Obligation and Modality

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Abstract

This thesis investigates the structure of legal obligation. Each essay in it defends, more or less directly, the claim that legal obligation has a normal modal logic: this logic is classical and guarantees that whatever follows from what is legally obligatory is itself legally obligatory. Knowing what follows from our legal obligations, and so knowing their logic, matters whether we care about obeying the law or avoiding the coercive power of the state. Essay 1 defends the inference scheme of deontic explosion, which says that conflicting obligations entail any obligation at all. The logic of legal obligation is normal only if it validates this scheme, which is standardly assumed to be absurd. But deontic explosion for legal obligation is not absurd. The scheme shows that the law effectively gives up on guiding our action as soon as any of our legal obligations conflict. Essay 2 defends the classicality of the logic of legal obligation. Some dialetheists claim that legal obligations can be inconsistent: the same action can be both legally obligatory and not legally obligatory. These dialetheists assume that the semantic or asserted content of a legislature's enactment is the law. But the law controls the interpretation of its own instruments: the legal content of an enactment is the law. Inconsistencies in legislation give no reason to doubt classicality since such inconsistencies are resolved by standard legal principles. Moreover, the law assumes the impossibility of inconsistent legal obligations when determining rights and duties. Essay 3 evaluates perspectivalism, which holds that legal obligations amount to claims by the law about moral obligations. This popular view is committed to a theoretically unnecessary distinction between strong and weak legal-deontic modalities. It also entails that the law implausibly claims that it doesn't claim what it doesn't claim. Atomism, which denies that legal obligation can be resolved into more fundamental modalities, suffers from neither of these difficulties.

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Introduction

You're a little bored. You light up at the bus stop. You steal a car. You stab a passerby.

You announce: 'I'm legally obliged not to light up at bus stops or at train stations. I'm legally obliged not to steal anything. I'm legally obliged not to stab anyone. But I lit up *at the bus stop*. I stole *this car*. I stabbed *him*. Where are the legal obligations not to do *those* things?'

Your defence does not convince. If one is legally obliged not to light up here or there, then one is legally obliged not to light up here. If one is legally obliged not to steal anything, then one is legally obliged not to steal this. If one is legally obliged not to stab anyone, then one is legally obliged not to stab him. The truth of those conditionals has a natural explanation: whatever follows from what is legally obligatory is itself legally obligatory.

Principles like that form the topic of this thesis. This thesis investigates the structure of legal obligation; it does so by investigating the general principles that legal obligation obeys. It is made up of three essays. Each essay is connected to, but may be read independently of, the others. Each essay defends, more or less directly, the claim that legal obligation has a normal modal logic. If the logic of legal obligation is normal, then it is *classical*, in the sense of validating all theorems of the propositional calculus. It is also *closed under conjunction*: if one is legally obliged to do this and one is legally obliged to do that, then one is legally obliged to do this and that. It is also *closed under logical consequence*: if one is legally obliged to do this

and doing this entails doing that, then one is legally obliged to do that.[1]

Why do the principles that legal obligation obeys matter? We need to know these principles in order to know what follows from our legal obligations. That knowledge matters because the violation of those obligations often attracts the force of the state. The state's coercive power explains why von Wright (1968, 91) says that the 'principal interest' of the legal subject 'is to be clear over his duties, what he must do lest he should become punished for neglect, and what he must avoid doing lest he become punished for criminal action'.

Knowledge of the consequences of our legal obligations, of course, does not matter simply because it lets us avoid criminal punishment or unfavourable civil orders. In general, that knowledge lets us know how to act in order to fulfil our legal obligations—whatever their consequences—and so how to act in order to obey the law. Knowledge of the consequences of our (and others') legal obligations is required not only for practical reasoning but also for theoretical reasoning. Legal arbiters—judges—need to be clear over the duties of the legal subjects appearing before them. Legal advisers—lawyers—need to be clear over the duties of the legal subjects they advise. The examples could be multiplied.

If legal obligation obeyed no general principles, radical uncertainty about the law's requirements would follow. The law says: 'No one may kill another person.' How do we know that *she* may not be killed? The law says: 'All contractual promises must be performed.' How do we know that *this* contractual promise must be performed? Principles like closure under logical consequence underwrite the predictability of the law. Without them, the rule of law is eroded, if not eliminated. For these principles yield criteria by which to judge the correctness of decisions of legal officials, whether of the executive or the judiciary; they also yield criteria by

1 'Closure under logical consequence' here refers to single premise closure under consequence; multiple premise closure under consequence entails closure under conjunction.

which to judge the correctness of claims by legal subjects about their legal obligations and those of others. Without these principles, someone might consistently claim that everyone is legally forbidden from killing everyone else and that this person is not legally forbidden from killing that person. If such claims are made by legal officials, the state's power risks being arbitrarily exercised. If such claims are made by legal subjects, or at least sufficiently many of them, the political community risks collapse.

Of course, few reject the inferences secured by principles like closure under logical consequence. Few judges, lawyers, or citizens deny that 'You are legally obliged not to steal anything' entails 'You are legally obliged not to steal this'. Indeed, these people seemingly assume that all inferences of this form are truth-preserving. The assumption is that such inferences are logically valid rather than the products of rough heuristics (such as 'If it is legally obligatory that every F has G, then it is *usually* legally obligatory that this F has G'). This is just as well, since the predictability of the law depends on the security of such inferences. And if inferences of this form are logically valid, a natural conclusion is that whatever follows from what is legally obligatory is itself legally obligatory. And that is to say that legal obligation is closed under conjunction and logical consequence.

Despite the naturalness of that conclusion, some legal philosophers express scepticism about the applicability of logic to the law. That scepticism sometimes amounts to a denial of the possibility of a logic of legal obligation.[2] But that denial leads to a kind of irrationalism about legal obligation, for it leaves unexplained how good inferences involving legal obligations are to be distinguished from bad. Such irrationalism, when exposed, is unlikely to find defenders.

Sometimes the scepticism is more local, and directed specifically to normal logics of legal obligation. Closure under logical consequence, in particular, is often

2 Navarro and Rodríguez (2014, chapters 1–2) outline some of the putative grounds for that denial.

blamed for validating allegedly paradoxical inferences.[3] Yet such inferences—like the one from 'You are legally obliged to pay your taxes' to 'You are legally obliged to pay your taxes or kill everyone'—typically depend for their allegedly paradoxical force on a tacit and unmotivated expectation that truthfulness and pragmatic acceptability should never come apart. That criterion rules out much more than closure of legal obligation under logical consequence. It also rules out closure of knowledge under logical consequence, for otherwise 'I know that 2 + 2 = 4 or 0 = 1' is true whenever 'I know that 2 + 2 = 4' is true, even when it is pragmatically infelicitous to assert the first sentence but not the second. It rules out closure of metaphysical necessity under logical consequence too, by analogous reasoning. It even demands a revision of natural language semantics, for pragmatically infelicitous utterances are true on standard semantic theories of English (for instance, 'All six-headed men are vain'). The implausibility of those demands reveals the implausibly of the criterion.[4]

Essay 1, 'Conflict and explosion', investigates the role that conflicting legal ob-

3 For criticism of closure of obligation under logical consequence on these grounds, see Danielsson (2000), Carmo and Jones (2002), Broome (2013, chapter 7), and Hansson (2013).

4 For critical discussion of the alleged paradoxes of standard deontic logic (the modal system KD), see Føllesdal and Hilpinen (1971), Castañeda (1981), and Wedgwood (2006, 149–51). For critical discussion of Ross's (1941) paradox, see Nair (2016, 658 n. 35). Nair points out that Ross-paradoxical inferences are validated by principles weaker—and so even harder to reject—than closure under logical consequence. Section 1.8 of essay 1 has more to say on the pragmatic acceptability of assertions about legal obligations. Some other so-called paradoxes of standard deontic logic relate to conditional obligation (Hilpinen and McNamara 2013, 82–90). (Broome 2016, 11–12 appeals to such alleged paradoxes to dismiss closure under logical consequence.) Conditional deontic logics aim to resolve those alleged paradoxes by using a two-place operator for obligation instead of the usual one-place operator (Feldman 1990). As section 1.2 of essay 1 explains, the arguments of that essay (along with those of essays 2 and 3) could be run using such a logic, provided that it is weakened so that it invalidates the consistency principle.

ligations play in our practical and theoretical reasoning. In doing so it takes up the most serious challenge to the normality of the logic of legal obligation.

The law lets us assume conflicting legal obligations, most obviously in contract. Two obligations conflict when they cannot both be performed. You contract with him to sell that painting; you contract with her not to sell it. You cannot both sell and not sell the painting, so your legal obligations conflict. Whatever you do you will violate a legal obligation. Worse still, if the logic of legal obligation is normal, then you are not only legally obliged to sell and not to sell the painting, but you are also legally obliged to set it on fire, and to kill him, and to kill her. For you are legally obliged to sell the painting and legally obliged not to sell it, so by closure under conjunction you are legally obliged to sell and not to sell the painting. But to sell and not to sell the painting is a contradiction, which by classical logic entails everything. Hence, by closure under logical consequence, you are legally obliged to do anything at all.

That is an instance of the inference scheme of *deontic explosion*: conflicting obligations entail any obligation at all. The logic of legal obligation is normal only if it validates this scheme. As a result, that logic, like any logic of obligation that allows for conflicts, must either reject normality or accept deontic explosion. Rejecting normality entails rejecting at least one of classicality, closure under conjunction, or closure under logical consequence. Each of those principles is plausible; and abandoning any one of them drastically weakens the logic of legal obligation and so undermines our ability to reason about what the law requires. Nevertheless, logics of obligation that allow for conflicts, and so logics of legal obligation, standardly violate at least one of those principles. That is because deontic explosion is standardly assumed to be absurd. But that assumption is wrong, at least for legal obligation.

Deontic explosion for legal obligation does not force us to abandon classicality or closure under conjunction or closure under logical consequence. It does not

force us to abandon any one of those simple and strong principles. Instead, it reveals the limits of the law's ability to guide behaviour. Very roughly, if one has an obligation to obey the law and one's legal obligations conflict, then for any φ one has a reason to φ given by one's legal obligation to φ, as well as a reason not to φ given by one's legal obligation not to φ. Neither of those reasons is stronger than the other, so they effectively cancel each other out. The law gives up on guiding our action as soon as any of our legal obligations conflict.

Essay 2, 'Interpretation and inconsistency', turns from conflicting legal obligations to inconsistent ones. One's legal obligations *conflict* if two jointly incompatible actions are both legally obligatory (for example, one is legally obliged to dance and legally obliged not to dance). One's legal obligations are *inconsistent* if the same action is both legally obligatory and not legally obligatory (for example, one is legally obliged to dance and not legally obliged to dance).

Some dialetheists think that legal obligations can be inconsistent. They point to the law as evidence for their *dialetheism*, the thesis that some contradictions are true. They think that the law cannot resolve many of the inconsistencies found in legislation, and they think this because they assume that whatever a legislature enacts as law is the law. More precisely, they assume that the semantic or asserted content of a legislature's enactment is the law. As a result, they think that when a legislature enacts 'Everyone may smoke' and 'No one may smoke' smoking is *both* legally permitted and not legally permitted.

If the same action can be both legally permitted and not legally permitted (or both legally obligatory and not legally obligatory), then legal obligations can be inconsistent. If so, legal obligation is *glutty* and its logic countenances truth value *gluts*: sentences that are both true and false. If so, the logic of legal obligation cannot be classical, since by classical logic nothing is ever both so and not so.

Dialetheists are right to observe that statute books are full of provisions which on their face are jointly inconsistent. But that observation provides no evidence for

the possibility of inconsistent legal obligations, and so provides no evidence for the gluttiness of legal obligation. For one, legal systems standardly contain principles directed to the resolution of inconsistencies in legislation. What those principles say matters because the law controls the interpretation of its own instruments: it is not the semantic or asserted content of an enactment that is the law but its *legal content*. Moreover, the possibility of inconsistent legal obligations is inimical to the law's function of settling disputes. The law cannot, for instance, settle the question of whether a given action is legally permitted if it must answer both 'yes' and 'no'. Taking legal obligation to be glutty even risks undermining established legal reasoning, since glutty logics invalidate the inference scheme of reductio ad absurdum, on which legal reasoning depends.

Since the logic of legal obligation does not countenance gluts, that logic can be classical. The abductive evidence against gluttiness, together with the strength and simplicity of classical logic, tells in favour of the classicality of the logic of legal obligation.[5]

Essay 3, 'Perspectival obligation', evaluates *perspectivalism*, which holds that legal obligations amount to claims by the law about moral obligations. Many legal philosophers endorse this surprising view. Perspectivalism is contrasted with *atomism*. The perspectivalist maintains that legal obligation is complex: it is factored into law's claims and moral obligation. The atomist maintains that legal obligation is simple: it is not factored into a combination of modalities. The atomist also maintains that legal obligation is distinct: legal obligation and moral obligation are separate kinds of obligation; the former is not a shadow of the latter.

The essay defends atomism by isolating two consequences of perspectivalism. Each is surprising; neither is welcome; and neither follows from atomism. The first is that the number of legal-deontic modalities doubles, since perspectival-

5 For a defence of abductive methodology in philosophical logic, see Williamson (2017).

ism induces a distinction between strong and weak legal-deontic modalities. That distinction—between, for instance, strong legal permission and weak legal permission—introduces needless complexity. The second is that the law contains gaps: perspectivalism entails under reasonable assumptions that the law is silent on how to answer some legal questions over which it has jurisdiction. But then the law is a defective system for guiding behaviour and settling disputes, for the rule of law demands that the law should be able to answer any legal question over which it has jurisdiction. The law satisfies that demand, given perspectivalism, only if it does the incredible—only if it claims that it doesn't claim p whenever it doesn't claim p, and so only if it claims that it doesn't claim what it doesn't claim.

Atomists, unlike perspectivalists, deny that legal obligation should be understood in terms of more fundamental modalities. Atomists propose only that legal obligations are obligations whose source is the law. (Similarly, moral obligations are obligations whose source is morality, epistemic obligations are obligations whose source is rationality, and so on.[6]) Obligation is taken as given.

Consequently, atomists can deny that legal obligation should be understood in terms of anything other than obligation itself. They can deny that legal obligations should be understood in terms of commands, or rules, or special combinations of reasons, or claims about special combinations of reasons.[7] Indeed, they have no need to advance any analysis of legal obligation at all, in the sense of a non-

6 'Source' is here used in a broader sense than is common in legal philosophy. If a legal philosopher asks whether a legal obligation has a source, they are usually asking whether the obligation can be traced back to a statute or a judicial decision or another so-called social source. Legal philosophers sometimes even use 'source' synonymously with 'social source' (as in 'the sources thesis'). For present purposes, 'source' instead refers to something like a normative domain, and might be represented formally as a Kratzerian (1981) ordering source (see sections 3.2 and 3.5 of essay 3).

7 For examples of such accounts, see Austin (1832), Kelsen (1960b), Hart (1967), and Raz (1975). For a survey of such accounts, see Green (2012).

trivial necessary and sufficient condition for something's being a legal obligation. The suspicion is that no such analysis exists.[8] The programme of analysis outside legal philosophy has met with limited success. Many epistemologists, for example, have abandoned it (Williamson 2000). There is little reason to think that the programme should fare better inside legal philosophy.

The absence of an analysis of legal obligation does not entail the absence of a positive account of it. Essay 1 proposes that one has a legal obligation to do something if and only if one must legally (or ought legally) do that thing. The standard model theory for modal logic gives a way of understanding the right-hand side of that biconditional: it is true if and only if every possible world consistent with what the law requires is one in which one does that thing. The model theory says nothing, of course, about what those possible worlds are, or about how they are selected.[9] Nevertheless, it invites an account of legal obligation on which legal obligations rule out possibilities and legal permissions rule them in.[10] Of all the ways things could be—of all possible worlds—only some are consistent with what the law requires: in short, only some worlds are legally permissible. Legal obligations rule out worlds because a legal obligation to do this rules out (as legally permissible) those worlds in which one does not do this. Legal permissions rule in worlds because a legal permission to do this rules in (as legally permissible) those worlds in which one does do this.[11] Legal obligation on this account is *modal*.

8 For criticisms of some prominent analyses of legal obligation, see Hart (1982, chapter 6) and Green (2012).

9 For discussion of the notion of a possible world, see Lewis (1973, 1986) and Stalnaker (1976). For discussion of the relation between possible worlds and possible worlds semantics, see Stalnaker (2012).

10 For the notion of a sphere of permissibility as a set of possible words, see Lewis (1979).

11 This account could be made less schematic by, for instance, incorporating a treatment of agency (Horty 2001). Such elaborations would not disturb the structural point that legal obligations rule

This account, of course, is no analysis of legal obligation. But the investigation of legal obligation need not wait on an analysis even if one is there to be discovered. So much is shown by essays 1 and 2. The arguments of those essays hold whether or not legal obligation can be resolved into more fundamental parts, provided that whatever legal obligation is resolved into—if anything at all—has a normal modal logic. (Notably, no analysis of legal obligation in terms of reasons will satisfy that constraint.[12])

This thesis does not only investigate the structure of legal obligation. It also investigates the structure of the law, for without legal obligation there is no law. (Nor are there legal permissions, which are the duals of legal obligations, or legal powers, which let their holders change their own or others' legal obligations.[13]) The distortionary effects of taking obligations as the sole constituents of the law are well known (Hart 1967). But that observation scarcely detracts from Bentham's (1970, 294) claim that 'the notion of duty' or obligation 'is a common measure for every article of law'. Understanding that common measure lets us understand the law.

out possibilities and legal permissions rule them in.

12 Reasons must disobey either closure under conjunction or closure under logical consequence. If they obeyed both principles, they would validate an analogue of deontic explosion. But 'the whole point of reasons is that they can support an outcome without guaranteeing that outcome, thus allowing for different reasons to support conflicting outcomes, and to do so consistently' (Nair and Horty 2018, 75). For further discussion, see Nair (2016) and Horty (2012, 41–45).

13 For related observations, see Hart (1967, chapter 5), Green (2012, section 1), and Gardner (2012a, 35–36 n. 24).

1

Conflict and explosion

You promise the priest to make a pilgrimage in penance for your sins. You promise the atheist not to make a pilgrimage. Since you ought to do what you promise to do, you ought and ought not to make a pilgrimage. Your obligations conflict. You promise Marie that you will deliver a lecture in Paris on Monday morning. You promise Ernst that you will deliver a lecture in Berlin at the same time. You cannot do both. By a plausible principle connecting possibility and obligation, you ought and ought not to deliver a lecture in Paris, and you ought and ought not to deliver a lecture in Berlin. Your obligations conflict.

Plausibly, obligation is closed under conjunction. You ought to deliver a lecture in Paris and you ought to deliver a lecture in Berlin, so you ought to deliver a lecture in Paris and a lecture in Berlin. Plausibly, obligation is closed under logical consequence. You ought whenever delivering a lecture in Paris to deliver it in French, and you ought to deliver a lecture in Paris, so you ought to deliver it in French. Plausibly, the logic of obligation is classical. You cannot be both obliged and not obliged to deliver a lecture. Given these three principles—closure under conjunction, closure under logical consequence, and classicality—since you ought to deliver a lecture in Paris and you ought to deliver a lecture in Berlin, you ought to do everything. You ought to give neither lecture. You ought to assassinate the prime minister. You ought to kill your family.

This inference scheme is called *deontic explosion*: conflicting obligations entail any obligation at all. Any logic of obligation that validates those three principles validates deontic explosion. People have taken deontic explosion to be obviously absurd. People deny that obligation is closed under conjunction or that it is closed under logical consequence or that its logic is classical. But to deny any of those principles is to undermine our ability to reason about obligations. And without those principles the logic of obligation is complex or unnatural or both.

Deontic explosion matters if obligations can conflict. Some people think that moral obligations cannot conflict. It is hard to know whether these people are right or wrong. Some people think that legal obligations cannot conflict. These people are wrong. Legal obligations can conflict, for the law lets us assume conflicting obligations, most obviously in contract. Since legal obligations can conflict, legal 'ought' does not imply 'can': the law may demand the impossible. And since legal obligations can conflict, a logic of legal obligation must either deny one of those three principles or accept deontic explosion. Fortunately, there is no need to deny any of those principles, since legal obligation validates deontic explosion. This essay explains why.

If we have an obligation to obey the law, the law sometimes generates all things considered obligations: we are sometimes all things considered obliged to do something just because we are legally obliged to do it. But when our legal obligations conflict, the law never generates all things considered obligations: we are never all things considered obliged to do something just because we are legally obliged to do it. The law effectively gives up on guiding our action as soon as any of our legal obligations conflict. So much is guaranteed by deontic explosion for legal obligation.

1.1 Deontic logic

If obligation is closed under conjunction, then if one ought to do this and one ought to do that, then one ought to do this and do that. (One ought to love one's children and one ought to care for one's children, so one ought to love and care for one's children.) If obligation is closed under logical consequence, then if one ought to do this and doing this entails doing that, then one ought to do that.[1] (One ought not to murder anyone, and not murdering anyone entails not murdering Ernst, so one ought not to murder Ernst.[2]) If the logic of obligation is classical, then it validates the theorems of the propositional calculus. (For instance, nothing is both obligatory and not obligatory, and everything is either obligatory or not obligatory.) Closure under conjunction, closure under logical consequence, and classicality are all natural principles for obligation.[3]

If obligation obeys these principles, its logic is *normal* and so validates the principles of the modal system K. This essay, for definiteness, takes obligation to validate exactly the principles of that system. The logic $\mathrm{K}_{\bigcirc}$ of obligation is the logic K with the operator $\bigcirc$ in place of the usual $\Box$. (For technical details of the logic, see appendix 1.A.) The operator $\bigcirc$ expresses obligation and is read as 'it ought to be that' or 'it is obligatory that'. Its dual, P, expresses permission and is read as 'it may be that' or 'it is permitted that'. $\mathrm{K}_{\bigcirc}$ has a standard possible worlds semantics. Sen-

1 'Closure under logical consequence' here refers to single premise closure under consequence; multiple premise closure under consequence entails closure under conjunction.

2 In sentences of the form 'one ought not to do this', 'not' is to be read as within the scope of 'ought'.

3 Closure of obligation under conjunction is sometimes called 'agglomeration' (Williams 1965), and closure of obligation under logical consequence is sometimes called 'inheritance' (Goble 2005, 2009). For a defence of closure under conjunction and logical consequence, see Priest (1987, 191–93). For a defence of closure under logical consequence, see Horty (2012, 83). For a defence of classicality, see essay 2. And for a general defence of classical logic, see Williamson (2018), which presents a challenge to nonclassical logics from applied mathematics.

tences are evaluated for truth at a *world* of a *model*. Informally, when a sentence is preceded by the ○ operator, the sentence is evaluated at worlds consistent with what is obligatory. For instance, ○α is true at this world just if α is true at every world consistent with what is obligatory at this world.

Informally, where α is the sentence 'one φs', ○α may be read as 'one ought (is obliged) to be such that one φs'. That gloss may be abbreviated to 'one ought (is obliged) to φ'.[4] Where α is any sentence, ○α may be read as 'α is obligatory' or (in a reifying paraphrase) as 'one has an obligation that α'.[5] Similarly, where α is the sentence 'one φs', Pα may be read as 'one is permitted to φ' or 'one may φ'. And where α is any sentence, Pα may be read as 'α is permitted' or 'one has a permission that α'. For simplicity, time is held fixed in the informal interpretations of $K_{○}$ models; so too is the agent of each 'ought'.

4 The abbreviated glosses obscure the distinction between personal (agential) and impersonal (nonagential) obligation, if there is one. For discussion, see Castañeda (1970), Geach (1982), Horty (2001), Schroeder (2011), and Finlay and Snedegar (2014).

5 No distinction is drawn between being obliged and being obligated (or having an obligation) (contrast Hart 1958; 1967, 82–91). There is, of course, a distinction between its being likely (or believing that it is likely) that one will suffer harm if one fails to do something and having an obligation to do something. But that distinction does not as a matter of ordinary English map onto a distinction between 'obliged' and 'obligated'. The verbs 'oblige' and 'obligate' are closely related, for both derive from the Latin *obligāre* ('to bind by an oath, promise, or moral or legal tie') (*Oxford English Dictionary*, 3rd ed. (online, 2004), s.vv. 'oblige' and 'obligate'). Their meanings are closely related too. 'To be obliged', as the *Oxford English Dictionary* records, may mean 'to be morally or legally bound' (sense 4). The earliest example given of that sense—a sense which Hart apparently denies to 'oblige'—dates from 1398. The earliest example given of the sense Hart attaches to 'oblige'—'to constrain, influence; to force, compel' (sense 12)—dates from 1632.

1.2 Conflicting obligations

Two obligations *conflict* just if they cannot both be performed. More formally:

Conflict An obligation that α and an obligation that β conflict just if α and β are not jointly practically possible.

(The expression 'an obligation that α' names the sentence $\bigcirc\alpha$.) Practical possibility is a kind of objective possibility, like metaphysical possibility, only narrower.[6] It is not practically possible to give a lecture in Paris and a lecture in Berlin at the same time, but it may be metaphysically possible to do so. (One might travel close to the speed of light between the cities, delivering one word of the lecture in Paris, then one word of the lecture in Berlin, and so on.)

The operator $\Box$ expresses practical necessity; its dual, $\Diamond$, expresses practical possibility. Practical necessity is factive—whatever is practically necessarily so is so—and its logic is assumed to be normal. It therefore validates at least the principles of the modal system KT (appendix 1.A.2). Since the logic of practical necessity is normal, logical inconsistency entails practical impossibility.[7] This means that obligations to do logically inconsistent things (such as an obligation to dance and an obligation not to dance) conflict.

How do obligation and practical necessity interact? A plausible assumption is that obligation obeys:

Practical closure If α is obligatory and it is practically necessary that if α then

6 On the distinction between objective and nonobjective modalities, and for some illustrations of practical possibility, see Williamson (2016).

7 Proof: If α and β are jointly inconsistent, then $\alpha \rightarrow \neg\beta$ is a theorem, and so by $\Box$-necessitation (appendix 1.A) $\Box(\alpha \rightarrow \neg\beta)$ is a theorem too. That last theorem is equivalent to $\neg\Diamond(\alpha \wedge \beta)$, which says that α and β are not jointly practically possible.

β, then β is obligatory.

For example, one ought to walk to town; it is practically necessary that if one walks to town then one takes a first step towards town; so one ought to take a first step towards town.[8] Practical closure is tantamount to the principle that permission entails practical possibility.[9]

What happens when two obligations conflict? They entail any obligation at all. For whenever an obligation that α and an obligation that β conflict, they jointly entail an obligation that ¬α and an obligation that ¬β.[10] And an obligation that α and an obligation that ¬α entail any obligation at all. More precisely, for any sentences α and γ, obligation validates:

Deontic explosion If α is obligatory and ¬α is obligatory then γ is obligatory.

To see why, suppose α is obligatory and ¬α is obligatory. By closure under conjunction, α ∧ ¬α is obligatory. By classical logic, a contradiction entails everything, so

8 If obligation obeys practical closure, it presumably also obeys the so-called necessary means transmission principle. That principle says that if one ought to φ and ψing is a necessary means for φing then one ought to ψ. For criticism of the principle, see Broome (2013, 126–29); for a defence, see Kiesewetter (2015, 2018).

9 Proof: Regiment practical closure (PC) as $\Box(\alpha \rightarrow \beta) \rightarrow (\bigcirc\alpha \rightarrow \bigcirc\beta)$ and permission entails practical possibility (PPP) as $P\alpha \rightarrow \Diamond\alpha$. To get from PC to PPP, set α in PC to an arbitrary tautology and β to α. For the other direction, take the contrapositive of PPP and set α to $\alpha \rightarrow \beta$. Then use an instance of ○-distribution (appendix 1.A). Since practical closure is tantamount to the principle that permission entails practical possibility, it is also tantamount to the principle that practical impossibility entails prohibition. Yet that principle is not obviously valid: travelling at the speed of light is practically impossible but presumably not forbidden. Such examples suggest that practical closure might best be understood as a simplifying assumption.

10 Proof: Suppose that one has an obligation that α and an obligation that β and that these obligations conflict. Then α and β are not jointly practically possible. That is, $\neg\Diamond(\alpha \wedge \beta)$, which is tantamount to $\Box(\beta \rightarrow \neg\alpha)$ and to $\Box(\alpha \rightarrow \neg\beta)$. So ¬α and ¬β are each obligatory, by practical closure.

$\alpha \wedge \neg\alpha$ entails γ.[11] But then γ is obligatory by closure under logical consequence. Together, deontic explosion and practical closure mean that conflicting obligations entail that everything is obligatory (and hence that nothing is permitted and that everything is forbidden).[12]

Deontic explosion matters if obligations can conflict. In standard deontic logic—the modal system $KD_{\bigcirc}$—conflicting obligations entail a contradiction, so obligations cannot conflict. As a result, standard deontic logic trivially validates deontic explosion: a contradiction entails everything, so a contradiction entails in particular every obligation, so conflicting obligations entail any obligation at all. Standard deontic logic is distinguished from $K_{\bigcirc}$ by the validity of:

Consistency If α is obligatory then $\neg\alpha$ is not obligatory.

The consistency principle excludes the possibility of conflicting obligations because it transforms conflicting obligations into logically inconsistent ones.[13] (If one has an obligation to dance and an obligation not to dance, then by the consistency principle one also has no obligation to dance and no obligation not to dance, so one's obligations are inconsistent.) Moreover, the consistency principle guarantees that obligation entails permission, since α is permitted just if $\neg\alpha$ is not obligatory. The consistency principle, together with practical closure, also guarantees that obligation entails practical possibility: 'ought' implies 'can'.[14]

11 Proof: Assume that $\alpha \wedge \neg\alpha$. Then α and $\neg\alpha$. Since α, $\alpha \vee \gamma$. But $\neg\alpha$, so γ by disjunctive syllogism.

12 Proof: If everything is obligatory then so is $\neg\gamma$; but γ is permitted just if $\neg\gamma$ is not obligatory, so γ is not permitted; and γ is forbidden just if γ is not permitted, so γ is forbidden.

13 Most logics of obligation, at least from von Wright (1951), validate the consistency principle.

14 Proof: Practical closure is equivalent to $P\alpha \rightarrow \Diamond\alpha$ (note 9). The consistency principle is equivalent to $\bigcirc\alpha \rightarrow P\alpha$. Putting these together gives $\bigcirc\alpha \rightarrow \Diamond\alpha$, which says that whatever is obligatory is practically possible. Hilpinen and McNamara (2013, 42 n. 20) describe this principle as a 'weak version' of 'Kant's law'.

If obligation violates the consistency principle, as it does in $K_{\bigcirc}$, then obligation nontrivially validates deontic explosion. Deontic explosion can be avoided only by rejecting closure under conjunction or closure under logical consequence or classicality. Yet these are natural principles for obligation, and abandoning any one of them to escape deontic explosion looks ad hoc.[15] The following sections explore the consequences of keeping them.[16]

1.3 Explosion in the law

It is hard to know whether moral obligations can conflict, so it is hard to know whether deontic explosion for moral obligation matters.[17] Legal obligations can conflict, so deontic explosion for legal obligation matters. The law lets us assume conflicting obligations, most obviously because the law of contract lets us fashion obligations with whatever content we like.[18] If you contractually promise to sell the

15 Goble (2005) explores the difficulties in rejecting one or more of these principles to avoid deontic explosion. He settles for restricting closure under logical consequence to those cases where α is permitted: if α entails β, then $\bigcirc\alpha$ entails $\bigcirc\beta$ only if $P\alpha$ holds. This blocks the derivation of deontic explosion at the cost of weakening the logic. And since this restriction is motivated only by the desire to avoid deontic explosion, it appears ad hoc. See further Goble (2009, 2013b).

16 The results of the following sections extend to logics more expressively powerful than $K_{\bigcirc}$. For instance, two-place operators for conditional obligation standardly validate the modal system KD in their consequents (von Wright 1956, 1971; Føllesdal and Hilpinen 1971; van Fraassen 1972; Lewis 1974). Some deontic logics that distinguish between agential and nonagential obligation, such as those in Horty (2001), also validate that system. Those logics can be weakened by abandoning the consistency principle, so that K rather than KD is validated. Analogues of the results of the following sections hold for the resulting logics.

17 Kant (1785, 6:224) denies that moral obligations can conflict. On conflicts in morality, see Lemmon (1962), van Fraassen (1973), Marcus (1980), Conee (1982), and Horty (2003).

18 Immaterial restrictions on the permissible content of contractual obligations are ignored. Kelsen (who does not always distinguish between inconsistent and conflicting obligations) initially denied

same thing to two people, at least one of them will have a cause of action against you for failing to perform your contractual obligation. The law will hold you in default of your obligation. That is enough to show that conflicting obligations can be assumed in law.[19]

Since the law lets us assume conflicting obligations, legal obligation validates deontic explosion. Yet few have found deontic explosion acceptable. For Goble (2005, 2009, 2013b), any deontic logic that allows for conflicts must invalidate deontic explosion. Priest (1987, 189) labels the inference scheme 'absurd' before adding: 'If I have [conflicting] legal obligations, perhaps as a result of signing contracts to sell the same car to two different people, it in no way follows that I am obliged to shoot both of them and, for that matter, do everything else.' No further argument is forthcoming.

Those who reject deontic explosion typically take the inference scheme to be obviously absurd.[20] But it is not absurd, at least for legal obligation. To understand why, we need to understand why legal obligations matter. First, they guide our ac-

that norms, including legal norms, could conflict (1945, 1960b) but later reversed his position (1979, chapters 29 and 57). For discussion, see Bulygin (2013, 338–44).

19 Priest (1987, 182–84) makes the same argument. See also Kramer (1999a, 52–53; 2000, 17–19). The law certainly shows an interest in avoiding conflicting obligations, at least where these obligations are not willingly assumed, as they are in contract (for discussion, see section 2.2 of essay 2). This interest is presumably explained by the injustice of imposing conflicting obligations on someone (Kramer 2007, 125–30).

20 Besides Priest (1987), Routley and Plumwood (1989) also assume that deontic explosion is absurd. Nair (2014), however, sets out to explain why reasoning with conflicting obligations is defective if obligation validates deontic explosion. Goble (2009, 482 n. 17) suggests that Stenius (1963) may be the sole proponent of the possibility of normative conflicts to accept deontic explosion. Although Stenius rejects the consistency principle for obligation, he labels normative systems which invalidate that principle 'of no formal interest', not least because they are 'impossible to obey' (1963, 254). Stenius, then, does not so much defend the plausibility of deontic explosion as accept its nontrivial validity as a technical consequence of rejecting the consistency principle.

tion by figuring in our practical reasoning (sections 1.4 to 1.6). But they effectively give up on guiding our action whenever they conflict. Second, legal obligations serve as standards by which we evaluate our and others' conduct, since obligations can be fulfilled or violated (section 1.7). We violate a massive number of legal obligations whenever our legal obligations conflict. But these violations, or at least most of them, do not matter. Third, we assert legal 'ought's to report our and others' legal obligations (section 1.8). But the truth of an assertion does not entail its informativeness. That is why we should not assert many or even most of the legal 'ought's that follow from conflicting legal obligations.

1.4 Practical reasoning

1.4.1 Plan

The law bears on our practical reasoning in multiple ways. Since a failure to perform a legal obligation often attracts a legal sanction, one often has prudential reasons to do what one's legal obligations require. Since a failure to perform a legal obligation is sometimes a moral wrong, one sometimes has moral reasons to do what one's legal obligations require.

