# DEPARTING FROM SEARLE IN THE METAPHYSICS OF INSTITUTIONS*

*Rodrigo Azevedo dos Santos Gouvea*
**Universidade Federal do Rio de Janeiro**

**Abstract**: The paper develops an investigation of the constitution of institutions that is based on, but is also critical of the accounts proposed by John Searle in the books *The Construction of Social Reality* (1996) and *Making the Social World* (2010). Firstly, it discusses Searle's (1996) recognition-based account. To deal with some issues concerning the continued existence of institutional entities, the paper offers a version of the recognition-based account that departs in some aspects from his original characterization. Secondly, the paper addresses Searle's (2010) inclusion of status function declarations in the theoretical framework of his Metaphysics of institutions. The paper presents arguments in favor of the conclusion that Searle's new, language-based account is neither independent nor as comprehensive as the improved version of the older, recognition-based account, which marks another departure from Searle.

**Keywords**: Institution, status function, collective recognition, constitutive rule, status function declaration.

**Resumo**: O artigo desenvolve uma investigação acerca das condições de constituição de instituições que é baseada, mas também crítica das abordagens propostas por John Searle nos livros *The Construction of Social Reality* (1996) e *Making the Social World* (2010). Primeiramente, discute a abordagem baseada-no-reconhecimento de Searle (1996). Para lidar com algumas dificuldades concernentes à existência continuada de entidades institucionais, o artigo oferece uma versão da abordagem baseada-no-reconhecimento que se afasta em alguns aspectos de sua caracterização original. Em segundo lugar, o artigo aborda a inclusão por Searle (2010) de declarações de função de estatuto no arcabouço teórico de sua Metafísica das instituições. O artigo apresenta argumentos em favor da conclusão de que a nova abordagem de Searle, baseada-na-linguagem, não é nem independente nem tão abrangente quanto a versão aprimorada da velha abordagem, baseada-no-reconhecimento, o que marca mais um afastamento de Searle.

**Palavras-chave**: Instituição, função de estatuto, reconhecimento coletivo, regra constitutiva, declaração de função de estatuto.

---

## Introduction

In *The Construction of Social Reality (1996), Making the Social World* (2010), and elsewhere[1], John Searle influentially argues that there is a very special subclass of social facts, which he calls "institutional facts." Amongst the examples of institutional facts in his papers and books, one regularly finds marriage, money, being a professor, and universities. It should not be difficult to give other examples since he claims that "[w]e live in a sea of human institutional facts" (SEARLE, 2010, p. 90)[2]. The present paper examines this fragment of human reality. In order to avoid Searle's confusing notion of *institutional fact*, which seems to contain not only facts, but events, objects, properties, and what else, I will use the terms "institutional entities" or simply "institutions" to refer to the things with which he and I are concerned[3].

The paper aims to offer a metaphysical investigation of the constitution of institutions that is based on, but is also critical of the accounts offered by Searle in *The Construction of Social Reality* (henceforth, TCSR) and *Making the Social World* (henceforth, MSW). It does not contrast his accounts

---

[1] He also defends and attempts to elucidate this claim in *Mind, Language, and Society* (1998), in his last monograph, *The Basic Reality and the Human Reality* (still unpublished in English), and in many papers. The emphasis on TCSR and MSW here is due not only to their greater influence amongst researchers in the field of Social Ontology but also because these books present more systematic and thorough accounts.

[2] The occurrence of the term "human" in Searle's passage is intentionally redundant. According to his view, our ability to constitute an institutional reality distinguishes us from other animals. Some of his commentators strongly disagree. Racoczy and Tomasello (2007) claim that the anthropological difference lies deeper. They argue that nonhuman animals lack significant individual social cognitive abilities for manifesting collective intentionality. The discussion of empirical evidence in the referred paper concludes that not even the great apes exhibit the imitative capacities, found in human infants, that are necessary for cooperation (p. 117) and knowledge about artifactual functions (p. 122). In sharp contrast, Robert Wilson (2007) argues that not only sociality but also the capacity to assign status functions, and, thus, to constitute institutional entities, are much more pervasive in the animal kingdom than Searle's view acknowledges. The last claim would be supported by evidence of the social capacity to play found in different species (p. 133) and the practice of territory marking amongst canids (p. 144).

[3] Searle's usage of the term "institution" is ambiguous throughout his *oeuvre*. In TCSR, it is used to refer both to the constitutive rules that compose an institutional structure as well as to the institutional facts that stem from them, although the first usage seems to be predominant. The ambiguity remains in MSW, where he describes an institution as "a system of constitutive rules" (p. 10) but also presents a long list of particular things, such as hospitals, parties, and baseball teams as "typical institutions" (p. 91). In this paper, the terms "institution" and "institutional entities" will refer to things that are instituted in the way described in the following pages. If some constitutive rules are, thus, instituted, there would be no problem to call them institutions. However, I oppose the move to refer to all sets or systems of constitutive rules as "institutions."

with more recent explanatory models in the Metaphysics of institutions[4]. Instead, the paper pursues an attempt to better understand, evaluate, and even improve Searle's accounts, so that they may be contrasted with each other. In the first section, I will discuss Searle's original, recognition-based account from TCSR. To deal with some issues concerning the continued existence of institutional entities, I will suggest a version of the recognition-based account that departs in some aspects from his original characterization. The second section addresses Searle's inclusion of status function declarations in the theoretical framework of MSW. I will argue that his new, language-based account is neither independent nor as comprehensive as the improved version of the older, recognition-based account, which marks another departure from Searle's Metaphysics of institutions.

## 1. Improving Searle's recognition-based account of the constitution of institutions in TCSR

According to a broad Searlian perspective, institutions are *social entities* in the sense that they are constituted through collective intentionality. But there is more. They belong to the class of *social functional entities* since they are characterized by functions granted to them by collective assignments. Even concerning this class, institutions have a further distinction. They have a peculiar kind of function.

