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The Complexity of Rights, Claims, and Social Reality

Adam Riggio, Anderson College

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I have not often thrown myself into the ring of a long-running chain of replies that began in Social Epistemology. My own research specialties fit into the conceptual boundaries of social epistemology – the social and cultural aspects of knowledge production are central to my work – but not always in its disciplinary boundaries. As such, the specific literature from which a debate flows will not be familiar enough to me that I could add something genuinely valuable to a conversation.

That said, on seeing the exchange between J. Angelo Corlett and Gregory Lobo reignite, I realized that I could contribute a worthwhile comment. At least, I hope it will be worthwhile. My reply will have two steps. First, I wish to indicate the limits of the field of Corlett and Lobo’s debate. What social phenomena would their ontologies best describe?

In the recent exchange earlier this year, their most obvious difference was the most important for philosophers: over the proper domain to put these ideas into practice. After that comes the most critically-minded element of my reply, asking whether the concepts that Corlett and Lobo have discussed in their exchange can be put to practical use on their own. If not, what additional concepts or ideas would their social ontologies need to be put to work, as all political and moral philosophies must ultimately do.

What Is Society Made Of?

A social ontology is a philosophical account of what are the component constituents of social and political institutions and objects. Examples of institutions are governments, international treaties, and courts. Examples of objects are moral and ethical principles, and most importantly for the current essay, human rights. Working with these examples as the central models for our understanding of what social ontology is and is for, one can see the explanatory purposes of any particular social ontology. Such purpose is, regarding institutions, understanding how they appear and what powers they manifest in everyday human life. Regarding objects, such purpose is understanding what they actually are, how they exist in a fundamental form.

It is relatively easy to understand the existence of our institutions because we can visit courts and parliaments, watch summits and international meetings on television, read the texts of treaties. The ontological challenge regarding institutions is understanding their power over people. What enables the recognition of a law court, for example, as an authority over those people falling under what its rules define as its jurisdiction. Whether an institution like a court is something to which you owe your fealty or your defiance, a social ontology would identify what aspects or components of that court would prompt strong attitudes, what would make indifference to it impossible.

The matter of objects is more challenging for a simple empirical reason. Institutions are themselves obviously material – I can walk into the Supreme Court of my country Canada, tour the facilities, read its judgments, meet the judges. However, while I can read human rights laws and declarations, listen to speeches and discussions about human rights, and

study philosophical and theoretical texts about human rights, I cannot perceive the right itself. As an object of social ontology, a human right does not itself inhere in any particular matter. It can be discussed and understood, but never perceived.

None of these challenges are at all challenging from any perspective except for the one I would call reductive materialist. To be a materialist is to believe that all of reality is ultimately constituted from particles and fields of force, or perhaps only fields of force. Very generally speaking, this is what you could call me. Where a materialist differs specifically from a reductive materialist is that a person who deserves the latter description puts strict limits on the creative power of emergent processes, what systems can develop from dynamic relations among components, and how different those new systems can be from their components. A materialist need never be so harsh as to doubt, suspect, or oppose the power or existence of emergent processes, though some are.

The Emergence of Human Society, Morality, Rights, and Life

When developing an ontology of the social, the amount of creation by emergence you are willing to accept or tolerate is directly related to how many difficulties your philosophical investigation will encounter, and how intense those difficulties are. If emergence processes give you no serious concern other than to observe and understand how they work, then your investigation will discover and construct an ontology of the social with little stress or consternation. For those who, for whatever reasons, are doubtful or suspicious of emergence, their conceptual struggles will receive no sympathy or pity from me. It does not suit to make life or philosophy more difficult than it needs to be, because it will keep you from finding the truths you want to discover.

A better question to ask when developing the fundamental principles of a social ontology is what physical processes produce social objects and institutions as emergent properties. On the face of it, this would appear to be a very different question than the matter at the centre of Corlett and Lobo's exchange. Their essays revolve around how to identify and what could be that which facilitates the recognition of others' human rights.

