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LAWS OF ESSENCE OR CONSTITUTIVE RULES? REINACH VS. SEARLE ON THE ONTOLOGY OF SOCIAL ENTITIES

Preamble

Our guiding question is this: Amongst the entities making up social reality, are there necessary relations whose necessity is not a mere reflection of the logical connections between corresponding concepts? As is always the case with fundamental philosophical questions, there have been various and divergent answers to this question in the history of our discipline. At the one extreme there is Hume's position: no such connections are possible and, consequently, no *a priori* material knowledge is possible in the realm of social reality[2]. At the other extreme is the position of Adolf Reinach, the main protagonist of this essay, who, as we shall see, champions the view that there are many material necessities our knowledge of which is *a priori,* necessary and certain[3]. Somewhere in between these two extremes lies the position of Searle, our second main protagonist. On first inspection, Searle seems to reject, as much as did Hume, all special, uninventable, God- or nature-given categories whose instances would be bearers of necessary relations to each other. But like Reinach, Searle believes that there

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2   For a fuller discussion of Hume's views on this matter see Reinach 1911a. The word "material" in the context of this essay is an adaptation of the German word "*material*", used by Husserl in his third *Logical Investigation,* from § 11 onwards, where Husserl contraposes «material laws» to «formal or analytic laws», Husserl 1900/1901, Husserliana, XIX/2: 255ff., Engl. vol. II: 455ff.

3   We are of course aware that the distinction between *a priori* and *a posteriori* is an epistemological one, while that between necessary and contingent is ontological, and that between synthetic (material) and analytic (formal), which will crop up later on in our essay, is semantical (see e. g. Casullo 1992 and Casullo 2002.). Yet we nonetheless feel entitled to make parallels among these distinctions (thereby, to a degree, conflating them) as did the authors we are addressing, prominently Reinach himself.

are ontological categories whose instantiations are related, and that with necessity, with instantiations of other categories. What sets him apart from Reinach, though, is the assumption that the categories in question are man-made, and that the necessary connections between their instantiations are due to what he calls "constitutive rules", by dint of which the given categories are created (so the necessity turns out to be of a rather weak sort). One gets the impression that Searle is bent on following Vico ("*verum*" et "*factum*" *reciprocantur, convertuntur, sunt ipsum*)[4] and Hobbes in believing that we can enjoy certain, or *a priori,* knowledge only about what we humans have ourselves fabricated.

In the first part of this essay we shall set forth, in outline, Reinach's basic ideas concerning material necessity and the *a priori.* We will then try to demonstrate that Searle has not identified a sustainable position somewhere between the Humean and the Reinachian extremes. This is because, we shall argue, Searle's position is threatened by circularity, and to steer clear of that danger it must incorporate at least some elements of Reinach's essentialism.

1. *Reinach's essentialism*

The thesis underlying all of Reinach's social and legal philosophy is that there are categories of entities—prominently social and legal, but also certain others—whose instances in the world of what happens and is the case are of necessity linked with instances of certain other, correlated, categories. Reinach's favourite example is this: «Through the act of promising something new enters the world. A claim arises in the one party, and an obligation in the other»[5]. Another example is: «[A] claim to have something done dissolves as soon as the thing is done»[6]. Yet another is: «Every obligation refers to a *future action* [*Verhalten*] of its bearer [*Träger*]»[7], and also

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4   «Being» and «manufactured» are convertible, which means to say: they are the same, see Vico 1711: bk. I, ch. 1, *ad init.*, where Vico imputes this principle to «old Latin sages», in English: Vico 1988.

5   (Reinach 1913: 693, Engl. pp. 8f.) But not the other way round. There can be what he calls 'absolute' claims and 'absolute' obligations, which are not in this correlated, and which do not arise in virtue of an act of promising. A state is obliged, for instance, «to certain ways of acting, but this obligation does not exist over against any [specific] persons». Reinach 1913: 698, Engl.: 12.

6   Reinach 1913: 698, Engl.: 9.

7   Reinach 1913: 697, Engl.: 11. (Cf. Searle 1969: 57. Saying «I promise *p*» one predicates, Searle thinks, one's own *future* act. This is one of the 'constitutive rules' which go into the design of the institution of promise, see Part II of this es-

«No claim and no obligation begins to exist or is extinguished without some "reason"»[8]. Such «laws», as Reinach calls them, are «grounded in» (as he puts it) the essences of the entities involved: in this case in those of promise, claim and obligation; these essences, it must be stressed, are those of the *kinds* of the entities involved, and not of particular instances. Similarly, though Reinach's interest does not extend to such matters (he employs them chiefly for illustration purposes): every instantiation of the category *colour* necessitates in this fashion the instantiation of the category *visual extension*[9]. Such laws are necessary and *a priori*[10]; more than that, they are synthetic (or material, as we should say, as distinct from formal or analytic) *a priori* in the Kantian sense[11]. «In the "concept" of claim nothing is "contained" in any possible sense of this word about the fact that the claim dissolves under certain circumstances»[12]. It would be tempting to call Reinach's position a "Platonism"—and if so, Reinach would have surpassed Plato in the acumen with which he dealt with the issue of the connections through which Forms such as that of promise, claim and obligation are tied together into larger wholes[13]. Yet Reinach's entities are different from the Platonic Forms in that they are, on the one hand, part of the furniture of this (and not of some other, "Platonic") world. Claims, obligations and similar entities exist, he says, alongside trees and houses[14],

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say. It would be useful, though it remains outside the scope of this study, to compare, one by one, Searle's constitutive rules with Reinach's essential laws.)

8   Reinach 1913: 701, Engl.: 14.

9   See Stumpf 1873: 109, where he speaks of what one can have a presentation of. As Reinach stresses, however, an act of promising *generates* (*erzeugt)* claim and obligation (Reinach 1913: 694, Engl.: 10)—though again not in the causal sense (Reinach 1913: 701f., Engl.: 15)—colour does not, at least not in any usual, causal or non-causal, sense, generate extension. Reinach uses sometimes the German verb "*hervorgehen*" or "proceed" for the kind of generation at issue, see e. g. Reinach 1913: 702, Engl.: 15.

