Towards a principle-based moral case deliberation method

Master's Thesis in Applied Ethics

Cor van den Berg

Utrecht University

Januari 2018

Supervisor

Dr. S. (Sem) de Maagt

Evaluator

Dr. M.A (Mariëtte) van den Hoven

Abstract

If a principle-based method for moral case deliberation for use in a clinical setting is to succeed, it has to deal with the criticism put forth by particularists. Their main charge is that principles are either too abstract or too rigid to guide action. Secondly, a principle-based moral case deliberation method must be practically feasible. As such, it must be usable in a morally pluralistic context, be accessible to laymen in ethical theory, and be able to resolve conflict in a timely fashion. First casuistry is analysed as a moral case deliberation method which does not require reference to principles. Concluding that casuistry fails to sufficiently justify choosing one course of action over another, I move on to analyse two promising methods which rely on bringing principles to bear on a case. The first method is Onora O'Neill's account of practical judgement and the second is Henry Richardson's method of specification of norms. Both methods succeed in evading the particularists' points of criticism, but have weaknesses when it comes to practical feasibility.

Contents

1. Introduction

We encounter moral dilemmas on many occasions and in various contexts during our lives. One context in which many, often hard to solve, dilemmas turn up is the clinical setting. The tough medical moral dilemmas often involve risks of bodily harm or death, multiple people who differ in their convictions, and a multitude of possible solutions. Outlining the possible solutions and, subsequently, coming to an agreement which course of action to take can be done via moral case deliberation. In a general sense, moral case deliberation is the procedure in which the people involved in a particular case deliberate on how to proceed when faced with a moral dilemma under the guidance of a facilitator (often an ethicist). Moral case deliberation allows the persons involved in the case (e.g. the physician, the patient, relatives) to engage in a dialogue and to work through a case together.

There are, however, myriad possible methods or approaches to structuring a moral case deliberation. An important aspect in designing a method for moral case deliberation is the role of principles. Currently, there is ongoing debate as to the role and/or relevance of principles in moral case deliberation. For the sceptical side of this debate, I analyse the particularist position, put forth by Jonathan Dancy and Margaret Little. They claim that a principle-based method in moral case deliberation cannot work, because principles are either too abstract or too rigid. Abstract principles are not sufficiently action guiding whereas rigid adherence to principle risks being insensitive to the particularities of a case. In order to explore whether or not moral case deliberation without reference to principles could work, I analyse a case (outlined below) using the casuist method of Jonsen en Toulmin. I will argue that the casuist method fails to provide a well-founded justification for choosing one course of action over another. As a result, I am sceptical that moral deliberation without reference to norms or principles is feasible.

The main task of my thesis, then, to make the claim for a principle-based ethics as strong as possible. To do so, I would do well to take seriously the criticism put forth by the particularists. Is it possible to have a principle-based moral case method that is sufficiently action-guiding as well as sensitive to the context of a particular case?

To this end I analyse two promising theoretical foundations for a principle-based method. One method is proposed by Onora O'Neill, in which she argues that we need to employ practical judgement. The second method, called specification, is proposed by Henry Richardson. Both of these methods offer an approach to applying principles to particular cases as well as a means to resolve conflicting principles. The methods of O'Neill and Richardson,

too, will be analysed using the same case I used earlier for my analysis of casuistry. By doing so, I aim to reveal whether or not these methods were indeed sufficiently action-guiding without being overly rigid and thus whether or not the proposed approaches are vulnerable to the particularists' objections.

Practical feasibility

While the main objective of my thesis is to check whether or not a theoretical foundation for a principle-based approach has been put forth that takes seriously the two aforementioned criticisms of abstractness and rigidity, this is not be the only criterion for an acceptable moral case deliberation method. Several practical restraints are in effect for a moral case deliberation method and I will go over these restrictions briefly.

A moral case deliberation tends to take place with a diverse group of people. Patients, relatives, physicians, nurses, and ethicists can all take part in a moral case deliberation if it makes sense to include them in the decision-making progress. Of these people, physicians and nurses may have had ethical training during their medical training. The ethicist, obviously, has had formal training in ethics. Coincidentally, even the patient or relatives of a patient can have a philosophical background or be otherwise trained in a particular mode of reasoning useful for dealing with cases. It is, however, most likely that laymen in moral theory and ethical reasoning will take part in the moral case deliberation, be they physician, nurse, patient, or relative.

Taking seriously the input of the laymen in the decision procedure is likely to ensure their compliance, because they were given the honest opportunity to directly influence the outcome. If, instead, they were simply a fly on the wall and informed of what some commission decided, they may rightly feel ignored and not taken seriously. Secondly, if an expert or committee proposes a course of action that is at odds with the convictions of one of the agents, and the agent does not acknowledge that the expert or committee made the correct judgement, there is room for doubt whether or not the right course of action has been proposed. In the end, the patient and relatives, as well as the medical staff must be able to live with the agreed upon course of action without (much) lingering regret.

Secondly, a case must be resolved and a decision must be made. Depending on the urgency of the case, the timeframe for arriving at a decision can be quite limited. Deciding on whether or not to undergo a risky, potentially life-saving procedure could mean a decision must be made within a day. Preparing for eventualities in a case with slowly progressing Alzheimer's, on the other hand, often do not involve making decisions under pressure of time.

Third and finally, a plurality of norms and proposed justification of these norms is present in society. The various participants in a moral case deliberation bring to bear a wide range of norms and principles. The moral case deliberation is not the place where fundamental disagreement on what is right and what is wrong can be resolved. Nor can the ethicist claim that one moral theory or set of principles trumps all other considerations. This debate is ongoing and so the ethicist in the field would be hard-pressed to justify his or her decision to force one particular set of norms on the participants of the moral case deliberation. Here, I would do well to stress once more that I will not look for a set of norms or principles to go with my principle-based moral case deliberation method. I simply seek to defend and outline a possible structure of moral case deliberation in which principles play a central role.

What follows is the description of a specific case. I will use this case to sketch how Jonsen's account of casuistry, O'Neill's account of practical judgement, and Richardson's account of specification can help come to a decision in this moral dilemma. After this reconstruction I expect to be able to see whether or not the analysed method offers a satisfactory way to resolve a case. The case with which to reconstruct what the proposed methods could look like, is a variation on the standard Jehovah's Witness case described by Raanan Gillon.

Jehovah's Witness

A competent adult patient, identifying as a Jehovah's Witness, loses a massive amount of blood from a blood vessel bleeding in an acute duodenal ulcer. The best chance of saving his life is an urgent blood transfusion along with operative intervention to arrest the bleeding. The patient refuses blood on religious grounds, but asks for treatment instead with the best available non-blood products, and surgery, accepting the substantial risk that surgery without blood transfusion is much less likely to save his life than surgery with blood transfusion [1]. The patient was not raised as a Jehovah's Witness and as a result the parents and the patient do not share religious beliefs. At least initially, the parents want their son to accept blood transfusion. The patient's wife, on the other hand, is a Jehovah's Witness and appears to accept her husband's decision. The patient has no siblings or children. In this particular instance, the doctor finds herself committed to the four principles of autonomy, justice, beneficence and non-maleficence as a result of the ethical training during her medical training [2].

---

[1] Gillon, 'Four Scenarios', 267.
[2] The physician considers these four principles to be of primary importance, but is not necessarily committed to intuitive balancing to resolve conflict between these principles.

2. The particularists' challenge

Relying on principles in order to solve moral issues in practical ethics is not uncontroversial. Objections to relying on norms and principles come primarily from philosophers in the particularist camp. In order to make the claim for a principle-based ethics as strong as possible, I would do well to take seriously the criticism put forth by the particularists and see if O'Neill's and Richardson's promising accounts can successfully deal with the particularists' challenge.

The core feature shared by particularists is their focus on the elements within a specific case; the particulars of a moral case. They see no room for the application of principles given to us by some moral theory. Instead, particularists attempt to glean what needs to be done from the context of a moral case. I will first discuss the general particularist position and then focus on one well-known particularist method of moral case deliberation known as casuistry.

