Summarizing we can say that deontic facts are possible to the extent that they are based upon fact in the world and rules that exist in the world. Whether the belief in the presence of these facts (acceptance of ought judgments that express these facts) is inherently tied to motivation is another matter, which I will address in the following subsection.

7.3   Why the world is not inert

The idea that the world must be inert, because the motivation for behavior stems from the human mind (desires), presupposes a form of ontological realism that allows only mind-independent entities in the world. In section 5 I have argued for a moderate form of idealism, according to which the world contains a number of mind-dependent entities, without necessarily being completely mind-dependent. The idea was that a number of entities in the world, including all facts, are the result of a mental operation performed on already existing entities in the world. This mental operation may be limited to mere conceptualization (e.g. calling a horse an animal), but it may also involve the creation of new facts, such as the presence of goals in soccer, that are built upon other facts such as that the ball passed the goal line. Now I will elaborate this account of mind-dependent facts by arguing how these facts may have a built-in disposition to motivate behavior.

We have seen how it is possible to add new facts to the existing ones, purely by assigning status to what already exists. The utterance of particular words can receive the status of making a promise, and making a promise can receive the status of entering into a contract. From a physical perspective there is only one event, from a social perspective there is the additional event of a promise made, and from a legal perspective there is yet another event, the coming into existence of a contract. One might wonder whether it makes sense to have such a multiplication of facts, without any change in the layer of physics.

Those new facts that are superimposed on already existing ones are not identical to the facts on which they are superimposed. Making a promise is not the same as uttering particular words on a particular occasion. The utterance of those words has, using the terminology of Searle, a particular status, but this status is not inherent to the utterance. It might have had no social status at all, or a quite different status. For instance, saying 'I will repair your bike this afternoon' under the suitable circumstances counts as making a promise. That it counts as such is a result of social conventions, including the existence of the institution of promising and the ways in which they can be made. Had the institution of promising not existed, or should promises be made quite differently, the utterance of these same words would

not have constituted a promise, that is, they would not have had the status they actually have.

Before continuing, I would like to propose a change in terminology. Searle analyzed institutional facts in terms of status assigned to underlying entities. It seems to me that the word 'status' functions well in the case of institutional facts, but that it is a bit narrow for everything that is mentally added to the world. Therefore I would like to introduce the word 'meaning' in a broad sense that includes word meaning and sentence meaning, but that also includes the meaning that her children have for a mother, or the meaning of a bombing attack in international politics. Status in Searle's sense would be a special case of meaning too.

Meanings in this broad sense can be personal. The meaning of her children for a mother is a fair example of such personal meaning. Meanings can also be shared in a group. Word meaning is an example of this 'social meaning'.[58] And, finally, meaning can also be institutional. A good example of institutional meaning would be the meaning of the signature of the King under a recently passed bill.

Back to promises. If some event is described as making a promise, the event classified as a promise necessarily or inherently has the social meaning that promises have. In other words, the fact of the promise inherently has the meaning that the fact that the promising words were uttered merely has contingently. In this sense, the fact that a promise was made is different from the fact that these words were uttered and for this reason it makes sense to have promises next to the utterances of promising words.

The fact that a promise was made has the social meaning of a promise, but in a sense masks the way this social meaning has come about. If you know that a promise was made and you know the social conventions concerning how promises are made, you have some vague idea of what might have happened. For instance, if you know that John promised to marry Jane, you can guess what happened during a Saturday night after a romantic dinner. But the knowledge that a promise was made is very clear about the social meaning of what happened: it counts as making a promise with all the consequences attached by social rules to the existence of a promise. In the fact that a promise was made, the social meaning dominates and the physical substrate of the promise making event is at best hinted at. The fact that a promise was made is mostly a fact about social meaning. Similarly the fact that a contract was made is mostly a fact with legal meaning. Again the

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[58] That word meaning is also conventional does not detract from the fact that it is a kind of meaning shared within a group. The group is in this case the group of speakers of the language in question.

physical substrate, although necessarily present in the background, is hardly reflected in the fact.

