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Can the Two-Level Moral Thinking Reconcile the Rivalry of Contextualism and Principled Ethics? A Conversation between Winkler and Hare

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Abstract

There has been controversy between contextualism and principled ethics in metaethics in general and bioethics in particular. Contextualists attempt to solve moral problem by firstly working with particular cases in all of their contextual details and then by applying these results to other similar cases, whereas proponents of principled ethics try to apply the general normative ethical principles to particular cases. The former approach can be viewed as a "bottom-up" and the latter "top-down" way. As indicated by many moral philosophers, both of these approaches have shortcomings. By introducing the two levels of moral thinking, R.M. Hare argues that the two kinds of metaethical theories are not in real conflict. Contrarily, they both play important roles in our moral thinking, though at different levels. In this paper, I am going to examine to what extent, if ever, Hare's attempt is successful, and furthermore, what are the steps that should be taken to remedy the deficiency, if any.

Key words：contextualism; principled ethics; top-down approach; bottom-up approach; two-level structure; intuitive moral thinking; critical moral thinking; generality; specificity; universality; *prima facie* principles.

1. The Impotence of Principled Ethics

Traditional normative theories -- essentially principled ethics -- have been challenged for their impotence in providing guidance in a moral decision. The challenge is in twofold: Firstly, there is scepticism that one can reach a moral judgment by reasoning deductively from general ethical principles; secondly, these theories are insensitive to and thus do not give due weight to the contextual variabilities in a specific situation. As E. Winkler illustrates, there is doubt about the **applicability** and **relevance** of general ethical theory.[1] The difficulty mentioned is more serious in applied ethics since the domain specificity specially required by applied ethics has been ignored by the traditional normative theories. Winkler points out that special ethics such as biomedical ethics, business ethics and environmental ethics has been understood as a type of applied ethics which only requires an application of general ethical theories in making moral judgment. This fact leads special ethics in a wrong direction, under which no special principles or methods are needed.

> The basic philosophical conception of applied ethics has been that it is continuous with general ethical theory. Biomedical ethics, as a primary division to applied ethics, is not a special kind of ethics; it does not include any special principles or methods that are specific to the field of medicine and are not derivable from more general considerations. The practical field of medicine is governed by the same general normative principles and rules that hold good in other spheres of human life. If certain values and requirements are central to the practice of medicine, they will be explained and justified from the perspective of general moral theory.[2]

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1 Winkler (1996), p. 50.

2 Op. cit., p. 51.

The traditional normative theories to which Winkler and anti-theorists refer, fall into two main categories: utilitarianism (i.e., "classical utilitarianism", to follow Winkler) and Kantianism. In Winkler's view, the mistake utilitarianism makes is based on its commitment to "a particularly uncompromising form of impartiality in ethics" which derives from the idea that equal weight has to be given to every human being. Hence in making moral judgements it does not take into account the "commonly recognized contextual variabilities", the consideration of which might lead to a violation of such an impartiality.[3] Contrary to utilitarianism, commonsense morality accepts that one has special obligation to those one has special relationship with. Apart from the problem of impartiality, utilitarianism is criticized on the grounds that, in the pursuit of the greatest utility, it does not hesitate to sacrifice justice and human rights.

> Classical utilitarianism simply cannot properly recognize that factors of relationship, both personal and professional, as well as of rights and desert radically restrict or qualify the morally single-minded promotion of everyone's interest. Consequently, utilitarianism is blind to many forms of contextual variability in the weight of morally relevant considerations that commonsense morality embodies.[4]

Deontological theories like Kantianism also has a problem in accommodating the contextual variables in the force and import of moral principles, though in a different way. “Deontological reasons for action are commonly thought to owe their primary status as moral reasons to our nature as persons, not to circumstances or particular relationships.”[5] Therefore, in case that there are moral reasons for and against an action, it is impossible to weigh them by the variations of context. Deontologism either fixes the weights of these reasons in a general

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[3] Op. cit., p. 53.

[4] Op. cit., p. 54.

[5] Op. cit., p. 55.

context-independent way or determines their weights differently in different context by appealing to our intuition. Winkler claims, "Such resort to intuition, however, means abandoning any hope of systematically *explaining* the variable force of moral reasons or of offering any *method* of resolving conflicts about these variations."[6] On the other hand, if the weights are fixed independently of the context, then deontologism is committed to the denial of contextual variability of the kind in question.

Apart from the problem of accommodating contextual variability in making moral decisions, there is another problem for principled ethics: it is dubious that a moral judgement can be attained to guide an action simply by "applying" the principle to the specific situation. An alternative suggestion is that, the **interpretation** of the situation should play an important role in the decision procedure.

