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# Chapter 15

## Group Agents and Social Institutions: Beyond Tuomela's *Social Ontology*

Frank Hindriks

In the past 30 years, collective intentionality, group agency and social institutions have established themselves as central topics within analytic philosophy. The many wide-ranging and penetrating papers and books that Raimo Tuomela has published on these topics have made a significant contribution to this development.<sup>1</sup> His new book *Social Ontology. Collective Intentionality and Group Agents* (Oxford University Press) is a welcome addition. Tuomela formulates his ideas in a more accessible way than before, which makes the book attractive also to philosophers and social scientists that are new to his work.

At the heart of Tuomela's conception of group agents lies the idea that a group agent is a collection of individuals who are collectively committed to some belief or goal. Group agents engage in group reasoning, which explains how cooperation can arise in situations in which conventional game theory cannot explain it (think of Hi-Lo games; cf. Sugden 2003 and Bacharach 2006). Collective commitment provides the basis for Tuomela's conceptual non-reductionism or collectivism, the thesis that collective concepts such as that of a group agent cannot be exhaustively analyzed in terms of individual actions and attitudes (10).<sup>2</sup> In spite of the fact that he recognizes the causal and explanatory roles of group agents, however, Tuomela combines his conceptual collectivism with ontological reductionism or individualism – the thesis that group agents consist solely of the activities, properties and

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<sup>1</sup>Tuomela is regarded as one of the Big Four proponents of collective intentionality (Chant, Hindriks, and Preyer 2014). His contributions to the field are not restricted to his publications. Tuomela has also formed an international network of researchers that has recently constituted itself as a formal society, the *International Social Ontology Society* (ISOS). Participants in the network have recently established *the Journal of Social Ontology*.

<sup>2</sup>Unqualified page references refer to Tuomela (2013). See Tuomela (2007: 39–44) for more on collective commitment.

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interactions between individuals (10). In Sect. 15.1 I argue that this thesis is inconsistent with other claims Tuomela makes about collective intentionality. In light of this, it would be best to embrace ontological collectivism.

Whereas Tuomela fails to fully appreciate the ontological status of group agents, he overestimates the significance that constitutive rules should have in the analysis of social institutions. Tuomela defends a view of social institutions as norm-governed social practices. He thereby integrates the behavioral dimension of institutions with their normative dimension, something that a number of economists have tried to do as well (Aoki 2007; Greif and Kingston 2011; see also Guala and Hindriks *forthcoming*). Tuomela, however, uses the notion of a constitutive rule in order to explain how institutions enable new forms of behavior. In Sect. 15.2 I criticize Tuomela on this score. I argue that the enabling role of institutions can in fact be explicated in terms of regulative rules. At the same time, however, constitutive rules make explicit an ontology that regulative rules leave implicit.

## 15.1 Group Agents

### 15.1.1 *Conceptual Collectivism: The We-Mode*

People who interact do not necessarily do something together. You might get up in a movie theater to let me pass. We end up watching the same movie. But watching the movie together requires more than this. We need to have watching the movie as our joint goal. Suppose this is our joint goal. Each of us might be committed to the joint goal for private reasons. If so, we do something together in what Tuomela (2002a) calls ‘the I-mode’. In contrast, those who act in the we-mode are collectively committed to the relevant goal (70). Part of being collectively committed to a goal is to think as a group member (37). This means that an individual member derives the reasons from which she acts from the intentions that the group agent forms. The intention to paint the clubhouse, for instance, may be based on the fact that the old paint has worn out. In such a situation, the members may intend to do their part simply for the reason that the group agent has formed this intention (37–40).<sup>3</sup>

Tuomela argues that we-mode collective intentionality cannot be reduced to I-mode collective intentionality. This thesis of conceptual collectivism can be illustrated in terms of the notion of a group reason. Given that members derive their participatory intentions from the intention of the group agent, the level of the group agent is in an important sense primary and prior to that of an individual member (101–15). This idea is strengthened by the fact that, as Tuomela has it, the level of the group agent also has normative authority in that each member ought to accept its

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<sup>3</sup>Collective commitment comes with mutual obligations on Tuomela’s view (43). In this respect, he sides with Gilbert (1989) rather than Bratman (1999, chapter 7). See Hindriks (2013a) for a critical discussion of Gilbert’s and Bratman’s views on this matter.

