Carsten Heidemann

On Some Difficulties Concerning John Searle's Notion of an 'Institutional Fact'

Comment to John R. Searle "Social Ontology and the Philosophy of Society" (Analyse & Kritik 20, 143–158)

Abstract: John Searle's conception of institutional facts figures centrally in his latest works. It is defective for several reasons: (1) Searle's argument for philosophical realism is inconsistent. (2) Searle's conceptions of consciousness and collective intentionality are problematic. (3) The notion of normativity is indispensable in Searle's system, but cannot be accounted for and makes wide parts of his theory superfluous. (4) It is not clear what entities might be regarded as institutional facts. These problems have a common source: The philosophical basis of Searle's theory, his combination of realism and physicalist monism, clashes with his thesis that both the 'first-person-ontology' and normativity are irreducible.

Searle's latest writings do not contain many new elements. They are an attempt to create something new out of the old ingredients, they aim at constructing a 'social ontology'. Furthermore, these writings are remarkable for seemingly converging with a recent trend in American philosophy, where a kind of 'new naïveté' is gaining ground which is coupled with a common sense-realism and a certain arrogance towards those philosophers who are still in the snares of traditional 'Cartesian' inspired philosophy.

One central element in Searle's recent works *The Construction of Social Reality* and *Mind, Language, and Society* is the concept of 'institutional fact', which presupposes almost the whole of the theory developed in these books. The notion of an institutional fact was apparent, of course, even in *Speech Acts*; but there it received a rather short and unproblematic treatment (chapter 2.7). It is the aim of this paper to criticise Searle's present conception of institutional facts. I do not mean to analyse Searle's position 'from the outside', rather, I will just accept his premises and check whether they do their job inside his theory, i.e., whether they are able to account for Searle's conception of an institutional fact. Of course, a lot of my objections will be just repetitive of what other critics have brought forward before. Besides, I will not enter discussion concerning central topics—like realism and the mind-body-problem—fully; rather, I intend a short common sense-critique of a common

sense-position. The basis of my critique will be Searle's essay published in this journal, namely, *Social Ontology and the Philosophy of Society.*[1]

1. Searle's Argument in Short

The argument Searle brings forward in his paper *Social Ontology and the Philosophy of Society* is, in a nutshell and with minor variations, the same that he develops in *The Construction of Social Reality.*

Searle's aim is it to lay the foundation of a 'social ontology'. According to Searle, there is a special subset of social facts which he calls 'institutional facts'. His most prominent example for such an institutional fact is the existence of money. The main characteristic of institutional facts is that they exist as facts even though they are in a way dependent on the human mind. This is rather a concession for Searle because he is—with all the vehemence of a believer—an adherent of philosophical realism; in fact his argumentation for philosophical realism covers almost half of the book named above.

So what does the Searlian world look like? Being not a Platonic, but rather a common sense-realist, Searle mistrusts the metaphysical implications of theories like that of Frege, Popper or Habermas which rest upon the assumption that there are two or even three categorically different worlds—the world of physical entities, the world of psychical entities, and the world of mental or abstract entities. Searle's world 'out there' is a single one, and it is for the main part identical with the world of the physicalist; it is the world as described by chemistry and physics:

> "Ultimate reality consists of entities we find it convenient to call 'particles'. They are organised in systems. These systems are defined by their causal relations, [...]."

If the quotation were to end here, where, in this simple-structured world, would be the place for institutional facts? Or for social reality?—They come in with a smoothly flowing modification of this conception of the world as a system of causally related particles. For the last sentence of the passage quoted above continues as follows:

> "[...] some of these systems are organic systems, some of the organic systems have consciousness. With consciousness comes intentionality, and when we have consciousness and intentionality we have reached the evolutionary stage of animals, mammals and especially primates like ourselves, who form social groups" (Searle 1998b, 144).

This gives rise to the question whether the members of a social group might be seen as particles which are connected by causal relations, or whether there is some other way of describing social ties. But Searle does not worry about this problem, instead he abruptly turns to five characteristics of institutional facts which he takes to be both typical and troublesome. *First*, institutional facts are 'self-referential', i.e., it is part of their definition that they are believed in. According to Searle, money only exists because it is believed to exist. *Second*, language is constitutive for institutional facts. That is why there are no institutional facts among animals. *Third*, institutional facts are often created by explicit performatives, i.e., by performatives which explicitly refer to the created fact. *Fourth*, there are complex interrelations between institutional and social facts, involving the understanding of 'more general social and institutional notions', such as the notions of right and obligation. *Fifth*, institutional reality cannot exist without an underlying 'brute' physical reality (Searle 1998b, 144–146).

