The Truth-Value of Norms

Wojciech Żelaniec

Uniwersytet Gdańsk
Wydział Nauk Społecznych
Instytut Filozofii, Socjologii i Dziennikarstwa
Zakład Etyki i Filozofii Społecznej

E-mail: zelaniec(at)aol.com
WWW: www.wnswz.strony.univ.gda.pl

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Introduction

As the very title denotes, I shall address the problem of the truth-value of norms. More precisely, I shall look into the issue of whether norms can, or cannot, have a truth-value—and I shall try to gesture at a response in the affirmative (of which I am convinced it is the correct one). To be more precise, I shall set forth a few thoughts that might work in the direction of making less unbelievable the idea that norms may have a truth-value. For this idea passes nowadays for quite unbelievable, in large provinces of philosophy, as far as I can say from the study of the relevant literature. That norms have no truth-value seems to be a received opinion to-day.

Yet, it is philosophy’s, I shall not say obligation, because that would directly fly in the face of that very received opinion I just mentioned, but let’s say mission, or ‘calling’, to examine critically, and if need be contest, even the receivedest among the received opinions. So I am going to present you with an exercise in exactly that. A word of warning: the exercise is going to be very very quick-and-dirty, fast-and-loose, rough-and-ready.

There has been—let it be noted by the way—a certain development in this area, or the ‘received opinion’ has not come along ready-made and stone-carved—a development away from the idea that norms (or things akin to norms) could be true or false. Very characteristic, but hardly unique, is the case of the Norwegian scholar Arne Naess. In 1959 he published an article (in the Swedish journal Theoria) with the title ‘Do we know that basic norms cannot be true or false’ and in 1962, af-

1 For instance, in his chapter on Deontic Logic in Handbook of Philosophical Logic, 2, Lennart Åqvist notes that there is problem with a truth value of sentences constituting the object of his study (p. 614), but he does not go into it at all. The usual symbols for Truth and Falsity (T and ⊥, for instance) can, he says, be given any arbitrary logical value, as long as it remains fixed, p. 622.
After an argument exchange with Dag Österberg, he published an article entitled ‘Yes we do know that they can’t’. Or again, a Polish scholar Morawski says in his Wstęp do prawoznawstwa (Introduction to jurisprudence) that the view that norms have a truth-value is ‘isolated’ (p. 54). He does not mention a single name of a champion of that isolated view, so isolated it is in his eyes.

Yet if things have developed this way, it will not be temerarious to assume or at least to hope that they can one day start developing in the opposite direction, if sufficiently many arguments are supplied—such as those that I shall be trying to supply in this talk.

But at the outset let me, by means of ‘stage setting’, say these few things.

**Setting the Stage**

**Truth and truth-values**

First, I work with the correspondence theory of truth. While saying ‘the’ (correspondence theory of truth) I am not forgetting that there are far more than just one correspondence theories of truth (that originally invented by Avicenna, for instance, is quite different from Tarski’s), but I for the purposes of this talk disregard the differences, profound though they might be and certainly are, and speak of ‘the’ correspondence theory of truth.

‘The’ correspondence theory that I shall be assuming says, roughly (well, it’s going to be very rough indeed) that whenever we think or say or write that things are thus-and-so, what we think or say or write is true if and only if the relevant things are, indeed, thus-and-so. As can be seen from this formulation, the correspondence theory of truth (as I conceive of it) presupposes a certain theory of being (things ‘are’ thus and so\(^2\)), and

\(^2\)Which immediately brings up the problem of things that have once been
a full-fledged treatise on the problem would have to involve that. But I shall not go into that part of ontology here.

Second, I know only two truth-values, the classical ones: truth and falsity. In the context of things normative, it would be, perhaps, helpful to have more truth-values, and various authors have, in fact, accepted more than two, but again, at the level of a short intervention we shall be able to make do with just two.

**Norms versus imperatives**

Then, I do not, emphatically *not*, confuse norms with imperatives and/or value judgments. Especially the first confusion has been and is still very popular with philosophers, in particular those of a more or less Positivist persuasion. Most confusions are explainable (though not necessarily excusable) in a way (things confused are mostly similar, or ‘kindred’) and this one is rather easily explainable by the fact that norms can ‘motivate’ (in various ways and senses) commands. A norm like ‘It is prohibited to smoke in this building’ motivates or can motivate a command like ‘Do not smoke in this building’, ‘Stop smoking here’ etc. Nonetheless, norms are one thing, I insist, and commands are another. In jurisprudence, a case for the difference between norms and imperatives has been made by Hart in his *Concept of law*, to mention just him. In Poland, Maria Ossowska (in her *Podstawy nauki o moralności*) or Jerzy Kalinowski were very clear-headed about that distinction.

rather than are, as much as that of things that will possibly be, such as the famous ‘see-battle tomorrow’ by Aristotle, *De Interpretatione*. Then, there is the problem of the Aristotelian ‘being in the sense of being true’ (*Metaphysics*, V, 1017a, 31): ‘There are no unicorns’ is true, and things *are* so that there are none, even though among these things there are no, nor can be any, unicorns. Besides, there is, more relevantly in this context, the problem of things that ‘are’ in a strong sense, independently of what a subject thinks them to be, and things that ‘are’ at best in that weak sense of being thought, or sensed, or imagined, to be thus and so. I shall not go into any of these here, or only in passing.
The grammar of commands vs. the grammar of norms

One of the differences between norms and imperatives is of course their grammar (the mood of the verb, if any). Commands use, typically, the imperative mood for the main verb, whereas norms (more precisely: the propositions in which they are expressed) use, again, in the typical case, the indicative mood. The verbs typically used for norms display sometimes certain peculiarities: ‘shall’, ‘may’ and ‘can’ have no infinitive, while ‘ought to’ and ‘must’ have neither the infinitive nor the past tense, nor any other forms which most other English verbs have. They are called ‘defective verbs’ in the English grammar for this reason. There are other verbs in this group, which are not, or not quite, ‘normative’—such as ‘will’, ‘need’ or ‘dare’. In Polish, the typical verbs or verb-like expressions doing the job in normative propositions are grammatically weird: ‘powinien’, ‘trzeba’, ‘można’ etc. are grammatically disconcerting and even literate native Polish speakers are often confused about what category of speech-parts they belong to. Grammatically, though, they are all in the indicative mood.

All this is not to deny that both norms and commands can be expressed in a variety of (grammatical) ways, such as ‘Us-ing expletives in this room constitutes an offence’, ‘Why are you making such noise?’ ‘No trespassing’, ‘Those soliciting on these premisses will be prosecuted by Law’, ‘Here you come again’, ‘Always these dirty dishes’ and others. Yet, on this I in-

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3 There are grammars that tell you that ‘must’ and ‘ought’ is the present and the past tense, too. But sentences like ‘Yesterday I must see a doctor’ or ‘Last year I ought to renew my driver’s license’ are clearly ungrammatical in standard British as much as North American English. In Swedish, interestingly, the verb ‘måste’, related to the English ‘must’, is, in fact, both the present and the past tense. Like in English, it has no infinitive.

4 If you are a native speaker of Polish, try to think for yourself: just what part of speech are these words: ‘trzeba’, ‘powinien’, ‘wolno’. You’ll see that that’s not easy. Send answers (if you can find any) to my e-mail address.
sist, there are certain typical or 'standard' or 'canonical' forms of expressing both norms, on one hand, and commands, on the other. I mean this in not a particularly 'profound' sense; much rather, I mean this in the sense exemplified thus: In the case of the correct answer to the question ‘What is this?’ (where ‘this’ is a horse) the standard formulation thereof is ‘(This is) a horse’, while various non-standard formulations are, too, possible, such as for instance, ‘Call it a “horse”’, ‘Never seen a horse?’, ‘Let me introduce you to a horse’ and so on.

\textit{Norms and commands as will-expressions}

Another important difference between imperatives and norms is that the former (if genuine) are expressions of somebody’s will (the commanding subject’s, in the standard case), while norms may—but need not—be such expressions. ‘But they quite often are’, you’ll reply; and this is very correct, for, indeed, they sometimes are. When I remind my students that they must not quote without naming the source I certainly wish that they should not do so. Yes, but I need not (maybe I have a wish to catch as many of them as possible plagiarising, or maybe I am just tired, given the well-known futility of such attempts, of wishing anything on such matters—yet my proclamation of the norm is in neither case ‘inauthentic’.) I remember, too, that my students are under the obligation to attend my classes, and I sometimes remind them of that, but frankly most of the time I wish they might not come to my classes (teaching not being an occupation of which I sense an overstrong desire, the understatement the matter a bit, rather dramatically). On this, see Hart, but also Husserl.\textsuperscript{5}

\textit{Norms ‘abstract and general’, commands neither}

Norms are quite often, perhaps typically, though certainly not always, directed upon just anybody within a certain scope or

\textsuperscript{5}As tells us Kalinowski in his \textit{Querelle de la science normative}. 
responding to a certain description (all participants, all residents, all citizens...; norms are 'general and abstract', as Polish students of law call it), which is very uncharacteristic of commands (commands, as is usual with other acts, are performed over against, and directed upon, not just anybody, but specific persons).

