“Ought implies Can”:
secondary and higher-order interpretations

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Abstract
In this paper we will investigate the “Ought implies Can” (OIC) thesis. We will concentrate on explanations and interpretations of OIC, clarifying its uses and relevance. The OIC thesis is relevant to debates that ranges from semantics and pragmatics to legal philosophy, deontic logic and the philosophy of action and mind.

We state the different theses that have been proposed concerning OIC and seek to distinguish them and classify them, trying to set up a framework in which the different OIC proposals can be compared. We relate this to deontic logic and legal philosophy concerning the role of secondary rules.

Finally, we will try to clarify what is meant by ‘implies’ inside the OIC thesis, dealing with the different notions of presupposition, implicature and entailments and how different characterizations of ‘implies’ can give rise to the different OIC theses and uses.

Keywords: ought implies can, legal drafting, pragmatics, semantics

1 Introduction
In this paper we present various strands of the thesis that “Ought implies Can” (OIC). We seek to explain OIC and how it might be interpreted, and clarify its use and relevance. The issue of the use and relevance of OIC is considered in section 2 and 3 where we will focus on OIC as a secondary principle. In section 5 we will conclude. We will consider possible analyses of OIC mainly in section 4 where we discuss the logical and pragmatic interpretation of OIC.

The OIC is an old thesis, but it has remained a live and controversial. Here we will concentrate on the relevance that OIC can have in the following three areas:

1. from a philosophical perspective, we will try to outline a common framework to compare and contrast different enquiries on OIC from deontic

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1The principle is mainly ascribed to Kant — see Stern (2004) for the issues of this conceptions — but is goes back at least to Celso and the Roman Digest (50.17.185) under the formulation impossibilum nulla obligatio. According to Blum (2000) the thesis can be found also in Pelagius and Augustin.
logic, moral philosophy, legal philosophy and also the philosophy of mind, concentrating mainly on the functions that OIC can perform;

2. from the legal perspective, we will try to sketch what role OIC may have in drafting and structuring a legal system;

3. from a semantic and pragmatic perspective, OIC will force us to concentrate on the nature of obligation and the different relationships that can be covered under ‘imply’ (entailment, implicature, presupposition).

Concerning the status of OIC, it is appropriate to quote Howard-Snyder’s remarks, made after claiming that OIC will be defended:

“Twenty years ago such an argument would have seemed pointless – since the principle was then regarded as more or less axiomatic – a premise rather than a conclusion. In the last few years, however, OIC has come under sustained attack from several quarters.” (Howard-Snyder, 2006, p. 223)

This suggests OIC remains a relevant and actively debated issue. In modern times (e.g., from Moore, 1922 onwards) the thesis of OIC has often been considered to be intuitively true. It also became an axiom in some versions of deontic logic. But there has been the occasional criticism of OIC (Lemmon, 1965; Stocker, 1971; Dahl, 1974 for example), with some strong criticisms appearing recently (Saka, 2000; Ryan, 2003; Martin, 2009). This confirms both Howard-Snyder’s remarks and our view of the importance of the issue.

2 Philosophical Considerations

Here we summarise some of the ways in which OIC has been discussed in the philosophical literature. We first enumerate different theses from various areas of research. We then suggest a taxonomy to help clarify the principal focus of these discussions.

2.1 Eight theses on OIC

Of the following eight theses concerning OIC, some are stated explicitly in the literature on OIC itself, and on the question of how to frame research on OIC, and others are implicit:

1. Logico-semantic OIC: it is a truth of logic that OIC holds for norms and commands (Hare, 1963; von Wright, 1963).

2. Ethical OIC: OIC is an ethical truth claiming that it is unfair to order what is impossible (Copp, 2008 and perhaps Carter, 2001).

3. OIC is a contemporary concern in the context of doxastic voluntarism (See Alston, 1989; Feldman, 2001; Ryan, 2003; Chuard & Southwood, 2009 for example).

