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DETACHMENT AND DEONTIC LANGUAGE IN LAW

ABSTRACT. Some legal philosophers regard the use of deontic language to describe the law as philosophically significant. Joseph Raz argues that it gives rise to 'the problem of normativity of law'. He develops an account of what he calls 'detached' legal statements to resolve the problem. Unfortunately, Raz's account is difficult to reconcile with the orthodox semantics of deontic language. The article offers a revised account of the distinction between committed and detached legal statements. It argues that deontic statements carry a Gricean generalized conversational implicature to the effect that the rules in question reflect the speaker's own commitments. Detached legal statements are made when this implicature is either explicitly cancelled or when the conversational context is sufficient to defeat the implicature. I conclude by offering some tentative reflections on the theoretical significance of deontic language in the law.

We often use deontic language to describe the law. Lawyers tell their clients what they can and must do. We describe cases and statutes in terms of the rights and obligations that they confer. The language of the law is pregnant with references to rights, duties, and permissions. Some legal philosophers have regarded the use of deontic language to describe the law as an important datum that requires explanation.[1] H.L.A Hart noted in *The Concept of Law* that the internal aspect of

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[1] A useful survey is provided in Timothy Endicott, 'Law and Language', in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Summer 2016 (Metaphysics Research Lab, Stanford University, 2016), http://plato.stanford.edu/archives/sum2016/entries/law-language/. For the time being I will put to one side the question of whether the use deontic language in the law is at all problematic. Some philosophers have suggested it is not; see e.g. Luis Duarte d'Almeida, 'Legal Statements and Normative Language', *Law and Philosophy* 30 (2011): pp. 167–199; Alex Silk, 'Normativity in Language and Law', in *Legal Norms, Ethical Norms: New Essays on Metaethics and Jurisprudence*, ed. Kevin Toh, Scott Shapiro, and David Plunkett (Oxford: Oxford University Press, Forthcoming, 2017). I revisit the issue at the conclusion of this paper.

rules found expression in 'the normative terminology of ''ought'', ''must'', and ''should'', ''right'' and ''wrong''.[2] Joseph Raz goes so far as describing the use of such language to describe the law as the 'problem of normativity of law'.[3] His account of detached legal statements, which he claims is derived from his interpretation of Kelsen's *Pure Theory*, is supposed to resolve the problem.[4]

Raz observes that we can use deontic language in what he calls a 'detached' or 'non-committed' way.[5] As examples of detached use of deontic language, he cites what others have called 'sympathetic' statements.[6] For instance, I may say to my vegetarian friend 'you shouldn't eat that salad – it has bacon in it', even where I do not share his commitment to being vegetarian. This kind of detached discourse is supposedly what makes the language of legal science – the language of academics and jurists – possible.[7] It enables a lawyer to tell her client 'you have an obligation not to provide an abortion', even where she thinks laws prohibiting abortions are wicked and pernicious. To do this, Raz suggests our lawyer adopts the point of view of someone who accepts the rules of the legal system as valid in the same way that I might adopt the point of view of someone who is vegetarian for the sake of a friend.[8]

Several philosophers have admitted to having difficulty in following Raz's account of detached statements.[9] In his *Legality*, Scott

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[2] H. L. A. Hart, *The Concept of Law*, 3rd ed. (Oxford: Oxford University Press, 2012), p. 57.

[3] Joseph Raz, *Practical Reason and Norms*, 2nd ed. (Oxford: Oxford University Press, 1999), p. 170.

[4] Raz claims that his account of detached legal statements is a 'reconstruction' of Kelsen's account; 'The Purity of the Pure Theory', in *The Authority of Law*, 2nd ed (Oxford: Oxford University Press, 2009), p. 306. For expressions of doubt as to whether Raz's account is as Kelsenian as he claims, see Roberto J. Vernengo, 'Kelsen's Rechtssätze as Detached Statements', in *Essays on Kelsen*, ed. Richard Tur and William L. Twining (Oxford: Clarendon Press, 1986), pp. 99–108; Eugenio Bulygin, 'Legal Statements and Positivism', in *Essays in Legal Philosophy*, ed. Carlos Bernal et al. (Oxford: Oxford University Press, 2015), pp. 136–145.

[5] Raz has developed his account of detached legal statements throughout his career; see Joseph Raz, *The Concept of a Legal System: An Introduction to the Theory of Legal System* (Oxford: Oxford University Press, 1980); Raz, 'The Purity of the Pure Theory' (2009); Raz (1999); Joseph Raz, 'Hart on Moral Rights and Legal Duties', *Oxford Journal of Legal Studies* 4(1) (1984): pp. 123–131. For useful exegesis see d'Almeida (2011). See also Kevin Toh, 'Raz on Detachment, Acceptance and Describability', *Oxford Journal of Legal Studies* 27(3) (2007): pp. 403–427.

[6] See Andy Egan, 'Disputing About Taste', in *Disagreement*, ed. Richard Feldman and Ted Warfield (Oxford: Oxford University Press, 2010), pp. 251–252.

[7] 'The Purity of the Pure Theory', (2009, pp. 245–247).

[8] Raz (1999, p. 175).

[9] Critical discussions of Raz's account of detachment can be found, *inter alia*, in d'Almeida (2011), David Enoch, 'Reason Giving and the Law', *Oxford Studies in the Philosophy of Law* 1 (2011): pp. 20–26; Scott Shapiro, *Legality* (Cambridge, MA: Harvard University Press, 2011), p. 415, n. 44; Silk (2017), Toh (2007).

Shapiro describes Raz's account as 'mysterious', since it 'presupposes an unorthodox semantic theory' according to which detached and committed legal statements express the same proposition but have different truth conditions.[10] If Shapiro's characterization of Raz's account as truth-conditional is correct (it may not be), then there is much that is not just mysterious but mistaken in Raz's account of detached statements.[11] As I will demonstrate below, and as a number of others have noted, it is out of step with the contemporary semantics of deontic language.[12]

Fortunately, there is a better way of characterizing the distinction between committed and detached legal statements – the distinction is one that applies to uses of deontic language, rather than their semantic content. In previous published work, Matthew Kramer, Maria Cristina Redondo and David Enoch have all noted that the distinction is better characterized in terms of the pragmatics of legal statements.[13] Here I enlarge on their arguments and attempt a more detailed characterization of the distinction. I argue that legal statements carry what H.P. Grice called a 'generalized conversational implicature' to the effect that the speaker is committed to the legal rules that they are citing.[14]

I will briefly outline Raz's distinction between committed and detached legal statements. I then introduce the orthodox semantic account of deontic language. If the orthodox semantics is correct, the distinction between detached and committed legal statements cannot be explained in terms of their truth-conditional content. I then offer a characterization of the distinction in terms of the pragmatics of legal statements. I conclude by offering some reflections on the philosophical significance of the use of deontic language in law.

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[10] Shapiro (2011, p. 415).

[11] Kramer disputes Shapiro's characterization; see Matthew Kramer, 'In Defense of Hart', *Legal Theory* 19(4) (2013): pp. 370–402.

[12] Shapiro (2011, p. 415); Scott Shapiro and David Plunkett, 'Law, Morality, and Everything Else: General Jurisprudence as a Branch of Meta-Normative Theory', *Ethics* (Forthcoming); Silk (2017).

[13] Enoch (2011, pp. 23–24), Kramer (2013), Maria Cristina Redondo, *Reasons for Action and the Law* (Dordrecht: Kluwer, 1999), p. 81.

[14] H. P. Grice, *Studies in the Way of Words* (Cambridge, MA: Harvard University Press, 1989), p. 37.

I. DETACHED LEGAL STATEMENTS AND RAZ'S 'PROBLEM OF NORMATIVITY'

Joseph Raz suggests that 'the problem of normativity of law' is the problem that arises from 'explaining the use of normative language in describing the law or legal situations'.[15] The problem, as he presents it, arises from the fact that our use of normative language to describe the law is in *prima facie* tension with the positivist thesis that the validity of laws depends on their sources and not their merits.[16] On the one hand, we are able to describe the contents of the law without endorsing it. On the other hand, our descriptive language with respect to the law is typically normative, or, more accurately, deontic – it concerns how we ought to or must act.[17] Our descriptions of the law typically involve assertions about 'what ought to be done, what rights and duties people have because of the law'.[18] If words like 'obligation' have the same meaning in legal and moral settings, this supposedly presents a problem for legal theory.[19] The validity of a legal obligation does not necessarily depend on its merits, so we can have legal obligations that conflict with our moral obligations. One may even 'know what the law is without knowing that it is justified'.[20] Moreover, Raz suggests that the use of deontic language in the law has led some theorists to erroneously conclude that legal rules must of necessity be morally valid.[21] Positivist legal philosophers like Bentham, Austin, Holmes and Ross instead proposed a reductive semantic thesis according to which legal statements are just 'descriptive statements of one kind or another'.[22] A

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[15] Raz (1999, p. 170).

[16] Joseph Raz, 'Legal Positivism and the Sources of Law' (2009, p. 38).

[17] I will use the terms 'norm' and 'normative' to refer only to genuine reasons for action. According to some philosophers, the terms can be used to refer to any rule or standard that is socially recognized rather than a rule that is genuinely reason-giving. To avoid any confusion, I refer to the former as rules rather than norms; cf. Derek Parfit, *On What Matters*, vol. 1 (Oxford: Oxford University Press, 2011), pp. 144–148 (on 'rule-implying' normativity); Tristram McPherson, 'Against Quietist Normative Realism', *Philosophical Studies* 154(2) (2011): pp. 223–240 (on 'formal' normativity).

[18] Raz 'The Purity of the Pure Theory' (2009, p. 306).

[19] The problem is sometimes presented as a problem for legal positivism. But it will arise for any theorist who accepts that a rule's legal validity does not depend on its merits. Since many natural lawyers are also willing to accept this thesis, the problem will also arise for them.

[20] Joseph Raz, 'Legal Validity' in *Authority of Law*, 2nd ed. (Oxford: Oxford University Press, 2009), p. 158. See also Joseph Raz, 'Legal Positivism and the Sources of Law', in *The Authority of Law*, 2nd ed. (Oxford: Oxford University Press, 2009), pp. 38–39.

