



An Ontology for  
Social Reality

*Tiziana Andina*



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# Introduction

Over the years I spent writing this book, I progressively developed the conviction that ours is a particularly interesting historical phase for those who deal with social ontology. I believe this for two reasons: first, because the discipline has perfected a series of important conceptual tools aimed at understanding the social world, and seems now ready to explore interdisciplinary fields; second, all civilizations appear to be traversing an extremely delicate historical dimension. We live in a globalized world where the relations between agents have been immensely enhanced and no social component—and, at a higher level, no civilization—can be conceived without making reference to the others. This is proved, for instance, by large-scale migrations and their economic, political and social consequences. Migration flows are always hard to control and have a deep impact on the target social structures: in fact, they bring out traits of society that only emerge through traumatic events but would otherwise remain latent in the folds of everyday reality.

There is another element on which I believe it is necessary to reflect. Western culture has interpreted itself (at least since the eighteenth century) as a path of progress and growth, both in cultural and in economic terms. Indeed, cultural and scientific growth was often understood as a direct cause of economic development. The idea was that the future is always better than the present, and that children will live in a better world than their parents'. Immanuel Kant well expressed this view in his

political writings where he argues that the relation between generations is unbalanced towards the new ones. In fact, if we consider history as intrinsically positive and progressive, it follows that every generation will capitalize on the (material and immaterial) goods of the previous one, thereby living in conditions of greater wealth and prosperity.

However, this view of progress and future so typical of the Western culture has been disproved: transgenerational progress is not at all a given; Quite the opposite. If we do not fight for it, our society—in terms of ethics and law, but maybe also structure—is destined to change. I think this point is well worth considering as part of the social ontology to come, in collaboration with political and moral philosophy as well as demo-anthropological and economic sciences.

The book is structured in four chapters and has two main objectives: first, it presents the fundamentals of social ontology: it discusses the origins of the discipline, its basic concepts and some of the most representative theories of the recent literature in order to further develop them in a productive direction; second, it provides an essentialist social ontology that analyzes the concept of the state, reshapes social ontology, argues in favor of a realist approach and, finally, promotes better understanding of the dynamics of power as well as greater justice between generations.

The first chapter identifies two opposing theoretical models: the stipulative and the essentialist. An illustrative example of the former can be found in the position developed by David Hume, for whom social reality is a complex and completely constructed structure. The thesis that Hume supports in the *Treatise of Human Nature* identifies the origin of social reality in stipulation. In other words, according to this position, social reality exists because human beings, for utilitarian reasons and through an agreement, have decided that it should exist, in a manner functional to some purposes that they have established and shared. Therefore, from this perspective, social reality exists because human beings have conventionally decided for its existence and chosen the rules through which it functions. Hume's analysis of the promise is exemplary in this sense.

On the other side, the essentialist model was introduced by Edmund Husserl in a paper entitled *Soziale Ontologie und deskriptive Soziologie*, where he coined the phrase “social ontology” and indicated the main lines of contemporary social ontology. As is known, in phenomenology

reality it is composed of things that have invariable essences, whose being is also normative. In social reality, the description of which was mainly addressed by Reinach (hence the definition of the essentialist model, Husserl–Reinach), this means that if the action we call promise has a precise and stable structure, this structure does not depend on the fact that humans have conventionally decided to agree to commit some acts of the will. Rather, it means that promises, when they exist, exist only in ways that correspond to their essence *a priori*.

After showing the reasons for the adoption of the essentialist model, the chapter presents and discusses the basic concepts of social ontology: relation, social action, covenant, promise, emotion. Relations and actions are identified as the two constituent elements of social reality; as for actions, in particular, I describe the properties that identify social actions and, within the latter, I identify one particular type of action: the transgenerational action that identifies social reality over time. The concept of transgenerational action is introduced in the first chapter and is developed and defined throughout the book.

In the second chapter I discuss three paradigmatic theoretical positions that belong to the category of contemporary social ontology: P-ontologies, I-ontologies, and O-ontologies which, respectively, focus on People, Institutions and social Objects. These positions are largely represented by the works of Margaret Gilbert, John Searle and Lionel Hart, and finally Maurizio Ferraris. The theories discussed are paradigmatic because they build social ontology, each basing it on different assumptions: they all have strengths and weaknesses and, in different ways, have contributed to the significant progress of the discipline. What emerges from a comparison between these different theses and methodologies, firstly, is that a good social ontology, to be effective, must coordinate very different explanatory components, ranging from the need to have a good taxonomy of the elements that make up social reality, to the analysis of its agentive, regulatory and institutional structures.

Secondly, it is quite clear that, under the methodological profile, ontologies tend to investigate the social world as if it were a complex articulation *given at a time t*. However, I believe they lack reflection on an element that characterizes and constitutes social reality: persistence over time. To understand social reality it is not enough to understand

the individual elements that make it up, nor is it sufficient to understand its normative and document apparatus and the agentive and relational dynamics of the subjects; it is also necessary to understand how it is possible that this complexity can last over time, or what guarantees its duration and preservation in time.

The third chapter deals with precisely this question and proposes reflection on the state as the most appropriate theoretical key through which to address such issues. I then pose some questions relating to the nature of the state: does the thing we call the state exist or should it be rather regarded as a conceptual fiction? And, if it does exist, what is it? The ontological question is tricky, because it seems hard to reduce the state to some material entity, but it also appears reductive to consider it a mere regulative concept. My analysis will show that the temporal property is what best characterizes the state: in other words, the state is not primarily something that takes up some space, but rather something that has a certain—and relevant—duration in time. I will define the state as an emerging entity that has the property of lasting over time. To exist in time, a state must correspond to a precise ontological structure involving: (a) the individuals' intentional will that has brought the state into being; and (b) "something" which preserves and maintains the intentional will of the individuals, namely its redefinitions in time, which can be defined as the *vehicle of institutionality*.

As we shall see, the analysis of the second point (b) is the main issue as regards the definition of the concept of state. In fact, if it is true that the concept of state is temporally connoted, it is also true that the state cannot be reduced to a physical object. I will argue that what keeps and maintains in being the intentional will, namely the vehicle of institutionality, are the actions taken by the state. After outlining an initial taxonomy of these actions and analyzing their structure in terms of ontology, I show that there is a particular type of action, the transgenerational action, which exhibits two main characteristics: first, it is the necessary condition for the existence of societies (that is, there cannot be societies without transgenerational actions); and, second, it can only be taken by states. Furthermore, transgenerational actions are characterized not only by having an extension in time, but also by the fact that this time involves *more than a generation*. I will show in detail that the actions taken by states

have a complex ontological structure, since they have a double temporal dimension: they have at the same time a simple and a transgenerational temporal extension.

After defining the institutional actions, I will show the ontological differences between simple and transgenerational actions. Institutional actions, in fact, are not all the same, and their duration is an important variable. Let us assume that Mr. Smith is the commander in chief of the armed forces of a state. Imagine that Mr. Smith finds himself in a particularly delicate situation: he must decide, in his capacity as commander in chief, whether to respond militarily to an attack aimed at his country by a neighboring state. Mr. Smith's decision can have two consequences: (1) a negative action, where commander in chief Smith avoids responding militarily to the neighboring state and asks a third institution to take action, solving the conflict situation; or, (2), commander in chief Smith, perhaps after consultation with the institutional bodies of his country, can opt to declare war on the neighboring state. The hypothesis that I will examine assumes that temporality determines in constitutive and specific ways the act of "declaration of war". I will consider, with respect to ontology, how this action is structured and what components it implies.

I will show how this type of actions creates a normative sphere that is both required by and derived from transgenerational actions: they bring into being some obligations that relate to the consequences of transgenerational actions, that is, they relate to actions that depend, more or less directly, on transgenerational actions. This normativity—as well as the completion of the transgenerational action—is entrusted to generations who have not wanted or decided for the transgenerational action in the first place. So, as I shall point out, the problem is twofold: on the one hand it concerns the foundation of the claims made by the state, or by supranational organizations, that the completion of this type of actions and the consequences arising therefrom should be entrusted to people who have not decided for them; on the other hand, and conversely, it involves the obligations to which the state must adhere and which constitute such actions. Finally, I will show that if governments fail to consider the particular structure of transgenerational actions—that is, the fact that they require the collaboration of several generations—states risk taking constitutively *unjust* actions.

In the first three chapters, therefore, I will claim that the state and its evolutions (like meta-states) are necessary both to the preservation of the political sphere and to the realization of a politics whose objective is justice. This is true not only for practical reasons—that is, because individuals and societies need mechanisms for institutions and representational systems to work—but also for ethical reasons: in fact, governments cannot operate neglecting the transgenerational nature of some of their actions. If transgenerational actions are, as I assume, social actions, then they can only be taken in a framework that includes the presence of the state.

Finally, Chapter 4 is dedicated to completing the framework outlined in the previous ones through a discussion of the ontology of institutional reality. To do so, I draw on the film *The Giver* to make a sort of cinematic thought experiment. The film describes a dystopian social reality in which peace and harmony are reached at the cost of manipulating the history, identity and memory of the people. In that world, knowledge of history legitimizes a certain use of power; the chapter therefore dwells on the notion of power, analyzing it both in terms of energetics (as the biological–animal dimension of the living) and in terms of political power. I do so by looking at some of the most important definitions that have been given in literature (Dahl, Foucault, Dean, Lukes, Arendt, Searle), in order to propose the Lockean thesis that power is both active and passive. Thus, I do not consider power as a property that a person may or may not have, but rather as a predisposition.

The idea of power as predisposition is developed within the theoretical framework offered by the thought of Max Weber, articulating what I call the macro structure of institutional reality, that is, the document bureaucracy. The document bureaucracy is analyzed and described by proposing a taxonomy of the documents that it make up, which are passive and active custodians of power, according to two main categories: normative documents and testimonial documents. In conclusion, I go back to the abovementioned thought example to show why both types of documents are a necessary condition for the existence of institutional reality.

# 1

## The Domain of Social Ontology

### 1.1 Conflicting Intuitions: Antigone's Paradox

The origin of the story we are about to tell can be found in two things: a natural predisposition and a conflict of intuitions. The predisposition was captured and described by Aristotle in his *Politics*: human beings are by nature “political animals”—in other words, they are oriented, by natural inclination, to live a common life.<sup>1</sup> Forcing them to live a life in isolation is equivalent to imposing an unnatural condition on them. Aristotle does not delve into too much detail, but imagines that if there were a human being who chose to stand outside of the social forum, such a person would resemble a god or an animal.

It is not hard to imagine what Aristotle had in mind. It is sufficient to think of Edgar Rice Burroughs' Tarzan stories. Tarzan was born on the edge of civilization, to a young English couple who found themselves in the African forest after the mutiny of the crew of the ship *Fuwalda* that was taking them to the African continent. Extremely weakened by

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<sup>1</sup> *Politics*, I, 2–8.



childbirth, Tarzan's mother died after a few months, while his father was forced to defend himself and the child from the attack of a group of gorillas. The man did not survive, but Kala, a giant gorilla, saved the baby. Tarzan was then raised as an ape: he learnt how to move, to survive in the jungle and to speak ape language. At the end of many vicissitudes caused by encounters with humans, Tarzan will choose to return to the animal dimension, as if to symbolize that once the path of socialization is inhibited or interrupted, this fracture will remain open forever.

So, if the disposition to social life is very natural, social reality is complex and much more than "instinctive". It is made up of objects, relations, relationships, structures and superstructures that are intimately connected. Some parts of this structure are invariant and necessary, that is, constitutive of the part of reality we call "social"; others, instead, are the result of contingent choices and options. Therefore, one of the tasks of social ontology is to distinguish the first from the second, identifying the elements of the social world that are not subject to negotiation and those with a stipulative character. Following a research of this kind, it will be possible to discuss to the so-called normative aspects of social reality.

As much as human beings are predisposed to social life, some see the latter as the cause of profoundly conflicting dynamics. While it is true that man is a social animal, it is also true that a non-accessory character of his being is defined by freedom, that is, his right/duty to self-determination. Freedom is the reason for his ethical and moral responsibility, both as a single and as a social individual. Now, these two traits, both constitutive of human nature, often seem to be opposed. The task of social ontology is also to identify the causes of this conflictuality and, possibly, find a remedy.

The main agents of social reality are people, and its most important objects are relations and boundaries: between people, between people and institutions, and between institutions. Relationships can be of different kinds: some are little binding while others are extremely binding. They depend on the structure of social reality.

A significant example is that of the stipulation of pacts. It is no coincidence that Dante Alighieri, in his *Divine Comedy* (cantos xxxii, xxxiii

and xxxiv), places the betrayers of trust and pacts<sup>2</sup> in the depths of Hell, in a place far away from sight and memory: namely, the Cocytus, a frozen lake divided into four concentric zones. Traitors to their own relatives (the case is of two brothers of the lineage of the Alberti who slew each other) are immersed up to their necks in Caina. In Antenora, in a similar position, but with the head raised up so that it is more exposed to frost, are located the traitors to the homeland. In Ptolomea the betrayers of guests lie supine. Finally, in Judecca, completely immersed in the ice and in the most diverse poses, we find the traitors to benefactors.

Dante's disdain unfolds in the harsh and unforgiving description that runs through these pages: there is no room for mercy. Justice is manifested in the sentence that the poet chooses to inflict upon those souls. It is easy to imagine that the reasons for Dante's severity are not only of a moral order: those who betray trust and break pacts put social stability to a serious test, as it is based on trust between people in the first place, among people and institutions in the second place, and finally between institutions themselves. So, what simply cannot be tolerated in a social system is that people should not honor deals.

Dante seems to be certain that deals require absolute respect. It seems that he really knows in all cases what it means to comply with a pact, just as he seems to know *a fortiori* what we are talking about when we talk about pacts. However, even this matter, which seems so fundamental to social reality—*pacta sunt servanda* said the ancients—is somewhat controversial. So let us ask ourselves what a pact is, and if respecting a pact is always equivalent to doing justice. Things are not as simple as Dante takes them to be, and it is not difficult to show how this matter hides conceptual as well as ethical conflicts.

In this respect, it might be useful to recall Sophocles' *Antigone*, which presents an exemplary case. At the very beginning, Sophocles makes it clear that this is a situation in which the private and public spheres intertwine and are at one. Affections are tied to power in an inextricable tangle. *Antigone* exemplifies the essence of the conflict hiding between the lines of social

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<sup>2</sup> *Inferno*, xi, vv. 61–66: "In the other way forgotten is the love/which Nature makes, and that which afterward is joined thereto, whence special trust is born;/hence in the smallest ring, where the universe/its center hath, and on which Dis is seated,/whoe'er betrays is spent eternally."

reality: on the one hand there is the search for sociality as a constitutive dimension of human life, on the other hand there is the loss of individual self-determination, which has also consequences under the moral profile. This is a sharp conflict that invests the very foundations of social reality.

We are in Thebes, and the curse that fell on Oedipus does not appear to have ceased to be: this time it is his sons, Eteocles and Polyneices, who are affected by it. The facts are simple. Following Oedipus' exile, due to the devastation he inadvertently caused, Creon—brother of Jocasta, Oedipus' mother and wife—became regent of Thebes for a short period. As soon as the two twin sons of Oedipus come of age, being unable to claim a priority in the succession to the throne, they established a diarchy: each would rule for a year, on a strict rota basis. Everything seemed to work well, until Eteocles broke the pact. The day came in which his brother Polyneices was entitled to succeed to him, but Eteocles expelled his brother, accusing him of incompetence and wickedness. Polyneices' exile led to serious violence, and the city of Thebes was beset by a bloody war. The brothers came to a final direct confrontation, and the outcome of that fight, leading to the death of both brothers, provides the background for the story of *Antigone*.

Antigone and Creon—respectively, the sister of Eteocles and Polyneices, and the new king of Thebes—in addition to being the protagonists of the narrative, express two opposite but (at first sight) equally well-founded insights. Now, imagine we had the opportunity to ask the two about the foundations of social life. From Antigone we could get an answer like this:

The social world as seen by Antigone  
 What is the foundation of social reality? People, of course. To expand, social reality is based on both the respect for the written and unwritten agreements of men, and on the respect for other agreements: those between men and their gods. Not complying with this basic principle is equivalent to showing arrogance and contempt for the gods. If ever a king, a father who should administer public life and pursue justice for the welfare of his subjects, failed to comply with those laws, he would also show that he did not care for justice, nor for his subjects' future. Woe to the city that should know a king of such kind. He would give rise to irreconcilable tensions in the hearts of his citizens; contradictions so radical as to force them to choose between the freedom to

determine their own moral principles and the need to obey the laws of the state. Thebes had the misfortune to be ruled by such a king and underwent injustice and pain. You certainly recall the story:

What, hath not Creon destined our brothers, the one to honored burial, the other to unburied shame? Eteocles, they say, with due observance of right and custom, he hath laid in the earth, for his honour among the dead below. But the hapless corpse of Polyneices—as rumour saith, it hath been published to the town that none shall entomb him or mourn, but leave unwept, unsepulchred, a welcome store for the birds, as they espy him, to feast on at will.

Such, 'tis said, is the edict that the good Creon hath set forth for thee and for me, —yes, for me, —and is coming hither to proclaim it clearly to those who know it not; nor counts the matter light, but, whoso disobeys in aught, his doom is death by stoning before all the folk.<sup>3</sup>

The world that Antigone bears in her mind and heart has three characteristics: (1) it is founded on the idea of justice; (2) it is based on a relationship between individuals (and their memory) that, as such, precedes the relationship with the state and its institutions; and (3) this relationship is primarily based on the respecting of pacts, invisible but very real constraints that develop between people and, in the case of Antigone, between people and gods.

Justice is achieved in compliance with the laws, and the laws of the gods precede and ground the laws established by people. Therefore, no human decision, no political power, although inspired and descending directly from the gods, can justify breaking them. No political power may limit the individual's right/duty to self-determination, especially when it comes to ethically delicate matters. For this reason, the way the king treats one of the two brothers, in Antigone's view, is intuitively unfair, whatever the wrong he may have committed.

Now let us see how things are for Creon, for whom Antigone's actions foreshadow an open threat to his power.

The social world seen by Creon

You ask for what reasons I decided to put Antigone to death? Do you believe I cannot imagine what pain this will bring to Haemon, my hapless

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<sup>3</sup> *Antigone*, vv. 26–47.

son betrothed to her? Antigone has committed serious wrongs that no king could forgive. The main lies in having deliberately violated my commandment. In doing so, not only has she called into question the authority and the power of her king, but even worse, she has questioned the reasons for my commandment, namely my commitment to the good of the community. And what reasons could there be that pushed me to act as I did, other than a concern for the fate of my people? Thebes has already unjustly suffered too much, and a king, if worthy, always prefers the good of the community to his own or that of his friends and relatives.

For since I have taken her, alone of all the city, in open disobedience, I will not make myself a liar to my people—I will slay her. So let her appeal as she will to the majesty of kindred blood. If I am to nurture mine own kindred in naughtiness, needs must I bear with it in aliens. He who does his duty in his own household will be found righteous in the State also. But if any one transgresses, and does violence to the laws, or thinks to dictate to his rulers, such an one can win no praise from me. No, whomsoever the city may appoint, that man must be obeyed, in little things and great, in just things and unjust; [...] But disobedience is the worst of evils. This it is that ruins cities; this makes homes desolate; by this, the ranks of allies are broken into head-long rout; but, of the lives whose course is fair, the greater part owes safety to obedience.<sup>4</sup>

The arguments presented by Creon are interesting. Disaster is a step away, but he does not notice. The world that the sovereign has undertaken to defend has two characteristics: (1) it is founded, just as is the “Antigone-world”, on justice; but (2) unlike Antigone, Creon does not believe that the agreements between people should have precedence over the institutions and the state; rather, unlike Antigone, Creon holds that the basic agreement is the one that binds the king to his citizens insofar as they have fully delegated to the sovereign their right to self-determination.

This is what Haemon points out to Creon, in a dense dialogue in which the former scolds the absoluteness of a power that deprives people of any political representation.

HAEMON:    Father, the gods implant reason in men, the highest of all things that we call our own. Not mine the skill—far from me

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<sup>4</sup> *Antigone*, vv. 705–727.

be the quest!—to say wherein thou speakest not aright; and yet another man, too, might have some useful thought. At least, it is my natural office to watch, on thy behalf, all that men say, or do, or find to blame. For the dread of thy frown forbids the citizen to speak such words as would offend thine ear; but can hear these murmurs in the dark, these moanings of the city for this maiden; “no woman,” they say, “ever merited her doom less, —none ever was to die so shamefully for deeds so glorious as hers [...]”

CREON: Men of my age are we indeed to be schooled, then, by men of his?

HAEMON: In nothing that is not right; but if I am young, thou shouldst look to my merits, not to my years.

CREON: Is it a merit to honour the unruly?

HAEMON: I could wish no one to show respect for evil-doers.

CREON: Then is not she tainted with that malady?

HAEMON: Our Theban folk, with one voice, denies it.

CREON: Shall Thebes prescribe to me how I must rule?

HAEMON: See, there thou hast spoken like a youth indeed.

CREON: Am I to rule this land by other judgment than mine own?

HAEMON: That is no city which belongs to one man.

CREON: Is not the city held to be the ruler’s?

HAEMON: Thou wouldst make a good monarch of a desert.

The idea of justice endorsed by Creon entails the sovereign’s right and duty to apply and enforce the laws. Antigone, of course, also believes that the laws should be respected, but she does not take the power of a king to be self-legitimizing and, above all, she does not believe that the sole social bond is the one binding the king to his subjects. Rather, from Antigone’s perspective, the power of the sovereign is legitimated by the will of the gods, and pacts—especially those that have taken the form of divine laws, however they were stipulated—should be honored even when doing so contravenes the king’s dispositions. Notwithstanding the fact that the reader usually sympathizes with Antigone, it is worth noting that Creon’s thesis substantially privileges the state over the individual.

If we think about it, Creon's thesis is not too far from that exhibited by Socrates in *Apology*. In what was perhaps the most important moment of his life, when his own city—Athens—decided to sentence him to death, despite knowing he was innocent and having the chance to flee, Socrates chose not to contravene the law and, therefore, to accept death.<sup>5</sup> Socrates' idea is that there is a bond of obedience between a citizen and the laws of the state of which he is a member, and this bond is such as to impose obedience under any circumstance. Even in this case, however, there are several counterexamples.

Socrates decides to accept death for himself, so as not to contravene an order—no matter how unjust—of his city. But let us say that an unjust order involves not only the one who has to fulfill and bear it, but also third parties. I shall illustrate this point by means of a thought experiment. Let us assume that our state calls for a general census in order to identify all citizens belonging to a given race. The goal is to separate them from the rest of the population and deport them to a different world, away from the Earth. Let us assume that the state tells us that those citizens are carrying a rare, potentially lethal, virus. Let us also assume that the state is acting in good faith—the legislature acts on the basis of the information at its disposal—but let us also say that, for some reason, we know that the information on the basis of which the state is making decisions is incorrect. The only consequence of that deportation will be not to the saving of lives, but the leading of the whole selected race to certain death. In a scenario of this type, do Socrates' arguments still apply? It is easy to imagine conflicting intuitions in this regard: that is, there are good arguments to claim that, in situations of this kind, the laws do not express binding obligations—because the formulation is based on wrong information. In this case, citizens have the right and duty not to comply with the decisions of the state, which therefore are not normative.

But let us go back to *Antigone*. Yet a different view from both Creon's and Antigone's is brought forward by Haemon: he is committed to a more "secular" perspective, claiming that the citizens' legitimation is the foundation of the king's power. Essentially, he defends a form of political contractism: a place in which *one* man is in charge cannot be called

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<sup>5</sup> *Apology of Socrates*, XXIX and ff.

“city”. A king who ruled in such an absolute way would end up ruling a desert, thereby weakening his own power. Haemon has perfectly understood that the issue posed by Antigone highlights a morally and ethically delicate point. Therefore, he strongly advises the king to be careful, for the citizens of Thebes have not understood the reasons for Creon’s verdict. Are there really good reasons to execute someone who merely wants to honor the memory of her brother?

There is a special bond between brothers, a natural bond that precedes (or even founds) any social norm. One cannot ask a brother, as Creon does, to betray a brother, no matter what is at stake. This means that even in Haemon’s version the family bond precedes any institutional constraint, including that of obedience which a subject owes to his king. Haemon is perhaps less sensitive to the ties that bind people to the gods, but he is very sensitive to the relationship of trust and representation that binds people to the institutions that govern them.

Antigone’s paradox is therefore perfect: whatever decision she makes, Antigone cannot but betray someone. If she decided not to care about the fate of her brother’s body, she would have to be counted among the traitors of relatives, since she would be breaking one of the strongest pacts: the one with a close relative. If she were to choose—as she does—not to respect the order of Creon, then she would betray the king and therefore the state. *Antigone* represents, therefore, the perfect paradox: on the one hand we have the law of the state, personified by Creon; on the other, the law of self-determination, embodied by Antigone.

To solve the impasse, Norberto Bobbio suggests that one should interpret Antigone’s paradox (usually understood as ethical) in a broader sense. The real dichotomy, according to Bobbio,<sup>6</sup> is not that expressed in the contrast between a “weak” institution such as the family and a “strong” institution such as the state. Rather, the conflict is established at the dawn of the birth of market economies, between the state of nature (as described by Aristotle in his *Politics*) and the political and civil state. The entry into the civil state involves the signing of a particular pact, which has important consequences in terms of both the determination of the social sphere and the delimitation of the individual sphere. In other

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<sup>6</sup> Bobbio (1989: 13 ff).



words, an individual acting in the “Aristotle-world” (AW) has fundamentally different characters from those belonging to the “Hobbes-world” (HW). Let me explain what I mean.

In general, the individual referred to by Aristotle has his horizon of reference in the household (and hence in the dynamics underlying family structure). His action takes place in a relatively circumscribed world, governed by punctual and reassuring dynamics. This is, in fact, the characteristic expressed by Antigone. However, in the state of nature the position of the individual within the social world changes radically. The horizon becomes larger and the dynamics become more complex and fluid. It is no coincidence that the Hobbesian analysis clearly evidences the sphere of affection and, more specifically, an emotion that runs through *Leviathan*: fear. In the state of nature family bonds are weakened and the horizon of action widens considerably. The space of freedom increases but, in proportion, so does the insecurity that comes from this new dimension.

The reaction to this “climate” causes profound changes that have an impact at the social level. As we will see, this very choice produces the birth of the “Leviathan-world” (LW), which is founded on an act and on two properties. The act, which consists in delegating to the Leviathan all rights to self-determination, implies the signing of a covenant by which citizens give life to the Leviathan, namely the state. The properties of the pact are at least two: permanence in time and transgenerationality, that is, its validity for generations that succeed those that contracted it. Thus, the pact determining the birth of the Leviathan seems (1) to have no temporal determination limiting its duration, and (2) also to hold for those who have not explicitly accepted it. Brought into being as a result of a social pact, the Leviathan has the aim of perpetrating its own existence. Therefore, the people contracting the original pact assume the possibility of it being legitimately transgenerational,<sup>7</sup> i.e. its holding *de facto* also for generations that did not participate in its stipulation, but that will nonetheless have to comply with it. This means that the Leviathan is the expression of a form of consensus among individuals who choose to

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<sup>7</sup>This term has a specific meaning in the sphere of psychology (see, for example, Kaes 1993, Nicolò 1996) but I believe that, for the reasons that I will explain, it is destined to play a major part in social ontology and philosophy of politics.

live within political communities, but it also means that it aspires to be maintained over time regardless of any form of renewal or renegotiation of consensus.

Throughout the book I shall often refer to the idea of “transgenerationality”: I will show that it is a primitive concept that, as such, constitutes our identity as social individuals. Transgenerationality is what allows our social identity to be bound to generations other than our own, regardless of blood ties and kinship. It is a bond that, like many others—for example, relationships of love and friendship—involves rights and responsibilities not only from an ethical standpoint but also from a political one. I will also show that it makes sense to speak of transgenerationality in at least two fields. The first is that of collective identity, which is a state typical of different generations over time (think of national identity). The second is political—more precisely, it is the field of political practice. I will demonstrate that the latter field implies the existence of the former, showing that only the state grants the possibility of a genuinely transgenerational political action.

To sum up: the members of a community  $x$ , at a time  $t$ , choose to entrust some of their rights to a third party  $y$  that exists only as a result of the agreement between the members of the community. The delegation entails that the contractors of the covenant give up part of their individual rights that, from that moment, will be the exclusive property of Leviathan, which will protect them in the manner that it deems the most appropriate. In a situation like this—after all this is the question asked by Antigone—what room is left for free individual choice? Can individuals still legitimately be considered the moral subjects of their actions? Or must part of their—moral or immoral—actions be completely attributed to the state and its institutions?

## 1.2 Ontology

Human sciences have several means at their disposal to study social reality. Philosophy was the first discipline to research ethical, political and moral issues (the three major areas that, in different ways, deal with the social world). But there is another discipline, sociology (developed towards the

end of the nineteenth century by Émile Durkheim and Max Weber), specifically dedicated to the study of social facts and dynamics.<sup>8</sup> Social ontology finds its rightful place in the area of philosophy and takes social reality as its object; therefore, it is a part of the larger domain of ontology. This is why it is essential to clarify what ontology means in philosophy,<sup>9</sup> before delving into the specific discussion of social ontology.

Whether we decide to consider it as a study that should precede, or follow, metaphysics, ontology is a discipline that has a long history. “Why is there something rather than nothing?” Leibniz wondered in the *Monadology*. This is a fundamental question, which introduces the following point: granted that there is something rather than nothing, *what is there?* Or even, what is there, beyond the traps of ordinary language that seem to exist to provoke doubts about the certainty of common sense?

In order to better orient ourselves, it may be useful to quickly recall a stretch of history. The man who introduced the term “ontology”, thus founding, at least nominally, the discipline, was Johannes Clauberg, a philosopher of the seventeenth century. In a work entitled *Elementa philosophiae sive Ontosophia [Elements of philosophy, or Ontosophy]* (1647),<sup>10</sup> he defines ontology as the study of being as such, as it is intelligible. Clauberg sharply separates ontology from metaphysics, establishing that the first should concern the domain of being in its most general sense (1660, 1664). Therefore, it deals with what there is, with what exists.

It is worth noting that, despite giving the discipline its name, Clauberg was not the first person to engage in this type of investigation. Ontology and metaphysics (the discipline that is traditionally related to ontology) had already been tackled by Greek philosophers. Many of the most interesting works in the metaphysical field really belong to the period before the introduction of the term, at the dawn of the Christian era. Consider the treatises by Parmenides, Anaxagoras, Anaximander, Pythagoras, Euclid

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<sup>8</sup> Durkheim (1895), Weber (1904–1905, 1949).

<sup>9</sup> For a historical overview of the discipline, see Ferraris (ed.), 2008. For a discussion of theoretical issues related to contemporary ontology see Varzi (2001, 2005), and Andina (ed.) (2013): Eng. Trans. 8–37.

<sup>10</sup> Even though Clauberg coined the name, it should be noted that the explicit reference to a discipline that aims to inventory the entities making up the world was already present in the philosophical vocabulary of Goclenius (1613). On the origins of ontology and the specific contribution of Goclenius see Lamanna (2013).

and Zeno, Plato's *Parmenides* and many other ancient classics of Western thought. Similarly, important authors or works of other philosophical traditions have dealt with this topic: for example, the *Tao Te Ching* (a Chinese classic text dating back at least to the third century BCE), and the works of the two Indian Buddhist monks Nāgārjuna (around 150–250 CE) and Vasubandhu (fourth century CE); one should also add all those texts, even of a literary or religious nature, that contain reflections on the structure of reality.

Both ontology and metaphysics experienced a veritable flowering during the Middle Ages, when thinkers engaged in discourses about the nature of God, the Trinity, angels and men; suffice it to recall that the dispute between nominalists and realists runs through the whole of medieval scholasticism. Coming to modern times—merely mentioning the milestones—it is useful to recall Descartes' dualistic ontology, which marks very deeply the debate on substance (mind and body); then there is the ontology that Leibniz elaborates on the basis of his fundamental question, namely, "Why is there something rather than nothing?" After Leibniz, both John Locke and David Hume dealt with ontology. The topic was then taken up by Kant, whose philosophy marks a profound change in the way of understanding the relationship between subject and object.

In fact, if, in broad terms, the pre-Kantian tradition was marked by the idea that ontology was the starting point of epistemology, Kant moves in the opposite direction: his approach emphasizes transcendental structures and the modes of knowledge of the subject. In short: what can be known and, in certain radicalizations of Kantianism, what exists, depends directly on the "structure" of the knowing subject. In this perspective it is also possible to make the next step: to claim, as some did,<sup>11</sup> that not only the "ways" of knowing the world depend on the subject, but—even more radically—the world itself does.

Contemporary ontology, which has its roots in the works of Edmund Husserl, is usually far from these outcomes of postmodern thought and, while often working on the formulation of revisionist hypotheses, usually does not commit to radically constructionist themes. Research mainly follows two directions. The first is that of theories aiming to trace ontology

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<sup>11</sup> See, paradigmatically, the works by Gianni Vattimo.

back to logic and, more generally, to philosophy of science. In most cases these positions take ontological parsimony as their guiding principle: in other words, they engage in an essential ontology. The second direction is that of theories intended to preserve the autonomy of ontology both from logic and from epistemology and, more generally, the autonomy of philosophy from science. The ontologies proposed by these theories are often generous, sometimes even redundant.

The first set of theories generally engages with the formulation of corrective or normative metaphysical systems, following the belief that naive theories are coarse, perhaps even a little clumsy, and therefore should be amended or replaced by metaphysical systems starting from science. The second set of theories engages with the formulation of metaphysical systems close to common sense, which mostly clarify, on a conceptual level, the problematic aspects of ordinary reality. In other words, before one can even decide whether it is appropriate to engage with a three-dimensionalist or four-dimensionalist, objectivist or constructivist, realist or nominalist, relativist or anti-relativist metaphysics, one should ask oneself whether philosophy is expected to simply clarify the meaning of sentences (a minimal perspective, after all, but nonetheless of great fascination for contemporary thought) without exposing itself too much on the ontological side, or whether, conversely, it would not be better to go beyond the analysis of language and conceptual schemes that structure grammars and epistemologies.

Among the supporters of the minimal option we find the American philosopher Willard Quine, who, nevertheless, warns us about the risk of underestimating the ontological issue.<sup>12</sup> If we want to interrogate the world through formulating less titanic questions than those proposed by Leibniz, it will suffice merely to attend to the things that surround us. Yet, we will quickly realize how much this road is plagued by pitfalls. It will be sufficient to consider names referring to objects that have no space-time existence to notice this. For example, there is the case that Quine calls “Plato’s beard”. How to treat names like “Pegasus”, “Santa Claus” or “Sherlock Holmes”? To say nothing of objects such as the round-square. Are we sure that they should really be considered, from a theoretical view-

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<sup>12</sup> Quine (1948).

point, as existing objects based on the fact that we attribute predicates and properties to them? After all, we were told early enough that Santa Claus does not exist, so why should we reconsider the matter?

In fact, referring to Bertrand Russell and the position expressed in one of his most famous works—*On Denoting*<sup>13</sup>—Quine suggests a good strategy in support of ontological parsimony. Quine’s polemical target lies in the theories that engage in a generous ontology, such as the paradigmatic one proposed by the philosopher Alexius Meinong.<sup>14</sup> As is well known, Russell posed a question that has important ontological implications: How can we assess the truth or falsity of statements referring to things that do not exist? Let us assume that the topic of discussion is the King of France and that someone is discussing his hair. “The present King of France is bald”—says our interlocutor. Is this true? False? Some rudimentary notions of history are enough to help us: we know that the first French republic was founded in 1792. Then there were several vicissitudes, but in any case the constitution of the Fifth Republic dates back to October 4, 1958. That being the case, who are we talking about? We should know this, in order to answer the question about the king’s supposed baldness. Now, no matter how long we look for him, there is no trace of the King of France: thus, perhaps, the King of France does not exist even though it remains possible to say a few things about him. And yet, one could argue, there must exist something to which the statement relates if, as it happens, we are able to say something about him—for example, that the King of France is bald.

Russell’s idea is that, in order to solve the mystery, it is sufficient to carefully examine the statement, so as to “translate” it. Applying the principles of predicative logic, the sentence becomes: “There is now a king of France and he is bald.” The translation shows that the sentence has the shape of a conjunction in which one of the clauses is false, but if one of the clauses is false, then the statement is false. The move suggested by Russell, and then adopted by Quine, points out the convenience of minimizing the problems in the area of language, exposing ill-formed issues, or the deceptions that lie behind our grammars, before venturing

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<sup>13</sup>Russell (1905).

<sup>14</sup>Meinong (1904).

into the ontological and metaphysical context. We should not forget that, in doing so, ontology is partially put aside in favor of logic and linguistic analysis.

Russell's theory explains that, to put it in Quine's words, "A singular term need not name to be significant."<sup>15</sup> Russell's aim, shared by Quine and well represented in literature, is to get a better conceptualization of reality through a more prudent and less naive use of ordinary language. In a nutshell, there are four moves proposed by Russell in *On Denoting*: first, he shows how one can use singular terms without entering the ontological level; then he shows how one can do the same with universal terms, while remaining equally disengaged from ontology. Finally, he shows how, virtually, all theories use conceptual schemes that are proper ontological prejudicials. Therefore, in conclusion, he suggests that one should limit the comparison between different ontologies to the linguistic level.

Let us come now to the second theory, the less minimalist one. The hypothesis that language and conceptual schemes are a kind of cage structuring our relationship with the world is rooted in the continental tradition rather than the analytic one—Friedrich Nietzsche put forward a similar argument in *On Truth and Lie in Extra-moral Sense* (1873). If we think about it, such an argument finds its *raison d'être* in the radicalization of some skeptical hypotheses. Its premise is the following: we cannot exclude that knowledge developed with the help of sense organs, and conceptual schemes different from the human could produce unexpected results.<sup>16</sup> Given the premise, the argument proceeds in a rather singular way. Since no one will ever confirm or disprove the premise—we may never know what the world is like as known, say, by a bat or by a mosquito—*then* we are obliged to draw the necessary conclusions. In a word, according to this thesis, human beings face the logical impossibility of knowing the modes of knowledge of non-human animals. Therefore, human beings will never be able to know something true regardless of the subject establishing the cognitive relation.

Thus, instead of being regarded as a vehicle of our relationship with the world, language comes to be the sole object of investigation available.

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<sup>15</sup> Quine (1948: 5).

<sup>16</sup> See Nagel (1974).

The task of philosophy, then, is to clarify it, translate it, break it down and reassemble it. It is manifest that such an approach risks binding philosophy to merely reducing the external world to the language we use to describe and talk about it. This position entails a few relevant problems. The fact that human beings are special entities, because they are capable of being both subjects and objects of epistemological investigation, does not mean that linguistic practices—which also depend on the physical and mental constitution of the person using them—are all there is. Nor does it mean that human beings do not deal with a reality independent of subjects, conceptual schemes and languages. This is precisely the argument used by non-reductionist ontologies, which generally have a further ambition, so to speak. To them, metaphysics is not absorbed by the analysis of language; these ontologies do not lose sight of our relationship with the world, which is seen as a reality independent of the tools we use to represent it, to know it and to talk about it (such as language).

