Three ways of misunderstanding the power of rules

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Abstract. *Certain rules do not merely regulate social behaviours: they make social behaviours possible. That idea forms part of the philosophy of social science mainstream. It dates back at least to John Rawls' distinction between rules derived from past experience and rules of a practice, and possibly long before. This paper distinguishes and questions three ways of construing constitutive rules.*
(1) Constitutive rules are often thought to regulate some behaviours that would not be possible without them. This paper claims, however, that it is true in a sense of all *rules.*
(2) Constitutive rules alone, it is said, can confer statuses, rights and duties, thus "creating" our social world. This paper argues that most rules, including rules that do not look constitutive at all, logically imply statuses, rights and duties. However, no rule creates these things in a causal sense.
(3) The constitutive rules of a social practice can be seen as necessary to its definition, in such a way that the practice would be inconceivable without its rules. Such necessary rules, however, cannot be identified with certainty, as institutions change through time and space in ways that defy prediction.
The paper concludes that philosophy of social science would fare better without the distinction between regulative and constitutive rules.

It is widely accepted in the analytic philosophy of the social sciences that social rules fall into two categories: those that merely regulate already existing behaviours, and those that make possible certain behaviours that would not exist otherwise. Thus, it is said, one cannot lend money to oneself on pain of contradiction: a constitutive rule of the practice of borrowing is that there must be a borrower distinct from the lender. This distinction between "regulative" and "constitutive" rules was made popular by John Searle (1995, 2010), but it can be traced back to Rawls (1955) or Wittgenstein (1956).

"Constitutivity", as we might call it, is usually assumed to be an optional and binary feature of rules: not all rules are constitutive, and a rule either is or is not constitutive (non-constitutive rules are often called "regulative" rules). What makes constitutive rules special is the fact that they make possible certain behaviours that could not exist otherwise. They have also been said to create rights, duties and statuses, and to be logically impossible to break. Constitutive rules, under various guises, are central to the analytic philosophy of institutions. It has been claimed that every institution is based on at least one constitutive rule (Searle, 2005).

The notion that some rules are constitutive has remained remarkably undisputed in the analytic philosophy of social science. It can be used to back the claim that most of the interesting effects of rules and laws derive from their formal structure. If true, this would mean that we can learn many things about society by conceptual analysis alone, a claim of obvious interest to analytic philosophers.

This article, a critical overview of the most famous descriptions of constitutive rules, argues that there is no such class of rules. Constitutivity is a trivial formal property possessed by any rule whatsoever. Before reaching this conclusion, the paper will discuss three ways of defining constitutive rules.

In a first definition, constitutive rules are said to make possible the behaviours they regulate, while regulative rules regulate independently existing behaviours. The paper will argue that, in a trivial sense, all rules make some of the behaviours that they regulate possible. The triviality of this property, called "weak constitutivity", willl be underlined.

A second way of defining constitutive rules, made famous by the work of John Searle (1995, 2010) characterises them by their status-granting powers. Unlike regulative rules, constitutive rules create statuses, rights and duties where there were none before, thanks to their formal structure ("X counts as Y in C"). This paper claims that regulative rules can just as easily be presented in "X counts as Y in C" format. Furthermore, it will point out that the interesting causal effects of rules have little to do with their logical form, or their constitutive character. They arise, instead, from their diffusion in a population (a historical phenomenon).

Finally, we will turn to the most venerable definition of constitutive rules. It starts from the intuition that some rules occupy a privileged position in the definition of a practice. Promises do not change much when people stop using the oath, "Cross my heart and hope to die". They would change beyond recognition if the rule, "Promises must be kept" were changed. Thus, some rules make the practices they describe possible (in a purely formal fashion) because they are necessarily included in their definition. Finding necessary definition criteria for institutions, however, is harder than it might seem, because of the unpredictability of historical change. Some rules indeed seem more central than others, but that is a historical fact, not a property to be discovered through conceptual analysis, and least of all a logical property.

1. Constitutive rules as creating possibilities

The standard description of constitutive rules is often taken from Searle's work. In his latest book, he characterises them in the following way:

« It is important to distinguish at least two kinds of rules. Our favourite examples of rules regulate antecedently existing forms of behaviour. For example, the rule "Drive on the right-hand side of the road" regulates driving in the United States, but driving can exist independently of this rule. Some rules, however, do not just regulate, but they also create the possibility of the very behaviour they regulate. So the rules of chess, for example, do not just regulate pushing pieces around on a board, but acting in accordance with a sufficient number of the rules is a logically necessary condition for playing chess, because chess does not exist apart from the rules. »

(Searle 2010: 9-10.)

