



Dialogues with Hume

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The Institute for Advanced
Studies in the Humanities

**Hume and Searle:
the ‘is/ought’ gap
versus
speech act theory**



Daniel Schulthess

Celebrating Hume's Tercentenary

David Hume was born in Edinburgh in 1711, attended the University of Edinburgh from 1723, and died in Edinburgh in 1776, having meanwhile achieved worldwide fame as an historian and philosopher. He and his associates were at the heart of the intellectual, literary and cultural events that are now known as the Scottish Enlightenment and he is generally recognised as the greatest philosopher ever to write in English. Today his work is studied by scholars from all over the world. Although Hume wrote in the 18th century, his works continue to be influential across many fields of scholarship and remain uncommonly relevant to the philosophical disputes of the 21st century and a wide range of current public concerns. It is fitting, therefore, that the 300th anniversary of his birth should be celebrated in Edinburgh in 2011 and the University of Edinburgh is hosting a programme of events throughout the year. As part of this, IASH has organised a series of seminars entitled Dialogues with Hume as follows:

Emeritus Professor Peter Jones (University of Edinburgh):

Conversation: And the Reception of David Hume

Gathering Uncertainties: A conversation between playwright

Linda McLean and Professor Susan Manning.

Professor Daniel Schulthess (University of Neuchâtel):

Hume and Searle – the 'is/ought' gap vs. speech act theory

Dr. James Harris (University of St. Andrews):

Hume's intellectual development – an overview

A dialogue between Professor Don Garrett (New York University and Carnegie Centenary Professor, IASH) and Dr. Peter Millican (Hertford College, Oxford and Illumni Hume Fellow, IASH) on:

Reason, Induction, and Causation in Hume's Philosophy.

Hume and Searle – the ‘is-ought’ gap
versus speech act theory

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About the Author

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Abstract

John Searle notoriously rejected a basic logical point – the affirmation of the so-called ‘is-ought’ gap – made by Hume at a strategic stage of the *Treatise*, Book III. The aim of my paper is to understand some major differences, which derive from that basic disagreement, between these two philosophers. I discuss certain fundamental notions of social and political philosophy in relation to their opposition regarding that basic logical point. I take account of the fact that an analysis of promises features prominently in Searle (in *Speech Acts*) as well as in Hume (in *Treatise* III.ii.5). The paradigmatic speech acts that promises are – with the obligation to realize what one promised – have an important role in understanding political obligation more generally. So it is necessary to understand how promises function within these two different accounts – the differences being articulated here against the background of the disagreement over the logical issue.

There are two main reasons for exploring these different outlooks in a coordinated way: (i) Searle, showing no concern for the history of philosophy, says very little about Hume, although it is of great interest, in a speculative spirit, to follow the consequences of the logical disagreement through some of the developments and problems of the *Treatise*; this is done here by considering Hume in a way that is based on the quarrel Searle has started with him. (ii) Searle has kept developing, in a series of recent books, an outlook in contemporary philosophy that is a full-blown alternative to the kind of social and political philosophy which we find in Book III of the *Treatise*; so it is well worth going through some of the anti-Humean roots of this position – as well as to discover some Humean features along the way. So the aim of the paper is to put on one’s ‘logical spectacles’, and to identify through them some major oppositions in the social and political philosophy of Hume and Searle, oppositions that are precisely

derived from the initial disagreement concerning the so-called 'is-ought' gap. It will be argued that the differences are far-reaching. It will be shown also that even if Searle has a very strong point against Hume on the issue of promises, his position is not lacking in some troubling features. His outlook in social and political philosophy has still to be understood with a firm and encompassing philosophical grasp.

Introduction

The present paper deals with the relation – central to the debate Searle has initiated with Hume – between logical questions, and issues in social and political philosophy. One may suppose that logic is one thing, having to do with the bare form of discourse – indifferent, therefore, to all contents – and that social and political philosophy is a very different thing, dealing with specific contents: human behaviour, its values and its conflicts. But in fact dialogue between these domains does take place and this is because the reasoning in social and political philosophy can be affected by some logical questions as the debate between Searle and Hume shows. In 1964, Searle published his well-known paper ‘How to Derive “Ought” from “Is”’, one of his very first, after the years he had spent at Oxford from 1952 to 1959; he transformed it into a chapter of his first book, *Speech Acts: An Essay in the Philosophy of Language* of 1969. (I shall use the expanded version in the present paper.) The issues raised by Searle in his original paper remain with him to this day. He is still working out the consequences in no fewer than three books: *The Construction of Social Reality* (1995), *Rationality in Action* (2001), and *Making the Social World: The Structure of Human Civilization* (2010). With these new inquiries, the Hume-Searle debate has been expanding, following the ever-greater scope of Searle’s work.¹ One may say that whereas he first took issue with a single paragraph of Book III of the *Treatise* in 1964, Searle now addresses the whole of Book III. And this development is still rooted in the initial disagreement.

