Abstract

Context has always been central to Searle’s account of constitutive rules, as can be appreciated from his classic formulation, “X counts as Y in context C.” But while the nature of X and Y in Searle have been widely discussed, the role of the context in which Y is constituted on the basis of X has not. So, in this paper, I will discuss how context shapes the process of constituting and creating meaning through rules and how, in doing so, it affects the regulative action of constitutive rules. I extract from this argument the general thesis that the two main questions concerning constitutive rules—namely, “How can they be constitutive of meaning?” and “How can they be rules even so, despite their constitutive role?”—can be solved by looking at the wider context, or “practice,” within which these rules are framed, and that such an approach can give us further insight into the functioning of institutions.

1. Introduction

The question of constitutive rules has been relevant to the discussion of the nature of institutional reality at least since 1964, when John R. Searle came
out with “How to Derive ‘Ought’ from ‘Is’” (Searle 1964). But while Searle’s theory of institutional facts has since drawn a great deal of attention, theories about constitutive rules and their relevance have been with us long before Searle’s seminal article. A history of the debate on constitutive rules would therefore clearly use up much more space than can be made for it here. Such a history should at least cover Czesław Znamierowski (Czepita 1990), along with Rawls’s “practice conception of rules” (Rawls 1955) and von Wright’s concept of a “secondary norm or rule” (von Wright 1993). Searle’s own work—beginning with “How to Derive ‘Ought’ from ‘Is’” (Searle 1964) and going through *Speech Acts* (Searle 1969) and *The Construction of Social Reality* (1994)—stimulated a discussion that developed with many relevant contributions, particularly on constitutive rules in relation to the ontology of institutional reality.¹ Thus, Andrei Marmor has recently devoted a great deal of attention to the concept of a constitutive convention, both in general and with specific regard to law, and while constitutive conventions are not understood by him as equivalent to constitutive rules, his account nevertheless makes it possible to bring out the close affinity between the two concepts (Marmor 2006, 2007).

In his account of constitutive rules, Searle has always included the concept of context. Thus, his formulation of a constitutive rule is “X counts as Y in context C.” But, while the nature of X as an extra-institutional (or “brute”) term and Y as an intra-institutional term in Searle have been widely discussed, the context in which Y is constituted on the basis of X has not. Hence, there has yet to be a discussion about questions like “How does context affect the constitution and creation of meaning?” “What are the features of this context?” “Does it significantly influence the nature of constitutive rules?” And it is these questions that this paper will discuss. It will do so by drawing on the traditional example of games, but the account seems applicable to other areas of institutional life. In the first part (Section 2), I lay out a mental experiment illustrating how rules concur in setting up (or constituting) institutional elements, and the necessary conditions they must undergo to be constitutive of something meaningful. In the second part (Section 3), I show that context is essential in explaining how constitutive rules create meaning, and I bring into play the concept of a practice. Finally, in the third part (Section 4), I show how this context (or practice), within which constitutive rules are framed, helps us clarify how constitutive rules simultaneously constitute and regulate.

2 In what follows, I will often use the term institution for a system of constitutive rules, or rather a system inclusive of constitutive rules, which is roughly Searle’s sense.
2. Setting up a Game: How Constitutive Rules Create Institutional Elements

The discussion on constitutive rules very often overlooks the process of creating an institution and the necessary conditions this process is subject to. Thus, games, a favorite example in philosophical discussions about institutional phenomena and constitutive rules, are almost invariably discussed as givens. The game of chess, for instance, which has been the paradigm case at least since Wittgenstein, is almost always conceived as a system of elements defined by well-recognizable constitutive rules, a system which seems to come out of nothing. This, however, distracts us from considering the game in its development. Some games, and this is indeed the case with chess, are the result of a process that started centuries ago and is still under way. But most games develop from scratch, as it were: Game developers start thinking about a game and set out to build it through a process involving cumulative adjustments made to a core of tentative rules. And what is true of games is true of other institutions as well: Some of them are a sort of palimpsest carrying the layers of centuries; others are designed from scratch.

We can now consider in this section a simple mental experiment showing how an institution is designed and how, in this process, constitutive rules are subject to certain necessary conditions. This is central to our enquiry because these conditions are necessary for constitutive rules to create meaningful institutional elements, and I will argue in the next section that this process of meaning-creation can only happen in the context within which constitutive rules are framed.
Let us suppose, then, that we have a variant of chess, called proto-chess, in which there are no pieces—or rather, the pieces are the players themselves, who number from two to four and move on a chessboard composed of squares. Suppose, further, that proto-chess is played under five rules as follows:

(1) Players take turns.

(2) Players must randomly select who will make the first move.

(3) Players may move by two squares if all the squares adjacent to their starting position are empty; otherwise, they may move by just one square.

(4) Players may push an adjacent player away by one square, either before making their move or afterward.

(5) Whichever player is first to reach the opposite end of the chessboard will win.

