

What is a (good) institution?

Institutions are the backbone of social reality; they add form and stability. Since they are thus part of the infrastructure of social life, exploring the conditions of their success or failure is a question of genuine interest to social philosophy. Institutions not only make up a significant portion of the conditions under which individuals live their lives-- rather, as has been said many times, we are in fact, confronted with them literally “from the cradle to the grave”: it is impossible to avoid them. But they furthermore also belong to what Axel Honneth called the “social conditions of individual self-realization“. If we follow Honneth’s characterization of the particular perspective of social philosophy, we can distinguish between the issue of “good” institutions, or conversely the specific “pathologies of institutions”, and other problems. From this perspective, institutions are not primarily seen in the context of the problem of the stability of political systems. Their legitimacy and their just constitution is not the only point of interest. There are ways in which institutions can fail or involve a pathology, which cannot be fully covered by asking whether they are legitimate, or whether they are stable – although these questions always play a part. It is of course possible for an institution to fail due to instability; and it is also possible that an institution is not successful because it is unjust and supports an unjust social system. However, the perspective of social philosophy also takes institutions as such into consideration. That is to say: It asks whether they are good or bad both *as* institutions and whether they contribute to the good life of the individuals that are shaped by these institutions and also constitute them. This goes hand in hand with the idea that institutions are not merely neutral intermediaries of our goals or impartial distributors of social goods and liberties. If the issue of the just arrangement of social relations concerns the basic institutions of society, then the implementation of the principles of justice depends on the form of the institutions themselves, i.e. it depends on what these institutions *are* as institutions, and what they can accomplish as institutions. But if this is the case, then we cannot regard these institutions simply as a *black box*. In other words, we cannot stop at evaluating the effects of an institution, but instead we must also consider the social-ontological fundamental problem of what an institution actually is, how it operates and how it affects things – and based on this, we can ask whether it is good or bad *as* an institution.

In this paper, I would like to present some preliminary remarks and clarifications concerning the philosophical understanding of what a social institution is and what can cause it to fail – as an institution –, and I will focus primarily on two aspects. *Firstly*: institutions are characterized by the fact that they are “simultaneously given and made” in a way that warrants further exploration. They are the results of human actions, but in many ways, we cannot fully avail ourselves of them (they are, with the German term, "*unverfügbar*"). *Secondly*, this aspect of institutions is linked to a specific way in which they can fail: institutions can decay or “erode” until they are “emptied”, lifeless or frozen.

In the first part of my paper, I will discuss *what an institution actually is*, starting from our everyday use of this notoriously vague concept, and in the second part I will follow this up by analyzing *how institutions affect things*, what they can accomplish and what they do. Based on the core elements of what constitutes an institution and the process of institutionalization I will then proceed to discuss the motif of autonomization and de-animation (as one way in which institutions decay or erode), and use my analysis of this kind of failure to determine conditions that enable institutions to be successful or good.

1. What is an institution?

A university is an institution. Marriage is an institution. Property is regarded as an institution, but so is slavery. Theaters and ministries, prisons and hospitals, the European Court of Justice and the German Film Award, the UNO and the World Bank, they are all institutions. Moreover, we often consider certain arrangements – ranging from the German tradition of making Christmas cookies in kindergarten to the perennial World Social Forum – to “already have become an institution”. Even if some of these examples may illustrate a metaphorical or derivative use of the term, they can still teach us something about the character of what is at stake when we consider the concept of institutions. What do these everyday ways of using this term tell us about the content of the concept of institution?

Claiming that making Christmas cookies in kindergarten is an “institution” is probably only based on a loose connection to the main content of the concept. Still, this use of the term points to the fact that this is an activity which is repeated every year, which follows a relatively uncontroversial procedure, and which is more or less predictable. It has become a habit for those who participate. To say that it is an institution also implies that participation is expected. There are *mutual expectations of a particular behavior* and a certain (admittedly not very strict) normative pressure.

