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# MIMETIC CONSTITUTIVE RULES

*abstract*

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*This paper deals with the question of how constitutive rules in Searle's sense can be subject to definite constraints, or boundaries. Three kinds of boundaries to institutional constitution are here identified: ontological, structural, and pragmatic. All these kinds of boundaries to some extent depend on the context of the broader social practice for which rule-constituted institutions are created. Further, the paper introduces a fourth kind of boundaries, called "mimetic", which limit the process of institutional constitution according to a pre-existing social or natural reality that the institution is meant to imitate.*

*keywords*

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*Searle, constitutive rules, social ontology, institutional facts*

## 1. Introduction

Searle's new book *Making the Social World* (Searle 2010) answers many of the crucial questions that have been emerging during the last ten years with regard to his theory of social and institutional reality. The ambiguous status of the constitutive rules of speech acts has been clarified, and the circularity of his theory of language based on constitutive rules has been solved by appealing to the autonomous signifying force of meaning. The problem of freestanding Y terms has been answered by means of a wide-ranging theory of institutional reality as consisting of three kinds of different function-imposing phenomena. The question of unintentional institutional phenomena has been addressed through the concept of "systematic fallouts". Finally, the ontology of constitutive rules has been made clearer by recurring to the concept of "standing declaration", thus interpreting constitutive rules as speech acts of a given kind.

Still, one major topic of Searle's social ontology remains to be clarified. In fact, when we consider Searle's traditional formula of constitutive rules "X counts as Y in context C", it is striking to see that almost all the elements of this formula have received a great deal of attention and discussion, *apart from* context C<sup>1</sup>. The relation between the X term and the Y term of the formula, for instance, has been the main point of discussion in Barry Smith's criticism regarding freestanding Y terms (Searle and Smith 2003, Smith 2003); the nature of term Y was specifically discussed at length by Searle himself (Searle 1996) and further specified by Frank Hindriks when dealing with the concept of "practical import" (Hindriks 2005); the logical nature of the "count-as" locution has been the subject of much work in the last decades, for example in deontic logic and artificial intelligence (see, among many other authors, Jones and Sergot 1996). All these discussions dwell on different elements of the "count-as" formula, but none of them addresses specifically the question of context, namely, of how the constitutive power of rules can depend on contextual considerations. This is something I will try to do in this paper, by presenting some research results regarding context in social ontology. The structure of the paper is as follows. In Section 2, I briefly present the concept of "rational determination" and provide as an example some typical

<sup>1</sup> It should be noted, however, that the Derrida-Searle debate regarding speech acts (see for example Derrida 1988) can be interpreted as relevant for the question of context in connection with constitutive rules, particularly if we consider constitutive rules to be declarations, as Searle does in *Making the Social World*. I am thankful to the anonymous referee of this paper who pointed out this fact to me.

conditions (or, as I will say, “boundaries”) to the constitutive power of rules, conditions which are sensitive to the context in which these rules operate. Then, in Section 3, I introduce a new kind of boundary to institutional constitution—which I call mimetic boundaries—and show how they, too, depend on contextual considerations. Finally, in Section 4, I draw some conclusions.

2.  
**Boundaries to  
 Institutional  
 Constitution:  
 Ontological,  
 Structural  
 and Pragmatic  
 Boundaries**

In order to understand how constitutive rules can depend on contextual considerations, let me make an example taken from legal philosophy. In a paper titled *How Facts Make Law* (Greenberg 2004), Mark Greenberg discusses the relation of determination between descriptive facts about legal practice and normative facts about the content of law. This is a major topic of legal ontology, given that the relation between acts of legal practice and the normative content of law is for the most part determined by more or less explicit constitutive rules stating that an act of type X *counts as* the realization of a given legal institution with a specific normative import (see in this regard, for example, MacCormick 1986). Hence, the question that Greenberg addresses here can be rephrased in socio-ontological terms as the problem regarding what kind of relation between X and Y terms can be determined by legal constitutive rules.

