

# Constitutive Rules and Internal Criticism of Assertion

## Abstract

Timothy Williamson famously argued that assertion is constituted by the knowledge rule, or at any rate some epistemic rule. The rule-constituted nature of assertion entails a distinction between internal and external criticism of assertion: the possibility to criticize an assertion for being impolite is an inessential feature of assertion, whereas criticism drawing from the constitutive rules are supposed to be essential to assertion. Recently, an analogous idea has been extended to cover institutional roles like being a professor. This paper raises methodological problems for drawing the distinction between internal and external criticism in these cases. The main problem is that it is hard to discern intuitively what the source of criticism is in cases where the rules appealed to are assumed to be implicit. I further show how competing accounts may respond to some of the examples drawing from the possibility of internal criticism that have been raised against them.

## 1 Introduction

Timothy Williamson famously proposed that the speech act of assertion is constituted by the knowledge rule:

*K-rule.* One must: assert that  $p$  only if one knows that  $p$ . (Williamson 1996, 494)

The K-rule is “constitutive” in the sense that no speech act can count as an assertion without being subject to this rule; the K-rule is necessarily (and uniquely) in force for assertion. Nonetheless, it is perfectly possible and potentially even common for assertions to fail to live up to the K-rule without stopping to be assertions. For example, a liar who knows that not- $p$  may still assert that  $p$ .

If there is a K-rule (or another comparable epistemic rule) constitutive of assertion, then this has important consequences for criticism of assertions. To put it simply, an assertion can be criticized on contingent or “external” grounds, e.g., for being impolite, or then it can be criticized on necessary “internal” grounds, e.g., for being unjustified or false. Compare the case to a game, for example chess, where a move is subject to internal criticism if it violates the rules of chess. The reason or justification for the criticism is then internal to chess in the sense that it is impossible to play chess without being governed by the rules to which the criticism appeals, simply because the rules are constitutive of chess.

However, there is an important difference. The rules of chess are explicitly defined, but there is no rule book of the game of assertion to which speakers can appeal to. If there are constitutive rules of assertion in Williamson’s sense, these must in the first instance be

grasped implicitly (1996, 492). The main evidence for identifying the constitutive rules of assertion are left to intuitions, derived either from real observations or thought experiments, as to how we would evaluate assertions in various situations.

The problem developed in this paper concerns how we are to discern, not which rules are intuitively really constitutive of assertion, but whether intuitions can differentiate between the internal and external reasons for criticism in case of assertion to begin with. The main contention is thus broadly methodological in nature: can intuitions provide evidence for what the normative source for criticizing an assertion is? In particular, can our intuitions distinguish between reasons appealing to the “normative”, rule-constituted nature of assertion as opposed to more generic social or moral norms of conduct?

There are two reasons why this question matters. First is that the intuitions about the source of criticizing assertions have been used as evidence for the constitutive rule account of assertion. Second is that the intuitions have also been used as evidence against competing accounts (Goldberg 2015; MacFarlane 2011). In particular, the so-called attitudinal account of assertion (Bach and Harnish (1979)) is claimed not to be able to explain certain essentially normative features of assertion which rely on the idea of internal criticism, namely authorisation and retraction. My positive claim here is that the attitudinal account can in fact respond to the evidence from intuitions because it is not clear that intuitions can decide whether there is a distinction between internal and external criticism in case of assertion. At the very least there are complications involved that have not been considered before. Finally, I show that arguments similar to the case of assertion have been raised in case of institutional roles, e.g., being a professor (Roversi 2021), which are also claimed to include implicit rules that allow internal forms of criticism. I apply a similar line of criticism against Roversi’s proposal.

Before moving on to the arguments, it is good to emphasize that since the paper’s angle is methodological, it does not aim to attack the very idea of the constitutive rules account. For all that’s said here, there could be constitutive rules of assertion or of being a professor. The question is what can be counted as evidence in favor of deciding the matter.

