

## When Rules Turn Loose: An Analysis of the Concept of Rules and Exceptions

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### ABSTRACT

This paper seeks to clarify the notion of rules and exceptions and how they influence human behavior. Human beings, as Aristotle claims, are socio-political animals, and their existence is generally defined by how they associate with each other in society. The values one develops are related to the regulation of societal action. It is possible, however, that there are multifaceted valuations within the same society and that different rules may be created to account for them. These rules may fail to account for all the values that exist in society. More so, these rules may either be modified or changed over time to address society's evolution. Given the dynamism, individuals may bargain for the creation of exceptions to rules that define their existence as importantly as rules do.

*Keywords:* Rules, exceptions, deliberation, equality, meritorious/special case, equity, justice

What can be said about a dimension of the human condition which looks into the relation of rules and human behavior? Even more interestingly, how do exceptions, which fall beyond the purview of rules' objective application, figure in this? Some trends in the discussions of rules focus on how rules govern the social domain and on how individuals produce a variety of beliefs, institutions and behaviors, and how these, in turn, relate to rules. The necessity of formulating exceptions due to the shortcoming in the application of some rules is discussed in some articles but only a few explain why such exceptions are justified. This article sheds light on the discussion by focusing on the ethical analysis of the issue concerned with deciding when to make exceptions to rules. In addressing the notions of rules and exceptions, we acknowledge Schumacher's (1977) claim that "people are human beings by virtue of both their similarities and their differences"(p.123). This, in turn, brings forth the challenge of "how to justly recognize the significance of human beings' diverging sets of features when trying to produce rules for behavior" (Schumacher, 1977, p.123).

Using the academic rules stipulated in the University of the Philippines Diliman, Office of the University Registrar's (UPD-OUR) *General Catalogue 2004-2010* as my central focus to concretize an otherwise abstract topic, this paper will analyze rules in conjunction with the related notion of exceptions. My interest in writing this article was motivated mainly by several academic cases of students with which I have dealt and to which I continue to have an exposure in my capacity as Assistant Secretary of the College of Social Sciences and Philosophy.<sup>1</sup> From these cases, I will draw my arguments pertaining to the main points I will raise.

The interplay between the academic rules of the University and how students obey and, at times, negotiate with them is, to a certain extent, prototypical of the rule-governed properties of social systems; that is, an analysis of the academic rules of the UPD-OUR somehow shows how individuals follow and also negotiate with rules in social practice. The interplay between rules and how students follow or negotiate with them are by themselves not separate from the issues of the bigger world. Just as a particular unit of the University, such as the Office of the University Registrar, has its own rules by which it should abide, society too has its own set of rules which are either non-negotiable or discretionary.

The University of the Philippines, being a state university and a premier university in the country, is considered a microcosm of Philippine society. By focusing on the transactions done in one of its units, the Office of the University Registrar, which practically takes charge of a significant portion of the University's population, namely the student body, I may be able to show how such an analysis may be reflective of much bigger concerns in society.

This paper does not intend to show, however, that what is true of a particular part of the University is absolutely true of the whole society as well. There are limitations to this analysis of the academic rules of the UPD-OUR. Compared to the more complicated rules in society, academic rules fall short of the rigour that is required of rules that basically guide societal behavior. The violation of academic rules may require lighter forms of punishment, while the violation of some societal rules, such as those that pertain to life and/or property, may result in more punitive forms of sanction such as imprisonment. It pays to proceed with the analysis of such academic rules, nonetheless, as it provides a perspective on some of the basic notions on which the behavior of human beings is based.

## **ON RULES**

A society in which one behaves on a purely random basis, out of wish and whim, is a society where one can basically go about without rhyme or reason. So we put up

institutions that serve as watchtowers of our behavior, and man them with people we trust to have the moral and legal ascendancy to execute rules they themselves would, nay, ought to follow. We build our moral, legal, religious, academic, and other similarly placed institutions around rules or laws for that matter, and we gain a front-row seat to methodical conduct and transaction.

Rules may be written or simply implied, culture-bound and exclusive to a certain practice, or universally-acclaimed covering every conceivable instance of human conduct, and they get their way more often than not. Rules rule, so to speak.

Rules allow us to separate sensational from rational conduct, at least within the scope to which they apply; whichever action meets the standards is likely to spread like wildfire and whichever does not becomes extinct. Rules define the structures internal to operations, provide mechanics on how processes ought to be carried out, and lay down codes that guide demeanour. Just as there are many ways to find out and think about the world, there are many ways to act and respond to it.

Rules pick out the best among possible courses of action, further narrow them down, and transform them into executable and less messy guidelines. The fittest and most viable options in the competition survive and they form part of the structure that regulates virtually anything that has any need of order and conduct.

Rules allow humans to have control over a world full of uncertainty and seemingly paradoxical courses of action. Who would not enjoy having a good sense of security in the way one responds to events, anyway, if one had the capacity to systematize human conduct? By developing rules, humans also impose constraints on their environment and allow states of affairs to happen “differently from what they would be in the absence of control” (Mayo, 1954, p.16), and regulate existing and create new forms of behaviour (Searle, 1969; Sunstein, 1995). By creating more rules, humans effectively thresh out states of affairs that occur beyond their capacity to control and dictate which behaviors are to be reasonably carried out.

