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RULES & INSTITUTIONS

ESSAYS IN MEANING, SPEECH ACTS AND SOCIAL ONTOLOGY

Frank A. Hindriks



RULES & INSTITUTIONS

Essays on Meaning, Speech Acts and Social Ontology

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RULES & INSTITUTIONS

Essays on Meaning, Speech Acts and Social Ontology

Regels & instituties

Essays over betekenis, taalhandelingen en sociale ontologie

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CONTENTS

Acknowledgements	vii
1 Introduction	1
I RULES & CONCEPTS	
2 A Modest Solution to the Problem of Rule-following	19
3 Acceptance-dependence	49
II RULES & LANGUAGE	
4 The Analysis of Assertion	69
5 Speech Acts & Constitutive Rules	83
III RULES & INSTITUTIONS	
6 The XYZ-conception of Constitutive Rules	117
7 Institutions, Practices & Constitutive Rules	141
References	169
Summary (Dutch)	175
Curriculum Vitae	183

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Frank Hindriks
Rotterdam, December 2004

1 INTRODUCTION

Institutions play a very important role in our lives. Many of our daily activities are institutional. Think of going to the office, giving a lecture, standing in line for lunch, paying for it, and attending a seminar. All of these are institutional phenomena. The underlying institutions structure our behaviour. They are social arrangements that often make our lives easier, and sometimes more difficult: they facilitate and obstruct; they enable and constrain. Institutional phenomena, however, are not exhausted by activities. They also involve, among others, objects, persons, events, and relations. Think of driver's licences, presidents, declarations of war, and marriages. These examples reveal that institutional phenomena are very diverse. Institutions do not just structure our behaviour. They also shape our environment in many other ways. There would not be any traffic lights, mailboxes, psychiatrists, or bachelor parties, if it were not for our institutions.

Institutions are often regarded as rules, and it is easy to see why. The fact that institutions structure our behaviour implies that each institution has a characteristic pattern of behaviour associated with it. Most people stop for traffic lights, use money when they are in a shop, and are silent when a professor gives a lecture. Conceptualising institutions as rules has as an advantage that this fact about institutions is readily explained. If the people involved in an institution follow the relevant rule, a pattern of behaviour ensues. Take the rule that you need a driver's licence in order to be allowed to drive a car. This rule can be appealed to for explaining the correlation between driving a car and having a driver's licence. Many people let their behaviour be guided by institutions, or – what might be the same – by rules, and this provides at least a partial explanation for the regularities we can observe in institutional reality.

But there is more to institutional reality than patterns of behaviour. There is an important conceptual dimension to institutions as well. We

conceptualise certain actions as getting married, we take certain objects to be driver's licenses or money, and we regard certain people as presidents or police officers. And it seems plausible to say that the objects and persons really have that character at least in part because of that. This conceptual dimension of institutions plays an important role in the work of philosophers such as Wittgenstein, Rawls, Searle, and Tuomela. It is the hypothesis of this thesis that this conceptual dimension can also be accounted for in terms of rules. The notion of a constitutive rule, which plays an especially prominent role in the work of Searle, might be of help in this regard. Constitutive rules are, or our acceptance of such rules is, constitutive of the institutional phenomena to which they pertain. This implies that these phenomena would not have their institutional character if it were not for the underlying constitutive rules. Our conceptualisations of them as institutional phenomena involve these rules.

The core question of this thesis is how the notion of a constitutive rule can further our understanding of institutions. The point of departure for answering it is Searle's theory of constitutive rules. Searle's theory of constitutive rules is the most developed theory available. Searle claims that the form, or syntax as I prefer to call it, of a constitutive rule is 'X counts as Y in C'. A particular kind of piece of paper, for instance, counts as a driver's licence in the Netherlands. The idea is that we impose institutional concepts such as that of a driver's licence on other phenomena such as a piece of paper. The intuition that underlies Searle's theory is that the way we conceptualise institutional reality matters for the way the world is. This intuition will be retained. We will find, however, that Searle's theory is deficient in other respects. It provides some useful insights for accounting for the institutional character that many actions, objects, persons, events, and relations have. Nevertheless, we will see that the theory is underdeveloped in that respect. The main deficiency of Searle's theory, however, is that the behavioural dimension of institutions is not integrated in his conception of constitutive rules, or so I will argue. The main contribution of this thesis is a proposal for a new theory of constitutive rules. This theory accounts for both the conceptual and the behavioural dimension that many institutional phenomena have.

1.1 Rules and Institutions

1.1.1 The XYZ-Conception of Constitutive Rules

Someone who is familiar with Searle's conception of constitutive rules might be surprised by my claim that it does not properly account for

the behavioural dimension of institutions. After all, many of the examples that he gives concern institutional actions. Uttering certain words in a particular kind of setting counts as making a promise on his view. Similarly, going through a certain kind of ceremony counts as getting married. Finally, handing over a piece of paper in a bakery and receiving a loaf of bread in return counts as buying a loaf of bread. These examples, however, do not get to the core of the behavioural dimension of institutions.

Consider buying a loaf of bread. Let us pretend for the moment that there is a single constitutive rule for buying bread and that the description of the example provides the correct formulation of that rule (in practice, buying items of a particular kind can be accounted for in more general constitutive rules concerning, among others, money, property, and bakeries). This rule then accounts for the character that handing over some money has in certain circumstances, i.e. that of buying something. It does not, however, account for the consequences of that action. Buying a loaf of bread gives one the right to use it as one sees fit. Similarly for driver's licenses. The rule that certain pieces of paper count as driver's licenses in the Netherlands may account for the fact that these pieces of paper are indeed driver's licenses. The central feature of institutional phenomena such as this one, however, is that they structure our behaviour. Driver's licenses do so because having a driver's licence is a prerequisite for being permitted to drive a car. Even though Searle has said some things about rights and obligations (and functions as we will see shortly) involved in institutions, he has not integrated them in his theory of constitutive rules.

The main task that I have set myself in this thesis is to do just this. In chapter 6, I present my theory of constitutive rules, which I call the XYZ-conception of constitutive rules. The X and the Y of 'XYZ' are the X and the Y of Searle's formulation of the syntax of constitutive rules. In order to see what I add to Searle's theory, let me first say a bit more about his ideas. Searle holds that, if something is Y it has a certain status. In other words, Y-terms are status terms. A status is the set of properties an entity has due to the fact that the entity occurs in an institutional setting. It only has that status if we consider it to have that status, or if we count it as having that status. More specifically, having that status depends on human agreement or collective acceptance. 'Money' is an example of a status term. What is crucial to the existence of money is that we, for instance, count certain pieces of paper or certain pieces of metal as money or collectively accept them as such. The X-term specifies what kind of entity or entities instantiate a status. When objects are concerned, a

particular X-term characterises the material of which a particular status is made of. In case of our example this is a particular kind of piece of paper or a piece of metal. I add a third ingredient to this theory represented by Z-terms. Such terms represent the behavioural dimension of institutional phenomena.

The behavioural dimension of money is its function. Money is a means of exchange, and, hence, particular instances of money can be used for buying and selling (I assume for simplicity that means of exchange is the only function of money). The behavioural dimension of a driver's licence consists of an institutional right: having a driver's licence provides one the right to drive a car. 'Means of exchange' and 'being permitted to drive a car' are examples of Z-terms. As a rough and ready indication, this is how Z-terms figure in the XYZ-conception of constitutive rules: what it means to be a Y is to be a Z. The idea is that institutional statuses can be defined in terms of the practical import they have. 'Money is a means of exchange', and 'Driver's licences give one the permission to drive a car' should be seen as definitions of status terms. So, I agree with Searle that Y is a status and X the stuff it is made of. But I then go on to say that Z is the behavioural dimension of statuses or Ys. I call statements of the form 'To be a Y is to be a Z' or just 'Y is Z' *status rules*, and such rules define status terms.

The XYZ-conception of constitutive rules accommodates both the insight that a certain kind of stuff (e.g. paper) has a particular kind of status (e.g. money), and the idea that having the relevant status has behavioural implications (e.g. the stuff can be used for buying and selling). It contains both statements akin to 'X counts as Y in C' and statements the syntax of which is 'Y is Z'. Postponing the details of this theory to chapter 6 let me here just present the main conclusion of that chapter: the XYZ-conception of constitutive rules integrates the conceptual and the behavioural dimension of many institutional phenomena (I say 'many' because I will argue below that, *pace* Searle, not all institutional phenomena involve constitutive rules). This conclusion provides the basis for an answer to the core question of this thesis. Recall that this question was how the notion of a constitutive rule can further our understanding of institutions. Given the conclusion of chapter 6 just mentioned, we can now say the following:

T1. The XYZ-conception of constitutive rules furthers our understanding of institutions by revealing how their conceptual and behavioural dimensions (can) relate to one another.

This is the first central claim of this thesis. Chapter 6 presents the XYZ-conception in more detail and also elaborates on the relation to Searle's ideas.

1.1.2 Strategy of the Thesis

Before moving on to introducing the other parts of the thesis, let me comment on the strategy that I pursue. The thesis is a collection of six essays. Each of the essays has been written as a self-contained paper. This introduction is meant for explaining how the essays relate to one another. The main implication of this strategy is that the focus of the individual essays is somewhat different from what they would be had they been chapters of a monograph. The main points of those essays can, however, be re-described in such a way as to make the relation to the core question of the thesis more apparent. This is the task that is undertaken here in the introduction. I present six theses, T₁ – T₆, one for each essay. Because some of the essays have a focus that is somewhat different from the thesis as a whole, the theses that I present here do not always correspond to the claims presented in the conclusions of the essays. At the same time, however, the essays do support the theses that I discuss in this introduction. If the divergence is particularly large, I will comment on that below.

I introduce the chapters more or less in reverse order. I start with chapter 6 because it presents the answer to the core question of the thesis. Furthermore, it can be used to motivate the discussion of the other topics in the thesis. The first part of the thesis concerns rules and concepts. The relevance of this part in the wider context can only be appreciated once the role of concepts in the XYZ-conception of constitutive rules has been discussed. The first steps to do this have just been taken and the link will be further explicated below. It is the first part of the thesis because conceptually the issues discussed there are more basic. Chapter 2 is about possessing concepts and the idea that we do in fact possess concepts is presupposed in later chapters. Chapter 3 pertains to institutional concepts that will play an important role later on as well. The second part concerns rules and language, more in particular speech acts and constitutive rules. It discusses conceptions of constitutive rules that are available in the existing literature and, as such, it is a nice introduction to the ideas that are further developed in the third part that is devoted to developing a new theory, the XYZ-conception of constitutive rules mentioned earlier. The six theses form the conclusion of this thesis. There is no concluding chapter.

1.1.3 The Transformation View of Constitutive Rules

As we saw, Searle draws our attention to the conceptual dimension of institutional phenomena. Such phenomena acquire a status because of the way in which we conceptualise them. A question one might raise, however, is whether this conceptual dimension is essential to institutional phenomena. Isn't it conceivable that an institutional phenomenon exists that does not involve a status? Searle claims that institutional actions would not be possible without constitutive rules. In fact, he holds that all institutional phenomena including, for instance, the existence of institutional objects such as money require constitutive rules. This means that the very existence of those phenomena depends on constitutive rules. If this is true, all institutional phenomena involve statuses, because constitutive rules and statuses go together. Thus, our earlier question about the importance of concepts in relation to institutional statuses boils down to the question whether there might be institutional phenomena that do not depend on constitutive rules.

I suggest investigating this by taking a look at the contrast between constitutive and regulative rules. Searle claims that regulative rules pertain to actions that are possible independent of those rules, whereas constitutive rules concern actions that are made possible by those rules. An example of a regulative rule is 'When cutting food, hold the knife in the right hand' (Searle 1969, 34). One can hold a knife in one's right hand independently of this rule. If Searle is right, however, one cannot get married if the constitutive rule of marriage is not in place. The action of getting married is institutional, and on Searle's view all institutional phenomena depend on constitutive rules.

The XYZ-conception of constitutive rules provides a somewhat different perspective on these issues. On this conception, the contrast between regulative and constitutive rules is not as sharp as some of the things Searle writes suggest. The difference between regulative and constitutive rules should not be exaggerated. I will support the claim that the difference is not as large as Searle sometimes suggests by arguing that constitutive rules are transformations of regulative rules. In a nutshell, the transformation is a matter of adding a status concept to a regulative rule. The further claim that I will defend is that adding this conceptual dimension to regulative rules does not make a difference as to whether or not the phenomenon at issue is institutional or not. We cannot only create institutional phenomena by collectively accepting a constitutive rule (or, more precisely, a constitution rule, as we will see in chapters 6 and 7), but also by collectively accepting a regulative rule.

The central argument depends heavily on the XYZ-conception of constitutive rules. Searlean constitutive rules with the syntax 'X counts as Y in C' do not say much about behaviour, as we saw above. Rules such as 'Certain pieces of paper count as dollar bills in the US' are very different from regulative rules such as 'When cutting food, hold the knife in the right hand'. However, constitutive rules on the conception defended here include a behavioural dimension. I mentioned above that such rules include definitions of status terms and that such definitions are status rules. One of the examples given was 'Driver's licenses give one the permission to drive a car'. What is striking about this rule is that it is not only a status rule, but a regulative rule as well. The following reformulation of this rule makes it easy to appreciate this: if one has a driver's licence, one is permitted to drive a car on public roads. This rule has the same structure as the rule about holding a knife in one's right hand. Both rules are conditionals. Furthermore, the consequents pertain to actions. In addition to this, the actions are permitted or obligated. All in all, the antecedents of these rules specify a condition that is sufficient for the right or obligation mentioned in the consequent to be in place. It is sufficient for being permitted to drive a car to have a driver's license (of course, there are other conditions such as not having drunk too much, but we can abstract from those here). Similarly, it is sufficient for it to be imperative to use a knife with one's right hand to be in a certain kind of social situation in which one cuts food.

The difference between these two regulative rules is that only the one concerning driving contains a status term, i.e. 'driver's licence'. Now, is it really necessary for there to be an institution in virtue of which we have the permission to drive a car that we accept a rule that involves the status of a driver's licence? As will be clear, I defend a negative answer to this question. Before moving on to a sketch of the argument, I suggest considering an example for which a positive answer might be very intuitive. Consider legal tender. The institution of legal tender is that those kinds of money that are legal tender have to be accepted by a creditor in satisfaction of a debt (it is often thought that legal tender concerns an obligation on the part of shopkeepers to accept it as a means of payment; in fact, however, legal tender only involves an obligation on the part of creditors). It seems intuitive to say that the obligation that the creditor has depends on the very existence of legal tender, which in turn requires a constitutive rule concerning that status.

This claim, however, is too strong. Demanding that a constitutive rule concerning legal tender is in place, amounts to demanding that the people involved conceptualise the kind of money involved as legal tender.

This would imply the need for having the concept of legal tender. It seems, however, possible that a certain community has a practice that involves obligations similar to those involved in our institution of legal tender without conceptualising money as such. They might instead rely on a regulative rule according to which a creditor is obliged to accept certain kinds of money in satisfaction of a debt. Not all currency is legal tender. In Scotland and Northern, for instance, only one and two pound coins are legal tender for unlimited amounts. The rule for legal tender in that context might simply be 'If you as a creditor are offered one and/or two pound coins, you have to accept them as payment for the debt'. This rule does not mention the status term 'legal tender' (it does mention 'creditor' and 'money', but similar moves could be made for eliminating those).

How does this discussion support the claim that constitutive rules are transformations of regulative rules? What we have seen is that the key difference between constitutive and regulative rules is conceptual (or linguistic). The idea of the transformation view of constitutive rules that I defend is that we can get from a regulative rule to a constitutive rule by introducing a status term or a concept of a status into a regulative rule. I will try to give the flavour of this proposal here postponing a more systematic exposition of the idea to chapter 7. Consider the example of a driver's licence once more. Suppose we start with the rule: if one has a piece of paper of a particular kind, one is permitted to drive a car. This is a regulative rule that does not mention the term 'driver's licence'. The rule can, however, be reformulated in such a way as to include it. The result consists in fact of two rules. The first states that pieces of paper of a particular kind count as driver's licenses. The second explicates the practical import of such licenses: driver's licences give one the permission to drive a car. This second rule is what I have called a status rule. The first is a Searlean constitutive rule (or a constitution rule, as I will start calling it later on). As I have argued above, rules of both kinds are part of constitutive rules on the XYZ-conception of them.

Something similar holds for legal tender. Suppose we start out with this regulative rule: A creditor has to accept certain kinds of money in satisfaction of a debt. We can then move on to introduce the term 'legal tender'. Relying on the same procedure as used before, this results in two rules. First, certain kinds of money count as legal tender. Second, legal tender has to be accepted by a creditor in satisfaction of a debt. Again, the second rule is a status rule, and the first is a Searlean constitutive rule. Together they make up a constitutive rule according to the XYZ-con-

ception of them. Thus, the XYZ-conception of constitutive rules supports the following conclusion defended more fully in chapter 7:

T2. Regulative rules can be transformed into constitutive rules by introducing status terms.

Now, if constitutive rules are transformations of regulative rules and the difference between the two is conceptual (or linguistic), it seems implausible to say that institutional phenomena could not exist without constitutive rules. And, in fact, I will argue that collectively accepting regulative rules suffices under certain conditions for the existence of institutional phenomena. This second core claim of the thesis involves another revision of Searle's theory of constitutive rules.

1.2 Rules and Language

One of the most important institutions we have is language. Language enables complex forms of communication. Think of conversations during lunch, conference presentations, and election campaigns. It would be very difficult if not impossible to deliver the messages we communicate in such events and processes without language. Language serves of course more functions than communication. We also use language to influence other people. And we use language in order to create (and destroy) institutional phenomena. Marriages and promises are instituted by uttering words. In addition to the effect it has on our behaviour, language involves an important conceptual element. This is most obvious in the case of word and sentence meaning. Words express concepts and sentences express propositions, which in turn are composed of concepts, as many philosophers would say.

The fact that the institution of language has both a behavioural and a conceptual dimension suggests that the notion of a constitutive rule can be of use for analyzing language. Thus, we might ask: how can the notion of a constitutive rule further our understanding of language? This is an instance of the overarching question of this thesis, which concerned the contribution of the notion to our understanding of institutions in general. Even though the question is more specific, it is still very general and it is doubtful whether it can be fruitfully pursued at this level of generality. Language is a multifaceted phenomenon. We have already encountered word and sentence meaning, and the roles language plays in communication and in the creation of institutional phenomena. Undoubtedly,

there are many other interesting facets of language. It may be useful to formulate a more specific version of the question that focuses on one aspect of language.

1.2.1 Speech Acts and Constitutive Rules

In the philosophy of language, the notion of a constitutive rule has primarily been used in relation to speech acts. The notion of a speech act was introduced in philosophy in order to counteract the emphasis on the function of representation that language often has. We do not only use language to represent aspects of the world, we also use it to express our desires, regrets, intentions, and other attitudes. Thus, we do things with words, including requesting, apologizing, and promising. These are all examples of speech acts. Such acts express attitudes. They can also influence the behaviour of others. If I request you to pass me the sugar, chances are high that you will do so. In addition to this, we use speech acts to change reality in a more direct way. When a priest, for instance, utters the words 'I hereby declare you husband and wife' in the appropriate circumstances, he has affected a marriage in virtue of that very act. Similarly, a president can start a war just by declaring a war.

So, we might ask how the notion of a constitutive rule can further our understanding of speech acts. Asking this question, however, presupposes that not only language in general but speech acts more particularly are institutional phenomena. This is not obvious. We saw that institutions structure our behaviour. But what would the relevant patterns of behaviour be in the case of speech acts? Of course, our performances of speech acts involve regularities. Most people answer when asked a question. Few people apologize when they have not done anything wrong. One might doubt, however, whether the existence of such regularities implies that speech acts are institutional actions. If you have not done anything wrong, for example, you rarely have a reason for apologizing. Such a lack of motivation may already get us far when it comes to explaining the regularity. There seems to be no need to appeal to a constitutive or even a regulative rule for explaining it.

Searle's theory of speech acts can be used for constructing an argument for the claim that speech acts are institutional actions, and the stronger claim (given the earlier conclusion that there can be institutional phenomena that do not depend on constitutive rules) that they should be analysed in terms of constitutive rules. On his view, uttering certain words counts as performing a particular kind of speech act if this is done

in the appropriate context. As we saw earlier, the phrase ‘counts as’ signals dependence on collective acceptance. The idea in relation to speech acts is that we collectively accept that certain acts of uttering particular kinds of words are speech acts of a certain type. Another aspect of Searle’s view is that context plays the same role as in the case of institutional actions. Handcuffing someone and reading him his rights is only a matter of arresting someone if done by someone who has the authority to do so. This requires, for instance, that the person who acts be a police officer and that she be in the region in which she is allowed to exercise her powers. The same thing might apply to speech acts. Searle claims that this is the case relying on the example of promising: uttering words that would normally amount to making a promise do not do so in the context of a play. Thus, the key to the argument that can be constructed from Searle’s work is this: speech acts should be analysed in terms of constitutive rules because context and collective acceptance play the same role in their case as in the case of other actions that should be analysed in terms of constitutive rules.

I believe this argument is flawed. Let me indicate why by briefly discussing the role of context, reserving a more extensive discussion as well as an appreciation of other factors such as the role of collective acceptance for chapter 5. Bach and Harnish already argued that it is possible to make genuine promises in the context of a play. There may be a presumption that acts of uttering words in a play have a different character from such acts outside of that context, but this presumption can be overridden. If one is able to signal in one way or another that the utterance act is not only meant as part of the play but also as a speech act of another kind that other speech act is in fact performed. Suppose, for instance, that a line of the play is: ‘Shall we go to the movies tomorrow night?’ Now, an actor may be serious about asking this to the actress to whom he is supposed to utter this line. If he finds a way of signalling this to the actress, for instance by using different facial expressions and a somewhat different tone of voice than usual, he may very well succeed in performing the speech act of asking a question.

Both Searle and Bach and Harnish argue in terms of examples. I move beyond this level and provide a more systematic analysis. Institutional actions require that a certain context be in place. Speech acts are more flexible in this regard. Speech acts do not require a fixed context. There are contexts in which certain intentional states expressed by speech acts are usually not communicated. However, such contexts do not need to rule this out. The absence of a certain context does rule out the performance of an action that is really institutional. What matters in the

case of speech acts is that one has certain intentions and that one is able to communicate them. One needs to create a situation in which the person to whom the speech act is directed is in a position to infer that one has those intentions. This does not require a particular type of context.

More needs to be said to make the case that speech acts should not be analysed in terms of constitutive rules. As said already, the role of collective acceptance has to be discussed. Furthermore, other kinds of speech acts have to be taken up as well. Especially hard cases are speech acts such as declaring people to be married and vetoing a law, speech acts that clearly have institutional effects (we will see that constitutive rules play a very indirect role here). These issues are addressed in chapter 5. There is, however, another respect in which the line of argument presented here is incomplete. It depends to a large extent on Searle's conception of constitutive rules. There are, however, other conceptions of constitutive rules available in the literature.

As far as speech acts are concerned, there is at least one rival proposal. Williamson has argued that the speech act of assertion should be analysed in terms of a constitutive rule. Some of the things he writes suggest that he relies on Searle's conception of constitutive rules, but his proposal turns out to be importantly different. I criticize it in chapter 4. I discuss Williamson's views first, because he is only concerned with assertion. The broader and more complicated discussion of speech acts in general follows in chapter 5.

All this implies that when it comes to the question whether speech acts should be analysed in terms of constitutive rules, a distinction should be made between Searlean constitutive rules and Williamsonian constitutive rules. I defend a negative answer with respect to both conceptions:

T3. Speech acts should not be analysed in terms of Searlean constitutive rules.

This claim is defended in chapter 5.

T4. Speech acts should not be analysed in terms of Williamsonian constitutive rules.

Defending this claim is the focus of chapter 4. The alternative defended is that speech acts are acts of expressing attitudes. The upshot is that, even though the notion of a constitutive rule is of use for furthering our understanding of many institutional phenomena, it is of little use for

understanding speech acts. The reason for this is that few if any speech acts are institutional actions.

1.3 Rules and Concepts

1.3.1 Acceptance-Dependent Concepts

Let us return to the XYZ-conception of constitutive rules. Earlier we saw that Y-terms, such as ‘money’, ‘passport’, and ‘professor’, are status terms. Terms express concepts and Y-terms express status concepts. Earlier we saw that having a status depends on collective acceptance. This idea is made more precise in chapter 6. There we will see that an entity has a certain status if and only if it is collectively accepted that entities of that kind have that status. Having a status can be seen as having a property considering that being money, being a passport, and being a professor are all examples of having properties. As formulated here, then, the claim of dependence on collective acceptance is a claim about properties. The idea is that institutional properties or statuses are instantiated if and only if it is collectively accepted that entities of a certain kind, i.e. entities that are X, are Y and there are indeed entities that are X. We might, however, ask whether the relation between institutional properties and collective acceptance tells us something about status concepts as well. In chapter 3, I argue that it does.

In the case of money, it is widely agreed that acceptance should play a role in the analysis of the concept. The core that almost all analyses of the concept of money share is that it is a generally accepted means of exchange. I generalise this idea to other institutional or status concepts. The claim is that it is part of institutional concepts that the instantiation of the corresponding concepts depends on collective acceptance. I introduce the term ‘acceptance-dependence’ to signify this idea, which can then be expressed as follows:

T5. The status concepts involved in the XYZ-conception are acceptance-dependent.

This claim is defended in chapter 3. The acceptance involved has to be collective, which implies that several persons have to be involved. Something cannot be money if only one individual regards it as money. In such a situation, it would not be possible for the entity to fulfil its

function in market exchanges. Thus, concepts that are acceptance-dependent are social concepts in a way to be explained more fully later on.

The choice of the term ‘acceptance-dependence’ is not arbitrary. Apart from the fact that it fits naturally with the idea as explained thus far, it has also been chosen to indicate a parallel with the notion of response-dependence. This latter notion has been proposed in relation to concepts such as colour concepts, the concept of plausibility, and the concept of being nauseating. To be sure, these concepts are very different from the ones we have been discussing thus far. However, there is a striking parallel as well. The idea of response-dependence in case of the colour concept of red, for instance, is that it is part of that concept that something is red just if it looks red to us in certain circumstances. The concept of red involves a relation between being red and the way in which we respond to our environment. The concepts of plausibility and of being nauseating involve our responses in a similar way. Thus, a proper analysis of such concepts includes a dependence on our responses. Now, if ‘response’ is understood in a wide sense so as to allow for intentional attitudes generally, the same applies to acceptance-dependent concepts. I explore the parallel in more detail in chapter 3. The overall argument of that chapter is that acceptance-dependence is a social kind of response-dependence.

1.3.2 Rule-Following

The argument thus far has it that the analysis of institutional or status concepts reveals their social nature. Many have argued, however, that not only institutional concepts but concepts in general are social in a different sense. Having concepts might be social in the sense that it requires relations to other people. More generally, the very ability to think might be social in this sense. These claims can be framed in a way that will be more familiar to many. Concepts are rules. Having concepts as well as applying them is a matter of being able to follow those rules. Thus, the claim might be that rule-following is social in that it requires relations to other people. This claim is popular in the Wittgensteinian literature on rule-following. One version of it is defended by Philip Pettit. He argues that rule-following is social in the sense that whether or not a certain concept or rule applies depends on our interactions with each other. We do not regard ourselves as ultimate authorities on the applicability of rules but we sometimes resort to the judgements of others. Pettit uses the term ‘negotiation’ for such interactions, which play a central role in his theory. Whether a concept applies depends on whether our initial judgement

concerning this issue survives further scrutiny or, in Pettit's terminology, whether it survives later negotiations.

Suppose that rule-following is indeed social. In that case one might demand a detailed story about how the social dimension of rule-following relates to the social dimension of institutional concepts. Offering an account of this is bound to be a complex affair. Gilbert seems to believe that it cannot be done. She builds her account of social phenomena on an individualist theory of concepts. Tuomela argues that rule-following is social and proceeds to give a detailed account of concept-possession, social and institutional phenomena, and the relation between the two. I will not argue that it cannot be done. Instead, I will defend the weaker claim that it need not be done. Taking Pettit's theory as my point of departure, I argue:

T6. Rule-following is not social.

This claim is defended partially in chapter 2. The line of argument that I use there is indirect (recall what was said in the section "Strategy of the thesis"). Pettit argues that rule-following is social. He does this primarily by offering a theory of rule-following on which it is social and by arguing that this theory meets the conditions of adequacy that such a theory has to meet. I will criticise the latter claim. One of the conditions of adequacy for a theory of rule-following is that it should sustain a robust sense of objectivity. Whether or not a concept applies should be sufficiently independent of whether or not we take it to apply. My argument is that, *pace* Pettit, an appeal to negotiations does not save this sense of objectivity. I go on to offer an alternative theory of rule-following on which it is not social. I then argue that it does meet the criteria of adequacy for theories of rule-following.

As indicated above, this is only a partial argument for T6. In essence, I criticise a theory of rule-following on which it is social and defend a theory on which it is not social. This does not establish that it is in fact not social, because it does not rule out that another theory of rule-following on which it is social meets the criteria of adequacy and is in fact correct. However, my criticism against Pettit's theory may well generalise to other theories of rule-following that regard it as social. In a nutshell the idea would be that the social is too weak a basis for the robust sense of objectivity required for rule-following. One reason for believing this is that it is unclear which group of people at what time is authoritative with respect to the applicability of a concept. It seems unavoidable that the answer to this question will be arbitrary to some extent. Such arbitrariness

is not consistent with the robust sense of objectivity mentioned above. This together with the defence of a theory of rule-following on which it is not social makes it plausible that rule-following at its core is indeed not social.

The overall picture that emerges is this. Following rules or possessing concepts is not social. Institutional or status concepts are social in the sense that it is part of an adequate analysis of an institutional concept that the property that falls under it is instantiated just if this is collectively accepted to be the case. These concepts are acceptance-dependent. Many institutional phenomena including money, marriage, and property involve such concepts. Such concepts are status concepts. Analyses of status concepts explicate the *behavioural dimension* of the relevant statuses. The concept of money, for instance, should be analysed in terms of its functions such as medium of exchange. Being an acceptance-dependent concept, collective acceptance should also appear in an analysis of the concept of money. Such acceptance pertains to the kind of entity of which money is made in a particular context. More generally, collective acceptance pertains to the context-specific conditions something has to meet in order to have a certain status. Its content specifies the kind of entity on which we impose those concepts and thereby those statuses. This is the *conceptual dimension* of institutional phenomena. Both these aspects, the analysis of statuses and the kind of entity that constitutes those statuses, play a role in the XYZ-conception of constitutive rules. Some institutional phenomena might be explicable in terms of regulative rules only. However, with respect to those that involve constitutive rules the XYZ-conception provides a clear picture of how their conceptual and their behavioural dimension relate to one another. The XYZ-conception of constitutive rules thereby furthers our understanding of many institutional phenomena.

PART I

RULES & CONCEPTS

2 A MODEST SOLUTION TO THE PROBLEM OF RULE-FOLLOWING

2.1 Introduction*

The later Wittgenstein is famous for what has become known as the problem of rule-following. Kripke (1982) has interpreted this problem as a sceptical paradox that seems to impose on us the conclusion that meaning, as it is ordinarily conceived of, does not exist. Our ordinary conception of meaning presupposes the existence of meaning facts. It is in virtue of these meaning facts that we can grasp concepts and apply them to an indefinite number of situations. Concepts are rules, which implies that they can be applied correctly or incorrectly. A concept is correctly applied if the relevant property is instantiated. It is this conception of meaning that is challenged by the problem of rule-following. If valid, the problem of rule-following would imply that there are no meaning facts. This, in turn, would mean that words have no sense, and that sense, as such, does not exist.

Philip Pettit (1990a, 1996) has proposed a solution to the problem of rule-following, which, if sound, would answer Kripkensteinian scepticism about meaning and suggest that our ordinary conception of meaning is well-founded.¹ Kripke claims that Wittgenstein's was a sceptical solution. Someone who offers a sceptical solution believes that the problem of rule-following cannot be solved and that we ought to replace the ordinary conception of our rule-following practices with another one. Pettit claims that his theory provides a non-sceptical solution to the problem. However, strikingly, Pettit's proposal shares its two main ingredients with the sceptical solution, namely dispositions and practices.

* This paper has been published in *Philosophical Studies* (Hindriks 2004).

¹ Kripkenstein is Wittgenstein as interpreted by Kripke. Pettit (1990a) is reprinted in Miller and Wright (2002).

Thus, it is worth examining in what respects, if any, Pettit's theory differs from a sceptical solution.

The first question that I will pursue is whether Pettit's theory really is a non-sceptical solution to the problem of rule-following. I will argue that it is not. The main shortcoming of Pettit's proposal is that his account of normal conditions does not provide a proper solution to the problem of normativity. The second question I will address is whether – assuming it is a sceptical solution – Pettit's theory can be used for constructing a non-sceptical solution. I will argue that this can be done. A core claim will be that substantial topic-specific specifications of normal conditions are required in order to solve the problem of normativity. Accounts of normal conditions such as those provided by Mark Johnston and Crispin Wright in relation to certain response-dependent concepts can serve as a model. In the present proposal, the higher-order dispositions and the practices of negotiation that Pettit's account includes play a role only in justifying our judgements.

My proposal does not provide what Kripke calls a straight solution to the problem as it does not meet the demanding standards of Kripke's sceptic – the character that puts forwards the sceptical challenge in Kripke (1982). I will, however, argue that we can be satisfied with meeting a set of lower standards, which is why I use the term 'modest solution' for the proposal. A modest solution to the problem of rule-following is a non-sceptical one in that it preserves our ordinary conception of meaning. The modest solution is defended in section 2.6. Pettit's theory is introduced in section 2.4 and criticised in section 2.5. Section 2.7 concludes the chapter. Before we turn to theories of rule-following, however, the problems of rule-following and the different ways in which these problems can be solved need to be discussed. Sections 2.2 and 2.3 are devoted to these issues.

2.2 The sceptical paradox and the problem(s) of rule-following

The *sceptical paradox* consists of two at least seemingly conflicting tenets. On the one hand, it seems obvious that meaning exists and that it requires rule-following. On the other hand, it is hard to see what exactly rule-following can be as theories of rule-following have to solve a problem that seems insurmountable. This *problem of rule-following* consists of three subsidiary problems that I will call the normativity problem (NP), the finiteness problem (FP), and the justification problem (JP). Each of these problems pertains to a distinct feature of our intuitive conception of

meaning, and the challenge is to devise a theory that accounts for each of these features. The problems can be characterised as follows:

(NP) The normativity problem is the problem of how to account for the possibility of error in a way that preserves the objectivity of meaning.

(FP) The finiteness problem is the problem of how to account for the infinite character of rules.

(JP) The justification problem is the problem of how to account for the fact that the application of a rule can be justified.

A detailed look at these problems will confirm our intuition that these are indeed very difficult problems to solve. The problems will be considered as they arise for dispositionalism, as both Pettit's proposal and the modest alternative are versions of dispositionalism. The *normativity problem* pertains to the fact that a rule *prescribes* a particular application for all the situations to which it applies. In each situation, there is a correct and an incorrect way of applying a rule. A theory of rule-following must be able to account for mistakes (which is why the normativity problem is also known as the problem of error). Kripke's sceptic argues that a dispositionalist account cannot do so since it contends that our actual responses conform to the rule. This implies that it cannot single out particular responses as being mistaken. Note that the (in)correctness of a response must be accounted for independently of our actual beliefs and other responses as we are concerned with what is right rather than what seems right. Only in this manner can the objectivity of meaning be preserved.

Kripke's sceptic has very high demands with respect to a solution to the normativity problem. She claims, for instance, that invoking a *ceteris paribus* clause will not do because such a clause is bound to be circular. A non-circular version of this kind of dispositionalism, which Miller (1998) calls 'sophisticated dispositionalism', would solve the normativity problem as a *ceteris paribus* clause allows one to single out responses that are bound to be right: responses prompted under conditions in which other things are equal are correct. Responses prompted under unfavourable conditions may be mistaken. The sceptic believes *ceteris paribus* clauses are bound to be circular in the sense that their specification requires mention of the rule the agent tries to conform to.

Finally, the agent may be disposed to make mistakes, and there is no non-circular way of singling out the responses based on such dispositions as mistaken. These dimensions that the sceptic adds to the normativity problem can be summarised as follows (the subscript DS stands for ‘demands of the sceptic’):

(NP_{DS}) A solution to (NP) has to rule out the possibility that rule-followers are disposed to make mistakes and, if it invokes *ceteris paribus* clauses, it has to establish that they are not circular.

The *finiteness problem* pertains to the idea that rules apply to an infinite number of situations. Accounting for this is thought to be problematic because, given their limitations, human beings are unlikely to be able to grasp something that pertains to an *infinite* number of situations. That human beings are *finite* seems to imply that it is indeterminate which of a set of rules they follow. Kripke’s sceptic takes this to mean that no rules are followed at all. The alleged indeterminacy is particularly clear if one considers only actual applications, as the set of actual responses of a human being will always be finite and, hence, consistent with more than one rule, i.e. with more than one way of dealing with new situations.

The main objection of Kripke’s sceptic against dispositionalism is that our actual dispositions are finite. He does not deny that a dispositionalist response may go some way to solving the finiteness problem. As compared to actual past performance, a disposition allows one to exclude more rules as ones that are not followed. Instead of just referring to what she actually did, our subject can now say that she tends to react in certain ways when she encounters new cases that possibly fall under the rule. Thus, in addition to actual responses, counterfactual responses can be invoked for narrowing down the range of rules someone might be following. The sceptic’s concern is that this is not enough. It may be that actual dispositions are not specific enough to single out one rule as the rule that is followed.

Again, the demands of the sceptic are strict. The concern mentioned is enhanced by the possibility of extreme cases such as the problem of adding numbers that are just too large to be added by human beings because, for instance, their minds cannot grasp them or just stating the numbers to be added takes longer than the remaining lifetime of the people trying to solve the addition problems. In response to this, one could again invoke a *ceteris paribus* clause. Kripke’s sceptic dismisses such a response, not because she is opposed to idealisations *per se*. Instead, she

cannot imagine that plausible specifications are to be had. The dimension that the sceptic thus adds to the finiteness problem can be expressed as follows:

(FP_{DS}) A solution to (FP) has to establish that a unique rule is followed even in extreme cases and, if it invokes *ceteris paribus* clauses, it has to convince the sceptic of their plausibility.

The *justification problem* pertains to the claim that a rule-following subject must be able to *justify* the way in which she applies a rule. A rule is regarded as guiding a rule-follower. Kripke's sceptic takes the dispositionalist proposal to be an obvious non-starter. The sceptic thinks that a response based on a disposition is 'no better than a stab in the dark' (Kripke 1982, 23). She demands a justification for the belief that the response is not just arbitrary. It seems unsatisfactory to combine the answer that one is disposed to give a certain response with a hypothesis that one would have responded in the same way in the past. A hypothesis itself requires justification.

In the case of the justification problem, the severity of the demands of the sceptic manifests itself in her conception of justification. The sceptic seems to require of rule-followers that they be able to cite a reason for believing that a particular application of a rule is correct. Thus, we can formulate the demands of the sceptic with regard to the justification problem as follows:

(JP_{DS}) A solution to (JP) has to establish that rule-followers are able to provide reasons for believing their applications of rules are correct.

This completes the discussion of the three problems.²

One might feel that thus far the most pressing problem of rule-following has been ignored: Wittgenstein's regress problem, discussed, among others, by Wright (1989) and Millikan (1990). According to the regress problem, following a rule requires interpreting it. However, interpretation is itself a process that requires following rules. Thus, following a rule presupposes following other rules *ad infinitum*. This suggests that theories of rule-following are bound to suffer from a vicious circularity as they would presuppose the possibility of rule-following.

² The key passages of Kripke's (1982) discussion of the three problems in relation to dispositionalism can be found on 23-30, and 37.

Pettit's theory provides the means for resolving this problem. It accommodates a distinction between basic and non-basic rules. Basic rules are rules that are not followed in virtue of other rules. Hence, they do not require interpretation. In effect, this amounts to a denial of the existence of a regress. I believe it would be unfair, however, to regard the solution as a failure because of this. Instead, it is a crucial step towards locating the hard problem (cf. Pettit 1996, 80 and 86), i.e. to account for a kind of rule-following that is not a matter of interpretation. This is exactly what Pettit sets out to do as his theory applies to basic rules. The dispositions he invokes are tendencies of going on in a certain way that are primitively compelling and do not require interpretation (Pettit 1990b defends this view in his response to Summerfield 1990).

2.3 Straight, Sceptical and Modest Solutions

Straight and sceptical solutions. Kripke distinguishes two kinds of solutions to the sceptical paradox. The most straightforward approach – what Kripke (1982, 66) calls a *straight solution* – consists of a proposal that solves all three problems discussed above: (NP), (FP), and (JP). We saw that Kripke's sceptic sets high standards: (NP_{DS}), (FP_{DS}), and (JP_{DS}). A straight solution meets these demands in full. By doing so, it vindicates the existence of meaning facts. The alternative is to offer a *sceptical solution*, and claim that the demands cannot be met. Straight and sceptical solutions share the presupposition that our ordinary conception of meaning requires a solution to the three problems and that, in order to solve these, the demands of the sceptic must be met in full. They differ in that someone who offers a sceptical solution admits that the problems cannot be solved, and abandons the search for meaning facts. In addition to this, she regards the intuitions about meaning facts on which the conception of the problems is based as mistaken. She argues that our rule-following practices do not require the kind of justification that meaning facts would confer on them.

