

Institutional Power, Collective Acceptance and Recognition

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Abstract

This paper will argue for the following three claims: (1) Institutional power relations (in contrast to mere compulsion) are created by the collective acceptance of the normative legitimacy of sanctions. (2) Collective acceptance of sanctions is constituted by the mutual recognition of group members. (3) The concept of recognition therefore allows for a pragmatic analysis of institutional power relations.

1 Introduction

Institutional reality is a site of power. Institutions involve mechanisms which bring people to do both what they would not do in the absence of the institution and what does not always serve their interests.¹

But institutions involve a *special kind* of power. In this paper I explore the significance of this kind of power in relation to topics in contemporary social ontology.

I concentrate on social institutions in a narrow sense,² that is, on those institutional facts which go along with the creation of stable social status positions

¹That power exists only in situations where people are forced to act contrary to their own (“real”) interests, is one of the topics in LUKES, STEVEN (2005): *Power. A Radical View*; 2nd edition; Houndmills. Basingstoke, UK / New York, USA: Palgrave. But one does not need to be committed to this thesis in order to see institutional reality as characterized by power.

²MILLER, SEUMAS (2007): *Social Institutions*; in: *Stanford Encyclopedia of Philosophy*; in: <http://plato.stanford.edu/entries/social-institutions/> helpfully distinguishes between institutions per se, social institutions and institutions which are organizations. “Further,

of individual persons and which are inferentially connected to rights and entitlements of these persons.³ “Institutional power” in the following is the power persons acquire through their position in a stable and integrated system of rules which are followed by a group of people because they collectively accept the rules to be in effect for themselves.

That social institutions involve power is not exactly a surprising claim in itself. Raimo Tuomela and Wolfgang Balzer describe social institutions as “a type of collective activity in which some forms of sanction or pressure are present”.⁴ Jon Elster describes institutions as rule-enforcing mechanisms.⁵ And John R. Searle even argues that in most cases the point of having institutional facts is to confer power onto some entity.⁶ Power is thus thought to be present in institutions both in the sense that the institution involves power in its existence and in the sense that it involves power in terms of its purpose.

But at the same time, institutions rely on a special kind of power which can not be reduced to the force of coercion or manipulation. Rather, it is a kind of power which is dependent on the acceptance of the members or participants in the respective institutions.

The question I want to ask is what the social ontological constitution of institutional power is, and I want to ask this question in terms of what *pragmatic significance* institutional power has, that is, what difference the presence of institutional power makes for the actions or non-actions of people. I hold that any description of institutional power is only explanatorily useful insofar as it is able to explain specific forms of action or behavior and that, conversely, the primary ontological significance of institutions is that they produce systems of

most organisations possess a normative dimension by virtue (in part) of the norms governing the constitutive organisational roles. More specifically, most organisations consist of a hierarchical role structure in which the tasks and procedures that define the individual roles are governed by norms. [...] Organisations with the above detailed normative dimension are social institutions [...]. So — and as already mentioned — institutions are often organisations, and many systems of organisations are also institutions.” (MILLER (2007), *ibid.*)

³I understand institutional reality along the lines of SEARLE, JOHN R. (1995): *The Construction of Social Reality*; London: The Penguin Press, but concentrate on a narrower range of institutional phenomena, namely social institutions as organizations. My claims will, for the sake of simplicity, build on John R. Searle’s analysis of institutional facts and political power, but I intend them not to be dependent on any specific claim of Searle’s. Additionally, I choose to speak of institutional power instead of political power since the latter suggests the exclusion of e. g. economic institutions. The meaning of “political” is in a certain sense more disputed in terms of what is an appropriate subject matter of politics while the term “institutional” is more inclusive and can accommodate all institutions even those which are, on a certain view, apolitical. Cf. SEARLE, JOHN R. (2007): *Freedom and neurobiology: reflections on free will, language, and political power*; New York, Chichester: Columbia University Press, pp. 95ff.

⁴TUOMELA, RAIMO and BALZER, WOLFGANG (1999): *Collective Acceptance and Collective Social Notions*; in: *Synthese*, 117, p. 176

⁵ELSTER, JON (1989): *Nuts and Bolts for the Social Sciences*; Cambridge/New York/Melbourne: Cambridge University Press, p. 147

⁶SEARLE (1995): *The Construction of Social Reality*, *ibid.*, p. 95

behavior and action. Therefore, I want to put forward a *pragmatic analysis* of institutional power.⁷

More specifically, I want to advance three distinct claims about the nature of institutional power. After identifying different types of institutional power and some of the constraints which affect any explanation of that phenomenon, I want to argue firstly that a conception of institutional power as the *collective acceptance of sanctions* can satisfy these constraints. Secondly, I argue for a specific picture of collective acceptance, holding that collective acceptance is constituted by the mutual acceptance of an entitlement to demand compliance to a shared rule. Because all explicit rules and all specific authority in rule-administration must rest at some level on collective acceptance itself, I argue that there must be a basic level of symmetric and recursive authority ascription, which I call *recognition*. And, as a third and final point, I argue that recognition, understood as the recursive, mutual, symmetric acceptance of standard authority of evaluation, provides political philosophy and social science with an ideal type of institutional power.

2 Power as an essential element in institutional reality

Institutional reality is constituted by the imposition of new statuses on objects and persons.⁸ These statuses become pragmatically significant through their effects on people's behavior. And the effects which institutions have on the actions of human beings are essentially brought about by the collective acceptance of entitlements and obligations which are implicated in the meaning of these statuses. Furthermore, these entitlements and obligations can only be understood in relation to other actors. To accept an obligation means nothing else than to accept that another actor can demand compliance from oneself and therefore has a specific kind of power.⁹ Therefore, one could say that institutions can be analyzed as those social facts which bring about certain relations of power through the imposition of a normative status.¹⁰

⁷Pragmatic analysis is here to mean nothing else than an analysis in terms of its significance for the explanation of the behavior of agents.

⁸This is, again, one of the central claims of SEARLE (1995), *ibid*.

⁹I do not mean to suggest that there could not be institutions where everyone is following the rules voluntarily. But even in such institutions, in order for them to count as normatively governed by status functions, it would be legitimate to demand compliance in the counterfactual case of someone not following the rules. And in any case, social institutions are normally not of this kind.

¹⁰Thus, Searle writes: "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." (cf. SEARLE (2007): Freedom and neurobiology:

The power relations brought about by an institution can be *dispersed*. That is, they can be changing, volatile, and context-dependent, as in the case of money (or maybe even language). Power relations, however, can also be *concentrated*, stable and hierarchically structured, as for example in the case of a military power of command.

Searle suggests that there might also be institutional settings without implicated power relations,¹¹ such as beauty contests or table manners. But one should be cautious in assuming that there are no power relations in play at all. Moreover, even if these relations do not constitute new positions of power, they can still reflect power differentials in the mode in which they get established (Not everyone can suggest that specific table manners are not needed anymore!). Lastly, even if it is no universal feature of institutions, the establishment of power positions is certainly not an accidental feature of institutional reality. In many, if not most, cases the purpose of an institution is to establish specific positions of power through which some specific aspect of social life is regulated.

3 Institutional and noninstitutional power

What is the difference between institutional power and power in a more general sense? While power in general is often defined as the capacity to do what one wants to do, institutional power is something more specific.

First of all, it is an instance of *social power*. In institutions, people can achieve certain results not by acting themselves or by physically coercing other people to act but rather by *influencing* other people's intentions in a certain way, such as by giving them certain *reasons* to act. In contrast to power in general, social power is not simply a capacity but rather – and more interestingly – a capacity which is dependent on the existence of a relation between persons.

