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A PHENOMENOLOGICAL ANALYSIS OF THE NOMOTHETIC NOEMA. DISCUSSING THE *DE DICTO* AND *DE RE* FORMULATIONS OF NORMATIVE SENTENCES

abstract

In this paper, I examine phenomenologically the structure of the normative noema, which I call the "nomothetic noema." I distinguish the meaning content, its normative characters, which I call "ductive forces", and its modes of givenness. Next, I introduce the traditional difference between modalities de re *and* de dicto. *I argue that the current tendency, in deontic logic, to treat deontic expressions as operators over sentences induces, at least on the syntactic surface, a* de dicto *reading. I then discuss some of the theoretical decisions that underlie deontic logic, starting from two basic asymmetries between modal alethic logic and deontic logic. The decisive point is to recover a strong sense of permission that I equate with the factor of free agency, which is difficult to formalize. Finally, I return to the analysis of the nomothetic noema and try to show how a* de re *reading is better suited to account for normative intentionality. I simultaneously introduce the concept of status-imposing norms, which must be formulated with a normative use of the copulas "is" and "has." I conclude that the treatment of normative expressions is more appropriate when they are understood as complex copulas, irreducible to assertive sentences, rather than as operators over whole sentences. I emphasize on this occasion that, from a phenomenological point of view and within the framework of genetic analysis, the primitive basic datum is the freedom of agency, on which the normative domain of assigning statuses to agents, obligations, and prohibitions is built.*

keywords

normativity, phenomenology of norms, de dicto/de re, *deontic logic, agency*

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1. Basics About Husserl's Concept of the *Noema*

Phenomenologically, a noema is the correlate of an intentional act. In so being, every noema points back to a corresponding noesis, or act, or to a multiplicity of noeses along with their internal constituents. However, it remains an open question whether every noetic element of consciousness necessarily has a correlative noematic unity. I think not. In fact, there are noetic elements that only when animated by a meaning-conferring act acquire a relation to an object, such as the esthesic data, or the thymic or orectic contents of consciousness. By themselves and in isolation, without being constituents of an encompassing intentional act, these latter noetic elements have no corresponding noematic correlate: they form the "hyletic" part of the contents of consciousness in opposition to the intentional *morphé,* as Husserl put it. This entails, firstly, that the noetic-noematic correlation is not of a one-to-one type but between a multiplicity of noetic elements, on the one hand, and the unity of the noema, on the other. By the same token, it also entails that a full noema is not, as said, a sheer and monolithic unity but has several constituents corresponding to the noetic multiple elements.

The classical conceptual characterization of the noema, stemming from Husserl's *Ideas I,* amounts to the following:

1. Regarding its *transcendental place*, the noema is *immanent* to consciousness, while its immanence is not *real* (*reell*), as the noetic components, but instead *intentional.* This means that there is no noema where there is no intentional act. In the Husserlian mereological jargon, the noema is a dependent part of a larger whole, a founded content.
2. Regarding its *transcendental status*, the noema is an intentionally immanent *object.* This characterization can be misleading, however. It does not mean that the noema is the object to which one is intentionally directed. It will be senseless to say that consciousness is directed to micro-objects that would be intentionally immanent to it. On the contrary, normally (i.e., not in second-order reflective acts), one is intentionally directed to the objects out there, which phenomenology names the *transcendent* objects. In so being, when affirming that a noema is an object, this means either that the noema is the object intended in its ways of givenness or that it is an abstract sense-content through which a transcendent object is intended. The former interpretation is generally attributed to Aron Gurwitsch, who took the perceptual noema as his model for analysis, soon generalizing the results for every kind of noema whatsoever.[1] The latter stems from a seminal paper

1 See, for instance, his early French work on the theory of constitution, where one can read successively that "The

by Dagfinn Føllesdal, where the noema is equated with a Fregean *Sinn,* even though the sense is only a partial element of the full noema.[2] This clash of interpretations gave rise to the famous East-West Coast debate about the status of the noema. My construal partially sides with the West-coast position by Dreyfus, D. W. Smith, and R. McIntyre, among others, which follows Føllesdal's interpretation of the noema as a *non-thematic* mediator, which, I add, is only accessible through noematic reflection. Being the *Sinn* unthematic and only directly accessible by a higher order act of reflection, my construal, though, puts severe limits to an internalist account of intentional reference as solely determined via meaning-content, partially avoiding intensional contexts and reference opacity.

3. Regarding its *phenomenological composition,* the noema contains a meaning-core called *Sinn* or *Bedeutung,* depending on the level of expression (*Ausdruck*), that points to an objectual *X*, which contains both the *mode in which the object is* intended, the so-called *Gegenstand im Wie seiner Bestimmtheiten*, and the very object that is intended, which Husserl designates as the *Gegenstand schlechthin*, the object *simpliciter*, or the object about-which, the *Gegenstand worüber.* Additionally, besides the sense-core with its objectual *X*, the noema also covers both the manner of givenness (as directly present, remembered, given through an image, symbolically, and so on) and the characters of being (such as existent, probable, inexistent, fictional, and so on). In a nutshell, the noema is a composite of a sense-core with its objectual *X*, plus the manners of givenness and the characters of being, which are often but wrongly taken by each other (not rarely one sees, for instance, the thetic character of existence construed as perceptual presence, while, rigorously, the mode of "being bodily there" concerns the way of givenness and not the thetic character as such: a thing can be posited as existent while being only symbolically given, and so on).
4. Regarding its *ontological characterization,* according to my Fregean- or Føllesdalian-like interpretation (and according to Husserl himself, let me say), the noematic unity of *meaning* (*Sinn*) can be taken as an *ideal entity* that remains identical for an open multiplicity of different acts, which is denominated a *proposition* (*Satz*), in the case of polythetic noemata, or a *name,* which can be either simple (a "proper name") or obtained by the nominalization of a previous proposition. The noematic sense, as a proposition, is what is meant or said as such, the judged-as-such, the intended as intended, briefly, the *dictum* of a sentence, or the *sense* of an intentional act considered *per se*.
5. Finally, the *propositional meaning* as such, or the ideal sense of the noematic core, receives a truth-value if and only if there is a (transcendent, in the normal case) state of affairs (*Sachverhalt*) that corresponds to it, and that correspondence is accounted for as a possible synthesis of fulfillment (*Erfüllung*) between the intending act and the corresponding intuitive act. If not, it is false in what it says. In so being, every noema which is well-formed, according to the morphological and syntactical laws of sense-formation and sense-derivation, says something about something and is not, in itself, either true or false. "The Fountain of Youth is in Florida" is an instance of such unity of well-formed propositional sense. It says, about the fountain of youth, that it is in Florida. Only when one intends to search for its supposed *Gegenstand-worüber*, and examine what is said about it, namely that it belongs to the set of things that are to be found in Florida, proves the noematic sense to

noema of a perception is the thing as it presents itself under this or that aspect and in this or that quite determinate fashion [...]", and then that "[...] one can and should allow for the noemata of memory, expectation, judgment, volition, etc., by defining the noema in general as the object such, and only such, as it plays a role in a particular act in which one becomes conscious of something [...]" (Gurwitsch, 2009, pp. 132-133).

2 For instance, "[...] the noemata are like linguistic *Sinne* in most respects. Thus, the following important consequence of thesis 1 should be noted: 8. Noemata are abstract entities" (Føllesdal, 1969, p. 684).

be false because, definitively, there is neither a transcendent object nor a state-of-affairs whose givenness could enter with it in a synthesis of fulfillment. This situation of an impossibility for a synthesis of fulfillment becomes crystal clear in those cases where the object, in the way it is intended, contains an internal, self-destructive contradiction, like ironwood, round square, etc.

