

On Suits On the Moral Normativity of Games  
William J. Morgan

Suits's central interest in analyzing the concept of a game was, of course, to define it, to explicate its necessary and sufficient conditions. Even in his magisterial book, The Grasshopper, in which he sets himself the task of sketching out a theory of utopia, the definitional intent is front and center. In fact, the main bulk of the book is devoted to defining games and defending it against various objections. What is more, the theory of utopia he lays out in the final chapters is entirely dependent on his definition of games.

There is no question, then, regarding Suits's central definitional interest in games, that his aim all along was to conceptually capture the essential elements that make something a game, rather than to account for what makes for a normatively good, well-played game. Nevertheless, several commentators of his work have argued that his definition of a game offers important insight into how we should think about it in moral terms as well. In particular, they point to his "logical incompatibility thesis," the claim that one can't win a game by cheating. For winning a game, what he calls the lusory goal of a game, requires not only that one achieve a specific state of affairs, what he calls the prelusory goal of a game (in golf, putting a small ball in a small hole), but that one does so in a particular rule-governed way (putting the ball in the hole with the fewest number of strokes). The moment one resorts to kicks, hand-carries and the like in trying to get the ball into the hole, Suits argued, one is no longer playing golf but rather cheating at golf, which precludes the achievement of its lusory goal. It is not hard to understand, therefore, why Suits commentators

thought he had accomplished more than simply defining a game, but had also shown that game-players have a good moral reason not to cheat because it undermines the point and purpose of games and, consequently, the kinds of excellence they put on offer.

In calling attention to this moral feature of Suits's definitional effort, however, they were not just intent on paying him a compliment but on criticizing him as well. For they thought his logical incompatibility thesis was too narrowly conceived, specifically, too narrowly focused on the rules of games, to support a robust moral theory of games. I think their criticism in this regard is well founded for reasons I will shortly explain. But I also think it is not entirely fair because there is another element of games Suits featured in his definition, what he called the "lusory attitude," that suggests simply following the rules of games is not all that is morally required of game-players. I want, therefore, to offer a partial defense of Suits's account of games from this moral angle by bringing to light what his rendering of the lusory attitude contributes to his normative take on games and sport.

### The Normative Shortcomings of Suits's Rule-Based Account of Games

The critics who take aim at Suits from this normative vantage point lump his account of games into the more general category they call formalism (Simon; D'Agostino, Russell). A formalist account of games, they argue, is one that characterizes games and game-derivative notions solely in terms of their formal rules. So playing a game, making a move in a game, counting as an instance of a game, winning a game, are one and all predicated upon acting in accordance with its rules. What such an account has going for it both from a conceptual and normative

standpoint, they argue, is that whatever personal aims one might have in playing a game, the means for achieving these aims are importantly limited in a way they are not so limited in technical activities such as painting a house or doing one's taxes. This rule-based limitation on means, they further argue, answers Black's question, "if all you wanted was a touchdown, why not shoot the opposing team" (D'Agostino, 8).

The normative problems with such a formalist account of games in their view, however, are legion, and clearly apparent in Suits's logical incompatibility thesis. To begin with, such an account invites a suspect Platonist account of games. That is because as a matter of empirical fact practically all games involve one or more rule violations. That homely fact turns out to be anything but when considered from a formalist standpoint, and, of course, from the standpoint of Suits's logical incompatibility thesis, since even a single violation of a rule on either account is treated as game-nullifying, as not a "real" game. Worse yet, any such violation requires we rebuke those who committed it as cheaters. Few observers of games, however, would find either of these claims persuasive in the least. And the reason why, according to this criticism at any rate, is the Platonism that evidently runs through, however implicitly, formalist accounts of games, in which games are conceived as ideal types that are seldom if ever realized in actual games.

There are at least two ways to account for why actual games fall well short of the formalist requirement that games count as such if and only all of their rules are followed. The first is simple human frailty, the fact that game-players, like all human agents, are highly fallible, mistake-prone, creatures. The likelihood they could get

through any game, especially complex, physical and emotionally charged athletic games, without committing a single unintentional foul is practically nil. So holding game-players to such a rigorous standard of perfection is unreasonable in the extreme because it is for all intents and purposes unattainable - - after all, "ought" implies "can." It thus follows that if perfect rule adherence is beyond the capacity of most, if not all, players of games, then we cannot morally oblige them to adhere to such a standard of perfection nor hold them morally accountable for their failure to attain it. So much then for the moral force of formalist theories of sport, and for the moral force of Suits's logical incompatibility thesis.

