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But Where Is the University?

Frank HINDRIKS[†]

ABSTRACT

Famously Ryle imagined a visitor who has seen the colleges, departments, and libraries of a university but still wonders where the university is. The visitor fails to realize that the university consists of these organizational units. In this paper I ask what exactly the relation is between institutional entities such as universities and the entities they are composed of. I argue that the relation is constitution, and that it can be illuminated in terms of constitutive rules. The understanding of the ontology of institutions that constitutive rules provide, however, is incomplete. In order to capture the practical significance of institutions, I introduce the notion of a status rule. Status rules concern the normative powers of institutions. The status account of institutions defended here is used to solve the problem of freestanding status terms: it turns out to be rather difficult to identify the entities of which statuses such as corporations and electronic money are composed. Unable to solve this problem, Searle concludes that they are created out of thin air. I criticize this claim and argue that these statuses are imposed on persons.

Well before the subject became popular in analytic philosophy, Gilbert Ryle used an example concerning social ontology in order to illustrate the notion of a category mistake:

A foreigner visiting Oxford or Cambridge for the first time is shown a number of colleges, libraries, playing fields, museums, scientific departments and administrative offices. He then asks “But where is the University? I have seen where the members of the Colleges live, where the Registrar works, where the scientists experiment and the rest. But I have not yet seen the University in which reside and work the members of your University.” It has then to be explained to him that the University is not another collateral institution, some ulterior counterpart to the colleges, laboratories and offices which he has seen. The University is just the way in which all that he has already seen is organized. When they are seen and when their coordination is understood, the University has been seen. (Ryle 1949, 17–18)

Ryle believed that it is a mistake to assume that a university is an institution that belongs to the same category as colleges, departments, and libraries. On his view universities depend on these other organizational units for their existence. In order to develop an adequate account of the ontology of institutions, I shall ask what exactly this dependence relation is. The second question that I shall address here is to which kinds of entities institutions bear this relation. Ryle believed that universities depend on colleges, departments, and libraries. But these are institutions themselves. Presumably institutions ultimately depend on non-institutional entities. I shall investigate which entities they are.

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My point of departure is the idea that institutions are to be understood in terms of constitutive rules. This idea plays a central role in what I call ‘the conventional generation account of institutions’, which has been proposed and defended by Alvin Goldman and John Searle. Constitutive rules concern the conditions an entity has to meet in order to constitute a particular kind of institutional entity. Think, for instance, of the fact that a school could only be a university if the pope recognized it as such (Verger 1992). Constitutive rules feature such preconditions, and once a constitutive rule is in place institutional entities can be created or generated by ensuring that its preconditions are satisfied. Due to its somewhat one-sided focus on ontological preconditions, the conventional generation account has run into a problem that it has not yet been able to solve in a satisfactory way: sometimes it fails to identify the entities on which particular kinds of institutional entities depend. For reasons explained in section 1.2, I shall refer to this as ‘the problem of freestanding *Y* terms’. As we shall see in section 1, Searle’s response to this problem is that institutional entities such as universities are created ‘out of thin air’ (2005, 14). I shall argue that this claim is problematic and that we need not accept it.

I go on to present an alternative ontology, which I call ‘the status account of institutions’. A core ingredient of the status account is the notion of a status rule. A status rule captures the enabling and constraining roles that an institutional entity plays. A second ingredient, which is crucial for solving the problem of freestanding *Y* terms, concerns the relation that institutional entities bear to the non-institutional entities on which they depend. According to the status account, this relation is that of constitution, a relation of unity that is distinct from identity. I shall argue that articulating the status rule of an institutional entity is often an indispensable step in the process of identifying the kind of entities it depends on. Furthermore, embracing constitution as the dependence-relation facilitates accepting the eminently plausible claim that Searle has to reject: that universities are (not identical to but) constituted by people.

1. *The conventional generation account*

1.1 *Conventional generation and constitutive rules*

Goldman (1970) famously argued that institutional actions are conventionally generated. His idea was that actions such as signaling a turn in traffic, or check-mating one’s opponent in chess, exist in virtue of rules, conventions, or social practices. According to a presumably informal traffic rule, ‘extending one’s arm out the car window while driving *counts as* signaling for a turn’ (Ib., 25; emphasis added). Searle (1964, 1969) defends a closely related view of institutional actions on which institutional actions owe their existence to constitutive rules. Constitutive rules “create or define new forms of behavior” and they “create the very

possibility” of those forms of behavior (Searle 1969, 33). Searle contrasts constitutive rules to regulative rules, which only regulate actions that are logically independent of rules. Constitutive rules, however, “constitute (and also regulate) an activity whose existence is logically dependent on the rules” (Ib., 34). Finally, the structure of constitutive rules is ‘*X* counts as *Y* in context *C*’. *C* stands for a context, *Y* for an institutional action, and *X* for a non-institutional action.

Just as Goldman does, Searle uses the phrase ‘counts as’ in characterizing the rule of an institutional action. Both recognize the importance of the circumstances under which or the context in which an institutional action is performed. In addition to this, both of them focus on what is needed for a non-institutional action to constitute or generate an institutional action. Given these similarities between Goldman and Searle, both can be said to subscribe to what I call ‘the conventional generation account’ of institutional actions.¹