## 2 Internal and External Criticism

Starting with the proposal that assertion is constituted by some internal, epistemic norm, in this section I look into the debate on how this premise can be used to argue against competing accounts of assertion. But to begin with it’s useful to say a few more words about the distinction between internal and external criticism in this context. I will also present the outline of the attitudinal account of assertion which stands as a contrast to the rule-constituted account. Finally, I present the objections to the attitudinal account by Goldberg (2015) and MacFarlane (2011) which draw from the possibility of internal criticism and assertion being constituted by rules.

As already mentioned, the distinction concerns the grounds of criticism, or the justifying reasons one can have for criticizing a given assertion. In both the case of internal and external criticism relevant here, the form of justification is to appeal to a rule or norm (I use

these terms interchangeably) which the assertion violates. In the case of chess, this is an easy distinction to make because chess rules are relatively (a) clearly articulated and (b) easy to monitor. In most cases we can confidently say whether a given action by a chess player is to be criticized on the grounds that it violated the rules of chess or because it violated some more generic social rule, e.g. being unsportsmanlike (naturally it could be both). Williamson's original idea was that something similar is true of assertion, though here the distinction is not explicit but must be discovered by philosophical argumentation backed up by intuitions.

In order to question the evidence from intuitions regarding the source of criticizing assertions, it is useful to have as a contrast an account of assertion which does not entail the possibility of internal criticism of assertions. Here that role falls on the attitudinal account as developed by Bach and Harnish (1979). Before outlining the account I want to emphasize that my main aim is not to provide novel arguments in favor of the attitudinal account, but rather show that it is on equal footing with the constitutive rules account when it comes to evaluating evidence from intuitions. In order to show this, however, the attitudinal account may need to be adjusted somewhat, as I shall do below. My new suggestion is that the attitudinal account can incorporate the idea that assertion is a device for expressing knowledge and not merely beliefs without taking on the idea that assertion as such is constituted by some epistemic norm.

Briefly, the attitudinal account as developed by Bach and Harnish (1979) claims that assertion is defined by two conditions:

In uttering  $e$ ,  $S$  asserts that  $P$  if  $S$  expresses:

- i. the belief that  $P$ , and
- ii. the intention that  $H$  believe that  $p$ . (Bach and Harnish 1979, 42)

In this (simplified) picture, to make assertions is to express beliefs with the "R-intention" of giving the audience a reason to ascribe the belief that  $p$  to the speaker while also purporting to make  $H$  also believe that  $p$ . To "R-intend" means to cause beliefs in the audience by the way of their recognition of this very intention, loosely on the speech act model of Grice (1957). The speaker can thus (purport to) cause beliefs in others by asserting claims, which in large part explains why they make assertions at all.

The important point here is that the attitudinal account of assertion does not involve the possibility of internal criticism of assertions because assertion thus described is not a normatively *special* way to intentionally cause beliefs in others. Of course, a speaker will usually be (held) responsible for her assertions, and she may be criticized if her assertion turns out to be, e.g., false, unjustified or impolite. Furthermore, criticism according to which the assertion was unjustified may be in many ways more pertinent (in the context) than criticism according to which it was impolite. Yet the source of the criticism or its pertinence is not in assertion's internal rules but in more general social or moral rules and norms, which govern all actions indiscriminately.

Some authors think the normatively indiscriminate treatment is wrong. Goldberg for one thinks that the attitudinal account is wrong to miss the internal form of criticism for assertions. He provides the following example:

Compare: I may know that these cookies are for Ralph, and even so I may place them in a spot where I know you will encounter them, intending that you eat them (by way of your recognizing my intention). Still, if you do, it is no excuse to say that I authorized you to eat them—I did no such thing! To *tempt* a person to  $\phi$  (by doing something with the intention that they  $\phi$  by way of their recognizing this intention) is not the same as *authorizing* her to  $\phi$ . In short, even if the asserter intends the hearer to form the belief in question, intending is one thing, *authorizing* is another, and it would seem that the attitudinal view has no basis for moving from the former to the latter. What is missing here, and what the attitudinal view seems to fail to deliver, is a sense that S *ought not* to have asserted as she did—and that the reason she ought not to have done so is that in so asserting she *authorized* H to believe as he did. (Goldberg 2015, 14)

