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Chapter Twelve

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I. Introduction

To think about the institutional reality of any given society is always also to think about the relations of power by which it is characterised. Almost all institutions involve mechanisms which bring people to both do what they would not do in the absence of the institution and to do what does not always serve their interests.¹

That institutions involve power is thus not a surprising claim. Raimo Tuomela and Wolfgang Balzer describe social institutions as "a type of collective activity in which some forms of sanction or pressure are present,"² Jon Elster describes institutions as rule-enforcing mechanisms,³ and John R. Searle even argues that it is the point of having institutional facts in most cases to confer power onto some entity.⁴ Accordingly, institutions involve power both in their existence and in terms of their purpose.

It is, however, equally obvious that institutions involve not just "raw" power, such as mere influence or violence, but a very specific kind of *authority*.

This can be shown using Searle's analysis of institutional reality.⁵ Searle takes institutional facts to be created by assigning status functions to objects, actions and persons which designate certain behaviour as permissible or obligatory. The status of a person being president or the status of paper being money are obvious examples. However, the normative properties created by these assignments can only be fully understood as being realised in particular kinds of relationships between agents. Specifically, permissions and obligations can only be socially instituted if agents are responsible to other agents for their behaviour and, consequently, if some agents are accepted as entitled to demand compliance with the institutional rules. It seems appropriate to say that these persons have a specific kind of authority. For this reason, institutions can be analysed as relations of authority between agents brought about by impositions of normative status.⁶

I want to take a closer look at this specific kind of institutional power or authority. For this purpose, it will be helpful to concentrate on social institutions in a narrow sense,⁷ that is, on those institutional facts which accompany the creation of stable social status positions of individual persons, and which are inferentially connected to rights and entitlements of these persons.⁸ The paradigmatic example of such a system of stable status positions is, of course, the modern nation state.

Thus, "institutional power" will be understood in the following analysis as the power persons acquire through their position in a stable and integrated system of social rules.⁹

2. Institutional and Non-Institutional Power

Institutional power is dependent on the social context and on intersubjective relations between persons. Therefore, it is an instance of *social power*. While power in general is often defined as the *capacity to do what one wants to do*,¹⁰ social power is the capacity of persons to bring about certain states of affairs by *influencing* other people's actions in a specific way, such as by giving them

certain reasons to act—be it by coercive threats, reasoned arguments or anything in between—or by manipulating them into believing that they have such reasons.

The notion of social power, however, is still insufficiently precise to provide an appropriate description of institutional power, because it does not capture the specific kind of influence on which institutions rely. While a bank robber certainly has social power in virtue of her capacity to influence the actions of others, her power is not institutional in the sense that it calls upon to institution-dependent, ontologically subjective reasons.¹¹

By contrast, genuine institutional power is a capacity which has two characteristics. First, as an instance of social power, it is the *capacity of a person to bring about certain states of affairs by influencing the actions of other people in terms of giving them reasons to act*. Second, this capacity is *created through a system of status functions which entitles the person to issue demands upon the actions of others*.¹²

But how can the entitlement of a person to issue legitimate demands upon others implied in a system of status functions or rules create *reasons* for these other persons? The fact that such a system of rules normatively obligates a person to perform an action is only a reason for this person to perform that act if she *accepts* the relevant system. The reasons institutional power creates for a person therefore stem from her acceptance of the institution, and from the resulting acceptance that the other person can *legitimately* demand certain actions from her.

Therefore, genuine institutional power is distinct from non-institutional social power in the *way* it influences the behaviour of agents.

Because institutional power rests on (collectively) accepted status functions, it works—at least in normal cases—by giving people a reason to obey the legitimate demands of those who have the relevant powers. When someone asserts her institutional status, the primary claim is not that she is *able* to get other people to do certain things, but that she has a *legitimate claim* or *standing* to demand obedience.¹³

Having this kind of power connected to reasons in this peculiar way is specific to institutional reality.¹⁴

3. Types of Power within Institutions

A plausible theory of institutional power needs not only to be able to distinguish between institutional and non-institutional social power, it also needs to accommodate the different roles of institutional power in institutions. While the power implied by the position of a person in a system of collectively accepted status functions is the most important form of power in institutions, it does not exhaust the significance of power for institutional reality. The power relations created by institutional statuses certainly account for the everyday importance of institutions, yet one should not overlook another kind of power involved in institutions: namely the power to create, sustain, change or abolish the institution and its rules. This could be called the difference between intra-institutional and constitutive power. *Intra-institutional power*, or power *within* an institution, consists of the power relations which are created and sustained by institutional rules. *Constitutive power*, by contrast, is the kind of power which sustains, creates, destroys or changes the institutional rules themselves.

This distinction between power *within* an institution and power *constitutive of* institutions implies that there must be instances of constitutive power which do not already presuppose institutions, since some constitutive power relations must already be in place for institutional relationships to emerge.¹⁵

4. Main Features of Institutional Power

Having noted the importance of distinguishing between institutional and social power and of accounting for the two roles of power in institutions, we can now approach the question of what the conditions are for institutional power to exist. To answer this social ontological question, it firstly has to be noted that such power is not a *property* of actions or persons, but rather a *capacity*.¹⁶ As such, it does not necessarily have to be exercised: one can have institutional power without it having any effects.

Secondly, there is a strong and valid intuition that institutional power cannot be reduced to physical force. It is of course true that institutional power is often backed by physical force. However, the institutional character of such power relies on the fact that physical compulsion is only an exceptional case.

