7

Virtues and rules

Timothy Chappell

Righteous art thou, O LORD, and upright are thy judgements. Thy word is very pure: therefore thy servant loveth it.   (Psalms 119.137, 140)

But this shall be the covenant that I will make with the house of Israel: after those days, saith the LORD, I will put my law in their inward parts, and write it in their hearts; and I will be their God, and they shall be my people.   (Jeremiah 31.33)

The letter killeth, but the Spirit giveth life.   (2 Corinthians 3.6)

Men will submit to any Rule, by which they may be exempted from the Tyranny of Caprice and Chance. They are glad to supply by external Authority their own Want of Constancy and Resolution, and court the Government of others, when long Experience has convinced them of their own Inability to govern themselves.

(Dr Johnson, in Boswell's *Life*, Volume 1)

LEGALISM VERSUS ANTINOMIANISM, GENERALISM VERSUS PARTICULARISM

For virtue ethicists and their allies to inveigh against "algorithmic" or "mechanical" rule-based procedures in ethics is one of the best-known rhetorical tropes in contemporary philosophy. Anyone whose ethics depends on moral rules must (so the trope goes) be some sort of primitive: an insensitive and inhumane legalist, a humourless rule-fetishist, a grim robotic puritan, a self-righteous Pharisee. Sophisticated ethicists will have little or no place in their moral thinking for rules; virtue ethics especially, being an "agent-centred" rather than an "act-centred" ethics, will say that the virtuous agent does the right thing *effortlessly*, without the slightest even-mental recourse to the Look-It-Up Book of Doing Right. The same is said of particularism, which here, as elsewhere, seems closely allied to virtue ethics.

This opposition between external rules and inward virtue has its roots – as words like "puritan" and "Pharisee" suggest – in Biblical texts like my first three epigraphs. Many of the theological debates about these texts and the doctrines behind them have been obviously over-polarized. The New Testament is common property between Catholics and Protestants, yet Protestants quite commonly suppose that Catholicism means rule-based legalism and that only Protestants understand "the freedom of the Spirit" that St Paul talks about. The book of Jeremiah is common property between Jews and Christians; yet it is a commonplace of New-Testament exposition that Judaism is about external law whereas Christianity is about following commands that come, like the new law promised in Jeremiah's prophecy, from the heart.

If these enduring theological debates have been over-polarized, so too have been the more recent philosophical debates about rules that so obviously descend from them. Much of this polarization looks highly suspect. For example, there is something obviously implausible about the popular idea that rule-free virtuous deliberation should even aspire to be, in general, effortless. If there are any objectively hard deliberative questions, and apparently there are, good deliberation about those questions ought precisely *not* to be effortless. If Sophie found her choice straightforward, she would not be much of a mother (Styron 1979).

Again, ethical particularism has sometimes been presented as the thesis that all moral reasons have reversible polarity – that for any consideration C which counts as a reason to φ in some circumstances, there are other circumstances in which C counts as a reason not to φ (or a reason to not-φ, or not (a reason to φ): the formulations in the literature vary rather unstably). The examples which were supposed to support the reversible-polarity thesis were never terribly convincing. A moral rule against lying, for example, is not undermined by thinking about the advisability of 'lying' – note the scare-quotes – while playing the board-game *Contraband*. Such examples seem nowhere near as convincing as the counter-examples facing the reversible-polarity thesis; it is implausible to say that the fact that a given action would be a torturing of babies is one which sometimes counts for, sometimes against any action of that type.[1] If particularism retreats to the view that Jonathan Dancy defends in recent work, that "moral judgement does not depend on the provision of a suitable stock of general principles" (Dancy 2004: 7), then the question is what "does not depend" means. Is the particularist saying that moral judgement is *technically possible* without general principles or rules? That might conceivably be true, but it is not very interesting: it is technically possible to drive from Mexico to Alaska in reverse gear, but that does not tell you much about what counts as good driving. Or that moral judgement can be *done well* without general principles or rules? This sounds more interesting, but seems most unlikely to be true. We very often reach, and only *could* reach, our best-considered moral judgements by considering how general principles bear on the situation before us: "I promised to be there, but this is an emergency"; "If I take this car I'm breaking the law, but if I don't take it I am leaving an injured child to bleed to death."