This characterisation is ambiguous. It claims to be distinguishing two different kinds of rules, the constitutive and the merely regulative. Yet Searle's example shows that constitutive rules are just a special kind of regulative rule: the rules of chess do regulate the action of pushing pieces around on a board, an action that could exist without them. They regulate many forms of behaviour — playing, building game boards, etc. — that would certainly exist without them. Their constitutive role is an addition to their regulative role, not an alternative.

On the other hand, this passage is often read as showing that some rules are merely regulative and lack constitutive powers. The rule, "Drive on the right-hand side of the road" would illustrate this. However, that rule can easily be shown to possess constitutive powers, just like the rules of chess. Without the rule, "Drive on the right-hand side of the road", many forms of behaviour that it regulates would not exist: one could not abide by the Road Code prescriptions by driving on the right-hand side of the road; one could not commit an infraction to the US Road Code by driving on the left, or give someone a fine on that basis, etc. The properties of the Road Code and those of the rules of chess seem quite similar in this respect.

In many instances, Searle defines constitutive rules in quite a different way. In this second definition, they are characterised by their ability to grant things a status they did not previously possess. For instance, bits of papers possess their value, according to Searle, in virtue of a constitutive rule that treats them as money. We shall come back to this second definition. For the moment, let us just note that it is by no means implied in the first definition.

1.1. Weak constitutivity

A charitable interpretation of Searle's first definition should, I think, conclude that the distinction is not between kinds of rules, but between kinds of *behaviour descriptions*. Driving, after all, could exist without any kind of code, which is not the case for chess. Chess, being a game, seems to require some rules by definition (insofar as things like games and rules can be defined). This latter claim merely reminds us of the fact that rules exist, that they regulate behaviours, and that some description of actions would not be complete if they did not mention some rule or other. Driving can be described without mentioning the Road Code or alluding to it. Fining someone for not driving on the prescribed side of the road cannot. The distinction does not discriminate between distinct kinds of rules, but between distinct kinds of action descriptions: some necessarily mention some rule (explicitly or not), some do not.

This claim is as trivial as it is unobjectionable. What it says about rules could be said of anything at all: stones, weather events, electricity, galaxies — for all these things we may find action descriptions that necessarily mention them. The safest interpretation of Searle's characterisation of constitutive rules, therefore, would simply say that some action descriptions necessarily mention some rule or set of rules, in the same way that some action descriptions necessarily mention stones. Seen in this way, the constitutivity of rules is nothing special. This interpretation is what I will call 'weak constitutivity".

1.2. Weak constitutivity is trivial

A little more formally, it can be shown that any action description that involves an object, if true, would imply the existence of that object. For example, the truth of (1)

(1) Doris is eating an apple

logically implies (2)

(2) There are apples (at least one).

If (1) is true, so is (2). Naturally, the same reasoning applies to (3)

(3) Doris refrains from smoking in the pub, thus respecting the ban on smoking in pubs.

which logically implies (4)

(4) Smoking is banned in pubs.

Nothing here distinguishes natural facts like the existence of apples from legal facts like a ban on smoking. Whatever other differences there might be between those two facts (and of course there are many), they have nothing to do with the kind of logical implication we are describing. Any kind of proposition can play the part of our sentences (2) and (4). Any type of human action, collective or not, intentional or not, will do. In a sense, (2) and (4) both "create possibilities for action". Thus, a logical possibility for action is implied by any fact, however trivial. This purely formal possibility is completely different from the kind of opportunities for action that laws and rules provide. And it is no help at all if what we are looking for is a clear-cut distinction between constitutive rules and merely regulative rules.

According to weak constitutivity, there is no special set of constitutive rules. *All* rules can be called constitutive, in that they make some behaviours possible. That, however, is quite a trivial property. Most of the things we can describe make some behaviours possible. The sheet of paper in front of you makes it possible for you to touch that particular sheet of paper, something you obviously could not do if that particular sheet of paper did not exist. Likewise, the existence of a Road code in your country makes it possible for you to abide by that code, give or pay fines in accordance to it, etc.