The issue gains in complexity when we respectfully say that the World Social Forum succeeded in becoming an institution. By this we mean that a meeting point of loosely connected social movements has become an arrangement with a stable organization and activities that we can to a certain extent plan and predict. It also points to the fact that in the course of its existence, the World Social Forum has gained a certain influence and *effectiveness*; this is illustrated for example by the fact that its representatives are now asked to speak at the official meeting of the World Bank. This last point tells us that to ascribe the status of an institution to a social entity implies something like *public recognition*.

We call marriage an institution because it enjoys public recognition, and moreover, it is legally and “conventionally” codified, in contrast to other informal types of cohabitation. This tells us that legitimacy might be another aspect of institutions. It is no accident that in German, one used to call marrying “legitimizing” the relationship. Even today the public debate about same sex marriage shows that the institution of marriage is still connected to a variety of claims and entitlements – no matter how antiquated it appears to be in other respects.

However, the example of marriage also confronts us with another point: one characteristic of institutions is the fact that the institution and its “content” can become separated. Thus, a marriage can sometimes outlast its “living” meaning – viz., love. When this happens people sometimes say: “We are really only married on paper.” (The young Hegel called this phenomenon “positivity”, and later I will return to this point to discuss how we should understand this.)

Finally, we turn to some entities that surely belong to the core of the concept of an institution: the European Court of Justice, prisons, schools or hospitals. Aside from the fact that these entities are also publicly recognized and designed for stability, and aside from the fact that the functioning of these institutions is also characterized (idealiter) by regular, predictable routine procedures – what other additional elements can we observe here? Firstly, there is the fact that we are dealing with complex *internally structured entities* that display formalized procedures and an internal division of labor, which implies a sectioning into areas of specific function and competence. However, a further characteristic which did not explicitly appear in the examples discussed so far, is particularly salient when we consider these entities: the element of delegation and correspondingly the *substitutability* of the individuals participating in the institution. Every person who occupies a certain position in such an institution should act similar to anyone else in this position. In this type of institution, actions must be regulated in

such a way that the actions of an individual agent of the institution are predetermined and predictable. This goes hand in hand with something called the “suprapersonal” character of the institution, which can be spelled out as a “split into person and role” or office holder. In institutions, individual persons act, but they do not act *as* individual persons. This is partly responsible for what might be seen as the particular “rigidity” of institutions. Due to this, we might be told by a member of an institution: “Personally, I’m with you; but as a bearer of institutional responsibility I cannot grant you this subsidy.”

There is another element connected with substitutability: institutions can make *promises* and they can be held *responsible*. A person can be “institutionally responsible” without actually having had a part in the events in question, if she or he occupies a certain position in a (hierarchically structured) institutional arrangement. This is why a department head is responsible for misdemeanors of his subordinates, even if she was not aware of them. This is to say that the question whether one can be made responsible for something one did not know and could not predict, and the connected question whether one is obligated to *know* certain things, two questions fiercely debated in moral philosophy, are always already answered in the case of institutions. The particular form of institutional responsibility is part of the character of every institution. Conversely, it is a sign of the decay of an institution if this responsibility can no longer be ascribed. The institution thus presents itself as something like a person – an entity that is capable of promises, goals and action.

Core elements of the concept of an institution

These preliminary thoughts have yielded a set of characteristics that seem to belong to the institutional character of a social entity: their regularity, and linked to this the formation of habit and stability; the existence of mutual behavioral expectations and the normative pressure that entrenches them; the internal structural nature of institutions; the functionality of these structures, encompassing a differentiation of roles or status positions; and finally their predictability, the suprapersonal element, the substitutability and the distinct structure of institutional responsibility as well as the element of public influence and recognition.

This leads me to the following preliminary definition of “institutions”:

Institutions are habitual arrangements constituted through social practices, that consist in more or less complex systems of stable mutual behavioral expectations and are characterized by public influence and recognition.

