

Abstract:

Collective Intentionality, Documentation and Real Estate Transactions.

Real estate transactions are of interest in that all the facets of such transactions are gone into in great detail and in writing. The reasons for going into detail are fairly obvious; in very general terms, real estate transactions are often complex and it is important that each side understand exactly what is being exchanged and under which terms. And the same reasons could be given for putting it all in writing. But arguably writing plays a further role in such transactions in that the signing of the documentation is tantamount to engaging in the real estate transaction. While on its own, this might not appear to be a very controversial claim. However, according to Searle's well-known account of social and institutional facts, a necessary ingredient for any putative social or institutional fact is that it involves collective intentionality; in keeping with his brain in a vat condition and illustrated by his ballet in the park example, but, according to his account, it is impossible to say about any instance of behaviour, when viewed externally, whether it involves collective intentionality. So, signing a document may or may not involve collective intentionality and therefore may or may not involve a real estate transaction. Elsewhere I have argued against this position because it introduces an element of privacy into economic transactions that is utterly incompatible with the need for public accessibility of the conditions on the basis of which we take social and economic facts to obtain. But here I want to raise some further issues with respect to this alleged primacy of intentionality over behaviour in real estate transactions.

First I want to draw an important distinction between a generalized sort of collective intentionality and collective intentionality with respect to specific instances of institutional facts. For instance, there may be some sort of general collective acceptance in the population of certain aspects of the law, such as that one can own land or when a court makes a ruling, then that ruling is binding; unless an appeal is lodged, if a court ruling is not obeyed, then the disobedient persons may face sanctions of some sort. But with respect to particular instances of institutional facts, such as the ownership of a particular parcel of land, the question regarding who owns it is not settled by the collective beliefs or acceptance of those acquainted with the property. Even though the locals might collectively accept or believe that the land is owned by X, in actual fact the land is owned by Y. Of course the general acceptance of the law,

or more specifically the law as it relates to real estate, in conjunction with some additional information, may well lead the locals to correct their beliefs at a later stage. But the point is that the proper role of collective intentionality with respect to institutional facts is at the generalized level as opposed to the particular institutional fact.

Second, it is not at all clear whether collective intentionality necessarily plays a role in specific real estate transactions with respect to the transacting parties. If one is operating with a generalized acceptance of the law by all parties, then does there have to be the entertainment of we-intentions by all parties with respect to the particular transaction as such? My point is that each party intends to part with something in exchange with something else and is prepared to make undertakings to the other party and sign documents, and so on. But must each party entertain a we-intention in addition to that? I argue that all that is required is the generalized collective acceptance of the law (even if this only amounts to each being prepared to accept the law just as long as everyone else accepts it) plus some I-intentions along the lines of, "I intend to provide an undertaking to the other party" or "I intend to hand over a sum of money just as long as the other party hands over the title to the property."

Third, in the case of real estate transactions, intentions should not be taken to be of utmost importance over an above behaviour such as the uttering of documents and making marks on a page. The problem with intentions is that, taken in isolation from behaviour, they can be impossible to discern. I use the example of a court case involving a real estate transaction that has gone wrong. If we allow one of the parties to claim that, all his behaviour notwithstanding, such as making marks on a page, shaking hands at a certain time and so on, yet he still did not intend to buy or sell the property in question and therefore the putative transaction never actually took place, then we could not enforce such transactions. What this amounts to is that it is the actions of signing and issuing documents that take precedence here. In this sense, issuing and signing documents is tantamount to purchasing or selling a piece of real estate. It is of course possible to bring such documents or actions into question but this requires some basis, such as allegations of trickery, coercion or incapacity. I am not suggesting that intentions are irrelevant or that courts do merely restrict their activities to verifying who made which mark on a page; it is well known that courts examine and interpret evidence as to the intentions of parties to transactions as well as various contextual matters.

The signed document (which sometimes has to be registered or otherwise executed depending on the legal system) is the cornerstone of the real estate transaction for another reason; it forms a link in the *provenance* of the property with respect to ownership. Provenance warrants the belief that the property belongs to X in the same way as the provenance of a painting warrants the belief that this painting is by a certain artist. Of course, in both cases such beliefs are defeasible. But they are only defeasible to the extent that evidence can be brought forward to show that the provenance is defective. And in each case the provenance can be worked through just

as long as it provides a paper trail.

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