To explain these characteristics, and to solve the problems connected with them, Searle makes use of three different conceptual tools: (1) the notion of assignment of function, (2) the notion of collective intentionality, (3) and the notion of constitutive rules.

(1) The capacity to assign function to things is common to (some) animals and human beings. Taking a purely physical fact like a combination of wooden boards to be a cupboard involves the assignment of a 'function'. While physical facts just have 'observer-independent' features, a function is an observer-dependent characteristic of a fact; you assign a function to a thing if you esteem it to be an instrument in achieving a certain presupposed aim. Presupposing aims involves, according to Searle, normativity, so that the assignment of function is a crucial step from the World of Is to the World of Ought (Searle 1998b, 148–149).

(2) Collective intentionality is contained in all genuinely social behaviour. It is what distinguishes a choir from a bunch of people who are just singing the same piece of music by chance. Collective intentionality is an irreducible phenomenon in the individual's brain which takes the form of *"we intend* ..."; it cannot be seen as being identical with the totality of the individual intentions of co-operating people taking the form *"I intend ..."* which have the same object and are accompanied by the belief that there is a reciprocity of intention among the participants (Searle 1998b, 149–151).

(3) Constitutive rules have to be distinguished from regulative rules. While the latter just guide a pre-existing practice, the former are presuppositions of a practice whose existence is dependent on the validity of these rules. Constitutive rules take the form *"X counts as Y (in context C)"* (Searle 1998b, 151–152).

With the help of these three tools Searle wants us to imagine certain oc-

currences in a small primitive community. In this community the use of sticks
as levers comes up. This means that all those who are using the sticks as
levers assign a certain function to them (*tool* 1). Now, if the members of
the community join to use a single large stick as a lever on big objects they
are involved in a practice of function-assigning which is based upon a collec-
tive intentionality (*tool* 2). The constitutive rules come in when the assigned
function has no basis in causal reality. If, for example, the members of the
community build a wall round their dwellings in order to keep out any intrud-
ers, neither this action nor the consequent practice of regarding the wall as a
means of keeping out intruders requires more than function-assigning collec-
tive intentionality. But it may happen that the wall falls down and is no real
obstacle any longer, yet that it is still regarded as a 'border' which it is not
allowed to pass. This is only possible if there is a collective acceptance of a
constitutive rule which runs somewhat as follows '*The remaining bricks along
the lines of the old wall count as a border of the village*' (*tool* 3). This con-
stitutive rule conditions the collective assignment of a certain status-function
(i.e. a function 'not by virtue of physical structure alone') to the ruins of the
wall, namely, its functioning as a border, and thus it constitutes the existence
of the institutional fact 'village border' (Searle 1998b, 152–153).

2. Does Searle's Theory Work?

Now, is this conception of institutional facts feasible? In my opinion, it is not,
mainly for four reasons:

(1) Searle's argument for philosophical realism is counterproductive and
inconsistent.

(2) Searle's conceptions of consciousness and collective intentionality are
problematic, because his 'monist but not reductionist' position towards the
nature of mental entities is not plausible.

(3) The notion of normativity is indispensable in Searle's system, but can-
not be accounted for, and makes wide parts of his theory superfluous.

(4) It is not clear what entities might be regarded as institutional facts;
besides, there are institutional facts which, contrary to Searle, have no 'brute
fact' at core.

2.1. The Problem of Realism

The first problem is that Searle's conception of a common sense-realism does
not work. This problem is at first glance not *very* important, because—
contrary to what Searle himself might say—the realist stance may be given
up without serious damage to the rest of the theory. Nevertheless, there are
at least three flaws to it:

(1) First, Searle proposes a kind of common sense-realism which is not easy to grasp in theoretical terms; and he rather neglects what is at stake in the current debate about realism in linguistic philosophy which was initiated by M. Dummett. What Searle's realist attack aims at is idealism or non-realism in its various forms (Searle 1998a, 16–18); he wants to rescue Objectivity with a large 'O' which he thinks of as being coupled with the realist position. Thus, he fails to see that scepticism and relativism are rather a consequence of *realism* than of non-realism. For if reality is knowledge-independent, then it is possible that we might be mistaken in even our best-founded judgements. There would be no point of view from which it would be possible to judge whether our judgements correspond to reality. Concepts like 'truth' and 'reference' would be meaningless, because we should be constitutionally unable to be in a position to apply them. Accordingly, what the more reasonable of non-realist positions—like, e.g. that of Kant—try to achieve is to invest these concepts with a meaning (and thus to preserve objectivity with a small 'o') by cautiously linking them to epistemic concepts. One famous example is the following passage from Kant's *Critique of Pure Reason*:

