

“Constitutive Rules: Games, Language, and Assertion”

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Introduction

Many philosophers think that games like chess, languages like English, and speech acts like assertion are constituted by rules. For example, on Bernard Suits’s influential view, games are constituted by sets of *lusory* rules which permit only inefficient ways to perform certain actions (Suits 1967, 1978). Similarly, on John Searle’s and William Alston’s views, languages are constituted by sets of *semantic* rules which permit uses of expressions in certain conditions (Alston 1999, Searle 1969, for discussion see Harnish 2005). Finally, on Tim Williamson’s influential view assertion is constituted by a *pragmatic* rule which permits saying that p only if one knows that p (Williamson 1996, 2000, for critical discussion see Cappelen 2011, Maitra 2011, MacFarlane 2011, Pagin 2011, 2016; for a recent defense, see Goldberg 2015: Ch. 1).¹

Lots of other philosophers of course disagree that games, and even more so, languages and speech acts, are constituted by rules. To argue over this productively, it would be first useful to know what it would be for these things to be rule-constituted. Searle famously claimed in *Speech Acts* that rules constitute things in the sense that they make possible the performance of actions related to those things (Searle 1969). On this view, rules constitute games, languages, and speech acts in the sense that they make possible playing them, speaking them and performing them. This raises two questions:

(*Performance*) What is it to perform rule-constituted actions (e. g. play, speak, assert)?

¹ Both Searle and Alston think that the same *semantic* rules that constitute languages by making their expressions meaningful also constitute *illocutionary* acts like assertion (for critical discussion of this aspect of their view see Harnish & Plunze 2006). This is because they think that to perform the rule-constituted semantic action of using a sentence with its meaning amounts to performing an illocutionary act. In contrast, Williamson remains neutral on whether there are any semantic rules and whether languages are rule-constituted but thinks that there are *pragmatic* rules that constitute illocutionary acts like assertion, conjecturing, guessing etc.

(*Constitutive Rules*) What makes constitutive rules distinctive such that only they make possible the performance of new actions (e. g. playing etc.)?

Searle's own answers are, roughly, that to perform a rule-constituted action is to act or try to act in accordance with the rule, and that constitutive rules are distinctive in allowing for new possibilities for description.² These have frequently been taken for granted in the ensuing discussion.

In this paper I will criticize Searle's answers. However, my main aim is to develop a better view. First, I will develop the ideas of Alston and Kathrin Glüer and Peter Pagin to argue that to perform a rule-constituted action is to perform an antecedently existing action while *enacting* or *putting* the rule in force for ourselves or *accepting* it as being in force (Alston 1999, Glüer & Pagin 1999). I'll also explain how this view works in the case of each of games, language, and assertion and illustrate its appeal by showing how it enables rule-based views of these things to respond to various objections. Second, I will argue that constitutive rules are distinctive in being in force for us if we enact/accept them, having a certain special sort of content, and being enacted/accepted for a special reason.

I will proceed as follows. I'll start by providing a general account of rules to serve as background and by introducing the basic distinction between regulative and constitutive rules (Sections 1-3). Next, I'll criticize Searle's answers (Sections 4-5). Finally, I'll develop the better view (Sections 6-8).

1. Three Senses of 'Rule'

We can distinguish between three related, but different ways of using 'rule' in philosophy. In a very broad sense used by Wittgenstein in his discussion of rule-following, a rule is anything that can be *followed* such that:

- a) our having, grasp or use of it can play a role in generating and explaining our action.

² Searle seems to also think that *some* constitutive rules are distinctive in being *definitional* and not genuine rules at all (Searle 1969: 36, 41). I'll discuss this strand in his discussion in fn. 7.

b) our actions can accord or discord with it;

Here are some of Wittgenstein's examples of rules in this sense: intentions, requests, and orders, and functions and properties used as principles for doing something. First, consider intentions, requests, and orders. Suppose you intend to spend the morning writing or somebody requests or orders you to. Your intention or grasp of the request or order can obviously play a role in generating your ensuing actions and later explain why you did what you did. And if you do indeed spend the morning writing then your action accords with the intention, request, or order, otherwise it doesn't.

For a different sort of example, consider the $+2$ -function used or considered as a *principle* for continuing a series like 2, 4, 6, 8...1000. Your use of the function as your principle of continuation can play a role in generating the particular step and later explain why you did what you did. And if you continue the series with 1002 then your action accords with the function used as your principle of continuation. However, if you continue the series with 1004 then your action doesn't accord with the function considered as a principle of continuation (like Wittgenstein's pupil in #185 of *Philosophical Investigations*, perhaps you've been continuing the series by using some other function as your principle all along).

Similarly, consider the property of being green used or considered as a *principle* for sorting green, blue, and red marbles into green and non-green piles. Your use of the property as your principle of sorting can play a role in generating the particular step and explain why you did what you did. And if you sort a green marble into the green pile then your action accords with the property used as your principle of sorting. However, if you suddenly sort a blue marble into the green pile then your action discords with the property considered as your principle of sorting (like in Nelson Goodman's example, perhaps you've been sorting by using the property of being grue as your principle all along).

The broad Wittgensteinian sense of 'rule' covers both "particular" things like intentions, requests, and orders which can pertain to a single situation and "general" things like functions and properties which have multiple application. There is a considerably narrower sense of 'rule' used in ethics, practical reason, epistemology, philosophy of law, some philosophy of language, and philosophy of games and sport that differs in two key respects. First, rules in this sense are only "general". Second, the accord or discord they feature is distinctively *normative* (or, even more specifically, *deontic*).

Let's first look at the idea that rules in the narrower sense are only "general". Suppose you tell your children that, tonight, they can use your car. Intuitively, this is an example of giving them a one-time permission and not making a rule. In contrast, suppose you instead tell your children that they're allowed to use the car on every weekend-night. Intuitively, this is an example of making a rule. This illustrates the common idea that unlike particular one-time requirements, prohibitions, or permissions, rules are general in having multiple application (Brennan et. al 2013: 3, Schauer 1991: Ch. 2, Southwood & Eriksson 2011).

Next, let's look at the idea that the accord or discord they feature is distinctively deontic. Consider a moral rule and a traffic rule:

(No Murder) Murder is prohibited.

(No Right) If there's a red light, turning right is prohibited.

Like rules in the broader sense, these can be followed. However, what's different in this case is that when we break *No Murder* we're not merely doing something incorrect or using a different principle, we're doing something we mustn't do, something that's morally prohibited. Similarly, when we break *No Right*, we're doing something we mustn't do, something that's legally prohibited.

A 'rule' in the narrower sense is something general that can be *followed* and where the accord and discord is distinctively deontic. To regiment usage, and in light of their normativity, let's call such things *norms* (compare von Wright 1963: I.2). Norms have propositional content that attributes some action-type *A* (e. g. murder, turning right) some *deontic* status *D* (required, prohibited, permissible) perhaps on certain general conditions *C* (if there's a red light). They can therefore be written down in one of the following two ways which we can think of normal forms for norms:

(N1) (If/only if/iff *C*), doing *A* is required/prohibited/permissible

(N2) $\forall a$ (*a* must/can't/may do *A* (if/only if/iff *C*))³

³ Norms or rules are sometimes thought of not as having propositional, but imperatival content. For example, here's Searle: "Regulative rules characteristically take the form of, or can be paraphrased as imperatives" (Searle 1969: 34). However, as Paul Boghossian has argued, taking norms or rules to have propositional content allows us to naturally

The only difference between these two forms is that the latter allows us to quantify over agents and use deontic modals.