Apart from Rule 5, the other rules in this system are distinctively regulative with regard to the players’ behaviour. In fact, it seems that Rules 1 and 2 can be reframed as plain directives; and Rules 3 and 4 seem to be power-conferring rules. Rule 5, by contrast, sets forth the conditions for winning the game and is the only rule in the system which does not seem directly aimed at regulating the players’ behaviour. There is no trace here of constitutive rules conceived in their “count-as” form: And yet Rules 1-5 do make up a game—probably not too fun to play, but a playable game nonetheless. Hence my first observation: Even though games have been treated as paradigmatic examples of systems of constitutive rules, there is no need for a game to contain constitutive rules.
In fact, it is only when the process of developing a game is aimed at obtaining more complex and interesting results that constitutive rules come into play. Let us suppose that we get bored with proto-chess and decide to make it more interesting by supplementing it with two rules as follows:

(6) If a player who is about to take a turn is positioned along an imaginary line that can be traced between two other players, this counts as an eclipse.

(7) There are three options for someone in a position of eclipse: This player may (a) move by three squares, (b) make one other player move by two squares closer, or (c) make all the other players move one square closer.

The eclipse situation adds some zest to proto-chess by enabling players to have some control over the movement of the other players and providing for three distinct tactical choices. Rule 6 is clearly of the kind Searle has called constitutive: It is framed in the form “X counts as Y in context C” and it constitutes the possibility of an eclipse in the context of proto-chess, thus concurring in making the term eclipse meaningful within the game (see Searle 1964, 1969, 1995).

But what about Rule 7? From one point of view, this rule confers a power on players who are in an eclipse, and in this sense is no different from Rules 3 and 4. However, from another point of view (and this is our main concern here), Rule 7, like Rule 6, is constitutive of the eclipse: It sets forth the

---

3 I will not consider the “count-as” locution as a necessary condition for constitutive rules but will instead use it as a tool, in the spirit of Searle 2003, 301, for example.
consequence of an eclipse, thus determining the import of such a situation within the game and concurring to create the meaning of the term *eclipse*. In short: Whereas Rule 6 says what *counts as* an eclipse, Rule 7 says what an eclipse *is* in the game. And *both* rules are necessary in order for this meaning to be completely constituted.

This fact can be easily appreciated by supposing our supplemented version of proto-chess to include Rule 6 but not Rule 7. In this case, players would surely be able to recognize an eclipse but would not know what to make of it, for they wouldn’t know what its consequences might be: The eclipse would have no bearing on the game, acting pleonastically, as an idle element, and so would have no meaning within the game. Conversely, if supplemented proto-chess included Rule 7 but not Rule 6, the eclipse would have an import but could not be realized in the game, given that Rule 6 specifies the conditions under which an eclipse comes about. With either rule missing, proto-chess players could play the game without taking the eclipse into account. Hence, the eclipse can properly become a meaningful element of the game only if framed by *both* rules: Rule 6, setting forth the conditions subject to which an eclipse comes into existence, and Rule 7, setting forth the consequences an eclipse carries in game play. These rules are both constitutive of the eclipse, and they can constitute it only together: If either of the two were missing, the resulting system of rules would end up being incomplete. Considering that Rule 6 states the conditions for an eclipse to take place, and Rule 7 the consequences that follow once an eclipse has taken place, we will call the former kind of constitutive rule
condition-setting and the latter kind consequence-setting. Condition- and consequence-setting constitutive rules seem to act complementarily: The former is necessary for the latter to be able to actually determine any import within the game; the latter is necessary for the former to have a reason to determine an element’s existence conditions; together they are necessary in making anything a meaningful element of proto-chess, in such a way that to ignore the element is to ignore a part of the game. This complementarity of condition and consequence is a necessary condition for the constitution of meaningful game elements.

Let us add even more “spice” to our game of proto-chess, with three rules as follows:

(8) The wooden ball at the center square of the chessboard is the bumper.

(9) Whenever it is someone’s turn to make a move, a randomly selected player may move the bumper by two squares.

(10) If it is someone’s turn to make a move and the bumper, either before the move is made or once it is completed, lies on a square adjacent to that of any other player, this player must move back by two squares.

The bumper makes proto-chess a game of strategy by giving the players a reason to be wary about approaching the centre of the table and about taking a direct route to the opposite end of the table. Rule 8 and Rule 10 are constitutive on account of their being condition-setting and consequence-setting with respect to the bumper; Rule 9, for its part, can be analogized to Rule 7 in the sense that it seems to be a power-conferring rule, but it also determines how the bumper can be used in game play, and this is clearly an
important part of the meaning of *bumper*. Hence, while Rule 9 sets neither a condition nor a consequence with respect to the bumper, it seems to be constitutive of it nonetheless: It is constitutive by virtue of its determining the bumper’s use or mode of behavior, and for this reason we could call this a *mode*-setting constitutive rule.  

At first sight, this mode-setting constitutive rule does not necessarily go into the constitution process, as do condition-setting and consequence-setting constitutive rules. Suppose our supplemented proto-chess included Rules 8 and 10 but not the mode-setting Rule 9. Here we might be surprised to see that the bumper can be a meaningful game element even without a rule setting a mode for its behavior. In fact, once we have the bumper’s initial position as stated in Rule 8 and its import or practical bearing on game play as stated in Rule 10, there is no need for the bumper to move at all: A player need only know here is where the bumper sits at the beginning of the game (this is stated by the condition-setting Rule 8) and how this may affect game play (as stated by the consequence-setting Rule 10). The system of rules constituting proto-chess could do without the mode-setting Rule 9 and still

---

4 The idea that a rule can be constitutive *in* determining a game element’s mode of behavior (or of use) has been extensively argued by A. G. Conte with his concept of *deontic* constitutive rules: see, e.g., Conte 1995e. Conte’s theory of constitutive rules is probably the most systematic so far developed, on a par with Searle’s: see Conte 1995a, 1995b, 1995c, 2001.
create the bumper as a perfectly meaningful element of the game.

