

## *Nunc pro tunc. The Problem of Retroactive Enactments*

(Penultimate draft, to appear in *Philosophia*)

**Abstract.** In this paper, I present a problem for the realist with respect to the institutional sphere, and suggest a solution. Roughly, the problem lies in a contradiction that arises as soon as institutional contexts are allowed to influence the institutional profile of objects and events not only in the present, but also in the past. If such "retroactive enactments" are effective, in order to avoid contradiction the realist seems to have to accept the unpleasant conclusion that institutions can create a past that has never been present. I will defend a solution which involves a distinction between temporal and atemporal types of institutional kinds that has, I maintain, independent interest.

**Keywords:** Social ontology, A- and B-theory, institutions

### ***I. Introduction***

In contemporary metaphysics, there is a debate on the ontological status of social kinds, such as gender, race, and sexual orientation. Roughly, the disputants divide in three: two realist options, and one anti-realist option. *Naturalists* think that social kinds are genuine natural kinds, which are grounded in non-social facts (e.g. the biological constitution of individuals). *Social constructivists* think that social kinds are real, but have a social ground (e.g., they are grounded in facts about what people think and how they behave). *Eliminativists* (aka *error theorists*) think that social kinds are categories of our naive way of thinking that track neither social nor non-social facts<sup>1</sup>. The status of *institutional kinds* — such as tax crimes according to a given legislative system, legally recognized marriages, and officially established capitals of culture — seem to be less problematic. At least, it is hard to think of institutional kinds in naturalistic terms, given that institutional kinds depend on institutions, whose nature is eminently social<sup>2</sup>. In the institutional realm the alternatives, thus, shrink to two: either the *realist* one (constructivism), according to which institutional kinds are real, although derivative and grounded in social facts<sup>3</sup>, and the *anti-realist* one (eliminativist), according to which talk of institutional kinds is a mere *façon de parler*.

Anti-realism has at least two serious drawbacks: (i) it compels us to reject the literal truth of many intuitively true claims concerning the institutional profiles of people, events and situations, and (ii) it clashes with the *prima facie* fact that institutional properties are causally and normatively efficacious, and resilient to change. Realism, according to which institutional kinds are real, although derivative on social elements, fares better in both respects. In what follows, I will present a problem for the realist and suggest a solution. Roughly, the problem lies in a contradiction that

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<sup>1</sup> See Haslanger (2006), Mallon (2006), Kitcher (1999), Hacking (1999).

<sup>2</sup> This is not to say that the inquiry into the way the institutional sphere depends on mental attitudes and behaviors is a trivial matter. See Khalidi (2013). On the ontology of the social and institutional sphere see Searle (1995 and 2010), Tuomela (1995), Gilbert (1989), Bratman (1992), Thomasson (2002 and 2003).

<sup>3</sup> On grounding see Correia and Schnieder (2013), Sider (2011), Fine (2001). I know that constructivism has often been construed in reductionist terms, rather than by exploiting the grounding relation (but see Haslanger 2006, who uses the relation of "being founded on" to characterize her version of social constructivism). If constructivism is not a form of eliminativism, I take the formulation in terms of grounding to be clearer.

arises as soon as institutional contexts are allowed to influence the institutional profile of objects and events not only in the present, but also in the past. If such “retroactive enactments” are effective, in order to avoid contradiction the realist seems to have to accept the unpleasant conclusion that institutions can create a past that has never been present. In §II I will state the problem for the realist. In §III and §IV I will defend a solution which involves a distinction between temporal and atemporal types of institutional kinds that has, I maintain, independent interest. In §V I defend my position from some obvious objections and make some considerations about the metaphysics of time that fits best with it: the B-theory.

