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A Taxonomy of Rules: Authority, Dangers, and Possibilities

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A TAXONOMY OF RULES:
AUTHORITY, DANGERS, AND POSSIBILITIES

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A Taxonomy of Rules: Authority, Dangers, and Possibilities

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Abstract

Rules, originally a means toward group solidarity, are the alternative to the need for ongoing physical dominance. Seemingly omnipresent in modern life, rules can be overt or subtle, explicit or tacit, rigidly enforced or overlooked. They may clash with our autonomy. This thesis names and explores different functional types of rules: *safety, personal, socio-cultural, legal-religious, and technical*. Rules in general are discussed from social and ethical theoretical viewpoints and using *ideal type* methodology. Understanding that there are different types of rules and the *authority* behind them makes it easier to determine one's obligations to follow them, especially with the notion of *prima facie* duties. A century after Max Weber wrote of his admiration--and fear--of bureaucratic authority, we should be alarmed at the march toward bureaucratic, algorithmic "rule by a rule" that, in its attempts toward fairness and certainty, in fact dominates us by turning us into standardized "machines" rather than thoughtful, intuitive, creative people.

In memory of my father, Joseph Friedman

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I. INTRODUCTION

*“Theirs not to reason why,
Theirs but to do or die.”*

Alfred Lord Tennyson

“The Charge of the Light Brigade, 1854

“A certain ‘utopianism’ which tends to minimize the significance of authority, coercive power, and physical force in human affairs has been a conspicuous feature of a large part of modern social and perhaps particularly economic thought.”

Talcott Parsons, 1947¹

“Question Authority”

Bumper sticker, circa 1970

These days, rules seem to be everywhere. Recently, while waiting at the Salt Lake City Airport for a flight to Paris, I was irked at having to present identification before I could buy a beer—three days before my fifty-ninth birthday. Bemused, I could only imagine the harms prevented by this requirement. When I told this story later and learned that the practice is becoming increasingly common, I was even more troubled that people do not think twice about it.

Rules were originally a means for group solidarity in social animals such as bees, ants, dogs, and horses, as well as humans. Young animals are taught that rules must be followed if undesired consequences are to be avoided. We generally believe that

¹ Talcott Parsons, introduction in Max Weber: *The Theory of Social and Economic Organization* (New York, Oxford University Press 1947), 56.

“people who break rules deserve what they get.” Yet everyone breaks rules at times, some people more often than others, some rules more serious than others. There are so many contradictions that one of my ethics students asked: when rules are routinely broken, how do we know which ones we need to follow?

Civilization requires far greater coordination than simple societies; hence, people are subject to many more rules now than in the past. A few years ago I developed a list of different functional types of rules so I could understand better why I hated some rules yet cleaved to others. I believe that only through recognizing the differences among rule types can one fully comprehend the authority, burdens, benefits, and dangers inherent in various rules.

My taxonomy comprises:

- Safety rules
- Personal rules
- Socio-cultural rules
- Legal-religious rules
- Scientific/technical rules

In this thesis, I will utilize Weber’s “ideal type” methodology in elaborating my taxonomy, showing the authority inherent in different types of rules. Because the intellectual playing field is vast, I will focus primarily on selected social and ethical theorists and theories. To set the stage, I discuss rules in general from various academic perspectives, focusing on how they are appropriate and useful, and then introduce Weber’s work on authority. I elaborate my taxonomy, showing how

various types of authority, similar but not identical to Weber's ideal types, pertain to each rule type. Next, I offer a critique of rules, particularly as they seek to reproduce power relationships, especially in a bureaucratized society, followed by a discussion of rules from an ethics perspective. Finally, I suggest possible ways for society to reclaim itself from ever-increasing bureaucratic rules.

II. THE PURPOSES OF RULES

We know from experience what rules are, but we rarely have cause to think more deeply about them. Rules can be descriptive, as in regularity, or normative in prescribing behavior. According to British legal philosopher H.L.A. Hart, rules are crucial in that they demand forbearance because of human vulnerability. They typically refer to obligations or promises which involve sacrifice or renunciation of immediate self-interest, often in the presence of strong passions. Because people use the same words for legal and moral obligations, the coercive power of law which silences people for various reasons is obscured:

Not only may vast numbers be coerced by laws which they do not regard as morally binding, but it is not even true that those who do accept the system voluntarily, must conceive of themselves as morally bound to do so... [T]heir allegiance to the system may be based on many different considerations: calculations of long-term interest; disinterested interest in others; an unreflecting inherited or traditional attitude; or the mere wish to do as others do.²

Hart distinguishes between internal and external aspects of rules. Internal rules are those of the group that the individual has assented to and follows. External rules are those belonging to other groups—or one’s own if one rejects them. He observes that “for people who follow the rules, not following the rules in itself is a *reason* for hostility.”³

Rules carry sanctions: punishment by the state, shame and ostracism by the community, and other adverse consequences which, as human constructs, are not

² H.L.A. Hart, *The Concept of Law* (London, Oxford at the Clarendon Press, 1961), 198-9.

³ Hart, 88.

natural but artificial.⁴ For instance, the purpose of amputation of a thief's right hand under Arabic justice is to stigmatize him, to exclude him from communal dining because his left hand is "unclean."

Rules scholars in the communications field are concerned with how rules operate. Susan Shimanoff notes that rules generally refer to acts or behavior; they are usually prescriptive but can also describe regularities in behavior (such as scientific laws). Rules differ from orders and commands because the latter are specific to a situation, while rules depend on context: "Rules prescribe behavior under certain conditions...If X, then Y is obligated (preferred, prohibited)."⁵ Importantly, she observes that:

Rules are not neutral. Something cannot be both prescriptive and neutral. The force of rules is related to obtaining favorable evaluations or avoiding unfavorable evaluations; neutrality would result in the absence of evaluation... Rules express value judgments.⁶

Shimanoff points out various functions of rules: regulating behavior, interpreting behavior of others, evaluating behavior (because we expect people to follow the rules), justifying behavior, correcting behavior, predicting behavior (H.L.A. Hart's example of drivers at traffic signals—or if a friend is always late), and explaining behavior. Rules can be explicit or implicit (and thus potentially treacherous for newcomers, foreigners, and children, who may also not know which rule violations are tolerated more or less). Hart makes a similar point that implicit rules, especially

⁴ Richard M. Fox, *Moral Reasoning: A Philosophical Approach to Applied Ethics* (Mason, OH, Thomson-Wadsworth, 2006), 255.

