Searle and Menger on Institutions: Divergences and (Possible) Convergences

Introduction

Two influential but conflicting approaches to social ontology are "intentionalism"[1] and the theory of spontaneous order. Both approaches advances, in particular, a conception of institutions that seems to go in opposite directions. Intentionalists claim that institutions would not exist if we did not believe they existed. The 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 the creation of institutions. While Hobbes, Locke and Kant are, among others, the oldest advocates of this conception, Searle, Tuomela, Gilbert and Lagerspetz are its key contemporary proponents. Exponents of the theory of spontaneous order suggest, on their part, that we approach institutions as if no designer, whether individual or collective, ever invented them. Institutions shall be seen, on such account, 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, Nozick, Ullmann-Margalit, Hull and Keller are some of its more recent (albeit not uncritical[2]) advocates.

The goal of the present paper 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[3] respective view of institutions. There are several reasons to select 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

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

[2] Ullmann-Margalit (1978, 1994) 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] Searle, 1995, 2006, 2007, 2008, Menger, 1892, 1996, 2007.

that will reveal their "nature"[4], Searle purports to reveal their "logical structure". Moreover, they both believe that an explanation of how institution could emerge[5] will cast light on its logical structure. On 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[6]. In brief, Menger and Searle share the same goal and method, i.e. providing a conceptual analysis of institutions by means of a rational reconstruction. Finally, the comparison between these two thinkers strongly suggests itself because both take the money system as their favorite examples[7], finding in its logical structure the model of all institutions.

Yet Searle and Menger disagree 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 impose a status function, (section 1). The last element, namely 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). I will show how Menger's analysis of money (1892, 1996, 2007) can be interpreted as an attempt to dispense with collective intentionality (section 3). The next section deals with what could be Searle's reply to Menger, that is the inability of his view to account for the so-called "deontic dimensions" of institution (section 4). An exploration of a few paths of reconciliation between the two views will finally close the comparison (section 5).

1. Searle's theory of institutional facts

In the *Construction of Social Reality* (1995)*,* 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,

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4 Menger (1963, 37n). cf. Mäki (1991), Haller (2002), Younkins (2004), Nadeau (2005), Aydinonat (2007).

5 Such explanation can be found in Menger (1892). Searle offers a description of the emergence of money in (1995, pp. 41-43).

6 On the historical truth of his account, Searle writes : « The logical relations among these three can be illustrated by the standard account of the evolution of paper currency in medieval Europe. I will assume this account is true, but it does not really matter much for our purposes. *I am using the account only to illustrate certain logical relations, which do not depend on its historical accuracy"* (1995, p. 43, my emphasis).

7 Menger offers his analyses of the money system in a paper published in 1892 entirely dedicated to the issue, as well as in a chapter VIII of his *Principles of Economics* (2007).

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, i.e. 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 address is how objects that are observer-dependent fit in a world that is fundamentally composed observer-independent objects.

Exploring this question, Searle stumbles upon a sub-category 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 (1995, pp. 23-26). The two others are the assignment of function and constitutive rules (1995, p. 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 (1995, pp. 27-28). Manners of table, for examples, regulate an activity, i.e. eating, that may perfectly be performed independently from the manners of table. A constitutive rule also regulates but it also 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 institutional facts. They make institutional facts — such as the existence of money, of frontier, of leaders, of marriages, etc. — possible. All constitutive rules, he also claims, has the following structure: "X counts as Y in C". Let us see in more details the variables.

The X[8] is a brute fact. It is a material object or an event that would be ontologically the same whether people perceived it or not. For example, something needs not to be perceived in a certain way rather than another way to be a cowry shell. A cowry shell is something that

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[8] The necessity of a material object allows Searle to claim that reality is ultimately made of material things only. Smith (2003, 2008) refutes this ingredient. There are constitutive rules that have what he calls a "free-standing Y terms" where there is no physical object on which the status function is imposed. For example, no physical object (besides a mailing address, a list of officers and stock holders) needs to be there for corporations to exist.

exists independently of human intentionality. Human beings could all be eliminated without such an event having any impact on the existence of cowry shell.

The next question is "how does an X can count as a Y?". It is only in case a function of a certain kind, namely a "status function" is assigned to the brute facts (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 seem to be a difference between these status functions and the biological function the heart has to pump the blood. Nor do status function seems 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?

One might expect Searle to say that, unlike status function, biological functions are not observer-relative. It seems indeed that the heart has the function of pumping the blood, whether we represent this fact to ourselves this way or not. But Searle dismisses this way of distinguishing status function from biological function. He claims that all types of functions exist only relative to the attitudes of observers. In other words, to have a certain function is never an intrinsic feature of an object or an entity: there must be someone assigning the function of pumping blood to the heart for the latter to have the function of pumping blood. Surely, the pumping of the blood and the movement of the valves are intrinsic facts of nature. But when we assign the function of pumping the blood to the heart, "we are situating these facts relative to a system of values that we hold" (1995, p. 15). I take this to mean the following. If the survival of organism was something we valued as much as the sound the heart makes, we would assign both functions to the heart, namely that of pumping the blood and that of making noise. The fact that we deny the hart has the latter function seems to confirm Searle's idea that functions are indeed relative to some values that we hold[9].

The distinction between agentive and non-agentive functions is how Searle distinguishes status functions from biological functions. Status functions are agentive, i.e. they modify the range of what agent can and cannot do, unlike non-agentive function, such as the function of the heart to pump blood, that does not modify the range of things we do. The function of

[9] Bob Ennis caught my attention to the fact that, *Pace* Searle, we do not have to value the effect of a given cause to treat it as a function. For example, we accept that the function of the heart of crocodiles is to pump the blood, and we recognize the importance of the latter for the survival of crocodiles without having to value the survival of crocodile.

pumping blood that is assigned to the heart is part of the theoretical account of the heart. By contrast, agentive functions “has to do with our immediate purposes, whether practical, gastronomic, esthetic, educational, or whatever” (1995, p. 20). We assign to screw drivers the agentive function of driving screws with the practical purpose of driving crews. We assign to wine the agentive-function of pampering our taste buds.

