GUGLIELMO FEIS
Università degli Studi di Milano
guglielmo.feis@unimi.it

THE "OUGHT" IMPLIES "CAN" PRINCIPLE: A CHALLENGE TO COLLECTIVE INTENTIONALITY

abstract

In my paper I investigate collective intentionality (CI) through the "Ought" implies "Can" (OIC) principle. My leading question is does OIC impose any further requirement on CI? In answering the challenge inside a Searlean framework, I realize that we need to clarify what CI's structure is and what kind of role the agents joining a CI-act have. In the last part of the paper, I put forward an (inverted) Hartian framework to allow the Searlean CI theory to be agent sensitive and cope with the problems that emerged.

keywords

Collective intentionality, ought implies can, John Searle

THE "OUGHT" IMPLIES "CAN" PRINCIPLE: A CHALLENGE TO COLLECTIVE INTENTIONALITY

GUGLIELMO FEIS *Università degli Studi di Milano*

In this paper I will work on collective intentionality (CI) from the slightly odd point of view of the "Ought" implies "Can" principle (OIC)[1]. My leading question will be: what are the relationships between CI and OIC?
In answering it, I will use OIC to formulate a challenge to Searlean CI.
My starting hypotheses are:

1. OIC is not so certain as a principle as it has often been claimed[2];
2. OIC, nonetheless, forces the CI theory to consider each agent's possibility concentrating more on the structure of CI and not only on its conceptual role in social ontology[3];
3. There can be possible interactions between OIC and CI.

Thus, investigating CI through OIC provides us with:

1. good reasons for having a more accurate recognition of the role of the agents both in the creation of deontic powers and their acceptance and recognition;
2. a challenge raised by OIC – the OIC challenge – of whether OIC imposes more conditions and requirements on the agents that are willing to create deontic powers with a CI-act[4];
3. extra reasons for a better conceptual analysis and clarification of the OIC principle that, as commonly stated, can hardly play the role we asked it to play in the previous point[5].

Before starting this research on CI using OIC, a few words on the principle are needed.

1 A principle that perhaps is better known in its Latin formula *impossibilium nulla obligatio* and *ad impossibilia nemo tenetur* (AINT) or as "nobody is obliged to do the impossible".

2 I am sympathetic to the critics of OIC – see below, section 2 – because I think the principle is often used to prove much more than it can prove. Despite my critical approach to OIC, I think it can provide us with new insights on CI.

3 Searle (2010) addressed just the latter problem. His question was: do we need CI? What is its role in social ontology? He then investigates CI and its relationships with language and individual intentionality, but does not investigate the "engineering question" concerning its structure (is it a network? Can we picture a graph of it? What kind of graph is it? How does information spread into CI?).

4 I think this challenge arises at least when OIC is interpreted as a higher order norm or a criterion as, for example, in Stockhammer (1959), Moritz (1968), von Wright (1985).

5 As I have said before, even if OIC principle in its standard formulation is weak, I think the question it raises on CI are worth considering and I will attempt to answer them even before we have developed a full account of OIC.

GUGLIELMO FEIS *Università degli Studi di Milano*

1. "Ought" Implies "Can": Its Origin and Why it Can Matter for CI

Traditionally, what we now call the "Ought" implies "Can" principle is considered part of the Kantian philosophy and sometimes, especially in deontic logic, is referred to as "Kant's axiom"[6]. Besides this philosophical tradition, the Latin juridical tradition attests *ad impossibilia nemo tenetur* (AINT) and *impossibilium nulla obligatio.*

The standard reading of OIC comes really close to the meaning of the Latin AINT formulation following three steps:

1. "ought" implies "can",

Then by contraposition rule

2. "no can" implies "no ought"

That you can read as AINT

3. "nobody is obliged to do the impossible".

In the legal perspective, OIC is used as a criterion for normative requirements that prevents the legislator from issuing impossible commands or norms. AINT ensures that, in a legal system, the agents – who recognize the system as their system and act under the deontic powers of the system – have the possibility to bring about what the system requires to them.

