The Sounds of Institutional Facts[1]

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Abstract. Searle offers three arguments supporting the view that institutional facts are language dependent. One, institutional thoughts are too complex to be held without language. Two, institutional facts would remain invisible if they were not publicly represented by means of some linguistic symbols. Three, the changes that are brought about each time an institutional fact obtains could not take place if those thoughts were not sub-types of speech acts, namely declarations, the latter being characterized by an external, non-psychological, side in virtue of which uttering them is doing something. The paper reviews these arguments, shows what is wrong with the first two, and proposes a few refinements to the third one.

Introduction

Already in the *Construction of Social Reality*[2], Searle advanced a claim he himself described as "radical". The claim is that institutional facts are language-dependent facts. In his recent *Making of the Social World*[3], Searle makes that "very strong theoretical claim"[4] even more central to his social ontology. Such insistence deserves scrutiny.

Money, kings, universities and frontiers would not exist, Searle first convincingly argues, if we did not believe that they existed. They are what he calls "observer-dependent entities", drawing our attention to the crucial difference between brute facts such as the fact that Mount Blanc has snow on its summit, on the one hand, and those facts that are dependent on human agreements, such as cocktail parties, football games and marriages, on the other

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[2] Searle, 1995, hereafter referred to as CSR.
[3] Searle, 2010, hereafter referred to as MSW.
[4] MSW, p. 11.

hand. It is also Searle's view that a social fact requires much more than our thoughts and representations: the thoughts, he quite surprisingly adds, must be expressed in language[5].

The claim is rather strange. It just does not seem to be the case that we take pains to utter our intimate thoughts each time we represent to ourselves a piece of paper as a one dollar bill, each time we think of a building as a university or each time we see in the grouping of a few human beings an auction, a marriage or a cocktail party. For that reason, needing to verbally articulate in each case the "X as Y" kind of representations that are involved is unsurprisingly a contested claim of Searle's social ontology (cf. Moural, 2008, McGinn 2011, Little, 2011, Hindriks, *forthcoming*). In his review of the *MSW,* McGinn expresses his skepticism in the following way: "if we all regard certain things as money and use them that way", he reasonably asks, "isn't that enough to make those things money, without our having to say it out loud (or by sign language or some such)? To be sure, we can't have marriage without the concept of marriage; but once we have the concept and collectively ascribe it to pairs of people, don't we have all we need for the institution of marriage to exist—what need is there for uttering the word?"[6].

It is far from obvious why the thoughts that are partly constitutive of institutional facts need to be linguistically articulated. However counter intuitive the claim about the necessity of language may be, it is not a bold assertion. Searle does offer various arguments in favor of that claim—three on my count—which can be found in the *CSR* as well as in the recent *MSW*. After having presented the elements (and only those) of Searle's social ontology that are needed in order to understand these arguments (section 1), I will critically review the latter (sections 2-4). With the help of a few additional distinctions that I borrow from Reinach (1913) and Moya (1990), the last two sections

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[5] McGinn, 2011.
[6] McGinn, 2011.

expound on the third and, as I intend to show, most persuasive of these arguments (sections 5 & 6). Hopefully, Searle's contentious claim will on the proposed fleshing out sound more acceptable.

1. The move from X to Y

A building block of institutional facts is the idea of constitutive rule. Let us recall that while a regulative rule merely "regulates" a behavior that is logically independent and prior to the rule[7] (table manners, for example, regulate an activity, that is eating, that may perfectly well be performed independently from table manners), a constitutive rule also regulates but, in addition, it creates or defines a new form of behavior. The rules of chess create the possibility of playing chess, a possibility that did not and could not exist prior to the existence of these rules. All constitutive rules, he also claims, have the following structure: "X counts as Y"[8]. Let us look at the variables in more details.

The X term refers to a brute fact or object. It is a fact or an object that would be ontologically the same whether people perceived it or not. For example, the fact that cowry shells exist does not need to be perceived to be there. Indeed, a cowry shell is something that exists independently of human intentionality. Human beings could all be eliminated without such an event having any impact on the existence of cowry shells. The Y term refers to the same thing as the X term but refers to it under a different description, namely an institutional description. "Money," "frontiers," "king," "marriages," and "conferences" are examples of Y terms.

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[7] Searle, 1995, pp. 27-28.
[8] The formula is rather « X counts as Y in C » but I am intentionally dropping the C which refers to the context as this element need not be presented for the intelligibility of the present argument.

The next question is: "How can the thing that is referred as X count as the thing that is referred as a Y?" It is only in case a certain function of a certain kind, namely a "status function", is assigned to the brute facts (the X) that it becomes a Y or an institutional fact. Examples of such status functions are: "To serve as a medium of exchange", "to delineate two states", or "to indicate that its bearer is a king". There seems to be a difference between status functions and the function the heart has to pump the blood. Status functions also seem distinct from the function of the screwdriver to loosen screws. How does Searle account for the difference between these three types of function?

The distinction between agentive and non-agentive functions is what Searle uses to set apart status functions from biological functions. Status functions are agentive, that is, they modify the range of what agents can and cannot do, unlike non-agentive function, such as the function of the heart to pump blood, which does not modify the range of things we do. The function of pumping blood that is assigned to the heart is part of the theoretical account of the heart. By contrast, an agentive function "has to do with our immediate purposes, whether practical, gastronomic, aesthetic, educational, or whatever"[9]. We assign to screw drivers the agentive function of driving screws with the practical purpose of driving crews. We assign to wine the agentive-function of pampering our taste buds.