¹ There are notable parallels between Searle and – in Hume’s own time – Thomas Reid (1710-1796) in their criticisms addressed to Hume, including on the issue of “speech acts”: Thomas Reid spoke of “social acts of the mind”, 2002, I.viii, pp. 68-70; 2010, V.vi, pp. 327-344. See Schuhmann and Smith 1990; Smith 2003a, pp. 3-4; Coady 2004. These parallels fall outside the scope of the present paper.

At the beginning of the relevant chapter of *Speech Acts*, we find this:

One of the oldest of metaphysical distinctions is that between fact and value. [...] Hume is commonly supposed to have been alluding to it in a famous passage in the *Treatise* where he speaks of the vicissitudes of moving from 'is' to 'ought' [1969, p. 175; see Searle 2008a, p. 163].

The 'famous passage' is this:

In every system of morality, which I have hitherto met with, I have always remark'd, that the author proceeds for some time in the ordinary way of reasoning, and establishes the being of a God, or makes observations concerning human affairs;² when of a sudden I am surpriz'd to find, that instead of the usual copulations of propositions, *is*, and *is not*, I meet with no proposition that is not connected with an *ought*, or an *ought not*. This change is imperceptible; but is, however, of the last consequence. For as this *ought*, or *ought not*, expresses some new relation or affirmation, 'tis necessary that it shou'd be observ'd and explain'd; and at the same time that a reason shou'd be given, for what seems altogether inconceivable, how this new relation can be a deduction from others [=from other relations], which are entirely different from it. [...] [T]his small attention wou'd subvert all the vulgar systems of morality [2007, III.i.1, § 27, p. 302].

2 D.F. and M. Norton give the following comment: 'Notwithstanding Hume's claim, it is difficult to locate moralists who openly proceed in the manner he describes' (note in Hume, 2007, p. 537). The second part of the disjunction in the first sentence (towards the end): 'or makes observations concerning human affairs', is in need of an explanation. The obvious one is this. Hume was aware of the fact that Hugo Grotius treated human sociability as the source of natural law (see Grotius 2005 [1625], Preliminary Discourse §8, Vol. 1, pp. 85-86; and Hume 2007, III.ii.2, §13, p. 316); and Hume most probably also knew that Grotius had added that this foundational relation would hold 'though we should grant [...] that there is no God' (Grotius 2005, Preliminary Discourse §11, Vol. 1, p. 89). It is very plausible that the second part of the disjunction relates to a possible state of affairs where this hypothesis was taken as true: human sociability would be the only source of natural law.

This vigorous passage, one of the most frequently quoted from the *Treatise*, expresses the so-called ‘is-ought’ gap and contributes to the definition of what is commonly called the ‘naturalistic fallacy’ – a fallacy which consists in pretending to bridge that gap.³ Now Searle, not content with starting his paper by referring to the passage from Hume, gives it a title simultaneously quoting from Hume’s passage and opposing its central contention head on: ‘How to Derive “Ought” from “Is”’. Of the kind of derivation that Hume declares spurious, Searle professes to offer an outstanding example with the case of promises. The example of derivation is this:

1. Jones uttered the words ‘I hereby promise to pay you, Smith, five dollars’.
2. Jones promised to pay Smith five dollars.
3. Jones placed himself under an obligation to pay Smith five dollars.
4. Jones is under an obligation to pay Smith five dollars.
5. Jones ought to pay Smith five dollars. [Searle 1969, p. 177]

Of course this example establishes a pattern for countless similar derivations. These few steps constitute, according to Searle, a proper derivation (i.e. Hume’s ‘deduction’), in which the conclusion is to follow, in a logically apt way, from the premises, given that one must take into account a few innocuous, neither gap-bridging nor evaluative additional elements. (In what follows, we shall speak, with Searle, of statements built with ‘is’ as descriptive, and of statements built with ‘ought’ as evaluative.) The important thing is that the first statement (1. above) be built with an indisputable ‘is’ or reducible to such a statement, that no evaluative statement gets independently introduced, and that the last statement (5. above) be really built with ‘ought’. The rest of Searle’s article consists in defending and explaining the claim that there is, in this sequence of steps, a proper derivation

3 Searle 1969, also has a section, ‘The “Naturalistic Fallacy” Fallacy’, dealing with the same topics, pp. 123-136.

(see also Searle 2008a, p. 163). This is pretty much all that we have in the original paper by Searle as a declared interaction with Hume, even if some of the developments that follow in Searle's work can be easily connected with Hume.⁴

A mismatch

Before dealing with these points in more detail, I must underline that there is a mismatch between what Searle achieves with his criticism, and its target given the context of the passage. Hume obviously wishes to unsettle and dismantle a way of arguing in the tradition of natural law; a way of arguing that takes its departure in philosophical theology and then purports to draw various moral and legal implications for the human being; perhaps claiming that it has to obey divine or human commands, given its status as a dependent being. It is in this context that Hume formulates his requirements in the first place: he most obviously objects to any derivation from descriptive statements to evaluative statements in this context; and the absence of any such derivation has to count as a defining feature of his own standpoint.

