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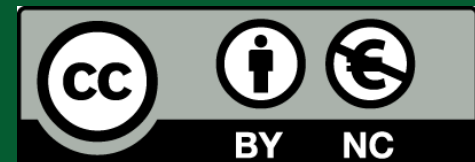


recognise
Legal Reasoning
& Cognitive Science

Materials from Recognise Intensive Study Programs

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The Cognitive Structure of Legal Institutions

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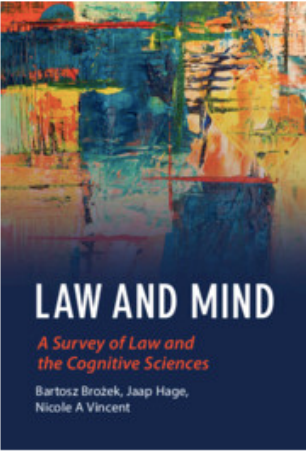


Law and Mind

A Survey of Law and the Cognitive Sciences

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Edited by [Bartosz Brożek](#), Jagiellonian University, Krakow, [Jaap Hage](#), Universiteit Maastricht, Netherlands, [Nicole Vincent](#), Macquarie University, Sydney

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The Cognitive Structure of Legal Institutions



What I am going to do:

Identify the main research question and explain why it is relevant

Introduce two assumptions that are the starting point to address that question

Propose a possible answer to that question

Present some practical consequences of this research and evaluate a few normative questions connected with them



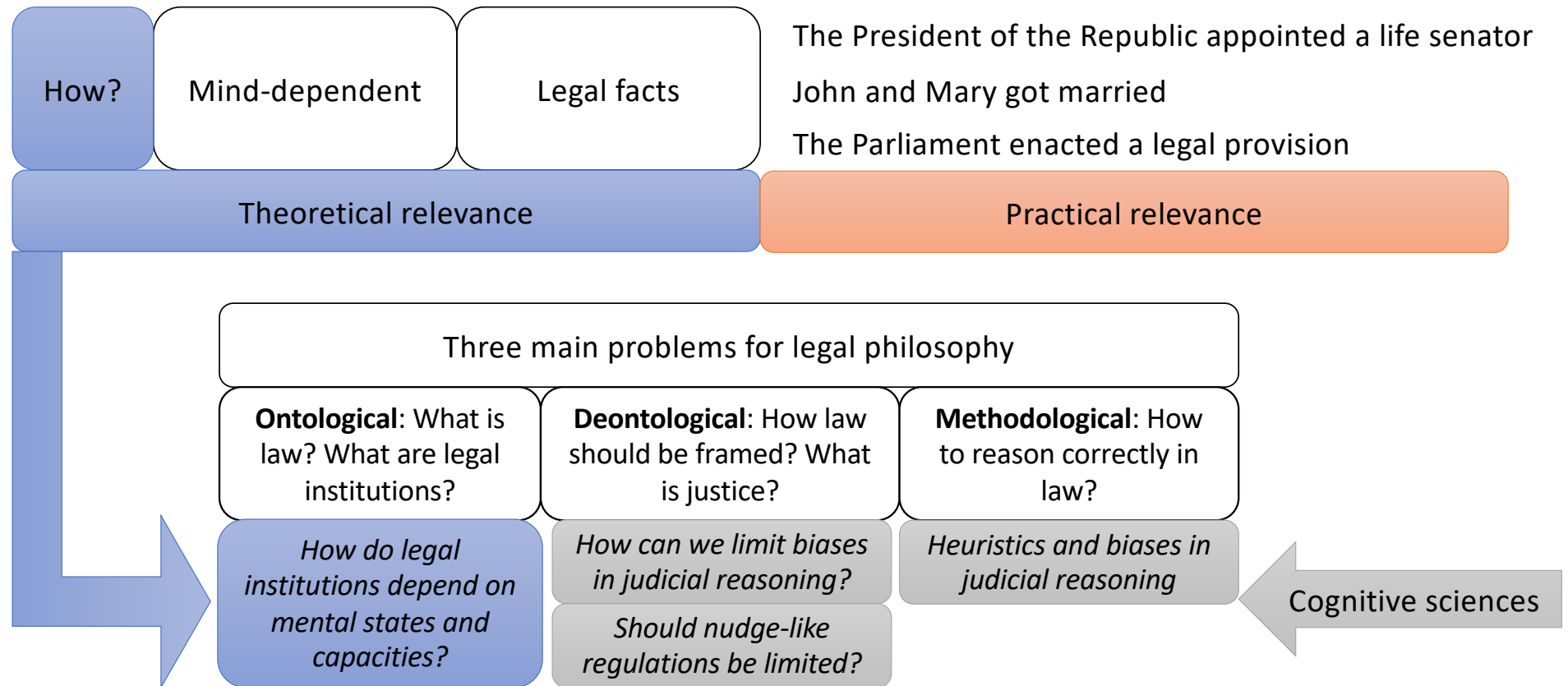
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The Cognitive Structure of Legal Institutions

