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Emma Tieffenbach[1]

Abstract

In Searle's social ontology, collective intentionality is an essential component of all institutional facts. This is because the latter involve the assignment of functions, namely "status functions," on entities whose physical features do not guarantee their performance, *therefore* requiring *our* acceptance that it be performed. One counter-example to that claim can be found in Carl Menger's individualistic account of the money system. Menger's commitment to the self-interest assumption, however, prevents him from accounting for the deontic dimensions of institutional facts.

Keywords

institutions, money, Searle, Menger, collective intentionality

Introduction

Two influential but conflicting approaches to social ontology are "intentionalism" and the theory of spontaneous order.[1] The two approaches advance, in particular, a conception of institutions that seems to diverge. Intentionalists claim that institutions would not exist if we did not believe they existed. They correlatively stress the indispensable role of our agreement, whether in the form of a social pact or in the more casual form of a collective recognition, in

[1]The term "intentionalism" is from Zaibert (2004).

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the creation of institutions. Whereas Hobbes, Locke, and Kant are, among others, the oldest advocates of this conception, Gilbert (1989), Searle (1995), Tuomela (2003), and Lagerspetz (1995) are its key contemporary proponents. Exponents of the theory of spontaneous order suggest, on their part, that we approach institutions as if no designer, individual or collective, ever invented them. Institutions are seen therefore as the unintended consequences of many actions that are directed toward other ends. Agents who contribute to the emergence of institutions may only be aware of the personal advantages they could draw from choosing certain options, without being conscious of the aggregative result that their choices add up to. This alternative conception has its roots in the Scottish Enlightenments (Hume, Smith, Ferguson, and Millar) as well as in the Austrian School of Economics (Menger, Mises, Hayek). Schelling (1971), Nozick (1974), Ullmann-Margalit (1978), Hull (1988), and Keller (1994) are some of its more recent (albeit not uncritical) advocates.[2]

The goal of the present article is to provide a clearer picture of the way these two seminal approaches conflict. I will, more specifically, limit the range of the comparison by focusing on Searle and Menger's respective view of institutions (Searle 1995, 2006, 2007, 2008; Menger 1892, [1963/1985] 1996, [1871] 2007). There are several reasons to restrict the inquiry to these two theorists in particular. First, both offer an articulated and representative version of the two approaches under scrutiny. Second, Menger and Searle consider their task quite similarly. While the former says he wants to provide a "theoretical" understanding of institutions, one that will reveal their "nature," (Menger ([1963/1985] 1996, 139),[3] Searle purports to reveal their "logical structure." Moreover, they both believe that an explanation of how an institution could emerge[4] could cast light on its logical structure. In their view, such explanation is different from an historically accurate account of the way institutions emerge, as none believe in the empirical truth of the story that they tell. In brief, Menger and Searle share the same goal and method, that is, providing a conceptual analysis of institutions by means of a rational reconstruction of their establishment. Finally, the comparison between these two thinkers strongly suggests itself because both take

[2]Ullmann-Margalit (1978) is, for example, a supporter of the explanatory use of the notion of spontaneous order, while remaining highly skeptical of its "ideological use", i.e. of the possibility of inferring the goodness of an institution from its spontaneous emergence.

[3]Cf. Mäki (1991), Haller (2004), Nadeau (2005), Aydinonat (2008).

[4]Such explanation can be found in Menger (1892). Searle offers a description of the emergence of money in *The Construction of Social Reality* (1995, 41-43).

the money system as their favorite example,[5] finding in its logical structure the model of all institutions.

Searle and Menger disagree, however, about what such logical structure is. To elucidate the nature and boundaries of such disagreement, I will first begin with the presentation of the three main components of Searle's theory of institution: constitutive rule, the imposition of status function and collective intentionality, or the fact that it is always a "we" that imposes a status function (section 1). The last element, namely collective intentionality, has no place in Menger's view of institution. For this reason, I will pay particular attention to an argument that Searle repeatedly offers about the essential role of collective intentionality in the creation of institutional facts (section 2). The next section shows that Menger's explanation of how money could replace the barter system represents a counter-example to Searle's defense of collective intentionality (section 3). I then present Menger's account of such an example and show how, on his own terms, Menger intended it to challenge the intentionalist view of institution (section 4). The next section deals with what could be Searle's reply to Menger, that is, the inability of his commitment to the self-interest assumption to account for the so-called "deontic dimensions" of institution (section 5). The conclusion sorts out the main implications of the comparison.

1. Searle's Theory of Institutional Facts

In the *Construction of Social Reality* (1995) (CSR), Searle is concerned with the logical structure of social reality. It aims at offering an understanding of this reality that accords with the idea that we live in one world, one that is described by physicists and that is composed of particles, electrons, and mountains. Social reality seems not to fit very well in this world because it is composed of objects—money, judges, kings, marriages, etc.—that seem to be irreducible to particles and electrons. The striking difference between these two kinds of objects is how they relate to our intentional states, that is, to our belief, judgments, and representations. Unlike the mountains and electrons, money, judges, kings, and marriages would not exist if we did not represent them as existing. They are, in Searle's words, observer-dependent. The problem that Searle ultimately addresses is how objects that are observer-dependent fit in a world that is fundamentally composed of observer-independent objects.