2. The Criticism of Paradigm Theory

In his paper "Moral Philosophy and Bioethics: Contextualism versus the Paradigm Theory" Winkler discusses at length the paradigm theory developed by Beauchamp and Childress. This paradigm theory comprises three main principles, namely, those of autonomy, beneficence (including non-maleficence), and justice. Since the aim of the paradigm theory is to tackle ethical problems in bio-medical practice, it is domain specific. The three principles are general and abstract but can nevertheless guide moral practice. As Winkler points out, the aim of the paradigm theory is to bridge the gap between principle and the actual case.

> The paradigm theory promises to bridge the logical chasm between the abstractions

[6] Ibid., Winkler's italics.

> of normative theory -- principally utilitarianism and Kantianism -- and the moral complexities of the world of medical particulars. For on the one hand, its three mid-level principles are articulated and explained in relation to medical practice…The paradigm theory thus appears to provide enough substance to guide practice. On the other hand, it keeps faith with the ideal of comprehensive justification because each of its principles is linked with one or another of our central traditions in normative theory.[7]

However, Winkler criticizes the paradigm theory for a serious limitation in solving moral problems in the field of medicine. First of all, the paradigm theory does not provide an account of what constitutes moral status. Since moral status is a fundamental issue in many areas of bioethical decision-making,[8] the omission of such an account makes the theory useless in these areas. Secondly, although the principles in the paradigm theory are domain-specific and thus more specific than the traditional normative theories, they will be applied to different situations with equal force. Attention has not been adequately paid to the contextual variation which might affect the moral force of the principle.

It can be agreed that the problem with the paradigm theory is the same as with the traditional normative theories, though perhaps in a weaker degree. It arises from the nature of generality of principle, and this in turn leads to the problem of the top-down process of application and justification. The latter problem can be viewed as constituting the central issue in the debate between principled ethics and contextualism in ethics in general, as well as in bioethics in particular. The point of issue is summarized by L.W. Sumner and J. Boyle as follows:

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[7] Op. cit., pp. 51-52.

[8] The abortion issue is one of the issues in these areas. In the abortion issue, the moral status of a fetus is always considered as crucial.

> Generalists about bioethics support an essential justificatory or deliberative role for ethical principles or theories. At their most ambitious, they argue that we need to subscribe to the best normative theory in order to do bioethics successfully. Moral justification or deliberation then operates in a "top-down" manner -- that is, from general principles to particular cases. One problem with this approach is that generalists have not managed to agree on which normative theory is the best, some defending consequentialism while others affiliate with one or another version of deontology or virtue theory. Another problem is that the rarefied abstractions of any such theory seem to do little real work in resolving the concrete problems of particular patients and institutions.
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> Particularists have reacted to these problems by advocating a rival "bottom-up" approach. On this way of thinking we begin by working with, and attempting to resolve, particular cases in all of their contextual detail.[9]

In the following section I shall examine whether contextualism, as a rival of principled ethics, is able to provide a vital methodology in respect of guiding and justifying moral decisions.

3. An Examination of Contextualism

If the traditional normative theories and the paradigm theory are described as adopting a top-down process, contextualism can suitably be described as bottom-up oriented. Contextualism holds that "moral problems must be resolved within the interpretive complexities of concrete circumstances, by appeal to relevant historical and cultural traditions, with reference to critical institutional and professional norms and virtues, and by relying primarily on the method of comparative case

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[9] Sumner and Boyle (1996), p. 4.

analysis."[10] Since the decision made does not involve the application of general moral principles, it can avoid the difficulty arising from the gap between principle and specific case. By the same token, since it does not borrow any guidance from principle, it remains a question as what resources to make use of in making moral judgments. Furthermore, without appealing to principles, we have to find some other way to decide whether differences between situations are morally relevant. It seems that while it accuses principled ethics of its inability to guide moral decision, contextualism itself cannot provide any guidance. The method of interpreting and comparing cases itself cannot resolve moral issues. As Sumner and Boyle query, "How can we be confident that our 'resolutions' of these cases are anything more than a reflection of our initial biases?"[11]

Some clarification is needed for answering this question. Firstly, contextualism does not belong to a radical form of anti-theory in which no principles are admitted into the process of moral deliberation. Rather, its bottom-up approach leads to the adoption of principles. What it suggests is, by accumulating agreement around cases we can reason our way "analogically" toward some modest principles.[12] Consequently, the principles and rules thus arrived is domain sensitive in a sense that "the weight and import of many rules and morally relevant considerations may vary across domains and contexts."[13] Secondly, contextualism merely rejects the deductivist approach of principled ethics and the invariable weight of principles it claims to have. By contrast, contextualism emphasizes the relative importance of inductive method in moral reasoning.[14] However, how to resolve moral issues by employing the inductive

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[10] Winkler (1996), p. 52.

[11] Sumner and Boyle (1996), p. 4.

[12] Ibid.

[13] Winkler (1996), p. 57.

[14] Op. cit., pp. 57-58.

method mentioned above remains a problem, as does the introduction of interpretation and comparison of cases.