Particularism

For an outline of this branch of particularism I will focus primarily on the contributions made by Jonathan Dancy and Margaret Little. The key distinguishing feature of particularism is the concept of holism of reasons:

> 1. What is a reason in one situation may alter or lose its polarity in another.
> 2. The way in which the reasons here present combine with each other is not necessarily determinable in any simply additive way. [3]

This description is often accompanied with the example of telling a lie. Telling a lie to save someone's life seems to be the right thing to do for most moral philosophers, but there is a difference in the way one can arrive at such a conclusion. The wrongness of lying can be outweighed by the wrongness of being complicit in someone's murder. As such, one should lie, but lying still has a negative valence and is regarded as something someone generally ought not do. For the particularist, this line of reasoning does not hold, and they claim, instead, that the context of the action is the deciding factor in judging the valence of an action. The context of the example makes it so that telling a lie has a positive valence, as saving a person's life counts as a reason for not telling the truth. As more information about the context of a case is revealed, it could very well be that the valence of lying shifts once more. Perhaps the person

---

[3] Dancy, "The Particularist's Progress," 132.

was rightly sentenced to death and lying would mean obstruction of justice. If the agent has good reasons to be against the death penalty, however, lying could once again have a positive valence, and so on. What remains, however, is the particularist's conclusion that the valence of the act of lying should be gleaned from the context of this case and its particulars.

For each case, the total set of morally salient features is different, and a particular feature can play a different role depending on the case. An often-mentioned example is shoelace colour, which is not a morally relevant feature in many cases. The fact that it often is not morally relevant does not mean that it never is. In some cases, it may count as a reason in favour of an action and in other cases it may be a reason against an action. What the relevant particulars of a case are, cannot be known in advance. Each case has its set of morally salient features and each of these features can count in favour or against performing one action or the other. The concept of absolute principles that hold in the same way for every case, then, is outlandish to the particularist.

Here, the rigidity of principles is regarded with suspicion. By coming up with counter-examples, such as lying to save an innocent person, this purported constancy in valence of principles or norms is disputed. The alternative method proposed by particularists does away with principles. Instead, it involves some moral sense, with which we can appraise the case as a whole. This moral sense allows us to be sensitive to the morally salient elements of a case and see how they function within the context of a case:

> According to particularists, we can come to discern or interpret the moral nature of specific actions or individuals by exercising a sensitivity—a sensitivity that is perhaps analogous to a perceptual capacity, but is perhaps just a species of the more familiar 'faculty' we use to apprehend that something is a table, namely, the capacity or skill to apply concepts correctly. On this view, to put it very schematically, we can apprehend that something falls under the classification cruel by attending to the complexities of the case, discerning what is salient, making appropriate discriminations, and employing a matured understanding of the concept.[4]

A person can train and hone this particular moral sense with which to appraise the context of a case and with which concepts can be applied appropriately.

---

[4] Little, "Moral Generalities Revisited," 292.

One tool available to a particularist to support a justification without reference to principle, is drawing on past experience and unravelling certain patterns. This is an important aspect of a particularist method for moral case deliberation called casuistry. In the remainder of this chapter I will outline what casuistry is and how it aims to help in resolving moral dilemmas.

Casuistry

Casuistry in practical ethics is most famously championed by Stephen Toulmin and Albert Jonsen. They put forth casuistry as a method with which to reason about particular cases and defined it as follows:

> [Casuistry is] the interpretation of moral issues, using procedures of reasoning based on paradigms and analogies, leading to the formulation of expert opinion about the existence and stringency of particular moral obligations, framed in terms of rules or maxims that are general but not universal or invariable, since they hold good with certainty only in the typical conditions of the agent and circumstances of action. [5]

From their definition it becomes clear that Toulmin and Jonsen, see little use in universal principles. After all, rules or maxims cannot be assumed to hold with certainty for other similar cases and require reassessment for each case. As such, casuistry is an example of a particularist approach to moral case deliberation. For the remainder of this chapter, I shall outline the method of casuistry and see how it fares when applied to a particular case.

Casuistry consists of three main elements, namely morphology, taxonomy and kinetics [6]. The morphology of the case describes the morally relevant particulars of the case. Typically it answers the questions of "who, what, when, where, why, how, and by what means", or the circumstances of the case. A second element of the morphology of a case are certain maxims; rules of thumb or principles[7], that play a role in the case. As these rules of thumb tend to conflict within a case, the circumstances as well as the taxonomy and kinetics of a case must reveal which of the rules of thumb ought to guide action.

---

[5] Jonsen and Toulmin, *The Abuse of Casuistry*, 297.
[6] Jonsen, "Casuistry as Methodology in Clinical Ethics."
[7] These principles, naturally, are not universal and serve a role similar to rules of thumb. Jonsen does not avoid the usage of the word, however.

The taxonomy in casuistry is a collection of cases similar to the case at hand. Casuistry starts by identifying a paradigm case. A paradigm case is a case in which the chosen maxim was clearly right or wrong and consensus exists on that judgement. An unprovoked killing is often considered wrong. The casuist can add circumstances and so construct a different, less straightforward case. These other, weaker, cases in the taxonomy share the same chosen maxim (killing a person is wrong), but differ in their circumstances. This enables the casuist to analyse how changes in circumstances can influence the judgement of the chosen maxim and perhaps arrive at a set of circumstances in which the act of killing is justified. In his analysis of the maxim 'do not kill', Jonsen offers as a possible outcome of an examination of the taxonomy is that killing in self-defence is often accepted as a reason, but that killing to relieve pain or suffering is much less certain to be justifiable given our judgements in other cases about killing another person. These analogous cases need not be actual cases and can be hypotheticals as well. The analogous case most similar to the case at hand also provides the strongest justification for judging one way or another.

The third and final element, kinetics, is the analysis of how the circumstances affect the maxim under scrutiny. As an example, jokes often rely on a subversion of truth but are hardly ever considered bad, at least not for the fact they are subversions of truth. As such, the circumstances of having fun negate the importance of the maxim of truth-telling. In more serious cases of euthanasia, deliberators can look at the lucidity of the patient, immanence of the patient's death, and the availability of alternatives.

I will now sketch how a casuist would proceed in dealing with a case in which the physician requested the ethicist's assistance. As such, I will only look into the conflict faced by the physician. I will do this in broader strokes than would a casuist, but still sufficiently in-depth to showcase the core features at work.

Case reconstruction

The casuist ethicist would start by outlining the morphology of the case at hand. The circumstances such as the patient and his wife being Jehovah's Witnesses, the fact that they therefore decline blood transfusions, the increased risks of the alternatives, the absence of children, the financial stability of the wife, and the hesitation in both the non-religious parents and the physician are noted. The maxims at hand are 'I must respect my patient's preferences' and 'I must not avoid disproportionate harm to my patients'. Due to the financial status of the

wife and the fact they have no children, it seems acceptable to keep the dilemma limited to these two maxims.

The second step is establishing the taxonomy by finding, say, two other cases similar as well as dissimilar in relevant ways to the case at hand. Let us assume that both cases are paradigm cases (or at least strong cases). The first analogous case is much like the main case, but the risks are far more severe. The odds of the patient surviving the procedure in the first case are, say 50% while in the analogous case they are 25%. The parents express their reasoned concerns, as does the physician. Both the patient and his wife remain determined however and insist that the alternative methods are used. Given that both the patient and his wife have a good income and no children, all of the potential harm, aside from the accepted increase of risk of dying, would be emotional The physician, noting that the patient is competent and lucid, is moved more strongly by her respect for autonomy as well as the fact that the patient has placed trust in her, and proceeds to use the alternative methods. The maxim of respecting the patient's wishes wins out over avoiding disproportionate harm.

The second analogous case is similar to the main case in the sense that the risk of dying is estimated to be 50%. The reason for refusal is the only difference here, as the patient is not a Jehovah's Witness. Instead, the patient does not seem to be able to fully appreciate why blood transfusion is the safer option and that there are no benefits to opting for an alternative. The physician, unsure whether or not to deem the patient competent enough to make this particular decision, decides to delay surgery and confer with a neuropsychologist to assess the patient's competence. The physician decides that the concerns for imposing unnecessary risks trumps, for the time being at least, respecting the patient's wishes.

The casuist then has to discuss which of the two analogous cases is more similar to the main case. The casuist concludes that the first analogous case is more suited to serve as a guiding case, due to the fact that the patient is competent to make the decision and instead refuses on religious ground. Without any more countervailing reasons being present, and the analogous paradigm case giving preference to respecting autonomy even in the face of higher risks than in the main case, the casuist concludes that respecting the autonomy of the patient in the main case wins out over the concerns from non-maleficence.

Review

The reliance on a paradigm case is a core element of the casuist method. Through comparison of the circumstances in the case at hand with the circumstances of a case that is clearly right or

wrong, casuists feel justified in saying that what holds in the paradigm case is likely to hold in similar cases. Because of that, comparisons to other cases in which we're confident about our judgement offers a good starting point for an analysis of the case at hand. The flaw here, is that it assumes that past cases were judged correctly and that the taxonomy is useful. If the taxonomy of cases consists of faulty rulings, any subsequent rulings based on that pattern risk being false as well. Here we see that casuist cannot really rely on such a pattern without faith that previous cases were judged correctly. The casuist would have to reassess previous cases, and draw her own conclusions. But then we have simply returned to the initial problem of establishing exactly why for example we would in some cases judge that autonomy wins out over non-maleficence and vice versa. We would have to take the casuist's judgement at face-value and assume that she indeed has a well-honed moral sense.

