

## The norm of assertion: a 'constitutive' rule?

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### ABSTRACT

According to an influential hypothesis, the speech act of assertion is subject to a single 'constitutive' rule, that takes the form: 'One must: assert that p only if p has C'. Scholars working on assertion interpret the assumption that this rule is 'constitutive' in different ways. This disagreement, often unacknowledged, threatens the foundations of the philosophical debate on assertion. This paper reviews different interpretations of the claim that assertion is governed by a constitutive rule. It argues that once we understand the full import of assuming that assertion is governed by a constitutive rule, it becomes clear that some fundamental assumptions of the current debate are mistaken, and others unwarranted.

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### 1. Williamson's hypothesis

What is the norm<sup>1</sup> of assertion? Timothy Williamson's 'Assertion' (1996, revised in 2000) has sparked a lively philosophical debate over this question. The debate originated from a simple hypothesis (Williamson 2000, 241):

#### WILLIAMSON'S HYPOTHESIS

What are the rules of assertion? An attractively simple suggestion is this. There is just one [constitutive] rule. Where C is a property of propositions, the rule says: (The C-rule) • One must: assert p only if p has C.

WILLIAMSON'S HYPOTHESIS is that there is a *single* rule regulating every act of assertion, requiring the asserted proposition to have a particular property C. This rule is the unique norm that is constitutive of assertion, and it *individuates* this speech act (it sets assertions apart from other speech acts). To

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<sup>1</sup>In the paper, I will treat 'rules' and 'norms' as synonymous.

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specify the norm of assertion, one needs to identify property C. This raises the question that animates the debate: which property is C?

WILLIAMSON'S ANSWER is that C is the property of *being known by the assertor*. In other words, assertion is governed by the norm that one should not assert what one does not know to be true:

WILLIAMSON'S ANSWER: THE KNOWLEDGE-RULE

(KR): "You must: assert that p only if you know that p".

A number of philosophers have found KR a convincing answer (e.g. DeRose 2002; Hawthorne 2004; Benton 2011). However, the debate is far from settled, and Williamson's position has elicited a number of critical responses. One could roughly divide these critical reactions into two categories.

The first comprises those who accept WILLIAMSON'S HYPOTHESIS, but refuse WILLIAMSON'S ANSWER in favour of a different one, i.e. an alternative account of what property C is. For instance, some maintain that a warranted assertion requires instead the truth of the proposition (Weiner 2005; Whiting 2012), or some relevant reason to believe it (Douven 2006; Lackey 2007; Kvanvig 2009; Marsili 2018).

The second category comprises those who reject or challenge WILLIAMSON'S HYPOTHESIS, either in part or as a whole. Some philosophers (Brown 2008; Carter 2015; Carter and Gordon 2011; Gerken 2014; Marsili 2015; McKenna 2015) reject the assumption that there is only one norm of assertion. Others have argued that assertion is not constituted by a rule of this kind (Hindriks 2007; Maitra 2011; McCammon 2014, 137–9; Marsili 2015, 120–1; Black 2018; cf. also Pagin 2016; Kelp and Simion 2018), sometimes even going so far as to claim that there is no such thing as an 'assertion-game' to which the putative rule applies (Cappelen 2011).

In this paper, I put forward a criticism that belongs to the second category. After showing that Williamson's notion of 'constitutive rule' departs significantly from the orthodox understanding of what a constitutive rule is, I examine the extent and consequences of this departure. I argue that the revised notion of 'constitutive rule' is open to slightly different interpretations, and that different authors writing on the norm of assertion problematically adopt different ones. After considering some competing ways to make sense of the claim that norm is constitutive, I show that no coherent interpretation is compatible with the project initiated by Williamson. I conclude that we are better off abandoning the misleading claim that assertion is governed by a 'constitutive' norm.

## 2. The orthodox account of constitutive norms

Williamson claims that the norm of assertion is a *constitutive* rule: '[My] paper aims to identify the constitutive rule(s) of assertion, conceived by analogy with the rules of a game. [...] Henceforth, "rule" will mean constitutive rule' (1996, 489–90). The notion of 'constitutive rule' is widely employed across a range of different philosophical subjects, 'as diverse as philosophy of language, philosophy of law, and most recently artificial intelligence' (Hindriks 2009, 254), and is especially central in speech act theory and social ontology. Authors employing this notion rarely call into question the *orthodox account*: an influential account of norms that was developed by Searle (1964, 1969, 1995) as a refinement of previous accounts<sup>2</sup>, which progressively became the received view in these disciplines. In this section, I will cover the orthodox account; in the next one, I will move on to Williamson's.

On the orthodox view, constitutive rules are defined in opposition to *regulative rules*. Regulative rules track our ordinary understanding of what a rule is: an imperative that serves as a 'guide, or as a maxim, or as a generalization from experience' (Rawls 1955, 24). These rules can be violated (it is possible to disobey the rule), but transgressors are *prima facie susceptible* to criticism (or sanctions) for violating the rule. Given their directive function, regulative rules 'characteristically have the form or can be comfortably paraphrased [as imperatives] of the form "Do X" or "If Y do X"' (Searle 1969, 33). For instance, 'Do not chew with your mouth open', or 'if the traffic light turns red, vehicles must stop'.

