Collective Acceptance and the Is-Ought Argument

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Abstract According to John Searle's well-known Is-Ought Argument, it is possible to derive an ought-statement from is-statements only. This argument concerns obligations involved in institutions such as promising, and it relies on the idea that institutions can be conceptualized in terms of constitutive rules. In this paper, I argue that the structure of this argument has never been fully appreciated. Starting from my status account of constitutive rules, I reconstruct the argument and establish that it is valid. This reconstruction reveals that the soundness of the argument depends on whether collective acceptance as such can generate obligations. Margaret Gilbert has argued that it can, and thus far some of her central arguments have not been addressed. The upshot is that the Is-Ought Argument deserves to be taken seriously once again.

Keywords Collective acceptance · Constitutive rule · Institution · Is-Ought thesis · Promise · Searle

Successfully making a promise entails an obligation to do as promised. So much is clear. However, it remains controversial what exactly the source of this obligation is. Many believe it originates from moral principles. John Searle (1964, 1969) has defended the idea that it originates instead from the institution of promising. Furthermore, he has argued that a statement about an obligation to do as promised can be derived from descriptive statements concerning the performance of the institutional act of promising. Searle's argument concerning promising, to which I shall refer as 'the Is-Ought Argument', flies in the face of the widely held belief that it is impossible to derive an ought-statement from is-statements only. In this paper, I revisit the Is-Ought Argument. In his presentation of it, Searle uses the notion of a constitutive rule. He has, however, never provided a detailed analysis of this notion. In section 1, I present the status account of constitutive rules that I have developed elsewhere (Hindriks 2009, 2012), and argue that it can be used to clarify the structure of the argument. The reconstruction that I present in sections 2 and 3 reveals that the argument is

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valid. It also facilitates the identification of the pivotal premise of the argument: collective acceptance can generate obligations without the support of moral principles.

Searle (1995, 2010) employs the notion of collective acceptance in his more recent work on social ontology. In section 4 I argue that his account of this notion does not adequately support the claim that collective acceptance of obligations generates obligations. Margaret Gilbert's account of collective acceptance is much more promising in this respect. To make clear how difficult it is to defend the pivotal premise, I devote section 5.1 to Michael Bratman's (1999, 2009) argument that promissory obligations follow from shared intentions only in combination with the value of assurance (cf. Scanlon 1990). Subsequently, I turn to Gilbert's (2006) arguments as to why obligations such as promissory obligations are social rather than moral obligations and do not depend on moral principles (section 5.2). Gilbert's arguments support the pivotal premise of the Is-Ought Argument. Thus far, those who criticize this premise have not properly addressed these arguments. In light of this, I conclude that, because of recent advances in theorizing about constitutive rules and collective acceptance, the Is-Ought Argument deserves to be taken seriously once again.

1 The Status Account of Constitutive Rules

1.1 Searle on Constitutive Rules

The notion of a constitutive rule plays a crucial role in Searle's (1964, 1969) Is-Ought Argument.[1] As indicated above, Searle has never provided a detailed analysis of this notion. This is unfortunate, because, as I shall argue below, a thorough analysis of this notion can be used to clarify the structure of the argument. Nevertheless, what Searle says about constitutive rules provides for a useful point of departure for developing a more detailed account. Searle characterizes the notion of a constitutive rule by contrasting it with that of a regulative rule. His contention is that, whereas regulative rules merely regulate behavior that is possible independently of such rules, constitutive rules create the possibility of new forms of behavior. A well-known example he uses is the game of chess. Playing a game of chess, or, to use a more specific example, checkmating one's opponent, is not possible independently of the rules of the game. Hence, those rules are constitutive rules. According to Searle, the structure of constitutive rules is 'X counts as Y in C'. The chess example naturally fits this format: 'Moving a chess piece in a position such that the opponent's king is under attack and cannot make a move to undo this counts as checkmating one's opponent in a game of chess'.

Searle (1969) left several questions unanswered. The one most relevant to our purposes here is: How do constitutive rules create the possibility of new forms of behavior? Searle's later work provides at least a partial answer to this question. In his 1995, Searle introduced the notion of collective acceptance. It seems that what he has in mind is that something is collectively accepted exactly if the members of the relevant collective (collectively) believe it (Searle 1995, 32). Furthermore, he appears to hold that new or institutional behavior is possible once it is collectively accepted that certain non-institutional behavior is or constitutes institutional behavior as a rule. The core idea is that we collectively impose institutional features on certain kinds of behavior that thus acquires a new character.

Two other novel elements in Searle's recent account of constitutive rules are the notion of a status function and that of deontic power (ibid., 40–43 and 100–01; see also his 2010).

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[1] See some of the papers in Hudson (1969) for early criticisms of the Is-Ought Argument.

Deontic powers are institutional rights and obligations, such as the right of transfer involved in the institution of property. People owe their deontic powers to collective acceptance of the relevant constitutive rules. Status functions differ from the functions of artifacts such as screwdrivers and hammers. Whereas the latter can perform their functions in virtue of their physical features, this does not hold for entities that have status functions. An entity can perform a status function only because it is collectively accepted to have that function. The collectively accepted status function of money, for instance, is to serve as a means of exchange. Just as status functions, deontic powers depend on collective acceptance.

