1. Introduction

In his famous book *The Construction of Social Reality*, of 1995, John R. Searle wrote:

There is a scale that goes from freedom to necessity, from arbitrariness to reason, in the items selected for the status-functions. At one extreme of freedom and arbitrariness is money. All sorts of substances can serve as money [...]. At the other extreme of necessity and reason are such things as the standard meter rod kept by the French government at the pavillon de Breteuil in Sèvres. Not just any old object, not even any old meter-long object, can serve this function. (Searle 1996 (1995), p. 86; cf. also pp. 49ff.)

This is a fundamental statement in social ontology, a statement with far-reaching consequences. It could be rephrased in Searle’s terminology with a simple formula, namely: Collective acceptance is something, but not all, in determining the content of institutional reality. In fact, if the assignment of status functions, which in Searle’s view is at the core of social ontology, can be subject to boundaries “of necessity” (as Searle himself seems to suggest), then the question arises as to where these boundaries come from and whether we can go any further in analyzing them.

I believe that Searle’s new book *Making the Social World*, of 2010 (Searle 2010), provides new ground for explaining this kind of boundaries. In that book, in fact, an institution’s constitutive rules are conceived as speech acts that assign status functions, namely, as “standing declarations” (see in particular (Searle 2010, pp. 96-7)). But, according to Searle’s traditional theory of speech acts, all speech acts are subject to conditions for successful performance (Searle 1969). Hence, we should inquire what are the conditions for a successful performance of standing declarations, and here the subject of boundaries of institutional constitution comes up again.

Now, Searle does not say very much in this regard. Apart from general remarks similar to that above quoted, in *The Construction of Social Reality* he does not enter in the question of why and how constitutive rules can be subject to conditions or boundaries, and even in *Making the Social World*
this question is not addressed. Indeed, in some passages, Searle seems to believe that the matter of boundaries of institutional constitution cannot be given a rational treatment, because the reasons why an institution is created and comes out from collective acceptance are for the most part obscure and irrational. Consider this passage drawn from Making the Social World:

Why do people accept institutions and institutional facts? The most general answer is that most of the institutions one can think of work for our benefit by increasing our powers. Many institutions like language and money are in pretty much everybody's interest, and it is hard to know how one would go about rationally rejecting them. But beyond such vague remarks about how some institutions tend to be in everybody's interest, there is no general answer to the question of why people accept institutions. Indeed, there are all sorts of institutions where people cheerfully accept what would appear to be unjust arrangements. One thinks of various class structures, the low position of women in many societies, the vastly disproportionate distributions of money, property, and power. But one feature that runs through a large number of cases is that in accepting the institutional facts people do not typically understand what is going on. They do not think of private property, and the institutions for allocating private property, or human rights, or governments as human creation. They tend to think of them as part of the natural order of things, to be taken for granted in the same way they take for granted the weather or the force of gravity. (Searle 2010, p. 107)

In this paper, I will explore one possible reason why people can tend to think of institutions “as part of the natural order of things.” This has to do with how an institution’s constitutive rules can relate to reality, be it social or natural reality, because this relation can define boundaries of institutional constitution, that is, limits to the arbitrariness of collective acceptance. The structure of the paper is as follows. In Section 2, I briefly present some work so far made on the boundaries of institutional constitution. In Section 3, I introduce a new kind of boundaries—which I call “mimetic” boundaries—and explain the broad concept of “institutional mimesis.” Finally, in Section 4, I discuss some observations made by Edoardo Fittipaldi on the topics treated in this paper, observations that have been published in this volume under the title Mimetic Regulative Rules.
2. Three Kinds of Boundaries of Institutional Constitution: Ontological, Structural, Pragmatic Boundaries

If we conceive constitutive rules, along with Searle, as kinds of speech acts, we can address the questions of the boundaries of institutional constitution by applying the typical regressive method that since J. L. Austin has been adopted to analyze the conditions for the felicity of performatives, namely, that of looking for typical failures or in-felicities. This is how Austin famously introduces the method:

Besides the uttering of the words of the so-called performative, a good many other things have as a general rule to be right and to go right if we are to be said to have happily brought off our action. What these are we may hope to discover by looking at and classifying types of case in which something goes wrong and the act—marrying, betting, bequeathing, christening, or what not—is therefore at least to some extent a failure: the utterance is then, we may say, not indeed false but in general unhappy. And for this reason we call the doctrine of the things that can be and go wrong on the occasion of such utterances, the doctrine of the Infelicities. (Austin 1976 (1962), p. 14)