> "The objects of our experience (Erfahrung) are never given in themselves but just in our experience; and they do not exist outside of it at all. It has to be acknowledged, though, that there might be men in the moon, even if nobody has ever perceived them. But this just means that we might possibly meet them when our experience progresses; for anything is real that is connected with a perception according to the laws of empirical progress" (A 492/B 521; translated by C. H.).

Thus, my first objection might be summed up as follows: Searle's realist stance is counterproductive to his aim of preserving objectivity, because it implies a sceptical position; this aim might have been better achieved by a non-realist stance.

(2) My second objection to Searle's realist position is that the way Searle tries to found it is self-contradictory, as well. Searle sees quite clearly that it is impossible to argue for the realist position; therefore, he maintains that realism is not a theory, but a kind of 'background presupposition', a framework for all our theoretical claims (among others). This would mean—according to Searle—that a non-realist in a way contradicts himself when asserting that there is no reality in itself; for if the realist presupposition of his assertion would be made explicit, the asserted sentence would run: *"In reality (as it is in itself) there is no reality as it is in itself."*

But in fact it is not the non-realist's thesis which is self-contradictory, rather, it is Searle's thesis that realism is 'true' (or just 'is'), because it is presupposed by our theoretical claims or assertions, which is inconsistent.

In recent philosophical debate it is quite a frequent move, though, to make realism plausible by regarding it as a presupposition of our everyday existence or 'Lebensform'; this move is found, e.g., in the latest works of Putnam and Habermas. What is wrong with it can be shown exemplarily by analysing a pivotal sentence from Putnam's *Words and Life*; it runs as follows: "*That the sky is blue is causally independent of the way we talk; for, with our language in place, we can certainly say that the sky would still be blue even if we did not use color words*" (Putnam 1994, 301). For this sentence implies the thesis: "*It follows from the way our language is that objects exist independent of our language*"; and this thesis is obviously absurd. The same applies to the argument for realism from the 'way we live': even if the view that objects exist 'in itself' were a necessary presupposition or part of our 'Lebensform', an indisputable framework of our practices (which is doubtful), it would not follow that the realist position is 'true', rather, the opposite conclusion is plausible. For realism itself would have been shown to be a product of our language and/or practices. Thus, to favour realism because our practices presuppose a realist position is self-contradictory.

(3) The third problem with Searle's realism is that it is hardly compatible with his thesis that social reality, though consisting of facts, is a construction of human consciousness. To be sure, Searle argues in detail to show that and how the existence of observer-dependent facts is possible, but his argument (which I did not include in the summary given above) is not convincing. The main part of it is the distinction between observer-dependent and observer-independent features (Searle 1998b, 147–148). Observer-independent or 'intrinsic' features of reality would remain the same even if there were no human beings (or other animals); examples for phenomena with exclusively observer-independent features are mountains, molecules etc. But some phenomena possess observer-dependent features, besides, which exist only because these phenomena are treated or regarded in a certain way; examples for them are chairs, money, marriages, etc. Searle's trick now is to couple this distinction with the distinction between ontological and epistemic objectivity. Ontologically, pains, for example, are subjective entities, because their existence depends on their being felt by subjects. Mountains, on the other hand, are ontologically objective. Epistemically, judgements are objective, if their truth is a matter of fact. Judgements about pain ("*I now have a pain*") can be objective in this sense, even though pain itself is ontologically subjective. The combination of these elements runs as follows (I quote it at full length, because it is a crucial passage):

> "1. The sheer existence of the physical object in front of me does
> not depend on any attitude we may take toward it. 2. It has
> many features that are intrinsic in the sense that they do not
> depend on any attitudes of observer or users. For example, it has

a certain mass and a certain chemical composition. 3. It has other features that exist only relative to the intentionality of agents. For example, it is a screwdriver. To have a general term, I will call such features 'observer relative'. Observer relative features are ontologically subjective. 4. Some of these ontologically subjective features are epistemically objective. For example, it isn't just my opinion or evaluation that it is a screwdriver. It is a matter of objectively ascertainable fact that it is a screwdriver. 5. Although the feature of being a screwdriver is observer relative, the feature of thinking that something is a screwdriver [...] is intrinsic to the thinkers [...]. Being a screwdriver is observer relative, but the features of the observers that enable them to create such observer relative features of the world are intrinsic features of the observers" (Searle 1995, 10–11).

