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Processes and Artifacts

The Principles Are in the Author Herself

*Veronica Rodriguez-Blanco**

1. Introduction

It is much agreed that intentions can create artifacts, whose key feature is whether they perform the intended function and fall under the concept and predicates of their intended character. Additionally, artifacts are possible because there is agreement on what they are and therefore their existence is mind-dependent.¹ However, in contemporary philosophy of action and the metaphysics of artifacts, there are no explanations or only very sketchy and unsatisfactory views on *how* intentions can create artifacts, e.g., law, performing arts, works of art, or social institutions.² The explanations resort to speech acts, or intentions as mental states, or to beliefs that are materialized in agreements, conventions, or acceptances. However, I will argue that none of these instances can truly explain the diachronic process of effectively producing a state of affairs by human authorship. At some point within the discussion, there has been a particular focus on the ontology of artifacts to the detriment of reflecting on how authorship can create practically a certain state of affairs. My diagnosis is that this is due to a theoretical view on intention and action, in which the idea of will and intention tends to be reduced to an understanding, or to expressions of

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¹ John Searle, *The Construction of Social Reality* (The Free Press 1995) 1.

² There are some recent exceptions, see Kenneth Ehrenberg, *The Functions of Law* (Oxford University Press 2016). However, Ehrenberg takes as starting point a different conception of intentional action than the one defended in this chapter. In his work, intentional action still is mainly a mental state.

our language. I will concentrate on two such accounts and show that they rely on an incomplete and at times defective conception of intention. I will then advance a different conception of intention which focuses on practical reason and powers and capacities with the aim of illuminating the character of artifacts. The key conclusion of the latter conception is that *artifacts belong to voluntary things and practical reason. Therefore the principles of the artifact are in the author herself.*

2. Intention as a Mental State and their Effects

Let us imagine the following two examples:

Tango choreography. A choreographer is creating a dance sequence based on the tango dance. There are a few basic steps, e.g. parallel walk, cross walk, weight change, and promenade, which he combines with some techniques and embellishments. In addition, he endeavours to insert an emotional understanding of the dance into its performance.

Making coffee with a stovetop coffee maker. You put the coffee grains and the hot water into the coffee maker then put on the stove and wait until the coffee is ready.

At first glance one might be reluctant to associate the performance of the tango by a dance group to an artifact and nor does the making of coffee seem to be an artifact. Typical examples of artifacts are “chairs,” “pencils,” “houses,” “hammers,” and so on. In these examples the focus is on the effects of the creation rather than on the process of creating the artifact. The mere observation of the physical properties of a chair, hammer, pencil, house, musical score, or coffee does not help us to understand that some things are created by human intentional acts as opposed to naturally occurring phenomena such as rocks, oceans, mountains, etc. Thus, it seems that we can expand our intuitive understanding of artifacts to the activity of producing an object or a state of affairs. The artifact is not only the cup of coffee, the stovetop coffee maker, or the dance sequence, but also the activity of producing it, e.g., the activity of making coffee and the activity of performing the tango.

Hilpinen asserts that artifacts have an author who intends to create an object or the state of affairs under a certain description.³ Thus the author intends to make an artifact of a certain type or kind. The intention connects the object, Hilpinen tells us, with different properties and predicates which

³ Hilpinen refers only to objects but I will extend his notion to states of affairs for reasons that will become clear later. Risto Hilpinen, “Belief Systems as Artefacts” (1995) 78 *The Monist* 136.

constitute the intended property of the newly created object or artifact.⁴ These properties are called the Intended Character of an Object “IC (o).” By contrast, the Actual Character of an Object “AC (o)” is the resultant effect of the intention. “The success of the author’s productive activity depends on the degree of fit or agreement between the intended and the actual character of o.”⁵ Additionally, Hilpinen tells us that an artifact is identified by a description which refers to its intended function. “I shall call the object made for a purpose F an F-object.”⁶ He asserts that the author’s productive activity can be evaluated according to: (a) the degree of agreement or fit between the intended character and actual character of the object; (b) the degree of fit between the intended character of the object and the purpose F of the object; and (c) the degree of fit between the actual intended object and the purpose F.⁷

But this is puzzling and unsatisfactory. It cannot be right or at least there is something fundamentally missing. Let us think about the following example. A mathematical theorem has an author who intends to show that the theorem is true by means of a proof that has certain properties, i.e., consistency, simplicity, truthfulness, etc. Thus, the success of the proof is determined on the basis of the degree of fit or correspondence between the intended properties or intended concept of the proof and the actual properties or concept of the proof to the theorem. Its success will also be evaluated in terms of the degree of fit between the intended character of the proof and the purpose of the proof (b) and the degree of fit between the actual character of the proof and the purpose of the proof (c). Let us say that the purpose of the proof is to establish the truth of the theorem. The proof could be defective because it is too complicated and inelegant, and is contrary to the intention of the mathematician who wanted a simple and elegant solution. It might also be incoherent and this would contradict the intended character of the proof. Thus, we might also find that there is an inadequate fit between the actual intended character of the proof and its purpose, i.e., its truth. We see then that all the conditions of an artifact are fulfilled in the example of proving a mathematical theorem. However, we intuitively know that the proof of a mathematical theorem is *not* an artifact. What, hence, is the problem arising from the conditions placed on artifacts by Hilpinen? The problem lies in not taking sufficiently seriously the idea that for artifacts, as opposed to natural kinds (including mathematical kinds that involve theoretical knowledge), the author *determines* the character of the artifact. The tendency is to overlook the

⁴ Ibid. 139.⁵ Ibid.⁶ Ibid. 140.⁷ Ibid.

nature of the *determination* and to use the idea of intention in an ambiguous way. Intention might mean “expectation” or it might mean “directing” the will toward a purpose or end. Thus in the former case there is a reduction of the idea of intention to understanding in the form of “what we expect to obtain.” In the latter case intention is an *active power* that aims to produce something or a state of affairs or object in the world. The problem of *how* intentions produce something in the world does not truly arise if we confine ourselves to the idea of intention as an expectation that obtains or does not obtain. What is left unexplained is *how* an intention can direct itself toward the production of the intended state of affairs.