2. On the Noematic Sense-Core of Norms and Their Complements

It seems quite easy to apply to *norms* the structure of noemata I have just highlighted for thetic acts. Indeed, it would be enough to substitute, on the noetic side, doxic acts of belief with acts of the will and, on the noematic side, characters of being with modalities of volitional positings. The noetic-noematic correlation will follow identical lines for every element of the noema, so that, *mutatis mutandis*, nomothetic acts, and their correlated normative noemata, as well as the corresponding normative states of affairs, would display an isomorphic structure. Things are not so simple, though. As Kelsen rightly stressed regarding the *Normsatz* that describes the content of a *Rechtsnorm*, it does not mention an act of the will as a constitutive element but only contains a conditional judgment articulated by a logical ought and based on the principle of imputation: If *A* is the case, then a certain behavior *B* ought to be the case.[3] Albeit the norm itself, not the description of it, was defined by him as the *sense* (*Sinn*) of a willing act, the act of the will, he stressed, belongs to the realm of the *is*, while the norm belongs to the for him nonreducible realm of the *ought.*[4] As he was adamant in affirming, an ought can only come from another ought and so on upwardly until the *Grundnorm*, which no longer has a positive content. Further, one can add that a simple act of the will cannot be *eo ipso* a norm. For instance, I may desire all nations to live in peace, but this is not a norm, namely of international law, but only my ineffective wish. Thus, I can live in the will that *S* be *P*, but this is not tantamount to having a norm directed to other people's behavior (not even to myself). For the meaning of the volitional act to be a norm, other conditions should be supposed, and precisely these conditions are, above all, the most important for characterizing the nature of norms. Actually, Kelsen himself pointed out this important feature when he wrote, "[...] not every such act [of the will] has also objectively this meaning [of being a norm]; only if the act of will also has the objective meaning of an 'ought', is this 'ought' called a norm."[5] Thus, not all acts of the will are norms, and the acts of the will that are norms have conditions for so being that are above their volitional character. In terms of principle, I believe it is a step in the wrong direction to define norms as a subclass of volitional acts. This would be more appropriate for orders or commands, but norms should not be interpreted in an imperativist framework. Thus, the simple analogy between thetic and nomothetic acts through the mere twist between doxic and volitional characters suffers a first but decisive blow.

One all-important condition for something to be a norm concerns its *meaning content* or noematic core, i.e., the *Sinn* of the noema expressing a supposed volitional act. As it is generally said, norms must have *deontic* content objectively traceable in their meaning. This

3 "[...] When the principle of imputation is applied, and when it is stated that under the condition of certain behavior, other behavior ought to take place, the term 'ought' has not its usual moral but a purely logical meaning. It designates, like causality, a category in the sense of Kant's transcendental logic" (Kelsen, 1967, p. 44).

4 "Norm is the meaning of an act by which certain behavior is commanded, permitted, or authorized. The norm, as the specific meaning of an act directed toward the behavior of someone else, is to be carefully differentiated from the act of will whose meaning the norm is: the norm is an *ought,* but the act of will is an *is.* Hence the situation constituted by such an act must be described by the statement: The one individual wills that the other individual ought to behave in a certain way" (Kelsen, 1967, p. 5).

5 Kelsen, 1967, p. 7.

feature essentially belongs to their nomothetic noema as a differentiating element regarding thetic noemata. Even though normative language is fully variegated and can be articulated in ways that omit deontic expressions, the essential point is that, in the propositional description of the content of norms, at least one deontic expression shall appear. In my view, a short list of such fundamental deontic expressions is the following:

1. The normative *is* and *has* (henceforward, "is_n", "has_n"), as in the norms "The age of majority is 18 years"; "Citizens have political and social rights."
2. At least, the threefold deontic expressions *prohibition* ("*F*"), *obligation* ("*O*"), and *permission* ("*P*"), which can be defined one by the other. For instance, taking permission as basic,[6] one defines the prohibition of *X* as the non-permission of *X*, and the obligation of *X* as the non-permission of *non-X*. Further, regarding contraries, if *X* is permitted, then *non-X* is also permitted (unless the permission follows from an obligation of *X*; I will argue this point later); if *X* is obligatory, then *non-X* is prohibited; if *X* is prohibited, then *non-X* is obligatory.

However, the sense-content of the noema is not enough to shape a norm. Obviously, being it a necessary condition, other elements must be added. A second crucial element regards the *ductive force* of the norm, i.e., the way it motivates or conditions behavior. In fact, norms have different qualities or forces. In the face of a norm that prescribes some behavior, one must always know whether it is something with a peremptory, binding force, or otherwise something that is no more than a recommendation, a guideline, or a piece of advice, by which one must not necessarily abide. Norms of etiquette, for instance, have the later ductive force, but also, in the juridical realm, customary law, when not recognized by state law and if not contrary to it, and recommendations issued by the competent authorities or the dispositions commonly referred to as "soft law." Indeed, regarding its sense-core, a norm can express an obligation (for instance, "during a speech, people should listen in silence and abstain from heckling the speaker"). Still, it can be no more than a recommendation when its ductive force is considered (in the example, suppose it is a speech at a political rally). The variation of ductive force in the nomothetic noema mirrors the variations of the characters of being in the thetic noema. On the latter, they range over a series that has existence and non-existence in its extreme points, passing through possible, probable, assumed, and so on. On the former, they go from peremptory force to ineffectiveness, passing through recommendation, counsel, suggestion, and so on.

In addition, besides deontic sense and ductive force, norms display something like a variety of modes of givenness. Some norms or a closed set of norms, no matter their deontic sense and ductive force, may be taken as effective standards for behavior. In contrast, others may appear to an agent as being at an ever-increasing "distance," to the point where they appear to her as strange or alien, as not being authentic norms for her (or "true," in a *de re* rendering of truth, as Amedeo G. Conte suggested[7]). The degree of subjective commitment to a given set of norms, the agent's "moral ideology", to use Kelsen's expression, determines how they appear to her on a nuanced scale between authentic and inauthentic. For a believer, for example, the norms that regulate her cult appear as authentic, while the norms concerning other different cults appear with the mark of inauthenticity. The same with laws: citizens of a certain country have their state laws mostly as authentic norms, while the norms of other states, especially in the case where they are very different in their legal cultures, are not only ineffective for them but,

6 I will explain later why I take permission as basic, not obligation, as it usually happens. Incidentally, I follow von Wright in his first system of deontic logic (von Wright, 1951b).
7 See Conte, 2016.

above all, appear as norms that do not raise an internal commitment. A case in point is the norms of social behavior across generations: many codes of conduct that supported the social life of a given generation appear to new generations as norms stripped of authenticity and are eventually replaced by others. These shaded differences between authentic (or "true") norms and norms appearing at an increasing "distance" up to the extreme point of inauthenticity shall be accounted for as the way norms are given to an active subject. They also belong to the internal structure of the nomothetic noema.

Thus, a theory of nomothetic noemata should cover the entire palette of deontic meaning and forms of ductive force and modes of givenness. However, my main concern in what follows will be about the meaning-structure of deontic sentences, for briefly returning to the other characters only in the last section.

3. Deontic Sentences in Light of the *De Re, De Dicto* Distinction

Now, the issue I shall deal with employing some phenomenological insights concerning the morpho-syntactical structure of norms concerns the *place* the deontic expressions shall have in the sense-content of the nomothetic noema.

An insight that, to my knowledge, stems from Leibniz amounts to treating deontic expressions by a strong analogy with modal alethic logic, so that the following pairs are obtained: Necessary/Obligatory; Contingent/Not-due (Optional); Possible/Licit (Permitted); and Impossible/Illicit (Prohibited). As far as I can see, he considers them as *modal operators* applying to the *dictum* of simple sentences that declaratively express some course of behavior. As he stresses, in so being, "the theorems on modals can be transferred here" so that "as many new propositions can be stated about the just and unjust."[8] Clearly, and not disregarding other possible sources, this specific move is accomplished by analogy with the alethic modal logic that comes from Aristotle.