Identify the main research question and explain why it is relevant

Which cognitive features of human beings do legal facts depend on?





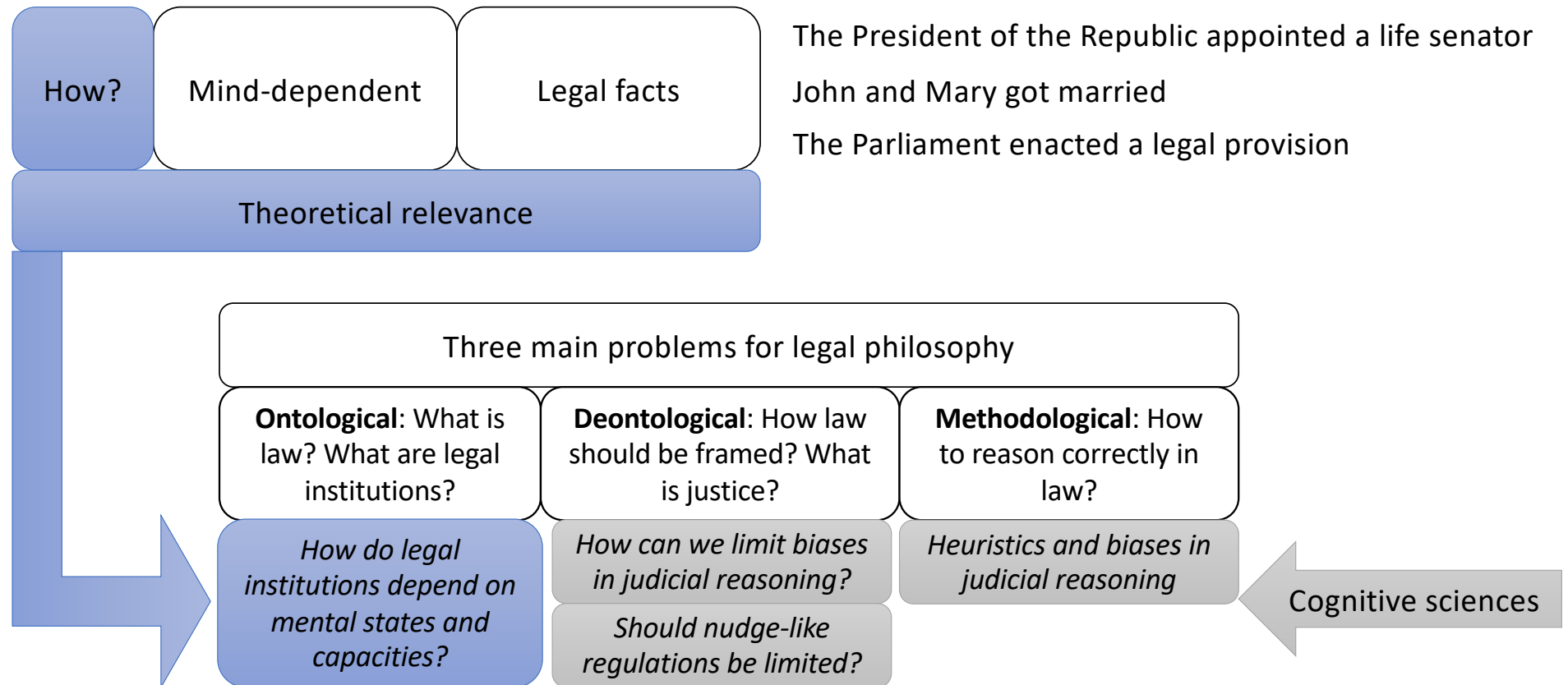
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The Cognitive Structure of Legal Institutions

Identify the main research question and explain why it is relevant

Which cognitive features of human beings do legal facts depend on?