4. Universality, Specificity and Generality

With respect to the rival views of principled ethics and contextualism, Hare thinks that both theories have grasped the truth, but only part of it. For instance, contextualism has hold of an important truth, that one has to judge each situation on its own merit.[15] But if contextualism persists in asserting that in morals one cannot appeal to general principles, then it is mistaken. It is important here to note the distinction between universality and generality made by R.M. Hare. Universality contrasts with particularity, whereas generality contrasts with specificity. According to Hare, it is possible for a moral judgment to be universal and at the same time highly specific. The specificity thus meets the requirement made by contextualism that every detail in the context has to be recognized and accommodated. A specific judgment can be universal if and only if one is ready to apply it to the similar case where the situation is exactly the same except that the roles in it are reversed. This similar case need not be a real one, it may only exist hypothetically. Given this conception of universality, it would be a confusion either to deny that a specific moral judgment can be universal (i.e. it is valid only for the particular situation in which it is made) or, to think that a universal judgment has to be very general (and thus neglect the contextual details which might affect the judgment).

> The confusion between universality and generality, which I have been exposing, leads people to think that if one makes a universal judgment about a situation, one

[15] Hare (1996). In his paper, Hare discusses situation ethics instead of contextualism, but I think his analysis on the former can well apply to the latter in this debate.

> must be making a very general judgment about it. This is not so. The judgment can be specific enough to take in any details of the situation that anybody thinks relevant. Only a victim of the confusion I have been exposing will think that a statement cannot at the same time be universal and highly specific.[16]

It can be seen from Winkler's perception of contextualism and criticism of traditional normative theory in the following passage, that he falls victim to the confusion described by Hare.

> Contextualism, by contrast, is sceptical about the very possibility of any complete, universally valid ethical theory that is even remotely adequate to the moral life. This scepticism springs from the sense that whatever appearance of universality is achieved by general normative theory is necessarily purchased at the price of separating thought about morality from the historical and sociological realities, traditions, and practices of particular cultures. The result of this separation is a level of abstraction and ahistoricism that makes traditional ethical theory virtually useless in guiding moral decision-making about real problems in specific social settings.[17]

However, the problem as it appears to contextualism is that, granted that it admits a specific moral judgment can be universal in Hare's sense, it remains dubious that whether, and how, it can apply to other similar cases. As it is commonly agreed that for a principle to have guiding force, it should have certain degree of generality. Therefore the scepticism here is about the **generality** of moral principles. The questions concerned are: 1. "Do general moral principles have a role to play in moral decision?" and 2. "Is it the case that we only need to make specific moral judgments by studying the actual case and no generalization

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16 Op. cit., p. 21.

17 Winkler (1996), pp. 73-74

should be made, as what situation ethics maintains?" If one gives a positive answer to the latter question, then one has to face the criticism which has been addressed to contextualism in the last section. On the other hand, if one claims that the general moral principles definitely play an important role in making moral decision, one should be able to defend principled ethics against the attack from contextualism.

While Hare admits that we may consider each situation on its merits and make moral judgments upon such consideration, he is aware of the problem of contextualism.

> …they [the situation ethicists] do not say how we are to judge the merits or situations. In default of some *method* for judging, everybody will be at liberty to say what they feel like saying.[18]

In order to ensure a moral judgment to be non-arbitrary, one has to give some reasons and these reasons have to be universal. Hence, in making a moral judgment for a particular case, one is at the same time endorsing a universal moral principle, though the latter may be a specific one.

> It is hard to see any method for judging situations can get far without giving *reasons* for judging them one way rather than another. And any statement of the reasons is bound to bring in principles -- not the very simple general principles that the situation ethicists so dislike, but universal principles all the same. If it is a reason for banning a drug from public sale that it could endanger life, then that is because of a principle that drugs which endanger life ought not to be on public sale. Of course reasons can be much more complicated than that; but they will have to state certain *features* of situations which make it right to do this or that; and these

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[18] Hare (1996), pp. 25-26.

> features will always have to be described in universal (though not always highly general) terms.[19]

In short, Hare argues that even though contextualism puts the emphasis on the contextual variability of the situation, the moral judgment so made has to be a universal one, as far as it is qualified as a "moral" judgment. The universality is embodied in the features which the judgment singles out as reasons. However, there must be some method for selecting certain features of the situation from among the others, as the relevant features. Therefore, contextualism, in order to be an acceptable ethical theory, has to offer a method for deciding moral relevance.

As stated above, a principle formulating moral reasons for an act can be as specific as one wants. When a highly specific principle is formed in this way, it is only valid for that particular situation and situations similar in relevant respects. For any other situations which do not contain those features, the principle is inapplicable. Nevertheless, even a principle which is so specific that no similar cases would exist in the actual world is universal. However, this kind of principles would be the object of another criticism made by contextualism: it cannot guide moral decision. It is because in order to apply to other situations in the future, guidelines have to be to some degree general.

