Chapter 6
Normativity of the Background: A Contextualist Account of Social Facts

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Abstract The ontology of society built by John Searle consists of two parts. The first concerns the definition of a social fact as the establishment of a status function by means of collective intentionality and declarative speech acts. The second concerns "the Background," that is, a set of capacities supporting the whole apparatus of status functions, intentionality, and speech acts. Yet in Searle's discourse, the Background comes after the fact, when the social reality is already constructed. By contrast, this chapter argues that in order to explain what a social fact is, the Background should take part in the formula that summarizes the establishment of the status function. The Background is to be characterized in terms of social practices establishing implicit norms that precede and ground the explicit rules instituted by intentionality and language. Therefore, the original formula for the constitution of social facts, namely, "X counts as Y in C," should be rephrased as "'X-in-C counts as Y"—and C should be related to the Background. Finally, this chapter argues that this formulation can address the problematic case of "freestanding Y terms," that is, status functions lacking physical bearers. The solution lies in conceiving of X no longer as a mere object but as a causal-historical process that embodies a status function Y in virtue of its being sustained by the Background within a context of social practices.

Both in *The Construction of Social Reality* (1995) and in *Making the Social World* (2010), the ontology of society built by John Searle consists of a theory in the foreground and a theory in the background. The theory in the foreground (Chap. 1–6 in 1995, Chap. 1–5 in 2010) concerns the definition of a social fact as the establishment of a status function by means of collective intentionality and declarative speech acts. In the 1995 version, Searle summarizes such a theory in the

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formula: "the concrete entity X counts as bearer of the status function Y in the context C," while in 2010 the formula is simply: "let there be the status function Y in the context C." Conversely, the theory in the background of Searle's social ontology (Chap. 6 in 1995, Chap. 7 in 2010) concerns what he calls "the Background," that is, a set of capacities supporting the whole apparatus of status functions, intentionality, and speech acts.

In both essays the Background comes after the fact, when the social reality is already constructed and the social world made. The Background only completes a figure that has previously been drawn independently of it. By contrast, in this chapter we will argue that in order to explain what a social fact is and how it is constituted, the notion of the Background has to be introduced first and it has to take part in the formula that summarizes the establishment of the status function. For this purpose, we will analyze the notion of a Background by focusing on its different characterizations and roles in the 1995 and the 2010 versions of Searle's social ontology. We will show that in 1995 the Background is appropriately characterized but its role is problematic, whereas in 2010 the role is better focused but the characterization is problematic.

We will argue that the main role of the Background is to enable the normative dimensions of collective intentionality, language, and social facts. Therefore, the Background neither can be described as a mere neurophysiological mechanism of rule reflection, as in Searle's 1995 account (it would lose its normative role), nor can be characterized as having a shared intentional content, as in Searle's 2010 account (its foundation of collective intentionality would be circular). Following Wittgenstein (1953) and Brandom (1994), we will propose to characterize the Background in terms of social practices establishing implicit norms that ground explicit rules instituted by intentionality and language. But if the Background can establish norms, then it does not simply support the construction of social reality; it directly constitutes social facts. Therefore, the general formula for the constitution of social facts has to be rephrased in the following terms: "X-in-C counts as Y."[1] Here, the context C is not a mere backdrop of the relation between the concrete entity X and the status function Y. Rather, C is what makes X count as Y, and it does that by means of the normativity of the Background.

Finally, we will argue that the formula "X-in-C counts as Y" can address the issue that primarily motivated Searle's shift from the 1995 formula to the 2010 one: the case of "freestanding Y terms" raised by Smith (2003). The formula "X-in-C counts as Y" addresses this issue by conceiving of X no longer as a mere object but as a causal-historical process that embodies a status function Y in virtue of its being sustained by the Background within a context of social practices.

[1] Searle uses the symbol "Y" to indicate both the status function and its bearer (cf. 1995, p. 46). In this sense, one could equally say "X-in-C counts as Y = the leader" or "X-in-C counts as bearer of Y = leadership." Instead, if one intends Y as strictly referring to the status function, then the general formula should be more explicitly rephrased: "X-in-C counts as bearer of Y."

6.1 The Role of the Background in *The Construction of Social Reality*

In the wake of his previous accounts (1983 and 1992), in 1995 Searle conceives of the Background as a set of capacities that offer a non-intentional foundation for intentionality: "Intentional states function only given a set of Background capacities that do not themselves consist in intentional phenomena […] It is important to see that when we talk about the Background we are talking about a certain category of neurophysiological causation" (1995: 129). Intentional states are essentially underdetermined and their contents need an interpretation. Only the Background can interpret these contents so as to definitively determine their conditions of satisfaction. Since the Background is essentially non-intentional, its interpreting of intentional contents is not an intentional act like ordinary interpretations, but rather some sort of mechanism.

The main task of the Background in social reality is to make rule following broader and more efficient. This task requires an already established institutional system of rules that ensures normativity.[2] The Background allows institutional rules to be followed by those members of the society who do not have a representation of these rules in their mind. Rules are first institutionally established and then "reflected" (Searle 1995: 142) by the members of the society by means of their Background capacities. But how, exactly, does such a "reflection" take place? In what sense are some Background capacities "sensitive to the rule structure" (Searle 1995: 145)?