## ***II. Institutional Realism and Retroactive Enactments***

Institutional kinds are not “natural joints” of reality. It is quite clear that without institutional contexts, which are collectively regarded as binding, and specific *enactments*, there would be no institutional kinds. I will use the term “enactment” to cover things such as laws, declarations, contracts, and the like which are effective, in a given institutional context, in creating a specific institutional status. The realist accepts this view, but rather than concluding that institutional kinds are not real, she thinks that institutional kinds are “non-natural joints” of reality. The realist idea can be fleshed out in terms of what grounds facts concerning specific instances of social kinds. For example, the fact that an individual *S* has committed a tax crime is not a brute fact but is partly grounded in the fact that *S* has done certain things, and partly grounded in the fact that in a certain relevant institutional context there is an enactment to the effect that doing such things is an infringement of the tax law. For simplicity’s sake, I will present the general thesis of institutional realism in terms of facts concerning the existence of *institutional entities*, namely instances of institutional kinds, such as the tax crime committed by John on a certain occasion, the marriage between John and Mary, and so on.

**(Institutional Realism)** Facts about the existence of institutional entities are partly grounded in facts about material individuals and events (often, human actions) and partly grounded in facts concerning enactments in institutional contexts<sup>4</sup>.

An analogous view has been proposed for other entities. For instance, some philosophers think that ordinary material objects exist, although they are derivative on the particles that constitute them. Therefore, philosophers who accept some derivative entities at least might welcome Institutional Realism. Unfortunately, institutional entities present a complication. Usually, what exists

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<sup>4</sup> See Torrenco (2016). For the purposes of this paper, I am simplifying matters in at least two respects. Firstly, I am not interested in the role of collective intentionality in grounding the social and institutional sphere, and in particular in what it takes for an institutional context to be binding (see, for instance, the discussion on *shared agreements* in Gilbert 2006). Secondly, I limit my considerations to cases concerning the institutional profile of individuals and events (human actions in particular). The cases of “free standing Y-terms”, namely institutional entities that seem to have only enactments as grounds (e.g. corporations), would require some further adjustment. See Smith and Searle (2003). As an anonymous referee has pointed out, this limitation is somewhat infelicitous since the claim that (some) human actions are institutional entities is less convincing than the claim that money or debts are. An action that is described as an institutional entity (e.g., a crime) can be plausibly *identified* with a non-institutional action (e.g., a stabbing); and this seems to be a general reductionist strategy available to the anti-realist. However, my choice of examples is intended to be merely illustrative.

derivatively occupies the same temporal location — if not the very same space-time region — as the more fundamental entities on which it is grounded. Accepting tables as derivative entities entails accepting entities that exist when (and where) certain particles exist. Thus, the existence of tables is not problematic with respect to their temporal location (barring issues of vagueness of temporal boundaries). In other terms, that at a certain time  $t$  a table  $x$  exists and is grounded in particles  $yy$  is *entirely* a matter of what  $yy$  do at  $t$ . If  $yy$  at a successive time  $t'$  cease to do what it takes to constitute a table, then at  $t'$   $x$  will no longer exist; but what  $yy$  do at  $t'$  has no effect on  $x$  at  $t$ . Analogously, if  $yy$  do not compose a table at  $t$ , there is nothing that they can do at  $t'$  that makes it the case that at  $t$  a table existed.

Now, with institutional entities, things aren't always that simple. The possibility of *retroactive* enactments may lead to outright contradictory outcomes, if combined with a simple account of how the derivative correlates to its ground. Suppose that the decision of a court or a parliament can be retroactively affective with respect to the institutional status of a certain past event. For instance, suppose that at time  $t$  an individual  $S$  carries out a financial operation which at  $t$  counts as a tax crime. If tax crimes are partly grounded in the legal status of actions, and partly on facts about actions, then at  $t$  there is a tax crime. Now, suppose that later on, at  $t'$ , the parliament enforces a retroactive legislation to the effect that what  $S$  did at  $t$  does not count as a tax crime. At  $t'$ , the institutional status of  $S$ 's actions at  $t$  has changed to a profile that is incompatible with the existence of a tax crime at  $t$ . Thus, if we look at the legislation at  $t$  we should say that there is a tax crime at  $t$ , but if we look at the legislation at  $t'$  we should say that there wasn't a tax crime at  $t$ . Clearly, we cannot say both without contradicting ourselves<sup>5</sup>. And of course things might have been the other way around, and it might have been the case that according to the legislation at  $t$  there wasn't a tax crime at  $t$ , although at  $t'$ , after the enforcement of a retroactive legislation, there was a tax crime at  $t$ . And, again, we cannot say both.

