

Observing Facts and Values: A Brief Theory and History

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Abstract

Not acknowledging the history and metaphysics of the fact/value distinction has led to confusion about the difference between the normative and the cognitive, and disputes on whether there are ways to move from one side, facts, to the other, values. One solution is to recognize values as more “objective” than facts, and thus blur the common way of drawing this distinction. The origin of the distinction between facts and values appears in the space between them, when and where it is uncertain whether an observation becomes fact or value. Once values turn into subjective beliefs, the entire distinction collapses, and modernity begins to end.

Résumé

Ne pas reconnaître l'histoire et la métaphysique de la distinction fait/valeur a créé de la confusion à propos de la différence entre le normatif et le cognitif, et des disputes concernant la possibilité d'aller dans un sens (les faits) ou dans l'autre (les valeurs). Une solution possible consiste à reconnaître les valeurs comme étant plus ‘objectives’ que les faits, et d'ainsi (brouiller) la manière habituelle de faire cette distinction. L'origine de la distinction entre les faits et les valeurs apparaît dans l'espace entre eux, lorsque et où il devient incertain si l'observation est un fait ou une valeur. Une fois que les valeurs deviennent des croyances subjectives, la distinction s'écroule, et la modernité est au début de sa fin.

THE INTERDISCIPLINARY intellectual movement commonly called “constructivism” centers on a notion of the “observer.” The premise or axiom of any theory of the observer is that “anything said is said by an observer” (Maturana and Varela 1980:8)—including this very observation. The theory of the observer concerns itself with the Who (the observer), the

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What (that which is being observed), and the How or light in which the What appears to a Who. In the metaphysics of modernity, from Descartes to Nietzsche, the Who appears as “Subject,” the What as “Object,” and the mode of their relation as “Knowledge.” The popular habit of seeing observers as human beings or persons, and these persons as aggregates of “mind” and “body,” is among the persisting echoes of the metaphysics of the Subject.

All observers *of* (something in) the world are observers *in* the world. All observing is innerworldly (Luhmann 1992:75). This means no observer can see all there is to see; all observing is limited, finite, and “perspectival.” An observer observes within its perspective or paradigm, but not the perspective itself. Paradigms figure as resources, not topics or themes. The light in which an observer sees is not itself seen by that observer—until it gets dark. This occurs in rare and exceptional situations, when a paradigm is collapsing, during scientific or cultural revolutions (Kuhn [1962] 1970:200). For the most part, however, an observer is mostly and largely blind—blind to its own blindness, and blind to all other perspectives and paradigms which allow other and different observers to see what (only) they can see from where and when they see.

Observing is no mere watching, mirroring, or copying its referent. The observer *is* not its referent—the knower is not the known. How an observer observes, its mode of observing, is not “caused” or “determined” by what is being observed, the referent or object. Seeing and perceiving depend on the social and cultural relations between observer and observed, as well as on the particular approach and stance an observer takes toward its referent. A vet’s clinical gaze will disclose a dog in ways that differ from that of an animal rights activist or dog owner. This means that the theory of the observer is incompatible with causal theories of perception and correspondence theories of truth.

Observing is no cognitive or mental duplication of what is “out there,” but a “doing,” an intervention and incision into the world. As such, this doing—once it has, in fact, occurred—can also come undone. Observers appear and disappear all the time; think of languages or species becoming extinct. The world is not the same after as it was before this intervention; it gains (or loses) a way in which something in the world can matter and make a difference, or matter no more and no longer. Observing is contingent, as it selects and actualizes but one possibility from others.

The practice of observing consists, fundamentally, in the drawing of a distinction, including the distinction between “facts” and “values.”¹ A distinction first separates and then relates and connects its two different and opposite sides. The distinction itself is one, a unity, but it distinguishes between two different and opposite sides. That is, a distinction establishes

1. “The basic cognitive operation that we perform as observers is the operation of distinction” (Maturana and Varela 1980:XIX).

the *unity of a difference*, and it takes “dialectics,” a Hegel, to handle the resulting logical and conceptual complexities. The two different sides created by the distinction are opposites, but opposites *of each other*, as in Subject and Object, or Being and Time. In each case, the “and” is not the additive plus of a sum, but points toward the underlying unity of the difference, the belonging together of the distinction’s two opposite sides.