You might argue that authors like Searle have focused on the idea of language, i.e., speech acts, to show how an intention can create artifacts. Thus, Searle argues that to move a brute fact, e.g., a piece of paper, into the status of an institutional fact, e.g., a piece of paper that has an exchange-value, we need language and thoughts. We learn that “X counts as Y in C” because of a series of conventions. They become symbols beyond themselves. We learn to treat the pieces of paper printed with an image of Darwin as being worth ten sterling pounds. This piece of paper now has a function in relation to exchange for goods. We have, according to Searle, a “precondition capacity to symbolize”⁸ and this is the *condition of possibility* of the creation of artifacts as human institutions, i.e., games, law, property, money, etc. According to Searle the predication of truth or falsehood can equally apply to institutional facts as to propositions about natural kinds. The only difference is that we need to recognize that their truth-conditions depend, in the former case, on the representational conventions of the practice, e.g., the rules of the game, the rules of law, conventions on property, and the institutional rules of exchange in contemporary economies, and *nothing* beyond the convention. Whilst in the latter case the truth conditions of statements about natural kinds depend on something non-conventional and beyond our thoughts and language, e.g., the constitution of molecules, the nature of the universe and its objects.

But again, we have in Searle the collapse of the idea of intention or will into the idea of understanding. The convention involves an *acceptance or agreement* that creates institutional facts which, according to Searle, emerges with time and about which we are not fully aware. The collective intention gives institutional status to specific entities, e.g., money, law marriage, property, games, etc. But how can a collective intention create something that endures and unfolds with time? Searle resorts to the idea of “background abilities,” which establishes that due to our dispositions we display a capacity

⁸ Searle, *The Construction of Social Reality* (n. 1) 75.

to create institutional facts. He asserts that background abilities are prior to intentions. However, the problem that Searle faces is how intentions construed as mental states can be connected to our background abilities. The idea of background abilities is underdeveloped. He asserts that “background” is the “set of non-intentional or pre-intentional capacities that enable intentional states to function.”⁹ According to Searle “capacity” falls under causal neuro-physiological causation about which we do not have sufficient knowledge, and that we therefore need to explain at higher order levels. Thus, to speak English is to exercise a capacity that is in my brain. Searle understands intentional states as mental states and asserts that we “know how” to interpret and recognize the adequate meaning of words that are used in different contexts. For example, we can easily recognize the use of the word “growing” in two different contexts such when I assert “The American economy is growing” and you assert “My son is growing.”

However, Searle argues that the causal role operates at the level of the “background.” Thus, institutional facts demand the following of certain rules, e.g., rules of the game, rules of promises, rules for the exchange of goods, etc. and because of this demand, the individual develops a set of “background” habits, skills, and dispositions that enables her or him to follow the rules.¹⁰ But this is puzzling and unclear. The question that arises is *how* collective intentionality creates the institutional structure. We cannot argue that it is *because* there is a “background” that enables the emergence of a specific kind of collective intentionality. On this view intentionality has no causal and creative role, it only establishes the pattern of conduct that we *expect* you to perform. But the performance is possible *because* of the background abilities. Again, will or intention seems to be reduced to understanding or expectation. Let me illustrate Searle’s point with the previous example of choreographing a tango dance. The dancers perform the steps because they have the abilities and talents to dance according to the institution “dancing the tango.” It is not that they are dancing the tango because they are following the rules of the tango. Additionally, they behave like tango dancers because they are conforming to the rules of tango dancing. The rules of tango dancing have been created by collective intentions that give them the status of institutional facts and for everyone who claims that he or she dances the tango, we say

⁹ Ibid. 129.

¹⁰ Ibid. 144. Searle asserts: “Instead of saying the person behaves the way he does because he is following the rules of the institution, we should just say, First (the causal level), the person behaves the way he does, because he has a structure that disposes him to behave that way; and second (the functional level) he has come to be disposed to behave that way, because that’s the way that conforms to the rules of the institution.”

that we “expect” them to conform to these rules. I repeat, intentions have no creative role in this model since they only establish a standard of conduct or institutional framework within which we assess what people are doing when they are acting. According to Searle, we acquire skills, dispositions, and habits that are responsive to an institutional structure, which is created by intentions as mental states. These skills, dispositions, and habits are pre-intentional.

Apart from reducing intention or will to understanding or expectation, Searle does not provide a satisfactory answer to the question of *how* we create institutional facts through our intentions. The question is left unanswered since the idea of creating institutional facts by intentions is already *given or granted as necessary to make sense of the actors in the social context*. Thus, in the previous example, it is *given or granted* that tango is a dance that was created by collective intentionality since dancers are responsive to the rules of tango. If it were not an institutional fact, Searle would assert, we could not have dancers following the rules and being responsive to the different steps and so on.

In his later work, Searle recognizes that he previously overstated the causal role of psychological antecedents and asserts that voluntary and rational action does not have causally sufficient psychological antecedents.¹¹ Thus reasons are neither causally sufficient nor causally efficient. For Searle, the only plausible causality is efficient causality, but reasons and intentions do not operate at the level of efficient causality. The question that then arises is how reasons and intentions create a state of affairs, including artifacts. According to Searle it is not possible to answer this question but we can use deductive reasoning to show that a non-Humean self needs to be presupposed to give an explanation of the phenomenon of reasons and intentions together with the phenomenon of free human rational and volitional action. Following Searle, the structure of the deductive argument is as follows. We have the experience of acting, which is the conscious intention-in action. We act for reasons and intentions that give order and intelligibility to the movements of our body. In the example given above, we dance tango according to choreographed movements and stylistic rules, and we follow these rules for different reasons, e.g., embellishment of our lives, entertainment, playfulness, friendship. According to Searle, these reasons neither sufficiently nor efficiently cause the bodily movements. Neither the intention nor reasons of embellishment, entertainment, playfulness, or friendship cause the creation of the choreographic and stylistic rules of tango. However, when we dance tango, we have the experience of dancing tango and of following the choreographic and stylistic rules of tango for specific intentions and reasons. There is therefore, according to

¹¹ John Searle, *Rationality in Action* (MIT Press 2001) 73.