Searle generalizes this into a conventional generation account of institutions including institutional objects and roles. On his view institutions are systems of constitutive rules (Searle 1969, 51; 1995, 140; 2010, 10). Such rules apply not only to actions, but also to objects and persons. Searle formulates the constitutive rule of money in the United States as follows: “Bills issued by the Bureau of Engraving and Printing (*X*) count as money (*Y*) in the United States (*C*)” (Searle 1995, 28; note that the bills are in fact issued by the Federal Reserve). The action, object, or person on which a status is imposed can be an institutional status itself, as long as it ultimately bottoms out in a non-institutional action, object, or person. Searle (1995) introduces three notions that will prove to be important for answering our queries about institutional entities and the relation they bear to non-institutional entities: collective acceptance, status function, and deontic power. Searle uses the term ‘acceptance’ interchangeably with agreement and recognition. These terms refer to the attitudes people have towards institutional entities. Searle seems to regard collective acceptance as a matter of collective belief, as is suggested by his claim that institutions only exist because we believe them to exist. On his view, then, institutional facts require that we collectively believe that certain constitutive rules apply.²

Status functions are institutional functions such as the function of money to serve as a means of exchange. The *Y* terms in constitutive rules 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 artifacts 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 lock on a door because of its physical characteristics. In the case of institutional functions,

¹ Ludwig (2007, 375 and note 27) also sees a close link between conventional generation and constitution, and between conventions and constitutive rules.

² Searle used to hold that collective acceptance cannot be reduced to individual intentional states (1990, 1995). He has abandoned this claim recently (Searle 2010, 58).

however, the physical structure of the entities that possess them is less important. In extreme cases “the status function may be attached to an entity whose physical structure is only arbitrarily related to the performance of the function” (Ib., 41).

Searle introduces the term ‘deontic power’ to conceptualize the normative dimension of institutions. Deontic powers “regulate relations between people” (Ib., 100). Searle distinguishes between positive and negative deontic power, roughly between rights and obligations. A president of the USA, for instance, has the right to veto legislation and the person who holds the office is enabled by her role to do so. Similarly, if a piece of land is someone’s property, others are not permitted to use it without his permission. Just like status functions, deontic powers also depend on collective acceptance.

The conventional generation account of institutions provides a useful point of departure for understanding the ontology of institutional entities. In particular Searle’s version of it can account for a wide range of institutional entities. Such institutional entities owe their existence to our collective acceptance of constitutive rules. The issue we should consider, however, is whether the account enables us to answer the two questions raised in the introduction in a satisfactory way. The first question concerns the relation between institutional entities and non-institutional entities. As I shall argue in section 3, Searle’s conventional generation account does not provide an adequate answer to the question what exactly the relation is that obtains between institutional entities and non-institutional entities. The second question raised in the introduction was to which kinds of entities institutional entities bear this relation. As I shall argue in section 1.2, Searle’s conventional generation account does not always facilitate the identification of the kind of entities on which a certain kind of institutional entity depends. In section 2 I present the status account of institutions that does provide a satisfactory answer to both questions.

1.2 *Freestanding Y terms*

Barry Smith has argued that the conventional generation account of institutions is incomplete: for certain kinds of institutional entities, no *X* can be found on which a status function *Y* is imposed. His main example is electronic money. Searle used to claim that ‘a blip on a computer disk’ could count as money (1995, 56). Smith argues instead that they merely represent money: “Searle seems here to confuse records pertaining to the existence of something with that something itself” (Smith and Searle 2003, 287).³ Searle has accepted Smith’s criticism. What is more, he extends the objection to the case of corporations:

³ Smith has introduced the notion of a quasi-abstract object in order to solve the problem. Quasi-abstract objects are abstract (non-physical) but historical (Smith 2007, 6). The argument below implies that this notion is not needed for accounting for the ontology of the cases discussed in this paper. See Hindriks (2007) for a criticism of Smith’s proposal.

The laws of incorporation in a state such as California enable a status function to be constructed, so to speak, *out of thin air*. Thus, by a kind of performative declaration, the corporation comes into existence, but there need be no physical object which is the corporation. The corporation needs to have a mailing address and a list of officers and stock holders and so on, but it does not have to be a physical object. . . . There is indeed a corporation as Y, but there is no person or physical object X that counts as Y. . . . the corporation itself is *not identical with any physical object or any person or set of persons*. The corporation is, so to speak, *created out of nothing*. (Searle 2005, 14, 15 and 17; emphasis added; see also Smith and Searle 2003, 305–307, Searle 2006a, 22–24, and Searle 2010, 20–23, 98)

Just as in the case of electronic money, Searle admits that there is no *X* on which the status of a corporation is imposed.

On the face of it, this seems correct. There are no objects with which a corporation can be identified. It would, for instance, be silly to identify corporations with their buildings. Furthermore, a corporation is neither identical to the person who created it, nor to its owners or any other set of its members. This much follows from the fact that a collection of owners or any other set of the members of a corporation can change while the corporation remains the same. This applies to universities and other organizations as well (Ruben 1985).

Even though Searle accepts this part of Smith's criticism, he rejects the idea that his account of institutions is incomplete for this reason. He holds that entities such as corporations and electronic money are statuses that are not imposed on anything. In terms of the structure of constitutive rules, Searle appears to think that he has solved the problem by admitting that there are no *Xs* in these cases on which the *Ys* are imposed, and by granting that some status function terms are freestanding *Y* terms. This, however, is merely a matter of putting a name to a problem. In effect, he claims that there is nothing that constitutes organizations or electronic money. This means that their ontology is unaccounted for.

In response, one might point out that Searle has emphasized the importance of institutional processes. Smith, however, argues that "we need to take seriously the fact that such processes involve objects" (2007, 21). In other cases this is exactly what the notion of a constitutive rule enables us to do. Such rules reveal on what kind of entity a status is imposed. Given that Searle allows for freestanding *Y* terms, his ontology cannot deliver the promises with which it was introduced: the extent to which institutional ontology is a matter of status imposition is more limited than we had reason to believe. In light of these considerations, I refer to the problem Smith has identified as 'the problem of freestanding *Y* terms'.