In summary, Goldberg’s thought is this. Imagine yourself in the position of the oblivious cookie-eater. Were Ralph to ask you why you ate his cookies, your justification might be something like “Because person S gave me a reason to believe the cookies were meant for me.” In return, S would then say that he merely tempted you to believe that, and thus is not responsible for your mistaken belief. Had S *asserted* that the cookies are meant for you, that would be another thing, for then S would have *authorized* your belief as opposed to merely intentionally causing it. (Of course, both the attitudinal account and the rule-constituted account can agree that there is a distinction between intentional misleading and outright lying, yet this is not what the cookie example is meant to showcase.)

Before raising objections to Goldberg’s criticism, I want to compare it to a parallel objection that has been made against the attitudinal account by MacFarlane (2011).<sup>1</sup> According to MacFarlane, the attitudinal account cannot make sense of the possibility that an assertion can be retracted, which means “rendering [the assertion] ‘null and void’” (2011, 83). His idea seems to be that, while it is arguably impossible to “undo” the causal or perlocutionary effects of a token assertion, it should be possible in principle to undo a token assertion’s illocutionary effects by retracting it. Since according to the attitudinal account of assertion, the main illocutionary effect of an assertion is to R-intend the audience to ascribe the belief that  $p$  to the speaker, the account cannot understand retraction literally as an undoing of the intention but rather as an “unexpression”:

- In uttering  $e$ , S retracts the claim that P if S expresses:
- i. that he no longer believes that P, contrary to what he previously indicated he believed, and
  - ii. the intention that H not believe that P. (Bach and Hamish 1979, 43)

However, according to MacFarlane this won’t do:

One can, without any insincerity, retract an assertion of something one still believes.  
One might do this, for example, because one realizes one can’t adequately defend

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<sup>1</sup> MacFarlane (2011) does not as such defend the Williamsonian account of CR, but his critical arguments do fit well with that account. In any case, Goldberg (2015, 14-15) uses retraction as a rule-constituted feature of assertion which the attitudinal account fails to explain.

the claim, or because one doesn't want others relying on it. Indeed, it is possible to retract the assertion while avowing the belief: "I retract that, as I can't defend it. But I still believe it." This does not seem insincere in the way that "I assert that  $p$ , but I don't believe it" does. So it does not seem right that retraction expresses lack of belief. Nor does it express an intention that one's audience not believe what was asserted—one may be quite happy to let them continue to believe this, if they have their own independent grounds. (MacFarlane 2011, 83)

The reason why this objection is parallel to the point raised by Goldberg about "authorisation" is that if we think of assertion as coming with internal norms, there is a ready way to think how an assertion can be retracted in the literal sense in which the word is used, e.g., in publishing and law. Retracting an assertion would then be like retracting a move in a game. While this does not undo the causal, perlocutionary effects of the move, it will return the game to a state prior to the move. Analogously, MacFarlane suggests that in asserting "I retract that  $p$ , but I still believe it," one gives up the responsibility to defend the assertion, thus its illocutionary effect, while letting the audience think that the speaker still believes that  $p$ , and that (possibly) they should too.

### 3 Responding to the Objections to the Attitudinal Account

In this section, I look into how the attitudinal account can respond to the two objections raised above, starting with Goldberg.

Goldberg's starting point is to contrast two ways in which the speaker can intentionally spread beliefs to his audience, then to claim that assertion plays this role in a normatively special way. The cookie example brings out the intended contrast well: it is a different thing to intentionally cause someone to believe that  $p$  with the knowledge that this was the speaker's intention than it is to authorize the audience to believe that  $p$ . The difference comes down to the justification for criticizing the speaker. According to the attitudinal account, an assertion can be criticized for being misleading or outright lying on generic moral or social grounds, whereas according to Goldberg, following Williamson, there is an additional normative source involved, namely the internal, constitutive epistemic norms of assertion. The problem I want to raise for Goldberg (and Williamson) is not about this distinction as such but the methods for showing that it is a distinction which we can identify in our ordinary practice of making assertions, as opposed to a theoretical postulate. So, how is it to be settled on what grounds it is justified to criticize an epistemically incorrect assertion?