Money, screwdrivers and wine all serve some practical purpose. But the last two are not institutional facts. How can we account for the difference between these two and money? To do so, Searle introduces the distinction between agentive functions that are causal and agentive functions that are not causal. Status functions are non-causal agentive functions in the following sense: they are assigned to entities that are physically unrelated to the function they perform. When squirrel furs, cowry shells and cigarettes serve as media of

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[9] Searle, 1995, p. 20.

exchange, these object do not play this function in virtue of their intrinsic physical features. By contrast, the physical shape of screwdrivers is what enables them to perform their function. Similarly, if the wine did not have a certain molecular composition, our taste buds would not be pampered.

Searle makes status functions the ultimate foundation of all other building blocks of institutional reality. It is from the way status functions are assigned that many other essential components — such as collective intentionality and deontic powers — are derived[10]. Unsurprisingly, it is also on the same foundation that Searle bases his case for the necessity of language. All institutional facts involves a move, i.e. the move from the X to Y in the formula X counts as Y in C, and that move cannot take place without language.

Searle offers various arguments for the need for language within the performance of status functions — various ways of explaining how language is necessary to the move from the brute facts to institutional facts. The following three explanations can in particular be extracted from his writings:

1. The move, he first argues, "is *eo ipso* a linguistic move, even in cases that apparently have nothing to do with language" (CSR, p. 63). On such an *eo ipso* view[11], the thoughts which partly constitute institutional facts are not the sort of thoughts that one could have independently of language.

2. The move, he alternatively argues, involves language inasmuch as a linguistic representation is the only way to give visibility to the move from X to Y — the visibility that is needed for the performance of status functions.

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[10] I will presently say nothing about these two components as I believe that they are not germane to the subject at hand.

[11] Cf. Moural (2008) for a discussion of that particular argument.

3. The move, Searle finally argues, exists in virtue of a speech act inasmuch as that is the only way by which the changes in reality that are involved in the creation of institutional facts can be accounted for.

These three explanations will be spelled out in the three next sections. In the last two sections, I propose a few refinements on Searle's third argument.

2. An *eo ipso* linguistic move

Searle gives two conditions for a fact to be language dependent (CSR, p. 63):

1. The move from X to Y is constituted by thought.

2. The thought is language dependent.

We cannot form the thought without any language in which the thought is expressed or described. As Searle says, I need to have "some words or word-like elements to think the thoughts" (CSR, p. 63). Words are thus needed in order to be able to have the thoughts that are involved in the act of counting Barack Obama as the president of the United States. Just as the words "king", "money" and "university" are required in order to have the thoughts that something is the king, is money, is a university. The thinkable, as Searle also says, cannot in this case be "detachable from the speakable or writable expression" (CSR, p. 68). Searle metaphorically refers to words as the "vehicle" of the thought (CSR, p. 73), as "something to think with" which "we have to have" (CSR, p. 73).

In this first argument, words are needed in so far as they are "linguistic symbols" (rather than, says, communicative devices). So the symbolizing power of words is the feature in virtue of which words are essential to the existence of kings, banks, and money. Searle recognizes in all linguistic

symbols three essential features. They first have to "symbolize something beyond themselves" (CSR, p. 66). Defining linguistic symbols this way is hardly helpful since it is redundant but the idea is roughly the following. A linguistic symbol means, refers to, represents, expresses, or is about something else[12]. Searle adds as a second condition that a symbol symbolizes "by convention" (CSR, p. 67). Everybody's agreement, or at least everybody's happy or reluctant recognition, of the symbolizing power of a representative device is required for the latter to count as a linguistic symbol. And thirdly, linguistic symbols are public symbols, so that a road sign that is invisible to many is not a linguistic symbol.

Note that the definition is at that point incomplete. Take, for example, the fox that symbolizes cunning or the scythe that symbolizes death. On Searle's definition, these symbols meet the three criteria and yet shouldn't they be considered as *pictorial* symbols? It seems indeed that we should restrict the class of linguistic symbols to include those that are verbally articulated only. As we shall see later it is by conflating these two categories of symbols that Searle unpersuasively proves the necessity of language.

The crucial question is: Why is the thought involved the move from X to Y language dependent? Searle provides several different answers to this question. He first argues that the thought is too complex to be held without words and gives the following thought as an example: "Her mortgage is largely paid off, but the recent decline in interest rates may make it desirable for her to refinance to lower her payments and to take out cash." (Searle, 2011). No doubt that this particular thought is impossible to have in a pre-linguistic form. But not all thoughts expressing the imposition of status function are of that complexity. As McGinn recalls, biologists have shown that ants are able to "mark their territory

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[12] The only and remarkable exception to that feature seemed to be the self-referential word "WORD". It is however only when the word "word" refers to itself that it is such an exception. I do not see any circumstances, beside maybe in contemporary art, where "word" could have such self-referential meaning.

by means of chemical signals that do not block others by sheer physical insurmountability"[13]. If ants are able to create an institutional fact such as a frontier, the representation involved in the creation of such fact certainly does not require language.