The above strikes me as problematic for several reasons. The first is that one can wonder whether or not we want a specially trained ethicist tell us why autonomy is more important in this case than non-maleficence without much room for debate on this outcome. If the other deliberators see the taxonomy and the judgements therein and draw a different conclusion, there is little room for any more discussion. The participants of the moral case deliberation either see the self-evident truths or they do not. If they do not there is no way for the ethicist to rationally elaborate on why the others ought to go along with the ethicist in accepting the ethicist's judgment. In tough medical cases, understanding and appreciating why the suggested course of action is the better one helps accepting the outcomes of the chosen route

Secondly, these paradigm cases are claimed not to stand in need of further justification, due to the fact that almost any observer of a paradigm case supposedly renders the same verdict [8]. Does a consensus ruling on a particular case mean that it is therefore the correct ruling? It would seem that such an approach to ethics is not readily susceptible to change and instead reinforces uncritical acceptance of the way things are going. One need only look at the tradition of slavery or the lesser position of women in the past to see why reliance on consensus can lead us to accept the unacceptable.

Third, what would happen if the casuist, for whatever reason, selects different paradigm cases? It is not unreasonable to expect that a different paradigm case taxonomy could lead to different outcomes. From hospital to hospital or country to country, the paradigm cases at hand and employed by a casuist are different, each with different decisions. It seems worrisome that

---

[8] Jonsen, "Casuistry as Methodology in Clinical Ethics," 301.

such contingent facts could have quite a large impact on the course of a casuist-based moral case deliberation.

I have focused on casuistry as a particularist method of dealing with moral cases, because it is a particularist method that is well-known and fleshed-out. Particularist ethicists that are not casuists do still rely on a mysterious moral sense with which they can perceive or appreciate the morally salient features of a case. This method is not particularly open to discursive justification; either the morally salient features strike you in the same way or they do not.

Conclusion

Because I find casuistry to be unconvincing, and the special moral sense of the particularists suspicious, I propose that we should first look to see if a principle-based ethics really is as abstract or rigid as the particularists fear and that it warrants the search for an alternative in the first place

Nonetheless, while neither casuistry nor particularism yield satisfying approaches to justifying one decision over another, the proponents of both approaches highlight potential issues that require serious consideration. If we were to design a principle-based moral case deliberation method, it needs clear normative principles. In having principles with clear normative content, it can be easy to overshoot the mark and have overly rigid principles. Such principles leave the deliberators little room to take case-specific features into account and only require the deliberators to algorithmically apply relevant principles to a case. The principles employed during a moral case deliberation need to be accompanied with a method to decide how principles can be applied. This method in conjunction with sufficiently indeterminate principles should yield a principle-based ethics that is neither too abstract nor too rigid. A method devised in such a way should be able to withstand the particularist's challenge.

The next sections will be dedicated to examining two promising accounts, one by Onora O' Neill and the other by Richardson, to see if they can sufficiently deal with the particularists' challenge.

3. Onora O'Neill's call for Practical Judgement

The first method with which to apply principles or norms to a case I will examine is Onora O'Neill's method of practical judgement. O' Neill speaks of applying certain norms in the same way I speak of relying on principles to guide action, and I assume we can use the terms interchangeably without thereby creating a distorted view on what we both mean. Nonetheless, O'Neill has deliberately adopted the usage of the word 'norm' and outlining her reasons for this decision are of import to understanding her account of practical judgement. After that, I turn to her explanation of how norms and actions relate to one another and the central role practical judgement plays in moving from a norm to a specific action. Having outlined O'Neill's method, I reconstruct how it would function in a moral case deliberation. This reconstruction hopefully highlights the strengths and weaknesses of O'Neill's method in a practical setting.

Norms

O'Neill chose the term 'norm' for one essential feature. Norms are used to 'guide the way action changes the world rather than to describe the way the world is' [9]. This means that a wide range of propositions can be understood as being a norm, such as intentions, instructions, requests, and promises. All these directives precede action so as to guide it in a particular way and to bring about a certain change in the world. O'Neill further extends the meaning of norm to also cover warnings or advice, which are not as strict as a request, but still aim to guide action in order to reach a preferred state of affairs.

O'Neill notes that norms can refer to propositions that are embedded in a certain culture and derive their justification purely from being embedded in a certain culture. To O'Neill, this is an interpretation of norms we would do well to let go, reinforcing this claim by reference to problematic, culturally embedded norms such as honour killing. Propositions need not be embedded in culture in order to be considered a norm.

Norms, actions, and practical judgement

O' Neill describes the relation between norms and action as follows:

---

[9] O'Neill, 'Normativity and Practical Judgement', 395.

> Norms pick out types of action that fall under specific act descriptions: it is their propositional structure and content that make norms apt for reasoning. However, by the same token the fact that a norm picks out a type of action means that it can offer no more than *a reason for doing some action of a specified type*, and not *a reason for doing a particular act of that type*.[10]

According to O'Neill, and elaborated upon in the cited passage above, norms are indeterminate, and acts are determinate. Norms understood as, or designed to be, algorithms are highly unlikely as that would require a norm which account for all possible contexts and moves. It is also not necessary for norms to function algorithmically, norms function sufficiently in constraining or advocating action in a certain direction. By explicitly claiming that norms are indeterminate, O'Neill evades the particularist criticism that norms or principles are too rigid. Being committed to a norm, is, as O'Neill states in above, being committed to some action of a specified type. What we are left with, then, is the possibility that norms are too abstract to be action guiding in O'Neill's approach. Norms simply provide reasons for doing some action of a specified type, but how is an agent to know which actions are in line with the relevant norms in a particular case. The way an agent can come to know which acts are in line with a norm is a matter of judgement, which, O'Neill admits, would not be a satisfying answer if this is as far as her account would go. Instead, O'Neill claims that practical judgement is the kind of judgement required. As such, she sets out to give an account of what practical judgement is and how this form of judgement aids us in choosing one act or another in an attempt to live in accordance with a norm.

O'Neill defends the claim that practical judgement amounts to more than just picking one of the various acts that would fulfil the requirement of acting in accordance with a norm. As an example of picking, O'Neill describes selecting a tub of margarine from a stand with many tubs of the same brand of margarine. Here, one truly just picks a tub of margarine as there is no real difference between the various tubs. As there is no difference, there is no reasoned argument to give for preferring one tub over another. O'Neill goes on to explain that choosing an act is not as one-dimensional is picking a tub of margarine from a collection of tubs of margarine of the same brand. If there were just one norm the agent had to meet, then any act satisfying the norm will do. Life is more complicated, however, and in deciding to act, we face a whole range of different norms worth taking into account. A doctor who has to break

---

[10] O'Neill, 394. Emphasis is in original.

bad news to a patient needs to be honest, clear, and compassionate. When an act description meets all the relevant norms, the agent is justified in performing that act. The doctor can, in an attempt to be compassionate, water down the seriousness of the situation. In doing so, he does not meet the point of clarity and honesty. The right words, body language and tone can all contribute to an honest, clear, and compassionate way of bringing bad news. O'Neill's description of practical judgement, then, is:

> Practical judgement, I suggest, is not something different from acting on norms: rather it comes into play where and because numerous norms have to be simultaneously taken seriously and observed. Hence practical judgement can indeed be reasoned, because it is norm guided, and norms are apt for reasoning. [11]

Elsewhere she summarised practical judgement thusly:

> The task of practical judgment is to select among possible ways of *jointly* enacting the various principles to which an agent is committed.[12]

She contrasts this with balancing or prioritising norms. All norms must be taken seriously, and the act must be in accordance with each of these norms. Respecting one norm does nothing to make up for not taking into account a different norm. Each of the relevant norms must be attended to individually and then integrated into the resulting action, rather than trying to nullify the failure to meet one norm through gaining high success in meeting another. As O'Neill illustrates, in designing a proper hospital one is guided and restricted by financial and practical considerations. Designing a very cheap hospital by not installing any kind insulation is a job poorly done. The fact that the designer met the financial requirements in a phenomenal fashion does nothing to negate the severe shortcoming of the building being uninsulated. A well-designed hospital meets all financial and practical requirements and so is designed within (or under) budget, with proper insulation, electrical infrastructure, parking spots and so on. O' Neill admits that practical judgement is a demanding task. To find the action which satisfies all norms is not an easy task. Practical judgement, thus, can be done well or poorly.

---

[11] O'Neill, 403.

