Facing the Inevitable?

The Dynamics of Impasse in Collective Contexts

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July 16, 2010

Abstract

This contribution aims at showing some of the advantages of taking a novel, broad and systemic view on constitutive rules based on a *failure oriented analysis*, relying on the notion of impasse.

Basically, impasses can descend by two main kinds of causes: either a mismatch between rules (how things should be done) and facts (how things are actually done), or an internal contradiction among rules. Given the definitional character of constitutive rules, one could say that they set a new "logical space" for action, and that impasses (both mismatches and internal contradictions) push the action out of such space, thus threatening the identity of the regulated interaction and coordination.

It is fairly clear that constitutive impasses may endanger the life of an institution, on the other hand, in a lot of other situations similar issues can arise in systems of constitutive rules that are not fatal to them. The main claim here is that, in order to understand such situations, an analysis of the dynamic evolution of impasses from definitional to institutional, in social settings is necessary. What the proposed analysis will show is a stepwise process towards the "institutionalization" of the impasse.

Both definitional and institutional impasses can be said to be *ontological*, though each in a different sense. What makes definitional impasse ontological are the rules of the institution, while what

makes institutional impasse real and unavoidable is a mechanism of social recognition.

While definitional impasse can be overcome without changing the rules, with institutional impasse agents necessarily face two alternative possibilities: either the death of the institution, in case it is not possible to find a meaningful coordination; or the change of the rules of the institution, in order to preserve its very identity.

1 Introduction

> [...] we lay down rules, a technique, for playing a game, and that then, when we follow the rules, things don't turn out as we had assumed. So that we are, as it were, entangled in our own rules.
>
> This entanglement in our rules is what we want to understand: that is, to survey.
>
> It throws light on our concept of meaning something. For in those cases, things turn out otherwise than we had meant, foreseen. That is just what we say when, for example, a contradiction appears: "That's not the way I meant it."
>
> The civic status of a contradiction, or its status in civic life – that is the philosophical problem (Wittgenstein, 1953, sect. 125)

We often face critical situations in our institutional activities. Despite this obvious consideration, there is not that much literature on social ontology devoted to this topic. In this paper we want to analyze how social institutions face failures of various kinds and, by relying on the notion of impasse, we want to show how they dynamically react to impasses and how these reactions are often at the basis of their changes and their survival.

Intuitively, an impasse is a situation that involves at least two agents and some system of rules in some way accepted (in an implicit or an explicit manner) by them. Impasses threaten the system itself. But we always live, as we shall see, with situations that are harmful for the rules that we follow. Instead of being completely deadlocked by these situations, we usually still keep on interacting in the regulated system we are in. If, from a very abstract point of view, a final deadlock may seem inevitable, this is not actually what happens in most situations.

To put the matter more explicitly, while impasses and critical situations seem to be an unavoidable constant in games and institutions and it looks like all regulated systems end up by being fallacious, what we will try to show is that – rather – impasses tend to activate complex social processes that go from definitional to institutional level and that allow the system to react and in many cases adapt to the critical situation in order to survive. Whence the question mark at the end of the title: maybe to face a deadlock is inevitable, but to end up in one of them is not.

So, in order to understand how this recovery is possible from impasses, we need to adopt a dynamic perspective of these phenomena. Beside this, such a perspective can help in giving a new unifying view on (apparently) quite different notions such as rule-breaking, cheating and rules-entanglement (in the Wittgensteinian sense quoted above), that will be used as guiding examples.

Furthermore, by moving from an analysis of social reality that takes as central the constitutive dimension, we want to also account for "obscure", "problematic", or "dialectic" aspects of such reality, something that has been remarked as lacking from such a fundamental account like that of Searle[1].

Balzer (2002), for instance, claims that "the account provides a too harmonious and thoroughly positive view of, and approach to, social institutions".

Recently, Searle himself recognized the existence of this problem, and remarked that his position, for instance on the issue of social acceptance, is actually more neutral than the one appeared in Searle (1995). In Searle (2010) he underlies that it is necessary to speak of, rather than social acceptance, "collective recognition or acceptance":

> In earlier writings I just used the notion of acceptance but to many people that implied some degree of approval, and I don't want to imply that. One can recognize and act within institutions even in cases where one thinks the institution is a bad thing. [...]"collective recognition or acceptance"[...] marks a continuum that goes all the way from enthusiastic endorsement to just going along with the structure. (Searle, 2010, p. 57)

Although this effort of positioning his thought outside a reconciling and harmonious vision, he never assumes a strong standpoint on the most critical aspects of institutionality or social reality in general.

[1]Searle (1995).

Hence, what here interests us more is not, strictly speaking, an exegesis of the Wittgensteinian text or its collocation in a research program in the philosophy of mathematics or of linguistic games (as other commentators, like Lugg (2000) and Baker and Hacker (2005) already did), but rather we want to follow the direction it points to and thus build an analytical instrument that will allow to understand the centrality of failure in regulated system and the interplay between definitional and institutional levels.

One of the results of the application of such an instrument will be the recognition of the complexity of social reality, a realm in which the relationship between epistemology and ontology is much more complex and much less sharply defined than one would expect it to be.