Let me start by applying this method to the typical example of the game of chess. Suppose that the game of chess (with all its rules, as we know them) is not the game that is, namely, the byproduct of a century-lasting tradition, but that it has been invented by me through a hard and long work of game-design. Now, I think it is clear that I cannot do what I want when designing the game of chess. If, for example, I have already decided what are the rules regarding most chess pieces (and that they are exactly those used today in chess) but I do not know exactly how to define the king, there are at least three different kinds of failures which the constitutive rules of the king could incur into. Consider these examples:

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.1

1 Notice that, even though all these rules are indeed constitutive of the king in chess, Rules (2) and (3) cannot be traced to the Searle’s schema “X counts as Y in context C.” Indeed, for reasons that cannot be discussed here, I believe this schema to be nothing more than a useful explanatory tool, something that can
All these rules fail as standing declarations constitutive of the king in the game of chess, for 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, but evidently a color cannot be manipulated as an object (nor can sounds, numbers, states of affairs, or events, and so on). Rule (2) fails for structural reasons. The problem, in this case, arises from the relation that the king holds with the network of other rule-defined elements of chess. In this game, the king must be amenable to attack, otherwise checkmate would not be possible and the game would not have consistent victory conditions. Finally, Rule (3) fails for pragmatic reasons. If the game of chess included this rule, it would be seriously defective as a game, because clearly competitive game-playing requires that victory conditions be not trivial and too easy to achieve.

These three kinds of failures correspond to three distinct kinds of boundaries of institutional constitution, which I will explain by appealing to Searle’s formula for constitutive rules “X counts as Y in context C” (but see footnote 1 on my use of this formula). Ontological boundaries have to do with the element X of the formula. Simply put, in the institutional domain some things cannot count as an institutional element because they are completely different and incompatible with the intended purpose of that element. Giampaolo Azzoni (Azzoni 2003) has recalled in this regard the famous example of the Roman emperor Caligola, who entrusted his own horse Incitatus with the charge of senator. As Azzoni observes, there is something completely odd in attributing to horses the status functions of senators, because horses are simply not the kind of beings that can govern a country and discuss matters of policy. There is at stake here a matter of consistency between the “brute” element to which the status function is assigned, on the one hand, and the intended import of that function on the other, namely, what that element is meant to do, what powers is meant to have, and the like. Hence, just as in the case of chess, where the king must be moved on the chessboard and therefore cannot be a color or other kind of entity different from a simple object, in the case of Caligola’s horse there is an evident conflict between the intended meaning of senators and the actual ontological capacities of horses, to the point that when Caligola be amended and even ignored in the creation of institutions. As a side note, also Searle has made it clear in several occasions that we should not take this formula too strictly (see for example (Searle 2003, p. 301)).

2 Notice that, even if we played chess with a computer on the Internet, and the king were represented through a colored figure, obviously it would be the figure, and not its color, that which represents the king: Hence, the computer-simulation case does not represent a counterexample to this thesis.
made *Incitatus* a senator it immediately became evident what in reality he was trying to do, namely, underscoring the irrelevance of the Roman Senate.

While ontological boundaries have to do with a question of internal consistency between the X element of the count-as formula and the actual import that is being given to the Y element, *structural boundaries* have to do with the consistency and structural coherence of a whole system of constitutive rules. Giuseppe Lorini (Lorini 2000, p. 300 ff.) has discussed this kind of boundaries when recalling Jean Ray’s conception of the legal act of selling as developed in the work *Essai sur la structure logique du code civil française*, of 1926 (Ray 1926). According to Ray, the concept of the institutional act of selling is inextricably intertwined with other institutional concepts such as “seller,” “buyer,” “price,” and “thing sold,” and therefore all these elements are essentially bound by their mutual relationship (Ray 1926, p. 233). This mutual relationship has among its consequences the “impossibility of representing an institution’s constitutive element without jointly representing the other constitutive elements” (Lorini 2000, p. 301; my translation). Hence, just as it is not possible in the game of chess to have the concept of a king without immediately referring to the other elements of chess which are related with the king in an essential way, it is not possible to have a concept of “selling” without having a concept of “price” or “buyer.” But the mutual relationship between institutional elements envisaged by Ray entails that changing a given institutional concept immediately raises matters of consistency with other related concepts. As a consequence, there cannot be complete freedom in changing the Y term of a constitutive rule, because the conceptual structure in which a given constitutive rules is placed puts some constraints on it. This is exactly the idea behind structural boundaries.