*Not all norms are command-like*

Another important difference is that while there are norms from which commands are, in a certain non-logical sense, derivable (I am referring to norms of obligation), or which motivate commands, all the other norms: permissive norms, empowering norms, and what have you, do not have that property. There is no command to be motivated by, or derived from, the permissive norm 'you may smoke here'. (If you insist on defining ‘may’ in terms of ‘must’, the norm in question would be re writable as: ‘you need not not smoke here’, or (which in this case by my lights amounts to the very same thing\(^6\)) ‘it is not true that you must not smoke here’, but it’s sort of difficult to make a natural-sounding command out of that...)

Again, I am told that in Polish legal language nothing but must- or must-not-norms counts as a norm.\(^7\) In this idiom, such norms (as I would call them) as 'Citizens may freely congregate' or 'Parents have the right to school their children at home' are not norms. I do not doubt that a linguistic restriction like that may have a profound justification, but I beg the right to use a somewhat less restrictive vocabulary, in the hope that eventually it will turn out translatable into whatever other semantics a given legal culture might have chosen

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\(^6\)It of course does *not* amount to the same thing if you reject the notion that norms have a truth-value. I do not want to foist anything on you.

\(^7\)This information has been provided to me by Professor Piechowiak, the eminent philosopher of law of the University of Poznań, by means of oral communication.
to use.

Contra Piechowiak  This is a rather longish piece which you
don’t really need to read if you are not interested in my com-
ing to grips with the above-mentioned objection by Professor
Piechowiak. Nothing essential hinges on it, anyway. And it’s
not really ‘contra’, since I don’t hold that Professor Piechowiak
is downright wrong, I only can’t help thinking he sort of over-
stated his point in a bit too wide-sweeping manner.\(^8\)

As a perusal of some of the relevant documents will teach,
in various primitive law systems ‘must-’ and ‘must-not-’norms
prevailed, in number, over permissive or empowering norms.

Take the Torah—a primitive law system whose influence on
ours can hardly be overestimated. According to Moses Mai-
monides (who drew on older rabbinic tradition)—in his Book
of Commandments—there are exactly 613 laws or ‘mitzvoth’
(מִצְוֹתא or מִצְוֹתא) in the Mosaic law, of which 365 are negative, or
prohibitions (mitsvoh lo’ ta’aseh, מִצְוֹת לְאָוֶם שָׁמָּה, literally: ‘thou-
shalt-not-do-laws’) and 248 positive commands (mitsvoh ‘aseh,
מִצְוֹת עֲסֵהא, literally: ‘do-laws’), so there is no room for
either obligatory or prohibitory rules. But Maimonides used
certain hermeneutic rules (shorashim, שׁוֹרָשִים) to distill the
laws from the body of the Torah, and the eighth of these rules
is that the absence of an obligation is *not* to be treated as
a prohibition, thus at least by implication a ‘has-a-right-to’-
norm is ushered in; and such places (see e. g. Exodus, 21, 7)
are sometimes translated by means of such expressions as
‘may’, ‘can’, ‘has a right to’ and similar in other languages;
as are, indeed, some others, for instance the formulation of
the 3. (or 4.) commandment, in Exodus, 20, 9, where not the
imperative mood but the second person singular of the future
tense, indicative mood is used: ta’avod, מַעְבֶּר, operaberis, shalt

\(^8\)The Polish scholar Morawski is more reticent, he says in his *Wstęp do
prowoznawstwa* that some deny that such be norms; he himself does not seem
to be one of ‘some’, as he explicitly admits permissive norms.
thou labour; but one Polish translation has ‘wolno ci pracować’, ‘thou may’st work’.

When it comes to the Law of the Twelve Tables—another age-old monument of our legal culture—obligatory and prohibitory norms, characteristically expressed in the future tense of the imperative, rare in Latin,\(^9\) are in the majority, but here and there we find a useful ‘has-a-right-to’-norm, such as this: ‘Si arbor ex vicini fundo vento inclinata in tuum fundum ist, ex lege XII tabularum de adimenda ea recte agere potes’\(^10\), or ‘should a tree on a neighbour’s farm be bent crooked by the wind and lean over your farm, you may [...] take legal action for removal of that tree’, listed under Table VII, 9.

When it comes to medieval legal systems, it is interesting and maybe significant that of the oldest Swedish law, Västgötalagen or the ‘Westrogothic Law’\(^11\) the sentence ‘Sveær egho konong at taka ok sva vrækæ’ is by far the best known.\(^12\) It says, in succint and pithy Old Swedish, that it is the Swedes\(^13\) who have the right to elect the king as much as to oust him from the throne.\(^14\) Now, this famous sentence does not, it is true, express a norm directly, but only states that there is a norm,

\(^9\)On this see Di Lucia’s *L’universale della promessa*.

\(^10\)Pomponius, *Digesta* XLIII 27, 2

\(^11\)Nothing to do with Goths; the reference is to ‘Gōtar’ or ‘Geatas’, as they are called in *Beowulf*, an Old Swedish tribe.

\(^12\)Olivecrona commented on it, among other scholars: see his ‘Das Werden eines Königs nach altschwedischem Recht.’ See an informative review in English by B. G. According to Olivecrona and earlier Holmgren, ‘taka’, literally ‘take’, did not at all mean ‘elect’, as it is standardly translated, nor did ‘vrækæ’, ‘wreck’, mean ‘depouse from the throne’; it did mean ‘to depose, to throw down from the stone of Mora’, as much as the former meant ‘to elevate on that stone’. Whatever it meant, however, the ‘Swedes’ had a right to do it, probably a unilateral one, as there is no evidence that they had a right, at any stage of their history, to neither ‘take’ a king nor ‘wreck’ one previously ‘taken’.

\(^13\)Or *Suiones*, an Old Swedish tribe, not Swedes in the modern sense.

\(^14\)Both of which they did, as historians tell us, for instance, in about the same time as the Law was written, they ousted their king Valdemar Birgersson from the throne, and established one Magnus Ladislaus or ‘Barnlock’.
a ‘has-a-right-to’-norm, to that effect. I do not know if a norm like that existed. But even if it did not, it is significant that somebody in medieval Sweden should have thought that it did—and considered it worth his while to note it explicitly.

Then, to take a legal system that is, in a sense, both old and young: the Canonical Law of the Roman Catholic Church. If I am not seriously misreading it, it literally teems with norms conferring various both bilateral and unilateral rights on various kinds of persons. For instance, Canon 999 lays down which persons ‘can bless the oil to be used in the anointing of the sick’, such as for instance ‘any presbyter in a case of necessity, but only in the actual celebration of the sacrament’. Professor Piechowiak says that a ‘norm’ like that is implied by the absence of a corresponding prohibitive norm, but if this were so, why should the Canon Law take such pains to list categories of persons who have various rights and faculties? Besides, even if it is so, there is one general, possibly non-written, general permission on the metanormative level, namely: Whatever is not explicitly prohibited, is permitted.

But I very much doubt if it be so. Von Wright has pointed out somewhere that while the principle ‘whatever is not explicitly forbidden is permitted’ may be taken to apply tacitly to certain types of actions, the opposite principle, ‘whatever is not explicitly permitted is forbidden’ must be taken to apply to others. In particular, in the domain of legislation itself, everything that is not expressly allowed must be regarded as forbidden, otherwise some legislators will inevitably take to legislating on what no legislation is called for, such as the length of people’s noses and similar matters. It is not difficult to agree with Anna Pintore, *Diritto senza verità*, that not all things require normative regulation.

On reflection, one realises that while in the past it was easy

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15Both going back to Tertullian’s *Of the crown*, some say: [http://www.tertullian.org/articles/mayor__puritan.htm](http://www.tertullian.org/articles/mayor__puritan.htm).
to go by mostly either mandatory or prohibitory norms, it no longer is, nor can be. Today’s technology makes possible so many new types of actions, some of them with wildly unforeseeable effects, that the question ‘should this be allowed?’ inavoidably forces itself on every thinking mind (including the legislator’s mind). As of 8. November 2008, the Parliament of the United Kingdom of Great Britain and Northern Ireland was still debating on a bill allowing to create hybrid animal-human embryos, ‘for research purposes only’. The bill would additionally allow ‘tissue to be used from people who lack the “mental capacity” to give consent, children whose parents give permission, and anyone who has previously donated samples to hospitals for medical research but can no longer be traced’ (see http://recentaffair.com/node/15686). The debate conducted to date has been very heated, and not without a reason, even though it has pertained to a ‘has-a-right-to’-norm, not a prohibitory or an mandatory, thus a norm that by Prof. Piechowiak’s lights is not a norm at all.

All of the above is not meant to imply that norms other than prohibitions and obligations are as important as, and (still less) more important than, these and have always been so. On the contrary, as we have seen they are rather rare, though in today’s legal systems they might well be less marginal than, say, in the Law of the Twelve Tables. So on the whole Professor Piechowiak is right; his judgement only appears to me a bit too sweeping and ‘whole-sale’. And again, I have no quarrel (which would be foolish) with a linguistic usage—that gold standard of language—which simply does not allow us—us Polish jurist in the case under discussion—to

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16 Morawski in his Wstęp do prawoznawstwa appears a bit more circumspect: without dwelling much on the issue, he distinguishes “przepisy nakazujące, zakazujące i dozwolające” or “imposing, prohibitive and permissive norms”, p. 61.