Norms *have* propositional content, they're not just the bare propositional contents themselves. They can be thought of on the model of judgments and assertions. Distinguish between particular datable and locatable acts of judging and asserting from judgments and assertions in the sense of propositions as judged or asserted. We can model the latter by using Frege's use of the assertion-sign '⊢' together with 'p', a variable over propositions. Every asserted proposition '⊢p' can be divided into two components: its assertive force '⊢' and its content 'p'. Norms are propositions that are *in force* and they allow for a similar separation between their being in force and their content. For example, the bare propositional content that murder is permitted is not in force and therefore not a norm, even though it is of the right type in attributing an action type a deontic status.

Norms are general and normative. There is an even narrower sense of 'rule' that might not be as important to ethics and epistemology the way they're usually thought of, but is central to philosophy of law, social philosophy, some philosophy of language, and philosophy of games and sport. Rules in this sense are norms that are *human-made* in that they're in force due to agential activity and therefore contingently. For example, laws are rules in this sense because they're in force because an authority has *enacted* them or put them in force. Similarly, communal norms are rules in this sense because they're in force because they're *accepted* as being in force in a community.⁴

To see the difference between norms that are not rules in the narrowest sense and norms that are, compare *No Murder* to *No Right*. Like other moral norms, *No Murder* is not usually thought to be in force contingently. For it to be in force is probably just for its content to be true, and if it is true it is necessarily true. In contrast, *No Right* is a rule in New York City, but not in most places in Europe or in Los Angeles. This is because the relevant authority in New York City has enacted it or put it in force there, but the relevant authority in the other places hasn't done so.

capture the fact that they are normative or deontic and the fact that many rules are not requiring or prohibitive, but *permissive* (Boghossian 2008: 475-476).

⁴ For discussion of the relevance of human-made norms to practical reason see Schroeder 2013.

And for it to be in force is not for its content to be true, but rather for it to have been enacted and/or accepted.

Hereafter we will solely be concerned with rules in the narrowest sense, that is, with anything general that can be followed, where the accord or discord is distinctively deontic, and that is human-made. To regiment usage, I will from now on call only such things *rules*.⁵

2. Rules: Enactment, Acceptance, and Restrictions

Above I said that norms can be thought of on the model of judgments and assertions in that we can distinguish between their being in force and their content. For moral norms to be in force is for their contents to be true. However, for rules to be in force is for them to be enacted and/or generally accepted. Since this will be important later, I want to here say a bit more about enactment and acceptance and then discuss a further question of how to think about restrictions on a rule's applying.

Let's start with what it is to enact. To make a rule, to *enact*, to put one in force, is not to judge or assert. To use Austin's terms, to judge and assert is to do something *constative*: it is to take a stand on how things already are and thus to do something that has a mind-to-world direction of fit. In other words, it is to do something that has to fit pre-existing reality in order to be correct. This is why judgments and assertions themselves can be said to be true or false (and not just their contents). In contrast, consider declaring a session open by the use of a sentence like 'The session

⁵ It might be instructive to compare my terminology of 'norms', and 'rules'. to that of Georg Henrik von Wright and to that of Geoffrey Brennan, Lina Eriksson, Robert Goodin, and Nic Southwood (hereafter BEGS). Von Wright's 'norm' covers both what I've called one-time requirements, prohibitions, and permissions as well as my norms. However, he lacks a term for my 'rule' and he draws instead a finer distinction between 'prescriptions' and 'rules'. 'Prescriptions' are norms which are like laws in being given by an authority to subjects and come with sanctions. 'Rules' are norms which are like rules of games (von Wright 1963: I.5). My 'rule' thus includes both his prescriptions and rules.

BEGS distinguish between *objectively valid rules or normative principles* and *accepted rules or normative principles* and reserve 'norm' for the latter (BEGS 2013: 3, Southwood & Eriksson 2011). Their 'rule' therefore maps onto my 'norm'. However, their 'norm' doesn't map onto my 'rule' since we're interested in slightly different things. Their 'norms' are *all* normative principles that are accepted in a particular community irrespective of the reasons why they're in force. Consider *No Murder*. On their use of 'norm', if *No Murder* is accepted in a community then it is a norm of the community (BEGS 2013: 7, Ch. 4). This is irrespective of the fact that it's in force simply by being true (or as they say, by being objectively valid) and not due to its acceptance. My rules however are *all* normative principles that are in force due to agential activity. We could cross-cut the categories and distinguish between propositional contents of the right sort or normative principles, normative principles that are in force (= their rules, my norms), normative principles that are in force by being necessarily true (e. g. an example of which are moral norms), normative principles that are in force due to agential activity (= my rules), and normative principles that are accepted in a community irrespective of why they're in force (= their norms).

is open' (as opposed to using what Austin called an explicit performative like 'I declare the session open'). To declare a session open by the use of such a sentence is to do something *performative*: it is to seek to bring into existence a truth and thus do something that lacks a mind-to-world direction of fit. In other words, it is not to report on pre-existing reality, but to seek to change it (for discussion see Recanati 1987: Ch. 6). To enact is similarly to do something performative, to seek to bring into existence a normative truth. This is why enactments can't be said to be true or false (even though their contents can).⁶

It follows from this that sentences of the above two normal forms can be used for two different purposes when it comes to rules. On the one hand, they can be used to enact rules. For example, if one uses them in making a law. On the other hand, they can be used to report rules that have already been enacted and are in force (compare von Wright 1963: VI. 9). For example, if one uses them while writing a newspaper article and reporting a recently made law.

Let's now discuss acceptance. Some communal rules are in force not because an authority has enacted them, but because they've come to be generally *accepted*. It's quite hard to say exactly what acceptance in a community or even by a person amounts to (see Hart 1961: Ch. 5, Pagin 1987: 13-21). However, a promising Hartian idea is that for a person to accept a rule is for her to have certain *normative attitudes*: to have beliefs which mirror the content of the rule, to be disposed to evaluate their own and other people's actions in the light of the rule, to disapprove of breakings, to let others evaluate their actions in the light of it etc. (BEGS 2013: 28-31). This will suffice for now, but I'll say a bit more about this later.

Thus far we've discussed two aspects of a rule: its propositional content and the fact that it's in force due to agential activity. The next thing we need to briefly discuss is how to think about restrictions on a rule's applying. For example, *No Right* is a rule in New York City. It's very natural to report this by uttering the following sentence:

No Right^{NY}: In New York City turning right on red is prohibited.

⁶ For further discussion of enacting as contrasted with, for example, ordering, see Reinach 1913: Ch. 3.

However, the report is compatible with two different ways of thinking of the restriction that the rule applies to *you* only if you're in New York City.⁷

On the first picture, the restriction goes in the content. Thus, *No Right*^{NY} reports a rule that tells us that *if* you're in New York, then, if there's a red light, turning right is prohibited. At the same time, it applies unrestrictedly: if it is in force, it's in force for all agents at all times. More generally, on this picture rules have almost always *conditional contents* and never have conditions of application. For a rule to exist is for it to be in force and apply unrestrictedly. And to create a rule is to take a content of the right sort and to put it in force unrestrictedly.

On the second, quite different picture, the restriction goes in the conditions of application. Thus, *No Right*^{NY} reports a rule that tells us simply that if there's a red light, turning right is prohibited. At the same time, it applies restrictedly: if it is in force, it applies to an agent at a time only if the agent is in New York at the time. More generally, on this picture rules have at least sometimes *unconditional contents* and always have conditions of application. For a rule to exist is for it to be in force and apply restrictedly. And to create a rule is to take a content of the right sort, to put it in force while specifying its conditions of application.