Finally, while ontological boundaries have to do with the internal consistency between the X term of the count-as formula and the import attributed to the Y term, and while structural boundaries have to do with the structural relationship between different Y terms, *pragmatic boundaries* have to do with the third and last element of the formula, namely, context C. Boundaries of this kind have been discussed for the first time by Hubert Schwyzer in his paper *Rules and Practices*, of 1969 (Schwyzer 1969). In that paper, Schwyzer asks us to imagine a situation in which the game of chess is not a competitive game but rather a sort of strange ritual of divination. In such a situation, chess could be constituted by the same set of rules while at the same time being something completely different, and this according to Schwyzer shows that constitutive rules are necessary but not sufficient for the understanding of an institution. Over and above constitutive rules, we must take into account the general practice in which the institution is embedded, a
practice which determines the “grammar” (Schwyzer uses here a distinctively Wittgensteinian term) of the institutional activity.\(^3\) Now, under these premises Schwyzer concludes:

Now, since the nature of a given practice is defined not by its rules, but by its “grammar,” by what things it is relevant to say and do with regard to it, it follows that one can bring a new practice into being by setting up rules for engaging in it only where the “grammar” of that behavior-according-to-the-rules is already given. Another way of putting this is to say that one can create a new practice by setting up rules only where the sort of activity that is to result from acting in accordance with the rules is one that already belongs among the things we do, one with regard to which there already exist relevant ways of speaking and acting, prior to the setting up of the rules. (Schwyzer 1969, p. 466)

Thus, an already-existing practice defines the framework in which the constitutive rules of an institution find their place, and this practice therefore determine boundaries for constitutive rules. This is what I am referring to with pragmatic boundaries.\(^4\) So, for example, just as the fact that chess is a game entails that victory conditions be not trivial to achieve, the fact that abrogation is a legal concept dictates among other things that it cannot allow “the deletion of one seemingly unimportant word in one subclause of one minor administrative regulation [to] result in the elimination of all legal content in the United States” (Greenberg 2004, p. 164). Such a boundary has nothing to do with the ontology of words and texts, nor with structural relations among normative concepts within the system. Rather, it has to do with the general concept of law, namely, with the crucial regulative role that law and legal practices must have in a given society.

Some interesting questions arise in regard to the mutual relations among ontological, structural, and pragmatic boundaries. It seems for example that, though structural boundaries involve questions of internal consistency, the centrality of this inconsistency depends on pragmatic considerations. In a game, for example, many kinds of inconsistencies can be accommodated, but not one having a direct impact over the conditions of victory. Suppose that the rules of chess define castling in a way that is inconsistent with the possible positions which the king and the rook

\(^3\) This relation between a surface level of rules and a deep level that frames rules within a general practice has also been discussed by Andrei Marmor as a distinction between “deep conventions” and “surface conventions” (Marmor 2009). I have analyzed the same phenomenon in depth, and with particular attention to constitutive rules, in (Roversi 2010).

\(^4\) Lorini prefers to adopt Schwyzer’s use of the expression “grammar” and thus speaks in this regard of “grammatical boundaries” (Lorini 2000, p. 302).
can have on the chessboard. This is an important inconsistency, one that should be solved in a way or another, but I can nevertheless play chess by ignoring it, namely, by ignoring the possibility of castling. Not so with checkmate. If the conditions for checkmate were inconsistent, we would be forced to fix that inconsistency before starting to play, otherwise we could not decide who is the winner. Hence, pragmatic boundaries are crucial in determining the degree of centrality that structural inconsistencies can have, thus having a direct impact on the relative importance of different kinds of structural boundaries.