10   Reinach 1913: 689, Engl.: 5.

11   Reinach 1913: 691, 694, Engl.: 6, 9.

12   Reinach 1913: 694, Engl.: 9. This is a clear allusion to the Kantian definition of analytic judgments as those in which the predicate is contained in the subject, *Critique of Pure Reason,* Introduction, section 4.

13   In fairness to Plato, the reader will recall that the Master did deal with such issues in his later work, for instance in *The Sophist*, albeit drawing his examples from different realms. See for instance his remarks on «τῶν εἰδῶν συμπλοκή» or «the interweaving of forms» in Soph. 259e (see Ackrill 1965). On the preceding pages of *The Sophist*, the Platonic Stranger is discussing the «intermingling of forms» or «κοινωνία γενῶν» see for instance p. 254b. See also Van Fraassen, 1969.

14   Reinach 1913: 688, Engl.: 4.

but, on the other hand, they are neither physical, nor psychological, nor ideal in any sense close to Plato's[15]. As distinct from, say, numbers or geometrical forms[16], they are temporal in the sense of being directed to certain future events, lasting for a certain time, and disappearing once performed, or waived, or revoked[17].

Such categories constitute an autonomous order independent of human acts and decisions. They are marked by the possibility that positive cultural and legal systems in many cases modify their instantiations in such a way as to suit various needs[18]. Even here, however, there are certain limits to variation. Thus for instance while in some cultures a "complete", valid promise may include a gesture like putting one's right hand over the heart, it is highly unlikely, to say the least, that in any culture a valid promise should be made dependent on undergoing a painful surgery or proving a hitherto unproved conjecture in mathematics[19]. The mentioned categories are, moreover, intrinsically intelligible in the sense that some experience of their instances—including imagined instances—is usually enough for an insight into the truth of the laws connecting them. This insight may have been gained "through experience" ("*mit der Erfahrung*"), to speak with Kant (to know what a promise is and what kind of concomitant institutions it generates one has to have witnessed an act of promising at least once), but yet, it is not "out of experience" ("*aus der Erfahrung*")[20], that is to say, one need not have seen thousands of such acts to conclude that every promise does, in fact, generate a claim and an obligation; and one does not conclude that inductively. Similarly, the basic structures and relations colour and sound, shape and motion, for instance are intelligible in such a way as to render it obvious to us that no colour can exist without a visual extension, or no musical tone without a pitch, or no motion without a velocity;

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15   Reinach 1913: 694, Engl.: 9.
16   Reinach 1913: 689, Engl.: 4.
17   Reinach 1913: 694, Engl.: 9.
18   «Positive law makes its enactments in absolute freedom, exclusively with a view to economic necessities and to the currently prevailing moral convictions», Reinach 1913: 690, Engl.: 5. For instance, in a given system of positive law there may be a limit restricting the validity of obligations incurred by promisors depending on their age, to the effect that no promises made by individuals younger than, say, 20 are valid. Reinach 1913: 801, Engl.: 102.
19   For a discussion of the relation between the synthetic aprioricity of the laws proposed by Reinach and their adaptations to various systems of positive law, see Incampo 2003: 84ff.
20   *Critique of Pure Reason,* Introduction, *ad init.*

such *a priori* insights are the groundwork of all *a posteriori* empirical knowledge, including natural science.

For Reinach, it is in the realm of what has later come to be called "speech acts" that the *a priori,* necessary laws of the sort indicated above are particularly easily found and manifest their interesting properties with particular conspicuity. For this reason, we shall insert here a brief excursus on the, perhaps, somewhat obscure history of philosophical reflection on speech acts[21]. This history is, as we believe, of some interest of its own; the excursus will provide, moreover, the reader with some background useful, as we believe, for further study of the Reinachian theory set forth here.

1.1. *Reinach's Theory of Speech Acts*

In chapter four of his *De Interpretatione*, Aristotle has drawn a distinction that was to have fateful consequences, and, in a sense, continues having them to this very day. The distinction was between «statement-making sentences» (λόγος ἀποφαντικός), on the one hand, and those sentences in which, as he says, «there is no truth or falsity» (λόγος [...] οὔτε ἀληθὴς οὔτε ψευδής, 17 a 1-5). The latter sentences, Aristotle thinks, are of no interest for logic, since their study «belongs rather to the study of rhetoric or poetry». This position—thanks to the authority that Aristotle enjoyed in the Middle Ages—effectively ensured that the treatment of his «non-statement-making sentences» was for the most part of the subsequent development of philosophical reflection banished, not just from logic, but from the realm of science in general[22].

The first thinker to challenge the entrenched Aristotelian dogma was Thomas Read in his work on «social acts»[23]. Reid's ideas, however, remained without substantial influence, and there is no evidence that Reinach—the next thinker (so far as we know) who took up the issue—was to any significant extent aware of, let alone inspired by, them. It is in Reinach's monograph on *The a Priori Foundations of the Civil Law*, published

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21   For more information on this topic see Smith 1990.
22   In all fairness to Aristotle, it also must be admitted that (in his theory of the 'practical syllogism', in *On The Movement of Animals*, ch. 7, *On The Soul,* Bk. III, p. 11, and *The Nicomachean Ethics,* Bk. VII, ch. 3) he laid the groundwork of deontic logic, i.e. of sentences featuring deontic operators, such as "ought to" and "may"; such sentences are generally considered by the majority of contemporary philosophers as "non-apophantic" or "non-statement-making", see Broadie 1968.
23   Cf. Schulthess 1983: 304; Árdal 1984; Mulligan 1987: 33f.; Schuhmann and Smith 1990.

in the Husserlian *Jahrbuch für Philosophie und phänomenologische Forschung* in 1913, that we find the first systematic theoretical treatment of such phenomena as promising, waiving, revoking, questioning, requesting, commanding, accusing, enacting, etc. These phenomena, like Reid before him, Reinach collects under the heading «social acts»[24].

This is not to deny that there were other philosophers, besides Reid and Reinach, who studied such «social acts». These other philosophers, however, took pains, as if in silent tribute to the Aristotelian tenet that only 'statement-making sentences' fall within the province of logic, to reassign social acts to the realm of statements. Bernard Bolzano, for example, considers the act of questioning a statement, in that he proposes that whoever is asking a question «desires to receive instruction about the object in question»[25]. Similarly, an act of promising is for Hume, Theodor Lipps[26] and others nothing but an expression of an act of will or the declaration of an intention to act in the interests of the party in whose (presumed) favour the declaration is made. Although there might be a grain of truth in such approaches, they cannot of themselves account for such obvious fact as this one: that whoever promises something (the promisor) is obliged to do what he promised and the addressee of his promise (the promissee) acquires as corresponding claim. Promisings conceived of as bare declarations of will simply do not have such deontic consequences.

