RUCH PRAWNICZY, EKONOMICZNY I SOCJOLOGICZNY
Rok LXXXI – zeszyt 2 – 2019

OLGIERD BOGUCKI

ON THE CONSTITUTIVE CORRELATION BETWEEN THE IDENTIFICATION AND INTENTIONAL EXPLANATION OF CONVENTIONAL ACTS*

I. INTRODUCTION AND KEY CONCEPTUAL ISSUES

This study is conducted within the framework of the broadly understood theory of conventional acts and deals with the correlation between identification and intentional explanation of these acts. The notion of a conventional act was introduced into the Polish theory of law in the 1970s.[1] It should be noted that the theory of conventional acts is still developing[2] and continues to be employed in the legal sciences in the analysis of their problems.[3] The concept of conventional acts was introduced for the needs of theoretical and legal analyses, however, it can be said that it has a wider cultural and philosophical significance. Therefore, the scope of the theory of conventional acts is closely related with the scope of considerations of other theories within other humanistic disciplines, and sometimes even overlaps with them.

For example, we can mention the theory of speech acts,[4] the theory of the institutional facts,[5] or the socio-regulatory theory of culture developed in the Polish philosophy of culture.[6] On the other hand, the scope of the theory of conventional acts is closely related to the scope of the problems considered within framework of legal theory on the law in force (e.g. the theory of acts in criminal law or theory of declaration of intention in civil law).

It is therefore evident that the existence of conventional acts is recognized in many theories in the fields of philosophy, the humanities and the social sciences. However, these diverse theories conceptualize the existence of these acts in a variety of ways, using different terminology. Due

* Translation of the paper into English has been financed by the Minister of Science and Higher Education as part of agreement no. 848/P-DUN/2018. Translated by Stephen Dersley.

[1] Nowak et al. (1972): 73–99.

[2] In particular: Czepita (1996); (2016); (2017); but also, for example, Patryas (2005) and Bator (2000); (2004).

[3] See, for example, Radwański (1977), and Janusz-Pohl (2017) (see the discussion of the literature on p. 21ff. of this work).

[4] Begun in the work of J.L. Austin, in particular Austin (1962).

[5] In particular: Anscombe (1958): Searle (1995); (2002); (2010).

[6] In particular: Kmita, Banaszak (1991).

https://doi.org/10.14746/rpeis.2019.81.2.5

to this, the consideration of conventional acts in this study is necessarily 'interdisciplinary' in nature. Nevertheless, I will focus not so much on the differences between the various approaches, but rather on the similar ways in which all of them view the existence of such acts and rules.

Therefore, in view of the above, some remarks of a conceptual nature are required at the outset. By 'conventional acts', I mean acts which are assigned a specific cultural meaning by rules. The rules for constructing conventional acts allow specific acts to be redescribed through their classification as performing certain conventional acts (these acts constitute the material substrate of the respective conventional acts). For example, the rules of speech ascribe a specific word, spoken under certain circumstances, the cultural meaning of the act of apologizing to someone, while the rules of law give cultural meaning to the act of concluding a contract in certain circumstances by nodding one's head. Since these rules constitute certain conventional activities, I will henceforth call them constitutive rules (following Searle's terminology).

Subsequently, a distinction should be made between questions of identification and questions of explanation. By asking the question: 'What did *P* do?', we want to ascertain exactly what act was performed by person *P*. Thus, we want to identify the act that was performed by *P*. These types of questions can be called 'questions of identification'. When, in turn, we ask the question: 'Why did *P* perform *A*?', we seek an explanation of the fact that *P* performed act *A*. This explanation may consist in referring to different types of facts, but explanations which identify the reasons why *P* performed the act play a key role, and then among these – explanations stating the person's intention. Such questions can be called 'questions of intentional explanation'. Despite their different content, questions of identification and questions of intentional explanation are interrelated, to a great extent. This connection becomes particularly important in the case of conventional acts. With such acts, we can observe that the answers to the aforementioned questions are to a large extent interdependent, and a special variety of this interdependence is constitutive interdependence. This paper is focused on an analysis of this interdependence, and attempts to outline its relations with regard to some basic issues which arise the field of action theory and the theory of explanation.

This article will address intentional explanations, that is, ones that refer to the person's intentions and their knowledge. For this reason, some attention should be devoted to the concept of intention itself. First, it should be noted that from a philosophical point of view this issue is rather controversial. The different views presented in the literature offer somewhat divergent answers to the question of what intention actually is. However, it can be said that contemporary philosophical reflection on intentions is based on the commonly accepted distinction of three contexts in which the word 'intention' appears.