Searle could claim that the existence of such entities is *sui generis*. However, it would be rather surprising if he would do so, given that his explicit aim is to explain how social reality fits into the ontology provided by the natural sciences (Searle 1995, 5–7; 2010, 3–5; Smith and Searle 2003, 300). Furthermore, he

dismisses the notion of a layered ontology as ‘mysterious’ (Searle 2006b, 43). And even if he were to do so, he would still owe us a more substantial account. He can hardly expect us to rest content with his claim that such entities can be constructed out of thin air. Searle maintains that a corporation “need have no physical realization” and “may be just a set of status functions” (Smith and Searle 2003, 305). It is just not clear what the claim that a corporation is a set of status functions means if there is nothing on which these functions are imposed. Searle claims that “the deontic power goes directly to the individuals in question” (2006a, 23). But this is not true. It is the corporation as such that can file a lawsuit, not any particular member.

I shall argue that there is a substantive solution to the problem of freestanding *Y* terms. This means that we need not accept the claim that social entities are created out of thin air. My solution will become salient once the status account of institutions has been introduced in section 2. Section 2.1 introduces the notion of a status rule. Section 2.2 elaborates on the notion of a constitutive rule. My account of constitutive rules includes an account of the relation between institutional and non-institutional entities. I argue that this relation is constitution, and that it is to be regarded as a relation of unity without identity. An important reason why Searle fails to provide an adequate solution to the problem is that he has never provided an account of constitution. The fact that he rejects a layered ontology suggests that he takes it to be identity (see section 3.1 for more on this). In section 3 I argue that the account I favor solves the problem of freestanding *Y* terms.

2. *The status account*

2.1 *Status rules*

According to the status account of institutions – my alternative to the conventional generation account – institutions are to be understood in terms of status rules. A status consists of normative powers.⁴ And a status rule specifies the normative powers that are characteristic of a particular status.⁵ The status rule of property, for instance, consists of the rights that accrue to owners including the right of use and the right of transfer. The status rules of chess pieces concern the moves the pieces can make. As they capture their normative powers, status rules concern the

⁴ I use the term ‘normative power’ instead of Searle’s ‘deontic power’ in order to avoid being committed to the peculiarities of his account. Normative powers encompass all normative features that are (at least partly) based on collective acceptance, including rights and obligations, liberties and entitlements, and immunities and executive powers (see Jones and Sergot 1997 for an analysis of executive power). As I do not see how the notion of a function could add anything to that of a status explicated in terms of normative powers, I use the term ‘status’ rather than ‘status function’ (see Hindriks 2008 for more on this).

⁵ Strictly speaking a *formulation* of the relevant status rule consists of a specification of those normative powers.

practical significance of institutions. They characterize the enabling and constraining roles that institutions play. The schema that status rules satisfy is: Y is Z , with Y being a status term such as 'property' and Z designating one or more normative powers.

The notion of a status rule is needed in addition to that of a constitutive rule in order to arrive at a more complete understanding of what institutions are. By conceptualizing institutions in terms of constitutive rules only, the conventional generation account provides at best half of the picture. Recall Searle's formulation of the constitutive rule of US American money: Bills issued by [the Federal Reserve] count as money in the United States. This tells us what tokens of money are made of in a particular context. It does not, however, tell us what type of object money is. An answer to that question is provided by the normative powers that are characteristic of money, which are given by its status rule. For the purposes of this paper, I shall assume that the only normative power of money is purchasing power. Given this assumption, its status rule is: money is purchasing power. Hence, the Z -term of money is 'purchasing power'.

As can be gathered from its name, the conventional generation account focuses on how institutional entities are generated rather than on what they are as such. This is exactly the purpose for which Goldman developed his account of the conventional generation of institutional actions. Searle's mistake was to think that the conventional generation account of constitutive rules that he proposed goes to the very heart of institutional ontology. He has tried to make up for this by introducing the notion of a status function and that of deontic power. However, as I shall go on to argue, he has not systematically integrated these notions in his conception of institutions as (systems of) constitutive rules.

Searle uses the following schema to elucidate the notion of deontic power: "We accept (S has power (S does A))" (Searle 1995, 104). Deontic powers, then, depend on collective acceptance, and it is always a person who has a certain deontic power to perform a particular kind of action. Searle does not, however, complement this elucidation with a systematic explanation of the way this schema relates to the counts-as locution. He only suggests that the person who has the power bears some special relationship to what the X term designates. She might, for instance, be the bearer of X (when the relevant status is money), the person to whom X is issued (with 'parking ticket' as the Y term), or X itself (when the Y term designates the president of the United States) (Ib., 106, 107; 2005, 17; see also 2006a, 23–24 and 2010, 101–103). The normative powers at issue in these examples are purchasing power, the obligation to pay, and, among others, the right to veto laws. In Searle's framework it is unclear how exactly they relate to the X and Y terms that figure in the relevant constitutive rules. Such normative powers can be integrated systematically into the status account of institutions by means of the notion of a status rule. Normative powers do not feature explicitly in constitutive rules. They do so

implicitly because status terms feature in them. The key to the integration that the status account achieves is that status terms figure *both* in constitutive rules and in status rules. As a consequence, X and Z terms turn out to be related to one another in a clear and unambiguous way.

Searle has recently defined institutions in a rather revealing way: “An institution is any collectively accepted system of rules (procedures, practices) that enable us to create institutional facts” (2005, 21). This definition suggests that Searle is more concerned with how particular institutional facts come into existence than with what institutions really are. Constitutive rules concern the context-dependent ways in which institutional entities are realized. They are important for understanding institutional entities, but they do not illuminate the nature of the relevant institutions as such. As a consequence, the conventional generation account is rather limited. The status account, in contrast, zooms in on the normative powers that are attached to institutional statuses. It thereby reveals what institutions really are: they are collections of normative powers.