The point I wanted to make with these examples is that there are facts that almost exclusively consist of the meaning, e.g. social or legal meaning, assigned to other events. These other events have this meaning contingently, while the facts that are superimposed upon them have this same meaning inherently, and sometimes these facts are hardly anything more than that this meaning exists. The underlying facts to which the meaning is attached must be there, for otherwise there would be nothing to attach the meaning to. But the superimposed facts, although necessarily based on other facts, abstract from their basis and consist (almost) completely of the meanings assigned to this basis.[59]

The point of having promises and contracts is that they create justified expectancies concerning future conduct. Crucial in the meaning of a promise is that the promisor has, at least pro tanto, the obligation to do what he promised to do. This obligation is inherent to the presence of a promise. Without it, the promise would not have been a promise but merely the utterance of the promising words. Of course, it is possible to attach other consequences to the utterance of the words 'I promise to do X', but when this happens, the institution of promising is abandoned and possibly replaced by some other institution.

The fact *that a promise was made* indicates the source of the resulting obligation, namely that it stems from the promise. The fact that the person P, who promised to do X, *ought to do* X, abstracts from this source. Duties to do things are all based on some source, but the fact that somebody has the duty, or ought, to do X abstracts from these sources, just like the fact that a promise was made abstracts from the precise way in which the promise was made. The fact that a promise was made consists almost completely of the social meaning of the underlying event, and in a similar way the fact that A ought to do X consists completely of the meaning of the underlying source of the duty. The best way to express this meaning is precisely to say that A ought to do X, and all other explanations of it, such as that A has a good reason to do X, that people can expect that A will do X, that they are justified in this expectation, etc. are at best approximations of what is best *described* by means of the word 'ought'. In this sense, 'ought' cannot be defined; it just stands for 'facts of the ought-type', such as that A ought to do X, or that B ought to refrain from Y.

Facts of the ought-type may be called *deontic facts*. Deontic facts are the (presence of the) meaning of their underlying facts. For instance, the fact

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[59]   This account of the role of meaning in facts is one of the central themes of Hage 1987.

that A ought to do X is the meaning of, what is attached to, the fact that some authority commanded A to do X. The fact that he was commanded to do X has contingently some meaning. This same meaning is inherent to the fact that A ought to do X, and it is expressed by the sentence 'A ought to do X'.

Because the fact that A ought to do X has behavior guiding meaning for A, the utterance towards A of the sentence 'You ought to do X' reminds A of the presence of this behavior guiding meaning, and therefore is suitable to exhort A to do X. But the behavior guiding meaning is not the outflow of the utterance, but is inherent to the deontic fact expressed by the utterance.

Because deontic fact, like all facts, are part of the world, and because deontic facts, a least those of the ought-type, inherently have behavior guiding meaning, the world has behavior guiding meaning. It is not, as the Humeans would have it, inert. Maybe there is not a serious disagreement with the Humeans here, because the behavior guiding force does not stem from reality in itself, independent of human assignment, and in this respect the picture sketched here is Humean. The main point of my argument above is that the world, as opposed to reality, is partly the result of human assignment of meaning, and that, as a consequence, the world contains the meanings that humans have added to it. Maybe the difference with the Humeans is that I think that it is this partly human made world that is the object of our knowledge, the place we live in and the thing that contains the facts that provide the reasons for our behavior. Reality in itself may be a theoretical construct needed to make sense of our behavior, as Searle would have it, but it is not the thing that should take a major place in our practical or theoretical life. The world is what matters to us, and this world is not inert.

7.4   Types of deontic facts

Deontic facts are facts that inherently have behavior guiding meaning. Acceptance of such facts, that is the belief that such a fact is present, tends to motivate behavior.[60] Traditionally three kinds of deontic facts (norms) are distinguished, namely obligations (oughts), prohibitions (ought nots) and permissions.

