

外国語

A

英語

早稲田大学大学院法学研究科

以下のIとIIの問題に答えなさい。

I 次の文章を読んで、後の問いに日本語で答えなさい。

Sociologists and philosophers of society accept that social life is suffused with ⁽¹⁾institutions that structure, enable, constrain, and channel social interaction. Institutions exist, in Searle's account, when people collectively recognize statuses to which specified rights and obligations are attached. He formalizes institutions thusly: *X counts as Y in context C*. X is an object, person, or entity; "counts as" is collective recognition; Y is a status with deontic powers (which he defines as carrying "rights, duties, obligations, requirements, permissions, authorizations, entitlements, and so on"); context C specifies the circumstances under which the powers attach. A cut of paper with certain dyed markings (X) counts as money (Y) when it is printed by the Bureau of Engraving and Printing and circulated (C). It counts as money because we collectively accept it as money. To serve as a means of exchange is the primary power of money.

Institutions consist of constitutive and regulative rules. Constitutive rules are fundamental in Searle's account because they construct the institution, creating the possibility of institutional actions and facts. Regulative rules specify norms of conduct. Both types of rules are matters of convention and can be set forth formally or informally observed, and frequently involved both. Under the constitutive rules of football across much of North America, for example, a "touchdown" worth six points is scored when a pointy-ended ball gets past the goal line in the possession of a player; a regulative rule (among many) prohibits striking an opposing player from behind. In South America, under the constitutive rules of football, a "goal" worth one point is scored when a round ball crosses the goal line between two posts below the crossbar; a regulative rule (among many) prohibits deliberately tripping an opposing player. ⁽²⁾The constitutive and regulative rules for these two types of football vary greatly depending on context, from professional leagues, to street games with makeshift balls and goals and rules made for the occasion. And the constitutive and regulative rules of football have histories, evolving over time.

Legal phenomena can be usefully seen in terms of this formal structure. Property and marriage consist of constitutive and regulative rules (which vary widely and have evolved over time). Property exists when people collectively recognize that a person or group has the right to possess, to use, to exclude others, or to transfer something. Marriage exists when people collectively recognize clusters of rights and obligations in connection with family unions. The same analysis can be applied to state legal organizations. Courts and legislatures are organizations composed of people holding offices with collectively accepted statuses carrying legal deontic powers operating through constitutive and regulative rules. Certain people (X) are collectively recognized as possessing legal authority (as police, prosecutors, legislators, judges, etc.) (Y) when duly appointed and acting in their official capacities (context C). ⁽³⁾People recognize that police have the power to arrest, prosecutors to prosecute, legislators to legislate, judges to judge, and jailors to jail.

⁽⁴⁾What defines a legal status is not the function or task itself—private security officers also engage in policing, private rule systems have rule makers and enforcers, and private arbitrators engage in judging, none of which is legal per se—but rather it is "legal" because these tasks are carried out within a system of institutions collectively recognized as a *legal* system. People acting as state legal officials have legal powers not conferred by statuses in other institutions, with organized physical force standing behind their official legal actions, often justified by claims of justice and right. Possessing "legal" powers is a defining component of how they are socially perceived.

※ページ下部に出典を追記しております。

問1 下線部(1)のinstitutionsとはどのようなものか。適切な訳語を当てた上で、貨幣を例にとって説明しなさい。

問2 下線部(2)のrulesは具体的にどのようなものを指すか。二種のfootballそれぞれについて述べなさい。

問3 下線部(3)を訳しなさい。

問4 下線部(4)について、本文で述べられていることをまとめなさい。

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From A Realistic Theory of Law. Brian Z. Tamanaha. pp.51-52. Copyright © 2017 by Cambridge University Press and Assessment. Reproduced with permission of the Licensor through PLSClear.

外国語

B-1

英語

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Ⅱ 次の(イ)～(ニ)の中から2問を選択して答えなさい。

必ず選択した番号を明記すること。

(イ)

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(ロ)

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外国語

B-2

英語

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(一)

Cries of private censorship abound in the digital age. What those who decry social media “censorship” mean when they use the term varies. Some critics use the term to accuse the social media companies of applying the rules that govern speech on their platforms inconsistently, to the disadvantage of certain viewpoints of speakers. Others use the term to refer generally to the power that private companies possess to decide what counts as acceptable or unacceptable speech on social media. What unites these complaints of platform censorship is the fear that underpins them: namely, that the private and almost exclusively for-profit companies that control the platforms may use that control to distort public debate and to deny equal access to the social, political, and economic goods that the platforms provide. While the lack of transparency about the content moderation practices of the social media companies makes it hard to reach general conclusions about whether and to what extent political bias, or other kinds of bias, influences their operation, the broad discretion that these companies currently enjoy to regulate the speech that flows through their platforms makes it entirely possible that they might, or already do, discriminate against certain viewpoints of speakers, either because of their ideological convictions or because it suits their economic or political interests to do so. And there is no question that individual speakers are denied access to the platforms all the time for reasons that are hard to fathom.

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Lokier, Genevieve. “Social Media, Freedom of Speech and the Future of Our Democracy.” In *The Limits of Antidiscrimination Law in the Digital Public Sphere*, 179. Oxford: Oxford University Press, 2022. Reproduced with permission of the Licensor through PLSClear.

(二)

In 2000, the UN Global Compact was issued. The UNGC includes four principles which relate to ‘Labour.’ Word-for-word these four are same as those in the ILOs 1998 Declaration. The UNGC appeals to companies voluntarily to align their practices with these principles and to report on their progress. Many thousands of companies have joined, but the UNGC has experienced some difficulty in persuading companies even to report. The UNGC's skimpy explanation of the meaning of the four labour rights makes it impossible to determine the level of commitment of the signatory companies....

In international law, human rights are those rights listed in certain international covenants or Conventions, with ratifying States obliged to ensure that the right is applied in law and practice. This universalist view of human rights does not mesh easily with the CSR approach adopted by some companies that they can voluntarily decide whether to assume the obligation of observing human rights and if so, to decide for themselves what exactly the right means. Some companies may have signed the UN Global Compact without fully realizing that the UNGC incorporates the four principles set forth in the 1998 ILO Declaration, which links these principles to eight core Conventions. Such companies may have committed to respect principles such as freedom of association because they assumed they could define what this meant. Those holding such a view were disabused of its validity by the adoption of the UN Guiding Principles.

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