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# The Contract of Language: John Searle's Philosophy of Society

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## **Abstract**

In *Making the Social World*, John Searle develops what he calls a “philosophy of society”, which explores the ontological status and logical structure of institutional facts like universities and baseball games. This philosophy of society crucially depends on Searle’s earlier work in the philosophy of language and mind. In this review, I discuss some aspects of Searle’s theory of institutional facts as structured in terms of declaratives that are most relevant to working linguists, like the relation of language to other social institutions, the emergence of normativity in language, the articulation of (legitimate and illegitimate) power in language usage, and the question of whether there should be any restrictions on the allegedly universal human right to free speech.

## **Keywords**

institutional facts, speech acts, declaratives, power, normativity, free speech

## **1. A New Philosophy of Society?**

The everyday social world around us is misleadingly familiar. All of us are engaged with all kinds of institutionalized social entities (e.g. by studying or teaching at a university, by electing a president, or by attending a soccer game) on a day-to-day basis, without ever thinking about them, doubting them, or questioning them. Yet, what kinds of things are universities, presidencies and soccer games? They are not physical objects, yet they are as real as stones and trees. At the same time, this apparently objective mode of existence depends on the subjective attitudes and beliefs of social actors: social facts only exist because people *believe* they exist. As soon as people stop believing in, say, the value of money or the legitimacy of a president, we are in for serious (and very real) consequences, such as hyperinflation or revolution.

In his latest work, *Making the Social World: The Structure of Human Civilization* (2010; henceforth *MSW*), philosopher John Searle takes up these and other questions concerning the ontology of social, or as he calls them,

institutional, facts; in doing so, he elaborates and modifies concepts and ideas he had developed some fifteen years earlier in *The Construction of Social Reality* (henceforth *CSR*). Thus, he complements his own – and others’ – accounts of language with an account of the institutional social reality within which language use occurs.

In a way, such a discussion is long overdue. In analytical philosophy and its empirical offshoots, lip service is often paid to the social dimensions of linguistic practice, without ever going beyond an implicitly assumed, highly idealized, and highly questionable, view of society. In the wake of, in particular, Wittgenstein’s *Philosophical Investigations*, many authors working in the philosophy of language have argued for the irreducibly public, or social, character of language; but they never spelled out exactly what the social amounts to in their accounts. As it turns out, a good many analytic philosophers tacitly assume the notion of a linguistic community as a self-evidently homogeneous and harmonious *Gemeinschaft*, characterized by shared linguistic rules and rites. Thus, Saul Kripke (1982: 90–98), in his solution of the sceptical paradox he sees as lying at the heart of Wittgenstein’s private language argument, argues that possession of a concept or the following of a rule should be explicated in terms of conforming to the behaviour of the community; in other words, he makes an essential appeal to a linguistic community implicitly and unproblematically assumed to be homogeneous and harmonic. David Lewis (1969: 63, 108), in his famous analysis of conventions as solutions to coordination problems, likewise presumes the notion of a linguistic community, or a “community of agents”, as an unproblematic given. Further, H.P. Grice (1975), in his work on conversational implicature, assumes language as a normally cooperative activity, especially in virtue of his so-called “cooperative principle”. Even the well-known idea of the division of linguistic labour, as introduced by Hilary Putnam (1975: 227–229) and elaborated by Michael Dummett (1978: 427–428), does not essentially alter this picture of a language community characterized by social harmony, cooperation, and integration. All of these authors, however, assume rather than argue for a particular vision of the social world; this vision, however, is not always easy to square, and at times quite at odds, with the findings of more empirically oriented research into social practices. Thus, it is completely unclear how they would deal with cases of social conflict, illegitimate authority, challenges of and struggles over power, and linguistic and social change. At best, one may argue that these philosophers implicitly presume a consensus view of society that only becomes available for substantial criticism once made explicit.