Now Searle is making his point, with the help of promises, very much outside such a context. The derivation he claims to supply from a descriptive statement to an evaluative statement has nothing to do with theologically-based notions: the considerations he draws from, concern the human institution of promising. So with Searle we do not at all come back to the systems Hume was intent on rejecting in the famous passage. Between Hume's scope in the formulation of his criticism and Searle's scheme to provide a rejection of it, there is a serious mismatch.⁵ Should we care about it?

4 Especially 1964, pp. 52-54; 1969, pp. 182-184.

5 There is another possible mismatch, less evident, which I shall consider towards the end of the paper (see below, pp. 19-22).

To be faithful to the texts, I must underline that Searle himself, towards the beginning of his *Speech Acts* chapter, refers to certain difficulties in defining the parties in the debate: ‘I shall not be concerned to present counter-examples to the views of Hume, Moore, or to the metaphysical distinction between fact and value’ [1969, p. 176n].⁶ This remark shows Searle’s awareness that the identification of the participants in the debate is not straightforward. We may speculate that Searle wishes to contradict some contemporary views rather than Hume’s more complex position: he mentions the ‘classical empiricist picture’ [1969, p. 1 83; see 2008a, pp. 163-164]. This may account for simplifications, but it does not suppress the mismatch we have been talking about.

The role of promises and other institutions

The initial mismatch may be mitigated, however, if we take account of a few additional elements. It is worth remarking that, no less than Searle, Hume wants evaluative statements to be established and obeyed on account of his overall philosophical position. A few pages after our quotation, we find these lines which provisionally summarise Part II, Book III of the *Treatise*: ‘We have now run over the three fundamental laws of nature,⁷ that of the stability of possession, of its transference by consent, and of the performance of promises. ‘Tis on the strict observance of this three laws, that the peace and security of human society entirely depend. [...] Society is absolutely necessary for the well-being of men; and these [=the three laws] are as necessary to the support of society’ [2007, III.ii.6, p. 337]. We find nothing in

6 The counterpart of this remark in the paper of 1964 is even more brisk: ‘I shall not be concerned with Hume’s treatment of the problem!’ (p. 43n).

7 The phrase ‘laws of nature’ unavoidably captures one’s attention here. It reminds the reader that the tradition of modern natural law is in the vicinity (*leges naturae*).

Hume of the kind, say, of a new morality without obligations. A French philosopher of the nineteenth century, J.-M. Guyau, once wrote a book entitled *Outline of a Morality without Obligation nor Sanction* (*Esquisse d'une morale sans obligation ni sanction*) [1885]. What we find in Book III of the *Treatise* is an exercise no doubt subtle and complex, but still aiming in the end at establishing the usual and common principles of morality. And Searle of course expresses a similar aim in different words: 'We could not [throw all institutions overboard] and still engage in those forms of behaviour we consider characteristically human' [1964, p. 57; 1969, p. 186n]. Like Hume, he is predisposed toward obligations and sanctions.

Now we have already seen that Searle with his derivation introduces the issue of promises as a suitable ground. Hume cannot but welcome this displacement of focus from theology to the level of human arrangements. One might say: such a displacement was his own in the first place, in Book III of the *Treatise*. So with Searle, in some sense we find a reiteration of Hume behind the apparent rejection of his views.

Hume also has much to say on promises in Book III – although Searle never mentions this. After the prospect of a dialogue having appeared difficult, suddenly there is plenty of scope for it. Let us imagine these two philosophers addressing the ancient Greek distinction, elaborated by the Sophists, between *phusis* (nature) and *nomos* (custom) as the source for the laws of the human species: on a first reading of their positions we must assign both of them to the party of Protagoras who takes *nomos* (custom) to be the sole source of our laws. In other words, we must take account of the following crucial point, with respect to Searle: the level of human arrangements such as promises – i.e. institutions – is the only one relative to which evaluative statements can be derived (see the enlightening remarks by Gardies 1987, ch. 7: 'Back to Hume'). The analysis given in Searle 1995 – which I can only sketch here – is decisive: the evaluative statements

