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Frank Hindriks¹**Abstract**

Hindriks argued that Searle's theory of institutions suffers from a number of problems pertaining to the notions of constitutive rule, status function, Status Function Declaration, deontic power, and human right. Lobo argues that these criticisms are not sufficiently charitable. In response, it is argued here that the problems that were identified earlier are sufficiently severe to call for substantial revisions of the theory.

Keywords

collective acceptance, constitutive rule, deontic power, status function, Searle

Social institutions are norm-governed social practices (Tuomela 2013). An institution such as that of a birthday party has a practical or behavioral dimension—which involves gifts and cake as well as friends and family—and a normative dimension—you are supposed to bring a gift, and you should leave

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the largest piece of the cake for someone else.¹ In his theory of institutions, John Searle (1969, 1995, 2010) recognizes both dimensions. On his view, an action—such as handing someone a wrapped object—has an institutional status—it counts as giving someone a birthday present—exactly if a rule is in place according to which such actions have this status in a certain kind of context. Such a rule is what he calls “a constitutive rule.” The normative dimension of the example comes in view when it is recognized that someone who has given a gift is entitled to a thank you.

Searle (1964, 1969) presented this explication of institutions in terms of constitutive rules about half a century ago. In the past two decades, he has expanded on these ideas in a number of ways (Searle 1995, 2010). Although many of these recent additions are insightful, a number of them are confusing at best and mistaken at worst. I have detailed my misgivings about Searle’s *Making the Social World* in a recent review essay (Hindriks 2013b). Gregory Lobo argues in this issue that many of my criticisms are too harsh. I thank him very much for this opportunity for clarifying my views. Lobo’s arguments do not convince me that Searle’s theory has fewer flaws than I took it to have. Instead, they make me think that Lobo and I share more views than he thinks that we do.²

I. Against Status Functions and Status Function Declarations

In 1995, Searle argued that social reality has three basic building blocks. One of them is that of a constitutive rule, which has the structure “*X* counts as *Y* in *C*.” An example is that certain pieces of paper count as money in the Eurozone. The other two notions are that of collective intentionality and that of a function. Collective intentionality is needed to make sense of two or more people doing something together. Two people cook dinner together, for instance, due

¹Institutions also have a representational dimension that I touch upon only briefly in this essay. See Hindriks (2009), Guala and Hindriks (forthcoming) and Hindriks and Guala (forthcoming) for more on this.

²In passing, Lobo suggests that I am not in substantial disagreement with Searle when I argue that the distinction between regulative and constitutive rules is primarily a linguistic one (see Hindriks 2009 for the role constitutive rules play with respect to ontology). What he fails to see, however, is that, if the distinction is primarily linguistic, constitutive rules can be reduced to regulative rules. Searle is committed to denying this and has actually done so explicitly in a forthcoming paper in which he responds to Hindriks and Guala (forthcoming).

to them having a collective intention to do so. Furthermore, that collective intention bears on what each of them should do to contribute to preparing the dinner together. Searle takes objects to have a function relative to an observer who attributes that function to it. Technical artifacts such as hammers and screwdrivers have functions in virtue of their physical features. Social objects have functions because we collectively accept that they have them. Physical features are often relatively unimportant, as what matters to institutional entities such as money are the rights and obligations or the deontic powers that people attribute to them. The entitlement to a thank you is an example of the deontic powers that come with the functions of social objects, which are status functions.

The first problem I see is that it remains unclear why status functions are supposed to be functions. In my review, I argued that we can do without the term *function* while retaining the term *status*. Lobo objects that, when we make this move, we lose sight of the fact that institutions have “social implications” or “deontological consequences.” This misses the point of my proposal. My suggestion is to explicate statuses in terms of deontic powers and to forget about functions (or to develop a better explication of them). As I equate statuses with deontic powers, there is no way of losing sight of them on my proposal. In fact, this normative dimension of institutions becomes more transparent because it is no longer obscured by the use of the term *function*. At times, Searle (forthcoming) comes close to this, for instance, when he claims that “all status functions are deontic powers.” The only purpose for which Searle uses the notion of a function in this context is to emphasize that statuses involve observer relative representations. The point to appreciate, however, is that this is already entailed by the fact that institutional statuses require collective acceptance. Hence, there is no need to bring the notion of a function into the picture when it comes to institutional statuses.

A similar line of argument makes clear that the notion of a Status Function Declaration is also redundant. According to Searle, status functions not only depend on collective acceptance, but collective acceptance of a status function is also sufficient for that status function to exist. Searle (2010) explicates this idea in terms of the notion of a double direction of fit. Imagine a community that recognizes certain rings as wedding rings. Someone who fails to believe this should adjust her belief to the way the world is. The belief has the mind to world direction of fit in the sense that it is mistaken as long as it does not fit the world. At the same time, the very fact that it is collectively accepted that those kinds of rings are wedding rings makes it the case that they are indeed wedding rings. In other words, this fact is constituted by it being collectively recognized. This illustrates the world to mind direction of fit of institutional statuses.