Searle has the great advantage over these and other analytical-philosophical predecessors and contemporaries that he consistently tries to explicate his

assumptions, and to fill up the gaps in his argumentation. In fact, Searle aims at creating nothing less than a new philosophical subdiscipline, which he baptizes “the philosophy of society”. This subdiscipline, he continues, is distinct from social and political philosophy as traditionally conceived and practiced: whereas the latter is concerned with normative questions concerning justice, legitimate government, and the like, the former is presented as a more fundamental inquiry into the logical structure and ontological mode of being of such apparently run-of-the-mill social entities as families, baseball games, money and presidencies. This account of social reality expands, refines, and at times modifies Searle’s earlier analyses in the philosophy of language and mind. More specifically, he builds on his earlier notion of collective intentionality, and on the speech act-theoretical insight that performative (or what he calls “declarative”) utterances can actually create, rather than merely describe, facts.

In other words, Searle is gradually revealing himself as a classical builder of a full-fledged philosophical system that presents the philosophy of mind, language and society as a systematically interlocking whole. In this latest work, he builds up an entire architecture ranging from physics and biology to the level of society and politics. He argues that the mental phenomenon of intentionality or aboutness is a natural outgrowth from what he calls “the basic facts”, i.e. physical and biological phenomena. The intentionality of language, in turn, emerges out of this biologically given intentionality; and finally, the construction of society (or more precisely, of institutional social facts) crucially depends on language in so far as it has the logical structure of a performative or declarative utterance, which on Searle’s analysis is not even possible without language. This coherence also has its drawbacks, however. Any reader who fails to be convinced by, say, Searle’s strict classification of illocutionary acts into five types, or by his account of collective intentions as irreducible and primitive, is unlikely to accept an account of institutional reality that crucially rests on such debatable assumptions.

*Making the Social World* continues where *The Construction of Social Reality* stopped; or more accurately speaking, it covers much the same ground anew, with a number of modifications, reformulations and improvements. For readers familiar with this earlier work, this may give an in places somewhat repetitive effect; but for readers unfamiliar with his earlier writings, it may still be relatively rough going as a result of the large number of definitions and technical terms. Searle goes out of his way, however, to state his case clearly and convincingly. Generally, he believes that apparently difficult questions allow for simple solutions, witness his liberal use of the stock phrase “simply”, which, as a quick scan reveals, occurs at least 57 times in the course of the book (the most extreme example being page 188, where it appears no less than four

times). A drawback of this rhetoric of clarity and simplicity, however, is that it risks skating over substantial problems. For example, in chapter 8, Searle argues that some human rights are universally valid, yet at the same time, he argues that they involve values that emerged in the historically very specific context of the European Enlightenment (*MSW*: 180). He does not resolve or even address this tension, but proceeds as if human rights like the right to free speech, are universally valid, “simply” in view of humans naturally being speech act using animals.

The undertaking of creating a “philosophy of society” may be less radically novel than Searle himself suggests: arguably, authors like David Lewis, in his 1969 study of convention, and Jürgen Habermas, in his explorations of the linguistic foundations of sociology, are similarly engaged in tracing, so to speak, the birth of society out of the spirit of language: like Searle, they analyze societal institutions and conventions as arising out of specifically linguistic practices. Below, some doubts will emerge as to whether Searle actually succeeds in correcting, rather than merely explicating, the social and political assumptions implicit in the work of his colleagues, and how far he takes us beyond his own earlier exercises. Nevertheless, *MSW* is a rich work that deserves a detailed and prolonged reflection. Below, I will first sketch Searle’s account of social powers as involving the collective imposition of rights and obligations; next, I will discuss his views on the primacy of language and on the social normativity that emerges out of his account of institutional facts; and finally, I will turn to Searle’s remarks on human rights, especially the right to free speech.

## 2. Rights and Powers

In chapter 5 of *MSW*, Searle – building on his earlier analysis in *CSR* – develops a general theory of institutional facts. The logical structure of such facts is that of the declarative speech act, in which language users collectively grant a person or object particular social powers. Social institutions arise because people can impose so-called status functions, involving particular rights and obligations, on individuals or objects. Thus, they can impose value on pieces of paper or metal by accepting them as money. More specifically, these institutions are brought about by constitutive rules of the form “X counts as Y in context C”; in the context of soccer, getting the ball in the opposite team’s net counts as a goal. Put differently, soccer is not an independently existing activity guided by regulative rules; it is actually *constituted* by its rules. Hence, Searle argues in *CSR*, all institutional facts have the logical structure of

a declarative involving the collective imposition of a particular status function on a person or object:

We accept that S has the power (S does P).

