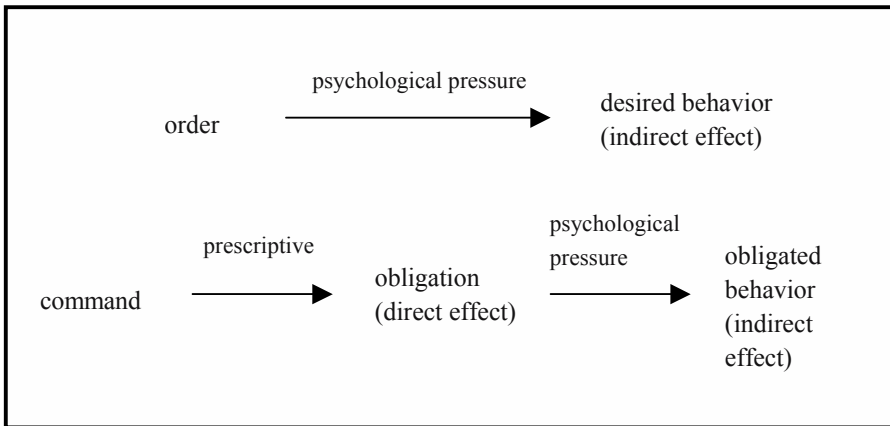


Commissives have a counterpart in constitutives that impose obligations on others than the speaker. For instance, an officer in the army gives a command to a subordinate soldier. In that way he imposes on the soldier the obligation to do what was commanded. Let us call these constitutives, which require a setting of rules, *commands*. Commands can then be opposed to orders that do not require such a setting. Everybody can order anybody and the success of the order only depends on whether it is obeyed. Orders have an indirect world-to-word direction of fit. In opposition to orders, valid commands have the direct world-to-word fit. Their success lies in bringing about an obligation and only in a derived sense in bringing about behavior.²² Where orders are directives, commands are constitutives.



3.3 Conventional acts

According to Searle, a successful declaration makes the world fit the declaration's propositional content. This may be correct, but the correctness depends more on a particular definition of declarations than on insight in the way in which successful declarations bring about changes in the world.²³ Let me explain this by means of an example. Suppose that an officer in the army commands a soldier to present his arm. The officer has the power to give this command and there are no invalidating circumstances. Therefore the

²² Ruiter 1993, 70f. makes the same distinction.

²³ This criticism of Searle depends on treating commands as constitutives, that is as declarations in the terminology of Searle. However, Searle himself proposes to treat commands as directives and thus avoids this criticism, only to be liable to the criticism of overlooking that commands and orders are different and that commands have much in common with speech acts which Searle does call declarations.

command has the direct effect that the soldier ought to present his arm. According to Searle's analysis, the world should fit the propositional content of the command. This content is that the soldier presents his arm. However, the *direct* result of the command is not that the soldier presents his arm, but that the soldier *ought* to present his arm. Although the command's effect in the world is related to the command's propositional content, it is not identical. How can this be explained?

The answer can be found in the setting of rules that defines when a command is validly given and what are the consequences of a validly given command. In the present case, these rules state that the addressee of the command *ought* to perform the action that he is commanded to perform. The *ought*, which belongs to the consequences of the command, derives from the rule that attaches consequences to commands, rather than from the command itself. It is the *ought* of owing to do what is commanded and not the *ought* contained in the command. In fact, there is in general not even an *ought* contained in a command.²⁴

Schematized, the issue can be stated as follows:

- rule: If an officer commands to do X, then soldiers **ought to do X**.
- fact: An officer commands: *Present arm!*
- result: A soldier **ought to present arm**.

In this schema, the obligation is in boldface, while the content of the obligation is italicized. In this way it becomes clear that the *obligation* derives from the rule, while the *content* of the obligation is provided by the command.²⁵

The world does not automatically come to fit the propositional content of a successful constitutive. The effects of successful constitutives depend on the rules that attach consequences to the constitutives. A rule about the appointment of chairpersons may make the world precisely fit the

²⁴ MacCormick 1972.