[21] Raz (1999, p. 155, pp. 162–163).

[22] Raz, 'The Purity of the Pure Theory' (2009, p. 295).

concern to avoid either conclusion led Hart to claim that deontic vocabulary has different meaning in moral and legal settings.[23]

To resolve the problem, Raz offers a nuanced account of legal discourse that distinguishes between two types of statements – committed and detached.[24] Committed statements are statements that involve the endorsement of the rules in question as a guide to action. For Raz, they are 'ordinary moral statements about what ought to be done'.[25] Detached statements occur when a speaker adopts the point of view of someone who accepts the body of rules on which the statements are based. A detached speaker is not merely making an external statement about someone's attitudes or actions; they are not saying that some other person regards the facts in question as normative. Instead, according to Raz, they are citing the facts, *qua* norm, without themselves endorsing it as a guide to action. They are statements 'given from a point of view or on the basis of assumptions which are not necessarily shared by the speaker'.[26] Detached statements solve the problem of normativity by allowing for the description of law in deontic language without any commitment to the law as a guide to action. We can hold that law is a matter of social fact, while also accepting deontic language is routinely used to describe the law, because the mere use of such language does not necessarily indicate any belief that the law is justified.

Raz develops this account of detached legal statements in several different works across a long period of time, which makes interpretation particularly difficult. It is hard to discern the precise linguistic account of the distinction that he has in mind. Occasionally, he seems to suggest that the distinction between committed and detached statements can be made in terms of their truth conditions. A person speaking from a detached point of view is characterized as 'saying' something different to someone speaking from a committed point of view.[27] Raz also refers to a 'semantic thesis' by which 'legal statements are normative statements in the same sense and the same

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[23] See e.g. H.L.A. Hart, 'Legal and Moral Obligation', in *Essays in Moral Philosophy* (Seattle: University of Washington Press, 1955), pp. 195–199; H.L.A. Hart, *Essays on Bentham* (Oxford: Oxford University Press, 1982), p. 267. Hart's claim is discussed further below.

[24] Raz, 'Legal Validity' (2009, pp. 153–157); Raz (1980, pp. 234–238); Raz (1999, pp. 171–177). For critical but nonetheless helpful attempts to engage with Raz's account, see Toh (2007); d'Almeida (2011).

[25] Raz, 'The Purity of the Pure Theory' (2009, pp. 305–306).

[26] Raz, 'Legal Validity' (2009, p. 153).

[27] Raz (1999, p. 176). This use of language is noted by d'Almeida (2011, p. 179).

way that moral statements are normative'.[28] Given these statements, it is understandable that philosophers like Shapiro have interpreted his account of detached legal statements as truth-conditional.

Elsewhere, however, Raz uses language that indicates his account relies on the pragmatics of legal statements rather than their truth-conditional content. He refers to detached statements as a 'class' of legal statements involving '*use* of normative language', suggesting detachment is an attribute of the utterances themselves rather than their semantic content.[29] Raz sometimes even indicates that the distinction is better made in terms of the attitudes that are implied by the speaker, rather than semantically entailed. At one point, he says that 'a person describing situations by using normative terms normally *implies* his acceptance of the bindingness of the rules on which his statement rests'.[30]

My purpose here is not to do Raz exegesis. What I do want to suggest is that a linguistically plausible notion of detachment – one that seems to me to be faithful to the spirit of Raz's initial presentation – can be offered. I will argue that detachment is best characterized in terms of the pragmatics of deontic language. Detachment arises when the speaker commitment that is generally implicated by the use of deontic language is either explicitly or contextually cancelled. Once detachment is understood in this way, we gain clearer insight into the use of deontic language to describe the law and the extent to which such use presents a problem for the philosophy of law.

For the purposes of this paper, I will define commitment to the rules of a legal system as endorsement or acceptance of those rules for the guidance of conduct. Detached legal statements are then defined negatively as those statements that involve deontic language but which are non-committed. I will not attempt to characterize attitudes of commitment or detachment any further. As Kevin Toh notes in his own discussion of detachment, developing an appropriate philosophical account of these attitudes and their relationship to one another may well require a developed folk-psychology.[31] It is

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[28] Raz, 'Legal Validity' (2009, p. 158). As we will see, there is nothing normative about the semantics of legal statements. But the use of deontic language to describe the law may well have normative implications.

[29] Raz, 'The Purity of the Pure Theory', (2009, p. 308). The emphasis is my own.

[30] Raz (1980, p. 235). The emphasis is my own.

[31] Toh (2007, pp. 411–412).

plausible that detached attitudes involve simulated acceptance of legal rules; our ability to make detached legal statements involves reasoning as if we endorsed the rules in question. Kramer suggests along these lines that a detached speaker 'does not merely attribute normative beliefs to officials and some citizens, but actually gives expression to those beliefs'.[32] But I will not evaluate this hypothesis. Part of what makes Raz's account of the distinction between committed and detached statements difficult to interpret is an entanglement of three separate but related issues: the semantics of deontic language, the pragmatics of deontic language, and the attribution of attitudes to speakers. In this paper I focus on the first two issues at the expense of the third.

Relatedly, it is worth noting that there is a venerable tradition in legal philosophy that has challenged the very possibility of non-committed, descriptive legal statements involving deontic language. Realist legal philosophers like Alf Ross and Riccardo Guastini have doubted the possibility of descriptive use of deontic terms like 'ought' and 'must'.[33] Dworkin's interpretivist critique of legal positivism can also be read as rejecting the possibility of descriptive deontic statements.[34] In different ways, both traditions reject the possibility of describing rules, and insist that what are purportedly detached, descriptive statements are interpretations of rules with unavoidable prescriptive force.

Many linguists and philosophers simply take the possibility of descriptive use of deontic language for granted. Linguists often distinguish, following John Lyons, between 'objective' and 'subjective' use of modal language.[35] Objective uses of deontic language corre-

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[32] Matthew H. Kramer, *In Defense of Legal Positivism: Law Without Trimmings* (Oxford: Oxford University Press, 1999), p. 165.

[33] See e.g. Alf Ross, *On Law and Justice* (Berkeley: University of California Press, 1959), pp. 9–10, fn. 4, Riccardo Guastini, 'Ought-Sentences and the Juristic Description of Rules', *Ratio Juris* 4(3) (1991): pp. 308–321; Riccardo Guastini, 'Rule-Skepticism Restated' in *Oxford Studies in Philosophy of Law*, ed. Green and Leiter, vol. 1 (Oxford: Oxford University Press, 2011), pp. 138–161 ; Riccardo Guastini, 'Juristen-recht: Inventing Rights, Obligations, and Powers', in *Neutrality and the Theory of Law*, ed. José Juan Moreso, Jordi Ferrer Beltran, and Diego Papayannis (Berlin: Springer, 2013), pp. 147–159.

[34] Ronald Dworkin, *Taking Rights Seriously* (Harvard: Harvard University Press, 1977); Ronald Dworkin, *Law's Empire* (Harvard: Belknap Press, 1986). Though cf. Marmor's claim that Dworkin can accommodate the possibility of detached legal statements, *Interpretation and Legal Theory*, 2nd ed. (Oxford: Hart Publishing, 2005), p. 39.

[35] John Lyons, *Semantics*, vol. 2 (Cambridge, U.K.: Cambridge University Press, 1977), pp. 797–801. For further discussion see Alex Silk, 'What Normative Terms Mean and Why It Matters for Ethical Theory', in *Oxford Studies in Normative Ethics*, ed. Mark Timmons, vol. 5 (Oxford: Oxford University Press, 2015), pp. 304–307.

spond to what I have called detached language use, where subjective use succeeds in communicating information about the beliefs and commitments of the speaker. The distinction between subjective and objective use is evident in epistemic modality as well as in deontic modality. A speaker who utters 'the restaurant might be closed' could be communicating her own commitment to the possibility that the restaurant is closed. Alternatively, she may be communicating the objective chance that the restaurant is closed, given that it is a Monday and many restaurants are shut, while disclaiming any personal commitment to the possibility.[36] The distinction between committed and detached use of deontic language is an instantiation of the broader distinction between objective and subjective use of modals.

If the linguistic evidence is any guide, then detached use of deontic language is possible, at least outside the law. Legal philosophers who wish to dispute the possibility of detached use of deontic language in the law should be willing to explain why legal contexts are an exception. The arguments that scholars like Guastini and Dworkin raise against the possibility of descriptive use of deontic language seem to be paradigmatic in this respect – they rest on substantive claims about the nature of legal rules and character of interpretation.[37] As I understand them, their arguments are not linguistic, but rest on theoretically antecedent claims about the nature of legal facts and the way in which they are taken to guide our conduct. Responding to these arguments would take me too far from my current discussion, but they are worth bearing in mind. My purpose here is to offer a linguistic characterization of detached legal statements, on the assumption that detached use of legal language is possible. I hope the characterization I offer will help us to develop a better understanding of what is at stake in disputes about the possibility of detached statements.

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[36] For work in descriptive and theoretical linguistics providing further discussion of the distinction between objective and subjective use of modals (though the terminology sometimes differs) see *inter alia* Paul Portner, *Modality* (Oxford: Oxford University Press, 2009), pp. 122–129; John Myhill, 'Should and Ought: The Rise of Individually Oriented Modality in American English', *English Language and Linguistics* 1(1) (1997): pp. 3–23; Jennifer Coates, *The Semantics of the Modal Auxiliaries* (London: Croom Helm, 1983), pp. 31–84; Frank Palmer, *Modality and the English Modals* (New York: Longman, 1979); Frank Palmer, *Mood and Modality* (Cambridge: Cambridge University Press, 1986).

[37] See e.g. Guastini (1991, pp. 312–317); Guastini (2011, pp. 153–155); Dworkin (1977, pp. 48–58).