17 ‘Ujsus quem penes et ius est et norma loquendi’, as tells us Horace in his Ars Poetica.
call certain things a norm. We do not apply various names to various things for much lighter reasons, or just because we don’t. But beyond such verbal issues, I should insist on there being enough similarities between ‘must’ and ‘must not’, on one hand, and ‘may’ or ‘has a right to’ on the other—similarities which do not, as I think, extend to certain other expressions also occasionally occurring in legal texts, such as ‘laudable’, ‘praiseworthy’ and such—for all of these concepts to be treated under the same heading.

From a philosophical point of view let me add this: If concepts (of a certain family) are interdefinable, it is not very fruitful to argue on which of them is the holder of a ‘primate’ in the order of knowledge. In mathematics, the same concepts, for instance that of an ‘open set’ in topology, can be defined in a number of quite dissimilar, yet interdependent and interdefinable ways. Now it does make a lot of sense to argue that one or another of these mutually interdefinable concepts is in the order or being, or of use, or of historical development or some other more ‘primitive’ than others, and certainly that of an obligatory norm will come out as having a stronger claim to any of these predicates than a permissive norm. But my argument pertained to the order of knowledge only.

An ontological difference between norms and commands

Another important difference that while commands are speech acts, norms are not (so their confusion is a case of what Ryle would have called a ‘categorial mistake’.) Commands are speech-acts, performed at a specific time; whereas norms, although possibly introduced and promulgated at

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18 For instance, we say ‘tall men’, ‘tall trees’, ‘tall buildings’, rather than ‘high men’ and so on, not because they are high in a particularly human, arboREAL or edificial way, respectively, but just because for them we don’t use the word ‘high’ and use the word ‘tall’ instead.

19 Such as: family of open sets, family of closed set, interior set, closure, for instance.
a specific time and place (such as the Ten Commandments at Mount Horeb during the wandering of the Jews through the desert) are not tied to that time and place in the way of commands. Norms can be used to issue commands, whose full linguistic form would be, should the issuer care to expand it, ‘be conform to this norm’ or similar. In daily business we have no time for that, we just point to the sign which says ‘smoking prohibited’ and say: ‘stop smoking’ (to someone defying the norm in question). This contributes to the illusion that commands and norms are essentially the same thing.

**Norms versus ‘practical propositions’**

Nor do I confuse, let it be added parenthetically, norms with ‘practical propositions’, i.e. propositions having a motivating power for action. Such propositions need not have anything in the widest sense normative about them, for instance ‘Somebody is climbing up the stairs’, or ‘They have started dancing’ or some such. They motivate action (for instance escaping, or joining the dancers) for other reasons, such as for instance that they drive home a fear- or a desire-inspiring idea. So does a proposition like ‘smoking is a frequent cause of lung cancer’, of the sort you regularly read on your cigarette-box. It too is, or can be, practical, in that it motivates quitting smoking or maybe persisting in it (out of spite or for whatever motives).

**Norms versus value judgments**

I do not confuse norms with value judgments. There is a norm ‘Smoking prohibited in this building’ and there is the value judgment ‘it is bad/objectionable to smoke in this building’. For all their affinities, they are not the same thing. I cannot go into the important question of whether value judgments found norms or vice-versa for lack of space.

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20 The first example is by Ossowska.
What norms are

What are norms, then? I shall try to characterise them in a positive fashion, not just by saying what they are not.

They are meanings of normative sentences. Maybe you’ll protest that they are something else, but hang on, I shall dispel your doubts in the sequel.

Here I am introducing a distinction between a sentence and its meaning. I am afraid this distinction will not be palatable to most of the Anglo-American participants of our conference (that because of the tradition of extreme Nominalism they come from), who will either dismiss it out of hand or regard it as unfruitful and uninteresting, but to me it is both interesting and important. The difference, in fact, is a particular version of the more general between a sentence and a proposition. That latter is, in fact, quite old (the Stoic λέκτόν is a variant of it) but as far as the last two centuries are concerned it can be fathered on Bolzano (Wissenschaftslehre), Frege (‘Gedanke’), Twardowski (O czynnościch i wytworach) and Husserl (Logical investigations). Many sentences can express the same proposition, for instance ‘Cats are carnivorous’, ‘Feline pets feed on meat’, ‘Les chats sont carnivores’ etc., but equally well (maybe not quite equally) one sentence can express many propositions, to wit, when it is ambiguous, for instance (by Robert Thornton): ‘I am pleased to say that this candidate is a former colleague of mine’, meaning either: ‘…that he once was a colleague of mine; or ‘…that he no longer is a colleague of mine’.

This ontological ‘fault line’ between norms (must- and must-not-norms) explained, it is easier to understand, with it in mind, how it comes about that norms and commands are so often identified. To wit: you can use a norm to perform a com-

21 A more in-depth discussion of this issue is in Lorini’s Il valore logico delle norme, p. 151f., note 275, where reference is made to the article ‘Studio per una teoria della validità’ by Amedeo G. Conte.
mand. For instance, in a room in which a smoking prohibition is in vigour but where in defiance thereof some individuals are ostentatiously smoking, you can order them to stop just by quoting the norm in the right tone of voice.

On the level of the proposition (as linguistic constructions), however, norms are typically expressed (in English) in such a way: somebody-or-other should/ought to/may/has the right to/ do something-or-other, and the negation thereof: somebody need not/has no right/may just as well not do something or other. This is very roughly said, of course. For instance, ‘John may smoke’, ‘Citizens have the right to congregate and express their opinion’, ‘No-one may buy or sell human beings’, and so on. But norms are quite often, too, expressed in a different form, for instance, ‘Smoking prohibited’, ‘Dogs permitted’, ‘No exit’, ‘The occupancy of this room is 80 babies’ and others. Sometimes, even the linguistic form of command is chosen to express an obligation-norm: ‘Do not lean out of the window’ and such-like. This contributes to the illusion that norms and commands are the same thing.22

The logical motive of wondering about the truth-values (if any) of norms

The study of truth-values (if any) of norms is often considered as belonging to the province of ‘deontic logic’, which denomination goes back to the Greek active participle δέον, δέοντος, ‘binding’, ‘obliging’, ‘needful’, ‘due’, from the impersonal verb δεῖ, ‘one ought to’, literally ‘it binds’, ‘it is binding’.23 This is perhaps unduly narrow, since, as I just said.

22 Short of commands and norms being the same thing, their corresponding linguistic expressions may be nonetheless used interchangeably; which in an inattentive, or simply philosophically unschooled, mind might foster the illusion that they are the same thing in the strict sense.

23 The creator of the term of art ‘deontic’ is Ernst Mally, as tells us Conte in his ‘Deontica aristotelica’, p. 429: in a nutshell, the term is derived from
norms are not only about what one ought, or must (in the sense of the normative necessity) do or forbear, but also what one has a right to do or to forbear and also, what one may just as well do as forbear (this is the so-called ‘bilateral permission’). So all is not deontic that is normative, words taken in their strict sense. But this is a linguistic use that has become the received use and there is little to do against it. Besides, I am not in favour of too much scrupulosity in things terminological. That only leads to fruitless logomachies.

Now deontic logic is, in a sense, as old as Aristotle (the ‘practical syllogism’ of the Nicomachean Ethics\(^{24}\)), then it has continuations in the Scholastics, in Leibniz, who first noted the similarities between normative and alethic modalities, I am referring to his *Definitio iustitiae universalis* as well as his *Elementa iuris universalis*, in Bolzano, Höfler, Husserl and others, but ‘officially’ it was inaugurated by the Finnish scholar Von Wright in his justly celebrated article ‘Deontic logic’ published in *Mind* in 1951 (twenty years later, there is the essay ‘Deontic syllogistic’ by Ziemba\(^{25}\)).

Well, I shall not even try to sketch a history of deontic logic here, however, because I am not interested in it, not being a logician, at least not in this talk. A history of deontic logic

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\(^{24}\) See *Nicomachean Ethics*, VII, c. 4, 1147a25–58. See also his *De motu animalium*, 701a23–25.

\(^{25}\) In the meantime, there were various international meetings and congresses on the ‘logic of norms’, such as that in Manchester, 1965, in Vienna, 1968, in Brussels 1969 and 1971... . Now we also have a chapter on ‘deontic logic’ (by Lennart Åqvist) in the *Handbook of philosophical logic*.
is to be found in *La logique des normes* by Kalinowski, partly also in Hilpinen’s *Deontic logic* and other works, including the *Handbook of philosophical logic* by Dov Gabbay and friends (the contribution on deontic logic being there written by Lennart Åqvist). Let me only remark that these logical systems are quite often vitiated by various paradoxes and other difficulties. This may be due—at least in part—to the fact that they are seldom constructed by people interested in actually applying them to reasonings in moral or jurisdictional or any other truly normative discourse (their constructors are mostly logicians who don’t care about such ‘trivial’ matters). For instance, one source of difficulties is an axiom by von Wright, which, on the face of it, seems quite convincing. It reads thus: $O(A) \land O(A \rightarrow B). \rightarrow O(B)$.\(^{26}\) It is so like a well-known axiom of the predicate calculus that one is ready to accept it. Yet, for starters, one does not quite know, on reflection, what $O(A \rightarrow B)$ is supposed to mean in ‘real world’\(^{27}\) (as distinct from, say, $O(A) \rightarrow (B)$ or $A \rightarrow O(B)$) and then one realises that the formula is not really assertible. For one can be under the obligation to do A, and also under the obligation to either not do A or do B, yet not be under the obligation to do B—namely, if one, as a matter of actual fact, does NOT do A, due to either just disregarding the obligation, or because of some overriding obligation, or to some *force majeure*, or such. For instance, the shop keeper is under the obligation to close the shop at six-thirty, then also he is under the obligation to roll down the shutters from the outside if he has (in conformity with that former obligation) closed the shop; but he is not under the latter obligation if he has failed to close the shop, lying on its floor prostrate, his hands and feet bound by shop-robbers. He

\(^{26}\)That is, in English: If action A is obligatory and action (if A then B) is obligatory, then action B is obligatory, too.

