

Reply to Corlett’s “Searle on Human Rights”
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J. Angelo Corlett in “Searle on Human Rights”¹ outlines a summary of Searle’s work on social theory so as to then mount a criticism of Searle’s lecture “Human Rights.”² I find Corlett’s criticism of Searle quite perplexing and based on an uncharitable reading of what Searle states as his view. The aims of my reply are as follows. First, I provide a very brief account of what Searle means when he describes his ontology as naturalistic and thus what ethical naturalism must come to for Searle. Second, I explain why Corlett’s criticism is perplexing in view of Corlett’s own discussion of Searle. I suggest how to reformulate Corlett’s point by looking more closely at a passage from Searle’s lecture that does address at least a version of Corlett’s objection. Finally, I conclude that though Searle’s defense of human rights does raise some problems for his sketch of ethical naturalism, that problem has two possible responses. Either the concept of human rights is otiose or ethical naturalism fails. I am not sure that this choice captures Corlett’s intent, but it is the only plausible reading of his criticism in my view.³

How Things Hang Together

How is it possible that handing someone pieces of paper can be a case of paying the rent or keeping a promise or exemplifying the virtue of generosity? It is important to stress that Searle intends this question in a very specific way. Metaphysics, as Searle understands it, is not a question (at least it is not first and foremost a question) about whatever causal processes happen to be the case. Rather it is a question about how to understand and conceptualize natural and social phenomena, how they ‘hang together,’ as Searle puts it, as phenomena. Causation is a secondary concern because, for example, philosophical Zombies cannot pay rent or keep promises or be generous no matter what causally nor what is observed. The reason is that philosophical zombies, as so defined, lack the necessary feature (for Searle) of intentional mental states.

In addition to a demand for conceptual analysis about what underlies or grounds any social phenomena whatsoever, and thereby any theory of society whatsoever, Searle

¹ Corlett 2016.

² Searle 2010.

³ In my discussion of Searle’s naturalistic metaphysics of social phenomena below I will largely avoid the bulk of Searle’s terminology that Corlett summarizes at some length. Searle’s view of metaphysics follows the orthodoxy within Anglo-American philosophy, i.e. he understands it as conceptual analysis. There are of course controversies about this orthodoxy, but they cannot be discussed here. However, in the following passage, Searle makes explicit what conceptual analysis does not mean. “My effort to explain institutional facts is not even remotely like ... the phenomenalist reduction of material objects statements to sense datum statements. Phenomenalism was an effort to *eliminate an ontological category* by reducing it to its epistemic base. My effort has nothing to do with such traditional reductionist or epistemic worries. Rather my aim is to show how the acknowledged realities all hang together” (Searle 1997, 457; emphasis added). Thus with this qualification, I understand Searle’s project as ‘conceptual analysis.’ A somewhat different picture of Searle’s overall conception, somewhat at odds with Corlett’s, can be found in D’Amico (1995) and Butchard and D’Amico (2011).

demands that such a metaphysic is naturalistic.⁴ What this demand comes to is that the proposed analysis coheres with the results of sciences and common sense taken as a whole. For instance, when Searle distinguishes intrinsic and observer-relative features of objects, his point is that the *very same object* has the property of being a molecular structure and being an artifact, such as a screwdriver. He does not hold that there are two objects, and thus he is not adding a mysterious invisible realm of objects to social ontology.⁵

When Searle discusses status functions, he proceeds in exactly the same way. For Searle, then, dollars as social objects and dollars as physical pieces of paper are identical; they are one and the same objects. There is no non-naturalistic ontology extending beyond individuals and physical objects. Of course there is a further feature required for social phenomena that has occupied Searle for his entire career. The proper conceptual analysis of social phenomena must include intentional mental states; most notably on this point Searle appeals then to what he calls an individual's "we-intention." We-intentions, whatever controversies this idea raises, are again not non-naturalistic features of the world on Searle's account.

