

A THEORY OF SOCIAL FACTS

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A THEORY OF SOCIAL FACTS

SUMMARY

In the most general sense this thesis is about the formal structure of the Geisteswissenschaften. It is a basic analysis of the structure of social reality that underlies all the special social sciences. Social facts have a basic ontological and logical structure that I believe can be displayed. By displaying this structure I show how we can transform inadequate prehensions of social facts into a more complete or perfect grasp of the concept. The theory of social facts I present is paradigmatically Hegelian. My analysis shows that it has practical applications. I apply the theory to the special science of legal anthropology in order to show that and how it can be used to clarify methodological problems in one of the social sciences.

KEYWORDS: Kant, Hegel, Idealism, Psychology, Sociology, Philosophy, Realism, Individualism, Holism, Durkheim.

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**CHAPTER ONE: INTRODUCTION TO THE THEORY OF SOCIAL
FACTS**

It frequently happens that in our experience we are presented with an "incomplete" phenomenon. It might be a strange situation or an unidentified object, but whatever it may be objectively, we have an incomplete grasp of it. Sometimes it is an argument or an idea that we grasp inadequately. Consider the concept of a social fact. In spite of a small but rapidly growing literature the idea remains shrouded in mystery and incomprehension.

I will use the term "prehension" (following Tragresser, 1976) to indicate the existence of an imperfect, inadequate or incomplete grasp of an idea. In most instances of incomplete concept grasp we find leitfaden, hints of paths which if carefully followed out will lead to a more perfect grasp of the idea or phenomenon in question. My main aim is to trace out leitfaden between the concept of a social fact and related conceptual structures that can be used to illuminate it. I argue that the concept of a social fact is just one concept in an array of concepts which, when taken together as a unity, is the master concept of the Geisteswissenschaften - Geist.

My method of procedure is to call attention to and discuss (in Chapter Two) certain basic but neglected and/or obscured features of Hegel's idealism. I treat these features as

paradigmatically sociological, and use them as a base-line with which to chart Hegel's criticism of, and against which to measure, Kant's first Critique. Since this is arguably the most important chapter of the book, it is broken into three sections. Section One introduces Hegel's criticism of Kant's idealism: in contrast to his own objective idealism, transcendental idealism is individualist and subjective. This criticism is elaborated in Section Two, issuing in the quasi-Wittgensteinian indictment that Kant cannot account for the possibility of language and human thought. Section Three argues that Hegel's criticism that mind is social and that objectivity cannot be understood in isolation from symbolic interaction amounts to a sociological critique of Kant. Out of this sociological critique comes "sociological idealism". This Hegelian model allows us to locate the concept of a social fact in an array of concepts that, when considered as a unity, is the master concept of the social sciences.

The model of sociological idealism that I develop, and call "Hegelian", consists of a number of clearly identifiable features. My aim is to relate these features to the concept of social and institutional facts. The array of ideas that are encompassed by, and which as a unity constitute, the master concept, are listed in Figure 1.

Figure 1.

<u>Geist</u>	<ol style="list-style-type: none">1) a <u>sui generis</u> "synthesis" of symbolic interaction,2) a doctrine of "internal relations",3) a "circuit of self and other",4) an "identity" of social concept and object,5) "participant-observer" knowledge,6) "collective ideas", and7) social and institutional facts.
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By fixing social and institutional facts as nodal points in this array of concepts or features, my aim is to trace out leitfaden or "paths" that exist between them.

In order to be as contemporary as possible I give flesh to the skeleton of sociological idealism by presenting an analysis (in Chapter Three) of John R. Searle's The Construction of Social Reality (1995), which is one of the most recent attempts in the philosophical literature to come to terms with the concept of a social fact. Searle uses the term "social reality" to refer to the existence of social and institutional facts. I assess Searle's model by using sociological idealism as the rule.

First, Searle introduces a model of "linguistic idealism"

which, in the recent philosophical literature, can be traced back to Anscombe's (and Wittgenstein's) linguistic idealism. There are two components of Searle's linguistic idealism that I bring forward. The first is Searle's notion that institutional facts are "self-referential". By examining this notion we see that he is amplifying and clarifying Hegel's concept-object "identity theory". Secondly, Searle's argument that institutional facts are language-dependent elucidates the "linguistic" character of institutional facts. All institutional facts are social facts but not all social facts are institutional facts. Some pre-linguistic animals may have social facts but they cannot have institutional facts because they do not have language. Searle helps us trace out leitfaden between social and institutional facts, and between institutional facts and language. Searle shows that institutional facts must be linguistic constructions, but who or what does the constructing? What is left out of Searle's model is the idea of a reality constructor or Self. There is no conception of the Self in Searle's model of social facts. Instead he puts forward an inadequate Hobbesian conception of man as machine. The concept of interaction is also conspicuously absent from Searle's account of social facts, so collective intentionality is not logically possible on his account. By giving an account of these phenomena toward the end of Chapter Three, and in Chapter Eight, I am able to trace out leitfaden between them and the concept of a social fact.

In Chapter Four I turn to the problem of the "objectivity" of collective representations. Searle thinks that collective ideas exist "in the head" of this or that individual. Hegel and Durkheim argued that they subsist independently of any one person's thinking them. In order to clarify the status of collective ideas, I discuss them in terms that will be familiar to contemporary analytical philosophers. This chapter begins a long and twisting account (which extends into Chapter Seven) of H.L.A. Hart's analysis of social rules. Social rules are taken as paradigms of social facts. I maintain that Hart's conceptual framework presents us with a structure that allows us to elucidate Durkheim's conception of social facts (which I see as broadly Hegelian). It also allows us to understand and defend Durkheim's Hegelian claim that collective representations exist "independently of" and "external to" individual people who think in terms of them.

In Chapter Five I formalize Hart's model. I contrast Hart's "dual" model of rules with Wittgenstein's monistic conception of social practices, and argue that Wittgenstein's conception is insufficient to account for the possibility of social and institutional facts. What is missing from Wittgenstein's model is the "internal" aspect of social facts. But there is also something missing from Hart's model, namely Hegel's conception of internal relations. Most of this chapter is taken up with clarifying the "internal" and "external" dimensions of social

facts and with tracing out leitfaden between them.

Chapter Six turns to one of the most vexed features of social facts, their existence as abstracta. In order to elucidate this characteristic feature of social facts I turn again to Durkheim's conception of social facts. I try to give sense to the idea that institutional facts are "abstract" in a way that does not involve any "bad" metaphysics or ontology. I do this by elaborating in some detail Durkheim's conception of social facts and by clearing away misunderstandings of his theory that have been put up by writers who have given reductionistic accounts of social facts.

Chapter Seven is an application of the social fact model that has unfolded from the preceding several chapters. This social fact model, which I see as Hegelian, is constructed out of basic ideas drawn from Hart and Durkheim. I apply the model to one of the most basic specialty sciences of the Geisteswissenschaften, legal anthropology. Legal anthropology is basic because it is simple, and the questions it is concerned with are also basic and simple. If the social fact model has any applicability at all - and this must ultimately be the test of any model - we should be able to see it here. If the model has no applicability, it is nothing but words. If customary law, which is the basic subject-matter of legal anthropology, is a social fact, my argument is that it must

have all of the features I have claimed apply to the concept of a social fact, and it must have the same connections to the conceptual array of the master concept. In this chapter I show how this is so, and I give examples of how the Hegelian model of social facts I have developed out of the work of Hart and Durkheim can be used to clarify, if not actually resolve, some of legal anthropology's central methodological problems. To be more specific, I use this model of social facts to clarify and distinguish "custom" from "customary law" in legal anthropology. This analysis is shown to give us more adequate ways of conceptualizing problems of behaviourism, agency and rule-scepticism in legal anthropology.

Chapter Seven might seem like a detour at first, but it is not a useless detour, because in applying the social fact model to actual problems in legal anthropology I continue to develop and refine this model. But in any case, the attempt to show the fruitfulness of general theory by applying it to concrete problems in the special social sciences can hardly be called a waste of time. The application of the social fact model to problems in legal anthropology is just a beginning really, a kind of "reality check" on the model developed here. All too often theoretical sociology seems vague and obscure, having no applicability whatever to concrete problems that social scientists encounter in their daily practice. I try to avoid that impression by showing how general theory can have a

bearing on problems of empirical research. In this way I am following Merton (1967).

The concluding Chapter Eight turns to Margaret Gilbert's (1989) conception of "plural subject phenomena". Plural subject phenomena and collective intentionality are deeply imbricated features of Geist. I sketch out leitfaden between these phenomena and the concept of a social fact. Gilbert's treatment of these ideas amplify and elucidate the connections that need to be drawn. Her main problem is that, like Searle, she has no good account of concept-grasp and social interaction. These Kantian and Hegelian problems are left unresolved in her treatment of social facts.

Even though, as I show, Kant's first Critique is profoundly, if not paradigmatically, asociological, in the Postscript I argue that we have reason to believe that Kant was working out a model of social facts in his later writings. I claim that he kept the first Critique asociological for planful reasons in accordance with the architechtonic of his lifetime project.

This book can be fairly easily summarized. In the most general sense it is about the formal structure of the Geisteswissenschaften. This does not mean that it presents a taxonomic classification of the special social sciences. It is a basic analysis of the structure of social reality that

underlies all the special social sciences. Social facts have a basic ontological and logical structure that I believe can be displayed. By displaying this structure we can transform inadequate prehensions of social facts into more perfect apprehensions of them.

CHAPTER TWO: THE LEAP FROM INDIVIDUAL PSYCHOLOGY TO
SOCIOLOGY - HEGEL'S BREAK WITH KANT

Hegel's Critique of Kant's Idealism

Sometimes it happens that out of the continually coming, continually going, tide of books, some single volume fails to disappear with its contemporaries, and because of something it contains, or something which it is, lives on to other generations. The Critique of Pure Reason is such a work. It is, in Collingwood's appropriate words, "like a mountain, whose waters irrigate every little garden of thought in the plains beneath it" (1995:24). Still it has deficiencies. What is interesting is that some of these deficiencies could not have been known at the time Kant wrote, because sociology had not yet been invented. The word did not exist and the conception was only a vague idea in the 18th Century.

18th Century philosophers misrepresented social reality by assimilating it to nature and then talking about it as though it were merely part of nature. In a bold but essentially misguided way Kant attempted to avoid this error with his distinction, based on Leibniz, between phenomena and things in themselves. Kant thought that what makes nature "nature" is the fact of its being phenomena, that is as something looked at from "outside". When human action is seen from the outside only, it is converted into phenomena. Granted this dichotomy, or parallelism, it distorts natural science because it implies

that behind the phenomena of nature there is a reality which is also spirit, and this is the foundation of the mystical view of nature, which instead of treating natural phenomena as concrete things deserving of study for their own sake, treat them as a kind of "veil" concealing a spiritual reality. As against this, Kant's strategy is to treat both the objects of the natural and social sciences as spectacle. If history and sociology are spectacle then they are phenomena, they are nature, because "nature" for Kant is an epistemological term which means "things seen as spectacle" - from the outside only (Collingwood makes the same point about Kant in Part III of his Idea of History (1946)).

Hegel refused to approach social reality purely by way of nature, that is, from the spectator's point of view. In addition to seeing Kant's system as hidebound by a natural science methodology and an obscure "noumenalism", in his Lectures on the History of Philosophy in the chapter on Kant he also described Kant's philosophy as "subjective" (subjectiv) and "personal" (persönlich).¹ These features of Kant's system according to Hegel cut it off from the possibility of bridging the gap between subjectivity and objectivity.

This problem was solved for Kant, according to certain writers who were influenced by Wittgenstein's Philosophical Investigations, by Kant's introduction of "rules" and "rules for the

application of rules", which were said to constitute the Empirical Schematism and the Categories of the Understanding respectively. Walsh(1966: 189ff.) was the first to make this claim.² He also claimed that rules "by their very nature have interpersonal validity" (Walsh: 195) and that Kant's position on rules was "identical in all respects with that of Wittgenstein" (Walsh: 197). This is controversial in light of Schwyzer's demonstration that Wittgenstein's notion of "public" criteria of rule-following is exactly what Kant's theory lacks, and needs, and that Kant's notion of rule-following is Cartesian, locked into a first-person perspective from which there is no escaping (1990: 113-161). Although Kant uses the subject as a "ground" of unity in the world, that underlying unity is according to Hegel "finite" (endlich) or "psychological" (or, in the de-psychologized B-Edition of the first Critique, "formal" or "empty") because Kant's subject is constituted only through its own individual synthesizing activities. Hegel regards this as a fundamental mistake.

Hegel thought that Kant's "empiricism" led him to adopt a sophisticated version of the bundle theory of objects, according to which the "given" is no more than a swarm of particulars, unconnected features of experience which are transformed into a unity only through individual synthesis. The Kantian model is "individualistic" because the unity of things we encounter in experience is "reducible" to the

manifold of intuitions out of which they are constructed. Stern (1990:200) seems clearly right to think that the key to Hegel's criticism of Kant's doctrine is the latter's view that "the object as we experience it has its relational unity imposed on it by us [individually]". In a similar way Guyer (1987:351) writes that, like Hume, "Kant harboured a prejudice against the ultimate reality of relations". Hegel was more than a little impatient with Kant's "reductionist" and "atomistic" account of experience. Kant rejected Hume's empiricist-associationist doctrine of an essentially passive human mind, as Rosen (1982) makes abundantly clear. In place of that doctrine he put his own constructivism. While applauding this move, Hegel thinks Kant failed to repudiate Hume's other key doctrine - the doctrine of the essentially unconnected character of experience.

The Kantian model is "individualistic" because the unity of things encountered in experience is "reducible" to the manifold of intuitions out of which it is synthesized. Hegel's counter doctrine is that the structure of the world subsists in an intelligible realm. Perception is not just a matter of sensation. Here Hegel could agree with Kant. But Hegel differs fundamentally in thinking that the nonsensible component of perception, which converts it from a sense impression, belonging to the inner world, into a perception of a thing or event, belongs to an "objective" realm, which he regarded as

social. We as individuals "discover" this realm through socialization. This involves learning to react to and grasp "objective" relations that are "already there" as, in another context, Gellner (1959:498) has noted. At times social reality may even seem forced on us. In any case, we do not unilaterally or individually "create" the world through private acts of Kantian synthesis.

Hegel argues repeatedly that universals and collective representations must be considered as subsisting outside of the minds of individuals. A system of signs, or currency, for example, can hardly be considered as the product of any one individual mind. Or consider reason. It is a feature of reason that it cannot be completely developed in the lifetime of a single individual. No one, for example, can invent the whole of mathematics or a legal system out of his own head.³ By calling Kant's idealism "subjective" Hegel's point was not that Kant was a phenomenalist or a Berkeleyian. Some writers, like Bird (1987), have questioned recent phenomenalist readings of Kant and have sought to defend Kant from Hegel by finding the latter guilty of the same misreading. But Hegel's claim that Kant's idealism is subjective is based on another ground altogether. Hegel applied this label to describe Kant's emphasis on the synthesizing subject to explain the unity and structure of individual consciousness. Stern (1990: 107ff.) is surely right to say that Hegel's fundamental objection to

Kant's idealism is that it is "subjective" in this sense.

Hegel denies that the unity of consciousness is created by a synthesizing subject and then projected against the world like a screen. The central role given by Kant to the subjective consciousness in imposing structure on the world is what leads Hegel to call Kant's idealism a system of "subjective idealism" Hegel rejoins that if the world is seen as possessing a pre-existing structure, the "external world" (a synthesized, social world) is freed from having its form imposed on it by an individual, subjective mind. It thus no longer fits the Kantian doctrine of synthesis. This is not to say that influential, charismatic individuals cannot, through the sheer force of their own synthesizing activities (through speeches, writings, heroic acts of public leadership, etc.) "change" the world. It means that the world is "out there", pre-existing individual apprehensions of it, to be changed, or maintained, through social movements or possibly through more organic, less visible processes. In the 1st Critique the structure of the world is atomistic and phenomenal and no object has an irreducible unity or structure. Hegel's antithesis is that the world possesses a unity that is free of any synthesis on the part of any one individual Kantian subject.⁴ This is a decisive break with Kant.

Hegel's Doctrine of Internal Relations

It is principally in his Phenomenology of Spirit (1807) and, to a less appreciated extent, in his two Logics, that Hegel develops his social theory of consciousness, otherwise known as "objective idealism". By briefly considering this doctrine we can gain a more rounded view of Kant's system, as Hegel sees it. Or in other words, by contrasting Kant's "subjective" idealism with Hegel's "objective" counterpart we can take the measure of the 1st Critique from Hegel's sociological perspective. Hegel claims more than once that we are driven to "objective" idealism and a "realist" account of universals (i.e. concepts) when we seek to explain the possibility of the development of consciousness from its lowest levels of awareness to "objective" knowledge. We do this, he thinks, by postulating the existence of an "intelligible realm" which allows us to escape from the fragmented and confused world of immediate sensory experience.⁵ It is Hegel's considered view that this intelligible world is not merely an abstract social structure but a process of interaction whereby concrete actions of different individuals merge and form sequences. These sequences are "logical" sequences behind which we can find "logical" relations. On Hegel's account there is an internal relation between logical sequence and temporal sequence, and the sequence by which one event leads to another in time is in some way the same as the "necessary" sequence by which one thing leads to another in a non-temporal logical series. But

for the Kantian observer, there can be no "necessary" connections at all, no relations, only Humean conjunctions that can hardly be called "sequences" at all.

It is basic sociology⁶ that sequences of behaviour that are manifestations of internal or "social" relations become "visible" only through participant observation, and may remain unnoticed or hidden when viewed purely from the spectator's observational point of view. This is not to say that everything in a practice or an institution will always be transparent to everyone. Often what a participant "knows" will come down to simple know-how that may just be "habits" (as Wittgenstein noted) that enable people to carry on with confidence (as people handle the grammatical intricacies of their native language before they are exposed to grammatical theory). But behind these unreflective habits, in the case of speech behaviour, it is the storehouse of social forms that we call lingua (and not just parole) that makes communication possible. These social forms are the ground of all social life and their interrelations are the foundation of all connectedness and intelligibility in the social field.

So much for generalities. Consider the following example: it is a logical consequence of being tagged "out" in American baseball that you must leave the playing field. The "must" in "you must leave the field" demanded by the referee is not just

a moral or a social injunction internal to the game. It is a logical consequence of being tagged with the ball when the player is off-base. If this is denied, and if it is maintained that temporal sequence and logical implication have nothing to do with each other, it becomes impossible to say about any event, "given A, B must have happened". As we watch the game we can see the logic of the actions unfolding from within the stream of collective ideas that makes it possible. These "ideal constructions" in terms of which we think have an outward manifestation. Still it can be difficult for the culturally ignorant (and impossible for the unsocialized solitary) to separate the sequences that are the outward manifestations of them from mere chance conjunctions or imagined and projected patterns of behaviour. The reason is not difficult to fathom. The difference between chance conjunctions and rule-governed (or social) sequences is that the latter have something abstract standing "behind" them as it were, which gives sense to them by relating them in logically or conceptually necessary ways that participants recognize and know.⁷ This is something the later Wittgenstein could never countenance and, in this sense, he was following Kant, knowingly or unknowingly.

When Hegel said that history, by which he meant the Herculean aspect of society, consists of empirical events that are the outward expression of thought he meant collective thoughts, and

these collective thoughts behind the outward events he thought of as a chain of logically connected concepts. Critics who blame Hegel for thinking that there are "necessary" connections in history (and in social action) either misunderstand him or else they are thinking only in terms of Kantian phenomena. Social reality, according to Hegel, has an "inside" (not to be confounded with the psychological) in addition to an outside and these are bound together by logical or "conceptual" relations. This sociological insight, which Kant never really developed, and may not have seen, was probed by Wittgenstein and Durkheim (Bloor, 1983; Hund, 1982, 1989). In essence the former's treatment of the "publicity", and thereby the possibility, of meaning and knowledge comes to this: if language is to exist (a) there must be behavioural correlates of meaning, and (b) these must be sufficient to enable those hearing a speaker to grasp the meaning in question. These are logical conditions of speech. Durkheim regarded speech as the sui generis "synthesis" that makes social reality "possible". Kant's model does not allow for this possibility. The importance of this can hardly be overestimated.

The 1st Critique does not allow for the possibility of human thought, speech or action, or interaction of any kind. In fact, Kant's model of thinking does not go beyond the possibility of the use of empirical concepts without language (cf. Waxman, 1995). The Empirical Schematism section of Kant's

Analytic (the first part of the 1st Critique) is an attempt to explain how such concepts of objects are possible. But it is insufficient to account for the possibility of language and human thought. The model of thinking in the 1st Critique is probably best suited for understanding the proto-thinking of prelinguistic animals, and that aspect of human thinking which, in infants, precedes the use of language.⁸

When Hegel repudiated the Kantian bifurcation of phenomena and things in themselves he put into practice his own warning that we must not suppose ideas to exist only in the minds of concrete individuals. If collective representations were not "independent" of individual people's thinking them, there would not be any "people" at all, because there would be no social reality, no society, and thus no socially constituted selves. Nor would there be "nature", in any strict natural science sense, because that complex idea is the logical framework within which alone a world of natural science is possible. The social patterns and sequences that we "see" are not the result of any Kantian imposition of forms through individual synthesis. They are "manifestations" of social-cognitive structures that we discover through participant-observation. If Kant had grasped his own idea firmly Hegel thinks he would have seen that phenomena and things in themselves are but two aspects of a social whole.⁹ And he would also have seen that in order to appreciate the difference between brute and social

facts we must approach this distinction from the internal, participatory side, and not merely as an external observer.

Geist as socialized Understanding - Sociological Idealism

Perhaps one of Hegel's most valuable contributions to philosophy is his attempt to see historical trends and developments in a system of philosophy that even its originator did not, and perhaps could not, have seen, and to find advances in that philosophy that had not previously been seen as advances. What we must do for Hegel is to read his work not necessarily as he insists we read it, but as he himself reads the work of his predecessors.¹⁰

Hegel nowhere indicates that Geist is introduced to solve any problem in the Critique of Pure Reason. But if we read Hegel's critique of the 1st Critique as a sociological critique, we can ask ourselves what problems he was attempting to solve with its introduction. And in particular we can ask why the special concept of objective mind was introduced at all.