But, despite these essential differences, *promising* and *communicating one's intention to do something* do have much in common. Reinach saw this clearly. One shared characteristic is, for instance, that both belong to the category of what he called *spontaneous* acts, i.e. acts whose accomplishment consist in their subject's actively bringing something about within his own internal, "psychic" sphere (*das Tun des Ich*)[27] — as contrasted with passive or receptive experiences of, say, feeling a pain or hearing an

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24 Reinach's theory was in part inspired by the work on logic and ontology of his teacher Edmund Husserl. It incorporated also criticisms of Husserl's thinking derived from the Brentanian philosopher of language Anton Marty and from Reinach's friend and fellow student in Munich Johannes Daubert. On the pre-First World War Munich tradition of speech act theory, see Smith 1990 and Schuhmann and Smith 1985. An important role in the development of Reinach's thinking was played also by his background as a student of law: see Schuhmann and Smith 1987: 10-13.

25 Bolzano, 1837: vol. I, § 22.

26 For a critical treatment of Hume's and Lipps' approach to social acts see Reinach 1913: 726ff., Engl. pp. 34ff.

27 Reinach 1913: 706, Engl.: 18: «a doing of the self».

explosion[28]. Both are, moreover, acts which involve, not incidentally but as a matter of necessity, a linguistic utterance or some other *overt performance* of a non-natural (in the sense of: conventional or rule-governed) sort. Not all spontaneous acts share this characteristic; consider for instance judging or deciding, cursing or forgiving[29], as distinct from, say, apologising, commanding, accusing, entreating etc. The latter cannot be performed (save to God, perhaps) without some overt performance of a (mostly) linguistic nature. Reinach for this reason divided all spontaneous acts into two classes, which he called *internal* and *external* acts, according to whether the act's being brought to overt expression is a separable or inseparable moment of the relevant complex whole[30].

All spontaneous acts are, too, *intentional*, not just in the sense of being done "on purpose" (which, *qua* spontaneous, they certainly are) but in the Brentanian-Husserlian sense[31] of being directed towards a (not necessarily existent) object or objects. Many of them are, in addition, directed—now in a further sense of this word—to a subject or subjects, most typically to human beings. Amongst such subject-directed acts Reinach distinguish further between those which are *self-directable* and those which are *non-self-directable* (the latter Reinach also calls *other-directed* or «*fremdpersonal*»). The former are such that the subject they are directed towards may be identical with the subject of the act (as in cases of self-pity, self-hatred, etc.). The latter, in contrast, are essentially and hence necessarily directed to a subject other than the one that is their spontaneous originator. Among these, some are purely internal (for example feelings of envy or resentment), while others are external (for example acts of baptism or benediction). Among the latter there is finally a highly interesting class of acts which are such that the relevant utterance must of necessity not just be directed towards, but also *addressed to* and thereby *registered* or *grasped by,* the subject to whom they are directed (their addressee). For instance, a command must as a matter of necessity be received and understood by the

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28 See Reinach 1913: 706, Engl.: 18. The issue whether the distinction between spontaneous and passive acts is an exhaustive one is not important for our present purposes.
29 We leave aside here those acts of forgiving which are prompted by a request for forgiveness.
30 Reinach 1913: 707f., Engl.: 20, Mulligan 1987, Schuhmann 1988. On the terminology and ontology of «inseparable moments», see Smith, 1982.
31 Inherited from the Scholastics. Brentano introduces this sense of "intentional" officially in volume I of his *Psychology from an Empirical Standpoint,* Brentano1874.

one to whom it is addressed (something which does not apply, for example, to an act of baptizing, forgiving or cursing). A command, in Reinach's own words,

> is an action of the subject to which is essential not only its spontaneity and its intentionality, but also its being directed towards other subjects and its standing in need of being grasped by those subjects. What has been said of commands holds also for requesting, admonishing, questioning, informing, answering, and many other types of act. They are all social acts which are, in their execution, cast by him who executes them toward another subject that they may affix themselves in his mind [*einem anderen zugeworfen, um sich in seine Seele einzuhaken*][32].

What is important about an action of this kind is that it

> is not divided into the self-sufficient execution of an act and an accidental statement [*zufällige Konstatierung*]; rather it constitutes an inner unity of deliberate execution and deliberate utterance. The experience is here impossible in the absence of the utterance. And the utterance for its part is not something that is added thereto as an incidental extra; rather it stands in the service of the social act and is necessary in order that this should fulfil its announcing function [*kundgebende Funktion*]. Certainly there exist also incidental statements relating to social acts: «I have just issued the command». But such statements then relate to the whole social act, *with* its external aspect[33].

Social acts, then, for Reinach (exactly as for Reid), involve

> activities of mind which do not merely find in words their accidental, supplemental expression, but which execute themselves in the very act of speaking itself and of which it is characteristic that they announce themselves to another by means of this or some similar external appearance[34].

Reinach comes close here to the views of Austin and later speech-act theorists and moves decisively away from Hume, Bolzano and their ilk. An act of promising cannot be reduced to a merely accidental expression of an act of will or intention, because the «activity of mind» which constitutes its core is, by its very essence — and hence as a matter of necessity — not able to exist outside of a whole of which the «very act of speaking» is also an essential part. An act of will may well be an independent

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32 Reinach 1913: 707 (transl. B. Smith), cf. Engl. pp. 19f.
33 Op. cit., p. 708 (transl. B. Smith), cf. Engl.: 20.
34 Op. cit., p. 728 (transl. B. Smith), cf. Engl.: 36.

and self-contained mental experience; an act of promising, by contrast, is something more. It encompasses a mental act, it is true, but it is not a report or declaration of it.

