

# Meta-meta-institutional Concepts? A Tale on Schwyzer and the Force of Technical Ends (Live from Ruritania)

*Guglielmo Feis*

*University of Milan*

## *Abstract*

The paper is a critical analysis of Hubert Schwyzer's idea of meta-institutional concepts. First, I isolate a presupposition in Schwyzer's example of chess as ritual. I then show how Schwyzer's idea of meta-institutional concepts is far from being the endgame in the research on levels of institutionality. In fact, we can iterate on meta-institutional concepts. Schwyzer's idea has to face an infinite regress. I try to avoid such a regress by introducing the concept of technical end of game. A game defines its own terminal status. People playing the game can then attach different meanings to this norm-dependent terminal status. Hence, meta-institutional concepts are not conditions of possibility: they belong to pragmatics, not to an extra ontological layer. I conclude the paper sketching a classification of games based on different kinds of technical ends and I advocate the need to adopt a pluralistic conception on games and practices.

*Keywords:* Meta-institutional Concepts, Technical Ends, Constitutive Rules, Social Ontology, Hubert Schwyzer, Infinite Regress.

The paper is a critical analysis of Hubert Schwyzer's idea of meta-institutional concepts.

The chief example of a meta-institutional concept is that of *winning in a game*. Games are different and have different rules. Nonetheless, they share the concept of victory that is present in most rulebooks. As Roversi (2014) says, we use the same word to say "I *won* at chess" and "I *won* at bridge", but it will be (pragmatically) odd for us to reply "Yeah, I won, too, yesterday at bridge" to a friend that says "Yesterday I won at chess".<sup>1</sup>

<sup>1</sup> Schwyzer (1969) first focused on victory. Miller (1981) talked about meta-institutional concepts discussing promises. The most recent research wholly dedicated to meta-

There seem to be two alternative options to account for the “new dimension” of meta-institutional concepts:

- 1) We *add a layer* to our ontology of the institutional domain: the obvious option is to dedicate a *new level* to meta-institutional concepts;
- 2) We *do not add a layer* to our ontology of the institutional domain and try to account for this “new dimension” relying on other tools.<sup>2</sup>

The goal of this paper is to criticize the standard view of meta-institutional concepts, denying that we need to follow option (1). Against this route I shall offer both methodological criticisms (§§ 1-2) and a conceptual problem based on the idea of properly defending a new foundation for the institutional domain (§ 3).

I criticize the view according to which meta-institutional concepts are conditions of possibility of the institutional realm (Lorini claims that straightforwardly;<sup>3</sup> Roversi’s approach seems closer to the one I will develop in the paper)<sup>4</sup>. I then build a positive proposal highlighting how the meta-institutional theory failed in distinguishing between the *end of a practice* and the *meaning we assign to the end of a practice* (§§ 4-5).

The thought driving the *pars destruens* is that when we claim there is an extra level or a background or some presupposition we also need to prove that that is the ultimate level. The leading question is whether the discovery of the alleged meta-institutional concept is the last step in our research of the background and the presuppositions of constitutive rules.

The thought driving the *pars construens* is that we need not look back or beyond or *meta constitutive rules* to discover their background but rather *inside* them. They will tell us all we need to know as far as how the game will end.

## 1. Every Saga Needs a Prelude (and some Methodological Remarks)

The starting point of the paper emerges as soon as John Searle’s theory of social reality interacts with Schwyzer’s (1969) paper. Both Roversi (2014: 202, 214) and Lorini (2014: 127) say that the Searlean picture of institutional reality needs to be developed and enriched. Lorini thinks we need a new level and favors the approach involving meta-institutional concepts (option 1 from the section above). I will say, on the other hand, that we only have to add an *element* (not a

institutional concepts I know of is that of Lorini (2012, 2014) and that of Roversi (2007, 2014, 2015).

<sup>2</sup> Giuseppe Lorini developed the first option claiming that meta-institutional concepts are conditions of possibility of the institutional, see Lorini (2012, 2014). Corrado Roversi focused on the second option and proposes a pragmatic analysis of the speech acts we use to describe the supposed meta-institutional dimension.

<sup>3</sup> “In this paper I extend Searle’s theory of institutional facts arguing that a further level is needed for the investigation of the structure of institutional reality: *the level of meta-institutional concepts*. The *meta-institutional concepts are concepts that go beyond (Greek: *metá*) the institutions of which they are conditions of possibility*” (Lorini 2014: 127, second *italics* are mine; see also 129).

<sup>4</sup> Roversi’s idea of *parainstitutionality* comes close to what I am arguing for in this paper. To paraphrase him (2014: 211) “Technical ends thus figure as the fundamental layers on top of which parainstitutional usages rest”.

whole new *level*) in the ontology, viz. the concept of technical end, i.e. the terminal point of a practice. Now to work.

First, the analysis involving meta-institutional concepts applies to a wide variety of contexts, such as games (chess, tennis, football, videogames, hide and seek, etc.), social practices (e.g., rituals, social exchanges such as greetings, etc.), institutions (promising, marriage, governments, elections, money, etc.) and many more. I propose to generalize and talk about rule-constituted element(s) (RCE for short) rather than rules, practices, games. ‘Element(s)’ shall be neutral enough to cover all these different grounds. Nothing hinges on this terminological choice. If you prefer ‘entities’ as more neutral than ‘element’, no problem with that. ‘*Constituta*’ might be another option.<sup>5</sup> My talking of RCE is just a reminder that we need to focus more on the pluralities involved in our discussions of constitutive rules and not only rely on chess and other “cheesy and easy” well-known examples.