The notion of social power, however, is insufficiently precise to provide an appropriate description of institutional power. Social power in general includes as diverse phenomena as the capacity to transform the set of available actions, for example by forcing people at gunpoint, it includes persuasion, and it includes legitimate political power in a democratic state. Therefore, it seems unlikely

reflections on free will, language, and political power, *ibid.*, pp. 92f.) or “all institutional structures are matters of deontic power [...] They are structures of power relationships” (SEARLE, JOHN R. (2005): What is an institution? in: *Journal of Institutional Economics*, 1, Nr. 1, pp. 10f.)

¹¹SEARLE (1995): *The Construction of Social Reality*, *ibid.*, p. 96; but cf. also SEARLE (2005): *Journal of Institutional Economics*, *ibid.*, p. 19

that the concept of social power is sufficiently narrow to be the subject of one specific social ontological analysis.¹²

Within the notion of social power, there is a distinction to be made between social coercion and institutional power. A robber who forces a cashier to hand out money at gunpoint does not physically compel her but does give her a reason to act (her wish not to die combined with her conviction that the robber might indeed shoot her if she doesn't comply). Such a capacity, however, is not linked to institutional reality in any sense. It is only social in the sense that it involves interaction, but not in the sense that it involves ontologically subjective, socially created features of reality.

Genuine institutional power, by contrast, is a capacity which admits of two characteristics. First, it is the *capacity of a person to influence the actions of other people*. And, second, it is a *capacity of a person which is created by a system of rules in virtue of the fact that this system of rules entitles her to issue demands upon the actions of others and is collectively accepted by these others*.¹³

Institutional power gives persons a specific kind of reason to act, namely a reason stemming from their acceptance that the other person is *legitimized* to demand certain actions from them.¹⁴ This kind of power is specific to institutional reality.¹⁵

Genuine institutional power is therefore distinct from noninstitutional social power with regard to the *way* in which it influences the behavior of agents.¹⁶

¹²Other than in a very abstract form, cf. GOLDMAN, ALVIN I. (1972): Toward a theory of social power; in: *Philosophical Studies*, 23, pp. 221–268; Morriss even states (in reference to Alasdair MacIntyre's jocular "general theory of holes"): "a general theory of power is as far-fetched as a general theory of holes" (MORRISS, PETER (1987): *Power: A philosophical analysis*; Manchester: Manchester University Press, p. 45)

¹³This obviously narrows the scope of an analysis of institutional power considerably and excludes different types of power which are usually called institutional power, such as agenda-setting, ideologically created power, and so on. In my opinion, one will be better able to explain these kinds of power if one has a clear picture of a more limited ideal type. Consequently, the following analysis can not claim to provide an exhaustive analysis of power in institutions.

¹⁴Acceptance of legitimacy is not the same as belief in legitimacy; we can accept that certain institutions are legitimate without believing that they are objectively so. If one accepts an institution, the motivation for the conformity to the institutional rules comes about by the fact that the acceptance of the rules creates a specific kind of reason. Searle proposes these reasons to be desire-independent. Cf. SEARLE (2007): *Freedom and neurobiology: reflections on free will, language, and political power*, *ibid.*, p. 101. But this is maybe too strong, it might suffice to say that the exertion of the power must be *accepted* which may relate indirectly to one's desires in general (cf. DARWALL, STEPHEN (2006): *The Second-Person Standpoint*; Cambridge/London: Harvard University Press, pp. 116ff.)

¹⁵This is not to suggest that the more general forms of physical or social power have no significance for the institutional realm. In institutional reality, some kinds of power, such as physical power, have, of course, very important consequences. But these kinds of power are in their nature not intrinsically institutional, they are not specific to institutional reality.

¹⁶Institutional power is of a specific nature, not only power within the framework of an institution. In institutions, there are, of course, many forms of power, which are not of a specific institutional type. If an institution enables actors to influence the behavior of others by creating new incentives for actions, or by transforming the set of available alternatives,

Institutional power of an agent is constituted by the fact that the rule-created powers of the agent enjoying a specific status position within an institution give other agents a direct *reason* to conform to her demands, because these other agents accept these demands as resulting from a legitimate institutional order.

Because institutional power rests on (collectively) accepted status functions, it works – at least in normal cases – by giving persons a reason to obey the legitimate demands of those who have the respective powers. If someone asserts her institutional status, she does not primarily claim that she is *able* to get other people to do certain things, but that she has a *legitimate claim or standing* to demand obedience, a claim for which there are reasons to accept it.¹⁷

Max Weber describes a specific kind of institutional power – the capacity of a person to issue binding orders – as *domination* or *authoritarian power of command*:

To be more specific, *domination* will thus mean the situation in which the manifested will (*command*) of the *ruler* or rules is meant to influence the conduct of one or more others (*the ruled*) and actually does influence it in such a way that their conduct to a socially relevant degree occurs as if the ruled had made the content of the command the maxim of their conduct for its very own sake. Looked upon from the other end, this situation will be called *obedience*.¹⁸

Weber’s point is not only that actors take the demand of others as a maxim for their conduct, but that they do so for its own sake. To put it more clearly, the reason why I make the institutional demand my maxim in the context of a social institution is not simply because of the *existence* of the command but rather because of my presupposed *acceptance* of the institutional *rules*, that is, because of my belief in the legitimacy of the institution. Therefore, the subject of authority is not the person on which a special normative status has been conferred by the institution. Rather, the subject of authority is the *institutional rule itself* from which the authority of the person giving the command is derived.

There are, of course, other types of institutional rules, which are not directly tied to commands of persons. But we can, for the sake of simplicity, assume

these actions which might be legitimated by the institutional rules amount to social power, but not to institutional power.

¹⁷There is a striking similarity of institutional power to the “second-personal authority” which Stephen Darwall extensively discusses in DARWALL (2006), *ibid.*. Unfortunately, he does not discuss the social ontological significance of this structure at all.

¹⁸WEBER, MAX (1986): *Domination by Economic Power and by Authority*; in: LUKES, STEVEN, editor: *Power*; Oxford: Basil Blackwell. – chapter 2, p. 33. Emphasis in the original. He is there echoing Hobbes’s definition, in chapter 25 of the *Leviathan*: “Command is where a man saith, ‘Do this,’ or ‘Do not this,’ without expecting other reason than the will of him that says it.”

that for every institutional rule, there is a person with the institutional status of being entitled to demand compliance from me. Therefore, it is sufficient to discuss the institutional power of command.

4 Types of power within institutions

While the power which results from a status position in a system of collectively accepted rules is the most important form of institutional power, this does not exhaust the significance of power in institutional reality.

The topic of institutional power has long been neglected in the tradition of rational choice and, especially, public choice theory which conceived institutions as arising from contexts of voluntary cooperation and therefore as not being in need of power. It has become clear, however, that institutions essentially involve forms of power which are not merely conventional in the classic sense that they involve coordination equilibria.¹⁹

Claus Offe usefully distinguishes between three positions relating to power within an institution:²⁰ the agents who enforce the rules, the agents who profit from the rules disproportionately, and the agents who are able to challenge the rules. All three positions are related to power, though the relation involved in each of them is fundamentally different.

But Offe's distinction is not obviously an ontological distinction since he does not distinguish between types of power but only between roles which are important for a political theory of institutions. Therefore, in order to better understand the kinds of power he mentions, it is productive to take notice of social ontological analyses of institutions.

As already noted, Searle analyzes institutions as going along with the creation of new normative statuses through constitutive rules.²¹ And these statuses necessarily entail a certain kind of power: they do not only entail normative entitlements or duties, as *empirically accepted* statuses they also entail empirically accepted normative entitlements (and duties). They have practical consequences

¹⁹cf. MOE, TERRY M. (2005): Power and Political Institutions; in: Perspectives on Politics, 3, Nr. 2, pp. 215–233. Most “institutionalist” analyses of social institutions are, however, primarily concerned with the question how the power of individual actors to limit the agenda explains the deviation from coordination equilibria and not so much with the essential nature of institutional power.

