

# **The Status Account of Corporate Agents**

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# The Status Account of Corporate Agents\*

In the literature on social ontology, two perspectives on collective agency have been developed. The first is the internal perspective, the second the external one. The internal perspective takes the point of view of the members as its point of departure and appeals, inter alia, to the joint intentions they form. The idea is that collective agents perform joint actions such as dancing the tango, organizing prayer meetings, or performing symphonies. Such actions are generated by joint intentions, a topic which has been investigated extensively in recent decades.<sup>1</sup> The external perspective takes the point of view of outsiders as its point of departure. Here the idea is that outsiders ascribe certain properties to collections of individuals that thereby acquire a new status. An example that is discussed in some detail below is provided by universities that, at least initially, had to be recognized by the pope in order to perform the actions that are characteristic of universities, in particular the awarding of academic degrees. This perspective has received considerably less attention.<sup>2</sup>

In this paper I present and defend a new account of collective agents from the external perspective. I call it ‘the status account’. At the heart of this account lies the idea just mentioned. A collective agent can come into existence by outsiders granting a collection of individuals some kind of status. I call a collective agent for which this holds a ‘corporate agent’, because such an agent is or has been, in a sense to be explained, incorporated. I develop this idea by distinguishing between two kinds of rules: status rules and constitutive rules. Status rules explicate the normative attributes that are characteristic of a particular kind of corporate agent. Constitutive rules specify the conditions that have to be met for a certain collection of individuals to have those attributes. The status account shares some important features with John Searle’s social ontology.<sup>3</sup> The advantages that my account has over Searle’s are discussed in section 2.2, immediately after the account has been introduced in section 2.1.

Before doing that, however, I shall discuss the internal perspective. My claim is that, in addition to joint intentions, a collection of individuals needs to have developed or accepted

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<sup>1</sup> See Bratman (1999), Gilbert (1989, 1996), Searle (1990, 1995), Tuomela (1995, 2005), and Tuomela and Miller (1988) for the most prominent accounts of joint intentions.

<sup>2</sup> As we shall see below, its most prominent proponent is Searle (1995, 2005). Tollefsen (2002) develops an account of the intentionality of organizations from an external perspective.

<sup>3</sup> Searle (1995).

a collective decision mechanism in order to really be a collective agent. Following Philip Pettit, I call such agents ‘social integrates’.<sup>4</sup> Against Pettit, however, I argue that this mechanism need not meet particular conditions of collective rationality. Insisting on this requirement rules out many organizations that are plausibly regarded as collective agents. The relation between the internal and the external perspectives, between social integrates and corporate agents, is discussed in section 3. By and large, the two accounts I defend should be regarded as complementary.

## 1. The Internal Organization Perspective

Consider Amy and Bob. Amy and Bob are walking together. Do they form a collective agent? Margaret Gilbert answers this question in the affirmative.<sup>5</sup> Amy and Bob perform a joint action. This joint action is generated by a joint intention. During the process of forming a joint intention, Amy and Bob have formed a collective agent, or in Gilbert’s terms ‘a plural subject’. This process can roughly be explicated as follows. Individual agents can form a plural subject by mutually expressing their willingness to be jointly committed to the performance of a particular action in conditions of common knowledge.<sup>6</sup> They are committed to it ‘as a body’. Because they are jointly committed to walk together, it is appropriate for Bob to criticize Amy if she happens to disregard him and walks too fast. As Gilbert puts it, he is entitled to rebuke her.

According to Gilbert, forming a joint intention is sufficient for forming a collective agent.<sup>7</sup> It is not obvious that this is correct, though. The one-time performance of the action of going for a walk together seems to be too fleeting to ground the existence of a new kind of agent. Rather than forming a new entity, Amy and Bob just join forces temporarily. Michael Bratman uses the terms ‘shared cooperative activity’ and ‘shared agency’ in this connection.<sup>8</sup> These terms seem apt to describe what is going on and do not require us to postulate a collective agent. I believe we should refrain from doing so, because in cases such as the walking example just discussed it does not seem right to say that the decision to perform the

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<sup>4</sup> Pettit (2003).

<sup>5</sup> Gilbert (1989, 1996).

<sup>6</sup> Gilbert (1996: 349).

<sup>7</sup> This is not a necessary condition, in Gilbert’s view, because plural subjects also come into existence when some other joint attitude is formed, such as a joint belief.

<sup>8</sup> Bratman (1999).

joint action at issue is made by a collective agent. Instead, the joint intention simply originates from the individuals involved.<sup>9</sup>

As collective agents perform joint actions, there is no reason to doubt that the formation of a joint intention is a necessary condition for forming a collective agent, at least as characterized from the internal perspective. What must be added in order to arrive at an adequate conception of collective agency? Philip Pettit has provided an answer to this question that focuses on the way in which a collection of individuals forms collective judgments. The motivation for his approach is that without taking special precautions, collections of individuals can easily end up forming inconsistent collective judgments. It is Pettit's view, though, that being responsive to the demand of consistency in the formation of beliefs is a requirement for being an agent. Let me elaborate.

Consider three individual workers A, B, and C who have to decide to forego a pay-raise in order to introduce some workplace safety measures. They make this decision by considering three questions. First, are the workers faced with a serious danger if the safety devices are not installed? Second, are the proposed measures effective? And third, is foregoing the pay-raise a bearable loss? They rely on majority voting. The safety measures will only be introduced if a majority is in favor of doing so. It appears that whether a majority is in favor of doing so can be determined in two ways. The first way is by voting on the three issues and doing what is implied by the votes. Only if a majority expresses a favorable opinion for each of the three issues will the individuals involved forego the pay-raise and introduce the safety measures. The second way is by voting directly on the issue whether to forego the pay-raise and introduce the safety measures. As illustrated in table 1, the outcomes of these two procedures can differ from one another. This in turn means that if they were to vote both on the overall issue and on its components, an inconsistency would arise.<sup>10</sup>

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<sup>9</sup> Pettit and Schweikard do not regard the formation of a joint intention as sufficient for the formation of a collective agent either, as is evidenced by their claim that 'it is we severally who intend that we act together, not we in the sense in which we might constitute a subject proper' (2006, 29-30). However, they reject this option for a more theoretical reason: according to their view, a joint action is (or need) not be generated by a single intention. They make this point as follows: 'We see no metaphysical reason why a joint intentional action has to be the product of a single agent or a single state of intending.' (Ibid., 30; emphasis added). I do not think this is correct. It appears to be more natural to say that it is the (single) joint intention that gives unity to the behaviors of the individuals involved and is what makes it proper to describe them as elements of a single joint action.

