

The Logic of the concept of Acts

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ABSTRACT

The article distinguishes between the concept of doing and the concept of an act. An act is performed, and it is performed by doing something: I am stealing another person's purse by putting my hand into his pocket. I can do something and thereby perform an act but I can also do something without performing an act. I cannot perform act, however, without doing something. It is shown that it is logically impossible to reach a definition of the concept of an act: There is no set of necessary and sufficient conditions for an activity to be classified as an act. The solution to the problem is to see the connection between the concept of an act and the concept of responsibility. And, like the concept of an act, the concept of responsibility is indefinable. The concept of responsibility (and therefore also the concept of an act) can be understood only as a trouser-word (as propounded by Austin) and validated only by not being defeated (as propounded by H. L. A. Hart).

The concept of doing and the concept of an act belong to different categories. I do not do an act; I perform it or commit it; and I do not perform or commit doings. But when I perform an act I perform it by doing something. If I steal my neighbor's car I perform an act of stealing but of course I do not do a stealing. Nevertheless, I cannot perform such an act without doing something. I break into his car, start the motor and drive away. It may be objected, and rightly so, that to break into a car, to start a motor, and to drive a car are themselves to perform acts. But these acts cannot be performed unless I do something. I must be handling certain tools in order to break into the car; I must know what to do in order to start it and to drive it; and if it furthermore is objected that also these doings are themselves acts then in turn they require certain doings in order to be performed, e. g. the movement of my hands and other parts of my body,

which in turn requires the working of certain muscles. In other words, there is a hierarchy of performing acts and of doing the things required for performing the acts. Every act requires certain doings which themselves, in a certain context, may be regarded as acts and, consequently, require some other doings until we get down to the working of my body which, basically, can be identified in terms of physiology and biochemistry, i. e. in terms of processes which cannot be qualified as acts. I can either say that I stole the car and am then ready to answer the question «How did you do it?» Or I can say that I broke into his car and was able to start it and drive it away. The question then to be asked is how I broke into the car and how I managed to start it.

The difference between the two concepts can also be seen through the logical difference between the kind of answers given to the two following questions: (1) «At this very moment what are you doing?» and (2) «At this very moment which act or acts are you performing?» At any time any person (if awake) will be able to answer the first question. The answer may vary from such answers as «working in the garden», «reading a book», «taking a walk», or «trying to take a nap». A person may even answer that he is doing nothing, which does not mean that he is in fact not doing anything at all; what it means is that he is not doing anything in particular, i.e. nothing of importance, and which cannot be interrupted. To the second question, however, a person, if asked, is likely to answer that he is not performing any act at all despite the fact that he is doing something; he may for instance be busy reading the newspaper, or perhaps just doing a little daydreaming.

But why is daydreaming not an act, whereas stealing counts as an act? Or to put it differently: Why is «to daydream» a doing-verb whereas «to steal» is an act-verb? In other words, what criteria have to be satisfied in order that an activity can count as an act? What are the necessary and sufficient conditions for using a verb as an act-verb? As one such condition the concept of intention is often mentioned. And often an intention is indeed a necessary condition. I cannot be said to be stealing if inadvertently I take another person's car (property) in the belief that it belongs to me. Nor can I be said to be shoplifting – at least not according to the usual and ordinary meaning of the word –, if I leave the shop forgetting to pay for an item. With respect to daydreaming it is irrelevant whether I do it intentionally or not. Nevertheless, intention cannot count as a necessary condition. Suppose I am about to go to my workplace. I am very much occupied by some problems I am at present working on. I start the car as usual. But I start it and begin to drive it without thinking of what I am doing; I am still occupied with my problems. In other words, no intention was involved. It would be wrong, however, to say that my starting of the car and my beginning to drive it were not instances of an act merely because there was no intention involved. It would in fact be an act despite the fact that there was no intention connected with it. Or suppose I suffer from some kind of obsession – an obsession requiring psychiatric treatment: I have to wash my hands, if not constantly then at least much more than needed. I have an almost constant urge to wash them. I am trying, more often unsuccessfully than successfully, to fight the urge. Whenever I give in, I am unable to resist the urge and therefore

perform the act of washing my hands; the act is an unintended act. In fact I intend *not* to perform it; had my urge been weaker my intention might have been successful.

In other words, the concept of intention cannot constitute a necessary condition – what constitutes a necessary condition cannot allow exceptions.