2 Impasses and critical situations

Let us start our analysis by providing a very rough definition of impasse based on intuition: an impasse is an undesired situation which goes against the rules, that agents who follow the rules may end up in.

Already in Bottazzi and Ferrario (2009) we noticed that the rules impasses are especially concerned with are constitutive rules. Constitutive rules, according to the characterization provided by Searle (1969) and, more specifically Searle (1995), are those rules that create new kinds of behaviors, as opposed to regulative rules, whose aim is that of regulating already existing behaviors. While regulative rules are formulated like explicit obligations or prohibitions, constitutive rules take a particular form, which Searle named "count as locution": X counts as Y in context C. A famous Searle's example is money: the bills (X) printed at the mint count as money (Y) in a certain State (C).

As we have already pointed out and will try to explain in a more detailed way in the following, such situations do not necessarily generate states of permanent deadlock and do not necessarily determine the end of the institutional activity they apply to, but rather activate a process comprised of various phases, that can be realized all or just in part, and this will be the main focus of the paper.

Another important distinction that will become useful later on in the analysis is that, firstly presented in Bottazzi (2010), between *nomic* and *anti-nomic* impasse.

Nomic impasse. The use of the adjective *nomic* (from the Greek $\nu\mu o\varsigma$, "law") emphasizes the aspect of following a rule[2]. This kind of impasse

[2]We won't enter here in the debate on what it means to follow a rule and on the

occurs even in cases where rules of a certain institution are perfectly followed. It is thus due to a lack in the design of the rules; there is an "internal" incoherence such that, even in a perfect execution of institutional activities in accordance with the rules, the result would nevertheless be an impasse situation. The impasse is, in such a case, *definitionally* necessary.

Anti-nomic impasse. *Anti-nomic* (from the Greek, $\alpha\nu\tau$, "against" and $\nu\mu o\varsigma$, "law") is used to render the intuition of going against a rule. It has nothing to do with the Kantian category of antinomy as expressed in the *Critique*. It can be due to a bad execution of the regulated activities or to an execution that goes against the rules of the institution. The lack at its basis is of a different kind: it is a lack of capability of foreseeing all the possible ways the agents have at their disposal to go against the rules. In this sense we could say that it is the result of an "external" incoherence.

In order to illustrate our proposal of analysis of the dynamics of impasse, we will let it emerge from the observation of three particular phenomena exemplifying impasse, namely rule-breaking, cheating and rule-entanglement.

2.1 Rule-breaking

If we go back to the distinction, introduced by Searle, between regulative and constitutive rules, we can see that breaking a rule of the former kind has different consequences than breaking a rule of the latter kind.

Usually, when an agent breaks a regulative rule, she is sanctioned and the right functioning of the system is restored; sometimes rules are violated in the attempt of obtaining a better result in the activity being performed (like when driving too fast); sometimes, especially in competitive games[3], agents are forced to break rules by their opponents who take advantage from the other being sanctioned. Sometimes agents break rules because being incapable of following them (like beginners in sports or in driving), or for ignorance of the rule. Other times rules are strategically broken, like when a soccer player interrupts the other team's action by throwing the ball out or someone who breaks a law that she deems unfair to protest.

different ways a rule may be followed. For both points there is a wide literature, we will only quote the recent work by Amedeo Conte – Conte (2004) – as it was the direct inspiration of the use of the term in this context.

[3]We will insist a lot with examples on games, rather than on institutions, as they are simpler and conceivable without many links to complex networks of institutions, as is the case with phenomena as marriages, bets and buyng-and-selling transactions. Where possible, we will try nonetheless to connect the examples to institutions as well.

In all these cases, the system of rules already anticipates the possibility of the violation and the connected sanction, so the impact of violations of this sort on the overall system has a controlled effect.

Breaking a constitutive rule has different consequences, as it implies going outside the logical space of the considered activity; for instance, moving a pawn of three positions is not playing chess badly, it is not playing chess at all[4]. As well explained by Frank Hindrinks, constitutive rules establish kinds of behaviors that come into existence exactly because we accept the definitions that specify them[5]. In this example, the sense of playing chess is given by constitutive rules, which define, for each piece, the space of possible moves. In order to understand what a pawn is in the game of chess we have to look at its constitutive rules: a pawn is something that can move this way or this other, that can eat pieces in this way or this other, etc.

When we decide to play chess, it is, in a way, as if we make an agreement, as in Searle's examples of making the hollandaise sauce[6], of pushing a broken car together or dancing together[7]. In a stronger sense, we could say that "omitting to do something which one has formally acknowledged as required of one is rather like contradicting oneself"[8].

Nonetheless, we keep the contrasting intuition that even when we are not completely following the rules of chess, we are anyway playing chess[9], as happens with cheating, that we will analyze more deeply in the next subsection, but use here as an action including the breaking of a rule. Sean Quinn quotes an interesting passage taken from a paper by Alf Ross. Ross is certainly a supporter of the idea that breaking a constitutive rule means going outside the logical space of the institution it is a rule of and thus of the fact that, strictly speaking, constitutive rules cannot be violated. Here is what Ross says with respect to the problem of cheating:

> A player may of course cheat by making an irregular move. But in that case what is going on is not, strictly speaking, chess. Cheating in chess requires passing off, undetected, an action, as chess that is not really so[10].

