Searle on Normativity and Institutional Metaphysics

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Abstract

In *Speech Acts* Searle argued for a version of philosophical naturalism by, in part, replying to G.E. Moore's famous claim that naturalism, if it included any evaluative claims, would be clearly fallacious. We make the case that Searle's reply was not the disaster it is sometimes claimed to have been. In our discussion we pay special attention to Searle's introduction of such key concepts as brute facts, institutional facts, and constitutive rules. We also make a broader case for the 'constitutive' connections as central to Searle's often misunderstood metaphysical views. We intend to show at least that Searle has an account of normativity that, while in a sense constructivist, is both naturalist and realist.

Keywords: Normativity, Realism, Naturalism, Social ontology, Constructivism, Grounding.

1. Introduction

In the last two decades Searle's work on social philosophy, or what could also be called his metaphysics of institutions, has been widely discussed and critically assessed.[1] As seems characteristic of Searle's views on various topics, those debates have concerned whether Searle's overall position coheres. Specifically, it is common to hear that Searle's constructivism about institutional phenomena is inconsistent with his philosophical naturalism.[2]

Though we have also entered into these debates (Butchard and D'Amico 2011, 2015), we now intend to reconsider Searle's earlier philosophical career where the groundwork for these views was first laid. In fact, we intend to

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[1] See Corcoran 2001, Ruben 2015, Hindriks 2009, 2013. See also Searle 2004 for responses to critical assessments of *The Construction of Social Reality*.
[2] For example, Ruben 2015 characterizes Searle as a "constructivist" because the institutional domain is in effect built out of mental states and physical states. We reply to Ruben in our concluding remarks.

reexamine in this essay Searle's first major philosophical work *Speech Acts: An Essay in the Philosophy of Language* (Searle 1969).

In that work Searle defends his version of philosophical naturalism by replying to G.E. Moore's argument in *Principia Ethica* (Moore 1993, originally published in 1903) that naturalism with respect to evaluative terms can be shown to be fallacious. In his reply, Searle introduces the key concepts of brute facts, institutional facts, and constitutive rules. Though the discussion of Moore is not based on a close reading, and Searle only sketches these important concepts, we are confident that these passages hold a key to understanding Searle's mature views.

Our aim is two-fold. We make a case for Searle's defense of naturalism with regard to normativity (as properly understood). We also argue in defense of his concept of constitutive rules, which we see as critical to his entire metaphysics of institutions.[3] More specifically, we aim to show that Searle defends an account of normativity that is both realist and naturalist.

We discuss his appeal to constitutive rules as a special case of his appeal to constitutive connections generally. Searle takes the term "constitutive" seriously enough (from the point of view of metaphysics) for his picture to ensure both that the phenomena of which real things are constitutive of are themselves real, and that if everything constitutive of some phenomenon is natural, then that phenomenon is itself natural. There is more about Searle's appeal to constitutive connections in the final section of this article.

What is key to Searle's account of institutional obligations is the fact that the attitudes constitutive of them are normative in character. Depending on how one understands Searle's account there could be a threat of circularity. We argue that the sense in which normative attitudes are constitutive of actual obligations, on Searle's account, does not involve circularity. Nor do we think it commits him to a form of mind-dependence that could be taken as a threat to realism. Thus, if the attitudes are both real and natural, the actual obligations of which they are constitutive are real and natural as well.

2. Moore on the Naturalistic Fallacy

In *Speech Acts*, Searle embraces the view that normative properties are real and thus part of philosophical naturalism. As we will explain, given the function of constitutive rules, Searle can be said to be realist about social phenomena and specifically institutions (though of course these phenomena are mind-dependent, or what he also calls "representation dependent"). These considerations also ensure that he is a realist about obligations in institutional settings.

Before launching into this discussion, it may be helpful to clarify some terminology. For some of this clarification we are just stipulating matters, while with respect to other points we set aside controversies that cannot be addressed in this article. However, our intent is to emphasize that Searle's embrace of "naturalism" should not be confused with what is currently called "physicalism," for instance; though physicalism is a specific version of naturalism as we understand it.

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[3] Searle's metaphysics in philosophy of mind is a version of "anomalous monism" since the natural world is not law-like throughout and there cannot be a science of the mental. We cannot address this large topic here, but in addition to the articles of ours cited above, for a brief discussion of the differences between Searle and Davidson on anomalous monism see D'Amico 1997.