Though Searle does not explain the matter in detail (especially thesis 4 is not further argued for), he seems to think that it is sufficient proof for their being objective 'in a strong sense' that the features of the observers necessary to 'create' observer relative features are intrinsic to the observers— i.e., objectively ascertainable brain features. This is not tenable; Searle is mixing up different notions of objectivity. The fact that any absurd notion of some human being is objective in the sense that there must be processes in this person's brain while he is having this notion does not imply that the notion itself is in any way objective. If someone thinks that lemons are screwdrivers, then there are objectively ascertainable brain processes 'accompanying' this notion; still, it is not an objective fact that lemons are screwdrivers. Yet the passage quoted above seems to lead to this result.—I dare say, the conception *might* be made plausible by some argumentation for thesis 4, but I cannot see how it might run. And there is another problem connected with this topic, namely, the problem as to what kind of entity it is that might be regarded as a 'fact with observer relative features'. I shall come back to this problem later on (2.4).

2.2. The Problem of Consciousness and Collective Intentionality

My second objection is that collective intentionality as an irreducible phenomenon of animal life has not been made plausible by Searle. This is connected, of course, with a lot of other issues, e.g., with Searle's treatment of consciousness and mental entities. Thus, the objection divides into two parts, the first part concerning Searle's conception of consciousness, the second the notion of collective intentionality and the question as to who may be regarded as the 'bearer' of collective intentionality.

(1) First, Searle's definition of consciousness is hard to accept. Philosophy of mind is a focus of current philosophical discussion, and two irreconcilable

positions oppose each other, materialism and dualism. Materialism says that mind is just part of the physical body and its functions; dualism maintains that mind is autonomous.

Searle's approach to this problem is to deny that any of the positions makes sense; he wants to be a monist without reducing mind to body. His argument for this position is difficult to understand, however:

> "The point to remember is that consciousness is a biological phenomenon like any other. It is true that it has special features, most notably the feature of subjectivity, as we have seen, but that does not prevent consciousness from being a higher-level feature of the brain in the same way that digestion is a higher-level feature of the stomach" (Searle 1998a, 51–52).

This sounds very much like reductionism. After all, digestion may be a 'higher level-feature' of the stomach, but it still is a purely biological process. Besides, Searle speaks of conscious states as being 'caused' by the brain; and causation normally is a process that takes place only between physical entities—even though Searle gives a very sophisticated explanation of causation (Searle 1998a, 58). Nevertheless, he insists that consciousness is irreducible, *"because it has a first-person ontology"* (Searle 1998a, 53). But this is scarcely convincing as long as Searle does not explain how a first-person ontology is possible on the basis that there is 'nothing else' but nature or biology.

Now, Searle would probably reply to this objection that it presupposes the dualism between mind and nature and thus fails the point, because it is just this dualism which he attacks. My rejoinder would be that it is not possible to uphold the thesis that there is an autonomous irreducible first-person ontology, unless presupposing the dualism.

Further problems with Searle's present conception of consciousness are that he maintains that even machines might have consciousness (Searle 1997a, 202–203), and that he offers no criteria for ascertaining 'from the outside' whether something/somebody possesses consciousness (cf. Gräfrath 1998, 1022). But in this context it is not necessary to dwell on these topics, because consciousness—though it is the underlying element of Searle's theory of institutional facts—stands in a rather loose connection to the 'next higher' element of intentionality; for Searle claims that it is possible to intend something without being conscious of it.

(2) The second point is that it is doubtful whether collective intentionality[2] really is a biologically primitive phenomenon that evolves with consciousness.

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[2] Note, by the way, that Searle's use of the term "intentionality" is rather ambiguous when he explains the notion of 'collective' intentionality. On the one hand, he maintains that intentionality must be understood in the sense of the German "Intentionalität", i.e., as "being directed towards a certain object" (cf. Searle 1998a, 85–86). On the other

At least it is difficult to imagine that, for example, herrings that move in swarms are in a mental state that may be formulated as *"we intend to swim in a swarm"*; and it is certainly impossible to prove it. It is an unwarranted assumption that we may share or deny, if we are disposed to do so. For my part, I have problems with assigning a 'first person singular (or plural) view' to herrings—and this is not just because of the fact that if I could be convinced of it, I should feel forced to regard fish as persons and turn a vegetarian at once.