The basic presupposition of Pippin's Continuity Thesis¹¹ is that the differences between Kant's and Hegel's idealism are peripheral and non-paradigmatic. But Hegel's Geist is no "successor" to Kant's transcendental subject; it is a complete sociological overhaul of the conception. In order to understand this we must consider that Kant regarded the "I think" as the

first principle of philosophical methodology and as the "highest principle in the whole sphere of human knowledge".¹² The conception of "objective" mind is a direct confrontation with this principle. Hegel thought that traditional epistemology, which Kant inherited from his predecessors and deployed in the Ist Critique, studies knowledge or thought in a subjective sense, in terms of "I know" or "I think". Such an epistemology requires that every philosophical proposition, indeed all knowledge, must be justified from a first person standpoint. According to this doctrine, or methodology, every proposition and all knowledge depends upon my individual mind for its justification, and any other mind can only be a philosophical problem. According to this way of thinking, my mind is not one among others, and I am not one person among others.¹³

Hegel thought all of this was mistaken. He perceived two fundamental mistakes with Kant's treatment of the self. Both of these, he thought, followed from Kant's strict adherence in the Ist Critique to the spectator methodology of the natural sciences. This in turn is linked to his empiricism. Because Kant (like Hume) allegedly makes the assumption that "real" means "observable in principle", he passes from "the self is not observable" to "there is no self". Or, according to Priest (1987:36), he equivocates between this and "the subject is not real". In either case he is led to the idea that the self is

an empty or formal principle. It is uncontroversial that Kant attaches no "ontological" weight to the subject. We know that he laid down a distinction between the transcendental "I think" and the empirical self, but he had little to say about the latter, and he certainly never regarded it as social. He did argue, however, that any inference from the "I think" to the actual existence of a subject is the result of an invalid syllogism, or paralogism, that wrongly moves from the formal conditions of consciousness to a conclusion about a supersensible entity. The subject is not an object of experience. It is unknowable because it corresponds to no sensible intuition. The unity of apperception is nothing but a formal principle of transcendental idealism.

Hegel regarded Kant's methodology as to blame for his badly formulated view that the subject cannot be observed or known. We do not first obtain knowledge of the self by observing it from outside as phenomena. We first discover it by participating with other selves in society. Hegel's introduction of participant observer knowledge is in one stroke also an introduction to his social psychology - his "sociological" way of seeing. Consciousness of self according to Hegel begins to develop as we learn to see ourselves through the eyes or, less metaphorically, the mirror-like responses of others. This is a reflective process the latter stages of which depend upon the use of language and speech. Hegel repudiates Kant's "pure"

self, existing in the mind prior to any experience. He is nothing if not emphatic. The social self is the only kind of self there is. The social self, or mind, forms a kind of circuit which serves to connect it to the world by fusing its actions with those of other social minds.¹⁴ Not only that, but the self is "continuous" in a way that Kant never considered - it is fused with the social world. When we think, as Kant was only too keenly aware, we try to discover connections, as distinct from mere conjunctions. We want to be able to say that A must go with B, not merely that A and B are as a matter of fact always found together. The self, though it appears inwardly as private and subjective, is under another aspect a "moment" in the objective reality of Geist. Hegel thinks this is evident once we reflect on the requirements of knowledge. Not only does knowledge require that experience be related, it also requires an order of "objective" relations subsisting independently of the subject. The transcendental subject does not first exist as a unity of apperception in some state of splendid isolation. Without the circuit of self and other there would be no unity of any kind.¹⁵ The relation of individual mind to objective mind can be represented by drawing a circle with a crooked line from top to bottom. The line frames the profile of two faces "interfacing", and the circle represents the process Hegel calls Geist. Objective mind will usually consist of, in fact it will almost always involve, a whole community of selves interacting. On the greatest scale

"national experience" brings multitudes of individuals together "as one people" - a Volksgeist - so that people can say "I am because we are". There is nothing in the Critique of Pure Reason that corresponds to any of this.

Having thus seen that mind is, or can be, "social" (this is not to deny the "spontaneous" biological aspect of consciousness) we must now ask what role it plays in any constructionist account of knowledge. The whole thrust of Kant's Copernican Revolution was towards its conclusion that things and facts about them are constructions which are dependent for their existence on the operations of mind. But what level of "mind" does the Critique of Pure Reason belong to? Empiricists have always tended to classify philosophical theories by their attitude to the perception of material objects. For them, as Passmore (1957, chapters 8-10) displays, "realism" is the view that things exist even when no one is perceiving them. Idealism is the view that they exist only when someone is perceiving them. When we reflect on empiricist theories of knowledge we see that things are knowable in terms of individual experience only. This was Kant's way of treating perception and knowledge in the 1st Critique. But Hegel had no particular, or essential, interest in the theory of perception, and would have strongly objected to having his idealism classed with Kant's or Berkeley's. The theme of Hegel's "sociological" idealism is that to be "real" is to be

part of a system, an intelligible whole of some kind. Something is "real" insofar as it collectively exists as a communal way of seeing. Being able to talk about it is a necessary condition of its "reality". To encounter something that has not been named is to encounter something that has no status as a thing. It is no better than private and imaginary ephemera.

Descartes, sitting in front of his fireplace, could ask himself whether, in addition to his own idea of a fire there is also a real fire. But when we consider a collective reality like language a parallel question can never arise. The distinction between the collective idea of a social reality and the reality itself has no purchase. The German language for example is exactly what the people who use it think it is. This is, basically, just a restatement of Hegel's vaunted and much misunderstood concept-object "identity theory".

A collective idea and its social object are one and the same. Sociological knowledge is a kind of knowledge in which questions about collective ideas and questions about social facts or realities are not distinguishable, or better, they are but two sides of a structure which are separable only by abstraction. We can sum this up with Aristotelian simplicity by paraphrasing Berkeley's dictum to read "to be is to be collectively perceived to be". A "king" or a "queen" for

example is such because the incumbent of that status is collectively defined and treated that way. A coin or a Dollar bill (that is, a piece of metal or a piece of paper with grey and green ink on it) is money because it is collectively defined and treated as "money". The legitimacy or illegitimacy of a government is constituted by collective perceptions of these phenomena. Anscombe (1976) called this "linguistic idealism". Searle has defended a similar theory in his Construction of Social Reality (1995: 31-78). This doctrine has a long history. In fact it was none other than Durkheim who wrote that "there is one division of nature where the formula of idealism is applicable almost to the letter - this is the social kingdom. Here more than anywhere else the idea is also the reality" (1915: 228). Social reality is the projection and reception of cognitions through which it is cognised (insofar as these cognitions are collective cognitions). It is the very intellectual activity that generates the reality. The traditional realism/idealism controversy takes a "new form" when social reality is substituted for physical reality, (cf. Collin, 1997: xi) What we need to do is draw these strands together.

In order to understand Hegel's sociological idealism we need to see that "objects" are knowable only as part of a system which we have collectively created for rational purposes. The empiricist's "realism" offers us a picture of reality

considered as an "external world" which confronts an individual. But social experience is not a bare perception of a given world. It is a construction, a collective mode of apprehension made tangible in abstract structure and saved from arbitrary subjectivity by its rationality and orderliness. Human experience exhibits a movement away from concrete particularity towards an ideal, abstract system in which society is reflected and expressed. The central clue to the understanding of human knowledge is language, and language too develops away from the sensuous and direct towards the abstract and symbolic. The least we can experience, according to Hegel, is a matrix of relations which conditions the ways we see and think. To talk is to use pre-existing judgements as foundations for descriptions and performances. Empiricism is rejected on the ground that for it immediate experience is composed of sequences of sensations only. Empiricism falsifies, by intellectualizing, the character of our lived experience. Hegel takes the experience of the fully socialized person, or self, as the starting point of his idealism, not the sensuous manifold of an asocial, solitary being. This constitutes a decisive break with Kant's idealism.

The Ist Critique sought to establish, for once and for all, that relations are the work of the mind. Kant rightly saw this as a movement away from realism towards an idealism of some kind. Where Hegel parts company with Kant is in his

denial that all relations are individually and unilaterally imposed on a manifold which in itself contains no objects of experience, or relations of any kind. If you remove these relations, he thought, you also remove objects of experience, you take away the intelligible world, which is really no more than a collective world. If this happens, the possibility of an essentially objective world confronting an inquirer is lost, and what is left is a Pirandellian world where "it is so if you think so". Such a world is a world in which the possibility of truth is finished and there is no reality apart from individual perceptions of it.

The distinction between "subjective" and "objective" is vital for any kind of inquiry, but it seems to vanish if the world is always of the individual mind's making. Hegel's attempt to overcome this problem is paradigmatically sociological. It has no counterpart in the Critique of Pure Reason. Kant's solution to the problem of objectivity there is a generalized version of the problem of an "objective" causal order. He makes it clear in the 2nd Edition version of the 2nd Analogy (B 234-236) that the problem of objectivity with respect to the temporal order is to explain how it is possible, by means of phenomena alone (which are all that is given), to represent an "objective" order that cannot be identified merely with the order of phenomena themselves. Under the category of causality all appearances necessarily stand in relations of cause and

effect. This has the consequence that all appearances are "ordered in time", and so gives "objective" validity within the field of appearances to succession (as one of the modes of time). Waxman (1995) argues that this pattern is repeated for all of the categories and thus inscribes an entire system of logical functions "on" appearances. This shows how, he thinks, Kantian experience acquires "objective" validity. Kant's solution to the problem of objectivity is as solitary as it is asociological.

Hegel sees no hope at all for Kant's treatment of objectivity. He thinks that the distinction between what is constituted by society and what is the product, only, of an imperfect individual mind accounts for our experience of objectivity, and for the common sense distinction between what is real and what is not, without departing from the idealist principle that everything in experience is, essentially, a product of mind. The reason things seem to us, as individuals, as being objective is that they are "independent" of the projections and impositions of our own individual, finite mind. And unless we are completely insane this is something that we all recognize and know. We as individuals do not unilaterally create the world.

We can sum up these ideas, not necessarily in the order I have presented them, like this:

Table 1 - Two Paradigms of Philosophy

<u>Sociological</u>	<u>Asociological</u>
<p data-bbox="269 423 601 454"><u>Hegel's Idealism</u></p> <p data-bbox="163 519 707 602"><u>sui generis</u> "synthesis" of symbolic interaction</p> <p data-bbox="223 685 641 768">doctrine of internal relations</p> <p data-bbox="148 851 716 934">circuit of self and other - <u>Geist</u></p> <p data-bbox="163 1074 701 1157">identity theory: language/world isomorphism</p> <p data-bbox="163 1240 701 1375">phenomena/appearances tied to intelligible world through internal relations</p> <p data-bbox="154 1458 716 1594">intelligible world knowable through participant observation</p> <p data-bbox="187 1677 686 1812">collective ideas (in addition to pure and empirical concepts)</p> <p data-bbox="166 1895 701 1926">social/institutional facts</p>	<p data-bbox="768 423 1378 454"><u>Kant's Critique of Pure Reason</u></p> <p data-bbox="813 519 1333 550">individual synthesis only</p> <p data-bbox="843 685 1303 768">relations imposed by individuals on "given"</p> <p data-bbox="804 851 1342 987">self is empty or formal regulative principle only; self is isolated, asocial</p> <p data-bbox="783 1074 1363 1157">no language or speech; no speech acts or performatives</p> <p data-bbox="822 1240 1324 1323">unbridgable gulf between phenomena and noumena</p> <p data-bbox="774 1458 1378 1594">intelligible world unknowable - spectator theory of observation</p> <p data-bbox="792 1677 1357 1760">pure and empirical concepts only</p> <p data-bbox="904 1895 1245 1926">brute facts only</p>

It is evident that many distinctions and qualifications would be needed to make this table stand up to close inspection. But if it is anywhere near right it should be apparent that Kant's first Critique is profoundly, if not paradigmatically, asociological.¹⁶ But for whom exactly is this supposed to be news? Kant's asociologism was well known to Simmel and Durkheim, and Dilthey aimed to (but never did) write a Critique of Historical Reason that would've done for the social sciences what the Ist Critique had done for the natural sciences. It is contemporary Kant-Hegel scholarship (and much of psychology too) that has forgotten what the classical sociologists knew well about the Ist Critique. These scholars have yet to be shown that Kant's model is insufficient to account for human, social thought, and they continue to miss out on the sociological features of Hegel's idealism, and his critique of Kant. Findlay was closer to the truth than he knew when he wrote that Hegel had invented an idealism "in a thoroughly new sense of the word" (1958: 1), but even Findlay did not consider how Hegel sought to incorporate a wide variety of sociological features into his idealism.¹⁷

What makes Hegel's critique of Kant's idealism important is that modern philosophy (including analytical Kant-Hegel scholarship) is dominated by the same sort of empiricist epistemology that Hegel alleges we find in Kant. When I read the works of contemporary and recent analytical philosophers,

admiring them deeply and learning from them more than I can hope to acknowledge, I find myself constantly struck by the thought that their accounts of knowledge not only debase the existence of social reality, but are actually inconsistent with there being any such thing. The nucleus of Hegel's idealism is the idea that self and society are synthetic unities that cannot be reduced to collections of self-subsistent phenomena out of which they are constructed. Hegel regards it as a mistake to treat these social unities as if they were spun by private synthesizing individuals out of discrete phenomena in this solitary Kantian way. Hegel's break with Kant is abrupt and arguably paradigmatic, and seems to be analogous to the leap from individual psychology to sociology.

Notes

- 1 It would be silly to attempt any sort of philological-exegetical analysis in an interpretive chapter of this nature. The section on Kant referred to in the text is only one of several discussions of Kant's theoretical philosophy in Hegel's corpus. Pippin (1989b) counts at least six: (i) the section on Kantian philosophy in the 1802 Belief and Knowledge, (ii) a series of remarks in the Science of Logic (1812-1816), (iii) "The Notion in General" in the Logic, (iv) the section titled "The Critical Philosophy" in the Encyclopedia of the Philosophical Sciences, (v) paragraphs 413-424 in the same work, and (vi) the section on Kant mentioned above.

- 2 Bennett (1966: 54 ff.) also makes this sort of claim. He says that, for Wittgenstein, "conceptual" means "rule-governed" and avers that Kant's "working use" of "concept" is "thoroughly

Wittgensteinian". Wolff (1963, pp. 129 ff.) was another 1960s commentator who used Wittgenstein's conception of rule-following to explain Kantian "mental processes". Wolff was so impressed with his own Wittgensteinian rule-following interpretation of Kant that he declared the one-over-many problem of concept-grasp finally resolved.

3 These are Collingwood's examples. The fullest treatment of how, on Hegel's account, concepts can be said to be "outside" of the minds of concrete individuals is in Westphal's treatment (1989) of Hegel's conceptual or Platonic realism. According to Westphal, to put it succinctly, Hegel's talk of the "autonomy of thought" includes thought's autonomy from human individual thinking. Pippin (1989), on the other hand, gives a psychologistic reading of Hegel by assimilating the autonomy of thought to the autonomous thinking of individual human beings. Conceptual realism makes sense when it is construed as a sociological doctrine, the idea being that concepts exist in society and not merely "in" the individual. Also see Wisdom (1993), Pinkard (1994) and Hundert (1989).

4 Brook, (1994) claims that Kant's theory of mind needs "another kind of synthesis", and says this is the "key" (pp. 32-33) to the completion of Kant's theory, but there is no indication that he has considered the sociological critique of Kantian (individual) synthesis.

5 Bradley (1928: 69) puts it that "we escape from ideas and from universals by reference to the real, which appears in perception". Hegel claims that we escape from the immediacy of perception by entering the world of concepts and ideas. Durkheim saw it both ways: "simply because he is social, man is therefore double... for there really are two sources of life that are different and virtually antagonistic in which we

participate simultaneously" (Durkheim, 1984).

- 6 Too basic to require comment. For a refresher course consult Cicourel's Cognitive Sociology (1974), Winch's Idea of a Social Science (1959), or Schutz's Collected Works (esp. 1962).
- 7 The problem of how we grasp these social sequences as "unities" is related to what Smith (1989, pp. 163, 169) calls the "linkage problem" which is about the relationship between social forms and the "patterns of behaviour" whose contents they are. I have elsewhere (Hund, 1991, pp. 774-76) tried to sketch a framework for discussing the linkage problem in terms of Hart's inner/outer conception of a rule.
- 8 Some philosophers still recite the old view that what distinguishes humans from infra-humans is that the former use concepts and tools while the latter do not. Many infra-human animals use empirical concepts. What distinguishes us from them is that we use language whereas they use concepts without language. Their behaviour is prelinguistic and their "thought" is proto-thought. For more on this see Searle's The Construction of Social Reality (1995, esp. Ch. 3).
- 9 Allison (1983: 16) claims that Kant *did* see the noumena/phenomena connection and that his distinction between phenomena and things in themselves merely marks two ways in which they may be considered at the "metalevel" of philosophical reflection.
- 10 This idea is advanced by R.C. Soloman (1976: 125-49).
- 11 By drawing what he thinks are Hegelian conclusions from passages in the second half, or "extension", of the B-Deduction and elsewhere Pippin (1989a) argues that Hegel's idealism is a "completion" of an insight first unearthed but badly expressed

by Kant. Westphal (1989), Wartenberg (1993), Stern (1990) and I argue for a more radical break between Kant and Hegel than Pippin will allow. Ameriks (1991) also disagrees with Pippin's "continuity thesis", but for reasons different from those advanced here.

12 B-135

13 Soloman (1976) sketches these points but does not consider how Hegel sought to incorporate a wide variety of sociological considerations into his idealism. Although Hegel sometimes describes Geist as a "divine subject" any student of Durkheim will know that this divine subject is just an obscure proto-sociological allusion to society. Soloman does not consider this.

14 For stimulating discussions see Kotarba (1989).

15 The standard (whether right or wrong) interpretation of Hegel is that he thinks that all facts are institutional facts. Searle argues that this is a logical impossibility. He claims that "there has to be some physical realization" of institutional facts (1995: 56). Money, for example, must come in "some physical form" (1995: 35). A socially constructed reality presupposes a reality independent of all social constructions "because there has to be something for the construction to be constructed out of" (1995: 190).

16 My interpretation of Hegel's critique of Kant is shaped by ethnomethodological considerations and not by better known "political" ideas on Hegel's critique (beginning at least with Lukács) which treat sociology in a more historical - and less cognitive and epistemological - way.

17 In one of Pippin's latest papers which I cannot trace at the

moment he dismisses "sociological talk" as "unHegelian". In another (1989b) he regards Hegel's concept-object identity thesis (the heart of his sociological idealism) as mystified nonsense. By missing out on the sociological dimensions of Hegel's idealism Pippin cuts himself off from a fuller reading of Hegel. But Pippin is not alone in this. Anglo-American Kant-Hegel scholarship is, in general, quite asociological. Or to put it differently, it has not yet taken the leap from individual psychology to sociology.

CHAPTER THREE: SEARLE'S THEORY OF SOCIAL REALITY

In his treatment of social facts Searle says that "the metaphysical complexity of the ontology of the social world would've taken Kant's breath away, if he had ever bothered to think about such things" (1995:3). But Kant did think about such things. In a well-known passage in his anthropological works Kant discusses an explorer who thinks he has unearthed the ruins of an ancient temple. His native guide sees nothing but a pile of rubble. The temple is an institutional fact. The rubble is its visible manifestation. Kant's question is whether there are two different objects here or merely one object viewed from two different perspectives. This is basically the same problem that bothers Searle. Searle says we can look at a coin or a Dollar bill from two perspectives. From one perspective - that of the natural sciences - the coin or Dollar bill is nothing but a piece of metal or a piece of paper with grey and green ink on it. From another perspective they are institutional facts. Searle's answer to Kant's question, if he had thought about it, would be that institutional reality is somehow embodied in nature and goes beyond it. Natural science cannot do justice to institutional reality because this point of view cannot cope with the abstract character of institutional facts and especially with the incredibly complex logical relations existing between them. This puts paid to behaviourism (and to the natural science

methodology of the 1st Critique) because the description of merely overt behaviour cannot account for the "invisible structure" (1995:4) of social reality that accounts for the possibility of it.

Searle's claim is that this invisible social structure is "self-referential". By this he means that there are portions of the real world that exist only because "we believe them to exist" (1995:1). Social reality is what it is because it is perceived as being that way. What it appears to be is "logically prior" to what it is. Money, for example, is self-referential in this way. "In order that the concept of money apply to the stuff in my pocket it has to be defined as the kind of thing people think of as money" (1995:32). The attitude people take towards money is "partially constitutive" of money. "[B]elief that something is money is in part the belief that it is believed to be money" (1995:33). "Money" is a self-referential concept or, what amounts to the same thing, the institution of money is self-referential. Searle thinks this is a remarkable feature of social reality that has no analogue in physical reality.

Readers familiar with Anscombe's examples of self-reference (eg, a king or the legitimacy of a government as being "constituted" by collective perceptions of these phenomena) will immediately see a link between Searle's self-reference

thesis and linguistic idealism. Searle, however, thinks Anscombe's linguistic idealism (and her analysis of brute and institutional facts?) is more or less irrelevant to his concerns. But this seems wrong. Consider Searle's idealist formula for self-reference. He says that for any "observer relative" feature of institutional reality:

Seeming to be F is
logically prior to being
F because... seeming to
be F is a necessary
condition of being F
(1995:13).

This idealist formula is radically inconsistent with received philosophical wisdom, namely that the very nature of knowledge unconditionally presupposes that the reality known exists independently of the knowledge of it. Conventional wisdom says that it is simply impossible to think that any reality depends on our knowledge of it. The standard objection to idealism is that it is unintelligible to suggest that reality is dependent, not on the existence of mind, but on being known by mind. And yet this is exactly what Searle is saying.

Searle thinks that self-reference is a puzzle, or a problem he can solve. But he doesn't say what the problem is, or even why the puzzle is a problem. Searle forces it into the light of day without saying what it is. A little thinking about the puzzle shows it to be (at bottom) the problem of idealism. Searle's "solution" of the problem is to substitute

institutional reality for physical reality and to show how received philosophical wisdom applies only to physical reality. Institutional reality, unlike physical reality, is self-referential. Self-reference is a problem only if we think that all knowledge is knowledge of physical reality. But not all knowledge is of this kind. Some knowledge is of institutional reality.

Having solved the problem of self-reference in this way, Searle's next question is "how is institutional reality possible?" His answer (which is also part of the solution) is that it is made possible by language and is itself language-dependent. What separates human beings (living in an institutional world) from infra-human brutes (living in a world of brute facts) is not that the former use tools and concepts while the latter do not. Many infra-human animals use tools and concepts. What distinguishes us from them is that we have language and they don't. Thus, we can have thoughts they are incapable of having. For example, the "thought" that certain physical movements (X) "count as" (Y), six points, can only exist relative to a linguistic system (context C) for representing and counting points. We can think about points only if we are in possession of the representational apparatus necessary for such a system. If you subtract the symbolic devices (the constitutive rules) for representing the points "there is nothing else there". The dog can "see" the man

cross the line with the ball, and thus, according to Searle, can think that thought without language. What the dog cannot in addition see or think is that the man has scored a touchdown. Prelinguistic animals can have proto-thoughts insofar as they can grasp and use simple natural concepts having brute facts as their referents. But there can be no prelinguistic way to represent the institutional dimension of behaviour because there is nothing there prelinguistically that could be perceived or otherwise attended to in addition to the brute physical dimension. That is why, says Searle, animals cannot have marriage, property or money. Suppose, he says, he teaches his dog to chase Dollar bills and to bring them to him in exchange for food. He is still not "buying food" and the bills are not "money" to him. Searle's dog cannot represent to itself the relevant deontic features of money (its place in a system of practices). The dog might reason "if I give him this he will give me that". But it cannot think "now I have the right to buy that". Why not? Because institutional facts (and the thoughts they make possible) are restricted to language-users and are themselves language-dependent. Self-reference (and linguistic idealism) is a "problem" only if we extend it to the realm of language- and representation-independent phenomena. If we restrict it to the realm of language-dependent institutional facts Searle thinks it is not a problem at all. It actually helps explain how institutional facts are possible.¹

Searle thinks that there are features of the world that are "intrinsic", like mountains and molecules, that don't depend for their existence on our perceptions or representations of them and "don't give a damn about observers" (1995:11). As against this there are "observer relative" features of the world that depend for their existence on the way they are collectively represented as being. This "ontological" distinction boils down to an epistemic distinction that Searle just mentions in passing (1995:33) between "natural" and "institutional" concepts. Natural concepts are concepts of objects whose objects are "independent" of those concepts. Institutional concepts are concepts of objects whose objects are "constituted" by those concepts. This distinction is a condition of Searle's analysis.² It is a consequence of this distinction, and not Searle's derivative distinction between "intrinsic" and observer relative features of the world, that "there is a way that things are that is independent of all representations of how things are" (1995:137). Searle calls this "External Realism". He doesn't think external realism can be proved, but he thinks it is logically implied by his analysis of institutional facts.³

The basic problem with Searle's account of realism (defended in his Chapters Seven and Eight) is that he advances several different, and inconsistent, conceptions of "intrinsic features"

of the world. On one account they are brute facts. On another account they are unknowable noumena, and on yet another account they are highly idealized constructions. Searle gives the following examples of intrinsic features of the world: "fields of force", "atoms", "molecules". But these are hardly Anscombe-type brute facts. Anscombe-type brute facts are lumps of coal, stones, marks on a piece of paper, sounds, etc, and other things that institutional reality is supposed to "bottom out" in.