The same kind of dependence on pragmatic considerations can be argued for with regard to ontological boundaries. For example, we usually assume that all sorts of things can serve as pieces of chess, but this is because chess is a game—something that in normal situations is done for fun. This entails that we can be flexible in allowing for all sorts of conventions regarding what can count as a piece of chess. But what if we assumed (as in the case of Schwyzer’s mental experiment) that chess is part of a complex religious ritual? This can indeed happen in certain contexts. For example, in a classic article regarding American Indian games, of 1903, Stewart Culin observed that American Indians used to include gaming implements in religious rituals (Culin 1971 (1903), p. 233). But clearly, in similar cases, the kinds of objects used in games cannot be changed at will, precisely because those objects have, on top of their meaning within a game, a ritual meaning.

Are then pragmatic boundaries more fundamental than the other two? In a sense, yes. It is indeed plausible to think that all kinds of boundaries are fatally sensitive to the broader practice in which the process of institutional constitution takes place. This does not mean, however, that pragmatic considerations are all that matters. For example, be chess a game or a ritual, structural inconsistencies are something that should be avoided, otherwise we would be forced to “skip” at least some institutional element.

By stressing the importance of pragmatic boundaries in the process of institutional constitution, it is possible to show how people can come to believe that institutions are subject to objective and non-conventional boundaries. In fact, the broader practices in which constitutive rules have their role are for the most part deeply “entrenched” in social contexts within which we, as agents, are brought up since childhood. This “entrenchment” in our life determines requirements that in a given social context come to be objective. Hence, given for example the general framework of the concept of a game, or given a broad concept of law which is for the most part shared among members of a community, certain objective requirements emerge for the process of institutional constitution, and these are connected with the normal purpose that games and law have in our
social context. Consequently, the non-fulfillment of these requirements give place to results that are perceived as irrational, inadequate, or problematic. This can explain how Searle’s process of assignment of status functions can become a process of “rational determination” (Greenberg 2004) in a given social context.

Deep pragmatic boundaries dependent on social contexts are therefore one way (perhaps the most general way) to explain why people can come to think that the assignment of status functions is not entirely “in the hands of humans.” There is, however, another kind of boundaries of institutional constitution which can explain to a greater extent how institutions can be seen as being “part of the natural order of things,” to take up again Searle’s passage quoted at the beginning of this paper. I will call these boundaries “mimetic.” To my knowledge, these boundaries have not so far been treated in social ontology.

3. Mimetic Boundaries

Let me start, again, with the example of chess. It is very well known that the game of chess has a long history. Deriving from the Indian game chaturanga, traceable to 2nd century A.D., chess were adopted by Persians during the sixth century and then, a century later, by Arabs during the Arab conquest of Persia under Caliph Omar. The game came to knowledge of Europeans after the Arab invasion of Spain, probably after the tenth century, and became the favorite game in European courts at least since the 16th century.

What is perhaps not always known of this history is that, during the Middle Ages, chess acquired in Europe a strong symbolic and allegoric character: With pieces such as knights, rooks, kings and queens, 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.”

I would like to give an example of Jacopo’s descriptive interpretation of the rules of chess. This quote his taken from his description of the role of the king:
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. […] The king has dominion, leadership, and rank over everyone, and for that reason should not travel much outside his kingdom. Accordingly, when the king first moves, he should not go more than two squares. […] After his opening, the king continues only one square at a time. This limitation connotes that while he is in the kingdom he is secure, but when he goes outside he should proceed cautiously. (Jacopo da Cessole, *The Book of Chess*, IV, 2)

I maintain that this passage (and several others that can be drawn from Jacopo’s book) is very relevant for the topic discussed in this paper. 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 boundaries different from the ontological, structural and pragmatic introduced in Section 2. Consider for example the rules concerning the initial positions of the two black knights and the two black bishops:

4. The two pieces that start the game on squares b8 and g8 count as the black knights.

5. The two pieces that start the game on squares 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:

6. The two pieces that start the game on squares c8 and f8 count as the black knights.

7. The two pieces that start the game on squares b8 and g8 count as the black bishops.

None of the boundaries identified in Section 2—neither the ontological, nor the structural, nor the pragmatic boundaries—would prevent such a change. First, this change does not have any impact on the underlying ontology of pieces: They still remain movable objects. Second, no structural inconsistency arises here if we simply swap the black knights with the black bishops. This change
can have a significant impact on game tactics and concrete game play, but the game of chess remains consistent nonetheless. Third, the proposed change does not have any impact on chess’s nature as a competitive game: It still has rules, conditions of victory, etc. Hence, the change from Rules (4) and (5) to Rules (6) and (7) perfectly falls within the ontological, structural, and pragmatic boundaries for institutional constitution in the game-playing context.

