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Aller au sommaire du numéro

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Résumé de l'article

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Rule Following, Standards of Practice, and Open-mindedness

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In this paper, I discuss the Ontario College of Teachers' most recent versions of the Standards of Practice with William Hare's counsel on being open-minded regarding open-mindedness in mind. Specifically, I insist that the use of the Standards of Practice as guidelines for working through cases of professional and ethical issues requires yet another rule to indicate when to deviate from this or that standard. In this way, open-mindedness consists of developing and following rules to indicate when and where specific standards should be bypassed. These rules vary, however, one source of these can be found in what Barbara Herman has called, "Rules of Moral Salience"—rules that guide us in our day-to-day moral decision-making and that we draw on when called upon to make moral-ethical judgments. What this means for various ethics (ethics of care; Kantian-type ethics, psychological and/or developmental accounts of ethics) is also broached.

Introduction

William Hare has famously claimed in several places that the virtue of open-mindedness recommends the abandonment of rigid rule following.[1] Our moral responsibilities cannot be evaded by clinging tenaciously to general rules, regardless of the supposed correctness of these. In other words, our moral responsibility consists in open-mindedness at those times and in those contexts where being open-minded is (morally) appropriate. Yet, Hare also states there are times when we are to be 'open-minded' about open-mindedness.[2] On some occasions, Hare advises to practice the virtue of open-mindedness and *avoid* following the rule or standard; on others, though, he advises us to follow the rule *if* it leads to good results.

If we think of a situation in which a teacher has to make a moral judgment, her rigidly following a general rule might well not be morally correct. Yet, our Standards of Practice are very often written in language that presupposes, indeed insists on, inflexibility and rigidity. We are to act according to the rule and the resolution of ethical and professional conflicts are to follow from the rule. In the case of ethical Standards of Practice, it is implied we are unethical if we go willingly against the rule, even if we wish to practice the virtue of open-mindedness.

I wish to investigate, with the help of the Standards of Practice of the College of Teachers of Ontario, some consequences in choosing to be open-minded. I claim that only if we have a further rule(s) we can appeal to in cases of moral quandary or confusion can we be consistently open-minded in our use of the Standards of Practice. The rules I suggest we consider (following Barbara Herman's work on practical judgment) are the "Rules of Moral Salience."[3] How they operate in the context of the Standards of Practice to ensure open-mindedness is one focus of this paper. How these might operate in the context of different accounts of ethics (ethics of care, Kantian-type ethics, and psychological and/or developmental accounts of ethical reasoning), I will also consider.

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Part 1: Open-mindedness and the Dilemmas of Rule Following

Rule following in ethical situations (I leave what constitutes an ethical situation aside for the moment) often reduces to making correct or proper *judgments*. The practice of ethical judging has various understandings. For Kant, judgment (*Urteilskraft*) is the capacity or power to bring a particular (say, an ethical) dilemma to a rule (a moral maxim). In the barest sense, an ethical judgment consists of finding the appropriate rule for the particular situation and following that rule.[4] For Dewey, on the other hand, judgment is akin to the reconstruction of thinking: the active selection of factors from one experience, turned into ideals for another, with the overriding goal being the solution of a problematic situation, is the practice of ethical judgment.[5] While we can multiply these differing understandings, there is a sentiment that runs through (almost) all: *the connection or conjunction of particular situations to rules (or ideals)*. To judge is to make some sort of decision, or alternatively develop a novel situation (even in thought), that has practical worth or appeal, chiefly through ordering that situation (or in any event, a bit of it) via ideas, principles, or rules. We can conceptualize judgment as the practice of this connection or conjunction, for the purposes of solving (or in any event, ameliorating) a problematic situation or moral conflict (to use Dewey and Kant's respective terms). This understanding of judgment is not meant to be exhaustive; it merely foregrounds what I take to be the central element of a larger, complex practice.