To see the difference, note that *authorities* to make rules or enact come with *jurisdictions*. For example, the New York City legislature has the authority to make rules in New York City, parents have an authority to make rules for their children, but not for others' children, and each one of us has the authority to make rules for ourselves. On the first picture such *jurisdictions* can't be understood in terms of a domain (e. g. a geographical area, set of subjects etc.) in which you can make rules. Rather, they must be understood in terms of what sorts of rules one can make. For example, on this picture the New York City legislature has an authority to make rules for everyone; it's just that the rules they make have to mention New York. Similarly, each of us has an authority to make rules for everyone; it's just that the rules we make must mention ourselves. In contrast, on the second picture jurisdictions can be understood in terms of a domain in which you can make rules.⁸

It is not important for us here to decide between the two pictures. However, since I think it's more natural, I will hereafter state things in terms of the second one.

⁷ I'm heavily indebted here to Peter Pagin's discussion of this contrast in Pagin 1987: 22-28.

⁸ It's unclear whether anyone has adopted the first picture. In contrast, Mark Schroeder has recently offered a model for thinking about making rules that adopts the second picture (Schroeder 2013: 303-305).

Having laid this down as background, let's proceed to the basic distinction between merely regulative and constitutive rules.

3. The Basic Distinction

Most of the contemporary discussion of constitutive rules takes as its starting point Searle's discussion where he proposes that we distinguish between merely regulative rules and constitutive ones (my emphasis):

...regulative rules regulate antecedently or independently existing forms of behavior; for example, many rules of etiquette regulate inter-personal relationships which exist independently of the rules. But constitutive rules do not **merely** regulate, they **create** or define new forms of behavior. The rules of football or chess, for example, do not **merely** regulate playing football or chess, but as it were they **create** the very possibility of playing such games. The activities of playing football or chess are constituted by acting in accordance with (at least a large subset of) the appropriate rules (Searle 1969: 33-34)

The basic idea is that some rules like *No Right just* regulate antecedently existing actions like making a right turn. In contrast, constitutive rules do not just regulate antecedently existing actions; they *also* make possible the performance of new actions. It follows that constitutive rules are a sub-class of regulative rules that are somehow distinctive in making possible the performance of new actions.⁹

⁹ I take constitutive rules to be a sub-class of regulative rules and rules in our narrowest sense. This fits well with how Suits, Alston, Williamson, Glüer & Pagin etc. think of such rules. Searle himself thinks of some constitutive rules like this as well. However, he also says that *some* constitutive rules are *definitional* (my emphasis): "Regulative rules characteristically have the form or can be comfortably paraphrased in the form "Do X" or "If Y do X". Within systems of constitutive rules, **some** will have this form, but **some** will have the form "X counts as Y", or "X counts as Y in context C". (Searle 1969: 34-35). Here's another pertinent quote: "Must all rules be thus normative? No. **Not all** constitutive rules have penalties; after all, what penalty is there for violating the rule that baseball is played with nine men on a side? Indeed, it is not easy to see how one could even violate the rule as to what constitutes checkmate in chess or touchdown in football." (Searle 1969: 41).

Many earlier philosophers like C. G. J. Midgley but also some more recent ones like Ishani Maitra seem to think that *all* constitutive rules are definitional (Maitra 2011, Midgley 1959). For example, one of Maitra's criticisms against Williamson's parallel between games and assertion is that constitutive rules like those of games are mere definitions, whereas Williamson's rule is a genuine norm or rule (Maitra 2011: 282). I think it is a mistake for Searle to think that some constitutive rules are definitional and for Midgley, Maitra etc. to think that all are. Instead, all constitutive rules are genuine rules in our narrowest sense. As several people have forcefully argued, what the 'counts-as' statements capture are not constitutive rules, but instead definitions that introduce new terms for already rule-

To get a better grip on how this works we need some examples. Here are purported constitutive rules of games, languages, and assertion, stated the way I think they have to be stated:

(*Pawn*) $\forall a$ (*a* may move a pawn two squares forward only if it hasn't moved)

(*Ouch!*) $\forall a$ (*a* may use 'Ouch!' iff *a* is in pain)

(*K-Assertion*) $\forall a$ (*a* may say that *p* iff *a* knows that *p*)

Pawn is plausibly a constitutive rule (or a part of a constitutive rule) of chess.¹⁰ The idea is that unlike merely regulative rules like *No Right* it not only regulates the antecedently existing action of moving the pieces called 'pawns' two squares forward but, together with other rules governing movings of pawns, makes possible the action of moving a pawn as a part of playing chess. If we identify pieces by their shape then we can think of the rules of a particular game like chess as determining their *role* in that game: their potential for movement, capture etc. The rules of a different game like Absorption Chess or Seizer's Chess determine their role in those games.¹¹ Then we can say that *Pawn*, together with other rules governing movings of pawns, makes possible the action of moving a pawn with its role in chess (vs. merely moving it, or moving it with its role in a different game). Furthermore, together with other rules of chess it makes possible *playing* chess.

Similarly, *Ouch!* has been thought to be a constitutive rule of English (Kaplan MS). The idea is that it not only regulates the antecedently existing action of uttering or inscribing the sound or mark-pattern 'Ouch!' but also makes possible the action of using it as a part of speaking English. If we identify expressions by their sound- or mark-shape, then we can think of the rules of a particular language as determining their *meaning* in that language. Then we can say that *Ouch!* makes possible the action of using 'Ouch!' with its meaning in English (vs. merely using it or using

constituted actions (e.g. 'assertion') or rule-constituted situations with certain consequences (e. g. 'checkmate', 'touchdown'). (Alston 1999: 254, Glüer & Pagin 1999: 220, Pagin 1987: 174, Ransdell 1971).

¹⁰ I say just chess and not the game of chess because it might be that rules governing the movings of chess pieces don't fully constitute the *game* of chess (Bierman 1972, Schwyzer 1969). This is because the same rules could also constitute other practices involving chess. For example, consider the imaginary *rite* of chess which is performed not with the aim of checkmating your opponent to win, but rather to determine the will of the gods. What distinguishes the game from the rite is something beyond the rules governing the movings of pieces like the general aim you have in performing the activity (e. g playing a game vs. determining the will of gods). Since this is not important for our purposes, I will mostly disregard this complication. For further discussion see Marmor 2009.

¹¹ https://en.wikipedia.org/wiki/List_of_chess_variants

it with its meaning in a different language). To use Austin's terminology, it governs the antecedently existing *phonetic* act of uttering 'Ouch!' and makes possible the *locutionary* act of using it with its meaning (Austin 1962: Lecture VIII). Furthermore, together with other rules of English it makes possible *speaking* English.

Finally, *K-Assertion* is how I think Williamson's K-rule of assertion qua a constitutive rule has to be stated. The idea is that it not only regulates the antecedently existing action of saying that p but also makes possible the new action of asserting (versus other, different rules that regulate the same action, but constitute the different actions of conjecturing, guessing etc.).¹²

Now, as we said above, the idea that constitutive rules constitute things by making possible actions related to these things raises two related questions:

(*Performance*) What is it to perform rule-constituted actions?

(*Constitutive Rules*) How are constitutive rules distinctive such that only they make possible the performance of new actions?

What did Searle say about these things?

4. Searle on Performing Rule-Constituted Actions

Searle's answer to the question what it is to perform a rule-constituted action is provided in the end of the above quote: "The activities of playing football or chess are constituted by acting in accordance with (at least a large subset of) the appropriate rules" (Searle 1969: 34). Let's call this:

¹² Williamson proposes that we can state the K-rule as follows:

The Knowledge rule: One must: assert that P only if one knows that P (Williamson 1996:494)

This is a convenient way of talking about the K-rule but can't be what it really looks like. If assertion is indeed a rule-constituted action, then the rule that constitutes it has to regulate some antecedently existing action like the *locutionary* act of saying that p (= using 'p' with its meaning in some language *L*). Then to assert is to perform the antecedently existing action while standing in some relation to the rule. Similarly, to conjecture is to perform the same antecedently existing action while standing in some relation to a different rule like:

The Conjecture rule: One must: conjecture that P only if one has some reason to believe that P.
(*R-Conjecture*) $\forall a$ (*a* may say that p iff *a* has some reason to believe that p)

(*Conformity*) To perform a rule-constituted action is to perform the antecedent action while acting in accordance with the constituting rule (or rules).