Notwithstanding Leibniz's ingenious breakthrough of construing (and finding) the deontic operators as counterparts of the alethic modal expressions, there are dark areas in the analogy. Firstly, some basic theorems of alethic modal logic are not transferable to the logic of deontic expressions, as it is well known (I will stress it later). Secondly, looking at the simple linguistic surface of modal sentences, it is undecidable whether Aristotle treats modal expressions as operators on propositions (syntactically, a kind of unary predicates, like negation) or as complex predicates within propositions (composed copulas of the adverbial kind, such as is-necessarily, is-possibly, and so on). Indeed, his closer discussion of the difference appears in a passage of *De Sophisticis Elenchis,* where he considers not modality but the fallacies of composition and division (*vide* 166a 23-31). However, as I intend to point out, this is an important issue. In the medieval tradition, Abelard was the first to draw a distinction between two ways of analyzing a sentence containing modal expressions: *de sensu* and *de re* or *rebus.* While he maintains that every modal sentence is a statement about the *dictum* of another statement, he concludes that an *authentic* modal sentence must be formulated *secundum expositionem de rebus* (see Kneale, 1966, p. 624). Thought, the *de dicto, de re* distinction as it is used nowadays goes back to Aquinas. He rightfully stressed that there are two ways of inserting modal expressions in propositions. As he states, the two possible forms give rise to a *de re, de dicto* distinction in the syntactic and semantic content of modal sentences:

> A modal proposition is either *de dicto* or *de re*. Modality is *de dicto* in which the whole

8 "Uti se habent inter se necessarium, contingens, possibile, impossibile; ita se habent debitum, indebitum, licitum, illicitum. [...] Hinc patet Theoremata de Modalibus huc transferri, ac totidem novas propositiones circa justum et injustum enuntiari posse" (Leibniz, 1999, p. 2762).

> dictum is made the subject and the mode is predicated, as in 'that Socrates runs is possible'; modality is *de re* in which the mode is inserted into the dictum, as in 'Socrates is possibly running.'[9]

According to Thomas Aquinas, a modal expression such as "Necessary" can be either the predicate of the whole *dictum* of a simpler proposition, as when stating "Necessarily, Socrates is mortal", or it can be construed as belonging to the copula itself, as when one says, "Socrates is necessarily a mortal being". The difference is not immaterial. Indeed, on the *de re* reading of modal propositions, one finds a drift toward an essentialist view, given that a modal expression such as "necessary" is not accounted for as a predicate of the whole non-modal sentence but instead as belonging to the very copula as if the subject would have necessarily such and such predicates. Despite the difference in meaning, in this early treatment of the distinction, there is no clear decision for rigidly framing modal sentences either in the *de dicto* or *de re* patterns. A telling case is the wavering of the Pseudo-Aquinas between the two forms in his *Summa Totius Logicae Aristotelis*, together with the assertion that only *de dicto* formulae are truly modal ones.[10]

Certainly to contravene this essentialist trend, as Novaes suggested (Novaes, 2004), the nominalist William of Ockham proposed a new interpretation of the *de re, de dicto* distinction. In his account, modal propositions are *cum dicto* or *sine dicto* (the equivalent to the adverbial use of modal expressions, as in the Aquinas' *de re* mode). Importantly, the former propositions are, for him, reducible to a pair formed by a simple proposition with a deictic, denoting some individual, and another with a *de dicto* modality. In his own words, for a proposition *cum dicto,*

> It should first be noted, as was just said, that by means of such a proposition it is always asserted that such a mode is verified of what is said in the correspondent whole proposition.[11]

While for a proposition *sine dicto,*

> [It is required] that the mode expressed in such a proposition be truly predicated of an assertoric proposition [*propositione de inesse*] in which the very same predicate is predicated on a pronoun indicating that for which the subject stands [*supponit*].[12]

9 "Propositionum utem modalium quedam est de dicto, quaedam est de re. Modalis de dicto est, in qua totum dictum subiicitur et modus praedicatur, ut dicitur Socrates currere est possibile; Modalis de re est, in qua modus interponitur dicto, ut 'Socratem possibile est currere'." (Thomas Aquinas, 1976, p. 421). I'm using Uckelman's translation (Uckelman, 2008).

10 "[...] notandum quod quaedam sunt propositiones modales de dicto, ut Socratem currere est necesse; in quibus scilicet dictum subjicitur, et modus praedicatur; *et istae sunt vere modales* [my emphasis], quia modus hic determinat verbum ratione compositiones, ut supra dictum est. Quaedam autem sunt modales de re, in quibus videlicet modus interponit dicto, ut Socratem necesse est currere: non enim modo est sensus, quod hoc dictum sit necessarium, scilicet Socratem currere; sed hujus sensus est, quod in Socrate sit necessitas ad currendum" (Pseudo-Aquinas, 1864, tract. 6, cap. 11, 91081). On the other hand, when exposing the forms of modal syllogisms, Pseudo-Aquinas waivers quite erratically between *de dicto* and *de re* formulations of them as if they were equivalent (see Pseudo-Aquinas, 1864, tract. 7, cap. 13).

11 "Primo igitur sciendum, sicut dictum est quod semper per talem propositionem denotatur quod talis modus verificatur de tota propositione correspondente dicto" (Ockham, 1974, cap. 9, pp. 28-30)

12 "[...] ita scilicet quod modus expressus in tali propositione vere praedicatur de propositione de inesse, in qua ipsummet praedicatum praedicatur de pronomine demonstrante illud pro quo subiectum supponit [...]" (Ockham, 1974, cap. 10, pp. 14-16)

In a nutshell, according to Ockham's reductionist account, a *sine dicto* proposition like "*A* is necessarily *B*" should be disaggregated in the pair of propositions "*X* is *B*", where *X* is a deictic that stands for an individual, and in the proposition "That *X* is *B* is necessary" (by force of logical implication, for instance), at once avoiding including modalities in the copula and putting them instead as qualifying the whole sense of a non-modal proposition. The modal predicates become, thus, always operators modifying the *sense* or *dictum* of a basic non-modal proposition, *pace* Thomas Aquinas' former alternativist account.

Importantly enough, the *de re, de dicto* distinction was resurrected in the 20th century by von Wright, in his 1951s work *An Essay in Modal Logic,* where he made a direct reference to Aquinas' distinction.[13] Albeit recognizing that modalities of whatever kind (alethic, epistemic, deontic) can be treated either *de re* or *de dicto*, the decisive step he took was to consider deontic logic by analogy with alethic modal logic and to develop a whole system of deontic logic with deontic expressions applying to act-predicates (not to propositional expressions, as it now the normal case). The step was taken in the famous 1951 essay on deontic logic, where the correlation settled in the work on modal logic between modal and deontic operators was fully developed. Thus, based on the correlation between the necessary and the obligatory, the impossible and the prohibited, and the possible and the permitted, already present in the essay on modal logic, the whole system of deontic sentences was presented with deontic modalities for generic act-predicates and not as complex copulas (von Wright, 1951b). Later work on deontic logic that led to SDL operated a decisive modification when, instead of act-predicates, the basic propositional logic was used with variables for sentences, *p*, *q*, etc., and the deontic expressions were thus treated as modal operators applying to whole sentences. Putting deontic expressions as modal operators on top of variables for sentences favored the choice for the *de dicto* formulation, at least on the syntactic surface. Indeed, the similarity became apparent since the formal presentation of a deontic sentence took the form of a modal operator on a proposition: *Op*, *Fp*, etc.

However, there is something intuitively strange about the decision favoring the *de dicto* rendering. Under it, a deontic sentence is interpreted as a complex of a unary operator (*O*, *P*, *F*, and others) plus its argument. The argument is a declarative sentence that can be true or false, describing some action in the framework of a state of affairs. Thus, "*Op*" means in natural language that "*it is obligatory that p*" or "*that p is the case is obligatory*." Filling in the argument, one obtains, for instance, that "*it is obligatory that citizens abide by the state laws*" or "*that citizens abide by the state laws is obligatory.*" If one detaches the declarative sentence from the deontic operator, then one gets a pure description of a supposed *fact,* to wit, *that citizens abide by the state laws.* One can then wonder: Is this fact true or false? What are the truth conditions of deontic sentences, then? Do the deontic operators have anything to do with obtaining the facts that the sentences describe? I think these are inevitable but dependent questions, dependent, namely, on the initial decision of putting deontic expressions under the *de dicto* form. And there is an answer to them due to Kripke's possible world semantics for modal sentences. Indeed, his ingenious idea was to circumvent the intensional character of modal logic by framing a device to recover extensionality. In this framework, the great step was to interpret the modal operators not as unary predicates of a *dictum*, as they syntactically appear to be, but rather as *quantifiers over possible worlds.* The idea is appealing, indeed. The modal