[12] O'Neill, 'Applied Ethics: Naturalism, Normativity and Public Policy', 228.

But what to do if the norms to which an agent is committed simply cannot be jointly satisfied? O'Neill first points out that planning can go a long way in avoiding situations in which norms cannot be jointly satisfied. If certain normative conflicts arise repeatedly, it could be a sign that the context in which this happens is sub-optimally designed and in need of reconsideration or that agents consistently fail to properly anticipate and prepare for certain situations. Nevertheless, should an agent face a situation in which the norms cannot be jointly satisfied O'Neill suggests the following:

> The fact that a requirement—and on occasion this might be an important ethical obligation or a central professional commitment—has proved contingently unmeetable does not exempt an agent from its claims. The unmeetable requirement may have "remainders," and remainders are often viewed as calling for expressions of attitudes such as regret or remorse.

An agent is never excused by circumstance from the obligation placed on him or her by the norms to which the agent is committed. Norms and principles must be seen as defeasible, and thus, even when the norm cannot be met in a particular case some act which acknowledges the failure to meet the norm must take place. Apart from showing regret or remorse, O'Neill also suggests compensation and commitment to reform. Framed this way, norms can happen, and are allowed, to be unmeetable in specific cases. As such, we need not give up our commitment to a particular norm should it prove contingently incompatible with another norm in a specific case. This also means that one can only commit oneself to norms which (at most) contingently clash; intrinsically incompatible norms are, of course, untenable and force a choice upon the agent to accept one or the other.

While coming to know what one ought to do is, by O'Neill's own admission, not an easy task, this difficulty is not due to the abstractness of norms. Rather, jointly satisfying the various norms to which an agent is committed is the difficult step, due to the inherent complexity of moral life. To, once more, use the analogy of an architect; the norms of delivering a blueprint on time, ensuring proper insulation, and staying within budget are not abstract, but it is nevertheless not an easy task to find out how these norms can be jointly satisfied. As such, O'Neill's account does offer an account of bringing norms to bear on a case, while simultaneously avoiding the particularists' criticism.

Reflective judgement

In this short section I wish to pay special attention to O'Neill's dismissal of relying solely on appreciating or appraising the context of a case in order to reveal what needs to be done. O'Neill describes this appraising as reflective judgement, as an act is judged by the context in which it took place. O'Neill sees no issue in relying on reflective judgement in order to assess the situation we find ourselves in as a kind of preparatory step. From this gathered information, however, we need to move to deciding on an action for which we cannot rely on reflective judgement and for O'Neill it is not quite clear how such a move can be made solely through reflective judgement or seeing the context in which an action is to take place:

> Important as it is to perceive or read the context in which one acts well, doing so cannot disclose what should be done. Moral connoisseurship is not enough to guide action. [13]

The particularist approach, then, cannot disclose what should be done, making a stronger case for relying on norms.

Practical judgement in a practical setting

O'Neill's account of practical judgement remains a largely theoretical endeavour to see whether or not any norm-based approach to ethics is feasible. The bridge to actual practical application has not yet been built, outside of short illustrative examples, so I will take this take on this task myself. I will take the example of the Jehova's Witness outlined in an earlier chapter and sketch how O' Neill's account of practical judgement could aid us in resolving the moral dilemma.

Before I turn to the case, however, something must be said about O'Neill's position regarding the justification of norms. O'Neill's objective in her writing on practical judgement was to find out whether or not norms are fit to guide action, and in these particular essays she deliberately makes no mention of criteria for which norms we should allow when thinking about cases [14]. O'Neill is, however, well-known to be Kantian philosopher and has outlined restrictions on which norms we should and should not accept. This restriction takes the form of her principle of followability, which demands that norms, understood as reasons for action,

---

[13] O'neill, 'Practical Principles & Practical Judgment', 19.
[14] O'Neill, 'Normativity and Practical Judgement', 404.

must be followable by, and intelligible to, all agents [15]. For now, I will continue on to see how O'Neill's account of practical judgement could function when employed during a case without taking into account the principle of followability and the restrictions it places on which norms can be brought to bear on a case. I do this due to the fact that I have listed several practical criteria in the first chapter, one of which is that the method must be able to function in the context of a moral pluralist context. It would therefore still be interesting to see if O'Neill's account could function in such a context.

O'Neill's account appears to place a focus on what each of the relevant agents ought to do if he or she were to act so as to jointly satisfy the norms to which the agent is committed. It would therefore be insightful to clarify the norms to which each of the participants feels committed. As I necessarily have to write *about* a case, many of these norms must be assumed, and important facts are vague. In practice an ethicist's first task could be to establish the relevant norms to which each participant is committed. Having established all of these norms, the ethicist can aid each participant in formulating a course of action that jointly satisfies the norms to which an agent is committed. This allows the participants to gain insight in the motivations of the other participants, with which they could better formulate an action that fits their own norms. After all, a common norm is some form of respecting another person's beliefs and principles, especially when it comes to a family matter. Let us turn, then, to an overview of the norms to which each participant may find him or herself committed.

Charting the norms

The patient

The patient is committed to acting according to the norms associated with Jehovah's Witnesses. The relevant Jehovah's Witness norm for this case is the norm that he is not allowed to consume blood. Blood transfusion is considered an instance of the consumption of blood and is therefore prohibited. Breaking this rule means breaking with his religion and becoming an outcast as far as his fellow Jehovah's Witnesses are concerned [16]. This particular norm can be placed under the larger norm of respecting God as the giver of life. The patient is likely to follow norms of loving commitment to his wife and loving commitment to his parents. Such norms of commitment to others may be too broad. More precise norms can entail owing it to them to do whatever you can to stay alive and respecting their preferences. A norm of commitment could

---

[15] O'Neill, *Towards Justice and Virtue*, 51–59.
[16] Muramoto, 'Bioethical Aspects of the Recent Changes in the Policy of Refusal of Blood by Jehovah's Witnesses'.

also entail duties of caretaking and providing for the family. As the patient is not suicidal, one may suggest that he is committed to a norm of self-preservation.

The patient's wife

The patient's wife shares the patient's commitment to the norms that hold for all Jehovah's Witnesses. She, too, is committed to a norm for a loving commitment to her husband, which could entail supporting her husband's choices, but also doing what she can to prevent avoidable harm from befalling her husband. The wife also has norms specific for her relationship with her parents-in-law, such as respecting their beliefs and taking their preferences seriously. Self-directed norms such as avoiding stress or emotional suffering are also relevant for the patient's wife.

The patient's parents

The parents, too, follow the norms involved in commitment to their son and daughter-in-law as outlined above, as well the self-directed norms outlined for the patient's wife. For the parents, norms pertaining to ensuring the well-being of their spouse include that they attempt to shield their spouse from stress or emotional suffering.

The physician

The physician is committed to the four principles of respecting autonomy, justice, non-maleficence, and beneficence. Respecting autonomy commits the physician to such norms as being honest, as well as respecting the beliefs and preferences of the patient. The physician also has norms of respecting the wife's and parents' beliefs and preferences and the choices they make because of them. The physician considers herself responsible primarily for respecting her patient's autonomy (and all its corresponding norms) and secondarily for the relatives' autonomy. Justice can instruct norms of treating the patient fairly, such as by putting in the same amount of effort for this patient as she would for any other patient. Justice can also direct the physician to not prescribe unnecessarily costly treatment, placing an unnecessarily high financial burden on either the patient or society. Non-maleficence commits the physician to shield her patient, but perhaps also the relatives, from harm and prohibits her from inflicting harm on her patient that is not tied directly to a beneficial result. Unnecessary risks, then, must be avoided or cautioned against. Finally, beneficence gives rise to norms instructing the physician to treat pain and illness, and seeking to aid her patient, as well as the relatives, to the

best of her ability. The physician, too, has some self-directed norms such as not performing procedures that could result in legal action, even if it as act the patient wanted her to perform.

From norms to action

How does the constellation of norms to which each participant committed him or herself lead to action? This section shows how the multiple norms interact for each participant.

The patient

The patient has several norms that appear to contingently conflict. His insistence on refusing blood transfusion puts him at greater risk of dying than is necessary. His norm of self-preservation could therefore conflict with his norm of refusing blood. The norms under the heading of commitment to his parents also conflict with his norm to refuse transfusion, as he causes them emotional suffering and stress by willingly taking a large risk.

Some norms of commitment to his wife, too, potentially conflict with his refusal of transfusion, should he die because of his refusal. However, as they are both Jehovah's Witnesses, their marriage could not be sustained were the patient to accept the blood transfusion. Accepting the blood transfusion means he turns away from his religion and, in accordance with the doctrine for Jehovah's Witnesses, annuls their marriage.

