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From: Albert W. Musschenga, Wim J. van der Steen eds. *Reasoning in Ethics and Law: Theory, Principle and Judgement*. Ashgate, Aldershot 1999, 19-47.

General and particular considerations in applied ethics

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In spite of sustained criticism, principles still form the core of the usual methodology of applied ethics. People usually assume that the area they study is governed by a set of principles, that problems can be analysed as conflicts between principles, and that solutions, even if argued only by intuitive 'weighing', will consist in some form of arbitration between their competing claims. In this paper I argue that this is how it should be. That doesn't mean, however, that the criticisms are simply mistaken. They help us understand the standard methodology more clearly.

The paradigm of this approach in bioethics, which has shaped the outlook of an entire generation of ethicists, and even to some extent of the workers in the field, is *Principles of Biomedical Ethics* by Beauchamp & Childress, with its four principles of non-maleficence, beneficence, respect for autonomy and justice, widely known as the Georgetown mantra. Problems in bioethics often are alleged to arise from conflicts between the principles of respect for people's autonomy and of benificence. A sophisticated example of the approach is Joel Feinberg's monumental quattrology on the moral foundations of the criminal law, which lists and evaluates the possible grounds for encroaching upon an individual's freedom, with the conclusion that freedom should be restricted only to prevent harm and offence to others. The argument for this conclusion consists in the detailed discussion of hard cases, which at the same time results in a specification of the meaning of the principles, both the accepted and the rejected ones. Most studies of distributive justice likewise focus on principles. Indeed, the most significant (and to my mind most worrying) characteristic of work in this area is that the claims of justice are usually derived from one basic principle only, say equal or leximin 'real freedom'. Recent work fortunately reinstates pluralism; Michael Walzer, for instance, recognizes principles of need, desert, and the recognition of 'membership', and his discussion of the distributive problems of concrete 'spheres of justice' (health care, leisure time, jobs, education) takes the usual 'principlist' format: deciding which

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principles govern any particular sphere, and solving apparent, or arbitrating real conflicts between them.[2]

Principlism is usually criticized on the following grounds. (1) The appeal to principles doesn't help to solve actual practical problems, for these arise precisely when principles conflict with each other. (2) Principles don't offer any significant guidance in concrete cases anyway because of their inherent vagueness and indeterminacy. (3) For any rule or principle, we know that situations will or at least may emerge requiring us to break it, but that is something we can only decide by looking at the case at hand. There is an obvious tension between these objections: principles must be practically informative to some extent, in order either to conflict with each other, or to stand in the way of what 'the situation requires'. But we cannot dismiss any particular objection simply because it belongs to an incoherent set. So I consider them all, in sections 1, 2 and 4, respectively. In between, in section 3, I take a hard look at the alleged superiority of the casuistic method in providing determinate guidance.

1. How to decide conflicts

The most common criticism of the appeal to principles is the following. Applied ethics, if it is to be of any use, should help us 'solve' problematic cases. At the very least it should enable us to reduce the range of acceptable solutions. Principles are no use whatsoever in achieving this aim. For problematic cases typically involve conflicting principles. Thus we have to turn to other considerations to make any progress. In concrete cases these considerations usually derive from the careful observation of relevant characteristics of the case; no 'codebook' of general rules and principles can generate them.

The argument means to suggest that applied ethics should forget about rules and principles, and rather attend to the similarities and differences between the relevant aspects of concrete case descriptions. That is the method of casuistry, which allegedly improves on principlism.

But this conclusion doesn't follow from the argument at all.

In one of the more forceful presentations of the argument, Earl Winkler (1993) usefully (and consistently) gives us an example. He compares two cases in which physicians have to decide whether or not to proceed with medical treatment of a patient against his own will. The first patient suffers from multiple sclerosis, and refuses to have his meningitis treated. His past history indicates a rather successful adjustment to his condition, and his MS has not worsened. It turns out that his refusal of treatment

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[2] This is a description of Walzer's practice, not of his theoretical account of justice as 'complex equality', cf. Den Hartogh 1999.

results from a family crisis which has caused some relatives to withdraw their usual concern and support. The physicians decide to give the patient antibiotics to save his life and inform him accordingly. They also tell him how to deal with what they think is his real problem. (When they have done so, Winkler writes, "(t)he patient is silent". What would they have done, if he had protested vehemently, had asked for an attorney etc.?) Family counselling starts, it restores the internal peace of the family, "and everyone is happy".

The second patient is paraplegic as a result of a motorcycle accident, which has made him embittered against the whole world. Having refused all efforts at rehabilitation before, he now refuses to eat. But his general tendency to blame everyone else for his condition even prevents him from taking full responsibility for this decision. Force-feeding is considered, but decided against.

In both cases the principle of respect for autonomy is relevant, but the details of the cases invite us to honour the principle in the second case, but not in the first. This cannot be explained, Winkler believes, by the assumption that some initial condition of application of the principle isn't fulfilled in the first case, while it is fulfilled in the second. The principle requires the patient to be competent for making his decision, in some sense of competence (to be specified!). But whatever criterion of competence we suggest, the first patient is more likely to satisfy it than the second. It could be argued, Winkler goes on to suggest, that the refusal of the first patient isn't really an authentic choice.It doesn't fit well with the basic values and commitments of this patient, given the actual circumstances (as opposed to the circumsatcnes as he perceives them). But the same point can be made, he believes (I am not so sure about this), about the second patient.

This case-study shows that we cannot simply decide such issues by taking the principe of respect for autonomy as our premise and deriving a solution from it by Modus Ponens. We should look at the cases carefully, and this may cause us to have doubts which in the first case these doubts -for Winkler at least, and presumably for most of his American readers- cannot be silenced.[3] But the case-study does not show that we can forget about the principle, and look at the cases instead.

Why do we want to abstain from force-feeding in the second case? Clearly because that would be a brutal infringement of the patient's autonomy. Moreover, both cases presumably confront us with genuine moral conflicts, not only apparent ones. We have to choose between two alternatives, and the reason to prefer one alternative is respect for the patient's autonomy, the reason to prefer the other is that this will serve the best interests of the patient. (Again, this seems debatable to me in the second case,

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[3] Though it is illegal to treat a competent patient without his consent, in the USA as well as in the Netherlands.

but that is besides the point.) And these are genuine reasons: even if they are overruled, they are not simply set aside. In that case they leave 'moral traces' (Nozick 1968) which should be reflected in the agent's actions and feelings. For instance, the principle of autonomy at least requires the physicians to fully explain their choice to the first patient.

