Can Constitutive Rules Guide Our Actions?

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1. According to Searle, who has introduced this term, constitutive rules are rules that make it possible to perform actions one could not perform if these rules did not exist (Searle 1969, 33f). One could not, e.g., score a goal in the game of soccer if the rules of soccer did not exist. Searle contrasts constitutive rules with regulative rules which prescribe how an action should be performed that can be performed independently of that rule. An example would be ‘Officers must wear ties at dinner’: Officers can eat dinner even if this rule does not exist. According to Searle, it seems natural to express constitutive rules in the form ‘Doing \( X \) in context \( C \) counts as doing \( Y \)’. E.g., ‘Kicking the ball across the goal-line counts as scoring a goal’ or ‘Moving chess-pieces across a chess-board in a certain way counts as playing chess’.\(^1\) So, in dealing with constitutive rules, we have to distinguish 1) a constituted action \( Y \), e.g., scoring a goal, 2) a constituting action \( X \), e.g., kicking the ball across the goal-line, and 3) a constitutive rule that connects these two actions. One can say both, albeit in different senses, that the constituting action \( X \) constitutes \( Y \) and that the constitutive rule ‘Doing \( X \) counts as doing \( Y \)’ constitutes \( Y \). The exact senses in which these two things can be said are to be discussed in this paper.

A second question to be discussed in this paper is whether constitutive rules can guide our actions. Searle has noted that it seems hard to violate constitutive rules since they do not seem to prescribe any course of action (Searle 1969, 41). Constitutive rules only determine what would count as doing \( Y \), but they neither commit nor entitle any agent to perform the action \( X \) or to perform the action \( Y \). For example, none of the rules of soccer commit the players to scoring a goal, nor to not scoring a goal. They say what would count as scoring a goal, but not what the players should do. As Glüer and Pagin (1999, 217f) have noted recently, this would have the consequence that constitutive rules cannot ground the meaning of linguistic utterances. This is because of the following minimal requirement for rules of language: In order to ground the meaning of an expression, rules have to classify some utterances as linguistically correct and others as incorrect. Since constitutive rules do not classify any course of action as correct or incorrect, they do not meet this requirement.

2. In this section of my paper, I am going to describe a first account of the way in which an action \( Y \) is constituted by an action \( X \) and argue that this account is adequate for

\(^1\) However, according to Searle, this cannot be regarded as a formal criterion because every rule can be “twisted” into this form (Searle 1969, 36).
some constituted actions like playing chess, but not for others like scoring a goal. The bulk of this paper will then be devoted to describing a second account of constitution that is adequate for actions like scoring a goal.

The first account of constitution starts from the observation that many actions are complex actions that are composed of several simpler actions. E.g., driving a car is composed of at least the simpler actions of steering, watching the traffic, and operating the gas and brake pedals. According to the first account of constitution, constitutive rules play the following role: They unite a number of simpler actions into a complex one and introduce a new name for that complex of actions. According to this account, constitutive rules in effect say that if certain actions $X$ are performed, the action-predicate $Y$ is applicable. So, these rules constitute a complex action in the sense that, without them, one would not call the different simple actions by a single name and one might not even see them as belonging to a single complex action. So, strictly speaking, rules of this kind do not make a difference to what we can do, but rather to the way we talk and think about certain actions. Accordingly, Searle remarks that constitutive rules “provide the basis for specifications of behavior which could not be given in the absence of the rules” (Searle 1969, 36, my emphasis) and that they are therefore almost tautological in character. So, according to this account, the actions that fill the $X$-slot in ‘Doing $X$ counts as doing $Y$’ constitute $Y$ in the sense that $Y$ is composed of them. And the constitutive rule constitutes the action $Y$ in the sense that it unifies several simpler actions and introduces a new name for them.

A further trait of the constitution of actions emerges when we consider the case of playing chess, which is often treated as a paradigm example of constitutive rules. The action of playing chess is a complex activity that is composed of moving chess-pieces across a board. For this complex action a new name is introduced by the following rule: ‘Moving chess-pieces across a chess-board in such and such a way counts as playing chess’. Now, the further trait present here is this: Unlike in the case of driving a car, the simple actions of which playing chess is composed are themselves subject to certain rules, namely the rules of chess. These rules determine in which ways the bishop, the king, etc. are allowed to move. Only when the chess-pieces are moved according to these rules, do these moves count as playing chess. So, there are two kinds of rules involved in playing chess: First, there are rules that determine which moves are allowed and second, there is a rule that says that a series of moves according to these rules counts as playing chess. Both kinds of rules have to exist if it is to be possible to play chess. The rules of chess have to exist because the complex action that fills the $X$-slot in ‘Doing $X$ counts as playing chess’ is defined with reference to these rules. If these rules did not exist, one could not even perform the simple actions of which playing chess is composed. Secondly, the rule ‘Moving chess-pieces according to the rules of chess counts as playing chess’ has to be in effect because otherwise one would not call this activity ‘playing chess’.