A sceptical solution differs from full-blown scepticism in that it stops short from concluding that we might just as well abandon our rule-following practices. It urges us to regard them in a different light. The idea is that rule-followers can rely on their inclinations or dispositions even though they are not able to justify the resulting responses. There is not a strict sense in which a solitary rule-follower can be said to apply a rule (in)correctly. Some notion of normativity is sustained because of the fact that community members correct one another when their disposi-

tions diverge. However, this is a far cry from the appeal to truth that could be made if there were meaning facts. In other words, the objectivity of meaning is not preserved. (Kripke 1982, 66, 69, and 87-92)

Does Pettit intend to offer a straight solution? Pettit agrees with Kripke that simply identifying ‘following a rule with displaying a disposition to go on after a certain pattern’ is inadequate. Pettit claims that ‘[t]his response says nothing about what rules are’ and that ‘[t]he theory does nothing to explain how in following a rule I am directly but fallibly guided by something that determines the right response in advance’. (Pettit 1996, 85; see also 1990a, 8) These statements make clear that Pettit does not dismiss the demands of the sceptic. Furthermore, he relies on Kripke’s formulation of the problem (Pettit 1996, 83). In addition, he claims that his own account is a non-sceptical solution (1990a, 1 and 1996, 86). This claim suggests that he aims at providing a straight solution to the sceptical paradox – given that he does not distinguish a third possibility. The same is suggested by his claim that ‘[Kripke’s sceptical] challenge can be met and the reality of rule-following *vindicated*’ (Pettit 1990a, 1, emphasis added; see also 1996, 86).

Other remarks by Pettit, however, seem to suggest that he does not see himself as offering a straight solution. In his reaction to Summerfield (1990), he states that his account does not rule out scepticism and leaves room for an error theory about rule-following (Pettit 1990b, 438). He distances himself somewhat from Kripke’s formulation of the problem by claiming not to be an exegete of Kripke (Pettit 1990a, 1). Furthermore, Pettit claims that on his account a rule-follower ‘can never redeem the assumption’ that her disposition ‘picks out a unique rule’ (Pettit 1990a, 16). He also writes that we can respond to scepticism by arguing ‘that possibly rule-following is a reality: that, at least, the tension between the objective and subjective conditions does not show that it is an illusion’ (Pettit 1996, 83). This is much weaker than *vindicating* the reality of rule-following. It can be taken to suggest that Pettit does not even intend to meet the demands of the sceptic in full.

The notion of a modest solution introduced. The tension between Pettit’s claim to offering a non-sceptical solution and the evidence that suggests he does not offer a straight solution can be resolved if there is a third alternative (not mentioned by Kripke or Pettit). Such an alternative would have to offer more than a sceptical solution and less than a straight one. I will call this alternative a *modest solution*. A modest solution differs from both straight and sceptical solutions in that it regards as inadequate the

standards that the sceptic has set for solutions to the problems of rule-following. In other words, it disputes the claim that the requirements set by (NP_{DS}) , (FP_{DS}) , and (JP_{DS}) have to be met. It provides arguments as to why the problems of rule-following can be solved without satisfying these demands of the sceptic completely. These arguments imply lower standards that suffice to affirm the existence of meaning facts.³

In sum, all three kinds of solutions start from the presumption that the problems of rule-following have to be solved. Whether or not the demands of the sceptic are seen as adequate is the first core feature that serves to distinguish the different kinds of solutions. As we just saw, modest solutions differ from straight and sceptical solutions in arguing for lower standards. The second dimension along which kinds of solutions differ is whether or not a solution solves the problems of rule-following (by meeting the standards it deems adequate). A sceptical solution does not do this (and provides arguments why this is not a devastating conclusion), whereas a straight and modest solution both do. They solve the problems and imply the existence of meaning facts. A modest solution does not meet the original demands of the sceptic in full. However, because of the arguments for lower standards, this does not imply a failure to solve the problem.⁴

2.4 Pettit's ethocentric theory

Pettit's proposal. Pettit proposes a non-sceptical solution to the problem of rule-following, i.e., he attempts to solve the three problems identified earlier. He calls his theory of rule-following 'ethocentric' since 'ethos' means both habit and practice, and habits, or dispositions, and practices are the two main ingredients of his theory. Habits, or dispositions, are inclinations to respond in certain ways to situations one finds oneself in. More specifically, they are inclinations to form certain primitively compelling judgements on the basis of salient similarities between

³ As Jan Bransen suggested to me, another name that would suit the proposal is 'realistic solution'.

⁴ A number of authors have argued that some of the demands of Kripke's sceptic are not legitimate or that the onus is on the sceptic to convince us that they are. They go on to propose a straight solution to the problem even though they admit it does not meet all the demands of the sceptic (see for instance Horwich 1998 and Millikan 1990). My strategy differs from this in that I believe that taking the sceptical stance seriously does not fit well with requiring the sceptic to defend her scepticism. By contrast, my approach is based on the idea that it is not necessary to refute scepticism in order to propose and defend a theory.

different cases. Practices consist of negotiations about the correctness of particular responses or judgements between members of one and the same community.

When two agents of the same community judge differently in a particular case – for instance, whether or not a certain object is red – one of them must be mistaken. If such a discrepancy arises between their responses, higher-order dispositions prompt them to withhold judgement or reconsider their initial responses. Subsequently, the agents will negotiate with one another whose is the right response according to the rule they try to conform to (and follow if they succeed). Abstracting from vagueness, these negotiations will result in an agreement about this issue. In order to achieve such a convergence of responses, the agents have to discount an unfavourable factor that distorted the situation. Favourable or normal conditions are those that survive negotiation, which means that no factor in them has been treated as unfavourable.

An example. In order to get a good grip on Pettit's theory, let us consider the various types of situations it distinguishes using the concept of red as our guiding example. In the first case, the agent is presented with an object that seems to be red. Nothing withholds her from judging that it is red, which in fact she does. The inclination to judge that the object is red is a manifestation of the relevant disposition, whereas the absence of an urge to withhold judgement is due to her higher-order dispositions remaining passive. Imagine next an agent who is uncertain whether the judgement she is inclined to make is in fact correct. According to the theory we are examining, this is due to her having detected some discrepancy, which prompts her to withhold judgement in virtue of the relevant higher-order disposition. She will start negotiating the matter with another member of her community. She may remember from a previous occasion that changing lighting conditions can improve the reliability of their judgements. Her knowledge of such unfavourable factors is limited (she does not need to have the concept of an unfavourable factor). She and her interlocutor will most likely arrive at a somewhat intuitive judgement as to the right response and thereby come to an agreement. Reaching an agreement requires them to discount a factor that, from a theoretician's perspective, becomes part of the blacklist of unfavourable factors. Presumably, discounting a factor consists either of adjusting one's judgement to accommodate its distorting effect or of changing the circumstances so as to prevent the unfavourable factor from distorting.

The normativity problem. How does Pettit think this theory solves our three problems? The notions of a higher-order disposition and of a practice of negotiation are supposed to provide the basis for a solution to the normativity problem. These two ingredients of Pettit's theory of normal conditions can be seen as a specification of the *ceteris paribus* clause of sophisticated dispositionalism. The proposal now is that the correct responses are those that are prompted in normal conditions rather than those prompted by conditions in which other things are equal. According to Pettit, normal conditions are *those conditions that survive negotiation*. Negotiations ensue once a response has become suspect due to a discrepancy "registered" by a higher-order disposition, prompting the agent to withhold judgement. Following negotiations, the agents converge on a response, i.e., they come to an agreement. A condition survives negotiation if it is treated as favourable during the negotiations. This would mean that the initial response in that circumstance prevailed. Pettit calls this account of normal conditions 'functionalist' because it characterises unfavourable factors in terms of the *role* they play in the practices of negotiation that are triggered by higher-order dispositions.⁵ (Pettit 1996, 91-94 and 1999)

How does this account of normal conditions answer the sceptic? Pettit's thesis is that rule-followers have higher-order dispositions that make them sensitive to discrepancies, i.e., to mistakes. Once they notice a discrepancy, rule-followers try to determine which response is right by negotiating with fellow members who follow the same rules. The right responses do not have to be identified with actual responses. Rather, they are those that go unchallenged as well as those that are agreed upon after negotiations. This account is non-circular in that no explicit reference is made to a particular rule.

The finiteness problem. Pettit's first move in response to the finiteness problem is to invoke the relation of exemplification instead of instantiation (1996, 86-88). Whereas a set of applications instantiates an indefinite number of rules, it may only *exemplify* one rule to a particular agent. The key difference between instantiation and exemplification is that the latter is a three-place relation between a rule, a set of applications and a particular agent, rather than a two-place relation that involves a rule and a set of applications. The set of applications may make one rule *salient*

⁵ The only substantial comment that Pettit provides is that in conditions that are not normal, the causal contact between the relevant property and our responses is affected. This distortion is corrected for in the response that is subsequently agreed upon after negotiations (Pettit 1999, 31).

to the agent given her disposition to extrapolate, thereby *presenting* her that rule. This first move basically consists of the assertion that rule-followers have dispositions that provide the basis of a solution to the finiteness problem. In effect, it is an explanation of how a dispositionalist proposal might go some way towards solving the indeterminacy pointed out by the finiteness problem. As we saw in section 2.2, the sceptic seems willing to grant that dispositionalism provides a partial solution to the problem.

The second move Pettit makes is to turn from our actual dispositions to our dispositions as they operate *ceteris paribus* or under normal conditions (1996, 98-100). The idea is that, apart from solving the normativity problem, the theory of normal conditions provides an idealisation that addresses the extreme cases mentioned earlier (including the problem of adding numbers too large for a human to grasp). The theory of normal conditions supposedly plays a role analogous to the role idealisations play in science. Physicists are able to create conditions in which many physical laws hold perfectly (or come very close to doing so). In these conditions, forces from which the relevant theory abstracts are absent. This does not necessarily mean that physicists are able to spell out the *ceteris paribus* clause completely in the sense of listing all unfavourable conditions, but it does indicate that they grasp them implicitly, which in turn suggests the clause is not circular or trivial (i.e., that it does not ultimately collapse to the claim that the law holds under those conditions in which it holds). In these ideal conditions, they can test whether the law holds, or – more precisely – whether the alleged law really is one. In analogy to this, the theory of normal conditions for rules might function as an idealisation that specifies conditions under which extreme cases would actually arise and yield correct responses. Pettit's third move is to argue that we should not be more demanding with regard to such idealisations than scientists are. This move is discussed further in section 2.6. As we will see in section 2.5, it is the second move that is problematic.

The justification problem. Pettit's proposed solution to the justification problem is that extrapolative dispositions tell the agent how to go on if she relies on them or 'authorises' them. Having been exposed to a set of applications of a rule, the agent acquires an extrapolative disposition that *presents* the rule:

In virtue of my inclination, I can use certain instances to identify a rule for myself: a rule that I can directly ostend as

that rule, the one featured saliently in such and such examples. But if I now look to new cases, and ask whether they fit the rule or not, the positive or negative inclination that they induce in me will present itself as a disposition to judge that yes, they do, or no, they don't. (Pettit 1996, 89; emphasis in original)

When confronted with a new case, the disposition *prompts* the agent to go on in a certain way. Finally, the disposition connects these two aspects. Because of this, a prompted response forces itself on any subject that understands the rule. Pettit even writes of 'a revelation as to whether or not the new cases fit the rule' (1996, 89).

2.5 The Return of the Sceptic

Would the sceptic be satisfied with these proposed solutions to her problems? I believe not. I will substantiate this in this section and thereby argue for my first conclusion: Pettit's proposal is a sceptical solution to the problem of rule-following despite his claim to the contrary. I will not argue that Pettit's theory does not meet the demands of the sceptic – as formulated in (NP_{DS}), (FP_{DS}), and (JP_{DS}) – but defend the stronger claim that it fails to solve the problems of rule-following – as formulated in (NP), (FP), and (JP) – independently of these additional demands.

2.5.1 The normativity problem

Recall that the normativity problem (NP) presents us with the challenge of accounting for the possibility of error in a way that preserves the objectivity of meaning. Pettit responds to this by invoking practices of negotiation that play a central role in his theory of normal conditions. According to this theory, the correct responses are those that survive negotiation. However, this fails to preserve the objectivity of meaning, which, as we saw in section 2.2, requires that the (in)correctness of a response be accounted for independently of our actual beliefs and other responses. Pettit's theory violates this requirement by rendering the extensions of our concepts dependent on the outcome of negotiations, which consist of a convergence of responses. Even if we bracket this concern, Pettit's theory is not in the clear: it still falls short of allowing

even a determinate *subjective* sense in which certain responses are (in)correct.⁶

In order to get this second problem into focus, we need to ask whether it is sufficient for a condition to be normal to survive negotiations once. The ostensible answer is “no” because – as Pettit seems to acknowledge – in particular cases the outcome of a negotiation may be wrong. Pettit claims that the rule-follower cannot rule out error because she can never be certain that she is in favourable conditions (1996, 92 and 1999, 42). The point can be made in terms of agreement as well. Responses that survive negotiation are the ones agreed upon at the end of a negotiation. In Pettit’s characterisation of normal conditions, (actual) agreement turns out to be constitutive of which conditions are normal. This raises a problem because the responses which actual agreements comprise may be mistaken. Pettit claims that later negotiation may always identify conditions that were (implicitly) regarded as normal at an earlier time as abnormal (1996, 93), and thereby mark the relevant responses as possibly false. However, he does not provide a criterion for singling out the correct outcomes of the negotiations, and simply preferring later outcomes to earlier ones seems arbitrary.

In effect, my criticism is that the problem of error recurs at another level. According to the normativity problem, our actual responses do not fix the extension of our concepts because if they did, it would be impossible to make errors. Pettit’s response amounts to the claim that our actual responses corrected by our negotiations fix the extension of our concepts (which means that if our negotiations were to yield different outcomes, the extension of our concepts would be different as well). This response will not work, however, because there is no reason to believe that the outcomes of our negotiations are necessarily right. Explicating or developing Pettit’s proposal somewhat by claiming, as Haukioja (2000, 72) does, that normal conditions are those that survive negotiations *in the long run* will not do either as it still leaves the extension of our concepts indeterminate. The reason for this is that ‘the long run’ is not specified more precisely. The extensions of our concepts may then depend on contingent factors such as whether the earth is hit by a meteorite causing the destruction of the human race. Furthermore, if one does not want to privilege later over earlier responses, an additional criterion such as a majority rule is required to single out correct outcomes of negotiations.

⁶ What is at issue here is that a non-sceptical solution requires there to be *some* responses whose (in)correctness is determinate. This allows for indeterminacy with respect to other parts of the range of application of a rule. Thus, even though I abstract from vagueness in this chapter, its possibility is not ruled out.

The sceptic takes contingency or reliance on a majority rule to imply that there are no meaning facts.

Thus, considering Pettit's theory from the perspective of the normativity problem reveals two flaws. First, the theory fails to preserve the objectivity of meaning because it renders the extension of our concepts dependent on the outcome of negotiations, and hence on our actual responses. Second, it does not even provide for a determinate subjective sense in which applications of concepts are correct or incorrect, as it may be that negotiations at different times deliver different outcomes and no criterion is available for privileging one over the other(s). Hence, Pettit's proposal can at most be a sceptical solution.⁷ This should not surprise us very much as the proposal is in fact strikingly similar to the sceptical solution described by Kripke. Both invoke agreement and disagreement in order to account for normativity.⁸

2.5.2 The finiteness problem

We saw in section 2.2 that the finiteness problem (FP) pertains to the question of how to account for the infinite character of rules given that human beings are finite. Pettit responded in the following manner: first, he invoked the relation of exemplification; second, he appealed to his theory of normal conditions; third, he argued that we should be careful not to set our demands for such theories too high. His second move is problematic. Apart from the fact that it does not solve the normativity problem, Pettit's theory of normal conditions does not even begin to address the extreme cases. The point is *not* that we cannot create a

⁷ In a later paper, Pettit (1999) provides a somewhat different definition of normal conditions. Whereas 'survive negotiations' suggested actual agreement, this definition is formulated in terms of maximised expected agreement. A problem with invoking expectations is that having an expectation involves having a contentful mental state, which presupposes rule-following. Hence, it cannot be appealed to in an account of rule-following. A problem with invoking maximised agreement is that it comes close to invoking a majority rule with respect to the outcomes of negotiations in the long run. This fails to preserve the required objectivity as it makes the extension of the concept dependent on (a relatively arbitrary selection of) the actual responses of rule-followers.

⁸ In response to my objections, Pettit might want to specify normal conditions as 'those that are of the kind that survives negotiations' – as was suggested to me by Jussi Haukioja. This implies that the practices of negotiations are no longer constitutive of normal conditions but only indicative. Both the sceptic and the modest philosopher will be dissatisfied by this response as it, in effect, means that a specification of normal conditions is still lacking. They would want to know what such conditions are like. In a similar vein, the response-dependent theorist will claim that this is a trivial specification. Ascribing an important role to the substantial comment about causal contact mentioned in note 5 only serves to revive the sceptic's concerns about circularity.

situation in which the conditions hold and in which we can test whether the dispositions provide determinate responses in the extreme cases. Pettit's third move is aimed at resolving that objection, and is – as we will see – at least partially successful. Rather, the point is that the theory of normal conditions is completely irrelevant in the extreme cases. Normal conditions are those that survive negotiation. However, by definition extreme cases do not arise. Hence, they cannot survive negotiations. (This holds, for instance, for the case of an addition problem with numbers too large for a human to grasp.)

The core of the problem is that Pettit appeals to a theory of normal conditions, whereas the extreme cases require a further idealisation. The extreme cases do not actually arise. The idealisation must specify conditions under which they would. Pettit's normal conditions are meant to ensure the correctness of responses. They do not, however, provide a counterfactual characterisation in which extreme cases would arise. Given the failure of his theory of normal conditions to address extreme cases, the upshot is that Pettit's proposal differs only in one respect from Kripkenstein's sceptical solution: Pettit claims that the dispositions of rule-following agents do in fact pertain to an infinite number of situations. Given his failure to provide an adequate idealisation that pertains to the extreme cases, however, Pettit's proposal does not solve the finiteness problem and hence is a sceptical solution in this regard as well.

2.5.3 The justification problem

The justification problem (JP) deals with the question of how to account for the justification of applications of a rule. The core claim of Pettit's solution is that dispositions play a justificatory role in that they tell the agent how to go on. This claim just begs the question against the sceptic. The sceptic repudiates claims to justification if the alleged justification is merely based on a disposition or feeling. Appealing to a revelation, as Pettit does, will not convince the sceptic. The sceptical solution accommodates a 'feeling of confidence' but it is regarded as unjustified (Kripke 1982, 108). The upshot is that Pettit's proposal is nothing more than a sceptical solution in light of the justification problem.

It has been argued that Pettit's theory provides a sceptical solution to the normativity problem, the finiteness problem, and the justification problem. It follows that the theory as a whole only provides a sceptical solution to the problem of rule-following. What exactly is the import of this conclusion? It has not been established that Pettit's theory is

incoherent. Rather, the point has been that the theory does not deliver what Pettit promises it delivers. Under the (shared) assumption that our actual rule-following practices require a non-sceptical solution, this implies that the theory does not adequately characterise these practices. This does not rule out that there might be practices that can be adequately characterised in terms of Pettit's theory.

In fact, the modest proposal that will be put forward and defended in the next section presupposes this. Hence, I will need some terminology to distinguish between Pettitian rule-followers and rule-followers to whom the modest proposal applies. I will say that the latter follow (full-blown) rules, whereas the former only follow proto-rules. Similarly, I will say that the latter possess (full-blown) concepts, whereas the former only have proto-concepts. As implied in section 2.5.1, proto-concepts or proto-rules differ from full-blown concepts or rules in that there is no determinate or objective sense in which the former can be used correctly or incorrectly.

2.6 A Modest Alternative

In this section, I propose an alternative account of rule-following that is inspired by Pettit's theory. By doing this, I defend my second conclusion: a modest solution can be constructed from Pettit's theory. I point out why my proposal is not a straight solution and provide reasons as to why we can be satisfied with this modest alternative. I also discuss the scope of the proposal.

2.6.1 The normativity problem

In order to solve the normativity problem, an alternative theory of normal conditions is required. The recent literature on response-dependence contains a lot of material that is relevant to this issue. Several topic-specific accounts of normal conditions have been proposed. Crispin Wright, for instance, has proposed an account of normal conditions for colour concepts. Mark Johnston has proposed an account of normal conditions for value concepts. My proposal is to replace Pettit's theory of normal conditions with such topic-specific accounts of normal conditions. Existing examples can be used as models for developing such accounts for concepts related to other topics. In addition to this, Wright and Johnston

have formulated a number of adequacy conditions that such accounts have to meet.⁹

What are response-dependent concepts and what does an account of normal conditions for such concepts look like? Response-dependent concepts are concepts that are intrinsically related to our responses. Mark Johnston's take on this is that these concepts are concepts of our dispositions. Crispin Wright's view is that our beliefs determine or fix the extension of these concepts (which can plausibly be explicated as the claim that, had our beliefs in normal conditions been different, the extension of the relevant concepts would have been different). In both approaches, concepts such as the nauseating, the titillating, and the plausible are response-dependent. Philosophically speaking somewhat more interesting concepts such as secondary quality concepts and value concepts – including aesthetic and moral value concepts – may be response-dependent as well.

Response-dependent concepts can be defined as concepts for which a non-trivially specified bi-conditional of the following form holds *a priori* (cf. Wright 1993):

x is $P \leftrightarrow$ for any S : if conditions C were to obtain, then S would believe that x is P .

S designates a normal subject, and C the normal conditions. A non-trivial specification of such a bi-conditional elucidates what it takes to be a normal subject and what it takes for a condition to be normal. This can best be clarified by an example. Wright has proposed a definition of normal conditions for the colour-concept red in terms of the following bi-conditional:

x is red \leftrightarrow for any S : if S knows which object x is, and knowingly observes it in plain view in conditions of lighting like those which actually typically obtain out-of-doors and out-of-shadow at noon on a cloudy summer's day; and is fully attentive to this observation; and has perceptual capacities which fall within the range that is typical of actual human beings and is prey to no other cognitive disfunction;

⁹ Pettit believes that all concepts are response-dependent. The critique of Pettit's theory presented in section 5 constitutes a severe blow to this thesis of global response-dependence. Neither Wright nor Johnston combines their conception of response-dependence with a global response-dependence thesis. In fact, Johnston explicitly argues against such a thesis (see Johnston 1993, 106-11).

and is free of doubt about the satisfaction of any of these conditions – then if *S* forms a belief about *x*'s colour, that belief will be that *x* is red. (This definition has been excerpted from Wright 1988 and 1993.)

The normality of subjects is specified in terms of perceptual capacities and cognitive functioning, where the former only have to be typical of actual human beings. The normality of conditions is specified in terms of a set of conditions relating to parameters such as knowledge, attentiveness, and absence of belief on the one hand and viewing conditions on the other. The set of conditions is specific enough to avoid the triviality charge. It does not, for instance, characterise the relevant conditions as those that are “suitable” for judging colours. In that sense, the specification is substantial rather than trivial. The specification is also substantial rather than functional in that it does not invoke a role related to our dispositions and practices but provides an explicit description of normal conditions.

How can appealing to specifications of normality conditions of this kind overcome the shortcoming of Pettit's account? It can because whether or not these conditions obtain is independent of our actual responses. In virtue of this, the extensions of response-dependent concepts are independent of our actual responses. Thus, the objectivity of meaning is preserved. Response-dependent concepts are subjective only insofar as their extension depends on our counterfactual responses, i.e., on the way in which we respond if conditions are normal. This does not deprive them of strict criteria for their application. Hence, it is consistent with the form of objectivity that is at stake in the normativity problem. Note that the demands of the sceptic are partially met since the normality conditions are specified in a non-circular way. More specifically, the second part of (NP_{DS}), according to which a non-circular specification has to be given of the *ceteris paribus* clauses of sophisticated dispositionalism, has been satisfied.

Pettit believes that accounts of normal conditions of this kind are inadequate (1996, 92 and 1999, 26-27). His objection is that a list of normal conditions would, in principle, enable the rule-follower to avoid mistakes. This objection, however, is flawed. First of all, rule-following agents do not have to have *explicit* knowledge of the specification of the normal conditions (as Pettit himself argues, they do not need to have the concept of normal conditions). Secondly, substantial specifications such as the one taken from Wright described differ in several respects from a list. Conditions are partly characterised by reference to a paradigmatic

scenario for reliable judgements. Normal conditions are those that sufficiently resemble the conditions in the scenario. Furthermore, a typicality requirement is added (e.g., in order to exclude, say, nuclear storms from the set of normal conditions in the case of colour judgements). Consequently, the specification is so abstract that it is rather unlikely that it would serve as a checklist for determining whether conditions are normal, a checklist that allegedly enables the rule-follower to avoid mistakes. Third, even if the specification could be used as a checklist, there is no guarantee that using it would help identify normal conditions. The agent may very well use the list incorrectly. This invalidates Pettit's objection to accounts of normal conditions such as those provided by Wright and Johnston.¹⁰

As it stands, this proposal implies that there are no basic rules. In particular, response-dependent rules or concepts presuppose concepts that figure in normal conditions (not the concept of normal conditions itself). Following response-dependent rules presupposes following these other rules. Thus, this version of the proposal succumbs to the regress problem. The solution that I propose is similar in spirit to Pettit's solution. The distinction drawn between rules and proto-rules in section 2.5.3 plays a crucial role in reinstating a version of that solution. Agents who follow response-dependent rules are sensitive to abnormal conditions. However, this does not imply that they possess the concepts that figure in the relevant normal conditions. Instead, it suffices that they have the proto-concept analogues of these concepts. So, there can be basic rules after all. According to Pettit, a rule is basic just if it is not followed in virtue of other rules. This conception of basic rules can be retained, as it is consistent with the claim that following such rules does presuppose following one or more *proto-rules*. No regress is implied. Rather than presupposing its own possibility, rule-following presupposes the possibility of proto-rule-following.

This proposal shares with the account of response-dependence provided above that agents who possess a response-dependent concept must have implicit knowledge of normal conditions. It diverges from it in

¹⁰ Another objection raised by Pettit (1999, 24) is that list- or inventory-based accounts of normal conditions cannot explain how people appear to discover that a condition hitherto unrecognised is actually not normal for seeing red, for example. The first point to notice is that accounts of normal conditions are not concerned with what is not normal but with what is. There is an infinite number of conditions that are not normal, not all of which have to be recognised in order for a rule-follower to have a grasp of what conditions are normal. Secondly, the respects in which the characterisation differs from a list, which were discussed in the main text, leave room for discovery.

that this knowledge need not be propositional. If the agents only have the relevant proto-concepts and do not possess the full-blown concepts, this knowledge will be a matter of know how rather than know that. This implies that, in spite of the fact that bi-conditionals of the form presented above hold a priori for these concepts, an agent who possesses such a concept need not have a priori knowledge of the related normal conditions (a priori knowledge is, of course, propositional by definition). It should be emphasised, however, that in the normal case, a rule-follower will possess most, perhaps even all of the concepts that figure in the normal conditions of a concept. Hence, in the normal case, she will have at least most of the a priori knowledge attributed to her above.

For this account to be convincing, a plausible conception is needed of how a Pettitian rule-follower might come to possess one or more full-blown concepts. Imagine an agent who has the proto-concept (analogue of the concept) of red.¹¹ She may, but need not, have the proto-concept of lighting conditions. Similarly, she may, but need not, have the proto-concept of observing something in plain view. If she does have these proto-concepts, however, her proto-concept of red will resemble the full-blown concept more. If she has all the proto-concepts the full-blown analogues of which figure in the normal conditions clause, she possesses the full-blown concept of red. At that stage, the rule is determinate in that there is a clear sense in which certain uses of the concept are correct, whereas others are incorrect (recall note 6). This sense is objective in that the correct application of a rule does not depend on actual responses (but rather on counterfactual responses). In addition to this, there is nothing that prohibits a rule-following agent from possessing several concepts. The overall picture suggested by this account is that, as the network of proto-concepts that an agent has expands, a number of these proto-concepts acquire the status of a full-blown concept. In fact, the full-blown concepts may outnumber the proto-concepts due to the way in which concepts interrelate. (The concepts someone possesses may even interrelate in such a way that all the rules she follows have acquired the status of full-blown rules.) Note that this account provides a relatively clear sense in which Wittgenstein's dictum "light dawns gradually over the whole" is at least partially true. The number of proto-concepts that attain the status of full-blown concept can increase if the network of proto-concepts expands, and it may be that the former grows faster. The key idea is that an agent who has a sufficiently elaborate network of

¹¹ Below, I will suppress the qualification 'analogue of the concept' and simply speak of the proto-concept, for instance, of red.

appropriately interrelated proto-concepts possesses one or more full-blown concepts.¹²

To recapitulate, I suggest solving the normativity problem by replacing Pettit's functionalist theory of normal conditions with substantial topic-specific specifications of normal conditions. The concern that this proposal succumbs to the regress problem is allayed by arguing that rule-followers only need to have the proto-concept analogues of the concepts that figure in these specifications.

The next issue we need to consider is the scope of this proposal. The number of specifications of normality conditions that has actually been provided is limited although they pertain to important concepts.¹³ In principle, however, the proposal encompasses all response-dependent concepts for which accounts of normal conditions, such as the one for the concept red discussed above, can be constructed. What is more, the proposal can be generalised to response-independent concepts. All that is needed in order to account for the possibility of error in a way that preserves the objectivity of meaning is that the extension of a concept be independent of our actual responses. This, in turn, requires that none of the concepts that figure in the analysis of the concept at hand depend on our actual responses. The underlying idea – which applies both to response-dependent concepts of the kind discussed by Wright and Johnston and to response-independent concepts – is that the conditions of application of a concept depend on its relation to other concepts. This does not lead to a regress because a rule-follower can possess the concept

¹² This implies a kind of holism that is different from the holism of Pettit's theory. Pettit in effect claims that the community of rule-followers determines the extension of our concepts. This is what one might call extension-holism. I deny this, and in this sense, my modest theory is atomist, rather than holist (see Pettit 1996, 165-75, for a discussion of this distinction). At the same time, however, I claim that a rule-follower can only possess a concept if she possesses other concepts or proto-concepts. Thus, I affirm a version of what I suggest calling possession-holism. Pettit also discusses an atomist version of his theory, and in his view, it is conceivable that this version of his theory – according to which rule-followers negotiate with other time-slices of themselves – is true (he argues that the truth of his extension-holism is contingent rather than necessary). This raises the question as to which version of Pettit's theory the modest proposal relies on. Even though it may be more natural to combine the atomist theory of full-blown concepts with the atomist version of Pettit's theory of proto-concepts, it seems possible to combine it with the holist version.

¹³ In addition to the ones mentioned already, Drivers and Miller (1999) put forward a specification with regard to the concept prime, and Wright (1987, 1989) provides an account of psychological concepts such as intention. See the first issue of the *Monist* in 1998, vol. 81 no.1, and the *European Review of Philosophy* of 1998, vol. 3, for sets of papers on response-dependence.

in virtue of having only the proto-concept analogues of the concepts that figure in the conceptual analyses of the concept at issue.¹⁴

What about the other aspects of the normativity problem? Pettit says nothing about the possibility of agents having dispositions to make mistakes. However, in effect, he rules out that possibility by postulating higher-order dispositions that detect discrepancies. These are dispositions to detect mistakes rather than to make them (although, by letting later negotiations change earlier “verdicts” on the normality of particular conditions, Pettit allows for higher-order dispositions to occasionally issue in mistaken responses). Kripke’s sceptic has other objections that similarly can only be ruled out by hypothesis. When discussing the normativity problem, the sceptic argues that claiming that the subject will learn from correction by others does not help because she might be uneducable. Furthermore, our subject may be suggestible, i.e., replace right responses with wrong ones because of what others say. (Kripke 1982, 32)

I suggest ruling out all these sceptical possibilities by hypothesis. The sceptic regards this strategy as begging the question. This means that the proposal cannot be a straight solution. However, one might believe that a different dialectic is called for. One may deem the demands of the sceptic too high for normal theorising. The possibilities of rule-followers having dispositions to make mistakes, or being uneducable and suggestible are too outlandish to address except when engaging with scepticism directly. A more substantial answer is available, however, for the case of response-dependent concepts. The hypothesis that these possibilities do not materialise may be especially plausible for such concepts. As the judgements of rule-followers in normal conditions fix or determine the extensions of such concepts, rule-followers possess a special authority that they do not in the case of response-independent concepts. This authority conflicts with uneducability, suggestibility and having dispositions to make mistakes. Thus, the proposal does not rule out the possibility that rule-followers have dispositions to make mistakes, as required by (NP_{DS}), but it does render this possibility implausible in the case of response-dependent concepts.¹⁵ It follows that the proposal is a modest rather than a straight solution.

¹⁴ This does not yet give us conditions in which rule-followers are infallible, as we had in the case of response-dependent concepts. Such conditions do exist, but a rule-follower does not need to have implicit knowledge of them. Having such knowledge necessarily is the distinguishing mark of response-dependent concepts.

¹⁵ Wright pursues a similar strategy with regard to concepts of avowals. He proposes a positive-presumptive condition, according to which ‘one is entitled to assume that a subject is not materially self-deceived, or unmotivatedly similarly afflicted,

Does all this render Pettit's theory of normal conditions worthless? No. In effect, my argument has been that agreement is too subjective for a proper foundation of normativity in that it does not provide for a robust distinction between correct and incorrect responses. Agreement is a matter of our actual beliefs or other responses, which were already excluded as the basis for normativity in section 2.2 since appealing to them undermines the objectivity of meaning. However, negotiation and agreement, as well as the notion of a higher-order disposition, can still play a role in solving the justification problem, as I will argue in section 2.6.3. A second reason for retaining insights of Pettit's theory of normal conditions is that they provide the basis for the commonability thesis. This thesis pertains to the interpretation of one rule-follower by another. According to the commonability thesis, '[t]he rules followed by a human thinker are commonable: they are rules that another can claim as a common possession' (Pettit 1996, 181). The underlying claim is that negotiation and agreement play a crucial role in coming to know which rules other rule-followers follow. In other words, these practices are required in order to find out whether the dispositions in question are shared. The upshot is that, although agreement ceases to be definitive of normal conditions, it still plays an important role in the process of justifying applications of rules and in coming to know what rules fellow rule-followers follow.

2.6.2 The finiteness problem

Just like Pettit's theory, the alternative theory of normal conditions does not address the extreme cases of the sceptic. Hence, it does not seem to provide us with a non-sceptical solution to the finiteness problem. However, another response is available, at least for the case of response-dependent rules. Nothing said so far establishes that extreme cases of the kind mentioned by the sceptic arise in the case of response-dependent rules. In fact, it proves quite hard to think of such extreme cases for this kind of concepts. For the few cases that there are, I will argue that plausible idealisations are available.

unless one possesses determinate evidence to the contrary' (Wright 1989, 251-52; emphasis in original). It seems natural to include dispositions to make mistakes, uneducability, and suggestibility in the category 'unmotivatedly similarly afflicted'. The difference between my proposal and that of Wright is that, in the latter, the positive-presumptive condition is one of the normal conditions for concepts of avowals, whereas, in my approach, the positive presumption is independent of normal conditions. As Wright acknowledges, the problem with the former is that it threatens to trivialise the specification of the conditions.

Consider the concept 'red'. Are there extreme cases involving this concept? Can the sceptic conjure up cases that would leave a normal rule-follower without an answer? I believe the answer is "no", except for a few cases that depend on space and time considerations. There is a principled reason why there are virtually no extreme cases of the kind discussed by Kripke for response-dependent concepts. Their extension is fixed or determined by our responses in normal conditions. This means that, in normal conditions, an absence of response implies that the relevant property is not instantiated. It is impossible for there to be a context in which the property is instantiated and in which conditions are normal, but which necessarily leaves a normal subject without an answer as to whether the relevant rule applies. No idealisation with regard to our ability to respond is required, because the actual abilities of normal subjects fix or determine the extension. I now turn to what, in my opinion, are the only exceptions to the rule that the sceptic's extreme cases do not arise for response-dependent concepts: space-time cases.

It may be that there are red objects on Alpha Centauri. However, there are no human beings on Alpha Centauri. Similarly, there may have been red objects on earth before there were sentient creatures. It may be impossible for human beings to go to Alpha Centauri, just as it is impossible to travel back through time to the days when there were no sentient creatures yet. Does this mean that the rule for red is indeterminate in that it does not prescribe certain applications for these space-time cases? It seems not. A simple counterfactual that mentions both normal conditions and a further idealisation can take care of these cases: if a normal subject were confronted with an object removed in space or time beyond her actual reach (the further idealisation), she would judge its colour correctly if conditions in such a situation were normal. Of course, one can distrust this idealisation. However, there seems to be no compelling reason to do so.

We saw that the sceptic does not oppose idealisations *per se*. Her objection was rather that she does not see why she should have any confidence in particular idealisations. She mentions an idealisation about increased brainpower as an example but dismisses it as widely speculative. She may be inclined to react in the same way with regard to the time-space cases. At this point, we can invoke Pettit's third move and argue that the sceptic is too harsh on idealisations as his 'attack [...] would tell against every sort of theorising'. The *ceteris paribus* clause that the rule-follower needs is acceptable because it is just 'a common-or-garden commitment' relative to 'standard scientific practice'. (Pettit 1996, 99) Pettit uses an example from Fodor concerning the inverse relation

between gas volume and pressure to support his claim, which is aimed at the extreme cases mentioned above. I will use an example from Blackburn – to which Pettit refers as well – that I find somewhat more intuitive:

The brittleness of a glass is a respectable dispositional property. But there is an infinite number of places and times and strikings and surfaces on which it could be displayed. Does this glass have a disposition that covers, for example, the fact that it would break if banged on a rock on Alpha Centauri? What if scientists would tell us that this glass couldn't get there, because it would have decayed within the time it takes to be transported there? (Blackburn 1984, 289)

The last sentence of this passage can be read as a rhetorical question. In spite of the impossibility of the circumstance ever arising, the glass still has the property of brittleness. One can, of course, challenge this and ask whether the property is not grittleness instead, where grittleness is the property of being brittle on earth and, for instance, unbreakable on Alpha Centauri. Even though scientists cannot meet this challenge, barring them from ascribing brittleness to glasses seems too radical a response. Arguably, this response is not convincing with respect to all idealisations, e.g., in the case of an idealisation concerning brainpower. However, given scientific practice, it seems reasonable to accept it in this case (in view of the fact that I am defending a modest solution; as should be clear from (FP_{DS}), a straight solution would require more). With respect to time-space cases, the example of brittleness suggests that the idealisations provided above are unobjectionable.¹⁶

¹⁶ There are extreme cases of a kind different from those discussed by Kripke. Johnston (1993) and Wright (1992) consider an example of a Chameleon the colour of which alters due to a change in lighting conditions. The moral of the example is that bringing about normal conditions can causally influence the properties of the object considered. This creates a problem: the reliability of the judgement about the colour of the Chameleon is only guaranteed when conditions are normal; however, changing the conditions to normal ones might alter its colour. Wright (1992, 127) concludes that (it is only *a priori* that) best opinion *partially* determines the extension of a concept (and, to reflect this, he switches from bi-conditionals to what he calls provisional equations for specifying the truth-conditions). Extreme cases that involve this kind of altering, however, are different from the extreme cases considered in the main text. The key point to appreciate is that, in the case of response-dependent concepts, the extension of a concept cannot be partly inaccessible to us due to limitations of our capacities, as our capacities determine the extension. If we cannot reliably judge whether or not a particular property is instantiated in the case of a certain object, this must be due to

In sum, I argue that there are no extreme cases for response-dependent concepts, and hence that the demands of the sceptic do not have to be met. The exception to this consists of cases pertaining to different locations or times, for which I provide an idealisation. Combining this argument with Pettit's argument as to why the demands of the sceptic with regard to idealisations are too high, I conclude that my proposal is a modest solution. Since the argument, as it has been presented here, is restricted to response-dependent concepts, my proposal pertains to such concepts only. Perhaps the argument generalises to all rules that can be basic. This is a question that is left for further research.

2.6.3 The justification problem

We saw that Pettit's theory fails to solve the justification problem as well. I believe, however, that Pettit's theory has the resources for a more substantial reaction to the sceptic. The key to this is provided by the notion of a higher-order disposition and that of a practice of negotiation, both of which figure in Pettit's account of normal conditions. Kripke's sceptic asks his questions to the rule-follower, and wants an answer from the first-person perspective (1982, 15). The sceptic demands reasons as justifications of the agent's responses (*ibid.*, 23 and 87). In many cases, a Pettitian rule-follower will not be able to provide a reason for her response in her answer to the sceptic. However, this, in itself, does not imply that the rule-follower is unjustified in the response she gives. A thinner notion of justification is available according to which the rule-follower is justified after all.

Let us first consider the situations in which a rule-follower is left without a reason. In normal conditions, our subject will just stick to her initial judgement that feels right. In abnormal or unfavourable conditions, she will note a discrepancy in virtue of a higher-order disposition and start discussing the case. The ensuing negotiation may or may not provide her with a reason. Her final judgement may simply depend on implicitly treating a certain condition as unfavourable and intuitively adjusting her judgement in light of this conditions, without explicit knowledge of which factor was unfavourable. In this scenario, her final judgement is intuitive and not based on a reason. It seems plausible, however, that there would be some situations in which the agent would have an explicit reason for her judgement. For instance, most people are aware of the fact that lighting conditions can distort their colour

other factors. Edwards (1998, 157-58) offers a similar argument concerning extreme cases of this second kind.

judgements and will consciously and knowingly adjust these conditions in order to be able to improve the quality of their judgements. This suggests that a discussion may provide an agent with a reason for her final judgement.