Introduce two assumptions that are the starting point to address that question

Legal facts are a subset of social-institutional facts

The peculiar element of legal institutions among social institutions is that...

A concept of law is needed here:

... legal institutions give the authority to create and apply formally valid norms, and to enforce them by way of sanctions



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The Cognitive Structure of Legal Institutions

Propose a possible answer to that question

Identify the main research question and explain why it is relevant

Which cognitive features of human beings do legal facts depend on?

Two assumptions:

Legal facts are a subset of social-institutional facts

Authority, punishment, validity

1. Analyzing the structure of social-institutional facts (Social ontology)

- Bratman, M. (1992). Shared Cooperative Activities. *The Philosophical Review* 101, pp. 327–41.
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The President of the Republic appointed a life senator

John and Mary got married

The Parliament enacted a legal provision

Facts that are made possible by rules

rules *constitutive of statuses*

X (a person elected under circumstances ...)

counts as

Status Y (The President of the Republic)

which entails

Z (the power to appoint life senators...)



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The President of the Republic appointed a life senator

John and Mary got married

The Parliament enacted a legal provision

Facts that are made possible by rules

rules *constitutive of statuses*

collectively accepted

We collectively intend and commit
to accept an institution (a set of constitutive rules)

Joint intention

Joint commitment

Social norms

Status attribution



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2. Finding the cognitive underpinnings for each of these elements

- Dubreuil, B. (2010). *Human Evolution and the Origins of Hierarchies: The State of Nature*. Cambridge: Cambridge University Press.
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- Becchio, C., Del Giudice, M., Dal Monte, O., Latini-Corazzini, L. & Pia, L. (2013). In Your Place: Neuropsychological Evidence for Altercentric Remapping in Embodied Perspective Taking. *Social Cognitive and Affective Neuroscience* 8, pp. 165–70.
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Kalish, C.W. & Lawson, C.A. (2008). Development of Social Category Representations: Early Appreciation of Roles and Deontic Relations. *Child Development* 79, pp. 577–93.

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Noyes, A., Keil, F.C. & Dunham, Y. (2018). The Emerging Causal Understanding of Institutional Objects. *Cognition* 170, pp. 83–7.