This is not to say, of course, that each institutional fact is based on an explicit declarative; but, Searle argues, social reality could not exist without this irreducibly linguistic resource. The collective imposition of status functions grants an actor specific rights and obligations; for example, by being granted the status function of the president of the United States, a person is granted the right to veto legislation and the obligation to deliver the yearly State of the Union address (*MSW*: 148). Further, status functions can be superimposed on each other an arbitrary number of times; for example, civil servants who can impose the status function of being married on couples first have to have the status function of civil servant imposed on themselves.

Collective intentions are the second crucial ingredient of institutional facts. Many earlier authors had attempted to reduce collective intentions, such as those involved in the collective playing of a symphony or a baseball game, to individual intentions plus mutual knowledge of the intentions of others; but Searle summarily rejects such attempts, claiming that we-intentions are irreducibly collective.<sup>1</sup> This leaves us with a still unanswered question of how different kinds of we-groups are actually constituted; instead, Searle tends to treat collectives or we-groups and collective intentions or we-intentions as given.

On Searle's account, institutional reality is built on a vastly complex hierarchy of minute social contracts and superimposed status functions bestowed by popular consent: for him, so to speak, it is not elephants but contracts all the way down. The analysis of *MSW* sets out to explicate and justify the contractarian assumptions that were already implicit in *CSR*. In the political-philosophical literature, social contract theorists have come under severe criticism, most importantly, for presuming social actors to be free and equal. Likewise, the contract has been rejected as a historical fiction. In reaction to such criticisms, Kant famously argued that the original social contract is not a historical act but an idea of reason, embodying the rational legitimation of state power: it obliges lawgivers to present their laws *as if* they were based on popular consent, that is, on the unified general will of the people.<sup>2</sup>

<sup>1</sup> Searle's most detailed argument for collective intentions as irreducible to individual intentions plus mutual knowledge can be found in "Collective intentions and actions", reprinted in Searle, *Consciousness and Language* (2002: 90–105).

<sup>2</sup> See in particular Kant's "On the common saying 'This may be true in theory, but it does not apply in practice'", in Reiss (ed.), 1991: 79.

The questions of both agency and legitimacy remain unresolved in Searle's account, as will appear below.

Searle's contractarian views stand in marked contrast to David Lewis's famous *Convention*, which likewise sets out to account for the emergence of institutional realities, or as Lewis calls them, conventions. According to Lewis, conventions do not require explicit agreements or shared codes or meanings; rather, they should be seen as solutions to coordination problems. Lewis distinguishes conventions (in his own, technical sense) from social contracts: the former allow for other, equally conventional alternatives, whereas contracts do not form alternatives to other contracts but only to a non-contractual state of nature. The general thrust of this argument provides us with a clear alternative to Searle's quasi-contractual account, in which explicit agreements are the rule (or rather, the general underlying logical structure) rather than the exception. Oddly, however, discussion of Lewis's influential ideas is nowhere to be found in either *MSW* or *CSR*. What Searle and Lewis do appear to share, however, is an assumption that language users are rational and autonomous actors who are free to decide on various alternative courses of action. This tacit assumption of full-fledged and free human agency may be considered a residual contractarian belief in both.

In chapter 6, which presents an application of Searle's theory of linguistically created institutional facts to questions of social and political power, these crucial – and problematic – contractarian features of Searle's views come to the fore. On his account, all social power based on collectively imposed status functions, is based on a quasi-contractual consensus, and hence, legitimate by definition.<sup>3</sup> By this move, however, he delegates the usurpation of, resistance against, and struggle for power to a theoretically marginal status; and where he does discuss such phenomena, he tends to assimilate his analyses of conflictual, contested or illegitimate power to his account of legitimate power as based on mutual consent. Thus, in analyzing a declaration like "You're fired!" as the collective agreement by employer and employee alike that "We no longer accept S has the rights and obligations (S acts as an employee)" (*CSR*: 108–109), he suggests that a situation the employee may not actually consent to but feels unable to challenge is actually a case of mutual agreement or consent; in doing so, however, he assimilates tacit acquiescence in a state of affairs (for example, based on a belief that one is not in a position to contest it) to the active agreement to that situation. In *MSW*, he slightly modifies this account: collective acceptance, he adds here, need not imply collective approval; thus,