Both money, screwdrivers and wine 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 function that are not causal. Status functions are non-causal agentive function in the following sense: there are assigned on entities that are physically unrelated to the performance of the function they play. When squirrel furs, cowry shells and cigarettes serve as medium of exchange, these object do not play this function in virtue of their intrinsic physical features. By contrast, the physical shape of screwdrivers is what enables them to perform their function. And unless 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, let us 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 component of institutional reality is collective intentionality. It is more precisely the collective recognition, acceptance or acknowledgement 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” (1995, p. 95). According to Searle, 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 (1995, p. 39). An agent alone may perfectly assign the causal agentive function of a bench on a log. Collective intentionality, he argues, is distinctively involved in the assignment of status functions. It implies that an agent alone could not assign a status function to an object. He needs to be accompanied in such assignment with the other members of his group.

When Searle claims that status functions always are assigned by a ‘we’, he does not merely means that status functions need to be assigned by several ‘I’. On Searle’s view, more, qualitatively speaking, is needed. In particular, it is only in case these ‘I’ impose the function *together* that they form a genuine “we”. On Searle’s view of collective intentionality (1990), several agents individually assigning the same function to the same object do not act together, because to act together is not merely to share the same goal. Collective intentionality is for Searle a primitive notion, along individual intentionality: it is articulated by locutions such as “we-intend” and a ‘we-intention’ is not reducible to several ‘I-intentions’. Nor is it reducible to an I-intention in conjunction with other individual attitudes (1995, pp. 24-6).

Searle finds the fact that status functions are collectively — rather than individually — assigned to be one of the three crucial ingredients of social reality. An institutional facts, he claims, are those special kinds of social facts that arise when human beings collectively award *status functions* to entities that do not play their function in 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* accept X as a Y.

2. Searle’s argument in favor of collective intentionality

A quick reading of the *Construction of Social Reality* may convey the impression that Searle leaves it at one’s guess whether collective intentionality is an implication of the way status functions are assigned or whether it is, on the contrary, an independent and therefore postulated ingredient of institutional facts[10]. Searle visibly endorses the latter possibility 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, p. 452, my emphasis).

Here collective intentionality is built into the larger category of social facts. As a sub-category of this larger category, institutional facts merely inherit from it this feature. Some other

[10] Most of his interpreters claim that Searle merely stipulates this ingredient, rather than argue in it favor. See, for example, Ylikoski & Mäkelä (2002, p. 469) and Hindriks (2003) who claims that “an exploration of the relation between status functions and collective acceptance reveals that Searle does not provide an argument as to why collective acceptance is required for institutional facts”.

passages in CSR and elsewhere give support to another interpretation. They sustain the idea that collective intentionality is not a stipulated but a derived feature of the way status functions are distinctively assigned. In these passages, Searle calls for the necessity of collective intentionality when he also points at the fact that status functions do not perform its function in virtue of its intrinsic, physical feature. There, he often defends the first claim as a direct implication of the second. There is an often-quoted passage in CSR where he just does it:

> 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. (1995, p. 41).

Searle claims that collective intentionality is an essential feature of all institutional facts *because* of the way status functions are performed, i.e. *not* in virtue of the physical features of the entity that plays it. 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. (1995, p. 124, my emphasis).

Or in the following passage:

> Since the function in question [i.e. status function] cannot be performed solely in virtue of the physical features of the X element, it requires our agreement or acceptance that it be performed. (1995, p. 46).

And, more recently, he claims that:

> Many functions of objects and people are performed solely in virtue of physical properties-Thus an object can perform the function of a hammer, a watch, a car, or a pen solely in virtue of its physical structure. There is, however, a fascinating class of functions where physical structure by itself is not enough, rather people have to assign a certain status to the object in question. And with that status goes a function that can only be performed in virtue of the collective recognition and acceptance of the object ore person as having that status. (2007, p. 14).

To paraphrase Searle, there are certain objects that do not play their function in 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[11].

3. Menger's analyses of money

So far our inquiry about the nature of institutions has delivered the following result. Institutions are made of constitutive rules that are of the form "X counts as Y in C". One crucial feature of constitutive rules is collective intentionality or the idea that only a "we" can count an X as a Y.

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 that is counted as a Y. But is it so? Let us, for example, consider the possibility that John Searle impose to the full moon the function of indicating to him that it is time he trims his sideburns[12]. Obviously, John Searle does not need to agree with anyone for being able to assign such function to the full moon as he can perfectly be the only one on earth assigning it. Clearly, no agreement with anyone, no collective acceptance is necessary. Only a personal acceptance suffices[13]. Suppose, furthermore, that not only Searle but all Californians happen to individually ascribe to the full moon the function of reminding each of them that they have

[11] As Miller notes (2005), collectively imposed functions are however not sufficient to create an institutional fact. Suppose that we collectively accept to use a log as a bench, the fact that the log is counted as a bench does not amount to an institutional fact. Such fact merely amount to a *social* fact, on Searle's taxonomy of social reality (1995, p. 88). It would amount to an institutional fact if the log were *not* able to perform its function in virtue of its shape. Money is in this respect different. None of the physical features of cowry shells make them more suitable to do the task than cigarettes, or squirrel furs. This is why the money system is an institutional fact, and the log, on which the function of being used as a bench has been collectively imposed, is not.

[12] The example is a modified version of a counter-example offered by McGinn in his review of CSR (1995). In Mcginn's version, "we 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 this example, the only individual who must act in conformity with the rule, rules it out as a genuine social rule. Searle could 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 fact that really is social.

[13] Maybe a less curious but similar counter-example is the case of someone who takes the habit of hooking his screwdriver to his door the day before he must pay visit to one of his friend. That person is assigning a function to his screwdriver that his screwdriver is not able to play in virtue of its shape, weight, or of any of its physical features. There is nothing in the physical structure of a screwdriver that makes it a more suited candidate than another object for serving as a reminder. But, again and *pace* Searle, no one but the individual who uses his screwdriver as a reminder needs to accept to count the screwdriver as a reminder for the latter to be able perform its status function.

to clip his sideburns. In this case, many persons would be following the same genuine constitutive rule, but as a private rule. Would not have we obtained an institutional fact?