II. THE ORTHODOX SEMANTICS OF DEONTIC LANGUAGE

Many philosophers of language and linguists have settled on an orthodox semantics for deontic modal verbs like 'ought' and 'must', noun phrases like 'obligation', 'duty', and 'permission' and adverbs like 'obligatorily' and 'permissibly'. Sentences involving these words have unified truth-conditions across legal and non-legal contexts (and, in some cases, even across deontic and non-deontic contexts). The orthodox account is derived from the classical semantics for dyadic deontic logic, which was developed by a variety of philosophers and logicians in the 1960s and 1970s.[38] It was popularized amongst linguists by Angelika Kratzer in a series of influential articles,[39] and has latterly found favour in a variety of philosophical accounts of modal language.[40]

Some legal philosophers have claimed that deontic terms possess different meanings across legal and non-legal contexts. As we have seen, H.L.A Hart claimed that words like 'right' and 'obligation' have a different meaning across legal and non-legal settings.[41] It is worth briefly stating why, from a linguistic perspective, it is implausible to claim that sentences involving deontic language have different truth

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[38] Sven Danielsson, *Preference and Obligation* (Uppsala: Folofisika Foriningen, 1968); Bengt Hansson, 'An Analysis of Some Deontic Logics', *Noûs* 3(4) (1969): pp. 373–398; Bas van Fraassen, 'The Logic of Conditional Obligation', *Journal of Philosophical Logic* 1(3) (1972): pp. 417–438; David Lewis, 'Semantic Analyses for Dyadic Deontic Logic', in *Logical Theory and Semantic Analysis: Essays Dedicated to Stig Kanger on His Fiftieth Birthday*, ed. Sören Stenlund (Dordrecth: Reidel, 1974), pp. 1–14.

[39] Kratzer (1977) and Kratzer, 'The Notional Category of Modality', in *Words, Worlds and Contexts: New Approaches in Word Semantics*, ed. H. Eikmeyer and H. Rieser (Berlin: de Gruyter, 1981), pp. 38–74. Horty notes that Gillies refers to Kratzer's view as 'canonical', and observes that it now has textbook status; Anthony Gillies, 'Default Logic and Hafta' (Unpublished Manuscript), available at http://www.thonygillies.org/wp-content/uploads/2015/11/horty-comments-central-apa.pdf, accessed 13 June 2017; John Horty, 'Deontic Modals: Why Abandon the Classical Semantics?', *Pacific Philosophical Quarterly* 95(4) (2014): pp. 424–460, fn. 2. A useful survey is given by Valentine Hacquard, 'Modality', in *Semantics: An International Handbook of Natural Language Meaning*, ed. C. Maienborn, K. von Heusinger and P. Portner (Berlin: de Gruyter, 2011), pp. 1484–1515.

[40] Restricting examples to metaethics, those who have endorsed the orthodox semantics or close variants include Ralph Wedgwood, 'The Meaning of ''Ought''', in *Oxford Studies in Metaethics,* ed. R. Shafer-Landau, vol. 1 (Oxford: Oxford University Press, 2006), pp. 127–160; Matthew Chrisman, 'On the Meaning of ''Ought''', in *Oxford Studies in Metaethics*, ed. R. Shafer-Landau, vol. 7 (Oxford: Oxford University Press, 2012), pp. 304–333; Alex Silk, 'Why ''Ought'' Detaches: Or, Why You Ought to Get with My Friends (If You Want to Be My Lover)', *Philosophers' Imprint* 14(7) (2014), Silk (2015).

[41] H.L.A. Hart, 'Legal and Moral Obligation', in *Essays in Moral Philosophy* (Seattle: University of Washington Press, 1955), pp. 195–199; H.L.A. Hart, *Essays on Bentham* (Oxford: Oxford University Press, 1982), p. 267.

conditions across legal and non-legal contexts. The principal reason for offering a unified semantics for deontic language is parsimony.[42] According to Grice's 'modified Occam's razor', 'senses are not to be multiplied beyond necessity'.[43] Unless we identify an invariant semantic content for all modal vocabulary, we might need to attribute an extravagant (and implausible) proliferation of different possible meanings to a word like 'obligation'.[44] Aside from its theoretical virtues, this methodological parsimony has an important explanatory role – it explains our language's productivity and flexibility. As Kratzer observes, in every day conversation we do not distinguish between the many different types and sources of 'oughts' and 'musts'. We do without labelling them, 'even quite easily' – 'there must be another way by means of which we make ourselves understood using these words'.[45] By offering a semantics of modal language according to which all such uses have invariant truth-conditional content, the orthodox semantics can explain the productive use of deontic language in a variety of different settings. It does so without postulating a proliferation of senses for modal vocabulary.

According to the orthodox account, modals like 'ought' and 'may' have invariant truth conditions, but are doubly context sensitive – they are relativized first to a set of salient propositions that represent what Kratzer calls a *modal base*, and second to another set of salient propositions known as an *ordering source* that represents what is ideal from a point of view. Broadly speaking, and ignoring several complications, the propositions contained in the ordering source induce

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[42] This rationale has been reiterated in a variety of different accounts of modal language. See especially Angelika Kratzer, 'What "Must" and "Can" Must and Can Mean', *Linguistics and Philosophy* 1(3) (1977): pp. 337–355; Hacquard (2011); John MacFarlane, *Assessment Sensitivity: Relative Truth and Its Applications* (Oxford: Oxford University Press, 2014), §11.1.3. A careful critique is offered in Eric Swanson, 'Modality in Language', *Philosophy Compass* 3(6) (2008): pp. 1193–1207.

[43] Grice, (1989, pp. 47–49). Saul Kripke less charitably called the postulating of multiple senses 'the lazy man's approach to philosophy'; Saul Kripke, 'Speaker's Reference and Semantic Reference', in *Studies in the Philosophy of Language*, ed. Peter A. French, Theodore E. Uehling Jr, and Howard K. Wettstein (Minneapolis: University of Minnesota Press, 1977), pp. 255–296, 277.

[44] Cf. Frank Jackson, 'Decision-Theoretic Consequentialism and the Nearest and Dearest Objection', *Ethics* 101(3) (1991): pp. 472–473.

[45] Kratzer (1977, pp. 339–340).

an order on a set of possible worlds provided by the propositions in the modal base.[46] A sentence of the form 'it ought to be that φ' will be true if and only if φ is the case in the top-ranked worlds provided by the modal base according to the order induced by the salient ordering source.[47] Suppose that my friend and I are watching baseball and I exclaim 'it ought to be a walk' after four balls have been pitched. This will be true, on the orthodox semantics, because according to the ordering of worlds provided by the rules of baseball, all top-ranked worlds in which four balls have been pitched are also worlds where the batter walks.

When we discuss the law, the relevant ordering source is provided by a set of contextually salient legal rules. In a sentence like 'legally, I must inform the police of his whereabouts', the adverb 'legally' modifies the deontic modal 'must' by fixing what linguists refer to as the verb's 'flavour'. Modal adverbs like 'legally' and modal adjectives like 'legal' are said to explicitly invoke a particular reading of the ordering source.[48] 'Legally, it ought to be that Jack pays Jill back' will be true if and only if the best situations in the modal base according to the order induced by the legal rules are situations where Jack pays Jill back. Since the linguistic category of modality is given a unified analysis, the same can be said, *mutatis mutandis*, of the adjective 'legal' as it modifies deontic nouns in phrases like 'Jane has

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[46] For the sake of simplicity, I make the so-called 'limit assumption', which is the assumption that there is always a set of top-ranked worlds; cf. David Lewis, *Counterfactuals* (Oxford: Blackwell, 1973), pp. 19–20. I am also ignoring the distinction, emphasized by linguists, between strong necessity modals like 'must', and weak necessity modals like 'ought'; cf. Kai von Fintel and Sabine Iatridou, 'How to Say Ought in Foreign: The Composition of Weak Necessity Modals', in *Time and Modality*, ed. Jacqueline Gueron and Jacqueline Lecarme (New York: Springer, 2008), pp. 115–141.

[47] See especially Kratzer (1977, 1981); Kai von Fintel, 'Modality and Language', in *Encyclopedia of Philosophy*, ed. Donald Borchert, (Macmillan Reference USA, 2006), pp. 20–27; Hacquard (2011). Some versions of Krazterian semantics utilizes the notion of premise sets, where other philosophical accounts utilize orderings on possible worlds. The two approaches have been proven to be equivalent; David Lewis, 'Ordering Semantics and Premise Semantics for Counterfactuals', *Journal of Philosophical Logic* 10(2) (1981): pp. 217–234. I am formulating my examples in terms of 'ought to be' sentences to avoid the vexed question of whether there are two senses of ought – one that is agential and another that is not. For discussion see Mark Schroeder, 'Ought, Agents, and Actions', *Philosophical Review* 120(1) (2011): pp. 1–41; Matthew Chrisman, '"Ought" and Control' *Australasian Journal of Philosophy* 90(3) (2012): pp. 433–451 ; Stephen Finlay and Justin Snedegar, 'One Ought Too Many', *Philosophy and Phenomenological Research* 89(1) (2014): pp. 102–124.

[48] Linguists have described this phenomenon as 'modal concord'; Bart Geurts and Janneke Huitink, 'Modal Concord', in *Concord Phenomena at the Syntax-Semantics Interface*, ed. P Dekker and H Zeijlstra (ESSLLI Workshop, Malaga, 2006), pp. 15–20; Hedde Zeijlstra, 'Modal Concord', in *Proceedings of SALT*, ed. M Gibson and T Friedman, vol. 17 (Ithaca: CLS Publications, 2008), pp. 317–331; Janneke Huitink, 'Modal Concord: A Case Study of Dutch', *Journal of Semantics* 29(3) (2012): pp. 403–437; Pranav Anand and Adrian Brasoveanu, 'Modal Concord as Modal Modification', *Proceedings of Sinn Und Bedeutung* 14 (2010): pp. 19–36.

a legal obligation to fill out her tax return' or 'John has a legal right to maintain his silence'.[49]

Considering the orthodox semantics of deontic language just introduced, there does not seem to be scope for arguing that the distinction between detached and committed legal statements is truth-conditional. Deontic modals can be used to describe the law without any speaker endorsing the rules in question. A statement like 'legally, it ought to be that Jack pays Jill back' will be true just in case it follows from the relevant body of laws that Jack pays Jill back, regardless of whether any participants in the discourse are committed to the laws in question. The orthodox semantics allows a speaker to cite the legal rules in question without being committed to them. The truth of a deontic statement about the law does not depend on the speaker's attitudes. One can truthfully use deontic language to describe the law without in any way accepting the legal rules in question as reason-giving. The difference between a committed and detached legal statement is just the difference between a statement in which the ordering source is taken to be endorsed by the speaker and one where it is not.[50]

Many legal philosophers and deontic logicians are uncomfortable with the idea that rules or imperatives have truth-conditions.[51] A long-standing tradition in legal philosophy, one that arguably includes Austin, Ross, von Wright, Kelsen, and Hart, has maintained what Alchurron and Bulygin call the 'expressive conception of norms'.[52] According to the expressive conception, imperatives lack truth value, but truth value can nonetheless be attributed to certain kinds of descriptive statements – 'normative propositions' – about those imperatives.[53]

The orthodox semantics is not incompatible with the expressive conception, though aspects of the former rest uneasily with the

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[49] See especially Kratzer (1981). Philosophical linguistics has tended to focus on the semantics of modal verb-phrases, and has given remarkably little attention to other syntactic categories. The deontic nouns 'obligation' and 'right' have an important role in the history of legal philosophy (cf. Hart 2012, pp. 85–88.) It would be useful to compare an account of its natural language meaning with the meaning of the term-of-art as it is stipulated by legal philosophers. Mark Schroeder (2011, p. 10) notes some possible points of distinction between 'ought' and 'obligation' that a semantic account will need to accommodate.