So the principles to a large extent provide us with the reasons for our eventual choices, or, as I will put it, the principles rationalize our choices.[4] On this point the criticism of principlism has an air of absurdity. 'Principles are of no use, for they don't help to solve real problems.' Could that be a good defense for a doctor who simply disregards his patient's autonomy or does not even try to act in his best interests?

Interestingly, and for the critics exceptionally, Winkler to some extent recognizes the point. But, he argues, this 'deductive' construction of justification "is irredeemably *ex post facto* and retrospective. In a far more important, essential, and primary sense, justification is a process." And in this process the real work is done by case-driven considerations.

It is true that when we ares aked to offer a justification of a decision, the question can have different meanings. For example, the meaning of such a question might be: why is it true that we have to abstain from force-feeding? The answer to this question is: force-feeding would violate the principle of respect for autonomy. This amounts to justification in the sense of rationalization. A second possible meaning of the same question is: how do we arrive at the insight that we have to abstain from force-feeding? This epistemological question is still ambiguous, it can be taken in two different senses. In the first sense it is a question about the justification of our belief, it asks for a warrant. In the second sense it asks for a heuristic, and it is anwered by a reconstruction of an actual thought process. So far, the critical argument has only established that 'looking at the case' has a heuristic value.

What is the relation between the quest for a rationalization (a reason for choosing one option rather than another) and the quest for a warrant (a reason for the belief that our choice is right)? Both may appeal to the same consideration(s). But it is also possible that we are sure that something is wrong while being unsure about the reason why it is wrong. Thus our belief that something is wrong need not depend on accepting any particular explanation of the fact that it is wrong. Indeed, a rationalization may be

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[4] It may be objected that it is only a particular fact about the second case that we have reason to respect the patient's autonomy in that case. Thus, autonomy would not be the kind of thing which (normally) requires respect. I will discuss this particularist construal of the relevant reasons in section 4.

warranted by the very judgement which it rationalizes: a reason may derive part of its plausibility from the fact that it <u>covers</u> a judgment about which we are intuitively sure.[5]

However, this doesn't seem to be the case in either of Winkler's two cases. In so far as the autonomy principle and the best interests principle figure in the rationalization judgments for these cases, they seem to be part of the answer to the epistemological question as well. We have doubts about simply doing the best for the first patient, and we strongly feel that it would be wrong to force-feed the second one. These epistemic attitudes can only be defended by appeal to the principle of respect for autonomy. If we 'forget' about the principles, we loose both: our sense of a conflict in both cases, and also the way of finding the proper solution to the second one. (As well as a guide to action in innumerable cases which we now reckon to be unproblematic ones.) So, even on the epistemological issue, the principles form a large part of the story, even if not the whole of it.

What more do we need? I have already mentioned considerations of competence and authenticity. Other relevant considerations include the following.
 (1) What the patient 'really' wants, is not wholly clear in the first case, as is testified by his silence after the physicians' announcement of their intention. Expressed death wishes can 'mean' -be intended to communicate- many things, and often more than one thing at the same time. What a competent speaker of the language knows the utterances to mean is not all, and sometimes not at all what they mean. In the first case we may wonder whether the patient really wants to be dead at all. In the second case this is less doubtful, even though 'wishing to be dead' is here a form of accusation or revenge as well. (I don't so much doubt the authenticity of the patient's refusal as its integrity.)
(2) What exactly does the alleged personal value of the life of the second patient (the value of his life for himself) amount to?
(3) The option of not-respecting his autonomy in this case involves the highly invasive and brutally coercive action of force-feeding.
(4) Lastly, while in the first case we may reasonably hope that the patient will eventually agree with our decision, as a result of a personal development which doesn't

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[5] Kant, for example, is in some sense a 'deductivist' concerning rationalization, but he emphatically places the 'locus of certitude' in low-level moral judgements. From the *Critique of Practical Reason* onwards, he even rejects any 'deduction' of the moral law which doesn't start from the fact of our actual low-level moral knowledge. A coherentist epistemology does not in itself refute the possibility of an axiomatic structure of ethics. Similarly, a theonomous morality which regards actions as wrong if God forbids them, is not committed to agree they would be right if God would be found (how?) to command them. On this view God's command rationalizes the wrongness of the actions of which we are sure in some other way, e.g. by consulting our conscience.

compromise the rationality of his agreement, no such hope seems to be warranted in the second case.

These considerations are almost as general as the appeal to principles, they are relevant to classes of cases. (Note that Winkler describes his own concrete cases in terms which cover other possible, and quite probably actual, cases as well.) They are also related to the notions of autonomy and best interests. This is obviously true for considerations (1) and (2), for they are relevant to deciding what these principles exactly require. Correctly interpreting the will of the patient is required by the principle of respect for autonomy itself. So the need for this interpretation can hardly be an argument for the redundancy of the principle. To identify what is required by each principle, we may need to answer many subsidiary questions; that is part of what we mean when we say that applying a principle requires judgment. Considerations (3) and (4) are relevant in a different way. Violations of the norm of respecting a person's autonomy come in degrees. It makes a difference whether we disregard only the person's present will, or his durable will for the foreseeable future. And to use physical force means 'violating' autonomy in a stronger sense than to insist on giving antibiotics. Such considerations help us when the relevant principles cannot be jointly satisfied, for in such cases we should inquire which package of actions and attitudes do satisfy them to the largest possible extent. This is not merely a matter of the comparative evaluation of available options. Our task is rather to design such a package of actions.[6] Executing that task requires creativity and imagination.[7]

To begin with, we should differentiate between several aspects or dimensions of the value protected by a principle. For example, what is it about autonomy that makes it worth respecting? The fact that each individual knows best what is in his own best interests? Or that he knows best what is most consonant with his basic values and commitments? Or is it the intrinsic value of his sovereignty over his own life, of his being 'at the steering wheel'? Each of these considerations invites us to determine its relative force and to chart the limits of its area of application. Second, we should make sure we understand the intrinsic nature or 'social meaning' of the things or actions to which the principle is applied. This is obviously true about principles of distribution[8], but

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[6] I owe this illuminating term to an unpublished paper of Onora O'Neill, presented in Rotterdam in 1996.

[7] I don't want to suggest that all conflicts can be solved by specification. Due to incommensurability and, perhaps, other factors, including unavoidable epistemic deficiencies, a category of genuine dilemma's will remain. Note, however, that on the 'design'-conception even the justified judgment that a dilemma exists may be revisable.