RCEs (in the plural) owe their existence to a set of rules and they are wholly dependent on the set of rules that generates them. They are the products (which can be entities belonging to different ontological categories) of sets of constitutive rules that determine them. There are two important features that are brought to the fore by reflecting on this use in the plural.

First, we say that constitutive rules are constitutive “as a whole”. In order for a constitutive rule to produce its effect(s) we need to embed it into a context, into a “totality of the rules” (Lorini, Roversi, Conte and Searle all agree on that). Some of these rules might be constitutive as well, some might be regulative rules or meta-rules (higher-order norms).

Because of this embedding and because of the fact that other rules refer to rules-constituted elements (e.g., in the case of technical legal gaps) we have different relationships and interactions between rules belonging to the set of constitutive rules. That’s why (constitutive) rules are constitutive “as a whole” or “in context”.

If so, then speaking of the products of constitutive rules favoring the singular over the plural would be misleading. It suggests that the thing in question is the product of a single rule. There would be no difference between the lone element and “the whole” and the latter would be the former under a different name. For example, let’s imagine that we have this single rule:

(CR 1): “paper banknotes count as money if they are issued according to procedure P”;

Does it create money as a singular rule constituted-element? Obviously not. In order to create money by means of constitutive rules, we would need many other of rules, such as:

(RR 2): “you can’t deny a payment that is made by means of valid forms of money”.

Such a (RR 2) rule allows you to pay a coffee with a credit card—assuming it counts as valid money, something that might require us to add a third rule in the system—or even with a fifty dollars banknote.

On the other hand, money (and most of other entities created by means of constitutive rules) is not an amorphous mass. It is complex and articulated into

<sup>5</sup> Żelaniec (2013, 39) introduced the term *constituta* to refer to something constituted by constitutive rules or one such rule. According to that usage money is a *constitutum* (in the singular) and so is volleyball.

components (such as single coins, banknotes, cheques, credit cards and so on) which, down to a certain level, are constituted, too, by means of other rules of the same system to which both (CR 1) and (RR 2) belong.

This is why I prefer to say that money (and the like) is (a system of) *RCEs* (highlighting the plural). This will help us, or so I hope, never to forget that money (and the like) is a structured and articulated whole, a whole whose elements are constituted by some from among the rules that define money as a whole.

The same goes with chess. Chess (singular) is a (system of) *RCEs*. All the constitutive rules that define the different pieces interact. If a pawn reaches the rank furthest from its starting position, the player who managed to do that ought to promote such a piece turning it into a different. The promotion rule (art 3.7.5.1-3.7.5.3. of the FIDE laws of chess) determines the chess *RCE* of a pawn and plays a similar role to (RR 2) above, helping us constructing a toy-model for chess as a (system of) *RCEs*.

There is an extra reason to talk about *RCEs* (in the plural) that is due to the fact that the plural reminds us of a variety of phenomena. Chess, money, marriages, football games, institutional entities, etc. are all *RCEs* in as much as they are the product(s) of set(s) of norms that include at least one constitutive rule.

Sometimes, theories of constitutive rules seem to be designed to account for one and only one phenomenon: chess. Such theories are those that preach saving the phenomena but consider only the single case that makes the theory work: chess. However, it could be fruitful and instructive to adopt a wider selection of examples and include such games as tennis, blackjack, *Magic: the Gathering*, go, scrabble (*stems* anyone?)<sup>6</sup> or even computer games. Philosophy of computer games is arguably a subdiscipline of philosophy and game design a discipline on its own. None of these (sub)disciplines are mentioned in the chess-dominated debate on meta-institutional concepts.<sup>7</sup>

The sets of rules most often specify circumstances in which *RCEs* are over. In chess, it is a specific situation: checkmating the opponent's king (or a stalemate). Other forms of technical ends may include time length, points, physical distances or a combination of these elements (see §4 for a sketch of a classification). This does not rule out that certain *RCEs* can go on indefinitely. Tennis admits such a possibility. The same was true for soccer when draws in in-or-out matches (say the final phase of a World Cup) caused the game to be repeated. The case of some *RCEs* that might not have a crystal-clear technical end (e.g., non-competitive playing, training) are briefly considered below (§5). Think about a computer running the set of rules of some *RCEs*.<sup>8</sup> Rather than 'winning'

<sup>6</sup> In competitive Scrabble you are interested in "bingo stems". You make a bingo and get extra points when you use all the letters on your rack. Six letters stems are combinations that easily make a bingo if you add other letters. An example is the "TISANE" stem that combines with all letters but J, Q and Y.

<sup>7</sup> See, e.g., Myers (2003), Moore (2011) and Sageng, Fossheim & Larsen (2012). The criticism that a certain theory of constitutive rules has been developed on chess only has been voiced already. See Leonardi (1983: ch. 3—for a discussion of soccer as constituted practice) or Feis (2014—on different game phenomena such as doping and simulation—and Feis 2018).

<sup>8</sup> People working in AI are keen on considering and modelling a wider array of phenomena than philosophers. We have championship in which algorithms play chess and Computer Olympiad which features a wider set of games. Another option to represent

or ‘losing’ I will talk about “reaching the technical end of the game”. Once we disclose this, different possibilities of interpreting this wholly rule-dependent terminal point open up: it could be a victory in a competitive game, it could be a ritual, it could be [add your favorite]. Maybe this is too a “static” or “computational” approach in analyzing the phenomena. At the present stage I can re-emphasize that, at least, though “static”, “computational”, “formalistic” or the like, at least it allows to catch phenomena in the plural.