Terms like "authorize" presume, in their literal (current) meaning, an institutional background with explicit rules, roles and positions for subjects.<sup>2</sup> Since the ability to make assertions

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<sup>2</sup> Of the current meanings of "authorize", two are worth noting here. First is the meaning in which official roles, duties, powers etc. are given in the legal sense. The second is to justify actions in general. Goldberg cannot have in mind the second meaning because this sense is agreeable to the attitudinal account: in making an assertion that  $p$ , the speaker aims to give the audience *a good* reason to believe that  $p$ . In case the reason is not in fact good, the speaker has generically misled the audience. ("authorize, v.". OED Online. June 2022. Oxford University Press. <https://www.oed.com/view/Entry/13352?redirectedFrom=authorise> (accessed August 23, 2022))

presumably is independent of the existence of any official institutions (no one is officially granted the license to make assertions *per se*), the sense in which an assertion purports to “authorize” the audience to believe that  $p$  cannot rest on its literal meaning; the meaning has to be either metaphorical or technical. However, Goldberg (2015) nowhere defines what he means by “authorize” as a technical term, and as a metaphor it is hardly helpful in argumentation.

As a helpful reviewer pointed out to me, it could be that Goldberg has in mind the sense of “authorize” which is apparent, e.g., in making a promise, which is arguably an ability independent of official institutional settings. So, asserting that  $p$  would be like making a promise that  $p$  is true (or justified etc.), or swearing that it is. If true, I agree that this would show asserting to be something different than to R-intend the audience to form the belief that  $p$ , just as it is different to R-intend the audience to believe that the speaker will do something than it is to promise to do something.

However, the question is how are we to make this distinction at the level of intuitions about imaginary or real cases of assertion, not whether the distinction is clear in the abstract. It is clear that the attitudinal account has no difficulties in explaining why we criticize assertions on epistemic grounds: the reason is simply that we care to have true, justified beliefs expressed to us. In the cookie example, S is responsible for misleading the speaker as to whom the cookies are meant, or if S expressed himself by way of an assertion, for lying. According to Goldberg, S is responsible in the additional sense for having violated a constitutive epistemic rule of assertion (whatever that exactly is). But since we cannot appeal to the explicit rule book of assertion as we can in chess, how are we to discern whether the criticism really is external or internal in kind? Moreover, assuming that there are independent social norms and moral norms against misleading and lying, why should we expect assertion to be additionally governed by an internal norm to this very effect?

We can press this question and its point further by adjusting the attitudinal account somewhat. Suppose that in asserting that  $p$ , the speaker does not merely R-intend the audience to believe that  $p$ , but makes a knowledge claim that  $p$ , i.e. presents himself as knowing that  $p$ . This is possible, let’s suppose, because it is a function of assertions to express knowledge. Nonetheless, I argue, the attitudinal account could still hold that there is no constitutive norm of assertion, and hence no distinction between internal and external criticism of incorrect assertions.

First of all, the intended function here is teleological in kind. It could be that our practice of making assertions developed for the purpose of expressing knowledge, i.e. that this function causally explains why we have this practice, akin to how the ability of the heart to pump blood explains why there are hearts. Similarly, the designed function of binoculars to see into the distance is what explains why we have them. The ultimate explanation for these things comes down to the fact that knowledge matters to us, as does seeing far. The important point in regards to the distinction between external and internal criticism of assertion is that assertion has the teleological function to express knowledge, that is compatible with its lacking internal, constitutive epistemic norms. The reasons to criticize faulty assertions would then be broadly the same as the reasons to criticize faulty binoculars, namely that they don’t serve their designed function. This is starkly different from internal criticism in case of chess:

there is no functional fault present in moving a rook diagonally because the rook did not develop to move only linearly. Rather, it was stipulated to be governed by this rule.