In the 1995 book, these questions remain unanswered. We only know that the Background depends upon the rules it must reflect, and Searle's social ontology is thus exposed to Wittgenstein's skeptical paradox: "no course of action could be determined by a rule, because every course of action can be made out to accord with the rule" (1953: §201).[3] In other words, when a certain rule R1 must be applied, it may be applied either correctly or incorrectly. But how can we, as agents, correctly apply R1? And how can we, as observers, assess the correctness of an application of R1? We need a meta-rule R2 (what Wittgenstein calls "a rule of interpretation") that relates R1 to its correct applications. Yet R2 has to be applied in turn; therefore, we need a meta-rule R3 telling us how to apply R2, and so on. The final result is an infinite regress.

[2] "There is a socially created normative component in the institutional structure, and this is accounted for *only* by the fact that the institutional structure is a structure of rules" (Searle 1995: 146, our emphasis). Schmitz summarizes Searle's point as "the assumption that normativity could not be socially created except by creating an institutional rule structure" (2013: 115).

[3] In developing this paradox, Kripke argues that it threatens the whole apparatus of rules, meanings, concepts, functions, and so forth, since there is no way to solve "the problem of how our finite minds can give rules that are supposed to apply to an infinity of cases" (1982: 54), nor can we appeal to more fundamental rules, because "the skeptical move can be repeated at the more 'basic' level also" (1982: 17).

Let us consider as an example the constitutive rule R1 establishing that a certain kind of object issued by the Bureau of Engraving and Printing under the authority of the US Treasury counts as money (cf. Searle 1995: 45–46). First, we need a meta-rule R2 that establishes how to correctly apply R1. Searle characterizes this need as:

> a puzzle about how we can define 'money,' if part of the definition is 'being thought of, or regarded as, or believed to be money.' I asked: does this not lead to a circularity or infinite regress in any attempt to define the word, or even to give an explanation of the concept of money? But the resolution of the paradox is quite simple. The word 'money' marks one node in a whole network of practices, the practices of owning, buying, selling, earning, paying for services, paying off debts, etc. (1995: 52)

From this perspective, we can conceive of the meta-rule R2 as specifying that the rule R1 (which establishes that an object satisfying certain conditions counts as money) can be correctly applied to "owning, buying, selling, earning, paying for services, paying off debts, etc." But, unlike what Searle argues, the infinite regress is not stopped, because we need in turn a meta-rule R3 that specifies what are the cases of "owning, buying, selling, earning, paying for services, paying off debts, etc." which the meta-rule R2 can be correctly applied to. Once we will have established R3, we will need a meta-rule R4 specifying how to correctly apply R3, and so on.

6.2 The Background and the Skeptical Paradox

Searle (2002) explicitly addresses Wittgenstein's skeptical paradox by arguing that the Background can stop the infinite regress by providing a basic non-intentional application that does not require rules of application in turn: "It is just a fact about our practices, about the way we were brought up to behave, that we count certain sorts of things as correctly applying a rule and others not […] It is always possible to offer alternative interpretations of any intentional content. But what fixes the interpretation in actual practice, in real life, is what I have elsewhere called 'the Background'" (Searle 2002: 264).

In addressing the skeptical paradox, Searle thus relates social practices ("the way we were brought up to behave") to the Background.[4] Yet our practices and the way we were brought up to behave are—at least partly—*in the world*, whereas the Background, as a set of capacities constituted by a certain category of neurophysiological causation, is definitely *in the head*. How can a neurophysiological mechanism in the head exactly match a practice in the world? Searle implicitly answers to this question by maintaining that the

[4] In his analysis of Searle's social ontology, Runde points out this connection by observing that "the Background is shaped, in some cases decisively so, by the particular context and culture in which we grow up" (2002: 17). According to Viskovatoff, Searle introduces the notion of a Background "because intentionality cannot produce itself, but is made possible by non-intentional rule-following, so he needs a concept like that of practices" (2002: 70); in this sense, the Background works as "a device to graft the idea of social practices […] into an individualist, internalist theory of intentionality" (2003: 71).

Background "is sensitive" to the practices taking place in the world and "reflects" them by means of the appropriate mechanisms of neurophysiological causation. Since the Background is essentially a causal system, its "being sensitive" and its "reflecting social practices" must be causal processes. So the Background is just the neurophysiological mechanism whereby social practices bear upon intentionality—the "Trojan horse" of social practices in the domain of intentionality. The "internal Background" is the way in which our brain implements the "external Background" constituted by social practices. Speaking of the Background as internal to the head, as Searle does, seems to be just shorthand for the Background as a system of social practices.

Some of the Background practices are indeed derived by intentionally established rules, as Searle claims in his 1995 book. Yet intentionality in turn needs the Background in order to establish rules. To avoid circularity, there must be some non-intentional, intrinsically normative social practice that, by constituting the Background, enables intentionality to establish new rules, which the Background itself will eventually reflect afterward. In order to fully face the skeptical paradox, the Background has to ground not only rule following but also rule establishing. Without the Background fixing the interpretation, the "legislators" cannot grasp and share the content of the rule they are explicitly establishing. Therefore, they would have no means of really establishing the rule.[5]

A Searlian reply could consist of appealing to the distinction between a superficial "local Background" that reflects social practices and a biological "deep Background" that is hardwired in human minds (1983: 143–144). The biological "deep Background" would ground the establishing of the rules, which would afterward be "reflected" by the social local Background. Yet, it is hard to explain how a complex, interactive process such as the establishing of a rule could rely on an exclusively biological—and not at all social—Background. Neurophysiological mechanisms alone are not sufficient for establishing a rule, that is, for establishing whether something that occurs has to be taken as correct or incorrect, since there are no correct or incorrect occurrences in the causal domain of biology: all that occurs is always biologically appropriate simply by occurring.[6] In order to underpin the establishing of a rule, the Background must be something more than a mere physiological facilitator of intentionality.