[50] Silk (2017).

[51] I am very grateful to two anonymous reviewers for pressing me to respond to this point.

[52] See Carlos E. Alchourrón and Eugenio Bulygin, 'The Expressive Conception of Norms', in *New Studies in Deontic Logic*, ed. Risto Hilpinen (Oxford University Press, 1981), pp. 95–124.

[53] Alchourrón and Bulygin (1981).

latter. On the orthodox approach, imperatives provide the basis for the ordering source. Interpreted in this way, the orthodox semantics does not attribute truth values to imperatives – it attributes truth values to deontic statements, where those deontic statements express a relationship between imperatives and their conclusions.[54]

Nonetheless, sometimes rules are formulated or created using deontic statements, and this presents an underappreciated complication for the orthodox account.[55] For instance, section 1(3) of the United Kingdom's *Contracts (Rights of Third Parties) Act* says that 'the third party must be expressly identified in the contract by name'. This section is not merely reporting a requirement based on an existing set of legal imperatives that form the basis for an ordering source. It is creating a new legal rule. There are many instances of this sort of performative use of deontic language. Rather than being descriptive and truth conditional, these statements appear to have an illocutionary force that is akin to the force of an imperative or explicit order. In attributing truth-conditions to these statements, the orthodox account of deontic language runs counter to a well-established tradition in legal philosophy.

The relationship between sentences containing deontic modals and imperatives has been underexplored, at least until relatively recently.[56]

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[54] If we think of legal norms as a set of simple imperatives or prescriptions, then the ordering source is a function which identifies the contents of each of these imperatives with a set of propositions (understood as sets of possible worlds). In this respect Kratzer's account can be identified with the 'imperatival tradition' in deontic logic discussed by Jörg Hansen in a recent body of work, beginning with his 'Problems and Results for Logics about Imperatives', *Journal of Applied Logic* 2 (2004): pp. 39–61. This logical tradition has been reenlivened in recent years, not only in Hansen's own work, but in John Horty's deontic default logic, and in Makinson and van der Torre's input/output logic. See especially David Makinson and Leendert van der Torre, 'Input/Output Logics', *Journal of Philosophical Logic* 29(4) (2000): pp. 383–408; John Horty, *Reasons as Defaults* (Oxford: Oxford University Press, 2012). Horty (2014) notes some points of equivalence and difference between Kratzer's account and his own. Hansen discusses Kratzer's semantics as a version of imperative logic in Jörg Hansen, 'Conflicting Imperatives and Dyadic Deontic Logic', *Journal of Applied Logic* 3 (2005): pp. 484–511.

[55] I am grateful to Luis d'Almeida as well as an anonymous reviewer for bringing this complication to my attention. d'Almeida also presented me with the related problem of disagreement about the sources of law in hard cases, of the sort relied upon by Dworkin in his critique of legal positivism; cf. Dworkin (1986). I do not address this problem here. For discussion of legal disagreement in the context of the orthodox semantics see Silk (2017).

[56] See e.g. Dilip Ninan, 'Two Puzzles About Deontic Necessity', in *New Work on Modality, MIT Working Papers in Linguistics*, ed. J. Gajewski et al. (Cambridge, MA: MIT Press, 2005); Magdalena Kaufmann, *Interpreting Imperatives* (Dordrecht: Springer, 2012); Nate Charlow, 'The Meaning of Imperatives', *Philosophy Compass* 9(8) (2014): pp. 540–555; Kai von Fintel and Sabine Iatridou, 'A Modest Proposal for the Meaning of Imperatives', in *Modality Across Syntactic Categories*, ed. Ana Arregui, Maria Luisa Rivero, and Andres Salanova (Oxford: Oxford University Press, 2017), pp. 288–319; Paul Portner, 'Imperatives and Modals', *Natural Language Semantics* 15(4) (2007): pp. 351–383. For discussion of this work's significance to the philosophy of law see Sardo Alessio, 'The Dark Side of Imperatives', in *Pragmatics and Law: Practical and Theoretical Perspectives*, ed. Francesca Poggi and Alessandro Capone (Springer Verlag, 2017), pp. 243–271.

Nonetheless there are several ways in which the orthodox semantics can be reconciled with the performative use of deontic language. It is plausible, for instance, that in the presence of what Searle called an illocutionary force indicating device, the force of the deontic sentence shifts while the underlying propositional or 'radical' content remains the same.[57] Alternatively, it could be claimed that in the circumstances where the person making the statement has the requisite legal authority, the sentence they utter is trivially true in virtue of that authority. Though this approach would constitute a more radical departure from the expressive conception, it is not without support.[58]

In any case, in this article I will focus on uses of deontic language that involve the description of existing legal rules. (On the assumption that such descriptive use is possible.[59]) Circumstances where modal language has a performative use (where it is used to create new rules) need to be distinguished from those where modal language is used to direct others to act in conformity with existing rules. It is plausible to think that in the latter circumstances deontic language performs a dual function – one that is both descriptive and directive. In addition to having a truth value, descriptive statements involving deontic language may or may not be used to direct others to comply with existing rules.[60] In this respect, deontic language can feature in indirect speech acts – speech acts which directly state what is required given a set of rules, and which indirectly advise or order their addressee to act in conformity with those requirements.[61] Bulygin offers the example of a babysitter who instructs a child 'you

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[57] John Searle, *Speech Acts: An Essay in the Philosophy of Language* (Cambridge: Cambridge University Press, 1969); John Searle and Daniel Vanderveken, *Foundations of Illocutionary Logic* (Cambridge: Cambridge University Press, 1985).

[58] A sophisticated version of this account is offered in Kaufmann (2012). But the approach has an analogue in the older tradition of interpreting imperatives in terms of explicit performatives; see e.g. David Lewis, 'General Semantics', *Synthese* 22(1–2) (1970): pp. 18–67.

[59] cf. e.g. Guastini (1991, pp. 312–316). According to Guastini purportedly descriptive uses of deontic language are actually the ascription of meaning to rules and therefore have the quality of disguised prescriptions. As discussed, this claim depends on a prior argument about the interpretation of legal rules, with which I have not engaged.

[60] See further Jan Nuyts, Pieter Byloo, and Janneke Diepeveen, 'On Deontic Modality, Directivity, and Mood: The Case of Dutch Mogen and Moeten', *Journal of Pragmatics* 42(1) (2010): pp. 16–34.

[61] cf. Eugenio Bulygin, 'Norms, Normative Propositions, and Legal Statements', in *Essays in Legal Philosophy*, ed. Carlos Bernal et al. (Oxford: Oxford University Press, 2015), p. 192. On indirect speech acts, see especially John Searle, 'Indirect Speech Acts', in *Syntax and Semantics Volume 3: Speech Acts*, ed. Peter Cole and Jerry Morgan (Cambridge, MA: Academic Press, 1975), pp. 59–82. As I note below, Grice's conversational maxims can be used to determine whether or not a deontic statement is intended to have a kind of indirect illocutionary force; Laurence Horn, 'Towards a New Taxonomy for Pragmatic Inference', in *Meaning, Form, and Use in Context: Linguistic Applications*, ed. Deborah Schiffrin (Washington: Georgetown University Press, 1984), pp. 29–31; Searle (1975).

ought to go to bed now', in a manner that both describes a command previously issued by the child's parents and which directs the child to comply with this command.[62] This kind of indirect use of a deontic sentence is perfectly compatible with, and even suggests the need for, the pragmatic account of deontic language on which I expand below.

I certainly do not mean to sound uncritical of the orthodox account. It is worth being cautious about it, partly for the reasons already mentioned. There are other aspects of the account worth questioning.[63] Nonetheless we should be wary, as legal philosophers, of departing too far from the views of theorists in other specialist areas without strong reasons for doing so. Provided that something like the account of deontic language presented here is correct, we will need to look elsewhere for a suitable account of the distinction between committed and detached statements. If the distinction is meant to be made in terms of the truth-conditional content of these statements, then it is implausible. Below I present an alternative account. I believe that this account is faithful to Raz's initial presentation, without requiring any claims about the semantics of deontic language that are inconsistent with the orthodox approach.

III. COMMITTED AND DETACHED USE OF DEONTIC LANGUAGE

The distinction between committed and detached legal statements can be preserved if it is recast as a distinction between two ways of using deontic language. I will argue that utterances involving deontic language are presumptively committed, in the sense that they carry what H.P Grice called a 'generalized conversational implicature' to the effect that the speaker endorses the rules in question: an implicature that 'use of a certain form of words in an utterance would normally (in the absence of certain circumstances) carry'.[64] This implicature is associated with a stereotypical interpretation of this utterance type; generic uses of deontic language carry a presumptive

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[62] Bulygin (2015, p. 198).

[63] For some further criticisms see John Broome, 'A Linguistic Turn in the Philosophy of Normativity?' *Analytic Philosophy* 56(4) (2015); Horty (2014).