I move on to MacFarlane's objection that the attitudinal account cannot explain the possibility of retracting an assertion. To be sure, there is a clear sense in which the speaker can retract an assertion that  $p$  while continuing to believe that  $p$  that is common to, e.g., law and publishing. But is the same sense so evidently available in informal contexts, so that there is always – or ever – a clear distinction between saying “I didn't mean that” and “I take that back” as MacFarlane claims? As always, the data gathered from actual speech acts is as messy as it gets, but one should think that in quite many contexts saying that “I retract that  $p$ , but I still believe that  $p$ ,” is bound to raise a few eyebrows, for saying “I believe that  $p$ ” is a conventional (if roundabout) way to assert that  $p$ , or at any rate present that  $p$  as true. So there are bound to be at least some contexts where the utterance in fact is backhanded and thus insincere, contrary to MacFarlane.

In any case, suppose there are some informal contexts where the possibility of retracting an assertion while holding onto the belief as well as the R-intention for the audience to believe it is clearly available. Returning to the cookie example, assume that I cannot justify, beyond my testimony, the claim that Ralph misled me to eat the cookies meant for you. Then I might “drop” the claim while continuing to believe this, and also R-intending you to believe it. To express this kind of *partial* retraction, I might say something like “Forget about it, let's move on”. Now, this would not be a full retraction because I would not give you a reason to disbelieve my original claim that it was Ralph who misled me to eat your cookies; I simply stop treating the justification of my original claim as pertinent.

The question to MacFarlane becomes this. How credible is it that I could *fully* retract my claim that Ralph made me eat your cookies while also continuing to R-intend you to believe this? If retracting a claim primarily means, following the rule-constituted account, to give up one's epistemic credentials to it, in the full sense this should imply that one cancels the reasons for one's original claim and not merely stops to actively defend it. In the cookie example this would mean changing my original testimony that it was Ralph who misled me by sincerely saying, e.g., “I was wrong about Ralph, the fault was my own after all”. But is it really coherent to both sincerely present reasons to cancel the justifications for the original claim (i.e. to fully retract an assertion as opposed to merely “dropping” it) *and* continue to R-intend the audience to believe the original claim? At least in the context of the cookie example, this seems barely coherent: I would both have to defend the (sincere) claim that it wasn't Ralph's fault that I ate your cookies while also R-intending you to believe it was Ralph's fault.

The reason for why it is harder to pry apart the epistemic credentials for assertion and R-intentions than MacFarlane appears to think, I contend, is that in most cases it is precisely the (implicit) epistemic credentials by the way of which we R-intend the audience to form the belief expressed by our assertions. This is compatible with my earlier suggestion that the attitudinal account could be adjusted so that it is the teleological function of assertions to express knowledge. This idea is natural enough: if I want you to believe that  $p$ , a good way to do this is surely to present  $p$  as knowledge. If I want to see far, I should use binoculars. But that does not imply that there is a constitutive norm for binoculars such that they should enable one to see far.

## 4 On Being a Professor

In this section I will consider the intuitive evidence for the distinction between internal and external criticism in the context of an institutional role, e.g., being a professor, as defended by Corrado Roversi (2021). Although the topic is different, the focus of my main argument is the same, namely to question the intuitive evidence for the possibility of internal criticism enabled by constitutive rules.