All in all, there are two kinds of situations in which the agent may be left without a reason: first, when judgements are formed in normal conditions and second, when negotiations prompted by abnormal conditions result in an intuitive judgement. Some philosophers defend a weaker notion of justification over and against the notion of justification as the ability to provide reasons for one's judgements (Millar 1991, and McDowell 1998). They regard sensitivity to countervailing conditions as sufficient justification. I will refer to this as the thin notion of justification, and to justification as the ability to provide reasons for one's judgements as the thick notion of justification. Pettit's notion of a higher-order disposition can be thought of as grounding the sensitivity required for the thin notion.

Thus, in normal conditions, Pettit's answer in terms of the prompting and presenting role of dispositions could be complemented with the following counterfactual: if there had been a discrepancy, a higher-order disposition would have prompted the agent to withhold judgement. In effect, this means that rule-following agents are sensitive to countervailing circumstances or abnormal conditions. Such sensitivity does not necessarily provide the agent with reasons for her responses. However, it provides justification for the responses of the agent nevertheless, at least on the thin conception of justification. Such sensitivity promotes the formation of true beliefs and can thus prevent the agent from forming a false belief. Although there are similarities between this account of justification and reliabilism, they differ, among other things, in that on the former rule-followers believe they have a good grasp of their concepts. This entails that they believe they are capable rule-conformers, and that they will actively seek to enhance their sensitivity to countervailing circumstances in the face of discrepancies between judgements.

Higher-order dispositions and practices of negotiation both come into play in the current proposal. The thin conception of justification can be explicated in terms of a higher-order disposition for detecting discrepancies. The negotiations that ensue once a discrepancy has been noted may yield a reason for the negotiator's responses. The practices of negotiations also serve to facilitate the development of dispositions for detecting discrepancies. Negotiating the correctness of one's responses can sharpen one's sensitivity to conditions that are abnormal. A rule-

following agent may be sensitive to abnormal conditions in virtue of the fact that she possesses those concepts that figure in the specification of the normal conditions. This would mean that her implicit knowledge of normal conditions is propositional. However, as will be clear from what was said in section 2.6.I, this need not be so. That knowledge may just be a matter of the know how that an agent possesses in virtue of her proto-concepts. In such a case, the response-dependent concept at issue is a (relatively) basic one. The implication is that a rule-follower may, in principle, be unable to provide reasons for her response, as the implicit knowledge she has may just be a matter of know how rather than know that.

As far as the scope of this proposal is concerned, the solution generalises to concepts that are not response-dependent. All that is needed for the thin notion of justification to be relevant is that a rule be complex in certain respects to a particular rule-follower in that it would be difficult for her to make explicit a part of her implicit knowledge of a priori truths about the concept. If this condition is satisfied, it may (but need not) happen that an agent is left without a reason for her response even though it is justified. This means that, whereas in principle she could, in practice she is unable to appeal to another rule in defending her response. As will be clear, a more radical scenario in which she would in principle be unable to appeal to another rule is conceivable as well.

In sum, the notion of a higher-order disposition can be seen as grounding a thin notion of justification: sensitivity to abnormal conditions. Whereas the sceptic demands a thick notion of justification, which allows an agent to provide reasons for her responses, I argue that a thin notion of justification is adequate for (relatively) basic and complex rules. This means that the proposal fails to meet (JP_{DS}), according to which a solution to the justification problem has to establish that rule-followers are able to provide reasons for believing their applications of rules to be correct. The implication is, by now, familiar: the proposal is a modest solution.

2.7 Conclusion

I have argued for two conclusions. First, despite his claim to the contrary, Pettit's theory of rule-following is a sceptical solution to the sceptical paradox as formulated by Kripke. The main problem is that he does not provide an adequate solution to the normativity problem. Second, with the help of topic-specific accounts of normal conditions developed by other

philosophers, Pettit's theory can be used for constructing a modest solution. In contrast to a sceptical solution, a modest solution characterises meaning facts through solving the problems of rule-following. It differs from a straight solution in that it does not meet the demands of the sceptic in full. Finally, it provides arguments as to why we can be satisfied with less than the sceptic requires. The modest solution applies to the class of response-dependent concepts. At least parts of the solution generalise to other classes of concepts as well.

In support of the first conclusion, I have argued that agreement is not infallible (or cannot be regarded as such for a non-sceptical solution), that Pettit's theory of normal conditions does not pertain to the extreme cases, and that a feeling, in itself, constitutes no justification whatever. In support of the second conclusion, I have argued that accounts of normal conditions, such as those offered by Johnston and Wright in relation to response-dependent concepts, provide a solution to the normativity problem, that extreme cases do not arise for response-dependent concepts, and that a thin notion of justification suffices for applications of basic and complex rules. Pettit's notion of a higher-order disposition has been appealed to as the basis for a thin notion of justification – that of sensitivity to countervailing conditions. Ensuing negotiations sometimes provide a rule-follower with a reason, and serve to sharpen the sensitivity. All in all, a key difference between my proposal and Pettit's is that Pettit invokes higher-order dispositions and practices of negotiations in order to solve the problem of normativity, whereas I appeal to them with regard to the justification problem instead.

3 ACCEPTANCE-DEPENDENCE: A SOCIAL KIND OF RESPONSE-DEPENDENCE

Almost two decades ago, the notion of response-dependence was introduced in order to capture the idea that many of our concepts are intimately connected to our mental responses to our surroundings. An object is red, for instance, because of our responses to that object in relevant circumstances. A certain view is plausible, given (among other things) certain background information, because we take it to be plausible after due consideration. A second motivation for introducing this notion was to provide a conceptual basis for the intuition that there is a fact of the matter whether something is red or whether a certain view is plausible. The idea was that intrinsic dependence on our responses does not necessarily deprive a concept of strict criteria for its application. In other words, some form of subjectivity can be consistent with a robust kind of objectivity.¹⁷

In the standard account, a response-dependent concept applies if a normal subject would take it to apply were she to form an opinion about this under normal conditions. Given the counterfactual formulation, a response-dependent concept can apply to an object even if no one has ever been confronted with that object. Exactly which concepts are response-dependent is a controversial matter. Much of the debate focuses on concepts of value and secondary qualities. I will leave these discussions aside and focus on another class of concepts: social concepts. Several social concepts have been claimed to be response-dependent. In Holton's (1992) view, for instance, the concepts POPULAR and GOAL are response-dependent.¹⁸ Johnston (1993) suggests that CONSTITUTIONAL is response-dependent.

¹⁷ Johnston coined the term 'response-dependence' in 1986. Wright (1988) and Johnston (1989) wrote the first papers on the topic (which is not to say that similar ideas did not exist earlier).

¹⁸ I use small capitals or bold for concepts. The term 'concept' as used here pertains to the level of sense (Peacocke, 1992, 2-3).

While social concepts are clearly intimately related to our thoughts and practices, it is not obvious that they are response-dependent – assuming the standard account of that notion. The first claim that I will defend is that, *pace* Holton and Johnston, the standard account of response-dependence does not apply to social concepts, including those that Holton and Johnston consider. The main argument for this will be that a social concept only applies if a group of people actually, rather than counterfactually, exhibit a particular response. The second claim to be defended is that social concepts are response-dependent in a sense different from the standard one. I will propose an account of a social kind of response-dependence that does apply to social concepts. For reasons to be explained, this kind of response-dependence will be termed ‘acceptance-dependence’. The main thrust of the present chapter is to explain what acceptance-dependence is. Importantly, acceptance-dependent concepts are less objective than the concepts to which the standard account of response-dependence applies.

Following Crispin Wright (1992), I will use the term ‘judgment-dependence’ for the standard account of response-dependence, which is introduced in section 3.1. Section 3.2 discusses the concepts POPULAR, GOAL and CONSTITUTIONAL, and defends the claim that these concepts are not judgment-dependent. The notion of acceptance-dependence is introduced in section 3.3. It is argued that many social concepts are acceptance-dependent. Section 3.4 compares the notions of judgment- and acceptance-dependence. Special attention is paid to the issue of objectivity. Finally, it is argued that acceptance-dependence is a kind of response-dependence.

3.1 Judgment-Dependence

Response-dependent concepts can be characterized as concepts that exhibit an intrinsic relation to our responses. A concept exhibits an intrinsic relation to our responses just if an *a priori* and substantial truth-condition can be formulated for that concept that refers to mental responses. Consider RED as an example.¹⁹ Suppose it is *a priori* that something is red if and only if it is such as to look red to a normal subject

¹⁹ Throughout the chapter, I will assume that RED is response-dependent. This, however, is controversial. Johnston has put forward the missing explanation argument (MEA) in order to defend the view that RED and concepts of secondary qualities generally are not response-dependent (see a.o. his 1993). Miller (2001) provides a critical assessment of the MEA.

in normal conditions. Perceptual capacities, for instance, pertain to what it is to be a normal subject, whereas lighting conditions enter into the analysis of normal conditions for color concepts such as RED. Supposing all normality conditions can be specified in a substantial way – to be elaborated on shortly – this example fits the characterization of response-dependence just given.

The accounts of response-dependence proposed by Mark Johnston and Crispin Wright dominate the discussion on response-dependence and share a common core. As such, I will refer to their commonalities as ‘the standard account’. Concepts to which the standard account applies are judgment-dependent. They do not necessarily depend on judgments directly. In the case of RED, for instance, the directly relevant response is ‘looking red’, rather than the judgment that the object in question is red. Rather, the underlying idea is that we – more specifically, normal subjects – are epistemically privileged when it comes to judging whether or not a judgment-dependent concept applies. The intrinsic relation that these concepts have to our responses gives us a special authority, at least in normal conditions. This means that our best judgments must be right. Even though the responses that are directly relevant need not be judgments, judgments are at least indirectly relevant in that a normal subject who forms a judgment in normal conditions is infallible.²⁰

The following bi-conditional is characteristic of judgment-dependent concepts:²¹

[JD] x is $F \leftrightarrow$ if conditions were normal and a normal subject who possesses the concept F were to form a belief about whether or not x is F , that belief would be that x is F .

In the standard account, a concept F is judgment-dependent just if a bi-conditional of this form applies to it *a priori* and its normality conditions

²⁰ Wright (1992) uses the terms ‘response-dependence’ and ‘judgment-dependence’ interchangeably. Consequently, he also uses the term ‘judgment-dependence’ in relation to concepts for which the directly relevant response is not a judgment, as in the case of red. I use the term ‘judgment-dependence’ for the same kinds of concepts as Wright does, but the term ‘response-dependence’ in a wider sense so as to encompass acceptance-dependent concepts to be introduced below. This implies that, in my terminology, judgment-dependence is just one kind of response-dependence. (Holton, 1992 also regards judgment-dependence as only one of several kinds of response-dependence, but he defines the term differently. In his terminology, a concept is judgment-dependent only if the directly relevant response is a judgment, as in the case of plausible.)

²¹ I abstract from problems related to subjunctive conditionals that motivated Wright’s move from basic equations to provisional equations (see a.o. his 1992).

can be specified in a substantial way. A substantial specification of normality conditions embodies an account of what it takes for a judgment to be authoritative (Wright, 1992, 112).

What the judgment-dependence of a concept *F* amounts to is that the truth-conditions of a judgment involving that concept can be adequately captured by a bi-conditional, the right-hand side of which pertains to counterfactual responses of idealized individuals. As said earlier, the (directly) relevant response need not be a judgment. It may be a perceptual or affective response instead. Note in this connection that [JD] could be reformulated without the idealizations pertaining to the possession of the relevant concept and the formation of a belief about its application. They are included in order to explicate the authoritative role judgments of normal subjects have even in cases where the (directly) relevant response is not a judgment.

There is no consensus as to which concepts are judgment-dependent. As we saw earlier, most discussions pertain to concepts of value and secondary qualities. As noted in the introduction, the literature on judgment-dependence contains claims that particular social concepts are judgment-dependent. Holton (1992) claims that concepts such as POPULAR and GOAL are judgment-dependent in the sense defined (see note 24 below). Similarly, Johnston (1993) claims that the concept CONSTITUTIONAL is judgment-dependent.²² It is not obvious that these concepts are judgment-dependent and, in the next section, I will argue that, in fact, they are not.

3.2 POPULAR, GOAL, and CONSTITUTIONAL

I will now argue that social concepts are not judgment-dependent. In other words, the thesis to be defended is that [JD] does not apply to social concepts as it stands. [JD] relates the extension of a concept to counterfactual responses; it concerns the way a normal subject *would* respond in normal conditions. Briefly, my argument for this thesis is: concepts such as POPULAR, GOAL, and CONSTITUTIONAL should be analyzed in terms of actual responses rather than counterfactual responses. The principal way in which I will support this claim is by providing analyses of the three concepts mentioned, in which they will depend on our actual responses.

²² Neither Holton nor Johnston would put it this way. Holton (1992) uses the term 'judgment-dependence' differently (see note 20). Johnston does not use the term at all.

Holton makes the (crude) suggestion that ‘something is popular if and only if most people judge that they like it’ (1992, 181). A first issue that is worth remarking on is that the relevant response for POPULAR does not seem to be the judgment of liking, but rather, the liking itself. Secondly, as it stands, the analysis fails to take into account that something may be popular in a certain group of people but not in another. Popularity is context-relative. Furthermore, it seems too demanding to require that, within a particular context, *most* people like it; *many* will suffice. Taking these points into account yields the following analysis:

Something is popular in a certain context if and only if many people within that context like it.

Although this analysis could perhaps be refined further, it will do for our purposes.²³ The specification of the relevant response is obviously crucial. The context-relativity will turn out to be important as well.

The fourth and, for our purposes, most important point to make is that the extension of POPULAR is dependent on our actual responses in both Holton’s and my analysis. Holton does not explicitly acknowledge this. He introduces the notion of response-dependence in terms of a biconditional according to which the extension of a response-dependent concept depends on counterfactual responses, and goes on to claim that POPULAR is response-dependent (which means it is judgment-dependent in my terminology).²⁴ However, this must be wrong because, even by Holton’s own lights POPULAR depends on actual, rather than counterfactual, responses. By his definition, something is popular if most people actually judge they like it (by my definition, the requirement is rather that they actually like it). It follows that [JD] does not apply to POPULAR. This implies that POPULAR is not a judgment-dependent concept.

A similar argument holds for GOAL. Holton writes: ‘[T]here could be games (perhaps there are) in which a team has a certain score if and only if the referee judges that it has that score’ (ibid.). Again, this analysis needs to be refined. It seems that the call of a referee is more relevant than her judgment. Imagine that a referee is bribed and calls a goal

²³ This qualification also applies to the analyses of goal and constitutional provided below.

²⁴ Holton (1992, 180) characterizes (what I call) judgment-dependence in this way:
 x is C \leftrightarrow x is such as to produce response R in normal observers in standard conditions.

This implies a counterfactual similar to the right-hand side of [JD].

despite the fact that she does not believe it should be called. The score would still change in this situation, and – given the gist of Holton’s analysis – a goal would have been scored. The modified analysis that I propose is (recall note 23):

A goal is scored in a particular game if and only if the referee of that game calls it.

There could be games where the score evolves according to this conception of goals. Note that the analysis is context-relative in the sense that whether or not a goal has been made depends on whether the referee of *that game* has called it. Crucially, in both Holton’s analysis and mine, the extension of GOAL depends on actual, rather than counterfactual, responses. This means that, *pace* Holton, [JD] does not apply to GOAL, and hence, GOAL is not judgment-dependent.

The third case we will consider is the concept CONSTITUTIONAL (more specifically, what it is for a U.S. state or federal law to be constitutional). Johnston formulates his analyses of judgment-dependent concepts in terms of dispositions. The connection with the type of analysis characterized by [JD] should be clear. Being disposed to react in a certain way implies that one would react in that way if certain conditions were met. Johnston claims that CONSTITUTIONAL is judgment-dependent and offers the following analysis: ‘Thus the concept of a U.S. state or federal law’s being constitutional is ... the concept of the Supreme Court’s *not* being disposed to ultimately regard it as *unconstitutional*. (Being constitutional is the default condition.)’ (1993, 104; emphasis in original) Note that CONSTITUTIONAL is analyzed in terms of the absence, rather than the presence, of a disposition to respond in a certain way (which, for Johnston, is the point of the example).

Johnston’s analysis is problematic because it is compatibility – or rather, *incompatibility* – with the constitution that matters, instead of what the Supreme Court is disposed to do. Ideally, the dispositions of the Supreme Court should track this, but the very use of the notion of tracking implies that they do not play the determining role that is played by dispositions – or, more precisely, by best opinion – in the case of judgment-dependent concepts. The extension of judgment-dependent concepts is fixed by the way we respond under certain conditions. In the case of constitutionality, the content of the constitution provides a basis that is independent of such responses (or dispositions to respond). Of course, the constitution is not entirely independent of human responses, as we will see in more detail below. However, the point to appreciate is

that, given the content of the constitution, constitutionality is fixed independently of what the Supreme Court is disposed to do.

This is not to say that there are no problematic cases. Arguably, there are cases with respect to which it is indeterminate whether or not there is a conflict with the constitution. Furthermore, the prevailing interpretation of keywords in the constitution, such as 'liberty', can change over time. In these cases, however, what matters is not what the Supreme Court is disposed to do, but rather what the Supreme Court actually does. Actual rulings can settle previously indeterminate cases (they are precisifications of what it is for a law to be constitutional). Actual rulings can change the relevant interpretation of keywords in the constitution. Of course, not all actual rulings are (equally) valid. Certain normality conditions have to be satisfied at the time of such decisions. All relevant information should have been considered, and due care exercised in arriving at such decisions. Judges should not have been bribed. Furthermore, any changes in interpretation should fit with the attitudes prevailing in society. The nature of the fit may be complex, but some sort of fit is necessary if the new interpretation is to be legitimate. Despite considerations such as these, in these problematic cases, constitutionality depends on what the Supreme Court actually does, instead of what it is disposed to do.

One may object to this and challenge whether the analysis proposed is really any different from Johnston's analysis, at least as far as the problematic cases are concerned. The idea underlying the objection would be that there is no difference between a dispositional analysis and an analysis that appeals to actual responses in certain conditions. This idea, however, is mistaken. A disposition in combination with certain conditions fixes the ensuing response. By contrast, the role of actual rulings in the problematic cases mentioned should be understood in a different way. That certain conditions have to be satisfied does not mean that the Supreme Court is forced to respond in one way rather than another. Within the limits set by the normal conditions, there is room for choice. In other words, in the case of judgment-dependent concepts, counterfactual responses trump actual responses, whereas, in the case under consideration, no counterfactuals are available and actual responses determine whether or not the relevant concept applies. It follows that constitutionality is partly fixed by what the Supreme Court actually decides, rather than by what it is disposed to do.

I propose a bipartite analysis. The first part addresses the unproblematic cases, and the second part the problematic ones – the cases that require an actual ruling (recall note 23):

A U.S. state or federal law is constitutional if and only if it is not in conflict with the constitution and the Supreme Court has not declared it to be unconstitutional in normal conditions.

In this analysis, the actual response or ruling can play a determining role with respect to the extension of CONSTITUTIONAL. It follows that, just as POPULAR and GOAL, CONSTITUTIONAL is not judgment-dependent – again because that would require dependence on counterfactual, rather than actual, responses. Note that this analysis implies that whether or not a law is constitutional can change over time. The analysis should be construed to imply that a declaration involving and establishing a new interpretation of a keyword can also influence whether or not there is a conflict with the constitution. Thus, there is at least one way in which the content of the constitution depends on our responses.

As suggested earlier, however, the content of the constitution as a whole is not independent of human responses. Even when we abstract from changes in the (legitimate) interpretation of the constitution, the content of the constitution depends on our responses. In fact, the (content of the) constitution depends on our acceptance of it as the constitution. This is apparent from the fact that there would not be a constitution if it were not for our acceptance of it as such. This has important implications for the status of the first half of the analysis provided. Thus far, the relation between the constitution and human responses has been left (largely) unspecified. Instead, the focus has been on the relation between responses of the Supreme Court and constitutionality. The conclusion that constitutionality is not judgment-dependent was based on two claims: first, in unproblematic cases, the responses of the Supreme Court are irrelevant to constitutionality; second, in the other cases, actual rather than counterfactual responses determine whether or not a law is constitutional. In short, constitutionality is not determined by the dispositions or counterfactual responses of the Supreme Court as judgment-dependence would require. The first claim leaves open several options for a positive characterization of the status of unproblematic cases. For all we know, it might be independent of human responses altogether. However, if, as has just been argued, the constitution depends on our actual responses, constitutionality depends on our actual responses in unproblematic cases as well, albeit indirectly. They fix the content of the constitution, thereby fixing what is and is not in conflict with the constitution. Given the analysis of constitutionality just

presented, this implies that they indirectly (and partially) fix whether or not a law is constitutional.

This discussion also addresses an objection one might have against the preceding analysis of GOAL. The main claim defended earlier was that GOAL depends on our actual responses. One could object to this by arguing that a referee tries to apply the rules of the game and that whether or not a goal has been scored depends on the rules rather than the call of the referee. The call of the referee, so the line of objection would continue, is only pragmatically relevant. If that call is irrelevant to the applicability of GOAL, the question arises whether GOAL is response-dependent in any sense. Isn't it a response-independent matter? Given the way things were set up, this misses the point. The claim was made on the supposition that there is nothing more to the score of a game than the call of the referee.²⁵ We can now see, however, that if this supposition is false with respect to the way our actual games work and the real score is fully determined by the rules rather than the call of the referee, the concept GOAL still depends on our actual responses. To appreciate this, one must first realize that, in order for there to be a game in the first place, it has to be believed that the rules of the game apply. There would not be games without human responses, more specifically without attitudes towards rules. The rules also define what it is to score a goal. By implication, GOAL depends on actual responses as well. In this scenario, then, GOAL depends on actual responses indirectly because the applicability of the rules depends on them directly. The upshot is that GOAL depends on actual responses *directly* if the analysis that appeals to the call of the referee discussed earlier is correct, and *indirectly* otherwise. In both scenarios, the earlier conclusion that GOAL is not judgment-dependent stands.

One might wish to challenge this rejoinder to the objection and stick to the idea that concepts such as GOAL and CONSTITUTIONAL do not depend on actual responses at all. The underlying idea would be that once the rules of the game or the content of the constitution have been fixed, the extension of these concepts has been fixed as well; our actual

²⁵ To be sure, in such a case it would be possible to say that she has made a mistake and that she should not have called the goal (think of a situation in which the referee calls a goal because she did not notice one of the players was in an offside position). Nevertheless, in this scenario, her call changes the score and there is no deep sense in which the actual score is not the real one. Hence, the call of the referee should enter the analysis of goal with respect to such games. Note that, even given this analysis, the rules of the game do constrain the extent to which the declaration of the referee is authoritative. No goal will have been scored if the referee calls a goal while the ball is midfield, for example.

responses are irrelevant to them. We have seen that this is simply false when it comes to the problematic cases discussed with regard to CONSTITUTIONALITY (below we will see it is also false with respect to institutional entities such as certain kinds of money). However, a more general point is needed for my conclusion. Admittedly, the matter is partly one of stipulation. I choose to use the terminology in such a way that even if responses are relevant only indirectly – they are responses with respect to the rules or laws presupposed by the concepts discussed rather than to the entities to which they might apply – the concepts can be said to depend on our responses. The reason why I think this is a good choice of terminology, however, is that there simply would not be goals or constitutional laws if it were not for our actual responses, no matter what their object is. So, there is an important sense in which these matters depend on our actual responses indirectly; in some sense, our actual responses are sufficient for determining the extension not only of POPULAR, but of GOAL and CONSTITUTIONAL as well. This dependence deserves to be spelled out and this will be done more fully in the next section. All in all, we can conclude that certain concepts that have been claimed to be judgment-dependent are in fact not judgment-dependent because they depend on our actual rather than counterfactual responses, either directly or indirectly.

3.3 Acceptance-Dependence

If the concepts discussed are not judgment-dependent, what are they? They are response-dependent in other senses, and this section is devoted to clarifying these other senses. First off, one needs to appreciate that not all examples discussed in the previous section are on a par. In particular, there is a striking contrast between POPULAR on the one hand and GOAL and CONSTITUTIONAL on the other. A manifestation of this contrast is that the latter two concepts can and often do involve an authority, whereas the former cannot. More specifically, it is simply impossible for an authority to make something popular by declaring it to be popular, whereas authorities can have such a determining role in the case of the other two concepts under discussion. Of course, their role may be indirect if their declarations directly pertain to the rules that the concepts presuppose. Even so, they play a determining role. Let's investigate this phenomenon further in order to bring the underlying contrast into focus.

Consider MONEY as an intuitive example to appreciate the (symptomatic) contrast. There can be money in a society without a central

bank or even a government. In such a society, it is the members of the society who determine what kind(s) of objects is (are) money. In an institutionally more complex society, the authorities determine the kind(s) of object that is (are) money (at least, officially). One could argue that, in the latter situation, the acceptance of certain objects as money is delegated to the authorities. The case of MONEY is helpful because certain kinds of money depend on an authority, whereas others do not. Whether a similar contrast applies to the other guiding examples is less clear, and especially questionable in the case of CONSTITUTIONAL, a concept that would seem to intrinsically involve an authority. One could construct a concept pertaining to the fit with common law and regard it as a non-authority-involving analogue. It is not crucial to the points to be made, however, that all concepts under which entities can fall in virtue of an authority are also such that entities can fall under them independently of any authority. It suffices that there are some authority-involving concepts for which this holds.

We now need to consider why the instantiation of popularity cannot be up to an authority, whereas the instantiation of money and similar concepts can. One aspect of this is that POPULAR involves an affective response, whereas the other concepts mentioned do not (or at least not exclusively). Another aspect is that concepts such as MONEY involve what one could call a performative response. Their instantiation depends on a response that involves those very concepts. Something is only money, for example, if it is believed or accepted to be money. This is a generalization of the well-known idea that some things are what they are because they have been declared to be so – a phenomenon to which the term ‘performativity’ was traditionally restricted. Performativity applied to the example under consideration means that accepting something as having a certain status such as money can result in it actually having that status.²⁶ POPULAR is not a performative concept. Whether or not something falls under that concept does not depend on our acceptance. Instead, it depends on the affective and non-performative response of liking. Thus, the relation to our actual responses is different from that of the other examples used. In what follows, I will concentrate on concepts that do involve our acceptance (see notes 27 and 32 for more on concepts such as POPULAR; cf. also note 34). Those concepts that do so in a way to be specified I will call ‘acceptance-dependent’.

²⁶ Searle (1995) and Tuomela (2002a) use the term ‘collective acceptance’ in this connection. The latter also uses the term ‘performative’ in the generalized sense just mentioned (Tuomela 2002a, 123).

Let any concept F be acceptance-dependent which satisfies the following bi-conditional *a priori*:²⁷

[AD] x is F in context $C \leftrightarrow$ group G in context C has attitude $A[F]$ towards x .

This bi-conditional applies to MONEY (at least to kinds of money that do not involve an authority). Context C determines whose responses are relevant. Group G can stand, for instance, for all agents within context C . We do not need to require that all members of G have the requisite response or attitude. Most or even just many will do. Attitude $A[F]$ is that of accepting something as F , which is akin to believing it to be F .²⁸

As noted earlier, (direct) acceptance can be delegated to an authority. For authority-involving cases, acceptance-dependence of a concept can be explicated in terms of the following bi-conditional that should apply *a priori*:

[AD'] x is F in context $C \leftrightarrow$ authority T in context C declares that x is F .

This bi-conditional applies to authority-involving kinds of money, and, if the analysis provided in the first part of the previous section is correct, to GOAL as well ([AD'] can be seen as a development of [AD] and, as such, does not imply that there are two different senses of terms such as 'goal' or 'money'). It is also relevant to CONSTITUTIONAL. The second part of the analysis of that concept refers to declarations by the Supreme Court that pertain to particular cases. It fits [AD'].

Next we need to accommodate indirect dependence on actual responses. Recall that in the second part of the previous section a scenario was sketched according to which GOAL does not depend on our actual responses directly but on our acceptance of the rules of a game instead. For such concepts this is the appropriate bi-conditional:

[AD*] x is F in context $C \leftrightarrow$ in context C group G accepts a rule R or authority T has declared that a rule R is in force and according to this rule x is F .

²⁷ If [AD] is reformulated so as to allow for attitudes such as liking something, it also applies to popular. Concepts such as popular could be called 'affect-dependent' or 'sentiment-dependent' (if 'sentiment' is understood in the way Adam Smith used the term).

²⁸ The notion of acceptance, or more specifically, that of collective acceptance, is developed in considerable detail in Tuomela (2002a).

This bi-conditional explicates the relation between rules, our actual responses, and concepts that depend on them in an indirect manner. In addition to the second scenario sketched for GOAL, it applies to the first part of the analysis of CONSTITUTIONAL – the part pertaining to the fit with the constitution (which can be understood as a set of rules). Thus, the bi-conditional reveals that in an indirect sense our actual responses determine the extension of certain rule-involving concepts as well. In the case of CONSTITUTIONAL, [AD*] helps to understand the relation between declaration, the constitution and constitutionality (see what was said about acceptance of the constitution at the end of the previous section). Note that in the case of CONSTITUTIONAL, the context includes satisfaction of the normality conditions discussed in the previous section. All in all, we can say that those concepts are acceptance-dependent that satisfy (slight variations of) [AD], [AD'] or [AD*].²⁹

How can one find out whether or not a particular concept is acceptance-dependent? In principle, this depends on whether or not a bi-conditional such as [AD], [AD'] or [AD*] applies *a priori*. Since not all *a priori* truths are obvious truths, it will be useful to discuss certain marks of acceptance-dependence. One such mark is the involvement of an authority, as is implied by [AD'].³⁰ A more general mark of acceptance-dependence is, what I call, sensitivity to negotiation: one can sometimes influence someone else's mental states simply through discussions or negotiations with this person. Given the dependence of acceptance-dependent concepts on our actual responses, changing someone's responses to something through negotiation can change the extension of the concept. If, for instance, I convince you (and a sufficient number of other people) to stop using shells as money, I will have managed to change the extension of MONEY.³¹

²⁹ When an authority is involved, there might be a higher authority that could overrule its decisions. In light of this consideration, the clause 'and this declaration is not overruled by a higher authority' could be added to [AD'] and [AD*] when appropriate. In the case of constitutionality, perhaps the Supreme Court at a certain point in time can be regarded as a higher authority with respect to the Supreme Court at an earlier point in time.

³⁰ The fact that an authority is involved does not imply that the dominant sense of the term at issue is acceptance-dependent. Take for instance 'murderer'. Whether or not someone is a murderer is independent of the ruling of the court. However, in addition to this *de facto* sense, there is a *de jure* sense of murderer that is acceptance-dependent. It corresponds to being convicted for murder.

³¹ This notion of sensitivity to negotiation has been inspired by Philip Pettit's (1996) notion of a practice of negotiation (see chapter 2 for a critique of the role these practices play in Pettit's theory of rule-following).

Acceptance-dependent concepts are social concepts. They are social in the weak sense of the term if the instantiation of the corresponding property requires that there be several agents with certain intentional attitudes (see Pettit, 1996, 119 for this conception of social properties). They are also social in a stronger sense. The attitudes have to be in line with one another in the sense that the content of the attitude that is shared should be (roughly) the same. Most members of a group should, for instance, take shells to be money. Furthermore, the attitudes held by individuals should relate to one another in a particular way. They should, for instance, be grounded partly in mutual beliefs (see Tuomela, 2002a for arguments that stronger connections than mere mutual belief are required). Institutional concepts satisfy these conditions. Thus, acceptance-dependence is definitive of a relatively strong sense of 'social'.³²

3.4 A Comparison

How does acceptance-dependence (AD) relate to judgment-dependence (JD)? There are three important differences. The first has been at the center of the discussion so far: whereas JD concepts depend on counterfactual responses, AD concepts depend on actual responses. In contrast to JD concepts, AD concepts apply only if the relevant attitudes or responses are actually instantiated. Related to this, the extension of a JD concept is constrained by best opinion; the extension of an AD concept is constrained by actual opinion. One could say that our authority is practical rather than (merely) epistemic in the latter case. Rather than just being sensitive to the way in which we respond to something, i.e. rather than introspecting, we have to actually do something, namely make up our minds. By doing so and by finding out whether others have done so as well, we can come to know whether the concept applies to the case at hand.

A second and related difference is that, in the case of an AD concept, the responses of several actual agents are relevant, whereas the point of reference for JD concepts is an idealized individual. This is also true when the response and declaration of, for instance, a referee plays a determining role. The reason for this is that the authority of the referee

³² In contrast to acceptance-dependent concepts, affect- or sentiment-dependent concepts (see note 27) need not be social in any sense. Popular is social in the weak sense of the term. A sentiment-dependent concept such as sad is not even social in this weak sense.

has to be accepted by a sufficient number of people. A third difference is that AD concepts are context-relative, whereas JD concepts are not. What is, for example, legal tender in one country need not be legal tender in another. As said earlier, the context determines whose responses are relevant. What is legal tender in a particular country depends on the attitudes of the citizens and the declarations of the authorities in that country.

These differences imply a difference in objectivity between (judgments involving) AD concepts and (judgments involving) JD concepts. This difference can be expressed as follows: AD concepts are less objective than JD concepts because they are more mind-dependent. Let me elaborate. All that is required for the extension of an AD concept to change is a change in the actual (mental) responses of the relevant individuals. If the members of a certain society cease to accept shells as money, shells cease to be money in that society. By contrast, a change in the actual responses of a normal subject is not necessarily accompanied by a change in the extension of a JD concept. If the mind of a normal subject were to change in such a way that it would react differently from the way it actually does in normal circumstances, it is not the extension of the concept that changes. Rather, the subject under consideration would have come to possess a different concept altogether (as a Martian might have different color concepts than human beings). The point can be made in another way. In order to possess a concept, one has to be inclined to react in certain ways. If two people have different inclinations of the relevant kind, they possess different concepts. It is a characteristic of AD concepts, however, that, in forming judgments about their application, one needs to take the actual responses of several individuals into account. This means that, even if one's inclinations remain the same, the extension of an AD concept can change if one's actual responses do.

This does not mean that we are infallible when it comes to AD concepts, mainly because these concepts require the responses of several agents in order to apply. I can, for instance, believe that shells are money partly because I assume that you and some others regard shells as money. If this assumption is mistaken, my belief that shells are money is mistaken as well. Similarly, I might be mistaken about the declaration made by an authority, and hence, about the features that the instantiation of money has in the context at issue. However, the extent of fallibility is more limited than in the case of JD concepts. A normal subject in normal conditions cannot be wrong about whether a JD concept applies. If normal conditions do not obtain, a whole community of normal subjects could be mistaken. By contrast, there is no room for the idea that a

community as a whole could be mistaken in the case of an AD concept given that the mutual beliefs in that community are correct. The underlying point is that a judgment involving a JD concept is only bound to be right if certain subject-independent conditions are met, whereas the dominant issue in the case of AD concepts is whether or not a judgment involving such a concept is in line with the attitudes that others have.³³

A remaining question is why acceptance-dependence would be a kind of response-dependence. One reason for this is that concepts that philosophers have claimed to be response-dependent are in fact AD (see section 3.2). Another reason is that the informal characterization of response-dependence provided at the beginning of section 3.1 applies to acceptance-dependence. [AD], [AD'] and [AD*] are substantial truth-conditions involving mental responses. A related reason is that both JD concepts and AD concepts are specific to our interests and sensibilities. In addition to this, we have a special authority with respect to both kinds of concepts. As we saw, the kind of authority varies depending on the kind of concept, but the basic point remains. Finally, the characteristic biconditionals [AD], [AD'] and [AD*] are *a priori* and non-trivial, as is [JD]. Given these similarities, I propose that any concept that is either judgment- or acceptance-dependent is response-dependent.³⁴

3.5 Conclusion

Two claims have been defended in this chapter. First, certain social concepts that others have claimed to be judgment-dependent are in fact not. Second, some of these, as well as many other social concepts, are indeed acceptance-dependent. The main difference between acceptance- and judgment-dependent concepts is that the latter depend on our counterfactual responses, whereas the former depend on our actual responses. Acceptance-dependent concepts are also comparatively less objective.

³³ This is not the only issue. First, the applicability of an acceptance-dependent concept might presuppose the applicability of another acceptance-dependent concept (e.g., there can only be money if there are property rights). This, however, can then itself be analysed in terms of the alignment of attitudes. Second, the object that falls under the concept should be correctly identified (e.g., the judgment that a certain piece of paper is money presupposes that the object that is judged to be money is indeed a piece of paper; note that this condition applies to judgment-dependent concepts as well). Given a correct identification of the object, the contrast pointed out remains.

³⁴ Arguably, sentiment-dependence (see notes 27 and 32) is the only other kind of response-dependence. This implies the stronger claim that a concept is response-dependent just if it is judgment-, acceptance-, or sentiment-dependent.

Obviously, the notion of acceptance-dependence can be further developed. It may prove interesting, for example, to pursue potential analogues between acceptance- and judgment-dependence that have not been considered here. Issues such as rigidification and explanation that have received ample attention in the literature on judgment-dependence can perhaps be fruitfully brought to bear on acceptance-dependence. This, in turn, could be useful for understanding the role of our responses in our concepts more generally. Even at this stage, however, it is already clear that the notion of response-dependence is of greater use than was envisaged almost two decades ago.

PART II

RULES & LANGUAGE

4 THE ANALYSIS OF ASSERTION

According to the increasingly popular knowledge account of assertion, knowledge is a normative requirement of assertion. More precisely, the knowledge account has it that assertion is governed by the knowledge rule:

One must: assert that p only if one knows that p .

The knowledge rule implies that an assertion can be legitimately criticized if the asserter does not know its content. This fits our linguistic practices, since we often respond to assertions by asking questions such as ‘How do you know?’ and ‘Do you know that?’. Furthermore, we take such responses to be appropriate. The questions mentioned seem to presuppose that asserters should know the content of their assertions.³⁵

The knowledge account of assertion plays a prominent role in contemporary debates about assertion and knowledge. Discussions concerning the knowledge account are dominated by two questions. First, is assertion indeed governed by the knowledge rule or is it governed by some other rule instead? Assertion might, for instance, be governed by the truth rule, R_T , according to which assertion only (normatively) requires truth (see Williamson 1996 for a criticism of this view). Second, what kind of analysis of knowledge is implied by the knowledge account

³⁵ Other linguistic material that is frequently adduced in support of the knowledge account of assertion consists of Moorean sentences of the form ‘ p but I don’t know that p ’. We find such sentences odd and this might be because an assertion of the first conjunct presupposes that the asserter knows that p , which in turn might be due to the knowledge requirement of assertion. The second conjunct contradicts the presupposition of asserting the first. In addition to this, it has been argued that we can legitimately criticise assertions for which the asserter’s evidential status falls short of knowledge such as those involved in lottery cases. The knowledge account can accommodate this as well. (See Unger 1975, Slote 1979, Williamson 1996.)

of assertion? It has, for example, been argued that the knowledge account implies a contextualist theory of knowledge (DeRose 2002).

A third question one might ask in relation to the knowledge account of assertion is what kind of analysis of assertion it presupposes. Perhaps the knowledge account is consistent with several analyses of assertion. If so, the question becomes: Which analysis of assertion fits best with the knowledge account? Timothy Williamson (1996, 2000) has argued that the knowledge requirement should be built into the analysis of assertion. On his view, assertion is that speech act that is necessarily governed by the knowledge rule. Because he analyses assertion in terms of a rule, Williamson offers a normative analysis of assertion. I will criticise Williamson's view and defend the claim that a non-normative analysis of assertion in terms of expressing a belief is to be preferred over his proposal. Rather than being included in it, the knowledge requirement should be derived from an analysis of assertion. This argument vitally depends on an intuition about lying. The crux of it is that there is nothing wrong with lies *qua* assertions. In addition to this, it will be argued that the alternative offered here is more informative than Williamson's analysis.

4.1 Williamson's Analysis of Assertion

For the purposes of our discussion the question 'What is assertion?' can be divided into two subsidiary questions. First, should knowledge or belief be the main ingredient of an analysis of assertion? Second, should assertion be analysed in terms of a rule or rather in terms of the expression of a mental state? Williamson opts for the first alternative in both cases. Thus, he offers what I call a [KR] analysis of assertion (where 'K' indicates that knowledge is the main ingredient and 'R' that the analysis is formulated in terms of a normative requirement or rule). In contrast, the traditional analysis is a [BE] analysis (with 'B' for belief and 'E' for expression). Let us consider these analyses in turn.

An [R] analysis of assertion characterises assertion in terms of an R-rule, such as the knowledge rule. Williamson's hypothesis is that the knowledge rule is the constitutive rule of assertion. Given Williamson's conception of constitutive rules, this means that assertion is governed by the knowledge rule as a matter of necessity. Williamson writes: '[A] rule will count as constitutive of an act only if it is essential to that act: necessarily, the rule governs every performance of the act.' (2000, 239) Note that this does not mean that knowledge is a necessary condition of

assertion. This would be rather implausible, since – as Williamson acknowledges – we often assert things we do not know. Instead, *being governed by the knowledge rule* is a necessary condition. The underlying idea is that being governed by a rule is consistent with violating it. The practice of promising, for instance, is governed by the rule that one should do as promised. This is consistent with promising something and not doing as promised. All in all, the knowledge rule forbids the combination of asserting that p and not knowing that p , but it does not rule out that combination occurring in actual practice.

