

Nicholas Rescher
On Rules and Principles
A Philosophical Study of their Nature and Function

For Arnold van der Nat

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PREFACE

This study of rules and principles was projected and executed in Pittsburgh during the spring of 2010. It forms part of my longstanding concern with issues of rational deliberation and decision.

I am grateful to Estelle Burris for her ever-competent aid in preparing this book for publication.

Pittsburgh, PA
May 2010

INTRODUCTION

This is a study of the nature and function of rules and principles projected from a philosophical point of view. The role of procedural principles in human affairs is crucial and ubiquitous, and the theory of such norms is accordingly bound to play a key role in philosophical inquiry regarding matters of thought and action. Their prominent role in the conduct of human life makes the theory of rules and norms an important topic of considerations on the agenda of philosophy.

How is a philosophical investigation into rules and principles to proceed? It is in order to offer a word regarding the methodology of inquiry at work in the present investigation.

Basically three phases are at issue:

- The *empirical*, discourse oriented phase. How does the relevant range of terminology (rules, mandates, instructions, instruction-following, rule breaking, etc.) actually work in matters of everyday communication?
- The *analytic* function-oriented phase. At what objectives does this range of discourse aim? What objectives are at issue here and what purposes are being served by the use of this language?
- The *philosophical* phase. What constructive and instructive bearing upon the relevant range of philosophical issues do the linguistic and functional clarifications of the proceeding phases constitute to our understanding of the relevant philosophical issues?

Of course these three phases of deliberation do not fall into distinct sectors or chapters of the book; they become intermingled in the course of discussion. They are as it were leitmotiv themes that are recurrent throughout. But the attentive reader will have no difficulty in discerning them and will readily remark their collaborative interaction throughout.

It will be helpful to foreshadow, even at this early stage, some of the key points that the present investigation will bring to view and highlight:

- The procedural indispensability of rules and principles in human affairs.

- The procedural insufficiency of rules to resolve all cases in complex matters.
- The need for rules to be validated in functional principles.
- The differentiation of rules into various distinct classes along many different taxonomic lines.
- The key role of rules in implementation hierarchies as a linkage between functional principles geared to project teleology and the concrete rulings of particular cases.
- That every rational enterprise has its characteristic body of fundamental principles that inhere in the functional and purposive nature of the enterprise at issue.
- That these principles provide for a descending cascade of subordinate norms, rules and (ultimately) specific rulings—all of them unified, coordinated, and validated by subordination under the goal structure of the enterprise.
- That such hierarchical subordination obtains across the board—irrespective of whether the enterprise at issue is mandatory for us (cognition, nourishment) or optional (negation, dentistry). And whether it is theoretical (philosophy) or practical (agriculture).
- The thread of purposive fundamentality that runs throughout the nomic hierarchy at issue embodies a functional and purposive rationale. The present theory is accordingly of a decidedly pragmatic orientation.

In sum, the present book develops an account of the theory of rules and norms that proceeds from a decidedly pragmatic point of view bringing into the foreground their role as instrumentalities in the management of human affairs.

Rules and Principles

(A Study of the Rationality of Norms)

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Chapter 1

RULES

1. THE NATURE OF RULES

SYNOPSIS

(1) Rules play a crucial role in shaping our rational proceedings, alike in matters of belief and of action. (2) Rules have a categorical structure: there is a standardized register of questions one can ask about any rule. And this engenders a characteristic taxonomy of rules. (3) The ascription of rules to others is a matter of fundamentally inductive inference.

Rules figure importantly in our lives. And they are important for philosophy as well, because philosophy is by nature the love of wisdom, and it is invariably wise to live by the appropriate rules.

Although the term rule (*regula*) originally functions in a primarily legal context of usage, the Stoics, who projected the idea of *laws of nature*, also correspondingly enlarged the use of rules into a wider range. Thus St. Augustine often spoke of the rules that function in the *artes liberales* (grammar, music, etc.), the ancient mathematicians put rules of mathematical demonstration on the agenda via actions and theorems, and ancient technicians—and builders in particular—projected rules of mechanical procedure. We still refer to a straight-edged measuring instrument as a ruler. And in traditional terminology a king too is a ruler. He rules by “laying down the law”—that is, by establishing the rules that prevail with respect to his subjects.