[8] "Bread is the staff of life, the body of Christ, the symbol of the Sabbath, the means of hospitality, and so on." Walzer (1983: 8).

it applies also to the notion of 'brutality' which differentiates Winkler's two cases of possible violations of autonomy. Third, we should realize that principles should not be applied one by one, in an atomistic way, but rather holistically, as a network of interrelated considerations. For instance, if autonomy is only one of people's interests among others, however basic, it should be weighed against those others, but if it is constitutive of a person's moral standing, it should be given additional weight, perhaps even lexical priority.

It is because of the fact that principles are to be considered holistically, that we should sometimes allow ourselves to get involved in ethical 'theory', for theory aims at reconstructing coherent sets of rationalizing general considerations. But we should not expect too much from theory. Progress with a practical problem need not depend on our ability to tackle the theoretical issues underlying it. If ethical theory aims at reconstructing the interrelations between values and principles, the plurality of competing theories suggests that its success is rather limited. (Though the understandable focus on the area of disagreement may be somewhat misleading.) Epistemologically speaking, most of the warrant theories claim derives from their ability to account for lower-level judgments. For these reasons it is generally an unattractive program to try to find solutions to practical problems by deducing them from comprehensive ethical theories. Such theories don't have sufficient authority to deliver the goods. That doesn't rule out, however, that some particular questions require us to consider problems from 'high theory', as for instance the truth of the doctrine of double effect, the legitimacy of agent-relative considerations etc.[9] As Williams said in his influential criticism of high theory, there is no reason to expect the truth about the subject matter of ethics to be simple. "Perhaps we need as many concepts to describe it as we find we need, and no fewer." (Williams 1985: 17)[10] We can be interested in ethical theory for practical reasons without believing it to be the starting point of all, or even most arguments in applied ethics.[11]

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[9] Green (1990) argues that principlism, by abstracting from theory, has insufficient resources to solve conflicts. He believes that applied ethicists tend to pay insufficient attention to theoretical questions, partly because practitioners tend to be impatient with them. He may have a point. But if the proposed remedy is to start all discussions in applied ethics from one of the textbook-'theories' (rule-utilitarianism, pluralistic deontology or intuitionism, virtue ethics, some brand of contractualism), the remedy is worse than the disease. Besides, one should also be sensitive to the mirror deficiency in ethical theory: lack of awareness of possible contexts of application.

[10] The point is only a critical one, if we presuppose all ethical theory to have reductionistic aims, as Williams seems to do.

[11] For that reason DeGrazia (1992: 519, 524, 528) is too dismissive of theory.

I have argued that, to solve conflicts of principles, we have to supplement the principles by subsidiary considerations of two kinds: considerations of application (exemplified by (1) and (2) above) and considerations of specification (e.g. (3) and (4)). 'Specifying principles' has recently been put forward as a way of saving principlism in an amended form (Richardson 1990, 1994; DeGrazia 1992).[12] In my view this is something applied ethicists have always done, even if some (Feinberg, Walzer) are far more expert in doing it than others. We will even find in section 3 that the method is equivalent to the method recommended by those who want to replace principlism by casuistry.

Specifying considerations again invites the sceptical comment we found Winkler making to principles: perhaps we may use them in explaining our achievements *ex post facto*, but they are no use at all in making those achievements. (The comment recalls similar sceptical views of legal realists and others on the justification of courts' verdicts.) Rather, it is only by attending to the details of the case at hand that we find the 'solution' which we afterwards defend in terms of the ambivalence of death wishes, grades of brutality of the violation of autonomy etc. My answer to the sceptic again consists in distinguishing between two questions. The first question is <u>why it is</u> that we should decide to respect the patient's autonomy in the second case, but not in the first. Which aspects of the cases actually <u>make</u> them relevantly different? Answering this question of rationalization we point to the general considerations I listed and similar ones. The second question is <u>how we know</u> that we should make those different decisions in both cases. At this point the critic could insist that we know by looking, and that this knowledge is prior to any commitment to the general considerations which, admittedly, rationalize our judgment. But this position is implausible. Perhaps, in simply attending to the details of the second case, we immediately had a strong intuition that in this case force-feeding would be unacceptable. Still that would be an epistemologically unsatisfactory state to be in. We would feel the urge to find good reasons for our judgment, convincing for ourselves and *in foro externo*,. And when someone suggests those reasons, we will respond by feeling more confident of our judgment.

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[12] As DeGrazia (1992: 522, 533) suggests, albeit only tentatively, this surely is also the correct interpretation of the way Beauchamp & Childress always intended to use rules for solving conflicts between principles, as for instance in their rejection of strong paternalism. Beauchamp & Childress (1983: 219-220) state that the rule is not 'derived' from the principle, but is (in the epistemological sense) justified by its own intuitive appeal, its coherence with the principle and the intuitive appeal of some of its applications. Beauchamp & Childress (1994, ch. 1), explicitly subscribe to the epistemic reciprocity of general and particular judgments and to the need for specification of principles.

Usually, I suggest, these are not distinct stages. Our very first 'intuition' will already be a judgment about the case in terms of reasons.[13] The first sentence in which Winkler presents his conclusion is a case in point: "attempting to force-feed this patient would be perfectly brutal and without foreseeable end". Most case-driven considerations already appeal either to principles or to general considerations that specify them.

2. *The guiding power of principles*

The second standard criticism of principlism has it that, due to the vagueness of general terms and the complexity of the world, principles are too indeterminate to provide any guidance. This line of criticism, as I said, is hardly consistent with the first one. But the answer to both objections is roughly the same, so I will be brief about the second one.

Principles, as we saw, have to be supplemented by subsidiary specifying considerations, to flesh out such abstracts concepts as 'autonomy', 'competence', 'harm', 'need' etc., and to design packages of actions which optimally satisfy sets of competing principles. So it is true that in applying principles judgment is needed. But it hardly follows that we can snugly do with the judgment alone and forget about the principles.

Judgment is needed not least because many concepts used in principles have threshold values. How good should a performance be to count as competent? How important should a setback to interests be to count as harm? To answer such questions, we must draw a line on a continuum. The continuum is relevant again when we cannot satisfy all relevant principles jointly, for if we cannot stay at the thresholds, we want to stay as close to them as possible. It is true that these questions cannot be decided by appeal to the principles themselves, but they make no sense outside the context of the enterprise of applying them.

Perhaps the basic misunderstanding involved in this second line of criticism is identifying a principle with a formula. Knowing a principle is similar to understanding a general prescription, issued by authority, even if actually there is no authority 'behind' the principle at all. If you know what the words 'respect' and 'autonomy' mean, you know what it means to respect autonomy, and therefore you are able to recognize each case in which respect is required. On this view, by the way, it is hard to see what the special expertise of an ethicist might possibly consist in. His task is apparently limited to

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[13] For that reason 'reflective equilibrium' should not only or mainly be sought between general considerations on the one hand and judgments of concrete cases on the other, but rather, as Rawls (1993) keeps saying, between considered convictions at all levels of generality. Cf. Beauchamp & Childress (1994: 21).