In this sense, a foundation of normativity that makes reference only to the biological "deep Background" must face objections that are rooted in Hume's "is-ought problem" and in Moore's "naturalistic fallacy." Searle (1964) argues that we can overcome the naturalistic fallacy and derive an "ought" from an "is" by means of the illocutionary force of speech acts. Yet speech acts in turn require normative

[5] In Brandom's terms, "the conclusion of the regress argument is that there is a need for a *pragmatist* conception of norms—a notion of primitive correctnesses of performance *implicit* in *practice* that precede and are presupposed by their *explicit* formulation in *rules* and *principles*" (1984: 21).

[6] A similar point is made by Stahl: "Someone who fails to follow a rule does not just deviate from a descriptive regularity which we supposed her behaviour to exhibit, but we can also say that she acts *incorrectly* (Searle 1995: 146). This normative aspect of action cannot be integrated into a story of mere causation" (2013: 129–130).

practices. You cannot perform a speech act in a merely biological world. In order to perform a speech act, you already need a basic layer of social agreement.[7] Hard-wired biological skills are arguably necessary for somebody to take part in such basic practices, but the naturalistic fallacy shows that the normativity of these very practices cannot be explained only in terms of the built-in capacities of the practitioners.[8] Neither can such a normativity be explained in terms of speech acts, since they in turn rely upon this basic normative layer. In order to characterize this layer, we need to refer not only to neurophysiological mechanisms but also to basic pragmatic devices, for example, expectations and sanctions, whereby normativity emerges from social interactions of individuals endowed with peculiar biological capacities. From this perspective, it is the Background itself, ultimately understood as an inextricable intertwining of basic practices and neurophysiological mechanisms, that allows us to derive an "ought" from an "is."[9]

6.3 The Role of the Background in *Making the Social World*

In the 2010 version of Searle's social ontology, the Background seems to play a direct role not only in rule following but also in rule establishing. As intentionality can construct social facts, so does the Background. On the one hand, Searle now claims that the Background can constitute power relations and norms of behavior, and since power relations and norms of behavior are what status functions are made of, it follows that the Background can create social facts on its own.[10] On the other hand, Searle introduces an "intentionality constraint" according to which

[7] As Gebauer puts it, "in illocutionary speech acts, the self acts as a person who is socially created and institutionally anchored in a social context" (2000: 74).

[8] As pointed out by Tomasello and his collaborators, a psychological skill like "joint attention" with its underlying neurophysiological "infrastructure" can play a key role in rule following. But joint attention in turn needs some contextual normative support: "Suppose that an adult points to an opaque bucket for the infant. If he does this out of the blue, the infant cannot know whether he is pointing to direct her attention to the container's color, its material, its contents, or any other of myriad possibilities. However, if they are playing a hiding-finding game together, and *in this context* the adult points to the bucket, the infant will very likely infer that he is pointing to inform her of the location of the hidden object. Fourteen month-old infants make just such an inference in this situation […], but chimpanzees and other apes do not" (Tomasello and Carpenter 2007: 122, our emphasis).

[9] A similar point is made by Schmitz: "This is a basic kind of normativity and it does not depend on the presence of rules. It is not essential that adults who know the rules give the feedback as in Searle's baseball example. It is sufficient that players react normatively to one another. Their emotional reactions are primitive forms of directives and evaluations. In this way, common (shared, collective) background dispositions, common skills, habits, and tendencies are established." (2013: 117–118).

[10] "Some (not all) of the Background practices and presuppositions can constitute sets of power relations […] The Background and Network, as I have defined them, contain, among other things, a set of norms of behavior" (Searle 2010: 156).

any exercise of power must have an intentional content.[11] To sum up, the Background works as an exercise of power, all exercises of power have intentional content; therefore, the Background has intentional content. That is why—we believe—Searle concludes that "in the case of Background power, like the criminal law, we have a standing power and a standing intentional content" (2010: 158). Yet that seems to be quite a puzzling move: how can the Background, originally characterized as the non-intentional foundation of intentionality, now have "a standing intentional content"?

There is no explicit answer in Searle's text, just an implicit one that we can try to make explicit. In 2010, though not in 1995, Searle distinguishes between the Background and the Network: they both support intentionality, but the Network is intentional, whereas the Background is not. The Network is constituted by all the "surrounding" intentional states that contribute to the conditions of satisfaction of a given intentional content, whereas the Background is constituted by capacities that definitively determine these conditions of satisfaction so as to enable intentionality to work. For example, the Network of the intentional content "if the traffic light is red, you have to stop" includes beliefs about the functioning of traffic lights, cars, and brakes, whereas the corresponding Background is an underlying blind mechanism that allows us to directly move from the conscious vision of a red light and its unconscious surrounding beliefs to the action of braking.