goals or its ethos (27, 115–20). We-mode reasons can come apart from I-mode reasons, as the former do not even supervene on the latter (93).<sup>4</sup>

According to Tuomela, organizations such as corporations and governments can usefully be seen as intentional agents that perform actions. Group agents exhibit collective intentional states in the we-mode. Just like individual agents, group agents are committed to the goals they pursue. And a group as such is committed to something only if its members are collectively committed to it. Hence, a group agent is a social group the members of which are collectively committed to the beliefs, goals, or standards – i.e. the ethos – that they regard as constitutive for the group (27, 34–36). The we-mode lies at the heart of Tuomela's conception of a group agent and also provides the basis for his conceptual collectivism. The questions I have about Tuomela's account of group agents pertain to the relationship between his conceptual collectivism and his ontological commitments, which I go on to discuss next.

### ***15.1.2 Ontological Individualism: Extrinsic Intentionality***

According to Tuomela, the we-mode is causally efficacious. Strategic or I-mode reasoning does not always suffice to settle on the best outcome, whereas intuitively people converge on it without much effort. Tuomela argues that this is because in such situations people engage in we-mode or group reasoning that serves to restrict the range of feasible action alternatives. In the we-mode people do not ask: What should I do? Instead, they ask: What should we do? The least of two beneficial outcomes can then be excluded from the start, this in spite of the fact that it is an equilibrium for I-mode groups. Thus, there is a 'functional difference' between the modes: the we-mode can explain how people coordinate in collective action dilemmas such as the Hi-Lo game whereas the I-mode cannot. Tuomela concludes that group agents cannot be reduced to I-mode social groups because, in contrast to I-mode reasoning, we-mode reasoning successfully reduces the number of equilibria in a range of strategic interactions.

The claim that the we-mode is causally efficacious suggests that, in addition to collective collectivism, Tuomela embraces ontological collectivism. This seems to be supported by the fact that he argues that group members entify the groups to which they belong (3), and that they thereby construct them as group agents (22). In addition to this, Tuomela maintains that their psychology is autonomous from the private psychologies of their members and in this sense they enjoy autonomy (22; see also List and Pettit 2011). Not only do group agents exhibit a mental unity, they can also be reflectively self-conscious (4). Finally, he recognizes joint causal powers (26), maintains that groups are systems that as such have the power to act (51), and

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<sup>4</sup>In addition to collective commitment and group reasons, the we-mode encompasses the collectivity condition according to which a group goal is satisfied for a particular member only if it is satisfied for each member (40). The members of a movie club, for instance, go to the movie together as a group only if its members do indeed go to the movie.

embraces the idea that group agency involves emergent features (22, 48, 52, 91). Tuomela concludes that group agents have what he calls ‘functional existence’ (2–3, 237).

In spite of all this, however, Tuomela defends ontological reductionism or individualism. The main reason for this is that he believes that ‘the only causally initiating agentive motors are the individual agents, and hence the agency of group agents must ontologically bottom out in the behavior of its members’ (22; see also 13, 15, and 93). He provides further support for his ontological individualism by commenting on the intentionality of group agents. First, he points out that people tend to attribute properties to them and to act as if they are real. They may even seem real to them, but they are not. The attributions give rise only to ‘intentional existence’ (2–3). In fact, however, they are projections without ontological significance. Outsiders are in the best position to appreciate that group agents are fictions and that it is ‘not literally true’ that group agents have intentional states (47). Instead, group agents are mind-dependent, ‘do not exist as fully intentional agents’ and are ‘partly fictitious’ (47, 46). This suggests that the version of ontological reductionism that Tuomela supports is eliminativism. His eliminativism is partial in that it only pertains to the intentional properties of group agents.

Tuomela goes on to argue that the intentionality group agents exhibit is extrinsic rather than intrinsic (47). Intrinsic intentionality is internal to someone’s mind – think of the intentionality of beliefs and desires; extrinsic intentionality is attributed to something from the outside – think of the intentionality of words and signs (Searle 1983). Only biological organisms exhibit intrinsic intentionality. According to Tuomela, the intentionality of group agents is extrinsic, because it depends on attributions people make, in particular those made by group members (3, 23). Hence, group agents do not possess intrinsic intentionality.<sup>5</sup>

Tuomela sums up his position in the following passage:

[T]he group-based approach of this book is conceptually collectivistic, but ontologically it does not postulate full-blown, intrinsically intentional group agents with minds of their own – while recognizing the existence of social groups as basically irreducible systems. (93)

This confirms my diagnosis that Tuomela combines conceptual collectivism about group agents with a belief in their irreducible causal efficacy on the one hand and eliminativism – a denial of their existence as full-blown intentional agents – on the other.