Since the purpose of deontic facts is to guide behavior, deontic facts are about actions. Moreover, since only future behavior can be guided and since

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[60] This is perhaps a too simple statement about the nature of deontic facts, given the possibility of 'inverted commas' or 'detached' versions of deontic beliefs. I will ignore this complication here.

acts that have actually been performed cannot be guided anymore, deontic facts concern future acts. These future acts can only be specified by means of the type of action to which they belong. Therefore deontic facts require, prohibit or (strongly) permit action types. Often, but not always, the actors for which the requirement, prohibition or permission holds are specified. Sometimes the actors are referred to by means of a general category, sometimes they are individually specified. Examples of deontic facts would therefore be:

- It is obligatory to drive on the right hand side of the road.
- Men are not allowed to enter the ladies dressing rooms.
- Everybody is permitted to express his opinion about political issues.
- Jane ought to repay the money she borrowed from Margaret.

Because of their inherent behavior guiding force, deontic facts seem to be suitable candidates for being norms. But there are other attractive candidates in the form of deontic rules. Rules like 'It is forbidden to steal', and 'When it is dark, car drivers are obligated to turn on the car lights' are also suitable candidates for counting as norms. To add to the complexity in this connection, the sentences expressing these rules would also qualify as sentences that express deontic states of affairs. To be able to say more about the nature of norms, we need an analysis of rules that pays attention to the relation between rules, deontic facts, commands, and legislative acts. In the following section I will try to provide such an analysis.

8.   OF RULES

In the previous section, rules were mentioned as connections between reasons and reason-based facts. Such rules are to be distinguished from both propositions and states of affairs. Rules in the sense of the word relevant here[61], are in my opinion entities used by humans to impose structure upon the world. I will try to clarify this view of rules.

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[61]   The intended sense is the broad one of rules as constraints on possible worlds, and not the narrow one of rules that lead to decisive reasons in contrast to principles or abstract reasons that merely lead to contributive reasons. See chapter 3 section 3 for this distinction.

8.1   The ontological effects of rules

Maybe the first thing to notice is that not all rules have as their primary aim to guide action. Obviously many rules such as traffic rules, or rules of a game aim to guide human behavior. But just as obviously, rules defining when a chess player is check mated, rules stating the number of members of Parliament and rules spelling out the organs of the United Nations do not have as their primary aim to guide behavior. They may be seen as supporting other rules that do guide behavior, but even from this perspective they do not guide behavior themselves. The same counts for power conferring rules, which give persons the power to perform some kinds of actions. Knowing that rules do not necessarily guide behavior is the first step on the road to a better insight in what rules are.

One type of rules are rules of meaning. We have rules for the use of the words 'square' and 'rectangle' which make that everything that falls under the concept of a square also falls under the concept of a rectangle. These meaning rules not only govern the use of these words, but by means of them, the users of these rules also impose structure on the world: Given these rules, all squares must be rectangles. Similarly, given the conventions governing the use of the word 'bachelor', all bachelors must be unmarried. There is nothing spectacular about these structures we impose on the world by meaning conventions. All we do is use words in a particular way and, given this use, some relations between types of states of affairs come to hold, as by definition. The rules that govern our linguistic behavior indirectly have also effects upon the world. We may call this phenomenon the *ontological effect* of rules.

Rules governing the meanings of logical operators illustrate the same phenomenon. Given the meaning of the operator &, the sentence P & Q must be true if both the sentences P and Q are true. In an ontological fashion, the same can be expressed by saying that the state of affairs *p & q must obtain if both the states of affairs *p and *q obtain. The relation that on the language level exists between the truth values of sentences is reflected on the ontological level in the relation between states of affairs. This relation is brought about by a rule of language.

