

PHENOMENOLOGY AND MIND

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PHENOMENOLOGY AND MIND

THE ONLINE JOURNAL OF THE RESEARCH CENTRE IN PHENOMENOLOGY AND SCIENCES OF THE PERSON

MAKING THE SOCIAL WORLD: SOCIAL ONTOLOGY, COLLECTIVE INTENTIONALITY, AND NORMATIVITY

Edited by Francesca De Vecchi



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EDITOR'S NOTE

The present, second issue of “Phenomenology and Mind”, *Making the Social World: Social Ontology, Collective Intentionality, and Normativity*, collects a selection of some of the papers presented during the Spring School and the International Conference *Making the Social World* that took place on 7-9 June 2011 at the Università Vita-Salute San Raffaele, Milan (see: <http://www.phenomenologylab.eu/index.php/category/17-milano-spring-school-2011/>) and was devoted to John R. Searle’s *Making the Social World. The Structure of Human Civilization* (2010).

Like the Spring School and the International Conference, the present issue of “Phenomenology and Mind” is also devoted to John R. Searle’s last book on social ontology.

I would like to express my most sincere thanks to the research groups and all the colleagues whose work and engagement made possible the realisation of the Spring School and the International Conference last year.

The Spring School and the Conference were organised by the Research Unit Person, Social Cognition and Normativity (Prin 2008), the Center of Research in Phenomenology and Sciences of the Person (www.phenomenologylab.eu), and the Center for Experimental and Applied Epistemology (www.cresa.eu) of Università Vita-Salute San Raffaele.

The *Organising Committee* was composed by:

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The *Scientific and Organising Direction* was by Roberta De Monticelli and Francesca De Vecchi (Center of Research in Phenomenology and Sciences of the Person).

The papers presented at the Spring School, as the papers published in “Phenomenology and Mind”, were selected through a double blind review procedure. My deepest gratitude and appreciation go both to the referees of the Scientific Committee of the Spring School and the referees who evaluated the submitted manuscripts for this issue:

Claudia Bianchi (Università Vita-Salute San Raffaele), Clotilde Calabi (Università degli Studi di Milano), Stefano Colloca (Università degli Studi di Pavia), Guido Cusinato (Università degli Studi di Verona), Roberta De Monticelli (Università Vita-Salute San Raffaele), Francesca De Vecchi (Università Vita-Salute San Raffaele), Michele Di Francesco (Università Vita-Salute San Raffaele), Paolo Di Lucia (Università degli Studi di Milano), Shaun Gallagher (University of Memphis, University of Central Florida, Københavns Universitet, University of Hertfordshire), Mattia Gallotti (Institut Jean Nicod, École Normale Supérieure, Paris), Francesco Guala (Università degli Studi di Milano), Giuseppe Lorini (Università degli Studi di Cagliari), Verena Mayer (Ludwig Maximilian Universität München), Lorenzo Passerini Glazel (Università di Milano-Bicocca), Jean-Luc Petit (Université de Strasbourg, Laboratoire de Physiologie de la Perception et de l'Action, Collège de France, Paris), Elisabetta Sacchi (Università Vita-Salute San Raffaele), Roberta Sala (Università Vita-Salute San Raffaele), Alessandro Salice (Universität Wien), Andrea Sereni (Università Vita-Salute San Raffaele), Corrado Sinigaglia (Università degli Studi di Milano), Wojciech Żelaniec (Uniwersytet Gdański, Università degli Studi di Cagliari).

John R. Searle (University of California, Berkeley) was the keynote speaker of the School and Conference. Other invited speakers were: Maurizio Ferraris (Università degli Studi di Torino), Cristina Meini (University of Eastern Piedmont), Hans Benhard Schmid (Universität Wien), Andrea Moro (IUSS, Pavia), Amedeo G. Conte (Università degli Studi di Pavia) and Paolo Di Lucia (Università degli Studi di Milano).

We are very honoured to publish the paper by John R. Searle on *Human Social Reality and Language* in the present issue of "Phenomenology and Mind". We are also very pleased to publish two papers of three invited speakers of the School and Conference: Maurizio Ferraris' paper on *Perspectives of Documentality*, and Amedeo G. Conte and Paolo Di Lucia's paper on *Adýnaton. Four Dichotomies for a Philosophy of Impossibility*.

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INTRODUCTION

Francesca De Vecchi

Making the Social World, or on Making Our Everyday Life World

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MAKING THE SOCIAL WORLD, OR ON MAKING OUR EVERYDAY LIFE WORLD

abstract

I will argue for three principal claims that found the structure of the present issue of “Phenomenology and Mind” and represent three Leitmotive of the papers in it collected.

A first claim on social world and everyday life world:

(i) by making the social world, we make our everyday life world;

A second and third claims on two essential features characterising social entities:

(ii) social entities existentially depend on the intentionality of individuals, and precisely on heterotropic intentionality of individuals (collective intentionality, social intentionality and intersubjective intentionality, or social cognition);

(iii) social entities are essentially normative entities, i.e. social entities are bearers of a deontology.

keywords

Social world, everyday life world, social ontology, existential dependence on intentionality, heterotropic intentionality, normativity

1. Social World and Everyday Life World

Famously, *Making the Social World* is the title of John R. Searle's last book on social ontology, to which the present, second issue of "Phenomenology and Mind", *Making the Social World: Social Ontology, Collective Intentionality and Normativity*, is devoted.

Making the Social World, or on Making Our Everyday Life World is the social ontology claim I will argue for, a claim that is shared, I believe, by Searle's account and also by many other accounts presented in this issue, as the reader herself could discover. This is essentially a phenomenological claim. Marriages, credit cards, bus tickets, euro bills, university professors, governments, football teams, the penal code, theatres, promising, rights and obligations, driver licences, taxes, etc., all are social entities, or, in Searle's terms, "institutional facts", which as such inhabit our everyday life world, our *Lebenswelt* (Husserl 1936). Therefore, the social world we make is a very relevant part of the everyday world we live in: by making the social world, we make our everyday life world, too.

This is the reason of the huge significance of social ontology today: our everyday life is even more a social and institutional life. A very important part of our everyday life is played in the social world and most of our everyday acts, actions and behaviours, as well as of our everyday ease and unease, concern or are in some way related to the social world and social entities. Think of social entities like our work contract, our marriage or divorce (and our right to get married or divorced), the economic politics of our government, the promise you made, the reservation of a medical visit through our sanitary card, the guarantee of our computer, the sentence of the judge in a trial we are involved in, our children's enrolment in the nursery school, our university diplomas, our membership to a political group, the property of our house, the bus ticket you bought, etc. Despite their extreme diversity, these are all examples of social entities our everyday living and acting depend on, is related to, deal with.

The social world creates new spaces, occasions and contexts of action, behaviour and activity of every kind. It creates new roles and functions that do not exist in a mere natural world. In the social world, we are students and professors, employed and unemployed people, musicians and audience of the Scala Philharmonic, Italian or European citizens, electors and parliamentarians, Wall Street occupants, sellers and buyers, and many other things. All of these social and institutional roles and functions imply duties and honours, obligations and claims. It is plain that we are the bearers of these roles and functions, as well as of the duties, obligations etc. they imply, just in our everyday life world.

In other terms, it is plain that our social world pervades our everyday life world.

Now, I would like to address two issues:

- (i) How do we make the social world?
- (ii) What does essentially characterise social entities?

These are two of the most fundamental questions on social world that the present issue of “Phenomenology and Mind” aims to answer. According to that aim, the issue is structured in three sections corresponding to three topics:

- (i) “Social Ontology”;
- (ii) “Collective Intentionality and Social Cognition”;
- (iii) “Normativity and Language”.

The first topic “Social Ontology” is the main, general topic: it concerns the question on *how we make the social world* (*Making the Social World*, as the first part of the issue’s title says) and aims to answer it by displaying theories explaining such creation. The question on how we make the social world likely represents the most fundamental and general issue in social ontology. This question implies of course others questions like: What are social entities? What is their ontological status? Do social entities exist as such? Are social entities a genuine type of entities, as natural entities and ideal entities are? Is realism a justified option in social ontology?

The papers in the first section of the present issue bring forward some important answers to these questions.

First of all, Searle’s paper on *Human Social Reality and Language*, which opens the section “Social Ontology”, argues that language, speech acts and, first of all, *status function declarations* play a crucial role in the creation of social entities. In Searle’s words:

All of human institutional reality, and indeed all of human Status Functions, and in that sense all of human civilization, is created and maintained by repeated applications of the Declarational form of the speech act, and this is done for the purpose of creating and maintaining Status Functions. For that reason, I call these speech acts “Status Functions Declarations”. For example, Barack Obama is the President of the United States, I am the owner of certain property in Berkeley, and the piece of paper in my wallet is a 20 Euro note, and all of these facts are created by linguistic representations that have the logical form of Status Function Declarations (Searle 2012, p. 30, in this issue).

According to Searle, social entities are essentially Status Functions, like “the President of the United States”, “the owner of a property in Berkeley”, “the 20 Euro note”, and Status Functions are created and maintained in existence by speech acts called by Searle “Status Functions Declarations”. Searle’s social ontological theory is very powerful and exhaustive; by this theory, Searle is also able to give an account of particular social entities, very difficult to define, like human rights.

Nevertheless, in Searle’s account at least one crucial question in social ontology remains not adequately fulfilled: the question on the ontological status of social entities, i.e., at the very end, the question on realism in social ontology. According to Searle, are Status Functions “things of a new kind which come into existence”¹ or not? Searle does not directly answer this question, but in accordance with his material and physical ontology, which social reality is based upon and composed of, the answer on the real existence of social entities as things of a new kind is likely in the negative.²

1 The expression is by Lynn Baker and concerns her “Constitution Theory” (2000, 2008).
2 See Searle (2012), in this issue, and Searle (1995, 2010).

2. Two Questions and Three Topics on Social World

2.1. First Topic: Social Ontology

Maybe this is the reason why Searle does not speak of social, institutional objects or entities, but only of social and institutional facts.

On the contrary, Ferraris' paper on *Perspectives of Documentality* theory stands up for realism in social ontology. Even if, according to Ferraris, the existence of social entities depends upon the intentionality of individuals, and precisely on the social acts of individuals, social entities are a third kind of entities, besides natural and ideal entities.³ Ferraris founds social entities on inscriptions and inscribed acts: "social object=inscribed act". According to Ferraris, (Searlean) speech acts need to be inscribed or registered in people's memory and documents in order to exist and to be socially effective (a marriage, whose all participants lost their memory and all documents registering the marriage disappeared, would not exist). Thus, Ferraris' *Documentality* theory aims to represent an alternative to Searle's theory.

It is worth noticing that there are also accounts in social ontology that do not attribute any existence to social entities at all. This is, for instance, the "austere realism" argued for by Matjaž Potrč and Terry Hogan. By dealing with the question on the ontological status of social entities, Potrč's paper on *Metaphysically Lightweight Posits* in the present issue maintains a very strict form of realism that does not include social entities and defines them as "metaphysically lightweight posits".

On the other hand, I would like to point out a very interesting extension of the boundaries of social ontology to the domain of the sacred and the magic. This is proposed by Filip Buekens' *Covert Institutionalality: Sacred Mountains, Witches and Exorcist*, which, by discussing an account of covert institutional facts, like sacred objects, witches, shamans and exorcists, sheds light on a very neglected category of entities in social ontology.

2.2. Second and Third Topics: Dependence on Intentionality and Normativity as Two Essential Features of Social Entities

2.2.1. The Existential Dependence of Social Entities on Heterotropic Intentionality

The second topic, "Collective Intentionality and Social Cognition" and the third topic, "Normativity and Language", which the second and the third sessions of the issue are respectively devoted to, regard the question on *what essentially characterises social entities*. "Collective Intentionality and Social Cognition", on the one hand, and "Normativity and Language", on the other hand, represent, I think, two essential features of social entities (*Collective Intentionality* and *Normativity*, as a shortened version of the second part of the issue's title reads). Why? Because of two reasons as I will claim here.⁴

Differently from natural entities and ideal entities, social entities are characterised by existential dependence on the intentionality of individuals. Without beliefs, perceptions, desires, intentions, memories, feelings and actions relating to social entities, social entities would not exist. For instance: the promise I did, and its corresponding claim and obligation, would not exist without my "social act" of promising.⁵ The bus ticket I bought and validated to go home would not exist without our "collective beliefs" according to which that piece of paper is a bus ticket.⁶

But a precise account of the existential dependence of social entities on intentionality is needed. As already showed by the examples just mentioned above, social entities depend on types of intentionality that, like collective intentionality, social intentionality and social cognition (or inter-subjective intentionality, as I prefer to say, according to the phenomenological tradition and, more importantly, according to the phenomena this concept means and indicates),⁷ involve at least two individuals, i.e. they do not depend on solitary intentionality. I call these types of intentionality

³ On this ontological three-partition, see also Ferraris (2009, 2012) and Reinach (1913).

⁴ And I claimed elsewhere, see De Vecchi (2012a).

⁵ The very first and still the most complete account of social acts is Reinach (1913).

⁶ I am evidently referring here to Searle's account of collective beliefs or collective recognitions, see Searle (2010).

⁷ In neurosciences and cognitive sciences, inter-subjective intentionality phenomena and collective intentionality phenomena are often confused and identified by the concept of "social cognition". Recently, Pierre Jacob has worked on this confusion and showed the difference between "sharing a goal" (collective intentionality) and "ascribing a goal" (inter-subjective intentionality or social cognition"), see Jacob (2012). For an attempt of a phenomenological analysis of these two phenomena, see De Vecchi (2011, 2012).

“heterotropic intentionality”:⁸ heterotropic intentional states, acts and actions necessarily refer to and depend on other individuals, i.e. they involve at least two individuals. For instance: collective acts like intending to go to the movies together; affective inter-subjective experiences (affective social cognition) like my feeling that you are enthusiastic about the movie we have seen; social acts like my promising to go to the movies with you again. These are all cases of heterotropic intentionality: a solitary individual cannot perform any of them; they need to be performed and experienced by at least two individuals.⁹

The claim that social entities are existentially dependent on heterotropic intentionality, i.e. they depend on an intentionality which involves at least two subjects, and not on a solitary intentionality, is connected to the question on how we make the social world. This claim, in fact, implies a precise answer to that question. What I mean is that a very significant corollary of this claim is that heterotropic intentionality is socially effective. Heterotropic intentionality (be it collective, inter-subjective or social cognition and social) contributes to the creation of the social world. In order to create and maintain in existence social entities of any type (rights, obligations, football matches, money, corporations, marriages, parties, families, theatres, etc.), at least two individuals are needed, who may deal with one another by performing social acts, by sharing collective intentions, beliefs and feelings, by one understanding the other in an act of empathy or sympathy, etc.

Many of the papers in the present issue of “Phenomenology and Mind” deal, more or less directly, with the question on the dependence of social entities on intentionality and on the role of intentionality in the creation of the social world. They do that, in particular by focusing on Searle’s account of collective intentionality. I would like to mention each of these papers that point out very significant aspects, and also in some way critical or worth of developments, of Searle’s collective intentionality theory.

Daniela Tagliafico’s *The Paradox of Government: Explaining the Life and Death of a State* focuses on the Searlean topic of the ontological dependence of institutional facts on collective acceptance, and individuates a paradox in the ontological dependence of a government both on collective acceptance and on brute force; finally, Tagliafico shows a way out by distinguishing between a “natural collective acceptance” and “social collective acceptance”.

Michael Wilby’s *Subject, Mode and Content in “We Intentions”* concerns the individualism and internalism which characterise Searlean collective intentionality, and attempts to argue for the notion of “a dual-subject mental state”.

Sarah Songhorian’s *Is Affective Intentionality Necessarily Irrelevant in Social Cognition?* aims to rehabilitate affective intentionality—collective affective intentionality phenomena are neglected by Searle—, and points out its relevance for collective intentionality and social cognition, by means of Scheler’s phenomenology of affective life.

Emanuele Caminada’s *The Phenomenological Background of Collective Positionality* addresses Husserlian phenomenology from the point of view of social ontology and, despite Searle’s conviction, attempts to show that phenomenology is adequate to face the problems in social ontology. More precisely, Caminada points out how collective intentionality and the Background, two of the pivotal elements of Searle’s account, can be well explained by phenomenological reductions.

Angelica Kaufmann’s *Collective Intentionality: A Human – not a Monkey – Business* investigates Searle’s argument according to which collective intentionality is a property of animal intentionality, i.e.

8 “Heterotropic” is a neologism composed of two ancient Greek words: the more familiar “*héteros*” which means other/another [*autrui, Fremd, altro*] and the less familiar “*trépo*” which means turn towards [*se tourner vers, sich wenden an, rivolgersi a*]. The adjective “heterotropic” and the noun “heterotropism” are neologisms born in the philosophy of law and social ontology group of the Universities of Pavia and Milan (members of the group are: Amedeo Giovanni Conte, Giampaolo Azzoni, Paolo Di Lucia, Giuseppe Lorini, Lorenzo Passerini Glazel, Stefano Colloca, Francesca De Vecchi and others), and they are “variations on the theme” of “nomotropic” and “nomotropism”, which are neologisms by Conte (2000) and Di Lucia (2002).

9 I worked on heterotropic intentionality in De Vecchi (2011, 2012, 2012a), and in De Vecchi-Passerini Glazel (2012).

a property not limited to humans. By referring to Tomasello and Rakoczy's criticism to Searle, Kaufmann claims that collective intentionality is the psychological mechanism that explains the uniqueness of human cognition, its culture and society.

Guglielmo Feis' *The "Ought" Implies "Can" Principle: a Challenge to Collective Intentionality* inquires into Searle's account of collective intentionality through the "Ought Implies Can" principle; this inquiry leads to identify more conditions and requirements on the agents participating collective intentionality than those identified by Searle.

Federico José Arena's *Other Participants' Cooperative Attitudes in Legal Context* argues against the Searlean claim that, for collective actions to exist, a belief in the cooperative attitude of the other participants is needed. Arena's argument is based on collective intentionality in legal institutional facts, which, according to Arena, do not imply this epistemological condition.

2.2.2. The Normativity of Social Entities

The second essential feature characterising social entities I will argue for (besides the first essential feature I have been arguing for: social entities existentially depend on heterotropic intentionality) is the following: social entities are essentially normative entities, i.e. they are specifically bearers of a deontology, and of reasons for action based on obligations, duties, rights etc.¹⁰

This claim is a very important one for Searle's account. According to Searle, social entities, i.e. Status Functions imply *deontic powers* (obligations, rights, commitments, permissions, authorisations, duties, licenses, etc.). Let us consider some examples.

Promising implies a promisor's obligation and promisee's claim. A university professor has the obligation to give his lectures, according to his work contract with his university, and he has the right to examine his students and evaluate them. Your invitation to your party authorises me to come to your party. Two friends who decide to visit the Picasso Museum together are committed to go together to the Picasso Museum.

Deontic powers create "desire-independent reasons for action", i.e. reasons independent of our preferences, inclinations and vantages.¹¹ If I promise you to walk together with you tomorrow, then when I wake up in the morning, I have a reason for walking together with you which is independent of my immediate inclinations to stay in bed or to go to play basketball. Thus, I have to recognise that I have a prior obligation – prior to my present inclinations – which gives me a reason for action which is independent of my inclinations and which will override my inclinations.

The third section of the present issue, "Normativity and Language", deals just with this claim on normativity as a characterising feature of social entities and also focuses on Searle's claim on language as implying a deontology, as well as on Searle's account of constitutive rules.

Two papers focus critically on Searle's claim on the deontology of language. Federica Berdini's *Rationality as the Normative Dimension of Speech Acts* brings forth a criticism of the normative dimension involved in the performance of speech acts in Searle's account. Enrico Terrone's *Making the Social World without Words* maintains that no language is needed to create the social world and that "the basic requirements to create an elementary social fact are the motivated representations and the normative associations between them".

One of the more interesting problems tackled by some of the papers of this section concerns the conventionality of the normativity in Searle's account. In Searle's perspective, deontic powers, language deontology and constitutive rules seem not to have a foundation or at least a limit *in rebus*.

¹⁰ We could make the following objection: may other kinds of entities, like artifacts and works of art, also be bearers of deontic powers or at least of a sort of reason for actions, for instance exigencies, suggestions, orientations in respect of our actions? In other words, is really normativity a specifically characterising moment of social entities? I have worked on this objection and tried to reply to it in De Vecchi (2012a).

¹¹ See Searle (2010, 2012).

We can impose the status functions and their correlative deontic powers we want, we can create the constitutive rules and their related institution we prefer. We do not have an intrinsic bound, the only condition, necessary and sufficient for the creation and maintenance of Status Functions, deontic powers, constitutive rules, is apparently their acceptance by a collective group of people.¹²

Amedeo G. Conte and Paolo Di Lucia's paper on *Adýnaton. Four Dichotomies for a Philosophy of Impossibility*, by identifying eight ideal types of impossibility in social and legal world, and in particular by focusing on praxical impossibility (i.e. an impossibility that concerns *praxis*, action), addresses eight types of connections which are essentially impossible. This means that we cannot turn these types of impossibility into types of possibility if we, collectively, want to do it. There is, in fact, an intrinsic limit, inside "the things themselves" (Husserl 1901), that prevents us from doing it. This is, plainly, a limit to the conventionality of the social world¹³. For instance, Conte-Di Lucia present the case of the impossibility for someone to forgive himself (Reinach 1913) and the impossibility of promising feelings (Nietzsche 1878-1879, § 58).

Corrado Roversi's *Mimetic Constitutive Rules* argues against the conventionalism and arbitrariness of constitutive rules in Searle's account. Roversi brings forward the concept of "Mimetic constitutive rules": constitutive rules which are reality-context sensitive. In some way, they are constitutive rules because they are imitating reality, i.e. they constitute games, institutions etc. starting from reality. In other words, they are reality-dependent, and therefore they are less conventional and arbitrary because they are limited by reality (the problem is: what kind of reality constitutive rules are mimetic to? It should of course be a reality that has not already been socially created).

A similar work on constitutive rules is offered by Gian Paolo Terravecchia's *Emergent Rules and Social Reality*. Terravecchia opposes "Instituted rules" (regulative and constitutive) to Emergent rules: rules that are effective without being instituted by us, and that emerge from the context itself—we may also say, from the phenomena themselves.

Also Barbara Malvestiti's *Human Dignity as a Status vs. Human Dignity as a Value. A Double Nature* tackles the problem of bounding and limiting Searle's conventionalism by focusing on human rights. Malvestiti does that with respect to Searle's account of human rights as Status Functions: she poses the problem of the values that human rights are based on and presents an alternative phenomenological account of human rights, the one by Herbert Spiegelberg.

Finally, Olimpia Loddo's *The Background Power in Searle's Social Ontology* provides an analysis of Searle's "Background Power" and of its role in his social ontology: by introducing von Wright's concept of "normative pressure", Loddo points out some limitations of the Searlean concept of "Background Power" and proposes a way to improve this concept.

I will resume the three principal claims that found the structure of the present issue of "Phenomenology and Mind":

- (i) the first claim on social world and everyday life world: by making the social world, we make our everyday like world;
- (ii) the second claim on the first essential feature characterising social entities: social entities existentially depend on the intentionality of individuals, and precisely on heterotropic intentionality of individuals (collective and social intentionality, inter-subjective intentionality or social cognition);
- (iii) the third claim on the second essential feature characterising social entities: social entities are essentially normative entities, i.e. social entities are bearers of a deontology.

3. Conclusion: Three Claims

¹² I say "apparently" because this is a point that should be deepened. Searle himself could apply to the conventionality of "making the social world" at least the limits given by the semantic and logical rules of the language, as Searle does in the case of practical rationality and morality about which Searle argues for a "Semantic categorial imperative". See on this point Searle (2001).

¹³ This is, in other words, the phenomenological topic on "material a priori", see Husserl (1901), and on "apriori foundations of law" and "laws of essence", see Reinach (1913). For a very interesting analysis of Searle's conventionalism vs. Reinach's laws of essences in social ontology, see Smith-Zelaniec (2011).

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SESSION

1

SESSION 1

SOCIAL ONTOLOGY

John R. Searle (University of California, Berkeley)
Human Social Reality and Language

Maurizio Ferraris (Università degli Studi di Torino)
Perspectives of Documentality

Matjaž Potrč (Univerza v Ljubljani)
Metaphysically Lightweight Posits

Olimpia Loddo (Università degli Studi di Milano)
The Background Power in Searle's Social Ontology

Filip Buekens (Tilburg University, Katholieke Universitet Leuven)
Covert Institutionalality: Sacred Mountains, Witches and Exorcists

Daniela Tagliafico (Università degli Studi di Torino)
The Paradox of Government: Explaining the Life and Death of a State

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HUMAN SOCIAL REALITY AND LANGUAGE

abstract

My question, in this work, will be: How do human beings create such complex phenomena as money, government, property, and marriage?

Here, I will maintain four theses. First, all of human institutional reality is created in its initial form by a certain type of linguistic representation that has the same logical structure as Declarations and as these create Status Functions, I call them Status Function Declarations. Secondly, institutional reality is maintained in its continuing existence by Status Function Declarations. Third, the status functions without exception function to create power. So the purpose of institutional facts is to create power relations. Fourth, the powers in question have a very peculiar status, because they function by creating reasons for action that are independent of the desires or inclinations of the agents in question. All institutional facts are created by Status Function Declarations, and these Status Function Declarations create deontic powers, and Deontic powers, when recognized, give desire independent reasons for action.

keywords

Social and institutional reality, status functions declarations, collective intentionality, deontic powers, human rights

1. The Central Problem in Contemporary Philosophy

There is an overriding problem in philosophy. It is the problem of how to reconcile what we know about the world from physics, chemistry, and the other hard sciences with what we think about ourselves. The hard sciences tell us that the world is entirely composed of physical particles in fields of force, and thus is composed of mindless, meaningless entities. Everything consists of “atoms in the void”. Yet we think of ourselves as conscious, free, rational, linguistic, political, aesthetic, ethical, creative, speech act performing animals. Our question is, How can we show how our self-conception is not just consistent with, but is in fact a natural consequence of what we know about the reality as described by physics and chemistry and other hard sciences? How do we get from protons to presidents and from electrons to elections? The human reality is based on, and in a sense we need to explain, composed of, the basic reality. We need an account that shows how human aspects of reality grow naturally out of the brute physical aspects of reality. Today I am going to talk about one aspect of this larger problem.

I am going to assume that we have a solution to the traditional “mind-body problem”, that we have an account of how conscious intentionality arises out of neurobiological process just as the neurobiological processes themselves arise out of a more fundamental physical process. I am going to assume then that we already have a world that contains conscious human beings, and our question is: How do such animals create such complex phenomena as money, government, property, and marriage?

Before launching into the problem, I want to say something about my own history in investigating these issues. When I first began work in philosophy, I worked mostly on the philosophy of language, and I wrote a book on speech acts (Searle, 1969). The book was written at a time when Wittgenstein was the dominant philosophical influence, and in my own case, I was also influenced by my teachers J.L. Austin and P.F. Strawson. The basic idea behind the book *Speech Acts* is that we ought to think of language as a form of intentional human activity, like playing a game. And just as in playing a game, we make certain moves that count as having such and such a status in the game, so when we play the game of language, we make such and such moves that constitute having such and such a status in the game of language. In a game, if I kick a ball in the net, that counts as a goal. If I move my Knight into a certain position, that counts as putting the opposing King in check. Similarly, when I make certain utterances through my mouth, that counts as making a statement or making a promise. I thought

the basic principle that underlies both games and speech was what I called constitutive rules—rules that do not just regulate a pre-existing activity, but rather constitute the very activity that they regulate. And it also seemed to me that the general form of constitutive rules was “X counts as Y in context C”. So, for example, such and such a move of the Knight counts as a legal move, and such and such a legal move counts as putting the opponent in check, and such and such a type of check counts as checkmate. Similarly with language: such and such occurrences count as making a promise. Certain other utterances count as making statements or commands. My approach was part of the general anti-Cartesianism of that philosophical era. We were to think of meanings not as sets of introspectable entities, but rather knowing the meaning of words and sentences is a matter of having certain abilities to engage in speech acts. I think that this approach is basically right, but I have had to make certain fundamental modifications in it in my overall philosophical approach.

When I first began work on these issues, I wanted to use the analogy with games to explain language, but in fact it turns out that I have to use language to explain games. Games presuppose language in a way that language does not presuppose games. On the account that I am about to present you, language is not just one social institution among others, it is the fundamental social institution. All of the others depend on language in a way that I am going to explain. Intuitively, we feel there is something right about this approach, because it seems natural to think that a tribe might have a language and not have money, private property, and government. But it seems impossible that they could have money, private property, and government without having a language.

When I wrote my first book on this topic, *The Construction of Social Reality* (Searle, 1995), I thought that institutional reality could be explained with a very simple set of four fundamental concepts. These are first the ability to cooperate, to have what I call collective intentionality, and second, the ability to impose functions on objects where the function is the result of the imposition of a certain kind of intentionality on the object. These two features—collective intentionality and the imposition of function—are not unique to the human species. Beaver dams and birds’ nests are also the imposition of functions on objects, and such functions are typically the result of collective activities, of collective intentionality. But a remarkable thing about human beings, and this is the third of my explanatory concepts I need to explain, is that they have a capacity to impose a special kind of function on objects, which I call a “Status Function”. A Status Function is a function that can be performed only in virtue of the fact that there is a collective acceptance of the object as having a certain type of status, and with that status goes a function that can be performed only to the extent that the status is collectively accepted. Think of the president of United States, the twenty Euro note in my pocket, or my position as being a Professor of Philosophy at the University of California in Berkeley. All of these are Status Functions, in that they are not functions that can be performed solely in virtue of the physics of the object, but they require a certain status and a certain collective acceptance of that status. It seemed to me that my earlier discussion of constitutive rules gave us the mechanism for understanding these Status Functions. The form of the imposition of the Status Function is that a certain entity X, a person or an object, counts as having a status Y in a context C, and the acceptance of that status Y carries with it a function F, which can only be performed in virtue of the collective acceptance of that function. This was the fourth of my fundamental explanatory concepts, the use of constitutive rules to create Status Functions.

The basic idea of a Status Function is so important, and the logical structure of its imposition and maintenance is so central to the understanding of human civilization that I want to say a little bit more about it. The basic idea is this: many functions of objects can be performed solely in virtue of physical structure. Think of the pocket knife that I have or the fountain pen that I have or the shoes that I wear or the car that I drive. All of these perform their functions in virtue of their physical structure, but with our serpentine human ingenuity, our lives are permeated by objects that do not

2. The Basic Structure of Institutional Facts

perform their functions solely in virtue of physical structure. Think of the money in your pocket or the credit cards that you carry or your position as a citizen of Italy or of the United States. Think of Barack Obama's role as president or the Congress of the United States acting to pass legislation. All of these are entities that can perform their function only in virtue of a set of attitudes that people have, collective intentionality, but the collective intentionality is of a peculiar kind. It is of a kind that enables us to assign a status to an object where the object can perform the function only in virtue of the collective recognition of the status, and just to have a label, I call these Status Functions. Now these four concepts—collective intentionality, the imposition of function, Status Functions, and Constitutive Rules—gave me a very powerful set of concepts for analyzing social and institutional reality. And it seemed to me also that I had the general form right, and that the form of the imposition of status functions is always the Constitutive Rule in the form “X counts as Y”. This is the general structure that explains money, government, property, marriage, universities, cocktail parties, summer vacations, lawyers, doctors, and all sorts of other things that we think of as important to human civilization. This furthermore is how we differ from other animals. There are lots of animals that apparently cooperate with each other, and it is interesting how far collective intentionality extends, but for our present purposes it does not matter. Human beings have collective intentionality, and this is a remarkable feature about us. Given collective intentionality, and given the application of principles of the form “X counts as Y in C”, we can create and maintain Status Functions. You might think that if that is your theory of human institutional reality, that it is simply a matter of X counts as Y in C, then it looks much too feeble. How can we explain human civilization just by the repeated application of this not very substantive sounding formal principle? It seems too weak to account for human civilization. I appreciate the force of this worry, but I want to remark that constitutive rules have certain remarkable properties of a purely formal kind. Specifically, the application of the rule iterates upward indefinitely, and it spreads out laterally indefinitely. I want to illustrate these two formal features. As I said earlier, I make certain noises through my mouth, and that counts as uttering a sentence of English, but uttering certain sentences of English counts as making a promise; and making a certain sort of promise counts as undertaking a legal contract; and undertaking a certain sort of legal contract counts as getting married. Now notice what has happened in the preceding sequence. We had X1 counts as Y1, but at the next level, Y1 becomes X2, which counts as Y2, and then Y2 becomes X3, which counts as Y3, and so on upward indefinitely. There is no limit, other than human exhaustion and inability to understand complexity, to how far upward you can keep going with the iteration of the formula “X counts as Y in C”. Furthermore, the application of the formula spreads laterally. So I do not just have money, but I have money in my bank account at the Bank of America on Telegraph Avenue, and it is placed there by my employer, The Regents of the University of California, and I use it to pay my Federal and State income taxes and all sorts of credit card bills and other forms of debt that I undertake. Now in the sequence of entities that I just mentioned, with a possible exception of Telegraph Avenue, all are Status Functions. The University of California, the Regents, income tax, credit cards—all of those are Status Functions. So the application of the formula iterates not only upward, but it spreads out laterally. You never just have an institutional fact on its own, but you have an institutional fact in a huge network of other institutional facts.

- 3. Improving the Theory** I think that the theory I just described is a pretty good theory, and what I am going to do is show how, by making certain small adjustments, we can increase its power enormously. The first thing to notice about the theory as stated is that it allows for certain sorts of apparent exceptions. So, for example, we need not have an established procedure in order to create a status function. It is true that I count as a citizen of the United States or I count as a professor at the University of California in Berkeley, because I satisfy certain X conditions, which count as constituting these Y status functions; but sometimes we can just create an institutional fact without

any of these, without a constitutive rule. You just decide collectively to treat somebody as the boss. You might even do it informally. You might say, “Well we cannot really do anything until Sally gets here. We better not make any decisions until we consult with Sally.” In doing this, we are treating Sally as having a status function, without there being any antecedently existing institution. Maybe, indeed, that is how institutions get started—somebody just decides this is *my* house, that is *my* property, this is *my* woman or *my* man, this person is *our* boss. So we have what we might call *ad hoc* cases, where there is no constitutive rule, but you just create status functions out of the blue.

Another interesting apparent counterexample to the theory as I originally stated it is that sometimes you can create a status function without imposing a function on a preexisting X term. You just, so to speak, create an institutional fact out of the blue. An obvious example is the creation of corporations. We do not take some entity, some building or group of people, and make it the case that they are now a corporation. Rather, we just make it the case that an entity that did not previously exist, such and such a corporation, now exists. And this enables us to assign further status functions to people, such as officers in the corporation or shareholders in the corporation, but the corporation itself is not a physical entity on which a status function has been imposed. It is created, so to speak, out of nothing. Another example is money. There is a certain irony when we consider these cases, in that my favorite example of an institutional fact was always money, where we take pieces of paper or bits of metal and count them as currency or coins, but interestingly, most of our money has no physical existence at all. If you think that in the bank where you have your bank account there must be a drawer with your name on it where they keep your money, you have a mistaken conception of how banks work. What actually happens is that your money has no physical existence as such, but rather, the bank has a *representation* of your money. It keeps a record, the only physical form of which are magnetic traces on computer disks, where they record the amount of money you have in the bank; and then changes in the amount of money you have consist entirely in changes in the representation on the computer disk. What is happening in these cases? How can there be something as powerful as money where there is no physical existence to the entity at all but just representations of the existence of the entity?

One of the marks of the philosopher is the ability to be astounded by what any sane person takes for granted. I think most people take money and corporations for granted. But if you think about them, they are both amazing human creations. If you think for a moment about the limited liability corporation, it is a wonderfully ingenious fabrication. A set of huge, powerful institutions with no physical reality at all. Of course there are buildings and people, but they are not constitutive of the corporation. The corporation is just an abstract entity. And similarly with money. Money starts out as physical objects, but then we find you do not need the actual physical objects. All you need are representations of quantities, and the ability to change the amounts of the representation by way of exchanging one quantity of money for something else or for some other quantity of money. These exchanges are called buying and selling.

These two types of cases force an interesting question on us. How can we make something the case as represented by being the case, even though there is no X term which we represent as acquiring a new factual feature? In order to explain how this works, I have to say a little about how language works.

I said in the earlier sections that we are going to explain how to reconcile human reality with non-human physical reality. In this investigation, there are two principles we have to keep in mind. The first is: we live in one world. We must not accept any kind of dualism that says that there are two kinds of entities—the mental and the physical—nor, even worse, trialism, the view that says there are three kinds of realities—mental, physical, and cultural. There is only one reality. We all live in it. We have to explain how it works. The second principle that we have to follow in this investigation is that any mechanisms we postulate must be simple. Humans are not so intelligent as to be able to apply very complex mechanisms. Rather, there is a simple mechanism that creates complex human reality by its repeated application.

4. The Fundamental Types of Speech Acts

In order to explain how humans create institutional reality, and thereby create the distinctive features of human civilization, I have to say a little bit about the nature of language. In what follows, I am going to give you a five minute summary of some of the central features of the theory of speech acts. I apologize for the brevity, but I need some of these results in order to answer the question we are facing.

The basic form of the speech act is $F(p)$, where the “F” marks the type of speech act it is, what Austin called its illocutionary force, whether it is a statement, promise, or command, and the “p” marks the propositional content. Thus, the statement that you will leave the room and the order that you will leave the room have the same propositional content, the same “p”, but each has a different “F”, a different illocutionary force, that of a statement, and an order respectively. If we ask ourselves how many types of such speech acts are there? One basic way of classifying them is by how they relate to reality. Some of our utterances are supposed to match how things are in the world. The philosophers favorites are statements and assertions. Thus, philosophers like examples such as “All men are mortal”, “the cat is on the mat”, and “Socrates is bald”. All of these are supposed to match an independently existing reality, and to the extent that we do, we say that they are *true* or *false*. I like to think in simple metaphors. Think of these as matching reality or failing to match. They have what we could call the word-to-world direction of fit, and I represent that with a downward arrow thus \downarrow . But not all utterances set out to be true or false, and not all of them attempt to describe an independently existing reality. Some are designed to get people to change reality, and typical examples of such utterances are orders, promises, commands, and requests. Such speech acts have the world-to-word direction of fit, because the aim of the speech act is not to tell us how things are, but to try to get the world to change in the form of the behavior of the speaker or hearer so that the world changes to match the content of the words. I represent the world-to-word direction of fit with the upward arrow thus \uparrow . I call the first class of speech acts that have the word-to-world direction of fit Assertives. The second type of speech acts that have the world-to-word direction of fit breaks into two kinds: Directives, which includes orders, commands, and requests, and Commissive, which include promises, vows, threats, and pledges. So far, then, we have three classes of speech acts: Assertives, where the aim is to match an independently existing reality, Directives, where the aim is to get people’s behavior to change to match the content of the speech act, and Commissive, where the aim is to commit the speaker in varying degrees to changing his behavior to match the content of the speech act.

A fourth class are cases where we take the fit for granted and express some feeling or attitude about the state of affairs represented. So, if I apologize for stepping on your foot, thank you for giving me the money, or congratulate you on winning the prize, then in each case I take it for granted that I have stepped on your foot, that you have given me the money, that you have won the prize, and the whole point of the speech act is to express some psychological state about that. In such cases, I say the fit is presupposed. I call these Expressives.

The fifth class of cases is the most interesting from the point of view of our present investigation, and those are cases where we make something the case by representing it as being the case. That is, we make it the case that the world matches the propositional content of the speech act, and thus we achieve world-to-word direction of fit, but we make it the case by representing it as being the case, by representing it with the downward or word-to-world direction of fit. I represent these with an arrow that has both directions of fit thus \updownarrow . The most famous cases of these are the so called “performative” utterances, where we make something the case by saying that it is the case. I make a promise by saying “I promise”. I adjourn the meeting by saying “The meeting is adjourned”. A government declares war by saying “War is declared”. Performative utterances always use a performative expression, such as “apologize”, “thank”, and “congratulate”.