However, according to a descriptive interpretation of the constitutive rules of chess such as that maintained by Jacopo, the same change would not be allowed. In fact, if Rule (4) were replaced with Rule (6), 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 of chess, we as game designers are subject not only to considerations of consistency, playability and deepness, but also to considerations of descriptive accuracy—at least in a loose sense of “description.” In this light, Rule (4) should be strongly preferred over Rule (6) not because it is a better rule in terms of game-mechanics, but rather because it fits well with the overall representative function of the game.

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. These mimetic boundaries can play a greater or smaller role in the game-playing context. For example, they are not so relevant in abstract games or card games, but they are absolutely central in simulation-type strategy wargames. It is the nature of the game (we could say its \textit{Witz}, in Wittgensteinian terms) that which dictates the weight of mimetic considerations in the game-design process. But it is also clear that mimetic considerations cannot overcome considerations of deepness, enjoyment, and longevity of the game. For example, a perfectly accurate simulation of World War 2 would be too complex to be “played” in a reasonable amount of time.

If we change the context of constitution, the weight of mimetic consideration will change accordingly. Consider the case in which a computer simulation similar to a strategic videogame is designed not for playing purposes but as a way 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. And the same would hold if we conceived chess \textit{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.

Similar considerations seem to support the view that, exactly like in the case of ontological and structural boundaries, also mimetic boundaries are strongly linked with pragmatic considerations. Indeed it seems that, in different contexts and in the framework of different practices, we can have different degrees of mimesis allowed or requested. And, as with other kinds of boundaries, this degree of mimesis dictates the weight that purely conventional considerations can have in the assignment of status functions. In fact, if an institutional element must mimic a natural, social, or other kind of pre-existing reality, then choosing its status function is not entirely a matter of convention or arbitrary choice. The element’s constitutive rules are bound by that reality which they must imitate.

This kind of mimetic relation can indeed give the impression that the institution is rooted in features independent of human choice, namely, that the institution is “part of a natural order of things,” as Searle says. This depends on whether the degree of mimesis of a certain institution in a certain context is conceived as a simple relation of representation or as an essential and objective connection with the mimicked reality. In the case of Jacopo’s interpretation of chess, for example, we have to do with a simple allegory, and given this allegoric role a shift in the underlying social structure can but not necessarily must determine a change in the rules of chess. Suppose, however, that we took Jacopo’s allegory strictly and conceive chess as something which is essentially related with the medieval social structure. Then, we could even come to the conclusion that the rules of chess cannot be changed unless the underlying social reality changes, which is exactly the situation described by Searle in which the institution is conceived as being “part of a natural order of things.”

Mimetic boundaries raise some interesting questions. First of all, they support the view that in standing declarations the representative (word-to-world) direction of fit can in a sense prevail over the constitutive (world-to-word) direction of fit, depending on context. But in what peculiar way these two directions of fit are intertwined in mimetic contexts? It seems, for example, that a mimetic declaration creates a new concept by way of inferential connections that are meant, at least to a certain extent, to represent aspects of reality, and thus that a mimetic declaration can have a genuinely assertive dimension different from that of standard declarations (which are instead true by definition because they “set down” the reality they are meant to describe).
A similar question can be reformulated in terms of concepts. It is usually said in social ontology that the process of institutional constitution produces concepts, or intensions of terms. Now, if in contexts of mimesis the representative direction of fit prevails or at least inevitably affects the constitutive, and if constitutive rules can mimic a given reality, what is the relation between the concepts constituted through the rules and the pre-existing concepts ordinarily used to grasp aspects of that reality? Jacopo’s example of chess is again useful here. In chess, the concept of king is simply an institutional concept constituted by the rules, but Jacopo saw a relation between the chess-relative concept of “king” and the ordinary concept of king in the medieval social context. Now, the fundamental problem of institutional mimesis can be stated as follows: What is the relation between these two concepts? Is it a symbolic relation? How does it work? Do metaphors have a role in this process?