Toward clarifying what conception of naturalism Searle is defending, we believe it to be a broad commitment to understanding the world by locating phenomena within the framework supplied by the sciences, again with the term "science" being understood broadly. Scientific naturalism does not commit one to any particular metaphysics; rather, it allows for different metaphysical positions, e.g., physicalism versus dualism.

To say either that mental properties are wholly grounded in physical properties or that they are merely caused by them is to locate mental properties (explanatorily speaking) within the scientific worldview. Scientific naturalism is thus compatible with an appeal to *a priori* principles that complement empirical data. Such principles need not be limited to mathematics; they can include analyses that address conceptual connections generally. Hence, physicalism, including versions of it that rest crucially on *a priori* considerations, counts as naturalism.[4] For purposes of grasping Searle's project we also stress that naturalism does not concern itself with how various phenomena are known in the first place; rather it is concerned with how various phenomena can be worked into the scientific worldview.[5]

It is worth noting in this context that Searle considers himself neither a physicalist (strictly speaking) nor a dualist. While he is not a dualist in philosophy of mind, Searle does not think mental properties supervene on physical properties with the strict necessity required by physicalism. But he does not think that such a position commits him to property dualism. His reason is that he thinks property dualism presupposes a substantive pre-theoretical mental/physical dichotomy, and for Searle there is no such dichotomy. In contrast, as regards our topic, he *does hold* that normative properties supervene on mental and physical properties with strict necessity.[6] Thus if his theory of mind merits the label "biological naturalism" then his account of normativity should be classified as naturalistic.

Given this conception of naturalism, there arises a famous problem that has been the focus of much of Searle's philosophical career. On the face of things, a core element of daily thought and language concerns the normative aspects of states of affairs. But it has been argued that the existence of normative features of the world is not—and could not be—part of the scientific worldview. Hence, we have the following problem: Either normative features do not belong to the natural world or there are no normative features.

Thus while at first sight normative statements are factual and thus part and parcel of the natural world, taken broadly, the study of the natural world in the sciences has been thought not to allow for normative or evaluative facts. Of course, this problem should be stated carefully. There are obviously legal systems and there are facts such as those concerned with rules. These facts would certainly be part of the natural world. But it is possible to consider these cases as not

[4] We agree with much of how David Copp (2003, 2015) characterizes naturalism epistemically and the dispute about normativity. Also Copp outlines what he calls a social theory of ethics as a response to how ethical properties could be understood naturalistically. Whether the positions of Searle and Copp are on the same track is simply too much to cover in this paper.
[5] See Searle 1992: 1, 85.
[6] Searle of course does not use the language of supervenience in *Speech Acts* and he does not make serious use of it in his later writings. In fact, he explicitly rejects the term as both misleading and unnecessary (Searle 1992). But, as we will argue, his appeal to constitutive connections secures strong supervenience.

involving *normative facts* as opposed to just *normative attitudes*. These cases may well be wholly accounted for in terms of psychological or perhaps even physical facts and thereby ultimately not require anything more than normative attitudes.[7] Thus we could put the challenge in this manner: Were the sciences to provide a vast catalogue of objects and properties that make up the world, that catalogue would not include normative or evaluative facts or properties (though it likely would include normative attitudes as psychological states).

This line of thought seems to leave broadly two options. First, there is the option of retaining the naturalist outlook and adopting an anti-realist position with regard to normativity. Second, one could commit to the existence of normativity but treat it as a non-natural property.

We cannot discuss details of these options here, but we want to emphasize before we begin the exposition that Searle rejects both options. In other words, Searle aims to be a realist about normativity. On his view, normative properties exist, and normative properties are natural properties. Understanding Searle in this fashion then makes clearer why Moore's claim that such a combination of views constituted a fallacy had to be answered.

If Searle's view is that moral properties are real and natural, then his account must in some way explain moral properties and perhaps in turn explain why they may seem mysterious. This task will require Searle to be clear about what is expected of him in defending both realism and naturalism. But in understanding Searle's position it is important to stress that by natural property Searle does not mean a property within some existing science. His only requirement is that it be explainable in terms of properties in the sciences. He thus does not commit to the view that there could be a science of normativity (in parallel fashion Searle argues there cannot be a science of the mental).