13 "Sometimes we consider the modes in which a proposition is (or is not) true. A proposition is pronounced necessarily, possibly, or contingently true. Sometimes we consider the modes in which a property is present (or absent) in a thing. A property is pronounced necessarily, possibly, or contingently present in a certain thing. Aquinas made this distinction, when he said that the modal assertion could be *de dicto* or *de re.* We shall employ his terminology" (von Wright, 1951a, p. 1).

operator of the necessary, for instance, can be interpreted as the fact that some state of affairs *p* obtains in all conceivable (and "accessible") possible worlds. *Pace* Descartes, who defends an intra-mundane conception of necessity based on the unbound will of God, the idea seems intuitively obvious. If something is necessary, it must be true in all *conceivable* possible worlds, as Leibniz has long before stated against Descartes' conception of the *vérités éternelles ou de raison.*[14] By the same token, the possible can be equated with truth in some possible worlds and falsity in other worlds; the impossible, with falsity in all possible worlds, and so on. Dispensing with technicalities, the same seems to be feasible for deontic sentences. Following Kripke, it is a question of defining a deontic model structure, $\mathfrak{M}$, by the triplet $\mathfrak{M} = <K, W^a, R>$, where K is a set of possible worlds, W^a is the actual world, and R the non-reflexive, accessibility relation of deontic alternativeness, and then constructing a deontic model by the ordered pair M = $<\mathfrak{M}, V>$, *where V stands for the valuation function V from Va to the set of logical values 1 = true and 0 = false*. So, the function V assigns a definite truth value for the variables V^a on worlds in the non-empty set K. Accordingly, following the definitions of Necessity and Possibility, Obligation and Permission can be defined by the formulae (see Woleński, 2018, which I follow here):

1. $V(Op, W^a) = 1$, if and only if, for any $W \in K$ such that WRW^a, $V(p, W) = 1$
2. $V(Pp, W^a) = 1$, if and only if, for some $W \in K$ such that WRW^a, $V(p, W) = 1$

As a result, the deontic operators are resolved into the satisfaction or not of the state of affairs *p* in the relevant possible worlds. An obligation, for example, is now tantamount to asserting that *p* is the case in all relevant possible worlds accessible from the actual one by *R*. Being *R* a relation of deontic *alternativeness*, it is understandable that *W* is a *relevant* possible world if *p* is the case there, i.e., if it is a world where *O* happens to exist and is fulfilled. Indeed, suppose the obligation exists but is not always or almost fulfilled. In that case, *W* is not a relevant possible world for deontic alternativeness because it is a world in which precisely the same situation occurs as in the actual world. As a result, one is filtering *K* for deontically *perfect* worlds, where what happens is just what shall be the case. We have, thus, moved from sense to extension, making the extensional facts of alternative deontic worlds and their truth or falsity stand for the *sense* of the deontic expressions.

However, it is strange to say that an obligation, for instance, is *true* if what it commands is the case in all possible relevant worlds. Indeed, a deontic sentence is not a norm but a *description* of a norm. Regarding the latter, it is neither true nor false but either valid or invalid. If valid, it has some degree of ductive force, which does not enter the syntactical and semantical content of the norm itself. Deontic *logical* constraints do not apply to it as such. Regarding the former, a deontic sentence is true if it rightfully describes the meaning content of the norm. Typically, a *norm* does not state that some *fact* of the actual world is the case. It does not talk about facts at all. It only states that some agents (say, for returning to the example, some individuals in the capacity of citizens) are obliged to do this or that (say, to respect the duties of citizens) or are permitted, prohibited to do some other things. Thus, according to their proper sense, the truth

14 When one expresses Leibniz's thesis in this way and writes explicitly in all *conceivable* possible worlds, it becomes apparent that the argument is based on what appears to be a *petitio principii*. The worlds are conceivable from precisely the truths of reason, and therefore the argument merely says that in all worlds conceivable from these truths of reason, these truths of reason hold. Descartes' point was God's possibility of freely creating one world with other truths of reason. Of course, these other truths of reason (and the corresponding worlds) are not accessible through the truths of reason belonging to the actual world. They are an empty set. However, their possibility is based not on what is conceivable but on the concept of an unbounded will. At the end of the story, Leibniz's argument seems weaker than it first appears.

conditions of deontic sentences do not go in the direction of facts. They go in the direction of the norms they express. And the norms do not talk about facts but instead about exigences about what the facts *shall be.* As a result, the deontic sentence "it is obligatory that *p*" is true not if *p* is the case in all relevant possible worlds. It is true if, in the actual world, there is a corresponding *norm* obligating that *p* in a given juridical, ethical, social code or other.

4. Two Recalcitrant Asymmetries in the Traditional Approach to Deontic Modalities

What I shall say in what follows is not tantamount to belittling the magnificent and subtle work deontic logicians have done. Quite the contrary. It is merely the endeavor of discussing, in a neutral region and based on the sense content of norms as phenomenological analysis can reveal it, some major decisions that have led to the quasi-evidence that a *de dicto* formulation must be given to deontic sentences. The weird situation plaguing this approach from the very beginning is that there is no strict symmetry between modal alethic logic and deontic logic, i.e., between the *de dicto* interpretation of modal alethic logic and the *de dicto* interpretation of deontic sentences. Two well-known asymmetries are worth noting for my proposes.
Firstly, the axiom that is included in the modal system called T or M, which expands the weaker system K, states that

1. If it is necessary that *p,*
   then *p* is the case. (T)

Clearly, this cannot be a theorem for deontic sentences in the *de dicto* interpretation, given that agency enters the situation and, thus, the power of choice for acting or not accordingly. In so being,

2. If it is obligatory that *p,*
   then either *p* or *not-p* is the case. (T)

In fact, the conclusion that *p* is the case is simply false by the internal logic of obligation as a command directed to someone with a power of choice and, thus, with a capacity to decide her behavior and be responsible for it. Indeed, if, for instance, a nomothetic sentence prescribes that citizens must abide by a certain law, it does not follow that it is a fact that every citizen abides by that law. In the maximal case, it could happen that nobody would abide by it. Thus, one cannot have a symmetry with 1. ($Np \rightarrow p$), writing:

3. $Op \rightarrow p$ (F)

Føllesdal noted that Ernst Mally's early deontic system included such a false theorem (theorem 20.), together with some other unacceptable theorems (like 12. $p \rightarrow Op$, and 21. $Op \leftrightarrow p$). He writes: "(12) states that whatever is the case ought to be, and according to (20), the converse implication is also valid. Theorem (21), the conjunction of (12) and (20), states that *p* ought to be the case if and only if it is the case. (21) expresses the equivalence of *ought* and *is*. These theorems are strongly counterintuitive. Mally himself observes that (21) is undoubtedly the strangest one among the 'strange' theorems" (Føllesdal & Hilpinen, 1981, p. 4-5). However, I confess that Føllesdal's formulation of theorem 20, namely "$Oq \supset q$," is hard for me to find in Mally's text. Indeed, Mally writes that, according to 20, "[...] everything that should be, should be equally, namely under all circumstances, unconditionally." If I am reading him right, this does not mean that whatever should be is, but that all requirements have the same ductive force: unconditionality under whatever circumstances. Indeed, Mally expressly writes: "All that shall be, shall be equally." Clearly, this does not entail that, in fact, what ought to be is, but that all that ought to be shall have the same mandatory force. Accordingly, the strangeness of the theorem concerns its denial of the intuitive notion of degrees of ductive force and, thus, of weaker and stronger demands.[15] Additionally, Mally's theorem 22 (21, in Føllesdal's discussion), "The facts are to be," which for Føllesdal expresses the self-destructive thesis of the equivalence between *is* and *ought*, is commented by him as follows: "It states that *at least what is factual shall be* but leaves it *undecided whether the reverse is also true*" (Mally 1971. p. 256, my emphasis). The comment suggests the objectionable theorem 12., but it makes no room for the expression under discussion, $Op \rightarrow p$, to count as a theorem. Even though Mally wavers permanently between the deontic demand "the facts *are to be*" and the seemingly actual verification that "the facts *are*," he appears to pass over the intrinsic problem of the passage from Op to p more than to fall in the error that is imputed to him. Theorem 23 is a case in point. It reads, "the facts and what is absolutely demanded are equivalent." Apparently, Mally is crossing the line between *Sollen* and *Sein.* However, he adds in the very same sentence: "*in terms of demand*."[16] This makes clear that, for him, albeit his wavering between the two realms, the coincidence between *Sein* and *Sollen*, and the passage from *Sollen* to *Sein*, is not a factual assertion but is affirmed instead as an *exigence* intrinsic to the normative realm. Instead of affirming $Op \rightarrow p$, it seems that he is rather writing that $O(Op \rightarrow p)$, which is pretty acceptable: It is obligatory, i.e., it is a deontic *exigence* that, if p is obligatory, then p should be the case.

