

European Institutions?

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Abstract

The aim of this article is to sketch a phenomenological theory of political institutions and to apply it to some objections and question raised by Pierre Manent about the project of the European Union and more specifically the question of ‘European Construction’, i.e. what is the aim of the European Project. Such a theory of political institutions is nested within a broader phenomenological account of institutions, dimensions of which I have tried to elaborate elsewhere (Meacham, ‘The “Noble” and the “Hypocritical” Memory’; ‘The Institutional Life’; ‘What Goes Without Saying: Husserl’s Concept of Style’). As a working conceptual delineation, we can describe institutions as (relatively) stable meaning structures. As such, the definition encompasses phenomena like the European Commission, Belgium, marriage, the Dollar, the Labour Party, but also political subjects themselves. In order to develop said theory of institutions, I will draw primarily upon resources in the work of Maurice Merleau-Ponty and John Searle.

Keywords

Institution, Politics, European Union, Nation-State, Merleau-Ponty, Searle

Introduction

The aim of this article is to sketch a phenomenological theory of political institutions and to apply it to some objections and question raised by French political philosopher Pierre Manent about the project of the European Union and more specifically the question of ‘European Construction’, i.e. what is the aim of the European Project. Such a theory of political institutions is nested within a broader phenomenological account of institutions, dimensions of which I have tried to elaborate elsewhere.¹ As a working conceptual delineation, we can describe institutions as (relatively) stable meaning structures. The definition encompasses phenomena like the European Commission, Belgium, marriage, the Dollar, the Labour Party,

¹ Meacham, ‘The “Noble” and the “Hypocritical” Memory’; ‘The Institutional Life’; ‘What Goes Without Saying: Husserl Concept of Style’.

but also political subjects themselves. All of these institutions have some material support, but the institution itself is not definable by or reducible to this support, but rather by acts of intersubjective meaning-constitution that give the institution a stability beyond any one subjective act of constitution. To put it into the terms of the social ontology developed by John Searle, the function of the institution is not derived from its physical structure or material support. The material support is fungible. The European Commission, for example, could continue to exist without the material superstructure of its headquarters, it could convene in the neighbouring park. So long as it continued to perform its function and be recognised by the subjects for whom it is a relevant institution and by extension power, the institution would continue to exist.

The dimension of recognition is important: institutions need to be continuously instituted; other institutions, in the case of the European Commission, political subjects or citizens, do this instituting. This is generally the case for the institutions that we describe as stable and democratic; they are legitimated by acts of collective recognition of and consent to their power by those within the scope or horizon of the institution's power. But certainly not all institutions are democratic ones. A non-democratic institution still depends on recognition for its power, but not on the consent of all those subjects or other institutions within its sphere. There are also non-democratic institutions that are consented to, like a monarchy. Prior to monarchs being constitutional monarchs, and hence having the institution nested within a framework of democratic institutions, the institution of the monarchy was stabilised by some form of tacit consent or force. A theory of political institutions should be able to give an account of the different forms of stability that an institution has or does not have as well as the different forms of power. We will look at these distinctions in the next sections.

There are also limits or spheres of institutional powers, and this idea of limits will turn out to be a very important feature of the theory of institutions that I elaborate here and its relation to the question of Europe. If the citizens of Omaha Nebraska voted to no longer recognise the European Commission (EC) and to speak of it never again, it would likely have a minimal impact on the stability or power of the EC (with all due respect to the good people of Omaha). If the people of France did something similar, it would certainly undermine the existence of the institution. This is because the French citizenry is actively involved in a continuous re-institution of the EC's power; the citizens of Omaha are not. And at a certain point, if not adequately re-instituted, institutions begin to lose their stability and may cease to exist. This is because no institution exists in a vacuum where it could exist perpetually insulated from other institutions. Institutions exist within ecologies of other institutions that

exert powers upon them in varying degrees of intensity. Within ecologies of institutions there exist relations of reciprocal instituting which form the dynamics of the ecology, it is these dynamics that determine the robustness, fragility and eventually longevity of any specific institution.

This is what some anti gay marriage campaigners claim to worry about and it is also what many Belgians worry about. Institutions in an ecology perdure in a state of metastability, i.e. there is some room for flux and change within the stability, but too great or too fast a change and the institution will cease to function and thereby cease to exist, or lead a diminished form of existence. There may be something like what the mathematician René Thom called a catastrophe set, a set of points which, if crossed, signal the dissolution of the institutional stability. From a meta-institutional perspective both Belgian patriots and anti gay marriage campaigners say that they worry about the same thing: the loss of stability in an institution that they care about and seek to re-institute. In the brief story that I have told here, individual subjects create, maintain and ultimately destroy institutions through acts of collective or intersubjective constitution. The institutions that are created in this manner have, in turn, their own proper powers that they exercise upon one another. I think that this is only half of the story. As I will try to explain below, institutions also play a role in the constitution of subjects and in doing so solidify their stability. Recall that above I referred to political subjects or citizens also as institutions and as such they also exist in a sometimes fragile institutional ecology.