[5]Menger offers his analyses of the money system in a paper published in 1892 entirely dedicated to the issue, in part III, chapter 2 of his *Investigations into the Method of the Social Sciences* ([1963/1985] 1996), as well as in chapter VIII of his *Principles of Economics* ([1871] 2007).

Exploring this question, Searle demarcates a subcategory of social reality, namely the category of institutional facts. He considers collective intentionality to be one of the three basic "building blocks" of institutional facts (Searle 1995, 23-26). The two others are the assignment of function and constitutive rules (Searle 1995, 28). Let us present each of these components by starting with the third one.

Searle contrasts regulative rules with constitutive rules. A regulative rule merely "regulates" a behavior that is logically independent and prior to the rule (Searle 1995, 27-28). Table manners, for example, regulate an activity, that is, eating, that may perfectly well be performed independently of table manners. A constitutive rule also regulates but, in addition, it creates or defines a new form of behavior. The rules of chess create the possibility of playing chess, a possibility that did not and could not exist prior to the existence of these rules.

Searle further claims that constitutive rules play a central role in our understanding of institutional facts. They make institutional facts—such as the existence of money, of frontiers, of leaders, of marriages, etc.—possible. All constitutive rules, he also claims, have the following structure: "X counts as Y in C." Let us look at the variables in more detail.

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

The next question is: "How can the thing that is referred as X count as the thing that is referred as a Y?" It is only in the case when a function of a certain kind, namely a "status function," is assigned to the brute fact (the X) that it becomes a Y or an institutional fact. Examples of such status functions are: "To serve as a medium of exchange," "to delineate two states," or "to indicate that its bearer is a king." There seems to be a difference between these status functions and the biological function the heart has to pump blood. Nor does status function seem to be assimilated to the function of the screwdriver to loosen screws. How does Searle account for the difference between these three types of function?

The distinction between agentive and nonagentive functions is what Searle uses to set apart status functions from biological functions. Status functions are agentive, that is, they modify the range of what agents can and cannot do, unlike nonagentive function, such as the function of the heart to pump blood, which does not modify the range of things we do. The function of pumping blood that is assigned to the heart is part of the theoretical account of the heart. By contrast, an agentive function "has to do with our immediate purposes, whether practical, gastronomic, esthetic, educational, or whatever" (Searle 1995, 20). We assign to screwdrivers the agentive function of driving screws with the practical purpose of driving screws. We assign to wine the agentive-function of pampering our taste buds.

Money, screwdrivers, and wine all serve some practical purpose. But the last two are not institutional facts. How can we account for the difference between these two and money? To do so, Searle introduces the distinction between agentive functions that are causal and agentive functions that are not causal. Status functions are noncausal agentive functions in the following sense: they are assigned to entities that are physically unrelated to the performance of the function they perform. When squirrel furs, cowry shells, and cigarettes serve as a medium of exchange, these objects do not perform this function by virtue of their intrinsic physical features. By contrast, the physical shape of screwdrivers is what enables them to perform their function. Similarly, if the wine did not have a certain molecular composition, our taste buds would not be pampered.

The context, labeled as "C" in the formula, plays an important role in the assignment of status function. For the same words, say, "Yes, I do want to marry you," to count as a declaration of marriage, they must be uttered in a certain context, namely one in which at least an official authority is present to register them. The same is true of the rule that ascribes to squirrel furs the function of a medium of exchange, a rule that exclusively applies in medieval Finland.

The third and to be disputed component of institutional reality is collective intentionality. It is more precisely the collective recognition, acceptance or acknowledgment of the imposed status function on certain entities. "We have good reasons to believe," says Searle, "that the 'counts as' locution specifies a form of collective intentionality" (Searle 1995, p. 95). In other words, it is always a "we" that counts an X as a Y. It is important to note that Searle does not say that individual intentionality cannot assign functions on objects (Searle 1995, 39). An agent alone may perfectly well assign the causal agentive function of serving as a bench on a log. Collective intentionality, he argues, is distinctively involved in the assignment of *status* functions, suggesting that an agent alone could not assign a status function to an object. He needs to be accompanied in such assignment by the other members of his group.

When Searle claims that status functions are always assigned in virtue of collective acceptance, he excludes a mere summative account. "Status functions are not, in his view, ascribed by several "Is." It is rather only when these "Is" impose the function *together* that they form a genuine "we" (1990). Several agents individually assigning the same function to the same object do not act together, because to act together is not merely to pursue the same goal. Nor is it sufficient that, in addition to sharing the same goal, agents have the mutual belief that they do so. For example, there is a difference between two agents who are aware of the same use, that of serving as a bench, that each of them inadvertently makes of the same log, and two agents behaving similarly as part of an outdoor ballet choreography. Unlike these dancers, the first two agents merely converge on the same goal and could express what they do without reference to one another. In contrast, the dancers have a sense of doing something together (Searle 1995, 24) that can be captured by the fact that what they individually do, namely use a log as a bench, is derivative from what they collectively do, namely perform a choreography. This leads Searle to conceive collective intentionality as a primitive notion, alongside individual intentionality (Searle 1995, 24-26).