I call this class of speech acts Declarations, because they make something the case by declaring it to be the case. They are remarkable in the philosophy of language, and indeed, as far as I know, only humans

have this capacity to create a reality by representing that reality as existing. Declarations, as I said, are often performed by performative verbs, but often we make something the case by representing it as being the case without using an explicit performative verb. It says on American currency “This note is legal tender for all debts public and private”, but when they say that, the officials are not reporting a preexisting fact, nor are they ordering a fact into existence, they are making something the case by representing it as being the case. They are performing a Declaration. It is important to emphasize that in the Declaration, though the speech act has two directions of fit, it is not the case that two speech acts are performed. When I adjourn the meeting by saying “The meeting is adjourned”, I make it the case that the meeting is adjourned, and thus achieve the upward or world-to-word direction of fit, but I do it in the same speech act by representing the meeting as adjourned by means of the word-to-world direction of fit. It is not like having two directions of fit next door to each other. It is not like an order together with a statement, but rather it is a single speech act with both directions of fit at once.

Now, I want to advance a very strong claim, and it is one of the most important points in this lecture. All of human institutional reality, and indeed all of human Status Functions, and in that sense all of human civilization, is created and maintained by repeated applications of the Declarational form of the speech act, and this is done for the purpose of creating and maintaining Status Functions. For that reason, I call these speech acts Status Functions Declarations. For example, Barack Obama is the president of the United States, I am the owner of certain property in Berkeley, and the piece of paper in my wallet is a 20 Euro note, and all of these facts are created by linguistic representations that have the logical form of Status Function Declarations. They need not always be explicit, as I said earlier, someone might become the boss just by being treated as, or regarded as, or in other various ways represented as being the boss, but in every case it is a representation that has a double direction of fit. It makes it the case that something exists by representing it as being the case.

It is perhaps important to emphasize that the representations that maintain a status function need not take the form of explicit declarations. Thus, for example, when someone simply introduces Barack Obama in front of the United States Congress as the president of the United States, we are *reinforcing* his position as president, as having the status function of the presidency. The important points to make, however, are these two: All of human institutional reality—money, property, government, marriage, cocktail parties, stock market transactions—are all created in their initial form by representations that have the double direction of fit by Status Function Declarations. But secondly, they are maintained in their existence by continuous representations that have that same double direction of fit.

One of the ways to observe this last point, that the representations are essential for the continued maintenance of the existence of status functions, is by observing social change. So, for example, revolutionary movements find it necessary to alter the vocabulary. In the Russian Revolution, the revolutionaries were anxious that people should stop addressing themselves by the old forms of address and that everybody should be addressed as “Comrade”. This marked a change in status functions. Similarly, though in a less extreme form, the feminist movement was anxious to get rid of the traditional vocabulary of “ladies and gentlemen”, because these marked institutional Status Functions that they wanted to alter.

Now one might wonder why do we bother to do this? Why do we bother to create these status functions with this elaborate vocabulary and these elaborate procedures and codifications for maintaining the status functions in existence? And the answer is that we do not do this, typically, for decorative purposes, but we create powers in society by means of creating an institutional reality. We create power relations among individuals within institutional structures. How exactly does it work? All status functions create a certain type of power that I call a “deontic power”, using the Greek word for duty. Deontic powers include such things as rights, duties, obligations, authorizations, authority,

5. Speech Acts and Social Reality

6. Institutional Facts and Power

permissions, and requirements. And how do these work? These have a peculiar feature, which I think may also be unique to humans among animal species, and that is that when individual human beings recognize deontic powers—they recognize for example that they are under an obligation to do something or that other people have certain rights regarding them—they are recognizing that they have *desire independent reasons for action*. Thus, to take an example close to home, if I promise to give a talk today in San Raffaele, then when I wake up in the morning, I have a reason for giving the talk which is independent of my immediate inclinations. If I have an inclination to stay in bed or to go to a museum, I have to recognize that I have a prior obligation and that my obligation gives me a reason for action which is independent of my inclinations and which is an obligation which will override my inclinations.

It is no exaggeration to say that this is the glue that holds human societies together. Pre-linguistic animals have all sorts of complex social relations, but they do not have systems of rights, duties, and obligations, and that is why they are unable to maintain the sort of relationships that humans can maintain. There is nothing in the animal world analogous to the system whereby I can today create an obligation for doing something a year, or indeed, many years hence, and then when the time comes, I have a reason for acting, for carrying out the action that constitutes fulfilling my obligation, and that reason is independent of my inclinations. The reason can be the basis of the desire to do something. I want to do it, because I recognize I have an obligation to do it; but in this case, the desire is grounded in the obligation and the recognition of the obligation gives rise to the desire. When I recognize your rights as a citizen and I recognize my obligations as results of undertakings that I have taken, then I have recognized that I have reasons for acting which are independent of and go beyond my immediate inclinations.

7. Summary So far then, to summarize, I have maintained four theses. First, all of human institutional reality is created in its initial form by a certain type of linguistic representation that has the same logical structure as Declarations and as these create Status Functions, I call them Status Function Declarations. Secondly, institutional reality is maintained in its continuing existence by Status Function Declarations. Third, the status functions without exception function to create power. They create positive and negative powers. The president of the United States, for example, has the positive power to veto congressional legislation, he has the negative power, obligation, to give a State of the Union message every year. So the purpose of institutional facts is to create power relations. Fourth, the powers in question have a very peculiar status, because they function by creating reasons for action that are independent of the desires or inclinations of the agents in question. The powers in question are rights, duties, obligations, permissions, authorizations, authorities, requirements, etc. All institutional facts are created by Status Function Declarations, and these Status Function Declarations create deontic powers, and Deontic powers, when recognized, give desire independent reasons for action.

8. Glimpses Beyond I believe the account I have given so far, brief and tentative though it is, provide the basis for much more extensive investigations into political, social, and institutional phenomena generally. I will discuss two further topics, a political power and human rights.

9. Political Power Intuitively, I think it is obvious that a political system exhibits a different kind of power from sheer, brute physical power, though of course, just about all known political systems require military and police force to back the institutional power. The suggestion I wish to make is that all political power is a matter of Status Functions, and this is why, in Max Weber's expression, the crucial question for

any political system as with institutional reality generally, is one of “legitimacy”. Political power differs from police power and military power in that it is a system of institutional structures and these institutional structures will function insofar as they are accepted and the question of stability and permanence is always at issue in any totalitarian system. From outside, totalitarian systems look simple, where the leader has absolute power and any questioning or challenge to the leadership is punishable by death. But from inside, the leaders are invariably desperately insecure. Think of Hitler, Stalin, or Mussolini, for example. They are constantly struggling against the threat of internal subversion. The mark of a healthy political system is that the set of Status Functions, the system of deontic powers encoded in rights, duties, obligations, political offices, courts, and criminal laws is simply taken for granted. To the extent that it is taken for granted, the Status Functions seem almost invisible. They just become part of the furniture. So, paradoxically, Status Functions tend to work best when people are unaware that they are there at all.

Human rights are a perpetual source of debate, and I think most of the debate is confused, because people fail to recognize that human rights are a species of Status Function. The peculiarity of human rights is that, unlike most rights, the human right is not derived from some prior institutional structure. Property rights, marital rights, and educational rights derive from some institutional structure and the situation of people within the structure. The ingenuity in the concept of a human right is that just being a human being, by itself, is treated as a Y term. There is no logical reason why this should not be the case, but it is a surprising development, and I think it really only emerged in its present form at the time of the European Enlightenment. The point is that human rights provide a set of Status Functions, a set of deontic powers, that accrue to individuals not as owners of property, as husbands and wives, or possessors of university degrees, but simply in virtue of human beings. Can we justify such a conception? I think we can, but to do so is a non-trivial matter. There are two requirements necessary for any justification of human rights. First, we have to have a theory of human nature. So, for example, to justify the right to free speech, I think we have to understand that human beings are essentially speech act performing animals. The power of speech is not incidental to a full human life but is essential. The second feature in addition to a theory of human nature is a set of values, we need an axiology, a theory of relative values, because of course there lots of things that are human in nature, a tendency to violence perhaps, which do not thereby accrue any rights. It is because we think not only that the free exercise of speech is natural to human beings, but we think it is valuable, that we can justify the universal right to free expression.

I believe that the material presented here, material discussed at much more length in other works by me, provides a basis for further useful investigations in the human social and institutional reality¹.

10. Human Rights

1 For further discussion of these issues, see my earlier books: Searle (1995), and Searle (2010).

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PERSPECTIVES OF DOCUMENTALITY

abstract

Social ontology has experienced significant growth in the last decades. In particular, a promising research agenda concerns social objects. The reference to social objects implies sharing a realistic conception of the world which allows a definitive departure from the post-modern vision of the social world as a fluid and elusive organism. A taxonomy that distinguishes between social, physical and ideal objects can, on the contrary, reinvigorate human sciences getting over the well-known methodological controversies of the last years. The theory of Documentality provides heuristic power and a solid basis for organisational resources: all potentially reliable sources for the web society. Documentality theory aims to represent a valid alternative to Searle ontology, and at the same time to offer both theoretical and practical developments.

keywords

Documentality, social ontology, social objects, human sciences, web society, Searle's social ontology

1. Writing Explosion In *2001: A Space Odyssey*, filmed in 1968, normal type-writers are used to write in the spaceship and Hal, the computer, is a talking brain. The PC would be invented a few years later, yet no one had the slightest inkling of it because no one realized that using a talking machine that simulates thinking would be trivial compared to more powerful writing and archiving instruments, and that this—more so than spaceships and jets—would be the true propellant for delocalization and globalization. And so, in a science-fiction film from a little over forty years ago no one had foreseen what, in a short time, would emerge as a writing explosion. The prediction that writing would eventually be engulfed by a society of “hot” communication—that is, radio, cinema and television—today seems unrealistic. This point merits our reflection. It has been stated and restated throughout the course of the twentieth century that ours is a society of communication. This concept is mistaken for two reasons: the first is that it does not consider the fact that any society—human or animal—requires communication. The second, more crucial, error is that it fails to consider that *any instance of communication would be a sterile act if it were not accompanied by the act of recording*, to which we entrust the existence and permanence of highly important things such as promises, roles, debts and credit, as well as our identities. It is upon this very hypothesis that the social ontology of “Documentality” bases itself, whose principal theory is that documents are not an accessorial element of social reality, but rather (in the various forms that they can assume) its condition of possibility, insofar as they ensure the fixation of individual and collective memory.

2. Amnesyne Let us verify through three mental experiments.

1. A man sentenced to death is offered the choice between a cyanide capsule and a pill of amnesyne, a concoction that causes total amnesia. When all is said and done, there is no real difference between swallowing a cyanide capsule and an amnesia pill (a hypothetical chemical mixture that is able to provoke a state of total amnesia). Intuitively, we might admit that it would be less terrifying to swallow a capsule of amnesyne than it would be to swallow cyanide, but the question is: how rational is our elevated fear of cyanide? Come what may, what we are would disappear, and what would remain is a mere oblivious body.
2. Let us suppose that two people are responsible for the same crime—only one remembers

the events while the other does not. Our dominant intuition is that the person who does not remember the events is in some way less guilty than the person who does remember them. This is fairly peculiar, considering that the events are the same and the one who has forgotten the events has (hypothetically) the same mental capacities as the one who remembers them. And yet, we feel as though we should offer the one who has forgotten the events a sort of mitigation, due to his limited mental capacities. We might say that his intellectual and moral standards were left unaltered, he just failed to remember certain acts—yet this simple fact makes a significant difference. The only punishment that appears to be appropriate for the one who has forgotten the events would be the administration of a pill of amnesyne which would make him forget everything else (producing a sort of civil death) or, alternatively, a capsule of mnemosyne that would allow him to remember everything and, as a consequence, force him to face his responsibilities.

3. Let us envision a marriage that takes place in the complete absence of documents, or with documents written in invisible ink. Let us also imagine that, for some reason, all video cameras, photo cameras and cellular phones fail to record anything. Moreover, for the scenario to be complete, let us imagine that directly after the ceremony the bride and the groom, the officiant, the witnesses and all of the participants drink the amnesyne concoction that was mixed into the champagne. Can we truly claim that the two are married? We have good reason to exclude the possibility, since no one—not even those directly concerned—remembers anything about it. In fact, marriage, just as promises, bets, holidays, revolutions and economic crises, is a social object. As opposed to natural objects such as lakes and mountains, it exists only if we are aware of its existence, and in order to be aware of something it is, first and foremost, imperative that we remember it.

These three experiments demonstrate the relevance of writing, of memory and of the act of recording in social ontology.

Social ontology is a discipline that has undergone an important growth over the past decades. A field of research that is within it and that is particularly promising concerns social objects. The reference to social objects appears to correspond to a vision of reality in compliance with a realistic structure that is able to surpass the post-modern vision of the social world as a fluid and unseizable Tower of Babel. On the contrary (Ferraris 2012), to speak of social objects, which are distinct from natural objects and ideal objects, might confer a new analytical power upon the social sciences and overcome the traditional identitarian and methodological problems (Ferraris 1988).

From an ontological point of view the underlying question is the following: are people and behaviors the only constituents of social reality, as argued by the Reductionists (Tuomela 1995), or, in accordance with the Realist intuition (Reinach 1911, Mulligan 1987, Thomasson 2003, Gilbert 1989), should we admit that a third ingredient—social objects—exists? The Realist intuition appears to be justified, first and foremost, by theoretical considerations. Although their existence depends on subjects, social objects (promises, bets, money, and institutions) possess an autonomy that makes them different from mere psychological constructs, such as imagination or will. But there is a second motive that redounds in favor of the ontological reality of social objects: this is the importance of archives (and their proliferation in the information revolution). Why are recordings so important if not for the fact that they fix and make permanent social objects and liberate them from their strict dependence upon individual will and intentions? Two theories exist with regard to the construction of social objects. The first, and main, one is what we can synthetically call “Intentionality”; the other, which is being proposed here, is called “Documentality”.

“Intentionality” is the theory proposed by John Searle (Searle 1995, Searle 2010), which explains the

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construction of social reality through the rule “X counts as Y in C”, that is, the physical object X counts as the social object Y in the context C. For example, a piece of paper (X) counts as a bank note (Y) in the spring of 2012 (C). This approach has been named “Intentionality”. Let us call this theory “Intentionality” in order to emphasize how the imposition of function—considering the physical X as the social Y—depends on the action of a faculty that Searle defines “collective intentionality”, which is comprised of the ability to collectively share the belief that a piece of paper is a bank note, that a pad of paper is a book, or that a living human body is a professor.

“Documentality” is the alternative theory (Ferraris 2005, Ferraris 2009, Ferraris 2011), which states that the constitutive rule of social objects is, rather, “Object = Inscribed Act”, that is to say: social objects are the product of social acts (those which involve at least two people) which are characterized by the fact that they are inscribed, upon a piece of paper, on a computer file, or even, simply, within the mind of a person.

This theory allows the construction of social reality to depend on documents (hence the name “Documentality”). There are two arguments—one stronger than the other—concerning collective intentionality. The first is that collective intentionality is nothing but the sum of individual intentionalities that comes to fruition in documents and in their predecessors in societies without writing (in rites, for instance). The second is that the same individual intentionality depends, broadly speaking, on writing (which we shall define “arche-writing”, in accordance with Derrida 1967).

- 4. Intentionality** Let us begin, then, with the problems of intentionality. Searle’s theory presents more than one difficulty (Smith 2003a 2003b, Koepsell and Moss 2003, Ferraris 2005, Ferraris 2009), both from the point of view of the object (that is, the physical X that is subject to the social Y) and from the point of view of the act (that is, the collective intentionality called upon to exercise the transformation of X into Y). With regard to the object, it is easy to observe that the theory is applied only in certain cases (for example, in the case of a human body that counts as a professor, or of an ordinary object that counts as a work of art, within the theory of ready-mades), yet it does not account for entities that are vast and vague (nations, corporations), entities that are present in the online world, which do not have a precise physical equivalent, or of negative entities, such as debt. The attempt to take into account these “independent Y objects” (that is to say, objects that lack an evident physical X), undertaken by Smith (Smith 2003), who spoke of them as “quasi-representations”, lessens the distinction between social objects and mental objects and, therefore, does not resolve the problem. Nonetheless, Smith’s proposal was acknowledged by Searle (Searle 2010). In the updated version, the constitutive rule becomes: “We make it the case by Declaration, that the Y Status Function exists in context C”. This rule—which is the repositioning of the theory of the speech acts (Austin 1962)—has the advantage of no longer appealing to Xs, which are oftentimes difficult to find. Rather, it makes the entire social reality depend on collective intentionality (or, more precisely, on mental states), just as when Searle 2010, 2011 states that economic reality is a product of the imagination (“massive fantasy”).
- There are two problems concerning collective intentionality (that is the function designated to transform the physical object X into the social object Y, through an assignment of function).
1. First, it is not clear what is meant by “collective intentionality”, which appears to be an *ad hoc* function. From the observation of collective actions (Gilbert 1989, Gilbert 2006, Bratman 1992) we cannot infer the existence of a primitive biological datum that would ensure the passage from the physical to the social realm. Similarly, the fact that there are mirror neurons to which the genesis of empathy and imitation are attributed (Rizzolatti and Sinigaglia 2006) is simply proof of the role of imitation in the social world, which has been widely recognized (Tarde 1962), though not yet a decisive argument in favor of the existence of a collective intentionality.
 2. Collective intentionality is not able to explain social reality in its entirety, but only certain cooperative activities, that are the product of training and, therefore, appear as a result rather than

a premise (Ferraris 2009). Moreover, collective intentionality does not explain central elements of the social world: that is to say, dissent, conflict and the fact that a change in collective intentionality—in a mass movement, for example—does not necessarily involve a change at the institutional level.

The problems with the theory of intentionality can be resolved by the theory of documentality, defined as such because it maintains that the construction of social objects is to be searched for in an act of recording which finds its eminent manifestation in documents. The theory of Documentality is rooted in two principle theories: the theory of performatives (inspired by Reinach 1911 and Austin 1962) and the theory of inscription (inspired by Derrida 1967 and De Soto 2000).

The theory of performatives derives from the theory of speech acts, whose roots can be traced back, even before Austin (Austin 1962), to Reinach (Reinach 1911). Linguistic acts introduce into the world new objects that bring into existence demands, obligations, rights, relations of authority, debts, permits, names, and an array of other types of entities that, together, constitute the ontology of the social world. The theory of inscription, developed by Derrida (Derrida 1967) and based on phenomenological reflections on writing and institution (See Bojanic 1995) and Reinach's theory share the same origin. Seeing as though speech acts are evanescent, the physical basis for the existence of the entities of the social world—in small societies, and for simple interactions—can be identified by the traces in ones memory and other characteristics of the psychology of the people involved. In more vast societies, and for more complex social interactions, people's memories are not sufficient; documents create and maintain those deontic, lasting and reusable powers, which expand human memory and create and maintain in existence the new and more complex forms of social order that are characteristic of modern civilization. This proves to be especially evident in the economy (De Soto 2000). By performing documental acts (acts of compiling, recording, communicating and validating) we change the world and bring into existence relations of property, legal accounting, the organization of events and other activities that are typical of modern societies. Just as the combination of stocks and its division between shareholders creates capital, statuses create companies.

The theory of documentality (Ferraris 2005, Ferraris 2009) entails, first and foremost, an explanation of the ontological conditions of the theory of inscription. Linguistic acts are, after all, inscribed acts: without some form of registration, performatives would not produce social objects such as conferences, marriages, graduation ceremonies or constitutions. The point is quite simple: if, in accordance with the amnesyne mental experiment, we envision a graduation ceremony or a marriage or a coronation where there are no scribes or witnesses, then it is difficult to claim that a graduate, a husband and a wife, or a king were produced: social objects are closely linked to the forms of their inscriptions and recordings. In this sense, documents do not achieve social reality, but rather they constitute it.

At the same time, the theory of documentality weakens the theory of inscription, which in Derrida's version was applied to reality as a whole, resulting in a problematic statement such as, "nothing exists outside of the text". In the theory of documentality, on the other hand, the role of inscription seems to be decisive only within the sphere of social objects, whereby it can be argued that, "nothing *social* exists outside of the text". This proposal appears to be especially innovative as it confers a practical importance upon a theory that is otherwise simply metaphorical, and factually false.

It is necessary, first and foremost, to distinguish between three different families of objects (Ferraris 2005, Ferraris 2009): 1. Natural objects, which exist in space and time independently of subjects; 2. Ideal objects, which exist beyond space and time independently of subjects; 3. Social objects, which exist in space and time dependently on subjects. Only social objects require inscriptions, and this is the very reason for which the theory of inscription is weakened in the theory of documentality, according to which "nothing *social* exists outside of the text".

It is within this framework that the constitutive law of social objects is formed in accordance with the theory of documentality—that is, as previously mentioned, Object = Inscribed Act. According to

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this law, a social object is the product of a social act (which involves at least two people, or one person and a machine, such as a computer), characterized by the fact that it is recorded on a piece of paper, a computer file or some other digital support, or even simply in people's minds.

The theory of documentality resolves the problems of the theory of intentionality.

1. It explains the construction of social objects without turning to physical objects that have been translated into social objects, as occurs in Searle (Searle 1995), and avoids the troubles caused by vague, complex or negative entities.
2. Contrary to what is stated in Searle (Searle 1995), and especially Searle (Searle 2010), it does not require a recourse to collective intentionality. Individual intentionalities, directed by previous documents (norms, laws) are recorded in other documents. There is no need to recall an *ad hoc* faculty; that which is called "collective intentionality" is simply a name for the common experience of a contract that includes the signatures of the contractors and the potential authentication of a notary.

Due to its extreme simplicity, the theory of documentality confers a great heuristic power and great organizational resources, especially in a society like that of the web. The theory strives to constitute an alternative to Searle's ontology, while at the same time offers both theoretical and practical developments.

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METAPHYSICALLY LIGHTWEIGHT POSITS

abstract

We discuss metaphysically lightweight posits, providing some examples. The ontological assertion is that the right ontology does not include any lightweight posits. There are two semantical claims: statements about lightweight posits are often true in context, and truth is often indirect correspondence. Methodological claim is that this approach fits well with reflective common sense, considering the dialectics involving naïve common sense realism, common sense antinomies and the reflective or austere realism. This kind of approach is roughly compatible with Searle's view on the same matters in his story about the construction of social reality.

keywords

Metaphysically lightweight posits, truth as indirect correspondence, reflective common sense, austere realism.

1. Examples of Metaphysically Lightweight Posits

Prior to providing examples of metaphysically lightweight posits, it is advisable to discuss posits as a more general term, introductorily furnishing the feel for what may be called everyday bulky posits as their counterparts¹. These, as we call them, bulky posits, are predominantly not really massive, but they may be seen to be such in respect to their supposed subatomic ingredients, and they are important for our dealings with the surroundings in which we find ourselves. As posits have to do with metaphysics and with ontology, we can start with simple cases of entities such as they are encountered on the everyday basis. A usual example of entities discussed in philosophy involves the cat and mat, probably because the words pointing to them are short and almost everybody has some experiences with these items or at least a certain idea of what they might be. The famous sentence is

(C) The cat is on the mat.

In order to check whether this sentence is true one is advised to see whether there are the cat and the mat in vicinity, and whether situation is such that the relation is appropriately described so that the cat comes to be positioned on the mat and not the other way round. If all this matches the description, then one may claim that the sentence is true. Notice that in this case we have to do with the construal of truth as direct correspondence, for one establishes truth upon verifying that the situation in the world is such as described by the sentence. If the mat is on the cat, the sentence will not be true. But first of all, there have to be the cat and the mat somewhere in vicinity. We will come back to the construal of truth as direct correspondence. Let us notice now that this construal presupposes the existence of entities such as the cat and the mat, and possibly also the existence of relations in a certain sense. Given that we have to do with existence, we are in the area of matters pertaining to metaphysics. Quine has the following criterion for existence: whatever exists needs to be a value of a bound variable. This means that $\exists x Cx$ delivers conditions for the existence of the cat, given that \exists is the existential quantifier, x is a variable and C is the cat-predicate: i.e. there exists some x so that this x is a cat. The just reported criterion of existence

¹ This paper draws on the joint work by Matjaž Potrč and Terry Horgan. Our thanks go to referees for their improvement suggestions.

does not start with the introduction of entities, but with the quantified environment in which the entities are then posited. This is why Quine speaks about *posits*, in accordance with his empiricist and science oriented view of the world. Similarly as electrons or muons are posited in physics, in the environment of a physical theory, cats, mats and relations are posited in ontology, in the framework of the common sense view of the world, which may perhaps be called folk theory about what there is. So existence seems to be theory-relative according to Quine's approach, which, in its holistic manner, presupposes a possible interrelatedness and mutual effectivity of everyday and scientific world views. The logical center of the overall world view may well be questioned and transformed by the newly discovered data at its empirical periphery: we tend to stay with the law of non-contradiction, say, but we may well depart from it once as empirical experiential evidence pushes us into this direction. Common sense posits the existence of entities such as cats, mats and stones. Quine gives to these the name "middle sized dry goods", which means that they tend to be perceptually salient in our everyday surroundings, and that they are not like water or a similar mass terms corresponding stuff, i.e. that they have comparatively well assigned borders, coming in comparatively well distinguishable chunks. Given this characterization, we may call the everyday ontology suitable entities "metaphysically bulky posits". These are posits that we use in everyday dealings with the surrounding world and that therefore are important for folk ontology. We have seen that the construal of truth as direct correspondence deals with these everyday posits as based upon the everyday experience with entities in our environment. If there exists a cat, a mat, and if there is the relation of the first sitting on the second one, then our sentential assertion (C) to this effect is true. We find the cat and the mat in our surrounding world, we are well able to point at them, and delimit them from their surroundings.

Once as we appropriate this direct perceptual and ontological match as leading our inquiry, we notice that we have difficulties with the following examples:

- (U) "University Vita-Salute San Raffaele is in Milan."
- (N) "NATO lead a campaign to help rebels in Libya."
- (I) "Italy is predominantly a Mediterranean climate agriculture country."

The expressions "university", "NATO" and "Italy" are not so directly presented to our experience as this is the case with cats, mats and stones. Where is their essence? – one may ask. But first of all, where exactly are they located?

A Rylean klutz is somebody who encounters troubles in dealing with these presumed entities, because he leans on the model of the just discussed bulky metaphysical posits, such as cats and mats. Klutz decided to visit the Milano University Construction of Social Reality symposium, and he tries to find it. He says: "I see people here, lecturing and interacting, I see chairs and tables, rooms and buildings – but where the heck is the symposium? Where is the University? I do not see any University here!" In respect to (N) the Rylean klutz says: "I understand that people were shooting, and that airplanes got involved into airstrikes campaign. I can imagine and present to myself airplanes dropping bombs somewhere in the sandy landscape. But where the heck is NATO? Where is Libya? I do not see any NATO!" In respect to (I) the Rylean klutz says: "I feel fine here, eating pasta or pizza and drinking red wine, communicating with people in Italian language. But where the heck is Italy? I just read Searle's *Speech Acts* example featuring the American soldier in WWII trying to convey to his German captors the idea that he is a German himself, by reciting the only sentence in that language that he remembers, '*Kennst du das Land wo die Zitronen blühen?*' But where the heck is Mediterranean climate? I do not see any climate here!" Notice that Rylean klutz tries to find bulky metaphysical entities that are similar to cats and mats as he searches for University, NATO and Italy. But he fails to find any such compact stuff as he did in

the former, cat and mat figuring cases. In the spatio-temporal sense things are scattered in several directions. All these matters may be called posits. But they are not bulky posits. Rather they are what we may call *metaphysically lightweight posits*. One may quantify over these, without that they would be perceptually and experientially salient. They are there, but they have no bulky ontological presence. They are lightweight posits because they are not bulky in the same manner as the middle sized dry goods. Nevertheless, one can see that the metaphysically lightweight posits have several sometimes quite important impacts upon one's behavior.

Notice also that common sense, i.e. the usual cognizers, have no difficulty with the understanding of sentences such as (U), (N), (I). Just the Rylean klutz seems to be in trouble here. We have already presumed that such is the case because he is leaning exclusively on the model of bulky posits.

2.
Ontological Claim:
The Right Ontology
Includes no
Lightweight Posits

We do not say that Universities exist, in a similar manner as cats exist. In fact, we say that the right ontology does not include any such metaphysically lightweight posits. Then we even extend this claim in the direction that similarly to the metaphysically lightweight posits there in fact do not exist metaphysically bulky posits, i.e. middle sized dry goods either.

Rylean klutz certainly is in search of metaphysically lightweight posits in the same manner and attitude in which he would look for the everyday bulky posits. His idea is that if there is a cat, he would be able to directly spot it and present it to himself if that cat is around. In the same manner, he then expects University to be there in such a shape that it could be directly perceptually noticed. What is meant by this? What is the Rylean klutz really missing as he deals with the metaphysically lightweight posits? In order to see what is at stake here we may help ourselves with Searle's treatment of matters such as University, NATO and Italy. For him, they are socially construed entities, which means, as we may say, that they have a constitutive deontic ingredient built into them. Deontics is related to matters such as duties, obligations, permissibility and moral commitment, and it is not just related to the external world targeting ontological commitment, in its direct manners. In other terms, if we are in a world where the deontic ingredients matter or where they even are constitutive, then we are not just in the essentially ontologically existent world. In this case we are in the kind of surrounding where normativity is important and where it may be constitutive for some matters. These matters, exactly, are the metaphysically lightweight posits. University is constitutively normatively and deontically shaped.

Rylean klutz is right in a way: there does not exist any University, NATO or Italy. This means that these matters do not exist in the ultimate ontological sense. We believe that there is the world out there, but no Universities, in the just described sense. The dealing with klutz shows that the mentioned entities are not straightforwardly ontologically/metaphysically given in direct perceptual experience, and this means that they must have some deontological founding involved into them. We and Searle share the view that metaphysically lightweight posits are deontically basically constituted. But whereas Searle considers their existence to be the one conforming to the construction of truth as direct correspondence, we think that they are to be captured under the construction of truth as indirect correspondence. More about this in a moment. But in overall, it seems to us that our position is close to Searle's in his construction of social reality thesis. As just hinted at, we conclude that metaphysically lightweight posits do not exist in the ultimate ontological reality. We then go on to argue that this is just an entrance into the fact of ultimately ontological non-existence of bulky metaphysical posits, cats, mats and stones. We have some arguments with the help of which we demonstrate their non-existence, such as that these bulky metaphysical posits are vague, and that vagueness just cannot be there in a mind- and language-independent world. Another consideration is the question about the composition of the bulky metaphysical posits, which also leads us to conclude that they do not ultimately ontologically exist in the world.

We provide a couple of semantical claims, namely that statements about lightweight posits are often true (in context), and that truth is often construed as indirect correspondence.

(a) *Statements about lightweight posits are often true (in context).*

Although we believe that metaphysically lightweight posits do not exist in the ultimate ontology, the assertions about them nevertheless often turn out to be true. Is there Università Vita-Salute San Raffaele? Of course it is! But: is there really University Vita-Salute San Raffaele out there? No way, it isn't. As we say that there are Universities, we are talking under the lightweight normative pressure of everyday semantic standards. But as we pose the question whether a University really exists in the ultimate ontology, we appropriate semantic standards that are fitting for discussion in the strict ontology room environment. We can say that the statement (U) is true because the *world* is such that it makes it true, i.e. the world together with the appropriate semantic standards. Metaphysically lightweight posits involving statements are constitutively true because of the deontic foundation that they involve. We just say that there is yet another approach to truth possibly involving semantic slack, non-tightness, which is the approach according to moral statements according to the views of moral expressivism. What about the truth as indirect correspondence and deontic matters? There is *no* correspondence for moral terms: since genuinely opposed judgments are possible in this area there is *slack* and accordingly there is no tightness. Tightness is where semantic normativity and the world conspire for the sentence to be true, whereas there is no such tight correspondence for moral terms.

(b) *Truth is often indirect correspondence.*

As we said, the statements involving metaphysically lightweight posits are often true. And their truth, according to our understanding is that of indirect correspondence. As we just said: the world is such, in a direct manner, that the statement (U) is true. But as far as the University is concerned, this is the construal of truth as indirect correspondence. The statement is directly about the world but just indirectly about the University. We think that the construal of truth as indirect correspondence fits well to the metaphysically lightweight posits, and also that it is ontologically responsible. By saying that truth is often indirect correspondence we do not restrict our statement to metaphysically lightweight posits only, because for us the bulky posits provided by common sense deserve indirect correspondence treatment in respect to truth as well. In this sense metaphysically lightweight posits can be eye opening about the truth that is fitting to the realm of the middle sized dry goods.

In the book on *Austere Realism* (2008), the dialectics of the reflective common sense is the guiding theme. There are basically three stages involved, which we summarize here in very scarce words.

Stage I: Naïve common sense realism.

Naïve common sense realism, our folk psychology, posits a bunch of bulky metaphysical posits, such as cats, mats and stones. It buys realism because it claims that these entities do indeed exist in the ultimate ontology.

Stage II: Common sense antinomies.

Once as common sense eventually gets into reflective mood about the existence of bulky metaphysical posits, it encounters a bunch of antinomies. It is important to notice that this is still the very approach of common sense itself indeed, at the time as it gets reflexive about its own

3. Semantical Claims

4. Methodological Claim: This Approach Fits Well with the Reflective Common Sense

presuppositions. At the occasion of the Milano gathering the dean professor Di Francesco uttered the following sentence: “I now declare the existence of the 2011 San Raffaele Summer school on Making the Social World.” But you cannot add to ontology just by making an announcement! This is what common sense, as it gets into a reflective mood about its own presuppositions, realizes. Other considerations of common sense in this direction involve the just mentioned realization that bulky metaphysical posits are often vague and that their compositional criteria are questionable – vagueness proving itself to be impossible in the language and thought independently existing world, and a clear answer to the special composition question is not really forthcoming.

Stage III: Reflective (austere) realism.

Common sense itself, as it gets into reflective mood, is lead to conclude that there cannot exist these bulky metaphysical posits in the ultimate ontology. So, common sense, through its own reflective dialectics, arrives at the position of austere realism: namely that there cannot exist all these metaphysical posits that it originally took to exist out there, as it still was in the non-reflective everyday mode. The entrance into this direction may be nicely opened by the metaphysically lightweight posits, the importance and basic deontic constitution of which is agreed upon both by ourselves, Searle and by the Rylean klutz. We propose their interpretation according to the construal of truth as indirect correspondence, Searle, if we get him right, as direct correspondence. Whereas the klutz, as his name says, stays in an unhealthy amazed state. Austere realism is a realism first, so it believes that there exist a mind- and language-independent world. It is austere then in the sense that this dynamical world is most probably just one, i.e. that there do not really exist any parts in it. So reflective common sense embraces a monistic story, and so it arrives itself at the monistic view of the world that is in disagreement with its non-reflective beliefs. We believe though that realism needs to be austere, even if it does not go all the way down to monism, the most important thing for it being that it does not buy any vague entities.

- 5. Searle’s Construction of Social Reality and Some Discussion**
- We believe that our approach to the metaphysically lightweight posits is compatible with Searle’s construction of social reality. As already remarked Searle may be more inclined than we are to see the appropriate construal of truth as direct correspondence and not as indirect correspondence. But we believe that he should agree with our claims according to which the right ontology does not include any metaphysically lightweight posits, and that nevertheless, statements about these often happen to be true. Searle’s project is that of tracing deontic powers in the construction of social reality and this broadly agrees with our way to go. According to Searle, normative and deontic powers are the products of status function declarations which are collectively accepted. We believe that entities such as Universities do not ultimately ontologically exist, and that despite this statements involving these may well be true, in function of the existence of the world, and of the contextual normative powers guiding assertions of the relevant sentences. The world is such that there is a University, and the University’s coming into being gets effectuated through contextually guided normative and deontic powers.
- One question concerns things being really real such that they are acceptable in the ultimate ontology, and their difference to the phenomenological criteria, targeting rather whatever occurs in our experiences. And what succeeds with the concept of existence? Our argument here involves vagueness, which in our transvaluationist view is governed by mutually unsatisfiable and yet benign semantic standards. As already noticed, our view is that ontological vagueness is impossible, and so most common sense objects do not inhabit the ultimate ontology – which happens to be austere. What about the fact that both trees and Universities seem to exist? We may help ourselves with the example that there are different uses of the word “flat”. Despite their variety these uses involve the same concept, appearing under the fine grained semantic variation

– a phenomenon that we call *différance* in meaning: preserving of identity under fine-grained semantical changes. We borrow the expression *différance* from Jacques Derrida, using it to indicate the phenomenon of sameness which perdures along with changes, just as a person stays the same person, despite the differences that she endures through the flow of time. Likewise it goes for concepts such as “existence”, which is governed by contextually changeable semantical standards, so that this may give rise to a *différance*-based affirmatory conflict, involving the ultimate ontological and ontic understanding of existence. Metaphysically lightweight posits turn out to be features of our world, despite the lack of their ultimate existence.

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THE BACKGROUND POWER IN SEARLE'S SOCIAL ONTOLOGY

abstract

This essay aims to provide an analysis of Searle's concept of Background power and of its role in his social ontology. It is divided in three parts. The first part is a short introduction on the concept of Background and the relations between it and the concept of Background power. In the second part, I furnish an analysis of the so-called exactness constraint and the intentional constraint on same. In the third part, I make three observations on the theory of Background power.

keywords

Background power, social ontology, normative pressure

0. Introduction The aim of this essay is to analyze the concept of *Background power* and its role in John R. Searle's social ontology.

The essay is divided in three parts. The *first part* is a short introduction on the concept of *Background* and the relations between the concept of *Background* and the concept of *Background power*. In the *second part*, I analyze the exactness constraint and the intentional constraint in *Background power*. In the *third part*, I formulate three remarks on theory of *Background power*.

1. The Background and the Background Power As stated by Searle, a *Background* is "a set of non-representational mental capacities that enable all representing to take place" (Searle 1989, 143). The category of *Background* is extremely relevant in different fields of Searle's philosophical enquiry: philosophy of language; philosophy of mind and social ontology. According to my analysis, Searle uses the concept of *Background* to answer at least three different questions:

- (i) What are the necessary conditions for understanding a sentence?¹
- (ii) What are the necessary conditions of an intentional state?²
- (iii) What are the necessary conditions of a social phenomena?³

In *Making the Social World* (2010) the *Background* helps to answer a fourth question:

- (iv) How can society exercise power over people?

Background is considered by Searle the source of a special deontic power: the *Background power*. The *Background power* is defined by Searle, as follows:

A power in society that is not codified, [that] is seldom explicit, and may even be largely unconscious (Searle 2010, 155).

1 Searle (1978).

2 Searle (1989).

3 Searle (1995).

The concept of *Background power* is inspired by Foucault's discussion of *Bio-power*⁴. Searle affirms that the category of *Bio-power* has a weak point because it includes phenomena that cannot be explained by the general definition of power shared by Foucault itself: "power exists only as exercised by some on others" (Foucault 2000, 340).

1.1. Background: A Heterogeneous Set Of Abilities

Searle uses the word "*Background*" to refer to a (really heterogeneous) set of abilities.

Background includes both skills and knowledge that are presupposed in most of the actions we perform. Even if you are not necessarily conscious of having these abilities and this knowledge, they are necessary to perform the simplest everyday activity (for instance: drink beer from the bottle, walk, do karate or ski)⁵.

What has *Background* in common with *power*? Both *Background* and *power* are *abilities*. In fact Searle describes *power* as "the *ability* to get people to do something whether they want to or not". According to Searle, some of the abilities incorporated in *Background* are *powers*. For instance, people have the "*Background power*" of influencing other people's way of dressing.

1.2. A New Role of Rules in Background Power

1.2.1. Which Role do Rules Play in the Background Theory?

In *Intentionality* Searle affirms:

Consider what it is like to learn how to ski. The beginning skier is given a set of verbal instructions as to what is supposed to do: "lean forward", "bend the ankles", "keep the weight on the downhill ski [...] as the skier gets better he does not internalize the rules better, but rather the rules become progressively irrelevant. [...] The repeated practice enables the body to take over and the rules to recede into the Background (Searle 1989, 150).

The advanced skier does not think about rules of skiing, he just skis. Nevertheless he follows the rules of skiing, he "acts on the rule" (Searle 1989, 150).

1.2.2. Which Role do Rules Play in The Background Power Theory?

The role of the rules changes in the *Background power theory*. As stated by Searle:

The Background [...] contains among other things, a set of norms of behavior. If someone violates the norms of the community, various sorts of sanctions can be imposed on the violator (Searle 2010, 155).