## **INFERRING AND CREATING RULES**

Social order does not come with the birth of an individual; that is, it is not a process that automatically forms as if it had its own mode of biological existence. It is an offshoot of the activities of human beings. Just as virtue – its cultivation in particular – is possible relative to a society, the creation of social order, as the term connotes, is only viable within the context of human interaction (Berger & Luckmann, 1966).

Berger & Luckmann (1966) further qualified that rules are linked to habit. An individual starts off with his/her activities, social or otherwise, and identifies a pattern through which they are usually done. The creation of this pattern effectively helps one identify courses of action that would free one from having to choose from a number of possible options every time and allows one to proceed with one's activities with the least amount of tension and confusion. This pattern, MacCormick (1998) claimed, involves judgments and may, at one point, be limited to one's actions alone, but over time, owing to the inevitability of one's social and political nature, would include those of others in a scenario where one acts and observes how others react towards one's actions or vice versa.

Rules are more than just habit though. In trying to provide a stable background for one's activities, one creates social standards for one's habitualized actions, a process which Berger & Luckmann (1966) called "typification" which is "always socially shared and available to all the members of a particular social group" (p. 54). And it is not just habitualized actions that are typified; even individuals are typified, which is why there are social standards under the watch of specific groups or persons. A habit would have to be institutionalized or typified since, as Giddens (1986) claimed, "the sense of rule in habit or routine is fairly weak since it does not usually presuppose some sort of underlying precept that the individual is following or any sanction which implies to back up that precept" (p.19).

This process is much like inferring rules from already existing states of affairs (every time one does x, another reacts in such and such a way). The inference process starts out inductively and as more and more instances show regularity, they become typified and they gain deductive import. The process is responsible for the establishment of regulative rules. Searle (1969) held that such rules "regulate antecedently or independently existing forms of behaviour... much as rules of etiquette regulate inter-personal relationships which exist independently of the rules" (p. 33). Regulative rules usually cover activities that already exist prior to the creation of rules and produce forms of behavior that could be given specifications to whether or not the rules that define them existed (Searle, 1989). Rules that cover turn-taking fall under such a classification.

The typification process leads to the creation of institutions that regulate conduct by prescribing, prohibiting and basically bringing about orders that either reinforce and reward conformity and sanction deviance (MacCormick, 1998). Wittgenstein held the same view that "a rule, like a game or a language, is an institution" (as cited in Bloor, 1997, p. 27) since "it is administered by institutions like courts, legislatures, public prosecution agencies, police forces, and the like" (MacCormick, 1998, p. 302).

The presence of institutions, along with the element of control they possess, makes possible the creation of rules that “create or define new forms of behaviour” (Searle, 1969, p. 33). These rules, in Searle’s (1969) term, are constitutive and they allow activities to happen only insofar as the rules specify. The behavior produced can receive specifications only if a rule that supported it existed (Searle, 1989). Constitutive rules determine whether an action counts as so-and-so in a particular context for which rules have been created. An example would include determining whether or not a player incurred a foul or made a three-point shot in a basketball game, which would not otherwise be the case if there were no rules that defined such cases at all. A player can move any way he/she wants, but if there were no constitutive rules that set what are and what are not allowed in a basketball game, then none of the player’s actions would count as actions befitting a basketball game. Such rules, while constitutive, also possess an element of regulation whose authority is derived from the formulation of the rules themselves (Cherry, 1973; Hindriks, 2009). Instead of being merely inferred, as is the case with regulative rules, constitutive rules are created to allow the possibility of certain actions.

### **THE DIFFERENT KINDS OF RULES AND THE TENDENCY TO EQUALITY**

As it were, there are implicit or unspoken rules that nonetheless carry a binding force with them such as the practice of being fair towards others, which function independently of the presence of any form of authority (Giddens, 1986). If a student falls in line for a transaction at the UPD-OUR, for instance, he/she would complain if he/she was jumped over by somebody who was not originally part of the line. Even without explicit rules, the student can identify and react to the slightest trace of injustice and agree with anything that satisfies his/her sense of fairness (MacCormick, 1998). MacCormick held that tacit rules are binding because there is a “deep community of underlying ideas based on some ground that is universalistic rather than personally discriminatory” (p. 307).

MacCormick (1998) recognized though that there are occasions when individuals make sense of unspoken rules and make them even more intelligible to other members. Using the same queuing example, an institution such as the UPD-OUR may post a “please fall in line” notice to students who are doing transactions with the office. Such a reformulation need not necessarily and immediately have a formal status like an official law, but is clear enough for it to make its binding presence known to a number of people.

There are also rules that are in the form of an official standard. With such rules around, actions and individuals go through, in Berger & Luckmann’s term, a process of “typification” wherein individuals are appointed and systems are put up to give

the rules a more objective value (MacCormick, 1998). The creation of academic rules such as those that cover cross-registration, university admission, graduation, leave of absence, attendance, and other academic-related concerns necessitates the presence of an office (UPD-OUR) and an office head (University Registrar) who will oversee the implementation of such rules. Such rules, compared to a tacit rule or a notification that students fall in line, are institutionalized and gain additional authoritative import that may contain more explicit notions of reward and punishment and start to have an even more binding character.