that can be derived from descriptive statements depend on the prior assignment of certain functions to certain objects within institutions (e.g. the function of constituting a promise assigned to a certain form of utterance). Whereas these objects can be defined, at the bottom level, in terms of brute facts, ‘functions’, however, ‘are never intrinsic; [they] are always observer relative’ [1995, p. 14; see p. 19]. The world of brute facts, once we take away its observer relative features, provides no ground at all for evaluative statements. Only functions can provide such a ground; functions that are assigned to objects by the joint intentionality of observers. So Searle is no advocate of an older concept of nature, which did allow for the derivation of evaluative statements from descriptive statements, certain things being in conformity with nature, others contrary to it.⁸ Given the intrinsic connexion with a specifically human, non-natural level, Searle admits of a certain affinity of his views with Social Contract theory [2010, p. 165], even if he distances himself for reasons that I will discuss later in this paper (see below, pp. 18-19).

After confronting a mismatch, we now discover an unexpected convergence. As readers of Hume, we understand that we cannot derive evaluative statements from descriptive statements. But still, there is a way of sidestepping the difficulty and of establishing the usual and common rules of morality, e.g. in the case of promises. As readers of Searle, we consider that we can derive evaluative statements from descriptive statements, but in fact this gets restricted drastically. At bottom we cannot derive evaluative statements from descriptive statements, except in the specific domain of institutional matters, e.g. with promises. I may add this: it is the question of institutional matters, of the type of reality they possess, and of the evaluative

8 This shows that concerns about ‘nature’ (i.e. physics in a very broad sense) also play a role in our theme. The issues are not only a matter of logic, because the older concept of nature – the one we still find in Grotius – allowed for the derivation of evaluative statements from descriptive statements. See Grotius 2005, Preliminary Discourse §8, Vol. 1, pp. 85-86, and Gardies 1987, pp. 116-117.

statements that derive from them, that has been animating Searle continuously ever since (see above, p. 3).

After this exercise in harmonisation, we must consider that Hume is bound in his further investigations – notably in his treatment of promises – by the policy he has announced in *Treatise* III.i.1. How does Hume take himself, in ‘Of the Obligations of Promises’ [*Treatise* III. ii.5], to be satisfying his own requirements in *Treatise* III.i.1? Given what we have seen, he must find a path from a context in which descriptive statements can be made use of, to another context where evaluative statements apply, while avoiding the very criticism he addressed to others. Hume asks for something other than what he found on offer on this account, according to his own requirements: ‘For as this *ought*, or *ought not*, expresses some new relation or affirmation, ‘tis necessary that it shou’d be observ’d and explain’d’ [2007, III.i.1, p. 302]. To go into more detail: in a relevant subject-predicate proposition, the subject-term will stand for an agent (indicated in what follows as S), the predicate term for what he or she has to do (indicated as X), and there will be a relation between the agent and the action – of which ‘ought to’ will be indicative, so that we get: ‘S ought to do X’. An ‘observing’ and ‘explaining’ of this ‘new relation’ must be achieved. About this semantic requirement Hume’s overall strategy is quite complex. It is displayed on several occasions in Book III, Part ii, where he deals with ‘the three fundamental laws of nature, that of the stability of possession, of its transference by consent, and of the performance of promises’ [2007, p. 337].

Hume switches from the logical surface of evaluative statements to a psychological counterpart which they must have, and this means: to motives that make us do things. So Hume arrives at an instrument of the following kind: no properly established evaluative statement, he maintains, can remain without a proper motivational backing. And motives have a passionate character, as Hume argues in Part I of Book III. Or in his own words, ‘No action can be requir’d of us as our duty,

unless there be implanted in human nature some actuating passion or motive, capable of producing the action' [2007, III.ii. 5, p. 333].

The idea of satisfying a semantic requirement by means of a psychology of motives can be expressed, in its first step, by a conditional (C), where S stands for the agent, X for one of his actions, and CX for the relevant motive to do X.

(C) if it is the case that S ought to do X, then there is – among S's possible motives – a motive CX S has to do X.

Once this change of scene is realised, we may say – in a further step – that the motive ex is allowed to constitute the 'new relation' expressed by 'ought', the relation we were looking for in evaluative statements. This satisfies the requirement Hume had expressed, by means of the converse (ConvC) of the previous conditional, which is first expressed here in a very crude form:

(ConvC) if there is – among S's possible motives – a motive CX to do X, then it is the case that S ought to do X.