According to Searle the *Background* includes several norms about:

- (i) what is regarded as an *appropriate* dress;
- (ii) what is regarded as *permissible* sexual behavior;
- (iii) what is regarded as an *appropriate* thing to say;
- (iv) what is regarded as a *permissible* political and moral opinion⁶.

The person who exercises *Background ability* (for instance, the skier) acts on the rule.

On the other hand, the person who exercises *Background power* gets *someone else* to "act on the rule".

4 According to Michel Foucault (1978, 140), bio-power [bio-pouvoir] is "an explosion of numerous and diverse techniques for achieving the subjugations of bodies and the control of populations".

5 Ryle (2000).

6 Searle (2010, 155).

2. Intentional Constraint and Exactness Constraint in Background Power

According to Searle's social ontology two necessary conditions must be satisfied for discourse on power (and on *Background power*) to be meaningful:

- (i) the intentional constraint;
- (ii) the exactness constraint.

2.1. Intentional Constraint

The first necessary condition for power is the *intentional constraint*, i.e. according to Searle if there is no intentionality there is no exercise of power⁷.

Searle thinks that the intentional content of the *Background power* is "we conform"⁸.

2.2. Exactness Constraint

The second necessary condition for power is the *exactness constraint*. That is, according to Searle:

One should be able to say who exactly has power over exactly whom to get them to do exactly what (Searle 2010, 155).

Potentially, according to Searle, "anybody can exercise the power over anybody". A really particular aspect of the *Background power* theory is that the same person can potentially be the one *who has power* and the one *over whom is exercised the power*.

3. Three Remarks on the Theory of Background Power

Intentional constraint and *exactness constraint* were imposed by Searle to redefine the concept of "power" in order to avoid the limits of the *Bio-power theory*. In other words, Searle imposes *intentional constraint* and *exactness constraint* to avoid Foucaultian undifferentiated and quasi-magical hypostasis of an all-pervasive force. Despite this fact, the application of these constraints can reveal some limits of the *Background power* theory.

In § 3. I will analyze three counterfactual situations and I will point out some limitations of the theory of *Background power*. Finally I will make three remarks on this theory.

3.1. Background Power in a "Flying-Sandwich Situation"

Searle says that the intentional content of *Background power* is "we conform". In this sense we have at least two options:

- (i) we conform to Background rules that prescribe to behave in a particular way;
- (ii) we conform to Background rules that prescribe to sanction in a particular way a particular behavior.

To show this fact more clearly I will analyze an episode of Franck McCourt's autobiographical novel *Teacher Man: A Memoir* (2005).

The episode can be described both as a violation of a *Background rule* that prescribes a *particular* behavior and as a violation of a *Background rule* that prescribes *how to sanction a particular behavior*⁹. There is a teacher, Mr. McCourt, in a Bronx school, starting his first day of teaching. Before anything else, he is confronted with the problem of a flying sandwich. It starts when a boy named Petey calls out, "anyone wan'a baloney sandwich?" and a critic schoolmate, Andy, answers "You kiddin? Your

⁷ Searle (2010, 155).

⁸ Searle (2010, 158).

⁹ Ross (2004, 208) says, "the real content of a norm is a directive to the judge as to the conditions under which he shall order a physical force against a person [...] while the instruction to private individual is a derived and figurative legal norm deduced from it".

mom must hate you, givin'you sandwiches like that". Here is the full report of what happens next from Mr. McCourt's point of view:

Petey threw his brown-paper sandwich bag at the critic, Andy, and the class cheered - 'Fight, fight' - they said - 'Fight, fight' - [...] I came from behind of my desk and made the first sound of my teaching career: 'Hey!' Professors of education at New York University never lectured on how to handle flying-sandwich situations [...]. Should I say Hey, Petey, get up here and pick up that sandwich, or else? Should I pick it up myself and throw it into the wastepaper basket [...]? I picked it up and slid it from its wrapping [and] I ate the sandwich. It was my first act of classroom management. [...] I could see the admiration in their eyes. Petey said, 'Yo teacher, that's my sandwich you et'. Class told him: 'Shaddap. Can't you see the teacher is eating' (Mccourt 2005, 16).

First interpretation of this episode. Petey created a "flying sandwich situation", he violated the *Background rule*:

A student should not throw baloney sandwiches during a lesson.

Second interpretation. Mr. McCourt followed the *Background rule* that prescribes to *sanction a particular behavior*:

Somebody should sanction the student who throws baloney sandwiches during a lesson.

Nevertheless, Mr. McCourt sanctioned Petey by eating his baloney sandwich. He sanctioned Petey in a wrong way because he did not sanction him in accordance with the *Background rules*. In fact, Mr. McCourt punished Petey and achieved admiration and respect from his students despite the fact that he violated the *Background rule* that is connected with his status of teacher:

A teacher should not punish his students by eating their baloney sandwiches.

Curiously, Mr. McCourt exercised a *power* despite the fact that he violated sanction-stipulating *Background rules*. In fact, even if he punished his student in the wrong way, he got his students to do what he wanted: he avoided a fight.

3.2. Background Power of an Involuntary Laughter

One does not know how Searle would fit the following phenomenon into his theory. According to Searle *Background power* can be exercised through an informal sanction. But the informal sanction can sometimes be involuntary. Therefore in some cases we sanction whether we want to or not. For instance, the laughing of an involuntary laugher can be perceived as a sanction by somebody that violates a background rule. Despite this fact the involuntary laugher laughs only because that person appears ridiculous to him. He is not conscious that his behavior can be perceived as a sanction by the person who is behaving in a ridiculous way. Despite this fact, the involuntary laugh can have an impact on the person who provoked such hilarity. In fact, he can be motivated by the involuntary laugher to stop behaving in such a strange way. Moreover the involuntary laugher is conditioned by the *Background rules*: actually the behavior (that provokes his laugh) seems to him somewhat strange because it breaks *Background rules*. In this sense the involuntary laugher could be described as an involuntary instrument of the *Background power*.

In my opinion, this instance has the advantage of allowing us to see clearly the difference between exercising "*Background*" power on one hand and being "*its*" instrument on the other.

3.3. Subjective Will and Exercise of Background Power

Durkheim in *The Rules of Sociological Method* talks about a coercive power very similar to the one called by Searle *Background power*. According to Durkheim:

*La présence de ce pouvoir se reconnaît à son tour soit à l'existence de quelque sanction déterminée, soit à la résistance que le fait oppose à toute entreprise individuelle qui tend à lui faire violence*¹⁰.

The presence of this power may be recognized in its turn either by the existence of some specific sanction or by the resistance offered against every individual effort that tends to violate it.

According to Durkheim, both the presence of this coercive power and its exercise are independent from any subjective will. This is considered by Durkheim an intrinsic characteristic of the social facts i.e. “every way of acting, fixed or not, capable of exercising on the individual an external constraint; or again, every way of acting which is general throughout a given society, while at the same time existing in its own right independent of its individual manifestations” (Durkheim 1966, 10). In Durkheim's words:

Sans doute, quand je m'y conforme de mon plein gré, cette coercition ne se fait pas ou se fait peu sentir, étant inutile. Mais elle n'en est pas moins un caractère intrinsèque de ces faits, et la preuve, c'est qu'elle s'affirme dès que je tente de résister (Durkheim 1966, 10).

Of course when I fully consent and conform to them [to the social facts], this constraint is felt only slightly, if at all, and is therefore unnecessary. But it is, nonetheless, an intrinsic characteristic of these facts, the proof being that it asserts itself as soon as I attempt to resist it.

I think there is a *critical point* in the *Background power* theory. When Searle claims “my knowledge that sanctions can be imposed upon me and that I would find those sanctions unacceptable places me in a power relation with those who have the perceived option of imposing the sanctions”, he fails to see that sanctions (though informal) can be imposed only over somebody who is *already involved* in a power relation (Searle 2010, 160).

Searle notes that, if he does not wear a dress because he does not like it, no *power* forces him not to wear it. According to him:

As long as I don't want to dress in the impermissible way, no power is being exercised over me. But the moment I do want to dress in an impermissible way, and I am constrained not to do so by the perceived threat of the other members of the society, then power is being exercised over me (Searle 2010, 157).

Let us change the *Background* so that we can see if the will of John Searle will change or not. Let us imagine being in Rome around 509 BC. The taste in clothes of Professor Johannes Hrotgarus Searlus would have probably been radically different. Maybe he would like to wear something very similar to a dress: he would wear maybe a *toga*, that (as stated by Svetonius) in the first period of the Roman Republic was worn by men as well as women.

As we can see in the example, *Background* rules can influence not only Professor Searle's behavior but also his will and experience. Therefore, people's behavior is not only determined by coercive power

¹⁰ Durkheim points out the distinction between being obligated and feeling obligated in *The Rules of Sociological Method* when he says (1966, 10):

Il arrive que nous ignorons le détail des obligations qui nous incombent et que, pour les connaître il nous faut consulter le Code et ses interprètes autorisés. It happens that we are ignorant of the details of the obligations incumbent upon us, and that in order to acquaint ourselves with them we must consult the law and its authorized interpreters.

but also by a *normative pressure*.

Georg H. von Wright uses the expression “*normative pressure*” to designate some phenomena comparable with the ones described by Searle as *Background powers*. In *Norm and Action* von Wright affirms that *normative pressure* can be independent from the presence of a personal authority, in this sense he talks about “anonymous norms” (von Wright 1963, 9).

In *Freedom and Responsibility*, von Wright defines the expression “*normative pressure*” as follows:

Normative pressure is a coercive force, threatening people with something they shun, some form of punishment for non-conformity (von Wright 1980, 47).

Von Wright describes *normative pressure* as a coercive threatening force. However, sanction and threat are not the only way for influencing people’s behavior, in this sense the concept of “threatening force” does not coincide with the one of “*normative pressure*”. A *Background normative pressure* can influence our perception of reality, our will, and consequently our behavior. In this case no sanction threat is needed. According to the definition of *power* formulated by John Searle, *Background normative pressure* is not a power because it does not satisfy the exactness constraint, yet the *implicit knowledge* of *Background rules* influences people’s behavior.

In this paper I tried to point out some limitations of Searle’s *Background power theory*.

4. Conclusion

4.1. Firstly, starting from the distinction between *rules that prescribe to behave in a particular way* and *rules that prescribe to sanction in a particular way a particular behavior*, I tried to point out the vagueness of *intentional constraint* of *Background power*. According to Searle, the intentional content of *Background power* is “we conform”; however it is possible that a subject exercises a power sanctioning the violation of a *Background rule that prescribes a particular behavior* in contrast with the *Background rule that prescribes how to sanction the violation of a Background rule*. More precisely, the example in § 3.1. allows us to see that you can force somebody else to follow a particular *Background rule (that prescribes to behave in a particular way)* and that you can exercise a power even if you are violating the *Background rule (that prescribes to sanction in a particular way a particular behavior)*.

4.2. Secondly, informal sanctions are described by Searle¹¹ as a form of exercise of power, but the example of the involuntary laughter shows that an informal sanction can be an involuntary behavior.

4.3. Thirdly, *Background rules* influence not only our behavior, but also our perception of reality, and consequently our will.

11 Searle (2010, 158).

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COVERT INSTITUTIONALITY: SACRED MOUNTAINS, WITCHES AND EXORCISTS

abstract

I develop an account of covert institutional facts by examining sacred objects, witches, shamans and exorcists. I present an account of sacred objects as covert institutional entities, and distinguish between true beliefs that help create the institutional facts and false beliefs about their origin and/or their physical powers.

keywords

Sacred objects, institutions, error theories, covert institutional facts, witchcraft, John Searle

While religions as such are not institutions (Searle 2010, 92, 161), all religions contain “a system of symbols which acts to establish powerful, pervasive and long-lasting moods and motivations in men” (Geertz 1973, 90). The capacity of institutional facts to create deontic powers and desire-independent reasons for action is a central claim in Searle’s theory of institutions and will not be discussed in this paper. The deontic aura of sacred objects was brilliantly captured by Clifford Geertz. “Religion”, he writes, “is never merely metaphysics. For all peoples the forms, vehicles, and objects of worship are suffused with an aura of moral seriousness. The holy bears within it everywhere a sense of intrinsic obligation; it not only encourages devotion, it demands it; it not only induces intellectual assent, it enforces emotional commitment [...]. The powerfully coercive ‘ought’ is felt to grow out of a comprehensive factual ‘is’ [...]” (Geertz 1973, 126).

Geertz’ description brilliantly illuminates how rituals, rights and obligations are attached to, and engendered by, symbols and symbolic objects and how they create, in Searle’s apt terminology, desire-independent reasons for the participants involved in the practice. Moreover, it seems to be a universal feature of sacred objects that they impose commitments upon those who *accept* and/or *recognize* them (a second Searlean feature of institutional facts). The determination of the hours of worship or the offering of sacrifices presupposes a realm of concrete objects (places, times, etc.) that *count as* sacred. These considerations should not be confused with the function of calling something “sacred”. The use of the *predicate* “is sacred” often carries a *colour* that expresses reverence and awe (Frege 1918). The Fregean approach acknowledges that meaning and colour can come apart in systematic ways: you, *qua* outsider, can grant that an object is believed to be sacred (in a community C) without thereby expressing any (positive or negative) attitude towards it. What follows is a theory about sacredness as an institutional property of objects, not a theory about what is expressed by when the predicate is used.

Consider a fictitious case. *Mount Popzateł* is, according to a collective G (“the tribe”) a sacred mountain. Call the proposition members of G believe to be true (the proposition *that Mount Popzateł is sacred*) H. Let G designate a collective whose members recognize/accept H, which is essential for *Mount Popzateł*’s (designated by the X-term in the constitutive rule) being holy (its agentive function, designated by the Y-term). Because a god born on *Mount Popzateł*’s summit explains, for members of G, why it is a sacred mountain, members of G will deny that its holiness is an institutional

property, even if more theoretically-minded members of G (perhaps those who were graduate students at Berkeley but returned to their community) are willing to accept Searle's theory as a sensible account of *bona fide* institutional facts (e.g., money or borders). Depending on their tolerance for other religious practices (and articulating their view in Searlean terms), they could maintain the sacredness of another mountain (recognized by members of a different community G*) to be merely a covert institutional fact (members of G believe their gods are the only ones that really exist). Members of G could also hold that the beliefs of community G* are *false*. Members of G accept deontic powers that emerge from, or are associated with, the sacred mountain. They know that it is impermissible for children to climb Mount Popzatehl, and that senior members of the collective must be buried on a day the full moon appears behind its summit. These deontic properties – a complex system of permissions, obligations, rights and duties that relate Mt Popzatehl to individuals in G and actions they may or may not perform – have their origin in a natural fact, not in an acknowledged institution, although they may agree that rituals involving the mountain may have arbitrary or even conventional features. Members of G *deny* that what Searle presents as the key function of creating institutional facts, applies to deontic powers derived from H's truth:

[...] the whole point of the creation of institutional reality is not to invest objects or people with some special status valuable in itself, but to create and regulate power relationships between people (Searle 2010, 106).

For members of G, Mount Popzatehl's intrinsic value is conferred upon it via a relational property: a supernatural event that imposed a sacred character on it.

Error theories assume that talk about institutional facts is “a mere collection of roundabout ways of talking about other things” (Smith 2007, 11). The error theorist holds that the extension of the concept expressed by the predicate “is holy” is empty; talk purportedly referring to sacredness is therefore false or misguided, a bit in the same way that talk about witches is misguided (Searle tentatively defends an error theory about witches in Searle 2006, and we'll return to his arguments in sections 3 and 4).¹ Two important considerations of John Mackie (1977) can be applied in this context: predicates like “is sacred” (and the concept of sacredness) share with moral predicates both *relativity* and *queerness*. The argument from relativity points to the empirical observation that moral views can vary enormously and moral disagreements are very often characterized by a high degree of intractability. Mackie concluded that moral judgments merely “reflect adherence to and participation in different ways of life” (Mackie 1977, 36). There are strong disagreements about what is and what isn't sacred and wars are fought over who “owns” a sacred place. Such disagreements and disputes are clearly not empirically decidable. Should we not therefore conclude that sacredness fails to designate a property and that talk of sacred mountains is purely expressive?

The argument from queerness has a metaphysical and an epistemological reading. The metaphysical reading holds that sacredness, like moral concepts, would designate “qualities or relations of a very strange sort, utterly different from anything else in the universe” (Mackie 1977, 38). The epistemological reading adds that in order to track such properties we would need some special faculty of moral perception or intuition which, when applied to sacred objects, would amount to an even stranger faculty, one that would allow us to discern instantiations of sacredness. Under an epistemological reading, the queerness argument holds that being sacred is not an objective fact to which some people or cultures (but not all) have superior epistemic access (as Joyce 2010, xvii puts

¹ Error theories about race have been defended by Appiah (1996). Musgrave (1999) and Searle (2006a) defend anti-realism about witches (See *infra*).

it). Sacredness shares non-factuality with other concepts that have no application, like *phlogiston* or *witchcraft*. However, assimilating the property of being sacred to a phlogiston-type error begs the question: the latter was always intended to be an empirical predicate. Moreover, the analogous claim that money doesn't exist is implausible (and sound naive). Money and borders are *bona fide* institutional entities.² There is no reason to assume that because people have false supernatural beliefs about the origin of relational properties of certain institutions or institutional entities, this is sufficient to deny them existence.

Moreover, error theories cannot explain how and why mistakes are corrected. Suppose a member of G observes Mount Popzateatl from an unusual angle and denies that *that* mountain is holy. His mistake will be corrected by others members of G, or even by outsiders: "No, that mountain is holy" is the sensible thing to reply. "You are pointing at Mount Popzateatl". Error theories deprive not only members of G, but also outsiders, of knowledge, *i.e.* true justified beliefs which can be shared with non-believers and be passed on to future generations.

And yet, the error theory suggests an important objection to the institutional theory. Suppose you grant that a member of G *knows* that H.³ Knowledge requires that no false belief enter into the justification for the belief that H (if a false belief *q* enters the justification of one's belief *p*, then the latter belief, even if true, cannot be counted as knowledge – this is an important lesson drawn from the famous "no false lemma" requirement on knowledge, see Lehrer 1965). But isn't this the case when the belief that a god was born on Mount Popzateatl figures in the justification of the belief that H?

I suggest the correct answer should be that members of G may be ignorant of, or have false beliefs about, the social *explanation* of what enabled them to know that H: they lack knowledge (or have false beliefs) about the social aetiology of their belief. Members of G need not know the exact nature of what enabled them to know that H, in order to know that H. The false belief helps to provide justification for the (false) belief *that H is a natural fact*, a belief whose content differs from the unqualified belief that H. There is a difference between knowing that H (a justified true belief) and believing (falsely) that the proposition that H describes (is true about) a natural fact. The mistake is not in the belief that H, but in the belief *that the mountain's being sacred has its origin in a natural (or supernatural) fact*, which justifies the further, and false, belief that Mount Popzateatl's holiness was not the result of collective acceptance among members of G of (the proposition that) H. Outsiders know that Mount Popzateatl is sacred because they are told so by a reliable source (a senior member of G, say), and, if you follow Searle's account of institutional facts, we outsiders also know in virtue of what that belief is true (it is true in virtue of an institutional property, created and maintained by a collective). Similarly, the belief of members of G - that Mount Popzateatl is holy - is justified by their belief *that they were told so - that the scriptures, or the tradition says so, which, for them, should be (and often is) the end of the story.*⁴

Externalists or reliabilists about knowledge hold that at least some privileged members of G (but not necessarily outsiders) will be reliable sources of knowledge about what is and what isn't sacred in their community. Reliabilists should therefore have even less problems with the fact that Mount Popzateatl is known to be holy than their internalist counterparts. And perhaps interpretive charity

2 I owe this suggestion to an anonymous referee.

3 Note that members of G may have false beliefs about other communities. If they hold that their mountain is the only holy mountain in the universe, they are mistaken.

4 There is a difference between explaining why Mount Popzateatl is holy, and justifying one's belief that it is holy. The latter is justified by evidence, and the only legitimate evidence is that "one is being told so" (it is essentially knowledge by testimony). Their own explanation of its sacred nature is of course mistaken.

also plays a role here: while one may deplore the existence of a sacred object - perhaps because its deontic aura directly or indirectly legitimizes a particularly cruel treatment of women, for example - one shouldn't neglect that making members of G's beliefs and actions intelligible *to themselves and to us* is crucial. In order to eventually enlighten them about the institutional nature of their sacred mountain, part of what it takes to make them intelligible is to ascribe true and false beliefs to them. The institutional account suggests *which* truths and which falsehoods make their actions intelligible.

Insider concepts and descriptions can be understood by outsiders (*pace* cultural relativists, see Davidson 1974, 2001), but such understanding does not require joining members of G, to the extent that one thereby becomes co-responsible for maintaining H, let alone that they will maintain that H is (expresses) a non-institutional fact. This would conflate understanding with conversion. There is a distinction between collectives that are responsible for (unintentionally) maintaining an institutional fact, and an "enlightened" community that has a full understanding of its institutional aetiology. Note again, that in this respect too, the institutional approach cannot be extended to cases like phlogiston ('Before Lavoisier, phlogiston existed as an unintended institutional fact'). Those who believed phlogiston existed were self-consciously involved in empirical research and, at least in principle, open to falsifying evidence. Moreover, they could, independently of a falsification of the theory, accept the distinction between natural and institutional facts, and they would classify phlogiston, even on their own (false) account, correctly as a natural phenomenon ('If it exists, it is a natural phenomenon'). All parties involved in the phlogiston-controversy during the 18th century agreed that the concept, if it had an extension, designated a natural phenomenon that afforded empirical investigation. Neither did phlogiston's existence create specific deontic powers; there should therefore not be a temptation to hold that now, for us, the existence of phlogiston is an institutional (and not natural) fact. No rights and duties are created by letting some substance count as phlogiston.

An error theory about sacredness is therefore not *a priori* entailed by the very plausible belief that gods don't exist and can't be born on top of mountains. On this point, atheists and reluctant outsiders are sometimes in a position where they should grudgingly acknowledge the existence of sacred mountains, a bit like the anti-Nazi had to acknowledge that Hitler had a government (Searle 2010, 8, 57). As pointed out earlier, meaning and colour of the predicate "is sacred" come apart when *outsiders* speak about Mount Popzatehl's sacredness from their spectatorial point of view.

My claim is now that sacred objects can be *covert* institutional facts and in our toy example they do function like that. Members of G do create a sacred object, but they would not acknowledge that "creating Mount Popzatehl's sacredness" correctly specifies what they do (they certainly wouldn't acknowledge that they *declared* that Mount Popzatehl was a sacred mountain). Similarly, they would not believe any presentation of facts about their mountain which explicitly or implicitly presents the target property to be an institutional one. Searle explicitly accepts that people may have mistaken beliefs about the nature of specific institutional facts, objects or properties:

Most of these things (the creation of institutional facts, FB) develop quite unconsciously, and indeed people typically are not even aware of the structure of institutional reality. It often works best when they have false beliefs about it. So there are a lot of people in the United States who still believe that a dollar is only really money because it is backed by all that gold in Fort Knox. This is total fantasy, of course. The gold has nothing to do with it. And people hold other false beliefs. They believe someone is king only because he is divinely inspired, or even believe that marriages have been made by God in heaven, and so on (Searle 2001, 37-38) ⁵.

5 Compare (Searle 2010, 107)

There are interesting ambiguities in Searle's claims. Is the belief that certain institutions are consequences of a divine will conceptually coherent, given the theory of institutions just developed? Members of G lack beliefs, or have false beliefs about the social enabling conditions of what they believe or know, but those false beliefs need not be part of their justification of their belief that H. Recall that even though X (a member of G) has a false belief about what determines the extension of the concept of being sacred, this need not entail that X does not know that Mount Popzatecl is holy, just as the false belief that Elisabeth II is the Queen because she was divinely elected ("Elisabeth II, by the grace of God" is part of the Queen's official title) does not entail that UK citizens do not know that Elisabeth II is the queen or that queens don't exist. The false belief is about the divine origin of her monarchic powers, and there may be further ignorance or even patently false beliefs about the social enabling conditions of that belief. In this sense, false beliefs can contribute to the maintenance of covert institutional facts and even covert institutions.⁶

A theory that holds that the institutional character of a fact or object can be hidden or covert for a community C acknowledges the error theorist's point, made earlier, that institutional properties are in some sense *relative* and *queer*: their assignation is relative to a practice and within a community; they are queer because institutional properties are by definition not natural ones. Although an institutional account is in principle purely descriptive (See *supra*), there is an aspect of the institutional account that allows its proponents to be "critical of the status quo" (as Hacking 1999 puts it): since members of a collective are *de facto* responsible for the creation and maintenance of an institutional fact, but can be ignorant about its institutional nature, uncovering its institutional nature to them may in fact lead to a critical re-examination of the practice. Criticizing, perhaps abolishing certain deontic powers attached to sacred objects can best be initiated by explicitly and publicly exposing the object in the X-position as having an institutional property Y.⁷ Once you come to believe there are no gods born on top of Mount Popzatecl, you are open to the fact that its sacred character was *merely* due to collective acceptance. Once it is fully appreciated by members of G that collective acceptance is responsible for the creation and maintenance of the sacred nature of Mount Popzatecl, they *eo ipso* discover that the deontic powers attached to it have sublunar origins, and that insight might be the beginning of a thorough revision of those powers, perhaps leading to their gradual erosion and eventual disappearance (Compare the gradual reduction of the monarch's real powers to the purely ceremonial role of kings in modern constitutional democracies).^z Various moves and options that come with the insight that a practice is based not on natural facts but on institutional ones can be described within John Searle's theory of institutional facts: one starts seeing the holiness of Mount Popzatecl as an observer-dependent fact that obtains its status due to collective intentionality. One thereby comes to see that acceptance/recognition of Mount Popzatecl's holiness is a necessary conditions for its function to surpass the physical features of the object. And one starts to accept that H does not exclude that other mountains can be sacred too (and that this requires different contexts). It is recognized that a socially determined enabling condition for the emergence of knowing that Mount Popzatecl is sacred was key to the emergence of that belief. They will accept that it was human agency that did the imposition of holiness. Once this insight transpires, H can continue to exist or disintegrate, and be studied, perhaps in the context of a Foucauldian "archaeology" of now fully disintegrated institutions, forgotten institutional properties and eroded or merely symbolic deontic powers. To avoid expressing reverence and awe, an outsider can assert the proposition that *Mount Popzatecl is sacred because they, members of G, collectively accept it as holy.*

6 Bruno Celano argues that "[...] *pace* Searle, institutional facts being belief dependent is not compatible with people having false beliefs about them" (Celano 1999, 249, also quoted (and rejected) in Lagerspetz 2006, 302).

7 Compare the child who pointed out that the emperor has no clothes.

This avoids the relativism implicit in “According to them, Mount Popzatecl is holy’, which should be avoided (recall that outsiders too know that Mount Popzatecl is holy). Ex-members of G who come to believe that H is true in virtue of collective acceptance of H continue to grasp the concept of holiness.

What about witches, shamans, and exorcists? I will argue that the existence of witches, shamans and exorcists should be acknowledged, as these status functions are associated with, and known to be associated with certain deontic powers. Nevertheless, those who accept that they exist and who recognize their deontic powers, may have many false beliefs, perhaps not about the cover or over institution that assigns these statuses, but about the supernatural powers of the persons that have a specific. Consider witches. Searle holds the following view about witches:

Many people believe in the existence of witches and they act on that belief even to the extent of executing people for witchcraft. All the same, on the standard supernatural definition of witches there are no witches and there never have been any (Searle 2006, 115).

Searle judges here in view of the standard supernatural definition of witches (“women who had intercourse with the devil”) and on that account there could not be witches. I take this to be part of what *fixes the reference* of the concept of being a witch. An alternative account allows for the consistency of the following set of claims (applied to witches): witches once existed and are known to have existed, but there was never such a thing as witchcraft. Witchcraft is based on false empirical beliefs. Witches existed because they were created by (implicit, covert) collective acceptance that there are witches, and their social role can be defined in terms of a set of interconnected rights and obligations, implicitly or explicitly conferred upon them by the community. This is even more evident in the case of *shamans*, whose social role in a community is precisely defined: they are respected, must be consulted at certain occasions, and have various rights and obligations. They create and are owners of desire-independent reasons.

On the proposed account of witches as *covert* institutional entities, it is (objectively, historically) *true* that the last witch in England was burned in 1736, and there is no need to tinker with the truth-conditions of the sentence (replacing “witch” by some description – “the last person convicted of witchcraft”, for example). Even though the reference of the concept of a witch is, within a community responsible for their existence, fixed by “woman who had sexual intercourse with the devil” (or some such reference-fixing description that reflects how many or most believers stereotypically thought about witches), this need not determine its *extension*, as we saw earlier in the case of the concept of sacredness. What determines that there *are* witches (what determines the extension of the concept of a witch) is an aetiology in which someone (X) was declared to count as a witch (Y). But those who issued such declaratives may well have been wrong about what they did: rather than thereby *creating* witches, they thought they announced the *discovery* that this or that person turned out to be witch. Being a witch was, relative to them, a covert institutional property. They didn’t realize they were involved in an institutional practice that created rather than discovered entities.

Neither does the fact that women confessed to certain deeds (flying on broomsticks, etc.) commonly or stereotypically associated with witchcraft or even consciously or unconsciously started behaving according to the reference-fixing description made it true that there were once witches. The fact that being a witch is an “interactive kind” (*à la* Hacking 1999) is neither sufficient nor necessary to explain the existence of witches. What *did* make it true that witches existed was collective acceptance of a real or virtual declarative, issued by some authority and accepted/recognized by others, that someone was a witch, and that in virtue of being a witch, certain deontic powers came into existence.

We can therefore accept that witches existed, and simultaneously deny that witchcraft existed. In the case of shamans and exorcists the case for their institutional nature is even more clearer: the role of a shaman within a community is clearly defined in terms of what do's and don'ts, rights and duties. Moreover, many cultures make a clear distinction between laity and the shaman, and merely talking and acting like a shaman does not entail that one is a recognized shaman. In the Catholic religion a distinction is made between a formal exorcism which can only be conducted by a priest during a baptism or with permission of a bishop. The exorcist is an individual thought to be capable of expelling demons, using formulas, gestures, symbols and amulets. In Islam, *ruqya* is used to repair damage caused by witchcraft. In Judaism exorcism rituals are performed by a rabbi who has mastered practical *kabala*. Denying that they exist just because they are supposed to interact with supernatural entities does not seem to be an option, and it is not even correct to talk here, as in the case of the holy mountain, of covert institutional roles: an exorcist officially recognized by the Church has (real) deontic powers, but (contrary to what the Church thinks) none of the alleged supernatural powers.

One reason why the distinction between the existence of witches (they exist) and witchcraft (which doesn't exist) is not obvious is that in our understandable eagerness to deny that witchcraft exists, and our current moral outrage against witch-hunts (or slavery), we easily jump to the facile and consoling conclusion that *witches never existed, or that slavery was not an institution*. But what Searle himself acknowledges as true about *intended* or *overt* institutional facts (that correctly identifying them as such need not entail that one *endorses* the institution – See *supra*) can be extended to covert institutional facts. What one should have said to would-be witch-burners is something like this: “Yes, your collective acceptance of the declarative statement that these women are witches, has created the (non-empty) category of witches, but you are under an illusion about their alleged supernatural powers.” Publicly reciting this fragment of an analysis is definitely not the most effective strategy to *persuade* members of the relevant collective that they shouldn't classify persons as witches. A public assertion that witches existed may carry the misleading implicature that witchcraft *also* exists, or perhaps even the more outrageous suggestion that it was after all right to burn them. The lesson seems to be that announcing a viable and conceptually kosher account of the ontology and epistemology of statements and beliefs about witches and the social enabling conditions for beliefs that they exist need not offer the most effective way to persuade people that certain women should not be treated as witches, and that what they took to be a natural phenomenon was in fact created by their beliefs. It takes a complex attitudinal shift within a community to instil such a conversion.

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THE PARADOX OF GOVERNMENT: EXPLAINING THE LIFE AND DEATH OF A STATE

abstract

According to Searle (2010), the existence of a State brings a paradox with it. On one side, since a State is a social object, its existence seems to imply the existence of a collective acceptance towards it; on the other side, the existence of this collective acceptance seems to be granted only by the existence of a State that is capable to exercise violence – if needed – on its citizens by means of the military and the police. This implies a contradiction for, if the existence of a government should in principle rely on the free and voluntary acceptance of a certain social system, at the same time it seems that this acceptance derives only from the exercise of brute force, and thus it is all but voluntarily. I will argue that this paradox can be solved only if we distinguish two different notions of collective acceptance: one that can be individuated at the level of natural facts, the other at the level of social – and, more precisely, institutional – facts.

keywords

Government, collective intentionality, principle of efficacy, fictio iuris

1. The Paradox of Government

According to Searle (2010) social reality has only a derived kind of existence, since it depends on the collective acceptance of certain constitutive rules of the form: “We make it the case, by declaration, that a status function Y exists in context C” (Searle 2010, 101). For example, we can make it the case, by declaration, that a President exists in the context of the Italian Republic.

This picture of the construction of social reality holds also for a complex social entity such as a State. More precisely, Searle specifies, a State can be conceived as a *system* of status functions, that is, a structured and coherent set of social entities that are put into existence by the collective acceptance of a series of constitutive rules (Searle 2010, 163). Among the status functions that constitute a State we can include its law system and all the institutions through which the State accomplishes its tasks (the ministers, the provinces, the schools, etc.).

However, the existence of a State also poses an important problem for Searle’s account, leading to the so-called *paradox of government* (Searle 2010, 160ff). In fact, Searle observes, if the existence of a government seems to depend on the existence of a collective acceptance, the existence of this collective acceptance seems to depend, in turn, on the existence of a government, that has the power to exercise violence – if needed – on its citizens, by means of the military and the police (Searle 2010, 163). More precisely, what Searle defines as the “paradox of government” should be better described as a double problem. On one hand, the paradox poses a problem of circularity on the ontological level, since the existence of a government seems to rely on the existence of a collective acceptance, but the existence of this collective acceptance seems to be grounded, *vice versa*, on the existence of a government endowed with coercive powers. On the other hand, the paradox also involves a contradiction, because, when we say that governmental power is based on collective acceptance, we mean a free and voluntarily act of acceptance, whereas, when we say that collective acceptance is granted by the existence of the military and the police, this acceptance seems to be obtained through coercion instead.

Searle focuses mainly on this latter problem and tries to solve this contradiction by denying the second horn of the dilemma. In other words, what Searle claims is that the threat of violence that is exercised by the military and the police is not *per se* a form of coercion: it does not force anyone to accept the government, rather, it motivates the citizens to accept the government providing them with *desire-independent reasons* to act according to the government.

In order to explain the idea of a desire-independent reason Searle gives the following example:

suppose, he says, that I have promised to someone that I will meet her the following day at 9 a.m. When the day comes, I would rather desire to stay in bed, but the obligation that I have with this person “gives me a reason to want to do it” (2010, 167). In other words, the existence of this obligation, created by my promise, gives me a desire-independent reason to stand up and go to the meeting. The same holds for other kinds of social realities. For example, although I have no desire at all to pay taxes, I do it because of the threat of being sent to jail and, much the same way, although I can dislike the government I have and desire to have another, I can nevertheless accept it for the same reason. Of course, this is not necessarily the only reason to accept a certain social reality: for example, I can be motivated to pay taxes also because I simply recognize that paying them is the right thing to do in order to maintain the healthiness of the collectivity in which I live, or I can decide to accept the government, even if I dislike it, because I know that the elections were valid and thus I want to respect the majority’s will. Still, even if I accept a certain government only because of the threat of violence that it could exercise, this acceptance, Searle claims, is free and voluntary: I am not forced, but the threat of violence is simply effective in providing me with a good reason to act in a certain way (Searle 2010, 167ff).

As said above, however, the problem of contradiction is not the only problem created by the paradox of government. More importantly, the paradox poses an ontological problem, that becomes clearer if we take into consideration a political situation such as the Libyan revolution. As known, starting from February 2011 Libya has experienced a long period of civil war, that perhaps cannot be considered concluded yet. During the war the Libyan citizens have been basically divided into two opposite alliances: one faithful to the old government, the Libyan Arab Jamahiriya, and its leader, Gaddafi; the other that was trying, instead, to overthrow Gaddafi’s regime and constitute an antagonist government, the National Transitional Council.

Given this situation, in which a collective acceptance is clearly lacking, one could then ask which of the two competing governments was really existing: was it the Libyan Arab Jamahiriya or the National Transitional Council, or perhaps both? And what is the criterion, then, to decide which social entities exist and which do not?

The problem is that, the Libyan case set aside, collective acceptance can never be total: every political system, be it a democratic state or a totalitarian regime, always houses some dissidents, people who try to change their regime, by legal or illegal means. Just think of anarchists: they are typically recognized by the State as citizens, but they do not recognize, in turn, the existence of the State nor, when imprisoned, they recognize the legitimacy of the police and that of the judicial system under which they are posed; rather, what they claim is that some people are violating their freedom by using on them brute force. They “call them out of the play”, so to say, not recognizing what the collectivity accepts, instead, as existent, and their ontology seems to include much less entities than other people’s.

To be true, Searle partly recognizes this problem and admits that: “for the political system to *function* there has to be recognition or acceptance of a set of status function by a *sufficient* number of members of the group sharing collective intentionality” (Searle 2010, 171, emphasis added). So, he seems to recognize, at least, that collective acceptance is never total. The problem, however, is that in Searle’s theory collective acceptance grants something more than the *actual functioning* of a government: it grants the *reality itself* of the government. But, if we say that the existence of a government is based on a sufficient degree of collective acceptance, the problem is then to establish which is the minimal degree of acceptance that can grant the existence of a social entity. For example, which degree of acceptance could have granted the existence of the Libyan Arab Jamahiriya? 70%? 90%? 50% plus one? The risk, of course, is that of falling in the sorites paradox, ending up with social entities with vague boundaries.

2. Problems for Searle

3.
A Look to the
Theory of Law

As I suggested above, the problems raised by the paradox of government can be solved, in my view, only if we distinguish two different notions of collective acceptance, one that refers to a social – or, more precisely, institutional – fact, the other to a natural one. In order to clarify the distinction between these two notions we can gain some important insights if we look at the theory of law. In the first edition of his *Reine Rechtslehre* (1934), while discussing the foundation of the law system – and thus of the State itself¹ – Hans Kelsen describes a case that seems very similar to the Libyan situation. More precisely, he takes into consideration the case of a revolution that tries to overthrow a monarchy and to establish a republican regime:

A band of revolutionaries stages a violent coup d'Etat in a monarchy, attempting to oust the legitimate rulers and to replace the monarchy with a republican form of government. If the revolutionaries succeed, the old system ceases to be effective, and the new system becomes effective, because the actual behaviour of the human beings for whom the system claims to be valid corresponds no longer to the old system but, by and large, to the new system (Kelsen 1992, 59).

A revolution, then, can be defined as succeeded and a new system is established, according to Kelsen, only if the *actual behavior* of the human beings involved changes, so that they stop conforming to the old law system and start behaving according to new rules. In saying this, Kelsen is giving an implicit formulation of a principle that has been central in his entire philosophical reflection, meaning, the *principle of efficacy*:

The validity of a legal system governing the behaviour of particular human beings depends on the fact that their real behaviour corresponds to the legal system – depends in a certain way, as one also puts it, on the efficacy of the system (Kelsen 1992, 60, emphasis added).

It is worth noting that by the term “validity” Kelsen means the specific kind of existence of juridical entities. Kelsen thus endorses a position which is very close to the one proposed by Searle insofar as they both distinguish the level of social and institutional facts from the level of natural facts and both maintain that what founds the existence of a social entity such as a State is nothing but its efficacy, that is, a *natural fact*: a behavior of acceptance shown by a certain group of people who live in a certain territory. This notion of collective acceptance, however, does not seem to be the only one at disposal. If we look at other theorists of law, in particular the theorists of the early modern State, a different notion seems to emerge. One of the main ideas characterizing modern States, in fact, is that of *popular sovereignty*: a government is a form of organization that a certain people has decided to give to itself, and thus it is, *by definition*, the expression of a collective will.