Concerning the functions of institutional facts, Searle asserts that they cannot be performed "solely by virtue of their physical structures" (SEARLE, 1996, p. 41). In contrast, he argues, the functions of more simple social functional entities, such as a screwdriver or a hammer, could be performed by virtue of their physical structure. From these remarks about causal relations, we may attempt to carve the *differentia* of institutions: they are the social entities whose functions cannot be performed only through their physical features. However, Searle's view that all functions are observer-or-intentionality-relative calls for a careful understanding of the suggested distinction[5]. It cannot mean that the functions of more simple social functional entities can be performed independently of an assignment of function. If an assignment of function is a constitutive condition of social

---

[4] Brian Epstein's (2015) Anchoring and Grounding Model (p. 74-87) and Ásta's (2018) Conferralist Framework (p. 7-33) are probably the most promising among recent contributions in the field of Social Ontology.

[5] For a critical discussion of the notion of intentionality-relative features of the world, see Gouvea (2016).

functional entities, then the performance of their respective functions depends on something more than the entities' physical structure. Thus, it would be misleading to treat this demand to something more than the physical structure as the distinguishing feature of institutions. It seems, rather, to be an effect that should be explained and not the distinguishing feature that carves the essence of institutions.

Searle offers a more direct characterization of the nature of institutions by appealing to the notion of "status function". Institutional entities would be distinguished through their possession of status functions. Like artifactual functions, status functions take part in the class of functions that are essentially associated with our purposes, with what we want to do with the things that have these functions[6]. The notion of status function is elucidated as a "collectively recognized status to which a function is attached" (SEARLE, 1996, p. 41)[7]. This characterization reveals an important feature of the functions of institutions: their dependency on a status that must be collectively recognized. In the case of artifacts that are social functional entities, such as screwdrivers and hammers, the *performance* of their functions does not depend on collective recognition. As argued in Gouvea (2021), the collective assignment of function explains the continued possession of a function by an artifact if the assignment consists of a kind of continued intentionality. However, it does not imply that the artifact cannot be used or have its function consciously considered by an individual who does not take part in its constitution as a social functional entity. An individual can perform the function of an artifact and consider that its possession of the respective function is relative only to her *individual* perspective. A solitary maker can produce a knife from a stone and use it to cut fish even if she (mistakenly) thinks that no one else considers it, or things of the same kind, to have that function[8]. In contrast, the performance of a function of an institution depends on a collective recognition of a status, which gives it its function. The role of collective recognition of a status function offers a way to interpret and

---

[6] Searle calls functions of this kind "agentive functions" (SEARLE, 1996, p. 21f. & 41). He contrasts them with the non-agentive functions, which "are not imposed on objects to serve (…) purposes but are assigned to natural occurring objects and processes as part of a theoretical account of the phenomena in question" (SEARLE, 1996, p. 20).

[7] In MSW, Searle offers a more detailed characterization of the notion of status function. It is "a function that is performed by an object(s), person(s), or other sort of entity(ies) and which can only be performed in virtue of the fact that the community in which the function is performed assigns a certain status to the object, person, or entity in question, and the function is performed in virtue of the collective acceptance or recognition of the object, person, or entity as having that status" (SEARLE, 2010, p. 94).

[8] Amie Thomasson (2007, p. 52) argues that such artifacts are not social entities. See Gouvea (2021, p. 5), for a discussion and a criticism of Thomasson's view.

elucidate the claim that the functions of institutions cannot be performed "solely by virtue of their physical structures."

Searle argues in TCSR that the imposition of a status function that constitutes an institution occurs through collective recognition of a constitutive rule[9]. I refer to this view as "Searle's recognition-based account." In order to elucidate this account, I will deal, initially, with the content of the collective recognitions that are said to enable institutions. Searle contrasts constitutive rules with regulative rules, which are said to "regulate antecedently existing activities" (SEARLE, 1996, p. 27). I do not think that the temporal antecedence of an activity to a rule should be considered as a condition for regulative rules[10]. An alternative conception seems more appealing, according to which regulative rules regulate activities that could exist independently of them. Nonetheless, this is not a point of major importance. What must be emphasized is that regulative rules determine the way(s) in which these activities *should* be pursued[11]. Some examples of regulative rules suggested by Searle are the rules of right- and left-hand traffic, which regulate the independent and antecedent activity of driving. Constitutive rules, on the other hand, are said to "create the very possibility of certain activities" (SEARLE, 1996, p. 27). The activities in question are, therefore, dependent on the rules. Searle mentions the rules of chess as examples of constitutive rules and emphasizes that it would not be possible to play chess without them.

Searle characterizes constitutive rules as having the form "X counts as Y in context C" (SEARLE, 1996, p. 28). In this formula, the term "X" can stand for a natural particular entity or its kind (SEARLE, 1996, p. 44f.), such as a particular golden nugget or gold in general, as well as for a constituted social or institutional entity or its kind (SEARLE, 1996, p. 80), such as a special kind of paper printed under certain specifications or the piece of paper I handled some minutes ago to the cashier. The term "Y" stands for an institutional entity or a kind of institutional entity, such as money. A sentence expressing a constitutive rule asserts that in a determinate context, if there is an entity specified by the term to which "X" stands, then it counts as an entity referred by the term to which "Y" stands. Since constitutive rules are conceived as constituting institutions, we might rephrase the conditional as follows: if an

---

[9] Searle claims that "institutional facts exist only within systems of constitutive rules. The systems of rules create the possibility of facts of this type; and specific instances of institutional facts (…) are created by the application of specific rules..." (SEARLE, 1996, p. 28).

[10] It seems that an activity may come to exist simultaneously or even after the acknowledgment of the role of a regulative rule. E.g., the regulative rules that punish some sorts of aggression in sports (even in the most violent ones) precede the invention of most contemporary sports.