The second way to understand why actual games fall well short of the formalist ideal of perfect rule adherence proves, or so the critics contend, even more morally damaging to formalists like Suits. For it is also a matter of empirical fact that most games involve intentional rule violations. In this instance, it is not that game-players lack the capacity to adhere perfectly to the rules of games, but that breaking rules for strategic purposes is generally considered a perfectly acceptable way to play a game. That would explain why the more adept and skillful game players become the more they intentionally break rules and the less they unintentionally do so (D'Agostino, 9). So when, say, with a few seconds left in a hard fought basketball game a member of the trailing team deliberately fouls her opponent to stop the clock, she is playing the game as it was (conventionally) meant to be played, since this is a widely accepted part of the game. Strategic fouls of this sort, it is thus claimed, don't break the game, as Suits and his fellow formalists would have us believe, and so are entirely on the moral up and up. So much then, the critics again

assert, for the moral force of formalist theories of games, and for the moral force of Suits's logical incompatibility thesis.

Not so fast, Suits might rightly reply. For it turns out he has the same view of strategic fouls as his critics apparently do. That is, he recognizes that games have in addition to constitutive rules, which as their name suggests are what make a game a game by prohibiting more efficient in favor of less efficient means to achieve their goals, rules with fixed penalties. Suits never got around to naming the latter kind of rules, but I will follow D'Agostino in calling such penalty-bearing rules "regulative rules." <sup>1</sup> Suits make it clear that it is only constitutive rule violations that upend a game, which means, more to the present point, breaking regulative rules is neither game-destroying nor game-corrupting since it is sometimes tactically called for. Because strategy plays an important role in games, therefore, rule transgressions of this strategic sort do not compromise games.

So it seems Suits can easily beat the Platonist rap his critics charge him with by merely distinguishing constitutive rules from regulative rules. But things are not that simple, or so one of his critics, D'Agostino, claims (11). For this distinction can only have this Platonist-cleansing effect, D'Agostino argues, if the rules of games are either constitutive or regulative, but not both constitutive and regulative. With this in mind, D'Agostino asks us to consider two games in which in the first  $r$  is a regulative rule, but in the second  $r$  is neither a regulative nor a constitutive rule. According to Suits, so long as they both have the same constitutive rules they are the same games despite the fact they have different regulative rules. For, it will be remembered, only constitutive rules define games. Now, for some choices of  $r$ ,

D'Agostino concedes, the claimed identity between the two games holds up. But for many other choices of  $r$ , he argues, it clearly does not. For instance, let the game in question be soccer, and  $r$  the rule prohibiting handballs. So understood, the game of soccer that does have this handball rule is clearly a different game than the one that does not. In this and many other cases, D'Agostino argues, the distinction between constitutive and regulative rules appears arbitrary at best. And if Suits were to reply that in these cases both constitutive and regulative rules define games, he would, once again, find himself caught in the same Platonist trap his distinction between rules was supposed to spring him from.

Another important reason why formalist accounts of games fail to pass normative muster has to do with the indeterminacy of game rules. In a nutshell, no game rule, or any other kind of rule for that matter, can dictate how it will be interpreted in given situations. Rather, such interpretation is typically left to the social conventions that govern games at different times and places. How else, D'Agostino maintains, are we to explain why it is in a supposedly non-contact contemporary sport like basketball, especially in the closing moments, game officials allow all sorts of bodily contact to go on without calling a foul (16), or why referees of professional North American hockey games seldom whistle a foul against a team that already has one player in the penalty box for a previous rule violation unless it is especially flagrant. It is because the formal rules fail to be action-guiding in such instances that D'Agostino argues what he calls the "ethos" of games, the social conventions that determine how rules are called and applied in concrete cases, is an indispensable normative feature of games.

There are at least two other important ways in which formalist rule-based accounts of games like Suits's fall normatively short. The first is that the rules of games, like the rules of any social practice, are not exhaustive. This is especially the case in athletic games, in which, owing to their dynamic and fluid character, a number of unforeseen situations arise for which there are no applicable rules to guide us. Simon's hypothetical example of "clubless Josie" is a case in point. In Simon's scenario, Josie arrives at a national amateur golf championship without her clubs (2007, 37). But it turns out the reason she doesn't have her clubs is not her fault - - the airline, no need to imagine here, lost them. Her opponent, however, has a spare set of clubs that are almost identical to Josie's lost clubs. Should, Simon asks, Josie's opponent lend her the extra set of clubs? Tellingly, Simon opines, formalists like Suits have nothing to offer us in instances like these, and presumably many others, since there is no rule to deal with such a case.