A clear formulation of this idea can be found, for example, in one of the former theorists of the modern State, Marsilius of Padua. In his *Defensor pacis* (1324) Marsilius affirms in fact that law emerges as the product of a *persona ficta*, that is as the product of a *juridical person* that represents the collectivity or, at least, the best part of it (*pars valentior*). The existence of a law system, in other words, presupposes, in Marsilius’ view, the existence of a collectivity that detains the sovereignty and that has decided to put into existence the law system itself. However, according to Marsilius, this collectivity is an entity with a different ontological status with respect to physical entities: it is a fictional entity for, of course, we need to conceive the collectivity as a single person, with a single will. Nearly five centuries later, in his *Metaphysics of Morals*, Kant expresses an idea which is very close to Marsilius’ one, when he observes that “legislative power can be due only to the collective will of the people [*vereinigte Volkswille*]” (1797, § 46, transl. mine).

¹ For Kelsen the State *coincides* with its law system.

Although typical of democracies, then, the idea that the law system is the product of the entire collectivity and thus of a collective will is not restricted to democracies, but it applies to every regime which is based on the notions of *people's sovereignty*, and thus on some sort of *representative power*. Another good example is represented by the Italian referendum of 1946, by means of which the Italian people was called to choose between republic and monarchy. On June the 2nd more than 22 million Italians voted: Republic won with 12 million votes against the 10 million votes for monarchy. This, of course, does not mean that all Italians immediately accepted the new republican regime: on the contrary, in the following weeks there were many protests and riots by the monarchists. Finally, however, on June the 18th the Supreme Court ratified the results of the referendum and the Republic was formally set up. This means that *the majority's will* (expressed through the referendum) became *the will of the entire nation*, and thus of all Italian citizens. In other words, despite the fact that a lot of people were not willing to accept the newborn government, its instauration was, in virtue of the law, the expression of the will of all citizens, no one excluded.

In this sense, then, besides the notion of collective acceptance understood as a *natural fact* – a *collective behavior* of acceptance towards a certain government – we can identify another notion of collective acceptance which seems to found all regimes in which the people is sovereign: in those regimes the majority's will becomes, by default, the will of the entire collectivity. To put it in another way, democratic regimes *presuppose*, by definition, *the idea of a collectivity which has accepted them*. But, if this notion of collective acceptance is presupposed by the law system itself, it cannot consist in a natural fact – it is not the actual behavior of a collectivity – but it will rather consist in a *social, and more precisely institutional, fact* – a fact whose existence is stated by the law system itself.

Given the two notions of collective acceptance that we distinguished in the previous paragraph we can now come back to the paradox and ask ourselves which of the two is involved in it. Let us recall, first of all, the exact formulation of the paradox:

4. A Way to Solve the Paradox

Governmental power is a system of status functions and thus rests on collective recognition or acceptance, but the collective recognition or acceptance, thought typically not itself based on violence, can continue to function only if there is a permanent threat of violence in the form of the military and the police (Searle 2010, 163).

The paradox can be thus broken down into two different claims:

- (1) governmental power is a system of status functions and thus rests on collective acceptance;
- (2) but collective acceptance, in turn, functions only if there is a government which is capable to exercise a permanent threat of violence on its citizens in the form of the military and the police.

Now, if we consider claim (2), it is clear that the notion of collective acceptance to which it makes reference is the *natural* one, meaning: the behavior of acceptance shown by the citizens of a State. The threat of violence exercised by the military and the police, in fact, can have an efficacy only on the minds, and thus on the behavior of people, providing them, as seen, with desire-independent reasons to act in a certain way rather than others. Claim (1), however, does not seem to refer to the same notion. What this statement claims, in fact, is that the existence of a government is founded on the collective acceptance of a series of rules but, as seen, the collective acceptance posed at the basis of a State – at least in democratic regimes – is typically a *fictio iuris*, an entity whose existence is presupposed by the existence of the State.

The paradox of government can be thus solved without denying any of the two horns of the problem,

but simply by recognizing the ambiguity of the notion of collective acceptance involved in it, which indeed stands for two different entities: a social and a natural one. If these two notions are distinguished, the circularity problem immediately disappears. When we say that the military and the police grant the existence of collective acceptance, we make reference, in fact, to a behavior of acceptance – the fact that people choose to conform their actions to a certain regime rather than another. Instead, when we say that the existence of collective acceptance founds the existence of a State, we are rather making reference to the fact that a State – at least a State founded on popular sovereignty – is by definition the product of a collective will, the will of the entire people.

Most importantly, recognizing the difference between these two notions allows to solve the problem of vagueness that seems to afflict, instead, Searle’s social ontology. If one founds the existence of a State on collective acceptance conceived as an institutional entity, then the question of which is the minimal degree of acceptance which assures the existence of a State can easily be avoided (See § 2), since this kind of collective acceptance is always – by definition – *total* (it is the expression of the entire people). Speaking of a “sufficient number of members of the group sharing collective intentionality” (Searle 2010, 171), in other words, makes sense only if collective acceptance is conceived as a natural fact – the behavior of a certain group – but not if we conceive collective acceptance as a *fictio iuris*.

Before concluding, I want to take into consideration also a possible objection that could be raised against my solution. If collective acceptance is to be conceived as a *fictio iuris*, an entity whose existence is presupposed by the existence of a certain kind of regime, one could object in fact that it is impossible to found the existence of a State on this collective acceptance. In other words, if the existence of (social) collective acceptance is stated – implicitly or explicitly – by a certain law system, then (social) collective acceptance cannot found, in turn, the existence of the law system, and thus of the State that is based upon it. In this sense, analogously to Searle, also my solution would incur a circularity problem: either social collective acceptance founds the existence of a State or it is the State (and, more precisely, its law system) that founds the existence of social collective acceptance. This objection, however, fails to distinguish two different kinds of priority: a temporal priority and a logical one. If it is true that collective acceptance comes into existence, from the temporal point of view, only when a certain law system starts to exist, the existence of collective acceptance is logically presupposed by the existence of a certain law system (if there is a system based on popular sovereignty, then we must suppose that there was a collective will that put this system into existence). So, from the logical and ontological point of view, collective acceptance is necessarily prior to the existence of a State, and thus it is collective acceptance which founds the existence of a State, whereas the reversal is necessarily false.

Finally, in saying that the only notion that can found the existence of a government is social collective acceptance, I do not intend to deny the importance that natural collective acceptance – the actual behavior of citizens towards the government – has in order to maintain a government. Certainly, natural collective acceptance is the presupposition for the birth of a certain government and, symmetrically, the vanishing of this collective acceptance can be the presupposition for the death of that regime in the sense that, even if a regime is imposed with the use of brute force and coercion, normally it cannot resist for a long time if the majority of citizens rebels against it. So, it is certainly true that the lacking of collective acceptance understood as a brute fact (a collective behavior) can provoke, for example, the fact that those who are in power abandon their places and that a new regime can be constituted, but what founds the existence of a (representative) regime, I claim, cannot be only a collective behavior of acceptance, but it is rather the collective acceptance of the entire people, which is presupposed – explicitly or implicitly – by that regime.

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SESSION

2

SESSION 2

COLLECTIVE INTENTIONALITY AND SOCIAL COGNITION

Michael Wilby (Anglia Ruskin University)
Subject, Mode and Content in “We-Intentions”

Sarah Songhorian (Università Vita-Salute San Raffaele)
Is Affective Intentionality Necessarily Irrelevant in Social Cognition?

Angelica Kaufmann (University of Edinburgh)
Collective Intentionality: A Human – not a Monkey – Business

Emanuele Caminada (Universität zu Köln)
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Guglielmo Feis (Università degli Studi di Milano)
The “Ought” Implies “Can” Principle: A Challenge to Collective Intentionality

Federico José Arena (Università Bocconi, Università degli Studi di Genova)
Other Participants’ Cooperative Attitude in Legal Context

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SUBJECT, MODE AND CONTENT IN "WE-INTENTIONS"

abstract

Propositional attitudes compose of three factors: subject, mode and content. With collective propositional attitudes there is dispute as to which of these three factors the collectivity aspect attaches to. For Searle the collectivity aspect comes in with the mode of the propositional attitude – it is a matter of two distinct individuals each having their own collective intention-in-action. I argue that there are ineliminable difficulties with the Searle's individualistic analysis, and argue instead for the notion of a dual-subject mental state: a propositional attitude that, by its nature, takes two or more subjects.

keywords

Collective intentionality, joint action, John Searle, social ontology

Propositional attitudes (such as beliefs, desires and intentions) are generally thought to compose of three distinct factors: subject, mode and content (Searle 1983). For instance, *Fred believes that the world is round* involves “Fred” (subject), “believes” (mode) and “that the world is round” (content). Although there is no consensus as to how to understand each of these aspects of a propositional attitude, it is generally accepted that they are, to one degree or another, distinct, and can be analysed separately.

With collective intentionality there is some dispute as to which of these three factors the collectivity aspect should be attributed to (Pacherie 2007).

According to Bratman (1993), the collectivity aspect comes in with the *content* of the propositional attitude. According to Gilbert (1989), the collectivity comes in with the *subject* of the propositional attitude. According to one reading¹ of Searle (1990, 1995, 2010) the collectivity aspect comes in with the *mode* of the propositional attitude – it is a matter of two distinct individuals each having their own *collective intention-in-action*.

In this paper, I shall examine Searle’s alternative, and argue that it does not succeed. Searle attempts to limit the collectivity aspect to the mode, but this claim is on the back-foot from the start, given his doctrine that intentions are “causally self-referential”. I shall, however, argue that something related to Searle’s account can be salvaged, although only at the expense of dropping some of the restrictions that Searle places on any account of collective intentionality. In particular, I shall argue that the widespread view that collective intentionality must ultimately be understood as having an individualistic basis is at the root of the difficulties with Searle’s account², and that the problems Searle identifies with a genuinely shared mental are capable of being overcome.

1. **Searle’s Restrictions on Collective Intentionality** Searle places a number of prior restrictions on what he regards as an acceptable account of intentionality, and I shall begin by outlining these restrictions and the reasons he provides for them.

¹ I say “according to one reading of Searle” because there are a number of ambiguities in his account that I will outline in Section 2. For related concerns about how to read his proposal see Velleman (1997) and Meijers (2003).

² See Schmid (2009).

The first restriction is that “all intentionality, whether collective or individual, has to exist inside individual’s heads” (Searle 2010, 44). For Searle, this restriction does not mean that all cases of collective intentionality (“we intend”) must be reduced to cases of individual intentionality (“I intend”) – indeed, Searle thinks that collective intentionality cannot be so reduced – but it does mean that any case of collective intentionality (any thought of the form “we intend to *p*”) must be fully explicable in terms of the workings of an individual’s own mind. We can call this the “brain-in-a-vat” restriction: whatever collective intentionality amounts to (i.e., whatever it is for me to think “We intend to *p*”), it must be something that is, theoretically, capable of being achieved by a solipsistic consciousness. The ostensible reasoning behind this commitment is that it avoids the intolerable consequence of appealing to “some Hegelian world spirit, a collective consciousness, or something equally implausible” (Searle 1995, 25). Hence, for Searle, and *contra* Gilbert, collective intentionality does not involve an appeal to a plural subject. A collective intention is a thought that is had by a singular subject.

The second restriction is that “all that I can actually cause is my individual performance” (Searle 1995, 45). If we are cooking dinner together, then I cannot (at least directly) cause your actions, but I can cause mine. My actions are, at best, contributions to a total collective action.

This has certain consequences for Searle, which hark back to his previous work (Searle 1983). Intentions, Searle has argued, are causally self-referential, whereby “the content of the intention makes reference to the very intention of which it is a content” (Searle 2010, 34). That is to say, if I intend to do an action *x*, then that intention is only fulfilled if it is that very intention which causes action *x*. Unlike a desire (which is satisfied so long as the object of the desire is achieved), my intention to deliver a parcel to my friend is not satisfied if that parcel is actually received by my friend by another means. It must be this very intention to deliver the parcel to my friend that causes the delivery, in order for my intention to be satisfied.

Putting this together, it would seem that the content of one’s intention cannot be that *we do something*. Were the content to make reference to what *we* do, then it could only ever be unsatisfied (even if we actually did manage to do that action) because, try as I might, *my* “we-intention” cannot be causally responsible for *your* part of the action, and hence cannot be the direct cause of the collective action. The very most that I can do is intend to do my part in something that we do.

A final restriction is that we “cannot reduce “we intentionality” to “I intentionality” plus something else [for example] mutual beliefs” (Searle 1995, 24). This is for the reason that an appeal to mutual beliefs would result “in a potentially infinite hierarchy of beliefs” (Searle 1995, 24). The idea being objected to here is that a collective intention might be understood to be genuinely collective if we suppose that each participant forms their intention (“I intend to do *p*”) with the mutual belief that the other will do so too.

Suppose, for instance, that our aim is to move the sofa (Velleman 1997). It would not be a collective intention if I merely intended to lift my side of the sofa, and you merely intended to lift yours, perhaps each of us periodically lifting up his side in the hope that the other would do so too. Rather, in order to have the collective intention, I must intend to lift my end of the sofa on the condition and mutual understanding that you intend to lift your end.

But then this means that we must first establish a mutual belief that we each intend to do our part before we can form the intention. And it is not clear that we can do this. It would not be enough, for

example, for me to believe that you intend to move your side of the sofa, and then for you to have the corresponding belief. This would not be enough, since I don’t regard you as merely lifting your side in blind hope, as this would suggest. Rather, for mutual belief, I must regard you as lifting your side on the grounds that I am intending to lift my side too. So, we would need at least another iteration of belief. Would this be enough? Presumably not, since neither do I regard you as thinking that I am lifting my side in blind hope. Another iteration would be required to capture this, and I think it is clear that once we have started down this road, there would be no end to the iterations³. Thus, an appeal to mutual belief would seem to be less than helpful in spelling out the notion of collective intentionality.

That completes the review of Searle’s restrictions on collective intention, and they leave very little room for manoeuvre. When it comes to spelling out Searle’s account we shall find that any interpretation we attempt to give of what he is saying ends up rubbing against one or another of these restrictions.

We have outlined what Searle thinks collective intentionality is not. We can now attempt to outline what he thinks it is.

2. Searle attempts to provide an analogue of a singular intention in terms of collective intentions. So, whereas the canonical notation for a singular intention is:

**Searle and
Collective
Modes**

Ia B by means of A (this ia causes A, which causes B)⁴

The collective intention analogue is:

Ia collective B by means of A (this ia causes A, which causes B).

But what does “ia collective B” mean here? As it stands, there is nothing in the canonical notation that serves to distinguish “ia collective B” from a standard “ia B”, other than mere labelling. So, how should we understand this notion? Here are three possible interpretations⁵:

- (i) That “ia collective B” is to be read as a *distinct mode of intention* that is to be defined in terms of its operating with the distinctive goal of causing one’s own part within a *joint action*.
- (ii) That “ia collective B” is a *standard mode of intention* combined with a *presuppositional belief* that someone else is going to play her part in a joint action.
- (iii) That “ia collective B” is to be read as a *distinct mode of intention* that is to be defined independently of reference to its content or to its goal.

I want to now argue neither of these options is satisfactory, given Searle’s restrictions.

With regards to (i) the suggestion is that the content of the intention is merely to play *one’s own part* in the joint action. However, this raises a difficulty. For, it puts all the weight of the analysis onto the

³ See Schiffer (1972).

⁴ For more on this notation see Searle (Searle 2010, 50-51). Ia = Intention-in-action.

⁵ Searle’s initial remark on how to interpret the canonical notation is: “I have a collective intention-in-action B, in which I do my part by performing my singular act A, and the content of the intention is that, in that context, this intention-in-action causes it to be the case, as A moves, that the car moves, which, in that context, causes it to be the case that B, the engine starts” (Searle 2010, 52). I’m not sure how to square this with his remarks two paragraphs before that “each has to assume that the others also have an intention-in-action which has the same goal, the same ‘collective B’[...]” (Searle 2010, 53). The former remark seems to put the weight of collectivity on the “collective intention-in-action”, the latter seems to put it on having the same goal: “collective B”. Further remarks, emphasising presuppositional beliefs, suggest another interpretation altogether.

joint, collective action. For, it would seem, what distinguishes a collective intention from a standard, singular intention is merely the fact that the goal is to perform one's part within the context of a collective action. The question of collectivity, in this case, just cascade's all the way through the canonical notation, to the world itself, where the action takes place.

But this is problematic. As Searle's own examples attest, the notion of a collective action is dependent on the notion of a collective intention. It is no good identifying a collective intention in terms of its role within the context of joint action since "the same type of bodily movements could on one occasion be a set of individual acts, on another occasion they could constitute a collective action" (Searle 1990, 402).

The difficulty here, is that the exact same set of bodily movements – e.g., heaving a car up the hill – could in one context just be my individual action, and in another be part of a joint action. As Searle says, commenting on a parallel example, "Externally observed, the two cases are indistinguishable, but they are clearly internally different". And, presumably, the internal difference is a difference in intention. Hence, one needs an independent specification of a collective intention in order to ground the notion of a joint action. It would, clearly, be circular to attempt to do this by means of claiming that a collective intention is that kind of intention whose causally self-referential satisfaction conditions are the performance of one's part within the context of a joint action. The notion of collectivity in this case remains unanalysed, because it hinges on the concept of a joint action, in which one plays one's own part.

This is perhaps just as well, for, in fact, it is difficult to see how this interpretation actually would manage to remove collectivity from the content of the intention after all. For, so long as we understand "ia collective B" as referring to a collective set of actions (i.e., "collective-B"), then Searle's canonical notation could only be elliptical for:

Ia collective-B by means of A (this ia causes A, which causes *collective-B*)⁶.

So, how might we provide an independent definition of a collective intention, without thereby falling foul of the restriction that the collectivity cannot be part of the content? Interpretation (ii) would place the elusive notion of collectivity outside the content of the intention, by understanding collective intentions as a matter of the combination of an intention to do one's part in a joint action, in conjunction with a presuppositional belief that someone else intended to do their part in the same collective action. Here is how Searle understands the presupposition for the case at hand:

Bel (my partner in the collective also has intentions-in-action of the form (ia collective B by means of singular A (this ia causes: A clutch releases, causes: B engine starts))) (Searle 2010, 53).

This interpretation, however, has its own difficulties. Searle claims that "In collective intentionality I have to presuppose that others are cooperating with me, but the fact of their cooperation is not part of the propositional content of my part of the collective intentionality; rather, it is specified in the form of the collective intentionality, outside the bracket" (Searle 2010, 53).

⁶ That this is indeed a consequence of the first strategy is clearer when we consider what Searle calls "the constitutive-by-way-of-relation" (see Searle 2010, 51). A constitutive by-way-of-relation is an intention in which one's immediate actions constitute rather than cause the intended result. For instance, my pulling a trigger (B) causes the gun to shoot (A), while my raising my hand (B) constitutes my voting (A). With regards to collective intentions involving the "constitutive by-way-of-relation", Searle offers the following: "ia collective B by way of singular A (this ia causes: A piano plays, constitutes B duet is performed)" (Searle 2010, 54). But that strikes me as wrong. My playing the piano does not constitute a duet, regardless of the context. Surely a duet can only be constituted by both actions.

The suggestion seems to be to purge the content of the intention of all mention of collectivity. Thus,

Ia collective B by means of singular A (this ia causes: A car moves, causes B engine starts)

is in fact shorthand for a standard singular intention:

Ia B by means of A (this ia causes: A car moves, causes B engine starts)⁷.

With an accompanying belief (amended from Searle's initial claim, in the light of the above) of the form:

Bel (X has (ia B by means of A (this ia causes: A clutch releases, causes B engine starts)))⁸.

This would appear to be one way of purging the account of any appeal to collectivity in the content. But the upshot is a complex, but nevertheless, very impoverished account. For, at first glance, there is nothing in the account which joins the two protagonists together, other than their presuppositions. But since their presuppositions must eschew any mention of collectivity – for, here, the presuppositions *are* the collectivity – the account provided does not even establish that the two actors are in the same country, never mind that they are intending to pull their weight on the same car in unison.

One initial way around this would be to say, with Searle, that "I have to believe (or assume or presuppose) that others are cooperating with me" (Searle 2010, 53). But surely the analysis can't just rest there, for cooperation is exactly what we want to explain!

This leads us to (iii). The suggestion here is that the collective aspect is solely a matter of having a particular kind of intention (a "collective-intention-in-action"). To disambiguate from previous interpretations, we can talk of "collective-ia B" rather than "collective ia B" (the distinction is in the hyphen).

However, the first thing to note is that Searle's insistence that there be no mention of collectivity in the content has to go. If we understand collectivity as a particular mode of intention, then that mode is going to be part of the content, because it, like other intentions, is causally self-referential:

Collective-ia B by means of A (this collective-ia causes: A car moves, causes B engine starts).

Further, since many collective actions are by their nature collective, then, once again (for at least some such actions) there needs to be a further collectivity reference:

Collective-ia to collective-B by means of A (this collective-ia causes: A car moves, causes collective-B engine starts).

That collectivity is mentioned in the content is now not nearly so pernicious. What was causing the problem in Searle's analysis was the difficulty of squaring (i) the idea that intentions are causally self-referential, with (ii) the idea that all intentions must ultimately be attributed to the individual who holds them. As a consequence of these twin commitments, the causally self-referential nature of intentions meant that the content of the intention must, in the relevant respect, tightly mirror

⁷ Note that we have to remove the initial reference to collectivity (before the brackets) to avoid including a reference to collectivity within the brackets, due to the causal self-referential nature of intentions.

⁸ Presumably, the austerity that we have now imposed on the intention should also be transposed to one's beliefs about the other's intentions, hence this correction of Searle's presuppositional belief.

the mode of the intention. And since the mode of the intention is individualistic, then the content must be likewise. But, if we appeal to a *robust* notion of a collective intention (one which is defined *independently* of the content, presuppositions or the resulting actions) we need have no qualms about introducing the notion of collectivity into the content – for it refers back to the mode of the intention: the collective mode, collective-ia. Providing that we can get an independent grip on this collective intentional mode, then we can allow the content of the intention to mirror the collectivity of the mode.

But what is a collective mode of intention? What would a form of an intention that was a “collective-intention-in-action” be like?

When it comes to modes, Searle has one “rough” way of distinguishing them. That is their “direction of fit”. Of the “directions of fit” that Searle recognises, the world-to-mind would be applicable. But this doesn’t serve to distinguish a collective-ia from a standard, singular ia. The way to make the desired for distinction, I shall now argue, is by introducing a kind of “direction of fit” that Searle does not recognise.

We can agree with Searle that the weight of the analysis is to be taken by a specific mode of collective intentionality. But, in doing so, we shall also be required to recognise both (i) that that mode is necessarily one that requires (at least) two subjects, and (ii) that, to the extent that we follow Searle in regarding all intentions as causally self-referential, then the content will also be required to make reference to this collectivity.

3. Collective Propositional Attitudes

The position that I shall argue for here is that of a *dual-subject* mental state: a psychological mode that, by its nature, takes two or more subjects. To take the example of joint visual attention, this involves the capacity to *see with* another person a particular state of affairs in the environment – it is a matter of <X and Y jointly seeing that *p*>, as opposed to <X seeing that *p*, Y seeing that *p*, X seeing that Y sees that *p*, Y seeing that X sees that *p* ... etc>.

There is a way of spelling out such a state in Searle-style terms. Searle recognises two major forms of directions of fit. A mind-to-world direction of fit (↓) and a world-to-mind direction of fit (↑). In the case of joint attention, we might characterise it as a psychological mode with the (↓↔↓) direction of fit. The suggestion here is that it is a mental state which involves two subjects and whose satisfaction conditions are determined not just by the propositional content of the state, but also by the fact that it is a content that is only satisfied – indeed, only ever established – when one’s own perceptual state is aligned with the perceptual state of the other via causal interaction between the two subjects⁹.

Corresponding to joint attention, we could also have a dual-subject “collective intention”. Again, we can symbolise this notion in terms of a direction of fit, in this case: (↑↔↑). Here, it is the *goal* that each individual has that is shared, and under the partial causal control of the other. To illustrate, Searle imagines the following case:

Imagine that a group of people are sitting on the grass in various places in a park. Imagine that it suddenly starts to rain and they all get up and run to a common, centrally located shelter. Each person has the intention expressed by the sentence “I am running to the shelter”. But for each person, we may suppose

⁹ Whether one regards the perceptual alignment between the two participants (which establishes and constitutes the collective mode) as figuring in the content of the state, will depend on whether one agrees with Searle that perceptions are, like intentions, “causally self-referential”. Thanks to an anonymous referee for pressing for a clarification on this point.

that his or her intentions is entirely independent of the intentions and behavior of others [...]. Now imagine a case [...] of an outdoor ballet where the choreography calls for the entire corps de ballet to converge on a common point. We can imagine that the external bodily movements are indistinguishable in the two cases; the people running to the shelter make the same types of bodily movements as the ballet dancers. Externally observed, the two cases are indistinguishable, but they are clearly internally different (Searle, 1990, 402-403).

The difference between the two cases here, I would argue, is that in the latter case the establishment and maintenance of the joint intention-in-action is dependent on the reciprocal causal control that each dancers' bodily movement has on the others. If any of the dancers movements were to slip out of this causal loop (say, one of them were to slip and fall, thus breaking the causal connection), then all the dancers' intentions have been thwarted, and the joint intention-in-action breaks down. In the former case, by contrast, if one of the runners were to slip and fall, then this would not amount to the thwarting of the others' intentions – *their* intention to get out of the rain would be still alive.

The intentions that the dancers have, I would argue, are genuinely joint. It is not the case, as I think Searle ultimately wants to claim, that each individual has her own intention that "we shall perform this dance". Rather, each individual is participating in – and constituting – a single, shared intention *to perform this dance*, where the dance in question is a collective one.

This allows us to understand the canonical notation as follows:

Ia-collective to collective-B by means of singular A and singular C (this collective-ia causes singular A and singular C, causes collective-B).

To explain this notation by means of a previous example: *we* (you and I) have the intention of together getting the car to move, by means of your releasing the clutch, and my pushing the car, such that this very shared intention causes me to push the car and you to release the clutch, which then causes it to be the case that we have moved the car.

This account means that we must reject Searle's worry that by positing a dual-subject mental state we are "committed to the idea there exists some Hegelian world spirit, a collective consciousness, or something equally implausible" (Searle 1995, 25). There is no such commitment involved. The claim being made here is not the absurd one that there is some strange collective hive consciousness involved whenever we decide to jump-start a car, or perform a dance in the park. The claim, rather, is that there are particular kinds of psychological modes that necessarily involve *two* subjects rather than one. The notion of a dual-subject state should be distinguished from the troublesome notion of a collective consciousness or collective mind, because it is not the case, on this proposal, that there is one mind hovering between two bodies, but rather, it is the case that that there are two minds, with two bodies (i.e., two subjects) who have entered into a singular functional mental state.

The notion of a dual-subject mental state is gaining some traction in areas of cognitive science (albeit in areas not quite yet in the mainstream). In developmental psychology, for example, appeals to basic intersubjective states are sometimes utilised to explain infant's abilities to recognise other minds at an age before they can explicitly *represent* other minds (Trevarthen 1979, Tomasello *et al.* 2005, Ratcliffe 2007). There is nothing in the suggestion that need be incompatible with a wholesome naturalism, the account needn't posit anything over and above physical individuals with physical bodies and brains. Attempts to "naturalise" intentionality are on-going, and there is nothing within naturalism which dictates that intentionality must, always and everywhere, be the achievement of one brain on its own,

rather than, in some cases, being the achievement of more than one brain. Particularly in the case of infantile mentality, it is a plausible working hypothesis, that an infant's abilities to deal with the world are largely dependent on their ability to do so in concert with a caregiver.

Searle resists appeal to a collective content, on the other hand, on the grounds that "all that I can actually cause is my individual performance" (Searle 2010, 45). This worry can be assuaged by countenancing the notion of a plural subject: all *I* can actually cause is my individual performance, but *we* can cause quite a bit more. It is not implausible to suppose that evolution has thrown up creatures whose intentional capacities are, in some cases, unsaturated unless placed within a properly interactive context. This might involve particular kinds of psychological modes whose function is to operate within an interactive social context, and that the nature of that mode is to be spelt out accordingly. This, indeed, was a claim that Searle once appeared to come close to, when he said:

The crucial element in collective intentionality is a sense of doing (wanting, believing, etc) something together, and the individual intentionality that each person has is derived from the collective intentionality that they share (Searle 1995, 25).

Of course, there will be a unique neurological – and perhaps even cognitive-cum-computational – story to tell of what is going on at the individualistic level in each individual within such a context. But there is no guarantee that such models would amount to a full semantic explanation of what is going on within joint contexts. Such a reductive guarantee might be missing if, as Searle suggests above, collective intentionality has a basic, irreducible pedigree from which individualistic intentions are derived.

Finally, Searle's third restriction was that an account of collective intentionality must resist appealing to "mutual beliefs". I agree that that such an appeal would be merely shifting the onus of understanding onto something equally difficult to capture if the appeal to mutual beliefs were an attempt to *reductively off-load* the troublesome notion of collectivity. However, mutual beliefs (if, by this, we mean to include the related concepts of mutual knowledge and joint attention) cannot be of themselves impossible, since it seems that they are an integral part of everyday lives – most of our daily lives are spent in the company of people in which not just our intentions, but also our beliefs and attention can be shared, and transparently so. It is quite possible that joint attention, mutual belief, collective intention and coordinated action are a family of concepts that share interesting conceptual/causal links to each other. Although it is beyond the scope of this paper to explore this idea in any detail, it would seem that one way of further elucidating the idea of genuinely shared mental states as *sui generis* explanatory concepts would be to explore the conceptual, causal and normative links that hold between them. On the face of it, at least, it would seem that joint attention rationalises mutual belief, that mutual belief rationalises collective intentions, and that collective intentions rationalise joint action.

Searle's approach to collective intentionality is novel, understanding collectivity in terms of a distinctive psychological mode. His position, however, is hampered by a number of background commitments that severely limit what can be said about this distinctive mode. I have argued that if we are to understand collectivity intentionality as primarily a matter of a distinctive psychological mode, then this will mean that Searle must relinquish a number of background assumptions: in particular, the claim that collective intentionality must be understood as an individualistic attitude, something that can be achieved by me and me alone. On the contrary, I have argued that collective intentionality should be understood as a single, natural, irreducible psychological mode of thought that involves two subjects rather than one.

4. Conclusion

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IS AFFECTIVE INTENTIONALITY NECESSARILY IRRELEVANT IN SOCIAL COGNITION?

abstract

The aim of this work is to understand the meaning and the extent of “affective intentionality”, to discover whether or not it is analogous to other concepts of intentionality and if it can play a role in social cognition.

I will compare Searle's conception of intentionality, in particular affective intentionality, with Scheler's concept of sympathy. The reason for this is that I believe the comparison shows that it is not always necessary to presuppose something to have affective intentionality.

keywords

Collective affective intentionality, Max Scheler, sympathy, fellow-feeling

1. Introduction

The aim of this work is to understand the meaning and the extent of “affective intentionality”, to discover whether or not it is analogous to other concepts of intentionality and if it can play a role in social cognition.

To achieve these ultimate goals, I will consider, first, Searle’s conception of intentionality in general¹ and, then, of affective intentionality in particular.

Secondly, I will expound a few questions that are to guide the entire work. Then, I will take into account four preliminary considerations, that are to specify the object of this research.

Afterwards, I will present Scheler’s position on affective intentional states by displaying the four types of affective intentionality he identifies. The reason for this last step is that I believe Scheler’s account can provide further insight to answer the questions that will emerged throughout the paper.

2. Searle on Intentionality

Intentional states are always about, or refer to, something. Intending, in the ordinary sense in which I intend to go to the movies, is just one type of intentional state among many others such as belief, desire, hope, and fear.

[...] I said that intentionality is a name for the directedness or aboutness of mental states (Searle 2010, 25-26).

Searle takes into consideration different types of intentionality. The examples refer to beliefs, desires, hopes and fears, or, in other words, cognitive, conative or practical intentionality, and emotional or affective intentional states².

Searle’s idea is that emotions are actual intentional states, but that they are different from other types of intentionality because they need to be based on something else: an emotion always presupposes a belief or a desire.

¹ For a general account of “intentionality” see P. Jacob, (2010), “Intentionality”, *The Stanford Encyclopedia of Philosophy (Fall 2010 Edition)*, E. N. Zalta (ed.).

² To make just a brief and operative distinction, we can say that “belief” refers to “the attitude we have, roughly, whenever we take something to be the case or regard it as true” (Schwitzgebel 2010). It has the aim of representing what the world looks like (world-to-mind direction of causation). A “desire” is a disposition to make something happen (a mind-to-world direction of causation). Emotions are defined by the fact that they are responses to stimuli that trigger bodily states and have a motivational power (de Sousa 2010). According to the well-known Schachter-Singer theory (Schachter and Singer 1962), there are two components of an emotion: bodily arousal and cognitive factors. Emotions make us feel the world (feeling the world and representing it are two very different ways of relating to it). Much more can be said to distinguish these three concepts, but it is not the aim of this work to do it.

If I am proud that I have a big nose or I am ashamed that I have a big nose, in both cases the fact that I have a big nose is simply taken for granted. That is, it is not the aim of the intentional state to represent the fact that I have a big nose (mind-to-world ↓), nor is it its aim to bring it about that I have a big nose (world-to-mind ↑). In these states we simply presuppose that I have a big nose. [...] a fit is presupposed and the emotion of pride or shame would be inappropriate or misdirected if I did not have a big nose (Searle 2010, 29).

In Searle's account, emotions seem to be some sort of second level intentional states: I am not saying that I have or that I want to have a big nose, I simply presuppose one of these states and feel in a certain way about it. This does not mean that they are not intentional (i.e. "it is not the aim of the intentional state to represent [...], nor [...] to bring about").

My aim in this paper is to understand whether or not it is necessary to ground affective intentionality on another kind of intentionality.

If Searle neglects affective intentionality's role in the construction of human civilization because of its dependence on something else, then maybe showing that this dependency is not necessary could restore the similarity between different types of intentionality and could give the affective a role in social cognition.

Thus, the questions are:

- *Firstly, is it necessary to distinguish between affective intentionality, on the one hand, and cognitive and practical intentionality, on the other?*
- *Secondly, can we be sure that affective intentionality always presupposes something else? Or is it possible to imagine a specific type of affective intentional state that is as original as a belief or a desire?*

To answer the questions we have addressed above and to understand the relevance and utility, within this work, of Scheler's account, we need to take some preliminary steps that will make the path clearer. The aim is to narrow the sense of affective intentionality that is relevant to us, in order to provide an example as required by the last question. The aim of this paragraph, therefore, is to look for a type of affective intentionality that doesn't need any presupposition, and to analyze the possible relations between *this* kind of affective intentionality and collectivity, enabling us to comprehend the role of affective intentional states in social cognition³.

The first step towards understanding how we can relate affective intentionality and collectivity, is to underline the necessity of both a subjective and an objective pole. As we have seen with Searle's definition (Searle 2010, 25), an *object* is always required in order to have an intentional state. If the object is necessary, so must be the origin of that intentionality: the subject.

The concept of "positionality" serves two purposes: firstly, it helps us to understand what kind of experience is required for a person to have an intentional state; secondly, it introduces us to the phenomenological tradition that is to be central in this work.

The phenomenology approach suggests a further distinction between *the object* of the intentional state and *the act* itself.

³ I am not claiming that every emotion is necessarily collective: we do have private emotions, but they are not the kind of emotions I am investigating. My aim is to find a type of affective intentionality (that is just one among many) that can be useful to connect it to collectivity.

3. Two Questions

4. Four Preliminary Steps

4.1 A Subjective and an Objective Pole

4.2 Positionality

Every mental phenomenon is characterized by [...] the intentional (or mental) inexistence of an object, and that we might call, though not wholly unambiguously, reference to a content, direction toward an object [...]. Every mental phenomenon includes something in it as an object, although not always in the same way (Brentano 1874, 88).

Besides obvious continuity with Searle, what I believe Brentano, and the following phenomenological tradition, strongly stresses is the necessity of another variable in order to understand how and why different intentional states can subsist. What makes a perception different from a desire cannot be internal to its object, especially when we admit that I can either have a perception of an apple or a desire for it. The difference, thus, cannot be within the object, it must lay somewhere else.

Phenomenology suggests identifying this difference with the concepts of “act” and “positionality”:

Unlike events, that happen, and states, that take place, acts are made, they always imply something that the person does, and in this sense she is involved “as a subject”. [...] Acts always imply taking stands. This essential property is the one that we will call, with Husserl, positionality. Every act, strictly speaking, implies taking a stand (yes-no) in relation to an object given in experience and the corresponding state. [...]
Positionality is the specific property of people’s “intentional experience” (De Monticelli 2009, 186-187, translation mine).

This idea of *taking stands* solves the problem that arises through the subsistence of different intentional acts that cannot simply be reduced to a problem of different contents, as we have just noticed.

The act itself can be seen as the specific way in which the subject takes a stand in relation to that particular object at that particular time and within that particular context. The concept of “positionality” refers to the fact that the *person* is in a concrete and contingent position in relation to the specific object she has to deal with.

4.3 A Three- Variables Model

Proceeding in our aim to understand how affective intentionality can be related to collectivity, we come upon the third condition which is the *necessity for other subjects*⁴. In order to deal with collective intentionality (in a broad sense) we need to take into consideration more than one isolated subject⁵. This third step moves us from Searle’s definition to a different one: the kind of emotions considered are no longer “hope and fear”, but those feelings that involve (at least) two subjects, such as sympathy⁶. If, for example, *I* sympathize with *someone’s pain* (or joy), my object is twofold: the content of his feeling and he himself as a subject.

So, in order to understand the possibility of collective affective intentionality, we need to move from a two-variables model of intentional states (with a subjective and an objective pole only) to a three-variables one (with at least two subjects and an object).

⁴ This condition does not have to be met in every act of affective intentionality; it is merely useful to our goal of narrowing the relevant sense of intentionality for this work. It is necessary to understand collective affective intentional states; it is unnecessary for private emotions (that can be nonetheless intentional).

⁵ “So far, we have considered only individual intentionality which would be expressed in sentences in the first-person singular such as “I believe” or “I want”. [...] We will consider first-person plural forms of intentionality as in sentences of the form “We are doing such and such”, “We intend to do such and such”, “We believe such and such”. I call all of these sorts of cases “collective intentionality” [...]” (Searle 2010, 43). In the next paragraph we will see a more precise characterization of this concept.

⁶ This does not mean that “sympathy” is the only kind of affective intentional state, but just that it is of the right kind for our purposes: it deals with collectivity.

The last thing we have to consider is another distinction within the concept of collective intentionality in its broad sense: we can have inter-subjective, collective and social intentionality⁷.

In order to understand the differences between these, I will take into account two works by Francesca De Vecchi (De Vecchi 201a; De Vecchi 2011b). Since I will not be able to discuss this issue in depth, I will merely consider a few of the many things outlined therein.

In particular, I will take the following points as defining the differences between these three categories:

- *The role of the second subject;*
- *The direction of intentionality (i.e. what is considered the object?);*
- *The possibility of a sub-personal, unconscious level⁸.*

As concerns *inter-subjective* intentionality, the subject regards the other person involved as the object of his own emotional state and it is directed to her. Moreover, it is possible to have a *sub-personal* level of intentionality: a person can be directed towards another even though she is not conscious of her own direction.

In *collective* intentionality (in its narrow sense) the second subject is seen as a *partner* in a collaborative operation towards a common object. Therefore, the direction is the object of the shared intentionality. At this stage, *sub-personal* intentionality is still possible, e.g. driving on a highway is a collaborative enterprise of which the subjects are not necessarily constantly aware.

Things change when we consider social intentional states. These take the second person as an *addressee* or a *counterpart* of the act, and are *double-directed*: towards this second person and towards the object. At this level, it is impossible to have an unconscious intentional state because agency and authorship are always needed and these necessarily involve awareness.

These last step will be extremely useful to understand certain aspects of Scheler's distinctions.

In the book *The Nature of Sympathy*, Scheler provides an account of what we might call collective affective intentionality in the sense that has emerged from the preliminary steps we have just gone through. At the beginning of his work, he distinguishes between four facts of affective intentionality:

1. *Immediate community of feeling, e.g. of one and the same sorrow, "with someone".*
2. *Fellow-feeling "about something"; rejoicing in his joy and commiseration with his sorrow.*
3. *Mere emotional infection.*
4. *True emotional identification (Scheler 1923, 12).*

Further explanations and examples will be useful to understand what these concepts really mean and why they are interesting here.

4.4 Inter-Subjective, Collective and Social Intentionality

5. Scheler's Account

⁷ This distinction can be crossed with that of cognitive, practical and affective intentionality providing nine possible combinations of them.