This is not a conclusion that can be generalized, however, because the chosen example is marked by contingent features that require closer observation. Indeed, if a modified consequence-setting Rule 10’ entailed in some way that the bumper must move, then some mode-setting Rule 9 would have to be included in the constitution process, for otherwise the system of Rules <1–8, 10’> would yield a game with serious design flaws. And the same would happen if the condition-setting Rule 8 likewise entailed that the bumper must move: for example, if a modified Rule 8’ identified the bumper with the first player to reach the centre square.

These considerations support the following statements with respect to the bumper. The bumper can properly be a meaningful game element only if this game includes both Rule 8 (a condition-setting constitutive rule specifying the bumper’s initial position) and Rule 10 (a consequence-setting constitutive rule specifying how the bumper will affect game play): This is the necessary complementarity of constitution we previously argued for. But if either rule (8 or 10) entails for the bumper a specific mode of behavior or for the players a specific mode by which to use the bumper, then a mode-setting constitutive rule, such as Rule 9, will itself become necessary if the bumper is to be properly constituted as a meaningful game element. Hence, mode-setting constitutive rules are necessary to the constitution process only provided that such rules are entailed either by condition-setting or by consequence-setting constitutive rules.

All of the considerations so far made apply to proto-chess, which is an
imaginary game. There is no reason to think, however, that they could not also apply to any other game, and in fact they apply to the game of chess. It suffices to this end to replace the term *eclipse* with *checkmate*; and then to replace *bumper* with *bishop*, or else with *rook* or any other term designating a chess piece. Nor does this hold for chess-like games only, since the eclipse and the bumper both exemplify elements found in many if not most games:

It takes only a moment’s thought to realize that most games include event-like elements like the eclipse in proto-chess (common examples being, aside from checkmate in chess, offside in soccer, touchdown in American football, and let in tennis), just as we can easily appreciate that many games include piece-like elements (like the bumper) without necessarily being chess-like games: Think of any card game, in which different cards have different values and modes of use. Moreover, aside from games, it should be sufficiently clear that event-like elements like the eclipse and piece-like elements like the bumper play an important role in other institutions, too, particularly when pieces are reframed as roles that people can play. In law, for example, becoming of age is (like the eclipse) a legally meaningful event, since it has specific conditions and important legal consequences, and any official’s role is defined by conditions, consequences (in the form of powers, just as the bumper’s powers), and specific modes of behaviour (usually, limitations on the use of this power).

These simple analogies suggest that the observations made with regard to proto-chess can tentatively be extended to other institutions. And this tentative generalization can be articulated in three theses as follows.
There is strictly no need for an institution to include constitutive rules. Many games exist that do not necessarily have constitutive rules defining specific elements within the game. As we have seen with plain proto-chess, rules in the form “Players must do this or that” or “Players may do this or that under such and such a condition” can perfectly do all the work: These games may not be particularly complex or interesting, to be sure, but they will count as games proper nonetheless.\(^5\)

In order for something to be properly constituted as a meaningful institutional element, it must be subject to a definite set of existence conditions and must be capable of bearing on (or have an import within) the institution. An element’s existence conditions and its bearing (its import or effect within the institution) specify features necessary for something to be properly constituted as a meaningful institutional element. Constitutive rules

\(^5\) Certainly, even though these rules are not constitutive of elements within a game, they can still be conceived as constitutive of the game as a whole, and this introduces a broader conception of constitutive rules. This is not a conception that will be discussed here, but it is the implicit background against which we understand expressions such as “the rules constitutive of a game” or “a game constituted by rules.” When we consider the rule on checkmate as an example of a constitutive rule, however, it is the stricter conception that we are referring to, on which a rule is assumed to be constitutive by virtue of its constituting the possibility of a checkmate in chess even before it constitutes chess itself. Both conceptions are at work in Searle’s well-known section on constitutive rules in *Speech Acts* (Searle 1969, 33ff.).
can thus be regarded as coming in pairs: Condition-setting constitutive rules must necessarily be complemented by consequence-setting ones. This I will call the complementarity thesis.\(^6\)

If an institutional element has any other property, this property must be defined only if entailed by the element’s existence conditions or by its import within the institution. As we have seen with the bumper, it may be that some game elements have no defined mode of use or behavior and yet can still be perfectly meaningful. In a general sense, there is no need for constitutive rules to define a game element’s mode of use or behavior: Mode-setting constitutive rules are in this sense unnecessary. But if a specific mode of use or behavior is entailed by the element’s existence conditions (as specified in the element’s condition-setting constitutive rules) or by its import (as specified in the element’s consequence-setting constitutive rules), then a mode-setting rule does become necessary as a complement to the element’s condition- and consequence-setting rules. In this specific sense, mode-setting constitutive rules become necessary depending on what an element’s condition- and consequence-setting

---

\(^6\) Something very similar to the complementarity thesis has been maintained by F. A. Hindriks in what he calls the “XYZ conception of constitutive rules”: See Hindriks 2005, 124. Note also that J. Ransdell had previously made a similar statement in 1971: See Ransdell 1971, 388.
constitutive rules say. This I will call the subordination thesis.  