[11] Searle argues in MSW that regulative rules have the form "Do X" (SEARLE, 2010, p. 10).

entity satisfies certain conditions (X) in a determinate context (C), an entity is constituted by an assignment of a status function that characterizes a determinate institutional particular entity or kind (Y).

As we saw, Searle claims that institutions contrast with more simple social functional entities in respect to the conditions for the performance of their functions. The performance of the function of an institution was said to depend on its possession of a status that must be collectively recognized. This dependency indicates an important aspect of the constitution of institutions by constitutive rules. Since the status of an institution must be collectively recognized, the constitutive rule that is said to constitute the entity by assigning it its status function must be, likewise, collectively recognized[12].

A group of people can collectively recognize a constitutive rule by expressing their acceptance. In these cases, they verbally agree that, in determinate circumstances, everything that satisfies a specified condition will count as something else. Consider the formation of a reading group. Usually, the group members verbally decide what they will read, as well as the time and place of their meetings. By doing so, they will count themselves as members of a reading group, count a certain book or set of texts as the material of their discussions, and events at certain moments as the occasions of their meetings. The reading group can be said to exist from the moment in which they agree to form a reading group to the moment in which they decide to dissolve it. If the members are all sincere in their claims, i.e., if they in fact collectively recognize the mentioned points, then a reading group is constituted[13].

A public collective recognition of a constitutive rule by a group does not depend on its members uttering the same sentence, which could begin

---

[12] In a criticism of Searle's recognition-based account, Amie Thomasson (2003) points out that some facts relevant to the social and institutional reality, such as recession and racism, need not be collectively recognized nor the object of consideration by anyone (p. 276). The social sciences offer many examples of such discovered facts. She accounts for them by recognizing their dependency on facts created by the collective recognition of constitutive rules (p. 289). For instance, there would be no recession without money. As an attempt to preserve Searle's recognition-based account, we can avoid considering recession, racism, and other facts discovered by the social sciences as institutions. Indeed, they are not constituted by the collective recognition of a constitutive rule. However, this strategy does not avoid the threat to Searle's account of social entities, since the facts referred to above need not be objects of collective intentionality, which was the condition stipulated by Searle (1996, p. 26, 38 & 122).

[13] It is unclear to me what the exact conditions for the constitution of a reading group are. Since it is a notion employed in ordinary language, some indeterminacy should be expected. One might argue that the common agreement between some people that they form a reading group should suffice. However, I prefer the analysis according to which the constitution of a reading group depends not only on the satisfaction of the mentioned condition. It seems that it also depends on the choice of the texts or kinds of texts to be discussed and the occasions in which the group meetings will take place. For these reasons, I consider all the points upon which the group members in my description have agreed to be components of a system of constitutive rules.

with: "we recognize that …". Most importantly, each of them can instantiate intentional states of different types regarding the aspects of the institutional entity that is, hence, constituted. Their contribution to the collective recognition of the constitutive rule can differ in content. A reading group might be formed, for instance, if someone answers positively to a question like "What do you think of meeting Peter, Sally, and me every Friday at 18:00 in the cafeteria to discuss the *Eudemian Ethics*?" In responding positively to such a proposal, it is expected that the person consciously acknowledges the status function that is given to the newly constituted entity. The persons in question will count as a reading group, *Eudemian Ethics* will count as the material of their discussions, and Fridays at 18:00 in the cafeteria will count as the occasions of their meetings. However, the intentional states that take part in the explicit recognition of the constitutive rule can be of different types. The person who answers positively to the proposal of participating in the mentioned reading group might just enjoy the idea of being in a reading group with her class colleagues even though she does not know what *Eudemian Ethics* is about. Another person might be excited to read and discuss Aristotle's usually ignored ethical treatise with others, even if she does not know who some members of the group are.

It does not matter much that there can be differences in the specific content of the intentional states involved in the public acknowledgment of a constitutive rule. However, there is a certain condition that these intentional states must satisfy. The intentional states must entail that the constitutive rule is indeed recognized by the person who expresses her acknowledgment. A one-year-old who says yes to a proposal of forming a reading group does not take part in a collective recognition of the constitutive rule in question, because her intentional states cannot entail that he or she indeed recognizes the rule. Neither does a person who thinks that "Eudemian Ethics" refers to something other than a text. A public acknowledgment of a constitutive rule can only occur if the intentional states of those who express their recognition indeed contribute to the truth of an attribution of the collective recognition.

According to Searle, cases of collective recognition of a constitutive rule are not restricted to cases of public acknowledgment. Indeed, he argues that "one needs not be consciously aware" of his or her contribution to the collective recognition that constitutes an institutional entity to take part in it (SEARLE, 1996, p. 47 & 125f.). An analysis of these remarks allows us to distinguish two kinds of contributions to collective recognition. One involves conscious intentional states, but not a public acknowledgment, and the other does not involve such states. A conscious, but non-verbal recognition of a

constitutive rule occurs, e.g., when someone, after learning a constitutive rule, tries to act in accordance with it. In the first matches following a lesson on the rules of chess, it is expected that a novice player will consciously recognize the rules that determine the possible movements of the pieces and try to act in accordance with them. In this case, she is in some sense contributing to the collective recognition of the rules of chess in a conscious, but non-verbal way. In his classic work about intentionality, Searle claims that it is neither necessarily nor essentially linguistic (SEARLE, 1983, p. 5). Even if it does not follow from that view, I take that the intentional states composing occurrences of collective recognition can, but need not be linguistic[14].

The cases of recognition of constitutive rules that do not occur through conscious intentional states are elucidated in TCSR by reference to activities with institutional entities or practical relations with the rules in question. For this reason, before investigating this kind of contribution to the collective recognition of a constitutive rule, I shall consider the related topic of our activities with institutional entities.