No we would not. Searle would certainly reply that many "I" similarly counting the same X as an Y do not amount to a genuine institutional fact[14]. The fact that all Californians follow the same rule does not amount to a genuine institutional fact. It is only in case all Californians viewed what they do, when they assign to the full moon the function of reminding them of the sideburns-clipping task, as a "joint action". They would have to see the imposition of the function as something they *do together*, rather than as something each of them do on his side.

Similarly, were it the case that many agents coincidently counted cowry shells as a medium of exchange, it would not be correct to describe the aggregative result as the money system. As I purport to show now, Menger's influential analysis of money[15], developed more than a century ago, provides a counter-example to that claim. His analysis precisely illustrates how a certain good could become money as the result of agents individually ascribing to it the function of money.

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 as 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[16]. This is why a lot of valuable time is generally required to carry out a trade.

To proceed with indirect exchanges is the solution. Instead of accepting the good they presently desire to have, it is in agents' interest to provisory accept another good with the view to exchange it later for the good they are looking for. This intermediate good must be well chosen however. For this intermediate good to correctly play its function, that of

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[14] He however would have to grant the logical possibility of an "I » imposing a status function on a brute fact.
[15] Menger's theory of money has already been presented as challenging Searle's view. See, for example, Turner (1995) and Shearmur (2008), Viskovatoff (2003).
[16] "Consider how seldom it is the case, that a commodity owned by somebody is of less value in use than another commodity owned by someone else! And for the latter just the opposit direction is the case. But how much more seldom does it happen that these two bodies meet!" (Menger, 1892).

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 always is 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[17]. What does matter is, on the market place, to increase one's chance of having one's good accepted in exchange of the good one will be in need of.

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 salability increases, 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).

Now to serve as a widely accepted intermediate good is the only function an object must minimally perform to qualify as money[18]. 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[19].

[17] Menger says that the material advantage that each agent derives from doing so is "per se independent of the general acknowledgement of an item as money" (1996, p. 134).

[18] A generally accepted medium of exchange will generally have the further but surrerogatory functions of unit of account, store of value, standard of deferred payment, etc.

[19] Cigarettes count as money within a group if it is 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* in case the good used as money simultaneously perform another (causal) function. Cigarettes may both be used as a medium of exchange and purchased by some with the view to smoke them. In other words, for an item fulfills the function of money, it must *not exclusively* be used as a medium of exchange. Second, the money system exists in a group even if more than one good plays the role of money. Cigarettes, shells and cattle may simultaneously be used as money 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. 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[19]. The fact that cigarettes are *by and large* accepted as medium of exchange suffices. This should not however allows us to claim, as Tuner, that "one can have the first instance of money, in this [mengarian] model, with only one person intending to use the goods as money" (Turner, 1995, p. 225). Indeed it does not sound correct to say of a group in which only one of its members uses cowry shells as a medium of exchange, that the money system is instituted in this group.

By way of this story, Menger invites us to reflect on the minimal conditions for the money system to be created within a group[20]. What this story shows is that there is, first of all, a point upon which both Menger and Searle agree. It is the idea that what enables a good to serve the function of a media of exchange has nothing to do with its physical (intrinsic) features. As Zùniga notes, Menger's subjectivism forbids all attempt to define a social object, such as money, according to such physical features:

> 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[21].

Menger clearly share Searle's idea that there are certain objects, such as money, that do not play their function in virtue of their shape, weigh, colors, etc. However, Menger would not infer, 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. Attributing the function of being a medium of exchange to some good is something agents do *on their side* or privately. 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, is a sufficient reason for anyone to pick them as a medium of exchange. The resulting rule is both a constitutive rule[22] and a private rule, a possibility that has escaped Searle. Collective intentionality appears as a superfluous feature of the institution of money[23].

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[20] My argument assumes that a story about how money could emerge provides some conceptual information about what money is. For mysterious reason, this assumption is denied by Mäki (2004) when he says that "that if any given account of the origin of money (such as money being an outcome of an invisible-hand process, or of collective intentional action by a regulatory agency) is presented only as a possible scenario, then such an account does not qualify as a description of an essential property of money".

[21] Zùniga (unpublished manuscript).

[22] The rule "cowry shells count as a medium of exchange" is a constitutive rule in the sense that serving as a medium of exchange is a function that cowry shells do not perform in virtue of its physical features. Remember, however, that Searle also defines a constitutive rule as one that creates the possibility of a new form of behavior. Menger's account of how money could replace the barter system allows us to question the latter feature. Indeed, Menger shows that the difference between the barter system and the money system ultimately amounts to a

Interpreting Menger's account of money this way accords with what his author intended to show, although he phrased it differently. Menger explicitly claims to have shown demonstrated that money is neither the product of an agreement (nor the product of a legislative act, as he also stresses). He is however aware of both the popularity and great 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 (1996, p. 132).

In the *Origin of Money* (1892)*,* Menger similarly presents the view that money necessarily is 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 (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"[24] — as an indispensable, preliminary step in the establishment of money:

The task of science is to make us understand the institution of money by presenting the process by which, as economic culture advances, a definite item or a number of items leaves the sphere of the remaining goods and becomes money, *without express agreement of people* and without legislative acts. This is to pose the question of how certain items turn into goods, which are accepted by everyone in exchange for the goods offered for sale to him, even when he has no need for them. (1996, pp.132-133, my emphasis).

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difference about *what* serves as a medium of exchange rather than a difference in the kind of behavior that is involved. After all, we can say that whereas, in the barter system, *any* good can occasionally perform such function, in the money system, *only a very limited number (and ideally only one)* of good performs it.

[23] It would be misleading to interpret the story as showing that, in reality, collective intentionality never plays any role in the emergence of any real money system. The information the story conveys is not empirical but conceptual. For this reason, the story has no explanatory power, although it has some explicatory value.

[24] Menger, 1996, p, 131.

The money system is instituted, on 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 light of self-interested considerations.

Agents do not know that, once aggregated, each of their personal decision 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 contribute 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[25], as the unplanned outcome of specifically individual efforts of members of a society (1996, p. 135).