The other way in which formalist rule-based accounts of games fail to give us normatively authoritative guidance is when rules actually get in the way of our moral assessments, when they provide normatively questionable if not wrong guidance. Russell's discussion of the George Brett pine-tar baseball bat controversy nicely illustrates how relying too heavily on the rules can lead us to this distressing normative result. The controversy in the Brett case arose in the top of the ninth inning immediately after he hit a home run with a man on base to give his team a one run lead over the home team Yankees. As soon as Brett crossed home plate, the Yankee manager, Billy Martin, approached the umpire to complain that Brett's home run should be disallowed because he was using an illegal bat. It seems that the pine

tar (a sticky substance batters use to secure a better grip) on Brett's bat exceeded the eighteen inches from the bottom of the bat allowed by the rule. After the umpires briefly conferred, they decided that Brett had indeed broken the rule and declared him out. The Royals finished the game under formal protest (a good move on their part since they subsequently lost the game), which the president of the American League, Lee MacPhail, took under advisement. After a brief review, MacPhail overturned the umpire's decision and ordered the game to be replayed at precisely the point Martin lodged his protest. MacPhail's reasoning behind his decision to credit Brett with a home run, Russell notes, cuts to the heart of normative problem here. While MacPhail conceded that the umpires' ruling was technically correct, it was "not in keeping with the 'intent or spirit' of the game itself," which mandates that "games should be won or lost on the playing field - - not through technicalities of the rules" (Russell, 1999, 30). This case shows once again, then, that there is more to games than their rules, and that this "more" must be reckoned with if we aspire to get our moral judgments of the things that go on in games like baseball right.

#### Defense of Suits's Formalist Account of Games

The upshot of the argument of the previous section is that relying on the rules of games alone can't do the normative work most formalists ask them to do. What it doesn't show, of course, is that we can simply ignore the rules willy-nilly. The remedy then is not to discount the rules when they fail us but to supplement them with additional normative resources to cover their tracks. And this is where, or so I argue, Suits's lusory attitude comes into the picture. For what is distinctive about his

formalist account is that unlike other formalist rule-based accounts he gives us at least one additional normative resource (the lusory attitude) to help us get our moral reckoning of games right.

However, my claim that the lusory attitude feature of games gives Suits a normative leg up on his critics runs into two immediate problems, both of which are attributable to the two different ways he characterizes it. On the first, abbreviated characterization, he simply describes the lusory attitude as “the knowing acceptance of constitutive rules just so the activity made possible by such acceptance can occur” (2007, 13). The problem with this rendering is that it ties this pivotal attitudinal feature of games directly and irrevocably to the rules. But if the normative part played by the lusory attitude is reserved strictly to showing why game players are duty bound to accept the rules, as Suits seems to be clearly saying, then it would undermine my claim that it brings something new and important to the moral analysis of games.

The second problem, as noted, concerns Suits’s later, more expansive, characterization of the lusory attitude found in the Grasshopper. The root of the problem here concerns the fact that his new interpretation of “just so” part of this conception sidelines a prominent moral reading of it promulgated by sympathetic readers of his early work. For these sympathetic readers interpreted Suits’s claim that players accept the rules of games “just so” they can be about the activity of trying to overcome their contrived, rule-based challenges in the following way: this is the only reason they must have for playing them and that there can be no other reason. That is, they took this crucial “just so” phrase as committing him to the view

that games are best thought of and treated as intrinsic goods. This is important not only because it would mean the lusory attitude is for all intents and purposes the same attitude amateurs have towards the games they play, the signature feature of which, of course, is that play them for the sheer love of the challenges their rules make possible, but further because it would mean a game would only count as such, as a real game, if and only if it was played with no other ulterior, non-game purpose in mind.