This has a further consequence for the issue we are debating. If we agree on RCEs-driven pluralism, then we have to evaluate at least as dubious and incomplete all proposals that defend meta-institutional concepts based on chess only.<sup>9</sup> A chess-based theory of meta-institutional concepts is a hastened generalization.

In what follows I will try to analyze Schwyzer’s famous case of chess as a game and as a ritual. In so doing, we will try to write down the rules of both chess-as-a-game and chess-as-a-ritual. They are going to be two systems of RCEs and we shall try to highlight some of their features with toy-models similar to that presented above for money as (CR 1) and (RR 2). The *desideratum* would be: being able to write down a list of the (constitutive) rules constituting the game in order to implement it on some sort of simulation or computer program.<sup>10</sup>

Another advantage of proceeding as if we were coding (i.e. building software) the practice is that if we are able to implement at least a toy model simulation of different systems of RCEs we will gain a common ground on which to evaluate different games and practices.<sup>11</sup>

Here, I shall be assuming that we are dealing with practices and activities that *do have* an end. The objection that I omit never-ending practices does not apply to my argument as the advocates of meta-institutional concepts consider chess and victory most of the time. Further, alleged never-ending practices have an end: Shéhérazade is not immortal (so her supposed counterexample of a never-ending narration reaches an end). Bastian saves *Fantasia* screaming the name of his mother (should he fail in doing so the other possible outcome is that *Fantasia* is destroyed). If you think of miming games or mimesis-as-make-believe games, there is still some teleological end.<sup>12</sup>

the running of RCEs could be Ethereum’s smart contracts. See De Filippi & Wright (2018) for a primer.

<sup>9</sup> Even when other sports are mentioned, I am not aware of authors who tried to unveil the meta-institutionality of other sports or games performing an operation similar to that of Schwyzer (1969) with chess.

<sup>10</sup> Both a chess videogame (enter your favourite) or a sort of NetLogo simulation will be ok. NetLogo is a programming language that creates agent-based models and simulation. A quick overview can be found here: <https://en.wikipedia.org/wiki/NetLogo>. In NetLogo we will be forced to distinguish two kinds of agent that are relevant for Schwyzer’s arguments: priests and non-priests.

<sup>11</sup> Models will be toy-models, sure. But chess as the only test for meta-institutional concepts (in general) is a toy-model as well.

<sup>12</sup> Żelaniec (2013), who flirts with the idea of meta-institutional concepts, is probably the author that stressed the most the importance of teleology and human nature/biology as far as constitutive rules are concerned, see esp. chs. 7-8. See also the importance of teleology in Roversi (2014)’s aim-oriented meta-institutional concepts. This teleological end and the concept of acting-in-function (what Amedeo G. Conte calls *nomotropismo*) of a rule can be used to deal with the supposed counterexamples. I partially did that as far as training is concerned in Feis (2014), see also §5 of this paper.

Further, I think that methodologically it is a mistake to rely exclusively on ordinary language argumentation when discussing institutional concepts. One would have to explicitly decide such questions as: Which language from among the many on Earth? Which usage? Based on which *corpus*? Yet this is seldom done. No matter how naïve your institutional consideration is going to be, in a couple of sentences we can reach a point in which language usage does not conform to the intended theory you try to argue for by way of ordinary language. Besides, do institutional documents such as written laws, rules in a manual or even speeches by legal authorities or leaders count as ordinary language (think about property, marriage or even elections)?<sup>13</sup> If we assume that normative language, in particular the legal discourse, is some sort of semi-planned language, ordinary language philosophizing on that should be regarded as at least suspicious. Something similar will follow if we have an artefact theory of law: it is the (ordinary) language of the artefact maker and of the community that makes the law, but there is no guarantee that that is the ordinary language.<sup>14</sup>

## 2. The Exclusivity Rule or the Dirty Little Presupposition in the Construction of Meta-institutional Concepts

Meta-institutional concepts date back to Schwyzer's (1969) thought experiment meant to show that practices have no built-in instructions concerning how we should enact them. In his (in)famous Ruritania case, Schwyzer tries to show that we can have two kinds of chess practice constituted by the *same rules*, call them the FIDE-chess<sup>15</sup> and RITE-chess: the first practice is a competitive game, the second a religious ritual.

There is a lot of room for arguing that RITE-chess has different rules from FIDE-chess (*contra* Schwyzer's assumptions—oddly enough, all the philosophizing on Schwyzer's paper never focused on that). Neither Schwyzer nor the ad-

<sup>13</sup> The mistake here is that of reasoning on what is taken as an institutional level (that of meta-institutional concepts, constitutive rules and RCEs) running ordinary language arguments. Some hold the view that institutional languages such as legal language are not so close to ordinary language. If there's a point in claiming that an institutional language is to a degree different from everyday language, then an institutional language has its own usage and "grammar". I think those applying ordinary language or linguistic considerations to institutional matters need to deal with this point first. I actually share Haas' (1953: 514) worries on ordinary language helping "creating a philosophical muddle, though a muddle expressed in correct English". Funnily enough, legal philosophers insisting on distinguishing institutional language as peculiar adopt ordinary language philosophy narrowly conceived (in practice: analytic philosophy done by informal arguments based on those linguistic usages which are apt to prove your point).