Is a purpose a necessary condition for an activity to be an act? To be sure, if I steal something the stealing has a purpose: I want to be in possession of the thing or the things I steal – be it money, another person's car, or whatever. But a purpose cannot constitute a necessary condition. If I am a kleptomaniac I am by definition a person who steals, but I am not necessarily stealing in order to enrich myself; or rather, if I steal in order to enrich myself it is not an act of kleptomania; it is an act of ordinary stealing; I am then quite simply a thief. However, as an act of kleptomania I do have a purpose, the purpose namely, of achieving an act of stealing. The stealing is not a mean to obtain the object stolen. The act of stealing is not a mean but is the sole purpose of the act. But when we talk of the purpose of an act we mean by a purpose that for which the act in itself is, not its own purpose, but a mean for something else, *in casu* to be in possession of the thing or the things stolen. A great many acts belong to this type of acts, i. e. acts without a purpose. If the weather is nice I decide to take a walk. If I am asked why I take a walk I may answer either that it is good for my health, or I may just say that I enjoy walking. But what I am saying in the latter case is that the purpose of taking a walk is that I like to take a walk – which of course is identical with the empty statement that I like to take a walk because I like to take a walk. Which of course is not to take a walk for the sake of a purpose. But whether the fact of taking a walk has a purpose or not it is indeed classified as an act.

Accordingly, neither the concept of intention nor the concept of purpose can count as a necessary condition for an activity to be classified as an act.

It may be maintained that if I am conscious of what I am doing, my doing may count as an act. But as we have seen it is neither a necessary nor a sufficient condition. It is not a sufficient condition since I can do things of which I am conscious and which clearly do not constitute acts but only doings. If I am daydreaming I am obviously conscious of the fact that I am daydreaming and also conscious of the content of my daydreams. But to daydream is not to act. Nor is consciousness, as we have seen, a necessary condition. As mentioned above, I can start my car and I can start driving it while being occupied with other problems; only seconds or minutes later do I discover what I am doing. I initiated and performed acts without knowing it.

We thus have to conclude that a definition of the concept of an act seems not to be logically possible. But if it is the case that we are unable to give a definition of the concept of an act it seems to imply that we are unable ever to be able to know whether a given activity is an act or not.

This raises the question why and under which circumstances it is important, may be even necessary, to be able to identify an activity as an instance of an act or, which is the same thing, to be able to certify whether a given activity can qualify as an act. The answer to the question is to realize that the concept of an act is a forensic concept; that

is, the concept is connected with the concept of responsibility. I am not saying that the concept of responsibility is part of the meaning of the concept of an act. I am not saying, therefore, that the sentence «an act for which the agent is responsible» is a tautology. What I am saying is that the reason the concept of an act is of philosophic interest is because of the role it plays in jurisprudence. It is through acts that we create facts that have consequences which are subject to moral evaluations and, in some cases, are subject to the decisions of the courts.

When Moritz Schlick in his essay «The Future of Philosophy» hailed Socrates as the first philosopher on the ground that he was the first one to ask for the meaning of our concepts¹, specially of the concepts of practical philosophy, he was right in so far as Socrates was if not the first philosopher then perhaps the first one to attempt at a conceptual clarification. Schlick's point was that Socrates was the first to see and to practise that philosophy, in distinction from science, which is the pursuit of truth, is the pursuit of meaning. But what is implicit in Schlick's essay is that the final goal, in so far as the clarification of the meaning of a term or a concept is concerned, is a definition. If this is what Schlick means he is in error. Anyhow, this seems to be almost asserted when Schlick says: «In one of the Platonic Dialogues, for instance, Socrates asks «What is justice?»². It is difficult to deny that *The Republic* is attempting to find a definition of just that concept. Socrates may be the first one to try to clarify the meaning of the different concepts by searching for their definitions, but he is surely not the last one. It has been a common feature of human thought –a feature that has proven successful within the mathematical and natural sciences– that it is not only possible but also necessary to find definitions of our fundamental concepts. Henry Sidgwick, the author of the well-known book, *The Methods of Ethics*, complains about the difficulties in setting up definitions in general, and then adds: «But there is no case where the difficulty is greater, or the result more disputed, than we try to define justice»³. And in a recent book Norman P. Barry writes that «despite more than two thousand years of subsequent political theorizing, the concept still has no settled meaning. It is not simply that there are fundamental disputes at the normal level. ... it is simply the fact that there is so little agreement as to what the concept means that causes such serious problems»⁴. The reason for the difficulties in giving a definition of the concept of justice is a logical one. It is a logical fallacy to try to set up a definition of it. It is a logical fallacy for the simple reason that the fundamental concept is not the concept of justice but the concept of injustice⁵.