[4]Bottazzi and Ferrario (2009).

[5]Hindrinks (2009).

[6]Searle (1990).

[7]Searle (2010): pp. 52-54.

[8]Cameron (1972): p. 319.

[9]"Constitutive rules do not lay down necessary conditions for performing the constituted act. When one breaks a rule of a game, one does not thereby cease to be playing that game." Williamson (2000): p. 240.

[10]Ross (1968): p. 54.

But there are cases in which actions of rule-breaking are located within a certain institution, though being in overt contrast with it:

> I think that we should allow that (at least) some people who cheats in games are nevertheless playing the game. Otherwise whenever we say of a person that he plays but cheats every chance we get, we are contradicting ourselves (unless what we mean is that he is playing whenever he is ostensibly playing and not cheating)[11].

A similar situation occurs when we deal with particularly distracted players, who accidentally move a piece of chess to a location in which, *by definition*, that piece should not go (Quinn calls this "the argument from ineptitude").

In any case, it looks as if there are a number of activities that survive the violation of constitutive rules:

> In a competitive intellectual skill game such as chess, in which all moves are clearly defined in the rules, violations are easy to detect and the game can be fully restored to the situation which existed before the violation took place. However, in less rigidly defined sporting games in which bodily movement skills play a crucial part, the situation is more complicated. Lack of skill and/or unsuccessful movements can lead to a variety of rule violations and in most instances the situation before the rule violation cannot be fully restored. In fact, in intensive contact sports, for instance in most ball games, rule violations seem almost unavoidable. Hence, there is a need in sport for a differentiation of rule violations and of the sanctions that follow those violations[12].

We are thus faced with a dilemma: if constitutive rules create the meaning of an institution, how come that many institutions survive even though experiencing violations of their constitutive rules? More than trying to "reconcile" this dilemma, we will try to accurately describe it, as we believe it displays a peculiar feature of social reality.

Let's start with an example. Imagine a bicycle race in which the participants are Ada, Beatrice, Carla and Diana and the winner is Ada. The day before the race Ada has taken some nandrolone, a substance which has

[11] Quinn (1975): p. 78.
[12] Loland (2005): p13.

been classed as doping by the Federation. Even if the day of Ada's victory she was the only one knowing that she had taken it and even if Ada didn't know that nandrolone was classed as doping, we could nonetheless say that the race is invalid, as doping has "disrupted" its meaning.

This fact is *ontologically* and *by definition* true, i.e. it is true independently on what agents involved in the game may suppose. Once that the rules of the game have been established, *those* rules assign *that* status *independently* on what the involved agents think[13]. If the agents believe, suppose or assume that the race has been correctly run, we can say that, on the day of the victory, this is *epistemically* valid but *ontologically* invalid.

Let's go on imagining that the following day an anti-doping test is performed on the athletes, Ada results positive to the test and is thus disqualified by the Federation. The change in the epistemic state of the Federation, from having a false belief on the world to having a true one, has changed the *ontological* status of the game itself: the race is now valid (there is a new winner, suppose Beatrice), disregarding the beliefs of the involved individuals.

The game has not been stuck in a true and genuine impasse, at most in a temporary one: it is true that at a certain point the game had lost its sense, but it is also true that, once the correctness conditions have been restored, through the recognition of Ada's doping as a violation, the game has re-acquired its sense also ontologically. One could anyway claim that there has been an effective impasse, as the game, strictly intended, before the doping's episode was discovered, was not valid and so, in a sense, didn't exist, i.e. it didn't ontologically exist as *that* game. The issue here is that in social reality the epistemic states are much more meaningful than what could appear at first sight. This is especially true in cases as this: if all believe that the game is valid, the game – even partially, even if only in a certain sense – *is* valid.

The reconstruction of the various stages in the bicycle race episode leads us to see that there are two senses in which we can call an impasse "*ontological*". At first we have an *ontological*, definitional dimension, dependent on the design of the rules; this, in its turn, can be transformed in an *epistemic* dimension, of cognitive recognition and then be accepted, institutionally recognized and this latter stage is *ontological* in another sense. It seems that *ontological* impasse in the first sense – unless it becomes in some way epistemic, known – cannot influence the game in a significant

[13]This, obviously, holds if a certain notion of parity is *constitutive* of the sense of the game itself. In these cases we could say, with Conte (1983), that deviating, going further or *against* a system of this sort — that we have characterized as an *anti-nomic* situation — is a deviation from reality itself.

manner. We believe the reason of this lies in the very nature of social reality, where the institutional dimension, mediated by mutual beliefs and common knowledge, makes real and existing only what is collectively accepted as existing.

In the case of rule-breaking, precise mechanisms of detection are always in place; even though in many cases there are specific figures (like referees in games or policemen for civil laws), in principle these are not necessary and in fact there are many examples of games where players referee the match directly while playing it. This is because when a violation of a controlled activity is detected, that damages one or more of the players and benefits another, the violation is "invoked" by the damaged players in their own interest, but could also be invoked to protect the logic of the match (or of the institutional activity) or the very aim of the game, thus bringing it into a deadlock[14].

