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The Normative Structure of Human Civilization
Readings in John Searle’s Social Ontology
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Introduction
The Birth of Society: A Sacralization of Language?

Let me start with the heroic gesture, whereby John R. Searle conceives the world: Instead of an extramundane architect, it is the actors themselves who construct their own reality. It is by way of the noble gesture of the speech act that institutions and society are built. Despite Searle’s admirable ethos of clarity and sobriety in argumentation, he cannot defy the aesthetic appeal of parsimonious system-building when stating »that social reality has a formal structure as simple and elegant as the structure of the language used to create it«.¹ This simple structure consists, according to Searle, in the fact that all human institutional reality (except the institution of language itself) can be traced back to declarations.

Based on this insight, the founding fathers of social theory appear to have been erroneous in several perspectives: To have mistaken the role of language (»a curse of all social (and political) theorizing from Aristotle«² on) and having consequently misunderstood the question of social reality. But is this reference to Weber and Durkheim correct, these »great philosopher-sociologists of the nineteenth and early twentieth centuries«³ to whom John Searle had claimed to be »much in debt«⁴? They were regarded as having been unable to answer the questions, because »they did not have the necessary tools«.⁴

A revisionist reading of these authors, that I can only sketch here, could, however, illuminate further their actual relationship to the »reality problem«: Despite a strong tendency in Durkheim’s writings to provide a sociologization of the world and to demonstrate the social nature of classificatory systems, the factual character of the social world is never in doubt: it is the specific »reality« of a set of emergent phenomena that constitutes another ontological realm separate from that of the individual or supernatural sphere. His religious ontology, mainly the distinction of the world according to a binary code of the sacred and the profane, serves as a

¹ Searle: Making the Social World, p. 16.
² Ibid., p. 62.
³ Searle: The Construction of Social Reality, p. xii.
⁴ Ibid.
model of analyzing the social world after rituals of purification, identification and sacralization of the research object.

Weber’s »realism« is the recognition of the reality of fiction: collective phenomena as chances that a type of social action will occur, collective identities defined by the imagination and the belief in their existence: »Gemeinsamkeitsglaube«, »Einverständnis« as a form of social action »as if« a social order would exist. Belief in objective reality is a necessary condition for his methodological »objectivism«, rooted in the mirrored relationship to commonly shared values of a certain community: The relationship to values constitutes objectivity insofar as it defines the »Kulturbedeutung«, the selectivity of attention and the embedment in a concrete community of thought. Weber’s reserve to any kind of ontology entails, however, a minimal ontology of the »as if«: it would be wise to act in this world as if it existed and »as if« certain rules would be accepted as a given. Sometimes we call them human rights.

The institutional life of social reality demands multi-faceted analyses. Searle’s skepticism about large parts of social theory consists in the suspicion that these theorists fail to deliver answers regarding the fundamental »structure of human civilization« (the ambitious subtitle of Searle’s fascinating study *Making the Social World*), whereas social scientists point to the fact that they indeed have something to say when the »role of language in the creation, constitution, and maintenance of social reality« is at stake. Thus, Searle’s often provocative project of social ontology is taken on by philosophers and social scientists in this volume in a critical encounter. These contributions are all a result of the lively discussions with John Searle on the occasion of a workshop dedicated to his study of social ontology at the Käte Hamburger Center for Advanced Study in the Humanities »Law as Culture« in the fall of 2012.

However, before giving a short introduction of the main topics and contentious issues readers of this book may expect, I would like to take the liberty of connecting Searle’s project to the research agenda of our Center. It is quite obvious that, when institutional realities and the deontic power of social arrangements are focused on, the reality of law should not be omitted. Therefore, I will try to rephrase some of the fundamental questions that have been dealt with at our Center for many years in Searle’s terminology – some of them are answered in this book or in the further volumes of our series »Law as culture«, whereas other questions seem to represent eternal problems demanding repeatedly new analyses. This gives me the opportunity to go beyond the logical structure of declarations as the presumed basic structure of society by pointing to the social and cultural life of speech acts and institutions.

Law as a Cultural Fact

The agenda of the Käte Hamburger Center is centered on the question of defining law from a transcivilizational perspective, leading to a reflection of different systematic dimensions of law as a cultural fact, namely symbolic cultures and ritual dynamics, normativity and normative pluralism, and issues of the force of law and of organizational culture.