Something like the *Conformity* view is sometimes taken for granted in discussions of rule-constituted actions. Unfortunately, it's false.

Here's the first reason why. The *Conformity* view entails that every action that is in accordance with the constitutive rule amounts to performing the rule-constituted action. But consider a "player" who doesn't know how to play chess and moves a pawn one square forward. It should be clear that even though she's moved a pawn in accordance with the rules of chess, she hasn't made a move in the game or played chess. Similarly, consider a speaker who doesn't know how to speak English and uses 'Ouch!' while being in pain. It should be clear that even though she's used the expression correctly she hasn't spoken any English (compare Austin 1962: 97, Recanati 1987: 239).

This provides us with a constraint on views of what it is to perform rule-constituted actions:

1) *Competence*: To perform a rule-constituted action one has to *grasp* the constituting rule.¹³

Now, it's important to see that even if we could restrict the *Conformity* view by somehow accommodating *Competence*, it would still be false. Grasp of constitutive rules doesn't make it the case that one's movings or uses automatically amount to playings or speakings. Consider a competent player who moves pieces on a large board to represent a game that's going on elsewhere like they used to do before computers. It should be clear that even though she's moving the pieces correctly she isn't playing or making moves in the game. Rather, she's merely moving the pieces in representing a game.

This gives us a second constraint:

¹³ What is it to grasp a rule? Although it's not important for us to settle it here, it's relatively clear that to grasp the rules of chess, or English, or assertion is not a form of (ordinary) knowledge that. Plausibly, it's a form of knowledge how to act in accordance with the rule where this requires at the minimum some sensitivity to what counts as acting in accordance with it and what doesn't. Compare Williamson: "In mastering the speech act of assertion, one implicitly grasps the C(P) rule, in whatever sense one implicitly grasps the rules of a game or language in mastering it. As already noted, this requires some sensitivity to the difference between conforming to the rule and breaking it." (Williamson 1996: 492)

- 2) *Voluntariness*: To perform a rule-constituted action one has to *voluntarily* do something or have done something related to the rule beyond merely acting in accordance with it.

We will come back to what this might be below.

The above considerations show that the *Conformity* view is false because acting in accordance with the rules isn't *sufficient*. However, it isn't even *necessary*. To see this, we need to think about whether and how constitutive rules can be broken while playing. Many rules of games are such that they can't be broken at all while continuing the game. Take chess. Suppose you try to move a pawn that has already moved two squares forward. What happens? From the point of view of the game nothing happens since the move is impermissible and the resulting position is not defined. This is clearest in the case of playing on the computer where such moves are simply impossible to make. But things are no different over the board. Even though you can physically move the piece and get a new board position, from the point of view of the ongoing game it's as if nothing happened and the board position remains the same. In competitive chess such illegal moves are punished in one of two ways. In long time control games where there is no chance of making such a move by accident, you simply lose. In blitz games where there is a chance of accidentally making an illegal move the game is instead continued from the previous board position and you incur a time penalty.¹⁴

Things are similar in more dynamic sports like boxing or tennis. Suppose you throw a kick in boxing or "serve" by throwing the ball over the net. Again, there is no chance of doing these things by accident and there's a strong intuition that if you do, you're not playing the game anymore.

However, many rules of games are such that they can easily be broken while continuing the game. Even a static game like chess has competitive rules like this. For example, it's illegal to castle by using two hands or to make a move with one hand and press the clock with another. If

¹⁴ For a recent example consider Carlsen vs Inarkiev in World Blitz Championship 2017. Towards the end of the game Carlsen used a rook to check his opponent's king, while the latter responded with an illegal knight check of his own. According to the rules at the time, Carlsen could've claimed a win, but in time pressure he instinctively moved his king after which Inarkiev called the arbiter. The final verdict was for the play to resume from the last legal position. According to the new FIDE rapid and blitz rules in force from the beginning of 2018 such illegal moves are now punished with a time penalty instead.

you do this then the game clearly advances to a new board position, even though you will either lose or incur a time penalty. Furthermore, in most dynamic sports, such rules are central. For example, it's illegal to kick, headbutt or hit below the waist in boxing. If you kick, you're not boxing. However, since headbutts and low blows can happen by accident their occurrences count as a part of the match and are punished by a warning or a point deduction. Even more clearly, consider the rules governing serving in tennis. They specify that you need to hit the ball with the racket over the net into the box diagonal from where you stand while staying behind the service line. If you "serve" by throwing the ball over the net you're not playing tennis. But if you serve into the net or out or foot fault, then you clearly are playing, and any of these actions results in your 2nd serve, and, upon repetition, a double fault, in which case a point is awarded and the game advances to the next "position". (compare Glüer & Pagin 1999: 221).

The existence of breakable rules shows that some rules of games are such that acting in accordance with them isn't necessary to play. Similarly, on rule-based views of language and assertion, the relevant rules are supposed to be such that you can break them while continuing speaking and asserting. Here's Williamson making this point:

"Constitutive rules do not lay down necessary conditions for performing the constituted act. When one breaks a rule of a game, one does not thereby cease to be playing that game. When one breaks the rule of a language, one does not thereby cease to be speaking that language; speaking ungrammatically is speaking English. Likewise, presumably, for a speech act: when one breaks a rule of assertion one does not thereby fail to make an assertion. One is subject to criticism precisely because one has performed an act for which the rule is constitutive." (Williamson 1996: 451, 2000: 240)

All in all, this gives us a third constraint:

- 3) *Mistake*: Performing rule-constituted actions is compatible with breaking some of the rules.

The above three considerations decisively refute the *Conformity* view. However, perhaps what Searle really has in mind is that playing and speaking are constituted by *trying* to act in accordance with the rules. To spell this view out:

(*Intended Conformity*) To perform a rule-constituted action is to perform the antecedent action while *trying* to act in accordance with the constituting rule (or rules).

The *Intended Conformity* view is more promising since it satisfies the three constraints. It satisfies *Competence* because only competent players and speakers know what the rules require and can therefore *try* to act in accordance with them. It also satisfies *Voluntariness* because it requires players and speakers to voluntarily do something that invokes their grasp of the rules beyond merely acting in accordance with it. And it further satisfies *Mistake* because trying to act in accordance with a rule is not inconsistent with failing to do so.

Unfortunately, I think that the *Intended Conformity* view is still problematic. Above I pointed out that many rules of games are such that they can be broken while continuing the game. However, it seems that for any rule that can be broken by accident while playing, you can also *intentionally* break it while playing. Such intentional breakings in games can be divided into *mere* intentional breakings and *cheatings*. The difference is that in the former case one doesn't try to avoid detection and the ensuing punishment or penalty, whereas in the latter case one does (Fraleigh 2003: 168). Of course, in many cases there is no reason to break the rules unless you're trying to cheat. But in some cases, there is. These are the strategic fouls. For example, suppose you're playing basketball and intentionally hit the opposing players hand instead of the ball because the game has reached to a point where good strategy requires a foul. It's clear that this counts as a move in the game and in fact results in you getting penalized with a foul and the opponent's getting free throws.