In other words, just as in epistemology it is not necessary to support radically skeptical theses lying behind the argument of mere conceivability, in the same way it would be opportune to see some advantages in engaging in positions that theorize the reduction of the world to our conceptual schemes, or to our semantic vehicles. This is an important first step. The second, equally central, point concerns the role that, as philosophers, we intend to grant to philosophy. The debate of the last fifty years has devoted much time and energy to this issue for reasons that basically resemble those that had already led Kant to complain about the ineffectiveness of metaphysics. The reader surely remembers the terms of the Kantian objection: unlike other sciences, metaphysics is cyclically committed to questioning its own premises. Such obvious weakness, according to Kant, should probably be ascribed to an inefficient method that had to be rethought in accordance with the methodology of physics.

It is not surprising, therefore, that Kantism has been adopted, and in some ways even developed, by scientists who used it to support their scientific perspectives—the works of Hermann von Helmholtz are paradigmatic (1882–95). For a physician like von Helmholtz, who was a doctor and a physiologist, Kantism formed the most appropriate theoretical basis to give philosophical substance to the idea of perception as intercepting sensory stimuli rather than the objects of the external world. In



*On the Conservation of Force*,<sup>17</sup> the methodological dimension becomes explicit: science relates to worldly objects using two types of abstractions. The first considers them in their simple existence, regardless of whether they affect one another or not. What he derives from this, from the conceptual point of view, is the idea of an inert matter, devoid of qualitative differences, which undergoes transformations and changes only with respect to its movement in space. These changes, registered by the sense organs, allow us to organize an understanding of reality that has a relational character. If matter is the postulate of Helmholtz's metaphysics, force is its sign: the track which sense organs refer to. Helmholtz assumed that the correspondence between the external object (say, a chair) and the perception of the chair is the outcome of a series of unconscious inferences, real "adjustments" that the subject has no cognizance of, but that allow her to structure a coherent reality.

Such a hypothesis, transposed in metaphysical terms, would be very similar to the *sequentialist* thesis: if on the one hand there is the possibility of ascertaining the operating modes of perception and, more generally, of human cognition, on the other hand there is the equally founded possibility that human beings will never know the world outside of the construction made by their sense organs and intellect. So one should simply assume that reality is a kind of flow, an undifferentiated sequence of stimuli, which living beings learn to structure in ways that are most congenial to them. In Helmholtz's theory, in essence, the properties of the objects in the world and those of our representations do not coincide. Subjects relate exclusively to representations, while the world outside the subject remains an indistinct cloud.

The bond that binds the subject to the outside world is extremely tenuous: the sense organs deal with forces, everything else is postulated or is the result of conceptual construction. In this context, the space left to scientific theorizing is vast, and philosophy somewhat prepares the ground for science, while placing itself on the side. Besides, Von Helmholtz was not the only person to formulate a constructivist position in those years: the same presupposition lies behind the theses of Charles S. Peirce in his "Anti-Cartesian Essays". In them he deconstructs Descartes' concept of

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<sup>17</sup>Von Helmholtz (1847: 12–68).

intuition by stating that no form of intuitive cognition can exist, because everything is inference even at a perceptual level.<sup>18</sup>

As was rightly pointed out by Alexander Koyré and Paul Feyerabend,<sup>19</sup> this idea of philosophy comes from afar and depends on the way in which scientists and philosophers have interpreted the role of perception in the economy of human cognition. In the seventeenth century a real conceptual revolution changed the balance of the relationship between the beliefs of common sense and scientific theories; this revolution entailed a conception of perception that became the heart of the turn itself. In fact, while in Aristotle's thought errors related to sensibility are defined as occasional accidents—it may happen that the senses deceive and are mistaken, but these are fundamentally exceptions because, for the most part, they fulfil their duties very well—their reliability is questioned radically by Descartes and Galileo.

The senses—this is the basic thesis—systematically deceive us. So, as far as possible, one should work on a method that substantially prescind from their contribution. Even better: scholars should investigate the so-called primary qualities, i.e. those aspects of reality that are subject to measurement. That is to say it is good to deal with figures, motions and numbers, while it is less good to be interested in colors, shapes and aesthetic qualities in general. It is not hard to guess the reason for this distrust expressed by science, as it has much to do with a search for stability: the weight of an apple and its nearly round shape are qualities that can be determined with a much greater accuracy than its redness.

After all—this is the idea—red color can be expressed in many ways because its perception includes different shades, which are partially subjective. Still, if we reduce that red to wavelengths, maybe we will lose its beauty, but certainly our knowledge will gain greater clarity, precision and stability. And it does not matter from the point of view of philosophical theory and scientific inquiry that, in everyday life, people do not perceive wavelengths but dozens of shades of red.

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<sup>18</sup> Cf., for example, Peirce (1931–1958: vol. 5), “Questions Concerning Certain Faculties Claimed for Man”, 213–263.

<sup>19</sup> Koyré (1965), Feyerabend (1978: 148).

But does it really not matter? Naive knowledge does not seem to agree. The idea that not all aspects or dominions of reality can be fully traced back to, or reduce to, interpretations of natural science—and that translating philosophy into the language of scientific theories is not always an advantage—is the second idea that has partially limited philosophy’s aspiration to turn into a metaphysics that would side with hard science. Naive knowledge well expresses this second option. By the label of “naive knowledge” philosophical literature refers to the number of theories expressing the kind of knowledge belonging to commonsense. Physics and psychology are perhaps the two spheres in which naive theories have developed the most.

As for physics, consider, for instance, a body in motion: a ball entering in contact with another one that is still. We all know it is natural to infer the motion of the latter, still ball: we deduct it from perceiving the speed and direction of the former. In psychology it is also natural to interpret the behavior or even the feelings of others on the basis of the attribution of beliefs, mental states, desires and emotions. If an elderly lady approaches us on the bus, without asking, we get up and offer her the seat; if a student fails an exam it is not difficult to imagine he would be gloomy and maybe angry at his examiner. Ordinary life is complex and full of our attributions of meaning that, in general, have a fairly good degree of predictability and on the basis of which we make most of our decisions. When—as happens with autistic people—one cannot attribute mental states to other individuals, leading a normal life becomes *de facto* impossible.

Philosophers such as Patricia and Paul Churchland<sup>20</sup> and Stephen Stich have suggested that we should naturalize the domain of the mind so that the many entities that are difficult to define and vaguely mysterious—memories, emotions, desires, volitions and so on—can be traced back to neural states. In doing so, our vocabularies would be impoverished, but at the same time our languages would certainly be less vague and less metaphysically problematic. We will no longer refer to things like anger or desire for revenge, but rather to the  $x$  or  $y$  neuronal configuration, and everything will be easier and hopefully clearer.

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<sup>20</sup> Paul Churchland (1984) and Patricia Churchland (1986), Stich (1986).

What still has to be considered is whether simplicity is really the only objective that a theory should set itself. It might be a trivial observation, but it is also true that reductionism is one of the most common temptations in contemporary philosophical thought—in philosophy of mind, in aesthetics, in morals and in ethics. As much as the need to simplify is both legitimate and justified from a theoretical viewpoint, the feeling is that the reduction of knowledge to the understanding of the functioning of neural patterns or cellular states is mostly effective if one wishes to capture a “primary” level of reality, so to speak. Think of the arts and studies in neuro-aesthetics: the mere list of colors or, if you wish, of the colored pigments that make up a painting by Picasso does not “render” the work of art. Also, knowing what areas of the brain are active when we see an artwork is unlikely to help us understand what art is and why it gives us emotions. The portrait of Gertrude Stein is something more than the many brown tones the painter plays with, or than the combined formal qualities of the painting.

After all, artistic experience cannot be merely explained by illustrating the functioning of the brain. If we also add the fact that some works touch us, others teach us something, while others do neither the first nor the second thing, the picture is complete. The reductionist theoretician must then imagine a strategy including, under the label of “artistic experience”, the most diverse neural patterns: those that are activated in the presence of works that affect us or, conversely, those that are activated in the presence of works that do not. But then what distinguishes this neural configuration from the one that is activated, say, in the presence of the recognition of an ordinary object? Think also of the brain areas that are activated in the presence of didactic works, esthetic qualities or non-esthetic qualities. I doubt that such research, while being interesting in terms of science, will help us understand why we consider the art of Picasso more significant than that of his friend Manuel Pallarès, or that it will help us understand artistic experience.

A similar thing could be said for the theories explaining the nature of human mind. The thesis—developed by the theories of naive physics and advocated in psychology, among others, by Jerry Fodor<sup>21</sup>—is twofold:

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<sup>21</sup>Fodor (1987).

intentional explanations are literally true and essential, functional for human beings to be capable of action. In addition to this, they have a reference in the world and denote computational states of the human mind. Thus the “psychological” cannot be reduced to the “neuronal”, just as the ontology of the mental cannot be reduced to the ontology of our neurological system and, likewise, the ontology of the phenomenal world cannot be reduced to that of the physical world.

Similarly to what happens in other specific fields of philosophy (for instance, philosophy or art or philosophy of the mind),<sup>22</sup> I believe that in social ontology it is also worth committing to the formulation of a non-reductionist ontology. Therefore, the investigation of the structures of social reality falls fully within the framework I have just described.

## 1.3 Social Ontology

### 1.3.1 The Stipulative Model and the Essentialist Model

Now that we have identified the domain of reality that social ontology is concerned with, it is time to present the two main perspectives from which to construct a social ontology. We shall call them the “stipulative model” and “essentialist model”. There are several different examples of them in the history of philosophy; however, for our purposes, we will only consider the position of David Hume, exemplifying the stipulative model, and the Husserl–Reinach theory (as I shall call it for convenience), which provides a good example of the essentialist model.

Let us start from the analysis of the stipulative model. The thesis put forward by Hume in the *Treatise of Human Nature* (1739–1740) identifies the origin of social reality in stipulation. In other words, social reality exists *because* human beings—for reasons of utility and through an agreement—have decided, in conventional terms, on both its existence and the rules that regulate its functioning. The Humean analysis of the

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<sup>22</sup>For a deeper analysis see respectively Andina (2013) and Morton (ed.) (2010).

promise is exemplary in this sense. In the third book of the *Treatise*,<sup>23</sup> in fact, Hume takes up the question of the essence of the promise. The question that arises is simple: Can we argue that promises have natural foundations, which belong in some way to human nature or, on the contrary, should we conclude that they are the result of conventions, i.e. acts of stipulation?

Here is the thesis: “a promise would not be intelligible, before human conventions had established it; and that even if it were intelligible, it would not be attended with any moral obligation”.<sup>24</sup> In essence, the promise comes directly from conventional acts, which makes Hume say that a human being who was unacquainted with society—someone similar to our Tarzan—could not in any way make promises, let alone be subject to the moral constraints obliging him to keep them.

To support this thesis Hume uses two arguments. The first, in particular, clarifies his orientation: he seeks to invalidate the idea that actions involving a promise are natural dispositions. If it were so, and the promise and the act of promising consisted in a natural disposition, we should identify an act, among those which the subject is capable of, that nature has specially designed for promises. However, it seems difficult to detect such a thing. What would that be? Hume browses some options. Could it be the “resolution” to keep a promise? Not really, given that a resolution does not entail any kind of obligation. Could it be desire? Neither, since the actions implying a promise do not necessarily depend on wishes. In fact, I can promise things that I don’t want to do or that I don’t want to happen. Finally, it is not even the will to realize the promise. The will, says Hume, is a faculty that is only oriented in one declination, being linked to the present. Promising, instead, means relating to the future. “It follows, therefore, that since the act of the mind, which enters into a promise, and produces its obligation, is neither the resolving, desiring, nor willing any particular performance, it must necessarily be the willing of that obligation, which arises from the promise.”<sup>25</sup>

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<sup>23</sup>Hume (1739–1740: vol. I), third book, part II, section V.

<sup>24</sup>Ibid.

<sup>25</sup>Ibid.

In a word, I must *want* to feel obligated, as the obligation arises precisely from the will of the subject; therefore, I must want to want that obligation and, in doing so, I must want to oblige myself to keep the promise. In Hume's view, this is the weak point of the argument. We only force ourselves to do something when, for some reason, not doing so would create problems for us. In the case of the promise, however, the creation of the obligation presupposes a new feeling, which is impossible, given that feelings cannot change as a result of a command of the will.

Therefore, Hume seeks in the subject, and more precisely in his faculties, the source of the obligation connected with the promise: if an obligation exists, it is an obligation that depends on the dispositions of the subject. If we can prove that things are not that way, then we should conclude that the obligations arising from the promise are entirely conventional, i.e. that there is no obligation deriving from the promise: if anything, what exists is the social convenience to stick to what we promised. That is to say, if we are spontaneously inclined to keep a promise because, say, we are happy to do so, then everything is fine. Otherwise, if we are tempted not to fulfill our obligations, society will take the appropriate countermeasures. This is necessary: if it were not so, society itself would quickly become unstable and the relationships between people would be marked by corrosive and eventually unmanageable suspicion. To avoid the implosion of society, people have invented such things as obligations and have decided to make them binding through various forms of sanctions. So—and this is the first point—a promise is not at all something deriving from a natural act of the mind and, in the same way, no act of the mind produces it.

This leads to the second argument. If there were an act of the mind specifically dedicated to promising, this would not “naturally” produce any form of obligation. That is, it would not be able to intervene on the subject by causing those feelings that lead to compliance with promises. This happens for the simple fact that people cannot take action on how they feel, they cannot arouse feelings on purpose. Feelings are undergone rather than enacted. Therefore, any action that does not have strong roots in the emotional sphere of human beings is not caused by nature, but is rather derived from contractual agreements. Nor is it possible to resort to the sense of duty, as it is a different thing from the passions which

naturally belong, so to speak, to the human sphere. What this means is that if a kind of obligation exists, it stems from an act of stipulation—of which, as Nietzsche would say, humans probably have forgotten the origin. So, in short, the core of the stipulative thesis is the following:

If any one dissent from this, he must give a regular proof of these two propositions, viz. *that there is a peculiar act of the mind, annexed to promises; and that consequent to this act of the mind, there arises an inclination to perform, distinct from a sense of duty.* I presume, that it is impossible to prove either of these two points; and therefore I venture to conclude that promises are human inventions, founded on the necessities and interests of society.<sup>26</sup>

On this point Hume is especially clear: humans are both selfish and fragile. In order to live, they need to collaborate, to help one another and trust one another. If this exchange of trust should fail—that is, if naturally self-centered and selfish attitudes should prevail—it is expected that interpersonal relationships would be much more complicated and, at worst, impossible. Life in general (not just social life) would become very difficult. So people, for practical reasons, invented promises, linking them to the constraints of the will. For the same reason, laws were invented such as the stability of possession, or the transfer of ownership of certain goods to compensate for the lack of others. Since it is not always possible to program simultaneous exchanges—it may very well be that my grain will be available long after receiving your wine—then, to ensure further protection to the parties involved in the agreement, the binding nature of the promise was introduced.

When a man says *he promises any thing*, he in effect expresses a resolution of performing it; and along with that, by making use of this *form of words*, subjects himself to the penalty of never being trusted again in case of failure. A resolution is the natural act of the mind, which promises express: But were there no more than a resolution in the case, promises would only declare our former motives, and would not create any new motive or obligation. They are the conventions of men, which create a new motive, when

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<sup>26</sup>Ibid., p. 519.



experience has taught us, that human affairs would be conducted much more for mutual advantage, were there certain *symbols or signs* instituted, by which we might give each, other security of our conduct in any particular incident, After these signs are instituted, whoever uses them is immediately bound by his interest to execute his engagements, and must never expect to be trusted any more, if he refuse to perform what he promised.<sup>27</sup>

In the stipulative model framework one element is particularly interesting: Hume considers the promise as a manifestation of the will. It is an act through which the subject makes his intention public. This act is likely to be linked to a (present) state of mind allowing the promisor to bind himself to do (in the future) something in favor of the promisee. That is to say that if social conventions disappeared, or if a society were composed of monads, the act of promising would amount to nothing.

Now, one of the first thinkers to propose a completely different direction than that sketched by the stipulative model was the German philosopher Adolf Reinach, a student of Edmund Husserl and phenomenologist, who developed phenomenological theses with special regard to the ontology of social objects. Reinach observed an essential point that, years later, and in a different context, was to be analytically repropounded by John L. Austin in *How to Do Things with Words* (1962). Analyzing Hume's position, Reinach observes that:

but [one] does not see that in addition to these inner experiences there are also "acts of the mind" which do not have in words and the like their accidental, additional expression, but which are performed in the very act of speaking and for which it is characteristic that they announce themselves to another through words or some similar form of expression.<sup>28</sup>

To summarize, we might put it as follows: there are different kinds of utterances. Some, says Reinach, are special because they do much more than just communicating something; rather, through communication, they result in a real action. Austin will call them "performative

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<sup>27</sup> Ibid., p. 552.

<sup>28</sup> Reinach (1913), Eng tr. p. 36.

utterances”. So Reinach starts from this point: when we promise something to someone, what we do—contrary to what is suggested by the stipulative theory—is not manifesting a state of our will, but *acting*.

Note that this action cannot be structured in any kind of way. Reinach understands that promises have a stable ontological structure; in other words, he understands that we cannot act in a random manner when we promise something, because the promise is an act that determines changes in the world only if it is structured in specific ways. So: there are promises, not because we decide that it is reasonable and useful that they should exist, but because every time we act in a certain way we bring into being those things we call “promises”. Promises must have the following structure: someone who formulates them (the promisor), someone who receives them (the promisee), a duration (the length of time that goes from the wording of the promise to its fulfilment) and the action (used to adjust a state of things in the world to the content of the promise).

### 1.3.2 The Origins of the Essentialist Model

The term “social ontology” was introduced by Edmund Husserl in a work entitled *Soziale Ontologie und deskriptive Soziologie* (1910).<sup>29</sup> Without going into the details of Husserl’s work, in this context it is worth noting some of the ideas that make up the main lines of his metaphysics and, therefore, of social ontology—both of those ontologies that, following the Aristotelian tradition, are structured around the foundational role of the subjects and of those articulated around the foundational role of the social and institutional context.

The Husserlian theoretical horizon therefore determines the disciplinary specificity of social ontology, and it is precisely in this specificity that we must identify its differences compared to other disciplines that traditionally take a similar object as their field of investigation—such as, for example, sociology. The theoretical strategy adopted by Husserl is particularly attentive to the identification of invariants, namely the identification of the elements that constitute the backbone of the real.

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<sup>29</sup>I refer the reader back to De Vecchi (ed.) (2012) for an overview of the development of research in social ontology after Husserl’s analysis.

So as to locate them, Husserl proposes a kind of “psychic diet” where both the epochè and the eidetic reduction play a key role.<sup>30</sup> The thesis upon which the Husserlian theory rests is that things that exist and that are given as part of experience have an invariant structure. He uses the term “thing” in a rather broad sense, covering both entities with spatial–temporal properties and ideal entities that, by contrast, have none.

What exists is characterized by a stable structure and this structure persists in the examples of things, according to the type–token dependency. Each thing exemplifies an invariant structure that is captured in experience through a specific intentional act that Husserl calls “eidetic intuition”. So, in order to exist, things should fit within that structure or, in other words, each particular thing does not exist if not by conforming itself to such a structure. The example used by Husserl in *Prolegomena*<sup>31</sup> is well-known: a warrior, in order to be a warrior, must be brave. In other words, anyone who wants to be brave must exhibit the property of courage, which is the necessary condition for a man to be recognized as brave.

Husserl systematically develops this part of his thought in the first section of *Ideas I*,<sup>32</sup> following two main levels: the relationship between the universal and its particular instantiation (say, the general structure of the promise and the promise made by a particular candidate during an election campaign) and the relationship of ontological non-independence (or independence) between entities of different kinds. The complementarity of these two levels ensures the effectiveness and completeness of the analysis.

So, in phenomenology reality is composed of things that have invariant essences and whose being also has a normative character. We experience these essences. Therefore, experience is composed not only of the objects of our sensible perception, but also of the invariant essences of things. In some ways it is precisely because we experience courage, in terms of its typical and invariant structure, that we recognize a brave man and distinguish (say) Donald Duck from Paperinik.<sup>33</sup> In other words, in

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<sup>30</sup> See Costa (2009).

<sup>31</sup> Husserl (1900–1901: II, § 14).

<sup>32</sup> Husserl (1913).

<sup>33</sup> Paperinik (also known as Duck Avenger [USA] or Superduck [UK]) is Donald Duck’s alter-ego, a Batman-style heroic avenger.

order to exist, Paperinik must present the essential structure that defines brave people. No short-cut is possible: the day when Paperinik proves to be fearful, indecisive, weak or wavering in his choices, his essence will simply cease to correspond to that of a brave man and his being would no longer exhibit the property of courage. What we have just described is what Husserl defines as “basic normativity”; namely a normativity that is necessarily present in all entities. In addition to basic normativity, entities belonging to the specific field of social ontology show further normativity belonging to their material essence.

Edmund Husserl distinguishes “formal ontology”, which deals with being in general, from “material ontology” that, conversely, investigates specific regional areas of reality. Developing the perspective opened by Husserl, philosophers have articulated a number of “level” ontologies: the regional ontologies of mathematics, physics, biology, art, the social world and, in relatively recent years, those whose object is common sense and naive knowledge. It is in this context that the essentialist model proposed by Adolf Reinach is developed.

### 1.3.3 Contra Hume: Reinach’s Essentialism

Within the framework outlined by Husserl, Reinach engages with a specific material ontology, i.e. social ontology. In the work entitled *The A Priori Foundations of Civil Law* (1913), he takes the stipulative model very seriously: his aim is to show that there is no positive law—that is, the law in force in a given political–territorial context, at a certain historical moment, sanctioned by the sovereign power of the State—that is founded exclusively in terms of stipulation. In other words, although positive law is clearly subject to continuous change and to the dependence of its institutions on customs, social structures, forms of government and so on, in Reinach’s opinion the foundations of those (apparently variable) institutions must be sought in *a priori* structures that underlie positive law itself.

Which means that if the action we call “promise” has a precise structure, it does not depend on the fact that, due to a conventional choice, humans have agreed to commit to some acts of the will, because—as Hume supposed—they are aware of the weakness of human nature. Rather, it means

that the essence of the promise coincides with its normativity. More simply, it means that promises exist only in ways that correspond to their *a priori* essence. If this is so and the objects that make up the domain of social ontology have a being that, in some ways, is similar to that of numbers, then we must investigate the *a priori* structures of this being.

We shall show that the structures (*Gebilde*) which one has generally called specifically legal (*spezifisch rechtlich*) have a being of their own just as much as numbers, trees or houses, that this being is independent of its being grasped by men, that it is in particular independent of all positive law.<sup>34</sup>

In essence, positive law is not what *creates* the objects of the social world, but rather it is what *uses* them, applies them or puts them in motion; whereas philosophy, in a way, discovers them. So, the philosopher has to try to capture and describe those essences that identify things like promises, claims, or obligations. In particular, it is about identifying the *a priori* structures and laws that, according to Reinach, have a synthetic character.

### 1.3.3.1 The A Priori Foundations of Social Ontology

However, what does Reinach have in mind, exactly? He has a very simple idea that we could summarize as follows. When a person makes a promise to another person, something different happens compared to when a person communicates something to someone. The action of promising—which has a possible vehicle in verbal expression—possesses a specific legality and involves a *transformation* of the world in which it is performed. Let me try to clarify things with an example.

“Have you ever had a strange word rattle around in your mind and hammer at your thoughts for hours? Well, it happened to Uncle Scrooge one morning, and the word was BALABOO.” Thus begins *Uncle Scrooge and the Last Balaboo*, a comic strip written by Romano Scarpa in 1960.<sup>35</sup> One morning, Scrooge is in good spirits and, upon awakening, he notices

<sup>34</sup> Reinach (1913); Eng tr. p. 4.

<sup>35</sup> *Uncle Scrooge*, “The last Balaboo”, *Uncle Scrooge* #242.

that he has a weird word in mind: balaboo. Believing such thing to be non-existent, Scrooge promises one to Brigitta, his slightly pushy lover—to be more precise, he promises her a balaboo hat—with the naive hope of trying to rid of her. When he discovers that one last balaboo really exists in a remote corner of the earth, he feels compelled to leave with his grandchildren to look for it in order to keep the promise.

The thesis proposed by Reinach can be substantially found in this story. The moment Scrooge promises Brigitta the balaboo he is not expressing a state of his will, as Hume thinks. Rather, he is performing an action through which he establishes a relationship that did not exist before the promise between him and Brigitta. That relationship depends on the *promise* that Scrooge makes Brigitta. In a word, the world, after Scrooge has uttered his promise, is not the same as before: in that fictional world, Scrooge has put into being a new part of reality—the relationship that ties him to Brigitta. This leads to him to change the world in which that relationship is contained, so that it will conform to what is involved in the relationship itself.

In fact, from the point of view of the old duck it is appropriate to say, “I wish I had never done this”, as it is his act that established a specific relationship—precisely the kind of relationship that Scrooge was trying to avoid by promising the balaboo—that ties him to Brigitta. This relationship brings into being two new elements: an obligation that needs to be fulfilled—which is why Scrooge leaves in search of the balaboo—and a claim, that Brigitta, legitimately, makes to get her hat. This is true, says Reinach, in all possible worlds, that is to say, it is an *a priori* truth, namely a *synthetic a priori* truth.<sup>36</sup> Which, in this case, also means that it is true regardless of the structure and changes that affect the positive law of a society or, better yet, of a state. “The promising produces a unique bond between the two people in virtue of which the one person [...] can claim something and the other is obliged to perform it or to grant it. This bond presents itself as a result, as a *product* (so to speak) of the promising.”<sup>37</sup>

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<sup>36</sup>Reinach uses the concept of “synthetic” precisely in the Kantian sense. For Kant, remember, we are in the presence of a synthetic statement when we do not have an analytical proposition, in which case the proposition is a kind of implicit definition of some terms that constitute it (see Reinach 1913, Eng tr. p. 6).

<sup>37</sup>Reinach (1913); Eng tr. p. 8.

Reinach's is a strong argument that is set sharply against the stipulative model: the action of promising is completely independent of the content of the promise. Scrooge could have promised Brigitta to rob the bank of Duckburg and give her the stolen goods: nothing would have changed. The relationship brought into being by that promise would have produced, in any case, an obligation and a claim. On the other hand, Scrooge's obligation is extinguished as soon as he gives the balaboo to Brigitta—that is, as soon as he performs a series of actions so that a state of things in the world adapts to what is stated in the utterance constituting the promise.

Now, leave out, for the moment, the fact that the protagonist of our example is a fictitious entity and that therefore he belongs to a fictional world. Note that Scrooge makes a promise about something that, in his head, does not exist, or has no existence in the fictional world. If the state of affairs the promise is about is impossible or non-existent (this is Scrooge's idea), then the promise does not exist and is not binding for the promisor, i.e. the cunning duck. However, in Reinach's view, Scrooge is wrong: the promise brought into being remains such *regardless of the possibility of realizing its content*, and Brigitta would have been perfectly entitled to require from Scrooge, say, a sable hat.

What matters is that promises (and, by extension, all social acts) are actions that must be perceived in order to exist: they have to be understood by at least one person who is not the promisor. If, in fact, Scrooge had only imagined to promise something to Brigitta, or if he had promised to give her the hat while muttering it to himself so that Brigitta would have not known about the promise (if she had not heard or read about it somewhere), then not only would that promise not have been valid, but Scrooge's action (whatever it was) certainly would not have been a promise. Indeed, properly speaking, it would not have been a social act. In essence, in Reinach's words, social acts are "spontaneous acts which are in need of being heard".<sup>38</sup>

So the class of objects we call "social objects" has two fundamental properties: (a) intentionality: they are, in fact, intentional actions, and as such they imply both the existence of an agent, and the fact that the

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<sup>38</sup> Ibid.; Eng tr. p. 19.

action is directed toward “something” that does not necessarily exist, (b) audibility: they are actions that must be “perceived”, which means that the persons addressed by such actions must be aware of what is happening. We can therefore summarize the basic points of the essentialist theory, in the version formulated by Reinach, as follows: social objects are a particular class of objects that legislators and philosophers do not invent, but find in reality just as they find natural objects (trees, clouds, flowers and so forth), or ideal objects (e.g. numbers). This class of objects is characterized by their resulting from an act that the subject intentionally directs towards an object (existing or non-existent) and is consciously received by at least another person.

This structure, according to Reinach, identifies social objects such as promises or commands in all possible worlds and is true regardless of the multiple forms of positive law. So every time that, for example, we promise something or we issue a command, not only do we perform an action that needs to exhibit certain characteristics, but we also perform an act that makes something happen in the world. In the case of the promise, for example, the promisor creates an obligation that must be fulfilled by him or her. In the case of the command, vice versa, the obligation must be fulfilled by the person who receives the command.

### 1.3.3.2 Arguments for and Against the Essentialist Model

The stipulative model and the essentialist one occupy the opposite ends of the same continuum. In the first case, the theory is built on the basis of two underlying intuitions. First, a rather pessimistic view of human nature: if they followed their instincts, humans would hardly work collaboratively as they are competitive and aggressive by nature. At the same time, though, they are fragile, and history teaches us that, perhaps in spite of themselves, they have learned to cooperate. In the end, for Hume, society is a kind of prosthesis: just as through glasses we see the world in focus and telescopes may be used to look more closely at the planets, so societies—grandiose and complex man-made structures—are useful for doing things that people, acting alone, could not do. It is thus that social reality, regulated by a series of customs, rules and regulations adopted and decided on the basis of a stipulation, takes form.



The second consideration, related to the first, concerns the conventional nature of the foundations of natural law. Natural law is typically the result of conventional choices, and is determined both from a historical and a cultural standpoint. In essence, its structure, which remains fluid over time, depends on many factors, including the given historical moment and cultural climate. From our point of view, the critical question is not, however, how natural law should be understood, but what we believe to be its foundations. Hume thought that they were *conventional*, and his thesis can be summarized in this way: people, as they are, need a lot of things. Once they got them, they must keep their possession; they therefore make agreements allowing social life and mutual aid. These agreements are binding and determine individual choices; habit and education will then do the rest.

In this context, even justice is the result of a stipulation and, more specifically, of an agreement descending directly from the social organization created with the aim of achieving the possession of goods and the consolidation of such possession:

After this convention, concerning abstinence from the possessions of others, is enter'd into, and every one has acquir'd a stability in his possessions, there immediately arise the ideas of justice and injustice; as also those of *property*, *right*, and *obligation*. The latter are altogether unintelligible without first understanding the former. Our property is nothing but those goods, whose constant possession is establish'd by the laws of society; that is, by the laws of justice. Those, therefore, who make use of the word *property*, or *right*, or *obligation*, before they have explain'd the origin of justice, or even make use of them in that explication, are guilty of a very gross fallacy.<sup>39</sup>

The concept of justice, then, acquires a meaning only in relation to property: not only is the origin of property the result of the agreement, but the concept of justice—whatever definition we choose for it—arises from the need to defend our property.

Now might be a good time to state some general considerations. The stipulative model engages in inexpensive theoretical assumptions and this

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<sup>39</sup> Hume (1739–1740: 490–491).

is certainly an advantage: both social foundations and social practices are somehow completely naturalized. At some point in history, humans have begun to improve the organization of their lives and to protect the outcomes of their efforts. To achieve this goal in a more rapid and simple way, they have introduced, on the basis of a stipulation, the concepts of property, equity and justice. At the same time they have identified conducts and practices subject to sanction as well as agents and tools to make sanctions effective. In this frame, the task of the legislator and that of natural law is to develop an institutional mechanism capable at once of refining the stipulation and ensuring the best functioning of what is, in essence, a complex social “game”.

Parsimony at the ontological level—which is generally an advantage, especially in theory—however, also has a downside: in this context it makes no sense to wonder whether there are such things as justice, property, obligations, values and so on, since what really exists is only the act or the series of acts by which we stipulate social objects and the rules of the game. Some fluidity is indispensable for the social game to function, and such fluidity is linked to a real nihilism of the foundations, for example, of such things as values. Given the consensus on the basic thesis, the social forum is conventionally regulated by institutions and agreed rules.

The goal of the theory is to maximize the collective profit, minimizing conflict—it must also engage, more or less explicitly, in the issue of the values of reference. So there are two possible solutions: (1) the first, semi-stipulative, has one of its best-known examples in the model developed by Nietzsche. Untying values from any absolute foundation, Nietzsche binds them to the biological makeup of the living in general and of humans in particular. If values are the result of stipulation, the best possible conclusion is to take into account the biological characteristics of the living, which Nietzsche interprets according to the “strength–weakness” ratio. The second, (2) the stipulative one, is even more radical and properly theorizes the relativism of ethical values.<sup>40</sup> Just as the rules and institutions governing them are the result of an agreement, so the choice of reference values inspiring them is the result of a stipulation.

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<sup>40</sup> For a thorough examination of questions related to the different variants of ethical relativism see Masters (1993), especially Chap. III, Magni (2010) and Hales (2011).

The second line of thought is the one that has had the most interesting developments, in both philosophy and social and economic sciences. The focus of this reflection is the concept of convention,<sup>41</sup> as it is developed within the theory of games. As I have repeatedly pointed out, the framework of the stipulative theory is typically conventional, so it is necessary to clarify the starting point, defining the concept of convention. An explanation of actions in conventional terms might be helpful both for a theory adopting a positive anthropology and for a theory adopting a negative anthropology. Let me try to construct a better explanation.

We may believe—as both Hume and Hobbes do—that the behavior of human beings is generally oriented to the achievement of individual profit; conversely, we can assume with David Lewis that humans express essentially rational behavior. Both approaches are compatible with, and can express, a way of acting governed by conventions. Thus, it becomes essential to clarify the starting point, i.e. the concept of convention. According to Lewis, an agreement is the outcome of a coordination game determined by the history of the game itself. Conventions are therefore social rules that emerge as practical solutions developed in response to coordination problems occurring on a large scale. Essentially, a convention is formed when people—the agents of a particular situation—develop a stable solution to a coordination problem that tends to present itself with certain regularity.<sup>42</sup>

The considerations made by Lewis are set against a thesis that Quine has formulated in relation to language. In literature, conventions were normally taken to be essentially agreements that, in order to be made, require language. Therefore, being the pre-assumption of conventions, language could not be conventional as well (this was Quine's position). Lewis believes that Quine's idea about conventions is incorrect. By explaining conventions not in terms of language but in terms of action, Lewis has managed to elaborate an exclusively behavioral explanation for agreements. The world that Lewis has in mind has a salient feature: it is composed of agents mostly inclined to collaboration, intelligent enough

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<sup>41</sup> Lewis (1969).

<sup>42</sup> For a case study see Lewis (1969: 5 ff).

to understand that collaboration is fundamental to achieve better results in the social sphere.

So far, so good, or at least so it seems. In reality, there are two problems with this theory: (1) the solution suggested by Lewis to solve the problem of coordination;<sup>43</sup> (2) the generalization of the solution. Basically, it is certainly true that some conventions arise from the solution of a problem of coordination, but it is equally true that not all conventions are born this way. The arguments proposed by the critics of Lewis are well known and rather stringent: it is implausible that, for example, a coordination problem is the reason behind conventions such as those that regulate games like chess or football.<sup>44</sup> Conversely, it is reasonable to argue that, given the framework of the game, issues of coordination may arise within such framework. The same applies to the salient option. Given many equally possible options to solve a coordination problem, Lewis—borrowing the model of game theory—believes that the agents are likely to choose the salient option.

It is quite obvious that things in the real world do not go in the way described by Lewis. His solutions, at most, could be a wish. In fact, it is far from certain that, faced with a coordination problem, people will invariably opt for collaboration—nor is it certain that they will choose the salient option rather than a less auspicious one. On the contrary, it is plausible to imagine that the chosen option will depend on the type of problem that the agents are facing: if, in a foreign country, I have to decide a preferred direction for driving, I will choose the salient option. If, however, I must establish the rules governing the distribution of social housing among the people of my own town I will, presumably, draw up conventions that are not necessarily related to the salient option, but rather consider parameters such as the redistribution of income, social justice, equality of opportunity, and so on. Even if we admit the idea that societies are entirely based on conventions, still not all conventions are of the type described by Lewis. In other words, not all conventions are the result of coordination games.

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<sup>43</sup> See, for instance, Bicchieri (2006: 35 ff).

<sup>44</sup> See, for instance, Marmor (2009: 22).

*The “Tragedy of the Commons” and the Irreducibility of Power*

In seventeenth-century England, “open” fields—i.e. fields available to an entire community and with shared management—were widespread. Peasants, who lived on the edge of the poverty line, had at least the opportunity to exploit this land, thus gaining sustenance for themselves and their families. The situation was far from prosperous, because the overall wealth was very little. Survival was usually guaranteed, but there was not much else to hope for. Between 1700 and 1810 the British parliament passed a series of “enclosure acts” that allowed the enclosure open fields and common lands. This generated two main consequences: a concentration of land in the hands of the richest owners, namely those who could afford to bear the costs of the enclosures, and an increase in productivity.

From the stipulative perspective it is clear that such a change of structure was due to the variation of conventional balances. The new balances, the ones that followed the enclosure acts, involved a partial sale of the goods of the state. Interpretations of this dramatic change have often been contrasting: on the one hand, those in favor of enclosures claimed that this was the only way to increase agricultural productivity of the state and, therefore, to increase the wealth of the country. Conversely, detractors have argued that enclosures marked the beginning of the institution of private property and liberal policies.<sup>45</sup> In the face of such a divergence of interpretations of “the tragedy of the commons”—as goes the title of a famous essay by the biologist Garrett Hardin (1968)—it seems that we should conclude that, for the so-called “commons”, no destiny was possible other than enclosures.

In “The Tragedy of the Commons” Hardin engages with an issue that touches only briefly on the enclosure of the English commons. Rather, his essay relates to the problem of overpopulation of the planet. Is there a way, a technical solution—Hardin wonders—for overpopulation not to lead to the collapse of the Earth? The answer is “no”, in the sense that any solution we might imagine, whether it addresses the better exploitation of arable land or of fishing resources, will be nothing more than a temporary solution. Producing more food will result in an increase in population that will in turn oblige us to produce more food, in an unstoppable crescendo.

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<sup>45</sup> See, paradigmatically, Marx (1867–1894): Chap. xxiv; and, on the opposite side, Polanyi (1944).

To support his thesis, Hardin uses a number of targeted examples, all of which have an underlying leitmotif: it is utopian to hope that common property will be managed, by those who use it, with the same caution with which they would manage their own private property. And since the land is the largest of common goods there is not much to be happy about. But what are commons and how do they work? Hardin does not provide a definition,<sup>46</sup> but he explains it through many examples, extensively analyzing “small size” commons.

Consider, for example, an unfenced field, or a stretch of sea where fishing is free. Experience shows that the field or stretch of sea will be exploited until total depletion, which is dangerously irreversible. This is precisely what Hardin, with an effective formula, christens “the tragedy of the commons”: it occurs when individuals, who act in independent and rational ways, squander a shared resource, despite knowing that such behavior will go against their own interest. The reason for this is simple: the fear felt by those who make this kind of seemingly counterintuitive choice, is that by doing otherwise they may suffer a double loss. If they acted differently, they might gain less than all the others, who are likely to use the field recklessly. In such situations, therefore, people do not seem to be able to coordinate in order to achieve a collective goal and benefit. Now, whether they are unable to find the salient and rational option or whether, despite having identified it, they decide to act regardless of it, what matters is the result:<sup>47</sup> the pastures are depleted, the seas plundered of their fish. The same fate awaits water and oil resources.