\(^{27}\)Contrary to what I told you in the previous footnote, ‘action (if A then B)’ is *not* English. But judge for yourselves.
is not under the obligation to roll down the shutters because he has discharged his obligation to roll down the shutters if he has closed the shop by simply not closing the shop.

My favourite system of deontic logic is that designed by the Polish-French scholar Jerzy (Georges) Kalinowski (Kalinowski, Jerzy. 1953. ‘Théorie des propositions normatives’. Studia logica. 1: 147-182.) up to now unsurpassed, I should like to say. (Well, you’d say ‘vixere et post Agamemnona fortes’). It is based on the idea of a ‘deontic relation’ between an agent (or a set of agents) and an action (or a set of actions): $R_{\alpha x}$ in his symbolism is the scheme for that. It is possible to quantify over that: $\Pi x\Pi aR{\alpha}a$, $\Sigma x\Pi aR{\alpha}a$, $\Pi x\Sigma aR{\alpha}a$, $\Sigma x\Sigma aR{\alpha}a$; these are of course just schemes. The normative relations are five: ...ought to... (S), ...ought not to... (L), ...has a right to... (P), ...has a right to as well as not to... (M), ...has a right not to...(W). The only axiom of Kalinowski’s first system, $K_1$, is the universal closure of: $\neg Px\neg \alpha \rightarrow Px\alpha$, meaning that whoever does not have a right to do (or omit) something, has a right to perform the opposite action; for instance, if you do not have the right to corrupt young people, you have a right to not corrupt young people. Kalinowski then builds up a richer system of many-sorted logic, allowing to justify such things as (both examples by Kalinowski) ‘If some consumers may, whenever they please, use a credit card, and if using a credit card is a form of procuring oneself a short-term loan, then some customers may, whenever they please, procure themselves a short-term loan’ or even ‘If John, in his faculty of a father, ought not to allow his children to go and see an immoral motion picture, and if “The Hell”, being a pornographic motion picture, is also an immoral one, then John, in his faculty of a father, ought not to allow his children

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28 This adage—with which Hart mocks Kelsen in ‘Kelsen revisited’—is not by Horace (cf. Carm. IV/9, 25f., ‘ante’) but by James Russell Lowell, see Pritchard’s ‘A Glance at Lowell’s Classical Reading’, p. 449.
Kalinowski provides even a nice ‘pentagon of opposites’, analogous to the famous Apuleian ‘square of opposites’ of classical logic, for these ‘normative relations’ of his:

A historically and systematically informative study of various approaches to the problem is the work by Giuseppe Lorini, a promising young Italian scholar, entitled *Il valore logico delle norme*. Lorini, however, extends his interest to everything that could be termed a ‘logical value’ of a norm, which in his terminology goes far beyond the ‘truth-value’.\(^{29}\) Now the concept of a logical value (as distinct from the truth-value) can cover such things as for instance the syntactic well-formedness or the semantic clarity of that to which the logical norm is assigned;\(^{30}\) but Lorini conceives it in a different fashion: the ‘logical value’ as he understand this expression, should ‘do the job’ of the truth-value, denied to norms by the authors whom he

\(^{29}\)Pp. 127ff.

\(^{30}\)See Kalinowski, *Le problème de la vérité...*, p. ??.
studied, in being, for instance, the invariant of inferences (or proposition-operations that look like inferences from a formal point of view) and so on. The interest in the logical aspect of the truth-values (or their Ersatz’s) is, as far as I can make out, due to the understandable desire to avoid ‘inconsistencies’ in normative corpora, such as for instance prescribing or allowing one kind of behaviour, and also due to the wish to be ‘rational’, as consistency seems to be a minimal requirement of rationality.

Lorini is quite right in talking about ‘logical-’ rather than ‘truth-’values of norms, because great many deontic logicians have in fact, while denying truth-values to norms, studied whatever is (believed to be) transmitted from one norm to another across quasi-logical transformations in a way similar to that in which truth-values are transmitted from one descriptive proposition to another. Such logical values (as Lorini singles out from the history of deontic logic) are for instance: satisfaction, validity, derivability from some basic norm (Kelsenian Grundnorm) and others.31

I have also ‘trodden in the path of sin’, at least in one unpublished text I suggested that for certain purposes not satisfaction but satisfiability could be a good Ersatz of truth for norms. What I meant was simply this (by means of illustration): the norms ‘you may smoke in this room’ and ‘you must not smoke in this room’ are plainly inconsistent, contradictory, as one might wish to say, because not all kinds of behaviour are conform to both: namely, smoking in this room is not. The norms ‘you ought to smoke in this room’ and ‘you must not smoke in this room’ are, as one could loosely say, contrary, because no kind of behaviour is in conformity to both. The first two norms are, in a sense, not always satisfiable at the same time, while the latter two never are. It seems to me that in actual practice of norm-issuing a leading consideration of the norm-

31 Il valore logico delle norme, pp. 127ff.
giver is exactly to keep the norms given and to be given consistent in this sense: always (in all cases) simultaneously satisfiable. The norm ‘You must not jeopardize your wards’ implies the norm ‘You must not let your wards play with matches or lighters’, in the sense that in all cases in which the first norm is satisfied the second norm, too, is satisfied. In general, the logical relation between two norms, $N_1$ and $N_2$, mirrors the set-theoretical relation between classes of situations or states of affairs which conform to these norms; for the two norms to be consistent, one class must be included in the other. Since the relation of inclusion is a very ‘tame’ and well-understood one (classical set theory!), many issues in deontic logic could, in this way, become very tractable. However, I shall not go into it any more here. Besides, this type of Ersatz does not really work for norms taken singly, only in pairs or larger groups, where their mutual logical relationships are at stake (this is all we need for concerns of consistency, compatibility etc.)

Trading in Ersatz’s of truth-values can be dangerous, while at the same time in a sense instructive for deontic logic (especially for the various paradoxes of which deontic logicians appear to be so fond). Hofstadter and McKinsey, two American scholars, made out, not satisfiability, but ‘satisfaction’ as the thing they proposed as an Ersatz for truth-values for norms—strictly speaking, they talked of imperatives, not of norms. Alf Ross, the Dane, thought he had derived a paradox from the logic of Hofstadter and McKinsey, a paradox that eventually to be called the ‘Ross paradox’ and has spawned a considerable amount of publications. The paradox, if there is any, seems to consist in this: On one hand, it is a law of logic that $p \rightarrow p \lor q$; now suppose that $p$ is an imperative; from both it would follow that $p \lor p'$ is an imperative, too; for instance, ‘slip the letter into the letter-box!’ and ‘slip the letter into the letter-box or burn it!’.

be satisfied by burning the letter as well as by posting it; so it would seem that a command can be frustrated by executing a command that is its own logical conclusion. But in his *La logique des normes* Kalinowski notes that the question of the exection of the derived command ‘slip this letter or burn it’ makes sense only after the first command, i.e. ‘slip this letter into the post-box’ has been executed, after which it can no longer be burned (not by the command-receiver, that is). This does not militate against ‘satisfaction’ in the Hofstadterian-McKinseyan sense as ‘doing the job’ of truth for norms (and by metonymy, also imperatives), but Ross is certainly right when he says that the ‘immediate sensation of well-foundedness’ of some norms does not have much to do with their satisfaction or otherwise, but with their ‘existence’ and ‘validity’—Ross is uncertain which. Well, why not simply ‘truth’?

One subterfuge, invented to avoid the temptation to admit truth-values of norms, frequently used consists in assigning, to any normative sentence another sentence—typically homonymous—expressing the proposition that the first sentence is part of some body of norms. This latter sentence (called ‘normative proposition’ by von Wright, ‘external deontic sentence’ by Wedberg, or ‘spurious deontic proposition’ by Hedenius, *Rechtssatz* by Kelsen) is not at all deontic but purely descriptive. (Hence, it is truly ‘spurious’… .) For an illustration, the normative sentence ‘every citizen has the right to get a copy of his or her credit report free of charge every year’, once transformed into the corresponding spurious deontic sentence, means that there is a law guaranteeing a free-of-charge copy of one’s credit report every year.\(^3\)

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\(^3\)In this case, the law is called ‘Fair and Accurate Credit Transactions Act of 2003’ and was signed by President George W. Bush on December 4, 2003; see the following URL: [http://www.whitehouse.gov/news/releases/2003/12/20031204-2.html](http://www.whitehouse.gov/news/releases/2003/12/20031204-2.html).
Truth-values properly so-called

But now to leave behind all subterfuges and excuses and get to the ‘nitty gritty’: let’s come to grips with the issue of whether a norm (or a normative sentence, I am skipping the issue of what the ‘proper bearer of truth-values’ is, important though it be in itself) can or cannot have a truth-value, i.e. (only classical truth-values admitted here, remember) be true or false.