At this point a diehard supporter of the *Intended Conformity* view could try to argue that the unbreakable rules are somehow more central in determining the nature of the game. Bernard Suits has made some remarks which seems to suggest something like this (my boldface):

“The rules of a game are, in effect, proscriptions on certain means useful in achieving prelusory goals. Thus, it is useful, but proscribed to trip a competitor in a foot race. This kind of rule may be called constitutive of the game since such rules together with the specification of the prelusory goal set out all the conditions which must be met in playing the game...Let us call such rules *constitutive* rules. The other kind of rule operates, so to speak, *within* the area circumscribed by constitutive rules, and this

kind of rule may be called a rule of skill. ... To break a rule of skill is usually to fail, at least to that extent, to play the game well, but to break a constitutive rule is to fail (at least in that respect) to play the game at all. **(There is a third kind of rule in some games which appears to be unlike either of these. It is the kind of rule whose violation results in a fixed penalty, so that violating the rule is neither to fail to play the game nor [necessarily] to play the game well, since it is sometimes tactically correct to incur such a penalty [e. g., in hockey] for the sake of the advantage gained. But these rules and the lusory consequences of their violation are established by the constitutive rules and are simply extensions of them.)** (Suits 1978: 51-52).

Suits seems to be saying that the breakable rules of games are less central in being dependent on the unbreakable rules. But this is false. In boxing it's illegal to kick, headbutt or hit below the waist. These proscriptions are equally central in determining the nature of the game, even though the former can't be broken while continuing the game, while the latter can. Same for serving in tennis where there is no sense to be made of the claim that the part of the rule requiring hitting the ball with a racquet is in any way more central than the part requiring hitting it from behind the service line. Both are equally important in determining the nature of the game even though the former can't be broken while continuing the game while the latter is broken all the time. In fact, I think that the correct view is the opposite: the unbreakable rules are exactly like the breakable rules at bottom, but just have some special further features which explain why they can't be broken while continuing playing. (I'll explain why at the end of section 7).

Let's take stock. The existence of strategic fouls shows that some rules of games are such that *trying* to act in accordance with the rules isn't necessary for playing either. On rule-based views of language and assertion, the relevant rules are also supposed to be such that you can intentionally break them while continuing speaking and asserting. Consider again:

(*Ouch!*) $\forall a$ (a may use 'Ouch!' iff a is in pain)

(*K-Assertion*) $\forall a$ (a may say that p iff a knows that p)

Suppose that '*Ouch!*' is indeed a rule of English. Clearly you could use 'Ouch!' while knowing that you're not in pain, perhaps for the purposes of deceiving your audience into thinking that you are. Then you would've intentionally broken the rule and done something similar to cheating insofar as you're trying to hide the fact that you're breaking the rule. But it's obvious that you've

still spoken English. In fact, you couldn't have managed to deceive unless you would've succeeded in doing this.

Similarly, suppose that *K-Assertion* is indeed the constitutive rule of assertion. Clearly you could assert that p while believing that p is false, again, for the purposes of deception. Again, then you would've intentionally broken the rule and done something similar to cheating. But it's obvious that you've still asserted that p and represented yourself as knowing that p. In fact, you couldn't have managed to deceive unless you would've succeeded in doing these things.

All of this shows not only that the *Intended Conformity* view is still false, but also provides us with another constraint:

- 4) *Violation*: Performing the rule-constituted action is compatible with *intentionally* breaking the rule.

We will have to find a new view that can meet all the constraints.

5. Searle on Constitutive Rules

Unlike the first question, Searle didn't give a clear answer to the question about how constitutive rules are distinctive that would help us explain how they constitute. It is sometimes thought that his view was that constitutive rules constitute just by attributing the relevant deontic status. The idea would be that *Pawn* partly constitutes the possibility of moving a pawn with its role simply by attributing the deontic status of being permissible on certain conditions to the action of moving a pawn two squares forward. The new action type of moving a pawn with its role would then be simply the action-type of moving a pawn permissibly or in accordance with the rule.

The obvious problem with this view of how constitutive rules constitute is that it would do away with the intuitive distinction between merely regulative rules and constitutive ones (Marmor 2009: 32, Raz 1999: 108-9, Warnock 1971: 37-38). After all, if that's all that constitution amounts to, then *No Right* partly constitutes the possibility of making a legal right turn simply by attributing the deontic status of being prohibited on certain conditions to the action of making a right turn. The new action-type would simply be a *legal* right turn or making a right turn in accordance with the rule.

However, Searle didn't actually hold this view:

There is a trivial sense in which the creation of any rule creates the possibility of new forms of behavior, namely, behavior done as in accordance with the rule. That is not the sense in which my remark is intended. (Searle 1969: 35)

Instead, he tried to capture the intuitive distinction between merely regulative and constitutive rules by stressing the differences in possibilities of description:

What I mean can perhaps be best put in the formal mode. Where the rule is purely regulative, behavior which is in accordance with the rule could be given the same description or specification (the same answer to the question “What did he do?”) whether or not the rule existed, provided the description or specification makes no explicit reference to the rule. But where the rule (or system of rules) is constitutive, behavior which is in accordance with the rule can receive specifications or descriptions which it could not receive if the rule or rules did not exist. (Searle 1969: 35)

Unfortunately, this doesn't really help us further. Clearly, even regulative rules allow for new possibilities of description like we used above (e. g. *legal* right turn). Searle tried to respond to this by drawing a distinction between “appraisals” like a *legal* right turn versus “descriptions” like *checkmate* (or *assertion*) but this doesn't help since the latter are plausibly just new terms for what's already constituted (Ransdell 1971: 386, Pagin 1987: 175). And in any case, even if this could be made to work, this would at best give us a criterion for distinguishing between merely regulative and constitutive rules, but no explanation of how constitutive rules are distinctive such that only they constitute. We will have to find a new view that does this.

6. The Governance View of Performing Rule-Constituted Actions

As we saw above, the *Conformity* and *Intended Conformity* view of rule-constituted actions are both problematic. William Alston has made a plausible observation that suggests a different view:

Traffic regulations apply to one's driving willy-nilly, whatever one might choose. If one is stopped by a policeman for speeding, it will cut no ice to say, “I didn't choose to subject my driving to that regulation.” But rules of games are, or can be, different. One has the latitude, within

limits, to decide when one is playing a game and, hence, to decide when the rules of the game apply to him. (Alston 1999: 62)

The basic idea is that traffic rules like *No Right* are in force independently of what we do on a particular occasion and apply to us if we meet the relevant conditions of application (e. g. are in New York). In contrast, constitutive rules like the rules of games are in force for us on an occasion if we decide that they're in force for us on that occasion. And to play a game at some time is to decide that they're in force for us at that time.

Here are Kathrin Glüer and Peter Pagin saying the same thing:

When we decide to start a game of soccer, what we decide is that the rules of soccer shall start to *apply*, i.e. be in force for us. We decide what to count as the field, the goal posts, the teams etc., and then, as we proceed to play, our actions are to be *evaluated* by the rules. (Glüer & Pagin 1999: 221)

Again, the idea is that to play a game at some time is to decide as an "I" or a "we" that the relevant set of rules is in force for us at that time. In the terms we've been using above, it is to either enact or put the rules in force for oneself or an "us" at the time or accept them as being in force for the time.

I propose that we generalize it into a new view of rule-constituted actions:

(*Governance*) To perform a rule-constituted action at some time is to perform the antecedent action while enacting/accepting the constituting rule (or rules) at the time.

