

## **Enforcing Rules**

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### **Abstract**

To reach a goal, like survival, safe living-environment, producing an industrial product, or working alone on a text, humans as individuals or humans within groups, establish rules. These rules may be called "self-discipline" (of an individual), "code of conduct", "tradition", "agreement", "laws", "constitutions". What makes these rules actually work? And what gives these rules the authority to influence the conduct of an individual? Does that what is called "punishment" constitute a suitable method of enforcement of these rules? And if not, what ideas present viable alternatives? (recompensation of the victim, hindering the repetition of the offense)? Disclaimer: Due to peculiarities in formulation, the following text may suggest misinterpretations or even straight misconceptions or the text may voice untested dysfunctional thoughts. Nevertheless the basic idea strives to improve interaction of persons, within a society or group, into saving the cooperative ones from insurgencies of those with institutional or situational authority. Most of the ideas stated here may have been already voiced in another form elsewhere. And ideas already may have been put into action. But maybe this compilation gives a conceptually simple approach to a means of strengthening the stability of a social organization by humanizing the enforcement of rules.

### **Three Basic Phenomena - Fairness, Voluntary Cooperation, often for differing Reasons**

(Most humans can recognize fair and just treatment.) Without further considering situations in which occurs the need of assuring survival, the idea of treating persons just and fair seems to prevail in most - if not all - cultures on earth. The concept of respecting each other's freedom as long as that freedom does not interfere with the same freedom of others, occurs explicitly or implicitly, maybe gradable into variants, in almost every culture that showed a longer term of stable existence.

(Traditions or written rules give social organizations a conceptual frame but the organizations essentially constitute themselves by the people's willingness to comply.) Organizational structures without agreements on how members or associated persons interact may become prone to anarchy or tyranny. The set of rules to follow and their enforcement can be seen as only one side of a functioning social organization. This formalizable part has to be supplemented by the willingness of each member of that group to at least intuitively adhere to at least few of the principles of that list of rules. Children in a family, company persons, persons in public service, citizens cooperate without having in mind a full written account of their duties and rights. They all do their assigned work, often also following unwritten, even unspoken, rules of the local culture of their surroundings --- often hopefully improving the overall atmosphere.

(People cooperate for other reasons than the given organizational purpose.) Organizational structures of human beings depend on more or less voluntary support and cooperation by their members. This individual willingness to participate in working for a common goal may

be rooted in reasons (pay, social status, moral satisfaction) wholly unrelated to the kind of organizational superstructure. (This may be seen as one aspect of the relative stability of dysfunctional organizations like dictatorships or organized crime.)

Example: Small groups in military organizations are favored because of the personal support which group-members give each other; rather than urging themselves individually into fighting for some abstract reason.

### **The Role of Rules**

(Misusing rules, especially from a position of delegated power, often bears extraordinarily grave dangers for the entire group.) Even without a written or a traditional set of rules, one can assume the validity of the principle that assures mutual freedom, reciprocatingly inhibited only where one party feels subdued or in cases where obviously appears an imbalance. Violating this principle usually gets perceived as a breach of a basic natural law. For example, cornering fellow humans in situations endangering their life and health, or even continuously giving contradictory information tends to produce violent outbursts, sometimes considered a kind of rebellion, non-legal (not following rules), but legitimate (seen as reasonable by even distant informed onlookers) .

Furthermore, applying or enforcing written rules in organizational structures should minimally take note of the three previously stated phenomena. Having in mind that thoughtless application of rules may discourage cooperativity and/or even may render the rules an unstabilizing element of the social structure.

The far-reaching, multiplying effects of the misuse of power produce imitational dysfunctions ("If they bend the rules, so can I!" preparing corruption or fraud) or disillusionment ("Why should I hold up the rules if nobody acknowledges those anyway?"). Both perspectives dissolving an ethos, often carefully built by educational efforts, and finally destroyed by thoughtlessness or ignorance of negligent authorities.

Thus, agents of organized structures should take special care in avoiding abuse, disuse, or unfunctional application of rules. To assure a group's integrity, even the rules of that group as well as the way of enticing their group-members to follow the rules has to respect in particular the above-mentioned principle of fairness and has to leave enough room for individual freedom of the group-member.

Problematic application of rules may include the aforementioned blatant misuse by rule-enforcing authorities or the less open misuse that may occur legally sound but by consequently enraging identified offenders resulting in more damage than expected. This second case comes into the discussion in one of the following sections.