Constitutive rules differ from regulative rules in several ways. A first distinctive difference is that they are more like definitions than commands. This is because they do not set obligations; rather, they define what it is to engage in a particular institutional practice:

Regulative rules regulate antecedently or independently existing forms of behaviour [...]. But constitutive rules do not merely regulate, they create or define new forms of behaviour. The rules of football or chess, for example [...] create the very possibility of playing such games. Searle (1969, 33)

Constitutive rules can be phrased as 'count-as' locutions: 'X counts as Y-ing in C' (1969, 33). For instance, the constitutive rule of 'checkmating' can be expressed as follows: 'attacking the king in such a way that no move will

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<sup>2</sup>The distinction was first introduced by Polish philosopher Znamierowski (1921), who contrasts 'coercive norms' (*normy koercyjne*, corresponding to regulative rules) with 'constructive norms' (*normy konstrukcyjne*, corresponding to constitutive ones). Other precursors include Reinach (1983), Midgley (1949), and Rawls (1955). For a more comprehensive historical overview, see Conte (1984, 1986 or 1991).

leave it unattacked counts as checkmate in the game of chess'. The 'definitional' (rather than imperative) character of constitutive rules reflects their 'performative' function: they establish institutional practices by defining them (Searle 1995).

A consequence of the non-imperative character of constitutive rules is that while regulative rules can be disobeyed, constitutive rules cannot: 'it is not easy to see how one could even violate the rule as to what constitutes checkmate in chess, or a [goal] in football' (Searle 1969, 41). To fail to comply with a constitutive rule is simply to fail to engage in the activity subject to that rule: for instance, checkmating the opponent 'incorrectly' simply amounts to a failure to checkmate.

To sum up (see table below), the orthodox account claims that: (1) constitutive rules establish the practices they regulate, while regulative rules regulate pre-existing practices; (2) given their nature, constitutive rules cannot be violated, while regulative rules can; (3) constitutive rules can be easily formulated as count-as locutions, while regulative rules generally take the form of imperatives.

#	CONSTITUTIVE RULES	#	REGULATIVE RULES
C1	Establish (define) the practices they regulate	R1	Regulate pre-existing practices
C2	Cannot be 'properly' violated	R2	Can be violated
C3	Typically take the form of 'count-as' locutions	R3	Typically take the form of imperatives

### 3. Williamson on constitutive norms

In presenting his account of constitutive rules, Williamson significantly departs from the orthodox understanding of constitutive rules: his analysis clashes with (C2) and (C3).<sup>3</sup> Since this difference is rarely acknowledged in the literature, it is worth pointing out that Williamson himself fails to mention it: on the contrary, he presents the proposed interpretation as uncontroversial ('we have at least a crude conception of constitutive rules ...' 2000, 239) and in line with the tradition.

Williamson refuses to commit himself to a particular definition of constitutive rules by stating that he will make 'no attempt [...] to define "rule"' (2000, 239). Nevertheless, he gives a necessary but not sufficient

<sup>3</sup>Note that the aim of this paper is to highlight differences between Williamson's account of rules and the orthodox one, and to try to bring clarity to the former view. My critical discussion of Williamson's position should not be taken to imply that the orthodox view is free of error. Objections to the orthodox framework have been presented by Ransdell (1971), Schwyzer (1969), Cherry (1973), Garcia (1987), Ruben (1997) and Hindriks (2009). Even though I am sympathetic to Hindriks's (2009) proposed refinement of the regulative/constitutive distinction, for the purpose of this paper (which is, again, to contrast Williamson's view with the orthodox one) I will adopt a traditional understanding of the opposition.

condition for being a constitutive rule: 'A rule will count as constitutive of an act only if it is essential to that act: necessarily, the rule governs every performance of the act' (2000, 239). A core tenet of this view is that, if a rule is constitutive of an act, it is *essential* to it. Being 'essential to' an act, in turn, means that the rule *necessarily* governs that act (rather than contingently). The claim here is that the speech act of assertion could not have possibly been governed by another norm, and it could not exist if the C-rule was not in place (cf. Pagin 2015: §6.2, 2016, 184–5). This comes close to condition (C1) of the orthodox characterisation of constitutive rules: under both conceptions, constitutive rules are essential to the practices that they regulate.

Williamson's conception of constitutive rules, however, departs from orthodoxy with respect to (C2) and (C3). Against (C3), he maintains that constitutive rules typically take an *imperative* form: in other words, he takes them to possess the regulative property (R3) rather than the constitutive property (C3) (cf. Maitra 2011, 280–4; Hindriks 2007, 396). He argues that constitutive rules characteristically put an agent under an obligation: "'must" expresses the kind of obligation characteristic of constitutive rules'. He phrases the C-rule in an imperative form: 'In the imperative, assert p only if p has C' (2000, 241).

Against (C2), Williamson claims that constitutive rules 'do not lay down necessary conditions for performing the constituted act'. Consequently, satisfying the constitutive rule of assertion is not necessary for asserting: 'when one breaks a rule of assertion, one does not thereby fail to make an assertion' (2000, 240). More generally, one can  $\varphi$  without satisfying the constitutive rule of  $\varphi$ -ing. Hence, failing to satisfy the rule involves being liable to criticism, rather than not asserting. By contrast, on the orthodox view an infraction of a constitutive rule amounts to not  $\varphi$ -ing, rather than  $\varphi$ -ing inappropriately. Again, the proposed view is rather in line with the corresponding regulative property (R2).