The solution proposed by Hardin has a dual direction: to avoid the catastrophe we can either choose to privatize the goods—which, in fact, happened in the case of enclosures—or we can entrust an institution, for example the state, to strictly regulate the use of the resource in question. The moral of this reflection is simple: unless there is the intervention of an institutional power, people do not handle public goods in the best way, or at least not always. Institutions determine the best option, which is not necessarily the salient one, and also organize collective behaviors

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<sup>46</sup>To clarify the definition of the commons and related classifications (essentially between commons, anti-commons and semi-commons) the reader should refer to Dallara (2012).

<sup>47</sup>Hardin (1968: 1246–1247).

aimed to enact what has been decided. Thus, summing up what we have said so far: if left to the initiative of individuals, and therefore to the stipulation of agreements between private parties, the management of commons is ineffective or unsuccessful.<sup>48</sup> It is thus necessary that institutions deal with them, functioning as a third party that is actually able to make rational decisions. At this point, the important question becomes: What is an institution? And how can it be explained in terms of stipulation?

At a closer look, the stipulative theory faces a substantial difficulty. It has to account for a factor that has not a stipulative character, but which is essential for the management of the conventional apparatus it introduces: that is, power. Power is not an option among many, nor is it something that, at first, we construct. Power or, if you will, the quest for power, concerns itself with both the individual and the community, be they small or large, since—as duly noted by Hobbes, Machiavelli and Nietzsche—the roots of power have a biological nature. Of course, as highlighted by Foucault, power has a reticular structure within more sophisticated dimensions such as the social world. Thus real power is held by the subject that manages to affect with his actions others' sphere of action. This means, of course, that commons are not and cannot be a particular space of reality, working under different rules. Thinking that there may be areas of society exempt from the logic and dynamics of power is frankly absurd.

As Hobbes and Nietzsche correctly guessed, power is something that we encounter in the world. Power makes it possible, for example, for institutions to enforce the option they have chosen—which is not always the salient one, but is nevertheless required. An institution has the power not only to create new ways of behavior, but also to enforce them, operating in a normative environment. Now, the source of this power does not lie in the stipulation of contracts, but in the biological constitution of living beings; it is linked to the organisms' ability of preservation and self-assertion used to organize social life. There is a common thread that binds the power we use to survive to the power people and institutions use to keep small communities, cities, states and associations of states alive.

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<sup>48</sup> Elinor Ostrom (1990) has a more optimistic position than Hardin's, but still believes that a good management of commons can only exist on a small scale: generally in rather small communities.

Let me make another observation to complete the framework proposed by Hardin. In his prediction, commons are destined to privatization or, conversely, to public management that entails, *de facto*, a partial regulation of their use. Today we know that Hardin, in spite of everything, probably showed excessive optimism. The sovereign debt crisis paralyzing Western economies highlights a simple fact: even the seemingly best solution—i.e. the management of the commons by institutions—has been more than problematic, due in large part to distortions in the management of power. To understand this point it will suffice to draw a comparison. Can the wealth capitalized through taxes by a state be regarded as a common good in the same way as a pasture? I think so, although it cannot be found in nature but is constructed by people according to precise rules with the aim of redistributing it in the form of services. Now, assume that the institution responsible for managing the funds not only squanders them, but even gets into debt, so that future generations—that is, people who have not yet been born—will have to pay the institution's debt for a period of time  $t_1-t_n$ . This is not very different from cases in which shepherds exploit a field taking everything the field can give, without regard to its life cycle—and, therefore, regardless of generations who will use that field in a future time  $t_n$ .

Compare two cases and two kinds of common goods. In the first—quite rare—the state manages the common good in an exemplary way; in the second, instead, takes place the tragedy described by Hardin, despite the fact that the solution adopted is the second one proposed in his paper. The states in question are Norway and Italy. The common goods are oil for Norway and the artistic heritage for Italy.

Let us begin, therefore, with Norway. The “Government Petroleum Fund” is a sovereign fund set up by the Norwegian government in 1990. The purpose of the fund was to invest part of the profit coming from the extraction of oil. In 2006 it changed its name and status, becoming the “Government Pension Fund Global.” It consists of a deposit in Norwegian kroner run by the Bank of Norway on behalf of the Ministry of Finance, with the aim of ensuring that “a reasonable portion of the country's petroleum wealth benefits future generations.”<sup>49</sup> The reasoning

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<sup>49</sup>In *Ethical Guidelines for the Government Pension Fund-Global*, 22 December 2005, in [www.regjeringen.no](http://www.regjeringen.no).



behind this operation is very simple: the fund aims to be a sort of piggy bank in which to set aside the surplus proceeds from the sale of oil. The bank, in the intention of the legislature, maintains and produces new financial resources that the state is committed to providing for future generations. Oil, unlike pastures or fishing resources, is bound to run out. For this reason the state has decided to make part of the wealth produced by the exploitation of that common good renewable, and thus accessible to future generations that will no longer have oil. This is an exemplary case that seems to confirm Hardin's thesis: the public institution not only regulates the management of the common good, but it also finely programs a way to reconstitute its value, although in a different form.<sup>50</sup>

Now let us come to Italy, which is notoriously home to a very important cultural and artistic heritage: the legacy of two thousand years of history and culture. It is all common property, in the same way as oil or pastures: works of art are also exploitable economically—think of the amount of money produced by tourism—and are virtually “consumables”. Is it more difficult to consume a monument than to use up a reserve of oil? Not really, when you consider the millions of visitors who every year walk on the stones of the Colosseum, cross the Ponte Vecchio, visit Piazza San Pietro or stay in Venice. Works of art are therefore not only enjoyed for what they communicate and the beauty they express, but are also intensely exploited *economically*. Indeed, one would expect that the Italian institutions to have set up a fund with characteristics similar to the Norwegian one, the proceeds of which could be used for the preservation of the cultural goods themselves. Yet nothing of this kind has been done and the artistic heritage is experienced as a burden rather than as a common good to be protected and put to good use.

The archaeological site of Pompeii was inspected several times by UNESCO between December 2012 and February 2013. The inspectors detected a serious condition of degradation that threatens the conservation of the entire site: water leaks, shrubs holding the site in a deadly

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<sup>50</sup> For a deeper investigation of the so-called “theory of social choices” and of its articulations in the economic sphere, see Arrow (1951), Sen (1985, 1992, 2004). For the sphere of political philosophy, see Rawls (1971), Nussbaum (2000).

embrace, severe lack of maintenance personnel. And so the *domi* remain closed to tourists, to the public, to scholars. And crumble down. It is the tragedy of the commons, indeed. In the Italian case, institutions do not have the power to enforce the most rational option. A detailed analysis of the reasons for the decadence of Pompeii would take us off topic, but this example suggests that institutions' inability to manage the commons entrusted to them has roots in a lack of power or, at least, in an inability to manage power.

*The Primitives of Social Reality: Actions, Covenants, Emotions*

If we consider social reality as the realm of stipulation, things, therefore, do not add up. I think this is what gave impetus to essentialist theories. Power reveals a non-conventional datum that cannot be reduced to mere conventionality. Following this track, essentialist theorists have thoroughly inspected the domain of social reality in order to verify the existence of any other potential primitives. Thus, it is not about adopting the best convention in terms of convenience and rationality, but rather about capturing objects, relationships, emotions and states of affairs that are the basic elements of social reality. So, ultimately, what these theories are looking for are the essences and the relationships *de re* included in the domain of social reality. It is an attempt to identify the primitives that make up this domain and the relationships between them, so as to derive from those relationships those that affect the dynamics and articulations of the social world.

The perspective opened by Reinach goes in this direction, starting with a very simple observation: there are “things” that everyone experiences in the social dimension that are not the result of agreements and construction, but simply part of social reality as such, with the structure they have and that we encounter. These are the primitives that we use to articulate, in several ways, our social worlds. The fundamental intuition—which I agree on—is that social reality is composed of stable elements and data, bricks and ribbings that the human imagination can use as it pleases, but that cannot be overturned in their essence. Living in a social world without pacts would be a bit like trying to live without

breathing oxygen: I can go to the moon and bring oxygen in a cylinder, but I cannot live without it; I can decide to live a solitary life on a desert island, but if I choose to live in a social dimension I will end up—consciously or not—making a pact and either respecting it or breaking it.

There are two assumptions underlying social ontology: (1) social reality emerges out of natural reality; and (2) the typical and emerging character of social reality is *relation*. (1) means that natural reality must exist in order for social reality to exist. As per (2), there is a relation whenever an *object*, an *action* or an *emotion* ( $x$ ) are constituted following a necessary relation to some otherness ( $y$ ). Objects, actions and emotions—that is, the fundamental components of social reality—share a necessary property: *relationality*. This means that an ordinary object is *different from* a social object—say the two have the same perceptual properties—or *coincides with* a social object inasmuch as the social object (unlike the ordinary object) is necessarily relational. Therefore, analogously, a social action differs from a basic or a complex action insofar as it is necessarily relational.<sup>51</sup>

Let us begin our analysis by considering actions and, specifically, a particular type of action: language acts. When, say, we make a pact, our commitment is determined in two ways: through a verbal exchange and, very often, through the signing of a document. In this context, the actions we perform by means of language—the so-called performatives—are very important. The fundamental intuition, dating back to the dawn of Christian civilization, identifies a particular type of action—that is, a way to change aspects of reality—we make by using language, rather than the body or its prosthesis. In this sense, language is not only a vehicle of communication with other people or, more basically, with ourselves—it produces actions in the proper sense. Look at the Prologue of John's Gospel:

- (1) Ἐν ἀρχῇ ἦν ὁ λόγος, / καὶ ὁ λόγος ἦν πρὸς τὸν θεόν, / καὶ θεὸς ἦν ὁ λόγος /
- (2) οὗτος ἦν ἐν ἀρχῇ πρὸς τὸν θεόν.

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<sup>51</sup> For the distinction between basic actions and complex actions I am here referring to Danto (1973).

(3) πάντα δι' αὐτοῦ ἐγένετο, / καὶ χωρὶς αὐτοῦ ἐγένετο οὐδὲ ἓν. ὃ γέγονεν (John:I, 1–3).

- (1) In the beginning was the Word, and the Word was with God, and the Word was God.
- (2) The same was in the beginning with God.
- (3) All things were made by him; and without him was not any thing made that was made.

The action of *logos* is directly creative and coincides with the action of God. The sense is that everything exists insofar as it is *said* by God: it is God who brings things into being by taking them away from the darkness of not being. In this case, more than ever, the word is a performative utterance, i.e. a performing action. Thus John sees the *logos* as the creating word that, by acting, not only leads to changes in the world but, more essentially, brings the world into being.

In his *De Interpretatione* (17a 1–5), Aristotle adopted a partition that remained valid for centuries. He identified on one side a kind of discourse that has nothing to do with neither truth nor lies—basically the language used by poetry and art, which is the subject of study of rhetoric. On the other side, he places the “apophantic” language that, instead, either captures or fails to capture parts of reality and is either true or false. Reinach and, before him, Thomas Reid discussed this bipartition. The core of Reid’s argument invalidates Hume’s hypothesis that promises depend on social institutions and are conventional. In *Essays on the Intellectual Powers of Man* (1785), Reid distinguishes between “solitary acts” and “social acts”, bringing attention on two main elements: (1) social communicative acts are not reducible to apophantic acts—the same point will be made centuries later by Austin in *How to Do Things with Words* (1962); and (2) they cannot exist unless (a) they are expressed and (b) they are addressed to someone.

I call those operations *solitary*, which may be performed by a man in solitude, without intercourse with any other intelligent being. I call those operations *social*, which necessarily imply social intercourse with some other intelligent being who bears a part in them. [...] [S]ocial acts of mind

[...] can have no existence without the intervention of some other intelligent being, who acts a part in them. Between the operations of the mind, which, for want of a more proper name, I have called *solitary*, and those I have called *social*, there is this very remarkable distinction, that, in the solitary, the expression of them by words, or any other sensible sign, is accidental. They may exist, and be complete, without being expressed, without being known to any other person. But, in the social operations, the expression is essential. They cannot exist without being expressed by words or signs, and known to the other party.<sup>52</sup>

Otherness is a constitutive property of the mental act as a social act: specifically, the social act is directed to an otherness that, in Reid's view, must not only be potentially rational, but must also use its rationality. The expression of a command does not only imply the existence of a person who receives it, but it also implies that such person is a rational being capable of understanding it. If we want to define social action as Reid does we can use the definition provided by Gideon Yaffe: "a mental act is social if, and only if, the act's performance necessarily implies the existence of intelligent beings, other than the agent of the act, exercising their intelligence".<sup>53</sup>

In a perspective of ontology of action, Reid clearly distinguishes the speech act from the social act, which cannot be reduced to a speech act because it includes relational properties: namely, it is necessarily addressed to a second person (or a group of people). The social act is not a speech act addressed to someone, but something ontologically different, not reducible to a speech act.<sup>54</sup> To put it otherwise, the social act is a speech act that falls under a different description. It is a different sort of thing.

The social act thus has a relational component that is constitutive to it and makes it possible, but this component alone is not enough to explain it. The social act also bears what Reid calls the "active power" of the promisor. By active power Reid means that kind of power that is able to trigger a series of causal sequences and that may be exercised by the

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<sup>52</sup> Reid (1788: V. 6, 437–438).

<sup>53</sup> Yaffe (2007: 282).

<sup>54</sup> Schuhmann and Smith (1990) are inclined instead to a reductionist reading of the thesis proposed by Reid.

will of its owner. This means that a speech act is actually a promise only if the promisor has the power to keep the promise. From Reid's point of view, a statement like "I promised to give you a first edition of *Wuthering Heights*, but I could not find one" makes no sense. I can commit to that promise only if I know I am able to get hold of that book, otherwise my statement is not a promise.

This is a first point. Reid's thesis, however, implies an even stronger aspect: the promisor, by promising, not only claims to be able to do what he claims, but he also claims to be able to choose to do what he says. He might not choose it—he could choose to keep that precious first edition in his own library—but he claims to be able to determine his own will in the direction expressed by the promise. The promise, therefore, is a social act involving a relational property that necessarily links promisor and promisee, provided that the promisee is of a certain type (i.e., a human being endowed with rationality and ability to understand the particular structure of social acts) and that the promisor has a will to commit to keeping the promise.

The essentialist approach, both in Reid's formulation and in that of Husserl-Reinach, thus takes the social world away from stipulation, operating in an anti-reductionist way: the social world has an *a priori* structure and components that philosophy can identify and describe, and that were not set out by stipulation. In this context, the stability of the social world is due, first of all, to its *a priori* elements, and secondly to the practice and normative apparatuses that construct complex societies.

Émile Durkheim (1895)<sup>55</sup> notes that social facts, i.e. the particular class of facts that identify social reality, form a specific and stable set that has an important property: it does not depend directly on the subjects:

Here, then, is a category of facts which present very special characteristics: they consist of manners of acting, thinking and feeling external to the individual, which are invested with a coercive power by virtue of which they exercise control over him. Consequently, [...] they cannot be confused with organic phenomena, nor with psychical phenomena.<sup>56</sup>

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<sup>55</sup>Durkheim (1895).

<sup>56</sup>Ibid., Eng tr. p. 60.

Social reality is a specific domain, certainly related to the physical world, but at the same time not reducible to it: social actions, for example, are not reducible to speech acts; the performativity that distinguishes them, noted by Austin, deserves to be deconstructed with particular care.<sup>57</sup> The same goes for social objects, which can be natural objects or artefacts but in all cases cannot be reduced to the first or the latter.

The case of the dissolution of the Federal Republic of Yugoslavia is a good example. The story is well known. Following the creation of independent states, some cities crossed by rivers found themselves divided into two separate cities. The river was, at the same time, a separation element and a border line. It happened to the cities on the Sava river (the border between Croatia and the Serbian Republic of Bosnia and Herzegovina) and to those on the Una river (a tributary of the Sava river, along the same border). In all these cases, a natural object (the river) was turned into a social object and, specifically, into a border.<sup>58</sup> Then what distinguishes the natural object (the mere river) from the social object (the river–border line)? And how can it happen that two such different objects share the same physical basis, since the river–border totally resembles the mere river?

Upon closer inspection, this is the same difference that separates a normal wall and the wall dividing USA from Mexico: the infamous wall of Tijuana. In Mexico, they have dubbed it the “wall of shame”. Walls, in general, are used in the construction of buildings, sometimes separating agricultural properties, other times dividing states. South American illegal immigrants who want to enter the United States know the difference between a simple wall—the mere physical object—and a border. Little or nothing happens if you pass the first one, but by crossing the second one you risk ending up murdered, as evidenced by the crosses attached to that wall, placed there in memory of the dozens of people who died while trying to cross it.

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<sup>57</sup> For the typicality of social actions I also refer the reader to Weber (1922), which describes social phenomena by deriving them from individual actions. Actions, in turn, must be explained by a reference to intentional states that push individual agents to act.

<sup>58</sup> For a discussion of the difference between fiat objects and bona fide objects, as well as between fiat borders and bona fide borders see in particular Smith and Varzi (2000: 401–420).

The wall of shame, however you want to call it, is a cluster of rather curious properties. This physical object, over one thousand kilometers long, is many different things at the same time. It is a wall (i.e. a physical object), the border of a state (an object that has a social function entrusted to a few walls) and, in the intentions of those who have put there those anonymous crosses, a work of art (a different social object, even though not all social objects are works of art<sup>59</sup>). Now, it is beyond doubt that the wall–border has properties that do not belong to the wall–wall (i.e. the physical wall): for example, it has the property to establish the separation of the same territory into two distinct parts. The consequences of this state of affairs are relevant. Above all, the legislation existing on each side of the wall–border, namely in Mexico and in the United States, is different—which makes the life of Mexicans different from that of Americans. The physical boundary coinciding with the wall marks not only the creation of a field of reality that we define social, but also the differentiation of that area into different domains, i.e. the distinction of two completely different social realities.

Finally, a few more words must be spent on the topic of emotions, which are a fundamental constituent of social life and reality. The relational property is necessary though not sufficient to define certain emotions, and this is especially true for social emotions. Emotions such as love, friendship, solidarity, hatred, envy and fear all contain a relational component. There are emotions of the second level, which are structured on the basis of a simpler, more basic disposition. Empathy, on which many thinkers have worked,<sup>60</sup> was rightly defined as the social emotional disposition par excellence, or rather, as the emotional disposition at the basis of social life.<sup>61</sup> The reason for this assumption is simple: provided that relationality is the fundamental property of the social structure, empathy is the particular emotional disposition that leads a person to regard another person not as an object, but as another person—that is, as a being endowed with an end in itself. Simon Baron-Cohen gives a

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<sup>59</sup> For a discussion of the theories that deal with works of art as social objects see Andina (2013). The classic formulation of the argument can be found in Dickie (1974, 1984).

<sup>60</sup> See for example, the reflections of Smith, *Theory of Moral Sentiments* (1759), Schopenhauer, *On the Basis of Morality* (1840) and Nussbaum (2001: 393 ff).

<sup>61</sup> Buber (1923).



precise definition of it: “empathy is our ability to identify what someone else is thinking or feeling and to respond to their thoughts and feelings with an appropriate emotion.”<sup>62</sup>

For this reason it seems appropriate to define it as the basic disposition of the social world. It is composed of two parts: the ability to recognize emotions, moods and thoughts of others, and the ability, different from the first, to respond to their “state” in the right way. Therefore it is a matter of grasping and interpreting a stimulus (the expression of a face, the register of a speech or maybe even a complex reasoning apparently devoid of emotional tones) and being able to provide an emotional, affective and rational response that is adequate to the context. Except for cases of clearly established disease—for example, people suffering from autism—all human beings have the ability to adopt an empathic attitude, that is, they have the ability to switch from being mentally and attentionally focused on their own thoughts and perceptions to a mindset that understands otherness.

This is what Richard Wollheim (1968), in the context of art fruition, has called a form of “double attention”,<sup>63</sup> referring to the spectator’s ability to focus on both the mode of representation and the represented object. Empathy entails, in a similar fashion, that the subject pays attention both to him or herself and to the person with whom s/he relates. If that did not happen there would be a deficient relationship, either narcissistic (i.e. marked by the inability to grasp the other as a subject in itself) or transpositive, i.e. generating an equally problematic transposition of the subject onto the other. As per those who are not affected by specific diseases, this disposition is not equally present in all individuals and, when present, it is not always the same at all times of the day. Baron-Cohen and others have devised a scale of ten levels of increasing empathetic disposition.<sup>64</sup>

When a person’s attention is fully directed to a target concerning him and not including the other as a subject in the proper sense (call this disposition “monadic”), then, in that time frame, the subject is not in

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<sup>62</sup> Baron-Cohen (2011: 18). Adopting the definition of Baron-Cohen, and unlike Nussbaum (2001: 370 ff.), I consider empathy to exist prior to compassion and sympathy, in that both those feelings involve empathy, while empathy implies neither compassion nor sympathy.

<sup>63</sup> Wollheim 1968.

<sup>64</sup> Ibid.: 21.

an empathetic disposition with the rest of the world, or better, with the part of the world affecting his experience at that given time. In non-pathological subjects, the monadic disposition is transitory: that is, they are always able to switch from a disposition to another, being in a *certain* empathetic disposition. To an extent, they can always orient themselves to the perception of the other—which does not happen, or happens rarely, with pathological subjects. Baron-Cohen identifies borderline, psychopathic and narcissistic personalities—that typically manifest significant problems of social integration—as presenting a clear deficit in empathic disposition or in the functioning of the so-called empathy circuit.

The fact that empathy can rightly be regarded as a basic emotional disposition is easily derived from the medical case histories presented by Baron-Cohen. In all cases, a malfunctioning of the empathetic disposition (be it the mechanism of receiving or that of responding) causes a significant alteration of the more complex emotions that are based on, or use, empathy. To be clear, it is really unlikely that pathological narcissists are able to avoid relating to people who are not immediately useful, not objectifying them. Hence a profoundly distorted way of managing complex emotions such as friendship or love.

The causes of an altered empathy can be of different nature: they can be either physiological problems or educational/emotional deficits during early childhood. However, the etiological investigation is not that interesting for our purposes. Rather, what interests us is to recognize this disposition as the original core of the social dimension. The ability that humans have to relate, which is expressed in people's readiness to recognize one another and to respond appropriately to the other's requests in emotional and cognitive terms, is one of the elements that make social reality possible.

At this point the preliminary picture is complete: we have seen how, despite/while depending on human construction, social reality presents some constituent elements. That is, *empathy* for the sphere of emotions, the *will* for the sphere of faculties and the *promise/pact* for the sphere of actions. Now we have to understand how, starting from those basic elements, a complex social reality is constituted. I shall argue that a fundamental role is played by the structures allowing for the extension of social relations and their duration in a diachronic (i.e. transgenerational)

perspective. Empathy is a good basis for the development, in rather restricted communities, of feelings of compassion or friendship, which make social cohesion and justice effective. However, the expansion of communities and their durability requires the introduction of other entities: that is, documents, institutions and the state.

In the next chapter, I shall consider the theories that have examined and discussed the nature and function of those objects, offering considerably complex readings of social reality. I will try to integrate them in a perspective capable of accounting for the transgenerational issues arising within social ontology.

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# 2

## Theories

### 2.1 “P-Ontologies”: People, Groups, Relations

The mainstream theories of contemporary social ontology share a realist perspective, obviously modulated in different ways, and identify three starting points on the basis of which to develop an explanation of social reality. The ontologies of Aristotelian inspiration (which I will call “P-ontologies”) focus on the concept of person (or agent) as well as the relationships between people. A paradigmatic example of this position is the work of the American philosopher Margaret Gilbert. There is a second group, exemplified by the position of the American philosopher John Searle and the British jurist and philosopher Herbert Lionel Hart, which regards the institutions and the rules as the center of social reality (I shall call them “I-ontologies”). Finally there is a third group, exemplified by the position of the Italian philosopher Maurizio Ferraris, which instead concentrates on the role and function of social objects (“O-ontology”).

Let us start with “P-ontologies”. Margaret Gilbert has devoted a trilogy of books (1989, 1996, 2006) to the study of social reality, devel-

oping a systematic social ontology. Her theory places individuals at the center and considers groups and relationships as the fundamental building blocks of the social world. We'll see that one of the most delicate but also most interesting issues aroused by P-ontologies is the difficulty of clarifying the mode of transition from the community dimension of social structure to the state dimension. So the question that Gilbert asks in her 2006 book, *A Theory of Political Obligation*, is both classic and very modern: "how does it happen that a state can force its citizens to respect the law? What are the foundations of this obligation?" To answer, Gilbert explains what reality is in its properly social dimension and does so starting from a particular way of thinking about subjectivity—declining it "in the plural".

### 2.1.1 Common Commitment and Plural Action

Gilbert's social ontology is based on three concepts, while a fourth is the focal point that allows for the completion of the social dimension. The concepts on which this social ontology stands and through which it is articulated are: (1) the agent or (in Gilbert's jargon) the "plural subject"; (2) relationships and "shared commitment"; and (3) actions, i.e. the "collective action". Gilbert discussed these concepts systematically in the works entitled *Social Facts* (1989) and *Living Together: Rationality, Sociality and Obligation* (1996). The fourth concept, which Gilbert uses to determine the transition from the sphere of the social world to the more properly political realm, belongs to the sphere of normativity: it is the concept of "political obligation" discussed in *A Theory of Political Obligation* (2006).

We begin by examining the concept of "plural subject". It is an idea that, albeit through less explicit and detailed theoretical formulations, has antecedents in Rousseau (1762) and Hobbes (1651)—while being widely criticized by Max Weber (1949) who believed that it is unnecessary to assume any form of subject different from the traditional one. Gilbert considers the plural subject as an entity endowed with its own ontological consistency, in other words as a primitive that is not reducible to its components. In function of this, she speculates that it is a com-



pletely different entity from the singular subject. Consequently, Gilbert's ontology includes two entities: the traditional subject, which I will call singular subject, and the plural subject, which is the main agent in social ontology.

The singular subject can be defined as a body capable of consciously directing his or her own will toward a specific goal. However, the distinction that Gilbert imagines between the two subjects is quite blurry: most of our actions imply the singular subject, i.e., an "I" that knowingly performs a range of actions that do not concern, or do not necessarily concern, the sphere of social reality. At times, or for extended periods of time, the singular subject can be part of one or more plural subjects and relations may exist between different plural subjects of which a certain singular subject is part.

The singular subject " $x$ " is singular when it performs, as it were, private actions (walking alone, reading the newspaper, doing homework after school etc.). It becomes a plural subject when its actions become part of the social dimension (that is, walking with someone, discussing a newspaper article publicly, or doing homework with a group of classmates). We can imagine that  $x$  is a plural subject for periods of time that have variable length; for example,  $x$  and  $y$  give life to the plural subject " $z$ " only for the time period of the walk, while if  $x$  and  $y$  are married we can reasonably assume that their intention is to create the plural subject " $z$ " forever—or at least for a very long period of time.

Gilbert suggests that, in terms of metaphysics, the plural subject is a separate entity independent from the singular subjects, yet retaining some dependence, at least at the physical level, on the singular subject.

Surely a plural subject, as characterized in this book, is the same kind of system as a singular agent. Its physical components are two or more human bodies. The movements of the system occur in response to the conception of the system which is contained contemporaneously in its physical parts, and which is based on the perception of what is taking place in each. (Gilbert 1989: 433)

The relationships between the components of the plural subject are specific. Gilbert identifies a particular one and defines it as the relation-

ship of “shared commitment” (relation of joint commitment), which makes the plural subject possible. Therefore, wherever there is a social dimension, there are plural subjects; i.e. those who perform a certain type of actions (shared actions) and are linked by specific relations (relations of “joint commitment”). The social dimension is characterized by particular agents that have specific properties: (1) plural subjects that, contrary to what Weber thought, are not reducible to the sum of singular subjects; (2) the relationships between singular subjects and plural subjects; (3) social actions, that is, collective actions. Gilbert’s idea is that it is wrong to regard the singular I as the unique foundation of social reality. Therefore she resists any reductionist approach:

Mill said that men are not converted into another kind of substance on entering society. He was right if he meant that human beings do not cease to be human beings. [...] He was wrong if he meant that human beings as such do not have to undergo a radical change in order to become members of social groups. In so far as it is true, his claim is rather trivial. Societies are real unities (said Simmel); societies are *sui generis* syntheses of human beings (said Durkheim). I agree. (Gilbert 1989: 431)

Now, the plural subject is ontologically a primitive, just like the singular subject. It is thus plausible that the singular subject and the plural subject are not related by close dependence. In other words, it is plausible that the plural subject does not strictly depend on the existence of the singular subject, while retaining some dependence (called weak dependence) on it. Think of the following situation: a teenager is part of a plural subject—say, a youth gang with which she engages in illegal practices. In this case it is entirely plausible that the teenager in question, while belonging to all intents and purposes to a plural subject, has not yet developed her own individuality because, for example, she is unable to direct her will to an individually selected goal, regardless of the plural subject: “The conclusion seems to be that humans *as singular agents* and humans *as members of plural subjects* are ontologically on a par. Neither is prior as far as ontology goes” (Gilbert 1989: 432).

The idea, then, is that by performing certain actions subjects take on particular properties *because of* those specific actions. Thus, the condition

of possibility of a plural subject is that two or more individuals perform “ $x$ ”, where  $x$  is a social action. When this kind of action—which, as we shall see, has a precise structure—is performed, then the singular subject gives way to the plural subject and the particular dimension gives way to the social. In terms of ontology, therefore, the individual and the social levels are distinct; the levels of individual and social action must be kept separate. The only dependence is that of the singular subject on the plural subject. In other words: people’s actions are what allows for the opening of a social space and, consequently, the formation of the plural subject. Once this level of reality has been brought into being there are actions and objects that do not belong to the same level of reality as the singular subject.

In this context then it becomes crucial to ask two questions: (1) what kind of things actions are; and, (2) in particular, given that not all actions are social actions,<sup>1</sup> what are the properties that allow us to identify social actions. Gilbert (1989, 1996) usually refers to rather linear patterns of actions, conducted by a small and defined number of participants. What interests her is primarily the investigation of the structure and dynamics of small groups. In this sense, her 1989 book entitled *Living Together* is exemplary. The elective field of investigation for Gilbert is represented by the structure and dynamics of small groups: if we are able to explain the structure and dynamics of simple actions, such as two friends having a walk, then—this is Gilbert’s thesis—we will also be able to identify the foundations of the social world.

So let’s focus on the characteristics and properties of social actions and ask ourselves: what do we mean when we talk about walking together? In order to answer it might help to take a step back—always keeping in mind the overall picture of Gilbert’s position—and think about what an action is, how many types of actions exist and, finally, what are the necessary properties for an action to be a social action. In terms of ontology, the standard theory regards actions as “events”. By standard theory I mean the line of thought that ideally connects all the works discussing a famous question posed by Ludwig Wittgenstein in his *Philosophical Investigations* (1953, § 621), which was addressed, among others, by

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<sup>1</sup> Barnes (1988).

Elizabeth Anscombe and Donald Davidson. The question posed by Wittgenstein is simple: “What is left over if I subtract the fact that my arm goes up from the fact that I raise my arm?” Basically, Wittgenstein raises the question of what distinguishes a mere movement of the body—say, a tic or a reflexive gesture—from the same movement made intentionally. Wittgenstein’s answer was clear: nothing.

This issue is taken up in *Intention* (1957), an essay that was central to the development of Elisabeth Anscombe’s theory of action. The essay seeks to invalidate the very meaning of Wittgenstein’s question on the one hand, while, on the other hand, specifically examining the element of intentionality—that is, what seems to distinguish the actions that are caused by conscious activity from those which are not. If we stick to ontology, Anscombe’s approach is openly thrifty. Arthur Danto (1973), for example, adopts a multiplicationist position, distinguishing *basic actions* (the actions made by the subject without any mediation, which basically coincide with bodily actions) from *non-basic actions* (actions performed by means of basic actions). Contrastingly, Anscombe reduces all types of actions to a single action that continues over time and bears, within itself, different descriptions. The most important and most appropriate description is the one that answers the question “Why?”.

The example formulated by Anscombe is very popular. Consider a man performing a particular action: introducing water into a tank that supplies a house. What would seem to be a completely ordinary action conceals a crucial detail. Our man has found a way to contaminate the water, poisoning it. The poison is such that people will notice it only when the damage is irreparable. Now, it so happens that the house is inhabited by a handful of hierarchs together with their families. Our man is aware of this. Those people he wants to poison have been responsible for planning a campaign for the extermination of the Jews and are about to unleash a world war. The man has a plan: he believes that if he can kill all those residing in the house, he will allow better people to take control of the situation before it is too late.

For Anscombe, the question is essentially the following: “What is this man doing? Is it possible to formulate a correct description of his action?” According to Anscombe the action is virtually unique; however, to describe it, we can refer to different “bits” among the many that make it up. This

means that the same action can be described by capturing different aspects. The description may also have a progressively larger degree of complexity: we can refer to (1) the mere contraction of the muscles of a body; (2) the fact that someone is pumping water into the tank; or (3) the fact that he is poisoning a group of people; and most importantly, (4) that he is working at the realization of a plan for the “improvement” of the world.

Davidson (1963) agrees with Anscombe in that he interprets this series of events in view of ontological parsimony and treats them as a single action, an event with a certain extension in time. In addition, he deepens the reflection on the causal relation belonging to certain types of action. Let us suppose that a man who has just entered the house presses a switch to turn on the light. His apparently simple action actually involves two events: in the first place, he turns on the light and his will works causally to accomplish this goal. But a second thing also happens, which, however, the man ignores. That light scares away a thief who was lurking outside the house in the attempt to rob it. The light causes him to desist.

So, the man acts causally and consciously to turn on the light, while acting causally but unknowingly on the decision of the thief. In the example proposed by Davidson, the same event—turning on the light—can therefore be described in different ways, some of which involve reference to intentionality with a causal effect, while others do not. Where it is possible to distinguish an element of causal intentionality, Davidson believes that it is possible to identify one or more beliefs belonging to the person performing the action, who must be distinguished from the action itself. This is exactly the opposite of the solution considered by Wittgenstein: in Davidson’s view, what is left is far from nothing—there is really a great deal left. The subject’s beliefs are the ones that are irreducible to basic actions (as Danto calls them).

The standard theory of action applies particularly well to the actions that take place in the present, or at least within a rather limited time horizon. So, we need to understand if the standard theory can also be applied to social actions or if, conversely, these require an explanation of a different sort. Do social actions have their own characteristics? Or can they be explained by means of a variation of the standard theory?

Let us go back to Gilbert and her idea of shared action. Suppose that two people,  $x$  and  $y$ , decide to take a walk. In this case the action identify-

ing the social dimension is “the walk”. It’s a beautiful sunny day and  $x$  is tired of working. What better way to freshen up than a walk outdoors? While  $x$  is walking along the river that runs alongside the building where he works,  $y$  joins him. The two are long-time friends. Initially,  $x$  had decided to walk alone, but  $y$ ’s company ends up not displeasing him. Therefore,  $x$  willingly accepts  $y$ ’s offer to keep him company, and the two find themselves strolling along, that is, doing together something that each of them had started on their own.

Now consider this variant of the same scenario. The main characters are the same,  $x$  and  $y$ , but this time,  $x$  does not want to be alone, because he knows for sure that he would be sad. And so he looks for  $y$ . During a phone call the two agree to go out together. Together they decide the appointment time, the path and the goal. At the chosen time they begin their walk. The differences between the two scenarios are minimal, almost details; yet they are important and configure the distinction between a singular action from a social one. Let us examine them.

In the first scenario  $x$  decides to take a walk out of the blue, without talking to anyone. The meeting with  $y$  is fortuitous and does not bind the two to make any joint action. Whether they decide to continue together or not,  $x$  and  $y$  are not linked by any kind of relationship that depends on that specific action. The second scenario is completely different. As much as the action remains the same (“take a walk”), the conditions are different—which, on closer inspection, involves some differences in the structure of the action as well. More precisely, it is possible to identify a number of properties that can be ascribed to the second “walk”, but not to the first. For instance, the walk that comes from the conversation between  $x$  and  $y$  is an action that lasts over time. However, an explanation that merely emphasized the persistence of the action would fail to identify the characteristics that make that action a social action. What matters is that it is an action in which agents share a common goal.

But we must also consider a second point, as important as the first one. If  $x$  and  $y$  do not want to do something together and, even more, if  $x$  and  $y$  do not want this will, by acting in such a way that their actions show this, that action might still take place, but it would take place in a completely different way. The issue is crucial to Gilbert, as it was for Reid: in a joint action the subject must declare they have their own will, not

only for the present, but, especially, for the future. The commitment that  $x$  and  $y$  make at a time  $t_1$  will be actualized at a time  $t_n$ , when there could be a million reasons for them to change their minds.

Now, the will is certainly a fundamental property for the identification of complex actions—both for what concerns singular complex actions (those of the individual), and as regards social actions and, specifically, joint actions. Naturally, the absence (or the presence) of the will directed intentionally toward a goal is necessary and sufficient to distinguish basic actions from complex ones. However, the presence of the will directed to a purpose, while being necessary, is still not sufficient to characterize an action as social.

The joint action is described in the second scenario. More precisely, it is a type of action that includes as a necessary condition a particular setting of the action. In the second scenario, the action of  $x$  and  $y$  entails that the two parties are bound by mutual obligations that are a structural part of the action. In other words, the joint action entails that the two (or more) participants in the action have legal obligations towards each other. This is true even in cases where the bond of joint action is rather weak, as it happens in the walk of  $x$  and  $y$ . In practice,  $x$  cannot change the route of the walk without notifying  $y$ , nor can she decide to “forget” about  $y$ , as would be entirely plausible in the first scenario. Nor, finally, could she decide not to care about  $y$  if, say, he dislocated an ankle while they were walking together.

The challenge is to find a criterion for the identification of joint actions allowing them to be distinguished from those actions that, while exhibiting similar properties, do not fall into the same category. In literature, there are at least three different positions. The first, known as “intentionalist”, is exemplified by Michael Bratman (1999, 2008): it refers to the intentions explicitly formulated by agents in the context of clear statements. In the case of the walk, the explicit intentions of the parties involved are a criterion for identification.<sup>2</sup> A variation of the intentionalist position was formulated by Wilfrid Sellars and later articulated by John Searle (1990): the intention of the joint action is the “we-intention”,<sup>3</sup> that is, a clearly expressed intention in the plural.

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<sup>2</sup> For an extensive discussion, see O’Connor and Sandis (ed. by), (2010): 69–70.

<sup>3</sup> See also Tuomela and Miller (1988) and Tuomela (2005): 327–369.

In general terms, the idea is this: certain intentions of individuals are not expressed (or expressible) in the classic form: “I intend to do this and that.” Rather, they are commonly expressed through statements like: “We intend to do this and that.” Each of the agents of the action then expresses this plural “we-intention”. It remains to be understood—notes Gilbert—what is the structure of this we-intention, and especially whether Sellars and Searle take it to be a bearer of normativity or not. The third variant is the one formulated by Gilbert, for whom both singular intentionality and plural intentionality are effective.

To come to the head of the matter one should rather distinguish between intention and decision. Suppose that Peter decides that tomorrow he will go to Paris. In this case Peter “intends” to do something that does not bind anyone but Peter himself. Obviously we are not in the presence of a plural action. If, however, Peter had decided, in agreement with his boss, that the next day he would go to Paris to discuss an important matter with French colleagues, then, in this case, the decision is an action in a participatory form in which the two, Peter and his boss, commit their will to a specific content (the trip to Paris and the reasons that make it necessary). Precisely this kind of action is for Gilbert the basic action of the social world. This is the kind of action that makes social reality possible.