Now here is the problem. Searle says that "properly understood" realism is "not a thesis about how the world is in fact" (1995:155). "Realism does not say how things are but only that there is a way that they are" (1995:155), and "things" in the previous clause "is not a referring expression" - it is like the "it" in "it is raining" (1995:155). But what kind of realism is this? It is clearly not any kind of brute fact realism. It sounds like an empty Kantian realism. When Searle says that it is "consistent with realism to suppose that any kind of 'view' of reality is quite impossible" (1995:154) he falsifies, by intellectualizing, brute fact realism. He writes for example as if he thinks that atoms and molecules are brute physical facts. But it would be absurd, on Searle's own principles, to argue that the object of the concept of an atom is something that is representation- or language-independent. "Atoms" and "molecules" are in the same general category as

"rights" and "points". They are constituted by our representations of and theories about them. Object and content coincide, ie, the object of the idea is nowhere to be found, except within the very idea. These phenomena are hardly the bedrock upon which we superimpose institutional facts. They are themselves institutional facts. Searle might rejoin that "whatever the word 'atom' refers to, it is independent of our representation of it". But this is an entirely empty idea. The whole bloc of scientific theory in physics and chemistry would be empty and meaningless if the phenomena they described were representation- and language-independent.

Almost as if he were crossing swords with Durkheim, the first line of Searle's Introduction emphatically says that we live in one world: "not two or three or seventeen" (1995:xi). I think Searle is wrong about this. Dogs live in one world - the world of brute facts. People also live in that world, but in addition they live in a world of institutional facts. A subset of those institutional facts are conceptions about physical reality. But these language-dependent conceptions do not refer to phenomena that are independent of them. They cannot, because they are self-referential. So Searle's claim is either wrong or misleading. Durkheim was probably closer to the truth when he wrote that "there really are two sources of life that are different and virtually antagonistic in which we participate simultaneously" (1984:65). Searle actually seems

to admit as much when he says, somewhere in his book, that we live in a state of nature all the time (by which I assume he means in a world of Anscombe-type brute facts) and a world of institutional facts. This idea does not commit us to the absurdity that these two "worlds" are not part of the same reality. This is just a manner of speech. These two worlds, or "levels" of reality, are logically and conceptually interconnected. There are, and must be, behavioural correlates of meaning.

For a long time now Searle has been arguing for a conceptual monism according to which the world can be described in a single idiom in which all facts can be cross-referenced and indexed to each other. The attainment of a single conceptual currency is at least as important for intellectual advance as the attainment of money is for the furtherance of commerce. But I don't think Searle has gone about the job of arguing for his conceptual monism in the right way. Searle says the bare-bones of his ontology is that we live in a world made up entirely of "physical particles in fields of force". But what kind of world is this? Dogs don't live in that world. It is only people who think they live in a world of intangible "fields" of "force". Physical reality is a world of brute facts. Fields of force, like rights, are ontologically subjective. The only objectivity they admit of is epistemic. Fields of force are real in Physics 101, but dogs and

unsocialized people know nothing about Physics 101 because they are not university students and they do not live in that world.

If Searle wants to draw a "continuous line" from molecules to mountains to money he should read Anscombe-type brute facts as constructed. But Searle refuses to do this because it would undercut his argument that institutional facts bottom out in (unconstructed) brute facts, and also because he thinks we typically have direct perception of brute facts. By stipulation, brute facts are unconstructed language-independent phenomena. Searle thinks there is a stratum of reality that people (and also dogs, etc.) typically seem to perceive directly, without any intervention of representations of any kind. But he should know that this must be a fairly narrow band of phenomena that mammals are finely tuned into, just because of the nature of the physical organism. It seems more likely that, often, in order to cognize something we must remake it in our mind.

Who or what does the remaking? I don't see how any constructionist account of social reality can avoid asking these questions. Sociologists will tell you without hesitation that it is the Self that does the remaking. One of the most surprising and, indeed, remarkable features of Searle's book is that it is devoid of any conception of the social self. Searle thinks his worries have nothing to do with Mead's Mind.

Self and Society (1934), but he must be regarded as mistaken about this. Mead's theory has everything to do with his worries (more on this below).

What we find in Searle's book in lieu of any treatment of the self is an account (in Chapter Six) of something he calls Background and "the mechanism". Searle's Background is not a new idea. It consists in S-R-type dispositions, habits, know-how, etc. Searle ascribes no intentionality to Background, even though he thinks it contains perceptual and linguistic structures that enable us to "see as", "hear as", "read as", and so on. According to Searle institutional reality (and also physical reality) imprints designs and causal structures on the mechanism (1995:146). The mechanism, when confronted with the appropriate occasion of behaviour or state of affairs, matches the situation at hand with the applicable Background phenomena and these conjunctions "cause" predictable behaviour. The mechanism "determines" the right (or expected) response. In turn, the mechanism has been programmed to function as it does by institutional reality via a system of rewards and punishments. Searle thinks that dispositions, once acquired, become automatic and are mechanically applied. They are a "category of neurophysiological causation" (1995:129) that we "describe at a higher level as rule-following".

Searle is clearly right to think that a lot of human behaviour

is automatic and mechanical most of the time. It is even possible to motorize higher level functions of the brain (as in negotiating a car through traffic, or a tour-guide "spontaneously" reciting a patter). Searle talks about the "man who is at home in his world" (1995:147) as having developed the ability to act naturally in his society because the mechanism has developed these abilities to perfection. But this sounds like an armchair idealization to me. Society is usually full of ambiguity and struggle. Things are not so simple. There are of course people who do act (think and speak) in stereotyped and predictable ways. Searle takes these people (e.g. professional baseball players) as exemplifying human behaviour. He says he wants a "causal explanation" of behaviour "that will explain complexity and spontaneity", but there is nothing in his model that allows for spontaneity of any kind.

To act, on Searle's model, the actor need only apply a simple matching algorithm. Once a situation's meaning is apparent, itself an automatic happening, the relevant dispositions, etc., flash as impulses that are translated into action. But in social life the meaning of a situation is usually never completely given to us, as if it were just a question of our perceiving the transparent essence of some natural object, and even natural objects have a haze of indeterminacy about them. Searle models actors as being "outside" of the situations they

encounter (more on this below), but this is not possible. The methods they use to assemble, recognize and realize a setting's features are a family of interactional practices. Searle would have us believe that these reflexions can be reduced to a set of mechanical formulae in accordance with exceptionless laws. Perhaps. But he has not shown this and his baseball examples beg the question. The basic problem with Searle's account of social action is that he models it as being outside of social scenes, or interaction of any kind. In order to see this consider the two diagrams that Searle introduces (1995:26):

Figure 1.1 - The Individualist Model

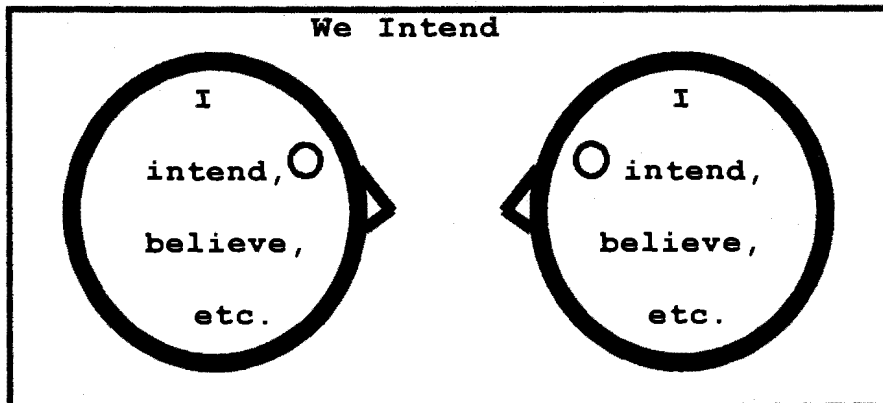
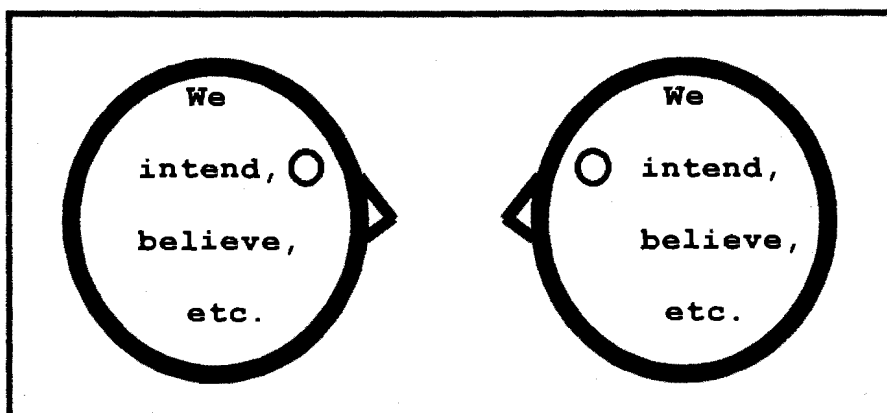


Figure 1.2 - Searle's Model



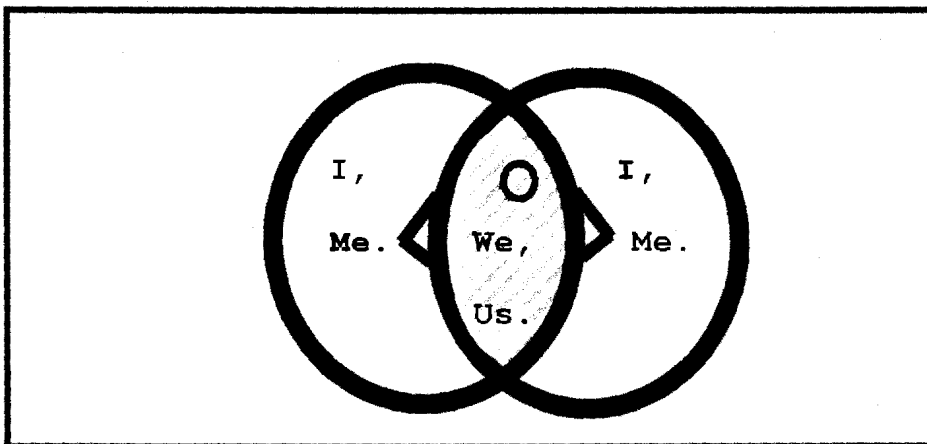
Searle introduces these two simple diagrams in order to show how his model of collective intentionality differs from individualism. He claims that individualists are guilty of blunder when they "reduce" collective intentionality to first-person intentionality. Searle does not claim that his model excludes individual intentionality. Searle's actor may have the singular intention to block the defensive end but he has that intention as part of the team's collective intentionality to execute a pass play. The individualists and Searle share a major assumption: that representations of any kind exist "in the head" of this or that individual. But this is difficult to square with common sense. A system of signs or currency for example could hardly be located in the head of any one individual. Or consider reason: it is a feature of reason that it cannot be fully developed in the lifetime of a single individual. No one for example could invent the whole of mathematics or a legal system out of their own head.

Searle attributes an argument to individualists that he thinks is fallacious, namely that from the true proposition that "all intentionality exists in the heads of individual human beings" they draw the false conclusion that "intentionality can make reference only to the individuals in whose heads it exists" (1995:25). This is a spectacular non-sequitur but it's not the way individualists actually reason. What Searle should've said is that they reduce social and institutional concepts to

natural concepts. According to Searle's model individuals think in both natural and institutional concepts. It is because individualists restrict human thinking to natural concepts that they think singular intentionality (which is a brute fact phenomenon) is the only kind of intentionality there can be.

Searle distances himself from the individualists by introducing social and institutional concepts in order to account for the possibility of collective intentionality. This seems plausible enough on the surface but a closer inspection of Searle's model reveals that it cannot possibly account for plural subject phenomena. To see why consider this model:

Figure 1.3 - The Interactionist Model



If Searle looks at Figure 1.3 he will see that it contains an element that does not exist in Figures 1.1 or 1.2. Figures 1.1 and 1.2 show two individuals. Figure 1.3 also shows two

individuals, but in addition it shows a shaded area of interface. This shaded area represents interaction. Sociologists who have absorbed Mead's theory call this portion of reality "self" and "society". Figure 1.1 shows two solitary individuals. They live in a world of brute facts only. Since they only think in natural concepts, there can be no social or institutional facts in this world. Searle's model introduces the idea of social and institutional concepts and facts. But these phenomena are not possible outside of interaction. Interaction is a logical condition of collective intentionality. And interaction cannot be located "in the head" of any one individual. That is an impossibility. So there is really nothing to distinguish Searle's model from individualism. Neither model allows for interaction, and so neither can account for the possibility of collective intentionality or plural subject phenomena of any kind.

Sociology is concerned with action as opposed to nonmeaningful behaviour. Acts do not usually occur as isolated events but are usually linked to each other as actors respond to and anticipate the actions of others. The process of interaction is at the core of sociological interest.

Many philosophers (Searle included) think that sociological explanation should take the deductive form characteristic of the natural sciences. Behaviour is accounted for in terms of

dispositions. Dispositions are usually regarded as rules that have been internalized or learned. Interaction is regarded as "rule-governed" in the sense that patterns of behaviour are rendered intelligible and are explainable in terms of these rules.

It is however vital to note that "situations" and "actions" are not concrete events with unique locations in space and time. The same situation can recur and actions can be repeated. This means that concrete occasions and behaviours must be treated as instances, or tokens, of type-like situations and actions. The way in which an actor discriminates situations and actions is critical. This involves judgements. Users of concepts make judgements which involve the ability to subsume occasions of behaviour under categories. It is on this basis that Kant distinguishes humans from infrahuman beings which, he thought, are caused to act by dispositional properties determined by laws of nature that a natural scientist could observe and codify.

If social interactions and thus social structures, are to be stable, different participants must discriminate situations and actions in virtually the same way. Otherwise rules could not be invoked to account for or explain the stable structure of society. Thus, an element of substantial cognitive consensus among actors must be assumed if this model is to be of any use. Typically this takes the form of an assumption that the

actors have been socialized into a "common culture" that includes a system of symbols and meanings, particularly a language. Different definitions of situations and actions do occur, but the assumption of cognitive consensus is retained by treating such deviations as emanating from different subcultural definitions or idiosyncratic deviations resulting from accidents of individual biography.

In the flow of group life there are many points at which actors are redefining the situation and each other's acts. The process has been called the documentary method of interpretation by Garfinkel (1967). According to Wilson (1970:68) documentary interpretation consists in identifying an underlying pattern behind a series of appearances such that each appearance is seen as referring to, is an expression of, or a "document of", the underlying pattern. However, the underlying pattern itself is identified through its individual, concrete appearances, so that the appearances reflecting the pattern and the pattern itself mutually determine one another in the same way that "part" and "whole" mutually determine each other in gestalt phenomena.

The mutual determination of appearances and underlying patterns is called by Garfinkel "indexicality" and a particular appearance is called an "indexical particular". The concept of documentary interpretation was adapted from Mannheim by

Garfinkel. The term "indexical" is taken from Bar-Hillel (1954) who defined an indexical expression as one that depends for its meaning on the context in which it is produced. The term "indexical particular" is a generalization of indexical expression to include nonlinguistic as well as linguistic events.

A central characteristic of documentary interpretation is that later appearances may force a revision in the perceived underlying pattern that in turn compels a reinterpretation of what previous appearances "really were". In addition, on any given occasion present appearances are interpreted partially on the basis of what the underlying pattern projects as the future course of events. One may have to await further developments to understand the meaning of present appearances. Thus, the "meaning" of a situation or an action is never completely given in the situation or action itself. In this sense, documentary interpretation is "retrospective" and "prospective" (Cicourel, 1974: 54-55; Garfinkel 1967).

Interaction is a process in which participants engage in documentary interpretation of situations and each other's actions, etc. What makes interaction problematical is that context itself is "seen for what it is" through the same actions it is used to interpret. That is, on any particular occasion in the course of interaction, the actions that the

participants see each other performing are seen as such in terms of the meaning of the context, and the context in turn "is understood to be what it is through these same actions" (Wilson 1970:64). Further, "what the situation on any particular occasion is understood to have been may be revised subsequently in light of later events. Consequently, what the situation "really was" and what the actors "really did" on a particular occasion are continually open to redefinition. It thus becomes apparent that definitions of situations and actions are not explicitly or implicitly assumed to be settled once and for all by a literal application of a pre-existing established system of symbols. Rather, the "meanings of situations and actions are interpretations formulated on particular occasions by participants in the interaction and are subject to reformulation on subsequent occasions" (Wilson 1970:64). As Blumer says: If the fundamental process in interaction is documentary interpretation "the study of interaction would have to be made from the position of the actor... since action is forged by the actor out of what he perceives, interprets and judges... in short, one would have to take the role of the actor and see the world from his standpoint" (1966:542).

Descriptions of social scenes, situations and actions may be called interpretive description. And the characteristics of interpretive descriptions are incompatible with the logic of

deductive explanation in the covering law model. Literal description is taken for granted in the natural sciences. Problems of description tend to be treated as practical matters of competent technique rather than as posing fundamental methodological questions. In the natural sciences a literal description amounts to asserting that some phenomenon has some clearly designated property, or what is logically the same thing, belongs to some particular well-defined class of phenomena. To treat a description as literal it must be taken for granted that the description of a phenomenon as an "instance" of a class specifies explicitly the particular features of the phenomenon. A second assumption is that the features on which the classification is based are demonstrably recognizable by any competent member of the relevant scientific community.

Sociological investigation depends on descriptions of interactions. If sociological explanations are to be deductive, as Searle thinks, these descriptions must be taken to be literal. But it is difficult to see how this can be. In describing interaction the observer necessarily imputes an underlying pattern that serves as the essential context for "seeing" what the situations and actions are, while at the same time the situations and actions are a necessary resource for seeing what the context is. Thus, the observer's classification of the behaviour of an actor on a given occasion

in the course of interaction as an instance of a particular type of action is not based on a limited set of specifiable features of the behaviour and the occasion but, rather, depends on the indefinite context seen as relevant by the observer, a context that gets its meaning partly through the very action it is being used to interpret. Moreover, though the behaviour of an actor on a given occasion may be classified as an instance of some particular type of action, this classification is indefinitely revisable on the basis of later events or further information.

It is for example a familiar experience in social interaction for people to explain what they previously meant by some previous gesture or utterance. Such reinterpretations are frequently accepted at face value and in good faith, thus sometimes altering the course of interaction on the basis of a new understanding of what was previously meant. In ethnographic studies of interaction it is not uncommon for the ethnographer to understand what the events recorded in his notes "really" consist of only in the light of subsequent events and often only after he has left the field altogether. Utterances and displays which had no clear or determinate meaning may later acquire determinate meaning in light of information subsequently obtained.

The description of interaction cannot be treated as literal.

Meanings and definitions of situations have their "objectivity" established through the interpretive processes of interaction rather than by reference to a body of culturally given constitutive rules. The problem of understanding the reflexive nature of interaction is centrally important for understanding social facts.

Notes

1. Searle's argument is an original invention, but it is not without precursors. Consider Durkheim's claim: "there is one division of nature where the formula of idealism is applicable almost to the letter: this is the social kingdom. Here more than anywhere else the idea is the reality" (1915: 228, emphasis added). It is even possible to trace Searle's self-reference thesis back to Hegel's concept-object identity theory. Hegel was, after all, talking about social objects when he wrote that "it is a mistake to imagine that the objects which form the content of our mental ideas come first and that our subjective agency supervenes, and by the... operation of abstraction, and by colligating the points possessed in common by the objects, frames concepts of them. Rather... the things are what they are through the action of the concept, immanent in them, and revealing itself in them" (1873: 163, emphasis added).
2. This is an epistemological distinction of the first importance. Consider Schlick's version of it: "[T]his distinction between ideas and objects of ideas [being independent]... makes sense in the case of concrete ideas; after all, I distinguish between the book lying in front of me on the table and my idea of that book. But in the case of abstract ideas, object and content co-incide, i.e., the object of the idea is nowhere to be found,

except within the very idea" (1910: 407).

3. Searle argues that "there has to be some physical realization" of institutional facts (1995:56). "It could not be the case, as some antirealists have maintained, that all facts are institutional facts" (1995:56). Money, for example, must come in "some physical form" (1995:35). A socially constructed reality presupposes a reality independent of all social construction "because there has to be something for the construction to be constructed out of" (1995:190).

CHAPTER FOUR: SOCIAL REALISM - THE EXTERIORITY OF
SOCIAL FACTS.

Searle accounts for the behaviour of his mechanism in part by something "outside" of individual people, namely social reality. Durkheim also claimed that society exerts a constraining pattern on individual actors. "Exteriority" is one of the features claimed by him to characterize social facts. But in what sense are social facts "out there" as against "in here" (in the head as Searle would say?). Is it really sensible to suppose that social facts, abstract social generalizations, have existence "outside" of the minds of concrete people?

In this chapter I will clarify and defend Durkheim's Hegelian view that collective representations exist independently of and "external to" individuals, and that they cannot without remainder be reduced to psychological or behaviouristic phenomena. By explaining Durkheim's theory in the idiom of Hart and Searle I am able to trace out leitfaden between the concept of a social fact and the theories of holism and individualism.

In a classic article Philippa R. Foot noted that:

When anthropologists or sociologists look at contemporary moral philosophy they must be struck by a fact about it which is indeed remarkable: that

morality is not treated as essentially a social phenomenon. Where they themselves would think of morals first of all in connection with... the regulation of behaviour in and by society, philosophers commonly take a different starting point. What the philosopher does is to ask himself what it is to make a moral judgement, or to take up a moral attitude, and he tries to give the analysis in terms of elements such as feeling, action and thought, which are found in a single individual (1977: 229).