Williamson's departure from the orthodox conception raises some serious interpretative concerns with respect to the abundant literature on the norm of assertion. On the one hand, Williamson attributes characteristically regulative properties (R2, R3) to the C-rule instead of the corresponding constitutive properties (C2, C3), so that the rule is not taken to be constitutive in the traditional sense (as pointed out by Hindriks 2007, 396; McCammon 2014, 137–9; cf. also Maitra 2011). On the other hand, several authors take the C-rule to stand out as the constitutive norm of assertion, in the customary sense (e.g. García-Carpintero 2004, 143, 2018, 4; Rescorla 2007, 253, 2009, 99; Turri 2013, 281).

It would be wrong to dismiss this as a mere verbal dispute, where authors simply disagree on how to use the term 'constitutive'. On the one hand, there is no *acknowledged* disagreement – very few authors seem to have noticed that the term is used in radically different ways (Hindriks 2007, 396; McCammon 2014, 137–9; Kauppinen 2018, 12fn are exceptions). On the other hand (and more importantly), the underlying disagreement is not merely verbal: different understandings of what the term 'constitutive' means result in incompatible understandings of what WILLIAMSON'S HYPOTHESIS is about. To wit, if the C-rule constitutes assertion in the orthodox sense, it *cannot* be violated while still asserting; but if it regulates assertion in Williamson's sense, it *can* be violated while still asserting. Rather than explicitly disagreeing about how the term 'constitutive' should be used, philosophers are endorsing incompatible interpretations of WILLIAMSON'S HYPOTHESIS, without acknowledging that these interpretations are incompatible. And this threatens to undermine the foundations of the philosophical debate on the norm of assertion: if there is no consensus about what 'constitutive' means, different authors can (and do) mean different things when they write about the 'constitutive' norm of assertion, effectively talking past each other.

This paper aims to bring clarity back into the debate. But solving this disagreement is not as simple as reaffirming what I have already stated, namely that Williamson interprets the notion in a novel way, as possessing properties (C1\*, R2, R3). In the course of this essay, I will show that this solution is also problematic, because it renders the claim that the norm of assertion is 'constitutive' of little or no significance. Before entering the details of the pros and cons of each account, however, I want to introduce in more detail both proposed interpretations.

In the next section, I will interpret the C-rule as an orthodoxly constitutive rule that possesses some regulative features (R2, R3); in the subsequent one, as a regulative rule that possesses the constitutive feature (C1\*) instead of (R1). Both attempts will prove problematic and incompatible with the desiderata underlying WILLIAMSON'S HYPOTHESIS. I will conclude that the problem rather lies in the HYPOTHESIS: while assertion is arguably subject to a norm taking the form of the C-rule, this norm is not constitutive of assertion in any sense that is meaningful for the debate (§5).

## 4. The C-rule as a constitutive rule

### 4.1. Phrasing the C-rule as orthodoxly constitutive

A first strategy to make sense of the claim that the norm is ‘constitutive’ is to interpret the C-rule as a constitutive rule, on the orthodox understanding (García-Carpintero 2004, 143, 2018:4; Rescorla 2007, 253, 2009, 99; Turri 2013, 281; cf. also Maitra 2011, 283–4; Goldberg 2015:§1). Can we show that there is a sense in which this interpretation is compatible with WILLIAMSON’S HYPOTHESIS? The first difficulty is that, according to the HYPOTHESIS, the C-rule rather takes a regulative form:

(A1) One must: assert that  $p$  only if  $p$  has C

To treat (A1) as a constitutive norm, perhaps we could rewrite it as follows:

(A1\*) One asserts that  $p$  only if  $p$  has C

(A1\*) satisfies (C1), (C2), and (C3), so that it is a constitutive reading of (A1). However, (A1\*) is clearly not a plausible rephrasing, at least not in a sense relevant for the debate. In fact, most authors want to claim that property C is a property like K: ‘being *known* by the speaker’, or B: ‘being *believed* by the speaker’. But if  $C = K$ , or  $C = B$ , then saying what you do not know, or what you do not believe, is not asserting – a possibility explicitly denied by Williamson (2000: 240; see also Koethe 2009, 628).

To turn (A1) into a constitutive norm, one needs a rephrasing that satisfies (C1), (C2) and (C3) and that acknowledges the existence of assertions without property C. Such a rephrasing could take the following form:

(A2) One asserts that  $p$  iff in asserting  $p$ , one is subject to the obligation that  $p$  must have C<sup>4</sup>

This formulation satisfies our desiderata, but it contains a circular element, as assertion figures on both sides of the biconditional. To avoid this worry, the right leg of the biconditional can be rephrased so as to avoid any reference to assertions (see also Reiland 2019):

(A3) One asserts that  $p$  iff in saying  $p$ , one is subject to the obligation that  $p$  must have C

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<sup>4</sup>This introduces the requirement that  $p$  be said; the purpose of this extra requirement to avoid that presuppositions and implicatures are counted as assertions (cf. Alston 2007:24–5; Pagin 2015:§2.2). I use the biconditional ‘iff’ (in place of the conditional ‘only if’) to incorporate Williamson’s claim that the rule regulates *only* assertion, and thus individuates it. For a more orthodox phrasing involving a ‘count as’ locution, cf. footnote 5. Goldberg (2015, 25) endorses a version of (A2) in which the *definiendum* is restricted to warranted assertions: the ‘constitutive rule tells us that something is [...] a warranted assertion iff condition C is satisfied’.