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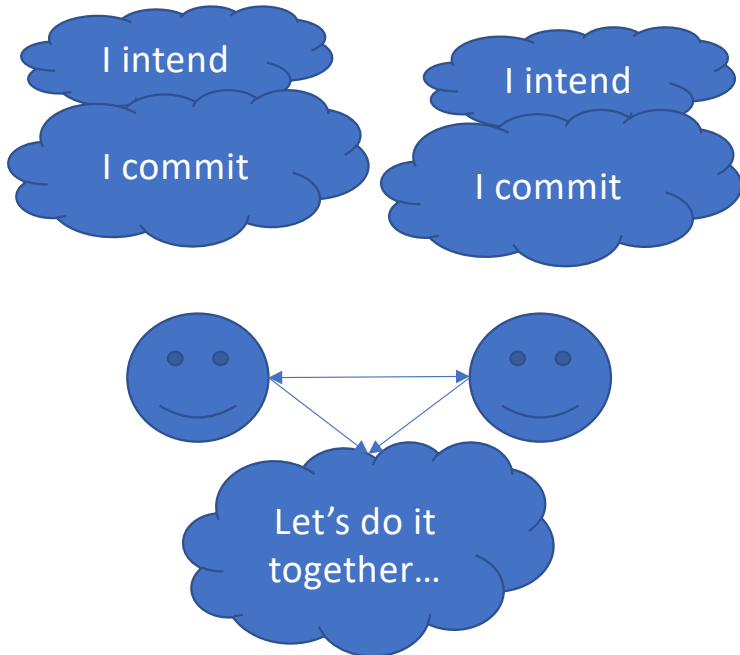
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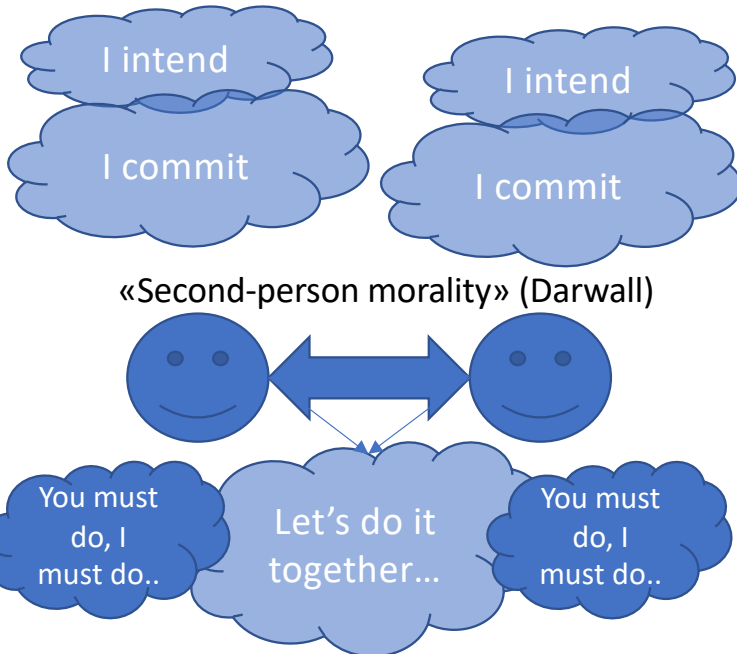
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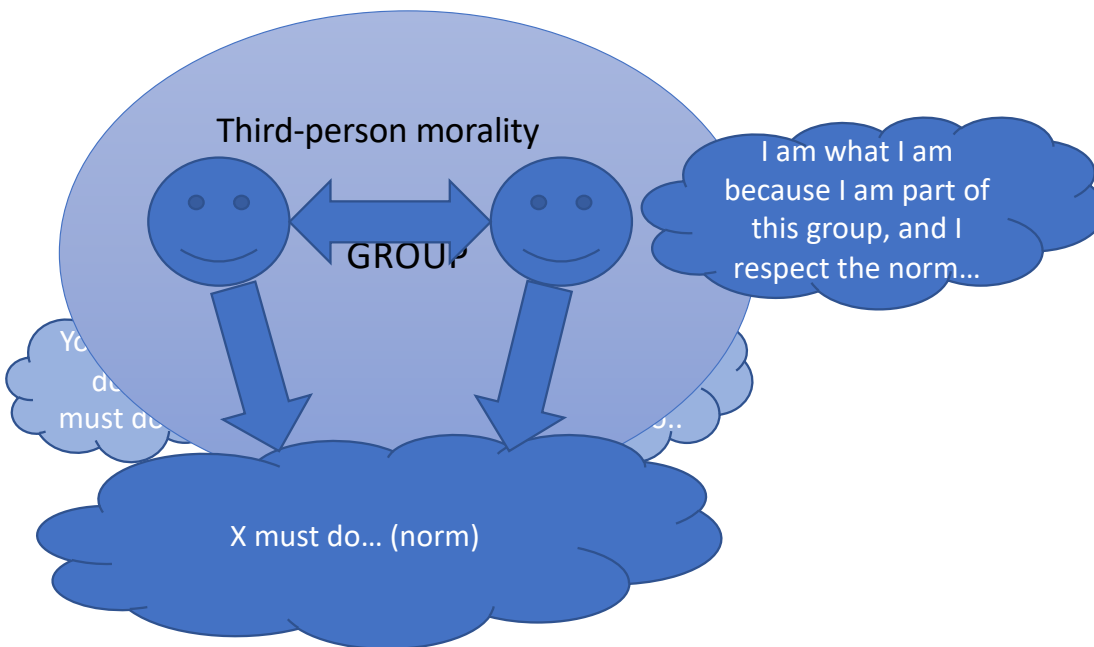
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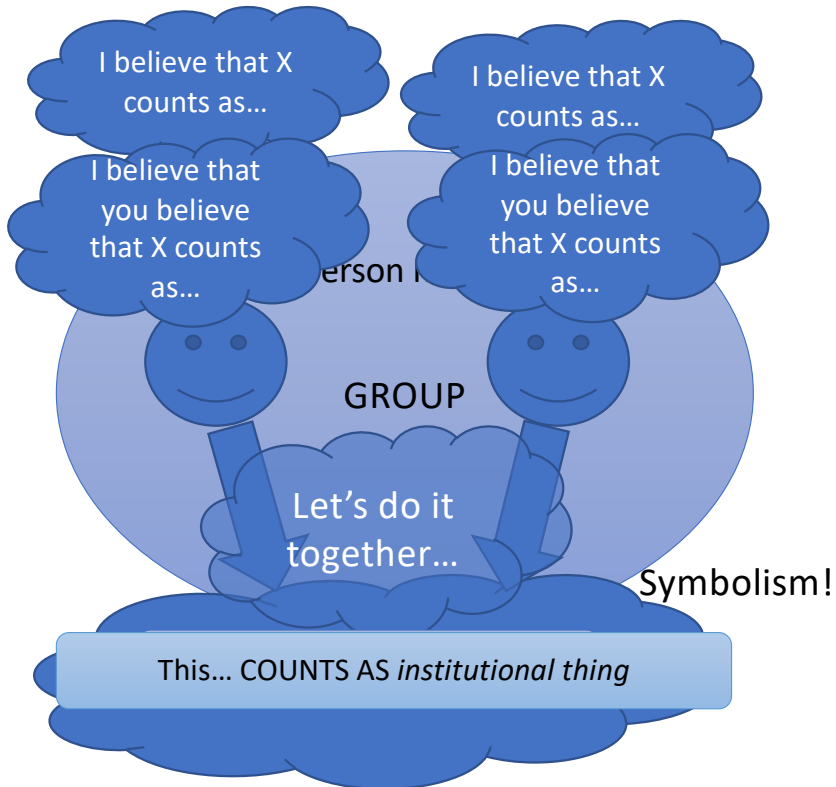
«Mutual beliefs» (Lewis, Lagerspetz, Celano)