Consider the status of a president. A president is, of course, someone who has been elected as such. The constitutive rule for being a president in a particular country specifies the election procedure someone has to go through in order to become a president as well as the other preconditions she has to meet. As an answer to the question what a president is, however, a specification of such preconditions would be seriously incomplete. An enumeration of the rights and obligations, the privileges and the powers that come with being a president would be more to the point. The status rule of the presidency consists of such an enumeration. A satisfactory ontology of an institutional entity contains both a specification of the normative powers involved in its status and an enumeration of the conditions an entity has to meet in order to have that status – so both a status and a constitutive rule. Status rules are in some sense more important than constitutive rules: as they concern features of the type that are (relatively) independent of particular contexts, status rules capture what is most significant about institutions. As they feature new normative powers, they provide new parameters for social interaction.⁶

⁶ The information that features in a status and a constitutive rule can be put in a single regulative rule (cf. Ransdell 1971, Lewis 1983). Suppose the constitutive and status rules of the US presidency were as follows: (CR) Someone who is elected by US citizens to sit in the oval office is the president of the US; (SR) the US president has the right to veto legislation. No information is lost if these rules are transformed into the following regulative rule: (RR) If (and only if) someone has been elected by US citizens to sit in the oval office, this person has the right to veto legislation. In Hindriks (2009) I argue that, even though institutional terms such as ‘president’ can be eliminated from the systems of rules in which they occur, they do have ontological significance due to the fact that they succeed to refer to institutional entities. In the context of this paper, the point to see is – as will be clarified further below – that it is useful to separate the normative powers from the preconditions, because the latter concern the lower-level ontology of the status, and the former its practical significance.

2.2 Constitutive rules

As status rules complement constitutive rules, constitutive rules do play a role in the status account of institutions. Constitutive rules specify the conditions that an entity must meet in order to have a particular status, and thereby its concomitant normative powers. On the status account, the schema for constitutive rules is this: In C , X is Y . The first thing to note about this schema is that it features a status term, just as status rules do. The schema for status rules is: Y is Z . The Y term is what status rules and constitutive rules have in common. On the status account, then, statuses provide the link between the two kinds of rules that are needed for understanding institutional reality. The second notable feature of the status schema for constitutive rules is that the phrase ‘counts as’ does not appear in it, this in contrast to Searle’s counts-as locution. The reason for this is that I take the phrase to be indicative of the fact that institutional entities are socially constructed. This stands in need of analysis beyond indicating that something is counted as something else. What I call ‘the Collective Acceptance Principle’ (CAP) can be used for giving content to the idea that institutional entities are socially constructed.

The underlying idea is that institutional entities, entities that involve a status, owe their existence to collective acceptance of a constitutive rule. The formulation of the Collective Acceptance Principle (CAP) is this:⁷

$$[\text{CAP}] \quad \text{In } G, p \leftrightarrow \text{CA}_G(p)$$

with G for a group, ‘ CA_G ’ for collective acceptance by group G , and ‘ p ’ for an institutional proposition that expresses a constitutive rule. Given the CAP, ‘ X counts as Y ’ can be interpreted as ‘ X is Y exactly if it is collectively accepted that X is Y ’.

The counts-as locution does not explicitly mention a group. Implicitly, however, the locution is relative to some group in the following way: In the group that is relevant in the context under discussion, X constitutes Y , due to the fact that the group collectively accepts this. CAP makes this explicit. A consequence of CAP is that statuses require collective acceptance of constitutive rules for their instantiation. This also implies that the normative powers that are involved in a status can be exercised only if the relevant constitutive rule is collectively accepted. I shall say that when a status is instantiated its normative powers are *active*.

An X term characterizes the kind of entity on which a status is imposed. It specifies the conditions that an entity must meet in order to have a particular status Y in a context C . Using the term ‘constitution base’ in analogy with ‘supervenience base’, an X term provides a description of the constitution base of a status. The claim that X is Y , then, is to be understood as the claim that an entity that is X

⁷ Cf. Tuomela’s Collective Acceptance Thesis, 2002, 132 and note 6.

constitutes an entity that is *Y*. In terms of the CAP this amounts to: ‘an entity that is *X* constitutes an entity that is *Y* exactly if it is collectively accepted that entities that are *X* constitute entities that are *Y*’.

Constitution is commonly regarded as a metaphysical determination relation of unity without identity (see, for instance, Johnston 1992 and Baker 1997, 2000). A well-known example of constitution is the relation between a lump of clay and a statue. When a statue is made out of a lump of clay, the lump of clay already exists before the statue does. This suggests that, even though they coincide in spatio-temporal terms, the statue and the lump of clay are not identical to one another. The relation of constitution is irreflexive, transitive, and asymmetric. The standard account of constitution entails a layered ontology. Constituted objects are one level up from the entities that (directly) constitute them.

This account of constitution fits institutional entities seamlessly. The relation that institutional entities bear to the entities that constitute them is indeed irreflexive, transitive, and asymmetric (Grossi et al., 2006). A piece of paper does not constitute itself, but it can constitute money. If it does, the bill does not constitute the paper. Furthermore, some (but not all) money is also legal tender, and legal tender is constituted by pieces of paper. The properties of irreflexivity, asymmetry and transitivity can be accommodated in the structure of constitutive rules by placing constraints on the way in which the schema of constitutive rules is to be specified. Note that the *X* term characterizes the constituting entity, the *Y* term describes the constituted entity, and the *C* term characterizes the context in which the entity that is *X* constitutes the entity that is *Y*. In order to accommodate irreflexivity, the *X* term of a constitutive rule should be distinct from its *Y* term. The transitivity of the constitution relation implies that it is admissible for the *Y* term of a particular constitutive rule to figure as the *X* term in another. Asymmetry requires that when a *Y* term of a constitutive rule occurs as the *X* term of another, the *Y* term of the latter rule be distinct from the *X* term of the former.