Institutional power in a strong sense is dependent on being (in some way) *accepted* by the persons who are subject to it. It is a kind of normative social power which is distinguished from other types of power insofar as, in general, its exercise must be legitimised by a system of rules or status functions that the participants accept,¹⁷ which is to say, both those who are in a position to exercise the power and those who are subject to it.

We can understand this basic thesis about the *acceptance-dependency* of institutional power in different ways. Firstly, we could think that the notion of acceptance can be explained as *behavioural obedience*, such that a person A accepts the power of a person B, if A consistently behaves in the way B demands. Secondly, we could understand acceptance as realised by *beliefs* about legitimacy, such that A has power over B if B believes that A may legitimately demand that B behaves in certain ways.

But both alternatives turn out to be unsatisfactory. “Raw” obedience, in the sense of the conformity of the overt behaviour of the ruled with the demands of the rulers, is neither necessary nor sufficient for the existence of institutional power. It is not necessary because we can imagine forms of fully and widely accepted institutional power which are systematically disobeyed by a majority for a certain span of time, provided that there are still organised attempts to enforce these norms and it is still accepted that persons are, for example, punishable for not obeying the norms.¹⁸ It is not sufficient, because—as H. L. A. Hart¹⁹ notes in respect to legal institutions—one can do what another person demands without accepting her demands if one would have done the action anyway. Genuine acceptance of a demand requires not only that one act in conformity with the demand, but that one do so *because* it was made by a person with the relevant institutional status.²⁰

Similarly, beliefs are neither necessary nor sufficient: we can easily imagine that a person might have institutional power without anyone having explicit beliefs about it. Conversely, if a group of people believes that a person has a certain kind of institutional power but none of the members either followed her orders or assumed any accountability for failing to do so, this empty belief does not make her power real.

Therefore, I suggest a third option. In the cases where a person A fails to follow the commands of a person B, we would like A to at least accept

accountability for this failure to be able to speak of an institutional power relation at all.

This leads to a more plausible candidate for an answer to the question of what “acceptance” means in the context of institutional power: to take accountability, or pragmatically speaking, to accept evaluations and sanctions from others. More precisely, it is necessary and sufficient for B having institutional power over A that in all (factual and counterfactual) scenarios in which A does not comply with B’s demands, A is ready to accept accountability for failing to do so.

Thus, B has institutional power (in a narrow sense) over A if and only if A is ready to treat B as someone who has power in the respective way, which is to say, if A is ready to accept accountability for her compliance or noncompliance with B’s demands or, more generally, with the obligations entailed by B’s institutional status.

We can validate this intuition by considering whether there could be any case in which people consistently assume accountability for their compliance or non-compliance with the orders of a person and yet where this person could not be said to have any institutional power whatsoever.²¹ Conversely, we can also consider whether there could be a case in which persons consistently do not accept accountability for failing to obey the commands of another person and yet this other person could still be said to have some institutional powers. I hold that neither case can be imagined.

The element of *accountability* is thus what separates institutional power from other types of influence. For someone to have institutional power, it is therefore not sufficient for her to be consistently obeyed or followed,²² rather, obedience to her must also be supported by other agents accepting that they are accountable for their compliance or non-compliance.

The practical expression of the acceptance of accountability is the acceptance of *sanctions*.²³ People practically *take themselves to be accountable* for their success in obeying a specific command if they accept evaluations of their behaviour with respect to this command, and more specifically, if they accept sanctions if they fail to obey.

A sanction is not merely a reaction to the behaviour of an agent, but is a reaction which is—at least *prima facie*—apt to motivate the agent to change her

behaviour,²⁴ and which implies an evaluation of the action according to a certain standard.

In the simplest (negative) cases, sanctions are expressions of disapproval which, for example, convey this disapproval by negatively affecting the other agent in a way independent of institutional reality. But sanctions can also take the form of consequences which can only be understood in terms of normative or institutional status such as in the withdrawal of entitlements or in even the mere expression of disapproval, which Margaret Gilbert calls "punitive criticism."²⁵ They can be, as Brandom puts it, "norms all the way down."²⁶

5. Authority and sanction

If the acceptance of sanctions lies at the core of institutional power, a preliminary analysis of the concept might look like the following:

Institutional power (sanctioning account): *An agent A has institutional power, that is, power stemming from her status position in an institution, over a set of persons $B_1 \dots B_n$ if and only if (and only to the extent that) (1) the rules which constitute the institution entitle A to make demands on their behaviour and (2) $B_1 \dots B_n$ are ready to accept (sanctioning) evaluations of their behaviour in regard to these rules.*

We might now say that a person is in a position of *authority* if this person has the status of being allowed to issue legitimate demands upon others according to the rules of an institution and thus has institutional power to the extent that the institution is accepted.

But is the person whose authority is accepted always identical to the person who can exercise the legitimate sanctions constitutive of this authority? Sometimes, an agent's behaviour in response to a legitimate demand will legitimately be evaluated and sanctioned, if needed, by the same person who issues the demand. But in many other instances, this is not the case. Larger groups often delegate the power of evaluation to, for example, agents of a judicial system and police. In such cases, we can distinguish the power a person or organisation has to make commands from the authority which establishes this power by enforcing it through (accepted) sanctions.

This constitutive authority of sanctioning lies at the very foundation of an institutional order.