On this view, constitutivity is not a causal power of rules, merely a formal property of action descriptions. Rules "make some behaviours possible" only in the sense that their description necessarily implies some rule. It would be more accurate to say that some behaviour descriptions imply rules. That would allow us to avoid several misunderstandings that tend to go along with verbs like "constitute" or "make possible".

Rules "constitute" some action descriptions like flour constitutes some cakes, like wood constitutes some chairs. These things are in a relation of mere inclusion with the thing they constitute. Wood does not build chair and flour does not bake cakes. One might say they make those things possible, but that would be a bit of a stretch, as it would suggest that they possess some causal powers akin to those of upholsterers and bakers.

Likewise, to say that the rules of chess "create" the practice of chess, or "make it possible" is misleading: they *are* the game of chess, or at least a crucial part of it. They constitute chess only in a weak, purely formal sense: they are an important part of what we refer to when we talk about chess. Weak constitutivity entails no causal power.

2. Constitutive rules as status declarations

But weak constitutivity is clearly not what Searle has in mind. Throughout his books (1995, 2010), he refers to constitutive rules as rules of a distinct type, endowed with specific and impressive causal powers. In Searle's new framework (2010), constitutive rules are reframed as "Standing Status Function Declarations": they are the most stable form of Declarations, i.e. of linguistic representations that create rights and duties if and when they are shared and accepted sufficiently widely in a community[1]. The causal power of Declarations (constitutive rules among them) lie at the basis of Searle's framework:

« ... all of human social reality, and in that sense nearly all of human civilisation, is created in its initial existence and maintained in its continued existence by a single, logico-linguistic operation. (...) It is a status-function declaration. »

(Searle 2010: 201.)

Creating civilisation and maintaining it into existence clearly requires causal powers — momentous ones at that. Constitutive rules (being Declarations) create, in quite a strong sense of that term, institutional facts described as "tremendously enabling". And they create them from scratch. The justification for such a claim lies in Searle's second characterisation of constitutive rules.

« Characteristically, regulative rules have the form "Do X", constitutive rules have the form "X counts as Y in C". Thus, for example, such and such *counts as* a legal knight move in a game of chess, such and such position *counts as* a checkmate. »

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[1] Declarations elaborate upon and generalise Searle's earlier (1995) concept of constitutive rule. This paper deals exclusively with the latter, although the author feels that many of the points made about constitutive rules could also be made about Declarations.

(Searle 2010: 10 — italics in the original.)

On this view, constitutive rules (unlike other rules) possess their powers in virtue of their logical form. While other rules forbid, allow and regulate, constitutive rules grant statuses, create titles and confer rights and duties. This second characterisation presents several problems. First, it still fails to provide us with a clear demarcation criterion between constitutive rules and merely regulative ones. Second, as Searle remarks, there is something mysterious about the way constitutive rules create rights and statuses *ex nihilo*. Let us examine these two difficulties in turn.

2.1. Is it true that only constitutive rules take the form "X counts as Y in C"?

There are many reasons to doubt what Searle asserts as a fact. "Drive on the right-hand side of the road", Searle's prototypical example of a regulative rule, is easily formulated in "X counts as Y in C" format:

« Not driving on the right side of a United States road counts as an infraction to the Road Code, sanctioned by a fee. »

Conversely, the rules of chess described by Searle seem easily translated in "Do X" format:

« To move your knight, make a move that consists of first one step in a horizontal or vertical direction, and then one step diagonally in an outward direction. Backward moves are forbidden, as well as inward second steps. »

Then again, on a closer examination, an allegedly powerful difference between two kinds of rules turns into a formal difference between two ways of describing rules.

2.3. How do constitutive rules create statuses out of nothing?

The previous section of this paper gave some reasons to think that constitutive rules, *qua* constitutive, have no special causal power. Social practices are made *of* constitutive rules, not made *by* them. How could constitutivity, a purely formal feature of rules, endow them with causal powers? Unlike our first puzzle, this one is addressed at length by Searle.

« I have been talking about status function declarations in a way that gives them extraordinary powers. However, it must seem mysterious that we can create all these powers just by making noises through our mouths. »

(Searle 2010: 88-89.)

Where do the causal powers of constitutive rules come from? Searle's answer, which I find quite unobjectionable, states that constitutive rules are efficient only insofar as they are transmitted.