It would seem that refusing blood transfusion only implies a risk of not living up to several of his norms, mostly those concerned with his relationship to his wife and parents. Accepting blood transfusion, however, necessarily means he does not satisfy his norms of not consuming blood, respecting God and respecting his marriage. For the patient, then, it would seem denying blood transfusion and accepting a greater risk would jointly satisfy most of his norms, but leaving him with a duty to make amends to his parents for the trouble this decision causes them.

The patient's wife

A similar line of reasoning holds for the patient's wife. If her husband were to accept blood transfusion, it would mean an end to their marriage or perhaps an end to her commitment to her religion. The wife appears to have to commit to supporting her husband in his decision from the onset. It would not be in line with several of her norms to try to convince her husband to accept blood transfusion. Like her husband, the wife, too, must see to some form of reparation towards the parents for insisting on refusing blood transfusion.

The patient's parents

The parents appear to face a fait accompli, as practical judgement does not direct their son to accept blood transfusion and instead refuse it. From within this context, however, practical judgement would direct them to take on a supportive role, out love for their son and respect for his preferences. It could also mean that they press the physician to do her utmost to find the best and safest alternative to blood transfusion. Lastly, the parents must ensure they support each other as they face uncertain times.

The physician

A potential conflict arises between norms under the heading of respecting autonomy and norms informed by the principle of non-maleficence. Were the physician to respect the patient's reasons for refusing blood transfusion, she also consciously elects a procedure which imposes an unnecessary risk on her patient. The way in which the physician can most effectively act in accordance with her set of norms is by respecting the patient's wish of refusing blood transfusion, thereby meeting the norm of respecting autonomy. Putting as much time and effort as she can in finding those alternative procedures that pose the least risk of harm to the patient would maximally satisfy her commitment to the principle of non-maleficence given the circumstances.

Review

O'Neill's relaxed view on norms as being indeterminate and defeasible is a very strong aspect of her method of bringing norms to bear on a case. On her view, norms contain a clear normative element without being as rigid as an algorithm; each norm directs the agent to act in a certain way, but does not specify exactly what needs to be done in order to act in accordance with a norm. Paired with the concept of practical judgement, the agent is given a certain degree of freedom to interpret how the norms to which the agent is committed guide action in a particular context. O'Neill's method is rather straightforward and simply instructs to take each norm seriously and not to balance one norm against another. While straightforward in theory, employing practical judgement is by no means an easy task. Uncovering how to jointly satisfy all (or most) of your norms is difficult and can be done to a more or lesser degree of success.

The fact that it is difficult for an agent to exercise practical judgement does not necessarily mean that it is ill-suited for moral case deliberation. It does create a certain imbalance between the trained ethicist and the patients and their relatives who are often

laypersons. This imbalance, however, is surmountable due to the fact that the trained ethicist can rationally explain the justification of one act over another by referring to the norms the patient and/or relatives have accepted. This option is not available to the particularist ethicist, whose reliance on a trained moral faculty I had earlier noted as a disadvantage. The fact that one can be better or worse at formulating an acceptable course of action is not the main problem, rather the problem lies in claiming an authoritative position without the possibility of discursive justification.

O'Neill's approach does allow for use in the context of moral pluralism, in the sense that it can help an agent figure out which actions best fit the norms to which he or she is committed. Disagreement on what to do can still exist, of course. Such disagreement, however, is more likely to be due to a disagreement on which norms and principle one ought to accept than on how those norms and principles guide action within the context of a case. In the case at hand, the parents can understand how a commitment to the doctrine of Jehovah's Witnesses can result in their son's refusal of blood transfusion. The parents' issue here does not lie with the procedure of moving from norms to action, but with the norms themselves, which they reject. This, however, is an issue which lies outside the scope of my thesis. Even though O'Neill has an account of justifying which norms are acceptable and which norms are not, her method of practical judgement could still sensibly function even when isolated from the rest of her work.

One issue that needs further elaboration is how to justify which norm needs to give way when two or more norms conflict in such a way that they cannot be jointly satisfied. O'Neill only mentions that, after concluding that one norm needs to budge, this norm must still be respected by means of making some form of reparations. As an example, in the case reconstruction I chose to have the norm of non-maleficence give in to some extent, whereas I let the norm of respecting autonomy remain unchallenged. On reflection, I can justify this move by pointing out that respecting the patient's autonomy is a somewhat binary affair; either the physician respects the patient's decision to refuse blood transfusions or she does not. The norm of non-maleficence leaves room to be fulfilled to a greater or lesser degree. Whether or not this is how O'Neill intended for this justification procedure to proceed, cannot be distilled from her writing (or rather, at least I fail to do so). Regardless of how O'Neill intended such a decision be made, I do think the way I justified satisfying the norms of autonomy and non-maleficence fits her description of employing practical judgement.

In conclusion, O'Neill's account of practical judgement lends itself to be used in a principle-based moral case deliberation method due to its ability to bring norms and principles

to bear on a case without being too abstract or too rigid (and is thus not susceptible to the criticism put forth by the particularists), and its ability to function in a pluralistic society. It does seem obvious that having more time to deliberate will improve the quality of the process, but I do not expect this method to be so thoroughly time consuming to render this method ineffective in a practical setting.

4. Richardson's method of specification

Henry Richardson has developed an account with which to deal with conflicting principles or norms. Once again, not much hinges on which particular word is used and the general goal appears to be the same. Richardson developed his account to be an alternative to the deductivist approach, in which deliberators subsume a case under a (absolute) rule. Specification is also an alternative to a second method called intuitive balancing, in which one assigns weight to each of the conflicting norms in the context of a case in order to decide which principle ought to prevail. Richardson proposes this third alternative, because he argues deduction and intuitive balancing are defective. In this section I will first outline Richardson's arguments as to why deduction and intuitive balancing are defective. After that, I will outline Richardson's own account of specification. Thirdly, I will attempt to reconstruct what it would look like where this account of specification employed in dealing with my example case of the Jehovah's Witness. The final part of this section concerns itself with a review of Richardson's account of specification as a promising method for moral case deliberation.

Deduction and intuitive balancing

A deductivist approach aims to guide action by subsuming a case under a particular rule. The central structure looks like this:

> (i) For all actions x, if Ax then x is (is not) permitted(obligatory).
>
> (ii) Aa.
>
> Therefore,
>
> (iii) Action a is (is not) permitted(obligatory).[17]

Richardson offers the example of a lawyer defending a man accused of rape. The lawyer is committed to the following:

> (1) It is wrong for lawyers not to pursue their clients' interests by all means that are lawful.

---

[17] Richardson, 'Specifying Norms as a Way to Resolve Concrete Ethical Problems', 281.

(2) In this case of defending an accused rapist, it would lawfully promote the client's interest to cross-examine the victim about her sex life in such a way as to make sexist jurors think that she consented.

Therefore,

(3) It would be wrong not to cross-examine the victim in this way. [18]

Deduction is defective, because it is susceptible to offering conflicting recommendations for a course of action. The particularists and their counter-examples tend to highlight exactly this defect as well. To expand on the example, the lawyer can be committed to a norm prohibiting him from defaming the accuser by wilfully distorting the accuser's image. On the one hand, the lawyer should use all the legally allowed tools at his disposal to prevent his client's conviction. On the other hand, he cannot use all the legally allowed tools on the grounds that some of them involve purposefully defaming a person. This leaves the lawyer with a dilemma that does not appear to be resolvable through reliance on principle alone. The occurrence of such dilemmas is not just a mere accident, but the result of the complexity of the world in which we live and the inability to sufficiently capture that complexity in a set of absolute rules [19].

Solving this dilemma through intuitive balancing, however, is not acceptable according to Richardson. Intuitive balancing is defective due to its 'arbitrariness and lack of rational grounding'[20]. The reasons for this conclusion are quite similar to my reasons for being suspicious of the moral sense employed by the particularists. The assigned weights and the balance we eventually arrive at must be taken at face value and are not open to further discursive justification.

Accepting that neither deduction nor intuitive balancing can help us guide action, at least not in a way that is able to properly deal with conflicting principles, we turn to Richardson's alternative that is supposedly able to succeed where the other two methods have failed.