Rules are generalized procedural instructions. They specify what is to be done in certain circumstances. They specify that something of a certain general sort is to be done in conditions of a certain general sort. (And sometimes they stipulate not only the that of it but also the how of it.) Accordingly they coordinate the circumstances and conditions in which an agent may find himself with a course of action that is to be followed in such a case.

Rules of conduct are often framed in the form of precepts or maxims, this being a pithily expressed rule of conduct purporting sagacious counsel. The *Pocket Oracle* of Balthazar Gracián¹ or the *Maxims* of the Duc de la Rochefincauld afford typical illustrations. For Immanuel Kant a maxim is, effect, a rule that an agent sets for himself as a determinative guide for his own conduct. (In this regard he sees moral virtue as tantamount to wise self-legislation.)

A universal rule has the format

- In circumstances *C* always/never do *A*.

And this has noteworthy consequences. For here the features of universality at issue with always/never here functions in a limited and conditional way, relations to the circumstances. The second key feature is that of imperation or command regarding the performance of the cautions *A*. This means that in effect a rule can be views as an injunction to truth-making:

- So proceed as to make it true that: “Whenever circumstance *C* arise then action *A* is (or: *is not*) performed by you.

A universal rule is, in effect, an injunction to truth-making with respect to generalities.

So obeying a rule is something that only an intelligent agent can do. Now an individual has little difficulty in obeying a general rule like “Always salute an officer you meet” on a given occasion—or every on a given day. However, we cannot say that he has obeyed it in a temporally unqualified way until he is at the end of his military career (or perhaps his life). Rules are not obeyed in unrestricted generality, they are obeyed in particular occasions or groups thereof.

Rules appertain to agents—indeed to intelligent agents who can, by willing determination, proceed to follow instructions. The generalization

- (1) Whenever the doorbell button is pushed, the doorbell rings.

May well be true, but is not a rule. Only figuratively and metaphorically is it an instruction to the doorbell to the effect.

- (2) Ring whenever the doorbell button is pushed.

On the other hand, the instruction to the parlor-maid

(3) Answer the door whenever the doorbell rings.

Enjoins upon her the rule

(4) To answer the door whenever the doorbell rings.

And this explicit rule will, by virtue of the fact at issue in (1) carry in its wake the consequential but merely tacit rule

(5) To answer the doorbell whenever the doorbell button is pushed.

But such an implicit “rule is not an authentic rule, any more than a stuffed owl is an owl. Like the pseudo-rule at issue with (2) it fails to function in the agent’s motivational repertoire, as an authentic rule must do.

Rules have a limited jurisdiction. They apply not necessarily to everyone at large but merely to everyone of a certain sort (practicing physicians, sea captains).

Obedience to a rule is thus a matter of conforming actions to generic types of conditions. Such processual uniformity is something at which machines are particularly adept. They, however, are not free agents who choose to conform to rules, but merely function “as though” they were so. Accordingly to speak of machines as “obeying” certain rules in their *modus operandi* is to employ a figure of speech.

To be sure, rule-conforming behavior can result in various distinct ways. For example, it can be the product of:

- conscious and deliberate effort
- habituation, be it self-produced or externally imposed (as per Pavlovian conditioning)

Who makes the rules? Where do they come from?

Various agencies can be operative in the institution of rules:

- *Human fiat*: the rules of games, for example, are instituted by those who invent or modify the games at issue.

- *Personal customs*: the rules of behavior that characterize a person's habits, for example.
- *Social customs*: the rules of fashion, for example, or of marriage ceremonial.
- *Legal or legislative mandate*: the rules governing the transfer of real property, for example.
- Hybrid cases of *Legislated custom*: the rules of the road, for example, or of royal succession, which give formal sanction to a pre-established custom.