4. For an accurate and complete reconstruction of the criticisms and some replies, see Vranas (2009).
3. **Ontological OIC**: OIC is to be conceived as an higher order norm, in particular as an iterated norm of the form O(OIC).

4. **Pragmatical OIC**: OIC is a Gricean maxim we use to issue commands.

5. **Methodological OIC**: The kinds of reasons and justifications for accepting OIC.

6. **Logical completeness OIC**: OIC is needed to achieve the completeness of a legal system or a system of norms.

7. **(meta) Ethical OIC**: It is ethically needed that OIC to avoid unfair impossible requirements (Carter, 2001).

8. **Praxeological OIC**: OIC tells the norm giver what to do if he wants to create a rational legal system (von Wright, 1983).

### 2.2 Classification of OIC theses

From the above enumeration we can distinguish different families of arguments or classifications concerning OIC theses. The first is concerned with the nature of OIC. The second is concerned with the application, or use of OIC.

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4 It is difficult to find an explicit reference for this thesis. Various authors say that “It ought to be the case that OIC”, providing reasons for it. We think it is possible, given these claims, to make an ontological claim on OIC saying that is a norm of a particular kind, i.e. a norm with an iterated modality and not just a simple norm or a principle.

5 This is a view we will develop later. Sinnott-Armstrong (1984) has put forward what might be described as a pragmatic version of OIC (criticised by Streumer, 2003). We think our pragmatic OIC is somehow different and propose to call their proposal “presuppositional” OIC. We will see later that such a presuppositional OIC could be covered by a pragmatic OIC.

6 This view can be worked out starting from von Wright (1968), p. 68: “A decision to accept the idea that “ought” implies “can” must be motivated, it seems to me, from consideration of an axiological order.”

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7 For the debate on OIC being equivalent to the principle of consistency of deontic logic see Lemmon (1962, 1965), and the critics by Keding (1965), Dahl (1974) considers the point again, taking into account the concept of excuses and justifications. Jacquette (1991) showed how OIC could issue a dilemma for deontic logic that was criticized by Slater (1994).

8 Carter (2001, p. 92) explicitly says that ‘ought’ implies ‘can’ (OIC) is a second order ethical norm. By this, Carter characterizes OIC’s second order nature as less than a metaethical thesis such as ‘moral principles are neither truth nor false’ but more than a first order ethical claim such as ‘you should not kill me’.

This is how Carter, states his OIC as an ethical norm:

> “On this interpretation, we do not see OIC (OIC) as simply holding for any prescriptive use of ‘ought’. Rather, we see it as holding because we believe that its denial is wrong – because we think it ethically mistaken to prescribe impossible things.” (Carter, 2001, p. 81)

To his ethical OIC, Carter opposes the thesis that sees OIC as a semantic norm, as advocated by Hare (1963):

> “The impossibility, or the inevitability, of doing something stops the question of whether to do it arising.” (Hare, 1963, p. 59)

According to Carter, the function of this latter OIC is “to describe one of the semantic properties of prescriptive ethical norms, thus filtering out some of the norms which cannot fall into this category” (Carter, 2001, p. 80). Thus the semantic OIC can be used “to circumscribe our ethical prescriptions” (Carter, 2001, p. 81).
The theses concerned with the nature of OIC are: the logico-semantic OIC (1), the ethical OIC (2), the ontological OIC (3), the pragmatical OIC (4). We will refer to these as OIC-nature.

The theses concerned with the application of OIC are: the logical completeness OIC (6), the metaethical OIC and the praxeological OIC (8). We will refer to these as OIC-use.

Finally, we can discern a methodological category (5) that seems to be a tertium datur between the other two families: it tells us how to argue for a given OIC thesis (a thesis that can characterise both what OIC is, and how OIC is to be applied).

2.3 OIC: Metanorm vs. Iterated Modality

The work of deontic logic on higher order norms, metanorms and iterated modalities can help us in distinguishing two levels that corresponds to two different ways in which OIC can be said to be a higher-order norm.