[64] Grice (1989, p. 37). Neo-Griceans have proposed revising Grice's account of generalized conversational implicature in a variety of ways Julia Bell Hirschberg, *A Theory of Scalar Implicature* (New York: Garland, 1991); Stephen Levinson, *Presumptive Meanings: The Theory of Generalized Conversational Implicature* (Cambridge, MA: MIT Press, 2000); Horn (1984, 2004, 2006).

meaning to the effect that speakers are committed to the rules that form the basis of their assertion. Detached legal statements are statements in which this implicature is either explicitly or contextually cancelled.

I begin by briefly outlining Grice's notion of generalized conversational implicature. I then use a variety of pragmatic tests to show that speaker commitment exhibits the properties we would expect of a conversational implicature. Following this, I will argue that the implicature in question should be characterized as a generalized conversational implicature, which arises primarily through the Gricean maxim of quantity. Absent special circumstances or explicit cancellation, a speaker's utterance of a deontic sentence will implicate their commitment to a set of rules or standards.

A. *Grice's Notion of Generalized Conversational Implicature*

Grice's account of implicature, first offered in his 1967 William James lectures, is well-known and will be familiar to many readers. But it is worth briefly reintroducing the basics of the account. Grice is generally credited with drawing attention to an important set of distinctions in linguistics and the philosophy of language. In particular, he drew attention to the distinction between 'what is said' and 'what is implicated' by a particular utterance. Theorists over the years have found Grice's notion of 'what is said' to be particularly hard to explicate.[65] According to Grice, what is said is closely related to both sentence meaning and the 'conventional meaning of words'.[66] For our purposes here, it will suffice to presume that what is said by a statement containing deontic language corresponds to its truth-conditional content. In Gricean terms, a speaker can implicate one thing by saying something entirely different. To adapt one of his canonical examples, if a philosopher gives a student a reference stating only that the student has beautiful handwriting, then what the philosopher has *said* is that the student has beautiful handwriting.

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[65] For critical discussion of the Gricean notion of what is said see, *inter alia*, Stephen Neale, 'Paul Grice and the Philosophy of Language', *Linguistics and Philosophy* 15(5) (1992): pp. 509–559; François Recanati, 'The Pragmatics of What Is Said', *Mind and Language* 4(4) (1989): pp. 295–329; Jennifer Saul, 'Speaker Meaning, What Is Said, and What Is Implicated', *Noûs* 36(2) (2002): pp. 228–248; Kent Bach, 'Conversational Implicture', *Mind & Language* 9(2) (1994): pp. 124–162.

[66] Grice (1989, p. 25).

The philosopher, however, has also *implicated* that the student is not a particularly good scholar.[67]

The Gricean account of conversational implicature begins with the assumption that conversation requires conformity with a set of conversational maxims; these ensure that the participants are respecting what he calls 'the cooperative principle': 'make your contribution such as is required, at the stage at which it occurs, by the accepted purpose or direction of the talk exchange in which you are engaged'.[68] Grice notes that speakers generally seek to make contributions that are truthful, relevant, informative, and clear; they observe what he describes as the maxims of quality, relation, quantity, and manner.[69] Gricean conversational implicatures arise from the pursuit of cooperative conversation. For instance, if my friend asks me if I have any water in my bag, and I respond 'I have some orange juice', then the obvious implicature is that I do not have any water. On the assumption that I am being cooperative, my friend can infer that I do not have any water to offer him, because I would have volunteered it if I had.

In what follows I will characterize generalized conversational implicature in terms of Grice's initial presentation of the phenomenon. The Gricean account of conversational implicature – particularly the default interpretations associated with generalized conversational implicature – has been considerably refined, modified and revised by subsequent linguists and philosophers of language. Philosophers and linguists debate whether or not Grice's account should be psychologically plausible, for instance, or whether it simply offers a set of explanatory heuristics.[70] Some accounts have hewn to the initial project relatively closely, while also seeking to reformulate or reduce Grice's maxims.[71] Other approaches depart more radically from Grice's methodological assumptions.[72] It would be interesting to distin-

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[67] *Ibid.*, p. 33.

[68] *Ibid.*, p. 26.

[69] *Ibid.*, p. 26

[70] See e.g. Blome-Tillman (2008) for an argument that Grice's maxims were not intended to be psychologically plausible.

[71] Julia Bell Hirschberg, *A Theory of Scalar Implicature* (New York: Garland, 1991); Laurence Horn, 'Towards a New Taxonomy for Pragmatic Inference', in *Meaning, Form, and Use in Context: Linguistic Applications*, ed. Deborah Schiffrin (Washington: Georgetown University Press, 1984), 11–42; Laurence Horn, 'Implicature', in *The Handbook of Pragmatics* (Oxford: Blackwell Publishing, 2005), 3–28; Laurence Horn, 'The Border Wars: A Neo-Gricean Perspective', in *Where Semantics Meets Pragmatics: The Michigan Papers*, ed. K von Heusinger and K Turner (Oxford: Elsevier, 2006), pp. 21–48; Levinson (2000).

[72] See e.g. Dan Sperber and Diedre Wilson, *Relevance* (Blackwell, 1995).

guish the pragmatic accounts of modal speech that might offered from within these frameworks with the more traditional, Gricean account. But I have not undertaken that task here.

Grice distinguished between three types of implicature: generalized conversational implicature, particularized conversational implicature, and what he called conventional implicature. According to Grice, conventional implicatures formed part of the meaning of the sentence, whereas both types of conversational implicature are attributed to conversational contexts.[73] Conventional implicatures are more contentious than conversational implicatures and I will not consider them any further here.[74] The distinction between the two types of conversational implicature is, as their labels suggest, a matter of their generality. Generalized conversational implicatures occur where a standard utterance carries a certain presumptive meaning. Particularized conversational implicatures arise only in certain conversational settings.

Scalar implicatures associated with a statement like 'some of the guests are already leaving' are often offered as examples of generalized conversational implicature.[75] The statement carries a conversational implicature to the effect that some but not all the guests are leaving. As Levinson notes, the audience is invited to make a shared inference to this effect that 'has an entirely general currency'.[76] The relationship between the utterance of the sentence and this inference is so intimate that it can be described as a kind of presumptive meaning.[77] Our ability to infer that not all the guests left does not seem to depend on a specific context of utterance.

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[73] Levinson (2000, p. 25).

[74] See especially Kent Bach, 'The Myth of Conventional Implicature', *Linguistics and Philosophy* 22(4) (1999): pp. 327–366; for further discussion, see Christopher Potts, 'Into the Conventional-Implicature Dimension', *Philosophy Compass* 2(4) (2007): pp. 665–679.

[75] Though, as I note below, some linguists dispute the distinction between generalized and particularized implicatures.

[76] Levinson (2000, p. 17).

[77] For an overview of the 'presumptive meaning' characterization and its rationale, see Levinson (2000, pp. 1–9). Levinson's theory of a 'third level' of meaning has analogues in other neo-Gricean frameworks – Kent Bach's (1994) notion of 'conversational impliciture' for example. However, there are other approaches to these sorts of default or presumptive meanings that depart to a far greater degree from the traditional Gricean framework; see e.g. Katerzyna Jaszczolt, *Default Semantics: Foundations of a Compositional Theory of Acts of Communication* (Oxford: Oxford University Press, 2005). For a survey of alternative characterizations of default interpretations, see further Katerzyna Jaszczolt, 'Defaults in Semantics and Pragmatics', in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Winter 2014 (Metaphysics Research Lab, Stanford University, 2014), https://plato.stanford.edu/archives/win2014/entries/defaults-semantics-pragmatics/.

We have good reason to treat utterances involving deontic language as carrying an equivalent sort of generalized conversational implicature; it is implicated that the speaker is committed to the rules that they are citing. As I argue below, these implications arise as a matter of an inference to stereotype arising from ordinary use of deontic language. Several linguistic tests for conversational implicature support this characterization.

B. Testing Deontic Statements for Conversational Implicature

Grice introduced a set of necessary (though not sufficient) criteria for identifying conversational implicature. Though their exact probative value is widely debated, these tests have become a mainstay of Gricean and neo-Gricean analysis.[78] Implicatures are capable of being calculated by their audience through reference to the conversational maxims. They may also be cancelled or reinforced by the speaker. Finally, conversational implicatures cannot be avoided by restating the contents of an utterance – alternative sentence formulations with equivalent meaning carry the same implicature. When each of these tests is applied to deontic statements, they support the characterization of these statements as presumptively committed.

(i) Calculability: An implicature must be capable of being worked out.[79]

Whether a speaker is committed to a given rule that is presupposed by their statement will usually be *calculable*. If I ask my friend whether I ought to inform the police of a wrongdoing, he may reply by saying 'legally you

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[78] Grice (1989). For endorsements of these tests in the deontic context, see Forrester (1989, pp. 201–207); Kai von Fintel, 'The Best We Can (Expect to) Get? Challenges to the Classic Semantics for Deontic Modals', in *Session on Deontic Modals, American Philosophical Association Central Division Meeting*, 2012, http://web.mit.edu/fintel/fintel-2012-apa-ought.pdf; Strandberg (2012). Not all of these tests are uncontroversial, but I have adopted them as useful rules of thumb. For critical discussion of these tests and their currency in the philosophy of language, see Michael Blome-Tillmann, 'Conversational Implicature and the Cancellability Test', *Analysis* 68(2) (2008): pp. 156–160; Michael Blome-Tillman, 'Conversational Implicatures (and How to Spot Them)', *Philosophy Compass* 8(2) (2013): pp. 170–185; Jerrold M. Sadock, 'On Testing for Conversational Implicature', in *Syntax and Semantics: Pragmatics*, ed. Cole Peter (Cambridge, MA: Academic Press, 1978), pp. 281–297; Levinson (2000); Laurence Horn, 'Implicature', in *The Handbook of Pragmatics* (Oxford: Blackwell Publishing, 2004), pp. 3–28; Laurence Horn, 'Given as New: When Redundant Affirmation Isn't', *Journal of Pragmatics* 15(4) (1991): pp. 313–336; Hirschberg (1991). For recent discussion of the cancellability test in linguistic pragmatics, see Katarzyna Jaszczolt, 'Cancelability and the Primary/Secondary Meaning Distinction', *Intercultural Pragmatics* 6(3) (2009): pp. 259–289; Michael Haugh, 'Implicature, Inference and Cancellability', in *Perspectives on Pragmatics and Philosophy*, ed. Alessandro Capone, Franco Lo Piparo, and Marco Carapezza (Cham: Springer International Publishing, 2013), pp. 133–151.

