

THE DEONTIC FURNITURE OF THE WORLD

An analysis of the basic concepts that embody normativity

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ABSTRACT

This paper aims to elucidate the nature of normativity by discussing the ‘deontic furniture of the world’, the concepts which embody this normativity.

In its first part, the paper deals with facts and rules, the different kinds of rules, and the difference between facts and rules. Three important conclusions are that:

- the well-known distinction between constitutive and regulative rules is a dubitable one;
- there is a real important difference between static and dynamic rules, and that there are at least two kinds of static rules;
- depending on the meaning assigned to ‘norm’ either there is no difference between norms and facts, or the difference is rather uninteresting.

In its second part, the paper attempts to elucidate the nature of normativity by addressing the relations between motivating and guiding reasons. Two important conclusions of this discussion are that:

- there are two ‘families’ of guiding reasons, one based on the motivation of actors, and the other on reason;
- not all guiding reasons are reasons why something ought to be done.

In its third part, the paper makes some distinctions between the central normative notions of duty, obligation, being obligated, being obliged and ought to do. Two important conclusions of this discussion are that:

- there is a clear difference between duties and obligations and neither one of them is an ought;
- the fact that P should, or ought to, do A is not a reason for P to do A.

KEYWORDS:

constitutive rules, regulative rules, dynamic rules, fact-to-fact rules, counts-as rules, deontic facts, explanatory reason, guiding reason, deontic reason, personal reason, social reason, institutional reason, second-personality, ought, duty, obligation, practical reason.

¹ The authors thanks Jerzy Stellmach and Bartosz Brozek for inviting him to the seminar *The many faces of normativity*, where he could present a draft of this paper, and the participants in the seminar for the questions which made him rethink the issues addressed in this paper.

1 THREE THEMES

There are many discussions in ethical and legal theory which somehow involve the notion of normativity, but it is seldom explained what normativity is.² Usually it is just assumed that the nature of normativity is sufficiently clear and the discussion then continues with more specific questions. Wedgwood, for instance, mentions the nature of normativity in the title of his book: *The Nature of Normativity*. However, when he turns to describing the central topic of his book, it turns out that this topic is the question what ought to be.³ As will become clear later, the step from 'normative' to 'ought' is not an obvious one. And yet it is taken by Wedgwood without paying much attention to it. Another illustration, this time from legal theory, is the volume *New Essays on the Normativity of Law*, edited by Berteau and Pavlakos. In their introduction, the editors emphasise the importance of the normative component of law, but they do not even begin to explain what this 'normative component' might be.⁴

Dancy, however, addresses the question after the nature of normativity head on.⁵ The problem is that he discusses two views which are not very satisfactory. According to the one view, normativity is a characteristic of speech acts. That would make that the fact that it is forbidden to steal non-normative because there is no speech act involved; not a very attractive result. The other view just assumes that the word 'ought' is normative, and that anything else that is only explicable in terms of it, is normative too. Dancy extensively argues that this view is wrong too, but in his arguments he ignores that this characterisation does not tell us much because we do not know what it means that 'ought' is normative.

More satisfactory, even though it does not directly address the nature of normativity, is the work by Alan White. In his books *Modal Thinking* and *Rights* White discusses a number of normative concepts in a very detailed way, thereby implicitly illuminating the nature of normativity.⁶ My purpose in this paper is to follow White's example and to elucidate the nature of normativity by focusing on a number of concepts which are all somehow related to normativity.

Normativity has to do with standards concerning what should be done or how things should be. These standards can be used prospectively to guide action. They can also be used retrospectively to evaluate behaviour or facts.⁷ Both aspects of normativity, the behaviour guiding aspect and the evaluative aspect, are equally important. In this paper, the emphasis will be on the behaviour guiding aspect of normativity; the evaluative aspect will mainly be ignored. The concepts that deal with the behaviour guiding aspect of normativity are often (in

² Possibly such explanations should be skipped altogether. According to Stellmach there is no normativity, and therefore nothing to explain. (Jerzy Stellmach, "And if there is no 'ought'?" in Jerzy Stellmach and Bartosz Brożek (eds.), *The normativity of law*, Kraków: Copernicus Center Press 2011, 15-20). Maybe that explains the relative lack of explanations.

³ Ralph Wedgwood, *The Nature of Normativity*, Oxford: Clarendon Press 2007, 1.

⁴ S. Berteau and G. Pavlakos (eds.), *The Normativity of Law*, Oxford: Hart Publishing, 2011, 1/2.

⁵ Jonathan Dancy, 'Nonnaturalism', in David Copp (ed.), *The Oxford Handbook of Ethical Theory*, Oxford: Oxford University Press 2006, 122-145.

⁶ Alan R. White, *Modal Thinking*, Oxford: Basil Blackwell 1975 and Alan R. White, *Rights*, Oxford: Clarendon Press 1984.

⁷ Cf. Torben Spaak, *Guidance and Constraint. The Action-Guiding Capacity of Theories of Legal Reasoning*, Uppsala: Iustus Förlag 2007, 14.

particular by logicians) called 'deontic'.⁸ They include the concepts 'shall', 'ought', 'obligated', 'obligation' and 'duty'. These concepts in a sense provide the 'deontic furniture of the world'. My hope is that a better understanding of these concepts and their differences leads to a better insight in the nature of normativity.

The discussion of this deontic furniture is, somewhat artificially, clustered in three themes. The first theme concerns the distinction between rules and facts, which is much more central than the overrated distinction between fact and norm. The second theme concerns the relation between normativity and human behaviour, and is focused on the similarities and differences between guiding and motivating reasons. The third theme, finally, concerns the distinctions between a number of deontic concepts including 'ought', 'obligated', 'obligation' and 'duty'. The arguments in this paper aim to a large extent at giving precise meanings to words. In ordinary usage, these same words tend to be used in many different and often overlapping meanings, however. This means that the usage proposed in this paper will deviate from some ways in which the words are ordinarily used.

Although the approach taken in this paper is that of conceptual analysis, which suggests that things that are already implicitly known are made explicit, the conclusions may for some be rather surprising. They will include that:

- depending on the meaning assigned to 'norm' either there is no difference between norms and facts, or the difference is rather uninteresting;
- the well-known distinction between constitutive and regulative rules is a dubitable one;
- there is a real important difference between static and dynamic rules, and that there are at least two kinds of static rules;
- there are two 'families' of guiding reasons, one based on the motivation of actors, and the other on reason;
- not all guiding reasons are reasons why something ought to be done;
- there is a clear difference between duties and obligations;
- the fact that P should, or ought to, do A is not a reason for P to do A.

2 FACTS, RULES AND NORMS

The concept that is most related to normativity is that of a *norm*. Arguably, this concept is so ambiguous that it should be abandoned and replaced by less ambiguous concepts.⁹ The basis for these other concepts is to be found in the distinction between facts and rules. Since rules tend to have a linguistic expression and since facts are also closely related to language, language is a suitable starting point for making the necessary distinctions.

2.1 FACTS AND INDIVIDUALS

As Strawson has pointed out, facts depend on language.¹⁰ A fact is always the fact that ..., where the dots stand for a phrase expressed in some language. It is for instance a fact that 'it

⁸ The word 'deontic' suffers from the same lack of clarity as 'normativity': it is easier to give examples of what is 'deontic' than to define what it is. Cf. <http://plato.stanford.edu/entries/logic-deontic/> and <http://www.sil.org/linguistics/GlossaryOfLinguisticTerms/WhatIsDeonticModality.htm>

⁹ Jaap C. Hage, 'What is a Norm?' in Jaap C. Hage, *Studies in Legal Logic*, Dordrecht: Springer 2005, 159-202.

¹⁰ P.F. Strawson, 'Truth', in *Proceedings of the Aristotelian Society*, Supplementary Volume, 1950. Also in P.F. Strawson, *Logico-Linguistic Papers*, London: Methuen 1971, 190-213.

is not raining here and now'. However, facts also depend on the world, because it is the world, not language, that determines which facts exist, whether it rains here and now. A language determines which facts can be expressed, the world determines which of the expressible facts actually exist. This insight can be used to define the *world* as the set of all actual facts. Since these facts are language-dependent, the world is then language-dependent too.¹¹

It is useful to distinguish between expressible facts and actual facts. An expressible fact will be called a *state of affairs*. States of affairs are what is expressed by sentences with truth values.¹² For instance, the sentence 'It's raining' expresses the state of affairs that it is raining. Some states of affairs *exist*¹³ in the actual world; these are called *facts*. A sentence that expresses a fact is *true*. False sentences express *non-facts*, states of affairs that do not exist.

In most declarative sentences it is possible to distinguish one or more terms which denote entities in the world. Next to these terms there will be predicate expressions by means of which something is said about the denoted entities. For instance, in the sentence 'John walks' the word 'John' denotes John, while the predicate term 'walks' is used to say something about John. Logicians call the entities in the world *individuals*, and the expressions used to denote them *terms*. Terms should be distinguished from full sentences. Declarative sentences are true or false; terms are not. So there is, from a logical point of view, a fundamental difference between sentences and terms. Sentences which are used to make statements have truth values; they do not denote.¹⁴ Terms, on the contrary, have no truth values, but denote.