To explain how the *Governance* view works let's walk through it in the case of *K-Assertion* and *R-Conjecture*:

(*K-Assertion*) $\forall a$ (a may say that p iff a knows that p)

(*R-Conjecture*) $\forall a$ (a may say that p iff a has some reason to believe that p)

Both rules regulate the *same* antecedently existing action of saying that p. The former makes possible the new action of asserting and the latter the new action of conjecturing. To perform an assertion is to say that p while accepting *K-Assertion* as being in force for oneself at the time of saying or putting it in force (I'll discuss the difference between enactment/acceptance versions of the view in the next section). At that time, *R-Conjecture* isn't in force and thus doesn't apply. Similarly, to perform a conjecture is to say that p while putting *R-Conjecture* in force for oneself at the time of saying. At that time, *K-Assertion* isn't in force and thus doesn't apply.¹⁵

The *Governance* view relies heavily on the notions of enacting and accepting. One might wonder what it is to do these things. Enactment of a rule for oneself is best thought of in terms of *commitment*. It's at least somewhat plausible to think of the special *authority* we all have to make rules for ourselves as the ability to *commit* ourselves to certain courses of action (Schroeder 2013: 308, for discussion of commitment see Shpall 2014). For example, one might think that to make a rule that prohibits eating sugar for oneself is nothing but to *commit* to not eating sugar.

For games that you play with yourself that is all that is needed. However, what is important in our case is that in the case of communal activities like most games, the enactment/acceptance of constitutive rules must be manifest or public. For example, to start a game with others, one has to publicly signal one's acceptance of the rules to the other players – one has to publicly commit to acting in accordance with the rules. Similarly, to put a constitutive rule like *K-Assert* in force for oneself is to publicly *commit* to saying that p only if one knows that p. Notice that the explanation of enactment/acceptance in terms of commitment together with the requirement that it be made *publicly* is what makes sense of the idea that we can put a constitutive rule in force for ourselves without intending to act in accordance with it. Consider the parallel with promises. It's common to think that to promise to do A is to *publicly* commit oneself to doing A (e. g. Shpall 2014). On this view it's possible to promise a friend to pay back the money owed without intending to do so. This would be a genuine promise, just an insincere one. Similarly, on the rule-based view

¹⁵ Pagin is quite explicit in thinking of the rule-based view of assertion roughly along the lines of the *Governance* view: "Norm accounts of assertion are of the following general format:

(N) An utterance of *u* is an assertion iff *u* is governed by norm *R*.

where *R* is the norm proposed by the norm account of assertion. On this type an account, an utterance does not become an assertion in virtue of *conforming* to the norm *R*, and does not fail to be an assertion in virtue of *failing to conform* to *R*. It is the mere fact that *R applies* to, or is in force for *u* that matters." (Pagin 2011: 99, compare also MacFarlane 2011: 84fn. 6)

of assertion to assert is to say that p while *publicly* committing to following *K-Assert* (etc.). while not even believing that p. On this view it's possible to assert that p while not even believing that p. This would be a genuine assertion, just an insincere one.

The *Governance* view meets all the constraints we introduced in the previous section. You can't enact/accept a rule unless you grasp it. And enacting/accepting amounts to voluntarily doing something in relation to it other than merely acting in accordance with it. Furthermore, you can clearly enact/accept a rule and yet break it by mistake. When a tennis player foot faults she will have broken the relevant rule. However, there should be no question of her not being committed to the rules – she accepts the penalty and moves on to the 2nd serve. Similarly, if the norm of assertion is knowledge then you break it by mistake in cases where you assert and believe that you know even though you don't. Finally, you can also enact/accept a rule and break it intentionally. When a basketball player commits a strategic foul, he will have broken the relevant rule. However, there should be no question of his not being committed to the rules – he accepts the penalty and continues the game. Similarly, if the norm of assertion is anything that entails belief then you break it intentionally in cases where you lie.

7. The Governance View in the case of Games, Language, and Assertion

Let's say more about how the *Governance* view works in the case of games, languages, and assertion.¹⁶

Following David Lewis's view of languages, we can think of a game like chess as a set of pieces together with their roles in the game (Lewis 1975). Of course, since intuitively most games don't cease to exist when one piece changes its role, it's perhaps more natural to think of games as evolving entities that are at each moment fully constituted by "Lewisian" games or game-stages, but that could at the next moment be fully constituted by a different one (Williamson 1996: 490). It is then the "Lewisian" games that we can think of as sets of pieces together with their roles. Now, on a rule-based view of games, a "Lewisian" game is nothing but a set of propositional contents of the right sort like *Pawn*:

¹⁶ In developing the Governance view I've relied on work by Glüer & Pagin 1999: 221 and Pagin 2011. It should be noted that they have discussed constitutive rules while arguing *against* the view that languages and assertion are constituted by rules.

(*Pawn*) $\forall a$ (*a* may move a pawn two squares forward only if it hasn't moved)

To start playing a game at a time is to start performing the relevant antecedent actions while taking the contents and putting them in force for ourselves at the time plus some further conditions like aiming to win. Thus, a game by itself is just a *mere* set of propositional contents of the right sort. However, to *play* a game at a time is to perform the relevant antecedent actions while *treating* these contents as *rules*.

Something similar goes for languages. We can think of “Lewisian” languages or language-stages as sets of expressions together with their meanings. On a rule-based view, a “Lewisian” language is nothing but a set of propositional contents of the right sort like *Ouch!*:

(*Ouch!*) $\forall a$ (*a* may use ‘Ouch!’ iff *a* is in pain)¹⁷

However, when it comes to speaking a language the difference between enacting or putting a rule in force and accepting it as being in force becomes potentially relevant.

In the case of games, it's natural to think that starting to play at all and which game we start to play is to some degree a matter of *voluntary* decision. For example, when you and I sit behind a chess board we could be merely representing a game that's going on elsewhere or we could mutually decide to use the pieces to play chess or instead to play checkers. To do the latter would be to start moving the pieces while treating one or the other set of contents as rules.

In the case of languages, one could similarly think that speaking at all and which language I speak is a matter of *voluntary* decision. For example, when I utter ‘Ouch!’, I could merely be practicing pronunciation or I could use it with its meaning, to express my pain. To do the latter would be to utter the sentence while treating the content as a rule. One consideration in favor of such a view has to do with ambiguity. Take an ambiguous sentence like ‘The bat flew out of the window’. When I use the sentence, what I end up saying seems a matter of which rule I put in force for myself.

¹⁷ Lewis says that a language is a function from expressions to meanings (Lewis 1975: 3). *Ouch!* and other such propositional contents can be thought of as such functions in mapping an expression like ‘Ouch!’ to its meaning thought of as its permissible use-condition. I explain how to think of the meanings of declarative sentences, various sub-sentential expressions etc. in terms of permissible use-conditions elsewhere (Reiland 2014).

However, at least some people might instead prefer to think that whether we speak a language at all and which language we speak is a matter of *default* presumption. For example, when I utter ‘Ouch!’ in someone’s presence, they would claim that it seems plausible that there’s a *default* presumption that I’m not merely practicing pronunciation, but rather using it with its meaning in English. More generally, when a competent speaker uses expressions of a language in the presence of others they would claim that there is a dual default presumption. First, that one is speaking *a* language rather than merely using the expressions. Second, that one is speaking some particular Lewisian language that is generally spoken in the community that the conversationalists are part of. In other words, there’s the presumption that one is speaking what Lewis called the language *of* the relevant community or what Stephen Schiffer later called its *actual* language (Lewis 1975, Schiffer 1993).