> We have, indeed, to look carefully at particular cases; but after we have done that we shall want to learn from these cases principles that we can apply to other cases. Cases differ from one another, no doubt; but that does not mean that we cannot learn from experience. The salient reasons for one decision may also be important for another decision. So, while avoiding oversimplification and too rigid general rules, we can still, and good medical practitioners do, form for ourselves and others general guidelines for the future. These guidelines have to be to some degree

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[19] Op. cit., p. 26; Hare's italics.

> general, or they will apply to only one situation, and be useless for preserving the lessons of experience for later situations.[20]

Before affirming that general principles are able to provide guidelines for the future decision, it should be agreed in the first place that we need general principles to guide our acts. Given that we can, and should make specific judgment after considering the situation on its own merits, as contextualism urges, why do we still need general principles? In answering this, Hare gives the following reasons. First, a general principle can help us to cope with moral issues in the world. Moral judgment we made in the past can apply to future cases which have certain salient features in common and thus can serve as a practical guide. In other words, following principles would give us the best chance to act rightly.[21] This is a fact that Hare thinks situation ethics overlooks.

> What is wrong about situation ethics and certain extreme forms of existentialism … is that they make impossible what is in fact an indispensable help in coping with the world (whether we are speaking of moral decisions or of prudential or technical ones, which in this are similar), namely the formation in ourselves of relatively simple reaction-patterns … which prepare us to meet new contingencies resembling in their important features contingencies in which we have found ourselves in the past.[22]

Second, Hare points out that we, as human beings with more or less dominant desires and interest, always have a temptation to "cook" our moral thinking so as to make a judgment which suits our own interest. If we have general principles or intuitions firmly built into our characters and motivations, it is easier to overcome

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[20] Ibid.

[21] Hare (1981), p. 38.

[22] Op. cit., p. 36.

such temptation.[23] These are practical and psychological reasons for us to learn general moral principles. Surprisingly, Winkler, being a proponent of contextualism, also conceives contextualism as a kind of socially embedded rule utilitarianism, which emphasizes the importance of moral rules that guide social interactions and relationships within social contexts.[24]

Although Hare and Winkler have different understanding and evaluation of principled ethics and contextualism, they both admit that general moral principles are indispensable. They also recognize, with different weight, that contextual details should be considered carefully so that we can sort out the morally relevant features and decide whether they would fall under a certain principle. Now the problems remained seem to be these: "How to reconcile the conflict between these two theories?" and "How do they defend themselves from the attack of their rival theory?"

5. Two Levels of Moral Thinking

As mentioned above, Hare thinks that contextualism has grasped an obvious truth that two similar situations may be in some important respects different.

> The situations in which we find ourselves are like one another, sometimes, in some important respects, but not like one another in all respects; and the differences may be important too.[25]

Therefore, from the point of view of contextualism, principled ethics cannot

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23 Op. cit., p. 38.

24 Winkler (1996), p. 58.

25 Hare (1981), p. 39.

recognize these different respects thus should be rejected. But according to Hare, this is a mistaken view in that it ignores another obvious truth that some situations are similar in some morally relevant respects, and also in that it holds that these two truths are incompatible. Hare conceives that this mistake arises from failing to make the distinction between two levels of moral thinking, namely, intuitive level of moral thinking and critical level of moral thinking. Since Hare has expounded these two levels of moral thinking in great detail in his book *Moral Thinking*, I will only summarize his idea briefly here. The intuitive level is the day-to-day level at which most of us do most of our moral thinking. General principles are used at this level to help us solving moral problems. If we have absorbed certain principles and acquired certain virtues, we "will have the corresponding intuitions about right and wrong, good and bad, and will also, unless overcome by temptations, follow the principles and display the virtues in practice." [26] Nevertheless, these principles are neither self-evident nor self-supporting, they are only implanted in us by our upbringing and education. Moreover, there are always cases where these principles are in conflict. In order to resolve moral conflicts and justify our moral principles, we have to turn to the critical level of moral thinking.

At critical level, we are going to make moral judgments by critical moral reasoning. As Hare puts it, "Critical thinking consists in making a choice under the constraint imposed by the logical properties of the moral concepts and by the non-moral facts"[27], the choice mentioned is a decision of principles. Hare's account of the method of moral reasoning at the critical level "draws heavily on both the utilitarians and Kant and is based on an analysis of moral language and its

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[26] Hare (1996), p. 30.