2.2 Cheating

The second kind of critical situation we want to analyze is that of cheating. A very interesting account of cheating has been given in Green (2004).

His definition of cheating goes as follows:

> Under my account, in order for us to say that X has cheated, X must (1) violate a fair and fairly enforced rule, (2) with the intent to obtain an advantage over a party with whom she is in a cooperative, rule-bound relationship[15].

Further on Green seems to claim that cheating has mainly to do with regulative rules rather than with constitutive rules; at p.150 he says: "Cheating can involve the violation of either constitutive or regulative rules, although it seems more likely to involve the latter." Let's see through an example why we think this is not the case.

Ada and Beatrice are playing chess; at a certain point Ada loses sight of the chessboard – something falls on the floor and she tries to recover it.

[14]We already considered in Bottazzi and Ferrario (2009) the distinction between players' goals and the game's aim both with respect to games and to the more interesting case of institutions, where most of the times the personal interests of the participants are not in line with the aim of having a fair and correct execution of institutional activities. We won't deepen this analysis in the present work, but it is important to keep in mind that what the participants to an institution agree on, at least formally, is the aim of the institution and thus the rules that should be conceived as suitable means to reach it.

[15]Green (2004): p: 144.

Let's suppose it is Beatrice's turn and, while Ada is not looking, Beatrice moves her knight in a position that is not envisioned for that piece (for instance, she moves it as if it were a bishop) and Beatrice thinks that this benefits her more than what she could have obtained without her knight performing that particular move.

In this case we can fairly say that Beatrice is cheating and specifically that she is cheating by breaking the constitutive rules of the game of chess; moreover she is cheating even according to Green's definition. And this does not only happen with the rules of chess, we can also say that counting votes in an incorrect manner is a form of cheating that breaks the constitutive rules of the institution of democratic voting.

But, more in detail, what happens when cheating is successful? What kind of consequences does this act have?

Similarly as with rule-breaking, let's see how the epistemic and ontological levels are intertwined.

When we talk about the most common cases of cheating, like that of Ada and Beatrice, which is a case of *covert* cheating[16], what happens is that the irregular move ends up to be perfectly legitimated. In a world where Ada and Beatrice play chess alone in a room and Beatrice cheats, is there genuinely a chess play going on? Yes, according to Quinn, as we have seen, and no according to Rawls[17]. The legitimation of the move stands against the rules, but also against Ada who, not being aware of what happened, goes on playing despite the incorrect move and acts as if implicitly declaring the move valid, even if in a weak sense. Thus the move is valid and invalid at the same time and this is maybe what Wittgenstein meant when he talked about "civic status of a contradiction". In games like football the regulatory activity is wholly demanded to the referee, so if she is fooled with respect to an incorrect action happening on the pitch, the latter becomes immediately valid and it is as if the fault never took place. Even if one tries to accommodate this problem by introducing slow-motion, the possibility of mistakes may be slightly reduced, but in any case the problem is just shifted: who would control the referee's controllers?

As in the case of rule-breaking, in order to appropriately describe the critical situation, it is necessary to rely on the distinction between definitional and institutional level. As already remarked, both are, in a different sense, ontological. The main difference is that the definitional level can be

[16]According to Green (2004), covertness is often present in cheating, but is not essential to it. Someone who drives on the emergency line on a highway where all other cars are stuck in a queue can be said to be cheating.

[17]Rawls (1955).

epistemically influenced only before an agreement on rules has been set; after that, it is sedimented and independent of the perspective of social agents. On the other hand, the institutional level is always subject to epistemic and social dynamics. The issue here is that, from a pragmatic point of view, what counts is the institutional level. On the definitional level, before being discovered, Beatrice has broken the rules of the game, is not playing chess anymore and has, in a certain sense, brought the game to a critical situation, a situation of impasse but, on the institutional level, she has performed no violation, and, for the sake of the present game, it is all that matters. This does not mean that the definitional level is completely irrelevant. On the contrary, if Ada realizes, even *a posteriori*, Beatrice's trick, she has good reasons to protest the result of the chess game or, even, the very existence of their chess game (as a chess game). It is not the case that the actual game is null as a direct consequence of Ada's discovery; pragmatically, it is necessary that Beatrice recognizes that her own acting was outside the rules and must agree on the consequences that her acts had on the game[18]. That the chess game is institutionally null or that it must be re-played from the stage in which Beatrice cheated, or that Ada be declared winner is to be decided.

All we can say here is that cheating weakens the game, puts it in a critical situation in which it is endangered by arguments relative to the definitional level. On the other hand, given the peculiarity of social reality, the institutional level is ontologically charged in a prominent way.

2.3 Rule-entaglement

We come now to the third kind of critical situation, namely rule entanglement[19]. Intuitively, this is the phenomenon taking place when the rules of a game or an institution have some bug that determines the fact that at a certain point no legal move is possible. Even though apparently this brings to the destruction of the game or institution at stake, in practice we very often engage in games and institutions that live on their internal incoherences.