[79] Grice (1989, p. 39).

ought to inform them'. If he did so I would be capable of inferring that my friend, who is committed to Grice's norms of cooperativeness and efficiency, is suggesting that I also have good reason to inform the police. I have asked my friend what I ought to do, and on the assumption that he is obeying the maxims of conversation, his answer is meant to assist me in resolving this question. My friend would know that, in the absence of some contextual awareness on my behalf that he was not committed, I will assume that he endorses the legal rule in question, in accordance with the maxim of quantity. Moreover, in accordance with the maxim of relevance, he would not have uttered this sentence unless he thought I had reason to inform, since he takes his contribution to be relevant for the purposes of our conversation.

(ii) Explicit Cancellability: A speaker who utters a sentence and then denies its implicature is not contradicting themselves.[80]

A speaker can cancel any unwelcome implicature by offering further clarification to their audience. A speaker's presumptive commitment is explicitly cancellable.[81] Consider the difference between utterances involving the following two sentences, one in which the unwelcome implicature is explicitly cancelled by the speaker.

(1) Legally, you ought to inform the police.
(2) Legally, you ought to inform the police – I don't mean to say that I think you have any reason to inform them.

The implicature present in (1) that the speaker endorses the legal rules in question is cancelled in (2). The speaker's commitment to the rules in question is presumed in (1), and in (2) the speaker clarifies, explicitly, that they do not mean to communicate their endorsement. Cancellability supports the claim that a speaker's commitment is presumptive but not entailed by the semantic contents of their utterance. If a speaker is sufficiently clear, it is possible to cancel any implicature to the effect that they are committed to the rule they are citing.[82]

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[80] Grice (1989, p. 39).

[81] In addition to being explicitly cancellable, Grice suggested that generalized conversational implicatures were contextually cancellable; Grice (1989, p. 44). I return to this issue below, but rely for now on explicit cancellation as a worthwhile rule of thumb.

[82] Some theorists have offered examples of putatively non-cancellable implicatures, such as irony implicatures; see Matthew Weiner, 'Are All Conversational Implicatures Cancellable?', *Analysis* 66 (2006): pp. 127–130. For two different responses see Jaszczolt (2009), Michael Blome-Tillmann, 'Conversational Implicature and the Cancellability Test', *Analysis* 68(2) (2008): pp. 156–160.

(iii) Non-detachability: Where an utterance involves an implicature, there is rarely any way of restating the contents of the utterance while avoiding the implicature (except through explicit cancellation).[83]

Where the use of deontic language carries an implicature to the effect that the speaker is committed, they cannot restate the contents of the utterance in order to avoid the implicature. Instead, the implicature must be explicitly cancelled. Consider, for instance, a situation where a speaker replaces an utterance involving the sentence in (3) for an utterance involving the sentence in (4).

(3) Legally you must give restitution to David.
(4) You have a legal obligation to give restitution to David.

Any implicature to the effect that the speaker accepts the obligation to give restitution that is involved in an utterance of (3) is replicated with an utterance in (4). The only way to remove the implicature is explicit cancellation. This suggests that the implicature in question arises from the use of the language in question, and is not encoded in its semantics. It arises in the circumstances of utterance when any sentence of equivalent meaning is used. The only way to cancel the presumptive meaning of an utterance is to make it clear that in this specific conversational context the speaker is not committed.

(iv) Reinforceibility: An implicature can be stated explicitly without the utterance being redundant.[84]

Any implicature involved with the use of deontic language can be reinforced by the speaker without redundancy. So, for instance, the sentence in (5) can be amended so that the speaker makes their commitment to the rule in question explicit (as in (6)).

(5) Legally you must give restitution to David.
(6) Legally you must give restitution to David. I should also add that I think you have good reason to actually do it.

The fact that a speaker's commitment is reinforceable demonstrates that it is not entailed by the bare truth conditions of the sentence in (5). It arises as a result of the general properties of utterance-types

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[83] Grice (1989, p. 44).

[84] Reinforceibility can be seen as a corollary of cancellability; for elucidation see Sadock (1978), Horn (1991).

that involve deontic language. By way of contrast, reinforcement of semantic content is generally redundant (consider the absurdity of a sentence like 'he finished his dinner and he actually ate it all').[85] In certain conversational circumstances, there may well be strategic value in speakers reinforcing their commitment – it can help to affirm for the audience that any presumptive meaning was intended by the speaker.

On the assumption that they are forensically valuable, these four tests demonstrate that a speaker's commitment to the rules on which they are relying is communicated to their audience as a matter of conversational implicature, rather than as a result of the semantic contents of their utterance. I will argue that the implicature in question arises through Grice's maxim of quantity, and that it has the hallmarks of a generalized, rather than particularized, conversational implicature.

C. Speaker Commitment as a Quantity Implicature

The conversational implicature in question arises through the Gricean maxim of quantity – more precisely, through Grice's second submaxim of quantity. According to Grice's second sub-maxim, speakers should not make their utterances more informative than required.[86] Speakers should avoid stating that which is presumed to be obvious. As a corollary, speakers invite their audience to enrich what has been said by making such inferences as they are invited to make as a result of the speaker's conformity with this maxim. For instance, in an utterance like 'he opened the door', the speaker does not specify the manner in which the door is opened. The audience is invited to enrich the statement with the inference that the door was opened in the usual fashion (by turning the handle).[87] Levinson's gloss on this principle is that 'minimal specifications get maximally informative or stereotypical interpretations'.[88]

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[85] Horn (1991) notes that non-redundant affirmation can be given for certain entailments and presuppositions. This does not show that the test is unreliable, just that it is not independently sufficient to identify an implicature.

[86] (1989, p. 26). Levinson (2000, p. 114) reinterprets implicatures of this sort in terms of his 'principle of informativeness'. Horn (1984) refers to 'R-Implicatures'.

[87] (2000, p. 113).

[88] (2000, p. 37).

Implicatures to the effect that a deontic statement reflects the speaker's personal commitment arise through a similar process of conformity with the quantity maxim. Recall that the difference between committed and detached deontic statements is captured in terms of different ordering sources for the deontic statement.[89] Where a committed statement takes as its ordering source a set of rules that reflect the speaker's personal commitments, a detached statement does not. If a speaker is obeying Grice's second submaxim of quantity, then they will not need to specify that the rules that they are citing reflect their own commitments. They will anticipate that their audience will be aware that the statement should receive this interpretation.[90]

Two related features of utterances involving deontic language ensure that they are presumptively committed. To begin with, the claim that deontic statements are presumptively committed is supported by statistical frequency; deontic statements are stereotypically committed. A broad body of work in descriptive linguistics supports the claim that deontic language – especially strong deontic modal verbs like 'must' and 'have to' – is more likely to be used in a committed fashion than in a detached fashion.[91] Statistical frequency can give rise to a generalized conversational implicatures in the form of a presumptive or stereotypical meaning.[92] A statement like 'the dancer went to the barre' carries a standard meaning to the effect that the dancer in question was female, since dancers are predominately female. Similarly, since committed use of deontic language is more frequent than detached use, stereotypical uses of deontic language are committed. An addressee will interpret the statement as

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[89] Kratzer (1981).

[90] According to Levinson (2000, ch. 3) this sort of implicature arises through the use of a word or phrase and therefore occurs at the local, sub-propositional level (Levinson therefore abandons the what is said/what is implicated dichotomy). If this is the case, then deontic modal auxiliaries like 'ought' and 'must' could be characterized as carrying a sub-propositional implicature to the effect that their ordering source represents the speaker's commitments. Historical evidence might support this characterization to some extent. In her work on modal verbs in historical pragmatics, Elizabeth Traugott has argued that, over time, modal verbs' 'meaning tends to become increasingly based in the speaker's subjective belief/attitude towards the proposition'; 'On the Rise of Epistemic Meanings in English: An Example of Subjectification in Semantic Change' *Language* 65(1) (1989): pp. 31–55, p. 35. See also Elizabeth Traugott and Richard Dasher, *Regularity in Semantic Change* (Cambridge: Cambridge University Press, 2002), ch. 3. Levinson's account has been widely criticized, however (see e.g. Françoise Recanati, 'Embedded Implicatures' *Philosophical Perspectives* 17(1) (2003): pp. 299–332, Horn (2004)).

[91] See e.g. Coates (1983); Palmer (1979); Palmer (1986); Traugott (1989); Traugott and Dasher (2002, ch. 3). For a succinct survey of the literature see Silk (2015, pp. 304–307).

[92] Cf. Jaszczolt (2005, pp. 55–58) on 'socio-cultural' defaults.

meaning that a speaker is committed to the rules that form part of the ordering source.

In addition to being more frequent than non-committed uses, committed uses of deontic language have a sort of explanatory priority over detached use. This explanatory priority seems to arise from what Lyons refers to as the 'ontogenetically basic' and 'closely connected' instrumental and desiderative functions of deontic language.[93] Deontic modality arises from the need for language to fulfil these functions. Deontic language provides us with an efficient instrument for communicating our desires and intentions and, where necessary, imposing them on others. Primarily, we use the language of obligation and permission to evaluate or guide conduct.[94] This is what I have already referred to as deontic language's directive function. In circumstances where language is used to direct others' behaviour, it is generally safe to infer that someone relying upon a normative standard is committed to that standard. Provided that they are obeying the maxims of quality and relevance, speakers will not assert that something ought or must occur unless they are committed to the truth of the statement and its relevance to directing behaviour. Circumstances in which someone will cite a normative standard as a guide to behaviour without also endorsing that standard are rare and esoteric. Someone who utters 'you have an obligation to take your hat off in church' with the desire of inducing people to remove their hats, is typically committed to the rule that requires people to take their hat off in church. As Hart noted, there is an association between the directive use of deontic language and what he called the 'internal aspect' of rules.[95] When we use rules for the guidance of another's conduct, we typically endorse them as normative. The presumptive commitment of deontic statements arises because it would be onerous to expect speakers to make these commitments explicit. Given this conceptual relationship between deontic language and directive use, the interpretation of these statements as committed arises as a matter of conversational efficiency. They are given a maximally informative meaning.