On this version of a rule-based view of language it’s thought that the rules of the particular Lewisian language that is the actual language of a community are in force *by default* in that community. They’re in force by default because they’re generally accepted in the community. It is therefore also plausible to suppose that if one is a competent speaker and a member of the community then to speak one doesn’t have to enact or put the rules in force at the time of the use. Rather, she merely has to continue *accepting* the rules as being in force at the time of her use. She could opt out or discontinue the acceptance for the time when it’s clear from the situation or by making it clear that she’s merely practicing pronunciation or testing a microphone (defeating the default presumption that she’s speaking a language at all). Similarly, she could opt out when it’s clear or by making it clear that she’s engaging in linguistic innovation in trying to use a familiar word with a new meaning or when she’s speaking a different language which shares the same words (defeating the default presumption that she’s speaking the actual language). However, to speak, to continue accepting the rules, she doesn’t have to do anything beyond not opting out.

To start playing a game and playing a particular game seems straightforwardly a matter of voluntary decision. In contrast in the case of language one could take one of two views. On one view speaking a language is also a matter of voluntary decision. However, on the other view, if one is a competent speaker in some actual language of a community then speaking it in the presence of others is instead a matter of default presumption. What about assertion?

Williamson conceives of asserting as a matter of default presumption. As he puts it: “In natural languages, the default use of declarative sentences is to make assertions” (Williamson

1996: 511, 2000: 258). The idea is that whenever we say things, the rule of assertion is in force by default. This would have to be because it is somehow generally accepted among speakers of any language. Hence, to assert one doesn't have to put it in force at the time of saying. Rather, she merely has to continue *accepting* it as being in force at the time of saying. She could opt out or discontinue the acceptance by indicating that she's merely saying things or that she's rather conjecturing or guessing etc. For example, she could perhaps do this by using an explicit performative like 'I conjecture...' (Williamson 1996: 496). However, to assert, to continue accepting the rule, she doesn't have to do anything beyond not opting out.

However, one could also hold an alternative rule-based view of assertion that conceives of asserting instead as a matter of voluntary decision. The idea would be that when we say things there is no pragmatic rule that is in force by default. Rather, we might say things and put the rule of assertion in force or instead the rule for conjecturing in force or be just joking etc. Going this route could help the rule-based theorist to answer certain objections. For example, Herman Cappelen has argued against Williamson's view partly by claiming that in everyday speech we don't characterize sayings as assertions and don't really use the word 'assertion' or an analogue which is what we would expect if sayings are by default to be evaluated as assertions (Cappelen 2011: 37). However, if one conceives of asserting as a matter of voluntary decision and doesn't think that they're by default to be evaluated as assertions then the objection simply doesn't apply.

I've now explained how the *Governance* view works in the case of games and shown that there could be two different rule-based views of language and assertion. Let me next illustrate its appeal by showing how it enables rule-based views of these things to respond to various objections.

Here's the first objection, to rule-based views of games. Consider the so-called *formalist* view of games on which they are *wholly* constituted by sets of rules. The formalist view is usually taken to go hand in hand with the *Conformity* view of performing rule-constituted actions on which to play a game is to act in accordance with its rules (perhaps on the further background condition that one is aiming to win, see fn. 6). For example, here's William Morgan: "...what it means to engage in a game...is to act in accordance with the appropriate rules of that game." (Morgan 1987: 1). This has led to the following objection. The formalist view entails that one can't play a game while intentionally breaking its rules like in the case of strategic fouling. Clearly, one can. Hence the formalist view must be false and there must be more to games than their rules, perhaps

something like the “ethos” of the game or “spirit” of the rules that determines when one can play a game while breaking its rules (D’Agostino 1981).

The right response to this is to acknowledge that some rules of games can easily be broken while continuing playing and uncouple the formalist view from the *Conformity* view. As soon as we take it as going hand in hand with the *Governance* view the objection disappears since this view does allow for playing a game while intentionally breaking the sorts of rules relevant to strategic fouling. Hence the objection fails to show that there must be more to games than their rules.

Here’s a second objection, this time to rule-based views of assertion. Williamson drew a parallel between games and assertion. Ishani Maitra has recently criticized this parallel. Her argument proceeds in two stages. First, she tries to establish as a general claim that the performance of rule-constituted actions is incompatible with intentional breakings. She supports this as follows. Baseball includes a rule on which after three strikes the batter is out. Consider Derek, a baseball player who refuses to leave the batter’s box after the third strike, insisting that it would be much more enjoyable for the spectators if he were allowed an extra one. Maitra’s intuition is that Derek has ceased to play baseball. She claims that this is because he is intentionally and publicly breaking the three strikes rule. And she concludes from this that performing a rule-constituted action is incompatible with *flagrant*, that is, “intentional and sufficiently marked” breakings of the rule (Maitra 2011: 281-282).

In the second stage, Maitra then claims that Williamson’s parallel between games and languages breaks down because you can’t flagrantly break the rules of games and continue playing, but you can flagrantly break any rule of assertion that entails belief and continue asserting (Maitra 2011: 283).

The right response to this is to deny the general claim that the performance of rule-constituted actions is incompatible with intentional breakings. In fact, we’ve already discussed examples that show that players can play while intentionally breaking some of the rules of games (for a baseball-related example see Goldberg 2015: 25). We can also easily resist Maitra’s analysis of the case of Derek as supporting the general claim. She is correct that Derek has ceased to play baseball. She is even correct that the three strikes rule is one that can’t be broken while continuing playing. However, the right explanation of why Derek has ceased to play is not that trying to act in accordance is necessary for playing and he intentionally breaks the rule. Rather, it is because

Derek publicly refuses to accept the three strikes rule as being in force for him. Given all this, there's no problem for Williamson's parallel between games and assertion since you can intentionally break the rules of both games and assertion and continue playing and asserting.

Having discussed Maitra's objection, it's now a good time to explain why the unbreakable rules are exactly like the breakable rules at bottom, but just have some special further features which explain why they can't be broken while continuing playing. The idea is that for any rule of a game, to perform the rule-constituted activity is to accept the rule as governing one's action. However, some rules of games are such that once you know them, it's basically impossible to break them by accident. The examples are rules of chess like *Pawn*, but also the rule forbidding kicking in boxing, the rule requiring hitting the ball with the racquet in tennis, and the three strikes rule. This means that if one breaks these rules, it usually means that one has stopped accepting these rules as being in force for them. This is why they can't be broken while continuing playing.

8. The New View of Constitutive Rules

What makes constitutive rules distinctive such that only they make possible the performance of new actions? The *Governance* view of the performance of rule-constituted actions relied on the idea that constitutive rules are in force for us on an occasion if we decide that they're in force for us on that occasion. One might wonder, as a first hypothesis, whether something related to this is also what makes constitutive rules distinctive in being constitutive. Here then is the first hypothesis: a rule (or a set of rules) is constitutive iff it is in force for one at a time if one enacts/accepts it as being in force for oneself at that time. To spell this out a bit more, the idea would be that a rule is constitutive if one either has to enact it for it to be in force or one can at least opt out.

However, consider:

(*Kiss*) $\forall a$ (*a* may kiss their companion)

(*No Sex*) $\forall a$ (*a* mustn't have sex with their companion)

Suppose you go on a first date and put *Kiss* and *No Sex* in force for yourself. We can of course say that when you do end up kissing or having sex you perform the new actions of kissing or having

sex while the relevant rule is in force. But the ensuing actions don't nevertheless seem to look anything like our supposedly rule-constituted actions of moving a pawn with its role in the game, using 'Ouch!' with its meaning, or assertion. In other words, *Kiss* and *No Sex* do not seem to be bona fide constitutive rules. Something beyond personal authority seems needed.