According to this analysis, the acceptance of institutional power is constituted by the acceptance of sanctions. But what behaviour or attitude constitutes a case of “acceptance of sanctions”?²⁷ While explicit beliefs do not seem necessary to accept institutional power for the aforementioned reasons, it might still be the case that a subject must have a certain *attitude* to constitute an acceptance of power.

Intuitively, the negative case is the clearest one: certain types of reactions show that a person does not accept a sanction. For example, if a person treats the sanction as an illegitimate attack on herself, if she tries to fight back, or tries to sanction the sanctioner, her reactions clearly demonstrate that the sanction is not accepted. A certain practical reactive attitude—that is, a readiness to react in the above kind of ways—is incompatible with accepting sanctions. Thus, a necessary condition for the acceptance of a sanction is at least the absence of reactive attitudes of this type.

But this condition may seem too strong, since it is plausible that a sanctioned subject may evaluate their sanction negatively and yet accept it, just as many people evaluate the fact that they have to pay taxes negatively but still accept it. Acceptance should require no more than the absence of an attitude which leads to a practical *challenge* of the sanction. According to this idea, an agent accepts the action of another agent if her reaction does not constitute a *contestation*, that is, an attempt to punish or negatively sanction the original sanctioner. An individual might still disagree with a sanction or question its legitimacy without thereby contesting the sanction. Nor will a contestation of an authority occur if a person challenges a sanction with reference to some norm that grants an exception—thus demonstrating that she still accepts the underlying system of norms.

Thus, we can understand an individual authority relation between two persons as further developing what the acceptance of sanctioning authority requires.

Acceptance of sanctioning authority *An agent A accepts an agent B as being entitled to sanction performances according to a specific rule R in a specific context C, if and only if there are no scenarios in which (1) a performance P of A violates R,*

(2) *P happens in context C, (3) the performance P of A is sanctioned by B referring to R, and in which (4) A is ready to contest this sanction (that is challenges B's sanction without giving any reason that A should be granted an exception).*

For institutional power, acceptance is usually thought to be a permanent disposition or habit. Thus, we might say that a continually accepted sanctioning authority creates a standard situation of acceptance:

Standard sanctioning authority *If A habitually accepts the sanctioning authority of B in regard to a certain rule R and context C, i. e. is ready not to contest sanctions for any failures to obey R in C in the absence of reasons for exception, we say that A grants B a standard sanctioning authority.*

It is now only a matter of putting the different building blocks together to arrive at a first model of individual acceptance of institutional authority:

(Individual) acceptance of institutional authority *An agent A (individually) accepts the institutional authority of an agent B if and only if A accepts B and/or other agents as having standard sanctioning authority according to a rule R which grants B a status entailing the entitlement to issue demands on A's behaviour in a specific context C.*

This account already fulfils some of the conditions we have set out with regard to a plausible concept of institutional power as it does not depend on universal obedience, it understands power as a capacity, and allows us to distinguish cases of genuine acceptance of demands from cases of contingent behavioural conformity.

Even without fully understanding the specifics of institutional authority, it is now possible to describe a preliminary typology of institutions as regards the distribution of normative authority. The relation "A has authority over B in regard to a specific norm in specific conditions" can function as both a *symmetric* and an *asymmetric* relation. A symmetric authority relation exists when, according to some status function, an agent has authority over another agent only if the former grants the latter the exact same authority, while an asymmetric authority relation exists when an agent has authority over another agent without the latter having the same kind of authority with respect to that rule and context.

At the collective level, there could be institutional settings with different kinds of authority distributions in which different persons would have

different types of authority, symmetric or asymmetric, over one another. An (hypothetical) extreme case would be the *monopolisation* of authority, an institutional setting where a group of agents or even a single agent has authority over everyone else, while everyone else has no authority at all. The other extreme would be an institutional setting where every agent has authority regarding the same rule and context over every other agent, and where there is thus one pervasive and symmetric authority distribution. We can call this latter case an *egalitarian-symmetric distribution* of this authority type.

6. The Constitution of Collective Acceptance by Mutual Recognition

Individual acceptance of authority, as analysed so far, is not sufficient for social or institutional power, since individual agents can independently accept sanctions from one another without thereby creating a social institution. We only call those practices institutions which are created through the *collective acceptance* of rules and status-functions.

For example, if all U.S. citizens decide individually that they will accept shells as legal tender (and consequently, that they will accept sanctions for not living up to this decision), this will not establish shells as legal tender—if alone for the reason that such a decision is *not up to* any individual. Even if it became common knowledge that all U.S. citizens had individually decided to accept shells as legal tender, we would imagine that for shells to become legal tender it would still be necessary that there be a public declaration of some sort, through which the individual intentions become a collectively shared rule.

This intuition points to the necessity of not only individual but also collective acceptance of authority for the construction of full-blown institutions, a requirement which is shared by the social ontological accounts of Searle, Tuomela and Gilbert.²⁸

In addition to the issue of descriptive adequacy, there are two theoretical reasons to endorse the necessity of collective acceptance. Firstly, institutional rules have a binding force on the participating individuals, that is, they are at least sometimes obliged to follow these rules. As Gilbert argues,²⁹ individual commitment to a rule is insufficient to explain this obligation as a matter of principle. Secondly, a more general argument concerns whether individuals

taken as such can follow a rule in a meaningful sense at all. The rule-following arguments by Wittgenstein, Kripke and their followers suggest that there must be a collective element in any kind of rule-following, and consequently that the status functions of institutions which are constitutive of rules must have a collective character at the most fundamental level.