An entity that is *X* constitutes an entity that is *Y* only if the requisite context *C* obtains. In this respect, the constitution relation that applies to institutional entities fits the account that Baker (1997, 2000, 2007) has proposed. She argues that the existence of a constituted entity is (non-causally) explained by the fact that it occurs in circumstances that are favorable for its existence. If the schema for constitutive rules is on the right track, this is obviously true of institutional entities. The circumstances that have to be in place for an institutional entity to exist encompass the conditions specified by the relevant *X*-term and *C*-term. In addition to this, they include collective acceptance of the relevant constitutive rule. Given these restrictions and requirements, the CAP provides an account of the way in which the constitution relation is effected in the case of institutional entities.

Baker also argues that constituted objects have some of their relational properties essentially. A statue, for instance, bears an essential relation to an art world.

The same holds for institutional entities. A bill or a coin bears an essential relation to a financial world, a president to a democracy, and a crown to a monarchy. Note that, because it employs the standard account of constitution, the status account is a multi-level account of institutions. As Searle rejects a layered ontology (see section 1.2), the status account of institutions differs from Searle's institutional ontology also in this respect.⁸

The status account of institutions features status rules (section 2.1) and employs a conception of constitution as a relation of unity distinct from identity (this section). In these respects, it differs from the conventional generation account. In spite of these differences, the status account shares a number of features with Searle's conventional generation account. Searle's notion of a status function is rather similar to my notion of a status. And as *Y* terms also feature in constitutive rules, normative or deontic powers also play a central role in his account. Status rules make explicit what is implicit in constitutive rules. The main argument in favor of the status account is not that it is better as such. Instead, it is that the status account can be used to solve problems. In section 3, I shall argue that it solves the problem of freestanding *Y* terms.⁹ My contention will be that, when combined with the standard account of constitution, the notion of a status rule facilitates the identification of the entities that constitute statuses such as electronic money and universities.

3. *A solution to the problem of freestanding Y terms*

3.1 *Universities*

The two most significant differences between the status account and the conventional generation account are, first, that the status account explains what institutions are in terms of status rules rather than constitutive rules, and second, that the status account employs a particular account of constitution, one on which it is a relation of unity that is distinct from identity. Although these two differences do not directly lead to an answer to the question on which entities institutional entities depend, they do provide the basis of a method for answering it: if you want to identify the kinds of entities that can constitute a particular status, start by formulating its status rule. Even though ontologically speaking non-institutional entities

⁸ In Hindriks (forthcoming) I defend what I call 'the enactment account of constitution'. In this account the common requirement of material coincidence is replaced by an enactment condition according to which members enact organizational actions or authorize others to do so. As it does not require (material and hence no) spatial coincidence, the enactment account solves what I call 'the Location Problem in Social Ontology'. It can, for instance, explain how organizations can retain their locations when their members move around.

⁹ The status account of institutions also sheds light on the relation between regulative and constitutive rules (see note 6, section 4, and Hindriks 2009).

are prior to institutional entities (in that the latter depend on the former), methodologically it is best to start from a characterization of the institutional entity at hand and try to identify the constituting entity only later. This methodology shall be used to provide an answer to the question which entities constitute universities and electronic money. As we saw in section 1, Searle believes no (positive) answer to this question is to be had. I think he is mistaken about this. The answer that I shall propose allows us to resist Searle's claim that they are constructed out of thin air. The upshot is that the problem of freestanding *Y* terms can be solved after all.

Tuomela (1995, 2002, 2003) uses the notion of a task-right system to elucidate the nature of organizations. Such systems consist of (formal) norms that an authority imposes on its members and/or of (informal) mutual normative expectations that members have about each other's behavior. Because it is collectively accepted, a task-right system generates a social practice involving recurrent social actions. Tuomela's conception of organizations can be used for formulating a status rule for organizations. Recall that status rules consist of normative powers sustained by collective acceptance. A task-right system just is a collection of normative powers (some members, for instance, could have the power to tell others what to do). This entails that task-right systems are collections of statuses. Sub-categories of organizations, such as universities, will have task-right systems with particular features: some normative powers will, for instance, pertain to research or education (think, for example, of the right to confer degrees). Providing this (admittedly rough) characterization of the status rules involved in organizations is a first step towards identifying the kind of constitution bases they might have.

In the passage quoted in the introduction, Ryle points out that a university does not exist independently of its colleges, departments, and libraries. At the same time, it is also clear that it cannot be identified with the buildings in which they reside, which are observed by the foreigner in the passage cited. A university can retain its identity when it sells a building or builds a new one, just as a statue can survive changes in its constituting matter. The notion of constitution serves to account for such changes. Even so, the idea that the buildings constitute the university can be ruled out. This is evident from the (rough) characterization of the kind of status rule appropriate for universities. It does not make sense to say that a certain set of buildings constitutes a particular task-right system.

As discussed in section 1, Searle argues that organizations are not identical to the people they employ. In one of the passages mentioned there, Searle maintains that "the corporation itself is *not identical with* any physical object or *any person or set of persons*" (2005, 17; emphasis added). This means either that these people are not as important to organizations as we might think, or that the relation between organizations and their members is not one of identity. According to the status account of institutions, the relevant relation is that of constitution conceived of as a relation of unity that is distinct from identity. The objection that was fatal

to the claim that organizations are identical to collections of people – that they can survive changes in membership of such collections – is harmless with respect to the suggestion that organizations are constituted by collections of people. A constituted entity can survive changes in its constitution base. The proposal, then, is that organizations are constituted by one or more persons. These people fill the roles of task-right systems. The members of a particular organization have the obligations and other normative powers that go with the roles that figure in its status rule. Perhaps universities are constituted directly by institutions such as colleges, departments, and libraries. However, such institutions are themselves constituted by people. So even if they do not constitute them directly, ultimately people constitute universities.