Depending on the range and internal differentiation of the roles assigned by the institution or the institutional positions, there are *more and less complex* institutions, and depending on how strong the expectations directed at the social practices they encompass are and the means by which they are brought to bear, there are *stronger and weaker* institutions. Institutions are therefore a gradual phenomenon. They are entities made up of social practices and norms, or “frameworks of social life” that have solidified into a certain – institutional – form. Consequently, we can distinguish between various degrees of institutionalization and thus between different “aggregate states” of social practices. But what happens when a – not institutionalized – social practice is transformed into an institution or a institutional practice? What exactly does this solidification and the distinct (normative) *status* of an institution consist in?

Several aspects come immediately to mind:

Firstly: the *instituted* character of institutions. Institutions are created, they do not evolve unregulated, naturally or spontaneously; instead they are “set into work” and designed. One might say that institutions are *set up* or *established* – i.e. instituted. Even when they originate in unregulated spontaneous activities, as in the case of the World Social Forum, there is a founding moment. The fact that institutions can be *abolished* as well as created points to this aspect of foundation. In contrast, social customs and conventions or forms of life change, but they are very rarely abolished (and even more rarely successfully).

Secondly: a second possible distinction of institutions from other types of social practice is their *codified* character. This is paradigmatically exemplified in the legal codification – there is a reason why the founding figure of the legal theory of institutions, Maurice Hauriou, stated: “Institutions are born, live and die juridically.” But this understanding is too narrow if we also want to recognize arrangements as institutions that rely on more informal types of codification, but which are nevertheless more binding and especially more explicit than other often only implicitly regulated formation of practices. Still, the legal codification and the sanctioning of deviant behavioral patterns associated with it greatly inspire our everyday understanding of what characterizes the institutional character of an arrangement or a social practice, and this is so because it does something that is fundamental to all institutional actions in a particularly tangible and obvious way. To wit, the legal codification of certain acts is a specific type of something that John Searle described as the *ascription of status functions* and which he regarded as the basic element of the “constitution of social reality”. The logical structure of an institutional fact consists, according to Searle’s much debated

approach, in the ascription of status functions in the form of *x counts as y in c*. Such an ascription might say: “This printed piece of paper counts as money in Europe.” This kind of ascription, and only this kind of ascription, establishes the status of an institutional entity – in our example the status of money. Every institution (in the sense that I am trying to capture) is a complex formation of such ascriptions of status and the powers and expectations associated with them. This codification need not be a legal system, but it has to be collectively accepted in some way.

These observations already point to the particular accomplishment of institutions, and this brings us to the second part of my discussion.

2. What do institutions accomplish?

What do institutions accomplish? Which of their characteristic qualities account for the fact that they seem so very essential for the fabric of the social world? There are two factors in particular that seem to be crucial in this respect.

Firstly: Institutions can posit *meanings*. They have the power of definition. They “say what is and what is important”. Only within an institutionally constituted reality can we say: “This is a marriage.” “This is a lecture.” “This is a search committee.” Only then do we regard something *as* a marriage, *as* a lecture, or *as* a search committee, and behave accordingly. Through these ascriptions of status we create something that did not exist before or without them, but which is just as powerful as the “real reality” that confronts us independently of an observer. The institutions make up the “fabric” of our social world, and it is more tightly woven the more such institutions there are.

And they not only weave the complex network of the social, but they create it as a normatively regulated and *ethically closely-knit* network. Institutions include criteria for what it means to belong to them, and they also have certain criteria for what it means to satisfy these requirements well. The two cannot be separated. It is characteristic for institutions that one can criticize them with remarks like: “You can’t really call this a marriage anymore.” or “Is this supposed to be a lecture?” This means that we can judge them according to certain expectations that are included in them – and this leads to the philosophically complex situation that (as Searle explained) in this special case one can derive an *ought* from an *is*.

Secondly: institutions *stabilize* the social world. At least according to a prominent interpretation of the problem of institutions, the constancy and habituality characteristic of

institutions contribute to the stability of the social world. However, both the establishing of accountability and the suprapersonal aspect described earlier can also create stability. When I deal with an institution, I know *what I am dealing with* and I also know without further reflection *what I have to do*.