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[93] Lyons (1977, p. 826).

[94] Many philosophers have noted this. See e.g. Forrester (1989, ch. 3); Allan Gibbard, *Wise Choices, Apt Feelings: A Theory of Normative Judgment* (Oxford: Clarendon, 1990); Strandberg (2012).

[95] Hart (2012, p. 57). It should be noted that Hart did not appear to think that the internal aspect of rules required *commitment* to the rules, in the sense in which I am using the term.

Implicatures to the effect that the speaker is committed to the rules in question may also be reinforced in context through the maxim of relevance: speakers ought to make contributions that are relevant to the purpose of their conversation.[96] The maxim of relevance plays an important role in the generation and reinforcement of the implicature. Although relevance implicatures arise relative to specific contexts, and therefore cannot be associated with any general or presumptive meaning,[97] they may serve to reinforce the general quantity implicature to the effect that the speaker is committed to the rules that they are presupposing. For instance, if I ask a friend whether or not I ought to fill out my tax return, then, on the assumption that he is being relevant, I will assume that an answer like 'legally you ought to fill out your tax return' reflects his personal commitment to the rule as suitable for the guidance of conduct. His conformity with the maxim of relevance can serve to reinforce his personal commitment to the legal rules. Given the general directive function of deontic language, these relevance implicatures are likely to be widespread, and to go through in a diverse range of circumstances.[98] Across these contexts, the maxim of relevance can serve to reinforce the quantity implicature to the effect that the speaker is committed.

The implication of speaker commitment also allows for deontic statements, which semantically only express a relationship between a set of contextual propositions and a conclusion, to be used in indirect speech acts. Suppose, for instance, that someone uttering the sentence in (5) is a judge who is not only asserting the existence of a legal requirement but directing the defendant to conform with my legal obligation to give restitution. The indirect directive force of the judge's statement relies on the defendant's recognition of the judge's commitment to the rule, and therefore his intention that the defendant conform to the rule. The intention to direct the defendant to conform with the requirement can be signalled through the judge's use of the maxims of quantity and relevancy. These conversational principles ensure that the intended force of the judge's statement is apparent.

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[96] Grice (1989, p. 27)

[97] Levinson (2000, p. 74).

[98] Strandberg (2012, p. 108) argues that moral conversations 'generally have as a purpose to influence behaviour', and therefore that relevance could ground generalized implicatures. My own view is that the maxim of relevance plays an important auxiliary role in explaining how the quantity implicature arises and is reinforced.

D. Speaker Commitment as Generalized Implicature

The implicatures in question do not appear to require deontic lan-
guage to be used in any particular context. Rather they arise from a
more general association between deontic language and speaker
commitment. This is what justifies characterizing the inferences in
question as arising from a generalized conversational implicature,
rather than a particularized one. The implicature is standardly car-
ried by unmarked use of deontic language. Unless there is sufficient
explicit or contextual information to prevent the implicature from
going through, it will be carried by the utterance. The implicature
has the property of a particular kind of strengthening of what has
been said.[99] If I say 'legally, you ought to give restitution', then all
that I have said is that in all the highest ranked worlds according to
the law, you give restitution. But in the absence of specific cir-
cumstances or explicit information, the statement is generally
strengthened to implicate that legal rules in question reflect my own
commitments. If speakers were required to constantly spell out their
commitment to the norms they are citing, then conversation would
become onerous and inefficient. Instead, the speaker commitment is
presumptively or defeasibly implicated absent some special context.

   Though Levinson defends it in modified form, other post-Gricean
accounts have queried the firmness of the distinction between gen-
eralized and particularized implicatures. They argue that since so-
called generalized implicatures only arise in a local context of
utterance in which certain features are absent, they are still context-
dependent and particularized in a sense.[100] For my purposes here, it
is enough to observe that the implicature associated with deontic
language is relatively widespread – it occurs unless a special context
prevents it from going through. According to Laurence Horn, 'it is
apparent that some implicatures are induced only in a special context
while others go through unless a special context is present'.[101] Per-
haps all that separates generalized and particularized implicatures is
that the former have a widespread tendency to go through – that
they possess such a high degree of context independence that they
are carried in a diverse range of contexts rather than only in highly

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[99] Cf. Levinson (2000, p. 119).

[100] Hirschberg (1991) offered an early version of such a critique; see also Robyn Carston, 'Quantity
Maxims and Generalised Implicature', *Lingua* 96 (1996): pp. 213–244.

[101] Horn (2004, pp. 4–5).

specific contexts.[102] Even if this is the case, the distinction in degree between particularized and generalized implicatures is still worth noting, and may well have broader philosophical significance.[103] The implicature of speaker commitment is carried unless certain special contexts of utterance are present.

E. Characterizing Detachment

Having argued legal statements are presumptively committed, it will be useful to briefly characterize detached legal statements. Detachment arises because of the defeasibility of the implicature in question. With either explicit cancellation or sufficient contextual information, a speaker can communicate to the audience that the rules that contribute to the ordering source do not reflect their personal commitments.

Detached legal statements occur where, in the specific context of utterance, the implicature that arises to the effect that the speaker is committed to the imperatives or rules in question is explicitly or contextually cancelled. In other words, a speaker's detachment from the rules in question is either explicitly communicated or implicitly cancelled by the circumstances in which the utterance is made, defeating the default interpretation to the effect that the speaker is committed.

Raz relies on various examples of sympathetic discourse to illustrate the possibility of detached statements, such as his example of someone who advises their vegetarian friend that they should not eat a meal because it contains meat.[104] In these specific conversational contexts, it is clear to both speakers that the non-vegetarian friend does not endorse the rule in question, so the speaker's commitment to the rules is cancelled by the context.

Suppose a simple model of discourse on which assertion acts to revise what Stalnaker calls the 'common ground' – a parameter that

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[102] See e.g. Bart Geurts, *Quantity Implicatures* (Cambridge: Cambridge University Press, 2011), p. 17. Hirschberg (1991); Blome-Tillman (2008) and Strandberg (2012, p. 107) make similar observations.

[103] On the philosophical significance of generalized conversational implicatures, see H.P. Grice 'Presupposition and Conversational Implicature', in *Radical Pragmatics*, ed. P. Cole (New York: Academic Press, 1981), p. 185; Levinson (2000, ch. 2).

[104] Raz (1999, p. 175).

reflects what is taken for granted within conversation.[105] (The common ground is understood here to include propositions that reflect the different practical commitments of the speaker and audience.)[106] Contextual cancellation arises from inconsistency with the common ground.[107] If it is part of the common ground that my friend is a vegetarian and I am not, then an assertion like 'you mustn't eat that pizza, it has meat in it' will not carry the presumptive meaning that I endorse vegetarianism. The contextual information provided by the common ground cancels or defeats the inference carried by the sentence to the effect that the principles of vegetarianism are my own.

Contemporary linguists debate whether it is appropriate to describe the implicature in these circumstances as cancelled by the context or whether it simply fails to arise given the contingencies.[108] Cancellation of implicatures would be psychologically costly, and ought not to form part of a theory of efficient communication unless absolutely necessary.[109] If generalized implicatures are not cancelled in these contexts, but rather simply fail to arise, then the distinction between generalized and particularized conversational implicatures looks unstable – both arise only in particular contexts of use. As I have already conceded, it is possible that the distinction between particularized and generalized conversational implicatures is one of degree rather than kind. Nonetheless, what is required for failure of the implicature is some sort of specific contextual information to the effect that the speaker is not committed to the rules in question.

Contexts in which the speaker's commitment to a deontic standard is contextually cancelled or defeated do arise in legal settings. Raz's discussion of legal statements highlights several specific conversational settings, including arguments made by barristers and solicitors, and analysis by law lecturers and legal writers, where he

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[105] Robert Stalnaker, 'Pragmatic Presuppositions', in *Context and Content* (Oxford: Oxford University Press, 1999), pp. 47–62, 'Assertion', in *Context and Content* (Oxford: Oxford University Press, 1999), pp. 78–95.

[106] Cf. Portner's (2007) notion of a 'To-Do-List', in which commitments and preference that are taken for granted within a conversation are represented by properties, rather than propositions.

[107] Levinson memorably refers to this as 'Gazdar's bucket': 'we can think of the common ground as a bucket, holding all the facts mutually assumed…a new assertion will have its content chucked in the bucket…only if each incrementation is consistent with the contents of the bucket' (2000, pp. 49–50).

[108] For discussion see Jaszczolt, (2005, pp. 65–66); Jaszczolt (2009); Haugh (2013). I thank an anonymous reviewer for pressing me to respond to this point.

[109] Jaszczolt (2005, pp. 65–66).

argues that a speaker's commitment to the rules in question is cancelled by the context.[110] He thinks it is accepted in these conversational circumstances that a person's statement of a legal rule does not successfully implicate commitment to the rule in question. Supposedly, law lecturers and legal writers use deontic language in contexts where their clear purpose is to describe or understand the law rather than to express their commitment to its content. In these contexts it is possible that there is sufficient contextual information to defeat an implicature to the effect that the rules cited reflect the speaker's own commitment. A barrister's audience may know that he personally despises a certain law, in spite of his arguing for its validity. Much will depend on the context and purpose of discourse. But supposing that detachment of the sort that Raz postulates is possible, it will be dependent on these contextual conversational features.

IV. IS THERE A PROBLEM OF DEONTIC LANGUAGE IN LAW?

It might be argued that although the characterization of committed and detached legal statements I have offered is coherent, it is of little or no use to legal philosophy. Raz initially offered his account of detached legal statements as a solution to what he described as the 'problem of normativity of law'.[111] Yet it follows from the orthodox semantics that there is no problem of normativity that relates to the use of deontic language at all. Luis D'Almeida suggests, in the course of a very different critique of the Razian approach (one that rejects a unified semantics for deontic vocabulary), that there is no problem involving deontic language whatsoever. The apparent problem of deontic language use simply derives from 'the fact that one of the typical uses of normative terminology is to state the content of a given set of legal materials'.[112] This critique can be reiterated in light of the orthodox semantics, since we can use deontic language truthfully simply by citing some fact or rule as if it were reason-giving, even when it is not reason-giving and when we do not regard

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[110] (1999, pp. 176–177).