Searle, an explanatory gap. To explain this experience of acting for reasons and specific intentions, we need to presuppose that there is a non-Humean self that advances reasons and intentions. This non-Humean self has certain key features. This self cannot be reduced to empirical properties, e.g., to a bundle of experiences. The self is a unity of apperception that transcends empirical conditions. All my experiences at any given point in time come to me as part of a unified conscious field.¹² The presupposition of a self with these features provides an intelligible explanation of my experience of freely, rationally, and volitionally dancing tango. Thus, I do not only have the sight of myself moving my body, the feeling of my arms and legs following the steps of tango, but I also have a unified conscious experience of dancing tango for the intentions and reasons that made me choose to dance tango.

But Searle's revised account does not provide an answer to our initial question, which is how intentions and reasons *determine* institutional facts, including artifacts. Searle takes for granted that there are institutional facts and artifacts, which are determined by reasons and intentions. He concentrates on advancing an explanation of the conditions of possibility of institutional facts and artifacts, but this is not an explanation of the conditions of creation of institutional facts and artifacts.

In the next section, I will advance a view of intention and an explanation of how intentions create institutional facts. Thus, in my account, the latter are not taken as *given or granted*. According to this view and in contrast to Searle, the dispositions, skills, and habits of the agent are actualizations of her intention. They are not pre-intentional. Unlike Searle and Hilpinen, this account does not reduce intentions to understanding or expectation.

3. Intentional Action as Diachronically Directed to an End

Imagine the following two examples:

NEIGHBOR. You see your neighbor coming out of the supermarket and a few minutes later you see his well-known enemy (Mr. Enemy) driving his vehicle and running into him. Your neighbor is killed.

OMELET. You are a cook and instruct a group of people who are attending your cooking workshop on how to make a good omelet.

¹² Ibid. 77.

In NEIGHBOR you can provide a description of the action in terms of mental states, i.e., the beliefs/desire pair that cause the bodily movements. The effect of this is to rationalize the action and make its description intelligible. You can, thus, say that Mr. Enemy had the desire to kill his enemy *and* the belief that driving his vehicle over him would kill him.

NEIGHBOR is a description of the action as a mental event, i.e., pair belief/desire and a consequential effect, which includes the bodily movements of Mr. Enemy, e.g., his pressing the pedal, controlling the wheel, and the *further* effect of killing the neighbor. However, this account faces the difficulty encountered by some counter-examples which is that there is no connection between the mental state, i.e., pair belief/desire, and the bodily movements. In other words, the agent has the appropriate mental state and the *further* effect has been obtained, nevertheless there is no intentional action. The description fails as a correct description of the action. Let us imagine the following alternative scenario:

SWERVING THE WHEEL. You see your neighbor coming out of the supermarket and a few minutes later you see his well-known enemy (Mr. Enemy) driving his vehicle and running into him. Your neighbor is killed.

SWERVING THE WHEEL is exactly like NEIGHBOR but there is one key difference. What really happens is that Mr. Enemy has the relevant mental states, i.e., the desire to kill your neighbor and he believes that driving his vehicle into him will enable him to kill him, but he suffers an involuntary spasm that makes him swerve the vehicle toward your neighbor and kill him non-intentionally. All the elements of an intentional action as mental events are present, i.e., the relevant desire and belief, nevertheless there is no intentional action. Consequently, the model of belief/desire as a mental event causing the action does not really explain the action in SWERVING THE WHEEL. The key problem is that the model cannot ensure the causal connection between the mental event and the *further* effect.¹³

¹³ This is called in the literature the deviant causation problem: see Roderick Chisholm, "Freedom and Action" in Keith Lehrer (ed.), *Freedom and Determinism* (Random House 1976). Surprisingly, there are some philosophers who assert that this is a problem for every theory of action: see David Enoch, "Reason-Giving and the Law" in Leslie Green and Brian Leiter (eds.), *Oxford Studies in Philosophy of Law* (Oxford University Press 2011); David Enoch, "Giving Practical Reasons" (2011) 11 *The Philosopher's Imprint*. This is incorrect. It is not a problem for accounts of action that do not rely on mental events. Furthermore, my diagnosis shows that something else is happening and that the idea that we can provide a pure description of actions is mistaken. Searle's idea of "background abilities" seems to bypass the deviant causation problem since the causal work is done at the background level and not at the intention level. However, an account of an intention as creator of a state of affairs is either left unexplained or the order of explanation is reversed, i.e., intention as authorship is given or necessarily presupposed.

In OMELET the cook is not telling the participants his beliefs and desires so that they can act upon them. It would be absurd and unintelligible if he were to say, “I desire to instruct you to make an omelet because I can charge a fee for this and I believe that giving you these instructions will enable you to make an omelet and pay me a fee.” What about if the desire/belief pair is present in every single instruction on how to make an omelet? In the example, the cook would have to say, “I desire the eggs to be stirred and I believe that putting them in this bowl and moving the fork in this way will enable the eggs to be stirred.” The participants will probably look perplexed. It does not say anything about *how to make an omelet*. Worse, it does not say anything about the next steps in the omelet making process or about *the know-how* required to follow these steps. It would presuppose an absurd sequence of randomly connected mental states (the pair belief/desire). There would be no answer to the questions, “Why should we *not* put the stirred eggs in the frying pan prior to the butter? Why shouldn’t we begin the process with putting the frying pan on the heat, then taking the fork and stirring the eggs, then washing the frying pan, and finally pouring the eggs on the wet and un-oiled frying pan?” By contrast, in order to ensure success in his instructions the cook needs to tell the participants the chain of reasons that are required to correctly perform the action, i.e., the making of the omelet. His “know-how” to make an omelet entails knowing the answers to the “Why?” questions involved in making an omelet, i.e., knowing why it is necessary to stir the eggs; knowing why there needs to be a knob of butter in the pan; knowing why the pan needs to be hot before you pour in the stirred eggs, and so on. He also needs to know “why” people make omelets and the good-making characteristics of omelets, i.e., that they are nutritious, delicious, and a quick and easy meal to make, etc. The cook presents the chain of reasons but the final end that unifies the series of actions is advanced by the agent who actually performs the action. It might be that the answer to the question “why?” is obvious in many circumstances due to the internal rationality of the activity or social practice, but perhaps in other circumstances it is required in order to explain “why” certain actions should follow others. The final end of “why” the participant aims to learn to make omelets can be various, e.g., for nutritional reasons, for reasons of practicality or expense, but this final end provides unity to the action *when* the participant executes the set of actions in order to make an omelet. Let us imagine that the participant goes home and starts to make an omelet as instructed; he will “know how” because he knows “why” certain actions follow other actions. In response to the final question “Why are you making an omelet?” he might reply in different ways, but always providing the end as a good-making characteristic, e.g., “because it is practical and easy,” “because it is nutritious,” “because it is delicious.” If