That institutions thus have a “burden-relieving function” is probably the most famous and influential idea of Arnold Gehlen’s theory of institutions. Gehlen accorded the existence of institutions an anthropologically “deep” foundation: he claims that the constitutive human lack of instincts necessitates this kind of burden-relief. However, the implications of this idea of relieving a burden are problematic. Gehlen’s almost diabolical talk of the “consuming” power of the institution as our “undoing” which we most nevertheless embrace is evocative but off-putting. It seems to advocate an unconditional surrender to the authority of the institution. But even more importantly, Gehlen’s suggestion is anything but clear, and it is not without alternatives.

What does this burden-relieving function of institutions actually consist of, according to Gehlen? Its objective, objectifying character sets a course for the actions of the individual (analogous to instinct) and this renders the „subjective exertion“, the reflection on one’s own actions, unnecessary. The legal and moral philosopher Joseph Raz gives us a considerably more restrained description of the issue: institutions are systems of “exclusionary reasons”. These “exclusionary reasons” are reasons of the second order which affect other reasons by *not* letting them become active. Raz argues that sometimes it is not rational to consider every possible reason for an action. Even the smallest formation of habit can be rational due to the time and effort it saves. Thus it can even be rational not to listen to good reason you actually *know*. Raz’ pertinent example of this is a deferring of reasons that conflict with one’s compliance with an order, in favor of the exclusionary reason of compliance with the military command hierarchy, and this leads us deep into the (double-edged) logic of the institution. Institutions also suspend reflection in a way that itself has reasons and they thus limit the space of practical questions. Institutions always also claim a rationality that supersedes the particular case in question, in the interest of - institutionalized, of course – procedures. It is a matter of opening up possibilities *qua* limiting them, of making actions possible by restricting the freedom of action.

However, the lack of pathos and the substitution of “shallow” practical considerations for the anthropological foundation are not the only things distinguishing the description following Raz from Gehlen’s approach. Another difference is that we stay within the space of reasons

when we comply with “exclusionary” reasons, rather than being forced to open up a dichotomy between reflection and institutional reasons. We are not dealing with a simple suspension of reasons, but rather with a certain kind of *hierarchization of the space of reasons*. This however has certain implications for the evaluation and evaluability of institutions, which is in turn a first step to approaching a positive account of institutions, which means an understanding of institutions that would perceive them not only as a force “restricting” the intentions of individuals, but also as a precondition of realizing and embodying their reason based desires.

This brings me to the third part of my remarks and to the question what characterizes a good institution and conversely what can lead to its failure.

3. Good and bad institutions

I would like to remind you at this point that my question about good and bad institutions is not aimed at their effects or contents. Of course slavery is a bad institution, but maybe it is not bad *as* an institution. (Or at least this is not the factor I want to discuss in this paper.) I am concerned with distinctly institutional success or failure and with the specific quality of institutions as social structures.

But how can an entity be good or bad, or successful or a failure *as* an institution? Is it not true that institutions can only *be* or *not be*? Gehlen’s theory of institutions does not leave a lot of room for qualitative considerations in the evaluation of an institution between the fact of stability and the fact of instability; and Searle’s perspective also posits that institutions are either there (i.e. operative) or not there: either the ascriptions of status have an effect or they do not, or at any rate not any longer.

There is a way I have already mentioned to determine deficiencies of institutions: the Hegelian criterion of “positivity”, or the emptying and de-animation of institutions, which is contrasted with a slightly vague picture of a “living” institution or a spirited identification with an institution. On a phenomenological level Hegel’s characterization accurately describes certain entities and it is hard to deny that they exist and pose certain problems. I already mentioned marriage that exists only on paper, and within the area of democratic participation, institutions that endure (and are legitimate), but seem strangely empty, are ubiquitous. (For the young Hegel, Christianity was the paradigmatic example of an institution

that is still posited, or valid, but which is in danger of losing its living meaning and the living support of its participants.)

But what does this intuitively plausible motif mean? How should we understand the claim that it is possible that “life has fled from an institution” – an idea that in Hegel’s writings should not be understood in the context of the philosophy of life, but rather as tantamount to a deficiency of rationality?