Williamson claims that the knowledge rule is the only constitutive rule of assertion and that this rule is unique to assertion. The analysis to which he subscribes is: assertion is that speech act that is necessarily governed by the knowledge rule. The problem with this analysis is that it is circular. Recall the formulation of the knowledge rule: One must: assert that p only if one knows that p . This formulation contains the term ‘assert’, which is what we are trying to analyse. The immediate circularity can be removed by reformulating the analysis as follows (cf. Williamson 241):

[KR] To assert is to perform that speech act that is governed by R_k : One must: perform that speech act with content p only if one knows that p .

In this formulation, ‘assert that p ’ has been replaced with ‘perform that speech act with content p ’. This is a knowledge analysis of assertion [K], because knowledge is the main ingredient of the analysis. Furthermore, it is an [R] analysis because it analyses assertion in terms of a rule that (normatively) requires that a certain condition be met, in this case knowing the content of the speech act. Hence, it is a [KR] analysis. According to the [KR] analysis, assertion is that speech act that requires knowledge of its content.

Let me make two remarks about this analysis before turning to a discussion of the traditional [BE] analysis of assertion. The [KR] analysis is only one of many [R] analyses that could be offered. Other [R] analyses can be constructed by replacing the knowledge rule with another rule. Replacing the knowledge rule with the truth rule, R_t (One must: perform that speech act with content p only if p is true), results in the [TR] analysis. Incorporating the belief rule, R_b (One must: perform that speech act with content p only if one believes that p), in an [R] analysis leads to a [BR] analysis. And so on. Perhaps the most plausible alternative to the [KR] analysis is the [JBR] analysis, where JB stands for justified belief. Most

plausible, that is, on the assumption that a Williamsonian constitutive rule or [R] analysis is adequate. In the remainder of this chapter I will in fact argue that an alternative type of analysis is to be preferred. For argumentative purposes, I will take it for granted that knowledge is a normative requirement of assertion.

4.2 The Traditional Analysis of Assertion

Williamson's analysis of assertion differs radically from other analyses that are on offer. Assertion and speech acts generally are often analysed in terms of the expression of mental states. Most philosophers who subscribe to such an [E] analysis of speech acts, analyse assertion in terms of expressing a belief (Alston 2000, Bach and Harnish 1979, Searle 1969, Williams 2002).³⁶ Thus, the traditional analysis of assertion is the [BE] analysis.

Expressing a mental state or an attitude can roughly be analysed as intending to give the hearer the impression that one has the attitude. More precisely, to express an attitude by uttering a sentence is 'to R-intend that the hearer take one's utterance as reason to believe one has the attitude' (Bach and Harnish 1979, 39; cf. Alston 2000, 37; the R signifies that the hearer should do this in virtue of recognising that intention).³⁷ Rather than having the relevant attitude, having an R-intention is constitutive of assertion. One cannot assert something without having this intention, even though one can fail to have the attitude expressed.

The content of a speech act is determined by the meaning of the sentence uttered (at least in part; I abstract from the role that context plays in the determination of content). Thus, the following analysis of assertion results:

³⁶ Grice's (1989, 27) supermaxim 'Try to make your contribution one that is true' is closely related to RT and one might regard this as an indication that he subscribed to a [TR] analysis – the analysis that Williamson seems to regard as the most important rival to his own analysis. Note, however, that this maxim is a conversational maxim, which suggests that, rather than being part of the analysis of assertion, it is a condition of rationality that governs conversation instead. Grice can in fact plausibly be interpreted as supporting a [BE] analysis (*ibid.*, 42). Thus, Williamson fails to consider what is in fact the most important alternative to the [KR] analysis.

³⁷ I abstract from assertions that do not involve hearers and from utterance acts that do not involve sentences.

[BE] To assert that p is to express the belief that p by uttering a sentence that means that p .

As in the case of [R] analyses, [E] analyses come in several kinds. Instead of a [BE] analysis, one might want to defend a [KE] analysis, according to which assertion is a matter of expressing a knowledge state (note that Williamson thinks that knowledge is a mental state).

In contrast to [R] analyses, [E] analyses are not normative. Instead of analysing assertion in terms of a rule that can be broken, [E] analyses analyse assertion in terms of conditions that are always satisfied when an assertion is made. In spite of this, the [KE] analysis, for instance, does not imply that assertions always involve knowledge. As we saw earlier, expressing an attitude does not require having it. Instead, it is a matter of giving the hearer a reason for believing one has the attitude.

4.3 A Derivation of the Knowledge Rule

Recall that the main question of this chapter is what kind of analysis of assertion fits best with the knowledge account. In order to argue that the [BE] analysis fits best, I first need to show that this analysis can accommodate the knowledge requirement. Accommodating that requirement involves two steps. In the first step the norm of sincerity is invoked in order to derive R_b from the [BE] analysis. The second step invokes an account of belief in order to derive R_k from R_b .

Both those who defend [E] analyses and those who defend [R] analyses accept the claim that in asserting something we represent ourselves as having a certain attitude (a claim that goes back to Unger 1975 and Slote 1979 and perhaps even further; see Williamson 2000, 252n6). Thus, it provides the means for a neutral formulation of the norm of sincerity: One ought to represent oneself accurately. Because the adequacy of [E] analyses is presupposed in the derivation, the norm, [NS], can be formulated as follows:

[NS] One ought to express an attitude only if one has that attitude.

The applicability of R_b can be derived from the [BE] analysis in combination with the norm of sincerity [NS] as follows:

- (1) To assert that p is to express the belief that p by uttering a sentence that means that p .
- (2) One ought to express an attitude only if one has that attitude.
- (3) Therefore, one ought to assert that p only if one believes that p .

In this argument, R_b is derived from [BE] and [NS]. This completes the first step.

In order to get from the belief rule to the knowledge rule, we need to consider the nature of belief. It is often said that belief aims at truth. Pursuing this metaphor, one might say that the means for aiming at truth is justification. The claim that belief aims at truth should be understood normatively: beliefs should be true. Assuming that reliable means are available, the implication is that beliefs should be justified. Thus we can conclude that one should only believe that p if one is justified in believing that p . This requirement on belief enables us to derive the justified belief rule, R_{jB} , according to which one ought to assert that p only if one is justified in believing that p .³⁸

Now, if we aim at truth, justification being the means, and we succeed in achieving our aim by employing this means, the outcome is knowledge (Wedgewood 2002, 283).³⁹ Perhaps this suffices for deriving the knowledge rule.⁴⁰ Williamson makes the stronger claim that belief aims at knowledge, or – in his words – that belief requires knowledge

³⁸ We might leave it at this. Perhaps we should prefer a justified belief account of assertion over the knowledge account. A question such as ‘How do you know?’ in response to an assertion might just be a request for making explicit one’s reasons for believing what one asserts. However, in order to make my argument against Williamson as strong as possible, I proceed on the assumption that the knowledge account is correct. Earlier I said that [BE] is the most important rival to [KR]. I also said that [JBR] is perhaps the most plausible alternative to [KR] on the assumption that one wants to offer an [R] analysis. We can now see that these claims fit together well, given that RJB can be derived from the [BE] analysis (as Douven 2005 shows, RJB can also be derived from a principle of rationality and the so-called belief-assertion parallel; Douven goes on to argue that it is more plausible that assertion is governed by RJB than that it is governed by RK). That such a derivation is needed, however, is an important argument against holding on to [R] analyses as the appropriate form for analysing assertion, as will become clear shortly.

³⁹ What about Gettier cases? Don’t they show that justified true belief falls short of knowledge? Wedgewood’s conception of justification or warrant implies truth. Therefore, it is not vulnerable to Gettier cases (Wedgewood 2002, 284–85 and note 33).

⁴⁰ Wedgewood argues that ‘the fact that a person should aim to get to the truth is enough to explain why that person should aim to know the truth’ (2002, 289; emphasis in original).

(2000, 255-56). Given this conception of belief, the knowledge requirement of assertion clearly follows from the belief rule. The claim that belief (normatively) requires knowledge implies that one ought to believe that p only if one knows that p . This allows us to derive the knowledge rule:

- (3) One ought to assert that p only if one believes that p .
- (4) One ought to believe that p only if one knows that p .
- (5) Therefore, one ought to assert that p only if one knows that p .

Thus, the two ingredients of this derivation of the knowledge requirement from the [BE] analysis are that belief is a necessary condition for sincere assertion (R_b) and that belief requires knowledge. The implication is that sincere assertion requires knowledge (R_k).

4.4 Lies and Exceptions to the Knowledge Rule

The knowledge requirement can be accommodated both by the [KR] analysis and by the [BE] analysis. The [KR] analysis accommodates it directly by incorporating it in the analysis of assertion. The [BE] analysis accommodates it indirectly by invoking the norm of sincerity and a requirement on belief. I will now argue that accommodating the knowledge requirement in this indirect way is to be preferred over including it in the analysis of assertion. The argument hinges on an intuition about lying. The intuition is that what is wrong with lying is an extrasemantic, let us say a moral, matter. This means that rather than following from speech act theory, it should be accounted for in terms of norms that are independent of it, for example in terms of the norm of sincerity.

Someone who lies does not believe what she asserts. *A fortiori*, she does not know it (arguably, she also knows that she does not know it). It would be odd to fault an exposed liar for not knowing that which she asserts. Williamson's [KR] analysis, however, implies that deceitful assertions are defective assertions. But intuitively there is nothing wrong with lies *qua* assertions. Lying is wrong because one ought to represent oneself accurately, i.e. because one ought to be sincere. This norm of sincerity appears to be independent from the nature of assertion. Arguably, it governs the performance of speech acts in general. The norm applies, for instance, to promising as well: one should only promise

something if one intends to do as promised (at least in ordinary cases). This as well as the moral overtones of the norm suggest that it is extragrammatic and should not occur in analyses of particular types of speech acts. In relation to assertion, it is implausible to hold, as Williamson is committed to, that one ought to know what one asserts even if one is lying. The bottom line is that insincere assertion is still assertion and that it is implausible to require knowledge of an insincere asserter. Thus, the [BE] analysis is to be preferred over the [KR] analysis because it accommodates lying in a manner that is intuitively more appealing.⁴¹

In the cases considered thus far, both the [KR] and the [BE] analyses imply that lies can be criticized, albeit for different reasons. The latter but not the former invokes a norm of sincerity to account for this. Since the normative verdicts point in the same direction, one might doubt whether the criticism presented is a strong one. Its strength can be explicated by considering other cases. As is well known, in certain circumstances lying is permissible. In the case of such permissible lies, the normative verdicts implied by the [KR] and the [BE] analyses come apart. Let me elaborate.

There are many situations in which it is permitted to assert something one does not believe – for instance, if this serves to protect an innocent person from a severe threat. *A fortiori*, in such situations it is allowed to assert something one does not know. On Williamson's account, however, R-rules, such as the knowledge rule, do not have exceptions (even though they can be overridden; see note 42). An implication of this is that permissible lies can be criticized because the asserter does not know that which she asserts. This consequence is highly counterintuitive. Therefore, it counts against the [KR] analysis.

One might think that the [BE] analysis is in as bad a shape in this regard as the [KR] analysis. After all, the norm of sincerity as formulated above does not allow for exceptions either. Things change, however, once one realises that the formulation of the norm of sincerity is defective in this respect: it is too stringent.

The main reason why sincerity is important in relation to assertion is that we often rely on assertions made by others and change our beliefs in light of them. Insincerity can be a betrayal of trust. Sometimes,

¹ One might wonder why I defend the [BE] analysis instead of the [KE] analysis (to which Unger 1975 seems to subscribe), given that the knowledge rule follows from the combination of [KE] and [NS] directly without the need for invoking a particular conception of belief. One reason for doing so is that, as far as assertion is concerned, the norm of sincerity requires belief and not knowledge. This follows from the fact that breaking the norm is a matter of lying. Merely failing to know what one asserts is not lying, whereas not believing it is.

however, we have good reasons for deceiving someone, as when hiding a fugitive for a persecutor. Thus, the norm of sincerity needs to be qualified (similar considerations apply to promising). It can, for instance, be made relative to circumstances of normal trust (see Williams 2002), which would imply the following formulation:

[NS*] In situations of normal trust, one ought to express an attitude only if one has that attitude.

The idea underlying this norm is that sincerity can only be legitimately expected if the participants of a conversation do not distrust one another.

Qualifying the norm of sincerity in such a way has as a consequence that there are exceptions to the derived R-rule as well. If [NS] is replaced by [NS*] in the derivation presented above, only a qualified version of the knowledge rule follows.

R_{K^*} In situations of normal trust, one ought to assert that p only if one knows that p .

Thus, the qualified norm of sincerity can explain why R-rules have exceptions. In such cases, the normative verdicts warranted by the [BE] analysis differ from those implied by the [KR] analysis. Williamson is committed to the implausible claim that even permissible lies can be criticized because the asserter does not know what she asserts.⁴² According to the [BE] analysis, in contrast, there is nothing wrong with lies *qua* assertions. Furthermore, the qualified norm of sincerity implies that such lies are in order in moral respects as well. All in all, the verdicts of the [BE] analysis fit better with our intuitions, or so I claim.

How might the defender of an [R] analysis respond to this challenge? She could claim that [R] analyses should be formulated in terms of the qualified versions of R-rules. This option is not open to Williamson, however. Williamson (2000, 240) takes the normativity of R-rules to be non-moral, and including a qualification such as ‘in circumstances of normal trust’ makes them moral. A more general reason for not including qualified R-rules in the analysis of assertion is that, as we saw earlier, the norm of sincerity that motivates the exceptions does not apply to assertion only. The norm of sincerity regulates our interactions more generally, another salient example being promises. This

⁴² Note that this implausibility cannot be removed by invoking an overriding norm to account for the exceptions, because this only overrides rather than eliminates the initial criticism.

suggests that the qualification of the norm of sincerity should not appear in an analysis of one subset of these interactions, i.e. our assertions to one another.⁴³

In sum, only sincere assertions require knowledge. Since insincere assertions are assertions all the same, the knowledge requirement should not be build into the analysis of assertion.

4.5 Constitutive Rules and Analysis

We have seen that the [BE] analysis is to be preferred over the [KR] analysis because it does more justice to our intuitions about lying. A reason for favouring [E] analyses over [R] analyses in general is that the former are more informative than the latter. Consider (the reconstruction of) Williamson's analysis once more:

[KR] To assert is to perform that speech act that is governed by R_K : One must: perform that speech act with content p only if one knows that p .

Imagine, *per impossibile*, that one offers this analysis to someone who does not have the concept of assertion. It would be perfectly natural for that person to respond by asking: 'But which speech acts are they?' According to the analysis, assertion is governed by a knowledge requirement. The analysis does not tell us, however, to which speech acts this requirement applies. And it appears that a complete analysis would do so.⁴⁴

⁴³ Williamson could try to accommodate my criticism by formulating the knowledge rule in terms of knowledge of either p or not p . The idea would be that a liar still has to meet the epistemic standards associated with knowledge. One problem with this is that one can (deceitfully) assert that p even though one neither believes p nor not p .

⁴⁴ I do not mean to imply that [KR] does not offer necessary and sufficient conditions for assertion, because one can plausibly maintain that it does (at least if the concern that the knowledge requirement applies to assertion only given the norm of sincerity is bracketed, if we suppose, as we have done thus far, that the knowledge account of assertion is correct, if we assume that in some sense it expresses a conceptual truth – in contrast to what has just been argued, and if we keep in mind that only the applicability of the knowledge rule and not knowledge itself is a necessary condition). The criticism is that it does so in a way that is less informative than one can reasonably expect from an analysis and than the alternative defended here. Note that one could also object to [KR] that it does not reduce assertion to concepts that are antecedently understood. In this connection, the problem is that one needs to know which speech acts are assertions in order to determine to which speech acts the requirement applies. The underlying intuition is that, even though the immediate

Williamson holds that the knowledge rule is a constitutive rule similar to the constitutive rules involved in games (*ibid.*, 240). I suggest considering the analogy with games in some detail. Imagine that someone tries to explain the rules of chess to you. Suppose that this person tells you that bishops are those pieces that are only allowed to move on the diagonal lines. It would be perfectly natural to react to this by asking: ‘But which pieces are they?’

In the case of bishops an answer is readily available. Bishops can be identified on the basis of their starting position on the checkerboard: c1, c8, f1, and f8. So, bishops are those chess pieces that start on these four positions. This shows that the original answer included only a partial analysis of the concept of a bishop. A complete analysis includes a specification of both the kind of action that the item is permitted to perform and criteria for identifying that type of item independently of that permission. Such an analysis is more informative than the one that only specifies which moves are constitutive of bishops. A complete constitutive rule includes both aspects.

The case is similar to that of [KR]. The question ‘But which pieces are they?’ with respect to the incomplete analysis of what bishops are expresses the same kind of puzzlement as the question ‘But which speech acts are they?’ with respect to [KR]. In both cases, a specification of the normative dimension of the analysandum leaves us wondering what descriptive criteria suffice for identifying the items to which the requirement or permission applies. All this suggests that Williamson’s analysis of assertion is incomplete, or at least less informative than constitutive rule analyses usually are.⁴⁵ What is lacking is a set of descriptive conditions that can be used for identifying the speech acts to which the knowledge rule applies independently of that rule.⁴⁶

circularity has been removed, a sense of circularity remains. As the idea that analyses should be reductive in this sense is controversial, I will not press the point (see also note 47).

⁴⁵ One might have wanted to object earlier to the presumption that Williamson is offering an analysis. After all, he only talks about the knowledge rule governing assertion necessarily. Nowhere does he claim that this is an a priori matter. By now, it will be clear that I rely on Williamson’s analogy with games for the claim that he is indeed offering an analysis.

⁴⁶ This undermines one of the arguments Williamson adduces in favour of his account. Williamson sees it as a prime virtue of his account that it is simple. He more or less assumes that other accounts have to be more complex (2000, 242). However, if simplicity comes at the cost of incompleteness, it cannot be seen as an argument in favour of Williamson’s approach. What is more, [E] analyses appear to be both more informative and simpler than [R] analyses.

Now, suppose that Williamson would grant this. That would put some pressure on him to try and formulate criteria for identifying assertions independently of the knowledge rule. [E] analyses generally and the [BE] analysis more in particular provide such criteria. What is striking about these analyses, however, is that they make the knowledge rule redundant in the following sense: if one accepts, for instance, the [BE] analysis, there is no need to include the knowledge rule in one's analysis of assertion anymore. In the previous section, we saw that the knowledge rule can be derived from the [BE] analysis given an assumption about belief that Williamson accepts. Because of this, there is no reason to include the knowledge rule in an analysis of assertion. In sum, the analogy with games suggests that an analysis of assertion should be more informative than [KR]. However, the analysis that is more informative in the required sense can do without the knowledge rule R_k that lies at the heart of Williamson's analysis.⁴⁷

One could object that on the analysis favoured here the knowledge rule is a constitutive rule of assertion. It appears that according to [BE] belief is constitutive of assertion and there is a knowledge requirement that, in some sense, is constitutive of belief. By implication, the knowledge requirement appears to be constitutive of assertion. Hence, it is a constitutive rule. The first problem with this objection is that the appearance that belief is constitutive of assertion is an illusion. On the definition of expressing assumed here, one does not need to have a belief in order to express it (see section 4.2). Related to this is the fact that the knowledge requirement only follows once the norm of sincerity is brought into the picture. Another problem will enable us to see the wider significance of the point made in this section. In order for something to be constitutive in the sense at issue here it is not sufficient that the thing applies as a matter of conceptual necessity (which would make being an unmarried male constitutive of being a bachelor and, perhaps, justified true belief constitutive of knowledge). What is needed in addition to this

⁴⁷ Instead of talking about the extent to which an analysis is informative, one could try to argue that Williamson's analysis is defective because it is not reductive. Williamson in fact grants that his analysis is not reductive, but he does not see this as a problem, since he does not believe a reductive analysis can be provided (personal conversation; cf. 2000, 240). On his view, what would be required in order to turn his analysis into a reductive one is a reductive account of the capacity of asserters to identify assertions. This parallels what has been said about what is needed in order to make the analysis more informative. Putting the point in terms of reduction is problematic, however. The reason for this is that it is not clear whether [E] analyses are fully reductive. This depends on one's account of sentence meaning. If sentence meaning can be explicated independently from assertion, [E] analyses are reductive. Otherwise they are not.

is that the term analysed refers to an institutional phenomenon. This in turn means that it is sustained by human agreement or collective acceptance.

Williamson draws an analogy between assertion on the one hand and institutional phenomena such as games and language on the other hand. The basic insight that follows from the criticism of this section is that assertion is not an institutional phenomenon. Expressing a belief may be social in the weak sense that it is directed at another person (at least most often; cf. note 37). However, it is not social in the stronger sense in which institutions such as games, language and money are. These phenomena are socially constructed in that they require human agreement (about a constitutive rule) for their instantiation. Assertion, however, is independent from human agreement. Thus, there is no need to appeal to the notion of a constitutive rule.

One of the most striking differences between [KR] and [BE] is of course that in contrast to the former the latter does not mention knowledge. Another difference is that the latter only mentions factual conditions whereas the former specifies a normative requirement. We have seen earlier that on the approach favoured here, an appeal to the norm of sincerity is needed in order to derive normative conditions for assertion. In this section, we have seen that the difference between Williamson's analysis and the belief-expression analysis is even larger than it appeared to be so far. Whereas assertion is an institutional phenomenon on the former, it is at most a social phenomenon on the latter.⁴⁸

4.6 Conclusion

It has been argued that we should prefer a belief-expression analysis of assertion over Williamson's knowledge-rule analysis, even if we accept the knowledge account of assertion. One argument has been that this enables us to account for our intuitions about lying. We saw that [E] analyses can be used to explain the applicability of R-rules as well as their exceptions by invoking the norm of sincerity [NS*]. Given this, the knowledge rule can be derived from the [BE] analysis in combination with [NS*] and an account of belief. On this approach, only sincere assertions require

⁴⁸ See Pagin (2004) for an argument that assertion is not even social. Note that none of what I have said is meant to deny that we (often) employ conventional or institutional means when we make assertions. I take, for instance, word-meaning and sentence-meaning to be conventional matters.

knowledge, which is surely the natural thing to say. On Williamson's [KR] analysis, in contrast, both sincere and insincere assertions require knowledge.

A second argument levied against [KR] is that it is less informative than other constitutive rule analyses. The [BE] analysis of assertion is more informative, even though it does not analyse assertion in terms of a constitutive rule. A further insight that this line of argument provides is that, *pace* Williamson, assertion is not an institutional phenomenon. This means that the notion of a constitutive rule does not have a role to play in an adequate analysis of assertion. All this suggests that the [BE] analysis is to be preferred over the [KR] analysis. The answer to our guiding question then is that the knowledge account of assertion fits best with a non-normative analysis of assertion that has belief rather than knowledge as its main ingredient.

5 SPEECH ACTS & CONSTITUTIVE RULES

Ever since Austin, the notion of a speech act has played an important role in the philosophy of language. Several philosophers, including Austin and Dummett, have argued that some or even all speech acts are conventional. Assessing such claims requires a specification of the way in which speech acts are thought to be conventional. Some philosophers appeal to the notion of a constitutive rule in this connection. Constitutive rules are often appealed to in relation to conventions or institutions in general (Searle 1995, Tuomela 2002a), and language in particular (Lewis 1983a, Gluër and Pagin 1999). The specific claim that constitutive rules should figure in analyses of speech acts is most prominently defended by John Searle (1969, 1999) and Timothy Williamson (1996, 2000). Appeal to the notion of a constitutive rule makes the claim that speech acts are conventional or institutional more precise, but still not unambiguous. This is because Searle and Williamson rely on different notions of constitutive rules. Both will be considered in turn. The claim to be defended is that constitutive rules, be they Searlean or Williamsonian constitutive rules, are in fact irrelevant to the analysis of most if not all speech acts.

This claim may sound counterintuitive, because many speech acts do have conventional or institutional aspects. Making a promise, for instance, results in being obliged to do as promised. Arguably, this is a conventional obligation. Similarly, getting married by being declared to be married is a conventional phenomenon. The obligations created by making promises and by getting married are what will be called conventional effects. It will be argued that the conventional effects that result from successfully performing particular kinds of speech acts should be analyzed separately from the acts themselves. More generally the idea is that, even though there are indeed conventional aspects to acts such as these, speech acts should not be analyzed in terms of them. *A fortiori*, they should not be analyzed in terms of constitutive rules.

On the view to be defended, to perform a speech act is to express an attitude. To assert something, for example, is to express a belief. Similarly, to make a promise is to express a particular (set of) intention(s). Even though conventional means are employed in the process – word-meaning and sentence-meaning, for instance, are conventional matters – expressing an attitude itself is not a conventional act. Crucially, doing so does not require agreement or collective acceptance of a way of doing so. This implies that constitutive rules are not involved, at least not directly.

Constitutive rules might still be relevant indirectly by figuring in analyses of conventional effects. We will see, however, that even this is not always the case. In particular, the obligations involved in speech acts such as commanding and promising can be accounted for in terms of social norms rather than constitutive rules. The only kind of speech acts to which constitutive rules are relevant, albeit indirectly, are declarative speech acts, such as adjourning a meeting. Making the case for this claim will require a lot of ground clearing. In particular, we will need to discuss the views of Searle and Williamson on constitutive rules, as well as their views on the relation between constitutive rules and speech acts. This endeavour will have broader significance than just the conclusion that analyses of speech acts should not involve constitutive rules (which depends heavily on the work of others anyway; see note 57). In addition to this, Searle's conception of constitutive rules will be clarified and developed and Williamson's conception of constitutive rules will be compared to Searle's and criticized from that perspective. Furthermore, analyses will be provided of the conventional effects that are involved in some types of speech acts. On a narrow conception of what is achieved, the outcome will be a picture of constitutive rules and their relevance to the analysis of speech acts. More broadly conceived, the result will be a specification of several senses in which (certain types of) speech acts and their effects are social.

5.1 Searle on Speech Acts and Constitutive Rules

5.1.1 Collective Acceptance

Constitutive rules. According to Searle, the form or syntax of constitutive rules is 'X counts as Y in C'. He refers to this as 'the "counts as" locution'. An example he uses is 'Bills issued by the Bureau of Engraving and Printing(X) count as money(Y) in the United States(C)' (Searle 1995, 28). Y stands for an institutional status (or status function,

as Searle calls it), X for a possibly non-institutional item, and C for context. Although Searle does not emphasize the point, the relation between X and Y is that of constitution. In our example, money is constituted by certain pieces of paper. More generally, the X designates what the Y is made of, or – in the case of actions – what it takes to perform an action that is Y. The phrase ‘counts as’ appears to signal the fact that Xs are Ys (or, more precisely, that items that are X are Y) because we accept this to be the case. In Searle’s words, ‘the Y content is imposed on the X element by collective acceptance’ (ibid., 104).

Searle also claims that constitutive rules ‘create or define new forms of behavior’ and talks of the creation of the very possibility of new forms of behaviour (1969, 33). A plausible way of interpreting this is to say that ‘X counts as Y in C’ specifies the form of definitions of terms that designate kinds of behaviour that can be characterised in terms of constitutive rules, and that instances of those kinds of behaviour can exist because of our acceptance of these definitions. For example, depending on the context, performing certain acts counts as getting married. The laws that apply in the relevant context specify what it takes to get married – they are definitive of it in that context – and they make it possible to get married. Putting all this together results in the claim that Xs are in fact Ys because we have accepted a definition or rule according to which Xs are Ys.⁴⁹ Furthermore, if it were not for our acceptance, there could not be Ys.

Speech acts. Now that we have some idea of what constitutive rules are on Searle’s view, we can turn to the question what role they play in his analysis of speech acts. The main hypothesis of *Speech Acts* is that ‘speaking a language is performing acts according to rules’ (1969, 36-37). More specifically, (the early) Searle defends the following claim:

[T]he semantic structure of a language may be regarded as a conventional realization of a series of sets of underlying constitutive rules, and [...] speech acts are acts characteristically performed by uttering expressions in accordance with these sets of constitutive rules. (Ibid., 37)

This passage implies that there is an intimate relation between speech acts and constitutive rules. Searle goes on to define the major kinds of speech acts that he distinguishes partly in terms of constitutive rules.

⁴⁹ Searle has recently changed his views on this in that he no longer takes constitutive rules to be or provide definitions (Smith and Searle 2003, 301). I will rely on his earlier views here.

The overarching idea behind Searle's analyses is that performing a speech act is a matter of doing or at least attempting to do something by expressing a propositional attitude, which in turn is done by performing an utterance. To assert something, for example, is to express a belief and thereby to undertake, to use Searle's term, that the content of the belief represents an actual state of affairs (*ibid.*, 65-66). Similarly, to make a request is, on Searle's view, to express a wish or desire and thereby to attempt to get the person to whom the act is directed to do something (*ibid.*). As a final example, to make a promise is to express an intention and thereby to undertake an obligation to act on the intention (*ibid.*, 62-65).

Searle formulates his analyses in terms of rules. Each speech act involves a propositional content rule, one or more preparatory rules, a sincerity rule, and an essential rule. The propositional content rule puts constraints on the propositional content expressed in a speech act. The propositional content of a request, for example, has to pertain to an act to be performed by the person to whom the request is made (the hearer). The preparatory rule(s) pertain(s) to what this content presupposes, e.g. that the hearer is able to perform the act. The sincerity rule stipulates that the speaker has the attitude she expresses. Finally, the essential rule, on which we will be focusing, pertains to what the speaker does or attempts to do. Importantly, Searle claims that essential rules are constitutive rules.

Let us look at some examples of essential rules. Searle formulates the essential rule of promising as follows: 'The utterance of *Pr* [a sentence that can be used for making a promise] counts as the undertaking of an obligation to do *A*.' (*Ibid.*, 63) In line with this, Searle argues that 'promising is, by definition, an act of placing oneself under an obligation' and writes: 'the constitutive rule that to make a promise is to undertake an obligation' (1964, 45 and 56). The overview of types of speech acts that Searle presents suggests these formulations of the essential rules for assertions and requests (respectively): 'To assert *p* counts as an undertaking to the effect that *p* represents an actual state of affairs'; 'To request *H* to do *A* counts as an attempt to get *H* to do *A*' (1969, 66; see 1999, 147 for similar formulations). These rules define the relevant speech acts in combination with the other rules mentioned.

Criticism. As said, Searle regards essential rules as constitutive rules. This claim provides the basis for the thesis that speech acts should be analyzed partly in terms of constitutive rules. Essential rules do indeed resemble constitutive rules to some extent. Notably, the phrase 'counts as' that is part of the counts as locution appears in these rules as Searle formulates

them. *Pace* Searle, however, essential rules are not constitutive rules. I will provide two arguments for this claim. The first one, which I will defend in this section, is that the phrase 'counts as' is not doing any work in essential rules. Its occurrence in essential rules is deceptive. In contrast to what it suggests, collective acceptance is not needed in order to turn the X of an essential rule into a Y.

Consider the essential rule for making a request: 'To request *H* to do *A* counts as an attempt to get *H* to do *A*.' The occurrence of the phrase 'counts as' in this rule sounds somewhat odd. One might react by saying that to request something does not (only) count as an attempt to get someone to do something, it really is such an attempt. Now, on the interpretation of 'counts as' presented above, this phrase stands for the idea that an X is a Y because we collectively accept it as a Y. This implies that the fact that something counts as something else is perfectly consistent with the fact that it really is something else. In spite of this, the feeling that the occurrence of the phrase in the rule is odd does not go away. The reason for this, I propose, is that the fact that a request is an attempt to get someone to do something does not derive from its being collectively accepted. This is simply what a request is. Now, if this does not depend on collective acceptance, the phrase 'counts as' is not doing any work in the essential rule of requesting. This is evidenced by the fact that the rule could be rephrased in terms of 'is' rather than 'counts as' without any loss (which results in: a request is an attempt to get someone to do something).⁵⁰

The same argument applies to the essential rule of assertion. Its essential rule is: 'To assert *p* counts as an undertaking to the effect that *p* represents an actual state of affairs.' As Searle interprets this rule, one commits oneself to the truth of *p* by asserting *p*. Committing oneself to the truth of a proposition, however, does not seem to require collective acceptance. Doing so by asserting the proposition does not seem to presuppose collective acceptance either. As in the case of requesting, the content of the essential rule of assertion refers to a basic fact about assertion, rather than to an institutional phenomenon that depends on our acceptance. In other words, the claim that to assert *p* is to commit oneself to the truth of *p*, or any similar claim, does not require an appeal to the phrase 'counts as'.

Consider promising as a third example. According to Searle, the essential rule of promising is that a promise counts as the undertaking of

⁵⁰ See also Alston (2000, 102): 'What my utterance was an attempt to do is a psychological fact about my motivation, and no rule could make the utterance "count as" an attempt at one thing rather than another.'

the obligation to do as promised. The obligation to do as promised is an example of what Bach and Harnish (1979) have called conventional effects. As we will see in more detail below, conventional effects do depend on collective acceptance. Thus, the case of promising presents a problem for the argument that the phrase ‘counts as’ does not do any work in essential rules. In section 5.3, however, it will be argued that speech acts should not be analyzed in terms of the obtaining of their conventional effects. In relation to promising this means that the claim that if you make a promise you are obliged to do as promised, even though it is true, should not be part of an analysis of the speech act of promising. Given this argument, I can easily explain why the phrase ‘counts as’ does not do any work in the essential rule of promising either (see note 72). All this means that my argument for the claim that the phrase ‘counts as’ does not do any work in essential rules will only be completed in section 5.3.

Conclusion. The argument has been that essential rules are not constitutive rules because the phrase ‘counts as’ does not do any work in essential rules. More generally, speech acts do not require collective acceptance. If correct, this argument undermines Searle’s thesis that speech acts should be analyzed in terms of constitutive rules (none of the other rules that appear in Searle’s analysis are constitutive rules, nor does Searle claim they are). The next section provides a second argument for the claim that essential rules are not constitutive rules. Not only will this add force to the overall argument it will also further our understanding of constitutive rules. This, in turn, will be useful for assessing Williamson’s conception of constitutive rules in section 5.2.

5.1.2 Practical Import

Constitutive rules. In order to develop the argument against the claim that essential rules are constitutive rules, more needs to be said about Searle’s view of constitutive rules. On Searle’s conception of them, constitutive rules mark ‘something that has consequences’ (1969, 36). Searle illustrates this claim in terms of his paradigm example of a type of activity that can be characterised in terms of constitutive rules, that of playing a game: ‘Thus “offside”, “homerun”, “touchdown”, “checkmate” are not mere labels for the state of affairs that is specified by the X term, but they introduce further consequences, by way of, e.g., penalties, points, and winning and losing.’ (Ibid.) The idea is that consequences are attached to things to which Y terms apply, i.e. to institutional statuses.

Searle does not specify what he means by ‘consequences’. It would be fairly unproblematic to say that in a certain situation it was a consequence of one of the players being in an offside position that the team lost. To say that one loses as a consequence of having been checkmated, in contrast, sounds somewhat odd. Having been checkmated *entails* losing. The term ‘consequence’ suggests a relation that is not purely conceptual, a relation that is different from entailment.

In his 1995, Searle emphasizes the role of rights and obligations in relation to constitutive rules. Such rights and obligations can also be regarded as consequences of satisfying a constitutive rule or of having an institutional status. Consider the status of citizenship. Being a citizen by itself does not entail having the right to vote, or else non-democratic countries would not have citizens. Democracies have instituted laws that confer such a right on their citizens. In virtue of such laws, it is a consequence of being a citizen that one has the right to vote in democracies. It is not entailed by being a citizen. Whether or not having the right to vote is a consequence of being a citizen is a contingent or context-relative matter. In contrast, it is a conceptual implication or entailment of the status of legal tender that a creditor has to accept it in satisfaction of a debt. This holds independent of context. Irrespective of whether he has consequences or entailments in mind, the important point is that on Searle’s view the practical import of being a Y does not figure in constitutive rules. Instead, the Y terms that figure in such rules mark items with practical import that is not specified by such rules.

Instead of the practical import of being a Y, constitutive rules specify the kind of entity to which the relevant Y-term is applied in a particular context C. Recall the money example presented at the start of the previous section: certain bills count as money in the United States. According to this rule, what it takes to be money in the United States is to be a bill of the requisite kind. Given what has been said thus far, we can say that in the United States such bills are money because they are collectively accepted to be money. Being a bill of the requisite kind is a necessary and sufficient condition for being money (or, more specifically, for being a dollar bill) in the context mentioned. In other words, such bills constitute money (or dollar bills). Thus, constitutive rules specify what one might call the ‘constitution base’ of Ys (analogous to ‘supervenience base’).

Criticism. Now when we return to the essential rules as formulated in the previous section, bearing in mind the features just discussed, it is immediately obvious that they are not Searlean constitutive rules. Consider again the rule ‘To request *H* to do *A* counts as an attempt to get

H to do *A*'. To request something entails (or presupposes) attempting to get someone to do something. The latter certainly does not constitute the former: to attempt to get someone to do something is not the constitution base of requesting her to do it, which it would if the rule were a constitutive rule.⁵¹ Similarly for assertion. Recall that according to Searle, the essential rule of assertion is this: 'To assert *p* counts as an undertaking to the effect that *p* represents an actual state of affairs.' Committing oneself to the truth of *p* is not the constitution base of asserting it. If anything, it is entailed (or presupposed) by it. These examples make it clear that the (term that occurs in the place of the) *Y* term in essential rules is not of the right kind for them to be Searlean constitutive rules. Rather than referring to a status, the terms mentioned specify what having such a status entails. Thus, rather than with their constitution bases, essential rules are concerned with the practical import of speech acts.

Again promising is somewhat problematic. However, the way in which it is will help to clarify the point just made. As we saw earlier, Searle writes of 'the constitutive rule that to make a promise is to undertake an obligation' (1964, 56). Undertaking an obligation either is an entailment or a consequence of promising. It certainly does not constitute it (in the required sense). Searle also writes that 'promising is, by definition, an act of placing oneself under an obligation' (ibid., 45). If this is true, placing oneself under an obligation is entailed by making a promise, which amounts to admitting the point just made. A more problematic formulation is what is in fact Searle's most explicit formulation of the essential rule of promising: 'The utterance of *Pr* counts as the undertaking of an obligation to do *A*.' (1969, 63) This formulation is problematic because the utterance of *Pr* is in fact a plausible candidate for a constitution base of something. It would, however, be more natural to say that such an utterance constitutes a promise and that making a promise entails undertaking the obligation. Linking the utterance directly to the obligation is somewhat counterintuitive.

The idea that is suggested by this is that the specification of the link between an utterance act and a speech act might be the constitutive rule for that speech act. At times, one gets the impression that this is what Searle has in mind, at least as far as promising is concerned. Consider the

⁵¹ It may be constitutive of it in some sense, but this is not the required sense. Being an unmarried male is constitutive of being a bachelor in that it is a conceptually necessary (and sufficient) feature of being a bachelor. The relation of constitution relevant to constitutive rules, in contrast, is a metaphysical rather than a (merely) conceptual relation. Furthermore, if Baker (2000) is right, it is a contingent rather than a necessary relation.

following passage: '[T]he utterance of such and such expressions under certain conditions counts as the making of a promise' (ibid., 37). This rule fits the earlier characterisation of constitutive rules better than the essential rule of promising.⁵² It does indeed pertain to what it takes to perform an act of the relevant kind (to an X that might constitute a Y) rather than what performing such an act entails or what its consequences are.

More generally, it might seem to be a sensible proposal to analyse speech acts in terms of the following schema: Utterances U count as speech acts A in context C. I suggest calling this the U-schema (cf. the syntax of constitutive rules: X counts as Y in C). The main argument against this proposal is a version of the argument that was employed in the previous section. There we saw that essential rules are not constitutive rules because the phrase 'counts as' that occurs in them does not do any work. This argument applies to instances of the schema just presented as well. An utterance U made in a certain context is an instance of a speech act of a certain type irrespective of our acceptance. We do not need to accept that certain utterance acts are speech acts of a certain type in order for it to be possible to perform speech acts of that type.⁵³ This argument needs to be developed further, of course. It can only be convincing if it is combined with a fairly detailed story about the determinants of the identity of a speech act. Such a story will be offered in the next section, where I continue to make the case against the involvement of constitutive rules in speech acts.

Conclusion. Again, the conclusion is that essential rules are not constitutive rules. The argument in this section has been that essential rules specify the practical import of having an institutional status rather than the conditions the entity on which the status is imposed has to meet apart from those involved in the status itself. Just as the previous one, this argument undermines Searle's thesis that speech acts should be analyzed in terms of constitutive rules. These arguments suggest that speech acts are not conventional or institutional, at least not in a sense that requires an appeal to constitutive rules.

At this point, however, one could object that, even though essential rules are not constitutive rules, constitutive rules should be involved in

⁵² If it were not for the absence of the phrase 'counts as', the following formulation would be even more suitable for making the point: 'Under certain conditions C anyone who utters the words (sentence) "I hereby promise to pay you, Smith, five dollars" promises to pay Smith five dollars.' (Searle 1964, 44)

⁵³ See Miller (1981) for similar concerns about the relation between essential rules and constitutive rules.

analyses of speech acts nevertheless – the reason being that, in spite of what has been said, speech acts are institutional acts. Searle’s writings contain the ingredients for developing this objection. It could be argued, on his behalf, that constitutive rules must be involved because the context plays a role in the determination of the identity of a speech act in a way similar to the role context plays in the determination of institutional facts generally. The next section is devoted to an assessment of this argument.