OIC as a metanorm: we say that OIC is used to evaluate other obligations and prescriptions. OIC ranges over other norms and the resulting structure is OIC(norms).\(^9\)

OIC with iterated modality: we say that OIC is needed in a system, i.e. that it ought to be the case that OIC. Here OIC is embedded into another deontic modality and the resulting structure is O(OIC).

This distinction applies both to the OIC-nature family and to the OIC-use family. In the first case, the ontological OIC is iterated whereas the pragmatical OIC seems to be a metanorm. In the latter case, both the logico-completeness OIC and the metaethical OIC seems to be metanorm, whereas the praxeological OIC is an iterated norm.

3 OIC and Legal Philosophy

Here we investigate OIC’s secondariness from a different perspective to the higher-order norms and iterated modalities of deontic logic. Legal philosophy has much to say on the issues of hierarchies of norms and norms ranging over other norms. Here we will consider Hart’s theory of secondary rules, and Kelsen’s distinction between primary and secondary norms. Our leading questions will be:

Q1 Is OIC secondariness the same as Hart’s conception of secondary rules?

Q2 Is OIC secondariness the same as Kelsen’s secondary norms?

Answering these questions may provide a better understanding of the uses of OIC and a more refined taxonomy of the different OIC theses. In addiction, legal philosophy will help us in finding whether during legal drafting or legal interpretation OIC is used in some (pragmatic) legal way that is distinct from its interpretation or relevance in the context of everyday statements about obligations.

\[^9\]Here OIC becomes itself a sort of modality that ranges over a corpus of norms (i.e. the content of what we put between brackets).
3.1 OIC and Hartian Secondary Rules

Hart (1961) distinguished three kinds of secondary rules, so question (Q1) “is OIC secondariness the same as Hart’s conception of secondary rules?” has to be rephrased for every kind of secondary rule:

Q1.1. Is OIC secondariness the same as the Hartian rule of recognition?

Q1.2. Is OIC secondariness the same as the Hartian rule of change?

Q1.3. Is OIC secondariness the same as the Hartian rule of adjudication?

There is a caveat for the rest of our analysis of OIC when interpreted along the line of Hart’s theory of secondary rules: all of Hart’s secondary rules starting from the rule of recognition are empirical in nature. Our inquiry into OIC’s possible roles takes into account only the function Hart is using rather than the empirical characterization. The claim that (some) OIC could be itself empirical a further claim we are not defending here.

3.1.1 OIC and the rule of recognition

Hart’s rule of recognition was used to determine empirically which rules belong to the legal system and which do not. We think OIC could be used as a test to determine which norms can belong to a legal system: if you say that only norms that can be fulfilled are part of the legal system, then you are somehow using OIC to lay down a criterion for rules being recognized as part of the legal system.

The different OIC notions can play this recognition role in various way: the logico-semantic OIC can be used with ontological import in distinguishing proper commands or norms from improper norms — i.e. norms that demand the impossible. Praxeological OIC can also play this role.

On the other hand, both the ethical and the (meta)ethical OIC can be used as an Hartian rule of recognition in the sense that it recognizes what is a command or a norm that need to be followed and what is not. The two ethical based OIC do not deny that an impossible command could still be considered a command, as the was the case the logico-semantic OIC, but state that it does not need to be followed because of its unfairness.

3.1.2 OIC and the rule of change

Concerning the rule of change — the rules that allows for the modification of the legal system — it seems there is no OIC thesis that can play a role when it come to modifying a legal system. Prima facia it seems that the notion of “changing a rule” as-such is not able to interact with the OIC thesis.

Of course, given the recognition role of some OIC theses, one may say that its presence prevents the legal systems from issuing impossible norms (logico-semantic OIC will prevent them from being in the legal codes, ethical OIC could be used to say they are not obligatory norms in case they were issued). Despite this, the various interpretations of OIC do not state how to change the law, they just exclude some possible outcomes.

\[^{10}\text{Rescher (1966, p. 16) is an example of this usage.}\]
3.1.3 OIC and the rule of adjudication

Concerning the rule of adjudication — the rule according to which legal controversies can be solved — the situation is similar to that of the rule of change. OIC can play a role that is similar to that of the rule of recognition, thus reducing the number of norms used to solve a dispute (e.g. impossible norms will be cut down), but it does not provide some “OIC procedure” to solve a controversial issue.