Regarding Searle on Human Rights

Let me now turn to Corlett's criticism of Searle. It occupies the last third of the essay, but it appears to have been the whole point of writing the essay and is at first sight, as I said at the start, perplexing:

So while Searle might be correct to think that human rights are not discoverable in the same manner in which gold and silver are discoverable (i.e. in nature), it hardly follow from this that, if there are human rights, they are *merely social constructs in the sense that they exist only to the extent that they are social recognized and constructed as status functions*. Indeed, if Joel Feinberg is correct, then human rights are moral rights that exist independently of social recognition and social construction and are discoverable by the light of reason. ... I shall focus my attention on his [Searle's] notion of social reality insofar as it lacks a concept of moral normativity aside from what is institutional.⁶

Corlett continues that Searle's view of rights is "purely institutional," and Corlett adds as clarification that by "non-institutional is meant that such rights have essential moral properties" and that we should understand Searle language about rights as treating them as "socially constructed or institutionalized (i.e. made legal)."

⁴ It is not possible in a note to sort out these matters, but for my purposes here the following would be consonant with Searle's view. Naturalism is not the same as reductionism or physicalism or eliminating philosophical explanation with scientific explanation. Naturalism does not eliminate features that make philosophical understanding possible, specifically it is committed to the reality of rationality and perhaps normativity.

⁵ Searle 1997, 11-29.

⁶ Corlett 2016, 16; with emphasis added.

I will turn to a deeper discussion of Searle on rights, but this criticism is perplexing because it denies what Searle specifically states as his position, a position Corlett has just summarized at some length in this very article. Searle's point is that institutional phenomena are nothing over and above natural phenomena, properly understood. Or, as Searle also puts it, institutional facts depend upon brute facts. But Corlett appears to understand this phrase differently.

He understands Searle as holding (even though textual evidence is wholly to the contrary) that institutional facts are a distinct reality from brute facts. He understands status functions as making for phenomena that are therefore not real because they are not natural or brute facts. Hence for Corlett Searle has failed to defend 'natural rights.' There simply could not be a less charitable misreading of Searle.⁷ For example, Searle's aim in his lecture "Human Rights" is to demonstrate that rights are real, that they are grounded in deontic powers (i.e., moral norms), and that rights like all features of the world are grounded in brute facts.⁸

Of course philosophers were put on earth to disagree with one another, but without specifying what is wrong with Searle's position beyond simply asserting that rights are natural and universal (i.e., whether or not any legal systems exist) is not a disagreement because Searle would agree.

Is there a way to salvage or reformulate the point of Corlett's article? I think there is an issue here, and ironically enough, Searle directly addresses the point Corlett is raising in a passage to be discussed below (but not discussed by Corlett).

Before turning to that passage, let me quickly highlight a criticism Corlett makes that either I don't understand at this point or it is not explicated in the article.⁹ Corlett holds

⁷ I do wonder if part of the problem here is that Corlett ignores that the term 'facts' for Searle is a philosophical term of art, and that might contribute to what seems to me to be Corlett's misunderstanding. Searle does use the term 'facts' and thus 'institutional facts' quite often, but his use of 'fact' should not be read as introducing another reality or a distinction within reality between natural and institutional phenomena. Searle use of 'facts' is simply a way, he argues, for supporting the correspondence theory of truth. See Searle (1998).

⁸ Searle introduces the lecture by stating that "Most philosophers, and indeed most people, seem to find nothing problematic in the notion of universal human rights. ... But there is a skeptical tradition founded by Jeremy Bentham and continued by Alasdair MacIntyre that find the whole idea of universal human rights absurd. If we are going to make sense of the notion of rights we have to answer the question, What exactly is their ontological status?" (Searle 2010, 175). Searle's lecture then has the sole aim of showing how skepticism about rights can be countered by appeal to status functions. But then this lecture is not an argument for any particular theory of rights (therefore no discussion of Joel Feinberg or Carl Wellman, or Wayne Sumner is required). The concern of the lecture is what must be presupposed by any theory of rights whatsoever. Given that aim, Corlett has provided no reason for why Searle's attempt at defending rights fails, except as I suggested by misreading Searle's use of the phrase 'institutional facts.'