The money system can therefore establish itself even if agents do not have the intention to establish it. Now to describe the money system as an unintended consequence would not be conceptually coherent for Searle. Searle 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 a 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 get established, as Searle claims.

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

[25] As some commentators observes (Friedman, 2006, Lukes, 2006, Sheamur, 2008), the notion of "unintended consequences" play no role in Searle's argumentation. In spite of observations about the possibility of agents not fully "aware of the form of the collective intentionality by which they are imposing functions on objects", observations that do not cohere very well with the rest of his theory of collective intentionality, Searle seems to assume that the imposition of status-function is an activity that agents consciously perform together.

Menger tells a story of the emergence of money that never appeals to any sort of collective intentionality. Surely, this story is historically implausible[26]. But it does not matter for the use, following Menger's own recommendation[27], we propose to make of it. When treated as a conceptual analysis, rather than as an explanatory model, it elucidates what sort of institutional fact money is[28]. As the precedent 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.

To take money as a counter-example to the claim that collective intentionality is an ingredient to all institutions may appear as a provoking choice. Indeed, it challenges the collectivist position by showing that, on some alternative and arguably better account, their favorite example[29] turns out to be a counter-example. In fact, Menger thought his analyses of money could 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, 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[30].

[26] The lack of plausibility is mainly due to its excessive reliance on rational choice assumptions, namely instrumental rationality and selfishness.
[27] To consider how institutions could be the unintended consequence of self-interested actions provide a "theoretical understanding of their nature" (p. 139) which Menger contrasts with an "historical" understanding (1999, p. 122-139). Menger elucidates the opposition between the two approaches as an opposition between one that pays attention to concrete token-events and one that pays attention to abstract relations between abstracts entities. Cf Nadeau (2005).
[28] Cf. Mäki (1990).
[29] Cf. Tuomela (2003), Hindriks (2003), Lagerspetz (1995).
[30] Menger (1996, p. 137). Could Menger's analysis of money as an unintended consequence of uncoordinated self-interested actions be generalized to all institutions? It is, in all case, the opinion of many social scientists who believes that Menger has found, in the spontaneous growth of the money system, the logical structure of *all* institutional facts[30]. Nozick's explanation of a minimal state (Nozick, 1974), Brennan and Pettit's account of the way the norms of the jury system (1993, 2005), Keller's account of linguistic changes (1994) and Hull's explanation of the progress of sciences (1988, 1997), are, among others, all attempts to understand institutions as the results of many actions performed by agents who are minding their own business only, and are thus being led to strategically take into account others' actions only to the extent that it will improve their own material or psychological conditions. In striking contrast with Searle's description, these self-interested agents are far from seeing themselves as being bound by a "we-intention" to accept the diverse rules that are constitutive of the institutions that prevail in their group.

In sum, Menger's story can be said to show that Searle is wrong to claim that it is always a "we" that count X as Y in C. The aggregation of many "I" counting the same X as an Y seems to suffice for the creation of an institution[31].

4. 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 temporary 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 on the market place. But he may reasonably be confident about his capacity to exchange nonetheless a few goods by using his coconuts as an intermediate good. After all, coconuts are 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 corrected 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 initially be under the *obligation* to use cowry shells as money in the first place.

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[31] Is a generalization from the money system to all institutional facts warranted? Consider a situation in which a fence surrounding Maria's house is counted as a physical barrier. The fence function causally because it plays its function — that of preventing anyone but Maria to cross it — in virtue of its physical shapes and compositions (it is a tall fence made of large stones). Now the fence could also mark a frontier delineating Maria's property land. If it were counted as a frontier, the fence would have a status function. Indeed, it would play this additional function not in virtue of its physical function because, physically, a frontier could very well be a line of yellow paint or a post. The question is: would it make sense for Maria to unilaterally start treating the fence surrounding her property land as a frontier, regardless of the way the others treat the fence? To answer this question, let us imagine what would happen if it happened. Plausibly, Maria would live at risk of having her house intruded. For she would have no means of guessing what other agents would do, in case the fence happened to break, for instance. This is because the fact that agents are physically unable to cross the fence is no guarantee that they have another, independent reason not to cross the fence, were they physically able to. Therefore Maria has no reason to one-sidedly assign to the fence the status function of frontier. The need of collective intentionality in the creation of an institutional fact such as a frontier is vindicated.

Surely, there is a sense in which it is correct to say that Sam *must* 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 do. Temporary 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 exclusively use cowry shells as money.

In line with many other theorists[32], Searle will consider this implication of Menger's account to be at odd with what a sensible understanding of money should be. The fact that Sam cannot be corrected for using coconuts reveals that Menger's theory is unable to do justice to the normative dimension of the money system. His analyses shows how a status functions can be assigned on an object, as 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 (1995, pp. 121-127).

This might be viewed as an unfortunate implication of Menger's analyses. 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 accommodate 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[33]. To put it Searle's terms, anyone must assign to Xs — *and to Xs only* — the function that is associated with the Y term. Searle also calls for the notion of power, rights and duties as the "deontic dimensions" that all institutional facts have. If you belong to a group in which cowry shells are money, you have the *power* to use them as money. Power, on its turn, creates obligation. If I have the power to use my cowry shells as money, you have the obligation to accept my cowry shells in exchange of the good you want to sell.

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[32] Cf. Gilbert, 1989, for example.

[33] Even Lewis whose theory of convention (1969) has been criticized for not accounting for the normative dimension of institutions defines money as a medium of exchange that agents must accept « without question » (1969, p. 24).

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

Unsurprisingly, the idea that the reason for which agents conform to the rules that constitute an institution is a desire-independent reason is very unfamiliar to Menger (as to any proponents of rational choice theory). On his view, 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. 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 it should now be clear, prescribes the use of any object as money, as long as the object is highly traded.

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 these 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. Erase such legislative authority and its codification, Menger would probably claim, and you will have remove 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 as 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?[34]

An official enactment is unnecessary, on Menger's view, only adding stability to an institution that already works by itself[35]. Neither do agents need to have their choices converged on the same good by an external coordinator. The latter appears as useless in 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"[36].