The relation between one fact that is a reason for the presence of some other fact and the reason-based fact supervening upon the reason, is brought about by a rule. In the example given in the previous section about scoring a goal, this is a rule of soccer, but there are many examples with other rules. For instance, the rule that thieves ought to be punished makes that the fact that X ought to be punished supervenes on the fact that X is a thief.

If a rule exists, not all combinations of facts are equally possible anymore. For instance, without the meaning rule that squares are a kind of

rectangles, there might have been squares that are not rectangles. Without the rule that if the ball passes the goal line a goal is scored, it would be possible that the ball passes the goal line without a goal being scored. However, if this last rule exists, a special explanation is needed if the ball passes the goal line without a goal being scored. The two types of facts, the ball passing the goal line and a goal being scored, normally go together.

By having rules, humans make that facts supervene upon each other. By using the rule of soccer, they make that scoring a goal supervenes on the ball's passing the goal line. By using the rule that thieves ought to be punished they make that the fact that X ought to be punished supervenes on X's being a thief. There is a structural connection between facts that are based upon each other. By using rules, humans create that structure. Supervenience based on rules is an example of the ontological effect of rules.

8.2   Legal rules

Legal rules also have ontological effects. To make the transition to legal rules as small as possible, we can start with legal meaning conventions. The Dutch Penal Code defines a number of crimes and thereby gives meaning conventions for, e.g., the notion of 'thief'. Given the convention for 'thief', somebody who takes away somebody else's good with the intention to appropriate this good illegally, is necessarily a thief.[62] This meaning convention structures the legal world by creating a connection between (compound) states of affairs of the types 'being a thief' and 'taking away somebody else's good with the intention to appropriate this good illegally'.

It is not only meaning conventions that have ontological effects in the law. There is also a legal rule that creates a connection between being a thief and being punishable. This rule *imposes* punishability. Another rule creates a connection between being the municipality council and being empowered to make by-laws. This is a *competence conferring* rule. Yet another rule creates a connection between having a driver's license and being permitted to drive a car. Finally, there is also a rule that connects the facts of having enjoyed an income and being obligated to make a statement to the tax officials. The last two rules, which have deontic states of affairs in their conclusion parts (being *permitted* to drive and *being obligated* to make a statement), are deontic rules.

Deontic rules have ontological effects by attaching deontic facts to the facts that satisfy their conditions. Enjoying an income and being obligated to

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[62]   Cf. art. 310 of the Dutch Penal Code.

make a statement to the tax officials go together in a way which is not identical, but nevertheless quite similar to the way in which being a square and being a rectangle go together.

Deontic rules are a kind of rules and derive many of their characteristics from being rules. Nevertheless they have also some peculiarities of their own. A characteristic that holds especially for deontic rules is that they often lack conditions. For instance, the deontic rule that it is forbidden to drive more than 35 miles an hour has no condition part. The same counts for the deontic rule that everybody is permitted to hold political speeches. Deontic rules without conditions do not impose structure upon the world, but rather create deontic facts. The deontic rule that it is forbidden to drive more than 35 miles an hour calls the deontic fact into life that it is forbidden to drive more than 35 miles an hour. The presence of this deontic fact is based on the existence of the deontic rule that caused its existence. Such deontic rules without conditions are difficult to distinguish from the deontic facts that are based on them and that sometimes have the same formulation.[63]

8.3   The world-to-word fit of rules

If a rule exists, the world is adapted to the contents of the rule. Rules can therefore be said to have the direct world-to-word direction of fit.[64] Nevertheless the way in which this fit comes about is different for rules than it is for constitutive acts. Constitutives cause *changes* in the world; rules influence the world, but not by causing changes. Their effects are more like constraints on the possible content of the world.[65]

For instance, if the rule that thieves are punishable exists, it is not possible that somebody is a thief without being also punishable.[66] If the rule exists that thieves are punishable and if I know that X is a thief, I can refrain from drawing the conclusion that X is punishable, but that does not prevent that X *is* punishable. It would be the same as if I would refuse to apply the rule that squares are rectangles. Such a refusal would not make some square into a non-rectangle; it would only mean that I make a mistake in my use of language. Similarly, my refusal to apply an applicable rule only means that I make a mistake in not applying the rule.[67] As long as the rule exists, thieves

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[63]   I will say some more on the relation between deontic rules and the deontic facts based on them in section 8.5.