Deontic explosion for legal obligation multiplies our legal obligations whenever those obligations conflict. It transforms the outrageous—assassinating the prime minister, killing one's family—into the legally obligatory. But this multiplication of legal obligations does not meaningfully change our prudential or moral reasons. If one has when one's legal obligations do not conflict a moral reason not to murder because murdering is wrong, one still has that reason when one's legal obligations do conflict. And if one has when one's legal obligations do not conflict a prudential reason not to murder because murderers go to prison, one still has that reason when one's legal obligations do conflict.

Of course, when one's legal obligations conflict, one does not only have a legal obligation not to murder—one also has a legal obligation to murder. But deontic explosion for legal obligation does not transform murder into a moral good, so one does not have when one's legal obligations conflict a moral reason to murder because murdering is good. Nor does deontic explosion for legal obligation institute a legal sanction for failing to murder, so one does not have when one's legal obligations conflict a prudential reason to murder because those who fail to murder go to prison. This is why the obligations that deontic explosion for legal obligation generates do not meaningfully change our prudential or moral reasons.[21] If deontic explosion for legal obligation is absurd, it is not because it distorts our prudential or moral reasons.

The law can bear even more directly on our practical reasoning. If one has an obligation to obey the law, one has a reason to do whatever one's legal obligations require—and so one's legal obligations are reasons for action (sections 1.4.2 to 1.4.4). In particular, if one has an obligation to obey the law, one sometimes has an all things considered obligation to do something just because one has a legal obligation to do it. (One's all things considered obligations are assumed to be a function of one's reasons.) But if one has an obligation to obey the law and one's legal obligations conflict, one never has an all things considered obligation to do something just because one has a legal obligation to do it. Thus if deontic explosion for legal obligation is absurd, it is not because it distorts our reasons for action when we have an obligation to obey the law (section 1.6).

If one has no obligation to obey the law, one does not have a reason to do whatever one's legal obligations require—and so one's legal obligations are not al-

21 The qualifier 'meaningfully' is there since one might (for instance) have a prudential reason to sort out the conflict between one's legal obligations, and have this reason *because* deontic explosion for legal obligation has multiplied one's legal obligations.

ways, and may never be, reasons for action. This means that one's legal obligations do not always, and may never, change one's all things considered obligations. Thus if deontic explosion for legal obligation is absurd, it is not because it distorts our reasons for action when we have no obligation to obey the law (section 1.5).

1.4.2 Reasons

A common assumption, adopted here, is that one's all things considered obligations are a function of one's reasons for action.[22] Given that assumption, we need an account of reasons for action if we want to understand the effect of deontic explosion for legal obligation on all things considered obligations. This section sketches such an account; it is made more precise later.

Reasons are true propositions. *Being a reason for* is a relation between two propositions. If p is a reason for (or gives one a reason for or counts in favour of) q, then p is a reason for its being such that q.[23] Reasons are *factive*, in the sense that if p is a reason for q, then p is true. If p is a reason for q and q is the proposition that one φs, then p is a reason for φing. No distinction is made between possessed and unpossessed reasons; thus if p is a reason for q, then one has a reason for q.

Reasons may but need not be *stronger* or *weaker* than other reasons. (In this essay, as is common, 'reason' is used by synecdoche to refer not only to propositions that count in favour of other propositions but also to pairs of propositions where the first proposition in the pair is a reason for the second. Thus to say that one reason is stronger than another is really to say that one pair of propositions is stronger than another.)

22 For analogous assumptions, see W. D. Ross (1930), Raz (1975), Scanlon (1998), Parfit (2011), and Broome (2013).

23 No distinction is made in this essay between 'being a reason for' and 'giving one a reason for'. Parfit (2011, 32) also takes these expressions to be equivalent. For discussion, see Broome (2018, 308–10).

A common assumption, rejected here, is that reasons have weights represented by cardinal numbers. Another common assumption, also rejected here, is *additivity*. According to that assumption, one works out one's all things considered obligations by adding up the weights of one's reasons. (Typically, those who endorse additivity say that one ought all things considered to do whatever one has most reason to do, and that one has most reason to do a given action whenever the sum of the weight of each of one's reasons for that action is greater than the sum of the weight of each of one's reasons for any other action.)

Each of these assumptions is rejected here because each is implausible.[24] For one, additivity entails that reasons are monotonic, in the sense that conclusions about what one's reasons support cannot be withdrawn as one adds to those reasons. But reasons are not monotonic. In particular, two reasons that separately count against an action may jointly count in favour of it. For example, hot weather and rainy weather may separately count against going for a run but may together count in favour it.[25] On the account of reasons developed later, which extends the present

24 For various criticisms of the assumptions, see Kagan (1988), Schroeder (2007, chapter 7), Horty (2012), and Hawthorne and Magidor (2018). For sympathetic discussion of them, see Lord and Maguire (2016). Broome (2018, 312) doubts 'whether a cogent account of weighing explanations can eventually be given' (see also Broome 2004, 37). But for evidence of the persistence of the assumptions, see Maguire and Snedegar (2020).

25 The example is from Horty (2012, 61). For another example, take a random whole number n between 1 and 100, where each value for n is as likely as any other. Let r be the proposition that n is odd and let p be the proposition that n is either an odd number less than 50 or 50. There is a 25 in 26 chance that n is odd given p, so p counts in favour of r. Let q be the proposition that n is either an odd number greater than 50 or 50. There is a 25 in 26 chance that n is odd given q, so q counts in favour of r. But if n is an odd number less than 50 or 50 and n is an odd number greater than 50 or 50 then n is an even number. The chance that n is odd given $p \wedge q$ is 0, so $p \wedge q$ counts definitively against r. Thanks to Timothy Williamson for the example, which is developed in Williamson (forthcoming).

account, reasons are not monotonic. We do better to reject cardinal weights in favour of relative strengths.

1.4.3 Legal obligations as reasons

Usually, if a theorist thinks that one has an obligation to obey the law, they think that one has a pro tanto obligation to do whatever the law requires.[26] This obligation must be pro tanto rather than all things considered, because all things considered obligations cannot conflict but legal obligations can.[27] All things considered obligations cannot conflict because they aim at (and so presumably can always issue in) action.[28]

If one has a pro tanto obligation to do whatever the law requires, one presumably has a reason to do whatever the law requires. More accurately, if one has such an obligation, the following schema presumably holds, for each action φ that is legally

26 Both those who accept and those who reject an obligation to obey the law take the alleged obligation to be pro tanto (or 'prima facie'): see for example Rawls (1964), M. B. E. Smith (1973), Raz (1979c), Edmundson (1998), and Murphy (2018).

27 It is usual to assume that all things considered obligations cannot conflict. This assumption is made, for instance, by Searle (1978, 89) and Raz (1979a, 64). (Raz assumes that conclusive reasons, which are analogues of all things considered obligations, cannot conflict.) For discussion of the assumption, see Horty (2012, 96–102).

28 To see why all things considered obligations cannot conflict if they can always issue in action, assume otherwise. Then one has an all things considered obligation to do the impossible whenever one has conflicting all things considered obligations (provided that all things considered obligation is closed under conjunction). But an all things considered obligation to do the impossible cannot issue in action. To see why the obligation to obey the law must be pro tanto rather than all things considered, given that all things considered obligations can always issue in action, assume otherwise. Then one has an all things considered obligation to do the impossible whenever one has conflicting legal obligations. But, again, an all things considered obligation to do the impossible cannot issue in action.

obligatory:

Legal reason That φing is legally obligatory is a reason to φ.

Informally, the legal reason schema says that the legal obligatoriness of φing is a reason to φ, or that one's legal obligation to φ is a reason to φ. For present purposes, one has an obligation to obey the law just if the schema is valid.

It follows that one's legal obligations are reasons for action whenever one has an obligation to obey the law. It may sound strange to say that legal obligations are reasons, since obligations are often thought to be a function of reasons. But to say that legal obligations are reasons is, for present purposes, just to say that one has a reason to do whatever the law says one ought to do, which is just to say that one has an obligation to obey the law. Moreover, to say that obligations are a function of reasons is usually to say that *all things considered obligations* are a function of reasons. Whether all things considered obligations are a function of reasons does not depend on whether one has an obligation to obey the law and so on whether one's legal obligations are reasons. Thus to say that one's legal obligations are reasons does not imply that obligations, in the intended sense of that word, are other than a function of reasons.

1.4.4 Content independence and strength invariance

The obligation to obey the law is *content independent*, in the sense that one is obliged to obey the law whatever its content.[29] Informally, if one has that obligation, one has a reason to do whatever the law requires simply because the law says it is required—not because of *what* is required. More precisely, if one has that obligation, the legal obligatoriness of any given action is itself a reason to do that action,

29 The content independence of the obligation to obey the law is assumed, for example, by Raz (1979c, 234). For another discussion of content independence, see Hart (1982, 254–55).

whatever that action may be.

It is not only the *existence* of reasons given by the legal obligatoriness of actions that is independent of the content of any particular law. It is also the *strength* of these reasons. That is because, given the obligation to obey the law, legal obligation satisfies:

> *Strength invariance* The strength of the reason to φ given by the legal obligatoriness of φing is the same as the strength of the reason to ψ given by the legal obligatoriness of ψing (for all actions φ and ψ).

Strength invariance says that any reason given by the legal obligatoriness of an action is as strong as any other such reason.[30] Legal obligation satisfies strength invariance because it is *nongradable*: one action cannot be more legally obligatory than another. To see why, suppose that strength invariance fails. Then two jointly incompatible actions—say, doing this and doing that—may each be legally obligatory, and the reason to do this given by the legal obligatoriness of doing this may be stronger than the reason to do that given by the legal obligatoriness of doing that. If so, and assuming that no other reasons are in play, the former reason defeats the latter. But then, informally, the reasons given by the legal obligatoriness of doing this and doing that require one to do this and do not require one to do that, so doing this is presumably more legally obligatory than doing that. Hence legal obligation is gradable if not strength invariant; contrapositively, it is strength invariant if nongradable.[31]

30 Strength invariance is commonly taken to be implied by the content independence of the obligation to obey the law. Edmundson (1998, 13) says that if the obligation to obey the law is content independent then 'the existence and weight of the [obligation] should be determinable without reference to any particular law'. Adams (2017, 148–49) says that 'what is important about content-independence is that [a] reason's existence and weight do not depend on content'.

31 The argument can be recast in the default logic of appendix 1.B. Take a default theory whose back-

Why is legal obligation nongradable? Imagine that it is gradable. Let two jointly incompatible actions—doing this and doing that—each be legally obligatory, and let the former action be more legally obligatory than the latter. Now, presumably, whenever one has to choose between the two actions, as far as the law is concerned one should do the former rather than the latter. But then as far as the law is concerned one may be such that one does not do that, and so as far as the law is concerned it is not the case that one ought to do that. Hence something's being legally obligatory does not imply that as far as the law is concerned it ought to be done. Yet any plausible account of legal obligation must verify that implication. For what is left of the notion of legal obligation if something can be legally obligatory even though as far as the law is concerned it need not be done? The assumption that legal obligation is gradable leads to absurdity.[32]

Of course, the legal consequences attached to the violation of one obligation may be more severe than the legal consequences attached to the violation of another. But that does not show that the action required by the latter obligation is any less

ground facts are $\neg\Diamond(P \wedge Q)$, $\bigcirc P$, and $\bigcirc Q$ (where $\bigcirc$ expresses legal obligation) and whose defaults are $\bigcirc P \blacktriangleright P$ and $\bigcirc Q \blacktriangleright Q$. Then one's legal obligation that P gives one a reason to see to it that P, one's legal obligation that Q gives one a reason to see to it that Q, and P and Q are jointly incompatible. Let $\bigcirc P \blacktriangleright P$ be stronger than $\bigcirc Q \blacktriangleright Q$, in violation of strength invariance. Then the theory has exactly one ideal scenario, containing only $\bigcirc P \blacktriangleright P$, so P (and not Q) is all things considered obligatory. In this theory, one's legal obligations generate an all things considered obligation that P and no all things considered obligation that Q, even though P and Q are each legally obligatory. Thus P is presumably more legally obligatory than Q.

32 Finnis (1980, 312) takes the nongradability of legal obligation to be 'part of the data, which an explanation of law must take into account and explain'. To illustrate nongradability, he considers a statutory duty formerly imposed on sellers of goods, and observes that 'if [sellers] do have this duty, the consequences of failure to conform to it … are well-defined and, legally, inevitable. There is simply no room for them to plead that, although they fall within the terms of [the duty], nevertheless their prima facie duty was *outweighed* and *diminished* or *deferred* or in some other way *modified* by other considerations' (1980, 310–11).

obligatory than the action required by the former. If one is legally obliged to do this and does not do this, one violates one's legal obligation to do this. That is so no matter the severity of the sanction attached to that violation; that is so even if no sanction is attached to the violation at all.

An objector might insist that some reasons given by the legal obligatoriness of actions *can* differ in strength from one another. They might claim that the reason to rescue this child given by the legal obligatoriness of rescuing her is stronger than the reason to obey the speed limit given by the legal obligatoriness of obeying it, since the former action is morally more valuable than the latter. If so, legal obligation disobeys strength invariance and is therefore gradable; but legal obligation cannot be gradable, so the objection must fail.

Differences in the moral value of legally obligatory actions can, however, be encoded without violating strength invariance or nongradability. That an action is morally valuable is a reason to do that action; such reasons may be stronger than reasons given by the legal obligatoriness of actions. If so, then when this is morally more valuable than that, one may be all things considered obliged to do this rather than that, even though this and that are both legally obligatory. For instance, the moral valuableness of rescuing the child is a reason to rescue her; that reason is stronger than the reason to obey the speed limit given by the legal obligatoriness of obeying it; so the former reason defeats the latter whenever you cannot both rescue the child and obey the speed limit. If obeying the speed limit is itself morally valuable, the moral valuableness of obeying the limit is a reason to obey it, but a reason weaker than the reason to rescue the child given by the moral valuableness of rescuing her; so the latter reason defeats the former whenever you cannot both rescue the child and obey the speed limit. Hence, other things being equal, and assuming that no other legal obligations are in play, you are all things considered obliged to do whatever is morally most valuable whenever your legal obligations conflict. And neither strength invariance nor nongradability is violated. (An ana-

logous argument can be given with 'legal significance' or 'centrality to the law's concerns' in place of 'moral value', if there are differences in the legal significance of legally obligatory actions or in the centrality of those actions to the law's concerns, assuming it has any.)[33]

The content independence of the obligation to obey the law, together with the strength invariance of legal obligation, explains why deontic explosion for legal obligation does not distort one's reasons for action when one has an obligation to obey the law (section 1.6). What about when one has no such obligation? As the next section explains, one's reasons for action are similarly undistorted.

1.5 Explosion without an obligation to obey

If one has no obligation to obey the law, one's legal obligations are not always, and may never be, reasons for action.[34] But then the legal obligations that deontic explosion generates are not always, and may never be, reasons for action. And so deontic explosion for legal obligation does not always, and may never, direct one

33 In any event, even if strength invariance fails, the argument of section 1.6 can stand with limited modifications. In particular, if strength invariance fails because the law's concerns induce an ordering on the reasons given by the legal obligatoriness of actions, the reason given by the legal obligatoriness of doing this presumably differs in strength from the reason given by the legal obligatoriness of doing that only when this and that are not equally central to the law's concerns. But then, by reasoning analogous to that in section 1.6.3, provided that one has an obligation to obey the law and one's legal obligations conflict, if an action is all things considered obligatory it is at least in part because either a reason given by something other than the legal obligatoriness of an action is stronger than a reason given by the legal obligatoriness of an action or one action is more central to the law's concerns than another. And so, informally, as section 1.6 argues, one is not all things considered obliged to do something just because one is legally obliged to do it.

34 For arguments against an obligation to obey the law, see M. B. E. Smith (1973), Raz (1979c), Green (1988), Edmundson (1998), and Murphy (2018).

to do the absurd, for it does not always, and may never, direct one to do anything at all.

Typically, those who deny that one has an obligation to obey the law do not merely deny that for all φ one's legal obligation to φ is a reason to φ. They also claim that for no φ is one's legal obligation to φ a reason to φ.[35] If that claim is right, deontic explosion for legal obligation *never* changes one's all things considered obligations. That is because deontic explosion for legal obligation changes one's all things considered obligations only if the legal obligations generated by deontic explosion are reasons for action. If in general no legal obligation is a reason for action, then in particular no legal obligation generated by deontic explosion is a reason for action either.

Of course, if one has no obligation to obey the law, it does not follow that one never has a reason to do what one ought legally to do. For what one ought legally to do often coincides with what one ought morally or prudentially to do; and one has a reason to do what one ought morally or prudentially to do. Thus when φing is both legally and morally obligatory, one has a moral reason to do something that one ought legally to do.

If deontic explosion for legal obligation is absurd, it is not because it distorts our reasons for action when we have no obligation to obey the law.

1.6 Explosion with an obligation to obey

1.6.1 Sometimes and never

If one has an obligation to obey the law, one's legal obligations are reasons for action, and so generate all things considered obligations. In particular:

35 See for example Edmundson (1998, 12–14).

Sometimes If one has an obligation to obey the law, one is sometimes all things considered obliged to do something just because one is legally obliged to do it.

If one has an obligation to obey the law and one's legal obligations conflict, one's legal obligations are still reasons for action. Those reasons, however, do not generate all things considered obligations. In particular:

Never If one has an obligation to obey the law and one's legal obligations conflict, one is never all things considered obliged to do something just because one is legally obliged to do it.

This section offers rough explanations of these principles. The explanations are made more precise later. Each explanation in this section assumes that a reason to φ generates an all things considered obligation to φ unless that reason is defeated by a stronger reason not to φ or is cancelled out by an equally strong reason not to φ. That assumption, made here for simplicity, is refined in later sections.

To illustrate the sometimes principle, imagine:

DANCE One has an obligation to obey the law. One is legally obliged to dance, and one has no reason not to dance.

In this case, one has an obligation to obey the law, so one has a reason to do whatever one is legally obliged to do, so one has a reason to dance. This reason is not defeated by a stronger reason not to dance (since one has no reason not to dance), so one is all things considered obliged to dance. In a tolerably clear sense of the admittedly vague term 'because', one is all things considered obliged to dance just because one is legally obliged to dance.

To illustrate the never principle, imagine:

LECTURES One has an obligation to obey the law. One is legally obliged to

deliver a lecture in Paris and legally obliged to deliver a lecture in Berlin. One cannot do both.

In this case, one's legal obligations conflict, so for all φ one has a legal obligation to φ. Moreover, for all φ one's legal obligation to φ is a reason to φ, given that one has an obligation to obey the law. Since everything is legally obligatory, whenever φing is legally obligatory so too is not-φing. Thus whenever one's legal obligation to φ is a reason to φ one's legal obligation not to φ is a reason not to φ. Each of those reasons is as strong as the other, given strength invariance, so neither reason is defeated by the other. Consequently, one's legal obligation to φ generates an all things considered obligation to φ just if one's legal obligation not to φ generates an all things considered obligation not to φ. Thus if either of those legal obligations generates an all things considered obligation, one is all things considered obliged to φ and not to φ. But one cannot be all things considered obliged to φ and not to φ since all things considered obligations cannot conflict (section 1.4.3). And so neither one's legal obligation to φ nor one's legal obligation not to φ can generate an all things considered obligation. The reasons given by one's legal obligation to φ and one's legal obligation not to φ cancel each other out, since they favour incompatible actions but have the same strength.

In general, *none* of one's legal obligations generates an all things considered obligation whenever one has an obligation to obey the law and one's legal obligations conflict. It does not follow, however, that nothing is all things considered obligatory. One might be all things considered obliged to φ because a reason to φ given by something other than a legal obligation is stronger than a reason not to φ given by a legal obligation. To illustrate, imagine:

IMPORTANT MEETING One has an obligation to obey the law. One is legally obliged to deliver a lecture in Paris and legally obliged to deliver a lecture in Berlin. One cannot do both. One also promised to attend a meeting tak-

ing place before either lecture, which is a reason to attend it. This reason is stronger than any reason given by a legal obligation.

In this case, since one's legal obligations conflict, one is legally obliged to attend the meeting and legally obliged not to attend it. So by reasoning as above, those legal obligations generate no all things considered obligations. The reason to attend the meeting given by one's promise, however, is stronger than the reason not to attend the meeting given by one's legal obligation not to attend it, so one's promise generates an all things considered obligation to attend the meeting. Hence one is all things considered obliged to attend the meeting, but not because one is legally obliged to attend it.

1.6.2 Reasons and defaults

To offer more precise explanations of the sometimes and never principles, we need to introduce some terminology.[36]

From now on 'reason' is reserved for true propositions that count in favour of other propositions' being so. 'Reason' is no longer used to refer to pairs of propositions where the first proposition in the pair is a reason for the second. Instead, whenever p, if true, would be a reason for q, we say that *p would be a reason for q*.

The *default* $\alpha \blacktriangleright \beta$ says that the proposition expressed by α (on its intended interpretation) would be a reason for the proposition expressed by β (on its intended interpretation). (For convenience, defaults will often be treated as being made up of propositions or actions rather than sentences. References to propositions or actions should be understood, where appropriate, as references to sentences expressing those propositions or actions.) The *premise* of the default $\alpha \blacktriangleright \beta$ is α. The

36 This section informally presents the default logic of Horty (2012), which is based on the default logic of Reiter (1980). For a formal presentation of the logic, see appendix 1.B.

conclusion of that default is β; equivalently, the default *favours* β. When α is true, the proposition expressed by α is a reason *provided by* the default.

Defaults may but need not be *stronger* or *weaker* than other defaults. Formally, defaults are ordered by a strict partial order, an irreflexive and transitive binary relation. (One default cannot be stronger than itself, and whenever a first default is stronger than a second default and the second default is stronger than a third default, the first default is stronger than the third default.)

How do we get from defaults to all things considered obligations? We work out which defaults one would act on if one were ideally rational: those defaults will then yield all things considered obligations. Call a set of defaults a *scenario* and a set of defaults on which one would act if one were ideally rational an *ideal scenario*. A scenario is ideal just in case it contains exactly those defaults satisfying three conditions.

First, the default must be *triggered* at the scenario. Informally, a default is triggered at a scenario when it would provide a reason if one did everything favoured by the defaults in the scenario. More precisely, a default is triggered at a scenario just if its premise is true given the actions favoured by the defaults in the scenario together with background facts.[37] To illustrate, consider a default which says that rainy weather would be a reason for wearing wellingtons:

Wellingtons It is raining ▸ one wears wellingtons

This default is triggered at *every* scenario so long as it is raining.

Why is a default triggered at a scenario if it provides a reason in light of background facts *together with* the actions favoured by the defaults in the scenario?

37 References to actions are here to be taken as references to sentences expressing those actions. References to background facts are to be taken as references to sentences expressing those background facts.

Why, in other words, is one assumed to do what all the defaults in the scenario favour? The answer is that the present concern is with those defaults on which one would act if one were *ideally rational*. For example, if the wellingtons default belongs to a scenario, then a default which says that wearing wellingtons would be a reason for wearing thick socks is also triggered at that scenario. For on the assumption that one does what one would do if one were ideally rational, one does what the wellingtons default favours, so one wears wellingtons, and so one has a reason to wear thick socks.

Second, the default must not be *conflicted* at the scenario. Informally, a default is conflicted at a scenario if one cannot jointly do what it and the defaults in the scenario favour. (Since ideal scenarios are made up of defaults on which one *could* act, those defaults cannot favour incompatible actions.) More precisely, a default is conflicted at a scenario just if the action it favours is incompatible, in light of background facts, with the actions favoured by the defaults in the scenario.[38]

To illustrate, consider two defaults:

Sun seeker It is sunny ▸ one goes outside

Sun shirker It is sunny and one is sunburned ▸ one stays inside

The sun seeker default is conflicted at any scenario containing the sun shirker default, since going outside is incompatible with staying inside, given that one goes outside only if one does not stay inside. By analogous reasoning, the sun shirker default is conflicted at any scenario containing the sun seeker default.

Third, the default must not be *defeated* at the scenario. Informally, a default is defeated at a scenario if a stronger default provides a reason to do an action incompatible with the action favoured by the weaker default. More precisely, a

38 An action expressed by the sentence α is incompatible with an action expressed by the sentence β just if α and β are jointly inconsistent.

default is defeated at a scenario just if another default triggered at the scenario is stronger than it and the two defaults jointly favour incompatible actions in light of background facts.

To illustrate, imagine that it is sunny, one is sunburned, and the sun shirker default is stronger than the sun seeker default. Then the sun seeker default is defeated at every scenario: the sun shirker default is triggered by the background fact that it is sunny and one is sunburned, and so is triggered whatever the scenario; the sun shirker default is stronger than the sun seeker default; and the two defaults favour jointly incompatible actions.

In summary, a scenario is *ideal* just in case it contains exactly those defaults that are triggered at it (and so provide reasons), not conflicted at it (and so favour jointly compatible actions), and not defeated at it. A scenario *recommends* an action just in case the action follows from the actions favoured by the defaults in the scenario in light of background facts. Each action recommended by every ideal scenario is *all things considered obligatory*.

Why is an action all things considered obligatory just if it is recommended by *every* ideal scenario? An alternative proposal is that an action is all things considered obligatory just if it is recommended by *some* ideal scenario. The difficulty is that more than one scenario might be ideal, and ideal scenarios can jointly recommend incompatible actions. The alternative proposal thus risks generating conflicting all things considered obligations, contrary to the assumption that all things considered obligations cannot conflict.[39]

1.6.3 Legal defaults and all things considered obligations

With the machinery of defaults in place, we can now isolate default-theoretic analogues of the obligation to obey the law and strength invariance. We need both to

39 For discussion of the alternative proposal, see Horty (2012, chapter 3).

explain the sometimes and never principles.

In the terminology of section 1.4, one has an obligation to obey the law just if one's legal obligation to φ is a reason to φ for all φ. In the default-theoretic terminology of this section, one has an obligation to obey the law just if one's legal obligation to φ would be a reason to φ for all φ. More formally, one has an obligation to obey the law just if every default of the following form holds:[40]

Legal default α is legally obligatory ▸ α

Call any default of this form a *legal default*. By extension, given any sentence α, call a default whose premise is logically equivalent to 'α is legally obligatory' and whose conclusion is logically equivalent to α a legal default as well.

The natural default-theoretic analogue of strength invariance is *strength equality*, which says that every legal default is as strong as every other legal default. Strength equality can be captured default-theoretically only if defaults can have equal strength—and so only if the partial order on defaults is nonstrict rather than strict. For now, however, the assumption that this order is strict need not be abandoned. That is because strength equality entails the following condition, which suffices for present purposes:

Weak disconnectedness No legal default is stronger than any other legal default.

We can now turn to the sometimes and never principles, repeated here:

Sometimes If one has an obligation to obey the law, one is sometimes all things considered obliged to do something just because one is legally obliged to do it.

40 Formally, a default holds just if it belongs to the set of defaults in the relevant default theory (see appendix 1.B).

Never If one has an obligation to obey the law and one's legal obligations conflict, one is never all things considered obliged to do something just because one is legally obliged to do it.

For the sometimes principle, it suffices to observe that α is all things considered obligatory whenever there is only one ideal scenario and this ideal scenario contains exactly one default, a legal default favouring α.[41] Informally, in such cases, α is all things considered obligatory just because it is legally obligatory, which means that one is sometimes all things considered obliged to do something just because one is legally obliged to do it. We thus have the sometimes principle.

For the never principle, start with this condition:

(C) One has an obligation to obey the law and one's legal obligations conflict. The background facts are consistent.

Given (C), if no default is stronger than a legal default, then nothing is all things considered obligatory except for what is entailed by the background facts. Contrapositively, if something not entailed by the background facts is all things considered obligatory, then some default is stronger than a legal default. By weak disconnectedness, any default stronger than a legal default is a nonlegal default. And so, given (C), something not entailed by the background facts is all things con-

41 More precisely, given a sentence α that does not follow from the background facts, α is all things considered obligatory when there is only one ideal scenario and this ideal scenario contains exactly one default, a legal default whose conclusion together with the background facts entails α. For example, take a default theory whose sole background fact is $\bigcirc$*Dance*; whose sole default is $\bigcirc$*Dance* ▸ *Dance*; and whose default ordering is empty. (In this and subsequent footnotes $\bigcirc$ expresses legal obligation.) Then the theory has one ideal scenario, which contains only $\bigcirc$*Dance* ▸ *Dance*. Since every ideal scenario recommends dancing, one is all things considered obliged to dance. (This theory formalizes DANCE from section 1.6.1.)

sidered obligatory only if a nonlegal default is stronger than a legal default.[42] (The qualification 'not entailed by the background facts' is left tacit from now on.) Informally, given (C), if an action is all things considered obligatory, it is at least in part because a nonlegal default is stronger than a legal default. And so, given (C), no action is all things considered obligatory just because it is legally obligatory, which means that one is never all things considered obliged to do something just because one is legally obliged to do it. We thus have the never principle.

1.6.4 Cases

If one has an obligation to obey the law and one's legal obligations conflict, one is never all things considered obliged to do something just because one is legally obliged to do it—and so, informally, none of one's legal obligations generates an all things considered obligation.

To illustrate, consider this case:

MEETING One has an obligation to obey the law. One is legally obliged to deliver a lecture in Paris and legally obliged to deliver a lecture in Berlin. One cannot do both. One also promised to attend a meeting taking place before either lecture, which is a reason to attend it. The default favouring attending the meeting is neither stronger nor weaker than any other default.

In this case, one is legally obliged to do everything, and so in particular one is legally obliged not to attend the meeting. This means that the following defaults (among others) hold:

Absence One is legally obliged not to attend the meeting ▸ one does not attend the meeting

42 For proofs, see propositions 1.3 and 1.4 in appendix 1.B.4.

Attendance One promised to attend the meeting ▸ one attends the meeting

Since one cannot both attend and not attend the meeting, these defaults conflict with one another. (More precisely, whenever a scenario contains one of these defaults, the other default is conflicted at that scenario.) Neither of these defaults is stronger than the other. As a result, MEETING relevantly has six ideal scenarios. Three of them recommend attending the meeting; the other three recommend not attending it. Two of them recommend giving the lecture in Paris; the other four recommend not giving it. Two of them recommend giving the lecture in Berlin; the other four recommend not giving it. Since no one action is recommended by every scenario, one is not all things considered obliged to do anything.[43] (If deontic explosion for legal obligation failed, one would be all things considered obliged only to attend the meeting: see appendix 1.C.)

43 Strictly speaking, one is all things considered obliged to do whatever follows from the background facts. This qualification is ignored in this section for simplicity. To model MEETING more formally, take a default theory whose background facts are *Promise*, $\neg\Diamond$(*Paris* ∧ *Berlin*), ○*Paris*, ○¬*Paris*, ○*Berlin*, ○¬*Berlin*, ○*Meeting*, ○¬*Meeting*, and every other sentence of the form ○α; whose defaults are *Promise*▸*Meeting*, ○*Paris*▸*Paris*, ○¬*Paris*▸¬*Paris*, ○*Berlin*▸*Berlin*, ○¬*Berlin*▸¬*Berlin*, ○*Meeting*▸*Meeting*, ○¬*Meeting* ▸ ¬*Meeting*, and every other default of the form ○α ▸ α; and whose default ordering is empty. (In the terminology of appendix 1.B, this theory is explosive and its default ordering is strongly disconnected for legal defaults.) Ignoring irrelevant legal defaults, the theory has six ideal scenarios. The first scenario contains *Promise* ▸ *Meeting*, ○*Meeting* ▸ *Meeting*, ○*Paris* ▸ *Paris*, and ○¬*Berlin* ▸ ¬*Berlin* (and not ○¬*Meeting* ▸ ¬*Meeting*, ○¬*Paris* ▸ ¬*Paris*, or ○*Berlin* ▸ *Berlin*, as each of those defaults is conflicted at this scenario). The second scenario is identical to the first except ¬*Paris* is substituted for *Paris*. The third scenario is identical to the second except *Berlin* is substituted for ¬*Berlin*. The fourth scenario contains ○¬*Meeting* ▸ ¬*Meeting*, ○*Paris* ▸ *Paris*, and ○¬*Berlin* ▸ ¬*Berlin* (and not *Promise* ▸ *Meeting*, ○*Meeting* ▸ *Meeting*, ○¬*Paris* ▸ ¬*Paris*, or ○*Berlin* ▸ *Berlin*, as each of those defaults is conflicted at this scenario). The fifth scenario is identical to the fourth except ¬*Paris* is substituted for *Paris*. The sixth scenario is identical to the fifth except *Berlin* is substituted for ¬*Berlin*. (This case is an illustration of proposition 1.3 from appendix 1.B.4.)

As seen in section 1.6.3, none of one's legal obligations generates an all things considered obligation when one has an obligation to obey the law and one's legal obligations conflict. It does not follow, however, that nothing is all things considered obligatory. One might, for instance, be all things considered obliged to dance because a nonlegal default favouring dancing is stronger than a legal default favouring not dancing.

To illustrate, consider IMPORTANT MEETING, which is the same as MEETING, except that the attendance default (which favours attending the meeting) is stronger than any legal default:

IMPORTANT MEETING One has an obligation to obey the law. One is legally obliged to deliver a lecture in Paris and legally obliged to deliver a lecture in Berlin. One cannot do both. One also promised to attend a meeting taking place before either lecture, which is a reason to attend it. The attendance default is stronger than any legal default.

(This case is the default-theoretic analogue of IMPORTANT MEETING from section 1.6.1.) In this case, as in MEETING, one is legally obliged to do everything, and so in particular one is legally obliged not to attend the meeting. Also as in MEETING, the absence default (which favours not attending the meeting) conflicts with the attendance default (which favours attending the meeting). But in this case, unlike in MEETING, the attendance default is stronger than every legal default and so stronger than the absence default. And this means that the absence default is defeated.

As a result, IMPORTANT MEETING relevantly has only three ideal scenarios. Each of them recommends attending the meeting. One of them recommends giving the lecture in Paris; the other two recommend not giving it. One of them recommends giving the lecture in Berlin; the other two recommend not giving it. Since all ideal scenarios recommend attending the meeting but otherwise disagree

on what to do, one is all things considered obliged only to attend the meeting. One is not all things considered obliged to give either lecture.[44] (If deontic explosion for legal obligation failed, one would be all things considered obliged only to attend the meeting: see appendix 1.C.)

For another illustration of how none of one's legal obligations generates an all things considered obligation if one has an obligation to obey the law and one's legal obligations conflict, consider:

TAXES One has an obligation to obey the law. One is legally obliged to deliver a lecture in Paris and legally obliged to deliver a lecture in Berlin. One cannot do both. One's taxes are also due, so one is legally obliged to pay them.

In this case, one is legally obliged to do everything, and so in particular one is legally obliged not to pay one's taxes. But since one cannot both pay and not pay one's taxes, the default favouring paying them conflicts with the default favouring not paying them. Neither of those defaults is stronger than the other. As a result, TAXES relevantly has six ideal scenarios. Three of them recommend paying one's taxes; the other three recommend not paying them. Two of them recommend giving the lecture in Paris; the other four recommend not giving it. Two of them recommend giving the lecture in Berlin; the other four recommend not giving it. Since no one

44 More formally, take a default theory just like the theory for MEETING except its default ordering is such that *Promise* ▸ *Meeting* is stronger than every legal default and no legal default is stronger than any other default. (This theory is explosive and its default ordering is weakly disconnected for legal defaults.) Ignoring irrelevant legal defaults, this theory has only three ideal scenarios. These scenarios are identical to the first, second, and third ideal scenarios of the theory for MEETING. Each of these scenarios contains *Promise* ▸ *Meeting* and ○*Meeting* ▸ *Meeting*. (The fourth, fifth, and sixth scenarios of the theory for MEETING contain ○¬*Meeting* ▸ ¬*Meeting*, but in this theory *Promise*▸*Meeting* is stronger than ○¬*Meeting*▸¬*Meeting*, so the former default defeats the latter and does so at every scenario. This means that none of this theory's ideal scenarios contains ○¬*Meeting*▸¬*Meeting*.) (This case is an illustration of proposition 1.4 from appendix 1.B.4.)

action is recommended by every scenario, one is not all things considered obliged to do anything.[45] (If deontic explosion for legal obligation failed, one would be all things considered obliged only to pay one's taxes: see appendix 1.C.)