Besides, it is doubtful who or what it is that can be regarded as the 'bearer' of collective intentionality. According to Searle, this is no 'super organism' but the individual; collective intentionality seems to be entailed by several persons co-operating in a certain endeavour and being, as individuals, (at times) conscious of the fact that they co-operate. But how is the mental state of co-operating persons to be described? If an individual is in a mental state which can be formulated as *"I intend x"*, this means that he intends x. But what does it mean if he is in a mental state which can be described as *"we intend x"*? It can scarcely mean that the group denoted by the pronoun 'we' intends x; for if this single person is in this mental state it does not follow that every member of the group is in the same mental state. Searle's attempt to solve this problem is hardly convincing; he maintains that the state of collective intentionality which the individual is in can be 'mistaken':

> "It turns out that I can be mistaken, not only in what is happening in the world, but I can be mistaken about the very mental state that I have. [...] You can be mistaken about the nature of the activity you are engaged in, if you have an assumption about the collective intentionality, which is not shared by your apparent co-operators" (Searle 1998b, 150).

This—not very clear—passage is scarcely feasible. First, it is not plausible that a mental state should be accompanied by a—true or false—judgement about this state. Second, it is difficult to see why there should be any mistake at all. If I am in a mental state which can be described by *"we intend"* (and the other members of the group are not in this state), and if, at the same time, I form a judgement according to which I am in a mental state of *"we intend"*, it is obvious that my judgement is correct. And of course, contrary to Searle (1998b, 150), it is not possible to draw a conclusion from the fact that the other members of the group actually were not co-operating, to the fact that my mental state was 'mistaken'.

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hand, when explaining the notion of collective intentionality he seems to use the expression 'intentionality' in the meaning of 'having to do with what people want/intend' (cf. Searle 1998a, 119–120).

2.3. The Problem of Normativity

The third objection divides into three parts, the first concerning the character of normativity, the second concerning the role of the status-functions, and the third concerning the relation between constitutive rules and rules conferring conventional powers.

(1) The first point is, in my eyes, the most serious one (even if it is the shortest one). The complex hierarchy of facts Searle develops in *The Construction of Social Reality* (Searle 1995, 121–125) to make plausible his conception of institutional facts needs a special additive at least at its highest level which can scarcely be accounted for in his theory, and which besides makes superfluous wide parts of it. This additive is normativity.[3] It is indispensable, because the central element of Searle's conception is the formula "*X counts as Y (in context C)*"; and this formula—normally—expresses a 'constitutive rule', thus introducing the notion of normativity, and the same applies to the 'conventional power-sentences' (see below, 2.3 (3)) which presuppose a normative conception of empowerment. Furthermore, normativity is, according to Searle, irreducible (Searle 1995, 70).

What does this mean? Where, in Searle's physicalist world, is a place for norms or rules? What exactly *are* norms or rules? Are they just higher-level features of the brain, as well? As long as Searle does not give a satisfactory answer to this vital question, his theory is rather defective. And there is a strong suspicion that the notion of autonomous normativity has to bear the main burden in explaining the notion of institutional fact so that the artful hierarchy of facts that Searle develops is—in a way—superfluous. He might just as well have explicated institutional facts as being a result of an interpretation of brute reality by using an effective set of norms as a scheme. And this, of course, is a rather simple and old-fashioned conception brought forward as early as in the twenties and thirties, e.g., by Hans Kelsen and other neo-Kantian legal theorists and sociologists (cf. Kelsen 1934, 2–5).

(2) The disquieting feature of status-functions is that their relation to the concepts of a constitutive rule and to causation, to empowerment and to institutionalised deontic features, like legal rights and duties, is difficult to determine. Searle defines status-functions concisely as follows:

> "A status-function is a function that an entity performs not in virtue of its physical structure alone, but in virtue of the collective imposition or recognition of the entity in question as having a certain status, and with that status a function" (Searle 1998b, 153).

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[3] To be sure, Searle himself introduces normativity even at the level of assignment of functions (1998b, 148). But the necessity of normativity at this level is rather doubtful. Instrumental rationality does not presuppose that the 'end' is *valued*; it is sufficient that the actor *wants* to achieve the end.