Searle finds the fact that status functions are collectively—rather than individually—assigned to be one of the three crucial ingredients of social reality. Institutional facts, he claims, are those special kinds of social facts that emerge when human beings collectively award *status functions* to entities that do not play their function by virtue of their physical properties. Since having a status function defines what an institutional fact is, we can sum up Searle's view by saying that all institutional facts require that we *collectively* count a brute fact as having a status function.

2. Searle's Argument in Favor of Collective Intentionality

A quick reading of the *Construction of Social Reality* may convey the impression that collective intentionality is a postulated ingredient of institutional facts.[6] Searle visibly argues along this line when he says that "social facts, on my account, are *stipulatively* defined in terms of collective intentionality, and institutional facts are a special subcategory of social facts." ([1997, 452], my emphasis). Here collective intentionality is built into the larger category of social facts. As a subcategory of this larger category, institutional facts merely inherit from it this feature. Some other passages in CSR and elsewhere, however, give support to another interpretation. They sustain the idea that collective intentionality is the only way to explain how status functions are assigned. In these passages, Searle calls for the necessity of

[6]Cf. Ylikoski and Mäkelä (2002, 469); Hindriks 2003.

collective intentionality when he also points to the fact that a status function does not perform its function by virtue of its intrinsic, physical features. There, he defends the first claim as a direct implication of the second. There is an oft-quoted passage in *Construction of Social Reality* where he does just that:

> The central span on the bridge from physics to society is collective intentionality, and the decisive movement on that bridge in the creation of social reality is the collective intentional imposition of function on entities that cannot perform these functions without that imposition (Searle 1995, 41).

Searle claims that collective intentionality is an essential feature of all institutional facts *because* of the way a status function is performed, that is, *not* by virtue of the physical features of the entity that plays it.[7] The argument is even more clearly stated in the following passage:

> I distinguish between functions performed solely in virtue of causal and other brute features of the phenomena and functions performed only by way of collective acceptance. The key element in the development of agentive functions into institutional facts comes when we collectively impose a function on a phenomenon whose physical composition is insufficient to guarantee the performance of the function, and *therefore* the function can only be performed as a matter of collective acceptance or recognition. (Searle [1995, 124], my emphasis)[8]

To paraphrase Searle, there are certain objects that do not play their function by virtue of their physical features, and this fact reveals the mandatory role of collective intentionality. Being physically unrelated to the function they have, the *only* way these objects can play their function is by "we" collectively assigning their function.[9]

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[7]Viskovatoff (2003) advances an alternative explanation of Searle's appeal to collective intentionality, which is his Cartesian theory of the mind.
[8]Cf. Searle (1995, 46), (2007, 14), (2008, 23) for other statements of the same argument.
[9]As Miller notes (2005), collectively imposed functions are however not sufficient to create an institutional fact. Suppose that we collectively accept the use of a log as a bench; the fact that the log is counted as a bench does not amount to an institutional fact. Such a fact merely amounts to a social fact, in Searle's taxonomy of social reality (Searle 1995, 88). It would amount to an institutional fact if the log were not able to perform its function by virtue of its shape.

3. From the Barter System to the Money System

The *collective* imposition of status function is a requirement that seems to entail that an "I" could *not* do the imposition of the status function that is involved each time an X is counted as a Y. But is it really so? Let us, for example, consider the possibility that John Searle imposes on the full moon the function of indicating to him that it is time he trims his sideburns.[10] Obviously, John Searle does not need anyone's agreement before he can assign such a function to the full moon as he can perfectly well be the only one on earth assigning it. His personal acceptance suffices.[11] Suppose, furthermore, that not only Searle but all Californian men happen individually to ascribe to the full moon the function of reminding each of them that they have to clip their sideburns. In this case, many persons would be following the same genuine constitutive rule, but as a private rule. Would we not therefore have obtained an institutional fact?

No, we would not. Searle could first say that many "Is" similarly counting the same X as a Y do not amount to a genuine institutional fact. The fact that all Californians follow the same rule does not amount to a genuine institutional fact. It is only when all Californians view what they do, when they assign to the full moon the function of reminding them of the sideburns-clipping task, as a "joint action," that they would be creating an institutional fact. They would have to see the imposition of the function as something they *do together*, rather than as something each of them does on his side.

Answering to the full moon counter example this way, however, amounts to the same thing as granting that collective intentionality is merely a

[10]The example is a modified version of a counter-example that McGinn (1995) advances in his review of *The Construction of Social Reality*. In McGinn's version, "we" (rather than John Searle alone) all decide that the full moon is to have the function of indicating to John Searle that it is time he trimmed his sideburns. McGinn believes that the fact that John Searle is, in his version, the only individual who must act in conformity with the rule, rules it out as a genuine social rule. Searle could, however, reply that no matter how many agents play a role in the fulfillment of the rule, the fact that its creation involves all of "us" makes it a genuine social fact.