⁹ Corlett claims the work of Joel Feinberg is opposed to and thus is an alternative to Searle. I will ignore that topic here. I don't recognize some of what Corlett attributes to Feinberg, but for my purposes I will just accept for now that Feinberg's views on human rights are inconsistent with Searle's views. However, it is relevant that Corlett ignores Searle's commitment to what Searle calls the objective reasons (or also "desire-independent reasons for action"). When Searle speaks of normativity as 'deontic power' he is treating moral norms as external or objective reasons. If I understand Feinberg's view that is a substantive

against Searle that rights have no correlative obligations or duties associated with them. Corlett quotes Searle describing rights as having moral obligations “logically related” to them. Corlett responds: “But this point is problematic in that, in some instance of putative absolute positive human rights, there is no assignable person who is in a position to assist those in need ... Who, then, has the duty to address the right in question? Searle fails to address this concern.”¹⁰

This criticism seems substantive yet unclear, especially given the question Corlett asks in the passages quoted above. After all, if rights do not entail any moral duties or obligations, then any moral action fulfilling someone’s right would be supererogatory. I would find that unacceptable if I were a supporter of rights doctrines. If moral duties are not even logically entailed, which is of course a weak condition, then the answer to Corlett’s questions is that *no one has any moral duty to assist*. If this were a problem with Searle’s view (though I don’t even follow how this is a problem specific to Searle), then rights are, as Bentham claimed they were, “nonsense upon stilts.”¹¹ The question of identifying “someone to address the right” is moot if rights entail no obligations. How could the person who addresses the right have a moral duty to do so? They could act for some other non-moral reason, but then that is not relevant to a theory of rights.

As I stated, the irony of the whole discussion so far is that Searle actually addresses the issue Corlett seems to be concerned about and tries to answer it in the very lecture we are discussing. Since Corlett does not discuss this passage, I provide it before reaching my conclusion:

I have said that the easiest rights to understand are those tied to institutions... But now we come to an interesting historical development: in addition to the idea of that there are rights of property ... someone got the brilliant idea that there are rights that one has just in virtue of being a human being. Being human is a status to which functions can be assigned that fit our definition of status functions ... the theory of natural law is the theory that man-made laws should be consistent with ... human nature. The assumption is that human nature is universal and universal laws following from human nature.¹²

matter of agreement between Feinberg and Searle. But I leave it to others to judge whether Corlett is correct that nonetheless they substantively disagree about rights. For Searle’s defense of desire-independent reasons and his disagreement with Bernard Williams over the distinction between external and internal reasons see Searle (2001, 135-166).

¹⁰ Corlett 2016, 22.

¹¹ Corlett’s example in his article is that all persons have a ‘right to potable water.’ But at best that looks like simply the right to life, or perhaps a right to some minimal level of well being. However, what would be the point of having any such right if no one had any corresponding moral duty or obligation to provide what the right states persons deserve? It seems that the right to potable water correlates to the duty of some specific government agency, for instance, to provide it. Of course sometimes people do not either recognize or accept moral obligations and duties that they objectively do have. While that might be a fact of human psychology, it would not constitute an objection to Searle’s position. For a more nuanced discussion of this topic about whether and how rights are connected to duties and how they could make it that a person with that right deserves others to fulfill some moral duty see Wolterstorff (2016).

¹² Searle 2010, 179-180.

After rejecting the viability of natural law doctrines and their underlying theology, Searle asks the following question. “But if rights in general are status functions, and the existence of status functions is a matter of institutional facts, then isn’t there something puzzling about human rights?”¹³ This question is either the very same question Corlett is raising against Searle’s argument or it is very close to it. Searle then responds as follows:

The puzzling feature derives from the fact that in complex social systems rights typically accrue from several layers of already assigned status functions such as property, the army, courts of law, government bureaucracy, business enterprise, or marriage. But it is no more logically absurd to assign a status function of a right directly to humans that it is to assign a status function of being money to a piece of paper or a piece of gold... we are asking whether being human, by itself, can be a status that imposes desire-independent reasons for action on other humans. The common mistake is to suppose that if something is intentionality-relative, then it is completely arbitrary, that the assignment of rights is totally arbitrary and unjustified from a rational point of view. But that is a mistake.¹⁴