he responds “I do not know” we will probably suspect that his action is not intentional. I am not asserting that he constantly reminds himself of “why” he is making an omelet, but if the action is intentional he certainly knows “why” he is making it. In order to succeed in his action he is *only* looking forward; thinking about the next step in the series of actions and “knowing how” to make it and “why” there is a series of actions x, y, and z.

The diagnosis of SWERVING THE WHEEL is that action is conceived in its secondary conception, namely as a description of events, i.e., mental states, bodily movements, and further effects that happen in the world. But the primary conception of an action is the model of OMELET. If we ask Mr. Enemy “why” he deliberately moved the wheel in the direction of your neighbor he will respond that “he did not” and then understand that his action was not intentional.

The difficulty is that any correct description of an action must grasp the model of OMELET, including the action of creating institutional facts. In other words, it needs to grasp the deliberative mode of the agent and this is only possible if we begin and finish with the answers to the question “Why.”. The correct interpretation is not that we “effectively” ask the agent “why” he did this and not that. It is rather that it is implicit because we ourselves are “knowers” of the “know-how” of the practice and tap into the good-making characteristics, values and principles of the intentional actions and resultant practices. We are all practical reasoners, we have acquired know-how and exercise this capacity. Therefore we can perceive this capacity in others.¹⁴

In her book *Intention*, Elizabeth Anscombe engages with the task of explaining intentional action along the lines of OMELET. Her explanation should be understood within the philosophical tradition of Aristotle and Aquinas. Anscombe identifies a number of key features that characterize intention and intentional action.¹⁵ These features include:

- (a) *The former stages of an intentional action are “swallowed up” by later stages.* Intentional action is composed of a number of stages or series of actions. For example, if I intend to make a cup of tea, I first put on the kettle *in order* to boil water, I boil water *in order* to pour it into a cup of tea. While I am making tea, however, there are many other things that I am doing that are irrelevant to my intentional action and to *what is happening as*

¹⁴ This point requires a deeper analysis of perception and practical knowledge. This is, however, an under-researched area. The Aristotelian notion of “perception” is widely explored in ancient history of philosophy, but its connection to practical knowledge is almost absent in the secondary literature.

¹⁵ To develop this section, I have relied on material that was published in Veronica Rodriguez-Blanco, *Law Under The Guise of the Good* (Hart Publishing 2014).

intentional. For example, I sneeze, I look through the window, I sing, and so on. Similarly, many other things are happening in the world that are irrelevant to what I do and that happen as a result of what I do intentionally. Thus, the kitchen has a specific location, the flowers in the garden are in bloom, the wind is blowing and blows open the window, and so on. Because my action of making tea is intentional, *I impose an order on the chaos of the world and this order is the order of reasons*. Thus I put on the kettle *in order* to boil water and I boil water *in order* to pour it into a cup. This is how I understand the sequence of happenings in the world that I, as an agent, *produce or make happen*. But, arguably, there could be an infinite number of series of actions; there could be a continuous infinite, or ceaseless, seamless web of actions. The question “Why?” can always be prompted: “Why are you making tea?” and the agent might reply, “Because it gives me comfort in the morning.” There is, however, an end to the “Why?” series of questions and the end comes when the agent provides a characterization of the end or *telos* as a good-making characteristic. The action becomes intelligible and there is no need to ask “Why?” again. The end as the last stage of the “Why?” series of questions swallows up the former stages of the action and makes a complete unity of the action. Intentional actions are not fine-grained, they are not divisible into parts. Thus, parts of series of actions are only intelligible because they belong to an order that finds unity in the whole.

- (b) *Intentional action is something actually done, brought about according to the order conceived or imagined by the agent*. Intentional action is not an action that is done in a certain way, mood or style.¹⁶ Thus, it is not an action plus “something else,” i.e., a will or desire that is directed toward an action. *Intention is not an additional element; e.g., an interior thought or state of mind*, it is rather something that is *done or brought about* according to the order of reasons that has been conceived by the agent. Consequently, if the question “Why?” has application to the action in question, we can assert that the action is intentional. The prompting of the question “Why?” is the mechanism that enables us to identify whether there is an intentional action. Intentional action is neither the mere movements of our body nor the simple result of transformations of the basic materials upon which agency is exercised, e.g., the tea leaves, kettle, boiling water. It is a doing or bringing about that is manifested by the expression of a future state of affairs and the fact that the agent is *actually* doing something or bringing

¹⁶ Elizabeth Anscombe, *Intention* (2nd edn., Harvard University Press 2000) § 20.

it about according to the order of reasons as conceived or imagined by the agent.¹⁷

- (c) *Intentional action involves knowledge that is non-observational, but it might be aided by observation.* If I am an agent that acts in an intentional way, I know that I am bringing about something and I know this without the need to observe every single step of my series of actions to verify that (effectively) I am acting.¹⁸ In performing my action I might be aided by observation, but I know *what* is the order of the series of actions and *why*. This is the essence of practical knowledge. You do not need a theoretical stance toward yourself, a verification and observation of the movements of your body to know that you are performing an intentional action and bringing about *something*. Following the previous example, you do not need to observe that “you are making tea” to know that you intend to “make tea” and that you are bringing this about. You put on the kettle and boil the water, you do not ask yourself, “let me see what my body is up to, let me observe what I am doing,” and then infer from the movements of your body that you are actually bringing about “making tea.” Of course you can be aided by observation, you need your sight to put the kettle in the right position and to pour the boiling water without spilling it. But you do not use your observation and inferences from the observational data to know that you are making tea. On the contrary, the more you need this verification or theoretical stance toward yourself, the more likely it is that your action is not intentional, you are not controlling the action and you are not guided by the order of reasons. You are not an agent on this occasion, rather something is happening to you.