Whether these arguments succeed or not, it is reasonable to argue that if differences between the collective and merely individual acceptance of a norm can convincingly be established, then institutional power requires that there is a *collectively held* norm in a group that the respective sanctions should be accepted.

But what difference might there be between a group in which every individual accepts a norm privately and a group in which a norm is collectively accepted? A helpful approach to this problem is offered by Gilbert's discussion of collective belief.³⁰ On Gilbert's account, collectively believing a proposition entails collectively accepting the proposition.³¹ This collective acceptance of a proposition is accompanied by a normative obligation to conform to the implications of this acceptance which take to hold between themselves. Therefore, collective belief entails that group members accept that they are *entitled to expect each other* to conform to the shared commitment to the belief, and that they are even entitled to *rebuke* group members who do not act in accordance with this commitment.³²

I would like to propose that the same condition holds for the collective acceptance of an institutional rule (at least in basic cases). A rule is only genuinely collectively accepted as a shared rule to the extent to which the members of a group *see each other as entitled to demand compliance from each other*.³³

It follows that collective acceptance is accompanied by the institution of a specific form of authority. For saying that group members legitimately expect specific behaviour from other members—and can rebuke them if they do not behave this way—is tantamount to saying that they grant each other a certain authority over each other's behaviour.

If we want to describe the pragmatic significance of collective commitment using the vocabulary already introduced, we can further extend Gilbert's account by saying that a group of persons is collectively committed to a certain rule only if every member of the group has a particular type of accepted

authority over the other members, namely the authority to demand compliance with the collective commitment.³⁴ This authority is obviously not unconditional, but rather depends on whether the other group members actually accept to be part of the collective commitment. But if this condition is fulfilled, then the collective commitment must be understood as sufficient for the relation of authority.

Collective commitment consequently does not need to be supplemented by an additional individual commitment in order to create relations of authority since—as described—authority is directly entailed by collective commitment. Consequently, if group members accept a collective commitment, they must accept the respective authority without requiring any *further* justification.³⁵

Thus, if collective acceptance is to be realised in a social setting persons should at least accept each other (to a socially relevant degree) as being entitled to make the normative judgements which constitute their authority, for example, criticism and demands for compliance with norms. Therefore, we can describe collective acceptance using the same pragmatic vocabulary introduced earlier. Collective acceptance would then consist in a (more or less) *symmetric case of acceptance of authority in regard to a shared rule*.³⁶ At the most fundamental level this must be even of the egalitarian-symmetric type: Any agent who has a *special* authority or non-authority in regard to some subject matter cannot have this authority other than by being, in turn, collectively accepted to have this authority. And, unless we accept an infinite regress, at the bottom there must be a symmetric case where everyone accepts everyone else's authority, and through the same relation of acceptance it is collectively agreed that everyone has this specific authority.

At this point, it is necessary to remark that the above conceptual analysis does not imply that there is no coercion. As Gilbert argues, one can indeed be coerced into a collective belief without this belief losing its obligating character,³⁷ and the same is true for the collective acceptance of authority. Nevertheless, collective acceptance must also always include a certain degree of mutual authority ascription regardless of how it emerges, in order for collective acceptance to be distinguishable from pure coercion.³⁸

Consequently, there must be both fundamental forms of institutional reality, which involve only the basic social status of mutual authority ascription, and

more complicated institutions, where new forms of social status are created through the collective acceptance of rules or procedures according to which this status is assigned to persons. Additionally, as already mentioned above, the collective acceptance of the entitlement of a specific set of persons to sanction behaviour can be constitutive of the institutional status of an entirely different set of persons.

Now, the only element which seems to resist such a pragmatic solution is the concept of a "shared rule." Speaking of a shared rule might seem a mere way of talking. That is, while one may accept rules collectively, it could be said that the work of interpreting and applying these rules in each particular case must still be done by individuals. However, if there is no shared standard of application and interpretation, there are only individual interpretations of what the rule is. If the interpretation of a shared rule in particular cases is nothing more than an interpretation by individuals, then a collective acceptance account which rests on the notion of a shared rule would effectively amount to nothing more than an account of the individual acceptance of individual rule-interpretations. Consequently, there can only be collective acceptance of a system of status-functions in a strong sense if it is not just the abstract acceptance of norms that is subject to collective attitudes, but also their concrete application and interpretation. Consequently, to avoid collapsing into individualism, both symmetric and egalitarian relations of authority ascription must also be understood as *recursive*, for the agents in a group must not only accept each other as authorities in regard to a specific rule, but as regards the interpretation and application of this rule according to second-level rules, and so on.³⁹

Is this requirement too demanding? It does seem counter-intuitive to ascribe an infinity of relations of mutual authority-ascription to the members of a group. However, this is unproblematic if we remember that the acceptance of authority contains a counterfactual element. To accept the authority of another individual on an infinite number of questions is tantamount to being ready to treat her reactions in a certain way *if one of these questions ever arises*. Since the question of authority only arises in the case of challenges of evaluations, there is no problem, because—given the sufficiency of non-contestation for acceptance—we can just imagine the group members to be committed to accept each other's criticism on every level, without them relating to any level specifically. As far as questions of authority at higher levels tend to be decided

according to rules that are more widely shared, more stable and more tested, we can imagine that challenges will be progressively less likely on each level.