A distinction allows something in the world to make a difference and matter in some way. It lets something be and unfold. The distinction creates a difference that makes a difference. In fact, for the observer whose distinction it is, it makes *all* the difference and is *all* that matters. But the distinction matters and makes a difference only once and after it has been drawn (not before), and only as long as it is, and can in fact be drawn (but not after). Once a distinction can no longer be drawn, it—together with its observer—turns into an extinction. When a distinction and its observer come into the world, the world gains a way in which something is allowed to matter, but when both exit the world, the world loses a mode of mattering. The entry of a distinction is a mode of “worlding,” and its exit an “unworlding.”² Where no distinctions can be drawn, nothing matters there anymore, as the Nothing and nihilism spread in the distinction’s former space.

How and what an observer can and cannot see depends on the core or master distinction that defines who the observer is, its “identity.” The core distinction is that distinction without which the observer could no longer be who it is and do what it does. Once drawn, the distinction limits the range and horizon of the observer. Then, the observer must observe the distinction, that is, follow and obey its particular way of carving up the world. It is only within this niche that the distinction matters and the observer is “at home.” Still, the radius of an observer’s habitat and habitus varies; it can expand in an imperial effort to make its distinction matter more widely and globally, or it may shrink as its domain and distinction are invaded and annexed by rival observers striving to “reduce” their competitors (Fuchs and Spear 1999).

Once drawn, the observer’s movement is limited to the two sides of the distinction that enclose the observer within its domain. From now on, the observer cannot simply step out of its domain and observe (according to) a completely different distinction and observational mode or blueprint. Once the distinction, say, between true and false has been drawn and “turned on,” the observer can move from true to false and back, but cannot leave this distinction and its domain altogether. An immune system can only distinguish between what is harmful and harmless to the organism whose immune system it is; it cannot abandon this distinction, and operate in a world where it makes no difference.

An important consequence is that an observer can see *within* and according to its distinction, but not the distinction itself, its unity. While

² “Welt *ist* nie, sondern *weltet*” (Heidegger [1929] 2004:164) (italics in original).

observing and following the distinction, an observer cannot also observe that distinction's historical and social origins, or its neurobiological conditions. The distinction itself, its unity, is the light in which the observer sees what it sees; the observer can see *in* the light or truth of the distinction, but not the light itself (von Foerster 1981). The light is the condition that grounds and enables the observer and its observing, the medium within and out of which this kind of observing is possible. If this is attempted nevertheless, if a distinction is applied to itself, paradox ensues, blocking such attempts, and rendering the observer idle (Luhmann 1990:132).³ The observer "law," for example, can operate within the distinction legal/illegal, and decide its cases accordingly, but it cannot decide whether the distinction itself is legal or illegal, at least not in and during its routine or normal operations. The legality or illegality of the law as such can and does become a topic in and for the law, but rarely so, when the law is collapsing, as may happen in so-called states of exception, in revolutions, or state breakdowns. Likewise, a science can decide whether something is true or false, a fact or fiction, but it cannot, in its normal or routine mode, apply the distinction to itself, and consider whether separating true from false is true or false. Again, this remains a rare possibility opened up by scientific revolutions and radical incommensurability between paradigms.

An observer is limited and restricted to its domain. It cannot see what can be seen in different domains, and it can hardly and barely and rarely see itself, its own unity, or origins. To observe the unity of an observer, to observe the distinction itself, and as such, to observe the origin and initial unfolding of a distinction, a switch is needed, the switch from first- to second-order observing (Luhmann 2002:155). First-order observers (e.g., the brain) observe *what* they observe, and attribute their observations to the actual existence and reality of their referents. Second-order observers (e.g., neuroscience) observe *how* first-order observers observe, and attribute that first-order observer's observations to that observer, not to what it observes. The brain (mind) observes, say, the wall, while neuroscience observes the brain observing the wall. As observers, both brains and neuroscience are operationally closed, that is, they cannot feed their observations into each other. How neuroscience observes brains follows from neuroscience, not brains; while in brains, we find neurons and neuronal networks, but no neuroscience. A brain perceiving some object "naturally" and "obviously" attributes its perception to the "evident" fact that the object is really out there to see (naïve realism), while neuroscience attributes the brain's perceiving to the brain, to the brain's own mode of operation (constructivism).