Now, (A3) differs significantly from the formulation (A1) originally found in Williamson, so that it represents a substantive amendment of his view. Nonetheless, there seem to be strong reasons to prefer this reading, as it appears to meet all the desiderata of the orthodox conception. Consistently with (C1), it *defines* the practice of assertion by declaring what it is to engage in that practice: it is to be *subject to* the obligation that what is said must have C. Consistently with (C2), it cannot be disobeyed: if one is not subject to the obligation that *p* has C, one is simply not asserting. And, consistently with (C3), it can be phrased as a count-as locution.<sup>5</sup> Moreover, it allows for the existence of assertions that do not have property C, thus avoiding the problem of (A1\*).

#### 4.2. Treating two rules as one

Despite its appeal, there is patently something wrong with the envisaged reconciliation between the orthodox view and Williamson's: the orthodox interpretation of 'constitutive norm' requires (C2) and (C3) to be satisfied, and this is inconsistent with Williamson's understanding of the C-rule, that *rejects* (C2) and (C3) in favour of (R2) and (R3). No consistent conception of a rule can meet both requirements, because requirements (C2) and (R2), and (C3) and (R3), are mutually exclusive: (R2) allows for violations of the norm that are still assertions, while (C2) does not; (R3) takes the rule to be akin to an imperative, while (C3) does not.

Here is a possible reply. Even if (A3) as a whole cannot be violated in asserting, there is a sense in which (A3) expresses an obligation that can be violated: (A3) states that a proposition should be asserted only if it has property C. It is then possible to state a proposition that does not possess property C while still asserting. This shows that (A3) possesses not only constitutive features (C1-3) as shown in the previous section, but also regulative features (R2-3) – meeting the requirements of both the orthodox and the Williamsonian notion of constitutive rules.

Though appealing, this reply rests on a mistake in interpreting WILLIAMSON'S HYPOTHESIS (possibly a common one in the relevant literature): on this reading, two rules are treated as one. This is because (A3) is a rule about another rule: it is a constitutive rule that states that if you assert, you are

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<sup>5</sup>Here is a possible translation of (A3) (with reasonable approximation) into a count-as locution:

(A3') Being subject to the obligation to that *p* must have C in virtue of saying *p* counts as asserting that *p*

I will prefer phrasing (A3) as (A3') is more complex, and would require a lengthier discussion.



subject to another rule, a regulative rule, (A1). To show this, (A3) can be paraphrased as:

(A3\*) One asserts that  $p$  iff in saying  $p$ , one is subject to rule (A1)

Where (A1) is:

(A1) One must: assert that  $p$  only if  $p$  has C

It is now apparent that (A3) does not possess both regulative and constitutive properties. To claim that (A3) possesses both regulative and constitutive features is to conflate (A3)'s properties and (A1)'s properties. This is a mistake, as (A3) and (A1) are different rules with different properties. (A3) is a definition of assertion and cannot be violated, while (A1) is an imperative and can be violated; the former is a constitutive rule in the traditional sense, the latter is not. The regulative reading (A1) is the original formulation introduced by the WILLIAMSON'S HYPOTHESIS, and hence consistent with it. The 'constitutive' reading (A3), by contrast, is not compatible with WILLIAMSON'S HYPOTHESIS, as it does not allow for violations that are still assertions. Scholars who claim that the C-rule is constitutive in the orthodox sense are therefore mistaken, because they incorrectly take (A3) to be equivalent to (A1).

Importantly, saying that (A3) is not the C-rule mentioned in the HYPOTHESIS falls short of claiming that (A3) is false. Even if (A3) is not the C-rule of assertion, it is a plausible definition of assertion *in terms* of its rule – that is, the C-rule, (A1). This definitional reading is compatible with the HYPOTHESIS, and it illustrates one of Williamson's claims: that assertions can be defined as all and only the sayings that are subject to the C-rule (Williamson 2000, 241; cf. also Goldberg 2015, 25; Johnson 2018, 52). Furthermore, (A3) entails that (A1) regulates assertion – so that there is still an important sense in which (A3) establishes that asserting  $p$  is proper only if  $p$  has C. But this is not yet to say that (A3) is *the* constitutive norm of assertion, as defined by WILLIAMSON'S HYPOTHESIS. This claim is simply incorrect: despite their important connections, (A3) and (A1) are not equivalent, and belong to different kinds of rules. In sum, there is an important difference between the norm of assertion identified by Williamson, (A1), and the definition of assertion in terms of its norm, (A3).

Now that these distinctions are clear, in the next section I will review interpretations that construe the norm of assertion as an orthodoxly regulative rule possessing some salient 'constitutive' features.

## 5. The C-rule as a regulative rule

In claiming that constitutive rules possess orthodoxly regulative properties (R2, R3), Williamson seems to treat constitutive rules as (orthodoxly) regulative. Hindriks (2007, 396) draws the same conclusion from considerations similar to mine (cf. also Maitra 2011, 28f; McCammon 2014, 137–9; Kauppinen 2018, 12fn):

In spite of the fact that Williamson invokes the analogy with games, the knowledge rule cannot be a constitutive rule [...]. Constitutive rules specify (non-normative or descriptive) requirements an entity such as an action has to have in order to constitute another entity. [...] A related problem regarding the knowledge rule as a [...] constitutive rule is that [the rule] is a directive rather than (merely) a specification: it forbids assertions that do not express knowledge. Thus, instead of a constitutive rule, the knowledge rule is a regulative rule.