1.6.5 Normative domains

As TAXES illustrates, a conflict in one's contractual obligations robs *all* of one's legal obligations of the ability to generate all things considered obligations. The legal obligations robbed of that ability include legal obligations that issue not from contract but from statute, such as the obligation to pay one's taxes. Is this not implausible, especially when one *would* be all things considered obliged to pay one's taxes in TAXES if deontic explosion for legal obligation failed?

Far from being implausible, this consequence flows naturally from the interaction between deontic explosion for legal obligation and the obligation to obey the law. As already seen, if one has an obligation to obey the law, one has a reason to φ whenever one is legally obliged to φ. This reason to φ flows from one's obligation to obey the law. And so, arguably, this reason to φ should lead one to φ

45 More formally, take a default theory whose background facts are $\neg\Diamond(\mathit{Paris} \wedge \mathit{Berlin})$, $\bigcirc\mathit{Paris}$, $\bigcirc\neg\mathit{Paris}$, $\bigcirc\mathit{Berlin}$, $\bigcirc\neg\mathit{Berlin}$, $\bigcirc\mathit{Taxes}$, $\bigcirc\neg\mathit{Taxes}$, and every other sentence of the form $\bigcirc\alpha$; whose defaults are $\bigcirc\mathit{Paris} \blacktriangleright \mathit{Paris}$, $\bigcirc\neg\mathit{Paris} \blacktriangleright \neg\mathit{Paris}$, $\bigcirc\mathit{Berlin} \blacktriangleright \mathit{Berlin}$, $\bigcirc\neg\mathit{Berlin} \blacktriangleright \neg\mathit{Berlin}$, $\bigcirc\mathit{Taxes} \blacktriangleright \mathit{Taxes}$, $\bigcirc\neg\mathit{Taxes} \blacktriangleright \neg\mathit{Taxes}$, and every other default of the form $\bigcirc\alpha \blacktriangleright \alpha$; and whose default ordering is empty. Ignoring irrelevant legal defaults, the theory has six ideal scenarios. The first scenario contains $\bigcirc\mathit{Taxes} \blacktriangleright \mathit{Taxes}$, $\bigcirc\mathit{Paris} \blacktriangleright \mathit{Paris}$, and $\bigcirc\neg\mathit{Berlin} \blacktriangleright \neg\mathit{Berlin}$ (and not $\bigcirc\neg\mathit{Taxes} \blacktriangleright \neg\mathit{Taxes}$, $\bigcirc\neg\mathit{Paris} \blacktriangleright \neg\mathit{Paris}$, or $\bigcirc\mathit{Berlin} \blacktriangleright \mathit{Berlin}$, as each of those defaults is conflicted at this scenario). The second scenario is identical to the first except $\neg\mathit{Paris}$ is substituted for *Paris*. The third scenario is identical to the second except *Berlin* is substituted for $\neg\mathit{Berlin}$. The fourth scenario contains $\bigcirc\neg\mathit{Taxes} \blacktriangleright \neg\mathit{Taxes}$, $\bigcirc\mathit{Paris} \blacktriangleright \mathit{Paris}$, and $\bigcirc\neg\mathit{Berlin} \blacktriangleright \neg\mathit{Berlin}$ (and not $\bigcirc\mathit{Taxes} \blacktriangleright \mathit{Taxes}$, $\bigcirc\neg\mathit{Paris} \blacktriangleright \neg\mathit{Paris}$, or $\bigcirc\mathit{Berlin} \blacktriangleright \mathit{Berlin}$, as each of those defaults is conflicted at this scenario). The fifth scenario is identical to the fourth except $\neg\mathit{Paris}$ is substituted for *Paris*. The sixth scenario is identical to the fifth except *Berlin* is substituted for $\neg\mathit{Berlin}$.

only if one would obey the law when φing. (Equivalently, this reason to φ should generate an all things considered obligation to φ only if one would obey the law when acting on that all things considered obligation.) But one obeys the law only if one φs whenever one is legally obliged to φ for each action φ.[46] (Time is ignored for simplicity.) And if one's legal obligations conflict then for some action φ one is both legally obliged to φ and legally obliged not to φ. But one cannot both φ and not φ, so whatever one does for some action φ one does not φ when one is legally obliged to φ. Thus whatever one does one does not obey the law whenever one's legal obligations conflict. Therefore, whenever one's legal obligations conflict, for no action φ should the reason to φ flowing from one's obligation to obey the law lead one to φ—and nor should it generate an all things considered obligation to φ.[47]

Still, why should conflicting legal obligations in one branch of the law (such as contract) infect one's legal obligations in another branch (such as tax law)? Why, in particular, should the unfortunate ordering of one's contractual affairs leave one with no all things considered obligation to pay one's taxes, even though one has an obligation to obey the law? The answer is that the law constitutes a single normat-

46 For present purposes, one obeys the law if one *conforms* with the law, in the sense of doing what the law requires; one need not *comply* with the law, in the sense of doing what the law requires because it is required by the law. The distinction between conformity and compliance is from Raz (1975, 178–80).

47 A stronger conclusion follows if, as is at least arguable, one's obligation to φ is a reason to φ only if one is permitted to φ. (In default-theoretic terms: one's being obliged to φ would be a reason to φ only if one is permitted to φ.) If reasons obey this constraint then one's legal obligations cannot be reasons when those obligations conflict. For by this constraint one's legal obligation to φ is a reason to φ only if φing is legally permitted; but nothing is legally permitted when one's legal obligations conflict; so for no φ is one's legal obligation to φ a reason to φ when one's legal obligations conflict. (For discussion of the related principle that "'has a reason" implies "can"', see Dancy 2004, chapter 3.)

ive domain. It is not made up of a series of independent normative domains (with one, say, for contract, another for tort, another for the criminal law, and so on). This is consistent with the systemic nature of legal reasoning: whether one has an obligation in tort may, for instance, depend on one's obligations in the criminal law or on the obligations imposed by a statutory scheme unrelated to tort.[48] The legal obligations in one branch of the law cannot be isolated from those in another branch.

(Of course, this essay has assumed that legal obligations can be isolated from other kinds of obligations, like moral ones. This assumption depends on the further assumptions that obligations can be assigned to separate normative domains, such as law, morality, and etiquette, and that these domains may but need not interact with one another. Given these assumptions, if a normative domain contains conflicting obligations, the effects of deontic explosion are limited to that domain, provided that the domain does not relevantly interact with any other domain. If obligations instead all belonged to a unified normative domain, no obligation could be quarantined from the effects of deontic explosion: conflicting obligations of any kind would lead to everything's being obligatory.)

Finally, even if one's legal obligations conflict and one has an obligation to obey the law, it does not follow that one's legal obligations have no bearing at all on one's practical reasoning. As already seen, one often has prudential reasons for doing what one's legal obligations require. If one risks a legal sanction for failing to perform some legal obligation, that is a reason to perform that obligation. One has that reason whether or not one has an obligation to obey the law. Prudential reasons of this kind (more accurately, the corresponding defaults) can have differing

48 See *Sullivan v Moody* [2001] HCA 59, (2001) 207 CLR 562 and *Hunter and New England Local Health District v McKenna* [2014] HCA 44, (2014) 253 CLR 270. On the unity of the German legal order, see Engisch (1935).

strengths. And this means that if one is legally obliged to deliver a lecture in Paris and deliver a lecture in Berlin, one may have an all things considered obligation to do the former but not the latter, even though one is not all things considered obliged to do anything just because one is legally obliged to do it. For the legal consequences of not delivering the lecture in Paris may be worse than the legal consequences of not delivering the lecture in Berlin: one might be liable to pay €10,000 in damages if one fails to deliver the lecture in Paris but only €100 in damages if one fails to deliver the lecture in Berlin.

One's legal obligations do not direct one to do the absurd when they conflict: they do not direct one to do anything at all. If deontic explosion for legal obligation is absurd, it is not because it distorts our reasons for action, whether or not we have an obligation to obey the law.

1.7 Evaluating actions

Since legal obligations can be fulfilled or violated, they serve as standards by which we evaluate our and others' actions.[49] If legal obligation validates deontic explosion, one is presumably subject to a massive number of legal obligations when one's legal obligations conflict. One will not perform most of these obligations; one cannot perform all of them. Thus if legal obligation validates deontic explosion, one will likely violate a massive number of legal obligations when one's legal obligations conflict. (One violates a legal obligation to φ if and only if one ought legally to φ and one does not φ.) Does this mass of violations matter?

One reason this mass of violations might matter is if the violation of any legal obligation attracted a nontrivial legal consequence. For then this mass of violations would bring with it a mass of nontrivial legal consequences. The most salient non-

49 Hart (1967, 33) makes the same point.

trivial legal consequence is a legal sanction. But there is no legal principle that one is subject to a legal sanction whenever one violates a legal obligation.[50] Of course, if one violates an obligation to which no legal sanction attaches, a court may declare that one has violated that obligation. But such a declaration will not be made whenever one violates a legal obligation: declarations are issued not by right but at the discretion of the court.[51]

Another reason this mass of violations might matter is if one committed a moral wrong whenever one violated a legal obligation. For then this mass of violations would amount to a mass of moral wrongs. Yet an action—say, executing murderers—may be legally obligatory but morally forbidden. Hence if one does not execute a murderer, one simultaneously violates a legal obligation and fulfils a moral obligation. But then one has violated a legal obligation without committing a moral wrong, so one does not commit a moral wrong whenever one violates a legal obligation.

Someone might object that there is a sense in which one does something one ought not to do when one violates a legal obligation. But what is this sense? If the 'ought' in the objection means 'ought legally', then one does something one ought not to do when one violates a legal obligation: namely, one fails to fulfil an obligation that one ought legally to fulfil. But it does not follow that this failure is a moral wrong. If the 'ought' in the objection means 'ought morally', then one

50 Austin (1832, lecture 1, 32–33) denies that English law contains obligations whose violation attracts no sanction, for he maintains that 'where the English legislature affects to command, the English tribunals not unreasonably presume that the legislature exacts obedience. And, if no specific sanction be annexed to a given law, a sanction is supplied by the courts of justice'. Even if it was once true that courts supplied a sanction where the legislature provided none, that proposition is no longer good law. On the separability of legal obligations and legal sanctions, see Hart (1967, 216–20).

51 *O'Reilly v Mackman* [1983] 2 AC 237 (HL) 275.

does something one ought not to do when one violates a legal obligation only if one commits a moral wrong whenever one violates a legal obligation. But one does not commit a moral wrong whenever one violates a legal obligation.

One violates a mass of legal obligations whenever one's legal obligations conflict, but these violations, or at least most of them, do not matter. Moreover, these violations, or at least most of them, are blameless: even if 'the notion of obligation carries with it very strongly the notion that the non-discharge of an obligation is blameworthy' (W. D. Ross 1939, 163), blameworthiness and obligatoriness can come apart. If deontic explosion for legal obligation is absurd, it is not because it multiplies our violations of the law.

1.8 Asserting 'ought's

We assert legal 'ought's to report our and others' legal obligations. If legal obligation validates deontic explosion, every assertion of the form 'one is legally obliged to φ' is true whenever one's legal obligations conflict. Yet most, if not all, of these assertions sound false. Is deontic explosion for legal obligation absurd because it entitles one to assert what sounds false?

Consider this case:

ASSERTION You are legally obliged to deliver a lecture in Paris and a lecture in Berlin. You cannot deliver both. I assert:

(∗) You are legally obliged to kill your family.

My assertion of (∗) may sound false or strange or infelicitous. Even if that is so, it does not follow that my assertion is false. It may be defective for another reason. Take this case:

NORMATIVE IGNORANCE As for ASSERTION. Further, I know that you are legally obliged to deliver a lecture in Paris, but I do not know that you are legally obliged to deliver a lecture in Berlin.

(Assume that this case and subsequent cases describe my knowledge at the time of asserting (∗).) Since in NORMATIVE IGNORANCE I do not know that you are legally obliged to deliver a lecture in Berlin, I do not know that you have conflicting legal obligations. Hence I know neither that you are legally obliged to do everything nor that you are legally obliged to kill your family. If one should assert only what one knows, my assertion of (∗) is defective.[52]

Take this case instead:

LOGICAL IGNORANCE As for ASSERTION. Further, I know that you are legally obliged to deliver a lecture in Paris and a lecture in Berlin. I also know that you cannot deliver both. Although I know that legal obligation is closed under conjunction and logical consequence, I do not know that a contradiction entails everything.

In this case, because I do not know that a contradiction entails everything, I do not know that you are legally obliged to kill your family. If one should assert only what one knows, my assertion of (∗) is defective.

Now consider this case:

LOGICAL COMPETENCE As for ASSERTION. Further, I know that you are legally obliged to deliver a lecture in Paris and a lecture in Berlin. I also know that you cannot deliver both. I know that legal obligation is closed under conjunction and logical consequence; and I am deductively competent, so I know

52 For the knowledge norm of assertion, see Williamson (2000, chapter 11). My assertion is defective even if reasonable belief is enough to warrant assertion (Lackey 2007).

that a contradiction entails everything.

In this case, my assertion of (∗) is an assertion of something I know. But my assertion is defective for another reason: it is less informative than it should be (Grice 1989, 26–27). Since I am deductively competent, I know that conflicting legal obligations entail any legal obligation at all. I could therefore have asserted not (∗) but (1):

(1) Since you cannot deliver both lectures, you are legally obliged to do everything.

This assertion is more informative than (∗), but it may still mislead. If I tell you that you are legally obliged to do something, it is reasonable for you to assume that I intend what I said to play a role in your practical reasoning. But what I said cannot play the intended role in your practical reasoning if your legal obligations conflict, since your legal obligations cannot then generate all things considered obligations. If I knew this, I should have asserted something like:

(2) Since your legal obligations conflict, the mere fact of being legally obliged to do something has no bearing on whether you should do it. You have to decide what to do on other grounds.

(Those other grounds, of course, may include morality and prudence.) More generally, if I tell you that you are legally obliged to do something, you are usually entitled to assume that you are legally permitted to do it. Even if the implication from legal obligation to legal permission is not logical, it is surely conversational.[53] Yet in LOGICAL COMPETENCE, as in all the cases in this section, you are not legally permitted to kill your family. My assertion of (∗) misleadingly implicates that you

53 Sinnott-Armstrong (1988, chapter 4) argues that the implication from moral obligation to moral permission is conversational rather than logical.

are legally permitted to do what you are legally obliged to do.

Legal 'ought's are not asserted simply to report legal obligations. They also figure in evaluations of our and others' actions. Take this case:

VIOLATION As for ASSERTION. Further, since you did not kill your family, I assert:

(∗∗) You violated your legal obligation to kill your family.

My assertion of (∗∗) is misleading, since it presumably implicates that you should be reproached for failing to kill your family. That implicature is false whether that 'should' is given a moral or legal reading. For one can be reproached for violating an obligation to do something only if doing that thing is not forbidden. Yet you are morally forbidden from killing your family; and since everything is legally forbidden when your legal obligations conflict, you are legally forbidden from killing them too.

If deontic explosion for legal obligation is absurd, it is not because it entitles us to assert what sounds false.

1.9 Conclusion

Deontic explosion for legal obligation is not absurd because it distorts our practical reasoning, or because it multiplies our violations of the law, or because it entitles us to assert what sounds false. Deontic explosion for legal obligation is not absurd at all. Its validity allows legal obligation to obey simple and strong principles. Its validity also means that the law's hold on our practical reasoning is less firm than many think.

Conflicting legal obligations reveal the limits of the law's ability to guide behaviour. Since the law lets us assume conflicting legal obligations, it empowers us to

commit to the impossible—and it mandates the impossible whenever we exercise that power. But by mandating the impossible, the law forfeits its position as guide. That forfeiture is not total, for the law's power to punish and compel remains, but it is substantial, for the law's guidance no longer flows from the obligations it imposes but from the consequences it threatens.

Appendix 1.A $K_{\bigcirc}$ and $K^{+}_{\bigcirc}$

1.A.1 $K_{\bigcirc}$

The logic $K_{\bigcirc}$ is the modal system K with the operator $\bigcirc$ in place of the usual $\Box$. The language of $K_{\bigcirc}$ contains countably many propositional variables (P, Q, R, …), along with $\neg$ (negation) and $\wedge$ (conjunction), in terms of which $\vee$ (disjunction), $\rightarrow$ (material implication), and $\leftrightarrow$ (material equivalence) are defined. It also contains the sentence operator $\bigcirc$. The dual of that operator is P, which abbreviates $\neg\bigcirc\neg$.

Every tautology of the propositional calculus is an axiom. So too is every instance of:

$\bigcirc$-*distribution* $\bigcirc(\alpha \rightarrow \beta) \rightarrow (\bigcirc\alpha \rightarrow \bigcirc\beta)$

The logic is closed under each of:

$\bigcirc$-*necessitation* If α is a theorem then so is $\bigcirc\alpha$.

Modus ponens If α and $\alpha \rightarrow \beta$ are theorems then so is β.

Together, $\bigcirc$-necessitation and $\bigcirc$-distribution mean that obligation is closed under conjunction and logical consequence.

A $K_{\bigcirc}$ frame is a pair $\langle W, R\rangle$, where W is a nonempty set and R is a binary relation on W. Informally, the members of W are worlds and R is an accessibility relation on those worlds. That accessibility relation encodes the standard of obligation for each world. If wRw' then w' is a state of affairs compatible with what is obligatory at w. In counterfactual terms, w' is one of the ways things could be if everything that ought to be so at w were so.

A $K_{\bigcirc}$ model is a triple $\langle W, R, V\rangle$, where $\langle W, R\rangle$ is a $K_{\bigcirc}$ frame and V is a function that assigns intensions to atomic sentences. Formally, V is a function from atomic sentences to functions from W to 0 or 1. The truth of a sentence α in a model M

at a member w of W (written $M, w \vDash \alpha$) is defined recursively as follows:

$M, w \vDash \alpha$	if and only if	$V(\alpha)(w) = 1$, for atomic α
$M, w \vDash \neg\alpha$	if and only if	$M, w \nvDash \alpha$
$M, w \vDash \alpha \wedge \beta$	if and only if	$M, w \vDash \alpha$ and $M, w \vDash \beta$
$M, w \vDash \bigcirc\alpha$	if and only if	for all $w' \in W$, if wRw' then $M, w' \vDash \alpha$

A sentence α is a *logical consequence* of a set Γ of sentences if and only if, for every world w of every model, α is true at w whenever every sentence in Γ is true at w.

1.A.2 $K^+_\bigcirc$

To express both practical necessity and obligation, we extend $K_\bigcirc$ as follows to give $K^+_\bigcirc$. Introduce the sentence operator $\Box$, read as 'it is practically necessary that'. The dual of $\Box$ is $\Diamond$, which abbreviates $\neg\Box\neg$ and is read as 'it is practically possible that'.

The operator $\Box$ obeys the principles of the modal system KT. $\Box$-necessitation is a rule of inference (if α is a theorem then so is $\Box\alpha$). Every instance of $\Box$-distribution is an axiom ($\Box(\alpha \rightarrow \beta) \rightarrow (\Box\alpha \rightarrow \Box\beta)$). So too is every instance of the T (truthfulness) principle ($\Box\alpha \rightarrow \alpha$). So too is every instance of $\Box\alpha \rightarrow \bigcirc\alpha$, which is tantamount to practical closure (section 1.2 note 9).

A $K^+_\bigcirc$ frame is a triple $\langle W, R_\Box, R_\bigcirc\rangle$, where W is a nonempty set, $R_\Box$ is a reflexive relation on W, and $R_\bigcirc$ is a binary relation on W such that $R_\bigcirc \subseteq R_\Box$. The validity of the T principle corresponds to the second frame condition; the validity of $\Box\alpha \rightarrow \bigcirc\alpha$ corresponds to the third frame condition.

A $K^+_\bigcirc$ model is a quadruple $\langle W, R_\Box, R_\bigcirc, V\rangle$, where $\langle W, R_\Box, R_\bigcirc\rangle$ is a $K^+_\bigcirc$ frame and V is a function from atomic sentences to functions from W to 0 or 1. The truth of a sentence α in a model M at a member w of W is defined in the usual way. In particular:

$M, w \vDash \Box\alpha$ if and only if for all $w' \in W$, if $wR_{\Box}w'$ then $M, w' \vDash \alpha$

$M, w \vDash \bigcirc\alpha$ if and only if for all $w' \in W$, if $wR_{\bigcirc}w'$ then $M, w' \vDash \alpha$

Appendix 1.B Default theories

1.B.1 Default logic

Default rules

A *default* is an ordered pair $\langle \alpha, \beta \rangle$ of sentences of $K_{\bigcirc}$.[54] (The qualification 'of $K_{\bigcirc}$' is usually left tacit from now on.) We write this default as

$$\alpha \blacktriangleright \beta$$

Informally, this default lets us conclude that β is true (on its intended interpretation) by default whenever α is true (on its intended interpretation).

The function π maps defaults to their *premises* and the function κ maps defaults to their *conclusions*. Formally, for any default $\alpha \blacktriangleright \beta$

$$\pi(\alpha \blacktriangleright \beta) = \alpha$$
$$\kappa(\alpha \blacktriangleright \beta) = \beta$$

We extend κ to sets of defaults, so that where S is a set of defaults $\kappa(S)$ is the set containing the conclusions of each default in S. In symbols:

$$\kappa(S) = \{ \kappa(d) \mid d \in S \}$$

54 Appendices 1.B.1 and 1.B.2 present the default logic of Horty (2012).

Default theories

Let Σ be the set of sentences of $K_{\bigcirc}$. A *default theory* Δ is a triple $\langle G, D, < \rangle$, where G is a set of sentences ($G \subseteq \Sigma$), D is a nonempty set of defaults ($D \subseteq \Sigma \times \Sigma$), and $<$ is a strict partial order (an irreflexive and transitive binary relation) on D.[55] Informally, the members of G are background assumptions and the *default ordering* $<$ encodes the strengths of the defaults in D relative to one another.

Scenarios

Where $\Delta = \langle G, D, < \rangle$ is a default theory, S is a *scenario based on* Δ if and only if S is a subset of D.

Binding defaults

Let $\Delta = \langle G, D, < \rangle$ be a default theory and S be a scenario based on that theory. A default d is *triggered* at the scenario S ($d \in \mathbf{T}_{G,D}(S)$) if and only if the premise of d is entailed by the background assumptions in G together with the conclusions of each default in S. A default d is *conflicted* at S ($d \in \mathbf{C}_{G,D}(S)$) if and only if the negation of the conclusion of d is entailed by the background assumptions in G together with the conclusions of each default in S. A default d is *defeated* at S ($d \in \mathbf{D}_{G,D,<}(S)$) if and only if there is a second default which is triggered at S and stronger than the first default and whose conclusion, together with the background assumptions in G, entails the negation of the conclusion of the first default. Formally:[56]

55 Horty (2012) labels such theories 'fixed priority default theories'.

56 Here (as elsewhere in this appendix) $\models$ is the logical consequence relation of $K_{\bigcirc}$. As is usual, where α and β are sentences and Γ and Θ are sets of sentences, $\Gamma, \Theta \models \alpha$ stands for $\Gamma \cup \Theta \models \alpha$ and $\Gamma, \alpha \models \beta$ for $\Gamma \cup \{\alpha\} \models \beta$.

$$\mathbf{T}_{G,D}(S) = \{\, d \in D \mid G, \kappa(S) \models \pi(d) \,\}$$

$$\mathbf{C}_{G,D}(S) = \{\, d \in D \mid G, \kappa(S) \models \neg\kappa(d) \,\}$$

$$\mathbf{D}_{G,D,<}(S) = \{\, d \in D \mid \text{there is a } d' \in \mathbf{T}_{G,D}(S) \text{ such that } d < d' \text{ and } G, \kappa(d') \models \neg\kappa(d) \,\}$$

A default d is *binding* at the scenario S ($d \in \mathbf{B}_{G,D,<}(S)$) if and only if the default is triggered at S and not conflicted at S and not defeated at S. In symbols:

$$\mathbf{B}_{G,D,<}(S) = \mathbf{T}_{G,D}(S) \setminus \mathbf{C}_{G,D}(S) \setminus \mathbf{D}_{G,D,<}(S)$$

And α *is a reason for* β at the scenario S if and only if there is a default $\alpha \blacktriangleright \beta$ in D that is triggered at S.

Ideal scenarios

Where $\Delta = \langle G, D, < \rangle$ is a default theory and S is a scenario based on Δ, S is an *ideal scenario* if and only if the members of S are exactly those defaults binding at S,[57] that is, if and only if

$$S = \mathbf{B}_{G,D,<}(S)$$

Extensions

A set E of sentences is an *extension* of a default theory if and only if the sentences in E are exactly the sentences entailed by the background assumptions of that theory together with the conclusions of every default in an ideal scenario based on that theory. Formally, where $\Delta = \langle G, D, < \rangle$ is a default theory, E is an *extension* of that

57 The identification of ideal scenarios with those scenarios whose members are exactly the defaults binding at that scenario is a simplifying assumption (Horty 2012, 32). Horty calls ideal scenarios 'proper scenarios'.

theory if and only if for some ideal scenario S based on that theory

$$E = \mathrm{Cl}(G \cup \kappa(S))$$

Call E the extension *generated by* S. $\mathrm{Cl}(\Gamma)$ denotes the logical closure of a set Γ of sentences ($\mathrm{Cl}(\Gamma) = \{\alpha \mid \Gamma \vDash \alpha\}$).

1.B.2 Deliberative obligation

This default logic naturally induces two logics of deliberative obligation. The language of each logic is the language of $\mathrm{K}_{\bigcirc}$ augmented with the sentence operator $\textcircled{\scriptsize D}$. Where Δ is a default theory:

$\textcircled{\scriptsize D}\alpha$ is *credulously true in* Δ if and only if α belongs to some extension of Δ

$\textcircled{\scriptsize D}\alpha$ is *sceptically true in* Δ if and only if α belongs to every extension of Δ

And $\textcircled{\scriptsize D}\alpha$ is credulously (sceptically) false in Δ if and only if $\textcircled{\scriptsize D}\alpha$ is not credulously (sceptically) true in Δ.

It is natural to suppose that $\textcircled{\scriptsize D}$ on the sceptical satisfaction relation (but not on the credulous satisfaction relation) expresses something like all things considered obligation.[58] That is because $\textcircled{\scriptsize D}$ on the sceptical satisfaction relation cannot conflict—it can conflict on the credulous satisfaction relation—and all things considered obligations cannot conflict (section 1.4.3).

1.B.3 Explosive default theories

Given a default $d = \alpha \blacktriangleright \beta$ and a default $d' = \alpha' \blacktriangleright \beta'$, d is *equivalent to* d' if and only if α is equivalent to α' and β is equivalent to β'.

Let $\bigcirc$ express legal obligation. A default d is a *legal default for* α if and only if d

58 For discussion, see Bonevac (2018, 232).

is equivalent to the default $\bigcirc\alpha \blacktriangleright \alpha$.

Where Γ is a set of sentences, $\Omega(\Gamma)$ denotes the set of legal defaults for each sentence in Γ ($\Omega(\Gamma) = \{\bigcirc\alpha \blacktriangleright \alpha \mid \alpha \in \Gamma\}$). Λ denotes the set of sentences of the form $\bigcirc\alpha$ ($\Lambda = \{\bigcirc\alpha \mid \alpha \in \Sigma\}$, where Σ is the set of sentences of $K_{\bigcirc}$). Informally, the legal obligations in Λ are exactly the legal obligations one has when one's legal obligations conflict.

Where $<$ is a binary relation on a set D of defaults, $<$ is *weakly disconnected for legal defaults* if and only if no legal default in D is stronger than any other legal default in D (if and only if, for all legal defaults l, l' in D, $l \not< l'$). And $<$ is *strongly disconnected for legal defaults* if and only if no default in D is stronger than any legal default in D (if and only if, for all defaults d and legal defaults l in D, $l \not< d$).

A default theory $\Delta = \langle G, D, < \rangle$ is *explosive* if and only if $\Lambda \subseteq G$, $\Omega(\Sigma) \subseteq D$, and $<$ is weakly disconnected for legal defaults. Informally, a default theory is explosive if and only if every legal obligation is a background assumption of the theory, every legal default is a default of the theory, and no legal default is stronger than any other legal default.

1.B.4 Proofs

We first show that, given an explosive default theory where no default is stronger than a legal default and a sentence whose negation does not follow from the theory's background assumptions, there exists an extension of the theory which contains that sentence (lemma 1.1).

It follows that, for any sentence γ, given an explosive default theory where no default is stronger than a legal default and whose background assumptions entail neither γ nor $\neg\gamma$, there exists one extension of the theory which contains γ and another extension which contains $\neg\gamma$. As a consequence, if no default in a given explosive default theory is stronger than a legal default in that theory, then, for

any sentence γ, γ is all things considered obligatory in the theory only if either γ or ¬γ follows from the theory's background assumptions (proposition 1.1). Hence nothing is all things considered obligatory in the theory except for what follows from the theory's background assumptions, provided that those assumptions are consistent (proposition 1.3).

No legal default in any given explosive default theory is stronger than any other legal default in the theory. Therefore, for any sentence γ such that neither γ nor ¬γ follows from the background assumptions of a given explosive default theory, γ is all things considered obligatory in the theory only if a nonlegal default in the theory is stronger than a legal default in the theory (proposition 1.2). Hence, in an explosive default theory whose background assumptions are consistent, one has an all things considered obligation to do something not entailed by those assumptions only if a nonlegal default in the theory is stronger than a legal default in the theory (proposition 1.4).

Lemma 1.1. *Let* $\Delta = \langle G, D, < \rangle$ *be an explosive default theory such that* $<$ *is strongly disconnected for legal defaults. Let* γ *be a sentence such that* $G \not\models \neg\gamma$. *Then there exists an extension of* Δ *containing* γ.

Proof. Since $G \not\models \neg\gamma$, $G \cup \{\gamma\}$ is consistent and so by Lindenbaum's lemma is included in a maximal consistent set G'. Let $A = \Omega(G')$, the set of legal defaults for each sentence in G'. Let $B = \mathbf{B}_{G,D,<}(A)$, the set of defaults binding at A. To see that A is a scenario based on Δ, observe that $A \subseteq \Omega(\Sigma)$ and Δ is explosive. So $\Omega(\Sigma) \subseteq D$ and so $A \subseteq D$, as required. We now show that B is an ideal scenario based on Δ, that is, $B = \mathbf{B}_{G,D,<}(B)$.

Take any default d in $B \subseteq D$. By construction of B, d is triggered at A, so $G, \kappa(A) \models \pi(d)$. By lemma 1.2, $\kappa(A) = \kappa(B)$, so $G, \kappa(B) \models \pi(d)$. So d is triggered at B. Similarly, d is not conflicted at A, so $G, \kappa(A) \not\models \neg\kappa(d)$, so $G, \kappa(B) \not\models \neg\kappa(d)$. So d is not conflicted at B. Similarly again, d is not defeated at A, so there is no d' such

that $G, \kappa(A) \models \pi(d')$, $d < d'$, and $G, \kappa(d') \models \neg\kappa(d)$; so nor is there a d' such that $G, \kappa(B) \models \pi(d')$, $d < d'$, and $G, \kappa(d') \models \neg\kappa(d)$. So d is not defeated at B. Therefore d is binding at B.

Conversely, take any default d in D that is binding at B. Since $\kappa(A) = \kappa(B)$, d is binding at A, by reasoning as above. So d is in B.

Finally, G' is an extension of Δ since $G' = \kappa(B) = \mathrm{Cl}(G \cup \kappa(B))$. G' contains γ by construction. ■

Lemma 1.2. *Let $\Delta = \langle G, D, < \rangle$ be an explosive default theory such that $<$ is strongly disconnected for legal defaults. Let G' be a maximal consistent set of sentences that includes G. Let $A = \Omega(G')$ be a scenario based on Δ and let $B = \mathbf{B}_{G,D,<}(A)$. Then $G' = \kappa(A) = \kappa(B)$.*

Proof. By construction of A and the definition of κ, $\kappa(A) = G'$. We now show that $\kappa(A) = \kappa(B)$.

Pick any default d in A. We show that d is binding at A and is therefore in B. By construction of A, the premise of d is $\bigcirc\lambda$ for some sentence λ. By construction of Λ, $\bigcirc\lambda \in \Lambda$, so $\Lambda \models \bigcirc\lambda$. But Δ is explosive, so $\Lambda \subseteq G$. Also $\models$ is monotonic, so $G \models \bigcirc\lambda$, so $G, \kappa(A) \models \bigcirc\lambda$. But $\bigcirc\lambda = \pi(d)$, so $G, \kappa(A) \models \pi(d)$. So d is triggered at A. Next suppose for contradiction that d is conflicted at A. Then $G, \kappa(A) \models \neg\kappa(d)$. Since $G \subseteq G'$ and $G' = \kappa(A)$, $\kappa(A) \models \neg\kappa(d)$. Now $\kappa(A)$ is consistent, so $\kappa(A) \not\models \kappa(d)$, so $\kappa(d) \notin \kappa(A)$. But d is in A, so $\kappa(d) \in \kappa(A)$. Contradiction. Finally, since d is a legal default and $<$ is strongly disconnected for legal defaults, there is no d' such that $d < d'$. So d is not defeated at A. Therefore $A \subseteq B$ and so $\kappa(A) \subseteq \kappa(B)$ by the definition of κ.

Conversely, assume that a sentence α is in $\kappa(B)$ but not in $\kappa(A)$. Then there is a default d in B such that $\kappa(d) = \alpha$, so $G, \kappa(A) \not\models \neg\kappa(d)$ by construction of B. But $G \subseteq G'$ and $G' = \kappa(A)$, so $\kappa(A) \not\models \neg\kappa(d)$, so $\kappa(A) \not\models \neg\alpha$, so $\neg\alpha \notin \kappa(A)$. But $\kappa(A)$ is maximal consistent, so $\alpha \in \kappa(A)$, which is a contradiction. ■

Proposition 1.1. *Let* $\Delta = \langle G, D, < \rangle$ *be an explosive default theory. Let* γ *be a sentence such that* $G \not\models \gamma$ *and* $G \not\models \neg\gamma$. *Then* $\text{◍}\gamma$ *is sceptically false in* Δ *whenever* $<$ *is strongly disconnected for legal defaults.*

Proof. Suppose $<$ is strongly disconnected for legal defaults. Then by lemma 1.1 there exists an extension of Δ containing γ and another extension of Δ containing $\neg\gamma$. So $\text{◍}\gamma$ is sceptically false in Δ. ■

Proposition 1.2. *Let* $\Delta = \langle G, D, < \rangle$ *be an explosive default theory. Let* γ *be a sentence such that* $G \not\models \gamma$ *and* $G \not\models \neg\gamma$. *Then* $\text{◍}\gamma$ *is sceptically true in* Δ *only if a nonlegal default in* D *is stronger than a legal default in* D.