Berger & Luckmann (1966) shared the same view:

The objectivity of the institutional world “thickens” and “hardens,” not only for the children, but for the parents as well...For the children, especially in the early phase of their socialization into it, it becomes *the* world. For the parents, it loses its playful quality and becomes “serious.” (p. 59)

Authorized by an academic rule, a teacher has the option to give a student – who has lost by absence 20% of the hours of recitation, lecture, laboratory, or any other scheduled work in one subject – a grade of 5.00 or F (for failing) if majority of the student’s absences in class are unexcused; or force drop the student if majority of the absences are excused (UPD-OUR, 2004). Similarly, when a student incurs a scholastic deficiency due to his/her failure to pass at least 75% of the total number of academic units in which he/she is enrolled, or if he/she fails to pass 24 academic units within one academic year, then he/she will be placed on either a warning, probation, dismissal or permanent disqualification status (UPD-OUR, 2004). The presence of such rules sends a message that attendance and scholastic standing are to be taken seriously by students, faculty members and administrators alike.

## **THE PRAGMATIC FOUNDATION OF RULES**

Having a rule means not having to deliberate every time a similar or a related case arises. By adopting objective standards, so that no one is above the rules themselves, the function of rules to regulate conduct is better carried out in such a manner that it produces compatible outcomes for similar cases (Hage, 2000). Sunstein (1995) claimed:

Because of their simplifying effects, rules produce enormous gains where individual decisions would otherwise be extremely expensive. Every day, people operate as they do because of rules, legal and nonlegal. Often the rules are so internalized that they become second-nature, greatly reducing the costs of decisions and making it possible for people to devote their attention to other matters. (Sunstein, 1995, p. 972)

Rules establish frameworks within which decisions are made. A faculty member does not have to deliberate every time a student exceeds the prescribed maximum number of absences in class. He/she simply has to appeal to the UPD-OUR rule on attendance. Similarly, it would be relatively easier for an administrator to tag a student as falling within a corresponding scholastic delinquency if the latter fails to meet the requirements for good scholastic standing. Decision-makers do not have to go back to the first principles on which the rules were based each time a decision is to be made. More so, rules help mitigate the possibility that decision makers would exercise their discretion over cases whose stakes are high, or over cases that personally involve them. The University Registrar or any administrator for that matter is expected to impose the sanction for incurring a scholastic delinquency even if he/she finds out that the affected student is related to him/her, or to the University President, or to one of the members of the Board of Regents of the University.

Rules also enable individuals to make plans or act consistently without the fear of being randomly sanctioned, and without the surprise of being randomly rewarded. Contrary to Mayo's (1954) claim that systematizing conduct can be done not by having rules but by way of threatening or rewarding individuals (which need not involve rules), such actions necessarily presuppose the existence of rules on which a sanction can be based or from which the possible giving of a reward can be adjudicated. For instance, to sanction a student who incurred a scholastic delinquency is to indirectly say that the student failed to recognize a particular academic rule. Similarly, to reward a student, either by placing him/her under the list of University or College Scholars or by granting him/her Latin honors is to recognize that the student's behavior conforms to the established rules of the school. To sanction or give away rewards without rules on which to base them is to create a randomly created set of standards that are not likely to make the acts of sanctioning or rewarding consistent, and is therefore unlikely to objectively label a certain act as either concerned with sanctioning or rewarding because then people would not know how and when to respond with regard to the avoidance of sanctions and the pursuit of rewards.

More so, rules allow institutions to be more visible and the people who implement them more accountable to the public (Sunstein, 1995). Every time there is a case to be dealt with that requires the application of academic rules, an individual would know which particular office to go to. If there are irregularities in the application of rules on attendance or scholastic standing, then it would be much easier to identify which individuals or offices are to be blamed. Similarly, if rules are applied rigorously, perhaps too rigorously that they ignore the more important aspects of individuals'

lives, then people can be identified to explain the reason/s behind such a rule, in which case, it would be easier to assess whether there were shortcomings in its formulation.

Rules promote “equal treatment and reduce the likelihood of bias and arbitrariness” (Sunstein, 1995, p. 974). Rules are rarely just exclusively made to cater to the needs of particular individuals or groups. They are often instances of more objective precepts that serve as foundations of order (Wrathall, 2005). Rules are perceived as instances of objective standards that aim for the uniform application of justice, which would make them enticing and stable enough for individuals to follow. Anything contrary to this can lead individuals to question if such a rule that is, at best, left to the subjective formulation of some, is a rule at all. One student’s being a varsity player does not necessarily excuse him/her from the attendance requirements of a particular course. Being a consistent champion in competitions does not make him/her any more special than a student who is not involved in any extracurricular activity at all. The rules concerning all students’ attendance or scholastic standing ought to be invariably carried out. Unarticulated considerations and personal preferences hardly make their way into the decision-making process. Knowing that the student missed majority of the class meetings because he/she had a hard time waking up for his 7:00 A.M. class, or knowing that the student had a hard time coping with the academic requirements of most of his classes, is not likely to spare the student from being dropped from his/her class or from facing the sanction of his/her corresponding scholastic delinquency.