### ***15.1.3 Why Not Embrace Ontological Collectivism?***

Is this combination of views coherent? Many collectivists accept the claim that groups ‘can act only through their members’ activities’ (13). They deny, however, that this entails that groups are not proper agents (French 1984; Copp 2006; Pettit 2007; Hindriks 2013b). Tuomela grants group agents functional existence, which

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<sup>5</sup>As it presupposes intrinsic intentionality, group agents cannot have phenomenal consciousness (52, 260).

means that they have irreducible causal consequences. This fits perfectly with ontological collectivism. Yet Tuomela denies their existence.

The mind-dependence of group agents does not provide a good basis for denying their reality. To be sure, the idea that mind-dependent entities do not exist is deeply entrenched in philosophy. However, not all kinds of mind-dependence are on a par in this respect. When something depends only on conceptual schemes, or if those schemes constitute it, it is rather plausible that it is fictitious. However, when people rely on a concept in their deliberations about what to do, those schemes can have causal consequences. And when they do, it does not follow that the entity to which the concept refers is fictitious. Richard Boyd (1991) and Uskali Mäki (2011, 203) argue that the fact that something has causal consequences provides a suitable basis for concluding that it is real. In the case at issue, this is supported by Tuomela's claim that the we-mode is causally efficacious (Sect. 15.1.2). This line of reasoning supports the following thesis:

1. The fact that group agents are mind-dependent does not imply that they are fictions.

The causal significance of group agents also derives support from the fact that a group agent does not depend on the mind of a single individual, but on the minds of a number of individuals. The upshot is that, because of the irreducibly collective causal features that group agents exhibit, the line of reasoning from mind-dependent to fictitious can and should be resisted.<sup>6</sup>

Finally, the distinction between intrinsic intentionality is not a solid ground for resisting ontological collectivism either. It is a rather controversial distinction at least insofar as it is used to deny certain entities agency. The alternative is to embrace some form of functionalism. According to functionalism the only criterion for intentional agency is whether the entity functions as an intentional system (Dennett 1971). And Tuomela believes that group agents have both 'intentional existence' and 'functional existence' (he also accepts that group agents can be rational; 136–44, 212). From the perspective of functionalism, the causal efficacy of the intentional properties of group agents entail that they are in fact real. In light of this, I formulate a second thesis:

2. Group agents are real due to the fact that they are causally efficacious.

It is not at all obvious that Tuomela can escape realism about group agents. After all, even if the intentional properties of group agents are derived from the intentional properties of individuals, Tuomela grants that they are real in their causal consequences.

Tuomela faces a problem even if these concerns are bracketed. The reason for this is that his use of the distinction between intrinsic and extrinsic intentionality supports skepticism with respect to collective intentional states in general. It thereby threatens Tuomela's own views about collective intentional states in the I-mode. He argues that the reality of group agents should be denied on the basis of the fact that

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<sup>6</sup>See Baker (2000, 2007) for a well-developed framework for accommodating intentional properties as part of the fabric of the world.

the intentionality they exhibit is extrinsic rather than intrinsic. This seems to commit him to believing that we-mode attitudes only have intentional existence.

There is no reason to believe, however, that this would not hold for collective attitudes in the I-mode. After all both are a matter of extrinsic intentionality: rather than being states of a mind that supervenes on a brain, they are attributed by a number of individuals who each have states of mind that supervenes on a brain. Two people who carry a piano upstairs do so due to a joint intention. They do not, however, have a joint brain.

Tuomela comes close to recognizing the problem when he points out that ‘the ontological gap between the non-fictitious joint states and actions and the fictitious intentional attitudes and actions attributed to the group agent figuratively speaking is rather “small”’ (49). This reveals how dangerous his reductionism with respect to group agents is to his overall project in social ontology. Thus, Tuomela owes us an argument as to why his eliminativism does not generalize. Without such an argument, the conclusion to draw would be that the gap that Tuomela mentions is too small to ground a difference in reality.