'conceptual analysis', which should be distinguished from substantial moral judgment. I have no idea what such an analysis would look like. It is simply impossible to apply the principle of respect for autonomy without an appreciation of the value of autonomy, and the moral relevance of this value, which goes far beyond the understanding of the lexical meaning of words. We should rather put it the other way around: you only fully understand the way a principle is expressed if you are able to apply it correctly.

My arguments sofar may foster the suggestion that I believe all the real work in applied ethics to be done by general considerations: providing rationalisations and warrants. Careful attention to cases merely has a heuristic value. However, I have not denied that 'brute' (i.e. non-rationalized) intuitions about cases may provide part of the warrant for our final judgments. More importantly, I would grant that looking at particular case may be a necessary stage on the way of finding the specifications we need. There is more to competence in applying norms than knowledge of the meanings of words. What exactly is involved in this 'more'?

3. *The alleged superiority of casuistry*

The usual alternative to principlism is casuistry. Confronted with a hard case, unable to decide between, say, two seemingly equally attractive and equally objectionable alternatives, we are advised not to look for general considerations which will only rationalize our conflict, but rather for cases which are comparable to the present one in most respects, but in which the first or the second of our alternatives are obviously to be preferred. Even better, we might construct a whole range of such cases on a continuum between the two 'clear' ones. Then we have to judge how close our present case is to either end of the continuum.

It is hard to imagine someone going through this procedure in its pure form.[14] How do we identify relevant 'clear cases'? How are we to measure closeness? The answer seems to be that, implicitly at least, we appeal to general considerations. Our predicament is a conflict (real or apparent) between two principles, the clear cases are paradigmatic instantiations of each of these principles not conflicting with the other, and our judgment of 'closeness' derives from a cumulation of similarities and differences which all can be shown to be relevant by specifying considerations.

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[14] Van Willigenburg, this volume*, points as an example to people finding the solution to a pure coordination problem by converging on the salient outcome which may be identified by precedent. But people aim at the salient outcome because they mutually expect each other to do so: it is a social rule or convention. That is confirmed by the fact that the relevant notion of "salience" in this context is: whatever we mutually know to be salient to each other. See Mehta et al. (1994).

Casuistry has been most strongly defended, as an alternative to the "tyranny of principles", by Jonsen and Toulmin in *The Abuse of Casuistry*, in which they argued that the casuistic method as practised by (mostly) catholic theologians in the sixteenth and seventeenth century, is an exemplar to be followed by present-day applied ethicists, (see also Brody, 1988; Van Willigenburg, 1991) But the 'old' casuistry as they describe it turns out to appeal to principles in precisely the way I suggested to be unavoidable.

By and large, the method consisted in the following steps. The point of departure is some particular item from an established code of behaviour, e.g. the Ten Commandments or the Seven Deadly Sins. This item defines a certain ethical domain. The first step in treating the problems of the domain is to present some paradigmatic and unproblematic examples of conduct in accordance with duty and of conduct violating it. Next, a range of possible cases is constructed having more and more dissimilarities in comparison with the paradigm cases. For each of these cases the dissimilarities are specified, and their weight is then adjusted in terms of two types of considerations: opinions of moral authorities (fathers of the church, the highest esteemed casuists from the tradition), and so-called 'maxims'. Cases are then decided (with a specified degree of 'probability') on the cumulative force of these considerations.

This, of course, is not what I called 'pure casuistry' at all, it is casuistry with the general considerations in the background made explicit. Except for the appeal to authority, the approach is virtually indistinguishable from the procedure of specifying principles in confrontation with hard cases which I recommended in the first section. And so, again, it is not a forgotten method to be rediscovered, it is the method actually followed by all good work in applied ethics. It is worth observing that it is also the method generally practised in legal dogmatics.[15] In any reasonably comprehensive treatise on, say, contract law or fiscal law, the domain is organised by appealing to some basic rules and/or principles, which may or may not be explicitly stated in any statute. Paradigmatic applications of these principles, in statutory prescriptions and case law, are presented. We then move on to hard cases, most of them analysed as conflicts of basic rules and principles. Finally, solutions of these cases are offered in terms of specifying considerations which maximally restore coherence over the entire domain.

So, contrary to the usual interpretations of the great debate on the proper method of applied ethics, we don't have two alternative methods here at all. (Of course, I don't deny that many authors are sinning: some on account of their monism and atomism, subsuming cases under their favourite principle without considering the acceptability of

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[15] That is worth observing because critics of principlism sometimes reject what they call the 'legal' model of moral thinking. This rejection mainly rests on a mistaken 'deductivist' conception of legal reasoning, cf. the Introduction.*

the outcomes; others on account of their unorganised pluralism, recognizing 'tragic moral dilemmas' wherever a plurality of relevant considerations are found pointing in different directions.) What we have, rather, are different interpretations of the same procedure. Probably these interpretations make some difference in practice, but they hardly result in totally incompatible ways of arguing.

The interpretations differ along the following dimension. At one end we find the position, which I introduced already, according to which the appeal to cases has nothing but a heuristic (and, we may add, didactic) value. Problems are, in the end, decided by appeal to the subsection of relevant general considerations from the total network of valid ones. It only happens that the inescapable limitations of our understanding make it impossible for us to always have this entire network, or even the subsection, before our minds. But at some level the relevant considerations exert their force, and so it happens that when we are confronted with hard cases, we get an intuitive idea, in which these considerations are unconsciously applied. On the guidance of this idea, we will eventually be able to make the relevant considerations explicit as well.

On the opposed reconstruction, the category of general considerations would be dispensable but for the deficiencies in our understanding. The "locus of certitude", as Jonsen and Toulmin call it, is always in the judgment on the particular case. But this judgment can only be relied upon if we 'see' the case in its correct shape, and here rules and principles may help us to attend to relevant details. They are to be seen as rules of thumb, summaries of our earlier concrete judgments. However, we can never be sure of their validity without assessing it in the concrete case itself, (cf. Nussbaum, 1986: ch. 10; Dancy, 1993: ch. 4)

As I have presented these positions, they provide different answers to the epistemological question. 'Generalists' and 'particularists' also disagree on the rationalization issue. I discuss this issue in the next section.