Anyway, what *is* a rule or principle? Surprisingly, given its title, Dancy's classic *Ethics Without Principles* (2004) never directly answers this question. It seems hard to separate the notion of a *rule* from a notion that Dancy is much fonder of, the notion of a *reason.* Even particularist reasons need at least enough generality for supervenience to apply to them: necessarily, if circumstances C1 give agent A1 reason to φ, then qualitatively identical circumstances C2 give qualitatively identical agent A2 reason to φ. But then the

reason that A1 and A2 have is immediately generalizable into the form of a rule: *any* circumstances CN will give *any* agent AN reason to φ. Even particularists must concede that there are rules in this sense – rules which, given supervenience, are simply the same thing as reasons. The difference between particularists and generalists then becomes merely a matter of degree – a difference about how fine- or coarse-grained these rules are.

Given thoughts like these, the recent particularism versus generalism debate seems rather to have run out of steam (at least as a debate in normative ethics, which is what I am doing here).[2] The debate does leave us with the interesting questions, (a) what kind or kinds of things rules are, and (b) what place, if any, rules should have in practical thinking, that is in the practical thinking of a virtuous person. I consider these questions in turn in the following two sections.

RULE-FETISHISM AND MARCUS ATILIUS REGULUS

Reflection on the question "What is a rule?" brings out the variety of possible kinds of rules. Here are six important distinctions which we can use to classify rules. (There may be others too, but there are at least these.)

(a)   Rules can be *positive* or *negative* in their content: they can tell us to φ (like the Fifth Commandment, "Honour thy father and mother"), or alternatively not to φ (like the Sixth Commandment, "Thou shalt not kill").
(b)   Rules can be definitive of *right* action or of *good* action or of *permissible* action.
(c)   Rules can be *defeasible* ("Other things being equal, keep your promises") or *absolute* ("Don't commit adultery no matter what").
(d)   Rules can be *formal* ("Do the right thing") or *substantive* ("Thou shalt not steal").
(e)   Rules can be *vague* ("Don't be a jerk," "Play nicely," "Be fair") or *specific* ("Don't throw your drinks over people," "Don't steal sweets from babies").
(f)   Rules can be *justificatory* ("Whether or not A realizes, this was the right thing for A to do *because* it instantiated rule R") or *deliberative* ("This is what I should do because it instantiates R") or both ("A thought A should do it because it instantiated R – and A was right").

These distinctions shed interesting light on the charge of being "algorithmic" or "mechanical". Once we have a better idea of the sheer variety of possible kinds of rules, we see just how restricted is the plausible scope of that charge. Following a rule which (a) positively defines (b) the right as (c) absolutely required in (d) some substantive and (e) specific action, where the rule-following in question is (f) both deliberative and justificatory – rule-based action fitting *this* description might well have something mechanical or rule-fetishistic about it. Think of someone who insists on paying his library fine simply because it is due, even though it is obvious in the case that no one minds if he does not pay. But actions could be rule-based in lots of other ways *without* fitting this description: just permute the six distinctions to get a sense of the possible variety. So apparently, rule-based actions do not *have* to be mechanical or rule-fetishistic.

Moreover, even rule-based actions that *do* fit this description will not *always* be uncontroversially mechanical or rule-fetishistic. Consider Marcus Atilius Regulus, the

Roman general whom the Carthaginians made take a treaty proposal back to the Roman Senate, forcing him to swear an oath to persuade them to accept it or suffer death in Carthage; he did not even try to persuade the Roman Senate, so in line with his oath he returned voluntarily to Carthage and faced execution by torture.[3] Regulus' absolute refusal to break his oath can certainly be seen as fitting the six-part recipe for rule-fetishism specified above. Yet though it fits that recipe, it does not *have* to be seen as rule-fetishism or mechanical rule-following. Most commentators down the centuries have seen Regulus' action as exemplarily virtuous: as an act of noble defiance of attempted blackmail. What Regulus' action says, on this view, is not "I am bound (by rules)," but on the contrary "I am *free* – and no human schemes or threats can bind me." This is certainly, for example, how Horace sees him:

Atqui sciebat quae sibi barbarus	Well witting what the torturer's art
tortor pararet; non aliter tamen	design'd him, with like unconcern
dimouit obstantis propinquos	the press of kin he push'd apart
et populum reditus morantem	and crowds encumbering his return,
quam si clientum longa negotia	as though, some tedious business o'er,
diiudicata lite relinqueret,	of clients' court, his journey lay
tendens Venafranos in agros	towards Venafrum's grassy floor,
aut Lacedaemonium Tarentum.	or Sparta-built Tarentum's bay.