In this brief account of what I think institutions are and do I have used the terms power, limit, recognition and ecologies. These are key concepts in the theory of institution that I will elaborate here and their function within that theory has to be better explained. That will hopefully occur in the next sections. As prolegomena I can say that the explanation will be phenomenological, meaning that power will be understood as the power to bring something to appearance, to make it real. What is brought to appearance or made real is meaning, human life is meaningful and nothing but; what is real is real because it has meaning. We humans cannot live outside of the sphere of meaning, except perhaps in a comatose state that hardly qualifies as human life. There are limits to the powers embodied in institutions; they have spheres of influence and competency in terms of both the capacity to bring a meaning-structure to appearance and also to legitimate it, to give it robustness and indeed enhance its power. While there are borders of institutional powers, these borders are indeed porous. To refer to my previous example, while the citizens of Omaha's powers are indeed diluted by the time they reach Brussels, their traces could nonetheless probably be felt at some level of the

functioning of the EC. Their anti-EC referendum would not shake the stability of the EC to its core, but it might cause one or two ripples, so to speak. Institutional ecologies, the dynamics of their powers to bring meanings-structures to appearance, are constitutive of worlds as meaningful totalities. Though political reality, the focus of this article, is not the entirety of anyone's world, the power of political institutions weighs heavily on the dynamics of the overall ecology of meaning that is a world and thus plays an outsized role in world constitution. This is perhaps descriptive of our contemporary situation on most parts of the planet at least, but for reasons that I think I share with Husserl, Merleau-Ponty, Jan Patočka and Pierre Manent it is also normative. I will try to explain this at the end of this article.

It is important to note that institutions also exist on a subject-relative stratum. What phenomenologists have described as perceptual types – a central element of Husserl's theory of sense-constitution – would also count as institutions insofar as they are iterated and hence stable structures of meaning. This is to my knowledge how the term is first used phenomenologically. Likewise, from a phenomenological perspective the lifeworld as a whole (the ecology that I refer to above as the 'world') has an institutional structure, it is made up of institutions, and may itself be considered an institution, albeit one that composed of many other institutions that are related to one another in various forms, including perhaps most importantly the form that we can refer to as nested, wherein an institution functions, exerts power, within the functional horizon of one or many other institutions, that it in turn helps to constitute and stabilise. For example, the office of President of the EC is obviously nested within the broader institution of the EC, which is in turn nested within the European Union, which is not only a set of institutions, but itself an institution in the relevant sense. While the office of the presidency and the EC itself are obviously stabilised by and to an extent constituted by the larger institutions that they are nested within, they play a reciprocal role in stabilising those larger institutions and making them more robust.

Institutions qua stable sense structures are likely not limited to human life. Orcas display patterns of behaviour that have been described as cultural and are handed down from generation to generation via processes of teaching and learning.² These would certainly seem to qualify as institutions in the relevant sense. The famous waggle dance performed by bees and described by Karl von Frisch might likewise qualify as 'institutional'. Languages are also institutions, by far the most important ones from a human perspective as they provide support and stability to nearly all other human institutions; but not all institutions require linguistic

² See <http://www.smithsonianmag.com/ist/?next=/science-nature/understanding-orca-culture-12494696/> [last accessed 4 April 2016].

support in a strict sense, though all institutions do require some form of behavioural expression of which language is the most complex and indeed stable, hence how the waggle dance could be an institution while allowing us to remain agnostic about the linguistic capacities of bees. Formalisation of an institution in writing gives a particular stability to human institutions across time and space. As formal objects embodied in writing institutions gain the status of supra-temporal objects to use Husserl's term. The transmission of Orca institution require animal to animal contact and expression/communication that is not required of formalised human institutions. The function of the institution where I currently sit – a university – is structured almost entirely by written documents to which I grant authority and legitimacy by behaving in accordance with them. Orcas on the other hand don't send memos. The aim here is however limited to a discussion of human political institutions.

Let me briefly take a more historical perspective on the phenomenological tradition. In the repertoire of conceptual tools developed within this style of thinking, institution³ is the one that I think is most interesting and relevant for political philosophy. As mentioned, it is a concept that one finds in Husserl's genetic analyses of constitution (in *Ideas II* for example) and in his philosophy of history and ideal objects, as developed in the *The Crisis of the European Sciences and Transcendental Phenomenology*, especially in §15 and the appendix entitled 'The Origin of Geometry'. The concept of institution is crucial to Husserl's account of history, tradition, science, Europe and crisis. Both Merleau-Ponty and Derrida took up Husserl's development of the concept in their respective analyses of Husserl's theory of constitution and phenomenological account of history; Derrida in his extended commentary on 'The Origin of Geometry', Merleau-Ponty in his 1960-61 Collège de France lectures on the same topic, but also in his 1954-55 lectures on *Institution in Public and Private History*, and in many essay and notes written in the period between these lecture and his death in 1961.⁴ Institution is also a key concept in Sartre's *Critique of Dialectical Reason*, which was arguably influenced by Merleau-Ponty.⁵ In this article, my primary phenomenological reference points will be Merleau-Ponty's uses of the term, although I will also make brief

³ This is the translation of the German word *Stiftung* that I will use. The term has also been translated into English as instauration, establishment, and foundation. The former is used in some English translations of Husserl's work (*Ideas II*). All three, along with the term institution itself, have been used in both the French by Merleau-Ponty and Derrida (as translations of *Stiftung*), and in English translations of Merleau-Ponty's and Derrida's French.