3. **The Role of Context in Constituting Meaning through Rules**

The complementarity and the subordination theses make explicit some necessary conditions the process of constitution must undergo to create meaningful institutional elements. A game element is marked by at least two necessary features: a set of existence conditions and a set of consequences on the game, the former stating when the element can be regarded as having “materialized” (through its own existence conditions) and the latter specifying how this will affect game play. Now, these consequences—an element’s bearing on game play—I am referring to as its *import* within the game,  

---

7 Clearly, the subordination thesis does not imply that you *cannot* add modes of behaviour to an institutional element even if this is not strictly entailed by the element’s existence conditions or practical import. It only states that there is no need to do so.

8 The term *import* is not new to the theory of games and constitutive rules. In Hindriks’s sense, a game element’s *practical import* is what the element entails as defined by constitutive rules; Ransdell, for his part, had previously used the term *import* in a slightly different sense to designate a game element’s *logical effects*: See Hindriks 2005, 123ff.; Ransdell 1971, 388.
these consequences? And how is it that they can concur in conferring meaning on a game element?

My view is that we cannot understand the nature of such a rule-constituted import (which is central for an element’s meaning within an institution) if we do not analyze the broader context in which constitutive rules are framed: Hence, context C in Searle’s constitutive rule “X counts as Y in context C” is critical in assessing the rule’s ability to constitute something meaningful.

Let us clarify this matter by drawing a distinction between two kinds of questions about a game. And let us consider the first type by asking:

(1) How is it that castling is a possibility in chess?

This I will call a straightforward question, since any rulebook will explain what castling is and what its mechanics are, and the answer therefore lies in the rules of chess, or rather, in the game’s constitutive rules on castling. The matter can in this sense be described as depending on convention, for it is by convention that something called castling is possible in chess.

But let us consider now this second kind of question:

(2) How is it that players must attempt to win in chess?

(3) How is it that players mustn’t cheat in chess?

These questions might seem trivial, but they are actually deeper and more involved than they seem at first sight, and the reason for this—what makes them different, and deeper, than (1)—is that these answers cannot be looked up in a rulebook. In fact, that chess players should try to win and should do
so without cheating is not properly a rule of chess but a sort of conceptual truth about what chess is, namely, a competitive game: What explains why chess players should so behave has little to do with chess as a distinctive system of constitutive rules and everything to do with chess as competitive game, and so as a *practice*, this being the practice of competitive game-playing.\(^9\)

It is quite clear that we are considering here two different kinds of questions about a game: Questions of the first kind can be answered by simply citing a constitutive rule of the game, while questions of the second kind find an answer in the features of the game as a competitive game-playing practice.\(^{10}\)

And this difference brings out a distinction between two separate, albeit overlapping, “layers” of a game: On the one hand are the moves, pieces,

\(^9\) This point is from Schwyzer 1969, and in fact the remainder of the discussion owes much to this article.

\(^{10}\) Whether or not a practice such as competitive game-playing is conventional will be treated as something of an open question here. But I will say this much: Even assuming that practices are indeed conventional, they are so in a *deeper* way than is the case with the conventions established through a game’s constitutive rules, and this is something that can be appreciated by considering what is involved in *changing* constitutive rules as against practices: Constitutive rules can be changed with relative ease in comparison to practices. It is in particular A. Marmor who has set out a dichotomy between deep and surface conventions (Marmor 2006, 2007). A similar distinction has been introduced by G. Lorini between *praxis* and *practice* (Lorini 2000, 263ff.).
events, and modes of behaviour specific to the game, and these are *rule-*
constituted (by condition-, consequence-, and mode-setting constitutive
rules); on the other hand are the game’s general features as a practice (the
practice of competitive playing) which form the context in which
constitutive rules are framed. What is particularly interesting for us here is
that these two layers can be distinguished for analytical purposes only,
because they really represent two different ways of looking at the same
thing, this being, in our example, the game of chess, which from a broader
perspective can be regarded as a competitive game and from a narrower one
as a well-defined system of rules constituting a set of events and pieces. We
are not looking here at two distinct things or sets of things—a competitive
game-playing *practice* on the one hand, a specific competitive *game* on the
other—because when we play a competitive game, we are thereby engaged in
the practice of competitive playing and, vice versa, there is no way for us to
be engaged in such a practice except by playing a game.\footnote{This may suggest an understanding of games as *instantiations of* competitive practices, as Marmor has recently maintained: See Marmor 2006, 363, 366; Marmor 2007, 594.} So, either way we
are doing the same thing, which means that this is rather a question about
how broad a perspective we are taking over the practice of chess-playing: A
distant or bird’s eye view would reveal certain general features of
competitive game-playing, while a close-up view would show the detailed,
well-ordered system of constitutive rules that we as players recognize to be
Let us first consider the game of chess from a short focus, that is, from the close-up view that shows it to be only a system of constitutive rules, without taking into account the broader context of the practice in which these rules are framed. Here, in outline, is the system we might see from this close-up view:

The game of chess is played by two opponents who take turns moving their pieces on a square board called a chessboard. (Cf. *FIDE Laws of Chess*, art. 1.1)

The game is won by the player who checkmates the opponent's king (a consequence-setting rule). (Cf. *FIDE Laws of Chess*, art. 1.1)

Players have at their disposal the following pieces: one king, one queen, two bishops, two knights, two rooks, and eight pawns.