Proof. Suppose $\text{◍}\gamma$ is sceptically true in Δ. Then, by proposition 1.1, $<$ is not strongly disconnected for legal defaults, so not all defaults x in D and legal defaults y in D are such that $y \not< x$. Thus there exists a default d in D and a legal default l in D such that $l < d$. Since Δ is explosive, $<$ is weakly disconnected for legal defaults, so all legal defaults x and y in D are such that $x \not< y$, so d is not a legal default. ■

Lemma 1.3. *Let* $\Delta = \langle G, D, < \rangle$ *be a default theory. Then an extension of* Δ *is inconsistent only if* G *is inconsistent.*

Proof. Suppose an extension E of Δ is inconsistent. Now $E = \text{Cl}(G \cup \kappa(S))$, where S is an ideal scenario based on Δ. Since E is inconsistent and is the logical closure of $G \cup \kappa(S)$, $G \cup \kappa(S)$ is inconsistent too. But then $G, \kappa(S) \vDash \gamma$ for all γ, so every default is conflicted at S. Now a default is binding at S only if it is not conflicted at S, so no default is binding at S. Also S is an ideal scenario, so it contains exactly those defaults binding at it. Hence S is empty, as is $\kappa(S)$ by the definition of κ. But then $G \cup \kappa(S) = G$, so $G \vDash \gamma$ for all γ, so G is inconsistent.[59] ■

59 A proof of this lemma is also given in Horty (2012, 33–34).

Lemma 1.4. *Let* $\Delta = \langle G, D, < \rangle$ *be an explosive default theory such that* G *is consistent. Then* $\textcircled{\scriptsize D}\gamma$ *is sceptically true in* Δ *only if* $G \not\models \neg\gamma$.

Proof. Suppose $\textcircled{\scriptsize D}\gamma$ is sceptically true in Δ and $G \models \neg\gamma$. Take any extension E of Δ. Since $\textcircled{\scriptsize D}\gamma$ is sceptically true in Δ, γ is in every extension of Δ and so is in E. Now $E = \mathrm{Cl}(G \cup \kappa(S))$, where S is an ideal scenario based on Δ. By assumption, $G \models \neg\gamma$, and $\models$ is monotonic, so $G, \kappa(S) \models \neg\gamma$. By the definition of Cl, a sentence α is in $\mathrm{Cl}(G \cup \kappa(S)) = E$ whenever $G, \kappa(S) \models \alpha$, so E contains $\neg\gamma$ and is thus inconsistent. But then, by lemma 1.3, G is inconsistent as well. Contradiction. ■

Proposition 1.3. *Let* $\Delta = \langle G, D, < \rangle$ *be an explosive default theory such that* G *is consistent and* $<$ *is strongly disconnected for legal defaults. Then* $\textcircled{\scriptsize D}\gamma$ *is sceptically true in* Δ *only if* $G \models \gamma$.

Proof. Suppose $\textcircled{\scriptsize D}\gamma$ is sceptically true in Δ. By proposition 1.1, $\textcircled{\scriptsize D}\gamma$ is sceptically false in Δ when $G \not\models \gamma$ and $G \not\models \neg\gamma$, so either $G \models \gamma$ or $G \models \neg\gamma$. By lemma 1.4, $G \not\models \neg\gamma$, so $G \models \gamma$. ■

Proposition 1.4. *Let* $\Delta = \langle G, D, < \rangle$ *be an explosive default theory such that* G *is consistent. Let* γ *be a sentence such that* $G \not\models \gamma$. *Then* $\textcircled{\scriptsize D}\gamma$ *is sceptically true in* Δ *only if a nonlegal default in* D *is stronger than a legal default in* D.

Proof. Suppose $\textcircled{\scriptsize D}\gamma$ is sceptically true in Δ. Then, by proposition 1.1, $<$ is not strictly disconnected for legal defaults if both $G \not\models \gamma$ and $G \not\models \neg\gamma$. By assumption, $G \not\models \gamma$, and by lemma 1.4, $G \not\models \neg\gamma$, so $<$ is not strictly disconnected for legal defaults. Hence, by reasoning as for proposition 1.2, there exists a default d in D and a legal default l in D such that $l < d$. ■

Appendix 1.C Nonexplosive cases

We consider cases identical to those in section 1.6.4 except that deontic explosion for legal obligation fails. For definiteness, it fails because legal obligation is not closed under logical consequence or practical implication. First consider this case:

NONEXPLOSIVE MEETING As for MEETING, but deontic explosion for legal obligation fails.

This case has two ideal scenarios. The first relevantly recommends attending the meeting and giving the lecture in Paris; the second relevantly recommends attending the meeting and giving the lecture in Berlin. Since the only action relevantly recommended by both scenarios is attending the meeting, one is all things considered obliged only to attend the meeting.[60]

Next consider:

NONEXPLOSIVE IMPORTANT MEETING As for IMPORTANT MEETING, but deontic explosion for legal obligation fails.

This case has two ideal scenarios, identical to those for NONEXPLOSIVE MEETING. Since no default favours not attending the meeting, the strength of the attendance default (which favours attending the meeting) is irrelevant. And so just as for NON-

60 Strictly speaking, one is all things considered obliged to do whatever follows from attending the meeting as well as whatever follows from the background facts. For simplicity, these obligations are ignored. To model NONEXPLOSIVE MEETING more formally, take a default theory whose background facts are *Promise*, $\neg\Diamond(\mathit{Paris} \wedge \mathit{Berlin})$, $\bigcirc \mathit{Paris}$, and $\bigcirc \mathit{Berlin}$; whose defaults are $\mathit{Promise} \blacktriangleright \mathit{Meeting}$, $\bigcirc \mathit{Paris} \blacktriangleright \mathit{Paris}$, and $\bigcirc \mathit{Berlin} \blacktriangleright \mathit{Berlin}$; and whose default ordering is empty. (Defaults arising from the closure of legal obligation under conjunction are ignored, since they are irrelevant for present purposes.) The theory has two ideal scenarios. The defaults in the first scenario are $\bigcirc \mathit{Paris} \blacktriangleright \mathit{Paris}$ and $\mathit{Promise} \blacktriangleright \mathit{Meeting}$. The defaults in the second scenario are $\bigcirc \mathit{Berlin} \blacktriangleright \mathit{Berlin}$ and $\mathit{Promise} \blacktriangleright \mathit{Meeting}$.

EXPLOSIVE MEETING, one is all things considered obliged only to attend the meeting.[61]

Finally consider:

NONEXPLOSIVE TAXES As for TAXES, but deontic explosion for legal obligation fails.

This case has two ideal scenarios. The first relevantly recommends paying one's taxes and giving the lecture in Paris; the second relevantly recommends paying one's taxes and giving the lecture in Berlin. Since the only action relevantly recommended by both scenarios is paying one's taxes, one is all things considered obliged only to pay one's taxes.[62]

61 More formally, take a default theory just like the theory for NONEXPLOSIVE MEETING except its default ordering is such that *Promise* ▸ *Meeting* is stronger than every legal default and no legal default is stronger than any other default. (This theory is explosive and its default ordering is weakly disconnected for legal defaults.) This theory's ideal scenarios are identical to those of the theory for NONEXPLOSIVE MEETING. Since this theory contains no default whose conclusion is ¬*Meeting*, the strength of *Promise* ▸ *Meeting* is irrelevant.

62 More formally, take a default theory whose background facts are $\neg\Diamond(\mathit{Paris} \wedge \mathit{Berlin})$, $\bigcirc\mathit{Paris}$, $\bigcirc\mathit{Berlin}$, and $\bigcirc\mathit{Taxes}$; whose defaults are $\bigcirc\mathit{Paris} \blacktriangleright \mathit{Paris}$, $\bigcirc\mathit{Berlin} \blacktriangleright \mathit{Berlin}$, and $\bigcirc\mathit{Taxes} \blacktriangleright \mathit{Taxes}$; and whose default ordering is empty. (Defaults arising from the closure of legal obligation under conjunction are ignored.) The theory has two ideal scenarios. The defaults in the first scenario are $\bigcirc\mathit{Paris} \blacktriangleright \mathit{Paris}$ and $\bigcirc\mathit{Taxes} \blacktriangleright \mathit{Taxes}$. The defaults in the second scenario are $\bigcirc\mathit{Berlin} \blacktriangleright \mathit{Berlin}$ and $\bigcirc\mathit{Taxes} \blacktriangleright \mathit{Taxes}$.

2

Interpretation and inconsistency

This legislature is forgetful. Earlier it enacted: 'Smoking in playgrounds is permitted.' Later it enacted: 'Smoking in playgrounds is forbidden.'

If the semantic content of an enactment is the law, then smoking in playgrounds is legally permitted and legally forbidden. But nothing can be both permitted and forbidden, so the semantic content of an enactment cannot be the law. If the asserted or communicated content of an enactment is instead the law, then smoking in playgrounds might be legally permitted and legally forbidden. Whether it is depends on what the enactments asserted or communicated. But nothing can be both permitted and forbidden, so the asserted or communicated content of an enactment cannot be the law.

The argument of the previous paragraph assumes that the consequents of the conditionals in that paragraph are false. Some people reject that assumption. Those people maintain that something can be both legally permitted and legally forbidden, and so both legally permitted and not legally permitted. According to those people, legal obligation is *glutty* and its logic countenances truth value *gluts*: sentences that are both true and false.

This essay rejects the gluttiness of legal obligation. If legal obligation is glutty, then its logic cannot be classical, since by classical logic nothing is ever both so and not so. If legal obligation is not glutty, then its logic can be classical. In rejecting

gluttiness, this essay thus rejects an argument against the classicality of the logic of legal obligation; in rejecting that argument, it makes a case for classicality.

This essay's rejection of gluttiness depends on claims about the interpretation of legal sources. Put crudely, the most important of those claims is that statutes mean whatever the law says they mean. Put less crudely, the claim is that the *legal content* of an enactment is the law—not its semantic or asserted or communicated content.

Inconsistent legislation does not issue just from forgetful legislatures. Legislation in any contemporary legal system is complex and plentiful: inconsistencies are inevitable. Yet the law can render these inconsistencies merely apparent, because it alone determines what enactments mean.

2.1 Interpretation

2.1.1 Semantic content and asserted content

An attractive proposal is that the interpretation of legal sources—statutes, constitutions, regulations, perhaps even judicial decisions—is governed by a single principle. Where A is a declarative sentence, c a context of use, and V a mapping from pairs of contexts and sentences to propositions, this single principle takes the form:

Effective content If a lawmaking authority declares in c that A then $V_c(A)$ is the law.

Call A the lawmaking authority's *declaration*. Call the value of $V_c(A)$ the *effective content* of A relative to c, since this value has legal effect. By extension, let *effective*

content refer to whatever function *V* stands for.[1]

An obvious candidate for effective content is the function that returns the semantic content of a given sentence relative to a given context. On this proposal, the effective content principle becomes:

> *Semantic content* If a lawmaking authority declares in *c* that *A* then the semantic content of *A* relative to *c* is the law.

The semantic content of a sentence is distinct from its linguistic meaning. Semantic content, unlike linguistic meaning, may depend on speakers' intentions (or on false assumptions about those intentions it would be reasonable for interpreters to make). That dependence is explained by the following. The semantic content of a sentence is a truth-evaluable proposition. A sentence yields such a proposition only if its constituents are assigned semantic values, and so only if any demonstratives in it, like 'this', are assigned referents. These assignments might depend on the intentions of the speaker (or on false but reasonably made assumptions about those intentions). The term 'semantic content' is otherwise left schematic; the precise way of filling it in does not matter.

A surgeon, attending to a man who has collapsed in the street, opens the man's vein, causing him to bleed. An Act states that 'no one may draw blood in the

1 For simplicity, attention is restricted to statutes (in particular, to sentences in statutes). The criticisms developed in this essay of candidates for effective content apply with even more force when the values of *A* are (parts of) judicial decisions rather than (parts of) statutes (compare Greenberg 2011b, 73–75). Taking *A* to range over (parts of) judicial decisions is also incompatible with the declaratory theory of the common law, since on that theory 'the common law is not found in a text; its content is *evidenced by* judicial reasons for decision': *Western Australia v Commonwealth (Native Title Act Case)* (1995) 183 CLR 373, 485 (emphasis added). For discussion of the declaratory theory, see Beever (2013).

streets'.[2] Did the surgeon violate the Act? Yes, if the semantic content principle holds. The sentence 'no one may draw blood in the streets' expresses on its natural interpretation the proposition that no one may draw blood in the streets. That proposition is the sentence's semantic content relative to its context of use, on any reasonable understanding of 'semantic content'. A lawmaking authority declared what the Act states. So by the semantic content principle, the law is that no one may draw blood in the streets. The surgeon violated the law.

What if the Act was passed to discourage duelling in the streets? Perhaps it was implied, given the context in which 'no one may draw blood in the streets' was declared, that the prohibition this sentence expresses was intended to extend only to blood drawn in duels. If the semantic content principle is valid, the law is indifferent to such implications. There is, however, an obvious way to remedy this indifference. The proposal is that effective content is instead the function that returns something like the asserted or communicated or pragmatically enriched content of a given sentence relative to a given context. This proposal yields:

> *Asserted content* If a lawmaking authority declares in *c* that *A* then the asserted content of *A* relative to *c* is the law.

The term 'asserted content' is left schematic; the precise way of filling it in does not matter. One could substitute 'communicated content' or 'pragmatically enriched content' for it if one preferred.[3] On present assumptions, the surgeon did not violate the Act if the asserted content principle is valid. For on those assumptions, the asserted content of 'no one may draw blood in the streets' relative to its context of use is that no one may draw blood in the streets in a duel; so by the asserted

2 Compare Blackstone (1765, 59).

3 Stanley and Szabó (2000) discuss ways of distinguishing between semantic content ('what is said') and asserted content ('what is communicated'). Soames (2004) offers a schematic account of pragmatically enriched content.

content principle that is the law; so the surgeon did not violate the law.

How do the proposed principles fit with decided cases? The equation of effective content with semantic content is plausible enough so long as attention is restricted to a small class of English cases. Take *Hollands v Williamson*.[4] An Act imposed an excise duty on any 'carriage [with] four or more wheels … drawn, or … adapted or fitted to be drawn, by two or more horses or mules, or … drawn or propelled by mechanical power'.[5] The court held that a tricycle became such a carriage when it was fitted with a fourth wheel powered by a small engine. The court also held that the tricycle attracted duty at the rate for motor cars, since the tricycle counted as a 'light locomotive' under a second Act and so counted as a 'motor car' under a third Act.[6] And the court held this even though it was 'perfectly absurd to call [the tricycle] a motor car'.[7] A natural explanation for the court's reasoning is that effective content is semantic content—that is, that the semantic content principle is valid.

The semantic content principle may even be able to explain some trickier cases. In *Colchester v Kewney*, a provision exempting 'any hospital' from land tax was held to extend only to hospitals existing when the provision was enacted.[8] To hold otherwise, the court said, would defeat the policy of the Act. The outcome, the court added, was also justified by a 'strict construction of the words of the exception; for "any hospital" must mean any existing hospital'.[9] That reasoning is consistent with the semantic content principle if restrictions on quantifier domains are semantically encoded—and if an appropriately restricted domain is recoverable

4 [1920] 1 KB 716.

5 Customs and Inland Revenue Act 1888, s 4(1).

6 Locomotives on Highways Act 1896, s 1; Finance (1909–10) Act 1910, ss 86(9) and (1).

7 *Hollands v Williamson* [1920] 1 KB 716, 719.

8 (1866) LR 1 Exch 368.

9 *Colchester v Kewney* (1866) LR 1 Exch 368, 380, citing Land Tax Act 1797 (38 Geo 3 c 5) s 25.

from the context in which the provision in *Colchester* was enacted. (Admittedly, recovering such a domain might be a stretch.)

In any event, the semantic content principle rapidly loses plausibility as one expands the class of cases under consideration. Few would endorse the principle today, despite remarks in older cases which favour a so-called literal approach to statutory interpretation.[10] Many see the asserted content principle as the semantic content principle's more respectable relative. With respectability comes popularity: the asserted content principle is frequently endorsed.[11]

2.1.2 Difficulties

The asserted content principle, although popular, quickly gets into trouble. This section outlines three principles (or sets of principles) of statutory interpretation in common law jurisdictions that the asserted content principle cannot accommodate.[12]

Mens rea. Criminal offences are presumed at common law to require mens rea, which roughly means that criminal liability is presumed to attach only to acts done with criminal intent. The presumption extends to offences created by statute: 'whenever a section is silent as to mens rea there is a presumption that … [a court] must read in words appropriate to require mens rea'.[13]

10 An example is *R v City of London Court Judge* [1892] 1 QB 273, 290.

11 For relevant debate, see Soames (2007), Marmor (2008, 2011), Greenberg (2011a, 2011b), and Asgeirsson (2016). As Wilmot-Smith (2019, 4 n. 10) points out, Raz (2009, chapter 11) might be taken to endorse something along the lines of the asserted content principle.

12 Similar principles are discussed by Greenberg (2011b), Solum (2013), Baude and Sachs (2017), D. Smith (2019), and Wilmot-Smith (2019). The semantic content and the asserted content principles are even less plausible when tested against civil law methods of statutory interpretation: see Bergel (2001, 231–66) and Zippelius (2006, chapter 3).

13 *Sweet v Parsley* [1970] AC 132 (HL) 148.

By this presumption (and simplifying the element of mens rea), the effective content of a statutory provision like (1) is the proposition expressed by (2):

(1) Whoever injures another commits an offence.

(2) Whoever intentionally or knowingly injures another commits an offence.

('The proposition expressed by' is often omitted in what follows.) It is not part of the meaning of 'offence' that the offence of φing can be committed only by intentionally or knowingly φing. Nor is it part of the meaning of 'injure' that one injures someone else only if one intentionally or knowingly injures them. Hence the semantic contents of (1) and (2) differ. For instance, one may unintentionally and unknowingly injure someone else, and so commit an offence under (1) but not under (2).

The mechanism by which the law goes from (1) to (2) does not matter. It may be, as the House of Lords has held, that a principle of statutory interpretation requires a court to 'read in' words appropriate to mens rea in a provision like (1).[14] It may instead be that a principle of statutory interpretation takes a provision like (1) to establish an offence which does not fall outside the mens rea presumption and that a further legal rule provides that any such offence requires mens rea. Any difference between those approaches is irrelevant for present purposes, since on either approach (1) is not the law while (2) is, and so in present terminology the effective content of (1) is (2).

Of course, the asserted content of (1) might be (2) relative to a context in which the intended interpretation of 'offence' is (or may reasonably be taken to be) an offence requiring mens rea.[15] But the mens rea presumption requires the effective

14 *Sweet v Parsley* [1970] AC 132 (HL) 148.

15 The qualification 'or may reasonably be taken to be' is explained by the assumption that asserted

content of (1) to be (2) relative to *any* context in which the intended interpretation of 'offence' is anything other than an offence not requiring mens rea (a so-called strict liability offence)—including a context that discloses nothing at all about the intended interpretation of 'offence'. Given the mens rea presumption, the effective content of a provision is not always its asserted content, and so effective content is not asserted content.

Reading down. In many jurisdictions a legislature's power to enact legislation is limited. The limits are typically constitutional: a legislature may, for instance, be unable to enact legislation that restricts the exercise of constitutionally protected interests. In such jurisdictions, statutory provisions which would on their face exceed the legislative power of an enacting legislature may be interpreted as if they did not exceed that power. They may be *read down*.

Australia is such a jurisdiction. The constitution of Australia deprives federal and State Parliaments of the power to make certain laws restricting communication on political matters.[16] In certain circumstances, statutory provisions which would exceed the legislative power of the enacting Parliament must be interpreted as if they did not exceed that power.[17] For example, a statutory prohibition on 'communicating in relation to abortions in a manner reasonably likely to cause distress' near an abortion provider might be interpreted as excluding any communication on political matters, as the prohibition could otherwise lie beyond the

content, like semantic content, may depend not only on speakers' intentions but also on false assumptions about those intentions it would be reasonable for interpreters to make. Nothing in this essay turns on this assumption, and qualifications of this kind are left implicit in what follows.

16 *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520.

17 Acts Interpretation Act 1901 (Cth) s 15A, along with cognate provisions in each State and self-governing Territory. Such provisions are known in the United States as severability clauses. For discussion, see Stern (1937).

power of the legislature.[18]

This principle of statutory interpretation may, in other words, require the effective content of (3) to be (4):

(3) A person must not communicate in relation to abortions in a manner reasonably likely to cause distress near an abortion provider.

(4) A person must not communicate in relation to abortions in a manner reasonably likely to cause distress near an abortion provider, except when that communication concerns political matters.

This principle requires the effective content of (3) to be (4) even relative to contexts which disclose no intention that (3) should be interpreted as falling within the legislative power of the enacting legislature. (Indeed, *any* interpretation required by this principle arguably goes against the intention of the enacting legislature or legislators, since 'it may greatly be doubted that legislation is ever passed with legislators intending less than full and complete operation of the statute according to its terms'.[19]) Once again, the effective content of a provision is not always its asserted content, and so effective content is not asserted content.

Inconsistencies. The provisions of one statute may on their face be inconsistent, in light of background facts, with the provisions of another statute. Suppose Parliament enacts (5) followed by (6):[20]

18 Compare *Clubb v Edwards* [2019] HCA 11, (2019) 93 ALJR 448 [149]–[153], discussing Public Health and Wellbeing Act 2008 (Vic) s 185D.

19 *Pape v Commissioner of Taxation* [2009] HCA 23, (2009) 238 CLR 1 [389]. Whether a legislature can have an intention is controversial. For relevant debate, see Dworkin (1986, chapter 9), Waldron (1999, chapter 6), and Raz (2009, chapter 11).

20 Compare Children and Young Persons Act 1933, s 50 and Criminal Justice Act 1988, s 139A, read together with s 139. Cases of this kind are mentioned by Atiyah and Summers (1987, 101–2).

(5) No child under the age of ten years is guilty of any offence.

(6) Any person who has a knife with them on school premises is guilty of an offence.

A nine year old takes a knife to school. By (5) and (6), on their natural readings, the child is both guilty and not guilty of an offence. So much follows, then, from the semantic content and the asserted content principles, assuming a normal context of use.

This is not the outcome at which English law arrives. (6) is instead read as subject to (5), so the effective content of (6) is (7):

(7) Any person who is at least ten years old and who has a knife with them on school premises is guilty of an offence.

The reason why (5) takes precedence over (6) and not the other way round does not matter for present purposes. (Since (5) was enacted before (6), the outcome is not explicable by reference to the principle *lex posterior*, according to which a later law takes precedence over an earlier law which is inconsistent, in light of background facts, with the later law. The outcome is presumably explicable by reference to a principle like *lex specialis*, since (5) is plausibly a special provision and (6) a general provision.) What matters is that, given (5), (7) is the effective content of (6) relative even to contexts which disclose no intention that (6) should be subject to another provision or read in accordance with principles like *lex specialis*. Once again, the proposed equation of effective content with asserted content fails.

Sometimes the one statute may generate apparently inconsistent obligations. For instance, the Act considered in *Project Blue Sky Inc v Australian Broadcasting Authority* appeared both to permit and to prohibit the making of a broadcast-

ing standard by an authority established under that Act.[21] To understand how the court resolved the apparent inconsistency, it is necessary to consider the provisions of the Act in some detail.

The authority was obliged to 'determine standards … to be observed by commercial television broadcasting licensees' in relation to 'the Australian content of programs' (section 122 of the Act). The authority determined a standard which required a certain proportion of programming broadcast on commercial television to be produced by Australians. This standard, which discriminated in favour of Australians over New Zealanders, was inconsistent with a trade agreement between Australia and New Zealand which prohibited such discrimination.

The inconsistency between the standard and the trade agreement mattered because the authority was required to 'perform its functions' consistently with Australia's international obligations (section 160 of the Act). One of those functions was developing standards relating to broadcasting in Australia (section 158); and determining standards under section 122 was an exercise of that function. The Act thus appeared to permit (section 122) and prohibit (section 160) the making of standards inconsistent with Australia's international obligations.

This apparent inconsistency had to be resolved. The 'hierarchy of the provisions' fell to be determined, as 'reconciling [inconsistent] provisions [in light of background facts] will often require the court "to determine which is the leading provision and which the subordinate provision, and which must give way to the other"'.[22] In this case, section 122 had to give way to section 160. Section 160, by 'requir[ing] the [authority] to carry out its functions in accordance with … that section', 'provide[d] the conceptual framework in which the functions conferred

21 (1998) 194 CLR 355, considering Broadcasting Services Act 1992 (Cth).

22 *Project Blue Sky* (1998) 194 CLR 355 [70], citing *Institute of Patent Agents v Lockwood* [1894] AC 347 (HL) 360.

by [section] 158 [were] to be carried out'.[23] In particular, section 160 provided the conceptual framework governing the performance of the obligation in section 122. Section 122 was therefore subordinate to section 160—a conclusion reinforced by the requirement elsewhere in section 122 that 'standards … not be inconsistent with this Act'.

As a result, although the 'literal or grammatical meaning' of section 122 authorized the making of the standard, the 'legal meaning' of the section was that the authority 'must determine standards relating to the Australian content of programs but only to the extent that those standards are consistent with the directions in [section] 160'.[24] In schematic terms, the effective content of (8) was (9):

(8) The authority must determine standards to be observed by commercial television broadcasting licensees in relation to the Australian content of programs.

(9) The authority must determine standards to be observed by commercial television broadcasting licensees in relation to the Australian content of programs but only to the extent that those standards are consistent with Australia's international obligations.

Neither the semantic content principle nor the asserted content principle can explain this outcome. The semantic content of (8) relative to any plausible context is not (9). Of course, the asserted content of (8) might be (9) relative to a context in which (8) is intended to be subordinate to section 160. But the outcome in *Project Blue Sky* did not depend on the existence of such an intention. The effective content of (8) relative to its context of use was (9) whether or not that context disclosed an intention that (8) should be subject to another provision. That is, the effective

23 *Project Blue Sky* (1998) 194 CLR 355 [79].

24 *Project Blue Sky* (1998) 194 CLR 355 [80].

content of (8) was (9) whether or not the asserted content of (8) was (9). Once again, the proposed equation of effective content with asserted content fails.

2.1.3 Legal content

Both semantic content and asserted content fail as candidates for effective content. Are there more promising candidates?

Assuming a broad enough notion of asserted content, the outcomes in each of the cases (actual or hypothetical) in the last section have a common explanation. The explanation is that the law in certain circumstances takes the context of use of a statutory provision to be something other than its actual context of use. For example, whenever the legislature enacts a provision creating a criminal offence and does so without intending that the offence should (or should not) require mens rea, the law takes the context in which the provision is enacted to be one in which the offence *is* intended to require mens rea.

We might think of the law as transforming in certain circumstances C an actual context of use c into a context c' conforming to the law's requirements. Call c' the *legal transformation* of c. As a convenience, say that the *legal transformation*$_C$ of a context c is its legal transformation if C and c otherwise. (If not C then the legal transformation$_C$ of c is simply c.) Then the effective content principle becomes:

> *Legal transformation* If a lawmaking authority declares in c that A then the asserted content of A relative to the legal transformation$_C$ of c is the law.

One might think that the legal transformation principle demands too much of the notion of asserted content. One might think, for instance, that no matter the context the asserted content of (3) cannot be (4) or the asserted content of (8) cannot be (9). If the notion of asserted content cannot do the work the legal transformation principle demands of it, there is an alternative explanation of the cases

in the last section. This alternative explanation is structurally analogous to the explanation just advanced.

On this alternative explanation, the cases in the last section show that in certain circumstances *C* the effective content of a statutory provision *A* relative to a context *c* is something other than its asserted content—and that the law determines what this something other is. Call this something other the *legal content* of *A* relative to *c*. The legal content of a provision, roughly speaking, is whatever the law determines to be the propositional content of that provision. Again as a convenience, say that the *legal content*$_C$ of *A* relative to *c* is its legal content relative to *c* if *C* and its asserted content relative to *c* otherwise. Then the effective content principle becomes:

Conditional legal content If a lawmaking authority declares in *c* that *A* then the legal content$_C$ of *A* relative to *c* is the law.

The legal transformation and the conditional legal content principles improve on the qualifications of the asserted content principle advanced by some theorists. Soames (2007), for instance, claims that effective content is asserted content except in certain circumstances *C*. In those circumstances, effective content is determined by reference to 'principles … that routinely guide the interpretation of incomplete, inconsistent, or otherwise defective linguistic materials' (2007, 404). Those principles are 'applicable in both legal and nonlegal contexts' (2007, 404).

Soames would reject the appeal in the legal transformation principle to the *legal* transformation of a context as well as the appeal in the conditional legal content principle to the *legal* content of a sentence. He would reject these appeals since the legal transformation of a context or the legal content of a sentence might be determined by reference to principles applicable only in legal contexts.[25] In rough

25 Soames's insistence that the principles governing legal interpretation in exceptional circumstances

terms, Soames endorses a principle like this:

> *Exceptional content* If a lawmaking authority declares in c that A then the exceptional content$_C$ of A relative to c is the law.

The *exceptional content* of A relative to c is the propositional content of A relative to c as determined by the principles of interpretation π_1, π_2, ... These principles are applicable in both legal and nonlegal contexts. Again, the *exceptional content*$_C$ of A relative to c is its exceptional content relative to c if C and its asserted content relative to c otherwise.

Soames's rejection of specifically legal principles of interpretation is misplaced. To take one example, ordinary nonlegal principles of interpretation do not yield the interpretations required by the reading down principle, which says that statutes should be read as not exceeding legislative power. By ordinary nonlegal principles of interpretation, (3), repeated here, does not relative to a normal context of use express or implicate or bear some other broadly semantic relation to (4), also repeated here:

(3) A person must not communicate in relation to abortions in a manner reasonably likely to cause distress near an abortion provider.

(4) A person must not communicate in relation to abortions in a manner reasonably likely to cause distress near an abortion provider, except

are applicable in both legal and nonlegal contexts is difficult to reconcile with his subsequent claim that 'legal interpretation is special, and fundamentally different from some other forms of linguistic interpretation' (2007, 417). Given Soames says that 'judges … have the authority to make minor adjustments in [a law's] content to avoid transparently undesirable results in cases not previously contemplated' (2007, 417), it is difficult to see how these exceptional principles could apply in nonlegal contexts. Further complications are introduced by Soames's claim that (in the terminology of this essay) the effective content of A relative to c is *approximately* the asserted content of A relative to c (2007, 417). These complications are ignored.

when that communication concerns political matters.

(Someone might object that the reading down principle is an instance of a general, nonlegal principle of interpretation. According to this alleged principle, whenever a speaker intends to oblige someone to do something but lacks the authority to do so, the speaker should be taken to have obliged that person to do only so much of that thing as the speaker has the authority to render obligatory. But this alleged principle lacks plausibility. Suppose I have authority to oblige you only to do what is legal. It is legal to climb halfway up the mountain; it is illegal to climb up any further. I say, 'You are hereby obliged to climb to the top of the mountain.' It is far from obvious that I have obliged you to climb halfway up the mountain; it is at least as plausible that my attempt to create an obligation has failed.[26])

The rejection of specifically legal principles faces an even greater difficulty. On any plausible assignment of values to π_1, π_2, …, the principles denoted by those terms can themselves be changed by the law. (In the United Kingdom, those principles could be changed by Parliament if they were statutory principles of interpretation, and by the Supreme Court if they were common law principles of interpretation.[27]) The law cannot modify the principles applicable to the interpretation of utterances or texts in nonlegal contexts, but it can modify the principles applicable

26 There is another reason to doubt the plausibility of the alleged principle. Reading down provisions like section 15A of the Acts Interpretation Act 1901 (Cth) were introduced to displace the general law rule that 'legislation which by a collective expression covers objects some of which are and some of which are not within the scope of the power of the legislature' is wholly invalid: *Bank of New South Wales v The Commonwealth (Bank Nationalization Case)* (1948) 76 CLR 1, 369–70. The existence of this general law rule casts doubt on the existence of the alleged principle.

27 Of course, Parliament can also modify common law principles of interpretation, and statutory principles of interpretation must themselves be interpreted by courts, but such complications are irrelevant to the present argument.

to the interpretation of utterances or texts in legal contexts. Thus on any plausible assignment of values to $\pi_1, \pi_2, \ldots$, at least some of the principles denoted by those terms will apply only in legal contexts. But those principles are by assumption intended to apply in both legal and nonlegal contexts, and so an assignment is admissible only if it assigns to those terms principles applicable in both contexts. This means that there is no assignment of values to $\pi_1, \pi_2, \ldots$ that is both plausible and admissible, so the exceptional content principle must be rejected. The legal transformation and the conditional legal content principles are right to appeal to specifically legal notions.

What does *C* stand for in the legal transformation principle? That is, in which circumstances is asserted content evaluated relative not to an actual context but to a legally transformed context? And what does *C* stand for in the conditional legal content principle? That is, in which circumstances is the effective content of a provision other than its asserted content? We restrict our attention, without loss of generality, to the condition *C* in the conditional legal content principle. That condition might simply be a long disjunction, a single disjunct of which must be satisfied if a provision's effective content is to be other than its asserted content. The condition might say:

($\vee$) the asserted content of *A* relative to *c* creates a criminal offence with no mens rea requirement or exceeds the power of the enacting legislature or …

On this proposal, the conditional legal content principle becomes:

Disjunctive legal content If a lawmaking authority declares in *c* that *A* then the legal content$_{(\vee)}$ of *A* relative to *c* is the law.

This proposal fails, since the circumstances in which the effective content of a provision is not its asserted content are determined by the law, and like nearly

anything determined by the law those circumstances can be changed. The mutability of those circumstances means that the disjunctive legal content principle may yield false instances after formerly yielding only true ones. To illustrate, imagine that every instance of the disjunctive legal content principle is true at a given time, and so accurately reflects the law at that time. Now suppose that the law is changed at a later time: the Supreme Court abolishes at this later time the mens rea presumption. Then the disjunctive legal content principle does not accurately reflect the law at this later time, and so each instance of it is false, and so it is invalid. The disjunctive legal content principle is valid only if each of its instances is true always; hence this principle, and so this way of filling in *C*, must be rejected.

We need another way of filling in *C*, one that is insensitive to the mutability of the circumstances in which the effective content of a provision is not its asserted content. A more promising candidate for *C* is:

(≠) the legal content of *A* relative to *c* differs from the asserted content of *A* relative to *c*

On this proposal, the conditional legal content principle becomes:

Differential legal content If a lawmaking authority declares in *c* that *A* then the legal content$_{(\neq)}$ of *A* relative to *c* is the law.

The differential legal content principle is a more promising proposal than the disjunctive legal content principle, since the validity of the former, unlike the validity of the latter, is insensitive to changes in the circumstances in which the effective content of a provision is not its asserted content.

Nevertheless, the differential legal content principle can be simplified further. The legal content$_{(\neq)}$ of *A* relative to *c* is its legal content relative to *c* if (≠) and its asserted content relative to *c* otherwise. But if not (≠) then the legal content of *A* relative to *c* is identical to the asserted content of *A* relative to *c*. Hence the legal

content$_{(\neq)}$ of *A* relative to *c* just is its legal content relative to *c*. The differential legal content principle is therefore equivalent to:

Legal content If a lawmaking authority declares in *c* that *A* then the legal content of *A* relative to *c* is the law.

The conclusion that the effective content of a declaration by a lawmaking authority is its legal content sits well with the law's ability to govern the interpretation of those declarations however it likes. Take the mens rea presumption or principles directed to the resolution of inconsistencies in legislation. That presumption and those principles are legal rules, which is why they are described as such by courts and in textbooks.[28] Those rules are expounded by common law courts; and like any (or nearly any) such rule, they can be changed or abolished by those courts. They can be supplemented, too, by further rules the courts create. In principle, common law rules of statutory interpretation can have whatever content an ultimate appellate court determines them to have. Of course, that statement must be qualified with the rider 'subject to any constitutional constraints'; but this qualification does not detract from the plausibility of the identification of effective content with legal content, since constitutional constraints are themselves legal rules.