Teachers are expected to operate with varied rules, principles, standards, obligations, and the like in making ethical judgments as part of their professional practice. To this end, Ministries and Departments of Education, Colleges or Departments of Teachers, schools and school boards, and collective bargaining units and unions, propose, develop, and oftentimes enforce guidelines for professional practice. Sometimes these guidelines are flexible; other times, however, they are treated as de facto principles, to be followed regardless of the situation. Sometimes, multiple guidelines are mutually contradictory when set in practice. Wading through the quagmire of the various institutions' expectations, guidelines, standards, and rules becomes a dreary affair. The potential for violating one of these standards in the quest to satisfy another is great. Paradoxically, the establishment and maintenance of one standard entails the failure of others.

Consider the following example: we can envision a young teacher disciplines a pupil for failure to complete her homework. The discipline is firm, but within the guidelines for discipline set by the school, and in no sense is an obvious violation of the Statutes and Regulations of Ontario, nor (at least directly) the Standards of Practice. A complaint is lodged by the parent of the child, and the administration of the school investigates the complaint. A verbal reprimand is laid against the teacher. The basis of the reprimand is the failure to consider the child's unique learning needs. This is construed as a violation of Standard One—commitment to student learning. The teacher appeals the reprimand on the basis of Standard Four—professional knowledge. Two Standards are invoked; which is correct for this case? The paradox of one inhibiting the other emerges.

Of course, the Standards of Practice are designed to be guidelines. Therefore, one can make the argument that appealing to them in specific cases where an ethical decision is required is at the very least, a provisional matter. Of course, this begs the question of what we ought to appeal to, if not the Standards. On the one hand, we have our personal moral 'frame,' which carries us through our daily lives. This, however, seems ill-equipped to handle cases involving professional knowledge and judgment. On the other hand, we have legislation, statues, and regulations, such as the Education Act. However, these do not operate directly in cases, though they are certainly appealed to ex post facto. This limits their usefulness for the practicing teacher faced with a difficult ethical decision.

One response to this quandary is to (re)emphasize the importance of being open to possibilities ranging beyond statutes, regulations, and Standards. On this response, if the available warrants ameliorating the problem, or guiding the decision-making, are absent or untenable, holding out for other warrants is acceptable. There is some discussion of this problem in philosophical literature. Consequentialist theorists, for example, have made frequent mention of the paradox of

narrow maxim-formation in the pursuit of ethical solutions to complex problems. Henry Sidgwick, for example, talked of the pull between intuition and consequence as rival moral maxims in personal ethical decision-making.[6]

William Hare sees the dilemma as a potential threat to open-mindedness, and responds forcefully. One can be open-minded, Hare says, but *not* to the exclusion of all principle. Consider the case of logical principles. We could not, for example, formulate a rule that demands we be closed-minded to good reasons for our actions. If we formulated such a rule, we would immediately generate a contradiction in conception. As Hare puts it:

> A willingness to revise certain logical principles cannot properly be demanded, because such principles are presupposed in the act of being open-minded…. Suppose however, we ask if we can be open-minded about *the principle of revising beliefs in the light of relevant reasons*. The obvious difficulty here is that any attempt to adopt an open-minded attitude would at once presuppose this principle for we would merely state our willingness to give it up *in the light of the relevant reasons*.[7]

In his chapter, "Standards as a Threat to Open-mindedness," Hare claims that only by remaining open-minded to standards, general rules, and particularly, rule following, can we avoid the quagmire of mutually contradictory, competing standards. Open-mindedness is one of the standards of professional teaching practice, and it cannot be sidelined or diminished at the expense of thoughtless rule following.[8] Presumably, this would include ethical standards of practice as well. Hare advises in some cases to practice the principle [my term] of open-mindedness and avoid following the rule or standard; on others, though, he advises us to follow the rule if it leads to good results. How are we able to determine when it is appropriate to do either? This is the conundrum.