Joint intention

Joint commitment

Social norms

Status attribution





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Some psychological keywords:

Sense of joint
commitment

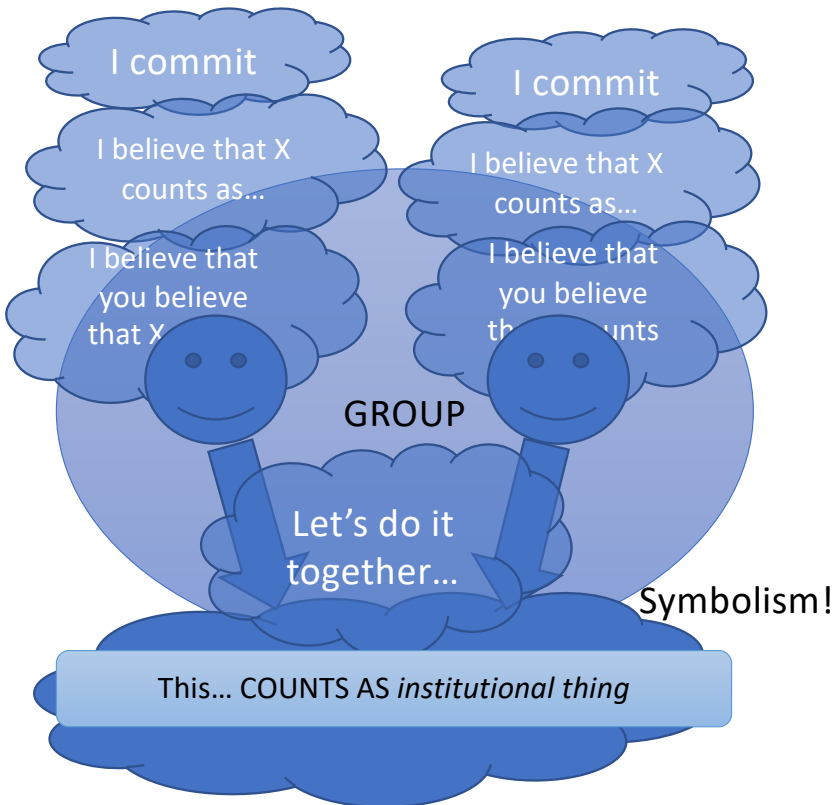
Normative
reactions and
reputation

Games of
pretend-play

Theory of
mind and false
beliefs

Meta-linguistic
awareness

Artifacts and
symbolic
artifacts





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Ontogenesis

Already at the age of 6 months, human children show some capacity to share a goal