What role does the investigation of the status rules of universities play in arriving at this conclusion? It makes it apparent that Searle is on the wrong track when he rejects the claim that the status of some kind of organization is imposed on people. Given that universities consist of task-right systems, they must be statuses that are imposed on collections of people. One might want to object and point out that normative powers play a central role in Searle's conception of corporations: "the whole point of [declaring a corporation to exist by fiat] is to create a rather elaborate set of power relationships between actual people; indeed, the corporation consists of such relationships" (2010, 98; see also 2006a, 23–24). Here Searle comes close to claiming that a corporation is a status that consists of a system of roles, or tasks and rights. However, Searle also argues that in the case of freestanding *Y* terms "the deontic power goes directly to the individuals in question" (2006a, 23). This implies that there is no entity that has the status of a university or corporation. As Searle puts it: "there is no *X* which counts as *Y*" (Ib., 22; see also 2010, 98).

Searle seems to believe that in the case of corporations he has to choose between the claim that some status is imposed on an entity that constitutes the corporation and the claim that the members of corporations bear normative relations to one another: "It is not that there is an *X* that counts as the corporation but, rather, that there is a group of people involved in legal relationships – thus, so and so counts as the president of the corporation, so and so as a stockholder in the corporation and so on – but there is nothing that need count as the corporation itself" (Searle 2006a, 24). My argument reveals that no such choice needs to be made. The analysis of the status rule of organizations presented above reveals that an organization is a system of statuses imposed on the members of an organization. This implies that the individuals involved in an organization do indeed have particular normative powers. However, there is also an *X* that counts as a *Y*. Corporations and universities as such have statuses. And those statuses are imposed on collections of individuals. Universities and corporations can, for instance, sue in their own name. This normative power is not imposed on any

particular member of an organization, but on the collection of members as such. So it is both the case that certain members have specific normative powers, and that the members count as an organization with a particular status.¹⁰

Now why does Searle feel compelled to maintain that some institutional entities are not imposed on anything? This may well be because he takes constitution to be a matter of identity. Searle claims, for instance, that an object is a social object “only under certain descriptions and not others” (Smith and Searle 2003, 302; see also Smith 2007, 12). Furthermore, Searle motivates his claim that in the case of a corporation there is no *X* that counts as *Y* by rejecting particular identity claims: “the corporation itself is *not identical* with any physical object or any person or set of persons. The corporation is, so to speak, created out of nothing” (2006a, 24, emphasis added; 2010, 20; recall also Searle’s rejection of a layered ontology discussed in section 1.2). The hypothesis that he conceives of the relation between institutional and non-institutional entities in terms of identity entails that he has to reject the suggestion that corporations are statuses imposed on collections of people. So it provides an attractive explanation of why Searle embraces the idea that corporations are created out of thin air.

When he makes this point in his most recent book, Searle also mentions the fact that corporations can retain their identity “through changes in the people who occupy the various positions of status function within it” (2010, 98). This is not possible when the relation between them is one of identity. We have seen, however, that there is a more attractive alternative. The standard account of constitution can account for changes in an entity’s composition. It is part of this conception that an entity can preserve its identity through changes in its constitution base. So the standard account of constitution dissolves an obstacle for accepting the idea that universities and corporations are entities with statuses that are constituted by persons. The upshot is that we do not have to accept Searle’s claim that the deontic powers of corporations are free-floating and that corporations are fictitious entities (Ib., 100). Instead, those normative powers form the core of an ontology that has exactly the same structure as that of other institutional entities. Corporations are just as real as promises and presidents.

¹⁰ Three qualifications need to be made. First, it may be that the institutional status is imposed not on all members, but only on the operative or authorized members (Tuomela 1995). On whom exactly a status is imposed will be apparent from the constitutive rule that is in place for that status in the context at issue. Second, it may be that the institutional status is imposed on social groups rather than on persons. Social groups consist of people who have collectively accepted a collective decision mechanism (Hindriks 2008). Third, the points made in the main text apply to corporate agents, but not to mere organizations. Organizations consist of task-right systems and have members with statuses; corporate agents are organizations that have statuses as such (Ib.). Corporate agents encompass universities and corporations, which are recognized by law. Although most organizations enjoy some form of external recognition, some do not (think, for instance, of secret criminal organizations).

3.2 *Electronic money*

The status account can also solve the riddle of electronic money, Smith's main counterexample to Searle's account. Suppose that money just is a means of exchange, and its status rule is 'Money is purchasing power'. On what kind of entity is this status imposed? Smith and Searle agree that it would be wrong to claim that the digital representation is what counts as money. A digital representation is not the constitution base of electronic money, because, as Smith points out, "it might also represent dollar bills or bars of gold in a safe" (Smith and Searle 2003, 287). And there is no suitable alternative object on which the status is imposed.

In order to make progress here, another notion Searle uses needs to be introduced: that of a status indicator. Searle argues that objects such as passports and drivers' licenses are not status functions but rather status indicators. These status indicators "indicate the status of the bearer as someone who is legally entitled to travel to and from foreign countries or is legally qualified to drive" (Searle 1995, 119). The idea, then, is that the relevant statuses are imposed on persons. These statuses, I propose, are properties of persons. And the status indicators are objects that do nothing else than indicate that those persons have those status properties.