Hare discusses two thinkers in regards to this. (I will keep my comments to Hare's argument alone, and not comment on his understanding of these thinkers' arguments.) The first is the well-known philosopher of utilitarian persuasion, R.M. Hare. R.M. Hare, William Hare tells us, argues for a kind of closed-mindedness on breaking certain rules.[9] R.M. Hare tells us that a philosophical argument cannot tell us whether, in a particular case, the risk of ignoring the relevant features of a situation will be greater than the risk of distorted calculation if we try to consider these features.[10] However, this is self-refuting. Being closed-minded on certain rules requires an explanation if circularity or question-begging is to be avoided, and R.M. Hare does not provide one.

Equally problematic is the view that to remain open-minded requires constant vigilance; even the smallest or seemingly least significant conflict or dilemma requires us to be sensitive in our responses. This is the concern of David Bridges and (indirectly) Richard Brandt.[11] If the necessity of this vigilance is correct, a sanitized professional practice is the result. Hare claims that open-mindedness does not require us to be eternally vigilant; only sensitive to the possibility that situations could be otherwise. To this end, Hare advises rule breaking in those situations where rule breaking is called for. "The risks involved in deciding to break a general principle must not, and need not, be minimized. There is a presumption against breaking the rule…. It is quite correct to say that a good person will have a proper concern for his reputation. But, at the same time, there may be occasions when…he will have to ignore what people will say and think in order to do the right thing. Furthermore, a tendency to hold oneself to the received code is consistent with being prepared to depart from it in certain circumstances."[12] To be open-minded to general principles is to allow for rule breaking under appropriate circumstances, some of which may be situation-dependent. On the other hand, there is sometimes the need to follow other rules or principles. While it may be expedient to follow the general rule, general rules cannot tell us how to apply them in particular cases. A general rule may provide an exhortation to conduct oneself in a certain way, yet this does not bridge the gap between the rule and its application in a particular case. In some of these cases, an appeal to something other is required. This appeal, too, is an instance of open-mindedness: "…if, in view of the risks, we set ourselves against

open-mindedness in the practical context, we do so not because it is itself immoral or absurd or logically incompatible with other desirable traits, but simply because it will in fact not lead to good results. It can still function as an important ideal in our conception of moral education."[13] Hare also responds to the complaint that only by following rules rigidly can we be principled (and moral). Hare sensibly notes, "We will sometimes want to say that an individual should have realized that this was an exceptional situation, and excuses may not be accepted. But then, we cannot encourage people never to break, or consider breaking, generally sound rules. We must, it seems, encourage a firm commitment, coupled with the attitude of open-mindedness. We cannot evade our moral responsibility by invoking a generally sound rule."[14]

Hare's advice is that we violate generally sound rules in cases where it does not lead to *good results* or necessitates one's abdication of (higher) moral responsibility. The proviso to violate generally sound rules extends to moral rules as well; no rule, moral or otherwise, is sufficient unto itself for all situations.[15] We might think of Jonsen and Toulmin's influential account of problem-solving in the context of bioethics in *The Abuse of Casuistry* as another example of conceptualizing the rule breaking to gain a better or more favourable outcome.[16] This pragmatic-seeming maxim in fact constitutes a rule for breaking the rules, with the criteria for rule breaking the solution to the original conflict or quandary. This rule for rule breaking, if Hare is right, seems necessary in light of the perils of rigid rule following. Hare also advises us in ethical situations or situations in which one's moral principles (one might even say conscience) are in danger of violation, to follow a higher rule. This seems all to the good. However, is it the case that what I am calling 'Hare's Maxim,' is *a requirement (and if not requirement then a sensible maxim) for professional practice*? What sorts of rules are those that are appealed to when we break conventional ones? Does rule breaking in favour of another (higher) rule, in other words, evince positive practical consequences? I claim it does, and the rest of this paper will show where and how.