1 Moritz Schlick *Gesammelte Aufsätze 1926-1936*, Wien 1938, p. 125 ff. See also his essay «L'ecole de Vienne et la Philosophie traditionnelle», op. cit., p. 395 ff.

2 Ibid.

3 *The Methods of Ethics*, 7 edition, 1930, p. 264.

4 *An Introduction to Modern Political Theory*, London 1981, p. 110.

5 In the article «The Concept of Justice» I have argued that «the concept of justice is used if and only if an actual or possible instance of injustice is negated or rectified», *Renaissance Universal Journal*, Volume 5, n.º 4, Ontario, Canada. Cf. Heraclitus remark: If it were not in injustice, men could not know justice.

A study of the history of philosophy fully shows that progress in the clarification of fundamental concepts has been reached when it has been seen that the attempts to define them is based on a misunderstanding of their logic. Let me mention a few examples. To Hegel the understanding of a concept was definitely not achieved by given a definition; to the contrary, an understanding was conditioned by knowing that which would negate the concept (an insight Hegel refers back to Spinoza's principle «*omnis determinato est negatio*»). Deeply influenced by Heracleitus Hegel based his logic and his dialectical method on the concept of negation. To reach an understanding was conditioned by knowing what was negating the concept.

In our own days philosophers like Austin and Hart have shown that insight into the logical nature of important concepts is acquired through processes utterly alien to the definition-seeking process. Austin's concept of trouser-words and Hart's concept of defeasibility demonstrate how philosophy gets into a cul-de-sac if it tries to obtain a clarification of important concepts through a definition. As an example of a trouser-word Austin mentions the word «real». To say that something is real can be understood «only in light of a specific way in which it might be, or might have been, not real. «A real duck» differs from the simple «a duck» only in that it is used to exclude various ways of being not a real duck – but a dummy, a toy, a picture, a decoy, etc.; and moreover I do not know *just* how to take the assertion that it is a real duck unless I know what, on that particular occasion, the speaker has it in mind to exclude»⁶. In general, if *x* is a trouser-word then there is no common feature that each and every *x* must possess. To search for such a feature which consequently could serve as a definition of *x* would then be a futile search; it will be a futile search until it is seen that *x* acquires its meaning when in a certain context it is seen which particular not-*x* it is not (the expression «the real duck» makes sense only if it is seen that it is not e.g. a decoy).

According to Hart all legal concepts share a common feature, namely this: They are all defeasible; that is, their validity is not verified through a correspondence between a definition of a given legal concept and the alleged facts of the case: they are verified in a negative way: they are verified if and only if they cannot be negated – cannot be defeated. A person accused of murder will have the accusation upheld as long as the accusation has not been falsified. He will be judged according to the accusation if it has not been possible to defeat it⁷.

To the extent that the concepts of an act and responsibility are connected to that extent is the concept of an act a defeasible concept. And as I have argued, cases in which a kind of activity might possibly be regarded as an act, but as an act which has no moral or legal consequence, then the question of whether the activity should be regarded as an act is of no philosophic importance, not to say philosophic relevance.

6 J. L. Austin, *Sense and Sensibilia*, Oxford 1962, p. 70.

7 I have examined Hart's theory in some details in my book *Wittgenstein y la Filosofía Contemporánea*, Ariel, Second edition, 1977.

Whether, for instance, my shaving myself in the morning, or reading the newspaper, can be regarded as an act will not arise unless such activities would create situations in which questions of guilt and therefore of responsibility could arise.

No two concrete instances of an act are identical. And since there are indefinitely many facts constituting what could be called circumstantial, i.e. facts such as each person's psychological and physical constitution, family background, education, intelligence, social status, etc. it follows that although two persons seemingly commit the same crime, be it murdering, stealing, breaking a contract, etc., the circumstances may be so different that the two acts are far from identical. There may be circumstances, internal or external, which may be in one case make the crime less criminal than in another; they may even serve as an excuse⁸.

What this shows is that no act can be classified as this or that act on the ground that it fits an alleged definition of a certain kind or type of act. There is no deductive link between an alleged definition of an act and concrete cases. Neither deduction nor induction are methods applicable within the philosophy of acts (and therefore within jurisprudence). A decision whether an act can be classified as one or another act requires, not deductive skills, but wisdom.

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⁸ Cf. Austin's «A plea for excuses», *Proceedings of the Aristotelian Society*, Volume LVII, 1956-1957.