And it is clear that in the light of a very restrictively empirist epistemology they cannot. ‘Consumers may procure themselves short-term loans’, ‘Every driver must, when approached by an emergency vehicle, yield the right of way’ and such-like: There certainly are consumers and loans in this (restrictively empirical) world, as are also emergency and non-emergency vehicles, but no ‘mays’ or ‘musts’, they’re simply no part of the furniture of the universe, as John L. Mackie would have said. In the parlance of restrictively empirical philosophers such entities are sometimes labelled (not to say: abused) ‘weird’ or ‘queer’ or ‘quirky’ or similar. I am not saying that an epistemology like that is overly restrictive. I am only saying that is not the only one possible—before the ultimate bankruptcy of other, less restrictive ontologies has not been proven beyond a shade of doubt, admitting them maybe just for the sake of argument may be worth our while.

The above is an ontological perspective: There are such and such categories of being in the world, and whatever is not in one of them, does not exist, not even in a weak sense of the word. But let’s then take a different perspective: an epistemological one.

An epistemological perspective

As I said at the beginning, a norm is standardly expressed in the indicative mood, the ‘deontic operator’ being in the indicative: ‘May’, ‘must’, ‘has a right’ and so on. This norma-
tive propositions share with propositions whose bearership of truth-values does not present any problems. Just like for ‘Some citizens do take out loans’ we say ‘Some citizens may/have a right to take out loans’ and just as for the former so for the latter is it possible to apply logical connectives such as negation, conjunction and so on. So at least as long as things are taken at face-value.

This is a very superficial similarity (between normative propositions and non-normative descriptive ones) as I readily admit. All the more so as applying negation is also possible with commands. Just as you say ‘breathe!’ is it possible to say ‘don’t breathe!’. Yes; but note well that this, again, might be an even more superficial similarity between commands and descriptive propositions. In English, the imperative negation looks exactly like the indicative negation, but for instance in Greek, in Latin, in the Semitic languages it does not. For other connectives, too, you might wonder if they have the same sense for the two moods.

Be it as it may, there are things that are definitely not possible with commands, for instance iteration. For neither in English nor in any other language known to me is it possible to iterate commands; ‘Breathe breathe!’ or such simply makes (grammatically) no sense. By contrast it is possible to


35 In Latin, for instance, the negative negation particle is ‘nolī(te)’; ‘noli turbare circulos meos, noli foras ire, in te ipsum redi, and such-like. In Greek, there two different words for the indicative and the imperative negation; in Semitic, things are even more complex and involve various mood-manipulations.

36 ‘Post this letter or burn it’ — is that one command leaving within a modest scope the commandee free as to what to do actually, or is that effectively two commands, the ‘or’ signalling that only one of them the commander is seriously expecting to be obeyed? In other words, if commands are expression of the commander’s will, as is often said, what is the will one who is issuing a command like that?
iterate normative modalities, such as ‘It is obligatory that consumers should have a right to take out short-term loans (up to a certain limit)’ and similar. Some philosophers, such as Oskar Becker\textsuperscript{37} or Carlos Cossio\textsuperscript{38} have quoted this peculiarity as a serious argument in favour of norms’ having a truth-value. However, I am not sure, or rather I am sure with Kalinowski\textsuperscript{39} that the iterations are not exactly what they seem to be, and that much rather each normative modality is insulated from the following one (that in which in it seems to be immediately nested) by something like ‘a legislative act to the effect that…’, for instance, in the example given: ‘It is obligatory that somebody should allow (perform a legislative act to the effect that) citizens (to) have a right to take out loans’. ‘It is obligatory that it should be allowed to take out loans’ means, as long as one is able to make any sense of that at all, ‘It is obligatory that someone should allow…’\textsuperscript{40}

However, what I would attach much more weight to is the fact that it is both for non-normative indicative sentences and normative ones (formulated, to recall, in the indicative mood in the standard form) possible to ask ‘Is it true that…?’ For instance, just as it is possible to ask ‘But is it true that citizens have received their credit-reports?’ or ‘Is it true that John runs for Mayor?’ so it is, too, possible to ask: ‘Is it true that every citizen has a right to a free-of-charge credit report once a year?’. This, note well, you can iterate: Is it true that it is true that John runs for Mayor or that they have such a right, and so on.

However, you might reply, it is also true that we can ask without absurdity ‘Is it true that the present king of France is bald?’ And yet we know that the proposition does not have a

\textsuperscript{37}Untersuchungen über den Modalkalkül.
\textsuperscript{38}‘La norme et l’impérative chez Husserl.’
\textsuperscript{39}See his La logique des normes, or a German translation thereof: Einführung in die Normenlogik.
\textsuperscript{40}Such iterations of the normative as ‘we must obey laws’ seem to mean: ‘we must see to it that our actions are conform to laws’. 
truth-value.\footnote{Unless you are able to construct a logical system in which the sentence ‘The present king of France is bald’ is false or true, as of 2008, which is quite possible and has been done. For ‘false’ see the classical Russellian description with the internal-external-negation gimmick; for ‘true’ there is a Polish logician who spelt the sentence out, roughly, as ‘if there is a king of France at present, and if he is unique, then he is bald’, which is vacuously true.} This objection is well-aimed, but note that, in the case of this proposition, the not-having of a truth-value is due to the nature of things to which the proposition is referring, i.e. France, its political system (republicanism), and what not. Equally well, the normative proposition ‘As of 2008, the citizens of Jugoslavia have a right to a credit-report’ is neither true or false, not necessarily because of there being no truth-values to normative propositions (which would solve the problem by ‘overkill’), but simply because as of 2008 there is no Jugoslavia (and, as far as we know, no citizens thereof) any longer. In neither case is there anything in the nature of the respective propositions that would bar them from being either true or false.

But even this objection removed, we are not quite at ease as to whether we are not duped by language.

Thetical or objectifying mental acts

We certainly don’t want to be duped by anything. But this we can avoid, perhaps, if we let enter a third (after propositions, and their meanings—norms in the case of normative propositions) protagonist on the stage: the acts. Not speech-acts, this time, but mental acts connected with linguistic expressions. What I mean is this: sometimes we say various things in a rather parrot-like manner, without thinking or reflecting on what we are saying, for instance good many verbal transaction of every-day life are accomplished in this way. But sometimes we do actually mean what we say and, what is even more interesting, we sometimes first think something and only then formulate it linguistically, for instance a physician examininig
a pregnant woman is first thinking and then saying to himself ‘there is still some time’. Such thoughts are carryings-out of mental acts (again, a hard-nosed behaviourist, and probably an orthodox Wittgensteinian too would deny that there are any such ‘mental acts’ but I’d ask them to assume that there are, just ‘for the sake of argument’) which are in a characteristic manner tied up with the linguistic expressions.

Now such mental acts are typically ‘directed towards’ various objects (this ‘directedness’ is called ‘intentionality’) and relate to them in various ways. But some of them are directed in such a way as to present them as ‘lying before us’ and ‘being thus and so’, while some are not. Here is where my ‘theticity’ enters the equation. The doctrine of ‘theticity’ was developed by Husserl in his *Logical Investigations*, starting from Section 30-seventh in the Fifth, and was in fact called ‘objectifying’.42 In that place, Husserl is examining a doctrine of his teacher Brentano, according to which every mental act is a presentation itself of is founded upon one.43 This is not so interesting for us, but in the process Husserl lays bare a lot of interesting facts about the structure of mental acts (see Marvin Farber, Dallas Willard, David Bell, Quentin Smith44 on that, to mention just a few). One of them is that there is a qualitative difference (with ‘qualitative’ being in this case a *terminus technicus*).

42 My hypothesis at this stage being, clearly, that ‘thetic’ and ‘objectifying’ mean in Husserl the same thing: setting out as lying before (the subject). The doctrine was drawn upon by Cossio and Kalinowski, and brought to my attention by Francesca de Vecchi.

43 Epistemologically, this thesis of Brentano’s is in a way similar to the familiar tenet of all British Empiricism: all our mental acts are in a sense founded upon sensations, impressions and such-like; except that Brentano’s ‘presentation’ (*Vorstellung*) is a far wider class than any of the Britons’.

44 See Literature for references. (Almost) needless to say, what I am laying forth above is more than extremely rough and crude, Husserl’s teaching on the matters being ‘one of the most profound and one of the most difficult theories of consciousness to have as yet been developed’, Smith, ‘On Husserl’s Theory of Consciousness in the Fifth Logical Investigation’, p. 482.
nicus, a term of art\(^45\)) between such acts as thinking of something or judging that something be thus and so, on one hand (for all the differences between these two sorts of acts, which Husserl calls ‘differences of matter’, ‘matter’ being taken in a very technical and somewhat unusual sense), and willing, wishing, asking, commanding, fearing and so on that something or that something might be thus and so. This distinction is somewhat similar to that between the Searlean ‘direction of fit’\(^46\) but it is far more intricate and subtle. Acts of the first sort he calls ‘objectifying’ (Farber calls it ‘objectivating’\(^47\)) and claims, in the style of Brentano, that all acts are either objectifying and founded on objectifying ones. This is not so important for us, but more importantly, he classes (in Section sixty-eight of the Sixth Investigation) normative propositions with objectifying acts. A proposition like ‘The coachman ought to harness the horses’, he says, may, but need not, express somebody’s will. In carrying out an intentional act corresponding to the proposition in question one may be just apprehending the coachman as standing under a specific obligation, or standing in a specific normative relation (that of obligation) to the action of harnessing the horses, to speak in the idiom of Kallenowski. Such an apprehending (viewing things objectifying, i. e. as ‘lying before us’) might seem a bit flabby, as compared with the sinewy command to harness the horses, which may, of course, be expressed in the same way; yet it is not emasculated the way a translated command is;\(^48\) the will that some-

\(^{45}\)The ‘quality’ of an act is that of its components which gives it its specific mode of directedness to its object; ‘The square root of two is irrational’, ‘Is the square root of two irrational?’, ‘May the square root of two (not) be irrational’—the mental acts expressed (standardly) in these propositions are all different in quality only.