[11]Maybe a less curious but similar counter-example is the case of someone who has the habit of hooking his screwdriver to his door the day before he has to visit a friend. That person is assigning a status function to his screwdriver since there is nothing in the physical structure of a screwdriver that makes it a more suitable candidate than any other object for serving as a reminder. But again, and pace Searle, no one else in addition to the individual who uses his screwdriver as a reminder needs to accept the screwdriver as a reminder for the latter to be able perform its status function.

stipulated ingredient of institutional reality. It amounts to admitting that status function could, in some cases, very well be individually assigned but that these cases must, as an *ad hoc* requirement, be excluded from the class of institutional facts.

As a counter-objection to the full moon example, the following second answer seems more promising. To claim that institutional facts always involve the assignment of a status function is not to claim that every time there is a status function that is assigned, there is an institutional fact. For example, we commonly use a notebook as a reminder. To assign the function of reminding oneself to do something to an object is to assign a status function. This is also a private rule since each of us adopts it regardless of what the others do. But nobody would describe the practice of using notebooks as an institution. Aide-memoires, such as the full moon and the notebooks, would be convincing counter-examples of Searle's theory if their logical structure was also found in clear examples of institutions, like money, frontiers, marriages, or elections. However, the possibility of construing the latter in terms of privately assigned status function is, at least apparently, hopeless.

Indeed it is hard to envisage any circumstance in which it could make sense to privately count a few bushes surrounding one's house as a frontier delineating one's property. Nor do we see any context in which someone may have a good reason to count some uttered words as a conference talk, regardless of what the others may think about it. It seems that Searle is right to claim that status functions involved collective intentionality whenever they pertain to an institution. His only mistake, if it is one, is to neglect the cases where status functions are assigned *apart from* institutional facts.

Let us, however, consider the institution of money. As odd as it may sound, there might actually be a circumstance in which it is rational to individually assign to a certain brute entity, like cowry shells, the function of serving as a medium of exchange. The circumstances, I intend to show now, have been persuasively described by Carl Menger in various places in his writings.

In a paper entitled "The Origin of Money" (1892), Menger describes a process whose initial stage is a situation in which agents barter their goods. The satisfaction of their immediate needs is what motivates them to exchange their goods. But the barter system turns out to be an obviously inconvenient way of acquiring goods. This is because for an exchange to happen, an agent must rely on a double coincidence. He must meet an agent who has what he needs and who needs what he has. This double coincidence is unlikely to take place as often as it ideally should. This is why a lot of valuable time is generally required to carry out a trade.

Proceeding with indirect exchanges is the solution. Instead of accepting the good they presently desire to have, it is in the agents' interest to accept another good provisionally with a view to exchanging it later for the good they are looking for. This intermediate good must be well chosen, however. For this intermediate good to perform its function correctly, that of reducing the trading costs, it should be a good that is itself heavily traded. This way it is more likely to be accepted by the agents who happen to own the good that one wants. In Menger's terms, the intermediate good must have a high level of "marketability."

To possess a good amount of marketable goods is always an advantage. Its owners will not waste time looking for the person who both has what he needs and needs what he has. Now it is important to see that each agent has an independent reason to purchase some highly marketable goods. Whether the others also purchase the same good for the same reason or not does not matter (Menger [1963/1985] 1996, 134). What does matter in the marketplace is to increase one's chance of having one's good accepted in exchange for the good which one needs.

This is a self-reinforcing process. When a good is chosen as an intermediate good, its marketability is raised. But remember that its marketability was the reason why it was initially chosen as an intermediate good. In sum, the more a given good is chosen as an intermediate good, the more its saleability increases, and the more it will henceforth be chosen as an intermediate good. This self-reinforcing process explains why a small number of goods (only one in some cases) become accepted as the dominant intermediate good(s).

To serve as a widely accepted intermediate good is a function which an object must minimally perform to qualify as money.[12] Therefore, the situation in which only a few numbers of goods serve as intermediate goods in a group is the situation in which money can be said to exist in this group. For example, cigarettes count as money within a group if they are used as such. Analyzing the conditions under which this statement is true, one can advance the following. First, the money system exists in a group *even* when the good used as money simultaneously happens to perform another (causal) function. Cigarettes may both be used as a medium of exchange and be smoked. Similarly, coins and bills

[12]The conditions, both necessary and sufficient, for something to be money are not easy to list. Following Searle (1995, 115) and Menger ([1871] 2007, chap. 7), I assume that to serve as a medium of exchange is a necessary condition for something to be money, but leave unaddressed the question of whether it is also sufficient. In the literature, it is often taken for granted that a generally accepted medium of exchange may have the further, albeit less essential, functions of serving as a unit of account, as a store of value or as a standard of deferred payment.