Nevertheless, there are good reasons to resist the conclusion that the term ‘constitutive rule’ is used to refer to a plainly regulative rule. First, it seems unreasonable to redefine the traditional notion of constitutive rule so that it is equivalent to its *complementary notion*, without even acknowledging this intention, and it would be uncharitable to attribute to Williamson this intention. Second, and relatedly, this interpretation diverges from how the majority of philosophers interpret the claim. Many authors either do not acknowledge that the norm is in fact orthodoxly regulative, or explicitly claim (Pagin 2015: §6.2, García-Carpintero 2004:143, 2018:4,13) that it is not. Rather than claiming that most authors are mistaken in their interpretation of the notion, it would be better to find an interpretation of the norm in the light of which it is possible to make sense of the existing debate.

### 5.1. Pollock’s paradigm: ‘prescriptive’ constitutive rules

A better prospect is to interpret the norm of assertion as a third kind of rule: a regulative rule that possesses some salient features of constitutive rules. After all, Williamson defines constitutive rules as possessing a feature (C1) of constitutive rules (revised as (C1\*)) and features (R2, R3) of regulative rules.

Pollock (1982) has explicitly argued in favour of extending the label of ‘constitutive’ to those orthodoxly regulative rules that are *essential* to the practices that they regulate. Pollock notes that these rules are such that ‘to eliminate [them] would be to profoundly alter the nature of games’, so that they belong to ‘the rules that *constitute* the nature of [those games]’, and hence ‘must be regarded as constitutive’ (1982, 212–213, italics mine). He

consequently distinguishes two kinds of constitutive rules: orthodoxly constitutive rules (in his terminology, *definitive rules*), and regulative norms that necessarily regulate a practice (*prescriptive rules*). These two kinds of constitutive rules are opposed to merely regulative norms, which are not essential to the practices they regulate.<sup>6</sup> To sum up Pollock's view:

- CONSTITUTIVE RULES:
  - DEFINITIVE RULES: C1, C2, C3  
(equivalent to *orthodoxly constitutive rules*)
  - PRESCRIPTIVE RULES: C1\*, R2, R3  
(equivalent to *Williamson's constitutive rules*)
- REGULATIVE RULES: R1, R2, R3  
(equivalent to *orthodoxly regulative rules*)

A *prescriptive* rule, on this conception, is a rule in terms of which the relevant practice can be defined. This can help to make sense of the tension between the readings (A1) and (A3\*) individuated in section 4 (reported below for convenience).

(A1) One must: assert that  $p$  only if  $p$  has C

(A3\*) One asserts that  $p$  iff in saying  $p$ , one is subject to rule (A1)

I have already stressed that the C-rule to which Williamson refers is (A1), not (A3). If the C-rule is constitutive of assertion in Pollock's 'prescriptive' sense, to claim of (A1) that is *constitutive* of assertion is to claim that (A3\*) is true of (A1).<sup>7</sup> Therefore, both (A1) and (A3\*) help make sense of what it means for assertion to be constituted by a norm: (A1) spells out the content of the norm, whereas (A3) postulates that assertion is necessarily subject to that norm (so that (A1) is a prescriptive rule of assertion, in Pollock's sense).

## 5.2. The problem with Pollock's distinction

The notion of *prescriptive rule* captures the sense in which the HYPOTHESIS takes the C-rule to be constitutive of assertion: the C-rule is essential to

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<sup>6</sup>Alston (2000, 254) also adopts a similar conception of rules: a 'regulative rule can also qualify as a constitutive rule if we take advantage of the *possibilities it presents for concept formation*'. For a different, more fine-grained account of the distinction, see Hindriks (2009).

<sup>7</sup>To be sure: to claim that (A1) is *uniquely* constitutive of assertion amounts to claiming that (A3\*) is true of (A1). Constitutivity without uniqueness could only account for the left-to-right reading of the biconditional. I am ignoring this distinction in text, for ease of discussion.

assertion (C1\*), takes the form of an imperative (R2) and can be violated while engaging in the practice (R3).<sup>8</sup> However, I will show that, depending on the understanding of 'essential' that one adopts for (C1\*), the notion of *prescriptive norms* either (i) fails to include the C-rule, or (ii) coincides with the orthodox notion of regulative rules.

Williamson (2000, 238–9) identifies two ways of conceiving a norm as *essential* to a practice. In a 'broad', ordinary sense, we say that a norm is essential to a practice if we cannot *conceive* that practice as not being ruled by that norm. This conception is quite loose, as it takes essentiality to depend on the judgments of a community. For instance, since in our community we say that 'games such as tennis gradually change their rules over time without losing their identity' (2000, 239), the rules that change in these games are not essential to them.

By contrast, in a 'narrow', technical sense, being essential is a very strict modal relation: the rules of a given practice define the identity conditions of that practice, so that they *necessarily* regulate it. Any change in the rules of the practice generates a new practice identified necessarily by different rules, and in which different moves are allowed. In this technical sense, we say that a practice that evolves in time is a different practice at each stage of its evolution.

