

Conditional Obligation and Fact Statements

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Introduction

Consider this normative statement that expresses a conditional obligation: a person who has intentionally or negligently infringed on any right of others must compensate for any damages resulting in consequence. There are at least two interpretations of this statement: it ought to be that if a person intentionally or negligently infringed on any right of others, then he compensates for any damages resulting in consequence, and if a person intentionally or negligently infringed on any right of others, then he ought to compensate for any damages resulting in consequence. ‘Ought’ in the first interpretation has a wide scope because the word applies to the entire sentence. ‘Ought’ in the second interpretation has a narrow scope because it refers to only the consequential clause of the sentence. This paper aims to defend the first interpretation and to suggest its implication for legal philosophy.

1. Wide Scope ‘Ought’

In his 1951 article, *Deontic Logic*, Georg Henrik von Wright¹ chose the first interpretation, arguing that a conditional obligation should be formulated as followed:

$$(1) \quad O(p \rightarrow q),$$

where O is a deontic operator meaning ‘it ought to be that’, and p is the proposition ‘a person infringed on any right of others’. q is the proposition ‘he compensates for any damages resulting in consequence’. ‘ \rightarrow ’ is a logical connective of a (material) conditional.

Proposition (1) has at least two unreasonable conclusions. First, the following formula is provable in the Standard Deontic Logic (SDL):

$$(2) \quad O\neg p \rightarrow O(p \rightarrow q),$$

where q can be any arbitrary proposition. Proposition (2) means that if it ought to be that a person did not infringe on any right of others (this agrees with our common sense), then it ought to be that if he infringes on any right of others, then he does whatever he can (for example compen-

¹ G. H. von Wright, ‘Deontic Logic’ (1951) 60 *Mind* 1-15, 4-5.

sation, but it can be killing the others). In short, anything impermissible commits us to everything². This conclusion is very absurd.

Second, the formula (1) defines nothing to us living in the real world. It only says that the proposition: ' $p \rightarrow q$ ' is true in any ideal world. If Op would also be true, namely p would also be true in any ideal world, then it follows that Oq would be true, namely q is true in any ideal world. It is indeed absurd to assume that Op (it ought to be that a person infringes on any right of others) is true, but this absurdity is not important here. It is more important that in SDL, nothing follows from the true propositions: $O(p \rightarrow q)$ and p . Therefore, in the case of a person infringing on some right of others, the proposition $O(p \rightarrow q)$ seems to tell him nothing³. In this sense, the proposition (1) seems to be useless for guidance in the real world.

2. Narrow Scope 'Ought'

In his 1954 article, A.N. Prior pointed out the first absurd conclusion of von Wright's formulation and proposed another formula⁴:

$$(3) \quad p \rightarrow Oq$$

With this formulation of a conditional obligation, the two unreasonable conclusions of (1), mentioned above, are avoidable since the proposition (3) does not follow from $O\neg p$, and Oq follows from (3) and p by Modus Ponens. However, (3) has another unreasonable conclusion: the following proposition is provable in SDL:

$$(4) \quad \neg p \rightarrow (p \rightarrow Oq)$$

It means that if a person did not infringe on any right of others, then if he infringes on any right of others he ought to do whatever he can (for example compensation, but it can be killing others). This inference is indeed logically valid, but it seems difficult for anyone unfamiliar with logic to comprehend.

² R. Hilpinen and P. McNamara, 'Deontic Logic: A Historical Survey and Introduction' in D. Gabbay et. al. (eds), *Handbook of Deontic Logic and Normatives Systems* (2013) 86.

³ In the following 4th section I will argue that the proposition (1) nevertheless can guide us if the necessary fact is provable.

⁴ A. N. Prior, 'The paradoxes of Derived obligation' (1954) 63 *Mind* 64-65.

Therefore, R. Hilpinen's and P. McNamara's 2013 article⁵ revealed that the sort of deontic conditional meaning a secondary obligation⁶ (Oq) imposes in the case of the violation of a primary obligation ($O\neg p$) cannot be faithfully represented in SDL.