may both perform the function of money and be wanted "for their own sake" by collectors. In other words, an item may count as money in a group even if it is *not* being *exclusively* used as a medium of exchange. Second, the money system may be said to exist in a group even if more than one good plays the role of money. Cigarettes, shells, and cattle may simultaneously be used as medium of exchange within the same group without thwarting the possibility of describing the group as having the money system. Third, the money system exists in a group even if, contrary to the majority, some of its members do not use cigarettes as a medium of exchange and use the barter system instead. To be sure, these outsiders should not outnumber those who use cigarettes as a medium of exchange. But to say that cigarettes are a *universal* medium of exchange seems to be too strong a requirement. The fact that cigarettes are *by and large* accepted as a medium of exchange suffices. "By and large" means, however, more than one. To suggest, as Turner (1995, 225) does, that "one can have the first instance of money, in this model, with only one person intending to use the goods as money" seems to attribute too much creative power to one isolated instance of individual intentionality. A group in which only one of its members uses cowry shells as a medium of exchange is *not* acquainted with the money system.

4. Menger's Account of Money

By way of this conjectural story, Menger invites us to reflect on the minimal conditions for the money system to be created within a group. What this story shows is that there is, first of all, a point on which both Menger and Searle agree. It is the idea that what enables a good to serve the function of a medium of exchange has nothing to do with its physical (intrinsic) features. As Zùñiga notes, Menger's subjectivism forbids all attempt to define a social object, such as money, according to such physical features only:

> Menger developed a complex ontology of social objects which have a unique nature. Namely, economic objects are not merely describable by their physical properties since, for example, money is not reducible to the paper, metal, plastic, or electronic components which comprise the various kinds of money we recognize as, and indeed call, money. In fact, there is no single physical property that is common to all the members of the class of objects we call money. (Zùñiga 2005, 137)

Menger clearly shares Searle's idea that there are certain objects, such as money, that do not perform their function by virtue of their shape, weight, color, etc. Menger would not infer, however, as Searle does, that it reveals the mandatory role of collective acceptance. We can indeed interpret Menger's analysis as an attempt to derive the money system from the barter system without ever having to invoke any kind of collective intentionality.[13] Attributing the function of being a medium of exchange to some good is something agents do as a private rule. Agents do not need to ask themselves whether the others follow the same rule to apply it personally. "As long as the others are likely to accept my cowry shells," each agent says to himself, "it is enough for me to assign to cowry shells the function of media of exchange." The mere fact that cowry shells are widely purchased, their high "marketability," as Menger says, independently from the reasons for which they are so describable, is a sufficient reason for anyone to use them as a medium of exchange. The resulting rule is both a constitutive rule and a private rule, a possibility that has escaped Searle. Collective intentionality appears as a superfluous feature of the institution of money.

Interpreting Menger's account of money this way accords with what he intended to show, although he phrased it differently. Menger explicitly claims to have demonstrated that money is not the product of an agreement.[14] He is however aware of both the popularity and prestigious lineage of the opposite (intentionalist) view:

> The idea of tracing these back to an agreement or to a legislative act was fairly obvious . . . Plato thought money was "an *agreed-upon* token for barter," and Aristotle said that money came about through *agreement*, not by nature, but by *law*. The jurist Paulus and with few exceptions the medieval theoreticians on coined money down to the economists of our day are of a similar opinion. (Menger [1963/1985] 1996, 132], emphasis original)

[13]From this perspective, Menger offers an account that is plainly illustrative of the "standard story" of money that Turner brings into play (Turner 1995, 223-29) as an alternative and more plausible account than Searle's. In line with the interpretation that I propose, Turner argues that the standard story successfully dispenses with collective intentionality, only relying on "explicit individual beliefs and intentions" (Turner 1995, 225) in its description of the process resulting in the creation of the money system. But Turner and I differ on the role collective intentionality plays within Searle's theory of institutional facts. Whereas Turner interprets Searle as saying that collective intentionality is the only way to explain the normative feature of institutional facts, I read Searle as (mistakenly) considering collective intentionality to be a crucial step in the assignment of status function.

[14]Nor the product of a legislative act, as he also stresses.

In the *Origin of Money* (1892), Menger similarly presents the view that money is necessarily the result of an agreement as the one that naturally suggests itself: “The idea which lay first to hand for an explanation of the specific function of money as a universal current medium of exchange was to refer to it a general convention, or a legal dispensation” (Menger 1892). The explanation in terms of “general convention” he refers to in this passage attributes to collective acceptance a central role in the creation of money. Menger believes he had shown what is wrong with this sort of explanation, that is its appeal to an agreement—something he alternatively refers to as an “intentional common will” (Menger [1963/1985] 1996, 131)—as an indispensable, preliminary step in the establishment of money. “The task of science,” he claims, is, on the contrary, to dispense with the request of an “express agreement of people” in the description of its emergence (Menger [1963/1985] 1996, 132-33). The money system is instituted, in Menger’s account, when most agents assign to the same good the same function, that of serving as a medium of exchange. As it should now be clear, such assignment is a personal decision, one that agents take in the light of self-interested considerations.