An example of Searle's position on naturalism can be found in the way he treats the category of furniture.[8] Samples of furniture are physical objects, and whatever properties those objects have are also natural properties. But of course there is no science of furniture, and it would be foolish to think there ought to be such a science. Furniture will not be found in the catalogue of objects and properties as prepared by the sciences. But, Searle insists, it would be wrong to conclude that therefore one should be an anti-realist about furniture. Given the established sciences, including such fields as physics, psychology, and economics,

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[7] In explaining Searle's naturalism we say that he aimed to defend the reality of normative *facts* as part of the world. When we appeal to the notion of a normative *attitude* we simply wish to point to an even more modest position that we think is also compatible with the scientific outlook. For instance, an emotivist such as A.J. Ayer could well embrace that there are normative attitudes as a fact of human psychology while also maintaining that there are no moral properties. We want to thank the anonymous reviewer and David Copp for pointing out the need for further clarification on these matters. We address our use of the term "constitutive," albeit briefly, in our discussion of David-Hillel Ruben and specifically in footnotes 15 and 16.

[8] "Some philosophers point out that we don't have a science of behavior for the same reasons that we don't have a science of furniture. We couldn't have such a science because that aren't any physical features that chairs, tables, desks, and all other items of furniture have in common that would allow them to fall under a common set of laws of furniture. And besides we don't really need such a science because anything we want to explain— for example, why are wooden tables solid and why does iron lawn furniture rust?—can already be explained by existing sciences" (Searle 1984: 73).

furniture is neither mysterious nor non-natural. It is ultimately a higher-level feature that can be accounted for in terms of familiar mental and physical properties, all of which are natural.

In turning to Searle's discussion of Moore in *Speech Acts*, the first matter we encounter is the way in which Moore put his demonstration of the naturalistic fallacy. Moore claimed he had demonstrated that one could not analyze ethical statements in terms of naturalistic statements.[9] He held that derivation of an evaluative statement from a factual base requires that the term "good" be synonymous with some descriptive term *F*, making it analytic that if something is *F*, it is good.

Moore's requirement on derivation, in brief, is that there be analytic bridge principles connecting evaluative statements with descriptive statements. Moore then argued against the possibility of such a derivation by way of what he called an "open question argument." If the term "good" and *F* were to bear an analytic connection, then when presented with something that is *F*, it could not seriously be said to be open to question whether it is also "good." Moore of course had in mind *a priori* analytic connections analogous to those between the words "bachelor" and "unmarried male."

But Moore's open question argument runs into problems. It depends on a sense of "openness" about our response to such sentences. It also depends on a sharp distinction between normative and non-normative statements that Moore struggled to provide.

Contemporary philosophers are apt to respond to this argument by citing the work of Saul Kripke (1980) and Hilary Putnam (1973) on natural kinds. Kripke and Putnam have given us reason to think that Moore's argument fails because the meaning of natural kind terms is not exhausted by *a priori* analytic definitions, making it possible for two expressions to be synonymous even though their synonymy is not transparent to ordinary (i.e., empirically uninformed) speakers. And there is the related point that just as water's being identical to H_2O is what Kripke calls an *a posteriori* necessity—making water's H_2O nature an open question to ordinary folk—it may be that normative kinds are identical with natural kinds even though the identity is accessible only *a posteriori*. Hence Moore's central demonstration of the fallacy collapses.

Of course, Searle's discussion of Moore has none of the fancy objections about natural kinds we just discussed. In fact, Searle is brief about what is wrong with Moore's demonstration. He offers examples in which he thinks the derivation goes through, but his discussion, as we will see, engages later thinkers more directly than it engages Moore. We believe that Searle's point about Moore concerns what constitutes the factual basis of the derivation. Before discussing this issue, however, we want to look at some of Searle's examples.

3. Searle's Argument for Descriptive-Evaluative-Entailment

Searle begins his response to the Moorean tradition with examples from J.O. Urmson. Searle wants to explain why such examples have been thought to be impossible or to raise problems for naturalism. Urmson discusses, for example, fruit grading terms introduced by the British Ministry of Agriculture and Fisheries. Take the statements:

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[9] Moore concedes in his "A Reply to My Critics" (Moore 1942: 535-677) that his efforts to clearly make a distinction between normative and naturalistic claims were a failure.

- This apple is Extra Fancy Grade.
- This apple is *A*, *B*, and *C*.