2.2 REALISM AND CONSTRUCTIVISM

There is a simple relation between declarative sentences and the states of affairs expressed by them. A sentence is true, if and only if the state of affairs that this sentence expresses exists. This means exactly the same as that a sentence is true, if and only if it corresponds to a fact (not: 'the facts', as is often written).

This correspondence theory of truth is easily interpreted as presupposing that somehow there are facts outside, given independently of language or human knowledge or recognition, and that a true sentence is true because it accurately describes one of these pre-given

¹¹ Those who also want something like the world which is not language-dependent might use the word 'reality' to denote a language-independent world. The problem with such a reality is that it is not possible to say anything substantive about it, because saying something presupposes a language. Reality in this technical sense would be like a Kantian noumenal world.

¹² The clause 'with truth values' is meant to exclude non-descriptive sentences, such as commands, but also descriptive sentences that have terms on referential positions that have no object of reference, such as 'The king of France is bald'. For the rest of this paper, I will ignore declarative sentences which lack a truth value.

¹³ In earlier work, for instance Jaap C. Hage, *Reasoning with Rules*, Dordrecht: Kluwer 1997, 131, I used the word 'obtain' to stand for the existence of states of affairs, rather than 'exist'. My purpose in doing so was to distinguish the mode of existence of states of affairs and of facts from the mode of existence of 'ordinary' things. This distinction turned out to be confusing, so here I decided to stick to 'exist'.

¹⁴ Frege assumed that sentences denote truth values, but this was a logical-technical device that gives little insight into ontological matters. Cf. G. Frege, 'On Sense and Meaning' in Peter Geach and Max Black (eds.), *Translations from the Philosophical Writings of Gottlob Frege*, 3rd ed. Oxford: Basil Blackwell 1980, 56-78.

facts.¹⁵ Of course, that would be *an* interpretation of the correspondence theory of truth but it is not the only possible one.

According to a different interpretation, it is only necessary that a true sentence corresponds to a fact, without making any assumption about what comes ontologically first, the truth of the sentence or the presence of the fact. On this interpretation the 'direction of fit'¹⁶ may be word-to-world – the content of descriptive sentences aims to reflect the content of the world - in which case the underlying ontology is a realist one.¹⁷ The direction of fit may also be world to word. On this interpretation a fact exists because the sentence that describes this fact is true. For instance it is a fact that John is obligated to repay the loan from Jane, because the sentence 'John is obligated to repay the loan from Jane' is true. In this case the truth of sentence is determined by something else than by its correspondence to a pre-given fact.¹⁸ An attractive version of this view is that the sentence is true because it is the conclusion of the best (possible or actual) argument.¹⁹ Such a constructivist view was defended for the law by Ronald Dworkin.²⁰ It is compatible with a correspondence theory of truth by assuming that the facts correspond with true sentences.

2.3 DEONTIC FACTS

It has often been noticed that sentences that tell one what to do often take the form of declarations. For example, the sentence 'You ought to go to the supermarket' looks very much like the sentence 'You will go to the supermarket'. Is this similarity misleading, covering up a kind of order as a description? Or does the former sentence stand for a state of affairs, and even – if it is true – for a fact?

I will argue for the latter view, but in order to do so it will be necessary to get some possible misunderstandings out of the way.²¹ One misunderstanding is that a sentence such as 'You ought to go to the supermarket' is 'really' a kind of order or exhortation, rather than the description of a fact, because it is, or can be, used to make somebody do something. This

¹⁵ Cf. Ralph C.S. Walker, 'Theories of Truth', in Bob Hale and Crispin Wright (eds.), *A Companion to the Philosophy of Language*, Oxford: Blackwell 1997, 309-330, referring to the 'picture theory' of language of Wittgenstein's *Tractatus*.

¹⁶ Cf. G.E.M. Anscombe, *Intention*, 2nd ed., Oxford Basil Blackwell 1976, 56. See also J. Searle, *Expression and meaning. Studies in the theory of speech acts*, Cambridge: Cambridge University Press 1979, 3/4 and John R Searle, *Making the social world*, Oxford: Oxford University Press 2010, 27-30. However, see also the proposed changes in terminology in my paper 'What is a norm?'.

¹⁷ Cf. Michael Devitt, *Realism and Truth*, 2nd ed. Oxford: Blackwell 1991, 13-17.

¹⁸ An example of this opposite direction of fit, world-to-mind to be precise, is to be found in Aquinas' *Summa Theologica* Ia, q. 21 a.2: 'Truth consists in the equation of mind and thing, as said above. Now the mind, that is the cause of the thing, is related to it as its rule and measure; whereas the converse is the case with the mind that receives its knowledge from things. When therefore things are the measure and rule of the mind, truth consists in the equation of the mind to the thing, as happens in ourselves. For according as a thing is, or is not, our thoughts or our words about it are true or false. But when the mind is the rule or measure of things, truth consists in the equation of the thing to the mind; just as the work of an artist is said to be true, when it is in accordance with his art.'

¹⁹ Cf. Jaap Hage, 'Construction or reconstruction? On the function of argumentation in the law', in press.

²⁰ Ronald Dworkin, *Law's Empire*, London: Fontana 1986, 225.

²¹ A more elaborate version of the present argument can be found in my paper 'What is a norm?'.

line of argument has been attacked by Geach²² and Searle²³, basically because the speech act which can be performed with a sentence does not determine the meaning of the sentence. The sentence 'That is what I ought to do' means the same if it stands on its own as when it is used the conditional sentence 'If that is what I ought to do, I will eat my hat'.

A variant on the same misunderstanding is based on the assumption that facts cannot guide behaviour. The argument then runs that if somebody ought to do something, or – probably better – if somebody is aware that he ought to do something, this guides his behaviour. Because facts cannot guide behaviour, it cannot be a fact that somebody ought to do something. However, a similar argument can be used to argue that it cannot be a fact that your house is on fire, because that fact or the awareness of it will guide your behaviour. Clearly, facts, or the awareness thereof, can and do guide behaviour.²⁴ Therefore it cannot be a reason against the existence of deontic facts that such facts would guide behaviour. Normative or deontic facts are typical cases of behaviour guiding facts.

A second misunderstanding, which may have inspired the first one, is that a 'real' fact cannot depend on what we humans think, believe, project, accept or recognise. On the assumption that standards for goodness and for what should or ought to be done are mind dependent, this misunderstanding becomes that 'real' facts cannot depend on standards. Perhaps the clearest expression of this idea can be found in the work of Mackie, who claimed that facts involving an 'ought' (and other 'normative facts') are ontologically 'queer'.²⁵ This misunderstanding is essentially that of applying an ontological realist stance to domains in which such is less suitable. One such domain is that of social reality, because social reality depends to a large extent on what people accept or recognise about it.²⁶ Another domain is – at least in the eyes of non-Platonists – that of mathematics, because theorems must be provable from axioms adopted by human beings.

If facts can be mind-dependent and therefore also dependent on standards, there is no good reason why there cannot be normative or deontic facts. Moreover, for the same reason there is no problem with 'evaluative facts' or 'value-facts' either. It may be a fact that the decoration of this wall is terrible, just as it may be a fact that one should visit the dentist in case of a tooth-ache. Both facts presuppose standards such as a standard for decent wall-decoration or a standard for prudence, but there is no good reason why the presupposition of a standard makes the existence of facts impossible.

Because normative judgments can very well, and often are, expressed by means of declarative sentences, the appearance is that there are deontic facts which are expressed by these sentences. Two possible objections against the view that there can be deontic facts have been rebutted and apparently there is no reason to deny that there can be and actually are deontic facts.

²² E.g. P.T. Geach, 'Good and Evil', in *Analysis* 17 (1956), 33-42. Also in Ph. Foot, *Theories of Ethics*, Oxford: Oxford University Press 1967, 64-73.

²³ *Speech Acts*, 136-140.

²⁴ This theme is explored in more detail in Jaap C. Hage, *Feiten en betekenis* (Facts and meaning), PhD-thesis Leiden 1987, 117-120.

²⁵ J.L. Mackie, *Ethics. Inventing Right and Wrong*, Harmondsworth: Penguin Books 1977, 38-42.

²⁶ Cf. Searle, *Making the Social World*, 8.

One question which remains to be answered is whether deontic facts, or the awareness thereof, actually motivate human behaviour. This question will be addressed in section 3.4.

Another remaining question is precisely which facts count as 'deontic'. Are they only 'ought-facts', or also 'duty-facts', 'obligation-facts', 'obligated-facts', 'forbidden-facts', or even 'should-facts' and 'permitted-facts'? The answer to this question does not matter very much. What counts is that these are all facts, and not something different because they might be 'deontic'. A possible answer to the questions which kinds of facts are deontic would be that 'ought-facts' are deontic facts, just as other facts which exist on the basis of deontic reasons. As will be explained in section 3.4, deontic reasons are reasons which indirectly, namely through the intermediary of other deontic facts, constitute an ought.