Agents do not know that, once aggregated, each of their personal decisions amounts to the emergence of the money system. They are, by hypothesis, only aware of the effect that their own personal choice will have on their own material conditions. To replace the barter system with the money system is, however, something agents help to bring about. But it is something that they bring about unintentionally or, as Menger phrases it, it is something that they produce as an *unintended consequence* of choices that are directed toward another end. “The origin of money can truly be brought to our full understanding only by our learning to understand the social institution discussed here as the unintended result, as the unplanned outcome of specifically individual efforts of members of a society” (Menger [1963/1985] 1996, 135).

The money system can therefore establish itself even if agents do not have the intention to establish it.[15] To grant that the money system could be an

[15]Cf. Haller (2002). Shearmur (2008) explicitly refers to Menger’s theory of money as a counter-example to Searle’s theory of institutional facts. He also reads this example as throwing doubt on the role of collective intentionality in the creation and maintenance of institutional fact. Sheamur uses this example to show that Searle does not afford sufficient room for the unintended consequences of agents’ actions. He also addresses the question as to how the category of nonagentive functions could convincingly integrate these unintended aspects of institutions.

unintended consequence would not be coherent for Searle.[16] Indeed, he cannot both assign a crucial role to collective intentionality in the existence of institutional fact and allow the latter to be an unintended effect because collective intentional actions, such as the one involved in the collective imposition of status functions, always are intentional. There is no such thing as acting together unintentionally, and if there is no such a thing as acting together unintentionally, money is an institution that cannot be both unintentionally brought about, as Menger claims, and require collective acceptance to become established, as Searle claims.

The individual efforts from which Menger derives the money system are the self-interested actions of agents who act in the light of what their material interests dictate. As an early proponent of rational choice theory, Menger defends the idea that the best way to conceive how institutions work is to model each agent forming the group in which it prevails as "oriented simply to [their] own interest" (Menger [1963/1985] 1996, 131).

Menger tells a story of the emergence of money that never appeals to any sort of collective intentionality. Surely, this story is historically implausible, but it does not matter in terms of the use we propose to make of it, following Menger's own recommendation.[17] When treated as a conceptual analysis, rather than as an explanatory model, it elucidates what sort of institutional fact money is. As the preceding section shows, its main conceptual illumination is to reveal that collective intentionality—in the form of collective acceptance, recognition, or agreement, for example—is a superfluous ingredient of such institutional fact.

Taking money as a counter-example to the claim that collective intentionality is an ingredient to all institutions may sound a provoking choice. Indeed, it challenges the intentionalists by showing that, on some alternative and arguably better account, their favorite case in point turns out to be a counter-example.[18] In fact, Menger believed his analyses of money could even be generalized to many other institutions:

> In the same way, it might be pointed out that other social institutions, language, law, morals, but especially numerous institutions of economy,

[16]As some commentators critically observe (Friedman 2006; Lukes 2006; Sheamur 2008), the notion of "unintended consequences" plays no apparent role in Searle's theory of social reality.

[17]To consider institutions as the unintended consequence of self-interested actions provide a "theoretical understanding of their nature" (Menger [1963/1985] 1996, 139) which Menger contrasts with their "historical" comprehension ([1963/1985] 1996, 122-39).

[18]Cf. Tuomela (2003), Hindriks (2003), and Lagerspetz (1995).

> have come into being without any express agreement, without legislative compulsion, even without any consideration of public interest, merely through the impulse of individual interests and as a result of the activation of these interests. (Menger [1963/1985] 1996, 137)

Although many have followed him to understand other institutions as the results of many actions performed by agents who are minding their own business only,[19] we should not overestimate the extent to which all institutions display the same logical structure as the one he sees in the money system. There is no circumstance in which it would make sense, for instance, to privately count a yellow line (X) as a frontier (Y) delineating one's property. Be that as it may, Menger's account of the money system reveals that Searle is wrong to claim that it is always a "we" that counts an X as Y in C. At least in the case of money, the aggregation of many "Is" counting the same X as a Y seems to suffice for the creation of an institution.

5. The Deontic Dimension of Institutions

Suppose that cowry shells count as money for transactions in a group and that its members came to use cowry shells as the result of a process "à la Menger." No one ever agreed to use cowry shells as money. Nor is it the case that an influential agent ever stipulated that cowry shells had to be used as a means of exchange. Suppose now that someone, call him Sam, deviates from the general practice, ascribing to coconuts instead of cowry shells the function of money. Maybe Sam comes to this decision because he notices that coconuts also have a high marketability and, being temporarily short of cowry shells, Sam notices that he could assign the same function to his large stock of coconuts. To be sure, Sam may well anticipate that the other agents will not as easily accept his coconuts when he brings them to the marketplace, but he may be reasonably confident about the prospect of obtaining a few goods by using his coconuts as an intermediate good. After all, coconuts are, let us suppose, a heavily traded good in Sam's group, so the chance that he finds a coconuts consumer is there.

It is a noticeable fact that Sam could not be rebuked for his behavior. Nobody could oblige Sam not to use coconuts as an intermediate good. Under Menger's theory of money, anyone behaving like Sam could not be rectified. This is because no one seems to be under the *obligation* to use cowry shells as money in the first place.