As Fogelin points out:

> In practice it is often quite reasonable to employ systems of

[18]This was the case in which Ada and Beatrice were playing alone in a room, in official contests there is always an authority that is responsible to monitor the fair play and sanction incorrect moves.

[19]The term is borrowed from Wittgenstein, as can be seen in the quotation opening the paper.

> rules with no guarantee that they are consistent. This is a common situation: We employ systems of rules without being able to establish their consistency, perhaps without having any idea of how one might go about doing so. More radically, again following Wittgenstein, I hold that it is sometimes legitimate to continue to use a system of rules even after its inconsistency has been recognized. Inconsistency in a system of rules is sometimes debilitating, but not always[20].

Fogelin illustrates his position through an example taken from Wittgenstein's *Remarks on the Foundations of Mathematics*, where he talks about a competitive intellectual skill game he calls Ludwig.

> One day two novices playing foolishly (though making legal moves) stumble into a position where two of the rules of the game come into conflict. [...] Our novices somehow work their way into a position where a particular move is both mandated and forbidden, thus leaving no legal way to proceed. The game gets hung up, as computer programs sometimes do. Because this possibility exists, we can say that Ludwig is inconsistent in the following sense: a series of legal moves can lead to a situation where a further move is both mandated and forbidden. [...] Finally, we can suppose that this feature of the rules – its dilemma-pronenes – has gone undetected for centuries because the moves that lead to it, though legal, are wholly unmotivated. Nobody who understands the point of the game Ludwig would make the moves leading to this situation[21].

Agents playing Ludwig act according to two kinds of constraints:

(1) the constraints of the game (and of its rules),

(2) the constraints that they impose on the space of their moves in order to try to win.

The point Fogelin (and, according to him, Wittgenstein too) is trying to make is that, in order to avoid the paradoxes that rules in (1) may bring into life, one must look at constraints in (2). (2) could be seen as a regulative rule, something that has to do with the aesthetics of the game,

[20] Fogelin (2003): p. 42.
[21] Fogelin (2003): p. 45-46

with what makes a game a good game or a beautiful game. One who plays chess badly may execute moves correctly but in such a way as to lose very quickly with a fairly experienced player. She's not pursuing her own goals at best. According to Fogelin, even in institutional activities, a way to prevent paradoxes is by following this strategy and trying to play well.

But this is not always the case. Take for instance the discursive dilemma[22], a paradox of judgment aggregation with many variants that shows that, by applying the rules of majority voting to a set of interconnected decisions, even if all agents vote coherently, the aggregate result may be incoherent. In such case, players (voters) are playing well according to the rules of non-contradiction in voting, but the election is nonetheless "entangled" by its own rules so, in this case, the "argument from ineptitude" does not apply.

Another very interesting aspect is the effect of the rule-entanglement on the past. Fogelin notices that the fact that two novice players have been stuck in a contradiction of the game does not endanger the correctness of the game as it has been played by smarter players in the past: the effects of this contradiction don't affect the past.

Also in the example of the discursive dilemma, we could think that incoherent results are exceptional cases which can be dealt with case by case thus leaving unaltered elections where the mechanism gave sound results.

But there are also more difficult cases, in which it is not immediately decidable whether there would be a backward effect and in case which kind of effect. Take for instance a diploma which is conferred by an institution which is not entitled to do it. Maybe this happened because the requisites for being an entitled institution are contained in civil laws that have been promulgated at different times and that contradict one another. What happens when this is discovered? Suppose that the diploma has been given to thousands of people over the years and that some of them got a job thanks to that diploma. Which are the backward effects? How can the bug be fixed? Do we consider all the issued diplomas null? Do we relax the requisites so that all can be considered valid? Do we make an *ad hoc* adjustment for the past and promulgate new, coherent laws for the future?

All these are interesting open problems but, once again, the point we want to make is that what all these different phenomena have in common is the importance of the recognition phase and the successive collective

[22]Pettit (2001).

acceptance of what has been recognized, in order to pass from the definitional to the institutional level, so that something that in the end can be said to exist needs to base its ontological status on epistemic acts, like recognition and acceptance.

3 The dynamics of impasses

In this section we will try to trace down in an explicit way the phases that constitute the dynamic process of impasses. The resulting scheme will then be used as an interpretation tool to read the kinds of impasses mentioned so far.

We will try to sketch a path that, in principle, an impasse situation could follow inside a single "unit of game", a unit whose limits are established by a system of constitutive rules (the institution) of the game; something as a football match, a bicycle race, but that could also be adapted to more complex "games", like weddings, bets, a buying and selling transaction. Such path moves from a definitional level towards a properly institutional level and we could call it "Impasse propagation", like in table 1.

Table 1: Impasse propagation

1. Definitional impasse
↓
2. Epistemic recognition
↓
3. Impasse declaration
↓
4. Collective acceptance
↓
5. Institutional impasse

Before specifying each of the indicated steps, we would point that the passage from one phase to another is not strictly necessary, but it explains a relevant mechanism in the dynamics of institutions, thus the symbol "↓", that has no formal meaning here, should be read as "may lead to". It indicates the direction of a path that leads from an initial impasse to its institutional effects, that could be instantiated by the modification or the

end of a single "unit of game" or, in certain cases, of the institution as a whole. Let's see now what each step means.