2.4 CONSTITUTIVE RULES

Rules have much in common with ordinary individuals (in the logical sense): they exist in time, they can be created and derogated, they can have characteristics such as effectiveness, etc. They have also a lot in common with descriptive sentences: they have a propositional content and they can in some sense 'correspond' with facts.

However, in this correspondence lies also a major difference with descriptive sentences. Descriptive sentences are 'successful' in the sense of 'true', if they match the facts. Rules are successful in the sense of 'valid', if the facts match the rule. With this match I do not mean that the rule is obeyed, but that the content of the rule is reflected in the world. So, the rule that thieves are punishable is reflected in the world if (because of this rule) thieves are punishable. Valid rules impose themselves on the world. They have the world to word direction of fit because they constrain the world in the sense that not all combinations of facts are possible. As a consequence, rules bring about facts; they are *constitutive*.

Constitutive rules are usually opposed to regulative rules.²⁷ As we will see shortly, it is questionable whether this is a proper distinction. Arguably, all rules are constitutive, and regulative rules only regulate by constituting deontic facts such as duties and obligations. To see why, it will be necessary to distinguish between two main kinds of constitutive rules, namely between dynamic and static rules.

DYNAMIC RULES

Dynamic rules attach new facts, or modify or take away existing facts as the consequence of an event. An event is a change in the set of all facts, any change in the world. Examples are that it starts to rain, that John promised Richard to give him €100, and that Eloise was appointed as chair of the French Parliament. At least the last two of these events have consequences attached to them by dynamic rules. John's promise has the consequence that from the moment of the promise on John is under an obligation to pay Richard €100. The appointment has as its consequence that from the starting point of the chair's new term on, Eloise will be the chair of the French Parliament.

²⁷ The distinction between regulative and constitutive rules can be traced back to at least J. Rawls, 'Two Concepts of Rules', in *Philosophical Review* 64 (1955), 3-32 (also in John Rawls, *Collected Papers*. Cambridge: Harvard University Press 1999, 20-46), and to John R. Searle, *Speech Acts. An Essay in the Philosophy of Language*, Cambridge: Cambridge University Press 1969, 33-42.

Dynamic rules may be conditional, in which case their consequence is only attached to the event under certain conditions. An example is the rule that if it is dark, the occurrence of a car accident obligates the drivers to place a light on the road next to the cars.

FACT-TO-FACT RULES

Where dynamic rules are a relatively simple category, because they all attach a change in the set of all states of affairs to the occurrence of an event, static rules come in two flavours. One kind of static rule attaches a fact to the presence of some other fact. I will call them *fact-to-fact rules*. An example is the rule which attaches to the fact that P owns O the fact that P is competent to alienate O. For example, if Smith owns Blackacre, she is competent to transfer her property right in this real estate to Jones. Another example is the rule which makes that if P is under an obligation towards Q to do A, then P is obligated to do A.²⁸

Fact-to-fact rules may be conditional too. An example is the rule that the mayor of a city is competent to evoke the state of emergency in case of emergencies. This rule attaches the fact that some person has a competence to the fact that this person is the mayor under the condition that there is a state of emergency.

COUNT AS RULES

The second kind of static rules consists of the so-called *counts-as rules*. They have the following structure: Individuals of type 1 count as individuals of type 2. These 'individuals' may be human beings, such as in the rule that the parents of a minor count as the minor's legal representatives. Often, however, the 'individuals' that count as another kind of individual are events. For instance, under particular circumstances, causing a car accident counts as committing a tort, or offering money to another person counts as attempting to bribe an official.

Usually counts-as rules are conditional, meaning that individuals of type 1 only count as individuals of type 2 if certain conditions are satisfied. An example from Dutch law (art. 3:84 of the Civil Code) would be the rule that the delivery of a good counts as the transfer of that good if the person who made the delivery was competent to transfer and if there was a valid title for the transfer.

2.5 REGULATIVE RULES

Traditionally, constitutive rules are opposed to regulative rules. It is not at all clear that this opposition makes sense. Take for instance the rule 'If it grows dark, car drivers must turn on their car lights'. This rule may very well be interpreted as a dynamic, and therefore constitutive, rule which attaches the deontic fact that car drivers must turn on their car lights to the occurrence of the event that it grows dark. All rules which attach a consequence to the occurrence of an event can be classified as dynamic rules, and for this purpose it does not matter whether the consequence is deontic or not.

The rule 'Every citizen must yearly make a tax declaration' might very well be interpreted as a fact-to-fact, and therefore constitutive, rule which attaches the deontic fact (a duty) that one must yearly make a tax declaration to the fact that one is a citizen. All rules which obligate persons who belong to a particular class can be analysed in this way.

²⁸ The distinction between being under an obligation and being obligated will be discussed more extensively in section 4.2.

The only 'problematic' regulative rules are those which unconditionally obligate everybody. An example would be the rule that it is forbidden to commit a murder. However, it is very well possible to treat such rules as constitutive rules which create deontic states of affairs 'out of nothing'. For instance the rule 'It is forbidden to commit a murder' unconditionally creates the fact that it is forbidden to commit a murder. If one is prepared to take this step, one can abandon the distinction between constitutive and regulative rules. All rules are constitutive, and some of them constitute deontic facts. Those are also called 'regulative rules'.

2.6 FACTUAL COUNTERPARTS OF RULES

Suppose that there exists a rule to the effect that skate boards count as vehicles in the sense of some traffic regulation. Because this rule exists, skate boards count as vehicles in the sense of this traffic regulation. To state it differently: because the rule exists, it is a fact that skate boards count as vehicles. This fact, the fact that skate boards count as vehicles, is not the same fact as the fact that the rule 'Skate boards count as vehicles' is valid. The former fact is about skate boards; the latter is about a rule.

Apparently, a rule can constitute facts which can be described by re-using the rule formulation. 'Skate boards count as vehicles' is both a descriptive sentence which expresses a state of affairs, and the formulation of a rule. Moreover, the existence or validity of this rule tends to go hand in hand with the state of affairs being a fact. Because it is convenient to have a term which denotes this phenomenon, I propose to use 'factual counterpart of a rule'.²⁹ The factual counterpart of a rule is a fact which corresponds to the formulation of a valid rule and this fact exists because of the validity of this rule. For example, car drives are obligated to turn on their car lights when it gets dark because the rule exists (is valid) that car drives are obligated to turn on their car lights when it gets dark.

Often it is not easy to tell a factual counterpart of a rule from the rule itself. If somebody says that it is forbidden to lie, does she then make a statement expressing a factual counterpart of the rule that it is forbidden to lie, or does she formulate the rule? For many practical affairs it does not matter, but sometimes it is useful to be able to distinguish the two. Then the following test will do the trick. If it is an appropriate reaction to say 'That is (not) true' then what was said should be interpreted as the expression of a factual counterpart, and otherwise not.

2.7 SUMMARY ON RULES AND FACTS

By way of intermediate summary it is possible to draw two main conclusions. The one is that there is a distinction between facts and rules. Facts are expressed by full declarative sentences which are true. Rules are denoted by terms; they are from a logical point of view individuals. The existence of so-called 'factual counterparts of rules' makes that it is easy to confuse rules and some kinds of facts, but the awareness that this category of facts exists may help avoiding this confusion.

The other main conclusion is that the distinction deontic/non-deontic cuts across the distinction between facts and rules. There are both deontic and non-deontic facts and deontic and non-deontic rules. In schema:

²⁹ In my paper 'What is a norm' I used the term 'descriptive counterpart'. That was less than happy, because the counterparts are facts and facts do not describe (but can be described).

	FACTS	RULES
NON-DEONTIC	non-deontic facts , e.g. <i>It rains, or This is a beautiful painting</i>	non-deontic rules , e.g. <i>Skate boards count as vehicles, or A transfer of ownership makes the person to whom a good was transferred the new owner</i>
DEONTIC	deontic facts , e.g. <i>John is obligated to repay the money he borrowed from Jane, or Judge Judy has the duty to apply the law</i>	deontic rules , e.g. <i>Persons who borrowed money are under an obligation to repay the money, or Judges have the duty to apply the law</i>

A final observation in this connection about norms and their relation to facts:

- If the word 'norm' stands for deontic facts, there is no gap between fact and norm. Norms would just be a kind of facts.
- If 'norm' stands for rules in general, there is a difference between facts and norms, but norms do not have to be deontic. There would, for instance, be competence conferring norms and norms that specify the meanings of words.
- If 'norm' stands for deontic rules (the most plausible interpretation if one wants to keep using the word 'norm') then there is a difference between facts and norms, but this difference is essentially that between facts and rules: it has everything to do with norms being rules, and nothing with norms being deontic.

3 REASONS FOR ACTING

For a proper understanding of normativity it is necessary to see how normativity on the one hand has to do with setting standards which indicate what one should do, or ought to do, that is with standards underlying 'should-facts' and 'ought-facts'. At the same time we should also be able to see how normativity aims at motivating people to act in a particular way. There are two types of discourse involved in normativity, one concerned with providing guidelines for behaviour, and the other with providing motives for behaviour. The one type of discourse is usually deontic, using concepts such as 'duty', 'ought' and 'must', and it deals with the existence of deontic facts. The other type of discourse is usually causal, mostly psychological, using concepts such as 'belief', 'motivation', 'desire' etc., and it deals with explanation and prediction.