[27] Hare (1981), p. 40. There are three logical properties of moral concepts such as "ought", namely, prescriptivity, universality and overridingness. Hare (1981).

moral properties."[28] Hare admits that his account on how we have to reason remains a matter for dispute, which we shall not deal with here. His method of moral reasoning at the critical level is that, by employing the principle of utility, we can detect the right one among the conflicting moral judgments in a specific situation; or, we can discover other judgment beyond those conflicting. In the latter case, the new judgment is an improved one in a sense that it is more specific. Furthermore, it can be justified. Apart from resolving moral conflicts, by critical thinking we can also select the best set of *prima facie* principles which would most likely produce optimific results in the usual cases in the actual world as it is. Optimific results are those which would be chosen if we were able to use critical thinking all the time.

In short, at the critical level, we may form principles (which are universal) as specific as required to deal with any individual cases. And for the reason stated above, we also select principles of a certain generality for use at the intuitive level. At the intuitive level, we only need to pick out some features of a situation as morally relevant. These morally relevant features constitute the essential descriptive content of a general moral principle. That means that when we select a *prima facie* principle, we at the same time decide the relevant features. Our critical thinking is equipped to do both of these jobs. The *prima facie* principles thus selected will be justified by the principle of utility and the requirement of universality.

> The critical level of moral thinking is used, not only to settle conflicts between intuitions at the intuitive level, but to select the moral principles and … the virtues that we should seek to cultivate in our children and ourselves. On my own account of critical thinking, the selection is done by assessing the acceptance utility

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[28] Hare (1996), pp. 29-30.

> of the virtues and principles -- that is, by asking what are on the whole the best for society to acknowledge and cultivate … If the critical thinking has been well done, and if, therefore, the right virtues and principles have been chosen, the person who has them will be a person of good character, that is, a morally good person.[29]

It seems that the two-level structure of moral thinking introduced by Hare can reconcile the rivalry of principled ethics and contextualism. It can accommodate both the contextual variability emphasized by the latter at the critical level and the general principles employed by the former at the intuitive level. Finally, Hare is able to evaluate contextualist theories by applying the distinction between these two levels.

> It is obvious that a distinction between levels can explain what is right and what is wrong about such a theory. Taken literally, the theory would require us to use critical thinking in all our moral decisions however straightforward. But usually we do not have time for this, nor always the necessary information about the consequences of alternative actions. We are also affected by personal bias, which, in spite of what some of the people I have discussed say, is often a source of wrong decisions.
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> So the sensible thing to do is to form for ourselves principles and cultivate virtues, which in the general run of straightforward cases will lead us to do the right thing without much thought, and reserve our powers of deep thought for the awkward cases … When we do this critical thinking, we have to consider each situation on its merits and in detail, as the situation ethicists say we should. But it would be absurd and impracticable to do this on every occasion.[30]

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[29] Op. cit., p. 30.

[30] Op. cit., p. 33.

The division of labour between general *prima facie* principles and contextual reasoning in making moral judgment is analogical to that between rule-utilitarianism and act-utilitarianism, with its two-level structure. Therefore it is useful here to quote Hare's discussion of the two kinds of utilitarianism.

> Much of the controversy about act-utilitarianism and rule-utilitarianism has been conducted in terms which ignore the difference between the critical and intuitive levels of moral thinking. Once the levels are distinguished, a form of utilitarianism becomes available which combines the merits of both varieties. The conformity (for the most part) to received opinion which rule-utilitarianism is designed to provide is provided by the *prima facie* principles used at the intuitive level; but critical moral thinking, which selects these principles and adjudicates between them in cases of conflict, is act-utilitarian in that, in considering cases, actual or hypothetical, it can be completely specific, leaving out no feature of an act that could be alleged to be relevant. But since, although quite specific, it takes no cognizance of individual identities, it is also rule-utilitarian in that version of the rule-utilitarian doctrine which allows its rules to be of unlimited specificity, and which therefore is in effect not distinguishable from act-utilitarianism. The two kinds of utilitarianism, therefore, can coexist at their respective levels: the critical thinker considers cases in an act-utilitarian or specific rule-utilitarian way, and on the basis of these he selects … general *prima facie* principles for use, in a general rule-utilitarian way, at the intuitive level.[31]

The two kinds of utilitarianism, as Hare conceives them, can coexist and have specific roles to play at different levels. Similarly, principled ethics and contextualism can also coexist as different but complementary ways of moral reasoning. With the distinction of levels of thinking, Hare accommodates the

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[31] Hare (1981), p. 43.

merits of each theory. Furthermore, on Hare's account, it is noticeable that an aspect of a theory which is considered as a merit at one of the two levels, will become a problem if it is still emphasized at another level.

By the two-level moral thinking, the problem of utilitarianism raised by Winkler can be resolved. As mentioned in the first section, utilitarianism is accused of committing the uncompromising form of impartiality in ethics and thus violates the commonly acceptable partial behaviour, e.g. a mother should give priority to the needs of her own children over those of other people's children. However, Hare thinks that partial principles can be adopted at the intuitive level and can also be justified by impartial thinking at the critical level. Importantly, impartial critical thinking will also prescribe partial principles to use at the intuitive level.