⁴ I have argued elsewhere that institution is the key concept in Merleau-Ponty's post *Phenomenology of Perception* attempts to develop a phenomenological ontology. See Meacham, 'The "Noble" and the "Hypocritical" Memory'; 'The Institutional Life'.

⁵ In his obituary for Merleau-Ponty, Sartre wrote that Merleau-Ponty had taught him history. See Sheridan, 'On Ontology and Politics'.

reference to Husserl and Jan Patočka. It is not my intention here to provide an exegesis of Merleau-Ponty's uses of the concept, which is very similar to Husserl's. Rather, by drawing upon what I think to be a few pivotal and fertile passages I will attempt to sketch a phenomenological theory of institution as an important political concept and resource for political philosophy.⁶ This will encompass the first part of this essay. The second part of the essay will examine how the phenomenological concept of institution that I develop relates to Searle's social ontology. The third and final section of the essay will examine how the phenomenological theory of institution can help us to better understand Pierre Manent's critique of the European Union, and more specifically the project of 'European Construction'.

I will not treat Husserl's development of a phenomenological concept of Europe or his concept of crisis, which occur in the same context. One might legitimately ask if Husserl's treatment of these concepts offers a guide or resources for a normative or critical discussion of the European project and the current on going 'European crisis'; if the two share more than terms in common. In both cases, I think the response should be in the affirmative; Husserl's philosophy has a great deal to offer in this regard. However, I do not have the space here to give an adequate account of Husserl's possible contribution on these topics and also say what I want to say about the phenomenological concept of institution as a political concept. So I will restrict myself primarily to the latter task, although in doing so it is not possible to completely neglect either Husserl's concept of Europe, which is ultimately an institution in the sense described above and the current European crisis, which like all crises in the phenomenological sense is a crisis of institutions.

1. A Phenomenological Theory of Institutions:

Let me start by trying to conceptually pillage two quotes from Merleau-Ponty's 1954-55 lectures on Institution and Passivity; the first, from the resumé of the course, deals with the concept of institution in a general sense, the second, from the course notes, addresses the concept in relation to the state or political body.

Quote 1: By institution we were mean here those events in an experience which endow it with durable dimensions, in relation to which a whole other series of experiences will make sense, will form a thinkable sequel or a history-or again the events which deposit

⁶ Claude Lefort does something similar with his concept of 'regime', which he describes as the 'principles that generate society, or more the form of society'. See Lefort, *Democracy and Political Theory*, 217.

a sense in me, not just as something surviving or as a residue, but as the call to follow, the demand of a future.⁷

Quote 2: [There is an] apparently clear sense: the ‘body’ of the State, organic laws subjected to special processes of revision—and the apparatuses that they set up. Nevertheless, that accentuates (in the psychoanalytic sense) institution as the letter without the spirit of institution, which mutilates institution. Institution [is not only] what has been fixed by means of contracts, but that plus functioning. True institution [is the] actual framework of the dynamic of the system, whether it is official or not. It is often in the latent content that we find what is most important, the reason for the Stiftung.⁸

The first distinction to make is between an institution as a thing, a more or less stable meaning structure, and an event. So far I have referred to institutions as things, Merleau-Ponty refers first to institutions as events (quote 1) and then as things (quote 2) although certainly active or dynamic things – processes might be a better word. Things are of course components or dimensions of events, or better, events create, change and destroy things. If an event has no impact on the things in its horizon or scope then it would be hard to say that an event has occurred. We can thus say that an institution is an event that in the first instance creates a stable-ish meaning-structure. Here we can see the link between the concept of institution and foundation or establishment. The advent of an institution, we can use a political party as an example, is its establishment or foundation. It is important to note that the institution does not happen in isolation or ex nihilo. An institution occurs within an institutional ecosystem and also as part of the interaction of other existing institutions. The foundation of a political party is likely preceded by dynamics that lead subjects to think that a new part is needed, possible, etc. At the same time the institutional apparatus of a political party in general has to already exist for the new party to be meaningful; or we might retrospectively see the formation of an institution that we would now call a political party but that at the time of its advent was not considered as such because the existing institutional ecology did not have the capacity for a political party in the sense that we think of it now, but was altered in such a way by existing institutions that something we can now recognise as a proto-party was instituted. To be more precise, we can easily imagine the new party being formed in a dynamic of relations between other similar institutions, among them, citizens,

⁷ Merleau-Ponty, *Themes From the Lectures*, 40-1.