If we want to focus on living *within* institutions, rather than on the idea of returning the (solidified) institution to the more liquid pure practice, we will have to further explore the split of person and role embedded in institutions. After all, the fact that human actions are “objectified” in institutions, and the possibility of a growing autonomization are on the one hand a crucial factor for the productive and positive effect of institutions. But on the other hand, they are the source of the problems of deterioration, emptying and erosion I already mentioned. This means that we have to distinguish between objectivization in general and (bad) positivity. To do this, we must first bring the moment of “autonomization” into closer focus.

Autonomization as the Paradox of Institutions

A number of writers described this moment of autonomization in the context of institutions. Thomas Ferguson articulated it succinctly in his *Essay on the History of Civil Society*: „[N]ations stumble upon establishments which are indeed the result of human action, but not the execution of any human design”. In the *Social Construction of Reality: a Treatise on the Sociology of Knowledge*, (which, as the title suggests, has a lot in common with Searle’s approach) now a seminal work in social phenomenology, Peter L. Berger and Thomas Luckmann construct their entire analysis of “institutionalization” around the objective/objectifying character of institutions, or the fact that even though they are created and reproduced by human beings, institutions acquire an inescapable “non-human facticity”. Berger and Luckmann call this process of objectivization “the paradox that man is capable of producing a world that he then experiences as something other than a human product”, or even of “creating a reality that denies him”.

And indeed, the descriptions we find in Berger and Luckmann’s as well Ferguson’s writings suggest a paradox. If my own actions acquire a power I cannot withstand, which therefore no longer seems to be my power, i.e. a power whose source “I myself” am, then I would cease to be the author of my own actions, although I am the one who acts. And when Ferguson

described institutions as the result of human *action*, but not the execution of any human *design*, he probably did not just mean that we are dealing with actions without intent. He suggests that the person in question did follow an intention or design, but in the course of this the actions gained a certain independence in such a way that the result of that person's actions can no longer be understood as a realization of the intentions she originally followed.

But of course this is not really a paradox. We can solve this problem as follows, using Searle's language: if institutions are based on the collectively accepted ascription of status functions, then they are "human made" or artificial because only human beings or collectives thereof can establish such ascriptions of status in a more or less explicit mutual agreement. This status – for example functioning as money – does not lie in the things themselves. At the same time, the institutional facts we create in this way are recalcitrant and not fully available to us. Searle introduced a distinction that might help us understand this: institutions are *ontologically subjective* (i.e. not simply there like a mountain exists, but rather dependent on these ascriptions), but they are at the same time *epistemologically objective* (or not dependent on our subjective attitude towards them). We human beings are responsible for the institutional status of the social entities surrounding us, they depends on us, but not in the sense that an individual could simply deny their validity. The ostensible paradox dissolves into the categorical distinction between the ontological and the epistemological perspective. Thus, institutions are not both subjective and objective, both given and created in the same respect, but in two respects that we have to distinguish.

Therefore, if one should ask how the moments of autonomization described above are possible, we can answer: due to the fact that through (collective) action something epistemologically objective was created, which acquired an independent existence, even vis-à-vis the very persons who brought it to life.

Concealment of artificiality as an institutional pathology

This brings us to the question of why this should render institutions problematic (in the sense of a source of badness). The reason for this is the following: the fact that such an institutional objectivity emerges is per se unproblematic. The problems arise when the merely *epistemologically* objective entity presents itself as *ontologically* objective, as well. (This is the case if something like money appears to be no more fully available to us than a mountain. Without the benefit of Searle's distinction, Marx described precisely the same confusion when he talked about the fetish character and reification in reference to commodities.)

Accordingly, the dimension of autonomization is per se constitutive of and productive for the social world. However the kind of autonomization in which the subjective ontology of this epistemologically objective entity is denied, concealed, and negated is deeply problematic. In other words: institutions such as money, educational institutions, and the legal system (and maybe even marriage?) have to outlast my or our fleeting inclinations. If I or we could decide at will whether some printed piece of paper is in fact money, the institution of money would not exist. But on the other hand, it should be clear that it is within our collective power to redefine, modify or even abolish institutions that our ancestors created. This leads us to a first – comprehensive – point to consider when evaluating the quality of an institution: a good institution cannot be constituted in such a way that the fact of its artificiality, i.e. the fact that it is the result of human practice, that it was collectively instituted and accepted, is concealed.