Obviously, however, it is not the case that we ought to do whatever we have a motive for! Therefore the motives alluded to in the antecedent of (ConvC) must be appropriately sorted out. The additional element to take care of in the antecedent is, on Hume's own account, that a proper prevalence of the 'calm passions' (e.g. 'the sense of beauty ... in action') must be realized (see 2007, II.i.1, pp. 181-182; II.iii.3, pp. 267-268). Therefore (e) and (ConvC) will have to be rewritten as (C)' and (ConvC)':

(C)' if it is the case that S ought to do X, then there is – among S's possible motives, and given that a prevalence of the calm passions is realised in S – a motive CX S has to do X.

(ConvC)' if there is – among S's possible motives, and given that a prevalence of the calm passions is realised in S – a motive CX S has to do X, then it is the case that S ought to do X.

Once this is done, the conditional (C)' together with its converse (ConvC)' finally allows for a convertibility of established evaluative statements and their appropriate motivational counterparts.

(Convertibility) S ought to do X if and only if there is – among S's possible motives, and given that a prevalence of the calm passions is realised in S – a motive CX S has to do X.

Thus the semantic requirement about the 'new relation' expressed by 'ought' gets satisfied by way of the (Convertibility) thesis. In short, Hume addresses these issues by way of the determination of a motivational backing of putative evaluative statements, determination that must have all the correct features, and that will be allowed to underscore the evaluative statements.

It must be observed that Searle accepts the (Convertibility) thesis, but in a form in which the equation of motives and passions would be suppressed. So there is little that is controversial for him here at the formal level. Searle, being disposed to an abundance of evaluative statements belonging to various institutional contexts, provides them all with their motivational counterparts. The Humean initial equation of motives and passions (or desires) being suppressed, Searle introduces the issue of motives corresponding to evaluative statements by means of what he calls 'desire-independent reasons for action'. So in his 2008a, Searle provides his own version of the (Convertibility) thesis 'So we have now transformed the question about 'ought' and 'is' into this question: How can there be desire-independent reasons for doing anything? [2008a, p. 171; see 1995, p. 70; 2001, pp. 26-30; 2010, pp. 130-131].

Even if Searle is not in the business of ‘observ[ing]’ and ‘explain[ing]’ the ‘new relation’ expressed by ‘ought’ – because he does not believe that the opposition between ‘fact’ and ‘value’ is conceptually sound (see e.g. 2008a, p. 161) –, we may say that his own account of institutions and of the way they imply various commitments for participants may be seen to satisfy Hume’s semantic requirement. Searle could approve of it (see on this account his 2001, ch. 6). At this point, the opposition between Hume and Searle has to do with the limited set of basic motives which, according to Hume, are available. Of course Hume would reject the notion of ‘desire-independent reasons for action’: in Searle, it is basically an anti-Humean notion.

Hume’s modus tollens strategy

In the meantime, this change of levels and the notion of a limited set of basic passionate motives allows Hume to proceed by way of modus tollens using the contraposition of (C) above, which I call (ContrapC).

(ContrapC) if there is not – among S’s possible motives – a motive CX
S has to do X, then it is not the case that S ought to do X.

In a general formulation: if no motive is available (out of the limited basic set), then no corresponding evaluative statement can be countenanced (the use of this will appear with the inquiry into promises). Now if Searle has no problem at all with the (Convertibility) thesis once it is duly rephrased, he has no proper use for Hume’s modus tollens way of reasoning. This is central to his position: all the evaluative statements that derive from institutional situations correspond to motives that are given to agents in the circumstances. Institutions impose ‘desire-independent reasons for action’ (see his 2001, ch. 6). This view sustains Searle’s approach to social reality in its constructive features.

A syllogistic setting for promises

To proceed, we have to address the topic of promises. In his account of promising – the details of which we cannot explore here, but which has many interesting features – Hume conducts a kind of natural history of this institution. This natural history considers the question of social cooperation, which will be made possible only with the institution of promising. Hume thinks in terms of a simple game theory, with a notion of cooperation anticipating Robert Axelrod's view on this topic [Axelrod 1984]. Hume in particular takes notice of the importance of iterated games, which require anticipation of the payoffs for players, not only of games taken individually, but also of games taken in a series involving the same protagonists. Here the importance of future commitments appears; the cost of 'never being trusted again' [Hume 2007, III.ii.5, p. 335] if one does not fulfil one's commitments – that is to say, the cost of not being considered for further cooperation – has to feature in one's reasoning concerning one's optimal behaviour. The motive to keep one's promises will be built out of such anticipations, once put in a social setting. So Hume works with an opposition between different motives that are available: those that are given from nature, and those that are artificial and dependent upon a full-blown social life. This explains why he reasons firstly in a context that is determined by nature only and secondly in a context where nature is supplemented by the artifices of society.