2. OCI Interpretations and OIC Criticisms

Thomas Besch (2009) has distinguished a normative and a factualist interpretation of OIC.

The *normative interpretation* uses OIC to impose duties: it starts from our possibilities to act and then imposes normative requirements, i.e. given that we know that you have this "can", you "ought" (to do what you can).

The *factualist interpretation* is close to AINT: it subordinates the normative requirements to the possibility of acting. In case we miss the possibility to act ("no can") we will have no corresponding "ought".

I will use the OIC factualist interpretation to formulate a challenge to CI.

6 For papers concerned with the history of OIC and whether Kant really meant this see: Stern (2004). Tranøy (1972, 1975) traces the Kantian attribution to the reading of Henry Paton of Kant's Metaphysics of morals. OIC is named "Kantian principle" by (Prior 1957, 142). (Baumgardt 1946, 100) harshly denies OIC to be Kantian. The first occurrence of OIC as a title of a paper is O. J. Russell (1935) but, surprisingly, it is not a discussion of the topics of AINT.

GUGLIELMO FEIS *Università degli Studi di Milano*

Here I am assuming OIC as a good starting point but it has been hugely criticized at least in the following ways:

1. if the "implies" states a logical implication[7], OIC has troubles to work in the normative realm, because it is very difficult to find truth values for normative entities;
2. we may come up with situations where we feel a genuine impossibility or a true dilemma and where, still, we have an obligation. This is the standard scheme to build counterexamples against OIC[8].

3. The OIC Challenge: Does OIC Impose Further Conditions on CI?

As we have seen, OIC principle is usually interpreted as a criterion for commands or normative statements: if you want to succeed in issuing normative requirements, you have to give the agents chances of bringing about what you are ordering. As a consequence of this, impossible commands (i.e. commands ordering something impossible) are absurd[9].
The premise to formulate the challenge is the following: normativity plays an important role in issuing commands, regulating behavior and constructing a legal system. Now, given that Searle discusses normativity under the heading of "deontic powers", deontic elements (i.e. normativity and deontic powers) are the link between OIC and CI.
Going back to CI, we know that every CI-act involves deontic powers and that deontic powers are normative. This leads us to the OIC challenge to CI:

> does OIC impose further conditions on CI-acts in order for them to successfully create CI-products (institutional facts, status functions and so on) with which the agents can go along?

This question matters to social ontology: if OIC holds also in social ontology, it will prevent the assignment of status functions that create deontic powers that ask impossible things and it will avoid the creation of status functions that are impossible to be maintained. We know that:

1. the factualist OIC requires that, in order to have an "ought", the

7 This fact pushes us towards a better understanding of what "ought", "implies" and "can" mean in OIC.
8 Martin (2009) calls them "ought, but cannot". Feld man (2000) proposes "role oughts" – i.e. duties related to social functions – as sources of ought, but cannot. The best paper to have an idea of all the critics to OIC and possible replies is Vranas (2007).
9 See (Rescher 1966, 17).

agent should have the relevant "can".
2. CI creates normative elements.

Thus we can expect that:

(T1) the OIC application will add further conditions on CI-acts and the creation of deontic powers.

Before considering whether T1 has relevant consequences we have to face this problem: in order to apply OIC to CI-agents that act under deontic powers, we have to know what they can and cannot do, in the different meanings of "can" (i.e: their range of possibilities).

This presupposes that:
1. We have a taxonomy of different "can", i.e. of the different possibilities (material, cognitive, physical, epistemical, and so on);
2. We are able to recognize both the agents who perform the creation of deontic elements and the agents who act under the deontic elements and maintain them.

A full taxonomy of possibilities is something really difficult to exploit and, as it is not part of the Searlean debate, I will leave it aside[10].