Rules can vary in their standing, and in point of their origination rules fall into four classes:

1. *Behavior-reflective* rules that reflect prevailing regularities in the comportment of people, something that is a matter of general practices and nothing more. Such rules emerge from the behavioral regularities and exhibit them to view. The individual who breaks such a rule will simply be considered eccentric.
2. *Behavior shaping rules* that constrain (rather than merely reflect) behavior. Such rules are stipulated as such and enforced upon the behavioral practices of people. Rules of the sort in driving are an example. They are instituted by design and their violation carries sanction of some sort—if only public disapproval.
3. *Mixed-status rules* which begin in merely behavioral regularities but are then impressed upon the behavior of people by various agents and agencies of social conditioning (teachers, social arbiters, etc.). The rules of orthography and grammatical usage are of this sort—as are the rules of etiquette.
4. Finally, there are also those rules, established by mere fiat, which define a certain range of practice as such. The rules of chess or of tic-tac-toe are of this nature. The individual who does not know such a rule is simply not “playing the game.”

A rule must be a stipulation *for someone to do something*. Even a “claim” is not a proper claim unless it is made *by* someone, as a “rule” is not a proper rule unless it is so *for* someone. Two different conditions are at issue here. The first is the matter of *jurisdiction* as it were—that is the range of persons to whom the rule applies. The second is the matter of *situation* that is, the range of circumstances in which the rule comes into operation.

A rule need not specify what *must* be done, it can merely specify what *may* be done. The queen at chess can move laterally (like a rook) or diagonally (like a bishop). Again, the player has a choice for opening: he can begin play of the game by moving a pawn or a rook: both are available moves. Accordingly, two sorts of rules can be envisioned: the mandatory and the permissive. All the same, the aspect of imperfection is critical for rules. Those theses that are permissive in saying that either A_1 or A_2 may be done are not actual rules unless they go on to stipulate that at least one of these alternatives must be done.

Jurisdictionally, a rule can be either universal and applicable to everyone or rangewise delimited and applicable only to a certain type or group of individuals. Situationally a rule can be one of: (1) unrestricted applicably in all situations (2) general and applied to all normal or ordinary situations, or (3) limited and applicable to only in situations of a certain special kind. The defining features of categorical rule is that they are *both jurisdictionally universal and situationally exceptionless*.

It was the characteristic feature of Immanuel Kant’s ethical philosophy that he insisted that all authentic moral rules are categorical.

- (1) *Mandatory* or *imperative*. Throughout situations of type T when X occurs one must [or must not] do A .
- (2) *Optional* or *permissive*. Throughout situations of type T when X occurs one may do A or B .

Rules thus envision three sorts of actions: required, prohibited, and optional. In any event, rule conformity is a matter of all or nothing: within the relevant range of procedure one either honors a rule or breaks it.

In assertoric substance and format rules look to be universal: they talk in the language of always and never. But in Status or standing rules may be

- *categorical* in broking no exceptions whatsoever

 Display 1

THE BINDING STATUS OF RULES

I. CATEGORICAL

Categorical rules are binding upon everyone in all circumstances. Examples are

- Always respect the rights of others.
- Never inflict needless injury.
- Never make factual claims without any evidence for them

II. GENERAL

General rules are binding upon everyone in “normal” conditions and “ordinary” circumstances. Examples are

- Always keep your promises.
- Never kill people.
- Never make a claim you believe to be false.

III. CONDITIONAL

Conditional rules are binding upon those those who wish to realize a certain optional end or objective

- Always establish credibility with someone you hope to provide.
- Always secure the ingredients first if you plan to bake a pie.

-
- *general* in being geared to the normal or usual course of things
 - *conditional* in specifying what an agent is to do if he aims at a certain end or objective to the elective aims and purposes of the agent. They say, in effect, “Here is how you can or should proceed if you are trying to reach a certain result (e.g., bake a pound cake, exhibit the cube root of a number).”