Further questions arise on the concept of a context-dependent degree of mimesis. Should we in this regard envisage a yes/no distinction among contexts for institutional constitution, in the sense that social practices serving this role should be divided between mimetic and non-mimetic? To be sure, I have been using an expression here—namely, degrees of mimesis—which suggests that probably the distinction is not so sharp. However, it seems that some contexts, such as that of games, are less bound by mimetic considerations than others, such as that of rituals. Then, the question arises of how to explain these differences, and whether there are independent criteria to define the degree of mimesis of a given context for institutional constitution. Moreover, it becomes necessary to understand how the degree of mimesis of a given social practice interacts with the practice’s essential ends and values. For example, games can allow for a relatively low degree of mimesis because of their recreational purpose, thus not imposing any kind of necessary relation with a pre-existing reality (be it social or natural), at least if this is not required by considerations of playability, fun, deepness of the game, and the like. But what about law, for example? In a sense, it is clear that many legal rule-constituted concepts have a relation with pre-existing social concepts. But is this relation a mimetic one? And, if yes, is such a mimetic relation necessary for the internal functioning of law and for achieving the general regulatory purpose of a legal system?

These are indeed very difficult questions, that I cannot address here and that I leave for future research. What seems clear to me, however, is that the concept of mimetic boundaries could prove

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5 Recall for example Searle’s observations that institutional context are intensional with-an-s: see (Searle 1996 (1995), p. 28–29).
fruitful both for interpreting institutional phenomena in a new way and for reframing classical philosophical questions, among which, for example, the classical legal-philosophical questions regarding the relation between norms and nature developed in natural law theory. Even though the analysis proposed here is intended as a descriptive one—hence, not as a prescriptive or normative theory, such as that of natural-law—there is some reason to hope that it could in the end shed some light even in that millenary debate.

4. Postscript. A Reply to Edoardo Fittipaldi’s *Mimetic Regulative Rules*

In his essay *Mimetic Regulative Rules*, published in this volume, Edoardo Fittipaldi addresses some questions related to my analysis of institutional mimesis. I find his work stimulating both in what concerns the hypotheses brought forward and the presupposed methodology. Let me make a few remarks concerning the hypotheses, and then proceed to methodology.

Fittipaldi is a legal realist. As such, his account of legal ontology is typically connected with the task of showing how the world of norms and normative concepts can be the result of a hypostatization of our beliefs and practices. In this regard, institutional mimesis can be fruitful, because it shows how some features of institutional life that purport to be objective may have “borrowed” their (illusory, according to legal realists) objectivity from the world they “mimic” or imitate. In this way, we can use institutional mimesis to explain legal concepts in a legal-realistic vein, just as Fittipaldi does in connection with Alf Ross’s analysis. His main thesis in this regard is that the existence of several different conditions for the instantiation of a legal concept—such as “ownership”—mimic some features of the artifactual domain, namely, that “once you have a chair, with all the features of a chair, you can refrain from thinking of the way that chair was made” (Fittipaldi, in this volume at p. XXX). As a consequence, legal concepts, just as chairs, start “being experienced as independent from the way [they were] created” (Fittipaldi, in this volume at p. XXX).

This is a very formal kind of mimesis, one having to do with the basic ontological categories through which we experience our world, categories like “object” and “independent feature.” Though I do not agree with Fittipaldi’s reductionistic stance (and in particular with his monistic ontology), I think that his insistence on this highly formal kind of mimesis brings into light the fruitfulness and flexibility of the concept of institutional mimesis. Indeed, if this analysis proved to...
be true, it would entail that institutions can mimic physical and social reality on different levels of formality.

Thus, Fittipaldi’s observations show how institutional mimesis can be fruitful not only to analyze in further detail the crucial debates related to natural law theory (which was my main hope, one that I stated at the end of the previous section) but also those debates related to the ontological discussions which are typical of legal realism. In this way, institutional mimesis could become an important category for legal theory and legal philosophy as a whole. And, on an even broader level, it could turn out that institutional mimesis can be an entirely new and fruitful category for ontological discussions regarding all kinds of institutions, even non-legal ones.