Similarly, a legislature can enact whatever principles of statutory interpretation it likes, again subject to any constitutional constraints.[29] For instance, the prin-

28 See for example *M v Secretary of State for Justice* [2018] UKSC 60, [2019] AC 712 [31]; *Lacey v Attorney-General of Queensland* [2011] HCA 10, (2011) 242 CLR 573 [43]–[44]; Bennion (1984, 256–57).

29 Constitutional constraints may limit a legislature's ability to govern the interpretation of its own enactments. If it is the 'constitutionally mandated function' of a court to determine the meaning of statutes, the legislature may be unable to control the exercise of that function. See *Marbury v Madison* 5 US 137, 177 (1803); *Work Health Authority v Outback Ballooning Pty Ltd* [2019] HCA 2, (2019) 93 ALJR 212 [76].

ciple of Australian law that statutes should be read as not exceeding legislative power is a statutory principle; it could be repealed or amended by whichever legislature enacted it. A constitutionally unconstrained legislature could even enact a statute requiring each sentence in every other statute to be read as if it began with the words 'it is not the case that'. Such perverse provisions are of course fanciful, but the examples in section 2.1.2 show how radically the effective content of a provision may depart from its asserted content. The law countenances all sorts of other departures from asserted content too. For instance, the common law sometimes holds that the bearer of a statutory power is under a duty to exercise that power, even if the power was conferred only with the word 'may'. The common law, loosely speaking, sometimes reads 'may' as 'must': a radical departure from asserted content (at least usually).[30]

The legal content principle has the virtue of being consistent with how at least some courts describe the task of statutory interpretation. Recall that the court in *Project Blue Sky* distinguished between the 'literal or grammatical meaning' and the 'legal meaning' of a statutory provision. The court said that the literal meaning of section 122 of the Act permitted the making of the broadcasting standard but the legal meaning of the section prohibited it. It explained that 'ordinarily' the legal meaning of a provision:

> will correspond with [its] grammatical meaning … But not always. The context of the

30 This principle is no modern innovation. It was held in 1683 that 'though the words in the Act of Parliament were, that the Chancellor may grant a Commission of Bankrupt, yet that *may* was in effect *must*': *Alderman Backwell's Case* (1683) 1 Vern 152, 153; 23 ER 381, 381. Subsequent cases, from at least *Julius v Lord Bishop of Oxford* (1880) 5 App Cas 214 onward, deny that 'may' is read as 'must' and instead say that a statutory power may be coupled with an implied duty to exercise that power. This alternative analysis does not detract from the claim that legal content may depart radically from asserted content, since implications of this kind may arise whatever the intention of the enacting legislature or legislators.

words, the consequences of a literal or grammatical construction, the purpose of the statute or the canons of construction may require the words of a legislative provision to be read in a way that does not correspond with the literal or grammatical meaning.[31]

It is natural to identify legal content with what the court calls 'legal meaning'. The legal meaning of a provision, in the court's terminology, is what has legal effect: it is the effective content of a provision. And the legal meaning of a provision is determined by the rules of statutory interpretation. It has been said, for instance, that 'the search for legal meaning involves application of the processes of statutory construction' and that 'the preferred construction by the court of the statute'—that is, the statute's legal meaning—'is reached by the application of rules of interpretation'.[32] Presumably, then, the legal meaning of a provision is whatever the law determines to be the propositional content of that provision; and so legal meaning corresponds to legal content.[33]

31 *Project Blue Sky* (1998) 194 CLR 355 [78] (citation omitted).

32 *Certain Lloyd's Underwriters v Cross* [2012] HCA 56, (2012) 248 CLR 378 [25]; *Zheng v Cai* [2009] HCA 52, (2009) 239 CLR 446 [28].

33 The court in *Project Blue Sky* apparently took the distinction between so-called literal or grammatical meaning and legal meaning from Bennion (1984). (The court cites the second edition of that work, but the relevant passage appears in almost identical terms in the first edition: Bennion 1984, 199–200.) D. Smith (2016, 231) suggests that the court's distinction between literal or grammatical meaning and legal meaning corresponds, in the terminology of this essay, to the distinction between semantic content and asserted content. The former correspondence is plausible; the latter one is not. As for the former correspondence, Bennion (1984, 200) says that the 'grammatical meaning' of a provision is 'its linguistic meaning taken in isolation'. Admittedly, this suggests that literal or grammatical meaning, unlike semantic content, does not involve things like assigning referents to demonstratives. But courts (as well as Bennion) often treat literal or grammatical meaning as yielding truth-evaluable propositions, which makes it natural to identify literal or grammatical meaning with semantic content. As for the alleged correspondence between legal meaning and asserted content, the legal meaning of a provision is its effective content, but (as has been argued)

Of course, in a given legal system, legal content may coincide with semantic content. But it does not follow that effective content is semantic content in the intended sense of those expressions. To see why, we need temporarily to complicate the effective content principle by relativizing parts of it, including the function V, to a legal system S:

Effective content$_S$ If a lawmaking authority of S declares in c that A then $V_{c,S}(A)$ is the law in S.

We can now introduce a harmless ambiguity and call the value of $V_{c,S}(A)$ the *effective content* of A relative to c in S. Effective content is semantic content, in the intended sense of those expressions, only if the effective content of A relative to c in S is the semantic content of A relative to c for each possible sentence A, context c, and legal system S. Suppose in a legal system σ the legal content of a statutory provision is always its semantic content. Then the effective content of A relative to c in σ is the semantic content of A relative to c for each sentence A and context c. But suppose in another legal system σ′ (such as a common law system) the legal content of a statutory provision sometimes differs from its semantic content. Then the effective content of A relative to c in σ′ is not the semantic content of A relative to c for some sentence A and context c. And so the effective content of A relative to c in S is not the semantic content of A relative to c for some sentence A, context c, and legal system S. Hence effective content is not semantic content.

The most promising candidate for effective content is legal content. The next two sections further test this proposal.

effective content is not asserted content, so legal content is not asserted content. A more plausible supposition is that legal meaning corresponds to legal content.

2.1.4 Constraints

The legal content principle places no constraints on the circumstances in which the declaration of a lawmaking authority has legal effect: legal efficacy is assumed to be unconstrained. For example, the legal efficacy of an authority's declaration does not depend on its conformity with the demands of morality. Nor does the legal content principle place any constraints on how the law may interpret an authority's declaration: legal content is assumed to be unconstrained. For example, the legal content principle does not say that the law must, if faced with a range of possible interpretations of a declaration, choose the interpretation that best conforms to the demands of morality.

These assumptions are made for simplicity, and the argument of the last section can be straightforwardly modified if one or both of the assumptions is false. For instance, if the legal efficacy of a declaration is conditioned on its compliance with the demands of morality, the legal content principle could be reformulated as:

> *Constrained efficacy* If a lawmaking authority declares in *c* that *A* then: the legal content of *A* relative to *c* is the law provided that this content is morally permissible.

If this principle rather than the legal content principle were valid, a declaration whose legal content was morally impermissible would not have legal effect. This principle would guarantee that only moral laws were law.

If the constrained efficacy principle or one structurally analogous to it were valid, the claim that effective content is legal content would be false. But the claim that effective content is neither semantic content nor asserted content would still be true. And the former claim would need only to be minimally qualified to be rescued from falsehood: effective content is legal content so long as the latter is morally permissible. Because the unqualified claim and the unqualified legal content

principle are simpler, and because that claim and that principle can be qualified without compromising the argument of this essay, the assumption that legal efficacy is unconstrained—and thus that the legal content principle is unqualified—is left in place.

Arguably, if legal efficacy is unconstrained, legal content is unconstrained too. At the very least, to suppose otherwise demands substantial argument. Since legal efficacy has been assumed in this essay to be unconstrained, legal content is assumed to be unconstrained as well. And just as the argument of this essay stands (with straightforward qualifications) if legal efficacy is constrained, so too does it stand (with straightforward qualifications) if legal content is constrained.

Of course, even if legal content is unconstrained, the rules of a legal system may impose constraints on the considerations that *other* rules of the system may take into account when interpreting an authority's declaration. These constraints will usually be constitutional (and so are themselves legal rules and so do not issue from outside the law). Moreover, even if legal content is unconstrained, principles of political morality may determine, at least in part, which considerations the law *should* take into account when interpreting an authority's declaration.[34] For instance, it is usually easier to know what a statute requires of one if legal content at least approximates semantic or asserted content. But principles of political morality may pull in different directions. The mens rea presumption—the presumption that criminal liability attaches only to acts done with criminal intent—shifts the legal content of criminal provisions away from their semantic or asserted content; but the same presumption curtails the coercive powers of the state and to that extent advances the liberty of the subject.

34 Fuller (1969) defends a series of such principles. For discussion, see Kramer (2007, chapter 2).

2.1.5 Abstraction

The legal content principle abstracts away from the process of adjudication. Someone might think this abstraction far from harmless. Someone might think that talk of statutory construction as a 'process' whose rules must be 'applied' shows that the act of adjudication itself gives rise to the legal content of a provision—and thus that a provision's effective content differs before any act of adjudication from its legal content.[35] This concern is misplaced: effective content is always legal content, independently of any act of adjudication. The abstraction is harmless.

Imagine the following:

KNIFE Parliament has enacted (5), which sets the age of criminal responsibility at ten years, and (6), which forbids anyone from taking a knife to school. No court has yet considered the latter provision. A nine year old takes a knife to school at t_1 and is charged with an offence under (6). The court determines at t_2 that the legal content of (6) is (7), according to which anyone who is at least ten years old is forbidden from taking a knife to school.

Having made the determination in KNIFE, the court will not find that, because the law at t_1 was that no one may take a knife to school, the child committed an offence at t_1. It will instead find that the child committed no offence at t_1, since the law at t_1 was that no one who is at least ten years old may take a knife to school.

Similarly, imagine the following:

DETENTION The executive detains at t_1 a person under a statutory provision which purports to give the executive the power to do so. No court as yet has

35 For such talk, see *Certain Lloyd's Underwriters v Cross* [2012] HCA 56, (2012) 248 CLR 378 [25]; *Zheng v Cai* [2009] HCA 52, (2009) 239 CLR 446 [28].

considered this provision. The detainee challenges their detention in court, seeking damages for false imprisonment. The court determines at t_2 that the legal content of the provision does not permit the detention.

If the court in DETENTION awards the detainee damages for false imprisonment, those damages will be calculated on the basis that the false imprisonment began at t_1. That is because the executive violated the law from t_1.

Similar examples could be constructed for statutory provisions dealing with other areas of law.[36] That is because, as will be seen, the effective content of a provision as soon as it comes into force is its legal content, even if that legal content is only subsequently declared by a court—or even if that legal content is never declared by a court. In a slogan: 'a statute is taken "as though it read precisely as the highest court of the State has interpreted it"'.[37]

Courts typically adjudicate disputes about events in the past and resolve those disputes in accordance with the law as it stood at the time of those events. This means that courts typically determine at one time how the law stood at an earlier time. Of course, 'determine' here is ambiguous: it might mean that courts *declare* at a later time how the law at an earlier time operated; or it might mean that courts *fix* at a later time how the law, from that time onwards, is to be taken to have operated at an earlier time. On the former understanding, a court's determination discloses the content of the law; on the latter understanding, it lays down that content. The law conventionally favours the former understanding: 'judicial power is concerned with existing rights, that is, those which the parties actually have at the inception of the suit'; 'a judicial inquiry investigates, declares and enforces liabilities as they

36 A structurally analogous example is given in *Brown v Tasmania* [2017] HCA 43, (2017) 261 CLR 328 [509].

37 *Brown v Tasmania* [2017] HCA 43, (2017) 261 CLR 328 [507], citing Amsterdam (1960, 74), citing *Minnesota ex rel Pearson v Probate Court* 309 US 270, 273 (1940).

stand on present or past facts and under laws supposed already to exist'.[38]

An explanation of how a court may declare the law rather than fix it lies outside present concerns.[39] It is also dialectically unnecessary. For present purposes, it does not matter whether courts declare legal content or fix it or do both, since in any event it is only the legal content of a provision that has legal effect (this is what KNIFE and DETENTION illustrate). Something other than the legal content of a provision never gives rise to legal rights or obligations: effective content is always legal content.

The legal content principle abstracts away from the process of adjudication in order to avoid the complexities that an account of the relation between adjudication and legal content would introduce. This abstraction does not distort features of effective content that are relevant to present concerns. The abstraction is broadly analogous to the way in which models of agents' knowledge typically abstract away from the agents' computational limitations and so from their processes of deduction. In many such models, agents are taken to know the logical consequences of what they know, whether or not they have engaged or could engage in the requisite deductions. In both cases of abstraction, complexities irrelevant to the phenomena under investigation are bracketed.

The legal content principle, like any instance of the effective content principle, also abstracts away from time, since it contains no temporal parameter. This idealization obscures a class of legal rules that this essay has so far ignored. Some legal systems contain rules which permit a court to alter the legal content of a statutory provision, so that a provision's legal content before an act of adjudication differs from its legal content after the act. Section 3 of the Human Rights Act 1998, for

38 *United Engineering Workers' Union v Devanayagam* [1968] AC 356 (PC) 384; *Prentis v Atlantic Coast Line Co* 211 US 210, 226 (1908).

39 For criticisms of the possibility of such an explanation, see Kelsen (1934, 80–84). For discussion, see Raz (1979b, 90–97) and Endicott (2020).

instance, provides that 'so far as it is possible to do so, legislation … must be read and given effect in a way which is compatible with' certain rights set out in the European Convention on Human Rights and its protocols.[40] This section has been held to empower a court to 'change the meaning of … enacted legislation' and so (in present terminology) to alter the legal content of a statutory provision.[41] If a court exercises that power, the provision's legal content changes when the court hands down its decision.

Both the legal content principle and the notion of legal content would have to be revised to accommodate rules of this kind, presumably by introducing parameters for time.[42] But the envisaged revisions would not disrupt the identification of effective content with legal content; and it is this identification that matters for now. Suppose a court, exercising a power under section 3 of the Human Rights Act, changes at t_2 the legal content of a provision. Then the effective content at t_2 of the provision is its legal content at t_2. As already seen, however, the effective content at t_1 of the provision—before the court exercised the power to change its legal content—was its legal content at t_1. This suggests that at all times t the effective content at t of the provision is its legal content at t.[43]

40 Human Rights Act 1998, s 3(1), read with ss 1(1) and 21(1). For related discussion of the provision, see Wilmot-Smith (2019).

41 *Ghaidan v Godin-Mendoza* [2004] UKHL 30, [2004] 2 AC 557 [32].

42 Since the legal content principle contains no parameter for time, it also cannot deal with amendments or repeals of existing laws, or with retrospective changes to rules of interpretation, among other things. Such phenomena are put to one side for simplicity.

43 Not all legal systems countenance rules of the kind in section 3 of the Human Rights Act 1998. In *Momcilovic v The Queen* [2011] HCA 34, (2011) 245 CLR 1, a provision broadly similar to section 3 was held by a majority of the High Court of Australia not to empower courts to change the legal meaning of legislation. If the provision had so empowered courts, it would have conferred legislative power on them. Such a conferral is constitutionally impermissible in Australia, so the provision would have then been invalid.

2.2 Inconsistency

Here is another argument against the equation of effective content with semantic content. Suppose the semantic content principle holds. The legislature enacts 'Everyone may smoke' and 'No one may smoke'. The 'may' in each enactment presumably expresses legal permission, so by the semantic content principle it is the law that smoking is legally permitted and it is the law that smoking is not legally permitted. An action is presumably legally permitted whenever the law says it is (and legally obligatory whenever the law says it is), so smoking is and is not legally permitted. But that is a contradiction, so effective content is not semantic content after all. (An analogous argument can be given for asserted content.)

The argument of the previous paragraph assumes that contradictions cannot be true. Some theorists reject that assumption—and with it the classicality of the logic of legal obligation. Priest (1987, 2008), for instance, endorses *dialetheism*, the thesis that some contradictions are true. He points to the law as evidence for this thesis. Priest thinks that the law is often unable to resolve apparent inconsistencies in legislation, in the sense of statutory provisions which, taken on their face, are jointly inconsistent in light of background facts. He thinks this because he thinks that effective content is (nearly always) semantic content. As a result, he thinks that when the legislature enacts 'Everyone may smoke' and 'No one may smoke' smoking is *both* legally permitted and not legally permitted.[44]

If the same action can be both legally permitted and not legally permitted, or both legally obligatory and not legally obligatory, then one's legal obligations can be *inconsistent*. And if one's legal obligations can be inconsistent, then the logic of legal obligation must allow for truth value gluts: sentences that are both true and false. Appendix 2.A outlines a logic of legal obligation that allows for gluts; the lo-

44 Priest (2008, 127–28) repeats in a compressed form the argument of Priest (1987, 184–88).

gic of *deontic paradox* there outlined is the deontic logic that Priest endorses. The adoption of that logic is far from harmless, not least because legal obligation would then invalidate reductio ad absurdum, an inference scheme on which legal reasoning relies. The following section examines some of the consequences of adopting the logic of deontic paradox. This section examines the arguments for adopting that logic in the first place.

Priest (1987, 184–85) constructs two cases in which one's legal obligations are allegedly inconsistent. First, Priest invites us to imagine that a country's constitution provides:

> In a parliamentary election:
>
> 1. no person of the female sex shall have the right to vote;
> 2. all property holders shall have the right to vote.

When the constitution was written, women were forbidden from holding property. Women may now hold property. A woman owns a house. According to Priest, it follows from the constitutional provision that the woman has and does not have the right to vote, and so is and is not legally permitted to vote.

Second, Priest (1987, 185) asks us to imagine a law governing who has the right of way at unmarked junctions. The law provides:

> At an unmarked junction at which two vehicles arrive simultaneously:
>
> 1. any female driver shall have priority over any male driver;
> 2. any older person shall have priority over any younger person.

A 40 year old man and a 30 year old woman arrive together at a junction. By clause 1, the woman has priority over the man. By clause 2, the man has priority over the woman. Priority is asymmetric: if A has priority over B, then B does not have priority over A. So by clause 1, the man does not have priority over the

woman; and by clause 2, the woman does not have priority over the man. If A has priority over B, then A and only A is legally permitted to go first. So the man and the woman are each legally permitted and not legally permitted to go first.

Cases like these, according to Priest, bolster the case for dialetheism. Priest (1987, 188) claims that inconsistent provisions, like those in the cases above, fail to give rise to inconsistent legal obligations only if there is 'more to the law than the literal wording of statute', and so only if effective content is not semantic content.[45]

Priest grants that effective content may *sometimes* differ from semantic content. His understanding of the law's interpretative resources is as follows (1987, 187). First, some laws take priority over others because of their place in a legal system's normative hierarchy (for instance, if a constitutional provision and a statutory provision are inconsistent then the former prevails). Second, if two statutory provisions are inconsistent and one provision was enacted after the other, then the later one prevails, given the legal principle of *lex posterior*. Third, 'the intentions of the legislators' revealed in the preamble to an Act may 'provide the basis for the existence of an implicit exceptive clause'. That is all.

Priest effectively assumes the validity of something like Soames's exceptional content principle (section 2.1.3), with semantic content substituted for asserted content. In schematic terms, Priest assumes the validity of:

Three-part exceptional content If a lawmaking authority declares in c that A then the three-part exceptional content$_C$ of A relative to c is the law.

The *three-part exceptional content* of A relative to c is the propositional content of A relative to c as determined by the three exceptional principles of interpretation

45 Priest's (1987, 186) examination (and rejection) of the argument that statements of legal obligation cannot be true or false is ignored for simplicity.

that Priest identifies. (These principles, unlike those in the exceptional content principle of section 2.1.3, are not assumed to be applicable in both legal and non-legal contexts.) The *three-part exceptional content*$_C$ of *A* relative to *c* is its three-part exceptional content relative to *c* if *C* and its semantic content relative to *c* otherwise.

Because Priest assumes that the circumstances in which effective content is not semantic content are so narrow, and that the principles which govern interpretation in those circumstances are so restricted, he concludes that the law lacks the ability to resolve many apparent inconsistencies in legislation. He acknowledges that 'there are procedures for resolving' apparent inconsistencies which cannot be resolved by his three exceptional principles (1987, 188). But these procedures, Priest maintains, are extralegal. In cases involving such apparent inconsistencies, 'there are, *ex hypothesi*, no legal grounds on which to base the decision', so the decision will be made 'on extra-legal (socio-political) grounds' (1987, 188). To suppose otherwise—that is, 'to suppose that something could be a fact of law when grounded in no aspect of the legal process'—'is just mystification' (1987, 188).

As already seen, however, principles of the kind set out in cases like *Project Blue Sky*[46] and *Institute of Patent Agents v Lockwood*[47] govern the resolution of such inconsistencies. These principles are rules of law, and so are 'grounded in [an] aspect of the legal process', and so provide legal grounds on which to base decisions. (Recall that the alleged inconsistency in *Project Blue Sky* was resolved by examining the structure of the statute and the legal obligations to which it purported to give rise; those are surely legal grounds for a decision if anything is.) Effective content is not, as Priest assumes, three-part exceptional content; to hold otherwise is to cleave to an impoverished understanding of the law's interpretative resources.

46 (1998) 194 CLR 355.

47 [1894] AC 347 (HL).

Legal content is the more plausible candidate for effective content (section 2.1).

Of course, someone might construct cases intended to push the limits of legal rules about inconsistencies in legislation. Take a statute which says:

1. Everyone may smoke in playgrounds.
2. No one may smoke in playgrounds.
3. No legal rules governing the resolution of inconsistencies apply to the interpretation of this statute.

The possibility of such statutes does not undermine the argument of this section. In some legal systems the third provision would not determine whether rules about inconsistencies applied to the interpretation of the statute. That is because in some legal systems the interpretation of statutes is a function reserved exclusively for the courts, which means that a legislature cannot control a court's exercise of that function.[48] More importantly, whether or not the third provision were given effect, a court would presumably be entitled to conclude that the statute as a whole was inconsistent and so of no effect.[49] For the absence of any indication in the statute of whether the first or second provision is the leading one suggests that the legislature has enacted a contradiction; and as a nineteenth century text on statutory interpretation puts it, it is 'impossible to will contradictions' (Maxwell 1875, 133). If the statute is of no effect, then it has no nontrivial legal content, so by the legal content principle the legislature has effectively created no legal obligation at all.[50] Priest (1987, 187) is therefore wrong to maintain that the opponent of dialethe-

48 See further note 29.

49 On the possibility that a legislature's 'attempt … to frame a rule' might fail, see *Brown v Tasmania* [2017] HCA 43, (2017) 261 CLR 328 [489].

50 Kelsen (1960b, 206–7) constructs a similar case involving simultaneously enacted inconsistent provisions. He concludes that if no reconciling interpretation of the provisions is available, the legislature has enacted something meaningless and so created no legal norm.

ism must show that the law is *always* able to resolve apparent inconsistencies in legislation. The resolution may sometimes be that the legislation simply gives rise to no legal obligations at all.

Priest misunderstands the relation between statutory text and effective content in another way. He claims that the law is changed when a court hands down a decision resolving apparent inconsistencies in legislation, at least when that resolution relies on extralegal grounds. As a result, '*after* the ruling the law may be consistent. This does not change the fact that *before* the ruling the law was inconsistent' (1987, 188). But the effective content of a statutory provision, even before any act of adjudication, is its legal content (section 2.1.5). When a claimant alleges in court that an obligation they were owed has been violated, the court standardly determines whether, at the time of the (alleged) violation, the (alleged) obligation existed and what, at the time of the violation, the content of the obligation was. The claimant's legal rights standardly depend only on the content of the obligation at the time of the violation. Thus, assuming that the obligation arose under statute, the claimant's legal rights depend only on the legal content of whatever statutory provision gave rise to that obligation. That is why Australian law, for instance, affirms the legal impossibility of a statute's having 'some practical operation, prior to judicial construction, which is inconsistent with its legal meaning'.[51] Since effective content is always legal content, apparently inconsistent provisions do not operate one way before, and another way after, a court resolves the apparent inconsistency.

Priest (1987, 184) may be right that 'the most cogent way' of arguing for the possibility of inconsistent legal obligations is to construct hypothetical examples instead of using real ones. But he is mistaken to think that 'the niceties of interpretation and scholarship tend to cloak the essential issue' (1987, 184). For one cannot

51 *Brown v Tasmania* [2017] HCA 43, (2017) 261 CLR 328 [505].

claim that the law lacks the resources to resolve apparent inconsistencies in legislation without looking at what those resources are. The common law systems considered here contain resources directed to the resolution of inconsistencies that are more developed and more comprehensive than Priest imagines. Civil law systems contain analogous principles.[52] (As already seen, if a legal system contained no such principles, apparently inconsistent provisions may simply yield no legal obligations at all.)

There is an independent reason to doubt the possibility of inconsistent legal obligations. That possibility is inimical to the law's functions of guiding behaviour and settling disputes.[53] The law cannot guide behaviour if an action is both legally permitted and legally forbidden; nor can it settle the question of whether an action is legally permitted if it must answer both 'yes' and 'no'.[54]

Admittedly, the law allows for conflicting legal obligations (such as a legal obligation to dance and a legal obligation not to dance), and so the law may sometimes fail to guide behaviour (essay 1).[55] But conflicting legal obligations, unlike inconsistent ones, may arise from contract: they may arise from the exercise of a power to bind oneself in law. Arguably, if the law recognizes conflicting but not inconsistent legal obligations, it is in part because the former but not the latter may be willingly assumed. On this understanding, the recognition of conflicting

52 In German law, for instance, 'the principle of the unity of the legal system … requires that each legal norm is interpreted in such a way that the consistency of the legal system is preserved' (Hellwege and Wittig 2015, 123). For discussion, see Zippelius (2006).

53 For a statement of those functions, see Raz (1975, 154).

54 Endicott (2000, 72) observes that the answers the law gives to such questions are typically *either* 'yes' or 'no' (and not 'somewhat'). He calls this feature of the law 'juridical bivalence'.

55 Formally, one's legal obligations conflict just if α and β are each legally obligatory but not jointly practically possible (essay 1); one's legal obligations are inconsistent just if α is both legally obligatory and not legally obligatory.

legal obligations flows in part from the recognition of the autonomy of those in a community governed by law.

More importantly, however, conflicting legal obligations do not undermine the law's dispute settling function in the same way that inconsistent legal obligations do. If one is legally obliged both to dance and not to dance, the answer to the question of whether one violated one's legal obligation to dance is *either* 'yes' or 'no' and not both. If one is both legally obliged to dance and not legally obliged to dance, the answer to the same question is *both* 'yes' and 'no'. The law's dispute settling function is not inhibited if the law countenances conflicting legal obligations. That function is inhibited if it countenances inconsistent ones.[56]

Priest's argument against the classicality of the logic of legal obligation is abductive. But the law provides no abductive evidence against classicality. Priest's argument fails because the data of which dialetheism is supposed to be the best explanation are no data at all. By refusing to look at actual legal systems and to reflect on the law's functions, Priest misapprehends the law. Because he misapprehends the law, he misapprehends the logic of legal obligation. That logic is not glutty.

2.3 Reductio ad absurdum

There is another reason to doubt the gluttiness of legal obligation. Glutty logics typically invalidate the inference scheme of reductio ad absurdum, which says that

56 Kelsen (1945, 375) claims that the law does not countenance inconsistent legal obligations when he says that 'the specific function of juristic interpretation is to eliminate contradictions [in legal sources] by showing that they are merely sham contradictions'. (Kelsen, who does not always distinguish between inconsistent and conflicting legal obligations, may here intend 'contradictions' to include conflicting legal obligations.) Kelsen (1979, 127) later insisted that absent legal principles providing for the resolution of 'conflicts of norms' such conflicts could not be resolved by 'legal science' and so could not be resolved by legal interpretation.

if a set Γ of sentences and a sentence α jointly entail a contradiction then Γ entails ¬α. The logic of deontic paradox allows for gluts and so invalidates this scheme. (That logic, outlined in appendix 2.A, is endorsed by Priest.) Since legal reasoning relies on reductio, the logic of deontic paradox invalidates parts of legal reasoning. That logic thus invalidates arguments that are not only valid by classical logic but are also taken to be valid by the law.[57]

Take a common pattern in legal reasoning. One party to a dispute asserts that some legal right or obligation exists. Both parties to the dispute agree on the truth of a series of propositions of law. The court finds that, given those propositions of law, the assumption that the alleged right or obligation exists entails a contradiction. From this the court concludes that the alleged right or obligation does not exist. This reasoning is an instance of reductio.

Reductio fails in any logic that allows for gluts, given the standard assumption that logical consequence is truth preservation in all models. To see why, consider first why reductio is classically valid. Suppose that a set Γ of sentences and the sentence α entail a contradiction. Then every model in which α and each sentence in Γ are true is one in which a contradiction is true. But a contradiction is true in no model, so there is no model in which α and each sentence in Γ are true, so every model in which each sentence in Γ is true is one in which α is false. And this means that Γ entails ¬α. On the other hand, if a logic allows for gluts, a contradiction is true in some model, so one cannot reason from the impossibility of such a model to the conclusion that Γ entails ¬α. (For technical details, including a proof of the failure of reductio in the logic of deontic paradox, see appendix 2.B.)

Fejo v Northern Territory illustrates the law's use of reductio.[58] That case examined whether the grant of an interest in land by the Crown extinguished native

57 On other abductive costs of dialetheism, see Williamson (2017).

58 [1998] HCA 58, (1998) 195 CLR 96.

title rights in that land. An Aboriginal community held native title rights, including rights to hunt and fish, in respect of that land. In the late nineteenth century, the Crown granted an estate in fee simple in that land to someone else. Under Australian law, a native title right is extinguished if the Crown grants a right inconsistent with the native title right. The question in *Fejo* was whether the estate in fee simple was inconsistent with the Aboriginal community's native title rights.

Let us suppose for simplicity that the only native title right at issue was a right held by A to hunt on the land. The estate in fee simple was held by B. The accepted premises are these. Since B had an estate in fee simple in the land, B had a right to exclusive possession of the land. Since B had that right, no one else (including A) was legally permitted to go onto the land (without B's permission).[59] If A had a right to hunt on the land, A was legally permitted to go onto the land.

The question was whether the grant to B of the right to exclusive possession of the land extinguished A's right to hunt on the land. The question, in other words, was whether the accepted premises were consistent with A's having a right to hunt on the land. They were not, since those premises, together with the supposition that A had a right to hunt on the land, entailed that A was and was not legally permitted to go onto the land. It followed by reductio that A did not have a right to hunt on the land. A's right to hunt on the land was therefore inconsistent, in the legal sense of that term, with B's right to exclusive possession of the land. As a result, A's native title right was extinguished by the grant of the estate in fee simple to B.

There is nothing artificial about this reconstruction of the court's reasoning. *Western Australia v Brown*, handed down fifteen years after *Fejo*, confirmed that Australian law takes two rights to be inconsistent if and only if (sentences express-

59 The qualification 'without B's permission' is ignored in what follows for simplicity.

ing) those rights, together with background facts, entail a contradiction.[60] Two rights are inconsistent when 'one right necessarily implies the non-existence of the other …: that is, when a statement asserting the existence of one right cannot, without logical contradiction, stand at the same time as a statement asserting the existence of the other right'.[61]

These remarks were advanced as a gloss on *Fejo*. How do they apply to the reasoning in *Fejo*? Here are two premises. If B has a right to exclusive possession of the land, A is not legally permitted to go onto the land. If A has a right to hunt on the land, A is legally permitted to go onto the land. And here—to use an expression from the court's reasons in *Brown*—is a statement asserting the existence of both rights:

(∗) A has a right to hunt on the land and B has a right to exclusive possession of the land.

The two premises together with (∗) entail a contradiction: A is and is not legally permitted to go onto the land. It follows by reductio that (∗) is false, which means that B has a right to exclusive possession of the land only if A does not have a right to hunt on the land. And this means that 'one right … implies the non-existence of the other'.

The court's reasoning on the facts in *Brown* is structurally analogous to the court's reasoning in *Fejo*. *Brown* concerned mineral leases granted by the Crown to some people over some land. The leases allowed those people to enter the land, build on it, and extract minerals from it. An Aboriginal community held native title rights in the land. Those rights included rights to hunt and fish. The issue was whether the native title rights were inconsistent with, and thus extinguished

60 [2014] HCA 8, (2014) 253 CLR 507.

61 *Western Australia v Brown* [2014] HCA 8, (2014) 253 CLR 507 [38].

by, the mineral leases. The court reasoned as follows. The native title rights gave the native title holders legal permission to go onto the land. The mineral leases did not grant the leaseholders a right to exclusive possession of the land. So the rights under the leases did not entail that the native title holders did not have legal permission to go onto the land. Hence the native title rights were consistent with the rights under the leases.

It is unsurprising that courts should rely on reductio, for reductio is a part of our everyday, nonlegal reasoning (Williamson 1994, 152). Since courts rely on reductio to reason about legal rights, they rely on reductio to reason about legal obligations. (One has a legal right to exclusive possession of some land if and only if everyone else is legally obliged not to enter the land without one's permission; and one has a legal right to enter some land if and only if one is not legally obliged not to enter the land.) Since courts rely on reductio to reason about legal obligations, any logic that invalidates reductio is a wrong logic for legal obligation. Since reductio is invalid if the logic of legal obligation is glutty, the right logic for legal obligation is not glutty. So much is assumed by the courts in *Brown* and *Fejo*; and a plausible hypothesis, given the place of reductio in everyday reasoning, is that this assumption is shared by every legal system, even if the assumption is not explicitly articulated.

Priest (1989, 614) argues that the failure of reductio in logics such as the logic of deontic paradox does not prevent arguments by reductio from succeeding in 'criticizing and thereby changing the beliefs of others'. The general invalidity of reductio, claims Priest, does not stop us from rejecting a contradiction and the premise that leads to it, 'provided that it is reasonable to suppose that the domain in question is not a paradoxical one' (1989, 620). Unfortunately, the paradoxical domains for Priest include the law: 'paradoxical sentences occur in only certain logico-mathematical, legal and dialectical situations (and maybe a few others)' (1989, 616).

Fortunately, according to Priest, we can rely in paradoxical domains on argu-

ments by reductio (even if formally invalid) so long as the contradictory sentences at which those arguments arrive are not themselves paradoxical (1989, 620). (That is, if Γ and α jointly entail β∧¬β then we can accept the inference from Γ to ¬α—in some unspecified sense of 'accept'—provided that neither β nor ¬β is potentially both true and false and so paradoxical.) However, in legal arguments by reductio (at least those of the kind considered in this section), the contradictory sentences at which the arguments arrive are tantamount to sentences of the form 'β is (not) legally obligatory'. And every sentence of that form is for Priest potentially both true and false and so paradoxical. The allegedly paradoxical potential of such sentences flows, for Priest, from the alleged ability of the legislature to make nearly *anything* legally obligatory or not legally obligatory or both, simply by enactment. (This alleged ability is reflected in the three-part exceptional content principle, set out in section 2.2, whose validity Priest assumes.) On Priest's account, then, the range of β in 'β is (not) legally obligatory' is effectively constrained only by the imagination of the legislature. Hence the risk that sentences of that form are paradoxical can never be excluded, and so arguments by reductio in law cannot be relied on, even by Priest's own lights.