⁵ Susan Shimanoff *Communication Rules: Theory and Research* (Beverly Hills, CA, Sage Publications, 1980), 49, 83.

⁶ Shimanoff, 54, 208.

those learned by example, can be confusing because the particularities are not spelled out.⁷

Shimanoff's discussion of the circumstances under which rule violations may not be sanctioned is particularly interesting. These include naivety of the actor; minor importance of the rule; acknowledging in advance that the rule is about to be broken; related norms are not broken so that the action as a whole is seen as appropriate; the rule violation is done with panache; high status of the actor; the group is less dogmatic with greater tolerance for rule violation; humor or some other purpose in violating the rule; or the rule is in a state of flux. She observes that while we all manipulate rules, some people do so for their own benefit at the expense of others. Knowledge of rule behavior can help stymie manipulators.⁸

Another purpose of rules is to decrease uncertainty and to create predictability. Philosopher John Dewey observes that "insecurity generates the quest for certainty."⁹ Rules, for example as manifest in ritual, can be seen as an attempt to ameliorate uncertainty. While inexcusable by today's standards, human sacrifice presumably represented past quasi-scientific efforts to appease the gods that could ensure survival of the group.

⁷ H.L.A. Hart, *The Concept of Law* (London, Oxford at the Clarendon Press, 1961), 121-2.

⁸ Shimanoff, 98, 211-5, 257

⁹ John Dewey, *The Quest for Certainty*, in Forrest E. Baird and Walter Kaufmann, eds. *Twentieth-Century Philosophy* (Upper Saddle River, NJ, Prentice Hall, 2000), 25.

A good way of looking at rules is British philosopher W.D. Ross' notion of *prima facie* duties. *Prima facie* duties (or rules) are general default rules that can be superseded only by stronger ones in a particular circumstance. *Prima facie* means "on the surface" or "at first glance." It refers to apparent conditional duties such as keeping promises, fidelity, reparations for both prior wrongful acts and beneficial acts by other people and society, distributive justice, beneficence, self-improvement, and not harming others.¹⁰ Sometimes, however, people must choose between a duty they assent to and another that is stronger under the particular circumstances. Ross elaborates:

When we think ourselves justified in breaking, and indeed morally obliged to break, a promise in order to relieve some one's distress, we do not for a moment cease to recognize a *prima facie* duty to keep our promise, and this leads us to feel, not indeed shame or repentance, but certainly compunction, for behaving as we do; we recognize further, that it is our duty to make up somehow to the promisee for the breaking of the promise.¹¹

For example, when my sister-in-law, frustrated by the line at a convenience store, rushed out to the rental car with paper towels after her young grandson vomited his jelly donut, she violated the *prima facie* rule: "pay for things before using them." However, she felt her primary obligation at the moment was to her grandson; she then went back to pay the angry clerk for the paper towels.

The notion of *prima facie* may be extended to explain the persistence of some rules that do not otherwise make sense. For example, according to baseball's "infield fly rule" the batter is out if he hits an infield fly ball with a runner on first base. The rule prevents the greater "harm" of a double-play if the fielder were to purposely drop the

¹⁰ W.D. Ross, *The Right and The Good* (Oxford, Clarendon Press, 1930), 19-28.

¹¹ *Ibid*, 28.

ball, quickly pick it up, and force both runners out. Indeed, it might be said that rules in general aim to prevent worse things from happening.

The early sociologist Emile Durkheim (1858-1917) examined rules and their functions in society. Having grown up at the end of a turbulent century of political unrest in France, as well as rapid urbanization and industrialization, Durkheim focused on analyzing scientifically the problems of society so that its ills could be corrected. He believed that society, based in its history, shapes individuals and creates capabilities out of reach of the theoretical isolated, autonomous individual invoked by Enlightenment thinkers. Seeking a secular morality, Durkheim believed that moral rules create social solidarity.¹² In order to operate, moral rules require sanction by some authority, which he defines as:

...that influence which imposes upon us all the moral power that we acknowledge as superior to us. Because of this influence, we act in prescribed ways, not because the required conduct is attractive to us, not because we are so inclined by some predisposition either innate or acquired, but because there is some compelling influence in the authority dictating it. Obedience consists in such acquiescence.¹³

Discipline, crucial to obedience, requires rationality, but Durkheim also recognizes that humans appropriately feel and act on emotions. Importantly, Durkheim views discipline as self-mastery. He examines the libertarian argument that constraint is bad:

¹² Emile Durkheim, *On Morality and Society*, ed. by Robert N. Bellah, (Chicago, U. of Chicago Press, 1973), 136.

¹³ Emile Durkheim, *Moral Education* (Glencoe, IL, The Free Press, 1961), 29.

...limitations imposed by discipline...seem to imply a violence against human nature. To limit man, to place obstacles in the path of his free development, is this not to prevent him from fulfilling himself?¹⁴

But he concludes that lack of constraint is far worse, like the “bulimiac who cannot be satisfied.”¹⁵ When a society is in a state of flux and old norms are devalued while new norms are still inchoate, people individually or as society feel distress and uncertainty, which Durkheim called *anomie*, meaning literally “without rules.”

Respect for rules is not the same thing as fear of punishment. For Durkheim, the function of punishment is to prevent rules from losing their authority.¹⁶ At the same time, he observes that:

All punishment, once applied, loses a part of its influence by the very fact of its application. What lends it authority, what makes it formidable, is not so much the misery that it causes as the moral discredit implied in the blame that it expresses.¹⁷

At the same time, it is important to remember, as Ross observes: “[underlying the rule of law] is a promise to the members of the community that if they do not commit any of the prohibited acts they will not be punished.”¹⁸

German scholar Max Weber (1864-1920) studied authority extensively. He noted that, although authority has historically typically been maintained by violence or

¹⁴*Ibid.*, 48.

¹⁵*Ibid.*, 39-40

¹⁶*Ibid.*, 173-4.

¹⁷*Ibid.*, 198-9.