The central claim now is that the notion of a *recursive, symmetric mutual authority ascription* is pragmatically equivalent to Gilbert's idea of collective commitment, although it might be conceptually different.⁴⁰

I want to call a constant disposition or readiness to participate in such a mutual relation of authority ascription "*recognition*." That is, two persons recognise each other in regard to a social relation if they are ready to take part in a structure of mutual, symmetric, recursive authority ascription in regard to this relation.

The term "*recognition*" is, as is well known, historically rooted in the theories of Fichte and Hegel, and it has also been taken up recently in analytic philosophy.⁴¹ However, the meaning of this term in the historical context of German Idealism—which is also used by contemporary social philosophers as Charles Taylor and Axel Honneth—is distinct from the more technical sense in which it is used here.

In social philosophy, "*recognition*" identifies an attitude towards specific features of persons which confirms or even constitutes important aspects of their status as persons and their personal identity, and which thereby acquires moral significance.⁴² However, these relations between recognition, subjectivity and identity are not central to this analysis. Rather, "*recognition*" in the sense of a mutual authority ascription focusses on the capacity of certain attitudes to constitute forms of social authority which are, in turn, narrowly defined as an acceptance of sanctioning power. Of course, this is not to say that there are no connections to the wider issues of social status in general or even to the social construction of identities. But while these connections would need to be discussed within a general social theory, the specific understanding of "*recognition*" used here is already sufficient to discuss the basic features of institutional power.

If we accept that the basic element of collective commitment is the readiness for recursive, symmetric acceptance of sanctions, or the relation of recognition which is constituted by this readiness, then understanding how a group could collectively be committed to a certain norm, and how a group could collectively accept the authority that goes along with a specific institution, is

no longer problematic. If the members of a specific group ascribe to each other mutual, recursive authority about which sanctions should be accepted by whom and in what respect, we can legitimately say that the group collectively accepts these sanctions and thereby fulfils the pragmatic conditions of accepting a specific authority. If this authority is accepted in respect to an appropriate constitutive rule of an institutional fact, the group accepts and constitutes the institutional power of the relevant agents.

Therefore, a norm is collectively accepted if the members of a group of agents recognise each other's authority in regard to this norm. And the institutional power of an agent is collectively accepted if there is a collectively accepted status rule which mandates the acceptance of the respective sanctions by this agent.

Consequently, the basic case of institutional power can be understood as follows:

Institutional power (recognition account) *An agent A has basic institutional power over a set of persons $B_1..B_n$*

if and only if

- (a) $B_1..B_n$ are part of a group G (which can but does not have to include A),
- (b) the members of G display a constant readiness or disposition to grant each other the recursive and symmetric standard authority to evaluate each other's behaviour in regard to a norm or rule R,
- (c) R prescribes $B_1..B_n$ to respect the institutional obligations and entitlements entailed by A's institutional status,
- (d) A's institutional status entails that A is entitled to make legitimate demands regarding the behaviour of $B_1..B_n$.

Of course, in sophisticated systems of status functions not all institutional power will be basic institutional power in this sense. There will be forms of power which are derived from the basic forms, for example, if the authority of an agent A is based on the acceptance of the authority of an agent C who has legitimately conferred A's authority to her. Here, a basic norm N might prescribe the acceptance of C's status which, in turn, entails A's authority as a matter of institutional logic without there being collective acceptance of a rule directly constituting A's authority.

As noted earlier, this analysis does not claim that all institutional power is as a matter of fact of this ideal type. Persons with institutional authority often

exercise non-institutional power when they sanction people for their behaviour in a way which is not accepted by these sanctioned persons. But institutions are only able to exercise non-institutional power by relying on agents who act on behalf of the institution because these agents collectively accept the power of the institution to make them do so.

For example, if one country invades another, the members of the invader's military will typically be able to force the citizens of the other country to change their behaviour in various ways and thus exert considerable power upon them which the latter probably will not accept as legitimate. Citizens of the invaded nation will often resist commands and sanctions, such that whether the commands are successfully executed depends on raw power or violence. The same holds for the actions of the state against criminals who not only try to make exceptions from the law for themselves but who do not accept the laws as binding for them at all. But in both cases, the state relies for the exercise of non-institutional sanctions on agents in the military and the police over whom it has proper institutional power because the latter accept the power of other agents of the state to issue commands, and to sanction them in the case of disobedience.

A plausible picture of institutional authority now begins to emerge. Institutional authority is constituted through the collective acceptance of power, and this collective acceptance of power is, in turn, constituted by the mutual recursive acceptance of normative authority between the participants in an institution.

By accepting other agents as entitled to evaluate their actions, individuals thereby practically accept norms which accede a certain normative status to either the same interaction partners or other agents. The agents who are accepted as having this normative status are thereby entitled to take a range of actions, which often includes issuing legitimate commands within a specific context.

The notion power as a capacity constituted by acceptance might seem unnecessarily passive though, as it requires nothing more than the habitual absence of challenges. There is a real danger of speaking of this capacity as something merely hypothetical, as in the joke "Can you play the piano?—I don't know. I've never tried." While it is useful to start with as weak a notion of power as possible, it is important to note that this notion does not fully

capture the strong sense of power which actively structures social reality. Power as a capacity is not only a mere logical possibility but something like standing ability. A standing ability differs from a mere logical possibility in that in the former case pre-existent empirical conditions mean that the following holds: for any realistic situation in which a challenge could arise, there is a mechanism or other social preconditions such that the power of the relevant agent will be accepted. We could therefore define socially effective institutional power as the kind of institutional power that is backed by social structures, dispositions or intentional acts, such as social and psychological enforcement mechanisms on the one hand, and collective phenomena like the "group ethos"⁴³ or Gilbert's "joint commitment" on the other hand.