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2 By the rules of chess, I mean the rules that determine in what ways the chess-pieces are allowed to move.
I would now like to argue that this way of accounting for the constitution of actions is not adequate for the action of scoring a goal in soccer or scoring a touchdown in American football. First, it has to be conceded that in the case of scoring a goal, there is also a series of simpler actions, culminating in kicking the ball across the goal-line, for which a new name (scoring a goal) is introduced. It is also the case that these simpler actions are themselves subject to certain rules (e.g., ‘Do not touch the ball with your hands’). However, something more seems to be involved in the action of scoring a goal. This is also noticed by Searle:

And secondly, within systems the phrase which is the $Y$ term will not in general simply be a label. It will mark something that has consequences. Thus “offside”, “homerun”, “touchdown”, “check-mate” are not mere labels for the state of affairs that is specified by the $X$ term, but they introduce further consequences, by way of, e.g., penalties, points, and winning and loosing (Searle 1969, 36).

That the action of scoring a goal is somehow connected to certain further consequences is clear from the following consideration: kicking the ball across the goal-line will count as scoring a goal only if it is performed within a game of soccer. If this action is performed outside a game of soccer, for example in training, it will not be said that one has scored a goal. These two cases differ in the following way: Kicking the ball across the line within a game of soccer will have certain consequences with regard to winning and loosing, whereas no such consequences of kicking the ball across the line will be present if performed outside a game. So, actions like scoring a goal essentially involve certain further consequences. This feature of constituted actions cannot be made sense of by the account of constitutive rules presented above. According to that account, scoring a goal would simply be a complex action composed of simpler actions, which are themselves subject to certain rules, and for which a new name is introduced by a constitutive rule. So, for actions like scoring a goal, a different account of constitution has to be found. It is the primary aim of this paper to propose such an account.

3. In order to explain what is special about constituted actions like scoring a goal, I am going to draw on an article by Joseph Ransdell from 1971. According to Ransdell, constituted actions consist in modifying the normative situation, where the normative situation is conceived as consisting of all the commitments and entitlements that exist for a group of agents in a given situation. So, according to Ransdell, constituted actions consist in creating or altering commitments and entitlements to perform certain further actions. Ransdell uses baseball as an example to illustrate this point. In the case of baseball, the normative situation is quite complex because there are different positions in this game that are occupied by different players, such as the pitcher, the batter, the fielders, and

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3 Unfortunately, Searle does not attempt to explain the role of these ‘further consequences’ for the constitution of actions.
the runners. The rules of baseball specify different commitments and entitlements for the players that occupy these different positions. This means that, according to their position in the game, the players are committed and entitled to do different things. Now, this normative situation can be modified by certain moves in the game: For example, there is a rule in baseball, according to which the batter, when he has allowed four balls to pass, has to leave home base and go to first base. When this happens, it is said that the batter has been walked. He is then no longer the batter, but a runner at first base. This means that new commitments and entitlements arise for this player: He is no longer allowed to use a bat to hit the ball. Instead, he is allowed, and also expected to, try to reach second base, etc. Moreover, this change in the normative situation is what is essential to a batter being walked. So, the action of being walked, Ransdell concludes, consists in modifying the normative situation in the way just described.

Scoring a goal in soccer is another example of an action that consists in modifying the normative situation. In the game of soccer, the normative situation is much simpler than in baseball because, apart from the goalkeepers who may use their hands, each player has the same commitments and entitlements. Also, there are no moves in this game that have the effect of moving a player from one position to another. However, there still are some moves in this game that consist in modifying the normative situation, the most important of which is scoring a goal. When a player has kicked the ball across the goal-line, it is said that he has scored a goal, and the following commitments and entitlements arise for the players: The scoring team is entitled to one point and the opposing team is entitled to perform a kick-off from the middle of the field.4 Also in this case, the normative effects of the action are essential so that it can be said that scoring a goal consists in modifying the normative situation.