¹⁸Ross, 64.

force, a stable society requires some better reason for the populace to comply. That reason is usually a successful claim of legitimacy.¹⁹

Weber described three *ideal types* of authority: charismatic, traditional, and legal/rational. These ideal types commonly overlap. *Charismatic* authority, from the early Christian notion of a “gift of grace,” revolves around a leader with compelling personal qualities, sometimes aided by magic or force. Crucially, charismatic leaders are in some way revolutionary. A charismatic leader, for example, a prophet or certain political leaders, relies on recognition and a certain amount of success. Problems arise when considering succession after the leader dies. For that reason, charismatic authority historically has led into the more stable *traditional* authority. Hereditary monarchy or aristocracy, priests, or selection by elaborate procedures such as for the pope or Dalai Lama (who may have charismatic authority as well) are examples of traditional authority. The third type of authority is *legal/rational*. This form of authority is based on rules and procedures. The benefit of legal authority is that decisions are not made according to whim or favoritism and are predictable. Legal authority was advanced as a reform during the Enlightenment and by utilitarian thinkers; it also benefited the political status and commercial activities of the rising middle class.

Weber pointed out that while weaker bureaucracies have existed in the past, notably in China, legal authority via bureaucracy is a distinctly modern phenomenon. He

¹⁹ Peter Lassman, “The Rule of Man Over Man: Politics, Power and Legitimation.” *The Cambridge Companion to Weber*. Ed. Stephen Turner (Cambridge, UK, Cambridge U. Press, 2000), 88.

believed that bureaucracy, public or private, is the most efficient, productive, and democratic method of management because of its demand for equality before the law.

Defining characteristics of bureaucracy are:

- “Official business is conducted in accordance with stipulated rules.
- Every official’s responsibility and authority are part of a hierarchy of authority.
- Officials do not own the resources necessary for them to perform their assigned functions, but they are accountable for the use of those resources.
- Offices cannot be appropriated by their incumbents in the sense of property that can be inherited or sold.
- Official business is conducted on the basis of written documents.”²⁰

The bureaucrat is an expert appointed because of technical qualifications, contractually salaried, under discipline by superiors, and in line for advancement during a long career.²¹ The authority of the bureaucrat comes from the office itself and the rules that s/he administers impartially.²²

When considering rules, it is helpful to understand that people approach rules differently. Conservatives may adhere to rules ideologically; other people (parents come to mind) comfortably create rules for their inferiors while perhaps resisting those that pertain to them. I tend to see many rules as common-sense best approximations, “recipes” to be followed and adjusted according to circumstances and past results. Why do many people dislike rules? First, to them, rules impede

²⁰ Bert N. Adams and R.A. Sydie, *Sociological Theory* (Thousand Oaks, CA, Pine Forge Press, 2001), 185.

²¹ *Ibid.*, 185.

²² David Ashley and David Orenstein, *Sociological Theory*, fifth ed. (Boston, Allyn and Bacon, 2001), 235.

what you want to do and make you do what you would prefer not to do; they violate our autonomy. A rule may seem stupid in some way, counter to common sense or what one observes; rules are often arbitrary or unfairly applied. They may advantage certain people while imposing unfair burdens on others. Finally, the source of the rule may lack sufficient legitimacy or authority. Rebels choose to defy rules for these reasons, or merely because they are there, but other people may passively ignore rules in simple non-compliance.

A more useful operational definition of rules might be: “what you have to do so you don’t get in trouble,” understanding that trouble comes from some sort of authority. As one tries to avoid adverse consequences while maintaining a maximum degree of autonomy, people would benefit from understanding that there are different categories of rules—and that different categories of rules may imply a difference in the obligations they place on people.

III. A TAXONOMY OF RULES

A. Introduction

My taxonomy differs from Weber's ideal types of authority in that he differentiated leadership, while I look at the function of the rule in society and less at the source of the authority. For example, my legal-religious rules against stealing are in a different category than the No Child Left Behind legislation encompassing Weber's rational rules.

I want to first briefly mention two rules in my ideal typology that are useful when one wishes to sort through which type(s) of rule may be operative in a specific situation.

Safety rules often concern nature or risk ("Don't go surfing in a hurricane").

Personal rules include one's habits, internalized morals, and rationalized rule-breaking. These rules lack outside authority. I will not elaborate on them further.

B. Socio-cultural Rules

The first authority-based rule type is *social and cultural*. Social and cultural rules concern convention: for example, language, food preparation and serving, what is considered rude behavior, traditions, and generally "how things are done around here."²³ More than other types of rules, socio-cultural rules are often *tacit*. Cultural rules reflect—and, as Durkheim observed, create values. Different cultures emphasize different values and virtues. For example, Native American reverence for the earth is reflected in the admonition that one should consider seven generations in

²³ GG Weix, Social Anthropology, Fall 2001

the future when making decisions, while Christian theology holds that man is steward of the earth.

Socio-cultural rules are enforced by the *group*. Shame, ostracism, ridicule, and threats to personal or family reputation are powerful means of control in smaller societies, whether tribal, family, or peer. Few people can resist such pressure without loss of self-esteem. Strict cultural rules often smother individual development. However, when norms are conveyed by means of stories or exemplars, such as in many Native American tribes, individuals have more autonomy and freedom to exercise judgment in specific situations even as they uphold cultural rules.

Moral rules are primarily socio-cultural rules which may be further sanctioned by religion and law. Concerned that morality based on Christian rules was insufficiently rational, German Enlightenment philosopher Immanuel Kant (1724-1804) looked to abstract reason in justifying morality.²⁴ He devised a rational system based on *duty*, which he does not define but is roughly equivalent to obligation or role-related responsibility. Only by acting according to one's duty is one being moral. Acting on inclination, passion, or self-interest has, at best, no value, because it may interfere with the rational process and one's real duty. Consequences are not to be considered in determining action. Deontology requires autonomy of the individual deciding on the act; it also concerns obligations and rights. Generally speaking, humans in small societies rely on deontologic practices in addition to virtue and common sense.

²⁴ Immanuel Kant, *Groundwork of the Metaphysic of Morals* (New York, Harper and Row, 1964).