Searle points to a second reason why a thought is language dependent. The dependency may derive from the fact that the thought itself refers to a language. A case in point is the following thought: "Mt Everest has snow and ice at the summit, is a sentence of English" (CSR, p. 60). The idea is compelling enough but does not cast light on institutional facts whose creation involves thoughts that typically do not refer to any language. Take, for example, the thought: "That yellow line is a frontier". It could be held by someone who does not also think that "that yellow line is a frontier" is an English sentence" and only the latter could not be held without words. Now it is true that the thought "that yellow line is a frontier" is an English sentence" is involved in the move from an X, i.e. a brute sequence of sounds to a Y, i.e. a meaningful English sentence. The thought is, to put it differently, one by which the institutional fact of language is (partly) created. The fact that language is an essential component of the existence of that particular institution which is the institution of language should not be very surprising. What remains to be shown is that language is an essential component of other institutions such as money, kingdoms and cocktail parties.

The third argument I will refer to as the "there is nothing else there but linguistic symbols" argument. The argument consists in an analogy between the scoring of points in games and institutional reality. Searle explains that "a touchdown counts six points" is not a thought that one could have without linguistic symbols. Why not? Because, according to Searle, "points can only exist relative to a linguistic system for representing and counting points" (CSR,

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[13] McGinn 1995, p. 39.

p. 66). Similarly, the analogy goes, "the yellow line counts as a frontier" is a thought that one could not have without linguistic symbols and the reason is that a frontier can only exist relative to a linguistic system for representing.

There are at least two ways of resisting the argument. One is to question the adequacy of the analogy, that is, on the possibility of treating frontiers, Kings, and money like touchdowns. Although games involve status functions and constitutive rules, they are not full-blown institutions, and so we should consider any analogies between the two with caution. I will examine this line of thought in the last section of this paper. The other line of reply, which is the one I examine now, is to refute the view according to which games could not be played if agents did not have linguistic ways of representing the scores. It is true that the game could not be played if points could not be counted and it is also a noticeable fact that numbers are in this linguistic system the way to represent and count these points. But the question is whether there is a non-linguistic way of representing and hence of counting those points? What if I fold up one of my fingers every time a point is made and use that registration device? Wouldn't it be an alternative way of representing and counting the points? While it surely would be less reliable (I need to keep the fingers fold up until the end of the game) and more limited (I only have 20 fingers) than using numbers (by either writing them down or by uttering them), yet it is, *Pace* Searle, a non-linguistic way of scoring points[14].

But Searle further claims that "if you take away all the symbolic devices for representing points, there is nothing else there" (CSR, p. 66). Now there are various ways of interpreting what Searle means by "there is nothing else there".

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[14] Searle does recognize the possibility of counting points by using "some other symbolic devices other than actual words" and gives as an example the possibility of "assembling piles of stones, one stone for each point." But Searle astoundingly adds that in this case "the stones would be as much linguistic symbols as would any others". But to my knowledge, stones are not words and although we may imagine a new language within which words would be stones of various shapes, such a language remains to be invented and until it is so, stones are not words.

Maybe he means that no point could be scored if there was no way of representing them at all, whether linguistic or non-linguistic. The claim is however dubious. Take away all the representative devices available and, still, it remains the case that one team's score is raised by 6 points if one of its players makes a touchdown. The lack of representative devices does not change anything regarding that fact.

Searle will maybe reply that, being short of a symbolizing device, the players (or some authority attending the football game) need at least to represent to themselves the added points for the latter to exist. After all, it remains an uncontested claim that no point could ever be scored if there was no one to think that there are scored points. But even this apparently credible claim can be challenged. Suppose that a football game takes place and that one of the teams makes a touchdown. According to the rule of the game, the team now has six more points but suppose furthermore that precisely when the touchdown is made, no one registers it either by changing the numbers of the scoring board nor by folding his fingers or by using any other devices. To explain such failure, we can imagine that everyone is suddenly struck by a short period of amnesia (an effect of having taken enhancing drugs, for example) and that as a consequence no one is able to represent the new score to herself. Would it imply that no points have been made at all? Would it imply, as Searle says, that "there is nothing else there" that happened? My intuition is that it would not have such radical consequence. In spite of the collective amnesia, one of the team did score six more points and it is unfair that no one has counted them.

Searle might here (as elsewhere[15]) be willing to invoke the type-token distinction in order to restrict the language dependency to the type. Points as

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[15] Searle invokes the type-token distinction in order to explain the possibility of mistakes within the practice of attributing status function to brute fact. The use of forgery as money is an example.

token can be scored without anyone representing them as having being scored. But what is true of points as tokens is not true of points as types which not only need to be represented to exist, they also require words or other markers to exist. Here is how the argument can be addressed. In order to justify his claim, Searle rightly notes that the scoring of points is not something to be seen in addition to a man crossing the line carrying a ball. He also correctly observed that "points are not 'out there' in the way that planets, men, balls and lines are out there" (CSR, p. 68). But it does not follow that, in contrast to planets, points are nothing but words. It does not follow that "points are not something that can be thought of or can exist independently of words or other sorts of markers" (CSR, p. 68). For even if we didn't have words or, for that matter, any other sorts of symbols to refer to points, still the latter could be scored as long as they are represented (and mutually known as such) in everyone's mind.

At this point, McGinn's skepticism about the need of language remains vindicated. Let us see whether such skepticism also resists the two other defenses that Searle provides in favor of the dependency of institutions on language.