We can thus end our brief consideration on Hart’s senses of secondariness claiming the logico-semantic, the praxeological, the ethical and the (meta)ethical OIC have something similar to the secondariness of the rule of recognition, but not with the secondariness of the rule of change and the rule of adjudication.

We can note how in this Hartian framework both the concerns about the OIC-nature family and the OIC-use family can have a role that Hart attributed to secondary rules. In contrast to this, we will see that in the Kelsenian framework, the primary and secondary rules correspond with both the OIC-nature and OIC-use families of OIC (cf. section 2.2).

3.2 OIC and Kelsenian Primary/Secondary Rules

Kelsen (1945) distinguished primary norms (sanctioning norms) from secondary norms (norms suggesting the proper behavior to be held not to incur in the sanction). It is quite difficult to characterise OIC in terms of the primary rule vs. secondary rule distinction of Kelsen, but we offer the following:

**OIC as a Kelsenian primary norm:** A norm that requires something impossible is not valid.

**OIC as a Kelsenian secondary norm:** You should not issue norms that demand the impossible.

The primary norm formulation looks like one that belongs to the OIC-nature (logico-semantic) family; the secondary formulation is quite similar to the praxeological OIC-use iterated OIC.

The Hartian formulation called “secondary” those aspects classed as OIC-nature whereas Kelsen’s called “primary” what was OIC-use, and “secondary” what was OIC-nature.

4 Pragmatic and Semantic OIC

When considering possible relationships between “Ought p” and “Can p”, there are a number of candidates in the literature, including whether “Can p” is an entailment, a presupposition, or an implicature of “Ought p”. It is appropriate to consider the meaning of these different notions in order to evaluate these options.

4.1 Entailments

Entailment is the conventional logical relationship that holds between a set of premises and each conclusion that can be drawn from those premises. The
relationship is typically defined in terms of the recursive application of one or more rules of inference, together with axiomatic statements that are held to be true independent of any contingencies.\footnote{Here we are assuming a conventional “static” logic, but the key issues can be generalised to include an appropriate notion of entailment for dynamic logics \cite{vanEijck&Visser2010}. Dynamic logic adopts a notion of “context change potential” in place of “truth”. In this setting, a proposition $p$ is then entailed by a discourse context $\Gamma$ if asserting $p$ results in no change to the context — that is, the “information” provided by $p$ is already (implicitly) part of the context $\Gamma$.}

The rules are usually expected to satisfy certain requirements to be taken seriously as a logic. Typically it should not be possible to derive a contradiction within the bare logic. Related to this, for every rule that allows us to introduce a logical connective, there must be rules that allow us to eliminate that connective, and “recover” the initial statements. Furthermore, if an entailment holds between two expressions $a$ and $b$, and between $b$ and $c$, then for most coherent logics it will be the case that $a$ entails $c$.

Within the so-called “classical” tradition of logic, there are additional constraints. Statements are assumed to be either true or false. And if $a$ entails $b$, then $b$ should always follow, however much additional information we add.

Non-classical logics may diverge from this. There may be either explicit or implicit assumptions that there are judgements other than “true” or “false” available. In the case of non-monotonic logics (including default logics), additional information may require us to withdraw a conclusion.

Typically it is assumed that there should be some coherent interpretation of the logic that supports its patterns of entailment.\footnote{These interpretation might be quite artificial in nature.}

There is a sense in which logics can be quite arbitrary. On this view, it does not really make much sense to ask whether “ought logically implies can”, as we can propose logics in which it does, and logics in which it does not. Rather the question is whether our intuitions, or “natural” understanding of the relationship between “ought” and “can” can in principle be formulated as an entailment relationship in some logic, at least at some level of abstraction, and whether that logic is classical in nature, or whether it has to adopt some non-classical machinery.