A final consideration worth mentioning is that, according to Tuomela, group agents exist only ‘for the group’ (47). He calls them ‘groupjective’, as he also regards them as epistemically objective (218–23). Perhaps this explains why he claims that they are fictitious ‘at least for external observers’ (47). Tuomela does not, however, believe that everything that is groupjective is fictitious. Collective acceptance that the earth is flat does not entail that the earth is indeed flat. In contrast, the fact that, in medieval Finland, squirrel pelts were collectively accepted as money made it the case that within that context squirrel pelts were indeed money. This follows because there is a necessary connection between collective acceptance and the instantiation of institutional statuses such as money (220). This reveals that something can be collectively mind-dependent without being fictitious (see also 268n16). On top of that, Tuomela also claims that social facts are epistemically objective for those who are not members of the group (220; this in contrast to his earlier claim that group agents are fictitious for external observers; 47). Why would this not be true for the intentional states of group agents? This line of reasoning supports the conclusion mentioned earlier. Due to the fact that he accepts that group agents have irreducible causal powers, it would be rather natural for him to embrace ontological collectivism.

## 15.2 Social Institutions

### 15.2.1 *Norm-Governed Social Practices*

According to Tuomela, institutions are norm-governed social practices. Institution terms such as ‘money’, ‘marriage’, and ‘property’ can be used to refer to social practices, as well as to the norms governing those practices (214). Social practices

are repeated collective social actions that are performed for a social reason or a shared we-attitude. A pottery practice, for instance, might involve ingrained skills including some hand movement. Those who participate in the practice possess these skills to some degree and make pots using these skills. Furthermore, they believe that others are manufacturing pots in the same way. And those who participate in the practice mutually believe that this is the case. A social practice such as this one becomes a social institution when a social norm is introduced that govern the practice (216–18).

As another example, consider patterns of interaction and co-habitation. They can develop into an institution of marriage when social norms develop concerning, for instance, sexual activity and the use of goods. By collectively accepting those norms, the participants in the relevant social practices construct an institution of marriage. In the process, they shape closely related institutions. Depending on the practices and norms that govern them, the institutions could be monogamy or polygamy on the one hand and separate property or community property on the other.

The main function of social institutions is to establish a stable and persistent social order that is conducive to satisfying the needs of those involved (223). Social institutions serve this function by solving coordination problems and by dissolving collective action dilemmas and thereby promote cooperation. Tuomela argues that they tend to serve this function better if they involve we-mode collective acceptance rather than I-mode collective acceptance (229; see 16, 44, 175).<sup>7</sup> The questions I have about Tuomela's account of social institutions pertain to how he explicates the enabling role of institutions. As I go on to discuss next, he accounts for it in terms of the notion of a constitutive rule. In Sect. 15.2.3 I argue that it should instead be explicated in terms of their capacity to facilitate or enhance coordination and cooperation.

### ***15.2.2 Institutions Constrain and Enable: Regulative and Constitutive Rules***

It is a platitude that social institutions constrain and enable behavior. Even though it is relatively clear how they constrain, it is less well understood how they enable behavior. Institutions constrain by prohibiting certain kinds of behavior (and by sanctioning violations). The natural next thought is that they enable by permitting certain kinds of behavior. The problem with this claim, however, is that, for all we know, the permitted behavior is possible independently of the permission. In the absence of prohibitions, the question of whether one can perform the action does

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<sup>7</sup>We-mode collective acceptance may well contribute to the functioning of some institutions. I do not see, however, why this would always be the case. Institutions sanctioned by authorities that are collectively accepted in the we-mode need not themselves be supported by such acceptance. Furthermore, some institutions involve little conflict of interests and function fine without collective commitment.



not depend on whether it is permitted. As a consequence, it is unclear in what sense if any the relevant norm of the institution at issue enables it. Perhaps the sense in which institutions enable behavior is rather trivial.

Tuomela explicates the enabling role of institutions in terms of the distinction between regulative and constitutive rules. Inspired by Rawls (1955), Searle (1969) argued that regulative rules guide behavior that is possible independently of those rules – think of the rules of etiquette; constitutive rules make possible the very behavior they guide – think of the rules of chess. Tuomela argues that constitutive rules provide people with institutional powers that enable them to do things they could not do independently of the rules that constitute the relevant institution (224).