Given Suits's primary interest in defining a game, it comes as no surprise that the definitional dilemma of interpreting the lusory attitude as, effectively, a synonym for the attitude of amateur game-players, which would, controversially, exclude professionals as genuine game-players, trumps the generous moral view of games as ends-in-themselves that such an interpretation of the lusory attitude also encourages. So in order to make room for professionals in his conception of the lusory attitude, Suits's glossed the "just so" reason game-players have for accepting the rules in the following subtle but importantly different way: this is "the only reason [they] must have in playing a game, but . . . [it is] not the only reason [they] may have" (144). This latter interpretation freed up the lusory attitude to associate with any number of other unmistakably instrumental attitudes and reasons people may have for playing games, and it did so with normative impunity. But while this neatly takes care of Suits's definitional conundrum, it raises a second problem with my claim that the lusory attitude contributes something important to our moral reckoning of games. That problem is that in squeezing professionals into his account of the lusory attitude, the contribution I claim this feature of games brings to the

moral analysis of games is drained of much of its moral significance. For while Suits's more inclusive account does not deny that amateurs who treat games as ends-in-themselves are bona fide game players, after all, he was keen to accommodate both game types so as to avoid the charge his definition is too narrow on either count, it does deny moral priority be given to the amateur view that games are primarily intrinsic goods. That is because in allowing the lusory attitude to fraternize with other instrumental attitudes people may have for accepting the rules without incurring any normative cost, Suits is, in effect, declaring his moral agnosticism as to how games should be played so long as one of the reasons why people accept means-limiting rules includes a reason to actually play them (2014, 156). And this does seem to leach out much of the moral force it had on the amateur conception because it suggests that the only reason that matters why game-players should not avail themselves of the most efficient means at their disposal for achieving their athletic goals is merely "because there is a rule against it" (2007, 12).

If I am to make good on my claim that the lusory attitude not only adds something new but something substantive not found in other formalist moral accounts of games, therefore, I must show that it can defeat both the first objection that it doesn't, in fact, add anything beyond the formalist dictum that players are obliged to follow the rules of games, and the second objection that it doesn't contribute anything of moral substance to such formalist accounts of games. My plan of attack, however, is to tackle the second objection first.

While this second objection that the lusory attitude lacks moral substance has force, my argument will be that it fails to see that what Suits's new, extended

conception takes away with one hand, that games be valued chiefly as intrinsic goods, it more than gives back with the other, by greatly expanding the normative portfolio of games. That is because by fitting both the amateur and the professional game types under his account of the lusory attitude, Suits impressively enlarges the scope and variety of non-moral and moral goods potentially served by games. And in doing so, he opens the normative door for using games to achieve any number of important goods, to include high-minded social, political, and moral goods, and for valuing games specifically for their evident all-purpose efficacy. A prime example is the modern Olympic Games, which were revived in the late nineteenth century precisely to cash in on the burgeoning popularity of athletic games, which its founders thought could be effectively harnessed to promote international goodwill and, more grandly, to contribute to world peace by gathering together game-players from across the globe into one place every quadrennial. It would be hard to fault such a salutary moral use of sport, especially given our own depressingly war-riven times, and it would be just as hard to fault Suits for showing how the moral utility of games follows perfectly from, rather than conflicts with, the attitude he insists all players of games must possess in order for their activities to be accounted as bona fide games.

That is not to say, however, that Suits's more extended conception of the lusory attitude has no normative downside. For whatever importance and value games gain on Suits's instrumental-friendly explication of this attitude, they lose to an appreciable degree by virtue of having their moral stature as intrinsic goods taken down a notch or two. That is not to say Suits is guilty of failing to notice games are

capable of commanding the high moral seriousness properly accorded ends-in-themselves - - on the contrary, his entire theory of utopia is premised precisely on the fact that games alone possess the qualities required to warrant such exalted moral status. But it is to say, however, at least for us non-utopian creatures, that his second conception of the lusory attitude runs the risk of, if not eliding, at very least depreciating such a view of them. This is especially so since our present, non-utopian understanding of games is largely oblivious to the idea they might be something more than occasionally useful tools for accomplishing useful goals, not to mention occasionally useful tools for accomplishing distinctively bad, morally untoward goals. By lending his support, however qualified, to the reigning idea that games are effective instruments for achieving extra-lusory ends, Suits makes it harder, not easier, to conceive of them as ends-in-themselves. And in doing so, he makes it that much harder to imagine that games might be, as he opined in the Grasshopper, the clue to our future, the one human activity that makes utopia an intelligible notion let alone an ideal worthy of our highest aspirations.