\(^{46}\)Ultimately going back to Anscombe’s *Intention*?

\(^{47}\)See his *Foundations of phenomenology*, p. 388.

\(^{48}\)Hart gives this example: a German officer is saying to English soldiers in a POW camp: *Aufstehen!* and an interpreter translates: ‘Stand up!’ The officer
thing should be the case is hardwired into the structure of a command in such a way as it is not in the structure of an objectifying act—here is the difference between objectifying and non-objectifying acts. This is not to deny that on mental (intentional) acts expressed in normative propositions acts of will can be concomitant; they can even be so upon those expressed in non-normative propositions, such as for instance ‘it is fine today’ (and may it remain so for the rest of the day). The point that Husserl is making is that in wish or a feeling or any other non-objectifying act a state of affairs is apprehended, but in a quite different way—with a different ‘quality’ in a technical sense of that term. If an analogy between between the apprehension of a normative obligation and a wishing or feeling act were to be sought, it could be found much rather in that between the former and the objectifying act apprehending the wishing subject and the object wished.

It is not that Husserl offers a ‘knock-down argument’ for his classification of mental acts expressed in normative propositions as ‘objectifying’; it is the whole context of the Fifth and Sixth Investigation that makes it believable.

**The ontological situation of normative states of affairs**

So much for epistemology; returning to ontology now, you might well ask: If there should be such a thing as a normative relation between an agent and an action, where is it? And how does it come into being?

As regards the former question, the answer is that relations in general are quite literally ‘neither here nor there’ (at least nowhere else but where their bearers are), but in the case of ‘well-behaved’ relations, such as the physical ones, there is a more or less tangible ‘ontological fundament’ (as it used to be called in classical Scholastic ontology) of the relation. For

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is commanding, the translator is not. ‘Kelsen visited’, p. 293.
instance, if body A stands in the relation of accelerating (by exerting power on) body B, then on the one hand there is power on the part of body A and acceleration (increase/change of velocity) of body B, on the other. Or, if John is taller than Mary, then there is the excess of height on the part of John, and so on.

In the case of normative relations, a tangible ‘ontological fundament’ like that is more difficult to find. Roughly speaking (but understandably, I cannot go any deeper into this here) it is the ‘directedness’ of inherent dynamisms (or ‘dispositional properties) to certain predetermined goals. This involves teleology and other difficult topics.49

Now for an answer to the latter question: how a normative relation comes into being. It comes into being, in good many cases, by legislative acts (for instance that of President Bush, in the case of the credit-report statute), and the corresponding laws that are in vigour. The law would be the ontological source of that relation, and indirectly it would make the proposition ‘every citizen has a right to a free-of-charge copy’ true. Only indirectly, however, because the direct truth-maker would be the normative relation itself. But a ‘nihilist’ would retort that the normative relation is a fiction (all normative relations are, he would say) and at best is the universal but nonetheless erroneous belief in the existence of a relation like that. Well, not quite erroneous, maybe, as the very existence of that belief (in something that itself does not exist) is a surrogate for the non-existing relation. This is more or less Searle’s position from his The Social Construction of Reality.

Be it as it may (I won’t go into it here), more interesting, and considerably more controversial, are the cases where there is no corresponding positive law—and yet we do have a strong intuition (a ‘normative intuition’) to the effect that a certain

49The topic is treated in an in-depth manner by Kalinowski in his Le problème de la vérité en morale et en droit, to which I would like to refer you in this place.
normative relation obtains.\textsuperscript{50}

In the pluralist world of today, it might be all but impossible to find universal ‘normative intuitions’, but take for instance this: ‘Nobody may inflict pain on sentient beings just for the sake of inflicting pain and/or with a view to the pleasure of so doing’.\textsuperscript{51} There are cases when we do inflict pain on sentient beings (the pain being physical or moral, as the case may be) just for the case of making somebody suffer, not because that suffering should have some salutary or medica
tory mid- or long-range effects but because we just want to make them suffer. Few people are absolutely free from such Sadist impulses and few among those who are not have never indulged in any. This covers cases in which we do not do anything explicitly forbidden by a law or a statute. Now my claim is that, even though most of us do such things sometimes, we do not have a right to do them; nay, we emphatically must not do them. The usual excuses (suffering has an educational value and such—Kant is reported to have written about that and extolled suffering’s Erziehungskraft\textsuperscript{52}) are blocked by my proviso that the only motive for making somebody (or an animal) suffer is just the desire to make them suffer including a Sadist pleasure that we often derive from so doing. So, is it true, as I think, that we have no right to act in this way, and even must not act in this way, or do we merely think so (if we do, that is)? Even if this question will not be answered beyond any shade of doubt, the very question makes sense, I claim,

\textsuperscript{50}I am omitting here consciously the difficult question of what happens when a legislator is legislating one way and our moral intuitions are headed the opposite direction. I have an answer to this, but elaborating upon this topic would bring us too far afield.

\textsuperscript{51}‘Do harm as thou wilt’ was Circe’s motto, according to Auden, in his poem ‘Circe’. But no morally literate person’s, I hope.

\textsuperscript{52}I owe this piece of information to my former teacher, Dr. Hariolf Oberer of the Friedrich-Wilhelm University, Bonn, Germany. The particular wording is mine, and it might well reveal some misunderstanding on my part.
and this speaks in favour of the thesis that the proposition has a truth-value.

Let me note, in passing, that by intuitions, ‘normative’ intuitions in particular, I mean cognitive (though not discursive), and definitely not emotive, acts\(^5\). So the claim that we all have an, or the (if there is only one), intuition that something-or-other must not be done is not in any sense equivalent to the claim that we all feel that way. With reference to the example in hand, I rather doubt that all human beings will have any perceivable feelings about inflicting pain gratuitously. For one thing, feelings are usually reactions to something individual, single, here-and-now, and ‘inflicting pain gratuitously’ is very general and abstract and out-of-way, too shadowy to have any noticeable feelings about. I personally do not feel any way about that (although I do not sincerely think I am hard-hearted or callous and although I would certainly feel and act if confronted with a single instance of gratuitous tormenting, e.g. hoodlums setting a cat on fire,\(^5\) or some such)—I just think (but not reason) that one must not do so.

Now to take another example, one somewhat less bloodless, less abstract, more definitely emotions-stirring: there has been a Polish nurse and midwife, Stanisława Leszczyńska, who was imprisoned in Auschwitz, the German ‘National Socialist’ (Nazi) concentration camp during a better part of World War II, and who actually worked there (if ‘work’ be the right word for it), as a midwife and nurse. She was assistant to one Josef Mengele, M.D., whose name might be familiar to you. One day she was ordered by a German doctor—some report it was Dr. Mengele himself—to kill a new-born baby. To which she courageously replied: ‘Nie! Nigdy nie wolno zabijać

\(^5\)On ‘emotionalism’ before and after Scheler see Kalinowski’s *Le problème de la vérité en morale et en droit*. Some pieces by Christine Tappolet, a Swiss-Canadian philosopher, are also worth consulting.

\(^5\)This is David Wiggins’ favourite example of callousness.
dzieci’ (No! You must never kill children). She got away with it—Dr. Mengele (or whoever the German doctor was) was not used to such cheek, so he was duly astounded, and later on he even developed a sort of respect for Mrs. Leszczyńska, who then saved many babies from the oven. After the war Mrs. Leszczyńska wrote a ‘Report of an Auschwitz midwife’, see also her *Nie, nigdy! Nie wolno zabijać dzieci*.

Now, I am not sure if there is an explicite statute in any law corpus of the civilised world prohibiting the killing of *children* (as distinct from, say, thirty-somethings, or nonagenarians), and, on the contrary, I know that in many countries the killing of *some* children (unborn babies) *is*, by all means, legal, with or without special conditions or presuppositions, but even so it would seem that we need qualifications to consider killing of children allowed. (Just as under certain circumstances it might at least seem licit to inflict pain on sentient beings.) For instance, such that they are not yet born, that they constitute a danger or embarrassment to the prospective mothers, or some such. Thus, in its core, the prohibition ‘one must not kill children (unless for some special reasons one may)’ *is*, I would say, still obvious.

Well, but why exactly should it be so obvious? Perhaps we got imbued with such opinions at an early age, without there being any slightest justification for thinking they are right and true? Perhaps *that* and just *that* is the reason why we hold them intuitively self-evident? Is the very fact that killing children is very well allowed, or even advised, in various legal systems run by decent, intelligent, respectable and responsible people not evidence enough against an alleged intuitive self-evidence of ‘you must never kill children’ of that quite unglamorous Polish midwife, or such-like? Or, that which is more likely, when we (seem to) think that killing children and such-like is ‘inherently’ forbidden, no matter what the books say on it, we are deceived by our own feelings, which just happen not to like such things as killing children? Since
ethical sentimentalism (Hume) has prevailed over ethical rationalism (Wollaston) we are all inclined to believe that all ethical evaluation is just, or boils down to little else than, feeling one way or another about various things. This in our purportedly so rationalist and unsentimental age. So, hurling children live into a burning oven inspires horror in some, such as for instance in Hamilkar’s mercenaries in Flaubert’s novel *Salammbô*,\(^{55}\) while to some it appears quite neutral, like drinking a glass of water,\(^{56}\) and some may even find it quite entertaining; all of who just ‘feel that way’, the practice of child-immolation being in itself neither praiseworthy or condemnable (let alone self-evidently condemnable, as we make out).