Following Searle's declaration that he "will use 'Background' as short for both Network and Background" (2010: 155), we can make sense of the claim that the Background satisfies "the intentionality constraint" by considering the term "Background" as referring not only to the Background, strictly understood, but also to the Network. Yet this solution contradicts Searle's most sophisticated account of the Background, contained in *The Rediscovery of the Mind* (1992), which underlies both the 1995 social ontology and the 2002 discussion of the skeptical paradox. In that text, Searle recalls that in his earlier view, he was thinking of the mind as containing an inventory of mental states but also admits that he was mistaken:

> I now think the real mistake was to suppose that there is an inventory of mental states, some conscious, some unconscious. Both language and culture tend to force this picture on us. We think of memory as a storehouse of propositions and images, as a kind of big library or filing cabinet of representations. But we should think of memory rather as a *mechanism* for generating current performance, including conscious thoughts and actions, based on past experience. The thesis of the Background has to be rewritten to get rid of the presupposition of the mind as a collection, an inventory, of mental phenomena, because *the only occurrent reality of the mental as mental is consciousness*.
>
> The belief in an occurrent reality that consists of unconscious mental states, and that is distinct from Background capacities, is an illusion based largely on the grammar of our language. Even when Jones is asleep, we say that he believes Bush is president and that he knows the rules of French grammar. So we think lying in there in his brain, sleeping too, are his belief that Bush is president and his knowledge of French. But in fact all his brain contains is a set of neuronal structures, whose workings at present are largely unknown, that enable him to think and act, when he gets around to it. (Searle 1992: 187, our emphasis)

[11] "The concept of power is logically tied to the concept of the intentional exercise of power […] No intentionality, no exercise of power. […] Let us call this 'the intentionality constraint'" (Searle 2010: 151).

In this amended account, there are no more unconscious intentional states (i.e., the Network) surrounding the currently conscious one. There is only conscious intentionality supported by a non-intentional mechanism (i.e., the Background). That is why—we believe—in his 1995 and 2002 texts, Searle no longer needs to call the Network into question; he has explained it away by reducing it to the Background.[12]

Still, in Searle's 2010 social ontology, the Network is back in action. In order to make the Background conform to the "intentionality constraint," Searle implicitly comes back to what in 1992 he characterized as his mistaken earlier view. A quite puzzling clause of the "intentionality constraint" is symptomatic of such an implicit regression: "The intentional exercise of power may have unintended consequences and *the intention may be unconscious*, but all the same all exercises of power have intentional contents" (Searle 2010: 151, our emphasis). The Background is thus endowed with an unconscious intentional content that Searle specifies in the following terms:

> Where the social Background and Network norms function as power mechanisms, they function as *standing Directives*. They tell each member of the society what is and what is not acceptable behavior. What exactly is their intentional content? Well, because we are talking about the Background, we are not talking about something members of society are consciously thinking. […] The certainty of sanctions can constitute an unconscious exercise of power when the intentional content is implicit. The intentional *content* in its most general *form* is: 'Conform!' (2010: 158, our emphasis)

Yet "Conform!" does not seem to be a shared intentional *content*, which tells each member of the society what is and what is not acceptable behavior. Otherwise, it would be reduced to a rule of behavior that in turn requires a rule of application, and we would be brought back to Wittgenstein's skeptical paradox without the possibility of stopping the infinite regress by means of the Background, because this time the content of the Background is precisely what is at stake. Rather, "Conform!" seems to be—as Searle himself writes—a *form* whereby social practices enable us to share intentional contents thereby establishing rules of behavior. The Background as a power mechanism cannot have a shared intentional content, if one wants to avoid circularity, since such a power mechanism is precisely what enables us to share intentional contents.

At this point, Searle's theory faces the two horns of a dilemma: either (1) give up the intentionality constraint (i.e., "no intentionality, no exercise of power") and accept that the Background can exercise power even without a shared intentional content or (2) give up the possibility that the Background directly exercises power and accept that it can only reflect intentionally instituted rules. Choosing horn (2) amounts to coming back to the account of the Background proposed by Searle in his 1995 construction of the social reality, with the consequent exposure to the skeptical paradox and to the infinite regress. By contrast,

[12] In Searle's words: "the Network is that part of the Background that we describe in terms of its capacity to cause conscious intentionality" (1992: 188). As Marcoulatos points out, starting from *The Rediscovery of the Mind* "the idea of unconscious intentionality […] is abandoned […] Consequently, the Network is largely absorbed into the Background, which is defined, as before, in neurophysiological terms" (2003: 69).

choosing horn (1) involves a truly renewed account of the social world, in which the normativity of the Background underpins shared intentional contents. If all of this is right, Searle's 2010 claim that the Background can directly exercise power can be reconciled with his 1992 (and 1995) view according to which the Background is absolutely non-intentional. For this purpose, the formula of the creation of social facts must be rephrased so as to show that the Background, understood as a power mechanism, can create social facts on its own without the need of a shared intentional content.