It is controversial whether illocutionary acts, for the analysis of which Searle introduced the concept ‘constitutive rule’, also consist in modifying the normative situation. For ‘official’ speech acts, this is clearly the case: When the judge sentences the defendant to five years in jail, this certainly modifies the normative situation for the defendant. Also, the intentions of the judge and the defendant are irrelevant for this speech act. In the case of more ordinary speech acts, however, it is not as clear that they consist in modifying the normative situation. I believe that they do, but in the end, this is not essential for my purpose here. My aim here is to analyze certain constituted actions like scoring a goal. Whether or not illocutionary acts turn out to be actions of the same sort, is another matter. Of course, if it should turn out that ordinary speech acts are not at least in part constituted actions in this sense, this notion would lose much of its interest for the philosophy of language.5

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4 Being entitled to a point has further normative consequences: At the end of the game, the team that has more points than the other receives the title ‘winner’ and is awarded a trophy.

5 Brandom’s speech act of an assertion seems to be a constituted action in this sense because making an assertion consists at least in part in “altering the deontic score”, and altering the deontic score just seems to be creating new or altering existing commitments and entitlements (cf. Brandom 1994, Ch. 2.3).
So, my first claim is that there are actions, like scoring a goal, that consist in modifying the normative situation. Next, I would like to show that actions that consist in modifying the normative situation are in a certain sense constituted by rules. In order to do this, I would first like to draw attention to a certain structure that many actions exhibit, and which, I believe, is also present in actions like scoring a goal. I am going to explain this structure using the example of turning on the light. When I turn on the light, I normally do this by performing a smaller action, namely flipping the switch. Because of the laws of physics, my flipping the switch brings it about that I turn on the light. The action of turning on the light may then have further consequences, such as alerting the prowler. So, three elements can be distinguished within this structure: The action itself (turning on the light), the smaller action by means of which I perform the action itself (flipping the switch), and further consequences of the action itself. Finally, the connection between the smaller action and the action itself is important: It is in this case provided by the laws of physics.

Furthermore, it is important that the agent acts for the sake of turning on the light and not for the sake of flipping the switch or for the sake of alerting the prowler. Only then will it seem natural to describe this action as turning on the light, and not as flipping the switch or as alerting the prowler. When, on the other hand, I flip the switch for its own sake, just because I happen to enjoy it, it would be inappropriate to describe my action as turning on the light, even if it has that consequence, because I would have flipped the switch even if it did not have that consequence. Also, if I were to turn on the light in order to alert the prowler, it would seem wrong to describe my action simply as turning on the light. One would rather say that I alerted the prowler by turning on the light. So, when an action exhibits the structure just described – I perform a smaller action, not for its own sake, but for the sake of bringing about a certain consequence – it seems most natural to describe the action simply as bringing about this consequence.

We have seen that many actions exhibit the following structure: 1) They consist in bringing about a certain event, 2) this is done by means of performing a smaller action, and 3) the connection between the smaller action and the event to be brought about is provided by the laws of physics. So, for this structure of actions, it is crucial that actions can cause physical events according to the laws of physics. Next, I would like to argue that actions not only have physical consequences, but that they can also have normative consequences, i.e., that an action can have the consequence that certain agents become committed or entitled to perform certain further actions.

In order to explain how an action can have the consequence of modifying the normative situation, I will make use of von Wright’s concept ‘prescription’, which is one species of the more general concept ‘norm’. Von Wright distinguishes three general kinds
of norms, namely rules, prescriptions, and directives (von Wright 1963, 15). Rules are constitutive rules in the sense that has been described above. Von Wright notes that rules are neither descriptive nor prescriptive, but rather determine how a certain action, like playing a game or speaking, is carried out. Secondly, directives, or technical norms, are “concerned with the means to be used for the sake of attaining a certain end” (von Wright 1963, 9). Finally, prescriptions are norms stating that a certain action ought to be performed. There are two kinds of prescriptions, first, prescriptions in the narrow sense, and second, customs. While prescriptions in the narrow sense are issued by an authority, and thus have to be given a more or less explicit formulation, no such authority is needed in the case of customs. The difference between prescriptions in the narrow sense and customs is not relevant here. It is important, however, that prescriptions, i.e., both prescriptions in the narrow sense and customs, exhibit the following general form: ‘If condition \( C \) obtains, action \( A \) should be performed’. A prescription always requires that a certain condition \( C \) be fulfilled and asserts that in this case certain commitments and entitlements obtain. There are always certain conditions under which a prescription is applicable and there are always certain actions that in this case may be or should be performed. In the case of customs, we often cannot state exactly which conditions are required or exactly which actions the custom commits or entitles agents to. However, there still have to be some conditions and some commitments that are connected hypothetically by a custom.