One of the challenges in giving a good account of normativity is to show how the behaviour-guiding and the psychological aspect of normativity are related. In moral philosophy this topic is tackled in the internalism/externalism debate.³⁰ This debate deals with the issue whether guiding reasons or the awareness thereof necessarily motivate. Is it, for instance possible to believe sincerely that one has reason to give money to the poor, while at the same not being motivated at all to do so.³¹ The account in the remainder of this section will focus on the differences and relations between guiding and motivating reasons. In the discussion a

³⁰ Brożek describes how this topic was tackled by some legal theoreticians (notably Petrażycki and Kelsen), in Bartosz Brożek, 'Outline of a theory of law's normativity' in Jerzy Stellmach and Bartosz Brożek (eds.), *The normativity of law*, Kraków: Copernicus Center Press 2011, 63-97.

³¹ For this example, see Michael Smith, *The Moral Problem*, Oxford: Blackwell 1994, 6. More in general on the debate in Andrew Fischer and Simon Kirchin (eds.), *Arguing about Metaethics*, London: Routledge 2006, 521-614 and the literature mentioned there.

number of additional distinctions will play a role too, namely the distinctions between practical reason and normativity (should versus ought), between reasons for a person and reasons according to a social group, and between reasons from a psychological and from a rational perspective.

3.1 REASONS AND CAUSES

The word 'reason' functions both in a behaviour guiding discourse and in a causal discourse. In the behaviour guiding discourse it concerns amongst others reasons for action, including both reasons why something should or ought to be done, and reasons why something should or ought to be refrained from.³²

In causal discourse, the word 'reason' is often used as a kind of synonym for 'cause'. It is for example possible to say that the reason why the train was late is that there was a power failure. In relation to normativity, the use of 'reason' for causes of human behaviour is more interesting. However, even then it is possible to use 'reason' in a sense which apparently has little to do with guidance of behaviour. One can, for instance, say that the reason why a person attempted to commit suicide is that he lost control over his actions because of the use of Prozac.³³ We are then talking about physical reasons on a level which is 'underneath' the level of conscious or mental states.

In relation to normativity, the more interesting causes of behaviour are mental states such as – to use the terminology borrowed from Hume³⁴ – beliefs and desires. Such mental states figure in explanations of behaviour in the past, in predictions of future behaviour, and in accounts of motivation, as is illustrated by the following examples, which all mention first the belief and then the corresponding desire:

- The reason she took the train to Brussels was that she thought that the European Parliament is seated in Brussels / she wanted to visit the European Parliament.
- The fact that John believes that there is a cool drink in the refrigerator / that John wants a cool drink, makes it likely that John will walk to the refrigerator soon.
- Amalia is motivated to buy 'Coherence in thought and action' because she thinks this is a good introduction to coherentism in epistemology and because she wants to have such an introduction.³⁵

Mental states as causes of behaviour are more interesting from the perspective of normativity than other causes because these mental states often have a propositional content³⁶ which reflects the presence of a guiding reason.³⁷ It is the belief that a guiding

³² Normative discourse also deals with reasons why some act in the past was good or bad, and reasons why some state of affairs is or is not as it should or ought to be, but – as announced in the introduction – this evaluative aspect of normativity will be ignored here.

³³ See for instance Colleen Cebuliak, 'Life as a Blonde: The Use of Prozac in the 90's', *Alberta Law Review*, vol. 33 (1994/5), 611-625.

³⁴ The terms may be important in Hume's work, but there is discussion whether the famous belief/desire model of human motivation was actually endorsed by Hume. See for instance Jonathan Dancy, *Moral Reasons*, Oxford: Blackwell 1993, chapter 1, footnote 4.

³⁵ Cf. Paul Thagard, *Coherence in Thought and Action*, Cambridge: MIT Press 2000.

³⁶ There are also mental states without a propositional content which cause behaviour. An example would be free-floating anxiety, which may cause restlessness.

reason is present which causes the behaviour for which the guiding reason is a reason. If there is a cool drink in the refrigerator, this fact is a reason for John to walk to the refrigerator. It is the belief that this guiding reason exists, the belief that there is a cool drink, that motivates John.³⁸ Beliefs that have as propositional content a state of affairs which the believing person considers to be a guiding reason and which exercise at least some motivating force upon this person will be called *motivating reasons*.³⁹

That there exists a conceptual relationship between guiding reasons and motivating reasons in the sense that the latter can be defined in terms of the former is well-known. It is less known that the relationship may also run the opposite way, that guiding reasons may be defined in terms of motivating reasons.⁴⁰ It is this opposite direction of the relation which will be explored in the following subsections.

3.2 PERSONAL REASONS

A first step towards defining guiding reasons in terms of motivating ones is to consider reasons for a person, or *personal reasons*.

Suppose that Jane is thirsty. Then this is reason for her to take a drink. That this is a reason for her follows from the fact that being thirsty normally motivates Jane to take a drink if there is one available. If this motivation were lacking, the fact that she is thirsty is not a reason for Jane to take a drink.

Several things should be noted about this example. First, the guiding reason is a fact, not a belief or any other mental state. If she were not thirsty, Jane has no reason to take a drink, although she may be motivated to do so if she is under the illusion that she is thirsty.⁴¹ In general it holds that guiding reasons are facts.⁴² Moreover, it is concrete facts that are reasons, not abstract facts or fact types. It is not 'being thirsty' that is a reason for Jane to drink, but the concrete fact that she is thirsty now and here.

Second, the reason is a fact that is in the eyes of Jane relevant for a kind of behaviour, for the performance of a type of action. This relation of relevancy holds between a kind of fact (being thirsty) and an action type (taking a drink). Because of this general relation, concrete instantiations of the type 'being thirsty' are reasons for performing an act that belongs to the kind of behaviour. A guiding reason is therefore a concrete fact that is relevant for performing

³⁷ The term 'guiding reason' stems from Raz (Joseph Raz, *Practical Reason and Norms*, London: Hutchinson 1975, 15-19). Other terms are in use too. Smith, for instance, writes about 'normative reasons' (Michael Smith, *The Moral Problem*, Oxford: Blackwell 1994, 95).

³⁸ The motivating reason is a belief in an 'ordinary' fact, not a belief that there is a reason, nor the belief that a particular fact is a reason.

³⁹ This usage follows Stephen Darwall, 'Morality and Practical Reason', in David Copp (ed.), *The Oxford Handbook of Ethical Theory*, Oxford: Oxford University Press 2006, 282-320.

⁴⁰ Darwall mentions in 'Morality and Practical Reason' a version which he calls 'existence internalism' and which has strong Kantian overtones.

⁴¹ I ignore the possibility that being under an illusion (the fact) may in special circumstances be a reason for acting too.

⁴² Raz, *Practical Reason and Norms*, 16-20. See also Jaap C. Hage, *Reasoning with Rules*, Dordrecht: Kluwer 1997, 12.

an act that belongs to an abstract action type and which derives its relevancy from the relation between the kind to which the fact belongs and the action type.⁴³

Moreover, this relation of relevancy has as its main ingredient that the person for whom the reason holds tends to be motivated by the awareness of such a reason. In our example this would mean that being thirsty is relevant in the eyes of Jane for taking a drink, only if Jane tends to be motivated to take a drink by the awareness of being thirsty.⁴⁴

It may be tempting to analyse this phenomenon in terms of the Hume-inspired belief-desire model of practical reasoning⁴⁵, but this temptation would be wrong. The analysis in our example would run approximately as follows: Jane has a desire to quench her thirst and she believes that taking a drink will quench her thirst. This explains why Jane takes a drink. Moreover, this same desire makes that it is rational for Jane (Jane has a guiding reason) to take a drink. On this analysis, the belief-desire model functions in the first place as an explanatory theory for human behaviour, as an analysis of motivating reasons. And then it is transformed into a theory about guiding reasons on the assumption that a motivating reason is a belief that there is a guiding reason.

What is wrong with this belief-desire model is that it is too strong. A desire to do something explains the motivation to do it, but is not necessary to explain the motivation. Jane in our example may be motivated to take a drink without having the desire to quench her thirst. Most probably she does not even think about it and there is no desire in the sense of a conscious mental state. Of course it is possible to infer that there must have been a desire, because otherwise she would not have been motivated to take the drink, but that would amount to defining the desire in terms of the motivation which allegedly is caused by it (desire is what in combination with beliefs causes motivation)⁴⁶, and that would be circular.

Our observations so far about guiding reasons for a person lead to the following preliminary definition:

A fact F is a reason for a person P to perform an act that belongs to action type A, if and only if F belongs to a type of fact T such that the awareness of facts of type T tends to motivate P to perform an act of type A.

This definition is over-inclusive, however, as is illustrated by means of the following example about advertising.