With respect to promises, Hume takes the further step of putting on one side the promise as something verbal, as something that occurs in speech; and on the other side the obligation-procuring aspect of the promise; which, given the rule of convertibility (see above, p. 12), means taking into consideration the corresponding motive. This way of reasoning can be captured well by a simple syllogism; a syllogism with a major premise which is universal, a minor premise which is particular, and a conclusion that is particular too (the mode is called Darii).

A reconstruction that would capture what Hume has to say actually implies the use of two versions.

Syllogistic reasoning version 1

Major (universal): if someone promised to do X, then he or she ought to do X

Minor (particular): S promised to do X

Conclusion (particular): S ought to do X

Now there is a certain opacity concerning what is precisely involved in promising. Therefore there is this further version of the syllogism, which is taken as equivalent to Version 1 but underlines the verbal element. Of course there are conditions, beyond the bare utterance of words, for a promise to be given, such as speaking seriously, not ironically, or as an actor. It is easy to add such conditions to the antecedent of the major in Version 2 below.

Syllogistic reasoning version 2

Major (universal): if someone uttered the words 'I hereby promise to do X' (and did so seriously, not ironically, or as an actor), then he or she ought to do X

Minor (particular): S uttered the words 'I hereby promise to do X' (and did so seriously, not ironically, or as an actor)

Conclusion (particular): S ought to do X

The idea of this syllogism is that it captures – with its distinctive major premise – the adequate understanding, in Hume's approach, of the obligatory character of promises, which is realized only in the 'state of civil society'. Searle takes account of this view: 'According to the classical model, an inference from a descriptive statement [...] to an evaluative statement, if valid, must always be mediated by an additional evaluative statement' [1969, p. 184; on this approach, see also the classic Prior 1949, ch. 5].

State of nature versus state of civil society

Now let us consider the premises of the syllogism in different contexts, first in the ‘state of nature’, then in the ‘state of civil society’. Of course, in other respects, Hume is known as an opponent to the idea of a state of nature, especially such as it is implied by the notion of a Social Contract, taken by Locke and others as basic to legitimate political authority (see Hume 1987a). The two positions are compatible however: one can be an advocate of a state of nature in relation to a generic institution (as Hume is in the present context) while being a critic of it with respect to a particular institutional arrangement (as he is when criticizing Lockean political views).

So let us observe the behaviour of the premises. I take the minor first. Let us say this: in the state of nature, one can well utter the words of promising (Version 2); and so in a certain sense promise (Version 1); so the minor can be treated as true in the appropriate circumstances. However, the major does not apply in the state of nature. The idea is that the appropriate motive is not constituted, and that therefore – due to (ContrapC) – the consequent of the major is false. This, however, does not allow us to deny the antecedent of the major. (Here it is given as true.) Thus the major does not apply. Hume precisely professes that ‘the rule of morality, which enjoins the performance of promises, is not natural’ [2007, III.ii.5, p. 331]. In consequence, the conclusion is not established – in the sense in which it would have had to derive from the premises. This is what allows Hume to say that there are no obligation-producing conditions in the state of nature (and accordingly, ‘in nature’): ‘promises have no force’, he writes, ‘antecedent to human convention’ [2007, III.ii.5, p. 333].

A logical remark must be duly considered here. It is important, for Hume’s approach to work, that the minor actually applies in the state of nature, i.e. that there are promises in the state of nature. If it did not, we would not encounter this typical Humean situation of finding

promises that are not binding! It is characteristic of his view that the bare nature of promises does not yet bring about the obligation. But it is only on the basis of the notion that there are promises, that we can say that they do not bind. Without promises being given in the state of nature, we may well say: ‘it is not the case that promises bind’. But we would not be enabled to proceed to: ‘promises do not bind’. The point has to do with the difference between internal and external negation. We have internal negation with ‘promises do not bind’. We have external negation with ‘it is not the case that promises bind’ if we take this to mean ‘it is not the case that there are promises that bind’. The latter statement is compatible with the mere non-existence of promises.

On Hume’s picture, it is appropriate to have a situation (in the state of nature) with a descriptive statement that applies – in the minor – (and from which the naïve may think that evaluative statements follow), and then, to be able to assert the lack of an evaluative consequence, given that the major does not apply. Were it the case that the minor does not apply, then the point of the separately acquired applicability of the evaluative consequence (in the state of civil society) would not be made clear. We would not see that the relevant evaluative statement does not follow from the relevant descriptive statement, given that there would be no appropriate descriptive statement in the first place.

The major and the minor of the syllogism, then, jointly apply in the state of civil society. And what occurs is not the deduction of an evaluative statement from a descriptive statement (this is what Searle wants, and Hume rejects), but – in Hume – the deduction of an evaluative statement from the conjunction of an evaluative and a descriptive statement. Hume is in favour of this. It satisfies his requirements. In the end there is such a ‘rule of morality, which enjoins the performance of promises’. Hume wants a role for ‘human inventions, founded on the necessities and interests of society’ [2007,

III.ii.5, p. 333); he insists that the rule is ‘merely a human invention for the convenience of society’ [ibid., p. 336].