The first (1) occurs when we say someone has behaved[7] in a certain way intentionally ('intention' as intentional behaviour). To put it simply, one can say that one has performed *A* intentionally when one has performed *A* with the intention of doing *A*. The second context (2) arises when we want to say that someone acted in a certain way with the intention of carrying out a further act in this way (one performs *A* with the intention of carrying out a further act, or to cause the effect *E* – 'intention' as the goal of the act). The third (3) in turn occurs when we refer to intentions concerning the future (*P* intends to do *A* in the future – 'intent' as a measure of future behaviour; intent for the future). Philosophical reflection on intentions aims to determine the mutual relationship between the indicated 'forms' of intentions and to find their common unity.

However, this article does not require consideration of philosophical issues related to intention (e.g. whether it is a separate mental state or not). It will suffice to point out that intention, whatever it is, always concerns an act. This is the case even with intentions regarding the future, although in such situations this act only amounts to planned future behaviour which someone intends to undertake. Therefore, in the formula 'intention *I*', *I* can be substituted by the variable *A*, as referring to any act, and this results in the formula 'the intention to perform *A*'. Thus, if the indication of a specific intention *I* is to be an explanation of intentional explanation, then it can be assumed that it is based on the indication of the intention to perform some act *A*.

It should also borne in mind that the logical structure of intentional explanation can be presented differently, depending on the adopted model of explanation.[8] The remarks contained in this study do not assume the adoption of a specific model, which, however, does not mean that they cannot be treated as one of the arguments when considering the accuracy of individual models. However, this issue needs to be addressed in a separate study.

II. THE INTERDEPENDENCE OF THE IDENTIFICATION AND THE EXPLANATION OF CONVENTIONAL ACTS

Analysing the relation between the question of identification and the question of explanation, it must be stated that the latter is undoubtedly dependent on the former (it is derivative in relation to the former). Obtaining a specific answer to the question of identification is a presupposition of the question of intentional explanation. Obtaining a true or false answer to the latter question is only possible after obtaining the answer to the former (the question about the intention to do *A* assumes that we have already established the performance of *A*).

[7] In subsequent sections, I will follow the terminological convention according to which 'behaviour' may consist of an 'act' or 'omission'.

[8] In particular, the following models should be indicated: deductive-nomological, semantic, explanation by specification, causal-mechanical. See Kuipers (1985); Vanderbeeken (2004).

In the case of conventional acts, it seems that also the former question is somehow dependent on the latter. Generally speaking, this dependency means that in order to identify the performance of a conventional act *CA*, it is necessary to refer to intentional explanation, and the outcome of this has some influence on the identification. The answers to these questions are interdependent. However, this *prima facie* leads to a basic methodological difficulty, which can be expressed in the question: How can we explain something if we do not know exactly what we are explaining? Therefore, we need to look more closely at the different aspects of the interdependence between questions of identification and questions of intentional explanation.

It seems that this interdependence can be analysed in three different aspects: (1) primary, (2) constitutive, and (3) epistemic. These aspects are manifested in the practice of everyday life, as well as in other areas, such as in law (when determining an act in criminal law, interpretations and legal acts in civil law, or when interpreting legal provisions).

The primary aspect is related to the understanding of any act as being the result of conscious will-driven (intentional) behaviour, and can be expressed using the formula: 'Person *P* performed the conventional act CA^1' because 'person *P* was guided by the intention to perform act *A*'. In other words, only something that has been done intentionally (has some intentional explanation) can be considered a conventional act

The epistemic aspect, on the other hand, is related to the search for the best explanation of the conventional act CA^1 with reference to the person's goal and can be expressed by means of the formula: 'Person *P* performed act CA^1 (not CA^2, … CA^n)', because 'person *P* was guided by the intention to achieve goal *G*, and CA^1 is the best means to achieve *G'*. In this case, it is not so much the intentional performance of *CA,* as the performance of *CA* with the intention of creating some other state of affairs *G*, which can be considered as the person's goal. It is the assumption of this goal that allows CA^1 to be recognized as this and not another conventional act. In this situation, the intentional explanation, on the one hand, allows for the establishment of the goal, and on the other hand, allows the identification of a specific conventional act. For example, let us suppose that the legislator has established a specific legal provision. However, in the light of certain language rules, this provision is ambiguous and can be understood in two ways (as having two meanings) M^1 and M^2 . The establishment of a provision with meaning M^1 is therefore a different conventional act from the establishment of a provision with the meaning M^2. Let us also assume that the establishment of a provision with meaning M^1 finds an intentional explanation in the possible achievement of the legislator's purpose, while no rational explanation can be found for the establishment of a provision with meaning M^2. The intentional explanation thus becomes in such a case not only an instrument for establishing the purpose of the legislator, but also a means for dispelling doubts as to what conventional act was actually performed.[9]

[9] See Bogucki (2016).