## **RULES AND THEIR VARYING PRACTICAL FORCES**

This part of the paper will now analyze how exceptions figure in the discussion of rules. In spite of the intention of rules to systematize conduct and uniformly administer democratic and just causes though, rules differ in terms of the values they cover and in terms of their capacity to tolerate or reject exceptions even more so. While there are rules that do not tolerate the existence of exceptions at all, there are also those that accommodate varying numbers of exceptions that may place individuals under the impression that some rules are more binding than others in relation to the number of exceptions with which they deal (Miller, 1956).

### **Some Rules Are Non-negotiable**

Some rules hardly allow the inclusion of subjective considerations in their application, and are at best absolutely applied. Such rules impose that actions and results be invariably carried out. As it were, their application is non-negotiable. Most of these rules come from those that have gone through a process of typification,



and have stricter command over their application through the institutions that arise along with them (Berger & Luckmann, 1966). With an identified form of authority and formality, “individuals can identify the extent to which a decision is final and establish an arrangement to make reasonably explicit and determinate provisions” (MacCormick, 1998, p. 312).

If a rule holds that only students with a minimum general weighted average of 1.75 (the absolute minimum) will be granted Latin honors, then it is expected that anyone who falls under the minimum grade requirement, regardless of other factors, is automatically disqualified (UPD-OUR, 2004). Knowing that the student already paid for the graduation fee, or that his whole family will be disappointed should he/she not graduate with honors, or that he/she is not likely to be on a par with his contemporaries, or that he/she had an unexpected setback in his/her academic life is not apparently going to significantly help in waiving the rule concerned with granting students Latin honors. The same finality applies to the academic rule on the removal of an Incomplete or a grade of 4.00, which is set to be within the prescribed time of one academic year, in which case the student should be enrolled or in residence (UPD-OUR, 2004). Anything outside the bounds of the rule will be ruled out as irrelevant in the administration of rules and in the assessment of results.

Exceptions cannot be made if too much tension is imposed on the principles on which the rules are based. In our examples, the considerations mentioned largely violate the preservation of scholastic standards. A .01 or a 1.0-point difference between the student’s grade and the minimum required grade will not make any meaningful difference in the consideration of his/her case. Similarly, even if the student removed an Incomplete or a grade of 4.00 a day, a week, or a month later than the prescribed time of one academic year, or even if he/she removed the said deficiency within the prescribed time if he/she is not officially enrolled or not in residence, then he/she will curtail his chance to remove the Incomplete or the grade of 4.00. It may be that the rule hardly allows flexibility in its application and this rigidity of its application indicates that no other consideration will be special or meritorious enough to even warrant an exception.” Such a rule is absolute in the sense that nothing can weigh against the outcome it prescribes when the conditions it sets are met” (Endicott, 2001, p.204).

We can better understand the non-negotiability of some rules if we ground them in Frederick Schauer’s (1991) thought:

Where the language in which the rule is written contains a word or a familiar phrase that itself excludes what the drafters wish to exclude from the scope

of the rule, no exception is necessary. All that is required is to employ that appropriate word or phrase, and that which is to be excluded without the necessity of an exception. (Schauer, 1991, p. 874)

Saastamoinen (1995) referred to such cases as “established exceptions” (p.2). One example is when a rule states: Any student who enrolls in less than 15 units in any semester that is not his/her last enrolment will be automatically disqualified from graduating with honors except in cases when the underloading “is justified by health reasons, unavailability of courses, or employment” (UPD-OUR, 2004, p.13).

Similarly, the academic rule that says, “no faculty member shall change any grade after the Report of Grades has been submitted online/filed with the Secretary of the College or with the University Registrar” (UPD-OUR, 2004, p.28), identifies an exception saying, “when an error has been committed, the faculty member may request authority from the faculty of his/her college to make the necessary change” (UPD-OUR, 2004, p.28).

The requirement for an eight-unit basic physical education as a prerequisite for graduation is another good example. While the academic rules of the UPD-OUR requires all undergraduates to meet this requirement, it exempts students “who hold the Associate in Arts title (or equivalent) or a Bachelor’s degree; members of the ROTC Band; members of the Rayadillo; students 30 years or older; veterans of the armed forces, navy, or air force; and students who have served on a full-time basis for at least 2 years in the armed forces, navy, or air force” (UPD-OUR, 2004, p.13).

Such formulations effectively rule out other possible points of contention, and effectively bar other considerations from being invoked later. While a rule may identify exceptions, the exceptions are themselves uniformly adopted in any case that resembles them. In fact, it may be held that the inclusion of such special cases makes them part of the rule itself, and they may thus be indicated as sub-rules.

***A room for discretion.*** The preceding formulation can only be a partial notion of rules though. Rules are not always black and white. Rules may allow room for discretion. In the case of making tacit rules more explicit, McCormick (1998) held:

Different people trying to articulate a more concrete version of the underlying idea for a particular setting would come up with different formulations, all quite reasonable...There is no special reason to suppose that among a range of reasonable interpretations, just one has to be the right one. (p. 308)

Tacit rules have nuances. In attempting to make them more pronounced, one may be faced with more complications because the basis for agreement as to why people observe tacit rules may only be a function of “overlapping consensus” (MacCormick, 1998, p. 308), and the attempt to expressly identify them may expose that no single value is uniquely right. Such complication happens since making a rule more explicit is likely to allow dilemmas to arise in relation to the more explicit version; and this may occur in an infinite regress especially when a new attempt to evade the new complication prompts one to make a more explicit version of an already explicit rule which, in turn, would bring about its own set of complications (Luhmann, 1972, 1985).