The thing to note is that this move is also available in the case of money. Searle writes that "[m]oney does not require additional documentation, because it is itself a form of documentation" (Ib.). In light of this, one might think that it would be natural to regard money as a status indicator. However, Searle does not do so. And there is a notable difference between money on the one hand and passports and drivers' licenses on the other: money is easily transferable from one person to another, whereas passports and drivers' licenses are not. In the case of bills and coins it makes sense to say that the normative powers are carried by the pieces of paper and metal. Their purchasing power is not intimately connected to a particular person, but is carried by whoever happens to have them in his or her wallet. This is different in the case of electronic money. There is no object to which the purchasing power of electronic money is attached. In light of this, it makes sense to conceive of the electronic documentation as a status indicator, i.e., as an indicator of the status that some person or organization has. The figure in someone's electronic bank account indicates how much purchasing power *that person* or *that organization* has. These considerations support the idea that in the case of electronic money purchasing power can plausibly be conceived of as a property of a person or organization. It is a status that is not imposed on an object, but on a property. And the 'blips' or 'magnetic traces' on computer disks' are status indicators. The upshot is that, *pace* Smith (Smith and Searle 2003, 288), even electronic money is the product of status imposition.¹¹

¹¹ See Baker (2009) for an account of property constitution.

4. *The status account contextualized*

The status account can be used for answering several questions that the conventional generation account cannot answer satisfactorily. At the beginning of section 1 I discussed Searle's characterization of constitutive rules. According to him, constitutive rules "create or define" new forms of behavior and "create the very possibility" of these forms of behavior (1969, 33). He has never explained what he meant by this. Creation and definition are very different matters. How can one and the same kind of rule do both? And how exactly is the claim that they create the possibility of new forms of behavior related to the claim that they "constitute (and also regulate) an activity the existence of which is logically dependent on the rules" (Ib., 34). How can such rules at the same time constitute, regulate, and be logically presupposed by an activity? Instead of trying to answer these questions for Searle, I shall provide the answers that follow from the status account of institutions. Let me first make the claims that I take Searle to make fully explicit: (1) Constitutive rules define institutional terms. (2) They regulate institutional forms of behavior. (3) They create the very possibility of those forms of behavior. (4) Institutional forms of behavior are logically dependent on constitutive rules. The status account reveals that some of these claims have to be qualified, and that others are true of status rules rather than constitutive rules.

Status rules capture what statuses are. Formulations of status rules are definitions of status terms. When a status term refers to a non-institutional action that affects the normative powers someone has or can execute, its status rule defines an institutional kind of behavior. Thus, instead of constitutive rules, status rules provide definitions.¹² To marry a couple, for instance, is a matter of imposing particular rights and obligations that usually pertain to sexual behavior, raising children, and property. This definition is a status rule. The implication is that claim (1) is wrong. Instead of constitutive rules, status rules define institutional terms. Consider next the regulatory function that Searle attributes to constitutive rules. In order to marry a couple, certain procedures have to be applied. The context determines which procedures they are. In France, for instance, the procedures have to be completed by a civil official, whereas a priest has to do this in Spain. Such procedures are specified in constitutive rules. As such, they regulate behavior – in the case at hand the behavior during and prior to the wedding ceremony. However, this is not the behavior that is involved in the status of marriage. How sex, children, and property should or can feature in marriages is determined by status rules rather

¹² Games form an important exception in that they are defined by a combination of status and constitutive rules. A game, then, is to be identified with the combination of its status and constitutive rules. Sometimes constitutive rules include certain features that are essential to a status and others that are not. That a president is someone who has to have been elected may be a case in point, although the details of the election procedure can be subject to change.

than constitutive rules. So it seems fair to say that claim (2) Searle makes about constitutive rules pertains to status rules as well.

Do constitutive rules create the possibility of institutional forms of behavior? It is more accurate to say that our collective acceptance of such rules does this. A couple can marry only if the relevant constitutive rule is in place, which requires that it is collectively accepted. Only then does going through the procedures have any significance. Only given our acceptance of the constitutive rule, an official's applying the procedures to a particular couple constitutes marrying them. So (acceptance of) the constitutive rule is an ontological precondition for the activity, and claim (3) is (approximately) correct.¹³

So far the argument only establishes that acceptance of a constitutive rule is an ontological presupposition of institutional forms of behavior. Is this also a logical presupposition? The status rule of marriage is only operative if there is *some* constitutive rule that specifies the procedures for the context at issue. Those procedures do not feature in that status rule. However, that there be some such procedural specification is part of our concept of marriage (Alston 2000, 91n7). This implies that the instantiation of the status not only ontologically but also logically presupposes the acceptance of a constitutive rule applicable to that context. Although it is not obvious that this holds for all statuses, it may well be that claim (4) is correct.

Goldman fails to appreciate the distinction between constitutive rules and status rules just as Searle does.¹⁴ As we saw earlier, one of the examples he gives of a rule that conventionally generates an institutional action is this: "Extending one's arm out the car window while driving counts as signaling for a turn". Because of this rule, S's extending his arm out the car window is a matter of S's signaling for a turn. Presumably someone who signals for a turn has certain (usually legitimate) expectations about how other drivers behave. Goldman discusses another rule, one concerning lifeguards, that he takes to play a role similar to the one concerning signaling a turn: "Lifeguards, while on duty, are obliged to try to save the life of anyone in the water who calls for help" (Goldman 1970, 25). However, this rule is different from the previous one in several respects. First, this rule does not employ the phrase 'counts as'. Second, it specifies an obligation. Both observations suggest that it is a status rule rather than a constitutive rule. This suggestion is supported by the fact that it does not introduce a status term for the

¹³ Searle no longer claims that all institutional entities require constitutive rules for their existence. Institutional entities can also be created on an ad hoc basis. People can, for instance, select a leader without having a constitutive rule for doing so (Searle 2010, 19–20). In such cases, an institutional fact is created even though there is no corresponding institution.