Unlike Bratman’s theory and Sellars-Searle’s version, Gilbert’s view proposes as a criterion for identifying a joint action the notion of joint commitment, which involves a specific type of normative obligation. In order to avoid the difficulties encountered by intentional or we-intentional theories, Gilbert introduces the concept of joint commitment, treating it as a necessary condition for both intentions and collective actions (or decisions). Joint commitment, for Gilbert, is synonymous with normativity: “if Peter has decided to go to Paris tomorrow, he is committed to going to Paris tomorrow, in the sense that, all else being equal, if he does not go to Paris tomorrow he will not have acted appropriately.”<sup>4</sup>

According to Gilbert, this example shows how the normative component is already present in the intention, as in the intention that Peter formulates thinking to himself. That intention, by the mere fact of being

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<sup>4</sup> O’Connor and Sandis (ed. by) (2010): 71.



formulated, would result in a regulatory constraint: it requires to be carried out following a precise form. The difference between an intention (i.e. an expression of the will that has a purely personal dimension) and a decision, which has instead a public expression, is significant: while it is possible to withdraw the intention without questioning constraints created by the coming into being of that intention, the same is not possible in the case of revoking a decision. A joint action, in addition to having a clear regulatory structure, cannot be revoked after the agreement of those who take part in the action.

A joint action, in addition to determining a certain event, puts in place a precise structure that involves the relationship of joint commitment. In addition, a joint action sets up a new subject—the plural subject—that only exists for the field of existence of that joint action and is, in effect, an entity other than  $x$  and  $y$  (the agents of the joint action) considered separately: “when a goal has a plural subject, each of a number of persons (two or more) has, in effect, offered his will to be part of a pool of wills that is dedicated, as one, to that goal” (Gilbert 1996: 185).

A good metaphor to understand Gilbert’s idea is the classic one adopted by contract theories: when taking joint action, the parties are engaged in a constraint that binds them as if they formed one body. It is a bond that creates rights and duties and remains valid as long as all the contractors of the bond actively engage in the joint action. The metaphor of the body is also useful to explain the diachronic temporal extent of a social corpus or of the many social bodies gathered in a state. If it is true, in fact, that the body is composed of parts that together operate, albeit in different ways, to achieve a common goal—the best possible quality of life for the body they belong to—it is also true that temporal continuity seems to be an essential requirement for the identity of a body. In other words, how many and which parts can we replace or change for a body to remain the same?

It is useful to remember that the metaphor of the body, which has been used often by contract theories to justify both the foundation and the normative claims of the states, poses a serious problem of foundation that, to some extent, is a variation of the question of the diachronic identity of a body. To account for this, I would reformulate Gilbert’s question by widening its scope: not only, “How does it happen that a

state can force its citizens to respect the law?” But, in more detail, “How does it happen that a state may compel citizens who didn’t participate in the contract at the time of the state’s establishment to respect its laws? On what bases lies legal obligation towards people and citizens who never explicitly made that covenant?” Both I-ontologies and O-ontologies have offered significant contributions in this sense.

## 2.2 “I-Ontologies”: Facts, Institutions, Procedures

### 2.2.1 The Relational Character of Social Ontology

So, if Gilbert and P-ontologies mainly study—along with some foundational aspects—the structure and dynamics of small groups, I- and O-ontologies deal with (respectively) the foundations as well as with the procedural aspects and the documental ones of social reality. Unlike Gilbert, John Searle is placed firmly within the field of ontology and, at the same time, clearly distinguishes his work from the research in the field of sociology. The project of social ontology that Searle outlines in two texts, *The Construction of Social Reality* (1995) and *Making The Social World* (2010), cannot be understood without considering the broader theoretical, even systematic, design of the whole of Searle’s philosophy, which regards human beings as beings capable of language. A proper understanding of social reality can only be achieved by resorting to an adequate theory: for Searle, that “of speech acts, of performatives, of intentionality, of collective intentionality, of rule-governed behavior, etc.” (Searle 1995: xii). And, I would like to add—as Searle seems to have noticed only recently—a philosophy of action, which he develops in *Rationality in Action* (2001).

As is known, Searle starts off with a rather simple observation concerning the metaphysical structure of reality: there are parts of reality, like social reality, whose foundations cannot be grasped through the investigation proposed and developed by the natural sciences. To investigate and understand the fundamentals of social reality, Searle suggests following two lines of research: the first concerns the exploration of the use of

ordinary language (speech acts and performatives); the second refers to the clarification of a disposition that characterizes living beings in general and humans in particular—intentionality.

So let us begin with the first point. At a metaphysical level, Searle's observation is straightforward. If it is true that there are parts of reality that have no relationship of mind-dependence with humans (this is true, for example, of natural facts) it is equally true that there are parts of reality that seem to have a radically different structure and seem to be dependent on the subjects. Put another way: it is difficult to doubt the fact that a stone exists independently of the existence of a human being who perceives it, while it seems that things are different when it comes to what is (perhaps trivially) defined as social reality. Humans play a decisive role in the existence of social objects because, ultimately, they contribute to their construction. Think, for example, of aesthetic properties.

Searle believes that this mind-dependence also applies to the typical functions of everyday objects. It is, for example, an intrinsic characteristic of the object in front of me that it has a certain mass and a certain chemical composition. It is composed in part of wood, the cell walls of which are composed of cellulose fibers, and in part of metal, which in turn is composed of molecules of a metal alloy. All these features are intrinsic. But it is also true to say of the same object that it is a screwdriver. When I describe it as a screwdriver, I'm specifying a characteristic of the object that is relative to the observer or user. It is a screwdriver just because people use it as (or make it work as, or consider it as) a screwdriver (Searle 1995).

The object that has a sharp shape and a pointy tip is certainly a screwdriver (we know it as a screwdriver). However, that it is a screwdriver depends on another fact, namely the existence of human beings who have designed and built it to be a screwdriver (therefore, its existence is mind-dependent). Searle thus distinguishes between: (1) the mere existence of a natural object that is independent of the existence of human beings; (2) the properties, intrinsic to the object, which do not depend on the observers (for example, its mass or chemical composition); (3) properties whose existence depend directly on the existence of the subjects (its being a screwdriver).

## 2.2.2 The Fundamentals: Assignment of Function, Collective Intentionality, Constitutive Rules

The space in which Searle places social reality is therefore that of relationality—a space that, as we mentioned, Searle considers objective in terms of epistemology and subjective in terms of ontology (Searle 1995: 9–13). In this framework, the concepts that Searle puts at the center of his social ontology are three: the assignment of function, collective intentionality, and the constitutive rule.

### 2.2.2.1 The Assignment of Function

Let's start from the first element: the assignment of a function. We assign a function to an object both when we imagine and create it from scratch, and when we find it in nature. Therefore, in the same way, we can take a tree trunk and use it like a bench, or we can take a tree, sew a colored coating around it and make it into a work of art—this is what Carol Hummel did in *Tree Cozy* (2005). This means that: “functions are never intrinsic but are always observer relative” (Searle 1995: 14); which is a way to emphasize the relational nature of the functions, or their non-intrinsic character.

Whenever we happen to affirm that the heart has the function of pumping blood, or that the gall-bladder has the function of storing the bile produced by the liver, we are assigning to the heart and the gall-bladder a function; such function only exists in relation to the system of values of human beings, who consider the preservation of life through a proper functioning of the heart and liver as an absolute value. Without a system of values there may not seem to be functions, but only processes or operations.

According to Searle, while it is not too difficult to understand how function assigning works in relation to artifacts—they are built with the express purpose of performing a function assigned to them from the outside (that is, by us)—the matter becomes more complex and insidious when we speak of the functions we associate with biological beings, to parts of the body, or organisms. In all these cases we have to be particu-

larly careful in examining the issue, because it often happens that the assignment of function occurs implicitly, except that then—as Nietzsche would observe—we end up forgetting what we ourselves have done, regarding the functionality as an intrinsic property instead.

By assigning a function to an object we introduce the latter into a reality that already exists as designed, detailed and full of values. Searle describes the assignment of functions mechanism as articulated in three different stages: (1) the *agentive function*: subject  $x$  operates in such a way that its action is virtually recognizable by any other subject, as it takes into account certain constraints of human perception and certain constants of human behavior; (2) within the agentive function, there is a particular function, performed by certain categories of objects, which is to “stand for”, or, or represent something else; finally, (3) the *non-agentive function*: it happens “naturally” that, say, the heart pumps blood, or that money often becomes an essential element in the management of power relations.

### 2.2.2.2 Intentionality

From Searle’s perspective, next to the assignment of functions, a key role is played by collective intentionality. Many species of animals (especially our own) have a predisposition for collective intentionality. By this I mean not only that they engage in cooperative behavior, but that they share intentional states like beliefs, desires and intentions. So, in addition to individual intentionality there is also a collective intentionality. This happens whenever I am doing something only as part of *our* doing something (Searle 1995: 24).

The very strong idea that Searle exposes is structured along two axes.<sup>5</sup> The first consists in arguing in favor of the non-reductionist distinction between individual and collective intentionality, and in regarding the latter as a biological primitive or as something very similar to an innate faculty. The second is to assume that this collective intentionality is the foundation of cooperative behavior: musicians, like the members of a

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<sup>5</sup> Apart from Searle (1995), see also Searle (1990) (reprinted in Searle 2002: 90–105).

team, cooperate appropriately because this intentionality guides the individual behavior of each musician.

Basically, in situations that require cooperation and coordination, subjects are able, each within their own individuality, to implement the required behaviors because first, collectively, intentionality has allowed the organization of collective behavior (Searle 2002: 91). Subsequently, based on this architecture, the necessary individual behaviors are carried out. To understand the issue, which is a rather delicate point in the structure of Searle's system, I think it is useful to step back and examine the arguments in favor of individual intentionality.

### 2.2.2.3 Individual Intentionality

What are we talking about when we talk about intentionality? As is known, the concept of intentionality has an ancient history: its origins date back to medieval scholasticism and its recent uses are due to the revival of the concept by Franz Brentano. Searle provides a rather articulated discussion of it in *Rationality and Action* (2001),<sup>6</sup> where he discusses intentionality in relation to action. Intentionality—the capacity of the mind to head for something other than itself—has a lot to do with what Searle calls the “practical reason”, i.e. the ability to intervene and to take concrete action on and in the world. In fact, a considerable part—perhaps the most interesting part—of human actions is purely intentional.

That said, how is this ability (which is an act of the mind directed to something) structured, specifically? First, it should be noted that almost all the dispositions of the mind are mental states: fear, desires, beliefs, hopes. In all these cases the mind acts in its own way; i.e., it is directed to something external. This “move” in the direction of something can happen in very different ways—it can be a feeling like fear, or hope, or a desire, or even a belief—but the propositional content can be the same: “I think you're wrong”, “I hope you're wrong”, “I'm afraid you're wrong”, “I wish you were wrong.”

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<sup>6</sup> For a specific analysis of individual intentionality, see. Searle (1983).

Now, all mental states are characterized by conditions of satisfaction and direction of adaptation. A *belief*, for example, can be true or false depending on whether the propositional content actually corresponds to a state of things in the world (the statement “You’re not well” is true if I verify that the subject of my belief is actually ill). The direction of my action proceeds, so to speak, from the mind to the world; that is, I have to make the necessary checks to verify in the world my belief about the health of the person who is the subject of my belief. On the other hand, however, *desires* are neither true nor false: in the case of desires, at most, there may be a false attribution—someone falsely attributes to me the desire to make a trip around the world—but, generally, it makes sense to speak of desires as satisfied or not satisfied. To satisfy a desire I have to do something in the world: for example, to satisfy the desire to own *Three Studies of Lucian Freud* by Francis Bacon I have to attend the auction at Christie’s and spend \$142 million in six minutes. I must do something or change the things in the world for my desire to find satisfaction. On the other hand, *emotions* do not have a direction of satisfaction: when I am excited about something (for example, I’m happy because I solved a problem, or unhappy because I received very bad news) my emotional state is caused by the fact that my belief is verified (I know I have solved the problem) and my emotional state depends precisely on this awareness.

Now, when it comes to a promise or an obligation, these things can be satisfied or fulfilled only if the person who has contracted them acts in such a way as to eliminate the constraints that a previous action has put in place (Searle 2001: 39–40). So we are in all respects in the sphere of action: since obligations or promises are not found in nature, unlike mountains or water, it takes one or more actions to bring a promise or an obligation into being; in the same way, one or more actions allow one to fulfill the obligation or promise.

For Searle, the transition from intentionality to action is neither direct nor immediate. Søren Kierkegaard understood this very well when he theorized the irreducible opposites that characterize our choice: in the exact moment when we sift the alternatives and commit to one of them to the detriment of all others, in order to pass from intention to action we must fill a space, close a fracture. Indeed,

there is a clear break that separates the intention from the conscious decision that turns into a given action. For Kierkegaard, as for Searle, there is no continuity, but rather a deep gap that can be closed only by a determination of the will. Then, there is still a gap between the choice of one of the possible options, its implementation and, finally, its fulfillment.

What happens is that an intentional state, with its propositional content, is directed to a range of options. Once we have identified those options, we must make a selection, engaging in one or some of them; then our choice will lead to the corresponding action. Finally, we will have to commit to keep the decision in time—especially in the very frequent case that the decision is not actualized through a temporally circumscribed act of the will. Now, if the scheme “intentional state—primary intention—intention in place” is sufficiently clear in terms of individual action, it is interesting to try to understand how it can be transposed in terms of the social dimension. At first glance, therefore, it would seem useful to reflect on the type of action that distinguishes the social dimension. Searle instead changes strategy by calling into question a new entity, similar, but not identical, to individual intentionality: collective intentionality. Let’s see what this is.

#### **2.2.2.4 Collective Intentionality**

Searle’s choice is only apparently reductionist: if on the one hand he excludes the reference to new entities that specifically belong to the social dimension, as in Gilbert’s introduction of the plural subject, on the other hand he does not fail to refer to a particular disposition, duplicating in a way the idea of individual intentionality. In this case, Searle shows himself to be primarily concerned with the question of coordinated cooperative action. How is it that the players of a football game, the members of a symphony orchestra, or even the musicians of a jam session, are able to act in a coordinated manner?

Common sense would answer that this is likely to happen because of a predisposition to cooperation, and maybe practice. Searle posits instead the existence of a specific faculty that, while requiring only the existence



of the individual subject, involves the sharing of intentional states.<sup>7</sup> The following example illustrates the point:

If I am an offensive lineman playing in a football game, I might be blocking the defensive end, but I am blocking only as part of *our* executing a pass play. [...] Collective intentionality is a biologically primitive phenomenon and cannot be reduced to something else [...] No set of “I Consciousness”, even supplemented with beliefs, add up to a “We Consciousness.” The crucial element in collective intentionality is a sense of doing (wanting, believing, etc.) something together, and the individual intentionality that each person has is derived *from* the collective intentionality that they share. (Searle 1995: 23–25)<sup>8</sup>

If we carefully examine Searle’s position we should draw a distinction between two different levels, both present in this argument. The first, perfectly acceptable and widely acknowledged in literature, is the claim that collective action cannot be explained by summing the individual intentionalities of those who perform them. Therefore, it is plausible to assume that collective action possesses its own ontological status. From this it is possible to observe that collective actions are characterized by the fact that individual intentionality derives from collective intentionality.

It seems to me that, in this regard, the central question for Searle is the following: is there some evidence, both philosophical and scientific, that individual actions—that is, mental actions, basic actions and complex actions—as well as intentional states rigidly depend on collective intentionality? In other words, is there some kind of evidence to support the idea that, with regard to collective actions, the plural dimension precedes the singular? I believe that at the present state of knowledge there is, in fact, no evidence of this and therefore it would seem prudent to use collective intentionality as one hypothesis among others. Searle’s example was not chosen at random and belongs to a rank of actions with precise characteristics: they require coordinated behavior, operated by a limited

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<sup>7</sup> Gilbert discusses Searle’s thesis by treating collective intentionality—which, in Tuomela’s jargon, would be “we-intentions”—as a belief. (Gilbert 2007: 31 ff.).

<sup>8</sup> See also Searle (2002: 91 ff).

number of people over a generally limited period of time, and do not imply transgenerationality.

With regard to this type of action (which includes, among others, the actions of groups of small or medium-sized groups, coordinated actions by restricted communities and so on), Searle's idea seems to work, or at least it does not pose too many problems—although, of course, it would require (as Searle himself puts it) to be supported by scientific evidence. However, there is certainly the possibility of explaining coordinated actions by using simpler hypotheses, for example, by referring to will or basic emotions such as empathy, as well as processes of negotiation and agreement. Still, even if we grant Searle the validity of the intentional thesis to explain cooperative behavior within small groups, the argument becomes more problematic when applied to social activities in which people have never met or seen one another. Stated differently, in those cases in which communities and relationships widen and extend, either because of the large number of people involved, or because of the extension of the time period concerned, the argument becomes problematic.

Let me try to explain this through a series of similar cases, characterized by increasing complexity. Imagine members of a small community, similar to that which Aristotle could have had in mind when writing his *Politics*. Just as in very narrow contexts (like a football match or a music performance or, even, medical research by a team in the same laboratory), the actions affecting, respectively, the match, the performance and the research involve a dimension of relatedness. In this type of action, people generally have a clear goal—to win the game, to play the concert, to find a cure. And, unless unforeseen situations arise, each one will work for the best in the pursuit of that goal, knowing that cooperative action implies, in general, a higher chance of success.

Now picture a slightly wider community. This community, made up of shepherds, shares a property: a pasture. The region it inhabits—call it Shepherdland—is fairly small, so that everyone knows everyone at least by sight. It is likely that the shepherds' common goal is to live off the profit of their work. Now, suppose Shepherdland is part of a state that is particularly careful about the shepherds' needs and work. The state has therefore granted each shepherd a pasture to exploit privately as well as an

equally big pasture to share with the others. In this specific case, unlike what happens in football matches, the shepherds' actions do not require a particular degree of coordination—at most, turns will be established. In Searle's view, this type of action is also possible thanks to collective intentionality (i.e. the disposition to think and act together) on which the intentionality of every single shepherd allegedly depends.

It seems to me that the question for Searle here would be: what property (or set of properties) characterizes an action as a social action? Is it only the coordination of the shepherds in exploiting the common pasture? I believe the answer is no, and I'll explain why. For now, though, let's suppose that social action lies "only" in the shepherds' coordination. If this were the case, Hardin's study (see Chap. 1) would bring about some problematic issues. First of all, wherever coordination is a little more complex and entails forecasting skills, coordination fails. This means that coordination works as long as there is a script to follow (a game scheme, a music sheet, a system of rules that regulate a performance). If the agents have to make relevant individual choices, however, collective intentionality (provided it is there) seems to be completely irrelevant.

The second element emerging from Hardin's example is the following: the implications of this kind of action do not only relate to the specific choices of the shepherds but have a wider scope. Every single shepherd should limit his exploitation of the pasture by agreeing to do so with the others. In fact, doing the opposite might have negative consequences for everyone and, in the long run, it might heavily affect future generations of shepherds. I will discuss this issue as the consequences of social actions in relation to transgenerationality. I believe this is a particularly delicate point: social actions activate dynamics that are not limited to the present or the near future. They often affect remote future as well, and this seem to be neglected by both P-ontologies and I-ontologies.

Back to the question I posed a few lines above: does social action amount to the shepherds' coordination in managing and exploiting the common pasture? The hypothesis I wish to support is the following: not only do social actions not rest upon collective intentionality, but some are also necessarily transgenerational—actions projected to the near or remote future. This thesis requires a few more remarks. If we admit that some social actions are necessarily transgenerational, we should

also consider that social ontology should deal with the elements allowing for transgenerationality—i.e. the establishment of relationships between people linked by no direct connection, be it because of time or space distance. Institutions and states seem to be the best candidates to allow for transgenerationality within medium-sized social contexts in the long run.

Let us go back to Shepherdland for a moment. Are all the shepherds' actions social? Of course not. The shepherd taking his sheep to his own pasture is performing an individual action that may or may not have social consequences. Things are different if he takes his sheep to the common field. In this case we can picture two scenarios. In the first, we see the consequences of the bond between the inhabitants of Shepherdland: everyone knows each other and this makes it so that everyone respects at least the basic rules of sharing, so as to prevent using up the common resource. In this scenario the shepherds are linked by relatively strong bonds: kinship, friendship or even acquaintance.

In the second scenario the borders of Shepherdland are a thousand times larger. A typical shepherd only knows very few co-citizens with whom he entertains different kinds of relations. With many others, however, he does not have any form of bond or relationship. In any case, he knows that the economy is based mainly on sheep breeding. If he decides to leave the common field to someone else to exploit, his share of the field might be assigned to a total stranger, perhaps coming from the extreme limits of the territory of Shepherdland. He does not know the intentions of the other shepherds, but suspects that they might want to exploit that resource, sating their sheep. The more their sheep are sated, the more wealth they will produce. At this point our shepherd would be at a crossroads: he could either act individually by sating his own sheep to become richer; or choose to transform his into a social action.

How can he do this? This seems to be the really relevant question once we have shelved the idea of collective intentionality. This transition will take place at the exact moment in which he takes charge of the future, realizing that his action has a transgenerational character, whether he likes it or not. The exploitation of the common good up to its limit will not only affect him and the other shepherds of that generation: it will greatly affect the lives of those who make a living from that field even

when he and others like him will no longer be there. When our shepherd understands this—in other words, when he understands the centrality of temporality to social actions—he will also understand that the transgenerational nature of social actions requires the existence of normativity, and that normativity is guaranteed by the existence of institutions and the state.

### 2.2.2.5 Constitutive and Regulative Rules

It is necessary to introduce yet another element to complete the theoretical framework proposed by Searle, that is, the set of rules that govern (and in some cases create) social reality. Unlike natural reality, social reality is created through the introduction of a set of rules that depend on a variety of factors including the social context. What allows for the functioning of the social world is a complex apparatus of rules that partly regulates behaviors and practices (regulative rules) and partly determines them (constitutive rules). Searle's opinion is that the negotiation of certain rules allows for the creation of large parts of social reality.

According to Searle, the reasons for this are quite obvious: while the natural world has a life of its own and a normativity that does not depend on elements external to it, many parts of the social world depend directly on humans. And so the rules of chess or Monopoly make possible, i.e. bring into being, the games of chess and Monopoly: they are constitutive rules. Conversely, the rules regulating the behavior of the members of the art world are regulative rules. We all know, at least in broad terms, the dynamics of the art world. According to what mechanisms are the works exchanged, sold, stored and generally circulated? These are relationships of various types, all rather vague, which function precisely to the extent that they remain vague.<sup>9</sup> If they were more rigid they would lose much of their effectiveness. So, social reality depends on the ability to comprehend the rules that constitute it and the rules that keep it flexible.

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<sup>9</sup>See Andina (2012: Eng. Trans. 51 ff.).

### 2.2.2.6 Institutional Facts

We can now examine the second part of Searle's theory, the one that introduces institutions—the first of the two elements that guarantee transgenerationality and the transition from a relatively small social structure (in terms of spatial and temporal extension) to a large one. To understand the logical possibility of this passage, Searle elaborates the notion of *institutional fact*. The key to understand this shift is once again, according to Searle, the concept of intentionality. In short, intention can sometimes become performative and make things happen or create parts of reality. Performative speech acts, in fact, create the state of affairs they represent—they create parts of reality. There are several examples of institutional facts, from war declarations to wedding pronouncements. The point is that a doctor cannot simply “pronounce” his patient recovered for her to actually be such, but a head of state has only to declare war for the state to actually be at war. This type of speech act, called performatives, produces a particular type of fact: that is, institutional facts, typical of social reality.

Institutional facts are characterized by being logically dependent on brute facts and—unlike the latter—on human beings. Of course, in this framework, an institutional fact differs from a basic social action because of the normative context, which can be more or less rigid. A stipulative theory like Searle's, in fact, focuses on the importance of institutions (which are fundamental as producers of institutional facts) and the procedures that bring a social object into being; in other words, if there are no procedures to make a couple man and wife, there will never be married couples. This makes it so that the background of practices, conventions and norms is of paramount importance and, consequently, their condition of possibility (i.e. language) is also of paramount importance. For Searle, only beings capable of language can elaborate a system of representations, which is the necessary condition for the construction of social reality.

The proof of this is given by the assignment of function and, specifically, by all those cases in which the latter does not depend directly on the physical characters of the object. For instance, a chair may also be regarded as a work of art (think of *One and Three Chairs* by Joseph Kosuth

1965), because through collective intentionality people can replace the original function for which that object was built (i.e. to sit down on it) with a different function: being an artwork. People must obviously agree in assigning the same function to an object or to a class of objects for the trick to work.

I have chosen to use a different example to Searle's. In *The Construction of Social Reality*, the philosopher refers to walls used as borders. It is not the case that whenever we build a wall we want to separate two or more territories, but when it does happen we are assigning a specific function to a material object that, in this case, depends on the object's qualities: in fact, walls have the capability of physically dividing space (Searle 1995: 39 ff.) However, Searle introduces an interesting complication to his example. Say the wall, which has been separating two territories for some time, loses its physical consistence and is degraded to a mere line traced by a few rocks: it may very well be that the wall would still continue to mark those boundaries.

In such cases it is evident that the assignment of function goes hand in hand with the symbolic property that people associate with the (former) wall. People do not merely impose a function on an object (the function of border to a wall), but impose a status on the physical remains of the object. If all, or at least most, members of a community agree to impose that status, then the object assumes that status, regardless of its physical conformation. In other words, the former wall can still mark borders because it has acquired a symbolic value.

Within the theoretical framework outlined by Searle we can then ask two questions: can the imposition of function, i.e. the imposition of status, apply to any object, at the discretion of those who undertake the task? And again, is it really necessary to introduce collective intentionality to account for decisions, even institutional ones, which are taken by a large number of people? Of course, when it comes to assigning a function the physical constraints of the given object, in relation to the way in which they are perceived by the subjects, are particularly important. The fact that we tend to determine borders by walls rather than by, say, geographical coordinates, happens primarily for practical reasons—walls are in physical opposition to the passage of people, while geographical coordinates might serve as a warning but are not of much impediment.

In this sense, there are good arguments to claim that the imposition of function is a relational property, rather than a faculty of the subject.

The status function, in this respect, is even more interesting. We have seen that it concerns the transformation of the mode in which a certain group of people considers a given object. Now we must add that it is not necessary that the object alter its physical properties for us to give it a new status. In other words, it is not necessary for the row of stones to have been a wall for it to act as a border, rather, it is necessary that the row of stones is transfigured and transformed into something else. Therefore, the real question does not seem to be how to pass from the wall to the stones that also perform the function of boundary markers. Rather, it seems useful to ask a question like this: How can people make that transfiguration happen?

If we shift our attention to works of art, we'll see that things are not different. In a way, rather, the point becomes even more manifest. How is it that an ordinary object—let's say a bicycle wheel—all of a sudden becomes a work of art, that is, a privileged and valuable object, without this affecting its fundamental properties? It can happen, Searle would say, because the bicycle wheel has been invested with a different value, incomparably higher than what, in general, wheel-builders or cyclists grant it. The point is, therefore, to understand how something so special and, basically, extreme could happen, so that a random wheel has been given extraordinary value.

For Searle, it comes first of all to explaining the dynamics of a process: the transformation is possible because, in the social world (made up of the practices, rules and objects I have described), we use certain procedures to give a new and different function (or status) to a given object. Searle sums up this idea in the constitutive rule of social reality: "X counts as Y in C" (Searle 1995: 40 ff.). Which can be translated in this way: a bicycle wheel,  $x$ , counts as a work of art,  $y$ , within a given context,  $c$ , i.e. within the art world. This type of proceduralism implies an important metaphysical commitment, which consists in affirming that many things have an entirely mind-dependent existence.

Let us see if the solution proposed by Searle appears plausible in the case of contemporary art. We put it to the test with what is perhaps the most striking case of contemporary art, which is now a classic. Marcel



Duchamp presented his *Fountain* in 1917 on the occasion of a competition at the Society of Independent Artists. The story is well known: Duchamp had been in New York for a couple of years when he conceived the idea of that unconventional work. Accompanied by the artist Joseph Stella and by the collector Walter Arensberg he went to a shop in Manhattan and bought a urinal, Bedfordshire model. The urinal was then delivered to the studio and Duchamp merely rotated it 90 degrees and signed it with a pseudonym: “R. Mutt 1917”. Note that Duchamp at that time had just come into contact with the Society for Independent Artists, which is why he decided to present the work under a pseudonym. The epilogue of the story is well known: a jury of artists rejected the work on the grounds that it was not a work of art. So, at that time, relatively to that decision, certainly  $x$  did not count as  $y$  in  $c$ . Now, on the contrary, we know that *Fountain* is probably one of the best-known artworks of the twentieth century, and that  $x$  has certainly counted as  $y$  in  $c$  some time later, when *Fountain* was accepted and exhibited in the major museums around the world.

Ascribing the change in the judgment about *Fountain* as belonging to the realm of works of art or not (which, among other things, has also affected the economic value of the object) to the presence or absence of collective intentionality frankly seems rather unlikely. Rather, the passage of status, which requires an update of the ontological classification, was due to a number of factors, most of which are not part of the physical properties of the object. I am referring to factors that need to be explored to find an answer to the philosophical issue of contemporary art.<sup>10</sup> In fact, in the case of the border/wall the imposition of status retains a certain connection with the imposition of function; however, in the case of the artwork/urinal there is really no trace of assignment of function that could be read as a cause of the change of status.

In Western culture there is probably nothing further from the idea of a work of art (which is supposed to trigger an aura) than a urinal: if anything, the latter suggests emotions related to disgust. Not only did the French artist choose the urinal for its manifest anti-aestheticness, but it is likely that he also chose it because it shares very few properties with

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<sup>10</sup> See Andina (2012).

those things that common sense would regard as works of art. Therefore, to understand the significance of Duchamp's act and to understand why *that* urinal is a work of art, I think it is necessary to tell a different story, one that engages in a metaphysical rather than procedural investigation. So, the idea that I would suggest is that Searle's procedural approach is usefully applicable to many social objects, but the case of contemporary art shows the need for a more detailed explanation. Searle's approach may be rather useful to investigate circumscribed aspects of social reality, such as the functioning of institutions and rules ensuring the transgenerational durability of social organisms.

### 2.2.3 Rules and the Normative Issue

The complex mechanisms of procedures hide a pitfall that was already noticed and discussed by Zeibert and Smith (2007). In fact, procedures (implemented both by individuals and institutions) and the rules that govern them must be legitimized. This means that if, as posited in the framework outlined by Searle, the structure of social reality is attributed entirely to the apparatus of rules and institutions that *de facto* allow for its functioning, it will be necessary to justify those rules and institutions, identifying the foundation of their power. In other words, one has to wonder what legitimates the power that requires us not to cross the street when the light is red, that binds us to keep our word, to bury a brother or, more prosaically, to honor the debts of the generations that preceded us.

The procedural panorama is composed of different types of rules and, consequently, of different types of identification. Let us begin with the simplest stipulation, based on an agreement between the actors who take part in it. The agreement, in turn, can be "weak", entailing conventions, or "strong", entailing rules of behavior. The *weak stipulation* is a type of agreement that we encounter very often in ordinary situations. An example of convention is the rule that the younger person should greet first, or the use of "sir" or "madam" in formal situations. Such practices are most often based on habit and common sense, and are aimed at simplifying behaviors.

However, it may happen that people forget both established practices and common sense, so that laziness prevails. These are the cases in which the legislator intervenes to replace the weak convention with a stronger binding character. For example, that younger people should leave their seat to the elderly on public transport is a form of weak convention. However, this practice is not always respected, be it for the reluctance of young people to acknowledge the elderly, or for the vagueness of the concepts of “young” and “old”. In cases like these, the weak stipulation is converted into a rule, that is, into *strong stipulation*. This is what happens, for example, when on public transport appear signs reserving seats for the elderly. In these situations, people have an obligation to give way, because a rule was introduced that strictly regulates their behavior.

The distinction between the different types of rules has been rigorously articulated by the British jurist and philosopher Herbert Lionel Hart in *The Concept of Law* (1961). Hart distinguishes two types of rules, “primary” and “secondary”. The primary ones are characterized by a specific element: they impose modes of behavior, duties and rules. They are the reasons why a red light forbids us to cross the street; a sign requires us to give way to an elderly person; or the crossing of a border requires us to show our passport. In general, those are obligations whose compliance is “reinforced” by the imposition of a fine: if we cross when the light is red despite the ban, it is possible or even likely that a police officer will give us a fine. The fine is therefore a reinforcement of the reasons that have imposed the rule: the red signal imposes the rule not to cross the street and to observe the warning (if I didn’t, I would run the risk of causing damage to both myself and others). The fine is used to reinforce the reasons to respect the rule, if those reasons were not understood fully. In essence, the red light speaks for itself, its existence is the reason for respecting the rule it refers to, but, if that were not sufficient, the fine reinforces the prohibition, tying it to a financial penalty.

The primary rules are to be followed not because someone or something forces us to do so, but because there is an objective in view of which those rules were formulated: we invented road signs in order to lower the accident rate in the streets. Theoretically the fine should be redundant—it seems strange that people should be afraid of losing some money rather than their own life—but while the former is a remote thought, perhaps

for psychological reasons, the fine is undoubtedly more concrete. The primary rules are therefore the result of stipulation, just as when we invent a new game: stipulation makes the game possible, insofar as it is precisely the result of the rules stipulated. Given that this is a new game, which has never been played by anyone anywhere, and therefore does not refer to a previous story, the participants should agree on the rules, namely the structure of the constraints and opportunities that make the game playable. These rules are essential but not binding. In the game of tennis, for example, the service, to be valid, must fall within the rectangle that is diagonally opposite the server's. That the service should follow these modes rather than others is likely the result of a conventional decision, partly resulting from the tradition from which tennis was born, *jeu de paume*. The important point is that this type of rule can be recontracted quite easily. It is sufficient that the players involved in the game, or their representatives, decide to redefine the rules of the service for the ball to be able to fall into a different area of the court and still be valid.

As I anticipated, the primary rules are not the only ones. There are others, which typically are not incorporated in actions, but still play a foundational role: in other words, they legitimize the primary rules. More precisely, while the primary rules impose duties or obligations, the secondary rules—almost invisible—confer power, public or private (Hart 1961: 81, 94). The rules of the first type must be incorporated in actions, while those of the second type do not require being instantiated by the actions of the individuals. In other words, if there is an embedding going on, it has different characteristics. The reasons for this difference are due to the type of rules: secondary rules are “about” primary rules. They relate to those rules, founding them and making them possible. They do not have to be incorporated in the actions, but they are the backbone of the whole social structure. Secondary rules allow for games to begin with and, *a fortiori*, for the social world itself, which in this vision recalculates the structure of a complex game.

With this distinction in mind, let us return for a moment to Antigone and her inner conflict. The rules imposed by Creon for city government, i.e. the primary rules, require that the prohibition of receiving burial be applied to anyone who harbors war within the walls of the city. According to the values recognized by the community, this means that, by apply-

ing that specific rule, Creon decreed a conviction that will have value for eternity. So, the king puts in place a set of rules that, on the effectual level, result in obligations and constraints to Antigone's behavior. To ensure the implementation of these obligations, he ties them directly to the most severe punishment: the death penalty. The primary rule is clear; the open question, if anything, relates to the legality of the secondary rule on which the primary rules are based. It is important to note that Creon goes well beyond the time-limited realm of his power, which is related to maintaining peace and welfare in the city. That specific law changes significantly another law, which affects rules that belong to a different sphere than Creon's and the value of which is recognized by Antigone. The theoretically relevant point, then, is this: is the law, that is, the set of primary and secondary rules, reduced to Creon's will? The answer, formulated very clearly, is "no", in the sense that the social system does not depend on the will of the sovereign.

Therefore, for Hart, the law can be reduced neither to primary rules, nor to the will of the king. The rules are certainly a component of the law, but not the only one. In general political philosophy, when proposing a definition of law, focuses on the discussion and determination of the primary rules. Conversely, Hart believes that the law is the synthesis of two components: primary rules and secondary rules—where the latter are the most difficult to explore. Hart's theses embody a real monism of rules: i.e. a stipulative system where the relations between the rules allow for and, at the same time, found, social reality (see especially Chap. V in Hart 1961).

For Hart, as for Gilbert, sociality begins with actions. Hart's position, however, differs profoundly from Gilbert's, despite sharing her idea that actions are a necessary component of social reality. For Gilbert, remember, social action characterizes social reality; for Hart, vice versa, the action constitutes the body that conveys the primary rules. Hart is concerned, however, with a matter to which Gilbert, at least in the early writings, has devoted little attention. According to Hart it is not important to establish what are, in ontological terms, the building blocks of the actions when they take on a social character. In other words, it is not important to identify what properties define a social action by making it social. Rather, it is important to identify the different rules in play. Given

an essentially stipulative theoretical framework, as outlined by Hart, it is necessary to clarify the type and hierarchy of rules that comprise the social world, identifying the specificity of the secondary rules: in fact, those are the foundations of the entire social structure.

In other words, it is by virtue of the secondary rules that Creon establishes the set of primary rules that Antigone must respect. Among the primary rules there is one that can be explained in this way: “in some circumstances, the king will retain the power to decide the fate of a person even beyond life. On those occasions all the constraints that normally bind people can be overruled by the absolute power of the king, which goes beyond space and time.” Antigone’s action follows a secondary rule which goes beyond the power of Creon and indeed incorporates the refusal to execute the order dictated by the ruler, rejecting the primary rules that Creon has imposed. By doing so Antigone affirms a very simple idea: it is not by erasing human compassion that power is conserved and, above all, power does not have the function to erase the human compassion.

Antigone therefore indirectly raises a question that involves the definition and the status of power, as it is invested by the status of secondary rules: what is it, and what is the source of power? What is the foundation of the secondary rules by which power is made legitimate? It is important to be clear about this if a king, in the exercise of power, claims the right to break a bond that was not stipulated, but that is certainly given, as in the case of the relationship between siblings. The point that Antigone underlines is the same highlighted by Hart: that secondary rule is unfair. The lack of justice makes unjust (therefore rejectable) the primary rules that are connected to it and that, consistently, Antigone refuses to incorporate in her actions.

Antigone therefore raises a question that can be addressed in two ways: either you believe—as Hart does—that the legitimacy of the system comes from the system itself, i.e. from the architecture of the rules (which is a rather weak legitimacy precisely because it is intrinsic to the system) or it is necessary to assume that the source of legitimacy is external to the system. According to Hart, in complex societies like modern ones, there are three sources of legitimacy or sets of meta-rules: the written constitution, legal precedents and the promulgations of the

law. It is obviously necessary to establish a hierarchy among these three sources, which will be asserted in case of conflict. The central element of Hart's reflection therefore consists of those secondary rules or meta-rules that allow for the recognition and implementation of the primary ones.