Regarding point (2), as we know from Searle's reply of 2003 to Barry Smith about conflicting boarders, Searle is not interested in understanding who is really counting something as Y in the real world. He just says, from a theoretical point of view, that "the creation of institutional facts requires that people be able to *count something* as something more than its physical structure indicates" (Searle 2003, 301).

I think this lack of interest for real world situation is one of Searle's theory weaknesses. Going at the same abstraction level of Searle – i.e. avoiding historical examples as the one of boards –, I think his theory has no answer for solving conflicting attributions of status functions. Imagine CI is split 50% vs. 50% on attributing status function SF to X_1 or X_2 or that we are arguing for whether it is SF_1 or SF_2 that we have to attribute to X. Searle (2010) used status functions declarations to solve counterexamples to his social ontology theory

10 (Southwood and Chuard 2009, 614) are well aware of the "can" problem: "there are the "cans" associated with different notions of possibility: logical, metaphysical, nomological, epistemic, psychological, etc". They then list can of: ability, feasibility, availability.

but, even with status functions declarations he has no decision procedure to solve the problematic abstract cases I proposed. I think structuring CI can help us in solving such an issue and that (computational) social sciences have a method to move in that direction[11].

Caring about the structure of CI will end up giving details on who are the agents joining CI and will help us in answering two questions concerning the relationships between OIC and CI:

1. How does OIC apply to the agents performing a CI-act that creates deontic powers?
2. How does OIC apply to the agents acting under the pressure of deontic powers and maintaining the CI-act products?

Now that I have established a connection between OIC and CI using normativity, formulated a hypothesis (T1) concerning the upshots of such a connection and raised two questions, it is time to start investigating the problems.

I will first (section 4) answer the questions (1) and (2) above from a Searlean point of view: I will show that a factualist non restricted OIC is a too weak and vague principle to be considered as a criterion that imposes further conditions both on CI-acts and on CI-products maintenance.
In the last part of the paper (section 5), I will argue that, even if CI can escape this first OIC challenge, we can formulate a better OIC challenge that may lead us to use the agent-sensitive approach I will sketch.

4. A Searlean Prospective: OIC Failing on CI

I will start with examples showing CI situations creating deontic powers (oughts) that – contra OIC – hold even though the agents are in a "no can" situation because they lack a certain kind of possibility.
I think that these simple examples will show that the CI-agents are able to create deontic powers ("oughts") that cannot be removed by means of an impossibility ("no can") of the agent to perform what is issued by the deontic power. This will show that the factualist OIC does not hold on CI and adds no further conditions on CI-acts, thus denying T1.
Let us consider these situations:

(1) someone parking the car where it is forbidden because he does not

11 I think graph theory and network analysis are a good way to capture the structure of CI. For an introduction on these tools see (Easley and Kleinberg 2010).

know that parking there is forbidden. The agent is fined even if he does not know he could not park there;
(2) someone cognitively unable to park a car (because he lacks skills and ability) that parks outside the parking lines. The agent is fined because parking outside the lines is prohibited, no matter if he is unable to park.

The agents in (1-2) face an impossibility when they are sanctioned. The agents are responsible for their own failures but, when they are contested their failures, it is impossible for them to accommodate their failure into a success. They cannot all of a sudden move their car into the right parking lot.

Given that there are impossibilities, we can apply the factualist OIC claiming that the agents have "no ought", because they are facing "no can" situations: (1) has an epistemic impossibility, (2) has a practical impossibility. Both (1) and (2) have a physical and logical impossibility to avoid the fine by parking their car in the right way *after* they received the fine. So, the OIC factualist may say, the drivers have *now* "no ought" to park in the right and proper way because of their "no can" (impossibilities) and are not to be fined.

Despite this, we do not accept such a use of the impossibility ("no can") to remove obligations ("ought"). The problem is that a non restricted factualist OIC does not say that a "no can" for which the agent is responsible cannot be accepted as a "no can" to remove an "ought".