Now, with regard to the condition \( C \) that is required by a prescription, two cases can be distinguished. 1) \( C \) can be the condition that a certain state of affairs obtains, as in the prescription, ‘When a phone call has been cut off, the original caller should try again and the other person should wait’. 2) \( C \) can be the condition that a certain action be performed in a certain context, as in the prescription, ‘When you enter a church, you should take off your hat’, or, ‘When you eat dinner, you should wear a tie’.

This second possibility is the one that is relevant here. When prescriptions of this kind concerning the performance of an action obtain, the action will not only have physical and psychological consequences, but also normative consequences. E.g., we may assume that entering a church has certain psychological consequences either on the agent himself or on others. However, because of the prescription mentioned above, this action also has the consequence of committing the agent to take off his hat. This is a commitment the agent did not have before he entered the church and that arose because of his entering the church. To give another example: Suppose that there is a prescription that everybody has to stand up when the king enters the room. Then the king’s action of entering the room will have the normative consequence of committing those present to stand up. So, we can distinguish two kinds of consequences of an action: 1) physical and psychological consequences, which obtain independently of prescriptions, and 2) normative consequences, which depend on prescriptions.

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6 According to von Wright’s definition, prescriptions always state that certain commitments obtain under certain conditions, but never that certain entitlements obtain. In my view, however, entitlements are reducible to commitments (cf. von Wright’s discussion, p. 85–92).
I have argued that in the case of many actions, the following structure can be discerned: A smaller action is performed, not for its own sake, but for the sake of its consequence of bringing about a certain event. This event can then have further consequences. The same structure, I now want to claim, is present in constituted actions like scoring a goal. Also in this case, a smaller action is performed, namely, kicking the ball across the goal-line. This action, moreover, is not performed for its own sake, but for the sake of its normative consequences which are characteristic of scoring a goal. So, in this case, scoring a goal is the action itself. It consists in the modification of the normative situation, and this modification is brought about by the smaller action of kicking the ball across the goal-line. The only difference from the case of turning on the light is that, here, the connection between the smaller action and the action itself is not provided by the laws of physics, but by a certain prescription, namely, ‘When a player kicks the ball across the goal-line, his team is entitled to one point and the opposing team is entitled to perform a kick-off.’ Because of this prescription, the smaller action has the consequence of bringing about the action of scoring a goal. Here, it is crucial that scoring a goal consists in modifying the normative situation in a certain way. Otherwise, the action of kicking the ball across the line and the action of scoring a goal could not be connected by the prescription just mentioned.

When discussing the structure of actions like turning on the light, I pointed out that it is important that the smaller action is performed not for its own sake, but for the sake of performing the action itself. Otherwise, it would not be appropriate to describe the action as, for example, turning on the light. The same is true for the action of scoring a goal: The smaller action, i.e., kicking the ball across the goal-line, is not always performed for its normative consequences. Sometimes people kick a ball across the goal-line outside a game of soccer, for example in training. In this case, the normative consequences characteristic of scoring a goal do not arise. Rather, the action of kicking the ball across the line is carried out in order to improve one’s skill. Correspondingly, one would in such a case be reluctant to say that the agent has scored a goal.

It should also be noted that the normative consequences of actions are not only involved in connecting a smaller action to an action itself, but can also be involved in connecting further consequences to an action. E.g., the king’s action of entering the room has the normative consequence of committing everyone present to stand up. However, one would not say that the king’s entering the room is a smaller action he performed in order to commit others to stand up. That everybody has to stand up is just a side-effect of the king’s action. So here, the normative consequences of the king’s action should be counted as further consequences of his action. This shows that, when an action has normative consequences, this does not automatically mean that one can speak of a constituted action. It is also required that the action is performed for the sake of these normative consequences.
I have tried to make plausible the following theses about constituted actions such as scoring a goal: A constituted action is an action that consists in modifying the normative situation. It is an action that is performed by means of performing a smaller action. This smaller action is not performed for its own sake or for the sake of its physical and psychological consequences, but rather for the sake of its normative consequences. The structure of constituted actions is thus the same as the structure of actions such as turning on the light. The only difference is that the connection between the smaller action and the action itself is not provided by the laws of physics, but by a prescription.