(Horace, *Odes* III 5.49–56)

My point is not that Horace's view of Regulus is obviously right; but it is that Horace's view is not obviously wrong. That is all I need in order to show that the charge of rule-fetishism cannot confidently be sustained even on the interpretation of what it is to act on a rule that helps it most.

THE DELIBERATIVE AND JUSTIFICATORY ROLES OF RULES IN MORAL THINKING: A SURVEY

More attention to the rather fundamental question of what rules (or principles, or reasons) *are*, and to the wide variety of forms that rules can take, breeds salutary care and nuance in our pronouncements about what role(s), if any, normative ethics should give to rules. We have seen that recognizing any reason at all, even a particularist reason, means recognizing a rule, because of supervenience. Further, any rationally guided approach to ethics whatever can be called a rule-following approach, inasmuch as any rationally guided approach must involve action upon some maxim or dictum, however thin and formal: no one is going to argue with "Do the right thing," and not many are going to argue with "Always do the best" – I would, but that's another story (Chappell 2001).

What further roles might rules play in normative ethics, and especially in a normative virtue ethics? Here we may ask in particular about my sixth distinction above, between justificatory and deliberative rules. First I comment on how this distinction plays out in various normative ethical theories; in the following section I focus on virtue ethics specifically.

Justificatory moral rules are rules that explain why the agent was right to do what she did; deliberative moral rules are those that explain how the agent decided what to

do, or how we deliberate ourselves. (This distinction lines up with the familiar distinction between criterion of rightness and deliberative procedure.) A rule can play both roles. The reason why a rule figures in our justification of an action can be, and often is, because the agent appealed to the rule in his deliberation – and, we say, was right to. But there are plenty of other ways for a moral rule to be explanatorily relevant to an agent's action than by being used in the agent's deliberations. A rule might be mentioned in deliberation yet not used: the agent might say "Lots of people follow R, and that is a consideration for me because I have to think about the consequences of their actions in determining what to do myself." (See the literature on rule consequentialism, and in particular L. Murphy (1993), Hooker (2000) and Mulgan (2001) for inflections of this thought.) Or an agent might give some weight to the fact that those he takes to be his epistemic peers follow and are convinced by R. Or he might take "Lots of people follow R" as evidence (given the content of R) that lots of people are purblind, stupid, wicked or all three. And so on.

Again, an agent's action can accord perfectly with a rule, even though the rule itself has never entered the agent's thoughts. As a matter of logic, there are infinitely many *possible* rules that I could be following at any given time, whether or not I think about them or even could think about them – as every reader of Kripke (1982) knows. Any behaviour whatever *can* be treated as following *some* rule. What matters is not whether any behaviour accords with a rule, but whether it is an explanatorily significant fact about that behaviour that it accords with that rule rather than some other, or none.

Possible positions in normative ethics range from those that give the agent complete conscious access to the reasons why he should do whatever he should, to those that give him no such access at all. There is more than one way, too, for the agent to "have" this conscious access: he might not always be able to access his own reasons at the moment of action, but that does not rule it out that he should be able to access those reasons in a calm hour of reflection. The person who has no access at all at *any* time or in *any* state of mind to the reasons why his right action is right looks like a child, or a victim of ideology in the strict Marxist sense of the term. But the person who cannot always access a reasonably full story about his own reasons at the moment of action need be neither childish nor a victim of ideology. He might simply be sane. The idea of knowing what *all* my own reasons are at any time involves either a bizarrely overstretched fantasy of rationalism, or a no less bizarrely attenuated conception of my reasons, or both.