Kant's test to determine whether one's contemplated action is moral is the "Categorical Imperative." He says: "[a moral agent] is subject only to laws which are made by himself and yet are universal, and he is bound only to it in conformity with a will which is his own but has as nature's purpose for it the function of making universal law."²⁵ The Categorical Imperative takes three forms, two of which are crucial. The first is: **"Act only on that maxim through which you can at the same time will that it should become a universal law."** The second states: **"...treat humanity...always as an end and never as a means only."** A maxim is valid if it does not contradict itself and the end because it is ludicrous or makes an exception of itself (*i.e.*, is not universal). For example, the maxim "Stealing is OK if a person is hungry" undermines the workings of society and is thus invalid.

Philosopher Bernard Gert devised ten moral rules in his attempt to ground morality in a more contemporary way than the Golden Rule, Ten Commandments, and Categorical Imperative. He proposes that every rational person would agree to a system with five rules that prohibit everyone from engaging in the evils of killing, causing pain, disabling, depriving of freedom, and depriving of pleasure. Moreover, people have the obligation to keep promises, obey the law, do one's duty (understood as one's role-related responsibility), and to refrain from cheating and deceiving.²⁶

Gert states more specifically the universalizing approach to ethics developed by Kant.

²⁵*Ibid.*, 100

²⁶ Bernard Gert, "Morality, Moral Theory, and Applied and Professional Ethics," *Professional Ethics I*, 1992, 5-24.

C. Legal/religious Rules

The next type of rule is *legal/religious*. These rules differ from socio-cultural rules in that they are explicit, based on the formal authority of the state or church, and carry strong sanction. Religious law is identical to civil law except in modern pluralistic societies. Even in modern societies, however, remnants of religious-based laws are seen, for example, in prohibition of alcohol sales on Sunday. Legal/religious rules are what most people think of when considering rules in general.

Paternalistic laws, or, as bioethicist Edmund Pellegrino calls it, “benevolent authoritarianism,” are intended to improve the lives of others. Examples include seatbelt, helmet, speed limit, and public health laws involving immunizations and smoking, and laws prohibiting underage drinking. While paternalistic laws were consistent with the authoritarianism of the past, today they offend many people who expect to choose for themselves. Paternalistic laws are ethically problematic because individual autonomy is trumped by someone else’s idea of beneficence. In the United States today, however, it is unclear where to draw the line between acceptable rules that clearly benefit the entire community versus those that unfairly limit personal choice or are based on ideology of some kind.

Legal rules maintain the stability of the status quo that most people desire. Indeed, the rule of law protects rights, typically of minorities against the majority, or when authority, public or private, abuses power. Unfortunately, rules often reflect a hidden power structure that benefits some sort of elite. Anatole France quipped: “The law in

its majestic impartiality forbids rich and poor alike to sleep under bridges, beg in the streets, and steal bread.”²⁷

Quite naturally, humans who find themselves advantaged tend to try to maintain that position and leave it to their heirs. One way of making sure that happens is to create rules that automatically produce the desired result. Thus, certain warrior leaders “became” kings or aristocrats whose position was said to be dictated by God. Max Weber traced castes in India to their time of arrival in the area, with newer arrivals possessing lower status. The Hindu religion, with its focus on reincarnation, rewards suffering in this world with the promise of a higher status in the next life. Therefore, the hierarchical system of Brahmins and no-caste “untouchables” and everything in between is not easily challenged, to the benefit of people of higher caste.²⁸

D. Scientific/Technical Rules and Bureaucratic Authority

In his early work, *Knowledge and Human Interests*, philosopher Jürgen Habermas described three very different approaches to knowledge: **scientific**; **interpretive/historical/hermeneutic**; and **critical**. The scientific approach is driven by technical interests based on the desire for *prediction* and *control* of our world. Its underlying premise is that knowledge is gained through direct observation by an objective person; knowledge is conditional, accepted (perhaps) until more precise information becomes available. Science seeks to understand the natural world and to determine cause-and-effect relationships and general “laws,” particularly those that

²⁷ Anatole France, quoted in Alan Hunt, *Explorations in Law and Society* (New York, Routledge, 1993), 28.

²⁸ Max Weber, *General Economic History* (London, George Allen & Unwin, 1927).

can be applied for technical purposes.²⁹ The interpretive approach, found, for example, in literature and history, seeks understanding and meaning. The critical approach seeks to unmask hidden manifestations of power.

While all three approaches are useful, depending on one's project, in my experience people tend to view the world through primarily a scientific or interpretive filter. Non-scientists tend to over- or underestimate scientific progress because they do not understand how science works. Scientists and engineers are not taught to reflect on or examine the implications of their work, hence the anguish many Manhattan Project scientists experienced only after the atomic bomb was dropped on Japan.

The final type of rule, which I call *scientific/technical/algorithmic/bureaucratic rules*, refers to those aimed at prediction and control. Scientific rules are observed regularities, which lack outside authority. When "rational" or technical rules in algorithmic form are extended into human activity, they resemble scientific rules in their aim for prediction and control. This pattern is manifested especially in bureaucracy.

In a nutshell, starting from the mid-eighteenth century, traditional authority was increasingly undercut, privately-owned machinery opened the world to consumer goods (but at a steep human cost), and science blossomed. Products of mechanization such as light bulbs and the width of fabric were appropriate for standardization. But then the scientific order and the machine became the model for effective management

²⁹ Jürgen Habermas, *Knowledge and Human Interests* (Boston, Beacon Press, 1971).

of people. In this view, bureaucracy, based on the machine-like precision of rules that eliminates human variability, produces better results, and decreases uncertainty. Bureaucracy was perhaps the only way to manage large numbers of people in an increasingly complex society.

Weber admired the efficiency and ostensible fairness of bureaucracy due to its impersonal rules, in contrast both to favoritism and unpredictable but common-sense case-by-case Islamic *khadi* justice. But Weber had many misgivings about bureaucracy. Although bureaucratic action is limited by what is in the rules, agencies or individuals can nevertheless create new policies and rules.³⁰ Managers may try to increase their personal power, despite the fact that legitimate power comes from the particular office.³¹ Collegiality, even though it can create consensus, is downplayed as an inefficient drag.³² Perhaps most troublingly, Weber noted that formal rationality often leads to substantive irrationality.³³

Relating Bismarck's surprise at discovering that little of his bureaucracy had changed after he left office, Weber observed that bureaucracies, once firmly established, are extremely difficult to terminate. Virus-like, the bureaucratic "... apparatus, with its peculiar 'impersonal' character, means that the mechanism... is easily made to work for anybody who knows how to gain control over it." Weber was vexed by the inverse relationship between bureaucratic rules and autonomy: "... one aspect of

³⁰ Weber, TSEO, 392.