[64]   Directions of fit are explained in section 3

[65]   Cf. the distinction between constitution and causation in chapter 7, section 2.

[66]   This would be different if an exception to the rule can be pointed out.

[67]   For the present purposes I ignore the possibility that there are good reasons against applying the rule, and its consequences for whether the rule should be applied.

are punishable. Only if the rule is abandoned (e.g. derogated), the relation between being a thief and being punishable disappears.

8.4   Deontic rules and commands

This contrast between the way in which constitutive acts and rules have the world-to-word direction of fit can be sharpened by paying attention to legislation. Legislation is a constitutive act by means of which (amongst others) deontic rules are created. A legislative act brings about a change in the world, because a deontic rule that did not exist before has come into existence. Moreover, if a deontic rule comes to exist, the structure that the deontic rule imposes upon the world also comes to hold. So if the legislator makes the deontic rule that thieves ought to be punished, the direct effect of this constitutive is that the deontic rule that thieves ought to be punished comes into existence. The indirect effect is that the state of affairs that thieves ought to be punished comes into existence too. (This assumes that before the deontic rule was created it was not yet the case that thieves ought to be punished.) An even more indirect effect obtains if the deontic rule is acted upon, and thieves are actually punished.
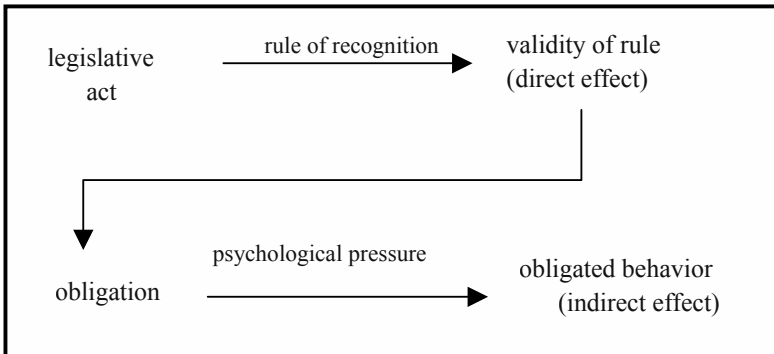
It may be useful to contrast this with issuing a command. The direct effect of a valid command is that an obligation is called into existence. This obligation can, but need not, lead to the obligated behavior.
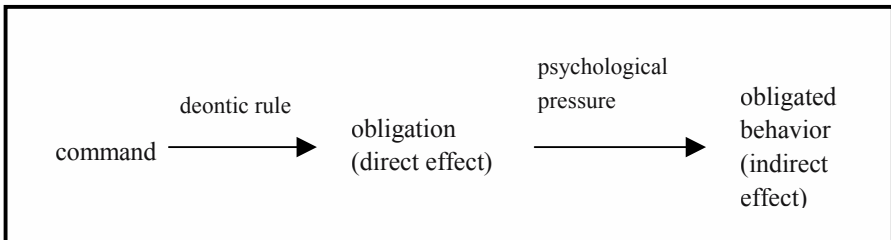
Notice that the rule that attaches the existence of a deontic rule to the validity of a legislative act is not a deontic rule. It does not prescribe to obey validly made deontic rules. The obligation that results from a valid deontic rule derives from the deontic rule itself and not from the power-conferring rule. In this respect the ought derived from a deontic rule differs from the ought brought about by a command. The latter ought derives from the deontic rule that prescribes to obey particular commands.[68]