We have thus returned to the issue of the *vitality* of institutions: the fact that institutions can be filled with “life“, or else devoid of it translates to the fact that this practical moment can become either effective, or impotent, and that it can be out in the open or buried. Spelling out the several possible ways of concealing this practical moment and the various consequences of doing just that could lead us to a number of considerations that are relevant for the evaluation of institutions. Thus, hiding the practical moment does not only lead to the institution becoming voided, in the sense of it having outlived its actual function or meaning, but also, quite differently, to the dynamic form of institutional autonomization that amounts to the individuals’ loss of control over the institutions they created.

If we continue to explore the problem of deterioration, we also end up returning to the (again Hegelian) assumption (or insight) that institutions are not only “burden-relieving”, but also empowering or enabling in a much broader sense, since institutions are preconditions of the realization of human freedom. This means that a good institution is one in which the individuals realize their interests and also one they can identify with. An institution without life remains an external duress. Such an entity is characterized by rigidity, which can be illustrated by the fact that things that are recalcitrant or do not follow the institutional procedures can no longer enter the institution’s field of vision. Another point is that the moment of reflection should never be simply written off. To make use of the terms introduced in my discussion of Raz: a lasting and too strong discrepancy between reasons of first and second order, but also the loss of reasons for the exclusionary reasons themselves are signs that an institutional rationality is becoming irrational.

Taken all together, this points us toward a fact that is grounded in the composition of the institution itself: an institution that is good in the sense I am trying to explore, i.e. a vital institution, does not consist in blind compliance with the rules and routines, but rather in an appropriating reactualization, and one might count the fact that an institution never simply reproduces itself, but rather constantly requires a new and appropriating interpretation and reactualizing affirmation as characteristic of institutional preservation itself. Considering the continually changing circumstances this also means that a (good) institution prominently features processes of learning and transformation – in spite of its stability. I would suggest that individuals are able to recognize themselves as authors of precisely this kind of institution – even though there can never be a simple case of authorship.

Conclusion:

In conclusion I would like to briefly outline two implications of my discussion.

I initially suggested that there might be a connection between the phenomenon of institutional deterioration and the issue of illegitimacy. Well, quite a few approaches within political philosophy determine the *legitimacy* of an institution via the authorship of individuals over the institutions that concern them. However, (according to my view) the recognizability and realization of this authorship turned out to be a criterion for the vitality of the institution, as well. This means that not only do the illegitimacy and the erosion or exhaustion of an institution often go hand in hand, there might also be a systematic link. Of course not all exhausted institutions are illegitimate and (unfortunately) not all illegitimate institutions are exhausted. Nevertheless, one could point out moments in which – in Habermas' language – motivational crises and legitimacy crises mesh. This suggests a reason why the character of institutions is an issue that has to be of interest to political philosophy even in a narrow sense: only if we do not treat institutions as neutral intermediaries distributing goods and liberties, but instead start evaluating their quality, the (institutional) conditions for a just structure of the basic institutions of a society come into focus.

But a second implication also presents itself: exploring the character of institutions leads us to a problem that concerns the social theoretical foundations of the project of the Critical Theory, and that also touches on an early intuition of Axel Honneth. An analysis of social pathologies guided by the concept of institutions would no longer need to place certain areas of our society - e.g. the economy – as “systems” in opposition to the lifeworld. Instead, such diagnoses would be confronted with a continuum of more or less solidified and more or less

good institutions and they could do justice to the obstinacy and autonomy of complex institutional procedures justice without forsaking the action theoretical foundation completely. The “colonization of the lifeworld” by the “system” that is at the center of the Habermasian diagnosis of pathologies would thus be replaced by the theorem of a “pathology of institutions”, and this would open up a wide field of possible social philosophical research.

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