1. Definitional impasse

   The definitional impasse is an *effective* impasse, an impasse, so to speak, "actual". What this means is that, with respect to how the game (or the institution) is *designed* and *costituted*, the game is in fact stuck in a deadlock. The impasse can be both nomic and antinomic: it depends on how the system is defined, it can be due to lack in design or to the presence of incoherences, both internal and external, both autonomous and heteronomous. When we say that the impasse is *definitional* and *ontological*, we mean that it objectively exists, *independently of* the opinion the agents may hold on the current play.

2. Epistemic recognition

   This is an epistemic phase, a phase involving knowledge: someone realizes that the game is effectively experiencing an impasse. The possibility of realizing such kind of recognition depends on multiple factors. Some may be contingent, like when none is paying attention to the game or the referee is looking to the other direction, or more subtle cases, related to the structure of the institutional system at hand: for example, it is too complex to allow agents to detect the impasse.

   But if the impasse is realized and the agents acknowledge it, the impasse creates difficulties with respect to the successive moves that are left to be performed in order to go on playing according to the rules of the game.

3. Impasse declaration

   This phase opens the possibility of "protesting" the game, it offers good reasons to *declare* the impossibility of acting further and oppose a part or the whole institution. The declaration may be executed in various ways, through linguistic acts, but also through non linguistic acts that have a linguistic relevance. In some contexts just the mere fact of following or not following certain rules may be viewed as a linguistic act[23].

   Moreover, impasse declaration (or not declaring an impasse) may imply strategic aspects, or aspects of control of one or more agents

[23] Searle (2009).

over one or more agents, i.e. we may have situations in which not declaring the impasse may bring advantages in the institutional activity, like for cheating in games. In cheating one may recognize the impasse situation (or eventually provoke it anti-nomically), act on step 2 by pretending not to recognize the impasse and then omit the declaration[24].

4. Collective acceptance

   Since we are in a collective context, impasse declaration can engender a chain effect over other agents, eventually leading them to the situation described at point 2. From here we can imagine that the elements of the collective interact with one another and one after the other shift from 2 to 3.

   It is worth noting that this position presupposes something more than the searlian *we-mode*[25], because acceptance is obtained through reciprocal influence and also something more than the bratmanian *I think that you think*[26], because at this stage agents are influenced by what others declare to think and desire and need to take into account the collective itself. This level is not merely mental, as it involves also declaratives. In some cases this will end in a collective deliberation with respect to what the group accepts, or, on the opposite side, in an imposition which agents, due to a set of collective beliefs and reciprocal interdependencies, accept or simply endure.

5. Institutional impasse

   At this stage the impasse can be institutionalized, i.e. collectively declared with respect to that specific institution. This is the end point of the process, that also draws the limits of the unit of game. In fact here "to institutionalize" does not mean to ascribe a *status* according to the rules of the game, as these are, in the very moment of the impasse, deactivated. It means that the deadlock has come to a level in which it has been declared and accepted by the relevant agents of the game. We have come back to the ontological level, even though, exactly due to the propagation process, the impasse at phase 1 is different from that at phase 5, the latter being not only definitional, but also *ratified*.

[24]It would be interesting here to compare this position to the one expressed in Conte (2003, 2004): "Paradoxically, the cheater is witness of rules to which he/she does not conform his/her own action". (Conte, 2004, p. 12), translated.

[25]Searle (1990).

[26]Bratman (1999).

Institutional impasse can lead to two different states:

— to the "*death*" of that unit of game, to its effective nullification: agents refuse to go on playing that game because they cannot build a meaningful coordination activity anymore;

— to the *radical change* of that unit of game, by modifying the rules, or adding rules endowed with an *arbitral function*[27]. To establish a relation between the former unit of game, that stuck in the impasse, and the latter is not easy: strictly speaking, the two units don't follow one from the other, since the rules are different, but there are similarities that can engender a process for which the players are brought to declare (and, overall, to collectively accept) that they are playing the same match (or other unit of game) anyway. This means that the modification of rules has entered the game itself and, by collective acceptance, the modification has been ratified at the institutional level. A new "game" emerges here: that of taking decisions, of modifying rules and of establishing the identity of the unit of game with respect to the modification.

Let's now make some considerations on the three kinds of critical situations described above. If we take rule-breaking and we exclude the case of breaking regulative rules, which does not seem to cause a real definitional impasse, in most cases, except those in which cheating is involved, it is very rare not to detect the impasse, since usually this results from a behavior which is overtly against the spirit of the game or the institution. If the violation has been caused by ignorance on behalf of the agent, other participants to the activity, or an authority, like for example a referee, can notify (declare) the violation to the agent and wait for her to recognize it also and accept it. If, on the contrary, the agent willingly committed the violation (possibly to protest against a law she deems unjust), then it is the agent herself who declares the violation and wait for the other participants to the institution to recognize it and accept it as violation.