2. Status function indicators

As Searle repeatedly notices, the switch from the X to the Y is not visible. This is because the object that is referred to as a Y is not physically different from the object that is referred to as an X. Searle says that "the existence of institutional facts cannot in general be read off from brute physical facts of the situation" (CSR, p. 119). As he also says "there is nothing in the physics of the situation that makes [the fact that the man holding the ball has scored a touchdown] *apparent*" (CSR, p. 72, my emphasis).

However invisible it may be, the move from X to Y does take place and what makes it possible is our capacity to represent the X as a Y. Representation

thus constitutes a crucial step in the existence of status function. "The only way to get to the Y status function", Searle says, "is to represent the X object as having that status" (MLS, p. 154). It is important to observe that the representation involved in the move from X to Y is a representation of something *as* something else. The move requires the capacity to represent the object designated by the X term *as* a Y. Note that the object referred to as X is not physically different from the object referred to as Y. Hence the invisibility of the move from the former to the latter.

There is an important feature of representations that Searle does not stress. It is the fact that representations can either be public or private. The move from X to Y can either be something that is accessible to everyone or something that we represent to ourselves. A case where the representation can remain private is, for example, the case where John Searle imposes on the full moon the function of indicating to him that it is time he trimmed his sideburns[16]. Obviously, Searle's private representation of the full moon as an aide-mémoire is all that is needed. He needs not inform other Californians of the status function he personally imposes on the full moon. A similar case is the use of a piece of string tied around one's wrist as a reminder. The string will serve as a reminder if and only if someone represents it to herself as a reminder. But that person need not share her representation with anyone. She need not inform anyone of the special use she makes of that piece of string[17].

Using the full moon, a piece of string, or anything else as a reminder is however not an institutional fact. These are illustrations of solitary acts. In the case of institutional facts, Searle could reply, the move from X to Y exists in so

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[16] McGinn (1995) explores this example in his review of *CSR*.

[17] There is an apparent paradox here. A reminder is a helpful device for anyone who needs to be reminded of things. Yet there is one thing that one needs to remember when using a piece of string as a reminder which is the special use one makes of the string. That special use cannot be read off the physical features of the string. I suppose that its unusual location, that is, around the wrist, here helps its user to remember the special use she makes of it.

far as it is publicly available to everyone and thus *publicly* represented as existing. The reason why the new status needs "markers" is, according to Searle, "because, empirically speaking, there isn't anything else there"[18] or, as he says, because "there is no way to read off the status function Y just from the physics of the X". According to Searle, the invisibility of all constitutive rules explains the need for markers. If status functions were physically visible, just looking at the Y object would be sufficient.

The argument however does not withstand scrutiny. First of all, it is possible to dispute the absence of any visible difference between the object as an X and the same object as a Y. Searle hastily assumes that any visible difference would have to be a physical difference between the objects as a X and the objects as a Y. But it need not be so. What makes the object as an X visually different from the same object as a Y could alternatively be the sort of things we respectively do with X and with Y. There is no physical difference between cigarettes serving the function of providing relief from a nicotine craving, on the one hand, and cigarettes used as a medium of exchange, on the other hand. In both cases, cigarettes are physically identical. It does not follow that the following of the constitutive rule of counting cigarettes as a medium of exchange is itself entirely invisible. This is because the physical features of cigarettes are not all what there is to see when cigarettes are used as a medium of exchange. Agents behave differently when they smoke cigarettes and when they use them as money and these behavioral differences are visible. These behavioral differences should not be surprising from Searle's perspective. As he stresses himself sometimes, constitutive rules modify the range of things that agents can *do*. The constitutive rule of the money system allows agents to buy things with cigarettes, something they could not do before. The fact that agents do not behave similarly when they use cigarettes as a nicotine provider

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[18] CRS, p. 69.

as when they use them as a medium of exchange may indicate something to any newcomer. To be sure, these behavioral differences may be insufficiently reliable as a representative device to provide knowledge of the constitutive rule that creates the money system. It might not be easy to infer that agents count cigarettes as a medium of exchange from the fact that agents purchase them although they do not smoke them. The point is that, besides the physical similarities between X and Y, there are behavioral dissimilarities between the two situations, and these behavioral dissimilarities do not make the X object and the Y object entirely equivalent, from an "empirical" point of view.

Status indicators are means by which "we impose intentionality on entities that are not intrinsically intentional" (CRS, p. 99). A status indicator is a representative device that allows an entity to represent something beyond its physical features.

But the function of status indicator is itself a status function. Uniforms, crowns, and wedding rings do not play their function, that of indicating that certain human beings have such and such status, in virtue of their physical features. Crowns are not intrinsically intentional. So we first have to impose the power to represent on crowns for crowns to be able to perform their function of representation.