The fundamental rules of morality, rationality, and law are categorical.

The situation is actually even more complicated because rules can also be quasi-mandatory. For there are two sorts of mandatory rules: the outright *universal* and the merely *general*. The former, *universal* rules purport invariability: they require that the agent *always* or *never* to do something:

The latter, *general* rules merely enjoin what is to be done generally, ordinarily, “as a rule,” whenever practicable, unless unusual circumstances intervene, or the like. Such general rules do not specify flat-out and adequately that something or other is always to be done, but only tentatively and provisionally that it is to be done UNLESS there is in the circumstances a good reason for not so proceeding. They require conformity only:

- barring impediments
- unless circumstances counterindicate
- under unreal conditions
- whenever practicable

Note, however, that if the exceptions can be made fully explicit, the rule can still be seen as a universal mandate outside this determinate range.

Rules do not offer suggestions. They do not indicate what one might possibly do but stipulate what one should or must appropriately do.

Are there unbreakable rules?

No—rules canalize the behaviour of free agents in situations of choice. They can conform or not confirm.

However, in some cases (specifically that of games—there seem to be no others) the rules are *constitutive* of the practice at issue. If you violate the rules of chess you are no longer playing chess

In general, however, rules are changeable. Corporate executive like to change them in their firm. Legislatures exist to change them. The drift of custom manages to change them. Such changes are sometimes for the good and sometimes not. It all depends on whether they prove effective in situations for whose management the rules are instantiated. But one significant point must not be lost sight of here. Any change in the prevailing rules is to some extent confusing as people have to reconfigure their expectation in the light of these changes.

2. REALMS OF PRACTICE

All rules are rules of practice—even the so-called theoretical or cognitive rules, seeing that for inquiry and developing knowledge is itself a practice.

The various domains of thought and action—i.e., “realms of practice”—differ with regard to the sorts of procedural rules that are appropriate for the field. In mathematics, for example, one would be unwilling to accept merely general rather than exception-admitting rules. We want to have it that

- Never class a number as prime except for 2.

rather than

- Numbers divisible by two are usually to be diversified as non-prime.

And the same situation holds in natural science. In botany, for example, we want to have it that

- Expect an eclipse of the sun only in those same circumstances where the moon intervenes between the earth and the sun

And not

- As a rule, do not expect an eclipse.

The situation is, of course, quite different in an applied science such as medicine. We know how various treatments and medicaments usually function, but there is seldom anything universally invariable about such matters.

The rules (Lat. *regulae*) enjoin a certain regularity: they exist to engender uniformity. Whenever “In circumstances *C* to *A*” is an appropriate rule we accordingly will have it that: “Whenever things run in their proper course, people always do *A* in circumstances *C*”. It is one of the objects. Rules have to form an object to provide for uniformity and predictability. Rules are exclusionary. They stipulate that certain phenomena and certain concatenations of phenomena will not (or should not) exist. Any coherent set of rules dismiss certain situations as unacceptable.

Our present discussion will focus on the most familiar situation that of universal rules. Such rules purport to apply always and everywhere. They are so formulated as to admit of no exceptions, unlike those merely general rules that are porous and permeable.

Display 2

RULE PARAMETERS

- *Action/Operation*
 - Do *A*
 - Do not do *A* (refrain from doing *A*)
 - *Frequency*
 - Always whenever . . . [Positive universal]
 - Never whenever . . . [Negative universal]
 - Ordinary/usually whenever . . . [Standardistic]
 - *Conditionality*
 - The circumstance/condition *C* obtains
 - *Catchment* (range of jurisdiction)
 - Everyone
 - Physicians
 - Parents
 - Etc.
 - *Modality*
 - Must/should [Mandatory]
 - Must not, may not, shall not [Prohibitive]
 - May, is allowed to [Permissive]
 - *Regulative Authority*
-

Since a performative rule is a general injunction that something is to be one in a certain sort of way, and this raises a series of characteristic questions with regard to the descriptive parameters at issue, what? when? and above all why? These issues are outlined in Display 2. As regards the issue of regulative authority, it would be useful if there were a single term to denote someone with the power to set the rules, covering the whole spectrum from pope and dictator down to a shopkeeper vis-à-vis his employees or a lady of the house vis-à-vis her maid. Perhaps regulator will do the job—although actual usage does not in fact quite work that way.