A second qualification to this account must be stressed, which regards its normative significance. Specifically, even though this account refers to norms in various ways, it is important to note that it is agnostic with regard to the "objective" legitimacy of specific norms and forms of power. The point is not that institutional power is only legitimate if it is accepted, but that it is *constituted by this acceptance itself*. The acceptance constitutive of institutional power is not something which can be "added" to generic power after the fact, so to speak, but rather is something which essentially constitutes the character of institutional power.

Therefore, this account is not a normative account in the sense that would be concerned with "legitimate" or "objectively appropriate" norms. Rather, it only refers to norms insofar as they are objectively and empirically accepted in a specific population, regardless of whether these norms *should* be accepted on moral or political grounds.

To summarise, this account fulfils the conditions set out above: it can be used to distinguish between obedience and conformity according to the counterfactual question as to whether the agent would accept sanctions, and it does not require universal obedience. There is also a basis for a concept of a non-institutional form of authority, namely, the authority created by recognition. Finally, this specific type of authority, which is the most basic building block of all other types, provides the criterion according to which we can distinguish between constituting and constitutive power.

Given the necessary capacities and the right circumstances, everyone has the ability to create a basic type of constituting power, as everyone is able to enter

into relations of recognition with other people insofar as all parties are willing to do so. Therefore, there is constitutive power available to an agent provided that there are other agents who are willing to recognise her in relation to any specific norms. This kind of constitutive power is essentially in a tension with violence which does not require such willingness.

However, there are of course more sophisticated types of constitutive power beyond this basic capacity to be a source of normative authority. For example, there are institutions which confer authority onto specific persons not only in regard to their specific rights within the institution and the standing to sanction violations of institutional rules, but also due to it being collectively accepted that these persons might create *new* institutions for themselves and everyone else. The institution of government is, of course, the typical example for this, because governments are not only accepted in conducting their business according to the rule of law, but are also collectively accepted as entitled to create, transform and abolish other social institutions.

However, these higher-order forms of constitutive power are still dependent on the existence of institutions and thus on the basic form of constitutive power created by recognition.

7. Conclusion: Consequences of a Recognition Theoretic Analysis of Institutions

If institutional power is analysed in these terms, two important conclusions can be drawn. The first is of methodological significance to the social sciences, while the second concerns normative issues.

It is easy to see the methodological significance of the recognition model. In social theory, it has been argued that power can be studied by looking at conflicts in a community and analysing who "wins" these conflicts more often than not.⁴⁴ That this method is insufficient should be clear from the arguments given above. As institutional power is constituted by collective attitudes towards sanctioning power and by the attribution of standard authority to such sanctions, we should not ask who is empirically successful but rather who has such authority in a group if we want to study institutional power. To do this, we must understand behaviour directed *at* sanctioning behaviour

as a *collective reaction*, as, for example, in reactions to successful and unsuccessful protests either against or in support of government intervention in society, to attitudes towards the law, and so on. Social scientists should therefore examine the discourses and interactions within groups by which they negotiate their collective stance towards the legitimacy of specific power relations.

The second, normative argument concerns three types of pathologies in instituted power which should be of special interest for social criticism. Firstly, there are forms of institutional power, such as those related to wealth, where the agents who are constrained by this power are either not aware that it is institutional power—that is, power legitimacy of which they could in principle deny—or where institutional power interlocks with other forms of power such that a one-sided negation of its legitimacy would be prohibitively costly for an individual.

Secondly, the acceptance of institutional power is often not experienced as a conscious decision by those who display this acceptance, because it is frequently masked by hidden agenda-setting or deception. People can deceive other people into believing that they are accepting a specific sort of power while they, in fact, accept something very different, especially if the power structure is so complex that a single individual can not comprehend it in its entirety.

Finally, a third form of pathology is the interference of non-institutional power with institutional power through either physical coercion or the withholding of material resources.

In respect to these pathologies, the account of institutional power developed above does not only provide neutral conceptual tools, but also an ideal type of institutional power which can serve as a means for comparison. It allows to us evaluate how non-institutional power—that is, power which is not dependent on collective acceptance—may interfere in the institutional process in three dimensions: by hiding the fact of acceptance, through deception and through direct interference.

This points to Hannah Arendt's famous distinction between violence and power.⁴⁵ Arendt locates this opposition not on the level of constituted power, but rather on the level of constitutive power. While both, power and violence,

are forms of a capacity to sanction people and thereby influence their behaviour, violence disregards the level of collective acceptance and thus ignores the mutual recognition of agents.

In the very concept of institutional power there is an ideal of collective acceptance which is based on collective recognition. While violence, or—to put it less dramatically than Arendt—one-sided, non-institutional social power, persists alongside institutional power created by collective acceptance in virtually every society, it is at the same time essentially in a tension with a social order based on mutual recognition.⁴⁶

Notes

¹ S. Lukes, *Power, A Radical View*, 2nd edition, Houndmills Basingstoke, Palgrave, 2005.

² Compare R. Tuomela & W. Balzer, "Collective Acceptance and Collective Social Notions," in *Synthese* 117, 1999, p. 176.