Both the basic and epistemic aspects are important, but particularly interesting issues are related to the constitutive aspect, which will be the subject of discussion in the next section.

III. THE CONSTITUTIVE ASPECT

The constitutive correlation between the question of identification and the question of explanation of a conventional act is related to the fact that certain conventional acts are in some way co-constituted by the intention to perform them. As is noted in the philosophical literature,[10] actions such as a greeting or a promise, have to be performed intentionally. These actions are paradigmatic examples of conventional acts. It seems that a specific intention is necessary for their performance. It can be said that in such cases one of the constitutive rules for the creation a given act is the requirement that the person has a specific intention to perform such an act.

The constitutive aspect is therefore connected with the recognition of a specific intention as a necessary condition for a specific conventional act. In this case, the correlation between the question of identification and the question of explanation lies in the fact that the answer to the former ('person P performed a certain conventional act CA^1') assumes the provision of a specific answer to the question of explanation ('person P performed a certain conventional act CA^1, because person P was guided by the intention to perform this act CA^1'). The constitutive aspect appears to be characteristic for conventional acts, rather than for purely psychophysical acts. For example, it is difficult to assume that the identification of a particular action such as 'kicking someone's leg' depends on attributing the intention to 'kick a leg' (the actor could be guided, for example, by the intention to kick a ball next to this leg, or some other intention).

The constitutive aspect is, in a sense, constructed upon the original aspect. In the constitutive aspect, it is required not only that actions be performed intentionally, but also with a *specific* intention—this and not another intention. Hence it can be said that the constitutive aspect assumes the primary aspect—the requirement of a specific intention implies the requirement of intentionality. Therefore, if we consider that the constitutive aspect is present in all conventional acts (and this work will pursue this line of thinking), then the constitutive aspect somehow 'absorbs' the primary aspect. However, if we question the existence of constitutive interdependence or conclude that it occurs only in the case of some conventional acts, then we still have to recognize the interdependence of identification and explanation at the level of the primary aspect.

It should be further noted that the phenomenon of constitutive interdependence is significant from the point of view of the issues discussed in action theory. Two fundamental issues concern the very understanding of an act, and the causal character of its intentional explanation.

---

[10] Anscombe (1963): 84–85.

IV. CONSTITUTIVE INTERDEPENDENCE AND THE CONCEPTION OF AN ACT

The conception of an act depends to a significant degree on the answer to the question of whether a particular intention can be seen as being part of a specific action. The negative answer to this question assumes that an action is only an event that can be described in isolation from the person's intention (such an approach is therefore purely 'behavioural' and 'external'). However, if we treat conventional acts as a particular type of action and recognize that in the case of conventional acts the key feature of the act refers to this intention, and not to any other intention, then the answer to this question should be affirmative. It should be added that conventional acts are 'meaningful' (their outcomes are signs in the semiotic sense), therefore the above question can be formulated appropriately also in relation to the notion of a sign (is the sign Φ only something done with intention Φ?). In this part of the article we should subject the consequences of the phenomenon of constitutive interdependence to close analysis.

One might notice that treating intention as an element of conventional acts changes the meaning of the terms used in the answers to the question of identification and the question of explanation. If we consider that '(i)person P performed a specific conventional act CA^1' only if '(ii) P performed a specific conventional act CA^1,and (iii) person P performed a specific conventional act CA^1 , because (iv) she was guided by the intention to perform this conventional act CA^1' , then CA^1 will not occur with the same sense every time. If we consider that a given conventional act involves specific behaviour (or an omission) involving an appropriate intention, then CA^1 in (i) and (iv) will be the name of this action, whereas in (ii) and (iii) it will be the name of the relevant behaviour (acts or omissions), which under the relevant constitutive rule is recognized as a substrate for that conventional act (the act or omission by which this act is performed).

Thus, for example, in many cultures nodding is treated as a substrate for confirmation. In this regard, it can be said that (i) person P performed the conventional act of confirmation only when (ii) P nodded, and (iii) P nodded because (iv) she was guided by the intention of performing the conventional act of confirmation.