Nevertheless, the normative hit games take as intrinsic goods on this second reading does not in any way undermine, as the second objection would have us believe, my claim that the lusory attitude brings something new to our moral reckoning of games beyond the formal necessity that the rules of games be followed. For by giving the lusory attitude normative cover to mingle with other instrumental attitudes people have for playing games, Suits gives games license to chase a variety of extra-lusory ends that carry their own particular normative entailments - - in my

own example, that the Olympic Games be staged and conducted in such a way that they nurture morally respectful relations among players.

A critic might plausibly retort, however, that because these moral entailments sanctioned by Suits's second account of the lusory attitude are bound up with instrumental, extra-lusory considerations rather than intrinsic, internal lusory ones, they are at best optional, and, more to the point at hand, exhausted once the moral needs they serve are satisfied. For once there is no further need to secure morally respectful relations among the different peoples we share the world with, either because games like the Olympics have done their jobs well, or because they have been satisfied more straightforwardly and perhaps more appropriately by, say, their political leaders, who are typically charged with such functions, there would be no further point, nor would it be any longer intelligible, to saddle games with this task. That would leave any moral work that needs to be done by the lusory attitude to games themselves, which is, of course, why Suits featured this element of games in his definition in the first place. But if that moral work consists in nothing more than holding players accountable for following the rules of games, as the first objection claims, then my argument it performs additional important lusory moral work comes to naught. So I now need to direct my critical attention to this first objection.

I am not persuaded that the lusory attitude, on either of the two versions Suits puts on offer, is as morally bereft as this objection would have us believe. That is because in addition to requiring players to accept the rules "just so" they can play the game, it also requires that players value and doggedly pursue the lusory goal of the game. According to this attitudinal feature of games, in other words, it is not

enough to accept the rules and abide by them, but, equally importantly, to do so with the actual intent of trying to win the game. This feature of the lusory attitude comes out in Suits's discussion of triflers at games, who despite the fact that they typically obey all of the rules of the games they play, haven't the slightest interest in trying to accomplish their corresponding lusory goals (2014, 49). Their odd behavior of accepting and abiding by the rules of games but not striving in the least to win them can be explained, according to Suits, by the fact that they have some other purpose in mind, say, in tennis, trying to see how long they can keep a volley going with another player, or focusing on how they look when executing tennis skills rather than on actually trying to hit the ball. And while their behavior starkly contrasts with cheaters, since triflers place no value and extend no effort in trying to win games whereas cheaters place too much value and extend excessive effort in trying to win them, what they share in common with cheaters is that their reason for accepting the rules of games does not include a reason to play them. So what Suits's lusory attitude adds to the moral picture of sport that goes beyond what its rules contribute, is that one can fail to play a game not only by breaking its (constitutive) rules, but further by failing to value or pursue its lusory goal even if one has not broken any of its (constitutive) rules.

What makes this further Suitsian take on the lusory attitude an important moral addition, however, is that it is not restricted to the admittedly bizarre athletic conduct of triflers, who as a group themselves, it must be said, are not only odd game players but conspicuous outliers given the present sports crazed world in which we live. For in contemporary elite athletic circles, it boggles the mind to think

there are any athletes or game players to be found who suffer from a deficit of zeal in trying to win the games they play. If there is a moral problem with sports today surely it is that winning is greatly overvalued not undervalued. But, oddly enough, it is precisely because winning is too much valued in sport today that players for certain strategic reasons not only, like triflers, lack zeal in accomplishing their lusory goals, but, quite unlike most triflers, deliberately try to lose athletic contests. <sup>2</sup> I am not referring here, for example, to well-known and despised game types much chronicled in the history of sport scandals who throw games and fix matches for a pot of money. Rather, I have in mind a more contemporary and more strategically minded game type, the kind that surfaced and caught the always-looking-for-a scandal eye of the media in the 2012 London Games in of all events women's badminton doubles. Some of the top badminton players in the world from China, South Korea, and Indonesia were disqualified by Olympic officials for deliberately losing their matches to lesser opponents they should have handily defeated. They were not charged, however, with fixing or throwing their matches, nor with the kind of telltale lackadaisical behavior characteristic, as noted, of triflers, but, contrarily, with the kind of win-at-all-costs mentality we usually associate with cheaters. For the reason they apparently played to lose is that having already advanced to the quarterfinals by virtue of their previous victories, they had nothing further to lose and everything to gain by losing the remaining games left to play in the first round, since that would increase the likelihood they would face an easier opponent in the next, quarterfinal round. In other words, they played to lose

for purely strategic reasons because that would give them an easier path to winning the Gold medal.