Just as there are many values and value-laden judgments, there too may be other rules, each having its own valuation of states of affairs. Much to our desire to formulate rules and invoke them to regulate human conduct, discrepancies in their application are apt to arise. Rules can sometimes be very loosely framed, may leave much room for determining cases with merit, and may run the risk of an over-inclusion or under-exclusion of cases (Schauer, 1995; Sunstein, 1995). Rules are not solely concerned with raw data or rigorous principles, anyway. They have an even greater function that involves human beings and their related states of affairs which are as dynamic as humans are, never fully understood in just a single formulation of rules, and never fully dealt with by simply using a strict set of standards.

Any individual who forms part of the same category to which the rules apply, ought to receive the same treatment in the application of the rules (Perelman, 1963). Perelman further claimed though that the similarity in the category in which people are grouped is no guarantee to accord them an equal application of rules since “certain differences make it impossible to consider as alike beings distinguished by characteristics judged to be essential – their merits, needs, works, rank, origin, or any such combination of characteristics” (p.70). While the call for rules to uniformly treat individuals can be seen as beyond doubt, their applications may not widely cover all concerns.

In the UPD-OUR requirement that 24 academic units be passed within one academic year, discussed in the earlier part of this paper, a case may arise in which a student went either on a leave of absence (LOA) or an absence without official leave (AWOL) for a semester and may, as a result, pass less than 24 units. There is nothing in the rule that supports such a case and may provide no adequate basis for administrators to tag students falling under this case as having incurred a scholastic deficiency.

The same can be said of the academic rule on attendance. While it holds that unexcused absences reaching 20% of class hours is to be sanctioned with a grade of 5.00, it is not quite clear how students who only attended class once are to be dealt with. While, based on the rule, the student concerned should get a 5.00, there is much sense in knowing that one meeting is not enough basis for giving the student a grade of 5.00 and, in such instance, giving the student a forced drop may be the just thing to do.

O'Neill (2000) recognized that "practical principles (and rules) never provide complete guidance. The thought that there are complete rules leads only into an infinite regress" (p. 69). We can see some support for her claim in Bourdieu's (1977) notion of pre-regulated rules:

We are a long way from norms and rules: doubtless there are slips, mistakes, and moments of clumsiness to be observed here as elsewhere; and also grammarians of decorum able to state what is right to do and say, but never presuming to encompass in a catalogue of recurrent situations and appropriate conduct the "art" of the *necessary improvisation* which defines excellence. (Bourdieu, 1977, p. 8; emphasis in the original)

Rules, along with the guidelines they prescribe or with the infringements they want us to avoid, are rarely clearly black and white, all good or all bad. There are degrees which general or domain-specific rules attempt to address, but the rules themselves may be loosely formulated and may be subject to a number of different interpretations, which are likely to give rise to exceptions.

***The need for an exception.*** O'Neill (2000) claimed that rules leave little room for consideration. This, she thinks, is almost a given. She acknowledged, however, that the objections to such rules, if such rules are present at all, have a good degree of plausibility. She claimed further that the question regarding degree of "uniformity" or "differentiation" imposed on humans' multi-faceted existence is worthy of consideration (p.54).

Some cases may be really especially unique, with incommensurable features with the general account, such that it is inevitable that they be made into exceptions. So what need do individuals have of exceptions then? A case's falling within or outside the values of a given rule helps determine whether or not it can invoke an exception. If the case in fact falls within the values that a rule covers, but an individual is warranted in not following the rule, then an exception may be allowed to obtain (Miller, 1956; Endicott, 2001).

The academic rule governing the admission of transfer students enumerates a number of conditions with which transfer applicants have to comply. In one portion of the rule though, it is stated that “any or all of the mentioned conditions may be set aside in exceptional cases, upon the recommendation of the unit’s Committee on Admission or by the dean or director concerned, upon approval of the Chancellor” (UPD-OUR, 2004, p.7). Another example involves the UPD-OUR (2004) maximum residence rule:

Students who fail to finish the requirements of a degree program of any college within a prescribed period of actual residence shall not be allowed to register further in that college. Under meritorious cases, extension of residency may be granted. (p.30)

While we earlier identified rules with intended equal application and rules that identified exceptions right on, here are examples of rules that allow an exception but with no indicated guidelines or parameters. If exceptions were allowed at all, how are these cases to be judged against each other? The distinctions of cases cannot be arbitrarily made (Sunstein, 1995). In deciding which of the rules of transfer admission are to be set aside or which students are worthy of being extended beyond their maximum residence, it is necessary to develop appropriate qualifications.

But what exactly makes a qualification appropriate? Hage (2000) noted that exceptions ought to be exceptional. There are no exceptions to rules unless there are special reasons to make them (p. 380).

Let us use another example to sharpen our intuitions. A particular unit of the University may decide to implement a stricter rule in readmitting a student from Leave of Absence (LOA) or Absence without Official Leave (AWOL) by not allowing him/her to go on another leave within the current academic year to be able to compensate for lost time in school. Within the same academic year though, the student is unable to continue with his/her studies due to a medical condition that requires the student to rest.