1.2 Status Rules

In order to use Searle's new ideas about social ontology to reconstruct his earlier Is-Ought argument, a couple of amendments need to be made. The first of these concerns the notion of a function. In spite of appearances, this notion does not really do any work in Searle's conception of a status function. Searle seems to be aware of the problem when he writes that 'not all status functions would ordinarily be thought of as functions' (2010, 95n2). He goes on to claim that such functions are 'sufficiently like ordinary functions' to warrant the label (ibid.). Without further evidence, this claim is not very convincing. And an alternative is readily available: institutional statuses can be characterized in terms of deontic powers without recourse to the notion of a function. Note, for instance, that the physical features that an object has are of little relevance both to its status function and to the deontic powers that are associated with it. Searle does not provide a positive characterization of status functions. So his theory does not provide any reasons for thinking that the notion is essential.[2]

One might think that some of Searle's examples reveal that the notion of a function adds something to that of a status. On the face of it, this is particularly plausible for money. Money is indeed often characterized in terms of functions, in particular that of means of exchange. In spite of this, it can be analyzed exhaustively in terms of deontic powers, or so I argue. One might think that there is nothing normative about an object serving as a means of exchange. However, the institution of money presupposes that of property. The result of a monetary exchange is that the distribution of property rights is altered. Someone who buys a product in a store ends up being the owner of that product. Someone who has money, then, has the ability to change the distribution of property rights. This means that he has a power-right (section 2.1.3 of Wenar 2005). Hence, a means of exchange is a deontic power after all: purchasing power.

Searle's conception of rights and obligations is unduly restrictive. When he writes about deontic powers, he appears to have in mind privileges and claims (Searle 1995, 106–07). A privilege consists of a permission to perform a particular action (or the absence of a duty not to do so); a claim consists of a duty someone else has with respect to the person who has the claim to perform a particular action (Wenar 2005). In addition to these two, the well-known Hohfeldian classification of rights includes power-rights and immunities. A power-right consists of the ability to change the existing distribution of rights. And someone has an immunity if someone else is unable to change the rights she has. There is no good reason for believing that institutions do not involve powers other than privileges and claims. In order to

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[2] Searle used to hold that status functions and deontic powers could come apart. He maintained that purely honorific status functions do not come with any deontic powers (Searle 1995). He abandons this claim in his more recent work, and now holds that all status functions come with institutional rights or obligations (Searle 2010).

mark my more encompassing approach to the normative dimension of institutions, I shall use the term 'normative power' rather than 'deontic power'. On my proposal, then, a status consists of one or more normative powers.

These amendments will prove to be useful below. They reveal that once the normative powers of a status have been explicated, there is nothing left to be accounted for. This means that there are no hidden premises concerning the relevant status and its function that might invalidate the derivation of an ought-statement from is-statements only. The broader conception of powers on which I rely will turn out to be useful in relation to the example of money. Promising is a rather complex example, because there are so many different perspectives on what it is and in particular on why it entails an obligation. I will argue that a derivation can be constructed for the case of money that is similar to the one concerning promising. Rival views concerning the relevant normative powers are less distracting in the case of money. However, in order to make that point it needs to be clear that the status of money can indeed be explicated in terms of powers. As money cannot be explicated in terms of ordinary rights and obligations, or privileges and claims, I needed to introduce the notion of a normative power in order to show that the same conceptual apparatus used for promising can also be used for explicating the status of money.

Insofar as the term 'status function' is concerned, Searle's social ontology is too baroque. In another respect, however, it is too simple. As I have argued elsewhere, Searle's social ontology is incomplete: the notion of a constitutive rule needs to be complemented with that of a status rule (Hindriks 2009; 2012). As I conceive of them, status rules concern the enabling and constraining roles of institutions, their practical significance. More specifically, a status rule specifies the normative powers that are characteristic of a particular status. The structure of a status rule is 'Y is Z'. An example is: money is a means of exchange, which is equivalent to: money is purchasing power. This entails that money can be used for buying and selling. As the example suggests, a status rule provides a (sometimes partial) definition of the term that designates the status it is concerned with. It is a matter of definition that money is purchasing power.[3] In sections 2 and 3 the notion of a status rule will prove to be important for clarifying the structure of Searle's Is-Ought Argument.

Status rules are, of course, intimately related to constitutive rules. On the status account of constitutive rules that I defend here, a constitutive rule specifies what it takes for an entity to have a particular status in a certain context. What that status consists of is specified or defined by the relevant status rule. Constitutive rules make new forms of behavior possible in the sense that, when a constitutive rule is collectively accepted, non-institutional forms of behavior acquire an institutional status. More generally, collective acceptance of a constitutive rule entails that entities present in context C that satisfy conditions X have status Y. What was said about collective acceptance above puts me in the position to reformulate the structure of constitutive rules. Doing so will be helpful for clarifying the structure of Searle's Is-Ought argument.

Recall that, according to Searle, the structure of a constitutive rule is 'X counts as Y in C'. On the status account, something has a status Y due to the fact that entities of that kind are collectively accepted to have that status. Collective acceptance involves believing that the entities have that status as well as being disposed to treat them as such Once the role of

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[3] Searle (1969, 31) holds that constitutive rules define new forms of behavior. It is hard to see, however, how this could be. The constitutive rule of money in a particular context, for instance, concerns the pieces of paper or metal of which money is made in that context. The stuff that money is made off, however, is irrelevant to the definition of money. It is more felicitous, I believe, to accept the idea that status rules provide definitions of the statuses they concern.

collective acceptance of the rule is explicitly acknowledged, there is no need anymore to use the phrase 'counts as' when stating the structure of constitutive rules (see section 2.2 for more on this). On my view, then, the structure of constitutive rules is 'In C, X is Y'. A (simplified) example that will play an important role in section 2 is this: In the United Status, any piece of paper that has been issued by the Federal Reserve is money. Thus, a constitutive rule enumerates the conditions (X) that an entity has to meet in the context at issue (C) in order for it to have the relevant status (Y).[4] The X-term, then, describes what constitutes the relevant status in a particular context C.

The status account of constitutive rules can be represented in terms of what I call 'the status schema'. The status schema consists of the schemas for constitutive rules and status rules:

(C) In C, X is Y
(S) Y is Z

In the case of US money, the status schema is to be filled in as follows: In the context of the United States (C_1), any piece of paper that has been issued by the Federal Reserve (X_1) is money (Y_1); money (Y_1) is purchasing power (Z_1). The status schema reveals that in effect a constitutive rule ascribes a set of normative powers (Z) to a particular kind of entity (X) in a particular context (C).