²⁰OFFE, CLAUDIUS (2006): Political institutions and social power: conceptual explorations; in: SHAPIRO, IAN, SKOWRONEK, STEPHEN and GALVIN, DANIEL, editors: Rethinking Political Institutions; New York: New York University Press, pp. 9–31

²¹though Tuomela does not accept this as a general feature, he nevertheless includes it in TUOMELA and BALZER (1999), *ibid.*, p. 188

in terms not only of what people are *allowed* to do, but of what people are *accepted to be entitled to do* and thus what they *can* do without having to expect negative consequences. The institutional establishment of status in institutional or noninstitutional terms therefore amounts to the establishment of power relations such as the entitlement to profit in a certain way from the arrangement or the entitlement to exert some pressure on other agents.

But there is also another kind of power involved in institutions to which Offe refers when he speaks of the position of possible *challenges* to institutional rules, namely the power to create, sustain, change or abolish the institution and its rules. One could call this 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 the institutional rules, either with institutional or noninstitutional consequences. Constitutive power, by contrast, is the kind of power which sustains, creates, destroys or changes the institutional rules themselves. The question is whether these two kinds of power can or should be analyzed together or whether they are of distinct types.

The distinction between intra-institutional and constitutive power is so important because, if one suppresses this distinction, one might see power too one-dimensional as a relation only within the given institutions and their framework of power-conferring rules. Hannah Arendt, for example, implicitly uses this distinction in her critique of the classical theories of power which understand power always as a relation between the powerful person and the person who is subject to power and not as a creative force through which people can cooperate and constitute new institutions.²²

It is one of the peculiar features of institutional power in general which sets it apart from other forms of social power that it always involves constitutive power in addition to other forms of power. While noninstitutional social power – as for example a band of kidnappers has it over their victims – is not dependent on constitutive power, the same power becomes institutional power as soon as there is a certain kind of constitutive acceptance in place.

The distinction between power *within* an institution and power *constitutive of* institutions finally implies that there have to be types of constitutive power

²²She thus writes “Power corresponds to the human ability not just to act but to act in concert. [...] When we say of somebody that he is ‘in power’ we actually refer to his being empowered by a certain number of people to act in their name.” (ARENDR, HANNAH (1970): *On Violence*; San Diego/New York/London: Harvest, p. 44). This distinction between instituted and instituting power has been taken up by the political philosophy of so-called radical democracy. Steven Lukes also criticizes in his famous study on power that the one-dimensional view on power systematically hides the questions which are already decided by the institutional rules and which therefore cannot be examined by looking at conflicts within given institutions. In short, if one does not distinguish these two types, the resulting empirical analysis of given power relations will become ideological.

which are not already presupposing institutions themselves. Power relations of the constitutive type must already be in place in order to provide a bootstrapping mechanism for institutionality. This does, however *not* imply that this basic type of power is raw power in the sense of sheer physical force. It is indeed rather questionable whether institutional power – which according to Searle essentially involves collective intentionality – could be brought about by mere force.²³

5 A pragmatic analysis of institutional power

If we concentrate less on the conceptual analysis of institutional power and more on its pragmatic significance, it is rather unclear how this kind of power is to be described in relation to its practical effects. This is one issue which is often left unexplored by social ontological theories of institutions. The question is: *What conditions regarding their actions must a group of agents fulfill in order for an observer to be justified to claim that a certain kind of institutional power is in effect in this group?* This question effectively asks for a *pragmatic analysis* of institutional power.

One conceptual feature of power for which a pragmatic analysis must account is the fact that power is not a property of actions. Rather, the power which is transferred onto people by institutions is a *capacity*.²⁴ One can have institutional power without it having any effects.

A second point can be made with regard to the question whether institutional power is based on physical force. It is true, of course, that institutional power is often or nearly always backed by physical force. But its institutional character relies on the fact that physical compulsion is only an exceptional case for its exertion. Institutional power in a strong sense is by definition 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 its exercise, in general, must be considered to be legitimate by the participants, that is, by those who exert the power and those over whom it is exerted.

But if the necessity that power must be accepted as legitimate rules out

²³The naive view of Mao that “Political power grows out of the barrel of a gun” is the other extreme compared to Arendt’s view that violence and (instituting) power are exact opposites. Searle allows for a more relaxed view that monopolized violence can have a certain stabilizing effect if opposition to institutional power is only a rare phenomenon, but cannot support institutional power without widespread agreement. Cf. e.g. SEARLE (1995): *The Construction of Social Reality*, *ibid.*, p. 90. See also below.

²⁴LUKES (2005), *ibid.*, p. 79

an explanation in terms of physical force, then in what does the pragmatic significance of institutional power consist?

A first step can be made if the idea of legitimacy is spelled out in terms of its practical function. Powerful persons make practical use of other people's beliefs in the legitimacy of a system of status functions and institutional rules when they take advantage of these beliefs in order to gain acceptance for their demands. More generally, the practical significance of beliefs in the legitimacy of an institution is the set of peculiar consequences these beliefs have upon the acceptance of the norms that make up the institution. These norms, for example, are practically significant insofar as they serve as reasons for obedience to demands of a certain type when issued by holders of certain kinds of institutional status. The acceptance of norms is involved, in both the constitution of institutional power and in its exertion.

Therefore, the next question arises: How do these norms become practically relevant in the day-to-day life of individuals? An obvious starting point for finding an answer to this question is the idea of *obedience*. At first glance, one would say that A's power is accepted by B, or rather, the norm that A has a certain kind of institutional power or standing is accepted if B follows these commands (and thereby the norm) in all or most cases. But as already noted, the existence of institutional power does not require universal obedience. If this were so, there would be practically no institutions in existence, since we know that practically every institutional norm is broken by someone at some point. But it is not enough to relax this condition and only require for the existence of institutional power (and the respective norm) that the *majority* of people conform in the majority of cases. We can imagine that there are forms of fully and widely accepted institutional power which are systematically disobeyed by a majority for a certain span of time when there are overriding norms or practical impossibilities which lead them to disobey it. Nevertheless, the norm would still be in force and stay accepted. Or the power as a capacity might never be exerted: in Germany, the parliament has for example the constitutional power to declare the state of war. This capability has never been exercised since the current constitution first came into force. Therefore, it is hard to see how obedience could constitute this power.

But obedience is not only not necessary for the acceptance of power. As Hart²⁵ notes in respect to legal institutions, habitual obedience is also not sufficient in order to constitute law, and thereby legal power: For obedience is not the same thing as just conforming with the demands of another person; one

²⁵HART, H. L. A. (1994): *The Concept of Law*; 2nd edition; Oxford: Oxford University Press, pp. 51ff

could happen to independently wish to do what the other person demands and only by chance happen to do anyway what she wants. If this were sufficient to constitute power, anyone and everyone could have the power to command everything which would happen anyway. Obedience seems to require that one not only act in conformity with a certain demand but that one do so *because* this demand was made by another person.²⁶ Habitual obedience is therefore not sufficient for acceptance because it might come about by chance and it does not include any guarantee for its continued existence.²⁷

Weber consequently argues

“The merely external fact of the order being obeyed is not sufficient to signify domination in our sense; we cannot overlook the meaning of the fact that the command is accepted as a ‘valid’ norm.”²⁸

A second candidate for a sufficient condition for institutional power are the mental states of the agents in question. Even though the orders of a powerful person might be disobeyed from time to time, one might say that a person is still accepted as being in power as long as everyone believes her to be so or consciously accepts the assertion that her institutional power, and consequently her orders are legitimate. But defining authority in terms of mental states is also neither necessary nor sufficient. It fails to conceive power as relational and it is inadequate as a description: we can easily imagine that a person might have power without anyone having explicit beliefs of any kind about it. And, conversely, if a group of people believes that a person has a certain kind of power but none of the members follows her orders and, additionally, none of the members does assume any accountability for failing to do so, this empty belief surely does not make her power real. In the cases where a person A fails to follow the commands of a person B, we would like to have A at least accept *accountability* for this failure, in order to be able to speak of a power relation at all.