6.4 Rules and Norms

In *The Construction of Social Reality*, constitutive rules have the form: "X counts as Y in C." The term X basically designates a material entity or a series thereof, while Y designates a status function, that is, a set of commitments and entitlements corresponding to power relations and patterns of behavior. Collective intentionality, by means of the speech acts that disclose it, connects the object X to the status function Y. For instance, "X = a piece of metal satisfying certain conditions" counts as "Y = money" in virtue of the collective intentionality of a given community. But what about the context C?

Searle says very little about it. At first sight, C seems to simply designate the scope of the connection between X and Y. According to this interpretation, the formula claims that "X counts as Y in C." A piece of metal counts as money only in those nations that recognize it as such; for instance, "X = Sestertius" counts as "Y = money" in "C = ancient Rome," but it has no power to buy in "C* = the contemporary United States." Interestingly, however, if we link C with X thereby producing the formula "X-in-C counts as Y," C becomes something more than the scope of the connection between the object X and the status function Y. The context C can now be related to the Background constituting such a connection. That being the case, if the declaration "Sestertius counts as money" was done in the contemporary United States, it would not produce exactly the same status function Y as in ancient Rome, but a new status function Y*. To use the same word, namely, money, to refer to both cases is just a matter of lexical parsimony, but the distributions of powers that are individuated by Y and Y* in principle are different. In spite of some relevant similarities, Y and Y* are determined by two different contexts of normative practices: ancient Rome, on the one hand, and the contemporary United States on the other hand. For example, in ancient Rome Sestertii's owners were entitled to buy human beings as slaves, whereas owning Sestertii in contemporary United States would not involve, at least in principle, such an entitlement.

To sum up, the former interpretation—"X counts as Y in C"—means that the object X is paired with the function Y and that this pairing accidentally takes place in the context C (but it could be placed in any other context). By contrast, the latter interpretation—"X-in-C counts as Y"—means that the object X is paired with the function Y *in virtue of* its belonging to the very context C. The difference between

"X counts as Y in C" and "X-in-C counts as Y" concerns the role of C with respect to X and Y. In the former interpretation, the link between X and Y can be established independently of any C, and only secondly applied to some C. Instead, in the latter interpretation there is no way to relate X to Y without relying on a particular C. This interpretation does not reduce the context C to a mere geographical backdrop of the relation between X and Y, but conceives of it as involving the Background that makes X count as Y.

Searle has never explicitly related the context C to the Background, but at least one of his examples encourages this move. In his *Responses to Critics of The Construction of Social Reality*, he observes: "in a group of children someone may just emerge as the acknowledged leader of the group without any official recognition or authorization. The leader is just another person until the emergence of the status-function. There is no prior institutional fact in virtue of which he or she is the leader, rather the emergence of their status as leader is the institutional fact in question" (1997: 457). Here, it is not that "X = a certain child" counts as "Y = the leader" in virtue of a declaration (or some "official recognition or authorization"), but he or she *emerges* as "Y = the leader" because of his or her being X-in-C, that is, because of the intrinsic normativity of the group of children as a basic social practice.[13] In a different context C*, a different group of children would in principle attribute to "X = a certain child" a slightly different set of powers Y*. And again, it is only for reasons of lexical parsimony that we call both Y and Y* "leadership," but the set of powers that constitutes the status function is negotiated within the context and cannot be individuated in an absolute way, independently of a given context.

Something similar happens in this thought experiment proposed by Brandom:

> A prelinguistic community could express its practical grasp of a norm of conduct by beating with sticks any of its members who are perceived as transgressing that norm. In these terms it is possible to explain for instance what it is for there to be a practical norm in force according to which in order to be entitled to enter a particular hut one is obliged to display a leaf from a certain sort of tree. The communal response of beating anyone who attempts to enter without such a token gives leaves of the proper kind the normative significance, for the community members, of a license. In this way members of the community can show, by what they do, what they take to be appropriate and inappropriate conduct. (1994: 34)

Here, "X = a certain kind of leaf" counts as "Y = a license" not in virtue of an explicit rule, grasped by collective intentionality, but rather—and once again—in virtue of its being an X-in-C, an object embedded in a practice. In a different context C*, the same kind of leaf X could have similar associated powers Y*, but we could never have the certainty that these powers are exactly the same as those associated

[13] Despite their apparent abstractness and explicitness, even the constitutive rules of chess, in order to acquire meaning, need to be grounded in a context of competitive game playing, that is, a normative practice embodying the notions of victory and defeat. As explained by Roversi, "the concept of checkmate is connected to those of attack and of king, and the concept of king is in turn connected to that of castling; but apart from noticing these connections, someone observing the system from a close-up view will not be able to appreciate how these connections established by constitutive rules can create meaning. This can be understood only when institutional elements are viewed *in the context of an already meaningful practice*" (2010: 233, our emphasis).

with the status function Y in the context C. If the context C* is different from—and unrelated to—the context C, there is no way of establishing that the same status function Y is instantiated in both C and C* in spite of the fact that our lexical parsimony leads us to use the same word ("license") in both cases. For example, it might be the case that Y, as an X-in-C, means "you can enter and stay as long as you want" whereas Y*, as an X-in-C*, means "you can enter and stay until the end of the day."

In the "X-in-C counts as Y" formula, the status function Y no longer needs to be grasped and shared by the community members: rather it emerges from the Background by imposing power relations and norms of behavior even if the members of the community cannot exactly represent all of these in their mind. From this perspective, collective intentionality and language are no longer the foundations of social facts, but only the most explicit means whereby the Background can constitute social facts.