<sup>10</sup> In Pettit's view such inconsistencies only pose a threat to collective agents, and not to individuals who want nothing more than to perform a joint action: 'No plausible analysis of joint action, and none in the literature, requires that just for the purposes of acting jointly people have to take precautions against the appearance of such inconsistencies.' (Pettit and Schweikard 2006, 31)

INSERT TABLE 1 HERE

Pettit calls this problem of inconsistency ‘the Discursive Dilemma’. The problem is called ‘discursive’ because it pertains to a process of reasoning involving what can be regarded as premises and a conclusion ( $p$ ,  $q$ , and  $r$  in table 1 are the premises and their conjunction is the conclusion). It is taken to be a dilemma because it is regarded as forcing a choice on us between one of two ways of avoiding the inconsistency. The first is to vote only on the premises and to accept whatever is implied by the majority votes on them as the decision of the collective. This is the premise-based procedure. The second is to vote only on the conclusion and arrive at a collective decision in this way. This is the conclusion-based procedure. Pettit holds that the formation of a collective agent requires opting for one of these solutions to the problem.

By adopting one of these procedures, Pettit argues, the collection of individuals at issue develops ‘a mind of its own’.<sup>11</sup> The easiest way to see what Pettit means by this is to consider the premise-based procedure. It can result in the collective accepting a proposition and thereby making a decision that none of its individual members support. Note that the key to a group having a mind of its own is a lack of responsiveness to individual views on some matter. Such a lack of responsiveness is also present in the conclusion-based procedure. After all, that procedure ignores the fact that each premise is supported by a majority of the individuals, possibly by all of them.

In early papers on the topic, Pettit singles out the premise-based procedure and argues that if a collection of individuals that forms joint intentions has adopted this procedure there are good reasons to regard it as a collective agent.<sup>12</sup> After all, it has ‘collectivized reason’, as Pettit put it: it has imposed consistency at the collective level by accepting as its decision what is logically implied by the collective judgments on the premises. In a more recent paper co-authored with David Schweikard, this focus on one of the two methods has disappeared. Presumably, the idea is that either one will do.<sup>13</sup> The conception of collective agency presented there is as follows:

A group of individuals will constitute an agent, plausibly, if it meets conditions like the following. First, the members act jointly to set up certain common goals and to set

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<sup>11</sup> Pettit (2003). See also Pettit and Schweikard (2006).

<sup>12</sup> Pettit (2001, 2003).

<sup>13</sup> See also Pettit (2007).

up a procedure for identifying further goals on later occasions. Second, the members act jointly to set up a body of judgments for rationally guiding action in support of those goals, and a procedure for rationally developing those judgments further as occasion demands. And third, they act jointly to identify those who shall act on any occasion in pursuit of the goals, whether they be the group as a whole, the members of the group individually, certain designated members, or certain agents that the group hires.<sup>14</sup>

In addition to forming joint intentions, then, Pettit and Schweikard regard the formation of joint goals and rational judgments as necessary conditions for collective agency. Furthermore, the formation of rational judgments must be systematized by adopting the premise-based or the conclusion-based procedure. Finally, the individuals jointly determine who is to perform a particular action.

This conception of collective agency is rather attractive. Collections of individuals who satisfy all these conditions form collectives that are certainly not fleeting (which is not to say that they need to be in existence for a long period of time). In this respect, they differ from Amy and Bob, who perform only a single joint action. So Pettit's account solves the problem from which Gilbert's account suffers. However, it appears to be too strong. The first problem is that it excludes organizations that are governed in an authoritarian way. Instead of relying on majority voting it might be that a single individual makes all the decisions by considering only her own views on the matter. In the literature on the Discursive Dilemma this decision procedure is called 'dictatorship'. If the so-called dictator is sensitive to consistency, then so will the organization be, too. Some organizations that are run in this way may be more effective than some others run in a democratic way. Intuitively, there is no reason not to regard them as collective agents. After all, such organizations act and they consist of several individuals.

Dictatorships do not display the strong discontinuity between collective and individual judgments that Pettit appeals to in order to argue that collections of individuals can have a mind of their own. This only suggests, however, that (the possibility of) such a discontinuity is not a necessary condition for collective agency. Another consideration provides further support for this hypothesis. By requiring consistency, Pettit and Schweikard in effect develop a conception of rational collective agency rather than of collective agency per se. Consider the following passage:

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<sup>14</sup> Pettit and Schweikard (2006, 33).

Did individuals come together in the manner characterized, then they would be in a position as a group to mimic or simulate the performance of an individual agent. The group would have goals corresponding to individual desires, judgments corresponding to individual beliefs, and just as rational individuals act so as to satisfy their desires according to their beliefs, so this group would be able to act rationally so as to achieve its ends according to its judgments.<sup>15</sup>

This reveals that the target of analysis is rational action and rational agency rather than mere agency.<sup>16</sup> In other contexts, Pettit invokes the same considerations in order to develop a conception of collective personhood, or of collective agents that can be regarded as bearers of moral responsibility.<sup>17</sup> The purpose of this paper is more modest than that. It is to investigate the conditions for ordinary collective agency, not for its more demanding relatives.

Of course, this second argument can only succeed if there is an intermediate option, one that is stronger than Gilbert's account and weaker than Pettit's. I shall now argue that there is such an alternative. Instead of a procedure for forming rational judgments, mere collective agents should be required to have a procedure or a mechanism for making decisions or forming intentions, presumably against the background of some overarching goal the group wants to pursue. In order that a collection of individuals can have a collective decision mechanism, the individuals involved must have jointly accepted the procedure as their method for making joint decisions or for forming joint intentions. Arguably, they can only properly regard a decision mechanism as their own if they have successfully exercised it on several occasions. Thus, genuine collective agents will have developed a practice of decision making. Given the existence of such a practice, it would be inappropriate to say that the decisions originate from the individuals. As there is an established way of transforming the ideas individuals have about what to do into a joint intention, it makes sense to say that there is a collective agent that makes decisions of its own.