Roversi builds his case on a thought experiment centered on one Mr. Colasanti, a student in legal philosophy who comes to his professor (Roversi himself) to get help passing his exam. After hearing him out, Roversi clearly perceives that he does not have the time required to ensure that Mr. Colasanti will pass the exam; moreover, Roversi in his position as a professor is not obliged by the explicit rules of his institution to go over the extra mile to help him. Yet Mr. Colasanti is not satisfied with this reasoning; he goes on to demand the extra help precisely by appealing to Roversi's position as a professor despite knowing full well that the official rules do not mandate him to do that. Roversi summarizes his view of the situation as follows:

I take this retort by Mr. Colasanti to be perfectly meaningful and genuine, something I must reply to with good arguments. His point is that independently of the formal rules set forth by the university, my being a professor requires me to take his situation into account and do my best to improve his understanding of the subject matter. This is what being a professor means, he is implicitly arguing: it means getting students to understand what is being taught. I insist on my formal duties with him, but for the rest of the day I keep mulling over whether there is something I could do. (Roversi 2021, 14355)

Roversi's claim is that two prominent accounts that seek to explain institutional reality without appeal to constitutive rules, namely Epstein's (2015) grounding approach and Hindriks and Guala (2015), cannot make sense of Mr. Colasanti's reaction as "meaningful and genuine". The reason is that in making the plea Mr. Colasanti draws his justification from the *ratio* of being a professor, and that the *ratio* can only be understood by appealing to the constitutive rules of being a professor. For sake of space I shall only discuss the case from the point of view of Hindriks's and Guala's regulative rules account, which at any rate seems to be the better contrast for my purposes. As in the case of assertion, my main aim is not to provide new arguments in favor of Hindriks and Guala, but merely to argue that the evidence from intuitions to which Roversi appeals can be explained from their perspective as well.

The crucial pivot of Roversi's argument is that the source of justification for Mr. Colasanti's appeal is the position of professorship itself understood as distinct from the regulative rules that define it. Without this normative support Mr. Colasanti's appeal would either be ingenuine (unjustified and misguided) or then its justifications would have to be grounded in more generic normative sources like compassion. This raises an immediate problem: how are we to tell that Mr. Colasanti's appeal *is* meaningful in the relevant sense? Note that to answer this it does not suffice to know his motivations for making the plea, for what is only relevant is the source for the plea's justification. But insofar as the plea is not justified by the



explicit regulative rules of professorship, the claim that it is actually meaningful in the “internal point of view’s” sense is *prima facie* no more justified than than the negative claim.

Moreover, it is interesting to note that in his more detailed analysis of Mr. Colasanti’s plea, Roversi actually says that the plea is not meant to claim that professorship is defined by obligations that go beyond what is explicitly stated in the regulative rules, but rather that these regulative rules *should* be changed in view of the position’s *ratio*. He goes on to derive a kind of a *reductio* argument from this observation:

On the regulative-rules account, I could simply reply to [Mr. Colasanti] that what he is saying is meaningless, because the very meaning of the term *professor* is a composition of rules, none of which requires me to do what he is asking. But his reaction is *not* meaningless. His argument is precisely that, even recognizing that there is no rule requiring me to support him beyond class time and office hours, a rule of this kind should be added to the list and be made explicit, given the overall *ratio* of the institutional role “being a professor.” But this entails that the meaning of *professor* is not simply a set of conditional regulative rules. To state the point more directly: if one can always build a meaningful argument about changing or adding further rules connected with a status in view of that status’s purpose or underlying rationale, the concept of that status cannot simply be reduced to the regulative rules that are connected with it. There is at least one other element of meaning apart from the rules, and this element is the overall rationale behind the connection between conditions and normative consequences—the purpose the institution is built for, one might say. If this further element were not part of the picture, any connection, any arbitrary set of rules could do. (Roversi 2021, 14363)

This paragraph appears to contain a slide in the meaning of “meaning of professor”. On the one hand, the meaning of being a professor is given by the explicit, official regulative rules that define the position. On the other hand, “the meaning of being a professor” refers to the *ratio* of being a professor, or the purpose that the role is supposed to play in an institution. As such, the regulative rules account should have no problem to recognize both of the senses of “the meaning of being a professor” as legitimate so long as they are not mixed together. Roversi’s argument in contrast presumes that the two meanings must come together, or that the official meaning must somehow contain the *ratio* – otherwise “any arbitrary set of rules could do”.