Part 2: Rule Following and the Standards of Practice

I draw upon the Standards of Practice of the College of Teachers of Ontario. There are, in fact, two sets of Standards, bundled together—Ethical Standards of Practice and Professional Standards of Practice. I will concentrate on both. The combined Standards of Practice were most recently issued in 2006. A case study booklet accompanies the Standards. In the case study booklet are scenarios in which students and practitioners are to apply a (flexible) framework to solve ethical and professional dilemmas, using the Standards as guidelines. The point of the exercise is to "Formulate some generalizations about effective practice."[17] To this end, "…the Standards of Practice and the Ethical Standards are guiding principles for teacher action [not necessarily strict rules.]"[18] The Standards of Practice are presented in bulleted point together with corresponding brief descriptions of the intended meanings. The purposes of the Standards of Practice are:

> to inspire a shared vision for the teaching profession • to identify the values, knowledge and skills that are distinctive to the teaching profession • to guide the professional judgment and actions of the teaching profession • to promote a common language that fosters an understanding of what it means to be a member of the teaching profession.[19]

There are five Standards outlined, and these are, 'Commitment to Student Learning,' 'Leadership in Learning Communities,' 'Ongoing Professional Learning,' 'Professional Knowledge,' and 'Professional Practice.' An early version (2005) included a breakdown of each Standard and sub-categories specifying particular expectations, but sadly, these have been removed.[20]

The Ethical Standards are separate from the Professional Standards. These are described as "a vision of professional practice" and include 'Care,' 'Trust,' 'Respect,' and 'Integrity.'[21] A brief description of each is included. The Standards are for practical use. To this end, Members of the

teaching profession are to use the Standards: as "a reflective tool," to guide their ethical decisions; as "a professional learning process," to increase their ethical "knowledge"; "to increase self-knowledge," as a "community-building process" to commit them to ethical principles; and finally, to "understand and shape ethical cultures," in their respective professional communities.

The Standards are to be used in groups under the guidance of a trained facilitator. They emphasize team problem-solving, dialogue and discussion, and active inquiry. They are suitable for pre-service Teacher Education programs, or ongoing staff development. They are to be followed by all members of the Ontario College of Teachers in their teaching practices. The central components of the inquiry undertaken consist of the following headings:

> What Are the Facts?
> Analysis & Reflection
> Evaluation
> Alternative Solutions & Explanations
> Principles of Practice
> What Is This a Case of?
> Changing Opinions.[22]

In terms of Principles of Practice, we are advised to, "Formulate some generalizations about effective practice… [and]…Remember that the Standards of Practice and the Ethical Standards are guiding principles for teacher action."[23] Similarly, for "What Is This a Case Of?" we are to note 'general categories,' which may be multiple, that the case is a species of.[24] Practicing ethical decision-making (which I construe as making an ethical judgment) consists in: 1) isolating the 'facts' of the case (presumably from as many stakeholders as possible); 2) analysing and reflecting on the situation (presumably isolating factors of various sorts, as well as specific reasons for acting; 3) evaluation (presumably of these factors and reasons); 4) proffering alternative solutions and explanations (were there other reasons being appealed to; could other decisions or actions have been made; are we (evaluators) missing something; 5) isolation or invocation of principles of practice (standards); 6) determining which standard fits the situation (the centre or core of the ethical judgment); and 7) changing opinions (presumably of the evaluators, themselves, after having gone through the process of deliberating, as well as others, including perhaps, stakeholders). In other words, evaluators hone their judging by following a process that begins with an examination of an ethical dilemma or situation, an analysis of factors and reasons, an appeal or invocation to principles (the actual core of judging) and a reconstruction of one's moral outlook (on the part of the evaluator).