Specification of principles

Richardson's account of specification takes some norm or principle as its starting point and attempts to tailor it to the specifics with a case. Here, as with O'Neill, the account of specification does not deal with the justification of the principles it aims to specify. Justification

---

[18] Richardson, 281.
[19] Richardson, 287.
[20] Richardson, 287.

of the principles themselves is a different endeavour altogether. Instead, modes of bringing principles to bear on a case are examined, without which principles may be theoretically interesting but practically inapplicable. What this account of specification sets out to do, then, is the following:

> The central assertion of the model of specification is that specifying our norms is the most important aspect of resolving concrete ethical problems, so that once our norms are adequately specified for a given context, it will be sufficiently obvious what ought to be done. That is, without further deliberative work, simple inspection of the specified norms will often indicate which option should be chosen. [21]

First, Richardson stresses that a starting principle cannot take an absolute form, such as 'it is always wrong to lie'. Instead, 'always' must be substituted with 'generally' resulting in 'it is generally wrong to lie'. This change is necessary for specification, because specifying absolute principles results in formulating redundant principles. After all, in a world in which we have the principle of 'it is always wrong to lie' the formulation of the specified principle 'it is wrong for a physician to lie to his patient' is redundant because it was already clear that lying is always wrong and the introduction of the physician-patient relationship is irrelevant. Secondly, attempting to specify an absolute rule so as to introduce an exception results in a contradiction. Either we have two logically incompatible principles such as 'it is always wrong to lie' *and* 'it is always wrong to lie except when trying to have your child believe in Santa Claus' or the initial absolute principle was false and should have taken the form of the latter in the first place. This, however, is not a specification of a principle, but a replacement of the principle. Richardson assumes this move away from absolute principles as unproblematic, as it is widely recognised that absolute prohibitions on acts such as lying or even killing are not applicable [22].

How is specification to proceed from a rather general principle, to a principle that fits the description of a case and allows the agents to decide on one action or another. Richardson provides the following schema:

> Norm *p* is a specification of norm *q* (or: *p* specifies *q*) if and only if
>> (a) norms *p* and *q* are of the same normative type;

---

[21] Richardson, 294.
[22] Richardson, 293.

(b) every possible instance of the absolute counterpart of p would count as an instance of the absolute counterpart of q (in other words, any act that satisfies p's absolute counterpart also satisfies q's absolute counterpart);

(c) p qualifies q by substantive means (and not just by converting universal quantifiers to existential ones) by adding clauses indicating what, where, when, why, how, by what means, by whom, or to whom the action is to be, is not to be, or may be done or the action is to be described, or the end is to be pursued or conceived; and

(d) none of these added clauses in p is irrelevant to q. [23]

The 'normative type' mentioned in (a) refers to whether the principle is a requirement, prohibition, end, or permission.

Clause (b) places a limit on how principles can be specified, so as to avoid an exception by disjunction. As an example, he claims that the norm 'When you receive benefits that were not your due, you should generally express gratitude' cannot be specified to 'When you receive benefits that were not your due, you should generally either express your gratitude or surreptitiously aid their child'. After all, if we turn both norms into their absolute forms, the specified norm allows for either expressing gratitude or aiding the child, whereas the original norm only allows for the expression of gratitude. Thus, the specified norm does not satisfy the initial norm. This is not the case in the following example of 'euthanasia is generally wrong' being specified as 'it is generally wrong to shut off the respirator of a patient in an irreversible coma.'

Clause (c) ensures that norms are specified in a meaningful way. In the example of euthanasia, specification by describing a type of euthanasia and the context in which it is done is a meaningful specification, whereas specifying 'euthanasia is always wrong' to 'euthanasia is generally wrong' offers little assistance in guiding action.

Clause (d) prevents specification such as specifying the end 'I wish to expand my pupils' knowledge' to 'I wish to expand my pupils' knowledge and write a movie script'. Writing a movie script is not relevant to expanding his pupils' knowledge.

---

[23] Richardson, 295.

The coherence standard

The clauses above outline how to specify a norm or principle and restricts how specification can proceed. The end result of specification, however, should be that the set of norms to which a person is committed, remain a logically and practically coherent set of norms within the context of a specific case. However, specification in an attempt to resolve conflict in one place could result in conflicts arising elsewhere. To combat this, Richardson proposes a coherence standard for the rationality of specification, akin to the wide reflective equilibrium proposed by John Rawls, on the level of specific cases. Richardson stresses that the coherence standard is more demanding than requiring the absence of logical inconsistencies. By striving for coherence, an agent needs to specify norms in such a way so that it enhances mutual support between the norms to which the agent is committed.

Specification should proceed in such a way that some norms are explained in terms of other norms. To further clarify this, Richardson provides an example of a hospital facing an outbreak of a fatal disease. The hospital is committed to the epidemiological interests of the people inside the hospital, the professional interests of their surgeons, and the good these surgeons can do for some of the patients requiring surgery to be performed. If some surgeons appear to be carriers of the fatal disease, one cannot simply look at the three norms above and find a clear-cut instruction as to what needs to be done. Sending away the infected surgeons will satisfy the norm of looking out for the epidemiological interests of the hospital population, but will ignore the interests of the surgeons and those who require surgery. Specification in accordance with the coherence standard will not only strive to make these incompatible norms compatible, but it will also result in specifying in such a way that the norm for respecting the epidemiological interests are specified in terms of respecting the professional interests. Respecting the surgeons' professional interests has multiple specifications, such as ensuring financial stability and allowing a surgeon to pursue his or her calling. The latter specification can be further specified to a norm stating that an aspect of pursuing the calling of a surgeon is ensuring the patient's wellbeing. Eventually, the norm of respecting the epidemiological interests of the hospital population can be specified partially in terms of the norm of respecting the surgeon's professional interests: a surgeon carrying a disease must be sent home with pay, in order to ensure the wellbeing of the patients while also respecting the surgeon's professional interests.

By being cognisant of the fact that a surgeon's interest and the hospital's interest do overlap in some sense (neither party wants to see the patients harmed), a specification which enhances mutual support was found, to which other specifications such as ensuring financial

stability can be added to fully account for both conflicting norms. Approaching specification in this manner makes it easier to asses which specification to accept if multiple possible specifications are at hand. The more coherent and interconnected the set of specified norms, the stronger its justificatory power.

This model allows deliberators to move from abstract norms, such as respecting autonomy, to move to concrete ones instructing them to take another person's preferences and beliefs seriously, while also allowing them to hedge a commitment to respecting beliefs and preferences to a certain degree. As long as each specification is supported with reasoned arguments, follows the clauses outlined above, and enhances coherence with other norms in the set of accepted norms, deliberators can employ norms in dealing with specific cases. In the next section I examine how this method of specification could proceed when applied to an actual case.

Case reconstruction

The principles and norms by which the participants are guided have been outlined during my reconstruction of O'Neill's method involving practical judgement. I will not, therefore, reassess the commitments of each participant again and, instead, skip right to examining how the norms of each participant can be specified in order to reveal a justified course of action after briefly examining what the role of the ethicist is on this account of specification.

The ethicist's role is that of a guide. He is to ensure that the specifications of norms and principles are valid and in accordance with the four clauses described by Richardson. Secondly, the ethicist should aid in helping the participants construct a coherent set of norms and specifications. The input comes from the participants and the norms and principles they bring to bear on the case, after which a joint effort is made by the participants and the ethicist to specify their norms and principles in order to get clarity on how that norm or principle functions in this particular case.

Specifying the principle of respecting God

The method of specification requires non-absolute principles as input for the whole procedure, whereas religious principles often take on an absolute form. To ask of our patient to generally respect God as the life-giver would be asking too much of him. In this particular case, however, I expect to arrive at a properly specified norm regardless. The steps of specifying the principle

of respecting God are given by the Jehovah's Witness doctrine itself. The principle of respecting God as the life-giver is specified by them to the principle of not consuming blood products. This specification depends on a particular reading of scripture, and as most Christian denominations are not committed to this prohibition of accepting blood products, doubt can be cast on the justifiability of this specification. An ethicist can point this out, so as to confirm that the patient is truly committed to the Jehovah's Witness reading of scripture, but the ethicist cannot emphatically claim that the patient's specification of the initial norm of respecting God is defective. The patient's wife can weigh in on this issue as well, being well-versed in the Jehovah's Witness' reading of scripture.

The principle has been further specified to 'it is prohibited to accept transfusions of whole blood, red cells, white cells, platelets, or blood plasma'. Again, the ethicist has to go about pressing the patient for a justification of this norm carefully, as its justification depends on interpreting scripture and no agreement is reached on the right way to read this passage. By specifying it thusly, however, we are given a much clearer picture of what the patient can and cannot accept. As it turns out, feasible alternatives to blood transfusion exist such as transfusing saline to maintain blood pressure, direct administration of oxygen to maintain oxygenation and blood loss minimisation strategies during surgery.