Sociologists, as this learned philosopher notes, do not usually take the individual as the starting point of analysis but rather the group of which the individual is a part constitutes the fundamental unit of analysis, or if not the group, then at least the "role" the individual occupies is taken to be primary. But because of the starting point taken by philosophers the notion of "social facts" has been thought to be suspect by many. Nowhere is this suspicion more apparent than in the controversy between the methodological individualists and holists. In the main, the individualists have been philosophers cast in the traditional empiricist mold. They have been inclined, that is, to the view that what is "real" is that which can be seen or that which is sensible, and that which is in principle unobservable or insensible (like abstractions) has been thought to be, fundamentally, "unreal". Since social facts cannot be observed but individual people can, they reason, the latter are real and the former are not,

and all statements about the behaviour of groups, and all use of group-type concepts to describe the behaviour of individuals, can ultimately be "reduced" to statements about the feelings, beliefs and dispositions of individuals, for what else is there? Most philosophers have been perfectly ready to accept the existence of "brute" facts (and certainly Kant and Wittgenstein are no exceptions to this rule). But philosophers have been inclined to treat social facts as being in a suspect category of phenomena.

In the 1950s the debate about social facts was rejuvenated by the controversy between the individualists and holists. Mandlebaum (1955) argued persuasively in an influential article that "societal facts" (as he called social facts) are "as ultimate as psychological facts" and "cannot be reduced without remainder to concepts that refer to the thoughts and actions of specific individuals" (1955:6). Amongst Mandlebaum's critics was Watkins who summarized his antithesis by saying that "the ultimate constituents of the social world are people" (1959:505). There is no need to reconsider the gamut of side and ancillary issues raised by the Mandlebaum-Watkins controversy here. It is, I think, better to relate the controversy to the theories of Hart, Searle and Durkheim. These writers have argued that traditional empiricist modes of explaining social behaviour cannot explain nor account for the existence of obligations. Since the controversy about the

nature of social facts has so far not been construed broadly enough to include the work of these philosophers, and since their theories help to locate the controversy within a larger context, it is certainly worth our while to examine them here.

One of the reasons why Searle's controversial derivation of an "ought" from an "is" (1964) has had and still has so many philosophers scratching their heads is that he was outré enough to introduce the notion of "institutional facts" into philosophical discourse at a time when very few others were sensitized to this idea. Searle used the existence of institutional facts to explain how evaluative conclusions could be drawn from factual or descriptive premises. Even though it provoked a spate of reply and rejoinder and rebuttals to rejoinders to replies and so on, Searle's derivation of an "ought" from an "is" was simple enough. He argued this way: from the fact that Jones promised to pay Smith five Dollars no one would disagree that he, Jones, ought to pay Smith five Dollars, all things being equal. Some attacked the ceteris paribus rider, others denounced the deduction as a fraud, and still others simply denied that Jones ought to do anything at all, if he is not so inclined. What Searle says about his deduction is that it is possible only because of the institution of promising. If the institution did not exist, then Jones' utterance "I hereby promise..." would have no effect on Jones' moral situation or upon what he "ought" to do.

But underlying the institution of promising are certain constitutive rules to the effect that utterances of the kind "I hereby promise... etc." count as promising, and "promising involves the undertaking of an obligation" (1969: 33-34).

Searle gives as a formula for constitutive rules "X counts as Y in context C", where X is a brute description of certain things in the world, and where Y is an institutional state of affairs. Without constitutive rules the description "they played football" or "Jones made a promise" cannot be given. It is possible that twenty-two men might line up and go through the same physical movements as are gone through by two teams at a football game, but if there were no rules of football, that is, no antecedently existing game of football, there is no sense according to Searle in which their behaviour could be described as playing football. Constitutive rules give sense to the activities of individuals. They create and define "new forms of behaviour" according to Searle.

What we must do now is question the "ontological" status of constitutive rules. The question can be generalized: what are abstractions, how are they possible, and what does it mean to say that they exist? Though many empiricist philosophers have grown tired of asking such questions good answers to them may help to clarify, if not resolve, the controversy between those who believe that social facts are "real", and those who either

deny their existence or, what is more likely, covertly attempt to reduce them to physical or, in the dualistic version, physical and mental phenomena. I will argue that the question of the reality of social facts is identical with the question of the existence and reality of social rules, for what are social rules and abstractions if not social facts?

Rules according to Hart's scheme necessarily involve reference to something that is "outside" of the individual. What is it? It is a certain "pattern of behaviour" that exists independently of and external to the individuals who learn to recognize and use them as guides to conduct and as the basis for claims, demands, admissions, etc. We must learn to "see" these patterns. This is what socialization is all about. Gellner clarifies this by noting that individuals think in institutional concepts (in addition to empirical concepts). What this amounts to, in Gellner's view, is that individuals are capable of isolating and reacting to certain "patterns" in their environment. The pattern abstracted, however, is according to Gellner "not merely abstracted", but it is "really there" (1959:498). This raises the issue of the "exteriority" of social rules. The common (or shared) standards, can be thought of as shared meanings, or what Durkheim called collective representations (and what Searle calls constitutive rules). Simmel would have called them social generalizations or abstractions. Collective representations, Durkheim tells

us, presuppose the existence of certain "sensible indices" or "visible patterns" and the extent to which such indices or patterns (the external aspect of rules) and "sensible" or "visible" varies in animals from those, like dogs and horses, that have scant ability to recognize them to those, like humans, who have the cognitive capacity of thinking "symbolically" and in hierarchical and systemic ways.

Viewed strictly from the external or "physical" point of view, spoken language is no more than brute phonetic utterances; a coin or a Dollar bill is no more than a piece of metal or a piece of paper with grey and green ink on it, etc. We have institutional concepts which we use to describe these institutional facts (and artifacts), and if we try to reduce these to "natural" concepts (what Kant called empirical concepts) which have as their referents mere brute phonetic utterances (in the case of language) or pieces of metal or paper (in the case of money), what is lost is an entire dimension of the social life being described. If human beings like prelinguistic animals were able to think only in terms of natural concepts referring to physical objects in the world, they would be unable to recognize much less build their lives around and participate in institutional forms of behaviour. A rudimentary system or kinship would not even be possible, because without constitutive rules creating and defining the roles of "husband" and "wife" the institution of marriage could

not exist. Without institutional concepts and the institutional facts they make possible human beings could perhaps "run in packs" but group life as we know it could not exist. Constitutive rules make group life and society possible. They create the very possibility of forming social relationships, obligations and social structures, and until their importance is accepted (by behaviourists) and understood (by reductionists) we shall be unable to properly understand the whole distinctive style of human thought, speech and action which is involved in the existence of rules and which constitutes the normative structure of society.

Why then do so many still adhere to the idea that institutional concepts can be reduced without remainder to concepts which refer only to brute facts? We have already considered Searle's answer to this question. The model for systematic knowledge of any kind is thought to be simple empirical observations recording sense experience. This is the model, according to Searle, that is causing most of the trouble. He identifies areas of apparently fact-stating language which do not consist of concepts which are a part of this model - institutional concepts. Now, according to Gellner, what is at issue (at bottom) in the controversy between the methodological holists and individualists is the "ontological" status of the phenomena that institutional concepts refer to and describe. While the notion of "ontological status" is never as clear as it could

be, one thing is clear and this is that the things referred to by institutional concepts exist in and by virtue of rules. These rules themselves consist of more elemental ingredients. They consist not only of mental phenomena (attitudes), and physical phenomena (patterns of behaviour), but also abstract phenomena (social generalizations). The social generalizations are always self-referential. This makes them quite different from natural concepts. The interactional patterns of behaviour which constitutive rules create and define are "out there". They are certainly not "in the head". If we have been properly socialized, we have the tools we need to grasp and use them. They are in other words group phenomena, or properties, and they cannot be reduced to properties, or concepts used to describe the properties, of natural or brute phenomena, even though they exist side-by-side with the latter.

When we look at a work of impressionistic art, for example, we find that if we stand too near it we cannot make out its object. Then, as we stand back at just the right distance, a "pattern" comes into view. We undergo a similar cognitive experience as we are socialized into a group, or as we learn a language. Patterns become visible to us as we become members of the group or speech community. As we become familiar with the ways of the group, we begin to recognize certain patterns of behaviour which are taken by the group as shared or common standards of behaviour. It could of course be supposed that

in the case of a work of impressionistic art the pattern is being "imposed" on the canvas by the mind of the individual viewer - that it is not "really there". But if a pattern is an intelligible configuration of elements - that is to say, part of the intelligible world - this is yet another sense in which it can be said to exist "out there" in the world, and not merely "in here" in the mind (or head) of an individual viewer. This is the kind of claim, I think, that Durkheim and Hegel both put regarding the "ontological" status of institutional facts. Of course, it takes certain training, skill and capacity (sometimes called "competence" by learning theorists or linguists) to be able to recognize the patterns of behaviour which constitute the intelligible world of human thought, speech and action. But the claim is that these patterns really are there to be discovered, or learned, and that they are group properties which cannot be reduced to nor explained in terms of physical or mental properties alone (although both of these types of properties are involved). This is certainly Durkheim's claim. He argued throughout that social facts could not be reduced to psychological facts, that the former are sui generis and exist on another "level" than psychological phenomena. Kant's Humean-based model of understanding is inconsistent with this picture.

A second index (along side of "exteriority") of the ontological status of the phenomena referred to by institutional concepts

noted by Durkheim is "constraint". He accepts that institutional facts can "constrain" individuals. This model is a different model of social causation than the one proposed by Searle. Durkheim is not necessarily saying that institutional facts "cause" people to do certain things. It is rather that they can "give cause" or provide reasons for actions. While it may not be true that institutional facts can have an effect on behaviour in the same way that a billiard ball struck squarely (or otherwise) can have an effect on another billiard ball, it still makes sense to say that institutional facts can constrain us and that indeed they do. Group membership constitutes an enormous structure of rights and duties which exerts a constant and indeed a crushing influence on individuals. And any attempt to argue, as for example Watkins does, that "an individual's personality is a system of unobservable dispositions which, together with factual believers, determine observable behaviour" (1973:104) leaves an entire dimension of social life unanalyzed and badly explained. Indeed, often the explanation of an individual's behaviour demands the introduction of concepts referring to societal status. A person's behaviour may sometimes be made more intelligible by viewing it as a species of role behaviour. It would be difficult to reduce many of the concepts used to characterize role-relationships and role behaviour to psychological concepts having to do with feelings, motives and beliefs alone. The reason is that the incumbents of such roles

are the bearers of rights and duties which define these roles. They are "constrained" by such roles (though of course they are sometimes free to ignore or resist this constraint).

Structures of rights and obligations exist in the same way that rules and social generalizations or abstractions exist, and these also "constrain" individuals who are subject to them. This is illustrated most clearly by examining the notion of social obligation. Thus, the statement that an individual has an obligation, e.g., to pay Smith five Dollars, to stop at a red light, to report for military duty or to care for one's offspring, remains true even if he believes (reasonably or unreasonably) that he will never be found out and has nothing to fear from disobedience. This indicates the general irrelevance of an individual's beliefs, fears and motives to the question of whether he has an obligation. A person has an obligation if his case falls under a rule or a social generalization with society's stamp on it, and rules and social generalizations, as group properties, cannot be reduced (without remainder) to the dispositions or beliefs of individuals. The jurist John Austin, seeing the general irrelevance of a person's beliefs, fears and motives to the question of whether he has an obligation, defined the notion of obligation not in terms of these subjective facts, but in terms of the objective chances or likelihood that certain officials or others would behave in certain ways. And Hayek

has argued that "there is no other way toward an understanding of social phenomena but through an understanding of individual actions directed toward and guided by expected behaviour" (1949: 6). But these individualistic modes of analysis obscure the facts that where rules and social generalizations exist, deviations from them are not merely grounds for a prediction that hostile reactions will follow, but are also a "reason" and a "justification" for such actions. From the internal point of view of group members rules and social generalizations are used as guides to social life and as the basis of criticism and punishment. Rules and social generalizations give them "reasons" for behaving in one way rather than another.

So, if we insist on analysing social behaviour, including language, from an individualistic perspective in terms of motives, feelings, beliefs and habits of individual people, what is left out is the social or "symbolic" dimension of human life. Thus, when Ryle wrote the Concept of Mind in the late 1940s his individualistic mode of analysis completely left out of the picture the group and symbolic properties of human social and communicative behaviour. This explains why there appears no reference in that work at all to George Herbert Mead's widely read and influential Mind, Self and Society, which had appeared in 1934. Ryle and Mead began with entirely different starting points. And the two works are as different from one another as individual psychology is from sociology.

In many ways the starting point of Hart is much closer to that of Mead and Durkheim than it is to Hume, Kant or Ryle. Both Hart and Searle deviate from the empiricist-individualist model of knowledge and analysis set down by Hume, Kant and classical 18th Century empiricist epistemology.

The converse methodological doctrine is that social or group phenomena are intentional and teleological, and one of the salient themes of modern sociology is that description of distinctively social phenomena must involve understanding of the situation as it is apprehended by the agent. It must therefore make reference to the conceptual framework of the agent, and while institutional concepts used by sociologists might be eliminable or reduced to natural concepts referring to brute physical phenomena (if all we cared about were the kinds of explanations produced by animal psychologists or natural science demographers), it is clear that when used by participants or group members they are not. These institutional concepts and the "things" they refer to are "real in their consequences", which is just another way of saying that they exist independently of and external to individuals, and that they cannot be reduced "without remainder" to natural concepts having as their referents brute facts.

CHAPTER FIVE: TWO MODELS OF RULES - WITTGENSTEIN
VS. HART.

We must now consider two versions of psychologism that Kantian philosophers have had a habit of falling into: the first is the attempt to reduce abstract, social or cultural phenomena - of varying degrees of specificity, from the most determinate to the most diffuse - to mental phenomena found in the minds of concrete individuals. The second psychologism, which has often been a reaction against the first, is the attempt to reduce abstract cultural phenomena to patterns of behaviour, often sanctioning behaviour, that can be detected in the visible action of individuals that an external observer could record. I will call these two psychologisms "mentalism-psychologism" and "behaviourism-psychologism" to distinguish them, respectively, from those two slippery impostors, mentalism and behaviourism. What is of greatest interest is not what distinguishes these two species of psychologism, but what it is they have in common. What they seem to have in common is an empiricist foundation that generates a nominalist impulse to reduce abstract phenomena to things (mental and/or physical) that are concrete particulars. Popper and Durkheim have laid the blame for what they have called "psychologism" at the doorstep of a refusal to acknowledge the reality of such abstract phenomena. The refusal to accept or to see that abstract phenomena have a reality sui generis is often based on the supposed obscurity of this claim itself. Wittgenstein

is the best-known modern example that can be cited of an empiricist philosopher who regards all such talk of abstract phenomena as a mistake, or as mystification or obfuscation. That was his very foundation, a foundation that is wholly endorsed by almost all of analytical philosophy today. The deep confusion that this view promotes, however, is only too evident from Wittgenstein's perplexed and cryptic jottings, and from the crack-up, after more than three decades of commentary, of the paradigm his later philosophy established. Today there are thousands of commentators who have published books and articles on Wittgenstein's work, and there is nothing but confusion at the top. So much has been written attempting to piece Wittgenstein's ideas together, or tear them to pieces, by the method of textual juxtaposition and commentary, that further attempts in this line seem unpromising. What seems needed is an approach that stands back from the rest to obtain an overall picture that can determine in general just what sort of method was being followed. While this may sound preposterous, it is just what has been attempted by one of Wittgenstein's new "sociological" commentators, David Bloor. Bloor's goal has been to locate Wittgenstein's later philosophy within a tradition: the sociological tradition of Émile Durkheim. The so-called "marriage" of Wittgenstein and Durkheim has been widely taken for granted lately, but I will argue that the marriage is a nullity: it never happened.

According to Bloor, Wittgenstein thoroughly "sociologized" philosophy by construing meaning and knowledge as social accomplishments. Bloor classifies Wittgenstein and Durkheim as writers who adopt what he calls a "sociological" approach to meaning and necessity. Both thinkers, he claims, regarded logical necessity and conceptual constraint as categories of moral (or social) obligation. By so doing, they relativized objectivity and the foundations of knowledge by reducing them to nothing more substantial than ephemeral social constructions which can (and do) vary across cultures and over time. But, as any familiarity with Durkheim will show, many of these constructions are not arbitrary at all. Some of them, rather, can be said to be constitutive of humanity itself. Some are such that they could not be other than they are, and what we know them to be. Durkheim had a deeper insight into the nature of the social and the social foundations of knowledge than Bloor is willing to admit or perhaps able to see, an insight that Wittgenstein himself never caught hold of. The truth of the matter is that Durkheim's theory of the social is radically at odds with that of Wittgenstein's. Bloor's attempt to locate Wittgenstein's later philosophy within the sociological tradition of Durkheim is a failure, but it is an instructive failure which points the way to a better understanding of what the two sociologisms of Wittgenstein and Durkheim really are. This is important because it allows us to see just what Wittgenstein's sociologism amounts to, and why

and how it must be supplemented.

Consider the radical interpretation of Wittgenstein's later philosophy that was given in 1961 by Joseph L. Cowan. In Cowan's article, the claim is made that, for Wittgenstein, "there is no such thing as a rule" (1961:364). Cowan went on to elaborate upon this remarkable claim: "there is no such thing as (or state or condition of) understanding a rule, or knowing a rule, or meaning a rule. There is no such thing as behaviour guided by, or even according to, a rule" (1961:364). I believe that Cowan's interpretation is quite right and that it is a form of blindness on the part of most contemporary commentators that prevents them from seeing that this is so. This blindness, which also afflicted Wittgenstein, prevents them from seeing that rules, whatever else they may be, are also, in part at least, abstract phenomena that cannot be reduced (without remainder) to ideas in the minds of individuals nor to actions or patterns of behaviour that such individuals may display. As I will attempt to indicate below, it is precisely this blindness that has bedeviled so much of contemporary thinking about Wittgenstein's later philosophy. First there are those who have accepted Wittgenstein's rule anti-realism. These writers have been led to the most absurd conclusions, such as that language use is not necessarily governed by rules. Cavell was the first to make this claim: he argued that, for Wittgenstein, "everyday language does not,

in fact or in essence, depend on... a structure and conception of rules, and yet that... absence of such a structure in no way impairs its functioning" (1966: 156), and went on to endorse this view and to accept it as a liberation in thought. Then there are those writers who have not accepted, or at least have not explicitly accepted, Wittgenstein's rule anti-realism. These writers have been led into the most tortuous and inconclusive attempts ever to explain what "following" a rule might amount to, or what behaviour "in accordance with a rule" might be.

Part of the problem has been that no clear conception of a rule has emerged in the context of these Wittgensteinian problems. We might therefore ask: what did Wittgenstein mean by "rule"? What emerges is that he made no distinction at all between rules and habits, or custom, and that he defined rules in terms of habits. This comes out most clearly when considering his two-pronged theory of meaning. The first prong of this theory has been widely remarked upon and seems generally well-understood. It amounts to the contention, which has also been attributed (rightly) to Frege, Durkheim, and Popper, among others, that meanings cannot be identified with mental states or events in the minds of individuals. Bloor(1983) has claimed that this approach to meaning "fits snugly into the Durkheimian tradition", but this betrays a misunderstanding of Durkheim that is most likely a result of

the "blindness" I mentioned above. It is true that both Wittgenstein and Durkheim rejected the view that meanings are mental, but while Wittgenstein adopted a form of behaviourism-psychologism, Durkheim adopted a theory of abstract collective representations as part of his own theory of rules. For Wittgenstein, we "strike rock bottom" when we come down to regular habitual behaviour. But for Durkheim, such behaviour gives us evidence for the existence of the abstract, internal dimension of rules, a dimension that is entirely missing from Wittgenstein's theory of rules-as-habits.

This brings us to the second prong of Wittgenstein's theory of meaning. Wittgenstein could not identify meanings with mental phenomena because he realized that meanings were public and mental events and states were private, so the next step was to identify meanings with social phenomena, which he did regard as "public" or external to individuals. Wittgenstein realized that without such a public or external criterion for determining, and teaching, the correct use of signs, we should have no recourse but to private languages, which he rightly regarded as impossibilities. The second prong of his theory of meaning was the identification of this public criterion with publicly observable behaviour which an observer could record. This amounted to the identification of rules with habits and comes down to a form of behaviourism-psychologism. Thus, his sociology is a form of psychologism and a rejection of

abstract phenomena.

Curiously, Wittgenstein's theory resembles that of the jurist John Austin. Austin (1832) was not interested in meaning, but in the "objectivity" of obligations. He recognized that binding obligations could not be reduced to subjective mental or psychological elements. Having seen the general irrelevance of a person's feelings, beliefs and wishes to the question of whether he or she was objectively under an obligation. Austin attempted to define obligation not in terms of these subjective elements, but in terms of the objective chances or likelihood that certain officials would act in certain ways in cases of disobedience. Wittgenstein was searching for objective grounds for the possibility of human speech and communication. These grounds he found in regular usage, which was to be the criterion for correct usage. Both Austin and Wittgenstein identified rules, in other words, with what people do "as a rule". But these behaviouristic modes of analysis obscure the fact that where rules exist, deviations from them are not merely grounds for a prediction that hostile reactions will follow, but are also a reason and a justification for such reactions. From the internal point of view of group members, rules are used as guides to social life and as the basis of claims, demands, admissions, criticism and punishment. Such rules give them reasons for behaving in one way rather than another. This, basically, has been H.L.A. Hart's criticism of

Austin. Indeed, the main thrust of his critique of Austin's theory of law as the command of the sovereign has been that legal obligation cannot be accounted for in terms of the simple elements of commands, habitual behaviour, and sanctions - what is required is the concept of a rule, a concept that is entirely missing from both Austin's and Wittgenstein's analysis of the grounds of objective normativity.

A social rule according to Hart rule has an "internal" aspect in addition to an "external" aspect, which it shares with a mere social habit and which consists in "regular uniform behaviour which an observer could record." (1961:56). Hart is quick to point out that this internal aspect of rules is sometimes misrepresented as a mere matter of "feelings", but he rejects this form of psychologism. Such feelings, he says, are neither necessary nor sufficient for the existence of binding rules. According to Hart, what is necessary is a "critical reflective attitude to certain patterns of behaviour as a common standard" (1961:56). This language must be paid close attention. These words were not chosen randomly or haphazardly in the heat of confusion but form the basis of a very careful theory of normative obligation, which applies with equal measure to the "must" of conceptual constraint and logical necessity as it does to moral and legal obligation. This can be appreciated by examining its formal features:

- A. External aspect of rules: "Regular uniform behaviour which an observer could record" (1961:56).
- B. Internal aspect of rules: 1) a "critical reflective attitude" to certain 2) "patterns of behaviour" as a 3) "common standard" (1961:56).

