3.2 Practical Principles and Practical Judgement in Bioethics[1]

In bioethics, and in the philosophical debates that form part of its background, there has been a long running dispute about ethical principles. The advocates of principles think that they are central to ethical reasoning or decision-making, and have proposed and defended various influential ethical principles. The best known approach to bioethical reasoning that appeals to principles remains that of Beauchamp and Childress,[2] who suggested that bioethical reasoning should centre on four principles, those of beneficence, non-maleficence, autonomy and justice. In some of the literature the ugly neologism 'principilism' has been used to label this well-known approach and similar approaches.

A lot could be and has been written about the merits and the shortcomings of each of these specific principles, and about alternative ways in which each might be interpreted. A lot could and has also be said about other principles that have been advocated in bioethics— the principle of utility, various principles of justice, and many specific principles such as those indicated by phrases such as 'reproductive autonomy' or 'the precautionary principle'. However I shall leave discussions of specific principles that may be important for bioethics, or more generally for ethics, on one side in order to consider the more basic question whether (as some suspect) principles are intrinsically inadequate or morally suspect, or (as others think) they are an essential component of ethical reasoning and deliberation.

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[1] Published as: 'Practical Principles and Practical Judgement', *Hastings Center Report*, 31, 2001, 15-23, I have amended the title to indicate the specific focus, which could be taken for granted in the *Hastings Center Report*.

[2] T.L. Beauchamp, T.L. and J.F. Childress, J.F. (1979), *Principles of Biomedical Ethics*, New York: Oxford University Press; 4th edn., 1994.

Opponents of 'principilism' allege that a focus on principles is formally inadequate, ethically defective, or both. Ethical reasoning and decision making should, they think, focus on or be responsive to cases, case-studies, or to specific situations, relationships or practices, and in any case centre on something less abstract than principles. They may claim that practical principles (let alone rules) are corrupting, stifling, or even illusory, *a fortiori* that they are ethically disastrous. Some propose that ethical concern should focus on virtues and community, on care and commitment, and on other distinctive excellences, and assert that none of these can be adequately specified or captured by principles or rules.3

Those who see a formal deficiency in principles, and in ethical positions that appeal to them, may point in either of two directions. As they see the matter, principles will either be so abstract and indeterminate that they fail to guide action, or if they are not indeterminate but rather offer an effective procedure or algorithm4 for guiding action, will prescribe with relentless uniformity and ethical insensitivity for cases that may differ in deep and ethically significant ways. This double-barrelled criticism has a long history in ethics: it is essential a repetition of the claim that Kantian ethics—evidently principle based— suffers either from excessive *formalism* or from

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3 The opponents of principles and rules are more heterogeneous than this may suggest. Some, including communitarians and those interested in ethical pluralism, object only to 'abstract' and 'universal' principles and rules, and base their own accounts of ethics on the more determinate norms of communities, that is on socially embodied principles. Others have more radical objections, and hold that ethical judgement must be wholly particularist, dealing with each case as it arises. See the papers in Part II, and sections 3 and 4 below.

4 David Berlinski, *The Advent of the Algorithm: The Idea that Rules the World*, "An algorithm is a finite procedure, written in a fixed symbolic vocabulary, governed by precise instructions, moving in discrete steps… whose execution requires no insight, cleverness, intuition, intelligence or perspicuity, and that sooner or later comes to an end", p xviii, facing; New York: Harcourt Inc. 2000.

excessive *rigourism*. Occasionally and fascinatingly both of these incompatible criticisms of

ethical principles have been made simultaneously: but evidently a principle that is too empty to

guide action will not be determinate enough to regiment it into total uniformity— and *vice versa*.

At best the two criticisms can be made consecutively: like those who fall from the frying-pan

into the fire, advocates of principles are then seen as escaping one catastrophe only to suffer

another.

Those who see ethical deficiencies in principles usually attribute them to these supposed formal

difficulties. They suggest either that principles (being indeterminate) cannot really help us in

deciding what to do, or alternatively that principles (being algorithms) could help us decide what

to do, but at the cost of demanding a leaden and ethically dubious uniformity of response across

differing cases. In place of principles, they suggest, we should focus on the specificities of

actual situations, on case studies, on particular examples and exemplars, on the situation to hand

in its rich complexity. There is no single label that fits all opponents of principle-based ethics

equally well: their positions range from those who think of themselves as particularists and insist

that ethical judgements are a matter of *perceiving*, *intuiting* or *appraising* the salient aspects of

particular cases or 'concrete situations', to those who may think of themselves as drawing on the

thick concepts of specific cultural traditions. This thought lies behind another ugly (if less

recent) neologism, which has been adopted from time to time by some of those who oppose

principles, who speak of themselves as 'situationists'. 'Situationism', as I shall understand the

term, prizes the particularity or the specificity of cases, the thick and culturally significant

descriptions by which we pick out their salient ethical features, or even insists that ethical

judgement is directed solely at particular cases.5 Only a focus on what is *specific* to cases or (it

is often said, as if the terms were synonyms) on the *particular*, which principles invariably

overlook, can secure ethical responsiveness to significant differences.

1 Varieties of Practical Principle

To fix ideas it is useful to pick out very broadly the types of principles that have been variously

thought essential and destructive in bioethics. Bioethics is evidently not directly concerned with

principles of logic, with mathematical principles, or with principles of pharmacology: neither

formal nor theoretical principles are its concern. We may say very broadly that it is thought by

some to be concerned with *practical principles*, that is with principles that could at least

sometimes be used in working out how to live our lives, or some parts or aspects of our lives.

Practical principles are for agents.

Practical principles come in many different kinds, and not all of them are of ethical importance.