Another way to phrase that question is to ask what it takes for someone to qualify as human, and so deserving of rights. The object of their inquiries is the same as that explored by Hannah Arendt and Seyla Benhabib in their pioneering works in human rights theory, what constitutes a person's right to claim rights. Human rights theory is a discourse grounded in the moral and political domain of philosophical thinking. So building a social ontology of human rights requires identifying a process through which moral discourses and imperatives emerge from the physical.

Where you look for these processes depends on your ontological comfort level with emergence. If you give yourself a philosophical imperative to minimize the productive power of emergence in your ontology, you will look for the shortest conceivable path from the physical, assemblages of particles and fields of force, to human rights themselves. An institutional view on the ontology of human rights, speaking very broadly, takes them to be

constituted through laws and organizations that codify and uphold law. Examples include international treaties like UDHR or UNDRIP, the International Criminal Court, and the different domestic legislatures, state constitutions, and police forces that codify and enforce human rights through their laws.

Yet this need not be sufficient, since human rights in themselves do not appear in these institutions. They are the objects of discussion in all these laws, treaties, arguments, and rules, but they are present only in the intentions of the actors involved, legislators, lawyers, police, judges, and so on.

The Power of Intentionality

This is why group and individual intentions can function well as a foundation for a social ontology of human rights. Human rights, along with all the other objects and institutions of social existence, would emerge from a common substrate of individual and group intentions and intentionality. Such is the legacy of John Searle's social ontology of intentionality.

Lobo was correct to identify that Searle made an important observation about the importance of intentional stances in constituting a society where respect for any particular set of human rights (or even just its possibility condition, the right to claim rights and have those claims discussed fairly) is a universal, or at least a widespread belief. As Lobo put it in one of his recent articles at the Reply Collective, human rights only become effective in a society's political morality when individuals and groups within that society form the intentions to recognize rights and rights claims.

The epistemology of such a notion is particularly interesting, coming from Searle, given his home sub-discipline of philosophy where rational argument is so highly prized in professional discourse. It is to Searle's credit that he has arrived at the conclusion that rational argument alone is not enough to compel recognition of a human rights claim. This is the point Lobo eloquently makes with his description of the story of Mr. Saifullah, a Rohingya refugee from ethnic cleansing in Myanmar, living as an illegal alien in Pakistan.

A human rights claimant like Saifullah does not make demands on the people and legal institutions to recognize his rights claims as legitimate. He must supplicate himself to the authorities of various state and legal institutions around the world for them to recognize his rights. A rational argument in favour of his having rights will not be enough to justify his receiving them, no matter the logical validity of his argument or the truth of his argument's premises.

You Need to Recognize

Recognition is a matter of intention. I, or preferably for Saifullah someone whose institutional office has the material power to help him, must have an intentional attitude toward him that recognizes his right to claim rights. At the moment of his interview, no one with such material power such as Myanmar's government or Pakistan's immigration

authority had such an attitude. No one in a position to give him citizenship rights or even material aid recognized Saifullah as a legal immigrant or a refugee.

The intentional stance that those with material power over Saifullah take toward him is as an illegal alien; given such intentions, his claims are not recognized. If his claims for rights are not recognized, then neither is his humanity. He is ejected not only from the communities of Pakistanis or Burmese, but the community of humanity itself. I remain skeptical that an ontology of society that centres on group intentionality alone can understand the nature of this recognition and its refusal, for reasons that will become clear through the rest of this essay.

Despite Lobo's intentions to defend Searle's account of intentionality as the bedrock of the recognition of human rights, the account still comes up empty. Just as there is nothing about a rational argument that compels our accord, there is nothing about a rights claim, no matter how wretched the condition of the claimant, that compels an intentional stance of recognition. The case of Saifullah and the millions upon millions others like him in global human civilization and history demonstrates that a social ontology of individual and group intentionality alone is insufficient to ground human rights as a true universal.

Saifullah's intentional attitude of claiming his rights cannot compel Pakistani government officials, Myanmar President Htin Kyaw, or State Counsellor Aung San Suu Kyi to change their intentional attitudes towards him to recognize his claims as legitimate. No matter the pleas of victims, their group intentionality of claiming human rights cannot compel their enemies to change their own group intentionality of destroying them.