In this case the impasse can be solved either by classifying as "invalid" the action taken by the agent, and keeping the game as it is, trying to restore the initial situation by some actions aimed at nullifying the effects of the violation action; or the community understands, through the violation, that the rule was unfair or disadvantageous for the system itself and will try to change the system of rules rather than condemning the agent for her violation.

[27] Bottazzi and Ferrario (2009).

For cheating, we can distinguish two cases: covert and non covert cheating. For the former, much more common, we can say that at start the cheater is the only one aware of the definitional impasse and pretends the game to be correct. If she is not discovered, the process never goes to stage 2 and the institutional impasse is never realized. If, on the other hand, she's discovered, there's an epistemic recognition on behalf of someone participating to the activity, a declaration and then, depending on how much the relevant agents of the collective accept to interpret the action as a cheating, the cheater may or may not be disqualified.

In the latter case, that of rule-entanglement, especially for very complex systems of rules, it can happen very often that the impasse is never detected and it stays at the definitional level. But, once it is recognized by someone, then, apparently, the complicated step is the declaration and the successive acceptance, since it doesn't look like anybody is entitled to question the rules of the entire institution, often it is necessary to have a certain role within that institution, in order to be allowed. When the collective acceptance takes place and the institutional impasse has been ratified, either, in extreme cases, the whole institution is abandoned or destroyed, or, more commonly, the rules causing the entanglement are modified.

In all these cases, what we want to insist on again is that one of the peculiarity of social reality is that definitional impasses, even if ontological (independent of the opinion of agents) have no effect in the social world *unless* an epistemic act of recognition happens, that transforms the impasse from definitional to institutional, thus reaching a new level, that is also ontological, and moreover effective.

4 Searle con conceptual relativism and strengths and weaknesses of democracy

When reasoning about the ontological status of social entities, it is unavoidable to confront with what Searle wrote in *The Construction of Social Reality*.

We will thus move from his explanation of the conceptual relativism of socially created entities, like terms with their definitions and of the room it nonetheless leaves to objectivity:

> Conceptual relativism, properly understood, is an account of how we fix the application of our terms: What counts as a correct application of the term "cat" or "kilogram" or "canyon"

> (or "klurg") is up to us to decide and is to that extent arbitrary. But once we have fixed the meaning of such terms in our vocabulary by arbitrary definitions it is no longer a matter of any kind of relativism or arbitrariness whether representation-independent features of the world satisfy those definitions, because the features of the world that satisfy or fail to satisfy the definitions exist independently of those or any other definitions. We arbitrarily define the word "cat" in such and such a way: and only relative to such and such definitions can we say, "That's a cat." But once we have made the definitions and once we have applied the concepts relative to the system of definitions, whether or not something satisfies our definition is no longer arbitrary or relative[28].

Aside from the problem of the relation between world and language, that we won't treat here, the point is the relationship between what is epistemic and what is ontological in social reality, between what we establish, arbitrarily and by definition and the effects that this collective establishing has on social interaction.

It is obviously true that social reality depends on agreements and it is also true that those agreements have consequences within a fixed context and this is, in a certain sense, objective. The problem here is that social reality does not depend on the epistemic level only at a first stage; such level continuously intervenes and "erodes" the definitional level. Sometimes we believe to be objectively guided by the rules that we have imposed on ourselves, but we are in a way fooled and what we do doesn't mirror the rule anymore.

This means that social reality depends on other agents' beliefs on a further sense, not only it depends on the agreements agents establish and on their consequences, it also depends on the opinion the agents have on the nature of such an agreement.

In other words, the fact that there is a connection at a definitional level, does not mean that such connection will hold also at an institutional level. Thus the objectivity that Searle advocates to overcome conceptual relativism, once that the consensus on the application of a term has been reached, it is not sufficient to deal with cases in which situations of impasse arise.

Since one of the main criticisms that have been moved to Searle's account is that it is too centered on positive situations in which agents

[28]Searle (1995): p. 166.

quickly agree and are successful in their cooperation, but is less useful to analyze critical cases, in Searle (2010) he tries to overcome such a criticism.

The line of argument starts with the recognition of the inner feature of inconsistencies that he ascribes to democracies:

> Democratic goverments are by their definition committed to the permanent acceptance of disagreements and inconstistencies. It is not a flaw of democratic goverments that rival political parties have different sets of values and different fundamental beliefs[29].

We don't believe disagreements and inconsistencies are exclusive features of democracies: many tyrannies, monarchies and dictatorships hold incongruent laws and statements.

Moreover, the coexistence of disagreements is one of the less problematic traits of democracies, as the democratic system based on majority voting can deal successfully with it, except paradoxical cases in the discursive dilemma's style.

Searle himself seems to be convinced that the majority voting rule is constitutive and characterizing democratic systems: "democracies are defined in part by majority rule as expressed in elections".

But if such rule is definitional for democracy, how do we decide how to overcome states of impasse in democratic contexts in which the system, in execution, ends in a deadlock? And, most of all, given a certain governmental apparatus, who decides how to overcome the impasse according to a democratic perspective?