The black king is the piece whose initial position on the chessboard is e8 (a condition-setting constitutive rule).

The white king is the piece … (a condition-setting constitutive rule).

The black queen is the piece … (a condition-setting constitutive rule).

The kings may either move to any adjoining square not taken by any of the opponent’s pieces, or they may move by castling but may not do so more than once over the course of a match (a mode-setting constitutive rule). (Cf. *FIDE Laws of Chess*, art. 3.8)

In castling, the king moves by two squares toward the rook, and the rook moves to the square the king has just crossed (a consequence-setting constitutive rule). (Cf. *FIDE Laws of Chess*, art. 3.8., point (ii))
Castling is a move involving the king and either of the two rooks having the same color as the king, but only so long as the chosen rook occupies the same rank with the king (a condition-setting constitutive rule). (Cf. *FIDE Laws of Chess*, art. 3.8., point (ii))

The queen may move to ... (a mode-setting constitutive rule). (Cf. *FIDE Laws of Chess*, art. 3.4)

... Any piece may capture an opponent's piece by moving legally to a square occupied by that piece (a consequence-setting constitutive rule). (Cf. *FIDE Laws of Chess*, art. 3.1)

The king is under attack when an opponent’s piece can capture it with its next move (a condition-setting constitutive rule). (Cf. *FIDE Laws of Chess*, art. 1.2)

When the king is under attack, it must be moved (a consequence-setting constitutive rule). (Cf. *FIDE Laws of Chess*, art. 1.2)

Checkmate is obtained when the opponent’s king is under attack in such a way that the opponent has no legal move (a consequence-setting constitutive rule). (Cf. *FIDE Laws of Chess*, art. 1.2)

From this view (a view equivalent to that found in a chess rulebook), chess may be conceived as a system of elements defined by condition-, consequence-, and mode-setting constitutive rules, supplemented with a statement clarifying the game’s overall mechanics and a rule stating the conditions of victory (which also sets consequences for the element called checkmate). From this close-up view, all the elements have a well-defined structure framed by constitutive rules. But in showing a formal structural resemblance among the various elements of chess, the close-up view tends
to put these elements on the same level, flattening them out, as it were, in such a way as to make the structural resemblance into a formal one, or into a resemblance of formal requirements. This is because the close-up view shows us no more than a set of rules defining a set of elements, a sort of formal axiomatic system yielding well-defined formulas: Such is the short focus that flattens out the picture before us. Clearly, these elements are so set up that we can see how they all connect as parts of a single formal system. Thus, the concept of checkmate is connected to those of attack and of king, and the concept of king is in turn connected to that of castling; but apart from noticing these connections, someone observing the system from a close-up view will not be able to appreciate how these connections established by constitutive rules can create meaning. This can be understood only when institutional elements are viewed in the context of an already meaningful practice: Only within this context can the function that an element of the system serves give meaning to that element.

It is here, then, that we should consider the institution of chess from a bird’s eye view, a view enabling us to see not a formal system of rules but the practice within which these rules are framed: in our example, the practice of competitive game-playing. What are the structural features of this practice? We can answer this question by going back to the two questions—numbered (2) and (3)—that we considered earlier in this section.

Let us take up Question (2) first, which asked how it is that someone who is playing chess must try to win. Is that really so? Clearly, it is. Imagine a breed of chess players who clearly and purposely move their pieces from the start
so as to make their own king vulnerable to attack and subject to checkmate, and who, upon being checkmated, jump for joy inviting their opponent to play another match. Would we say of these players that they are really playing chess? Clearly, they are not: From a player’s point of view, their behavior is deeply paradoxical. They fall into the class of what Bernard Suits has called the “trifler” (1978, 47), someone whose stated purpose is to follow the rules of the game not to win the match but to lose it. And, clearly, a trifler is not really a player, nor is a chess match played against one really a match of chess. This point might seem obvious, to be sure, but it is not without consequence. For if we know that no serious chess player will consider a trifler to be one, we know that players in competitive games can be considered such only if they are in it to win, or at least if they give the appearance of being in the game to win. Which is precisely the conclusion we were looking for.

Let us turn now to Question (3). How can we show that someone playing chess must do so following the rules of the game? Imagine a chess player who tries to checkmate the opponent’s king all the while overtly ignoring the rules specifying the way the pieces must move on the chessboard. This player, for example, might move the bishop along an orthogonal line and knock off the opponent’s king, thereupon standing up to shake the opponent’s hands and claim a checkmate, even offering to explain the opponent’s losing strategy. When we ask this player about the bishop, we might get for an answer something along the lines of, “I do realize the bishop moves diagonally, but I decided to move it orthogonally even so,
because that took me straight to my opponent’s king and there was no better opportunity for me to take out the piece I was after.” What should we make of this player’s behaviour? It is not strictly cheating, because that would have to be concealed and, what is more, cheating is certainly not something a cheater would openly acknowledge. For this reason I would suggest that we call this player a self-admitted cheater, pointing out as well that the self-admitted cheater’s behavior stands in a converse relation to the trifler’s: While the trifler’s stated aim is to lose, and to do so in compliance with the rules of the game, the self-admitted cheater’s aim is to win, and to do so out of compliance with the rules, or at least with one of them, in fact openly defying this rule. Like the trifler, the self-admitted cheater is not really playing chess: Chess players would not think that a victory claimed by a self-admitted cheater counts as a victory. And here a conclusion analogous to that stated under Question (2) can be drawn: If we know the self-admitted cheater is not strictly a player, we consequently know that players engaging in a competitive game must play by the rules in seeking to win, or at least they must give the appearance of so playing. Which, here too, is the conclusion we were looking for.