2 Money and the Logic of Institutional Action

2.1 The Normative Power Derivation

Having introduced the status account of constitutive rules, it is now time to consider Searle's Is-Ought Argument. The argument consists of a counterexample to the claim that no ought-statement can be derived from is-statements only. This claim is known as 'the Is-Ought Thesis'. Inspired by Anscombe (1958), Searle argued that statements concerning the institution of promising provide for a counterexample to the thesis. Searle claimed that the argument generalizes. This means that institutions other than promising can be used to elucidate the argument. In this section I shall use money as my guiding example of how a normative statement can be derived from merely factual statements. I discuss promising in section 3. This allows me to consider "the logic of institutional action" without being distracted by the intricacies of the case of promising.

The status schema introduced in section 1 can be used for uncovering the structure of Searle's argument. At this point I shall not yet be concerned with the question whether all premises are purely factual propositions. Rather than arguing that an ought-statement can be derived from mere is-statements, I shall first argue that the status schema can be used to derive normative conclusions. Suppose you are in the United States, and you have a piece of paper in your pocket that has been issued by the Federal Reserve. Given the way the institution of money works in the United States – i.e. given the constitutive rule of money that is operative in that context – you can infer from this that you have money in your pocket. The status rule of money basically says that anything that is money can be used as a means of exchange. In light of this, it puts you in the position to infer that you have a certain amount of purchasing power.

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[4] More precisely, I suggest that in C an entity that is X constitutes an entity that is Y. See Hindriks (2012) for more on the metaphysics of constitution in relation to constitutive rules.

At the heart of this argument lies the status schema. Its first two premises are a status rule (S) and a constitutive rule (C). The third and fourth premises concern first, the fact that a particular object is in a context C, and second, that the object is X. The intermediate conclusion that is then drawn is that objects that are X have status Y. This follows premises two and three, i.e. from (C) and the fact that the relevant context obtains. This intermediate conclusion is the fifth statement of the argument. In combination with premise four – the fact that a particular object in the context at issue is X – it implies that the object has status Y.[5] Given the status rule in premise 1, this in turn entails that the object has normative power Z. I call this argument 'the Normative Power Derivation'. It encapsulates the logic of institutional action. The Normative Power Derivation is clearly valid.

In section 1 I argued that purchasing power is a power-right, a normative power that involves the ability to affect property rights. Suppose that, in spite of this, you are not convinced that the conclusion that you have a certain amount of purchasing power is a normative conclusion. In order to bring this point home, it will help to consider legal tender. This case clearly allows us to infer the existence of an obligation. The status rule of legal tender is this: anything that is legal tender in the context at issue has to be accepted by a creditor in fulfillment of a debt. In other words, a creditor is obliged to accept money that is legal tender in the context at issue if someone wants to use it to settle a debt. Now one-dollar bills are 'legal tender for all debts, public and private', as it says on one-dollar bills right next to the image of George Washington. So, from the fact that you possess a one-dollar bill you can infer that someone to whom you have to repay a debt is obliged to accept it in fulfillment of a debt.[6]

The Normative Power Derivation reveals that normative conclusions can be derived from the status schema. This by itself does not prove that the schema can be used for generating counterexamples to the Is-Ought Thesis. That stronger claim turns on the question whether the status schema can be used to derive an ought-statement from is-statements only. The stronger conclusion only follows, then, if all the premises in the argument are mere factual statements. I address this issue in section 2.3. First, however, I need to return to the role that collective acceptance plays in relation to constitutive rules. This serves to make a couple of hidden premises explicit one of which will turn out to be the pivotal premise of the Is-Ought Argument.

2.2 The Collective Acceptance Principle

Are constitutive rules mere factual statements? Recall that the phrase 'counts as' figures in the structure of constitutive rules as Searle conceives of them. At the end of section 1, I provided a formulation of the structure of constitutive rules in which that phrase does not feature. The reason for this is that its meaning can be explicated in terms of collective acceptance. What it means to say that a certain object counts as another object that has a certain institutional status is that the object has that status due to the fact that it is collectively accepted that such objects have that status. More generally, what it means to say that objects of a certain type X count as objects that are Y is that such objects have such a status due to the fact that this is collectively accepted. In more technical terms, the phrase 'counts as' is to be explicated in terms of what I call the Collective Acceptance Principle [CAP]:

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

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[5] More precisely, the status is a property of the object that is constituted by the object that is X (see note 4).
[6] In the US all currency is legal tender. This need not be the case, however. In Scotland, for instance, only one and two-pound coins are legal tender for unlimited amounts.

with *G* for the group who collectively accepts a proposition *p*, and CA as the collective acceptance operator.[7] Of course, [CAP] cannot be applied to just any proposition (at least not without substantial qualification; a group's collectively accepting that reindeer can fly does not make it so). However, the principle applies to all constitutive rules. This entails that a constitutive rule is in force if and only if it is collectively accepted to be in force.

Collective acceptance of the relevant constitutive rule was in effect taken for granted in the formulation of the Normative Power Derivation in section 2.1. As will become clear soon, making its role explicit is essential for appreciating the significance of the argument. What needs to be added to the argument is a premise in which the relevant constitutive rule features in the collective acceptance principle [CAP], as well as a statement according to which that constitutive rule is in fact collectively accepted. Given these two premises, it is possible to conclude that the constitutive rule is in force. So rather than as a premise, the constitutive rule now features as an intermediate conclusion in the argument that is based on two new premises. As this intermediate conclusion does indeed follow from the two premises, this expanded Normative Power Derivation is also valid.