The difference between the role of intentionality and the more basic role of the Background in the creation of social facts corresponds to the difference highlighted by Brandom (1994: 21–30) between *rules* and more basic *norms*. Explicit specifications by means of *rules* can just make *norms* that are implicit in the Background partially explicit. Unlike what Searle claims, it is not the Background that reflects rules, but rather rules that reflect the normativity of the Background. Yet rules just provide us with partial approximate representations of the normativity of the Background. The normative core of the Background remains beyond the reach of rules.[14]

Both rules and norms differ from causal physical laws since physical laws only describe *what happens* whereas rules and norms state *what ought to happen*. Both rules and norms take place in the "logical space of reasons" rather than in the physical space of brute facts and causes. Still, rules differ from norms since norms implicitly determine customs, whereas rules partially make explicit and codify the normative dimension implicit in human practices. In this sense, rules emerge from norms, but there is a basic layer of norms that could never be fully codified in rules and nevertheless bears upon the working of all rules.[15]

Since explicit rules rely on implicit norms embodied in practices, a social fact is not a connection between a concrete entity X and an abstract deontic structure Y, but rather the emerging of such a deontic structure from a normative practice. There is no way to

[14] As Zaibert and Smith put it: "there are provinces in the kingdom of normativity that have nothing to do with conventional rules. Surely some of these provinces affect the structure of social ontology" (2007: 174).

[15] Wittgenstein calls this basic layer "the bedrock": "'How am I able to obey a rule?'—if this is not a question about causes, then it is about the justification for my following the rule in the way I do. If I have exhausted the justifications I have reached the bedrock, and my spade is turned, then I am inclined to say: 'This is simply what I do'" (Wittgenstein 1953: §217). Searle's Background in some sense replicates Wittgenstein's bedrock. Yet "Wittgenstein's problem is to steer a course between a Scylla and a Charybdis" (McDowell 1984: 342), that is, between explicit rules and brute causal laws. Instead, Searle's account of the Background—as we have shown—is often stuck between the Scylla of intentionality and the Charybdis of biology. Only if we conceive of the Background basically in terms of practices we can try to steer such a course.

wholly disentangle the status function from the normative practice, to wholly make it explicit as a rule. By observing from the outside the abovementioned community in which "X=a certain kind of leaf" counts as "Y=a license," we could try to make the notion of license partially explicit ("having an entitlement to enter the hut") and eventually try to import it into our community by means of an explicit declared rule stating that "X=a certain leaf" counts as "Y=a license." Yet Wittgenstein's skeptical argument shows that this rule cannot exactly replicate the original norm, but only approximately emulate it. Without a shared practice, there is no way to guarantee that what a license has been, is, and will be for that community exactly corresponds to what a license henceforth will be for our community. Between their rule "X-in-C counts as Y" and our rule "X*-in-C* counts as Y*," there will always be a margin of difference: X and X* can coincide (they can be the same kind of leaf), but C and C* relate to two different historical communities so as also Y and Y* in principle will be different status functions.

By acknowledging the dependence of social facts on implicit norms, we can overcome a problematic presupposition of Searle's ontology that Marcoulatos outlines in the following terms:

> Searle's concept of *imposition of function* presupposes two levels of existence: a primary one where things exist as (meaning/function/value-wise) neutral material entities, and a superimposed one where their particular meanings and functions are assigned subjectively or intersubjectively […]. There are two ontologically distinct orders of existence, which are never truly integrated (2003: 79).

The formula "X-in-C counts as Y" integrates these two ontologically distinct orders of existence by transforming the superimposed function into something that historically emerges from the natural human world. The context, as involving the Background, provides us with a basic layer of implicit norms from which the status functions can emerge rather than be superimposed.

6.5 The Case of Freestanding Y Terms

The formula "X-in-C counts as Y" allows us to address the main issue that determined the change in Searle's formula from 1995 to 2010. This problem concerns what Barry Smith calls "freestanding Y terms": in social facts like corporations or electronic money, the status function Y is not *embodied in* a single object X, but only *represented by* some inscriptions, which do not count as the function Y but rather instantiate it, as the inscriptions on a piece of paper instantiate a poem. According to Smith, Searle's theory can provide only a partial account of the social reality for the following reason:

> Such a theory is analogous to an ontology of works of art that is able to yield an account of, for example, *paintings* and *sculptures* (the lump of bronze *counts as* a statue) but not *symphonies* or *poems*. For a symphony (as contrasted with the performance of a symphony) is not a token physical entity at all, rather—like a debt or a corporation—it is a special type of abstract formation (an abstract formation with a beginning, and perhaps an ending, in time). (2003: 23)

In order to face Smith's objection, Searle admits that the formula "X counts as Y in C" is just one form—not the only one—in which we articulate the most general logical form of the creation of institutional reality, that is: "We (or I) make it the case that a Y status function exists in C" (cf. 2010: 101). The price to pay for this new formula seems to be quite high, to the extent that social facts reveal themselves to be abstract formations. In this sense, Searle weakens his naturalism whereby only physical reality ultimately exists and ends by implicitly endorsing what Marcoulatos (2003: 79) calls "a sort of sociological idealism: in essence, social reality is grasped as structures of representations." The status function Y turns out to be an abstract structure graspable by collective intentionality that instantiates Y in a context C.