But this seems confused. Of course, if an institutional role has no *ratio* or purpose, then one set of rules defining it will not be better than any else (formal considerations notwithstanding). As it happens, most institutions that are defined by regulative rules have been founded for a purpose which those rules reflect, for better or worse. So the debate is not about whether institutions and roles within them have *ratios* or not, but whether this *ratio* is included in the meaning that defines the role. Insofar as the meaning of Mr. Colasanti’s plea is that the current official meaning of professorship should be changed in view of it’s *ratio*, there is nothing that contradicts the account according to which the current meaning of being a professor just is given by the currently official regulative rules; in fact this interpretation of the plea affirms the regulative rules reading.

The only way in which Mr. Colasanti's case would be problematic for the regulative rules account was if his plea meant (and was correct to mean) that being a professor included obligations that went beyond those defined in the official regulative rules. In that case, being a professor would of course be defined by more than a set of official regulative rules. What would then show that the plea is justified in this sense, i.e. that Roversi *is* (and not merely should be) obliged to help his student out beyond official regulations, not merely due to generic normative sources like compassion but because of the *ratio* of being a professor? As far as I can see, Roversi does not answer this crucial question in the paper.

Insofar as *ratio* is not included in the definition of what it means (in the sense of rules) to be a professor, there is no distinct source of normativity which the regulative rule account would miss. This does not imply that an account that relies predominantly on regulative rules as opposed to constitutive rules would be incapable of accounting for the "internal point of view" on institutions and their roles, for all that the internal point of view requires is deliberation about whether the rules serve their purpose and whether they should be changed. But it is perfectly possible and unproblematic to deliberate a change of rules in view of an institution's overall purpose without presuming that the institution (or a role within it) is defined by constitutive rules.

If that is right, does it follow that there is nothing more to the existence of an institutional entity than the set of regulative rules defining it? Roversi appears to think so, which he takes to be another point against the regulative rules account:

Ownership can have different rules in different legal systems, yet the institution is taken to be the same across these systems and to be commensurable because the different rules serve a similar *ratio*, namely, to make it possible for legal persons to have something at their exclusive disposal. If the constitutive rules of property in a legal system were simply regulative, the institutions of property in different systems could not be recognized as structurally modified instances of the same institution but would have to be considered altogether different entities. (Roversi 2021, 14366)

Again, the argument here in my view pivots on a slide in meaning. On the one hand, two different juridical property systems ascribing different sets of regulative rules for "property" will thereby ascribe different meanings to what it is to be property. On the other hand, the two systems might resemble each other a great deal in other respects save what is literally printed in codexes; they might share a historical origin, several social functions, many ritualistic practices etc. So the systems are different yet similar at the same time. The question is, if we remove all the legal regulative rules, is there anything left that can be called "the same" institution, namely property? All things being equal, the answer must be yes: what remains are, e.g., the history and social functions of the property institution. So the regulative rules account is compatible with institutions being something more than their regulative rules, only in a different sense. We can therefore recognize two different regulative rule legal systems as different developments of the "same" institution without thereby assuming that the institution must be defined by underlying constitutive rules.

## 5 Conclusions

This paper discussed certain methodological issues around the constitutive rules account of assertion and by an extension of the institutional role of being a professor. The defenders of Williamsonian constitutive rules sometimes argue in favor of their view by pointing to the intuitive possibility of offering internal criticism of an assertion or of being a professor. I argued, first, that where the rules which the internal criticism appeals to are implicit, it is difficult to intuitively distinguish the internal criticism from other normative sources of justification, e.g., generic social or moral norms. Second, I showed how competing accounts, such as the attitudinal account of assertion or the regulative rules account, can account for the objections drawn from intuitions about the possibility of internal criticism. While the point of these arguments was not to directly establish the truth or falsehood of any single account, in order to do that it is necessary to get clear about the evidence that can be used for deciding these matters, which is what the present paper aimed at.

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