> If we were concerned impartiality for the good of all children, we should want mothers to behave partially toward their own children and have feelings which made them behave in this way. We should want this, because if mothers are like this, children will be better looked after than if mothers tried to feel the same about other people's children as about their own. The same applies to doctors and nurses. Thus, impartial critical thinking will tell us to cultivate partial virtues and principles. But it will also tell us to cultivate impartiality for certain roles and situations. These obviously include that of judges, but also those of anybody who has to distribute benefits and harms fairly, as doctors do when they have to divide scarce resources between their parents.[32]

The two-level structure of moral thinking seems not merely able to reconcile the rivalry of principled ethics and contextualism, it can also solve the conflicting views of top-down and bottom-up approach. I shall discuss this in the next

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[32] Hare (1996), p. 31.

section.

6. The Dynamics of Particular Judgment and General Principle

The dispute of the top-down approach versus the bottom-up approach is partly due to the different weight put on general principles by the theories in question. Most importantly, the debate is over the way by which principles are produced. As I have pointed out above, even a contextualist like Winkler thinks that principles are indispensable. Moreover, Winkler claims that "contextualism's recognition of variable weight for moral considerations can be both principled and critical".[33] Nevertheless, contextualism maintains that the principles should be attained by bottom-up approach, as contrast with traditional normative theory.

However, the dispute is expressed in a somewhat misleading form. It sounds as if we begin with nothing when we are doing contextual reasoning. As Sumner and Boyle describes, principles follows, not precedes, the resolution of particular problems.

> On this way of thinking we begin by working with, and attempting to resolve, particular cases in all of their contextual detail. Once we have managed to settle some to these cases, then we can apply these results to other, similar, cases, gradually widening our network until larger patterns begin to form. Some of these patterns we might then codify as rules or guidelines, or even principles, but any such generalizations would follow, not precede, the resolution of particular

[33] Winkler (1996), p. 56.

problems.[34]

In fact, prior to the resolution of particular problems, principles, no matter in which ways they are achieved, have already existed. The denial of the possible contribution of principles in solving moral problems, makes the bottom-up process as well as the principles attained by this process redundant. If contextualism admits a certain degree of significance that principles have in making moral judgments, as it has been shown it is the case, then the question is how these principles enter into the process. Here Winkler makes a sensible suggestion: we begin with conventional moral principles and norms unless the moral judgment derived from them is challenged by other principles or by other moral judgment derived from them.

> Contextualism thus begins with conventional morality and the norms and values that currently play justificatory roles in various domains of social life. These moral rules and values are presumed to be reasonable unless they can be shown to be unreasonable. Moral judgment is regarded as sufficiently justified by appeal to other moral beliefs or principles not challenged by the particular issue in question. Accordingly, relevant levels of theoretical reflection are determined by what is actually required to establish a judgment as most reasonable in the circumstances. Ultimately, contextualism tries to bring a case under a rule that can be shown to have, or properly presumed to have, instrumental validity for the social domain that contains the case.[35]

This shows the method of moral reasoning of one kind of contextualism that Winkler favours. In the above quotation, "levels of theoretical reflection" is mentioned. This way of thinking is coherent with Hare's two-level structure. In

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[34] Sumner and Boyle (1996), p. 4.

[35] Winkler, (1996), pp. 52-53.

fact, the conventional morality and the norms and values are *prima facie* principles, in Hare's terminology. They apply at the intuitive level. Nevertheless in case of challenge or conflict, they have to be reviewed and modified when needed at the critical level. The "instrumental validity" mentioned also resembles the principle of utility which is used to justify and to select *prima facie* principles at the critical level. This resemblance is shown clearer in the following passage where Winkler illustrates the instrumental validity more fully.

> The kind of contextualism I favour would seek to explain or justify such differences [variable weight for moral considerations] in instrumental terms; in terms, that is, of the basic purpose of given moral rules, or of their purpose in relation to the primary social functions and values that help to define different domains of social life — such as the family, the criminal justice system, the economic system, the medical system, and so on.[36]

In the same paper, Winkler explicitly discusses the view of two levels of moral thinking.

> By contrast, contextualism agrees with the view that a fundamental pattern of moral reasoning consists of appeals to moral rules that combine instrumental validity at one level with deontological force at another. What contextualism adds to this perception is the idea that the instrumental justification of rules and standards may be domain sensitive. In consequence, the weight and import of many rules and morally relevant considerations may vary across domains and contexts. In so far as governing purposes and values associated with various domains are reasonable, however, these variations will be essentially systematic and explainable. It is these basic theoretical features of contextualism, together with its thoroughly bottom-up and socially embedded orientation to moral

[36] Op. cit., p. 56.