This leads to a third, more plausible candidate: the taking of accountability, or pragmatically speaking, the acceptance of evaluations and sanctions. It seems to be necessary and sufficient for A having institutional power over B that B either obeys the commands of A, or if she does not, accepts being accountable in terms of being subject to sanctions for her not doing so. While normative power can rest both on unconscious habits and on intentional belief in its legitimacy,

²⁶BLOOR, DAVID (1997): Wittgenstein, Rules and Institutions; London / New York: Routledge, pp. 27ff cites this as a general institutional feature of rule-following.

²⁷For similar arguments with regard to normative practices also cf. TURNER, STEPHEN (1994): The Social Theory of Practices. Tradition, Tacit Knowledge and Presuppositions; Cambridge, UK: Polity

²⁸WEBER (1986), *ibid.*, p. 34

its essence is connected with the practical acceptance of its exercise by the participants in the respective institutional practice in terms of their acceptance of accountability.

Practical acceptance means nothing else than the fact that A has institutional power (in a narrow sense) over B if and only if B is ready to treat A as someone who has power in the respective way, that is, if B is ready to accept accountability for her compliance to A's demands.

We can validate this intuition by examining whether there could be any case in which people consistently assume accountability for failing to obey the orders of a person and yet where this person objectively could not be said to have any institutional power. Conversely, we can also examine whether there could be a case in which people consistently deny being accountable for failing to obey commands of a person and yet this person still could be said to have some institutional powers. I hold that neither case can be imagined.

The element of *accountability* is thus what separates power from other types of influence. For example, someone who is respected as a wise person may find that her advice is consistently followed. But this does not mean that she has power, for people will follow her advice for prudential reasons but will not assume any accountability or accept sanctions for not doing so. It is therefore not sufficient that someone be consistently obeyed or followed in order for her to be powerful;²⁹ rather, this obedience must also be supported by the agents' acceptance that they are accountable. And, finally, the practical expression of accountability is the acceptance of *sanctions*.³⁰

The point of the introduction of sanctions is that people can practically *take themselves to be accountable* for their success in obeying a specific command if they accept evaluations of their behavior with respect to this command, and more specifically, if they accept sanctions in the case of their failure to obey.

A sanction is a reaction to the behavior of an agent which is not merely a reaction but a reaction which implies an evaluation of the action according to a certain standard. This element of reference must include a certain linguistic element, though not in every case.

In the simplest (negative) cases, sanctions are expressions of disapproval

²⁹As Searle seems to suggest in his discussion of a "chief" in SEARLE (2007): Freedom and neurobiology: reflections on free will, language, and political power, *ibid.*, p. 91

³⁰This is related to the difference Hobbes makes in chapter 25 of the *Leviathan* between "command" and "counsel": "And from this ariseth another difference, that a man may be obliged to do what he is commanded; as when he hath covenanted to obey: but he cannot be obliged to do as he is counselled, because the hurt of not following it is his own; or if he should covenant to follow it, then is the counsel turned into the nature of a command."; The same distinction is explored by Morriss who takes it to be the difference between "power" and "influence". Cf. MORRISS (1987), *ibid.*, pp. 8f.

which are made clear by affecting the other agent negatively for example by hurting her or by withholding resources from her. But sanctions can be not only nonnormative forms of punishment or reward, but also normative forms, such as the withdrawal of an entitlement from someone, or even the mere expression of disapproval in the form of what Margaret Gilbert calls “punitive criticism”.³¹ Sanctions can be expressed in terms of normative statuses, duties and entitlements. They can be, as Brandom puts it, “norms all the way down.”³²

6 Authority and sanction

In this spirit, institutional power can be analyzed preliminarily in terms of the acceptance of evaluations or sanctions:

Institutional power (sanctioning account): *An agent A has certain institutional powers, that is, powers stemming from her status position in an institution in practice over a set of persons $B_1 \dots B_n$ if and only if these persons generally and in most cases accept (sanctioning) evaluations of their behavior in regard to the legitimate demands that A puts on them.*

Consequently, the following holds for the case of *authority*, authority being the status of a person within an institution of who is entitled to issue legitimate demands regarding the behavior of other agents:

Authority: *A has authority over B with respect to a certain area of behavior if and only if B accepts the evaluation of her actions with respect to her conformity with the authoritative demands of A.*

But is the person whose authority is accepted always identical to the person who is capable of exerting the sanctions which are constitutive for this authority? Typically, the behavior of an actor in response to a legitimate demand will be evaluated 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, for example, to the agents of a judicial system and to the police. We

³¹GILBERT, MARGARET (2006): A theory of political obligation: membership, commitment, and the bonds of society; Oxford / New York: Oxford University Press, p. 190

³²BRANDOM, ROBERT (1994): Making it explicit. Cambridge / London: Harvard University Press, p. 44; Because of this wide notion of sanctions, I will speak of sanctions and evaluations interchangeably.

can thus distinguish the power of command of an authority from the authority which establishes this commanding authority through (accepted) sanctions. Finally, there is a third kind of authority to be found in the authority which establishes the rules regarding who can legitimately sanction.

A customer in a restaurant, for example, can be legitimately ordered by the restaurant owner to pay for her meal, but the acceptance of this order is pragmatically constituted by and only acquires pragmatic significance through the customer's acceptance of the power of the police to enforce it. The power of the police will be, in turn, accepted to be legitimate because it was created by other accepted authorities, for example, a parliament.

We can therefore distinguish positions of power constituted by an institution, on the one hand, from the constitutive power which is the capacity to institute such positions through the acceptance of possible sanctions, on the other hand, and both can be distinguished from the legitimation which they derive from other sources.

While logically the original authority of the "legislative" form might be primary, in terms of practical significance the constitutive power of sanctioning is the most basic form. It creates the possibility of obedience to the constituted forms of power as well as the practical expression of the higher-order constitutive authority. As long as the sanctioning power is practically accepted, it is considered to be legitimate whether it is indeed legitimate or not.³³

This means, that power is here understood to be exercised primarily in terms of evaluations and sanctions. Therefore, normative power is accepted to the degree to which sanctions of performances are accepted.

It is not required that persons have explicit beliefs in order for them to accept an evaluation or sanction, since there obviously are cases of habitual obedience which do not go along with explicit beliefs. A pragmatic solution rather suggests that a conforming action constitutes obedience only if the person would have accepted sanctions had she not conformed to the respective demand. According to this analysis, the notion of institutional power is grounded in the idea of the acceptance of sanctions.

But what is the pragmatic meaning of "acceptance"?³⁴ The idea of sanctions was introduced in order to avoid analyzing the notion of power in terms of intentions, beliefs or mental states. Therefore, it would be a strategically questionable move to define the acceptance of sanctions in terms of beliefs and

³³Adopting a pragmatic approach avoids the question of whether something is *really* legitimate as long as possible in favor of the question what it means to treat or take something as legitimate.