This proposal bears a close similarity to Raimo Tuomela's conception of social groups as authority systems.<sup>18</sup> Authority systems are a kind of collective decision mechanism. In Tuomela's terminology, they are group-commitment systems, the exercise of which leads to the formation of a group will or intention.<sup>19</sup> They are transformation functions, or sets of such functions, that represent or describe the process of forming a joint intention on the basis of

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<sup>15</sup> Pettit and Schweikard (2006: 33-34; emphasis in original).

<sup>16</sup> See Pettit (1993) for an analogous distinction between mere intentional agents and thinking agents.

<sup>17</sup> Pettit (2001, 2007).

<sup>18</sup> Tuomela (1995, 2007).

<sup>19</sup> Tuomela (1995, 174).

their individual intentions.<sup>20</sup> At the heart of Tuomela's proposal lies the notion of authorization, which is a matter of transferring the power to act. He makes a concomitant distinction between authorized or operative members on the one hand, and non-authorized or non-operative members on the other, and uses these notions to describe the core idea as follows:

As a way of creating a group will, the members commission the authorized members to act for the group while still retaining the ultimate responsibility – although not necessarily “authorship” – for such authorized action. Thus, the relevant power to act by the former is transferred to the latter, and the end result of this transfer of power is that the operative members gain the power to act in relevant, commissioned ways.<sup>21</sup>

Although by and large I accept Tuomela's proposal, I think that the term ‘authorization’ is of limited use in getting at the core issue, which is better captured by the general notion of a collective decision mechanism.

One can easily get the impression that when a process of authorization is involved, some members always authorize others. Whereas this can be the case, it need not be. It can be that, in a sense, all members authorize themselves. What is crucial, in my view, is that the individuals involved switch from their individual or private perspectives to the perspective of the group and that they act on the basis of the joint intention that is formed rather than giving priority to their individual or private intentions. The joint intention is prior in the sense that it provides the point of departure for the members to determine how to contribute to the joint action.

A final feature I want to add to this conception of collective agents, or ‘social integrates’ as I call them, concerns the scope of the collective decision mechanism.<sup>22</sup> It must pertain not only to what the group will do, but also to who belongs to the group. A genuine collective agent, at least as characterized from the internal point of view, can change membership while retaining its identity. It can lose members and acquire new ones as, for instance, sports teams can and often do. It is this feature that provides the very basis for regarding social integrates as genuine entities. Nothing in Gilbert's conception of plural subjects guarantees that they possess it, but it is crucial for the ontological significance of collective agents as conceptualized from the internal perspective. Because of it, social integrates have criteria of identity over time that differ from those of other entities, most

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<sup>20</sup> Tuomela (1995: 180).

<sup>21</sup> Tuomela (1995: 176).

<sup>22</sup> As mentioned in the introduction, I take this term from Pettit (2003).



notably from those of the sets of individuals that are their members at particular points in time. It is the presence of such criteria that grounds their reality.<sup>23</sup>

In sum, in my view, forming a joint intention is not sufficient for a group to become a collective agent. Doing something together does not require or involve the formation of a new distinct agent. Instead, establishing a way of making decisions together or of forming joint intentions is the mark of collective agency as characterized from the internal perspective. Thus, in order for a group to be a social integrate it must have a minimal level of internal organization. The relevant individuals must have integrated themselves into a new unity by jointly accepting a decision mechanism that serves to determine what to do and who belongs to the integrate. There is no need for this mechanism to meet particular requirements of rationality. While such requirements may be crucial to collective moral responsibility, they are of little relevance to ordinary collective agency.<sup>24</sup>

## **2. The External Attribution Perspective**

### **2.1 The Status Account Introduced**

Many types of collective agents have characteristics that they owe to the wider institutional context in which they operate. This holds, for instance, for universities and limited liability companies. In order to be a university or a limited liability company, an organization needs to be recognized as such by outsiders, agents other than the organization itself or its members. Consider universities. Since they came into existence in the twelfth and thirteenth centuries, the prime characteristic of universities has been that they have the right to award titles of higher education (see note 26 for a qualification). They owe this right to external authorities, initially ecclesiastical authorities, in particular the pope, and later civil authorities. As a consequence of being guaranteed by an external authority, these degrees are valid in a wide range of places. In the Middle Ages universities granted licenses called 'licentiae ubique

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<sup>23</sup> As discussed in section 3, my view differs from that of Tuomela in this regard. He does not ascribe ontological significance to social integrates, whereas I do.

<sup>24</sup> In the locus classicus on collective moral responsibility, Collective and Corporate Responsibility, Peter French (1984) develops a conception of collective agency that bears some similarity to the one presented here. At the heart of both accounts lies the notion of a collective decision mechanism, in French's terms a 'Corporation's Internal Decision (CID) Structure'. French does not require that particular conditions of rationality be met in order that a collective agent bears moral responsibility. My claim, then, is not that the conception of social integrates proposed in this paper is irrelevant to collective moral responsibility. Instead, the claim is that it does not count against the proposal if it turned out to be inadequate as an account of collective moral agency. French's conception of collective agency is in fact somewhat more demanding than my conception of social integrates, more closely resembling Tuomela's notion of a task-right system (see section 3 for a discussion).

docendi' that gave those who received them the opportunity to teach throughout Christendom.<sup>25</sup>

Since their inception, universities have been communities of teachers and students.<sup>26</sup> These communities had a special standing in that they enjoyed some independence from the local authorities, be they ecclesiastical or civil. For instance, the pope granted students the right to enjoy the revenues from ecclesiastical benefices without actually having to take up residence in them. Furthermore, universities were corporate entities that could endow themselves with statutes and enforce obedience of such statutes on the part of their members. In addition to this, they could sue in civil actions in their own names. Again, universities and their members owed these privileges to the wider institutional setting, including the external authorities mentioned.