The C-rule cannot be taken to be essential to assertion in the *broad* sense, as this conception would not count it as constitutive of assertion (cf. Cappelen 2011, 30). We obviously can conceive assertion as being governed by norms other than the C-rule: the very disagreement that animates the philosophical debate turns on the conceivability of different specifications of the C-rule: condition C could be that *p* is *true*, that *p* is *known* by the speaker, that the speaker *rationaly believes* *p*, etc. The *broad* conception of essentiality is thus incompatible with the HYPOTHESIS.<sup>9</sup>

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<sup>8</sup>Hindriks (2007, 399), Johnson (2018) and Reiland (2019) all defend an interpretation of WILLIAMSON'S HYPOTHESIS along these lines, but proceed to make further and different claims. Hindriks goes on to argue that the C-rule (identified as the knowledge rule) is not constitutive of assertion in this sense. Johnson rejects part of Pollock's view: she argues that (unlike speech acts like assertion) games like football are only subject to definitive rules, never to prescriptive ones (2018, 55). However, there are several rules that are straightforwardly prescriptive in football, such as the rule against touching the ball with your hands (see Marsili 2018, 642, cf. also discussion of rule (FKR) in this very section). Finally, Reiland (2017:fn9) rejects the idea that there are such things as definitive rules (so that all constitutive rules are prescriptive on his view).

<sup>9</sup>One could reply that it is the *unspecified* C-rule that is essential to assertion, rather than any specification of it. But this move is not available, for two reasons. First, it would mean giving up the whole project of identifying property C, as no rule in particular would be essential to assertion after all. Second, against Williamson's desiderata, an unspecified C-rule would not only regulate assertions, but most speech acts (as for most speech acts, the speaker ought to have the psychological state that that speech act expresses, e.g. you should intend to *p* if you promise to *p*, cf. Searle 1976; Bach and Harnish 1979).

Consistently, Williamson claims that the C-rule should be taken to be constitutive in the narrow sense (2000, 239). The problem with this solution is that, paired with a 'prescriptive' interpretation of constitutive rules, it problematically erases the distinction between constitutive and regulative norms, counting all norms that impose regulations as constitutive – so that the claim that the norm is constitutive boils down to the trivial, uninteresting claim that the norm of assertion is a norm. Let us address this issue in more detail.

In the *narrow* sense, it seems that not only prescriptive rules, but also all the orthodoxly regulative rules are essential to (and hence constitutive of) the practices they regulate: every change in a regulative rule slightly alters the moves allowed in the practice it regulates, thereby generating a slightly different practice. To see this, consider an intuitively marginal rule of football:

(FKR) If a player kicks a free kick, she must not touch the ball again before it is touched by another player

It is easy to imagine variations of football that deny (FKR) and allow, e.g. for a second or a third touch after the kick. In the ordinary *broad* sense, we judge such variations as unessential: a game without (FKR) can still be appropriately called football, and hence the rule is not essential to the game. However, in the technical, *narrow* sense that matters to the HYPOTHESIS, (FKR) is essential to the game. Necessarily, (FKR) governs football: if football was regulated by a slightly different rule, football would be a slightly different game (call it football\*), identified by a slightly different set of rules.

If even a marginal regulative rule like (FKR) is counted as constitutive to football, it is difficult to see how this view could allow for rules that are *not* constitutive. It seems that every rule, independently of how marginal or central to a given practice, counts as constitutive on this conception. But if all rules are constitutive, claiming that the C-rule is *constitutive* of assertion is redundant – it simply amounts to claiming that that rule governs assertion.

Pollock (1982, 218; cf. also Montminy 2013) attempts to address this worry by offering a putative example of a rule that would still count as regulative in the proposed framework: in the game of Scrabble<sup>10</sup>, 'do not

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<sup>10</sup>Pollock's original example rather refers to the rules of chess. However, making unnecessary noises is explicitly forbidden by rule 11.5 of the FIDE Laws of Chess (as of 2018), so that this rule would actually qualify as prescriptive rather than regulative, since it is essential to the game of chess in the relevant (narrow) sense (if chess was not regulated by rule 11.5, it would be a slightly different game). Since Pollock's point seems to be that in playing a game we sometimes follow rules that are not formally part of the game, I amended the example to give full consideration to this kind of objection.

make unnecessary noise when your opponent is thinking about his next move'. Unlike (FKR), this rule is not essential to Scrabble in the narrow sense; nonetheless, it regulates it. It is a putative example of a regulative, but not constitutive, rule of Scrabble. Pollock's account seems to classify general rules (like rules of etiquette) as regulative, and practice-specific rules as constitutive, thus maintaining a meaningful distinction between constitutive and regulative rules.

This explanation, however, overlooks a fundamental fact: while (FKR) is clearly a rule of *football*, the mentioned rule is not in the same sense a rule of *Scrabble* (as a matter of fact, the first is in the rulebook of the game, the second is not). Rather than a rule of Scrabble, the rule against disturbing the opponent is a general rule or maxim of a higher-order activity (for instance, a rule of *fair play*: 'Avoid disrupting your opponent's play, unless this is explicitly prescribed by the game') that *also* constrains, indirectly, which actions are appropriate in playing Scrabble (as well as other games, such as checkers, go, etc.). To put it in other terms, the normative constraint against disturbing the opponent is not generated by the rules of Scrabble, but rather by a higher order norm governing fair play. In a similar way, the norm 'Do not speak with your mouth full' constrains the practice of assertion, but is not a rule of assertion (it also constrains questions, bets, praises, etc.). It is a general rule about how to eat and talk politely that also applies to the speech act of assertion.

If this line of reasoning is correct, Pollock's example fails to show that the proposed account allows for some rules that are not constitutive. The aforementioned rules are constitutive too, because they are essential (in the narrow sense) to the higher-order practices that they regulate, namely 'fair play' and 'eating politely': if these latter practices were regulated by different rules, they would be different practices.