It is true that Hume remains puzzled by what is happening in this context: ‘[S]ince every new promise imposes a new obligation of morality on the person who promises [...] ‘tis one of the most mysterious and incomprehensible operations that can possibly be imagin’d, and may even be compared to transubstantiation, or holy orders’ [2007, III.ii.5, p. 336]. These surprising comparisons show Hume’s strong commitment to his limited set of basic motives, and simultaneously his readiness – forced and constrained (for there is no escape from the (Convertibility) thesis) – to extend it nevertheless. Or should we switch to an ironical reading of the passage just quoted? I rather think not, because the price would be too high for Hume’s overall position (see above, pp. 7-8).

Searle against the syllogism

Searle in principle accepts the idea of a natural history of institutions (see 1995, pp. 70-71; 2010, pp. 94-96): but any such history will have to take account of the derivation we have been speaking about from the beginning. At an early stage, we may say – perhaps – that there are no promises; and at a later stage, promises appear. However one cannot make a promise without thereby incurring an obligation to do what one has promised to do; the obligation being ‘internal’ to the promise, due to the constitutive rules on which the very act of promising depends: because to promise is to put oneself under an obligation to do what one has promised to do [1969, pp. 178-179; 2010, p. 83]. More generally, however, Searle rejects the notion of a state of nature, because the use of language itself is always tied to various commitments. The whole thrust of speech act theory bears against the notion of any commitment-free situation. The constitutive rules of the various speech acts make it impossible to avoid the

requirements they imply; see for example the criticism of Social Contract theory [2010, p. 134].

If we use the terms of our syllogism (see above, p. 15, especially Version 2), this means that according to Searle there can be no splitting between a verbal moment – the minor – and an obligation-providing moment – the major. The rejection of this splitting is very basic in speech act theory. Here we see how decisively the analysis of speech acts – with the notion that there are constitutive rules for them, rules always involving commitments of various kinds – defines a parting point between Hume and Searle. And the author of the present paper admits that he sides with Searle on this account.

A difficulty in Searle's position

At some point we may become wary about the very direct and undifferentiated way in which Searle arrives at the obligations which follow from various speech acts, including promises. In order to describe the difficulty, I will list a few features of such institutional obligations:

- they are backed by social constraints, so that compliance is often imposed upon us (by praise and blame, reward and punishment, etc.)
- they correspond to various stereotypes, to quite undifferentiated roles available in society
- a simple participation in public life is often impossible without incurring them
- they reflect social conformity.

The attempt to bring such features to the fore may express a certain social scepticism. Once we take that stance, we may wonder whether such institutional obligations must be taken as objects of philosophical enquiry (see Zaibert 2003, p. 70). And if they are taken as distinct, then the issue arises of the relation between institutional obligations

and any fully-fledged moral obligations which we may incur.

Is there not another mismatch here between Searle's approach and Hume's investigations? The situation is approximately the following: the evaluative statements that are being derived from descriptive statements according to Searle's views are to be taken as unspecified, and not as statements having a moral import (the moral 'ought' being obviously what Hume has in mind in the context). They may not qualify as evaluative statements in the moral sense. Searle admits that this is so and claims not to consider the derivation of properly moral statements, but only of statements having 'ought' as a 'humble English modal auxiliary' (see 1969, pp. 176-177; pp. 187-188).

Why is it that we are not very much at ease with these directly derived obligations? We tend to be detached in respect to them, non-committal, even though our compliance may be beyond doubt. The answer to the question is probably this: because they work through a background of social constraints; compliance is enforced by certain means also. We tend to think that philosophy has precisely to be critical about such obligations that are simply the consequences of our participation in various institutions.

The problem can be taken up in various ways. If we think of the distinction which Kant draws between categorical and hypothetical imperatives, there may be a way of treating most institutional obligations simply under the guise of non-moral hypothetical imperatives. On this view, obligations that are consequential upon institutions would acquire a proper moral character only in special circumstances giving them special weight. Now there is a notable threat for Searle's position arising from such thoughts. We may describe the threat with the help of a syllogistic reasoning similar to the one we have dealt with before, this time expressing the necessity of a moral backing to give an institutional obligation the character of a 'real' moral obligation. This would have the following structure (MB for 'moral backing'). A first premise would make the

moral obligation dependent on a prior recognition of an institution as valuable. A second premise would express the recognition of the institution.