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<sup>3</sup> For more on Searle's consensus view of power as developed in *CSR*, see Leezenberg (2002).

in Nazi Germany, “there were lots of people in Germany at the time who, while not endorsing the institutional structure, went along with it as a matter of nationalism, indifference, prudence, or even just apathy” (*MSW*: 57). But in thus assimilating acquiescence to acceptance, Searle skirts the crucial normative question of legitimacy: in the classical social contract, social power is legitimate precisely because it is based on the consent of the contract partners; the repressive power of an authoritarian regime is not generally based on, let alone legitimated by, such popular consent. Searle’s analysis, however, giving both the same logical structure, blurs this difference in legitimacy. It seems dubious to assimilate illegitimate domination to legitimate power, as Searle’s account of the declarative creation of institutional facts seems to do, for reasons that are conceptual and normative as much as empirical.

Likewise, the arrogation and contestation of, and the struggle for, power are rather more frequent than Searle allows for. In *CSR*, Searle notes that

One way to create institutional facts in situations where the institution does not exist is simply [*sic*] to act as if it did exist. The classic case is the Declaration of Independence in 1776. There was no institutional structure of the form X counts as Y in C, whereby a group of the King’s subjects in a British Crown Colony could create their independence by a performative speech act. But the Founding Fathers acted as if their meeting in Philadelphia was a context C such that by performing a certain declarative speech act X they created an institutional fact of independence Y. (*CSR*: 118)

In other words, one can create institutional facts by arrogating specific powers for oneself, rather than being granted those powers by the collective acceptance and consent of others. But if even the existence of the most powerful nation in the world is based on a declarative speech act that, on Searle’s account, is pretended, it may be worth exploring whether the struggle for and over power should not be given a more central place in a theory of institutional facts, and whether social reality can be more fruitfully conceived in terms of antagonistic strategies and power struggles rather than stable institutions. Such an alternative analysis may or may not be a more adequate reflection of social reality as we encounter it in the field; but more importantly, it should be explored whether it is better placed to account for different kinds of linguistic behaviour and other forms of social action. It may well be that Searle’s model is too static and too rigidly institutionalized to account for the everyday negotiation of power in informal conversation, and for the constant reproduction, reassertion, and contestation of power relations.

This kind of objection is reminiscent of, and indeed structurally analogous to, the earlier criticisms of Speech Act Theory for focusing on the relatively rare case of institutionalized and ritualized speech acts, at the expense of

more informal and non-institutionalized conversation. From a Conversation Analysis oriented perspective, it has been argued long ago that Speech Act Theory is essentially inadequate to deal with the vagaries and indeterminate perlocutionary effects appearing in informal conversation;<sup>4</sup> but here, the implications for social theory at large are rather broader. Most importantly, Searle repeatedly comes close to, but narrowly misses, a more substantial discussion of the more hidden and more contested forms of social power in everyday life. Particularly revealing in this respect is his – characteristically brief – discussion of the notion of power in the work of Michel Foucault, a thinker for whom he has expressed a remarkable respect and sympathy.<sup>5</sup> One of the more remarkable features of *MSW* is the fact that Searle enters into a discussion of the views of a French social theorist at all, just as *CSR* featured a brief discussion of Pierre Bourdieu's notion of the habitus, the semi-conscious set of dispositions that generate social action, which Searle identifies with his own notion of the Background. Among analytical philosophers, it is not yet common practice to take radical French thinkers seriously (witness Searle's own earlier violent diatribes against Derrida),<sup>6</sup> so this attempt is particularly to be welcomed.

Yet, Searle's discussion of Foucault's influential ideas on power leaves much to be desired. First, it is mostly based on Stephen Luke's rather critical discussion, rather than on Foucault's own writings. Second, Searle conflates discipline, which Foucault describes as the methods or technologies of power exercised on individual bodies in order to make them docile and productive (*DP*: 137), and biopower, which Foucault characterizes as the power of life and death over a population as a whole (*HS1*: 140–141). Third, Searle reads Foucault's work as setting out to unmask apparently liberating trends, such as the sexual liberation movement, as in fact involving new and hidden forms of repression. Thus put, Foucault's views amount to little more than a reformulation of the age-old Marxist dogma of repressive tolerance. This reading does not do justice to Foucault (who never spoke in this way about feminism, the gay liberation movement, or other local – or, as he called them, “transversal” – struggles); but more importantly, however, Searle appears to be missing a

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<sup>4</sup> See in particular Levinson (1981).