Let us assume that Jane has seen lots of commercials of the soft drink Splash. Influenced by these commercials, Jane is motivated by the awareness that she is thirsty to drink a Splash. Suppose moreover, that Jane is not aware that she has been influenced by these commercials. She knows that being thirsty motivates her to take a

⁴³ In *Studies in Legal Logic*, 81-84, I distinguished between concrete and abstract reasons, with abstract reasons being a kind of fact the concrete instantiations of which counted as concrete reasons because they are instantiations of the abstract reason..

⁴⁴ Cf. James Rachel, 'Naturalism', in Hugh LaFollette (ed.), *The Blackwell Guide to Ethical Theory*, Oxford: Blackwell 2000, 74-91.

⁴⁵ Railton seems to have succumbed to this temptation in Peter Railton, 'Humean Theory of Practical Rationality', in David Copp (ed.), *The Oxford Handbook of Ethical Theory*, Oxford: Oxford University Press 2006, 265-281.

⁴⁶ This is essentially the approach taken by Smith (*The Moral Problem*, 113).

drink, but does not realise that she is in fact motivated to take a Splash. Then it can be said that Jane considers being thirsty as a reason to take a drink, but not as a reason to take a Splash.

The conclusion to be drawn from this example is that a fact can only be a guiding reason for a person to perform a particular kind of action if this person knows that awareness of this fact tends to motivate him or her to perform acts of this type. The knowledge does not have to be conscious; it suffices that if the person is asked about the causal connection, he or she will usually answer in the affirmative.

Let us modify the example still a bit.

Jane has come to realise how the commercials have influenced her motivation and she is unhappy about that. Maybe she is wrestling with what in her eyes has now become the temptation to take a Splash, but Jane certainly does not consider being thirsty as a reason to take a Splash. Under these circumstances it cannot be said that being thirsty is a reason for Jane to take a Splash.

A fact can only be a reason for a person if this person does *not object* against being motivated by the awareness of this kind of fact.

It may still be asked whether this last demand should not be stronger. Shouldn't it be required that a person *agrees* with being motivated by the awareness of a guiding reason for this person? Suppose that Jane realises how she has been influenced by the commercials and thinks 'Never mind'? Would being thirsty then count as a reason for her to take a Splash? The case seems to be a boundary one, but intuitively I would say that neutral awareness of being motivated suffices for the existence of a guiding reason. It is not necessary that the motivated person agrees with being motivated, if only he or she does not disagree.

If these amendments are taken into account, the definition of a guiding reason for a person would become the following;

A fact F is a reason for a person P to perform an act that belongs to action type A, if and only if:

- 1. F belongs to a type of fact T such that the awareness of facts of type T tends to motivate P to perform an act of type A;*
- 2. P is aware of this tendency to be thus motivated;*
- 3. P does not disagree with being thus motivated.*

Under these circumstances it may be said that F is a *personal reason* for P to do A.

3.3 SOCIAL REASONS

Diana does not trust weather forecasts. Therefore she is not motivated to believe that it will rain in the afternoon if the morning weather forecast predicts it. Diana is exceptional for the society in which she lives. Almost everybody in her society trusts weather forecasts, especially those which regard the same day.

If the facts are as in this example, the fact that the weather forecast predicted rain for the afternoon is in Diana's society a reason to believe that it will rain in the afternoon, but it is not

such a reason for Diana.⁴⁷ People may accuse Diana of being irrational, but from Diana's point of view such an accusation does not have to be correct. It may be the case that Diana's lack of trust is embedded in a comprehensive set of beliefs, attitudes etc., held by Diana, which is coherent. It may also be that all the other people are irrational, but that does not have to be the case either. It is very well possible that a person is motivated in a different way than other persons while neither this person nor the others are irrational. In such a situation, what is a guiding reason for one person does not have to be a guiding reason for the group, or – to state it in the terminology which will be used from now on – it does not have to be a *social reason*.

A fact is a *social reason* in group G if and only if

- this fact is a personal reason for sufficiently many members of G, and
- sufficiently many members of G
 - believe that this fact is a personal reason for sufficiently many members of G,
 - believe that sufficiently many members of G believe the same,
 - expect from other members of G that this kind of fact is a personal reason for them.⁴⁸

If a social reason in a group is not a personal reason for some person, this person may be said not to take the internal point of view towards this reason. For facts of a particular kind to count as social reasons in a group, it is normally necessary that sufficiently many group members take this internal point of view towards these reasons.⁴⁹ It is important to notice in this connection that on the one hand facts of a particular kind may count as social reasons within a social group, while a member of this group nevertheless tends not to be motivated by facts of this kind, and that, on the other hand, social reasons are still defined in terms of motivation to act on these reasons, be it indirectly.

3.4 NORMATIVE OR DEONTIC REASONS

Having the notion of social reasons available, it becomes possible to distinguish between guiding reasons in general and normative or deontic reasons in particular. Deontic reasons are those guiding reasons which *obligate*. Examples are moral reasons, such as the reason that closing a factory would make many people jobless, which is (under certain circumstances) a moral reason why the factory owners are under a duty not to close the factory, and legal reasons, such as the fact that Evelyn borrowed €500 from Jack, which is a reason why she is under an obligation to repay Jack the money which she borrowed from him.

There are also guiding reasons which do not obligate, such as the fact that Jane is thirsty, which may guide her behaviour but does not obligate her to do anything. Apparently, not all guiding reasons are deontic ones. What precisely is the difference between deontic and non-deontic guiding reasons? The notion of *second-personality* that was introduced by Darwall

⁴⁷ The example deals with reasons to believe and is therefore epistemic. However, I do not think that reasons to believe are fundamentally different from other guiding reasons, and therefore this epistemic example can very well fulfil its function.

⁴⁸ This definition is inspired by similar definitions of existence in social reality, which can be found in, for instance, Tuomela's paper, 'Shared we-attitudes' in Raimo Tuomela, *The Philosophy of Sociality. The shared point of view*, Oxford: Oxford University Press 2010, 65-82.

⁴⁹ Cf. Herbert L.A. Hart, *The Concept of Law*, 2nd ed. Oxford: Oxford University Press 1994, 89-99.

into ethical theory⁵⁰, may come in useful here. The idea behind second-personality is that it involves a claim on a person's behaviour. This claim may stem from a right-holder, such as the creditor who claims that the debtor pays what he is due. It may also be a claim from the community at large, as when 'society' demands that a plant stops polluting the environment. And, as a boundary case, the claim may even stem from the person on whom the claim is laid, such as when some researcher demands from himself that he will finally write this book which he planned already many years ago.⁵¹

In case of a claim its existence should not depend on the motivation of the person on whom the claim is laid. If this were different, Evelyn could take her obligation to pay Jack €500 away just by not being motivated to act upon Jack's claim. Therefore deontic reasons, which involve a claim, do not depend for their existence on the motivation of the person for whom the reason holds. Since the existence of personal reasons does depend on the tendency of the personal for whom the reasons hold to be motivated, deontic reasons will not be merely personal reasons. Does this mean that one cannot be obligated to do something if there is no social group? Not necessarily, but the second-personality characteristic of deontic reasons does imply that there must be something which functions like a group. The minimal case would be a 'group' consisting of one person, when a person lays a claim on herself.⁵²

That a deontic reason is not *merely* a personal reason does not imply that it cannot *also* be a personal reason. Evelyn is still under an obligation to pay Jack €500 if she is not motivated to do so, but Evelyn may be very law-abiding and motivated to comply with her legal obligations. In that case legal obligations will be personal reasons for Evelyn too.

The step from personal reasons to social reasons is a step on the road from motivation to normativity. It allows the existence of deontic reasons, reasons for the existence of duties and obligations that allow other persons to make demands on an actor. Suppose that the members of a social group acknowledge the duty for inhabitants of houses to clear away the snow before their houses to keep the pavements passable. Even if some inhabitant does not see the presence of snow on the pavement before his house as a reason to clear it away, the group members still take it that he is under a duty to do so and may make appropriate claims on him. The existence of the duty does not depend on the motivation of the person under this duty to comply with it, and yet the existence of the duty is indirectly defined in terms of motivation, namely the motivation of the group members as a set.

Social reasons can be reasons why somebody has a duty, e.g. the duty of house owners to clear the pavement, or is under an obligation, e.g. the obligation of the promisor to do what she promised.⁵³ If this is the case, these reasons are constitutive; they *make* that a duty or obligation exists, and indirectly also that somebody ought to do something. Such reasons are

⁵⁰ Stephen Darwall, *The Second-Person Standpoint*, Cambridge: Harvard University Press 2006, 3-10.

⁵¹ A nice illustration is the story of a famous Dutch soccer player who defended his transfer from Ajax to Barcelona with the reason that if he would not go, he would be 'a thief from his own wallet'. Apparently it is possible to violate a duty towards oneself.

⁵² This theme takes a central place in R.A.V. van Haersolte, *Monoloog met mijn schuldeiser* (Monologue with my creditor), inaugural address Rijksuniversiteit Leiden, 31 januari 1975. Also in Arent van Haersolte, *De mens en het zijne*, Zwolle: Tjeenk Willink 1984, 146-164.