Is there another way to salvage legal applications of reductio? Priest (1989, 619) says that 'certain special cases' of the inference scheme might be valid, even in logics in which it otherwise fails. But arguments by reductio in law display no special structure. Even if the accepted premises in such arguments are usually equivalent to sentences of the form 'α is (not) legally obligatory', they need not be.[62] At most,

62 For example, take the argument in *Fejo*. Let *Hunt* = 'A has a right to hunt on the land', *Permitted* = 'A is legally permitted to go onto the land', *Estate* = 'B has an estate in fee simple in the land', and *Exclusive* = 'B has a right to exclusive possession of the land'. Then the argument takes the form in (RAA), set out in appendix 2.B. In particular, Γ = {*Hunt* → *Permitted*}, Δ = {*Estate*, *Estate* → *Exclusive*, *Exclusive* → ¬*Permitted*}, α = *Hunt*, and β = *Permitted*. Each of those sentences, except *Estate*, is equivalent to one of the form 'α is (not) legally obligatory' (or to a

such arguments are distinguished by the form of the contradictory sentences at which they arrive: as already seen, each such sentence is tantamount to one of the form 'β is (not) legally obligatory'.

The suggestion, then, is that arguments by reductio in law exhibit this structure:

> If Γ and α jointly entail 'β is legally obligatory' and 'β is not legally obligatory' then Γ entails ¬α.

On this suggestion, the accepted premises (Γ) in legal applications of reductio can be sentences of any form, so long as they, along with the assumption to be tested (α), entail contradictory sentences of the form 'β is (not) legally obligatory'. Yet this suggestion does nothing to save legal applications of reductio from invalidity in the logic of deontic paradox. For the displayed inference scheme, a special case of reductio, fails in that logic, as does the general case (appendix 2.B).

To suppose that legal obligation is glutty—in particular, to suppose that it obeys the logic of deontic paradox—is to suppose that legal applications of reductio are invalid. This supposition is implausible, not least because the law assumes that reductio is a reliable guide to truth. The law is not a paradoxical domain.

2.4 Conclusion

Statute books are full of provisions which on their face are jointly inconsistent. But that observation provides no evidence for the possibility of inconsistent legal obligations, and so provides no evidence for the gluttiness of legal obligation. For one, legal systems standardly contain principles directed to the resolution of inconsist-

sentence of that form lying within the scope of a quantifier): *Hunt* is equivalent to 'A's not hunting on the land is not legally obligatory'; *Permitted* is equivalent to 'A's not going onto the land is not legally obligatory'; and *Exclusive* is equivalent to 'For each person other than B: that person's not going onto the land is legally obligatory'.

encies in legislation. What those principles say matters because the law controls the interpretation of its own instruments: effective content is legal content. (If a legal system contains no such principles, apparently inconsistent provisions may simply yield no legal obligations at all.) Moreover, the possibility of inconsistent legal obligations is inimical to the law's function of settling disputes. Countenancing such obligations even risks undermining established legal reasoning, because the law assumes the impossibility of such obligations when determining people's rights and duties. The law does not force us to reject classical logic. The law may be complex, but it is skilled at managing that complexity.

Appendix 2.A The logic of deontic paradox

This appendix presents the logic DLP of deontic paradox.[63] The language of DLP contains countably many propositional variables, the sentence operator ○, and the connectives ∧, ∨, and ¬, in terms of which → and ↔ are defined.

A DLP frame is a pair $\langle W, R\rangle$, where W is a nonempty set and R is a binary relation on W. Informally, the members of W are worlds and R is an accessibility relation on those worlds. If wRw' then w' is a state of affairs compatible with what is obligatory at w.

A DLP model is a triple $\langle W, R, \rho\rangle$, where $\langle W, R\rangle$ is a DLP frame and ρ is a three-place relation between propositional variables, members of W, and the values 0 and 1. We write $\alpha\, \rho_w\, 1$ for $\langle \alpha, w, 1\rangle \in \rho$. The relation ρ satisfies:

Exhaustion For every atomic sentence α and every world w of every model, either $\alpha\, \rho_w\, 1$ or $\alpha\, \rho_w\, 0$.

Exhaustion validates excluded middle for nonmodal sentences: that is, it validates $\alpha \vee \neg\alpha$ for each sentence α that does not contain ○.[64] Logical consequence is defined, as usual, as truth preservation in every world of every model.

A sentence α is *true* in a model $M = \langle W, R, \rho\rangle$ at a member w of W if and only if $\alpha\, \rho_w\, 1$ and *false* in M at w if and only if $\alpha\, \rho_w\, 0$. The relation ρ is extended to arbitrary sentences as follows:

63 DLP is the paraconsistent deontic logic now favoured by Priest, although he does not give the logic this name (Priest 1987, 282–83). (Originally, Priest favoured an alternative paraconsistent deontic logic, which is not equivalent to DLP: Priest 1987, 188–95.) DLP is a modal extension of the logic LP of paradox. LP is itself an extension of the logic FDE of first degree entailment; LP extends FDE by validating excluded middle. The semantics presented for DLP in this appendix is the so-called relational semantics for FDE and its extensions (Priest 2008, chapter 8).

64 For a proof, see Priest (2008, 148 n. 4).

$\neg\alpha\ \rho_w\ 1$	if and only if	$\alpha\ \rho_w\ 0$
$\neg\alpha\ \rho_w\ 0$	if and only if	$\alpha\ \rho_w\ 1$
$\alpha \wedge \beta\ \rho_w\ 1$	if and only if	$\alpha\ \rho_w\ 1$ and $\beta\ \rho_w\ 1$
$\alpha \wedge \beta\ \rho_w\ 0$	if and only if	$\alpha\ \rho_w\ 0$ or $\beta\ \rho_w\ 0$
$\alpha \vee \beta\ \rho_w\ 1$	if and only if	$\alpha\ \rho_w\ 1$ or $\beta\ \rho_w\ 1$
$\alpha \vee \beta\ \rho_w\ 0$	if and only if	$\alpha\ \rho_w\ 0$ and $\beta\ \rho_w\ 0$
$\bigcirc\alpha\ \rho_w\ 1$	if and only if	for all $w' \in W$, if wRw' then $\alpha\ \rho_{w'}\ 1$
$\bigcirc\alpha\ \rho_w\ 0$	if and only if	either not $\bigcirc\alpha\ \rho_w\ 1$ or for some $w' \in W$, wRw' and $\alpha\ \rho_{w'}\ 0$

The first disjunct of the semantic clause for $\bigcirc\alpha\ \rho_w\ 0$ guarantees the validity of excluded middle for modal sentences. That disjunct and exhaustion together validate excluded middle.

DLP invalidates explosion, the principle that a contradiction entails anything at all; it is thus *paraconsistent*. DLP also invalidates deontic explosion, the principle that conflicting obligations entail any obligation at all.[65] Deontic explosion is invalid in DLP even though $\bigcirc$ is closed under conjunction and logical consequence.

Moreover, conflicting obligations entail inconsistent obligations at any world with a nonvacuous standard of obligation. That is because the consistency principle ($\bigcirc\alpha \rightarrow \neg\bigcirc\neg\alpha$) is valid on every DLP frame whose accessibility relation is serial;[66] thus conflicting obligations entail inconsistent obligations in all such

65 Proof: Take a DLP model $\langle W, R, \rho\rangle$ where $W = \{0, 1\}$ and $R = \{\langle 0, 1\rangle\}$. Let the atomic sentence P be true and false at 1 and the atomic sentence Q false at 0. Then $\neg P$ is true at 1, so $\bigcirc\neg P$ is true at 0, as is $\bigcirc P$. But $\bigcirc Q$ is not true at 0, as required.

66 Proof: Take any DLP model whose accessibility relation is serial. Suppose $\bigcirc P$ is true at a world w of the model. Since the accessibility relation is serial, there exists a world w' accessible from w. Since $\bigcirc P$ is true at w, P is true at w', so $\neg P$ is false at w', so $\bigcirc\neg P$ is false at w, and so $\neg\bigcirc\neg P$ is true at w.

frames. Given that Priest (1987, 195) rejects the consistency principle when originally formulating a paraconsistent deontic logic on the grounds that the principle 'serves to multiply contradictions by turning [conflicting] obligations into [true contradictions]', DLP may be less suitable as a paraconsistent deontic logic than Priest (1987, 282–83) suggests.[67]

Appendix 2.B Failures of reductio

The general form of reductio ad absurdum (with $\vDash$ for logical consequence) is:

(RAA) If $\Gamma, \alpha \vDash \beta$ and $\Delta, \alpha \vDash \neg\beta$ then $\Gamma, \Delta \vDash \neg\alpha$.[68]

(The simpler form of reductio seen in section 2.3 is a special case of this general form: set Δ to Γ.)

To see the classical validity of (RAA)—for definiteness, in the modal logic K—assume $\Gamma, \alpha \vDash_K \beta$ and $\Delta, \alpha \vDash_K \neg\beta$.[69] Now $\vDash_K$ is monotonic, so $\Gamma, \Delta, \alpha \vDash_K \beta$ and $\Gamma, \Delta, \alpha \vDash_K \neg\beta$. But then $\Gamma, \Delta, \alpha \vDash_K \beta \wedge \neg\beta$ by the semantic clause for $\wedge$ in K. And so, by the definition of $\vDash_K$, for every world w of every K model M, if every sentence in $\Gamma \cup \Delta$ is true in M at w and α is true in M at w then $\beta \wedge \neg\beta$ is true in M at w.

67 Priest's (1987, 188–95) original deontic semantics invalidates the consistency principle even at worlds with nonvacuous standards of obligation (worlds where not everything is obligatory). Proof: Take an original semantics model $\langle G, W, R, \omega^+, \omega^-, v\rangle$. In such models $\bigcirc\alpha$ is true at a world $w \in W$ if and only if α belongs to the set $\omega^+(w)$ of $\bigcirc$-sentences true at w, and false at a world w if and only if α belongs to the set $\omega^-(w)$ of $\bigcirc$-sentences false at w. Pick any $w \in W$ and fix $P \in \omega^+(w)$, $\neg P \in \omega^+(w)$, $P \notin \omega^-(w)$, $\neg P \notin \omega^-(w)$, and $Q \in \omega^-(w)$. Then $\bigcirc P$ and $\bigcirc\neg P$ are true but not false at w, so the consistency principle fails at w. And $\bigcirc Q$ is false at w, so not everything is obligatory at w.

68 As is usual, where α and β are sentences and Γ and Θ are sets of sentences, $\Gamma, \Theta \vDash \alpha$ stands for $\Gamma \cup \Theta \vDash \alpha$ and $\Gamma, \alpha \vDash \beta$ for $\Gamma \cup \{\alpha\} \vDash \beta$.

69 For a presentation of K, see essay 1.

But $\beta \wedge \neg\beta$ is not true at any world of any K model, so for every world w of every K model M, if every sentence in $\Gamma \cup \Delta$ is true in M at w then α is not true in M at w. By the semantic clause for $\neg$ in K, α is not true in M at w just if $\neg\alpha$ is true in M at w. Hence, by the definition of $\models_K$, $\Gamma, \Delta \models_K \neg\alpha$.

For a counterexample to (RAA) in the logic DLP of deontic paradox, set α to P, β to Q, Γ to $\{Q\}$ and Δ to $\{\neg Q\}$. Then $\Gamma, P \models_{DLP} Q$ and $\Delta, P \models_{DLP} \neg Q$. Now take a DLP model $M = \langle W, R, \rho\rangle$ where $W = \{0\}$. Let Q be true and false at 0 and P not false at 0. Then every sentence in $\Gamma \cup \Delta$ is true in M at 0 but $\neg P$ is not, so there is a world of a DLP model at which every sentence in $\Gamma \cup \Delta$ is true but $\neg P$ is not. Hence $\Gamma, \Delta \not\models_{DLP} \neg P$.

Consider the suggestion that legal applications of reductio have the form (with $\bigcirc$ for legal obligation):

($\bigcirc$RAA) If $\Gamma, \alpha \models \bigcirc\beta$ and $\Delta, \alpha \models \neg\bigcirc\beta$ then $\Gamma, \Delta \models \neg\alpha$.

($\bigcirc$RAA) fails in DLP. The reasoning is as for (RAA), except $\Gamma = \{\bigcirc Q\}$, $\Delta = \{\neg\bigcirc Q\}$, and the model must be such that 0 can access itself.

3

Perspectival obligation

Here is a story. The law claims the capacity to regulate any kind of action—and to do so legitimately. If the law claims that it can control one's movements, it claims that this capacity is legitimate; the law is not a captor ordering around a captive. The law also claims that the directives it issues—and so the obligations to which those directives give rise—bind its subjects unconditionally. If the law claims that one ought not to steal, then it claims that one is bound not to steal even if stealing would further one's ends. If the law's claims about what one ought to do were imperatives, they would be categorical, not hypothetical.

So described, the law's claims about what one ought to do bear striking similarities to morality's claims about what one ought to do. Both law and morality claim the capacity legitimately to interfere with any kind of action. Both law and morality claim that their requirements bind unconditionally. The similarities are structural.

Of course, morality's claims about what one ought to do are claims about one's moral obligations. But if the structural similarities are taken seriously, then the law's claims about what one ought to do are themselves claims about one's moral obligations. The salient difference is that morality's claims are truth-entailing, while the law's are not. If morality claims that one ought not to steal, it follows that stealing is morally forbidden, while if the law claims that one ought not to kill, it

does not follow that killing is morally forbidden.

This story is one that might be told to explain a surprising view: that legal obligations amount to claims by the law about moral obligations. That view is here called *perspectivalism*. Many legal philosophers endorse it. Perspectivalism is contrasted with *atomism*. The perspectivalist maintains that legal obligation is complex: it is factored into law's claims and moral obligation. The atomist maintains that legal obligation is simple: it is not factored into a combination of modalities. The atomist also maintains that legal obligation is distinct: legal obligation and moral obligation are separate kinds of obligation; the former is not a shadow of the latter.

This essay defends atomism by isolating two consequences of perspectivalism. Each is surprising; neither is welcome; and neither follows from atomism. The first is that the number of legal-deontic modalities doubles, since perspectivalism induces a distinction between strong and weak legal-deontic modalities. That distinction—between, for instance, strong legal permission and weak legal permission—introduces needless complexity. The second is that the law contains gaps: perspectivalism entails under reasonable assumptions that the law is silent on how to answer some legal questions over which it has jurisdiction. But then the law is a defective system for guiding behaviour and settling disputes, for the rule of law demands that the law should be able to answer any legal question over which it has jurisdiction. The law satisfies that demand, given perspectivalism, only if it does the incredible—only if it claims that it doesn't claim p whenever it doesn't claim p, and so only if it claims that it doesn't claim what it doesn't claim.

Sections 3.1 and 3.2 clarify perspectivalist doctrine; sections 3.3 and 3.4 make the disagreement between the perspectivalist and the atomist precise. The remaining sections take up the consequences of perspectivalism. The arguments of those sections, under reasonable assumptions, generalize to nearly any view on which legal

obligation is factored into two modalities (as it is according to many fictionalists).[1] Such generalizations are left for another time. The present focus is perspectivalism, for that is the view which prevails in much contemporary legal philosophy.

3.1 Perspectivalism

3.1.1 The perspectival principle

The perspectivalist thinks that a legal obligation is something that the law claims to be, or something that is from the law's point of view, a moral obligation. More precisely, the perspectivalist endorses:

> *Perspectival principle* One has a legal obligation to φ if and only if the law claims that one has a moral obligation to φ.

Because the perspectivalist thinks that the right-hand side of this biconditional is in some sense more fundamental than the left-hand side, they think that legal obligation is factored into law's claims and moral obligation.

Because perspectivalism is rarely articulated with precision, the perspectival principle is not put in these terms by those who hold the view. As will be seen, however, the perspectival principle is the most plausible formulation of the view. As will also be seen, even if some versions of perspectivalism are committed to a principle stronger than the perspectival principle, that stronger principle entails the perspectival principle.

Some perspectivalists talk not of the law's claims but of the law's point of view. It does not matter for present purposes whether the perspectival principle is for-

1 The target fictionalist views involve 'according to' operators, and so are in Yablo's (2001) terminology metafictionalist. For examples of such views, see Holton (1998), Marmor (2014, chapter 3; 2018), and Wodak (2019).

mulated in terms of claims or a point of view. The problems the principle faces are the same on either formulation; so too is the logical structure of the principle. That structure is most obvious if the principle is rendered using an explicit sentence operator, such as 'the law claims that': that is why the perspectival principle is formulated as it is. But 'from the law's point of view' can be substituted for 'the law claims that' in the perspectival principle if one prefers.

Perspectivalism, as Wodak (2018, 791) observes, 'was first endorsed by Joseph Raz, and has since become the dominant view'—or at least one of the most dominant views—'in contemporary jurisprudence'.[2] The view in some version or other is held not only by Raz (1975, 1984) but also by Coleman (2007, 2011), Gardner (2012a), Green (2012), and Shapiro (2011).[3]

Shapiro's (2011, 185) formulation of perspectivalism comes closest to the perspectival principle. He says that (1) 'may be understood to mean' the same thing as (2):

(1) One is legally obligated to perform some action.

(2) From the legal point of view one is (morally) obligated to perform that action.

If (1) and (2) mean the same thing, then they are equivalent, and so the perspectival principle holds.[4]

2 Wodak (2018) labels perspectivalism the 'moralized view'. The label 'perspectival' is borrowed from Shapiro (2011, 184–85). For critical discussion of perspectivalist commitments, see Hart (1982, chapters 6 and 10), Kramer (1999b), and Toh (2007, 2010).

3 These references are collected in Wodak (2018).

4 Shapiro (2011) also endorses an analogue of the perspectival principle for legal authority. That analogue exhibits a structure which resembles the structure of the perspectival principle. The analogue says: 'X has legal authority over Y with respect to subject matter Z in system S ↔ From the point of view of S, X has moral authority over Y with respect to Z' (2011, 187).

Other theorists formulate perspectivalism less precisely. Raz (1984, 131) says of 'the meaning of statements of legal duties' that the law 'claims that … legal obligations are real (moral) obligations arising out of the law'. He maintains that 'the law purports to determine or reflect (moral) rights and duties of its subjects' (2009, 278). He also says that 'statements of what ought to be done according to law … simply state what one has reason to do from the legal point of view … They are like statements made on the assumption that something is the case, for example, that a certain scientific theory is valid, which … do [not] presuppose that the theory is true' (1975, 175).

Coleman (2011, 78) maintains that 'the law claims to have an impact on what we have moral reason to do', and rejects 'the view that legal obligation constitute[s] a distinctive kind of obligation which [is] not just a species of moral obligations'. Gardner (2012a, 37, 34) says that the law makes 'a moral claim for itself, in the sense of a claim made up of moral obligations, rights, permissions, and so on', and that legal obligations are obligations 'the existence of which law claims'. The best way to make sense of these remarks, as the following sections show, is to take them as expressions of the perspectival principle.

3.1.2 The semantic perspectival principle

Is perspectivalism a semantic thesis? Both Shapiro and Raz present the view as such: Shapiro (2011, 185) says that (1) 'may be understood to mean' the same thing as (2), and Raz (1984, 131) purports to explain 'the meaning of statements of legal duties'.[5] Shapiro and Raz seem to endorse this semantic version of the perspectival principle:

5 Wodak (2018), who attacks perspectivalism, also takes the meaning of 'legal obligation' to be at issue.

Semantic perspectival principle 'One has a legal obligation to φ' means that the law claims that one has a moral obligation to φ.

This principle entails the perspectival principle, since if the semantic perspectival principle holds then (3) and (4) are synonymous (holding fixed the value of φ):

(3) One has a legal obligation to φ.

(4) The law claims that one has a moral obligation to φ.

If (3) and (4) are synonymous, then (3) holds if and only if (4) holds, and so the perspectival principle holds. The salient difference between the semantic perspectival principle and the perspectival principle is that if the former holds then the latter is synonymous with (5), a tautology:[6]

(5) The law claims that one has a moral obligation to φ if and only if the law claims that one has a moral obligation to φ.

Since this essay rejects the perspectival principle, and since the rejection of that principle entails the rejection of the semantic perspectival principle, it does not need to examine the semantic perspectival principle.

In any event, the semantic perspectival principle is independently implausible. As already seen, the semantic perspectival principle entails that sentences of the form (3) are synonymous with sentences of the form (4). Yet even if one endorses the semantic perspectival principle, one cannot plausibly suppose that (6) is synonymous with (7):

(6) I have a legal question.

(7) The law claims that I have a moral question.

6 In the terminology of Boghossian (2017), the perspectival principle is then Frege-analytic. For discussion, see Williamson (2007, 63–71).

And if (6) and (7) are not synonymous, then 'legal' must be ambiguous between (at least) two senses—one on which the word functions as or introduces a modal operator (whether in the syntax or the lexical semantics) and one on which it does not.[7] If 'legal' has these two senses, then they are closely related, and so 'legal' is presumably polysemous. If so, 'legal' is like 'healthy', a word which seems to have different but closely related senses in 'healthy person', 'healthy diet', 'healthy complexion', and so on.[8] Polysemy is common in natural language. But it is rare, if not unheard of, for the senses of a polysemous word to function so differently from one another—as the alleged senses of 'legal' do—at the level of the syntax or the lexical semantics. The semantic perspectival principle commits one to an unattractively ad hoc semantics for 'legal'.

That semantics also maintains that sentences of the form 'one has a legal obligation to φ' are synonymous with sentences containing a nonfactive modal operator ('the law claims that'), while sentences of the form 'one has a moral obligation to φ' are not synonymous with sentences containing such an operator. This asymmetry is difficult to explain. Why should 'legal', but not 'moral', function as or introduce a modal operator when it qualifies 'obligation' and related nouns? Both 'legal' and 'moral' seem to qualify 'obligation' in roughly the same way.[9] A theory which predicts a symmetrical semantic structure not only is simpler but also fits the linguistic data better than a theory which does not make that prediction. The semantic perspectival principle should be rejected.

7 This kind of ambiguity is in effect what Shapiro (2011, 185) postulates when he isolates the alleged 'perspectival' (or modal) and 'adjectival' readings of 'legal'.

8 Aristotle, *Metaphysics* Γ 2.

9 For linguistic evidence of this, see Wodak (2018, 800–2). Wodak points out that 'legal' and 'moral' cannot be stacked together before nouns, unlike some other modifiers. One cannot say, for instance, 'I have a legal moral obligation to dance'. This suggests that 'legal' and 'moral' each pick out 'separate sources of obligations' (2018, 802).

3.1.3 The is-what principle

Gardner (2012a) offers a series of nonequivalent formulations of perspectivalism. If those formulations are taken literally, the perspectival principle gets things wrong. Fortunately, those formulations should not be taken literally.

Gardner (2012a, 34) remarks that 'a legal obligation … is … none other than an obligation … the existence of which law claims'. This remark says that every legal obligation is such that it is an obligation and the law claims that it exists. It may be informally regimented as:

(8) If x is a legal obligation then (x is an obligation and the law claims that x exists).

(The universal quantifier binding x is left tacit.) (8) is an implausible formulation of perspectivalism because it is inconsistent with Gardner's understanding of legal obligation. Gardner (2012a, 35) thinks that legal obligations 'are merely claimed or supposed obligations'; such obligations are contrasted with 'obligations … that are not merely claimed or supposed', which 'are the very ones that the claimed or supposed ones are claimed or supposed to be'. (8) falsely, by Gardner's lights, characterizes legal obligations as obligations that are not merely claimed or supposed. 'Obligation' in the consequent of (8) presumably picks out, on its intended interpretation, obligations that are not merely claimed or supposed. Thus (8) entails that legal obligations are obligations that are not merely claimed or supposed, contrary to Gardner's understanding of legal obligation. The same point may be made another way. For Gardner, a legal obligation is a supposed obligation, but a supposed obligation is no more an obligation than fool's gold is gold.

Gardner (2012a, 38) also remarks that 'a legal … obligation … is no more and no less than what the law claims to be a[n] … obligation'. What could this mean? The qualifier 'no more and no less than' is ignored for simplicity. The question is

thus how to understand:

Is-what A legal obligation is what the law claims to be a moral obligation.

It may be tempting to take the is-what principle to concern the meaning of 'legal obligation'. So understood, the principle is another way of saying:

Semantic is-what 'Legal obligation' means what the law claims to be a moral obligation.

It is hard to make sense of the semantic is-what principle, probably because it is ill formed. Even if it is well formed, it is at least as implausible as the semantic perspectival principle. That principle has already been rejected; the semantic is-what principle should be rejected too.

It will be more profitable to restrict our attention to readings of the is-what principle that make nonsemantic claims. Two such readings are salient:

Wide is-what The law claims that if x is a legal obligation then x is a moral obligation.

Narrow is-what If x is a legal obligation then the law claims that x is a moral obligation.

The wide reading is obtained by taking the is-what principle to be a so-called reversed pseudocleft sentence.[10] (The unclefted analogue of that sentence is some-

10 On reversed pseudocleft constructions, see Huddleston and Pullum (2002, 1414–27). The wide is-what principle, as expressed, leaves open whether the tacit universal quantifier takes scope over the 'claims' operator or the operator takes scope over the quantifier. Those two readings are not equivalent (unless the law's claims obey the Barcan formula and its converse), but any differences between them are irrelevant here. (If the law's claims obey the Barcan formula and its converse, then the law claims that everything is so-and-so if and only if everything is such that the law claims that it is so-and-so.)

thing like 'The law claims a legal obligation to be a moral obligation'.) The narrow reading is obtained by taking 'what the law claims to be a moral obligation' in the is-what principle to be predicated of 'a legal obligation'.

The two readings are not equivalent. For instance, the narrow reading is vacuously true if there are no legal obligations; the wide reading is not. The two readings, while not equivalent, are both defective. For perspectivalism is presumably a view about what a legal obligation is; it is presumably intended as an explanation (or account or analysis) of legal obligation. Yet both the wide and narrow readings are defective explanations of legal obligation. Neither reading captures perspectivalism.

The wide reading is defective because the 'claims' operator takes scope over 'legal obligation'. If the is-what principle is intended as an explanation of legal obligation, then 'legal obligation' denotes the explanandum and 'what the law claims to be a moral obligation' the explanans. Yet the wide reading of the is-what principle embeds the explanandum within the scope of the explanans. Whatever it means for one thing to be an explanation of another, an explanation that embeds the explanandum within the scope of the explanans is a defective explanation of that explanandum.

The narrow reading does not suffer from this defect. Yet its structure still makes it an unsatisfying account of what a legal obligation is. An account of legal obligation should presumably do more than identify a property that legal obligations have. Yet that is all the narrow reading does: it ascribes to each legal obligation the property of being claimed by the law to be a moral obligation. Since that is all the narrow reading does, that reading may be true even if there are things claimed by the law to be moral obligations that are not legal obligations. Whatever it means for one thing to be an account of another, a claim of the form 'All Fs are Gs'—whose truth is consistent with some Gs not being Fs—is an inadequate account of what an F is. 'All humans have a heart' is true, yet it is not an account of what a

human is.

The structure alone of the narrow reading makes it an unsatisfying account of what a legal obligation is. The structural defect is that the truth of the consequent of the narrow reading does not imply the truth of its antecedent. What if the implication in the narrow reading instead went in both directions? Substituting a biconditional for the conditional in that reading gives:

> *Biconditional is-what* x is a legal obligation if and only if the law claims that x is a moral obligation.

The biconditional is-what principle is a structurally more promising account of what a legal obligation is. Indeed, the biconditional is-what principle looks very similar to the perspectival principle. Unlike that principle, however, the biconditional is-what principle says that something is a legal obligation just if that *same thing* is such that it is claimed by the law to be a moral obligation. That claim is unnecessarily strong. The weaker claim in the perspectival principle—which in any event is presumably entailed by the biconditional is-what principle—is a more plausible formulation of perspectivalism.

3.2 Why perspectivalism?

What might drive one to endorse perspectivalism? This essay opened with a sketch of some alleged structural analogies between law and morality. That sketch did not explain why, even if the law's claims about what one ought to do are claims about one's moral obligations, legal obligations are for the perspectivalist *tantamount to* those claims. Such explanations are not easily found; this section advances one. No attempt is made to present the explanation in terms endorsed by perspectivalists; like the sketch with which this essay opened, the explanation in this section is

intended to make sense of the most important perspectivalist assumptions, not slavishly to track them all.

The proposal is that perspectivalism is one way to resolve the tension between three commitments:

Legal–moral independence Something can be legally obligatory without being morally obligatory.

'Ought' monosemy Expressions like 'ought', 'obliged', and 'obligation' have the same sense in legal and moral contexts.

Obligation monism There is only one real kind of obligation: moral obligation.

Legal–moral independence is standardly endorsed by perspectivalists.[11] So too is 'ought' monosemy. For Shapiro (2011, 114), 'ought' monosemy is explained by the observation that 'claims of legal … obligation are not merely used to guide conduct; they are used to make demands that materially constrain freedom'. From this Shapiro concludes that 'only moral terms and concepts enable law-abiding citizens and officials to make the claims and form the thoughts that are appropriate to the [legal] context'. Raz (1977a, 159) endorses 'ought' monosemy for a different reason, maintaining that the principle helps explain the normative force of certain kinds of statements of legal obligation.[12]

11 For example, Shapiro (2011, 185) says that 'to say that one is legally obligated to perform some action need not commit the asserter to affirming that one … has a moral obligation to perform that action'.

12 'Ought' monosemy is said by Raz (1977a, 159) to be necessary for explaining the normative force of 'detached statements' of legal obligation. Roughly, a statement like 'You are obliged to pay your taxes' is detached if it 'represent[s] things as they seem to those who hold the point of view' of the law without conveying an endorsement of that point of view (and so of that obligation) by the speaker (Raz 1977b, 225). Of course, one can hold one of the three commitments while rejecting another. Hart (1982, chapter 6), for instance, endorses legal–moral independence but rejects 'ought'

Obligation monism—monism about the kinds of real obligation (in some unspecified sense of 'real')—is also standardly assumed by perspectivalists. For example, Shapiro (2011, 185) equates being 'really obligated to perform [an] action' with having 'a moral obligation to perform that action'. Similarly, Raz (1984, 131) says that legal systems claim that 'legal obligations are real (moral) obligations arising out of the law'. Gardner (2012a, 37) also equates real obligations with moral obligations. (Gardner's name for real obligations is 'obligations that are not merely claimed or supposed'.[13])

Some obligation monists are relaxed about whether real obligations are described as 'moral'. Raz, for instance, sometimes denies the utility of the contrast between moral and nonmoral reasons. Since Raz takes obligations to be special combinations of reasons, those denials suggest that he may withhold the description 'moral' from real obligations.[14] The argument of this section does not depend on whether obligation monists describe real obligations as 'moral'. If the obligation monist withholds the description 'moral' from real obligations, then

monosemy.

13 Gardner (2012a, 36) sometimes distinguishes narrow and broad senses of 'moral': in the narrow sense 'moral' applies to only a proper subset of obligations that are not merely claimed or supposed; in the broad sense it applies to all such obligations. This complication is ignored. The argument of this section goes through even if that distinction is made, for 'moral' could be replaced throughout by 'not merely claimed or supposed'.

14 For an example of such a denial, see Raz (1999, chapter 12). For discussion, see Kramer (1999b, 379 n. 4) and Toh (2010, 1294–95). Kramer's (1999b) reconstruction of the argument for perspectivalism depends not on the assumption that there is only one real kind of obligation but on the assumption that there are only two kinds of reason, moral and prudential; since the law may require one to act against one's own interests, its reasons cannot be prudential and so must be moral. Kramer endorses that assumption, but it is hardly tenable. That there are (or that you know that there are) six balls in the bag is a reason for you to answer 'Six' to the question 'How many balls are in the bag?'; that reason is neither moral nor prudential. For related criticism of the assumption, see Toh (2007, 2010).

'real' can be substituted for 'moral' in the legal–moral independence principle and in the argument below. Indeed, the argument of the rest of this essay does not even depend on the kind of obligation into which, together with law's claims, perspectivalists decompose legal obligation. The obligations claimed by the law are here taken to be moral since that is what perspectivalists usually take them to be.

How do legal–moral independence, 'ought' monosemy, and obligation monism sit with atomism? Atomists can consistently reject legal–moral independence. Most do not, for legal–moral independence holds on most understandings of legal obligation.[15] Atomists can also consistently reject 'ought' monosemy. Again, most do not, for 'ought' monosemy, on a natural reading of the principle, is consistent with the standard semantics for 'ought' (Kratzer 1981).[16] Atomists must, however, reject obligation monism, for atomists hold that legal obligation and moral obligation are separate kinds of obligation, and so presumably hold that neither is more real than the other.

How do the three commitments combine to yield perspectivalism? By legal–moral independence, one may truly assert (9) for some φ:

(9) One has a legal obligation to φ but no moral obligation to φ.

By obligation monism, one has a moral obligation to φ just in case one has a real obligation to φ. Hence, given obligation monism, (9) entails:

(10) One has a legal obligation to φ but no real obligation to φ.

15 Of course, it does not hold on all such understandings. Legal–moral independence is true only if legal antipositivism (or at least certain versions of it) is false. For recent examples of legal antipositivism, see Dworkin (2011), Greenberg (2014), and Hershovitz (2015). The same point is made by Wodak (2018, 13).

16 Section 3.5.2 explains how atomists can endorse 'ought' monosemy.

If legal obligations are real obligations, then (10) entails (11), a contradiction:

(11) One has a real obligation to φ but no real obligation φ.

Legal–moral independence and obligation monism therefore jointly entail that legal obligations are not real obligations.

If one denies that legal obligations are real obligations, how should one understand 'ought' monosemy? 'Ought' on the standard semantics is an unambiguous but context-sensitive expression (Kratzer 1981). On that semantics, the Kaplanian (1989) character of 'ought'—roughly, its linguistic meaning—is invariant, while its Kaplanian content varies according to the context of use. If 'ought' monosemy is understood as saying that 'ought' has the same *content* in legal and moral contexts, then it is incompatible with legal–moral independence. For then 'ought' monosemy entails that the sentences 'This is legally obligatory' and 'This is morally obligatory' are equivalent (relative to a given context), so an action is legally obligatory just if it is morally obligatory, contrary to legal–moral independence.

If 'ought' monosemy is instead understood as saying that 'ought' has the same *character* in legal and moral contexts—which is the more plausible reading of the principle—then it is consistent with legal–moral independence. But this reading of the principle is also unavailable to the perspectivalist. For 'ought' on the standard semantics is a sentence operator that expresses distinct deontic modalities by combining with distinct ordering sources. An ordering source is a set of propositions that represents the requirements or standards of a given normative domain (such as morality or the law). If the ordering source for 'ought' is the same across legal and moral contexts, then 'ought' has the same content in each of those contexts; but this, by the argument of the last paragraph, violates legal–moral independence. On the other hand, if the ordering source for 'ought' differs across legal and moral contexts, then presumably a legal obligation is an obligation whose source is the law and a moral obligation is an obligation whose source is morality. Hence, pre-

sumably, legal obligations and moral obligations are obligations of different kinds, so legal obligations are as much obligations as are moral obligations, so legal obligations are real obligations. But this violates the conjunction of legal–moral independence and obligation monism.

How can one make sense, then, of the conjunction of legal–moral independence, 'ought' monosemy, and obligation monism? One proposal is that to have a legal obligation is to have *in some qualified way* a moral obligation. The natural way to represent such a qualification is with a nonfactive sentence operator, for if it is in some qualified way the case that p then it need not follow that p. Accordingly, one might propose that 'one has a legal obligation to φ', and so (L), is equivalent not to (M) but to (#M), where # is a nonfactive sentence operator:

(L) One ought legally to φ.

(M) One ought morally to φ.