We can distinguish different possible positions in normative ethics about psychological access to one's own reasons. We have a spectrum from those who give "moral rules" of some fairly substantive and specific sort a maximal deliberative role, to those that give them a minimal deliberative role. The more antinomian virtue ethicists believe that the best way to be is to give moral rules in this substantive, specific sense a minimal deliberative role, perhaps even a null deliberative role. But why should that sort of minimalism be thought desirable?

This question brings back the earlier thought about effortlessness. The virtuous person, on this view, always does what is right without needing to think about the rules (if any). This moves virtue-ethical antinomianism towards act-consequentialism, which also holds that the best decision procedure for an agent is whatever delivers the goods most efficiently, and that this decision procedure might well be effortlessly doing the right thing without having to think about it.

To call such positions antinomian is to suggest that there is an air of liberationism about them. Of course, the reasons why the rules of explanation are entirely unreflected in deliberation and its rules (if it has any) do not have to be this benign. As above, one term for a person who has no grip at all on the real explanations of what he does is the Marxist term "victim of ideology".

At the other end of this spectrum, two possible kinds of ethicist who are very different (from act-consequentialists and antinomian virtue ethicists, and from each other) postulate an absolute identity, a complete coincidence, between deliberative and justificatory rules: call these forthright Kantians and forthright rule-consequentialists. The forthright Kantian says, in line with at least some of Kant's texts, that right action just is action on the right psychologically explicit application of the categorical imperative; the forthright rule-consequentialist says that right action just is action in psychologically explicit accord with the rules general acceptance of which would bring about the best overall consequences in the long run. For both, rules are explicitly a central part both of deliberation and of justification.

A surprisingly hard-to-rebut reading of the *Groundwork* makes it look like Kant himself occupies the forthright-Kantian extreme. (I am less sure whether any rule-consequentialist even seems to be forthright.) However, the *Groundwork* is not Kant's only or even perhaps his most important ethical work; elsewhere, for example in the *Metaphysic of Morals*, Kant does a lot to soften the apparently stark contours of the *Groundwork* picture. So those who start from forthright Kantian starting points tend to move towards the middle ground; and so do initially forthright rule-consequentialists, who typically find themselves bound to admit exceptions to or emergency clauses in the rules they posit. For act-consequentialists typically do not dispense *entirely* with rules in ethics (other than the master-rule "promote utility"): even they admit the existence, on grounds of utility, of rules of thumb. Hence I do not claim that anyone actually occupies the extreme forthright position about the identity of rules of justification with rules of deliberation, any more than I would claim that anyone occupies the other extreme, the antinomian extreme at which the rules of justification and of deliberation *never* coincide. Both extremes are uninhabited for a reason: both are uninhabitable.

RULES AND DELIBERATIVE ACCESS

The previous section has surveyed how rules can play a deliberative or a justificatory role or both in various familiar ethical theories. Now we come back to virtue ethics. Given the distinctions made in the section 'Rule-fetishism and Marcus Atilius Regulus', we can ask a better-defined question about virtue ethics and rules than the usual question, "Should virtue ethics recognize rules?" Or rather, we face two connected questions:

(a) Should virtue ethics be antinomian – should it deny, as far as possible, that anything except formal and vague rules belong in either deliberation or justification?
(b) Should virtue ethics allow whatever rules it recognizes to be deliberatively accessible?

Plausible answers to (a) and (b) are obvious once the complications in the notion of a rule have been spelled out. They are, respectively, "probably not" and "sometimes,

depending on circumstances, and depending on what kind of rule and which of the virtues is in question".

These are the answers because what virtue ethics recommends is that the conditions on practical deliberation and justification that any agent recognizes should be just those conditions that a virtuous agent recognizes. So will a virtuous agent recognize *rules* among these conditions? Given the breadth and variety of possible senses of "rule" – and given that, as noted earlier, in one sense *any reason* is a rule – I think the answer to that is pretty well bound to be "Yes, the virtuous agent will certainly recognize rules of *some* sort."