As indicated above, Searle characterizes constitutive rules as making activities possible that otherwise could not be pursued. The emphasis on activities is made explicit in Searle's claim that there is a primacy of social acts over the social entities that take part in them (SEARLE, 1996, p. 36). The primacy of social activities over social entities is supported by two aspects of the constitution of the latter. Firstly, the constitution of social functional entities and institutional entities occurs because of the function that they will then possess. The assignment of artifactual and status functions enables us to do things. We constitute entities by assigning them these functions because of what we can, then, do with them. Secondly, an activity that involves a social or institutional entity can be performed independently of an explicit acknowledgment of the constituted entity, i.e., without an explicit intentional state directed to the entity and the function in question.

Our usage of artifacts suggests that there is a form of practical assignment of functions. It encompasses cases in which agents use or perform the function of an artifact without an explicit or conscious assignment of function. Experience reveals that these cases are very frequent. Indeed, they are much more common than the cases in which the performance of a function is accompanied by an occurrent conscious thought that the entity has the function in question. Nonetheless, practical assignments of function involve intentional states of the agents, but implicit or non-conscious ones.

---

[14] See Stalnaker (1984, p. 27-42) for a thorough elucidation and criticism of the linguistic picture of intentionality.

This claim does not depart from Searle's position since he conceives assignments of function as "a feature of intentionality" (SEARLE, 1996, p. 14), and contrasts the way of imposing functions through use with the way of imposing functions that involves "*explicit* intentionality" (SEARLE, 1996, p. 126).

Everyday experience and common sense confirm that one usually performs the functions of institutional entities without entertaining conscious intentional states about their status functions. As an illustration, consider a game of chess involving experienced players. It is expected that they will not explicitly or consciously consider the rules that assign status functions to the different pieces, especially if the game is played under time control. Accordingly, one can argue that these cases of interaction with institutional entities are similar to practical assignments of function to artifacts. More specifically, they would be similar in two respects. Firstly, in the most frequent cases of interaction with institutional entities, we seem to instantiate implicit or non-conscious intentional states concerning their respective status functions. Secondly, these non-conscious intentional states appear to contribute to the possession of the status functions by the institutional entities with which the practical relation occurs. However, Searle rejects the view that we instantiate non-conscious intentional states that guide us in the frequent cases of interaction with institutional entities when no explicit or conscious intentionality is involved. He claims that "(…) we can relate to rule structures such as language, property, money, marriage, and so on, in cases where we do not know the rules and are not following them either consciously or unconsciously (…)" (SEARLE, 1996, p. 129); and he explains this way of interacting with institutional entities by an appeal to the notion of the Background.

The passage quoted above is obscure. The exact meanings of the expressions "unconscious" and "relating to rule structures" are left unclarified. In TCSR, Searle tries to avoid the question of what "unconscious" and related notions mean by emphasizing that authors who famously appealed to these notions left them unexplained (p. 128f.). The expression "relate to rule structures" is patently ambiguous. It can be understood as referring to interactions with institutions and/or some sort of relation to constitutive rules. In an attempt to understand Searle's position, I interpret the passage as asserting that we can interact with institutions and, thus, relate to constitutive rules, independently of conscious or non-conscious intentional states about the status functions involved. This interpretation agrees with Searle's attempt to explain such cases of interaction with institutions by appealing to the notion of the Background.

A survey of Searle's writings reveals that he has appealed to a Background for different reasons, and might have conceived different things under this title (see SEARLE, 1983, p. 145-152; 1996, p. 132-137; 2010, p. 155-160). However, in TCSR, he seems to employ an unequivocal notion. The Background is described as "a category of neurophysiological causation" (SEARLE, 1996, p. 129), which is "causally sensitive to the specific forms of the constitutive rules of the institutions without actually containing any beliefs or desires or representations of those rules" (SEARLE, 1996, p. 141). The Background is formed by practice, which involves "learning to cope with the social reality" (SEARLE, 1996, p. 145). It consists of "skills or abilities" that do not contain intentional states but are "sensitive to an intentional structure and in particular to the rule structure of complex institutions" (SEARLE, 1996, p. 142 & 145).

With the above characterization of the notion of Background, Searle's position can be completely elucidated. Instead of relying on non-conscious intentional states to explain the frequent cases in which we interact with institutional entities without explicitly considering their status function, Searle appeals to the non-intentional components of the Background. These skills and abilities, which have also been described as neurophysiological states, would enable us to interact with institutional entities and, thus, relate to constitutive rules, independently of conscious or non-conscious intentional states about the status functions of these entities. This position has merits. I have defended it elsewhere because it offers a tentative solution to the problem of social causation (see GOUVEA, 2012). Nonetheless, the position faces an objection associated with the notion of interaction or practical relation.

It seems to be a conceptual truth concerning the notion of interaction or practical relation that, to count as such, an event must be an intentional action under a description that mentions the entity with which the interaction is said to occur[15]. Consider, as an illustration, the movement of a horse-shaped wooden piece over a chess board. If the movement occurs from g1 to f3 under specific circumstances, it is true to describe what happened as a move with a knight. However, it can be the case that the movement is not intentional under this description. If the person who moves the piece does not know the rules concerning how knights move, then she did not move that

---

[15] The position that an action is intentional under a description but not under other descriptions is defended and thoroughly investigated in Anscombe (1979). Davidson (2006 [1963]) offers a famous example: "I flip the switch, turn on the light, and illuminate the room. Unbeknownst to me I also alert a prowler to the effect that I am at home" (DAVIDSON, 2006 [1963], p. 24). In this example, alerting the prowler is a clear case of a description under which the action is not intentional. Davidson is not interacting or in a practical relation with the thief.

knight intentionally[16]. In support of the presumed conceptual truth, we are compelled to avoid considering the movement of the wooden piece as an interaction with the knight or a practical relation with the rules that determine its movements.