Conflicting norms are revealed for the patient when we note that the norm of declining blood products clashes with a norm of self-preservation, as the alternatives impose a greater risk. The Jehovah's Witness' principle of self-preservation could be conceived of as 'Generally, I am committed to preserve my life by any means necessary'. Can this be properly specified so as to be compatible with his principle of refusing blood products? Simply specifying the principle to 'Generally, I am committed to preserve my life by any means necessary, *except* when doing so commits me to a sinful act' seems to be untenable on the basis of clause (b) which rules out exceptions by disjunction. I argue, however, that this need not be the case. Like declining blood products, self-preservation for the Jehovah's Witness could be seen as a specification of respecting God, as the patient likely considers his life a gift from God. This move of placing self-preservation and declining blood products under the heading of respecting God allows for the specification ''Generally, I am committed to preserve my life by any means necessary, *except* when doing so commits me to a sinful act such as accepting blood products'. Within the context of the norms the patient has accepted, he does seem committed to unequivocally refuse blood transfusions and insist on using alternative treatment or otherwise accept death.

Respecting autonomy and non-maleficence

How can specification help us resolve the well-known conflict between the principle of respecting autonomy and the principle of non-maleficence?

The principle of non-maleficence is best known as the norm 'first, do no harm'. Specified to fit the case, this principle could be 'generally, the physician should not purposefully expose her patient to greater risks than is necessary', which can be supplemented with 'unless the alternative to risky treatment is refusal of treatment by the patient.'

Respecting autonomy can be specified as 'generally, the physician should respect the patient's freedom to make decisions in accordance with his beliefs and preferences'. The physician knows, however, that her patient is not suicidal and very much has the preference to stay alive and she knows that the alternatives to blood transfusion carry with them a certain risk. We can specify the principle further as 'generally, the physician should respect the patient's freedom to make decisions in accordance with his beliefs and preferences and disclose pertinent information in order to assist her patient in acting according to his beliefs and preferences.' As such, the principle of autonomy directs the physician to disclose information about alternatives and its risks, assisting the patient with aligning his decision with his beliefs and preferences, but ultimately leaving the patient as the final arbiter for the decision.

We see here that the principle of autonomy can be put in terms of the principle of non-maleficence. The physician's conflict can be resolved by her very clearly explaining what the alternatives entail, the risks involved, but ultimately agreeing to proceed using the riskier alternatives given that the patient unequivocally declines the use of blood transfusion. The contingent fact that the patient is willing to choose death over accepting blood transfusions, makes that the specification enhances the coherence in the physician's set of norms. If the patient's insistence in refusing blood transfusions was weaker, and resting on a clear case of misinformation, this particular specification would not suffice and instead require a much stronger push to convince and inform the patient of the necessity of the blood transfusion.

Review

Richardson's method of specification, with which to employ norms and principles during a moral case deliberation, elegantly avoids the criticism of principles or norms being too rigid or abstract. Starting with a broad and unspecific norm and specifying it by adding context-specific clauses seems an obvious thing to do when trying to glean normative guidance from a norm. This method alone could still yield several (seemingly) equally valid specifications. The

coherence standard is introduced to distinguish good specifications from poor ones. Through the construction of an interconnected and mutually enhancing collection of specified norms for a case, the agent can rationally justify his commitment to one particular way of specifying his or her set of norms.

While elegant, the process of specification is much like trying to solve a large logical puzzle. The various specified norms must logically fit into one another and trying to find the right way to fit each component is by no means an easy task. As such, the expert knowledge of an ethicist, who is well acquainted with the process of specification, is indispensable. As I stated earlier for O'Neill's practical judgement, this does not have to be a major downside as the process of specification is open to discursive justification.

One issue I anticipate with Richardson's account of specification comes with the requirement that norms do not take an absolute form. In our moral pluralist society there are traditions which feature absolute norms, as could be seen in the case reconstruction. The patient's norm of respecting God cannot in practice be made into anything other than an absolute norm. The patient would not have accepted any other norm to trump his norm of respecting God, which restricts the procedure of specification. As such I felt a need to specify everything in terms of respecting God, which was manageable due to the fact I was working with only two specified norms. I am unsure whether specification can still yield a coherent, non-conflicting set of specified norms if the pool of norms at play during a case expands.

Barring this final reservation, specification is an attractive method for use in a principle-based moral case deliberation method. Here, as with practical judgement, I expect that time constraints will not be much of an issue for specification.

In the next, and final, chapter I will take stock of the three methods I have analysed in this thesis.

5. Taking stock

Having analysed both O'Neill's and Richardson's methods through application to a fictional case, I can place them side by side and review how both methods fared in relation to the particularists' criticism and the practical criteria I have listed.

The particularists' challenge

The particularists' challenge could be summarised as a two-pronged criticism. Either the use of principles would fail due to the fact that principles were too abstract, or the principles would be too rigid and function as algorithms thereby making principles insensitive to the particularities of a case.

O'Neill's description of norms as a reason to do some action of a particular type make it so that she is not committed to norms that function as an algorithm. Initially, however, it does seem that her description of norms opens her up to the criticism that norms are not sufficiently action guiding as "some action of a particular type" is quite vague. After her example of the architect designing a house and the various norms she lists as relevant for the architect, however, it becomes apparent that norms as O'Neill describes them do not risk being too abstract. Being on time, within budget, and so on are sufficiently open-ended, but not so much so that they fail to guide action. Especially when compounded with O'Neill's account of practical judgement requiring joint satisfaction of the whole set of norms to which an agent is committed, a clear normative direction that is context-sensitive can be reasoned for.

Richardson's method of specifying norms by adding contextual clauses to a broad and unspecified norm is an approach with which Richardson answers both points of particularist criticism at the same time. With specification, norms require the context of a case and coherence with the other case-relevant norms to be action guiding, thereby avoiding that norms function like an algorithm. After specification, each norm also has a clear normative content regarding what to do in a particular case, thus avoiding abstract norms.

Both practical judgement and specification remain viable methods in the face of the particularists' challenge and could therefore prove to be applicable as theoretical foundations for a principle-based method for moral case deliberation. It is important that both methods can provide a satisfactory answer to the particularists' challenge, but this is not the only hurdle to take. Because the proposed approaches must eventually serve as a foundation with which to formulate a principle-based moral case deliberation method, they cannot contain elements that

would hinder its practical feasibility, which I condensed into three criteria; timely resolution, accessibility to laypersons, and sensitivity to moral pluralism. I will discuss the methods for each of these criteria in turn.

Timely resolution

For a method to work in practice it must be able to offer a solution to a moral dilemma in a timely fashion. The luxury to remain abstract or leave the question unanswered is one physicians, patients, relatives and other relevant agents do not have. Consequently, the process of moral deliberation cannot take multiple years or days and should rather have a span of one or two hours, perhaps with multiple sessions depending on the urgency of the case, to resolve a moral dilemma. Of course it could happen that a case is so complex that the method does not enable the deliberators to reach a timely agreement, but this should be a rare occurrence rather than the norm.

O'Neill's approach of practical judgement is open to being done well or poorly. I suspect that, when being guided by an ethical expert, time is an important influence on how well the deliberative process is carried out. However, a relatively short time of deliberating on which action would jointly satisfy all the norms to which an agent is committed can allow an agent to identify, justify and defend a particular act. The only thing I expect, which is not unique for O'Neill's approach, is that being allotted more time to deliberate enables an agent to reason and justify a particular act in a more comprehensive manner. In any case, I expect O'Neill approach to satisfy the criterion of timely resolution.

A similar line of reasoning holds for Richardson's specification approach. More time to deliberate could yield a higher quality of specified norms and a better fulfilment of the coherence standard. It is not the case, or so I expect, that time limitations will restrict the process of specification in such a way that it consistently fails to offer intelligible and acceptable resolutions to moral dilemmas.

Accessible to laypersons

The key feature of moral case deliberation is that a case is discussed with those who are involved in the case itself. The deliberation ideally takes place with an ethical expert to guide the deliberation process, but it should not be the case that an ethical expert or committee renders a one-sided verdict. The participation of physicians, patients, relatives and the like means that the method by which the moral case deliberation is structured allows for laymen participation

while avoiding an overly dominant or authoritative position of the ethical expert. In short, training in moral deliberation or baseline ethical knowledge cannot be a prerequisites for participation. Involving all the relevant parties contributes to compliance and acceptance of the outcome of the deliberation process as well as its legitimacy. I will now briefly review whether or not the approaches by O'Neill and Richardson sufficiently accessible to laypersons.

O'Neill already notes that practical judgement is not necessarily an easy task and that it can be done with varying degrees of success. This does not mean that there necessarily is a high barrier to entry. Especially with the presence of a trained ethicist, any person can be enabled to take part in the deliberation process and employ practical judgement. This does require that the facilitating ethical expert takes a particular approach, whereby he or she ensures proper modes of argumentation and reasoning while shying away from forcing certain beliefs or points of view on the layperson. So, while it may be harder for some than for others to participate in a moral case deliberation method using O'Neill's practical judgement, no special training is required to participate. With proper guidance by the facilitating expert, anyone should be able to adequately participate in the deliberation process.