In discussing the role of the Background with respect to language, Recanati (2003) argues that Searle's semantics wavers between a Fregean account, whereby an utterance instantiates a proposition in a context, and a contextualist account, whereby only an utterance in a context counts as a proposition. Likewise, Smith's freestanding Y terms show that Searle's social ontology is unstable between a Platonist account, whereby status functions are self-standing abstract structures that can be instantiated in concrete contexts, and a naturalistic account, whereby there are no genuine status functions without a context (just like, according to contextualism, there is no genuine meaning without a context). Searle's 2010 formula seems to implicitly resolve such an instability in favor of the Platonist account. Although Searle does not intend to give up his original naturalistic commitment, it is hard to see how naturalism can be reconciled with the formula "We (or I) make it the case that a Y status function exists in C," in which the freestanding Y term must be, as pointed out by Smith, an abstract formation. That is why Smith in his paper *Document Acts* (Forthcoming) brands as inconsistent Searle's attempt to argue for the formula "We (or I) make it the case that a Y status function exists in C" without giving up naturalism. Still, the formula "X-in-C counts as Y" can provide us with a way to build a naturalistic account of freestanding Y terms. Of course, we cannot account for corporations or electronic money exactly as we accounted for coins or presidents, since in the former cases there is no material object X embodying the status function Y. Nevertheless, in the case of freestanding Y terms, we can still treat X as a *process*, that is, a causal-historical chain that can involve representations and inscriptions (cf. Sperber 2006) and that is sustained by expectations, interactions, and sanctions (cf. Brandom 1994). This chain does not require that the status function be an abstract type that is grasped by collective intentionality. Instead, the chain itself creates the "type," embodies it, and uses it as a transmitting mechanism that sustains and stabilizes its historical development.[16]

[16] Searle claims that, in the case of institutional entities, "codification specifies the features a token must have in order to be an instance of the type" (1995: 53). Yet, prior to any attempt to explicitly codify the features that are normative for the tokens, the status function as a type is historically constituted by the tokens themselves, which hold and possibly proliferate with the support of normative practices. Millikan (2004) stresses the importance of having a certain history in order to be a certain social fact. This history involves the iteration of a given pattern of behavior that individuates the social fact. Yet our account differs from Millikan's (just as from Sperber's) with regard to the role that normativity plays in such a historical process. We do not

Smith compares freestanding Y terms to symphonies, but some philosophers of art (e.g., Rohrbaugh 2003; Davies 2012) show that we can conceive of musical works not as abstract structures, but rather as "historical individuals" that are brought into existence by an act of invention and kept into existence by normative practices and transmitting mechanisms. Likewise, social facts that are individuated by freestanding Y terms can be conceived of as historical individuals whose existence relies on normative practices and transmitting mechanisms that constitute and iterate them. "X-in-C counts as Y" is thus the most general form of the creation of institutional reality, subsuming both the case in which X is the singular concrete *embodiment* of the status function Y and the case of the so-called freestanding Y terms in which, instead of a single X, there are multiple concurrent *representations* of a given social entity. In the former case, X is a token *embodying* the status function Y in virtue of its being related to the Background. In the latter case, X is a process relying upon the Background and connecting a series of tokens which *represent* the status function. For example, the American Constitution is not an abstract deontic structure Y grasped by the legislators and instantiated in a signed parchment X. It is the signed parchment itself that, as the outcome of an act in the appropriate historical context, gives rise to a causal-historical chain that—as an X-in-C—embodies the deontic structure Y.[17]

To conceive of the status function as a created type rather than as an abstract structure of power relations leads us to focus on the historicity of social entities. Every community has its own legal system, just like it has its own language, in virtue of having its own history. Legal systems cannot be easily exported from one country to another since social entities are not Platonic types but rather created types—better to say, historical individuals. A given status function Y cannot be arbitrarily instantiated by a multiplicity of unrelated tokens; rather, it can only emerge from the pairing of the object (or process) X with a specific context C. This is not to say that social entities are absolutely singular. Social entities can be iterated; they can have multiple instances. But such a repetition can only take place in a specific context, by means of distinctive practices. For example, we can have multiple instances of the American Constitution, like we can have multiple instances of Mahler's *Third Symphony*. Yet, in order to preserve not only the "letter" of the Constitution but also its "spirit," that is, its deontic meaning and its normative force, all these instances have to belong to the same causal-historical chain and the transition from link to link in the chain has to be governed by distinctive practices.

Indeed, there are two kinds of normativity at play in social ontology, and therefore two kinds of repeatability. On one hand, the status function Y establishes what

believe that normativity can be simply explained in terms of basic biological purposes of achieving the wanted results (cf. also Millikan 1990). There is something more in normativity: a social constraint that is irreducible to individual adaptive purposes and that gives us, in Searle's words, "desire-independent reasons for action."