<sup>14</sup> In a Legal Positivist setting it is even easier to see that there is not much room for the ordinary language at all, it is the language of the authority making the law that counts (though the authority has reasons to stick to what is thought to be the standard usage).

<sup>15</sup> I find it at least controversial to say that FIDE rules are ordinary language, at least if we have to give some credit to the work in legal pragmatics and the idea that law is something in between an artificial and a natural language. Lorini (2014) occasionally employs ordinary language arguments based on the FIDE law, e.g., section 2.3. of the paper saying that the article 10.1 of FIDE presupposes winning. See also Lorini (2014: 134). Such claims need testing in a Computer Olympiad and other scenarios in which non-human players execute sets of rules (see fn. 8).

vocates of meta-institutional concepts ever carried out an explicit—“extensional” if you will—characterization of the rules.

Let’s present some reasons why the rules are *not* the same in RITE-chess and FIDE-chess. If we carefully consider Schwyzer’s example we find that there is something different from FIDE-chess in his ritualized version (I do not know if this counts as a phenomenology of the game, Schwyzer offered us no rule-book, just his intuitions). Think about reconstructing a model of FIDE-chess and RITE-chess in some sort of regulated and coded environment (e.g., NetLogo). The world of RITE-chess features two different kinds of players (priests and ordinary folks, i.e. non-priests) whereas in FIDE-chess all players are equal.

We can clearly see this difference if we refer to the “Blasphemer!” part of Schwyzer’s story. In Ruritania ordinary people, who are not entitled to play chess, are sanctioned (in the paper the exclamation “Blasphemer!” expresses this sanction). In RITE-chess, in fact, there are *two kinds of agents*. If a non-priest tries to enact the chess rules a sanction occurs. In FIDE-chess there is no such thing.

In order to account for this element, we need to carefully *add a rule* in our model of RITE-chess, call it the *exclusivity rule* according to which only priests may enact the chess<sup>16</sup> system of RCEs. If we were to program this, we would have a domain of agents (priests and non-priests), then the program would randomly pick an agent from the domain and try to have the agent execute the system of RCEs. If the agent is not a priest nothing will happen. There is no outcome of the chess-like practice, because it cannot start. If the agent is a priest, then the game starts and we will have a final stage of this game and an outcome.

According to that representation, the rules composing RITE-chess are different from those of FIDE-chess, in fact RITE-chess includes the exclusivity rule above (and it seems it does not include stalemate). In order to have Schwyzer’s story going and to have a chess-like game in which there’s no winning and losing but only a ritual, it is essential to have a division between priests and non-priests. It seems to me hard to deny that the exclusivity rule is part of the game. FIDE-chess and RITE-chess are not the same game because they have different rules. Nonetheless, RITE-chess and FIDE-chess largely overlap, and RITE-chess contains at least some elements of the technical end of FIDE-chess (checkmate is still there, stalemate—we do not know).<sup>17</sup>

Advocates of meta-institutional concepts may try to remove the exclusivity rule from the game and implement it at another level, e.g., in the social context or something else. Society in Ruritania is such that when a non-priest is playing chess he or she gets sanctioned.<sup>18</sup>

<sup>16</sup> Chess-like, if you prefer.

<sup>17</sup> To my knowledge, such an issue has never been investigated. For our present purposes; (i) if stalemate is not part of RITE-chess, RITE-chess is a different game compared to FIDE-chess. That’s an easy win against Schwyzer as the assertion “we are using the *same* set of rules in different ways (defined by means of different meta-institutional concepts)” is false; (ii) as far as my reconstruction in terms of technical end goes, we can adopt some sort of charitable reading and restrict our attention to the aspects of FIDE-chess and RITE-chess that overlap without some Ruritanian exegesis. In this setting, both FIDE-chess and RITE-chess share the technical end according to which “the king can’t be safely moved”.

<sup>18</sup> I think that spelling out these details would bring in a whole new level of complexity that requires us to review the whole example. Even by doing this, the issue of stalemate will still be there allowing us to say the rule sets are different.

The above reconstruction allows us to see that, at the very best, Schwyzer's case is ambiguous, depending on how we realize the exclusivity rule. Advocates of meta-institutional concepts should clarify which reconstruction they are considering: where do we place the exclusivity rule? I am not aware of any discussion of that. The following table sums up the reconstruction:<sup>19</sup>

	<b>FIDE-Chess</b>	<b>RITE-Chess</b>
<b>Agents playing the game</b>	2	2
<b>Type of Agents</b>	1 (players)	2 (priests, non-priests)
<b>Layers of the Game (context(s))</b>	1 (technical end)	2 (technical end + social interpretation)
<b>Sanctions</b>	1? (violation of fair play)	2 (violation of fair play + "Blasphemer!" sanction)

As we have said already FIDE-chess and RITE-chess share a terminal status of the rule-governed activity, i.e. checkmate (stalemate needs further evaluation and will be left out of this discussion). You need a checkmate to have a winner, you also need a checkmate to evaluate the ending of a ritual. It is not difficult to expand the Ruritania phenomenology and image different conditions for RITE-chess.

You can either have RITE-chess 1, in which the ritual is in favor of Ruritania's people if Black reaches the checkmate or RITE-chess 2, in which the ritual is in favor of Ruritania's people if White reaches the checkmate. More generally: winning and losing can be associated differently with the same kind of technical end: in card game like Hearts the more points you score the worse for you, in Rummy the more you have the better.