⁸ Merleau-Ponty, *Institution and Passivity*, 13.

labour unions, interest groups, etc. The example that I have given is taken from a democratic context where the institutional apparatus for party formation precedes the formation of a new party. But I think that the same structure would hold in a non-democratic system as well, but the new institution would not have the official institutionally sanctioned status and function of a political party, it could nonetheless have many of the same functions, workers councils (even illegal ones) or phenomena like the Paris Commune might qualify as appropriate examples. What is important is the relative stability of the meaning structure and its mutually agreed function, with some scope of flexibility, by the other instituting institution.⁹

Once an institution is established it must do something, i.e. have a function, within the larger dynamics of the institutional ecology it is part of. In functioning, an institution alters those dynamics. Some of the things that it does will be prescribed already within the existing institutional dynamics as was the case of the political party example above or a novel institution carves a new functional niche for itself within an existing ecology. This niche is determined by the capacities or powers that the institution has. We can adapt Searle's formula for the logical structure of institutional facts, 'X counts as Y in C',¹⁰ to say that X has the capacity for Y in C, where X is the institution, Y is a capacity that it has and C is the institutional ecology in which it functions. Political parties, for example, have all sorts of capacities within our democratic institutional ecologies, but the capacities that parties have also differ from ecology to ecology. In Belgium your political affiliation may impact what health care provider you use, as they are also divided along political lines (Christian, Liberal, Socialist), in the UK your party affiliation may have a different impact on your health care. What is clear is that political parties have different capacities in different institutional ecologies.

We can analyse institutional ecologies at many different levels. In this case we are primarily analysing them according to the level of nation-states, but we might well choose another level, that of a particular city, for example. Of course there are good reasons to choose the nation-state as the level of analysis in this instance. That is because the nation-state is itself an institution that exerts enormous power on the dynamics of its local ecology, and plays a significant role in determining the capacities of other institutions to the extent that we think of it as an over-arching super-institution, what Merleau-Ponty calls in his course an 'event-matrix' or what I prefer to call a matrix-institution.¹¹ A matrix-institution is a central

⁹ Thank you to an anonymous reviewer for demanding this clarification.

¹⁰ Searle, 'What is an Institution?', 8.

¹¹ Merleau-Ponty, *Institution and Passivity*, 13.

organising force within its ecology, nation-states are still the paradigmatic example of this (which is Manent's point as we'll see below). A counter-example may serve to clarify. I am an institution, as a citizen-subject I am a relatively stable meaning structure with various powers (most notably the power of speech and the power to appear in the public sphere or represent others within other political institutions). Belgium, the country where I live is also an institution. It is formed by the confluence of various other institutions, a monarchy, various mechanisms of government, the police, its citizenry, and like my own body has a clear border, although its capacity to impact other institutions extends beyond those borders. Despite these similarities there are good reasons for calling the immediate geographic space around me Belgium and not 'Darianland'. The institution of the nation-state Belgium plays a much larger role in structuring the institutional ecology than I do, it is a matrix institution, I am not.

It is extremely important not to forget the role that language, and especially written language plays in the formation and dynamics of institutions. Almost all of the institutions that we have discussed are stabilised in written language, which gives a precise formation and often function to the meaning structure. This is why there is often the rush to embody institutions in written documents. In the examples just given, neither the institutional power of the Belgian state nor my power as a citizen rest on tacit verbal consent. The roles and functions of each are formalised in writing, which gives stability to the institution. Languages themselves are institutional in structure insofar as they have the character that Searle describes X counts as Y in C (a mark, gesture or utterance has a certain meaning within the scope of the language) and are constituted by stable meaning-structures. The importance of linguistic stability applies to institutions that we are inclined to think of primarily as events and not as things. The 9/11 attack on New York is an institution not only because it was given a written signifier '9/11' that functions as a proper name, but its being rendered into written language and constantly referred to in public and private discourse gives the sense of the event a public stability that it would not otherwise have if it had been never named and remained a private institution in the memories of those of experienced or witnessed it.

This helps us to understand the idea of an institution conveyed in quote one as giving experience durable (read: stable and robust) dimension and inaugurating a history. It also helps to clarify the relation between institutions and events and institutions and things. We can say that the foundation of an institution is indeed an event that changes the dynamics of an existing ecology but also has a product, the perduring meaning-structure which continues to function within the now altered ecology. It is as a perduring meaning structure that the

institution continues to structure and stabilise experience. And it is this general structure of institutions interacting with one another in an ecology that gives coherence to experience as a temporal flow. We must emphasise the reciprocal structure of the relations between institutions and especially between subject and other subjects and subject and non-subjective institutions. So long as a meaning-structure perdures as a common reference point for experience, as something giving a coherent temporal frame to experience, it is continuously reinforced, the institution is reinstated and further stabilised. This does not have to happen on a level that phenomenologically would be called 'active', i.e. present to consciousness. Experience can be structured by institutions that remain 'passive' insofar as the subject is not consciously aware of them but is still under the sway of their power. A good example of this may in fact be the European Commission, which exerts a great deal of institutional power over the ecology delineated by the European Union, but is most likely not thought about very often by most people. It is of course very active to some subjects how work to continuously reinstate it and maintain its power and to other who work to de-stabilise it, as in the fictional case of the Eurosceptics of Omaha. It may be the case that remaining passive has an advantage for political institutions seeking to maintain their power by remaining below the radar of consciousness, so to speak. This also makes it clear than a subject does not have to recognise or even be aware of an institution for it to play a role in structuring its experience. As Weber famously wrote about bureaucracies: 'Every bureaucracy seeks to increase the superiority of the professionally informed by keeping their knowledge and intentions secret [...] in so far as it can, it hides its knowledge and action from criticism'.¹² The introduction of the concept of passivity requires a reformulation of what was said earlier about the relation between recognition and institutions. We can maintain that the formation of an institution requires the recognition or at least acknowledgement of that institution, though this does not necessarily entail consent. However, if the power of an institution can be passively experienced then presumably recognition or acknowledgement is not entailed. There is, in such cases, what we might call a passive recognition that is simply a lack of active resistance to the power of the institution: an institution that structures the experience and behaviour of one or many subjects without either an active acknowledgement of that structuring or an active resistance is passively recognised. Indeed this is likely the most prevalent form of institution-subject relationship.