There is a radical difference between this Durkheimian dual conception of rules and Wittgenstein's conception of rules as observable social habits. Wittgenstein's conception eliminates the internal aspect of rules. Notice that the third element of the internal aspect, B(3), is abstract and apparently social in character. The attitudinal element, B(1), is mental or psychological, but notice that the object of the attitude itself is something abstract, namely, standards shared by the group, and this element cannot be reduced to elements found in the mind, such as thoughts, feelings, or beliefs. This constitutes a departure from the "justified true belief" theory of knowledge which ultimately locates knowledge in the mind of the believer. Hart's is a theory, like Popper's, of "objective knowledge." The common or shared standards used by the group to evaluate knowledge claims, or claims that an individual's case falls under a rule, or that someone is under an obligation, are abstracted by individuals from actual "patterns of behaviour," B(2), which amount to regular uniform behaviour that constitutes the external aspect of rules. It must be

noted that these patterns are not "merely" abstracted in idiosyncratic ways by individuals but are, as Gellner has noted, "really there", as objects to be learned and taught which are independent of individual perceptions or representations of them. In other words, they are external to individuals. Where rules exist, deviations from these sanctioned patterns of behaviour are generally regarded as lapses or faults open to criticism. Where there are such rules, not only is criticism in fact made, but deviation from the standard imposed by the abstract category is generally accepted as a good reason for making it. The external aspect of rules can sometimes be difficult to distinguish from mere habitual behaviour. But there is a critical difference in principle between the external aspect of rules and mere habits: The external aspect of rules has something standing "behind" it, as it were, which a mere social habit does not have. What it has behind it is its collective representation as a category of behaviour to be recognized - learned and taught - and followed by members of the group. It is precisely this element that Wittgenstein's analysis leaves out of the picture, the element that some commentators have loosely referred to as "the normative".

A mere social habit or practice, taken by itself, cannot provide the external or public check that Wittgenstein sought in vain as the objective ground of meaning and knowledge,

including mathematical knowledge. This is because, if a rule has no internal aspect, as Wittgenstein imagined, there can be nothing to measure actual behaviour against and so no criterion for the correct application of critical behaviour in cases of putative deviation from the normal course. Overt sanctioning behaviour constitutes one part of the external aspect of rules. It is a necessary condition for the existence of binding rules in the sense that, if there were no sanctioning behaviour, there could be no rules, for we should have no way of learning and teaching the abstract categories of behaviour they impose and of which, in part, they consist. In one sense, rules are created by the actual critical behaviour of the group, which is after all a form of observable behaviour, but it would be a mistake to suppose from this, as Wittgenstein appears to suppose, that the public response is itself a sufficient condition for the existence of binding rules and objective normative constraint. By adopting what might be called an "outsider's" perspective of rules, Wittgenstein left out of his account of the basis of group life the way that members view their own regular (and irregular) behaviour. Thus it might have seemed plausible (but is, in fact, false) to suppose that the critical response of the community was a sufficient condition for the existence of rules. I cannot say if this error was the error that allowed Wittgenstein to identify rules with habits, but it seems likely that his doctrinaire rejection of abstract phenomena was the real cause of his identification

of rules with habits.

Wittgenstein's vision of social rules was obscured by a partial blindness. Why have so many of his commentators failed to recognize this defect and to attempt to correct it? One reason may be that they, too, have shared Wittgenstein's almost irrational repugnance for abstract phenomena. Most of his critics seem to have been internal critics, those who have accepted as a basic ground rule of analysis the empiricist dogma, accepted by Wittgenstein, that only observable sensibles are real. Since abstract phenomena cannot be observed but concrete particulars can, they seem to have reasoned, the latter are real and the former are not, and all statements about the behaviour of abstract groups, and all use of abstract concepts to describe the behaviour of individuals, can ultimately be reduced to statements about the feelings, beliefs, or dispositions of individuals, for what else is there? Wittgenstein's doctrine of family resemblances, which as been so widely discussed and misunderstood, was in fact nothing less than an all-out frontal attack on abstract phenomena. His remarks on rules and rule following vacillate between collateral attacks on essences and genuine statements of perplexity at the results of his own theorizing activities. I venture to suggest that the main thrust of Wittgenstein's later philosophy, his later work, was the denial of abstract phenomena. His mission, as he saw it, was to forever destroy

this myth. But this was bound to lead him into trouble, for as Durkheim once remarked, "Man is dual". By this, Durkheim was not alluding, in a Cartesian manner, to the duality of mind and body but rather to the duality of concreteness and abstractness which is the condition of humankind. We live in two worlds: a world of abstractions and categories and a world of concrete phenomena, of material bodies and mental events. These two worlds together constitute society and make it a possibility and indeed a necessity for life as we know it.

Wittgenstein recognized, rightly, that speech and communication behaviour could only be understood by seeing how these phenomena were part of the "stream of like and thought" and how they fitted into "patterns of activity" in the course of "purposeful and shared activity". But in speaking of these phenomena as mere "activities", "forms of life", or "the given", he omitted a crucial dimension of social life from his theorizing activity. Most people will agree that language and speech are considerably more than mere activities. If language and theorizing were "mere" activities, reflecting nothing other than their own brute existence as sounds or marks on paper and pointing to nothing beyond themselves, they would amount to no more than what Mead called a "conversation of gestures" of the kind that ensues between infrahuman creatures that have not attained to the level of "symbolic" interaction. The behaviour of two wild dogs eyeing each other is a case in point: The

sort of "conversation" of power that precedes actual physical struggle for dominance fits into a stimulus-response paradigm of animal psychology that is ill equipped to explain or make sense of abstract, theorizing activity. Is this the sort of paradigm that Wittgenstein's theorizing presupposes? Bloor has in fact been so impressed with this aspect of Wittgenstein's empiricist approach that he has attempted to develop and push these ideas to their limits by using the idiom of stimulus-response theory. The Skinnerian counterpart of Wittgenstein's public criterion of custom is found, Bloor says, in the notion of a reinforcement schedule.

Echoing Pavlov, Bloor says that an organism learns its behaviour by a system of "external" checks and reinforcements. Bloor really is one of Wittgenstein's most radical expositors. He seems quite faithful to Wittgenstein's position: His attempt to explain the possibility of human thought, speech, and action from within the Skinnerian framework shows just how remote the theories of Durkheim and Mead really are from those of Wittgenstein. It is only a pity that Bloor fails to see that this is so. His Skinnerian account leads him to want to argue that "observable behaviour" provides our "ultimate criterion" of meaning and understanding. But Bloor forgets to ask: "observable" to whom?" It is trite sociology that patterns of behaviour (the external aspect of rules) become observable through participant observation and often remain unnoticed or

indeed invisible when viewed through the eyes of outsiders who lack insiders' knowledge of the holistic concepts (or constitutive rules) that constitute and define the actions and patterns in question. As Searle has said, it is possible that men might line up and go through the same physical movements as are gone through by two teams at a football game, but if there were no rules of football, that is, no antecedently existing game of football, there is no sense in which their behaviour could be described as playing football. For the anthropologist or sociologist of knowledge, for whom knowledge is "distributed", there is recognized to be many points of view and many group perspectives, and what is "externally observable" to a member of one group may not be so to a member of another. The "ultimate criterion" for understanding the basis of human social life is the insider's perspective, and this is something that individuals learn to see as they become socialized into the multifarious groups to which they belong. Indeed, we often cannot "see" the patterns of behaviour that constitute the external aspect of rules until we have acquired an insider's knowledge of social structure, and this is a form of knowledge by acquaintance and not merely knowledge by description, it involves the insider's apprehension of an abstract, preexisting system of rules or abstract categories. This is not to say that everything in a practice or an institution will be transparent to participants. Often, what a participant "knows" will come down to know-how that may just

be "habits" that enable people to carry on confidently (as people handle the grammatical intricacies of their native languages before they are exposed to grammatical theory). But behind these habits, in the case of speech behaviour, it is the system of abstract collective representations that we call language that makes such speech behaviour possible and intelligible. Because Wittgenstein denies the existence of any such "preexisting" system he is led to the hopeless view that the meaning of a word is inextricable from the context in which it is originally learned.

Wittgenstein's rejection of abstract phenomena led him to the view that there is nothing that can be treated as a standard of behaviour, including categorizing behaviour, and so nothing in that behaviour which manifests the internal point of view characteristic of the acceptance of rules. But to argue in this way impales us on the horns of a false dilemma: either rules are what they might be in a formalist's Platonic heaven - a view that Wittgenstein is at pains to reject - or there are no rules at all. The first part of Wittgenstein's widely discussed section 201 of the Philosophical Investigations is a case in point: No matter what interpretation we give to section 201, its argument manqué cannot be sustained. Wittgenstein's so-called sceptical paradox, whether read in the original or given a Kripkean gloss, is just the sort of result one would expect if there is no such thing as a rule. One searches in

vain in Kripke's work for an adequate conception of rules. He does not embrace Wittgenstein's rule anti-realism outright, but it seems clear there is no place in his thinking for the abstract, internal dimension of rules.

The refusal to accept or to see that abstract phenomena have a reality sui generis is often based on the supposed obscurity of this claim itself. Wittgenstein is the best-known modern example that can be cited of an empiricist philosopher who regarded all such talk of abstract phenomena as a mistake, or as mystification or obfuscation. That was his very foundation, a foundation that is wholly endorsed by almost all of analytical philosophy today. The deep confusion that this view promotes, however, is only too evident from Wittgenstein's perplexed and cryptic jottings. Wittgenstein's rejection of abstract phenomena left him with nothing to fall back on save his own fleeting and ephemeral sensations, feelings, and observations of the behaviour of others. Ayer seems right in saying that Wittgenstein's position is untenable because it involves a "behaviouristic account of the experience of others and a mentalistic account of one's own" (1986:79). Such accounts leave no room for the existence of abstract social phenomena. I realize that this line of reasoning will strike most Wittgensteinians as backwards. The view I have been expressing, they will say, "is precisely what Wittgenstein was trying to get away from. It is mistaken". But what sort of

view did he put in its place? Most certainly it was not a view that could explain how human social life is possible. Wittgenstein is left with the same problem of the 1st Critique. He is not able to account for the possibility of language.

Searle argues that "we live in one world". I have already given reasons for thinking that we live in two worlds. I have also mentioned in passing that the view I am adopting is Durkheim's view that "man is dual". The reason for this duality is the duality of the worlds we live in. I now want to explore this duality in terms of Hart's rule theory.

Hart's theory of rules gives us a tool for analyzing and understanding this duality. We have already seen how Hart's model differs from the one I have attributed to Wittgenstein or at least Bloor's Wittgenstein. Now we want to explore this model further to see how it links up with Popper's three worlds and with Durkheim's theory of social facts.

We can begin by formalizing Hart's model of rules in the following way:

- 1 External aspect - "patterns of behaviour"
- 2(a) Internal Aspect - "Critical Reflective Attitude" (to)
- 2(b) Internal Aspect - "patterns of behaviour" (taken as a)
- 2(c) Internal Aspect - "common standard"

We can now make the following observations:

1 and 2(b)(c) are mediated by 2(a)

There are internal relations between elements in the system of 2(c)

There are internal relations between the elements in 2(b)(c) and 1

2(a) is a reflective, psychic (or psychological) element

2(b)(c) are abstracta.

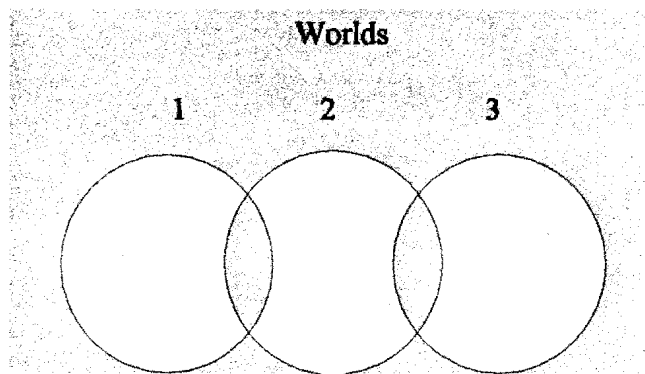
1 are concreta or brute facts

2(b)(c) are representations or constructs of 1 "under an aspect"

We can amplify this model by considering Popper's (1972) 3 Worlds. Although this scheme has come in for criticism on the grounds that it is simplistic and ontologically extravagant, I think it provides us with a more comprehensive way of looking at social reality.

According to Popper's scheme, World 1 is the world of physical objects and states. World 1 is concrete. World 2 is the world of self-consciousness and subjective psychological or mental phenomena. World 3 is the world of objective knowledge, it is the abstract world of culture and collective representations.

Worlds 1, 2 and 3 are according to Popper related in the following way:



Worlds 1 and 3 are mediated by world 2. World 3 consists of a cultural heritage coded on material substrates. There are internal relations between worlds 1 and 3, or in other words, "behavioural correlates of meaning". World 3 presupposes the existence of both worlds 1 and 2, but cannot be "reduced" to either of the two or both. There are internal relations between the elements in World 3 as well. These relations consist in conceptual and logical relations. World 3 is abstract when considered analytically. But since it is tied to World 1 by internal relations the elements in World 3 are

both abstract and concrete, or "dual". When Durkheim said that "man is dual" he was saying that we live in World 3 in addition to World 1. World 1 is concrete, consisting of brute facts and includes Searle's mechanism. World 2 is the world of judgement, of Hart's critical reflective attitude. Hart's 2(a) links Worlds 1 and 3 together and provides the basis for internal relations between them. Following a rule is not merely a World 1 process.

According to Searle we live in just one world. He wants us to believe that Worlds 2 and 3 are basically World 1 phenomena. Wittgenstein thinks that we live in Worlds 1 and 2 only. He rejected the existence of abstract phenomena. Hart's common standards, 2(c), are collective representations. World 2 overlaps with World 3. Individual experience is both collective and individual. Worlds 1 and 2 also overlap. People live in a world of brute facts. Behavioural correlates of meaning (or "internal" relations) exist between Hart's 1 and 2(b). On Popper's model the direction of causal influence comes from both Worlds 1 and 3.

According to Searle's model the "mechanism" (itself a World 1 phenomenon) is determined to act and react causally by elements in Worlds 1. Everything that is ultimately exists in World 1. Thus, "we live in one world". Durkheim argued that we live in two worlds. In Popper's model, the individual (in World 2)

mediates between Worlds 1 and 3. World 1 is the world of "objective physical reality", and World 3 is the world of "objective knowledge". Hart and Durkheim would both accept such a model. They both argue that there are internal relations between Worlds 1 and 3. World 2 is the Reality Constructor. The Reality Constructor is causally influenced by both Worlds 1 and 3, but it also has some determinative force on these worlds. According to this model the actor is not "caused" to act, but phenomena in Worlds 1 and 3 "give cause" for action. This is not to deny that, insofar as the actor is in his body the actor is also in a causal nexus. Nor is it to deny that much of the actor's behaviour is motorized. But it leaves open the possibility of freedom to act and choose. Although World 3 exerts a constant and indeed a crushing influence on the individual, the possibility exists that the individual is still at liberty to act independently of reasons "for" acting. This three worlds system does not deny brute fact realism but it denies that Worlds 2 and 3 can be reduced to brute facts. And it insists that World 3 encompasses the "intelligible" aspect of World 1 phenomena.

The case I have been attempting to present has been made to depend upon the existence of what I have called "abstract phenomena". What are they? This is indeed the key question to be asked, for it is precisely at this point that Wittgensteinian philosophers will be inclined to interdict:

"But Wittgenstein destroyed that notion long ago". It is true that Wittgenstein's later philosophy is generally, if obscurely, regarded as an attack on Platonic essences. Bloor calls these "strange entities" and says of their advocates that "all they do is stress that they are different, more basic, and never change" (1983:50). He then lapses back to Wittgenstein's solution to the problem of abstract phenomena: "if you talk about essences... you are merely noting a convention" (1983:50). But is this really any sort of solution at all? Bloor makes it into a problem: he accepts that mathematics and logic are "social", or "conventional", and just because they are social he wants to say that there can be variation in logic and mathematics just as there is variation in social structures in different cultures and in different times. Bloor traces this relativistic sociologism back to what he calls Wittgenstein's "sociologically orientated" Remarks on the Foundations of Mathematics, and concludes that "it is not necessary" to postulate any "vague mathematical reality" once we realize that mathematics is but social. There are, however, a number of serious mistakes in Bloor's analysis of mathematics and logic as social which render his overall approach inadequate. The first is that of thinking that "the social" can be defined in terms of its external aspect alone. Wittgenstein has already been criticized on this ground, the ground that he takes no cognizance of the internal aspect of rules, and this criticism extends easily to Bloor's attempt to

push Wittgenstein's externalist analysis of rules to its Skinnerian limits. A second mistake results from Bloor's failure to distinguish social phenomena that are vague and diffuse from those that are determinate and specific. In a sense this is related to his third mistake: the failure to distinguish social phenomena that are local and temporal from those that are general and basic to the human condition. The relativism that he extracts from his sociologism is based on a faulty premise: that because there is variation in most social phenomena, there is no reason to suppose that there is not fluctuation in all social phenomena. What Bloor fails to realize is that while some social phenomena are indeed fleeting and ephemeral, (eg., fads, fashions) there are others that are not so, and that some of these are so basic and unchanging to the human condition as to amount to the very conditions of human social life itself. I will have more to say about this when I turn to Durkheim's sociologism, which, as it turns out, is radically different and considerably more sophisticated than the version of it that Bloor attributes to Wittgenstein.

CHAPTER SIX: DURKHEIM'S SOCIOLOGISM

Wittgenstein's sociology was an attempt to get around the tendency, noticed in Frege, to see mathematical and logical concepts and relations as pure and detached from material objects and from the concrete field of experience. Bloor notes that Frege's tendency to "Platonize" numbers creates a gulf between mathematics and concrete reality. There is truth in this. However, if we view arithmetic and logic as social phenomena with two aspects, as with Hart's Durkheimian model of social rules, this gulf can be closed, and a web of internal relations established between configurations of elements in nature and abstract social patterns, or unities of meaning. Mill's theory of arithmetic, for example, is an empirical theory about the purely external dimension of arithmetic, but arithmetic also has an internal dimension which is abstract and not merely concrete. Once we realize this, any attempt to save Mill's theory from the onslaughts of Frege can be seen as or perhaps made into part of a larger project. The Wittgensteinian effort to explore and develop aspects of the external dimension of mathematics can be used as part of a more encompassing approach which recognizes the dual nature of social phenomena and attempts to work out their interconnections. I realize that this must sound impossibly conjectural and programmatic, especially when it is based upon such a slender theoretical formulation, but in what follows I

will attempt to sketch a view of a way in which Platonic or Fregean forms might be "sociologized". In so doing, I will, in the main, be following the lead of Durkheim, whose theory seems badly in need of exposition. Few philosophers seem to understand its important central tenets: this is shown by the fact that the identification of Wittgenstein and Durkheim as belonging to the same sociological tradition has been allowed to stand without challenge, when it is so badly mistaken.

It is perhaps best to let Durkheim speak for himself, since his views seem to be so widely misunderstood. In what follows I will do just that, culling my material from his important yet widely ignored essay "Individual and Collective Representations" (1974). Durkheim there distinguished "individual representations", or ideas in the mind, from "collective representations", which he regarded as abstract and social in nature. He argued that the latter, although abstract, did not "hang in the air" as he thinks Platonists have supposed, but that they had a "definite substratum". This substratum is "the mass of associated individuals. The system which they form by uniting together, which varies according to their geographical disposition and the nature and number of their channels of communication" (1974:24). With regard to the relationship between abstract collective phenomena and their substratum, Durkheim stated that "while maintaining an intimate relation with their substratum" collective representations are "to a

certain extent independent of it" (1974:23). Nevertheless, "their autonomy can only be a relative one; and there is no realm of nature that is not bound to others". "Nothing could be more absurd", he said, "than to elevate them into a sort of absolute, derived from nothing and unattached to the rest of the universe" (1974:23).

To enforce his point that abstract collective representations cannot be reduced to their substratum, Durkheim draws an analogy between "the relationship which unites the social substratum and social life" and "that which undeniably exists between the physiological substratum and the psychic life of individuals" (1974:24). He believes that if he can show the absurdity of reducing the mind to the brain (and the brain to its chemical elements), he will be able to show the irreducibility of abstract social phenomena to their behavioural or mental counterparts. His argument runs as follows: "the condition of the brain affects all intellectual phenomena and is the immediate cause of some of them (pure sensation). But on the other hand, representational life is not inherent in the intrinsic nature of nervous matter, since in part it exists by its own force and has its own peculiar manner of being.... A representation is not simply an aspect of the condition of a neural element at the particular moment it takes place, since it persists after the condition has passed, and since the relations of representations are

different in nature from those underlying the neural elements" (1974:25). "If there is nothing extraordinary in the fact that individual representations, produced by the action and reaction between neural elements, are not inherent in these elements, there is nothing surprising in the fact that collective representations, produced by the action and reaction between individual minds that form society, do not derive directly from the latter and consequently surpass them" (1974:26). He continues with this analogy: "each mental condition is, as regards neural cells, in the same condition of relative independence as social phenomena are in relation to individual people" (1974:28). There is, he says, "no need to conceive of a soul separated from its body maintaining in some ideal milieu a dreamy or solitary existence.... The soul is in the world and its life is involved with the life of things" (1974:28). But, he says, even though all our "thoughts" are "in the brain", they "cannot be rigidly localized or situated at definite points". This diffusion or ubiquity, he says, "is sufficient proof that they constitute a new phenomenon... (1974:28-29). In order that this diffusion can exist, their composition must be different from that of the cerebral mass, and consequently must have a different manner of being which is special to them" (1974:29). He thus concludes his argument: "those then, who accuse us of leaving social life in the air because we refuse to reduce it to the individual mind have not, perhaps, recognized all of the consequences of

their objection.... If it were justified it would apply just as well to the relations between mind and brain, for in order to be logical they must reduce the mind to the brain. But then... following the same principle... one would be bound to say that the properties of life consist in particles of oxygen, hydrogen, carbon and nitrogen, which compose the living protoplasm, since it contains nothing beyond those particular minerals just as society contains nothing more than individuals. In fact, individualistic sociology is only applying the old principles of materialistic metaphysics to social life" (1974:30).