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The state of affairs that you intend to bring about is at a distance, it might not be within your sight.¹⁹ Imagine a painter who intends to make a painting. He has an idea about what the painting will look like, e.g., how the colors will be distributed across the canvas, and what topics and concepts will be at work in the painting. The painting is at a distance and the painter does not need to observe the movements of his body and the motion of the brushes to know *what* he is painting and *why* he is painting what he is painting. Certainly, his sight will help him to find the adequate color at the correct time and to shape the figures at the right angle, but his intentional action is not what he observes; it is not the result of his painting but what he is actually doing. We do what happens.

¹⁷ Ibid. §§ 21–2.

¹⁸ Ibid. §§ 28–9.

¹⁹ Ibid. §§ 29–30.

- (d) *In acting intentionally, we exercise our practical knowledge. We can understand practical knowledge if we understand the structure of practical reasoning.* Intentional action is not in the mind, it is not primarily a mental state, it is not an internal thought.²⁰ Rather it manifests itself publicly and within the public reasons that we share as creatures with certain constitutions and who belong to a particular time and place. For example, we eat healthy food because it is good to survive, we look after our family because we love them, we avoid harm because we aim to enjoy pleasant things and so on. Similarly, we know that to make a cake you need flour, sugar, eggs, and milk. If I see you mixing grass and earth and you tell me that you are making a cake, then I can assert, if I consider that you are in sound mind, that there might be a mistake in your performance or that you do not understand what it is “to make a cake.”

According to Anscombe, Aristotle establishes a strong analogy between practical and theoretical syllogism and this has led to misinterpretations about what practical syllogism is.²¹ Like theoretical syllogism, practical syllogism is often systematized by Aristotelian interpreters as having two premises, i.e., major and minor, and a conclusion. It is said that, as in the case of theoretical syllogism, the practical syllogism is a proof or demonstration. The typical form might be as follows:

Vitamin X is good for all men over sixty
 Pigs' trotters are full of vitamin X
 I am a man over sixty
 Here are pig's tripes

But in this case nothing seems to follow about doing anything. Furthermore, the practical syllogism is sometimes interpreted as having an ethical or moral character and establishing a way to prove what we ought to do. Following the previous example, the conclusion might be “I should eat pigs' tripes.” Anscombe rejects this view since Aristotle's examples are not in ethical contexts, i.e., “dried food is healthy,” “tasting things that are sweet” is pleasant. Additionally the word “should” (*dei*) as it appears in the Aristotelian texts has an unlimited number of applications and does not necessarily refer to the ethical or moral context.²²

Aristotle insists that the starting point of any intentional action is the state of affairs or something that the agent wants and is wanted because it is presented to the agent as having good-making characteristics or as being valuable. For example, the man wants to have vitamin X because it is healthy.

²⁰ Ibid. §§ 21–2, 25, 27–8.

²¹ Ibid. § 33, §§ 33–4.

²² Ibid. § 35.

Furthermore, the practical syllogism is not limited to two premises and a conclusion, there can be many intermediate instances that are part of the syllogism. After a close analysis, the analogy between practical and theoretical syllogism breaks. Unlike theoretical syllogism, practical syllogism is not a proof or demonstration of a true proposition, nor is it a proof or demonstration of what ought to be done or what we ought to do. It is a form of *how* and *why* we are bringing something about when we are *actually* bringing it about.

Anscombe presents us with an alternative analysis to the practical syllogism and a different way to understand practical reasoning. Thus, the series of responses to the question “Why?” manifests or reveals the practical reasoning of the agent and enables us to identify whether the action that the agent is performing is intentional or not. However, she warns us, the why-question methodology is as “artificial” as the Aristotelian methodology of practical syllogism.²³ When we act intentionally, we are exercising a kind of reasoning which is not theoretical and which is grounded on a desire for that which seems to the agent to be constituted by good-making characteristics. You know the thing or state of affairs that you are bringing about because you desire the thing or state of affairs that you are bringing about, and you are able to desire the thing or state of affairs that you are bringing about because you know *practically* the state of affairs. Your desire arises because you represent the thing or the state of affairs to be brought about as valuable or good. Volition and knowledge do not fall apart.²⁴ For example, if you are a painter, you know how and why the shapes and colors on the canvass are what they are, it is because you desire and value the painting you will produce that it should be such and such a color and shape. But it is also true that because you desire and value *this* and *not that* arrangement of colors and shapes, that you are able to know it *practically*. Consequently, moral approbation is irrelevant for practical reasoning and for our practical engagement with the world.²⁵ This does not mean that there are no instances of objectively justified reasons for actions.

Whatever strategy we follow to show the structure of intentional action, whether we take the Aristotelian practical syllogism or the Anscombian series of actions revealed by the question “Why,” we are able to grasp the mechanism of practical reasoning in its different manifestations.