¹² Weber, *From Max Weber*, 233.

This allows us to turn the standard phenomenological analysis of active and passive constitution on its head. The standard account would say, very coarsely, that subjects constitute either actively, in a manner that they are consciously aware of or passively, consciousness acts behind its own back, so to speak, and does things without those things rising to the level of awareness. We can see then that passivity is a form of activity; it is a way of consciousness doing something. This fits with both Husserl's and Merleau-Ponty's accounts of passivity. This would hold whether we are talking about subjective or intersubjective constitution. What the concept of institution introduces is a situation where subjects are instituted as stable-meaning structures but also as having stable-structures of meaningful experience. This institution can happen actively, when subjects engage with institutions in a fashion that they are consciously aware of, but also passively, when the dynamics of an institutional ecology institute subjects without them being consciously aware of the institutions that hold sway over the formation and reformation (it's a continuous process) of the structures or forms of their experience. It seems most sensible to say that the active and passive dynamics of subject institution are intermingled.

In structuring the forms of experience, the intuitional dynamic gives the development of experience an orientation toward certain forms over others. This style of experiencing the world in some kind of accordance with the institutional dynamic that the subject qua institution is nested within is correlated with a style of being and an orientation that belongs on the side of the world qua experienced and qua institution. Merleau-Ponty calls this a 'call to follow, the demand of a future' that one finds on both sides of the institutional subject-world dyad. The 'call' or 'demand' that Merleau-Ponty refers to here is mistakenly projected in the future; it is rather an institutional orientation in the present that has a history of development. A careful reader of both Husserl and Merleau-Ponty, Jan Patočka, notes, in an essay where he critiques Husserl's conception of the lifeworld for being too cognitive and subjective, that a lifeworld not only contains act of valuation and objects of value, but has an overall orientation toward a notion of the good.¹³ This notion does need to be explicit, but can function as a regulative ideal that permeates the institutional dynamics of a lifeworld like a watermark, to borrow again a phrase from Merleau-Ponty. This orientation, visible in the analysis of the dynamics of an ecology, is the subject of quote 2 above. What Merleau-Ponty calls the 'latent content' of the 'dynamics of a system'. It is in this latent content that we can find the reason or explanation for the dynamics of the system/ecology, namely for what

¹³ Patočka, 'Edmund Husserl's Philosophy of the Crisis of the Sciences and His Conception of a Phenomenology of the 'Life-World'', 235-6.

institutions are created, what institutions maintain themselves and which ones cease to function and disappear or limp along in diminished form and power.

Thus, what Merleau-Ponty call ‘the body of the state’, which refers to the full dynamic of its institutions has both an actual or ‘official’ dimension, the letter of the law, but also a latent dimension that inhabits or permeates the relational dynamics of the system and gives it an orientation toward a future that seems to ‘call’ to the subjects who are instituted with those relational dynamics but in reality does something much more powerful, it structures the forms of their experience.

Institutional powers or capacities also lie in both the actual and latent dynamic of the ecology, but can be analysed separately even if this separation is ultimately abstract. In this sense, Searle is at least partially correct to say that the powers of political institutions are deontic, at least phenomenologically; democratic political institutions institute an experience of duty or adherence to ‘matters of rights, duties, obligations, commitments, authorizations, requirements, permissions and privileges’.¹⁴ Searle argues that this is possible because ‘recognized deontic powers provide desire-independent reasons for action’,¹⁵ this is how institutions motivate subjects to act in such and such a fashion. Searle further argues that this motivational reason formation does not need to be active (he says ‘explicit’); there is a passive motivation for action that comes with the recognition, active or passive, of a set of institutional facts as valid. Searle has a narrower view of institutions than I do, but this does not pose an issue here as the kinds of things that he considers to be institutional facts – e.g. the dollar and American citizens – certainly fall within the scope of institutions as described here. For Searle we get from collective intentionality to institutional reality in two steps, first the creation of status functions X counts as Y in C (this green paper counts as 20 dollars everywhere where the global monetary system of currency exchange is recognised); second ‘constitutive rules’ that create the institution that they are rules for, e.g. the dollar is created by the rules that designate what a dollar is and does, these rules are both regulative and constitutive of dollars, in the way that jay-walking and traffic rules regulate walking across streets, but do not constitute the act of walking.¹⁶ Institutional reality is generated in Searle’s picture when status functions (X counts as Y in C) with constitutive rules are represented linguistically, language functioning as an ur-institution in his theory of social ontology: ‘status functions can only exist as long as they are represented as existing, and for them to be

¹⁴ Searle, ‘Social Ontology and Political Power’, 93.

¹⁵ Ibid., 101.