Be that as it may, Searle would perhaps reply that there is a need in the special case of institutional fact, for a public way of representing the various Xs as Ys. He will recall that kings, universities and cocktail parties are not like pense-bêtes in that they involve a group of individuals who all need to be aware of the status functions. Echoing Reid's distinction between solitary acts and social acts, Searle argues that status indicators are the means by which everyone is informed of these status functions. Let us here quote Reid:

> A man may see, and hear, and remember, and judge, and reason: he may deliberate and form purpose and execute them, without the intervention of any

other intelligent being. They are solitary acts. But when he asks a question for information, when he testifies a fact, when he gives a command to his servant, when he makes a promise, or enters into a contract, these are social acts of mind, and can have no existence without the intervention of some other intelligent being, who acts a part in them. Between the operations of the mind, which, for want of a more proper name, I have called *solitary*, and those I have called *social,* there is this very remarkable distinction, that, in the solitary, the expression of them by words, or any other sensible signs, is accidental. They may exist, and be complete, without being expressed, without being known to any other person. But, in the social operations, the expression is essential. They cannot exist without being expressed by words or signs, and known to the other party (Reid 1969, 437-438[19]).

Suppose you and I are playing chess and a pawn is missing. "Let us count that coin as a pawn", I suggest to you as a way of replacing the missing pawn. The utterance is the representative device, audibly specifying to the other party the fact that the coin now counts as a pawn. Is the need to be known by some other party what explains the difference between the cases (e.g. all institutional facts) where a representative device is needed and cases (e.g. pense-bête) where it is not? No, it is not. As I intend to show the difference between these two cases does not map onto the difference between institutional acts and solitary acts. The reason rather is that sometimes various brute facts qualify as the sort of X that is to be counted as a Y (as a reminder, as a pawn, as a king, etc.), increasing the risk of mistakes. Sometimes the wrong X may be mistaken as a Y. Making the move visible thus seems to be an efficient way of avoiding these confusions. Suppose, for example, that we are invited to Versailles and the king enters the room in which all the guests are gathered. If everyone can correctly represent to themselves a particular person as the king, he need not be marked out as such. For doing so would add nothing to what is already quite familiar to everybody. Making the move visible would be redundant. Let us however

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[19] Quoted by Mulligan (1987).

imagine that our knowledge of what the king looks like is based on the official portraits of the king. The latter are however too flattering to be reliably informative. Since confusion is in this case possible, the declaration: "Here comes the king!" that accompanies his entrance is more than helpful. Linguistic markers are obviously good ways of avoiding the possibility of taking the *wrong* X as a Y.

Let us investigate the example further and ask where the possibility of confusion — of taking the wrong X as a Y — comes from? One explanation is that not everybody was involved in the initial decision to take *that* X as a Y. There are those who made the choice and those who only (either reluctantly or enthusiastically) accept it and the latter obviously need to be notified of the choice of the former. The chess example also fits this explanation. Suppose that we never find the missing pawn and leave the coin in the chess box as a substitute for this missing pawn for future game sessions. Now a representative device, i.e. something visibly specifying that the sharpener is to be counted as a pawn, would be more than useful in case someone who was not part of the initial decision intended to use that chess game. So if the move from X to Y needs to be made visible, it needs to be so exclusively for mere acceptants, and not for the more august legislators, in order to count as such a move. This way the acceptants are made aware of the constitutive rule that has been determined and can represent to themselves the right X as the Y. The necessity of markers is, on such hypothesis, a consequence of the division within the society between those who makes the constitutive rule and those who merely accept it.

Interestingly, the explanation in terms of avoiding confusion does not pertain exclusively to institutional facts. Confusion can very well threaten the private imposition of status function. Suppose that I have a few screwdrivers at home and that I want to use one of them as a reminder. Unless I mark *the* screwdriver on which I impose that status function — unless I managed to

make it visibly different from the others — there is no way that this screwdriver will be able to perform its reminding function. So what do I do? I hook it on the door. The hooking, I believe, is my way of marking the screwdriver-as a-reminder to make it different from the screwdrivers-as-screw-drivers and to avoid any confusion. So the hooking is a status indicator.

Suppose, as another example, that some trees are attributed the function of signaling that all drivers must slow down. Unless the drivers agree about which trees, among those standing along the road, have such status function, the rule cannot be followed. But agreeing is not enough, we additionally need to mark the trees to which a signaling function is assigned. This is because unless we have a means of distinguishing the regular trees from the signaling trees (by painting the latter in red for example, or, in a more green-friendly fashion, by deciding that only a certain type of trees, palm-trees, for example, will play the signaling function), the rule cannot be properly followed. To sum up, status indicators are needed when confusion is possible and the latter arises when there are many Xs with which the qualified X that must be counted as a Y can be confused.

There is a way of verifying the adequacy of the proposed explanation. If it is correct, it would have the following implication. When the X in the formula "X counts as Y in C", is exemplified by one token only, the need for status indicators should just vanish. Does the full moon example not precisely show this? When Searle assigns to it the function of reminding him to trim his eyebrows, does he need to mark the full moon with a status indicator? No. The reason is that there is no full moon besides the one to which he assigns the function of reminding him to trim his eyebrows that might confound him about the time he must proceed with the trimming. The fact that the full moon is uniquely instantiated — the fact there is only one full moon a month — explains why Searle does not need to find a status indicator for marking the full

moon as a reminder. Status indicators are needed because, sometimes, there are many Xs to which a constitutive rule could apply whereas we want to restrict the application of the constitutive rule to some of these X's only.