In the following section, I will argue that if Anscombe is right and both strategies are “artificial” ways of understanding,²⁶ then a deeper and more “natural” way of understanding practical reasoning is by grasping the nature of the capacity that is exercised by the agent. *In other words, the answers to*

²³ Ibid. §§ 41–2.²⁴ Ibid. § 36.²⁵ Ibid. §§ 37–8.²⁶ Ibid. §§ 41–2.

the “Why?” questions show a capacity that the agent is exercising when acting. In the next section, I will show that the Aristotelian potentiality/actuality distinction sheds light on understanding the exercise and nature of our practical reasoning capacities. Furthermore, the potentiality/actuality distinction illuminates each of the key features of intentional action (a, b, c, and d) and their interplay as identified by Anscombe. This metaphysical distinction between potentiality and actuality is the key to understanding how human actions that are intentional can cause institutional facts and artifacts like law. We determine such artifacts through our intentions, but the correct way of thinking about this determination is, as Searle correctly points out, neither in terms of efficient causation, nor in terms of an exploration of the conditions of possibility of the experience of acting. The reason for this is because then we are not truly explaining how intentions *determine* artifacts. The distinction between potentiality and actuality enables us to understand how capacities work and how selves with practical capacities, such as practical reasoning and intentions, can create artifacts like law.

4. Aristotle’s Distinction between Actuality and Potentiality

Contra Parmenides who has argued that motion is impossible since something cannot come from nothing, Aristotle advances the idea that motion or change is possible if there is an underlying nature or constant feature that does not change. To explain this, Aristotle resorts to the distinction between potentiality and actuality. In *Metaphysics*, book Θ, Aristotle uses the analogical method to show that particular instances of the scheme or idea of potentiality and actuality have a pattern.²⁷ Thus he begins with the particular instances of capacity/change and matter/form to explain the common patterns that will illuminate the general scheme of potentiality/actuality. However, since our purpose is to elucidate the character of practical reasoning which is a power or capacity, and I have argued that the general scheme of potentiality/actuality will help us to clarify the nature of practical reason, it is circular to resort now to the particular instance of capacity/change to explain potentiality/actuality. I will, therefore, amend the Aristotelian argumentative strategy and explain

²⁷ I follow the interpretation of Aristotle’s *Metaphysics*, book Θ advanced by Stephen Makin and Michael Frede. See Aristotle, *Metaphysics Theta*, (S. Makin tr. and ed., Clarendon Press 2006); Michael Frede, “Aristotle’s Notion of Potentiality in *Metaphysics*” in Theodore Scaltsas, David Charles, and Mary L. Gill (eds.), *Unity, Identity and Explanation in Metaphysics* (Clarendon Press 1994).

the general scheme of potentiality/actuality. I will then proceed to explain the particular instance of exercising our practical capacities as the actuality of a potentiality.

Capturing what “motion” is, is difficult and many definitions of “motion” tend to use terms that presuppose motion. For example, “a going-out from potency to act which is not sudden,” but “going-out” presupposes motion and “sudden”²⁸ is defined in terms of time which is also defined in terms of motion. Therefore, this kind of definition is discarded by Aristotle for being circular and unhelpful. Nor can we define motion in terms of pure potency, because if we say that “bronze is potentially a statue,” we are merely referring to the piece of bronze which has not yet been changed in which case there is no motion. You cannot refer to motion or to change as being “actual.” (For instance, you cannot refer to what has been built or transformed, e.g., a building or statue, because it is not being moved but has *already* moved.) In the example of a building, the bricks, wood, clay, cement of the building have been already moved; and in the case of a statue, the bronze has already been transformed. Thus, Aristotle defines motion as a kind of actuality, which is hard to grasp. In other words, *the actuality of what exists potentially, in so far as it exists potentially.*²⁹ Motion is an actuality that is incomplete. It is hard to grasp and the tendency is to say that motion is the actuality. In the example of the house, it is the house that has been built. The other tendency is to say that motion is the privation of something, i.e., the going from nothing to something, from not being a house to being a house. Finally, the tendency is also to think that motion is what exists before potentiality, e.g., the bricks, steel, wood, cement, and so on. Contrary to these tendencies, Aristotle insists that motion is what happens exactly at the *midpoint*, neither *before* when nothing has been moved and is mere potentiality, and neither *after*, when something *has* been moved. Furthermore, motion is not privation, it is rather constitutive actuality. For example, if the baby has not learned to speak English, we say that the baby is potentially a speaker of English. If a man knows how to speak English and is in silence, he is also potentially a speaker of English. Finally when the man is speaking English, we say that he is actually an English speaker speaking English. However, the potentiality of the baby (p1) is different from the potentiality of the man in silence (p2), and motion is located in the second potentiality (p2), when the man is in silence, but begins to pronounce a sentence to speak English. Motion is midway and is not privative, but rather constitutive. We do not say that the man speaking

²⁸ Aristotle, *Physics Book III and IV* (E. Hussey tr., Clarendon Press 1983) 284.

²⁹ *Ibid.* III.1.201a9-11.

English went from being a non-speaker of English to a speaker of English, we say that he went from being in silence to speaking English (he knew how to speak English, but did not exercise his capacities).

The previous example locates us in the domain of the particular instance of capacity and change as exemplified by the potentiality/actuality distinction. Aristotle argues that there are many different types of capacity, i.e., active/passive, non-rational/rational, innate/acquired, acquired by learning/acquired by practice, and one way/two way capacities. Two-way capacities are connected to rational capacities, whereas one-way capacities are linked to non-rational capacities. For example, bees have a natural capacity to pollinate a foxglove flower in normal circumstances,³⁰ (“normal” circumstances might include a healthy bee in an adequate foxglove, and the absence of preventive circumstances). In the case of two-way capacities there ought to be an element of *choice or desire* to act, and the rational being can exercise her capacity by producing or bringing about “p.” Furthermore, she also knows how to produce or bring about the absence of a state of affairs. The paradigmatic example used by Aristotle is medical skill. The doctor knows how to make the patient healthy and how to eliminate disease or illness. Therefore the doctor can bring about two opposite effects.³¹ For Aristotle, to have a rational capacity is to have an intellectual understanding of the form that will be transmitted to the object of change or motion. Thus, the doctor will have an understanding of what it means to be healthy and without illness. Let us suppose that a chef is making a cake. He needs to understand the order of the series of actions that will result in a cake and he needs to possess knowledge about the necessary ingredients and temperature of the oven. The chef also needs to understand how to avoid producing non-cakes, e.g., crepes. His action will be directed to making a cake and to not making a non-cake.