Given the unit’s condition, normal cases would forbid the student to apply for LOA or to go on AWOL. If the student decides otherwise, his/her application for LOA is not likely to be approved, or if he/she goes on AWOL, his/her chances of being readmitted will be relatively slimmer. If the student’s medical condition is considered in relation to the unit’s stricter rule, however, the student’s case gains more merit and would require an evaluation slightly different from how normal cases would be dealt with.

The school may allow the student to file an LOA since it may rule that the case is in fact meritorious. The student takes exception to the given condition, which would never had been the case if only the unit's condition obtained and the student, without any valid reason, wanted to file an LOA or go on AWOL. The exception is warranted. Markus (1998) claimed that "one doesn't just break the rules, but use 'considered judgment'; that is, one has to identify breaking the rules with reasons" (p. 262). Brady (1987) held a similar view: "while few rules are exceptionless, [like the rules on graduating with honors, removing an Incomplete or a grade of 4.00 discussed earlier] there are exceptions that are made with adequate reason" (p. 436).

The student's case, as Hage (2000) put it, may be considered "exceptional" and may therefore be made an exception. There was a special reason to do so. When one sees a police mobile going against the traffic, one would infer that there probably is the presence of an immediate threat and that whoever is driving the mobile is simply performing his/her function to maintain peace and order. If a traffic enforcer disrupts traffic flow to give way to an ambulance with a patient who needs immediate medical attention, other motorists hardly ever complain and would often yield. There was a special reason to do so. If it was any other motorist that disrupted the traffic flow at all without any acceptable reason, or if it is any other person who, out of whim, went against the traffic flow or decided to let the traffic on red signal go, then affected individuals are likely to complain and question the necessity of the situation.

Notice how special and justified reasons figure in the making of exceptions. The fact that one can apply for a leave of absence immediately after being readmitted from absence without leave does not regularize such cases. Special reasons need to exist; but there is no set of guidelines that allows one to objectively assess the specialness of a case.

### **HOW "SPECIAL" IS SPECIAL?**

If there were complete rules for judging, then there would not be much left for judgment to do. O'Neill (2000) recognized that the inadequacy of rules to guide action must be complemented by judgment. She recognized at the same time however that: "Yet to say that the gap must be 'filled by judgement' which can engage with (or at least reach towards) the particular, is little help unless we understand what judgment does" (O'Neill, 2000, p. 55).

We live in a pluralist society and there is a need for individuals who can seek and come up with ways of thinking that respect the rigidity or abstractness of rules or

the multiplicity of obligations to augment the gap between rules and the cases they cannot sufficiently cover.

Not all reasons and not all minute details that rules are thought to have left out in their application count, though (Schauer, 1995). For one, some people may be blinded as to the real worth of the case at hand and so attempt to construct arguments around it to show how special it is. The moral or social unacceptability of the supposed exception may also serve as a constraint. One may wish to create an exception to a rule, but if it largely goes against established standards and values, then the proposed exception may even be considered ridiculous. Deliberation, regarding the creation of an exception to a rule, must still maintain an objective stance, capable of determining if the case is really worthy to be made an exception. Some individuals may also not realize that the case at hand hardly qualifies as an exception. A case may be rendered meritorious by someone whose evaluative judgment of the case involves personal considerations or whose conceptual knowledge is limited or is significantly different from others who would judge the case differently. More so, the reasons for invoking an exception to a rule may be merely pragmatic than rational, on account of possibly benefitting from it or preventing a friend or a loved one from being sanctioned. As the situation demands, one may sometimes feel the need to make an exception of one's or someone else's case with whom one is relatively close while denying it to others in normal circumstances. It may also be that people have been used to seeing or accepting exceptions to rules that they think special reasons are not required and that exceptions are simply trotted out.

Human beings may also at times be opaque to themselves and despite trying to be authoritative about their own thoughts, which are within their privileged domain, they can still fall prey to self-deception and selective judgment. On a day-to-day basis, we may not fully realize or understand what is going on in our mind and we are sometimes a little less than warranted due to a dispassionate observation of our states of affairs.

Such constraints necessitate the presence of a number of qualified individuals to partake of the deliberation, especially of important issues, as it should minimize the impact of factors irrelevant to the judgment of the case. Two or more heads are indeed better than one. It should not just be any other individual, though, who should be asked to deliberate on the matter, but individuals with moral ascendancy, who are likely to be able to handle emotions properly (MacCormick, 1998). When one is in the grip of a strong emotion, one is hardly able to deliberate. Emotions may distort conviction when attempting to come up with a correct process of thought

and consequently when rendering judgment. Emotions may ignore complexity and may blind individuals to important shades of gray in situations and problem-solving discussions. The world is not easily understood simply, because it is a complex web of choices, decisions and causes with which emotions are poorly equipped to deal.

In making an exception to a rule, it would not suffice to simply say that a special and a justified reason exists. One has to *know* what makes such reason justified and special, and if it is supposed to be considered special in the first place. Even in rules with established exceptions, it is important for people to deliberate how the case at hand fits the conditions of the identified exception. Since there are no objective guidelines to absolutely determine meritorious cases, the ad hoc criteria would have to be carefully arrived at through a correct process of thought that is capable of accounting for the case in question against other relevant states of affairs.