As examples, he mentions judges who have the power to send prisoners to prison, and professors who can decide whether a student is qualified for a university degree. These examples vividly illustrate the idea that institutional behavior is novel as compared to the behavior people can display in a more basic social order. Surely, the judicial system enables those people we call ‘judges’ to pronounce prison sentences. Similarly, the university system enables those people we call ‘professor’ to confer university degrees. Without the relevant judicial and educational institutions, it would simply be impossible to do these things. It remains to be seen, however, whether the notion of a constitutive rule or norm can indeed account for this.

Tuomela argues that the constitutive rule or norm confers an institutional status on the activity that is characteristic of the social practice it governs, or to items that play a central role in that practice (226).<sup>8</sup> The status is social because it depends on collective acceptance, and it is normative because it concerns a rule that stipulates that the action at issue is permitted, prohibited, or required. The status is also symbolic, as the norm is a conceptual presupposition of the action (227). In this respect, it contrasts to norms that merely regulate behavior. Behavior guided by a regulative rule does not presuppose that rule.

Can this analysis of the constitutive rules of institutions be used in order to explicate the claim that institutional actions are novel in an ontologically significant sense? I do not see how it could do this. Just as constitutive norms, regulative norms are social and normative. Furthermore, both kinds of norms are in force exactly if they are collectively accepted, and both prohibit, permit, or require some kind of action. This means that the only respect in which these two kinds of norms differ from one another is the symbolic status. Only constitutive norms confer such a status. The symbolic status is conceptual or linguistic. Focusing on its linguistic manifestation, it is a matter of us having certain terms such as ‘judge’ and ‘professor’. As Tuomela emphasizes, having such terms is of great practical significance as it helps people to economize on cognitive resources. However, economy of thought is as such ontologically neutral.

Just as Searle, Tuomela uses the phrase ‘counts as’ in relation to constitutive rules (237). Can this phrase be used to distinguish constitutive rules from regulative rules in a way that supports the claim that constitutive rules enable new forms of behavior? The phrase ‘counts as’ is often used in relation to classificatory practices

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<sup>8</sup>Tuomela uses the term ‘constitutive norm’ interchangeably with ‘constitutive rule’.

(Grossi, Meyer, and Dignum 2006). A certain distance might, for instance, count as a meter due to the fact that it is rather similar in length to the platinum bar placed in the National Archives in Paris in 1799 (this is how 'meter' was defined until 1889). However, the phrase 'count as' has a special significance in relation to institutional entities. In that context, it signifies more than that a certain classification is appropriate. It signifies that, whatever meets the relevant conditions actually has the status at issue and that this is due to collective acceptance (220). Certain pieces of paper or metal, for instance, are bills or coins if and only if it is collectively accepted that they have this status.

The problem with this line of argument is that, just as constitutive rules, regulative rules require collective acceptance in order to be in force. This makes it difficult to see how the phrase 'counts as' could play a special role in accounting for the enabling role of institutions. This implies that, whether or not a norm is regulative or constitutive does not depend on collective acceptance as such. Instead, it turns on the fact that only in the case of constitutive rules collective acceptance pertains in part to a classificatory practice. This in turn suggests that the only difference between regulative and constitutive rules is symbolic. And Tuomela does not explain how a symbolic status might have causal or ontological significance.

Searle (1995, 2010) has argued that, whereas technological artifacts fulfill their functions in virtue of their physical features, social institutions go beyond the physical features of the entities they involve. Entities such as bills or coins can serve as a means of exchange, not so much in virtue of their physical features, as in virtue of being collectively accepted as bills or coins. Tuomela invokes this idea in support of his claim that the enabling role of institutions can be understood in terms of constitutive rules (230). Now it is surely true that technological artifacts often make behavior physically feasible that was not possible beforehand. Think, for instance, of telegraphs and phones, and airplanes and parachutes. The first thing to note in response is that, in virtue of this very feature, the actions that technological artifacts enable are novel in a sense much more straightforward than those that social institutions enable.

The thing to see is that the creative power of collective acceptance is limited to intentional properties including symbolic and normative features. And just as constitutive norms, regulative rules also involve normative features. This means that, even though it may well be a genuine insight that the things institutions enable have little to do with the physical features of institutional entities, it does not help us to move beyond the claim mentioned earlier: the only difference between regulative and constitutive norms must be symbolic. Now I certainly want to leave open the possibility that the symbolic aspect of constitutive rules can have significance beyond economy of thought and affect the way in people behave. Tuomela does not explain how symbols would have such an effect on behavior. The point to see, however, is that even such an explanation would not establish that it is the fact that a collectively accepted rule is a constitutive rule that accounts for the enabling role of institutions. To bring this point home I go on to argue that it can be accounted for in terms of regulative rules.