In sum, the need to find a status indicator shows up when the formula "X counts as Y" does not apply to all token of Xs. Not all human beings are kings, judges, or policemen. Unless we know which Xs, among all the Xs, count as Y in C, one must mark those that do have the function with a status indicator. On the proposed account, the need for status indicators is unrelated to the fact that "there is no way to read off the status function Y just from the physics of the X". It is not because judges, policemen and kings have correlatively no existence apart from our representation that we need to find a representative device. We need to find a representative device because judges, policemen and kings are, physically speaking, human beings and that not all human beings are judges, policemen and Kings. The only way to make a difference between human beings that are not judges and human beings that are judges is to mark the latter with a status-indicator (e.g. their uniform) that eliminates all possible confusion. Nor does the need to publicly mark institutional status functions have anything to do with the fact that, unlike private status functions, institutional facts involve more than one person. Objects that are privately used as reminders need to be similarly marked in order to avoid confusion.

Now the declaration: "The King is there!" is certainly one efficient way to make the move from Louis Dieudonné to Louis XIV visible. Just as the words "shell money" indicate in a publicly available way that a status function, that is, serving as a medium of exchange, is attached to cowry shells. Among the various features of language, the capacity to symbolize plays a crucial role in the existence of institutional facts. Words are like labels attached to physical entities. They signal to everyone that a certain physical entity, an X, is in fact a Y, that is, an institutional entity. They are tags warning us of the special

function that an entity plays, a function unrelated to its physical features. Searle calls these tags, "status indicators", "markers" or, more prosaically, "representative devices".

Words, however, are only metaphorically tags on institutional facts. For words inform us about institutional facts in the form of uttered declarations. Unlike tags, which are meant to be *seen*, notice that declarations do not add visibility to institutional facts. They make them more perceptible by making them distinctively *audible*. They add sounds, rather than visual cues, to institutional facts.

To represent the X as having a status function is what status indicators do but status indicators come in various types. There are many ways, besides using Y terms, to make the move from X to Y noticeable. Having the king wear a crown is, for example, one alternative. Uniforms, crowns, and wedding rings are symbolic ways of marking the difference between human beings, on the one hand, and kings, policemen, judges and spouses (CRS, p. 120), on the other hand. Uniforms, wedding rings and words like "money", "king", "pawn" are like tags attached to certain material objects, indicating to everyone that these material objects play a function, one that cannot be read off from their physical features.

However, the view that language is constitutive of institutional facts entails that only *linguistic* markers are essential to the latter. Something could not be money unless it is *verbally* referred to as "money". Unless Searle tells us why linguistic symbols are exclusively powerful in making the move from X to Y, visible, his second argument is, at best, incomplete.

4. Status Function Declarations

We have so far dealt with the representations involved in all constitutive rules as if they were ordinary mental states. We have assumed that these representations were not different from, say, beliefs and that, as a consequence, their propositional contents were mere expressions of those mental states. On such an approach, the proposition "cowry shells count as money" is true in virtue of its ability to reflect the belief that each Ojibwas holds in this regard. The representation has, on this approach, a word to world direction of fit, as Searle would phrase it, to the extent that its truth depends on the accuracy with which these representations describes our beliefs. Its utterance consequently appears as something that is added to the representation as an optional extra.

This is however a mistaken way of construing them. The representations (the thoughts, the beliefs, the opinions, etc.) involved in a constitutive rule have an additional special power in consideration of which their classification as simple mental states sounds inaccurate or, at least, only in part true. Unlike the belief that the grass is green or the thought that I am in pain, the representations of an X as a Y have the power of creating the very reality that they describe. The content of the constitutive rule by means of which we, say, impose on cowry shells the function of media of exchange does not only represent our inner thought. It also changes the reality to the extent that there is now a new class of facts — selling, buying, storing, etc. that now can take place. Because the representations do not only reflect what agents think but also aim to "change the world by declaring that a state of affairs exists and thus bringing that state of affairs into existence" (MSW, p. 12), their word-to world direction of fit combines with a world-to-word direction of fit.

Recognizing such a power in the representations involved in the move from X to Y this way is to afford them a place in the familiar class of speech acts. So the claim about the dependency of institutional facts on language turns out to be a claim about the dependency of institutional facts on speech acts.

And because of their double direction of fit, the representations involved in the move from X to Y nicely illustrate a subclass of speech acts, namely declarations. To be declared married is essential to being married. Just as to be declared a leader is essential to being a leader and to be declared a university is essential to being one. On Searle's terms, the declarations that are at stake in the creation and maintenance of money, of banks and of universities are "Status Function Declarations" (hereafter SFD) and have the following structure: "We (or I) make it the case by Declaration that the Y status function exists." (CSR, p. 93).

Unlike mental states, the utterance is essential to speech acts. Unlike pain, which can occur independently from its expression in the form of an utterance (i.e. "I am in pain"), ascribing a status function is an experience that could not occur without its utterance. The reason is that, unlike the experience of pain, which does not need to be known, the SFD needs to be grasped[20]. There is nothing about declarations that could rightly be taken as the mere expression of a belief. Declarations essentially have a public dimension, in the form of their utterance, in addition to reflecting some private thoughts. SFDs are uttered inasmuch as they necessarily have recipients. As Mulligan explains, "here the experience is not possible without the utterance. And the utterance for its part is not some optional thing which is added from without, but is in the service of the [speech act], and is necessary if the act is to carry out its function of making itself known to the other person"[21].