Let's return to our previous example of the teacher. Recall our young teacher upon whom a verbal reprimand for failing to take into consideration a child's unique learning needs is laid. The teacher appeals the reprimand on the basis of another standard—her invocation of professional knowledge. Two standards are being appealed to for opposite ethical courses of action from opposite ethical judgments of opposing parties. In the case of the teacher, the situation as a whole is analyzed (what the teacher did; what the administration did; what the reasons for acting on the part of each were; what the final result was/is); the evaluation of the overall case (what was the outcome for the teacher; the student; the administration/administrator); the question of whether something was missed (alternative reasons; other agendas on the part of the teacher or administrator; perhaps procedural or legal elements not first brought to the surface); the isolation of standards of practice (which standards apply; which were violated and/or appealed to by the teacher; and the administrators); and the result of the deliberating process on the evaluators themselves (the self-consciousness of the entire process on the evaluators upon deliberating). At step 6, a decision as to which standard applies (the standard used in the claim of violation or the standard claimed in the appeal), must be made. Unfortunately, the standards seem powerless to arbitrate the dispute between standards themselves. At step 6, the

deliberators simply have to choose which standard best fits the case as a whole. Here, the appeal to the standards is unhelpful; there is no mechanism for challenging the standards themselves.

Part 3: Rule Following and the Rules of Moral Salience

Standards are crucial in any account of ethical decision-making. Whether that account develops out of care theory, Kantian ethics, or psychological theories of moral development, a strong and central role for standards (as principles, as ideals, as warrants) is assumed: debates between scholars of various ethical schools of thought, as often as not, concern not the existence of standards, but their roles in ethical decision-making. For example, in Kantian ethical theories, principles play a strong role; it is the principle that determines whether an act is morally worthy, and it is the ground of obligation of a moral maxim (crudely, the reason one acts 'morally') that is at stake. There cannot be two competing moral grounds of obligation; only one can be entirely consistent with the moral law.[25] In care theory (here I am thinking of Nel Noddings), ethical sentiments are elaborations of primal, natural ones; yet these are context-bound and reconstitute in the various relationships we enter into and out of; as with Dewey's account, they are reconstituted in unsettled or problematic situations, and serve as 'warrants,' but only inasmuch as they are able to function adequately in ethical dilemmas. Finally, psychological theories of moral development also insist on the context-bound nature of principles; they are conventions (though often as not, strongly held and vitally important) of particular societies and cultures, often built up through the socialization of children.

What psychological accounts of moral theory and care theorists alike often downplay is the irreducible presence of warrants, principles, or rules. Yet, absent a rule, an ethical decision cannot be made. This includes seemingly innocuous decisions, involving little forethought. While we may say that our ethical responses are habituated (and I agree with this), when we come to reflect on the reasons why we acted in such and such a manner, we turn to reasons and offer them as warrants or principles for our behaviour. We seldom say, "I was socialized to do so and so;" or "I had a sentiment to do so and so;" this would merely beg the question of what we acted upon in so doing. When we act and we are held to account for our action, we offer reasons, not sentiments or developmental accounts of our (social) behaviour.

Another of the great criticisms of principle-based accounts of ethical decision-making is their susceptibility to closed-mindedness. It is almost axiomatic that reconstructive accounts of ethical decision-making (say, care theory accounts or Deweyan accounts) avoid this trap. On the whole, I believe this to be correct. However, there is a line that must be distinguished between a dogmatic (or in any event, closed-minded) acceptance and following of principles, and a strongly-held, yet ultimately contingent one, which I suggest is preferable. More trenchantly, there is the problem of a too facile release or abandonment of principle(s) writ large, often in the face of moral quandaries that don't seem to be easily dealt with, or in any event, solved. I believe there is a situation in which one can be so open-minded as to be absolutely porous with respect to principles and I am not convinced that those charging principle-based ethics with the former problem aren't themselves prey to this. One must guard against both.

In any event, let us recur to our earlier scenario of the teacher faced with a reprimand because she was thought too firm with her student. The general categories we appeal to in order to determine what this is a case of are statutes, regulations, and standards. In the case of standards, we noted that it is conceivable the administration could appeal to one standard, the accused the other, and both be correct. Of course, this does not 'solve' the case. We may feel that more than simply appealing to ambiguous standards is needed here, and (rightly) wish to maintain open-mindedness about the general categories or guiding principles invoked in this case.