One critical result is that a second-order observer of a first-order observer cannot observe according to the same master distinction this first

³ Is the Marxian distinction between "basis" and "superstructure" a matter of basis, superstructure, or neither?

observer employs. The observer “Nietzsche” ([1886] 1988), for example, had to move outside and beyond the distinction between good and evil to observe (Christian) morality as such. Only then can that morality and its distinction be disclosed as neither good nor evil. Likewise, that observer of the observer “metaphysics,” namely Heidegger ([1927] 1975:452), had to move out of and beyond the metaphysical “ontological difference” to be able to see that difference and, thereby, the truth—not *about*, but *of*, metaphysics. Only after this move, the famous *Kehre*, can it be observed that metaphysics “worlds” in the way of the ontological difference, the distinction between Being and beings.

IN THE CROSSING

As an observer moves within the defined confines of the domain, it makes and maintains as its own, from one side of the distinction to the other, it traverses a “crossing” or passage stretching in between the two sides, around demarcation lines, borders, and boundaries (Spencer Brown 1964). The crossing is a zone of indeterminacy, ambiguity, and uncertainty. The two opposite sides of the distinction consolidate into firm and well-demarcated opposites, so that something can be *either true or false*, either Subject or Object, either fact or value. But things are not so clear-cut in the crossing, where the either/or turns into a neither/nor or “(some of) both.” In the crossing reside surprises and exceptions, anomalies and hybrids. It is a zone of transition and becoming, of undecidability, doubt, even despair. The light of the distinction is not as bright here as at its opposite poles; it is a darker or twilight, shot through with darkness. It is not clear who, what, and how something is, or eventually will be and become, in this passage. The beings populating this area of the domain are not sure of themselves, of where they belong; they are on the move, going through various metamorphoses and transformations, which makes them elusive drifters, hard to track, pinpoint, and classify.

The crossing unites the history of Western metaphysics in its various historical epochs and incarnations, from Plato’s movement out of the cave (the world as error) and toward the Sun (the true world), to Hegel’s notion of “experience” and the nineteenth-century genre of the *Bildungsroman*. Hegelian experience is the movement and path of becoming in and through which the Subject discovers and transforms itself into who it (truly) is. This movement entails a transition and transsubstantiation from the Subject as first-order observer in the mode of common sense or “natural” consciousness—the “for it”—to the Subject as second-order observer in the way of philosophy and self-consciousness—the “for us.” The Subject is (as) the unity of the difference between itself (“I” as Subject) and its self (“Me” as Object), which “reenters” the “I”—as the unity of the difference between the “for it” (common sense) and the “for us” (absolute idealism). The path of its becoming leads the Subject through the crossing

in between the two sides of the distinction, between the Subject as “for it” (Subject as Object) and “for us” (Subject as Subject).⁴ The Hegelian crossing marks an intermediate zone in which the Subject is not anymore who it was, and not yet who it will become. Being suspended between this double negativity, between the “not yet” and the “not anymore,” the Subject is not just in (Cartesian) doubt, but (Hegelian) despair (Hegel [1807] 1988:61). The difference? Doubt is (merely) cognitive; despair existential.⁵

LATERAL AND HIERARCHICAL DISTINCTIONS

The theory of the observer distinguishes between lateral and hierarchical distinctions. In a lateral distinction, such as left/right, the two sides of the distinction belong to the same ontic level or plane; in a hierarchical distinction, one side is placed “above” and “beyond” the other. Regardless of their particular configuration, which varies throughout the history of metaphysics, *all* metaphysical distinctions, including the distinction between values and facts, are hierarchical, since the “meta” realm occupies a privileged ontic rank, over and atop the “physical” realm. The difference between the two realms is not (just) quantitative but qualitative; movement across the two sides does not (just) involve the gain or loss of continuous resources, such as various amounts of various kinds of “capital,” but a transition between two fundamentally different orders of life and ranks of being. The archetype for hierarchy is the difference between profane and sacred.