The argument structure can be run for any institutional status. Let me run through it in more detail for the case of money. We have already seen that 'money is a means of exchange' is the status rule for money ((S), premise 1). We have also seen that in the case of US American one-dollar bills the (somewhat simplified) constitutive rule is this: any piece of paper that has been issued by the Federal Reserve is money. All such entities are indeed money, according to the status account, just in case it is collectively accepted to be the case ([CAP], premise 2). This constitutive rule is indeed collectively accepted (premise 3). The context at issue obtains, and the piece of paper is indeed located somewhere in the United States (*C*, premise 4). The piece of paper has the relevant features: the Federal Reserve has indeed issued it (*X*, premise 5). The constitutive rule for dollar bills – statement (6) – follows from premises 2 and 3, i.e. from the [CAP] as applied to the constitutive rule of US money in combination with collective acceptance of that rule. Given that the relevant context *C* obtains (4), statement (6) allows us to infer that anything that has the relevant features is money (7). So we can conclude that the piece of paper is money (8, from 5 and 7). This in turn entails that it has purchasing power (9, from 1 and 8).

2.3 The Premises Are Factual Statements

In order for the Normative Power Derivation to generate one or more counterexamples to the Is-Ought Thesis, all of its premises have to be (mere) factual statements. So we need a conception of what it takes for a statement, sentence or premise to be non-normative. Two necessary conditions for a sentence to be normative are generally accepted. A sentence is normative only if first, it is synthetic and second, it uses a normative term. Analytic premises are non-normative by definition.[8] Although the Is-Ought Thesis is usually formulated at the

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[7] The CAP is a simplification of the Collective Acceptance Thesis defended by Tuomela and Balzer (1999) and Tuomela (2002, 132 and note 6). It represents the basic "axiom" that governs the collective acceptance operator. The left-to-right implication captures the so-called reflexivity of institutional notions, and the right-to-left implication gives what is known as their performativity.

[8] Brink (1989, 147) writes: 'Proponents of the is/ought thesis claim or assume that a statement is a moral statement just in case it is a synthetic statement expressed by a sentence in which at least one term is used (and not merely mentioned) in its moral sense. Only synthetic statements count as moral, on their view, because analytic statements are held to be linguistic or semantic and hence, not moral statements.' If 'moral' is replaced by 'normative', this passage supports the claim made in the main text (recall that Searle is concerned with an institutional rather than a moral obligation; 1969, 176).

semantic level, where the issue is analyticity, this is not essential to it. A priori necessity is the analogue of analyticity at the conceptual level. So, when considering how to derive an ought from an is in relation to propositions, the relevant question is whether they are necessarily and a priori true. I approach the issue from an epistemic perspective here. Tuomela (2002, 132) points out, that the Collective Acceptance Principle is a necessary truth. It is also a conceptual truth that institutional entities such as money exist if and only if they are accepted to exist. Hence, the CAP holds necessarily and a priori.

Status rules are definitions. As noted in section 2.1, they can be regarded as explications of the meaning of the relevant status term. I take this to be obvious in the cases of money and legal tender. Surely, money is a means of exchange by definition, and what it means for an object to be legal tender is that a creditor is obliged to accept it in fulfillment of a debt. As they are definitions, status rules express a priori necessary truths.

None of the synthetic or a posteriori premises are normative. Whether the relevant constitutive rule is collectively accepted is a factual matter (more on this in sections 3 and 4). The same holds for the fact that the relevant context obtains. Presumably none of the X-conditions that are met are normative.[9] It follows that a normative statement is derived from non-normative statements, or that an ought-statement is derived from is-statements only. The Is-Ought Argument has it that this is possible. If the premises are true and have the character they have been argued to have, the Is-Ought Thesis according to which this is impossible is false.

There can be little doubt that the synthetic or a posteriori premises are indeed not normative. Furthermore, status rules are clearly definitions, at least in the cases considered so far. So the question arises whether there is any reason to question the Collective Acceptance Principle as applied to constitutive rules and institutional statuses. Premise (2) embodies in effect what turns out to be the pivotal claim that collective acceptance of a normative power can generate that power all by itself. In other words, the argument turns on the idea that institutional obligations exist exactly if the institutional statuses with which they are associated are collectively accepted to exist. I shall return to this idea in section 4. A question that needs to be addressed first is whether the Normative Power Derivation represents the underlying structure of Searle's Is-Ought Argument concerning promising. We shall see that it does, but that it involves a second controversial claim: the claim that promises involve obligations by definition.

3 Promising

The example Searle used in his Is-Ought Argument is promising. Searle's argument concerning promising can be reconstructed in a way analogous to the argument concerning money presented in the previous section. In other words, it is an instance of the Normative Power Derivation (NPD) and it relies on the status schema and the Collective Acceptance Principle [CAP]. Searle focused on promises made by uttering sentences the first words of

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[9] Many of the X-conditions are obviously factual (e.g. money is made of a particular kind of paper). Some of the X-conditions may be institutional, however. Few if any institutions can exist independently of other institutions. Money, for instance, presupposes an institution of property. Such other institutions can occur as part of the X-conditions or of the context. I do not believe that these aspects raise new issues for the derivation. The other institutions that are relevant depend on collective acceptance, too, and collective acceptance is already at the center of our attention. If evaluative or normative issues arise with respect to other institutions, it should be possible to bring them out explicitly also with respect to the institution under analysis. See section 5 for a discussion of a way in which normativity could play a different role from the way it figures in the analysis thus far.

which are 'I hereby promise'. I shall call such sentences P-sentences. Searle's views on promising can be related to the status account of constitutive rules by relying on the status schema.[10] In light of this, both a status and a constitutive rule need to be formulated. The status rule of promising is:

[1] Anybody who makes a promise is obliged to do as promised.

Searle takes this to be true by definition.[11] The constitutive rule is:

[6] In context C, anybody who utters a P-sentence thereby makes a promise.

In section 2.2, I have argued that a constitutive rule is in force only if it is collectively accepted to be in force. Hence, [3] states that it is collectively accepted that in context C anybody who utters a P-sentence thereby makes a promise. Against the background of this premise features [2]: the constitutive rule applies exactly if it is collectively accepted to be operative. The other two premises needed for deriving a normative conclusion are that the relevant context C obtains [4] and that a specific person, let us call him 'Jones' as in Searle's own example, uttered a P-sentence [5].