### 3. A Regress Is Haunting Institutional Reality

The idea of iterating on a concept is far from new. In the analysis of constitutive rules, we welcomed meta-institutional concepts as a way to go beyond our main topic of investigation and investigate it at another level. This was our new hope.

Nonetheless, every time we add another level of inquiry, the question of whether: (i) there is only the starting level and the meta-level (i.e. the newly discovered level) or (ii) there are more levels (the starting one, the meta-level and more levels that are implied or maybe presupposed by the new one).

In particular, we need to be sure that levels are not added *ad infinitum*, otherwise our newly discovered "promised land" level might compromise the research. We do not want our new hope to become a new dope.

Advocates of meta-institutional concepts say that the true picture of the institutional domain is two-fold. I would challenge them by asking whether they have a closure rule to ensure that their foundation is the ultimate one.

I start by asking whether we have an infinite number of meta-levels of meta-institutional concepts, such that we could distinguish meta-meta-institutional concepts ( $M^2$ -concepts for short),  $M^3$ -concepts (i.e., meta-meta-meta-institutional concepts), etc., up to  $M^\omega$  (and possibly beyond that). To my knowledge, in the

<sup>19</sup> I have included sanctions in FIDE-chess as far as fair play is concerned. This might be controversial but nothing in the argument depends on that.

contemporary research on meta-institutional concepts these questions have not (yet) been raised.

I think it is enough that, for a given theory, we can *conceive* of possible iterations of the meta-levels to hold that a theory claiming there's a single meta-level that is the foundation of institutional reality does not work (for some examples see later §5). Further, as Lorini proposes meta-institutional concepts as *conditions of possibility* of the institutional domain, we can demand that a foundation at a higher level should legitimize its status of being the ultimate level. Searle gives us reasons (that we may or may not accept) to think that all the levels we have are those he is talking about; Schwyzer and those who follow him have not provided any reasons to think that their levels are ultimate.

Lorini challenged Searle by pointing out (with Schwyzer's help) that what Searle thought to be the conditions of possibility of social reality rested on other conditions of possibility (Lorini's meta-institutional concepts). The issue is whether we can be sure that meta-institutional concepts are the last step, the ultimate ground, or, rather, we have to infinitely keep adding further levels. If adding meta-institutional concepts is going to add also meta-meta-levels and meta-meta-meta-levels, then introducing the first meta-level will at best be useless, at worst: dangerous. I think the burden of proof that there are just two levels is incumbent on the advocates of meta-institutional concepts.

What is happening in this paper is nothing but an echoing of an argument of the Neo-Schwyzers: they chide Searle saying "well, you forgot to mention the level that gives a foundation to the institutional reality you construct". Here I am saying nothing but "well, are you sure your newly discovered level is the ultimate level?".

#### 4. Technical Ends: or How to Fix Meta-institutionality without Potentially Infinite Levels

Now that the main questions addressed to the advocates of meta-institutional concepts have been raised, it is time to see if we can do any better as far as the iteration problem is concerned: are there further backgrounds for technical ends? Are there meta-technical ends? What about meta-meta-technical ends?

I argue that technical ends are first level entities due to their own (as RCEs) specific constitutive rules. If my claim is correct, we will probably have to review the place of meta-institutional concepts. Meta-institutional concepts are in fact, it will turn out, meanings we assign to the technical ends that determine what we can do with our RCEs. Consequently, they are no conditions of possibility, *pace* Lorini. We need to already have our RCEs before we can ask questions on what we can do with them.

In both FIDE-chess and RITE-chess there is a common subset of rules that determines checkmate as a technical end common to both kinds of practice. Once we reach this rule-dependent status in an instance of RITE-chess or FIDE-chess, both are over: i.e. both systems of RCEs are over when checkmate happens (we do not know if RITE-chess may end with a draw, as in FIDE-chess).

We can now enter another level and discuss how to evaluate it or "use" it. Is it White winning and Black losing? Is it the other way around? Is that something new like something good forthcoming for Ruritania's citizens because of a ritual? Is it winning your life while playing against Death himself as in the film *The Seventh Seal* by Ingmar Bergman? No matter which one you choose, there is

still some core-common rule set running in the background. The meanings we assign to the technical ends (meta-institutional concepts) shall tell us how to use those different RCEs that terminate when an instance of the technical end is reached, selecting one way from among different possibilities, without being a condition of its possibility.<sup>20</sup>

#### 4.1 A Technical Ends-Based Recognition

There are different kinds of technical ends of various RCEs. Technical ends define the end of an instance of the respective (system of) RCEs in that, once a certain status, defined by a (sub)set of rules on which the RCEs depend, obtains, the instance of the given RCE is over. We have already seen this for checkmate (and stalemate). Card games may end when there are no more cards you are allowed to draw (e.g., solitaire).

Other technical ends may include a reference not only to a status of the activity but also to specific events: a bell's ringing (as in fighting), the fact that a certain amount of time has passed (for example in a football match), someone doing something for the first time inside the constituted space (think about being the first to cross the finish line in a race). Chess itself has an alternative technical end as well: checkmate or stalemate (though we most often reason without the latter).

Yet other technical ends may include spatial considerations in defining the relevant event or status. Think again about the case of running a marathon. Most racing in the Olympic games is distinguished by length (100 m, 400 m, and the like), i.e. a spatial condition. Of course, the length determines the event (crossing the line and finishing the race) as well as a status (being the first in the race).