I shall call these privileges, i.e. features such as that of having the right to award the licentia ubique docendi, 'normative attributes'. Normative attributes abound in institutional reality. Consider as another example the limited liability company (LLC). Just like universities, they can sue in their own name. The core characteristic of LLCs, however, pertains to its debts, obligations, and other liabilities. By forming an LLC the individuals involved limit their liability to the amount of money they invest. The members of an LLC are not personally liable for any of the debts of their company other than for the value of their investment in it. Limited liability, then, is a normative attribute of LLCs. The collection of normative attributes that is typical of a certain type of organization is what I shall call 'a status'.

Just like the right of a university to award academic degrees, the limited liability of an LLC is grounded in an external authority. In order to form an LLC a certificate of organization has to be signed and delivered to the Secretary of State. The existence of agents such as universities and LLCs, then, depends on recognition or (collective) acceptance by people or institutions external to them. Rather than (merely) to their internal organization, they owe their existence to the external ascription or attribution of a status. As indicated in the introduction, I call agents of this kind 'corporate agents' because a collection of individuals is

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<sup>25</sup> The account of the history of the university presented here is due to Verger (1992).

<sup>26</sup> In fact some universities were, initially communities of students only (those modeled after Bologna rather than Paris, the universitates scholiarum rather than the universitates magistrorum et scholarium). The students hired teachers on annual contracts. The teachers created their own organization, the college of doctors. This college was responsible for examinations and the conferring of degrees. The claim that universities have the right to confer academic degrees, then, must be qualified. It is more accurate to say that universities are the organizations students go to in order to meet the requirements necessary for receiving academic degrees. See note 41 for more on this issue.

incorporated into a new entity by being ascribed a status.<sup>27</sup> The account of these agents I develop in this paper is the status account of corporate agents.

Why should we regard corporate agents as agents distinct from their members? Perhaps this is because many of them can change membership without losing their identity. A more compelling reason, however, is that they have properties or powers that the individuals involved do not have. A university can confer academic degrees, whereas individuals cannot, at least not without being authorized to do so. Similarly, the liability of an LLC is distinct from that of the individuals that are its members. Corporate agents are distinct from their members because they have properties that are distinct from the properties of their members (section 104a of the Revised Uniform Limited Liability Company Act drafted by the National Conference of Commissioners on Uniform State Laws in the United States in 2006 states in fact that an LLC ‘is an entity distinct from its members’).

In order to explain how this can be I employ the notion of constitution, which I regard as a relation similar to but distinct from identity.<sup>28</sup> The core idea is that a collection of individuals constitutes a particular type of corporate agent exactly if it meets the required conditions for having the status of that type in the context at issue. Filing what is called ‘a certificate of organization’ is one of the conditions that has to be met in order for some individuals to constitute an LLC in the US. An LLC is not identical to its members, because its members can survive its dissolution and it can survive the death of its members. Just like identity, constitution is a non-causal notion. An LLC is not caused by its members. However, its members do enact the actions of an LLC.<sup>29</sup>

Both the notion of a status and the conditions that have to be met in order for something to have a particular status can be explicated in terms of rules: in terms of status rules and constitutive rules, respectively. A status rule specifies the normative attributes of the status at issue. It is a rule or a set of rules because normative attributes can be formulated as

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<sup>27</sup> In contrast to integration, incorporation is an institutional matter. As I use the term, though, it need not be a legal matter.

<sup>28</sup> See Baker (1997, 2000) for a defense of such a view. Wasserman (2004) provides a useful but critical discussion of various conceptions of constitution.

<sup>29</sup> Wilson (2005) formulates an analogous condition that collective agents and their members are supposed to satisfy. This is the condition of agency coincidence, which is a matter of two agents undertaking precisely the same actions at a particular point in time. Although it is defined for agents, Wilson maintains it is satisfied by collective agents and the (collection of) individual agents of which they are made up. Moreover, although it is put forward in the context of a discussion of constitution, Wilson appears to require identity. What I call ‘the Enactment Condition’ is a more felicitous formulation of basically the same idea: any action of a collective agent is enacted by some (possibly all) of its members, or by one or more agents who have been authorized by the collective agent. This condition can play the same role Wilson ascribes to his condition of agency coincidence, in that it can replace the requirement of spatial coincidence that is usually invoked in accounts of the relation of constitution.

rules. Consider the status term ‘university’ and suppose, for simplicity, that its only normative attribute is the right to award master’s and doctorate degrees. Given this stipulation, its status rule is straightforward: a university has the right to award master’s and doctorate degrees.<sup>30</sup>

The first universities developed out of pre-existing schools. It appears that nothing else was required in order for a school to be a university than that it be recognized as having the status of a university, a status that could at some point only be imposed by the pope. In contemporary societies the conditions that have to be met are much more complex and systematic. For such cases, they can be explicated in terms of constitutive rules.<sup>31</sup> Such rules specify the necessary and sufficient conditions for a status to be instantiated in a particular context. In the case of corporate agents, it explicates the properties that a collection of individuals or some (other) entity must have in the context under consideration in order for it to constitute a corporate agent that has the status at issue.

Status rules and constitutive rules characterize types of institutional entities. They can – but need not – be formal or codified. Features that are particular to a token of a type can be specified in what I shall call ‘a statute’. Both the status rule and the constitutive rule of the LLC are specified in the Act mentioned above. Its key articles pertain to the conditions for the formation of an LLC on the one hand (article 2), and to the relations of members and managers to persons dealing with an LLC on the other (article 3). These articles present the core of the constitutive rule and the status rule of American LLCs, respectively. The Act also discusses the operating agreement, which can basically be regarded as a statute. An operating agreement will be unique to a particular LLC. The kinds of provisions that the members of an LLC can make in it are specified and limited by the Act. The operating agreement serves as the foundational contract among the entity’s owners.

In sum, a corporate agent as defined in this section owes its existence to external recognition of its status. As evidenced by the role that outsiders play, the status of a corporate agent is always embedded in a wider institutional context. The status can be explicated in

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<sup>30</sup> Status rules are closely related to regulative rules, which have as their structure ‘Do X’, or ‘If Y, do X’ (Searle 1969). Only some regulative rules employ status terms, while all status rules do so. Status rules are (possibly stipulative) definitions, whereas regulative rules are not. See Hindriks (2007a) for a more detailed discussion of the relation between status rules, regulative rules, and constitutive rules.