The derivation works exactly as in the case of money. So the fact that the constitutive rule of promising is in force [6] follows from collective acceptance of that rule [3] in combination with the fact that this rule is in force exactly if it is collectively accepted to be in force [2]. The fact that the relevant context C obtains [4] and that in context C uttering a P-sentence is a matter of making a promise [6] together imply that uttering a P-sentence is a matter of making a promise [7]. At this point, the constitutive rule is operative and the relevant context obtains, which means that any utterance act that satisfies the X-conditions, i.e. any utterance of a P-sentence, is a matter of making a promise. Given that he has uttered a P-sentence [5], it follows from [7] that Jones has made a promise [8]. Against the background of the status rule of promising [1], this [8] in turn implies that Jones is obliged to do as promised [9]. Statement [9] is a normative conclusion. Suppose that the premises are true. If they have the character they have been said to have, none of the premises is normative. Given these presuppositions, this example concerning Jones making a promise is another counterexample to the claim that no ought-statement can be derived from is-statements.

As in the cases of money and legal tender, the crucial premise turns out to be premise [2], i.e. the Collective Acceptance Principle applied to the constitutive rule of promising. Recall that [CAP] comes down to the claim that collective acceptance suffices to generate obligations.[12] An underlying assumption is that no normative attitude such as endorsement is needed. Looking back, it seems that Searle was aware of this (1969, 189–90 and 194–95).

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[10] I am concerned here with Searle's views on promising as he expressed them in the sixties when he defended his Is-Ought Argument. See note 13 for Searle's more recent views.

[11] Searle claims that 'to make a promise is to undertake an obligation' (1964, 56). He also writes about 'definitional connections' between 'promise', 'obligate', and 'ought' and he calls the claim that 'one ought to keep one's promises' a tautology (ibid., 49, 56). Finally, he claims that 'promising is, by definition, an act of placing oneself under an obligation' (ibid., 45). Elsewhere he writes of the 'tautology that one ought to keep one's promises' (Searle 1969, 185). He also refers to this as an analytic truth (ibid., 179). See section 5 for a discussion of an alternative view of the meaning of 'to promise'.

[12] Schurz (1997) offers a charitable reconstruction of Searle's argument. He acknowledges the role acceptance plays, but he claims nevertheless that the argument does not work because 'there is no logical way to infer from the acceptance of OA(x,p) by person x that OA(x,p) is true' (ibid., 179). He fails to see, however, that what Searle had in mind was collective acceptance rather than individual acceptance. And, whereas the claim that (mere) individual acceptance has ontological and normative import in the context of institutions is indeed implausible, the claim that collective acceptance has ontological and normative significance lies at the heart of several recent accounts of social ontology (see Gilbert 1989, 1996; 2006; Searle 1995; Tuomela 1995, 2002, 2007).

Given what he has said about collective acceptance and deontic power in his 1995, it appears that Searle still holds this view. Eerik Lagerspetz defends this claim with respect to institutional authority: 'Acceptance does not, in these cases, imply anything like moral approval or tacit consent' (1995, 160; see also Tuomela 2002, 151 and Gilbert 2006, 269–71).

The difference between acceptance and endorsement is important. It is exemplified in a particularly salient way in Al Gore's concession speech that he delivered in December 2000 after the U.S. Supreme Court had decided in favor of George Bush as the next president in spite of the contested and decisive outcome of the election in Florida. Gore's words were the following: 'Let there be no doubt, while I strongly disagree with the court's decision, I accept it.' The strong disagreement is a normative attitude, the opposite of endorsement. Gore's acceptance is a factual attitude that turned out to be part of a collective acceptance (that is not without exception). Searle holds that such factual attitudes suffice for the functioning of the relevant institutions, including their deontic dimension. The argument does not need to refer to endorsement, which would jeopardize the argument against the Is-Ought Thesis.

Thus, whether or not Searle's argument against that thesis works depends in part on whether collective acceptance supports or generates obligations. Another claim that one might wish to question is that the statement that to make a promise entails an obligation to do as promised holds a priori. In section 4 I shall discuss Gilbert's (2006) views. She defends both claims. Together with the status account of constitutive rules, this entails that Searle's Is-Ought Argument has in effect only recently received a proper defense, one that is made explicit in this paper.

4 Collective Acceptance and Obligations

At the heart of the argument concerning promising presented in section 3 lies the idea that collective acceptance can by itself support or generate obligations. This is the case when collectively accepting a rule or norm implies being bound by it. Now, why should we believe this? Searle (1995) maintains that social rights and obligations owe their existence to collective acceptance. However, what he says about collective acceptance does not reveal anything about why it might generate obligations. Without further arguments, Searle's claim is unconvincing.[13] Gilbert (2006), on the other hand, provides an account of collective acceptance that goes some way towards explaining how it obligates. I present her account in this section, and discuss her arguments in favor of it in section 5.

The central notion in Gilbert's account of collective, or in her terms 'joint' acceptance is joint commitment (I shall follow Gilbert's usage of the term 'joint acceptance' from this point onwards). A collection of individuals can be jointly committed to a propositional attitude such as belief, or intention. Focusing on beliefs and intentions, they become jointly committed by each openly expressing his or her willingness to be committed to the belief or the intention together with the others with whom they hereby come to form a group (Gilbert 1996, 349). As a consequence of doing so, they are obliged to uphold the belief or intention in group-related contexts (Gilbert 1989; see Tuomela 1995 for similar claims). This process

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[13] What Searle (1999) says about desire-independent reasons could be taken to imply that he no longer believes that collective acceptance is the ultimate source of institutional obligations. Searle (1999) proposes that an intention to do as promised results in a desire-independent reason to do as promised, and that the person who made the promise has such a reason irrespective of whether at the time the obligation is to be discharged she desires to do as promised. Note that this flies in the face of the fact that we do not let people off the hook when they say they never really intended to keep their promise in the first place.

has three ingredients. First, there has to be willingness to become jointly committed to a view or an intention. Second, this willingness has to be openly expressed by each of those involved to the others. Third, expressing such willingness has to occur in conditions of common knowledge. All these ingredients are factual. In combination with one another, however, they have normative implications.[14]

A member of a committee, for instance, cannot publicly express disagreement with a point of view that has been accepted by the committee, at least not without making it clear that she is expressing her personal beliefs. Note that the obligations at issue are social or institutional rather than moral (Searle 1969, 176). Social obligations provide a sufficient reason for acting accordingly in the sense that to comply is the rational thing to do provided there are no moral reasons that count against it (Gilbert 2006, 27–35). This means that they trump preference-based considerations, but can be trumped by moral concerns.