³⁴Cf. again DARWALL (2006), *ibid.*, pp. 116f.

intentions. But there are also material reasons for not doing so. Although specific beliefs or intentions can cause sanctions to be accepted and therefore power to be instituted, they are not necessary for constituting power relations. Not all patterns of interaction are the result of specific beliefs and intentions. It might also be the case that people accept sanctions out of habit, tradition or because of other nonintentional causes. Furthermore, even though each single action in a pattern of regular acceptance of power might be caused by some specific belief or intention, it does not follow that the pattern of continued acceptance itself is caused by these beliefs and intentions. In order to not exclude prematurely the idea of structural power relations which come about by the combination of unintended consequences of the actors, one should not require explicit beliefs or intentions for power.

But if explicit beliefs are not necessary for the constitution of power relations between two persons, how can the acceptance of sanctions be analyzed? It seems reasonable to lower the requirements: If explicit beliefs are not necessary, it might still be the case that a certain *attitude* of the subject towards the sanction is necessary in order to constitute acceptance of power. A practical reactive attitude of the kind I envisage here is only definitively shown by her reaction to the sanction. This reaction could go along with an explicit intention or belief to the effect that the sanction should be accepted but does not need to be so. We can stay neutral on how we conceptualize this reaction, whether as a full-blooded intentional action, a dispositional, traditional or habitual reaction or otherwise.

Intuitively, the negative case is the clearest one. A person does not accept a sanction if she has a propensity to react in a certain way to it: if she, for example, treats the sanction as an illegitimate attack to herself, if she tries to fight back or to punish the sanctioner, then these reactions are clear cases of nonacceptance of the sanction. Certain practical reactive attitudes, that is dispositions to react in a specific way, are incompatible with accepting sanctions. Thus, at least the absence of reactive attitudes of this type is a necessary condition for the acceptance of a sanction.

Because a sanction can only be accepted if the sanctioned subject is at least implicitly aware that there is a sanction, there is no acceptance where there are no reactive attitudes at all, since the absence of the latter implies a lack of awareness of the sanction. Therefore, it is a necessary condition for the acceptance of a sanction that the sanctioned subject have a reactive attitude which is not of the negative kind described above, but is of a kind which is either neutral or positive towards the sanction.

This does not mean that the sanctioned subject could not evaluate the sanction negatively and yet accept it, just as many people evaluate the fact that they have to pay taxes negatively but still consider them to be legitimate. It simply means that there is no attitude which leads into a practical *challenge* of the sanction.

Given this notion of a practical reactive attitude, an agent accepts the action of another agent if she reacts to it with a neutral or positive practical reactive attitude, that is, in a way which does not amount to actively punishing or negatively sanctioning the original sanction.

But negatively sanctioning is only one way of not accepting an action and of displaying a negative practical reactive attitude; one can also imagine in discursive communities that agents discursively question the authority of the other agent to sanction or to sanction in this case, that is, they do not sanction directly, but just put into question the very authority of the other person, a move which is not available on the level of nonlinguistic actions.

But, to return to the question of power, does questioning the sanctions of another person amount to not accepting her power to sanction one's behavior? Surely not. Imagine that a person is arrested by a police officer for, say, shoplifting. If she contests her being arrested under the premise that her behavior did not constitute shoplifting, she does not contest the general power of the police officer to arrest people for shoplifting; but she questions her being arrested by reference to a higher-order norm, namely the legal definition of shoplifting on which the police officer's power depends in this specific case. Compare this case with the case where the person contests her being arrested by the officer without giving any such reason. The latter case amounts to nonacceptance of the officer's power, while the former does not.

We can therefore differentiate between cases of discursive and nondiscursive general challenges which do unconditionally put in question or resist the authority to sanction (subsequently called *contestation*) and cases of discursive challenges which concern only the specific application of authority but do not constitute nonacceptance (subsequently called *weak contestation* or *putting into question*). Only the former cases constitute negative practical reactive attitudes.

Authority and sanction: Therefore, we can summarize the individual case of the acceptance of power as follows:

Firstly, it is necessary to differentiate the act of *putting* an institutional action *into question* which does not amount to a rejection of the legitimacy of a demand from a genuine case of contestation.

Putting into question (or weak contestation): *An agent A puts into question the institutional action of another agent B, if A does not contest in general terms the status of B as entitled to do actions of this type, but contests B's action in the specific case by reference to a higher-order institutional norm which is shared by both. In the case of a sanction, for example, A can put a sanction into question by B by pointing out that A or the action of A to which B's sanction was directed has a status which exempts A from the sanction.*

Building on this notion of putting into question, we can understand an individual authority relation between two persons as building up on the acceptance of sanctioning authority.

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*

- *in all cases in which (1) a performance P of A violates R, (2) P happens in context C and (3) the performance P of A is sanctioned by B,*
- *A either does not contest this sanction at all or only puts it into question.*

*If the entitlement of B to sanction A's performances of a specific type in context C is habitually either not contested at all or only put into question by A, we say that A grants B a **standard authority**.*

If this is a correct description of the acceptance of sanctioning authority, it is only a matter of putting the different building blocks together to arrive at a model of acceptance of institutional authority:

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

The authority of an agent can therefore be analyzed as being constituted by the acceptance of her standard authority (or the standard authority of those who sanction behavior in relation to her demands) of evaluation by other agents.

This account already fulfills some of the conditions we have set out with regard to a plausible concept of normative power. First of all, it does not require universal obedience but considers power to be a feature of the factual processes of evaluation and of the exertion of power. Insofar as constitutive, sanctioning power is only a counterfactual capacity in the cases of obedience, namely the capacity to sanction disobedience, normative power is not to be identified with any concrete exertions of power.³⁵ And, finally, we can at least conceptually distinguish cases of obedience from cases of contingent conformity by asking whether there would have been acceptance of sanctions in the case of disobedience.

Authority distributions in institutions: So far, this analysis only relates to individual acceptance of authority relations. While institutional authority is probably closely related to less formal types of authority, we should expect it to be much more complicated, for institutions typically do not involve specific relations between specific persons. The authority relations within institutions are rather specified and accepted in a much more abstract form as applying to all persons with a specific status.

But even without understanding the specifics of institutional authority, it is possible to describe a preliminary typology of institutions in regard to the distribution of normative authority. The relation “A has authority over B in regard to a specific norm in specific conditions” can function both as a symmetric and as an asymmetric relation. A symmetric authority relation exists when an agent only has authority over another agent 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.

On 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 extreme case would be the *monopolization* 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 over every other agent at least in regard to one

³⁵cf. MORRISS (1987), *ibid.*, pp.16ff., who embraces the consequence that not power but only manifestations of power can be observed.

rule and context, though not in regard to the same rule and context. Even though this could be the case without symmetric authority relations existing, we can understand this as symmetrical with regard to authority as such and call it an institutional setting with *symmetric authority distribution*. A sub-case of symmetric authority distribution is an institutional setting where everyone has authority regarding the same rule and context over everyone else, and thus there is one pervasive and symmetric authority distribution. We can call this an *egalitarian-symmetric* distribution of this authority type.

7 The constitution of collective acceptance by mutual recognition

An agent *individually* accepts the power of another agent if not she does not contest sanctions with regard to this power. But this can hardly be sufficient for social or institutional power.

Individual agents might accept sanctions independently 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 by a whole society or by a group of people for themselves and in which members can leave and enter the group without the institution changing in its character.

If all U.S. citizens decide for themselves that they will accept shells as legal tender (and consequently, that they will accept sanctions for not living up to this decision), shells will nevertheless not become legal tender through these merely individual acts of acceptance. Even if it became public that all U.S. citizens have individually decided for themselves to accept shells as legal tender, we would imagine that for shells to become legal tender it is necessary that there be a public declamation through which the individual intentions would become a collectively shared rule.