In the cases considered by Searle, an interaction with an institution is said to occur independently of conscious or non-conscious intentional states about the status function of the institution in question. However, the lack of the respective intentional states implies that, in these cases, the institutions are not presented or represented to the agents as possessing the status function that characterizes each of them. In other words, there is no presentation or representation of the institutions as being what they are. Thus, I conclude that institutions are not mentioned in the descriptions under which the cases considered by Searle would be intentional actions. If the presumed conceptual truth applies, the non-intentional Background cannot be said to take part in any sort of interaction or practical relation with institutions. The objection indicates that the most frequent cases of interactions with institutions, i.e., the ones that do not involve conscious intentional states about their status functions, have to involve non-conscious intentional states about these matters. However, since the objection is based on a certain conception of interaction and practical relation, it might not be strong enough to override the reason for appealing to the Background[17].

Let us return to the question concerning how a constitutive rule can be collectively recognized. I have already considered cases of public acknowledgment of constitutive rules and cases of conscious but non-verbal recognition. In the following, I will argue more vigorously that the role of non-conscious intentional states must also be acknowledged. The reason in favor of this claim resembles the one that supports the view that, quite regularly, functions of artifacts or artifactual kinds are assigned by non-

---

[16] Anscombe distinguishes the descriptions that are true in respect to an event from the descriptions under which what happens is intentional. In her words: "What happens happens under every description that is true of it! Whereas (…) there may be descriptions that are true of a happening, though the happening is not known, or willed, or derived or explained under those descriptions" (ANSCOMBE, 1979, p. 220). The claim that it seems to be true to describe the movement in my example as a move with a knight independently of its being intentional under this description is motivated by an intuition from Anscombe. She asserts that: "[c]ertainly one would never say 'It was unintentional under that description' unless the description was true of it" (ANSCOMBE, 1979, p. 220).

[17] Actions in general can be said to depend on intentional states about their form or kind. Stekeler-Weithofer (2012) emphasizes the fundamental role of sociality in the recognition, performance, and evaluation of the success of different kinds of actions (p. 104). Although he does not refer to intentional states explicitly, he argues that we continuously take the perspective of others in controlling our actions in accordance with the learned criteria about their successful performance (see STEKELER-WEITHOFER, 2012, p. 104 & 106).

conscious intentional states[18]. Similar to the case of social functional entities, Searle argues that the continuous possession of a status function by an institutional entity, or, in other words, its continued existence, requires continued recognition. In a section entitled "The Continued Existence of Institutional Facts", he states that:

> The secret of understanding the continued existence of institutional facts is simply that the individuals directly involved and a sufficient number of members of the relevant community must continue to recognize and accept the existence of such facts. Because the status is constituted by its collective acceptance, and because the function, in order to be performed, requires the status, it is essential to the functioning that there be continued acceptance of the status (SEARLE, 1996, p. 117)[19].

Unfortunately, the section does not elucidate how a continued collective recognition of this kind can occur. Only at the end, a passage gives us a hint of what Searle conceives under the label of continued collective recognition. It says:

> The formula 'X counts as Y' applies to both the creation and the continued existence of the phenomenon, because the constitutive rule is a device for creating the facts, and in general, the existence of the fact is constituted by its having been created and not yet destroyed (SEARLE, 1996, p. 119).

The claim that an institution continues to exist until it is destroyed is surprisingly helpful. In conjunction with the remark that, for the continued existence of an institution, "the relevant community must continue to recognize and accept the existence of such facts", that apparently trivial claim indicates a direction for an investigation aimed at improving Searle's account. By considering how an institution can be destroyed we might be able to reveal how collective recognition can cease to occur and what its continuity consists of. The claim that the formula 'X counts as Y' takes part in the creation and the continued existence of an institution is also helpful. The formula indicates general ways in which an institution, the occupant of 'Y' in the formula, can be destroyed. An institution is destroyed if the occupant of 'X' in a specific application of the formula is destroyed. A five-dollar bill is destroyed if it is

---

[18] See Gouvea (2021) for details.
[19] To avoid commitments regarding ontological categories, I read "institutional facts" as referring to institutional entities.

burned, someone ceases to be the King if he dies, etc. An institution is also destroyed if the relation of 'counting as' no longer applies. There are at least three general ways in which the relation of "counting as" ceases to apply to an institution. Firstly, the relation can be denied in particular cases. Hence, a constitutive rule continues to apply, but one or another thing that satisfies the condition for being X cannot be counted as Y. Secondly, the constitutive rule can be denied through another occurrence of collective recognition. Thirdly, the constitutive rule can lose its collective recognition. The last two ways in which an institutional entity can be destroyed are the ones we should consider in order to elucidate the nature of continued collective recognition.

The loss of the collective recognition of a constitutive rule should be understood as the circumstance in which the conditions that correspond to the collective recognition cease to be satisfied. It seems that, in some cases, if members of a group no longer instantiate intentional states concerning the status function of an institution, then the institution in question ceases to exist. Consider, for example, a reading group whose members no longer instantiate intentional states about its status function (either by individually denying it or forgetting that they once agreed to take part in it). In this case, the intentional states consisting of the collective recognition of the reading group are no longer shared among the members of the respective group. The institutional entity is destroyed, because nothing guarantees its continued existence. This way in which an institutional entity is destroyed differs from the cases in which there is a denial of the validity of a constitutive rule through further collective recognition.

There are cases of institutions whose constitutive rules continue to be valid even if the subjects that take part in a collective recognition do not instantiate intentional states about their status function. A tenant and her landlord might not instantiate intentional states about certain terms and conditions involved in the renting of an apartment. However, a signed contract guarantees their validity. Some of these conditions are constitutive rules that constitute institutional entities, such as the fact that the tenant is to be held responsible for certain kinds of damage in the apartment. It is expected that the institutional entities constituted by the constitutive rules of a signed contract cease to exist if there is another document signed by the tenant and the landlord that denies them. In other words, these entities can be destroyed by a collective recognition that denies the validity of their respective constitutive rules.