Joint acceptance of a rule amounts to being jointly committed to that rule. This involves the obligation to uphold the rule. A consequence of upholding a rule is that the rule is operative. Gilbert makes the point as follows: 'There is a social rule in a population P if and only if the members of P jointly accept a requirement of the following form: members of P are to perform action A in circumstances C.' (Ibid., 198) When a rule is operative in a certain community any member incurs the relevant obligation when in the circumstances specified in the rule. This much is implied by Gilbert's claim that joint acceptance of a rule 'amounts to the imposition of a requirement' (ibid.). All in all, by being a member of a group that jointly accepts a rule one not only incurs the obligation to uphold the rule in group-related contexts but one also becomes subject to that rule, which means that when the relevant circumstances arise one incurs the obligation specified in the rule.

Gilbert's claim that a rule exists exactly if it is jointly accepted basically amounts to a statement of the Collective Acceptance Principle [CAP] formulated above for the case of social rules. As a consequence, her account of joint acceptance supports what was identified as the crucial premise of Searle's Is-Ought Argument. As Searle has no account of why collective acceptance of a normative power can as such generate an obligation, Gilbert's account of joint acceptance nicely complements the reconstruction of Searle's argument presented in section 3. (Gilbert does not provide a formulation of the rule involved in promising, but does state that it is a joint commitment phenomenon; ibid., 223.)

Note that, according to the reconstruction of Searle's argument, the rule that is jointly accepted is a constitutive rule. Constitutive rules do not explicitly specify requirements. However, their acceptance presupposes that one grasps the meaning of the status term involved. This means that joint acceptance of the claim that Xs are Ys presupposes that those who do the accepting know what being a Y amounts to. And what being a Y amounts to is specified by the relevant status rule. Joint acceptance of a constitutive rule, then, implies that the relevant status rule is operative, and hence that the relevant normative powers are in force.[15]

In order for Gilbert's account of joint acceptance really to support Searle's Is-Ought Argument it should not involve any implicitly normative factors. In particular, whether or not a rule is jointly accepted should be a factual matter. In this connection, it is important to note that joint acceptance does not require endorsement. Often, acquiescence or merely going along with the rules suffices for incurring the concomitant obligations (ibid., 269–71;

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[14] Accounts of joint attitudes that have this structure are sometimes criticized for being circular. In response, one can bite the bullet and accept that a conceptual reduction is not to be had. See Petersson (2007) for a reductive proposal.

[15] Insofar as obligations are concerned, then, there is no difference between jointly accepting a rule of the form 'If X, then Z' and jointly accepting a rule of the form 'If X then Y' where what it means to be a Y is just for the normative powers Z to be instantiated.

see section 3 for others who support a similar claim). Furthermore, the connection between joint acceptance and obligations should not be a synthetic or a posteriori one. Gilbert's account of joint acceptance also meets this requirement. She claims that the existence of an obligation of joint commitment in joint commitment phenomena such as promising is knowable a priori (Gilbert 2006, 223).[16]

Before turning to her arguments as to why we should believe that the obligation involved in promising is not a moral but a mere social obligation, it is worth noting that Gilbert's position on the issues discussed in this section bears a close affinity to that of H.L.A. Hart. Focusing on legal rules and the obligations involved in them, Hart also defends a distinction between moral and non-moral obligations. He holds that for a social rule to exist it must be generally complied with, and it must be used as a standard of criticism of the behavior of the members of the relevant group. These ideas bear a close affinity to Gilbert's claim that social rules bind the behavior of those members, and that their existence warrants rebuking members who do not follow those rules. Gilbert's account is in a sense more fundamental than that of Hart, for instance because she explains why people regard their criticisms of others as appropriate in terms of joint commitment, whereas Hart leaves this feature unexplained (see for a discussion of the differences, ibid. 185–203).

The upshot is that, just as Searle, Gilbert believes that the mere instantiation of intentional attitudes can have normative implications. This means that Gilbert's views on joint acceptance can be used in support of the Is-Ought Argument. The advantage of doing this is that, in contrast to Searle's views on collective acceptance, Gilbert provides an account of joint acceptance that goes some way to explaining why it has these normative implications, and – as I shall discuss in section 5.2 – provides arguments as to why we should believe it does.

5 Bratman Versus Gilbert

5.1 Bratman and the Value of Assurance

Gilbert's views have not gone unchallenged. Bratman believes that normative implications of the kind under consideration require more than just the instantiation of certain intentional attitudes. In his view, intentional attitudes have normative consequences only in conjunction with values. He invokes the value of assurance in order to account for the rights and obligations that he believes are often, though not always, present when there is a shared intention. In relation to this value of assurance, Bratman (1999, chapter 7) appeals to Thomas Scanlon's (1990) Principle of Fidelity, which can be rendered in a somewhat simplified form as follows:

> If A provides B assurance that she will do x, in the absence of special justification, A must do x unless B consents to x's not being done.

Bratman argues that this principle applies in many instances of shared intention and action. In contrast to Gilbert, he holds that any rights or obligations involved in shared or joint intentions derive from the applicability of this principle, rather than from the intentions only.

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[16] Gilbert uses the term 'analytic' in relation to her argument in support of political obligations. She defends what she calls 'an analytic membership argument' according to which those who jointly accept the political institutions of a country are obliged to uphold those institutions (Gilbert 2006, 7–10).