The screams and pleas of his victims in the fields of Srebrenica did not change Ratko Mladic's intentional attitudes toward them, just as his conviction on genocide charges did not change the group intentionality of the communities who continue to venerate Mladic, Radovan Karadzic, Slobodan Milosevic, and the wider Serbian nationalist movement. The same goes for all genocidaires and mass murderers throughout human history.

The Limits of Intentionality as an Ontological Foundation

This entire discussion, stretching back to mid-2016 on the Reply Collective, of the relationship between a social ontology of group intentionality and human rights, began with a discussion in review of Raimo Tuomela's book *Social Ontology*. At first, Tuomela and Searle are quite successful in building a social ontology to understand the powers of group intentionality to shape larger social and institutional structures. However, I consider Tuomela's project ultimately superior to Searle's approach for a reason that could best be described as Tuomela's humility. Tuomela frames his inquiry as an investigation of how group intentionality fits into a more complex ontology of the social. Social existence, as Tuomela describes it, is a complex phenomenon that includes group intentionality as one important constituent.

Searle's social ontology is simultaneously more reductive and less humble than Tuomela's, despite the American's relative fame and prestige. One cannot understand human rights ontologically without understanding how the dynamics of group intentionality can encourage or discourage the recognition of a particular person's or community's claim to some human right or rights. But group and individual intentionality is not sufficient for a complete understanding of the existence of all social structures, including institutions like governments and laws, as well as social objects like rights and community beliefs about morality. Tuomela recognizes this insufficiency from the start of his book, and limits the scope of his inquiry accordingly.

Searle, however, takes group intentionality to be entirely sufficient for the bedrock of an ontology of the social, kneecapping his investigation from the first step. The roots of this error, as well as his inability to recognize this error in his reasoning, lie in the core principles by which Searle has guided his career and work as a philosopher for decades. The sociologist Neil Gross published a scathing and insightful critique of Searle's late-career turn to social and political theory, which explains these profound errors in very digestible and clear terms.

Gross' critique of Searle begins with a simple observation. When Searle's first major book on social theory, *The Construction of Social Reality*, appeared, one of the first and most common critical comments it received from the sociological community was that his theories were very similar to those of Émile Durkheim. Essentially, the sociological community received Searle's work as achieving the same insights as Durkheim did, but with a theoretical vocabulary better suited to the approaches of North American analytic philosophy, Searle's own intellectual milieu.

Catching Up to History

Durkheim was one of the major founding theorists and researchers of the modern discipline of sociology, but this critique was not complimentary to Searle or his theory. Durkheim is historically important to contemporary social theory, but theoretically and philosophically, he has been utterly surpassed. Durkheim and Searle articulate an entirely reductive materialist approach to the ontology of the social, rooting social processes in individual, group, and community psychology.

Durkheim's priorities in doing so were shaped by his historical context. He had an imperative to convince a skeptical intellectual establishment that sociology could be a science at all, so had to shape his theories to the extremely reductive ontological presuppositions of the scientific community in the late 19th and early 20th centuries. Searle, however, admitted that he did not bother to research any of this history in any great detail when he was first developing his ontology of the social. Searle's response to his first critics in this regard was that colleagues more familiar with the history of social theory pointed him to Durkheim as a possible forerunner of his ideas, but he explored little of this older work, having found Durkheim's writing style difficult and obscure.

Gross explains that the features of Durkheim's style which a contemporary American researcher would find difficult are rooted in the historical context of the time. So familiarity with his intellectual community's nature and priorities would help someone understand his concepts, and why he wrote as he did. Searle instead dismissed Durkheim as too obscure, and possibly obscurantist, so ignored him as he developed his own theory.

However, if Searle has progressed his theory's sophistication beyond that of Durkheim, this does not mean that his work is especially relevant to contemporary social thinking. Understanding that attitudes of mutual recognition is the foundation of inclusion in human community and the validity of human rights claims merely means that Searle has caught up to the insights of Max Weber and Karl Marx. If you want to be especially mean-spirited, you could say that Searle has only just caught up to Hegel. An enormous, complex, and vibrant tradition of theoretical development and empirical research that has continued for more than a century and is still living goes largely unremarked in Searle's recent social and political theory. So the last task of this essay is understand why.