The structure that a (deontic) rule imposes upon the world is a case of the direct world-to-word direction of fit. The immediate effect of the existence of a deontic rule is that some deontic fact obtains. A deontic rule does not have the indirect world-to-word fit. This indirect fit belongs to the deontic fact that exists because of the deontic rule.[69]

The mirror of a legislative act that calls a (deontic) rule into existence is a derogative act. By means of a derogative act, a rule is taken away from the institution, and indirectly also the consequences that the rule had for the structure of the world. Notice, by the way, that derogation is an act and not a rule.[70]

8.5   The descriptive counterpart of deontic rules

Rules, including deontic rules, have the world-to-word direction of fit. As a consequence, they have no truth values. A truth value depends on the success of the word-to-world fit between a sentence or proposition and the world. Only entities with the word-to-world direction of fit can have a truth value and this truth value is 'true' if the states of affairs represented by them obtain in the world. Entities with the world-to-word direction of fit, such as rules, can therefore not have truth values.

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[68] Cf. the discussion of Kelsen's differing view on this subject in section 3.3.

[69] Weinberger 1989, 226 also distinguishes between the word-to-world and world-to-word direction of fit. He ascribes the (indirect) world-to-word direction of fit to norms. Since Weinberger does not distinguish between norms and the deontic facts which are based on them, his views seem partly correct to me, namely to the extent that they deal with deontic facts.

[70] Kelsen 1979, 84f. offers the view that derogation takes place by means of norms. This imposes the difficult task to explain why derogating norms cannot be derogated themselves. If derogation is considered as an act, derogations cannot be derogated themselves, because it is impossible to undo acts by 'derogating' them.

Conventional acts can, however, be nullified and this holds also for derogations. Nullification is not taking the act away, but taking away the consequences that are (normally) attached to this fact.

Nevertheless, sentences such as 'Thieves ought to be punished' seem to be true or false, and yet they also seem to express deontic rules. Do not sentences like this illustrate that deontic rules can have truth values? My answer to this argument is that it mixes up rule formulations and the descriptive counterparts of rules. Descriptive counterparts of rules are sentences expressing states of affairs that obtain thanks to the application of a rule. To clarify the difference between rules and their descriptive counterparts and to distinguish between the descriptive counterparts of deontic rules and other assertive deontic sentences, I will say a little about the meaning of referring expressions.

We use referring expressions to identify a subject we want to say something about.[71] The simplest case of a referring expression is a proper name that rigidly denotes the object of reference. The proper name needs not have any meaning, otherwise than standing for what it names.[72]

The use of definite descriptions is somewhat more complex, because their linguistic meaning plays a role in identifying their object of reference. Definite descriptions can be used in a referential and in an attributive way.[73] If a definite description is used in a referential way, its descriptive component is used - in combination with the context of its utterance, including the beliefs of the audience - to identify the object of reference for the audience. Any descriptive expression that succeeds in making this identification suffices. For instance, if I want to refer to a long-haired *man* with a glass of *white wine* in his hands, I may succeed in identifying him by referring to the *lady* with a glass of *sherry* in her hand. The linguistic meaning of a definite description that is used referentially is not essential. This meaning is only an additional means, in combination with the circumstances of utterance, to identify the referent for the audience. As the example shows, there is no need for the definite description to be true of the referent.

The opposite is the case when a definite description is used in an attributive way. In that case the description is used to refer to those persons of objects that satisfy the description. For instance, the description 'the murderer of Jones' is used attributively if I say 'The murderer of Jones must be insane', when I am not acquainted with the murderer, but infer his insanity from the terrible way in which he mutilated Jones' corpse.

Often when an attributive use is made of a referring expression, what we want to say about the thing(s) to which we refer depends on the

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[71] Searle 1969, Ch. 4.
[72] Cf. Kripke 1972.
[73] Cf. Grayling 1997, 114f. and Donnellan 1966.