I have distinguished two kinds of institutions. One of them encompasses the institutions that cease to exist if the members of determinate groups cease to instantiate intentional states about their status functions. The other kind includes

institutions that continue to exist even in those circumstances because of documentation of collective recognitions of constitutive rules. There is a reason to acknowledge that institutional entities of the latter kind can also be destroyed by constitutive rules losing their collective recognition in the sense elucidated above. My position is based on the view that written and other kinds of documentation of collective recognition consist of one or more institutions. The signed contract is itself an institutional entity that is about the status functions of other institutional entities, such as the tenant, the landlord, and the rented apartment. In my example, the contractual clauses are about the collectively recognized obligations and rights of the tenant and the landlord. The institution that consists of the documentation of collective recognitions of constitutive rules ceases to guarantee the validity of these rules if the document is destroyed, lost, or canceled. Thus, the institutional entities of the second kind described above can also be destroyed by the loss of the collective recognition of constitutive rules.

Based on the fact that institutions cease to exist if the respective constitutive rules lose their collective recognition, I depart from Searle by arguing that non-conscious intentional states play a determinate role in the continued existence of institutions. Together with their conscious counterparts, non-conscious intentional states about the status functions of institutions make true the attribution of a collective recognition to its putative subjects, i.e., the members of the respective group. They take part, thus, in the explanation of why a constitutive rule does not lose its collective recognition when the members of a group do not consciously consider it. Another possible explanation involves the non-intentional skills and abilities of the Background, which are conceived as being sensitive to constitutive rules (SEARLE, 1996, p. 125f. & 144f.). I rejected the latter approach. As argued above, the recognition of a constitutive rule is a condition for interactions with the institution. Thus, it is a condition for taking part in the actual performance of the status function of the institution. Someone who does not recognize that X is Y in context C, cannot be said to interact with Y, i.e., the institutional entity. Most importantly, she cannot contribute to the performance of the status function of Y. Such an event cannot be intentional under this description.

## 2. The inclusion of status function declarations in the theoretical framework of MSW

In *Making the Social World*, Searle argues for the inclusion of an element in the theoretical apparatus he devised in *The Construction of Social*

*Reality* to account for the nature and constitution of institutional entities (SEARLE, 2010, p. 11). He refers to this putative new element as the notion of "status function declarations"[20] and presents its explanatory power as including and being more general than the account based on constitutive rules.

Declarations are speech acts that, if successful, simultaneously represent the world and change it[21]. Searle uses the notion of directions of fit to emphasize the special character of declarations. Like assertions, declarations have the word-to-world direction of fit. Assertions represent the world as being in a certain way, and the way things are in the world determines if they are true or false. In other words, they fit or fail to fit the world. Nonetheless, declarations are also similar to orders, promises, and other speech acts that are aimed at changing the world so that it matches their content. The satisfaction of speech acts with the world-to-word direction of fit depends on whether the world is adequately determined by them. In these cases, it is the world that fits or fails to fit them. Searle characterizes and explains the distinctive nature of declarations as follows: "These are cases where we change reality to match the propositional content of the speech act and thus achieve world-to-word direction of fit. But (…) we succeed in so doing because we represent the reality as being so changed" (SEARLE, 2010, p. 12).

In MSW, Searle argues that "all institutional reality (…) is created by speech acts that have the same logical form as declarations" (SEARLE, 2010, p. 12f.). I call this view "Searle's language-based account." He suggests the term "status function declarations" to refer to the "cases where we create an institutional reality of status functions by representing them as existing" (SEARLE, 2010, p. 13). The terminological choice is misleading. Confusion might arise from the fact that Searle takes the notion of status function declarations to cover not only declarations but also cases that are not declarations in the strict sense. In his words, "sometimes we just linguistically treat or describe, or refer to, or talk about, or even think about an object in a way that creates a reality by representing that reality as created" (SEARLE, 2010, p. 13). Thus, in addressing his views, one should keep in mind that a status function declaration must not be a declaration. The condition for something to be encompassed by this notion is to be a speech act[22] with "the

---

[20] When speaking of status function declarations, Searle (2010) uses the word "declaration" with a capital "D". I avoid this procedure also when quoting him.

[21] To ascertain the continuity of Searle's account of the class of speech acts known as declarations, see Searle (1979, p. 16-20; 2010, p. 12; 2019, p. 191-193).

[22] It may seem strange that Searle includes thoughts or mental representations amongst status function declarations, and considers them to be speech acts. Even if he endorses a linguistic account of intentional mental states, according to which thoughts are sentences in some language or other, it is odd

same logical form as declarations" that takes part in the constitution of institutional entities[23]. Searle indicates that the logical form of declarations is specified by their double direction of fit. Thus, a speech act is a status function declaration that, when successful, creates an institutional entity by representing it as existing.

Searle offers different reasons for introducing the notion of status function declarations in the theoretical apparatus that accounts for the nature and constitution of institutions. One reason is to emphasize the essential role of speech acts in the creation of institutions (SEARLE, 2010, p. 101). The claim that speech acts may take part in this process is not new. In TCSR, Searle argues that performative declarations play a decisive role "in the creation of many, though not all institutional facts" (SEARLE, 1996, p. 54). However, there is a strong difference in emphasis between the two books. I think this can be explained by the different roles attributed to constitutive rules in creating institutions according to these two accounts. In TCSR, a declaration is said to create an institution only if a collectively recognized constitutive rule refers to this speech act in its X term and to the institutional entity in its Y term. It is the collective recognition of this constitutive rule that "enable[s] the speech act to be performed as a performative declaration creating the state of affairs described by the Y term" (SEARLE, 1996, p. 54). In contrast, according to the account in MSW, a declaration that assigns a status function (or a speech act with the same logical form) can work independently of a constitutive rule referring to the declaration as the X term.

Another reason for introducing the notion of status function declarations is that it solves cases that have been considered problematic to Searle's recognition-based accounts. One set of problematic cases includes the institutional entities that seem to be constituted independently of a corresponding constitutive rule. Searle illustrates these cases with the example of a tribe that recognizes someone as their leader without having a constitutive rule for selecting leaders (SEARLE, 2010, p. 19). Another set of problematic cases includes institutional entities that do not have "a bearer of the status

---

that some thought of one individual, a silent and private status function declaration, may create an institution. I will not explore this oddity any further in the present paper. Instead, in my criticism of his language-based account, I accept his view that all status function declarations are speech acts.