⁸ This idea of a sub-personal level of intentionality should be deepened in order to understand how it is possible for human beings to have unconscious intentional states and to define it more precisely. For the purposes of this work, I will use them as if they were synonyms.

5.1 Community of Feeling

As concerns the first type of affective intentional state, Scheler's example is that of

two parents [who] stand beside the dead body of a beloved child. They share the "same" sorrow, the "same" anguish (Scheler 1923, 12).

In this example we have two subjects and a content of their emotional state: the *same* sorrow, the *same* anguish⁹. The relation between the two subjects is that of *partners* in a specific situation: they do not have each other as their immediate object. Their intentionality is primarily directed towards their child, not towards each other. They may acknowledge the presence of the other parent, but this has not a direct influence on the feeling of sorrow itself; it could, at most, change its intensity, not its type.

Summing up, the two subjects share the object (the child) and feel the same way about him (the *same* sorrow, the *same* anguish), which is the content of their state. They can be seen merely as partners since the mother is not the object of the father's feeling nor his addressee (he does not expect a reaction from her), and *vice versa*. They share the object and the type of feeling. It is also possible to have a sub-personal level of this experience of community: it is not unusual for someone in an overwhelming situation such as the one described by Scheler not to be fully conscious of what is going on, but still have a sense of sorrow and an unconscious sharing of it. So, this is a case of collective intentionality.

5.2 Fellow- Feeling

Fellow-feeling is the central category among those analyzed by Scheler, and is the most important to understand the possibility of a type of collective affective intentionality which does not need to presuppose something else.

All fellow-feeling involves intentional reference to the feeling of joy or sorrow to the other person's experience. It points this way simply qua feeling - there is no need of any prior judgement or intimation [...]; nor does it arise only upon sight of the other's grief (Scheler 1923, 13).

Before considering the features of this experience, two things are worth noticing in this quote. The first regards the fact that Scheler himself talks about an "intentional reference"; and the second has to do with the fact that he considers this kind of affective intentional state something that doesn't need any prior judgment, intimation or the sight of the other's emotion reflected in his facial expression. These two points provide us with an alternative view of affective intentionality that can be at least compared to that emerging from Searle's account.

When I sympathize with someone else's pain (or joy), I can be directed both towards the other person and towards the content of her emotion. In this first case, fellow-feeling is an example of *social intentionality*: it has two directions and it expects a reaction from the other person, who is considered an addressee or a counterpart. No sub-personal level is thus possible: both the other person and I need to be conscious of what kind of experience we are going through for a proper case of social intentionality.

If this is not the case, then probably fellow-feeling is not at its complete stage and we have a case of *inter-subjective intentionality*. At this level, sub-personal intentionality is possible: the subject is not conscious of his emotional state and he has not taken a stand about it, but he can still have

⁹ The content of an emotion is its type, the kind of emotion it is. It differs from the object of an emotion since the latter is the thing in the world that triggers an emotional reaction.

unconscious and instinctive reactions to the other's emotions. In this second hypothesis, the other subject is merely the object of my commiseration or the cause of my rejoicing, therefore not properly a subject. And I am merely directed towards him as an object.

Scheler's example of emotional infection is the following:

We all know how the cheerful atmosphere in a "pub" or at a party may "infect" the newcomers (Scheler 1923, 15).

What happens in a situation like the one depicted in Scheler's words is that the emotion passes from one subject to another without any consciousness of the passage in any of the individuals involved. The relationship is totally *sub-personal*. Starting from this, it is obvious that emotional infection cannot be a form of social intentionality, as we have said that, to have social intentional states, we need authorship and agency: in a word, consciousness. The alternative, thus, is between inter-subjective and collective intentionality. Since the second person involved is not the object to which the intentional state is directed, this means that we are facing an unconscious collective intentional state and not an inter-subjective one. The object of the contagion is the emotion itself, not the other person.

Emotional identification is, in a sense, the highest level of contagion possible. Not only the origin of the emotion is unknown, but the subjects themselves become indistinguishable. Scheler provides several examples of this, but I will just consider one here.

Genuine identification is [...] present where the relationship between a hypnotist and his subject is not just a temporary one [...], but becomes a stable and permanent state (Scheler 1923, 20).

Emotional identification is thus *sub-personal* like emotional infection and is a particular example of *collective* intentionality because there is no distinction between subjects, and so the second one cannot be either the addressee or the object.

Subjects cease to be distinguishable persons in order to merge in an indistinct flow.

In Scheler's intentions, emotional identification should be the vital, almost biological basis of every other kind of affective intentionality. It represents the original presence of the "us" within the "I": it is the primeval basis of all these kind of acts. That is, this identification is a return to a cosmos-vital stage when, ontogenetically and phylogenetically, subjects were not distinct individuals, but one and the same vital community.

The essential character of human consciousness is such that the community is in some such sense implicit in every individual, and that man is not only part of society, but that society and the social bond are an essential bond of himself (Scheler 1923, 229)¹⁰.

To reach a conclusion, we need to see if we have been able to answer the questions that were asked at the beginning of this work.

Our second question dealt with whether or not it was necessary to presuppose something in order to have affective intentionality. Scheler helps us with his definition of fellow-feeling: "it points this

¹⁰ We can easily relate this to: "As long as we respect the basic facts we have to acknowledge that all human intentionality exists only in individual human brains. [...] There isn't any other place for intentionality to be except in human brains (Searle 2010, 44)".

5.3 Emotional Infection

5.4 Emotional Identification

6. Answers to the Questions

way simply *qua* feeling - there is no need of any prior judgement or intimation [...]; nor does it arise only upon sight of the other's grief" (Scheler 1923, 13).

Even though this is not the *demonstration* of the fact that all affective intentional states can exist without a presupposition, it shows that at least *some of them* can and, thus, it demonstrates that it is not always necessary to presuppose something else to have affective intentionality.

If this is true, then we can also answer the first question, which referred to the possibility of a greater similarity between affective intentionality, on the one hand, and cognitive and practical ones, on the other. If the presupposition is not necessary, then the three kinds of intentionality can be much more closer and we might doubt about the irrelevance of affective intentionality in the construction of the social reality.

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COLLECTIVE INTENTIONALITY: A HUMAN – NOT A MONKEY – BUSINESS

abstract

In Making the Social World Searle makes the same claim he made in 1995: that “Human beings along with a lot of other social animals, have the capacity for collective intentionality” (Searle 2010, 43). In this paper I aim to show that Searle’s “overattribution” of collective intentionality to non-human animals is unjustified. Firstly, I briefly reconstruct and augment Tomasello & Rakoczy’s (2007) criticism that Searle overemphasises the primitiveness of the notion of collective intentionality. Secondly, I will investigate the domain of cooperative behaviour by means of a comparative, cross-species methodology driven by an enactivist approach. Such an approach can help us to understand (i) why Searle overattributes collective intentionality, (ii) how we can resist such an overattribution, and (iii) why we ought to resist it. Thirdly, I argue that Searle’s six conditions of adequacy for any account of collective intentionality are incompatible with his attribution of collective intentionality to non-human animals. Finally, I conclude by noting that Searle’s overattribution has important consequences for his system, as it implicates that human uniqueness begins with institutional reality rather than with collective intentionality and social ontology.

keywords

Intentionality, social coordination, collaboration, human ontogeny

- 1. Introduction**
- In the *Construction of Social Reality* John Searle claims that “many species of animals, our own especially, have a capacity for collective intentionality” (Searle 1995, 23). In *Making the Social World* Searle makes the same claim: that “Human beings along with a lot of other social animals, have the capacity for collective intentionality” (Searle 2010, 43). In this paper I aim to show that Searle’s “overattribution” of collective intentionality to non-human animals is unjustified. My argument comprises four steps. Firstly, I briefly reconstruct and augment Tomasello and Rakoczy’s (2007) criticism that Searle overemphasises the primitiveness of the notion of collective intentionality, and that he does not show enough regard to the understanding of the cognitive and communicative resources that are demanded by individual behaviour in the context of cooperative engagements. Here a complementary account is presented, namely the distinction between competitive and collaborative cooperation as outlined by Brinck and Gärdenfors (2001). Secondly, I will investigate the developmental roots of cooperation in social cognition, by means of a comparative, cross-species methodology driven by an enactivist approach. The basic claim of the enactivists is that our experiences are not inner events, rather that they result as the engagements between an organism and the surrounding environment. Therefore any experience includes aspects of the brain, the body and the environments of an organism, in a temporal and spatial extension (Hutto 2009). Given that interactions during ontogeny play an especially large and important role in the cognitive development of *Homo sapiens*, as compared with other primates (Tomasello 2011, 38), such an approach turns out to be very helpful within the debate on the nature of the notion of intentionality¹. The enactivist paradigm has been similarly discussed by psychologists such as Tomasello himself (Seemann [Ed.] 2010), and that is the reason why its exploitation in this argumentation can help us to understand (i) why Searle overattributes collective intentionality, (ii) how we can resist such an overattribution, and (iii) why we ought to resist it. Thirdly, after having recalled Searle’s six conditions of adequacy for any account of collective intentionality (Searle 2010, 44-45), I argue that these conditions are incompatible with the attribution of collective intentionality to non-human animals, if we accept Tomasello and Rakoczy, Brinck and Gärdenfors and the enactivist’s arguments. In particular I focus on Searle’s third and sixth

¹ Thanks to Dan Hutto, who in a recent conversation inspiringly guided me through a deeper analysis of Searle’s notion of intentionality and pointed my attention to its crucial implications for my investigations in social cognition.

conditions. According to the third condition, intentionality - collective or individual - has to exist inside individuals' heads. The sixth condition says that in collective intentionality, there is the need to believe in sharing one's collective goal. I explain how these two conditions suggest that social coordination and collective intentionality should be identified. However, if we identify social coordination and collective intentionality then we are led to wrongly attribute collective intentionality also to non-human animals. Finally, I conclude by noting that Searle's overattribution has important consequences for his system, as it implicates that human uniqueness begins with institutional reality rather than with collective intentionality and social ontology.

Rakoczy and Tomasello (2007) have contributed to critically informing the necessary distinction between, on the one hand, social coordination, and, on the other hand, collective intentionality. They explain why the former can be traced in non-human animals' behaviour, meanwhile, the latter is arguably human-specific. In order to outline this distinction they provide empirical evidence from experimental research on child development, and the way infants engage in social activities at different stages of their growth. Rakoczy and Tomasello outline the distinction between these two very different kinds of behaviour in order to explain why Searle's claim that collective intentionality can be found not only in human reality, but also in non-human animals including our nearest primate relatives, is wrong. The analysis of the skills and motivations that constitute collective intentionality (according to Searle's six conditions of adequacy²) has enabled them to hypothesise about how, during the course of normal ontogeny³, human children move from specific social interactions involving shared intentionality⁴ (learning, sharing, informing, helping) to participation in institutional realities-involving scenarios. Arguably, Rakoczy and Tomasello's distinction between social coordination and collective intentionality can be furthered and informed by Brinck and Gärdenfors's (2001) notion of cooperation, which distinguishes between competitive cooperation and collaborative cooperation, the latter being characterised by those features that can be ascribed to Rakoczy and Tomasello's account on collective intentionality.

The difference between competitive and collaborative cooperation can be introduced as follows: non-human primates coordinate individual goals into common actions (e.g. group hunting and coalitions against predator's aggressions). In the case of chimpanzees, as it has been remarked, "There is nothing that would be called collaboration in the narrow sense of joint intentions based on coordinated plans" (Rakoczy and Tomasello 2007, 116). This means that in order to talk about collaboration we need to identify the *joint intentions* that underpin a group activity. A joint intention is directed to a goal that will bring benefit to all the members of the group, independently from the fact that the single actor will get a personal and immediate reward. In fact the way in which chimpanzees work within a group is a competitive or agonistic interaction (Hare *et al.* 2000, 2001, 2004). In the case of, for instance, group hunting, the participation of single members is motivated by the awareness that "we are going to share the plunder" and this is going to happen *soon*. This, conversely, means that the motivation for which each single actor is taking part in a group activity, is driven by the desire to satisfy a personal need that will be rewarded immediately or in the near future. This kind of group activity is also called "coalition of alliances" that is a context in which single individuals act together in order to defend the group they belong to from the attack of other - in this specific case, chimpanzee's - groups. But what is happening in these interactions is just a coordinated execution of the same thing at the same time with responsiveness to one another's behaviour, that is the understanding of one another's *intentional* states (I shall return to this in a moment). On the other hand, human children, from very early in ontogeny, tend to engage in group activities (this is

2. The Ontogeny of Social Ontology- Revisited

2 See section 3.

3 Meaning during the course of normal ontogeny (excluding cases of autistic and feral children) in which children engage in regular social activities with peers and adults too.

4 For a complete account on the notion of "shared intentionality", see Tomasello *et al.* (2005).

especially evident in the context of pretend play games where the mutual agreement to pretend to be someone else implies the predisposition to understand mutuality and trust) that are motivated by an interest in the achievement of a shared goal (Rakoczy 2006, Wyman and Tomasello 2007).

The second kind of cooperation, collaborative cooperation, occurs when the goal is not to compete for given resources. In this context, the reward may be prospective relatively to long-term planning. And the calculus of future values of goals demands cognitive tools that all non-human animals, including primates, seem to lack. Collaborative cooperation is human-unique (and, ostensibly, the same goes for collective intentionality) in that it requires the ability to attribute mental states and to understand mental states, which is something that non-human primates are unable to do.

The difference might be that apes do not attribute *mental* states in order to interpret other's behaviour but they instead attribute only intentional states. Generally, intentional states are considered to belong to a subcategory of mental states (Searle 1983). In my account, instead, intentional states are not included in mental states but are characterised by a different set of conditions. I suggest that holding *mental* states means being aware of the contents of one's own thoughts (and to a further level of sophistication, means to be aware to the contents of someone else's thoughts⁵). I am not implying that non-human animals cannot *be* in mental states but just that they cannot *be aware* of them – and therefore *share* them- as they cannot understand the content of their mental states (see Hutto 2009). And this constitutes a significant limitation in the diversification of collective action-planning. The reason why – being a human – I can understand my mental states is due to the fact that my mind represents the contents of my own thoughts in terms of propositional attitudes. And propositional attitudes have a linguistic form. But, as pointed out by Searle (1979), intentionality does not need to occur exclusively in the form of a linguistic act⁶. Therefore, I characterise *intentional* states as describing intentional actions. By “intentional” I mean driven by a purpose or goal-directed. But holding them does not, necessarily, imply the mastery of concepts like beliefs and desires (for which there is the need of far more complex forms of representations). And it can only work when the competition is directed to given resources (e.g. food, mate selection), which means on short-term planning. In this sense, my claim is that we should ascribe intentionality to all action-oriented and conscious behaviour, but we should not, given this assumption, jump to the conclusion that all living organisms act intentionally with the same degree of complexity, and we should not accept so easily Searle's claim that many social animals act *collectively* intentionally. As a result, the more an agent's communicative system is sophisticated the more the collaborative framework gets articulated in a wider range of possible scenarios. So, it is important to understand the crucial relevance of the fact that *Homo sapiens* adopted propositional attitudes and not just intentional attitudes. Because the former is what it takes to have the capacity for collective intentionality. I shall now enhance the last point by means of an enactivist story.

3. **Going Enactive** As stated, it is arguable that propositional attitudes are generated by symbolic representations, namely taking the shape of linguistic communication (Bermúdez 2003, Davidson 1984, Hutto 2008). But what is the content of a symbolic representation? The first thing to point out is that not all attitudes involve contents, but, following Hutto (2008) it can be argued that only propositional attitudes are content-involving, as opposite to intentional attitudes, that do not require propositional contents. In this account, it is necessary to be able to manipulate complex linguistic forms in order to articulate content-full propositional attitudes. This is because only language has the appropriate structures that enable to express those attitudes. The content of symbolic representations is what its user wants to represent as “*standing for* something else” than what is perceptually experienced in the present context. This is a function

⁵ See Tomasello *et al.* (2005) for an account on different orders of intentionality.

⁶ Unlike Searle (1979) I do not believe that intentional states consists of representative contents in the various psychological modes. In my account intentional states can exist without being represented linguistically.

that a signals-based communicative system – as those we find in non-human animals world – cannot exploit in that signals are never used to stand for something else than what is required in coordinating behaviour. From a cognitive point of view, it is a crucial step up to be able to think by means of “detached” representations (Gärdenfors 1996) because it is what it, cognitively, takes in order to act accordingly to goal-based rather than drive-based motivations (see, for instance, Sterelny 2003). Representations of mental states make use of propositions that are structured with recombinant elements. This is what allows voluntary planning, actual reasoning, and decision making. In fact this capacity requires the mastery of the tools provided by language. As a result, from the enactivist perspective, oppositional-based beliefs and desires that characterise human’s practical planning, are likely a quite late developmental achievement (Hutto 2008).

The likelihood of the claim that I just made is widely supported, for what concerns the characterisation of competitive cooperation (or social coordination) by the results of empirical findings. These experimental tasks stress the quite unmistakable competitive attitude that arise in the behaviour of chimpanzees when put under specific circumstances. This evidence, the results of Hare *et al.* (2000, 2001, 2004), have been referred to as the, so-called, Competitive Cognition Hypothesis, which suggests that chimpanzees have been demonstrated to be more skilled and motivated when engaged in competitive rather than in (collaborative) cooperative, cognitive tasks. Relatively, instead, to the notion of collaborative cooperation (or collective intentionality), Carpenter *et al.* (2005) have shown that even very young children (between the age of 1 and 2 years) are capable of grasping the role structure of joint actions based – as previously explained - on joint intentions. Those children demonstrate their ability to imitate role reversal by spontaneously acting out the other role when appropriate. This means that human children pursue shared “we-intentions” with others, as they develop an ability to engage in collaborative cooperation as the basic form of collective intentionality, before language kicks in. And even though, chimpanzees’ communication can be very sophisticated, it will always remain at the level of individualistic or I-intentionality, lacking the structure of collective or we-intentionality that is characterised by the joint attentional frames that typifies human children communication, normally, from the age of two years old. In fact, in human ontogeny, we observe how children’s communicative experiences occur in a very complex social and pragmatic context. We can take as a valuable example a developmental phenomenon named “triadic engagement” (Tomasello *et al.* 2005) that children begin to experience at around the age of 9 and 12 months. This is the social context in which the child becomes able to coordinate an interaction that comprehends objects and people simultaneously. The triadic engagement consists in a triangulation of references by means of symbolisation. In other words, a child learns how to direct the attention of someone else to a given object, preparing the ground for joint attentions. Joint attentions are possible when there is a mutual awareness towards the nature of the object or the event that is the subject of the attention.

Tomasello (2003) argues that the primary role of symbolic communication is that of enabling an individual to manipulate the attention of, or to share the attention with, another individual. More specifically, he claims, symbolic communication occurs in its complete form when linguistic communication becomes referential. This referentiality is what enables the other to share attention to some virtually construed entity, that is a symbolic reference that stands for a given entity. This kind of interaction does not occur in non-human primates in that their communicative signals are not used to direct the attention of others through the conveying of information by means of referentiality. Signal references are, rather, used to affect the behaviour of others directly. This, in all likelihood means that the evolution of human language itself originally arose to satisfy the necessity to influence the behaviour of others, and only later in phylogeny, to influence their mental states. So language is a social entity itself and, therefore, its evolution is driven by the needs of its users. Language can satisfy humans’ greatest need, namely that of exploiting a system of heredity linking

the generations, and that is capable of keeping up with continuous cultural changes. This means that if we accept that cultural progress is one of the main distant goals and symbolic referential thought is necessary in order to engage in long-term goals, therefore we can understand why cultural progress is made possible by our capability for symbolisation in linguistics. So if the function of communication in non-human primates is, as Tomasello argues, that of influencing other's behaviour, the function of human communication is also that of influencing other's mental states. Because symbolic communication is a tool that enables the access to the contents of other's mental states. And as Deacon (1997) said, the most effective means for coordinating behaviour, that is being able to anticipate another's mental responses in the context of joint activities, requires imagination and this is a uniquely powerful tool for social manipulation. The crucial function of a symbolic-based communicative system is the ability to mentally represent the contents of other minds. Deacon explains very clearly what is the role of symbolisation in his notion of a shared "virtual mind": "The ability to use virtual reference to build up elaborate internal models of possible futures, and to hold these complex visions in mind with the force of the mnemonic glue of symbolic inference and descriptive shorthands, gives us unprecedented capacity to generate independent adaptive behaviour" (Deacon 1997, 427).

It is now time to call back Searle's characterisation of his notion of collective intentionality and then see to what extent it does not match previous discussions.

4. Six Conditions of (In)Adequacy Following Searle (1995, 152) collective intentionality consists in (I) engaging in cooperative behaviour, (II) sharing intentional states (e.g., beliefs, desires, intentions), or – as he rephrases it in his 2010's analysis (Searle 2010, 43) - (I.a) having collective intentions in cooperative planning (what he calls collective prior intentions) and acting (what he calls collective intentions-in-action), and (II.a) holding collective intentions in believing and desiring. In order to explain this, Searle (2010, 44-45) has outlined six conditions of adequacy that, he believes, any account of collective intentionality has to meet. Within these six conditions, recalled as follows, I shall focus on the third and the sixth conditions, in that they both clearly appear to be counterintuitive relative to Searle's idea that collective intentionality is not human-unique:

1. We must have a clear distinction between prior intentions and intentions-in-action.
2. The conditions of satisfaction of both prior intentions and intentions-in-action are causally self-referential.
3. All intentionality, whether collective or individual, has to exist inside individuals' heads.
4. In case of collective intentionality, we have to distinguish what I can individually cause, that which can be part of the condition of satisfaction of my intentional content, and that which I take for granted as contributed by my collaborators in the collective intentionality.
5. The propositional content can only represent the condition of satisfaction of the intention.
6. In collective intentionality, it cannot be required of each individual's intentionality that he knows what the intentionality on the part of others is. [...] All one needs to believe is that they share one's collective goal and intend to do their part in achieving the goal.

Having in mind Rakoczy and Tomasello (2007)'s (enhanced) explanation of the reason why is necessary to appreciate the distinction between social coordination and collective intentionality, enables us to understand why claims such as those made in the third condition, and in the sixth condition, cannot apply to collective intentionality if we ought to embrace Searle's position. In fact, to say that collective intentionality has to exist inside individuals' heads implies assuming the mastery of rather complex means⁷. In terms of cognitive and communicative demands, it implies the ability

⁷ See section 2.

to grasp the mental states of others, and the contents of those mental states, which, as previously stated, are made of propositional attitudes that are articulated through a symbolic-based system of reference, namely that of language. This does not mean that, necessarily, without language there is no collective intentionality, but it means that, necessarily, without those pre-linguistic social activities, such as role reversal imitation, that can be observed since very early in human ontogeny (Tomasello and Call 1999, Tomasello 2003), and that constitutes the normal route to the acquisition of a linguistic communicative modality, there is no collective intentionality.

The advantage of embracing an enactive view in order to investigate the development of socio-cognitive abilities is that it offers an explanation on how the interaction between the agent and its environment (which is made of other agents as well) enables the growth of the cognitive and communicative skills that we exploit in social cognition. These skills are, as I have argued, what make collective intentionality an exclusively human business. They are not innate tools, still there is some peculiar reason for why humans only can develop them. This is why the mark of human cognition might be found in this double mechanism: the first is the capacity for sophisticated abstract thought and planning, and the second is the capacity to exploit this abilities as social interactive weapons.

Searle's notion of collective intentionality is inconsistently presented. On the one hand, it is claimed to be shared by human and non-human animals, and on the other hand is argued to be characterised by behaviours that are only permitted by certain human-unique features. As it has been explained this notion is an overattribution, for two main reasons: firstly, it emphasises its primitiveness⁸, and secondly, it neglects the cognitive and communicative demands of cooperation that the single participants have to deal with. It is also incompatible to his six conditions of adequacy. This is because, as I have explained, the conditions that he outlines (in particular the third and the sixth) cannot apply for an account that puts collective intentionality and social coordination, under the same explanatory label. In order to appreciate the species-uniqueness that characterises human social ontology we should reject Searle's notion and this is made possible through a reinforced version of Tomasello and Rakoczy's (2007) criticism that takes into account the distinction between competitive and collaborative cooperation (Brinck and Gärdenfors 2001), and the respective cognitive and communicative demands that these two kinds of social behaviour require. In addition the enactivist paradigm offers a consistent explanatory framework that enables to reinforce the critics to Searle's argument.

In Summary, collective intentionality is grounded in the ontogenetic roots of human social ontology (Rakoczy 2008). It is embedded in cooperative behaviour described in terms of collaborative cooperation that requires communicative modalities (that will become linguistic) that enables social learning. So far, there is no other species that share this ontogenetic path with us, therefore we cannot accept Searle's notion of collective intentionality, which as he puts it, would, indeed, best be just named, social coordination.

5. Conclusion

8 More on the critique on the primitiveness of collective intentionality in Tomasello and Rakoczy (2007).

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THE PHENOMENOLOGICAL BACKGROUND OF COLLECTIVE POSITIONALITY

abstract

Searle is convinced that phenomenology is inadequate to face social-ontological problems. Despite his opinion, collective intentionality in its positional effort can be explained through phenomenological reductions. Clarifying how Husserl comes to the evidence of the background within the exercise of the transcendental reduction, it has to be shown how the frame of primordial reduction could make an inner description of the plural first-person perspective possible. Finally, some of the reasons that left Husserl to be completely overlooked in the contemporary debate on collective intentionality are exposed. The suspicion that is aroused by Husserl's transcendental phenomenology could be dispelled if one only considers the social-ontological value of the structure of collective positionality that Husserl claims to be the condition of possibility for the experience of objectivity.

keywords

Collective intentionality, positionality, phenomenological methods, idealism/realism problem

If phenomenology is the study of consciousness as experienced from a first-person perspective, the structure of collective intentionality should belong to the main themes of phenomenological research. Indeed, in Husserl's reflections we find several attempts to sketch a methodology in order to thematize the *plural* first-person perspective in contrast to the *singular* one, as it is provisionally given in the solipsistic account (Hua IV). These attempts are primarily carried out in order to clarify both the intersubjective background against and the common ground upon which objectivity is experienced. Given this transcendental aim, the descriptive value of Husserl's phenomenological research on the plural first-person perspective was overlooked, if not misunderstood, as an idealistic foundational enterprise. I will not face here the problems of Husserl's own social ontology, i.e. the problems concerning the constitution of the human world through collective attitudes or of the foundation of common mind and higher order personalities by collective intentionality (Hua IV, Hua VI, Hua XIV, Caminada 2011). I will rather show how collective intentionality in its *positional* effort can be revealed through two forms of phenomenological reductions Husserl worked out: 1. *transcendental reduction* (Hua III/1); 2. *primordial reduction* (Hua I) interpreted as a form of reduction to the we (Hua XV). Both reductions were designed to find a descriptive clue to solve the big philosophical problem that obsessed Husserl throughout his life: How can subjective minds posit objectivity? In the last part of this contribution I will uncover some of the reasons that led to the fact that Husserl has been completely overlooked in the contemporary debate on collective intentionality.

- 1. The Phenomenological Value of the Transcendental Reduction** One of the tasks of the transcendental reduction is to enable us to follow the evidence of the *positional* background through which we take for granted the evidence of the *real* world. Following the inner structure of simple experience, one can see how intentionality is always embedded in a more complex whole. We experience much more than what we *presently* intend: given a perspective or a fragment of something, we experience it as *real*. When we say 1. "P is there", we don't intend only the side we actually see, but the totality of the object. In further experience one can change idea and state: 2. "P is not real, it was only a shape, I confused myself!". Switching from 1 to 2 presupposes that the intentional structure of the experience upon which the subject is judging changed and forced the subject to switch its position toward the object. P is not anymore seen as real. When we take something as real or apparent, possible or dubious we are *taking a position* toward what we

presently experience. We are posing this perceived element as real or apparent, as possible or dubious. The characteristic to be real or apparent, possible or dubious is not given instantaneously. It exceeds the actual moment of intentionality. Husserl calls this surplus *positionality*. The task of transcendental reduction is to neutralize all positions concerning the existence of the intentional contents. Bracketing what we usually take for granted we realize by contrast that in every actual experience we posit more than we actually perceive. Furthermore we discover that positionality is a continuous *effort* that we usually don't mind, such as a background noise or our breath. But where does this surplus of meaning that positionality attributes to what we actually perceive come from? What kind of reasons do we have to accord or not to accord reality to something we perceive?

According to Husserl, every intentional act arises not only on the basis of an intentional *horizon* but also against a *background* of experience which produces intentional habits and offers the frames through which every new experience of the same type can be anticipated. The mind has no atomic structure: Every intentional experience implies a focus and a situated network of potential links that frame it. Thanks to this implicit holistic frame the intentional content is meaningfully enriched. It is only according to the implicit situation that one is inclined, for example, to posit a shape not as a real person but as a mannequin if one is entering a clothes store. The increasing knot of meanings related to an intentional content develops into a framework through which every type of this token will be experienced. This meaningful framework is the intentional *schema* that configures every new encounter with similar objects or situations (Lohmar 2008, 103). Husserl calls this schema *type* and the process of its development *typification*. He defines types as a form of *habitus*, because, as any other habitual structure, types present an *enactive* moment, i.e. a punctual act that originates this structure, that is kept further in force and can be reenacted through endorsement or expire once it is given up. Mental life is therefore characterized as a never-ending dynamic of typification, i.e. sedimentation of experienced intentional networks in habitual structures that can be aroused in the encounter with similar objects.

Every experience with its positional structures *sediments* itself and becomes stable "ground" for further experiences, motivating fantasies, actions, or expectations that drive further perceptions, etc.

Husserl describes the web of potential and habitual positionality that surrounds every intended content as the background against which the subject experiences it. This background is therefore not a hypothesis about some non-intentional functions, it is an intentional structure articulated according to an intentional modality (*habitus*) that we can directly experience.

So far I exposed how Husserl describes the way in which what we have access to in perception receives its positional character against the background of our concrete experience. The second step is to show how *our own* experience is not *owned* in the sense of a *private* one. It is *ours* in a stronger sense, but in the meantime *own*.

Husserl claims that through the encounter with other embodied minds one's own background is radically modified. This radical modification becomes evident through the method of *primordial reduction*. In the background of a concrete subjectivity, there are not only the structures that he or she acquired in his or her experience, but also all the intentional structures that are related to other subjects, or, as Husserl would say, that are *implicated* by other subjects. This is very important in order to understand the result of the phenomenological reductions (which usually are operated by a socialized adult): "Phenomenological reduction does not lead me back to my private inner life and its positional effort. Wherever I met other subjectivities, this or that subject, or a plurality of other egos, the phenomenological reduction leads me back to a plural subjectivity that embraces my subjectivity and all these counterparts with their life, with all their phenomena and intentional correlation" (Hua XXXV, 111). Phenomenology, the study of consciousness from a first-person perspective, is not solipsistically imprisoned in individual life: among the first-person perspectives that one can phenomenologically study, belongs also the *plural* one. The phenomenological reduction can be led not only by the structure of *ego cogito* of the one who is meditating on one's intentional effort, but also by the structure of *nos cogitamus* (Hua VIII, 316). The task to reach "a

2. Plural Intentionality as Revealed Through the Primordial Reduction

transcendental sociological phenomenology” (Hua IX, 539) lies in the aimed developments of Husserl’s philosophy.

Husserl speaks therefore about a *We-mode* of intentionality and tries also to develop a pertaining method of description in order to understand the nature of the intentional background against which we experience objectivity. If in the background we can explicate the horizon of the whole world, *whose* background is that? How can my individual intentional life be embedded into this intersubjective network? Where does the horizon of my background, my intentional network, come from?

One attempt to answer these questions is shaped in Husserl’s own interpretation of the primordial reduction (Hua I) as a “peculiar reduction to the We” (Hua XV, 66). This reduction can be *static* or *genetic*. It is static if we describe the *structure* of socialized experience. It is genetic if we describe the *process* of socialization. According to Husserl, these are possible questions of a *static* analysis of We-intentionality: “How do we experience the world, this world that we experience together and we have experienced in our world life always together? How can we describe this world ontologically? How do we experience its modality? How can every community experience its particular communal world with its cultural predicates? The formal structure of the *genetic* process of socialisation can be thematized through *primordial reduction*: given our life-world we can try to reduce my life only to my private *cogitationes*, where I experience the world as it is given only for me. I reduce myself to my primordial ego and then I ask how it became social, how could a communal world and a community be experienced [...]” (ibid.).

This methodology is a particular form of deconstructive reduction (*Abbau-Reduktion*): the aim is to try to neutralize our positional acts and efforts that depend and rely on other subjects. I quote Husserl’s words: “we disregard all constitutional effects of intentionality relating non-mediatly or mediatly to other subjectivity and delimit first of all the total nexus of that actual and potential intentionality in which the ego constitutes within himself a peculiar oneness” (Hua I, §44). Through this selective disregard of some positional acts we are performing a very peculiar abstraction within the background. It is a very new sense of abstraction. We live naturally as differentiated and contrasted from others – me and you; that’s me: I can abstract myself; I remain *alone*. But the primordial reduction is not a kind of transcendental Robinson Crusoe. As Husserl stresses, we are not thinking about the last man after a pest. On the contrary we are revealing an essential structure of intentionality, a core of oneness in subjective intentional life. But this core of oneness is very poor. It is our bodily experience, an experience that knows no objectivity, because everything experienced is only linked to my own experience. Husserl puts out that the experience of objectivity belongs to a higher level than that of primordial experience. Disregarding all positionality that is embedded into the experience with other subjects, one could somehow experience a coherent reality, but nothing like objectivity. Husserl claims that his philosophy is a form of intersubjective transcendental philosophy because the positional efforts that enable us to take the objective reality of the world for granted are interwoven in intersubjective, social intentional life. Without social cognition, we could say, there is no cognition of objectivity. We can experience an objective world because we are a *We*, because we are socialized. We can also idealize our social experience in the form of “everyone would agree that [...]” and therefore sediment in our background the sights of our community and of the rational collectivity we aim to belong to.

3. **Clearing Some Misunderstandings Concerning Husserl’s Phenomenology** If Husserl tried to develop the methodologies of phenomenological reductions in order to describe the inner nature of collective intentionality in its positional effort, why has this task been completely overlooked in the contemporary debate on collective intentionality? Now I would like to offer some historical and theoretical reasons for this fact. The main reason lies in the misunderstandings of Husserl’s controversial way of calling himself a “transcendental idealist”. His aim was to give a “philosophical” name to his attempt to justify that naturalistic objectivity is to be explained through a rich eidetic description of subjective life. This was in his mind *the* philosophical task of our time. Similarly, Searle sees the challenge that

philosophy has nowadays to face in the conciliation of natural sciences with the subjective character of personal life (Searle 2010). The architecture of Searle's social ontology provides in his eyes for the peculiar objectivity of social reality, since the latter cannot exhibit the naturalistic sources of scientific evidence. In fact, for both Husserl and Searle, questions of social ontology are embedded in their philosophical projects and linked to the task of looking for the peculiar objectivity of everyday social life. Despite that, Searle is firmly convinced that phenomenology is inadequate to face the problems of contemporary social ontology and especially to describe the inner structure of collective intentionality. I claim that this belief is rooted more in the misleading criticism of Searle's colleague and rival in Berkeley, the Heideggerian philosopher Hubert Dreyfus, than in phenomenology itself (Searle 1999, 2000, Dreyfus 1993, 2000, 2002). The paradigmatic problem of social ontology, i.e. how can mind-dependent structures be understood to be real and objective, was not ignored by Husserl: as a matter of facts, it was the problem he faced throughout his whole life!

If phenomenology has been rediscovered in the last years as an interesting travel mate for analytic social ontology (De Monticelli 2011), Husserl was not. An important note: speaking about phenomenology in singular is misleading, since we can distinguish at least three main streams only within German phenomenology and many other rills in further European traditions, such as the French or the Italian ones. The three main streams of German Phenomenology are: 1. the "orthodox" Husserlian, transcendental one; 2. the realistic and personalistic approach of the early circles of Munich and Göttingen; 3. the existential shift driven by Heidegger.

Social ontology up to now only encountered the last two forms of phenomenology. Social-ontological questions have been nowadays recognized as embedded into the tradition of early, realistic phenomenology (Salice 2011), since through the pioneering work of the "Seminar for Austro-German Philosophy" an important bridge was built in the 80s between the revaluation of Reinach's account of social acts and Searle's speech acts theory (Mulligan 1987). We have to thank Schmid (2005) for having revealed a non-individualistic account of Heidegger's *Dasein*, and working out a new positive phenomenological understanding of We-intentionality. His personal research is rooted both in the realistic and existential tradition of phenomenology, as well as in contemporary analytical philosophy. Husserl himself never took part in the social-ontological reassessment of phenomenology. Why is that? Both Mulligan and Schmid believe that Husserl became harnessed in a "monological" account of intentionality that led him to his shift towards Kant's idealism. Searle should have claimed that with his own turn to idealism, Husserl tragically helped his project of a descriptive and scientific philosophy to vanish (as cited in Mulligan 2003). Because of these biases, Husserlian phenomenology up to now has not been taken in consideration as a social-ontological challenge.

This image of Husserl is not anymore maintainable. The elephantine publication of the Husserliana volumes and the actual Husserlian research have confuted most of this criticism. Therefore, we need to rehabilitate Husserl, not only as a subject of history of philosophy, but also as a good philosophical partner for contemporary debates. Husserlian studies themselves could profit from the contemporary debate in social ontology, since it facilitates the systematisation of Husserl's attempts in order to describe the plural first-person perspective (e.g. distinguishing between *common intentionality* as the concrete intentionality of a group's mind and *open intersubjectivity* as the universalizing idealisation of the former as the implicated *telos* of the pretension of objectivity).

Searle further believes that phenomenology can neither explain how intentionality refers to its conditions of satisfaction, nor how it is linked to the background. Both claims are unjustified. Husserl worked out the problem of the rationality of intentionality (its different styles of evidence in reference to intuitive conditions of satisfaction) and of the background, beginning with his *Ideas* (Hua III/1). I am not at all claiming that Husserl already said what Searle discovered. Their concepts of intentionality are very far apart from each other, despite the caricatured polemic of Dreyfus (*nome de guerre* of Dreyfus, combination of himself and Heidegger) against Hussearle (*chimera* of Husserl and Searle), where Dreyfus

thinks to make Searle the victim of the same confutations he believes Heidegger could make with Husserl (Beyer 1997, Dreyfus 2002). That is fair neither to Husserl nor to Searle!

There are actually at least two relevant statements about the nature of intentionality that Searle *does not* share with Husserl: 1. Husserl describes *non-propositional* forms of intentionality (both conceptual and non-conceptual); 2. Husserl *does not* explain intentionality via causality, rather causality via intentionality. Nevertheless Searle shares with Husserl the ideals of truth, rationality, and objectivity, since they aim into the same direction to reform philosophy as a descriptive and scientific discipline. Furthermore, Husserl also shares with Mulligan and Searle the belief that realism is part of the taken-for-granted background of our practices. Realism to Husserl is a natural and sane everyday attitude, but he does not take it philosophically for granted. He picks up the modern transcendental question (*Why do we take the real world for granted?*) and tries to answer it phenomenologically, i.e. within a methodological description (*How do we take the real world for granted?*). Because of the answers he gives, he tried to define his philosophy as a peculiar form of transcendental idealism. The huge peculiarity of his idealism is that it is not a form of subjective idealism, but rather an intersubjective one (Zahavi 2001), since it involves the peculiar social-ontological idealisation that leads to the ideal of an *open intersubjectivity*.

Strange as it may sound, Husserl would agree with Searle's arguments against subjective idealism. Given one of the arguments for idealism, Searle refutes: "1. *All we have access to in perception are the contents of our own experiences*. 2. *The only epistemic basis we can have for claims about the external world are our perceptual experiences*. Therefore, 3. *The only reality we can meaningfully speak of is the reality of perceptual experiences*" (Searle 1995, 172). Husserl would not even accept the first point, because he claims that what we have access to in our perception is not only the content of a *private* experience but can rather be coordinated and sedimented in the background as a *collective* and *common* one. Therefore, I claim that the foundation of Husserl's phenomenological philosophy relies on his understanding of collective intentionality as the way through which the positional processes of constitution sediment in the intentional background through socialization (*Vergemeinschaftung*). My aim was not to argue for the validity of this foundation, but to show that because of this goal, Husserl tried to describe the intentional structure of collective intentionality within the methodological frame of the two peculiar phenomenological reductions discussed above: 1. *Transcendental Reduction* (Hua III/1); 2. *Primordial Reduction* (Hua I) as a form of reduction to the *We* (Hua XV).