²⁵ This view of the operation of commands is similar to Kelsen's view of competence conferring norms. According to Kelsen (1979, 83), a competence conferring norm includes the prescription to do what the competent norm-giver prescribes. See also Patarro 2001, who characterizes competence norms as 'remitting norms'. In this view, the obligation to do what was prescribed by the norm-giver does not derive from the contents of the given norm, but from the competence conferring norm. The given norm merely determines the content of what ought to be done. On my analysis of commands, the command merely determines the content of what ought to be done, while the obligation to do what is commanded derives from the setting of rules that surrounds the command. In section 8.4 I will argue, contra Kelsen and Patarro, that this analysis, which seems to be correct for commands, is not correct for rules.

propositional content of the appointment. Such a rule might be that if X appoints Y as chairperson by saying that Y is chairperson, Y *is* chairperson. However, as the example above illustrated, a rule about army commands may make that a deontic version of the propositional content comes to hold: the command does not bring about that the soldier presents his arm, but that he ought to present his arm.

This observation can be generalized from speech acts to acts in general. Many acts derive their meaning from a setting of rules that define who is competent to perform acts of a particular type, what count as valid acts of this type and what are the consequences of this type of act. Examples are raising one's hand at an auction, baptizing ships, officially raising a flag and laying down one's king in chess. These acts may be called *conventional* acts. Conventional acts which are not speech acts, have no propositional content and their effects can therefore not be that the world comes to fit their propositional content. Their effects are completely determined by the rules that define them. In the examples mentioned above, these effects are respectively that one makes a bid, that a ship receives a name, that honor is paid to the country of the flag and that one gives in.

Constitutive speech acts are in my opinion best considered as a subcategory of this general category of conventional acts. Their effects are also completely determined by their defining rules. However, in the case of speech acts it will normally be fruitful to have rules that make the effects of the speech acts somehow dependent on their propositional contents. Precisely in which way the effects of constitutive speech acts depend on their content is determined by the kind of speech act. This is demonstrated by the examples about the appointment to chairperson and the command in the army. In the appointment example, the effect of the speech act corresponds precisely to the propositional content of the speech act. In the example of the army command, the effect is a deontic version of the propositional content.

It seems therefore that the world-to-word direction of fit of constitutive speech acts is not something that is special for these speech acts. It is not even the case that all constitutive speech acts have this direction of fit exactly. Whether, and to which extent, the world fits the content of successful constitutive speech acts depends fully on the conventions that govern these acts. The theory of constitutive speech acts is not something independent, but rather part of a general theory of conventional action.

3.4 Conclusions concerning the command theory

If the above analysis of commands is approximately correct, the relation between commands and the obligations that arise from them is weaker than

might seem at first sight. Commands are no more than conventional acts to which the conventions assign the quality that they lead to obligations. The obligation to do what was commanded stems primarily from the conventions; the command gives the content to this obligation. It seems therefore somewhat misleading to state that norms are the effects of commands. Maybe some norms are brought about by commands, but there is no inherent connection between commands and norms.

That such an inherent connection is absent becomes also clear from the fact that some norms exist for which there is no corresponding command. Arguably the norm that one ought not to kill other human beings existed without ever having been commanded.²⁶

A third argument against the command theory is based on the existence of permissive norms. It is not clear how a permission to do something could be the result of a command. Of course it is possible to broaden the notion of a command to make it include the sources of permissions, but this would make the command theory true by trivializing it. It would become the theory that norms are the results of the causes of norms.

The conclusion of all these considerations must therefore be that command theory of norms is incorrect, both in the version that norms are commands and in the version that norms are (rather than can be) the effects of commands. It has become time to look at alternatives for the command theory.

4. DEONTIC FACTS

As an alternative for the command theory of norms, I want to investigate the theory that norms are a special kind of facts, namely deontic facts. Before giving substantial reasons for this view, I want to present some linguistic evidence for it.

4.1 Linguistic evidence for the view that norms are deontic facts

The natural way to say that a certain fact is the case is to utter a declarative sentence that expresses this fact. For instance, the natural way to say that it is a fact that Bush was the president of the United States in 2001, is to say

²⁶ One might argue that there are commands without a commander, or that norms without a clearly identifiable commander are commands of God, but such manoeuvres seem to me attempts to save what cannot be saved.

‘Bush was the president of the United States in 2001’. And the normal way to say that it is a fact that Mount Everest is the highest mountain is to say ‘Mount Everest is the highest mountain’. Similarly, one can say that it is forbidden to steal, and this sentence is naturally interpreted as expressing that (it is a fact that) it is forbidden to steal. Even more, one can very well say ‘it is a fact that it is forbidden to steal’. The same counts for sentences such as

Everybody with an income ought to submit a tax declaration.

It is forbidden to kill human beings.

Margaret must pay Jane €100,-.