(#M) #(one ought morally to φ).

How does this proposal satisfy the three commitments? Since # is not factive, the equivalence of (L) and (#M) does not entail that legal obligation entails moral obligation, so legal–moral independence is satisfied. 'Ought' monosemy is satisfied too, provided that the senses of 'ought' are individuated by a nonstandard criterion. According to this nonstandard criterion, the senses of 'ought' are individuated by their characters together with something like generic descriptions of their ordering sources. By this criterion, the sense of 'ought' in (#M) (by hypothesis, an 'ought' in a legal context) is identical to the sense of 'ought' in (M) (an 'ought' in a moral context). For the characters of the 'ought' in (M) and of the 'ought' in (#M) are identical (assuming the standard semantics for 'ought'). And the ordering source of each might be described as something like 'morality'. Hence, by the proposed criterion of individuation, 'ought' has the same sense in (M) and

(#M) and so in legal and moral contexts.[17] Obligation monism is presumably satisfied too, provided that (#M) is understood to be in some sense more fundamental than (L). For then legal obligation is explained in terms of moral (and so real) obligation—albeit moral obligation within the scope of the operator #. And if that operator is read as 'the law claims that', what has been proposed is the perspectival principle.

3.3 Claims and obligations

The perspectival principle combines three modalities: the law's claims, moral obligation, and legal obligation.[18] Which principles do each of these modalities obey?

For the law's claims, three principles suggest themselves: consistency, closure under conjunction, and closure under logical consequence.[19] These principles suggest themselves because perspectivalism holds that the law's claims form a theory. For instance, Shapiro (2011, 186) says that 'the legal point of view . . . is the perspective of a certain normative theory'. Raz (1975, 175) says that 'statements of what

17 Admittedly, by the proposed criterion of individuation, the sense of 'ought' in (L) differs from the sense of 'ought' in (#M), for only the latter has an ordering source that could be described as 'morality'. Since (L) and (#M) are both legal uses of 'ought', it seems to follow, given the proposed criterion of individuation, that 'ought' does not have the same sense across legal contexts. But perspectivalism holds that (#M) is in some sense more fundamental than (L) (section 3.1). Consequently, 'ought' monosemy might be understood as applying not to the surface formulation in (L) but only to the fundamental formulations in (M) and (#M). On that understanding of 'ought' monosemy, the principle is satisfied on the present proposal.

18 For convenience, this essay describes the law's claiming as a modality rather than a propositional attitude. Nothing turns on this choice of terminology, since propositional attitudes are standardly modelled in modal terms.

19 'Closure under logical consequence' here refers to single premise closure under consequence; multiple premise closure under consequence entails closure under conjunction.

ought to be done according to law' are 'statements made on the assumption that something is the case, for example, that a certain scientific theory is valid'; these statements 'state what is the case from the point of view of the theory or on the assumption of the theory'. Coleman (2011, 22) also talks of 'the law's point of view' as forming or expressing a theory.

What do these three principles have to do with theories? First, any reasonable theory is consistent. Special relativity does not claim that both nothing and something can travel faster than the speed of light. Second, any reasonable theory is closed under conjunction. Kantian moral theory holds that lying is wrong; it holds that murder is wrong; so it holds that lying is wrong and murder is wrong. Third, any reasonable theory is closed under logical consequence. Special relativity holds that no particle can travel faster than the speed of light; it holds that this is a particle; so it holds that this cannot travel faster than the speed of light.

Coleman's (2011, 22) remarks suggest that he takes perspectivalism to be committed to each of these principles. He says:

> Talk of 'the law's point of view' is a way of expressing an idea about law: namely, that there is an underlying moral theory that is implicit in the existence of law, according to which the law's directives not only turn out to be systematically connected to one another, and thus satisfy the demands of rationality and coherence, but also turn out to be morally legitimate.

It is natural to suppose that the law's claims—which presumably are tantamount to what Coleman calls 'the law's directives'—are closed under conjunction and logical consequence if they satisfy the demands of rationality. For if a theory's claims satisfy those demands, then the theory claims (or is at least committed to claiming) q whenever it claims p and p entails q. And if a theory's claims are coherent, then they are at least consistent, since coherence implies consistency.

Consequently, a natural assumption is that the law's claims obey the principles

of the modal system KD—and thus that their logic is *normal*. Also natural is the assumption that the logics of moral obligation and legal obligation are normal, and so validate at least the principles of the modal system K. (Their logics may be stronger than K, but need not be for present purposes.) As seen in essay 1, legal obligation plausibly obeys exactly the principles of that system. Moral obligation is here assumed, for simplicity, to obey exactly those principles too.[20]

The logic PO of perspectival obligation is a multimodal logic containing three operators. The duals of those operators are metalinguistic abbreviations. The operator L expresses the law's claims and is read as 'the law claims that'. Its dual, $\mathsf{\Gamma}$, abbreviates $\neg\mathsf{L}\neg$ and is read as 'it is consistent with the law's claims that'. The operator $\bigcirc$ expresses legal obligation and is read as 'it is legally obligatory that'. Its dual, P, expresses legal permission and is read as 'it is legally permitted that'. The operator $\bullet$ expresses moral obligation and is read as 'it is morally obligatory that'. Its dual, $\mathbf{P}$, expresses moral permission and is read as 'it is morally permitted that'.[21] (For details of PO, see appendix 3.A.1.)

Each of L, $\bigcirc$, and $\bullet$ validates the principles of the modal system K. The operator L also validates the principles of the modal system KD since it obeys:

L-*consistency* If the law claims that α then it does not claim that $\neg\alpha$.

The consistency principle stops the law from claiming, in particular, that something is and is not morally obligatory. It rules out *inconsistent* legal obligations—so

20 Of course, moral obligation might obey other principles, such as $\bullet(\bullet\alpha \rightarrow \alpha)$, which says that it ought morally to be that whatever ought morally to be so is so, or $\bullet\alpha \rightarrow \neg\bullet\neg\alpha$, which rules out inconsistent moral obligations. The relevant assumption for present purposes is only that the logic of moral obligation is at least as strong as K.

21 For convenience, 'it is legally obligatory that α', 'α is legally obligatory', and 'one has a legal obligation that α' are all treated as equivalent (likewise for 'morally obligatory' and 'moral obligation'). For discussion of these informal glosses of $\bigcirc$ (and by extension of $\bullet$), see section 1.1 of essay 1.

one cannot both have a legal obligation to dance and not have a legal obligation to dance. The consistency principle does not stop the law from claiming that something and its negation are both morally obligatory. It does not rule out *conflicting* legal obligations—so one can, for all the principle says, have both a legal obligation to dance and a legal obligation not to dance.[22] As essay 2 shows, the law does not countenance inconsistent legal obligations; but as essay 1 shows, the law does countenance conflicting ones.

PO has a standard (multimodal) possible worlds semantics. Sentences are evaluated for truth at a *world* of a *model*. Informally, when a sentence is preceded by the L operator, the sentence is evaluated at worlds consistent with the law's claims. For instance, Lα is true at this world if and only if α is true at every world consistent with what the law claims at this world. Analogous remarks hold for ○ and ●, with 'what is legally obligatory' or 'what is morally obligatory' substituted for 'what the law claims'. Thus, for instance, L●α is true at this world if and only if α is true at every world consistent with what is morally obligatory at every world consistent with what the law claims at this world.

3.4 Statuses

The perspectival principle is formalized in the logic of perspectival obligation as:

(PP) $\bigcirc\alpha \leftrightarrow \mathsf{L}\bullet\alpha$

This says that α is legally obligatory if and only if the law claims that α is morally obligatory. To endorse the perspectival principle is to endorse the validity of (PP),

22 Formally, one's legal obligations are inconsistent just if α is both legally obligatory and not legally obligatory; one's legal obligations conflict just if α and β are each legally obligatory but not jointly practically possible (essay 1).

and so to hold that (PP) is an axiom of the logic of perspectival obligation. Adding (PP) as an axiom to that logic yields the extended logic PO^+ of perspectival obligation (appendix 3.A.2).

Since perspectivalism holds that legal obligations can be decomposed into claims of the law and moral obligations, it is committed to a logic which can express at least three modalities: the law's claims, legal obligation, and moral obligation. A natural assumption is that PO^+ is the logic of perspectivalism. Since atomism holds that legal obligations cannot be decomposed into simpler modalities, it is committed to a logic which can express at least one modality: legal obligation. A natural assumption is that $K_{\bigcirc}$ is the logic of atomism (appendix 3.A.1 and essay 1). On that logic, legal obligation validates exactly the principles of the modal system K, so its logic is normal.

Atomism holds that there are four legal-deontic modalities: legal obligation ($\bigcirc\alpha$), legal omissibility ($\neg\bigcirc\alpha$), legal permission ($P\alpha$), and legal prohibition ($\neg P\alpha$). Call these the *atomic statuses*. Perspectivalism holds that there are eight legal-deontic modalities. Call these the *perspectival statuses*. These statuses can be partitioned into four pairs of strong and weak statuses. This partition generalizes the familiar distinction between strong and weak permission.[23] The *strong perspectival statuses* are strong legal obligation ($L\CIRCLE\alpha$), strong legal omissibility ($L\neg\CIRCLE\alpha$), strong legal permission ($LP\alpha$), and strong legal prohibition ($L\neg P\alpha$). The *weak perspectival statuses* are weak legal obligation ($\Gamma\CIRCLE\alpha$), weak legal omissibility ($\Gamma\neg\CIRCLE\alpha$), weak legal permission ($\Gamma P\alpha$), and weak legal prohibition ($\Gamma\neg P\alpha$). Each strong status entails the corresponding weak status but not vice versa.[24]

23 Alchourrón and Bulygin (1971, 121–22) also generalize the distinction between strong and weak permission. That distinction is notably made by von Wright (1963, 85–87; 1981, 25).

24 Proof: The left-to-right direction follows by L-consistency. For the other direction, let $M = \langle W, R_L, R_{\bigcirc}, R_{\CIRCLE}, V\rangle$ be a PO^+ model such that $W = \{0, 1\}$, $R_L = R_{\bigcirc} = \{\langle 0,0\rangle, \langle 0,1\rangle, \langle 1,0\rangle, \langle 1,1\rangle\}$, and $R_{\CIRCLE} = \{\langle 0,0\rangle, \langle 1,1\rangle\}$. Let the atomic sentence P be false at 0 and true at 1. Then $\CIRCLE P$ is true at 1 since

strongly legally obligatory	L ●α	↔	Oα	legally obligatory
weakly legally omissible	Γ¬●α	↔	¬Oα	legally omissible
weakly legally permitted	Γ ⁋α	↔	Pα	legally permitted
strongly legally forbidden	L¬⁋α	↔	¬Pα	legally forbidden

Table 3.1: Perspectival statuses with atomic equivalents

weakly legally obligatory	Γ ●α			
strongly legally omissible	L¬●α	→	¬Oα	legally omissible
strongly legally permitted	L ⁋α	→	Pα	legally permitted
weakly legally forbidden	Γ¬⁋α			

Table 3.2: Perspectival statuses without atomic equivalents

(PP) lets us translate between atomic and perspectival statuses (table 3.1). Legal obligation is equivalent to strong legal obligation, legal omissibility to weak legal omissibility, legal permission to weak legal permission, and legal prohibition to strong legal prohibition. The translation is only partial, since four perspectival statuses have no atomic equivalents: strong legal omissibility, strong legal permission, weak legal obligation, and weak legal prohibition (table 3.2).

3.5 Strong and weak modalities

3.5.1 Distinctions

Perspectivalism distinguishes between strong and weak legal-deontic modalities; atomism does not. For instance, if a legal rule permits fox hunting, then according

1 can ●-access only itself, so Γ●*P* is true at 0 since 0 can L-access 1. But ●*P* is false at 0 since 0 can ●-access itself, so L●*P* is false at 0 since 0 can L-access itself. Hence Γ●α → L●α ('weak legal permission entails strong legal permission') fails at 0.

to perspectivalism fox hunting is strongly legally permitted; according to atomism fox hunting is legally permitted. If no legal rule says anything about fox hunting, then according to perspectivalism fox hunting is weakly legally permitted; according to atomism fox hunting is legally permitted. Should a theory of legal obligation and permission distinguish between strong and weak legal-deontic modalities?

The question may be put another way. The perspectivalist's logic (PO^+) is more expressively powerful than the atomist's ($K_\bigcirc$), since the former but not the latter can distinguish between strong and weak legal-deontic modalities. Does the expressive power of the perspectivalist's logic count in favour of perspectivalism?

This section advances two answers to that question. Attention is fixed for definiteness on the distinction between strong and weak legal permission. First, the expressive power of PO^+ counts in favour of perspectivalism if 'legally permitted' is ambiguous in everyday contexts between strong and weak readings (section 3.5.2).[25] That is because both readings can be captured in PO^+ yet only one can be captured in $K_\bigcirc$. Second, whether or not 'legally permitted' is ambiguous, the expressive power of PO^+ counts in favour of perspectivalism if the distinction between strong and weak legal permission is one that any logic of legal obligation should make (section 3.5.3).

3.5.2 Ambiguity

What would it mean for 'legally permitted' to be ambiguous in everyday contexts between strong and weak readings? (Clearly, 'legally permitted' is not ambiguous in contexts, such as elsewhere in this essay, where the expression's interpretation is fixed. In this section, 'legally permitted' is to be understood, where appropriate, in its everyday sense or senses.) Take the following sentence:

25 Alchourrón and Bulygin (1971) and Navarro and Rodríguez (2014) advance claims about the ambiguity of 'legally permitted' along these lines.

(12) One is legally permitted to hunt foxes.

If 'legally permitted' is ambiguous between strong and weak readings, it is presumably because 'permitted' is ambiguous between strong and weak readings. If so, 'permitted' has at least two senses: a strong sense ('permitted^{+}') and a weak sense ('permitted^{-}'). On that assumption, (12) on the strong reading of 'legally permitted' holds if and only if (12^{+}) holds, and (12) on the weak reading of 'legally permitted' holds if and only if (12^{-}) holds:

(12^{+}) One is legally permitted^{+} to hunt foxes.

(12^{-}) One is legally permitted^{-} to hunt foxes.

Presumably, 'legally permitted^{+}' expresses strong legal permission and 'legally permitted^{-}' expresses weak legal permission. The perspectivalist can therefore capture in their logic both the strong reading of (12) ($\mathsf{L}\blacktriangleright H$) and the weak reading of (12) ($\Gamma\blacktriangleright H$). The atomist, on the other hand, can capture in their logic only the weak reading ($\mathsf{P}H$).

(What if the atomist's logic is given a deviant semantics on which P expresses not weak legal permission but strong legal permission? Then the logic is effectively rendered useless, since it can express strong legal permission only if it cannot express strong legal obligation or strong legal prohibition.[26] A logic of legal obligation that cannot express those modalities is useless for most purposes, for if one cannot know whether dancing is strongly legally obligatory, then one cannot know whether the law requires one to dance. Even if not-dancing is not strongly

26 Proof: Consider a deviant semantics for $\mathrm{K}_{\bigcirc}$ on which P expresses strong legal permission. Then $\mathsf{P}\alpha$ is true at a world w of a deviant model if and only if α is strongly legally permitted at w. Hence, holding fixed the entailments between the strong and weak perspectival statuses, $\neg\mathsf{P}\alpha$ is true at w if and only if α is weakly legally forbidden at w, $\bigcirc\alpha$ is true at w if and only if α is weakly legally obligatory at w, and $\neg\bigcirc\alpha$ is true at w if and only if α is strongly legally omissible at w.

legally permitted and so dancing is weakly legally obligatory, it does not follow that dancing is strongly legally obligatory and so required by the law. An analogous argument can be given for strong legal prohibition.[27])

If 'legally permitted' is ambiguous between strong and weak readings, then English distinguishes between strong and weak legal permission, and so it is at least arguable that a logic of legal obligation should distinguish between them too. If so, perspectivalism should be favoured over atomism, for the logic of the former but not of the latter makes that distinction. The supposition that 'legally permitted' is ambiguous, however, faces at least two difficulties.

The first difficulty is that senses—that is, Kaplanian (1989) characters—are multiplied. As already seen, if 'legally permitted' is ambiguous, then 'permitted' presumably has at least two senses. To multiply senses in this way risks violating the Gricean (1989, 47–48) injunction against multiplying senses beyond necessity.[28] It is also inconsistent with the standard semantics for 'permitted', according to which that term has only one Kaplanian character and so only one sense (Kratzer 1981). Atomism, on the other hand, denies that 'legally permitted' is ambiguous, and so is consistent with the standard semantics for 'permitted'.[29]

27 These points are elaborated in section 3.5.3.

28 Hacquard (2011, 1489–90) explains why linguistic theory resists positing systematic ambiguity in modals. Mullins (2018, 359–60) and Wodak (2018) make related points about modals expressing legal obligation and permission. For the view that natural language distinguishes between strong and weak permission, see Moltmann (2018).

29 The assumption that 'permitted' has only one character is compatible with the atomist's use of distinct modal operators (P, ⚑) to express distinct kinds of permission (legal, moral). According to Kratzer's semantics, 'permitted' (and related expressions) is an unambiguous but context-sensitive sentence operator (as is its dual, 'obliged'). That operator expresses distinct modalities (legal permission, moral permission) by combining with distinct ordering sources (the law's requirements, morality's requirements, each formally represented as a set of propositions). Let $\Diamond^g$ represent the Kratzerian operator for permission relative to an ordering source g (modal bases are ignored). That

The second difficulty is that the supposition that 'legally permitted' is ambiguous because 'permitted' is ambiguous generates a vicious circularity given certain auxiliary assumptions. For suppose that 'legally permitted' is ambiguous because 'permitted' is ambiguous between a strong reading and a weak reading. Then (13) is ambiguous between the strong reading in (13^{+}) and the weak reading in (13^{-}):

(13) One is morally permitted to hunt foxes.

(13^{+}) One is morally permitted^{+} to hunt foxes.

(13^{-}) One is morally permitted^{-} to hunt foxes.

What are the truth conditions of 'α is morally permitted^{+}' and 'α is morally permitted^{-}'? We restrict our attention, without loss of generality, to sentences of the former kind. Because the sentence 'α is strongly legally permitted' is true at a world w if and only if 'the law claims that α is morally permitted' is true at w, a natural assumption is that by analogy:

(14) 'α is morally permitted^{+}' is true at w if and only if 'morality claims that α is morally permitted' is true at w.

(14), however, is defective, since on present assumptions 'permitted' is ambiguous, and so 'permitted' in the right-hand side of (14) is ambiguous as well. For definiteness, let that occurrence have its strong reading. Then (14) amounts to (15):

(15) 'α is morally permitted^{+}' is true at w if and only if 'morality claims

operator validates the modal system KD (Horty 2014, 429; Goble 2013a, theorems 1–3). Let $\Diamond^{*g}$ represent the operator that validates each principle validated by $\Diamond^{g}$ except consistency. (Essay 1 argues that legal obligation invalidates consistency.) Then $\mathsf{P} = \Diamond^{*l}$ and $\mathsf{P}\!\!\!\!\mathsf{-}\ = \Diamond^{*m}$, where l denotes the law's requirements and m denotes morality's requirements. Roughly speaking, $\Diamond^{*}$ corresponds to the character of 'permitted' while $\Diamond^{*g}$ corresponds to a contextually determined content of 'permitted'.

that α is morally permitted^{+}' is true at *w*.

What are the truth conditions of 'morality claims that α'? A natural assumption is that they are like those of 'the law claims that α'. That assumption gives:

(16) 'Morality claims that α' is true at *w* if and only if α is true at each world compatible with what morality claims at *w*.

Putting (15) and (16) together gives:

(17) 'α is morally permitted^{+}' is true at *w* if and only if 'α is morally permitted^{+}' is true at each world compatible with what morality claims at *w*.

(17) fails as a specification of the truth conditions of 'α is morally permitted^{+}', for it is circular. The supposed analogy between 'α is morally permitted^{+}' and 'α is strongly legally permitted' is fruitless. The supposition that 'legally permitted' is ambiguous because 'permitted' is ambiguous is untenable.

3.5.3 Utility

Even if 'legally permitted' is not ambiguous in everyday contexts, the expressive power of the perspectivalist's logic counts in favour of perspectivalism if the distinction between strong and weak legal permission is one that any logic of legal obligation should make.

Whether a logic of legal obligation should distinguish between strong and weak legal permission depends on what such a logic is for. Most obviously, a logic of legal obligation lets one work out the consequences of one's legal obligations and permissions. The law can reliably guide one's actions only if one can work out those consequences. If one knows that one ought legally not to murder anyone, but one does not know that one ought legally not to murder Caesar, then the law

can hardly guide one's actions as one wonders whether to produce the dagger.

If one cares about obeying the law, a principle like the following plays a role in one's practical reasoning:

(P) One should (φ only if φing does not violate the law).

To know whether one may φ consistently with (P), one needs to know only whether φing is legally permitted and so weakly legally permitted. For φing violates the law just if φing is legally forbidden, and so φing does not violate the law just if φing is legally permitted. One does not need to know whether φing is strongly legally permitted; indeed, if that is all one knows, then one may not be able to work out whether one may φ. For if φing is not strongly legally permitted, then it follows neither that φing is weakly legally permitted nor that it is not weakly legally permitted. If one knows only that φing is not strongly legally permitted, then one does not know whether one may φ consistently with (P). (P) demands only that legal-deontic space be divided in two: in one part lies what is legally permitted, in the other part lies what is not.

The strong legal permissibility of an action is not only irrelevant for practical reasoning about the consistency of one's actions with the law. It is also irrelevant for theoretical reasoning about the consistency of others' actions with the law. For a principle analogous to (P) plays a role in one's theoretical reasoning if one has to work out (as a lawyer often must) whether someone else *would* violate the law by φing. And a principle analogous to (P) plays a role in one's theoretical reasoning if one has to work out (as a judge often must) whether someone else *did* violate the law by φing. These analogous principles demand only a classification of actions into legally permitted and not legally permitted.

An analogous argument can be given for legal obligation. If one cares about obeying the law, a principle like the following plays a role in one's practical reasoning:

(O) One should (φ if φing is required by the law).

To know whether according to (O) one should φ, one needs to know only whether φing is legally obligatory and so strongly legally obligatory. For φing is required by the law just if φing is legally obligatory. One does not need to know whether φing is weakly legally obligatory; indeed, if that is all one knows, then one may not be able to work out whether one should φ. For if φing is weakly legally obligatory, then it follows neither that φing is strongly legally obligatory nor that it is not strongly legally obligatory. If one knows only that φing is weakly legally obligatory, then one does not know whether according to (O) one should φ. (O) demands only that legal-deontic space be divided in two: in one part lies what is legally obligatory, in the other part lies what is not.

(P) and (O) jointly demand that legal-deontic space be divided in four, once along the line separating what is legally permitted from what is not, and once along the line separating what is legally obligatory from what is not. $K_{\bigcirc}$ makes exactly these divisions. PO^{+} makes twice as many; those additional divisions are superfluous.

Of course, the distinctions made by the perspectival statuses are often important for explaining *why* an action has the atomic status it has. For instance, to explain why singing is legally permitted, one may need to distinguish between singing's being legally permitted because the law says it is permitted and singing's being legally permitted because the law does not say it is not forbidden. But that distinction is between the grounds of the truth of 'singing is legally permitted'. A logic of legal obligation needs to encode the distinction between the truth and the falsity of statements of legal permission (and hence the distinction between what is legally permitted and what is not); it need not encode distinctions between the grounds of the truth of such statements.[30]

30 For a logic which does encode a semantically marked distinction between strong and weak per-

3.5.4 Deontic collapse

Not all perspectivalists endorse a semantically marked distinction between strong and weak legal permission. (Indeed, none seems to endorse it expressly, since none seems to have observed that perspectivalism is committed to this distinction.) Raz, for instance, disavows any commitment to the distinction. He claims that 'strong and weak permissions are permissions in precisely the same sense differing only in their source' (1975, 88). (Raz's notion of weak permission is not precise, but seems at least to include what this essay calls 'weak permission'.[31])

Raz's remarks presumably indicate that he would deny that a theory of legal permission should make a semantically marked distinction between strong and weak permission. It suffices on this view to be able to offer differing explanations of *why* a legal permission does or does not hold, albeit in a language other than the one in which one's theory of permission is formulated.

How can Raz consistently affirm perspectivalism and deny the existence of a semantically marked distinction between strong and weak legal permission? Raz (1979a, 76) claims that it is a 'logical truth' that it is not the law that α is obligatory if and only if it is the law that α is not obligatory. For a perspectivalist such as Raz, that principle is presumably equivalent to the principle that the law does not claim that α is morally obligatory if and only if the law claims that α is not morally obligatory. And that principle is tantamount to:

Deontic collapse α is strongly legally obligatory if and only if α is weakly legally

mission, see Fine (2018). Of course, if one needs to reason about the relationship between the law's saying *p* and the law's not saying not-*p*, one can do so in a logic that makes such distinctions. As section 3.6 shows, perspectivalism demands that such distinctions be made; but that demand cannot be used independently to motivate those distinctions, on pain of circularity.

31 See also Raz's (1979a) remarks on 'explicit permissions', which presumably correspond in present terminology to strong permissions.

obligatory.

Deontic collapse erases the distinction between strong and weak perspectival statuses: each strong status becomes equivalent to its corresponding weak status. If deontic collapse holds, so too does *perspectival closure*, the principle that whatever is not strongly legally forbidden is strongly legally permitted. Yet that principle, as the next section explains, cannot hold for every legal system; so it cannot be valid.

Raz's argument shows that the perspectivalist avoids the distinction between strong and weak legal permission only by committing to a principle—perspectival closure—which by the perspectivalist's own lights is to be rejected. Raz's (1979a) endorsement of deontic collapse occurs in an article that says nothing about perspectivalism. The tension between deontic collapse and perspectivalism appears not to have been confronted: to endorse the former is to undermine the latter.

The atomist has no need to endorse deontic collapse to avoid the distinction between strong and weak legal permission, for atomism does not draw that distinction in the first place. Deontic collapse cannot even be formulated in the atomist's logic. Already it looks like the expressive weakness of the atomist's logic is a virtue, not a vice. The following sections make good this claim. They show that the distinction between strong and weak legal-deontic modalities is more trouble than it is worth.

3.6 Gaps

3.6.1 The problem

You want to drill a well on your land. You seek from the court a declaration that you may do so; your neighbour seeks a declaration that you may not. The law

can resolve this dispute, in the intended sense of 'resolve', only if it can answer 'yes' or 'no' to the question of whether you may drill the well. If the law can give neither answer, it is a defective system for guiding behaviour and settling disputes (Raz 1975, 154). For then you do not know whether obeying the law demands not drilling the well, so you are unsure how to act, and your neighbourhood dispute persists. The rule of law requires the law to be able satisfactorily to answer any legal question over which it has jurisdiction.[32]

The law has jurisdiction over questions of the permissibility of nearly any action, since the law can 'interfere with any kind of activity' (Raz 1975, 154).[33] Consequently, if the law contains *gaps*, in the sense of actions whose permissibility the law could but does not regulate, the law cannot satisfactorily answer any legal question over which it has jurisdiction, and so violates the demands of the rule of law.[34] Atomism forecloses the possibility of such violations with ease, for it entails that the law is gapless. Perspectivalism forecloses that possibility with more difficulty, for it entails under reasonable assumptions that the law is gapless only if the law implausibly claims that it doesn't claim what it doesn't claim.

3.6.2 Atomic closure

According to atomists, an action is regulated by the law only if it has an atomic status—and so only if it is legally obligatory, legally permitted, legally forbidden, or legally omissible. Every action has one of those statuses in the atomist's logic.

32 For related remarks, see Raz (1979a, 70–72). For present purposes, a satisfactory answer to a polar question such as 'Is drilling a well permitted?' is either 'yes' or 'no'.

33 Finnis (1980, 148–49) makes a similar point. Of course, some actions, such as those of other states, fall outside the jurisdiction of most municipal legal systems. (And the actions of nonstate actors conventionally fall outside the jurisdiction of much of international law.)

34 In what follows, the law is assumed for simplicity to have jurisdiction over questions of, and so to be capable of regulating, the permissibility of *any* action.

Hence, according to atomists, every action is regulated by the law: the law is gapless.

Put another way, atomists maintain that the law is gapless if and only if this principle holds:

Atomic closure Whatever is not legally forbidden is legally permitted.

This principle is so named because its validity ensures for the atomist that the law is a *closed* normative system, in the sense of a normative system which leaves no action unregulated.[35] It is regimented as:

(AC) $\neg\neg P\alpha \rightarrow P\alpha$

Since (AC) is valid in the atomist's logic, the law for the atomist is gapless.

It is often objected that atomic closure cannot guarantee the gaplessness of the law because (AC) is a tautology and therefore trivial.[36] Those pressing the objection do not explain in what sense a tautology is trivial. Many tautologies, such as complex ones, are not trivial in the sense of being obviously true to someone with normal cognitive abilities. Even simple tautologies are not trivial in the sense of being so obviously true as to be beyond dispute. The law of noncontradiction, $\neg(\alpha \wedge \neg\alpha)$, presumably counts as a simple tautology. Yet dialetheists reject it, for they maintain that there are true contradictions (Priest 1987). (AC) presumably counts as a simple tautology too. Yet intuitionists might reject it, for they deny the unrestricted validity of double negation elimination, and so reject $\neg\neg\alpha \rightarrow \alpha$, of

35 This terminology can be traced back at least to von Wright (1968, 83). He says that an action is 'deontically determined' in a given normative system 'when it is either permitted or forbidden in this system'. And 'a normative system is closed when every action is deontically determined in this system'; otherwise the system is open.

36 For remarks along those lines, see Bulygin (2002) and Navarro and Rodríguez (2014). For a more developed version of the objection, see Alchourrón and Bulygin (1971, chapter 7).

which (AC) is an instance. Nor are all simple tautologies trivial in the sense of being insubstantial. The law of noncontradiction, for instance, reflects a fundamental feature of reality: that nothing both is and is not so.[37]

In any event, atomic closure can be regimented nontautologically in a logic acceptable to the atomist. Extend $K_{\bigcirc}$ to $K^{+}_{\bigcirc}$ by treating P as an operator of the language instead of a metalinguistic abbreviation for $\neg\bigcirc\neg$. (And add each instance of $\mathsf{P}\alpha \leftrightarrow \neg\bigcirc\neg\alpha$ as an axiom.) Atomic closure can then be regimented in $K^{+}_{\bigcirc}$ as $\neg\bigcirc\neg\alpha \rightarrow \mathsf{P}\alpha$. This regimentation is not a tautology, since it is neither a tautology of the propositional calculus nor the result of uniformly substituting modal sentences for the atomic sentences of such a tautology.

3.6.3 Perspectival closure

According to perspectivalists, an action is regulated by the law only if it has a *strong* perspectival status—and so only if it is strongly legally obligatory, strongly legally permitted, strongly legally forbidden, or strongly legally omissible. Not every action has one of those statuses in the perspectivalist's logic. Hence, according to perspectivalists (at least those who reject deontic collapse), not every action is regulated by the law: the law is not gapless.

Perspectivalists think that only actions with strong perspectival statuses are regulated by the law;[38] they think this because they endorse:

Justifiability A legal authority's decision that α is justified only if the law claims that α.

37 Compare Aristotle's so-called ontological formulation of the law of noncontradiction in *Metaphysics* Γ 3, 1005b19–20. For critical discussion of the supposed triviality or nonsubstantiveness of logical truths, see Williamson (2007, chapters 2–3). For a defence of logic's grounding in reality, see Sher (2013). For discussion of disputes in logic, see Williamson (2014).

38 Of course, if deontic collapse holds, then every action trivially has a strong perspectival status.

Perspectivalists endorse justifiability because they distinguish between strong and weak legal permission. Those who make that distinction typically think that so-called negative answers—answers of the form 'the law does not claim that α'—to questions of whether an action is permitted by law 'cannot be used to justify judicial decisions' (Bulygin 2013, 352).[39] They think this because they think that 'satisfactory or good' answers to such questions 'must … inform us of the obligations and rights that we have according to the law'; negative answers do no such thing (2013, 351). On this view, if a judge has to decide whether an action is permitted by law but the law makes no claim about the permissibility of the action, 'the judge will not be able to justify [their] decision by appealing to the norms of [the legal] system' (2013, 352). The judge will instead have to 'make use of other, non-legal criteria' to justify their decision (2013, 352).[40]

A legal authority's decision that a given action is permitted or forbidden presumably amounts for the perspectivalist to a decision that the action is morally permitted or forbidden. By justifiability, a legal authority's decision that a given action is morally permitted or forbidden is justified only if the law claims that the action is morally permitted or forbidden. But the law makes such a claim only if the action has a strong perspectival status—for instance, the law claims that α is morally permitted only if α is strongly legally permitted. Thus a legal authority's decision that an action is morally permitted or forbidden is justified only if the

39 Alchourrón and Bulygin (1971, chapters 7–8) arguably assume an analogue of justifiability. Dworkin's (1985, 131–37) reconstruction of the 'no-right-answer thesis' allegedly held by positivists arguably assumes an analogue of the principle too, as does Raz's (1979a, 75–77) discussion of closure principles. Kelsen (1934, 84–86) discusses (but rejects) the related view that the law contains a gap when it contains no norm addressing a given case.

40 Atomists presumably reject justifiability because it is specified in terms of the law's claims. They can instead endorse the principle that a legal authority's decision that α is legally obligatory is justified only if α is legally obligatory (together with the analogue of that principle for legal permission).

action has a strong perspectival status.[41]

If one endorses justifiability, it is natural to endorse:[42]

Regulation An action is regulated by the law only if a legal authority can justifiably decide that the action is morally obligatory, permitted, forbidden, or omissible.

In other words, an action is regulated by the law only if a legal authority's decision that the action is morally obligatory, permitted, forbidden, or omissible is justified. Put together, justifiability and regulation entail that an action is regulated by the law only if it has a strong perspectival status. This conclusion sits well with the claim, sometimes endorsed by those who distinguish between strong and weak permission, that only strong statuses are real or genuine deontic statuses.[43]

Since the perspectivalist's logic extends the atomist's logic, atomic closure is valid for both the atomist and the perspectivalist. But atomic closure does not for

41 This argument does not depend on the assumption that a legal authority's decision that a given action is permitted or forbidden amounts to a decision that the action is morally permitted or forbidden. The authority's decision might instead amount to a decision that the action is legally permitted or forbidden. On that assumption, the argument goes through provided that the law's claims obey positive infallibility, which says that the law claims what it claims it claims (section 3.7). By justifiability, a legal authority's decision that a given action is legally permitted (forbidden) is justified only if the law claims that the action is legally permitted (forbidden), and so only if the law claims that it claims that the action is morally permitted (forbidden). By positive infallibility, the law claims that it claims that the action is morally permitted (forbidden) only if it claims that the action is morally permitted (forbidden), and so only if the action has a strong perspectival status.

42 'Legally' can be substituted for 'morally' in this principle if a legal authority's decision that an action is (say) permitted amounts to a decision that the action is legally permitted.

43 For example, von Wright (1963, 86) says: 'Weak permission is not an independent norm-character. Weak permissions are not prescriptions or norms at all. Strong permission only is a norm-character.' Compare von Wright (1968, chapter 4).

the perspectivalist guarantee that the law is gapless, for it only guarantees that every action has an atomic status.[44] Since perspectivalists maintain that an action is regulated by the law only if it has a strong perspectival status, they maintain that the law is gapless if and only if this principle holds:

> *Perspectival closure* Whatever is not strongly legally forbidden is strongly legally permitted.