« One of the strangest and most striking features of institutional facts is that there is nothing institutional to the institutional fact prior to its creation. And since its creation is really just words, words, words, we have to ask, How does it get to be so successful? How do we manage to get away with it? Is it not just a sleight of hand? The short answer to the question is that we get away with it to the extent that we can get other people to accept it. As long as there is collective recognition or acceptance of the institutional facts, they will work. »

(Searle 2010: 105-106.)

Two things about this excellent explanation of the causal powers of rules are worth pointing out.

First, the explanation has nothing to do with (allegedly) constitutive rules as such. It could apply just as well, for instance, to the rule "Drive on the right-hand side of the road". That rule is just as dependent on public consensus as others. The "Drive on the right" rule is efficient insofar as it is widely recognised, and the same is true of the rules of chess.

Second, the popularity of a rule, the degree to which it is accepted, is not at all implied by its logical form. It is the outcome of a causal process that involves people communicating, migrating, using communication technologies and means of coercion — a history of cultural diffusion. If that is where rules take their actual powers from, as Searle seems to suggest in this passage, then one may conclude that the formal properties of rules play a small part in "making the social world". Without cultural transmission, most rules are socially inert[2]. If I decide that the upper-left key on my keyboard will from now on be called Jacqueline, that constitutive rule is impeccably well-formed by Searle's standards. However, this idea of mine will have no social consequence worth mentioning because it will never be taken seriously by anyone else.

Yet the fact that rules get their efficacy from their diffusion is all but hidden in Searle's work. On the contrary, *Making the social world* stresses the causal impact of the most formal features of Declarations:

« All institutional reality is created by linguistic representations. »

(Searle 2010: 14.)

Society as pictured by Searle is not the messy product of cultural transmission, but the organised outcome of a conscious, collective enterprise (« I will imagine the construction of society as an engineering problem » — Searle 2010: 133). Our social world did not evolve into existence: it was made, or created, and its creation was a primarily logical process, governed by the grammatical features of society's rules.

« Society has a logical (conceptual, propositional) structure that admits of, indeed requires logical analysis. »

(Searle 2010: 6.)

Thus, readers may be forgiven for forgetting that, in this framework, the formal structure of Declarations is completely powerless without cultural transmission. They may also have reasons to think there exists a special category of rules that have the power of creating a great deal of society out of nothing, solely by virtue of their logical structure. The arguments offered in *Making the social world* do not warrant this conclusion.

3. Constitutive Rules as Defining rules

However, there might be a way of construing constitutive rules that would not lend them mysterious causal powers. According to this interpretation, a constitutive rule is merely a necessary feature of the definition of a given social practice. Some rules of a practice can be changed without altering the institution they regulate, but constitutive rules are so crucial to the identity of an institution that they cannot be altered without destroying it. This is the most important feature of the definition

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[2] I thank Dan Sperber for this interpretation and for pointing to this passage of Searle.

offered by Rawls for his "rules of a practice": some rules, like the rule stating that promises must be kept, are so intrinsic to a practice that the practice would not be logically possible without them.

This interpretation is coherent with the fact that constitutive rules are thought to be distinct from regulative rules (in spite of the problems entailed by this position), and with the widespread idea that constitutive rules cannot be broken. It has been claimed that actions violating a constitutive rule are not physically impossible, but meaningless. As a result, they cannot be violated on pains of contradiction. This view will be familiar to readers of Wittgenstein, who famously remarked that ill-formed mathematical statements are not forbidden but meaningless (Wittgenstein, 1956[3]). Rawls endorsed this claim in his discussion of the "rules of a practice". Unlike rules derived from prior experience, the rules of a practice define the practice they rule. Hence, they present the weird property of being unbreakable by definition.

« The practice is logically prior to particular cases. Unless there is a practice the terms referring to actions specified by it lack a sense. »

(Rawls, 1955: 25.)

This criterion seems more promising than the first two ways of defining constitutive rules that we have examined thus far. It clearly does not seem to apply to all rules. No one claims that the rule asking you to drive on the right side of the road is logically unbreakable. The rule that (in many countries) describes marriage as a union of one man and one woman is sometimes seen as unbreakable on formal grounds (Descombes, 2007); so is the rule demanding that promises be kept.