In the case of some acts of the type that are accomplished only if they or their contents are simultaneously brought to expression there is a sense in which talk of their *experiential contents,* on one hand, and their *expression,* on the other, should be understood as referring only to parts that can be distinguished abstractly; there are, in fact, no two separate, independent, self-supporting parts. In certain other cases, however, the independent existence of an underlying experience is equally evident. Consider, trivially, the very act of *bringing to expression* (a mental experience) itself. Acts of warning, apologising, promising, commanding, and so on, are, in contrast, necessarily of the first sort, Reinach holds, in that they cannot exist except in and through, and by dint of, the very act by which they are brought to expression. Such as clearly do have, as Reinach notices, an «internal» layer, situated in the domain of mental acts and states, for instance that of belief, on which they are founded. They may also be founded on certain external states of affairs, as in the case of commands, on a state of affairs involving authority, i.e. on someone's being invested with the requisite "title" to issue commands to somebody else. In this way phenomena of the sort Reinach is interested in turn out to be multi-categorial: their constituent necessary relations and in particular necessitation relations[35] span regions of (mental, linguistic, legal and behavioural, factual and normative) reality and combine together into new structures elements derived from each. In finding essential necessary laws governing such relations, Reinach, as we have seen, picks up where Plato left off.

The above is not offered as a complete presentation of Reinach's thought. We have left out such issues as Reinach's treatment of conditional acts, sham acts, defective and incomplete acts, acts performed collectively and severally, and those performed *in the name of* somebody else (by proxy). We have also not treated the various ways in which such acts can be overridden and invalidated, along with many aspects of Reinach's ontology of social acts[36]. One aspect of his work to which we shall return, however, is

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35   All "necessitation relations" are also "necessary relations" but not vice-versa; A holds a necessitation relation to B if and only if every instance of A necessarily produces (generates) an instance of B. Such is the case with "promising" (A) and "claim/obligation" (B). It is *not* the case with "colour" (A) and "extension" (B), which, however, do stand in a necessary relation to one another – the relation of one-sided existential dependence.

36   Cf. Mulligan 1987: 78ff., Smith 1990.

the way in which his account of social acts is complemented by a theory of legal formations and of the ways in which the universal categories of promise, obligation, etc. are related to certain contingent and pragmatically motivated higher-order social acts of the positive law.

Reinach's most important contribution, however, at least for our present purposes, is to have drawn attention to the central role of necessary relations in the sphere of social action and to have grasped the fact that our synthetic *a priori* knowledge is in large part knowledge of structures held together by such relations. Necessary relations had, it is true, been recognized earlier, above all by Stumpf, Husserl and other followers of Brentano in the sphere of psychology. It was Reinach, however, and his fellow Munich-Göttingen phenomenologists[37], who made evident the omnipresence of the corresponding structures and who demonstrated also how a general theory of *a priori* knowledge can be constructed on this basis.

1.2 *The Ontology of Necessary Relations*

Future research will reveal whether Reinach's work exerted any influence on how speech act theory developed in Oxford in the '40s and '50s of the twentieth century[38]. In any event there is a striking difference between the Anglo-Saxon and the Reinachian approaches to speech acts and associated phenomena. For the former, true to its Nominalist spirit, speech act theory is but a conceptually new way of representing more "pedestrian", more "humdrum" entities. All talk of speech acts is just a reflection of how we ordinarily speak about, roughly, human beings making noises; it discovers no ontologically new realm or province. For Reinach, by contrast, promises, claims, obligations, etc. are *entities* in ontologically special categories, entangled in systematic ways, with entities of certain other special sorts (for example with people, their acts and actions, states of affairs in which they are involved, and so on). Social acts are, in Reinach's eyes, part of the fabric of the world, even though a rather peculiar part; they are not other, more familiar things that are only talked about in a new and "fancy" way. This approach makes possible for Reinach what was not possible for

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37   Spiegelberg 1982: 169ff.
38   We know, for example, that Austin's early interest in German (and Austrian) philosophy was not restricted to translating Frege. Moreover, it is known that a copy of Reinach's *Gesammelte Schriften* was in the possession of Austin's colleague Gilbert Ryle. This copy survives, with annotations, in the library of Linacre College in Oxford.

the English-language analytical philosophers: a quest for, and a subsequent study of, necessary and more specifically necessitation relations *in re.* And around these relations Reinach subsequently builds up an ontological theory of the *a priori.*

The world does contain—as Reinach never tires of insisting—promisings, claims, obligations, commands, requests, cursings, blessings, marryings, and instances of other such, neither physical nor psychological nor ideal (in the Platonic sense), species. Such species can be essentially (not just as a matter of fact) dependent on one another, and where they are so dependent, their corresponding instances are tied together by necessary relations not unlike that which connects (in Descartes' eyes at least) a *sum* with a *cogito*. There are, too, negative necessary relations, such as that of exclusion, neatly illustrated by this (synthetic *a priori*) proposition: no two distinct colours can occupy, at the same time, the same area or volume of space. The class of such relations extends, in this way, to fill out much of the sphere which, traditionally, had been seen as the domain of *a priori* knowledge.

For Reinach, as for his mentor Husserl, there is a rigid order to the connections of instances of dependent species. In Husserl words:

> It is not a peculiarity of certain sorts of parts that they should only be parts in general, while it would remain quite indifferent what conglomerates with them, and into what sorts of contexts they are fitted. Rather there obtain firmly determined relations of necessity, [...] determinate laws, which vary with the species of dependent contents and accordingly prescribe one sort of completion to one of them, another sort of completion to another. (Husserl 1900/01: 244f. (transl. B. Smith), cf. Engl.: 454)

Judging is such a species: «a strict relation of essence» (i. e. a necessary relation) obtains between judgings (judgments as acts) and states of affairs to which they refer: «A judgment—even a false and absurd one—can as judgment refer only to states of affairs». But similarly «Every command can by its very nature refer only to the action of another person»[39]- *Promising*, too, is a case in point; here, however, the dependence is multifold: a promise, to be instantiated, requires that there should be at least also some instantiations of the species *claim*, *obligation*, *utterance* and *registering act*, knit together with speaking (and understanding speech) subjects in a single whole. Austin himself, too, recognised that every speech act is dependent, for its success,

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39   Reinach 1913: 807, Engl.: 107.

also on being heard (on uptake, or "*Vernehmung*", in Reinach's vocabulary)[40]. Reinach's approach to such issues is more systematic than that of Austin, however, and also more pronouncedly ontological and more sensitive to the role of necessary or necessitation relations within the realm studied, and he covers the whole family of such relations within a single theory.