³ Compare J. Elster, *Nuts and Bolts for the Social Sciences*, Cambridge, Cambridge University Press, 1989, p. 147.

⁴ J. Searle, *The Construction of Social Reality*, London, The Penguin Press, 1995, p. 95

⁵ Searle, *The Construction of Social Reality*, pp. 38ff.

⁶ "The person who possesses money, owns property, or is married has powers, rights, and obligations that he or she would otherwise not have. [...] Institutional facts are always matters of deontic powers." (J. Searle, *Freedom and Neurobiology: Reflections on Free Will, Language and Political Power*, New York, Columbia University Press, 2007, pp. 92f.); compare also: "all institutional structure are matter of deontic power [...] They are structures of power relationships" (J. Searle, "What is an institution?", in *Journal of Institutional Economics*, vol. 1, no. 1, 2005, pp. 10f.)

⁷ S. Miller, "Social Institutions," in *Stanford Encyclopedia of Philosophy*, <http://plato.stanford.edu/entries/social-institutions/>, 2007, helpfully distinguishes between institutions per se, social institutions and institutions, which are organisations.

⁸ I understand institutional reality along the lines of Searle, *The Construction of Social Reality*, but concentrate on a narrower range of institutional phenomena, namely social institutions as organisations.

⁹ For an argument that there are more aspects to institutional power than the Searlian notion of deontic power can capture, see F. Hindriks, "The Status Account of Corporate Agents," in *Concepts of Sharedness*, eds. B. Schmid, K. Schulte-Ostermann and N. Psarros, Frankfurt, Ontos, 2008.

¹⁰ J. Raz, *Practical Reason and Norms*, London, Hutchinson, 1975, p. 98: "Power in all its forms is related to the possibility of realizing one's wishes."

¹¹ Adopting the terminology of Raz, *ibid.*, pp. 98ff., one could say that social power typically operates only on first-order reasons while institutional power also typically involves second-order reasons, i. e. reasons to act or not act on certain first-order reasons. For an analysis of social power, see also W. Detel, *Philosophie des Sozialen*, Stuttgart, Reclam, 2007, pp. 65, 73.

¹² This obviously narrows the scope of an analysis of institutional power considerably and excludes different kinds of power which are often called "institutional power" in the literature, such as agenda-setting, ideology, and so on.

¹³ There is a striking similarity of institutional power to some forms of what Stephen Darwall calls "second-personal authority" in S. Darwall, *The Second-Person Standpoint*, Cambridge, MA, Harvard University Press, 2006.

¹⁴ This is not to suggest that the more general forms of physical or social power have no significance for the institutional realm.

¹⁵ This does, however, *not* imply that this basic type of constitutive power is raw power in the sense of sheer physical force.

¹⁶ Lukes, *Power*, p. 79.

¹⁷ Compare J. Raz, *The Morality of Freedom*, Oxford, Clarendon Press, 1986, p. 65

¹⁸ The parking rules in Frankfurt can serve as an example. They are systematically disobeyed, but enforced by sanctions and thus indisputably existent. Failing institutions still exist. Compare also N. Luhmann, *Macht*, Stuttgart, Enke, 1988, p. 11.

¹⁹ H. L. A. Hart, *The Concept of Law*, 2nd edition, Oxford, Oxford University Press, 1994, pp. 51ff.

²⁰ Compare D. Bloor, *Wittgenstein, Rules and Institutions*, London, Routledge, 1997, pp. 27ff. Bloor argues that this shows the institutional character of rule-following in general.

²¹ This does not exclude, however, the possibility of error in the characterisation of this power. A group of isolated U.S. citizens could accept a person as U.S. President in the way described who does not fulfil the necessary preconditions for that status. But even though they would misapprehend his institutional status, he still would have some kind of institutional power (which would have to be correctly described as being something different) over them, as far as they take themselves to be accountable for conformance to his demands.

²² As Searle seems to suggest in Searle, *Freedom and Neurobiology*, p. 91.

²³ This is related to the difference between "command" and "counsel" in Th. Hobbes, *Leviathan: With Selected Variants from the Latin Edition of 1668*, Indianapolis, Hackett, 1994, p. 166. The same distinction is explored by Morriss who takes it to be the difference between "power" and "influence." Compare P. Morriss, *Power*.

A Philosophical Analysis, Manchester, Manchester University Press, 1987, pp. 8f.; The idea of acceptance or acquiescence is similar to the one defended by R. Ladenson, "In Defense of a Hobbesian Conception of Law," in *Philosophy and Public Affairs* 9(2), 1980, pp. 134–159. Raz notes, however, that Ladenson's analysis is not one of legitimate power but only of de facto power. Compare Raz, *The Morality of Freedom*, p. 26.

²⁴ "The avoidance of sanctions is indispensable for the function of power" (Luhmann, *Macht*, p. 23, my translation) The existence of an institutional background assumption that the sanction is sufficient for this purpose is a necessary condition for there being power, but it is not necessarily the case that this assumption always proves to be true.

²⁵ M. Gilbert, *A Theory of Political Obligation: Membership, Commitment, and the Bonds of Society*, Oxford, Oxford University Press, 2006, p. 190.

²⁶ R. Brandom, *Making It Explicit*, Cambridge, MA, Harvard University Press, 1994, p. 144. Because of this wide notion of sanctions, I will speak of sanctions and evaluations interchangeably.