[19]Notable examples are Nozick's explanation of a minimal state (Nozick 1974), Keller's account of linguistic changes (Keller 1994) and Hull's explanation of the progress of sciences (Hull 1988, 1997).

Surely, there is a sense in which it is correct to say that Sam *should* use cowry shells. This sense appeals to Sam's own economic interest. If Sam's goal is to increase the number of goods that he possesses, he should not deviate from what he is used to doing. Temporarily lacking cowry shells is not a good reason to switch to coconuts. This is because Sam's long-term interest is best satisfied if he sticks to the cowry shells, in spite of the transitory loss he will encounter in the next few days. Yet while Sam might be accused of instrumental irrationality, and, more precisely, of time discounting, he is, strictly speaking, under no obligation to use cowry shells, and cowry shells only, as money.

Searle would consider this implication of Menger's account to be at odds with what a sensible understanding of money should be. The fact that Sam cannot be rebuked for using coconuts reveals that Menger's theory is unable to do justice to the normative dimension of the money system. His analysis shows how a status function can be assigned on an object, as a quasi-private rule, but it fails to show that assigning a status function actually creates "the deontic power (rights, duties, obligations, commitments, authorizations, requirements, permissions and privileges)" that anyone using the cowry shells would not otherwise have (Searle 1995, 121-27). This might be viewed as an unfortunate implication of Menger's analysis and, in particular, his commitment to the self-interest assumption. In fact, it even casts doubt on the fact that money really was ever instituted at the end of the process he describes. Any theoretical account of money should indeed integrate the fact that anyone living in a group where cowry shells are assigned the function of money *has an obligation* to use them as money in any circumstance. To put it in Searle's terms, anyone must assign to Xs—*and to Xs only*—the function that is associated with the Y term.

The deontic dimensions of constitutive rules have an important implication for the reasons why agents follow the constitutive rules that prevail in their group. In Searle's view, Sam should know that he is under the obligation to count cowry shells as money, *whether he desires it or not.* The sort of obligation Sam is subjected to is unrelated to what he may occasionally desire to do. Searle claims that when agents recognize that a certain object has a status function, it gives them a "desire-independent reason" for acting in a certain way. It is a characteristic of institutional forms of powers, rights, obligations, or duties that they create reasons for action that "are independent of what you or I or anyone else is otherwise inclined to do" (Searle 1995, 70).

In Menger's view, however, motivations cannot but be desire-dependent. There is no institution, or no long-lasting ones, whose rules do not fundamentally fit the agent's desires to obey them. This is why the only normativity that Menger allows is a normativity that pertains to our instrumental rationality. The only motivation that is compulsory is the motivation to act in accordance with what one's interest tells one to do, and interest, as should now be clear, prescribes the use of *any* object as money, as long as the object is a highly bartered good.

Does it mean that Menger would deny the "rights, duties, obligations, commitments, authorizations, requirements, permissions, and privileges" that Searle recognizes in all institutional facts? No, he would not. But he would conceive this deontic apparatus as essentially related to the intervention of a legislative authority, one that, as a matter of general policy, may have prescribed the exclusive use of a certain commodity as money (Menger [1871] 2007, 262). Erase such legislative authority and its codification, Menger would probably claim, and you will have removed the source of the deontic system that Searle considers to be essential to all institutional facts.

More crucially, Menger believed he had shown the futility of the intervention of a central authority in the creation of institutions. At least, his explanation of the emergence of the money system remarkably dispenses with it. If this is so, the various deontic dimensions that Searle identifies appear to be even more useless. Why do agents need to be externally obligated to observe the rule of an institution which, following only their material self-interest, they will end up following in any case?

An official enactment is unnecessary, in Menger's view, only adding stability to an institution that already works by itself. Neither do agents need to have their choices converged on the same good by an external coordinator. The latter appears as useless in the light of the self-reinforcing nature of the process that leads from the barter system to the money system, leading Menger to conclude that "money is not an invention of the state. It is not the product of a legislative act" (Menger [1871] 2007, 261).

The state is, however, not entirely deprived of a role in the full establishment of the money system. Its import is, as we have seen, that of making "legally binding" (Menger [1871] 2007, 262) the use of the unique good that it has authorized, converting it into a "universal substitute in exchange." For this reason, the state deserves credit. For although "it is not responsible for the existence of the money-character of the good, it is responsible for a significant improvement of its money-character" (Menger [1871] 2007, 262).[20]

While agreeing on the mandatory effect of codification, Menger would certainly not share Searle's idea about the way political authorities obligate us. He explicitly defines the obligation to use the official currency as an

[20] I thank Gloria L. Zùñiga for drawing my attention to this aspect.

obligation that is based on a cost–benefits calculation. More precisely, the obligation to use the official currency is there when the risk of being sanctioned outweighs the benefits of using an alternative currency. Comparing the ruler to the "victor" and the agents being ruled to the "vanquished," he believes that fear plays a prominent role in our obedience to the institution of laws:

> The man in power or intellectually superior can set certain limits to the discretion of the weak men subject to him or of those mentally inferior. The victor can set certain limits for the vanquished. He can impose on them certain rules for their action to which they have to submit, without considering their free conviction: from fear. (Menger [1963/1985] 1996, 217)

Searle flatly rejects such a view, claiming that the fears of possible sanctions cannot be the reason why we have the obligation to follow a constitutive rule. Its deontic dimensions, he claims,

> . . . are not reducible to something more primitive and simple. We cannot analyze or eliminate them in favor of dispositions to behave or fears of negative consequences of not doing something. Famously, Hume and many others have tried to make such eliminations, but without success. (Searle 1995, 70)

Searle insists in various places on the inadequacy of the view that recognizes maximization of one's utility as the only sort of motivations at play in the acknowledgment of institutional facts:

> It is tempting to some to think that there must be some rational basis for such acknowledgment, that the participants derive some game theoretical advantage or get on a higher indifference curve, or some such, but the remarkable feature of institutional structures is that people continue to acknowledge and cooperate in many of them even when it is by no means obviously to their advantage to do so. (Searle 1995, 92)

Searle even argues (or merely assumes) that were agents motivated to follow a constitutive rule as a matter of inclination (Searle 1995, 70), no institutional fact would be created as a result (Searle 1995, 71). To be a component of institutional reality, the constitutive rule must be followed by agents who, unlike animals, do not consult their "inclination" as to whether they should follow it or not. This is why ants are not able to impose a status function. Ants are admittedly able to "mark their territory by means of chemical signals that do not block others by sheer physical insurmountability," as McGinn recalls (McGinn 1995, 39) with the intention of casting doubt on the sophisticated intentionality that Searle requires from agents involved in the assignment of status function. But ants remain unable to create in full an institutional fact such as a frontier. This is because whereas ants have an *inclination* not to cross the chemical line, agents have a *desire-independent reason* to cross a national border.

Conclusion

"Status function," Searle argues, "is the glue that holds human societies together" (Searle 2005, 9). This is because status functions allegedly are imposed on entities in such a way as to make collective intentionality compulsory. Assigning a status function is like dancing the tango: it is the sort of activity that you do not do alone. In fact, it is not even enough to be two agents having the same mutual belief about what each other do. For you must, crucially, have a sense of doing something together.

This article attempts to cast doubt on such view. It brings into play a few cases—the full moon, the notebooks, and the story about the spontaneous emergence of the money system—in which status functions are a matter of individual assignment. In these examples, agents impose a function on an object whose physical features are not sufficient to guarantee the performance of the function. But agents imposes this status function as part of a private rule, whether for the sake of their own comfort or to be good-looking (e.g., being shaved) or for the sake of their own material conditions (e.g., increasing the amount of one's possessions). In view of these counter-examples, it seems fair to say that status function is not the compelling bonding device that Searle believes it is and that what constitutes the "cement of society" remains an open question.

Had Searle not misguidedly seen any significance in collective intentionality, he would have offered a more economical account of institutions, one that simply relies on individual intentionality as a sufficient building block for institutional reality. The lack of parsimony of the resulting account is not, however, the most noteworthy weakness of Searle's conception of institution. More annoying is how his commitment to collective intentionality leads him to overestimate the extent to which agents understand the function and the aggregated effect of their choices. Defending the view that agents accept the institutional rules just as the dancers play their part in the collective performance of a ballet is to misjudge the extent to which agents understand, even partially, the ins and outs of institutional reality (Lukes 2006). In other words, his plea to collective intentionality forbids him to see that institutions need not be (and often are not) as transparent to their participants as they are to some external, and theoretically skilled, observers.[21]

Menger's conception of institutions as the unintended results of individual actions suitably avoids these inadequacies. Be that as it may, Menger's view is not immune from criticism. It is, in particular, unable to account for the (noninstrumental) normative dimension of institutions and I have related this shortcoming to the injudicious significance he sees in grounding the rationale of institutional rules with agents' self-interests. The notion of desire-independent reason that Searle uses to account for such a normative dimension seems, in this respect, a promising explanatory tool.

The right view about institutional reality is likely to lie somewhere in between these two incompatible approaches. Unlike Menger's, it is a view that, once fully articulated, will have to accommodate the normative dimensions of institutions, or the fact that we do not have much choice in following the rules that constitute the institutional reality. Unlike Searle's, it will also have to be a conception that is not oblivious to the condition of opacity in which most agents are when they first create and later conform to these institutional rules.

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[21]In various places, Searle warns us against an interpretation of his theory that would unrealistically restrict the activity of imposing a status function to an activity that is consciously performed. "Money," he concedes, "may simply have evolved without anyone ever thinking, 'we are now imposing a new function on these objects'" (Searle 1995, 22). But this cannot be right. If we allow the "we-ness" dimension of a joint action to escape the consciousness of its participants, it becomes impossible to distinguish between the cases where agents merely bring a joint effect (e.g., littering, driving the prices to a lower level) and genuine cases of joint actions by which people own in common an action as something they combine to perform (exchanging ideas, cowriting a paper, singing a duet).

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Bio

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