\section{4.2 Presuppositions}

Presuppositions are things that are not stated but need to be true in order for a statement to make sense. A classical example arises under some analyses of definite descriptors. The use of the definite descriptor “the king of France” in the statement “The king of France is bald” presupposes that there is a king of France.

There are different ways of dealing with the case where the presuppositions are false. One is to follow \cite{Russell1905} and say the statements with false presuppositions are simply themselves false. Another approach is to follow \cite{Strawson1964} and say that they are in some sense meaningless. It is possible to formulate an account where they are not provably propositions unless the existential presuppositions are true \cite{Fox1994}.

There are also what might be described as “lexical” presuppositions; presuppositions of the lexical meaning of certain words, such as “stop” in “Have
you stopped beating your wife”, where “to stop p” only makes sense if p is something that is on going at the appropriate time.

It seems that presuppositions can be blocked, or rendered moot, by the context in which they occur, as with conditionals “if there is a King of France, then he is male”, and counter-factuals “if there were a King of France, then he would be male.” Those presuppositions that persist in the wider context are said to be “projected” (Heim, 1983). The so-called “project problem” is the problem of identifying the rules that capture how the presuppositions of constituent expressions and statements are filtered, or not, by the context in which they occur.

In principle, there is nothing intrinsic to presuppositions that prevents their behaviour being formulated within a logical framework. But it is still helpful to consider them as forming a particular relationship, in that — at least in the Stawsonian perspective — they are concerned with the “meaningfulness” of discourse, rather than its meaning.

We can consider the question as to whether presuppositions are an appropriate way of characterising the relationship between “ought p” and “can p”. The answer to this question depends in part on how we characterise presuppositions, and which, if any, of those characterisations may accord with our intuitions. If “ought p” presupposes “can p” on the Russellian analysis, then in the event that “cannot p” holds, “ought p” must be false. On a Strawsonian analysis of such a presupposition, if “cannot p” holds, then “ought p” is not a coherent statement.

But there are confounding factors. First there is the issue of presupposition accommodation (Thomason, 1990; Heim, 1983). Accommodation is where, in some sense, we give the benefit of the doubt, and for the purposes of analysing meaning, or engaging in coherent discourse, we treat the presuppositions as being true (without necessarily committing ourselves to its truth). We might then accommodate “can p” as a belief about the believes of the agent who states “ought p”.

A second issue is that of ambiguity. Saying “ought p” can impose an obligation, describe an obligation, or describe a desirable state of affairs. The last case may be characterised as “ought to be”, as opposed to “ought to do”. One possibility is that we use presupposition failure as one way of disambiguating between “ought to do” and “ought to be”.

If “ought p” is claimed, and “can p” is false (or taken to be false), and there are no grounds for revising this view, then the charitable interpretation is that this can only be interpreted as “ought to be p”. This perhaps ties in with the notion of an implicature.

4.3 Implicatures

Implicatures in the Gricean sense (Grice, 1975, 1981) can be characterised as those things that we can deduce by reasoning about an agent’s beliefs on the basis of the things that have not been said, or rather, that one thing was said rather than another.

The classic example is the case of a reference in which little more than the neatness of the applicant’s handwriting is praised (Grice, 1989, p. 33). Given that normally a good candidate will have a number of good qualities that deserve mention, the failure to say anything else suggests that there is nothing else about this candidate that is praiseworthy.
Normative rules, or “maxims” can be formulated that seek to capture the principles that a speaker is assumed to follow in deciding what to say. In the case of the reference, the maxim might be to be maximally informative. Any adverse inference from the terse reference is founded on the assumption that the writer of the reference is striving to be maximally informative.

What is often taken to be distinctive about implicatures, in contrast to entailment and presupposition, is they are defeasible. Defeasibility is not necessarily a bar to producing a formalisation of implicatures in a logical framework. Perhaps a larger obstacle is that conversational maxims often compete with each other; for example we need to be maximally informative, while minimising verbosity. Arguably this may be better conceived of as an optimisation problem.