²⁷ Compare S. Darwall, *The Second-Person Standpoint*, Cambridge, MA, Harvard University Press, 2006, pp. 116f, and A. Gibbard, *Wise Choices, Apt Feelings. A Theory of Normative Judgment*, Cambridge, MA, Harvard University Press, 1990, pp. 55ff.

²⁸ "the status requires collective intentionality" (Searle, *The Construction of Social Reality*, p. 114); "A norm-entailing sentences expresses a social institution in a primary sense in a collective G if and only if the members of G collectively accept s for the use of G, with the understanding that collective acceptance for the group entails and is entailed by the correct assertability (or truth) of s from G" (Tuomela & Balzer, "Collective Acceptance and Collective Social Notions," p. 198); The most elaborated account of Tuomela's view is to be found in R. Tuomela, *The Philosophy of Sociality*, Oxford, Oxford University Press, 2007, pp. 182ff.; M. Gilbert, *On Social Facts*, London, Routledge, 1989.

²⁹ Compare Gilbert, *A Theory of Political Obligation*, pp. 197ff.

³⁰ Compare M. Gilbert, "Modelling Collective Belief," in *Synthese* vol. 73, no. 1, 1986, pp. 185–204; M. Gilbert, "More on Collective Belief," in *Living Together. Rationality, Sociality and Obligation*, Lanham, Rowman and Littlefield, 1996, pp. 339–360.

³¹ Gilbert, "Modelling Collective Belief," p. 195, although strictly speaking she distinguishes collective belief from a more technical sense of acceptance. Compare M. Gilbert, "Belief and Acceptance as Features of Groups," in *ProtoSociology* 16, 2002, pp. 35–69.

³² Gilbert, "More on Collective Belief," pp. 351f.

³³ There must be a minimal kind of reference to the institutional norm implicated in this acceptance, because the members must conceive their mutual correction and the acceptance of sanctions as referring to this norm.

³⁴ In this spirit, Tuomela remarks about agreements that they give “a reason for each participant to normatively expect that the other participants will indeed participate” (Tuomela, *The Philosophy of Sociality*, p. 88), and, consequently a reason to normatively demand cooperation; the same holds for his notion of social commitment in R. Tuomela, *The Philosophy of Social Practices: A Collective Acceptance View*, Cambridge, UK, Cambridge University Press, 2002, p. 143.

³⁵ This also seems to be a consequence of the analysis of a “proper social ought-to-do norm” in Tuomela, *The Philosophy of Sociality*, p. 214.

³⁶ Whenever there are members in social groups which are not given any authority in regard to the social norms (e. g. children) this does directly entail that they are not full members of the normative group and that the authority which other members exercise towards them is not fully institutional but partly mere social power (based on psychological, emotional or physical advantages).

³⁷ Gilbert, “More on Collective Belief,” pp. 351ff.

³⁸ Many institutions can be shown not to be based on mutual authority ascription alone, but on a mixture of collective acceptance, individual-rational calculation and coercive social pressure. To the degree in which this is the case, they deviate from pure institutional regulation towards individual adaptation and coercion and are consequently not examples for pure institutional power but for social power in the wider sense.

³⁹ At this point I can only point to similar models of rule-following as proposed by Brandom and Haugeland in J. Haugeland, “The Intentionality All-Stars,” in *Philosophical Perspectives* 4, 1990, pp. 383–427, and Brandom, *Making It Explicit*.

⁴⁰ It avoids, however, the objections which have been raised against Gilbert’s account of collective beliefs, compare Gilbert, “Belief and Acceptance as Features of Groups.” Additional support for the idea of understanding Gilbert’s account in terms of the mutual, recursive ascription of authority can be found in her account of Hart’s concept of a social rule in her M. Gilbert, “Social Rules. Some Problems for Hart’s Account and an Alternative Proposal” in *Law and Philosophy* 18, 1990, pp. 141–171 where she (a) argues that one of the features of Hart’s concept of social rules is that they give “group members a title to exert punitive pressure” (*ibid.*, p. 151) and (b) argues that if her account of collective commitment to a norm is correct, “all of Hart’s conditions will be satisfied” (*ibid.*, p. 165), allowing the conclusion that the entitlement to exert punitive pressure (authority) is a feature of her account of collective commitment, too.

⁴¹ For example, R. Brandom, “The Structure of Desire and Recognition,” in *Philosophy and Social Criticism* vol. 33, no. 1, 2007, pp. 127–150. (Reprinted above as Chapter Two).

⁴² See H. Ikäheimo, “On the Genus and Species of Recognition,” in *Inquiry* vol. 45, no. 4, 2002, pp. 447–462.

⁴³ Compare Tuomela, *The Philosophy of Sociality*, p. 16.

⁴⁴ As the classic account of Dahl suggests. Compare R. Dahl, "The Concept of Power," in *Behavioral Science* vol. 2, no. 3, 1957, pp. 201–215.

⁴⁵ H. Arendt, *On Violence*, San Diego, Harvest, 1970.

⁴⁶ An extended version of this paper was presented at the conference "Collective Intentionality VI: Social Change" in Berkeley, California. I would like to thank Martin Saar, Heikki Ikäheimo and Mauro Basaure for comments on earlier versions; Raimo Tuomela and Juliette Gloor for two useful objections; and Arto Laitinen for extensive comments on the final manuscript. Part of the work on this paper was supported by a Macquarie Research Excellence Scholarship.