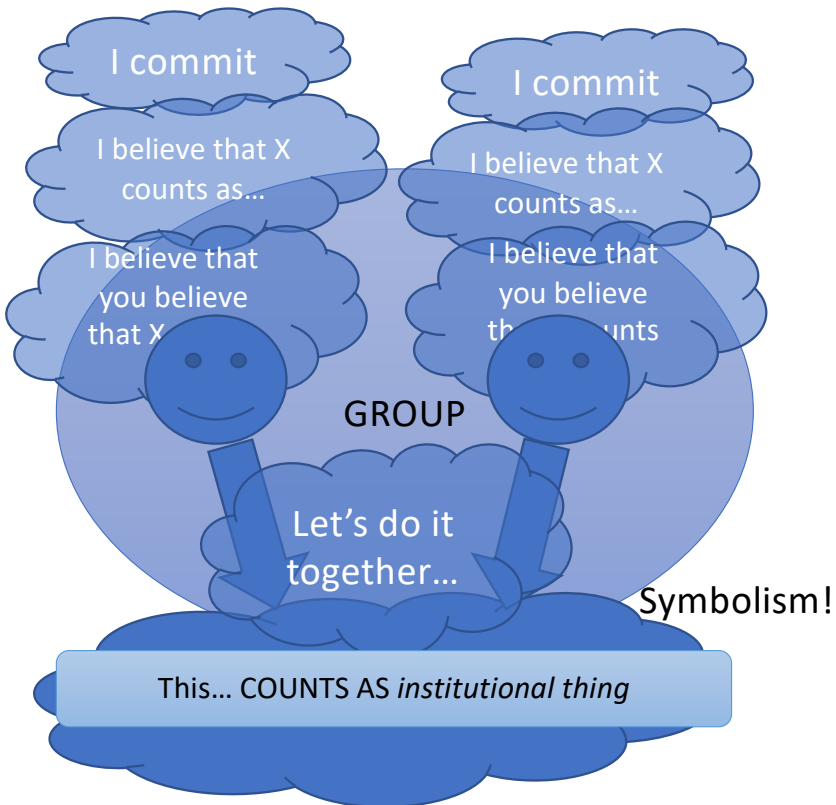
At 2 y.: first «pretend-play» games (let's do it together that X is the Orc)

At 3 years, they help others even if already rewarded; they feel the responsibility to make amends when dropping the game; they react to violations even when not directly affected

Since 5 years, explicit reputational concerns (group, normative identity)

At 4-5 years, human children develop a full-fledged perspective-taking → an understanding of others' false beliefs. - Meta-linguistic awareness

Inhibition of one's own cognition, different perspectives over an object, multi-modality of objects. Institutional objects as artifacts.





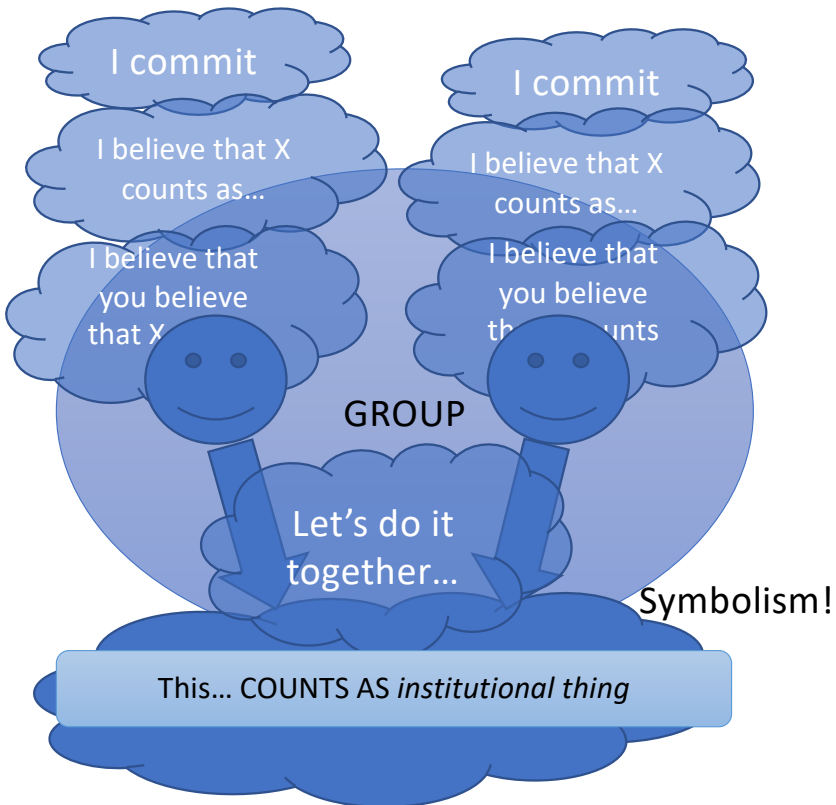
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Homo habilis → *Homo erectus* (2 millions – 1.8 millions y.a.)