⁵³ The distinction between duties and obligations will be discussed in section 4.2.

normative reasons or *deontic reasons*.⁵⁴ Normative or deontic reasons are indirectly – that is via intermediate deontic states of affairs such as the existence of duties and obligations – reasons why somebody ought to do, or to refrain from, some kind of action.

A consequence of this is that it is possible that duties and obligations exist, and that somebody ought to do something, even if the concerned person who is aware of the presence of a duty or an obligation is not at all motivated to comply with it. Awareness of personal reasons by definition involves motivation of the rational person for whom these facts are personal reasons. For personal reasons *internalism* holds: the awareness of a personal reason guarantees in rational persons the motivation to act upon it. For social reasons, deontic social reasons included, internalism does not hold. Something may be a reason why P ought to do A, even though a fully rational P is not motivated to do A by the awareness of this reason. As far as deontic reasons are concerned, externalism is the correct view: the awareness of a deontic reason does not guarantee the motivation of the concerned person to act upon it.

3.5 THE DEMANDS OF REASON

The notion of a reason is etymologically and conceptually connected to reasoning. In this light it is not surprising that there is a demand that reasons are reasonable. Reasons must, so it may be argued, be good reasons; a bad ‘reason’ is not ‘really’ a reason, at least not a guiding one.⁵⁵ The example about Jane and her disposition to take a Splash whenever she is thirsty may serve as an illustration again.

Let us assume that Jane has acquiesced in the effects of the Splash commercials and has no problems with being motivated to take a Splash when she is thirsty. Then being thirsty is a personal reason for Jane to take a Splash. Now, suppose that Splash does not quench thirst. The belief that Splash does quench thirst was a factor that led to Jane’s tendency to be motivated. Given that Splash does not quench thirst, this motivation is misguided⁵⁶, and arguably it may be said that being thirsty turns out not to be a reason for Jane to take a Splash after all. Anyway, it would not be a good reason, and if one assumes that reasons can only guide - rather than persuade - if they are good, it would not be a guiding reason either.

More in general, there is a tendency to connect guiding reasons with reason in the sense of rationality. This may mean that some facts which would seem to be personal or social reasons⁵⁷ turn out to lack that nature, or to be bad reasons. It may also mean that some facts the awareness of which does not tend to motivate would nevertheless count as guiding reasons. The following story may illustrate this.

⁵⁴ This identification of normative and deontic reasons is only possible if, as happens in this paper, evaluative reasons are ignored.

⁵⁵ This theme is also explored in Bernard Williams, ‘Internal and External Reasons’ in his *Moral Luck*, Cambridge: Cambridge University Press 1981, 101-113. Originally in Ross Harrison (ed.), *Rational Action*, Cambridge: Cambridge University Press 1980.b

⁵⁶ It is tempting to state that the motivation is irrational (cf. for instance Smith, *The Moral Problem*, 156), but if Jane has good reasons to believe that Splash quenches thirst, there is nothing irrational in her tendency to be motivated. Nevertheless there is something ‘wrong’ in it, and by the use of the word ‘misguided’ I tried to express this kind of wrongness.

⁵⁷ The type of argument why some personal ‘reasons’ are not real reasons can be applied analogously to social reasons.

John is playing a betting game with dice. If the sum of the two dice he has thrown is bigger than 9, John has reason to raise the bet. John has thrown a 4 and a 6, but he cannot sum these numbers and is therefore not motivated by his knowledge that he has thrown a 4 and 6, and would normally not be motivated by this knowledge either. Nevertheless, rationally John should be motivated by this knowledge and therefore, arguably, John has a guiding reason to raise his bet.

Apparently the set of reasons can be extended on the basis of reason. Reason may make that some facts are guiding reasons, even if they are not personal reasons. This function of reason will be referred to as the *extension function*.

‘Opposed’ to the extension function stands the *reconstruction function*.⁵⁸ This reconstruction function boils down to it that the original set of tendencies to be motivated is subjected to reconstruction in order to make it rational. Only those tendencies to be motivated are considered to lead to good guiding reasons which fit in this reconstructed set.

An example to illustrate this step concerns the discrepancy between the ways in which the (ab)use of alcohol and the (ab)use of other drugs is dealt with. If there is a good moral reason to prohibit the use of drugs like marijuana or cocaine, there seems to be an equally good moral reason to prohibit the use of alcoholic drinks. Conversely, if only the abuse of alcoholic drinks should be prohibited, why should this be different for the use of other drugs? Whatever the outcome of this discussion, there is either need for making the prohibition policies consistent, or to provide a theory that adequately explains the difference between alcohol and other drugs.

Rational reconstruction has been defended by Rawls as a kind of coherence theory of morality, under the name of ‘reflective equilibrium’.⁵⁹ Coherence theories, both in epistemology and in ethics and law, are rationalist theories which assume some kind of uncritical input, which is then rationally reconstructed into a coherent whole. In connection with coherentism in the law, Raz denoted this uncritical input as the ‘base’.⁶⁰ For Rawls, this ‘base’ consists of moral intuitions, which should be turned into ‘considered judgements’ in a coherence creating process of mutual adaptation with hypothetical moral principles.

This phenomenon, that facts which at first sight would be guiding reasons turn out not be reasons after all, will be referred to as the reconstruction function of reason, because the initial set of reasons, the ‘base’, is reconstructed into a more reasonable set which does not necessarily include some of the original ‘reasons’. It should be noted that the extension function is also part of the reconstruction function, because the reconstruction of the base set of reasons into a more reasonable set can include extension of the original set. Therefore,

⁵⁸ Both the extension and the reconstruction function were already recognised by Bernard Williams, in his paper ‘Internal and External Reasons’, be it under a different name.

⁵⁹ See ‘Outline of a Decision Procedure for Ethics’, in *Philosophical Review* 64 (1951), 177-197, also in *Collected Papers*, 1-19, and *A Theory of Justice*, Oxford: Oxford University Press 1972, 48-51. See also Norman Daniels, ‘Reflective Equilibrium’, in Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Spring 2011 Edition), <http://plato.stanford.edu/archives/spr2011/entries/reflective-equilibrium>.

⁶⁰ See Joseph Raz, ‘The Relevance of Coherence’, in Joseph Raz, *Ethics in the Public Domain*, revised edition, Oxford: Clarendon Press 1995, 277-325. Originally in *Boston University Law Review* 72 (1992).

properly speaking, the distinction between the extension and the reconstruction function of reason is not an opposition.

Both in its extension and in its reconstruction function, reason takes its starting point in the facts which counted as reasons before reason played its role. This means that the input of reason's work may be a-rational or even irrational. It is possible to do away with this base completely, and try to base reasons purely on reason. This is essentially the Kantian project, according to which, in the name of autonomy, all personal inclinations are discarded. There is much to say about the viability of this Kantian project. However, for the present purposes it suffices to note that this project cuts all links with actual, as opposed to rational, human motivation.

3.6 INSTITUTIONAL REASONS AND REASONS FROM A POINT OF VIEW

Let us define institutional reasons as reasons which make that institutional facts exist. They include, for instance, the reason why Smith owns Blackacre (she inherited it), and the reason why Eloise is competent to open a session of the French Parliament (she is the chair).

The main category of institutional reasons are legal reasons. Legal reasons derive their behaviour guiding nature from legal rules. For instance if there exists a valid legal rule that car drivers must carry a driver's license, then this rule makes the fact that somebody is a car driver into a reason why this person has the duty to carry a driver's license. Most valid legal rules are valid because they satisfy the conditions of counts-as rules which are recognised within a particular social group. For instance, in a particular social group the counts-as rule exists that rules created by means of legislation count as valid legal rules. Given this counts-as rule, reason requires that the rules created by means of legislation are recognised as valid legal rules and – which is a second step - that the reasons based of these rules are recognised as behaviour guiding reasons from the legal point of view. Whether they are actually (mentally) recognised as such is a different matter.

For instance, in the Netherlands there are rules that govern traffic lights for pedestrians. These rules were made by the Dutch legislator and therefore count as valid legal rules. These rules obligate pedestrians not to cross a road if such a traffic light is red. Going by the behaviour of Dutch pedestrians, these legal rules do not exist as social rules. Most Dutch pedestrians are not at all motivated by a red light for pedestrians. Nevertheless these rules count as valid Dutch law, and as a consequence, pedestrians are legally obligated to stop for red traffic lights for pedestrians. They have a guiding reason to stop, whether they are motivated or not. Moreover, this guiding reason is a deontic one. It guides pedestrians by obligating them, not – which is the crux of the example – by motivating them.

The argument chain that starts from personal reasons to some of the reasons defined by legal rules may be quite long.