Urmson holds that the first claim is not entailed by the second because it is evaluative while the second is descriptive. Searle replies that the ministry saw itself as *defining* "Extra Fancy Grade." Given their definition, Searle points out, it is analytic that any apple that is *A*, *B*, and *C* is Extra Fancy Grade. Thus the statement "The apple is *A*, *B*, and *C*" entails "The apple is Extra Fancy Grade" (Searle 1969: 135-36).

Searle notes that it is fundamental to later Moorean arguments to assert a gulf between the *meaning* of an evaluative term and the *criteria for its application*. But, he says, once you identify "Extra Fancy Grade" apples as ones that are by definition "*A*, *B*, and *C*," there is no such gulf (Searle 1969: 134). He grants that the *characteristic illocutionary force* of the utterance of "The apple is Extra Fancy Grade" is *to grade something* while the characteristic illocutionary force of the utterance of "The apple is *A*, *B*, and *C*" is *to describe something*. But he argues that this difference is not sufficient to show that the proposition expressed by the utterance of the one sentence fails to entail the proposition expressed by the utterance of the other. We have to distinguish, he says, the characteristic illocutionary force of an utterance from its propositional content, as well as the closely related pair *use* and *meaning*. (Searle 1969: 136).

To help make Searle's more effective strategy clearer, it is worth looking briefly at an anti-realist variant on Moore's argument. The work of R.M. Hare best represents a classic anti-realist position in agreement with Moore's claim of a naturalistic fallacy.[10]

Hare showed how anti-realists can agree with Moore about there being a naturalistic fallacy without accepting Moore's specific argument against naturalism. Hare's own version of the open question argument is as follows. If naturalism were true, then evaluative terms would be descriptive terms. But their being descriptive would not make sense of the fact that we often *commend* objects *for being a certain way*. If "good" were a property term that attributes the feature that forms the basis of an evaluative judgment, then our statements of the form "x is good because it is *F*"—which commends something for having feature *F*—would be read is "x is *F* because it is *F*," which does not commend x for being *F*. Hence, descriptivism (which is implied by naturalism) mistakenly reduces statements of the form "x is good because it is *F*" to statements of entirely different form, which would make it impossible to say things of the sort we normally say with evaluative terms. Hare's argument thus shows that Moore's so-called open question turns in the end on a gap between the meaning of an evaluative term and its descriptive criteria.

We have spelled out this version of the naturalistic fallacy because it rests on the distinction between meaning and criteria. While Searle uses Urmson's examples, his diagnosis as to why the derivation has appeared impossible was meant to apply to Hare as well. The diagnosis, once again, is that philosophers in this camp fail to distinguish *use* from *meaning*, leading to the mistaken distinction between the meaning of an evaluative term and its descriptive criteria. He thus

[10] Hare (1952) mounts his defense of Moore's naturalistic fallacy argument in Chapter 5 of *The Language of Morals*. Hare (1972) also responds to Searle concerning the relationship between meaning and use, a topic we have to set aside.

addresses Urmson and Hare more directly in this section than he does Moore (Searle 1969: 134-35).

Searle does not discuss the is-ought question in this part of *Speech Acts*. And we think it is at best unclear that his examples, as he describes them, show that it is possible to derive ought-statements from descriptive statements. Is it analytic that one ought to accept arguments whose premises entail their conclusion? Is it analytic that one ought to seek out apples that are *A*, *B*, and *C*? If the answer to these questions were clearly yes, then Searle's examples might be said to show that it is possible to derive an ought-statement from a set of descriptive statements. But these claims are not clearly analytic. One might doubt, for example, that when the British Ministry of Agriculture and Fisheries stipulates that "Extra Fancy Grade" applies only to apples that are *A*, *B*, and *C* that "Extra Fancy Grade" retains its ordinary normative meaning. If they are not analytic, Searle has simply not made a case for any principle that would make the derivation possible. Thus, as far as Searle's examples go, there may well remain an is-ought gap, even given his theoretical framework.

However, as we will now discuss, Searle identifies in a later part of *Speech Acts* constitutive connections between the attitudes people have and genuine obligations they have as a result within institutional settings. We think these connections more plausibly bridge the is-ought gap.

