CHAPTER 4
NEGATIVE ACTS-IN-THE-LAW

I. ILLOCUTIONARY DENEGATION

1. Permissive Speech Acts
Until now analysis was restricted to acts-in-the-law whose successful performances have ‘positive’ legal effects. However, acts-in-the-law whose successful performances have ‘negative’ legal effects play an equally significant role in legal systems. Thus, the important category of permissive acts-in-the-law is negative in character.

Permissive acts-in-the-law are of the linguistic type Searle and Vanderveken term acts of illocutionary denegation. The distinctive feature of speech acts of this type is that the propositional contents of their performances are subject to a negated illocutionary force. Taking the structural formula of simple speech acts F(p) for a starting point, we can symbolize acts of illocutionary denegation as:

\[ \sim F(p). \]

The sentence: ‘I do not promise to come.’, provides an example. Acts of illocutionary denegation are usually articulated with the aid of the adverb ‘not’ or its equivalents. There is, however, a small collection of verbs that designate acts of illocutionary denegation directly. Thus, the verb ‘to permit’ designates acts of illocutionary denegation of imperative speech acts, while ‘to refuse’ is frequently used as the illocutionary denegation of the commissive speech act ‘to accept’.

Searle and Vanderveken have no doubts about the purpose of acts of illocutionary denegation. In their opinion such acts purport to make explicit a speaker’s non-performance of a certain illocutionary act. Their interpretation is rendered in the shape of the following equivalence:

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1 Searle and Vanderveken (1985), 4; Vanderveken I (1990), 24.
‘An act of illocutionary denegation of the form \( \sim A \) is performed in a context of utterance \( i \) iff the speaker in that context performs an act whose aim is to make explicit his non-performance of \( A \)’.\(^3\)

When we attempt to determine the structure of permissive acts-in-the-law with the aid of the notion of illocutionary denegation, Searle and Vanderveken’s characterization gives rise to serious problems, for it means that performances of permissive acts-in-the-law would aim only at making explicit that the permitting authorities do not impose an obligation. Is, however, this conclusion tenable with regard to legal permissions? Do successful performances of permissive acts-in-the-law yield no more than statements as to the absence of specific legal obligations? In legal theory, permissions consisting in the absence of an obligation are termed weak permissions.\(^4\) Permissions resulting from successful performances of permissive acts-in-the-law do not, however, fall within this category; rather, they are strong permissions.\(^5\)

If we adopt the above interpretation of acts of illocutionary denegation, the fundamental difference between weak and strong permissions would in fact disappear. For the distinction between an act that is permitted by a certain authority in the sense that it did not command its forbearance and an act that is permitted by it in the sense that it expressly allowed its performance would then be reduced to the trivial question of whether or not the authority ever took the trouble to state his ‘not commanding’ the act. As far as legal theory is concerned, however, there is a fundamental difference between strong and weak permissions. Strong permissions are legal norms, weak permissions are not. Accordingly, strong permissions are conceivable as legally valid presentations, whereas weak permissions are mere propositions that a certain legal system lacks a particular presentation of an order to certain subjects to carry out a certain course of action. Therefore, rather than figuring in the legal system, weak permissions set its boundaries.

The incompatibility of the consequences of Searle and Vanderveken’s characterization of illocutionary denegation with the distinction between weak and strong permissions made in legal theory calls for a more detailed analysis. We shall not deal with the question of whether Searle and Vanderveken’s characterization is satisfactory with regard to permissive

\(^3\) Searle and Vanderveken (1985), 76. The expression ‘iff’ is shorthand for ‘if and only if’.

\(^4\) A. Soeteman, Logic in Law, Dordrecht, 1989, 150.