[23] In order to avoid more confusion, one should also have in mind that speech acts are not only instantiated by means of utterances but also by means of gestures. Searle offers a nice illustration of a status function declaration that is made independently of any utterance. In a pub, while giving the beer he bought to his friends, Searle "[does not need to] say anything. Just pushing the beer in the direction of their new owners can be a speech act" (SEARLE, 2010, p. 89). A status function declaration occurs because by leaving a pint in front of each of his friends, he is in a way declaring to whom it belongs.

function" (SEARLE, 2010, p. 20). These are the cases of institutions whose constitution does not occur by means of something occupying the place of X in a constitutive rule with the form "X counts as Y in context C." Corporations are presented as illustrative examples[24].

The cases mentioned above are expected to be unproblematic to Searle's language-based account. Status function declarations would fare better than constitutive rules because they are said to differ from the latter in certain respects. The cases of institutions constituted independently of constitutive rules would be unproblematic because status function declarations are conceived as not requiring a general rule (SEARLE, 2010, p. 95). A status function declaration allegedly could assign a status function to a determinate object or person, without the intermediation of a rule that takes things of some kind to count as things of another kind. In Searle's words: "In these cases, we are counting an X as a Y without a preexisting institutional structure, but counting an X into a Y is a case of making an X into a Y by representing it as being a Y" (SEARLE, 2010, p. 22). The cases of institutional entities that have no bearers for their status functions are explained by the fact that the form of some status function declarations differs from the form "X counts as Y in context C." According to Searle, all kinds of status function declarations have the form: "We make it the case by declaration that the Y status function exists in context C" (SEARLE, 2010, p. 99). The constitutive rule with the form "X counts as Y in C" and the status function declaration that constitutes a Y that has no X are considered to be different implementations of that form. An institutional entity whose status function has no bearer is constituted by a status function declaration that presupposes no bearer[25].

Contrary to Searle, I do not consider that the inclusion of the notion of status function declarations represents a significant novelty to our understanding of the nature and the conditions of the constitution of institutional entities. One can interpret the notion of constitutive rules as presented in TCSR as not comprising only general rules. There is no reason

---

[24] Other problematic cases comprise things that seem to be part of the institutional reality though their existence does not depend on collective recognition of their status functions (see note 13). Examples are recession and other phenomena discovered by social scientists. Like Thomasson (2003), Searle (2010) deals with these problematic cases by endorsing the view that their existence does not depend on a collective recognition of their status functions. Rather, he conceives it as a consequence of there being other ("ground-floor") institutional entities that require such a collective recognition (SEARLE, 2010, p. 22). Concerning these problematic cases, Searle does not distinguish the solution based on the notion of constitutive rules from the one based on the notion of status function declarations (SEARLE, 2010, p. 23).
[25] Searle characterizes the form of such status function declarations as follows: "We make it the case by declaration that for any x that satisfies a certain set of conditions p, x can create an entity with Y status function by declaration in C" (SEARLE, 2010, p. 99).

why the X term in "X counts as Y in C" cannot be the name of an object or a definite description. Concerning the form of constitutive rules, one could simply stipulate that some constitutive rules do not have the form "X counts as Y in C," but, as Searle (2010) suggests, "Y exists in C."

The main problem with Searle's language based-account account, however, is not that it does not present any novelty, but that it is neither independent from nor as general as the improved version of the recognition-based account, which I have discussed in the first section of this paper. Regarding the dependence claim, there are different reasons for acknowledging that successful status function declarations depend on the collective recognition of constitutive rules. Firstly, notice that only persons with authority can constitute institutional entities through status function declarations. In some cases, many people have this authority. Think of how we make informal study groups by explicitly agreeing on its features. In other cases, such as pricing items in a supermarket or officiating weddings, only a few have such authority. Nonetheless, for a status function declaration to be successful, the person who makes it must hold the authority to perform status function declarations relative to that specific domain. Of course, the authority can be originally conferred by another status function declaration. However, its maintenance depends onwards on the continued collective recognition of a constitutive rule. Besides the authority, the gesture that triggers a status function declaration must also be the object of a collectively recognized constitutive rule. Indeed, linguistic or nonlinguistic gestures must count, in specific circumstances, as status function declarations. For this, again, we need collective recognition of constitutive rules.

Regarding the claim that the language-based account is not as general as the improved version of the older, recognition-based account, I will point to two aspects of the constitution of institutions that are left unexplained by the former. First, the appeal to status function declarations does not explain the continued existence of institutions[26]. Since it is an event, a status function declaration must have a duration. It may occur during the short time in which a sentence is uttered or a gesture is made, or it may take longer, and persist until the document in which it was written is destroyed. In the first case, after

---

[26] Searle acknowledges in MSW the importance of a form of continuous recognition for the maintenance of institutions' status functions and, thus, for their continued existence (SEARLE, 2010, p. 103). However, in strong adherence to his language-based account, he takes such continuous recognition to consist in the continuous usage of the vocabulary employed in the status function declarations that created the institutions in the first place (SEARLE, 2010, p. 103f.). This attempt to explain the continuous existence of institutions fails. It contradicts everyday evidence of institutions fading into inexistence despite the continuous usage of the vocabulary that allows us to retrospectively describe them.

the end of the utterance, it cannot be said to maintain the status function of the institution. As argued in the first section of this paper, the non-conscious, but continuous collective recognitions of constitutive rules present themselves as promising candidates for explaining the continued existence of institutions. In the case of written, longstanding status function declarations, we should notice that the document in which it is contained is itself an institution whose continued possession of a status function must be explained. Of course, this can be done by appealing to a status function declaration contained in another document, whose continued possession of a status function must be explained. We may attempt to do so by means of a status function declaration presented in a third document and so on. But, for better or worse, there cannot be infinite documents, and the language-based account is unfit because it ensues infinite regress. In contrast, forms of conscious or non-conscious collective recognition of constitutive rules can act as the ground floor for this net of iterated institutional entities, and guarantee the continuous possession of their status function.