Above all, 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 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 with the "victor" and the agents being ruled with the "vanquished", fear, he argues, 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.[37]

Searle flatly rejects such 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 other have tried to make such eliminations, but without success (1995, p. 70)

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[34] Miller (2001)
[35] Miller, 2001, pp. 184-185. Lewis Famously endorses the same view when he says that "official punishments are superfluous if they agree with our convention, are outweighed if they go against it, are not decisive either way…" (1969, p. 45).
[36] Menger, 2007, p. 261.
[37] Menger, 1996, p. 217.

Searle insists in various places on the inadequacy of the view that recognizes to the maximization one's utility the only sort of motivations behind the acknowledgement 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. (1995, p. 92)

Searle even argue (or merely assumes) that were agents motivated to follow a constitutive rule as a matter of inclination (1995, p. 70), they would not have an institutional fact (1995, p. 71). To be a component of the latter, the constitutive rule — e.g. this fence counts as a frontier — must be followed by agents who, unlike animals marking the limits of their territory, do not consult their "inclination" as to whether they should follow it or not.

Thanks to this distinction between an inclination to P and a desire-independent reason to P, Searle can reply to another objection, advanced by Mcginn, that consists in observing that ants are able to impose a status function. They happen to be able to "mark their territory by means of chemical signals that do not block others by sheer physical insurmountability" (1995, p. 39). Ants being are however deprived of beliefs and intentions, casting doubt on the sophisticated intentionality that Searle requires from agents involved in the assignment of status function.

Searle could respond that although both animals and human beings can impose a status function, that of indicating where the frontier of a territory is, this does not amount to the creation of an institutional fact in the case of ants. This is because whereas ants have an *inclination* not to cross the line, agents have a *desire-independent reason* to behave similarly. One more reason for which ants do not have a desire-independent reason not to cross the line is that none of them ever *commit itself* not to cross the line. The creation of desire-independent reason stems, according to Searle, from an initial commitment or as, he more recently says, "something like a promise" (2008, p. 29). In an unexpected admission, Searle explicitly recognizes the affinity between his view and the social contract theory[38]. The acceptance of status function that is involved in the creation and maintenance of institutional facts is an act of commitment in the following sense. When one recognizes that X counts as Y, one creates a desire-independent reason to act in a certain way, regardless of one's desire to act in this way or not[39]. Such commitment to act in a certain irrespectively to one's desire to act this way clearly has no essential place in Menger's analyses of institutions, who does not see the point of untying the reason to follow the institutional rules from one's personal interest to do so.

5. Three possible paths of reconciliation

So far we have seen that Menger and Searle develop two antagonistic accounts of institution. We have in particular highlighted the divergent role they attribute to the collective intentionality, on the one hand, and to desire-independent reason for action, on the other, in the creation and maintenance of institutions. The importance Searle gives to these two notions forbids him to conceive institutions as the unintended consequences of actions that are directed toward other ends. I have shown that Menger is, on his side, unable to account for the non-instrumental normative dimension of institutions. I have related this shortcoming to the significance Menger sees in matching the rationale of institutional rules with agents' individual interests.

Having brought into light the main points on which Menger and Searle diverge regarding the logical structure of institutions, I wish now to indicate how their differing approaches could be, at least to some extent, reconciled. There indeed seems to be a few possibilities of partially integrating the Mengerian view of institutions as unintended consequences within Searle's intentionalism that deserves scrutiny.

[38] « [Social contract theorists] thought that there is no way we could have a system of political obligations, and indeed, no way we could have a political society, without something like a promise, an original promise, that would create the deontic system necessary to maintain political reality ». (2008, p. 29).

[39] The possibility of having a desire-independent reason is closed to Sen's idea of commitment (Sen, 2002). According to Sen, I can act in a way that reflects my real goals but I can also act in a way that reflects imagined or as-if goals. I have an as-if goal when I act as if the goal of others is my own. Sen gives the example of someone who assumes the responsibility of a trustee and who sees himself as having to furthering the truster's interest (Sen, 2002, p. 179). Another example of acting on the basis of an "as if goal" is when someone sees himself as the representative of a group. Both Sen and Searle's theory of action violate an assumption of rational choice theory, endorsed by Menger, according to which "one's choice always is based on *one*'s goal".

The elements of these reconciliations can be found in various passages in the *Construction of Social Reality,* as well as in subsequent writings. In these passages, Searle endorses several distinctions that can be used to accommodate the spontaneous view of institutions within his view. The first passage is where he addresses the distinction that Merton advances between latent functions and manifest functions (1995, p. 22-23). The second is where he envisages the possibility that agents non-consciously impose status functions (1995, p. 22, 47). The third one is where he characterizes constitutive rules as involving codification and the correlated distinction between formal and informal institutions. The emphasis of these passages will hopefully show that, notwithstanding some if its commentators' claims to the contrary, Searle does afford a place to the unintended consequences of agent's choices in social reality[40]. Let us see them more closely.

It is not infrequent that Searle attempts to accommodate some well-known theories within his own theoretical framework. One such attempt is when Searle considers the distinction Merton makes between "manifest" and "latent" functions (1995, pp. 22, 123). He defines the latter as the "secret, unintended function" (1995, p. 22) that an institution can play in addition to its intended, explicit or manifest function. He gives the example of money whose manifest function is to serve as a medium of exchange but whose latent function could be that of "maintaining the system of power relationships in society" (p. 22). He then offers a test for deciding whether a given function is manifest or latent. The test consists in asking what facts of the world would make a claim about a certain function to be true and to ask oneself whether the intentionality of agents is part of these facts (p. 22). Let us consider, for instance, the two following claims:

(i) The function of X is to serve as a medium of exchange and a store in value.
(ii) The function of X is to maintain the system of power relationships.