Here, we may profitably bring back Hare. Remember that Hare advised us to break from our standards if they fail to obtain good results. Hare's 'maxim' takes the inquiry a step further than is

expressed by the case methods of the Standards of Practice: though it is important to evaluate the case, discuss, and decide what genera this species (of problem) is the important decisions are directly related to the solution to the case. That is to say, solving the ethical problem is the first order of business. In order to do this, we oftentimes must turn to a different standard or rule, or a higher principle in those cases where one's moral responsibility is in question. These need not be metaphysical or transcendental; they will however, be common and widespread. The ethical theorists Hare cites, such as R.M. Hare, are Universalists (Hare as a Utilitarian), and appealed to universal, general principles as the trump to context-based or specific ones (including, presumably, standards specific to institutions or organizations). We need not go as far as accepting universalism's solutions to solve the conundrum, though.

Where do these higher principles come from? Here we may connect what Hare has to say regarding a maxim to deviate from standards when standards falter with some of the work recently completed in principle-based moral theory. Barbara Herman has nicely captured the central sense of our deepest moral values and principles. She calls these, "Rules of Moral Salience." She defines these as follows. "I think of the RMS as an interpretation, in rule form, of the respect for persons (as ends-in-themselves) which is the object of the Moral Law [Kant's famous Formula of Universal Humanity]: their function is to guide in the recognition of those areas where the fact that persons are moral persons ought to instruct agents' deliberations and actions."[26] Here is one understanding of rules we internalize, live with, and practice. So understood, these rules help us orient ourselves in the moral universe. They are undoubtedly at work in any deliberative inquiry into professional or ethical cases. "The basic field of deliberation contains not only my interests and private projects but also the interests of others as possible sources of claims on my actions and resources. The grounds of obligation partially create the practical world I live in."[27]

Rules of Moral Salience operate in the background, so to speak. Nevertheless, it is these we appeal to when we are unsure how to apply standards or make judgments when morally vexed by a potential response. "The need for judgment characteristically arises when an agent has what he takes to be a good or compelling reason to act to satisfy some interest or need and yet realizes that what he would do violates a known moral precept.... The question for this agent is whether his is such a case. We may think of the judgment rendered as showing whether the moral weight the agent is inclined to give his particular circumstances...is warranted."[28] So construed, Rules of Moral Salience operate as a sort of gate, permitting certain judgments through to action while redirecting others to more exacting judgments involving particular maxims.

Here is the trump: Standards of Practice, ethical or professional, that result in unfavourable results, or the absence of a solution to the case, are replaced by and/or supplemented with, other standards, rules, or guidelines. These other standards are very often personal; the Rules of Moral Salience each of us has and operates with. This is what it means to be open-minded in the context of making ethical judgments. Furthermore, when a moral quandary—one that results in the sense that applying the rule is mistaken or a violation of conscience—arises, appeals to higher rules or standards together with the means to access these become necessary. This is also a species of open-mindedness, though one about being open-minded to Rules of Moral Salience rather than the outcome or result of the case.

Conclusion

Open-mindedness is a requirement in the appeal to higher principles or Rules when typical Standards or guidelines are inappropriate, or violate one's ethical sense. Codes of ethics are often limited in what they can provide *vis-à-vis* standards that can operate to resolve moral ambiguities such as conflicts between standards or competing grounds of obligations. It is in these cases especially where appeal to Rules of Moral Salience becomes a viable option. We need not appeal to transcendental laws, but we

must have an understanding that there are other, better standards and higher ideals or principles than those specific to our professional practices (including our Standards of Practice), and that we are urged to appeal to them in situations of moral/ethical unease or quandary. This cannot occur unless we are open-minded enough to allow ourselves to recognize and act on this unease. Open-mindedness also consists in using further rules to navigate or negotiate action when other rules fail or do not produce the intended result. In this way, open-mindedness also emerges as a willingness to bring one rule or rules under another.

Acknowledgments

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About the Author

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