Therefore, in light of the above, one could say that there is nothing special about the phenomenon of constitutive interdependence. It is simply related to the fact that fact A (an act or omission) and fact B (an intention) together form fact C (a conventional act). However, such a position omits two very important (and interrelated) circumstances: (1) the facts A and B have a fundamentally different epistemic status, and (2) that fact B is cognized by cognizing fact A.

Fact A occurs in physical reality and is in principle directly observable. Whereas in some sense fact B has a different status. Even if we identify intention with a mental state (which is not the only position adopted in the literature), and this in turn with an event occurring in the central nervous

system, there is no doubt that it is not directly observable for people interpreting certain behaviour. Referring to the distinction between 'observable' and 'theoretical', one can simply say that acts or omissions are observable, while intentions are theoretical. Knowledge of intentions arises primarily through learning about acts and omissions. This is particularly so in the case of a person who interprets another person's action at the time it is performed. Of course, various other circumstances could be important while establishing the intention, but the very fact of such an act (or omission) has a privileged status. It is worth referring to the intuition expressed by Von Wright in his theory of intentional explanation.[11] In this approach, intentional explanation is perceived as a practical syllogism, and the premises of this syllogism (the relevant desire and belief) are verifiable on the basis of semantic postulates by the very fact of performing a specific action. One can only talk about an appropriate desire and belief if the appropriate action has been performed. Thus, such a practical syllogism cannot perform a predictive function.[12]

A special relationship between the act and intention exists in the case of conventional acts. In this case, it seems that the identification of a particular act involves us in a special way in statements concerning the person's beliefs and intentions. That is why, from the point of view of language pragmatics, statements such as the following seem 'weird', to say the least: 'I hereby confirm that you have just promised me this, and at the same time I state that you did not intend to do this', or 'I hereby confirm that you apologized to me, and at the same time I state that you do not know that you did this'. This 'weirdness' is caused by the intuition that there is a difference between a real promise or apology and only saying the words 'I promise' or 'I'm sorry'. [13] For a real promise or apology, the existence of specific beliefs and intentions seems to be necessary. The purely 'behavioural' understanding of a conventional act (according to which it is only an event described in isolation from the person's intentions) completely eliminates this difference.

Undoubtedly, the way in which a culture understands such acts, which in this article are referred to as conventional, depends to a large extent on the overall vision of the world, and in particular on the beliefs about the nature of the relationship between such actions and their effects. Imagine, for example, an unknown tribe is visited by an anthropologist. During the meeting with the chief, the anthropologist gives the chief a warm handshake. This, however, causes widespread indignation and anger among the tribe, and the anthropologist is imprisoned. It turns out that in the rules of this culture, this gesture is the worst possible insult. The members of the tribe were sympathetic to the anthropologist's explanation that he could not have offended anyone because he had no idea that this behaviour was considered offensive. Nevertheless, the tribe stated that 'in the eyes of the

[11] Von Wright (1971).

[12] Kuipers (1985): 182.

[13] This is why speech act theory devotes a great deal of attention is to the *felicity conditions* of speech acts.

gods' an insult remains an insult, and the anthropologist must be punished. It can be said that the members of this imaginary culture understood the action in purely 'behavioural' terms (and simultaneously that they would probably never call it 'conventional'). This way of thinking is therefore closer to cultures which do not treat the relationship between such actions and their effects as conventional, perceiving it rather as a magical or cause-effect relationship which occurs independently of human beings (similar to the relationship between a physical event and its physical effects). Therefore, at least in terms of secularized Western cultures, the behavioural approach to conventional acts seems inadequate. This approach does not adequately reflect the relationship between conventional acts and intentions, and, in a sense, it undermines their conventionality.

To put it another way, the basic argument in favour of treating certain intentions as conceptually related to the corresponding conventional acts is the idea of conventionality as being nothing more than a 'codified' transmission of human intentions. If we perceive conventionality as serving the transmission of intentions, then it seems justified to conceptually link the intention with conventional acts. However, if we seek a separate 'conventional world' independent of human intentions, then the conceptual linking of intentions to conventional acts may seem unreasonable.