According to Searle, claim (i) is made true "by the intentionality with which agents use objects as money". The intentionality involved is more precisely that of "having the purpose of buying, selling, and storing value" (p. 22). Claim (ii), by contrast, is made true "if and only there is a set of unintended causal relations and these serve some teleology, even if it is not a

[40] In his otherwise very clarifying review of Searle's theory of social reality and his critics, Lukes claim that "as things stand, unintended consequences play no role in Searle's argumentation and that must be a weakness, given his ontological project" (Lukes, 2006, p. 7).

teleology served by the speaker" (p. 22). Searle finally concludes that the distinction between manifest functions and latent functions overlaps his own distinction between agentive and nonagentive functions, allowing him to integrate Merton's social theory without having to modify his own. The unintended function of an institution is, in Searle's taxonomy of functions, its nonagentive functions.

Do the two distinctions really overlap, as Searle claims? Maybe not. First, recall that Searle defines all functions, whether agentive or nonagentive, as being observer-relative. Latent functions, however, are, by definition, unrecognized by agents and, therefore, observer-independent. It therefore seems that the recognition of latent functions in social reality commit Searle to abandon the idea that functions always are observer-relative. Searle may however not to abandon the idea of functions as an observer-relative feature of entities. The conscious observers who assign the function of maintaining the system of power relationship to the money system are the theorists rather than the agents.

To grant the idea of latent functions raises nonetheless another problem of consistency for Searle. Remember that he defines a non-agentive function as a function that does not modify the range of things we do, in contrast with an agentive function. Now it is certainly true that the function of the heart to pump the blood does not modify the range of things we do. The same cannot be said of the maintenance of a system of power relationship, however. For such maintenance has the effect of modifying the range of things agents can do. In particular, it unquestionably restricts the range of things the powerless can do, while enlarging the range of things the powerful can do.

Be that as it may, Searle clearly accepts, in the quoted passage, the possibility that some unintended function has a significant place in social reality and this may be where Menger's idea of institution as unintended consequence could perhaps fit[41]. It is indeed possible to interpret his account in light of the distinction between manifest and latent functions. Menger advances two claims about the act of choosing a highly marketable good as a medium of exchange. One refers to the goal that the agents consciously pursue when they make that choice, i.e. enhancing the efficiency of the barter system. And the other claim refers to the unintended function (Menger would rather say the "unintended consequence") that these

[41] Shearmur (2008, pp. 55-58) also explores this possibility.

numerous choices have for the group, i.e. that of replacing the barter system with the money system. These two claims can be summarized as follows:

(i) The function of purchasing a highly marketable good as a medium of exchange is to facilitate exchange.

(ii) The function of purchasing a highly marketable good as a medium of exchange is to replace the barter system with the money system.

According to this line of interpretation, claim (i) is about the manifest, recognized — or agentive function — of adopting a medium of exchange and claim (ii) is a claim about the latent, unintended, secret — or nonagentive — function of adopting a media of exchange. In light of Merton's idea of latent function, Menger can be interpreted as claiming that when agents individually and consciously ascribe to the same good the manifest function of being a medium of exchange, it has the hidden, unintended or latent function of establishing the money system in their group. The only modification to Menger's theory that we need to introduce to make it fit the Mertonian/Searlian framework of latent/nonagentive function is to replace the word "consequence" with that of function.

There are, however, a few problems with such re-interpretation. First of all, the establishment of the money system is hardly the sort of latent functions that Merton and his followers enjoys discovering. For they generally are more interested in shedding light on the hidden effect institutions have on the cohesion of the group or on the reproduction of the ruling class. Second of all, whereas both Menger and Merton invoke the production of unintended functions, the notion does not occupy the same place in their explanation. Whereas Merton takes functions as an *explanans*, i.e. as what explains, Menger takes them as an *explanandum*, i.e. as what is to be explained. On Merton's view, the unintended increase of the cohesion of the group is an effect of the rainmaking ceremonies and such effect retroactively explains the rainmaking ceremonies. On Menger's view, the emergence of the money system is the unintended state of affairs that is explained as the result of agents' decision to purchase a medium of exchange with the view to facilitate their trade. Unfortunately, all of these discrepancies between the uses Merton and Menger respectively make of the notion of unintended function downgrades the prospect of integrating this way Menger's view within Searle's conception of institutions.

Let us therefore turn to the second possibility of integration. 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'" (1995, p. 22). This way, Searle adds a further feature of constitutive rules, namely that agents could follow them without recognizing that they do. "As long as people continue to recognize the X as having the Y status function", adds Searle, "the institutional fact is created and maintained. They do not in addition have to recognize that they are so recognizing" (1995, p. 47).

Allowing the possibility that agents collectively assign functions without being aware of doing so may put Searle in a position to allocate a room to Menger's view of institution inside his framework. Indeed Searle gives justice to the idea, so central in the tradition of spontaneous order, that institutions need not be (and often are not) as transparent to their participants as they might appear to some external, and theoretically skilled, observers. Let us call it the condition of opacity.

The condition of opacity requires however further elucidations. As it turns out, a close reading of Searle's writings reveal five different, but not mutually exclusive, ways of understanding the idea that agents non-consciously assign status function on object.

One relates to the fact that, sometimes, agents do not linguistically represent to themselves what they do in the precise terms used by the social scientists. Most agents do not have the theoretical vocabulary of the latter, nor do they need to master it, to be able buy anything, to get married or to start a war. Searle seems to claim that mastering co-refential terms suffices when he says that "to believe that something is money, one does not actually need the word 'money'. It is sufficient that one believes that the entities in question are media of exchange, repositories value, payment for debts, salaries for services rendered, etc." (1995, p. 52)[42]. On this proposal, agents non-consciously assign the function of serving as "money" on cowry shells when they consciously assign the function of "money of exchange" on them.

[42] Note that this passage does not square very well with another where Searle says that "substitution of coreferential terms in function contexts fails to guarantee preservation of truth value. Thus 'the function of A is to X' together with X-ing is identical with Y-ing' do not imply "the function of A is to Y" (1995, p. 19).

Another way of clarifying the condition of opacity relates to the lack of ontological knowledge that agents typically have. Agents are obviously not aware of the fact that they impose a status function on a brute fact. This is because most of them ignore Searle's theory of institution. As Searle specifies, "they need not think, 'We are collectively imposing a value on something that we do not regard as valuable because of its purely physical features' even though that is exactly what they are doing" (1995, p. 47).