The necessity of collective acceptance for the construction of full-blown institutions is shared by the social ontological accounts of Searle³⁶, Tuomela³⁷ and Gilbert.

³⁶“the status requires collective intentionality” (SEARLE (1995): The Construction of Social Reality, *ibid.*, p. 114)

³⁷cf. “A norm-entailing sentence *s* 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* for *G*.” (TUOMELA and BALZER (1999), *ibid.*, p. 198); The most elaborated account of Tuomela’s views on social institutions is to be found in TUOMELA, RAIMO (2007): *The Philosophy of Sociality*; Oxford / New York: Oxford University Press, pp. 182ff.

In addition to the question of descriptive adequacy, there are two reasons to endorse the necessity of collective acceptance: Firstly, it is assumed that institutional rules have a binding force on the participating individuals, i.e. they are obliged to follow these rules. As Gilbert argues,³⁸ individual commitment to a specific rule is not sufficient to explain such obligations; only collective commitment suffices. Secondly, a more general argument is related to the question whether an individual on its own can follow a rule in a meaningful sense at all. Especially the rule-following arguments by Wittgenstein, Kripke and their followers suggest that there must be a collective element in any kind of rule-following, consequently, that the status functions of institutions which are constitutive rules must have a collective character at the most fundamental level.

Regardless of the argumentative strategy one chooses, the need for collective acceptance entails that the institutional power of a specific group of persons is accepted to the extent that there is a collectively held norm in a group that the respective sanctions should be accepted. But this definition does not help much in terms of elucidating the pragmatic significance as long as we do not know what the pragmatic significance of collectively holding a certain norm amounts to.

While Searle analyzes collective intentionality as involving a biologically primitive capacity,³⁹ Tuomela puts forward a sophisticated analysis of the conceptual requirements to which intentions have to conform in order to count as collective intention.⁴⁰ Gilbert, finally, conceives collective intentionality as being dependent on the more normative relation of joint commitment.⁴¹

I do not want to pursue the question as to which of these accounts is more adequate as a conceptual analysis. We can rather approach the question from another direction: What must be true of collective acceptance for it to be sufficient to explain institutional power?

The notion of collective acceptance is introduced in order to explain how a group of agents is justified in believing that a certain set of institutional norms is in force in this group. Therefore, collective acceptance of a norm must at least be such that it entails the truth of all necessary and at least one set of sufficient conditions for the social existence of obligations derived from

³⁸cf. GILBERT (2006): *A theory of political obligation: membership, commitment, and the bonds of society*, *ibid.*, pp. 197ff.

³⁹SEARLE (1995): *The Construction of Social Reality*, *ibid.*, p. 23

⁴⁰cf. TUOMELA, RAIMO (1995): *The Importance of Us. A Philosophical Study of Basic Social Notions*; Stanford: Stanford University Press, pp. 112ff., TUOMELA, RAIMO (2002): *The philosophy of social practices: a collective acceptance view*; Cambridge: Cambridge University Press, pp. 17ff.

⁴¹GILBERT, MARGARET (1989): *On Social Facts*; London and New York: Routledge, p. 198, and more explicitly in GILBERT, MARGARET (1996a): *Introduction*; in: *Living Together. Rationality, Sociality and Obligation*; Rowman and Littlefield, p. 7

institutional norms. And since the question whether a norm is in effect in a group is a question which is not, or not only dependent, on whether any given individual *believes* that this norm is in effect,⁴² there must be differences in the *practical behavior* of this group.

What pragmatic significance has collective acceptance of a specific institutional rule or status function for a group of agents? Instead of attempting to specify what collective acceptance amounts to ontologically, this question asks for the employment of a pragmatically sufficient metavocabulary⁴³ that allows us to speak about what people have to *do* in order for other people to be justified in describing them as collectively accepting certain forms of power.

A helpful approach to this problem is offered by Gilbert's discussion of collective belief.⁴⁴ On Gilbert's account, collectively believing a proposition entails collectively accepting the proposition.⁴⁵ She furthermore argues that collective belief in a proposition necessarily goes along with a normative obligation which the group members take to hold between them.⁴⁶ One of the pragmatic significances of this is the acceptance of the group members that they are entitled to expect each other to do their part in the shared commitment and that they are even entitled to rebuke group members who do not act in a way which is compatible with their commitment.⁴⁷

The same is certainly true for the collective acceptance of an institutional rule (or status-function). A rule is only collectively accepted to the extent in which the members of a group see each other as entitled to demand compliance from each other. At this point, we can see how 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. Otherwise, they would not be able to distinguish between mere reactions and sanctions.

Going beyond Gilbert's account, one can argue that collective acceptance

⁴²otherwise, no one could be mistaken about what norms are in effect in a certain group, but obviously we can be mistaken about that.

⁴³cf. the notion of "practice-vocabulary sufficiency" in BRANDOM, ROBERT (2007a): Between Saying and Doing: Towards an Analytic Pragmatism. Lecture One: Extending the Project of Analysis; in: The 2005-2006 John Locke Lectures. Extending the Project of Analysis. in: <http://www.pitt.edu/~7Ebrandom/locke/downloads/LL1%20EPA%2007-5-10%20a.doc>

⁴⁴cf. GILBERT, MARGARET (1987): Modelling Collective Belief; in: *Synthese*, 73, Nr. 1, pp. 185–204, GILBERT, MARGARET (1996b): More on Collective Belief; in: *Living Together. Rationality, Sociality and Obligation*; Lanham/London: Rowman and Littlefield, pp. 339–360

⁴⁵cf. GILBERT (1987): *Synthese*, *ibid.*, p. 195 although she distinguishes it from a more technical sense of acceptance in GILBERT, MARGARET (2002): Belief and Acceptance as Features of Groups; in: *ProtoSociology*, 16, pp. 35–69

⁴⁶Therefore, we should find that the pragmatic significance of collectively believing something is sufficient for collectively accepting something, though it does not need to be necessary, especially as the acceptance of a rule might have lower criteria than the epidemically more challenging case of believing something.

⁴⁷GILBERT (1996b): More on Collective Belief, *ibid.*, pp. 351f.

goes along with the institution of specific forms of (rule- or norm-dependent) authority. For saying that group members are entitled to expect specific behavior from other members and to rebuke them if they do not behave this way, amounts to nothing else than to say that they grant each other a certain authority about each other's behavior.⁴⁸

If we want to describe the pragmatic significance of collective commitment using the vocabulary already introduced, we can further extend the account of Gilbert and say that a group of persons is collectively committed to a certain attitude, norm, belief or intention only if every member of the group has a certain authority towards the other members, namely the authority to demand compliance with the collective commitment to them.⁴⁹ This authority is obviously not unconditional but depends on the fact as to whether the other members want to be part of the collective commitment. But if those other members so desire, then they have to accept this authority without any further justification.⁵⁰

And if collective acceptance is to be realized in a social setting it should at least be the case that persons accept each other (to a socially relevant degree) as being entitled to make such criticism. Therefore, we can describe collective acceptance using the same pragmatic vocabulary I used earlier. Collective acceptance would then be a (more or less) symmetric case of acceptance of authority in regard to a shared norm. At the most fundamental level, this must be in some important respects equivalent to the egalitarian-symmetric type. Because any agent which has a specific authority or nonauthority in regard to something must be, in turn, collectively accepted to have this authority. And, save accepting an infinite regress, at the bottom there must be a symmetric case where everyone accepts everyone else, and through the same relation of acceptance everyone is collectively accepted to have this specific authority.