Yet if the point of the utterance is to make the act known to the other person, couldn't the latter be shouted at using something other than spoken words? In fact, they could. On Searle's view, "wearing a wedding ring or a uniform is performing a type of speech act" (*CSR*, p. 120). Such a liberal conception of speech act is also clearly the one he supports when he claims that

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[20] Cf. Reinach, 1913.
[21] Mulligan, 1987, p. 32.

"any intentional movement can be a speech act provided it is performed with certain sets of semantic intentions that are communicated to the hearer". "Speech act", he continues, "is a quasi-technical term that means, roughly, 'a meaningful linguistic act that is intended to communicate propositional content with a certain force from speaker to hearer, which may be spoken, written, or conveyed in some other symbolic form"[22]. So a mere gesture can very well be the sort of act by which a speech act is performed as long as it is intended to communicate the existence of a status function.

But then it seems that what matters for being a speech act is the intention that accompanies the act and not the various expressions by which the act is externally reflected. The same gesture may, in some circumstances, be the expression of an act that is not a speech act. I can either push a beer as a gesture of disgust or because I want it to be yours. Although both gestures are acts, only the latter is a speech act. Surprisingly enough, speech turns out to be not so essential to speech acts after all and this is because, besides saying it out loud, there are many silent ways of making a status function known. Such a finding should be very welcome. In light of it, Searle's view about the central role of language in the existence of institutional facts finally accommodates McGinn's skepticism well.

Searle's third argument in favor of the central role of language focuses on the change that the move from X to Y brings about in reality. No real change could ever take place if the move from X to Y were only a matter of an inner representation. The change, it can be argued, would have been as non-existent as the one involved in the perceptual shift involved in seeing the duck-rabbit picture as a duck or as a rabbit. But the move from X to Y is different to the extent that a new entity —a king, an auction, a money bill or a judge— is introduced into the world.

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[22] Searle, 2011.

In its present form however, Searle's third argument leaves two sorts of cases unresolved. In particular, it does not rule out two already encountered cases, namely reminders and football games, although they are intuitively not relevant examples of institutional facts. In the last two sections, I show how a refined conception of the sort of declarations on which institutions depend helps us deal with these two cases.

5. Undeclared status functions

Sometimes, the representation involved in the ascription of a status function can perfectly remain *un*declared in any of the linguistic or behavioral ways of understanding what declarations can be. These are the various cases of reminders discussed earlier. While both reminders and frontiers involved the imposition of status function, Searle's third argument does tell us why only in the case of frontiers such ascription needs to be a matter of a declaration. It is not that the imposition of function is, in the case of reminders, silently declared. Rather such imposition takes place without any declaration at all, not even a tacit or implicit one.

In order to understand why reminders are different from frontiers, Reinach's pioneering theory of "social acts" (which anticipates in many ways Austin and Searle's speech act theory) turns out to be useful[23]. There is, in particular, a distinction Reinach makes between two types of acts, namely "self-directable" and "non-self-directable"[24] ones, in light of which the status function of reminders and frontiers can be set apart. Unlike all social acts, the acts of using a reminder is a self-directable acts inasmuch as, like self-pity, the subject toward whom it is directed is identical with the subject of the act. Non-self-directable acts require by contrast an alien subject and are illustrated by the

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[23] Reinach,1913. Cf. Mulligan, 1987.
[24] Reinach, 1913.

class of SFDs. One does not declare that a yellow line has the function of serving as a frontier to oneself. Like requests, admonishments, questionings, informings, answerings, SFDs have an announcing function which requires an addressee who also grasp their content.

Even more crucial to the difference between reminders and money is the impersonal feature that Reinach observes in a sub-category of social acts such as waiving a claim, revoking a promise and enactments. Reinach observes that, although these three acts are non-self-directable (we do not waive a claim to oneself) in the sense that they must be grasped by others to be fully performed, they nonetheless would be badly described as other-directed acts. This is because, unlike other social acts such as promises, these acts do not refer to any particular person. "Enactments" Reinach says, "dOOOOO not have this necessary relation to other persons, just as little as do acts like waiving or revoking. Although these acts are addressed to other persons in being performed, their substance (*Gehalt*) lacks any personal moment"[25]. Likewise, there seems to be an *impersonal* dimension in the way SFD are addressed that makes them different from the personal way reminders are used. Note first that both reminders and frontiers presuppose a person or a group. Reminders refer to a person who is reminded and frontiers contain a reference to a group which is prohibited from trespassing on some territory. But whereas something is a reminder for somebody, something is a frontier for everyone. The SFD that is at the core of the latter does not pertain to *you* and *me,* inasmuch as they are not addressed to any persons in particular. They apply to everyone without anyone being individually addressed by those declarations. The kind of speech acts that pertains to institutional facts has this impersonal feature[26]. In light of it, the

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[25] Reinach [1913], 1989, 170.

[26] Otto Bruun objected to me that a declaration of marriage does not have the impersonal dimension which, on my account, is characteristic of the ascription of *institutional* status functions. As a reply I first grant that when the official declares: "I pronounce you married", he does personally direct his declaration to the

reason why reminders are not, despite their status function, part of such institutional reality, now makes sense.

6. Speech acts as pure acts

Searle's third argument may also be found lacking, as it does not account for the difference between full-blown institutional facts and more dubious cases. On Searle's conception, indeed, the act of scoring a goal is as much an institutional fact as the act of counting a yellow line as a frontier, to the extent that in both case a SFD captures the move from X to Y. The scoring of a goal in a football game depends in particular on the following SDF: "We (or I) make it the case by Declaration that the crossing of the line by the ball counts as the scoring of a goal".