5.1.3 Context

Constitutive rules. Constitutive rules specify what it takes to have a certain status *in a certain context*. Creating a certain position on a checkerboard only counts as checkmating someone in the context of a game, and not, for instance, when that position is created just for purposes of displaying the board in a particular way. A certain kind of context-dependence, then, is characteristic of constitutive rules, as is also evident from their syntax (*‘X counts as Y in C’*). What matters is not just the way in which the participants conceive of the situation. A more objective notion of context is in play. In particular, the obtaining of the relevant context cannot be overruled just by believing it to be overruled. Such context-dependence is a sign of the presence of an institutional status, which in turn could be taken to indicate the relevance of some constitutive rule. I suggest using this indicator as a test for determining whether or not constitutive rules could be involved in speech acts in one way or another (but not because they involve essential rules; note that nothing in the formulation of essential rules corresponds to the C term of the counts as locution).

Speech acts. In the previous section, we considered the idea that speech acts involve constitutive rules different from essential rules (which had turned out not to be constitutive rules after all). The suggestion was that the constitutive rules involved in speech acts might have the following form: Utterances U count as speech acts A in context C. This idea was dismissed on the grounds that the phrase ‘counts as’ does not do any work in them. As presented there, however, this may not yet have been fully convincing. Here I first want to develop and strengthen the suggestion made there by invoking claims Searle made to the effect that context plays a role in promises similar to the role it plays with respect to statuses that clearly involve constitutive rules. The upshot would be that the rules of the U-schema are genuine constitutive rules: not only do they specify what it takes to perform a speech act, but both the role played by

the 'counts as' phrase and that played by the context are similar to that of genuine constitutive rules. This suggestion will then be criticized. On the alternative provided, context will turn out to play a different role than that required by the Searlean argument. Furthermore, it will become apparent that the identity of a speech act does not depend on collective acceptance.

So, how does context come into the determination of the identity of a speech act on Searle's view? He claims that an utterance that would normally amount to a promise does not do so if uttered as part of a play (Searle 1964, 45). This means that being X in the relevant context ensures that the action has the status of a promise in much the same way as having the relevant properties in the US ensures that a bill (or piece of paper) is a one-dollar bill. What we have here is a particular proposal as to how constitutive rules might be involved in speech acts, independent from the role of essential rules, combined with an argument as to why the relevant rules are genuine constitutive rules. The important suggestion is that constitutive rules must be involved because the context plays an uneliminable role with respect to the identity of a speech act.

Criticism. To assess this argument we need to consider the analysis of speech acts proposed by Bach and Harnish (1979). Just as Searle, they analyse speech acts in terms of expressing propositional attitudes. Roughly speaking, they explicate the notion of expressing an attitude as the speaker *intending* to give the hearer the impression that the speaker has that attitude (*ibid.*, 15 and 39). In expressing an attitude, speakers rely on context-specific mutual beliefs. Which belief is expressed by someone who utters the sentence "I love you like my brother", for example, depends crucially on whether or not it is mutually believed that the speaker hates his brother (*ibid.*, 5). Hearers *infer* from the utterance act together with such mutual beliefs what kind of speech act is performed.⁵⁴ Bach and Harnish (1979) aptly call this way of analysing speech acts the intention-and-inference approach.

This analysis can be used to argue that the only fundamental way in which the context enters the determination of the identity of a speech act is via the context-specific mutual beliefs of those involved. It is not the case that the fact that an utterance is made as part of a play by itself rules out that it is a genuine promise (in addition to an acted promise). One

⁵⁴ In fact, Bach and Harnish (1979) argue that hearers also rely on certain conventions in this process including the presumption of literalness. Such conventions, however, are not specific to particular kinds of speech acts. Even though they imply that the performance of speech acts is social or conventional in some sense, they do not imply that particular kinds of speech acts are conventional, at least not in a sense that requires recourse to Searlean constitutive rules.

further aspect of the intention-and-inference approach needs to be presented in order to develop this point. Bach and Harnish argue that a communicative presumption (CP) is operative in most circumstances. According to this presumption, there is a mutual belief in a linguistic community that whenever a member says something to another member, she 'is doing so with some recognizable illocutionary intent' (ibid., 7).⁵⁵

The communicative presumption is sometimes suspended and it is commonly suspended during the rehearsal or performance of a play. Bach and Harnish agree with Searle that usually utterances do not have their normal status in such situations. However, on their view this is due to the suspension of the communicative presumption, i.e. it is due to the absence of a (general) mutual belief. The point to appreciate is that in spite of the suspension of the communicative presumption, it is still possible in the situations under consideration to perform a speech act with its usual status. Consider the following scenario (in which *S* is the speaker and *H* the hearer and CP stands for 'communicative presumption'):

Suppose that during the rehearsal of a play, wherein the CP is suspended, *S*, following the script, says to *H* "Tonight is the night, my love." *H*'s husband happens to be the director, and it happens that he, as mutually believed by *S* and *H*, will be spending the evening with the producer. Moreover, there is a certain special twinkle in the eye of *S* that only *H* can observe. In this context, despite the suspension of the CP, *S* could reasonably have uttered the line with the communicative intention that *H* take it as an invitation to see him that night. *H* relies not on the CP but on the twinkling in *S*'s eye to infer that *S* has some communicative intention. (Ibid., 292n4; cf. 99)

Thus, even in the context of a play, a genuine promise can be made. Hence, the role of the context in the determination of the identity of a speech act is different from the role contexts play in Searlean constitutive rules where it cannot be overruled by intentions and context-specific mutual beliefs. This in turn means that the relevance of context does not

⁵⁵ Communication may be social in a stronger sense than Bach and Harnish acknowledge. Instead of individual intentions and mutual beliefs communication may involve collective intentions and beliefs. This issue is not further addressed here, because it is orthogonal to the main argument. See Meijers (2002) for an account of dialogue and communication in terms of collective intentions and beliefs.

imply the relevance of constitutive rules.⁵⁶ Note that the theory of Bach and Harnish explicates speech acts in such a way that reliance on collective acceptance is not required. The argument then not only supports the conclusion that context cannot be invoked in order to argue that speech acts involve constitutive rules, but it also supports one of the conclusions of the previous section, i.e. that the phrase ‘counts as’ does not do any work in the U-schema.

Conclusion. In sum, the claim that Searlean constitutive rules should play a role in analyses of speech acts cannot be saved by an appeal to context. The context does play a crucial role in the determination of the identity of a speech act. However, this role is different from the role context plays with regard to institutional facts generally. All in all, the preceding suggests at least that not all speech acts should be analysed in terms of constitutive rules. Asserting, requesting, and promising are examples of speech acts the analysis of which does not need to appeal to a constitutive rule.

Three arguments have been presented for this conclusion.⁵⁷ The first two support the claim that essential rules are not constitutive rules, whereas the third is aimed at establishing that constitutive rules are not involved in another way. First, the phrase ‘counts as’ is not doing any work in the formulation of essential rules. This suggests that collective acceptance is not required for the instantiation of speech acts of a particular kind. Second, essential rules pertain to the practical import of speech acts rather than to what it takes to perform a speech act, which they should if they were Searlean constitutive rules. Third, as we just saw, the context plays a different role with respect to the determination of the identity of a speech act than it would if a Searlean constitutive rule were involved, at least in the case of promising.

⁵⁶ Even though the presence of certain beliefs or other attitudes cannot undermine the instantiation of an institutional status, the absence of an intention can be relevant. Bach and Harnish (1979, 118-19) argue that most often a conventional act will be nullified if it turns out to have been performed unintentionally. This may be due to the fact that the X term includes a condition that a particular kind of intention should be present, and need not be related to the required context.

⁵⁷ These arguments have been inspired by the work of Bach and Harnish (1979) on the one hand and Alston (2000) on the other. My contribution lies in distinguishing the three aspects clearly and developing them in more detail in relation to Searle’s theory of speech acts. Overall, however, the contributions of this chapter lie more in the development of Searle’s conception of constitutive rules (see a proposal for modification below), the discussion of Williamson’s conception of constitutive rules, and the analyses of conventional effects that is provided below. The three conclusions summarised here prepare the grounds for this.

A final move one could make in defence of constitutive rules is to say that, even though the arguments presented here show that most speech acts should be analysed without constitutive rules, it does not show that this holds for all. In particular, the analysis of declarative speech acts such as marrying a couple or adjourning a meeting might still require an appeal to constitutive rules. A consideration of this objection, which would save Searle's thesis partially, is postponed to section 5.3. In that section, I will also consider how the conventional effects of, for instance, promises and commands should be analysed.

5.2 Williamson on Speech Acts and Constitutive Rules

Searlean constitutive rules. Just as Searle, Timothy Williamson appeals to constitutive rules in his analysis of speech acts. Just as Searle, he claims that games involve constitutive rules. Combining this with the fact that Searle made the term 'constitutive rule' popular and that Williamson does nothing to differentiate his conception of constitutive rules from Searle's views explicitly, one might expect him to have Searlean constitutive rules in mind. Leaving aside speculation as to whether or not this is true, I will argue that the rules that he discusses are not Searlean constitutive rules (SCRs) and that Williamsonian constitutive rules (WCRs) are not the kind of rules that figure in games. Understanding how the two conceptions differ will be useful for appreciating Williamson's conception of constitutive rules, which in turn is crucial for evaluating his proposal as to how constitutive rules should figure in the analysis of speech acts.

The form or syntax of WCRs is this:

One must: do Y only if X.

Williamson develops his account only for the case of assertion. On his view, the rule that is characteristic for assertion is (Williamson 2000, 243; see also his 1996):

One must: assert p only if one knows p .

Williamson calls this the knowledge rule. This example of a WCR makes it easy to show that such rules differ radically from the ones Searle has in mind. I will argue for this using the three features of SCRs discussed in sections 5.1.1 – 5.1.3.

Starting with the last one, context can be dealt with in a straightforward way. Context does not play a role in WCRs. These rules do not mention contexts. There is no reason whatsoever to suppose that context plays a role in them, let alone one similar to the role context plays in relation to institutional statuses. Williamson does not make this claim either. Turning to the first two features of SCRs, the crucial point to appreciate is that it is just plain nonsense to say that knowing *p* counts as asserting *p*. The phrase 'counts as' does not appear in WCRs. Recall that the phrase 'counts as' indicates that a status is involved that depends on collective acceptance. In the case of an SCR, Xs count as Ys, which means that Xs are Ys because we collectively accept that Xs are Ys. However, it is not true that we collectively accept that all cases of knowing *p* are cases of asserting *p*. Doing so would be absurd, because one can perfectly well know something without asserting it.

The point can be made in somewhat different terms. Knowing *p* is not the constitution base of asserting *p*. If this were the case, knowing *p* would be a necessary and sufficient condition for asserting *p*. SCRs lay down necessary and sufficient conditions (although the X terms of SCRs are disjunctive predicates if the Y statuses are multiply realizable). WCRs, however, do not lay down necessary and sufficient conditions. Williamson writes that '[c]onstitutive rules do not lay down necessary conditions for performing the constituted act' (2000, 240). As a general claim about constitutive rules, this is false.⁵⁸ There is a good reason, however, for Williamson not to claim that knowing *p* is a necessary condition for asserting *p*. As he acknowledges, we often assert things we do not know. Hence, Williamson needs a conception of constitutive rules that allows for exceptions. Rather than as a factual requirement, then, knowing *p* figures as a normative requirement in Williamson's analysis. This observation supports the point to be made in connection with the second feature of SCRs. In a sense, WCRs specify the practical import of speech acts (if practical import is understood widely enough so as to cover normative preconditions). They do not specify their constitution bases. Thus, rather than leaving the practical import of a status outside of the rule, WCRs include it, which means they cannot be SCRs.

⁵⁸ The arguments Williamson provides in favour of it are not very convincing (2000, 240). He points out, for instance, that one still speaks a language if one breaks several of its grammatical rules. This observation only carries force due to the ambiguity in the claim that the rules of grammar are constitutive of speaking a language. Such rules are constitutive of speaking a language in a way that is grammatically correct. This implies that all conditions mentioned in those rules have to be observed in order to speak in such a way. Obviously, less will do for merely speaking a language.

Constitutive and regulative rules. We can conclude that WCRs are not SCRs, because they do not have any of the three features that figured in our discussion of SCRs in the previous section. Even though it is natural to take what Williamson writes to suggest they are, this is not all that surprising. Searle contrasts constitutive rules to regulative rules, and, as it turns out, WCRs are very similar to regulative rules. In particular, the syntax of the knowledge rule and WCRs is more akin to regulative rules than to SCRs. On Searle's view, regulative rules have the form or syntax 'Do X' or 'If Y do X' (1969, 34). Focusing on the second formulation (and generalising somewhat), regulative rules are conditionals that specify situations in which an act is obligatory (or forbidden or permitted). Williamson's rules forbid the acts to which they pertain if the specified condition fails to be met (they unconditionally forbid the combination of Y and doing X; 2000, 241). The knowledge rule forbids assertions in situations in which what is asserted is not known. All this suggests that WCRs are in fact regulative rules.

The fact that WCRs specify normative rather than factual requirements fits nicely with this idea. Williamson claims that the rules that figure in his analysis can be broken. SCRs cannot be broken, whereas regulative rules can. One can fail to meet a normative requirement even though the rule in which it appears applies. One can, for instance, fail to have a knife in one's hand in situations in which one should. In contrast, if a factual requirement, such as the ones that figure in SCRs, is not met, the rule in which it figures fails to apply. As an example, a bill that does not have the face of George Washington on it simply is not a one-dollar bill. In other words, whereas one can violate a regulative rule, SCRs cannot be violated. Searle came close to drawing this conclusion: 'Indeed, it is not easy to see how one could even violate the rules as to what constitutes checkmate in chess, or touchdown in football.' (1969, 41; see also Bach and Harnish 1979, 122). One can of course apply the terms that are characterized in terms of constitutive rules incorrectly. So, at least in some sense, one can apply a Searlean constitutive rule mistakenly (think, for example, of someone who misapplies the term 'one dollar bill'), but this is different from violating it. Given that Williamson wants to allow for assertions of propositions that the asserter does not know (or, more precisely, with respect to which the asserter does not have the status of knower), SCRs are not suitable for his purposes.

Searle claims that regulative rules are not constitutive rules. Whereas regulative rules regulate behaviour that is possible independently of such rules, constitutive rules define and create (the possibility of) new forms of behaviour (Searle 1969, 33). It is clear that regulative rules

are not SCRs. However, constitutive rules might come in different kinds, and there might be a sense in which certain regulative rules are also constitutive rules.⁵⁹ If so, there is a chance that Williamson's claim that the knowledge rule is a constitutive rule could be salvaged. Rather than turning immediately to what Williamson has to say about such rules himself, I suggest first to discuss a way in which regulative rules could be (part of) constitutive rules. The reason for doing this is that it will be helpful in developing a critique of Williamson's conception later.

Status rules and constitution rules. In the previous section we saw that Searle claims that essential rules are SCRs. It was argued that they are not. This does not mean, however, that rules akin to essential rules do not play a role with respect to institutional statuses at all. In fact, rules that specify entailments or practical import are very important to them, or so I will argue. Let us consider the case of promising once more. As we saw earlier, Searle writes: '[T]he utterance of such and such expressions under certain conditions counts as the making of a promise' (1964, 37). Such a formulation is well suited for being an SCR (in spite of the fact that, as was argued above, this is not the constitutive rule of promising, because there is no such thing). Searle also writes that 'promising is, by definition, an act of placing oneself under an obligation' (ibid., 45) and he regards a claim similar to this one as the constitutive rule of promising as we saw earlier. Even though this is most definitely not an SCR – in spite of Searle's claim to the contrary – there is room for such claims in a conception of constitutive rules that takes SCRs as its point of departure. The suggestion is that, in addition to an SCR, there might be room for a rule that defines what it means to have a certain institutional or Y-status, i.e. that explicates its practical import.⁶⁰

Consider money. Money is, by definition, a means of exchange, i.e. money is by definition something that can be exchanged for goods and services. Whereas the SCR of money specifies what it takes to be money in a particular context – it specifies its constitution base in that context –

⁵⁹ Even though most of what Searle writes conflicts with the idea that regulative rules can be constitutive rules (regulative rules have a different syntax and they do not create and define new forms of behaviour), other claims he makes support it. This is suggested, for instance, by his claim that constitutive rules do not merely regulate, which implies that they do regulate.

⁶⁰ This paragraph, as well as the remainder of this chapter, includes many claims related to rules that are, strictly speaking, inadequate. Rules do not specify, explicate, or define anything. They are abstract entities, which cannot do such things. For similar reasons, formulations or claims cannot be rules. However, writing in a way that would avoid such inadequate wordings would be too cumbersome given the purposes of this chapter.

this rule makes clear what it means to be money. Rules that provide definitions, such as ‘money is a means of exchange’, are meaning rules. The meaning rules relevant to institutional phenomena always pertain to the practical import or behavioural dimension of a status. What it means in practice for something to be money is that it can be exchanged for goods and services. Now there is every reason to include such statements in constitutive rules. Searle writes that Y-terms are ‘placeholders for patterns of *activities*’ (1995, 57; emphasis in original). More generally, it is evident that the behavioural aspects of institutions are crucial to them. It makes a lot of sense to make them explicit. Searle’s manoeuvring with respect to the identity of the constitutive rule of promising suggests that doing so is not very far removed from what he was after himself.⁶¹

I suggest renaming SCRs ‘constitution rules’, as they specify what the constitution base is of a Y-status. Furthermore, I propose to add what could be called ‘status rules’ to such rules and require that such rules specify the practical import of being a Y. The combination of a status rule and a constitution rule is a constitutive rule on this proposal. I suggest calling such rules modified SCRs. Thus, the constitution rule for getting married explicates what procedures are required for getting married in a particular context, whereas its status rule provides the set of rights and obligations that is definitive of that status. Similarly, the constitution rule for becoming a professor specifies the conditions that have to be met in order to be one, whereas its status rule provides a description of what that role involves. The constitution rule for being a licensed driver makes clear what it takes to get this status, whereas its status rule states what it means in practical terms, i.e. that one is legally allowed to drive.

Status rules and WCRs. Two points are important for evaluating Williamson’s claim that the knowledge rule is a constitutive rule in relation to this proposal. First, status rules are regulative rules. Second, status rules are part of constitutive rules on my proposal. The first point requires some elucidation. Take the claim that licensed drivers are allowed to drive. Once this conceptual truth is reformulated as ‘If one is a licensed driver, one is legally allowed to drive’ it becomes apparent that it is a regulative rule. This reformulation specifies an action that is permitted. Furthermore, it provides a condition that has to be met in order for this action to be permitted. All this fits very well with the syntax of regulative rules as specified by Searle (‘If Y, do X’), as long as one allows for rights in addition to obligations, and with the underlying conception of such rules. At this point, one could suggest that WCRs are

⁶¹ See Ransdell (1971) for somewhat similar ideas.

status rules. One might consider this to be sufficient for salvaging Williamson's claim that WCRs are constitutive rules, although on the terminology I propose status rules are part of such rules (but one could try to argue that status rules are constitutive rules; after all, being a means of exchange is constitutive of being money).

I have two objections against this suggestion. The first objection is that, if this suggestion is correct, Williamson fails to tell us what the relevant constitution rules are. A somewhat plausible candidate was discussed earlier: Utterances U count as speech acts A in context C. Even though this U-schema is a reasonable candidate for a constitution rule, it was argued above that such rules are not the SCRs of speech acts (what is more, it was argued that SCRs are irrelevant to speech acts). The second objection is that WCRs do not specify entailments but normative preconditions instead. Consider the knowledge rule once again. That rule does not specify what one is obliged or permitted to do once one has asserted something, which it would if it were a status rule. Instead, it delineates in what position one ought to be in order for it to be permitted to assert something. In other words, WCRs are not status rules because they do not specify the practical import of having a certain status. Hence, they are not (part of) modified SCRs.⁶²

This conclusion is also important for assessing Williamson's claim that game rules are WCRs. It is now easy to see why they are not. Most game rules are either constitution rules or status rules (in addition to these, rules of games include directives for play, which are regulative rules; Lewis 1983a). Some rules of chess, for example, specify what it takes to be a chess piece of a particular kind (its starting position on the checkerboard is crucial here). Other chess rules specify the moves that chess pieces are allowed to make. These are the constitution and status rules respectively, and a combination of such rules is the constitutive rule of a particular kind of chess piece (on the modified conception of SCRs). As we have seen, WCRs are neither constitution rules nor status rules (let

⁶² Another way in which one could try to salvage Williamson's claim that rules such as the knowledge rule are constitutive rules is by appealing to what is perhaps the most intuitive conception of constitutive rules: regulative rules the observation of which is constitutive of some status. Thus, one could argue that observing the rule 'Don't drink and drive' is constitutive of being a responsible driver. Such a conception of constitutive rules, however, would not be of any help to Williamson. Violation of this rule would imply that the relevant status is not instantiated: one is not a responsible driver if one does not refrain from drinking. Recall that what Williamson is after is a rule that is constitutive of a certain status while breaking that rule is consistent with having the status.

alone directives of play). Hence, game rules are not WCRs, in spite of Williamson's claim to the contrary.

An Identification Problem. By now it should be obvious that WCRs are not constitutive rules in any familiar sense, even though there are signs that Williamson wants to use the term 'constitutive rule' in the traditional Searlean sense. Williamson might, however, be working with a very different notion of constitutive rules. Given such an alternative conception the knowledge rule might be a constitutive rule after all. I suggest looking at what he has to say about the matter in some more detail. Williamson's key claim about constitutive rules is the following: '[A] rule will count as constitutive of an act only if it is essential to that act: necessarily, the rule governs every performance of the act.' (2000, 239; see also 1996) We have already seen that the rules Williamson has in mind are regulative rules (that are also constitutive). Such rules are thought to be constitutive of some kind of act even though performing an act of that kind is consistent with violating the rule. This raises the question what is left to constitute the act if the rule is violated. The answer to that question is thought to be the very applicability of the rule. The act is of the requisite kind because the rule applies to it, not because the rule is observed. What that amounts to is not analysed any further by Williamson.

It is not obvious, however, that this removes the worry. In fact, it only postpones the problem, as it raises a further question that serves to get the problem into focus: Why does the rule apply? In the case of a modified SCR, an answer to this question is available. An act belongs to a certain type because it meets the requirements specified in a constitution rule. Being an act of that type implies, for instance, that one has certain rights or obligations, those that are given by its status rule. These rights and obligations still apply even if they are not used or if they are violated, because the relevant constitution rule is still satisfied. Consider signing a contract for a mortgage. Signing such a contract let us suppose implies the obligation to pay a certain amount of money at a specified time interval. This obligation figures in the status rule of signing such a contract. Now, the obligation does not go away if one does not satisfy it, nor does the act of signing the contract lose its status because of it. This means that the status rule still applies. If one asks why, the answer is readily available: the constitution rule remains satisfied. So, the answer to the question why does a status rule apply to a particular act is that the act satisfies the relevant constitution rule. The constitution rule determines the identity of the act, whereas the status rule specifies its practical

import. Such an answer is not available to Williamson, because there is nothing more to his analysis than a regulative rule that is supposed to be a constitutive rule as well. This means that the form that the rules Williamson considers have is problematic. Williamson's analysis suffers from what one might call an unsolved identification problem. There is no description of the act that would serve to identify that act independently of the rule. Such a description is needed in order to know to which acts the rule applies. Such a description is available in the case of a modified SCR.

Thus far, we have relied on the most prominent formulation of the knowledge rule that Williamson provides ('One must: assert p only if one knows p '). Formulated in this way, the Searlean conclusion seems unavoidable: the rule is a regulative rather than a constitutive rule because it pertains to behaviour that is possible independently of the rule. The knowledge rule uses the term 'assert' and as such it cannot figure in an analysis of assertion, because that would make the analysis viciously circular. It could be a rule that contingently regulates assertion. The knowledge rule would in fact be perfectly intelligible if it governed assertion only contingently. Assertion would be characterised independently of that rule, and the rule would be a social norm specifying under what condition assertions are permitted. But this is not what Williamson has in mind. Williamson does, however, provide the means for eliminating the immediate circularity (2000, 241). The analysis that results from this is:⁶³

Assertion is that speech act that is governed by the rule (one must: perform that speech act with content p only if one knows p).

Williamson claims that the rule is a constitutive rule because it governs the relevant act as a matter of necessity. This claim is salvaged, because the statement just provided is offered as an analysis, which (at least here) implies that it is (thought to be) *a priori* and necessarily true.

Even though the reformulated analysis is not immediately circular, it does raise a question that expresses uneasiness similar to the one that accompanied the circular analysis.

Suppose someone is confronted with this analysis of assertion. It would be perfectly natural for her to react by asking: But which speech acts are they? Consider an analogy. Suppose that, if asked what a bishop

⁶³ This reformulation does not solve the identification problem discussed earlier. The characterisation 'speech act with content p ' is not sufficiently specific, as having a proposition as its content is not at all specific to assertion

is, someone would reply by saying that bishops are those pieces that are only allowed to move diagonally. It would be appropriate to ask in response to this answer: But which pieces are they? In this case, a suitable answer is available: those pieces that start on c1, c8, f1, and f8.⁶⁴ Williamson's analysis of assertion includes nothing that provides the means for a similar answer. Thus, judged from the perspective of modified SCRs, Williamson's analysis is *incomplete*. He fails to solve the identification problem mentioned earlier.

A related complaint that has been voiced pertains to the kind of requirement that figures in Williamson's analysis. The rules he appeals to cannot be status rules, because they contain a (normative) precondition rather than what is entailed by having the status. The very form of Williamson's analysis seems problematic to me. Williamson characterises the analysans in terms of a normative precondition where failure to meet that precondition does not imply failure to satisfy the analysis. I do not know of any other analysis that has this form. I find it odd and am not convinced that such an analysis can be adequate. All I can conclude, however, is that the analysis is inferior to a modified Searlean one, the reason being that it is less informative because it is less complete.⁶⁵

One might want to object to this conclusion by saying that it is unfair to Williamson. The claim is that another type of analysis is superior to his, but the alternative cannot accommodate his knowledge rule (recall our earlier conclusion that the knowledge rule is not a status rule). This objection is easily countered. The analysis I favour and that was judged to be preferable to a Searlean analysis can accommodate the knowledge rule. Williamson argues that belief comes with a knowledge requirement. In other words, belief (normatively) requires knowledge. On the approach

⁶⁴ A nice feature of the chess example is that the constitution base of chess does not vary between contexts (or at least relatively little). If the example were, for instance, legal tender, things would have been more complicated. The claim that legal tender is that kind of thing that a creditor is obliged to accept in satisfaction of a debt may prompt the same reaction: 'But which kind of thing is that?' However, it is not incomplete in the same way as the answer about the bishop was. The appropriate first response would be to say: 'That depends on the context.'

⁶⁵ Williamson's take on these matters is that, if a reductive analysis could be provided of the capacity for identifying assertions, his analysis could be turned into a reductive one. However, he does not believe an analysis of this capacity can be provided, and, concomitantly, he does not believe a reductive analysis of assertion can be provided. Given these claims – made by Williamson in personal conversation (in writing he only claims that he does not aim at offering a reductive analysis; 2000, 239-40) – I could argue that the modified SCR approach is to be preferred because it results in more reductive analyses. I will not develop this argument here, but rest content with pointing out that the concerns I raise under the heading of completeness could also be considered under the heading of reduction.

discussed in the previous section, asserting is a matter of expressing a belief. On the supposition that the asserter is sincere, she has the belief expressed. Given the requirement that Williamson thinks applies to belief, the conclusion follows that a sincere asserter should know that which she asserts. I have argued elsewhere that this way of deriving the knowledge requirement is to be preferred over Williamson's approach for independent reasons (reasons related to the role of sincerity in speech acts; chapter 4). Note that on this approach the relation between assertion and knowledge is not contingent. The reason for this is that it derives from a necessary connection between knowledge and one of the ingredients of the analysis, i.e. belief.⁶⁶

Several conclusions have been drawn. First, Williamsonian constitutive rules are not Searlean constitutive rules. Second, Williamsonian constitutive rules are not the kind of rules that figure in games. Third, a Searlean type of analysis is to be preferred over a Williamsonian one, because it is more complete. Williamson's analysis suffers from what has been called an identification problem. In section 5.1, it was argued that a Searlean type of analysis of speech acts such as assertion is surpassed by one that does not appeal to constitutive rules. This conclusion is confirmed by a consideration of Williamson's proposal.

5.3 Conventional Effects

5.3.1 Commissives and Directives

Earlier we saw that many speech acts involve conventional effects. Making a promise results in an obligation to do as promised. A (successful) command creates the obligation to do as commanded. Declaring a couple to be married institutes a marriage. Adjourning a meeting implies that the meeting has in fact been stopped. It might be that constitutive rules are relevant to these effects. If so, such rules are at least indirectly relevant to speech acts. If the arguments of section 5.1 are sound, constitutive rules should not figure in analyses of speech acts directly, but this does not prevent them from figuring in analyses of their conventional effects.

In order to determine whether conventional effects involve Searlean constitutive rules, we need to know what kind of conventional effects are

⁶⁶ One could argue, as Raimo Tuomela suggested to me, that at the heart of Williamson's proposal lies the idea that a rational agent obeys the knowledge rule. This idea is preserved by the favoured alternative.

involved in which speech acts.⁶⁷ A preliminary question, however, is whether all kinds of speech acts involve conventional effects. The answer is no. Five kinds of speech acts can be distinguished: assertives, expressives, commissives, directives, and declaratives.⁶⁸ Roughly, performing an assertive is a matter of expressing a belief, performing an expressive is a matter of expressing some other attitude such as gratitude or remorse, commissives involve obligations on the part of the speaker, directives concern obligations on the part of the hearer, and, finally, the point of declaratives is to bring about changes in the world, e.g. stopping a meeting by adjourning it. Conventional effects are only involved in commissives, directives, and declaratives, or so I will argue.

Do assertives involve conventional effects? Perhaps assertives do indeed involve a commitment to the truth of what is asserted, as Searle claims. However, this is primarily a psychological matter and not a conventional one. It is social to the extent that one can be blamed if one is not justified in believing the content of the belief that one expresses. However, this does not depend on collective acceptance of some conventional effect. Instead, it depends on rules pertaining to responsibility and blame (as well as on epistemic norms). Similarly, expressives are psychological act types rather than conventional ones. The other types of speech acts do involve conventional effects. In the case of commissives and directives they are obligations. In the case of declaratives a wide range of conventional effects are relevant, including for instance two people getting married or a meeting being adjourned. They may involve obligations as well.⁶⁹

I suggest treating commissives and directives first, reserving a discussion of declaratives for the next section. As we will see, the conclusions I draw with respect to them are very different. As said, the

⁶⁷ In the remainder of this chapter, constitutive rules will always be (unmodified) Searlean constitutive rules (what were called 'constitution rules' in the previous section) unless indicated otherwise.

⁶⁸ I rely on Searle's typology of speech acts. The typologies proposed by Alston and by Bach and Harnish do not differ substantially from Searle's, however, at least not in ways that affect the arguments of this chapter.

⁶⁹ See Alston (2000) for a defence of this view on which speech acts involve conventional effects. I also follow him in using 'conventional' so as to include normative effects such as the creation of obligations even though one might take them to be more objective than conventional matters (*ibid.*, 84). I will in fact suppose that even such normative effects are conventional or institutional. Perhaps assertives do involve conventional effects, contrary to what was argued in the main text. Watson (2004), for instance, argues that someone who asserts something is obliged to defend or justify it. If this is correct, what is said about commissives and directives below applies to assertives as well.

conventional effects of commissives and directives are obligations. Especially in the case of directives, it is very natural to hold that the obtaining of the obligation is separate from the performance of the speech act. Consider commanding. One can command someone to do something, but fail to obligate him because one is not in the position to do so. Thus, the conventional effect is not established. The conventional effect only follows if the speech act is successful. This suggests that we should separate conventional matters from semantic ones, i.e. leave the obtaining of an obligation out of the analysis of commissives and directives. This is in fact the view defended by Alston (2000) and Bach and Harnish (1979, 289n4). If we follow them in pursuing this strategy of separating the conventional from the semantic, the question arises as to how conventional effects enter the analyses of these kinds of speech acts if it is not their obtaining that enters into them. Alston's answer to this question is that in performing such acts we *purport* to establish the relevant conventional effect.

In the case of promising, to give another example, this means that if we perform the speech act of promising we purport to obligate ourselves (Alston 2000, 96). This falls short of actually obligating ourselves. That effect is due to extralinguistic conventions. Alston does not deny that performing the speech act is sufficient for the creation of the obligation in our society, but he argues that this is because 'society "allows" a speaker to take on an obligation *just by saying something*' (ibid., emphasis in original). The upshot is that, even though in practice all promises generate obligations, one can still usefully distinguish the obtaining of an obligation from the performance of the speech act. The point generalises to other commissives. If this is correct, the obtaining of the conventional effects can and should be left out of the analysis of commissives and directives.⁷⁰

We now need to ask how the conventional effects should be analyzed (thus far I have relied mostly on arguments proposed by others, but the analysis of conventional effects proposed below is mine; cf. note 57). More specifically, we should investigate whether the conventional effects should be analyzed in terms of constitutive rules, which would make such rules indirectly relevant to commissives and directives. The conventional effects of commissives and directives are obligating oneself and obligating

⁷⁰ One might object that Searle's views are closer to the alternative defended here than is acknowledged. One could, for instance, interpret Searle's essential rules as being about purporting to establish conventional effects rather than actually establishing them (cf. the occurrence of 'attempt' in the essential rule of requesting). This interpretation of essential rules, however, only makes it easier to argue that they are not constitutive rules, because the latter do pertain to the establishment of conventional effects.

someone else respectively. This means that we need an account of the move from purporting to obligate oneself or someone else to actually creating an obligation. As we just saw, Alston argues that in our societies commissives automatically generate obligations. Directives, in contrast, require that further conditions be satisfied:

[O]ur social conventions are such that *purporting to place a prima facie obligation on oneself by an utterance* engenders the obligation with no further conditions required, whereas *purporting to obligate others* achieves that effect only where further conditions are satisfied. (Ibid.; emphasis in original)

This suggests that we can formulate the following rules for commissives and directives respectively:

Purporting to obligate oneself counts as actually obligating oneself.

In appropriate circumstances, purporting to obligate someone else counts as actually obligating that person.

These rules share some features with Searlean constitutive rules, but not enough to be legitimately regarded as such.

What both of them share with Searlean constitutive rules is the phrase 'counts as'. This signals the involvement of collective acceptance. The transition from purporting to obligate to the creation of an obligation is due to acceptance by the relevant group or society. The second rule also involves a reference to context. The reason why these rules are not Searlean constitutive rules is that the Y terms are not of the appropriate kind. Rather than referring to something that has practical import, they are specifications of such practical import.

In fact, the rules are disguised regulative rules. This can be made explicit by reformulating them so as to fit the conditional format of regulative rules discussed in the previous section:

If one purports to obligate oneself to do *A*, one (obligates oneself and hence one) ought to do *A*.

If someone purports to obligate *H* to do *A* and the appropriate circumstances obtain, *H* (is obliged and hence) ought to do *A*.

These rules are social norms.⁷¹ In sum, the conventional effects of commissives and directives can be separated from these speech acts themselves, at least analytically. Furthermore, these conventional effects should be analysed in terms of social norms rather than constitutive rules.^{72,73}

5.3.2 Declaratives

In the case of commissives and directives, it was argued that their conventional effects could be separated from the speech acts themselves. Furthermore, it was argued that the conventional effects should not be analysed in terms of constitutive rules but in terms of social norms. In the case of declaratives, the argument will be different. First of all, it will turn

⁷¹ Even though the 'counts as' phrase does not occur in them, collective acceptance plays a role with respect to these rules all the same. The role of collective acceptance consists in the fact that these rules apply in virtue of being collectively accepted.

⁷² In the case of promising, the idea is the following. The speech act of promising is a matter of purporting to obligate oneself, whereas one actually obligates oneself in virtue of the institution of promising. Some of the things Searle writes suggest that his view is not as far removed from this than other claims made by him. Searle talks, for instance, of invoking the institution of promising (1964, 49) and he (later) distinguishes extrasemantic institutions (1999, 150). Apart from the fact that this position is not consistently developed by Searle, a remaining difference is that on my view the conventional effect of promising should not be analysed in terms of constitutive rules. Note also that if the speech act of promising is just a matter of purporting to obligate oneself, the argument of section 1.1 applies to promising as well: the possibility of purporting to obligate oneself does not depend on our acceptance of such a practice.

⁷³ One could argue that the social norms presented above are status rules and that commissives and directives do involve constitution rules. The constitution rule of promising, for example, would then be: performing the speech act of promising counts as performing the institutional act of promising. The relevant status rule of the institutional sense of 'promise' could then be: 'To promise to do A is to obligate oneself to do A.' I have no fundamental problem with this line of argument, which would result in the claim that commissives and directives involve constitutive rules indirectly – the claim that will be defended with respect to declaratives below. Two things are worth noting, however. First, the constitution rules of commissives and directives are rather trivial on this approach in a way that other constitution rules are not. Second, there is a lot to be said in favour of the idea that the obligations involved in, for instance, promises, derive from a norm that applies to commissives generally rather than from a status rule that is specific to promising (this general norm would be the norm formulated in the main text). An implication of choosing this option would be that in promising we invoke the general institution of commissives rather than that of promising in particular. Note finally that only the norm for directives mentions a context (which is specific to particular directives).

out to require little argument to establish that the conventional effects of declaratives should indeed be analysed in terms of constitutive rules. Secondly, making the case for separating the conventional effects from the performance of this type of speech act, even just analytically, will turn out to be more difficult – to the point that I cannot exclude the possibility that they should not be separated. The upshot will be that constitutive rules are at least indirectly relevant to declaratives, because they should figure in the analyses of their conventional effects.

The argument that the obtaining of conventional effects should be left out of analyses of speech acts was derived from the work of Bach and Harnish and that of Alston, so I suggest turning to what they have to say about the matter in relation to declaratives. Alston argues that we should separate the conventional from the semantic in the case of declaratives as well. The problem that he has to confront is that most declarative verbs involve the obtaining of the relevant conventional effect. Whereas one can fail to obligate someone if one commands that person to do something, one cannot adjourn a meeting and fail to stop it. In spite of this, he maintains that we should distinguish between the semantic act of performing a declarative and the related conventional or institutional act.

The underlying idea is that one can perform the speech act involved in adjourning a meeting without succeeding to adjourn the meeting. Just as is the case for commanding, it depends on the circumstances – among other things on whether one is in the position to adjourn the meeting – whether or not the effect gets established. Terminologically, the distinction is between the speech act of *purporting* to adjourn and the institutional act of adjourning. In contrast to commissives and directives where the purporting pertains to establishing the conventional effect, Alston argues that for many declaratives the qualification ‘purport to’ should be included in the specification of the speech act verb (2000, 89–95). Whereas performing the speech act of commanding does not imply that an obligation is created, for reasons adumbrated above, adjourning a meeting does imply success. Including the qualification ‘purport to’ makes this asymmetry disappear. Commanding is a matter of purporting to obligate someone else; purporting to adjourn a meeting is also (obviously) a matter of purporting to do something.⁷⁴

⁷⁴ It is perhaps difficult to appreciate the point in the case of promising, because no further conditions are required than performing the speech act in order to establish the obligation (except from the relevant social norm being in place). This might explain why Alston at one point claims that the qualification ‘purport to’ should also be included with respect to promising (2000, 98, in contrast to 95–97). Such a slip of the pen is hard to avoid if I am right in claiming that there are two senses of ‘promise’, a speech act sense and an institutional sense (see notes 72 and 73).

Bach and Harnish (1979) take a different line. On their view, it is part of the nature of such acts that the effects are established by performing them. As long as one does not appeal to the distinction (later) introduced by Alston between, for instance, adjourning and purporting to adjourn, this is of course correct. An argument for going along with Alston is that accommodating the idea of purporting to do something in the analyses of all types of speech acts enhances their symmetry (which is aesthetically more pleasing). I will continue on the presumption that Alston's strategy is to be preferred, realising that the arguments in favour of this are perhaps not very strong.

The remaining question is whether constitutive rules should play a role in the analysis of conventional effects of declaratives. The answer to this question is clearly affirmative. In section 5.1, we discussed three features of constitutive rules that were crucial for our verdict that they are not involved in (at least most) speech acts. These same features can be appealed to for arguing that constitutive rules are involved in declaratives. First, the effects, such as adjourning a meeting and getting married, clearly depend on collective acceptance. Second, the effects are of the right kind. Rather than being consequences, they mark consequences (the term 'adjourn' marks stopping a meeting; the term 'marriage' marks the rights and obligations attached to marriage; the constitution rules specify what it takes for these practical implications to be in place). Third, they only get established if the appropriate context obtains.⁷⁵

This means that, if Alston is correct, constitutive rules are relevant to declaratives, but only indirectly so. They serve to explicate what it takes to actually achieve the effect involved in a declarative. At this point, one might object that it only makes sense to perform a declarative speech act if one believes a constitutive rule for establishing them is in place. Even though this seems correct, the declarative can be understood independently from the content of such a rule. Someone who performs a declarative speech act does not (always) need to know the constitutive rule of its conventional effect in any detail.