### 15.2.3 *Can Regulative Rules Enable New Forms of Behavior?*

Searle and Tuomela fail to fully appreciate the significance of regulative rules. The point that they try to make in terms of the distinction between regulative and constitutive rules can be made independently of this distinction. Collective acceptance of a regulative rule introduces normative features, and these normative features are pivotal for institutions. Searle (2010: 98) argues that normative relations of power lie at the heart of social institutions. Tuomela formulates a similar point in terms of reasons: ‘Institutions create order by providing group reasons (and derived individual reasons) for acting in institutional contexts.’ (224) Neither of these two claims depends on the notion of a constitutive rule.

The thing to see is that regulative rules can enable new forms of behavior as well. Collective acceptance of a regulative rule introduces the normative features that are pivotal for institutions. The point can be made by elaborating on the example of patterns of interaction and co-habitation introduced in Sect. 15.2.1. In the community at issue men and women tend to live together in duos. Over time, people become conscious of this and they realize that “this is how we do things here”. At some point, a ritual is invented to mark the moment at which a particular man and woman start living together. Perhaps the leader of the community kisses the man and the woman on the forehead. People in this community start to expect men and women to focus their attention on the person they live with and they start to frown on those who engage a lot with others. Over time, the frowns transform into explicit norms concerning sexual activity and the use of goods.

This example describes how a social practice of co-habitation – a kind of proto-marriage – turns into a social institution. All the norms that play a role in it are regulative norms. Co-habitation, sexual activity, and using goods are possible independently of them. One might say that they are constitutive because the practices depend on the norms in that without the norms they would not exist. Given how I laid out the example this is simply false. The social practice preceded the norms.<sup>9</sup>

Imagine next that an outsider, an anthropologist, comes and studies social interaction within this community. She invents the terms ‘husband’ and ‘wife’ for individuals who underwent the ritual together, as well as the term ‘married’ that serves to mark their common status. This does not affect the institution, which still owes its existence to a regulative rule. It could happen, however, that the members of the community come to adopt the terms that the outsider introduced. They use the terms ‘husband’ and ‘wife’ for individuals who underwent the ritual together, and the term ‘married’ to mark their common status. This enables them to formulate constitutive norms such as ‘any man that has undergone the kissing ritual with a woman is her

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<sup>9</sup>One might say instead that they are constitutive because the practices would not be norm-governed if it were not for the rules. Although true, this claim is trivial. ‘Constitutive’ merely indicates necessity here: necessarily, the social practice would not be governed by these rules if it were not for these rules. This claim would also be true if the relevant norms were regulative rules – as in the rules of etiquette.

husband, and any woman that has undergone the ritual with a man is his wife'. In light of this, it is necessarily true that any two people who have undergone the kissing ritual are husband and wife. This necessary truth is a consequence of the classificatory or symbolic practice that has been adopted collectively. In light of the norms that are characteristic of this institution, husbands and wives have certain rights and obligations when it comes to sexual activity and to the use of goods. The very same persons, however, had those rights and obligations already before people started using the terms. This establishes the third thesis of this paper (Hindriks 2009, 2013b):

3. Collectively accepted rules enable new forms of behavior, irrespective of whether they are constitutive or regulative.

This reveals that the enabling role of this institution of proto-marriage is not due to the fact that the social practice has come to be governed by a constitutive rule. That institution was already in place before the anthropologist entered the community. And little would have been lost if the outsider had never come to the community and the terms she came up with had never been adopted.

None of this is to say that the terms that the anthropologist introduces do not signify anything. The point is instead that replacing a regulative rule by a constitutive rule need not have any ontological consequences. This means that the ontology is in place already before the constitutive rule is replaced, but that constitutive rules provide people with the terms for referring to the relevant institutional entities.