I will try to approach Searle’s perspective by way of formulating the following questions: What does it mean to call a certain institutional fact »law«? A set of declarations, as Searle promotes? How can we understand and explain the different ways to impute »deontic power«, as Searle names it, to social facts as institutions? Where is the place for the implementation and the interpretation of declarative speech acts? In other words: where is the place for the enforcement of the law and the respective organizational structures – Weber’s famous »Erzwingungsstab«?

And perhaps the most crucial one in this context: According to what kind of magic is the binding »force of law« produced; by the simple declaratory act and its illocutionary effect? Or is there any other way to understand and to explain the binding effect of the utterance of words?

I will try to give you one possible interpretation derived from a reading of some rather hidden analysis of Durkheim. Doing that I come back to a critique of Habermas’ theory of communicative action, claiming a »linguistification of the sacred« instead of what I think to be more true: a sacralization of language. Let me tell you the argument:

First digression: The speech act seen through the lens of the sociology of religion

The oath is a prototypical speech act, since the action taken lies in the uttering of words whose meaning consists of a promise. The opportunity for the oath to become binding initially follows from the content of the oath’s formulation, in which a godly being is appealed to as a religious sanctioning instance in case of breach of contract:

»By this invocation, this being becomes the guarantor of the promises made or exchanged: he is present and communicates to them something of himself and of the sentiments he inspires. To fail in this is to offend, to be exposed to his vengeance, that

6 Cf. Austin: How to Do Things with Words.
is, to sacred penalties which seem to the believers as certain and inevitable as those later to be imposed by the tribunals.«\(^7\)

While this explanation centered on the content of the promise remains oriented towards sanction, the further interpretation relies on the religious-sociological meaning of the mere utterance of the oath, irrespective of their semantic meaning. Durkheim continues: «In these circumstances, once the words have left the lips of the contracting party, they are no longer his own, they have become something exterior to him, for they have changed in nature.«\(^8\)

Yet wherein does the metamorphosis of the words reside? Under the conditions of the religious scenario, they transformed from the profanity of the flesh into the sacredness of words. Removed from the whims of the speaker and clothed with religious power, these words now stand up to him and bind him. This interpretation of the oath that can be found in Durkheim’s review of a work by Lasch\(^9\) stands in sharp contrast to the characterization of Durkheim’s theory designed by Habermas. No »linguistification of the sacred« (»Versprachlichung des Heiligen«)\(^10\) is to be observed, but Durkheim uses rather the prototype of speech act theory – the oath – to show how it is only through the sacralization of speech that words can attain binding force. Even if one is skeptical of the magic of words as a means of tracing the binding force of promissory acts in modern societies, the second line of explanation of the institutional context remains noteworthy.

Austin’s speech act theory explicitly notes the institutional scenario – just like in Durkheim’s analysis of the oath. It thus remains hard to tell how the relationship between institutional arrangements – i.e. the social organization of sacral and profane sanctioning bodies – and the intrinsic binding force of words is constituted, whether it stems from the moral binding force of communicative reason or perhaps rather from the sacralization of word in the Theory of Communicative Action. For the latter, too, relies on the idea of contract, at least as a metaphor, when speaking of the »acceptance« of »offers« of speech acts.

This is precisely wherein Durkheim sees a further religious relict of modern contractual thought. For if a word is »given«, then, according to the magic conception, it has actually left the person: »Those expressions still in current use – to give one’s word, to pledge one’s word – are not mere metaphor: they correspond in fact to a parting with something, a genuine alienation.«\(^11\)

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\(^7\) Durkheim: Professional Ethics, p. 186.
\(^8\) Ibid.
\(^9\) Cf. Durkheim: Review of Lasch, Der Eid.
\(^11\) Durkheim: Professional Ethics, p. 196.
This argumentation is linked with the second step of our Center’s program, a focus on the nexus of law and religion.

Law and Religion

By shedding light on the relation of law and religion, we follow up with the suspicion that a primary source behind the production of that mystic »force du droit« is linked to religion or religion-like facts. In other words, we relate the legal to the religious sphere. Transferred to the declaration theory we might ask:

Does religion deliver an explanation for the question where the deontic power of institutional orders derives from? How do institutional facts become legitimate, not only endowed with deontic power but imagined as justified? What kind of institutional fact or institution based on declarative speech acts defines how basic institutions, or as I would like to say: institutional spheres,\(^\text{12}\) are related to one another? – By way of fusion, differentiation, interference, interpenetration, inequity etc.?