But what about rules of the substantive and specific kinds, such as "Do not steal," which antinomian virtue ethicists are most inclined to distance themselves from? And absolute rules, or just *prima facie* or *ceteris paribus* rules? Following Rosalind Hursthouse (1999), we might call this question, "What are the v-rules?"[4] But this is a question about the particular demands of particular virtues, so it is best answered by investigating what particular virtues require. There is no reason at all to deny the possibility that *some* virtues might demand our adherence to substantive and specific rules like "Do not steal," even if *other* virtues do not. Sometimes this adherence may be pretty uncompromising, maybe even absolute: consider, for example, a rule against rape or torture. An exactly parallel remark applies when we think about deliberative access: in advance of investigations of particular virtues, the possibility that different virtues might require different levels of deliberative access remains entirely open, and we should not allow it to be closed off *a priori* by sweeping antinomian – or legalistic – generalizations.

Contrast justice with two other virtues: love and self-forgetfulness. (Self-forgetfulness surely *is* a virtue, incidentally: it is a mean between self-consciousness and lack of self-awareness; it is closely connected to virtues like humility and innocence on the one side, and spontaneity and concern for others on the other side.) Justice and love plausibly contrast as to the place in them of substantive and specific rules. Justice is *all about* adjudicating what follows from the rules; love is about caring for someone or something else; love may involve rules, but seems likely to deploy them less centrally than justice.

Justice and self-forgetfulness also contrast in the levels of deliberative access they involve. Psychologically speaking, self-forgetfulness is a self-effacing virtue, while justice is a self-asserting one. There is no trace of paradox in consciously asking oneself, "What is the just action here?" while there is an obvious and familiar paradox in any conscious attempt to be self-forgetful.

Love sits between self-forgetfulness and justice as to how self-effacing it is. It is nearly always all right to ask, "What is the just action here?" as an explicit deliberative question; it is nearly always *not* all right to do that with "What is the self-forgetful action here?" As for "What is the loving action here?", this is sometimes a good question for explicit deliberation, sometimes not. Within the practice of love as a virtue, there is a place for trying to match birthday present to recipient or to keep one's temper with a wayward toddler, but there is also a place – rather, many different places – for spontaneity or immediacy or, indeed, self-forgetfulness. So, for the virtue ethicist, when we try to say how deliberation should relate to action, we do not just find a single all-purpose answer which covers all the virtues in every situation. Cases differ; particularities matter.

Virtue ethics also complicates the relations between what we should do and what we should deliberate about by way of the notion of the unthinkable. For a virtuous agent, some things will simply be not to be considered; they will be off the deliberative radar entirely.

To all or nearly all the atrocities that it is currently physically possible for her to commit, any virtuous agent's deliberative access is typically nil: it is not just that she *does not* think of those possibilities, it is also that in an important sense of "could", she *could not* think of them. And a good thing too (B. Williams 1995a, Chappell 2001).

In general then, the place of rules of different sorts within action and deliberation that the virtues recommend will depend on which particular virtue or virtues are in play. We cannot just say *a priori* that virtue ethics involves any kind of general antinomianism – or any kind of general legalism, either.

Here at least, the architecture of virtue ethics is like that of act-consequentialism, and unlike that of Kantianism and rule-consequentialism. For the Kantian, the question of which substantive and specific moral rules, if any, to follow is a foundation-level question. It is not merely about what universal moral principles *we are well served by*, it is about what universal moral principles *there can rationally be.* The (questionable) background assumption is that universal moral principles are the only thing that morality can possibly be concerned with. For the rule-utilitarian too the question, "Which substantive and specific moral rules?" is foundation-level, even if his answer to it, unlike the Kantian's, appeals at least partly to utility.[5] For the rule-utilitarian, the code of rules that our constructions and negotiations rationally converge on is, essentially, what morality *is.* By contrast, for the virtue ethicist or the act-consequentialist, the question whether we should even recognize rules is a secondary question, the answer to which cannot be determined at the foundational or *a priori* level, but only by considering what living according to the virtues, or "maximizing the good", demands at the level of detailed description of specific scenarios and possibilities. In this sense at least, virtue ethics is not a rule-*based* ethics, any more than act-consequentialism is.