Take marriage. If someone purports 'to unite two people in holy matrimony', she should believe that she has the authority to do so and that whatever conditions are required in the relevant context are satisfied. The point to appreciate is that for understanding what it is to perform the

⁷⁵ Bach and Harnish (1979) regard declaratives as conventional speech acts in contrast to the other speech acts that they call 'communicative'. What they call 'conventions' are Searlean constitutive rules. They make points similar to those made in the main text in their own terms, in particular they formulate the first point in terms of mutual belief rather than collective acceptance (*ibid.*, 116).

speech act, this abstract indication suffices (Alston 2000, 93-94). The fact that different countries have different requirements concerning what it takes to get married has no implications for the concept of marriage (ibid., 91n7). The constitutive rule, in contrast, requires a concrete specification of the conditions that have to be met (ibid., 254). This means that, even though performing a declarative requires one to believe that the constitutive rule involved in its conventional effect is in place, one does not need to have any more detailed beliefs.⁷⁶

This completes our discussion of the relation between speech acts and constitutive rules. In the previous section we saw that at least promising should not be analysed in terms of such rules. The upshot of the discussion in this section is that this conclusion generalises to speech acts in general (with the qualification that the position Bach and Harnish maintain with respect to declaratives is a defensible alternative). A further conclusion that can be drawn is that, if constitutive rules are not directly involved in the analysis of declaratives, they are relevant indirectly in that adequate analyses of their conventional effects appeal to constitutive rules.

5.4 Conclusion

On the view defended here, to perform a speech act is to express an attitude (or a set of attitudes). Speech acts are not conventional or institutional. *A fortiori*, an analysis of a speech act term does not need to invoke the notion of a constitutive rule. None of this is meant to deny that speech acts have conventional aspects. Conventions or institutions are relevant to speech acts in at least two ways. First, most often the means employed for performing a speech act are conventional (word-meaning and sentence-meaning are conventional matters). Second, the effects associated with some speech acts, notably those of commissives, directives, and declaratives, are conventional. The effects of commissives and directives, however, can be analysed in terms of social norms. Only the effects of declaratives need to be analysed in terms of Searlean constitutive rules. All in all, conventions are only indirectly relevant to

⁷⁶ One can imagine that there are no context-specific requirements other than having the authority to perform the relevant act. This may hold, for example, for adjourning meetings in certain organisations. In such a limiting case, the X of the relevant constitutive rule would just be 'purporting to establish the effect', which results in the following rule for adjourning: In appropriate circumstances, purporting to adjourn a meeting counts as actually adjourning that meeting. This is an almost trivial constitution rule that basically implies that whatever means one can use to get others to understand that one purports to adjourn the meeting suffice for actually doing so.

speech acts. Furthermore, Searlean constitutive rules are irrelevant to the analysis of speech act terms.

This last conclusion generalises to Williamsonian constitutive rules, albeit for very different reasons. Williamson's conception of constitutive rules has been found wanting. The idea that an act could be characterized (only) in terms of a normative precondition has turned out to be problematic. It was also concluded that Williamsonian constitutive rules are not Searlean constitutive rules and that, *pace* Williamson, such rules do not figure in games. Finally, it was argued that a Searlean type of analysis is to be preferred over a Williamsonian one, but we have already seen that another analysis – in terms of expressing attitudes – is to be preferred over Searle's. Thus, the conclusion that constitutive rules are irrelevant to the analysis of speech acts survives consideration of Williamson's proposal. Overall it can be concluded that, even though speech acts have many conventional aspects, such aspects should not figure in their analysis.

PART III

RULES & INSTITUTIONS

6 THE XYZ-CONCEPTION OF CONSTITUTIVE RULES

Institutions play an important role in our behaviour. Many of the things we do are influenced by institutions in one way or another. Our jobs, driver's licences and money are institutional phenomena that are of central importance to our lives. Institutions structure our behaviour by putting constraints on what we do. One is, for example, not allowed to drive without a driver's licence. However, institutions do not only constrain our behaviour, they also facilitate many of our actions. They widen our perspective by enabling us to do things we could not do without them. It would, for instance, be impossible to vote if it were not for several political institutions. The influence that institutions have on our behaviour is partly due to their normative force. Institutions obligate, permit, and forbid us to do certain things in particular kinds of situations. In addition to this, institutions can often be said to define what we do. Our behaviour acquires a certain meaning or status in the context of institutions when we conceptualise what we do in terms of institutional categories. Thus, institutions have behavioural, normative, and conceptual aspects.

Institutions are often regarded as rules. The question that provides the focus of this chapter is what the notion of a constitutive rule can contribute to our understanding of institutions. The notion of a constitutive rule plays a prominent role in John Searle's (1995) philosophy of society.⁷⁷ As we will see, Searle's conception of constitutive rules is underdeveloped in several respects. Most significantly, the behavioural dimension of institutions, which is of course central to them, has not

⁷⁷ The notion of a constitutive rule also occurs in the work of philosophers such as Wittgenstein and Rawls. It is also used in the philosophy of language (Midgley 1959, Lewis 1983a, Williamson 2000) and the philosophy of law (Ruiter 1997; Zniemarowski, discussed in Czepita 1990). Cognitive and computer scientists explore related issues (Jones and Sergot 1997).

been systematically incorporated in it. I will present a theory of constitutive rules in this chapter, called ‘the XYZ-conception of constitutive rules’, that repairs this defect as well as others. A key claim that I will defend is that the notion of a constitutive rule presented here helps us to see how the behavioural, the normative and the conceptual dimensions of many institutions relate to one another. However, institutions also involve entities from ontological categories other than actions. Paper is a well-known instantiation of money, wedding rings are important to the institution of marriage, and soldiers wear uniforms and are permitted to carry guns. A second key claim of this chapter, then, is that the notion of a constitutive rule sheds light on the role that ontological categories such as objects, persons, and events play in institutions. On the whole, this chapter is devoted to developing a theory of constitutive rules that improves on Searle’s theory and to characterising its relevance to institutional ontology.

6.1 Searle on Constitutive Rules

Since I build on his ideas, we should start by investigating Searle’s conception of constitutive rules. Anscombe and Rawls were Searle’s main sources of inspiration (see his 1964, 55, n6 and n7). Both of them emphasized the fact that certain things can only exist in virtue of institutions. Anscombe made a distinction between brute facts and facts that presuppose an institutional setting. She noted that, for instance, adequately describing an act as ‘sending a bill’ presupposes the institution of buying and selling (Anscombe 1981 [1958], 24). On her view, the fact that someone sends a piece of paper is a brute fact relative to the fact that someone sends a bill. The former can only properly be regarded as the latter if the institutional context is appropriate. Rawls distinguished rules we follow only because of their utility in particular cases from rules that define practices or institutions. Whereas he took the former to be generalisations from decisions taken in the past, rules of the latter kind are logically prior to the acts that fall under them. An act cannot be described as an institutional act if the rules of the relevant institution are not in place. For instance, an act can only be adequately described as an act of stealing a base if the rules that constitute baseball apply (Rawls 1955, 25).

Searle (1964, 1969) used the term ‘constitutive rule’ for rules that define institutional activities. He drew a contrast between constitutive rules and regulative rules in terms that are reminiscent of Rawls.

Regulative rules pertain to activities that are logically independent of the rules, whereas activities that fall under constitutive rules logically depend on them. In line with this, Searle writes:

[R]egulative rules regulate antecedently or independently existing forms of behaviour [...]. But constitutive rules do not merely regulate, they create or define new forms of behaviour. The rules of football or chess, for example [...] create the very possibility of playing such games. (1969, 33)

According to Searle, constitutive rules define and create (the possibility of) institutional forms of behaviour (see also *ibid.*, 35). The underlying conception of institutions is that they are (systems of) constitutive rules (*ibid.*, 51; 1995, 140). Inspired by Anscombe, Searle holds that facts that exist independently from institutions are brute facts. Institutional facts, such as the fact that the United States started a war against Iraq, presuppose institutions – among others the institution of war – and, hence, constitutive rules.

The form, or syntax as I prefer to call it, of constitutive rules is different from that of regulative rules. The syntax of regulative rules is ‘Do A’ or ‘If C, then do A’. In contrast, the syntax of constitutive rules is ‘X counts as Y in context C’. Searle calls this ‘the counts-as locution’. Acts of type A are possible independently of the rule that regulates them. For example, sending out an invitation to a party two weeks in advance is possible independently of a rule of etiquette that might be in force according to which one must send such invitations out two weeks in advance (*ibid.*, 35). Acts of type Y, such as scoring a touchdown, cannot be performed without a constitutive rule in place that defines such acts. In addition to actions, the counts-as locution can also be applied to, among others, objects, persons, and events. A certain piece of paper, for instance, can count as money in a particular context, and it would not be money if it were not for the underlying constitutive rule.

Searle said little about the phrase ‘counts as’ that occurs in the counts-as locution in his early work. The phrase indicates that the actions derive their character from the institutional setting in which they occur including the group of people who sustain the relevant institution. It is always a ‘we’ that counts something as something else as far as institutional phenomena are concerned. Institutional settings presuppose agreement about the rules that make up institutions. Searle introduced the term ‘collective acceptance’ as a technical term for agreement in his more recent work. Relying for the time being on an intuitive

understanding of what agreement or collective acceptance is, we should note that the role played by collective acceptance in Searle's recent work is intimately related to the 'counts as' phrase. Somewhat analogous to the syntax of constitutive rules, 'X counts as Y in C', Searle (1995, 44) now claims that institutions require that we collectively accept X as Y. The next section is devoted to the question how the notion of collective acceptance can contribute to our understanding of the phrase 'counts as' in the counts-as locution.

In order to understand his conception of constitutive rules more fully, we need to consider two other notions that Searle introduced recently, that of a status function and that of deontic power. Doing so will also prove to be valuable for developing an improved account of such rules – the XYZ-conception of constitutive rules presented below. Status functions are institutional functions such as the function of money to serve as a means of exchange. The Y-terms that figure in the counts-as locution refer to status functions. Such functions can only be performed because we collectively accept that certain entities have them. Searle contrasts this to functions of artefacts that can be performed in virtue of the physical features of the objects to which they are assigned. A screwdriver, for instance, can be used for screwing a bracket to the wall because of its physical characteristics. In the case of institutional functions, however, the physical structure of the entities that have them is less crucial. Searle writes: 'In the extreme case, the status function may be attached to an entity whose physical structure is only arbitrarily related to the performance of the function.' (Ibid., 41)

Searle introduced the term 'deontic power' in order to conceptualise the normative dimension that many, if not all, institutions have. Deontic powers 'regulate relations between people' (ibid., 100). Searle distinguishes between positive and negative deontic power. Positive deontic power is a matter of enablement and involves rights. A president, for instance, may have the right to veto legislation and the person who holds the office is enabled by her role to do so. Negative deontic power pertains to requirements and obligations. Just as status functions, deontic powers also depend on collective acceptance. Searle has not integrated the notion of deontic power in his conception of constitutive rules. The fact that he has not done so is an indication of the fact that he has not done much to integrate the behavioural dimension of institutions systematically in his theory (for more on this, see section 5.3). Below I will propose a way of doing so that also provides a somewhat different perspective on the way functions figure in constitutive rules. The

behavioural dimension of institutions will thus become an integral part of the theory of constitutive rules.

6.2 Collective Acceptance and 'Counts As'

The XYZ-conception of constitutive rules that is presented in this chapter is a development of Searle's theory of constitutive rules. In order to get from the ideas presented in the previous section to the new proposal, three steps will be taken. The first step is proposing an interpretation of the phrase 'counts as' that figures in Searle's specification of the syntax of constitutive rules, the counts-as locution (this section). The second step consists of providing an interpretation of the central ingredients of the theory, among others the X-term and the Y-term of the counts-as locution. In a somewhat loose sense, this is the semantics of constitutive rules as conceptualised here (section 5.3). The third step is a matter of presenting a new syntax of constitutive rules in terms of what I call 'the XYZ-schema'. This schema replaces Searle's counts-as locution (section 5.4).

According to a well-known claim, institutions only exist because they are believed to exist. Money exists only because we believe that, for instance, certain pieces of paper are money. The underlying idea is that the way in which we conceptualise reality has consequences for the way the world is in as far as institutional reality is concerned. This idea is central to the notion of a constitutive rule. Beliefs are not the only intentional attitudes that are of relevance to institutions. Intentions, for example, are of crucial importance as well. Actions are central to institutions and they are not only guided by beliefs but also by intentions. In order to acknowledge the fact that institutions can depend on complex sets of intentional attitudes, I will use the term 'collective acceptance'. Whereas Searle (1995, 32 and 44-45) seems to use the term for beliefs only, Tuomela (2002a) has developed the notion so as to include intentions as well. I will use the term 'collective acceptance' for the sets of attitudes that generate the actions that are characteristic of institutions and that provide the ontological basis of institutional phenomena more generally.⁷⁸

⁷⁸ Searle (1990) and Tuomela (1995, 2002a) have argued that social phenomena depend on collective intentional attitudes, which are attitudes that cannot be reduced to a combination of individual or private intentional attitudes and mutual beliefs (see also Gilbert 1996 and Bratman 1999; see Hindriks 2002, 2003a and Tollefsen 2004 for a discussion of these views). Tuomela has argued that in full-blown cases of institutions collective acceptance involves collective intentions and/or beliefs in what he calls the we-mode (2002a, chapter 6). The we-mode requires that agents act in their capacity of

What exactly does it mean to say that collective acceptance provides the ontological basis for institutional phenomena? Two features that have been discussed extensively in the literature on institutions provide the answer to this question (see especially Tuomela 2002a): performativity and reflexivity. The term ‘performativity’ is best known in connection with Austin’s work on how we can do things with words. A priest can, for instance, institute a marriage by uttering the words ‘I hereby declare you husband and wife’ in the appropriate circumstances. This is an example of a performative act. In relation to collective acceptance, the idea is that our intentional attitudes can affect reality. Just by believing and/or intending certain things we make things thus and so. In a slogan reminiscent of Austin, we can do things with attitudes (one might want to require that attitudes can only have such ontological significance if agents have acted on them). Reflexivity is, in a sense, the opposite of performativity. It stands for the idea that from the very existence of institutional phenomena we can conclude that there are people who have intentional attitudes with respect to them. Using ‘p’ as a variable for institutional propositions and ‘CA’ for collective acceptance, this can be represented as follows:⁷⁹

$$[\text{CAP}] \quad \{p \leftrightarrow \text{CA}(p)\}$$

I suggest calling this the Collective Acceptance Principle. It is a simplified version of the Collective Acceptance Thesis proposed by Tuomela (2002a, 132 and note 6). The arrow from left-to-right stands for reflexivity, and the arrow from right-to-left represents performativity.

The claim that I want to defend is that Searle’s counts-as locution can best be interpreted in light of the Collective Acceptance Principle. On this proposal, ‘X counts as Y’ should be explicated as follows: ‘X is Y just if X is collectively accepted as Y’. Thus, the phrase ‘counts as’ as used in this context is indicative of the features of reflexivity and performativity just discussed. It signals an ontological bridge principle, [CAP], that allows us to move from the instantiation of certain attitudes to the existence of particular kinds of institutional entities and *vice versa*. I believe this interpretation fits well with what Searle writes. It is clear that the phrase

group members. Collective acceptance in the we-mode also requires that the agents be collectively committed to what is accepted. The definition of ‘collective acceptance’ used here is neutral with respect to these issues. It even encompasses the sets of attitudes postulated by mutual belief approaches to institutions and conventions such as Lewis (1969).

⁷⁹ See Tuomela (2002a, 170) for an account of institution-expressing sentences. Constitution rules, discussed below, are paradigm examples of such sentences.

'counts as' is in this context suggestive of the power of our agreement or collective acceptance (Searle 1995, 43-47). Searle also discusses the features of reflexivity and performativity, although he does not appreciate the way in which the latter notion can be generalised beyond its role with respect to speech acts (*ibid.*, 32-34 and 54-55). Nevertheless, assigning the suggested interpretation to 'counts as' goes beyond what Searle writes. Since the proposal is more precise than what can be found in his work, however, this need not be considered as an obstacle. The core insight that this proposal has in common with what Searle writes is that our attitudes can have ontological significance. I now turn to the question how these insights can be used for developing a new theory of constitutive rules.

6.3 The Semantics of Constitutive Rules: X, Y, Z, and C

The idea from which I start is that constitutive rules can best be seen as rules that forge connections between brute and institutional reality. The point of departure is, roughly speaking, the idea that Xs constitute Ys with X characterising non-institutional entities and Y institutional ones. For instance, certain pieces of paper with George Washington's face on them constitute one-dollar bills. We cannot restrict ourselves to Xs and Ys, however, because doing so would fail to do justice to the behavioural dimension of institutions. Institutions are a kind of social practices, which implies that their behavioural dimension is central to them. To be sure, X and Y can be characterisations of actions, as in the case of writing something on a piece of paper (X) and signing a contract (Y). However, this need not be so, as we just saw in the case of money. And even in the case of actions, just noting what institutional feature is imposed on an X can hardly be said to be a way of acknowledging the behavioural or practical significance of institutions. The practical import of a contract is not that it has been signed but that it entails certain rights and obligations. Similarly, the practical significance of money is that it can be used as a means of exchange. In order to account for this adequately, a third ingredient has to be introduced. I will use the symbol 'Z' for the behavioural dimension of institutions (*cf.* Ransdell 1971). Adding this third ingredient implies that the syntax of constitutive rules on my proposal will be more complex than on Searle's, as we will see in detail in the next section.

This section is devoted to what one might loosely call the semantics of constitutive rules, i.e. to the interpretation of the ingredients of the XYZ-conception of constitutive rules: X, Y, Z, and context C. On my

proposal, Y-terms are institutional terms the meaning of which can be explicated in terms of Z-terms. For instance, money (Y) is a means of exchange (Z). ‘Means of exchange’ is a behavioural term that stands for the idea that money can be used for executing market transactions. The practical significance (Z) of an institutional status (Y) is independent of context. So, money is a means of exchange everywhere. X-terms, in contrast, specify what features something has to have in order to be a Y with its concomitant behavioural dimension in a particular context. Pieces of paper with a picture of George Washington’s face on them, for instance, are money in the US. At least some of these features can be non-institutional or brute, and for the moment I will assume that all are (see below for more on this issue). In order to be of help for understanding institutions, constitutive rules should contain terms of all these three kinds. The core idea of my proposal put in linguistic terms then is that institutional terms (Y-terms) forge connections between non-institutional terms (X-terms) on the one hand and terms that characterise the practical significance of institutional phenomena (Z-terms) on the other. In order to appreciate this idea, we need to have a clearer conception of what these terms – as well as the C-term, which designates context – stand for.

6.3.1 Y-terms and Institutional Statuses

Institutional or Y-terms refer to institutional statuses. Examples are money, marriage, presidents, and property. Entities with institutional statuses can only exist in virtue of collective acceptance. More precisely, they are entities to which the Collective Acceptance Principle [CAP] applies. Hence, something is Y just if it is collectively accepted to be Y. One might fear that this characterisation is too general. Doesn’t it apply, for instance, to witches as well? Isn’t a witch a person who is collectively accepted to be a witch? This idea may be helpful as an operational definition in empirical research in anthropology, but ultimately it does not do justice to our concept of a witch. A witch is someone with supernatural powers, and such powers cannot be constituted just by collective acceptance. It is part of our concept of a witch that she has powers that have nothing to do with us. One might also fear that the characterisation is too narrow, as it seems to rule out, for instance, money in societies in which the value of money is believed to be determined directly by a god. Even in such societies, however, those entities are money that are collectively accepted as money. The fact that the members of these societies have some mistaken beliefs about money does not mean that there is a difference in ontology (Tuomela 2002b).

How can one determine whether something is an institutional status or not? This information is available to us *a priori*. It is part of concepts of particular institutional statuses that the relevant properties are only instantiated if it collectively accepted that they are. This is widely recognised, for instance, in the case of money the concept of which is commonly analysed as a generally accepted means of exchange (usually, other features such as store of value are also included, but for our purposes the simplification involved in leaving them out is harmless). Lagerspetz (1995) has proposed a test for conventionality that can also be used for recognising statuses. Since *a priori* truths are not always obvious, this test can be of value. Lagerspetz writes: ‘The critical test of the conventionality of a fact is whether an agent who knows that a belief in a fact is not generally shared in his community can still meaningfully believe in it. If not, the fact is a conventional fact.’ (Ibid., 209) At least as far as this test is concerned, conventionality and institutionality come down to the same thing. The significance of this test lies, among other things, in the fact that it serves to rule out absurdities such as ‘The earth is flat because it is collectively accepted to be flat’. The shape of the earth is investigated by astronomers, and astronomy is a science that concerns entities that are not dependent on collective acceptance.⁸⁰ Institutional statuses differ from the counter-examples discussed in that they, or at least their instantiations, are wholly up to us.⁸¹

6.3.2 Z-terms and the Practical Significance of Institutions

Y-terms can be explicated in terms of Z-terms. Whereas Y-terms can be seen as labels for institutional statuses, Z-terms characterise the behavioural dimension of such statuses. On my proposal, Z-terms refer to powers. These powers can be functions (causal powers) or deontic powers.

⁸⁰ A social constructivist might want to claim that even the shape of the earth is dependent on collective acceptance. I would want to maintain that even in the light of such constructivism a distinction between institutional phenomena and non-institutional phenomena based on collective acceptance should be upheld. The spirit of this suggestion is well expressed by Lagerspetz: ‘If all facts are ultimately “subjective”, conventional facts are doubly so.’ (1995, 209)

⁸¹ Conventional or institutional facts are often codified, and such codifications are usually part of a system of rules that are accepted in a certain society. These are among the reasons why many conventional or institutional phenomena are not quite as fleeting as the conventionality test suggests they are (note that, for the purposes of this chapter, I do not distinguish between institutions and conventions). Often, if not always, we cannot think institutional phenomena out of existence individually, even though they would cease to exist were we to stop acknowledging the underlying system as a whole. These qualifications, however, leave the gist of Lagerspetz’ test intact.

Consider some examples. Money is a functional status. Its Z-term refers to a function, i.e. means of exchange. Legal tender is a deontic status. Legal tender is (implicitly) defined by the statement 'A creditor has to accept legal tender in satisfaction of a debt'. The deontic power involved here is the obligation to accept the relevant entities in satisfaction of a debt. This characterisation of the obligation is the Z-term of legal tender. Other kinds of deontic power are permission and prohibition. Note that a full account of deontic power should also accommodate the fact that someone can have the power to do something without being permitted to do so. Jones and Sergot provide the following example: 'A departmental head may be empowered to purchase new equipment, but not be permitted to do so for equipment costing over \$ 50,000 unless he first consults the Finance Office. But his failure to consult them on a purchase of \$ 100,000 will not necessarily invalidate his purchase order.' (1997, 351) Thus, deontic powers do not map unto rights and obligations in the simple way that Searle envisages.

It will by now be apparent that I slice things differently from Searle. Searle talks about status functions, I simply use the term status. According to Searle, status functions have deontic powers associated with them. On my view, a status has one or more powers associated with it and such powers are functions, deontic powers, or combinations of these. Searle's conception of constitutive rules does not include powers or functions. Thus, he does not do full justice to the behavioural dimension of institutions, which is presumably the main reason why social scientists found it difficult to appreciate Searle's theory (Knoblauch 1996). The introduction of Z-terms will turn out to be crucial for the systematic integration of the behavioural dimension of institutions in the theory of constitutive rules.

6.3.3 X-terms and Constitution Bases of Institutional Statuses

Having discussed Y-terms and Z-terms, I now turn to a discussion of X-terms. The rough idea with which we started was that Xs constitute Ys. In line with this, X-terms characterise the constitution base of institutional statuses. Such constitution bases can often be characterised largely in non-institutional terms. Consider the example of money used earlier. The constitution base of one-dollar bills, for instance, consists of pieces of paper with George Washington's face on them. This is of course a simplified example. A full specification of the features of one-dollar bills would include details about, among other things, the kind of paper and the kind of ink used, as well as the watermark. These examples suggest

that the X-term only contains brute or non-institutional predicates, i.e. predicates to which the Collective Acceptance Principle [CAP] does not apply. This will not always be the case (perhaps there are no cases for which this holds). Today, the Federal Reserve issues all US currency. This means that a piece of paper is only a one-dollar bill if the Federal Reserve has issued it. This condition is also amongst the X-conditions, as one might call the conjuncts of an X-term. Since the Federal Reserve is an institution in itself, one of the X-conditions for the Y-status of a one-dollar bill is institutional rather than brute.⁸² As this example shows, constitution bases of institutional statuses can be very complex indeed. Often, a long list of conditions has to be satisfied in order for something to have a certain status. Thus, X-terms are almost bound to be conjunctive predicates.

X-terms can also be disjunctive predicates. Again, the example of money can be used to illustrate this. There are currently eleven different designs of UK one-pound coins in circulation. The specification of the constitution base of the one-pound coin, then, will be a disjunction of all these different designs. By allowing the X-term to be a disjunctive predicate, the framework offered accommodates multiple realizability. As is well known, multiple realizability is a widespread phenomenon in institutional reality. Note that not all features that something with a certain institutional status in fact has should be included in the X-term. Only features that are necessary for having that status in the context at issue should go into it. Even if all actual instances of a status have a certain feature, this does not mean that it is an X-condition. Take, for instance, the often-used example of chess. The fact that chess pieces have a certain physical appearance is not essential to them. We could have chess pieces that look completely different from the way they actually do. In contrast to its starting position on the checkerboard, the appearance of a king is completely arbitrary. It is a matter of convenience, rather than an essential feature of instances of the status. One could say that it is merely

⁸² The example implies that X-conditions can be historical (cf. Smith and Searle 2003, 305): the Federal Reserve has to have issued a one-dollar bill in order for the relevant object really to be a one-dollar bill. Similarly, in order to be married, one has to have gone through a certain procedure or ceremony. In line with this, the conditions for having a certain status and for acquiring it often coincide. Allowing the X-conditions to be historical goes some way to addressing Smith's (2003, 19) criticism that in spite of his counts-as formula, which suggests that statuses are always physically realised, Searle is committed to what he calls 'free-standing Y terms', which are terms the referents of which have no physical realisation. On the view defended here, the physical basis of a promise and the concomitant obligation to do as promised can include sounds that have already ceased to exist.

conventional. Features that are merely conventional in this sense should not go into the X-term.

6.3.4 C-terms, Collectives and Constitution

What X-conditions are relevant to a particular status is often, if not always, relative to a context C. The conditions that have to be met, for instance, for a couple to be married differ from country to country. Similarly, the conditions for being a medical doctor vary widely between different contexts. This means that multiple realizability occurs at two levels in institutional reality. First, as we saw above, statuses can have multiple kinds of instantiations within a context. Second, the realization of a status can vary between contexts. Money is an example of a status that is multiply realizable at both levels. It is in fact multiply realized at the level of particular countries as well as at the international level. Context C can be specified in different ways. It is often specified in a rough and ready way in terms of countries, as we have seen with respect to the example of money. In the case of chess, the context could be specified as 'Within a game of chess'. Independently of a game, movements of chess pieces do not have the same significance as within the context of a game. They could just be made in order to create a configuration for displaying a checkerboard.

What I want to suggest is that, when it comes to characterising the context, a central issue is the group of people relative to whom the X-conditions are in force. There is, for instance, an intimate relationship between a country and its citizens. Similarly, whether or not a game is being played depends on the participants. A context-specification should make clear which group of people who collectively accept that Xs are Ys. The context-specification does not need to be couched in such terms directly, but it should be possible to reconstruct which group is concerned from the specification that is provided. In order for this idea to work, some complex issues have to be resolved. Sometimes, for instance, institutional statuses apply to people who are completely unaware of them (people can, for instance, have rights to subsidies or benefits that they do not know of). It is a task of the theory of collective acceptance to resolve such issues (see Tuomela 1995 and 2002a for a theory that resolves many of them).

Context C plays a crucial role when it comes to the constitution of Ys. Searle has not offered a theory of constitution, which means that his theory of constitutive rules is incomplete. Using Baker's (2000) theory of constitution as a source of inspiration, we can say that a necessary

condition for an entity to constitute another entity is that it occurs in favourable circumstances for being an entity of that kind. These circumstances are ‘states of affairs in virtue of which something is the kind of thing that it is’ (ibid., 41). Context C can play a role similar to that played by favourable circumstances in Baker’s theory as far as institutional statuses are concerned. So, the core idea when it comes to the constitution of an entity to which a constitutive rule applies is this: an entity that is X constitutes an entity that is Y when it occurs in context C.

As was noted earlier, many if not all institutions are interrelated. Such interrelationships can be apparent from the X-term or context C. This complicates the relation between the institutional and the non-institutional or brute level. The simple picture would be that an institutional entity is constituted by a non-institutional entity. This is what Searle seems to have in mind most of the time (1969, 50-53 and 1995, 34-35). The fact that many, if not all, institutions are interdependent means that this simple picture has to be adjusted. Given such interrelationships, an institutional entity is not (always) constituted by a non-institutional entity directly. If one wants to conceive of one of the relata of the constitution relation as non-institutional, one had better consider the institutional level as a whole (or a subset thereof).⁸³ Such relations between levels rather than individual entities are familiar from other areas (see, for instance, Lewis 1983b). Thus, acknowledging interrelationships between institutions does not stand in the way of the idea that constitutive rules forge connections between brute and institutional reality.⁸⁴

6.4 The Syntax of Constitutive Rules: The XYZ-schema

How do all these ingredients fit together? Their interrelationships are given by what I suggest calling the XYZ-schema. The XYZ-schema provides the syntax for the constitutive rule as conceived here in a similar

⁸³ Supervenience may in fact be more adequate a notion than constitution when it comes to relations between levels. When the institutional level is considered as a whole, it does not seem possible anymore to separate contexts or favourable circumstances from institutional statuses, because contexts are often (partially) institutional themselves. The constitution relation as conceptualised here requires such a separation.

⁸⁴ Institutions can also be related to each other in another way. As Searle notes, one status can be imposed on another (1995, 125). In terms of constitution, this means that an entity with an institutional status can itself be the constitution base of an entity with another institutional status. For instance, certain kinds of money are legal tender (whereas all US coins and currency are legal tender, in parts of the UK – in particular Scotland and Northern Ireland – only one and two pound coins are legal tender for unlimited amounts). Thus, the relation of constitution can be iterated.

way as the locution ‘X counts as Y in C’ provides the syntax for Searle’s notion of a constitutive rule. It is a schema, which means there can be an endless variety of different instantiations. X, Y, Z, and C are schematic letters that should be replaced by particular predicates for each instantiation. Together, the syntax presented here and the semantics presented earlier form the XYZ-conception of constitutive rules.

Constitutive rules, on the current proposal, consist of two rules, a status rule and a constitution rule.⁸⁵ Status rules are definitions of institutional terms (at the conceptual level, they are analyses of institutional concepts).⁸⁶ Their structure or syntax is: Y is Z. Given that the Z-term refers to the behavioural dimension of a status, status rules explicate the meaning of status terms in terms of the practical significance of having the status concerned. Recall that the Z-term stands for one or more functions or deontic powers. The significance of something’s being money, for instance, is that it can be used as a means of exchange. In addition to status rules, constitutive rules consist of constitution rules on the proposal defended here. Constitution rules specify the constitution base of an institutional status. Constitution bases are always relative to a context, and constitution rules include a specification of that context. Their syntax is: In C, X is Y. More intuitively, constitution rules specify what it takes to have a certain status in a certain context.

These ideas can be made more precise. I will use χ as a variable for the domain over which the predicates range. This can, for example, be the domain of objects, persons, or events. Status rules express conceptual truths, i.e. *a priori* necessities. Constitution rules only apply if they are collectively accepted to apply. They express contingent truths. Putting these things together, the XYZ-schema is this:

$$[S] \square (\chi) (Y\chi \leftrightarrow Z\chi)$$

$$[C] (\chi) ((X\chi \wedge C\chi) \rightarrow Y\chi)$$

⁸⁵ Conte (1988) argues that there are different kinds of constitutive rules. I agree with him that an undifferentiated conception of constitutive rules fails to do justice to the phenomena to which such rules apply. An important respect in which my proposal differs from his is that I take the two kinds of rules that I distinguish to be part of one constitutive rule. The way in which they relate to one another is discussed below.

⁸⁶ Rules are plausibly conceived of as abstract objects. However, abstract objects cannot be definitions. Several of the claims about rules made in the main text should not be taken literally (this holds also for the claims that constitutive rules express sentences or conceptual truths, as abstract objects do not do such things). I use the formulations in the main text because writing in such a way as to do full justice to the notion of a rule would result in a very unnatural use of language.

[S] is the (schema for the) status rule, and [C] (for) the constitution rule. Relying on the Collective Acceptance Principle, the role collective acceptance plays with respect to the constitution rule can be represented as follows:

$$\square [(\chi) ((X\chi \wedge C\chi) \rightarrow Y\chi)] \leftrightarrow CA((\chi) ((X\chi \wedge C'\chi) \rightarrow Y\chi))]$$

The content of collective acceptance as specified on the right-hand side of this bi-conditional is almost the same as its left-hand side. The only difference relates to the specification of the context. As we saw earlier, collective acceptance and the context are interrelated. Collective acceptance is always relative to a group. This relativity to a group is implicit in the C-term. The C'-term on the right-hand side can be seen as the context C minus the group-relativity, because that has already been accommodated by the collective acceptance operator. This complication was not clear from the Collective Acceptance Principle as formulated originally, because earlier on I abstracted from context. The upshot of this application of the principle is that a constitution rule applies just if it is collectively accepted to apply. This means that in order to be able to derive the existence of a certain institutional status, one has to presuppose the collective acceptance of a constitution rule.

The introduction of the variable χ directs our attention to the fact that institutional phenomena encompass entities of a great variety of ontological categories. In addition to actions, statuses can be imposed on items from ontological categories as diverse as objects, persons, events, and relations. A one-dollar bill is an object, being a president is a role filled by a person, a declaration of war is an event, and a marriage is a relation. So, in spite of the fact that behaviour is of course of central importance to institutions, many institutional statuses are imposed on items other than actions. Their behavioural significance is then explicated in terms of a Z-term. Functions can be imposed on objects and events. Concomitant rights and obligations can, for instance, be carried by the person who owns or is responsible for an institutional object. The structure of the analysis is the same both in the case of actions and in the case of items from other ontological categories. The XYZ-schema applies equally to actions, objects, persons, events, and relations.

A remaining question that needs to be answered is why a constitutive rule is a rule. Searle has not said anything about this, and I will try to remedy this situation. Rules are normative constraints (Pettit 1996). Two central characteristics of rules are their normativity and generality. Rules ground a distinction between what is correct and

incorrect. They are general in the sense that they apply to more than one thing, for instance to situation types rather than just to one particular situation. Both status rules and constitution rules, the two components of constitutive rules, have the two features that are characteristic of rules. Their generality comes out in the fact that their logical form is that of a universal generalization. Status rules and constitution rules also ground a distinction between correct and incorrect. In both cases, this pertains to the use of Y-terms. Consider constitution rules. Within context C, entities that are not X are not Y, so it would be mistaken to apply a Y-term to them (recall that X can be a disjunctive predicate). Conversely, it is, of course, correct to apply Y-terms to entities that occur in context C and that are X. Something similar applies to status rules. Status rules are definitions and provide a basis for a distinction between correct and incorrect in that capacity. Their content provides an analysis of the meaning of Y-terms, which implies that it is incorrect to apply a Y-term to something that does not satisfy the analysis. As we will see in the next section, status rules are not only rules in the fairly technical sense discussed here. They also fit the common sense conception of rules.

6.5 The Contrast with Regulative Rules

The XYZ-conception of constitutive rules presented in the preceding sections can be used to address two issues that are of central importance to Searle's theory. The first is the distinction between regulative and constitutive rules. Searle used the contrast to introduce the notion of a constitutive rule. As we will see shortly, the distinction is not very clear in his work. The XYZ-conception provides the basis for a clear understanding of the contrast (this section). The second issue is the relation between constitutive rules and institutions. Searle regards institutions as (systems of) constitutive rules. According to the XYZ-conception, however, institutions should not be identified with (systems of) constitutive rules. The alternative conception that will be offered is more congenial to theories of institutions that are dominant in philosophy and the social sciences (section 6.6).

As we saw in section 6.1, an important ingredient of Searle's characterisation of constitutive rules was the contrast with regulative rules. It is not fully clear, however, how Searle conceived of the relation between constitutive and regulative rules. Some of the things he wrote suggest that constitutive rules are a kind of rules that is distinct from regulative rules. The syntax Searle uses for characterising the notion of a

constitutive rule, for instance, is completely different from that of a regulative rule. Other things can be taken to suggest that constitutive rules are a special kind of regulative rule. Several philosophers have read Searle in this way (see Raz 1975, and Miller 2001). Evidence for this interpretation might be that Searle writes that constitutive rules do not merely regulate (1969, 33). This presupposes that, just as regulative rules, constitutive rules do regulate. The XYZ-conception of constitutive rules provides the basis for a clear conception of the relation between regulative and constitutive rules.⁸⁷

Let me start by commenting on the notion of a regulative rule. This notion can be elucidated with the help of what I call the MAC-model. The MAC-model has three ingredients: modality (M), action (A), and context (C). Paradigmatic modalities are the deontic modalities of permission, prohibition, and obligation. Regulative rules with such modalities state that actions of a certain type are permitted, forbidden or required in a certain context. Consider the following example: if one is the first to occupy a piece of land, one has the right to its exclusive use. This is a regulative rule with permission as its (main) modality (that the person concerned has the right to *exclusive* use implies that prohibition is involved as well). The action-type is the exclusive use of land. And the context is a situation in which you are the first to occupy a piece of land. The syntax of this rule in terms of the three ingredients of the MAC-model is this: If C, then MA. I suggest calling this the MAC-schema. It is characteristic for regulative rules, although such rules sometimes leave the context implicit, as we will see below. The MAC-model can be seen as an explication of our common sense conception of rules.⁸⁸

The MAC-schema can be used for determining how constitutive rules as they have been conceived of in this chapter relate to regulative rules. Since constitutive rules consist of two parts on the XYZ-conception of them, this question can be broken down in two parts. Constitution rules do not fit the MAC-schema. Such rules state that within some context entities with certain characteristics have a particular institutional status. They do not regulate actions. Even if the X and Y-terms predicate actions, such a constitution rule does not contain a modality that qualifies the institutional action. Hence, constitution rules are not regulative rules.

⁸⁷ Given that the conception of the relation between regulative and constitutive rules presented here is more precise than Searle's, it will be of use for evaluating the criticisms that have been voiced against the distinction (e.g. Giddens 1984, Raz 1975, and Ruben 1997). However, such an evaluation will have to wait for another occasion.

⁸⁸ As Raimo Tuomela pointed out to me, the MAC-model should allow for alternatives to the MAC-schema. For instance, the context C could also be internal to the modality: M (A given C).

What about status rules? They do contain such a modality. The Z-term can concern deontic powers, which implies that the modality is obligation, permission, or prohibition. In the case of functions, the modality is that of possibility. Money, for instance, can be used in exchange processes. These modalities qualify types of actions. So, the second ingredient of the MAC-model is present in status rules as well. The context is left implicit, but the MAC-model allows for that. Even though no context is mentioned in status rules, the context is given by both the X-conditions and context C as specified by the applicable constitution rule. In sum, status rules fit the MAC-schema whereas constitution rules do not. Hence, (only) status rules are regulative rules.

The upshot is that one of the component parts of constitutive rules is a regulative rule. This insight can help us to further our understanding of constitution rules (or Searlean constitutive rules). Constitution rules link the satisfaction of certain conditions to the applicability of an institutional term. This is a matter of classification rather than regulation. It has been argued that Searlean constitutive rules regulate our classificatory practices. This argument was based on a reading of the ‘counts as’ phrase as an implicit imperative. Garcia (1987) claims that constitutive rules as formulated by Searle can be reconstructed as commands to count an X as a Y (cf. Miller 2001, 42). Searle (1969, 34), however, claims that constitutive rules, or at least some of them, are non-imperative rules. In line with this and with Searle’s later writings, the ‘counts as’ phrase has been rendered differently in this chapter. On this proposal, there is no hidden imperative. This is not to deny, however, that there could be regulative rules pertaining to our classificatory practices. They could also be important to our institutional practices (Tuomela 2002a, 172-73). If there are such rules, regulative rules can play a role with respect to our use of institutional terms. This does nothing, however, to undermine the claim that constitution rules are not regulative rules.

All this means that classification rather than regulation is central to constitution rules. As said, constitution rules link the satisfaction of certain conditions to the applicability of an institutional term. This can be very convenient, because X-conditions can be very complex. Once the X-conditions that something has to meet in order to have a certain status have been specified, the Y-term can be used to signal that all those conditions have indeed been met. Thus, constitution rules are convenient in complex environments. In line with this, Ransdell (1971, 390) claims that the functions of Y-terms are ‘mnemonic and practical’. Constitution rules also facilitate institutional change. A status with all its concomitant functions and deontic powers can remain the same while the conditions

something has to meet in order to instantiate that status can change. This feature is very important for our legal practices. The use of status terms can thus reduce the extent to which a legal system has to be adapted if one wants to implement a change.⁸⁹

Note that the classificatory role of constitution rules fits well with one of the few general statements Searle makes about rules. Not all rules have penalties (Searle 1969, 41). Searle adds that ‘it is not easy to see how one could even violate the rule as to what constitutes checkmate in chess, or touchdown in football’ (ibid.). This claim can now be strengthened. Constitution rules cannot be violated at all; they can at most be misapplied (see also Bach and Harnish 1979, 122). One can misapply a Y-term to something that fails to meet the X-conditions operative in the relevant context. One cannot violate a constitution rule, however, because such rules do not contain modalities that qualify institutional behaviour.