That said, it is important to note that, *de facto*, a system of legitimacy like the one proposed by Hart begs the question of its foundation—which Antigone's case shows well to be problematic. Who or what founded the secondary rules that establish the primary rules and, with these, the whole system? Hart's response is simple and, in some way, predictable: it is the system of conventions that was established by people in time and which was consolidated in various ways, some destined to remain fluid, others become more overtly normative. After all, it is precisely a theoretical framework of this type that Antigone opposes: if the meta-rules are conventionally chosen on the basis of, say, a negotiation decided by the majority, those who do not fit or do not share this contract can call out, but then—as in her case—suffer the consequences established by those in power, who enforce the laws enshrined in the majority.

The ending of the story shows how weak and questionable this solution is. Antigone does not merely claim that Creon cannot replace some rules with others and expect citizens to simply go by them. More deeply and radically, she argues that the rules and meta-rules that Creon chooses to impose are wrong because they are unjust. Therefore, she shifts the focus from the rules to what *grounds* the rules, anticipating Augustine's "lex iniusta non est lex". The tension is therefore clear: on the one hand we have the system of rules, which certainly helps to stabilize the internal relations of the social world; on the other we have the same system of rules that, in extreme cases, refers problematically to its foundation. In a word, when we are dealing with regulatory obligations, their acceptance coincides with the acceptance of the justice system they are working under. This rightness—which we will call the "issue of normativity"—cannot depend exclusively on the application or the functioning of the system of rules. In this framework, the appropriate question seems to be this: What is that "something" that the rules do not capture and that, conversely, seems to motivate Antigone's behavior?

## 2.3 “O-Ontologies” and the Role of Documents

Neither Hart nor Searle, therefore, commit themselves to solving the issue of normativity. Searle’s latest work (2010) posits that social reality is the result of a stipulative process, therefore the problem of foundation is replaced by the rules: what they are, how they classify and so on. Hence, in this context, both Searle and Hart are consistent with their premises. However, as well illustrated by the example of Antigone, the question of the foundation is far from secondary and can pose serious problems to the I-ontologies as well as to the social and political systems that rely on procedural systems. For this reason, O-ontologies engage a research that directly addresses the foundational question.

### 2.3.1 The (Social) World in Eleven Theses

I consider the work of Maurizio Ferraris to be paradigmatic in this sense. He developed his theory of the social world in different writings (2005, 2009, 2012, 2014, 2015), but he undoubtedly provided the most organic and extended articulation of his theory in *Documentality. Why It Is Necessary To Leave Traces* (2012), in which he investigates and proposes a taxonomy of the objects that make up the world. In particular, he identifies the class of social objects and the specific subclass of documents, which—as we shall see—perform a particular function. From a fundamentally realist perspective<sup>11</sup> Ferraris considers social ontology as the moment of synthesis of his theory in which epistemology, ontology and aesthetics find their own articulation. Like Searle, Ferraris thinks that to understand the structure of social reality one needs to put in motion various fields of philosophy, and therefore develops a systematic reflection whose cornerstones are provided in the eleven theses summarizing *Documentality*. Let us go through them.

1. *Ontology catalogues the world of life.*<sup>12</sup>

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<sup>11</sup> Cf. Ferraris (2012).

<sup>12</sup> Ferraris (2012: 316 ff).



The first thesis traces the scope of the analysis and delimits its boundaries, which are those identified by descriptive metaphysics as understood by Peter F. Strawson (1959). This analysis targets the development of a metaphysics that, whenever possible, aims to proceed in line with common sense. Although in certain domains of reality philosophy can be taken primarily as a discipline of complement, supporting conceptual clarification in metaphysics and theories derived from experimental data, it is also true that in those domains in which human action positively determines the structure of the domain itself, philosophy can engage in describing what directly depends on human perception, actions and choices. It is, however, a type of analysis that precedes any reflections of a prescriptive character. In this sense, and in terms of methodology, philosophy is committed to identifying, classifying and distinguishing things in the world. By “world” Ferraris means “the totality of individuals: stones, organisms, artefacts and persons both physical and juridical” (2012: 317). In this framework, individuals have the salient feature of being “exemplary”, that is to say that they are at the same time authors and objects of the classifications they produce and use.

2. *There are three types of objects: natural, ideal, and social.*

The cataloging produces a taxonomy that lays the foundation for the development of social ontology. This taxonomy includes this tripartition: (1) natural objects, which are in space and time independently of the subjects with which they are related in terms of perception and epistemology; (2) ideal objects, which are not in space, nor are subject to time, and do not depend in any way on the subjects; finally, (3) social objects, which have spatial and time location, and whose existence depends on the subjects.

3. *Ontology is distinct from epistemology.*

The second and third theses constitute the backbone of Ferraris’ system.<sup>13</sup> Resuming the analysis he developed when discussing Kant,<sup>14</sup> to whom Ferraris imputes the origin of the confusion of ontology and epistemology, and specifically the reduction of the first to the second, Ferraris adopts and maintains a clear separation between the sphere of epistemol-

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<sup>13</sup>Ferraris (2009: 100 ff).

<sup>14</sup>Ferraris (2004).

ogy and that of ontology, with the aim of avoiding the constructivists' and idealists' outcomes of Kantianism.

Ontology, according to Ferraris, is therefore the set of things that exist regardless of whether we know them and of the ways in which we possibly get to know them. Epistemology, on the other hand, is the sphere of knowledge of what exists. The two levels must be kept separate so as not to incur in what Ferraris defines the “transcendental fallacy”: that is, the methodological approach—exemplified by Kantian epistemology and later fully deployed by postmodern philosophies—in which the world is completely absorbed by language or thought.

The ontological structure of natural objects has the characteristic of being *unamendable*, in other words, of resisting the subjects' constructivist attempts. Things are different when it comes to epistemology. Not only is the latter amendable (i.e. not only can it be corrected and refined), but this amendability hides the very meaning of the advancement of knowledge: the nature of knowledge is progressive and enlightened. In other words, knowledge is only such when it can be amended.

The first three theses therefore aim to develop the methodological tools of the investigation, outlining the scope of epistemology as opposed to that of ontology. Theses 4–11, on the other hand, draw Ferraris' actual social ontology, which has its hub in the concept of “social object”. Put differently, working on a social ontology means answering the question “what is a social object?” Hence theses 4 and 5.

#### 4. *Social objects depend on the subject, but are not subjective.*

The analysis of the social world thus takes its cue from the investigation of the social object: Do social objects exist? And if they do, can we find a definition for them? Unlike ideal objects and natural objects, social objects are linked by a relationship of dependence on the subjects. That is, while the beliefs of the subjects are not crucial to define the identity of the natural or ideal objects with which they enter into some kind of relationship, beliefs are crucial for the existence of social objects. This does not mean that social objects are relegated to a purely subjective dimension; rather, it means that “unless there were subjects capable of recognising social objects, such social objects would not exist. The upshot of this observation is that, while transcendentalism is not applicable to natural objects, it fits social objects perfectly” (Ferraris 2012: 318). In

other words social objects have a form of dependence on the subjects that, however, does not imply that they are subjective.

5. *The constitutive rule of social objects is Object = Inscribed Act.*

As I said, social objects necessarily and constitutively depend on the subject. This dependence can be described according to the following constitutive rule: Object = Inscribed Act. The social object thus derives from an action that takes place between (at least) two people and is characterized by being recorded, that is, by being identifiable in a physical trace that is constitutive of its essence. This trace can be deposited on very different surfaces: from physical media (paper or digital media) to the memory of two or more persons among whom the social act takes place.

Suppose that two people ( $x$  and  $y$ ) arrange to meet, promising each other to go to the movies tomorrow. That mutual verbal commitment, that is, the fact of having exchanged a promise, leaves a physical trace—in this case it is a memory trace, the same that makes the two turn up at the cinema—in the memory of  $x$  and  $y$ . Without sharing that trace—let's say that  $x$  has only thought about going to the movies with  $y$ , but has forgotten to tell him—the social object would not exist. Which means that  $x$  would have no reason to complain about  $y$  if he did not keep his promise. In this sense, the social object “promise” depends on the subjects that formulate it, but at the same time has a standard structure, that is, it could not be different from what it is.

6. *There is nothing (social) outside the text.*

The thesis articulates the concept of inscription that marks Ferraris' position. A necessary condition for the existence of an object is not only the coming into being of a particular type of action, but also the fact that this action produces a trace in the form of an inscription. Unlike the case of natural objects, whose existence depends on nothing other than the material consistency of the objects, social objects exist only if there is a trace that, in some way, performs the act that has brought them into being. That trace is the bearer of a representational act that, in the case of social objects, is the result of a dual action.

7. *Society is not based on communication, but on recording.*

The centrality of the objects to the social world and the inquiry, of genealogical nature, by which he develops the Derridean concept of trace, lead Ferraris to criticize the arguments that in the wake of the investi-

gation of Marshall McLuhan (1962, 1964) have taken communication as the condition of possibility of the social world. For Ferraris, recording and traces are the conditions of possibility of social reality. Basically the latter exists in relation to the possibility that human beings have to deposit the intentional content of their actions into relatively articulated traces and record them on surfaces that allow one to recall them.

8. *The mind is a tabula that collects inscriptions.*

The eighth thesis aims to finish the metaphysical-epistemological framework proposed by the first three, completing them with notions related to the theory of the mind.<sup>15</sup> For Ferraris, the mind is a *tabula* that receives and retains inscriptions. In this sense it is characterized by a form of passivity, but it also actively captures the traces and inscriptions found in the world.

9. *Documents, in the strong sense, are inscriptions of acts.*

The eminent exemplification of social object is the document, i.e. the kind of object that has the feature (1) of resulting from an act of (at least) two people and (2) of being written down somewhere. If  $x$  promises  $y$  to leave him her country house,  $x$ 's wish finds expression in a written document— $x$ 's Will. This action has evidently the form of the “potential action”, since  $x$  will really accomplish the action of leaving her house to  $y$  only when she is dead. The Will then collects  $x$ 's action that, at the time of its inscription, is still partially potential. This promise will be kept only after  $x$  has lost to the ability to act directly. The Will preserves, extends and updates the will of  $x$ , whose intentional being will retain its effects even after her death.

From a metaphysical point of view it is interesting to ask what kind of thing a document is, as it happens to have so much power—for example, the power to act on behalf of its author—what types of documents exist, if all types of documents known are related to the actualization of an action, and so on. The ninth thesis points to a real theory of the document, where Ferraris develops a phenomenology of the document and distinguishes between *documents in a strong sense*, i.e. recordings of acts, and *documents in the weak sense* or documents that are recordings of facts.

10. *The letter is the foundation of the spirit.*

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<sup>15</sup> Cf. Ferraris (2011).

In the tenth thesis, Ferraris proposes a second Copernican revolution and suggests considering the letter (with its autopoietic structure of recording and inscription) preliminary and primitive compared to the spirit. The letter precedes the spirit and founds it. This applies to the subjective spirit (the soul as *tabula*), to the objective spirit (i.e. institutions) and to the absolute spirit (art, religion, philosophy). Theses 9 and 10 are intimately linked, in the sense that the basic idea is that the trace as document achieves a poietic capacity that is independent from the subject's intention. The trace and the letter produce horizons of meaning and significance that are not related to the subject's direct poiesis.

11. *Individuality is manifested in the signature.*

So, the subject does not found social ontology, but at least leaves a mark of individuality using a very special and idiomatic trace: the signature.

### 2.3.2 The Ontology of Social Objects

In the general framework that I have briefly described Ferraris attributes to social objects a specific ontology. If we consider, for example, marriage, we will find that the term has a semantic complexity leading to an interesting ontological complexity. Ferraris describes it as follows: by the word *marriage* we mean the legal institution, the wedding ceremony, and the state that follows from it. The legal institution is the archetype, i.e. the model; the wedding ceremony is the “inscriber”, i.e. the act that, accompanied by recording, actualizes the legal institution in the single marriage. The latter, instead, constitutes the ectype (Ferraris 2012: 44).

As for the archetype, it reveals an internal necessity: we may never make a promise in our lives, but if we were to do that, then our promise would necessarily follow the internal structure of the archetypal promise. In the transition from the archetype to the ectype Ferraris introduces a third entity: the inscriber. Its task is to individualize the act and implement it in the ectype. The inscribers may have different structures (ranging from graduation ceremonies to weddings, allowing for the inscription of the archetypes of social objects “graduation” and “marriage” into documents, to the web as an inscriber whose power and pervasiveness characterize contemporary social reality) and above all, can create social objects.

This point is extremely interesting because it recognizes (*de facto*, if not *de iure*) an autopoietic capacity in social reality. There are parts of social reality that social reality itself produces, apparently without any particular foundation or specification. The characteristic captured by Ferraris is crucial because it is constitutive of social reality: large sections of social reality are autopoietic. This trait is also destined to be reinforced exponentially by the advent of the new technologies.

It should be borne in mind that a reality that is largely self-produced is not *ipso facto* justified. Therefore, the issue raises urgent problems from a normative perspective, problems similar to those raised, at the level of state theory, by transgenerationality. Whether we consider contractualism as a metaphor or as a kind of thought experiment *ex post*, or whether, conversely, we limit the usability of the theory to the sole founding act of the state, it is clear that states are autopoietic entities. We will return to this, but for now I wish to point out that this area poses a significant problem of legitimacy.

Finally, ectypes. These are concrete examples of archetypes, which require an inscription as their necessary condition. By inscription Ferraris means a non-private recording (Ferraris 2012: 164 and ff.; 224 and ff.), that is, a recording that has public accessibility and fixates social acts, giving life to social objects. The concept of inscription is not limited to writing only, as much as writing is exemplary here, but in this context it refers to a technical meaning: “Thus, in the sense I am proposing here [...] we use “inscription” for every sort of registration of a social act that concerns at least two people” (Ferraris 2012: 237). While in ideal objects the archetypes–ectypes relationship is, so to speak, descending, passing from the archetype to the ectype and therefore from the universal to the particular, in the context of social objects Ferraris recognizes an inverse relationship: the ectypes produce the archetypes, and the passage is from the particular to the universal.

### 2.3.3 From the Letter to the Document: The Case of the European Community

Among the inscribed acts, there are some that, more than others, retain a special role and a strategic value for social reality: documents. But what is a document? Ferraris does not provide a definition in

terms of necessary and sufficient conditions, but rather engages in a taxonomy of the document that starts from the following description: the document is an inscription with institutional value (Ferraris 2012: 249). In line with his theory, Ferraris uses the constitutive rule of social reality (object = inscribed act) to explain the concept of document, and uses the latter to explain what, with a Foucaultian term, he defines as governmentality: the theory of the states and the normativity that founds it. Both points are extremely interesting; so let's try to follow their development.

One of the most complex issues that a social ontology faces regards the possibility of justifying, or at least explaining, the transition from the un-normed dynamics pervading social reality to increasingly rigid normative ones. If I systematically ignore my friends it is likely that I will be considered unreliable in friendship, but, predictably, no one will fine me; rather, sooner or later someone will point out that my behavior violates established social rules. There are, conversely, specific areas of social reality in which the normative component is necessary to their existence. These areas, identified roughly with the institutions that regulate and allow for extended communities, generally constitute a fundamental component of the social structure. The investigation of what demarcates and, at the same time, allows for and regulates the transition from the social dimension to the political dimension is a particularly delicate point. Wondering what enables the transition from the social dimension to the political dimension amounts to asking by virtue of what—what rule, law, principle, or foundation—states can impose laws and ask that we respect them. To refer to our example, it amounts to asking why Creon can demand that Antigone accept the laws he lays down.

The answer given by Ferraris is in a sense close to that proposed by Hart, for whom the set of rules of the first and second level impose normativity and engage in terms of value, but at the same time is more concrete. The transition from the social sphere to the “governmental” one is allowed for and guaranteed by the documents. Hence, the centrality of the concept of document to the whole theory. Basically, it is by virtue of documents that societies actually work—that is, are able to manage and organize the division of labor—and that states were born to begin with. Ferraris does not express his opinion on issues of law (by virtue of what should a document found the power of a state?), but he is certainly very

clear on matters of fact, detailing in what ways documents allow for the existence of institutions and states.

### **2.3.3.1 Phenomenology of Documents**

Let's go back to the ontological question: what is a document? A document is an inscription with an institutional value, which means, I think, that a document is the recording of an act in a way that allows a form of public access to that inscription. There are three spheres to which documents are particularly relevant: (1) history, in which documents are what allows for the reconstruction and understanding of the past; (2) information, where the term "document" designates anything that conveys information; and (3) law, in which documents are what has a juridical value. The latter is the originary meaning: "'juridical' should be understood in a broad sense, having to do with the overall process of inscription of anything that appears socially important, from the economy to religion, in line with the analyses offered of writing and archiwriting" (Ferraris 2012: 250).

Within this domain Ferraris lays the foundation for developing a theory of the document that refers to at least seven areas: (1) the different types of documents within a continuum ranging from informal notes to documents that have legal value, such as Wills, or formal value; (2) the different possible physical instantiations; (3) the actions performed on documents (4) and those that are exercised through documents; (5) the positive or negative outcomes of these operations; (6) institutional systems in which documents have a meaning, a function and a value; (7) the origin of documents.

### **2.3.3.2 Governmentality: The Poietic Power of Documents**

While social reality, and social objects in particular, show a weak dependence on the subject, the true sense of Ferraris' theory lies in the central role given to social objects and their eminent exemplification: documents. If we want to understand the structure of social reality, it is precisely from here, from social objects and documents, that we need to start



our analysis. You can easily see how Ferraris' method is opposed to the P-ontologies.

According to Ferraris' taxonomy, the social object can: (1) depend on the subject being the outcome of an inscribed act; or (2), as happens with some kinds of documents, be poietic and (apart from its coming into being) prescind from the subject. To be clear, a promise cannot be separated from the subjects (a promisee and promisor) that register the intentional content of the act on a surface, or that institutionalize it in a document. A document, however, in the presence of a social or institutional context legitimating it, may not require the subjects that established it in the first place. Documents thus possess an autonomous existence from the subjects, and, what is perhaps more interesting, have autonomous agentic abilities.

Consider for example the Will, which had already solicited Austin's attention. A Will exists and retains its value even, and especially, when the person who drew it up is no longer able to alter or cancel it. Thus, it acquires its entire documental scope just when it no longer depends on the subject. At that time it also acquires its full agentic capacity, since it can produce a variety of effects in the social world. The same applies to states. A state exists and has significant agentic capacity even when those who have participated in the original social contract have ceased to exist.

The important element, in our perspective, is that both the Will (*pars pro toto* the documents) and the institutions that generally are based on, or use, public documents, have a form of existence that involves trans-generationality, i.e. an existence protracted in time that is independent of the actors who brought them into being. Ferraris rightly observes that the European Community is a perfect example of what governmentality means (Ferraris 2012: 262 ff, 2009: 286–315). For Ferraris, governmentality is a tangible sign of how the base of political power (both in the sense of the foundation and in the sense of the maintenance of power) lies in the documents and the bureaucracy that guards them and uses them.

Now, Ferraris' analysis certainly captures a state of things. However—I would argue—it is precisely this state of affairs that brings out a deficit of normativity that is rather disturbing, and that emerged very obviously during the economic crisis that began in 2008. I do not think it would

be absurd to imagine that such a legitimacy deficit is a direct result of the wide spaces of action that Ferraris identified in the documents and that (as we will see) are equally typical of the states, which are poietic and transgenerational.

Let us return briefly to the European Community. What makes it an exemplary case is that its genesis was openly bureaucratic. In other words, in the case of the European Community, the founding members have programmatically undertaken the unification of rules, norms and laws through appropriate regulatory documents (treaties and currency). On the other hand, unification in terms of values and culture has been delayed for a long time, probably because it was felt that it had to follow the establishment of a European documentality.

It is not strange that the geopolitical area that caused the last two world wars has chosen this strategy for its unification—it was necessary to ensure that Europe might actually aspire to maintain an economic and political influence. In addition, a unification that targeted values too openly and directly would have required a large and protracted negotiation. It was therefore decided to follow a route starting from the sharing of rules and treaties to reach the (desirable) formation of common behaviors, practices and values. The unification of the European states is similar in this respect to an educational process: inducing virtuous behavior through the adoption of good rules should kick-start a virtuous cycle that conveys peace and prosperity.

The challenge of the constituent states—according to the political tradition of the Anglo-Saxon matrix that highlights the importance of rules while marginalizing the contribution of people—has been to derive the values from the rules and good practices. In this sense, Europe was certainly an example of a union founded on documentality. However, the failure of this attempt is, in many ways, exemplary. Europeans—virtually everyone, including the most ardent advocates of the need for a united Europe, among whom I place myself—underline the abortive character of this Europe. As it is, it works little and is little liked, and I think that its genesis plays an important role in this widespread sentiment. The question then is this: what is the reason for so much hostility towards the European community on the part of its citizens, who should appreciate the noble and important reasons for which it was born? Answering this

question actually means responding to two questions: why Europe was born and what are the reasons for the failure of the process from documentality to governmentality. The answer to the first question is simple, while the second requires a longer route that involves a reflection on one of the most important questions of political philosophy, that is, the legitimacy of the power of states and supra-state organizations such as, precisely, the European Community.

Let's begin with the simple question: why was Europe founded? For noble and fair reasons and, I would add, due to an absolutely correct political forecast—which happens rather infrequently in the modern world. The noble and just reasons had deep roots, the deepest imaginable, for they were the result of two devastating world wars, caused by the European states. The goal of the founders was twofold: to consolidate peace in the European territory, which had always been exposed to serious tensions, and to increase the wealth and well-being of peoples. The road to unification and the gradual transfer of wider parts of national sovereignty to Europe was then subsequently accelerated by the political forecast about the global economy.

The slightly confused concept of globalization, which was long considered an obscure threat, took a very concrete form in transnational economic concentrations. Politics ran after the economy by promoting the formation of global markets. It is no coincidence that Europe began its process of unification through the construction of a common European market: if, in fact, it was quite unlikely that the people would be able to trigger a process of unification starting from the values—the memory of the war was a heavy burden—the search for greater profit and more favorable economic conditions was certainly a viable strategy. In the fifties, the European Coal and Steel Community began to unite the countries in terms of the economy; many years later, in the nineties, that bond would then be extended to the political sphere.

The European Economic Community was founded in 1957 with the Treaty of Rome; the first six founding members (Belgium, France, Germany, Italy, Luxembourg and the Netherlands) were joined by Denmark, Ireland, and the United Kingdom in 1973. In 1981 it was the turn of Greece, while in 1986 the political situation allowed for the entry of Portugal and Spain. Europe was then ready for the single

market. During the decade from 1990 to 2000, the unification process became more intense: in 1993 the single market was completed with the introduction of four freedoms of movement: goods, services, people and capital. In 1993 and in 1999 were signed the treaties of Maastricht and Amsterdam with the clear intention to lay the foundations for an actual political unification. In 1995 the union was joined by Austria, Finland and Sweden, and following the Schengen agreements EU citizens were able to move freely between many member states. Since January 1, 2002, after a transition phase, the euro has been the currency used by most countries of the Union. Between 2004 and 2007 the European Union was joined by a dozen more countries.

The Lisbon Treaty, ratified by all member states on January 1, 2009, features a significant change in Article 1 of the Treaty on European Union (1992), which consists of the following addition:

DRAWING INSPIRATION from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law [...]<sup>16</sup>

These three lines, which outline the meaning of a common tradition delimiting a set of values to defend and strengthen, were introduced relatively late, to testify—if ever it were needed—how the heart of Europe lies in a common market and shared rules. It is also significant, since the function of the states is primarily linked to protection and defense, that, more than fifty years after its foundation, the European Community has not developed a common defense system.

The rest is recent history that tells us that something in the economic and documental composition of Europe has not worked and is not working. I will dwell on this extensively. To figure out what does not work, we need to step back and deal with the concept of the state, which is the mereological basis of the concept of Europe as it is outlined and defined in the Treaties. Therefore, we must ask ourselves: what does a state's legitimacy amount to?

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<sup>16</sup> *Treaty of Lisbon/Article 1—Treaty on European Union/Preamble* (2007/C).

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# 3

## State and Justice

### 3.1 That Thing Called State

Some theoretical issues concerning social ontology deal with the state, its legitimacy and the power to which it is subject. As a preliminary, however, we should wonder whether there is such a thing as “the state”: we should determine if the state should not rather be considered a mere fictional concept; and then, if indeed it exists, we should try to understand what it is.

The question is challenging under the ontological profile because it seems difficult to reduce the state to some kind of material entity. Geopolitics includes numerous examples of states that, in the course of their history, have redefined their geographical boundaries. It follows that the state is not reducible to its geopolitical boundaries, because it exists or can continue to exist even if those limits vary compared to its original institution. The same can be said for the people who comprise and legitimize it, whatever that means: in fact, the state is defined by the essential property of durability. It follows that a state cannot be identified with the people who brought it into being. That being the case, it is natural to ask a fundamental question: what is the state?

I will argue that the state is an emerging object that has functional properties, that is, an object that, once brought into being, acquires a full and independent existence compared to the subjects that constituted it—in fact, the latter necessarily change over time. In this sense the existence of the state is not mind-dependent.<sup>1</sup> Thus, the state cannot be considered a mere concept, even though such position has a certain theoretical legitimacy.<sup>2</sup>

Putnam's theory of "multiple functionality" might be useful here. Notoriously, Putnam introduced the concept of multiple functionality in the philosophy of mind so as to oppose the idea—advocated by reductionists—that each mental state can be reduced to a neural configuration. In this regard, he noted (1967: 37–48) that creatures with a profoundly different neuronal and physical configuration—human animals, other primates, reptiles, birds, amphibians and shellfish—all experience pain. If this is true, the mental state "pain" does not strictly depend on the conformation of the physical structure that causes it; this thesis brings Putnam to the conclusion that very different physical structures cause the same state of mind "pain". Similarly, we may think that the state, as an object with a prolonged existence in time, does not depend strictly on the people who brought it into being, nor on the specific properties of those citizens (their culture, social and economic status, and so on). Rather, the basic configuration supports infinite variations, provided the arrangements that have caused the coming into being of the state remain in place.

The adoption of this metaphysical model implies a critique of the conception of the state as a person, that is, the organismic model, which has had wide application.<sup>3</sup> The metaphor of the body, in particular, made with varying degrees of realism, dominated philosophical and political

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<sup>1</sup> For an example of the opposite approach, which considers states to be mind-dependent and ontologically non-existent objects, see for instance Miliband (1969), Gilpin (1984: 318), Abrams (1988: 58–89), Wendt (2004: 290).

<sup>2</sup> Cf. for instance Wendt (2004: 290), "The concept of state personhood is a useful instrument for organising experience and building theory, but does not refer to anything with ontological standing in its own right".

<sup>3</sup> For an articulated critique of the concept of state as a body and a person, see Wendt (2004).



thought from the eighteenth century<sup>4</sup> to the second half of the twentieth century, when this model was adopted by European fascisms. Sticking to ontological considerations, it is extremely important to emphasize that the organismic paradigm presents important issues ranging from the adoption of a confused notion of body to a coarse assimilation of some features that we attach to bodies and, by transitivity, to the concept of state. Typically, there are five characteristics: individuality, organization, homeostasis, reproduction and genetic autonomy. In fact, these characteristics may be considered to be shared by the notion of biological organism and by the notion of state understood as body, but only if the word “organism” has a very metaphorical meaning. Consider, for example, *individuality*. That an organism is an individual—that is, a living being with specific connotations of space and time—is a quite intuitive matter of fact. For some time now biology has been exploring the concept of biological individual;<sup>5</sup> that its determinations should also be attributable to the state is more controversial. For example, while it is intuitively true that a biological organism can usually withstand a limited number of changes in the constituting parts of its body, our intuitions, in the case of the state, are different.

Locke regarded memory as a good element to determine the identity of an individual over time: where there is continuity of memory there is also individual identity—that is, that given body is an organism and also an individual. From this perspective, we could reasonably assume that an individual who lost their memory and, as a result of this loss, were forced to reconstruct their identity, would also lose continuity with their self: that is, they would become another *person* albeit retaining biological continuity.<sup>6</sup> Locke thus imagines transferring the memories of a prince into the body of a cobbler: if that happened, the prince would find himself in a new body. On the other hand, to transfer the soul of an individual, without their memory and psychological traits, into the body of another person, would not make the latter the same as the former: the identity of

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<sup>4</sup> For a critical discussion, cf. Mannheim (1953: 165–182).

<sup>5</sup> Cf. for instance, J. Wilson (1999), R. A. Wilson (2005).

<sup>6</sup> The issue of the formation of personal identity, linked to the concept of person, is a classic question of the philosophical debate. For an examination of the debate cf. Barresi and Martin (2003).

a thinking substance without consciousness and memory is not enough to make a person's identity. According to Locke's argument, the identity of a thinking substance, i.e. the human biological individual, is neither a necessary nor a sufficient condition of personal identity.

However, when it comes to the state, there seems to be much greater "tolerance" towards the changes of the parts that constitute it. Furthermore, it seems certainly more complicated to identify the elements that constitute it as necessary conditions of its identity. Let us assume we agree that it is the people: it is clear that, given the strong diachronic characterization of the state, the time continuity of the people who have founded the state cannot be considered a necessary property of it. If anything, the opposite is true. The people who make up a state enter and leave the state in ways that are different from those in which—say—a cell is part of, or ceases to be part of, a biological organism. It goes without saying, moreover, that the physical structures of living organisms appear to be organized based on the strict interdependence of their constituting parts. In other words, their organization is such that failure of one part of the organism (say, of an organ) frequently has significant consequences on other parts of the same body. On the contrary, assuming that a part of a state functions badly, it is unclear how this malfunction is related to, or causes, a malfunction in other components of the state.

In general, although on a metaphorical level it is possible to trace some elements of similarity between the concept of the body and the concept of state, there are two glaring differences, which make anything that goes beyond the simple metaphorical similarity an inadequate application of the concept: firstly, unlike organisms, states are composed of autonomous and independent individuals, while it is assumed that individuals are psychological units, except for pathological conditions. Secondly, unlike individuals, states do not reproduce—that is, they are not organic beings.

It remains to be seen how legitimate and useful it can be to metaphorically see the state as an organism in the sense of collective intelligence: after all, the state—at least for the contractualist model—could be considered as a set of people who have gathered knowingly in view of a common purpose. It therefore seems reasonable to wonder whether it makes sense to explain the state in a way akin to the heuristic model provided by collective intelligence, used to account for a particular type of animal

behavior. In fact, a model of this type creates two kinds of difficulties: firstly, it implies that it is possible to take a clear and unambiguous concept of individual conscience—which, as such, is far from obvious. Furthermore, it implies the ability to derive a concept of collective intelligence from that of individual personality and conscience (which is not necessarily always clear). Therefore, if we consider the state as if it were a super-organism, it remains unclear where its intelligence and conscience are and how they are structured, since super-organisms, unlike individual organisms, are not identified with a physical body.

The answer that is usually given to these objections has to do with the way in which we understand “thought”: it is suggested we use thought rather than the body as a criterion. In other words, different individuals participate in a sort of collective thought: a common thought process that allows for individuation. In this sense, a hive is a super-organism that is identified not so much by the bees, but rather by the thought processes that govern the bees’ behavior. The basic hypothesis is that a similar model could be applied to the state. However, I think this argument can be opposed by means of the same objections used with regards to anarchist theories, or at least to the main assumptions of classical anarchist theories<sup>7</sup>: provided that it is possible to attribute a collective form of thought and consciousness to animal communities, this is only plausible for small communities, like those wished for by anarchists—but it has to be noted that such communities are rather rare today.

On the other hand, it is much more difficult to imagine that such a model could be applied to a wider community, such as a state. Above all, it is not clear exactly how it is possible to attribute to the state a higher-order form of consciousness compared to individual conscience: what characteristics would this consciousness have, and who exactly would it belong to? For example, should it be attributed to some of the groups that make up the state? Some theories have considered an explanation of this kind, but they never went so far as to associate an emotional connota-

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<sup>7</sup>Classical anarchism is composed of political reflections inheriting some elements typical of Modernity, such as anti-statism, individualism and secularization, welding them to the nineteenth-century social problems. These theories took shape in the second half of the nineteenth century, with authors like Proudhon and Bakunin, and went up to the 1940s—with the failure of the anarchist revolution during the Spanish Civil War—with contributions from authors like Kropotkin and Malatesta.

tion to such consciousness. Therefore it would have to be characterized by different properties compared to those that are normally attributed to individuals.<sup>8</sup> The difficulty in this case is in identifying what these properties are and how they are configured. The analogy between biological organism and state shows significant weaknesses, despite the fact that such metaphor has illustrious supporters.<sup>9</sup>

From the ontological point of view, I think it is theoretically more useful to reject the hypothesis of the state as a merely fictional concept and opt for Hegelian realism. However, compared to Hegel's model, I believe we should commit to the idea of state as an object depending on and emerging from the wills of the subjects that make it up. In other words, the *res* we call state—far from being a merely conventional term, as proposed by some theoreticians<sup>10</sup>—is rather a real entity that should be included in every ontology. The state has some specific characteristics. One necessary property seems to be permanence in time: a state that, say, only existed for a second might perhaps be possible, but it would be hard to attribute to it any form of institutional agency.

To exist in time, a state must have a precise ontological structure including: (1) the will of the individuals, endowed with intentionality, who brought the object “state” into being. Without some form of intentional expression of the individual no such thing as a state would exist. This is a necessary condition. Also (2), there must be “something” that keeps and maintains the intentional will and its redefinitions in time—this is what we can define the *vehicle of institutionality*. Many theories have been developed to justify the object “state” through individual intentionality, and I will examine some of them in the pages to follow. What interests me now, however, is reflection on point (2), which I have defined as a vehicle of institutionality. This is a fundamental step in understanding the ontological structure of modern states.

As rightly noted by Edward H. Robinson,<sup>11</sup> an important step forward in this direction has been taken with Maurizio Ferraris' theory of docu-

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<sup>8</sup> Cf. McCloskey (1963).

<sup>9</sup> Cf., for instance, Hegel (1821: § 269).

<sup>10</sup> Cf. Abrams (1988).

<sup>11</sup> Robinson (2014): 1–29.

mentality, along with its subsequent developments formulated by Barry Smith and applied to the concept of state.<sup>12</sup> In particular, Robinson's thesis, which largely relies on the theory of documentality, is that states are "quasi-abstract objects": that is, objects that have a temporal (but not a spatial) connotation, and whose sovereignty is established, maintained and managed by different types of documents with deontic power.<sup>13</sup> In other words, according to documentality and its applications to the definition of state, documents are what bring states into being and allow them to last in time.<sup>14</sup> I will not follow here Robinson's thesis that states are quasi-abstract objects (despite the fact that such theory is surely interesting). Rather, I will consider them *emerging objects with functional properties*.

Robinson's argument is based on a premise with which I agree: if it is true that the concept of state is temporally connoted, it is also true that the state is not reducible to a mere physical object—for example, it cannot be reduced to its borders, even though generally states do own territories (cases such as the Knights of Malta, in which the state has no territory, are quite rare). So what do we mean by *state*? It seems clear that, in order to answer this question correctly, it is better not to choose a reductionist approach. To solve such problems, philosophers often adopt a particular method: they break down the concepts into their components. In this case, if defining the concept of state seems difficult we can at least identify the elements that compose it. Talking of groups of people, institutions, or governments does not seem to help in this sense, as these notions are also quite complicated. However, we have a very real and direct perception of the *actions* produced by the state. It seems that given the effect—that is, given the actions that can be traced back to the state as an agent—there must be a cause that determines them: indeed, the state. So let us try to ontologically define the typical characters—if there are any—of the actions made by states, so as to examine some of the possible structures of the state itself.

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<sup>12</sup>Smith (2012: 179–198).

<sup>13</sup>Ibid.

<sup>14</sup>Robinson (2014: 2).

## 3.2 Transgenerational Actions

We usually have a very concrete idea of the actions produced by the state, which are fairly complex. For instance, through governments, it *runs foreign policy*, signing agreements and treaties, declaring war of offense and defense, directing secret services, weaving diplomatic relations and so forth. Similarly, it *oversees economic policy*, signing trade agreements, opening up markets, redistributing parts of the national income, investing shares of national wealth to boost certain lines of development at the expense of others, managing public debt (increasing or decreasing it) and so on.

Some theoretical and political positions believe that one of the state's main areas of action is that of *security*. In fact, states are usually founded precisely to defend citizens from external attacks (wars) and, sometime, by attacks against peace and prosperity within national borders (think of certain terrorist organizations like the Red Brigades in Italy or ETA in Spain). Finally, there are actions related to the field of *education and culture*. The actions put in place by states to train their citizens and shape their culture are essential for maintaining social balances that ensure prosperity, well-being and, therefore, social justice.

Now, how is it possible (if it is) to distinguish between the actions of a state and the actions of one of its elements—say, a government, an institution or a group of citizens? In other words, are there actions performed by the state as such, which cannot be traced back to its components? Can we distinguish states from governments, and can we posit the existence of the latter without the former, as anarchist theories do?

In the perspective I am outlining it will be useful to refer to a specific propriety of the state: temporality. What I would argue is that the actions of states can be distinguished not only for their extension in time, but because this extension is often *transgenerational*: that is, for their development and fulfilment such actions involve more than one generation of citizens. This means that the actions of states concern a time span that has to do with history, where history does not coincide with everyday life. To explain what I mean by this, I will use the reflection on history—or rather, on the epistemic configuration of historical knowledge—devel-

oped by Arthur Danto.<sup>15</sup> I will therefore take into consideration the epistemological level, before moving on to considering the ontology of action.

The hypothesis that I would like to explore is that the actions taken by states have a complex ontological structure, as they are characterized by having a double temporal dimension: they have both a simple extension and a transgenerational extension. I will show how, if states do not take these points into account, they are bound to take unjust actions. If this were the case—if it turned out that states are systematically unaware of this—*then* we should conclude that the existence of states implies a *disenfranchisement of justice*. According to Hume, this consideration should also apply to the notion of original contract:

But the contract, on which government is founded, is said to be the original contract; and consequently may be supposed too old to fall under the knowledge of the present generation. If the agreement, by which savage men first associated and conjoined their force, be here meant, this is acknowledged to be real; but being so ancient, and being obliterated by a thousand changes of government and princes, it cannot now be supposed to retain any authority. If we would say any thing to the purpose, we must assert, that every particular government, which is lawful, and which imposes any duty of allegiance on the subject, was, at first, founded on consent and a voluntary compact. But besides that this supposes the consent of the fathers to bind the children, even to the most remote generations, (which republican writers will never allow) besides this, I say, it is not justified by history or experience, in any age or country of the world.<sup>16</sup>

### 3.2.1 Epistemology

So let us start with epistemology; more specifically, with historical knowledge. Danto had two fundamental intuitions with regard to the latter. The first concerns the autonomy of history from sciences: historical

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<sup>15</sup> See in particular Danto (1962 and 1965).

<sup>16</sup> Hume (1748: OC 8, Mil 470–471).

knowledge has a different structure compared to scientific disciplines and should be considered in the light of this. The second and more important intuition has to do with the particular structure of propositions produced by history—what Danto defined “narrative propositions”. Narrative propositions are characterized by a twofold bond with temporality: in fact, they refer to two distinct and separate time dimensions, even though they only describe (or, in Danto’s terms, they are only *about*) the first event they refer to.

According to the conceptualization of time typical of common sense, the flow of time is split into present, past and future. The present is a kind of point without extension, marking and giving direction to the flow; the future is still undetermined, being what is not yet distinct or finished; the past, on the contrary, is what is determined once and for all, its dimension being fixed and static—which is why it can be exhaustively described through historical research. Inverting this vision of temporality, Danto believes that the task of history is not to describe what it is no longer subject to change, but rather to determine, through narrative propositions, part of the identity of what it narrates. Basically, it is the narration itself (note that Danto specifically chooses not to use the word description) that constructs the narrative proposition in the way it does and, therefore, gives historical knowledge its shape.