It should be noted in this regard that the 'behavioural' (effect-oriented) conception of an act criticized above seems to be accepted in accordance with the current version of the theory of conventional acts.[14] However, it is hard not to resist the impression that such a position has never been the subject of sufficiently in-depth considerations. The authors of the publication introducing the notion of conventional acts did not adopt a clear position in this respect, but in a much later publication Stanisław Czepita clearly stated (referring partly to the findings of Wojciech Patryas) that conventional acts should be treated as effect-oriented.[15] Two arguments support this position. First, in determining the conventional action *CA*, we do not ask why *P* performed *CA*. We want to know what conventional act *P* has performed.[16] According to the second argument, a finalistic conception of the act does not allow for explanation through humanistic interpretation and mixes the recognition of the act with its explanation.[17] Knowledge of an act conceived of in finalistic terms requires knowledge of what allows the act to be interpreted (explained).

However, both of these arguments are incorrect. It is obvious that the question 'Did you greet *R*?' is different to the question 'Why did you greet *R*?' Nevertheless, this does not in any way entail that we cannot treat the answer to the question: 'Why did *P* doff his hat?' as an element of knowing the procedure of doffing one's hat is an act of greeting. It is this explanation

[14] However, see Janusz-Pohl (2017), which conceives of the material substrate in effect-oriented terms, but conceives of conventional acts in finalistic terms.

[15] Czepita (1996): 148; Patryas (1988): 14–33.

[16] Czepita (1996): 129.

[17] Patryas (1988): 20–21; (1979): 271–283.

of doffing one's hat through humanistic interpretation that allows it to be recognized as a greeting (which of course first requires knowledge concerning the act of doffing one's hat). Recognizing a conventional act in the finalistic sense requires knowledge of what allows its material substrate to be explained, not the whole action (this is a separate process of explanation). Thus, both arguments clearly mix the conventional act with its substrate.

To the basic, previously mentioned doubts concerning the effect-oriented ('behavioural') understanding of a conventional act we can add another: this approach has unacceptable consequences if there are two different conventional acts, which, however, share the same material substrate. In our culture, a downward nod is treated as a substrate for affirmation, while in Bulgarian culture it is a substrate for denial. Assuming an effect-oriented approach and disregarding the intentions and knowledge of the person performing the act, one would have to assume that someone nodding their head in such a way simultaneously affirms and denies (only the reference to knowledge and intentions allows us to state whether the person actually affirms or denies).

The recognition that an intention is an element of every conventional act (let us call it 'intentional') also entails a negative and completely non-intuitive consequence. For if a given conventional act can only be carried out with the specific intention of the person (which also involves having specific knowledge), then everyone else apart from that person will in principle never be able to state beyond any doubt that the indicated act has been performed. Such a conception would cause chaos in the sphere of culture and legal transactions. In particular, in the case of an act by which one commits oneself to something, it would be extremely unintuitive to recognize that one can 'annul' it by indicating that one actually had no intention of performing this act.

In order to avoid this difficulty, a clear distinction must be made between ontological and epistemological issues. It is one thing to recognize that a particular intention is part of a conventional act, and another thing entirely to define the scope of circumstances that may constitute admissible evidence or an argument for the existence or non-existence of that intention. Various ethical or legal considerations may argue in favour of certain limitations in terms of proof. In other words, not every circumstance, highlighted by anyone at any time and in any way, may be regarded as admissible evidence of the non-existence of a relevant intention, even if that circumstance is relevant from a purely cognitive point of view. The degree of such 'conventional' limitations depends primarily on the cultural importance of the act and how much it changes the normative situation of the person or other entities (in particular their ethical or legal situation). For example, the following situations will be very different: firstly, if someone waving their hand in front of a taxi, which is treated by a taxi driver as flagging down a taxi, but when she drives the car to the person, this person claims 'I was only waving my hand', without the intention of flagging down a taxi;

and, secondly, if someone takes on a legal financial obligation by public promise, and then claims that they had 'no such intention'.

These limitations on determining an acceptable way of demonstrating the lack of relevant intention can here conventionally be called the rules of falsification. Their source can be both explicit legal regulations, as well as more 'fuzzy' norms assumed by institutional practice in another sphere of a specific culture (such as the so-called ethics of speech acts). Of course, the reconstruction of the rules of falsification will be more problematic in the case of 'fuzzy' norms than in the case of explicit regulations. Nevertheless, the rules of falsification, together with constitutive rules creating a given conventional act and the rules defining its normative consequences, will shape the functioning of this act in a specific sphere of a given culture.

A good example of a falsification rule is the specific rule adopted for the interpretation of declarations of intent in the case of contracts for the benefit of a third party. In the civil law theory it is pointed out that the determination of the actual intention of the entity making a declaration is not permissible when the declaration is addressed to an unlimited circle of addressees, or if an unspecified circle of persons may refer to its content in the future.[18] In such a case, the interpretation involves determining its universally accepted meaning.