3. Dyadic 'Ought'

Against the background of the incompatibility of SDL, B. Hanson introduced a primitive symbol expressing a conditional obligation in his 1969 article⁷ as

(5) $O(q/p)$,

and, with it, extended SDL. $O(q/p)$ holds if and only if q holds in all the best worlds where p holds. $O(q/p)$ focuses only on the p -worlds and does not exclude the possibility that $\neg p$ worlds are better than p worlds. It means that Hanson introduced an order between ideal worlds.

The formula (5) does not have any absurd conclusion like (1) because it does not follow from the primary obligation ($O\neg p$). $O\neg p$ and $O(q/p)$ are independent; they can coexist with each other. However, $O(q/p)$ shares another unreasonable conclusion with (1), that is, it reveals nothing to those of us living in the real world. Even if both $O(q/p)$ and p are true, they provide nothing.

P.S. Greenspan correctly suggested that the following proposition is provable⁸.

(6) $(\Box p \ \& \ O(q/p)) \rightarrow Oq$

\Box is a modal operator, meaning it is a necessity⁹. $\Box p$ means that p is true in any possible world. If it is provable in this real world that p is necessarily true and $O(q/p)$ is true, then Oq is also true in the world. Therefore $O(q/p)$ is not useless to those of us living in this world.

Furthermore, (6) has another problem: $\Box p$ cannot coexist with the primary obligation $O\neg p$. Because ideal worlds are also possible worlds, if p is true in any possible world, then p is true in any ideal world. Therefore, $\Box p$ implies Op . Moreover, in SDL, Op implies $\neg O\neg p$, which cannot coexist with $O\neg p$.

⁵ Hilpinen and McNamara (n 2), 86.

⁶ It is called Contrary-to-Duty (CTD) obligation.

⁷ B. Hanson, 'An Analysis of Some Deontic logics' in R. Hilpinen (eds), *Deontic Logic: Introductory and Systematic Readings* (1971), 121-147. Reprinted from (1969) 3 *Noûs* 373-398.

⁸ P. S. Greenspan, 'Conditional Oughts and Hypothetical Imperatives' (1975) 72 *Journal of Philosophy* 259-276, 265.

⁹ Greenspan (n. 7) used the expression 'unalterable' instead of 'necessarily'.

We are now in a dilemma. The secondary obligation, $O(q/p)$, can coexist with the primary obligation $O\text{-}p$ but it alone indicates nothing. If both $\Box p$ and $O(q/p)$ are provable, then $O(q/p)$ cannot coexist with $O\text{-}p$. Our dilemma reveals that the proposal of Greenspan is not the perfect solution to the problem of conditional obligations.

4. A Reconsideration of the Wide Scope ‘Ought’

In my opinion, the formula (1): $O(p\rightarrow q)$ is more suitable to express legal conditional obligations. The reasons are as follows:

First, $O(p\rightarrow q)$ is not useless for us because a slightly different proposition from (6),

$$(7) \quad (\Box p \ \& \ O(p\rightarrow q)) \rightarrow Oq,$$

is provable. If the necessary fact (‘It is necessary that a person has infringed on some rights of others’) is provable, Oq (‘he ought to compensate for the resulting damage’) is concluded.

Second, (7) represents the praxes of judicial trials well. A plaintiff in a civil case or a prosecutor in a criminal case doesn’t prove a simple fact. He must prove a necessary fact. He can argue such necessary facts by showing persuasive proofs.

Third, if we assume that legal obligations are different from non-legal obligations, there is no reason to hold the coexistence of primary (non-legal) obligations and secondary (legal) obligations in one normative system. For example, Article 709 of the Japanese Civil Code provides a conditional obligation (‘A person who has intentionally or negligently infringed on any right of others, or a legally protected interest of others, must compensate for any damages resulting in consequence.’), but no article provides the primary obligation: it is forbidden for everyone to infringe any right of others. Similarly, penal codes in many countries provide no primary obligation. For example, Article 199 of the Japanese Penal Code indeed provides either imprisonment of at least five years or the death penalty for murder, but no article literally forbids murder. We, therefore, touch a central issue of legal philosophy; namely, the relation between legal norms and other sorts of norms, especially moral norms. The line of this paper seems to have an affinity with a kind of legal positivisms. I will discuss this issue at the next opportunity.

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