³¹ Weber, TSEO, 69.

³² Weber, TSEO, 402.

³³ Alan Sica, "Rationalization and Culture," in Turner, 46.

modernity eventually comes into conflict with the other: the conditions for subjective freedom run up against the conditions for objective control.”³⁴ Invoking the “iron cage,” he worried: “How can the individual maintain his independence in the presence of this total bureaucratization of our life?”³⁵

Pinpointing the authority within bureaucratic organizations can be exceedingly difficult. Is it your boss or his/her bosses; organizational cultural rules; policy and procedural rules; acts of Congress or articles of incorporation; codes of ethics; legal regulations; or what have you? Such invisible authority is nowhere and everywhere. Philosopher Ludwig Wittgenstein criticized bureaucracy as “rule by a rule.”³⁶

Because bureaucracy is such an intrinsic part of modern life, we tend accept it at face value and may not even recognize it. Applying for college, filling out tax forms, mailing a package, even shopping at large retailers involve bureaucratic rules and management. We expect things to be done in a standardized fashion with a predictable result. When things fail to meet our expectations, we can complain, threaten legal action, or, more likely, bemoan our impotence. Who has not been frustrated greatly by the labor-saving telephone “menu” when our needs do not fit the available choices, especially when no “real person” is available?

³⁴ Lawrence A. Scaff, “Weber on the Cultural Situation of the Modern Age,” in Turner, 103.

³⁵ Mayer, 56.

³⁶ Ludwig Wittgenstein, *Philosophical Investigations*, quoted in Verner C. Petersen, *Beyond Rules in Society and Business*, (Cheltenham, UK, Edward Elgar, 2002), 33.

IV. Overlap and Conflict Between Rules

There can be considerable overlap among rule ideal types. For example, speed limits and laws about U-turns are based on safety, but they also reflect driving conventions that tell drivers what to expect from other drivers and create legal consequences for dangerous driving. Rules of grammar are both socio-cultural and scientific, in the sense of the human propensity toward language. Some cultural Kosher laws, for example those prohibiting pork and shellfish, were probably originally safety laws aimed at avoiding illness. Socio-cultural rules are often confused with safety rules, for example, “women shouldn’t walk alone after dark.” Although wild beasts may make walking alone after dark unsafe for both men and women, the real threat to women is predatory men who attack under the cover of darkness. As in this example, people who break socio-cultural rules are often blamed for the consequences they suffer, when in reality another person may bear the entire responsibility.

Although I like to drive fast, I never speed in residential neighborhoods. In the latter case, a safety rule has become a personal rule even when a legal rule says I can drive faster. On the other hand, I typically drive five miles an hour faster than the speed limit because I recognize speed limits as somewhat arbitrary, not necessarily based on safety, and usually not enforced unless people drive more than about ten miles an hour too fast. The *de facto* speed limit is higher than the posted speed limit, and “everyone knows” that this sort of legal/religious rule is meant to be broken, to a limited socio-cultural extent

The overlap of legal rules and bureaucratic technical rules, especially in the form of *contracts*, is a perplexing problem. Contracts are agreements between individuals backed by law. Originally, contracts replaced vague obligations in the late middle ages. They largely concerned transfer of title consistent with custom and fairness, typically between approximate equals, such as an eighteenth-century merchant and the sea captain who transported the goods to be sold.³⁷ Juries might not enforce a contract if a price was considered unreasonable but might require payment if it was customary but not specifically agreed on.³⁸ Shakespeare's *The Merchant of Venice* exemplifies the onus placed on the lender in an unfair contract. According to critical legal theorists Peter Gabel and Jay Feinman, with the rise of free-market capitalism in the nineteenth century, contract law became a means of ideological imagery disguising socio-economic oppression: a starving worker now had rights equal to a wealthy individual in his "freedom to contract."³⁹ By the twentieth century, contract law became "a uniform code for business transactions" in which large corporations make business decisions based on their own needs, not on any altruism.⁴⁰

Weber notes that "[j]uridical formalism enables the legal system to operate like a technically rational machine," providing beneficial certainty of laws and procedures, especially for commercial interests.⁴⁸ Thus, legal and technical rules become safety rules for organizations as they decrease the risk of legal liability. Health insurer rules about whom they consent to insure under what conditions and how much they will

³⁷ David S. Landes, *Prometheus Unbound* (Cambridge, UK, Cambridge University Press, 1969), 18.

³⁸ Peter Gabel and Jay Feinman, "Contract Law as Ideology," *The Politics of Law*, third ed., Ed. David Kairys (New York, Basic Books, 1998), 499.

³⁹ *Ibid.*, 501.

⁴⁰ *Ibid.*, 507-8.

cover, as well as and requirements for physicians, limit options for consumers and providers.

Durkheim discusses the ethics of contracts. Consent being an intrinsic component of contracts, an individual who enters into a contract under duress does not consent fully, which somehow decreases the validity of the contract.⁴¹ Coercion can be pressure of any kind:

How often it happens that we consent because we are tied by circumstances, compelled by them, without any option of choice... Under pressure of illness, I have to call in a certain doctor whose fees are very high: I am just as much bound to accept them as if I had a pistol at my head... When we say contract we mean concessions or sacrifices made to avoid more serious ones.⁴²

Durkheim is nevertheless forced to acknowledge that while this sort of contract is unethical, it still maintains the force of law. However, society is free to regulate the sorts of institutions that inherently disadvantage certain people and the conditions under which contracts are enforced.⁴³

When contractual obligations exist between actual equals, as civil law assumes, contracts work acceptably well. The problem is that many contracts involve people who are not roughly equal, with one party having considerably more power than the other. That power may be knowledge, monopoly, or a coercive machinery of some sort. In other words, the deck has been stacked. For example, elderly people may be manipulated into signing up for something that benefits the seller much more than

⁴¹ Emile Durkheim, *Professional Ethics and Civic Morals*, (Glencoe, IL, The Free Press, 1958), 176-220.

⁴² *Ibid.*, 208.