With reference to the previous example of the anthropologist and the unknown culture, it is necessary to add at this point that from a theoretical point of view the rules of falsification may be so restrictive that they will exclude any possibility of falsifying the claim of having a proper intention at all. The question arises, of course, of whether this is no longer a manifestation of a behavioural understanding of conventional acts. It is difficult to give a clear answer. Even if, for theoretical reasons, we insist on an intentional approach in such situations, in practice the conventional act will function as if it were understood in behavioural terms.

At this juncture it is worth mentioning that treating a certain intention as an element of a specific conventional act is not contradicted in any way by the fact that some conventional acts are attributed to entities which are not natural persons (e.g. lawmakers or joint-stock companies). Although the issue of the intentions of collective entities is a separate, complex issue, which really lies beyond the scope of the present work, the possibility of attributing intentions to such entities is beyond doubt. Important questions concern, of course, how to determine such an intention, what are the rules of falsification in such cases, and also how such an intention exists (e.g. the intention of a rational legislator exists in a different way than the intentions of persons forming a collegial body creating a given normative act). Irrespective of these problems, the essence of the issue remains the same – to recognize that a particular entity has performed a specific conventional act, we need to make a statement concerning their intentions (it is not

[18] See, for example, Machnikowski (2004): 240.

possible to say, for example, that the rational legislator established the norm *N*, even though he had no such intention; but it can be said, of course, that some members of the legislature did not have such an intention).

Summing up the comments made thus far, we can present in more detail the structure of the constitutive interdependence between the identification and explanation of conventional acts. We have assumed that an appropriate intention is an element of a specific conventional act. Therefore, it can be said that: 'Person *P* performed a certain conventional act CA^1' only if 'person *P* performed $S(CA^1)$[19] and person *P* performed $S(CA^1)$ because person *P* was guided by the intention to perform a certain conventional act CA^1'. In this formula, '$S(CA^1)$' will denote a specific act or omission treated under the relevant constitutive rules as the performance of a specific conventional act (that is, the material substrate of that conventional act). However, the basic testimony (evidence) of having a proper intention is '$S(CA^1)$' itself, because this intention explains the occurrence of '$S(CA^1)$'. However, it is also necessary to take into account possible other circumstances which, in the light of the relevant rules of falsification, may indicate that despite the occurrence of $S(CA^1)$, there was no intention to perform the conventional act CA^1. If these falsifying circumstances are referred to as '$F(CA^1)$', the argumentative structure for identifying a specific conventional act CA^1 can be expressed as follows: 'If person *P* performed $S(CA^1)$, then person *P* performed $S(CA^1)$ because person *P* was guided by the intention to perform the conventional act CA^1, and therefore person *P* performed the specific conventional act CA^1, unless $F(CA^1)$'. It should be added that if the relevant rules are so restrictive that they will exclude any possibility of falsification, then the space after 'unless' will be empty. In other words: the act (or omission) in the manner provided for by the constitutive rules of a given conventional act gives rise to a refutable explanation of it by the intention to perform that conventional act, which in turn gives rise to the refutable statement that the act has been performed. In extreme cases, however, this refutability may be excluded.

V. UNDERSTANDING CONVENTIONAL ACTS IN THE LIGHT OF CAUSALISM AND ANTI-CAUSALISM

From the previous considerations some conclusions can also be drawn concerning the nature of the intentional explanation of an action. In recent decades one of the most discussed questions in action theory was whether or not intentions (and generally explanations referring to reasons for behaviour) can be regarded as the causes of behaviour, and therefore whether intentional explanation (and explanation generally referring to the reasons for behaviour) can be reduced to causal explanations. These questions divided authors into two groups: causalists (associated with

[19] With *S* standing for 'substrate' [translator's note].

Davidson) who answer these questions in the affirmative, and anti-causalists (associated with Wittgenstein) who answer them in the negative. The debate between causalists and anti-causalists is quite complex, multi-threaded and far from conclusive.[20] It seems that in this respect the situation is significantly hindered by two circumstances. Firstly, the concept of cause itself is insufficiently clear, and in this debate the word 'cause' is not always used with the same meaning. Secondly, it is not clear what it means to say that one type of explanation is reduced to another. Although rigorous analysis of these issues lies far beyond the scope of this paper, the findings made so far have allowed us to formulate a number of important observations.