Both positions are deficient.[16] As to the first, it is a complete mystery, how attending to a particular case helps us find a relevant norm which otherwise eludes us. How can we have intuitions in which 'the norm exerts its force unconsciously'? There must be a closer connection between 'knowing a norm' and 'knowing what to do in a concrete case' than this account assumes.

The second position is even more unsatisfactory. If in some particular case the answer, on looking at the case in its right shape, is clear, how does this help us find the answer in another case, in which, so far, the answer is unclear? The point is not only that the defenders of the superiority of casuistry cannot answer this question, since the appeal to principles covering both cases is closed to them. The point is that any strong

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[16] Like the analogous positions of formalism (legism) and rule-scepticism (legal realism) in jurisprudence. See Hart (1961: ch. 7).

epistemological claim for the casuistic method is incompatible with (epistemological) particularism.[17] On a consistent particularist understanding the precedent case can have no authority at all; taking it into consideration does not warrant any growth of our confidence in the solution it suggests. We can only say that the similarities are more important than the differences or *vice versa* <u>after</u> having made up our mind on the problem case itself. For if the first judgment presented us with any support for the second, the locus of certitude would not fully be in the particular case at all.[18] Hence the precedent does not even create a presumption.

So what is the use of considering a precedent case? The most radical view is that it only has a heuristic use: it helps us fix attention on aspects of the case which may or may not be relevant; the proper use of the appeal to precedent is only that of an aide-memoire or checklist, (Dancy, 1993: 66ff). That is clearly less than defenders of casuistry such as Jonsen and Toulmin claim for their favourite method. Moreover, it is precisely what the second view claimed to be the proper use of principles as well. So this conception surrenders the claim to superiority for the casuist method and concedes its equivalence to principlism.

But even this rather unambitious view is more than the epistemological particularist is entitled to. For why is it that of all the possible selections of possibly relevant properties of the problem case, some particular selection has a stronger claim on our attention than any other arbitrary one? There is no satisfactory answer to this question which doesn't claim some degree of <u>probability</u> that this selection determines the correct judgment of the problem case. We don't make checklists of mere possibilities. Particularism, however, cannot allow any claim to probability. If this is true, no form of the appeal to precedent is compatible with particularism.

The analogy with induction, often made, serves to underline the point. For an inductive generalization is nothing but a statistical coincidence, which we shouldn't apply to the next case, unless we assume it to be traceable to an underlying universal

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[17] Van Willigenburg, this volume*, concedes that it is a mystery how probability can be transferred from one case to the other, but resists explaining this by what he believes to be a greater mystery of a rule determing its own future application. Even if we grant him the second mystery (but see note 20), that position is untenable. We don't have two mysteries here, one for the generalist and one for the particularist, but only one: the mystery of how the correct continuation of a series can be idenfied, whether the series is given by extension (casuistry) or by intension (principlism). Any position invoking this mystery is incompatible with particularism.

[18] "Whatever we learn from a case and then transport to another case cannot be entirely specific to the first case; some degree of generality must be present in order to lead us to the next case" (Beauchamp, 1996: 89).

causal pattern. If (*per impossibile*) we were to believe that no such causal patterns exist, we would have to stop making inductive generalizations. That the sun will rise tomorrow, would not even be a hypothesis.

Finally, it is worth noting that the practice of casuistry, as described by Jonsen and Toulmin, is in direct contradiction with any particularist interpretation. For the theologians working in this tradition always discussed <u>classes</u> of possible cases. Toulmin himself is very much inspired by his experience in a government committee on bioethical issues in which he found the members time and again to disagree strongly about 'principles', but to agree nevertheless about 'cases', (Toulmin, 1981: 31; Jonsen & Toulmin. 1988: 16-19).[19] Committees, however, don't discuss particular cases which all members are personally acquainted with, but rather classes of cases. Even if this is sometimes done by reference to reports of particular cases, the reports will describe these cases in general terms applicable to other cases as well.

Is any stable position to be found in-between these extremes? To answer this question, let us ask: how do we teach a person to follow a norm? It seems that there are two possibilities (Hart, 1961: 121 ff): we can either communicate a statement of the norm in general terms, which we may expect a competent speaker of the language to understand, or we can present this person with a series of relevant cases, pointing out the required behaviour in each. How do we know that our pupil has understood the lesson? This is clear in the last case: he has understood it, if he is able without further guidance, to recognize a new relevant case, and to identify the required behaviour in it. But this is also the correct answer in the first case; if our pupil only knows the formula we have taught him, and is (mysteriously) able to explain its meaning by giving adequate reformulations, but doesn't know what to do in a concrete case, we would consider our lessons to have been in vain. This means that fully knowing the meaning of the statement of the norm consists in being able to continue the series. On the other hand, in using the second method, our aim hasn't been to teach our pupil something about the 'particular cases' we present, but rather about <u>extrapolations</u> from these to an indefinite number of new cases. If we are using statements in general terms as a vehicle,

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[19] He actually says: particular kinds of human situations! Note that this observation, if valid, would only tell us something about warrants: the 'locus of certitude' would be found in lower level general considerations, rather than higher level ones. Higher level considerations could still provide the true rationalizations of the lower level ones. In my own experience, however, it is equally possible that a committee agrees on principles (e.g. the harm principle), but disagrees about 'appplications' to classes of cases (cf. Lustig 1992: 498). Privileged or 'core' intuitions within the method of reflective equilibrium can be at every level of generality. Locally they may tend to cluster on some particular level (lower or higher), but that doesn't change the basic point.

our aim is exactly the same, for to understand the meaning of such statements already involves being able to refer to paradigmatic cases, and to extrapolate from these to new ones.[20] Cognitive psychology tells us that our mastery of general concepts is like this; my suggestion is that our appeal to general considerations in practical judgment isn't at all different.

Note, however, that talk of 'particular' cases should not necessarily be taken literally; abbreviated sketches of such cases which stand for classes of cases, may be sufficient. The point is only that a grasp of the general always consists in the ability to extrapolate or project from some of its instantiations to others. That is not, as suggested in the claims for the superiority of casuistry over principlism (cf. McDowell, 1979), a form of knowledge alternative to knowing a rule; it is knowing a rule.

We have now found the kernel of truth in the particularist criticism of principlism. Pointing to particular cases (or to descriptions of relatively concrete classes of cases) has more than a heuristic value only: it fixes the meaning of general (or higher-level) considerations, and as such it has an indispensable informational value. Even if in any particular case this value is dispensable, that is only because the relevant consideration is part of a network of beliefs which is fixed in this way at innumerable places. On the other hand, cases are only relevant as models or paradigms, as representatives of general considerations. All the operations of casuistry derive their sense from the fact that moral truth is not in the particular case as such, but only in clusters of cases.