Not only are agents obviously unaware of the fact that their activity can be accurately described by means of Searle's theoretical apparatus, they also and quite often happen to hold some wrong theoretical beliefs about what they do. This amounts to a third way of understanding the condition of opacity. For instance, they may believe that marriage is sanctified by god, that money is backed by gold, that kings are divinely authorized, etc. As Searle rightly claims, cases where these inaccurate beliefs are at play do not refute his theory. It does not refute in particular his central claim about the self-referentiality of institutions (1995, pp. 32-34, 52-53). The idea that something is money only if it is believed to be such remains true even when the belief is wrong. For example, the claim that someone is a king only if agents believe him to be a king remains true even if, when asked, the agents would offer an alternative, more observer-independent, evidence (e.g. the king is related to God), than their mere belief that he is a king, in favor of the fact that Louis XIV is the king. This is because the wrong belief that Louis XIV is the king because he is related to God presupposes the belief that he is the king "tout court", and the latter belief is all that is ultimately needed for Louis XIV to be the king.

A fourth way to specify the condition of opacity is to conceive the imposition of function as an activity that agents can both do *together* while being only aware of their own individual imposition. According to this line of thought, it would be possible for agents to be the participants of a collective intentional action while (wrongly) believing that they act individually. Searle seems to endorse such view when he says, without however further developments, that "participants need not be consciously aware of the form of the collective intentionality by which they are imposing functions on objects" (1995, p. 47). I take the suggested case to be one in which agents fail to represent to themselves what they do in terms of something they do together, although this is exactly what they do. A familiar (though far-fetch) example would be the case where two agents are pushing a car (which they would or would not be unable to push were they pushing it alone) but who are not conscious of each other's contribution and who, therefore, are not consciously aware of the form of the collective intentionality by which they are pushing the car. Although both are pushing the car together, they are only aware of the individual form of intentionality of their own individual action.

This suggestion raises some difficulties. First of all, whether cases of this type would genuinely illustrate a case of collective action is doubtful. One widely recognized condition of collective action is that its "we-ness" dimension cannot escape the consciousness of its participants. This condition helps to distinguish cases where agents merely bring a joint effect (e.g. littering, driving the prices to a lower level) and cases where people own in common an action as something they combine to perform (exchanging ideas, co-writing a paper, singing a duet). In the first case, agents may very well act without being conscious of the fact that their action combine to produce an effect. In the second case, however, it is difficult to see how an awareness of doing one's personal contribution to some shared goal could possibility escape the mind of the participants. But, unlike the first case, the second case is usually taken as a genuine case of joint actions.

Second, the possibility of being unaware of the form of collective intentionality by which one is doing something is not consistent with Searle's theory of collective intentionality (1990). It is, in particular, not in agreement with his characterization of the "we-ness" that is involved in collective intentional action as a "psychological mode", rather than as a feature that pertains to the content of the action. If the difference between an action based on an I-intention and one that is based on a We-intention has to do with the different psychological mode in which these two actions are performed, the difference can hardly escape the consciousness of agents.

Finally, even if it were possible for agents acting together to be unaware of their doing so, it does not seem that it would allocate the room we are looking for to Menger's view within Searle's theory of institutional fact. For Menger would not accept to describe the spontaneous emergence of money as involving agents who are not aware of the collective form of intentionality of what they do. What agents are unaware of is the emergence of the institution that each of their actions give rise to. This lack of awareness cannot be translated into a lack of awareness of the we-ness dimension of their action. The reason is that there is no such we-ness dimension in the first place. To give rise to a collective outcome is one thing, and to give rise to a collective outcome "jointly" or "together" is another. For these latter words entails a sense of owning an action in common that is utterly absent in Menger's account of the establishment of the money system.

Our current endeavor to accommodate a place to Menger's view of institution within Searle's own theory has not given much result. There remains however a third distinction in Searle's theoretical apparatus that might offer a better prospect. It is the distinction he makes between formal and informal institutions (1995, p. 53). Searle defines informal institutions as institutions that are not codified into explicit laws, but that could be. Examples are cocktail parties, friendships and dates. Exemplifications of formal institutions are property, marriage and money, as they involve codification (1995, p. 88). Formal institutions are not logically different from informal institutions in the sense that both involve the assignment of status functions. But in the case of formal institutions only is such assignment "a matter of policy" (2008, p. 25). There are thus "codified into explicit laws" (1995, p. 88).

Why do we codify? How come we feel the urge of transforming an informal, un-codified institution into a formal, codified one? We would codify cocktail parties, Searle answers, if "it mattered tremendously whether or not something was really a cocktail party or only a tea party" (1995, p. 88). Rephrased in terms of the X counts as Y formula, we can say that codification is at play when it matters tremendously whether a given particular X must be counted as a Y or rather as a Y'[43]. For example, we codify money because it matters whether a given piece of paper on which there is Giaccometti's portrait (X) is a 100.- Suisse francs (Y) or a piece of forgery (Y'). We codify the money system, in brief, to prevent counterfeit money.

The distinction between formal and informal institutions leads Searle to revise what he describes as the "self-referentiality" of institutions. The case of counterfeit money refutes the idea that something is money if agents believe it is money. That is why Searle specifies that, in the case of formal, codified institutions, the fact that agents count a given piece of paper on which there is Giaccometti's portrait as a 100.- francs does not guarantee that piece of paper to be a 100.- francs. For these agents could very well be forgers, or agents abused by forgers. In opposite case, a 100.- francs that has slipped into two limes of a wooden floor is a 100.- francs even if no one thinks it is money. How does codification authorizes these possibilities?

[43] What considerations in particular is it relevant to consider in order to properly assess whether it tremendously matters or not whether an X is a Y or Y' is left unspecified.

Codification explains them because it ensures that the self-referentiality of institutional fact is a feature of the type rather than of the token. In the case of codified institutions, the possibility of being mistaken about a particular token is always there. “But where the type of thing is concerned”, says Searle, “the belief that the type is a type of money is constitutive of its being money” (1995, p. 33). By contrast, informal institutions, such as cocktail parties, are what they are only in virtue of being considered as such, period. In other words, the representations that agents have of tokens cannot be defeated in the case of informal, un-codified institutions. Agents cannot be wrong in counting a given X as a Y. Only in the case of codified institutions can they misrepresent to themselves (or to others) a given X as a Y. Only in the case of codified institutions can they therefore be corrected.