¹⁶ Ibid., 93-4.

represented as existing there needs to be some form of representation, and that means is typically linguistic. Where political status functions are concerned it is almost invariably linguistic'.¹⁷

I have no objection to Searle's account, but I do think that it overlooks the extent to which institutional reality constitutes a world by instituting the very forms of experience by which we experience the world and also by legitimising some forms of experience and expression while rendering other impotent. Institutions do not simply give us desire independent reasons to act in certain ways and not others, they structure our desires qua forms of experience. I think that by insisting on seeing the subject as, at its core, an institution, and indeed a political institution insofar as political matrix-institutions play an outsize role in the reciprocal relations of instituting-instituted, the phenomenological theory of institutions gives us a richer account of reality as institutional reality. It also allows us to better understand how subjects are caught up in what I have called an institutional style of being, that permeates a system or ecology and gives an overall orientation to its temporal movement or development. This orientation can be resisted, and nearly always is, but that resistance also takes the form of an institution – a meaning structure. Finally this allows us to better see that an institutional dynamic constrains or limits the possibility of creating some new institutions while making other institutional advents more probable. This is a phenomenological point about the appearance of the world; institutions structure and orient the coming to be of the world, not only in terms of other institutional facts, but insofar as institutions institute the structures of experience, they shape how we experience what Searle calls 'brute facts' about the world, like the melting of a glacier or a hurricane, or also the suffering of another animal in front of us.¹⁸

In the second part of this paper I want to examine and make some critical reflections on Pierre Manent's very eloquent and powerful critique of European Construction or the 'European Project'. Specifically, I want to read Manent's critique phenomenologically, through the theory of institutions that I have sketched out above. We can then return to a fundamental question concerning the power of institutions, what role recognition plays.

¹⁷ Ibid. p. ??

¹⁸ A more sustained engagement with Searle's social ontology in relation the phenomenology of institutions, beyond the very coarse lines that I have drawn here is certainly warranted. My aim here is limited to drawing some broad distinctions and points of conflict.

2. Democracy Without Institutions: reading Manent phenomenologically.

In the second and concluding part of this article I would like to make some critical reflections on Pierre Manent's very eloquent and powerful critique of European Construction or the 'European Project'. The strength of Manent's critique comes from its not being a practical objection along the lines of there are these and those concrete obstacles to European construction. Rather it is a philosophical critique of the project as it is currently institutionalised that is based on Manent's understanding of what is essential to political life. It is a defence of the political form of the nation-state without succumbing to any kind of essentialist particularism about nation-states. The critique runs something like this: real political life does not only consist of the mechanics of a principle of legitimacy, i.e. democratic consent, but also entails a political 'body' or 'flesh' that is a 'bringing of things in common', the creation of poles of 'identification' and the subsequent delineation of a political territory and a people bound by these things that have been put in common with one another.¹⁹ By the account that I have offered in this article, the body that Manent refers to is an institutional body; what Merleau-Ponty calls the 'body of the state'. The twentieth century, for various reasons, has seen the decline in power – we can again conceive this notion of power phenomenologically by way of the preceding analysis – of the paradigmatic modern political body, the nation state. The European Union is widely understood as the successor body of the European national state.²⁰ However, the EU, by Manent's account, has remained steadfastly ambiguous vis-à-vis this bodily definition of politics. The discourse of European construction is (or was) permeated by continued talk of a federal European super-state and at the same time a refusal to specify what things would be put in common by this super-state or where its borders would lie, opting instead for reliance on a democratic principle of legitimacy by consent, supported by the institutions of the common market, amounting to something like the bare cartilage of a political body. Manent goes on to argue that despite this political Achilles's heel of sorts, the EU has actually benefited from this ambiguity as, 'many Europeans believe that the notion of "Europe" has content, a definite meaning; and that what is at stake is less to "construct" the said Europe than to make appear a Europe that is already there beneath the appearance of the different nations'.²¹ Thus by not actually determining what things are to be put in common to form this new body the EU allows itself to be all

¹⁹ Manent, 'Democracy without Nations', 93.

²⁰ This is probably a more contentious point now than in the late 1990s or early 2000s, but nonetheless it remains I think a valid proposition as the current perceived weakness of the EU has not seen a correlated re-strengthening of European nation-states, in the relevant sense.

²¹ Manent, *Modern Liberty and its Discontents*, 107; cited in Janssens, 'Habeas Corpus?', 185.

things to all Europhiles, if not all people. Moreover, Manent himself rejects the idea of a ‘European particularity’,²² nor is he in the business of defending the particularity of the European nation states – ‘to defend the nation in its particularity is ultimately to condemn it only as a region, a territory, or (even less than a territory) a “culture”’.²³ Rather Manent’s concern for the nation-state is a concern for political bodies more generally as proposals, concerning the good life and justice, ‘by humanity for humanity’.²⁴ Nonetheless, ‘[t]hanks to the nation and the national form, the natural human desire for self-government that once could only be satisfied in the city [...] can now be fulfilled in a form that encompasses hundreds of millions of citizens’.²⁵