So here we have the core of Durkheim's social metaphysics in his own words. He rejects the Platonic vision of a heavenly realm of abstract phenomena unattached to any sort of material or psychic substratum. At the same time, he denies that abstract social phenomena can be "reduced" to either mental or physical phenomena. He characterizes abstract social phenomena as having a reality sui generis. In this way it may be said that he "sociologizes" Platonic and Fregean forms. This comes out most clearly when considering other aspects of Durkheim's theory. There are a number of points which Durkheim makes about collective representations which are of utmost importance. He often refers to them as social facts. He maintains that they continue to exist in themselves without their existence being perpetually dependent upon the

disposition of any one concrete mind. He says, contentiously, that collective representations have the power of reacting directly upon each other and to combine according to their own laws. They are, he says, (as we saw) external to individuals. He suggests, very importantly, that abstract social phenomena come in varying degrees of specificity and determinateness. Phenomena such as numbers, elements of logic, or crystallized law can be cited as examples of the most determinate of all the social forms. Social currents and movements, vague political and ideological notions, on the other hand, are some of the most indeterminate and diffuse. He also recognizes that some social phenomena are general to all of humankind whereas others are specific to local groups. Some of the former are actually general enough to be called "constitutive of" human social life. The introduction of rules of inference and the associated vocabulary of "not", "implies", "therefore", "follows from", "and", "or", "if... then", and so on are cases in point. These social phenomena allow us to calculate and to think. Then there is the normative vocabulary of rules in general, consisting of "ought", "must", "should", "right" and "wrong", and so on which constitutes the actual glue of social life. In his Primitive Classification Durkheim suggests that arithmetic and counting behaviour have an elementary basis in group perception, and especially in perceptions of "us" and "them". Having learnt to use "the same" and "different" in this way, through classifying ourselves and others, we extend

this abstract knowledge to other things in the natural and social environment. In this way we learn to sort and group and to count and it is on the basis of this that we learn to calculate in other ways. These are social skills. They may be said to constitute the step from the pre-social to the social world. In this way individuals become "part of" society, they preserve and perpetuate it while at the same time being held in check by it, as the grid of collective representations forces itself upon them through interaction with the collectivity. Some social phenomena are indeed specific to certain cultures, such as systems of signs or currency which are local and temporary phenomena which vary from one culture to another and from time to time. But there are others of a more basic and durable nature, such as the institutions of arithmetic and logic. They can hardly be called "arbitrary" merely because they are social constructions. They have objective parameters which set their bounds, such as human physiology, the structure of the physical universe, what may be called the "furniture" of the human mind and, according to Durkheim, laws or principles of their own association. They are so basic that they can be said to be "timeless" and unchanging to the human condition. Because they constitute the foundations, upon which are built the edifices, of meaning, they have a "givenness" which seems quite atemporal just because we could not imagine what it might be like without them, or if they were different than we know them to be.

I have just been discussing the social foundations of human knowledge. By calling them "social" I am indicating a movement toward sociological idealism. What would it be like to "sociologize" the Kantian categories of the understanding? This is, in fact, exactly what Durkheim has suggested we do. He was not alone. There were suggestions from some neo-Kantians along precisely these lines: some writers, like Cassirer and C.I. Lewis, reportedly thought that the categories were not fixed by nature or by the nature of our psychological faculties, but were capable of historical and cultural variation - although it is unclear just how far they might have been prepared to go in this direction. Perhaps, like Bloor and Wittgenstein, they would have been prepared to go "all the way" if pressed. But Durkheim would most certainly have rejected this, for reasons that have just been canvassed. A related question that might be raised, in this connection, is the extent to which a philosopher's views can be "sociologized" as opposed to being regarded as "proto-sociological". My view is that a writer's theories are proto-sociological if there is a hint, even a trace, that he or she would have regarded the basic building blocks of knowledge as "social", no matter how slight the appreciation of such a view might have been. There is no indication that I am aware of in the 1st Critique that would suggest that Kant regarded his categories as social constructions, although his talk of regulative and constitutive principles is suggestive. He attempted to ground the

distinction between experience and thought in different faculties of the mind, the sensibility and the understanding. But he recognized the difference between the psychological faculty of judgement, and the forms of judgement which provided for the unity of apperception, and regarded the latter as transcendental. His unity of apperception would have been regarded as social by Durkheim, in the same way that abstract collective representations are so: they transcend individual experience and pre-exist individual consciousness of them. Moreover, the particular contents of experience were recognized by Kant as having some general character, and this generality is explained by some modern commentators in terms of "rules" and "rules for the application of rules" which are said to constitute the empirical schematism and the categories of the understanding respectively.

To what extent can Frege and Plato be sociologized? Or were they proto-sociological thinkers? There are indications that Frege regarded his "concepts of reason" as cultural artefacts even though he characterized them as "timeless". He wrote, in the context of a discussion of the distinction between "ideas" in the minds of individuals and the objective "sense" of a sign, that mankind "has a store of thoughts which is transmitted from one generation to another". Did Frege (1984: 368) mean to suggest that his concepts of reason, including numbers (which he often characterized as "objects"), were part

of the storehouse of social forms, or would he have put them in another category altogether, one that, as Bloor complains, has nothing to do with the social and which he understood but poorly? The answer is not clear. Bloor's deflationary sociology aimed to "demystify" Frege's Platonism by construing numbers in terms of their purely external aspect alone, but what would it be like to attempt to "sociologize" Platonic and Fregean forms as part of a Durkheimian social epistemology? What would this amount to? Here, the focus would be on analogies that can be drawn between forms as social categories or collective representations, and Plato's doctrine of "participation" and the actual group participation that imposes the collective grid upon the individual. Patterson has said of Plato's doctrine of participation that it is impenetrable just because of the primitiveness of the notion itself, yet he gives an interpretation of Plato's metaphysics that encourages us to see it proto-sociologically: in speaking of concepts that constitute and define society and social structures, he notes that these phenomena are "separated from" the individuals who "participate" in them. He gives examples of roles that it would be difficult if not impossible to reduce to the thoughts, feelings, or dispositions of individuals. He recognizes that society and societal phenomena are "abstract" and says they are "independent of the people..." who participate in them as group members. He then offers the suggestion that this description seems to "Platonize" social

phenomena. But would it not be better to say that such a description "sociologizes" Plato's original conception of them? This is of course highly speculative, but it is interestingly so: the idea has been to give some indication of what it might be like to theorize about the problems of philosophy from a Durkheimian perspective.

Even though Durkheim's critique of Platonism seems decisive, he is still referred to as a "social Platonist" or even a "Platonist" by some of his commentators. There is a simple explanation for this: it is that Durkheim's social metaphysics contains a definite Platonic element, namely the "abstractness" of social phenomena and their capacity, which is sometimes fully realised, of assuming highly determinate "forms" or "essences" which can be - and are - used deductively in the manner of a calculus by human beings. I have already been through these arguments and there is no use in repeating them, but it is worth mentioning that these social forms constitute a transcendental reality closed to our physical senses but nonetheless accessible by other means. Their method of apprehension, the manner in which they are collectively brought into being and persist, and the nature of the constraint they exercise upon us at all levels - from the most microscopic to the most macroscopic - all constitute worthy topics of investigation. For this, if for no other reason, Durkheim's social Platonism is worth exploring further. It also raises

some interesting theoretical problems, such as those that have already been alluded to. Most importantly, perhaps, Durkheim's sociology establishes a framework for exploring the social foundations of a priori knowledge. His attempts to sociologize the categories of the understanding, his social theory of arithmetic and logic, and his overall concern with the problems of universal and necessary knowledge, give ample proof of this.

Let us imagine a spectrum of theories now with Durkheim's sociology counterpoised between the two polar opposites of relativism and dogmatic absolutism. At one end of the spectrum we have something that looks like a version of subjective idealism or what may be called "social Berkeleyism". This is a constructivist theory of reality not unlike the relativistic sociology of Wittgenstein and Bloor: when it comes to the social world, though not necessarily the physical world, most relativist-constructivist theorists today would accept Bishop Berkeley's formulation that "to be is to be perceived". Beauty, truth and goodness, law history and art, status, role and self, and even logic and arithmetic, are ephemeral social constructions, according to them. There is no distinction to be made between appearances and reality, they say, because reality just is a collective appearance, or maya.

Totally opposed to this relativism, at the other end of the spectrum, is something that may be called "dogmatic Platonism",

or perhaps "vulgar Platonism", but in any case something that postulates a self-subsistent or independent realm of eternal, unchanging, abstract reality, but goes little further than this by way of attempting to explain the nature or the character of this reality. Could these two extreme theories, situated at either end of our imaginary spectrum, be the "false dichotomy" supposed by Dummett (1959:447) to exist in the philosophy of mathematics and to be eliminable by the interposition of some middle theory which he leaves unnamed? If so, then that theory can now be named: it is social realism or social Platonism or, if we like to think in terms of "sociologisms" it is Durkheim's sociologism. Wittgenstein's sociologism has been exposed as a species of psychologism and branded as social Berkeleyism. The theories of Frege, Plato, and Kant have been given proto- or a-sociological interpretations. We can see then that there are any number of theories that can be spread across the spectrum described, but there are certain fixed points with reference to which these theories can be given their precise location on it. There are three such points of reference and they are represented by the three views that I have been discussing. Do these three views represent "stages" in the development of philosophical thought? A speculative neo-Kantian might say so. Kant thought there were cycles in the history of philosophy and he identified three stages through which all philosophy must pass: (i) dogmatic metaphysics, and, as a reaction against this, (ii) acid scepticism, and finally (iii) the stage of pure

reason, which is that of "examination, not of the facts of reason, but of reason itself, in the whole extent of its powers, and as regards its aptitude for pure a priori knowledge". Since we are all agreed that reason is, at least in part, social and not merely psychological, does Hegel's theory now take the place that Kant's once took between radical scepticism and dogmatic rationalism? A Durkheimian might say "yes". For others the answer will not be so clear, but one thing that is certain is that Durkheim's sociologism is quite unlike that of Wittgenstein's and presents a radically different way of viewing social facts. We should take this into account: that there are two sociologisms, one is an empiricism that spells the end of philosophy and the other is an idealism that heralds a new beginning. That is why sociologism is pivotal, because it stands at the centre of a fork in the road. It is like a signpost that points in two directions. It increases our comprehension of the concept of a social fact, and allows us to trace out leitfaden between sociology and philosophy.

**CHAPTER SEVEN: LEGAL ANTHROPOLOGY - AN APPLICATION OF
THE MODEL**

Let us now apply the social fact model developed so far to one of the most basic specialty sciences in the Geisteswissenschaften - legal anthropology. Legal anthropology is basic because it is simple, and the questions it raises are also basic and simple. If the social fact model I have been developing has any applicability at all - and this must ultimately be the test of any model - we should be able to see it here.

We already know that social facts have an inside and an outside, and that these are tied together by internal relations. If customary law, which is the basic subject-matter of legal anthropology, is a social fact, then it must also have an inside and an outside, tied together by conceptual connections. In this chapter I will explain how this aspect of the model of social facts developed here can be used to:

- i) clarify the concepts of "custom" and "law" in legal anthropology
- ii) mount a critique of behaviourism in legal anthropology, and
- iii) defeat rule-scepticism in legal anthropology.

I will do this by explaining how the model of social facts can be used to resolve, or at least clarify, one of legal anthropology's most basic methodological problems. This might seem like a detour, and it might be argued that in a work of this brevity and compass there is no time for detours. But it is not entirely a detour,

because in applying the model I will develop and extend it. And in any case, the attempt to show the efficacy of a theoretical model by applying it to concrete problems in a special science can hardly be called a waste of time. The detour might be regarded as a way of running a quick "reality check" on the model developed here.

In the Cheyenne Way jurist Karl Llewellyn and anthropologist E. Adamson Hoebel collaborated in outlining a theory of investigating customary law which has since become standard reading as part of an introduction to the subject. In a chapter titled "A theory of investigation" they sketched three methods of investigating what Llewellyn had termed the "law stuff" of a culture. The first method was termed "ideological" and went to "rules" which were conceived to be "ideal patterns, right ways against which the real action is to be measured". The second method was "descriptive" and was said to deal with practice and to explore the patterns according to which behaviour actually occurs. The third method of investigating preliterate or unwritten "law" was called the "trouble case method" and was a search for instances of "hitch, dispute, grievance, trouble" and an enquiry what the trouble was and what was done about it. The authors, as is now well-known, themselves adopted the trouble case method in their research on the law of the Cheyenne Indians in Wyoming, and since then a generation of legal anthropologists have adopted, or adapted, the trouble case method as well. Indeed, focus on disputes and dispute institutions seems to have displaced a focus on "law" for many researchers, and thus the

expressions "legal" and "anthropology" may seem dubiously appropriate in many cases.

The reason given by Llewellyn and Hoebel for preferring the exclusive use of the trouble case method was that the authors found it "convenient to treat as 'law' for a culture that 'norm' which will be recognized as proper to prevail in the pinch". What went unstated are the jurisprudential underpinnings of the trouble case method which were brought in through the back door by Llewellyn's theory of "legal realism", a central principle of which was that judicial decisions are the only "sources" of law. Without spending time on the shortcomings of this jurisprudential dogma here, or commenting on the use of such dogmas as guides for empirical research on legal phenomena, we need only note that if judicial decisions or trouble cases were the only source of law we should have no need at all for the "ideological" and "descriptive" methods outlined by Llewellyn and Hoebel. But it is incontrovertible that judicial decisions are not the only sources of law, and that "custom" itself can be a source of law and legal obligation.

If we accept custom as a source of law and legal obligation, in addition to judicial decisions, it seems clear that we should also look again at the two methods of investigation discarded in The Cheyenne Way and attempt to see how all three methods might be comprehensively employed. But if we do hark back to methods of legal research which have their foci on rules of law having their sources

outside of the contest of litigation or dispute, which method should we revert to in the case of conflicting results when each method is used independently of the others. And how might we go about the job of integrating or unifying these three methods? I will suggest that these questions are at bottom, questions about the foundations of the Geisteswissenschaften.

So much for generalities. Now consider an actual methodological problem that confronted an anthropologist in the field who used the descriptive, ideological and trouble case methods of research. The problem is clearly illustrated in a note by Simon Roberts (1971) in which he describes the results of his research into the customary law in Botswana:

During the course of investigating the nature of interests in arable land held under customary forms of tenure, Roberts writes that he asked several senior tribesmen whether payment was ever made where fields were transferred from one person to another. All were emphatic that such payments were "against the law", and that they never occurred. However, as he had already discovered by investigating the actual decisions of the Chief's Court of the same group, such payments were indeed permitted, provided that the land had been cleared for cultivation. Puzzled by this discrepancy Roberts focussed his attention on the actual practices of the people and discovered that it was a common practice for payments to be demanded, even where interests in uncleared land were transferred, and even though it was common knowledge that the Chief's Court did not recognize such payments (Hund, 1974).

Here were three methods of investigation, conforming, in their order of appearance in the text, to the ideological, trouble case and descriptive methods outlined by Llewellyn and Hoebel. And each method produced a different "picture" of law. The methodological question is which picture (if any) most accurately represented social reality as it was at the time of the investigation. In order to get a hold on this slippery question we have to ask questions about the nature of "custom" and "customary law". And in order to answer these questions we need a theory of social facts.

What do we mean by saying that custom is a source of law? Should we suppose that all custom is law in the way that E.S. Hartland did, over half a century ago, in his Primitive Law? Or would this lead to absurdity? Hoebel, commenting on Hartland's identification of law and custom in his The Law of Primitive Man argued that if law were to be so identified we should have to say that "patterns of pottery making, flint making, tooth filing, toilet training, and all other social habits of a people, are law" (1954: 20). What we need to know is what distinguishes customs per se from customary law. Is there any difference, and if so what is it?

Following Hart, the first thing to notice is that custom is generally used, by lawyers and laymen alike, to mean no more than regular, habitual or convergent behaviour. Thus, to say that a group has a certain custom is to say no more than that the members, or most of them, regularly behave in this or that way. But then what is the

difference between the social habits of a group, and the "law" of the same group? Here we come to the nerve of the problem, and to resolve it we can turn to the model of social facts.

We already know that a social rule as defined by Hart has an "internal aspect" in addition to an external aspect which consists in simple, regular behaviour which an observer could record. The internal aspect is, according to Hart, sometimes misrepresented as a matter of psychological thoughts, feelings and impressions, but these are "neither necessary nor sufficient for the existence of binding rules" (1961: 54). What is necessary is that "there should be a critical reflective attitude to certain patterns of behaviour which are taken as a common standard" (1961:56). For a group to have a social habit it is sufficient that their behaviour be regular and convergent. Deviation from the regular course need not be a matter for criticism. But where legal rules of customary origin exist "deviations are generally regarded as lapses or faults open to criticism, and threatened deviations meet with pressure for conformity" (1961:56). Why? The reason can be traced back to Llewellyn and Hoebel's conception of a rule as an "ideal pattern" (B(2) and (3)), or "right way" against which the real action A is to be measured. So, we measure A against B(2). It is [B(2)(3)] that provides the standards against which A is measured. The "standard" is only those B(2)'s which are taken as B(3). But it is B(1), the critical reflective attitude toward B(2), that distinguishes simple custom B(2) from customary law B(3). B(1) is the psychic ingredient

in customary law, and it is this that distinguishes customary law from mere custom, or social practice. This view deviates from positivist approaches to legal anthropology, which dispense with the need for any "hidden" psycho-social dimension. These approaches assess legal life and thought from the Kantian external observer's point of view, as a system of behaviour or phenomena alone. Hart argues (against such a Kantian methodology) that if the observer really does keep to this extreme external point of view, and does not thereby give any account of the manner in which members of the group who accept the rules view their own intelligible behaviour, his descriptions of their life cannot be in terms of rules at all, and so not in terms of the rule-dependent notions obligation and duty. In a passage that is worth repeating Hart says that:

his view will be like the view of one who, having observed the working of a traffic light in a busy street for some time, limits himself to saying that when the light turns red there is a high probability that traffic will stop. He treats the light merely as a natural sign that people will behave in certain ways, as clouds are a sign that rain will come. In so doing he will miss out a whole dimension (sic) of the social life of those whom he is watching, since for them the red light is not merely a sign that others will stop: they look upon it as a signal for them to stop, and so a reason for stopping in conformity to rules which make stopping when the light is red a standard of behaviour and an obligation (1961: 86).

What the Kantian model, which limits itself to observable

regularities of phenomena, cannot reproduce is the way in which rules function as criteria from the internal point of view. From this point of view group members use these standards as guides to the conduct of social life. Such rules give them reasons for acting in one way rather than another. This is not just a matter of Verstehen suggesting hypotheses about empirical regularities (as Nadel (1957: 25) once suggested), but rather that the regularities are made intelligible by being related to the social meanings which members attach to their own and others' behaviour. Reference to the internal aspect of rules is required for any analysis of social reality and the legal conceptions of obligation and duty, and rights, and until its importance is fully grasped we shall be unable to properly understand Hegel's conception of an "intelligible" world, existing "behind" the Kantian world of appearances.

The technical name given to the internal dimension of rules (of customary origin) is opinio juris, and is usually defined as a conviction that a certain form of conduct is required by customary law. Everybody would agree, says Fuller, that "a person, a tribe or a nation does not incur an obligation simply because a repetitive pattern can be discerned in his or its actions... Customary law arises out of repetitive actions when and only when such actions are motivated by a sense of obligation" (1969: 16).

Evidence of the existence of opinio juris can come in different ways. First, it can come in what appears at first to be simple habitual or

regular (or customary) modes of social behaviour. This would be a variant of Verstehen used to suggest hypotheses about empirical regularities. A customary rule of law has been held to be based necessarily on a "constant and uniform usage", and the method used to determine the existence of this usage conforms closely to Llewellyn and Hoebel's "descriptive" method of investigation. Secondly, probes into the normative element of customary law can be conducted by questioning informants with rule-directed interviews. The rule-directed technique, which has been used extensively by the Restatement of African Law Project at the University of London, conforms closely to the "ideological" method outlined by Llewellyn and Hoebel.

Once we see that rules of customary origin have two dimensions, one which is amendable to empirical observation A, and one which is abstract and graspable only indirectly (2(B)(C)), it is but a short step to the realization that the descriptive and ideological methods are really but two sides to a more encompassing method which could have been called the ideological-descriptive method. Viewed this way apparently contradictory or inconsistent findings generated by either method when used independently of the other can be reconciled by reconstructing our data by indicating more precisely what they include and what they exclude. The ideological-descriptive method has a dual focus, but this should not generate inconsistent results, because rules of customary origin, like all social facts, have two aspects, one internal and one external, and the foci of the

ideological-descriptive method is perfectly tailored to fit the aim of investigating these different aspects. Here then is a perfect exemplification of Merton's thesis that conceptual analysis may often resolve antinomies in empirical findings by indicating that such contradictions are more apparent than real.

The model of social facts gives us an analytical framework with which to distinguish mere social habits or custom from bone fide customary law. This is a problem that has bedeviled legal anthropology since its inception. We now have the beginnings of a way of dealing with it. We also have a way of dealing with the contradictory findings which Roberts' use of the ideological and descriptive methods produced. In light of the model of social facts such contradictory findings will not be logically possible. For by seeing that the ideological and descriptive methods are really one method, it becomes apparent that inconsistent findings produced by the two methods must be more apparent than real, thereby calling for data reconstruction. The answers given by the old men, for example, might have reflected the views of a bygone generation, while current practices might have represented current ways of doing things. Analysis of the group structure of the Tswana unit investigated by Roberts might have shown the existence of a generation gap between old ways of doing things (to which lip service is paid) and new ways (which are simply done). Roberts' inconsistent findings can also be traced back to a crudely defined notion of custom, employed also by Llewellyn and Hoebel, which conflates usage and opinio juris. Or, better, which fails to

separate them precisely.

The ideological-descriptive method (as I have called it) is aimed at rules of customary origin which arise outside of the context of litigation. I think, however, that the main aim of the trouble case method is to learn about rules which underlie and define the operations of court-like institutions in customary society. According to Llewellyn and Hoebel (1941: 24), such rules were called "litigious custom" by Vinogradoff, and they were separated by him from "general custom" which he thought of as rules which impose obligations (and are applicable to the entire community). Llewellyn referred to litigious custom as the "purest stuff of law", and both he and Hoebel conceived such custom to be concerned with such questions as the following:

What person, or range of persons, is the proper one to proceed? What penalty, or what variety of penalties, is proper for such an offence? What tribunal, or what ritual, or what form of notice and summons, or of declaration before retaliation, is prescribed? (1941: 26).

Litigious rules of customary origin approximate what Hart has characterized as "secondary" or public "power conferring" rules, and it is the principal thesis of the Concept of Law that law can best be understood as a combination of such rules with primary or duty imposing rules of obligation. Power conferring rules according to Hart and Searle impose status functions on individuals that give them

certain powers. These constitutive rules define a group of important legal concepts such as the concepts of judge, court, jurisdiction and judgement. They set up criteria for identifying individuals who are empowered to adjudicate and define the procedures to be followed by them. They may be said to be on a different "level" than duty imposing rules in the sense that while primary rules are concerned with what actions that people must do and not do, secondary rules are concerned with primary rules themselves. They specify the ways in which primary rules may be ascertained, "introduced, eliminated, varied", and the fact of their violation determined. Their introduction into society, according to Hart, "is a step forward as important to society as the invention of the wheel", and "may fairly be considered as the step from the pre-legal into the legal world" (1961: 89-96). As explained in Chapter Three, the introduction of constitutive rules may be regarded as the step from the pre-social to the social world. It is only a certain kind of constitutive rules which lead to the legal world, which Hart calls Power-Conferring rules. What we need to do next is refine the relationship between the inside and the outside of social facts. In order to do this I will analyse what Hart has to say about the external aspect of rules in greater detail.

We noted previously that Hart's theory of rules contained provisions for distinguishing rule-governed from mere convergent or habitual forms of social behaviour. He introduces his model by asking a deceptively simple question: "How does a rule differ from a social

habit?" Another way of posing this question, which we considered in the previous section, is "How does (mere) custom differ from customary law?" We must now go deeper into Hart's answer to these questions in order to fortify the critique of behaviourism suggested in Searle's account. This will also allow us to see how the model of social facts can clarify rule-scepticism in legal anthropology.