6.6 Institutions

The next issue that is to be addressed is what the XYZ-conception of constitutive rules implies with respect to institutions. Searle regards institutions as (systems of) constitutive rules. On his view, then, (systems of) constitutive rules are necessary and sufficient conditions for the existence of institutions. Such a conception of constitutive rules and institutions is, or at least seems to be, at odds with the dominant view of institutions, according to which they are a kind of regulative rule. The kinds of rules that for instance Lewis (1969) and North (1990) have in mind fit the MAC-model, which means they are regulative rules (see chapter 7 for a discussion of Lewis’ views). If a theory of constitutive rules is indeed at odds with the dominant view of institutions, an argument would be needed why a conception of institutions based on the notion of a constitutive rule is to be preferred. I will argue, however, that the XYZ-conception of constitutive rules implies a different picture of the relation

⁸⁹ Since the use of status terms is optional, the use of constitutive rules is optional as well at least in as far as the design of a legal system is concerned. Lewis (1983a) already noted that we could choose to formulate a system of rules in terms of regulative rules only or in terms of a combination of constitutive and regulative rules. The latter is usually more convenient. Status terms can be seen as summary terms for the satisfaction of a list of conditions. Without the use of such terms, the antecedents of the regulative rules would have to spell out all those conditions, which makes them very cumbersome to handle. Note that none of this implies that the phenomena to which status terms refer are not real (cf. Lewis 1983b on this issue in relation to theoretical terms).

between such rules and institutions than that offered by Searle. On the view to be defended, an appeal to the notion of a constitutive rule is perfectly compatible with the dominant view of institutions.

Given the XYZ-conception of constitutive rules, the claim that institutions are (systems) of constitutive rules is too strong. I suggest focusing first on constitution rules or Searlean constitutive rules, since this was the basis for Searle's claim. It seems implausible to regard issues of classification as essential to institutions. This suggests that it is implausible to regard the acceptance of a constitution rule as a necessary condition for the existence of an institution. It is social practices rather than classificatory practices that are central to institutions (which is not to deny that classificatory or linguistic practices more generally can be institutional phenomena). Instead, I suggest that (collectively accepting) a constitution rule is a sufficient condition for an institution (if an institution cannot exist independently of others, a system of institutions has to be presupposed). This claim can be supported by saying more about the relation between constitutive and regulative rules, given that, as we just saw, institutions are often regarded as a particular kind of regulative rule.

As I argue at greater length in chapter 7, constitutive rules can be seen as transformations of regulative rules. Consider the example given earlier: if one is the first to occupy a piece of land, one has the right to its exclusive use. This is a regulative rule that can be transformed into a constitutive rule by introducing a status or Y-term. The exclusive right of use of a particular object is closely associated with our institution of property. It cannot be identified with it, for one thing because an owner can grant the exclusive right to use the object to someone else. In order to keep the example simple, however, I suggest refraining from introducing further complexities and using the starred term 'property*' for the practice characterised by the rule mentioned instead. The transformation of this regulative rule into a constitutive rule is a two-step process. The first step consists of dividing the regulative rule in two parts by separating the antecedent and the consequent. The antecedent is the incomplete sentence 'If one is the first to occupy a piece of land', and the consequent is the sentence 'One has the right to its exclusive use'. The second step of the transformation is a matter of introducing the term 'property*' in both parts. This term is used to turn the antecedent into a complete sentence: A piece of land is the property* of that person who is the first to occupy it. The second part is changed into the following sentence: If a piece of land is someone's property*, she has the right to its exclusive use.

What exactly has been achieved in this process of transformation? We started out with a regulative rule that did not contain any institutional terms. The crux of the transformation was the introduction of the institutional term 'property*'. Using this term, the regulative rule was transformed into two rules. The first is a matter of classification. What is the criterion for classifying a piece of land as someone's property*? According to the first rule that results from the transformation this is which person was the first to occupy it. Given the connection between classification and constitution rules discussed earlier, we can now see that this rule is the constitution rule of property*. The second rule that was formulated is the status rule of property*. According to this rule, the right to exclusive use is the defining feature of property*. This second rule explicates the practical significance of the status of being someone's property*. Combined, these two rules form the constitutive rule of property*.

The claim that constitutive rules are transformations of regulative rules fits well with the claim defended earlier that status rules are regulative rules. The antecedent of our guiding example of a regulative rule can be seen as a specification of the context. The status rule, however, is constructed from the consequent. Hence, it can be seen as a regulative rule without an explicit context-specification. It is a context-invariant definition of land ownership. The context is implicitly referred to, however, because of the introduction of the term 'property*'. This term also occurs in the constitution rule. Given that this rule was constructed from the antecedent, it can be seen as a specification of the context. In the context at issue, the rule for land ownership is a kind of first-come first-serve rule. Thus, constitutive rules contain all ingredients of the MAC-model of regulative rules. In the case of this example, the ingredients can be nicely separated. The Z-term of the status rule discussed is 'the right to exclusive use', and it contains a modality (M) and an action-type (A). As said, the constitution rule can be seen as specifications of the context (C).⁹⁰

Now, if constitutive rules are indeed transformations of regulative rules, constitutive rules should not be identified with institutions. The transformation is a logical or linguistic one and such matters are not necessary to institutions. This means that the XYZ-conception of

⁹⁰ Constitution rules allow for very complex specifications of context, because they themselves include a context. Recall that constitution rules include both an X-term and a C-term. This C-term is different from the context specified in a regulative rule. In the case of our example, being the first occupant of a piece of land would be the X-term. This can then be made relative to, for instance, a country in which this first-come first-serve rule applies.

constitutive rules is not in competition with the view that institutions are regulative rules. Constitutive rules themselves can be seen as a kind of regulative rules in virtue of the fact that one of the component parts is a regulative rule. Accepting a constitutive rule adds a linguistic and a concomitant conceptual dimension to an institution. As institutional terms and concepts are very important to our actual linguistic and conceptual framework, it is important to recognise that collectively accepting a constitutive rule is a sufficient condition for the existence of an institution. However, it should not be regarded as a necessary condition. Collectively accepting certain kinds of regulative rules is sufficient as well. This means that an appeal to the notion of a constitutive rule is perfectly compatible with the dominant view of institutions.

What does this imply with respect to Searle's claim that constitutive rules create and define (the possibility) of institutional forms of behaviour? Even though the preceding might be regarded as a challenge to this claim, it is in fact consistent with it. The XYZ-conception of constitutive rules can be used to interpret the claim in a precise way. Collective acceptance of a constitution rule creates the possibility of institutional forms of behaviour characterised by or related to the Y term. For instance, collective acceptance of the marriage laws in a particular context enables one to get married in that context. Constitution rules, however, do not define institutional forms of behaviour. Such definitions are provided by status rules instead. So, rather than Searlean constitutive rules, it is status rules, such as 'Money is a means of exchange', that are definitive of institutional behaviour. All in all, the XYZ-conception of constitutive rules accommodates both aspects of Searle's claim.⁹¹

There are cases in which both status rules and constitution rules should play a role in the definition of a status term. One kind of case is that in which the status term used is specific to a particular context. Whereas money, for instance, is a general status that can be instantiated

⁹¹ Searle has recently changed his views on (Searlean) constitutive rules (or constitution rules). He now holds that it is a useful mnemonic device that 'is not intended as a definition of social objects or even of institutional facts' and he claims that it is 'no longer essential to the analysis' (Smith and Searle 2003, 301; emphasis in original). As will be clear from the main text, I acknowledge the mnemonic use of constitution rules. At the same time, however, I stick to the claim that things really can be Y only if they meet the appropriate conditions, and I do regard constitution rules as essential to the analysis of many institutional phenomena. Rather than letting go of the notion, I develop it in order to overcome some of the shortcomings of the initial proposal. Crucial to this endeavour is the suggestion that, at least in many cases, constitution rules should indeed not be regarded as definitions, but rather as specifications of the constitution base of institutional items. Status rules are definitions instead.

anywhere, the status of a US one-dollar bill is specific to one particular context. The features of US one-dollar bills are also definitive of them. Similarly, the definition of status terms that refer to statuses with no contextual variation should also include the content of constitution rules. The game of chess might be a suitable approximation for this case. A game in which a piece called 'king' starts at a2 simply would not be chess. Thus, the features mentioned in the constitution rules for chess pieces – notably their starting position on the checkerboard – are necessary features of chess. It is the necessity of constitution rules such as these that explains why they are part of the definition of status terms.

As we have seen, the XYZ-conception of constitutive rules differs in many respects from Searle's conception of them. There is much continuity as well, and several of the suggestions made can be seen as developments rather than criticisms of Searle's views. One might, however, wonder whether the main claim made in this section – that constitutive rules are not required for institutional phenomena – presents a major departure from Searle's approach. In a sense, this is correct. Searle holds that constitutive rules are required for behaviour that is new or qualitatively different from non-institutional behaviour. I agree with this to the extent that without such rules we do not conceptualise our behaviour in ways we do with them (in chapter 7 I argue that this also makes a cognitive difference). At the same time, however, I hold that the same patterns of behaviour can be generated by accepting and acting on regulative rather than constitutive rules. Such kinds of behaviour are also institutional.

Even though there is this difference from Searle, my approach is in line with other things he says in his more recent work. Searle writes, for instance, that '[w]hat we think of as social *objects*, such as governments, money, and universities, are in fact just placeholders for patterns of *activities*' (1995, 57; emphasis in original). This is one of the places in which Searle emphasises the importance of behaviour in relation to institutional entities other than actions. A focus on patterns of activities fits well with the approach to institutions defended in this chapter. The conceptual dimension is emphasised throughout as well, but it was recognized that institutional behaviour could also be conceptualised in terms of regulative rules. As was noted earlier, Searle has not succeeded very well in accommodating the behavioural dimension of institutions in his conception of constitutive rules. This dimension is done more justice by allowing for cases in which institutions exist in virtue of our acceptance of regulative rules. At the same time, we have seen that a conception of constitutive rules can be constructed that accommodates

the behavioural dimension in a suitable way. By complementing constitution or Searlean constitutive rules with status rules, the behavioural dimension of institutions has been integrated systematically in the notion of a constitutive rule.

6.7 Conclusion

The key contribution of this chapter is the presentation of the XYZ-conception of constitutive rules. The idea from which I started was that constitutive rules forge connections between non-institutional and institutional reality. The XYZ-schema presented in section 6.4 develops this idea in a detailed manner. As we saw in section 6.3, X-terms stand (mostly) for non-institutional reality and designate the constitution bases of institutional statuses that are referred to by Y-terms. Z-terms, which refer to powers, explicate the practical significance of those institutional statuses. By adding Z-terms as a third ingredient of constitutive rules one of the main defects of Searle's theory has been resolved: the behavioural dimension of institutions has now been incorporated systematically in the notion of a constitutive rule. More generally, the XYZ-conception provides a picture of how the behavioural, the normative and the conceptual dimensions of many institutions relate to one another.

The theory of constitutive rules has also been developed in other respects. The phrase 'counts as', for instance, has been interpreted in terms of the Collective Acceptance Principle, which in turn sheds light on the ontological basis of institutional phenomena. It was noted that such phenomena encompass items from a variety of ontological categories, including actions, objects, persons, and events. Status rules provide definitions of status terms that refer to such phenomena. Constitution rules explicate their constitution bases, or – in linguistic terms, they specify the conditions that have to be satisfied in order for something to have a certain status. It has been argued that status rules are regulative rules, an insight that helped to clarify the relation between constitutive rules and regulative rules. Finally, we have seen that, *pace* Searle, appealing to the notion of a constitutive rule in relation to institutions does not need to imply a conflict with the dominant view of institutions on which they are a kind of regulative rule. The XYZ-conception of constitutive rules is in fact perfectly compatible with this view of institutions.

7 INSTITUTIONS, PRACTICES & CONSTITUTIVE RULES

7.1. Introduction

Property, presidents, and promises are prominent examples of institutional phenomena. Institutions such as those involved in these examples play an important role in our lives. In particular, they structure our behaviour. In line with this, institutions are often regarded as regularities in behaviour. Driving on the same side of the road – be it on the right or the left hand side – is an example in which this feature is particularly salient. Many social scientists and philosophers alike believe that institutions are rules. The institution of property, for example, can be explicated in terms of rules of property, in particular in terms of rules that specify the behaviour that is characteristic of this institution. Now, as long as these rules are rules for action – akin to, for instance, traffic regulations – this idea is perfectly compatible with (most instances of) the view that institutions are regularities in behaviour. According to this approach, institutions are a kind of practices. Hence, I will label this ‘the practice conception of institutions’ (PC for short).

What I call ‘the constitution view of institutions’ (CV) is a completely different approach, at least at first sight. The claim that institutions exist only because we believe they exist plays a prominent role here. Our beliefs are thought to play a constitutive role with respect to institutional actions. The CV, however, is not restricted to actions. In addition to a perspective on institutional actions, it provides a conception of institutional items from other ontological categories – including objects, persons, and events. Rules also play an important role in the constitution view. However, these rules need not be rules for action. They can be uniformities that have little to do with behaviour, such as ‘Certain pieces of paper count as money in the United States’.

Rules play a prominent role in both the PC and the CV. Simplifying somewhat the PC identifies institutions with regulative rules, whereas the CV identifies institutions with constitutive rules. As the distinction between these kinds of rules is drawn traditionally, regulative rules structure behaviour and constitutive rules confer an institutional character or status on it (or on items from another ontological category). Thus, the rules are of a fundamentally different kind. If this is true, theories that identify institutions with one kind of rule are inconsistent with theories that identify them with the other kind. In this chapter, I use David Lewis' theory of conventions as a representative of the practice conception of institutions and John Searle's theory of institutions as a representative of the constitution view of institutions. These theories do indeed have little in common, or so it seems.

The main argument of this chapter, however, is that, in spite of appearances, the PC and the CV are perfectly compatible. The crucial premise of this argument is what I call the transformation view of constitutive rules (TV). According to this view, constitutive rules are transformations of regulative rules. More precisely, they are transformations of simple regulative rules that are themselves complex regulative rules. This idea needs of course to be spelled out in more detail, as is done in section 7.3. In that section, it is also argued that the PC and the CV are not only consistent with one another but that the CV has virtues that the PC does not have. The CV helps us to explain the pragmatic value of institutional terms. Furthermore, it serves to do justice to the conceptual framework with which we in fact operate. Crucially, the CV enables us to appreciate several ontological features of institutions – including their multiple realizability and constitution as the relation between non-institutional and institutional phenomena. Before these arguments can be presented, however, the practice conception and the constitution view of institutions need to be introduced.

7.2 Two Conceptions of Institutions

7.2.1 The Practice Conception

Institutions as regularities or rules. Institutions are often regarded as regularities in behaviour. On such a view, the institution of land ownership, for instance, corresponds to certain patterns of land use – on a somewhat simplified view, with exclusive use of land by particular agents. Some would identify that institution with such patterns or practices.

Alternatively, institutions can be seen as rules. It might be a rule that whomever is the first to occupy a piece of land has the right to its exclusive use. A close cousin of the institution of property, to be labelled 'property*', can be identified with (a part of) such rules. There is an intimate and obvious relationship between (many) theories that take institutions to be regularities and those that regard them as rules: if agents behave according to rules, regularities in behaviour ensue.

Theories of both kinds fall under what I propose to call 'the practice conception of institutions' (PC for short). Even though the argument of this chapter encompasses those views that identify institutions with regularities rather than rules, I will write as if according to PC institutions are rules. This simplification is harmless, given the described relationship between rules and regularities that is accepted by many social scientists and philosophers alike. Thus, it is fair to say that according to PC institutions can be identified with or reconstructed as regulative rules.⁹²

Regulative rules. Regulative rules are rules for action. Not all rules pertain to actions, at least not directly (Black 1962). Consider for instance the rule 'Like poles repel, unlike poles attract'. This is a description that is either true or false. It does not prescribe any action. Nevertheless, it is a rule of sorts. Regulative rules are intimately related to actions. We can get the relation between regulative rules and actions into focus by considering what I call the MAC-model of rules. The three letters of 'MAC' represent the three ingredients of regulative rules: modality, action, and context.

Each specification of a regulative rule includes a type of action such as 'land use'. In addition to this, it contains a modality. Paradigmatic modalities are the deontic modalities of permission, prohibition, and requirement. The use of a certain piece of land might, for instance, be permitted or forbidden. Regulative rules typically relate types of actions under a certain modality to a type of context. Sometimes the context is left implicit. An important and common ingredient of the context of a regulative rule is a specification of the type of agents to which it applies. In the case of property*, land use is forbidden to those who are not the first to occupy the piece of land at issue.

⁹² There might be theories according to which institutions are regularities in behaviour that cannot be reconstructed in terms of regulative rules. Such theories are not considered here. It is a matter of philosophical importance, whether institutions are to be identified with rules or regularities, but in most cases there does not seem to be a deep conflict between the two views. On both views, social practices are essential to institutions. The differences between these views are not important for our current purposes. Note that many theories of institutions accommodate both rules and regularities in behaviour, as Mäki (1993, 13) urges they should.

The MAC-model is not restricted to the modalities mentioned. It also encompasses, for instance, rationality and even mere possibility. In a particular type of context, it may, for instance, be rational to drive on the right hand side of the road. The statement that makes this explicit is a formulation of a rule that falls under the MAC-model. Similarly, the statement 'Shells can be used as a means of exchange' is an example of a regulative rule. The modality involved is that of possibility. By allowing for these modalities, I may be stretching the notion of a rule beyond its common sense usage. This is no problem, however, as 'regulative rule' is a technical term. Thus far, its meaning has not been made very precise (cf. Searle 1969). The proposal made here fits with what others have said earlier and should prove itself in terms of its usefulness.⁹³

Rules are often formulated as conditionals. Usually, the antecedent of a regulative rule contains the context-specification, whereas the modality and the action-type occur in the consequent. The schema that is characteristic for regulative rules, then, is 'If C, then MA'. This is what I call the MAC-schema. Our guiding example can be made to fit this schema: If you are the first to occupy a piece of land, you have the right to use it exclusively.⁹⁴

Lewis as a representative of the PC. In order to substantiate the claim that PC-theories in effect take institutions to be regulative rules, we need an example to work with. Lewis' (1969) theory of conventions will figure as the exemplar of PC. Thus, I need to argue that, on his view, conventions are or can at least be seen as regulative rules. Before I turn to that issue, let me comment on why I single out Lewis' theory. One reason for this is that this theory has been very influential. As such, it is representative of a whole range of theories within PC. Another reason is that it is a relatively clear and transparent theory that has been developed in detail. This means we will encounter few problems of interpretation.⁹⁵

⁹³ Raimo Tuomela suggested to me that rationality might be subsumed under the deontic modalities. One could indeed argue that an action's being rational implies that one ought to perform it, perhaps conditional on a desire to be rational.

⁹⁴ As Raimo Tuomela pointed out to me, the MAC-model should allow for alternatives to the MAC-schema. For instance, the context C could also be internal to the modality: M (A given C).

⁹⁵ Ullmann-Margalit (1977), Schotter (1981), Sugden (1986), Gilbert (1989), Young (1998), and Miller (2001) are directly influenced by Lewis (1969), which was itself strongly influenced by ideas from Thomas Schelling. Aoki (2000) discusses conceptions of institutions in relation to game theory. On one of these, institutions are the outcome of games. This conception fits well with the practice conception of institutions (a regularity in behaviour can be seen as an outcome of a game). Note that Lewis (1969) is

A drawback of this choice is that Lewis' is a theory of conventions rather than institutions.⁹⁶ One could argue that institutions have a normative dimension, whereas this does not need to hold for a convention (Miller 2001). This does not, however, decrease the usefulness of Lewis' theory in relation to the argument of this chapter, because a normative dimension can be included in that analysis without altering the theory in a way that affects any of the points to be made (in fact, Lewis argues that conventions are such that we believe one ought to conform to them, which makes them a species of norms; 1969, 97-100). We can then say that conventions with such a normative dimension are institutions. The significance of this point should not be overstated, as many theories of conventions portray them as intrinsically normative.

Lewis regards conventions as mutually beneficial solutions to coordination problems. Roughly, a coordination problem is a situation in which agents can choose between alternative actions, in which the outcome for one agent depends on the actions of the other agents, and in which the interests of the agents coincide, at least to a great extent. A convention is a solution to such a problem: it is a matter of the members of a certain population behaving in the same way in the relevant type of situation. Language is Lewis' prime example. It is beneficial to all to use the same words and sentences in order to express certain contents. It does not matter much what words and sentences we use, as long as we succeed in coordinating on using the same.

According to Lewis, our expectations of what others will do are crucial to achieving coordination. In addition to regularities in behaviour and a system of mutual expectations, the core ingredients of Lewis' theory of conventions are a system of preferences and a condition of common knowledge. Lewis defines 'convention' as follows:

A regularity *R* in the behavior of members of a population *P* when they are agents in a recurrent situation *S* is a *convention* if and only if it is true that, and it is common knowledge in *P* that, in any instance of *S* among members of *P*,

used here as a representative not only for the theories that are heavily influenced by him but also for other theories that allow for a reconstruction in terms of the MAC-model.

⁹⁶ Many of Lewis' examples, including money and language, are institutions. In relation to property, Lewis uses the term 'institution' (1969, 48). Note that he is aware of the fact that our institution of property is different from conventions of exclusive use of land (an owner might grant someone else the right to exclusive use). Lewis refrains from using the term 'property' because of this. I use the term property* taking it to be understood that the similarities with our institution of property are limited.

- (1) everyone conforms to *R*;
- (2) everyone expects everyone else to conform to *R*;
- (3) everyone prefers to conform to *R* on condition that the others do, since *S* is a coordination problem and uniform conformity to *R* is a coordination equilibrium in *S*. (Ibid., 58; emphasis in original)

A coordination equilibrium is a set of chosen actions such that no agent could have achieved a better outcome by unilaterally acting differently. Coordination problems have at least two equilibria. This means that there is a pattern of behaviour different from the one that actually obtains that would serve our interests (almost) equally well. This fits well with the connotation of arbitrariness that 'convention' has. (Ibid., section I.2.)

In addition to language, Lewis discusses examples ranging from driving on the right or left hand side of the road to the use of one or another kind of object as money. A further example he considers is patterns in the use of land or property*. He writes:

Suppose we take it to be in our common interest that some scarce good, say grazing land, should be divided up somehow so that each of us can count on having the exclusive use of one portion. [...] It matters little to anyone who uses which portion, so long as people never try to use the same portion and no portion ever goes to waste. Each must choose which portion to use according to his expectations about the portions others will use and the portion they will leave for him. (Ibid., 7)

This description contains the core ingredients of a coordination problem. Lewis writes of common interest and of the fact that the way one person acts matters to the others – in particular, interests are served badly by two persons trying to use the same piece of land. The various possible actions correspond to different ways of using the land: an agent could exclusively use this rather than that piece of land (communal sharing is not a live option, because the agents are assumed to prefer exclusive use over such an alternative). Given certain assumptions, Lewis regards any division of land as a coordination equilibrium and, hence, as a convention:⁹⁷

⁹⁷ This might be unrealistic for our actual institution of property. Others have argued that the institution of property includes a considerable amount of conflict. See Sugden (1986) for a conceptualisation of property in terms of non-cooperative game theory.

On the hypothesis that each of us wants the exclusive use of some land that nobody ever thinks it worth the trouble to try taking over the use of some land from another, any *de facto* division of the land is a convention. Each goes on using a certain portion and keeping off the rest in the knowledge that, since others will go on using everything else, that is the only way he can meet his needs and stay out of trouble. (Ibid., 47-48; emphasis in original)

The last sentence of this passage indicates that no agent is served by acting differently on the assumption the others keep doing the same, which implies that the set of actions is a coordination equilibrium. One such set of actions is that in which everybody refrains from using land she did not occupy as the first person. Recall that this set up was used earlier as an illustration of the MAC-model of rules. Let us now turn to the question whether Lewis' definition of 'convention' fits the MAC-model of rules.

Conventions as regularities and the MAC-model. In his definition of 'convention', Lewis identifies conventions with regularities in behaviour. At the same time, Lewis explicitly claims that conventions are rules (ibid., section III.4). We need to consider the question how these views can be reconciled. More in particular, we need to ask in what sense conventions are rules on Lewis' view and whether this sense fits the MAC-model. Intuitively, the situation-type *S* corresponds to context *C* in the MAC-model. Obviously, *R* is closely related to the type of action *A*. The type of action can be described as 'conforming to *R*' (see clause 1 of the definition of 'convention'). The relevant modality is (instrumental) rationality: agents act on their preferences given their expectations and common knowledge; they maximize their utility. Once the normative dimension we took to be included in institutions is taken into consideration as well, the modality is (also) deontic: there is an obligation to conform to *R* (ibid., III.3). Thus, all three ingredients of the MAC-model are present: modality, action and context.⁹⁸

⁹⁸ It is not always feasible to carve things up in such a neat manner. Consider our earlier example of property*. The relevant regularity (*R*) in that example is 'Those who are the first to occupy a piece of land use it exclusively'. The antecedent of the relevant rule is 'If you are the first to occupy a piece of land' (see above). This is a specification of context (*C*). If the action type were to be described as 'conform to *R*', the context-specification would enter into the action description. This would blur the distinction between the three ingredients of the MAC-model. In this example, then, it would be better not to describe the action type as 'conforming to *R*' – contrary to what is

So, the ingredients of the MAC-model can be related explicitly to ingredients of Lewis' conception of conventions. All in all, we can conclude that Lewis' conception of conventions fits the MAC-model of rules. Hence, given the assumptions made, institutions are regulative rules on Lewis' view. In case of the institution of property*, this means that the regulative rule presented earlier provides an adequate (partial) reconstruction of Lewis' conceptualization. As this example plays an important role below, it will turn out to be useful to have a label for the regulative rule of property, [R]:

[R] If one is the first to occupy a piece of land, one has the right to its exclusive use.

Since Lewis' theory is representative not only of a whole range of theories that have been influenced by it directly but for the practice conception of institutions in general, the upshot is that on PC institutions are regulative rules.⁹⁹

7.2.2 The Constitution View

The alternative to the practice conception of institutions is what I call the constitution view (CV for short). Constitutive rules play a key role in the constitution view of institutions. According to the most prominent proponent of this view, John R. Searle, institutions are constitutive rules (or systems of such rules).¹⁰⁰ Searle claims that constitutive rules create

proposed in the main text. An acceptable alternative can be found by specifying R in more detail, and subsequently using some of the elements for specifying the relevant type of action (A) and others for (partially) specifying the context (C), as in [R] below. Thus, the context-specification may incorporate elements of R in addition to the situation-type S. It is likely that other cases require different adaptations from the proposal made in the main text.

⁹⁹ The claim that the PC identifies institutions with regulative rules may be too strong. The weaker claim that I would want to hold on to is that they can be reconstructed as such. This claim, however, is somewhat ambiguous. One way of making this more precise would be to say that behaviour according to such rules constitutes the institution. Note that the institution of property is more readily identifiable with the consequent of [R] – the right to exclusive use – whereas the convention pertains to the antecedent, as that states the ingredient that is conventional or arbitrary. One advantage of the constitution view as developed below is that it nicely separates these elements and accommodates them in different rules, only one of which is a rule for action.

¹⁰⁰ Other proponents of the constitution view are Lagerspetz (1995) and Tuomela (2002a). For a discussion of the history of the notion of a constitutive rule, with an emphasis on Znamierowski's views, see Czepita (1990).

and define new forms of behaviour, which, naturally, are institutional kinds of behaviour. The paradigmatic example of this approach to institutions is the practice of playing chess. The chess rules are definitive of the game and create the very possibility of playing chess. If it were not for the rules of chess, it would be impossible to checkmate an opponent, or perform any other chess move. To be sure, it would be possible to move the same objects in the same way physically speaking. Those moves, however, would not be chess moves. (Searle 1969)

According to Searle, the form of a constitutive rule is 'X counts as Y in C'. I will call this the XY-schema. An instantiation of this schema is 'Moving a piece in such and such a way given such and such a position counts as checkmating ones opponent in a game of chess'. Searle contrasts constitutive rules to regulative rules, that – on his view – have as their syntax 'Do X', or 'If Y, do X'. In my symbolism, this is 'Do A', or 'If C, do A'. An example Searle presents in his later work concerns US dollars: 'Bills issued by the Bureau of Engraving and Printing (X) count as money (Y) in the United States (C)' (1995, 28). This is a constitutive rule for an institutional object instead of an institutional action. I suggest sticking to A as a schematic letter for types of actions, and propose to allow X to apply not only to actions but to items from several other ontological categories as well. It is a key characteristic of the constitution view of institutions that constitutive rules can apply to, among others, objects, persons, events in addition to actions.

In his book *The Construction of Social Reality*, Searle has elaborated this view of constitutive rules. There he stresses, for instance, the reflexivity of institutions: the existence of institutions implies that people believe they exist. The existence of money, for instance, implies that we believe the items that are in fact money to be money – we accept them as money. Belief, or more precisely, collective acceptance plays an important role in this account. Collective acceptance is closely related to 'counting as', although Searle nowhere spells out how exactly they are related. It is clear, however, that the claim that certain pieces of paper count as money is very similar to the claim that we collectively accept the pieces of paper as money.

In addition to reflexivity and collective acceptance, Searle (1995) introduces the notions of a status function and that of deontic power. Money is an example of a status function. Money is a means of exchange. By accepting certain entities as money we assign the status function of being a means of exchange to these entities. Searle characterizes status functions indirectly: they are the sort of things that can be constituted by agreement or collective acceptance, and the physical features of the

relevant entities do not by themselves suffice for performing the functions (ibid., 44).

Deontic powers are closely related to status functions. They are a matter of (institutional) rights and obligations. In this connection, Searle considers as an example having money in the bank. John has one thousand dollars in the bank. Searle claims that this ‘assigns to John the right to buy things or employ people with his money and the duty to pay taxes on interest earned by the money’ (ibid., 101). A more straightforward example concerns driving licenses, which confer the right to drive.¹⁰¹

Searle’s version of the constitution view suffers from several problems. Two of these are especially relevant for the purposes of this chapter. First, it is not very clear how constitutive rules relate to regulative rules. Searle contrasts constitutive rules to regulative rules, which suggests they are different kinds of rules. This would of course not be very surprising, because – at least on the face of it – the constitution view of institutions is very different from the practice conception. However, Searle also makes claims that suggest that constitutive rules, or at least some of them, are regulative rules (1969, 33-35).

The second problem concerns the relation between status functions and constitutive rules. There are good reasons for regarding them as different things. Money is a status function that is captured by the (somewhat simplified) definition of money as a means of exchange. The constitutive rule of money specifies what kind of entity is money in a certain context, i.e. what kinds of things have that status function (recall the dollar example presented earlier). This suggests there is a clear distinction between status functions and constitutive rules. However, there are also reasons for regarding constitutive rules as a special kind of status functions or as a special kind of instantiation of their contents. Consider the following passage: ‘[W]here the imposition of status function according to the formula becomes a matter of general policy, the formula acquires a normative status. It becomes a constitutive *rule*.’ (Searle 1995, 48; emphasis in original) It is not immediately clear what Searle means by ‘normative status’, and I will not try to interpret this term here. The importance of this passage for us lies in the claim that status functions or their contents can become constitutive rules. This conflicts with the earlier suggestion that they are distinct. Elsewhere I have tried to

¹⁰¹ This example is more straightforward because it is a conceptual truth that driving licenses confer the right to drive on their owners. It is not obvious that money confers the right to buy things or employ people, even though it is a conceptual truth that one can buy things with money (which may be a functional rather than a deontic status). Whether or not one has the duty to pay taxes on interest earned by money is contingent on the existence of other institutions in addition to that of money.

reconstruct Searle's views and interpret him as consistently as possible (Hindriks 2003b). Here I will take a different approach and present an alternative that is (intended to be) clearer on these issues.

On my view, a constitutive rule is a combination of a status rule and a constitution rule. A status rule explicates what it means to have a certain status. The status rule of money, for instance, is 'money is a means of exchange'. A constitution rule specifies what it takes to have a certain status. In certain contexts, an item has to be a shell in order to be money. In more theoretical terms, constitution rules concern the ontological basis of statuses. Status rules, in contrast, are meaning rules and concern the definition of status terms. Status rules are intimately related to behaviour. They (or rather their formulations) specify powers. Either they specify a function (a causal power) or they specify a deontic power (or both). Money is an example of a function. Legal tender has as its status rule 'A creditor is obliged to accept legal tender in satisfaction of a debt'. Because this status rule specifies an obligation, legal tender is a deontic status rather than a merely functional one.

The 'counts as' phrase can now be interpreted more precisely by relating it to constitution rules. Consider money in medieval Finland. In medieval Finland, squirrel pelts were money (I owe this example to Raimo Tuomela). Searle would say that the constitutive rule of money was 'Squirrel pelts count as money in Finland'. I suggest formulating the constitution rule of money relevant to medieval Finland in a somewhat different way: 'In Finland, squirrel pelts are money.' This constitution rule applied in the Middle Ages because it was collectively accepted to apply. In other words, squirrel pelts were money because they were collectively accepted as such. The interpretation of the 'counts as' phrase that is implicit in this is: 'counts as' means 'is because it is collectively accepted as'. In terms of the symbolism introduced earlier: 'X counts as Y' means 'X is Y because X is collectively accepted as Y'.¹⁰²

This rendition of the 'counts as' phrase prepares the way for what I call the XYZ-schema. Y stands for a status. Y-statuses are defined in terms of (behavioural) functions or deontic powers, represented by Z. Thus, 'Y is Z' is the schematic sentence for status rules. X is the ontological manifestation of the status in context C. Thus, 'In C, X is Y' is the schematic sentence for constitution rules. If the members of the community relevant to context C collectively accept the constitution rule, items that are X will indeed be Y. Because 'Z' gives the definition or

¹⁰² 'Because' should not be read as designating a causal relation. I only prefer it to 'if and only if' because it is asymmetric in that it assigns a certain priority to the right-hand side over the left-hand side of the conditional.

meaning of 'Y', items that are X will also be Z. In terms of our earlier example, squirrel pelts are money, which implies that they can be used as a means of exchange. The constitution view of institutions identifies institutions with constitutive rules.¹⁰³

This answers the second query we had with respect to Searle's position on constitutive rules, the relation between status functions and constitutive rules. I do not use the term 'status function' but write of statuses instead. Statuses, referred to by Y-terms, can be explicated in terms of functions or deontic powers, designated by Z-terms. The definition of a Y-term in terms of a Z-term is a formulation of a status rule. In combination with constitution rules, status rules form constitutive rules. Thus, on the proposal presented here status rules are part of constitutive rules. (See section 7.3.1 for a discussion of our first query.)

We now know what constitutive rules are and what the constitution view of institutions is. Given what was said about the practice conception of institutions in the previous section, we are now ready to discuss their relation. On the face of it, the CV and the PC are diametrically opposed. They each identify institutions with a different kind of rule – regulative and constitutive rules respectively. Also at a more intuitive level there seems to be a conflict. Institutions as regulative rules regulate behaviour. The fact that institutions such as money involve objects, for instance, does not play a systematic role in the practice conception of institutions. In contrast, the constitution view focuses on such ontological issues. Different objects constitute money in different contexts. The constitution rule that is relevant to a particular context states which type of object constitutes money in that situation.

In order to avoid a premature conclusion that the two views are incompatible, a more in depth consideration of their relation is needed. Before we turn to an investigation of the relation between the PC and the CV, let me comment on the notion of collective acceptance. One might regard this notion as an obstacle to any argument aimed at showing PC and CV to be consistent. The notion of collective acceptance has been proposed in relation to that of collective intentionality – roughly, the intentionality exhibited by social groups – and Lewis does not deploy such a notion. However, collective acceptance can be dissociated from the notion of collective intentionality and be defined as that set of intentional states needed for institutions. Thus, the Lewisian set of preferences, expectations and common knowledge would suffice for collective

¹⁰³ Ransdell (1971) emphasises the importance of Z-terms in a way that is somewhat similar to mine.

acceptance (in connection to the example of money, Lewis uses the term ‘accept’ himself; 1969, 49).

It could be that the Lewisian set does not suffice, perhaps because it does not do justice to the normative dimension of institutions (see Tuomela 2002a, 128-29). It could also be that such issues are central to the opposition between defenders of PC and CV. At the same time, however, it is orthogonal to the key issues of this chapter. It is perfectly well possible to discuss the relation between PC and CV while remaining neutral on this matter. I take the dialectical situation to be as follows. If the Lewisian set suffices, there is no need to invoke a stronger notion of collective acceptance. If it does not, Lewis’ theory would have to be adapted anyway, and a stronger notion of collective acceptance would be unavoidable. Even though many defenders of the PC might differ from most proponents of the CV with respect to this issue, it does not create an insurmountable obstacle for arguing that the two views are consistent.

7.3 Institutional Ontology and the Transformation View

7.3.1 The Transformation View of Constitutive Rules

Let us take another look at the institution of property*. The regulative rule used as an example earlier was [R]: ‘If one is the first to occupy a piece of land, one has the right to its exclusive use.’ Note that this rule does not include a label for or name of the institution. Suppose we now introduce the term ‘property*’ as follows. We say that what it takes for a piece of land to become someone’s property is that she is the first to occupy it. Furthermore, we say that what it is or means for a piece of land to be someone’s property is that she has the right to its exclusive use. Now, the only thing we have done is to split the regulative rule in two parts and use the term ‘property*’ in order to turn these parts into complete sentences. This transformation of the regulative rule [R] results in two rules, [C] and [S] respectively:

[C] A piece of land is the property* of that person who is the first to occupy it.

[S] If a piece of land is someone’s property*, she has the right to its exclusive use.

Somewhat more colloquially, the first rule is ‘The person who is the first to occupy a piece of land owns it’ and the second is ‘An owner has the right to exclusive use of her land’.

Transforming a regulative rule by introducing an institutional term such as ‘property*’ is very convenient. On the supposition that the stipulated usage of the term is generally accepted, the simple claim that a particular piece of land is my property* conveys a lot of information. It presupposes that I was the first to occupy it and it means that I have the right to its exclusive use. In spite of the fact that the introduction of the term ‘property*’ serves a purpose, no big changes are implied as far as the original rule is concerned. In particular, behaviour in accordance to the original rule [R] is extensionally equivalent to behaviour in accordance to the content of the rules [C] and [S] that employ the term ‘property*’.¹⁰⁴

Looked at from another angle, however, an important transformation has taken place. At first, there was only one rule. Now there are two. The first is a constitution rule and the second is a status rule. The rule ‘A piece of land is the property* of that person who is the first to occupy it’ specifies what it takes for a piece of land to be someone’s property* in the relevant context. The rule ‘If a piece of land is someone’s property*, she has the right to its exclusive use’ explicates what it is or means for a piece of land to be someone’s property*. As is implied by the theory presented in the previous section, the combination of these two rules is a constitutive rule. This is, in a nutshell, the transformation view of constitutive rules (TV). The kernel of this view is that, using terms such as ‘property*’, regulative rules can be transformed into constitutive rules.

Let us consider the transformation view of constitutive rules (TV) in more detail. On the TV, constitutive rules are conceptual or linguistic transformations of regulative rules. The point of departure for a transformation is a regulative rule such as [R]. Recall that this rule is formulated as follows:

[R] If one is the first to occupy a piece of land, one has the right to its exclusive use.

The transformation now consists of two steps. The first is to separate the consequent from the antecedent. As a result, we are left with two incomplete sentences: ‘If one is the first to occupy a piece of land,’, and ‘... one has the right to its exclusive use’. The second step of the transformation is the introduction of an institutional or Y-term, in this case ‘property*’. The Y-term is used for turning the two fragments into

¹⁰⁴ See Lewis (1983a) for somewhat similar ideas.

complete sentences. This results in the sentences ‘If one is the first to occupy a piece of land, that piece of land is one’s property’, and ‘If a piece of land is one’s property, one has the right to its exclusive use’. The content of these two sentences is equivalent to that of the rule formulations [C] and [S] respectively. This completes the transformation, as we have arrived at a constitutive rule – the combination of [C] and [S]. The upshot of this is that, roughly speaking, a constitutive rule is a regulative rule with a Y-term.

What is striking about the status rule [S] is that it fits the MAC-model of rules. The modality is a deontic one: the rule pertains to a right (or prohibition, depending on one’s perspective). The action-type that is relevant is ‘exclusive use of land’. The context is left implicit. Given that all these ingredients are present, we can conclude that the status rule is a regulative rule. The constitution rule [C] specifies the conditions that have to be met for an institutional status to be instantiated in a particular context. It fulfils more or less the same role as context *C* in the MAC-model. Thus, we can regard the combination of [S] and [C] as a regulative rule as well. This resolves the first problem that besets Searle’s conception of constitutive rules: the relation between constitutive and regulative rules. On the transformation view of constitutive rules that is based on the XYZ-schema, constitutive rules have regulative rules as one of their parts and they are regulative rules themselves.

One might want to object to the TV that the claim that constitutive rules are transformations of regulative rules is inconsistent with the claim that constitutive rules are regulative rules themselves. It is, however, easy to reconcile the two claims. What is needed for this is a distinction between simple regulative rules and complex regulative rules. Constitutive rules can then be seen as complex regulative rules that are transformations of simple regulative rules. The difference between simple and complex regulative rules is that only the latter contain special terms for satisfaction of the context-specific conditions, which also capture the associated action and the modality. In other words, only the latter contain Y-terms.