We are now beginning to have a clearer picture of chess as a competitive game-playing practice. Indeed, the bird’s eye view has enabled us to single out two distinguishing elements of this practice: On the one hand is the goal that anyone engaged in this practice must be driven by, which is to win, and
on the other hand is the necessary mediation of rules in attempting to achieve this goal. These two elements are both internal to the practice: One element can be described as *teleological*, since it does establish a goal, and the other as *technical*, since it sets forth the procedural conditions to be satisfied in striving to achieve this goal. And likewise internal is the *relation* between these two elements, for, as we saw, the goal must be achieved in compliance with the procedures, and, conversely, the point of such compliance is to work toward the goal of winning. Now here is what chess might look like from the bird’s eye view showing it to be a practice of competitive playing, with its two internal elements and its internal relation:

12 It should be noticed here that, however much competitive players could not be recognized as such unless they set out to win, and this makes winning an essential goal in this practice, it is by no means the *only* goal or even the *primary* one. This is because competitive game-playing is just what its name suggests, that is, playing: As a competitive practice it certainly does make winning a necessary goal, but as competitive *playing* it subordinates this to another goal, which is for the players to enjoy their common activity. This peculiar relation whereby the competitive (or “internal”) goal of winning is subordinate to the cooperative (or “primary”) goal of having fun has been called by Aurel Kolnai a “paratelic relationship” (Kolnai 1966, 116).

13 On this internal relation between the goal of winning and the procedures set forth by the rules, see Suits 1978, 24, and Raz 1999, 118. Interestingly enough, the same relation between ends and means is stated in the definition which the *Oxford History of Board Games* provides of a formal game (cf. Parlett 1999, 3).
This illustration is pretty basic, to be sure, but this should not come as a surprise: While the bird’s eye view does point out the features that chess shares with other competitive games, it does not bring into focus those features that are peculiar to chess, these being the features constituted by the game’s system of rules. To put it otherwise: While, from the close-up view, we see only the system of constitutive rules, without reference to the context in which they are framed, from the birds’eye view we see only the features of the context (namely, the practice), without taking into account the specific rule-constituted elements. Hence, we need to combine both views, the close-up and the bird’s eye, in order to fully account for the institution.

In our example, this merged view is achieved by reframing the rules of chess—the main focus of the close-up view—within the technical element that comes into sight by taking the bird’s eye view on the competitive game-playing practice. Figure 1 illustrates what we can see from this merged
In this diagram, and for the sake of brevity, condition-setting, consequence-setting, and mode-setting constitutive rules are abbreviated as CRC, CRI, and CRM respectively, the final C, I, and M in these initialisms referring to the words condition, implication (consequence), and mode respectively.
The first thing to note here is the tree-like structure that we end up with when we frame the rules of chess within the technical element of chess as a competitive game-playing practice: We start out from the roots of the tree, where we see the rules for each of the chess pieces, and work our way up until we get to the rule stating the conditions of victory. This consideration of the system of constitutive rules improves on the close-up view by giving depth to it and showing how the different rules making up the system do not all lie on the same level, the reason being that they are not all functionally equivalent. Here, we can identify at least three functional levels on which different constitutive rules lie.

On the bottom level, where the game is constituted “at root,” we find the condition- and mode-setting constitutive rules for the single pieces, along with the condition- and consequence-setting constitutive rules on castling: These rules are farthest from the top because, in defining the chess pieces themselves, they represent the game’s “opening rules.”

On an intermediate level we find the consequence-setting rule which is common to the different pieces and lays out the basic mechanics of the game: This rule revolves around the key concept of capturing, which represents the basic import common to all the pieces. The mechanics of a capture link the “opening rules” to the game’s top level, where the concepts of attack and checkmate are defined. Indeed, the concept of capturing is essential in stating what it means to attack a piece, and so also what it means to attack the king. And, through the condition-setting constitutive rule on checkmate, the attack plays an essential role in stating what counts as a
checkmate.

On the topmost level we find the condition- and consequence-setting constitutive rules on checkmate. These rules state the conditions under which a player wins a game, namely, the specific content chess gives to the practice’s teleological element: This explains their placement as “closing rules.” In particular, the consequence-setting constitutive rule on checkmate, stating the conditions of victory in chess, acts as a “bridge rule” connecting the technical and the teleological element of chess as a competitive game-playing practice: This rule states, within the technical element, the conditions of victory required by the same practice’s teleological element. Further, the bridge rule effects the connection between the system of constitutive rules and their context, and through this connection it ultimately imparts meaning on all the elements of the system.