⁴³ Emile Durkheim, *On Morality and Society*, Ed. Robert N. Bellah, (Chicago, University of Chicago Press, 1973), 96

them, when the older person assumes that the seller is in a fiduciary, and not an adversary, relationship. Reimbursement rules set up by insurance companies always have profit worked into the formula; people who want coverage are in a take-it-or-leave-it position. There are numerous other examples. Furthermore, large corporations and industries look to the legislature to pass additional rules that favor their interests. Because such contract-based rules are perceived to involve a monopoly or price-fixing, “gaming the system” by consumers somehow seems less morally problematic than other rule violations. This may explain why many people justify duplication of intellectual property such as music CDs (since the lost profit hurts the publisher far more than the artist).

Taking a different approach to contracts, feminist philosopher Annette Baier depicts legal obligations as “cool, distanced relations between more or less free and equal adult strangers, say the members of an all male club, with membership rules and rules for dealing with rule-breakers...”⁴⁴ She instead proposes *trust* as a more appropriate way to envision societal bonds than obligation, contractual or other. Trust takes into account unequal relationships, for example between mother and child. Similarly—and ironically--David Luban points out that:

[t]he legal surrogate for trust—enforceable obligation—itself amounts, after all, simply to trusting enforcement authorities more than one trusts one’s obligator, and so enforceable obligation itself is nothing more than a special case of trust.⁴⁵

⁴⁴ Annette Baier, “Trust and Antitrust,” 96, *Ethics*, 1986, 231 quoted in David Luban, *Legal Modernism* (Ann Arbor, Univ. of Michigan Press, 1994), 86.

⁴⁵ Luban, 85-6.

A peculiar case of conflict between types of rules concerns lying. All societies prohibit lying among its members (although not necessarily to outsiders).

Philosopher Sissela Bok observes that lies damage trust, “a social good to be protected just as much as the air we breathe or the water we drink.”⁴⁶

Deceit and violence—these are the two forms of deliberate assault on human beings. Both can coerce people into acting against their will. Most harm that can befall victims through violence can come to them also through deceit. But deceit controls more subtly, for it works on belief as well as action.⁴⁷

Thus, lying violates both socio-cultural rules and the legal rule against perjury. Only Kant took the extreme position that lying is never justified because it infringes on the “rights of humanity.”⁴⁸ From an individual perspective, however, lying is a means of self-protection, a safety rule, but liars, in rationalizing lies for short-term advantage, rarely consider the long-term risks to their integrity.⁴⁹ Also, society is unclear how to judge “white lies” that spare someone’s feeling, untruths about adultery, and excuses: Bill Clinton’s lies in a kangaroo court about his relationship with Monica Lewinsky were ridiculed but do not carry the moral import of George W. Bush’s lies about weapons of mass destruction to justify our costly invasion of Iraq.

⁴⁶ Sissela Bok, *Lying: Moral Choice in Public and Private Life* (New York, Vintage Books, 1979), 26.

⁴⁷ Bok, 18.

⁴⁸ Immanuel Kant, *Lectures on Ethics* (Indianapolis, Hackett Publishing, 1963), 227.

⁴⁹ Bok, 25-6.

V. ETHICS THEORY AND RULES

Rules pervade ethics theory, especially Kant's focus on duty. Duty can be considered obeying rules, primarily legal/religious rules. Duty can also be extracted from people by those in authority, for example soldiers whose tours in Iraq are routinely extended. Kant did not understand or describe the duty of mothers: endless, with strong socio-cultural sanctions. The Categorical Imperative, a rule that seeks to universalize acceptable behavior, is legalistic, lacks content, may diminish relationships, and cannot decide between acceptable but conflicting actions; it may perhaps be best understood as a way to avoid blame. Moreover, emotion and consequences do actually matter.

Utilitarianism, as envisioned by the then-radical Jeremy Bentham and refined by the liberal John Stuart Mill, was motivated by the desire to break the grip of both religious authority and the power of the nobility. For Mill, only after justice was assured could acts be ranked for utility. Since then, "the greatest good for the greatest number" has been corrupted into utilitarian business thinking that focuses on short-term, identifiable consequences for the specific company and justifies itself by creating procedurally fair algorithmic technical rules. Additionally, business interests often attempt to influence legislation in their favor, such as the law that used to prohibit the sale of margarine in the dairy state of Wisconsin.

Aristotle, as virtue ethicist, believed people and society grow and develop, and that moral development required character, instruction, and practice or training in

developing good habits. Most people need rules and punishment as a supplement in creating these good habits. But people need freedom in order to reach their *telos*, or ultimate end. By respecting autonomy, society encourages individuals to develop their character and abilities, which in turn benefits the entire group.⁵⁰

Socio-cultural norms define virtues for the particular group. For example, Athenian magnanimity and Puritan thrift would be considered vices by the other society. John Dewey wonders why rule-following is considered a virtue:

If one stops to consider the matter, is there not something strange in the fact that men should consider loyalty to “laws,” principles, standards, ideals to be an inherent virtue, accounted unto them for righteousness? It is as if they were making up for some secret sense of weakness by rigidity and intensity of insistent attachment. A moral law, like a law in physics, is not something to swear by and stick to at all hazards; it is a formula of the way to respond when specified conditions present themselves.⁵¹

Contemporary philosopher Alasdair MacIntyre talks of the virtue of integrity or wholeness. He advocates making one’s life a narrative unity, where one is the author and not just an agent. He would like us to think of our lives as a quest in which we find meaning for our lives within the community that created our past and within which is our future.⁵²

Although ethicists discuss justice, one deficiency of ethics theory is that it does not deal with unjust rules and how to change them.

⁵⁰ Aristotle, *Ethics* (London, Penguin, 1976).

⁵¹ Dewey, 36.

⁵² MacIntyre, Alasdair, *After Virtue* (Notre Dame, Indiana, Univ. of Notre Dame, 1984).

VI. RETHINKING NON-SCIENTIFIC TECHNICAL RULES

One possible conceptual way out of the increasingly rule-based nature of society is described by mathematician Bart Kosko in *Fuzzy Thinking*.⁵³ First proposed by Lofti Zadeh, fuzzy logic is based on the notion that “everything is a matter of degree.” The normal way we look at logic, from Aristotle through computers, is a binary yes/no, either/or, black/white. Zadeh proposes that the universe is actually multivalent: shades of gray--with black and white representing extremes. Kosko presents the seemingly simple problem of sorting apples into sets: red apples and non-red apples. Where, he asks, do green apples streaked with red fit in?