Claims of logical unbreakability are usually backed by a claim of definitional necessity. If constitutive rules can never be broken, that is because they are a necessary feature of the practice they regulate. For instance, for those who believe that monogamy is a constitutive rule of marriage, polygamous marriage would not be a wrong or different kind of marriage. It would not be marriage at all. Other laws of marriage, on the other hand (tax breaks granted to married couples, for instance) are not deemed necessary to the definition of marriage.

Claims of this kind are known in modal ontology as essentialist, as they entail that an entity could not exist without a given property. Essentialism could be said to come in two basic flavours. Leibnizian essentialism says that every thing necessarily has the properties that it has. Aristotelian Essentialism (thus called by Quine, 1953) says that only some properties of things are necessary.

A Leibnizian essentialist would say that French marriage (as it exists today) is necessarily monogamous and necessarily grants married couples a tax break. A change in either of these laws would destroy French marriage as we know it. An Aristotelian essentialist, on the contrary, would say that French marriage would remain French marriage in some sense even if the tax law was changed. But it would *not* be marriage *in any sense of that term* if it became polygamous.

If one wants to claim that some rules, but not others, necessarily define the practice that they regulate, one cannot endorse Leibnizian essentialism (since it puts all rules on an equal footing). One has no choice but to embrace some version of Aristotelian essentialism about social practices: some rules can be changed without endangering the identity of an institution, others are necessary to its existence. Endorsing Aristotelian essentialism about institutions allows us to make sense of the notion that only some rules are constitutive, in the sense that the practices they regulate would not exist without them. Unfortunately, it leaves us with the difficult task of finding out what makes a rule essential to a practice.

3.1. Core laws, essential rules

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[3] See David Bloor (1997) for a commentary of Wittgenstein centered on the problem of constitutivity.

At first, this does not seem too difficult. Some laws are obviously much more important than others for the survival of an institution. Political scientist Bernard Manin (1997), for example, has argued that representative democracy is a political form that almost always comes with four features:

« 1. Those who govern are appointed by election at regular intervals.
2. The decision-making of those who govern retains a degree of independence from the wishes of the electorate.
3. Those who are governed may give expression to their opinions and political wishes without these being subject to the control of those who govern.
4. Public decisions undergo the trial of debate. »

(Manin 1997: 6.)

Those features, Manin argues, form the core of modern representative republics, which means that they tend to occur together, if and when they occur. He calls them the principles of representative government:

« By principles I do not mean abstract, timeless ideas or ideals, but concrete institutional arrangements that were invented at a particular point in history and, since that point, have been observable as simultaneously present in all governments described as representative. In some countries, such as Britain and the United States, these arrangements have remained in place ever since their first appearance. In others, such as France, they have occasionally been abolished, but then were revoked all of a piece and the form of government changed completely (...) The combination may or may not be present in a country at any given time, but, when it is found, it is found en bloc. »

(Manin 1997: 4.)

According to Manin, the core features of representative republics occur together and they form a coherent package. He does not claim that they might never be dissociated. From a logical point of view, they could certainly be. A representative republic with free elections, representation, debate between representatives, but no freedom of speech for voters, is a conceivable (if impractical) option. The co-occurence of these features is not a formal necessity, but a historical observation that may be proven wrong in the future by historical discoveries or political developments.

Thus core features, like Manin's four principles, are not constitutive rules. Their co-occurence is not a formal necessity. One does not observe the linkage between those principles just by reading constitutions and drawing analytical conclusions therefrom. In Manin's careful historical investigation, whether a principle is a core feature of an institution is an empirical question. As such, it is settled by empirical means, not by appealing to the logical form of an underlying collective intention.

3.2. The 'Fundamental Laws' debate

The problem of telling constitutive rules apart from regulative ones is ancient. The debate began long before the time of Rawls and Searle, when our modern concept of constitution was not yet born, in the two centuries around the English Civil War. Jurists of the time were wont to claim that such or such a measure was a 'fundamental law' of a given institution. The phrase was excessively vague and could mean many things. Sometimes jurists argued for something akin to our modern concept of constitution: fundamental laws, they basically said, were too important for the sovereign

to amend or remove them through the usual procedures. Special legal measures should be taken for their preservation.

Sometimes, though, they used the notion of fundamental law to mean something quite different. Fundamental Laws, it was said, have to be preserved and obeyed because some kind of necessity — moral, logical, divine or other — tie them to the State. Were the law to be forgotten, the State as we know it would cease to exist, and something dreadfully altered and unrecognisable would take its place. Most States had such supposedly fundamental laws.