A function, according to Searle, is a causal effect that has been specially selected by conscious animals, because and as long as it is valued as an 'end'. Therefore, we might plausibly take status-functions to be the causal effects of something, which both exist *and* are valued as ends, only because there is a collective acceptance of a constitutive rule. Yet this is not in accord with a lot of examples of status-functions Searle brings forward. To be sure, the definition works with regard to Searle's favoured examples of the institutional facts of money and of the line of stones serving as a boundary. But the term "function" seems strangely out of place when applied to something related with a status which has no immediate physical effects, but is just connected with honour and rights or duties. Correspondingly, Searle argues rather evasively when explaining the nature of rights and duties. Sometimes he seems to think of them as status-functions (cf. under 2.4), but more often he argues as follows:

> "The elaborate structures that are then set up—structures of citizenships, rights, and responsibilities, powers and offices [...]— then evolve as institutional structures by way of the collective imposition of status-functions on top of more primitive relationships" (Searle 1995, 86).

According to this passage, these 'institutional structures' are not status-functions themselves, but emerge as a *result* of status-functions. Their nature is not further specified by Searle, but this would have been necessary to show how they fit into a physicalist's world.

(3) At first glance, it might seem that the constitutive rule "*X counts as Y (in context C)*" and its collective acceptance are fundamental for establishing institutional facts. And indeed, if we take into regard only *Mind, Language, and Society* and *Social Ontology and the Philosophy of Society*, this is true. But in *The Construction of Social Reality* Searle introduces another 'fundamental' rule (if a rule it is), and its relation to the constitutive rule is anything but clear. It is a sentence expressing 'conventional power' (c.p.-sentence) formulated as "*we accept (S has power (S does A))*" (Searle 1995, 104, 111). Its relation to the constitutive rule is explained as follows:

> "My aim is to try to state the general form of the content of the Y status-function when we go from X to Y in the formula 'X counts as Y in C'. Because the Y content is imposed on the X element by collective acceptance, there must be some content to these collective acceptances [...]; and I am suggesting that for a large class of cases the content involves some conventional power mode in which the subject is related to some type of action or course of actions" (Searle 1995, 104);

and this is expressed by the c.p.-sentence mentioned above. But how is it to be understood? To call it the "general form of the content of the Y status-function" is not very helpful. Elsewhere, Searle calls it the "one primitive logical operation by which institutional reality is created and constituted" and the "basic structure" of status-functions (Searle 1995, 111). According to this, the structure of the status-function entailed by the constitutive rule "*X, this piece of paper, counts as Y, a five-dollar-bill*" would be "*We accept (S, the bearer of X, is enabled (S buys with X up to the value of five dollars))*" (Searle 1995, 105). This is up to a certain degree plausible, but still, it does not settle in which way the c.p.-sentence is related to the constitutive rule. Does the constitutive rule only exist if the c.p.-sentence is true? In this case, institutional facts would not be created by acceptance of the constitutive rule, but by the acceptance of the empowerment-function described by the c.p.-sentence. What is the difference between the acceptance of the constitutive rule and the acceptance described by the c.p.-sentence? And which is first? Do we think that S is 'enabled' to buy something, because this piece of paper counts as a five-dollar-bill, or does this piece of paper count as a five-dollar-bill, because its bearer is enabled to buy something with it?—At first glance, the difference does not seem to matter, but it is decisive for the relation between the concepts of a constitutive rule and empowerment and thus for the question about the basic element of social structures. Besides, introducing c.p.-sentences as fundamental would require an explicit conception of social authority which is missing in Searle's work.

2.4. The Problem of the Relation Between Brute Reality and Institutional Facts

My last objection concerns the relation between institutional facts and the 'underlying' brute facts; it comprises two parts.