Concerning methodology, Fittipaldi adopts a very eclectic stance, in that he draws from theoretical, historical, and linguistic sources. This kind of methodological eclecticism is in my view the best way to deal with institutional mimesis, because the number and complexity of institutional features that can be influenced by this phenomenon calls for a plural approach, and not one that can be strictly limited to exclusively conceptual or phenomenological analyses. Fittipaldi’s provocative conjecture concerning abrogation is exemplary here. First of all, he draws a falsifiable hypothesis from the main conjecture, a hypothesis “that should be historically tested” (Fittipaldi, in this volume at p. YYY). Second, he appeals to etymology as one possible way to find clues of institutional mimesis.

History and linguistics are certainly two major sources for discussing questions of institutional mimesis on a theoretical level. Let me give another example of this. In his *Itinerarium* in the lands of Mongols written in 1255, Willem Van Rubruk’s discussed the origins of the Mongolian institutional concept of *khan*, interestingly noting what follows:

> When the Franks took Antioch, in those northern countries a king ruled whose name was Coir *khan*. (*Coir* is the first name; *khan* is the honorific, it means “he who can see into the future” and it is given to all seers; the rulers are likewise called *khan* because among those peoples government is exercised through divination. (Willem Van Rubruk, *Itinerarium*, XVII, 1)

If we consider *khan* as an institutional term, namely, in Searle’s words, a term which designates a role connected with deontic powers, then the fact that *khan* originally meant “he who can see into the future” can be discussed in terms of institutional mimesis. Here, a deontic power (the power to take decisions for the future regulation of the Mongolian community) could be mimetic of a non-deontic capacity (the ability to see into the future), and the procedures for taking authoritative
decisions could be modified accordingly (for example, the same Van Rubruk notes in another passage of his work that Möngke khan took authoritative decisions by means of procedures directly drawn from divination rituals: see (Willem Van Rubruk, *Itinerarium*, XIX, 26-7)).

Now, the fact is that Van Rubruk’s consideration regarding the term khan is very likely false, because the term was originally a mere honorific regarding social status and not connected with divination abilities. Hence, in this case, we cannot support our hypothesis of institutional mimesis with linguistic arguments. However, it is still methodologically fruitful to suppose, in the same way as Fittipaldi does, that linguistic considerations regarding pre-institutional and ordinary meanings of terms which later acquired an institutional and rule-constituted meaning—considerations such as that advanced by Van Rubruk—can give us clues regarding institutional mimesis.6

Further, Van Rubruk’s observation (however much based on a false assumption) is also useful to explain how history is crucial in discussing questions of institutional mimesis. In fact, institutional mimesis is always a genealogical phenomenon, having to do with the development of institutions from their origins to their current status. As we have seen above, mimetic considerations are first of all boundaries for institutional constitution, and then are crucial in determining how a given institution can be created and change. Hence, institutional mimesis entails a dynamic view of institutions, thus possibly being a fruitful explanatory category for legal history and other kinds of institutional history. But, conversely, historical considerations will be fundamental for grounding analyses of institutions in terms of mimesis, because it is only by taking into consideration the actual development of a given institution that hypotheses of institutional mimesis can acquire substance and leave the status of mere conjectures.

Similar considerations could be made regarding other empirical social sciences, such as anthropology and social psychology. Psychological studies on the perceived limits of institutional change could indeed support considerations of mimesis, and anthropology could give us

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6 Incidentally, it is important to distinguish in this regard questions of legitimacy from questions of mimesis. For example, one could argue that, even if Van Rubruk’s consideration regarding the term khan had been true, it would have simply shown that in Mongolian countries only individuals able to see into the future were legitimated to rule in virtue of their better grasp of future events. If this were the case, Van Rubruk’s observation would have nothing to do with institutional roles being mimetic of non-institutional capacities, but rather with the non-deontic capacities requested to cover an authoritative role in full legitimacy. Keeping these two phenomena distinct is crucial in order not to trivialize the concept of institutional mimesis.
important comparative tools when examining the mimetic roots of our institutions. This shows that institutional mimesis can be a good topic for interdisciplinary research, for example among legal philosophy, legal sociology, legal history and legal anthropology. Perhaps Fittipaldi would agree with me on this point, too.

References


A constitutive equation capable of modeling the effect of physical aging on the non-linear creep response for frequently changing stress levels is presented. Schapery’s non-linear theory is used to model the non-linear viscoelastic behavior and the effect of physical aging is incorporated through the use of Struik’s effective time theory. The con...