In France, that belief was attached to the Salic Law (the code that barred women from occupying the throne). Although the Kingdom had existed for centuries when a woman was thus deprived of the crown for the first time, and persisted for another long while before the law took codified shape, France's finest legal scholars were persuaded that the Kingdom would collapse if that peculiar and exotic measure (a puzzle for its neighbours) should fall into disuse. The same dispute took place in the Holy Roman Empire over the *Goldene Bulle*, and in many other places (I rely mostly, for those examples and my account of the fundamental law debate, on Gough's 1955 book).

The problem with fundamental laws, as with constitutive rules, is quite simply that we can, and do, change them. A XVIIth century scholar (quoted in Gough, 1955) wondered:

« How can that be called fundamental which hath and may be removed, and yet the statute laws stand firm and stable? It is contrary to the nature of a fundamental, for the building to stand when the foundation is taken away. »

Voltaire chimed in:

« A fundamental law, born from the mutable will of men, yet immutable: that is a contradiction in terms, an *ens rationis*, a chimaera, an absurdity. He who makes the laws can change them. »

(Voltaire, 1764[4].)

Voltaire's point was straightforward. As political and historical entities, institutions depend on the sovereign decisions of (at least some of) their users, and they change through time and space. As a result, a given social practice, like marriage or chess, might see most or all of its rules change from one century to another, from one culture to another, from one authority to another. This simple fact is hard to reconcile with the claim that some laws or rules are constitutive or fundamental. Which laws? With our limited knowledge of the past and future, how could we spot them with the kind of certainty that strong modal claims require?

One might reply (e.g. Searle, 2005) that constitutive rules need not be strictly immutable. One might prefer to see them as a set of relatively stable core features. Every instance of the institution would have to exhibit at least a subset of these features.

In my view, that criterion is still extremely demanding, for two reasons. First, it requires us to make predictions about future instances of the institution, and about some present and past instances that we don't know about, but might discover some day. Second, many social practices lack a stable set of core features. Instead, their various instances are linked together by a mere family resemblance (various instances share many features, but there is no stable core) or by merely historical links.

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[4] *Dictionnaire philosophique*, article "Loi salique". *"Mais une loi fondamentale, née de la volonté changeante des hommes, et en même temps irrévocable, est une contradiction dans les termes, un être de raison, une chimère, une absurdité. Qui fait les lois peut les changer."* My translation.

Most of the older versions of football, for instance, are linked with today's game of football by historical descent, not by formal similarities.

3.3. Essentialism and the appeal of constitutive rules

However debatable, essentialist intuitions are easily found in almost everyone, and not easily gotten rid of, even after we acknowledge that they may be wrong. As these lines are written, the ontology of many social practices is hotly debated. Christian or gay influence groups struggle to answer the question "What kind of marriage is true marriage?" Greeks and Macedonians fight over whether the Former Yugoslav Republic of Macedonia can be renamed "North Macedonia". Executives from the three universities that bear the name Sorbonne fight for the right to call themselves the one true Sorbonne. Outsiders often fail to see the point of these quarrels. How do we define the true Sorbonne or the true Macedonia? Is there a fact of the matter? Obviously, the solutions to such problems will have to be at least a bit arbitrary. They will violate at least some people's cherished intuitions — but should those intuitions be followed? Should not one agree to disagree on such cases?

The people involved in those quarrels will not agree to disagree, and seem convinced that there is a fact of their matter. They act and talk as though institutions were not a product of political negotiations, but were endowed with some objective essence. Why do we have these "essentialist" intuitions?

Cues may be found in the psychology of essentialism. Relevant studies have been led in the last thirty years, mostly in developmental psychology (Gelman 2003). Mostly, they have been concerned with the way we construe biological species, races, or artifacts, but there has been little investigation of essentialist construals of institutions. I have started doing some experimental work on that issue, showing how some standard effects of the literature on essentialism could also be found in people's thinking about institutions.

One such effect is the "Labelling effect" (Markman 1989, Cunningham 1999, Gelman and Heyman 2002). Subjects are presented with two fictional persons who share a given characteristic — for example, they are both intellectuals. The first person, A, has a certain characteristic in addition to the first — for example, she wears glasses. Subjects are asked whether, given that information, it is likely that the second person, B, also shares this second characteristic (in this instance, whether it is likely that B, also an intellectual, wears glasses). The way the first characteristic is designated varies : in one condition it is done with a substantive — A and B are described as "an intellectual", or "a schizophrenic", or "a carrot-eater". In the other condition, it is done with a descriptive proposition — A or B is "an intellectual person", "a person with schizophrenia", or "someone who likes eating carrots".