Sometimes a rule is abstracted from a certain uniformity of practice, other times this uniformity is the crucial consequence of a particular rule. Rules are a purposive device. Every appropriate rule has a rational—an ac-

count of how it is that obeying the rule is beneficial and breaking it detrimental with respect to the realization of some good. To be sure, Rules can be overdone: they too can become “too much of a good thing.” The myriad of petty Rules of court etiquette afford a classical illustration of such rulishness gone wild. At first these rules doubtless served a productive function in enhancing the mystique of royalty and creating a sense of social solidarity among the mainstay support of a ruler upon whose power the law and order of the land depended. But over the course of time the means transmuted into a pointless convoluted end in itself.

Statements are evaluated in the range of true/false; actions are evaluated in the range of right/wrong; rules are evaluated in the range of appropriate/inappropriate. The appropriateness of rules—like that of any instrumentality—turns on two considerations: (1) the inherent validity of the end at whose realization this instrumentality is directed, and (2) the capacity of this instrumentality to function in an effective and efficient way in realizing this end. A rule that proves counterproductive or inefficient is for this very reason inappropriate. Rules are thus in general part of a *realm of practice* that is coordinated with a certain contingently determined aim or objective. Only in two cases do they relate to an aspect of our condition relating to what we inherently are (or at any rate see ourselves as being), viz. rational agents. Accordingly the rules of rationality (i.e., reason) rules of free agency (i.e. ethics) are incomparably mandatory for us all.

Rules can be classified on the basis of various taxonomies.

1. by the logical nature of the rule. (Is it universal or merely general? Is it mandatory or permissive?)
2. by the nature of the agents: upon whom is it binding? (Does the rule hold for everyone or only for certified public accountants?)
3. by the nature of the situation. (Does it hold for the high seas or for territorial waters?)
4. by the nature of the relevant domain of action. (Is it cognitive [accepting, rejecting, declaiming] or is it physical [e.g. saluting an officer]?)
5. by being practical or theoretical. (Does it relate to what to think or to what to do?)

6. by the rule-grounding authority. (Is it a legal rule, a “rule of the game?”)

Basically there are three things one can do with respect to a rule

- follow/obey/honor it
- break/disobey/violate it
- ignore it

Whenever a rule is valid and appropriate, the sensible thing is to do the first and proceed as the rule stipulates. But not always! For in a complex world the circumstances that the rule envisions may not arise in the way in which the rule envisions them. When a rule is appropriate there is always a sanction inherent in failing to honor it by ignoring or breaking. The sanction can be imposed by others or simply by “circumstances.” (See Display 3). The breaking of appropriate rules always exacts a price.

Whenever it is acceptable (venial) for an otherwise appropriate rule to be broken, he have to do with an exception to the rule. And any rule that admits of exceptions will thereby be general rather than universal, seeing that such rules brook no exceptions. Strictly speaking, as Leibniz insisted, the rule that admits exceptions is no rule at all, any more than a statement that contradicts itself qualifies as a proper statement.² He saw the common precept that “Every rule has its exceptions” as a fraud and delusion.

It generally takes some effective authority to institute a rule and put it into operation. And a considerable range of possibilities arises here:

- the social system (e.g. moves such as rules of etiquette)
- the political system (e.g. legislation)
- the legal system
- a society of practitioners (e.g. the league of chartered accountants)
- an employer

 Display 3

THE SANCTIONS OF RULES

<u>Types of rule</u>	<u>Sanctions</u>
Rules of law	Civil or civil penalties
Rules of etiquette	Social disapproval
Rules of safety	Rules of injury to self or others
Rules of games	Self-exile from the game at issue
Rules of custom	Being considered eccentric or even crazy
Rules of language	Risk of failed or flawed communication

- a club or organization
- etc.