But maybe there is a way to get to the bottom of such self-evidences. For instance, by deducing them from some even more self-evident truths? Among these (if any can be found) there must be some normative truths for, as Hume was I think quite right to point out (bk. III, part I, s. I, *in fine* of the *Treatise*), we cannot deduce normative truths from non-normative truths alone.

But such are not always so difficult to find as those who deny truth-values to norms make out. Take for instance this: ‘If you want to achieve such-and-such end, you should take all appropriate measures’. This does seem to be obvious, enlightens reasons analytically, *ex vi terminorum*, I should say.\(^{57}\) The

\(^{55}\)Men who were, presumably, not otherwise noted for oversensitivity to suffering.

\(^{56}\)To use Hegel’s phrase on the Revolutionary Terror in France.

\(^{57}\)I am adding ‘*ex vi terminorum*’ to make clear that I understand ‘analytic-ity’ here in a somewhat wider fashion than Kant’s or that of the Logical Empiricism against which Quine inveighed. I mean by ‘analytic’ this, that once you understand what ‘to achieve an end’ means, you immediately see that you ‘must adopt all necessary measures’, if you understand this expression in its turn. There might be ends which you can achieve without any measures, just by doing it, to which case the above applies vacuously, or, if you don’t like that, can be made adaptable by adding ‘if any’: ‘adopt all necessary measures,
proposition apprehends anyone who wishes to achieve such-and-such ends as standing under the obligation of adopting such-and-such measures. Much as the above questions: ‘How a relation like that comes into being?’ and ‘Where is it located in the world?’ are justified for the obligation in hand, it would be rather laughable to say: ‘No-one has ever legislated so’ or ‘Such things as “being under the obligation to adopt whatever measures, or for that matter to do or to omit anything at all” are not in my ontology, hence I am not under an obligation like that, may I as much as ever wish to achieve the end in question’. At best ludicrous, at worst—philosophical in the pejorative sense of the word (futile, pointless, irrelevant, slightly pedantic thoughts about nothing or very little).

This is just a schema, not a real premiss, but let us take this one: ‘If you want to immunise your child against smallpox, you ought to adopt all necessary means’.\textsuperscript{58} This is clearly a normative proposition, in which the existence of a normative relation between ‘you’ (i. e., anyone) \textit{qua} wishing to immunise your children against smallpox and a class of actions is asserted. Again, I am not sure if a friend of an ever so restrictive ontology would say, without rendering himself ridiculous: ‘No, there is no such relation, because obligations simply do not exist, none, not even such “innocuous” ones as that between a parent and his child, if the parent wants to protect the child’s health’. To the question ‘when did this relation come about and where is it in the world?’ it is possible to give an answer, possibly not a very simple one, but one that would involve a reference to various biological as much as praxeological structures, not to any ‘slummy’ or ‘weird’ or ‘ontologically despicable’ entities. Then, there is a non-normative premiss,

\begin{itemize}
\item if any’. This does not rely on the Kantian predicate’s being included in the subject, the definitions of the Logical Empiricists or other equally problematic assumptions.
\item \textsuperscript{58}The example is actually from Kalinowski.
\end{itemize}
which medical science helps us to establish as true: ‘Vaccinating a child is a necessary means (as of now) of making it immune against smallpox’. It need not be true at all times: one day more efficient means of immunisation might be invented, and it was true in any strong sense in the times before the invention (some say in India, 8th century) of inoculation. But as of now, it is true, and from the two premisses\textsuperscript{59} we draw the normative conclusion, which otherwise would not seem obvious at all, namely: ‘If you want to immunise your children against smallpox, you ought to have them vaccinated’.

Kalinowski calls a norm like that a ‘technical norm’; it relies on what one ‘wishes to do’ and for this reason the whole strand of thought is not without further ado transferable to our case. For our case is this: Since, by hypothesis, we do not find ‘you must not inflict pain gratuitously’ or ‘you must not kill children’ true as they stand (for all the obviousness they may possess for some of us; but we presuppose this obviousness is in a way spurious, inculcated by our up-bringers at an early age and such), we need to deduce them from a normative and a non-normative premiss; the latter will tell us something about inflicting pain, or killing children, and of both there is a great deal to be told. But for the deduction to work, we have to choose the non-normative premiss in such a way as to make it hook up with the first, normative one. One variant of such could be this, that the second premiss could say that the activity (of killing children, or of inflicting wanton pain) belongs to a certain class of activities, and the first premiss could say that one must not do any acts or activities of that very class. For instance, ‘if you want to live a reasonable life, you must abstain from all uneconomical actions’, then ‘Inflicting wanton suffering is uneconomical’, therefore... etc. There are, no

\textsuperscript{59}That is, 1. ‘If you want to immunise your child against smallpox, you ought to adopt all necessary means’ and 2. ‘Vaccinating a child is a necessary means (as of now) of making it immune against smallpox’.

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doubt, great many such classes of activities. But the second, much more serious problem seems to reside exactly in this, that we wish to (1) get rid of that ‘if you wish to something-or-other’ protasis, and we want our normative premiss to have the unconditional form of ‘you must (not) do acts of class X’. And then, we also wish that (2) this premiss should ‘stand to reason’ in the way in which ‘you must not inflict gratuitous pain’ or ‘you must not kill children’ by hypothesis do not.

One way of accomplishing (1) would consist in picking out something we all and always wish. (The ‘if you wish’-condition could then be safely detached.) But is there such a thing? Again, in the pluralist word of to-day the answer can hardly seem to be in the affirmative. Quae omnia appetunt may have been available in Aquinas’s times, but not in ours (or so it would seem, at least). Dostoevsky, whom hardly anyone would consider a frivolous writer, was noted for not wishing various things which are otherwise objects of nearly-universal desire; in an early letter to Mrs. Fonwiza he wrote, for instance, that he would choose rather Christ than truth if there had been a conflict between the two, and his Ivan Karamazov is ready to forfeit all future harmony (some say: he just hated all Creation) if it were purchased at the price of an innocent child’s suffering and death (here we have our two examples harmoniously flowing into one). So there is really nothing that we all and always wish, it would seem.

Yet on reflection we see that that is not quite accurate—it’s a ‘self-image of our time’, as McIntyre would have said, and here is why. Our immediate desires are, it is true, multifarious, and often dependent on other, previous desires, as well

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60 Not for the first time in the history of philosophy do we want to dispose of the burden of ‘wishing’, see Plato’s Protagoras, p. 331c: ‘Pardon me, I replied; I do not want this “if you wish” or “if you will” (τὸ “εἰ βούλει” τοῦτο καὶ “εἴ σοι δοκεῖ”) sort of conclusion to be proven, but I want you and me to be proven: I mean to say that the conclusion will be best proven if there be no “if.”’
as on various contingent circumstances of our historical and social situation, our biological make-up and so on. But so are, more often than not, our long-term wishes and what the Germans call ‘Lebensentwürfe’ or ‘life-designs’. This is all true, as is also this, that we not always are positive about even our most immediate desires—all too often we do not ‘know what we want’, if we want anything at all. And conversely, we might believe that we do desire certain things, which in fact we do not. In both cases, desires being often a fleeting matter, we are likely to get confused by some of them superseding others. Already this is enough to make the enterprise of looking for a thing that we all always obviously wish an unlikely success. But not just immediate, surface desires are at issue. I will take rather this tooth-paste than that, because—because I count every penny and economise even on necessities, because I (habitually, but consciously) want to save money. Yes, but why do I want to save money? Well, because I wish to provide for a comfortable living when I am old—yes, but why do I?... And so on, for each ever so fleeting wish there is underlying wish of which I need not be aware, and most often am not aware; this is obvious, as is also this, that I cannot in any reasonable sense of the word ‘to wish’ wish not to be a mammal, which I cannot help being, or to stop the expansion of the Universe, which lies beyond my powers. There is a limit somewhere, I propose, dividing the actually wished with all of its underlying wishes and the unwishable, and this limit is set by the common human nature, in which we all share. It is anything but easy

61 The existence of limits dividing two disjoint realms is a fundamental issue in the foundations of mathematics; it belongs to the province of topology. The remarks made above in the text would bear a serious study in the line of (recently developed) ‘topological methods in philosophy’, to which The Monist has once devoted a separate issue with the present author as advisory editor.

62 It would be a strange thing if a man should choose to live not his own life but the life of some other than himself, as says Aristotle in Chapter 7 of
to find a conceptual articulation for that limit but I will tentatively describe it as the ‘wish to stay what we essentially are’, i.e. human beings, for short, even though we need not have, and typically have not, a very precise notion of our humanity. This falls far—indeed, very far—short of the venerable and age-old tradition of seeing the ultimate goal of human life in happiness, conceived of in a number of various fashions, and does not contradict that tradition either. Even a trifle and a fleeting wish, even more fleeting that of saving 0.97 Polish złoty on a tooth-past brand, say like that for a coffee or tea is underpinned in a sense by the wish to be and stay human in the sense that we wish the potion as one to which humans, not dogs or stones, react in such-and-such a way, which plays such-and-such role for humans rather than for eagles or tomatoes, and so on. An extensive phenomenological analysis, for which I have no space here, would bear (and flesh) my point out.