Replicated results show that people are more likely to judge that B has the second characteristic when the first characteristic is referred to by a substantive — in other words, they are more likely to judge that B wears glasses if B has been called "an intellectual" rather than "an intellectual person". Likewise, schizophrenics are more likely to hallucinate than persons afflicted with schizophrenia. These findings are usually interpreted as showing that labels prompt people to view clusters of properties like schizophrenia as more stable and more tightly bound than they would have assumed otherwise.

I found that a similar effect may apply to people's intuitions about social practices, with an interesting twist. In a pen-and-paper experiment, I presented subjects with one out of four versions of the following scenario:

Olga and her son Alix like to cook together. One day, Olga tells Alix: I am going to teach you a recipe that I just invented. In order to make that recipe, take a slice of stale bread, soak it in milk, spread mustard on it, then put it into the oven. Alix takes a slice of stale bread, soaks it in milk, spreads ketchup upon it instead of mustard, then puts it into the oven.

There were four variants of this story. In one pair of variants, the recipe was not called the recipe but 'the Barratz'. In another pair of variants, the recipe was not one that Olga had "just invented"; on the contrary, she called it "a recipe that is typical of my country". This implies that the recipe has been around for a long time, and that many people (beside Olga) know about the recipe. I asked people two questions (leaving control questions aside):

1. Is the recipe Alix made truly the recipe Olga talked about (or "the Barratz")?

2. Suppose Olga had told Alix that the recipe (or "the Barratz") is made using ketchup, not mustard. Alix takes a slice of stale bread, soaks it in milk, spreads mustard instead of ketchup upon it, then puts it into the oven. Would the recipe Alix made truly be the recipe Olga talked about (or "the Barratz")?

Subjects, who had to answer the questions on a scale from zero to nine, were slightly but significantly more likely to answer both questions in the negative when Olga's recipe was referred to as "the Barratz". Their view of the recipe was more stringent when it was labelled (figures 1 and 2).

	No tradition (a recipe I just invented)	Tradition (it is typical of my country)
No Label (the recipe)	2,75	2,92
Label (the Barratz)	2,34	1,63

Figure 1: Subjects' mean answers to question 1, on a scale from 0 to 9.
Results are significantly different between the lower and upper rows
(Kruskall-Wallis test, p = 0.042), not between columns.

	No tradition (a recipe I just invented)	Tradition (it is typical of my country)
No Label (the recipe)	7,5	7,62
Label (the Barratz)	6,18	6,4

More surprisingly, they did not seem to care that Olga's recipe was invented on the fly (instead of being shared with many people in Olga's country): this information had no effect whatsoever on people's answers, particularly their answers to the second question — where that issue should be relevant. In the condition where Olga invented the recipe on the fly, she basically defined the recipe while inventing it. People should thus judge that the correct way of making the recipe depends on the way Olga would have defined it. Most of them do, but are significantly less likely to do so when the recipe is referred to as "the Barratz". When the recipe is labelled, some subjects seem to treat it as though it had some independently existing essence, beyond the reach of Olga's decisions. One might say that they have essentialised the relation between the Barratz and one of its ingredients.

There is incomplete (but tantalising) evidence that 14-month-olds imitate pointless gestures more when these gestures are part of an action that receives a label. In a recent study (2009) Marian Chen and Sandra Waxman asked toddlers to imitate an unusual action — lighting up a big toy by pressing it with the head (whilst using one's hands would be more natural). In one condition, they attracted the toddlers' attention using demonstratives and imperatives (*"I'm going to do this! Watch this!"*), in the other they labelled their action with a verb: *"I am going to* blick *the light! Watch me* blick *the light!"*. Infants used their heads in the labelling condition only; strangely, this effect was found only in girls, not boys. While not conclusive, this study opens interesting perspectives for future research.