[17] In this sense, we can vindicate the claim that a document can truly constitute a social entity (cf. Ferraris 2012), rather than simply representing it. The document can constitute a social entity by inaugurating the causal-historical chain that composes the process X from which the status function Y emerges.

is correct to do and what somebody is committed or entitled to do (call it "Y-normativity"), and every time that person exercises this power, the social fact is repeated (call it "Y-repeatability"). On the other hand, there is a standard of correctness establishing which entities X are appropriate to instantiate the status function Y (call it "X-normativity"), and every time a new X is produced, the instantiation of the social fact is repeated (call it "X-repeatability"). For example, the five-dollar bill involves a Y-normativity stating what is *correct* to do with such a bill but also an X-normativity stating which features (both intrinsic and relational) a piece of paper must have in order to be a *correct instance* of a five-dollar bill. Y-normativity allows the social entity to exercise its distinctive power in a variety of situations, whereas X-normativity allows the social entity to be instituted, preserved, and possibly repeated in a variety of situations.

More specifically, practices concerning X-normativity establish whether, at a given time t:

(I) there can be just one entity X correctly embodying a given status function Y at t (e.g., the US President); (II) there can be a certain number of different entities X_1, X_2,… all correctly embodying the same status function Y at t and therefore constituting different social entities with the same status function (e.g., undergraduate students in philosophy or five-dollar bills); or (III) there can be multiple instances I_1, I_2,… all correctly belonging to the process X and therefore all correctly representing at t only one social entity possessing the status function Y that is embodied in the process X (e.g., the American Constitution and its multiple copies). Normative practices govern the construction of the chain of instances that constitutes a social entity by establishing the circumstances in which new instances should be linked to the chain. For example, unlike what happens in (II) and (III), in (I) a new instance can be linked to the chain of US Presidents only when the last President is no longer in charge.[18]

[18] Thomasson takes into account what we have called X-normativity by distinguishing three kinds of rules allowing for the creation of social entities: "Singular Rules: 1. (Of a) We collectively accept: Sa (where "S" names a social feature) […] Universal Rules: 2. For all x, we collectively accept that (if x meets all conditions in C, then Sx) […] Existential Rules: 3. We collectively accept that (if all conditions C obtain, then there is some x such that Sx)" (2003: 280–283). In principle, Thomasson conceives of rules in a sharply pragmatic way: "Although the 'rules' of the game (Walton's 'principles of generation' and Searle's 'constitutive rules') must be at least implicitly understood and accepted in order to do their work, they may or may not be explicitly stipulated. They may simply be embodied in background knowledge and practices—as we, say, become competent players of children's games, appreciators of art, or members of society—and need not be something the participants explicitly have in mind or can verbally articulate" (2003: 279). Yet in formulating her three basic rules for social ontology, Thomasson overlooks such an original proposal. She tries, indeed, to reduce the context in Searle's formula ("X counts as Y in C") to a set of conditions C that should guarantee the link between the object X and the function Y. But those conditions work in turn as explicit *rules*, so as we are led back to Wittgenstein's skeptical paradox, that is, to the problem of rules that need to be supported by other rules, with the consequent infinite regress. In order to stop the regress, we need to reintroduce the context and conceive of it no longer in terms of explicit conditions but rather in terms of implicit practices. That is why we need a context also in the case of Singular Rules, although Thomasson does not consider this possibility.

6.6 Conclusion

Both in his 1995 and in his 2010 accounts of social ontology, Searle argues that social facts are created by collective intentionality by means of constitutive rules that are expressed by declarative speech acts. On the other hand, he also claims that collective intentionality, in creating social facts, is supported by the Background. In this chapter, we have tried to specify the role that the Background plays in the creation of social facts. We have argued that the Background cannot be reduced to a neurophysiological mechanism in the brain (as Searle suggests in his 1995 *The Construction of Social Reality*) since Wittgenstein's skeptical paradox reveals that the intentional establishment of rules in turn needs a normative foundation, which involves not only built-in biological skills but also pragmatic interactions. Nor can the normativity of the Background be explained in terms of an "intentionality constraint" according to which the Background is required to have an intentional content (as Searle suggests in his 2010 *Making the Social World*) since the Background is a precondition of shared intentional contents. So the Background is neither wholly physiological (otherwise it would lack normativity) nor intentional (otherwise its foundation of collective intentionality would be circular). Instead, we can conceive of the Background in terms of those basic social practices that are capable of instituting implicit norms that underlie explicit rules established by collective intentionality and speech acts.

This pragmatic account of the Background has led us to rephrase the formula of the creation of social facts in the following terms: "X-in-C counts as Y." According to such a formula, there is no longer a collective intentional act that grasps a deontic structure Y and—either necessarily (according to Searle 1995) or possibly (according to Searle 2010)—associates it with a particular X in a context C. Instead, there is a social practice in a context C that allows a particular X (either an object or a process) to embody a status function Y. A social entity is no longer a mere placeholder for an abstract status function, but a historical outcome that constitutes and embodies a status function in virtue of its belonging to a context—in virtue of its being embedded in the normative practices that constitute the Background. In this sense, the "X-in-C counts as Y" formula vindicates Searle's social ontology against Gebauer's claim that "ontology is not a suitable philosophical discipline for the description of society" (2000: 76). According to Gebauer, indeed, due to its very nature, ontology is missing the feature that essentially constitutes the social, namely, historicity. Yet the problem, on closer inspection, is not ontology but a too narrow account of it. By conceiving of the Background in terms of normative practices, social ontology can effectively take history into account.

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