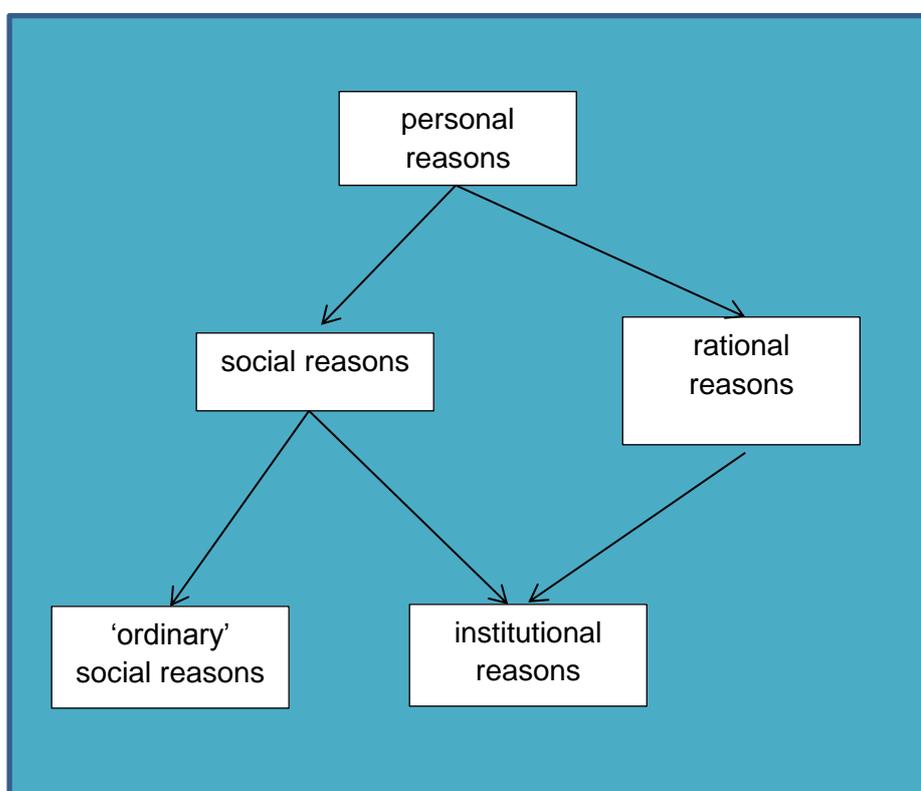
Suppose, for example, that P is committed to the law of Belgium. This means that he is normally motivated to have his behaviour guided by rules of Belgian law. This begins with being motivated to comply with the Belgian constitution. Then, rationally, P, who lives in Flanders, should also be motivated to comply with ordinary Flemish legislation. As a further consequence, P should rationally also be motivated by local rules from Flemish municipalities. This means that the abstract motivation to comply

with Belgian law rationally requires compliance with guiding reasons based on by-laws from Flemish municipalities.

As the example about the traffic lights for pedestrian illustrates, it is far from obvious that reasons which should rationally be complied with are also reasons which actually motivate. This holds particularly if the chain of reasons is quite long, as in the example about the by-laws from Flemish municipalities. Nevertheless there still is a connection with motivation because institutional rules derive their guiding force from their belonging to a system of rules which by and large motivates. The basis for the existence of institutional reasons is still the motivation to act of individual persons, this time the general motivation to act on the rules that belong to the system. If this general motivation would not have existed, the system in question would not have counted as an existing legal system.

The phenomenon of institutional reasons illustrates how rational extension of a set of reasons constitutes another step on the road from motivation towards normativity. It is also a step further on the road from personal to social reasons, because institutional reasons are a kind of social reasons which do not immediately depend on motivation anymore, but which nevertheless depend for their existence on human motivation with regard to the institution as a whole. Institutional reasons can exist thanks to the existence in a social group of rules⁶¹ which indirectly attach the presence of these reasons to events or other facts.⁶²

The relation between personal reasons, social reasons, rational reasons, and institutional reasons can be pictured as follows:



⁶¹ The existence of rules can be defined analogously to the existence of facts in social reality, or – in the case of institutional rules – it can be defined recursively in terms of the existence of other rules. Cf. D.W.P. Ruiter, *Institutional Legal Facts*, Dordrecht: Kluwer Academic Publishers, 1993, 23-26.

⁶² Cf. the account of kinds of constitutive rules in section 2.4.

In the end, all guiding reasons must either be, or be based upon, personal reasons, because otherwise there would be no link between guiding reasons and motivation. Social reasons are defined directly in terms of personal reasons. Rational reasons are those reasons which rationally should guide the behaviour of a person P, given the facts which would normally be personal reasons for P. Institutional reasons are those guiding reasons which count as reasons according to the rules which define a social institution. In the end these rules must be based on social rules and reasons.

Most institutional reasons to act are reasons from the *legal point of view*. Points of view are perspectives under which a phenomenon can be considered. The points of view of morality, and law are the most important normative points of view. They both generate guiding reasons *from that point of view*. That these facts are guiding reasons from the point of view in question, for instance legal reasons, is because of the definitional rules that specify what this point of view amounts to. So it depends on the definition of law which reasons count as legal reasons, and on the definition of morality which reasons count as moral reasons.⁶³

Institutional deontic reasons *constitute* duties, obligations etc. and in that way *make* that persons ought to do particular things. Institutional reasons have this in common with social deontic reasons, and they have also in common with them that awareness of their presence does not necessarily motivate the persons which they obligate. Externalism is correct with regard to institutional reasons, just like it is with regard to social reasons.

3.7 SUMMARY ON REASONS

Any discussion about reasons in connection with behaviour should distinguish between guiding reasons, which tell people what to do, and reasons in the sense of causes, which explain, motivate and predict behaviour. Motivating reasons are reasons in the sense of causes. They are mental states with as propositional content that a guiding reason is present. So there is a conceptual link between guiding reasons and one particular kind of causal reasons, and this connection makes motivating reasons dependent on guiding reasons.

In connection with normativity it is interesting to see whether the connection also goes the other direction, whether guiding reasons depend on motivating reasons. In order to obtain such a relation, it is necessary to define motivating reasons without mentioning guiding reasons. This can be done with regard to personal reasons, guiding reasons which are reasons for a particular person to act in a particular way. Such personal reasons can be defined as follows:

A fact F is a reason for a person P to perform an act that belongs to action type A, if and only if:

1. F belongs to a type of fact T such that the awareness of facts of type T tends to motivate P to perform an act of type A;
2. P is aware of this tendency to be thus motivated;
3. P does not disagree with being thus motivated.

Under these circumstances it may be said that F is a *personal reason* for P to do A.

⁶³ Geoffrey Warnock's *The Object of Morality* (London: Methuen 1971) is an attempt to derive conclusions about the contents of morality from the nature of this phenomenon.

Personal reasons cannot be deontic reasons, because deontic reasons have an aspect of second-personality. From a person who is obligated to act in some way it can be claimed, normally by somebody else, that he or she in fact acts this way. Such a claim cannot depend on the motivation to act, and therefore deontic reasons are not personal reasons.

Many deontic reasons are social reasons, reasons which are considered to be behaviour guiding by most members of a social group. A fact is a *social reason* in group G if and only

1. if this fact is a personal reason for sufficiently many members of G, and
2. if sufficiently many members of G
 - believe that this fact is a personal reason for sufficiently many members of G,
 - believe that sufficiently many members of G believe the same,
 - expect from other members of G that this kind of fact is a personal reason for them.

It is possible to distinguish between guiding reasons and good guiding reasons, but it is also possible to demand that all guiding reasons are good reasons. In the latter case, reason plays a role in determining what are guiding reasons. In this connection we can distinguish between the extension and the reconstruction role of reason. In its extension function, reason can make that facts the awareness of which by itself does not motivate, nevertheless count as guiding reasons. An important subset of these reasons required by elaboration of a more basic set are institutional reasons such as for instance legal reasons. In its reconstruction function, reason makes that only those facts count as guiding reasons which survive a process of rational reconstruction. Such a process would probably weed out reasons which derive their motivating force from false beliefs.

4 DEONTIC FURNITURE

Many rules, principles and facts are expressed by means of terms which are somehow related to normativity. These terms include 'ought', 'shall', 'duty', 'obligation', 'obligated', and 'obliged'. The precise relations between the meanings of these terms, or between what these terms stand for is far from clear, and the use of the terms in common parlance is not without ambiguity. Still, for a proper understanding of the nature or normativity, some insight in the differences between, for instance, 'shall', 'ought', and 'obligation' is very useful. For that reason, this section will make an attempt to create some clarity. 'Create' because there are no obviously correct analyses in this field. The work must necessarily be somewhat stipulative in this ambiguous field of semantic, conceptual, or still other relations. As indicated in the introduction, the analyses presented here were inspired by the work of White, in particular the books *Modal Thinking* and *Rights*, but it does not follow White's analyses uncritically.

4.1 SHALL AND OUGHT

Practical reasoning from the first-person perspective tries to answer the question 'What shall I do?' This question is a different question than the question 'What is it that I ought to do?' with which it may be confused.

The ought-issue is to be answered on the basis of deontic reasons, reasons which lay a second-personal claim upon the behaviour of the person who ought to do something. If a person ought to do something, even if he recognises that he ought to do something and is

aware of it, this is no guarantee that he will be motivated to act accordingly. It depends on whether the deontic reasons which make that he ought to do something are also personal reasons, and as we have seen in section 3.4, this is not necessarily the case.