<sup>31</sup> This may well be what Searle is after in the following passage: ‘[W]here the imposition of status function according to the formula becomes a matter of general policy, the formula acquires a normative status. It becomes a constitutive rule.’ (1995, 48) As I argue in my 2003, Searle relates this closely to codification and the possibility of there being counterfeit instances of a status. I believe the link is not so tight. Constitutive rules need not be codified. Furthermore, counterfeit instances can only exist when they are, and once an institutional authority is involved in status attribution: in the end, the crucial difference between a genuine and a fake instance of a certain status is often whether the status has been conferred by the relevant authority (consider a Central Bank issuing money). Constitutive rules do not necessarily involve authorities.

terms of a status rule that specifies the normative attributes that are characteristic of the type of corporate agent at issue. If generally accepted conditions have to be met in order for a status to be instantiated in a particular context, a constitutive rule for the relevant status is operative in that context. It will by now be clear that corporate agents are institutional agents. As institutional reality is often very complex, the picture presented here must be qualified and extended in order to do justice to those complications. A start will be made in the next section, in which the status account is compared to some of its rivals.<sup>32</sup>

## 2.2 The Status Account Defended and Developed

The status account of corporate agents presented in the previous section shares some important features with the social ontology that John Searle has developed in particular in his book The Construction of Social Reality.<sup>33</sup> Nevertheless, my view differs from Searle's in significant respects, two of which I shall discuss here.<sup>34</sup> First of all, my notion of a status, as it is developed below, is more general, transparent, and precise than Searle's notions of status function and deontic power. At the heart of Searle's conception of deontic power lies the notion of permission. In his view, all such powers can be defined in terms of permission and negation.<sup>35</sup> This is a natural suggestion to make, given that prohibitions and obligations can indeed be defined in these terms. It is too restrictive, however, because it leaves out important kinds of rights. Consider the four basic Hohfeldian incidents: the privilege, the claim, the power, and the immunity. The first two of these can be defined as the absence or presence of a duty or obligation. Hence, they can be reduced in the way Searle envisages. The last two, however, pertain to ability or a lack thereof to effect a change in Hohfeldian incidents.<sup>36</sup> These cannot be reduced to the notion of permission.

Searle has little to say about status functions. The key claims he makes about them are, first, that they are functions entities cannot perform merely in virtue of their physical features, and second, that they can perform those functions only because they are collectively accepted to have those functions.<sup>37</sup> It appears that he no longer thinks the notion of a status function

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<sup>32</sup> The ontology of many other institutional entities can be captured in terms of status rules and constitutive rules as well. The status account of corporate agents, then, can be generalized into a status account of institutions (see Hindriks 2007a).

<sup>33</sup> Searle (1995). See also Searle (1969).

<sup>34</sup> See Hindriks (2007a) for some others.

<sup>35</sup> Searle (1995, 106-07) claims that it is tempting to accept this idea. He puts it forward without qualification in his 2005 (16-17).

<sup>36</sup> Wenar (2005).

<sup>37</sup> Searle (1995: 46 and passim).

adds much to that of deontic power: '[T]he forms of the status function in question are almost invariably matters of deontic powers.'<sup>38</sup> What I want to suggest is that we can indeed do without the notion of a status function, but only if we accept a broader conception of deontic power that also includes powers and immunities.

Searle uses the term 'status function' primarily in relation to money. The function of money, one might say, is to serve as a means of exchange. This idea, however, can also be captured in terms of power. In economic terms, money provides one with purchasing power. This power is a matter of being able to change the distribution of property rights, which is, after all, the effect of purchasing something. According to the Hohfeldian conception, a power consists of the ability within a set of rules to alter one's own or someone else's rights.<sup>39</sup> The notion of ability lies at the heart both of powers and immunities. This implies that, although we can do without the notion of a status function, it is not possible to build all deontic powers out of the notion of permission.<sup>40</sup>

As I conceive of them, deontic powers can be explicated in terms of action-types and modes or modalities. The modalities include those of permission, prohibition, and obligation. In order to do justice to the complexity of institutional reality, we should, however, allow for other modalities. These include power or ability, which is more or less the possibility of performing certain actions. Perhaps yet other modalities should be included as well, so as to accommodate actions that are deemed appropriate, or activities that are to be promoted. In order to allow for this I use the more general term 'normative attribute' rather than deontic power. The upshot is that the notion of a status and that of a status rule are more general and provide a better understanding of the underlying institutional phenomena than Searle's notions of status function and deontic power.<sup>41</sup>

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<sup>38</sup> Searle (2005, 13).

<sup>39</sup> Wenar (2005).

<sup>40</sup> Of course, institutions often serve important functions. However, these are often not explicitly and deliberately attributed to them. When they are, this is done by specifying certain kinds of actions or activities that are, for instance, to be promoted. As will become clear below, this can be accommodated in terms of status rules. I do not want to deny that the notion of a function can play a useful role in relation to institutional entities in a way that is not captured by the status account. The claim I want to defend instead is that the work that is supposed to be done by the Searlean notion of a status function can be done by my notion of a status.

As I have argued in my 2003, there is some evidence for regarding the status function as the function of representation in relation to entities that do not exist independently of being represented. Given that interpretation, the notion of a status function could be taken to convey nothing but the idea that, insofar as institutional reality is concerned, deontic powers exist only because they are represented as existing. This is in fact compatible with the line I defend in the main text.

<sup>41</sup> Some statuses are truncated. Consider a university modeled after Bologna that consists only of students (recall note 26). Such a university does not itself have the right to award degrees, but serves for students to meet the requirements for being eligible to receive a degree, what I have called 'the X-conditions'. Searle also allows for statuses without 'real powers' (2005, 10n2). He only mentions cases in which the recipient has the (dis-) honor of the status, as in the case of an honorary degree, for which he uses the term 'honorific status functions'.

The second difference between my view and Searle's that I discuss here pertains to the notion of a constitutive rule. According to Searle, the form or structure of a constitutive rule is given by the counts-as locution "X counts as Y in C". In contrast to this, the status account uses the following schema for constitutive rules:

In C, X is Y.