More attentive to the mentioned break of symmetry between alethic and deontic logic than Mally ever was, von Wright's strategy amounts to a circumvention maneuver. Given that to pass from $Np \rightarrow p$ to $Op \rightarrow p$ is a conceptual impossibility *cum fundamento in re,* so to speak, because it elides the agency factor, he proposes to substitute the former by the weaker axiom for tautologies (t), stating that $Nt \rightarrow t$, so that a weaker deontic axiom follows, namely $Ot \rightarrow t$. However, the assumption that tautologies are obligatory is hardly understandable. Really, it does not make sense. Accordingly, von Wright reaches a second formula, $\sim O \sim t$, which, as he writes, "seems not only to make sense but also to be true" as it "says that a contradictory state of affairs is not a state which ought to be the case" (von Wright, 1981, p. 159). As a result, for the alethic pair formed by $Np \rightarrow p$ and its weaker counterpart $\sim N \sim t$, he gets the deontic formula $\sim O \sim t$, which he generalizes to $\sim O \sim p$, but *not* the strongest formula $Op \rightarrow p$ (von Wright, 1981, p. 160). Now, in my opinion, it is also hard to understand why one must say that contradictory states of affairs (*viz.*, the negation of tautologies) "ought not" to be the case. Passing from what *cannot be* the case (an ontic impossibility) to what *ought not to be* the case (a deontic prohibition) seems to mirror as if in negative the naturalistic fallacy of moving from "is" to "ought-to-be". Deontic predicates, like prohibitions, neither follow from nor apply to ontic impossibilities like contradictions. Contradictory states of affairs are not prohibited; they simply are impossible. Of course, what I say does not preclude the obvious principle that no norm shall oblige what is contradictory and, thus, impossible to fulfill. But the reverse is here the point: to overdetermine the realm of the ontically impossible with a deontic predicate as if they could overlap. They do not overlap. The *impossible* is wider than the non-obligatory

15 Here is the passage: „Satz 20 spricht aus, *dass alle unbedingt geforderten Sachverhalte forderungsmässig äquivalent sind.* In diesem Satze kommt ein Begriff der Forderung zur Geltung, der *keine Grade des Sollens* kennt: alles was sein solI, solI gleichermassen sein, nämlich unter allen Umstanden, unbedingt. Auch dieser Satz wird zu prüfen, nämlich einem zweifellos vorhandenen Sollensbegriff gegenüberzustellen sein, der die Unterscheidung stärkerer und schwächerer Forderungen zulässt" (Mally, 1971, p. 256).

16 "Das bedeutet: Die Tatsachen und das unbedingt Geforderte sind *forderungsmässig* äquivalent; oder: Was tatsachlich ist und was sein soll, *soll* äquivalent sein. – *Das liegt* ja *im Sinne des Forderns*, dass, was ist, sich mit dem Geforderten decken soll" (Mally, 1971, p. 257, my emphases).

(for instance, that "2 + 2 = 5"), and the non-*obligatory* does not coincide with the impossible (for instance, that "citizens are not obliged to leave their country" disobliges because not leaving the country is a positive constitutional right, not a contradiction). As a matter of fact, deontic prescriptions, obligations, as well as prohibitions are not framed in terms of tautological sentences. In addition, there is no existential generalization either: from the ontic impossibility of $\sim t$ to be the case, one cannot get the deontic non-existence of $\sim p$, by means of the transitional formula $\sim O\sim p$. As neither obligations nor prohibitions parallel the ontic modal truths of the necessary and the impossible, both p and $\sim p$ cannot be derived in the deontic realm.

Nonetheless, there is something subtle and worth noting in von Wright's thesis. One could expect that if a modified existential generalization is not obtainable, at least Pp would be deducible from the weaker formula $\sim O\sim p$. Von Wright thinks not. As he writes, "Accepting the modified definitions of the notions of necessary and of sufficient condition, it is easily shown that '$Pp \rightarrow \sim O\sim p$' is a theorem. If something may be, then it is not the case that its contradictory ought to be. [...] '$Op \rightarrow \sim O\sim p$' is another theorem", but "'$\sim O\sim p \rightarrow Pp$' is not a theorem" (von Wright, 1981, p. 166). Though, letting aside strict logical derivability, this seems strange. Suppose I drive a car in a foreign country on what appears to be a highway, accompanied by a friend from that land. Suddenly I feel unwell and think about stopping. I elliptically ask my friend, 'Is it obligatory not to stop?' He replies, 'No, it is not obligatory not to stop.' What should I conclude? Von Wright would say that permission to stop does not follow. Strictly, it does not follow, indeed. However, according to the *meaning* of the answer, 'it is not obligatory not to stop', the natural conclusion would be that it is permitted to stop. Therefore, it would follow that, on the road, there is no prohibition to stop, but permission both to stop and not to stop. In fact, if it were prohibited to stop, it would be obligatory not to stop. Since it is not obligatory not to stop, the conclusion is that it is not prohibited to stop and is therefore permitted, on the road, either to stop or not to stop. Whatever is not prohibited is permitted; whatever is beyond the set of all obligations is also permitted. This insight puts permission as a wider basis on which the whole edifice of obligations and prohibitions is built. Though, no existential generalization seems to mirror here the strong modal alethic formula $Np \rightarrow p$. One only has $Op \rightarrow Pp \rightarrow \sim O\sim p$, as von Wright rightly stresses, or something like $(\sim O\sim p \,\&\, P\sim p) \rightarrow (Pp \,\&\, P\sim p)$ – when freeing $\sim O\sim p$ from Op and taking it by itself – because the formula $((Op \rightarrow \sim O\sim p) \,\&\, (\sim O\sim p \,\&\, P\sim p)) \rightarrow (Pp \,\&\, P\sim p)$ would contain a contradiction in the antecedent – as a wide, non-formalizable, basic sense of permission the *natural meaning* of the expression suggests (I will return to this in a moment).

To get around this obstacle and regain something like an existential thesis in the framework of the possible world semantics, some deontic systems suppose an ethically perfect world in a vein that, as far as I know, also goes back to the Leibnizian *persona* of the *vir bonus*, who does and only does what he must do.[17] In what he names the D-system of deontic logic, Cocchiarella defines as follows such a world: "A possible world W is ethically ideal if, and only if, for all formulas φ, $(O\varphi \rightarrow \varphi)$ is true in W; or in terms of actions, a world W is ideal iff every action that ought to be done in W is in fact done in W" (Cocchiarella, 1969, p. 7). However, this move is hard to accept. Suddenly, one is talking about an ideal world that is not the world the logic of deontic sentences should account for, *pace* the Kripkean possible world

17 For instance: "Virum bonum enim seu justum definio qui amat omnes. [...] Hine omnia juris et aequi theoremata deduco. Licitum enim sit, quod viro bono possibile est. Debitum sit, quod viro bono necessarium est" (Leibniz, 1875, p. 73). See also: "*Justum* vel *Licitum, Illicitum, Debitum, Liberum,* quod est viro bono et prudenti possibile, impossibile, necessarium, contingens" (Leibniz, 1999, 2778).

semantics for modal sentences. It is not even necessary to invoke the phenomenological requirement of a return to the things themselves. It is enough to set our eyes on this drift into an alternative, fictional world created *ad hoc* to the difficulties of the issue. What seems to me the most "disrespectful" to the "things themselves" is the fact that this world does not take into account what is perhaps the deepest underlying reason for the existence of normativity: freedom of agency. Indeed, the supposed "ethically perfect world" is the sunset of freedom of choice, of weighing motivations, of decision, and of voluntary will. Norms would be like instructions that determine a mechanical doing. In fact, a variable set of motivations, many of them contradictory, is present in every decision that determines a unified will. Norms are only one part of this set of motivational factors, and it is a "necessity of essence," to put it phenomenologically, that there is no overlap between normative prescriptions and factual actions. It could be replied that an ethically perfect world is one in which this set of motivations is present but in which the agent, by ethical decision, always assigns a higher motivational force to what is established by normative codes. Though, this reply concedes what I want to claim. Indeed, in that case, there would always be weighing and deciding on a set of motivations and awareness of being able to act for motivations opposite to the norms. Thus, even in it, the agency would not be deleted, and, with the agency, the very ability to assess the "goodness" and "justice" of a normative code and, in the last resort, to decide against what it obliges or prohibits. On the contrary, a world in which the normatively established always occurs inevitably would be a world without decision, without freedom, and in which there would have been a positivist reduction of the just to the positivity of normative codes. In this case, there would be no need for a theory of moral evaluation, of the will, and practical reasoning.