### ***III. Atemporal and Temporal Types***

What should we say then? If we drop realism with respect to institutional kinds, we could relativize to time the social status of the actions of  $S$ . The case of retroactive enactments, then, wouldn't be metaphysically any more problematic than cases in which people change opinion with respect to a certain event: for instance, the birth of a woman changing from being considered an unremarkable event to being considered the birth of a famous woman. After all, the anti-realist considers institutional statuses as mental "projections", although of a collective kind, and is not compelled to say that anything more than a Cambridge change has occurred in the past. Certain things have passed from *being considered* in a certain way to being considered in a different, incompatible, way. Endorsing eliminativism might turn out to be the right thing to do. However, the kind of realism we are considering here looks reasonable enough for us to try to see whether it is possible to keep it even in the face of such a predicament. What then, if we stick to the idea that there are institutional entities and they are partly grounded in facts concerning enactments in institutional contexts?

In the cases of ordinary objects and the particles that constitute them, the problem does not arise because, as we have seen, the grounding facts and the derivative ones are temporally aligned. But institutional entities are grounded both in facts concerning actions or properties of material

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<sup>5</sup> For a discussion of the linguistic aspect of the puzzle, see Barlassina and Del Prete 2015, who focus on the fact that we ordinarily would say that "That is no longer a tax crime at time  $t$ " (see also footnote 8). See also Iacona 2016.

individuals, and in facts concerning enactments in institutional contexts, and — if retroactive enactments are allowed — the time at which the former facts take place may precede the time at which the enactment is made effective. Can we modify Institutional Realism in such a way that the facts concerning the existence of institutional entities are always temporally aligned with facts concerning enactments in institutional contexts? I doubt it, because I don't see how we could rule out, for *metaphysical reasons*, the possibility that enactments operate retroactively. It may be that such situations “feel” paradoxical due to their similarity with situations that are metaphysically absurd (aren't we kind of changing the past?), but in so far as their *practice* is not contradictory, then our metaphysics shouldn't make them so. (If retroactivity is bad for moral reasons, then it should be banned; but then it is metaphysically ok, since it would not make sense to prohibit morally a metaphysical impossibility). The problem is that institutional reality — both its present parts and its past ones — is dependent on the enactments of the *present* institutional context. Therefore, the present has an influence not only on what institutional entities exist in the institutional sphere, but also on what existed (and possibly will exist, but I won't be concerned with the future here). Can we make space for a backward influence of this kind, while keeping Institutional Realism?

My proposal of a solution to the predicament of retroactivity in the institutional sphere requires an articulation of the distinction between types and token of institutional entities. Generally speaking, institutional entities have a (finite) temporal duration: they begin to exist with certain acts and intentions, and they come to an end with other acts and intentions, or with the lack thereof. For instance, a marriage begins with a marriage ceremony, vows and a marriage contract, and it terminates either when one of the spouses dies, or when they undergo a divorce procedure. Of course, *tokens* of institutional entities exist in time in that way; *kinds* of institutional entities are abstractions with no existence in time. That I take to be uncontroversial (at least in one reading of the term “kind”). However, in the institutional sphere, it is useful to distinguish between two kinds of type. An *atemporal type T* is the possibility of there being tokens of institutional entity of type *T*. Atemporal types are individuated by sets of properties {P<sub>1</sub>, P<sub>2</sub>, ...}, which are inherited by the individual tokens *i* that instantiate them, *at the time* in which they instantiate them. Correlated to an atemporal type *T* constituted by properties {P<sub>1</sub>, P<sub>2</sub>, ...} there are token entities which have a “type-like” role with respect to the individual tokens *i* of *T*: the *temporal types T\** of *T*. Roughly, the temporal type of *T\** of *T* is an enactment (a law, a declaration, a contract) that specifies the properties {P<sub>1</sub>, P<sub>2</sub>, ...} of the atemporal type *T*, and establishes the existence of its tokens *i*. Unlike atemporal types, temporal types begin and cease to exist in time.