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[20] This leaves us with Kripke's famous problem to explain how a rule can fix its own future application. (For an exhaustive discussion , see Stein (1997). That problem cannot motivate us to prefer casuistry, however, because casuistry is confronted with exactly the same problem (cf. note 17). Besides, as Kripke (1982) recognizes, any thorough scepticism concerning the very possibility of rule-following (expressed in general terms!) would be obviously absurd. Hence Kripke's problem has an answer, even if we don't know it yet.

Here is one answer. How do we know that 'plus' means addition, and not: addition until time t, and always summing to 5 after t? Kripke himself suggests that this is a matter of the convergence of blind inclinations of people forming a linguistic community. But that doesn't explain why a person who says 68+57=5 is 'mistaken', rather than only deviant. However, people are not only blindly inclined to act in certain ways, they also (blindly) expect each other to be so inclined, and adjust their own actions to their expectations. If I get only fl. 5.- instead of the fl. 125.- I expect, I will be angry. Normative language expresses mutually adjusted reactions to successes and failures in coordination.

How is it possible for our reactions to be so adjusted? Take two computing machines, one with the function 'plus'=addition, the other with the time-index at t. The second clearly is dysfunctional for coordination-purposes (as the so-called millennium-problem illustrates). So there may be a functional (evolutionary) explanation for 'the convergence of blind inclinations'.

4. The order of rationalization

One argument for the epistemological priority of the general is the following. In each particular case in which an action is right or wrong, praiseworthy or blameworthy, some properties of the action and of the context of action combine to make it right, wrong etc. This presupposes a valid norm in virtue of which these properties are right-making etc. In itself, this is an insight about rationalization, not about warrant. But if it is true, it also simply and elegantly explains how it is that we (often, usually) know what is right, wrong etc. in a new situation which we haven't thought of before. For this new situation will have some properties which are picked out by a rule which we already know, and by appealing to the rule we also come to have warranted moral beliefs about the new situation.

Something like this must be true, provided that 'knowing the rule' is explained as I did in the last section: we know the rule if we recognize that the 'new' situation resembles situations which we are familiar with, either by experience or by thought or by imagination. But it is only 'something like this' which is true. The argument itself is invalid.

For even if a 'new' situation has the same properties as an old one, and in the old one action A was obligatory or virtuous, it doesn't follow conclusively that action A is obligatory or virtuous in the new one: this situation may also have some properties which <u>defeat</u> that conclusion.

This insight seems to have far more threatening consequences for generalism than the idea I rejected, that principles are no use when conflicts between them arise. For if an action is obligatory on account of one principle, but should nevertheless, all things considered, not be done in a case in which this principle <u>conflicts</u> with another, that doesn't mean that A isn't obligatory after all. Nor is this a kind of inert moral fact: it may well exert its force in some substitute actions (or at least feelings) being required of the agent. Therefore the occurrence of moral conflict doesn't undermine the adequacy of proceeding by subsumption of particular cases under universal rules: if a principle states that under conditions C, an action has a certain moral characteristic, this may be true for all conditions C, even if the deliberative conclusion the moral agent eventually has to draw isn't fully determined by this. But <u>defeasibility</u> really undermines the adequacy of the subsumption model of argument. For if we add to the premisses the

statement that not only conditions C obtain, but conditions C-1 as well, our original conclusion doesn't follow any more, not even as an input to further moral deliberation.[21]

This threatens generalism in the following way. Think again of Winkler's paraplegic patient. I said in section 1 that the question <u>why</u> we should refrain from force-feeding this patient is answered by saying that force-feeding would (brutally) violate his autonomy. I held this to be a point in favour of principlism; so I implicitly assumed that this reason was a reason <u>in virtue of</u> the principle that a person's autonomy should be respected. But this, it seems, cannot be true, for in some cases the fact that an action violates a person's (let's say, a tyrant's) autonomy may not provide any reason against it; it may even provide a reason to do it. Since the principle is outruled by a counter-example, it seems we can only return to the original insight: violation of the patient's autonomy is a reason against force-feeding in this particular case, not necessarily in another. These are truths about particular cases, and they are (fallibly) known by inspecting the cases. If we attempted to arrive at these truths by appealing to a principle, we would go wrong in an unpredictable number of cases. So it is safe to trust such a principle as a heuristic at most.

Generalizing, we can state this particularist argument in the following way:

(1) Moral characteristics are supervenient, i.e. if a state of affairs, an action or an agent has some moral property, this is always on account of other properties it has.

(2) Supervenience, however, works in a <u>holistic</u> way. If we are only looking at some of the properties of the action etc., we can never conclude that it has a certain moral property as well. We have to inspect the other properties, and any one of these may be relevant to the final judgment.

(3) Therefore, moral judgment can only be particularist. For general considerations require us to abstract from at least some properties of the actual case, but these may always be relevant. Moral properties depend on other properties, but not in any way which can be summed up in generalizations. Rather the total *tableau* of these other properties in the particular case has a certain shape or *Gestalt* which determines its moral property.[22]

I accept the first statement. I believe the second statement to be somewhat over-stated in a way which I will shortly explain, but I accept it for the time being. Does the conclusion really follow? Or is there a way in which a generalist can also account for defeasibility and holism?

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[21] Some diehard generalists deny the distinction between overriding and defeating considerations. They want to say that the duty not to lie to the persecutor is only overridden by the need to protect his victim. On my view there is no such duty at all to begin with.

[22] Platts (1979: ch. 10).

Consider the following. If some action is right for being A, and another action wrong in spite of (or even for) being A, this has to be explained by pointing to some other property which the second action has, which is lacking in the first, or *vice versa*. Therefore, the original norm identifying A as a right-making characteristic has to be qualified. As the particularist will be quick to point out, this is not the end of the matter: for similar reasons, the qualification has to be qualified itself etc., *ad infinitum*. But that doesn't exclude that, each time a qualification is added, it covers <u>a class of</u> possible cases. So any statement of a general consideration has a clause for exceptions or default assumption built into it: 'when C you should do A, except when also C-a...n'. Some of these exceptions can, with some thought, be stated in advance by anyone with sufficient moral competence and experience, but nevertheless, this rider is always an open one. Fact or fiction may always confront us with a situation we had not thought of before and which forces us to recognize a new exception to the rule.

Of course, these exception-clauses have exception-clauses built into them as well, and these have the same open-ended character. By means of these exception-clauses, all principles, as I suggested in section 1, are related to each other in a network of belief, some relations already being established, others remaining to be discovered. To have any moral judgment conclusively established, we would have to go through the entire chain from exception-clauses to exception-clauses, which we can never do exhaustively.