4. Searle's Is-Ought Argument

Once again, when Searle turns to the task of actually producing a deductive argument to answer Moore, Searle appeals to analytic bridge principles. In this case, the principles make possible a derivation of statements containing the term "ought" from a descriptive expression containing the term "promise." But unlike the examples noted above, Searle now can appeal to the following plausible analytic principle: If one promises to X then (baring extenuating circumstances) one is under an obligation to X. Searle does not rely on the principle's intuitive appeal. Rather, he sketches a theory of institutional reality that treats promising as an institution and explains why promising places someone under an obligation. He then takes it as analytic that if one is under an obligation to X, then one ought to X.

Searle does not try to provide a reductive analysis of normativity to something wholly descriptive in the sense that no normative terms are required to specify it. He thus makes free use of normative terms in identifying attitudes that contribute to the factual base for the derivation. On Searle's view, obligations can arise by virtue of our collective acceptance of certain actions as placing one under an obligation. For example, we accept that to utter "I promise" is to issue a promise and hence to place oneself under an obligation (it being analytic, as noted, that to issue a promise is to place oneself under an obligation). And since it is analytic that one ought to do what one is under an obligation to do, a person should do what he or she has promised.

Crucial to Searle's view is that the collective acceptance consists in the "we-intentions" of individuals. Each of us has an intention with the content "We intend that to utter 'I promise' is to make a promise." No individual's we-intention is enough for an utterance to amount to promise. But when enough people (and perhaps key people) have the intention, the acceptance counts as collective and the utterance really is a promise and really does place the person uttering it under

an obligation, in which case we have (what we call) a normative fact rather than a mere collection of normative attitudes.[11]

In brief, even if the concept of a promise is normative, and our individual we-intentions have normative content, it takes multiple individuals with such attitudes for genuine obligations to arise. Thus we can include normative terms in the descriptive base as long as they do not introduce the normative facts that arise from the individual states described in that base. Searle, we believe, thus relies implicitly on a bridge principle in which there are occurrences of normative terms—"obligation" and "promise"—that do not introduce normative facts, but are followed by an occurrence of "obligation" that does introduce a normative fact. For example:

- If a community collectively decides that a certain action brings one under an *obligation* by virtue of constituting a *promise*, then the action really does bring one under an *obligation*.

Searle's aim is to identify the institutional conditions under which someone is placed under an obligation, but the conditions he identifies are not supposed to explicate the very idea of an obligation (or of any particular kind of obligation). He identifies some of the conditions under which obligations may be realized in the institutional world, but the conditions are properly identified by means of normative terms because they include individual attitudes with normative content. In brief, Searle shows how institutional facts can give rise to obligations; he does not try to show that the concept of an obligation (or of a particular kind of obligation) is analyzable in terms of strictly descriptive concepts. We will say more to clarify Searle's explanatory project below in our response to Ruben.

The form of the bridge principle suggests an answer to the worry that Searle's use of normative terms in specifying the derivative base makes that base not wholly descriptive thereby making his derivation circular. Searle's derivation base is wholly descriptive in one sense and not wholly descriptive in another. It is wholly descriptive in the sense that it does not introduce *normative facts*. Rather, it introduces the normative attitudes of individuals, which, as we have stressed, are not themselves normative facts but may ground them. The descriptive base is not wholly descriptive only in the sense that it properly includes normative terms. But as long as those terms do not introduce normative facts, Searle will have derived normative facts from a set of statements that do not themselves state normative facts.

Notice that the bridge principle above explains how one might *know* that a person ought to do X. If one knows that a person uttered, "I promise to do X" and knows that we have collectively decided to treat the utterance of this expression as a promise, then, one knows that the person ought to do what was promised. The reason, as Searle argues, is that it is analytic that promising places one

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[11] When Searle wrote *Speech Acts* he appealed broadly to the notion of the community in his account of language use and he also used expressions that Searle would later develop at greater length as a whole doctrine of social phenomena and "we-intentions." This later position (Searle 1990) turns out to be complex and we must set it aside here. However, we tried to show (Butchard and D'Amico 2015) that Searle's account of we-intentions cannot be reduced to internal, individual causal states that some recent authors have called "incentives." The reader can also consult Margaret Gilbert (2007) for her challenges to Searle's we-intentions as against Gilbert's similar notion of what she calls "plural subjects."

under an obligation and that one ought to do what one is under an obligation to do. In this way one is in a position to know that the person ought to do X.