Perspectival closure entails deontic collapse, and so erases the distinction between strong and weak perspectival statuses.[45]

Perspectival closure is invalid in the perspectivalist's logic.[46] This is unsurprising, for perspectival closure says that if the law does not claim that an action is not morally permitted then it claims that the action is morally permitted. The law's claims for the perspectivalist form a theory, and theories do not usually claim p whenever they do not claim not-p. (If general relativity does not claim that I am

44 This point is not recognized by all perspectivalists. For example, Gardner (2001, 212 n. 29) says that 'deontic logic supplies automatic closure rules for cases in which the law fails to do so'. The closure rules Gardner has in mind are rules such as 'everything not forbidden by law is permitted by law' (2001, 212). Presumably, a rule is supplied by deontic logic if it is valid in standard deontic logic (the modal system KD). Since Gardner endorses the perspectival principle, he presumably thinks that the law is gapless if and only if perspectival closure holds. Yet no principle of standard deontic logic yields perspectival closure; perspectival closure is not even expressible in standard deontic logic. Indeed, the very idea of the law supplying closure rules, an idea implicit in the quoted passage, only makes sense if the gaplessness of the law is equated with the validity of something like perspectival closure.

45 Perspectival closure corresponds to the strong version of Alchourrón and Bulygin's Principle of Prohibition (1971, 125–26). Proof of the entailment: Perspectival closure is $\neg \mathsf{L} \neg \mathsf{P} \alpha \rightarrow \mathsf{L} \mathsf{P} \alpha$, which is equivalent to $\Gamma \mathsf{P} \alpha \rightarrow \mathsf{L} \mathsf{P} \alpha$. By L-consistency, $\mathsf{L} \mathsf{P} \alpha \rightarrow \Gamma \mathsf{P} \alpha$. Conjoining the last two principles gives deontic collapse.

46 For a proof, see note 24.

not eating an apple, it does not follow that general relativity claims that I am eating an apple.) Perspectival closure is a special case of that generally invalid scheme.

The assumed invalidity of that special case explains these remarks by Shapiro (2011, 186):

> The normative theory that represents a [legal] system's point of view is not a complete account of morality. The legal point of view merely asserts that the norms of the legal system are legitimate and binding and hence that moral questions are to be answered on the basis of these norms; it is silent on how to answer moral questions not resolved by these norms.

These remarks make sense only if perspectival closure is invalid. For if the law's claims disobey perspectival closure, then the law might make no claim about the moral permissibility of a given action, and so it might claim neither that the action is morally permitted nor that it is morally forbidden. If so, the question of the moral permissibility of the action is not resolved by the claims of the law (or by its norms, which here amount to the same thing). On the other hand, if the law's claims obey perspectival closure, then the law makes a claim about the moral permissibility of *every* action. The question of the moral permissibility of any given action is resolved by the claims of the law: those claims offer a complete account of morality. Hence if perspectival closure is valid, the law is silent on how to answer moral questions not resolved by the claims of the law—but only because there are no such questions. The law is nontrivially silent on how to answer moral questions not resolved by the claims of the law only if perspectival closure is invalid.

The invalidity of perspectival closure is independently explained by the law's capacity for indifference. The law (or at least some legal systems) may be indifferent to whether a given action is permitted. If so, given perspectivalism, the law claims neither that the action is morally permitted nor that it is not morally permitted. English law, for instance, once banned sex between men while saying

nothing about sex between women—the apocryphal story is that Queen Victoria insisted only that the former should be prohibited since the latter was physically impossible. Presumably, English law claimed neither that sex between women was morally permitted nor that it was morally forbidden (assuming that English law was not otherwise closed by a rule of the kind discussed in the next section). Less colourfully, the International Court of Justice held by majority that international law said nothing about the permissibility of a state's use of nuclear weapons 'in an extreme circumstance of self-defence'. According to some commentators, international law therefore claims neither that such a use of nuclear weapons is morally permitted nor that it is morally forbidden.[47]

3.6.4 Guaranteeing gaplessness

The law's indifference is possible only if perspectival closure fails. Yet even if the law—in the sense of any possible legal system—does not surrender the possibility of indifference, many actual legal systems do. In these systems, whatever is not strongly legally forbidden is strongly legally permitted: they are gapless in the perspectivalist sense of that term.[48] But if the law's claims do not obey perspectival closure, how do these systems guarantee gaplessness? One suggestion is that they contain a special legal rule—a closure rule—which entails perspectival closure and

47 *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)* [1996] ICJ Rep 226. On another reading of the decision, the court declined to decide whether such a use of nuclear weapons was permitted under international law. For discussion, see Weil (1997) and Bodansky (2006).

48 A distinction between the principles obeyed by a given legal system and those obeyed by any possible legal system can be formally made by relativizing the operator L: L_S expresses the claims of a legal system *S*. Models for the resulting logic are like those for multiagent epistemic logic, in which the operator K_i expresses the knowledge of an agent *i*. (For details, see Hughes and Cresswell 1996, 217–19.)

thus guarantees gaplessness.[49]

What might this legal rule look like? One proposal is that it takes the form:

(ρ) Whatever is not forbidden is permitted.

This legal rule might be found in statute or in the unwritten law.[50] According to perspectivalism, the law takes its obligations to be moral obligations. Presumably, then, (ρ) is more accurately expressed as:

Moral closure Whatever is not morally forbidden is morally permitted.

Moral closure, when a legal rule, does not entail perspectival closure. This means that (ρ) cannot, as a legal rule, guarantee gaplessness. The desired entailment fails because perspectivalism is committed to the validity of the following schema:

Legal rule The law contains a legal rule that α only if the law claims that α.

By this schema, if the law contains moral closure as a legal rule, then it claims that moral closure holds. But even if the law makes that claim, it does not follow that perspectival closure holds. (Indeed, the law *already* claims that moral closure holds,

49 For an argument along those lines, see Stone (1964, 186–92). (Finnis 1980, 292, on the other hand, describes the gaplessness of the law as 'a lawyer's desideratum rather than a plain fact'.) A decision of the Permanent Court of International Justice, *The Case of the 'Lotus'* [1927] PCIJ (ser A) No 10, is often said to stand for the principle that whatever is not forbidden by international law is permitted. As Bodansky (2006, paragraph 7) observes, that principle could be understood either as 'a logical axiom' or as 'a positive rule of international law'. By the argument of this section, if perspectivalism holds then the principle must be a positive rule if it is to have its intended effect. (If that principle holds, the decision of the International Court of Justice on the use of nuclear weapons cited in note 47 is presumably wrong.)

50 Von Wright (1991, 279) suggests that a legal rule such as (ρ) might be a generalization of the criminal law principle *nullum crimen sine lege*.

since moral closure is a logical truth and the law claims every logical truth.[51])

To see why perspectivalism is committed to the legal rule schema, imagine that the law contains a legal rule saying that one must pay one's taxes. By perspectivalism, the law takes its obligations to be moral obligations, and so this legal rule equivalently says that one has a moral obligation to pay one's taxes. But if the law contains this legal rule, then one has a legal obligation to pay one's taxes, and so, by the perspectival principle, the law claims that one has a moral obligation to pay one's taxes. The argument generalizes, thereby yielding the legal rule schema.

What other form might a legal rule that guarantees gaplessness take? An alternative proposal is that the law contains perspectival closure itself as a legal rule. If so, then by the legal rule schema this principle holds:

Second-order perspectival closure The law claims that whatever is not strongly legally forbidden is strongly legally permitted.

This looks like a more promising proposal, even though second-order perspectival closure does not entail perspectival closure. How does one get from second-order perspectival closure to perspectival closure? If the perspectivalist can answer that question, they can account for gapless legal systems—and so for many actual legal systems—while also accounting for the law's capacity for indifference. Second-order perspectival closure holds in any legal system that contains perspectival closure as a legal rule, so if the perspectivalist can find a principle which guarantees that perspectival closure holds in any legal system in which second-order perspectival closure holds—but not otherwise—then perspectivalism can accommodate both legal systems with gaps and legal systems without gaps. The next section investigates candidates for such a principle.

51 In symbols: $\neg\neg\blacksquare\alpha \rightarrow \blacksquare\alpha$ (moral closure) is a theorem of PO^{+}, so by L-necessitation (appendix 3.A.1) $\mathsf{L}(\neg\neg\blacksquare\alpha \rightarrow \blacksquare\alpha)$ is a theorem too.

3.7 Negative transparency

3.7.1 From second-order to perspectival closure

How can the perspectivalist get from second-order perspectival closure to perspectival closure? It will not do to assume that the law's claims are factive: that assumption violates a motivating tenet of perspectivalism, for it entails that nothing can be both legally obligatory and not morally obligatory.[52] The perspectivalist needs another way of getting from second-order perspectival closure to perspectival closure. It will be easiest to look for a principle that gets us from a consequence of second-order perspectival closure to perspectival closure.

What follows from second-order perspectival closure? Since the law's claims distribute over implication, second-order perspectival closure entails:

(KPC) If the law claims that α is not strongly legally forbidden, then it claims that α is strongly legally permitted.

To get from (KPC) to perspectival closure, we first need to identify a principle that entails that if α is not strongly legally forbidden then the law claims that α is not strongly legally forbidden. We then need to identify a principle that entails that if the law claims that α is strongly legally permitted then α is strongly legally permitted. Those two principles, together with (KPC), will give perspectival closure.

First, we need a way of getting from (18) to (19):

(18) α is not strongly legally forbidden.

52 That motivating tenet was labelled 'legal–moral independence' in section 3.2. Proof of the entailment: Suppose that the law's claims are factive and that α is both legally obligatory and not morally obligatory. Then, by the perspectival principle, α is not morally obligatory and the law claims that α is morally obligatory. By factivity, α is morally obligatory and α is not morally obligatory. Contradiction.

(19) The law claims that α is not strongly legally forbidden.

Equivalently, we need a way of getting from (18′) to (19′):

(18′) The law doesn't claim that α is morally forbidden.

(19′) The law claims that it doesn't claim that α is morally forbidden.

This inference will be secured if the law's claims obey:

Negative transparency If the law doesn't claim that α, then it claims that it doesn't claim that α.

This says that the law claims that it doesn't claim what it doesn't claim: the law claims that each of the claims it doesn't make is false.

Substituting 'α is morally forbidden' for α in negative transparency gives this special case:

(●5) If the law doesn't claim that α is morally forbidden, then it claims that it doesn't claim that α is morally forbidden.

By the perspectival principle, (●5) is equivalent to:

(●5′) If α is not strongly legally forbidden, then the law claims that α is not strongly legally forbidden.

Putting (●5′) and (KPC) together gives:

(●PC) If α is not strongly legally forbidden, then the law claims that α is strongly legally permitted.

This completes the first step.

Next we need a way of getting from (20) to (21):

(20) The law claims that α is strongly legally permitted.

(21) α is strongly legally permitted.

Equivalently, we need a way of getting from (20′) to (21′):

(20′) The law claims that it claims that α is morally permitted.

(21′) The law claims that α is morally permitted.

This inference will be secured if the law's claims obey:[53]

Positive infallibility If the law claims that it claims that α, then it claims that α.

This says that the law claims what it claims it claims: the law's claims about its claims are never mistaken. Fortunately, the law's claims obey positive infallibility if they obey negative transparency.[54]

Substituting 'α is morally permitted' for α in positive infallibility gives this special case:

(●4c) If the law claims that it claims that α is morally permitted, then it claims that α is morally permitted.

By the perspectival principle, (●4c) is equivalent to:

(●4c′) If the law claims that α is strongly legally permitted, then α is strongly legally permitted.

53 The label for this principle is from Rieger (2015, 217).

54 Proof: If negative transparency ($\neg L\alpha \rightarrow L\neg L\alpha$) is a theorem, then so is conceitedness ($L(L\alpha \rightarrow \alpha)$). Suppose otherwise. Then, for some α, $\neg L(L\alpha \rightarrow \alpha)$ and so $\Gamma(L\alpha \wedge \neg\alpha)$. Since Γ distributes over conjunction, $\Gamma L\alpha \wedge \Gamma\neg\alpha$ and so $\neg L\neg L\alpha \wedge \neg L\alpha$. By negative transparency, $L\neg L\alpha$. But then $L\neg L\alpha \wedge \neg L\neg L\alpha$, a contradiction. If conceitedness is a theorem, then so is positive infallibility, since L distributes over implication. (The proof is partly adapted from Rieger 2015, 225.)

Putting (●PC) and (●4c′) together gives perspectival closure.[55]

If the law's claims obey negative transparency, then second-order perspectival closure entails perspectival closure. This means that perspectival closure, when a legal rule, guarantees that the law is gapless. How plausible is negative transparency?

3.7.2 Plausibility

The plausibility of negative transparency depends in part on how seriously one takes the idea that the law makes claims. If one imagines the law to be a finite agent, then negative transparency is untenable. For often a finite agent neither claims p nor claims that they do not claim p, thereby violating negative transparency.[56] One doesn't always claim that one doesn't claim what one doesn't claim; otherwise, under plausible assumptions about the individuation of claims, one would make infinitely many claims. The objection generalizes. Many principles that the law's claims obey are implausible on the supposition that a finite agent makes those claims. For example, the law's claims are closed under logical consequence, yet no finite agent claims the logical consequences of their claims (otherwise they would be logically omniscient).

Because the objection generalizes beyond negative transparency to other principles validated by the law's claims, and because those other principles are plausible, the objection is not compelling. What the objection shows is that one cannot

55 In symbols, negative transparency is $\neg \mathsf{L}\alpha \rightarrow \mathsf{L}\neg\mathsf{L}\alpha$; (●5) is $\neg\mathsf{L}\neg\mathsf{P}\alpha \rightarrow \mathsf{L}\neg\mathsf{L}\neg\mathsf{P}\alpha$, as is (●5′), and (KPC) is $\mathsf{L}\neg\mathsf{L}\neg\mathsf{P}\alpha \rightarrow \mathsf{LL}\mathsf{P}\alpha$. Put together, (●5) and (KPC) give $\neg\mathsf{L}\neg\mathsf{P}\alpha \rightarrow \mathsf{LL}\mathsf{P}\alpha$, which is (●PC). Next, positive infallibility is $\mathsf{LL}\alpha \rightarrow \mathsf{L}\alpha$; and (●4c) is $\mathsf{LL}\mathsf{P}\alpha \rightarrow \mathsf{L}\mathsf{P}\alpha$, as is (●4c′). Put together, (●PC) and (●4c) give $\neg\mathsf{L}\neg\mathsf{P}\alpha \rightarrow \mathsf{L}\mathsf{P}\alpha$, which is perspectival closure.

56 Himma (2001, 279), who does not consider principles such as negative transparency, denies that there is anything 'objectionable about incorporating into our theorizing a fiction that treats the legal system as an agent capable of making claims'.

take the idea that the law makes claims so seriously as to insist on the possibility of a finite agent's making those claims. If one so insists, one abandons the possibility of a useful logic of the law's claims.[57]

The construction of a useful logic often involves idealization. In modelling belief or knowledge, for example, one typically abstracts away from agents' computational limitations and supposes that agents are logically omniscient. The idealization involved in the logic of the law's claims is at least as explicable as the idealization involved in logics of knowledge or belief. It is all the more explicable if one takes seriously the idea that the law's claims constitute a theory. For it makes sense to suppose that a theory is closed under conjunction and logical consequence (section 3.3), not least because the evaluation of a theory typically involves the evaluation of its consequences. On this understanding of the law's claims, the objection that the logic of those claims abstracts away from the limitations of finite agents has no purchase.

This understanding of the law's claims bolsters the plausibility of closure under conjunction and logical consequence. Yet it undermines the plausibility of negative transparency. For often a theory neither claims p nor claims that it does not claim p, thereby violating negative transparency. If general relativity doesn't claim that I'm eating an apple, it does not follow that general relativity claims that it doesn't claim that I'm eating an apple. Similarly, if the law doesn't claim that smoking is forbidden, it does not seem to follow that the law claims that it doesn't claim that smoking is forbidden. Theories do not usually make claims about the claims they do not make.

Is negative transparency instead desirable because of the principles it entails?

57 Another way to respond to this objection is to read L as 'it follows from the law's claims that'. Even if a finite agent does the claiming, then L, so understood, models the logical consequences of the agent's claims rather than the claims themselves. Thus the principles that L obeys cannot be declared implausible on the basis that no finite agent's claims obey them.

One principle it entails is:[58]

Conceitedness The law claims that if the law claims that α then α.

This says that the law claims that its claims are true: the law claims that it is never wrong about the claims it makes. The law's conceit is a virtue, not a vice. If the law's claims obey conceitedness, the law takes itself to be truthful; it takes itself not to deceive. The law, if conceited, cannot claim that, although it claims that p is true, p is false.[59] Fortunately, the law's claims can obey conceitedness while disobeying negative transparency.[60] If perspectivalists want to suppose that the law takes itself to be truthful, they can.

Perspectivalists have particular reason to favour conceitedness. By the perspectivalist's lights, conceitedness entails:

Legitimate authority The law claims legitimate authority.

Many perspectivalists think that every legal system must satisfy this principle. Raz, for instance, says that 'no system is a system of law unless it includes a claim of legitimacy, or moral authority' (1984, 131).[61]

How does the perspectivalist get from conceitedness to legitimate authority? An instance of conceitedness is:

58 The label for this principle is from Smullyan (1988). For a proof of the entailment, see note 54.

59 Hintikka (1962, 125) describes as 'indefensible' the doxastic analogues of such violations of conceitedness.

60 Proof: Let $M = \langle W, R_{\mathsf{L}}, R_{\bigcirc}, R_{\bullet}, V\rangle$ be a PO^{+} model such that $W = \{0, 1\}$, $R_{\bigcirc} = R_{\bullet} = \varnothing$, and $R_{\mathsf{L}} = \{\langle 0, 0\rangle, \langle 0, 1\rangle, \langle 1, 1\rangle\}$. Since R_{L} is shift reflexive, conceitedness is valid on the frame. Let the atomic sentence P be false at 0 and true at 1. Then $\neg\mathsf{L}P$ is true at 0 since 0 can L-access itself, and $\mathsf{L}P$ is true at 1 since 1 can L-access only itself. But 0 can L-access 1, so $\mathsf{L}\neg\mathsf{L}P$ is false at 0. Hence negative transparency fails at 0.

61 Similar claims are made in Raz (1977a; 1994, chapter 16).

(22) The law claims that if the law claims that α is morally obligatory then α is morally obligatory.

By the perspectival principle, (22) is tantamount to:

(23) The law claims that if α is legally obligatory then α is morally obligatory.

To say that the law claims legitimate authority is, according to Raz, to say that the law 'claims that legal requirements are morally binding, that is, that legal obligations are real (moral) obligations arising out of the law' (1984, 131). (23) says that the law claims that legal obligations are moral obligations, so (23) is tantamount to the legitimate authority principle. Fortunately for the perspectivalist, the law's claims can obey conceitedness—and hence validate the legitimate authority principle—while disobeying negative transparency.

3.7.3 Restriction

Even if negative transparency itself is implausible, could the perspectivalist endorse a restricted version of the principle while still securing the entailment from second-order perspectival closure to perspectival closure? Take this special case of negative transparency:

Restricted negative transparency If the law doesn't claim that α is morally obligatory, then it claims that it doesn't claim that α is morally obligatory.

Whereas negative transparency holds for all the law's claims whatever their content, restricted negative transparency is confined to the law's claims about moral obligations. Perhaps this restricted version of negative transparency is easier to defend than the unrestricted one.

If the law's claims obey restricted rather than unrestricted negative transpar-

ency, we can still get from (KPC) to (●PC). But we cannot get from (●PC) to perspectival closure. That is because restricted negative transparency does not entail a suitable instance of positive infallibility. The special case of positive infallibility that we need for the argument to go through is:

> *Restricted positive infallibility* If the law claims that it claims that α is morally omissible, then it claims that α is morally omissible.

Even though positive infallibility follows from negative transparency, restricted positive infallibility does not follow from restricted negative transparency.[62]

It is hard to see how the restricted version of negative transparency is easier to defend than the unrestricted one. Even if it is easier, adopting restricted negative transparency forces the perspectivalist to adopt another principle—restricted positive infallibility—whose unrestricted analogue comes for free if unrestricted

62 Proof: Let $M = \langle W, R_{\mathsf{L}}, R_{\bigcirc}, R_{\bullet}, V\rangle$ be a PO^{+} model such that $W = \{0, 1, 2, 3\}$, $R_{\mathsf{L}} = R_{\bullet} = \{\langle 0, 1\rangle, \langle 1, 2\rangle, \langle 2, 2\rangle, \langle 2, 3\rangle, \langle 3, 2\rangle, \langle 3, 3\rangle\}$, and $R_{\bigcirc} = \{\langle 0, 2\rangle, \langle 1, 2\rangle, \langle 1, 3\rangle, \langle 2, 2\rangle, \langle 2, 3\rangle, \langle 3, 2\rangle, \langle 3, 3\rangle\}$. Since $R_{\mathsf{L}} = R_{\bullet}$, restricted negative transparency ($\neg\mathsf{L}\bullet\alpha \rightarrow \mathsf{L}\neg\mathsf{L}\bullet\alpha$) is equivalent to $\neg\mathsf{L}\mathsf{L}\alpha \rightarrow \mathsf{L}\neg\mathsf{L}\mathsf{L}\alpha$. Now 2 and 3 can L-access only themselves and each other, so negative transparency is true at 2 and 3, so restricted negative transparency is too. Suppose that restricted negative transparency fails at 1. Then $\neg\mathsf{L}\mathsf{L}\alpha$ is true at 1, so $\mathsf{L}\alpha$ is false at 2 since 1 can L-access only 2, so $\neg\mathsf{L}\mathsf{L}\alpha$ is true at 2 since 2 can L-access only itself. But then $\mathsf{L}\neg\mathsf{L}\mathsf{L}\alpha$ is true at 1 since 1 can L-access only 2, so restricted negative transparency is true at 1 after all. Next suppose that restricted negative transparency fails at 0. Then $\mathsf{L}\neg\mathsf{L}\mathsf{L}\alpha$ is false at 0, so $\mathsf{L}\mathsf{L}\alpha$ is true at 1 since 0 can L-access only 1, so $\mathsf{L}\alpha$ is true at 2 since 1 can L-access only 2, so α is true at 2 since 2 can L-access itself. But then $\mathsf{L}\alpha$ is true at 1 since 1 can L-access only 2, so $\mathsf{L}\mathsf{L}\alpha$ is true at 0 since 0 can L-access only 1. Thus $\neg\mathsf{L}\neg\mathsf{L}\mathsf{L}\alpha \rightarrow \mathsf{L}\mathsf{L}\alpha$ is true at 0, so restricted negative transparency is too. Hence restricted negative transparency is valid on the frame. Now restricted positive infallibility ($\mathsf{L}\mathsf{L}\neg\bullet\alpha \rightarrow \mathsf{L}\neg\bullet\alpha$) is equivalent to $\mathsf{L}\mathsf{L}\neg\mathsf{L}\alpha \rightarrow \mathsf{L}\neg\mathsf{L}\alpha$, again since $R_{\mathsf{L}} = R_{\bullet}$. Let the atomic sentence P be true at 1 and 2 but false at 3. Then $\neg\mathsf{L}P$ is true at 2 since 2 can L-access 3, so $\mathsf{L}\neg\mathsf{L}P$ is true at 1 since 1 can L-access only 2, so $\mathsf{L}\mathsf{L}\neg\mathsf{L}P$ is true at 0 since 0 can L-access only 1. But $\mathsf{L}P$ is true at 1 since 1 can L-access only 2, so $\mathsf{L}\neg\mathsf{L}P$ is false at 0 since 0 can L-access 1. Hence restricted positive infallibility fails at 0.

negative transparency is endorsed instead. Even if the restricted version of negative transparency is somehow more plausible than the unrestricted version, that plausibility counts for little when the plausibility of a further principle falls to be defended. Moreover, the restricted versions of these principles look suspiciously ad hoc. We were right to fix our attention on the unrestricted versions, for they are the more compelling ones. Even then, unrestricted negative transparency (which entails unrestricted positive infallibility) was found wanting. The unrestricted versions of the principles are untenable; a fortiori so are the restricted ones. The law's claims obey neither restricted nor unrestricted negative transparency.

3.8 Upshot

Where does this leave the perspectivalist? Perspectival closure cannot hold for every legal system, and so, according to perspectivalism, not every legal system is gapless. If perspectival closure did hold for every legal system, no legal system could be indifferent to whether an action was permitted, and the law's claims would offer a complete account of morality, something perspectivalism denies.

Of course, those who endorse deontic collapse guarantee perspectival closure and with it the gaplessness of the law—but this guarantee comes at the cost of undermining perspectivalism. Perspectival closure cannot hold for every legal system, so deontic collapse cannot either. As a result, the perspectivalist is effectively forced to maintain that the law is gapless only if it contains perspectival closure as a legal rule and only if its claims obey negative transparency.

If the law is not gapless, it is a defective system for guiding behaviour and settling disputes, and so violates the demands of the rule of law. Perspectivalism avoids the possibility of such violations only if the law does the incredible—only if it claims that it doesn't claim what it doesn't claim. Atomism never even faces that possib-

ility, since it guarantees that the law is gapless. Moreover, atomism does not needlessly multiply legal-deontic modalities, as perspectivalism does. The abductive evidence for perspectivalism is weak; the abductive evidence for atomism is strong. Legal obligation stands apart from moral obligation. The former is no shadow of the latter.

Appendix 3.A The logic of perspectival obligation

3.A.1 PO

The logic PO of perspectival obligation is the fusion of the logics KD_{L}, $K_{\bigcirc}$, and $K_{\bullet}$. KD_{L} is the modal system KD with the operator L in place of the usual $\Box$; $K_{\bigcirc}$ is the modal system K with the operator $\bigcirc$; $K_{\bullet}$ is the modal system K with the operator $\bullet$.[63]

The language of PO contains countably many propositional variables (*P*, *Q*, *R*, …), the sentence operators L, $\bigcirc$, and $\bullet$, and the connectives $\neg$ (negation) and $\wedge$ (conjunction), in terms of which $\vee$ (disjunction), $\rightarrow$ (material implication), and $\leftrightarrow$ (material equivalence) are defined. The dual of L is $\mathsf{\Gamma}$; it abbreviates $\neg\mathsf{L}\neg$. The dual of $\bigcirc$ is P; it abbreviates $\neg\bigcirc\neg$. The dual of $\bullet$ is $⚑$; it abbreviates $\neg\bullet\neg$.

Every tautology of the propositional calculus is an axiom. So too is every instance of the distribution principle for each operator:

(K_{L}) $\quad \mathsf{L}(\alpha \rightarrow \beta) \rightarrow (\mathsf{L}\alpha \rightarrow \mathsf{L}\beta)$

($K_{\bigcirc}$) $\quad \bigcirc(\alpha \rightarrow \beta) \rightarrow (\bigcirc\alpha \rightarrow \bigcirc\beta)$

($K_{\bullet}$) $\quad \bullet(\alpha \rightarrow \beta) \rightarrow (\bullet\alpha \rightarrow \bullet\beta)$

Every instance of the consistency principle for L is also an axiom:

(D_{L}) $\quad \mathsf{L}\alpha \rightarrow \neg\mathsf{L}\neg\alpha$

The logic is closed under the rule of necessitation for each operator:

(Nec_{L}) If α is a theorem then so is $\mathsf{L}\alpha$.

($Nec_{\bigcirc}$) If α is a theorem then so is $\bigcirc\alpha$.

63 For details of fusing normal monomodal logics, see Kracht and Wolter (1997). Completeness is preserved under fusion (Kracht and Wolter 1997, 157, theorem 3.2).

(Nec$_\bullet$) If α is a theorem then so is $\bullet\alpha$.

It is also closed under:

Modus ponens If α and $\alpha \rightarrow \beta$ are theorems then so is β.

A PO frame is a quadruple $\langle W, R_{\mathsf{L}}, R_{\bigcirc}, R_\bullet \rangle$, where W is a nonempty set (of worlds), R_{L} is a serial (accessibility) relation on W, and $R_{\bigcirc}$ and $R_\bullet$ are binary (accessibility) relations on W. A PO model is a quintuple $\langle W, R_{\mathsf{L}}, R_{\bigcirc}, R_\bullet, V \rangle$, where $\langle W, R_{\mathsf{L}}, R_{\bigcirc}, R_\bullet \rangle$ is a PO frame and V is a function that assigns intensions to atomic sentences. Formally, V is a function from atomic sentences to functions from W to 0 or 1. The truth of a sentence α in a model M at a member w of W (written $M, w \vDash \alpha$) is defined recursively as follows:

$M, w \vDash \alpha$	if and only if	$V(\alpha)(w) = 1$, for atomic α
$M, w \vDash \neg\alpha$	if and only if	$M, w \nvDash \alpha$
$M, w \vDash \alpha \wedge \beta$	if and only if	$M, w \vDash \alpha$ and $M, w \vDash \beta$
$M, w \vDash \mathsf{L}\alpha$	if and only if	for all $w' \in W$ if $wR_{\mathsf{L}}w'$ then $M, w' \vDash \alpha$
$M, w \vDash \bigcirc\alpha$	if and only if	for all $w' \in W$ if $wR_{\bigcirc}w'$ then $M, w' \vDash \alpha$
$M, w \vDash \bullet\alpha$	if and only if	for all $w' \in W$ if $wR_\bullet w'$ then $M, w' \vDash \alpha$

A sentence α is a *logical consequence* of a set Γ of sentences if and only if, for every world w of every model, α is true at w whenever every sentence in Γ is true at w.

3.A.2 PO$^+$

The extended logic PO$^+$ of perspectival obligation is the logic PO augmented with every instance of the perspectival principle:

(PP) $\bigcirc\alpha \leftrightarrow \mathsf{L}\bullet\alpha$

A PO$^+$ frame is a PO frame $\langle W, R_{\mathsf{L}}, R_{\bigcirc}, R_{\bullet}\rangle$ that satisfies both:

Pseudotransitivity $\forall x, y, z \in W\,(xR_{\mathsf{L}}y \wedge yR_{\bullet}z \rightarrow xR_{\bigcirc}z)$

Pseudodensity $\forall x, y \in W\,(xR_{\bigcirc}y \rightarrow \exists z \in W\,(xR_{\mathsf{L}}z \wedge zR_{\bullet}y))$

A PO$^+$ model is a PO model based on a PO$^+$ frame.[64]

Pseudotransitivity says that whenever x can L-access y and y can $\bullet$-access z then x can $\bigcirc$-access z. Informally, any world that is a moral-deontic possibility for any world compatible with the law's claims in x is also a legal-deontic possibility for x. Pseudodensity says that whenever x can $\bigcirc$-access y there is a world z such that x can L-access z and z can $\bullet$-access y. Informally, any world that is a legal-deontic possibility for x is also a moral-deontic possibility for some world compatible with the law's claims in x.

We show that pseudotransitivity corresponds to the validity of the left-to-right direction of (PP) and that pseudodensity corresponds to the validity of the right-to-left direction of (PP).

Proposition 3.1. $\bigcirc\alpha \rightarrow \mathsf{L}\bullet\alpha$ *is valid on a PO frame if and only if the frame is pseudotransitive.*

Proof. For the left-to-right direction, let $F = \langle W, R_{\mathsf{L}}, R_{\bigcirc}, R_{\bullet}\rangle$ be a nonpseudotransitive PO frame. Then there are worlds a, b, c in W such that $aR_{\mathsf{L}}b$ and $bR_{\bullet}c$ but not $aR_{\bigcirc}c$. Let M be a model based on F in which the atomic sentence P is true at every world except c. Then since c is not $\bigcirc$-accessible from a, P is true at every

64 The completeness results of Kracht and Wolter (1997), which hold for PO, do not carry over to PO$^+$. Those results apply only to multimodal logics that, unlike PO$^+$, are independently axiomatizable. A multimodal logic is independently axiomatizable only if no axiom of that logic contains multiple modal operators (for instance, both $\bigcirc$ and $\bullet$).

world ○-accessible from a, so $\bigcirc P$ is true at a. Since P is false at c and $bR_{\bullet}c$, $\bullet P$ is false at b. But then $\mathsf{L}\bullet P$ is false at a since $aR_{\mathsf{L}}b$. Thus $\bigcirc\alpha \rightarrow \mathsf{L}\bullet\alpha$ has a false instance at a, and so is invalid on the frame.[65]

For the other direction, let $F = \langle W, R_{\mathsf{L}}, R_{\bigcirc}, R_{\bullet}\rangle$ be a pseudotransitive PO frame and M be a model based on F. Suppose that $\bigcirc\alpha$ is true at a, where a is any member of W. We need to show that $\mathsf{L}\bullet\alpha$ is true at a. To show that, we show that $\bullet\alpha$ is true at b, where b is any member of W such that $aR_{\mathsf{L}}b$. To show that, we show that α is true at c, where c is any member of W such that $bR_{\bullet}c$. Now $aR_{\mathsf{L}}b$ and $bR_{\bullet}c$, and F is pseudotransitive, so $aR_{\bigcirc}c$. But $\bigcirc\alpha$ is true at a, so α is true at each x such that $aR_{\bigcirc}x$. Since $aR_{\bigcirc}c$, α is true at c. Hence $\bigcirc\alpha \rightarrow \mathsf{L}\bullet\alpha$ is true at a and so valid on every pseudotransitive PO frame. ■

Proposition 3.2. $\mathsf{L}\bullet\alpha \rightarrow \bigcirc\alpha$ *is valid on a PO frame if and only if the frame is pseudodense.*

Proof. For the left-to-right direction, let $F = \langle W, R_{\mathsf{L}}, R_{\bigcirc}, R_{\bullet}\rangle$ be a nonpseudodense PO frame. Then there are worlds a, b in W such that $aR_{\bigcirc}b$ but no world z in W such that $aR_{\mathsf{L}}z$ and $zR_{\bullet}b$. That is, for every world z if $aR_{\mathsf{L}}z$ then not $zR_{\bullet}b$. Let M be a model based on F in which the atomic sentence P is true at every world except b. Let c be any member of W such that $aR_{\mathsf{L}}c$. Then not $cR_{\bullet}b$. Since P is true at every world except b, and b is not ●-accessible from c, P is true at every world ●-accessible from c. Hence $\bullet P$ is true at c. Since c was arbitrary, $\bullet P$ is true at every world L-accessible from a, so $\mathsf{L}\bullet P$ is true at a. But $aR_{\bigcirc}b$ and P is false at b, so $\bigcirc P$ is false at a. Thus $\mathsf{L}\bullet\alpha \rightarrow \bigcirc\alpha$ has a false instance at a, and so is invalid on the frame.

For the other direction, let $F = \langle W, R_{\mathsf{L}}, R_{\bigcirc}, R_{\bullet}\rangle$ be a pseudodense PO frame and M be a model based on F. Suppose that $\mathsf{L}\bullet\alpha$ is true at a, where a is any member

65 The proof from left to right is adapted from Hughes and Cresswell (1996, 175, theorem 10.3).

of W. We need to show that $\bigcirc\alpha$ is true at a. To show that, we show that α is true at b, where b is any member of W such that $aR_{\bigcirc}b$. Now $aR_{\bigcirc}b$, and F is pseudodense, so there is a c such that $aR_{\mathsf{L}}c$ and $cR_{\bullet}b$. Since $\mathsf{L}\bullet\alpha$ is true at a and $aR_{\mathsf{L}}c$, $\bullet\alpha$ is true at c. But then α is true at each x such that $cR_{\bullet}x$. Since $cR_{\bullet}b$, α is true at b. Hence $\mathsf{L}\bullet\alpha \rightarrow \bigcirc\alpha$ is true at a and so valid on every pseudodense PO frame. ■

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