Consider the above example of a tax crime. There are atemporal types of different varieties of tax crime. For each of them, there can be a temporal type—a law, say—that exists for a certain period of time, and many individual tokens, the actual infringements of the law, that encode the features of the corresponding abstract type.

**Atemporal Type *T***

(possibility of action *x* to be a tax crime)

**Temporal Type *T\****

(law instituting tax crime of type *T*)

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**Individual Token *i***

(actual action of infringement of the law)

Now, the type-token relation, as standardly understood, holds between the atemporal type and the *individual* tokens (i.e. the institutional entities), but in order for an individual token to be there, there must be a temporal type (i.e. an enactment) that institutes it. Every individual token, thus, has (at least) one temporal and one atemporal type “correlated” with it. When an individual token of type *T* exists, it is always the case that the atemporal type *T* exists too, given that the atemporal types' existence is not time-sensitive. But what about the corresponding temporal type *T\**: does it

have to exist at the same time that the individual token  $i$  exists? The case of retroactive enactment seems to suggest that it does not have to. Let  $T_I$  be an atemporal type such that the action of  $S$  at  $t$  would count as a tax crime. If at  $t$  there is no temporal type  $T^*_I$  of  $T_I$ , it seems that at  $t$  there is no individual token of  $T_I$ . But if later on, at  $t'$ ,  $T^*_I$  begins to exist and is retroactively enacted, an individual token  $i_I$  will exist at  $t$ .

#### ***IV. Temporal Types and the B-theory***

The distinction between atemporal types and temporal types has clarified the mechanism through which institutional entities “come to exist” thanks to enactments in institutional contexts, but it has not brought us the solution to the puzzle yet. On the face of it, if institutional entities require both facts about individual things (at a certain time) and facts concerning enactments in institutional contexts, and if the former can take place in the past with respect to the latter, it seems that in the social realm the past can be changed. Should we accept such a conclusion? After all, in the institutional sphere, present enactments are privileged over the status of the past. This is not to say that, as in Orwell’s *1984*, institutions, by acting upon the present, can change anything whatsoever about the past, including erasing a person’s existence<sup>6</sup>. Yet, present enactments seem to have the power of shrinking or inflating the institutional domain not only with respect to the present, but also with respect to the past. I think that if we remain realist with respect to institutional kinds, this kind of backward influence would be highly revisionary with respect to our ordinary intuitions. Retroactive enactments would have the effect of erasing facts in the past and substituting them with “new past facts”, which would have the very peculiar characteristic of never having been present. I propose a more conservative strategy. Given the overall dialectic between the eliminativist and the realist, this should be congenial to the realist.

Institutional contexts can encompass *prima facie incompatible enactments* (i.e. temporal types). Two enactments  $T^*_1$  and  $T^*_2$  are *prima facie incompatible* when  $T^*_1$  is such that a certain  $i$  exists, whereas  $T^*_2$  is such that a certain  $i$  does not exist. If we allow both enactments to be the ground of institutional entities, we will end up with a contradiction. A natural way out is to relativize the existence of  $i$  to enactments. Assume that, as in the previous example, a subject  $S$  at  $t$  acts in certain ways with respect to his or her tax declaration.  $T^*_1$  exist at  $t$ , and it is such that  $S$  has not committed a tax crime at  $t$ , hence  $i$  does not exist. Later, at  $t'$ ,  $T^*_1$  no longer exists and  $T^*_2$  exists, which is such that  $S$  has committed a tax crime at  $t$ , hence  $i$  exists. Roughly, we could say that  $i$  exists relative to  $T^*_2$  but it does not exist relative to  $T^*_1$ . But then  $i$  begins to exist at  $t'$  as an event *in the past* (i.e. at  $t$ )! Simply by relativizing the existence of institutional entities to enactments, we do not get rid of the problem.