The Principle of Fidelity is a substantive moral principle (i.e. it is a synthetic or a posteriori statement in which a moral term is used). As a consequence, it cannot feature in the Is-Ought Argument. Note that, if the Principle of Fidelity is needed to derive promissory obligations, [CAP], and hence premise [2] of the argument, must be false.

Searle has considered an objection to his Is-Ought Argument that has the same structure. Rather than the Principle of Fidelity, the principle he considered is this: 'One ought to keep all one's promises.' His argument against this objection is simply that such a principle is not needed to derive a genuine promise (Searle 1969, 184). As an argument in favor of [CAP], this will of course not do. Note, however, that Gilbert's account of joint acceptance provides indirect support for Searle's argument. Now we know more about how joint acceptance is supposed to issue in obligations, the idea that [CAP] suffices for deriving a normative claim from merely factual presuppositions will perhaps be somewhat more palatable to those who baulk at it initially. In section 5.2 I go on to discuss Gilbert's arguments in favor of the idea that promissory obligations are due to joint acceptance. Here, however, I want to consider how the Is-Ought Argument would need to be revised if Bratman is right and a moral principle such as the Principle Fidelity is needed in order to derive the obligation to do as promised.

The fact that it is not sufficient need not imply that collective acceptance is irrelevant to the obligation invoked in the institution of promising. Here is a way in which the idea that collective acceptance bears on the obligations we have can be preserved. Rather than claiming that promising involves obligations, the first premise of the alternative argument could be that promising is by definition a matter of providing some kind of assurance.[17] On this view, promising does not involve a normative status directly.[18] As before, the relevant constitutive rule would specify the way in which a promise is made in the context at issue. Given that, on this view, promising does not involve a normative status, the idea that the Collective Acceptance Principle applies to this constitutive rule is harmless. In order to derive an obligation, one would have to add the Principle of Fidelity as an additional premise.[19] The upshot is that even if Searle's Is-Ought Argument fails, the logic of institutional action based on the status schema and the account of constitutive rules survives with only minor modifications.[20]

5.2 Gilbert and the Nature of Social Obligations

On Bratman's view, the obligation involved in a promise is to be explained in terms of the value of assurance. Shared intentions as such need not come with obligations (Bratman

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[17] Scanlon (1990) is committed to this view. See Shockley (2008) for a version of this view that does not require an appeal to the Principle of Fidelity. Shockley defends a social practice account of promising against Scanlon's critique.

[18] Bach and Harnish (1979) have also argued that promising is not by definition a matter of placing oneself under an obligation. They maintain that the speech act of promising is not an institutional act and that the analysis of the generation of the institutional obligation should be separated from that of the speech act.

[19] The Principle of Fidelity cannot, of course, be used for all institutional statuses. The obligation involved in legal tender, for instance, appears to be unrelated to the value of assurance. As Bratman suggested to me in personal conversation, Rawls' Principle of Fair Play could play the role that the Principle of Fidelity plays with respect to promising on Scanlon's view at least in some such cases.

[20] The conclusion of the argument as presented in section 2.2 would then be: Jones has provided Smith assurance of the fact that he will pay him five dollars. Together with the Principle of Fidelity this implies that Jones is obliged to do so (supposing the conditions of the Principle are met). Note that this affects the relation between statuses and normative powers. When a status is instantiated, the normative power that is characteristic of it will only be instantiated if it is sanctioned by morality.

1999, 2009). Gilbert argues instead that they do: 'each party to a shared intention is obligated to each to act as appropriate to the shared intention in conjunction with the rest' (2009, 175).[21] Bratman's key argument against Gilbert's view of the relation between joint commitment and what he calls 'mutual obligations' is that such obligations are not always present when a shared intention is (Bratman 1999, chapter 7; 2009).[22] If this argument were to transpose to promising, then there could be genuine promises without concomitant obligations. This possibility is ruled out by Gilbert's account of joint acceptance of rules. Gilbert supports this claim with an independent argument. She maintains that the obligations involved in promising are *context-insensitive*. This means that the obligation to do as promised exists even if it turns out that, when we consider the wider context, the person who made the promise turns out to have another obligation that conflicts with it. To give an example, we commonly take someone who has made two promises such that keeping one entails breaking the others to have two conflicting obligations (Gilbert 2006, 31–32).

In this respect, obligations of joint commitments differ from moral requirements, or so Gilbert argues. A moral requirement ceases to exist when a more important moral issue arises. Gilbert (ibid., 159–60) discusses a case in which Jane has a moral obligation to help a child who hurt its arm. She supposes that just before Jane gets to the child an elderly woman collapses with an apparent heart attack. It appears that in this situation Jane is obliged to help the elderly woman and is no longer obliged to help the child immediately. The new obligation makes the old obligation disappear. (Note that once she has done what she can for the woman Jane might once again become obliged to help the child.) Context-insensitivity is one of the marks of social obligations. It appears that joint acceptance generally involve obligations that are context-insensitive in Gilbert's sense.

A second feature of the obligations involved in promising is that they are relational or *directed* (ibid., 38–41).[23] We owe the actions we promised to perform to particular people. Those people have a special standing in relation to us for no other reason than that we have made a promise to them. This involves their having a right to the performance of the action at issue. Now, whereas one might think that the Principle of Fidelity can accommodate the bare fact that promises entail obligations to particular people, it clearly fails to do justice to these concomitant rights (ibid., 227). Scanlon's Principle of Fidelity contains an escape clause according to which one does not need to perform the action if one has special justification for not doing so. An implication of this is that, if one has an overriding reason not to fulfill the obligation, the special claim that the promisee had disappears along with the obligation. This does not seem to be correct (see also Gilbert 2004).

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[21] Alonso (2009) argues that, in the absence of special circumstances, shared intentions generate obligations. He argues that the sociopsychological basis for these obligations is 'partly constitutive' of shared intention (ibid., 475). This means that, in contrast to Bratman, Alonso does not regard the presence of these obligations as a contingent matter. In contrast to Gilbert, however, he maintains that the obligations are moral and depend on moral principles (see his discussion of Scanlon's Principle of Due Care and his Principle of Loss Aversion; ibid., 466–72). This implies that his view is similar to Bratman in the sense that it does not support Searle's Is-Ought Argument.