In light of the distinction between a formal and an informal institution, we can re-interpret Menger’s account as showing that the money system could very well prevail in a group in an informal or un-codified form. Menger’s account reveals that money needs not exist in a codified form to exist. It is a view that Searle must accept even if he explicitly takes money as an instance of a codified institution, along with marriages and property. He seems to be ready to accept that the current codified form of the money system in most countries is a contingent state of affairs. In a passage (that could have been written by Menger himself), Searle imagines

> a system of exchange where objects are held for the purposes of barter, even though the people holding those objects may have no interest in them or use for them, as such. A similar situation existed, by the way, in the former Soviet Union at the time of its collapse. In Moscow, in 1990 and 1991, packs of Marlboro cigarettes had attained the status of a kind of currency. People would accept payment in Marlboros, even though they did not themselves smoke. The combination of paper and tobacco already had an agentive function, named by the word “cigarettes”, and on top of that function was imposed the nonagentive function named by “medium of exchange” (1995, pp. 42-43).

Packs of Marlboro that count as media of exchange never were a matter of general policy in Moscow. Still, the cigarettes had “attained the status of a kind of currency”, as Searle acknowledges, giving credence to the possibility that money could informally exists.

More to the point, the distinction between formal an informal institutions reveals that Searle is ready to restrict the deontic dimensions of institutions to formal institutions only and to leave informal one in the grip of the subjective and externally uncontrolled representations of the agents. It is only when a central authority makes is matter of obligatory rule that agents have the rights, obligation to count a cowry shell as money. So the imposition of function is, in itself, an activity that does not entail any of the deontic powers listed previously, As Searle makes it clear, it is only "where the imposition of status function according to the formula [x counts as y in c] becomes *a matter of general policy*, [that] the formula acquires a normative status."[44] Correlatively, when a rule remains un-codified, such as the rule of cocktail parties, there is no normativity involved. There is something particularly snobbish about rectifying someone who miscounts a cocktail party for a tea party.

In fact, the distinction between formal and informal institution is so important that Searle occasionally restricts the scope of constitutive rules to the cases where the assignment of function is "a matter of policy":

> When the practice of imposing a status function becomes regularized and established, then it becomes a constitutive rule. If the tribe makes it a *matter of policy* that [someone] is the leader because he has such and such features and that any successor as leader must have these features, then they have established a *constitutive rule* of leadership. (2008, p. 25, my emphasis).

On such view, constitutive rules are, strictly speaking, codified, i.e. officially authorized, rules only. If this is so, Searle might even be willing to accept that it is only in case it is a matter of policy that someone is the leader that agents have a desire-independent reason to obey him. As long as the practice of counting her as the chief is not regularized and established, agents will listen to what their desire dictate them to do when evaluating the need to follow her directives or not. But Searle remains unclear on this particular issue, so it remains a speculative interpretation of that part of his theory.

In any case, it should now be clear why the emphasis of the special role that Searle attributes to official codification in the creation of constitutive rule would permit his theory to integrate Menger's conception. It would have this fortunate consequence because it would show that Menger and Searle are, after all, not speaking about the same thing when they respectively claim that (i) money is the unintended consequences of actions toward other ends and that (ii) money would not exist if we did not agree to count something as having the function of

[44] Searle, 1995, p. 48, my emphasis.

money. It more precisely helps us to see that, from a chronological perspective[45], the scope of Searle's theory starts where the scope of Menger's theory ends. Whereas the latter is interested in the money system while it still is in its informal, officially un-codified form, Searle, on his part, focuses on the money system, once it exists in a codified form and becomes, as he says, a matter of general policy.

Conclusion

In *The Origin of Money* (1892), Carl Menger describes the emergence of the money system as the unintended consequence of actions directed toward another end. No agreement is required for money to replace the barter system, he claims. Such view is strikingly at odd with that of John Searle (1995) who, more recently, argue that something cannot be money unless it is collectively recognized as such. As any institutional facts, money is observer-dependent in the following sense: something could not be money unless we collectively intended to assign it the function of being a medium of exchange.

The conflicting nature of these two conceptions has already been noticed before[46]. Hopefully, the present paper provides a clearer view about how these two conceptions diverge. It also aims at providing an insight of the various ways they could possibly fit together.

I first have presented Searle's core idea of status function. I have then drawn the attention to the superfluous or, on the contrary, to the crucial role that he and Menger respectively attribute to collective intentionality in the imposition of status-functions. I have shown that, while, on Searle's view, it is always a "we" that count a certain entity as having a status function, such imposition can, on Menger's conception of institution, perfectly be individually performed.

I have subsequently drawn attention to the divergent ways these two authors conceive the reasons agents act in conformity with the institutional rules. According to Menger, institutions can always be re-described as functioning in accordance with the personal advantages of its

[45] I assume here, for the sake of clarity, that an institution exists, first, informally and that it, secondly, evolves into a formal system. But the destiny of institution may follow some other path. For example, it can become informal after having known a previous formal existence.
[46] Turner, 1995, Zaibert, 2004, Shearmur, 2007, Friedman, 2006.

participants. This is an idea that Searle explicitly finds faulty because it does not do justice to what he takes to be the deontic dimension of all institutional facts.

I have finally pointed at ways to reconcile these two conflicting views. A few passages in Searle (1995) offer, in particular, the chance of integrating Menger's view of institutions as unintended consequences within the intentionalist framework that Searle advocates. These are the passages where Searle endorses the distinctions between (i) latent and manifest functions, (ii) cases where imposing a function is a conscious activity and cases where it is not and between (iii) formal and informal institutions. I have argued that, of the three, the third offers the better prospect of reconciliation. This is so because it minimizes the number of inconsistencies that the recognition of unintended consequences in social life brings into Searle's intentionalist theory, while affording a decent room, within the category of informal institutions, to Menger's theory of institutions as unintended consequences.

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