[111] (1999, p. 170).

[112] Following Hart, d'Almeida (2011) maintains that normative terms like 'ought' and 'obligation' have different meanings across different contexts.

the rule in question as justified.[113] In this sense the law is no different from chess or hopscotch. The sentence 'you must move a knight or a pawn at the beginning of the game' would be true even were I to think that chess is a silly game and I have no reason to follow its rules. It seems to follow that there is no problem arising from the use of deontic language in the description of law – law can be a matter of social fact, and we can still use deontic language to describe it. The use of deontic language to describe the law is no different from the use of deontic language to describe any other rule-based system. If the orthodox semantics is correct, then Raz's problem of normativity is dissolved.

I am not sure that there is a single problem that can be reliably called the 'problem of normativity in law', and it is unfortunate that Raz gave the problem this name.[114] I do think, however, that the preceding discussion helps to demonstrate the different ways in which legal philosophers have thought that the use of deontic language to describe the law is philosophically important. I will briefly note three aspects of the use of deontic language in the law that I regard to be significant. The use of deontic language to describe the law does not give rise to a singular 'problem of normativity' of the sort Raz had in mind. It may nonetheless be theoretically significant for a variety of reasons that merit further inquiry.

To begin with, it is worth noting that though there is no problem of normativity *per se* that arises out of the use of deontic language in law, there is a problem akin to the one that Raz identified. The problem arises because of the tension between the positivity of law and the presumptive commitment that is carried by deontic language. This sort of presumptive commitment is in *prima facie* tension with the claim that the validity of rules depends on their sources, rather than their value or justification. The account of detached legal statements developed here partly resolves the problem by demonstrating the defeasibility of the presumption.[115] It allows for posi-

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[113] As Silk (2017) puts it, in premise-semantic rather than ordering-semantic terms, 'given a contextually supplied set of premises P, 'Must ϕ' says that ϕ follows from P'. There is no directive to act encoded in the semantics of the terms. This supports David Enoch's observation that 'detached and non-detached statements behave logically as if there were no semantic difference between them'; Enoch (2011, p. 23).

[114] For a useful attempt to disambiguate the various ways in which the 'problem of normativity' might be understood, see Enoch (2011).

[115] On the defeasibility of implicatures, see Levinson (2000, pp. 42–54).

tivists to use deontic language to describe the law in circumstances where they have no commitment to the legal system. The problem is not intractable. But non-committed use of deontic language does require elucidation and justification.

Second, as I have already argued, it seems plausible committed use of deontic language has a kind of explanatory priority over other uses. Outside of examples of detached use, purely descriptive uses of deontic language tend to be ironic or metaphoric. We regard them as out of the ordinary precisely because there is a presumption that they are committed. A tourist might say, ironically, 'smoking is obligatory in Paris', but in doing so they are exploiting the fact that Parisians are clearly not committed to a rule that requires them to smoke. The tourist is flaunting the presumptive meaning of deontic language. Ironic uses of this sort seem to be parasitic on committed uses. They arise where, in the context of utterance, it is clear that there is no rule to which anyone is committed.[116]

The same can be said for detached use. Ordinarily, one does not use deontic language in a detached way unless at some point another person has used the same language to endorse a rule or standard as normative. As Raz puts it, 'there is normally no point in making statements from a point of view unless in relation to a society in which people are often ready to make the full-blooded statements'.[117] Our ability to cooperatively cite rules in a detached way is dependent on their having been committedly regarded as rules by another. The problem of law's normativity is not a problem about the meaning of deontic terms. However, the use of deontic language indicates a tendency among some participants in a legal system (perhaps just legal officials) to accept or recommend the law as a guide to action. This kind of explanatory priority is not unique to law.[118] It is impossible to cite the rules of *omertà* in a detached fashion without some understanding of how these rules are used committedly by Mafiosi. A statement about how, according to the beliefs of an Italian American crime syndicate, a member must not cooperate with law enforcement depends on an understanding of how the various principles of non-cooperation are actually practiced

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[116] Irony and sarcasm are often regarded as particularized conversational implicatures within the Gricean framework; see e.g. Levinson (2000, p. 386 fn. 1).

[117] Raz, 'Legal Validity' (2009, p. 159).

[118] As David Enoch has noted (2011, p. 22, fn. 35).

by those who are committed to them. The same could be said for
the use of deontic language to describe any system of rules. Still, the
explanatory priority of committed statements may well be significant
to the prospects of developing a descriptively adequate theory of
law.[119] Raz was wrong to characterize the problem of normativity as
a linguistic problem. But facts about our language use are indicative
of an adjacent problem for legal theory, which is to explain how a
given community could take certain practices to be reason-giving.

Finally, if deontic language is used by legal officials in a directive
fashion – that is, to guide the conduct of others – then this suggests
that these officials are purporting to exercise a distinct sort of
authority or control. In his account of imperatival conventions,
David Lewis notes that conventionally we do not honour impera-
tives unless the person issuing them stands in a relationship of
authority over us; a tendency to honour imperatives indicates the
audience's belief that they have a common interest in subjecting
themselves to the speaker's control.[120] The corollary of this is that
issuing such directives indicates a cooperative speaker's belief that it
is in their audience's interest to conform to these directives.[121] The
same can be said of the tendency to obey directives couched in
deontic language.[122]

Several legal philosophers have cited the use of deontic language
in legal settings to support the observation that the law claims
authority over its subjects. According to Raz, 'the claims the law
makes for itself are evident from the language it adopts and from the
opinions expressed by its spokesmen'.[123] John Gardner likewise ar-
gues that legal officials make a claim to moral authority because 'in
explaining the law they cannot but use the language of obligations,
rights, permissions, powers, liabilities, and so on'.[124] There are well-

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[119] The significance of detachment to the description of law is discussed more fully in Toh (2007).

[120] David Lewis, *Convention: A Philosophical Study* (Cambridge, MA: Harvard University Press, 1969)
ch. 5, §4. Interestingly in the same discussion Lewis distinguishes between the imperative mood and
the use of threats or coercion, which he thinks are better classified as types of commissives; there are
parallels here with Hart's distinction between 'commands' and 'orders'; Hart (2012, pp. 18–20).

[121] Lewis (1969).

[122] See Kaufmann (2012).

[123] Joseph Raz, 'Authority, Law, and Morality', in *Ethics in the Public Domain: Essays in the Morality of
Law and Politics* (Oxford: Oxford University Press, 1995), p. 215.

[124] John Gardner, 'How Law Claims, What Law Claims', in *Law as a Leap of Faith* (Oxford: Oxford
University Press, 2012), p. 132.

known difficulties with attributing a claim to moral authority to legal officials.[125] Still, one need not accept Raz or Gardner's formulation in order to regard as significant the fact that legal officials use deontic language to direct others' behaviour. In using deontic language legal officials purport to exercise a special kind of control over their subjects that can be distinguished from the brute exercise of power or threat of sanction. A legal official who uses the language of obligation to direct their subjects indicates an intention that they behave in a rule-governed way.[126] This is a philosophically interesting feature of the law, since it sets it apart from other forms of social control.

V. CONCLUSION

This article has provided a characterization of the distinction between committed and detached legal statements that is both faithful to Raz's initial presentation and linguistically plausible. If the orthodox semantics is correct, the distinction between committed and detached legal statements cannot be made in terms of the truth-conditional content of those statements. Instead, the distinction should be made in terms of the pragmatics of legal statements. Utterances involving deontic language carry generalized conversational implicatures to the effect that the speaker is committed to the rules in question. However, in specific communicational contexts, it is possible to use deontic language in a detached or non-committal way.

I have also suggested, tentatively, that the use of deontic language to describe the law is significant for the philosophy of law in at least three ways. First, the fact that the use of deontic language is presumptively committed is in *prima facie* tension with the thesis that the validity of a rule does not depend on its merits. An account of detached legal statements resolves this tension; it allows us to explain the use of deontic language to describe the law in situations where speakers themselves lack any commitment towards it. Second, committed uses of deontic language have a kind of explanatory priority over detached use. Proper description of the law may well

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[125] See Luís Duarte d'Almeida and James Edwards, 'Some Claims About Law's Claims', *Law and Philosophy* 33(6) (2014): pp. 725–746.

[126] Hart (2012, pp. 82–91).

depend on an understanding of committed use. Finally, the directive use of deontic language by legal officials suggests that officials purport to guide the conduct of others in a rule-governed fashion.

The distinction between detached and committed statements plays an important role in the recent history of legal philosophy. But even if the distinction turns out to be relatively insignificant, there is value in better understanding the different uses of deontic language. Raz gives his account of detached legal statements a Kelsenian flourish. He associates detached legal statements with statements that assume 'the point of view of the legal man without being committed to it'.[127] This, in turn, explains how legal theory can maintain its Kelsenian 'purity', since the theorist can use deontic language in a detached way without themselves being committed to the legal system as just or practically desirable. If we put to one side the question of what makes for theoretical purity, for many scholars detached use of legal language seems nearly indispensable. When lawyers, academics and jurists discuss the law, they very often do so in circumstances where they think it imperfect or unjust, or where they have yet to form a final view as to the law's worth. An account of detachment allows us to characterize the way in which many academics and theorists talk about the law. Timothy Williamson suggests that philosophers who neglect issues relating to natural language semantics, because they want to 'study the non-linguistic world, not our talk about that world, resemble scientists who refuse to bother about the theory of their instruments'.[128] The language of rights and obligations is a ubiquitous instrument of legal scholarship. This is reason enough to be interested in better understanding its use.

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[127] 'The Purity of the Pure Theory' (2009, p. 305).

[128] Timothy Williamson, *The Philosophy of Philosophy* (Oxford: Blackwell, 2007), pp. 284–285.