In his effort to reject Searle’s answer here Corlett has staked out an extreme position on human rights. Searle is only emphasizing that his account of deontic powers, objective reasons for action, and status functions are all a part of his naturalistic metaphysics. Ethics like the rest of reality ultimately bottoms out upon brute facts (namely, human biological nature).¹⁵

But of course the question on the table is precisely whether rights belong to the realm of brute facts. I take it then that when Searle calls it “puzzling” he means that it is at first sight puzzling how human rights are not brute facts about human beings. Searle’s response is that it only seemingly a puzzle. Human rights are institutional facts and thus real and morally obligatory.

As already noted, Corlett’s accusation is precisely that if rights are institutional facts then Searle has denied they are real or objective. But those implications do not follow from Searle’s metaphysics (I ignore the use of the qualifier “absolute” here by Corlett because

¹³ Searle 2010, 180.

¹⁴ Searle 2010, 181.

¹⁵ Searle’s commitment to ethical naturalism was first made early in his career when he claimed that G.E. Moore’s famous discovery of the “naturalistic fallacy” was itself a fallacy. Though Searle’s argument remains quite controversial, it is relevant to my discussion in this note to understand how Searle defends ethical naturalism. “The point of my counter-example is to show that the classical model [Searle is referring here to Hume’s sharp distinction between evaluative and descriptive statements about the world] is incapable of dealing with institution facts. It is often a matter of fact that one has certain obligations, commitments, rights, and responsibilities, but it is a matter of institutional, not brute, facts.” (Searle 1969, 184). Searle then commits himself to the following principle. “No set of brute fact statements can entail an institutional fact without the addition of at least one constitutive rule.” I will refer to this principle in my conclusion to this note.

it is hard to tell what that means). To take recourse to classifying human rights as brute facts is what I consider an extreme position, all the more so when married to Corlett's further claim that rights have no correlative moral duties. Corlett's position leaves rights both mysterious and impotent.

I think the answer to this apparent standoff is simple. Searle only needs to deny the *traditional* doctrine of natural rights. Searle argues then that given his ethical naturalism, denying the *traditional* doctrine of rights makes no difference to the objectivity and reality of rights.

Of course this is a large topic and Searle's entire defense depends on whether he has secured a proper account of normativity within ethical naturalism. For example, when Searle explained his account, at least early in his career, he characterized that key dependency as follows; "No set of brute fact statements can entail an institutional fact without the addition of at least one constitutive rule."

Conclusion

I speculate that Searle's appeal here to constitutive rules is a possible weak link in his defense of ethical naturalism. Constitutive rules, one would assume, will turn out on Searle's view to be institutional facts, thus nothing over and above brute facts about human beings. But these rules are required for the reality of deontic powers. Deontic powers are also institutional facts and also nothing over and above brute facts. There would appear then to be an unfortunate circularity here. I think such an argument would take much more work, not in the least because Searle's account of metaphysical dependency relations is both reductive and non-reductive. Obviously this is not the place to try to mount such a case.

If such an argument could be worked out more precisely it would support *part* of Corlett's criticism of Searle, but it would do no more than that unless the traditional doctrine of natural rights could also be supported. However, the traditional doctrine is, in effect, a supernatural ethics, as Searle himself points out in his lecture. Thus Corlett's argument is either, ironically, against the notion of rights (mysterious as well as morally impotent) or it is against the project of ethical naturalism. My preferred solution, if presented with such a choice, would be to abandon most of the traditional conception of natural rights and thereby preserve as much of ethical naturalism as possible. But for the purposes of this note my preferences do not matter. What I have shown is that Corlett has neither a persuasive nor plausible case against Searle's defense of rights, assuming views about rights that currently prevail in ethical and political philosophy.

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