X, Y, and C should be regarded as schematic letters for predicates. Y refers to a status. X predicates the property or set of properties that an entity has to have in order to have the relevant status. C stands for a context or set of circumstances. On the status account of constitutive rules they are to be regarded as universal generalizations.<sup>42</sup>

A notable difference between this status schema and the counts-as locution is that the phrase 'counts as' has disappeared. The reason for this is that I take the phrase to be indicative of the role played by collective acceptance. On the view defended here, a constitutive rule is in force exactly if it is collectively accepted.<sup>43</sup> Accepting a constitutive rule amounts to accepting that any entity of a certain kind has the status that appears in the rule, at least if the appropriate contextual conditions have been met. If in the appropriate context an entity meets the relevant X-conditions it actually has the relevant Y-status.<sup>44</sup> More precisely, if in C an entity is X then that entity constitutes an entity that is Y. The upshot is that, once the role of collective acceptance has been made explicit, the phrase 'counts as' becomes redundant.

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<sup>42</sup> In order to make explicit that an instantiation of the schema concerns types of institutional entities rather than tokens, the schema of constitutive rules can be expanded as follows:

[CR]  $\forall \alpha (C\alpha \rightarrow (X\alpha \leftrightarrow Y\alpha))$ ,

with  $\alpha$  as a schematic letter for a variable. Using Z as a schematic letter for a predicate pertaining to the normative attributes belonging to a particular status, the schema for status rules can be formulated as follows:

[SR]  $\forall \alpha (Y\alpha \leftrightarrow Z\alpha)$ .

The schemas describe extensional equivalences. They do not make explicit that the relation between X and Y on the one hand and that between Y and Z on the other hand are in fact very different from one another. The relation at issue in constitutive rules is that of constitution. The extensional equivalence made explicit in the schema for status rules is due to the semantic equivalence between Y-terms and Z-terms: being Y just means having property Z.

<sup>43</sup> This can be made formally explicit in terms of what I call the Collective Acceptance Principle (see my 2007a for further discussion):

[CAP]  $(\text{In } G, p) \leftrightarrow \text{CA}_G(p)$ ,

with G for a group, 'CA<sub>G</sub>' for collective acceptance by group G, and 'p' for an institutional proposition that expresses a constitutive rule. This Principle is based on Tuomela's Collective Acceptance Thesis, which he presents in chapter 5 of his 2002.

<sup>44</sup> We often introduce labels for statuses in particular contexts. Currencies of particular denominations are a case in point in relation to the universal status of money. In such cases, the features that occur in the constitutive rule belong to the relevant status by (stipulative) definition. For instance, 5-euro bills are gray and 10-euro bills are red, and their sizes in millimeters are 120 x 62 and 127x 67 respectively.

It is not fully clear to me how important this difference is. Surely, Searle had something like this in mind. However, I ascribe more ontological significance to institutional entities than Searle does. This is mainly due to the account of constitution on which I rely. It appears that Searle's view is that *X*-terms and *Y*-terms are just different descriptions of the same entities.<sup>45</sup> In my view, however, entities that are *X* constitute other entities that are *Y* (see section 2.1 and note 57).

An important advantage of the status account of constitutive rules as compared to Searle's account is that it can solve a problem that, it turns out, afflicts the latter, which I shall call the problem of free standing *Y*-terms.<sup>46</sup> Barry Smith has criticized Searle, arguing that for some institutional entities there is no suitable candidate for an object *X* on which the status at issue is imposed.<sup>47</sup> When discussing some examples to which Searle's account of constitutive rules applies successfully, he observes:

In all such courses we have certain distinctively patterned parts of physical reality, which in certain specific kinds of contexts fall under certain specific kinds of descriptions. The corresponding objects and events, correspondingly, come to be ascribed certain properties or powers of non-physical sorts. As falling under such descriptions the *X* term counts as a *Y* term of a certain sort.<sup>48</sup>

The idea, then, is that on Searle's account there has to be a particular object *X* on which a status is imposed in order for that status to be instantiated. Having made this point, Smith turns to his critique:

Unfortunately, however, there are entities in social reality – debts, rights, obligations, bond derivatives (and games of blind chess), which do not fit well with Searle's formula. For here there is no physical *X* term to which the corresponding properties or powers could be ascribed.<sup>49</sup>

Smith calls statuses for which no physical object can be identified on which it is imposed 'free standing *Y*-terms', because they are not grounded in physical reality.

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<sup>45</sup> See Smith (2007: 12).

<sup>46</sup> Another advantage, which I discuss in my 2007a, is that the status account can be used to elucidate the relation between regulative rules, and constitutive rules.

<sup>47</sup> I have also discussed Smith's criticisms in my 2007a and 2007b. Here I focus on Smith's most recent formulation and also discuss the alternative he presents there. Another advantage of the presentation here is that the differences between the status account and Searle's account of constitutive rules are made fully explicit here, because here I develop the formal details of the former. I thank Barry Smith for a very helpful exchange on this topic.

<sup>48</sup> Smith (2007: 7).

<sup>49</sup> Smith (2007: 7).



In response Searle has accepted that there are cases to which his counts-as formula does not apply. Furthermore, he has argued that corporations are a case in point:

The laws of incorporation in a state such as California enable a status function to be constructed, so to speak, out of thin air. Thus, by a kind of performative declaration, the corporation comes into existence, but there need be no physical object which is the corporation. The corporation needs to have a mailing address and a list of officers and stock holders and so on, but it does not have to be a physical object. ... There is indeed a corporation as Y, but there is no person or physical object X that counts as Y.<sup>50</sup>

Searle claims here that there is no X, no object on which the status of a corporation is imposed. Furthermore, he suggests that this is not needed. Thus, he admits that there are free standing Y-terms to which his counts-as locution does not apply, but he does not take this to be a significant problem for his approach.