You may add and combine these elements.<sup>21</sup> Think about Formula One racing which has an alternative technical end: (i) it works as a normal race—a marathon with cars—but it has to last *less than two hours*; (ii) if the race lasts more than two hours, the two hours project a sort of virtual finish line and the race is over: the positions reflect those which players occupied at the two hours mark. Points might be another form of a technical end (*Pictionary* or the funny way in which in tennis points are aggregated in games and sets).<sup>22</sup>

<sup>20</sup> Torrenco (2016) and his institutional externalism might connect to my proposal, though his focus is not on the background of constitutive rules but on institutions in general. Another remark that could be regarded as somewhat technical-end friendly is that of Azzoni (1988: 44): “the ontology of *lusus* is completely determined by the rules of the *ludus*. There can be no mediation of an extraludic reality because, as far as the *ludus* is concerned, there is no extraludic reality”.

<sup>21</sup> Considerations above (§4.1) are guidelines for such a taxonomy. Paradigmatic properties may be whether the technical end is highly impacted by material features, say weight, strength or height; whether the technical end features spatial elements or only rule-related elements (e.g., points); etc. Some issues pertaining to the materiality of constitutive rules have been explored in Feis (2018). Sandbox, open-end games, and training in view of the best performance are the major challenges for that. Sandboxes and open-end games nonetheless have different events of gameplay that feature some technical ends, see Karhulahti (2013).

<sup>22</sup> Quick comparison with volleyball. No, the fifth set is not a tie-break. You can have tie-breaks in all sets, not only in the fifth. In all big tournaments (with the notable exception of the US-open) you can't have a tie-break on the fifth set.

The game ends when the technical end defined by its rules has been reached. At this point it is all up to us to decide what to do and how to interpret it. Checkmate can either be me winning and you losing, or a ritual. There is no need to specify which of the two options (or another option) we have chosen in order to instantiate a certain (system of) RCEs in so far as the RCEs share a subset of their constitutive rules that define the same technical end.

As I tried to show discussing RITE-chess, FIDE-chess and Bergman-chess: the sets of rules offer us a terminal status that is both common and prior to any further extra characterization. If we consider the case of White checkmated Black we have at least: (1) White prevailed against Black in a certain competitive game; (2) a certain ritual is completed in a positive way for people of Ruritania; (3) you saved your life. We can also invert the outcomes (1)-(3): if White checkmated Black. Call this inverted-chess (again, feel free to designate this with a different label). In order to obtain them you have to modify a rule in the core set of rules saying that if you checkmate your opponent you lose the game. Plausibly, to make inverted-chess a playable and enjoyable game you will have to add some rules that “force” each player to attack the opponents’ pieces and “move towards” checkmate.

Actually, considering inverted-chess shows us that the common-core of different uses of chess presupposes only the fact that checkmate (and stalemate) are designed in such a way as to terminate the system of RCEs.

You may want to add some sort of (Aristo)telic conception to this, saying that systems of RCEs tend to reaching their technical end. I do not want to make such a commitment. We can further elaborate interesting taxonomies of technical ends, we can even dare say that all systems of RCEs have a technical end.

## 5. Summing up: Criticism to the Proposal and Replies

It is time to see what kind of criticism may be raised against various parts of this paper.

Let’s consider the issue of meta-institutional concepts and their iteration. Meta-meta-institutional concepts seem not so absurd and, relying on the type-token distinction, we can get a handle on what is going on there. Be it as it may, let’s try to offer different examples of institution-related concepts that can enter into a three-levels structure (a level, a meta-level and a meta-meta-level) instead of a two-levels one.

First, consider the case of victory (e.g., in a game). Is there a way to embed this prototypical example of a meta-institutional concept into a further level? Maybe culture might be such a meta-level for victory. Certain cultures are fonder of individualism and competition than others. Empirical game-theory investigated that and offers a base for that point. Researches on how money is split in the Dictator game exhibit different patterns of sharing across different cultures. In the Dictator game the dictator chooses first how to split a certain sum of money with the other player. The other player can do nothing but accept the dictator’s choice. Rational choice theory says the dictator should take all the money for herself. In practice—and against rational choice theory—people playing the game share money most of the time (in different percentages).

Further, victory could not be the last word and the most important point of a culture. There is no need to make cross-cultural comparisons this time. Think about any debate on who’s the best player in a certain sport (e.g., the Messi *vs.*

Ronaldo struggle at almost every FIFA award). Is victory all that matters? Maybe not. Style matters (that's the argument for "McEnroe was better than Borg" in tennis). Maybe being merciful and forgiving prompts your honor and social prestige more than being a cruel winner.

A second institutional-related example comes from the view of legal philosophy which Riccardo Guastini entertains. For Guastini (2012: 57) jurisprudence is the meta-level of (positive) law. Jurisprudence takes positive law as its object of inquiry and develops its doctrines starting from that. The most distinguishing claim of Guastini's conception of philosophy of law is that, given that philosophy of law has to be linguistic analysis, the objects that philosophy of law can investigate are nothing but the different doctrines of jurisprudence. Philosophy of law is, then, nothing but meta-jurisprudence (that comes in two varieties, descriptive and prescriptive, but that does not interest us here). Hence, if we reunite the levels and make use of transitivity we shall be able to see that philosophy of law is the meta-meta-level of (positive) law.

Now let's move to technical ends. Given the arguments against Schwyzer (§2-3) and the alternative proposal advocated here (§4) let's see what complaints and replies could be voiced against this analysis.