Judgment, as Kant said, is a “talent” (as cited in O’Neill, 2000, p. 62). O’Neill (2000) qualified this view further:

Judgment does not follow algorithm: there are no complete rules for the application of rules. It is not a matter of deducing comprehensive instructions for action from relatively indeterminate principles. Rather it is a question of finding ways of meeting multiple constraints and recommendations set by a plurality of principles. Although no recipe for judging can be set out, the constraints it imposes often allow agents to distinguish better from worse judgment. (O’Neill, 2000, pp. 62-63)

We are led to Aristotle’s (1962) notion of practical wisdom in the *Nicomachean Ethics (NE)* which involves deliberation and the “correct judgement and assessment of what is conducive to a certain end, which in turn allows an individual to render it with conviction” (p.162). Aristotle added that practical wisdom itself requires that one has “sympathetic understanding,” which, he further argued, “men have by nature and is acquired at a given stage of life” (p. 166).

Both the Kantian and Aristotelian notions of good judgment boil down to a virtuous agent who acts and decides as closely as possible to maxims that can become universal laws (Kantian view) and to the development of a good character that would incline an individual to choose rational courses of action (Aristotelian view). The notions of duty and of the universalizability of actions touch on the concept of virtue which allows an individual to act with consistency. The actions that spring from a good character are those that are capable of being universalized, anyway.



When an individual deliberates concerning the making of an exception to a rule, he deliberates “about things that are in his power and can be realized in action” (Aristotle, p. 62) and as close as possible to the rules governing the case in question. Similar to Rawls’ (1971) point regarding the function of rules to advance the good of those taking part in it, Aristotle (1962) made the following claim about deliberation: it “operates in matters that hold good as a general rule, but whose outcome is unpredictable, and in cases in which an indeterminate element is involved” (p. 61).

It is also for this reason that deliberation can deal with rules and exceptions than with things that obtain necessarily because of their arbitrary character. Deliberation also has a “truthful and rational characteristic” (Aristotle, 1962, p. 153) which is why it is theoretically supposed to be geared at people’s good. It, being a truthful and a rational activity, excludes merely pragmatic considerations and guarantees that appropriate values, interests and considerations are covered and reviewed. More so, it guarantees that there are valid and sound reasons for allowing exceptions to rules.

## **THE RE-CREATION OF RULES AND THE DYNAMISM OF VALUES**

In spite of the objectivity that rules achieve, they are still a human creation. Objectivity, at least within a social spectrum, is a continuous process of discourse which involves the transformation or modification of social standards that account for the birth of new values and/or of existing values that have, over time, acquired a different social dimension.

Humans would, at times, try to negotiate with the rules in social practice. Human beings anyway are not mere machines that are expected to function according to a fixed set of data that is fed to them. Machines do not think and only operate upon the commands with which they are programmed. While they can recognize right from wrong numerical values or grammatical structures, machines lack the capacity to function according to varying contexts. That is, they are programmed to function within a very limited, linear dimension, with no regard at all to prevailing states of affairs. On the other hand, human beings think. But they do more than just think; they think about thinking and are almost always in a state of reflecting on the foundations of some, if not most, of their actions and their related consequences, positive or otherwise. Human beings are moral, legal, and social agents that cannot be contained in just a single or a very limited formulation of rules.

While human beings recognize the necessity of following rules as part of an established order, they, at the same time, recognize that elements of vagueness, ambiguity, inadequacy and prejudice may pervade the formulation of rules, in which

case, there may be areas on which the rules are silent, unjustly applied to, or cannot conclusively render decisions to.

In the course of addressing human interaction, the rules that previously guided behavior are reproduced. Along with this reproduction, however, a process of re-creation also takes place (Giddens, 1986). A similar view was held by Bourdieu (1977):

This practical knowledge, based on the continuous decoding of the perceived – but not consciously noticed – indices of the welcome given to actions already accomplished, continuously carries out the checks and corrections intended to ensure the adjustment of practices and expressions to the reactions and expectations of the other agents. It functions like a self-regulating device programmed to redefine courses of action in accordance with information received. (Bourdieu, 1977, p. 10)

In the reproduction and re-creation of rules, Giddens (1986) argued that even codified rules, such as laws, “are characteristically subject to a far greater diversity of contestations” (p.18). Thus, the non-negotiability of rules and their incapacity to allow exceptions may itself be seen as a provisional characteristic of formalized rules which, over time, may no longer be capable of accounting for valid challenges to the scope of cases they cover (Endicott, 2001). Giddens (1986) argued for this point further saying: “Rules typically intersect with practices in the contextuality of situated encounters: the range of ‘ad hoc’ considerations are chronically involved with the instantiation of rules and are fundamental to the form of those rules” ( p.18).

Giddens' view overlaps with O'Neill's earlier claim on the incapacity of rules to provide complete guidance and with Bourdieu's view that there are slips and mistakes and that we are still far from achieving notions of excellence in social practice.

In his notion of communicative action, Habermas (1987) held that the mere fact that validity claims can be criticized paves the way for the identification and correction of mistakes. While institutions serve as watchtowers of behavior through the rules they implement, they also continuously examine the rightness of actions or norms.