Globalizing Law and the Clash of Legal Cultures

One major theme of our Center is gaining an understanding of law and normativity in the ambiguous process of globalization. For the process of multidimensional globalization also brings normative cultures closer together whereas at the same time a retreat to local, traditional normative orders is observable:

Are the aforementioned institutional facts bound to territorial limitations? Or how far is the reach of declaration acts? Can the so called »world society« be understood as a set of institutional facts created by speech acts of declaration? What holds the sea of institutional facts together at the level of world society?

Once again: if we conceive speech acts not by their logical form but by their chance to realize certain effects in reality; what are the spatial boundaries to the efficiency of illocutionary effects; what kind of distance do they transcend, etc.? In other words the limits to communalization might also be valid for the reach of speech acts as binding forces, the glue to societal integration!

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\(^{12}\) The concept can be found in Sloterdijk’s elaboration of his »spherological« artificial language: cf. Sloterdijk: Sphären, Vol. 1, p. 71. However, it is used in a different sense there. See Gephart: Sphären als Orte der okzidentalen Rationalisierung.
Linked with the process of globalization is the complex of the conflicting relations of legal cultures, because migration, compression of interaction in the framework of time and space, circulates normative orientations as an expression of cultural identities and conceptions of how to lead a decent life.

Reformulated in Searle’s language game:
What does it mean that facts endowed with deontic institutional power by declarations of validity contradict one another within the same society? What are the institutional solutions to these contradictory declarations? For example: take the declaration of repudiation, a classical example of a speech act, to be repeated three times in formal language, after having previously been used as a threat. This may be valid within certain Muslim communities, whereas the main society rejects this validity claim. How should we formulate and analytically resolve the logic of conflicting legal cultures? – Is it a struggle about diverging declarations? How could we conceive an institutional order that allows conflicting legal cultural declarations to be legitimate? Or: What do we learn about legal pluralism by using the declaration theory of normativity («declarative pluralism»)?

There are a lot of other potential questions that come to my mind when looking back at the latest research done at our Center. With regard to the relation of law and the arts I would like to ask:
If institutional facts are created by declarations and thereby rely on all kinds of imagination to relate the declaratory act to some imagined institutional reality, what kind of relationship exists between expressive, institutional-related speech acts, like in art, literature, film and architecture on the one hand, and the very declarative speech acts on the other hand? Do they stress or enlarge the deontic power, undermine or simply represent the memory, presence and future of the institutional complex called the law?

Three aspects appear and reappear as central questions of a sociologist, one with regard to language, another with regard to the process of institution building and the third one as the missing link of magic and religion.

1. Is there any possibility to profit from the elegance and the clarity of John Searle’s theorizing in order to understand cultural differences? Is it the way to make speech acts, to believe in the power of language? What kind of belief in the inherent capacity of language to be the bearer of commitments is necessary to think that Searle’s answer to the question what holds the world together also applies to the realm of normativity?

2. Is it not true that the hardcore facts of «institution building» must be analyzed in a much more complex manner? Let me present the last digression that seems to be at the interface of philosophy and institution building.
SECOND DIGRESSION:
DECLARATORY ACT AND »RITE OF INSTITUTION«

»In a somewhat risky exercise, I will endeavour to bring out the invariant properties of social rituals understood as rites of institution.« Just as Marcel Mauss, Pierre Bourdieu investigates the constant characteristics — which do not depend on time and society — of an absolutely distinct reign of phenomena.

1. The Ritual of Demarcation

Bourdieu draws our attention to the rite d’institution as an act of demarcation. Thus, genital mutilation is a rite of demarcation which particularly establishes the border between those who are and those who are not involved in the rite, i.e. women, which means that the systemic reference of this institutionalizing act is not the group of men as such, but the entire social unit, turning a basic difference into an institution by marking the border between men and women as a »legitimate« order that constitutes the entire social entity.

Very similar to Mauss, Bourdieu is dealing with the efficiency of the rite that turns a weak man into a real man, a varlet into a knight, a delegate into a president or a pupil or student into a carrier of symbolic titles and symbolic authority: »social science must take account of the symbolic efficacy of rites of institution, that is, the power they possess to act on reality by acting on its representation«.