A difficulty thus emerges for the proposed interpretation: for the claim that the norm is *constitutive* to be meaningful, one needs to show that there are some rules that are *not* constitutive. Otherwise, the claim that the norm of assertion is constitutive simply boils down to the trivial claim that the norm of assertion is a norm.

### **5.3. Direct vs indirect constraints**

In light of this difficulty, we could try to recast the regulative/constitutive distinction as a distinction between constraints that a rule imposes *directly* (to the higher-order practice to which they are essential, *e.g.* eating politely) and the ones it imposes *indirectly* (to the lower-order practices

to which they also apply, e.g. assertion), dubbing the former constitutive and the latter regulative. In this sense, the *constitutive* rule of *eating politely* 'Do not speak with your mouth full' is also indirectly a *regulative* rule of *asserting*.

On this reading, the distinction survives, but it is reduced to a mere matter of scope: all rules are ultimately constitutive, but when they impose constraint on a lower-order practice to which they are not essential, this indirect constraint can be described as *regulative* (of the lower-order practice, since it regulates it *indirectly*). This distinction is logically coherent. But there are two important considerations that we must keep in mind to fully understand its import.

First, the revised regulative-constitutive distinction no longer identifies different *kinds* of rules (like it was the case with the orthodox conception), but rather different routes that the same kind of rule can take to constrain a given activity: a *direct* route (in  $\Phi$ -ing, you are subject to the rule for  $\Phi$ -ing *qua* participant in practice  $\Phi$ ) or an *indirect* route (since in  $\Phi$ -ing you are also X-ing, in  $\Phi$ -ing you are subject to the rule of X-ing, *qua* participant in practice X). Thus revised, the constitutive-regulative distinction does not identify different species of rules, but rather different ways in which an activity can be subject to a rule of the same kind. Read in this light, the hypothesis that the norm is constitutive no longer specifies the kind of norm to which assertion is subject; it merely specifies in which way assertors are subject to a prescriptive norm: *qua assertors*, rather than *qua* participants in a higher-order activity.

Second, this does not seem to be the role that Williamson (or any author writing on the norm of assertion) has in mind when he claims that the norm is constitutive. Williamson acknowledges that norms of higher-order practices can constrain assertions indirectly: 'norms such as relevance, good phrasing, and politeness are just applications of more general cognitive or social norms to the specific act of assertion' (2000, 238, cf. also 2000, 256), but these remarks are independent of the claim that the norm is constitutive. Similarly, other authors writing on the norm of assertion generally treat the claim that the norm is constitutive and the claim that the norm governs assertion directly as distinct. It is standard for authors to claim that the C-rule is constitutive of assertion and then add, as an independent claim, that they take assertion to be subject to the C-rule 'qua assertion' (in the proposed terminology, *directly*, see e.g. Rescorla 2009, 123; Turri 2011, 527; Whiting 2012, 849; McKinnon 2013; Goldberg 2015, 76).

The most likely explanation for these two observations is that these authors (including Williamson) implicitly accept a dichotomy between ‘merely regulative’ and ‘prescriptive’ rules – a dichotomy that I have shown to be misguided. In other words, they incorrectly assume a difference in kind between prescriptive and regulative rules (the former being essential to the act they regulate, the latter not being so); and this warrants the further (but equally misled) assumption that the distinction is not about different routes taken by a norm of the same kind, but rather about different kinds of norms. To put this more simply, the significance of the claim that the C-rule is constitutive of assertion is not fully understood in the philosophical debate: to claim that the C-rule is *constitutive* of assertion is not to claim something about the *kind* of rule that regulates assertion, but rather something about the *route* that this regulative rule takes to regulate assertion – a direct route, rather than an indirect one.

## 6. Consequences for the ongoing debate: must do better

This paper has tried to clarify the full import of the claim that the C-rule is constitutive of assertion. In doing so, it brought to light some significant misunderstandings that pollute the current debate on the norm of assertion. It will be helpful to recapitulate them, by considering them in turn.

First, this paper has established that Williamson’s notion of ‘constitutive rule’ is revisionary with respect to standard terminology in speech act theory: his notion ‘constitutive rule’ is essentially equivalent to the orthodox conception of ‘regulative rule’, where the latter notion is restricted to ‘direct’ regulation. The conception of ‘constitutive rule’ adopted in Williamson’s framework is thus almost equivalent to its *complementary notion* in the ‘traditional’ speech-act theoretic framework (the notion of regulative rule).<sup>11</sup>

Second, this paper has shown that by redefining the concept in this way, Williamson has led many researchers astray. This paper has offered a comprehensive review of the misunderstandings that have stemmed from this terminological revision: it has shown not only that authors interpret the term ‘constitutive’ in radically different ways, but also that their

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<sup>11</sup>Although I noted in section 5 that charging Williamson with the intention to bring about such a radical revision would be uncharitable, it has become clear in §5.3-4 that this revisionary result was rather unintended, and due to a mistaken assumption common in the literature: namely, that there are regulative rules that are not ‘essential to’ the practices that they regulate (in the relevant sense of ‘essential’). Were this assumption to be correct, Williamson’s notion of ‘constitutive rule’ would have rather identified a third kind of rule, equivalent to Pollock’s prescriptive rules.



interpretations are mutually incompatible. The claim here is not that Williamson's use of the term is incorrect or incoherent, but rather that its clash with the terminology that was previously prevalent in the literature has caused the HYPOTHESIS to be interpreted in different ways by different authors.