How does this connection impart meaning? Suppose that the system of rules of chess were detached from the context of a competitive game-playing practice, and that there were no bridge rule stating the conditions of victory. In such a case, chess would amount to nothing more than a formal and coherent but pointless structure, a meaningless pursuit or a system of rules with which we would not know what to do. More importantly, all the concepts in chess (king, queen, bishop, attack, checkmate) would in this case be ultimately devoid of meaning. For example, there would be nothing we could say about an attack on the king except that it is a condition for checkmate; and, conversely, nothing we could say about checkmate except that it is effected by attacking the king. In this situation, the only meaning
we could give to a chess element would lie in its connection to another rule-
constituted chess element, one whose meaning would in turn consist in the
connection so established. But, clearly, this would make for circularity,
because it is not by mutual connection that meaningless concepts can
acquire meaning.

In order for the elements of an institution to have meaning, at least one
such element must already have a meaning not dependent on the system’s
constitutive rules. Victory, in our example, is one such element, because
victory is not a concept peculiar to chess in the same way as are checkmate
or castling: Unlike the meaning of checkmate, the meaning of victory is not
exclusive to the system of rules of chess. As Dolores Miller puts it, victory is
not an institutional concept specific to any single game but is rather a “meta-
institutional concept” qualifying a game as a form of competition (See Miller
1981, 188).

Hence, the context of a competitive game-playing practice gives chess an
overall meaning by giving it a point, namely, victory, through its teleological
element. Context makes it clear that chess is a competitive game, something
which we play, and in which players compete in order to win. Constitutive rules
so framed acquire the functional differentiation that we saw under the
merged view, and the import with which they endow the elements acquires
practical significance: In our example, attacking the king becomes
meaningful as a move necessary to winning the game. In this way, victory
becomes the practice’s central concept: Framed in the context of this
practice, constitutive rules create meaningful elements by establishing a
more or less direct connection between these elements and victory.

This connection is ultimately mediated by the bridge rule, as the tree-like structure representing the system of rules of chess shows. Thus, in this example, apart from the king, which is susceptible of being checkmated and hence is critical for victory, the other pieces have their main import in their ability to capture other pieces, including the king itself. Now, here what this ability ultimately owes its relevance to: Since any piece has an ability to capture any other piece, and any piece can therefore attack and checkmate the opponent’s king, the ability to capture turns out to be essential for victory, and this is what the meaning of chess pieces amounts to within the game of chess. Clearly, there is no need for such a direct connection: An element’s meaning can certainly rest on a much more indirect connection to victory. But a connection must in some way exist: If capturing were of no (direct or indirect) consequence to winning, none of the chess pieces could be said to have a meaning in the game.

This argument can tentatively be stated as a general thesis. This is to say that the meaning of an institutional element depends on whether the element’s import is ultimately (more or less directly) relevant to the end (the teleological element) of the practice within which the institution is framed. Searle was right to say that X counts as Y only within context C: The process of constructing meaning with constitutive rules cannot achieve its aim unless it is framed within a specific and already meaningful context. This context functionally differentiates constitutive rules in a tree-like manner, placing an already meaningful meta-institutional concept at the top
of the tree. Through a bridge rule, the context connects the institution’s topmost institutional elements to this meta-institutional concept; but the institutional elements are all connected by way of their constitutive rules, and so, in the final analysis, all these elements exhibit via the bridge rule a (more or less direct) connection to the meta-institutional concept. This connection is ultimately what the practical import of an institutional element rests on, and in this relation consists an essential part of its meaning.

4. The Role of Context in Enabling Constitutive Rules to Regulate

We have seen that the merged view, by combining a close-up view of an institution as a plain system of rules and a bird’s eye view of the context (the practice) within which such rules are framed, can help us better appreciate how constitutive rules can create meaning, that is, how they can properly be constitutive. In this section, I will argue that context can also help us clarify how constitutive rules can regulate an activity, that is, how they can properly be rules. This is neither a syntactic nor a semantic question, for it concerns neither the structure of constitutive rules nor their meaning. It is rather a question about the pragmatic role of constitutive rules, or their typical illocutionary point, to use an expression borrowed from speech act theory. Constitutive rules are at once conceived as constitutive and regulative. But how can they be both? How can these two roles or actions combine in a single rule? Are constitutive rules after all rules or what?

Many of these doubts are probably owed to Searle’s original statement in *Speech Acts* that constitutive rules at once constitute and regulate specific
forms of activity (Searle 1969, 55). Now, that constitutive rules in fact do both of these things is something which can be appreciated at a glance: There is no doubt, for example, that the rules of chess on checkmate regulate this event by their very constitution of it, and so that what is constituted (brought into being or made possible) is thereby regulated. The problem is how to explain this fact, and the merged view can help us in this effort.

When we looked at chess from the bird’s eye view, showing this to be a competitive game-playing practice, we saw that the practice is made up of a teleological element (the goal of playing to win) and a technical element (the rules by which to play), and we also saw that the relation between these two elements is internal: No one can win who disregards the rules, but at the same time, the rules become pointless if complied with for some reason that defeats the purpose of winning. This internal relation brings out the technical element in its regulative role with respect to the teleological element; and this relation is expressed by the rule, “When playing competitively, you must follow the rules in order to win.” This is the first rule of competitive game playing, the one that all honest players follow and all cheaters break.