Richardson's method of specification seems, at first glance, rather easy and straightforward, but it does have two tricky elements. The first element is checking whether the absolute formulation of the newly specified norm still logically fits within the boundaries of the absolute form of the broader, unspecified form. Inexperience with the process of specification could easily lead to deliberators making errors such as exceptions by disjunction. Again, a trained facilitator can help deliberators avoid such mistakes and explain why certain specification cannot justifiably be made. The second tricky element is introduced by the coherence standard. Having to specify some norms in terms of others further adds to the complexity of the endeavour and turns it into a large logical puzzle. While the process is difficult, I do expect that in the setting of a moral case deliberation, under the supervision of a trained ethicist and in joint effort with fellow deliberators, each participant can deliberate how to bring his or her norms and principles to bear on the case at hand.

Sensitivity to moral pluralism

A plurality of norms and proposed justification of these norms is present in society. The debate on which norms, if any, to accept and why is ongoing and the setting of moral case deliberations is not the right one to debate such matters. Consequently, we must approach moral case deliberations as morally pluralistic and allow a wide variety of norms to be brought to bear on

a case by the participants. The method for moral case deliberation, then, cannot be in the business of justifying which principles and norms can and cannot play a role during deliberation. The method must be able to enable each participant to reason about his or her actions in line with his or her principles and norms.

I have noted earlier that O'Neill's approach to ethics is Kantian in nature and that it permeated all of her writing. If it is the case that practical judgement can only work on norms justified by her principle of followability, then this places an unacceptable restraint on the process of moral case deliberation. The Jehovah's Witness patient would not be allowed to bring his norm of not accepting blood products to bear on the case as it rests on reasoning that is not universally intelligible or acceptable, in fact it is rejected by most persons who are not a Jehovah's Witness. However, all is not lost as I do not see why practical judgement would not function when taken out of its Kantian context. The resulting method based on practical judgement, but without the restrictions on acceptable norms and principles, may not be in line with O'Neill's overarching project, but isolating practical judgement from the rest of O'Neill's work does not render it inapplicable or unintelligible. As such, I expect that practical judgement can function as the theoretical foundation for a principle-based moral case deliberation method, albeit in a way that may or may not be endorsed by O'Neill.

Richardson's requirement that all norms are formulated in a non-absolute form is a hurdle from the perspective of moral pluralism. As we have seen, Jehovah's Witnesses do adhere to some norms as absolute and may be unwilling to accept a non-absolute formulation of such norms. In general, religious belief systems are likely to take issue with the requirement to phrase the norm of respecting their God or deities above all in a way that is not absolute, as the resulting specified norm is one they are unlikely to accept. As a result, whenever a moral dilemma involves a norm which is either directly a variation of respecting a deity or a derivative thereof, specification will take place by specifying a norm in terms of the absolute norm of respecting God. I think, however, that I have shown in the case study that the method of specification can still yield acceptable results which can be accepted by the deliberating agent, even if the agent is committed to an absolute principle. What Richardson has shown is that norms need not be rigid or absolute in order for them to be able to guide action. But if a person accepts an absolute norm or principle, he or she can still employ specification to make normative sense of the various norms to which he or she is committed.

6. Conclusion

Medical ethics is fraught with difficult moral dilemmas in need of timely resolution. Moral case deliberation allows for deliberation about such moral dilemmas with the persons involved in the dilemma. In this thesis I set out to explore the feasibility of a principle-based moral case deliberation. To make as strong a case as possible for such a method, the method must take seriously the criticisms levelled against reliance on principles in general. These criticisms came primarily from the particularists and I have summarised their critique as a two-pronged criticism: Principles are either too rigid or too abstract.

A method for moral case deliberation must also be able to function in the practical setting of medical ethics. As such it the method must be a process which resulted in resolving the moral dilemma. Such a resolution had to be achieved within certain time constraints. The method must also be functional in a morally pluralistic setting, as moral case deliberations are not the time or place to discuss which norms are and are not acceptable. Finally, as most participants to a moral case deliberation are no ethical experts, the method must be accessible and be understood by laypersons as well.

Before defending a principle-based method for moral case deliberation, I explored the feasibility of a method which did not require principles at all. I did so by examining casuistry and reviewing it by applying it to a case involving a Jehovah's Witness who refused blood transfusion. I concluded that without reference to principles or norms no clear, well-founded justification could be given as to why one course of action was preferable over another. Principles are required in order to draw normative conclusion that are open to discursive justification.

Onora O'Neill and Henry Richardson both provide theoretical accounts of how principles could be brought to bear on a case. To be viable candidates for a theoretical foundation for a principle-based moral case deliberation method, they need to rely on norms and principles, but in a way that they do not thereby open their account up to the criticisms put forth by the particularists.

O'Neill's description of norms as indeterminate makes it so that she evades the criticism of norms being too rigid, while her account of practical judgement gives norms a clear normative content. By jointly satisfying the norms to which an agent is committed, the agent can think about and justify a particular course of action. No special knowledge of ethics is required to perform the task of practical judgement nor is the task overly laborious. The only potential weakness for O'Neill account lies in O'Neill's Kantian background. If, however, her

method of practical judgement does not have to rely on committing oneself to the Kantian tradition, her account of practical judgement is viable even in a morally pluralistic setting.

Richardson's method of specifying a broad norms to context specific norms, too, resists both prongs of the particularists' challenge. The starting point is a norm that is too broad to be considered rigid, and through the addition of context specific clauses to this broad unspecified norm, a specified norm is formulated. This norm has a clear normative content which is simultaneously context-sensitive. In the setting of a moral case deliberation which is facilitated by an ethical expert, the rather complex process of specification can nonetheless be performed by laypersons as well. And if we allow some lenience with Richardson's demand that norms take on a non-absolute form, the method of specification is a viable candidate for a theoretical foundation for a principle-based moral case deliberation.

Considerations regarding the acceptability of Richardson's coherence standard or O'Neill's larger bioethical project were outside the scope of this thesis. Both accounts have shown that there is a place for principles and norms when dealing with moral cases in a clinical setting, that principles need not be overly rigid or too abstract, and that principles can be employed in a practically feasible manner. The logical next step would be to design a methodological framework on the theoretical foundation offered by O'Neill or Richardson. In such a framework a step-by-step approach is explicated, as well as what is expected of each of the participants. Special attention should be paid to the role of the ethical expert as facilitator and steward of sound reasoning. The actual design of such a framework is a project in and of itself and will not be undertaken here.

7. Literature

Dancy, Jonathan. 'The Particularist's Progress'. In *Moral Particularism*, edited by Brad Hooker and Margaret Olivia Little, 130–56. Oxford : New York: Clarendon Press ; Oxford University Press, 2000.

Gillon, R. 'Four Scenarios'. *Journal of Medical Ethics* 29, no. 5 (1 October 2003): 267–68.

Jonsen, Albert R. 'Casuistry as Methodology in Clinical Ethics'. *Theoretical Medicine* 12, no. 4 (1991): 295–307.

Jonsen, Albert R., and Stephen Toulmin. *The Abuse of Casuistry: A History of Moral Reasoning*. Berkeley: University of California Press, 1988.

Little, Margaret Olivia. 'Moral Generalities Revisited'. In *Moral Particularism*, edited by Brad Hooker and Margaret Olivia Little, 276–304. Oxford : New York: Clarendon Press ; Oxford University Press, 2000.

Muramoto, Osamu. 'Bioethical Aspects of the Recent Changes in the Policy of Refusal of Blood by Jehovah's Witnesses'. *BMJ : British Medical Journal* 322, no. 7277 (6 January 2001): 37–39.

O'Neill, Onora. 'Applied Ethics: Naturalism, Normativity and Public Policy'. *Journal of Applied Philosophy* 26, no. 3 (August 2009): 219–30.

O'Neill, Onora. 'Normativity and Practical Judgement'. *Journal of Moral Philosophy* 4, no. 3 (1 October 2007): 393–405.

O'neill, Onora. 'Practical Principles & Practical Judgment'. *Hastings Center Report* 31, no. 4 (2001): 15–23.

O'Neill, Onora. *Towards Justice and Virtue: A Constructive Account of Practical Reasoning*. Cambridge ; New York: Cambridge University Press, 1996.

Richardson, Henry S. 'Specifying Norms as a Way to Resolve Concrete Ethical Problems'. *Philosophy & Public Affairs*, 1990, 279–310.