Hart states that there is certainly one point of similarity between rules and social habits: "in both cases the behaviour in question must be general, which means that it must be regular and convergent and that it is repeated when occasion arises by most of the group" (1961: 54). Hart thinks that this much at least is implied in the phrase "they do it as a rule". But though there is this similarity there are three salient differences which Hart notes between a rule and a social habit.

First, for a group to have a social habit it is sufficient that their behaviour in fact converges. Deviation from the regular course need not be a matter for any form of criticism. Such convergence of behaviour is however not enough to constitute the existence of a rule requiring the behaviour. Rather, "where there is such a rule deviations are generally regarded as lapses or faults open to criticism, and threatened deviations meet with pressure for conformity" (1961: 54). Secondly, where there are such rules, not only is criticism in fact made, but deviation from the standard imposed B(3) is generally accepted as a good reason for making it.

Criticism for deviation is regarded as legitimate or justified. Just how many of the group must treat the regular mode of behaviour as a standard (B(2) (3)) of criticism, and how often and for how long they must do it to warrant the claim that the group has a rule are not definite matters according to Hart. We need only remember that the statement that a group has a certain rule is compatible with the existence of a minority who not only break the rule but refuse to look upon it as a standard for themselves or others. There may be a minority, that is, which recognises the existence of the general practice. They may also recognise the fact that the majority of the group accept the practice B(2) and use it as a common standard B(3). They themselves, however, refuse to accept B(2) as B(3). Since they do not take B(2) as a standard, they refuse to apply it to threatened or actual deviation from B(2). But this can only apply to a very limited section of the group. If a sizeable sub-group refuses to accept B(2) as a common standard, that rule may be brought into question. If it is an important power conferring rule, one which, for example, is used to identify the leader of the group, the group may find itself pulled apart by social conflict. In the case of the example given by Roberts, the old men were not prepared to accept the existence of a practice which they themselves regarded as "against the law". Yet according to Roberts the practice did exist. The old men pretended that A did not exist. Consider another example. In some societies it is said that pre-marital sexual intercourse is "wrong". The wrongness of the act comes from measuring it against a standard B(3) which is based on a social abstraction B(2) of

abstinence from sexual intercourse before formal marriage ceremonies. That real practice A may or may not exist. Often people will assert that the practice of abstinence exists, and then take it as B(3), even where the practice does not exist, or is not general in the group. But if the practice of abstinence is practically non-existent in the group, no matter how often or for how long a vociferous minority may claim otherwise, there can hardly be a rule against pre-marital intercourse. Without the practice conditions, or the external aspect of the rule, the standard itself can only be an exhortation. And exhortations alone are insufficient for the existence of rules.

The third feature which distinguishes social rules from social habits is Hart's internal aspect of rules. When a habit or a custom is general in a group, this generality is merely a fact about the observable behaviour of most of the group. In order that there should be such a social practice no members of the group need in any way be cognizant of the general behaviour or even know that the behaviour in question is general. Still less need they strive to teach or intend to transmit or maintain it. It is sufficient that each for his part behaves in the way that others also in fact do. By contrast, if a social rule is to exist some at least must look upon the behaviour in question as a general standard (B(2) (3)) to be followed by the group as a whole. If a minority refuses to abide by the rule, that is, to accept B(2) as B(3), they may be expelled by the group. Hart illustrates the internal aspect of rules by

considering the rules of chess. Chess players do not merely have similar habits of moving the King or the Queen in the same way that an external observer, who knew nothing about their attitudes to the moves they make, could record. In addition they have a critical reflective attitude B(1) to this pattern B(2) and they accept it as a common standard B(3) for all who play the game. Each person not only moves the pieces in a certain way himself, but has views about the property of all moving them in that way. Such views are "manifested in criticism of others and demands for conformity made upon others when deviation is actual or threatened, and in acknowledgements of the legitimacy of such criticisms and demands when received from others" (1961: 55).

We have already noticed that it is possible to be concerned with rules either as a Kantian observer or as a member of a group. But statements made from the external point of view may be of two kinds. First, the observer may attempt to occupy the position of a natural scientist who does not even refer to the way the group regards their own behaviour. Secondly, he may, without accepting the rules himself, assert that the group accepts certain rules, and thus may refer from "outside" to the way they are concerned with the linkages between A and B(2) and B(3). But if the observer does attempt to keep to the Kantian external point of view, he makes no reference to Geist (i.e., the intelligible world) at all. The most he will be able to give will be descriptions of meaningless phenomena. In fact, it may not even be possible for the observer to "see" phenomena at

all if there is no (B(2)(3)) dimension of life.

One reason for this is that the observer will lack "understanding" of what group members are doing. Their movements will be unintelligible to him. There is of course the possibility that the Kantian observer may use his own common-sense notions to interpret their behaviour, but in that case he will have no way of knowing for sure if the interpretations he places on their behaviour faithfully represent what they are doing. For in order to understand what an agent is doing we must understand what he "thinks" he is doing. An essential feature of actions qua rule-following behaviour is their conceptual content, the B(3) element. Concept users make judgements which involve the cognitive ability to subsume occasions of behaviour under categories. Occasions of behaviour must be subsumed under categories of behaviour if they are to "count as" an instance of the latter. Once they are so instantiated, they are measured against the common standards B(3) that have been abstracted from the patterns that particular occasions instantiate. It is, in fact, on this basis that some philosophers distinguish human beings from brutes which are caused to act dispositionally by laws of nature that a Kantian external observer could theoretically observe and codify.

Once agents have grasped a rule, that is, once they have been taught to recognise occasions of behaviour as instances of (B(2)), and take (B(2)) as (B(3)), its use may become automatic or dispositional, so that we can say that it is "natural", but rule-following is an

activity which cannot, according to Hart, be reduced to a set of theoretical formulae in accordance with exceptionless laws of nature. To understand this we must consider what Hart says about the distinction between following a rule and merely acting in accordance with one. Very often when a person accepts a rule he may see what it requires in a flash and do that without thinking of the rule (B(2) (3)) or what it requires. Rule-following behaviour is often a direct response to a situation (as when the batter runs to the base after hitting the ball) unmediated by calculation in terms of rules. But does this mean that no rule is being followed, because there was no conscious attention to the rule at the time of or before the act? Not according to Hart. Following Wittgenstein, Hart argues that evidence that such actions are applications of a rule is in their setting in certain circumstances.

A factor that is important for showing that in acting one has followed a rule is that if the behaviour is challenged the agent is disposed to justify it by reference to the rule. That is, the agent will point to the existence of certain practices which he claims he is following, and will argue that the group has taken these practices as a common standard B(3). And if this explanation is not merely spurious it will be manifested not only in past and subsequent general conformity to it, and acknowledgements of it, but also in his criticism of his own and other's deviations from it. If, says Hart, before a person's "unthinking" compliance with a rule, he had been asked to say what the "right" thing to do was, he would, if honest,

have cited the rule. It is in the general context of an agent's behaviour and not in its accompaniment by any explicit thought of the rule that it is necessary to distinguish an action which is really a case of rule-following from one that merely happens to coincide with it. It is thus that we should distinguish, for example, as compliance with an accepted rule, the adult chess player's move from the action of an infant who merely pushed the piece into the right place.

The intentions that an agent forms closely track the concepts he uses and are constituted by the rules governing the use of such concepts. If we want to explain the actions of people we must regard their behaviour as guided by "oughts" rather than causally conditioned responses to physical conditions. An agent's actions are an expression of reasons he has adopted in terms of his commitments to his own life projects and interests. When an anthropologist identifies the concepts according to which a person acts, he maps or charts the behaviour on to a range of rule-following practices B(2). An observer adhering to the Kantian external point of view will not be able to discern the concepts that are structuring the behaviour. The common standards B(3) element of rule-following are non-sensible. Therefore they are not phenomenal in the Kantian sense. Thus the Kantian observer will be unable to understand an agent's behaviour - there will be no comprehension of the intelligible world. Nor will any ties or linkages be possible for the Kantian observer between the intelligible world and the world of appearances and phenomena.

Behaviourism cannot for this reason capture the rule-following actions of people. The behaviouristic explanation of action is a misguided aspiration based on a neglect of internal relations and conceptual connections.

The Kantian observer's point of view also leads to rule-scepticism.

For if we proceed on the Kantian assumption that we cannot, through participation with others in the intelligible world, get "behind" appearances, and so keep to the observer's external point of view, and do not thereby give any account of the manner in which members who accept the abstract standards B(3) view their own regular and irregular behaviour, our descriptions cannot be in terms of rules at all, and so not in terms of the rule-dependent notions of "right" and "wrong", "ought", "must" and "should", etc. As a result, the Kantian observer will have no way of distinguishing authentic rule-following and deviant behaviour from spurious rule-following or deviance that may be falsely ascribed to someone. Because of this the rule sceptic's claim in legal anthropology that "customary law is merely what the people say it is" may seem valid to the Kantian observer. The model of social facts helps us clarify this important but misguided claim.

One understanding of this claim comes from an ambiguity resulting from a failure to distinguish an already established system of rules from the way in which these rules are brought into being or, better, the conditions of their existence. Even though rule-following and

deviant behaviour are created by the critical response of the community, an internal feature of that response is the conception of an "objective" order of events whose character is presupposed as "independent" of the immediate response of the community. There is a sense in which it is true (but enormously misleading) to say that customary law is what the people say it is. If there were no sanctioning behaviour there could be no rules, for we should have no way of teaching and learning the abstract categories of behaviour (B(3)) they impose and of which, in part, they consist. In one sense rules are created by the actual, visible critical behaviour of the group, but it would be a mistake to infer from this true proposition the false proposition that this public response is itself a sufficient condition for the existence of binding rules and objective normative constraint. By adopting an "outsiders" model of social facts the behaviourist leaves out of his account of the basis of group life the way that members view their own behaviour. Thus it might seem plausible (but, is, in fact, false) to think that the critical response of the community is a sufficient condition for the existence of rule-following or deviant behaviour. This has important consequences. One of them is that the rule sceptic's claim that "customary law is what the people say it is" gains more plausibility than it deserves. This is actually a spurious, surface credibility, as the model of social facts helps illustrate.

There is another version of rule scepticism in legal anthropology. It amounts to the contention that rules of customary origin are not

normally used deductively. Instead they are twisted and manipulated for personal and political advantage. The argument is that there is nothing to circumscribe people's use of discretion in their use of customary rules because of their loose and unwritten character. It is thus argued that it is false to think that people are in any way subject to or "bound" to act as they do. They may act with sufficient predictable regularity, the argument goes, but beyond this there is nothing which can be characterized as a rule which they follow. The argument is that there is nothing that people treat as criteria, or standards, of customary law, and so nothing in their behaviour which manifests the internal point of view characteristic of the acceptance of B(3). But Hart points out that to argue this way, in any sphere of life, is to ignore what rules actually are (1961: 135). While it is true that deception and rule manipulations may under circumstances exist and for a while even be regarded as normal, it is not logically possible that rule-following should always be like this. To say that some Dollar bills are counterfeit, for example, presupposes a general background of use of authentic bills most of the time by most people, and rule-following is also like this. In reasonably stable social structures rules are for the most part known and followed, and it is against this general background of compliance that rule manipulations can exist at the margins. To argue otherwise impales us on the horns of a false dilemma, namely that rules are always what they might be in some Platonic heaven - always known, always recognized, always followed - or there are no rules at all. Everything is pretence and

manipulation. As everybody knows this is not to say that pretence and manipulation are not possible and sometimes successful. Tests for whether a person has merely pretended ex poste facto that he acted on a rule, or that another has broken a rule, are like all empirical tests fallible. It is possible that in deeply divided societies without secondary rules group members might reach their decision about or base their ascriptions of deviance upon arbitrary feelings of dislike or prejudice, and then merely choose from a catalogue of already established and accepted rules one which, they pretended, resembled the case at hand. They might then claim that this was the rule that had been violated. Comaroff (1974) and Comaroff and Roberts (1981) have shown that rules are often used this way in some small-scale societies. Some customary court decisions may also be like this, and arguments to the effect that customary law is merely what the people, the chief or the King say it is can make a powerful appeal to an anthropologist's candour. But in social structures which have taken the step described by Hart from the "pre-legal" to the "legal" world rule-twisting and power politics must be the exception and not the rule.

Hart's social fact theory of law gives us a way of assessing this claim. In order to see this we must consider how other legal anthropologists have used Hart's model. Lloyd Fallers, for example, used Hart's theory of law to argue that "law" is a variable of which there can be "more" or "less" in different customary systems (1969). Fallers invoked Hart's model of law to show how there can be

different "stages" in the development from the pre-legal to the legal world.

Comaroff and Roberts claim that their findings about rule-twisting and rule manipulation in certain Tswana groups "have reinforced existing doubts about the value of distinguishing 'the legal' as a discrete field of inquiry" (1981: 243). But rather than having "found" that the law/politics dichotomy is not a good one, Hart's model help us see that they have merely assumed this. Thus when they cite Barkun's view that law should be seen as a "system of manipulable symbols" (1968: 20) they ignore the fact that he was comparing customary law in small-scale societies with international customary law. Moreover, Barkun himself adopted Hart's legal-developmental model. Hart's social fact model of law sees both types of law as lacking certain features which are found in modern municipal legal systems. Both customary and international law lack Hart's "secondary rules" which, when added to a diffuse and undifferentiated set of primary rules results in the step "from the pre-legal to the legal world". These secondary rules are the preserve of specialized quasi-legal institutions which are empowered by general society to apply them in dispute so that primary rules may be conclusively and authoritatively ascertained. In societies without such secondary rules, such as in international law which lacks specialized organs with the power of enforcing their judgements, and in certain small-scale societies such as (apparently) some Tswana groups, the primary rules will of course resemble a

"system of manipulable symbols", because there will be no agency or institution empowered to render such indeterminate primary rules determinate by issuing authoritative proclamations about their meanings. Instead, the meaning of the normative repertoire will forever remain indeterminate, plastic and subject to unending auto-manipulations by self-seeking individuals and groups.

In such a situation it will of course be true that the dichotomy between "law" and "politics" (rule following and rule manipulation) will be largely "chimerical" as Comaroff and Roberts claim. But what about small-scale societies which have developed Hart's secondary rules, such as the Basoga of Uganda (at one time)? Should we not say that there, where specialized legal institutions and secondary rules have been introduced, a successful separation of law and politics is after all possible and sometimes achieved? Fallars has argued that the Basoga, by adopting secondary rules, display a commitment to the "rule of law". This phrase refers to the existence of a government of laws "and not of men". The rule of law is born, in this sense, when legal institutions acquire enough independent authority to impose standards of restraint on the exercise of rule manipulation and power politics. Law is elevated "above" politics. Roberts has said that the "independence of the judiciary" is just a feature of Western legal ideology (1979: 22). The implication of this is that the idea of a court which has removed itself from the political arena is not possible, not even in modern societies. But it is a truism in sociology that if people define social facts as "real", they can

become real "in their consequences". The same is true of an "independent" judiciary. The ideal of an independent judiciary is something that can be attained in degrees of "more" and "less" in modern and, as the work of some legal anthropologists has shown, in some small-scale societies as well.

What the social fact model of law has to offer legal anthropologists is a comprehensive framework of thought which can bring to the study of customary law the concepts that are needed to pull together and systematize the current piecemeal and unfocussed state of its research. If we stand back and consider the structure which has resulted from the model of social facts I have introduced, it seems evident that we have a powerful tool with which to consolidate and unify the triad of methodological approaches outlined by Llewellyn and Hoebel. This model gives us new ways of assessing current theories in legal anthropology, and clarifies basic concepts of agency and rule-following that allow us to better see the insufficiencies of behaviourism in legal anthropology. Customary law is a social fact. But tracing out leitfaden between these two conceptions I have shown that the social fact model works. It makes contact with the basic structure of social reality that underlies all the special social sciences. That can be used to clarify and sharpen issues in the special sciences.

CHAPTER EIGHT: COLLECTIVE INTENTIONALITY

Searle recognizes "togetherness" as a vital ingredient of collective intentionality. But because he locates collective intentionality "in the head", and insists that we "live in one world", he leaves something fundamental out of his picture. By examining Margaret Gilbert's treatment of "plural subject phenomena" we can see more precisely how this is so.

Gilbert, in her book On Social Facts (1989), is concerned, like Searle, with a theory of social facts. Like Searle, she treats the idea of people doing something "together" as basic to the idea of social reality. But what is togetherness, and what does it entail? In what follows I will outline Gilbert's Durkheimian and Simmelian answer to these questions.

In attempting to come to terms with the idea of doing something "together", Gilbert begins with a consideration of Weber's conception of Soziales Handeln (roughly, an action by an individual that "takes account of" the actions of another). Gilbert is not happy with Weber's treatment of social action, finding it too "individualistic" and insufficient to do the job of explaining how society is possible. Gilbert thinks that social phenomena, and in particular collective behaviour (which she seems to regard as a narrower conception) cannot be reduced to sequences of actions performed by individuals. She accepts that social phenomena have an existence which is somehow

"independent" of individuals, but she puzzles over what it might be. She rejects the view, along with Searle, that collective or group phenomena can be reduced to "externally observable structures". But unlike Searle she refuses to allow that collective intentionality can be "reduced" to mental or psychological states or phenomena that exist "in the head". Gilbert thinks there is something "in addition" to these phenomena (which are closely related but conceptually distinct) which we must understand if we are to get to the bottom of the possibility of social reality. What is it and how do we demarcate it?

In attempting to find out what distinguishes social phenomena from sheer physical or psychological phenomena Gilbert begins by criticizing the notion of convention. Searle states that we must not confuse rules with conventions, but he never makes it clear just what he thinks the distinction is. Although Searle calls for a more perspicuous theory of rules, and refers to the "familiar internal point of view" of rules, a careful reading of his treatise shows that he is very thin on the nature of rules, especially on the conceptual content of rules, and he nowhere makes it apparent what he thinks "conventions" might be, as against rules, or how they may be similar and at the same time different. Some writers define conventions in the way that we have defined "custom". But many others use the idea of convention in different ways. Lewis, for example, used "convention" as a master concept to include a number of other conceptions, including the idea of a rule. He thought of this latter

concept as a messy cluster concept with no real settled meaning. In his book Convention: A philosophical Study (1969) and elsewhere Lewis has spent a lot of time arguing that rules can be reduced to their external, physical dimension alone. Since Gilbert thinks that rules are paradigms of social facts, she refuses to be led along this road, because she denies that social facts can be "reduced" to their visible dimension alone. Gilbert explains that Lewis's treatment of rules leaves him with nothing to fall back on in order to explain the "normativity" and "ought" of social (and moral) obligation. Gilbert embarrasses Lewis by catching and holding him on this point. She says that collective phenomena must be both "collective" and "normative" and successfully argues that Lewis's model satisfies neither of these criteria.

A second prong of Gilbert's criticism of Lewis's conception of social facts traces the limitations of his game theoretic conception of social action. In such a scheme two or more individuals confront each other and then ask "what should I do?" The conceptual framework of the "plural subject" that Gilbert introduces is quite different from this. From the point of view of "us" it may not be obvious that the utilities of individual decisions taken from a first-person point of view are relevant to what "we" are doing or what is best for "us". But what is the status of the "we" that constitutes the plural subject phenomenon? Can "we" or "us" be reduced to the concrete individuals involved (as Lewis thinks) or to psychological phenomena "in their heads" (as Searle thinks) or is

there something more involved? I have already indicated that there is something more involved. Gilbert's arguments give weight to my analysis. She thinks there is "something more" than physical or psychological phenomena involved when two or more people do something together. An illustration sharpens Gilbert's intuition. After a lovers' spat two individuals retire to their corners and consider making up. "I must give 'us' a chance" she thinks. Now, what is the status of the "us"? What is it she wants to consider preserving, possibly even at the expense of her own individual utilities? According to Gilbert it is the "plural subject". But can plural subjects be identified with the thoughts, feelings and sentiments, etc. of the individuals involved, or is it something more, something "bigger than both of us", and if so how do we cash out this attractive but mysterious metaphor? According to Gilbert, in order for plural subjects to exist, the participants must themselves have the "concept" of a plural subject.

Gilbert defines plural subject conceptions as basic to institutional or social concepts. But she refuses to reduce these concepts to psychological "ideas" in the minds of individual people (like Searle). She does not deny that individual people can "grasp" and use these social concepts, but somehow, she thinks, they exist at a different "level" from psychological phenomena, and cannot be reduced to them nor located "in the head" as Searle supposes. Plural subject conceptions are according to Gilbert - following Durkheim - collective representations. Conceptions like "us" or "we" are

generically like "France" or "the government". They name collective entities. In his Primitive Classification Durkheim said that, in the evolution of society, "us" and "them" were the first classifications, the first collective ideas. Having learned to use "the same" and "different" in this way, we then extend this abstract knowledge to other phenomena. The introduction of collective representations, according to Durkheim, constitutes the step from the pre-social to the social world. Gilbert accepts this position. She realizes that in order for plural subjects to exist they must use concepts, and she is unwilling to "reduce" these concepts to more primitive psychological phenomena. Most importantly, she realizes that people must have the ability to "grasp" and use these concepts, otherwise they would be free-floating and inaccessible to individuals. Gilbert rejects any kind of "bad" Platonism such as the one discussed in Chapter Five. Like Durkheim she can be called a "social Platonist" on the ground that she refuses to "reduce" abstracta to concreta, and sees both as aspects of a larger social whole.

Lewis, on the other hand, like the philosophers to whom his work has appeal, cannot accept the "reality" of concepts. He is tediously cautious to avoid stating his views so baldly, but any objective analysis of his theory of conventions shows him to be deeply suspicious of the notion. Searle, likewise, notwithstanding the substantial differences between his treatment of rules and Lewis's treatment of them, is deeply sceptical about the "ontological" status of "concepts". Searle accepts that epistemology has a role to play

in philosophy, but he rejects the view that it is at the core of philosophical problems. While Searle locates concepts "in the head" of individuals as psychological phenomena (which can ultimately be reduced to biological phenomena, and thus to physical and chemical processes) Lewis is even more primitive in wanting to reduce concepts to observable regularities of behaviour alone. This is especially clear in his treatment of language. He recognizes a verbal distinction between language and speech, but as far as he can see language is nothing more than "speech". In fact, mere noise, because Lewis has no way of accounting for the possibility of explaining how we group sounds under units of meaning in order to produce intelligible communication. He has no account of "concept-grasp". Nor has he any way of explaining the normative aspect of language, its "conceptual constraint". Nor can he explain "necessity". Abstract "internal relations" are strictly taboo for Lewis. Gilbert is sensitive to all of these problems, because her theory of social facts is built on the idea that there are deep structures and "essences" in language. On a superficial level Searle's account of institutional facts agrees with Gilbert's. Searle accepts that institutional facts have a "logical structure" which result from the logical relations that exist between the representations that make them possible. But Searle treads lightly on this terrain, and gives no indication at all of how, if representations are only "in the head", logical, internal relations are possible. Gilbert cannot accept empiricist or psychological accounts of social phenomena (especially language and meaning) and she searches for and eventually

finds a better account which is broadly Durkheimian.