Moore's argument that the normative is not reducible to natural properties (as shown by the open-question argument) cannot take hold against Searle. Searle does not explicate the normative "ought" in terms of something non-normative. But Searle does show how to derive a statement of normative fact from other sorts of statement. Searle's derivation simply does not require the kind of reductive analysis Moore associated with naturalism.

5. Searle on Constitutive Rules

Searle's aim in the philosophical section of *Speech Acts* is grander than just replying to Moorean arguments against naturalism. He wants to show that his appeal to institutional facts establishes a broad conception of how normativity is part and parcel of the natural world and thereby part and parcel of philosophical naturalism. He states that it is at least sometimes a matter of institutional fact (not brute fact) that persons have commitments, obligations, duties, or responsibilities.

The point we are stressing now is that Searle's dispute with Moore fundamentally concerns the question of whether the concept of naturalism ought to be restricted to brute facts alone. Searle thinks that naturalism cannot be so restricted, but he does think that institutional facts are layered upon brute facts. However, to fully explain the relevant idea of layering requires access to bridge principles in the form of constitutive rules.

As Searle (1969: 184) put it, "No set of brute facts can entail an institutional fact without the addition of at least one constitutive rule." Searle rejects here a problematic restriction on which facts can figure in the deductive base in the derivation of ought claims. But, as we noted, in Searle's discussion of Urmson and Hare, Searle does not directly address whether *moral* ought-statements can be derived from descriptive statements. Though Searle's discussion leaves it unclear whether the way he derives ought-statements in institutional settings will have a counterpart in non-institutional settings, we think he has, at least, shown that the possibility of such a wider derivation should not be ruled out.

Searle clearly notes that he has not addressed the moral question directly.[12] But our aim throughout has not been to show that Searle has a completely worked out account of ought-statements. Rather our point is that his treatment of such statements in institutional settings does, plausibly, show that it is possible to derive ought-statements from descriptive statements and hence to fit some such statements into an ambitious naturalist picture of the world.

For our purposes, Searle's discussion in *Speech Acts* is the first appearance in his work of the distinction between brute facts and institutional facts, and then the further device of constitutive rules.[13] Searle rejects a picture of the world

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[12] In *Speech Acts* (1969: 187), Searle takes himself to have shown, by way of example, the falsity of the general thesis that an "ought" claim cannot be derived from an "is" claim, and as having undermined the linguistic thesis upon which the more specific moral thesis has rested. He thus thinks that, in light of his institutional examples, a special argument is needed for the narrower thesis that a moral "ought" cannot be derived from an "is".

[13] These notions are of course not original with Searle. In *Speech Acts* (1969) Searle credits the distinction between brute and institutional facts to Elizabeth Anscombe and in "What is a Speech Act?" (1965) Searle recognizes John Rawls as the source for the distinction between regulative and constitutive rules.

containing only brute facts capable of being known through experience, and language tracking only these facts. This picture, according to Searle, makes it very difficult to understand ethics and esthetics and has led to the implausible view that such statements are mere psychological reports, contrary to their initial appearance. "It cannot be said that the implausibility of these ways of dealing with the problems posed by ethics and esthetics has been any bar to their popularity, but their popularity is at least evidence of the power of this picture" (Searle 1969: 50-51). He then adds:

> Leaving aside the question of the status of statements in ethics and aesthetics, which are controversial areas anyway, there are many kinds of facts, and facts which obviously are objective facts and not matters of option or sentiment or emotional at all, which are hard, if not impossible, to assimilate to this picture (Searle 1969: 51).

Searle has in mind institutional facts, as opposed to brute facts. He first marks the distinction entirely by way of examples. Examples of brute facts are gravitational force, location in three-dimensional space, or physiological processes such as digestion. Institutional facts are exemplified by marriage ceremonies, legislative actions, economic exchanges, or legal trials. We believe Searle's point of contact with Moore is that he thinks the open-question argument appears persuasive only if we restrict our attention to brute facts.

After giving the examples of brute and institutional facts, Searle draws our attention to the important additional notion of constitutive rules:

> These "institutions" are systems of constitutive rules. Every institutional fact is underlain by a (system of) rule(s) of the form "X counts as Y in context C." Our hypothesis that speaking a language is performing acts according to constitutive rules involves us in the hypothesis that the fact that a man performed a certain speech act, e.g., made a promise, is an institutional fact. We are not, therefore, attempting to give an analysis of such facts in terms of brute facts (Searle 1969: 51-52).