Such necessary relations may be one-sided or mutual. The dependence existing between the obligation and the corresponding claim brought into being in virtue of an act of promising is a clear example of a mutual dependence[41]. Another such example is the relation existing between what Reinach calls the internal and external moments of the promising act. The internal (intending) acts which belong to promising and the corresponding, concomitant external utterance-phenomena cannot, as we have already said, exist outside the compass of the whole promising act of which they are both mutually dependent, constitutive, parts. They are, thus, only superficially similar to other intending acts (such as thinking about playing a game of chess) and to their corresponding utterance-phenomena (such as saying «I feel like playing chess now»), which *are* very well able to exist outside a comprehensive whole of a similar sort.

All of that can be known *a priori* in the sense of: non-inductively, and on even cursory acquaintance with a few samples of relevant phenomena. This type of knowledge is of the same kind as that by virtue of which we know that, say, red is (typically) darker than yellow, that no colour is a shape, that nothing can be simultaneously red and green all over—all of this naive chromatology is familiar to anyone not visually impaired: no extensive empirical studies are required for it, nor are any expected to belie it[42]. The categories in question (promise, colour, shape, etc.) seem in some way to be prior to all factual instantiations. For this reason, the corresponding necessary laws seem capable of being intellectually grasped as necessary even in the absence of any such instantiations; at the very least they seem not to call for an inductive justification on the basis of repeated series of such instantiations.

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40   See Austin 1962: 22, 52 and compare Reinach 1911: 213, Engl.: 373, n. 11; Reinach 1913: 707, 796, 801, Engl.: 19, 94, 102.
41   Yet there are claims without obligations and vice versa for Reinach. See Reinach 1913: 698f., Engl. pp. 12f. They are not, however, generated by promises.
42   On some empirical research pointing in a contrary, and unexpected, direction, however, see Crane and Piantanida, 1983. Yet Crane and Piantanida results seem to belie not the sentence quoted above but rather another, related sentence: «There are no colours visually intermediary between red and green» (where «visually intermediary» is for instance orange between yellow and red, or turquoise between blue and green).

The five Platonic solids[43] famously constrain factual processes of crystal-formation; similarly, the categories discerned by Reinach as basic to the sphere of social acts constrain all *de facto* existing institutions[44]. They provide a restricted, and exhaustive, range of natural (in the sense of "non-man-made"[45]) alternatives within the framework of which institutions must be formed (if they are to be formed at all)[46]. Positive law, customs and traditions create institutions which presuppose those categories and at the same time modify them in a variety of ways; thus, in some given society a contract starts being valid only when it is officially stamped with a certain stamp, defined in corresponding statutes. But as Reinach saw, such modifications must respect the limits imposed by the *a priori* laws associated with the category which serves as its starting point. As noted above, there can be no culture or society in which the validity of contracts is in general made dependent on acts which are in a sense beyond the powers of the contracting parties, such as, for in-stance, disproving the continuum hypothesis or trisecting an angle using only straightedge and compass. The non-viability of such "improvements" strikes immediately anyone with even cursory familiarity with entities of the sorts in-volved. In this sense, such modifications are *a priori* absurd.

The social and legal categories discussed by Reinach are, interestingly, all related to time, yet in different ways. Obligations, claims, contractual or marital ties are *states* of the corresponding objects (the latter are their «bearers [*Träger*]»)[47], and involve mutual relations between the latter. They are dependent on their bearers in the sense that they cannot *endure* without the latter[48]. Such spontaneous acts as promisings, requestings,

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43 Actually, only three of them: the tetrahedron, the hexahedron and the octahedron. For more exact information see Tilley 2006: 1ff.

44 A useful study providing much information on, and thoughtful criticism of, vari-ous general theories of institutions, Reinach-style and otherwise, is Lorini 2000.

45 On what *is* man-made in the social sphere, see Smith 2001.

46 This universality manifests itself also in the fact that we naturally tend to under-stand alien social orders in terms of the same restricted class of basic notions (claim, obligation, etc.), just as we tend naturally to see slightly irregular triangles and squares in terms of the standard concepts of *triangle, square,* etc.

47 Reinach 1913: 696, Engl.: 11.

48 Claim and obligation are, for this reason, similar to the individual accidents of the Aristotelian tradition (chapter 2 of the *Categories,* pp. 1a-b*)*. They differ, howev-er, from the kind of examples which Aristotle himself would give (which are rath-er puzzling, anyway: for instance: «[a] piece of grammatical knowledge», «ἡ τὶς γραμματική», 1a 26, Cook's translation, see Owen 1965), in that they can have a multiplicity of bearers and are able to be passed on from one bearer to another (claims and obligations can be inherited, i.e., in Aristotle's terms, they can 'mi-grate' from one substance to another). Here, then, in contrast to the thinking of Ar-

commandings, nominatings etc. on the other hand, are instantaneous *events*: their dependence on their bearers consists in the fact that they cannot *occur* without the latter. Then, relations of dependence obtain, too, forwards and backwards in time, between the states and events themselves, and even between states and events of different bearers. For instance, if certain actions (events) are performed by a suitably authorised speaker under suitable conditions, then as a matter of necessity certain claims and obligations (states) begin to exist, involving this speaker (or his principal) and certain other persons. These claims and obligations then exist for a certain time thereafter, and can cease to exist in virtue of further social acts (such as the waiving of a claim by its bearer). The effects of such acts will themselves be *a priori* intelligible and necessary.

In all of this, one of Reinach's points is that it is possible (*pace* Hume) to derive the "ought" of obligation (the promisor ought to perform as he promised) from the "is" of a certain factual statement (this person is the author of that act of promising)[49]. This is because on Reinach's theory the "is", though factual, is not purely and exclusively so; the facts involved instantiate essences which warrant *a priori* knowledge and makes empirical research («but has this particular promising *really* given rise to an obligation and a claim?» someone might ask, as if such things were to be found out in every case separately) superfluous.

1.3 *The Logicist Conception of Material Necessity*

Most contemporary philosophers will be tempted to think that the «laws» formulated by Reinach are *a priori* only because of the logical relations among the corresponding concepts. Something like this may, certainly, be true in formal sciences, such as mathematics. Attempts to transfer this type of account onto *material* spheres such as those of colours or tones or social acts

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istotle, we have to do not with an individual necessary dependence of one entity upon another, but rather with what might be called a *generic* dependence, one which requires that the dependent entity should exist in association with *some* entity or *other* from a certain restricted class. (See, again Smith, ed. 1982.)