[22] Bratman's other arguments pertain to coerced and immoral shared intentions. Gilbert (2006, 228–34) argues against this that coerced and immoral promises do involve promissory obligations.

[23] The directional nature of promises also plays an important role in Shockley's (2008) social practice account of promising. In contrast to the Searlean account presented in this paper, however, Shockley does not understand social practices or institutions in terms of collective or joint acceptance.

The joint acceptance account of promissory obligations does not suffer from this problem. It entails that the promissory obligation remains in place even when other considerations entail that one has an overall obligation to perform another action than the promised one. Thus, it accommodates the directedness of promissory obligations. As Gilbert (2006, 227n22) points out, Bratman's account fails to accommodate this feature. Directedness is the second mark of social obligations. If promissory or other obligations involved in institutions are indeed social rather than moral obligations, this provides support for the claim that they are ultimately due to joint commitment. Given the Normative Power Derivation, we can now see that these arguments support Searle's thesis that in the context of institutions one can derive an ought-statement from mere is-statements.

A lot depends on an adequate assessment of these two arguments. Gilbert's claim that joint commitment generates obligations is sometimes met with an incredulous stare. Those who respond in that way owe us criticisms of Gilbert's arguments concerning the context-insensitivity and the directedness of the obligations involved in promising as well as many other institutional phenomena. Such criticisms are also needed in order to refute the Is-Ought Argument. Some might say that Gilbert's arguments for denying that moral obligations can be directed after all are not that convincing. Others might want to argue that moral obligations can be context-insensitive. The idea would be that it is possible to have two moral obligations that are in tension with one another and that one ought to act only on one of them. On this line of argument, Gilbert fails to appreciate the difference between moral obligations and moral oughts.[24] Such criticisms need to be spelled out in more detail. And even if successful, they still do not establish that the Is-Ought Argument cannot be made to work on *some* conception of collective acceptance.

6 Conclusion

According to the status account, an institution can be analyzed in terms of a constitutive rule and a status rule. Status rules pertain to the practical dimension of institutional entities, i.e. to the normative powers they involve. Constitutive rules specify what is required for an institutional status along with its normative powers to be instantiated. The status schema has been used to clarify the structure of Searle's Is-Ought Argument. The resulting reconstruction of the argument is the Normative Power Derivation. The derivation turned out to be valid. The second statement of derivation is the pivotal premise of the argument. According to this premise, collective or joint acceptance suffices for the instantiation of institutional statuses including their normative powers.

Gilbert has argued in favor of the pivotal premise that such rights and obligations are intrinsic to certain collective intentional states. Bratman denies this. It follows that Gilbert is committed to the soundness of the Is-Ought Argument, whereas Bratman will regard it as unsound. Thus, the controversy about Searle's argument four decades ago is in effect mirrored in one of the most pressing problems in the contemporary literature on collective intentionality. The upshot is that Searle's Is-Ought Argument deserves to be taken seriously once again.[25]

References

Alonso FM (2009) Shared intention, reliance, and interpersonal obligation. Ethics 119:444–475

Anscombe GEM (1981/1958) 'On Brute Facts'. In: The collected papers of G.E.M. Anscombe, Volume 3. Basil Blackwell, Oxford, pp 22–25

Bach K, Harnish RM (1979) Linguistic communication and speech acts. MIT, Cambridge

Bratman ME (1999) Faces of intention. Selected essays on intention and agency. Cambridge University Press, Cambridge

Bratman ME (2009) Modest sociality and the distinctiveness of intention. Philos Stud 144:149–165

Brink DO (1989) Moral realism and the foundations of ethics. Cambridge University Press, Cambridge

Gilbert M (1989) On social facts. Routledge, London

Gilbert M (1996) Living together. Rationality, sociality, and obligation. Rowman & Littlefield, New York

Gilbert M (2004) Scanlon on promissory obligation: the problem of promisees' rights. J Philos 101:83–109

Gilbert M (2006) A theory of political obligation. Membership, commitment, and the bonds of society. Oxford University Press, Oxford

Gilbert M (2009) Shared intention and personal intentions. Philos Stud 144:167–187

Hindriks F (2009) Constitutive rules, language, and ontology. Erkenntnis 71:253–275

Hindriks, F (2011). 'The location problem in social ontology'. Synthese.

Hudson WD (1969) The Is-Ought question: essays on the central problem in moral philosophy. Macmillan, London

Lagerspetz E (1995) Opposite mirrors: an essay on the conventionalist theory of institutions. Kluwer, Dordrecht

Petersson B (2007) Collectivity and circularity. J Philos 104:138–156

Scanlon T (1990) Promises and practices. Philos Publ Aff 19:199–226

Schurz G (1997) The Is-Ought problem. An investigation in philosophical logic. Kluwer, Dordrecht

Searle JR (1964) How to derive "ought" from "is". Philos Rev 73:43–58

Searle JR (1969) Speech acts: an essay in the philosophy of language. Cambridge University Press, Cambridge

Searle JR (1995) The construction of social reality. The Free, New York

Searle JR (1999) Mind, language, and society. Philosophy in the real world. Weidenfeld and Nicolson, London

Searle JR (2010) Making the social world: the structure of human civilization. Oxford University Press, Oxford

Shockley K (2008) On that peculiar practice of promising. Philos Stud 140:385–399

Tuomela R (1995) The importance of us. A philosophical study of basic social notions. Stanford University Press, Stanford

Tuomela R (2002) The philosophy of social practices. A collective acceptance view. Cambridge University Press, Cambridge

Tuomela R (2007) The philosophy of sociality. The shared point of view. Oxford University Press, Oxford

Tuomela R, Balzer W (1999) Collective acceptance and collective social notions. Synthese 117:175–205