<sup>5</sup> Most relevant here are Foucault's *Discipline and Punish* (1977), henceforth *DP*; and *The History of Sexuality, Vol. 1: An Introduction* (1978), henceforth *HS1*.

<sup>6</sup> See Searle (1977: 98–108) and Searle, “The word turned upside down”, in *New York Review of Books*, October 27, 1983; for the convergences and exchanges between Searle and Foucault, see e.g. Hubert Dreyfus and Paul Rabinow, *Michel Foucault: Beyond Structuralism and Hermeneutics*, 2<sup>nd</sup> ed. (1983: 45–49, 77–78, 93–94).

crucial aspect: he completely overlooks Foucault's more radical, and for himself more relevant, suggestion that power relations may be productive rather than repressive or distorting. Thus, in *DP*, Foucault argues that the free and autonomous subject of law presumed in modern liberal society, and the free human presumed in humanist discourse, are actually produced or constituted by disciplinary forms of power (e.g. *DP*: 303). In other words, the free subject of liberal political theory, as a humanist ideal, is not outside of or prior to power relations, but is their very product. On the one hand, this tallies well with Searle's argument of power as involving the imposition of status functions, rather than being merely repressive, as more traditional concepts of social power hold; on the other hand, however, Foucault's suggestion seems difficult to square with Searle's implicit assumption of a free and autonomous subject entering into quasi-contractual relations of conferring power on other actors.

Obviously, Searle's main aim is not to provide a balanced assessment of Foucault's work, but rather to refine his own analysis; but Foucault's account of disciplinary power and biopower at least carry the suggestion of an analysis of social power that relies on non-legal societal norms and constraints, and hence allows for a power concept that is not exclusively formulated in the form of law-like or social contracts. This tallies with the above remarks that social realities are more contestable, and more contested, than Searle's stable and irenic picture of superimposed mini-contracts allows for.

### 3. Language and Norms

In one of the most significant departures from *CSR*, Searle gives language an even more central role in the creation of institutional facts. More specifically, on his account, it is the performative power of language that enables us to create institutional facts. Language, too, is an institutional fact; but unlike other institutional facts, it does not depend on declarations itself; obviously, trying to ground language in a linguistic phenomenon would lead to an infinite regress. Instead, Searle sees language as involving status functions that are not social powers, but as he calls them "purely semantic" rules; hence, he continues, these linguistic (or semantic) status functions need not depend on prior status function declarations (*MSW*: 14). It is doubtful, however, whether Searle can maintain his strict separation of the linguistic and the social, and of linguistic meaning and social action. On page 113 of *MSW*, he emphasizes that "language itself does not have powers that go beyond meaning"; yet, on the next page, he calls the reader's attention to powers of literal meaning that

go far beyond semantics as traditionally conceived. In short, Searle fails to take an unambiguous stand on the question of whether semantics is and should be a socially neutral domain of purely linguistic meanings or have substantial social implications.<sup>7</sup>

Despite these unclaritys, it is clear that, for Searle, language is not an institutional fact or social convention among others, but the crucial precondition for social reality at large. Put differently: on this account, language itself is the original social contract, that is, the foundation upon which all of social reality rests:

Once you have a shared language you can create institutional facts at will... once you have language, it is, I believe, inevitable that you will get non-linguistic institutional facts. (*MSW*: 63)

Note that Searle tacitly introduces the notion of a *shared* language, thus sidestepping the question of exactly how shared languages can emerge out of supposedly private mental states.