Humans, especially scientists, “round off” data in reaching “truth,” which has the advantage of simplicity (at the expense of accuracy), and then lose sight of that shortcut.⁵⁴ Kosko sees much of the problem as the remnant of nineteenth century thinking:

Vagueness, indefinite and blurred outlines, anything savoring of mysticism, was abhorrent to that great age of limited exactitude. The rigid categories of physics were applied to the indefinite and hazy phenomena of life and mind. Concepts were in logic as well as in science narrowed down to their most luminous points, and the rest of their contents treated as non-existent.⁵⁵

Fuzzy logic reconceptualizes Western logic and technical rules related to it away from “if A, then B.” Instead, Kosko shows that one can also say “if A1 then B1, if A2 then B2, if A3 then B3,” and so on. This follows how the mind really works—and common sense. Using jurisprudence as an example, Kosko notes the distinction

⁵³ Bart Kosko, *Fuzzy Thinking* (New York, Hyperion, 1993).

⁵⁴ Kosko, 90.

⁵⁵ Jan Christiaan Smuts, *Holism and Evolution, 1926* in Kosko, 138.

between black-and-white rules, as opposed to principles that act as guides: the letter of the law versus the spirit of the law. Determining the right answer or answers requires use of a “fuzzy” combination of factors.

Another insightful critique of rules is Verner C. Petersen’s *Beyond Rules in Society and Business*.⁵⁶ Noting David Hume’s observation that “reason is the slave of passion,” Petersen exposes the pretenses and distortions within rationalized organizations. He argues that much of what we know is tacit, taken-for-granted, social knowledge. Children are taught morality gradually by example, becoming more astute with early and continued exposure to ambiguity. We may be following tacit morality while appearing to break the rules. Alternatively, we only *look* moral when we blindly follow an externally-imposed moral code.

Explicit rules seem to eliminate the perceived problem of arbitrary, intuitive “particularism.” Petersen notes, however, that rules do not create the commitment to take responsibility or action. In fact, “[t]he more we attempt to anchor responsibilities in specific written statements and special institutions, the more we lose individual commitment to all the vaguer notions of responsibility.”⁵⁷ All the employee need do is follow rules, “whether they are relevant or not.”⁵⁸ Workers have the “right” to exploit loopholes:

Only transgressions of the letter of the law or code can be sanctioned, anything else would be unfair or unjust.... Making sure that loopholes were closed would occupy energy and time and make the rules even more detailed,

⁵⁶ Verner C. Petersen, *Beyond Rules in Society and Business* (Cheltenham, UK, Edward Elgar, 2002).

⁵⁷ *Ibid.*, 29.

⁵⁸ *Ibid.*, 85.

specific and more complex without really making everyone feel more responsible, only forcing everyone to act as if, or as long as they are under observation.⁵⁹

Petersen notes that managers think they must have figures in order to do their job: “If you can’t measure it, you can’t manage it.”⁶⁰ He observes that nowadays we are inundated with attempts to put life into tabular form, typically by attempting to “measure the unmeasurable.” An example of why this is not only wrong but illogical is the habit of many of my fellow good skiers at our local ski area who keep track of “verts,” or vertical feet, as in, “I skied 16,000 verts before lunch.” Verts say nothing about if the sky is blue, the snow is fresh powder, or if I’m skiing well. Verts tell only how far or how fast I skied—not if I had a good time. In a bureaucratic setting, important values may disappear when things that can be measured, like productivity, become the mark of quality—and reward.

Petersen considers the cult of rules both dehumanizing and less effective than it is thought to be, and that, ultimately, better results occur when humans are encouraged to be creative, reflective, flexible, and wise. And, ironically, in doing so “we may show rule-like behavior even though we are not aware of any rules and even though a close examination of our arguments would not reveal any rules.”⁶¹

⁵⁹ *Ibid.*, 37.

⁶⁰ D.A. Garvin quoted in Petersen, 77.

⁶¹ Petersen, 195.

VII. DANGERS AND POSSIBILITIES

Rules normatively imply a timeless impartiality that benefits the individual, group, and society. In fact, rules may reflect the particular interests of a very real, embodied group with authority. Rules can codify exploitation of one group by another, as slavery benefited slaveholders and commercial interests in the ante-bellum South. While reducing favoritism through rules is laudable, humans are still subject to temptation, greed, laziness, egotism, pettiness, counterproductive behavior, ethical shortcomings, pressure from peers and superiors, and rationalization, especially when under the threat of lawsuits or competition in a commercialized society that creates a pervasive sense of scarcity. We become frantic because losers lack standing in winner-take-all American-style competition based on Calvinism and Social Darwinism. The machine metaphor (and its computer scion) as the model of objectivity and fairness is appealing, but it forces complex human variables into inadequate yes-no algorithms that cannot handle the common intuition, “something more is going on here as well...”

What should alarm us is the relentless expansion of rules that nibble away at our ability to be free and creative human beings. Rules offer the advantage of making it unnecessary—or futile—to think. It is one thing to submit to scrutiny before boarding an airplane—and another when a middle-aged adult wants a beer. The danger is that we become inured to the latter, not thinking about the paternalism involved, that a number of poor, elderly, minority, and disproportionately female people who do not drive might be unable to buy a perfectly legal beverage, and that

laws of this sort constitute harassment. Should we spend public and private resources enforcing (and defending against) the law? Will a bartender disciplined for insufficient ardor in checking IDs be discriminated against when looking for another job—or trying to procure a mortgage?

As long as we have a system organized around specific rules, we are in a quandary about the appropriate way to handle *loopholes*. Loopholes subvert the intent of rules by exploiting gaps in the letter of the law for personal advantage. They allow us to make exceptions of ourselves, something that Kant deplored. They are a by-product, an unintended consequence of efforts at fairness that put some sort of additional burden on others. In the past, connivers utilizing loopholes might be controlled by community disapproval, instead of nowadays being rewarded for their ability to “game the system.” Because other people use them, most people now are happy to find loopholes that justify our own actions and enhance our autonomy or pocketbook.