Moreover, an individual person can—and should!—set certain rules for his own conduct.

- By law (e.g., the rules for voting eligibility)
- By custom (e.g., the rules of etiquette)
- By convention (e.g., the rules of chess)
- By institutional mandate (e.g. rules of saluting in the military)
- By collective agreement (e.g., the membership vales of a club)
- By personal decision (e.g., self-imposed rules of diet)
- By functional requirements (e.g. the rules for extracting square roots)

There are many possibilities here. These include:

- House rules for a hotel or dormitory
- Rules of a firm or company
- Rules of a game
- Rules of etiquette
- Rules of a club, organization, or society
- Rules of grammar

However, some rules have no specific authorizing source. Like the rules of morality or rationality they emerge into being from the world at large. No individual or group specifically institutes them. To be sure, this delimitation holds only of the *explicit* and *basic* rules of operation. These may well engender tacitly ruthless consequences, as when “Never do *A*” entails “Never do both *A* and *B*.” At this level there will of course be no finitude.

Often rules are functionally limited: they apply only to those who engage in a certain particular practice or who serve in a particular role. Physicians, sea captains, and public accountants are all subject to a code of practice that enjoins particular rules or procedure on them. Rules of a game only apply to the players, rules of a profession only for its practitioners, rules of etiquette only for members of the society, legal rules only for those of a particular jurisdiction, etc. However, two sorts of rules are functionally unlimited: the rational and the moral. By their very nature they apply to everyone alike, the governing presumption being that everyone lies within their range of applicability.

Those mandatory universally binding rules obtain states because they relate to what we *are* by nature, rather than what we choose or what rule society imposes upon us (e.g. by drafting us into the military). As *homo sapiens* we are by nature being and human agents—each within a wider community of similarly constituted beings. It is this universal feature of our existential condition that enjoins those universal obligations at issue in those universal rules.

To be of use, a manifold of rules must be of practicable size, something one can manageably survey and employ. If the rules were vastly numer-

ous—let alone infinite in number—they would be of no use to anyone and pointless. If they are to guide our actual proceedings rules must be accessible.

3. PROBLEMS OF RULE ASCRIPTION

Rules are purposive imperatives: they stipulate what must be done within a certain range of practice to possibilize or at least facilitate the attainment of its correlative objectives. Rules serve in regularities insofar as people conform to them. The realization of deniable regularities is, after all, the very reason for being of rules.

However, rule attribution on the basis of observed regularities always involves a cognitive risk. For how can we ever tell which rules it is that people are following? Given that observational data are always finite and limited in scope while rules are generally open-ended we confront the classic “Problem of Induction” to the effect that finite information will always underdetermine our finitude exceeding claims.³ There are issues I have discussed at length elsewhere and I do not propose to pursue the matter here. The upshot is that in particular we keep matters as simple as possible subject to never allowing complications to arise until circumstances constrain them upon us. The key this mode of inductive reasoning—as with others—lies in rational economy.

Thus the inference from a given set of phenomena to an underlying set of productive rules is always risky exactly because it involves an instructive leap from a finite body of data to a larger conclusion that reaches beyond its infinitive scope. As with any other piece of conjectural reasoning we resort to it under the due diligence of inductive inference because as best we can tell the calculations of costs and benefits stands in its favor.

NOTES

¹ For the *Pocket Oracle of Gracián* (1601-58) see Balthasar Gracián, *Oráculo manual y arte de prudencia*, tr. by Christopher Maurer as *The Art of Worldly Wisdom* (New York, Doubleday, 1991).

² G. W. Leibniz, *Nova methodus discendae docendaeque iurisprudentia* (1667).

³ This issue extensively preoccupied Ludwig Wittgenstein both in the case of language and in that of mathematics. Thus see especially Saul A. Kripke, *Wittgenstein on Rules and Private Language* (Cambridge, Mass: Harvard University Press, 1982).