Let me illustrate this by embellishing on the example of proto-marriage. Suppose that the following rule is introduced: husbands and wives are permitted to have sex with one another every day *except on Tuesdays*. If they do have sex with one another on Tuesdays, their marriage is dissolved – as a consequence of nothing other than the act itself – and they are no longer allowed to have sex with one another. The next thing that happens, let us suppose, is that a term is invented for having sex on Tuesday as a married couple: 'cheating'; husbands and wives who have sex with each other on Tuesdays cheat. It is of crucial significance for my argument to appreciate that, just as the rules of chess enable castling and the university statutes enable conferring degrees, this rule of marriage enables cheating. Furthermore, it is important to see that cheating is more than a symbolic status. Cheating has clear consequences: a cheater is no longer allowed to have sex with what was his or her marriage partner.

It is in virtue of the regulative rule that prohibits cheaters to have sex with one another that cheating is more than a conceptual status. It has consequences due to which it has normative significance. In light of this, it is appropriate to talk of novel behavior that is made possible by the rules at issue. Constitutive rules make this explicit. More precisely, the thesis that I defend is this (Hindriks 2009, 2013b):

4. Constitutive rules make explicit an ontology that regulative rules leave implicit.

Strictly speaking, constitutive rules are redundant, because they do not add anything to a regulative rule other than a term for an institutional status. Even so, they are useful, because they make explicit something that regulative rules leave implicit:

the existence of the institutional entity to which the status term refers. There can be husbands, wives, marriages, and cheaters even if we do not have terms for them. They do not require constitutive rules, as they exist just as well if the rules that govern behavior are regulative. However, it is easier to acknowledge their existence once people have terms that refer to them.<sup>10</sup>

If regulative rules can enable new forms of behavior, what is it exactly that they enable? This can be answered, I propose, in terms of Tuomela's claim that we-mode collective acceptance of norms serves to solve coordination problems and collective action dilemmas. People can achieve more efficient equilibria by collectively accepting rules or norms, which can in turn issue in a more stable and robust social order. In this way, institutions have real consequences insofar as preference-satisfaction is concerned. This provides for an alternative way of giving substance to the claim that institutions enable new forms of behavior: institutions enable certain forms of coordination and cooperation. As a consequence, the extent to which the preferences of those who participate in those institutions are satisfied increases. Thus, I venture, the enabling role of institutions is intimately bound up with the value they create.<sup>11</sup> The upshot is that there is no deep distinction between regulative and constitutive rules (Hindriks 2009). The key difference between these two kinds of rules does not reside in any ontological effects they might have. Instead, it is that constitutive rules deploy certain concepts or terms that regulative norms do not. Collectively accepted norms enable new forms of behavior, irrespective of whether they are constitutive or regulative. Thus, Tuomela mistakenly links the enabling role of institutions to the notion of a constitutive rule.

### 15.3 Conclusion

Tuomela's work on group agents and social institutions, as summarized in Sects. 15.1.1, 15.1.2 and 15.2.1, 15.2.2, is very rich and insightful. Although I agree with most of it, two features puzzle me (Sects. 15.1.3 and 15.2.3): Tuomela's ontological individualism, and Tuomela's stance about constitutive rules. Insofar as ontological individualism is concerned, Tuomela's claims about group agents seem to support ontological collectivism rather than the individualism that he defends. It remains

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<sup>10</sup>Tuomela allows for institutions to involve both constitutive and regulative norms (227). It would be interesting to know more about what this means. Elsewhere I propose that constitutive rules are best seen as combinations of constitutive rules that determine the referents of institutional terms and status rules that specify their meaning in terms of the normative powers that come with the relevant statuses (Hindriks 2009). As status rules are, on my view, a kind of regulative rule, this proposal embodies a precise idea of how constitutive rules and regulative rules could be combined.

<sup>11</sup>There are other ways of developing the same idea. Perhaps certain values can be realized only by means of particular rules. The idea would be that "a good" such as friendship is internal to practices governed by those rules, and accessible only to those who participate in them (see Raz 1986; Reaume 1988).

unclear whether Tuomela appreciates that the mind-dependence of group agents as such does not rule out their existence (thesis 1). Furthermore, their causal efficacy supports their reality (thesis 2).

Tuomela believes that the notion of a constitutive rule can illuminate the enabling role of institutions. I have argued against this that regulative rules suffice for this purpose (thesis 3). Constitutive rules are important but mainly because they lay bare an ontology that regulative rules leave implicit (thesis 4). Finally, I have argued that what is enabled by collectively accepted rules, whether they be regulative or constitutive, is to be explicated in terms of the function of institutions, which is – as Tuomela argues – to facilitate or enhance coordination and cooperation.

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