(Why not? It seems to me that the limitations of our understanding are only part of the explanation. The other part is that morality, to some extent, is 'invented' by the community of moral agents.[23] In any new situation we are sufficiently constrained by the relevant considerations to be warranted in believing that our conclusion is a discovery and not an invention. But nevertheless, when this conclusion is added to the relevant considerations for the next problem, we start a cumulative process of constructive thinking which inevitably results in the network of moral beliefs being revised, and this not only by our mistakes.)

It follows that our conclusions are always provisional and open to challenge. That is true to our experience: so they are. But it also follows that rationalizing judgments are general ones: they always rationalize classes of cases. And this is true of our experience as well. It makes sense to refer to other cases, and to explain their relevance in terms of a *ratio decidendi*, a norm with it's chain of exceptions, exceptions to exceptions etc., truncated of at some point, and for that reason open to further challenge. It is also never true that all the actual properties of a token-context are relevant to determining its moral character. If the situation requires a certain judgment on account of a certain constellation of its properties, we can always imagine the same

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[23] O'Neill's concept of 'design', see note 6, illuminates the point. Cf. Beauchamp (1996: 90-91).

constellation requiring the same judgment in other cases. Most of the time we are actually acquainted with such cases, sometimes routinely.

The idea of open-ended chains of exception-clauses to exception-clauses may seem very discouraging. In going through the chain, how can our rational confidence in any conclusion ever <u>grow</u>? And this seems to be a minimal requirement, even if we are already accustomed to the idea that our confidence will seldom approach certainty. Should we not rather conclude that a *ceteris paribus* clause to a rule undermines its claim to being a rule at all? Things are never equal. And we cannot decide whether the dissimilarities are relevant by reference to the rule. So how do we decide whether we are within the domain of the 'rule' or of its exceptions otherwise than by 'looking at the particular case'?

To give my generalist account some initial plausibility, I need a 'ripples-in-the-pond postulate'. The postulate says that in going through the chain, our chances of meeting any unforeseen exception will normally be reduced substantially. For the entire network of relevant considerations to be applicable by us with any degree of confidence, the complexity of its relations to the world has to be finite.

This constraint on holism explains how W.D. Ross could say that the validity of a principle, notwithstanding its defeasibility, implies a 'tendency' to fix the moral property of cases to which it applies.[24] This way of putting it can be misleading. For we shouldn't exclude, for any individual valid norm, the possibility that its exceptions are more numerous than its valid applications.[25] But such cases have to be rather exceptional themselves, and if they exist, the exceptions will normally (!) be relatively simple, low-level, and familiar. Otherwise, the holistic system can't be handled.[26]

Statements of general considerations in practical arguments will show their character as default-assumptions by the form 'normally if c, then p'. And the conclusion which they allow us to draw, will therefore have the form 'presumably p'. The applicability of these concepts presupposes a certain distribution of the burden of proof:

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[24] Van Willigenburg, this volume*, objects, that in appealing to a moral consideration ('that would be lying'), we don't claim that there is certain probability of, say, 95%, of the property referred to being determinative of rightness or wrongness, (cf. Dancy, 1993: 99-100). Indeed, we don't, because in such statements we imply that -as far as we know- there are no defeating considerations. They are to be understood in a holistic, not in an atomistic way.

[25] Such statistical considerations are one reason for preferring either the 'no, unless', or the 'yes, provided that' format for the wording of any norm, but not necessarily the only reason.

[26] I agreed with Williams (cf. note 10) that we have no reason to expect the system to be simple. But if it is to be action-guiding, there is a threshold to its possible complexity. That is particularly true to the extent that the actions it is supposed to guide should be adjusted to each other.

we will only be fully satisfied by a denial of p, if some relevant defeating consideration is adduced.

Suppose you have been told that a person did something morally wrong, you ask what made his action wrong, and the answer is that he lied (intentionally led another person to believe a falsehood). The answer, if a bit short, is satisfactory. Now suppose that you have been told that another person did something morally laudable, you again ask what about his action made it so, and the answer is again that he lied. This, in order to be intelligible at all, requires elucidation. Default rules reflect this a-symmetry in their ordering of the relevant features.

If you hold that, normally, human beings are one-legged, you will not only have many exceptions to explain, but, more basically, it will be very hard to explain them, (Veltman, 1989: 215).[27]

This means that, even if it is true that the moral character of an action or a person (or a society) results from the relevant properties of the action, the person or society as a whole, it is also true that this moral shape can be analysed, or broken down. Each relevant feature makes a difference, but the difference has to be explained against the background of other features. With a constant background, the significance of the feature is the same. If we have been informed that the action has the property a, we conclude that it is right (courageous etc.). If we now learn that it is also b, we consider it wrong (foolhardy etc.). With every new property the moral meaning, and even what Dancy calls the 'polarity' of the old ones may change, but it does so in a universally valid way. At every particular point we may stop this process, and then we know the moral truth for all cases in which it is proper to stop at this point. The moral 'shape' of a case is built up stepwise from the differences each of its salient features _generally_ makes at some particular point in the building process. There may be several routes to the same final holistic conclusion, each with a different starting point, e.g. either one of the sets of properties which invoke two conflicting 'principles'. But not every possible ordering of the relevant properties is equally acceptable. That is why the a-symmetrical idea of specification is appropriate. Exceptions to a principle belong to the logical level of its specification.

Default-generalism, as we might call it, is a modest doctrine: it only asserts that moral shapes are analysable in this way. There are only certain ways of telling the story which make sense, and there is a certain matter of fact which, at this particular point of the story, _always_ adds its weight to the same scale. But that need not be the end of the story. Default-generalism accepts the holistic idea that a salient feature doesn't make the same difference everywhere, but it doesn't accept that if a feature makes the same difference here and elsewhere, that is entirely accidental. But this is precisely what

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[27] On default-rules cf. Wijsbek, this volume.*

particularism has to affirm: 'atomistic' considerations can, by themselves, not only create no certainty, but no 'tendency', and therefore, not even a presumption of relevance either.[28] This brings me back to a point I made in the last section, which I can make more forcefully now: particularists cannot even justify their talk about norms being rules of thumb or summaries, or even checklists or aide-memoires. If we 'look at the case', as they require us to do, and believe that we see something, this belief cannot be reinforced by anything which we have seen before. For even the weakest form of the transfer of probability from one case to another is incompatible with particularism.