MB

First premise: if S recognizes the institution I as good, then (if an obligation to do X applies to S within the institution I) S morally ought to do X

Second premise: S recognizes the institution I as good

Consequence: if an obligation to do X applies to S within the institution I, then S morally ought to do X

Third premise: an obligation to do X applies to S within the institution I

Conclusion: S morally ought to do X

This reasoning,⁹ similar to our former syllogism (see above, p. 15), threatens the Searlian enterprise. If one really ought to do only what one morally ought to do against such a background as (MB), the whole significance of Searle's derivation would disappear. At least it would do so if we insist that we are interested only in what we morally ought to do. Searle is aware of such a threat, and has always avoided giving an organised account of the relation between institutional obligations and moral obligations. In any case, he thinks that much is misguided in moral philosophy: '[Our philosophical] tradition contains an unhealthy obsession with something called "ethics" and "morality", and the authors [...] are too eager to get to their favourite subject of ethics' [2001, p. 182; also quoted by Zaibert 2003, p. 80]. Clearly, Searle is sticking to his 'humdrum' institutional obligations.

Obviously institutions can be good or bad; institutional obligations can be eccentric (think of honour codes); and of course, Searle admits

9 A similar reasoning is implied by Hume's account of promise and obligation, when it comes to the dependence of obligations relating to promises from 'public interest and convenience' (see 2007, III.ii.5, §15, p. 337).

that institutions can be criticised on various grounds (and therefore also the various obligations that derive from them). But it is not on a moral vantage-point of the kind that is necessary for the reasoning (MB) above that they depend. What is significant for Searle is something much weaker, which may be expressed by the notion of participation. What is at stake is collective participation. This appears in the following structure expressing ‘participatory backing’ – hence PB.

PB

First premise: if S participates in the institution I, then (if an institutional obligation to do X applies to S within the institution I) S ought to do X

Second premise: S participates in the institution I

Consequence: if an institutional obligation applies to S within the institution I, then S ought to do X

Third premise: an institutional obligation applies to S within the institution I

Conclusion: S ought to do X

I think that this structure captures Searle’s position well (see Searle 2001, ch. 6, p. 210). It expresses also his view in relation to the kind of social scepticism which I have tried to make intelligible at the beginning of the present section. Certainly we are bound to live within institutions, to participate in them. They are not above criticism, including moral criticism; and up to a point, we can live outside them. But once we participate in them, we have to incur the obligations that derive from them. According to Searle, there is no way to be critical about institutions, except by way of non-participation. Now participation and non-participation in institutions are interesting and rich notions about which Searle has much to say. The issue of the relation between institutional obligations and moral obligations is one of continuing interest.

*A basic opposition between Hume and Searle
in the domain of social and political philosophy*

From here we may be able to move to a more global appraisal. In Searle, obligations are directly linked to institutions (given his approach). In Hume, obligations are only indirectly linked to institutions, against the background of a state of nature which allows us to make sense of these institutions. The idea of a state of nature is characteristic of Enlightenment thinking: it opens a space for the criticism and the reform of institutions. In this context Searle is a post-Enlightenment thinker. Searle's logical stance preempts certain ways of thinking that have had a critical edge in social and political philosophy. If Searle is right, then we will simply find ourselves saddled with all the obligations deriving from the institutions in which we participate.

In spite of what others have written to the contrary,¹⁰ Hume, by my account, remains an Enlightenment thinker because of the way nature, according to him, puts conditions of principle on the understanding of our obligations. The constraints of the state of nature allow Hume to take a critical view of the obligations we incur in social life. On Hume's view, property, consent and promises mainly operating in the style of economic arrangements – a certain kind of economic thinking with the Enlightenment value of utility – constitute the basis of natural law. This may account for the legitimacy of some purported obligations and the illegitimacy of others.

The reversal

In my concluding comment, I wish to underline the striking reversal that occurred in the Searle-Hume debate. The reversal appears when we consider the longer history of the modern natural law tradition.

¹⁰ E.g. Bongie 2000; Green 2011.

This tradition promoted the idea of a derivation of ‘ought’ from ‘is’, because it favoured a scientific methodology that made mathematical sense of the notion of derivation (see Dufour 1991a; the passage in *Treatise* III.i.2, §27, quoted on p. 4, is also a testimony to this aspect). The derivationist position was critical to the programme of bringing order to the system of legality. Hume shunned the derivationist scheme; nevertheless he remained close to the tradition of modern natural law.

As to Searle himself, although his derivationism might have appeared to place him in the camp of the modern natural law tradition, and although derivationism means to him also a sense of objectivity, because deriving ‘ought’ from ‘is’ provides the relevant institutional obligations with objectivity (something which was misguidedly rejected in empiricist philosophy, see Searle 2001, p. 188; 2008b, p. 21), his position nevertheless implies a break with the tradition of modern natural law.

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