The distinction between values and facts belongs in the history of metaphysics; not acknowledging this history has led to misunderstandings of what this distinction means and entails.⁶ More precisely, the fact/value distinction is part of a particular epoch in the history of metaphysics; namely, the period of its ending, which ending is still ongoing and by no means finished (Heidegger [1966] 2000). The root of the fact/value distinction is the Kantian (and NeoKantian) hierarchical distinction between the transcendental and empirical realms of the domain the observer “Kant” establishes. The “transcendental” is Kant’s term for the “meta” realm, where Pure Reason and philosophy reign, while the “empirical” denotes

4. “Die Reihe seiner Gestaltungen, welche das Bewusstsein auf diesem Wege durchlaeuft, ist vielmehr die ausfuehrliche Geschichte der Bildung des Bewusstseins selbst zur Wissenschaft” (Hegel [1807] 1988:61).

5. At the same time, the crossing is that site and situation that comes closest to affording the observer a look at itself, at its unity, source, and origin, precisely because the two sides of the distinction have not (yet) unfolded and condensed into robust and separate either/ors. The late Heidegger (1989) observes this condition in the crossing as the “Ereignis der Lichtung,” that is, the coming into the world (“Ereignis”) of a “clearing” (“Lichtung”), which “clearing” is an opening for a light in which an observer (in Heidegger’s case, the observer “*Dasein*” as metaphysics) can appear and unfold its core or master distinction. This metaphysical distinction, the ontological difference, is not anything “subjective” or “objective,” but the way in which the Western or metaphysical world—worlds.

6. A recent example is Black (2013).

the “physical” realm occupied by the positive sciences and sense perception. The unity of the difference between transcendental and empirical is Kantian “experience.”⁷

The transcendental realm is “prior” to the “posterior” of the empirical realm, not because it comes first in the temporal order of knowledge, but because it is prior to the positive sciences in epistemic and ontic rank and status. The transcendental is prior and *a priori* because it provides the paradigmatic conditions in and under which the empirical sciences are possible. Empirical science (for Kant: Newtonian physics as classical mechanics) can know “objects” if, and only if, metaphysics as transcendental philosophy provides a prior understanding, a paradigmatic and projective disclosure, of what constitutes the objectivity or objecthood of the object *qua* object. According to transcendental philosophy, no empirical science can provide such an understanding, since any empirical knowledge of any object of Nature given to the senses always and already moves within a prior understanding of what constitutes the nature of Nature as such—its ultimate essence and foundational substance (in modern science: “mass in motion”). This understanding is not and cannot be “read off” the Object, but comes from the Subject,⁸ and so is both prior to and above the Object.

For our present task, the critical result is that the metaphysical Subject is anything but “subjective,” that is, a matter of personal or individual choice or preference. Indeed, there is nothing more “objective” than the Subject, since the Subject constitutes the objecthood of the object, and so transcends the realm of the accidental, arbitrary, and contingent. The Subject is a conceptual and logical necessity for any “knowledge” of the world deserving of this label; without the Subject, our knowledge of the world would never exceed sensory perception and so could never go beyond the “merely subjective.”

The metaphysical and hierarchical distinction between Subject (mind) and Object (body) places the Subject above and beyond the Object as that Object’s transcendental condition and framework. For Kant and German Idealism, the Subject is a unity, the synthesis of Pure Reason, and is also universal, grounded in our common humanity as the rational animal. It is this unity and universality that begins to erode and fragment with the transition from Kant to the NeoKantians, which transition belongs to the (beginning of) the ending of metaphysics itself.

MAX WEBER ON FACTS AND VALUES

In his writings on the logic and foundation of the social and historical sciences, Max Weber adopts the NeoKantian reinterpretation of Kant’s

7. “Gedanken ohne Inhalt sind leer, Anschauungen ohne Begriffe sind blind” (Kant [1787] 1998:130).