49   For an interesting, though not quite convincing, attempt to prove that the statement that someone has made a promise is not quite an "is" or factual statement, see Sikora 1975. Zaibert and Smith argue in their 2007 (p. 164) that Searle unduly lumps together the moral "ought" with evaluative statements in general and thinks he can disprove Hume by demolishing what he calls the "Naturalistic Fallacy Fallacy".

so far undertaken have been, however, less than convincingly successful[50]. The truths of mathematics are 'formal', which is to say topic-neutral; they are not specific to any given qualitative or material sphere[51], and not sensitive to material (content-related) peculiarities of their subject matter. But in the truths of a Reinach-style social ontology materially specific concepts figure ineliminably and non-trivially, and for this reason, as distinct from those of mathematics, such truths cannot be regarded as merely analytic. Some truths about social reality can, certainly, be reduced to tautologies by stripping out defined terms, and replacing each such term with a *definiens* which consists of more primitive expressions. Consider: «All bachelors are unmarried», which can be revealed as analytic simply by being converted to «All unmarried men are unmarried», which is but a substitution instance of the logical truth of the form $(x)((F(x)\ \&\ G(x)) \rightarrow F(x))$[52].

In a reduction of this sort, we end up (after replacing defined terms by their definitions) with just one non-logical concept, or with multiple non-logical concepts connected, as in the bachelor example, by logical relations. But things are different as soon as we have to do with propositions featuring two or more non-logical and mutually logically independent concepts. For consider propositions expressing relations among the referents of such concepts, say A and B, even such trivial relations as the relation of non-identity ($A \neq B$). Such propositions may be *a priori,* but if they are, they cannot be analytic, since, by hypothesis, the non-logical concepts which occur in them are logically independent, so the truths cannot be reduced to substitution-instances of logical truths. For example, such propositions as «Green is not yellow», «Colour is not sound» are clearly *a priori* (no natural scientist, no matter how conscientious, would ever dream of checking them empirically) and equally clearly they are not substitution-instances of any logical truths. Of course, "green" could be defined (or rather redefined) as "not yellow and not blue and not red and not black and not white", but, abstraction made from the difficult issue of the adequacy of such a definition, it would leave us with a plethora of other non-logical concepts ("blue",

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50 The argument which follows is developed at greater length in Smith 1986: 15-18.
51 See Smith 1981 for further consideration of the meaning of the terms "formal" and "material" in the present context.
52 This is no mere incidental mark of analyticity, but a statement of what it is for a proposition to *be* analytic. There are, to be sure, competing accounts as to what "analytic" might mean, drawn for example from Wittgensteinian "logical grammar". None of these accounts has however succeeded in establishing itself as a clear and natural alternative to the Fregean account adopted here.

"red" and so on), of which not all would be, on pain of circularity, amenable to such a definition or redefinition.

Now, if we consider the abundance of independent concepts involved in the Reinachian theory of social acts, of concepts of language, or of mental acts such as intending, willing, registering, assenting, of mental states, such as sincerity and good faith, of legal statuses such as obligation, claim, authority, concepts of action and performance, etc. then it is becomes clear that it is impossible for that entire family of concepts to be reduced, by a process of definition, to exactly one single non-logical primitive. The laws including concepts of this family will, therefore (at least for the most part), be necessary but non-analytic (for the reasons set forth above), and our knowledge of such laws will be *a priori* and synthetic[53].

2. *Institutional Entities and Constitutive Rules*

For Reinach the (*a priori)* laws which govern the relations between various social and legal institutions are founded on (or «grounded in», «*gründen/ begründet sind in*», as he likes to say)[54] the respective essences of the entities involved. This is Reinach's essentialism, or even Platonism. The laws so founded then warrant various inferences, included the one from "ought" to "is", considered impossible by Hume. Hume thought there were no such essential and necessary laws, promises and similar institutions being «human inventions, founded on the necessities and the interests of society»[55].

The theory championed by Searle, now, occupies a middle ground between these two extremes; it can be called "conventionalism" (a better word would be "constitutionalism", if this term did not already have an established, different meaning). Searle believes, too, in the existence of necessities obtaining in the sphere of social acts. He holds, however, that these necessities are due, not to the essences of the entities involved, but rather to the 'constitutive rules' by virtue of which these entities are created. And 'constitutive

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53 But could not the Reinachian laws be themselves considered as "implicit definitions" of their otherwise definitionally non-reducible primitive non-logical terms? On this, see the contribution by Żełaniec to this volume.

54 On the relation of «founding», as systematically treated by the Husserl of the *Logical Investigations* see Smith 1982.

55 *A Treatise of Human Nature,* book III, part II, sect. V, 1909 p. 287. v. Quoted in Reinach 1913: 727, Engl.: 35.

rules', as Searle presents them, seem to be largely conventional, and conventionally adopted at a certain time by a certain culture or society[56].

There are, Searle explains in *How to Derive "Ought" from "Is"*, the *locus classicus* on constitutive rules[57], two different kinds of rules or conventions:

> Some rules regulate antecedently existing forms of behavior. For example, the rules of polite table behavior regulate eating, but eating exists independently of these rules. Some rules, on the other hand, do not merely regulate an antecedently existing activity called playing chess; they, as it were, create the possibility of or define that activity. The activity of playing chess is constituted by action in accordance with these rules. Chess has no existence apart from these rules[58].

The institution of promising is, by Searle's lights, no different from chess in the relevant respects[59]:

> The institutions of marriage, money, and promising are like the institutions of baseball and chess in that they are systems of such constitutive rules or conventions[60].

Searle is invoking here the opposition between "institutional" and "brute" facts[61], a characteristic trait of the former being, that they consist of deliberate constitutive arrangements of the latter, which in their turn serve as "input" of the former. Obligations, commitments, rights and responsibilities are, Searle thinks, institutional facts in this sense. For Searle, no less than for Reinach, the "ought" of obligation follows of necessity from the "is" of the fact that the promise has been made; yet for Searle this relation of consequence is due simply to the fact that, to put matters bluntly, promises are purposefully designed

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56   To be fair to Searle: he clearly and carefully distinguishes the "constitutive" from the "conventional" in the narrow sense of social acts' being performed, for instance, typically by means of such and such words and the like; see Searle 1969: 39ff. In chess, for instance, it is a matter of convention (but not of a constitutive rule) that chessmen are black and white rather than black and green, and that they are called "king", "bishop", "rook" and so on.