In the case of “ought $p$” and “can $p$” [Sinnott-Armstrong (1984)] appears to build an argument in favour of an implicature relationship (“can $p$” is an implicature of “ought $p$”) on the basis that implicatures are defeasible. This is perhaps a different kind of implicature to that of Grice. If the argument is that the implication between “ought $p$” and “can $p$” should be defeasible, that does not necessarily mean that it is an implicature as such (at least in the Gricean sense).

Regardless of this particular point, it is useful to summarise how “ought $p$ implies can $p$” might be interpreted according to these characterisations of entailment, presupposition, implicature, both in general, and in relation to legal obligations.

4.4 Sinnott-Armstrong and Streumer

[Sinnott-Armstrong (1984)] take ought implies can to be a “conversational implication”. The essence of the argument is that the implication is defeasible, which is not the case with a strict entailment, or a presupposition.

If we follow [Streumer (2003)], the problem that Sinnott-Armstrong identifies in his examples can be resolved if we distinguish “ought to do” from “ought to have done” (and from “ought to be/have been”). The maxim “Ought Implies Can” then becomes “ought-to-do $p$ implies can-do $p$” and “ought-to-have-done $p$ implies could-have-done $p$”.

If we take into account the notion of presupposition, accommodation, and ambiguity, this is not inconsistent with an analysis where “ought presupposes can”, and a failure in the presupposition can be either be attributed to a misapprehension, or be indicative that “ought” should be given in an optative interpretation, “ought to be”.

There is also a question of what is actually meant by “can”. In particular, in this context does “can” include or exclude those actions that may be subject to moral censure, and that may be at odds with other obligations? Or is it perhaps ambiguous?

4.5 Legal Obligation

In the case of legal obligations, it would seem perverse to impose an obligation-to-do that it was not feasible to satisfy. It would also be perverse to impose an obligation that was in conflict with another legal obligation (at least, not without there being some mechanism for resolving such conflicts). The standard of feasibility appears to be one that includes such conflicts.
In this setting, it may be tempting to say that the imposition of an obligation (to do) presupposes that what is required can be done. Formally such a presupposition could be characterised as a (meta-level) entailment of well-formed legal obligations, much like the presuppositions of definite descriptors. But in this case it would appear to be a higher-level presupposition relating to the drafting of obligations, rather than a presupposition of the individual obligations.

As this relates to assumptions about the motives of the drafters of a legal text, it may be appropriate to consider it to be a pragmatic implicature. But in this context there is a difference: it would appear that the wider legal system will seek to ensure that laws are interpreted or clarified in a way that prevents this “implicature” from being treated as defeasible interpretation. In this sense “ought implies can” itself appears to be treated as a legal norm.

5 Conclusion

The main aim of this paper has been to provide a conceptual framework for considering issues related to OIC, drawing on philosophical, legal, and logical concerns.

In the philosophical section of the paper (section 2) we gave a taxonomy that allows us to describe and compare different approaches to the question of what OIC is, how it can be applied, and how it can be analysed.

Then, we considered OIC’s secondary nature, distinguishing between OIC being a metanorm and OIC being an iterated modality. This clarifies what functions OIC can perform. We considered these functions in relation to the legal field (section 3), and attempted to relate them to analytic tools developed there to study the typology of rules.

We then outlined different ways of relating “ought” with “can” (section 4), distinguishing implicature, presupposition and entailment. This provides some perspective on how we might interpret OIC, in particular by finding an appropriate characterisation of what “imply” means. This also has the potential to provide insight into the relevant applications of OIC, as a norm. As noted in that section, logic does not by itself answer any questions about what OIC means, or when it should be applied. Rather, it provides tools that may help us characterise our intuitions about what it means — intuitions that include our understanding of how OIC may serve as a norm in some contexts, such as in the domain of legal reasoning.

References


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