What does this mean? Let’s try to explain it through a very simple example. Consider the statement “the Hundred Years War lasted roughly from 1337 to 1453”. This is a statement of historical character. Danto points out that if the proposition had been made at any time before the end of 1453 no one could have spoken of the Hundred Years War, nor would that statement have made sense. One has to be in a future point in time—any time after the conclusion of that war and the conceptualization of the events labelled as “Hundred Years War”—for that proposition, and therefore the interpretation of that set of events, to be formulated the way that it was formulated. Obviously, historical interpretation, judging certain parameters as more salient compared to others, determines an important part of the event being “narrated”.

The second fundamental element that enters into the determination of the historical narrative has to do with what we might call *the issue of unintended and only partially predictable consequences*. Let me make another



example. The harsh conditions imposed on Germany by the Treaty of Versailles at the end of the Great War were presumably intended to prevent that country from a new policy of aggression against the continent: the treaty, in fact, had the aim of limiting the German military power, establishing a financial compensation (estimated at 132 million marks) that Germany would have to pay the Allies for war damages. Many historians have read the harsh conditions imposed by the Treaty on the German people as one of the determining causes of the Second World War; which, of course, could only be partly foreseen by the nations that had worked on the drafting of the treaty. On the other hand, the two world wars surely had a consequence that was neither foreseen nor wished for: the terrible devastation that fell over Europe determined the loss of its political, economic and perhaps even cultural power. The wars damaged the European spirit, economy and politics to the point that the economic and political heart of the world moved first to North America and the Soviet Union, and then to North America and Asia.

Danto offers a well-known thought-experiment. It features a main character (the Ideal Chronicler), a set of facts and a notebook. The main character is ideal in the sense that he is perfect, at least under the profile of knowledge. He knows everything that happens the very moment it happens. But this is not the only extraordinary characteristic of the Chronicler: he also knows everything that people think and know the very second they think and learn something. Also, he can instantly transcribe all of this in his notebook, without risking forgetting something.<sup>17</sup> It follows that the Chronicler is able to transcribe what happens exactly as it happens. Danto calls his magnificent work an “Ideal Chronicle”. So, to sum up, the Ideal Chronicler is able to transcribe precisely any event that has ever occurred, which means that he can write down all the propositions defining a given event *E*.

Of course, compared to the accounts of normal historians, the Ideal Chronicle does not undergo revisions, nor does it contain false propositions or unverified ones. It is perfect, exhaustively describing the past as it is understood by common sense. Now suppose a historian finds the Ideal Chronicle and understands its value and potential for histori-

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<sup>17</sup>Danto (1962: 152 ff).

cal science: she would probably review her and other historians' writings so as to correct them. This operation may be carried out according to three methodological guidelines: (1) first, our historian will add to her and her colleagues' reports the missing statements that are present in the Chronicle; (2) she will also eliminate those that appear in their reports, but that are not present in the Chronicle; (3) finally, she will verify that her and her colleagues' reports are made up by the same propositions as the Chronicle. After this procedure of emendation and control, we can reasonably assume that the reports and the Chronicle will be indiscernible, impossible to distinguish, containing exactly the same statements. Now, the question that Danto asked is the following: are we sure that the Chronicle and its indiscernibles are *really* complete? And, if they are, what kind of completeness are we talking about?

The question is not idle because it marks the difference, which for Danto is substantial, between chronicle and history. Narrative propositions, which make up the very structure of history, refer to a double temporal dimension: the past, of course, and the future, i.e. the future compared to the past that is taken as the object of historical analysis. In other words, if it is true that the past cannot be altered because it is somehow concluded, it is also true that an event or series of events in  $t_1$ , let's call it  $E$ , may establish relations with a number of other, subsequent events. So, what happens is not so much that the past properties of  $E$  change, but that  $E$  acquires new properties because of its relations with the future.<sup>18</sup>

Danto's reflection is specifically focused on *epistemology*—that is, the way in which we organize historical knowledge and philosophy of history. When it comes to states, I believe that their actions have as a necessary condition that of being related to the future at an *ontological* level.

### 3.2.2 Ontology

So, what characterizes the actions of states? Of course, they are performed by the state, that is, by a subject acting on the state's behalf. In this sense,

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<sup>18</sup> Danto (1962: 157).

some subjects can act as single subjects, as plural subjects and as the state (institutional subjects): (1) as an individual, Mr. Smith goes for a walk; (2) as a plural subject, Mr. Smith asks his son to study more and decides with his wife that the kid will only be allowed to go out on a Saturday night; (3) as an institutional subject, Professor Smith declares that a student is a Doctor of Philosophy.

The third action is institutional because it is performed by Mr. Smith *on behalf of the state*, which has conferred on him the necessary authority. Institutional actions are not all the same: they do not have the same ontological structure. An important variable is their duration. Say Mr. Smith is not a professor but the commander in chief of the armed forces of a state. And let us also say that Mr. Smith finds himself in a particularly delicate situation: he must decide, in his capacity as commander in chief, whether to respond militarily to an aggression directed at his country by a neighboring state. In this case Mr. Smith's decision may result in two different state actions: (1) a negative action, by which commander Smith simply avoids taking any action against the state *Y*, asking the UN to intervene; (2) a positive action, by which commander Smith chooses to declare war on *Y*.

Taking the latter case, my hypothesis is that temporality determines and specifies the act of war declaration. In other words, this act is what it is because it is characterized by a certain temporal structure, different from that of the action by which Professor Smith declares that a student is Doctor in Philosophy. Say commander in chief Smith decides to declare war on *Y*. How is this action structured from the ontological point of view? First, we can reasonably assume that commander in chief Smith, who is also president of one of the most influential and powerful democracies, drafts a declaration of war and delivers it to the president or parliament of *Y*. Acts of this kind have taken place several times in the history of modern democracies. Well, in that document, General Smith has filed "the intention" of his country to claim its right to self-defense. The declaration of war corresponds to the fixation of the will represented in that act. The interesting question, at this point, concerns that will: whose will is deposited in the declaration of war?

Of course it makes no sense to think of a detailed answer, but we can reasonably assume that it is the will of the citizens of the state declaring war at the time of the war declaration. Say President Smith declares war at  $t_1$ : the declaration establishes an action that, unfortunately, will not end at  $t_1$ , but will likely end at  $t_n$ , where the latter is placed at a considerable distance in time from the former. In addition, at  $t_n$  we find a second declaration: the act declaring the end of a war. Between these two acts, which are embodied in two documents, there are hundreds of actions related to the declaration made at  $t_1$  that somewhat prepare the declaration made at  $t_n$ .

To go back to the previous example, today we *know* that the harshness of the Treaty of Versailles was one of the causes of Second World War. Therefore, the description of the event “Treaty of Versailles” includes both the phrase: “the peace treaty of Paris which took place between 1919 and 1920 and that ended the Great War”, and the phrase “the Treaty that, because of the conditions that it imposed on Germany, was one of the determining causes of the outbreak of the Second World War”. Similarly, if we want to identify and limit the number of actions and events that go under the label “Second World War” we will have to identify actions and events that have a relationship of some sort with the event of the declaration of war and with the second event, related to the first: the declaration of the end of the war. Now, sticking to ontology, the peculiarity of this structure is tied to its temporal duration and, more precisely, to the fact that—due to its considerable time extension—it has to involve not only different agents, but also different *generations* of agents.

We should reach the same conclusion with regards to actions or events that, despite not belonging to the actions and events defining the Second World War and its consequences, are still part of the aftermath of the class of actions defined “Second World War”. Take, for instance, the financial sanctions imposed on Germany after the First World War, which Germany finished paying only recently and which concerned generations who never wanted or caused the war and, therefore, hadn’t fallen into debt themselves. This means that the ontological structure of these kinds of actions implies and requires transgenerationality, which is, therefore, their necessary condition.

Transgenerationality raises important problems, as it involves a commitment to a given action on the part of agents who never brought that action into being. Thus, the problem is twofold: on the one hand, there is the state's *right*, for which this type of action must persist even when those who brought it into being have ceased to exist; on the other hand, there are the state's *duties*, which are constitutive of such actions. In other words, we expect a state to be consistent with its commitments—be it even a war declaration—even when the latter require a long time to be fulfilled. However, it isn't always clear that the state has also duties correlated to these actions. And yet, such duties are necessary and necessarily related to these actions' time structure: basically, it is legitimate for a state to involve people in an action only if, when weighing the pros and cons of that action, the state shows to consider the interest of such people—in fact, future generations will be required to agentively commit to the action without being asked what they think about it.

Once again, therefore, the future is the main aspect: in the case of historical consciousness examined by Danto, it is necessary to be aware that if we want to express a historical judgment on an action or an event, we must consider their future consequences. Analogously, at the level of theory of action regarding states—which uses the notions of shared agency and mutual obligation<sup>19</sup>—the future has to be taken into account, in the awareness that there is an ethical component to any action. In other words, transgenerational actions performed by states have a structure that, as such, raises an ethical problem. In fact, if the ontological question about the state can be summed up as “What makes a certain object a state?” the ethical question about the state as producer of transgenerational actions is: “What makes a state a just state?”

Differently put, the transgenerational character of some actions performed by states implies that ethics and ontology cannot be separated. Such an implication brings us to the conclusion that *the state's demand that a person actively commit to performing actions s/he didn't bring into being and whose completion would harm his or her rights or those of his or her generation, is not legitimate as it appears unjust*. Therefore, it seems reasonable that someone who found themselves in such a situation has

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<sup>19</sup>Cf. Gilbert (1990: 180–181, Id. 1996: 184).

the right to choose whether to commit to the given action or not. Let me try to illustrate with examples.

*First example.* The democratic state guided by President and commander in chief Smith is facing a time of strong social tension because an active minority wants to unsettle its institutions through terrorism. Both President Smith and his government know that poverty is fertile soil for terrorists to find new adepts. In the light of this, President Smith decides to significantly increase public expenditure in a way that is not necessarily functional to the country's most pressing economical needs, with the aim of reducing unemployment and poverty. The goal of the Smith government is understandable: a way to contrast terrorism is to increase the population's well-being, especially when it comes to the poorest social classes, even if this does not increase national wealth as a whole. President Smith succeeds: terrorists lose part of their potential adepts, but public debt increases considerably. In this case, President Smith is also involving future generations in his fight against terrorism, forcing them to pay his government's debt. His idea is that, between terrorism and higher public debt, the latter is preferable, given that terrorism can potentially threaten the very existence of the state. In any case, this is surely an example of transgenerational action: president Smith is performing at  $t_1$  a series of actions of considerable duration and related to the future, involving citizens living at  $t_n$  who never agreed to those actions.

*Second example.* This time, Franz Ferdinand Smith is not a president but the king of a constitutional monarchy, who is murdered during a public ceremony while visiting a neighboring country. The prime minister and parliament declare war on the country where the assassination happened. This act triggers a series of actions and consequences that only partly comprise the class of actions defined as "war declaration". Franz Ferdinand's country may win or lose the war: in any case a long conflict will harm the well-being and social solidity of that country. If the conflict were to spread and become global, furthermore, the whole geopolitical area would be damaged, culturally and economically, to a great extent. Just as in the first example, the costs of reconstruction and the payment of debt will fall on generations who never agreed to the war declaration to begin with. Of course this example makes one think of the consequences of the two world wars. Europe lost much of its political influence and

economic importance in their aftermath, and the core of power moved to the United States.

*Third example.* President Smith's country is facing deep recession, aggravated by strong public debt. The country is part of a confederation that, to face the challenges of globalization, is aggregating different states under the power of a meta-institution called the Union. In the light of this, President Smith finds himself in a rather complicated situation: he has to try to improve his country's economy, reducing public debt. Now, the Union, as often happens, is composed of some rich countries and some poorer ones. Economists know that high public debt is often accompanied by corruption. Furthermore, these two factors contribute to reducing many people to poverty. President Smith's country is therefore at least partly responsible for its unfortunate condition, but the responsibility for this cannot be solely ascribed to the political class, as the latter is the expression of the majority of the given society. If politics is corrupted, it is possible that civil society is corrupted, too.

Considering the situation from the viewpoint of the states of the Union that are wealthy, not excessively corrupted and with a public debt under control, there seems to be no good reason to support the economic and fiscal policy that President Smith is asking of the Union. Smith's idea is that countries who are in difficulty should be helped by countries with more solid economies, who could help pay off the public debt. If this doesn't happen, the situation might become socially dramatic: so as not to increase public debt, poorer states have to reduce public expenditure, thus increasing unemployment and social malaise. Fiscal consolidation, as commendable and necessary as it is, would create situations of strong political and social instability in the Union, undermining the solidity of the system. However, from the point of view of wealthier countries, the financial solidarity demanded by Smith might seem illogical and risky. What argument could justify the transfer of public money to corrupted countries? More money might even make things worse, aggravating general corruption. President Smith might provide a good argument by asking the Union to consider the situation from a transgenerational point of view—which is the dimension typical of states and meta-states, after all. In fact, unless a solution is found to poverty and cultural degradation in the weaker states, various populisms are likely to prevail: a great dream of

freedom and peace might be broken by aggressive forms of nationalism, and war might threaten the whole of Europe once again.

If the president and parliament of the Union choose to help the weaker countries, they will ask future citizens to commit their will and part of their goods—which their fathers have been saving up—to people who have squandered their own. This political decision can only be taken if, in a provisional perspective, future citizens can be taken to benefit from it too, in a way that would compensate for the partial loss of goods accumulated by previous generation. Stated differently, only if these people have a real chance to gain something in terms of overall prosperity, peace and cultural growth, will the president of the Union be entitled to ask them to sacrifice some of what they have rightfully earned and allocate it to other purposes.

Therefore, we can conclude that states exist, that their properties cannot be reduced to those of their components, and that they perform different actions—including transgenerational ones, which are of fundamental importance. After discussing the state's existence and its actions, we can now proceed to address the issue of normativity: that is, the state's legitimacy.

### 3.2.3 Three Theories of the State: A Comparison

To address the issue of normativity, which is central to any theory of the state, I will resort to three fictitious models of imaginary states that exemplify as many theories: “Utopia”, “Leviathan” and “Minimum State”. For this purpose let us imagine, then, a thought-experiment in which the inhabitants of all three models are men and women of culture who sometimes engage in philosophical debates. Let's also imagine that, when the time comes to build a foundation for their life together, they decide to be guided by authoritative *exempla*.

In our experiment, the three models of social organization share many properties—for example, some of them are states—and yet, with respect to a particular property, they show a substantial difference. The citizens of Leviathan and Minimum State weave social relations that are ultimately regulated by their institutions. In Utopia, conversely, people aspire, above all else, to be free. Let's say a traveler has to decide where to settle and, in order to do so, she visits the three states.



### 3.2.3.1 Utopia

*Utopia* is the social organization in which humans seem to consider freedom as the most precious good of all. To be *truly* free, the people have chosen to avoid implementing a state organization. The motto of the inhabitants of Utopia is significant and reads like this: “Nothing is more to me than myself.”<sup>20</sup> Therefore, they believe that the state is the real enemy, a monster that destroys the fundamental freedom of individuals. The interesting point, for the traveler, is to understand why that community acts as it does. Why do they prefer to organize their lives outside the state?

The traveler has always considered it plausible to assume that the state is the product of the will of individuals: free and equal people who decide to give up some of their rights. In a word, in order for the state to exist, individuals must give up some of their natural rights: that is, part of their being and their right/duty of self-determination. Utopians have instead decided not to recognize any constitution or agreement. They are fond of saying that each of them “had set [their] cause on nothing”,<sup>21</sup> and therefore no-one has obligations to anything or anyone. Therefore, they decided that people had to regulate in the first person what elsewhere was governed by the state. They did so by following the norms of individual free initiative, which change according to the place, the time and the people. In that way everyone defended themselves and their freedom, without a state as a tool used by the rich to protect themselves and their privileges. In that way, also, no generation would violate the rights of another. The foundational book of Utopia read as follows:

Political liberty means that the polis, the state, is free; freedom of religion that religion is free, as freedom of conscience signifies that conscience is free; not, therefore, that I am free from the state, from religion, from conscience, or that I am rid of them. It does not mean my liberty, but the liberty of a power that rules and subjugates me; it means that one of my despots, like state, religion, conscience, is free. State, religion, conscience, these despots, make me a slave, and their liberty is my slavery. That in this

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<sup>20</sup> Stirner (1844): 5.

<sup>21</sup> Ibid.: 3.

they necessarily follow the principle, “the end hallows the means,” is self-evident. If the welfare of the state is the end, war is a hallowed means; if justice is the state’s end, homicide is a hallowed means, and is called by its sacred name, “execution”; the sacred state hallows everything that is serviceable to it.<sup>22</sup>

The fundamental point, for this community, is that everyone must be self-determined. For this reason, many ties can and have to be broken if they go against the individual’s interests. After all, Utopians have a very positive interpretation of human nature: there is no need for external ties to force people to keep their word—they do so because that’s their nature, their most intimate predisposition. In Utopia people don’t seem to worry about human nature or about fear itself. That’s why they have no intention to entrust their future—as well as part of their sovereignty—to the hands of a “Leviathan”. To them, the latter is an arrogant entity that takes over rights that do not belong to it.

The traveler has many questions. For instance, he asks them how they defend themselves as a community. After all, it is reasonable to think that states were born to organize and rationalize defense operations, so that single individuals don’t have to constantly worry about their lives and the security of their families. Well, Utopians think differently. They are certain that any state that took the right to protection—and therefore the use of force—would violate the rights of some to protect others. Their argument is simple. The state, to defend its citizens, operates in at least two directions: (1) it punishes citizens who do not respect its monopoly—for example, those who defend themselves; (2) it imposes the redistribution of resources to provide its services, including those related to minimal protection. Doing so, however, the state violates the right of those individuals who may not want to finance protection and prevents them from defending themselves.

In short, the state theorizes that it is sometimes *legitimate* to punish people who violate other people’s rights; in so doing, however, it prevents the latter from defending themselves. Thus, the point is simple. How does the state justify its privileged and exclusive use of force as

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<sup>22</sup>Ibid.: 107.

well as its coercive redistribution of people's private resources? Can we be sure that this delegation to the state as regards public security does not entail a violation of the rights of some to the benefit of others? On the basis of these considerations, Utopians believe that to monopolize the use of force—which is an unavoidable consequence of a state, even if “absolutely minimal”—is illegitimate and therefore immoral. The same consideration applies to any fiscal redistribution, which is ensured only by means of coercive rules. Moreover—they argue—not to comply with the fiscal redistribution should not be considered a crime. There are many arguments used in defense of this position, implying complex choices on which it worth reflecting. For instance, how should interpersonal relationships be regulated in this scenario? Also, how can there be complex and articulated communities prescinding from the existence of the state?

The Utopians' ideal of freedom has implications that go beyond the political sphere: citizens are supposed to be socially virtuous because they are naturally good. They are taken to directly participate in the management of the *res publica*, without delegating social obligations to anyone, and acting for the best. In this way, any action performed by them as a state would be previously accepted by every citizen, avoiding the concentration of power typical of political systems involving representation. Giving up representational governments has a social cost, though: every citizen has to devote part of his or her time to political decisions. However, freedom is guaranteed and power is equally distributed. In order for this to work, Utopia has to stay rather small—this is the only way for every citizen to express their opinion on every matter without resorting to representative modes of government.

The traveler is perplexed, especially because Utopia's political model is based on the notion that human nature is intrinsically good, which is far from obvious. And a political theory grounded on a false idea of human nature cannot be a good theory. Living in a place organized according to the Utopian model is very risky. Let me try to illustrate why by resorting to the film *Fight Club*. In it, we see an anarchic community internal to a state inspired by the same values as those we find in Utopia. However, contrary to Utopia, humans in *Fight Club* are not taken to be naturally good: they are what they are—complex beings hardly reducible to simple notions of good and evil.

*Fight Club* tells the story of a young man with a complicated life. While being a fully integrated member of society, Jack feels marginalized. His emotional disorder, which turns out to be schizophrenia, leads him not to trust anyone, until he meets someone special: Tyler Durden. The two men have an almost symbiotic relationship and found a club in which people fight to take out their anger and frustration. Jack and Tyler's first fight is very similar to a ritual to defy fear and dominate it. It is a way to become truly free. As soon as the club is big enough, Tyler gives shape to his idea: organizing Project Mayhem. The aim is simple: to destroy human civilization so that it can start over again from new, better bases. There are only a few rules:

The First Rule of Project Mayhem is you do not ask questions ... The Second Rule of Project Mayhem is you do not ask questions ... The Third Rule of Project Mayhem is that in Project Mayhem there are no excuses ... The Fourth Rule of Project Mayhem is that you cannot lie ... The Fifth Rule of Project Mayhem is you have to trust Tyler.

No questions, no excuses, no lies and, mostly, you have to trust Tyler—these are the rules of Fight Club. The moral of the story is simple: even members of Fight Club have to trust someone if they want Mayhem to succeed. The ending is a real *coup de scene*: Jack finds out that Tyler is actually himself—his own dark side. The fight has always been against himself. So the fifth rule is necessary because Jack doesn't even trust himself, perhaps due to the self-affirmation mania he is a victim of.

What matters here is that as much as Jack wants to get rid of *any* social order or bond, he still has to place Tyler outside of himself, so as to see him and fight against him—without that limit, life is impossible. A social system based on total and complete freedom is neither plausible nor possible: interpersonal relations always imply some rules, and rules imply bonds and ties. Social life implies relations, which require that covenants should be respected and that there are systems granting this. Social life therefore ultimately implies the existence of normativity and power. In a word: it needs the state.

### 3.2.3.2 Leviathan

Not all social worlds are small—in fact, most social forms do rely on a state. The next place visited by our traveler is one of those: Leviathan. Here social relations are well structured and regulated by institutions, while interpersonal relations are based on pacts and promises, and overall things seem to work. However, the traveler is told that life is not all that simple in Leviathan. The citizens' ancestors had known fear almost as a second nature. It was in order to get rid of fear that they founded Leviathan. Now its inhabitants are not completely happy, perhaps, but at least fear is no longer a problem.

The structure of Leviathan is easy to explain. Before building the state, men and women lived in total freedom. No laws or institutions regulated their actions, which were essentially motivated by the struggle for survival. Even though many years have passed since then, citizens still remember what it was like: freedom was absolute, but the cost was very high. In fact, unrestricted, human nature proved to lead to never-ending fights, domination and struggles in which everyone constantly feared for their lives. The book narrating the genesis of Leviathan reads as follows:

[...] if any two men desire the same thing, which nevertheless they cannot both enjoy, they become enemies; and in the way to their End, (which is principally their owne conservation, and sometimes their delectation only,) endeavour to destroy, or subdue one an other. And from hence it comes to passe, that where an Invader hath no more to feare, than an other mans single power; if one plant, sow, build, or possesse a convenient Seat, others may probably be expected to come prepared with forces united, to dispossesse, and deprive him, not only of the fruit of his labour, but also of his life, or liberty.<sup>23</sup>

What regularly led to conflict was mainly competition, diffidence and ambition for glory. These passions were tied to a perennial state of unsettlement that led to a constant “war state”, due to the human natural inclination to commit offences, injustice and abuse of all kinds. Often

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<sup>23</sup>Hobbes (1651: Chap. XIII, part 1).

life itself was at stake, and in a constant war state it is hard to deal with anything other than personal defense: there is little time for trade, study, agriculture and so forth. People were mainly busy attacking and defending themselves.

But force, or a declared design of force, upon the person of another, where there is no common superior on earth to appeal to for relief, is the state of war: and it is the want of such an appeal gives a man the right of war even against an aggressor, tho' he be in society and a fellow subject.<sup>24</sup>

So it is easy to see how the main concern of the people of Leviathan was to change this situation. First of all it was necessary for people to learn to trust one another—which was far from easy, given the circumstances. For instance, it was important to believe people when they made a promise. Therefore, the solution seemed to be to delegate the control over pacts and promises, as well as the management of conflict and security, to a higher entity.

If the aim was to change the natural condition of perennial war, there had to be a coercive power that would guarantee everybody's freedom and lead people to trust one another. In a word, it was necessary to move from the state of nature to political society: "Covenants, without the Sword, are but Words, and of no strength to secure a man at all."<sup>25</sup> Political society only exists in those societies that allow one to defend what is one's own, which includes one's life, freedom and goods. Finally, political society only exists when single individuals give up their natural power and give it to a communal power, which becomes the judge of all controversies.<sup>26</sup>

After listening carefully to the description of Leviathan, the traveler quickly understands why the state was founded. Before founding it, peo-

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<sup>24</sup>Locke (1690: Chap. 3, sect. 19).

<sup>25</sup>Hobbes (1651: 128). Hobbes was perfectly right on this point. Indeed, John Locke (1690) also agrees that the law of nature—which makes every human being equal—is intrinsically just, and yet needs someone to enforce it. Without authority and force it is very hard to get people to keep their word and respect covenants. That is why states are first and foremost complex protection agencies.

<sup>26</sup>Locke (1690: Chap. 4).

ple enjoyed their freedom but, in exchange for that, had to exist in a condition of permanent conflict dominated by fear. People did not want to be vulnerable, especially not in the eyes of their enemies. That is why they came up with a way to defend themselves indirectly, without constantly having to fight for their lives. Self-defense and protection were primary needs that had to be satisfied.

At first, humans coordinated themselves; then they decided to unite, delegating part of their rights to a new entity—something they had deliberately chosen to create and establish. Thus they stipulated a covenant by which they gave up part of their freedom: they could no longer do anything to the detriment of anyone. Mostly, they gave up the possibility to seek private justice in case of offense. In order for the whole thing to work they had to give those rights to a third party that would express the synthesis of their individual wills—at least, the will to self-defense. This new “thing” would be something different from both the single wills of every individual and the sum of all the wills: it would basically be a bearer of the rights that the subjects, considered individually, did not have. It would be a sort of super-subject with some exclusive rights, such as the right to use force. This simple fact gave Leviathan enormous power.

Thus Leviathan was the only entity that could legitimately make use of force—the citizens of Leviathan had given up their natural right to use it—and this choice made Leviathan invincible, but also, to some extent, monstrous. These are the words you read in the book on whose doctrines the state was founded:

The only way to erect such a Common Power, as may be able to defend them from the invasion of Forraigners, and the injuries of one another [...] is, to conferre all their power and strength upon one Man, or upon one Assembly of men, that may reduce all their Wills, by plurality of voices, unto one Will [...] This is more than Consent, or Concord; it is a reall Unitie of them all, in one and the same Person, made by Covenant of every man with every man, in such manner, as if every man should say to every man, “I Authorise and give up my Right of Governing my selfe, to this Man, or to this Assembly of men, on this condition, that thou give up thy Right to him, and Authorise all his Actions in like manner.” [...] This is the

Generation of that great LEVIATHAN, or rather (to speake more reverently) of that Mortall God, to which wee owe under the Immortall God, our peace and defence.<sup>27</sup>

The book is very clear, even for our traveler: humans know no other aim than their benefit and no other tool than force. For this reason, if they do not want to live in fear of being overpowered, they have to create Leviathan. On the latter's foundation—and on the respect of covenants it implies—ultimately rests their very survival. Contravening covenants means dying or living in such terror that it is only comparable to death. A covenant has an institutionalized nature, and is in some ways even more binding than a private agreement between two individuals united by the same goal. The pact that encouraged the birth of Leviathan engages the entire community that, consciously and deliberately, limits its freedom and natural rights in exchange for protection.

Those who leave the state of nature to form a political society, if they intend to fully attain their goals, should entrust many rights and much of their power to Leviathan, through an act of free consent. This binds the contractors of the covenant in very challenging ways: the delegation of rights and power is, in fact, definitive. In other words, once entered into the agreement, the citizens of Leviathan can no longer claim their rights back. This constraint that individuals freely create and take on is the contract that binds them to be part of the political body and thus constitutes that very body.

At the end of the description, the traveler's first thought is that life in Leviathan isn't too bad, after all. The social contract has replaced and somewhat extended the family network, allowing for a wider community that would have been impossible in places like Utopia. In Leviathan's political structure, power is managed by a third organism. And yet the traveler realizes that something doesn't quite add up: the atmosphere isn't exactly joyful. Quite the opposite. In time, things haven't gone the right way. The ties that Leviathan imposed over people became too challenging: they turned into cages from which it was almost impossible to escape. Even if Leviathan violated their rights instead of defending them, even if

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<sup>27</sup>Hobbes (1651: 132).



it abused them and used violence arbitrarily, it would still be impossible to deconstruct that monstrous being.

Perhaps other Leviathans could resist it, but if even one of the citizens were allowed to disregard the original contract, this would lead to a situation of inequality among the people. Such situation would be extremely dangerous, as it would risk bringing things back to the state of nature. Only one exception is allowed: if the state doesn't comply with its defense duties, thereby endangering citizens' lives, *then* the latter can disobey or resist Leviathan. In any other circumstance, including manifest injustice, Leviathan has absolute power and, especially, the right to violate every right of its citizens. This is therefore a form of maximal state, which only works as long as Leviathan manages to solve the issue of justice. That is, only if it can turn into an institution that doesn't merely deal with defense but can also pursue transgressors, enforcing justice, thereby shifting its action range from issues of power to issues of law and justice.

### 3.2.3.3 Minimal State

The inhabitants of Minimal State see things differently. First of all, they share a specific view: the state doesn't exist as such, being rather a conceptual fiction or a semantic expedient. Therefore, to the question "What is the state?" the citizens of Minimal State reply that it doesn't exist. At most, there are a group of free individuals endowed with rights, this being the basic social entity they are willing to include in their ontology. People are naturally born free and can choose how to act and how to deal with their goods, so long as they stay within the limits of the law of nature: the only reason why they decide not to maintain this virtually perfect condition is their need to defend themselves against those who trespass against their freedom. That's why they have considered entering a civil state. However, Minimal State maintains the fundamental tenet that individuals are endowed with inviolable rights of which they cannot be deprived—not even for the common good.

This is a very important point: no social or generational compensation is admitted in view of the bettering of the state. In short, the citizens of Minimal State believe that every individual, as such, has some rights and,

at the same time, has the duty not to violate other people's rights. In this sense, everyone can behave as they want, so long as they don't go against other people's freedom. The second important point is that the inhabitants of Minimal State believe that people generally act in a rational way, in the sense that their actions are aimed at maximizing individual profit.<sup>28</sup> Profit, however, is individual, given that people are very different from each other, and it is not pursuable by depriving some of their rights, in accordance with the Kantian principle that each person is always an end in itself and never a means. For these very reasons no-one can be forced to look after someone else's well-being without this going against their freedom.

However they have the need to defend themselves, in view of which people gave birth to Minimal State: a social aggregation that takes on the responsibility to exclusively manage the use of force and justice. At first the citizens of this state had to ask a few questions about its structure. If their main goal was to be protected, then such a task could be achieved by protection agencies: that is, private societies who would provide protection in exchange for money. A free market was likely to favor such agencies, which soon would compete to get the best clients. In that case, however, the level of conflict would grow rather than shrink. On the other hand, citizens of Minimal State had as the foundation of their common life the idea that the right to freedom is inviolable. Hence, the obvious consequence that no one could force anyone to choose one agency over another, nor could a single agency be given monopoly over protection. What could be done and was done was favor the agreements between agencies to limit mutual conflict and focus on their shared goal; such agreements would certainly favor the progressive federation of agencies.

But what happened was that the federative process led to a drastic and progressive reduction of the number of agencies, to the point that only one was left: the Minimal State. The traveler immediately notes that the latter does not have the features we normally attribute to states. For instance, it doesn't tax people to finance public services (which are truly basic); there is no legislative body; there are only a few rules, there are no elections, no parties and, upon closer inspection, its inhabitants cannot

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<sup>28</sup> Nozick (1974: 26 ff).

be defined as “citizens”. There is no sovereignty and no territorial border. There are only executioners in charge of protection, clients, a board of directors, and shareholders. In short, Minimal State looks more like a business than a state.

So the traveler wants to understand how the people of Minimal State address issues of justice—say, financial justice. In fact, quite consistently, they believe that the state should not engage in transactions of redistribution: all that is needed is that people come into possession of their property in the right way, for if a possession is just there is no need to redistribute anything. But when is a possession just? The answer is quite simple: in all cases in which a person is entitled to it under the principle of justice of acquisitions and transfers.<sup>29</sup> The slogan used by those people is: “From each as they choose, to each as is chosen.” All a person has or receives comes from what that person has done, from what others give according to what he has done, or from possessions transferred from other people (which are given to him legitimately in the case of presents, and illegitimately in the case of frauds). Conversely, it is absurd to think that there is a central entity redistributing what nature and society have distributed incorrectly.

Basically, people who live in Minimal State do not believe that cooperation mechanisms generate a problem of distributive justice, since they are used to thinking that it is entirely possible, even in cases of complex cooperative activities, to state precisely who did what and, therefore, distribute the benefits of working together in a fair and efficient way. As much as cooperative activities are of benefit we must consider not the surplus they generate, but that same surplus relative to individuals who have produced it. Moreover, these people clearly take on another principle: society must not set aside resources to redistribute. In other words, it is unfair to ask some to make sacrifices in view of obtaining a higher aggregated good to be distributed to others, not even if the latter are the poorest.<sup>30</sup> Nor is it believed that economic differences, if determined correctly, are illegitimate. Essentially, even if acting as a community has some benefits, it is clear that these benefits should be redistributed con-

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<sup>29</sup>Nozick (1974: 167 ff).

<sup>30</sup>Nozick: (209 ff.)

sidering the specificities and the individual contributions to their production. People who live in Minimal State are strongly individualistic and believe that individualism is the only basis of common life.

The traveler cannot help wondering how the people of Minimal State solved the problem of transgenerational justice. After all, such a radical individualism had to face a concrete fact: that is, many goods do not belong to anyone; they are public (think of natural resources). In the same way, the actions of the state (which, in Minimal State, is a protection agency) do not require a redistribution of wealth, but still weigh on future generations. Think of extended and global conflicts: it seems quite unlikely that a protection agency would have the means to manage them, so it is obvious that there must be concentrations of power delegated to the state for defense purposes. The management of a power of this kind requires institutions that administer it, and institutions take long periods of time and involve different generations. In addition to this, there are a series of relations that enable consolidated links and complex long-term social relationships. Nothing could be more distant from the idea of an autonomous, self-contained and completely free individual.

### **3.2.4 The Prejudice Against the State: Anarchist Theories**

The issues of the definition and normative foundation of the state are deeply interconnected and must be metaphysically addressed by answering three questions: (1) What kind of entity is the state? (2) What is its power based on? (3) How can the normative power of the state coexist with the individuals' right to self-determination? In other words, is it possible to solve Antigone's paradox, that is, the conflict between the right/duty to self-determination and the normative function of the state?

As is well known, political philosophy—at least since John Locke's and Jean-Jacques Rousseau's reflections on the social contract<sup>31</sup>—has tried to address the issue of how to justify the state and its normative power. The issue of justification can be addressed along two opposite strategies: the

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<sup>31</sup> Rousseau (1762: §§ IV–VII).

first is maintained in the empirical sphere and justifies the birth of states through social and anthropological considerations (this is the strategy chosen by the theories of the social contract). The second, by contrast, is more theoretical and addresses the necessary conditions for the existence of the state, exploring the possibility of an *a priori* deduction of the concept of state (these are the theories of anarchist inspiration). I will here show how the latter theories—especially the utopian ones, exemplified here by Robert Wolff's *In Defense of Anarchism* (1970)—suggest some significant correctives in view of a revision of contract theories.<sup>32</sup>

Wolff starts from the consideration that the concept of the state, like other normative concepts, should not be empirically “derived” but rather deduced *a priori*. Contract theories offer *ex post* arguments for the state—that is, they acknowledge that states exist and justify their existence in the name of a utility principle—while a normative approach should investigate the state's conditions of possibility. It is not hard to find utilitarian reasons for the existence of states—that is what both Hobbes and Rousseau did. The question “Why were states born?” has a rather simple answer in philosophies based on a pessimistic view of anthropology and the state of nature. As Hobbes observed, those theories regard fear as one of the basic motives of human action. If we think that human beings live in situations of perennial conflict, we must admit that such a situation would cause fear; that, in turn, is the reason why the state of nature is eventually abandoned for the civil state.

According to Rousseau's definition, once people have decided to abandon the state of nature, the problem is the following: “to find a form of association which will defend and protect with the whole common force the person and goods of each associate, and in which each, while uniting himself with all, may still obey himself alone, and remain as free as before.”<sup>33</sup> For this reason—that is, in response to a practical problem—humans decided to gather in increasingly bigger groups. This choice allowed them to exploit the benefit coming from the establishment of communities acting in view of common goals.<sup>34</sup>

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<sup>32</sup>For this point it is also useful to refer to Ward (1973).

<sup>33</sup>Rousseau (1762: Chap. I, § VI).

<sup>34</sup>See both Hobbes (1651: § XIII and ff.) and Rousseau (1762: § VI).

Locke's conception of the state of nature, though, is the opposite of Hobbes': far from being a situation of *bellum omnia contra omnes*, the state of nature is the ideal condition in which people can live in "a state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man."<sup>35</sup>

The argument offered by contract theories is made up of two parts: the first part underlines how the civil state can satisfy needs of protection and justice that are not met in the state of nature. The second part gives special importance to the problem of self-determination and freedom of the people making up the state. This is a very delicate issue, because the civil state is founded on the conscious cession of some (or many) rights on the part of the people signing the founding social contract. In exchange for this cession, people expect to receive some benefits such as, for instance, security. In this view, the state is first and foremost supposed to defend and protect people, while allowing them to be self-determined, to an extent—failing the latter condition, their morality would cease to exist. But to what extent is it possible to delegate some individual rights to the state while maintaining moral responsibility for individual actions?

Rousseau tries to solve these problems by addressing the issue at a metaphysical level: the founding covenant immediately produces the creation of a collective body, made up of as many members as those who participate in the assembly. From the ontological viewpoint, the French philosopher considers the state to be an emergent entity—a new subject deriving from, and depending on, the composition of individual subjectivities: "At once, in place of the individual personality of each contracting party, this act of association creates a moral and collective body, composed of as many members as the assembly contains votes, and receiving from this act its unity, its common identity, its life and its will."<sup>36</sup> In the range of action made possible by this new subject (which, metaphysically speaking, is a rather bizarre entity), the subjects harmonize their wills while keeping, at least ideally, the possibility of self-determination. In this framework, Rousseau therefore posits that: (1) the state is an object

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<sup>35</sup> Locke (1689: Chap. II, § 4).

<sup>36</sup> Rousseau (1762: Chap. I, § VI).

emerging from the wills of the people; (2) once the state is constituted, it becomes autonomous with respect to its founders; and (3) as such, it bears rights. The state is not only autonomous from those who contracted the original covenant, but also from those who will be bound to that covenant at a later time. The founding covenant cannot be renegotiated, and the object deriving from it is independent from the will of those who contracted it.