Now it is easy to see how the concept ‘constitutive rule’ should be defined. A constitutive rule is a prescription that plays a certain role within the action-structure described in this paper: It connects a smaller action with an action itself, which consists in bringing about certain normative consequences. In order to fill this role, constitutive rules have to be prescriptions that require in their antecedent-clause that a certain action has been performed in a certain context, and that state in their consequent-clause that then certain commitments or entitlements to perform further actions arise. By virtue of such a prescription, it can be said that the action mentioned in the antecedent-clause has certain normative consequences. Moreover, the action required by the antecedent-clause has to be one that will not normally be carried out for its own sake or for the sake of its physical or psychological consequences. It rather has to be an action that is normally carried out for the sake of its normative consequences.

According to this account of the constitution of actions, the action that fills the $X$-slot in ‘Doing $X$ counts as doing $Y$’ constitutes the action $Y$ in the sense that it is the smaller action by means of which $Y$ is performed. We can thus connect the terminology of ‘smaller action’ vs. ‘action itself’ with the one of ‘constituting action’ vs. ‘constituted action’: The constituted action, e.g., scoring a goal, is the action itself, and the constituting action, e.g., kicking the ball, is the smaller action by means of which the action itself is performed.

So, in my view, two notions of constitution have to be distinguished. On the one hand, an action can be constituted in the sense that it is composed of several simpler actions. In this case, the constitutive rule unites these simpler actions and introduces a new name for them. On the other hand, an action can be constituted in the sense that it consists in modifying the normative situation and that this modification is achieved via certain prescriptions. Playing chess is a constituted action in the first sense, but not in the second sense. Scoring a goal is a constituted action in the second sense.

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7 However, certain moves within the game of chess seem to be constituted actions in the second sense: When a player checks the other player's king he creates a commitment for him to move his king so that he is no longer checked.
Finally, I would like to reconsider the question of whether constitutive rules can guide our actions. Here, we have to distinguish between the two senses of constitution. When constitutive rules are understood as rules that simply introduce a new name for a complex activity, it has to be concluded that rules of this kind do not prescribe any course of action and thus cannot be violated. So, we have to conclude with Glüer and Pagin that constitutive rules of this kind cannot serve to ground linguistic meaning.

However, when we consider the account of constitutive rules proposed in this paper, it seems that constitutive rules can guide our actions. According to this second account, constitutive rules can be identified with certain prescriptions. Of course, the prescription that serves to constitute an action does not prescribe to perform this action. For example, the rule of soccer which constitutes the act of scoring a goal does neither commit players to score goals nor not to score goals. However, this does not mean that this rule does not commit players to any course of action whatsoever. If a player has kicked the ball across the goal-line and other relevant conditions obtain, then certain subsequent behavior is obligatory, in this case letting the opposing team perform a kick-off. So, constitutive rules permit certain courses of action and rule out others, but only courses of action subsequent to the performance of the action \( X \) required by the constitutive rule. In fact, the constituted action precisely consists in bringing forth these commitments and entitlements.

This means that the problem raised by Glüer and Pagin can be answered in a preliminary way. Their argument against constitutive rules as rules of language rests on the premise that constitutive rules do not commit speakers to a certain way of using an expression. This premise is not true on the account of constitutive rules proposed here. Suppose a constitutive rule concerning a speech act exists, for example the prescription that constitutes the act of promising. Making a promise consists in modifying the normative situation, more precisely, in creating a commitment for oneself to perform a certain action. The smaller action by means of which this is done consists in uttering the words ‘I promise …’. Correspondingly, the action of promising is constituted by the following prescription: ‘When a speaker \( S \) utters the words ‘I promise to do \( p \)’ and other conditions obtain, then \( S \) is committed to do \( p \)’. A prescription of this kind prescribes a subsequent course of action for a speaker who has uttered the words ‘I promise …’ under certain conditions. So, the prescriptions with which constitutive rules can be identified determine a specific course of action subsequent to the performance of a speech act.

However, it might be argued that prescriptions that determine which further linguistic or non-linguistic actions have to be performed after a certain utterance has been made are not sufficient to ground the linguistic meaning of utterances. It might be argued that, in order to ground linguistic meaning, prescriptions are required that determine under what circumstances one should or should not perform a speech act in the first place. My view is that it would be wrong to argue in this way, i.e., I think that constitutive rules are sufficient to ground linguistic meaning. However, I do not have time to argue this here.
References