Now what makes this example relevant to Suits's interpretation of the lusory attitude is that it introduces another specimen of game-players that we should expect to see more of in tournament play of the kind staged in badminton and in the playoff system of many North American sports - - in which how one fares in one athletic competition directly affects how one might fare in a subsequent athletic competition, and with it a new moral wrinkle that his rendering of the lusory attitude seems to offer just the right moral antidote for. The reason we should expect both to see more of this kind of game-player and moral confusion and controversy quickly to follow, is because of the increasingly prominent role strategy has come to play in contemporary sport. For while it used to be restricted to in-game tactics such as pacing in foot races and not telegraphing one's next move in an athletic competition, it has more recently ramified into a tactic for breaking rules at the most opportune moments of a contest (the so-called strategic foul), and yet more recently into the strategy for playing to lose as evident in the above Olympic badminton example. And just as the advent of the strategic foul touched off an at times heated debate about its moral permissibility, the advent of the strategy to play to lose has touched off a similar debate about its moral permissibility. In this latest case, however, the controversy about what to make morally of this strategy regarding the lusory goals of games can't be resolved as it was with respect to the strategic foul by appealing to game rules, specifically, to distinguishing between constitutive and regulative rules, but only by explicating what moral attitude should

govern our pursuit of lusory goals. Hence, the relevance of Suits's notion of the lusory attitude.

The controversy in the badminton example, of course, concerned whether the officials' decision to disqualify the badminton players involved was the morally right one. A number of observers sided with the officials, including many of the actual spectators at these matches who let their disapproval of the players less than stellar effort and play be known by their loud booing and hissing. Like the officials, they were evidently appalled by their "unsporting" behavior, and thus agreed they should be disqualified for demeaning the sport by not trying to play at their best. However, a not insignificant number of observers sided with the players arguing that they should have been praised and thus rewarded rather than blamed and thus penalized for their strategic savvy. If any blame was to be handed out, they opined, it should be aimed at the organizers ill-fated decision to arrange the matches in such a fashion that it made the strategy of playing to lose the smart and appropriate one. Suits's argument that the disqualification ruling was the right one because the tactic of playing to lose is a game destroying one for precisely the reason that the players in question lacked the requisite lusory attitude, looks tailor made for this most recent moral controversy. Whether it ultimately wins the day, of course, no one can say since that will depend on what kind of counter-argument the other side can muster. But this much can be said in favor of Suits's interpretation of the lusory attitude, first, that it provides a strong argument as to why we should regard the badminton players' actions as a dubious game tactic because of the attitude it suggests is appropriate for game players to have towards lusory goals, and, second,

that its scope extends beyond the atypical and weird behavior of game triflers, at best a small and offbeat subset of game players, and covers the increasingly more common and worrisome strategic behavior of game-players, who, like cheaters, are too much invested in winning than on the affect their tactical behavior has on the good of the game itself.

If I have understood Suits correctly here, then I want to argue, contra the critics, that there is indeed a moral dimension built into his notion of the lusory attitude. For what his rendering of the lusory attitude shows, or so I claim, is that accepting the rules in order to play the game ought to be accompanied as well by a commitment to strive to achieve its lusory goal and the excellences it embodies. At a minimum, that entails would be players both value winning, seeking athletic distinction, and value the moral qualities (fairness, perseverance and the like) required to win, to demonstrating genuine athletic distinction. In sum, Suits's lusory attitude is a genuine moral attitude that commends striving to achieve athletic distinction because athletic distinction is itself a good thing. After all, what is the moral point of accepting the rules if not that trying to realize the athletic challenges they create is a good thing.

---

<sup>1</sup> . There is a downside in so naming them, however, because it invites confusion with what Searle called regulative rules in his well-known account of rules. This is a problem because Searle's conception of regulative rules couldn't be more different than Suits's, since for the former regulative rules have exclusively to do with descriptions, specifications, and causal claims regarding natural physical actions and facts. In the case of a sport like fishing, for example, Searle treats as a regulative rule the fact that "sometimes fish bite at worms but very seldom at empty hooks" (1969, 37). By contrast, of course, regulative rules have entirely to do with social, institutional practices like games, rather than natural, physical, non-institutional, "brute" facts.

<sup>2</sup> . Since triflers do not deliberately try to win games, they can't be said to deliberately try to lose games.