Roversi discusses an "internal, technical concept of victory" and proposes a challenge based on ordinary language we have already seen in the beginning of this paper:

Player A says, 'Yesterday I played chess and won.' Player B replies, 'I, too, won yesterday, playing bridge.' This conversation is perfectly meaningful, but if different games had their own concept of victory, then player B's use of the 'too' would be paradoxical, as if B had said, "Did you really take the bishop yesterday? I did the same. I, *too*, took the bishop at the airport." In the first exchange, the two players are talking about the same thing, even though this same thing (victory) is subject to different rules in one case and the other. By contrast, in the second exchange, they are referring to two entirely different situations, even though the expression they use is the same (Roversi 2014: 206, fn. 5).

The first response is that B's statement is lacking an adversative element, i.e. "I, too, won; *but*, playing bridge". I think such an adversative conjunction is there pragmatically, even if not written down in Roversi's example.<sup>23</sup> Admitting there is such an adversative element (i.e. *but*), the dialogue shows that we have *two different technical ends* that are peculiar, the two participants are aware of that fact and relate to each other because, functionally speaking, reaching a technical end is the last step of an instance of a system of RCEs. That is what they are using to realize that they have something in common: "You achieved the final stage in X, I achieved the final stage, but in Y".

Let's try to offer some further elements to support that line of reply. Let's see other two instances of "speeches"—i.e. following Roversi's argumentative style—in which two people refer to different instances of the same X and use an adversative. This should prove that there's no meta-institutional X. They are just two different instances of the same stuff.

<sup>23</sup> At least, it is there in my understanding of that example as an ordinary language conversation.

Think of “I met Tuomas, yesterday”. “Oh, I, too, met Tuomas, (but) today” where A and B are referring to different Tuomas(es) and know that. There is no meta-institutional Tuomas, there are just two different guys named “Tuomas”.

Think about “Yesterday I played the notes C, D, E, F, G, A, B over a C major chord” and “Oh, I, too, played the notes C, D, E, F, G, A, B (but) over an F major chord”. Again, here there is no “meta-institutional C, D, E, F, G, A, B”.<sup>24</sup>

Maybe the fans of meta-institutional concepts conceive these concepts as types that get instantiated by different tokens. We have a common type or *Ur-type* of victory that gets instantiated in many different ways in different systems of RCEs. That would be similar to cases in which in the word ‘vittoria’ presents two tokens (instances) of the type *t* and two tokens (instances) of the type *i*. The literature on types (sub-types) and tokens (and their occurrences) abounds with problems and difficulties that, of course, are going to affect our talking of types and tokens with reference to meta-institutional concepts.<sup>25</sup>

Supporters of meta-institutional concepts may reason as follows. There is a (meta-institutional) type of ‘victory’, whatever this might be, that gets instantiated by different sub-types, say ‘FIDE-victory’, ‘RITE-victory’ and even ‘Bergman-victory’. There are some problems here we need to explore.

First, when you play two different games of a certain (sub)type, say, FIDE-chess (singular), you have multiple occurrences of FIDE-victories (plural). In a FIDE-chess tournament there are different matches that enact the same set of rules, FIDE-rules. These FIDE-rules are the same for all matches. You may say that FIDE-rules define a type and that the different games are different tokens enacting those rules. This seems also the line of reasoning of Lorini when he says that Fisher’s victory, Karpov’s victory and Deep Blue’s victory seem to be instances of the same type. For Lorini that should be an instance of the meta-institutional type of victory.

We already have a type (FIDE checkmate technical ends turned into FIDE-victory: checkmate is winning in a competitive game) and tokens (different winnings in actual individual games). How can we accommodate in this picture the fact that FIDE checkmate and RITE checkmate are different sub-types of the same (meta-institutional) type?

Let’s look at this issue backwards, i.e. we start from Karpov’s token of the type “victory”: we then have the FIDE-chess-victory type (i.e., checkmate as competitive victory) and meta-institutional victory as a higher order type. Here again arises the issue of victory as meta-meta-institutional concept which we have seen above discussing the regress problem (§ 3). Be it as it may, it seems that the theory of meta-institutional concepts needs some extra work before using the type-token distinction that, rather than solving all issues in one fell swoop, is likely to pose extra threats.

<sup>24</sup> The two actually played two different RCEs: C Ionian (*aka* the C major) musical scale and F Lydian. Here we have two scales that are constituted by different rules. The rules determine what the intervallic structure of the scale is. In the case of the major scale you have the following intervallic pattern (T stands for tone, S for semitone; a tone equals two semitone): T T S T T T S, the scale grades are the following: 1, 2, 3, 4, 5, 6, 7. Lydian would be T T T S T T S. The corresponding grades are 1, 2, 3, 4#, 5, 6, 7. C Lydian would thus be C D E F# G A B.

<sup>25</sup> See at least Wetzel (2008). Those debates are not often mentioned when the concepts of type and token are used in discussions of constitutive rules.

Second, even assuming that meta-institutional concepts such as victory are types that are broken up into subtypes and then instantiated differently depending on the game (FIDE-victory, type 1; RITE-victory type 2; and whatever else we may come up with) then not all the types in a given ontology are going to be meta-institutional. We cannot generalize the claim that, given that—by assumption—the type of ‘victory’ will be meta-institutional, all the types that receive multiple tokenized instantiations are going to be meta-institutional as well. Think about the type of  $\emptyset$  (i.e. the empty set) for an example. In what way does it have anything meta-institutional about it?