In *Two Treatises of Government* (1689), John Locke offers a different reading of the contract theory: for him, the social object “state” is never independent of the wills of those who participated in the original contract. This means that citizens could withdraw their delegation if the state stopped fulfilling the tasks it was created for.<sup>37</sup> Hence, the idea that citizens always know very well what the purpose of their state is. Therefore, Locke considers the state to be an emerging object deriving from the wills of the contractors, but he also believes that its existence necessarily and continuously depends on the subjects who are in relation with it. To sum up Locke’s definition, we can say that the state is (1) an emerging object, and (2) a relational object. This second character opens up the possibility for the citizens to revoke the rights they have delegated to the state. In other words, the duration of a state depends on the subjects’ will: the state exists so long as individuals are willing to grant it some of their rights. If the relations between the individuals who make up the state varied in a significant way, the state would virtually cease to exist and people would go back to a state of nature.

So let us try to formulate a definition of the state, at least as far as its conditions of possibility are concerned. Both contract theories (in Locke’s and Rousseau’s versions) and Wolff’s anarchist theory indicate three necessary conditions for a state to exist: (1) the delegation of some rights (for Locke) or all rights (for Rousseau) to a third subject that is constituted by this very delegation; (2) this delegation can only happen through an act of free will by which individuals give up part of their rights; and (3) individuals must retain self-determination. What the theories do not agree on is the ways in which this self-determination should be retained. As we have seen, an important point distinguishing Locke’s contractualism

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<sup>37</sup>Locke (1689: Chap. VIII § 95 ff).

from Rousseau's is the possibility of revoking the foundational covenant if the state fails to fulfil the tasks it was created for. So long as the pact is not revoked, however, those who have contracted it have to respect the obligation to submit to the choices of the majority<sup>38</sup>—and this latter principle holds for both theories.

The critics of contractualism and the supporters of anarchy underline a different point. As much as contract theories indicate how the right/duty to self-determination should be preserved, states can only guarantee such rights within political systems based on direct democracy.<sup>39</sup> Excluding monarchies or oligarchies, in which citizens fully delegate their rights to one person or a small group of people, the right to self-determination is preserved only if citizens can directly participate in the management of power. Direct democracies are therefore defined through two necessary properties: (1) the members of the community who have chosen this political form are all involved in the management of the state (what we call collective management); in addition, (2) decisions—at least those that concern matters relevant to the lives of individuals and communities—must be taken as a result of a unanimous agreement. Dissent is permissible only at the level of preliminary discussion. Conversely, when deliberating, unanimity is required as a necessary condition to ensure that individuals submit to and comply with the laws that they themselves have set.

Many thinkers have underlined the importance of the theoretical point brought forward by anarchist theories—and implicitly grasped by Locke—as well as the inapplicability of the solution proposed by the model of direct democracy, or even the permanent risk of failing to apply the basic principles in the state of nature.<sup>40</sup> Even if universal participation in democratic life and choices—which is rather unlikely as such—were realizable, the idea that one can actually enter into universal agreements is strongly utopian. In particular, two elements appear to be necessary for the realization of the latter condition: (1) relatively small communities; and (2) a long negotiation process that allows for an extended and thor-

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<sup>38</sup> Locke (1689: Chap. VIII § 95).

<sup>39</sup> Wolff (1970: 22 ff).

<sup>40</sup> On this issue, see the lucid analysis offered in Nozick (1974: 33 ff).



ough discussion, designed to absorb and dispel dissent. Both conditions are however deeply outdated, since the evolution of the geopolitical world has accelerated states' trend to concentrate in supra-state organizations, while economic dynamics seem to impose ever shorter decision times. It follows that the best way to safeguard the principle of self-determination is not factually viable.

On the other hand, the structure and procedures of representative democracies, compared to direct democracies, provide more certainty in practical terms—and this element is far from irrelevant, since humans build state organizations in order to respond to needs that, in various ways, have to do with the practical sphere (from the need to defend oneself, to the need to implement the principles of justice, whatever that means). For this reason, the instrument that, albeit limiting the scope of individual freedom, greatly enhances the performativity of the system, consists of the replacement of direct participation with representative delegation. The latter, in fact, guarantees a shorter time in reaching agreements and, in parallel, frees resources on a social level in terms of participation. In representative democracies, in fact, only nominated representatives deal full-time with government affairs. It is also clear that if direct democracy guarantees the universal involvement of the members of the state, the same thing does not happen in the case of representative democracy, which works the more efficiently the more effective is the shift of power from the citizens to their delegates. This is the most critical point of the system, in the opinion of anarchist theorists.

Operationally, the delegation process is structured through the so-called “majority rule”: a practice established by convention, which allows the state to make decisions that go in the direction of the widest possible representation. In other words, once the impossibility of universal representation (which can only be achieved on pain of operational paralysis, which goes openly against the practical aims for which the state is constituted) is recognized, the criterion of representation by majority is chosen: every subject that makes up the state or is temporarily part of it must comply with the laws in force there, precisely insofar as they are enacted by the majority of people.

However, representative democracies are exposed to an important objection, which was made by Wolff in his 1970 text. If the delegation of rights

and the consequent loss of individual freedom does not correspond to full representation (that is, a concrete participation to the formation of the normative structure of the state), there are two consequences: the state loses legitimacy, and individuals lose subjective responsibility over their actions.

This second argument, of Kantian origin, is based on the idea that, in order to be recognized as moral agents, individuals should be able to perform free actions: they must be free to decide how to act and be fully responsible for their actions. Conversely, representative democracies severely limit their freedom by imposing on people laws they have not directly chosen. Therefore, with regard to the objections raised by Wolff, two issues are to be highlighted: the first, which I will examine shortly, relates to an internal inconsistency of Wolff's argument; the second concerns the principle of justice.

Let us start with the first point. Robert Wolff's definition of authority is very different from that of power, which he describes as "the ability to compel compliance, either through the use or the threat of force".<sup>41</sup> Authority, instead, is considered equivalent to "taking full responsibility for one's actions",<sup>42</sup> which is only possible by establishing the laws of one's own conduct, after careful deliberation.

The search for a social order based on something that does not limit the autonomy of individual morality is equivalent to the search for the foundation of the state's authority. In other words, it is the search for a solution to the fundamental problem of political philosophy: Can there be a legitimate authority? As I mentioned, Wolff's answer is negative: it is necessary to give up the search for an *a priori* foundation of the state's authority. In fact, the only form of social organization that allows for the moral autonomy of individuals is anarchy, in the classical sense of any non-state social order, which implies the absence of authority. Wolff builds his argument by articulating it in these steps:

- (1) humans who possess reason and free will are morally obliged to be responsible for their actions, namely to be morally autonomous and to commit to expand their moral autonomy;

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<sup>41</sup> Wolff (1970: 4).

<sup>42</sup> Ibid.: 14.

- (2) authority is legitimate only if it does not limit the moral autonomy of individuals and the possibility of its continuing expansion;
- (3) authority necessarily implies heteronomy;
- (4) heteronomy necessarily implies a reduction of the autonomy of individuals, being incompatible with it;
- (5) it follows that a legitimate authority is impossible.

The structure of the argument shows very well how the only form of authority that Wolff considers plausible and legitimate is that compatible with direct democracy, in which every citizen is required to actively participate in all decisions and in the creation of laws, which are never imposed, but derive from a form of mediation that aims to obtain the consent of each member of the community. Apart from the non-applicability of the model of direct democracy in complex state societies, it is interesting to note that Wolff's conclusion (5) asserts the logical impossibility of admitting the very concept of legitimate authority.

However, the case of direct democracy does not fail because of the logical impossibility of reconciling authority and freedom—indeed, Wolff recognizes direct democracy as a case in which this reconciliation is actually possible—but for reasons of practical impossibility. Direct democracy falsifies the premises (3) and (4), making the compatibility of freedom and autonomy possible, as Wolff's argument extensively shows. From Wolff's perspective, the point is rather to find a way to make anarchic practices possible within a state organization. Wolff's radicalism is clearly due to its dependence on the arguments of Kantian ethics: the premises (3) and (4) are a natural consequence of the premises (1) and (2), based on an idea of morality of Kantian inspiration.

Under the ethical profile, the problem does not only concern the moral duty for any rational and free individual to be responsible for their actions (that is, to be autonomous), but the fact that we should “acknowledge as well the continuing obligation to make ourselves the authors of such commands as we may obey” and the fact that we are morally obliged to “achieve autonomy wherever and whenever possible”.<sup>43</sup> Wolff's argument is, therefore, radical, in the sense that it does not distinguish between

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<sup>43</sup>Wolff (1970: 17).

different spheres of human action: in all of them it is necessary to seek complete autonomy and self-regulation. In short, for every matter upon which they are called for action, individuals must seek the greatest freedom, regulating their own conduct.

This assumption has two major implications: the first consists in equating actions and areas of action, which evidently takes the form of a radicalization of Kantian morality itself. In fact, Kantian morality still maintains the distinction between hypothetical imperative and categorical imperative, only reserving the categorical imperative to the moral sphere, while most actions are taken to be morally neutral and remain under the aegis of the hypothetical imperative (which is not a moral imperative, but a practical one). The second implication is that, paradoxically, should Wolff's radicalism be taken seriously, it would deprive individuals of a fundamental freedom: that of choosing which areas are to be submitted to moral evaluation and which can be left to the individual sphere and to free choice. The proposition presented by Wolff is a sort of compulsion to moral action that, as such, has no reason to be pursued—especially under the moral profile.

On the other hand, the principle of self-determination is not the only one that needs to be protected. The principle of justice, as already mentioned, also has central importance. Robert Nozick (1974) points out quite rightly how the principle of justice requires just as much protection, which constitutes, in turn, a weakness of anarchist theories. Even if we adopt the model of state of nature proposed by Locke, we should admit the possibility that  $x$  number of people, for various reasons, may not have the power to enforce their rights—for example, they may be unable to punish, or obtain compensation from, someone who has harmed them. Also, it is likely that the individual freedom to autonomously judge one's faults and rights would lead people to make biased judgements, flawed with excessive self-protection, with significant social consequences. Therefore, there is an argument that complete freedom and the general application of the principle of self-determination would not favor a just society.

That said, the Lockean model has at least three aspects which a good theory of the state cannot do without: (1) the idea that the state is an object whose existence depends on an act of stipulation; (2) the idea

that the state is an emerging object, which acquires special rights and duties that persist as long as the state remains in place; (3) the idea that this stipulation is not a definitive act, and can always be renegotiated by the persons on whose will the existence of the state depends. The salient property in this definition is the *relationality* of state: the state depends for its coming into being on an act of stipulation between  $x$  number of people (who thus maintain a relationship through which they give life to the founding pact) and remains in place because a number  $x + n$  of subjects keeps in place the relationship of dependence between the state and the subjects. Relationality and, in particular, the possibility that subjects renegotiate the state's form and existence are essential to ensure the possibility of applying the principle of justice.

In fact, we have seen that the contractualist theses—preferable to anarchist theories and to theories that consider the divine right of kings as the basis of the state—provide a double option. The option of Hobbes and Rousseau (hereafter, option *H–R*) implies the impossibility of withdrawal of the social contract and the subsequent independence of the state from those who lay down its foundation. The state is in place once and forever. The second option, that of Locke (hereafter, option *L*), provides for the possibility of revoking the agreement and founds this possibility on the state's relational dependence on the will of the parties who signed the social contract. They “merely” delegate part of their rights rather than giving them away for good. Option *L* makes it possible to answer, at least partly, to anarchist theories (the possibility of self-determination isn't as complete as anarchists would wish it, but we've seen that giving up complete self-determination allows for a better application of justice), while providing a solution to the problems deriving from a misleading conception of transgenerationality.

In other words, the option *H–R* does not provide for the possibility of introducing corrective measures with respect to a bad or non-optimal interpretation of the transgenerational structure of the state. In fact, even though the option *H–R* may only be born as a result of a conscious act of delegation, a huge number of people are committed to maintaining the existence of the state without having ever truly agreed to it. Modern states, as well as supra-state entities, have highlighted how this issue is important both to people's everyday lives and to the geopolitical orga-

nization to come. In this sense, the principle of justice can only be preserved if the generations who have *not* contracted the founding pact can revoke the delegation of rights that they never willingly (i.e. *de facto*) delegated to the state.

In other words, we have seen how, metaphysically, the structure of the social object “pact” is binding: a pact to be such must be contracted voluntarily by individuals who have the appropriate knowledge to be able to contract it. In this sense, the economic situation that, especially in Europe, was determined by the financial crisis of 2008, is particularly significant. As economists have widely noted, the crisis was largely determined by the accumulation of sovereign debt contracts by the states; these debts have prompted particularly important corrective measures in public spending, supported by operations that were intended to lead to a gradual reduction of the debt. This situation, which is particularly evident in southern Europe but affects all Western economies, has a clear cause and an effect.

The cause was the formulation of pacts, on specific economic matters, implying the consent of generations that never agreed to them. Specifically, in many cases, the state has an enormous public debt bearing almost entirely on future generations. The transgenerational structure that characterizes many actions taken by the state has a direct impact on the lives of future generations, helping some while significantly penalizing others. This circumstance led to a clear and serious deterioration of the principle of justice, resulting in a condition in which—contrary to one of the explicit assumptions of the options *H–R* and *L*—those who contract the social pact, directly or indirectly, are not granted equal rights. If this is the case, for reasons both *de facto* (to avoid a potentially destructive social conflict) and *de jure* (to protect both the principle of self-determination and that of justice), if a state does not guarantee a balanced management that takes transgenerationality into account, people whose rights are being violated should legitimately claim their right to renegotiate or end the pact. Such an act implies claiming back the delegation to the state of the rights to use force, to acquire resources through taxation and to take decisions in matters of internal and foreign policy.

### 3.2.5 Social Contract 2.0

The transgenerational structure of some actions taken by the states requires an ethical reflection on the issue of justice. In particular, it is clear that, in this framework, a utilitarian approach would not be helpful in matters of public ethics. The classic formulation of the utilitarian theory was developed by Jeremy Bentham in the essay *A Fragment of Government* (1776), and by Henry Sidgwick in *The Methods of Ethics* (1907), particularly in the fourth book, Chapters II and III. The utilitarian principle is simple: a society can be said to be just when its institutions are able to achieve greatest possible global profit, obtained by adding up the profits of all the individuals belonging to that society. In this way, given that each individual will predictably act for their own good—Sidgwick’s model of agent is the rational individual who has the ability to act in view of their own good—the maximization of individual profit should lead to the realization of the broader collective profit.

However, as rightly noted by John Rawls in *A Theory of Justice* (1971), to figure out what’s good for the individual in every single case is far from easy. Agents often do not aim for their immediate good, sometimes by choice. People are different, and driven by different desires, aspirations, opinions and possibly even theories about the world: then, the idea that one’s own “good” is something that can be maximized creates obvious difficulties. As was pointed out by Peter Singer, who amended the theoretical framework offered by classic utilitarianism to shift the emphasis on to the consequences of actions, the usefulness of an action is determined by calculating the extent to which its consequences meet the interests of the individuals who are affected by the action, where self-interest is everything a person could want that does not conflict with other desires.<sup>44</sup> The usefulness of an action is related to an individual and is determined on the basis of its satisfying the preferences of that individual. Therefore, if we consider not an individual, but a group of individuals, the usefulness of the action *a* is the sum of the usefulness of *a* for each individual in the group, where the preferences of the members of the group are potentially different.

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<sup>44</sup> Singer (1979).

In other words, there may be many reasons why Mr. Smith decides to come to work on his day off. He can do so (1) to rescue the goods of the company after a flood, and this is because—against what utilitarian theories claim—Mr. Smith knows that his good, in that particular case, increases by giving up an immediate advantage (his day off) to get a considerable advantage in the future (save his job). Or (2), Mr. Smith can give up his day off to volunteer and give a bit of his time to people in need. If the case (1) is foreseen by the utilitarian view—Mr. Smith is giving up his own immediate good, but he's doing it by still choosing the best option, hoping to get a better advantage for the future—vice versa in the case (2)—no rational choice seems to guide Mr. Smith's action, who simply decides to give something to someone else in his view of their good.

Therefore, it is obvious that people do not seek their own immediate benefit in all circumstances. Also, we are not always able to grasp clearly what a person in a given circumstance would define as their immediate advantage. For example, in situation (2), Mr. Smith could see an advantage where others would see nothing: for instance, Smith might feel psychologically gratified whenever he helps other people, and this gratification could benefit him in terms of psychological well-being, which people with different values may not perceive.

In other words, if it seems difficult to apply the principle of maximization of usefulness to the individual (by virtue of people's different views, motivations and aims), extending it to the whole of society seems even more difficult. The argument that society should be seen as one body for whom one can calculate the greatest good is thus contradicted by Rawls: it is unfair, and therefore illegitimate, to think one can balance gains and losses within a social organization considering different people.

Justice denies that the loss of freedom for some is made right by a greater good shared by others. It does not allow that the sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by many. Therefore in a just society the liberties of equal citizenship are taken as settled; the rights secured by justice are not subject to political bargaining or to the calculus of social interests.<sup>45</sup>

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<sup>45</sup> Rawls (1999: 3–4).



Fundamental freedoms and fundamental rights are non-negotiable, nor can a social benefit justify the limitation of one of its citizens' rights. This is particularly evident in those cases in which rights of hundreds of thousands of people have been violated for the advantage of a few or very few individuals. It is a strategy of objectification of human beings when people are treated as objects and, consequently, stripped of their basic rights, which are somehow "transferred" to those that *are* considered persons and who generally hold some form of power.

Let me make an example. Qin Shi Huang is considered the first emperor of China: he was the first to use the title after China unified its various kingdoms in 221 BCE. From the historical point of view his figure is complex: he was resolute and sometimes cruel, and under his reign China experienced major reforms that marked its history. Qin Shi Huang abolished the feudal system and divided the country into governorates, where the civil authorities held a power greater than that held by the military authorities. He standardized the units of measurement, and facilitated the construction of an extensive network of streets and canals to improve mobility and trade. On the other hand, in order to keep his power free of controls and constraints, he tried to counter the weight of tradition by ordering, in 213 BCE, the so-called book burning: he ordered the burning of all the ancient texts, except for scientific treatises and technical ones, and ordered the persecution of intellectuals. In addition to his actions as an emperor, one of the reasons for Qin Shi Huang's reputation was his madness. The emperor was obsessed with death: he managed to thwart three assassination attempts, and did all he could to achieve immortality.

His plan of greatness and folly was embodied in the creation of a great army that was supposed to protect his tomb. The terracotta army, as it was called by its discoverers, is impressive both for the grandeur of the work and for the madness it reveals: as far as we know, it is made up of about 8000 soldiers—armed to the teeth, whose features are amazingly similar to those of the ancient Chinese warriors—and 130 chariots pulled by 520 horses. Historians believe that its construction dates back to 246 BC when, immediately after the accession to the throne, Qin Shi Huang began the work on the construction of his mausoleum in the region of Xi'an. It seems that he involved about 700,000 workers in the project,

who not only worked in very bad conditions, but were murdered as soon as the mausoleum was finished, lest they reveal its secrets. After being stripped of all rights and considered objects, those people—finally, and quite consistently—were deprived of their lives, too.

Fortunately, at least in Western countries, we have become accustomed to condemning the brutal tendency to treat human beings as means rather than as ends. However, the fact that we are generally more respectful of human rights than the first emperor of China does not mean that the problem is solved. Rather, it is interesting to note how the issue reoccurs even in Western countries, where Rawls' question has become particularly important since globalization. For instance, employees of some large multinationals, while not being locked up in modern mausoleums, work in industries that somewhat resemble a Panopticon. The dehumanization and control policies of some companies reveal an idea of the human being close enough to Qin Shi Huang's objectification and many other similar cases.

The point that Rawls doesn't seem to make, while underlining that human rights cannot be given up in view of collective benefit, is that in many situations giving up *part* of your rights is a necessary condition for some actions to succeed.<sup>46</sup> I say necessary condition because the very structure of transgenerational actions requires it. This, of course, raises a question of legitimacy. Rawls' refoundation of contractualism on a Kantian basis is surely the most appreciated among the recent revisions of contract theories. It is useful here to recall David Hume's criticism of the classical formulations of contractualism: it is unacceptable to establish citizens' obligation of obedience to the government, taking on promises that citizens did not knowingly make.

In fact, as we have seen, a commitment or a promise logically require the contractor's explicit consensus:

Should it be said, that, by living under the dominion of a prince, which one might leave, every individual has given a *tacit* consent to his authority, and promised him obedience; it may be answered, that such an

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<sup>46</sup> Rawls indicates that utilitarian theories do not seem to be equipped to deal with the problem of justice between generations (Rawls 1999: 11 ff.).

implied consent can only have place, where a man imagines, that the matter depends on his choice. But where he thinks [...] that by his birth he owes allegiance to a certain prince or certain form of government; it would be absurd to infer a consent or choice, which he expressly, in this case, renounces and disclaims. [...] Did one generation of men go off the stage at once and another succeed, as is the case with silkworms and butterflies, the new race, if they had sense enough to choose their government [...] might voluntarily and by general consent establish their own form of civil polity without any regard to the laws or precedents which prevailed among their ancestors. But as human society is in perpetual flux, one man every hour going out of the world, another coming into it, it is necessary in order to preserve stability in government that the new brood should conform themselves to the established constitution and nearly follow the path which their fathers, treading in the footsteps of theirs, had marked out to them.<sup>47</sup>

For this reason Rawls, in line with other thinkers, considers the original contract as a regulative idea of reason. While such a contract probably never existed, it is certainly true that only a small number of citizens could have signed it. Rawls' move is then to openly declare the conventional character of the original contract, treating it as a sort of thought-experiment subject to some conditions. In particular, the first one, which Rawls defines the "original position,"<sup>48</sup> aims to outline an ideal situation in which the parties may stipulate the conditions of the contract in accordance with principles of justice through which to identify the basic structure of society. The principles of justice, however, cannot be determined starting from just any condition; if that were the case, the risk of particularistic constraints would be too high. For this reason Rawls proposes to sterilize, at least at the level of thought experiment, the initial situation, through the second condition: the veil of ignorance.<sup>49</sup> The principles of justice should not be established based on chance or social conditioning, nor on particular and socially determined world-views and values. "For

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<sup>47</sup>Hume (1748: OC 23, Mil 475).

<sup>48</sup>For a good critical discussion of Rawls' theory, see Chandran Kukathas and Philip Pettit (1991: 17 ff).

<sup>49</sup>Rawls (1999: 11).

example, if a man knew that he was wealthy, he might find it rational to advance the principle that various taxes for welfare measures be counted unjust; if he knew that he was poor, he would most likely propose the contrary principle.”<sup>50</sup>

Therefore, to avoid this type of conditioning, Rawls imagines a situation in which people are unaware of the particular determinations of their existence: therefore the ideal agents of Rawls’ original position are perfectly rational and perform their choices under a veil of ignorance, so as not to be conditioned by contingent situations or values. Not only that: in the original situation each person can keep their reference values, such as their idea of good. This point is particularly important because Rawls believes that the ethical pluralism that marks contemporary society cannot in any way be reduced, but should, if anything, be preserved.

In the original position all are equal and have the same right to argue for or against a principle of justice; therefore, there is virtually a situation of absolute equality. Given this condition, there are two principles of justice accepted by those who subscribe to the social contract. Rawls formulates it as follows: “First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others. Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all.”<sup>51</sup> Rawls’ intuition is that personal freedom should be preserved—as part of a formula of balance, in which evidently freedom can never be absolute, on pain of limiting the freedom of others—but that this generates inequality depending partly on contingencies, partly on the individual talent. If this is the case, *then* it is necessary that the product of inequality be redistributed.

The second condition posed by Rawls, as I have mentioned, regards the so-called “veil of ignorance”. In the original position it is expected that people are unaware of the aspects that characterize their lives (social class and racial affiliation, level of education, political orientation and

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<sup>50</sup> Ibid.: 17.

<sup>51</sup> Rawls (1999: 60).

so on); otherwise, the choice of principles of justice would be heavily affected by those factors. It follows that in the original position “no one knows his place in society, his class position or social status, nor does any one know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities.”<sup>52</sup>

To sum up, the conditions posed by Rawls to his thought-experiment are the following. First, the subjects involved in the negotiation are rational and able to choose the best option: that is, the most advantageous in terms of rationality. Second, agents are in a state of absolute equality, so that peculiarities and individual lifestyles do not affect the determination of the principles of justice (veil of ignorance). Finally, the identification of the principles of justice is carried out in what Rawls calls “original situation”, namely, a period of negotiation in which the actors identify the principles of justice for their society, through a procedure that is independent from the specific traits of their individual conditions. What matters is that Rawls considers the problem of transgenerational justice as one of the issues imposing the revision of the previous definition: in other words, the principles of justice, to be formulated, require that you take into account transgenerational relationships. This is especially true if we consider that transgenerational actions are characteristically performed by states.

Rawls ties the concept of transgenerational justice to that of social minimum. The social minimum, which depends on the prosperity levels of a community, regards both (1) the members of a society at a given historical period, and (2) the members of that society in future historical periods. As for (1), Rawls posits that the social minimum “is to be set at that point which, taking wages into account, maximizes the expectations of the least advantaged group”.<sup>53</sup> However, this consideration is not sufficient, since the social minimum should be established by taking into account the relationships between generations, thus assessing not only the degree of development and well-being internal to a society, but com-

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<sup>52</sup>Ibid.: 11.

<sup>53</sup>Rawls (1999: 252).

paring it with what a society has received from previous generations and considering what it will leave to the generations to come. So, let's say that  $x$  is the population of a society considered at time  $t$ ,  $w$  is the generation that preceded  $x$ , and  $z$  is the generation that will follow  $x$ . Generation  $x$  has an obligation to "receive" something from  $w$  and the obligation to leave something to  $z$ . The main point is then to "measure" this obligation and to clarify *what* should be left in the transgenerational passage. Regarding the latter point, Rawls has in mind a set of goods, both material and immaterial: "Each generation must not only preserve the gains of culture and civilization, and maintain intact those just institutions that have been established, but it must also put aside in each period of time a suitable amount of real capital accumulation."<sup>54</sup>

Therefore, it is supposed that every generation saves to the benefit of the generation to follow, having itself received goods from the previous one. This condition is taken to be necessary for generation  $x$  to fully take on the principle of justice established in the social contract by the generations who preceded it. In other words, the constant improvement of the living conditions of different generations is a necessary condition for the social contract to be kept in place and the principles of justice not to be dismissed. Therefore, it is supposed that generations can capitalize on some of the (material and immaterial) goods at their disposal. As shown by Kant,<sup>55</sup> the relationship between generations has been historically considered unbalanced in favor of the new ones: indeed, considering the issue from the perspective of accumulating goods, it is quite natural to conclude that each generation will eventually consolidate and increase the goods of the previous one and, therefore, that in principle new generations should enjoy more and more benefits.

However, intergenerational relationships do not only concern the issue of the accumulation of resources discussed by Kant and Rawls. There are two other important elements that should be taken into account: first, the transgenerational character of the actions performed by the states. In other words, there are some types of actions whose finalization involves the use of different generations. This means—and we come to the second

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<sup>54</sup> Ibid.

<sup>55</sup> Cf. Kant (1784).

point—that, contrary to what Kant and Rawls seem to think, transgenerationality should not only be thought of as the passage and accumulation of resources from one generation to another, but also as the diversion of resources due to debt.<sup>56</sup>

In other words, if generation  $x$ , belonging to state  $s$ , has the objective  $o$ , it is possible that the achievement of  $o$  makes  $x$  use the resources of the next generation ( $y$ ). Alternatively, the adhesion of  $y$  may be required for  $o$  to be obtained. In the event that this happens, that is, if  $o$  even only partially causes debt for  $y$ , the contraction of this debt must take into account the principles of justice, so that generation  $y$  is not prevented from living in a social structure that has the material and immaterial resources to operate by applying the principles identified as just. It should be kept in mind that if the sets of goods being passed on from generation to generation may be both material and immaterial, the same goes for  $y$ 's debt—there can be material resources or immaterial ones to be paid for (say, impoverishment in terms of human capital). If  $x$  has a debt that prevents  $y$  from living in a just social structure, then it is to be assumed that  $y$  has the right to renegotiate the terms of the contract.

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<sup>56</sup>Cf. Chap. 1 § 3

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# 4

## A Cross-Section of Power

### 4.1 States and Meta-States

As we have seen, at a macro level social reality is the outcome of stipulation, but is grounded on some fundamental elements that are its necessary condition regardless of the specific structure that a particular society gives itself. I would like to conclude the reflection presented in this book by going back to the topic I started from, in order to focus on the most recent developments of social reality with which I believe ontology should engage.

Antigone's story is considered emblematic especially for its paradigmatic conflict between the public and normative sphere on the one hand, and the sphere of private practices on the other. *Antigone* exemplifies the antinomy between what people (that is, their representatives and institutions) establish as just in the public and private domains—taking into account that, in the latter, individual sensitivity guides our ideas about justice. For Antigone it is wholly unjust to deprive a person of burial (especially if it's a sibling), even if this is required by a law of the state. The best path that Western culture has found to respond to Antigone's question is the construction of a political sphere whose rational analysis

and cultural elaboration interact to identify shared values and collectively acceptable behaviors.

In this book I have claimed that the state and its evolutions (which I call meta-states) are necessary both to the existence of the political sphere and to the realization of justice. This is not only true for practical reasons (that is, because individuals and societies need to develop mechanisms of representation that enable the functioning of institutions and the adoption of effective forms of representation), but also for ethical reasons: in fact, the actions of governments cannot prescind from the issue of transgenerationality. Therefore, only an entity that has the mandate and power to be a guarantor of transgenerational actions can act as the guarantor of a just society. This is the reason why states and meta-states are necessary for the establishment of a social reality that aspires to ensure not only common life, but also justice. If, as I claim, transgenerational actions are social actions, they can be performed only within a framework providing for the presence of a state. What is left now to do is to complete the picture of institutional reality.

## 4.2 Jonas' Half-World

The film industry has often tried to imagine social worlds, creating fictional proto-societies or fully organized ones. In *The Giver* (2014, directed by Philip Noyce) the screenwriter proposes a hypothesis that, thus far, has never been realized and yet is plausible. The question posed by *The Giver* is: what would happen if a community were isolated from the rest of the world?

The community in which Jonas, the main character, lives has some very singular features: its inhabitants only have a very short memory. They live a “sterilized” life, from which any emotional connotation has been removed. No memory that exceeds the time period of their lives, few emotions, all very rational. The elders of the community, who hold political power and social authority, have decided to use a trick: reset both the social and the historical memory of the members of their community, and destroy any trace able to bring it back. The community is based on this idea, which is embodied in a precise and very effective

normative code. Everything seems to work in Jonas' world and people seem to be happy, all in all.

The reasons for the organization of this society are noble: the awareness of human fragility and limits, as well as our incapability to bear pain and act wisely—not to mention the human tendency to be guided by passions and compete against one another. After reflecting on these and other human weaknesses and acknowledging that these are natural traits hard to eliminate, the elders adopted a meta-rule: citizens must abide by the rules—this is their categorical imperative. The rules were simple: “use precise language”, or “wear the clothes assigned”, “do the injections in the morning”, “respect the curfew”, “never lie”. Everyone was called by their name, no-one had a surname, because no differences were allowed. There were no such things as popularity, fame, winners or losers—all of this was dispensed with so there would be no conflicts.

Fear, pain, envy, hatred were empty sounds rather than meaningful words. This way the elders hoped to create a better world, safe from conflict and discord. And, in fact, they seemed to have succeeded: the daily injection prevented people from experiencing emotions, and no one was aware of it. People respected the rules flawlessly, especially the rule never to lie, which enabled that world to be absolutely transparent. Each citizen did as simply as possible what they were called to do. In the realization of the platonic ideal of community, the children were taken from their mothers, considered as mere incubators, and were assigned to the families who requested them. People had to carry out the tasks that the community attributed to them.

The gears of this world, which existed by subtraction, seemed to fit together quite well, except for a single task. Among all, this was particularly delicate and, in some sense, even risky. Only one citizen was allowed to preserve memory: not of his life, but of the world—of what it was like prior to that subtraction of reality. The bearer of memory found himself in a sorry position: he was the only one who knew how things really were and how they could be. He was the only one who felt emotions. Therefore, in a way, he was the only fully human person. One day, Jonas, who had lived a quiet life thus far, despite sensing that something wasn't quite right, was commissioned to be the new memory keeper. With the help of the only man who remembered, he had to learn to remember. The

journey was long: he went through memories deposited in tales, books and music. When he was finally able to remember, he tried with all his might to give people their memory back. Jonas had the intuition that memory is constitutive of social identity. Let's try to consider what was preserved and what was erased from Jonas' world, focusing on the reasons that made that world a half-world.

Let's start from the condition of possibility. Jonas' world was born following an agreement involving a certain number of people: the elders, who enjoyed a form of broad consensus in support of their action—citizens accepted that social order with good grace. But this is a form of contractualism built on an omission: the wise do not reveal to anyone that what they have produced is a halved society. We can grant the wise completely positive intentions: we can think that what prompted them was not a wish to dominate, but a way to take care of their society. Nevertheless it is clear that they made important decisions on behalf of the whole community, guided by the belief that they had a more sophisticated form of knowledge.

Therefore, there are two conditions of possibility for Jonas' world: a form of knowledge and the power through which that form of knowledge is actualized. Knowledge generates power and power generates new objects of knowledge, as Foucault rightly noted. Power has a complex structure, because its analysis reveals a double articulation. Philosophy has often tried to outline a genealogy of power, distinguishing between the *energy* of power (of the biological matrix, which includes strength, instincts, impulses, basically everything that characterizes the living in its vitalistic dimension) and the *structure* of power, including all the rational elements able to organize the former. In this way, philosophers like Hobbes, Schopenhauer and Nietzsche, both in politics and in metaphysics, have identified a direct continuity between force (i.e. the biological–animal dimension of the living) and power, which, in various ways and at different levels, is a form of manifestation of strength.

### 4.2.1 Energy

Let's leave Jonas' world for a minute and ask ourselves what power allowed the elders to remove half of their social world. The benefit of taking the “force–power” binomy as the foundation of anthropology and

human politics is quite obvious: instincts, strength, drives, and power are not theoretical postulates, but primitives to which many disciplines are dedicated (e.g., chemistry, biology, physiology and psychology). The idea that power consists of more or less sophisticated ways in which energy is structured and organized is a long-standing theoretical hypothesis.

At a first approximation, the roots of power, then, refer to force and its exercise. This energy is rooted in the biological dimension of the living, and takes strength as a primitive present in all life forms. In this framework, the living, at all levels, have as their main objective self-preservation and enhancement, while the instinct that leads to cooperation is clearly derived, essentially resulting from a cultural acquisition.

In the nineteenth century, German *Naturphilosophen* worked on the hypothesis that, if we have a unitary idea of nature, then we should seek its cause in an undividable power whose manifestations share significant similarities. Transposed in biological terms, this reasoning leads us to conceive of a harmonious development of natural reality. Wilhelm Roux, the biologist who is considered the founder of experimental causal–morphological research on development, was a proponent of the view that the parts of a living organism are mutually conditioning. Conflict, understood as tension between forces, it is therefore essential and develops as part of a mechanical tension.

Roux likened tension between forces to the cellular components of the developmental period (Roux 1881: 73 ff): the cells that are able to assimilate more quickly, regenerating in less time, are developed with more force than other cells with a lesser capacity to assimilate. A similar procedure also applies to the processes of nutrition: in the case of lack of nutritional resources, the cells with a more efficient capacity to regenerate are the most successful. Finally, Roux identified a third type of conflict that takes place inside the cell and concerns later mutations, which assimilate or destroy the first elements of development. Basically he shares with Goethe and Rudolf Virchow the idea that individuals are what emerges from a multiplicity of forces and the internal struggle that regulates their activities. The common matrix of the biological sciences of the nineteenth century—be it developmental biology as in the case of Roux, or evolution as in the work of Charles Darwin—is certainly the generalization of the idea of conflict (Lennox 2015). In fact, while Roux uses the idea of

conflict to interpret the dynamics of cellular organisms, Darwin uses it to interpret the dynamics of evolution.

Darwin's view is actually more complex: he tempers the conflicting elements, which enable and determine evolution, and considers them led by a sort of "design"—there is an invisible hand that regulates the structure of the evolutionary process (Darwin 1859, trad. it., p. 157). In his theory of evolution, Darwin clearly shows that he wants to keep both aspects at the basis of the natural world: the deterministic and conflictual; one of clear biological matrix, and one entailing cooperation. In other words, Darwin understands something crucial: the interpretation of the living must bind the dimension of conflict with that of cooperation and, out of the two, the former is certainly a primitive. This means that the living, in its various forms, is first and foremost conflicting: only through a process of mediation, education and development does it choose to adopt cooperative behaviors.

It seems to follow that this balance between conflict and cooperation is what allows for the passage from the energy to the structure of power. The energy expresses a dynamic force and an immediate antagonism; the structure expresses a more articulated dimension in which the transition from force to power corresponds to the passage from a force that is expressed directly (thus a basic action, which is not necessarily accompanied by intentional activity), to a number of complex relations and actions, some unintentional, others intentional. After all, Freud uses the term "energy" (Freud 1923) to describe the basic level of the subconscious, blending the corporeal and the element of cognition and intellection. In Freud's perspective, the self is what emerges from the energy in which it is grounded. Whether one shares Freud's view or not, his analysis is still significant in that it locates in human personality the conjunction between energy and structure, considering the former as the basis of the latter just as in evolutionary theory.

The disciplines that, in various ways, deal with humans are particularly interested in energy, while the disciplines that deal with social reality are obviously interested in structure. What does structure entail? One answer is this: all that is needed and that has been imagined, to make energy more efficient and effective. Stated differently: all that is needed to make more efficient and effective the transition from the predomi-

nantly biological dimension of force to that of power. Therefore, structure aims to improve the use of force and facilitate its being shaped into more sophisticated forms of exercise of power. The architectural structure of power has two levels: a micro level that corresponds to the microphysics of power described by Foucault, and a macro level that I will define as *bureaucratic documentality*.

## 4.2.2 Power

The lemma “power” refers to a rather complex semantic layering, and it seems appropriate to begin by clarifying what it means. The reasons for this complexity also depend on the fact that power is a key concept for many disciplines: political philosophy, sociology, economics, anthropology and others. The great number of scholarly definitions, which in many cases capture one aspect of power each, testifies precisely to this complexity. To cite only the most famous definitions, power has been conceived as “exercise” (Dahl 1957), as a “disposition of the subject” (Foucault 1982 and Dean 2010), as “domain” (Lukes 2005), as “freedom” (Morriss 2002), as “responsibilization” (Arendt 1970), and as deontic power, created by constitutive rules (Searle 1995, 2010). The definition of power is extremely interesting, but I cannot dwell too long on it; for the present purposes, I will adopt a definition of power as a disposition of the subject. I will then try to show that power is the foundation of institutional reality.

In the premises of this chapter I have identified force as a necessary condition of power—more precisely, as its energy basis. Now I wish to note that power cannot be reduced to force and that the most interesting aspect of philosophical reflection lies precisely in focusing on what distinguishes force from power. The first definitions of power, such as the one put forward in Plato’s *Sophist* and later reelaborated by Locke,<sup>1</sup> insisted on including both the active and passive characters of power, describing it roughly as the ability to affect or to be affected. Recent reflection has generally overlooked the second aspect—the ability to be affected—

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<sup>1</sup> *Sophist*, 247e.



which, as I will show, should instead be held in the same account as the first. Locke formulates an exemplary thesis: “Thus we say, fire has a power to melt gold, i.e. to destroy the consistency of its insensible parts, and consequently its hardness, and make it fluid; and gold has a power to be melted; that the sun has a power to blanch wax, and wax a power to be blanched by the sun, whereby the yellowness is destroyed, and whiteness made to exist in its room” (Locke 1690, Chap. XXI § 2). Therefore, power is both active and passive.