There are many ways to spell out the idea that the existence of institutional entities is relativized to enactments. For present purposes, the interesting distinction is whether an A-theoretic metaphysics of time or a B-theoretic metaphysics of time is assumed<sup>7</sup>. My main claim is that if we construe the relativization in A-theoretic terms, we are doomed to accept the unpalatable conclusion that the (institutional) past can change (in the sense that never-been-present entities can come to exist as past entities), whereas if we construe it in B-theoretic terms, we can make sense of retroactive enactments and institutional realism without abandoning ordinary intuitions about ontology.

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<sup>6</sup> See LePoidevin (2003).

<sup>7</sup> I am using a simplified version of the theoretic framework of Fine (2005). I do not discuss the “non-standard” views of tense realism here.

According to an A-theoretic metaphysics of time, the instantiation of properties is irreducibly tensed, and reality is composed by different tensed facts at different times<sup>8</sup>. This goes also for the instantiation of institutional kinds and therefore for facts about the existence of institutional entities (which are instantiations of institutional kinds). Given that  $T^*_1$  exists at  $t$ , and later at  $t'$  is substituted by  $T^*_2$ , in such a framework we should conclude that by going from moments after  $t$  in which  $T^*_1$  is still effective and in whose past (at  $t$ ) there is no  $i$ , to moments after (and including)  $t'$  in which  $T^*_1$  is substituted by  $T^*_2$  and in whose past (at  $t$ ) there is  $i$ , what has happened is that the past has actually changed. We have passed from a situation in which a certain institutional kind  $T$  was not instantiated at a certain time  $t$  in the past, to a situation in which  $T$  was instantiated at  $t$ . That is precisely the way to make  $T^*_1$  and  $T^*_2$  compatible that I claimed was too revisionary to be accepted.

What about the relativization within a B-theoretic framework? According to the B-theory, instantiation of properties is tenseless, and reality is composed by the same tenseless facts at all times. Thus, even if the two incompatible enactments  $T^*_1$  and  $T^*_2$  exist in distinct periods, in going from moments after  $t$  in which  $T^*_1$  is still effective to moments after (and including)  $t'$  in which  $T^*_1$  is substituted by  $T^*_2$ , the past won't change. In particular, it does not change what obtains at  $t$ : at all times, the two enactments  $T^*_1$  and  $T^*_2$  (respectively) partly ground two tenseless facts that obtain at  $t$  and are compatible with each other — namely the fact that  $i$  does not exist relative to  $T^*_1$ , and the fact that  $i$  exists relative to  $T^*_2$ . Thus, this strategy is more conservative than the A-theoretic one, in that it does not entail that in cases of retroactive enactments the past changes<sup>9</sup>.

### *V Defending the view*

An obvious objection to my proposal is that it *does* have a counterintuitive aspect too. In a B-theoretic framework, the temporal location of enactments is irrelevant to their being partial grounds for institutional facts. It follows that at  $t$ , when  $S$  is performing certain actions, it is a fact that  $S$  is committing a tax crime relative to  $T^*_2$  although  $T^*_2$  is yet to come (of course it is also a fact that  $S$  is not committing a tax crime relative to  $T^*_1$ , which already exists at  $t$ ). This is strange, because neither  $S$  nor anyone else would be in a position at  $t$  to claim that  $S$  is committing a tax crime

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<sup>8</sup> This is slightly inaccurate, because according to the traditional moving spotlight view (the version discussed in Sider 2011) qualitative properties are instantiated by objects tenselessly (and in a time-indexed way), with the only property that it is tensedly instantiated being presentness. However, the fact that presentness “moves” along the temporal series does make a serious metaphysical difference as to how reality is now (or with respect to the past). Hence, what follows is also relevant for this version of the A-theory. Notice that more recent version of the theory (such as Cameron 2015, Skow 2015 and Deasy 2015) all drop this aspect and concede that all instantiation is tensed. Thanks to a referee for having pushed me to be more precise on this point.