The examples show how a misuse of a non restricted factualist OIC is possible and that OIC can be turned, from a guarantee to the agents that prevents a legal system to ask them the impossible into a tool that destroys any "ought".

If this is the OIC we are using in the OIC challenge, Searle might rightly claim that such a principle has no right to impose any conditions on CI before we avoid the possibility of misusing it.

However, if we agree that a better formulation of OIC is possible[12], the OIC

12 This formulation will lay down conditions so that only "relevant" impossibilities will be acceptable "no can" to remove an "ought". The problem is to lay down these conditions, define "impossible" and its relationship with "(no) can". I do not pretend to solve these problems. I am just assuming that OIC somehow works fine, as a lot of the literature says, and use it to address new questions concerning CI.

challenge strikes back and can have relevant application. Consider, for example, the case of higher-order social constructions (the one where you iterate the "X counts as Y" formula).

We know that there are meanings of "can" related to our cognitive, practical and epistemic capacities[13]. I think it is hard to claim that all the agents involved in acting and maintaining global finance or politics have the possibility to understand what is going on there (considering all the relevant possibilities of "can"). When a new financial regulation is passed, we may face both epistemic "no can" (we do not know about the new regulation) and cognitive "no can" (think about how hard it is reading your bank's newsletter explaining you some changes responsible for higher fees).

Nonetheless, the sum of all the impossibilities of the bank customers, non professional market agents and citizens[14] is not enough to destroy the deontic power (oughts) related to the institution of money[15]. This is quite puzzling: these agents, even if passive, are the majority and they are maintaining the CI products created by the CI-act of a minority of agents. The majority of the agents is maintaining an "ought" even if, when confronted with the "ought" and its normative powers, they face "no can" situations[16].

This should surprise us. The idea in OIC of preventing a social institution to demand the impossible is not so easy to be dismissed. It is somehow shocking to discover that Searle's CI theory allows some agents to be in "no can" situations while maintaining some CI-products ("oughts").

5. An (Inverted) Hartian Framework for OIC and CI

I will now try to extend the Searlean framework so that it can be agent-sensitive. I propose to recognize and track who are the agents of every CI-act, outlining also who are the agents maintaining the deontic powers. The theoretical tool to pick the agents up may be called and "inverted Hartian rule of recognition" (ROR)[17].

13 E.g. "I can speak Japanese", "He can hit 3 aces per game", "We cannot prove Goldman's. conjecture".
14 This numerical majority can be said to be somehow passive in the CI-act. The problem is that Searle's CI theory does not structure nor weights the participation of people to CI using parameters such as passive/active nor does it clearly states minimal requirements for the maintenance of institutions (number of agents, social position, and so on...).
15 Neither to undermine collateral institutional activities related to money such as banking activities or forex trade.
16 "No can" situations are different from attempts to withdraw from an institutions, going along with an institution or explicitly denying it (as in Searle's 2010 example of "Bush is not my president").
17 The rule is stated in Hart (1961).

GUGLIELMO FEIS *Università degli Studi di Milano*

Hart had the problem of identifying the sources of a legal system made only of commands and said that a society can use a secondary rule, ROR, to see what are the effective primary rules that are in force in the society. The standard ROR – positively stated inside the legal system – was directed from agents to rules, and the function was to spot and select which rules belonged to the corpus of the system.

My inverted ROR, as the original, is positive and empirical, it forces the creators of the new status functions and deontic powers to be aware of what conditions they are imposing when making a CI-act and to whom they are imposing them.

The inverted ROR goes from deontic powers to the agents that perform the CI-act and then to the agents that perform the CI-maintenance of the products of the CI-act. The function of the rule is to spot and select firstly the agents who perform the CI-act that creates the deontic powers and secondly the agents that are maintaining the functions and the deontic powers that have been created. With such a rule, given some kind of deontic power, you can theoretically investigate who was to create the status function and who is maintaining it. In this framework you are able to treat difficult situations concerning status functions imposition and deontic powers attribution (the ones happening when CI is split 50% vs. 50%) that Searle's CI theory ignored.

