

commitment to realism when dealing with the world of responsibility and guilt. 'Social reality and the space of reasons do not exist unless people have specific sorts of beliefs. This is the core of Searle's construction. What he still misses is that there are facts about the space of reasons which hold independently of and even in spite of how people believe.

Response to Barry Smith

John Searle

I think Barry Smith supposes that I am trying to answer a question that I am not in fact trying to answer. I am not trying to answer such questions as, "What sort of moral society should we have," "What sorts of moral criteria should we have". I think those are legitimate questions, they just do not happen to be the ones I was trying to answer. The question that I was trying to answer initially was, "How can there be objective facts which are only facts because we think they are facts? How can there be facts where, so to speak, thinking that it is so makes it so?" It seems to me there are facts such that thinking them so does make them so. For example, we are all at something we call "The Wittgenstein Conference". Now ask yourself what fact about this makes it the Wittgenstein Conference? One could tell a whole story about how the institution was created and how it is sustained and so on, but it is essential to the operation of all this apparatus that people have to have certain attitudes, and those attitudes are in large part constitutive of the fact that this is the Wittgenstein Conference. So it could not turn out, for example, that unknown to us, scientific research will one day prove that though no one ever knew it at the time or before, but afterwards it was discovered that this was really the Ernest Hemingway Conference. Appearance is indeed one thing, reality something else. But there are cases where the appearances add up to the reality, and that is not an epistemic point. The point is, rather, that the fact that we treat something in a certain way creates a reality. And this I believe is true of institutional reality in general. The reality of money, property, marriage, government, universities, etc.

At this point Barry Smith's question becomes relevant: where does a fact such as "the Chinese guy is guilty" fall? Is this an observer-relative fact or an observer-independent fact? When I was writing my book on rationality I had a completely different set of questions. This question about the observer-relativity of guilt and innocence is not a question about rationality. In my book on rationality I find myself forced in chapter three to postulate the existence of a self in order to account for the gap. I will not spell out the whole argument here. You would have to read the book to get the whole argument. But the basic idea is that you cannot make sense out of rational explanations of human behavior without postulating a self because you have no other way to make intelligible the fact that we have adequate causal explanations that do not give causally sufficient conditions. The fact that we have such explanation bothers a lot of people - Galen Strawson, and Thomas Nagel, for example - and I am trying to answer their objections I want to claim that we can have adequate causal explanations which do not cite causally sufficient conditions because they have a quite specific logical structure which is different from the structure of explanations in the natural sciences.

What is meant by “the self” as I use it? It is really a formal notion. It does not mean “personality” or “character”. Having a self is not a matter of being a nice person, for example. The notion of the self as I am using it is just an entity that satisfies a certain set of formal conditions, namely it is the entity that is capable of agency, capable of rational thought including memory, perception, belief, and so on, and capable of making rational decisions. Once you have a notion of the self, you can make a lot of other notions intelligible, such as responsibility and guilt. But it was not my intention to offer an analysis of guilt.

Barry Smith points out that insofar as there is a set of institutional facts concerning guilt, the criteria for what counts as guilt varies from one culture to another. But that is not an objection to my theory; rather that is exactly what the theory should predict. Different sorts of people would count different sorts of things as guilt. But then what are we to say about Barry’s imaginary Chinese example? The way he has described the case, I think we would have to say that they have irrational criteria for deciding questions of guilt.

I believe that Barry’s account of my views is based on a misunderstanding. On my view there is, or can be, a simple brute fact about what someone did and what someone did intentionally. Let us suppose that it is a brute fact that a certain person committed a certain act and did so intentionally. Those brute facts will count as a “crime” in our society only if there is in addition to the brute facts a law which specifies that certain acts are criminal, others not. In such a case, then, you identify one institutional fact – the institutional fact of a crime having been committed - in terms of other institutional facts, the fact that certain laws exist. But the identification of one institutional fact in terms of other institutional facts is perfectly normal. Someone is a candidate for the presidency of the United States only if he is already a citizen of the United States. So “He is a candidate for the presidency” (one kind of institutional fact) presupposes “He is a citizen” (another institutional fact). So it is not an objection to me, to say that in order to say that such and such can be counted as guilty you have to make reference to another institutional notion, the notion of a crime. Sometimes Smith talks as if he thought crime and criminal guilt could be brute facts, but such facts as the fact that such-and-such is a crime and so-and-so is guilty of a crime are never brute facts. Such facts are only relative to some institutional structure.

So I do not really see that there is any serious difficulty here. There are non-institutional brute facts, and on top of these we create institutional facts by imposing status functions. The point is that in the U.S. since there is a law that says that smoking marijuana is a crime, to claim that Joe is smoking marijuana implies that (defeasibly) Joe is committing a crime. But the fact that smoking marijuana (the act-type) is a crime in the US is not a brute fact; rather, this fact is only the result of a convention, specifically, a law. So whenever someone says, “So and so committed a crime”, there is a brute aspect and an institutional aspect. The brute aspect would be the act in question, and the institutional aspect would be whether or not the society in question counts that act as a crime.