Now, in order to describe this relation, Greenberg introduces the notion of “rational determination” as opposed to mere “metaphysical determination”. In his view, metaphysical determination is a relation in which “there need be no explanation of why” some facts determine other facts, while rational determination is a relation in which facts can determine other facts only on rational grounds (at least to a certain degree), namely, only if the relation is not entirely arbitrary. In the light of this distinction, Greenberg then observes that “the metaphysical-determination doctrine is not enough to capture our ordinary understanding [...] of the nature of the determination relation between the law practices and the content of the law”, because otherwise it would lead to paradoxical results:

*For example, it is consistent with the truth of the metaphysical-determination doctrine that, say, the deletion of one seemingly unimportant word in one subclause of one minor administrative regulation would result in the elimination of all legal content in the United States—in there being no true legal propositions in the U.S. legal system (though there is no explanation of why it would do so) (Greenberg 2004, 164).*

Instead, Greenberg maintains, the relation of determination that we must

suppose to hold between descriptive facts about legal practice and normative facts about the content of law namely, in our terms, the relation that holds between X and Y terms in legal constitutive rules is a rational, and not brute, relation. He writes:

*There are indefinitely many possible mappings, from complete sets of law practices to legal content (to complete sets of legal propositions). As far as the metaphysical-determination doctrine goes, it could simply be arbitrary which mapping is the legally correct one. [...] By contrast, according to the rational-relation doctrine, the correct mapping must be such that there are reasons why law practices have the consequences they do for the content of the law (ibidem).*

Now, I believe that this thesis on rational determination holds not only for law, but also for institutions in general. In most cases at least, there are boundaries that institutional constitution—and hence constitutive rules—cannot trespass: The relation between X and Y in constitutive rules cannot be entirely arbitrary, because it is a sort of rational determination. Searle had already noted something in this regard in *The Construction of Social Reality* (see for example Searle 1996, 86; 49ff.), even though I believe that *Making the Social World* provides new grounds for explaining this kind of rational determination. Here, in fact, constitutive rules are conceived as speech acts—namely, as “standing declarations”—and all speech acts are subject to conditions for successful performance. Hence, the method by which we can identify the boundaries that define the limits of institutional constitution is not very different from that used in speech-acts theory, that is, we formulate paradoxical or conceptually unacceptable constitutive rules and see what “goes wrong” (Austin 1976, 14).

I will take the game of chess as my paradigmatic example. Suppose that the game of chess is not the product of a century-lasting tradition but rather that I have invented it through a hard and long work of game-design. Now, would my activity of constituting this game through constitutive rules be subject to boundaries would it create a rational-determination relation? I think it is clear that I cannot do what I want when designing the game of chess. Consider, for example, the king. There are at least three different kinds of constitutive rules which I believe would fail as standing declarations able to create the king in chess.

1. The color of the chessboard is the King.
2. The King cannot be attacked by other pieces.

3. When you move the King, you have won.

These rules fail for three different reasons. Rule (1) fails for *ontological* reasons: In the game of chess, the king is meant to be a piece, namely, an object that can be placed and manipulated by players on the board, and a color cannot be manipulated as an object (nor can sounds, numbers, states of affairs, or events, and so on). Rule (2), instead, fails for *structural* reasons: The structure of the game of chess would be seriously flawed if it included a rule such as (2). The problem, in this case, arises from the relation that the king holds with the network of other rule-defined elements of chess, because in this game the king must be amenable to attack—otherwise checkmate would not be possible and hence the game would not have consistent victory conditions. Finally, Rule (3) fails for *pragmatic* reasons: If the game of chess included this rule, then it would be seriously defective as a game, because it would be simply too easy to win.

In all these cases, contextual considerations are relevant for assessing the rational-determination relation which is laid down through constitutive rules. Clearly, chess is not a standalone practice, but rather finds its meaning in the context of a broader practice that we may roughly label “competitive game-playing” (see Schwyzer 1969, Marmor 2007 in this regard), and this context is crucial in understanding why Rules (1)-(3) fail as constitutive rules. This is apparent for Rule (3), which fails for pragmatic reasons: In fact, it is precisely the context of competitive game-playing that which requires victory conditions to be not trivial, because otherwise the game would not pose any serious challenge to players. But something similar could be said also for Rules (1) and (2). It seems for example that, though structural boundaries involve questions of internal consistency, the centrality of this inconsistency depends on contextual considerations: In a game, many kinds of inconsistency can be accommodated but not one that directly impacts over conditions of victory, whereas in other contexts different parts of the overall structure could be more relevant. The same kind of dependence on contextual considerations can be argued for with regard to ontological boundaries: For example, it could be observed that the reason why all sorts of things can serve as pieces of chess is that chess is a game, something not really serious and basically done for fun; probably we could not say the same if chess were part of a complex religious ritual.