This is a bit like with certain non-volitive presuppositions

the Tenth Book the Nicomachean Ethics. All the more so: the life of a beast or a plant.

63 Compare the following formulation by St. Augustine from Chapter 28 of the Eleventh Book of his City of God: ‘For if we were beasts, we should love the fleshly and sensual life, and this would be our sufficient good; and when it was well with us in respect of it, we should seek nothing beyond. In like manner, if we were trees, we could not, indeed, in the strict sense of the word, love anything; nevertheless we should seem, as it were, to long for that by which we might become more abundantly and luxuriantly fruitful. If we were stones, or waves, or wind, or flame, or anything of that kind, we should want, indeed, both sensation and life, yet should possess a kind of attraction towards our own proper position and natural order. For the specific gravity of bodies is, as it were, their love, whether they are carried downwards by their weight, or upwards by their levity. For the body is borne by its gravity, as the spirit by love, whithersoever it is borne.’ This ‘proper position’ is what we must—as a matter of necessity—strive for, and in most episodes of life, save, perhaps, mental illness, do actually strive for concomitantly, without being aware of it. St. Augustine’s formulation is very different from mine, as is his metaphysics and the philosophical method in the City of God; yet both formulations express, as it seems to me, the same fundamental intuition.
of our wishes: I do not choose to be with Christ rather than with the truth, but neither do I choose the opposite, because I don’t think (in the back-ground fashion, as a tacit assumption of everything else that I think and desire) that, given what Christ, and the truth are, an alternative like that is likely to face me any soon. Neither do I reject, à la Ivan Karamazov, the ‘universal harmony’ (whatever that might be) bought at the price of a child’s tear, nor am I looking forward to it with enthusiasm, because I do not believe it will come along within foreseeable future however many children’s tears should be shed. Few of us are, to take a somewhat different, but structurally similar example, very grateful for not being hogs, even though, as J. B. Morton tells us, if we had been one, someone may try to make a silk purse out of our dear wife’s ear, a prospect—I take it for granted—most adverse to us; we simply do not seriously take into consideration either having been a hog, or being about to be transformed into one.

So much is obvious, I propose; what is not obvious is the exact contents of ‘being human’. This ‘common ground’ of all our wishes and even states of wishlessness is at the same

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64 Our ideas on that change under the influence of various factors, e. g. the development of science. Now that we (think we) know we are descended from the ape, or rather that we are an ape, we might, quite often do, feel motivated to behave in a somewhat ape-like manner. So much is true, I think, to the somewhat bloated and overstrained claim that Darwin’s discovery has degraded man. The root of the evil, let me add in passing, is bad logic: As Geach once told us, if Tom admires a girl and Dick admires a girl, too, it does not follow that they admire the same young lady; similarly, even if we are apes, and so are gorillas, it does not follow that we are those very same apes that gorillas are. This point escapes the anti-Darwin fulminators. There is no reason to suppose that we can get truer to what we truly are, i. e. apes, by laying aside things traditionally revered as truly human, and by—if a pun should be allowed—aping (other) apes. For even those specifically human things are—if Darwin is right—ape-like, namely, that-ape-that-man-is-like.

65 ‘The question what we always want presupposes that we always want something or other, which we need not’, somebody will object. This is very right. When we are unhappy, we don’t care for wishing anything. But also
time a kind of Kantian ‘transcendental condition’: that without which all wishes had not been possible. In the case of coffee or tea the relevant dimensions of humanity are not so complex, but in other cases they may well be.

And this has the following consequences for our derivation. Suppose we, as the upshot of the foregoing discussion, have accepted the premiss: You must do/you must not do everything conducive to/destructive of your humanity just by detaching ‘If you wish to stay human’, which we assumed we always do. This is the less problematic part of our enterprise. But then comes the second, which is finding a non-normative premiss, like ‘inflicting wanton suffering is destructive to your humanity’. In order to establish anything like that, you must have a rich stock of knowledge concerning things human, some of which may not ply itself easily to persuasive formulation in simple English. This stock of knowledge is, or would be, if it were easily available, analogous to the stock of medical

conversely: as a Lutheran pastor has recently told me, one of his Confirmation-candidates (confrirmands), asked what he wished for on his Confirmation, said he was ‘happy without wishes’ (‘wünschlos glücklich’). Yet even in such cases—less controversially in the latter—there is a hidden wish to stay essentially what one is, which can be verified by confronting the subjects with the prospective of becoming something essentially different (voluntas sese conservandi primum et unicum virtutis est fundamentum as taught Spinoza (Ethics, P. IV, prop. 22, cor.)) It is likely that some persons should be ‘wünschlos unglücklich’, however, or wishlessly unhappy, while some others may even sincerely wish to cease to exist; but in both cases there is an underlying wish: the wish that the current suffering should subside, and this wish makes only sense on the basis of an even deeper one: that things should return to what they had been before the suffering set in.

Such issues ply themselves to empirical research which I am not yet aware of, but which I trust would bear out (or has already borne out) the correctness of my philosophical analysis. In a case of an acute suffering the subject may, of course, have no deeper wishes than that it might subside, and this wish may be so overwhelming that it may make the subject believe that it truly wishes nothing, except perhaps total annihilation. Somewhat analogous to the wish frequently experienced with persons with an aching limb: that the limb should be amputated.
knowledge which is jointly the sufficient reason to believe the non-normative premiss in Kalinowski’s example: ‘Vaccinating a child is a necessary means (as of now) of making it immune against smallpox’. But the problem is that might not have that knowledge. For even if, for instance, treating a child the way Dostoevsky described in his Brothers Karamazov or setting a cat on fire, is not exactly conducive to anything that might go by the name of ‘humanity’, it need not, it seems, be destructive of it. It might simply do nothing to it. Things are harder if we try to justify such truths (or seeming truths) as ‘you must not inflict gratuitous pain or inflict pain for the sake of the pleasure you get from it’, because is having pleasure not clearly conducive to humanity? Yes, it clearly is, and a very young child or an extremely infantile adult would say that all plea-

66 This knowledge is expressed in propositions which Kalinowski, with reference to von Wright’s terminology but not conceptual scheme, calls ‘anan-
castic’ propositions; such as ‘An injection of Vaccinia virus triggers off the production of antibodies which neutralise all Orthopox viruses, including the Variola virus’, see for instance Pauling, ‘Molecular architecture and the processes of life’, p. 1116. (The Italian scholar Amedeo G. Conte is a great stu-
dent of things anancastic, developing the concept further along the combined lines of Von Wright and Kalinowski. Studying his papers appears to be very promising as far as the comprehension of the corresponding phenomena is concerned.)

67 To be fair, in one case of tormenting and killing children as told by Ivan Karamazov, the action was not wanton or ‘just for the kicks of it’ but for redressing justice, however excentrically conceived from today’s and non-
Russian point of view. Again, in a respectable German opinion-magazine I have once read that Proust (the French romancier, not the French philosopher Joëlle) relished in rather lurid sexual pastimes with a Sadist component to them. No matter whether the gossip about Proust is or is not true, in general it cannot be excluded that in a man of genius diverse abominable cravings and tendencies, such as for tyrannising one’s family, and most sublime creativity intertwine in such a way as to render the genius all the more productive. One wonders if an Ivan Karamazov would say ‘I’d rather do without A la recherche du temps perdu if it was purchased at a price like that’; I, for my part, strongly hope he would. On the other hand, the German sociologist Theodor Geiger has written somewhere that alcoholism was a reasonable price to be paid for composing wonderful organ pieces, if you are a Max Reger.
sure, whenever affordable, deserves going after and indulging in, as would someone suffering from a mental disorder. But well-developed healthy persons know that not all pleasures are always conducive to humanity in us and that some at times are not. Yet, it may not be easy to say why exactly these and these are not. To know such things (in a first-hand way) takes a lot of study both in the library and ‘out there’, and the knowledge is typically hard-won and very costly.

So it seems that we have not really reached our goal. Maybe we have not—yet, I should dare say, we have not quite laboured in vain. For we have shifted the difficulty from the plane of things normative to that of things non-normative. The point is: in the century-long discussion on the justifiability or otherwise of norms and normative propositions, the difficulty has more often than not been located on the former plane: ‘How can we know that we must/may (not) something or other?’ What I regard as the upshot of the above discussion is that the real difficulty resides not in finding the allegedly ‘weird entity’ called ‘must’ or ‘may’, but in establishing whether a certain non-normative proposition of the form ‘something-or-other is this-or-that’ is, or is not, true. This may be difficult, because finding the corresponding ‘anancastic propositions’ is difficult—just think of the viruses and the antibodies—but at the very least no ontological or epistemological compunctions about the ‘weirdness’ or otherwise of anything blocks the way of—to use Kant’s words—

‘all future ethics (and deontic logic) that will be able to present itself as science’.

As Miss Anscombe once noted in her *Intention*, a person reasoning the way Aristotle had instructed us to: ‘You must enjoy every thing sweet, here is a sweet thing; you must enjoy it’ would have a sweet tooth to the point of monomania. Fortunately, a less objectionable one than killing children….
Literature