In the exercise of practical reason we choose to act³² and this choosing activates the action and directs the capacity toward the series of actions that will be performed. By contrast, a non-rational capacity is non self-activating, its acts are necessary. If the bee is in good health and there are no obstacles, it will pollinate the foxglove flower. By contrast, rational agents need to *choose or decide* to act to produce a result.

When we say that the medical doctor has the rational capacity to change the unwell patient into a healthy human being, Aristotle says that she has the “origin of change.” She is curing the patient and therefore she is in motion because she actualizes her practical reasoning capacities to bring about the

³⁰ Aristotle, *Metaphysics Theta* (n. 27) 43.

³² Ibid. 1048a10-11.

³¹ Ibid. 1046b4-5, 6-7.

result as she understands it. She has an order of reasons that connects a series of actions and knowledge of how to produce changes.

She is the origin of change because her medical know-how explains why certain changes occur in situations involving that object, e.g., the patient who suffers chickenpox has fewer spots and less fever. For example, when a teacher intends to teach and starts to say some sentences on the topic of “Jurisprudence” to her pupils, we say that she is teaching. She is the origin of change in the pupils who are the objects of change. Thus, the students begin to understand the topic and have a grasp of the basic concepts.³³ Similarly, when legislators create the law and judges decide cases, they establish rules, directives and principles and these rules, directives and principles can be found in statutes and case reports. Can we say that legislators and judges have reached the end of the process? No, we cannot: statutes and case reports do not represent the end of the process since citizens need to comply with the legal rules and directives and perform the actions as intended by the legislators and judges. We say that legislators and judges are the origin of change because they know how and have an order of reasons that enables citizens to comply with legal rules and directives. The order or reasons as good-making characteristics ground the rules, decisions and legal directives. In parallel to the situation of the teacher, I cannot say that I am teaching unless my pupils begin to understand the topic that I am teaching. Thus, the legislator cannot say that she is legislating and the judge cannot say that she is judging, in paradigmatic cases, unless there is some performance of their actions by the addressees as they intend.

The distinction between potentiality/actuality clarifies the structure of practical reason as a capacity that is actualized when we act intentionally. We can now understand that the features of an intentional action identified by Anscombe can be illuminated by the potentiality/actuality distinction. The idea that the former stages of an intentional action are swallowed up by the later stages is explained by the idea that motion is constitutive and not privative. It is not that when I begin to act I do so as an irrational or arational being, and that when I finish acting I am a rational being, or that I go from non-intentional to intentional action, but rather that I go from being a rational being and *potentially* intentional action to being a rational being and *actual* intentional action. Later stages begin to actualize something that was potentially there. My practical reason was always there *potentially* and the

³³ Makin argues that the teacher analogy is intended to show that the teleological perspective is equally appropriate for other-directed capacities and self-directed capacity: see Aristotle, *Metaphysics Theta* (n. 27) 198.

intentional action actualizes an order of ideas provided by my practical reason. For Anscombe, intentional action is something *actually* done, brought about according to the order conceived or imagined by the agent. If practical capacity is understood in the light of the general scheme of actuality/potentiality, then intentional action involves knowledge that is non-observational, but it might be aided by observation. In acting intentionally, I am exercising my practical reasoning capacity and this capacity is in motion. This motion is represented at the midpoint—*after* I potentially have an intention to act and *before* I have reached the result of my intentional action. It is not that the forming of an intention from nothing to something is a *magical* process. *It is rather that I potentially have the power to intend which in appropriate circumstances can be exercised.* As being in motion, I am the agent who knows *what* she is doing and *why* she is doing what she is doing, but if I observe myself doing the action, then I have stopped the action.³⁴ There is no action. There is no more motion and no exercise of my capacities. Finally, Anscombe asserts that in acting intentionally we exercise our practical knowledge. Because we are the kind of creatures that we are, we can *choose* or *decide to bring about* a state of affairs in the world. We choose according to our reasons and practical knowledge. Practical knowledge is potentially in all human beings and when we decide to bring about a situation or do a certain thing, then we actualize this potentiality. We can direct our actions to producing either of two opposing results (e.g., health or illness, ignorance or knowledge). By contrast, non-rational creatures can only produce one result under normal circumstances and with no impeding conditions (e.g., the bee pollinating the foxglove). It should be noted that to have an actual capacity, such as practical reasoning and the capacity to act intentionally, does not mean that A can Φ , nor that A will Φ if there are normal conditions and no impeding conditions. Instead it means that *A will Φ unless she is stopped or prevented.* Thus, once our practical reasoning capacity begins to be actualized, it will strive to produce or do what A has conceived. Once A decides or chooses to act then a certain state of affairs will be produced unless she is prevented or stopped. Intentional action and practical reasoning are not dispositions like being fragile or elastic, nor are they possibilities that something will be done. They are powers.

Now that we have grasped the idea of potentiality/actuality as the general scheme for explaining the structure of practical reason, we can turn to the problem of authorship of institutional facts.

We could say that within this conception of intention the process of practical reasoning runs parallel to the intention. The process is understood as the

³⁴ See J. David Velleman, *Practical Reflection* (Princeton University Press 1989).

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order of reasons, including values, ends, and/or principles that the agent conceives he or she is bringing about. The *effect* (i.e., the *physical or empirical aspects* of an omelet, coffee, tango dance, law, games, a banknote and so on) are unintelligible without an understanding of the process, i.e., intentions that run parallel to practical reasoning. The process is not something external or contingent to the effect. On the contrary, the process illuminates the effect and in some sense, the effect is swallowed up by the process. We can say, therefore, that the principles of the different artifacts, including the institutional facts are in the author since he or she knows *practically, i.e., in terms of an order of the reasons*, what he or she is producing. On this account the agent who exercises his or her intention as running in parallel to practical reasoning is genuinely a *producer*. Intention is not what is expected nor the standard against which we will assess the effect. Neither is it only a mere mental state that has a theoretical stance that randomly causes an effect which cannot clearly be connected to its cause, i.e., intention as mental state. On the contrary, it is the agent exercising her or his practical capacities that is truly the creator of the effect (i.e., the physical or empirical conditions of the artifact) which cannot become intelligible and be understood without looking carefully at the process. Under the appearance of a contingent assembly of empirical or physical conditions (which, in the case of a law for example, would be the relevant acts of parliament, the bodily movements of the citizens following the law, and the language of the law) lies an *order* that is provided by the agents. They are the origin of what they produce and the production is due to a specific process, i.e., practical reasoning. The process gives intelligibility to the effect.