The second aspect of the constitution of institutions that is left unexplained by the language-based account concerns the cases in which institutions are created but no status function declaration seems to take place. Status function declarations are not mere events, but intentional actions. Intentional actions are the objects and the effects of intentions. Thus, to occur, status function declarations must be the objects and the effects of intentions. The problem is that not all institutions seem to depend on such intentional actions, at least not all possible institutional entities. A false impression that a status function declaration was performed may lead to the collective recognition of a constitutive rule. Consider the scenario in which the ramblings of an old, but wise officiating judge are falsely understood as a declaration of marriage. It prompts a kiss and an effusive reaction among the guests, all endorsing that the groom and the bride now count as a married couple. Suppose that shame, but also pragmatic wisdom, prevents the surprised judge from saying anything. One may argue that, to the eyes of God, the couple will live in sin, but this sounds cruel and there is no reason or ground for us to assume His perspective. From the human perspective, a new couple would come into being even without a declaration of marriage. It would also not be farfetched to consider the possibility of collective recognition of constitutive rules ensuing from the observation of natural phenomena by a group of people. A storm becomes the wrath of a deity that must be appeased with some sort of sacrifice; a mountain that took so many lives, or is so abundant

with fruits and game, becomes a sacred place and can only be visited by a few, chosen ones, etc.

## Conclusion

The paper presented an investigation of the conditions of constitution of institutions that was based on, but was also critical of the accounts proposed by John Searle in *The Construction of Social Reality* (1996) and *Making the Social World* (2010). The first section discussed Searle's (1996) recognition-based account. To deal with some explanatory difficulties concerning the continued existence of institutional entities, the paper conveyed an improved version of the recognition-based account. Instead of appealing to a Background of non-intentional skills and capacities, it offered an argument to the conclusion that non-conscious intentional states play a determinate role in the continued existence of institutions. The second section of the paper addressed Searle's (2010) inclusion of status function declarations in the theoretical framework of his Metaphysics of institutions. In summary, the second section offered arguments to the conclusion that successful status function declarations depend on the collective recognition of constitutive rules and that appealing to the former may not explain the constitution of some (possible) institutional entities. For these reasons, we should once again depart from Searle. The improved version of the recognition-based account is better than Searle's language-based account as a metaphysical model for explaining the institutional sea we live in.

## References

ANSCOMBE, G. E. M. "Under a Description". In: *NOÚS*, vol. 13, n. 2 (May 1979), 1979, p. 219-233.
ÁSTA. *Categories We Live By*: The Construction of Sex, Gender, Race, and Other Social categories. Oxford: Oxford University Press, 2018.
DAVIDSON, D. "Actions, Reasons, and Causes". In: DAVIDSON, D. *The Essential Davidson*. Oxford: Oxford University Press, 2006 [1963], p. 23-36.
EPSTEIN, B. *The Ant Trap*: Rebuilding the Foundations of the Social Sciences. Oxford: Oxford University Press, 2015.
GOUVEA, R. A. S. "A Non-Reductionist Solution to the Problem of Social Causation". In: *XXII. Deutscher Kongress für Philosophie, Ludwig-Maximilians-*

*Universität München, 11. - 15. September 2011*, jan. 2012, p. 1-19, Disponível em: https://epub.ub.uni-muenchen.de/12615/ Acesso em: 01 maio de 2024.

_____. "On the intentionality-relative features of the world". In: *Filosofia Unisinos*, vol. 17, n. 2, 2016, p. 149-154.

_____. "On collectively assigning features to artifacts". In: *Filosofia Unisinos – Unisinos Journal of Philosophy*, 22(3), 2021, p. 1-12.

RAKOCZY, H. & TOMASELLO, M. "The Ontogeny of Social Ontology: Steps to Shared Intentionality and Status Functions". In: TSOHATZIDIS, S. (ed.) *Intentional Acts and Institutional Facts*: Essays on John Searle's Social Ontology. Dordrecht: Springer, 2007, p. 113-137.

SEARLE, J. *Expression and Meaning*: Studies in the Theory of Speech Acts. Cambridge: Cambridge University Press, 1979.

_____. *Intentionality*: An Essay in the Philosophy of Mind. Cambridge: Cambridge University Press, 1983.

_____. *The Construction of Social Reality*. London: Penguin Books, 1996.

_____. *Mind, Language and Society*: Philosophy in the Real World. New York: Basic Books, 1998.

_____. *Making the Social World*: The Structure of Human Civilization. Oxford: Oxford University Press, 2010.

_____. *Da Realidade Física à Realidade Humana*. Translation: D. M. Soares. Lisboa: Gradiva, 2020.

STALNAKER, R. *Inquiry*. Cambridge, Mass.: The MIT Press, 1984.

STEKELER-WEITHOFER, P. *Denken*. Tübingen: Mohr Siebeck, 2012.

THOMASSON, A. "Foundations for a Social Ontology". In: *ProtoSociology*, 18/19: Understanding the Social II: Philosophy of Sociality, 2003, p. 269-290.

_____. "Artifacts and Human Concepts". In: MARGOLIS, E. and LAURENCE, S. (eds.). *Creations of the Mind: Theories of Artifacts and Their Representation*. Oxford: Oxford University Press, 2007, p. 52-73.

WILSON, R. A. "Social Reality and Institutional Facts: Sociality Within and Without Intentionality". In: TSOHATZIDIS, S. (ed.) *Intentional Acts and Institutional Facts*: Essays on John Searle's Social Ontology. Dordrecht: Springer, 2007, p. 139-153.

Email: rasgouvea@gmail.com