Climatic changes → cooperation to survive

Cooperative group hunting – cooperative breeding

Homo heidelbergensis (700.000-300.000 y.a.)

Reorganization of cortical areas: inhibition of selfish reaction, social/emotional integration

Homo sapiens (300.000 y.a.)

Globularization of cranium – re-organization of temporal-parietal cortical areas (theory of mind, enhancement of phonological working memory)

Ornamental, symbolic artifacts → Red Ochre on shell beads at Blombos Cave, South Africa

Phylogenesis



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Joint commitment

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Status attribution

Three theses:

+ Authority, punishment, validity

1. The cognitive roots of punishment are more ancient than the ones of authority and validity

Anger (goal frustration)

Disgust

Trust and expectations (2nd person)

Pleasure of revenge

Indignation (3rd person)

Support of cooperation

Authority and validity require statuses

Inhibition of impulses

Perspective-taking and mind-reading

Language and meta-representations



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Milgram, S. (1974). *Obedience to Authority: An Experimental View*. London: Harper and Row.

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Three theses:

1. The cognitive roots of punishment are more ancient than the ones of authority and validity

2. The cognitive roots of authority are connected with the idea of a justification in terms of groups and their goals

2. The cognitive roots of validity are connected with categorization

Rules?

Prototypes? Exemplars?

Embodiment?

Is this a cat? Is this valid law?

Is this a valid contract?