If law is a specific kind of artifact, i.e., an institutional fact, then it is created under the OMELET type of reasoning. Legislators and judges engage in reasons, including principles, values, and ends, that they aim to bring about and imagine an *order* to produce it. Intention is neither granted nor given, and nor is the expected result against which we ought to interpret the law.

The “background abilities” advanced by Searle are actually part of intention as a process conceived as the structure of practical reasoning. They have both a causal and functional level *at the same time*.

This chapter began with the question of how intentions can create artifacts. The answer provided is that intentions create artifacts because intentions involve practical reason and practical knowledge. To adequately explain practical reason, the empirical model that reduces reason to a bundle of experiences and effective causation of prior mental states seems unsatisfactory. However, it is not sufficient to take intentions and practical reason for granted and to argue that they are a given phenomenon, whose conditions of possibility explain the given phenomenon. This solution avoids the question of how our intentions and practical reason create artifacts.

By contrast, we have argued that intentions create artifacts because intention as practical reason is a capacity. Like all capacities, e.g., speaking a language, practical reason can exist in two forms, i.e., potentially or actually. We have explained in detail the metaphysics of potentiality and actuality but we have also shown that this capacity is actualized to produce effects or ends. These ends are values or principles that are conceived and known by the agent.

Similarly, we argue that law is an artifact because its key feature is that it performs the intended function, but the question that then arises is how law as an artifact is created by intentions and practical reason.

Our argumentative strategy has been to bring attention to the dynamic structure of practical reason and to show that the underlying structure of complex artifacts, including legal systems, is the structure of practical reason. Law-makers create law as an artifact invoking good-making characteristics and making it possible for citizens to understand the reasons of the law as good-making characteristics. We have focused on the idea that law is an activity that unfolds within the structure or order of reasons as values and principles. However, law-makers can exercise their practical capacity in a defective way. If the citizens of a legal system, e.g., the European Union, feel *systematically* alienated from the laws imposed on them and cannot avow the ends as good-making characteristics that law-makers intend to produce, we confront, most likely, a marginal case of a legal system. I have explained elsewhere that marginal cases arise due to the inversion of values, the misunderstanding of good-making characteristics in law, and the defective realization of elements that constitute the Rule of Law, e.g., clarity, coherence, and so on.³⁵ One might object that the normal citizen cannot have access to the technicalities of certain laws in complex legal systems. If the law is excessively technical and there is no *logos* in terms of values that can connect to the practical reasoning of the citizen, then one might say that the practical reasoning of the law-maker has been defectively exercised. Law-makers can fail because of a defective exercise of practical reason.

Let us take a paradigmatic example of intentions and practical reason creating law as an artifact according to the principles and values of the law-maker. Let us take the EU Toy Safety Directive 2009/48/EC. Chapter 1 of the Directive establishes the subject matter, the scope of the Directive, and the definitions used by it, e.g., risk, harm, hazard. Chapter 2 establishes the obligations of economic operators. Chapter 3 describes the rules for conformity of toys, including warnings. Chapter 4 indicates how the conformity

³⁵ See Rodriguez-Blanco, *Law Under The Guise of the Good* (n. 15).

assessment will proceed. Chapter 5 describes the notification of conformity assessment bodies, and Chapter 6 considers the obligations and powers of the Member States. The final chapters concentrate on committee procedures, administrative provisions, and transitional provisions. Article 2(1) indicates: “This Directive shall apply to products designed or intended, whether or not exclusively, for use in play by children under 14 years of age.” Economic operators are defined in the Directive as “the manufacturer,” “the authorised representative,” “the importer,” and “the distributor.” A “chemical toy” is defined as “a toy intended for the direct handling of chemical substances and mixture and which is used in a manner appropriate to a given age-group and under the supervisor of an adult.” “Harm” is defined as “physical injury or any other damage to health, including long-term health effects.” Article 10 (2) establishes the essential safety requirements: “Toys, including the chemicals they contain, shall not jeopardise the safety or health of users or third parties when they are used as intended or in a foreseeable way, bearing in mind the behaviour of the children.”

Despite the complexity of the Directive, the ends as good-making characteristics that the law-maker intended are clear. If I am a manufacturer, I am able to avow the ends of the Directive as ends with good-making characteristics. I manufacture toys with chemical substances and need to ensure that these substances do not cause harm to children. The law-maker has created the Directive as an artifact with an underlying *logos*, *which is that the health of children is a value or good*. Of course, it might be that as the owner of a toy manufacturing company I am completely insensitive to the health of children, but this only shows that I fall short of the good exercise of practical reason.

5. Conclusions

I have argued in favor of a model of intention as diachronically directed to an end. Thus, intention is conceived as an activity, process, or bringing about of an object or state of affairs. This model explains how we effectively produce artifacts and specific kinds of artifacts which are institutional facts. I have rejected the model of intention as a mental state since it cannot explain how mental states are effectively connected to its *intended* effects. We are tempted to add something such as “volition” to re-establish the causal connection between mental states and effects but the idea of “volition” as an entity that operates within us has been criticized by authors such as Wittgenstein and Ryle. The alternative solution advanced by the classical tradition and some contemporary authors, such as Anscombe, provides the idea of intention as a

process of bringing about something. Intentions run parallel to our capacities for reasoning and this process creates an order to reasons that makes intelligible the product of the process. I have used this model to illuminate the idea of artifacts, including institutional facts. I have also rejected the idea that intentions should be reduced to theoretical explanations as expected results or should be understood as *given or presupposed*.