<sup>9</sup> An anonymous referee has correctly pointed out to me that there may be cases that require relativisation of statuses not to individual enactments, but more broadly to whole “institutional assets”, and hence require an approach that is more contextualist than relativist. For instance, imagine that in a certain country it is possible to backdate bank deposits. Accordingly, let us suppose that Mary never had much money on her bank account, but on day  $d_0$  Mary receives a deposit of 1.000.000\$ that is backdated to day  $d_1$  (one day before). The problem is to establish whether on day  $d_1$  Mary is very rich. And the problem for my account is that kinds like rich or poor are “multifactorial” in the sense that, usually, their instantiation is dependent on a variety of enactments and on their interactions, not just in the sense that they are relative to a certain set of enactments, but in the sense that they can be realized in different ways depending on the relevant enactments. I agree many institutional kinds are multifactorial in that sense, and they would require a sophistication of my account in the direction of contextualism. However, I do not think that the main point of the paper would be disrupted by such modification.

according to  $T^*_2$ . I have two remarks to make here<sup>10</sup>. Firstly, it is a consequence of the general B-theoretic framework that facts about the future are determined — in an absolute sense if the future is linear, and relative to possible histories if time branches<sup>11</sup>. If we accept that, then accepting that facts in the present that partially depend on future facts are determined (absolutely if time is linear, relative to histories if time branches) is not a further price to pay. On the other hand, the counterintuitive consequence of retroactive enactments in an A-theoretic framework (that the institutional past can be erased and substituted with a new one, which has never been present) has no similarity with what goes on outside the institutional sphere. This should also clarify why it is *not* relativizing institutional reality to enactments *per se* that allows us to avoid changing the past. Even if an A-theorist may insist that (assuming for simplicity that the future is linear) it is already now, at  $t$ , a fact that a certain enactment *will* take place at a future time  $t'$ , she cannot claim, when  $t$  is present, that the tax crime has a presently occurring ground, and so it presently exist in the same sense in which the legit act according to the enactment in force at  $t$  *presently* exists. Even if the metaphysical import of the present does not make a difference for what entities exist *simpliciter*<sup>12</sup>, it does make a difference for what facts obtain *simpliciter* (only the presently obtaining ones), and hence for what institutional kinds are instantiated *simpliciter*. Consider the spotlight metaphor, on which the A-theorists often rely: the whole succession of events exist, but only the present ones are metaphysically privileged, because they “shine” under the spotlight. In this picture, and given institutional realism, it is as if retroactive enactments had the power to sprinkle bits of “presentness” into the past, by changing the domain of derivative entities that existed<sup>13</sup>. That is something of which only the A-theorist have to give us an account. The B-theorist can exploit her usual resource.

Secondly, with respect to both the temporal and spatial location of events, there is a distinction between the regions that are, relative to a certain point in space and time, under the *de facto* control of an institution and those that are under its *de jure* control. Past events are always outside an institution’s *de facto* area of control, although not necessarily outside its *de jure* area of control. When a retroactive law  $T^*_2$  comes into existence at  $t'$ , the past is not affected (as B-theoretic institutional realism predicts, it is a fact at  $t$  that  $i$  exists relative to  $T^*_2$ ), the change pertains only to what the institution is now in a position to do under its *de facto* area of control, namely the present. In other terms, it is only at  $t'$ , when enactment  $T^*_2$  becomes effective (and  $T^*_1$  ceases to be so), that we can expect that  $S$  may face consequences (e.g. being fined, going to prison) for what he or she did at  $t$  relative to  $T^*_2$ , since only from  $t'$  onwards does the existence of a tax crime relative to  $T^*_2$  that  $S$  committed in the past have *de facto* consequences for  $S$ .