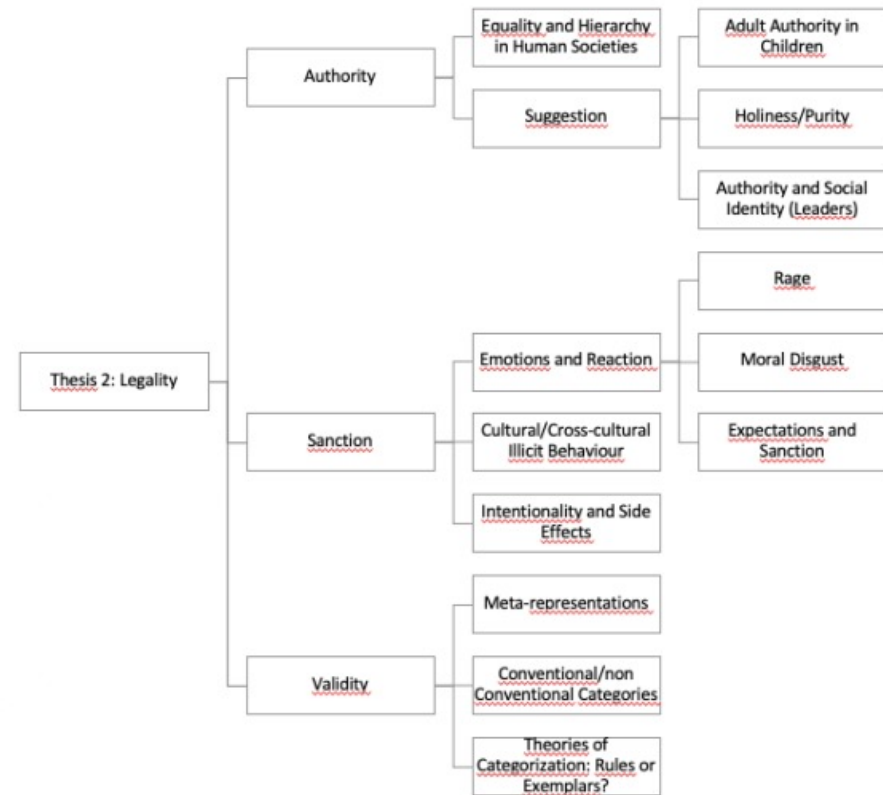
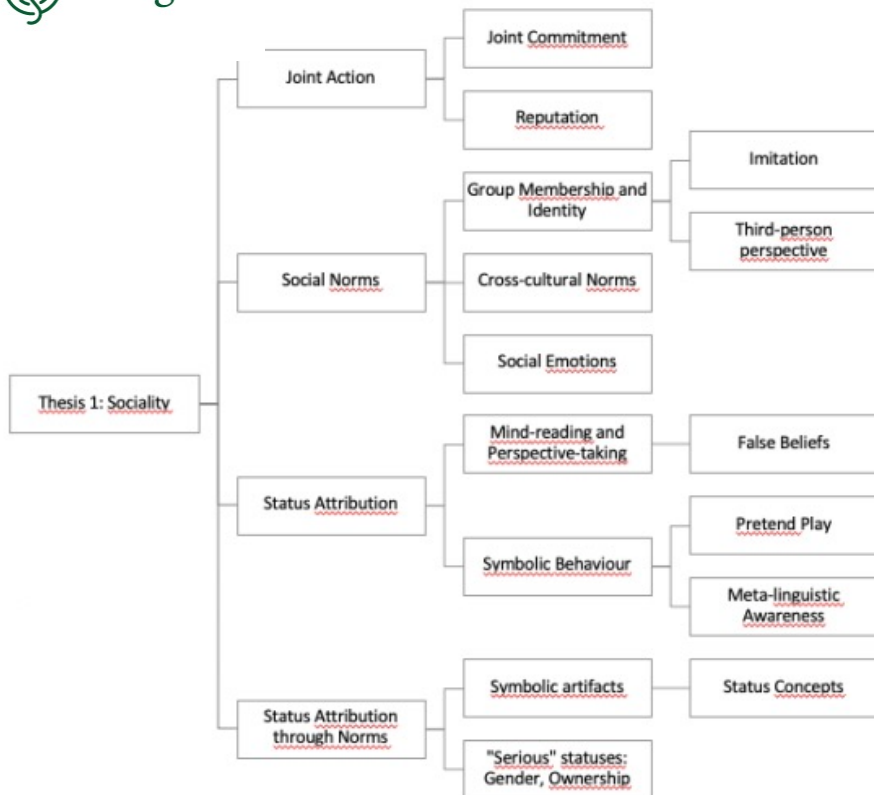
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The Cognitive Structure of Legal Institutions

Present some practical consequences of this research and evaluate a few normative questions connected with them

Theoretical relevance

Practical relevance

Pathologies of legal institutions (H.L.A. Hart)

from a cognitive point of view

Existence of legal institutions → cognitive facts
Absence (or weakening) of cognitive facts
→
Non-existence (or weakening) of legal institutions



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The Cognitive Structure of Legal Institutions

What happens if we reduce the general sense of social commitment by nurturing an individualistic illusion of self-sufficiency and solipsism?

What happens if we completely detach punishment from revenge?

What happens if we demystify legal and political rituals as a kind of «bureaucracy»?

What happens if we are «bureaucrats» in the sense of not making explicit the connection between procedures and group goals?

Pathologies of legal institutions (H.L.A. Hart)

from a cognitive point of view

Existence of legal institutions → cognitive facts

Absence (or weakening) of cognitive facts



Non-existence (or weakening) of legal institutions



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The Cognitive Structure of Legal Institutions

Rule of law

Existence and supremacy
of legal institutions

Pathologies of legal
institutions (H.L.A. Hart)

*from a cognitive point of
view*

Existence of legal institutions → cognitive facts

Absence (or weakening) of cognitive facts



Non-existence (or weakening) of legal institutions



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The Cognitive Structure of Legal Institutions

Should we avoid reducing the general sense of social commitment by nurturing an individualistic illusion of self-sufficiency and solipsism?

Should we avoid detaching completely punishment from revenge?

Should we avoid demystifying legal and political rituals as a kind of «bureaucracy»?

Should we make explicit the connection between procedures and group goals?

Rule of law

Existence and supremacy
of legal institutions

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Thank you!

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