Thus, despite the diminution in their power, in Manent’s view, nation-states remain the only viable political bodies, in view of the normative requirement that a political body be able to make or embody proposals concerning the good life and justice that are precisely not particular or limited to that region or culture but rather ‘by humanity for humanity’. The EU, while having the mechanisms of political legitimation does not have a political body or community to legitimise, leaving the operation of those mechanisms on a phenomenologically abstract plane, even if the institutions of the EU do in fact wield considerable power, which in fact compounds the problem. Put in the terms I have used above: The European Institutions fail to institute the citizen-subjects that would stabilise and reinforce it as a proper political body and a pole of identification. We could put it in terms used above, the particular characteristics of the EU as a political form makes it a matrix-institution in terms of its power, but it nonetheless fails to structure the experience of its would be citizen-subjects such that they actively recognise and consent to this power. Instead, when the institutional power, the power to make worlds appear, of the EU is made active, in the sense of present to consciousness, it is often resisted. Many of the problems facing European Construction as well as the inability of ‘Europe’ to respond to external crises can be traced to this fundamental problem of not just a lack of political body, but a refusal of it. For its emphasis on political body, David Janssens deftly refers to Manent’s critique as ‘Habeas Corpus?’ – having body.²⁶ I want to argue that by parsing Manent’s critique through the phenomenology of institution, as I have begun to do, it is in fact both strengthened and weakened. It is strengthened insofar as I think that the argument has greater explanatory

²² Manent, ‘Democracy without Nations’, 99.

²³ Ibid., 101.

²⁴ Ibid., 102.

²⁵ Manent, *A World Without Politics?*, 60.

²⁶ Janssen, ‘Habeas Corpus?’.

power if the concept of political body is rendered as institution, of which the nation state is certainly one, but not the only possible one, and it is weakened insofar as rendering political body in terms of institution does take the focus away from the nation-state. In the latter sense, I agree with some of the objections made by Janssens, who argues that many of the generative dimensions of the nation-state, qua Manent's preferred political body, apply as well to the European Union,²⁷ but again think that the argument should be parsed in phenomenological terms.

Manent's argument is decidedly Aristotelian in its form. Human are speaking animals (*zôion logon echôn*). In their use of language humans put things in common and form generalisations about concepts, values, goals and a notion of the common good. This putting things in common is the essence of the political, and in doing so a 'body politic' is formed.²⁸ The body politic is the people who have put certain things and not others in common, formed certain concepts, values and goals and it is the territory inhabited by those people – a polis. Territory can be understood here as the official sphere of power belonging to an institution. The polis is the direct expression of human essence as speaking animals and in this sense speaking and being political go hand in hand. The formation of the body politic is akin to the transubstantiation of human subjects into subjects of such and such a polis. Manent expresses this transformation in part as a distinction between 'identity' and 'identification'. Identity politics are 'passive' and 'lifeless', the appropriation of a label that can be manipulated demagogically.²⁹ 'Identification' by contrast is a principle of and motivation for action; an identification with a political body, with a set of formal objects placed in common is akin to what I called above a 'style of being' insofar as it permeates the subject's structures of experience and in fact institutes subjectivity. Manent writes that 'identification' gives a 'view to the future'.³⁰ In the terms that I borrowed earlier from Patočka and Merleau-Ponty, I think that this entails a latent orientation toward a particular notion of the good that is not fully present but appears in filigree as a kind of regulative ideal in the political fabric of the polis. It is this orientation that I think Manent points to when he talks about a 'view of the future' that is common to a polis. We saw a very similar formulation when Merleau-Ponty wrote of the 'body of the state' issuing a call or demand for a future. This is of course not only a principle of inclusion, but also of exclusion. In the formation of the body politic a border is

²⁷ Ibid., 185.

²⁸ Manent, 'Democracy without Nations', 97.

²⁹ Ibid., 98.

³⁰ Ibid.

formed between what is within and what is without, borders between political bodies, and also borders between the political and non-political.

The modern era sees two fundamental inventions and transformation of political life, the nation-state and democracy. Manent argues that in the post-Napoleonic context of the nineteenth century, the nation state was reborn and henceforth forever tied to the principle of democratic legitimation of the political framework by consent. What is fundamental to Manent's argument is that democracy on its own is not political, but a principle and eventually a set of varying institutional mechanisms for the regulation and legitimation of the framework. What I think we can without problems call the institutional framework of the things put in common to form the political body or the nation-states, precedes and extends beyond the mechanisms of legitimation. Another way of saying this might be that democracy does not provide the orientation toward the good or principle for future oriented action that Manent says animates the political body, or in phenomenological terms the lifeworld, it is a regulatory mechanism of that orientation or style of being. It is interesting to note that Merleau-Ponty makes precisely this point about the institution of parliament in *Adventures of the Dialectic*: parliament is an institution that allows us to question, regulate and guide other institutions.

The lack of a political Europe and the fact that the project of European construction is coeval with the diminishment of the powers of the nation-states that Europe is meant to replace³¹ is not only a problem for the European construction but also a source of alienation from the European institutions as these mechanisms unravel or dissipate the world-instituting powers of the existing political framework leaving those people living in Europe without a robustly functioning institutional framework: European 'decision making powers are more and more heterogeneous and foreign to the citizens of all the countries concerned'.³² Put in more polemical terms: the European citizen has little experience of what Europe is for, what its point and hence orientation is.