Here, the more interesting question is exactly how Searle sets out to reduce the linguistic to the biologically intentional, and the normative to the descriptive, and whether he succeeds in this attempt. In recent years, normativity has increasingly become a focus of attention from analytical philosophers, in the wake of Wittgenstein's (1953: §201) argument that rule-following is not only an irreducibly public but also an inherently normative practice, and of Wilfrid Sellars's (1997: §5) argument that knowledge states belong to a normative "space of reasons" rather than a purely descriptive "space of causes", and any attempt to reduce them to the latter involves a kind of naturalistic fallacy. Especially in the footsteps of Sellars, Donald Davidson has argued for the irreducibly normative character of the mental; Jürgen Habermas has sketched a picture of communicative action as involving validity claims, generalizing the more restricted semantic notion of truth conditions; and in his massive *Making It Explicit*, Robert Brandom has attempted to characterize communicative behaviour as an essentially normative practice of giving and asking for reasons.<sup>8</sup>

Searle has little patience with such arguments for the irreducibly normative character of social practice, and for language as a precondition for intentionality: he sees this view as not merely a philosophical error, but also bad biology

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<sup>7</sup> See, for example, Nunberg (2002).

<sup>8</sup> For Habermas's argument, see in particular "Reflections on the linguistic foundation of sociology", in *On the Pragmatics of Social Interaction* (2001: 1–104). For a more recent – and more skeptical – view of the centrality of normativity, see e.g. Simon Blackburn (2001).

(MSW: 61). Unfortunately, he does not quite spell out his reasons for this summary rejection; but at first blush, he seems to have a point: it is indeed tempting to see language as emerging out of factors and faculties humans are biologically endowed with. His own analysis belies his point, however. Sellars argues that the intentionality of thought can be traced to the application of semantical categories to overt verbal behaviour, rather than the other way around (1997: §50); and in fact, despite his claims to the contrary, this is pretty much what Searle himself does as well: he gives an account of intentionality that is explicitly modelled on the linguistic practice of using speech acts. Thus, he characterizes intentional states as having a representational content plus a psychological mode, modelled on speech acts having a propositional content and an illocutionary force. Subsequently, he proceeds as if these linguistically characterized intentional states, like beliefs and desire, are both logically primitive and unproblematically given in nature. This line of argument smells of circularity, as both institutional facts and intentional states appear to be logically independent on essentially, and at least in part irreducibly, linguistic notions.

A different way of stating this problem is asking whether, for Searle, intentional states, like speech acts, are inherently normative. Searle describes the problems of the normativity of language as the question of how deontology is introduced into a language in the process of being constituted (MSW: 80–84). Language, he argues, necessarily or essentially involves social commitments, and the necessity of these commitments “derives from the social character of the communication situation, the conventional character of the devices used, and the intentionality of speaker meaning” (MSW: 80). In other words, it is through our use of language that normativity enters into the social world.

Searle argues that social norms in general arise out of the commitments involved in specific speech acts: when making a descriptive statement, I commit myself to its truth; when making a promise, I commit myself to carrying out the intention it expresses. He sees these commitments as internal to, respectively, the truth of the statement and carrying out the promise. Put differently, against authors like Grice and Lewis, he holds that these normative or deontological commitments are internal to the performance of speech acts, as part of the very meaning of, say, a description or promise (MSW: 83).

This attempt to account for the emergence of normativity or deontology in the social world is a continuation of Searle’s (1964) famous earlier attempts to derive *ought* from *is*. A number of authors working in modal logic have argued that this argument is formally fallacious; but here, the more relevant question is perhaps whether Searle actually succeeds in *reducing* linguistic and other normativity to a wholly non-normative vocabulary of naturalistically conceived

intentional states, or whether he tacitly reintroduces a normative dimension in his characterization of those states. Is Searle's intentionalist vocabulary merely a shorthand for a wholly non-normative physiological description, or does it involve irreducibly linguistic and normative notions? Searle himself appears to resist attempts to reduce intentionality to something allegedly more naturalist, like physiological states (*MSW*: 42–43). But if he characterizes intentional states in irreducibly normative terms, there is after all a good reason to believe in a substantial gap between facts and norms. The crucial question here is whether intentional states, and in particular representational contents, are characterized in normative terms of correctness, such as a notion of truth. Even disregarding the epistemological question of whether one can have a fully private mental state of, say, believing that grass is green or desiring to become the president of the United States in a way that is logically independent from a public speech act to the same effect, it is difficult to see how one can have the corresponding intentional states, which – though private mental entities rather than public utterances – possess a similar propositional or representational content and psychological mode (like hoping or believing) without similar commitments as the speech act has, that is, without a similarly normative component. The normative dimensions that Searle sees as specific to language, in other words, are also transposed to his account of intentionality.