We first want to point out that there is nothing in the distinction between constitutive and regulative rules to exclude a naturalistic account of normativity. To say that institutions, or institutional facts, exist only because we adopt certain rules does not make them unreal, but of course it does make them mind dependent. If it is a fact that the bank is closed, then there is a system of material objects that exists independently of our minds, and there are individuals (all of who exist independently of one another's minds) who are in collective agreement that some objects in the world have a certain status. The latter condition requires the existence of minds, but it does not make the statement about the condition of the bank any less factual.

But there is another matter we want to address. At the beginning we stressed that Searle's position strikes many as best understood as an anti-realist view. As we noted earlier, Ruben argues that Searle's constructivism leads to anti-realism about institutions. Ruben makes crucial appeal in his article to the notion of supervenience. He argues that Searle's account of social reality is best understand as the specification of the details in the supervenience of the social on individual persons, their mental states, and physical objects. But for such an account to be successful, Ruben holds, it must *explain why* the supervenience holds. He does not think Searle's constructivism supplies such an explanation. Ruben points out,

correctly we think, that supervenience is not itself a *determinative* connection, so it is not the sort of relation that could *explain* institutions in terms of persons and material objects. Supervenience, he says, always obtains because of some further connection, and Ruben holds that Searle does not identify that further connection.

For instance, Ruben comments on the following statement by Searle: "The central span on the bridge from physics to society […] and the decisive movement on that bridge […] is the collective imposition of function" (Searle 1995a: 41). Ruben argues that if this passage is intended as an account of the relation between levels that thereby explains the supervenience, it has failed. Ruben reaches that conclusion because the existence of collective imposition must belong to one of the levels, whether one thinks of it as introducing the summation of individual attitudes or as something at the social level. Ruben's criticism is that collective imposition therefore cannot be a bridge across levels. Ruben says:

> The main point is only this: constitutive rules and the collective assignment of function (whether identical or not) must be either members of the set of I or set S or set M, for they must be placed somewhere and these exhaust the options of where to place them (it is obvious that neither are at the brute physical level) (Ruben 2015: 137).

Ruben's point, again, is that Searle's appeal to the collective imposition of function as the grounds for the existence of institutions must place it at one of the levels—I (the set of institutional facts), S (the set of social but non-institutional facts), or M (the set of mental facts)—but then it does not serve as a bridge. According to Ruben, Searle's picture merely directs our attention to a co-variation between levels without explaining that co-variation, and hence does not introduce an explanatory bridge principle as realism would require. Ruben's conclusion then is that Searle's *construction* of institutional reality amounts, unacceptably, to brute supervenience, and hence leaves the door open for anti-realism. We agree with Ruben that brute supervenience (of any strength) is a threat to realism.

We want to stress that if this is a problem for Searle's account of institutional reality, then it is a problem for his naturalism about normativity. The reason is simple: Naturalism about normativity entails that the normative supervenes on the natural. But if supervenience is not an explanatory notion, and yet is the key relation between the normative and the non-normative that defines Searle's naturalism, then his naturalism is likewise subject to Ruben's criticism.[14]

We believe that Ruben identifies a very important issue in this discussion. But we think that it is not particular to Searle's metaphysics. Ruben has in effect raised a broad concern about philosophy as a mode of inquiry. When philosophers engage in analysis they are not, as one might think they are, looking for strictly modal connections such as supervenience. They are more often looking for explanatory connections. Searle (1992: 125) himself distinguishes "causal

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[14] Hare (1989: 66-81) claims that the correct use of moral terms supervenes on the use of descriptive terms, but he does not say that it supervenes with the strict necessity of the supervenience entailed by naturalism, of the sort that says that moral properties strongly supervene on non-moral properties. In other words, his account of moral terms involves weak supervenience, which says only that any descriptive duplicates within the same possible world are evaluative duplicates. Hare thus does not commit himself to the stronger thesis Moore associates with naturalism, namely the one that requires analytic bridge principles that the open question argument then rules out.

supervenience" from "constitutive supervenience". The terms "causal" and "constitutive" are both explanatory terms. When Searle says that some rules are constitutive of an activity rather than imposed on a prior activity, he is pointing to a non-causal explanatory role they play.[15]

We think it reasonable to take philosophy as in the business of seeking out constitutive connections. We also think it reasonable to understand such constitutive connections in terms of non-causal explanatory notions such as metaphysical grounding or even real essence (though we seriously doubt Searle would go that far). Nevertheless, Searle's use of the term "constitutive" in these contexts suggests an answer to Ruben's proper question of why the supervenience relation holds: I supervenes on M (or S) <u>because</u> M (or S) is constitutive of I.