> problems themselves, that give this approach considerable power and relevance to applied ethics.[37]

It is quite clear that Winkler and Hare have a common view on the two-level thinking structure, even the domain sensitivity which contextualism emphasizes is accepted by and incorporated into Hare's structure. On the other hand, it is agreed that contextualism of this kind is, as Winkler puts it, a socially embedded rule-utilitarianism. The sort of rule-utilitarianism Winkler rejects is the one which focuses on impartial aggregation over individual utilities and leaves no room for contextual variations. But that is a principle used at the intuitive level and thus considered by Hare only as a *prima facie* principle. According to Hare, there is plenty of room at the critical level for the principle of utility to produce, review and modify moral rules so as to guarantee their instrumental validity.

Now let us return to the point of issue between the two approaches. Once the distinction between two levels has been made, the issue loses much of its significance even if it cannot be totally dismissed. The bottom-up approach as commended strongly by contextualism involves inductive reasoning such as comparison of relevant cases and generalization of particular judgments. Above all, interpretation of cases and that of principles is most important in this process.

> It is largely from a close comparison of relevant cases that we discover, or invent, more determinate meanings for the often conflicting values and principles that give situated moral problems their basic shape.[38]

As illustrated above, in making moral decision in a particular situation we start with conventional moral principles and norms until we are challenged. Then we

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[37] Op. cit., pp. 57-58.

[38] Op. cit., p. 65.

will move to critical level of moral thinking. At the critical level, any method, including the comparison of cases, collection of relevant information concerning the individual interested group, analogy of similar cases, etc. will be used. Even in a normal case where no controversy arises, interpretation of the moral issue would come into the process prior to the introduction of any principles. Intuitive thinking does not imply a blind application of principles. However, a reinterpretation is necessary when critical thinking is called for.

At the end of his paper, Winkler sums up the view of contextualism:

> All that contextualism need insist upon is our recognizing that, in confrontation with real moral problems, the deductive construction of moral explanation and justification is retrospective. In a far more important, essential, and primary sense, justification is a *process*. It is the process, in all of its interpretive and analogical complexity, of arriving at a considered moral judgment and defending it as a reasonable alternative within the context of the problem.[39]

If this really grasps the important aspects of contextualism, then contextualism is not in conflict with principled ethics, given the roles they play are at the right level as proposed by Hare.

7. The Two Levels of Moral Thinking in Practice

As explained above, in Hare's two-level structure, we use general moral principles at the intuitive level to deal with uncontroversial cases. Since they are selected by the principle of utility, then it would be for the best of the society if everybody follows such principles. On the other hand, we should tackle unusual

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[39] Op. cit., p. 76. Winkler's italics.

or extraordinary cases by critical reasoning and might arrive at some highly specific but still universal judgments. The distinction of the two levels not only preserves the function of our well-established principles and intuition but also provides the justification for them on the one hand, and reserves the room for their reformation on the other. Therefore this distinction appears fruitful at the level of theory. However, there may be some problems in practice.

The first problem is how to decide that the "extraordinary" case is extraordinary enough to be considered at the level of critical thinking? Hare insists that not only the principles, but also the moral feeling involved should be cultivated in us so that we would not cook the situation for our own interest. This is the positive side of moral feeling. Nevertheless, if the feeling is strong enough to overcome the temptation, it might also result in resistance to reflecting on cases that should be considered as departing from the generally accepted principles. Hare admits that in cases of challenge or conflict, we should bring the case to critical thinking level. But a person with good training and education from his/her upbringing, which has formed a good character, cannot easily be brought to discover that his/her principles are being challenged. S/he may see the alternative views as brought out by someone who lacks moral sense. By taking the issue of euthanasia as an instance, Hare illustrates the dilemma.

> Medical people often say, "Our whole training and our attitudes are directed towards the saving of life; how can you ask us to kill people?" Here it is a question of the attitudes that we think doctors ought to have in general; it is certainly true that unless, in general, a doctor is devoted to the saving of life, he is likely to be a bad doctor. So if a doctor is asked to end a patient's life, or even (though this is not euthanasia strictly speaking) to refrain from saving the life of a patient whom it is far better to let die, he will, if he is a good doctor, feel the greatest reluctance; to do either of these things goes against the grain— the "grain"

> being his training as a doctor in the saving of life.[40]

Hare argues that despite of the reluctance the doctor feels, s/he should overcome it provided s/he is certain that is a right act to do.

> If the advocates of euthanasia or of letting people die in certain cases are right, the doctor ought to overcome this reluctance, provided that he is certain that this is a case in which the patient will be better off dead.[41]

How can the doctor be certain that it is a right thing to end the patient's life? If we ascend to the critical level and appeal to the principle of utility, then we should investigate the case in close detail. Consequently we may reach a conclusion about the right act, which can "serve the interests of all the parties affected by our own action, treating the equal interests of each of them as of equal weight".[42] In doing this, the degree of the suffering of the patient has to outweigh the aversion of the doctor, as well as the unpredictable influence on society as a whole. Hare is aware of the danger of departing from the general principles and warns us:

> But there is a practical danger that, if it is overcome in these particular cases, this will lead to a general change of attitude on the part of doctors and perhaps also of patients; doctors will stop being thought of, and will stop thinking of themselves, as devoted to the saving of life, and will come instead to be thought of as devoted to doing what *they* think is best for the patient or even for people in general, even if it involves killing him, and this development might not be, taken all in all, for the best.[43]

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40 Hare (1993), p. 8.