In developing her scheme of plural subject phenomena Gilbert sees "society" everywhere. Not only in social structures like state and family, but in all places, in conversational groups and in people "going for a walk" together. She thinks that society begins the very moment plural subjects are formed, the moment people start doing something "together". Some sociological studies have investigated "togetherness" in terms of "identification categories" but these studies have not paid much attention to the ontological status of these categories. They have merely invoked them as unexplicated resources. Gilbert on the other hand wants to make the "conceptual apparatus" of plural subject phenomena a topic in its own right. She thinks that, ultimately, it is necessary to postulate a "Platonic" conception of language and meaning if we are to explain how group phenomena are possible. Platonic phenomena are abstracta according to Gilbert and they are "not quite in the head", nor can they be located entirely in "social practices". They must occupy some "third realm" (about which Gilbert says little) which is not exhausted by the two realms of the mental and the physical. But what is this third realm? I have already given some indication of what it involves. But many Wittgensteinians have come up with the answer "it is nothing". This has been part of their empiricist strategy of eliminating the whole problem of abstract phenomena as a pseudo-problem. In this regard Kripke's interpretation has been given flagship status in the rather ingrown world of Wittgensteinian

scholarship. Kripke says that, rather than concerning himself with the formulation of necessary and sufficient conditions of "meaning", or with the "analysis" of meaning, Wittgenstein rejects such endeavors as misguided and wanted instead only to consider what language games we play with such words and expressions. Rather than looking for the "essence" of these phenomena, Kripke thinks that Wittgenstein wanted to look only at the surface of such things, and to consider the "assertibility conditions" for the sentences we use when we talk about such things. Many Wittgensteinians have since tended to reject analyses of meaning and other transpersonal phenomena as based on mistaken philosophical theories. Gilbert rejects this whole scenario as thin and unconvincing. She wants to center the problem of concepts and concept-grasp as a serious problem for philosophical analysis. She notes that many analytical philosophers are "wary" (this is an understatement) of "reifying" concepts. Searle would certainly fall into this category. The problem however is that if concepts are, in a certain sense, "real", as Gilbert wants to argue, then the reification process is something to be understood, something to be investigated. Gilbert really must be congratulated for having the temerity to break free of dogmas in the analytical tradition in which she writes. But she is still captive of her paradigm. There is only so much latitude in the analytical paradigm in which she works and writes. Her apparent unwillingness, and perhaps to some extent inability, to move beyond the limits of the analytical school she criticizes leaves her with limited resources for working out a theory of concept-grasp, which

she rightly sees as central to the whole problem of plural subject phenomena. Gilbert accepts Kripke's "skeptical paradox" (that any fact pattern can be made to comport with the formulation of just about any rule) as unresolvable, saying that "the condition that one's linguistic behaviour be coverable by rules is useless" (1989: 75). But this sounds like an admission of defeat for her project of understanding social and institutional concepts and the "concept-grasp" that is a necessary condition of plural subject phenomena. In fact, Gilbert is finally pushed to the view that the process of concept-grasp, language use, and meaningful behaviour is "a mystery". This comes after a long chapter dealing with Winch's treatment of rule-following and concept-grasp which she finally gives up on as hopeless.

Analytical philosophy has dismissed the Platonic and Kantian traditions as based on an unrealistic "foundational" view of epistemology. Attempts to "naturalize" epistemology, or to read epistemology as peripheral to philosophy, are examples of this. But there is much in Winch's treatment of rule-following that, while not exactly "Kantian" in flavour, raises Kantian issues. To many it has seemed clear that Wittgenstein knew Kant (eg. Garver, 1989; Schwyzer, 1990, etc.), and that he was struggling with Kantian foundational problems. In this light Wittgenstein can be seen as having introduced new and interesting (even "sociological") ways of formulating Kantian problems. What makes Winch's work interesting, and pioneering, is that he is one of the first to seize on this idea.

Wittgenstein's rule-following considerations can plausibly be seen as an attempt to address the Kantian "one-over-many" problem of concept-grasp (especially as dealt with in the "Empirical Schematism" section of the Analytic). Although many Wittgensteinians take from their master only his destructive and sometimes retrograde aspect, it is possible to take constructive ideas from his work on rule following, and this is what Winch attempted to do. Winch thought that the "reaction of others" are partially constitutive of someone's following a rule. Winch was introducing an aspect of Wittgenstein's sociological "theory" of internal relations. This is an extremely suggestive point and introduces a sociological dimension to the Kantian problem of concept grasp that is Hegelian in spirit. To say that the reactions of others are something like logically necessary conditions of rule following is a clue to understanding the "public" aspect of rule following (and the "objective" validity of concepts). This idea was developed by Hegel and Durkheim in a sketchy way before Wittgenstein came along. This idea, which Winch obtained from his reading of Wittgenstein's constructive side, also finds clear expression in Hart's work on rules. Thus, a lot of ideas come together and make sense if read in the light of how Wittgenstein, Durkheim and Hegel attempted to "sociologize" the 1st Critique. Gilbert and Searle miss out on this. Gilbert must at least be given credit for trying to make sense of the problem of concept grasp. She is right to say that analytical philosophers have a "thin concept of a concept". They regard it as a discredited notion. Why? Because there is something about abstract "concepts", unlike psychological

"ideas", that seems mysterious. So even at the risk of being labelled a "mysterian" Gilbert has attempted to plumb this mystery. But in attempting her own rehabilitation of the "concept of a concept" Gilbert makes little headway. The most that she safely ventures is that concepts "gather similar things together" into a "unity" and "under a rule", but her treatment of these notions does not cover much ground. Her de novo attempt to analyse the notion of a "unity" shows no familiarity with the Kant-Hegel literature on this important topic. Although she knows that the notion of "publicity" is, like the idea of a unity (or a unit), critical to an understanding of the process of concept-grasp, she is unable to develop these ideas or put them into any kind of framework.

While it is true, as Gilbert says, that publicity is a slippery notion, some distinctions can now be made which allow us a grip on it. We can identify the "publicity of meaning" with Popper's "objective knowledge". Durkheim's collective representations are "objective" in the same sense: they are "out there" - they are not "in the head" as Searle supposes. They cannot be reduced to subjective mental phenomena in the minds of individuals. This seems clear enough. But it is important to see that this "third realm" conception of social fact is related to yet another dimension of publicity with which it is often confused. The second sense of publicity is well captured by Winch. Basically, Winch's treatment of the publicity of meaning (and rule following) comes to this: there must be behavioural correlates of meaning, and these must be

sufficient to enable those listening to a speaker to "grasp" the meaning in question and to tell if a person is following rules correctly. Durkheim's cousin notion of the "exteriority" of social meaning refers in part, but not in whole (as some have thought) to its "openness to view". The "patterns of behaviour" that constitute the external aspect of rules are "visible indices" which "stand for", "represent" and are dialectically implicated with abstract collective representations (B(2)(3)). Thus, a number of related ideas from Winch, Hart, Durkheim and Wittgenstein blend together to add a sociological dimension to the Kantian problematic in the 1st Critique. These ideas are, I have argued, in a broad sense "Hegelian".

Both Gilbert and Searle are concerned with the question posed in the title of Simmel's essay "How is Society Possible?" (1971; [first published in German in 1908]). For many this essay marks the beginning of cognitive sociology. Although subsequent writers (eg, Schutz, 1962, Cicourel, 1974) have moved away from Simmelian themes, none have been able to escape from the question posed in Simmel's essay title. Simmel regarded this as a Kantian question about how "judgement" is "possible", because without judgements of "the same" and "different", he thought, society is impossible. Today many Wittgensteinians argue that without society, judgement (ie, rule following) is impossible. The question of what, if anything, presupposes what (rule following or society?) divides Wittgensteinians as nothing else today, the same as it did over forty

years ago when they first queried the possibility of an asocial language-user.

There are three possibilities to consider:

- 1) rule-following (ie, judgement) is a necessary condition of society.
- 2) society is a necessary condition of rule-following.
- 3) society is a necessary and sufficient condition of rule-following.

I think that, in the end, (3) will turn out to be right. Claim (2) has been argued out but a consensus has emerged that rule-following by asocial solitaries is impossible, for the broadly Wittgensteinian reason that (a) without an external or public "check" there can be no way of distinguishing genuine from apparent cases of rule following, or from mistakes, and (b) without a social context of practice we should have no way of teaching and learning rules.

I have already mentioned that rule-following or "concept-grasp" is thought by Gilbert to be central to the problem of explaining the possibility of society. Gilbert is clearly interested in Simmel's question, but she is not able to take up the Kantian challenge it poses. Having made no headway with the problem of concept-grasp, Gilbert flirts briefly with the kind of psychologism advanced by Searle's claim that collective intentionality (representations, concepts, etc.) are "in the head". She wonders if, after all, the psychic fact of "consciousness" of constituting a "we" or "us" may

be "all there is" to group phenomena. Some of Simmel's descriptions of group phenomena, when read out of context, seem to indicate that he might have toyed with the same idea. Gilbert cites very few actual passages from Simmel, but one that she does cite seems to suggest an ambivalent attitude on Simmel's part toward the status of group phenomena. Thus it is not clear (to me) to what extent Gilbert's version of what she calls the "Simmelian schema" really does support Simmel's actual position on this point. It is true that, for Simmel, the "consciousness of sociation" really is the "inner significance" of "sociation". But this is a psychological observation and not a statement of necessary and sufficient conditions. It is independent of and need not be read as subtracting anything of importance from Simmel's "social realism".

Simmel had said of individuals that "they look at one another as through a veil" (1908; 1971: 8-12). "We see, not the other as a pure individual" but rather "the other appears to us in generalized forms". "It is only by means of social generalizations" that "relationships we know as social ones become possible" (1971:8). Simmel's question "How is society possible?" Is actually more exact: he wanted to know "what, quite generally, and a priori, ... are processes of sociation?" How is it possible that there exists "the production of a societal unit out of individuals...?" (1971:10). Simmel's Kantian answer was: "an intellectual capacity" for making "judgements" of "similarity and dissimilarity" (1971:12). This capacity for "synthesis" has implications that Gilbert does not

respond to.

For Durkheim plural subject phenomena are not just the product of Kantian (individual) syntheses. Indeed Durkheim, like Hegel, regarded Kantian syntheses as insufficient for the existence of group phenomena. Durkheim, like Hegel, thought that social phenomena result from a sui generis synthesis that cannot be reduced to nor identified with Kantian individual syntheses. What kind of synthesis is this sui generis synthesis? Mead argued that it is "symbolic interaction". Durkheim regarded this "collective synthesis" as the "key" to unlocking his theory of social facts. It is thus important to see how Durkheim's sociologism breaks with Kantian individual synthesis and explains the possibility of "new phenomena". Like Hegel, Durkheim theorized that the structure of the social world, rather than being a synthesized imposition of individual people, is actually grounded in an intelligible realm of collective thought that Plato rightly perceived as a realm of forms. But Durkheim was not a Platonist in any bad sense. Durkheim regarded "forms" as "social forms", and he believed that these social forms are linked by internal, logical relations to social practices which are grasped by the eye of the mind. It is this abstract system of collective representations that confers a more permanent and enduring structure of thought on the transient world of appearances. This is what makes society possible. Durkheim thought the Kantian model is "individualistic" for the same reasons we canvassed in Chapter Two. Kant's model is individualistic because the "unity" of things

encountered in experience is "reducible" to the manifold of intuitions out of which they are constructed through individual acts of synthesis. But once the world is seen as possessing its own unity and structure, it is freed from having its form imposed on it by any individual, finite mind. There is clearly much more that needs to be said about this. Two questions, in particular, stand out as requiring heavy attention if we are to understand the Hegel-Durkheim modification of the Kantian doctrine:

- 1) What is the "ontological" status of abstract categories and the epistemic conditions of social knowledge?
- 2) What is the nature of the sui generis "synthesis" that makes these categories and conditions possible?

These are fundamental questions of social metaphysics and epistemology.

We know that Durkheim and Simmel had studied Kant's 1st Critique. Durkheim published serious work on Kantian ideas, which he tried to sociologize. Kantian ideas are found throughout Durkheim's writings, but especially in the final chapter of his Elementary Forms of Religious Life which was the last of his major works. Simmel's question "How is Society Possible?" was clearly inspired by his reading of the 1st Critique. The social forms that Hegel, Durkheim, Simmel and George Herbert Mead regarded as necessary for the existence of society need to be better understood. Their method of apprehension, the manner in which they are collectively brought into

being and persist, and the nature of the constraint they exercise on us at all levels - from the most microscopic (rules of inference) to the most macroscopic (historical "forces of destiny") - need to be made topics for philosophical investigation.

I hope that analytical philosophers of the social sciences will begin to treat these problems with the respect they deserve. Where to begin now seems clear - we must go "back to Kant". But that alone is insufficient. We must also move beyond the model of the 1st Critique as Hegel, Durkheim and Simmel argued, and turn to answer the question "How is society possible?". This constitutes a profound challenge to social theorists who wish to move beyond the limits of Kantian social theory.

POSTSCRIPT: THE KANT-HEGEL LOOP

I argued in Chapter Two that Kant's model in the 1st Critique is asociological. But is there nothing whatsoever sociological in the Critique of Pure Reason? Where might we look to find "seeds" of sociological idealism in the 1st Critique? I claimed that Hegel's social reality has an "inside" in addition to an "outside" which an external observer could record, and that these two dimensions or "aspects" are tied together by conceptual or internal relations. I also suggested that Kant apparently never saw this connection, or that in any case he never developed it in the 1st Critique. It is clear that Kant never developed this connection in the 1st Critique, but did he see it? According to some commentators he did see the connection. If this interpretation is right, then things in themselves will not be located mysteriously "behind" the things we do perceive, but will be those very same things, but considered from another point of view.

Kant did not look at things this way. In the 1st Critique the spectator theory of observation is the last word. Kant is nothing if not rigorous. Every point is firm, every line conclusive. Every sentence is aimed at some definite target. Nothing is superfluous. I think we must accept that he believed he had no warrant by right in the 1st Critique for supposing anything about noumena (and thus nothing about any relationship, or linkage, between noumena and phenomena). Kant's natural science methodology cut him off from any

means of accessing the intelligible world. Although there is a passage in the 2nd Edition where Kant alludes to the existence of a non-sensible "intelligible world" as being in some way related to our consciousness of our own existence (B430 - 431), his methodology forbids him from entertaining this idea.

I myself have not been able to find anything sociological in the Critique of Pure Reason. This in itself proves nothing of course, but I have reason to believe that Kant intentionally, and studiously, kept the 1st Critique sociology-free for architectonic and logical reasons. And I also have reason to believe that Kant was working out a theory of society in some of his post-1st Critique writings. If these claims seem bizarre and unheard of, consider the following chronology:

- 1781 Kritik der reinen Vernunft (1st Ed.)
- 1787 Kritik der reinen Vernunft (2nd Ed.)
- 1785 Grundlegung zur Metaphysik der Sitten
- 1788 Kritik der praktischen Vernunft
- 1797 Die Metaphysik der Sitten
- 1798 Anthropologie in pragmatischer Hinsicht

In his Grundlegung (1785) Kant introduces the idea of "other rational beings" living in a "kingdom of ends" as part of his attempt to say what the good is. I think Collingwood is right to identify this kingdom of ends with society. In that same work Kant also introduces

his distinction between theoretical and practical reason (developed more fully in his Kritik der praktischen Vernunft). These two kinds of reason introduce two different viewpoints according to some Kantian commentators. The point of view of theoretical reason in the Critique of Pure Reason is the spectator's viewpoint, but this is not the only point of view from which we can consider ourselves. We can also view ourselves as agents rather than as isolated knowers in an idealized model of Naturwissenschaft. And it is from this standpoint, that of agent and practical reasoner living in a society with other agents, that we can think of ourselves and society "from the inside". From the external observer's point of view we see the world (and ourselves as part of the world) as a system of causally related phenomena. As agents we see ourselves and others as "people" participating in an intelligible world.

These themes are continued in a different way in Die Metaphysik der Sitten (1797) where Kant considers civil society as a society of benevolent agents. But it is in his anthropological writings that Kant begins to seriously work out the connection between the visible and the invisible (appearances and the intelligible world) that so exercised the mind of Hegel. In a passage in Anthropologie in pragmatischer Hinsicht (1798) which I regret I cannot trace at the moment, Kant mentions an explorer who believes he has discovered the ruins of an ancient temple, whereas his native guide sees nothing but a pile of rocks. The temple is part of the intelligible world. The pile of rocks is its visible manifestation. Are there two different

objects here, or merely one object viewed from two different perspectives? Kant was attempting to deal with a question that is central to theoretical sociology.

Searle has more recently discussed the same problem. Searle points out that we can look at a coin or a Dollar bill from two perspectives. From one point of view - that of the natural sciences - the coin or Dollar bill is nothing but a piece of metal or a piece of paper with grey and green ink on it. And Popper has considered what his sociological "World 3" might look like from a materialistic point of view. Popper, like Searle, accepts that social facts are "embodied" in nature and somehow go beyond it. The former writes that natural science cannot do justice to World 3 phenomena because this point of view cannot cope with "the abstract character of World 3 objects and especially with the logical relations existing between them" (1972:89).

It seems reasonable to believe that Kant was considering the same problem. If he was, his legacy to sociology ends in a knot that has yet to be unraveled. One might say that the, or at least a, central problem of the Critique of Pure Reason is to show how "pure concepts", though not derivable from things perceived, are still applicable to them. With the introduction of institutional concepts like "money", "debt", "uncle", "temple", and so on, we have a different but related problem. Even Durkheim was following Kant's discovery that in all knowledge, of whatever kind, there are a priori

elements. Like Kant he distinguished pure a priori knowledge from knowledge containing a priori elements, and he regarded sociology as an instance not of the former but of the latter. He wrote that:

It is necessary to show... how it comes to pass that we can see certain relations in things which the examination of these things cannot reveal to us.... The real question is to know how it comes that experience is not sufficient unto itself, but pre-supposes certain conditions which are exterior and prior to it (1915:243).

The idea of a temple or a coin is not in any way derivable from the empirical objects we call a pile of rocks or a piece of metal. An infrahuman or unsocialized solitary sees nothing but the physical objects, and then only if the empirical concepts needed to see them have been acquired. A social animal living in an intelligible world sees a "temple" or a "coin". When social facts are realized in intuition this is made possible through what Kant would have called a "schematic representation" which connects the object made visible through its empirical concept with the object "thought" through or as its collective idea. The very idea of such a connection raises what Smith has called the "linkage problem", which is about the relationship between social forms and the "patterns of behaviour" whose contents they are. It is possible, as Searle has suggested, that twenty-two women might line up and go through the same physical motions as are gone through by the members of two teams playing American football. But if there were no rules of the game, that is,

no antecedently existing institution of football, there is no sense in which their movements could be linked to, or described as, "playing football". Without Searle's "constitutive rules" (which he adapted from Kant's notion of constitutive principles) society, or Hegel's "intelligible world", would not be possible. Searle sociologized a 1st Critique conception to explain how institutional facts are "possible". These constitutive rules, or collective ideas, create and define new forms of behaviour - social behaviour - which transcend physical reality and cannot be reduced to it. According to Gellner socialized individuals "think" in terms of such concepts. Durkheim and Simmel had similar things to say about "social forms" and "collective representations". There is nothing even remotely close to this in Kant's considerations in the 1st Critique. But in his anthropological writings he seems to be considering Simmel's question: "How is society possible?"

It would be idle to speculate what a sociological edition of the Critique of Pure Reason, might have looked like. The 2nd Edition was designed to fend off traditional epistemological criticism that the 1st Edition was psychologistic and insufficiently distinct from a Berkeleyian kind of idealism. To have introduced poorly developed sociological considerations at that stage would have been to side-track Kant from his purpose at hand. But not only that, if Kant had revisited the 1st Edition with a view to accommodating sociological considerations it seems to me that the 1st Critique would have unraveled. Consider: (a) by abandoning his natural science

standpoint the distinction between phenomena and noumena would have collapsed; (b) by introducing participant-observer knowledge the intelligible world would have become knowable; (c) super-sensible or "abstract" phenomena (ie, internal relations) would have been introduced; (d) by countenancing collective ideas and social facts, Kantian individual synthesis and the very idea of an asocial self would have required replacement with something far beyond what the 1st Critique could have sustained; and finally (e) the possibility of language and speech would have necessitated a sui generis (or collective) synthesis of symbolic interaction (what Hegel referred to as Vereinigung - "unity"). Kant did not introduce sociological considerations into the 2nd Edition of the 1st Critique, though we may suppose that he was not entirely ignorant of them. And he must have realized at some stage that any "sociological" edition was out of the question for architectonic and logical reasons. Perhaps this helps explain why there is nothing sociological in the 1st Critique - Kant thought it had to be that way.

In criticizing the Critique of Pure Reason, and in developing his own idealism, Hegel did not attempt to trace Kant's sociological ideas, or to in any way read them back into the 1st Critique. Hegel went back to the ancients for his sociological inspiration. He was inspired by Plato's analysis of the city as a kind of society, and by Aristotle's developmental conception of society, with its transition from the family to the state. The first Western discoverers of society were, after all, Plato and Aristotle.

Unlike Hegel, Kant was little influenced by Greek thought. He seems to have discovered society entirely on his own. His thinking was inexorable and highly architechtonic. At first it was profoundly asociological. Only later did he turn his profound and original mind to questions about the foundations of social knowledge and the possibility of society. And it was to Kant, rather than to the Greeks or to Hegel, that Simmel and Durkheim turned for their sociological inspiration. But not in the way one might have thought. Not from a study of Kant's practical and anthropological reflections, but through an appreciation of the asociological Ist Critique, which they both attempted to sociologize in various ways. Simmel's essay "How is Society Possible?" was clearly inspired by his reading of the Ist Critique, as were his conceptions of social judgements and social forms. Durkheim's Elementary Forms of Religious Life is an attempt to apply Kantian Ist Critique ideas, admittedly in a sociologized form, to problems of the sociology of knowledge. Similar observations could be made about Wilhelm Dilthey and Max Weber, and other "neo-Kantian" social theorists who were deeply influenced by the Ist Critique. Dilthey for example aimed to (but never did) write a Critique of Historical Reason that would have done for the social sciences what the Ist Critique had done for the natural sciences, and in particular for Newton's physics, and Weber's deployment of Kantian ideas in his construction of ideal types is too well-known to require comment.

Due to ill health Kant gave up lecturing in 1799. He died on 12

February 1804. Within that short time he produced a collection of unpublished work, subsequently called his Opus Postum. This work is not well known. But it seems reasonable to suppose that some of it deals with his sociological ideas and provides clues as to how they may have developed. Kant was thinking about sociological problems from at least 1785 onwards. This means that for a period of nearly twenty years he was, at the very least, sensitive to these problems. We also have reason to believe that he was seriously working on these problems towards the end of his life, in particular in his anthropological writings. The philosophical work of Kant seems to be, in Collingwood's apt words, "one of those things whose magnitude only seems to increase with every advance in our understanding of them."

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