What does all this mean for the relation between the PC and the CV? The core of the transformation is the introduction of an institutional or Y-term. This leaves all features of the PC intact. In other words, the transformation does not introduce any alterations that are in conflict with the PC. According to the TV, constitutive rules are regulative rules with special features. In particular, they are regulative rules that have been split in two parts using Y-terms to turn the parts into complete sentences. Given that nothing that conflicts with PC has been introduced, we can

conclude that according to the TV version of the CV the PC and the CV are perfectly compatible.¹⁰⁵

One might wonder whether the argument presented does not show too much. If nothing that conflicts with the PC is introduced in the transformation, doesn't that mean that the PC and the CV are in fact equivalent? This would only be so if the transformation goes both ways. So, the question is whether the transformation can also be performed starting from the CV and ending at the PC. The answer is that it cannot, at least not without loss. Of course, one can start from a constitutive rule, i.e. a conjunction of a constitution rule and a status rule. By deleting the institutional term that these rules share and conjoining the remaining parts as antecedent and consequent of a conditional one will arrive at a (simple) regulative rule. This means that in a loose sense the transformation works both ways. For the PC and the CV to be equivalent, however, nothing should be lost in the process. What is lost when we move from a constitutive rule to a (simple) regulative rule is an institutional term the significance of which was discussed shortly above and will be discussed further below. Thus, the PC and the CV are not equivalent, in spite of the fact that the transformation is only a conceptual or linguistic one.

Now that the PC and the CV have been shown to be consistent, we need to consider what the added value might be of the CV in comparison to the PC. An important reason for taking the transformations of regulative rules under discussion seriously is that there are many Y-terms. 'Money' and 'marriage' are prominent examples. 'President', 'property', and 'promise' are others. The CV, in particular the version under discussion here (TV), helps us to appreciate the meaning of these terms and the way they are used in particular contexts. Another important aspect is that we in fact possess the concepts expressed by these terms. Thus, by investigating the terms we can do justice to the conceptual framework with which we operate when it comes to (many) institutions. The XYZ-schema allows for a high degree of conceptual realisticness when it comes to our institutional concepts.¹⁰⁶ This means that at least a

¹⁰⁵ It may be that those versions of the constitution view that identify constitutive rules with the XY-schema rather than the XYZ-schema cannot be reconciled with a practice conception of institutions, because the XY-schema fails to accommodate the behavioural dimension of institutions satisfactorily (see section 7.3.4).

¹⁰⁶ The term 'realisticness' was coined by Uskali Mäki in order to have a substantial form of the adjective 'realistic' different from the term 'realism'. 'Realism' is often used to denote some philosophical theory, whereas 'realisticness' denotes several attributes – including descriptive accuracy – that a variety of things can have (see Mäki 1994). The difference is important here, because I do not mean to introduce a new kind

philosophical purpose is served by the transformation view: conceptual analysis.

7.3.2 Pragmatic and Ontological Aspects of Statuses

What other advantages do the XYZ-schema and the related transformation view of constitutive rules have? In this section, I will discuss two kinds of added value that this perspective has in addition to doing justice to the way in which we conceptualise institutional reality. The first kind pertains to the pragmatic advantages of having Y-terms. The PC cannot sufficiently appreciate the advantages of having institutional terms, or so I will argue. The second kind relates to ontological issues. The CV allows us, for instance, to appreciate more fully than the PC that institutions can involve other things than actions, including objects, persons, and events. Furthermore, it enables us to recognize the relation between the PC and discussions about the multiple realizability of institutions in philosophy.

In section 7.3.1 we saw that the introduction of Y-terms is convenient. They provide for the means of expressing in a succinct way that certain conditions have been met. In addition to this, they convey that the relevant entity can (be used for) perform(ing) a certain function or that some deontic power is attached to it. If true, a claim such as ‘This piece of land is my property’ conveys a lot of information. It indicates that I was the first to occupy it. At the same time, it means that I have an exclusive right to its use. More complex cases can easily be generated and the convenience of introducing a Y-term increases with such added complexity. Owning a house or a business is a complex affair in most contemporary societies. Similarly, one has to go through several procedures in order to get married, and one has to meet various requirements in order to become elected as a president. Claims to the effect that one owns a business, one is married, or one is president signal that these conditions have been met. Such claims also convey the information captured by the meaning of the terms ‘owner’, ‘marriage’, and ‘president’ that consists of functions or deontic powers. In sum, Y-terms can be used to convey that the conditions that occur in the constitution rule have been met – these are conditions pertaining to the generation or maintenance of an institutional fact – as well as that the status rule applies.

of realism, conceptual realism. Instead, I want to draw attention to the fit between constitutive rules and the conceptual framework with which we operate as far as (many) institutions are concerned.

There is more to it than this, however. Y-terms also allow one to track certain entities in a convenient way. Consider a king in a game of chess. A king is a chess piece that is located at e1 or e8 at the beginning of a game, and that is only allowed to move one square at a time (apart from castling). Suppose we did not have the term 'king'. In such a situation, tracking the relevant chess piece would be a cumbersome affair. In the beginning of the game, things would be fairly easy. We could refer to the pieces by stating their starting positions. During the game, however, we would need to keep track of those pieces. We could perhaps still refer to them by talking of 'the piece that started on e1' and 'the piece that started on e8'. However, in order to be able to identify them, we would have to make sure we have in mind those pieces that have moved only one square at a time throughout the game (of course, the shape can help; but in a sense, the shape of a piece fulfils a similar role to its name). The situation in which we have given such pieces the name 'king' is much more convenient. It allows us to track and re-identify them with ease.¹⁰⁷

Arguably, these pragmatic linguistic advantages have a cognitive counterpart. It is not only that the introduction of Y-terms is convenient. Having the concepts that these terms express is convenient as well. Given our analysis of property – including the context-relative specification of what it takes for a piece of land to become someone's property – inferences from 'This piece of land is her property' to 'She was the first to occupy it' on the one hand and to 'She has the right to its exclusive use' on the other are valid. If we possess the relevant concept, we find them (primitively) compelling (Peacocke 1992).

The PC does nothing to uncover these pragmatic advantages of having Y-terms and these cognitive aspects of having the corresponding concepts. It abstracts from the way we would describe things altogether or just presupposes some description without analyzing the structure of such descriptions. Furthermore, it takes our conceptualisations into account only to a minimal degree (arguably, it does so to some extent, as Lewis' theory requires agents to have concepts of situation-type *S* and regularity *R*; in his theory, they occur as part of the expectations of the agents). Thus, the CV enables us to appreciate certain pragmatic advantages of having Y-terms and sustains a high degree of conceptual realisticness. It fits well with the way in which we in fact conceptualize many of our institutions.

¹⁰⁷ As far as particular pieces are concerned, the constitution rule pertains to the starting position and the status rule to the kind of moves the relevant piece is permitted to make.

In addition to these pragmatic and cognitive aspects, the CV is better suited than the PC when it comes to accounting for certain ontological aspects of institutions. I have three such aspects in mind two of which are discussed in this section. First, as was noted earlier, constitutive rules can apply to items other than actions. The predicates X, Y, and Z (or rather the predicates that take the place of these schematic letters in the case of a particular kind of institution) can range over a great variety of ontological categories including objects, persons, and events. Pieces of land are objects, presidents are persons, and declarations of war are events. Using the (philosophical) term 'property' in a broad sense, these are all institutional properties. It is not that the PC does not allow for these. Rather, the PC is just silent on institutional properties. It allows for them in the specifications of *R*, *S*, the content of the expectations, and perhaps even the content of the preferences. However, there is nothing in the PC that forces us to consider institutional phenomena other than actions in a systematic way, even though they are ubiquitous. Thereby, it fails to address an important feature of institutions.

Second, the CV enables us to see the connections between discussions about multiple realizability and the PC. Multiple realizability is a much-discussed phenomenon in philosophy, among others in metaphysics, the philosophy of mind, and the philosophy of the social sciences. Multiple realizability is the phenomenon of one and the same property occurring in different guises. Money, for example, can come in the form of shells or coins. Similarly, different countries have different requirements for getting married (think of age requirements, for example). In the case of property, the way in which the land is divided is variable, while (again) the institution itself – the right to exclusive use – remains constant. The CV accommodates multiple realizability by allowing for different constitution rules for different contexts: one constitution rule might pertain to shells, while another pertains to coins. Furthermore, within one context, multiple realizability can be accommodated by allowing for disjunctive specifications of (instances of) X: one constitution rule that is in force in a particular context might mention both coins and pieces of paper with certain characteristics as bases for money. Thus, the CV fits nicely with the multiple realizability of institutional properties.

What is striking about this phenomenon is its intimate relation to the existence of multiple equilibria in Lewis' theory. The multiple equilibria in the case of the institution of property, for example, correspond to the different ways of dividing up the land. Similarly for many other institutions. Think for example of different items that are

used as money in various contexts and of different procedures one has to go through in order to get married in various countries. Thus, a consideration of the CV and the PC allows us to see that in the case of institutions the ontological phenomenon of multiple realizability is intimately related to the theoretical phenomenon of multiple equilibria. At least in many cases, they come down to the same thing.

7.3.3 The Creation of Institutional Reality

The third ontological issue that we need to discuss brings us back to Searle's claim that constitutive rules create and define new forms of behaviour (see section 7.2.2). What I want to focus on here is in what sense institutional behaviour might be *new* behaviour. In order to answer this question we have to take a closer look at the notion of constitution. Searle has never provided an account of constitution, so we need to turn to an account proposed by someone else. I suggest looking at Lynne Rudder Baker's view of constitution (1997). The relation of constitution is different from that of identity. A piece of marble, for instance, might constitute a statue; Baker uses Michelangelo's statue *David* as an example. The statue, however, is not identical to the piece of marble for the simple reason that the piece of marble can exist prior to the statue and can survive different sorts of changes. The core idea is that the piece of marble can exist independently of an art world, whereas the statue cannot. The piece of marble might exist prior to the existence of an art world and might survive it as well. In other words, the identity criteria for the two objects differ. At the same time, constitution also differs from separateness. At times when the piece of marble constitutes the statue, the two objects are spatially coincident. They share all of their physical properties.

At the heart of Baker's account of constitution is the notion of favourable circumstances. The idea is that when an item of a certain kind occurs in favourable circumstances it is also an item of another kind. Thus, a piece of paper might be a piece of money in virtue of the fact that the appropriate circumstances obtain. Similarly, a piece of land might become someone's property* if she performs the actions require for this in the context (e.g. being the first to occupy it). The XYZ-schema provides the material for developing this idea in the spirit of Baker's account. The relevant circumstances can be labeled 'Y-favorable circumstances'. These circumstances include the context mentioned in the XYZ-schema. The symbol 'C' was introduced as a designator of the context. We can now say that an item that is X is Y if and only if it occurs in Y-favourable

circumstances, which means (in part) that it is *Y* only if the item occurs in *C*. Another ingredient in the *Y*-favourable circumstances is collective acceptance. An item that is *X* only constitutes something that is *Y* if the relevant community accepts a constitution rule to this effect. In contrast to identity, constitution is a contingent relation, which means that it is possible for an item that is *X* not to be *Y*. This holds, of course, if the item occurs outside of context *C*.

Baker's core claim is that the constituted object or property is a genuine addition to the set of items that inhabit the universe. A statue is distinct from the material that constitutes it in a way made precise by her account of constitution. An important way in which she fills in this idea is by claiming that the constituted object or property has causal powers that the object (with property *X*) that constitutes it does not have. A statue, such as Michelangelo's *David* for instance, might attract people to come and look at it or arouse certain emotions. At the moment at which the piece of marble becomes a statue a new object comes into existence. In terms of the example of money, these claims correspond to the claims that a piece of paper really is money in certain circumstances and that (only) in those circumstances it can be used as money.

Thus, the CV opens up avenues for defending the claim that institutional properties are not identical to other properties, and that institutional behaviour is indeed a new form of behaviour, as Searle has claimed. The CV is not committed to Baker's account of constitution, and can allow for other accounts of constitution. It does not even need to include the claim that institutional behaviour is qualitatively different from other kinds of behaviour. The main purpose of the argument just presented is to show that such a qualitative difference, to which Searle is committed, can be accommodated.¹⁰⁸

The argument of this section could be taken to show that there is a deep ontological divide between PC and CV after all. There would, however, only be such a divide if the PC does not have the means to

¹⁰⁸ Lewis' view is congenial to part of this story. He would agree that, for instance, property is a real phenomenon. Consider a set of constitutive rules that pertain to institutions that relate to one another in some way. Assume that this set is a theory of sorts. Suppose the constitutive rule for property is part of the set, which implies that 'property' is a theoretical term. According to Lewis, the following holds for any theoretical term: 'If it purports to name something, then if the theory that introduced it is true it does name something.' (1983b, 79) All this implies that if we have formulated the constitutive rules that make up the theory correctly, then 'property' names something, which means – at least in the context of Lewis' paper – that it exists. Lewis would not say, however, that property is qualitatively different from any underlying reality. In other words, he would not accept an account of constitution such as the one offered by Baker (cf. her 2000, 179-85).

accommodate a genuine sense in which institutional behaviour differs from non-institutional behaviour. Searle is committed to this view. This is not because he claims that constitutive rules create new forms of behaviour. That claim is consistent with the idea that regulative rules can also be constitutive of institutional forms of behaviour. However, Searle identifies institutions with (systems of) constitutive rules, or rather with what I have called constitution rules.¹⁰⁹ This means that, on his view, constitution rules are not only sufficient for creating (the possibility of) institutional forms of behaviour, but also that they are necessary. Searle does not provide an argument for this claim.

In fact, there are no good grounds for believing it is true. It may be that the CV is better suited to accommodate this feature explicitly, as is suggested by the neat way in which Baker's account of constitution maps onto the XYZ-schema. However, this is a matter of description rather than of (ontological) substance. Even if the PC does not systematically address Y-favourable circumstances, it does not deny their existence. The arguments presented in this chapter have suggested two things. First, constitutive rules are of conceptual and linguistic importance. In the case of institutions with respect to which we have special terms or concepts, constitutive rules play a meaning or content explicating role. Conceptual or linguistic realisticness is the issue here, as we saw earlier. Second, constitutive rules provide a natural way to theorize certain ontological aspects of institutions – including multiple realizability and, as we saw in this section, constitution. Both of these points, however, suggest that the importance of constitutive rules lies at the conceptual or linguistic level rather than the ontological one.

We can take one step further. Collectively accepting a constitutive rule is sufficient for creating (the possibility of) new forms of institutional behaviour. Thus, there is a sense in which constitutive rules can have ontological import. This sense is limited, however, because the same thing could be achieved by collectively accepting a regulative rule. The difference would be a difference in description. The difference can be illustrated by a couple of examples. As will be clear from the preceding, property* is an institution for which we have a special term that expresses a particular concept. Its constitutive rule has been spelled out earlier (see [C] and [S] above). Contrast this with driving on the right hand side of the road. This rule is part of the rules of the road. We do not have a special

¹⁰⁹ Recall that on Searle's view the structure of constitutive rules is given by the XY-schema, whereas on my view the XY-schema represents the structure of constitution rules while the XYZ-schema, which is more encompassing than the XY-schema, provides the structure of constitutive rules.

term for it, however. Hence, we are limited to describing this institution in terms of a regulative rule (the alternative would be to invent a term for it). Whereas it is appropriate to analyse property* in terms of a constitutive rule, this does not hold for driving on the right hand side of the road.¹¹⁰

If this is correct, then we should be able to point out in what sense behaviour as conceptualised by Lewis' theory of conventions is new or different from non-institutional forms of behaviour. This can indeed be done. There is a clear sense in which Lewisian conventions allow one to behave in a certain way that is impossible independent from them. The idea is that conforming to a regularity is not possible if there is no regularity. Without the convergent expectations postulated in Lewis' theory, the regularity in behaviour that is at the heart of his conception of conventions will not exist. The point can also be made in terms of the MAC-model. A convention exists only if the agents behave according to a rule that fits the MAC-schema. However, to follow such a rule is only rational for a particular agent if the other agents do so as well. In other words, in the situation under consideration agents will simply not behave according to the rule, because it is in fact not rational to do so. The rationality of doing so is conditional on compliance by other agents.

The relation to the behaviour of others comes out once we find an appropriate description. Using a piece of land is possible independently of the actions of any other agents. Using it exclusively is dependent on actions by others. Having the right to use it exclusively depends on collective acceptance also by others. Driving on the right hand side of the road is possible irrespective of what others do. Driving on the *same* side of the road involves reference to the behaviour of others and is not possible independently of the existence of some convention to that effect (it might happen by chance, but this is not by itself a stable configuration as required by the notion of a Lewisian convention; if it becomes a stable configuration, it has become a convention). The obligation to drive on the right hand side of the road depends on collective acceptance.

It can at times be difficult to see how an institution could be constituted merely by regulative rules without the need for constitutive rules. One reason for this is that we often do have institutional concepts that can be explicated in terms of status rules and for which we have constitution rules. It can be hard to imagine conceiving the world in

¹¹⁰ This makes the notion of a constitutive rule somewhat arbitrary: whether or not there is a term that requires explication in terms of a constitutive rule is to a large extent accidental (Warnock 1971, 37-3). It does not follow, however, that the notion of a constitutive rule is useless or confused.

different terms than we usually do. Another reason is that institutions interlock and many institutions presuppose others, as is obvious in the case of our political institutions that are very complex. The presidency, for instance, presupposes various institutions that are required for a democracy. Conceiving of what it is to be a president without constitutive rules at all may be virtually impossible. However, relative to those other institutions and their constitutive rules it is feasible. In order to see this, one could start from the constitutive rule for a president of a particular country. The constitution rule mentions the conditions that have to be met in order for someone to be the president of that country. The status rule mentions the deontic powers that the president has. The regulative rule can be constructed from this by deleting the term president from these rules and linking the conditions mentioned as the antecedent of a conditional to the relevant deontic powers as the consequent. For any institution that depends in fact on a constitutive rule, a regulative rule can be formulated by taking the reverse steps of the transformation process discussed in section 7.3.1. This regulative rule would suffice for constituting the relevant institution.

All this means that accepting a constitutive rule is not a necessary condition for an institution to exist. Accepting a regulative rule will do as well. Note that if accepting a constitutive rule is a sufficient but unnecessary condition for (the possibility of) an institutional phenomenon, Baker's theory of constitution does not require an appeal to constitutive rules. So, perhaps somewhat paradoxically, the constitution of institutional phenomena can but does not need to depend on constitutive rules.

The upshot is that the CV has added value over the PC. It has a larger degree of conceptual realisticness, allows us to appreciate pragmatic advantages of having institutional terms, and serves to explicate some important ontological features of institutions. At the same time, the discussion of the TV should have made clear that accepting the CV does not require abandoning any aspect of the PC. Thus, there is ample reason for PC theorists to accept some version of the CV.

One might want to object to this line of argument that the PC includes or can include everything that has been ascribed to the CV. To this objection two responses are available. First, many PC theories do pay attention to aspects that have been portrayed as virtues of the CV. However, they do not do so in a systematic way. For instance, no PC theorist will deny that money does not only involve actions but objects as well. The CV, however, accommodates ontological categories other than actions in a principled manner. Second, those PC theories that do

accommodate such aspects systematically, if any, are in fact also CV theories. One of the main points of this chapter is that there is in fact no great gap between the two. For those PC theorists who take on board everything I have said, perhaps the central thing this chapter has to offer is a proposal as to how constitutive rules relate to regulative rules.

In addition, this chapter provides such theorists with the means for appreciating Searle's theory of institutional reality. Social scientists have complained that, even though it might be valuable for philosophers, his theory is of little use to them. Knoblauch (1996, 1461) writes that social scientists can learn from reading Searle's book 'how big the hiatus between philosophy and the social sciences has become'. I have tried to show how the behavioural dimension can be incorporated more fully into Searle's theory. I hope this helps those who focus on the behavioural dimension of institutions to appreciate the insights embedded in a theory that does not pay enough attention to it. An insight that is perhaps of more interest to philosophers than to social scientists is the way in which Baker's theory of constitution fits with the TV conception of constitutive rules.

7.3.4 The Transformation View Defended

Why would one accept the transformation view of constitutive rules? The main advantage of the TV is that it allows for a reconciliation between the PC and the CV. This is an advantage because it allows us to enjoy the benefits of both perspectives, as elaborated in the previous sections. At a more concrete level, the argument of the preceding section allows us to appreciate at least the most important insights of Lewis (1969) and Searle (1969 and 1995) in tandem.

Further arguments for accepting the TV can be found by considering its relation to other instances of the constitution view. Even though the transformation view is closely related to the views of Searle and Tuomela, it has two distinct advantages when it comes to identifying the relation between institutions and practices. As we saw, Searle neglects the practice aspect of institutions. He acknowledges that actions have priority over objects in the context of institutions, but he does little to accommodate and develop the role of behaviour in his theory (Searle 1995, 56-57). This defect becomes apparent once one compares the XY-schema to the XYZ-schema. Only the latter includes a behavioural component, Z.

Tuomela, on the other hand, overstates the role of practices. He sees practices as an ingredient of all institutions: an institution cannot exist

without an actual corresponding practice (2002a, 170). The problem with this is that it rules out certain forms of institutional novelty. Authorities can introduce new institutions without the need for a corresponding practice to be in place. Contrary to what Tuomela's theory implies, a novel phenomenon such as a new law does not become an institution only when the concomitant practice has arisen. A new law and thereby a new institution comes into force once the appropriate authority has declared this to be the case. These two advantages provide further support for the transformation view.¹¹¹

Note that in order for the TV to be palatable, some important qualifications – mostly implicit in the preceding – will have to be made. The main reason for this is that TV might be considered implausible when presented as a theory for all institutions. Arguably, not all institutions involve constitutive rules, *at least not of the kind that fit the XYZ-schema* (cf. Tuomela 2002a, chapter 6). This further qualification is an important addition. One could argue that there are rules of a different kind that are also constitutive rules. For instance, Tuomela (2002a, 166) has claimed that a rule such as 'The Sunday Match is our football game' is a constitutive rule. Whether all institutions involve constitutive rules when one allows for several kinds of them is a matter that I will not investigate here. What is important for current purposes is that these qualifications require a restriction of the scope of the argument: analyses of those institutions that can be conceptualized in terms of constitutive rules of the kind under consideration are compatible with a practice conception of them.¹¹²

7.4 Conclusion

We have studied two perspectives on institutions, the practice conception (PC) and the constitution view (CV). It was argued that the PC closely associates institutions with regulative rules. The notion of a regulative

¹¹¹ Another example of an institution without an actual concomitant practice is an unobserved or hardly observed speed limit. The speed limit is an institutional phenomenon as long as it is accepted as such by the authorities, which have the power to sanction noncompliant behaviour. Note that the claim is not that PC cannot accommodate this. Lewis (1969) discusses degrees of conventionality and this can be seen as a somewhat different way of approaching the same issue. Instead, the point is that not all versions of CV accommodate it.

¹¹² Another important qualification that has been made already but that may need to be emphasised is that institutions need not be identified with regulative rules on the PC or with constitutive rules on the CV. PC-theories are those theories that allow for a reconstruction in terms of regulative rules, even if they identify institutions for example with regularities in behaviour. Similarly, it suffices for a theory to fall under the CV if, for instance, institutions owe their existence at least in part to constitutive rules.

rule was subsequently made precise in terms of the MAC-model of rules. According to the CV, in contrast, institutions are intimately linked with constitutive rules. The notion of a constitutive rule was made precise in terms of the XYZ-schema. The main argument of the chapter has been that, in spite of appearances, the PC and the CV are consistent with one another. Even though, at least on the face of it, these two perspectives relate institutions to a different kind of rule, there is no deep conflict between them. The crucial premise in the argument was provided by the transformation view of constitutive rules (TV). According to the TV, constitutive rules are transformations of regulative rules. Roughly speaking, constitutive rules are regulative rules that employ institutional or Y-terms.

A further argument that was offered is that the PC and the CV are not only consistent with one another but that the CV has some advantages over the PC. One of the virtues of the CV is that it enables us to appreciate the convenience of having institutional or Y-terms. In relation to this, the conceptual realisticness of the CV is significant. Another perhaps primarily philosophical advantage of the CV is that it serves to explicate some important ontological features of institutions. First, institutions do not only involve actions, but, for instance, objects, persons and events as well. Second, many institutions are multiply realizable. Finally, theories of constitution can be used in combination with the CV to defend the claim that institutional behaviour is qualitatively different from non-institutional behaviour.

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SAMENVATTING

Zowel filosofen als wetenschappers conceptualiseren instituties vaak in termen van gedragspatronen. Je kunt dan denken aan het effect dat bordjes ‘Verboden toegang’ op ons hebben als het gaat om eigendom van een stuk grond en de rol die geld speelt in markttransacties. We gaan vaak ineens netjes rijden als we een politieauto zien en we verwachten dat de koningin zich op koninginnedag vertoont in een of ander landelijk plaatsje en daar veel handjes schudt. Dit zijn allemaal institutionele fenomenen die overduidelijk een effect hebben op ons gedrag of op onze verwachtingen over het gedrag van anderen. Zij resulteren in patronen in het gedrag van de mensen die met die fenomenen te maken hebben.

Instituties worden ook wel gezien als regels. Dit is niet zo gek als je bedenkt dat regels gedragspatronen kunnen genereren. Als de meeste mensen zich bijvoorbeeld aan de verkeersregels houden dan ontstaan er een aantal regelmatigheden in gedrag zoals automobilisten die stoppen voor stoplichten en een gemiddelde snelheid van verkeer op de snelweg van om en nabij de 120 kilometer per uur. Een institutie als eigendom kan ook worden begrepen in termen van regels. De regels die eigendomsrechten bepalen zijn vastgelegd in het privaatrecht. Niet alle instituties zijn vastgelegd in formele regels. Er is bijvoorbeeld geen wet die stelt dat beloftes moeten worden nagekomen. Er is echter niet veel fantasie voor nodig om te bedenken dat ook dergelijke instituties in termen van regels begrepen kunnen worden.

Regels dragen echter niet alleen bij aan ons begrip van instituties omdat die gepaard gaan met karakteristieke gedragspatronen. Een tweede aspect van instituties waar regels relevant voor zijn is de normatieve dimensie van instituties. In het eerder gebruikte voorbeeld van privé-bezit werd dit normatieve aspect al expliciet gemaakt (een bordje ‘Verboden toegang’ geeft aan dat je niet op het betreffende terrein *mag* komen). Ook geld heeft vaak, zo niet altijd, een normatieve dimensie. Je kunt dan denken aan de verplichting die banken vroeger hadden om iemand die

met papiergeld aan kwam zetten op verzoek de waarde ervan in goud uit te betalen. De status die geld tegenwoordig vaak heeft als wettig betaalmiddel is een ander voorbeeld van een normatieve eigenschap die geld kan hebben. Iets is een wettig betaalmiddel als een crediteur het niet mag weigeren wanneer iemand er een schuld mee wil vereffenen. Dergelijke voorbeelden van normatieve aspecten van instituties zijn legio.

De kernvraag die in dit proefschrift gesteld wordt is hoe regels ons begrip van instituties kunnen vergroten. Om die vraag te kunnen beantwoorden moeten we eerst weten wat instituties zijn. We hebben al gezien dat instituties een gedragsmatig aspect hebben en een normatieve dimensie. Een derde eigenschap van instituties is dat ze hun bestaan te danken hebben aan ons, aan onze overtuigingen en verwachtingen en aan onze handelingen. Die handelingen zijn gebaseerd op onze overtuigingen en verwachtingen. Daardoor spelen met name onze ideeën over instituties een belangrijke rol. Dit wordt kernachtig uitgedrukt in de claim dat instituties bestaan omdat wij geloven dat ze bestaan.

De meeste regels kunnen slechts recht doen aan de eerste twee van de genoemde aspecten van instituties. In de filosofische literatuur wordt echter ook gesproken van zogenaamde constitutieve regels. Met name de filosoof John Searle heeft een belangrijke bijdrage geleverd aan de ontwikkeling van de notie van een constitutieve regel. Dat soort regels is bij uitstek geschikt om recht te doen aan de derde dimensie van instituties, dat ze hun bestaan te danken hebben aan onze overtuigingen. Wat een constitutieve regel is kan makkelijk worden uitgelegd aan de hand van spelletjes zoals schaken. Het schaakspel, of in ieder geval onze praktijk om schaak te spelen, kan worden gezien als een institutie. Een aantal regels van het schaakspel bestaat uit specificaties die nodig zijn om het spel te kunnen spelen. De uitgangsposities van schaakstukken bepalen bijvoorbeeld welke rol een stuk heeft in het spel (de startpositie van een bisschop is c1, c8, f1 of f8). Dit soort specificaties kunnen gezien worden als definities van de basisbegrippen die een rol spelen bij schaken. Zij definiëren het spel. Deze definiërende regels zijn net zo belangrijk als bijvoorbeeld de regels over welke zetten de stukken mogen zetten (een bisschop mag zich bijvoorbeeld alleen diagonaal verplaatsten). Zulke regels reguleren het spel en worden wel regulatieve regels genoemd.

Het is niet altijd even duidelijk in de literatuur wat constitutieve regels nu precies zijn. Het net besproken schaakvoorbeeld is vrij rechttoe rechtaan. Sommige andere voorbeelden die wel worden gegeven verschillen daar nogal van. Zo stelt Searle dat de regel dat iemand die een

belofte doet verplicht is die na te komen de constitutieve regel van de institutie van het doen van beloftes is. Deze regel is echter geen specificatie, maar reguleert ons gedrag. Searle contrasteert constitutieve regels met regulatieve regels en het ligt voor de hand om ondanks Searle te stellen dat deze regel eerder een regulatieve dan een constitutieve regel is. Gegeven deze onduidelijkheid over wat constitutieve regels nu eigenlijk zijn kunnen we verschillende dingen doen. We kunnen er bijvoorbeeld voor kiezen om verschillende soorten constitutieve regels te onderscheiden. We zouden er ook eentje kunnen uitkiezen als de echte constitutieve regel.

Ik heb ervoor gekozen om de notie op zo'n manier uit te werken dat beide soorten regels onderdeel uitmaken van constitutieve regels. Voordat ik uitleg waarom ik dat gedaan heb zal ik eerst toelichten wat ik daar precies mee bedoel. Constitutieve regels hebben betrekking op institutionele eigenschappen zoals die van president, politieagent, geld, of rijbewijs. Dit soort eigenschappen noem ik institutionele statussen. Volgens de theorie van constitutieve regels die ik in dit proefschrift voorstel bestaan dat type regels uit twee soorten regels, constitutieregels en statusregels. Constitutieregels specificeren waar iets aan moet voldoen om een bepaalde institutionele eigenschap te hebben in een bepaalde omgeving. Zo wordt iemand in principe alleen maar president als hij of zij de verkiezingen heeft gewonnen en staat er op elk eurobiljet een handtekening van Wim Duisenberg of van Jean-Claude Trichet. Statusregels geven vervolgens aan wat het hebben van een bepaalde status impliceert voor ons handelen. Een president heeft bijvoorbeeld een vetorecht en geld kun je gebruiken om producten of diensten mee te kopen. Deze op zich eenvoudige ideeën vormen de kern van de theorie die ik in dit proefschrift verdedig. Om redenen die in hoofdstuk 6 worden uitgelegd noem ik die de XYZ-conceptie van constitutieve regels.

Waarom heb ik hiervoor gekozen en niet voor een van de andere opties, zoals het aanwijzen van "de ware constitutieve regel". Ik heb dat met name gedaan omdat op deze manier recht kan worden gedaan aan alle drie besproken dimensies van instituties. Statusregels betreffen de gedragsmatige en de normatieve dimensie van instituties. Verder is er een belangrijk verband tussen constitutieregels en de idee dat instituties alleen maar bestaan omdat wij geloven dat ze bestaan. Institutionele statussen, die een centrale rol spelen in instituties, bestaan omdat wij bepaalde constitutieregels accepteren. Soms doen we dat indirect. Wij accepteren bijvoorbeeld de autoriteit van de Europese Centrale Bank die de specificaties bepaalt waar eurobiljetten aan moeten voldoen. Daardoor

accepteren we indirect de constitutieregels waarin zij die specificaties vastleggen.

Een tweede argument dat voor de XYZ-conceptie van constitutieve regels pleit is dat zij goed aansluit bij de betekenis van veel institutionele woorden. Eerder zagen we dat de regels van het schaakspel volgens de traditionele opvatting van constitutieve regels bestaan uit zowel constitutieve als regulatieve regels. De termen die een centrale rol spelen bij schaken, zoals de namen van de schaakstukken, zijn termen die naar statussen verwijzen, ofwel statustermen. Allebei de soorten regels zijn relevant voor de definitie van statustermen. Zowel de startpositie als de zetten die een stuk mag doen zijn bepalend voor wat een bisschop is. Je zou kunnen zeggen dat beiden constitutief zijn voor dit type schaakstuk. De definitie van de term die ernaar refereert omvat beide aspecten. Simpelweg een onderscheid maken tussen regulatieve regels en constitutieve regels doet geen recht aan deze nauwe verwantschap.

Beide soorten regels zijn ook van belang voor een goed begrip van wat een eurobiljet nu eigenlijk is. Ook daar zijn zowel de eigenschappen van de biljetten op zich als de dingen die je met die biljetten kunt doen van belang. De XYZ-conceptie van constitutieve regels doet recht aan beide aspecten van de definitie van statustermen door te stellen dat constitutieve regels uit twee soorten regels bestaan, constitutieregels en statusregels. De definitie van een statusterm valt dan (vaak) samen met de bijbehorende constitutieve regel.

Behalve in spelregels komt een dergelijke combinatie van constitutieregels en statusregels ook veel voor in wetboeken en contracten. Neem bijvoorbeeld de polisvoorwaarden, ofwel de contractuele bepalingen, van een reisverzekering. Artikel 1 van de polisvoorwaarden van mijn *Blue Travel Polis* bestaat uit begripsomschrijvingen. Daarin wordt bijvoorbeeld gespecificeerd wie de verzekerde is ('degene die door u onder vermelding van de geboortedatum is aangemeld en als zodanig op het verzekeringsbewijs is genoemd'). In andere artikelen worden de rechten en plichten van Postbank Verzekeringen en van de verzekerde omschreven. Artikel 5 bevat de verplichtingen van de verzekerde (bijvoorbeeld: 'U, de verzekerde, moet bij schade al het mogelijke doen ter vermindering of beperking van de schade.'). Gegeven de XYZ-conceptie van constitutieve regels bestaat artikel 1 uit een verzameling constitutieregels, terwijl artikel 5 statusregels bevat. De constitutieve regel voor de status van een verzekerde bevat beide type regels.

Een derde voordeel van de XYZ-conceptie van constitutieve regels is dat ze het onderscheid tussen regulatieve en constitutieve regels kan verhelderen. Toen Searle de term 'constitutieve regel' begon te gebruiken

contrasteerde hij dit type regels met de eerder genoemde regulatieve regels. Regulatieve regels zijn het type regels waar we direct aan denken als we de term 'regel' horen, zoals bijvoorbeeld verkeersregels. Meer in het algemeen gaat het om regels die een gedragscomponent combineren met een normatieve dimensie. Omdat statusregels beide aspecten bevatten zijn het regulatieve regels. De regels die traditioneel gezien werden als constitutieve regels zijn constitutieregels in het raamwerk dat ik verdedig. Het oude onderscheid tussen constitutieve en regulatieve regels is dus een scherp onderscheid als het onderscheid tussen constitutieregels en statusregels duidelijk is. Constitutieregels betreffen alle eigenschappen van statussen behalve de normatieve en gedragsmatige eigenschappen. Dit is volgens mij een goede manier om het onderscheid precies te maken.

In dit verband is het ook de moeite waard op te merken dat constitutieve regels volgens Searle niet alleen definiëren maar ook reguleren. Als constitutieve regels zouden samenvallen met constitutieregels dan zouden constitutieve regels niet reguleren. Omdat volgens de XYZ-conceptie statusregels ook onderdeel uitmaken van constitutieve regels spelen dat soort regels ook een regulerende rol. De XYZ-conceptie doet op deze manier recht aan genoemde claim van Searle.

Het voorgaande komt met name aan bod in hoofdstuk 6. In hoofdstuk 7 licht ik de relatie tussen de twee soorten regels verder toe. Ik beargumenteer daar dat constitutieve regels gezien kunnen worden als transformaties van regulatieve regels.

In dit proefschrift komen nog twee andere onderwerpen aan bod: taalhandelingen en concepten. Taalhandelingen worden besproken omdat wel wordt beweerd dat taalhandelingen geanalyseerd kunnen worden in termen van constitutieve regels. Dit lijkt misschien voor de hand te liggen omdat er over het algemeen vanuit wordt gegaan dat taal een institutioneel fenomeen is. Dat taal op zich een institutioneel fenomeen is betekent echter nog niet dat taalhandelingen dat ook zijn. In de hoofdstukken 4 en 5 beargumenteer ik dat taalhandelingen gezien moeten worden als uitingen van onze overtuigingen en intenties. Het doen van een bewering, bijvoorbeeld, is een kwestie van het uiten van een overtuiging. Als je een belofte doet wek je op zijn minst de indruk dat je de intentie hebt te doen wat je belooft. Gegeven een ruime definitie van wat het uiten van een overtuiging of intentie is kan een belofte gezien worden als (onder andere) het uiten van een intentie. Omdat het uiten van overtuigingen en intenties geen institutioneel fenomeen is, zijn (in ieder geval de meeste) taalhandelingen dat ook niet. De conclusie die ik dan ook

trek is dat, ondanks wat wel beweerd wordt, (dit soort) taalhandelingen niet in termen van constitutieve regels geanalyseerd moeten worden.

Concepten worden besproken omdat die een rol spelen in constitutieve regels. De statustermen die worden gedefinieerd door constitutieve regels staan voor concepten. Eerder wees ik er al op dat instituties bestaan omdat wij geloven dat ze bestaan. Ik beargumenteer dat dit idee zit ingebakken in institutionele of statusconcepten. Statusconcepten zijn acceptatie-afhankelijk. Dit betekent dat de eigenschappen waarop statustermen betrekking hebben alleen geïnstantieerd zijn als wij accepteren dat ze dat zijn. Geld bestaat bijvoorbeeld alleen als wij van een bepaald type object, zoals een soort schelp of stukje papier, accepteren dat het geld is. Dit idee wordt in hoofdstuk 3 uitgewerkt.

Als laatste – in het proefschrift als eerste – bespreek ik wat concepten in het algemeen zijn. Concepten worden door filosofen vaak gezien als regels. Concepten zijn namelijk normatief in die zin dat het juist is om ze in bepaalde situaties toe te passen en onjuist om ze in andere situaties toe te passen. Verder leidt het grotendeels juist toepassen van concepten tot bepaalde regelmatigheden. Dit zijn alleen geen regelmatigheden in ons gedrag, maar in ons denken. Wellicht vormen we bijvoorbeeld bijna altijd als we een rood object zoals een rood kledingsstuk tegenkomen de overtuiging dat het een rood object is.

Er wordt wel gesteld dat het hebben van concepten en daarmee het volgen van het net beschreven type regels een inherent sociaal fenomeen is. Als het volgen van dit soort regels inderdaad een inherent sociaal gebeuren is dan ligt het voor de hand te vragen hoe constitutieve of institutionele regels zich verhouden tot dit soort sociale regels – ook al omdat die laatste onderdeel uitmaken van de eerstgenoemde regels. Ik beargumenteer echter in hoofdstuk 2 dat het volgen van het soort regels waar het om gaat bij concepten niet een intrinsiek sociale aangelegenheid is. De gedachte die ik verdedig is dat concepten met name begrepen moeten worden in termen van hoe wij als individu in elkaar zitten en hoe wij reageren op onze omgeving en niet zozeer in termen van onze relaties met anderen. Natuurlijk ontken ik niet dat we onze concepten vaak te danken hebben aan onze omgeving in de zin dat we ze aangereikt krijgen door onze ouders en op school. Ook ontken ik niet dat in de praktijk discussies met anderen ertoe kunnen leiden dat we beter worden in het toepassen van onze concepten. In plaats daarvan stel ik dat die discussies en sociale leerprocessen niet zoveel zeggen over wat concepten nu eigenlijk zijn.

Ik sluit af door nog even in het kort verder toe te lichten hoe deze ideeën nu samenhangen. Een adequaat begrip van de aard van concepten in het algemeen en institutionele concepten in het bijzonder vormt een goed uitgangspunt voor de XYZ-conceptie van constitutieve regels. Concepten kunnen gezien worden als regels vanwege hun normatieve dimensie en de regelmatigheden die ze impliceren. Het zijn echter geen intrinsiek sociale regels. Institutionele concepten zijn speciaal omdat ze fenomenen betreffen die hun bestaan te danken hebben aan onze acceptatie. Statusconcepten zijn dan ook acceptatie-afhankelijk. Constitutieve regels bevatten statusconcepten en zijn daarmee in zoverre sociaal dat de institutionele fenomenen waar die regels over gaan hun bestaan te danken hebben aan onze acceptatie van die regels. De XYZ-conceptie van constitutieve regels maakt duidelijk hoe de conceptuele, de normatieve en de gedragsmatige dimensies van instituties samenhangen. Ze biedt een bruikbaar raamwerk om over instituties na te denken dat in de praktijk haar nut verder zal moeten bewijzen.

CURRICULUM VITAE

Frank A. Hindriks was born in Groningen on May 15 1974. After finishing secondary education at the Gomarusschool in Groningen, he spent a year at Dordt College, Iowa (United States; 1992 – 1993). He studied economics at the Erasmus University Rotterdam (EUR; 1993 – 1999), and worked as an economist for the Ministry of Economic Affairs, EIM and the CPB (1997 – 2000). In addition to this, he studied philosophy at the EUR (1994 – 2000) and at the University of St. Andrews (Scotland; 2000 – 2001). After returning from Scotland he started his Ph.D. research at the faculty of philosophy of the EUR. He was also appointed as the Assistant-Director of the Erasmus Institute for Philosophy and Economics (EIPE). He has published papers in journals such as *Philosophical Studies* and *Dialectica* as well as in several edited volumes. Together with Anthonie Meijers he edited a special issue of *Philosophical Explorations* devoted to collective intentionality.