My conclusion is reinforced by another observation I made before. The list of qualifications is open-ended, and we discover the need for adding another qualification by being confronted with a particular case. It is not necessary, however, that we are confronted by this case in reality: a description of it might do the job. At this point, the usual particularist metaphor of 'perception' is seriously misleading. The description may refer to the past or the future, to fictional or hypothetical cases (perhaps under some constraints concerning their 'realism').[29] Such descriptions, however, in abstracting from some of the properties of any actual case, in effect cover classes of cases. (Of course, any of the properties abstracted from may introduce another qualification, but that is besides the point.) So what we 'discover' by 'looking' is really the validity of a general, albeit defeasible, consideration.

My analysis confirms the suspicion that particularism is entirely unhelpful for deliberation about hard cases. Particularists recommend heuristics (comparison with other cases, appeal to summary rules), but they cannot explain the value of the heuristics. They are not entitled to any resource for moral thinking beyond 'perception'. Therefore, they cannot explain how people learn to 'perceive' either. Even their fallibilism causes problems, for they cannot give any account of the correction of mistakes. 'Look more carefully', they repeat saying, but they have no criterion of carefulness in looking. All these things depend on the existence of structural connections between ranges of cases, which only generalist forms of holism can account for.

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[28] Particularism cannot explain moral conflict either. For if one feature of the situation, taken on its own, would justify one moral judgment, and another feature its opposite, we have to remind ourselves that we are not entitled to any such judgment before we have seen the shape of all relevant features, including those two. (Particularism can account for moral dilemma's, however, for it need not assume that we can always rationally choose between two possible 'shapes'.) For a particularist account of conflict see Dancy (1993: ch. 7).

[29] "An imaginary case might be an abbreviated sketch of a situation where ...the importance it (a property) can have is revealed," (Dancy 1993: 69). Why should that be of any interest, if we are not entitled to expect it to have this importance in any other case as well?

So what is it that drives particularism, what explains its undeniable attraction? Its willingness to attend to the details of the particular case, of course, but this it shares with default-generalism. But there may also be a moral aspect to the initial appeal of particularism. If someone is in need and you are the only one who can help, the right reason for your action seems to be the particular fact that this person needs help now. If you explain your action by saying that people generally have a duty to help needy people, we may suspect you to have, in Williams' memorable phrase, 'one thought too many'. Now I believe that this important insight is in danger of being solidified into a new dogma. For there are such things as duties and obligations deriving their moral force from standing patterns of mutual expectations. If you explain repaying money you borrowed, or keeping to the right side of the road even in a suicidal mood, you may without any impropriety explain your behaviour by saying that people have legitimate expectations for cases like this. To my mind such a motive of duty can also be a proper additional motive for helping a person in need, even if it shouldn't be the only motive. It is clear that, at least for such motives, particularism cannot be the true account. And because reasons derived from such social norms have a holistic character -as is generally recognized in recent accounts of legal reasoning[30], it cannot be true either that holism requires particularism.

But let me grant the point that your basic reason should be the need of the needy and not your duty to help them. The idea that this discredits generalism reveals the basic misunderstanding of the nature of rules I discussed in section 3. The generalist does not claim that you should help this particular needy person because of the further fact that a valid rule prescribes you to help needy persons in general. There is no such <u>further</u> fact. Rather, you should help this needy person, and (other things being equal) the next one, and so on. That is what the rule amounts to.[31]

Conclusion

It is often suggested that applied ethics is in a state of deep methodological crisis, deriving from opposing views concerning the proper way of proceeding. To my mind these suggestions are highly misleading. If we have reason to worry about the state of applied ethics, this is because of the average quality of its productions, not because of

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[30] Ev. kruisverwijzen naar ander stuk in de bundel?*

[31] The misunderstanding may be partly due to a tendency to conceive of all rules on the model of legal rules. Legal rules mostly derive their validity from being prescibed by authority, and this prescription is a "further fact" indeed. Authority provides us with content-independent reasons. So, in a legal context, does precedent (cf. note 14). Moral principles and moral "precedents" do not.

any methodological crisis. Its outstanding contributions more or less exemplify the same method, and this method is <u>endorsed</u> by both camps which usually are supposed, and usually suppose themselves, to be totally at odds with each other as regards their view on 'methods'. The method essentially involves reference both to cases and to general considerations, and both to principles and to specifying 'maxims'. The knowledge of principles and maxims implies the ability to handle cases, and the appeal to cases is mostly an implicit appeal to principles and maxims.

This is also the method used in all actual moral thinking; whatever it is we call 'moral theory' is fully continuous with reflective moral practice. It is also very similar to the method used in sound legal thinking, which only allows more space to appeals to authority (or 'formal rules').

Really controversial is only the explanation of the appropriateness of this accepted method. I have argued for a view which is both (moderately) holist and generalist in its conception of rationalization, and which accepts the relevance of both general and particular judgments to the justification of belief. Most of the time a judgment on particular case will consist in a directive or evaluative, <u>together with</u> the grounds which rationalize the judgment, but sometimes only of a directive or evaluative, still in search of its *ratio*.

I reject so-called 'deductivism'[32] and atomism on the one hand, particularism on rationalization and epistemology on the other, but neither principlism nor casuistry.

Principlists acknowledge or should acknowledge that the firm grasp of the meaning of principles only comes from the exposure to cases. They also are able to acknowledge that principles are part of a network of general considerations which can only be applied holistically. Such applications can never be mechanical, but require judgment, and the exercise of judgment may either defeat or override any principle. Even in such cases the ratio for the final decision derives from general considerations specifying the application of principles. The proper subsection of the network of general considerations is often suggested by the careful study of (actual or hypothetical) cases. And this is not merely a matter of heuristics, for the warrant of any particular judgement may consist in a combination of general considerations and particular judgments, in reflective equilibrium.

The proponents of casuistry should acknowledge that the choice of cases as either 'paradigmatic' or 'problematic' is guided by an explicit or implicit reference to relevant basic principles, and that the identification of similarities and differences and the evaluation of their importance rely on implicit or explicit general considerations as well. They should also acknowledge that an appeal to an analogous case is usually,

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[32] I.e. the idea that the order of justification (warrant) is always from the general rule to the particular case (subsumption-model).

though not necessarily, more convincing if the *ratio decidendi* is made explicit. Cases invite us to re-consider and to re-organize our network of beliefs in such a way that the connectivity is increased, which generates more discursive support for particular options. This may not always result in a neat 'solution' of the moral problem we are considering. But that is a worthwhile insight in its own right.

It is true that such a network of beliefs will have a richness and complexity far beyond any simple list of principles. But it doesn't follow that principles are irrelevant. On the contrary, they structure the system.

If both camps make these possible and laudable adjustments, they will end up being indistinguishable.

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