Power is not a property that a person has or not, but a disposition. According to Max Weber’s famous definition, power is an individual’s or a group’s ability to reach their goal or aim when others try to prevent them from so doing (Wener 1922). To further underline its active character, he goes on to say: “The situation in which the manifested will (command) [...] is meant to influence the conduct of one or more others (the ruled) and actually does influence it in such a way that their conduct [...] occurs as if the ruled had made the content of the command the maxim of their conduct for its very own sake” (Weber 1922: 946). Weber’s definition well expresses the idea that power belongs to the sphere of agentive relation, being essentially the subject’s ability to reach a goal, overcoming the obstacles coming from other subjects. If Locke’s example doesn’t involve intentionality (fire burns by nature, as it is its specific disposition), Weber’s reference to the human and social sphere is grounded on intentional activity. Therefore,  $x$  is able to induce  $y$  to perform, or prevent  $y$  from performing, an action  $z$  that is functional to achieving  $x$ ’s goals. Here—as Spinoza noted in his *Tractatus politicus* (1675–6, cap. II, § 2)—we have a description of  $x$ ’s power (*potentia*) over  $y$ , but also  $y$ ’s effective limitation of freedom (*potestas*). I will therefore distinguish active power from passive, where the former is the subject’s ability to act on something or someone to reach a goal (which sometimes is intrinsic, like the fire’s burning, and sometimes is intentionally set by the subject).

Weber’s distinction between three different kinds of power falls precisely in this context. Active power can take at least three different configurations: (1) it can assume a charismatic structure, usually when depending on a person exercising leadership (in a group, a political assembly, a board of directors etc.). This is a form of power characterized by an emotional dimension and a personal bond with the leader. From a

genealogical perspective, this is certainly the most ancient form of power, present in primitive societies dominated by prophets and war heroes, and it persists in modern parliamentary democracies. On the other hand, (2) the power that is linked to traditional social structures depends on the belief in the sacred character of some social arrangements; it consists of feudal and patriarchal forms. Finally, (3) active power can depend on, or be exercised on the basis of, a certain normative asset—that is, laws.<sup>2</sup>

In order to be actualized, these three forms of power have to be embodied in a social structure and be exercised through some form of bureaucracy. Weber's analysis is particularly significant because it locates the ideal-typical structures of power as concerned with institutional organization, while pointing out a fundamental character of modern power: its tendency to being embodied by rigidly organized (i.e. bureaucratic) structures. This structure is made evident by the standardization of the actions performed by state officers or bureaucrats:

Just as the so-called progress toward capitalism has been the unequivocal criterion for the modernization of the economy since medieval times, so the progress toward bureaucratic officialdom—characterized by formal employment, salary, pension, promotion, specialized training and functional division of labor, well-defined areas of jurisdiction, documentary procedures, hierarchical sub- and super-ordination—has been the equally unambiguous yardstick for the modernization of the state, whether monarchic or democratic. (Weber 1922, p. 393)

So the bureaucratic apparatus is a sort of organizational body that allows power to deeply affect reality. Weber is here referring to people, who are objectualized into being tools of power.

However, power is not just the active ability to affect something or someone: it is also the passive ability to “receive”. Such receptive ability—in the case of people and unlike what happens with natural objects—is tied to free will. In other words, the passive power of, say, wax with regard to fire is determined by nature (that is, its chemical composition); human passive power is determined by psychophysical nature and, in particular,

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<sup>2</sup>For a deeper analysis, see Gephart (2015).

the ability to impose one's will against the determination of nature. So, if wax must necessarily melt when in contact with a source of heat, a person can choose not to comply with a habit or an order (and therefore act against his or her nature). Also, passive power can turn into active power. For instance, one can choose to change one habit for another, or resist an urge that would lead one to react in a specific way. Basically, one can choose to counter one's natural predisposition.

This means that passive power has several declinations, and that such declinations change depending on whether or not they regard objects or subjects endowed with rational thought, free will and intentionality. Differently put, fire necessarily melts wax, but there is no such determinism inducing people to react to the demands of a bureaucratic structure. This is true both at the level of microphysics of power—that is, the complex network or relations that, as Foucault has noted, constitute an important part of our everyday interactions—and at the level of the macro structure of power.

One of the distinctive features of human passive power is the fact that it allows for resistance to active power, enabling structures and mechanisms that can limit the latter significantly. Therefore, those (people or institutions) who hold active power have built structures and procedures to contain human passive power. In the light of this, it is important to make an observation. Weber noted the structures of bureaucracy and the irreversible process of rationalization they underwent, but in the second half of the twentieth century active power has focused on the management of a number of tools (natural, human and monetary) that allow it to reach its goals. I primarily refer to finance.

Once bureaucratic structures had concluded their rationalization, active power concentrated on two points: (1) limiting the potential obstacles coming from passive power, shifting the heart of bureaucracy from subjects (bureaucrats) to objects (documents); and (2) strengthening this passage with appropriate technology (computers and the Internet). The shift of focus in bureaucracy has brought about the birth of what I will call "document bureaucracy". In addition to contrasting with bureaucrats' passive power, it has mainly focused on finance and the use of (natural, human and monetary) tools necessary for active power to achieve its goals.

## 4.3 The Macrostructure of Institutional Reality

Understanding document bureaucracy is therefore central to comprehending the organizational structure of active power embodied in a state. My hypothesis rests on the idea that, compared to the type of bureaucracy studied by Weber, contemporary bureaucracy is very much digitally connoted, so that people are increasingly replaced by automated and serial processes performed through machines and documents. Therefore, it is interesting to try to determine what a document is and what kind of power it has—if any. Being an object, a document should have passive power, much like Locke’s wax—it should have no active power as, unlike humans, it has no autonomous intentionality. After all, this is also the reason why, as we have seen, bureaucracy has chosen to focus on documents over people. So let us examine the issue more closely.

### 4.3.1 Document Bureaucracy

Documents are a cornerstone of contemporary bureaucracy. By document I mean an inscription with institutional value (Ferraris 2009, p. 280): in other words, an inscription that embodies a normative content, whose source is a person or an institution in hold of power. Several ontologies have developed many interesting reflections both as regards the taxonomy of documents and as regards their performative character. Barry Smith, for example, has spoken of “document acts”:<sup>3</sup> “what humans (or other agents) do with documents, ranging from signing or stamping them, or depositing them in registries, to using them to grant or withhold permission, to establish or verify identity, or to set down rules for declaring a state of martial law” (Smith 2014: 19).

We speak of document acts rather than speech acts whenever it is necessary to explain the causal power of documents: in fact, documents not only have passive power (embodying a given normative content), but they often also have an active power, affecting and changing reality. This

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<sup>3</sup> Smith (2014: 19–31).

happens because of their ontological structure, for which they: (1) incorporate a semantic content; (2) incorporate an element that allows for the identification of the origin of the document and its validation (these are elements such as a signature or a photograph); and (3) endure in time. Finally, (4) they are (a) normative, (b) testimonial, or (c) ordinary—that is, neither normative nor testimonial.

Thus, it is assumed that all documents have semantic content (they say something) and endure, which allows different people to access their content in time. Also, it is assumed that they incorporate elements useful for their identification and validation. Finally, some documents have a normative character: that is, they determine what is right or wrong, true or false, or the conduct of people or institutions—documents that have legal and juridical value are of this type. Others have a testimonial character: that is, they do not affect the agentic level, but they mainly contribute to creating or consolidating individual and collective memory. Finally, they can change status: a document that has normative character can, for example, become testimonial. In fact, no longer having a normative character, as they do not prescribe rules to the behavior of people—think of treaties or conventions no longer in force—some documents may change status and become testimonial documents that are important for our collective memory.

As rightly noted by Michael Clanchy in his study of the origin and development of documents in England in the twelfth and thirteenth century (1993<sup>2</sup>, p. 117), the institution of documents initially functioned as a tool for the conservation and enhancement of memory. This evolution can rightly be ascribed to all kinds of documents: writing down a document (a Will, an order, a wish) and, at the same time, developing rules and institutional structures (verification systems, archives, paper-based systems and people dedicated to management of such systems) as well as an efficient bureaucratic apparatus—all of this has made a given document more efficient the more it was verifiable and accessible. The consolidation of this set of structures has also meant that some documents (legal ones) have acquired regulatory power and consequently active as well as passive power. Other documents (exemplified by artworks) have passive power (they preserve memory) that only occasionally becomes active.

Legal and testimonial documents have both passive and active power. However, if the active power of the former depends on the set of rules and institutional structure they belong to, testimonial documents do not depend on any institution or set of rules. This means that their active power depends on the cultural context, and on people who are able to turn passive power into active power, but not on a given set of rules (as is the case with legal documents). For this reason, if a Will necessarily leads to the actualization of the dispositions it contains, a work of art does not automatically preserve memory and construct social identity—in order for this to happen it is necessary that people interact with it, interpreting it in the light of their time. No set of rules would make this happen. For the passive power of artworks to become active it is necessary that people interact with them, making use of their creative and interpretative skills.

Therefore, document bureaucracy is not only made up of documents; it is made up of: (1) legal documents; (2) finance; (3) computer technology. To go back to Jonas' world, even there we can see an apparatus of document bureaucracy. It is no coincidence that Jonas' world is set in the future, where technology is supposed to have reached perfection. The idea is that a network-like open archive, accessible, verifiable and compossible, would allow one to transmit and practice the active power of the elders in a perfect, rigorous and proactive way. This is all the more so when sophisticated technologies allow one to achieve two goals: (1) reduce the time of document circulation; and (2) enhance the impact of normativity. In the world of Jonas the will of the elders is transmitted in different ways, which allows it to be always, so to speak, active. A software application controls the morning injection; various cameras, scattered everywhere, monitor people's behaviour and facilitate intervention, and so on.

Ideally, active power must therefore be present everywhere and constantly. This, however, is still not enough. There is another factor critical to the functioning of document bureaucracy: the meta-memory offered by the Web. Unlike what happens in bureaucracies, in which documents extend memory and are kept in efficient archives designed to protect them, the web is characterized by placing, at least virtually, each document in relation with others, or with its semantic content embedded in all other documents. This change, which is radical, affects not only

the performativity of the bureaucratic apparatus, but also the flow and amount of data and information produced by the system.

Recall the definition of power as disposition, with which we began. Power is the ability that someone—or, in the case of document bureaucracies, something—has to determine a goal and induce people who might have an impedimental, or even neutral, attitude to change their intentions so as to contribute to achieving the objective. In document bureaucracy, documents contain *memory* and can produce *actions* thanks to the system of rules to which they refer, while technologies have the effect of increasing both.

Now, just as actions are of different kinds, so memory is not all the same. This will be clear if we consider, once again, Jonas' world. In fact, in it, memory tied to document bureaucracy is preserved, whereas all testimonial documents have been erased. As we have seen, the latter are those preserving the deepest memory of a society, concerning not so much bureaucratic and normative structures but rather ethics and history.

#### **4.3.1.1 Actions**

What actions are produced by document bureaucracy? In general, I believe there are at least two types of action: (1) actions creating documents, (2) actions caused by documents through the set of rules in which the latter exist. Actions creating documents are performed by agents or institutions in positions of power who are able to insert their representations into a normative and institutional framework. If we consider the genesis of a state or a meta-state (that is, the political sphere), it is interesting to focus on the actions that have led to the composition and writing of constitutions and treaties. Be it the monarch giving up some of his power (constitutional charter), or the definition of the normative source of reference of a state (constitution), the actions leading to the drafting of such documents imply a particular process. In the first case, they imply an active transfer of (active) power from a single person (monarch) to a constitutional charter (i.e. a document) and a parliament. In the second case they imply the consensus statement expressed concerning the principles that are recognized as common and that form the perimeter within which the legal frameworks and regulations of the state must be articulated.

To stick to representational democracies, the process of drafting a constitution produces a document expressing a synthesis of very different ways to understand society. This synthesis is of course the result of a mechanism of representation, and emerges from discussions aimed to achieve a certain balance. This process can be interpreted in two ways: the first is that the process of discussion and drafting of the constitution implies an actual transfer of sovereignty; the second is that what happens is rather a specific agreement relative to the definition of values and rights/duties. Either way, it is a fact that the genesis of a constitution requires a form of power—one that allows some people to act representing other people—and produces a document endowed with both active and passive power. It has passive power because it is the result of the synthesis of the wills that produced it, and active power because it generates further documents and, more generally, the exercise of sovereignty of a given community. Simply put, this means that it has the power to determine the limits of freedom and action of that community.

As we have seen, the importance of a document like the constitution of a state is dual. First, the document may be properly understood as a kind of intensifier of individual wills: that is, it expresses a collective vision of the world, one that is more compelling than, say, the same ideas expressed by a single individual. In addition, this document has a potentially unlimited duration, coinciding with the period of existence of the community and the state that expresses it. Finally, it is no coincidence that some constitutions (e.g. the Italian one) are particularly difficult to modify or amend, because the technical procedure requires multiple steps and wide consensus and the whole process takes an enormously long time.

Now, on the one hand, this choice guarantees particular attention will be paid to the procedures of constitutional revision; on the other hand, it implies that the particular document (the Constitution) was written thanks to a kind of intragenerational mandate, which does not provide for a periodical rediscussion of the founding principles or the ways in which to actualize them. This is odd: it may very well be that, in relation to certain matters, cultural changes require the revision of certain principles, so it may very well be that a community at a given time no longer recognizes some or many of its founding principles. When this happens,



the constitution is granted more active power than the communities or individuals belonging to that community. This may perhaps sound paradoxical, but it is so.

This seems to bring back Spinoza's idea that the state (1675–6, Chap. ii, § 2), understood as the sum of individuals, has in itself greater value than the individual. Similar considerations apply of course to the constitution of the state. Even allowing this to be a good argument, it is still subject to the objection of representation: the state and the constitution are interesting objects in metaphysical terms because the actions they perform must ensure not only representation, but also intergenerational representation. They have to both protect different generations living in the same timeframe and actualize decisions taken by a previous generation. Only the state and the document that defines its limits and possibilities, namely the constitution in all its variations, can play a role of this kind. However, in order for the state and the constitution to be also just, it is necessary that these actions be expressions of the intergenerational character of the state. After all, some countries, like the United Kingdom, do not have a written constitution insofar as sovereignty is granted to parliament. In this case the constitution comprises the set of laws and principles enacted by the latter.

Actions that create documents are therefore of two types: those performed by people who have the authority to do so (members of a constituent assembly, the representatives of a parliament, a monarch or a dictator), and those performed by documents. A law can make things happen in a relatively short time, although its effects can be both short- and long-term. For instance, the Italian law granting people the right to retire at age forty or fifty has had consequences both in the short run and the long run. Among the short-term effects one can include a shift of electoral support and the fact that a significant part of the Italian population has acquired a right to a pension at an age when people are at their prime working age. The legitimacy of such right, however, is far from obvious in a transgenerational perspective. The application of that law was one of the causes of the collapse of public finance and the accumulation of a large debt, all of which have led to a substantial revision of the rights of future generations. This is a perfect example of inequity between generations and of substantial destitution of internal justice in a state.

It is worth noting one point in particular: it would be interesting to write, or indeed read, a history of the effects of actions produced by document bureaucracy. This would show the extent to which people's lives are conditioned by heterogeneous factors that are (relatively) distant in time, some of which depend on specific authors, while others are the result of the layering and interaction of documents, rules and regulations that constitute the essence of document bureaucracy. My hypothesis is that, to construct a meta-state (i.e. a set of states joined in a federation) there must be something that acts as social glue in addition to document bureaucracy.

Unlike cases in which states give rise to a federal union—that is, a confederation regulated in some matters by a central power that does not coincide with that of the individual states—in the European Union some matters are jointly managed and regulated by special treaties. In this context, sovereignty remains largely in the possession of national states. This means that all actions taken by the European Union are based on treaties freely adopted by the member countries. A treaty is a binding agreement between the countries of the EU: defining common objectives, it defines the institutions and procedures for the adoption of decisions within the Community and within the member countries. A treaty prevails over national legislation.

Therefore, if (written or unwritten) constitutions define the rights and duties that may be accepted and applied within a state, the treaties of the EU are a kind of meta-constitution common to all member states—the latter obviously cannot be in conflict with any of the constitutions of the nation states, but should tend to favor the process of harmonization of the principles adopted by each country in view of increasingly close synergies. Such a dense and complex document bureaucracy has very important effects. The fact that the EU is a union and not a federation of states and, unlike the United States, is not a meta-state, means that, for example, there are almost no decisions in the fields of foreign politics and defense—matters that are among the main competences of a traditional state or meta-state.

The founding countries of the EU had two main objectives: prevent war and create favorable conditions for trade and economic growth. Despite the fact that such intentions were the most forward-looking, just

and noble ones one could hope for, something in the process of building the European Union has clearly jammed. The EU somewhat resembles Jonas' world: a community united and founded on the basis of its document bureaucracy, but that, at least for the time being, has failed to "activate" the immense heritage constituted by its testimonial memory. Its memory is still marked by conflict, and the EU, at least for the moment, seems unable to form a common identity.

The European case is interesting when compared to two other processes of unification: that of United Kingdom and that of the United States of America. In all three cases, the state of war was decisive. However, the Second World War was fought between European countries, though it later became global, whereas in the case of the UK (Colley 1992: 364 ff.) and the USA there was an element of joining against a common enemy. This means that, while for the USA or the UK the post-bellum process was able to count on the symbolic character of the war as an aggregating factor to form a new political entity, no such thing happened in the case of the European Union. In the EU, in fact, the recent memory was made of very deep lacerations and millions of deaths. This was the reason why the European Union was formed fully resting on document bureaucracy, without actually becoming a meta-state as I have defined it above.

During the Civil War (1861–1865), the USA also underwent a very harsh conflict with serious internal lacerations, but the country had formed as a result of another great war: the War of Independence (1775–1783). In that conflict, the thirteen North American colonies that would become the United States of America, opposed the kingdom of Great Britain, which made it a conflict of liberation and of formation of a supra-state entity. The war cemented the federation which, in fact, was able to survive the civil war that followed: retaining the name, the states of the Union showed they wanted to have institutional continuity with the political entity formed by the War of Independence.

Europe can count on its long-term memory, or on the art and culture that has been produced over the centuries in the territories that today make it up; nevertheless, at the time of the formation of the Union, it could not count on its short-term memory: that, after the Second World War, had to be sterilized. The type of memory that is necessary to document bureaucracy to establish itself and work is not the same as

that necessary to a state so that its citizens can identify with it. As we have seen, testimonial memory deposited in documents must be actualized if we do not want it to remain a mere semantic and mnemonic trace. If this fails to happen—that is, if the bureaucratic structure is the sole foundation of a state—there is a good chance that such a state will not recognize itself as one, with subsequent problems in terms of social identity and justice.

#### 4.3.1.2 Memory

So let us focus on the memory of document bureaucracy: what is it and how is it structured? In general, the memory that allows bureaucracy to operate efficiently is based on the accumulation of data and information. The information must be vast, preferably infinite, and cover the most diverse fields of the life of people who have, or may have, some connection with the bureaucracy. Finally, the information must be able to be linked to other data so as to provide other information. All sensitive information that is routinely collected and concerns the personal or public life of each individual does not only *interest* the sphere of document bureaucracy, but *feeds* the bureaucracy itself—a check to buy a car is a document that has a certain relevance to the IRS. In other words, that check—depending on whether it is covered or not, the amount it corresponds to, it covers the full amount or only the first payment, etc.—helps draw the economic and tax profile of the person who signs it.

However, that check also tells us something about the customer's private life: it tells us what they can or cannot afford, as well as what they like—which helps determine their profile as a *Homo oeconomicus*. Ultimately, being aware of the economic possibilities, tastes, sexual orientation of a person  $x$ , will allow us not only to predict their behavior and thus to control them better, but also to profit from their lifestyle and to build, imagine, and develop products that meet their needs. A better knowledge of Mr. X—that is, an updated and comprehensive document bureaucracy on him—makes it possible to meet his needs, foresee some of his actions and, ultimately, make a profit. Furthermore, knowing, say, how Mr. X commutes, where he usually goes on holiday or how he

spends his spare time is obviously very useful also in that it contributes to classifying characters and behaviors as part of a process of deciphering trends and drafting strategies.

Document bureaucracy needs much raw memory made up of data related to other data so as to produce further information and so forth, *ad infinitum*. By raw memory I mean a carrier of information that is treated as neutral: potential ethical or emotional connotations are generally not exploited in any way. Technology has significantly enhanced the performativity of document bureaucracy: if it is true that the Web and the Internet are a gigantic archive<sup>4</sup> with an extraordinary capacity for increase and calculation, it is easy to understand how the Internet has evolved in parallel to document bureaucracy and its power. Such evolution is related to the tools provided by modern technology: personal computers have enabled the apotheosis of the World Wide Web (WWW). Subsequently, smartphones—connected to the Internet and GPS—have turned the enormous archive of the Web into a sort of autonomous entity that preserves all of our data (bank details, flights, private information on social media) and produces new data and information on its own.

In this light, it is no coincidence that there should be talk of virtual reality: the WWW is a parallel reality that duplicates our ordinary world—a digital train ticket is, to all intents and purposes, the old paper train ticket in a different format, and this holds true for a huge number of other documents. Sometimes, the WWW reality is even the only reality available: the objects that make it up only exist in the virtual form. Take social networks: there is no such thing outside the Internet, and there is no equivalent in our ordinary reality. They allow people to contact each other in completely new ways, defying boundaries of distance in time and space. In this sense, the recent migration crisis should come as no surprise: the dynamics of the WWW are dynamics of acceleration in which traditional space and time take on a greatly contracted and accelerated shape. The WWW, in other words, is a prime candidate to express the deep sense of globalization.

The relationship between ordinary reality and the WWW is complex and articulated. It is a relationship that takes many forms:

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<sup>4</sup>Ferraris (2009) and (2015).

1. *Reproduction of what exists in ordinary reality*, which finds in the WWW a powerful storage space. This book, for example, exists both in digital format and in paper format and is stored on the Web platform of a library or a seller. Had it been written fifty years ago it would have been handwritten, then it would have been keyed letter by letter by a skilled compositor, then printed in a specific number of copies. The ebook version of my manuscript is a new exemplification of the paper book. This version has properties that are associated with digital objects. For example, it can be integrated in a particular environment that has the features of multimediality. To take another example: the train ticket that exists as a QR code on my smartphone is a new example of the ticket that I could buy at the station ticket office or that I could print on paper after buying it online. The information contained in that ticket can be used thanks to a piece of software that will alert me that I must take a train within a certain period of time, or of the fact that my train is delayed. In case I am planning a more complex trip, the same virtual environment that contains my ticket will also suggest the best way to get to the airport and possibly the best metro route to get to the city center.
2. *Representation of ordinary reality*. This happens, for example, through virtual maps, the most advanced of which have two functions: the actual scale representation of the real world and a three-dimensional view that allows for a mimetic rather than merely representative view of it.
3. *Narration of reality*. This happens thanks not only to the digital version of traditional media, but also to the various forms of social media that allow for a huge flow of personal information.
4. Finally, the relationship between reality and the WWW may be classically *instrumental*, as in all cases in which the WWW is used in functional terms, typically to do something: a bank transaction, a purchase, watch a movie, listen to music etc.

There is one other type of relationship between ordinary reality and the WWW—one that is possibly the most interesting. There is a systematic and very dense exchange of data going on in the WWW, which in turn produces new data. The massive production of data is also guaranteed by the massive collection of data of all kinds through personal

computers and, in a capillary way, through smartphones (which also provide the traceability of what has been collected). To sum up, we can say that document bureaucracy depends and focuses on the ability to collect, manage and analyze new data, which allows for the creation of new data. If such data is appropriately elaborated, the possibility of getting new information entails the availability of new knowledge. Such procedures intentionally avoid characterizing data in emotional terms, as they are limited to producing materials from which to extract information and possibly knowledge. The result is an icy world very comparable to the world of Jonas.

### **4.3.2 Identity**

Document bureaucracy fails to provide something essential: identity. It is possible that in a society where document bureaucracy works well, many things work well too. It is possible that the procedures that regulate social behavior are very good, that access to and exchange of information is also good, and that normativity—i.e. the rules that determine the partition between what is correct and what is not—are clear and effective. And yet a society thus structured lacks something very important. That is why I claim that the EU resembles Jonas' world—document bureaucracy being very strong; the sense of identity and deep memory being non-existent. In Jonas' world, the identity memory of the community was willingly erased. But what forms that identity? According to the elders, it is art and emotions.

There is a special and deep link between art and emotions, as the former often goes hand in hand with the latter—emotion being the expected response to the meaning embodied in an artwork. Artworks and emotions are to identity what documents are to document bureaucracy: without documents and data there would be no document bureaucracy; without artworks and emotions collective and individual identity would be poor and imperfect. In other words, artworks and emotions are a necessary condition for that type of identity to exist. Personal identity would not be complete without the emotional connotation that accompanies consciousness; collective identity would not exist without the testimonial

memory of the arts. My view is that the metaphysical structure of a state, which is transgenerational, has as one of its conditions the testimonial memory deposited in the arts.

As perfect as it may seem, Jonas' world is alienated. However, sometimes reality goes beyond fiction, as the EU shows. Just as in Jonas' world, it is implausible that Europe will survive without its transgenerational and historic memory. As I have said, the reason why the founding legislators chose not to place memory at the center of their project is that such memory was very painful after the Second World War. Hence, the choice to focus on document bureaucracy and normativity. However, today it is clear that memory—albeit painful—must be dealt with and preserved so as to build a common identity.

A great part of the transgenerational memory constituting that identity lies in art. If history allows us to trace the narrative thread leading to our present, art embodies concepts, ideas, and visions of the world that make up a people's identity and make it possible for a community or a state to leave that memory to generations to come. Art is therefore the complementary element of bureaucratic documentality; it is what carries the memory that a state needs to actually be a community and that allows different states to join, or even to federate, so as to form a new entity.

#### 4.3.2.1 The Memory of Art

What is it about the memory of art that escapes document bureaucracy? I will try to answer this question in the pages to follow, keeping in mind that this is the kind of memory that states and meta-states need to exist in time in a complete and functional way. And yet Plato, in his *Republic*, claims that the ruler of a state should exclude all arts apart from music—in other words, Plato seems to agree with the elders of Jonas' world. The reasons that led him to argue in favor of the exclusion of the arts are known: the arts do not require any wisdom, apart from the ability to mimic something that already exists in the world. Generals know how to lead armies in a battle, while painters or rhetoricians are “only” able to describe real or imaginary battles.



In fact, Plato's arguments raise the suspicion that the philosopher misled his readers, just as the elders deceived the inhabitants of Jonas' world, hiding the real reason for a ban so severe. One is tempted to think that Plato had very similar intentions to the elders in Jonas' world: to protect civil society from the disruptive potential that is characteristic of the arts, considering them a threat to the values that a good *paideia* is supposed to teach young people. So Plato recognizes the centrality of art, but he strongly emphasizes its destabilizing and therefore negative power. My aim is to argue for the opposite thesis. In order to do so I must take a step back and look at why art has always been considered so important.

At least intuitively, this issue was addressed in the late sixteenth and early seventeenth centuries, when individuals and institutions began to design museums that housed collections of works of art. Why build museums? I will not dwell on the history of museums, which is very interesting and significant and is usually taken to coincide with collectionism.<sup>5</sup> Rather, I am interested in understanding what reasons led to the birth of museums beyond simple collectionism or the will to protect precious goods. To answer this question I will have to address briefly the metaphysical question of art: what is an artwork? Why do we care to protect it, preserve it, spend money on it, defend it with expensive security systems and so on? The truth is that, paradoxically, an artwork is often granted more rights than a human being. Why is that? This question gets even trickier when we consider contemporary art, in which sometimes the work is hardly distinguishable from an ordinary object. There seems to be a deeper need at stake, something that goes beyond collectionism. So what are artworks?

Essentially, *artworks are meanings embodied in a medium*.<sup>6</sup> They are insights, ideas, visions of what surrounds the artist, ways of interpreting reality that are distilled with respect to the many narratives that the outside world gives of itself. In this way, meanings are preserved from the passage of time. *Thus, embodied meaning becomes relevant* as we manage to save it from oblivion. Note one point: the importance of the work depends not only on the meaning, but also (greatly) on the ways in which

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<sup>5</sup> Cf. Findlen (2001: 4–31).

<sup>6</sup> I have further developed these points in Andina (2012).

its incorporation takes place. In other words, that the work is what it is, is determined by the ways in which it says what it says.

Artworks retain and convey what someone has sensed, perceived or seen at a given time of their personal history, which continuously interweaves with social and public history. Therefore, artworks are individual intuitions for which the artist has created a body. Due to general taste, the audience's reaction, and the consensus of the art world in general, an artwork is chosen as significant and paradigmatic of the time in which it was produced. For this reason, preserving an artwork from oblivion means saving at least part of what we are, or used to be. The embodiment of meaning, however, is never conclusive, at least not for what concerns the interpretation of the work—quite the contrary, since the artwork is constantly open to relations with those who interpret it.

More precisely, the artwork constitutes active memory: something whose content triggers a new experience. To use an expression borrowed from Umberto Eco in *The Open Work*: works of art provide us with images of the world “that work as *epistemological metaphors*” (Eco, 1962/1967<sup>3</sup>, p. 3). Artists put into the work what they feel, within all three dimensions of temporality: the present, from which the work emerges; the past, of which it collects the tradition (whether to confirm or to deconstruct it); and the future, to which remains constantly linked by way of the readings of the work that will appear in the course of time. Eco rightly notes that artworks have a dual semantic level: they are epistemological metaphors (that is, they say something about something through representation) and they are media (they say something through the way in which they are made).

art, as structuring of forms, has its own ways of talking about the world and man; it may happen that a work of art makes statements about the world through its topic—as in the subject of a novel or a poem—but first of all, as form, art makes statements about how it is structured, showing the historical and personal trends that have led to it and the implicit worldview manifested by a certain form. [...] Mantegna's altarpiece of San Zeno has the same subject as many medieval depictions and “says” outwardly the same things; but it belongs to Renaissance for its new building modules, for the earthliness of its forms and the cultured taste of its archeology; the

sense of matter, weight, volume. The first discourse of a work comes from the way in which it is made. (Eco 1962/1967<sup>3</sup>, p. 6)

The two semantic levels are obviously different. The first (the one where the work says something relative to the outside world) gives an account of the intuition of the artist, as part of the historical and cultural dimension where he or she works and lives. The synthesis of the two elements (the personal and the cultural–social) means that in the work there is not only the imaginative vision of a single person—the artist—but a more complex meaning that emerges from a historical moment. However—and this is the second semantic level—the way the artist chooses to structure the medium is also highly significant. It is a less direct and explicit signification than the first, but if we know how to read it, it tells us many things not only in relation to the work, but also to the threads that bind the work to the world in which it was produced and the ways in which that world is linked to the past.

Take one of the key artists of the twentieth century: Andy Warhol. He had a great intuition: traditional forms of art were inadequate to express the meaning of his time. His idea was that a common chair had much more to say about its world than a traditional painting. So he started drawing works resembling ordinary objects: the outcome was the creation of extraordinary objects that took a while to be recognized as artworks. In fact, those works signify their time precisely because of the way in which they were made and not only because of their meaning. *Brillo Box* (1964) or *Campbell's Soup Can* (1962), two of Warhol's most famous works, are respectively a plywood box very similar to the packaging used to market the Brillo soapy scouring pads, and a reproduction of the cans used to sell Campbell soups. *Brillo* is a sculpture, while *Campbell's Soup Can* is made up of 32 paintings on canvas that, by the way they are designed and arranged—32 representations of the same object, the only change being a particular of the label, which identifies the type of soup depicted—make one think of a supermarket shelf rather than an artwork.

The depiction of food is a recurring element in art history: it began as early as Roman times with a decorative or symbolic function. There are countless still lifes, depictions of banquets and tables laden with diverse types of food. In fact, given its absolutely primary function in people's

lives, food has often been conceived as a link between the human and the supernatural realm. Food is what makes life possible—therefore it is central to representations of life. *Peasant Wedding* (1568) by Pieter Bruegel and *Last Supper* by Tintoretto (1592–1594), to take two well-known examples, both represent convivial scenes revolving around food: one is profane, while the other retains a highly symbolic dimension. Food also plays an important role in Jesus' farewell to his disciples: in the *Last Supper* he is pictured as he breaks bread and hands it to one of his disciples. So, food is used to tell the intersecting stories and relationships between the human and the divine, or—as in Annibale Carracci's *The Beaneater* (1583–1584)—just to tell of an important moment in everyday life.

Andy Warhol also speaks of food—in his *Campbell's Soup Can*, in fact, food is the absolute protagonist of the work. And yet the type of food Warhol refers to—a canned soup—is far from traditional. It is highly processed and industrialized, eaten very quickly, without the usual rites associated with meals. People often eat that type of food for lack of alternatives. Now, Warhol chooses to describe and celebrate this type of food. Mass industrial production—he seems to say—works very well, even when it comes to food. If there is anything that characterizes globalization, it is the industrial mass production of food. The message is that Campbell soups are for all—no matter if they are good, healthy or nutritious. Warhol's work insists on this point: industrial production is for the masses, accessible to all for little money. *Brillo Box* and *Campbell's Soup Can* do not theorize serial production, nor do they describe it: they simply show it. This way, they allow people to stop and think about it—what it is, how it works, and how it has affected human life.

Art is no replacement for science, understood in every possible articulation and declination, including philosophy. It does not produce objective and systematic knowledge of reality, but rather an intuition that the artist expresses following their own logic. This intuition is articulated through a semantic basic structure that receives a particular identity, as well as from the medium of the work, from a series of interactions on which it structurally depends. First of all the interaction with the public, which applies to all forms of art, and then the interaction with art history or literature, music, film or photography. Obviously, art differs from history

because the two semantic levels of which the work is made are correlated in a free and imaginative way rather than by means of a rigid consequentiality distinguished by a specific method. In other words, Warhol does not demonstrate that industrial mass production is something good or bad as such, nor does he address its effects. He rather takes it as a distinctive trait of his age: he delivers it to our memory as something that helps us build our deepest social identity.

Now let me move on to another example. *The World of Matter* is the name of a collective of artists united by the idea that, in order to understand some crucial events of our present, it is necessary to find a new representation—a new way to look at the world. Their aim is to provide alternative representations of the world, questioning the usual ones promoted by mass culture. This is the direction followed by Ursula Biemann, a Swiss artist who tries to render through her lens both the psychological and social dynamics of migration (*Sahara Chronicle*) and the trans-generational effects of phenomena such as the exploitation of natural resources and climate change (*Deep Weather*). Biemann deals with video art and, more precisely, with what she calls “video essays”. She seems to be convinced of the need to combine imagination and epistemology in her work to the point of comparing her production (video) to a category that normally does not refer to art genres but rather to scientific works (essay). For instance, *Deep Weather* (2013, video 9 minutes) is a video essay, which is different from a video story. The aim is not simply to record facts—which typically happens with news reports—but to offer a worldview related to the facts recorded.

Another interesting point concerns the use of the emotional element, which is generally very much present in art and which we would expect to be present, even more significantly, in works such as those by Biemann, as they address issues with a high social relevance. Yet, the artist decides to make her work unemotional: if the mass media tend to underline the emotional aspect of these issues through a violent use of images, Biemann rather presents the *problem* in eminently critical and objective terms. Once again the dual character of the semantic level is evident: on the one hand there is the factual narration of the migration phenomena of the early 2000s, on the other hand there is the choice to narrate such a tragic event with the same coldness as a logical argument. The artwork does not

argue in favor of or against a specific point: it merely shows what happens, presenting a series of facts and tales. By so doing, it also contributes to the creation of our common memory and identity.

I conclude by considering another example, which I have used elsewhere (2012: 199 ff.). In 2010 Christian Marclay made a film that in my opinion, philosophically speaking, can be considered a masterpiece: *The Clock*. The film lasts 24 hours and rests on three fundamental elements: collective film memory, the director's own memory and preferences in terms of cinema, and the opaqueness of the concept of time. The protagonists of the film are therefore time, cinema on time and the memory of the audience. Time is tracked and measured obsessively: second by second, the time of the film coincides with that of the audience's real life. Time goes by, is measured and spoken of throughout the whole film. It is measured not only by clocks that capture its rhythm, but also by the memory expressed by Marclay's excerpts, contextualizing them and experiencing the irony of scenes that belong to a black and white past which then move on to telling the story of life in Technicolor.

Across time, very challenging questions are dealt with, some of which, after having been brought up in one scene, are answered in a different one, almost in a new temporal dimension. Marclay's artistic-narrative device works so well because, besides being technically impeccable, it resorts to a cultural memory common to all cinema lovers. Such an identity memory is the basis for a cultural history and a common point of reference for all people who have seen and loved the films referred to in Marclay's work.

Now, to go back to my starting point, how is all this related to the issue of identity? Art, I argue, is what emerges from factual history thanks to the sensitivity and skill of the artists, who choose what should be preserved from oblivion. In this sense, it is clear why Jonas' world couldn't survive without a deep connection to art—both past and future. Identity is given by memory that grasps and gathers what it makes sense to remember in a world too focused on the present.

A reflection that goes in this direction is that made by Peter Goodrich in *Legal Emblem and the Art of Law*. It is not my task to analyze Goodrich's thesis from a legal perspective; rather, I'm interested in how he insists on the importance of art images (especially emblems, that is, traditionally

“minor” art objects) for the historical reconstruction of juridical tradition and, in a broader sense, of our cultural memory (Goodrich 2014: preface). One of Goodrich’s arguments is that emblems are important insofar as they give substance—a material body—to the universal and abstract concept of law. In other words, to explain what law or justice are by means of argumentation, we must commit to complex analyses, focusing on the laws of logical arguments and dwelling in an entirely abstract realm.

On the other hand, the emblem is “a manner of inserting something, a law, a norm, a moral, into the interior of the subject”. The earliest definitions we have of emblem refer to it as “something sown, ingrafted, and planted in the interior of something else, a vase, a floor, a wall, and by expansion a person” (Ibid.: xvii). For the authors of emblems, images were active agents: theoretical equipment useful for memory and reflection. Not all emblems are works of art because not all emblems have the dual semantic structure of which I have spoken above. However, just like works of art, they are special memory receptors—in this case, they grasp the memory that relates to the legal tradition.

This type of memory that finds its privileged place in the arts is very different from the memory based on accumulation that is typical of document bureaucracy: it preserves the features of our practices, our social relations, our values and ethical codes as we have expressed them throughout history. Rather than producing new information finalized to the production of new data, all of this helps outline what a community or a state truly is. In other words, it is essential for a community to understand its own identity and act accordingly. Transgenerational memory is a necessary condition for a state to be just. That is, if a state wants to be able to act respecting the rights of different generations and lifeforms, transgenerational memory is a necessary condition—albeit not a sufficient one.

So, once again: why do we grant art so much value? For the same reason why Plato discards it: in many cases, the memory of art is accompanied by an emotional connotation that makes it much more powerful than any other means to convey memory. Therefore, the only possible social justice—one that does not merely consider people existing here and now, but that also takes into account generations

to come—needs a social world based on a wide and shared cultural identity.

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