The conclusion, then, is that all of these boundaries are sensitive to the broader practice in which the process of institutional constitution takes place, and this is exactly the sense in which I believe that the role of context should be discussed in depth when dealing with the rational-determination

relation which is created by constitutive rules. The topic of boundaries to the constitutive power of rules (ontological, structural, and pragmatic boundaries) has not received much attention in the scholarly literature on social ontology (with some exceptions: see for example Lorini 2000, Azzoni 2003, Żełaniec 2003, Roversi 2010), while probably all these kinds of boundary (pragmatic, ontological, structural) would deserve a specific and separate treatment. What I would like to show in what follows is instead that there is *another* kind of boundary to institutional constitution, one which so far has not been discussed at all in the literature on social ontology and which in its own turn frames a particular kind of context-dependent relation of rational determination. I will call boundaries of this kind “mimetic”: Let me show how they work.

- 3. Mimetic Boundaries** It is very well known that the game of chess has a long history. What is perhaps not always known of this history, however, is that during the Middle Ages chess acquired in Europe a strong symbolic and allegoric character: With pieces such as the knights, the rooks, the king and the queen, and the rules governing their mutual relationship, the game of chess gradually became an allegory, a symbolic representation of medieval society. In 1275, a Dominican friar called Jacopo (coming from the Lombard town of Cessole) delivered a sermon, and then wrote a book, in which this allegoric interpretation of chess turned into a justification of its rules. Very often the title of this book is abbreviated simply as *The Book of Chess*, but the original title was instead *Liber de moribus hominum et officiis nobilium*, namely, *Book of the Manners of Men and the Offices of the Nobility*. As it emerges from this title, Jacopo thought that it was possible to describe and comment the rules of chess by appealing to the “manners of men”. The following passage of his book very well exemplifies his view:

*The black king stands on the fourth square of the board. To his right there is a knight on the white square and an elder [which is what we now call “bishop”] and a rook on the black squares. To his left the same three men are on squares of the reverse color. Because knights represent the king’s honor and crown, the knight on the right stands on the same color square as the king. The one on the left is on the same color square as the queen. [...] The whole of the kingdom is governed best by this arrangement. (Jacopo da Cessole, *The Book of Chess*, IV, 2)*

Now, keeping in mind this passage, let us get back to the imagined situation in which I, as a game-designer, invent the game of chess from scratch. If, in designing chess, I adopted Jacopo’s descriptive interpretation of its

rules, then the constitutive rules of chess would be subject to another kind of boundary, one which is different from the ontological, structural and pragmatic boundaries introduced in Section 2. Consider the rules of chess concerning the initial positions of the two black knights and the two black bishops:

4. The two pieces that starts the game on square b8 and g8 count as the black knights.
5. The two pieces that starts the game on square c8 and f8 count as the black bishops.

Suppose now that, in designing the game of chess, I decide to swap the relative positions of these pieces: The black knights will start game on b8 and g8 and the black bishops on c8 and f8. None of the boundaries identified in Section 2—neither the ontological, nor the structural, nor the pragmatic boundaries—would prevent such a change. In fact, this change would not have any impact on the underlying ontology of pieces: They still are objects that can be manipulated. Further, no structural inconsistency arises here if we simply swap the black knights with the black bishops, and even though this change can have a significant impact on game tactics and concrete game play, the game of chess is consistent nonetheless. Finally, this change would certainly not have any impact on the fact that chess is a competitive game (with rules, conditions of victory, etc). Hence, the envisaged change would perfectly fall within the ontological, structural, and pragmatic boundaries. However, according to a descriptive interpretation of the constitutive rules of chess such as that maintained by Jacopo, this change would not be allowed. In fact, if we swapped the relative positions of knights and bishops, the black knights would not stand on squares of the same color as that of the black king (on the right) and the black queen (on the left). This sameness of color, however, is required because it symbolizes the fact that (to quote Jacopo again) “knights represent the king’s honor and crown”. Hence, under Jacopo’s interpretation, the kind of rational determination which is typical of the constitutive rules of chess includes not only considerations of consistency, playability and deepness, but also considerations of descriptive accuracy (at least in a very loose sense of *descriptive*).