There are substantial difficulties with this line of thought. For instance, it is far from obvious that it makes sense to say that the world has to fit with what people collectively accept. If collective acceptance is constitutive of institutional reality, there is nothing left to change as soon as collective acceptance is in place (see Laitinen 2014 for an excellent discussion of problems such as this one). For the purposes of this argument, however, I will abstract from them. Instead, I go on to ask what, if anything, the notion of a Status Function Declaration might add. The two claims that Searle intends to capture with the notion of a double direction of fit are these: institutional statuses require collective acceptance, and collective acceptance suffices for such statuses to exist. I have referred to the combination of these two claims as “the Collective Acceptance Principle” (Hindriks 2013a). This principle captures the (alleged) double direction of fit of collective acceptance. Once this principle is in the picture—and I take this principle to be implicit to Searle’s use of the phrase “counts as” that features in the structure of constitutive rules—there is no need to introduce the notion of a Status Function Declaration, as Searle (2010) did.

To be sure, given that on Searle’s view declarations have the double direction of fit, Status Function Declarations will have a double direction of fit as well. However, this by itself is not a reason to introduce the notion of a Status Function Declaration. After all, this idea is already captured by the phrase “counts as,” or by its analysis in terms of the Collective Acceptance Principle. And there is ample reason to refrain from doing so, as this notion is confusing. Why use the term if, as Lobo (2015) notes, strictly speaking Status Function Declarations are not declarations (Searle 2010, 13)? It raises questions about when a declaration was made, even though, as Lobo rightly points out, Searle takes these to be beside the point. Furthermore, the use of the term *Status Function Declaration* suggests that language is tremendously important to institutions, but it does so without providing an argument for this claim. Given that the notion does not add anything of value, we are better off without it.

Searle does present independent arguments for his claim that language provides the basis for all other institutions. I have criticized these arguments elsewhere (see Hindriks 2009, 2011). Here, I cannot do more than point out that the claim makes sense only if representation is regarded as an inherently institutional phenomenon. Searle (1995, 28), however, denies that representation as such is institutional. This entails that entities can be taken to represent something independently of language. As a consequence, there is no reason to take linguistic representations to be logically prior to the representations involved in other institutions. Lobo proposes to focus on “pre-linguistic symbolic representation.” This means, in effect, that he gives up on

Searle's thesis of the primacy of language as an institution. I argued that the thesis is either implausible or trivial. By emphasizing prelinguistic symbolic representation, Lobo impales Searle on the second horn of this dilemma.

2. Collective Acceptance and Deontic Powers

One of the main challenges of social ontology is to make sense of the normative dimension of institutions. Whence deontic powers? Margaret Gilbert (1989, 2006) argues that a collective intention comes with collective obligations. If you and I go for a walk together due to a collective intention to do so, each of us is entitled to rebuke the other when he or she speeds up so much that it becomes difficult to keep up, or if he or she wants to quit walking together. Bratman (1999, 2014) disagrees. He acknowledges that collective intentions play a central role in the collective obligations we often have. He denies, however, that such obligations are always in place when people have a collective intention. Furthermore, he argues that such obligations depend not only on collective intentions but also on some moral principle.³

This debate rests on complex issues concerning the nature of intention and the role that commitments play in intentions. Gilbert argues that collective intentions involve collective commitments and that such commitments give rise to collective obligations. Bratman (1987) argues that individual intentions involve commitments, but he denies that they always provide the agent with reasons. As he reduces collective intentions to individual intentions, they need not entail reasons or obligations.

I elaborate on this to make explicit the issue that Searle has failed to address thus far. Although he has argued that intentional states come with commitments (Searle 1983), he has not to my knowledge said anything about this in relation to collective intentions. It is very kind of Lobo to provide a charitable reading of Searle on which strong forms of collective acceptance involve collective commitment. Searle, however, has remained silent on this issue thus far. And even if he would go along with Lobo's suggestion, Searle needs to say more than that collective acceptance might involve collective commitment. He needs to provide an argument as to why collective commitment might give rise to obligations.

Lobo claims that Searle has a "capacious" account of collective acceptance. I find nothing of the kind. To be sure, Lobo rightly points out that Searle uses a set of terms designating something like collective acceptance

³See Hindriks (2013a) and Smith (2015) for more in-depth discussions of the views of Gilbert and Bratman.

that range from weak to strong (“going along with” presumably indicates a weak attitude; “collective recognition” a strong one). However, by doing so, Searle merely scratches the surface of the phenomenon. He does not address the real issues, which are as follows: What exactly is collective acceptance? Does it involve collective commitment? How does collective commitment relate to endorsement (I doubt that Lobo is right when he equates the two)? And (how) does collective commitment give rise to deontic powers?

Finally, insofar as human rights are concerned, I am convinced that Searle’s theoretical framework can be used to generate a lot of valuable insights. Any satisfactory attempt at doing so, however, should address the intuition that human rights are due to what we are and not to what we think, or to what we collectively accept. An extreme view would deny this intuition altogether and claim that human rights are nothing more than social constructs. Searle’s theory can be used to make this point. Searle, however, wants to save the intuition. All he does, however, is hand waving. He claims that “if you qualify as a human being, you are automatically guaranteed human rights” (Searle 2010, 181). But his theory does not have the means to account for this, at least not as it is. As I read his comment, Lobo does not deny this.

In my original review essay, I presented, or at least hinted at, an alternative to Searle’s theory, which I have been developing for some time now. This is why the review is titled “Reconstructing Searle’s *Making the Social World*.” In this brief response, I cannot do more than reaffirm my criticisms of Searle. I hope I have expressed myself more clearly than before, and I would like to thank Lobo again for pressing me to do so.

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