¹⁴ Goldman, however, was well aware that the relation between basic actions and institutional actions was not identity. Without using the term 'constitution' he defended the view discussed in section 2.2 that the relation is irreflexive, transitive, and asymmetric (Goldman 1970, 21).

act of trying to save someone. In contrast to what Goldman implies, no action is conventionally generated by this rule. Goldman observes that, because of the rule mentioned, *S*'s trying to save Jones' life is a matter of *S*'s doing his duty. This is true, but it is true simply by virtue of the definition of 'lifeguard'.

Note also that "doing one's duty" is not a status term. As it is not a specification of a particular duty, it does not describe a normative power. Presumably Searle has cases such as this one in mind when he claims that there "is a trivial sense in which the creation of any rule creates the possibility of new forms of behaviour, namely, behaviour done in accordance with the rule" (1969, 35). The status term 'lifeguard' comes with particular normative powers including the duty mentioned. Whereas signaling a turn can have normative consequences, executing your powers as a lifeguard does not introduce new normative powers. Because of this, there is no further status that is introduced by someone acting in her capacity as a lifeguard. Hence, the lifeguard rule cannot be a constitutive rule. Compare making a promise to doing as promised. Fulfilling your obligation to do as promised does not come with a particular institutional status. Making the promise does, because the promisor and the promisee acquire new normative powers. The lifeguard example is similar in that there will be a constitutive rule for having the status of a lifeguard, but not for acting as a lifeguard is supposed to.

Goldman holds that both normative rules (the ones that I have called 'status rules') and non-normative rules (or constitutive rules) can conventionally generate institutional actions. In light of this, it is unsurprising that he also claims that in some cases "conventional generation occurs without any particular 'circumstances' being involved" (Goldman 1970, 26). Once we see that only constitutive rules conventionally generate institutional actions, it becomes clear that this is incorrect as well. To be sure, it is true that *S*'s trying to save Jones' life can be appropriately described as '*S*'s doing his duty'. And given that *S* is a lifeguard, no special circumstances are involved. However, the constitutive rule that specifies the preconditions that have to be met in order for someone to be a lifeguard is context-relative. Even though types of circumstances are not directly relevant to status rules, they are essential to constitutive rules – the rules that account for conventional generation.

It should be emphasized that the status account of institutions is not a completed theory but a framework that can be developed in more than one manner. The account is, for instance, not committed to a particular theory of collective acceptance. In addition to optional features, certain aspects require further development. Much remains to be said about the role of context, for instance, especially in light of some of the remaining criticisms Smith has presented with respect to Searle's account. Furthermore, although the kind of constitution base for organizations has been identified, nothing has been said about how one organization is to be differentiated from another one. Is it just the people it employs that distinguishes the

University of Oxford from the University of Cambridge or is there more to it?¹⁵ I make only two claims in this paper. First, the status account of institutions increases our understanding of those phenomena to which it applies. Second, in contrast to the conventional generation account defended by Goldman and Searle, it provides a solution to the problem of freestanding *Y* terms.

5. Conclusion

The notion of a status rule forms the core of the status account of institutions. Status rules concern the enabling and constraining roles of institutions. A status rule identifies the normative powers that are characteristic of the relevant status. These normative powers determine new parameters for social interaction. Without the institution of property rights, for instance, no one can rightfully accuse others of trespassing and nobody has an obligation to refrain from walking across particular pieces of land. This changes as soon as property rights have been instituted. Such rights involve constitutive rules that are collectively accepted. Constitutive rules are rules that specify the features an entity must have in order for it to have a particular status. This implies that institutions are collections of (active) normative powers. The status rules in which those normative powers feature are in force due to our collective acceptance of the relevant constitutive rules.

The status account of institutions and constitutive rules is to be preferred over the conventional generation account for two reasons. First, it offers a better account of what institutions are. The conventional generation account focuses on the creation of institutional entities rather than on how they affect the parameters of social interaction. The introduction of the notion of a status rule serves to remedy this defect. Second, it includes an account of constitution conceived of as a relation of unity that is distinct from identity. As a consequence, the status account can do justice to the fact that institutions can survive changes in the collection of entities of which they consist.

The differences between the status account and the conventional generation account should not be overstated. The notion of a status is rather similar to Searle's

¹⁵ Some of the requisite further development is provided in Hindriks (2008). There I introduce the notion of a statute. A statute specifies features that belong to a particular instance of a status, and as such it serves to differentiate between different tokens of the same type. Note also that, even though the issue Ryle raises about the relation between universities and entities that belong to other categories has been addressed, strictly speaking the question "But where is the university?" has not received a full answer. In light of what has been said, it makes sense to suggest that the location of the people involved in a university is important for its location. However, it is possible for a university to be where none of its members is. In Hindriks (forthcoming) I argue that organizations such as universities have institutional locations. In addition to this, I develop the status account of institutions in such a way that divergences between the location of an institutional entity and the entity that constitutes it can be accommodated. The upshot is that universities are (ultimately) constituted by people and are located wherever their statutes say they are located.

notion of a status function. Furthermore, *Y* terms feature in constitutive rules and Searle takes them to pertain to deontic powers. As a consequence, Searle does acknowledge the normative dimension of institutions even if it is more attractive to conceptualize it in terms of status rules. The added value of the status account of institutions can best be appreciated by considering the problems that it solves. In this paper I have argued that it solves the problem of the freestanding *Y* terms. The status account facilitates the identification of the constitution bases of entities such as universities, corporations, and electronic money. Whereas Searle maintains that these institutional entities are created out of thin air, the status account reveals that these particular statuses are ultimately imposed on (features of) persons.*

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