It is permitted to smoke in the canteen.

In Belgium one should drive on the right hand side of the road.

It might be objected against these examples that they have a misleading form: Because they have the same surface structure as declarative sentences, it seems that they just *are* declarative sentences. Appearances are deceptive, the objection continues, because the example sentences really express norms and, as everybody knows, norms are not facts. This objection just might be true. But to reject these sentences as examples of norms that are facts, more is needed. This more should amount to substantial evidence that norms are not facts and that the example sentences have a deceptive surface structure. The burden of proof is on the person who claims that there is deception.

The usual ‘proof’ that norms are not facts runs that norms guide human behavior; somewhat unhappily formulated²⁷: norms are ‘prescriptive’. Facts on the other hand are not prescriptive and therefore facts are not norms. The crucial error in this proof is the assumption that facts as such do not guide behavior. That facts do not guide behavior is usually merely assumed. I have seldom seen an argument why facts cannot guide behavior. In the following sections I will provide the reader with an argument why facts themselves, without accompanying desires, can guide behavior. I will call these facts *deontic facts*.

My argument consists of three parts. I will start with brief discussions of the views of Searle and Weinberger, to show how the idea of deontic facts so to speak hovers in the air and to make the reader familiar with a style of thinking about reality that allows the existence of deontic facts. Then I present a more abstract account of the elements of the world. This account will lead to a moderate form of ontological idealism. The third step starts from this moderate idealism and goes on to show how it allows the existence

²⁷ Why this formulation is unhappy should be clear from the sections 2 and 3 of this chapter.

of facts which, without accompanying desires or rules, both guide and motivate behavior.

4.2 Searle on social and institutional facts

In his *The construction of social reality*, Searle addresses the question how social and institutional facts are possible. Both kinds of facts are according to Searle objective facts in the world, but nevertheless only facts by human agreement. Typical examples of these ‘special’ facts would be that Parliament decides on a proposal for a bill, that this piece of paper before me is money and that Gerald and Margaret are married.

Searle gives a hierarchical taxonomy of some types of facts, in order to indicate which place social and institutional facts take in the fabric of the world.²⁸ According to this hierarchy a particular kind of facts are *social facts*. Social facts are collective intentional facts, such as hyenas attacking a lion and people taking group decisions. What is special in social facts is firstly that they do not only depend on what goes on physically, but also on what the physical thing is meant to be. In other words, social facts have an *intentional component*. And, secondly, social facts are special because the intention involved in them is not merely personal intention, but the *collective intention* of the members of a group. This collective intention is not the same as merely a common personal intention. The members of Parliament do not merely decide for the bill as a personal matter, but they vote with the intention to participate in group decision making.

Some social facts consist of the assignment of a function to something. Searle gives as an example that a physical object (presumably of the right shape) is assigned the function of a screw driver. These social facts, which are based on function assignment, are called *functional facts*. Within this category of functional facts, there are facts with an agentive function. This means that their function is to be used for some purpose (functional facts). In this connection one might think of keys, which have the function of opening locks. A subcategory of the functional facts consists of those functional facts whose function only exists because of its social acceptance. A screw driver can be used to drive screws, even if this suitability is not socially accepted, but money can only be used as such because of its being accepted as money. The latter category of functional facts, where the function depends on social acceptance, consists, according to Searle, of *institutional facts*. This social acceptance takes the form of status assignment: certain pieces of paper or metal are assigned the status of money.

²⁸ Searle 1995, 121f.

The status assignment involved in institutional facts takes the general form of *X counts as Y in C*, where X is the entity to which status is assigned, Y is the assigned status, and C denotes the circumstances under which X has the status Y. In this connection it is important that status assignment can be reiterated. For instance, the pronouncement of certain words counts under circumstances as a promise and under additional circumstances, this promise may amount to a legally enforceable contract. In this way a recursive structure of institutional facts built on top of other institutional facts can result.²⁹ It is important for Searle that such a recursion always bottoms out on brute facts. In this connection, Searle writes about the logical priority of brute facts over institutional facts. ‘Institutional facts, so to speak, exist on top of brute physical facts’.³⁰

Independent of whether one agrees with all the details of Searle’s account of institutional facts, Searle has made a strong case for the existence of facts that in part depend on their being recognized as such. Searle writes in this connection of the *self-referentiality* of social concepts.³¹ This self-referentiality applies not to the tokens of social concepts, but only to the types. For instance, a particular contract would also be a contract if it were not socially recognized as such. However, contracts in general could not exist if the phenomenon of contracts were not socially recognized.