There will always be outliers who do not fit the algorithm: first cases in a trend such as identity theft or people who devise better ways to do things. Bureaucratic management is poorly equipped to deal with such exceptions. Ombudsmen, where used, solve problems by shepherding people through the bureaucratic maze. Another sensible way to deal with exceptions is to recognize that rules cannot cover everything; closing loopholes with more rules merely creates more loopholes. Instead, we should consider the policy of honoring the intent of the law as leading to fairer results for the public. We would be wise to apply Bernard Gert’s standard that

exceptions to rules can be justified only if all rational people would allow it publicly in similar situations. There should be a clear procedure for obtaining effective help in solving problems in bureaucratic organizations, thus avoiding increasingly-likely Kafkaesque nightmares.

In the mid-twentieth century, educational psychologist Lawrence Kohlberg devised a scale of moral development. The child-like lower stages are motivated by fear of punishment and hope for reward by authority; the adolescent-like conventional stages are guided by community peer pressure and conforming to the law; the highest levels found in some adults are exemplified by autonomous concerns with social utility and justice.⁶² While his methods and conclusions have appropriately been criticized—and everyone acts at lower levels at times--his classification is useful in considering the effect of ever-increasing rules in society. When one's goal is to avoid blame, it is natural to act at the lower stages rather than looking to any "big picture." Contrast this with Durkheim's belief that people must have knowledge and consciousness about their actions, that teaching children about

morality is neither to preach or to indoctrinate; it is to explain... to make him understand his country and his times, to make him feel his responsibilities, to initiate him into life and thus to prepare him to take his part in the collective tasks awaiting him.⁶³

Such teaching can be considered "preventive ethics."

⁶² Lawrence Kohlberg, *The Psychology of Moral Development: The Nature and Validity of Moral Stage*, (New York, Harper and Row, 1984).

⁶³ Durkheim, *Moral Education*, 121-4.

I have been struck by public vehemence about quarterback Michael Vick's bankrolling dog fighting. Is dog fighting more illegal than the widespread practice of betting on football or basketball games? Is the concern for animals a sentimental middle-class affectation or is it based on true concern for those weaker than ourselves? If it is the latter, why do so many Americans live in poverty? The maxim, "Treat sentient beings with respect," would seem to prohibit dog fighting (culturally abhorrent to most but not all Americans), but apparently does not apply to raising and butchering animals for meat—or to horse racing. When so many underground, illegal, or morally questionable activities and inconsistencies are tolerated, why is it fair to single out Vick?

Rule-change occurs through social evolution, crisis, revolution, paradigm-shift, leadership change, and legislation. Civil disobedience was a meaningful tactic during the Civil Rights and anti-Vietnam War efforts, and generating publicity in almost any way possible is useful today. However, there is no good model for changing more subtle rules when public outcry cannot easily be mobilized. The notion of changing bureaucratic rules through a democratic process seems almost quaint—and futile. However, I am extremely uncomfortable with a possible corollary of these observations: unfair and stupid rules can be broken with impunity.

Uncertainty has always been at the heart of the human condition, something to be minimized or controlled. When crop failure meant starvation, uncertainty had far greater consequence than perceived socio-economic survival in our highly

competitive society. Because the costs are perceived as too great, we avoid risk-- except when seeking excitement in sports and nature (but only when we think we can limit personally-unacceptable risk). Religion, with its rules, was a source of expected certainty. Nowadays, science and legal and technical rules fill that role. However, uncertainty will never be conquered. Life is full of surprises, some good, and many of the bad ones are human-caused: planned, negligent, or simply unforeseen. It seems to me that a far better strategy is to accept and prepare for uncertainty by training ourselves and our children to be flexible and capable of reacting with judgment and competence to what comes our way. We should understand the Buddhist tenet that suffering comes from wanting things to be otherwise.

Models exist for how to rehumanize rules. Then-Vice President Al Gore had a great deal of success in his “Reinventing Government” project that identified and eliminated unnecessary rules and functions. Organizations can free their employees to think and act with flexibility and judgment, exemplified in the stated policy of one well-respected corporation: “Southwest Airlines will never discipline an employee for accommodating the reasonable needs of a customer.” Another example consists of the three signs that appeared on walking paths near my home in the past few years. The first admonishes people to keep their dogs on leash. The second, on the garbage can by the Mutt Mitt® dispenser, read “Dog Waste Only.” The third, which replaced the second, said: **“Dog waste only!! We don’t want to attract bears. Thank you.”** People ignore the first rule, a bureaucratic rule instituted when the parks department took jurisdiction over the trails, because it violates the cultural rule that

most dogs in this rural state do not need to be leashed. The arbitrary second sign inferred that people need not deposit drink cups in the trash. People abide by the third rule, a safety rule that engages the community in a project that respects everyone, including bears.

VIII. CONCLUSION

When I began this project, I saw it as a critique of arbitrary, perhaps antiquated rules such as those limiting women, politically-motivated marijuana laws that people in the 1970s could not imagine would still exist in 2009, and the “need” for blind adherence. What surprised me most as my research progressed was my growing apprehension about how much of a juggernaut bureaucracy of all kinds has become. Weber predicted that the twentieth century would see the dictatorship, not of the proletariat, but the official: “Modern societies [now have] a form of rationality that is highly formal and empty of any significance other than instrumental effectiveness in the service of goals that can no longer be questioned.”⁶⁴

This taxonomy helps us identify the rule type operative in a given situation, for example, a socio-cultural rule in a work environment, and understand which sort of authority is involved. When we recognize different types of rules and how people use them, we can evaluate them for the good they do for society and what is being demanded of people. Moreover, we can consider the crucial place of obligations, virtues, personal rules, and real autonomy in human interactions. Understanding that *prima facie* duties exist makes choice easier and more explicit: for example, my duty to students is less than the duty to my family in an emergency. We become more conscious of questionable technical or legal rules. If we do nothing, these rules are inexorable—but we can question and make efforts to resist, especially if we have any power within a bureaucratic organization. We should be alarmed at the march toward bureaucratic, algorithmic “rule by a rule” that, in its attempts toward fairness and

⁶⁴ Ashley and Orenstein, 246-7.

certainty, in fact dominates us by turning us into standardized “machines” rather than thoughtful, intuitive, creative people.

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