Moreover, the way out suggested by Cochiarella seems to me not to work either, when one remains faithful to the basic sense of permission. In fact, for Cocchiarella, the way-out proposed amounts to modifying the false assertion that, if it is obligatory that *p*, then *p* is the case, by the weaker thesis that, if it is obligatory that *p*, then it is permitted that *p*. However, as I mentioned earlier, the core sense of permission entails that, if something is permitted, the contrary is also permitted: If it is permitted to smoke, it is permitted not to smoke; if it is permitted to walk on the streets, it is also permitted to not walk on the streets, and so on, under the condition that there is no express prohibition of one of the pairs of the alternative (for instance, if it is permitted not to harm others, it is not permitted to harm others either, because this latter is expressly prohibited).

To see this clearly, suppose a world free from obligations and prohibitions. Now, insert in this world some *positive permission* to do *p*. From this newly inserted permission, it does not follow that all or some agents will do *p*. The only conclusion is that *p,* being now permitted, can be done or not done. One could retort that one permission without a background of prohibitions and obligations is redundant because what is neither prohibited nor obligatory is a matter of indifference and, thus, always optionally practicable. However, suppose that, in this world, a new institution is created, for instance, a state power. When the constitution establishes that citizens have permission to vote, this is a positive authorization to vote or not to vote, that is, to do or not do some action *A* to which there was no former background of obligations or prohibitions because there were no political institutions in which *A* could exist. With this permission to vote, something new enters the world that did not exist earlier. So, the permission is not redundant. By the same token, even when some permission is established against the backdrop of a general prohibition, this sense of optionality of positive permission comes to light. Modifying an example given by Brown, suppose that a mother prohibits her children from eating cookies and now voices one special permission to eat a cookie, that is, an exception that does not withdraw the previous prohibition. This new permission is neither an obligation to eat a cookie nor the nonexistence of an obligation not to eat cookies or the nonexistence of a prohibition to eat cookies. On the contrary, it is permission given to the children to choose between eating or not eating a cookie now. In so being, once more comes to light the sense of positive permission, which Brown names "explicit permission" and that, as he stresses, "has been difficult for simple formal treatments of deontic logic to make room, [and remains, thus,] a traditionally difficult notion to incorporate into deontic logic" (Brown, 2000, p. 95).

Von Wright has long ago highlighted this sense of "strong" permission. It is worth quoting one of his accounts:

> The dual of the formula '$O(p \mathbin{\&} q) \leftrightarrow Op \mathbin{\&} Oq$,' i.e., the distribution principle '$P(p \vee q) \leftrightarrow Pp \vee Pq$,' holds good of this notion of [weak] permittedness. This, however, does not correspond to the way in which permission is normally thought to be distributive over alternatives. If we are told that we may do this or that thing, we normally understand this to mean that we may do the one thing *but also* the other thing. The distribution principle, in other words, would seem to be '$P(p \vee q) \leftrightarrow Pp \mathbin{\&} Pq$.' But this principle goes with a different idea of permittedness from the one which obeys the interdefinition schema 'P' $=_{\text{def}}$ '$\sim O \sim$.' We can call it a notion of *strong* permission. It is related to possibility (freedom) of *choice* between alternatives. (von Wright, 1981, p. 160)

This sense of permission amounts, thus, to optionality, which would have to do not with the alethic modal operator of the possible but rather with the contingent. In fact, when permission is asserted in a free manner, neither governed by the operator of obligation nor limited by the operator of prohibition, it is trivial that,

4. If it is permitted that *p*, then it is also permitted that not-*p*. (T)

However, this is false in alethic modal logic because of the contradiction one gets when permission is substituted by possibility. In fact, it gives rise to a blatant contradiction and is always false. Indeed, while one can state, assuming von Wright's "contingency principle" (i.e., the exclusion of $\sim P(A \mathbin{\&} \sim A)$ as theorem), that

5. $Pp \mathbin{\&} P{\sim}p \rightarrow P(p \mathbin{\&} {\sim}p)$ (T)

the correspondent assertion for the possible in alethic modal logic is contradictory and thus false, namely that

6. $Mp \mathbin{\&} M{\sim}p \rightarrow M(p \mathbin{\&} {\sim}p)$ (F)

The second problem to which the treatment of deontic expressions as modal operators is exposed comes from another long-known lack of symmetry with alethic modal logic. As I will stress very rapidly, the way it is usually countered also reveals a loss of sight for the strong sense of positive permission I just mentioned. In fact, while it is a theorem of alethic modal logic that

7. If *p* is the case,
   then *p* is possible, (T)

the correspondent sentence in deontic logic is simply untrue. Suppose that *p* describes a horrendous murder. One cannot simply state that,

8. If *p* is the case,
 then *p* is permitted. (F)

Once more, the usual move, as Cocchiarella puts it, consists in "a revised counterpart" of 8., in which it is assumed that "in an ideal world it ought to be that what is the case ought to be permitted; [...] in other words [the relevant alternative to 8.] is $O(\varphi \rightarrow OP\varphi)$" (Cocchiarella, 1969, p. 9). This revision mirrors Brower's axiom for alethic modal logic according to which, if *p* is the case, then it is necessary that it is possible that *p* (the system B, precisely after him). It is a perfectly understandable axiom: If something is the case, then necessarily, it must also be possible. However, its counterpart in deontic logic (obligatorily, if something is the case, then it is obligatory that it is permitted) is only valid in the *asylum* of the "ethically ideal world." In a nutshell, one is moving again to an "ideal world" without agency, where only what is obligatorily permitted is actually the case, where permission is governed by obligation, and where there is no place for the sense of positive permission, which is more than the nonexistence of a prohibition or an obligation to the contrary: it is the very *phenomenon of agency* caught in its most original form.

5. The Structure of the Nomothetic Noema and *De Re* Modalities

There is something intuitively strange, almost artificial, in the *de dicto* formulation of normative sentences. I contend that a phenomenological analysis of the sense-structure of the nomothetic noema will bring light to what sounds strange in the *de dicto* rendering. I also contend that it will provide an alternative and hopefully sounder formulation of the internal sense of norms.

To begin with, there is a whole set of normative sentences that are hardly expressible by deontic operators. I am referring to norms that use the is_n and the has_n or are reducible to them. Consider, for instance, the example given by Reinach: "The legal capacity of a human being begins with the completion of birth," which was the first article of the German Civil Code. This can be reformulated with an is_n: "The completion of birth is the beginning of the legal capacity of a human being." Consider, again, the so many direct cases of is_n, such as when the French Constitution stipulates that "The President of the Republic is elected for five years [...]" (Article 6). As it seems clear, one cannot put in it the deontic operators because the norm is neither an obligation nor a prohibition or permission. It rather *imposes* a *status*: President of the Republic, as well as other norms define what a citizen is, an ambassador, a husband, a person with legal capacity, and so on. It is in relation to these status-imposing norms, creating social *personae,* that deontic features are subsequently defined. Indeed, the subjects of deontic discourse are never plain individuals but social entities defined through these more basic imposition-status norms.