41 Ibid.

42 Op. cit., p. 11.

43 Op. cit., p. 8.

It seems that until we have a strong case where the advantage and disadvantage are very clear, we do not bother to consider it as a special case. This may result at insensitive response to current issue.

The second problem is, when should the conclusion of reflections on extraordinary case contribute to the change of established principles? Hare indicates that extraordinary cases should be dealt with at the critical level. After going into the case in detail, we can decide what ought to be done in these precise circumstances. Then we shall end up with very specific and sometimes fantastic principle which, Hare claims, will not be used at the intuitive level.

> …when we are doing the selection, we ought not to pay too much attention to particular cases, actual or hypothetical, which are not at all usual or which are unlikely to recur. For we are selecting our principles as practical guides in the world as it actually is, and not as it would be if it were composed of incidents out of short stories, or out of philosophers' examples. So it makes a difference if, for example, the number of people who die in agony of terminal cancer either is very small, or would be very small if proper care were taken of them. This is the point of the maxim that hard cases make bad law.[44]

Certainly what doctors and ordinary people need is general principles which give guidance in the ordinary cases. If the specific principles generated from the special case cannot be guidance, what kind of general principles we want for our ordinary life? Here the consideration for a rule-utilitarian would be: What is the best attitude for doctors to adopt to this kind of question?

> But at any rate we seem to have reached a point in the argument at which we can investigate, with some hope of discovering the answer, what is the best attitude for

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[44] Op. cit., pp. 13-14.

> doctors to adopt to this kind of question. For we can ask what it would be like, in hospitals and in the homes of dying patients, if one attitude or the other were adopted, and which would be the better state of affairs. So the philosophical exercise would have resulted, as all good philosophy should, in returning the problem to the non-philosopher for further investigation, but in a form in which it is better understood, clearer, and therefore easier of solution.[45]

Practically, it is not easy to decide whether the benefit of the new principles outweighs the negative impact to the public. Besides, to shift the problem from philosophical to non-philosophical admits that philosophy lacks the resources to solve this kind of problem. On the contrary, I think that the answer should depend on whether the judgment is a right one, and this is indisputably a philosophical question. If we are certain that the specific principle we formulate for the extraordinary case is right, we should imagine possible similar cases to which this principle can apply (perhaps with slight modification) and then form more general principles accordingly. In addition, moral education should introduce and promote these new principles. As a result, general principles may in turn affect ordinary people's thinking and then make the principles appear not so fantastic. This would decrease the repugnant feeling of the public.

Hare's reason for resisting to accommodate the judgment of extraordinary case at the intuitive level is that they are rare cases.

> If we give weight to cases of precisely that type, we shall be more likely to adopt principles whose general adoption and preservation will lead to the best results, on the whole, for those who are affected by them.[46]

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[45] Op. cit., p. 9.

[46] Op. cit., p. 14.

But if we believe that principles at the two levels are not fixed and static, and the relation between these two levels is dialectic in a sense that an important change at one level would ultimately result at an alteration at another, then our giving some weight to the rare case itself would promote the general acceptance of such fantastic judgment. Perhaps, the whole issue seems whether the philosophers are willing to take the leading position of reflection and reformation of old principles, or, to adopt the role of being driven by the majority of the existing society.

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兩層道德思維是否可以化解脈絡主義與原則倫理間的對壘關係？—Winkler 與 Hare 的對談

黃 慧 英 *

摘 要

在後設倫理學以至生命倫理學上，一直存在著脈絡主義與原則倫理之爭辯。脈絡主義者解決道德問題的方式，是首先審視個別事件發生的脈絡細節，作出道德判斷後再將之用於其他相類事件；原則倫理者卻試圖將一般的道德原則應用於特殊事件上。前者可視為一種「自下而上」的方式，後者則可名為「自上而下」。很多道德哲學家都指出這兩種進路各有利弊。R.M. Hare 藉著引介兩層道德思維結構，來論証上述二者其實並不矛盾，相反地，它們在不同的道德思維層面，分別扮演重要角色。在本文中，我嘗試檢視 Hare 的論証是否成立，又是否會在實踐上引生另外的問題。

關鍵詞：脈絡主義、原則倫理、自上而下的進路、自下而上的進路、兩層道德思維、直覺道德思維、批判道德思維、一般性、特定性、普遍性、初步原則

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