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Free Will: Brute Fact of Nature or Institutional Fact?

According to Dick Swaab and Victor Lamme, both the will and the free will are illusions. Scientific research on the brain, they argue, showcases that we erroneously identify ourselves with the conscious mind and consider our decisions, at least in principle, to be the result of an act of deliberation. But it is, in fact, the brain that decides, whereas the conscious mind invents a reason in order to explain the choice that the brain has already made.

This conclusion is based on the assumption, first, that the will is a mere construction of the mind, and, second, that the (free) will, therefore, is an illusion. That boils down to the idea that only brute facts of nature are true facts and everything else illusions. But this world not only consists of brute facts of nature (molecules, organisms), but also of facts that exist only because we believe them to exist (money, the UN, property). John Searle, in his book *The Construction of Social Reality* (1995) calls the latter facts "institutional facts". A piece of paper (a brute fact) is a 20 Euro bill, because of the institution of money. This worthless piece of paper becomes valuable only because the function to possess this value is assigned to them and we collectively accept this assigned function. Money is not the coins and paper bills (brute facts), but the collective behavior of people towards money. It exists because we believe it to exist. But does this mean that money (or the UN or property) is a mere illusion?

An analysis of the juristic act (art. 3:33-35 BW) exhibits that the will is an institution as well. The assumption of art. 34 is that we must differentiate between a true will and an apparent will: I sometimes willed an action, but afterwards concluded that this couldn't have been my true will. The criterion to determine what my true will is, is the standard of reasonableness. My (legal) will, therefore, is not the mere inclination to do something, but the judgment that this inclination is also something I could reasonably have willed at the time of the declaration. This means, first, that the will is a construction (it is a judgment, not the inclination in the brain), and, second, not a private phenomenon, only knowable to myself, but an institutional fact (I will use the institution of reasonableness in order to assess whether or not my declaration expressed my true will).

Only if we consider the Euro, the UN and property to be mere illusions, may we also call the (free) will an illusion. But to accept that option, is to wipe out the social world with its institutions of law, science and art, and to find us in a naked, nasty world of brute facts only. The mistake of Lamme and Swaab is a category-mistake: they fail to see that the (free) will does not belong to the category of biology, but that it belongs to the social world. The conclusion is: the (free) will exists!

(This blog is a summarize of the Meijers Lecture, held January 8, 2013. Full text:)