One could perhaps argue that such imposition norms are reducible to a set of deontic predicates, namely a set of permissions, obligations, and prohibitions, Δ. Therefore, the term "President", for instance, would be an abbreviation for the whole list of its deontic characteristics. In so being, "President" would be an umbrella name for a given set Δ^P of deontic predicates, which a complex formula could expressly and exhaustively refer to by $\Delta^P = (\delta p_1 \,\&\, \delta p_2 \,\&\, \delta p_3 \,\&\, ... \,\&\, ... \,\delta p_n)$, where δ stands for the several deontic modalities. Accordingly, is_n has_n norms would be reducible to δ norms. To talk about "The President of the Republic" would be, thus, a simple form of referring to the whole set of privileges, claim rights, powers, and immunities, to use here Hohfeld's taxonomy, that defines what to be a president is. However, this seems hard to defend. Firstly, because for questions like "What is a President?" or "What is a husband?" one expects normative definitions such as "Is the supreme magistrate of the

state" or "It is someone who got married" and not a list of δ-predicates. Secondly, because the introduction of new δ-predicates can alter the former conjunction of predicates in Δ, the suppression of revision of some of them, and nobody would say that the normative status-imposing *concept* of being a president or a husband had changed because of that.
Though, there is a deeper problem with the *de dicto* formulation of deontic sentences. In the *de dicto* rendering, one finds not the norm itself but instead a *nominalization* of the norm. This is a *second object*, which is phenomenologically accounted for as something constituted by an intentional loop that goes from the *objects directly intended* through a norm to *the norm itself* as a new object of noematic reflection. With his usual sagacity, Thomas Aquinas had already pointed out that *de dicto* sentences are nominalizations, or singular propositions, as he calls them, contrary to the *de re* counterparts, which are either universal or particular, and so on, i.e., which are sentences that affirm or deny something *about* something as their transcendent object. He writes:

> Now it must be known that all modalities *de dicto* are singular, by the fact that the mode is predicated on this or on that as of some singular. Now the modality *de re* is to be judged as universal, particular, indefinite, or singular, according to the subject of what it is said, as in non-modal propositions [*de inesse*]; whence "for every man, it is possible to run" is universal, and so of the others.[18]

Returning now to what I said in the beginning about the status of the noema (see section 1, no. 2), it must be kept in mind that it is not *the object itself* to which one is intentionally turned but instead the *sense* or *meaning* through which some transcendent object is intended. In the intentional relationship, the sense remains unthematic in favor of the very object which is intended through it. In light of this intentional-transcendent feature of the noema, it is easy to see what an accurate description of the intentional structure of the nomothetic noemata would be: Some *object* is intended *as* having this or that status (citizen, husband, ambassador, etc.) and/or *as* bounded by this or that deontic modality so that the normative constraint *is contained in the very propositional content of the noema* instead of being a second-order predicate of it, which is only possible when the meaning is nominalized and taken as a new object of reflection. In so being, the formulae that respect this intentional directness to objects are, obviously, those that are articulated under the *de re* form. Further, the right move will consist in having in addition *normative copulas* incorporating in themselves the is_n or the has_n, as well as the deontic modalities *is-prohibited, is-obligatory, is-permitted,* etc. These latter operators can be altogether referred to by the general symbol is_δ (where δ stands for a deontic copula). This move not only respects the intentional structure of normative intentionality but also opens the space of a first-order deontic logic incorporating quantifiers, a clear syntactical distinction between *de dicto* and *de re* formulations, things that have already been done, and the side-by-side use of $is\text{-}_\delta$ and is_n or has_n copulas. Indeed, the intentional directness of norms to individuals or groups under this or that deontic status is easily accounted for by the construction "*For all citizens...,*" the deontic expression appearing now not as a modal operator but instead as a deontic normative copula: "*For all citizens, it is obligatory to abide by the state's laws.*" Formalizing it, one gets not "$O(\forall_x)\ (Fx \supset Gx)$," which is a *de dicto* formulation, but

18 "Sciendum est autem quod omnes modales de dicto sunt singulares, eo quod modus praedicatur de hoc vel de illo sicut de quodam singulari. Modalis autem de re diiudicatur: universalis, particularis, indefinita vel singularis secundum subiectum dicti, sicut de propositionibus de inesse; unde haec omnem hominem possibile est currere est universalis, et sic de aliis" (Thomas Aquinas, 1976, p. 421).

instead "$(\forall_x)$ $(F_x \supset OG_x)$." The quantifier determines the domain of the norm independently of the deontic predicate. This corresponds to an essential feature of normative intentionality, namely, the fact of being almost always definitely *person-directed*, to all or to some within a definite group, or even to a single person (in the latter case, one would have $(\exists_x)$ $(OP_x$ & $(x = a)$: There is someone that shall serve a 6-year prison sentence and that someone is "a," say, John). On the contrary, the *de dicto* formulation is not rigidly person-directed. Stating, for keeping the same example, that it is obligatory that if *x* is a citizen, then *x* must abide by the state's laws, $O(\forall_x)$ $(F_x \supset G_x)$, gives the flank to naïve but still natural reasoning that, if *x* does not abide by the laws, then *x* is not a citizen, and is, therefore, beyond the reach of the normative obligation of abiding by the laws. None of this happens with the *de re* and normative copulas formulation because the application domain is fixed independently of the deontic operator. *De dicto* normative sentences are suited to abstract, universal *principles,* such as *neminem laedere* or *suum cuique tribuere*, which, as principles, are not person-directed*.* In fact, the good deontic formulation would be something like "It is obligatory that everyone gives to each one his due." However, to transform that universal principle into an obligatory norm for every single person, the transition must be made to a formulation *de re*: "For me, it is obligatory to give each one what is due to him." The same passage is required in the cases Hilpinen and MacNamara consider when discussing the deontic counterpart of the Barcan formula (Hilpinen & MacNamara, 2013, p. 53). Taking one of their examples, in a lifeboat overload with too many survivors, it is known that it is obligatory that someone leaves the boat $(O(\exists_x)$ $(Px))$. However, this formulation does not work because it does not generate a specific obligation for anyone on the boat. It will only work when, let me suppose, the survivors find a selection criterion (say, those severely injured and with no hope of survival must leave the boat) so that the former *de dicto* sentence is transformed into a *de re* sentence: "Smith shall leave the boat" $((\exists_x)$ $(OP_x$ & $x = a))$.
In accordance, one should write, for instance,

9. All citizens have$_n$ political rights and duties,
10. For every *X, X* is$_\delta$ to do *Y.*

Noematically seen, some transcendent object-about-which (*Gegenstand worüber*) is intended in some normative manner (*im Wie*), as obliged, prohibited, and so on, so that the propositional meaning (*Satz*) contains *in itself* the reference to some determined object and the way it is normatively intended. The bottom of the *Sinn* or noematic sense is not, thus, a non-modal proposition asserting some state of affairs, to which is applied a nominalizing transformation, and then some deontic predicate to the *dictum* as such, as Ockham put it. There is not an is-copula at the bottom of the normative *Sinn.* Therefore, one cannot construe the situation as if there were some state of affairs referred to by a proposition that, when nominalized, will receive a deontic predicate: For instance, *that driving on the left side of the road* is prohibited (in Italy) or obligatory (in England). On the contrary, at the very bottom of the core sense of a nomothetic noema, there is always a *normative sense* and not a supposedly more basic *descriptive sense*. This latter situation is certainly true for the relationship between non-modal and modal alethic logics, both in the *de dicto* and *de re* formulations of modalities. In fact, one can always suppress the modal predicate and obtain an assertoric sentence. I contend that, from the standpoint of phenomenological analysis, this does not hold for the intentionality proper to normative sentences, which have instead irreducible normative copulas (both *is*$_n$-*has*$_n$ and *is*$_\square$) belonging to their *basic sense*.
If I am right, the two paradoxes plaguing deontic logic from the very beginning disappear. Indeed, existential generalization is no longer possible. Instead, one must simply state:

11. If all citizens are obliged to abide by the laws of the state,
    Then, some citizens are obliged to abide by the laws of the state.