Returning to Searle's premise in the rejected argument for subjective idealism ("All we have access to in perception are the contents of our own experiences"), we can attest that there is a peculiar method to try to experience according to this premise, relying only on the experiences that arise in the sphere of ownness. Husserl tried to show what would be given in such a case. We can be sceptic about the method of primordial reduction, but it is clear that he didn't claim that the constitution of the natural world is a private, monological problem, since within the sphere of ownness there is no background based on which we could take for granted the objective world, as we always do. In order to intend the world as real and objective, our experience structurally depends on collective positionality.

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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

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 claimed²;
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 ontology³;
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-act⁴;
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 point⁵.

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.

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.

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.

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 implication⁷, 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 OIC⁸.

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.

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”. Feldman (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).

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

2. OCI Interpretations and OIC Criticisms

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 absurd⁹. 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 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 aside¹⁰.

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).

⁹ See (Rescher 1966, 17).

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.

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 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 direction¹¹.

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.

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 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

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).

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 possible¹², the OIC 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 capacities¹³. 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 citizens¹⁴ is not enough to destroy the deontic power (oughts) related to the institution of money¹⁵. 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” situations¹⁶.

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

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.

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”).

the deontic powers. The theoretical tool to pick the agents up may be called and “inverted Hartian rule of recognition” (ROR)¹⁷.

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.

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.

17 The rule is stated in Hart (1961).

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OTHER PARTICIPANTS' COOPERATIVE ATTITUDE IN LEGAL CONTEXT¹

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abstract

According to Searle, for there to be collective intentionality two elements must be present: an intention-in-action to collectively do something and a belief in the cooperative attitude of other participants. The author argues that this second element poses the requirement of giving an account of the epistemological basis for holding the belief. The author claims that we cannot extend the way in which, according to Searle, the epistemological basis exists in game-like activities to legal institutional facts, in these last cases, due to the fact that legal norms are discussed in midgame and the fact that legal interpretation is highly indeterminate, it is dubious that such a basis exists.

keywords

Epistemological basis, game-like activities, legal facts

1. Introduction Searle's theory of social action seems to face a certain challenge. The challenge is a consequence of the fact that the conditions Searle deems necessary for there to be collective intentionality, have reduced the capacity of the theory to account for some institutional facts of our everyday life, or so I will argue. As we know, Searle does not only tell us what must be the case for there to be collective intentionality, he also claims that it is the case that the institutional facts of our everyday life involve collective intentionality¹.

It seems to me that this two-front enterprise introduces a tension in Searle's theory. Collective intentionality requires, as Searle himself seems to admit, the existence of an epistemological basis for its formation (call this "the epistemological basis requirement" or EBR). Searle does not offer a general explanation of how this basis is present and, to my mind, on the basis of the claims that he makes on this regard, there are some central cases of our everyday institutional reality, i.e. legal facts, where there is no such a basis.

In the first section I will characterize more precisely EBR. In the second one a brief reference to how EBR can be satisfied in cases where coordination is needed will be made. In the third section I will resume Searle's proposal. In the fourth section I will point out some features of legal facts that seem to preclude the verification of EBR in the legal context.

2. The Epistemological Basis Requirement One of the major difficulties that the explanation of social actions must face is the problem of the knowledge of other participants' mind contents. The question is crucial because without some reliable information about other participants' contribution, individuals will not have sufficient reasons to engage in social activities. It is in virtue of this fact that a theory of social action must offer a story about how that information is to be gathered and about how that information can bring about the individual action, within the social activity.

An essential feature of social actions is that the outcomes individuals want to produce or prevent are determined by the actions of other agents. That is, the individual finds himself in a situation in which the attainment of a result requires not only an action of him, but the contribution of other individuals as well. The social outcome would not occur if all the parties did not do their part.

¹ "I will focus on what I believe is the fundamental building block of all human social ontology and human society in general: humans being, along with a lot of other animals, have the capacity for collective intentionality" (Searle 2010, 43).

Even though social actions are a widespread phenomenon, it has not been easy to single out their constitutive elements. In particular, it has been very difficult to elucidate the intentional states that individuals possess or are in when the social action takes place.

The problems arise because it has proved difficult to concomitantly satisfy two singularly correct but jointly incompatible constraints.

On the one side, an account of social action has to supply the set of necessary and sufficient conditions for the action to take place and, in particular, the intentional states that motivate action². Call this the “motivational constraint” or MC. In this regard, it is certainly clear that the set must contain the intention to do the singular part in the social action but, due to the fact that the outcome can be reached only if other individuals contribute, it will not be sufficient to single out the individual intention.

On the other side, it is forbidden for an account of social action to include any reference to other people’s intentions inside the content of an individual intention³. This constraint has been framed in different ways⁴. I will follow here the more general formulation proposed by Bardsley according to which the constraint amounts to the provision that “an individual’s intentions cannot be said to range over others’ actions” (Bardsley 2007, 144)⁵. In Searle’s terminology, the propositional content of individuals’ intentions cannot make reference to the actions of other individuals, because “the propositional content can only represent elements that the agent can (or he thinks he can) causally influence” (Searle 2010, 45). Call this the “forbidden reference constraint” or FRC.

There are two major proposals regarding the explanation of social actions; each of them, while trying to satisfy MC and FRC, dwells differently with EBR. The so-called conventionalist one, based on individual intentions plus mutual beliefs, and the so-called institutionalist one, based on collective intentionality⁶. Whether they are exhaustive or exclusive approaches is a controversial matter. Both of them seem to give, in some cases, a good answer to EBR: the conventionalist one for cases where coordination is needed and the institutional one for cases where game-like activities are carried out. In these two cases the structure of the situation gives a good epistemic basis for the formation of beliefs⁷ regarding other participants’ mind contents. Let see how.

The conventionalist theory tells us that the existence of a conventional fact (or social action) depends on the occurrence of individual intention plus mutual belief. Doubtlessly, this pair of elements respects both MC and FRC. There is an intention that makes reference only to the agent action and a (mutual) belief that supplies the required information. As we know, Searle claims that conventionalism does not offer a set of necessary and sufficient conditions for the existence of collective action⁸. Even if Searle is right about the limited scope of the theory, I think that conventionalism is able to give an account of social actions in certain cases and to tell a story for EBR

3. Coordination Cases

² “The action does not get performed if my body does not move, and this has to be reflected in the collective intentional content, even though the collective intentional content exists entirely in my brain and your brain and the brains of the other members of the collective” (Searle 2010, 55).

³ It is also important to add that, as Searle himself recognizes, it is possible for an individual intentionality to make reference to the intentionality of other members of the collective. For example, in cases of authority relationships. See (Searle 2010, 56) and (Velleman 1997, 34).

⁴ Bratman identifies the following three. First, as stating that an intention necessarily includes a reference to the person that has the intention. An agent can intend only to do something herself (Own Action condition). Second, as establishing that the agent cannot intend what is not under her control (Control condition). And third, as claiming that intentions are the attitudes that resolve deliberative questions, thereby settling issues that are up to you (Settle condition). Bratman believes that only 2 and 3 pose a real problem to an account of collective actions. See (Bratman 1999, 148-150).

⁵ Bardsley considers this an “uncontroversial constraint on the analysis of action” (Bardsley 2007, 144).

⁶ See (Celano 2010).

⁷ Searle talks about beliefs, assumptions or presuppositions. I will use beliefs for short.

⁸ The claim is based on the well-known example of the business school cases. If the example is good, economists that believe in Adam Smith’s theory of the invisible hand will act individually according to their egoistic desires, therefore there will be no cooperation (so, there will be no collective intention in Searle’s sense). Nevertheless, the economists will have the individual intention and the mutual belief that conventionalism considers sufficient (and necessary) for there to be collective intentionality. See (Searle 2010, 47-48).

satisfaction. Clearly, I am not saying that conventionalism is a good comprehensive account of social actions, nor I need to deny that. I am only saying that to the extent that it offers a story regarding the satisfaction of EBR and the two constraints, conventionalism seems to be a good account of a particular type of cases.

The cases to which I'm making reference here are those where coordination is needed. As we know, coordination is needed when the agent finds himself in a situation where his choice of one course of action between several alternatives depends on which course of action will be chosen by other people⁹. The need for coordination stems from the fact that in this kind of situation the agent has to choose between several alternative actions and the outcome of such actions depends on others' actions and vice versa. It is in virtue of this dependence that to choose one alternative rather than another the agent must consider what she thinks will be the choices of other agents. To put it differently, she must decide what to do on the basis of her expectations regarding what the others will do. And, in virtue of the fact that not only her action depends on the action of others, but also their action depends on hers, in replicating their practical reasoning, she needs also to figure out what *they* expect *her* to do¹⁰. According to the conventionalist theory, the probabilities for the agents to reach a solution are higher if they rely on a system of suitably concordant and mutual expectations about each other's action¹¹. Therefore, to satisfy EBR, conventionalism must tell us in which circumstances agents become justified in forming those mutual expectations. A first way to get to the solution is by an agreement. But it is not the only way and, moreover, if agreement were always necessary, then the scope of the conventionalist theory would be dramatically reduced.

Another, more common, way to solve coordination problems is by taking advantage of some salient event. An alternative of action is salient when it "stands out from the rest by its uniqueness in some conspicuous respect. It does not have to be uniquely *good*; indeed, it could be uniquely *bad*. It merely has to be unique in some way the subjects will notice, expect each other to notice, and so on" (Lewis 1969, 35).

Once salience has been noted by several agents and the problem has been solved one or more times, coordination can be achieved by precedent. In this third way, coordination is achieved "by means of shared acquaintance with a *regularity* governing the achievement of coordination in a class of past cases which bear some conspicuous analogy to one another and to our present coordination problem" (Lewis 1969, 41)¹².

So, when agreement, or salience, or precedent, occur there is a sufficient basis, according to the conventionalist story, for each agent to form a belief about other agents' coordinative actions. In this sense EBR would be satisfied.

- 4. Game-Like Activities** In his book Searle claims that explanations of collective actions based on I-intentions plus mutual beliefs fail and he proposes an alternative account of collective intentionality¹³. From Searle's point of view, in order to engage in collective behavior, the individual must hold two different intentional states. First, she must have a collective intention-in-action to achieve the social action by contributing with her singular action. Second, she has to believe that others are going to cooperate with her¹⁴. Clearly enough, Searle is aware of EBR and the two constraints, i.e., MC and FRC¹⁵, and his proposal purports to satisfy all of them¹⁶.

⁹ See (Lewis 1969, 8).

¹⁰ See (Lewis 1969, 32).

¹¹ See (Lewis 1969, 27).

¹² "Indeed, precedent is merely the source of one important kind of salience: conspicuous uniqueness of an equilibrium because we reach it last time" (Lewis 1969, 36).

¹³ Even if Searle himself admits that the conventionalist proposal is a good account of some institutional reality.

¹⁴ See (Searle 2010, 53).

¹⁵ "A second difficulty is that my personal individual intentionality can only range over actions that I can personally cause; and typically in cooperative behavior, there is an intentionality that is beyond the range of my causation" (Searle 2010, 44).

¹⁶ In doing this he also puts forward an answer to some critics. In particular, Bardsley had claimed that as much as the propositional content of the intention-in-action includes a result that can only be achieved in conjunction with the other agent action, so the intention-in-action ranges over others action. And this violates FRC. See (Bardsley 2007, 144).

He claims that “part of what it means to say that the intentionality is collective is that each agent has to assume that the other members of the collective are doing their parts” (Searle 2010, 52). In other terms, for there to be collective intentionality, each agent has to believe that the other members also have an intention-in-action with the same goal¹⁷.

The addition of a belief in the existence of others’ collective intention-in-action is necessary to satisfy the two constraints I’ve mentioned¹⁸. The MC is observed thanks to the fact that the intention-in-action plus the belief in others having the relevant intention-in-action can motivate my action. The FRC is respected inasmuch as “there is no reference to your intentionality or your behavior inside the propositional content of my intention-in-action” (Searle 2010, 53).

Now, does Searle offer sufficient elements to consider EBR satisfied?

Searle argues that there is an epistemic basis for holding the belief that others will do their part in the cooperative enterprise. In his words: “There is an epistemic basis for this: often one does not know what the individual intentionality in the minds of the other members of the collective is. I might have the collective intentionality to achieve a certain goal, and I have that on the assumption that you are working toward the same goal as I am. But it need not be the case that I actually know the content of your intentionality. In a football game, the offensive lineman blocking on a pass play does not necessarily need to know what routes are being followed by the wide receivers or how many steps backward the quarterback is taking before throwing the pass. All he has to know is what he is supposed to do (‘his assignment’ in the jargon of football coaches)” (Searle 2010, 54-55).

I think Searle is right in this. As his example shows, in game-like contexts, due to the close structure of the interaction, it does not appear to be problematic for an individual with a collective intention to hold the relevant belief.

In the first place, it does not seem problematic because participants in games are sharply demarcated, “players are typically recognized as such and can be distinguished quite clearly from spectators, fans, and other non-participants” (Marmor 2009, 60).

In the second place, games involve a certain element of detachment from real-life concerns. It is true that the level of detachment varies considerably in different kinds of games, as well as in different contexts and cultures. But this is precisely the reason that explains why the rules that govern game-like activities have certain artificiality. Within game-like activities rules are followed without being put in discussion by the participants. As Marmor notes, a “violation of such norms typically involves a confusion; it often manifests a misunderstanding of what games are or what the situation is” (Marmor 2009, 60).

I think that these three elements can be held to be sufficient to consider EBR satisfied. That is, the clear identification of participants, the detachment from other real life concerns and the stability of rules give a good epistemological basis for the agent to hold the belief.

Clearly enough, the scope of Searle’s theory goes beyond game-like activities, but he does not offer an explicit general account of the conditions that must hold in order to satisfy EBR. One possibility could be to try generalizing from game-like activities to other kinds of institutional facts. In the next section, I will put forward some doubts about this possibility regarding legal institutional facts.

17 Searle have always insisted in the difference between “two quite distinct logical categories” of intentions, to wit, “the intentions that one has *prior* to the performance of an action as when, for example, I now intend to raise my arm in thirty seconds, and the intentions that one has *during* the performance of the action itself, as when I rise my arm intentionally and this have an intention which is part of the action itself” (Searle 2010, 33). Searle calls the first category “prior intention” and the second one “intention-in-action”.

18 “So we need at least two elements in our analysis of collective intentionality. We need a representation of the intention itself, where the intention can only refer to things that the agent can achieve (or he thinks he can achieve) and cannot involve references to other agents’ actions, and then we need a representation of a belief, and the belief is a belief about what the other agents are doingv” (Searle 2010, 55-56).

5.
The Case
of Law

As we have seen, Searle give us good arguments to accept that there are some cases of institutional facts in which EBR is satisfied, i.e., game-like activities. However, as far as I can tell, Searle does not supply an explicit general explanation of how it is possible, for an individual with a collective intention, to have a sufficient epistemic basis for holding the relevant belief about other participants' cooperative attitude. To my mind, without this general explanation, the scope of the theory will thin out if there are some institutional facts that cannot be account for using the same explanation employed in the case of game-like activities.

It seems to me that the solution given for game-like activities cannot be extended further to cover other institutional facts where, due to the differences with games, it is not justified to form the relevant belief. In some cases, such as legal practice, characterized by conflicts of interests and by an open structure of interaction, it seems more difficult to claim that EBR is satisfied.

There are well-known attempts to use Searle's concepts and theory to account for legal facts¹⁹ and I'm not questioning the whole enterprise here. My point is that some of the social actions or reality that Searle claims to have explained, i.e., legal facts, take place in a context where there is no sufficient epistemological basis for each participant to form the belief necessary for the existence of a collective intention.

The objection that I'm trying to put forward here is an objection not against Searle's account of collective intention, but against Searle's claim that his theory explains all institutional reality. The first problem for the application of Searle's theory to law is that, in general, there is neither a sharp demarcation between participants and non-participants nor, obviously, a sharp detachment from real-life concerns. Even more, an individual could not rely on the belief that he shares with other people the same belief about which is the function of each legal institution. As it has been pointed out, many legal institutions do not have a clearly shared function. "For example, what is the purpose of our marriage, divorce, property and inheritance laws? Anything that can be said about it is banal or obviously concocted – for example, that the purpose of the rules of divorce is to enable people to have reasonable access to divorce" (Ross 1958, 147). And that's why there might be legal institutional facts "about which there might be disagreement on whether the institution has a function and what that function is" (Fletcher 2003, 93).

It is true, to face this challenge it could be said, in the first place, that the rules that constitutes legal facts have been codified and that this is a sufficient basis to belief in other individuals' cooperative attitude. In the second place, it could be said, as Searle does, that legal institutional structures require only "*collective recognition* by the participants in the institution in order to function" and that *cooperation* is needed only in particular transactions within the institution²⁰. In this sense, one could add, with Searle, that collective recognition can be explained in terms of the conventionalist theory, i.e., in terms of I-intentionality plus mutual belief²¹.

The resulting picture is then that "the existence of an institution does not require cooperation but simply collective acceptance or recognition. Particular acts within the institution such as buying or selling or getting married or participating in an election require cooperation" (Searle 2010, 58). Maybe we could also accept the claim according to which in particular cases there is a clear demarcation of participants, e.g., the parties of a contract, the wedding persons, and so on²². But, is it a sufficient basis for holding the relevant belief in every particular act where, according to Searle, cooperation is needed? I think that there are two circumstances, highlighted by some legal

¹⁹ See, as examples, (MacCormick and Weinberger 1986), (Marmor 2009) and (Redondo 2001).

²⁰ Searle also claims that cooperation is needed for the institution to be born (Searle 2010, 57). I am not here interested in the genesis of institutions.

²¹ See (Searle 2010, 57-58).

²² With the following caveat: whereas in game-like activities it is clear both which are the properties that define participants and which are the individuals that satisfy those properties, it is not always the case that both questions are settled in legal practice.

philosophers, that precludes the possibility of a belief in other individuals' cooperative attitude, or at least render it very unreliable.

The first one is the way in which judges and lawyers discuss about the very rules that regulate legal institutions. As Dworkin showed, from a historical perspective it can be seen that often legal practice changed in response to arguments made in the context of adjudication. These arguments were carried out not as part of a special mini-constitutional convention to change the rules of the game, as in game-like activities. Instead, lawyers "often call for changing even settled practice in midgame" (Dworkin 1986, 138). As a dramatic example, relevant changes in the doctrine of precedent were made inside the context of legal adjudication. These changes were changes within judicial practice; they were not the result of special agreements about having a new set of rules.

In the context of games such arguments would have been powerless, even silly, if everyone had thought that rules constitute the game of law in the same way as the rules of football constitute that game²³.

Rules of games can also change, but once people are engaged in playing them, a sharp distinction is made between arguments about and arguments within the rules. This distinction does not take place in legal argumentation.

Moreover, in legal practice rules are questioned not only in the middle of the game, but it is also the case that there is no agreement about their interpretation. And this take us to the second aforementioned circumstance, that is to say, the fact that the content of legal provisions suffers from a high degree of indeterminacy. The main sources of indeterminacy are, as Guastini remarks:

- (i) *the plurality of interpretive methods;*
- (ii) *juristic theories (so-called 'legal dogmatics' in continental jurisprudential language), and*
- (iii) *the sense of justice of interpreters, i.e., their ethical and political preferences (be they expressly declared by means of value judgments or not)" (Guastini 2011, 148).*

As a matter of fact, every normative provision can be interpreted as expressing different norms depending on the methods used to interpret it. Besides, in each legal community there is often a large set of accepted interpretive methods that is sufficient to produce a great deal of incompatible and/or competing results.

Take, for example, an Italian constitutional provision referring to "statutes". Arguing a contrariis, one can conclude that such a provision applies to any kind of statute and only to statutes. Arguing by analogy, one can conclude that the provision at stake applies to statutes as well as to executive regulations (since both are "sources of law"). Arguing by the distinguishing technique, one can conclude that, since the class of "statutes" includes different subclasses (constitutional and ordinary, on the one hand; state and regional, on the other), the provision - in the light of its ratio - only applies to one of such subclasses (Guastini 2011, 148-149).

So, even if there are legal facts where participants are more or less demarcated and some legal constitutive norms are codified, it seems to me that the fact that legal norms are discussed in midgame and the fact that the result of legal interpretation is highly indeterminate preclude the possibility of saying rightly that in legal context there is, in every particular act, a sufficient epistemological basis for the belief in other cooperative attitude. For example, even if both parties of a contract know each other and agree on a text, the fact that the meaning of the text or the way in which it will be settled by courts are not completely determined prevent them to form a belief on the other party's cooperative attitude. Or at least, the formation of the relevant belief cannot be based on the same circumstances that allow the formation of the belief in the case of game-like activities. If this is so, then, I would add, the burden of the proof of providing an explanation of how EBR could be satisfied is on Searle.

23 See (Dworkin 1986: 137).

- 6. Conclusions** As I have said at the beginning, it was not my purpose to question Searle's conceptual claims. My endeavor had a much less ambitious aspiration, to wit, questioning the explicative capacity of Searle's theory regarding some particular legal institutional facts. If I understood Searle's proposal in the right way, for there to be collective intentionality two elements must be present: an intention-in-action to collectively do something and a belief in the cooperative attitude of other participants. I have argued that this second element poses a requirement to the theory, namely, the requirement of giving an account of the epistemological basis for holding the belief. It seems to me that Searle has not offered in his book a general explanation of this last requirement. Furthermore, I have claimed that we cannot extend the way in which, according to Searle, the epistemological basis exists in game-like activities to legal institutional facts, in these last cases it is dubious that such a basis exists.

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SESSION

3

SESSION 3

NORMATIVITY AND LANGUAGE

*Amedeo Giovanni Conte (Università degli Studi di Pavia)
and Paolo Di Lucia (Università degli Studi di Milano)*
Adýnaton. Four Dichotomies for a Philosophy of Impossibility

Corrado Roversi (Università degli Studi di Bologna)
Mimetic Constitutive Rules

Barbara Malvestiti (Università degli Studi di Milano)
Human Dignity as a Status vs. Human Dignity as a Value. A Double Nature

Federica Berdini (Università Vita-Salute San Raffaele)
Rationality as the Normative Dimension of Speech Acts

Gian Paolo Terravecchia (Università degli Studi di Padova)
Emergent Rules and Social Reality

Enrico Terrone (Università degli Studi di Torino)
Making the Social World without Words

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ADÝNATON. FOUR DICHOTOMIES FOR A PHILOSOPHY OF IMPOSSIBILITY

abstract

The starting point of our paper is the distinction between a non-praxical impossibility from a praxical impossibility (i.e. an impossibility that does concern praxis, action). Our paper will focus on praxical impossibility. Within the domain of praxical impossibility, we will distinguish six different forms of praxical impossibility making use of three dichotomies: nomophoric vs. non-nomophoric, presence vs. absence, type vs. token. The eight forms of impossibility we introduce (non-praxical impossibility, praxical impossibility, nomophoric impossibility, non-nomophoric impossibility, presence-impossibility, absence-impossibility, type-impossibility, token-impossibility) are eight ideal types for a philosophy of impossibility.

keywords

Praxical impossibility, normative impossibility, constitutive rule, type/token

*We are using a sharpened awareness of words
to sharpen our perception of phenomena.
(J.L. Austin 1961, 130)*

1. Eight Forms of Impossibility.

We shall explore the phenomenology of impossibility [in German: *Unmöglichkeit*; in French: *impossibilité*; in Italian: *impossibilit *] by applying the Platonic method called *dihairesis* (in English: *division*). With this method we will be able to find or discover *four* distinct *dichotomies* which allow us to distinguish *eight* different *forms* of impossibility. These *eight forms of impossibility* are eight *ideal types*, eight *eidotypes* [in German: *Eidotypen*; in Italian: *eid tipi*] for a philosophy of impossibility.

2. Four Dichotomies for a Philosophy of Impossibility

2.1. First Dichotomy: Praxical Impossibility vs. Non-Praxical Impossibility

2.1.1. There is a kind of impossibility that doesn't concern *praxis*, *action*, a kind of impossibility which is not a *praxical* impossibility; in other words, there is a *non-praxical* impossibility. An example of *non-praxical* impossibility [**Example 1.**] occurs in the philosopher Edmund Husserl [Proßnitz, 1859 – Freiburg im Breisgau, 1938] (Husserl 1900-1901, § 10, 255; English translation, 18):

Eine Farbe schliet eine andere aus, n mlich an demselben Fl chenst ck, das sie beide ganz  berdecken sollen, aber es beide eben nicht k nnen.

A colour excludes another colour, but only if both aim to cover an identical piece of surface, and both cannot do so completely (Husserl 1900-1901, § 10, 255; English translation, 18).

2.1.2. The main subject of our paper, however, is a kind of impossibility that concerns *praxis*: *praxical* impossibility.

This *praxical* impossibility is exemplified by the following nine sentences:

- [Example 2.]** impossibility in a chess game of moving right off the chessboard¹;
- [Example 3.]** impossibility of castling if the king is under check;
- [Example 4.]** impossibility to ordain a woman priest in the Roman Catholic Church;
- [Example 5.]** impossibility for someone to forgive himself²;

¹ "Indeed this would not count as a 'move'" (Black 1958, 72).
² See (Reinach 1913).

[Example 6.] impossibility of promising feelings³;

[Example 7.] impossibility of castling in draughts/checkers⁴;

[Example 8.] impossibility of electing the judges of the Constitutional Court according to the Polish Constitution of 1952⁵;

[Example 9.] impossibility of revoking a deputy of the Polish Parliament according to the Polish Constitution of 1952⁶.

Thus we may draw a first dichotomy [*Dichotomy 1.*]:

[DICHOTOMY 1.]

praxical impossibility (impossibility that concerns action)

vs.

non-praxical impossibility (impossibility that does not concern action).

Second dichotomy: *nomophoric impossibility vs. non-nomophoric impossibility.*

2.2. Second Dichotomy: Nomophoric Impossibility vs. Non-Nomophoric Impossibility

2.2.1. To introduce the second dichotomy let's compare the following list of four examples.

[Example 3.] impossibility of castling if the king is under check;

[Example 4.] impossibility to ordain a woman priest in the Roman Catholic Church;

[Example 5.] impossibility for someone to forgive himself;

[Example 6.] impossibility of promising feelings.

What is the difference between these two pairs of examples?

2.2.2. In the first pair of examples ([Example 3.], [Example 4.]), the impossibility is a matter of *rules* (in particular, the impossibility is due to the *constitutive rules* of chess and, respectively, to the rules of Canon Law), whereas in the second pair of examples ([Example 5.], [Example 6.]), the impossibility is *not* a matter of rules at all.

We shall call the *rule-related* impossibility "*nomophoric impossibility*".

Thus we may draw a second dichotomy [*Dichotomy 2.*]:

[DICHOTOMY 2.]

nomophoric impossibility (or rule-related impossibility)

vs.

non-nomophoric impossibility (or rule-unrelated impossibility).

2.2.3. The relationship between the concept of *rule* and the concept of *impossibility* is new. But the relationship between the concept of *rule* and the concept of *possibility* is not new at all.

3 "Was man versprechen kann. Man kann Handlungen versprechen, aber keine Empfindungen: denn diese sind unwillkürlich" (Nietzsche 1878-1879, § 58).

4 See (Wittgenstein 1967, § 134, 315).

5 See (Ziemiński 1966b).

6 See (Ziemiński 1968).

7 Amedeo Giovanni Conte (Conte 2001, 72) has distinguished three forms of nomophoric impossibility:

(i) *deontic* impossibility;

(ii) *anankastic* impossibility;

(iii) *eidetic* impossibility.

2.2.3.1. The Austrian philosopher Ludwig Wittgenstein [Wien, 1889 – Cambridge, 1951] (Wittgenstein, 1979, p. 86), explicitly asserts that what the king of chess can do is laid down by the rules.

What idea do we have of the king of chess, and what is its relation to the rules of chess? [...] What the king can do is laid down by the rules. Do these rules follow from the idea? [...] No. The rules are not something contained in the idea and got by analyzing it. They constitute it. [...] The rules constitute the “freedom” of the pieces (Wittgenstein 1979, 86).

2.2.3.2. More recently, the thesis according to which rules are condition of the possibility of an action has been explicitly affirmed by Amedeo Giovanni Conte [*Pavia, 1934] and by John R. Searle [*Denver, 1932].

2.2.3.2.1. First document: Amedeo Giovanni Conte, *Saggio sulla completezza degli ordinamenti giuridici*:

In che senso affermo che un ordinamento normativo è trascendentale? In due sensi può affermarsi che un ordinamento normativo è trascendentale: e nel senso che esso è condizione di pensabilità dell'azione, e nel senso che esso è condizione di possibilità dell'azione stessa (Conte 1962, 196).

In which sense do I affirm that a normative order is transcendental? We can say that a normative order is transcendental in two senses: a normative order is condition of conceivability of an action, and a normative order is condition of possibility of the action itself.

2.2.3.2.2. Second document: John R. Searle, *Speech Acts. An Essay in the Philosophy of Language*:

I want to clarify a distinction between two different sort of rules, which I shall call regulative and constitutive rules. [...]

We might say that regulative rules regulate antecedently or independently existing forms of behavior; for example, many rules of etiquette regulate inter-personal relationships which exist independently of the rules. But constitutive rules do not merely regulate, they create or define new forms of behavior. The rules of football or chess, for example, do not merely regulate playing football or chess, but they create the very possibility of playing such games. [...]

Regulative rules regulate a pre-existing activity, an activity whose existence is logically independent of the rules. Constitutive rules constitute (and regulate) an activity the existence of which is logically dependent on rules (Searle 1969, 33-34).

2.2.3.2.3. The correlation between the concept of *constitutive rule* and the concept of *possibility* occurs again in (Searle 1995):

Some rules regulate antecedently existing activities. For example, the rule “drive on the right hand side of the road” regulate driving; but driving can exist prior to the existence of that rule. However, some rules do not mere regulate. They also create the very possibility of certain activities. Thus, the rules of chess do not regulate an antecedently existing activity. [...] Rather, the rules of chess create the very possibility of playing chess (Searle 1995, 27 and 43-48, Searle 2010, 97-98).

2.3. Third Dichotomy: Presence-Impossibility vs. Absence-Impossibility

2.3.1. Let us consider now the two following examples of *nomophoric* (or *rule-related*) impossibility:

[Example 3.] impossibility of castling if the king is under check;

[Example 7.] impossibility of castling in draughts/checkers⁸.

These look similar (they are both *nomophoric* or *rule-related* impossibilities). They are apparently homogeneous. But are they really?

2.3.2. In the first example (**[Example 3.]** *impossibility of castling if the king is under check*), the impossibility derives from the *presence* of a certain rule: in particular, it derives from the presence of a *deontic* eidetic-constitutive rule that forbids castling if the king is under check.

In the second example (**[Example 7.]** *impossibility of castling in draughts/checkers*), the impossibility derives from the *absence* of a certain rule: in particular, it derives from the absence of an *ontic* eidetic-constitutive rule, that constitutes the *praxeme* “castling” in draughts⁹.

We shall call the impossibility deriving from the *presence* of certain rules: “*presence-impossibility*”.

We shall call the impossibility deriving from the *absence* of certain rules: “*absence-impossibility*”.

Thus we may draw a third dichotomy [*Dichotomy 3.*]:

[DICHOTOMY 3.]

presence-impossibility (due to the presence of certain rules)

vs.

absence-impossibility (due to the absence of certain rules).¹⁰

2.3.3. The distinction between *presence-impossibility* and *absence-impossibility* might very well explain a thesis formulated by Ludwig Wittgenstein [Wien, 1889 – Cambridge, 1951] (Wittgenstein 1967, § 134, 315):

Statt: ‘kann nicht’, sage:

‘Es gibt in diesem Spiel nicht.’

Statt: ‘Man kann nicht im Damenspiel nicht rochieren’, sage:

‘Es gibt im Damenspiel kein rochieren.’

Instead of ‘you cannot’, say:

‘It doesn’t exist in this game.’

Instead of: ‘you cannot castle in draughts’, say:

‘In draughts castling doesn’t exist’ (Wittgenstein 1967, § 134, 315)¹¹.

2.4. Fourth Dichotomy: Token-Impossibility vs. Type-Impossibility

2.4.1. Example 7. (**[Example 7.]** *impossibility of castling in draughts*) recalls another famous example of *absence-impossibility* discussed by legal philosophers: the impossibility of electing judges of the Constitutional Court (according to the Polish Constitution of 1952), because of the lack of norms, within the Polish Constitution itself, concerning the practice of electing the judges of that particular Court.

The problem is described by the Polish legal philosopher Zygmunt Ziemiński [1920-1996] (Ziemiński 1966). According to Ziemiński, there is a gap (a gap of construction, a construction-gap) in the Polish

⁸ See (Wittgenstein 1967, § 134, 315).

⁹ On the concept of eidetic-constitutive rule see (Conte 1985).

¹⁰ Notice that example 7 (**[Example 7.]** *impossibility of castling in draughts/checkers*) is a counterexample to the so-called Hume’s Guillotine according to which a norm(ative statement) cannot be derived from a fact(ual statement). In example [7], a *Cannot* (a normative cannot) is derived from an *Is*.

¹¹ According to Conte’s interpretation (Conte 2001): “the phrase ‘castling in draughts/checkers’ is incompatible both with the semantics of the term ‘castling’ (that is determined by eidetic-constitutive rules), and with the semantics of the term ‘draughts/checkers’ (that is determined by eidetic-constitutive rules)”.

Constitution of 1952, because while the Constitution establishes that the judges of the Constitutional Court may be elected, it does not lay down the conditions or procedures according to which the judges are to be elected.

Therefore, in the Polish legal order (of 1952), the election of the judges of the Constitutional Court is an impossible act because of the lack of norms concerning the mode of election.

Here is Ziemiński's relevant passage:

Selon l'article 50 de la Constitution de la République Populaire de Pologne du 22.VII. 1952 les juges sont éligibles: la loi ordinaire déterminera le mode d'élection. Mais [...] aucune loi concernant l'élection des juges n'a été instituée depuis 1952, et les juges sont nommés par le Conseil d'État en application de lois instituées antérieurement. La Constitution a ordonné l'élection des juges, mais faute de règles d'organisation construisant cet acte, l'élection est impossible. Elle ne peut pas être organisée d'une façon quelconque, parce qu'elle doit être organisée selon les dispositions d'une loi, et cette loi n'existe pas. C'est un exemple typique d'une lacune de construction (Ziemiński 1966b, 41-42).

Under chapter 50 of the Constitution of the Popular Republic of Poland of 22.VII. 1952, the judges are elected. Ordinary law will establish the modes of their election. However, [...] no law regarding the election of the judges has been passed since 1952; consequently, the judges are appointed by the State Council following the laws established in the past. The Polish Constitution has decreed the election of the judges; yet, because of the lack of norms regulating that act, the election is impossible. It cannot be organised differently, for it has to be organised according the law, a law which does not exist. This is an example of a construction gap.

Ziemiński distinguishes two kinds of gaps [in German: *Lücken*; in French: *lacunes*, in Italian: *lacune*] in a legal order:

- (i) the gap due to the lack of a *norm of conduct* and a second type of gap;
- (ii) the gap due to the lack of a *norm of construction* [in Polish: *norma konstrukcyjna*] (as in the case of the election of the judges of the Polish Constitutional Court).

[...] dans le domaine des règles d'organisation, le manque d'une certaine règle construisant un acte de caractère conventionnel a des conséquences tout à fait différentes de celles du manque d'une simple règle de conduite. À défaut d'une règle de conduite, un acte est indifférent au point de vue de la loi. À défaut d'une règle d'organisation, un acte de caractère conventionnel est impossible (Ziemiński 1966b, 42)¹².

Within the domain of organisation rules, the lack of a certain construction rule for a conventional act produces an entirely different effect from that produced by the lack of a simple conduct rule. In the absence of a conduct rule, an act is legally indifferent. In the absence of an organisation rule, a conventional act is impossible.

There is a parallelism between **Example 7.** (*impossibility of castling in draughts/checkers*), and **Example 8.** (*impossibility of electing the judges of the Constitutional Court according to the Polish Constitution of 1952*).

But there is a crucial difference between these two examples of nomophoric absence-impossibility.

2.4.2. Let's look more closely at the two examples (Example 7. and Example 8.).

¹² According to Ziemiński (Ziemiński 1968, 132-133) there is another example of impossibility due to the *absence of a norm of construction*: [Example 9.] *impossibility of revoking a deputy of the Polish Parliament after the promulgation of the Constitution of 1952*. Ziemiński says:

"Selon l'article 2 al. 2 de la Constitution de la République Populaire de Pologne du 22.VII.1952, les députés à la Diète (*Seym*) sont révocables par les électeurs qui les avaient élus au suffrage universel. Mais aucune loi concernant la révocation de députés à la Diète n'a été instituée depuis 1952, donc la révocation d'un député est, par conséquent, *impossible*." On absence-impossibility see (Passerini Glazel 2003, 202-207).

[Example 7.] impossibility of castling in draughts/checkers (Ludwig Wittgenstein);

[Example 8.] impossibility of electing the judges of the Constitutional Court according to the Polish Constitution of 1952.

In both examples, the impossibility is a matter of (absence of) *constitutive rules*. But there is a difference.

To understand the crucial difference between these two examples, we may apply the fundamental distinction made by the American philosopher Charles Sanders Peirce [Cambridge (Massachusetts), 1839 - Milford, 1914]: the distinction between *type* and *token*.¹³

2.4.2.1. In the game of draughts/checkers, castling is not possible because there is not the type “castling”.

We shall call this first form of *absence-impossibility* “*type-impossibility*”.

2.4.2.2. On the other hand, in the Polish constitutional game, there is, according to the Constitution of 1952, the type “electing the judges of the Constitutional Court”. But, in the Constitution of 1952, there are no rules (hypothetical-constitutive rules) that make possible to instantiate a *token* of the type “electing the judges of the Constitutional Court”.

Therefore, we shall call this second form of *absence-impossibility* “*token-impossibility*”.

Thus we may draw a fourth, and last, dichotomy [Dichotomy 4.]:

[DICHOTOMY 4.]

token-impossibility

vs.

type-impossibility¹⁴.

The example [8]:

[Example 8.] *impossibility of electing the judges of the Constitutional Court according to the Polish Constitution of 1952* is an example of *token-impossibility*.

The example [7]:

[Example 7.] *impossibility of castling in draughts/checkers* is an example of *type-impossibility*.

3.1. List of Our Four Dichotomies [Dichotomy 1.-Dichotomy 4.]

[Dichotomy 1.] *Praxical impossibility vs. non-praxical impossibility*

[Dichotomy 1.] *Nomophoric impossibility vs. non-nomophoric impossibility*

[Dichotomy 3.] *Presence-impossibility vs. absence-impossibility*

[Dichotomy 4.] *Token-impossibility vs. type-impossibility.*

3.2. List of Our Eight Eidotypes [Eidotype 1.-Eidotype 8.]

Through the four dichotomies (*first dichotomy: praxical impossibility vs. non praxical impossibility; second dichotomy: nomophoric impossibility vs. non-nomophoric impossibility; third dichotomy: presence-impossibility vs. absence-impossibility; fourth dichotomy: token-impossibility vs. type-impossibility*)

3.
Overview (Four
Dichotomies, Eight
Eidotypes, Nine
Examples)

¹³ See (Passerini Glazel 2003).

¹⁴ The paradigm “*token-impossibility*” and “*type-impossibility*” has been introduced by Paolo Di Lucia, *Token-Impossibility vs. Type-Impossibility* (paper delivered at the Bocconi University of Milan, 8th March, 2011).

we have determined *eight* forms of impossibility.