(1) The first part is the comparatively special point that Searle's thesis that every institutional fact has at its core a brute fact, which has to last as long as the institutional fact lasts, cannot account for a lot of phenomena. Searle's examples for institutional facts certainly support his thesis, but what about legal 'rights' and 'duties'? These do not have a brute fact as substratum. Now, it is doubtful, of course, whether these elements may be regarded as institutional facts; as I understand Searle, he would rather have them to be 'status-functions' or 'institutions' (Searle 1995, 93).[4] But there are quite a

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[4] The relation between institutional facts, institutions, and rules, remains rather obscure in Searle's writings. This has been objected to by Tuomela in a 'book symposium' on *The Construction of Social Reality* (1997a, 436-437); and Searle's reply to this objection has obscured things even more. He holds that "[t]he institutional fact that I bought a car with money can only exist within such institutions as money, property, and exchange" (Searle (1997b, 452). This, though resembling some passages in *Speech Acts*, is scarcely consistent

lot of institutional objects in law which can neither be reduced to notions like legal right, competence, or duty, with ease, nor have a brute fact at core. 'Juristic persons' are just one example for such an object, for in jurisprudence there is a consensus that juristic persons are not just a special function of the human beings connected with it, but that they are autonomous constructions. How should this case be treated? There is no underlying brute reality which 'counts as' a juristic person. To be sure, there has to be at some time some perceptible action so that the juristic person comes into existence. But this act needs not last while the person exists; besides, we would not say that the act—for example, signing a contract—'counts' as a juristic person. The same objection, by the way, applies even to Searle's favoured example of 'money'. It is plausible to say that the brute reality of some metallic pieces 'counts as' money. But what if the physical core of money is just a magnetic trace, a 'blip on a computer disk' (Searle 1995, 56)? It is at least extremely counterintuitive to say that these traces 'count as' money, even though they might well be said to 'indicate' money.—Another example would be the ancient belief in several gods like Jove, Mars, etc. These deities certainly had 'status-functions' (having a claim to sacrifices and causing them, and being empowered to quite a lot of actions), and they existed just because they were collectively believed to exist, yet there was no underlying brute reality which 'counted as' god.

(2) The second part of the objection is the related point that it is not at all clear what an institutional fact consists in. Again this objection divides into two parts. The first is the problem as to what brute facts can be 'transformed' into institutional facts. This objection is in a part repetitive of the ones brought forward before, so I will formulate it as short as possible: On the one hand brute facts just seem to be necessary for conditioning the existence of institutional facts (like the 'blip' on the computer disk in relation to money), on the other they seem to be something which is *interpreted* as an institutional fact (like metal pieces in relation to money), which is quite a different thing. Furthermore, it is counterintuitive to take persons, like presidents, citizens, etc., to be institutional facts in the way Searle obviously does it (Searle 1995, 97). The second point is the more fundamental question concerning the relation between the brute fact and the institutional fact. Is the latter just the brute fact in a guise? This is implied by the formula which 'constitutes' institutional facts "*X (which is a brute fact) counts as Y*". It seems to mean, e.g., that money 'really' is the papery or metallic stuff we hold in our hands. On the other hand, Searle's conception of a hierarchy of facts implies that it is not just a brute fact invested with a special 'status-function' (i.e., an

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with anything Searle brought forward in *The Construction of Social Reality* (and which I tried to reconstruct in this paper); for, whereas before it seemed to be obvious that money itself was the institutional fact, now money seems to be an 'institution', and the institutional fact is some process or state of affairs involving the use of money and being denominated by a that-clause.

external fact combined with a higher-level feature of our brain), but a process in—or feature of—the brain, a mental entity. For in his pyramid of several levels of facts he distinguishes between 'brute' facts and 'mental' facts at the first level; and institutional facts are just a subdivision of mental facts (Searle 1995, 121). So, the question is—to put it crudely—whether institutional facts exist just in our brain or 'out there' in physical reality (as well).[5]

It might seem that these objections are rather unconnected. But, in my view, there is a common source to the major part of them. It is Searle's fundamental conception of 'realism plus physicalist monism'. This might seem surprising, because above I said that the problem of realism was not very important. But it is 'not important' only in the sense that it might be disposed of rather easily,[6] and if it is disposed of, I dare say it will be all the better for Searle's theory.

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[5] In a way this question concerns the meaning of the dotted line which 'bridges' the gap between mental facts and brute facts in Searle's illustration of the hierarchy of facts on p.121 of *The Construction of Social Reality*.

[6] This is not the place to argue for this thesis at length; a short outline of the argument would run as follows: One of the main reasons for Searle to insist on the realist stance is that he thinks a non-realist would not be able to distinguish between brute facts and institutional facts, because *all* facts would in a way be institutional (Searle 1995, 149). But this is not true; of course, the non-realist may still distinguish between facts which can be analysed using the categories of natural science (and nothing else), and facts which are institutional 'in a narrow sense' by being the result of an interpretation according to socially valid rules.