The same is the case with the passage from fact to permission because the normative copula does not derive from a more basic is-copula. In fact, from

12. *A* kills his fellowman *B*,

one gets absolutely nothing as a conclusion regarding the basic normative copulas *is-has*$_n$ or *is*$_\delta$. Now, if one asks what is intended by means of the nomothetic noema, the answer that comes to mind will be that what is meant is a normative *state of affairs*. The answer mirrors the case of thetic noemata, where some ontic state of affairs is intended and possibly given. However, this obvious answer needs qualification. The "objects" of a nomothetic noema are not *facts.* For example, saying that it is a normative state of affairs that smoking in this room is prohibited is an elusive assertion. The authentic sentence would be that *people are prohibited* from smoking *while they stay* in this room. In short, the nomothetic noema does not have some *fact* as its "object," qualifying it as obligatory, prohibited, and the like. Rather, it is a device for conditioning the *actual behavior of agents endowed with a power of choice*. Thus, instead of intending a *Sachverhalt*, a state of affairs, it is directed to a *Verhaltensentscheidung* or a *Verhaltensverlauf*, to a decision or course of behavior, if I am allowed to put it this way. Returning to our old Latin expressions, we should say that it is not a *factum*, but rather a *facturus* what the nomothetic noema intends, that is, not something that is already done, acted upon, but the *being about to do*, the *agency itself* in the very process of its accomplishment. Von Wright's way of prefixing deontic operators to act-predicates and not propositional expressions is very near to this understanding.

At the bottom of the whole issue and from a phenomenological point of view, one would have to say that the basic phenomenon of free agency supports the normative domain. Deontic logic does not have to worry about this. However, the question is pressing and has to do with understanding the normative domain by means of a clarification of its original form. This is a phenomenological and genetic question. In my view, the normative phenomenon begins with the imposition of obligations and prohibitions, i.e., with something like an original act of institution imposing the fact that there are obligations, *!O*, and there are prohibitions, *!F*. However, obligations and prohibitions are only understandable if at their basis lies a freedom that is describable by the strong sense of permission: *!P*. Indeed, imposing obligations or prohibitions is only comprehensible under this background, and they are thus limitations on that basic freedom of choice. This is the reason why norms are directed to *actual* behavior and not to states of affairs. How do *!O* and *!F*, which open the normative domain, begin? The usual answer is that they come from some "normative authority." This answer is short, however. The question returns: where does this authority come from, to impose directions for the basic freedom of agency, expressed in permission to do and not to do (optionality)? One would have to trace its institution back to several different processes genetically. Obligations and prohibitions, as well as rights and duties, can arise from mutual *agreements* (promises, contracts, etc.) or the *consent* given to some kind of authority (particularly political). However, they can also come from a "mute" *internalization* of a customary code that builds the cultural identity of individuals. There are multiple ways in which normative authority can be established. However, a normative authority of any kind would not exist if, at its base, did not lie the phenomenon of agency.

The validity of norms endures over time. But their effectiveness, what makes them effective norms in each case, is their capacity to be, as long as they are valid, conditioners of each particular agent's *actual* behavior. Thus, by means of norms, one *knows behaviors* and knows them as *right* or *wrong* according to some particular normative code. Unlike the thetic noema, whose *Satz* proves wrong in case a transcendent state of affairs does not verify it, the validity of a norm is not affected by a divergent course of behavior. Rather, it is that behavior itself that is known as *wrongdoing* or *transgression* in light of the relevant norm so that the valid norm remains effective in a strong sense, as it continues to be the standard from which behavior is known and judged as regular or irregular, even for the one who does it. The efficacy of a norm is not only the fact that it generates a decision to behave in accordance, which may not happen. Above all, its efficacy lies in the circumstance that is a standard for *judging* behavior as conforming or deviant. The other way around, when a norm loses its effectiveness for *knowing* and *deciding* a course of behavior while staying formally valid (for instance, some positive state law that was not repealed), it is no longer a *true* norm to the extent that it has fallen into desuetude, as it is usually said. It no longer motivates or functions as a standard for knowing behavior. This happens very often with customary law, where validity and efficacy are joined together. In such a case, one could say that the norm has no longer *veritas de re,* as Amedeo Conte puts it when he remarks that there is a "[...] true '*de re*' to be predictable of norms of anapophantic semiotic entities, that is, of semiotic entities of which true *de dicto* is not predictable" (Conte, 2016, p. 26).

Let me briefly finish with the other elements of the noema that go beyond the sense core and its intentional *X*. I am referring to the nomothetic characters and modes of givenness. Regarding the noematic characters, while in their propositional content, nomothetic noemata use deontic language and express obligations, prohibitions, and so on, their deontic force, or ductive force, as I call it, can be quite variegated. I am referring to how they impact the agent's freedom of choice. The important feature is that nomothetic noemata are *delimiters* of different *spaces of freedom* as they diminish or increase the scope of choice. Indeed, in a strong sense, nomothetic noemata are *configurative* of a realm of free agency, which they positively determine in various manners. A state law, which is enacted with a mandatory or peremptory force, is an extreme case. However, there are behavior injunctions, i.e., norms, that impact the agent's choice with a lesser ductive force, such as the cases of recommendations, warnings, conseils, or pieces of advice. They can be, and are very often, formulated with deontic strong language in their propositional content. Nevertheless, there is a huge difference between, for example, hard state law and the recommendations of the rules of etiquette, or between a recommendation passed by an authority, which must be considered and responded to, and a simple piece of advice given by a fellow man. One must not meld these two aspects. Regarding their propositional content, nomothetic noemata express obligations, permissions, and so on. However, regarding the constitution of a space of choice, the way they impact decision-making is quite differentiated and constitutive of diverse grades of freedom. This is an important point that is blurred in the *de dicto* formulation of deontic language because the position of the modal operator as a predicate of the *dictum* conveys the illusion that it is also expressing ductive force. However, the ductive force (as well as the objectifying quality of thetic acts) is normally not expressed in the sense content, except for circumlocutory constructions such as "It is my advice to you that...," "I strongly recommend that you...," "I order you to..." and so on. Normally, this is not the case, though, since the addressee knows what kind of ductive force the normative content implies. Consider a Turkish precept of etiquette: For a guest, it is mandatory to say "health to your hand" (*elinize sağlik*) to the person who prepared the meal. However, this propositional obligation is no more than a strong recommendation when ductive force is considered.

This last point brings me to the final issue I will refer to, namely, the manners of givenness. Of course, I am not referring to the differences, for a given object, among bodily presence, *Leibhaftigkeit*, the several varieties of indirect givenness, and deception, *Täuschung*, on the other extreme, i.e., the non-coincidence between what is intended and what is intuitively given. These are manners of givenness that belong to the thetic noemata, where a transcendent thing or a state of affairs is intentionally meant. On the contrary, I am referring to the manner norms are recognized as genuinely binding, or not, for the subject who must act in accordance with them. In short, I am referring to the difference between *authenticity* and *unauthenticity* in the way norms are given to the subject to which they appear. Indeed, like Kelsen's *Grundnorm,* the normativity of norms must be presupposed, i.e., the commitment to abide by them *as positive* norms. Individuals recognize plenty of normative codes as internally binding: moral and religious codes, rules of social behavior, state laws, and so on. As Kelsen put it, and as I stressed before, this internal commitment to a set of diverse normative codes counts as the "moral ideology" of an individual. The other way around, when a given normative code appears as unauthentic, it is viewed as a device of coercive power that is perhaps still respected because of the fear of sanctions but not as a genuine, authentic set of normative rules to which one is committed to. They are true norms because they have validity and efficacy. However, despite their *veracitas in re*, they do not appear as authentic or genuine normative codes. Recalling Hart's famous account, it is the difference between *being obliged to* (by external power) and *feeling obliged to* do something (internal obligation), even when one does not. This is the basic difference in the mode of the givenness of norms. Some of them are accepted by an express commitment to abide by them; others, even in the cases where an individual must comply, appear to him as unauthentic, i.e., without the power of triggering an internal adherence. They are, on the contrary, felt as alien and strange. Once more, on the path opened by Conte, one could say that such norms appear as having no *authenticitas in re*.

Are there meta-normative and absolute standards for determining the authenticity and non-authenticity of positive norms, as if there was a *true* normativity (in Conte's sense of *de re*) as the correlate of *authentic* humanity? Or should we surrender instead to moral relativism and subjectivism?

This is a huge question to which I will answer with... silence.

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