Let's compare the two above rules to our example constitutive ones:

(*Pawn*) $\forall a$ (a may move a pawn two squares forward only if it hasn't moved)

(*Ouch!*) $\forall a$ (a may use 'Ouch!' iff a is in pain)

(*K-Assertion*) $\forall a$ (a may use 'p' with its meaning iff a knows that p)

How do the two sets differ? One salient difference is that *Kiss* and *No Sex* are unconditional. In contrast, *Pawn* specifies a necessary condition, and *Ouch!* and *K-Assert* specify necessary and sufficient conditions for the antecedently existing action to have the deontic status. *Pawn*, of course, is only *partly* constitutive of the action of moving a pawn with its *role* in chess since other rules governing pawn moves contribute as well (or perhaps it is just part of the actual full rule). In contrast, the other two rules are *fully* constitutive of the actions of using 'Ouch!' with its meaning in English and assertion. One might therefore wonder whether considerations related to the determination of necessary and sufficient conditions are what make constitutive rules distinctive.

Here then is a second hypothesis: a rule (or a set of rules) is constitutive iff:

- a) *Authority*: it is in force for one at a time if one enacts/accepts it at that time; and
- b) *Content*: it specifies necessary and sufficient conditions for the antecedently existing action to have the deontic status.¹⁸

We can test this by taking a regulative rule and trying to turn it into a constitutive one by making it specify necessary and sufficient conditions. Let's take *Kiss* and turn it into:

¹⁸ A referee asks whether this view entails that unconditional prohibitions like " $\forall a$ (a mustn't touch the ball with their hands) couldn't be constitutive rules. This would be problematic since the above prohibition is part of soccer. However, the idea that constitutive rules specify necessary and sufficient conditions is rather that unconditional prohibitions couldn't *by themselves* be constitutive. Rather, like *Pawn*, they're part of a set of rules that jointly specify necessary and sufficient conditions and thereby jointly constitute or they're simply a part of the full rule that constitutes.

(*Kiss**) $\forall a$ (a may kiss their companion on the first date iff they set up another date)

Is *Kiss** a constitutive rule?

It depends. Rules are put in force for reasons.¹⁹ For example, *No Right* is put in force by the relevant authority in New York City because traffic is dense, and it helps to prevent accidents. Similarly, when you put a rule in force for yourself you do it for some reason. For example, one might put *No Sex* in force for oneself on a first date because one wants a relationship and one believes that abstaining from sex on a first date generates higher chances of the date leading to a relationship. Now, suppose you go on a first date and put *Kiss** in force for yourself. And suppose you put the rule in force because you think that kissing if and only if these conditions are met also generates higher chances of the date leading to a relationship. We can then say that when you do end up kissing you perform the new action of kissing while the relevant rule is in force. But your reason for putting the rule in force is completely unrelated to the performance of this action. In other words, when you put the rule in force for that reason you don't really care about performing the new action, but about something else. And this seems very different from what happens in the case of our example constitutive rules.

When we put our example constitutive rules in force for ourselves we do it for a reason which is much more closely related to the new action. Namely, because putting them in force enables us to perform the new actions and we care about performing the new actions. Bernard Suits notes this in his analysis of what it is to play games:

In high-jumping, as we have noted, although the contestants strive to be on the other side of a barrier, they voluntarily rule out certain means for achieving this goal. ... Their goal is not *simply* to get to the other side, but to do so only by means permitted by rules, namely, by running from a certain distance and then jumping. And their *reason* for accepting such rules is just because they want to act within the limitations that the rules impose. They accept rules so they can play a game, and they accept these rules so they can play this game. (Suits 1978: 45)

¹⁹ Frederick Schauer has called the reasons why a rule has been put in force or why it's accepted as being in force a rule's *justification* (Schauer 1991: 25-26).

The idea is that rules of games are put in force because doing so makes possible playing the game. For example, when you put *Pawn* in force you do it because doing so enables you play chess and you want to play. Of course, normally a player wants to play because of some further, deeper reason. A club-level player might want to play because they want to do something enjoyable and a professional might want to play because they want to make money. But both put the rules in force for themselves in the first place because doing so makes possible playing the game.

The same idea goes for rules of language and assertion. On a rule-based view of language, rules of *a* language are put in force or accepted as being in force because doing so makes possible speaking *that* language. For example, when you put *Ouch!* in force you do it because doing so enables you to use it with its meaning in English and express your pain in English. Of course, you want to express your pain in English rather than French because of a further, deeper reason. Namely, because you want to express your pain to your audience and you know that your audience speaks English rather than French. But you put the rule in force for yourself because doing so makes possible using ‘Ouch!’ with its meaning in English. Similarly, on a rule-based view of assertion, you enact/accept the rule of assertion because doing so enables you to assert.

Here, then, is a third hypothesis: a rule (or a set of rules) is constitutive iff:

- a) *Authority*: it is in force for one at a time if one enacts/accepts it at that time; and
- b) *Content*: it specifies necessary and sufficient conditions for the antecedently existing action to have the deontic status.
- c) *Justification*: it is enacted/accepted for the reason that doing so makes possible performing the new action.²⁰

We can test this by taking the above scenario with the first date and *Kiss** but changing the justification. This time, suppose you put the rule in force because it enables you to perform the

²⁰ A referee asks how we should think about the relation between constitutive rules and conventions. The way I see it, rules and conventions are different kinds of phenomena. Conventions are regularities in action that have certain sorts of further properties (for an overview, see Rescorla 2015). Some conventions are related to rules. When it’s said that some rule is conventional what this means is that there is a regularity related to the rule that is conventional. For example, in many cities there is perhaps a convention to *follow* the following rule on escalators: $\forall a$ (*a* must stand still when on the right and walk when on the left). To give an example related to constitutive rules, suppose there is a language L constituted by rules. To speak L is to perform the antecedent actions while enacting its rules. However, following and slightly modifying Lewis, L might be the actual language of a community because in that community there is a convention of *enacting* its rules.

new action of kissing while the rule is in force and you want to do that. Of course, for this to be credible the new action has to have some significance in being part of larger practice of some sort. For example, perhaps the new action is a move in a game you're playing with your friends. But if the significance is granted then *Kiss** seems to be a bona fide constitutive rule.

Conclusion

I started by noting that while many philosophers think that games, languages, and speech acts are constituted by rules, lots of others disagree. I also claimed that to argue over this productively, it would be useful to know what it would be for these things to be rule-constituted. In this paper I've labored towards such knowledge. First, I criticized Searle's views of the performance of rule-constituted actions and what makes constitutive rules distinctive. Second, I defended the *Governance* view of the performance of rule-constituted actions on which to do so is to either put the constituting rule in force or accept it as being in force. I also showed how this view works in the case of each of games, language, and assertion and illustrated its appeal by showing how it enables rule-based views of these things to respond to various objections. Finally, I argued that constitutive rules are distinctive in that they're in force for us if we enact/accept them, they have a content that specifies necessary and sufficient conditions for the antecedently existing action to have the deontic status, and they're enacted/accepted for the reason that doing so makes possible the performance of the new action. I hope that the gained knowledge enables us to more productively argue over the merits of rule-based views of games, language, and assertion.²¹

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²¹ I want to thank, first and foremost, my advisors Mark Schroeder, Scott Soames, and Robin Jeshion for working with me extensively on the dissertation that this paper grew out of. Furthermore, I want to thank Ben Lennertz, Julia Staffel, Shyam Nair, Justin Snedegar, Karen Lewis, Kenny Easwaran, Janet Levin, Jeff Speaks, Peter Hanks, Francois Recanati, Uriah Kriegel, Ray Buchanan, Shamik Dasgupta, Cory Juhl, Eliot Michaelson, Manuel Garcia-Carpintero, Josefa Toribio, Dan Lopez de Sa, Kathrin Glüer-Pagin, and audiences in Ray Buchanan's class Intentional Action at UT Austin, Institut Jean Nicod, and University of Barcelona for helpful comments and/or discussion. Finally, I want to thank the two referees for this journal for their valuable comments and suggestions.

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