4.3 Weinberger on the dual nature of norms

In his paper *The norm as thought and reality*, Weinberger applies a line of thinking to norms that is in some respects similar to that of Searle.³² On the one hand, norms are, according to Weinberger, ideal entities. With this he means that ‘they are thoughts in an objective sense, derived by abstraction from the process of consciousness’. Norms can be expressed linguistically, but this is not crucial for their existence, as is shown by norms of customary law. Norms as ideal entities can stand in logical relation to other norms. Weinberger stresses in this connection the logical gap between is and ought:

1. normative sentences (presumably sentences expressing norms - JH) cannot be restated in a declarative sentence without change of meaning;
2. no normative sentence can be deduced from purely declarative premises;

²⁹ This is, although in different terminology, a central theme of chapter 7.

³⁰ Searle 1995, 34f.

³¹ Searle 1995, 32f and 52f.

³² MacCormick and Weinberger 1986, 31-48.

3. no declarative conclusion can be deduced from only normative sentences.

Despite the logical gap between normative sentences and declarative sentences, Weinberger also sees a factual aspect in norms. Norms are not only thoughts, but also reality. The existence of ideal entities (such as norms) is, according to Weinberger, not without connection with material existence. He mentions two points of contact between ideal existence and material reality. One is in 'acts', material proceedings with an ideal content, such as psychic acts, acts of understanding, acts of will. The other is that ideal entities exist in time, just like physical entities. An example that illustrates both points is that of (intentional) legislative acts by means of which norms are created and derogated. The norm exists from the time it was created and stops existing when it is derogated.

Although Weinberger emphasizes the factual aspect of norms, he remains rather vague about their precise ontological status. He states that norms are to be distinguished from the acts by means of which some of them are created, from their linguistic formulations and also from (the absence of) behavior that respects the norm. Nevertheless, norms function as a motivational element in human behavior, and the social reality of norms is indicated by the fact that behavior in conformity with norms or contrary to norms gives rise to positive or negative social consequences.

Searle was much clearer about the status of social and institutional facts. Social facts are facts involving collective intentions, while institutional facts are cases of collective assignment of non-causal functions. The problem with Searle's analysis, however, is that it does not fit norms. Norms are neither cases of collective intentionality, nor cases of function assignment. Admittedly, Searle's analysis was not meant to cover norms, but given the similarity in some respects to Weinberger's view of norms, it might be useful for understanding norms.

4.4 A moderate form of idealism

Both Weinberger and Searle recognize facts that somehow involve the human mind. Social facts, of which institutional facts are a special kind, are according to Searle based on collective intentionality. Weinberger recognizes the existence of what he calls 'humanly conditioned facts', such as the existence of the state, of established ways of live, and of more or less stabilized social or individual patterns of conduct.³³ For their portrayal we

³³ MacCormick and Weinberger 1986, 82f.

must, according to Weinberger, take recourse to the concept of intentional action and to practical sentences, as contrasted to declarative sentences.

Nevertheless both Weinberger and Searle emphasize that they are not committed to idealism. Weinberger points out that his conception of norms as both ideal and real does not lead to idealism, amongst others because material reality is distinguished from ideal entities and because it ‘furthers understanding of the functional relation between material reality and ideal entities ...’.³⁴

Searle goes at some length in arguing for both what he calls external realism and the correspondence theory of truth. His main argument for realism is that realism is presupposed by a normal understanding of many speech acts, such as description. Moreover, the existence of social and institutional facts also presupposes the presence of brute facts, because social and institutional facts are ‘created’ by superimposing collective intentions upon other facts. This creates a recursive structure which in the end must bottom out on brute facts.³⁵

Despite this emphasis of both Weinberger and Searle that the acceptance of institutional facts does not commit to ontological idealism, I believe that the opposite is the case. Idealism comes in different forms, however, and some forms are less attractive than others. It seems that the emphasis with which both authors write that they are not committed to idealism is inspired by extreme forms of idealism, such as the view that everything is only a mental phenomenon and that there exists nothing outside the mind. In the following sections I will propose a moderate form of idealism, which combines the possibility of assuming a mind-independent reality with a natural explanation of the existence of mind-dependent facts. My starting point will be some observations about the nature of truth.