8. The metaphysical Subject is not a person, but the Subject of metaphysics, that is, metaphysics itself.

transcendentalism as a theory of experience and the positive empirical sciences. In NeoKantianism, the ontological dimension in Kant narrows into epistemology—itself an important sign that metaphysics is entering the period of its eventual demise. In this reinterpretation, the Kantian Subject—and, even more so, the Hegelian or absolute Subject—loses its unity and universality. While it retains some of its transcendental and hierarchical status, the logical and universal Subject now turns into a historical and regional a priori. This dethroning of the Subject occurs, prominently, in two NeoKantian approaches—Cassirer’s (1955–1957) “philosophy of symbolic forms,” and Max Weber’s (1982) *Wissenschaftslehre*. In the transition from Kant and German Idealism to Neokantianism, two events stand out. First, the unity of the Subject fragments into the famous “plurality of value spheres”⁹ and, second, it becomes historically relative; that is, relative to occidental modernity.

However, for Weber “values” are still nothing “subjective,” in the sense of arbitrary preferences or claims restricted to private persons or individuals.¹⁰ For Weber, “values”—though now in the massive and manifest plural—still occupy a special and privileged position in the constitution of knowledge. The Weberian distinction between values and facts is still a hierarchical and, as such, meta-physical distinction, although this hierarchy already shows signs of nihilism and deconstruction. Weber sees values not as the personal or collective value-judgments of actors or groups of actors, but rather as “value-relations” that belong to the objective culture of a society and its particular historical configurations.¹¹ While such value-relations may vary between cultures, and change over time together with culture, there is nothing “subjective” about these values, and their orienting force is not a matter of personal and subjective choice or volition. Instead, value-relations or, as Weber also says in a faint echo of Plato, value “ideas,” constitute the transcendental horizon and medium in and out of which the empirical sciences select and interpret their “facts” and data. One such value is that of the positive sciences themselves; in occidental modernity, science, and the empirical truth of scientific facts are, in fact (!), a core cultural value. Value-free empirical science is itself part of the value system of occidental modernity, and it is *this* value that Weber wants to protect and defend against a fusion of science and prophecy (Schluchter 1971:22).

While the empirical sciences may find facts, they cannot themselves establish their cultural significance. Left to their own devices, the sciences are confronted with a “chaos” of unstructured and unrelated bits and pieces

⁹ In Cassirer, the value spheres become “symbolic forms”; in Parsons and Luhmann, “function systems.”

¹⁰ That is, the values Weber is concerned about as scientist belong to a level different from “preferring blondes to brunettes” (Weber [1917] 1982:501).

¹¹ See Oakes (1994:146) for this distinction.

of factual information. Without transcendental value-relations and value-ideas, the sciences are unable to select what matters to a culture and cannot interpret the cultural significance of their findings. Values provide a prior perspective, framework, and light in which the sciences can order and structure their observations as observations that matter and make a difference—to the culture in which these sciences are embedded.¹² No fact can, by itself, demonstrate its significance; for this, it must be related to those values which define the identity and signature of a particular period or era in the history of a culture. What matters to a culture—the value of facts—is decided by that culture, not by facts, although one can observe values empirically as well—the fact of this, but not that, value in a culture. Weber moves within the crossing of the fact/value distinction—between the fact of values, and the value of (value-free) facts.

The *validity* of these values, however, cannot be empirically established; there is, for Weber, no logical path from facts to values, no transition from “is” to “ought,” from what is given to what should be.¹³ In Weber, the crossing from values to facts is open only in one direction, from values to facts, but not the other way around. But this does not mean that values cannot claim any validity at all, only that their validity cannot be decided scientifically. For values are always and already transcendently presupposed by, and prior to, any empirical science. The validity of values cannot be established empirically or scientifically precisely because they transcend the empirical domain of the observer “science.”

Up to Weber, values are endowed with transcendental status. They are not “subjective.” They belong to a hierarchical distinction in whose domain they occupy the meta-realm, above and beyond the realm of facts ruled by the empirical sciences. In sharp contrast, Niklas Luhmann’s way of distinguishing between facts and values is postmetaphysical and post-transcendental.

NORMATIVE AND COGNITIVE MODES OF EXPECTING

Luhmann sees the distinction between facts and values as grounded in different modes of expecting—cognitive expecting (facts) versus normative expecting (values). Expecting cognitively means to expect that the facts of the world may be otherwise than expected, in which case an observer is prepared to not insist on its expectations and adjust or correct them through learning. Luhmann tends to associate this mode of expecting with

¹² “Das Licht, welches jene hoechsten Wertideen spenden, faellt jeweilig auf einen stets wechselnden endlichen Teil des ungeheuren chaotischen Stromes von Geschehnissen, der sich durch die Zeit dahinaewaelzt” (Weber [1904] 1982:213–14).