Consider now chess from the merged view. This view shows that the

---

15 As Raz has rightly pointed out, Searle’s position wavers quite a bit in regard to the regulative character of constitutive rules (see Raz 1999, 110).
technical element of the practice has a specific content in the form of a system of rules, and that its regulative action is therefore inevitably carried in those rules, and so also in those constitutive game rules that appear to be non-regulative. So this is the first sense in which all the rules of a game, and so also its constitutive rules, are in effect regulative: They are regulative as parts of the technical element of a competitive game-playing practice.

This derivative regulative action of a game’s rules poses no problem when these rules are clearly regulative, as in “None of the players on a soccer team, with the single exception of the goalkeeper, may touch the ball with their hands.” Not so when the rule in question is a condition-setting or consequence-setting constitutive rule. Here, the rule has a non-regulative appearance (it is stated without deontic terms, for example, and is more similar to a definition), and the rule’s regulative bearing, deriving from its inclusion in the practice’s technical element (its being a rule stating what must be done in working toward the goal of the practice), does seem to stand in contradiction to this non-regulative appearance: Hence, someone observing such constitutive rules will not take these to be rules at all, particularly if his observation is made only from the close-up view.

However, as a part of the technical element of a competitive game-playing practice, constitutive rules are after all rules, and like the game’s other rules, they concur in specifying what must be done to play chess—except that they do so by defining elements whose role is essential in making it possible for the game to be played in the first place. Let us therefore consider how constitutive rules can be reframed in their derivatively regulative role owed
to their inclusion in the technical element of a competitive game-playing practice.

*Condition*-setting constitutive rules are especially striking in their giving no appearance of regulating anything within the game. An observer considering a rule such as (1), “The black king is the piece whose initial position on the chessboard is e8,” will have to wonder how this could indeed be conceived as a rule. And this first reaction is quite understandable: One is naturally led to ask, “In what sense does a rule such as (1) regulate behaviour?” or “How (1) could be broken?” But it is only in isolation, from a close-up view, that (1) appears to be something other than a rule. The merged view is different, for it shows that (1) concurs in defining the game’s basic elements: It specifies the technical element’s regulative role as a part of the rule stating how many pieces a player must have and how a player must arrange them to play a chess match; and in this larger picture, we can see (1) stating that if players are to play chess properly, they must have the king on square e8 at the start of a match. This is a rule, and we can appreciate this by considering that a cheater could in principle break it, for example by using as the black king—as something having the same powers and abilities as the black king, or its same import—a piece which they place in an initial position other than e8.16

---

16 Of course, an opponent would have to be blind not to see such a violation, but this is a contingent fact dependent on the features specific to chess.
While condition-setting constitutive rules probably won’t initially strike us as regulative, this quality will be more immediately apparent with consequence-setting rules. Take, for example, the rule setting forth the basic consequence for chess pieces at large, (2) “Any piece may capture an opponent’s piece by moving legally into a square occupied by that piece.” As we observed in Section 2, this can easily be understood as a power-conferring rule. However, the regulative action of (2) can be appreciated in another way from the merged view, because we can see this as a rule of conduct for all players generally: When framed within the practice’s technical element, (2) states that anyone playing chess must accept and behave consistently with the import of the game’s pieces by removing from the chessboard any piece occupying a square legally taken by a move of the opponent. And just as (1) can be violated, so can (2), as by furtively removing the captured piece to another square on the chessboard.\textsuperscript{17}

Of all the constitutive rules, those whose regulative action will show most clearly are the mode-setting rules. Consider, for example, the rule setting forth the mode of behaviour for the bishop, (3) “The bishops may move to any square along a diagonal on which they stand.” In this case, too, the merged view makes it even easier to see (3) as a regulative rule: When framed within the practice’s technical element, (3) simply states that anyone

\textsuperscript{17} This, too, is a difficult trick to pull off, but the reason depends, once more, on the game’s contingent features.
playing chess must move the bishops diagonally. And, as in the previous cases, (3) is a rule that a player can in principle violate, as by furtively moving the bishop orthogonally to capture the queen.

The point of these examples was to illustrate how the merged view helps us see and assess the regulative character of constitutive rules. And if we can see this, we can appreciate that constitutive rules will not reveal their pragmatic nature when considered in isolation, from a close-up view. Again, context is essential: Constitutive rules should be investigated through the features of the context (or practice) to which they belong.

5. Conclusion

The theses presented in this paper can be summarized into a single one, namely, that looking at the wider context, or “practice,” within which constitutive rules are framed gives us a way to solve the two main questions concerning constitutive rules, these being “How can constitutive rules be constitutive of meaning?” and “How can they still be rules?” This thesis has been defended using examples drawn from chess and from the practice of competitive play. And while these examples and the practice they refer to are specific, the thesis has been advanced as a general hypothesis about the relation between constitutive rules and their context. The future direction for research, then, should be to test the validity of this general hypothesis with other practices and institutions, too, and it would be quite an advancement if such an investigation bears fruit. This seems intuitively like a feasible extension, for there is no apparent reason to think that what holds
for games should not also hold for other practices, too: Game-playing is, after all, a fundamental social practice. And as Augustine writes, *Maiorum nugae negotia vocantur, puerorum antem talia cum sint, puniuntur a maioribus.*

6. References