These eight forms of impossibility are eight ideal types, eight eidotypes [in German: *Idealtypen*, or *Eidotypen*; in Italian: *tipi ideali*, or *eidótipi*] for a philosophy of impossibility:

- [Eidotype 1.] *Praxical* impossibility
- [Eidotype 2.] *Non-praxical* impossibility
- [Eidotype 3.] *Nomophoric* impossibility
- [Eidotype 4.] *Non-nomophoric* impossibility
- [Eidotype 5.] *Presence*-impossibility
- [Eidotype 6.] *Absence*-impossibility
- [Eidotype 7.] *Token*-impossibility
- [Eidotype 8.] *Type*-impossibility

3.3. List of Our Nine Examples [Example 1.–Example 9.]

- [Example 1.] impossibility for two colours to cover an identical piece of surface completely;
- [Example 2.] impossibility in a chess game of moving right off the chessboard;
- [Example 3.] impossibility of castling if the king is under check;
- [Example 4.] impossibility to ordain a woman priest in the Roman Catholic Church;
- [Example 5.] impossibility for someone to forgive himself;
- [Example 6.] impossibility of promising feelings;
- [Example 7.] impossibility of castling in draughts;
- [Example 8.] impossibility of electing the judges of the Constitutional Court according to the Polish Constitution of 1952;
- [Example 9.] impossibility of revoking a deputy of the Polish Parliament according to the Polish Constitution of 1952.

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MIMETIC CONSTITUTIVE RULES

abstract

This paper deals with the question of how constitutive rules in Searle's sense can be subject to definite constraints, or boundaries. Three kinds of boundaries to institutional constitution are here identified: ontological, structural, and pragmatic. All these kinds of boundaries to some extent depend on the context of the broader social practice for which rule-constituted institutions are created. Further, the paper introduces a fourth kind of boundaries, called "mimetic", which limit the process of institutional constitution according to a pre-existing social or natural reality that the institution is meant to imitate.

keywords

Searle, constitutive rules, social ontology, institutional facts

1. Introduction Searle's new book *Making the Social World* (Searle 2010) answers many of the crucial questions that have been emerging during the last ten years with regard to his theory of social and institutional reality. The ambiguous status of the constitutive rules of speech acts has been clarified, and the circularity of his theory of language based on constitutive rules has been solved by appealing to the autonomous signifying force of meaning. The problem of freestanding Y terms has been answered by means of a wide-ranging theory of institutional reality as consisting of three kinds of different function-imposing phenomena. The question of unintentional institutional phenomena has been addressed through the concept of "systematic fallouts". Finally, the ontology of constitutive rules has been made clearer by recurring to the concept of "standing declaration", thus interpreting constitutive rules as speech acts of a given kind.

Still, one major topic of Searle's social ontology remains to be clarified. In fact, when we consider Searle's traditional formula of constitutive rules "X counts as Y in context C", it is striking to see that almost all the elements of this formula have received a great deal of attention and discussion, *apart from* context C¹. The relation between the X term and the Y term of the formula, for instance, has been the main point of discussion in Barry Smith's criticism regarding freestanding Y terms (Searle and Smith 2003, Smith 2003); the nature of term Y was specifically discussed at length by Searle himself (Searle 1996) and further specified by Frank Hindriks when dealing with the concept of "practical import" (Hindriks 2005); the logical nature of the "count-as" locution has been the subject of much work in the last decades, for example in deontic logic and artificial intelligence (see, among many other authors, Jones and Sergot 1996). All these discussions dwell on different elements of the "count-as" formula, but none of them addresses specifically the question of context, namely, of how the constitutive power of rules can depend on contextual considerations. This is something I will try to do in this paper, by presenting some research results regarding context in social ontology.

The structure of the paper is as follows. In Section 2, I briefly present the concept of "rational determination" and provide as an example some typical conditions (or, as I will say, "boundaries")

¹ It should be noted, however, that the Derrida-Searle debate regarding speech acts (see for example Derrida 1988) can be interpreted as relevant for the question of context in connection with constitutive rules, particularly if we consider constitutive rules to be declarations, as Searle does in *Making the Social World*. I am thankful to the anonymous referee of this paper who pointed out this fact to me.

to the constitutive power of rules, conditions which are sensitive to the context in which these rules operate. Then, in Section 3, I introduce a new kind of boundary to institutional constitution—which I call mimetic boundaries—and show how they, too, depend on contextual considerations. Finally, in Section 4, I draw some conclusions.

In order to understand how constitutive rules can depend on contextual considerations, let me make an example taken from legal philosophy. In a paper titled *How Facts Make Law* (Greenberg 2004), Mark Greenberg discusses the relation of determination between descriptive facts about legal practice and normative facts about the content of law. This is a major topic of legal ontology, given that the relation between acts of legal practice and the normative content of law is for the most part determined by more or less explicit constitutive rules stating that an act of type X counts as the realization of a given legal institution with a specific normative import (see in this regard, for example, MacCormick 1986). Hence, the question that Greenberg addresses here can be rephrased in socio-ontological terms as the problem regarding what kind of relation between X and Y terms can be determined by legal constitutive rules.

Now, in order to describe this relation, Greenberg introduces the notion of “rational determination” as opposed to mere “metaphysical determination”. In his view, metaphysical determination is a relation in which “there need be no explanation of why” some facts determine other facts, while rational determination is a relation in which facts can determine other facts only on rational grounds (at least to a certain degree), namely, only if the relation is not entirely arbitrary. In the light of this distinction, Greenberg then observes that “the metaphysical-determination doctrine is not enough to capture our ordinary understanding [...] of the nature of the determination relation between the law practices and the content of the law”, because otherwise it would lead to paradoxical results:

For example, it is consistent with the truth of the metaphysical-determination doctrine that, say, the deletion of one seemingly unimportant word in one subclause of one minor administrative regulation would result in the elimination of all legal content in the United States—in there being no true legal propositions in the U.S. legal system (though there is no explanation of why it would do so) (Greenberg 2004, 164).

Instead, Greenberg maintains, the relation of determination that we must suppose to hold between descriptive facts about legal practice and normative facts about the content of law namely, in our terms, the relation that holds between X and Y terms in legal constitutive rules is a rational, and not brute, relation. He writes:

There are indefinitely many possible mappings, from complete sets of law practices to legal content (to complete sets of legal propositions). As far as the metaphysical-determination doctrine goes, it could simply be arbitrary which mapping is the legally correct one. [...] By contrast, according to the rational-relation doctrine, the correct mapping must be such that there are reasons why law practices have the consequences they do for the content of the law (ibidem).

Now, I believe that this thesis on rational determination holds not only for law, but also for institutions in general. In most cases at least, there are boundaries that institutional constitution—and hence constitutive rules—cannot trespass: The relation between X and Y in constitutive rules cannot be entirely arbitrary, because it is a sort of rational determination. Searle had already noted something in this regard in *The Construction of Social Reality* (see for example Searle 1996, 86; 49ff.), even though I believe that *Making the Social World* provides new grounds for explaining this kind of rational determination. Here, in fact, constitutive rules are conceived as speech acts—namely, as “standing declarations”—and all speech acts are subject to conditions for successful performance. Hence, the

2. Boundaries to Institutional Constitution: Ontological, Structural and Pragmatic Boundaries

method by which we can identify the boundaries that define the limits of institutional constitution is not very different from that used in speech-acts theory, that is, we formulate paradoxical or conceptually unacceptable constitutive rules and see what “goes wrong” (Austin 1976, 14). I will take the game of chess as my paradigmatic example. Suppose that the game of chess is not the product of a century-lasting tradition but rather that I have invented it through a hard and long work of game-design. Now, would my activity of constituting this game through constitutive rules be subject to boundaries would it create a rational-determination relation? I think it is clear that I cannot do what I want when designing the game of chess. Consider, for example, the king. There are at least three different kinds of constitutive rules which I believe would fail as standing declarations able to create the king in chess.

1. The color of the chessboard is the King.
2. The King cannot be attacked by other pieces.
3. When you move the King, you have won.

These rules fail for three different reasons. Rule (1) fails for *ontological* reasons: In the game of chess, the king is meant to be a piece, namely, an object that can be placed and manipulated by players on the board, and a color cannot be manipulated as an object (nor can sounds, numbers, states of affairs, or events, and so on). Rule (2), instead, fails for *structural* reasons: The structure of the game of chess would be seriously flawed if it included a rule such as (2). The problem, in this case, arises from the relation that the king holds with the network of other rule-defined elements of chess, because in this game the king must be amenable to attack—otherwise checkmate would not be possible and hence the game would not have consistent victory conditions. Finally, Rule (3) fails for *pragmatic* reasons: If the game of chess included this rule, then it would be seriously defective as a game, because it would be simply too easy to win.

In all these cases, contextual considerations are relevant for assessing the rational-determination relation which is laid down through constitutive rules. Clearly, chess is not a standalone practice, but rather finds its meaning in the context of a broader practice that we may roughly label “competitive game-playing” (see Schwyzer 1969, Marmor 2007 in this regard), and this context is crucial in understanding why Rules (1)-(3) fail as constitutive rules. This is apparent for Rule (3), which fails for pragmatic reasons: In fact, it is precisely the context of competitive game-playing that which requires victory conditions to be not trivial, because otherwise the game would not pose any serious challenge to players. But something similar could be said also for Rules (1) and (2). It seems for example that, though structural boundaries involve questions of internal consistency, the centrality of this inconsistency depends on contextual considerations: In a game, many kinds of inconsistency can be accommodated but not one that directly impacts over conditions of victory, whereas in other contexts different parts of the overall structure could be more relevant. The same kind of dependence on contextual considerations can be argued for with regard to ontological boundaries: For example, it could be observed that the reason why all sorts of things can serve as pieces of chess is that chess is a game, something not really serious and basically done for fun; probably we could not say the same if chess were part of a complex religious ritual.

The conclusion, then, is that all of these boundaries are sensitive to the broader practice in which the process of institutional constitution takes place, and this is exactly the sense in which I believe that the role of context should be discussed in depth when dealing with the rational-determination relation which is created by constitutive rules. The topic of boundaries to the constitutive power of rules (ontological, structural, and pragmatic boundaries) has not received much attention in the scholarly literature on social ontology (with some exceptions: see for example Lorini 2000, Azzoni 2003, Żelaniec 2003, Roversi 2010), while probably all these kinds of boundary (pragmatic, ontological, structural)

would deserve a specific and separate treatment. What I would like to show in what follows is instead that there is *another* kind of boundary to institutional constitution, one which so far has not been discussed at all in the literature on social ontology and which in its own turn frames a particular kind of context-dependent relation of rational determination. I will call boundaries of this kind “mimetic”: Let me show how they work.

It is very well known that the game of chess has a long history. What is perhaps not always known of this history, however, is that during the Middle Ages chess acquired in Europe a strong symbolic and allegoric character: With pieces such as the knights, the rooks, the king and the queen, and the rules governing their mutual relationship, the game of chess gradually became an allegory, a symbolic representation of medieval society. In 1275, a Dominican friar called Jacopo (coming from the Lombard town of Cessole) delivered a sermon, and then wrote a book, in which this allegoric interpretation of chess turned into a justification of its rules. Very often the title of this book is abbreviated simply as *The Book of Chess*, but the original title was instead *Liber de moribus hominum et officiis nobilium*, namely, *Book of the Manners of Men and the Offices of the Nobility*. As it emerges from this title, Jacopo thought that it was possible to describe and comment the rules of chess by appealing to the “manners of men”. The following passage of his book very well exemplifies his view:

*The black king stands on the fourth square of the board. To his right there is a knight on the white square and an elder [which is what we now call “bishop”] and a rook on the black squares. To his left the same three men are on squares of the reverse color. Because knights represent the king’s honor and crown, the knight on the right stands on the same color square as the king. The one on the left is on the same color square as the queen. [...] The whole of the kingdom is governed best by this arrangement. (Jacopo da Cessole, *The Book of Chess*, IV, 2)*

Now, keeping in mind this passage, let us get back to the imagined situation in which I, as a game-designer, invent the game of chess from scratch. If, in designing chess, I adopted Jacopo’s descriptive interpretation of its rules, then the constitutive rules of chess would be subject to another kind of boundary, one which is different from the ontological, structural and pragmatic boundaries introduced in Section 2. Consider the rules of chess concerning the initial positions of the two black knights and the two black bishops:

4. The two pieces that starts the game on square b8 and g8 count as the black knights.
5. The two pieces that starts the game on square c8 and f8 count as the black bishops.

Suppose now that, in designing the game of chess, I decide to swap the relative positions of these pieces: The black knights will start game on b8 and g8 and the black bishops on c8 and f8. None of the boundaries identified in Section 2—neither the ontological, nor the structural, nor the pragmatic boundaries—would prevent such a change. In fact, this change would not have any impact on the underlying ontology of pieces: They still are objects that can be manipulated. Further, no structural inconsistency arises here if we simply swap the black knights with the black bishops, and even though this change can have a significant impact on game tactics and concrete game play, the game of chess is consistent nonetheless. Finally, this change would certainly not have any impact on the fact that chess is a competitive game (with rules, conditions of victory, etc). Hence, the envisaged change would perfectly fall within the ontological, structural, and pragmatic boundaries.

However, according to a descriptive interpretation of the constitutive rules of chess such as that maintained by Jacopo, this change would not be allowed. In fact, if we swapped the relative positions of knights and bishops, the black knights would not stand on squares of the same color as that of the black king (on the right) and the black queen (on the left). This sameness of color, however, is required

3. Mimetic Boundaries

because it symbolizes the fact that (to quote Jacopo again) “knights represent the king’s honor and crown”. Hence, under Jacopo’s interpretation, the kind of rational determination which is typical of the constitutive rules of chess includes not only considerations of consistency, playability and deepness, but also considerations of descriptive accuracy (at least in a very loose sense of *descriptive*). I have chosen the term “mimetic” for boundaries of this kind, in order to capture the loose sense of description and representation that seems to emerge in these cases of institutional constitution. It is important to note that mimetic boundaries are sensitive to contextual considerations, just like the other kinds of boundary. For example, mimetic boundaries can play a greater or smaller role in the game-playing context (they are absolutely central in simulation-type strategy war games, while they are not so relevant in abstract games or card games) but typically they cannot overcome considerations of deepness, enjoyment, and longevity of the game. When switching the context of constitution, however, the weight of mimetic considerations changes. Consider the case in which a computer simulation similar to a strategic videogame is designed not for playing purposes but to convey historical information, for example as an introductory presentation in a museum. Here, clearly, the constitutive rules of the simulation—rules that even in the case of videogames are laid down through a software-design activity—must be mimetic in the first place, above all other considerations. And the same would hold if we conceived chess *only* as a means to symbolize and represent a social setting, therefore putting Jacopo’s descriptive interpretation to its extreme and entirely dismissing the nature of chess as a game. In this case, many rules of chess could be rephrased and reformulated according to criteria that have nothing to do with fun, longevity, deepness and challenge. Someone could object that similar cases of pure description are not to be interpreted as examples of institutional constitution. For sure, they are extreme examples, but they show something significant, namely, that a set of constitutive rules can have a mimetic or representational use and that the necessity of this mimetic character depends on the context of constitution. Very often this representational use is, in a sense, conveyed by the very concept of the practice: Think, for example, of institutional concepts involved in religious rituals such as Baptism or Holy Communion. Searle says in *Making the Social World* that these rituals are grounded on false beliefs, even though the participants in those practices are not aware of this falsity (Searle 2010, 118-9). I do not intend to take a stance on this thesis, but I think that in any case the very concept of a religious practice entails that its constitutive rules are not simply arbitrary: Instead, they can very well be mimetic, because representative of acts and events that have a supernatural and holy character (in our examples, Baptism and Holy Communion are respectively mimetic of John’s original baptism of Jesus Christ and Jesus’ Last Supper). Similar considerations seem to support the view that mimetic boundaries are strongly linked with the context of constitution, just like the other kinds of boundary, but also that they create a particular kind of rational-determination relation based on a continuous reference to other facts, acts, or events that are “imitated” by the institution. We could even venture to hypothesize that every context of institutional constitution—namely, every general practice in which the process of institutional constitution may find its place—has a certain *degree of mimesis* allowed, and that therefore it is usually clear (at least roughly) whether in that context mimetic considerations must or must not prevail over other kinds of considerations. In this light, rituals conceived as contexts for institutional constitution would have a higher degree of mimesis than games, for example.

- 4. Conclusions** The main outcome of this paper can be described as follows. Constitutive rules set up a relation of rational determination between the X and Y terms of the “count-as” locutions, which is to say that they create a relation based on reasons. This means that constitutive rules are not entirely free in their power to create institutional reality: Instead, they are subject to boundaries, mainly ontological, structural, and pragmatic boundaries. All these boundaries are sensitive to the context in which constitutive rules find their place, and hence to the broader social practice within which they create

institutional concepts. Understanding in detail how these boundaries work entails a better grasp of the real role played by context in the “count-as” formula.

Among the boundaries to institutional constitution, there are some which up to now had not been recognized: mimetic boundaries, which emerge when an institution created through rules “imitate” a given pre-existing reality, be it a natural or social reality. Mimetic boundaries, too, are sensitive to the context of the broader practice within which the process of constitution takes place: They, too, define a context-dependent rational determination doctrine, but one which in turn refers to another pre-institutional reality. Hence, in this case, to justify a constitutive rules means to assess how it is, other than constitutive, “descriptive” of something else (at least in a loose sense of *description*).

These results are relevant for social ontology in general, because they show that the role of context in constitutive rules can be discussed by analyzing the boundaries to institutional constitution, and hence the rational-determination relation these rules set up. But they are relevant for all kinds of institutional ontology as well, because they show how in certain contexts the question of rational determination, and hence of how an institution is reason-based, can be answered in terms of *mimesis*, that is, in terms of how that institution is able to “imitate” other aspects of reality.

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HUMAN DIGNITY AS A STATUS VS. HUMAN DIGNITY AS A VALUE. A DOUBLE NATURE

abstract

My paper provides an analysis of two antithetical theories about the nature of human dignity: human dignity as a status, human dignity as a value. Strengths of the theories consist in having developed two relevant traits of human dignity, respectively: human dignity as an object of rights, human dignity as a ground of rights. Weaknesses of the theories consist in both having excluded one of the two elements. A third paradigm will be provided, which tries to explain human dignity both as a status and as a value.

keywords

Human dignity, status, value, rights

0. Purposes My paper is intended to provide an analysis of two antithetical paradigms about the *nature* of human dignity, that Constitutions and Charters of Rights, European and non-European, have progressively treated as ground of rights, almost starting from the second half XX century. Two of the most important examples are the *Basic Law* for the Federal Republic of Germany, come into effect on 23rd May, 1949; and the *Charter of Fundamental Rights* of the European Union, come into effect on 1st December, 2009. The paradigms are the conception of human dignity as a *status* and the conception of human dignity as a *value*.

I found an exemplification of these paradigms in the theories of two contemporary philosophers, respectively Jeremy Waldron (*1953), an American philosopher of law¹, and Herbert Spiegelberg (1904-1990), a German philosopher, who played a prominent role in the advancement of the phenomenological studies in the United States².

Strengths and weaknesses of human dignity as a *status* and human dignity as a *value* will be highlighted and a third paradigm will be provided. This last one tries to overcome the weaknesses of the previous theories, providing a conception of human dignity which explains it as characterized by a double nature, both as a *status* and as a *value*. An exemplification of this theory can be found in the works of Aurel Kolnai (1900-1973), a Hungarian philosopher, who studied ethics and axiology, influenced both by phenomenological tradition and by British analytic philosophy³.

1. Human Dignity as a Status
1.1. A Juridical Idea

Waldron argues that dignity is born as a *juridical idea*, as a *status*, tied up with *rank*, conferred to some individuals only, in virtue of their offices (Waldron 2009, 2). He points out that, in modern time, starting from Kant, the concept has changed its *nature*: it turns into a *moral idea*, conceived as an *intrinsic worth*, recognized to *every single* human being, in virtue of their *humanity*.

According to Waldron the thesis that human dignity is an intrinsic worth is wrong: the concept of human dignity has a *legal recognition* and *no need of an underlying moral dignity* is required (Waldron 2009, 9).

¹ See Waldron (2009). Waldron is Professor at the New York University School of Law.

² See Spiegelberg (1971). Spiegelberg studied at the universities of Heidelberg, Freiburg, and Munich. In Freiburg he met Edmund Husserl, who influenced the prosecution of his studies. Spiegelberg's doctoral dissertation was written under the direction of the phenomenologist Alexander Pfänder and was titled *Gesetz und Sittengesetz*. Spiegelberg applied the phenomenological method to the analysis of law and morality, promoting an "ontological deontology".

³ See Kolnai (1976).

Placed as ground of human rights, the term “dignity” has changed in extension, but not in intension: it still denotes a *status*, assigned no longer to some individuals only but to everyone (Waldron 2009, 28-29).

It expresses the idea of a high-ranking *status*, comparable to a rank of nobility – assigned now *equally* to every person (Waldron 2009, 12).

1.2. General Rules vs. Particular Rules

Explaining human dignity as a *status*, Waldron makes a distinction. He says:

If human dignity is regarded as a status, there remains a duality between general norms establishing that status and particular norms like those that prohibit degradation (Waldron 2009, 6).

Waldron distinguishes between *general norms* and *particular norms*: general rules *create* human dignity *status*; particular rules *protect* that *status* (Waldron 2009, 7).

Some of particular rules are *affirmative*; some are *negative*.

An example of the affirmative ones is the controversial provision of the Universal Declaration of Human Rights, which says that “everyone who works has the right to just and favourable remuneration ensuring for him and his family an existence worthy of human dignity” (*Universal Declaration of Human Rights*, Article 23 (3))⁴.

An example of the negative ones is the *ban* on degrading treatment.

According to Waldron both kinds of particular rules are important, but they do not exhaust the *status* of human dignity, *established* by general norms, which carries many other rights and duties (Waldron 2009, 6-7).

In my opinion Waldron’s *general norms* can be treated as Searle’s *constitutive rules*⁵: Waldron’s account of human dignity as a *status*, something *created* by norms, is in agreement with Searle’s thesis that human rights are *deontic powers* deriving from an assigned *status* (Searle 2010, 176).

1.3. Status vs. Intrinsic Worth

Explaining human dignity as a *status*, Waldron gives an answer to Jeremy Bentham’s objection that the reasoning supporting the justification for rights is *incoherent*.

Bentham refers to *freedom*, but the same objection may work for *human dignity*, as Waldron says: the defenders of rights cite freedom or human dignity as the ground of their demands; but freedom or human dignity, which are cited as the *existent ground* of rights, are also *what is demanded*⁶. The subject of objection is interchangeable, it depends on what is specified both as ground of rights and as right demanded: freedom, in Bentham’s theory; human dignity, in Waldron’s theory.

According to Waldron the objection of incoherence is dispelled if human dignity is treated not as an *intrinsic worth*, as Bentham does with freedom, but as a *status*. Conceived as a *status*, human dignity can be treated both as an *existent ground* and as a *right demanded*: a *status*, something *accorded*, can be violated and, at the same time, *demanded*; conversely, an *intrinsic worth*, something *inherent*, cannot be violated nor demanded (Waldron 2009, 5).

Waldron’s distinction between human dignity as a *right* and human dignity as a *ground* of rights is linked with Waldron’s distinction between general rules and particular rules: *general rules* establish the general *status* of human dignity, which provides the *ground* of rights; *particular rules* specify the general *status*, concretizing it in an *object* of rights.

4 John Searle highlights the controversial character of positive rights: “Against whom exactly does one have all these rights?” (Searle 2010, 184).

5 About the concept of constitutive rules, see Searle (1969, 1995, 2010).

6 “Men ought to be free because they are free, even though they are not” is the reasoning of defenders of rights, called by Bentham “absurd and miserable non-sense” (Bentham 1987, 50).

Waldron agrees on Bentham's refusal of natural rights. Nevertheless, contrary to Bentham, who bars freedom from the feature of existence in reason of his refusal of natural rights, Waldron is allowed to assign an existence to human dignity explaining it as *status*. Waldron agrees with Bentham on the fact that something as an intrinsic worth does not exist, but he says that human dignity exists as a *status*, while Bentham does not actually consider "status" as something existent.

Waldron's analyses are in agreement upon those of John Searle, who states that, once we get clear about the ontological status of a juridical entity, its existence ceases to be mysterious (Searle 2010, 176).

1.4. An Objection to Waldron's Thesis

My objection to Waldron is that while he can grant human dignity an existence as an object of rights, he cannot justify it as a ground of rights.

He adopts the concept of *status* both for granting human dignity an existence as an object of rights, and for justifying it as a ground of rights. But while the concept of *status* is a necessary condition to grant human dignity an existence as an object of rights, the same concept is neither a sufficient nor a necessary condition to justify human dignity as a ground of rights.

Waldron's distinction between *general rules* and *particular rules* does not overcome Bentham's objection: the *general status* quoted by Waldron as an the *existent* ground for rights is *also* what is *demanded*. Waldron's distinction between *object* of rights and *ground* of rights means, at most, that rights are being put forward as *self-justifying*.

According to Bentham, the accusation of incoherence is grounded on the fact that human rights *do not have an independent justification*. He says about freedom: "It is from beginning to end so much flat assertion: it neither has anything to do with reason nor will endure the mention of it. It lays down as a fundamental and inviolable principle whatever is in dispute" (Bentham 1987, 74).

The same objection of incoherence is raised by Max Scheler to Kantian foundation of ethics: this last one is incoherent since it does not provide an independent basis for justification of duties⁷.

I argue that a necessary condition to grant human dignity an existence as a ground of rights is to consider it not only as a *status*, but also as a *value*.

Searle states that we can grant an existence to human rights through a *status* and, then, justify human rights considering a *conception of human nature*⁸.

In my opinion his approach is faulty since he does not consider that granting human dignity an existence as a ground of rights requires, firstly, to consider it as a *value*.

The thesis according to that human dignity can be explained as a *value* is argued by Herbert Spiegelberg.

2. Human Dignity as a Value

2.1. Potential of Linguistic Phenomenology

Herbert Spiegelberg agrees with Waldron upon the fact that human dignity is something that Charters of Rights recognize *equally* to every single human being, but in addition he states the opposite thesis that human dignity is an *intrinsic worth*.

He argues his thesis applying the method of *linguistic phenomenology*, a method of analysis of concepts, shared by the analytic philosopher John Langshaw Austin and the phenomenologist Alexander Pfänder⁹. Spiegelberg highlights the potential of a linguistic phenomenology.

This phenomenology consists in a linguistic analysis of the ordinary meanings, that provides the indispensable and preliminary means to access to the phenomena, not yet the direct study of the phenomena themselves. Language furnishes the means to direct our attention to the facts which constitute our experience, which, without it, we would tend to overlook (Spiegelberg 1981, 84).

⁷ According to Scheler, an independent basis for justification of duties is given by values, not by the form of a moral law, as Kant argues. See Scheler (1916).

⁸ A conception of human nature is "a conception of what is valuable, actually or potentially, about our very existence" (Searle 2010, 190).

⁹ See Spiegelberg (1981).

Moreover, linguistic phenomenology allows to remove the inconsistencies of our everyday talk about concepts (Spiegelberg 1971, 189).

Applying linguistic phenomenology, Spiegelberg introduces some relevant distinctions.

2.2. Something Inherent and Something to be Achieved

Firstly, Spiegelberg distinguishes between three different meanings we use to confuse in ordinary talk:

1. Dignity *itself*;
2. *Expression* of such dignity in the behaviour;
3. *Recognition* of both by outsiders.

Differently from Waldron, Spiegelberg argues that calling human dignity *inherent* and yet something to be *achieved* is not inconsistent, because we *mean* two different things. In the first case we mean something which man do not need and cannot “strive for”; in the second case we mean two possible things, both the *manifestation* of the inherent dignity by the attitude of its owner and the *recognition* of inherent dignity by its erstwhile deniers (Spiegelberg 1971, 189-190).

Moreover, Spiegelberg distinguishes between:

1. Dignity *itself*;
4. *Claims* issuing from dignity.

He argues that talking about human dignity as *unassailable* and yet as *violated* is not inconsistent, since we still mean two different things: in the first case we mean that in an ultimate sense human dignity cannot be destroyed by any attacks; in the second case we mean that violations are in conflict with human dignity since they do not fulfill the *claim* to respect issuing from it (Spiegelberg 1971, 190).

2.3. Intrinsic Worth and Worthiness of Respect

Spiegelberg investigates the distinction between (1.) and (4.), noticing that, in ordinary talk, there are two special connotational definitions of the term “human dignity”:

1. Human dignity as *intrinsic worth*,
5. Human dignity as *worthiness of respect*.

Human dignity as *intrinsic worth* means *inner, self-sufficient* worth of beings by themselves, which does not call for any outside complement.

Human dignity as *worthiness of respect* means an attitude that demands a *complement*: in virtue of *worthiness of respect* human beings have something like a *claim* to attention, approval, support, and they call for the *fulfilment* of a claim.

While human dignity as *intrinsic worth* is a matter of mere *contemplation*, human dignity as *worthiness of respect* *calls for action*.

Anyway, it is in virtue of the first sense of dignity, that human beings are worthy of respect: the *intrinsic worth* provides the *ground* for the *claim* to respect and for its *fulfilment*, through *rights* (Spiegelberg 1971, 192-193).

In this way Spiegelberg can explain human dignity as a *ground* of rights: human dignity is a ground of rights as much as it is a *value* that provides the ground for *worthiness* of respect and for its *concretization*, through rights.

Spiegelberg also distinguishes between:

4. *claims*;
6. *rights*.

A claim is the *act* directed toward obtaining certain things due to the individual *regardless* of all artificial regulations.

Rights are the *instruments* that give the possibility of *doing* something (Spiegelberg 1939, 347).

2.4. An Objection to Spiegelberg

Differently from Waldron, Spiegelberg gives an account of human dignity as a ground of rights, but he does not explain human dignity as an object of rights.

He suggests that one of the best approaches to concretely see human dignity is to start from the experience of *indignation* at the *indignities* suffered by human beings in concrete situations and to ask what revolt us most in what they have to undergo (Spiegelberg 1971, 195).

This approach allows to face the concrete situations out of which the outcry for human dignity was born, such as: being tortured and forced to make confessions; being segregated because of skin color or other native racial characteristics; being packed into overcrowded prison cells.

But this approach does not explain human dignity as an object of rights yet.

Spiegelberg cannot explain human dignity as an object of rights, since he considers human dignity as an intrinsic worth only, but not as a *status*.

3. 3.1. Strengths and Weaknesses of Previous Paradigms

Human Dignity: A Double Nature

The theories of Waldron and Spiegelberg point out two different traits of human dignity: human dignity as a *status* and human dignity as a *value*.

I found out two strengths in Waldron's theory:

1. Contrary to Bentham, who bars freedom from the feature of existence in reason of his refusal of natural rights, Waldron grants human dignity an *existence*. Waldron agrees on Bentham's refusal of natural rights, but he is anyway allowed to assign an existence to human dignity explaining it as a *status*.
2. The definition of human dignity as a *status* allows to grant human dignity an existence in *law*, to concretize it as an *object* of rights, to *define* its content. This allows to overcome the problem of vagueness, typical of a *general clause*, such as human dignity, and to satisfy *rule of law* principle.

The weakness of Waldron's theory is that while it can grant human dignity an existence as an *object* of rights, it cannot explain human dignity as a *ground* of rights.

Being unable to explain human dignity as a ground of rights, the theory does not provide the necessary condition that ensures to the system of rights full *normativity*, the *justification* for rights existence and for their respect.

On the other hand, I found out these two strengths in Spiegelberg's theory:

1. It can explain human dignity both as a *ground* of rights and as a *claim*, thanks to the potential of a phenomenological analysis of language, which shows two relevant traits of human dignity: human dignity as a *value* and human dignity as a *worthiness of respect*.
2. Providing an account of human dignity as a *ground* of rights, Spiegelberg's theory provides the necessary condition to ensure for the system of rights full *normativity*.

Weakness of Spiegelberg's theory is that it does not provide an account of human dignity as a *status*. In this way, it cannot provide the necessary condition to ensure to human dignity an *existence in law*, a *determined* content, in order to satisfy *rule of law* principle.

I argue for an integration of Waldron's theory and Spiegelberg's theory is possible. It tries to explain human dignity as characterized by a *double* nature, both as a *status* and as a *value*, in order to ensure both rule of law principle and normativity.

An exemplification of this paradigm can be found in the analysis of Aurel Kolnai.

3.2. Kolnai's Account: Both a Status and a Value

Kolnai argues that human dignity can be considered both as an *ascriptive* concept and as a *descriptive* concept. It can be treated as an ascriptive concept, since it is something we *ascribe* to the person. As *ascriptive* human dignity is a *status* (Kolnai 1976, 258).

It can be treated as a *descriptive* concept, since we regard it as an inchoate *quasi-quality*, we ascribe to the person *as such*, independently of its distinctive qualities, modes of bearing, mental levels and attitudes, which can be *impaired* and *destroyed*, temporarily or irreversibly. Differently from the other qualities, such as dignity only, human dignity is not a matter of more or less, not a matter of virtue, and it "seems to be something 'inalienable'" (Kolnai 1976, 258). It is simply regarded as "the *basic quality of being-a-person*" (Kolnai 1976, 259)¹⁰, thus it *demands* respect (Kolnai 1976, 258).

It "seems to be something 'inalienable'" like a right, but not in the same manner (Kolnai 1976, 258).

Whereas rights can be *disregarded*, *negated*, *violated* or *suppressed*, human dignity can be *impaired*.

Nevertheless it can be impaired not *as a quality*, but as the correspondent *claim*. Since the claim to *respect* can be impaired, human dignity has to be protected as an *object* of rights (Kolnai 1976, 258-259).

So, according to Kolnai, human dignity has a *double nature*: it is "a kind of half-way house between a set of *prescriptive claims* and the *basic quality of being-a-person*", a "semi-fictitious, semi-real status '*ascribed*' to the person *as such*" (Kolnai 1976, 259)¹¹.

It has both the nature of a *status* and the nature of a *value*: as a *status* it has *ascribed* and *prescribed* as an *object* of rights; as a *value* it is recognized as the *basic quality of being-a-person*, *ground* of rights, which is to be specified in an *object* of rights.

As last analysis, human dignity is something *ascribed* to the person *as much* as it is *recognized* as the *basic quality of being-a-person*: "human rights are specified rules for other people's conduct towards a person, *grounded in human dignity*" (Kolnai 1976, 259)¹².

3.3. Conclusion

In conclusion, my work tried to develop an explanation of human dignity as characterized by a double nature, both as a *status* and as a *value*.

This is a possible way to explain human dignity both as an object of rights and as a ground of rights, as it is treated by the Charters of Rights, and to ensure to the system of rights both rule of law and normativity.

Nevertheless, the question concerning the relationship between a *status* and a *value* remains open: is human dignity reducible to the totality of rules, which *constitute* it as a *status*, providing the conditions for its existence in legal systems; or does a *concept* of human dignity as a *value*, preexisting to these rules, exist?

¹⁰ Emphasis added.

¹¹ Emphasis added.

¹² Emphasis added.

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RATIONALITY AS THE NORMATIVE DIMENSION OF SPEECH ACTS

abstract

My paper deals with Searle's account of the normative dimension involved in the performance of speech acts. I will first critically assess the rule-based speech act theory behind Searle's characterization of the normativity of language – arguing that this approach cannot explain what makes a certain illocutionary act the specific type of illocutionary act it is, both in literal and non-literal or indirect cases. As an alternative, I will endorse the inferentialist model of linguistic communication proposed by Bach and Harnish. Besides a benefit on the side of speech act theory, the inferentialist model – along with some suggestions offered by Grice's later reflections about rationality – can adequately account for the normative dimension arising from language. In particular, it enables to do so by emphasizing an aspect pointed out by Searle himself: the social character of the communication situation. I will claim that the presumption about the interlocutor's rationality could be regarded as the basic form of normativity deriving from the social character of the communication situation.

keywords

Speech acts, inferentialism, rationality, deontic powers

In this paper I address a crucial thesis maintained in Searle's *Making the Social World*, namely that "language is the basic form of public deontology" (Searle 2010, 82). My aim is to criticize the rule-based speech act theory underlying Searle's account of the normativity of language, arguing in favor of an alternative way of accounting for the normative dimension associated with the performance of speech acts. In order to deal with the criticism it is worth considering in the first place the way Searle characterizes the deontology related to the performance of speech acts.

Searle's rule-based approach to speech acts survives substantially unaltered since its early formulation in *Speech Acts* (1969), inasmuch as Searle avows that "it is tempting, and indeed true, to say that the constitutive rules [whose form is 'X counts as Y in C'] of the institutions of statement making and promising make every statement into a commitment to truth and every promise into an obligation to do something" (Searle 2010, 81). The hypothesis central to *Speech Acts* consists in regarding "the semantic structure of a language as a conventional realization of a series of sets of underlying constitutive rules", with speech acts defined as "acts characteristically performed by uttering expressions in accordance with these sets of constitutive rules" (Searle 1969, 37). In *Making the Social World* Searle is concerned with the nature of the commitment engendered by the performance of a speech act and the dependence of the commitment on the compliance of that performance with the constitutive rules.

According to Searle, it is not possible to perform a speech act in accordance to conventional procedures, without thereby publicly committing oneself to the conditions of satisfaction proper of the speech act performed. The undertaking of social commitment is *internal* to the performance of any possible speech act. Searle states that the necessity of social commitments derives from:

- (i) the social character of the communication situation,
- (ii) the conventional character of the devices used,
- (iii) the intentionality of speaker meaning (Searle 2010, 80).

Aspects ii. and iii. play a strong role in Searle's characterization of the commitment produced

by the performance of a speech act. With respect to iii., in the standard speech act situation the commitment flows from the *primary-meaning intention* (i.e., the intentional imposition of conditions of satisfaction on conditions of satisfaction) as well as from the *communicative intention* (i.e., the intention that the hearer should recognize the representing intention) (Searle 1986, 2010). With respect to ii., the commitment flows from the conventional character of the procedures allowing to communicate the conditions of satisfaction, namely the accordance of the speech act performed with some relevant semantic rules. As to i., it is intended by Searle as concerning the fact that the performance of a speech act is “*above all a public performance*” (Searle 2010, 83).

According to many scholars, Searle’s approach presents at least one weakness. Bach and Harnish, in particular, maintain that a rule-based conventionalist approach cannot properly account for non-literal and indirect performances of illocutionary acts. More generally, the performance of the speech act in compliance with conventional rules is not sufficient to perform the act as an act of a certain illocutionary type: “meaning never exhausts illocutionary force” (Bach & Harnish 1979, 132)¹. For example, the utterance of the sentence “The door is open” may well be an assertion, an order, a threat, or a piece of advice, and the linguistic meaning of the sentence alone cannot determine it.

With regard to Searle’s account, Searle explicitly limits it to serious, literal and direct discourse (Searle 1969, 20, 55-56). Furthermore, Searle’s own attempt to explain indirect speech acts (Searle 1975), notwithstanding its appeal to rules and conventions, brings into play mutually shared background information, the hearer’s inferential abilities, and general principles of cooperative conversation. Still, the strategy employed to explain indirect cases remains peripheral and is not complemented with the main rule-based account according to which literal cases are fully accounted for.

The objection I therefore address to Searle’s rule-based account of speech acts is analogous to the one Searle himself (Searle 1980) made against the traditional semantic thesis, which states that the literal meaning of a sentence determines its truth conditions. Searle’s claim is that “the literal meaning of a sentence only determines a set of truth conditions given a set of background practices and assumptions”, that is to say, the interpretation of a literal sentence is made possible only against “a whole background of information about how nature works and our culture works” (Searle 1980, 226-227)².

In the light of Searle’s considerations about literal meaning, and along with Bach and Harnish, I claim that the kind of illocutionary act performed by a certain utterance cannot be determined ignoring a set of “background presumptions” about the communication context shared by the interlocutors, and that this applies even to literal and direct cases³. Whether the utterance of the sentence “The door is open” constitutes an assertion, an order, a threat, or a piece of advice obviously depends not only on “what is said,” but also on the *context of utterance* and on the speaker’s *communicative intention*.

In contrast with Searle’s approach, and endorsing Bach and Harnish’s perspective (1979), I advocate in favor of an inferentialist model of linguistic communication, explaining and motivating the need for such a model. In the inferentialist model, the hearer’s understanding of the illocutionary act amounts to inferring the speaker’s attitude from “what is said”, together with *mutual contextual beliefs*,

1 As an example, considering the words “I love you like my brother”, the hearer could understand the utterance in several different ways: as an assurance, an admission, an answer to a question, or a promise. Moreover, by hearing “The sun is shining on me today” the hearer cannot determine whether the speaker is performing a literal or a non-literal illocutionary act.

2 Searle focuses on the word “cut”: in spite of its having “one and the same semantic content”, it “seems to make a different contribution to the truth condition of the sentence in each case” in which it occurs – e.g., “Bill cut the grass”, “Sally cut the cake”, “The President cut the salaries of the employees”, “Cut the cackle!” (Searle 1980, 223, 221).