Thirdly, this paper has analysed some prominent interpretations of the HYPOTHESIS, discussing the problems encountered by each view. We have seen (§4) that some philosophers take it to claim that the C-rule is constitutive of assertion in the *orthodox* sense, or at least in some sense compatible with it. These authors (e.g. García-Carpintero 2004, 143; 2018:4 Rescorla 2007, 253, 2009, 99; Turri 2013, 281) are misled because (as shown in §4) there is no reading of WILLIAMSON'S HYPOTHESIS that is consistent with the orthodox reading. There are also authors who contrast Williamson's constitutive rules to orthodox regulative ones (Pagin 2015: §6.2, García-Carpintero 2004:143, 2018:4,13): these authors are similarly misled, as Williamson's constitutive rules essentially belong to the regulative kind.

Some further (and subtler) misunderstandings stem from the mistaken assumption that there are regulative rules that are not constitutive in Williamson's sense (cf. Pollock 1982). Accepting this assumption has led many authors to misjudge the *significance* of the claim that the norm is constitutive. It has led them to infer that 'constitutive' norms are different in *kind* from other norms (merely regulative ones), so that ascribing constitutivity to the C-rule was taken to ascribe a special status to it (Hindriks 2007; Ball 2014) – a status that the C-rule simply lacks.

Once one accepts that the C-rule is a 'constitutive norm' only in the weak sense that it is an orthodoxly regulative norm that regulates assertion *directly*, what are the consequences for the ongoing philosophical discussion? The core of WILLIAMSON'S HYPOTHESIS still stands: it is still a plausible assumption that (i) assertion is subject to a norm taking the form: 'One must: assert that p only if p has C' (i.e. that (A1) is true); and that (ii) this norm necessarily regulates assertion. Even if we have been forced to retreat to the weaker claim that the C-rule regulates assertion directly, this does not mean that we have to follow authors, like Cappelen (2011), who deny that asserting is a rule-governed activity (although we could, on independent grounds).

Other key claims and assumptions about the norm of assertion, however, lose their strength once we retreat to this weaker claim. The first is the *uniqueness assumption*: the idea that assertion, *qua* assertion, is governed *only* by the C-rule. This assumption already rested on shaky grounds: it has been pointed out that 'that there is such a unique rule is

little more than an item of faith for Williamson, with no justification offered other than that a simple account consisting of such a single rule would be “theoretically satisfying” (DeRose 2002:fn15), and several authors explicitly argued against this view (Brown 2008; Carter 2015; Carter and Gordon 2011; Gerken 2014; McKenna 2015).

The plausibility of the uniqueness assumption hinges significantly on conceiving the norm as constitutive in orthodox sense, rather than in Williamson’s revisionary sense. In the orthodox framework, constitutive norms are akin to definitions, so that there is nothing too controversial about claiming that a speech act can be defined in terms of its constitutive rules. The situation is different when we acknowledge that Williamson’s constitutive rules are *regulative* in the orthodox sense. Speech acts are typically regulated by *many* regulative rules (given that felicitous performance of a speech act can, and often does, depend on the satisfaction of several conditions). This is a problem for Williamson’s conception. If the C-rule is constitutive in the orthodox sense, its uniqueness follows. But if it is not, there is no reason to assume that the C-rule is unique. And if there is no reason to assume that assertion is governed by a unique rule, it follows that (A3) is unwarranted:

(A3) One asserts that *p* iff in saying *p*, one is subject to the obligation that *p* must have C

Rather, (A3) should be replaced by:

(A4) One asserts that *p* *only if* in saying *p*, one is subject to the obligation that *p* must have C

Moving from (A3) to (A4) is not an insignificant step. It means abandoning the appealing idea that assertion can be defined simply in terms of its norm – that is, abandoning the claim that the norm is *individuating* (Williamson 2000, 241; cf. also e.g. Goldberg 2015, 25; Johnson 2018, 52). To be sure, the claim made here is not that (A3) must be false; rather, it is that once it is recognised that the norm is not constitutive in the orthodox sense, there is no principled reason to think that it is *uniquely* governed by the C-rule, so that we have no warrant for preferring (A3) over (A4).

A further, crucial difficulty concerns the significance and originality of the hypothesis thus conceived. Deprived of the claims that the C-rule is constitutive, unique and individuating, the HYPOTHESIS is rendered unoriginal and therefore of little significance. It cannot be original, because this view has already been orthodoxy in speech act theory for 50 years. It is a standard view that different speech acts are subject to different

epistemic norms, and that these norms are analogous to the C-rule in form, *i.e.* that they are orthodoxly regulative rules (Searle 1969; Searle and Vanderveken 1985; Alston 2000).

In conclusion, this paper has accomplished three important results. First, it has dispelled some significant confusion surrounding WILLIAMSON'S HYPOTHESIS, clarifying the full import of the claim that the norm of assertion is constitutive. Second, it has established that the alleged dichotomy between prescriptive and merely regulative rules (recast by Williamson as a dichotomy between 'constitutive' and merely regulative rules) is misguided: it is not a distinction between kinds of rules, and it rather denotes two ways in which the same kind of rule can regulate an given practice (direct and indirect regulation). Third, it has reviewed a number of crucial misunderstandings that affect many extant accounts of assertion, raising a substantial challenge for them: namely, that there is no reason to assume that assertion is governed by a *single* constitutive norm, and that assertion can be identified as the only speech act subject to it.

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