Hence, we need to have extra details on why only certain concepts can be conceived of as types that admit different sub-types that are differently structured (as RITE-victory and FIDE-victory).

Third, the idea of meta-institutionality seems to fit in well with cases in which we have sorts of practice and games and, more generally, things that are executed or performed. If all types that receive multiple instantiations are going to be meta-institutional, we can challenge that view saying that there are also “conceptual types”, i.e. types that are hardly executed or performed because they do not give rise to any practice. You could also use different definitions of ‘meta-institutional concepts’ (say Lorini’s, Schwyzer’s and Roversi’s) as an example of different tokenizations of the same type of concepts. Note that, again, you may want to sort out this issue by saying that the conceptualization are types of a different higher order supertypes.

Fourth, as it always the case when types and tokens are mentioned, we have to consider the issue of whether there can be tokens without a corresponding type. Despite the fact that arbitrary mereological sums are most often discussed in the debates on universalism and unrestricted composition in mereology, they come in helpful in the analysis of the institutional domain. If you consider a token of the type ‘university’ and take a closer look at it, it’s likely to be a scattered object: different departments located in different positions, students and professors that are even more scattered. Further, a university is probably composed of different kinds of objects: physical, institutional, etc. Different universities offer different degrees; some have a Ph.D.-course, some don’t. Some university may have patents registered and be also a special kind of economic agent. Some include research centers. The more we get into a single token phenomenon, the harder it gets to find a type fine-grained enough to say that our beloved concrete instance of university X we are analyzing is a token of that type.

There are further challenges that we can raise to the technical end view. Training and solitaire are two possible challenges for the concept of technical end: where’s the technical end of a card game solitaire? What about training (e.g., practicing your backhand in front of a wall?).

Luckily, the idea of acting-in-function of a rule (*nomotropism*) can help us in managing the cases of training. Training is parasitic on technical ends. We practice serve and volley because tennis’ technical end is based on points and serve and volley (used to) help making points. We practice game endings in chess because of its technical end (checkmate and stalemate, sometimes our best option is to achieve a draw instead of a losing). And so on.

Puzzles and solitaire (and some computer games) are not a problem for a technical end-based analysis. They have a technical end defined by the correct completion of the puzzle or, in some card games, the game ends when the number of cards you can draw and manipulate is zero. Discussing playing solitaire

competitively and single person games seems trickier for the advocates of meta-institutional concepts. You can build an argument against meta-institutional concepts based on this: Is the same subject going to call himself ‘blasphemer’? In order to have the ordinary game and the meta-institutional game it seems that you need two parties viewing the same technical end in two different ways.

There is still a lot to unpack both to enhance the concept of technical end or to develop a less naïve theory of meta-institutional concepts. Whatever these developments may come to be, I hope it is now clear that chess won’t be enough as a starting point.

#### References

- Azzoni, G. 1988, *Il concetto di condizione nella teoria delle regole*, Pavia: Cedam.
- De Filippi, P. & Wright, A. 2018, *Blockchain and the Law: The Rule of Code*, Harvard: Harvard University Press.
- Feis, G. 2014, “Barare, copiare, doparsi, simulare”, *Rivista internazionale di filosofia del diritto*, 99-103.
- Feis, G. 2018, “Impossibility, Non-Existence and Constitutive Rules”, *ARSP*, 104, 2, 284-97.
- Guastini, R. 2012, “Manifesto di una filosofia analitica del diritto”, *Rivista di filosofia del diritto*, 1, 1, 51-66.
- Haas, W. 1953, “Value-Judgments”, *Mind*, 62, 248, 512-17.
- Karhulahti, V.M. 2013, “Puzzle Is Not a Game! Basic Structures of Challenge”, *Proceedings of DiGRA 2013: DeFragging Game Studies*.
- Leonardi, P. 1983, *Sulle regole*, Verona: Libreria Universitaria.
- Lorini, G. 2012, “Can Constitutive Rules Create a Practice?”, *Praxis Filosófica*, 34, 139-48.
- Lorini, G. 2014, “Meta-institutional Concepts: A New Category for Social Ontology”, *Rivista di Estetica*, 56, 2, 127-39.
- Miller, D. 1981, “Constitutive Rules and Essential Rules”, *Philosophical Studies*, 39, 183-97.
- Moore, M. 2011, *Basics of Game Design*, New York: CRC Press.
- Myers, D. 2003, *The Nature of Computer Games: Play as Semiosis*, New York: Peter Lang Publishing.
- Roversi, C. 2007, *Pragmatica delle regole costitutive*, Bologna: Gedit.
- Roversi, C. 2014, “Conceptualizing Institutions”, *Phenomenology and the Cognitive Sciences*, 13, 1, 201-15.
- Roversi, C. 2015, “Acting Within and Outside an Institution”, *Methode*, 4, 191-212.
- Sageng, J.R., Fossheim, H.J., and Larsen, T.M. (eds.) 2012, *The Philosophy of Computer Games*, New York: Springer.
- Schwyzler, H. 1969, “Rules and Practices”, *Philosophical Review*, 78, 451-67.
- Torrenzo, G. 2016, “Institutional Externalism”, *Philosophy of the Social Sciences*, 47, 1, 67-85.
- Wetzel, L. 2008, *Types and Tokens: An Essay on Universals*, Cambridge, MA: MIT Press.
- Żelaniec, W. 2013, *Create to Rule: Essays on Constitutive Rules*, Milano: LED.