VIRTUES, *TECHNAI*, PRACTICES

For a further perspective on the place of specific and substantive rules in virtue ethics, it is illuminating to reflect on a crucial aspect of Plato's and Aristotle's conceptions of virtue: the *technē* or craft analogy. If my concern is flute-playing or medicine or household management or generalship or bridle-making, what place will I give rules? As with the virtues, so with these standard Greek examples of *technai* ("crafts", "skills", "arts", "expertises"), the answer depends on which *technē* we are talking about, and what sort of rules.

Take bridle-making, for instance. Just to be recognizable as such, any instance of bridle-making must presuppose the objective of making a good bridle; that is, the constitutive formal rule of bridle-making. More specific and substantive rules emerge as we consider the constraints of the materials – leather and metals – that we work with, the tools we use, the shape of the horse's nose and mouth to which the bridle is to be fitted, and about the *purpose* of a bridle – to guide and direct a horse without injuring or frightening it. Other rules again emerge from the desire to make something not only functional but beautiful, from the tradition of bridle-making in which we work, from this year's fashion in bridles, and so on.

As a generalization, *technai* typically involve rules deriving from a number of different sources. First, each *technē* has a constitutive formal rule like the one above for bridle-making: as such, any *technē* has an *end* (*telos*), something it is supposed to produce.

Second, *technai* involve rules to do with the material conditions of the practice of the *technē* in question: "Remember the breaking-strain of leather," "Don't try playing C below middle C on a standard concert flute," "Keep your soldiers' feet in good nick." Third, *technai* involve rules which prescribe ways of being efficient and avoiding self-defeat: "Don't try to get through tough leather with paper-scissors," "Don't throw a half-made bridle on the fire just because it's not perfect," and so on. Fourthly, all or nearly all, humanly pursued *technai* involve tradition, usually in the form of master–apprentice relations: in practice bridle-makers often do things a certain way because that is how they were taught. *Technai*, then, involve rules in all sorts of different ways – even though it is also true, to repeat, that the exact form and role of these rules varies from *technē* to *technē*.

Notice too that the rules for *technai* are positioned all over the place relative to the six distinctions made in the section 'Rule-fetishism and Marcus Atilius Regulus'. Some of them are *positive* ("Use good-quality leather"), others *negative* ("Don't trim off too much too early"). Some define *right* action ("The only way to make a bridle is …"), others *good* action ("These are *all* ways to make a bridle") or *permissible* action ("You *can* make a bridle like this – if you must …"). Some of them are *defeasible* ("Usually you shouldn't use paper in a bridle") or *absolute* ("Don't use what's poisonous to horses in a bridle"). They can be *formal* ("Make a good bridle") or *substantive* ("Don't make a bridle that hurts the horse"), *vague* ("Don't make ugly bridles") or *specific* ("Don't whip the horse with the bridle"); and they can be *justificatory* ("This is good bridle-making, even if this saddler doesn't know why") or *deliberative* ("This is what I should do next, because this would be good bridle-making") or both.

The crucial point is this: the rules of the *technē* subserve the practice of the *technē*, and not vice versa. The point of bridle-making is not to keep whatever rules are involved in bridle-making; the point of bridle-making is to make bridles. To think the opposite is a bizarre – and rule-fetishistic – misunderstanding of what bridle-making is.

"And what has any of this to do with ethics?" (*poia hypodêmata?* – Callias at *Gorgias* 490e). My answer is that what connection there is between the *technai* and ethics depends on how we think the *technai* relate to the virtues; and that, for Aristotle, the relationship is very close indeed.

However, *Nicomachean Ethics* VI 5 explicitly rejects the idea that practical wisdom, *phronêsis*, is a *technē*. Aristotle, in fact, lists four differences between *phronêsis* and any *technē*: (a) *phronêsis* aims at overall good, the *technai* at particular good things (NE 1140a25–30); (b) the *technai* have products beyond themselves, *phronêsis* does not (NE 1140b1–7); (c) "the excellent exercise of *phronêsis*" is a pleonasm, "the excellent exercise of a *technē*" is not (NE 1140b21–2); and (d) "in the *technai* it is better to go wrong intentionally than unintentionally, whereas in *phronêsis* it is worse" (NE 1140b22–4).