5. THE CORRESPONDENCE THEORY OF TRUTH

The notion of a fact is closely related to that of truth. The correspondence theory of truth is the most natural theory of truth that exists, even to the extent that it is hardly imaginable to be wrong.³⁶ It might be described as the theory that ‘for a judgment (or, say, a proposition) to be true is for it to

³⁴ MacCormick and Weinberger 1986, 38.

³⁵ Searle 1995, 149f.

³⁶ It may be argued that Tarski’s semantic theory (The sentence ‘S’ is true if and only if s) is even more natural, but it is at least arguable that this theory and the correspondence theory coincide. They coincide if the phrase ‘s’, by means of which the truth conditions of ‘S’ are given, is understood as stating that the state of affairs denoted by ‘s’ obtains.

correspond with the facts'. Nevertheless history has shown that several alternatives are possible, including the coherence theory, the consensus theory, the pragmatist theory and the redundancy or deflationist theory.³⁷

5.1 Criticisms of the correspondence theory

Part of the motivation behind the development of alternatives for the correspondence theory is that the correspondence theory of truth seems vulnerable to serious criticism that can take different forms, but which in the end boils down to it that the facts with which propositions should 'correspond' cannot be identified independent of the sentences that express them. Strawson, who formulated this line of criticism eloquently, wrote:

'The only plausible candidate for the position of what (in the world) makes the statement true is the fact it states; but the fact it states is not something in the world. ...

Facts are what statements (when true) state; they are not what statements are about. They are not, like things or happenings on the face of the globe, witnessed or heard or seen, broken or overturned, interrupted or prolonged, kicked, destroyed, mended or noisy.'³⁸

Briefly stated: unlike material objects or mental states, facts are not part of the 'furniture of the world'. They are language dependent in the sense that they cannot be characterized otherwise than as the correlates of true descriptive sentences (propositions). And consequently, the issue whether a sentence matches the facts, makes no sense.

A complementary line of criticism runs that the statement that a sentence is true does not add anything to the statement made by that sentence.³⁹ The statement "'The cat is on the mat" is true' says the same as the statement 'The cat is on the mat', although grammatically it is a statement of the meta-language saying that a statement of the object language has a particular characteristic, namely that it is true. As a means of giving information, the truth-predicate is redundant. Maybe it can be used for different purposes, such as emphasizing what was said (It is *true* that I repaid my debt) or endorsing things without specification (Everything stated in my book is true). To fulfill these functions, the word 'true' does not need to stand for a

³⁷ See for overviews of truth theories Puntel 1983, Kirkham 1992 and Blackburn and Simmons 1999.

³⁸ Strawson 1971, 195.

³⁹ This line of criticism has been advanced explicitly in Ramsey 1999.

characteristic, however. The notion of truth as a characteristic of sentences or propositions is redundant, at least thus runs the criticism.

5.2 Language-dependent entities

Strawson is right when he points out that facts are not independent of the language by means of which they are expressed. From this it does not follow, however, that the sentence 'The cat is on the mat' does not derive its truth value from corresponding or failing to correspond to the fact that the cat is on the mat. This fact may be language-dependent in the sense that it is the correlate in the world of a true sentence, but this does not mean that it is not part of the world.

Suppose that the world contains a number of entities, including cats and mats and that these entities have properties and stand in relations towards each other. Because of these properties and relations, some propositions are true and other ones are false. Why not assume that *because of these propositions being true or false*, the world contains a number of additional entities in the form of facts, such as the fact that the cat is on the mat? These entities are not independent of the other entities such as cats and mats, that stand in relations to each other and neither are they independent of the language in which their corresponding propositions are expressed. This dependence on other entities and on language does not mean that these entities do not exist; it only means that they exist in dependence on other entities. As the argument of Searle about institutional facts shows, this is not very special or exceptional.

Facts exist in the world, but their existence is based on other existing entities and on a language that makes declarative sentences possible which express propositions and which in turn are made true or false by the contents of the world. In at least this sense, part of the contents of the world is language-dependent. And since language is a phenomenon in which the mind is involved, part of the contents of the world is also mind-dependent. The mind-dependence of the world goes further than that, however, because the entities in the world about which sentences make statements are themselves in a sense mind-dependent. Searle argued that some entities in the world may depend on other entities, but as he also pointed out, there must at least be some entities that do not depend on other entities, because the recursive structure of entities that depend on other entities must somewhere 'bottom out'. Searle saw this as a reason why some entities must exist in a mind-independent reality. However, from the fact that some entities are not dependent on other *entities*, it does not follow that they are independent of the *mind*.