You are also able to identify cases where agents are in "no can" situations but are still maintaining an "ought". These cases go against OIC and, once you discover them, you may revise the corresponding "ought" and the deontic powers in order to avoid the "no can" situations.

In this framework, the OIC challenge can be met by requiring, through the use of the inverted ROR, that the agents performing CI-acts have to be aware of who are the agents that will maintain the CI-products and of their range of possibilities.

With the inverted ROR we gain a tool that allows not only a theoretical possibility of analysing the structure of the CI network, but also a more technical and applied insight where we can map, with network analysis, the dynamics of CI.

GUGLIELMO FEIS *Università degli Studi di Milano*

Unfortunately, a full development of this Hartian framework inside Searle's theory requires more work (how does this Hartian rule fit Searle's description of the creation of the social world? Is there a place for such a rule inside Searle's theory of rules?)

Despite the difficulties, I think that approaching the normative side of CI through OIC helps in raising challenging questions about both CI and OIC: my answers are just the first step towards an applied and informative social ontology or, in Searlean terms, philosophy of the society.

REFERENCES

Baumgardt, D. (1946), "Legendary Quotations and Lack of References", *Journal of the History of Ideas*, 7, 1946, pp. 99-102;
Chuard, P. and Southwood, N. (2009), "Epistemic Norms without Voluntary Control", *Nous*, 43, 2009, pp. 599-632;
Easley, D. and Kleinberg J. (2010), *Networks, Crowds, and Markets: Reasoning about a Highly Connected World*, Cambridge University Press, Oxford, 2010;
Feldman, R. (2000), "The Ethics of Belief", *Philosophy and Phenomenological Research*, 60, 2000, pp. 667–695;
Hart, H.L.A. (1961), *The Concept of Law*, Claredon, Oxford, 1961;
Martin, W. (2009), "Ought but Cannot", *Proceedings of the Aristotelian Society*, 59, 1961, pp. 103-128;
Moritz, M. (1968), "On Second-Order Norms. An Interpretation of 'Ought Implies Can' and 'Is Commanded Implies is Permitted", *Ratio*, 10, 1968, pp. 101-115;
Prior, A.N. (1957), *Time and Modality*, Claredon, Oxford, 1957;
Rescher, N. (1966), *The Logic of Commands*, Routledge & Kegan Paul, London, 1966;
Russell, L.J. (1935), "Ought Implies Can", *Proceedings of the Aristotelian Society*, 36, 1935, pp. 151-186;
Searle, J.R. (2003), "II . John Searle: Reply to Barry Smith", in Smith, B. and Searle, J.R. (2003), "The Construction of Social Reality: An Exchange", *American Journal of Economics and Sociology*, 62, 2003, pp. 283-309;
Searle, J.R. (2010), *Making the Social World*, Oxford University Press, New York, 2010;
Stern, R. (2004), "Does 'Ought' Imply 'Can'? And Did Kant Think it Does?", *Utilitas*, 16, 2004, pp. 42-61;
Stockhammer, M. (1959), "Ultra posse nemo obligatur", *Rivista internazionale di filosofia del diritto*, 36, 1959. pp. 25-33;
Tranøy, K.E. (1972), "'Ought' Implies 'Can': A Bridge from Fact to Norm? Part I", *Ratio*, 14, 1972, pp. 116-130;
Tranøy, K.E. (1975), "'Ought' Implies 'Can': A Bridge from Fact to Norm? Part II . From Human Needs to Human Rights", *Ratio*, 17, 1975, pp. 147-175;
von Wright, G.H. (1985), "Is and Ought", in E. Bulygin (ed.) (1985), *Man, Law and Modern Forms of Life* , Reidel publishing, Dordrecht, 1985, pp. 263-281;
Vranas, P.B.M. (2007), "I Ought therefore I Can", *Philosophical Studies*, 136, 2007, pp. 167-216.