We might wonder about at least the third difference in this list. Flute-playing is a paradigm instance of a *technē*, but has no obvious product beyond itself. The administering of justice, as performed by an excellent judge (NE 1132a22), is a paradigm instance of *phronêsis* (NE 1137b30), but arguably does have products beyond itself – the judgments, and the settlements resulting from those judgments. (On Aristotle's own account, other virtues too seem to have products beyond themselves [and remember that acting on any character-virtue always involves *phronêsis*]: *megaloprepeia* produces fine shows, *eutrapelia* produces good jokes, and so on.)

Whether or not we question the details of Aristotle's list of differences, there is a larger scale-question. Does Aristotle list these differences as specimen examples of the utter

unlikeness of *phronêsis* and *technē* – as I might say "Cows aren't a bit like cabbages; cabbages don't moo, and you can't get milk from them"? Or does Aristotle list these four differences because he thinks they are the only (important) differences there are between *technē* and *phronêsis*? Many commentators take Aristotle's four arguments the latter way, but I propose the former. Aristotle's thinking about virtue remains deeply coloured and flavoured by the *technē* analogy; for him to say that *phronêsis* and *technē* are unlike and unconnected in these four ways is in no sense for Aristotle to deny that there are plenty of other ways in which they are alike or connected. In particular, then, the place of rules in the *technai* that Aristotelian ethics recognizes is likely to be much like the place of rules in the practices of virtue that Aristotelian ethics also recognizes.

Further evidence that, for Aristotle, the *technē* analogy is alive and kicking in his ethical thought comes from thinking through the implications of the first of his four differences between them. *Phronêsis*, Aristotle says, aims at overall good, the *technai* at particular good things. But how in general, we may ask, are we to pursue the overall good, *except* by pursuing particular good things? The opening lines of the *Nicomachean Ethics* (1094a1–18) famously point us towards the idea of the subordination and superordination of our various *technai*, enquiries, actions and intentions. It is hard to think how a good human life could be structured *without* including a wide range of activities of the kinds that Aristotle calls *technai*. So following the rules that the *technai* lay down will be involved in virtue, just as surely as following the rules that the virtues lay down. And in both cases, the rules will have the same status: the *technē*'s rules will be there for the sake of the *technē*, the virtuous activity's rules for the sake of the virtuous activity – and not vice versa.

WHY THIS CONCLUSION IS NOT ACT-CONSEQUENTIALIST

What I have *not* just said is that, on an Aristotelian outlook, the end of the *technē* or of the virtuous activity is all that matters, so that we need to keep the rules only in so far as keeping them promotes that end. In either the case of virtue or the case of *technē*, to say that the rules are there for the sake of the *telos*, not the *telos* for the sake of the rules, is not, in short, to sign up for act-consequentialism. Why not?

Because of the nature of the *telos* in either case. The *telos* is excellent performance within the *technē*, or according to the virtuous activity. In some *technai*, there may be ways of breaking some of the rules which are consistent with this *telos*: think of a poet who deliberately violates scansion or metre. In other *technai*, the rules – or some of the rules – are not negotiable or breakable *at all*, and no performance can count as excellent which breaks even one of the relevant rules even once.

More generally – and though cases vary – it cannot be that, for *every* rule of a *technē*, that rule can be broken without depriving the *technē* of its ability to reach its own *telos*. The *technē* of bridle-making may give its practitioners freedom to make their bridles out of leather or out of sheepskin, or to bequeath their bridles to their children or sell them on eBay. If bridle-makers recognize any rules about these questions, they will be secondary rules. The *technē* of bridle-making cannot give its practitioners freedom to make their bridles out of soap-bubbles, nor insist that they never make bridles less than twenty metres long, or that every bridle they make should be as ugly and ill-fitting as possible. Breaking rules of these kinds undermines the *technē* itself, either replacing it with nothing or with

some activity which may be all very well in its own way, but is no longer bridle-making. Keeping rules of these sorts is not merely a *means* to achieving the end of any *technē*; it is partially constitutive of that achievement.