If these little girls could speak the language of analytic philosophy, they might say that lighting the lamp with one's head is a constitutive rule of blicking, or even better, creates the very possibility of blicking. The roots of our essentialism about social practices seem to go deep, and its fruits weigh heavily on social life. Little girls seem ready to make the extra effort of using their head instead of their hands, just for the sake of upholding the correct standards of Blicking. People would stick to the one true version of the Barratz, even in spite of its inventor's advice. The wider sociological implications of these tendencies can only be guessed.

4. Conclusion: Constitutive rules and the three mistakes.

Constitutive rules are made plausible, I would conclude, by one platitude and three mistakes. The platitude is weak constitutivity: some actions cannot be described without mentioning rules (just like some actions cannot be described without mentioning trees). The three mistakes are (1) a confusion between constitution and creation, (2) the attribution of causal powers to formal features, and (3) an essentialist view of institution.

- Mistaking constitution for creation, inclusion for causation. Rules and laws are a necessary component of many practices and institutions, and, in that sense, these practices would not exist without rules or laws. This does not mean they are created, made or brought into existence by rules or laws. Chairs are made of wood, wood does not build chairs. Likewise, rules constitute an

important part of the social world — they do not construct it. As Coco Chanel would have put it, they do not make the social; they *are* the social[5].

- Attributing causal powers to formal properties.[6] The impact laws and rules have on social life is indisputable, but not due to a special logical form possessed by some of them. Many rules, including some prototypical regulative rules, can be made to fit the formula "X counts as Y in C". Furthermore, fitting this format is not what gives rules and laws their efficiency. What does is cultural transmission, a process that has a lot to do with historical contingencies and little to do with formal necessities.

- Essentialising institutions. This last mistake is perhaps the most intuitive, appealing and worthy of discussion. It is grounded in the indisputable fact that in a given institution, some rules may be much more important than others. We have argued that discovering such core rules is an empirical matter, one that should not be left to logical deductions or private intuitions. But our intuitions, in many cases, speak to the contrary. Some people feel that chess would not be chess without Queens and Bishops, even when they know that these are early additions to the game. Some feel that a Catholic priest is celibate by definition, even though they know that married Catholic priests were once common. This paper gave reasons to resist these strong intuitions; it also attempted to account for them. According to the hypothesis presented here, they derive from a deeply rooted essentialist tendency. We tend to assume that social practices, especially the ones that are named, must be rigidly defined by necessary features. This attractive (if arguably wrong) intuition deserves further philosophical and psychological explorations.

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[5] « Je ne fais pas la mode ; je *suis* la mode ».

[6] I owe this remark to Dan Sperber.

References

Bloor, D. 1997. *Wittgenstein, rules and institutions*. London: Routledge.

Chen M.L., and Waxman S.R., 2009. Linguistic cues to conventionality at 14 months' Poster presented at the European Society for Philosophy and Psychology Conference, Budapest, August 2009.

Cunningham, C.J. 1999. *Illness as labels: the influence of linguistic form class*. Dissertation, University of Michigan.

Descombes, V. 2007. L'Impossible et l'Interdit, in *Le Raisonnement de l'Ours, et autres essais de philosophie pratique*. Paris: Le Seuil.

Gelman, S. 2003. *The essential child*. Oxford: Oxford University Press.

Gelman, S. and Heyman G.D. 2002. Carrot-eaters and Creature-Believers : the effect of lexicalization on children's inferences about social categories. *Psychological science*, 10(6): 489-493.

Gough, J.W., 1955. *Fundamental Law in English Constitutional History*, Oxford: Oxford University Press.

Manin, B., 1997. *The principles of representative government*. Cambridge: Cambridge University Press.

Markman, E.L. 1989. *Categorization and Naming in Children: Problems of Induction*. Cambridge: MIT Press.

Quine, W.V. 1953. Three grades of modal involvement. *Proceedings of the XIXth International Congress of Philosophy, Brussels, 1953*, vol. 14. Amsterdam: North-Holland publishing co.

Rawls, J. 1955. Two concepts of rules. *The philosophical review*, 64: 3-32

Searle, J. 2010. *Making the social world*. Oxford: Oxford University Press.

Searle, J. 2005. What is an institution ? *Journal of Institutional Economics*, 1: 1–22.

Searle, J. 1995. *The Construction of Social Reality*. New York: The Free Press.

Voltaire, 1764 (1995). *Dictionnaire Philosophique*. Paris: Garnier-Flammarion.

Wittgenstein, L. 1978 (1956) *Remarks on the Foundations of Mathematics*. Oxford: Blackwell.