Moreover, constitutive terms are used in cases in which the phenomena, and hence the levels, are in an important sense not wholly distinct: the higher levels (levels being sets of property instantiations) exist *wholly in virtue of the existence of the lower levels*. Thus the account we are discussing has it that institutions are not wholly distinct from the material objects and collective acceptances that ground them. But then to return to Ruben's criticism, the claim that the levels are non-distinct in this manner makes it unproblematic that collective acceptance has to be located at one of the levels. It is, on Searle's account, located at a level that fully ensures the existence of the derivative institutional level. Grounding, therefore, provides a bridge between levels thereby explaining why the higher levels strongly supervene upon lower levels. Ruben's criticism that the location of collective acceptance at one of the levels excludes it as a bridge between levels appears to rest on the assumption that the levels are wholly independent and hence not *inherently bridged*. But the view that there are constitutive connections between levels is precisely the view that the levels are non-independent.

We stress by way of clarification that the term "constitutive" can be used in two ways. It can be used to introduce explanatory conditions that are *essential* to some phenomenon, and it can be used to introduce explanatory conditions that are not essential to but nevertheless fully account for (i.e., *metaphysically ground*) some phenomenon.[16] Searle appears to use the term in both ways, and seeing both uses is key to understanding his naturalism. He appears to use the term in its essentialist sense to give an account of institutional reality. Institutions, on his account, essentially involve collective intentionality. But in his account of

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[15] We use "constitutive" as a generic term for a class of explanatory notions that came into focus in the last half-century as philosophers began to suspect that strict identity was not always adequate for capturing connections across domains (e.g., identity rules out the so-called multiple-realizability of the mental or the coincidence of the statue and the hunk of clay that constitutes it). This family of concepts includes, but is not limited to, realization, constitution, essence, and recently grounding. The term "constitutive," as we use it, indicates that these notions are non-causal. Hence, Searle's makes a distinction between causal supervenience and constitutive supervenience. We also understand the concept as introducing notions that are not strictly modal. For a discussion of the inadequacy of strictly modal terms for capturing such notions (specifically that of essence), see Fine 1994.

[16] Being red, e.g., is not *essential* to having a color, but it may, in some particular case, fully *ground* it. By contrast, having a surface feature of a certain reflective sort is essential to having a color. The contrast in this example is not supposed to imply that essentialist connections exclude grounding connections. Rather, we think it is reasonable to hold that having a surface feature of a certain sort grounds having a color and that this is closely related to the essentialist connection.

normativity—his derivation of an "ought" claim from an "is" claim in institutional settings—he appears to use the term in the second sense. That is, he appeals to constitutive connections between attitudes and obligations in institutional settings, but he does not claim that obligations (or any particular kind of obligation) are essentially tied to those attitudes. In other words, he does not argue that the concept of obligation at work in his institutional metaphysics is different from any concept of obligation that may apply outside of institutional settings. In brief, it is his view that facts about collective intentions can ground real obligations.

Thus we take Searle's use of constitutive connections as introducing explanatory connections in metaphysics, as opposed to treating explanation as restricted to the work of the sciences. But if this sort of effort at explanation is in some way improper or inadequate on Ruben's view, then we think that such a broad criticism has the unfortunate consequence of driving philosophy wholly into deflationary or eliminativist projects, excepting, perhaps, cases in which they appeal to identity. Of course, this kind of explanation that we defend and think is exemplified in Searle's long effort to rescue a rich sense of naturalism is both somewhat messy and even tentative. But that will be the case in any non-deflationary account. We are under no illusion that there are not serious and weighty problems that need to be addressed, among them the status of non-causal explanations. But it would be a loss to abruptly dismiss Searle's effort at securing and defending a robust naturalism. If we have made our case, then there is a version of naturalism compatible with the sciences and common sense, but which also preserves the critical autonomy of philosophy.

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