A further way in which the relevant rules are constitutive of the exercise of a *technē* comes out very clearly in what Alasdair MacIntyre has to say about the relation between virtue and his notion of a practice, a notion that is clearly closely linked to the ancient Greek notion of a *technē*. MacIntyre's point is not the point I have just made, about rules as partly defining the very possibility of a *technē*. His point is the further point that rules are also necessary to define the possibility of excellence in that *technē*. He makes this point against the background of his definitions of two concepts that are central to his ethical thought; both are concepts that shed interesting light on the connections between virtue and *technē*. These are the concepts of "practice" and "virtue":

> By a "practice" I am going to mean any coherent and complex form of socially established cooperative human activity through which goods internal to that activity are realised in the course of trying to achieve those standards of excellence which are appropriate to, and partially definitive of, that form of activity, with the result that human powers to achieve excellence, and human conceptions of the ends and goods involved, are systematically extended.   (1981: 187)

> A virtue is an acquired human quality the possession and exercise of which tends to enable us to achieve those goods which are internal to practices and the lack of which effectively prevents us from achieving any such goods.   (*Ibid.*: 191)

Defining "(a) virtue" in this way, as MacIntyre does, by reference to what he calls "practices" has obvious implications about rules. And MacIntyre draws them:

> A practice involves standards of excellence and obedience to rules as well as the achievement of goods. To enter into a practice is to accept the authority of those standards and the inadequacy of my own performance as judged by them. It is to subject my own attitudes, choices, preferences and tastes to the standards which currently and partly define the practice … the standards are not themselves immune from criticism, but nonetheless we cannot be initiated into the practice without accepting the authority of the best standards realised so far.   (*Ibid.*: 190)

Here too, the would-be act-consequentialist reading of Aristotle's account of rules involves a misunderstanding of the relation of activity to its *telos*. That remains true whether the activity in question expresses a *technē* or a virtue. In both cases the truth that the rules are for the sake of the activity, not vice versa, doesn't imply that we may do anything at all in pursuit of the activity. There are many things we might do that just will not count as pursuing that activity at all, because of the way they break the constitutive rules of the activity. As MacIntyre's analysis enables us to add, there are many things we might do that cannot count as pursuing that activity *excellently*, because of the way they break the rules and standards that define excellence in that activity.

Any virtue is at least as apt as any *technē* to have adherence to rules as a constitutive part of what it involves. Perhaps even more apt. The rules of a *technē* can be suspended,

when some superordinate end demands: when the air-raid starts we drop our paintbrushes and perhaps even wedge our precious canvases into the windows of our *atelier* to protect ourselves from flying glass. The point about *phronêsis* is that there *is* no superordinate end, relative to its end. So at least one way in which the rules of any *technē* can be over-ridden has no analogue in the case of the virtue-rules. Here too the possibility remains that virtue ethics might recognize *absolute* rules; or at least, some rules which it would be inconceivable a virtuous agent could prefer to break than to die.

What is not possible is a virtue ethics in which the rules are foundational in the way that they are for the Kantian or the rule-consequentialist; or an ethics where the point is simply to keep the rules, just because they are the rules. An ethics of this latter sort would indeed be rule-fetishism. But has such an ethics ever been seriously proposed by anyone over the age of six? Even the Psalmist with whom we began – who might seem open to this charge – proposes no such ethics. For him, the point of the law is that following it has an expressive value: following it expresses his devotion to his God. To put it another way, the best way to make sense even of positions that are often taken by unsympathetic or uncomprehending critics to be merely rule-fetishistic is to understand them through the lens of virtue.

NOTES

1. There are good discussions of the usual examples, most of them first offered in Dancy (1993), in Crisp (2000) and Cullity (2002).
2. For further reflections on this see my NDPR review of *Ethics Without Principles*, http://ndpr.nd.edu/news/24822-ethics-without-principles/ (accessed August 2013).
3. For the story of Marcus Atilius Regulus, consul 267 BC, and its (un?)historicity, see Cicero, *de Officiis* 2.65, and Nisbet & Rudd (2007), ad loc.
4. Hursthouse herself often seems to talk as if the v-rules are primarily deliberative rather than justificatory. I am suggesting that this may be right sometimes, but also that it may not be the whole picture.
5. I say "at least partly" because the best-known contemporary theory in the rule-utilitarian tradition is Brad Hooker's rule-consequentialism, which is an impurely consequentialist position inasmuch as it justifies its rules by appeal both to consequences *and* to intuitions that pass the test of reflective equilibrium.