At this point, it is necessary to remark that this conceptual analysis does not implicate the absence of coercion. As Gilbert argues, one can be coerced into a collective belief without this belief losing its obligating character,⁵¹ and the

⁴⁸Gilbert says for example, about collective beliefs that they “justify the infliction of pressure” (GILBERT (1996b), *ibid.*, p. 357)

⁴⁹In this spirit, Tuomela remarks about agreements that “it gives a reason for each participant to normatively expect that the other participants will indeed participate” (TUOMELA (2007): *The Philosophy of Sociality*, *ibid.*, p. 88), and, consequently, a reason, to normatively demand cooperation; the same seems to hold for his notion of social commitment in TUOMELA (2002): *The philosophy of social practices: a collective acceptance view*, *ibid.*, p. 143

⁵⁰This also seems to be a consequence of the analysis of a “proper social ought-to-do norm” in TUOMELA (2007): *The Philosophy of Sociality*, *ibid.*, p. 214, in which both collective acceptance and social pressure are mentioned as necessary conditions for a norm to be in force, but to which one could add that the pressure is justified *because* the norm is accepted and that the acceptance of the norm therefore is effective (in part) in the form of the acceptance of pressure, i.e. recognition of the respective authority.

⁵¹GILBERT (1996b): *More on Collective Belief*, *ibid.*, pp. 351f.

same is true for collective acceptance of authority. But nevertheless, collective acceptance must also always include a certain degree of mutual authority ascription regardless of how it comes into existence in order for it to be distinguishable from pure coercion.⁵²

And consequently, there have to 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. And, as already mentioned before, the collective acceptance of a specific set of persons as entitled to sanction behavior might be constitutive to the status of an entirely different set of persons entailing entitlements and obligations.

Now, the only element which seems to resist such a pragmatic solution is the element of the shared rule. Speaking of a shared rule might seem a mere metaphor. Rules must be applied by individuals, and if there is no shared standard of application, there are only individual applications of rules. As many of the skeptical arguments concerning “rule-following” suggest, a collective acceptance account which rests on the notion of a shared rule effectively amounts to nothing more than an individual acceptance account if the extension and interpretation of a shared rule in particular cases rests on the interpretation of individuals.

If we follow this argument and grant some premises about rule-following which are not to be fully spelt out here, the extension, application, and interpretation of the rules must also be a matter of collective attitudes in order to save the collective character of collective acceptance. The symmetric and egalitarian relation of authority ascription must consequently be understood as also being *recursive*, for the agents in a group must accept each other not only as authorities regarding a specific rule, but also in regard to all rules which govern the interpretation and application of the first-level rule, and so on.⁵³

Obviously, the higher the level, the more extended will be the social group. Even if there is only a small group which collectively accepts a specific institution, the interpretation of the institutional rules will usually be governed by linguistic rules which are administrated by a much larger group, the group of all competent speakers of the relevant language.

⁵²Many institutions are, of course, not based on mutual authority ascription alone, but on a mixture of collective acceptance, rational calculation and coercive social pressure; but to the degree in which this is the case they deviate from pure institutional regulation towards individual adaption and to coercion – that is, social power in the wider sense.

⁵³There is an obvious resemblance to Haugeland’s and Brandom’s ideas. Cf. HAUGELAND, JOHN (1990): *The Intentionality All-Stars*; in: *Philosophical Perspectives*, 4, *Action Theory and Philosophy of Mind*, pp. 383–427, BRANDOM (1994): *Making it explicit.*, *ibid.*

Is this feature of recursivity too demanding? It seems counterintuitive to ascribe an infinity of relations to the members of a group. But if we remember that the acceptance of authority contains a counterfactual element, this is unproblematic. To accept the authority of another individual on an infinite number of questions means nothing else than to treat her reactions in a certain way *if one of these questions ever arises*. Because the question of authority only arises in factual challenges, this is no problem, since 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. And as far as questions of authority at higher levels tend to be decided according to more widely shared rules, even though the factual authority is group specific, we can imagine that challenges get less and less probable on each level.

This notion of a recursive, collective authority ascription could be said to be pragmatically equivalent to Gilbert’s idea of collective commitment, though it might still be conceptually different.⁵⁴

I want to call a constant disposition or readiness to participate in such a mutual relation of authority ascription “recognition”. Two persons recognize 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”, as it is well known, is historically rooted in the theories of Fichte and Hegel, but has been taken up recently also in analytic philosophy.⁵⁵ Even though the full scope of this idea cannot be spelt out here,⁵⁶ I want to argue that the specific understanding of “recognition” as mutual authority ascription in regard to a norm is useful to elucidate the character of institutions.

⁵⁴It avoids, however, the questions which have been raised against Gilbert’s account of collective beliefs. Believing a proposition is sufficient for accepting the truth of a proposition, but not the other way round. For the acceptance of sanctions, the specifics of belief are unimportant and Gilbert’s account is sufficient even if it were only sufficient to ground acceptance. cf. GILBERT (2002): ProtoSociology, *ibid.*; Additional support for this being a consequence of Gilbert’s understanding is to be found in her account of Hart’s concept of a social rule in GILBERT, MARGARET (1999): Social Rules: Some Problems for Hart’s Account, and an Alternative Proposal; in: Law and Philosophy, 18, pp. 141–171, where she (a) argues that one of the features of this concept is that it “gives group members a title to exert punitive pressure” (GILBERT (1999), *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” (GILBERT (1999), *ibid.*, p. 165). Consequently, collective commitment to a norm must give rise to a title to sanction.

⁵⁵For an example, see BRANDOM, ROBERT (2007b): The structure of desire and recognition; in: Philosophy and Social Criticism, 33, pp. 127–150

⁵⁶The concept of recognition in German idealism and also in the more recent debate both in the continental version around Axel Honneth’s work and in the more analytic version by Brandom and others is considerably wider and richer than the concept of recognition presented here. Especially, the idea in German idealism stemming from Fichte is that recognition is directed onto an other agent as a person in general, and not, as here, only in regard to a specific norm. Nevertheless, I hold, that especially the notion of recursive authority ascription could be able to provide insight into some central elements of the wider concept of recognition although I cannot argue here for this claim.

If we accept the recursive, symmetric acceptance of sanctions or the relation of recognition as the basic case of collective commitment, it is no longer a problem to say 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. 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, then we can legitimately say that the group collectively accepts these sanctions and thereby fulfills the pragmatic conditions of accepting a specific authority and consequently of constituting an institution.

Therefore, a norm is collectively accepted if the members of a group of agents recognize 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 prescribes the acceptance of the respective sanctions by this agent.

The final analysis of institutional power should therefore look similar to the following, shortened formulation:

Institutional power (recognition account): *An agent A has institutional power over a set of persons $B_1 \dots B_n$ if and only if those persons display a constant readiness or disposition to grant each other the recursive and symmetric authority to evaluate each other's behavior in regard to a norm which prescribes them to accept sanctions and evaluations of their behavior in regard to the normative consequences entailed by A's institutional status.*

As said in the beginning, this does not amount to the thesis that all power in institutions conforms to this ideal type of institutional power. Institutions often exert violence or noninstitutional power when they sanction people for their behavior in a way which is not accepted by these people. And such institutions are able to exert this noninstitutional power mostly by relying on agents who act on behalf of the institution because they themselves collectively accept the power of the institution to make them do so.

For example, if one country invades another, the members of its military will typically be able to force the citizens of the other country to change their behavior in various ways and thus exert considerable power upon them which they probably will not accept as legitimate. They will often resist commands and sanctions and thus make the question of whether the commands are successfully executed one of raw power or violence. The same holds for the actions of the state against the kind of criminals who do not only try to make exceptions from the law for themselves but who have a general disregard for the laws of

the state. In both cases, however, the state, with regard to its application of noninstitutional power, will rely on a set of agents in the military and the police over which it has institutional power because these individuals accept the power of other agents of the state to issue commands and to sanction them in the case of disobedience.