Firstly, since a specific intention is part of a specific conventional act, it is difficult to consider it as the cause of that act. As Anscombe pointed out,[21] the fact that, in the case of certain actions, the intention does not constitute an element clearly separated from the action itself is one of the arguments against treating intentions as causes. However, some view this position as unconvincing. Setiya argues that even if the intention cannot be distinguished from the action itself, it can still be understood as its cause.[22] In his view, adopting the contrary position thereby involves assuming an excessively narrow conception of cause. The author notes that even if I cannot make a promise without the intention of making it, I can still make it because I have the intention of making it – the appropriate intention can therefore be understood as the cause of behaviour. Although this argument *prima facie* seems convincing, it does lead to some significant difficulties. Since a specific intention is part of a specific conventional act CA^1, considering it to be the cause of CA^1 at the same time leads to the admission that this intention is to some extent its own cause. This, in turn, leads to an excessively broad conception of cause. One would have to admit that some causes, such as intentions, have a peculiar self-reflexive nature. However, if we treat Hume's postulate seriously (according to which, in order to recognize A as the cause of B, these phenomena must be different from each other), in the case under consideration we cannot talk about causes and causal explanation (unless by causal explanation we understand something different than adducing causes[23]).

It should be noted, however, that if certain assumptions are adopted, causal analysis of conventional acts is possible. As was indicated earlier, in the case of performing a specific conventional act CA^1 we are dealing not so much with performing CA^1 with the intention of performing CA^1, but with performing the substrate of the conventional act $S(CA^1)$ with the intention

[20] For an overview of the debate, see Alvarez (2007); D'Oro, Sandis (2013); Candlish, Damnjanovic (2013).

[21] Anscombe (1983): 179–180.

[22] Setiya (2007): 57.

[23] For example, Queloz (2018): 167–169, suggests that causal explanations should be understood broadly: not only as explanations adducing causes, but also as explanations that provide the characteristics of a situation that is associated with the cause.

of performing the conventional act CA^1 (e.g. saying certain words with the intention of apologizing). It should be noted that the previous remarks do not exclude the possibility of analysing the relation between the intention to perform a specific conventional act and the act (or omission) being its substrate as a causal relation. Thus, it can be said that, for example, the intention to affirm is the cause behind the nod of a head. However, it seems that a causal account of action would have to be combined with the recognition that the only 'real' acts are purely psychophysical 'body movements'. In this conception, conventional acts would not be acts, but more complex institutional facts 'constructed upon' acts. If, however, it is assumed that conventional acts are a type of act, it is difficult to hold that causalism is the appropriate position for the consideration of all acts (so that for all acts, the intention to perform them can be regarded as their cause).

VI. CONCLUSION

At the end of this study, it should be emphasized that there is significant interdependence between the answers to the questions: 'What conventional action *CA* did person *P* perform?' and 'What intention *I* guided *P* when performing *CA*?' This interdependence can be considered in its primary, epistemic aspect, and above all in its constitutive aspect.

The argumentative structure of constitutive interdependence can be presented in accordance with the following formula: 'If person *P* performed the material substrate of a given conventional act, then person *P* did so because he or she was guided by the intention to perform this conventional act, and thus person *P* performed that conventional act, unless there are circumstances which, in the light of the rules of falsification applicable in a given case, indicate that there was no intention to perform this action'.

The constitutive interdependence between the identification and explanation of conventional acts leads to treating the relevant intention as being an element of the act itself, which is a different approach from the one that seems to prevail in the theory of conventional acts as regards the effect-oriented understanding of an act. In turn, treating a relevant intention as an element of a conventional act argues against causality, which treats intentions as the causes of behaviour. In connection with constitutive interdependence, it is also necessary to postulate the existence (next to constitutive rules) of rules of verification of the relevant intention, which are appropriate for a given activity.

Olgierd Bogucki
University of Szczecin
olgierd.bogucki@usz.edu.pl
https://orcid.org/0000-0002-9337-5973

Alvarez, M. (2007). The causalist/ anti-causalist debate in the theory of action: what it is and why it matters, [in:] A. Leist (ed.), Action in Context. Berlin: 103–123.

Anscombe, G.E.M. (1958). On brute facts. Analysis 18(3): 69–72.

Anscombe, G.E.M. (1963). Intention. 2nd edn. Oxford.

Anscombe, G.E.M. (1983). The causation of action, [in:] C. Ginet, S. Shoemaker (eds.), Knowledge and Mind. Oxford: 174–190.