While everyone is for the establishment of rules, they may have varying interpretations of them. Assign ten people to interpret a rule and they are likely to come up with eleven different interpretations of it. There are gray areas that are hardly accounted for by rules alone. Individuals may come to understand that some

rules of the land have distorted interpretations and so may proceed to identify ad hoc measures to set things right.

### **JUDGING EQUITY AND CONSIDERATION OF THE PRIMARY PURPOSE OF THE RULE**

When individuals correctly deliberate to account for the shortcomings of rules, they do so for purposes of equity. This happens whenever aspects of social existence that form part of the values of the general public are left out of consideration (Perelman, 1963).

Sometimes, judges or qualified individuals may invoke rules based on stringent guidelines in explaining certain cases, but this need not always be the case; rules may fall short of certainty, and an appeal to equity may be a necessary course of action to take. Social affairs that used to be covered by the same rules, for instance, are themselves dynamic, and the conditions that existed when they were laid down may have changed already. While the rules are right for the most part, other cases may make their application fail. Changing the rule may be the most prudent thing to do, but to change it may take as much time as was needed to institute it and so creating an exception to it would be the more practical action to undertake.

There may also be outliers which "...lie outside the realm of regular expectations, because nothing in the past can convincingly point to its possibility" (Taleb, 2008, p. xxii). And when this outlier appears, it usually carries a strong impact. Most aspects of our social life are based on the ordinary and normal occurrence of states of affairs. It may be because they are easier to describe or it may be that they are the only ones that humans can describe. Parts of this same existence, however, can themselves be based on rare but consequential occurrences, which are rather not easily found. Some parts of the world and of our knowledge of the world may also at times be inaccessible to us. In another book, Taleb (2004) held that "there is the existence of inherent limitations and flaws in the way we think and act and an acknowledgement of this fact requires individuals to action" (p. xlv).

Similarly, there are events, which may not have been thought to exist, that shape our valuations of the world; but the moment they present themselves to us, they significantly affect our perception of states of affairs.

Rules function according to the criteria of what has value, and the presence of outliers can challenge and possibly modify the way through which they are carried out. They may indicate a substantial reshaping of our conceptual knowledge even.

Equity works to preserve the integrity of rules while minimizing the inconsistency of their application in varying cases, including those that were not foreseen to affect their application. Equity serves as “the crutch of justice” (Perelman, 1963, p. 80) so to speak.

It may also be the case that in creating exceptions to rules, in addition to correct deliberation, individuals may also look into the purpose for which the law was created (Endicott, 2001). This may be important in properly interpreting the essence of the rule in relation to a case. The exceptions, whose possible existence was not initially thought of, may acquire added dimensions and a different character, in which case, it will be justified to hold them. Rules are created for just and democratic purposes. The consideration of making properly deliberated exceptions may itself promote further this democratic and just character of rules. Brady (1987) held that: “To the extent that our rules and regulation fall short of the normative requirements established by the set of metarules, exceptions to our rules can be identified that bring those rules into conformance with the set of ultimate principles” (p.437).

There is therefore a good degree of plausibility in Perelman’s (1963) thought:

But any imperfect normative system, if it is to be ethically beyond reproach, should draw fresh inspiration from content with the more immediate and more spontaneous values. No system of justice, and therefore rules, should lose sight of its imperfection. Every system should thence conclude that an imperfect justice, without charity, is no justice. (p. 60)

## **CONCLUSION**

We strive to live by rules to prevent certain practices one can imagine to have existed only in barbaric times when people basically carried out their activities as they deemed fit or right, independently of the existence of principles that would have provided a good oversight for the assessment of such actions as unjust.

Justice, as an eternal essence, has conceptual notions that cannot be fully exhausted in the formulation of rules, unlike concepts of an empirical nature whose sense and reference are relatively easier to identify.

Exceptions are made not to discredit the whole system of rule making for surely, and there is no disagreement on this, there are areas that demand their equal execution whether it is the interests of friends or enemies, or, the rich or the poor that are at stake. Rules cannot simply be tweaked to adjust their scope with the inclusion of arguments that appeal to pity, force, emotions or ignorance. To be sure,

such considerations to uniformity are relevant, for in taking personal and irrelevant arguments into account, a greater form of injustice may be committed. Only then will individuals have a feeling of security and certainty in the administration of justice; but that is not all there is to rules. If they are to be faithful to the purpose for which they were formed, which is to address human conduct, regulate them, and create social order then they would have to continue taking into consideration related values that deserve proper evaluation.

Exceptions to cases may be identified if the reason is not merely exceptional but also special from a rational point of view and if it is one that has passed the judgment of individuals competent enough to declare its existence meritorious.

## ENDNOTE

<sup>1</sup> The University of the Philippines Diliman College of Social Sciences and Philosophy (UPD-CSSP) Office of the College Secretary convenes a special meeting of the CSSP Graduation Committee when there are academic cases – such as when students appeal to graduate with honors in spite of having violated a corresponding academic rule set by the UPD-OUR – that need to be decided on. More so, beyond my participation in the CSSP Graduation Committee, as CSSP Assistant Secretary, I also have the opportunity to decide on cases that involve, among others, the tagging/admission of ineligible students who failed to pass a specific number of units in a semester/in one academic year. My exposure to such academic cases necessarily involves rules and the attempt of students to negotiate with them.

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