2. The Magic of Difference

But do we really know what consecration is all about? How does the magic of difference operate and what are the specific techniques of the establishment of difference? Bourdieu is now mobilising everything we know from the construction of collective identities: Connection with primordial, unavailable features, such as gender and age, or even features which lament the exceptionality in specific processes: in the French system of the Grandes Écoles, i.e. the infamous »Concours«, which Bourdieu investigated in his Homo Academicus and which almost prevented Durkheim’s entry into the École Normale Supérieure. Insofar, the acte d’institution becomes a fundamental ritual for the determi-
nation of social identity as identification of what a person actually is or will be: »It is to signify to someone what he is and how he should conduct himself as a consequence.«

3. The Act of Institution as Identity Ritual

The addressee of this act is, however, not simply the one to be institutionalised, the one who is attributed to his social identity. Because this happens in a, as I would like to put it, »institutionalizing community«, he is told who he is to the community: The investiture, the testamentary determination of the inheritor in the ritual of the opening of the will, the decoration with medals and honors, the ritual of institutionalization is performed within a communicative act relieving the individual and at the same time evoking community. This, however, binds the individual to the community. As Durkheim would put it, the oath of allegiance is downright intended to avoid desertion, the acte d’institution shall produce something which Parson calls a »commitment« towards the community: »This is also one of the functions of the act of institution: to discourage permanently any attempt to cross the line, to transgress, desert, or quit.« Thus, the consecration acts would have to be analyzed in addition to the de-consecration acts; the top ritualized exclusion acts would have to be analyzed in addition to the acts of institutional inclusion – something which Bourdieu fails to do. The breaking of the sword, when Dreyfus is deprived of his prestige as an officer, the act of retirement which Auguste Comte terms the »sacrament of retirement« within his catéchisme positiviste. Just consider the countless series of festivities related to retirements from academic chairs, which deserve sociological attention under this aspect. Even though they result in an effective loss of functions and a restricted existence, they are given the appearance of ennobling its subject through the addition of the designation emeritus professor. If this process of symbolically communicated exclusion is provided in the curriculum vitae of the homo academicus, the incorporation of the institutionalization act into a habitus makes sure that it is not too easy to bid farewell to the community of the institutionalized. Therefore, the values of the society must be inscribed in the body; the contingent of the acquired characteristics must be translated into an available, primordial, purely corporal nature of man. The manners and habits of the institutionalization community thus gain a deep so-

16 Bourdieu: Language and Symbolic Power, p. 120.
17 For an interpretation in Bourdieu’s terms see: Gephart: Sur le rôle de l’honneur dans les sociétés modernes, in: Voyages sociologiques, pp. 207 et seqq.
19 Comte, Auguste: Catéchisme positiviste.
ciological significance. The manner of speaking, walking, sitting up or standing erect, eating habits and taste judgments are all regarded as the external signs of affiliation. They are tailored to fit the individual just like medals, badges or uniforms, which remind us of what the act of institution has initiated: the designation and legitimization of an individual’s place within the institution.

4. The Charisma of Institution

But what is this incredible efficiency of institutionalization based upon? A solution cannot be found in the magic of the word, as Habermas wanted to derive from the illocutionary power of speech acts. The efficiency of the speech act is only based on its institutional context, as we can all read in Austin’s work. This is explicitly included in Bourdieu’s argumentation through speech act theory, formulated with a certain criticism of Habermas, and theoretically coming to a head in Language and Symbolic Power. The magic of the symbolic act – according to Bourdieu – only functions »if the institution … is guaranteed by the whole group or by a recognized institution«. And this is where Bourdieu – without referring to Mauss – mentions for the first time the nature of the »efficiency belief«. This is not an illusion, but only the expression of the power which is actually given in the act of institution, because it is no longer a subjective attribution of power, but the expression of »collective belief, guaranteed by the institution and made concrete through qualifications and symbols like stripes, uniforms and other attributes«.

Bourdieu’s second answer seems even more important to me. It is the hint to the non-institutional prerequisites of institutions, in the end a charismatic efficiency belief, which leads the individual to assume that the characteristics attributed to him actually revalue him, take him out of everyday life. At the same time, it is the tragic of the inclusion ritual – as I would like to call it – that, just as every community formation, it excludes all those who do not belong to it, the ritual community of the initiated and institutionalized.

3. In other words: What is the role of the non-rational, the magic of language, the charisma of institution in order to understand a world that in its self-description reflects its global self as a rational one?

21 Cf. Austin: How to Do Things with Words.
23 Ibid., p. 126.