And it is at this point that we find what Searle says problematic; we quote a very long passage, as it opens the field to some reflections:

> To take an important recent example, after the year 2000 elections, many americans thougt George W. Bush got the status fuction of president in a illegitimate fashion. But the important thing for the structure of deontic power in Unite States is that with very few exceptions they continued to recognize his deontic powers. Anyone interested in how Background presuppositions enable democracy to function should look closely at the year 2000 elections. Normally, in an election there is a margin of error. And normally the margin of victory vastly exceeds the margin of error, so the error does not matter. But

[29]Searle (2010):p. 162.

> in the 2000 elections, the margin of error vastly exceeded the margin of victory. This meant, in a word, there was no winner. The elections ended in a tie. But elections cannot end in a tie. So what is one to do? Americans have this Background presupposition that is nowhere stated in the Constitution that all hard cases are to be decided by the Supreme Court, and this one was. I will not say wheter their decision was intelligent or unintelligent, justified or not justified, but the remarkable thing was that it was accepted by the population at large. Various European commentators suggested that the election of 2000 showed the weakness of american democracy. I believe it showed its strenght. Though the election ended in a tie, and the ultimate decision to award the victory to George W. Bush has inconclusive justification, it was almost universally accepted by the population at large. there was no rioting in the streets; no tanks were called out. I saw a few bumper stikers in Berkeley saying He is not my president. But I do not think the president or anybody else worried about them. The point I am making now is that democracies work not just on rules, but on Background presuppositions, on practices, and modes of sensibility[30].

Without entering in the specific example, let's analyze Searle's interpretation instead. The situation of the 2000 elections could be seen as a situation of double impasse. First of all, there is a mismatch at the definitional level: the majority vote rules impose that the elections end with the victory of one and only one candidate. But this hasn't happened. A second impasse has, in our opinion, arisen when an organism that was not entitled to, has intervened in the issue. And this problem has been solved at an institutional level, through an operation that masked what really happened.

Searle mentions this as a clear example of the strengths of american democracy, but if the majority voting rule is constitutive of democracy, it is hard to hold this position. We rather believe that democracy as a system has been weak, what has on the contrary been strong is the governmental system, i.e. the (at the time) current set of people holding certain power positions.

It is true, as Searle claims, that democracy does not work only with rules, but there are rules that have a priority over the others (as the majority voting rule in democracy) and, if violated, bring to the nullification

[30]Searle (2010):p. 168.

of the spirit of the democratic game itself. To accept as fully democratic an intervention which has an "inconclusive justification", because it has not brought to a popular insurrection seems at best questionable.

By following this line of reasoning we could end up saying that we could have an other authoritative organism that ceases to call elections in the usual terms given by law and that a nation with such a government is nonetheless democratic, if the population does not rise up. But we know that, even in very extreme cases, like dictatorship, it is not always the case that an insurrection takes place, not even after a *coup d'état*. Anyway, the mere mention to insurrection shows that the deep mismatch between the rules and the situation which has emerged can create the conditions for rising up. But very often reasons to raise up are not sufficient to make people rise up, what is needed are also other social conditions, that we won't consider here.

Moreover, if we don't hang on rules but on the acceptance of a role that has not been previously declared within a certain institution, as in Searle's Supreme Court example, we lose the whole definitional power given by Searle's version of conceptual realism. In other terms, we don't hang on the definitional consequences of our rules anymore, but rather we deprive rules of every objectivity inherent in the conceptual relativism account.

We believe that a democratic response to this problem – that is not up to us to formulate, but to the politic or legislative powers – would be in the direction of trying to involve as many agents as possible in the solution of an impasse situation, rather than demanding it to a restricted minority that is not authorized to do anything on the basis of what previously established.

5 Concluding remarks and future issues

This paper shows two main contributions. A first contribution is the problematization of the ontological status of objectivity in social facts in front of impasse phenomena, whose ontological "power" is solely guaranteed by epistemic acts. Starting from the uncertainty of regarding the status of social facts, we arrived anyway at the construction of an analytical scheme (that of impasse propagation and dynamics of critical situations), which establishes some fixed point on which to anchor the analysis.

And here we come to the second contribution, which is the application of such scheme to different kinds of phenomena, that we have all interpreted as critical situations (rule-breaking, cheating, rule-entanglement),

by showing similarities and differences with respect to the scheme.

Some reflections on these two contributions have also motivated an enquire based on political philosophy on problematic aspects of the concept of democracy, reflections developed in comparison to what John Searle has written on the same subject.

Future directions of this work can be of various kind: first of all, we could try to connect the result of this work on impasse with those of Bottazzi and Ferrario (2009) on arbitral functions, in order to integrate the scheme where a possible solution to the impasse enters the picture and see whether there are other interesting cases of impasse to which such an analysis can be applied.

More importantly, we believe that trying to trace "the civic status of a contradiction", as suggested by Wittgenstein, is important for applied ontology also, as this kind of enquire may allow a new perspective on how to deal with social entities, more exactly by looking to how they react to failures.

Acknowledgments

The second author is funded by the Project ICT4LAW, from the Piedmont Region.

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