In short, Searle does not seem to succeed in actually *grounding* the linguistic and normative aspects of social reality in a wholly non-normative and non-linguistic domain of “basic facts”. One reason for this is perhaps that his analysis is predicated on the assumption that the “basic facts” of biology and physiology are obviously non-normative; but this assumption is not at all self-evident, witness Georges Canguilhem's (1978) important analyses of the normal and the pathological in the life sciences.

#### **4. Human Rights and Free Speech**

A concluding chapter of *MSW* discusses whether there is such a thing as universal human rights. Famously, Jeremy Bentham dismissed the very idea of natural rights that humans are alleged to have in virtue of being human, and independently from any specific legal framework, as “nonsense upon stilts”. For Searle, this challenge amounts to the question of whether universal human rights can be seen as a particular kind of status functions, which do not depend on specific institutional facts to justify them, or on states to enforce them.

First, he notes, such rights are not discovered in nature but imposed by collective intentionality. Second, he argues that rights are by definition rights *against* someone else: one person's rights imply obligations on others. Thus, if an individual has a right to free speech, that implies that others have an obligation not to interfere with that person speaking. Third, and this is really what distinguishes human rights from regular status functions, they continue to exist even when they are not recognized.

Among the most important of these basic human rights, according to Searle, and certainly the one most relevant for working linguists, is the right to free speech. Searle believes this right to be as absolute as the right to life. Rejecting utilitarian justifications, he prefers to treat it as a “natural consequence of the fact that human beings are speech-act performing animals and the characteristic capacity of self-expression is innate to the species” (*MSW*: 189). Obviously, this is not yet a full justification, as Searle himself acknowledges: if humans were to turn out genetically disposed towards violence or mendaciousness, this clearly does not entitle them to a *right* to be violent or mendacious. Rather, Searle seems to be arguing, humans are by nature *rational* speech act users, so that free speech captures something valuable about what it is to be human.

In defending an absolute right to free speech, Searle unmistakably rejects the claim made by some of his compatriots that the freedom of expression should be restricted so as to render illegal so-called “hate speech”, such as racial or sexual slurs, for being offensive or hurtful to the addressee. Implicitly, he also takes issue with the line of argument of works like Judith Butler's (1997) *Excitable Speech*. As humans are thoroughly linguistic beings, Butler argues there, we can literally be hurt by hurtful language; she then proceeds to argue, using an array of insights from Speech Act Theory, that hate speech is – and does – far more than merely expressing opinions. By depicting attempts at restricting hate speech as assaults on the freedom of expression, she argues, users of hate speech try – and often manage – to turn the victims of hate speech into perpetrators, and perpetrators into victims. Butler, incidentally, does not call for greater legal restrictions on free speech. According to Searle, however, such arguments about hurtful language are fallacious: as rational speech act users, he claims, we can rationally assess or decide whether or not to be hurt by the words of others. The perlocutionary effect of hate speech, he argues, is largely up to the hearer to be decided; it is a psychological state, not a form of physical damage (*MSW*: 190). The effects on *others*, by contrast, are wholly beyond the hearer's control: thus, Searle continues, libel and slander can do real damage to hearers without them being in a position to control these effects; hence, laws against them should, if anything, be stronger than they currently are.

Once again, this apparently neat conceptual distinction becomes problematic under closer scrutiny. Social stigma may have a rather greater effect on individual psychology than Searle's picture of rational speech act users seems to allow for; and hate speech may not only affect the addressee's psychological status, but also affect their individual honour or respectability, or their group's collective social standing in society at large. Thus, the distinction between hate speech and libel is less clear-cut than Searle assumes.

In short, *Making the Social World* marks a rich, sophisticated and thought-provoking attempt at characterizing the logical structure and linguistically constituted ontology of the institutional realities we all live and work in. Even if, as argued above, it overemphasizes the legitimate and stable institutionalized forms of social reality at the expense of power struggles, contestation and change, its value lies precisely in generating such discussion. It is greatly to be hoped that contributions like these will help turn the attention of both analytical philosophers and working linguists to the complexities of the social contexts within which language usage occurs, and of the pivotal constitutive role of language in creating and changing those social realities themselves.

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