You Need to Recognize (Slight Return)

Understanding why Searle dismisses such a massive and complex heritage in 21st century social and human rights theory shows how inadequate conceptions of group intentionality are for a genuinely comprehensive ontology of the social. The theoretical machinery and toolboxes that Searle ignores, as Gross made clear in his remarks on Searle's general ontology of the social, are those rooted in hermeneutic and structuralist philosophy.

Sociology as a science was able to move beyond the reductive materialism of Durkheim and the destructive influence of behaviourist psychology by folding into its practice and theory core ideas from hermeneutics as well as the structuralist and post-structuralist lines of descent. These theoretical approaches understand the common beliefs of groups and cultures as more than shared intentions. They describe how social institutions, structures, and objects, as well as cultural mores, mythic narratives, and historical consciousness come to exist as emergence from more straightforward group, community, and economic dynamics.

Emergence, whether of specific properties of a system or of wholly new bodies and systems themselves, is a material process, as material as fundamental particles and fields of force, as material as group and individual intentionality through purposive action in the world. Emergent systems, bodies, and properties are real because their constituents are the relations among their components, the dynamic fluctuations of these relationships.

The interaction of complex activities constitute wholly new bodies and processes at macroscopic scales to those component dynamics. Emergence as described is an essential concept in sociology, but also in what the common expression calls hard sciences such as cell biology. In cellular biology, the structures and constituent processes of the cell emerge from metabolic and protein chemistry. Once constituting a cellular system, the system as a whole becomes capable of activities and processes that are impossible for those component

processes and elements alone. As well, the systematic processes of the cell affect the activities of their components as individuals.

In sociology, all the complex objects and institutions of culture emerge from individual and group actions and communications. Cultural systems are capable of activities and processes that are impossible for those constituents, such as identity creation processes based on tacit knowledge and habit, influenced by the structures and content of communications media, social institutions, and socialization processes. These cultural processes then influence and affect their components, a complex feedback process that is irreducible to the psychological or intentional attitudes of individual people.

Being emergent and producing such detailed feedback mechanisms to their components, their activities cannot be reduced to those of their components. They begin instead through the relations among components of the system. One may be tempted, in the name of simplifying theory, to reduce these emergent processes and systems to the activities of their components. But such a simple theory is not adequate to the real complexity of a world that includes processes that emerge from dynamic relations.

Willful

Searle's social ontology attempts to build the entire social world from aggregates of individual and group intentions. Such an ontology avoids the differences in kind that arise in systems of dynamic relationships among components. Searle has created an ontology of the social that need rely on no emergent processes, an ontology of the social that pushes aside almost all of modern social theory, social theory that is based on principles of emergence. The component processes and dynamics of those emergence that are peculiarly social were all described in sub-disciplines that developed from or in dialogue with hermeneutic and structuralist theory.

Searle, since his famous confrontation with Jacques Derrida, has dismissed these cultural fields of study and theory as empty charlatanism. The fact often goes unspoken, but to understand why Searle built such a reductionist social ontology in his 21st century work, it should at least be considered a contributing factor. Searle's influence in much of North American philosophy during the 1970s and 1980s lent his dismissive attitude an undue weight and contributed to marginalizing the core concepts of the cultural studies fields away from disciplines and departments where his prestige was waxing.

Yet the disciplines of knowledge of which Searle encouraged a continent-wide exorcism supplied all the key concepts and theories needed to understand emergent cultural processes. By dismissing such theories, Searle closed off his own philosophical thinking from the concepts that have become the bedrock of the last century of social theory, whether from cultural, political, media and communications, or sociological disciplines. Tuomela's ontology of group intentions, where this long dialogue began, was sufficiently humble and open-minded that it had always been pitched as being about a particular component of the social.

Searle, refusing after decades to grant any validity to the fields he once dismissed, has crafted a theory of the same phenomena, but which is hobbled by its hubris in attempting a theoretical task for which it is inadequate. If the theory turns out to be inadequate, any practice flowing from such a theory will sadly be so as well.

Contact details: serrc.digital@gmail.com

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