57   For some information on constitutive rules see Żełaniec 2010.

58   Searle 1969a: 131.

59   This blurring of the, in our eyes, crucial difference between the pseudo-obligations in chess ("bishops ought to move diagonally") and the real, "robust" obligation originating from a promise is the gist of the criticism against the Searlean conception by Zaibert and Smith in their 2007: 162ff.

60   Searle 1969a:131.

61   The distinction is by G. E. M. Anscombe, see Anscombe 1958.

as devices for generating obligations. It is certain «constitutive rules»—thus conventions—that are at the heart of that generating mechanism.

On this view, there is no room for any special universal and non-man-made categories which our factual acts of promising might instantiate and by which the very institution of promising might be constrained and by the same token made intelligible. When the relevant «constitutive rules» are entrenched deeply enough we, *qua* naive participants in human social life, might be effectively confused into thinking that the individual factual instances of the relevant institutions reflect, in their constitutive features, some Platonic, non-man-made essences, and that the concepts in which we think and talk of such instances are, as much as truths in which they are intertwined with one another, in some strong sense *a priori*; but that is plainly an illusion. The aprioricity involved (in Searle's view), as we have already noted, is of a rather weak sort: the «constitutive rules» that are part and parcel of the design of institutions are in fact prior to individual instances of those institutions. Far from being *a priori*, they have in fact been invented by particular individuals at particular times (of which there might or might not be historical records) and are in this sense thoroughly *a posteriori.*

Searle will, no doubt, recognise that there are certain constraints on the constitutive rules that human beings can invent and adopt. Thus, for example, there could hardly be a constitutive rule whose relevant "input" or "brute facts" would be such things as walking through walls, or travelling in time, or making $2 + 2$ equal 5. Institutions are in this sense constrained by whatever constraints the relevant brute facts themselves (laws of logic, laws of nature) are constrained by, and, clearly too, by the requirement of logical consistency of the constitutive rules among themselves. It seems, however, that for Searle, they cannot be constrained by anything other than this; for it is hard to see what that "something else" could be. All conceivable constitutive rules which accord with laws of nature and are logically coherent must from Searle's perspective be—at least pending further considerations—on a par and of equal status, however absurd or counterintuitive they might appear. And what the relevant "further considerations" might be must be uncovered on a case-to-case basis—there being no *a priori* or essential laws to dictate or enforce them on every human mind.

Reinach, in contrast, is in a better position to do theoretical justice not merely to the necessary laws governing the field of institutional facts and the constraints on such facts resulting from these laws, but also to our tendency to be immediately struck by the absurdity of institutional arrangements which violate such constraints (the absurdity, for instance, of the notion that one can eat a phoneme or cook a number). He holds, as we have

seen, that there is a family of uninventable and intrinsically intelligible categories which serve as the necessary basis for rule-formation in the realm of institutions. This categorial basis is necessary in the sense that there cannot, according to Reinach, arise institutions which do not instantiate the basic categories of, for example, utterance-phenomena, claims, obligations, and their interrelations. For Reinach such things as promise and obligation are elements in a complex essentialist, non-man-made hierarchy of universally instantiable categories. The rules we follow in instantiating such institutions for the most part just reflect that hierarchy. They certainly do involve linguistic, and other conventional, elements, but they are not contributed primarily by language or convention. On the contrary, what Searle fails to see is that the very practices involved in formulating and adopting conventional rules (the basis, on his view, of all things institutional) presuppose themselves certain universal categories, namely those which govern rules and conventions themselves and all that goes together therewith. Clearly, on pain of circularity, we cannot hold (as Searle appears to have held) that such universal categories could themselves have been designed by means of rules and conventions[62].

It is important to realise that Reinach accepts that certain institutional conventions may in the course of history come to be attached to the universal, essentialist, *a priori* categories underlying various institutions. He would not, presumably, shrink back from admitting, with Searle, that even a world which manifests the given non-man-made universal categories in the realm of social acts still has room for purely conventional arrangements built up around these and designed by means of Searle-style «constitutive rules»[63]. Just consider phenomena such as: *endowment mortgage*, *lien bond*, *football team-manager*, *member of Abba fan club*, and the like. It would be ridiculous (Reinach would no doubt agree) to pretend that there is something like an eternal essence of a football team-manager[64]; the institution of a football

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62 Interestingly, a similar type of circularity was appealed to by Poincaré in his argument against the analytic (or, more precisely, «disguised [implicit] definition») character of the axioms of arithmetic, in particular that of complete induction. To prove that the axioms of arithmetic are definitions Poincaré holds (with J. S. Mill), that it is necessary to prove that they are consistent (otherwise they would not even be definitions). But in a proof to that effect, the axiom of complete induction itself must be employed. See his 1996: 151ff.

63 Cf. Reinach 1913: 801f., Engl.: 104, where the parallels between Reinach's notion of enactment and Searle's notion of constitutive rule are especially clear. See also Paulson 1987 and Burkhardt 1986.