Austin, J.L. (1962). How to Do Things with Words. J.O. Urmson (ed.). Oxford.

Bator, A. (2000). Użycie normy prawnej w regulacji stosunków gospodarczych. Wrocław.

Bator, A. (2004). Kompetencja w prawie i prawoznawstwie. Wrocław.

Bogucki, O. (2016). Model wykładni funkcjonalnej w derywacyjnej koncepcji wykładni prawa. Szczecin.

Candlish, S., Damnjanovic, N. (2013). Reasons, actions, and the will: the fall and rise of causalism, [in:] M. Beaney (ed.), The Oxford Handbook of the History of Analytic Philosophy. Oxford: 689–708.

Czepita, S. (1996). Reguły konstytutywne a zagadnienia prawoznawstwa. Szczecin.

Czepita, S. (2016). O koncepcji czynności konwencjonalnych w prawie, [in:] M. Smolak (ed.), Wykładnia konstytucji. Aktualne problemy i tendencje. Warsaw: 109–147.

Czepita, S. (2017). O pojęciu czynności konwencjonalnej i jej odmianach. Ruch Prawniczy, Ekonomiczny i Socjologiczny 79(1): 85–102.

D'Oro, G., Sandis, C. (eds.) (2013). Reasons and Causes: Causalism and Non-Causalism in the Philosophy of Action. New York.

Janusz-Pohl, B. (2017). Formalizacja i konwencjonalizacja jako instrumenty analizy czynności karnoprocesowych w prawie polskim. Poznań.

Kmita, J., Banaszak G. (1991). Społeczno-regulacyjna koncepcja kultury. Warsaw.

Kuipers, T.A.F. (1985). Logic of intentional explanation. Communication and Cognition 18(1/2): 177–198.

Machnikowski, P. (2004). Komentarz do art. 65 k.c., [in:] E. Gniewek (ed.), Kodeks cywilny. Komentarz. Volume 1. Warsaw: 237–245.

Nowak, L., Wronkowska S., Zieliński, M., Ziembiński, Z. (1972). Czynności konwencjonalne w prawie. Studia Prawnicze 33(2): 73–99.

Patryas, W. (1979). Interpretacja humanistyczna a skutkowe ujęcie czynności. Poznańskie Studia z Filozofii Nauki 4: 271–283.

Patryas, W. (1988). Interpretacja karnistyczna. Studium metodologiczne. Poznań.

Patryas, W. (2005). Performatywy w prawie. Poznań.

Radwański, Z. (1977). Teoria umów. Warsaw.

Searle, J. (1995). The Construction of Social Reality. New York.

Searle, J. (2002). How to derive "ought" from "is", [in:] Ph. Foot Theories of Ethics. Oxford: 101–114.

Searle, J. (2010). Making the Social World: The Structure of Human Civilization. Oxford.

Setiya, K. (2007). Reasons without Rationalism. Princeton.

Vanderbeeken, R. (2004). Models of intentional explanation. Philosophical Explorations 7(3): 233–246.

Von Wright, G.H. (1971). Explanation and Understanding. London.

Queloz, M. (2018). Davidsonian causalism and Wittgensteinian anti-causalism: a rapprochement. Ergo 5(6): 153–72.

Quine, W.V., Ullian, J.S. (1970). The Web of Belief. New York.

ON THE CONSTITUTIVE CORRELATION BETWEEN THE IDENTIFICATION AND INTENTIONAL EXPLANATION OF CONVENTIONAL ACTS

S u m m a r y

The article examines the specific correlation (interdependence) between the identification and intentional explanation of conventional acts (in particular, legally significant conventional acts). The author describes this interdependence as 'constitutive' because in this case intentional explanation plays a constitutive role for the identification of a conventional act. This can be expressed through the formula: 'person *P* performed conventional act $CA^{1'}$ only if 'person *P* performed conventional act CA^{1} because person P was driven by the intention to perform conventional act CA^{1}.' The article analyses the logical and argumentative structure of the abovementioned correlation. On the basis of the analysis, the author claims that a constitutive correlation indicates that a relevant intention should be perceived as an element of the act itself (in contrast to the view adopted in the theory of conventional acts) and that verification rules relevant for the given act exist alongside the constitutive rules. Recognizing the relevant intention as an element of the conventional act stands in opposition to causalism, which treats intentions as the causes of actions.

Keywords: theory of law; intentional explanation; conventional acts; concept of an act; causalism; anti-causalism