I have chosen the term “mimetic” for boundaries of this kind, in order to capture the loose sense of description and representation that seems to emerge in these cases of institutional constitution. It is important to note that mimetic boundaries are sensitive to contextual considerations, just like the other kinds of boundary. For example, mimetic boundaries

can play a greater or smaller role in the game-playing context (they are absolutely central in simulation-type strategy war games, while they are not so relevant in abstract games or card games) but typically they cannot overcome considerations of deepness, enjoyment, and longevity of the game. When switching the context of constitution, however, the weight of mimetic considerations changes. Consider the case in which a computer simulation similar to a strategic videogame is designed not for playing purposes but to convey historical information, for example as an introductory presentation in a museum. Here, clearly, the constitutive rules of the simulation—rules that even in the case of videogames are laid down through a software-design activity—must be mimetic in the first place, above all other considerations. And the same would hold if we conceived chess *only* as a means to symbolize and represent a social setting, therefore putting Jacopo's descriptive interpretation to its extreme and entirely dismissing the nature of chess as a game. In this case, many rules of chess could be rephrased and reformulated according to criteria that have nothing to do with fun, longevity, deepness and challenge.

Someone could object that similar cases of pure description are not to be interpreted as examples of institutional constitution. For sure, they are extreme examples, but they show something significant, namely, that a set of constitutive rules can have a mimetic or representational use and that the necessity of this mimetic character depends on the context of constitution. Very often this representational use is, in a sense, conveyed by the very concept of the practice: Think, for example, of institutional concepts involved in religious rituals such as Baptism or Holy Communion. Searle says in *Making the Social World* that these rituals are grounded on false beliefs, even though the participants in those practices are not aware of this falsity (Searle 2010, 118-9). I do not intend to take a stance on this thesis, but I think that in any case the very concept of a religious practice entails that its constitutive rules are not simply arbitrary: Instead, they can very well be mimetic, because representative of acts and events that have a supernatural and holy character (in our examples, Baptism and Holy Communion are respectively mimetic of John's original baptism of Jesus Christ and Jesus' Last Supper).

Similar considerations seem to support the view that mimetic boundaries are strongly linked with the context of constitution, just like the other kinds of boundary, but also that they create a particular kind of rational-determination relation based on a continuous reference to other facts, acts, or events that are "imitated" by the institution. We could even venture to hypothesize that every context of institutional constitution—namely, every general practice in which the process of institutional constitution may find its



place—has a certain *degree of mimesis* allowed, and that therefore it is usually clear (at least roughly) whether in that context mimetic considerations must or must not prevail over other kinds of considerations. In this light, rituals conceived as contexts for institutional constitution would have a higher degree of mimesis than games, for example.

**4. Conclusions** The main outcome of this paper can be described as follows. Constitutive rules set up a relation of rational determination between the X and Y terms of the “count-as” locutions, which is to say that they create a relation based on reasons. This means that constitutive rules are not entirely free in their power to create institutional reality: Instead, they are subject to boundaries, mainly ontological, structural, and pragmatic boundaries. All these boundaries are sensitive to the context in which constitutive rules find their place, and hence to the broader social practice within which they create institutional concepts. Understanding in detail how these boundaries work entails a better grasp of the real role played by context in the “count-as” formula.

Among the boundaries to institutional constitution, there are some which up to now had not been recognized: mimetic boundaries, which emerge when an institution created through rules “imitate” a given pre-existing reality, be it a natural or social reality. Mimetic boundaries, too, are sensitive to the context of the broader practice within which the process of constitution takes place: They, too, define a context-dependent rational determination doctrine, but one which in turn refers to another pre-institutional reality. Hence, in this case, to justify a constitutive rules means to assess how it is, other than constitutive, “descriptive” of something else (at least in a loose sense of *description*).

These results are relevant for social ontology in general, because they show that the role of context in constitutive rules can be discussed by analyzing the boundaries to institutional constitution, and hence the rational-determination relation these rules set up. But they are relevant for all kinds of institutional ontology as well, because they show how in certain contexts the question of rational determination, and hence of how an institution is reason-based, can be answered in terms of *mimesis*, that is, in terms of how that institution is able to “imitate” other aspects of reality.

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