3 See (Kissine 2011) for a recent criticism of Searle’s view on the determination of the illocutionary act. Kissine also appeals to the tension between Searle’s speech act theory and his writings on the background of meaning. See also (Recanati 2003) on this point.

two general mutual beliefs peculiar to the communication situation (*linguistic* and *communicative presumptions*), and a set of *conversational presumptions* (drawn from Grice's maxims).

Such presumptions represent the conception of the communication-exchange as shared by the interlocutors, enabling them to engage in the communicative interaction, and actually determining the very possibility of any interaction. They have the status of defeasible mutual beliefs in that they are operative unless there is indication to the contrary, in which case the hearer is invited to seek for some alternative interpretations, or to suspend the presumption relevant to the incongruity in question. For instance, an incongruity regarding the communicative presumption would induce the hearer to think that no speech act is being performed at all, since this presumption enables the speaker not to determine *what* illocutionary act has been performed by uttering an expression, but rather *that* an illocutionary act has thereby been performed. Moreover, Bach and Harnish contend that due to a *presumption of literalness*, the hearer is guided to infer – as a first hypothesis – a literal interpretation of the utterance⁴. The (direct) literal act, as opposite to non-literal or indirect ones, represents the occurrence of the most straightforward relation between what is said and what is done (respectively, locutionary and illocutionary acts).

Central to the inferentialist account is the fact that communication consists in the speaker's expression of an attitude by means of reflexive-intending (i.e., an intention intended to be recognized as so intended) "that the hearer take the [speaker]'s utterance as *reason* to think [she] has that attitude" (Bach and Harnish 1979, 39, emphasis mine).

The account of linguistic communication provided by the inferentialist model has the advantage of including the explication of non-literal and indirect speech acts within the same inferential schema involved in the literal cases. Indeed, the recognition of direct and literal illocutionary acts rests on an inferential process which is homogeneous for all kinds of strategies: direct literal, literally-based indirect, direct non-literal and non-literally-based indirect⁵. Moreover, the inferentialist model allows us to focus on the first of the aspects pinpointed by Searle, as the basis from which it is possible to account for the normativity of language.

In doing so, I distance myself from Bach and Harnish, who define a "moral question" whether illocutionary acts create a deontology, stating that "at best they create mutual beliefs between speaker and hearer about rights and obligations" (Bach & Harnish 1979, 124)⁶. As Searle, I do regard the deontology engendered by language as *internal* to the performance of speech acts. Nevertheless, I do not consider the deontology as consequential to the compliance of that performance to a system of semantic rules governing the conventional devices employed. Instead, I put the focus on the "social character of the communication situation", from the standpoint of the analysis provided by Bach and Harnish, and of some suggestions occurring in Grice's later reflections about reason, rationality and value (Grice 1991, 2001). With regard to Grice's reflections, I sketch out below his main view.

In the John Locke Lectures, held in 1979, Grice undertakes a clarification of the notions of reason and rationality by means of an analysis of the concept of reasoning. As a result, he upholds that the idea of *good* reasoning is prior to, and in fact shapes the concept of reasoning itself. Reasoning amounts

4 It has to be noticed that the hypothesis of a presumption of literalness is too strong, and that maybe the appeal to such presumption may be avoided.

5 Characterizing the understanding of speech acts as an inferential process amounts to considering such process as abductive (non-monotonic) reasoning, along with the analysis provided by AI (see Hobbs 2004).

6 See also (Harnish 2005), which faces the issue of normativity, but envisions a solution different from the (inferentialist) one that I am proposing here.

to a *value-paradigmatic* concept, and rationality/reason turns out to be an evaluative concept as well (Grice 2001, 35-36). Furthermore, in the Carus Lectures (1983) he describes the attribute of rationality as consisting in “a concern on the part of the creature which has it [...] that the attitudes, positions, and acceptances which he (voluntarily) takes up should have attached to them certificates of value of some appropriate kind,” i.e., that these attitudes should be “well grounded, based on reasons, or *validated*” (Grice 1991, 82). Taking into consideration Grice’s suggestions, and rephrasing an idea originally expressed by Jaegwon Kim (Kim 1988), we could say that the terms within the scope of rationality are normative, since rationality itself is essentially normative.

I claim that the *presumption about the interlocutor’s rationality* could be regarded as the basic form of normativity deriving from the social character of the communication situation. This key presumption, along with general mutual beliefs of the kind specified by Bach and Harnish, constitutes the precondition for any communicative interaction. The *reasons* with which – according to the inferentialist model – a speaker provides a hearer by expressing a definite attitude (i.e., by performing an illocutionary act intending it as an act of a certain kind) are proper of a rational creature⁷.

Considering a creature as rational amounts to attributing a value to her. Considering her in such a way implies to have some expectations about her behaviour, which in turn imposes some constraints on one’s own behaviour. To this end, I claim that these expectations and the corresponding constraints can be regarded as constituting an ultra-minimalist notion of normativity, starting from which it might be possible to account for the more complex arrangements of deontic powers (e.g., commitments, obligations, rights, licenses) involved in the performance of any speech act.

In the light of Grice’s reflections, we could say that the normative dimension engendered by the performance of speech acts – which I have here traced back, as its basic form, to the presumption about the interlocutor’s rationality – amounts to the *evaluative dimension* corresponding to such presumption.

Investigating on this possibility would represent a promising direction for further research on the topic. However, this goes beyond the scope of this proposal, which simply has the character of a *quessertion*⁸.

7 Making explicit the presumption about the interlocutor’s rationality – which underlies Bach and Harnish’s inferential schema, but is not fully articulated by the authors – would make it possible not to posit the presumption of literalness, and to fully account for the notion of conversational appropriateness. Bach and Harnish seem in fact unable to define this notion without circularity, inasmuch as they define it by referring to the conversational presumptions borrowed from Grice’s maxims (Bach and Harnish 1979, 65).

8 Richard Grandy once defined this way the character of some of Grice’s remarks. This kind of speech act should be read as “It is perhaps possible that someone might assert that [...]” (Grice 1989, 297).

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EMERGENT RULES AND SOCIAL REALITY

abstract

The text presents and discusses John Searle's taxonomy of rule, introducing a new type: the emergent rule. It also explains the importance of the emergent rule for the social reality. Searle thinks that the social reality is the outcome of a construction, but he is wrong. The emergent social reality is not constructed, nor can it be. To accept this leads to a drastic change in the theory and the paper tries to bring the reader to this new perspective within the field of social philosophy.

keywords

Constitutive rule, regulative rule, emergent rule, normativity

1. Facing the Problem The social theory provided by John Searle is powerful: with a few basic notions (status functions, assignment of function, deontic powers, constitutive rules, institutional facts, collective intentionality), Searle is able to explain much of the social reality. Unfortunately, not all that counts in the social reality is explained by Searle's theory. There are several important aspects missing from Searle's account, or not properly represented. For example, his theory is not able to give a good account of social realities such as friendship or charismatic leadership.

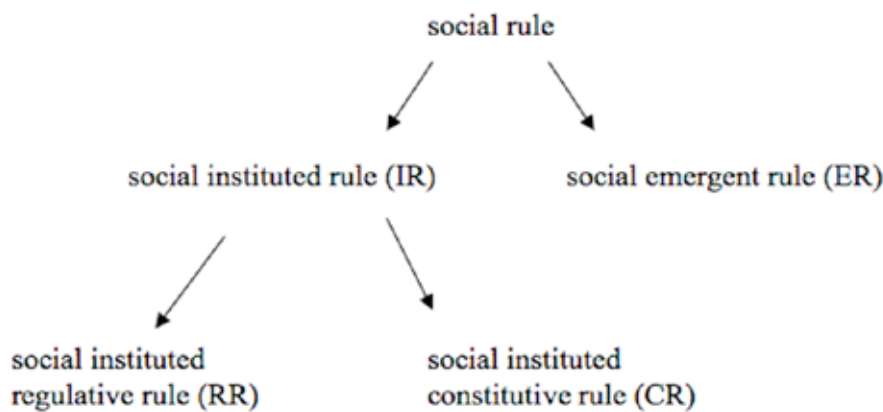
Searle writes: "All institutional facts, and therefore all status functions, are created by speech acts of a type that in 1975 I baptized as 'Declarations' " (Searle 2010, 11). According to Searle friendship is a social institution. But it is a matter of fact that friendship is not the outcome of any Declaration, except in some special cases, such as political alliances. Besides, there are status functions, such that of being a friend (with related powers and duties) which do not come from any Declaration. Friendship is not instituted, not even informally: yet, it is an important social reality. In general, within the framework of Searle's theory it is not possible to understand friendship and the other social bounds. To solve this problem one should leave the constructivist approach, which is too narrow. One important step towards a theory able to address the complexity of the social reality consists in introducing the notion of emergent rule.

In what follows I will try to show that one important weakness of Searle's social theory depends on the philosopher's partial understanding of the existing types of rule. The next paragraph will present and discuss Searle's taxonomy of rule, introducing a new type, the emergent rule. The third paragraph will discuss some emergent rules within the social reality. Searle thinks that the social reality is the outcome of a construction, but the truth is that this is not the whole story. The emergent social reality is not constructed, nor can it be. To accept this leads to a drastic change in the theory. Such a change would bring Searle's social philosophy down to the real complex social world.

2. Constitutive, Regulative and Emergent Rules John Searle distinguishes between constitutive and regulative rules (Searle 1995). Constitutive rules define something social in such a way that otherwise it would not exist. The game of soccer, for example, would not be possible without the rules of soccer (e.g. "The team scoring the greater number of goals during a match is the winner. If both teams score an equal number of goals, or if no goals are scored, the match is a draw"). The same is true with the game of chess so that, without its rules (e.g.

“If a player’s king is placed in check and there is no legal move that player can make to escape check, then the king is said to be checkmated, the game ends, and that player loses”), the game would not be possible. If the winning rule of chess is changed, the activity that results is not chess anymore. In general, if there is at least one change to a constitutive rule (CR) of a given social activity, the result is a dramatic, substantial, change of that activity. The regulative rule (RR), on the other hand, regulates something which exists independently from the rule. In fact, driving a car is an activity that does not depend for its existence on rules such as “Drive on the right”. Similarly, using black and white pieces instead of red and green ones does not effect the game called chess. The rules in these cases do not constitute the activity. Searle’s constitutive-regulative distinction (CRD) allows to differentiate between two kinds of activity. On one side, there are the activities which get their meaning from the rule constituting them. On the other side, there are the activities which do not depend on the rule for their existence, but they are somehow ordered by the rule.

I argue that the CRD is not enough to give a good account of the relevant types of social rule. The taxonomy must be expanded. It is possible to improve the explicative power of Searle’s social theory based on the study of the social rules by distinguishing between instituted rule (IR) and emergent rule (ER). Hence, the taxonomic tree is:



The IR depends on an explicit social act, or on an explicit social procedure, instituting the rule. The positive law is perhaps the most classic kind of rule instantiating the IR. Social institutions, such as governments and parliaments (instituted by positive laws), in exercising their functions enforce this kind of rule as well. The law is valid when the acts instituting the law follow the required procedure. It is worthwhile to notice that a valid law could not be effective if it were not accepted. The acceptance could come from a common explicit agreement, but this last is not a necessary condition of acceptance. In fact, an IR could be a hated law instituted by a ruler (e.g. a king) who made the decision on his own. One sufficient condition to have an effective IR (say *r*) is that a sufficient number of subjects (where the number is determined by contingent circumstances) would comply with *r*, eventually reluctantly. Effectiveness then should not be confused with validity and it should not be confused with legitimacy either. This last statement means that the valid rule must not be wrong or, according to a weaker perspective, it must not be considered wrong by the majority. Some significant formal relations between effectiveness, validity and legitimacy are the following: (a) It may be the case that an effective rule is not valid, nor legitimate; (b) if a rule is legitimate, then it is valid; (c) a valid rule remains such, even if it is not effective.

Following Searle’s distinction the type IR can be divided into two subtypes: regulative rule (RR) and constitutive rule (CR). The first ones are conventions such as “Do not talk with your mouth full”, “Nod

to say yes and shake to say no”, “Thumbs-up to mean ok”. They may be dependent on some objective circumstances such as talking with the mouth full could result in one spitting out some food (which is disgusting). Usually, they are purely conventional.

The CR brings into human life a variety of social entities such as money, football championships, laws, presidents, armies, trade unionists, banks, taxes, hospitals, and companies. Of course, in a complex society there is not one single authority that enforces all the rules. For example, some rules are enforced by people with a superior knowledge; some rules are enforced because some people were in charge; some are enforced just because some people were involved in a situation which needed coordination. The effectiveness of these rules depends on the mechanism of acceptance. Sometimes the social context, for religious, political or cultural reasons, does not accept the decisions made and so the rules are dropped or at least modified. This shows that acceptance is not granted and that it has its own mechanisms which are worthy of further discussion in a separate work.

Searle does not recognize any other kind of social rule, except RR and CR. Indeed they cover a very wide range of cases. No surprise that Searle did not notice any other kind of rule. This happened also because of his desire to provide the simplest explanation of the social reality, reducing it to its constructed dimension.

The second type of social rule (ER) is such that the rules emerge from a given set of preexisting rules (ERs and/or IRs) and/or some contingent circumstances. Given a set of rules (s) and eventually some external conditions (c_1-c_n), a rule (r) is emergent on s if: it is never the case that $s + (c_1-c_n)$, but not r . That the rule is emerging means that it is effective, without being instituted (for this reason validity and legitimacy cannot be applied to ER). It may be the case that r is also instituted to give it strength or, simply, to give it social (political, juridical) recognition. This just means a possible redundancy of the practice of instituting, since r was ruling also before being instituted. There may be practical reasons to recommend such redundancy.

The square rule (SR) in chess is a good example of the emergence of a rule (of course, not of a social one). The rule helps to know if in endgame of king and pawn against king, the pawn will be able to queen unassisted. And this is the rule: “Starting from the pawn, draw an imaginary diagonal line to the side of the board where the pawn can queen: This forms the diagonal line of the square we are looking for. If the king can get inside the square, the pawn will be captured, otherwise it will promote”. In the diagram below the black king will not to stop the pawn.



Figure 1.

The SR (r) is *dependent* on the rules of chess (s) and some empirical circumstances (c_1-c_n). The SR is *autonomous* from the rules of chess in so far as it is a *new* rule. The SR is *normative*, ruling the behaviour of the chess player. The SR emerges from the existing rules of chess and from some circumstances. In fact if, for example, the king would move as a pawn, or if the space were curved (the first vertical file being connected with the eighth), the SR would not emerge. The SR belongs to a new type of rule, not reducible to the IRs. It is not a CR, since it does not define the game of chess. It is not even mentioned in the official rules and people can play the game without even knowing it. The SR

is not a RR either, since it is not conventional, it has rather the character of a necessity. Nevertheless, the SR, as any ER, cannot be reduced to a logical necessity. From a first person perspective, it is normative: it rules the behaviour of the player.

Some ERs of the social reality are discussed in the context of the game theory by Thomas Schelling (1960), though the author does not name them ERs. Without communicating, agents are able to coordinate their actions. For example, if a man loses his wife in a mall, the two will be probably able to find each other easily at the information office, or in a central point of the mall. Schelling reports, among many examples, that people are usually able to successfully solve the problem, if asked to meet someone in New York, knowing the day, but not the place, nor the hour. The solution usually given is: Central Station, in front of the information desk, at noon. Emerging from the need to find each other, that is from the rule “Find the other person”, and from the structure of the place, the general rule is: “Go to the most obvious place at the most obvious time”. Of course a common background knowledge should be given to solve the coordination problem. But here the interesting thing is that the situation itself gives some focal points that help the coordination, allowing the formation of the ER.

Taking an example from Searle himself, which does not grasp its emergent side, when the political and economical situation in Russia in 1990 and 1991 forced the people not to accept the currency, one new rule emerged. Interestingly enough it was applied also by non-smokers and was “pay with Marlboro cigarettes” (Searle 1995, 43). This is a typical ER, since it depends on some circumstances and rules. The general circumstance is the economical weakness of the country and the rules involved are: “Do not accept rubles”; “What is used as money must be sufficiently diffused, but not too abundant”; “What is used as money must be easy to use and cannot be easily falsified”; and finally, “Pay with something that will be accepted by the others”. These rules, plus the circumstance that the Marlboro cigarettes were a good candidate, gave the new ER.

ERs can be found even among enemies. An interesting example is given by life in the trenches during the First World War, when enemies on the two sides adopted the same rule: “Live and let live”. It meant to avoid shooting at the enemies. Except in case of attack, of course. “Live and let live” is an emergent rule from: “Survive”; “If you shoot, the enemy will react”; “Without any direct order, you are not supposed to do anything”.

Blind meetings in New York, cigarettes as money and life in the trenches, are sufficient to show the existence of ERs, but they do not regard the more ordinary cases of everyday life. On the contrary, emergence is more frequent than it is usually thought (for more see (Ullman-Margalit 1977)).

Friendship or neighborhood, with their social duties of solidarity, emerge from a repetition of social interaction. Searle writes: “Something can be a mountain even if no one believes it is a mountain; something can be a molecule even if no one thinks anything at all about it. But for social facts, the attitude that we take toward the phenomenon is partly constitutive of the phenomenon” (Searle 1995, 33). He does not realize that this idea works for the instituted reality, but not for the emergent one.

People are friends, but sometimes they do not realize it. They may act for a long time according to the ER proper of the social bond of friendship built on some rules. In a very simplistic gallery such rules are, for instance: “Trust *a*”, “Be benevolent toward *a*”, “Help *a*”, where *a* is a person. Friends may not be aware of an existing social bond between them, as the chess player could not be aware of his following the SR.

Some important social phenomena as successions or decisions about which job to choose are coming from emergence. To explain this I will refer to the case of traffic jams discussed by Mitchel Resnick. With the help of a program simulating the behaviour of the cars, he observed that traffic jams are inevitable in the cases in which the cars are disposed randomly and there is the rule “If you see another car close ahead, slow down; if not, speed up”. What happens is well expressed in the book: “The jam itself moves backward. If you keep eye on one car, it leaves the traffic jam, but the jam itself,

3. Emergent Rules and Social Reality

I mean where you see the cars piling up, moves backwards” (Resnick 1997, 74). Therefore the emergent rule is: “The cars move forward, the jam moves backwards”.



Figure 2. Traffic jams (from Resnick 1997, 72)

The system tends to conserve the information of the jam, even if the individuals involved are changing from time to time. Something similar happens in the society. For example, when a person with a role retires, the system tends to conserve itself by attracting new individuals to fill the empty space. The metaphor of invisible hand, coined by Adam Smith, is a simplistic way to refer to cases in which emergent mechanisms are present in society.

To understand some rules of social behaviour that help in discussing the emergent phenomena of authority, a software simulation will help again. Simulating flocks, Craig Reynolds was able to create a realistic program. He used only three rules applied in the simulation by the individual (called boid): *separation* (steer to avoid crowding local flockmate), *alignment* (steer towards the average heading of local flockmates), *cohesion* (steer to move toward the average position of local flockmates).

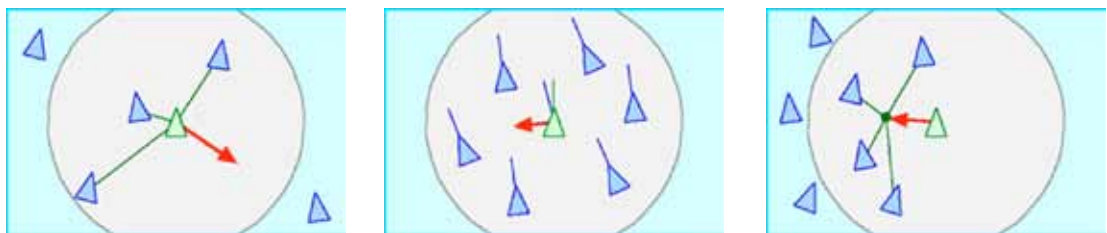


Figure 3. The 3 rules of behaviour of flockmates (from <http://www.red3d.com/cwr/boids/>)

Here we have an emergent social collective behaviour, that is the flock movement. From this model it becomes evident that if a boid will change its direction (with a random function), the other boids nearby will change accordingly. In a sense, it is true that flocks are emerging in the simulation, without any authority imposing anything on anyone. In this sense we have here collective ordered behaviours, without external coordination. But it must be remembered that the rules are constitutive of the behaviour of each boid, so the coordination comes from within. If a boid would slightly change its direction, it will make the others change as well, because of the rule of alignment. If a boid for some reason changes too much, it loses the contact with the group. This last scenario is in some way conservative, because the rules of alignment and of cohesion are given computing the average behaviour.

The case of leadership in the behaviour of social groups can be explained extending Reynolds' rules. A leader needs a group whose members decide to follow the rule of alignment. A leader is able to stay

with the group and to exercise his leadership by changing gradually the group's direction. This kind of authority has been qualified by Max Weber as charismatic. A figure such as Gandhi is particularly interesting to consider here. As a charismatic authority he followed the rule of cohesion with the group, fighting for the common feeling of being victims of injustice. He was able to lead the Indian nation against the authority, which up to that moment had been accepted (the failure of India's First War of Independence proves that there was an acceptance, though reluctant), by showing that it was illegitimate.

Charismatic leader is a role and authority is one of his qualities. The normal way of such a leader to exercise his deontic power is indirect. Charismatic authorities rule through advices mostly given to persons that ask for them, or through example and persuasion. It is always possible for the group to change a leader which loses the qualities that let his leadership emerge. Any good emergent leader knows somehow that his power is fragile, not being granted by a formal institution and depending very much on circumstances. In splendid ancient Rome, where being well dressed was a sign of power and of social distinction, Petronius was an authority (he was known with the informal title of *arbiter elegantiae*), because of his good taste. In the dark times of the Early Middle Ages it is likely that Petronius' qualities would not have been noticed, or developed.

Searle develops his social theory starting from a theoretical construction based on a speech act theory. His model is the result of a construction: from a few notions Searle explains much, but unfortunately not all that counts. No surprise. Using few and simple notions, within the field of the social sciences, gives oversimplified social models. I tried to show that the theory could be much better just using a slightly more complex theory of rule. For this reason I introduced the ER and I provided and discussed some examples within the field of social reality. The ER helps to explain, for example, how it is possible to solve some coordination problems, how a new currency can rise, how even enemies can find a way to cease hostilities, but also how friendship and charismatic leadership develop.

There is still much to be done to provide a social theory better than Searle's. For example there is the need to explain social bonds and their ontology and to stress the importance of affectivity. In the meantime, to accept the ER will be a step in the right direction.

4. Conclusions

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MAKING THE SOCIAL WORLD WITHOUT WORDS

abstract

I intend to criticize and amend one of the main theses of Searle's social ontology, that is: the dependence of social reality on language. This thesis raises a circularity problem because, in Searle's account, language has conventionality as an essential feature, but conventionality depends, on in turn, on social reality. I will argue that we can solve Searle's circularity problem by considering forms of communication and ways of imposing normativity more fundamental than language.

keywords

Language, pictures, reference, normativity

In this paper, I intend to criticize and amend one of the main theses of Searle's social ontology, that is: the dependence of social reality on language. This thesis raises a circularity problem because, in Searle's account, language has conventionality as an essential feature, but conventionality depends, on in turn, on social reality. I will argue that we can solve Searle's circularity problem by considering forms of communication and ways of imposing normativity more fundamental than language.

- 1. Features of Language and Requirements for Society**
- In the fourth chapter of *Making the Social World*, Searle explains how language can constitute the bridge between mind and society. These are his two basic claims: 1) language is an extension of pre-linguistic forms of intentionality, in opposition to Davidson's and Dummett's thesis that "without language, there can not be thought at all" (Searle 2010, 61); 2) there can not be institutional facts without language. So we have a conceptual hierarchy of this sort: thought *is a condition of* language which, on in turn, *is a condition of* society. Searle's account of language starts from three essential syntactical features that "organize semantics" (Searle 2010, 63):

1. *Discreteness*: sentences are composed of atomic *terms* that retain their identity in the recombinations (See Searle 2010, 63).
2. *Compositionality*: the arrangement of *terms* in a sentence determines the meaning of the sentence (See Searle 2010, 64).
3. *Generativity*: it is possible to produce and understand an infinite number of sentences (See Searle 2010, 64).

To these, Searle adds three other features:

4. *Segmentation*: the continuous flow of pre-linguistic consciousness is structured by *terms* into discrete segments (See Searle 2010, 68).
5. *Duality*: at one level intentionality produces a physical utterance, but at another level the utterance represents something (See Searle 2010, 74).
6. *Conventionality*: an arbitrary meaning is attached to *terms* by some socially-recognized device (See Searle 2010, 75).

Finally, we have these last three features:

7. *Normativity*: meaning has to be conveyed on a regular and repeatable basis, that gives right to specific expectations (See Searle 2010, 87).
8. *Deontology*: the speech act involves a commitment in the full public sense that combines irreversibility and obligation (See Searle 2010, 86).
9. *Declarativity*: it is possible to create a fact by representing that fact as existing (See Searle 2010, 68).

Among these nine features, the last three – normativity, deontology, declarativity – individuate the crucial requirements for the construction of social reality. The question is whether these last three requirements are really inextricable from the first six features of language. In other words: in order to have normativity, deontology, declarativity, do we really need language, with all its essential features, or can it suffice a simpler system of communication?

I will argue that it is possible to conceive a system of communication that does not satisfy all the essential features of language but still allows to create social facts. For this purpose, I start from a thought experiment whose protagonists are the same “pre-linguistic hominids” to whom Searle denies the possibility of making a social world: “a race of early humans possessing the biological forms of intentionality, both individual and collective, but lacking language” (Searle 2010, 65). In accordance with Searle’s approach (See Searle 2010, 65-66), my thought experiment does not concern directly evolutionary biology and the problem of the origins of language, but the conceptual dependence of social facts on language.

So, let us suppose that Searle’s hominids, who lack language, have nevertheless an exceptional pictorial ability, and that they have some special double-sided tablets, with a *recto* face and a *verso* face. They use the tablets in the following way: they depict a single scene on the *recto* and a series of scenes on the *verso*, and they collectively intend the situations on the *verso* as normatively connected to the situations on the *recto*.

These “Tablets of the Law” thus allow the hominids to make a sort of declaration according to which the scene on the *recto* represents an event that confers a status and the scenes on the *verso* depict a series of events that represent the functions connected to the status. Moreover, they collectively intend to conform their conduct to such a connection.

For instance, the *recto* can depict one of these hominids being crowned and the *verso* the crowned hominid in situations like receiving goods and marching at the head of hunters. In this case the hominids have used the double-sided tablet to mean that the crowned hominid has the power of receiving goods and marching at the head of hunters, and in doing so they have created a new social object, something like a chief. Moreover, if the series on the *verso* also contains a depiction of the crowned man painting new tablets, the chief will henceforth count as a legislator.

Likewise, if we consider a tablet whose *recto* depicts a male and a female hominid exchanging rings, and the *verso* the same hominids in situations like living together, having sex and raising kids, in this case the tablet creates a new social object, something like a family.

The double-sided tablet experiment leads us to suppose that we can construct social objects without respecting all the Searlean conditions. Let us try to analyze them one by one with the aim of showing their role in our system of iconic representation and their necessity in order to create social facts. In particular, I will argue that we could still create social facts even without discreteness and conventionality.

2.
[The Double-Sided
Tablet Experiment](#)

3.
[Reconsidering
the Searlean
Requirements
for Society](#)

1) Discreteness

By virtue of iconic representations, we can represent situations and make social facts without discreteness, i.e. without using atomic *terms* that are instead essential elements in Searle's account.

2) Compositionality

According to Fodor (2007), the compositionality principle can be applied also to pictures, although this kind of compositionality does not require discreteness: if *P* is a picture of *X*, then parts of *P* are pictures of parts of *X*. More generally, it is worth noting that: "The combinatorial structure of sentences [...] derives in large part from the combinatorial structure of episodes, and words provide the access to the components of episodes. Most of the episodes we witness, remember, or construct in our minds, are combinations of the familiar. Indeed it is generally the combinations that count, rather than the individual elements" (Corballis 2009, 34).

3) Generativity

It is possible to produce and understand an infinite number of pictures, so generativity is also an essential feature of iconic representations.

4) Segmentation

In Searle's account, language structures experience into discrete segments and allows human beings to move from a pre-linguistic "feature placement" to a structured propositional content. Yet Searle admits that "the intentionalistic apparatus prior to language is heavily endowed with categories" (Searle 2010, 67) and that "conscious experience already segments objects and features" (Searle 2010, 70), for instance discriminating between a figure and a background. So, we can claim that iconic representations are structured and segmented despite lacking atomic terms.

5) Duality

According to perceptual theories of depiction (See Wollheim 1987), duality (that is, in Wollheim's terms, "twofoldness") is also an essential feature of iconic representations, that are constituted by a "configurational fold" (the depicting surface) and a "recognitional fold" (the depicted state of affairs).

6) Conventionality

Conventionality raises an important circularity problem in Searle's account, because *language needs conventions* but at the same time *conventions are social facts and social facts need language*. Conversely, iconic representations do not have conventionality as an essential feature and so they do not have this circularity problem.

7) Normativity

In Searle's account, normativity rests upon conventionality. But iconic representations allow us to convey meaning on a regular and repeatable basis, without the need for conventions. Moreover, in the double-sided tablet experiment, the syntactical relation between the *recto* and the *verso* has a normative force that gives right to specific expectations. Yet representations as such have not normativity among their features, and so we need a way to impose normativity on representations.

8) Deontology

As a product of an intentional act, the iconic representation involves a public commitment of the agent.

9) Declarativity

As a public product of the imagination, the iconic representation may bring into existence something that still does not exist simply by representing it as existing.

In a social ontology perspective, we can define an elementary social fact as a rule that attributes a function to an entity. So, for the purpose of constructing an elementary social fact, we need a way to represent the entity and the function, and to impose a normative force on their connection.

But if we look at the conceptual basis of social reality, language can do neither the one nor the other task. Language cannot originally represent the entities and the functions because, in order to represent them, it requires in turn the social rules that assign a meaning to its terms. Furthermore, language – by itself – cannot originally impose normative force on the connection between the representation of an entity and the representation of its function, because the linguistic terms that express some normative force (e. g. verbs like “must” or “may”) rely on their turn on the speaker’s possession of normative concepts and on social rules that allow the speaker to share them.

Searle recognizes that speaking a language requires to follow rules, but his account of language as the condition of social reality precludes the possibility that these rules could be social in turn. In this sense, Searle’s social ontology is implicitly committed to Chomsky’s linguistics: the rules of language must be in people’s heads. But this commitment poses two problems: 1) the Chomskyan account applies to syntactical rules, but not to semantic rules that however need some form of social sharing; 2) the Chomskyan account does not fit well with the evolutionary claim that the only rational explanation for complex structures lies in natural selection (See Pinker and Bloom 1990).

In Searle’s account, as well as in Chomsky’s account, hominids directly jump, in a quite inscrutable way, from a pre-linguistic thought to a fully developed language. On the other hand, this jump can be better explained in evolutionary terms, by considering “motivated representations” as an intermediate step between pre-linguistic hominids and fully-linguistic men. According to Burling, “unlike most words on our spoken languages, motivated signs are related to their referent by more than just an arbitrary convention” (Burling 2005, 79): they can be related to their referent by resemblance (iconic representations) or by a physical connection, for instance the act of pointing (indexical representations). Moreover, Burling claims that “icon and indices played a greater role during the earliest stages of language than they do in the spoken languages we use today [...]. At the early stages of any conventional form of communication, iconicity and indexicality are the most obvious principles to exploit” (Burling 2005, 82). In short, iconicity and indexicality give pre-linguistic hominids a way of representing and sharing representations of states of affairs, without the need of sharing rules of representation. In this way we have not, unlike Searle and Chomsky, to put the rules into men’s heads. The rules themselves can be constructed by means of iconic and indexical representations. That is to say that elementary social facts can be created by representing entities and functions by means of certain kinds of representation that do not need social rules to work, while the imposition of normativity can be achieved by extra-linguistic means like enforcement, imitation, training, and especially paradigmatic applications.

Such an account could contribute to solve the main circularity problem that afflicts the Searlean theory, i. e. the mutual dependence between language and conventionality. Motivated representations and paradigmatic applications introduce a basic level of communication where it is possible to create elementary social facts that can enable conventionality and therefore language.

Our account of the social limits of language could be criticized on in turn by noticing that the problem is not language in itself, but Searle’s account of language. That is to say that Searle makes appeal to a definition of language that is too narrow, and too strictly linked to the notion of conventionality. Conversely, if we endorse a Gricean perspective (See Harnish 2005 and 2009), we can conceive an utterance in general as an expressed attitude, that is, as an intention to make a propositional attitude (a belief, a desire, etc.) manifest.

4. The Social Limits of Language

5. A Different Account of Language

In such a perspective, a speech act “can be defined in terms of the propositional attitude expressed by the speaker, and the understanding of such communicative acts can be defined as the recognition of such propositional attitudes by the hearer” (Harnish 2005, 15).

This account, unlike Searle’s, has no more requirements about discreteness and conventionality, and so it seems to have no more circularity problems. Yet we still have to explain how propositional attitudes can be expressed by the speaker and recognized by the hearer. Harnish suggests that “the recognition of such expressed propositional attitudes on the part of the hearer is guided by a *shared system* of inference strategies, presumptions, and contextual information, *all stated in terms of propositional attitudes*” (Harnish 2005, 15, my emphases). But this explanation raises a new circularity problem since, in order to build such a “shared system”, we already need a way of sharing propositional attitudes. So, also a Gricean account of language requires an integration in terms of basic mechanisms of communication that must ground the sharing of propositional attitudes.

6. A Different Account of Normativity Moreover, expressed attitudes as such seem to have no means in order to account for normativity. As Harnish points out: “The notion of an illocutionary act sometimes (Searle) or always (Alston) involves normative notions such as ‘commitment’, ‘taking responsibility for’, etc., and these notions are not captured by expressed attitudes” (Harnish 2005, 23). Normativity seems to be a more primitive notion than sharing attitudes.

At this point, we could try to introduce normativity and shared rules as a foundation for the possibility of sharing attitudes. But if we conceive rules as representations in people’s heads, as Searle does, we still have a foundational problem, whose best formulation can be found in Wittgenstein’s “skeptical paradox”: in order to follow the rules we need to interpret them, but in order to interpret them we need *rules* of interpretation (See Wittgenstein 1953: §198). So: “This was our paradox: no course of action could be determined by a rule, because every course of action can be made out to accord with the rule” (Wittgenstein 1953, §201).

According to Kripke’s reading of Wittgenstein’s text, the only way to solve the “skeptical paradox” is by means of a “skeptical solution” based on the “inversion of the conditional” (Kripke 1992, 93): we do not have to say that “we agree because we all follow the same rule”, but that “we follow the same rule because we all agree”. Agreement – that is, regularity of behavior supported by paradigmatic applications – is the most primitive form of normativity. In this sense, the skeptical solution “holds that there are facts about a shared understanding, and about what individuals mean by their utterances, when a communal practice of the appropriate sort is in place – where such a practice requires that we have individuals who are, for the most part, inclined to ‘go on’ in the same way. It is, if you like, the practice that grounds the normatively charged facts about meaning, understanding, and the grasp of concepts, rather than such facts that ground the practice” (Davies 1998, 137). Agreement, so intended, corresponds to Wittgensteinian “bedrock”: “ ‘How am I able to obey a rule?’ – if this is not a question about causes, then it is about the justification for my following the rule in the way I do. If I have exhausted the justifications I have reached bedrock, and my spade is turned. Then I am inclined to say: ‘This is simply what I do’ “ (Wittgenstein 1953, §217). The skeptical solution finally allows us to unpack the bedrock metaphor in the following terms: “Wittgenstein warns us not to try to dig below ‘bedrock’. But it is difficult, in reading him, to avoid acquiring a sense of what, as it were, lies down there: a web of facts about behavior and ‘inner’ episodes, describable without using the notion of meaning” (McDowell 1984, 348).

7. The Social Construction of Language Up to this point, we have criticized Searle’s claim that language is the condition of the construction of social reality, by showing that it raises a circularity problem since it has conventionality as an essential feature, and conventionality needs social reality in its turn. A less narrow account of language, like the Gricean “expressed attitude theory”, can release language of its dependence on conventionality, but still has the problem of explaining how the propositional attitudes can be shared

and in which way such a sharing can acquire normativity. I have argued that we can try to solve this problem by considering iconical and indexical representations as ways of expressing attitudes, and by grounding normativity not on shared rules, but on a “bedrock” of agreement.

At this point, we can even agree with Searle that language is different from all the other social facts in the sense that the institutional declaration “Obama is president” *creates* a president, while the mere linguistic utterance “snow is white” *does not create* snow nor its whiteness. But we have however to acknowledge that language itself needs a pre-linguistic social mechanism that, by assigning to the sign “snow” the status function of referring to snow, *creates* a word.

Semantics cannot be reduced to the computation of the meaning of a sentence. Semantics also regards the meaning of the words, that is – according to Kripke (1980) and Kaplan (1990) – the act of naming entities and the propagation of this act via a causal-historical chain. But the act of naming is not a linguistic act: it is a meta-linguistic act, that is a social act that requires pre-linguistic representational skills and rule-following skills.

A word is itself a social object that needs to be constructed. Naming, in this sense, is an act that, even if it is not a speech act, creates a social object: naming is the act of conferring to a sign the deontic function of referring to an entity. In this sense, the double-sided tablet can ideally exemplify an elementary mechanism to create words as social objects: if we use the *recto* of the tablet to confer to a sign the status of “bearer of meaning” and the *verso* to depict a series of situations that such a status allows to represent, then we obtain something like a dictionary that implements linguistic conventions. This account fits well with some recent theories of language that stress the importance of gestures, iconic representations and paradigmatic applications in order to reconcile the theories of language with the evolutionary approaches. In this sense, we can conceive the double-sided tablet as a conceptual scheme implemented by some evolutionary hypotheses. For instance Burling’s (2005) hypothesis: symbols are special gestures, maybe accidentally produced but collectively recognized as *connected* to instrumental actions. Or, for instance, Corballis’s (2002) hypothesis: words are the vocal emissions maybe accidentally produced but collectively recognized as *connected* to iconic gestures. Although language gives us an extremely powerful tool to extend and develop our capacity to create social facts, it is not a necessary condition for the construction of human social reality. To construct a social fact we need representations, but not necessarily linguistic representations: we can rely on iconic and indexical representations, that do not require a social foundation. Moreover, we need a way to connect representations between them and to impose normativity on this connection, but we do not necessarily have to do that by linguistic means: we can rely on pragmatic means (like enforcement, training, examples, paradigmatic applications) that do not require a social foundation. In Wittgenstein’s terms: “Then can whatever I do be brought into accord with the rule?” – Let me ask this: what has the expression of a rule – say a sign-post – got to do with my actions? What sort of connexion is there here? – Well, perhaps this one: I have been trained to react to this sign in a particular way, and now I do so react to it.” (Wittgenstein 1953, §198).

Finally, we need skills that allow people to use these representations and their connections, but we do not necessarily need linguistic skills: we can rely on more basic skills like imitation, mind-reading and mental time travel, that do not require a social foundation. According to Corballis: “It may be more useful to view the constructive nature of language as the product of what Locke and Bogin (2006), after Marler (1991), called an ‘instinct for inventiveness’ that goes beyond language *per se*. This instinct may well be uniquely human but is evident in many activities other than language, including mental time travel, manufacture, art, music, and other modes of storytelling, such as dance, drama, movies, and television” (Corballis 2009, 38).

To sum up, I propose to amend the Searlian conceptual hierarchy – language *is the condition* of society – in the following way: motivated representations, pragmatic ways of imposing normativity, and instinct for inventiveness *are the conditions* of elementary social facts, that *are the conditions* of language,

that *is the condition of* complex social facts. In this sense, “grammar can be regarded as a device for making communication more efficient and streamlined” (Corballis 2009, 35), but not as a necessary condition for communication and not even as a basic requirement for the creation of social facts. The basic requirements to create an elementary social fact are the motivated representations and the normative associations between them. We can find an excellent example of this claim, quite surprisingly, in the conclusion of the fourth chapter of *Making the Social World*. Searle imagines being in a pub, carrying three beers to the table, one for him and the others for his friends. In doing this, he creates a new social fact – the private property of beers – without words. As Searle writes, “Indeed I need not say anything. Just pushing the beers in the direction of their new owners can be a speech act” (Searle 2010, 89).

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