Are football games genuine institutions? I personally would welcome any theory that is able to account for the difference between the scoring of a goal and a presidential election. It seems to me that there is a difference between these two facts and that the difference is not only related to the level of gravity with which one of the two (and, of course, I will not specify which one) ought to be treated.

The difference can be grasped, I will now show, once speech acts are construed as illustrations of what Moya calls "pure acts"[27]. Pure actions are, according to Moya, actions that cannot be non-intentionally performed. Cases in point are greeting, signaling for a turn or marrying. As Moya observes, "there is no such thing as greeting, signaling for a turn or marrying unintentionally. To do it intentionally is a necessary condition of greeting, signaling for a turn or marrying"[28]. As Moya also says, to be able to attribute the action of greeting

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bridegrooms, but also observes that the official does not personally address his declaration to any of the other members of the group within which the marriage takes place.

[27] Moya, 1990.

[28] Moya, 1990, p. 52.

someone, the agent has to perform that action under the description "greeting". The same is true about marrying. "'Marrying' cannot be a true description of what someone does if 'marrying intentionally' is not"[29].

Pure actions, according to Moya, can be distinguished from their non-pure counterparts by the following features. First, pure actions are not subject to mistakes. I cannot mistakenly greet someone. Surely, some movements of mine can be mistakenly taken as such. But these movements are not a greeting if I do not intentionally make one. Note that this feature also applies to the act of bidding at an auction. While there is such a thing as accidentally scoring a goal (or, for that matter, shooting someone, or breaking a glass) there is no such thing as bidding at an auction fortuitously. While one can break a glass "by mistake", one does not find oneself buying an object unless one has it as one's purpose.

Second, we recognize actions that are pure by the fact that we cannot discover or know observationally that we are doing them. I can discover that I am absent-mindedly raising my arm while attending an auction. I cannot discover that I am signaling a desire to purchase the painting at a higher price. The unlucky football player can discover that he scored a goal because his action was not part of his intention, which was to turn the ball away. There is, however, no unlucky seller, no unlucky buyer and no unlucky auction signaler.

Thirdly, whereas non-pure actions involve happenings, pure actions are pure in virtue of the fact that no happening is essential for their performance. Scoring a goal, for example, essentially involves the happening of the ball crossing the goal-line. The same is true of the action of killing someone. Killing someone involves essentially the happening that someone dies. Now it is a feature of actions that essentially involve a happening, that they can be performed without the agents acting intentionally. Someone can score a goal

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[29] Moya, 1990, p. 53.

unintentionally as when, kicking the ball, a player mistakenly directing it into his own goal[30]. There are by contrast actions that do not essentially involve happenings and these are cases of "pure actions". Examples are signaling for a turn, making an offer, marrying and holding a lecture. Trying to separate, for these kinds of actions, the action performed, on the one side, from its happening, on the other, is impossible. This is because, as Moya notes, there is no real difference of content between these two. For example, there is no difference between "Someone made an offer" and "An offer took place". Similarly, there is no real difference of content between "Someone held a lecture" and "A lecture took place". By contrast, there is a difference of content between "Someone scored a goal" and "A goal was scored". Another way to grasp the difference between pure and impure actions is to say that, for pure actions, the results are actions not happenings[31]. Actions are pure in the sense that their performance is all there is.

Consider now SFDs in light of the distinction between impure and pure acts. We should now see why SFDs belong to the latter category. It is impossible in case of a SFD to sort out the happening — e.g. Catherine and Jules's marriage is pronounced — from the act itself — e.g. someone pronounces Catherine and Jules as married. Whereas in the case of the scoring of a goal, there is a possibility to separate the happening — a scored goal — from the act itself — the scoring of a goal. The possibility of separating the two comes from the possibility that the happening is mistakenly brought about. Scoring a goal is for this reason an impure act, one that falls outside the class of speech acts. No SFD turns out to be involved in the scoring of a goal.

In sum, the imposition of a status function may or may not stem from a status function declaration. Only in the latter case can a full-blown institutional

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[30] The reader will forgive my total ignorance of American football, which obliges me here to take European football as the framework for what scoring a goal means.
[31] Moya, 1990, p. 38.

fact be created. The latter case obtains when both (i) the possibility of being mistaken and (ii) the possibility of separating the happening from the act is impossible. Two conditions which the scoring of a goal clearly does not meet, consistent with our intuition that it is not a genuine institutional fact.

Conclusion

To the question "Why is language needed for the creation and maintenance of institutional facts?" Searle provides three different answers. One, institutional thoughts are too complex, he first argues, to be held without language. Two, institutional facts would remain invisible, he alternatively argues, if they were not publicly represented by means of some linguistic symbols. Three, the changes that are brought about each time an institutional fact obtains could not take place if those thoughts were not sub-types of speech acts, namely declarations, the latter being characterized by an external, non-psychological, side in virtue of which uttering them is doing something.

I have additionally brought into play further features of the sort of declarations that are involved in institutional facts, the fact that they are impersonally addressed and cannot be mistakenly performed, in order to highlight cases where status functions are ascribed outside institutional facts.

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