In fact, he now maintains that it is a mistake to treat the object as the unit of analysis, and he goes on to suggest that we should focus our attention on processes, and facts.<sup>51</sup> Representations play an enabling role in this connection: ‘The real picture is this: we have a set of processes and we have a set of representations which enable these processes to function’.<sup>52</sup> In addition to this, Searle claims that ‘in many cases the representation is all the reality we need to make the entity function’.<sup>53</sup>

Smith objects to this and maintains that ‘we need to take seriously the fact that such processes involve objects’.<sup>54</sup> He does so by introducing the notion of a quasi-abstract object. Free standing Y-terms are not ascribed to physical objects in his view. Instead, they are quasi-abstract objects anchored ‘in the realm of records and representations’.<sup>55</sup> That they are quasi-abstract means that they are abstract or non-physical on the one hand but historical on the other. Collective acceptance or human agreement is relevant through the role documents play, which grounds the historical aspect of these institutional entities. He criticizes the idea that free standing Y-terms might just be concepts pointing out that concepts can exist without corresponding objects. We can have the concept of a debt at a point in time at which there happen to be no debts.

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<sup>50</sup> Searle (2005: 14-15; emphasis added). See also Smith and Searle (2003: 305-07).

<sup>51</sup> Smith (2007: 19; the last section of this paper consists of a discussion between Searle and Smith).

<sup>52</sup> Smith (2007: 21).

<sup>53</sup> Smith (2007: 20).

<sup>54</sup> Smith (2007: 21).

<sup>55</sup> Smith (2007: 13).

Both Searle and Smith maintain that the universe is partly populated by a large number of free standing *Y*-terms, and that there need not be particular physical objects to which those terms apply. I regard both their views as unattractive. The main point of Searle's social ontology used to be to show how institutional reality is embedded in physical reality. Searle is correct in pointing out that he has always used fact talk, but this need not be at odds with object talk. After all, it is a fact that certain pieces of paper are euro bills. Moreover, without an account of how debts and organizations involve objects, or at least entities such as actions or persons, Searle's ontology adds nothing to existing accounts in the social sciences that appeal to norms or rules that specify the functions or powers, or as I would put it the normative attributes involved. Smith's more daring proposal is attractive in that it is a genuine attempt to provide an ontology of the entities at issue. However, Smith underestimates the extent to which institutional entities can be grounded in physical entities. As I shall argue, we can understand the ontology of entities such as debts and organizations by abandoning the idea that statuses are nothing other than new descriptions of objects that are familiar under other guises.

The first thing to realize is that institutional entities need not be objects. They can also be properties of objects. A debt, for instance, is to be regarded as a (relational) property rather than as a self-standing object. Even though George Bush can be the president of the United States, he cannot be a debt (not even if he has one). When the *X* and *Y*-terms that appear in the constitutive rule are interpreted as predicates, this can be accommodated in a rather natural way. The bound variable ranges over persons in this case. The *Y*-term stands for having a debt. If Bush has debts, he must meet the *X*-conditions for having a (particular kind of) debt and be in the relevant context *C*. Given all this, Bush's being *X* constitutes his being *Y* (which is a matter of standing in a particular relation to some other person).

Secondly, rather than regarding a status as a different description of the same object, it can be regarded as a predicate that first and foremost applies to another object, the one that is constituted by the object to which the status is ascribed. This alternative appears to work for corporate agents, and it can also be accommodated by the status account of constitutive rules. As we saw above, Searle maintains that in the case of a corporation 'there is no person or physical object *X* that counts as *Y*'.<sup>56</sup> In my view, a (collection of) person(s) can count as a corporation. This means that it is a corporation in that the relevant person(s) constitute(s) it. So we have two distinct objects here: a collection of persons and a corporation. The former

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<sup>56</sup> Searle (2005: 15).

constitutes the latter, because it meets the *X*-conditions and occurs in the appropriate context *C* (and because it is collectively accepted that in *C* entities that are *X* are corporations). The two entities are distinct from one another in the sense that the corporation has the normative attributes involved in its status essentially, whereas the collection of individuals has them only in a derivative sense.<sup>57</sup>

The upshot is that, pace Searle and Smith, corporate agents are not free standing *Y*-terms. Note that there is a sense in which any plausible view of institutional reality will have to allow for free standing *Y*-terms. Positions within organizations can be vacant. Especially if it is a statutory requirement for there to be a certain position, it is implausible to say that it does not exist because it is not filled. Consider the position of a treasurer and suppose it is in fact vacant in a particular society or association. In such a situation we should say that the position exists within this association, but that at the moment there is no one who is the treasurer; there is no one who has the properties that constitute the property of being a treasurer.

Given the criticisms voiced regarding the notion of a free standing *Y*-term above, the question arises of what the existence of an unfulfilled position amounts to. It amounts to nothing else than the collective acceptance of a statute according to which the corporate agent has the position of a treasurer. This phenomenon is in fact quite common and uncontroversial. Few will, for instance, claim that the relevant royal or ecclesiastical institutions have disappeared during periods in which there is no king or no pope. In fact, the Catholic Church has a doctrine of perpetual papal succession, which is left unperturbed by periods in which there is no pope (known as papal interregna). In all such cases, the institution exists, but it is not instantiated.

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<sup>57</sup> The status account involves both the notion of property constitution and that of object constitution. In relation to constitutive rules, the idea of property constitution is that, when an entity has a property *X*, a property that figures in a particular constitutive rule that is collectively accepted, and it occurs in the context *C* that appears in the same rule, that property thereby constitutes the relevant property *Y*. If an object has property *Y* essentially, then that object is constituted by the object that is *X*. It is a contingent fact about a person that she has a debt. Limited liability is an essential property of LLCs (and a contingent property of collections of individuals). In line with this, debts are to be explicated in terms of property constitution, whereas corporate agents are to be understood in terms of object constitution. An indication of the fact that a relation of constitution is at issue is that an entity can be *X* without being *Y*, which is the case when being *Y* depends on being in the appropriate circumstances *C*. This view of constitution is very similar to that proposed by Baker (1997, 2000, 2008) on whose work I also rely for the distinction between having a property essentially and having a property derivatively (see note 29 for a difference between Baker's view and mine).