(Applying rules on offenders or on victims) The enforcement of rules or legitimate claims may take effect in two directions: Rules may be used for protecting or compensating the weaker, victimized side. Or the rules may be used for discouraging the stronger, offending side within some conflict. Punishing the offending side often may offer a simpler procedure of discouragement. And due to some cultural background or tradition, the setting of fighting insubordination or sin by punishing an offender, seems to have been cast into institutional structures up to now. What kind of discouragement may substitute punishment?

(Enforcement of group interests enhanced by respecting individual persons) Generally, enforcing rules should conserve the stability of the social organization. Applied literally, this view alone vindicates an enforcement of rules without any respect to side-effects:

Conservation of stability by applying rules happens also within inhuman dictatorships or in the wake of organized crime. Therefore, another aspect has to be supplemented to the sole idea of conserving group stability: Improving the stability of the group by focusing the enforcement not only on rule-application but by additionally practicing a respect for the rights and the integrity of the individual member of the group, this applies both to the victim as well as to the offender.

(Justice: Compensation efforts concerning the victim and protection concerning the group) Promising the same kind of security to each member of a social group by setting examples, the group may see a primary goal in recompensating, as far as possible, the victim of an insubordination. The second goal of promising the safety to each member of a social group can be seen in protecting members of the group by restraining the offender from repeating perilous acts and offering a way out in recompensation or/and refraining voluntarily from certain activities. The result for the offender "my offense produces a functional disadvantage on my side" may even impress pure psychopaths.

(Justice: Offending the offender) The case of a corrupted judicial system has been mentioned in a previous section. In contrast, within an ideal setting, an offender would acknowledge the offense, recompensate the victim and strive to avoid future offenses. As a fully developed civilized human, the offender privately would try to handle the fact that an unfavorable situation or some deficiency of one's own, lead the offender into committing a breach of rules. Punishing such an offender would mean to senselessly uphold a principle (punishment) that only serves itself and does not improve any ethical position of the group or of the offender. Whereas, in some extreme cases of an uncivilized offender, pure punishment may be seen by the offender as a moral business transaction of exchanging offenses. Or the offender may be tempted into feeling mistreated by the punishment, arising more anger and making the offender even more dangerous to society. Hopefully, the offender has a sense of social proportion, and if the offender remains undisturbed by outside moralizing, then the offender will occupy him- or herself with the offense and may draw helpful conclusions from it. If the offender has no sense of social proportion, outside moralizing won't become effective. This could suggest to the group the idea of deliberately avoiding to punish the offender; rather the group may devise effective means for its protection and the victim could be recompensated as far as possible, if possible by the offender.

(Justice: Wronging a suspect) Noticing the cases of publicly known increasing injustice by trying to do justice with the best intentions, the ideas outlined here do not suggest to abstain from striving to let group-members follow sensible rules. But in forbidding oneself or the group to punish or to moralize on offenders, potential erroneous judicial decisions become less acrid, maybe even less grave. Alternatively, exercising power out of pragmatic necessity when recompensating victims and protecting society, without additional moralizing, takes out a sting if some of such exercising goofs, which, as in any human organization may occur more often than imagined.

Errors, mistreatments and negligence by the jurisdiction then also could be handled the same way as the jurisdiction handles insubordination of offenders, this ensures additional trust into justice coming from the society as a whole, from victims and even from offenders.

(Justice's new focus: Recompensation, Protection instead of Punishment) Judicial action thus would focus on doing justice to the victim as an individual person --- this means recompensating the victim as far as possible for losses involved in the offense --- as well as doing justice to the group in protecting the group, especially potential future victims in the group from further offenses.

Thus judicial powers seeking justice by punishment would be transformed to a power seeking to stabilize the society by caring for victims and restraining offenders from repeating their offenses and showing a way to strive for personal re-integration. Much of that may already be realized in various existent judicial systems but maybe a refining of the notion justice in this direction, rooted in a constitution could make this view more effective. Punishment or any moral activity in trying to impose a sense of guilt and remorse on the offender, although ideally forming an acceptable and natural way of reaction, unfortunately seems a way prone to misuse or ignorant negligence.

### **Support by other Lines of Reasoning**

The Bible also seems to indicate a moderation in (institutionalized) revenge ("tooth by tooth" as a maximal form of revenge) and the Bible may be interpreted as favoring a non-moralizing approach to handling offenses within social groups when stating that "those who are without guilt should throw the first stone". The Koran seems to favor the principle of restitution. Many books and documentations about child-education stress the importance of giving a good example, rather than admonishing to evoke desired behavior; own experiences support this view too.