There is a lower boundary for the relation of institutional power to non-institutional power which depends on the degree to which those who accept the power of the state are able to control the technical means of violence. A state needs only a small population which accepts its power if this population is much more well-armed than everyone else, but an institution needs significantly more legitimacy if it is only accepted by individuals with no technical means of violence and if it faces well-armed opponents.

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 this institution.

By accepting other agents as entitled to evaluate their actions, individuals are thereby practically accepting norms which institute as having a certain normative status either the same interaction partners or other agents. The agents who are accepted as having this status are thereby entitled to do certain actions which will often include the entitlement to issue legitimate commands within a specific context.

Even though this account is referring 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 of institutional power is not something which can be added to generic power after the fact, so to speak, but something which essentially constitutes its character as 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 they should be accepted on moral or political grounds.

This account can capture the defining features of institutional power adequately. It can be used to distinguish between obedience and conformity according to the counterfactual question whether the agent would accept sanctions,

and this account does not require universal obedience. There is also a foundation for the conception of a type of authority which is not institutional, namely, the authority created by recognition. And this specific type of authority which I understand to be the most basic building block of all other types, provides the criterion according to which we can distinguish between constituting power and constitutive power, and this is the last social ontological question I will discuss.

On the one hand, we can see that everyone has a basic type of constituting power available to them, as everyone is able to enter into relations of recognition together with other people as far as they are willing to do so. Therefore, there is constitutive power available to an agent depending on whether there are other agents who are willing to recognize her in relation to any specific norms. And this kind of constitutive power is essentially in a tension with violence. We can imagine that there are situations where this basic type of constituting power is taken away from people, for example, if they are stigmatized as nonhuman. In these cases, there will not only be virtually no one who is willing to enter into relations of recognition with them, they might also lose the confidence and willingness to do so in the face of continuing discrimination. We can thus understand how the negation of the basic human character of persons is so much worse than all other violations of their rights, because it does not only deprive them of specific rights but of the possibility to have normative significance generally.⁵⁷

But beyond this basic capability of being a source of normative authority there are, of course, more sophisticated types of constitutive power. For example, there are institutions which confer onto specific persons not only authority in the sense that these persons have specific rights within this institution and the standing to sanction violations of the institutional rules, but also in the sense that it is 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 involved in conducting their business according to the rule of law, it is also collectively accepted that they are entitled to create, transform and abolish other social institutions. They can, for example, create markets where there have formerly been none, and they can abolish institutions.

But those higher-order forms of constitutive power are dependent on the previous existence of institutions and thus on the basic form of constitutive power which is created by recognition.

⁵⁷Cf. MARGALIT, AVISHAI (1996): *The Decent Society*; Cambridge (MA): Harvard University Press

8 Conclusion: A pragmatic analysis of institutions

If the notion of institutional power is analyzed in these terms, there are important conclusions to be drawn, two of which I will mention as a conclusion. The first one is of methodological significance to the social sciences and also to normative political philosophy. The second consequence concerns normative arguments about which kind of power should be considered as problematic.

The methodological significance of the model presented for this question is probably not hard to spot. If we understand power as being constituted through the collective acceptance of sanctions, and if we understand collective acceptance itself as being built up on symmetric, recursive authority ascriptions, the task of social science is to try and discover these phenomena in the everyday social reality of societies and to build theories about this.

It has been argued that power could be studied by looking at conflicts in a community and by analyzing who “wins” these conflicts more often.⁵⁸ That this method is insufficient should be clear from the arguments given above. That specific persons or groups in a society are more often successful in enforcing their agenda is not in itself a clear justification for the assertion that they are more powerful. It could be the case that there is in each specific case some contingent, but always a different factor intervening, that is, that these people just have more luck than others. Furthermore, conflicts should not be examined separate from but rather from within their social context. From the fact that an agent manages to take away the property of another, we can not infer that she is more powerful, as she might be punished afterwards. Therefore, we should look at the sanctions in a society and who is collectively accepted to sanction other people.

As institutional power is constituted by collective attitudes towards sanctioning power and by the attribution of standard authority towards such sanctions, we should look at the question who has such authority in a group if we want to study institutional power. For this, one has to look at behavior which is directed *at* sanctioning behavior as a *collective reaction*, for example, to successful and unsuccessful protests either against or in support of government intervention in society, to attitudes towards the law, and so on.

Furthermore, asymmetric and monopolistic distributions of normative power will rest on the collective acceptance of their legitimacy which, in turn, is constituted by the symmetric and recursive relation of recognition.

⁵⁸As the classic account of Dahl suggests. Cf. DAHL, ROBERT A. (1957): The Concept of Power; in: Behavioral Science, 2, Nr. 3, pp. 201–215

Since it is plausible that such symmetric and recursive authority will be displayed in empirical discourses about power, it follows that in respect to power relations one should not only look at the interaction between agents with different degrees of power. Rather, social scientists should also examine the discourses and interactions within groups by which they negotiate about their collective stance towards the legitimacy of specific power relations.

But there are types of instituted power, such as wealth, where the agents who are constrained by this power are either not aware that it is a form of institutional power, that is a form whose legitimacy they could in principle deny, or where it interlocks with other forms of power such that a one-sided negation of its legitimacy would be prohibitively costly for a single individual and could be only denied by collective action.

Additionally, the acceptance of institutional power is often not experienced as a conscious decision by those who in fact display this acceptance. Institutional power is often masked through hidden agenda-setting or through the limitation of viable alternatives to acceptance by making defection from an institutional arrangement prohibitively expensive.

Furthermore, beyond hiding the fact that it is up to its participants whether to accept institutional rules or not, people can also 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 overlook it. When analyzing power, a social scientist should therefore ask if the institutional rules are sometimes bent by power which is instituted through other rules which are not collectively accepted as applying to the respective issues, for example when the rule of law is systematically distorted by financial interests.

Finally, a third form of pathology is the interference of noninstitutional power with institutional power, for example, when people are physically prevented from voting or they lack the material resources to engage in the political process.

Therefore, the account of institutional power analyzed above is not only useful in terms of how it can guide practical research on power but also in that it is an ideal type of institutionality which can serve as a means for comparison. For it allows one to evaluate how noninstitutional power, that is, power which is not dependent on collective acceptance, interferes in the institutional process along the three dimensions of hiding the fact of acceptance, deceiving participants about the factual rules and exerting direct interference.

This points to the distinction which Hannah Arendt conceptualizes as the

opposition between violence and power.⁵⁹ Power is the result of collective action through which institutions are created — violence is the opposite, the disregard for the constitutive authority of individuals by mere force. But the results of both can sometimes be so similar that there is no empirical evidence for answering the question whether people display tacit acceptance or whether they just conform because of a perceived lack of alternatives.⁶⁰

This opposition is to be located on the level not of constituted but of constitutive power which is created by collective acceptance. While both institutional power and violence can operate empirically as the capacity to sanction people and thereby influence their behavior, violence is the disregard for the level of collective acceptance and thus for the mutual recognition of agents.

In the very conceptual idea 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, noninstitutional social power can persist in an amalgamation with institutional power created by collective acceptance, as it is the case in virtually every society, it is at the same time essentially in a tension with a social order based on mutual recognition.

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⁵⁹cf. again ARENDT (1970), *ibid.*

⁶⁰This means, however, that there is not a separate scientific use of the concept of power asides from its use in practical or evaluative contexts. Cf. Morriss' argument that power has no use in scientific explanation of social phenomena if science is understood in both an explanatory and predictive sense. (MORRISS (1987), *ibid.*, p. 43)

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