64 Yet, in the kindred area of natural law perhaps no less ridiculous pretences were advanced (chiefly in the eighteenth century) to the effect, that, for instance, enter-

team-manager is clearly of human making, and «constitutive rules» in Searle's sense have certainly played a significant role in the way that institution was devised. Yet, they are grafted, as it were, on more basic categories, such as 'leader', perhaps, which are *not* of human making. The vocabulary necessary for discourse on endowment mortgages or football team-managers can be introduced (this is a mark of conventionality which Reinach, too, could readily accept) via non-circular definitions expressible in terms of concepts which are truly and unproblematically more basic. Reinach holds, however, that after eliminating terms defined in these definitions, we must eventually arrive at *basic institutional concepts*, which is to say: institutional concepts not capable of being further defined in terms of other institutional concepts. *Leadership* and *ownership* are, arguably, concepts of this sort; others might be: *rule*, *obligation*, *utterance*, *uptake*, *understanding*, *agreement*, and so on. And, clearly, such basic institutional concepts—together with the corresponding natural categories—must be employed, too, where constitutive rules are formulated and adopted in the realm of the positive law; concepts such as *authority*, *validity, juridic person, jurisdiction*, *legislation, promulgation* and others[65]. There are truths connecting such concepts, for instance «*For a legislation to be valid it must be enacted and promulgated by a juridic person invested with relevant authority*». A question which Searle ought to have put to himself for consideration is this: Are such truths themselves *purely conventional* in the sense defined above, i.e. reducible to tautologies by way of elimination of defined terms in favour of those which are «unproblematically more basic», such that their definitions are warranted by «constitutive rules»? Clearly not: for the very formulation and adoption of constitutive rules *presupposes* the concepts involved in such truths. Are such truths, then, analytic? This possibility we have already ruled out, by virtue of the argument given above on the inapplicability of the analytic conception to relations characterised by material necessity. Should we, then, suppose that all such material concepts (as are involved in the truths in question) can be defined in non-circular ways in terms of non-institutional concepts? No, because it is in their terms that all other institutional concepts are (by hypothesis) defined; such an assumption would thus imply that all institutional

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ing unbidden, making journeys troublesome or electing US senators for a term of two years (rather than annually, and that in spring) are all *offences against*, while the constitution of the Holy Roman Empire, the postal system and the exact number of jurors in a jury all *flow directly from* natural law, see Crowe 1977: 233.

65   Note that nothing in what follows turns on the question whether we have here provided even partially adequate lists of basic institutional concepts: the lists we provide in the text are intended to serve only for purposes of illustration.

concepts would be definable in terms of what is not institutional—a possibility which Searle quite correctly rejects[66]. What remains, then, is precisely the Reinachian alternative, namely that the truths in question express intelligible material necessities, that is, that they express necessary relations between certain non-man-invented categories. That Searle has evaded this conclusion is easily explainable: he has always *taken for granted* a rule-positing society, without ever asking how a society of that sort and its rule-positing practices might themselves have possibly come about[67].

Driven by the inner logic of his thought, Searle must, then, willy-nilly accept the notion of basic institutional concept as much as the irreducible institutional categories of entities to which such concepts correspond. At this stage Searle meets Reinach. They may still disagree with regard to the question where the line is to be drawn between purely conventional concepts (concepts which can reasonably be held to have been introduced by definition) and basic institutional concepts (concepts reflecting irreducible categories which cannot be mutually interdefined, on pain of circularity). In particular Searle takes promising to be a purely *conventional* concept, where Reinach insists that it is *basic*[68]. From the point of view of a champion of the *a priori,* however, such borderline disputes are at most of secondary importance. For borderline disputes presuppose (for their very possibility) the existence of clear, off-borderline, cases. It is useful in this connection to recall (by way of example) the reconstruction endeavours undertaken by Whitehead and Russell in their *Principia Mathematica:* number, in their framework, is defined (not before *100 of volume II) in terms of certain other, not intuitively more basic concepts, such as *propositional function* and *type.* That such a definition can be constructed (though, notoriously, at the price of other disputed assumptions in the system) does not commit a mathematical Platonist, who believes in numbers, to the view that numbers *are* exactly what the authors of *Principia Mathematica* define them to be. It only shows that

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66   Searle 1969: 56.
67   For a more extended analysis of this point, see Zelaniec 1992.
68   Searle has indeed offered a definition of "promising" in terms of other, more basic concepts (see Searle 1969: 57ff.), though it has to be said, e.g. in relation to clause 7. of this definition, that it is not at all clear that the mere fact that someone intends that his utterance shall place him under an obligation to do such and such is sufficient to bring it about that his utterance will indeed have this effect. In regard to clause 9., similarly, we must ask whether the semantical rules of a language really can be such that a given sentence is correctly and sincerely uttered if and only if this sentence brings it about that the speaker is brought under an obligation.

there is a certain room for free play in constructing systems of definitions suitable, for example, for our deductive purposes in mathematics.

3. *A Reinach-Inspired Theory of the A Priori*

We shall now proceed to a summary of our results. First: *a priori* knowledge is available first and foremost on the relations (prominently necessary and necessitation relations) which obtain among diverse intelligible categories, such as promise, obligation, claim, colour, sound or shape[69]. Man, secondly, has an innate capacity to discriminate between instances of categories like the ones just mentioned (for this is not itself something that could have been learned); and hand in hand with this innate capacity goes the ability to grasp the associated necessary relations. One incidental advantage of this position is that it makes possible a systematic account of all the various types of *a priori* laws (laws relating to one-sided and mutual necessitation, laws of exclusion and compatibility, and so on); they afford us a true theory of such types, where those treatments of the *a priori* which enjoy more currency in contemporary philosophy usually have as outcome that the laws in question appear as little more than an Olde Curiosity Shoppe of *ad hoc* examples.

Our view thus amounts—and here we are being faithful to Reinach—to an ontological (realist) theory of the *a priori*. We claim that there is synthetic *a priori* knowledge of, among other things, the basic relations among social and legal institutions, or among colours, because there are (we believe) corresponding intrinsically intelligible relational structures in the world. This view, once predominant in Western philosophy (the existence of such structures having been rightly considered to provide the necessary and sufficient conditions for the existence of philosophy in general), is distinctively opposed not only to standard Humean conceptions still holding sway in English-language philosophy[70] (which simply deny the existence of necessity *in re*), but also to the Kantian view, which pretends that *a priori* knowledge is possible only because of the conceptual apparatus of the subject being prior to the to-be-known object and constitutive thereof.

We do not, of course, deny that Kant did correctly recognise the central importance of synthetic *a priori* knowledge, and that he recognised also that it is not exclusive to philosophy but that it pertains also to the natural scienc-

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69   On why this view does not commit us to the thesis that the *a priori* knowledge in question is always infallible see Smith 1991.
70   Though not necessarily to Hume himself; see Davie 1987.

es and to our everyday experience; we deplore only that he was wrong, not only as to the scope of such knowledge (which he assumed to be restricted, effectively, to arithmetic, Euclidean geometry and Newtonian mechanics) but also, and with fateful consequences for all subsequent philosophy, as to the question of where synthetic *a priori* knowledge ultimately comes from.

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