¹³ “Die ‘Objektivitaet’ sozialwissenschaftlicher Erkenntnis haengt vielmehr davon ab, dass das empirisch Gegebene zwar stets auf jene Wertideen, die ihr allein Erkenntniswert verleihen, ausgerichtet, in ihrer Bedeutung aus ihnen verstanden, dennoch aber niemals zum Piedestal fuer den empirisch unmoeglichen Nachweis ihrer Geltung gemacht wird” (Weber [1904] 1982:213) (original emphasis).

the observer “science.” In contrast, normative expectations, such as legal norms, are upheld in case they are being disappointed by the facts; refusing to learn, one insists on them despite the world not being as expected (Luhmann 1992:138). If one expects sunny but observes rainy weather, one adjusts accordingly, and grabs the umbrella. But if one’s car is stolen, one insists on the relevant property laws, and expects the legal apparatus will support one in this insistence.

Notice that, in this understanding, the distinction values/facts loses all transcendental and hierarchical dimensions. The distinction is lateral; there is no sense in which one mode of expecting is somehow ontically distinguished and “above and beyond” or “prior” the other. Correspondingly, the respective systems for expecting communications, and communicating expectations—the legal system for normative and the system of science for cognitive expectations—are not organized through stratification, but functional differentiation. The entire distinction itself is empirical and a posteriori, not transcendental. In fact, it is “behaviorist,” because what matters for separating facts from values is nothing intrinsic to them, but how one “behaves” in case expectations are not fulfilled. The only way to separate facts from values is to observe how disappointments of expectations are, *in fact*, handled; if learning occurs, then the expectation must have been cognitive, if not, normative.

While Luhmann tends to assign cognitive expectations to the system “science” and normative expectations to the system “law,” it is more in line with the empirical nature of this distinction to approach it as a continuum, and to allow for variation. Then, we would not expect all of a science’s expectations to be cognitive. Rather, the paradigmatic framework of a science houses a core of “analytical” truths that are largely immune and resistant to falsification, that is, to learning, adjustments, and corrections (Quine 1964:43–44). In this paradigmatic or analytical core of a science, the mode of expecting is normative, and any “anomalies” are barred, shunned, and explained away (Bloor 1983:142). The more cognitive mode of expecting occurs at the periphery of a science, where the truth appears as more “synthetic” and revisable in the face of incongruencies between what is expected and what is actually the case. Once variation is being allowed, normative and cognitive expectations, values and facts, are not distributed over different systems, law, and science, but instead are housed in different segments of the same system, such that normative expecting occurs in the core of a system or network, while cognitive expecting is more typical of its peripheral and marginal regions (Fuchs 2009).

Such a rephrasing of Luhmann’s distinction allows for corresponding variations in the law as well. There are differences between natural law, positive law, and constitutional law that can be explained in terms of the ease or difficulty in legal changes. Natural law is almost impossible to change; it is seen as necessary and universal, the two Kantian criteria for “analytical” truths, those truths that are deemed true in all possible worlds

and remain true under any and all conceivable circumstances. Positive law is the easiest law to change; in fact, once law becomes fully positive, it expects itself to be changed all the time and is, in fact, undergoing perpetual change in legislatures, which are always in session. In between natural and positive law, in the crossing, is constitutional law that, unlike natural law, can change, but not as easily, routinely, and regularly as positive law. Constitutional law is the closest modernity comes to natural law.

CONCLUSION

The history of the fact/value distinction belongs in the history of metaphysics. As a hierarchical and transcendental distinction, it lasts up to Weber and NeoKantianism, the age in which the observer “metaphysics” is beginning its ending. Luhmann’s version of this distinction is postmetaphysical and posttranscendental. Once variation is being allowed *tout court*, facts and values, or cognitive and normative modes of expecting, do not as much separate different function systems, but rather different regions in the archeology of cultural networks.

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