With the shall-issue, things are completely different. What a person should do depends on her personal reasons. These reasons may, but need not, include deontic reasons. For example, if Alice would like to listen to some alternative country music, she has a reason to play a record of, for instance, Gillian Welch. *Ceteris paribus*, this is not something which she ought to do, but given her desire to hear that kind of music, she should play that record.

Moreover, if she should play this record and is aware of it, Alice will normally be motivated to act accordingly. There may be circumstances that make that she does not play the record. There may be countervailing reasons (Alice's husband, who is at home, hates alternative country) which make that Alice does not act on this motivating reason, or Alice may be irrational (too tired to do anything) with the effect that she is not motivated to act on what she herself considers to be a reason, but under normal circumstances there is a close link between what a person thinks she should do and her being motivated to act accordingly.

Deontic reasons may be reasons why a person should act in a particular way, but that depends on whether these deontic reasons were internalised. For instance, the fact that the traffic light for pedestrians is red is a legal reason for a pedestrian not to cross the road. *Ceteris paribus*, this reason makes that the pedestrian ought not to cross the road. Whether she should cross the road, however, depends on what are her personal reasons. If our pedestrian has internalised (this part of) the law, meaning that she takes legal reasons as personal reasons, the red traffic light will also constitute a personal reason, a reason for what she should do. However, if she is not interested in the law at all, and not afraid of the law's sanctions, there is no reason why she should not cross the road.

If a person should do something, this does not imply that others can expect from her that she does it in fact, unless she also has a deontic reason for doing it. Nobody is in a position to urge Alice to put the Gillian Welch record on. Personal reasons can very well lack the aspect of second-personality which makes them normative.

Finally, the fact that somebody ought to do something is never a reason for doing what she ought to do. The reasons why P ought to do A may be reasons why P should do A, but it is these reasons for the ought that can also be reasons for the should. *The ought itself is not a reason*. Neither is the should a reason, but this is easier to see: how can the fact why one should do A be a reason for doing A? Think for instance of the child who asks his mother 'Why am I to eat my meal?'. 'Because you should' is not an acceptable answer.

That neither a should-, nor an ought-fact can be a reason for acting, and that an ought cannot be a reason for a should, has to do with the special nature of the ought and the should. What one should do is the final conclusion of practical reasoning, and since practical reasoning ends in the intention to act there cannot be a step anymore 'after' the should. The should-judgement is, barring exceptional circumstances (irrationality), necessarily connected with the intention to act. Somewhat analogously, the ought-judgement is the conclusion of deontic reasoning. An ought is not a reason, but the outflow of one or more reasons. All these reasons which lead to an ought-conclusion may also be reasons why person should do something or a reason for a person to do something, but the ought that follows from these

reasons is not an additional reason why something should be done or to do something. The summary of a set of reasons is not a reason itself.

4.2 DUTIES, OBLIGATIONS, BEING OBLIGATED AND BEING OBLIGED

The distinction between what one has a reason to do and the summary of a set of reasons should warn us against identifying pieces of deontic furniture. Being under an duty or under an obligation to do something is *not* the same as owing to do that. Being under a duty and being under an obligation are both reasons why somebody ought to do something; they are not the ought itself. Moreover, duties and obligations are not the same thing either.

A *duty* to do something is what one is obligated to do as a consequence of a particular position or role.⁶⁴ Duties are connected to positions or roles by means of fact-to-fact rules (cf. section 2.4). It is for instance, the duty of a judge to apply the law, and the duty of a house-inhabitant to clear the snow from the pavement before the house. Then the fact that Judy is a judge is a reason why Judy has the duty to apply the law, and the fact that Gerald inhabits a house is the reason why Gerald has to clear the pavement.

The same reasons are also reasons why Petra and Gerald are *obligated* to apply the law, respectively to clear the pavement. However, by saying that something is somebody's duty, the relation to somebody's position or role is made explicit, while that is not the case if it is said that somebody is obligated. Being obligated is the normative implication of one particular deontic reason, which abstracts from the nature of the reason. It is somewhat similar to owing to do something, but there is a difference in that being obligated is the outflow of one deontic reason while an ought may be the outflow of a set of reasons.

It is possible, however, that a set of deontic reasons only contains one reason, and then the ought is very similar to the being obligated. Suppose, for instance that Petra has precisely one reason why she ought to apply the law and this reason is that she is under a professional duty to do so (Petra is a judge). Then Petra is obligated to apply the law, and she ought to apply the law, both as the outflow of the single reason that she is under a professional duty to do so.

Where a duty is connected to a position or role by means of a fact-to-fact rule, *obligations* are the consequences of events, to which they are connected by means of dynamic rules (cf. section 2.4). Some obligations are undertaken voluntarily, most notably by making promises. Then the event that P promised Q to do A leads to the obligation that P is under an obligation towards Q to do A. Other obligations are not undertaken voluntarily. An example would be that P by accident causes damage to Q. This event results in the obligation to compensate the damage.

As these two example illustrate, obligations are always *directed*. A person P is under an obligation towards person Q to do A. Normally this goes together with a *claim* of Q against P that the obligation is performed.⁶⁵ If a person P is under an obligation to do A, P is obligated to do A. The event that brought about the obligation and which is therefore the reason why P

⁶⁴ White, *Rights*, 21-26.

⁶⁵ The law knows some exceptional circumstances where such a claim is lacking, for instance in the case of *obligationes naturales* and *stipulationes alteri*. Cf. Reinhard Zimmerman, *The Law of Obligations. Roman Foundations of the Civilian Tradition*, Oxford: Oxford University Press 1996, 7-10 and 34-45.

is under an obligation, is also the reason why P is obligated. However, in saying that P is obligated to do A, one abstracts from the obligation, and therewith also from the claim which corresponds to the obligation.

The issue what is to be done is to a large extent decided by what is possible. Suppose that John promised to post a letter and the only way to keep his promise is to walk to the letter box, John is obliged to walk to the letter box. He is not obligated to do so; the obligation only concerns the posting of the letter; that is what John is obligated to do. His behaviour is not only constrained by this obligation, however, but also by which behaviour alternatives are open to him, both physically and normatively. If these constraints only 'allow' one kind of behaviour, one is obliged to perform this behaviour. Being obliged is the outcome of *all* constraints, both the deontic and the non-deontic ones, on one's behaviour, and is in that sense comparable with an ought. The difference between being obliged and owing to do something is that being obliged takes in all constraints, including the non-deontic ones, while the ought only takes in deontic constraints.

5 CONCLUSIONS

In the sections above, a large number of distinctions has passed. Neither one of these distinctions properly defines what normativity is, but together they offer a neat picture.

The first distinction is that between normativity as related to the guidance of behaviour (ex ante normativity) and normativity as related to the ex post evaluation of behaviour. This paper only deals with the ex ante variant.

The primary function of ex ante normativity is to direct people to act in a particular way. If there were no connection at all with motivation, the very notions of duty, obligation and ought would not make much sense. However, normativity is not merely a way to motivate people; it is a particular way to do so, namely through the intermediary of normative or deontic facts, such as the existence of duties and obligations, and 'ought-facts'. A major, if not the main challenge for an account of normativity is to connect these two aspects of normativity.

In the section about reasons an attempt was made to counter this challenge by arguing that there is a close connection between guiding reasons and explanatory reasons. Explanatory reasons can be defined in terms of guiding reasons, but also the other way round. The definition of guiding reasons in terms of explanatory reasons works best in case of so-called 'personal reasons', facts the awareness of which tends to motivate a person to act in a particular way. If the step is taken from personal towards social reasons, or from personal reasons towards 'good' in the sense of rational reasons, the relation between explanatory and guiding reasons is still maintained indirectly, but becomes much looser.

The introduction of social or rational reasons, reasons which do not depend for their existence on the motivation of the persons to whom they apply, made it possible to distinguish a special subset of guiding reasons, namely deontic reasons. Deontic reasons are reasons which make that (which constitute) deontic or normative facts. These facts presuppose the existence of a second-personal claim on the behaviour of the person who is obligated to do something.

Many deontic facts, in particular institutional ones, depend for their existence on deontic rules. These deontic rules attach the existence of a deontic fact to the occurrence of an event

or to some other fact. Therefore these rules are constitutive rules. However, in a sense, namely by creating deontic facts, they also regulate human behaviour. For that reason, deontic rules may also be called 'regulative rules'. These regulative rules are then a subset of the set of constitutive rules. Usually rules are subdivided into constitutive and regulative ones. However, if regulative rules are a subset of constitutive rules, it appears that all rules are constitutive.

It may seem that the central phenomenon in an account of normativity should be the norm. Regrettably it is not very clear what is meant by 'norm'. Perhaps it is better to abandon the very notion of a norm and stick to deontic and non-deontic facts and deontic and non-deontic rules. If one nevertheless wants to keep the notion of a norm, it may be best to identify norms with deontic or regulative rules. In that case, the alleged 'gap' between facts and norms coincides with the gap between facts and rules, and has nothing to do with the deontic nature of norms.