In the spatial case as well there are analogous cases of “displacement” between the *de jure* control and *de facto* control of an institution, and thus “changes” in the consequences that the existences of an institutional entity may have for a subject  $S$  depending on where  $S$  finds herself. Consider the case of Cyprus. The northern part of the island is under the *de facto* control of the *Turkish Republic*

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<sup>10</sup> Barlassina and Del Prete 2015 have objections to a solution parallel to the one I present here (and which they call the “relationist” solution to the puzzle). As I said, their focus is mainly on considerations about how we talk about the past in cases of retroactive enactments. Here I am focusing on the metaphysical problem for the institutional realist, and I have nothing to say about how well the proposed solution reflects our linguistic intuitions.

<sup>11</sup> The B-theoretic framework is compatible with a branching topology, according to which facts about the future are not determined absolutely but only relative to possible histories (Belnap 2001).

<sup>12</sup> I am assuming that the A-theorist here is not a presentist — namely, she is either a spotlight theorist or a growing blocker, but not a presentist. It should be clear that for presentism the problem is even more serious. See also Torrenço (2014).

<sup>13</sup> See note 8.

of Northern Cyprus, which also claims *de jure* control, but whose authority is not recognized by the Republic of Cyprus, which in turn has *de facto* control over the southern part only, and claims *de jure* control over the whole island. Imagine that at a place  $l^*$  located in the northern part, a person  $S$  does something that according to a law  $T^*_2$  of the Republic of Cyprus is a crime punishable by jail (whereas, according to a prima facie incompatible law  $T^*_1$  of the Turkish Republic of Northern Cyprus it is not a crime, if you like, but this fact is not crucial). Now, as long as  $S$  stays within the boundaries of the Turkish Republic of Northern Cyprus, although it is a fact that according to  $T^*_2$   $S$  has committed a crime punishable by imprisonment, he or she won't face any of the consequences of that institutional fact. The situation will change, of course, if  $S$  were to move to a location  $l$  in the southern part of the island. There, in a *de facto* area of control by the Republic of Cyprus,  $S$  could face the institutional consequences of the actions that he or she has committed at  $l^*$  — even if  $l^*$  is outside the boundaries of the Republic of Cyprus's *de facto* control<sup>14</sup>.

The analogy with the temporal case should be clear. Facts about institutional entities existing in a given location in space and time  $\langle l, t \rangle$  are partly grounded in what happens at that location, and partly grounded in enactments by institutions that have the location  $\langle l, t \rangle$  under *de jure* control. But effective consequences for subjects may depend on where and when they find themselves, in particular if they are under *de facto* control of an institution or not. Within a B-theoretical framework the analogy can be accounted for in a straightforward and elegant way<sup>15</sup>.

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<sup>14</sup> The A-theoretic metaphysics might actually seem to fit better with the intuition underlying the *de jure/de facto* distinction: the time of occurrence of enactments determines which institutional facts are *de jure* enforced, but only those grounded in enactment “under the light of the present” – as it were – are *de facto* enforced. This may be true (if the A-theory is true), but it would then the spatial case, in which the distinction *de facto/de jure* is clearly not grounded in some metaphysically substantive feature of reality (it's just a matter of where we find ourselves), would behave very differently.

<sup>15</sup> For comments on previous drafts, thanks to Dave Ingram, Davide Bordini, Nick Young, Samuele Iaquinto and an anonymous referee. Thanks to the project 2015-0746 (15-5-3007000-601) of Fondazione Cariplo and Regione Lombardia, and project 15-6-3007000-2021 of Università degli Studi di Milano for financial supports.

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