### 3. The Internal and the External Perspective Combined

In the preceding sections, collective agency has been investigated both from the internal and from the external perspective. This has resulted in a conception of social integrates on the one hand and of corporate agents on the other. The question arises how social integrates and corporate agents relate to one another. By and large, the conceptions defended here should be regarded as complementary. It is quite common, for instance, for a social integrate to develop into a corporate agent. A social integrate can also come into existence at the same time as the concomitant corporate agent.<sup>58</sup> This need not be the case, however. Corporate agents can in fact be constituted by single individuals. Sometimes this even holds by definition, as in the case of sole proprietorships. The limiting case of a corporate agent, then, is not a collective agent. In this respect, the claim that section 2 concerns the investigation of the external perspective on collective agents, which was made in the introduction, must be qualified. In fact, it pertains to a kind of agent that is distinct from individual human beings, which can but need not be a collective agent. So the status account also covers agents that are not social integrates.

It is important to note that statuses can exist within collective agents. Being a professor is a status within the university, just as being a manager is a status within LLCs. These statuses depend for their instantiation on collective acceptance both from insiders and outsiders. Statuses that are internal to a collective agent do not exist in all social integrates, but only within social integrates with structure. Tuomela has introduced the notion of a task-right system for such collective agents.<sup>59</sup> Such a system is a division of tasks and rights governed by formal or informal norms.<sup>60</sup> Such tasks and rights are normative attributes. As such, they can be accommodated by the status account of corporate agents. According to that account, the norms that are definitive of the relevant tasks, rights, or roles are status rules. So, even though it was developed above in relation to statuses of corporate agents attributed by

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<sup>58</sup> It may be that a collection of individuals decides on a decision procedure when going through the process of establishing a corporate agent (for instance, by formulating an operating agreement for an LLC). It appears that in such cases a social integrate comes into existence at the same time at which the corporate agent comes into existence, even if the decision mechanism has not been exercised several times. This condition mentioned in section 1, then, is only plausible in relation to social integrates that are not corporate agents.

<sup>59</sup> Tuomela (1995).

<sup>60</sup> Using these notions, Tuomela (1995, 438) provides a definition of organizations that is very similar to the conception of collective agents defended by French (1984), and, as Tuomela points out, to that of Bach and Harnish (1979).

outsiders above, the status account can be extended to normative attributes within those agents (see note 32).<sup>61</sup>

Collective acceptance from insiders is also important for statuses of a corporate agent as a whole. It is hard to see how, for instance, rights involved in a status could be exercised if insiders did not recognize them. Furthermore, there might be statuses that corporate agents can have in virtue of acceptance by its members only. Consider, for instance, the power of the Catholic Church to excommunicate some of its members. No external recognition appears to be required for it to possess this power. As another example, consider a national minority that declares its independence from the state to which it officially belongs. It is conceivable that it has some powers, even if it is not recognize as a state by outsiders. The thing to note, however, is that in such a situation its powers pertain to its members only.

The accounts also differ in relation to the ontological criteria they employ concerning the existence of agents, at least apparently. The internal organization account of social integrates appeals to criteria of identity over time. The status account of corporate agents invokes new attributes or properties (i.e. statuses). Many philosophers deny the existence of collective agents. Tuomela, for instance, argues in relation to what I have called ‘social integrates’ that they are ‘not ontically real entities, even if our formulations and phrasing – used for convenience – might suggest this’.<sup>62</sup> Tuomela appears to regard the notion of a social group or integrate here as a useful tool, perhaps a useful fiction. On his view a more felicitous way of talking would be to say that certain individuals form a social group or integrate (rather than that they are one): ‘Thus, “groupness” is a relation between persons ... . [A] group is not an entity’.<sup>63</sup> Apparently, Tuomela rejects the availability of independent criteria of identity as a criterion for existence, and only accepts the criterion of new attributes or properties.<sup>64</sup>

The view that corporate agents are nothing but useful fictions, known as fictionalism, is in fact very popular in law and the social sciences. In law corporate agents are often regarded as legal fictions. According to a prominent view in economics, the firm is taken to be a nexus of contracts, and this view is usually regarded as a kind of fictionalism. I cannot do justice to these views in this paper. Let me note just two things. First, the status account of corporate agents focuses on normative attributes. These are exactly the kind of things that are central to contracts and to law. Second, such attributes can be used for developing a robust

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<sup>61</sup> By virtue of their having the power to impose internal statuses, it seems plausible to say that task-right systems or organizations are themselves statuses.

<sup>62</sup> Tuomela (1995: 194).

<sup>63</sup> Tuomela (1995: 194).

<sup>64</sup> Tuomela (1995, 200-201 and 374-75) presents the ontologically noncommittal view as his official view, leaving open the prospect that future science will prove this view to be mistaken.

kind of realism, as I have tried to show in this paper. Perhaps the way in which I have employed the notion of constitution here in order to defend realism about corporate agents will convince some fictionalists that a genuine alternative is in fact available.

#### **4. Conclusion**

It has been argued that the most plausible account of collective agents viewed from the internal perspectives is the internal organization account of collective agents as social integrates. From an external perspective, collective agents are best seen as corporate agents, a notion that has been explicated in terms of the status account. Social integrates basically consist of collections of individuals that have jointly accepted a decision mechanism. This internal organization account of collective agents was defended against weaker and stronger accounts. The former was rejected because people can share a joint intention without forming a collective agent. The latter was rejected because people can form a collective agent without satisfying particular criteria of collective rationality.

The external perspective resulted in an account of institutional agents, the status account of corporate agents. Corporate agents are statuses that are usually imposed on collections of individuals, and that consist of normative attributes such as rights and obligations. This view was developed in terms of status rules that specify the nature of particular kinds of corporate agents, such as universities or limited liability companies, and in terms of constitutive rules that specify the conditions a collection of individuals has to meet in order to constitute an entity such as a university or a limited liability company. It is to be preferred to the Searlean account of constitutive rules, *inter alia* because the former succeeds in positioning corporate agents in a broader ontology where the latter fails.

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Table 1

	Serious danger? <i>p</i>	Effective Measure? <i>q</i>	Bearable loss? <i>r</i>	Pay sacrifice? $(p \wedge q \wedge r)$
<i>A</i>	No	Yes	Yes	No
<i>B</i>	Yes	No	Yes	No
<i>C</i>	Yes	Yes	No	No
Majority	Yes	Yes	Yes	No