The term alienation takes on its properly Marxist-Aristotelian sense here as an estrangement from what allows us to fulfil our proper function as human beings. Alienation, in this context, also indicates a disjunction between the institutions that structure experience and the institutions that are 'identified' with; subjective forms and structures of experience in this situation are instituted by institutions that can in certain political and economic contexts be experienced as hostile or inimical to the subject itself. This is perhaps the case in relation

³¹ Janssens, 'Habeas Corpus?', 174.

³² Manent, *A World Without Politics?*, 62.

to the meagre body that the EU has instituted (according to Manent), i.e. the common market. The situation is then compounded when the institutional mechanisms of consent, the regulatory institutions of a political body appear powerless to act upon and orient the sinuous political body of the common market. The problem is further compounded as the institutions that do exist beyond of the formal mechanism of legitimation by consent, i.e. the common market, are experienced in the moment of crisis, when strong reciprocal subject-instituting institutions are most necessary, as undermining the material conditions of life in many parts of the Union via public sector cuts and increasing the distance between the commonality of experience of subjects through growing inequality, enforced in some cases by the European Institutions.

We are justified then in asking if the European project thus amounts to a ‘depoliticization of the life of peoples – that is, the increasingly methodological reduction of their collective existence to the activities of “civil society” and the “mechanisms of civilisation”?’.³³ By civil society Manent means something correlative to affiliation with one of the many interest groups within a society, which may generate an experience of identity – I am a cycling, craft beer aficionado with several club memberships to prove it – without a strong form of identification generated by identification with a political body and the orientation towards a regulative idea of the good and the future that comes with it. These identities remain both completely open and extraterritorial, i.e. I could share my aforementioned identity with someone in Colorado while living myself in Belgium, while also being exclusive insofar as it excludes most of my fellow citizens. Real political life is thus reduced to the formal mechanisms of legitimation by consent: the processes of democracy, which seem impotent against other institutional forces.³⁴ A pallet of identities – neighbourhood, region, profession, hobbies – does not allow us to deliberate and institute a conception or rule of justice, nor does it allow for the formation of a common destiny, rather it does the opposite, creating an institutional space of ‘to each his own’. This may at points create periods or fields of great individual capacity, but when those seem to shut down or collapse, when, to be blunt, capitalism is not enough, citizens rendered as individuals are left

³³ Manent, ‘Democracy without Nations’, 96.

³⁴ This is in fact the crux of Habermas’s defence of the EU in the *The Post-National Constellation*, the institution of the nation state has become impotent in the face of other global institutions, namely those controlling market forces, so a larger, more powerful political institution is necessary to ensure rights and well-being of citizens. See, Habermas, *The Post-national Constellation*.

with no recourse to institutional change and no poles of identification, because those poles qua institutions have been rendered impotent.³⁵

In Manent's view we need political bodies because they are the site of the building of a common project, a common orientation toward a conception of justice and the good life, that is not particular but universal. The existence of political institutions is normative in this sense and gives a normative orientation to the whole of an institutional dynamic that in phenomenological terms is a world. Politics and indeed justice requires functioning matrix-institutions and moreover ones that we can act upon via regulatory and legitimating institutions that are nested within them; what such institutions regulate and legitimate are nothing less than world creating powers.

One of the questions that Janssens poses to Manent is, if political institutions are formed by bringing things in common, do those things have to pre-exist the formation of the institution or can they be brought to being by the very act of institution formation?³⁶ We can phrase this also in terms of Searle's social ontology. Searle acknowledges that primitive institutional facts do not require a formalised, i.e. linguistically represented, rule, but rather stable forms of (expressive) behaviour. Putting Janssen's question in these terms means asking if political institutions, the formal or official putting of things in common and letting the meaning-structures engendered by that putting in common orient a world and its subjects toward a conception of justice, necessitate something like the proto- or primitive institutions that Searle refers to, with the putting in common being the proper formalisation?

Viewing Manent's critique through the prism of a phenomenological theory of institutions allows us to go beyond the idea of the nation state as necessary for political life and instead see matrix-institution(s) and the nested institutions of regulation and legitimation as necessary for political life understood as the formation of a common project oriented toward a universal idea of justice. However we can also see how parsing the question of the political status of Europe through this theory does indeed seem to lend support to much of the critique and help us to better understand the built-in political impotence of the European institutions, but also how when that inbuilt impotence comes into play with the immense world forming powers of the institutions the result is an experience of alienation and political crisis. Perhaps we should take heed of the fact that there is nothing inherently special about the nation-state qua political matrix institutions; and also pay heed to the fact that while all institutions have a history, a pathway to development within an ecology that can be

³⁵ Manent, *World without Politics*, 63.

³⁶ Janssens, 'Habeas Corpus', 177.

retrospectively traced in through the institutional dynamics of, not all institutions need to exist in a primitive or proto- form to achieve official institutions. Those things that we may officially put in common need not already exist in common prior to being made official. Institutional ecologies beget meaningful life and new forms. Arendt was correct to make birth the central category of her theory of the political. Those who see the value of a European project but can also agree with Manent's critique of the current institutional structure of the European Union or see still other issues should perhaps set their goal toward acting as the midwives of new political forms that might allow for the formation of a new political orientation and collective endeavouring toward a just and good life on this continent.

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