Books on the principles of midwifery or of corporate finance or of engine maintenance are books

about the use of practical principles, and may be of considerable use in relevant contexts. So

much more has to be said if we are to pick out what makes a practical principle an ethical

principle. I do not intend to say any of it here, because I aim to approach ethical principles by

way of taking seriously the fact hat they are (thought of as) practical principles, so must be fit to

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5 This picture of ethics has a long history in Christian thought. A well-known   statement was given by
Joseph Fletcher,   *Situation Ethics*, (The Westminster Press: Philadelphia, PA), 1966. Parallel secular
views of ethical reasoning have been proposed by some Wittgensteinian and feminist writers, and are
strongly represented in specific attacks on moral theory and on moral principles.

carry the tasks that practical principles of various sorts routinely carry. Working from an

account of the tasks of practical principles in general can, I believe, put us in quite a good

position for assessing whether 'principilism' is essential to or destructive of bioethics.

Practical principles of all sorts have three features. First, all practical principles contain *act*

descriptions, taking this idea in a very broad sense that includes descriptions of emotional

responses and attitudes. These act descriptions may vary from the very specific to the very

abstract. Practical principles that contain very specific act descriptions include: *keep smiling*;

make sure that the drug cupboard is locked before you leave the room and *record the newborn's*

AGPAR score. Practical principles that contain very abstract act descriptions include *injure*

nobody; *pay attention to the bottom line*, *look before you leap* (in its non-literal interpretation!)

and *keep your head when all around are losing theirs.*

Secondly, practical principles do more than *state* act descriptions. They also take up a *position*

or *stance* with respect to the action falling under the description they contain. Many practical

principles prescribe or forbid, in effect setting certain requirements; many others recommend or

warn but do not set requirements. Principles that formulate *requirements* (prohibitions,

obligations, permissions, exceptions etc) can quite naturally be thought of as *rules*; those that

formulate *recommendations* (including warnings, suggestions for good tactics or good practice)

cannot. Both rules and recommendations may be variously classifiable as ethical or legal,

prudential or social, technical or professional, and no doubt in many other ways. Practical

principles with ethical content will therefore *prima facie* be as relevant to recommending virtues

and excellences, and to warning against vices and failures, as they are to prescribing constraints

and demands, obligations and freedoms. (So there is no fundamental reason for thinking that ethical principles must be concerned only with obligation to the exclusion of virtue— or *vice versa*).

Thirdly, practical principles usually specify or assume some *domain of agents* for whom they are to be regarded as relevant. Some practical principles are formulated as principles of universal scope, relevant for all agents. Others are formulated for and addressed to restricted ranges of agents, for example for physicians or for pharmacists, for parents or for patients. Frequently the domain of agents for whom a principle is proposed is left rather vague. Familiar principles such as *exercise due care and attention*; *do not use excessive force*; *love your neighbour* and *do everything in moderation* do not make it explicit that they are intended for all agents. By contrast, other practical principles incorporate explicit *agent descriptions*: *parents are responsible for their children's safety at the swimming pool*; *travellers in SE Asia are recommended to take anti-malarial drugs*; *nursing staff may not leave suicidal patients unattended.*

Practical principles that state requirements— rules— have (a degree of) deontic structure that links them to one another. This may not be obvious on the surface. Some rules use explicit deontic terms ('ought', 'may', 'should'); others use imperatives to convey the notion of requirement: *thou shalt not kill*; *first in, last out*; *treat the worst injured first*. Rules may be systematically linked to one another in two ways. First, the rights and obligations, permissions and prohibitions pertaining to one individual are systematically linked: for example, an agent who is required to do some act (whether ethically, legally, socially, prudentially etc) will also be

allowed to do it, and forbidden to omit it. Secondly, the rights and obligations, permissions and prohibitions of two or more agents may be systematically linked: A can be entitled to B's action or forbearance only if B is obliged so to do or to forbear.

Practical principles that state recommendations are not linked in so systematic a way. They may warn or advise, point out what it would be good or bad, effective or risky, excellent or dubious to do or to be some area of life. Both relatively specific recommendations to *take regular exercise* and specific warnings that *smoking can harm your health*, as well as less specific recommendations to *keep your cool* or *support your colleagues* and warnings to *avoid gossip* and *not to push your luck* are stated in open form, as advice or warning to the world at large. Other recommendations and warnings may be directed to specified ranges of agents. But in neither case are recommendations and warnings linked to one another by the systematic deontic relations that link principles that formulate requirements.

2 Abstraction, Algorithms and Sensitivity to Differences

When we consider the full range of practical principles one recurrent objection to 'principilism', and thereby to ethical principles, simply falls away. Practical principles, including ethical principles cannot, hence do not, require uniform action; more specifically practical rules, including ethical rules cannot, hence do not, require uniform action. Because the act descriptions incorporated in practical principles are invariably indeterminate they must underdetermine the action of those who conform to them. Even if principles or rules are elaborated to incorporate

many details and exceptions, indeterminacy is ineliminable and invariably limits the specificity

of prescription.

Simple examples make this quite plain. Even rather specific principles such as *take two pills*

before meals or *nothing by mouth* constrain but do not regiment. Nothing is prescribed about

where the pills are to be taken, or what the meal is to consist of; nothing is said about the

activities or other treatment of the patient who is to have nothing by mouth. The fears that

practical principles, and especially rules, must regiment those who conform to them are simply

misplaced. The only sorts of rules that could regiment would have to be *algorithms* that

prescribe the precise detail of action without regard to situation. Yet the image of the relentless

algorithm, of the rule that allows no discretion, is misplaced. Such quasi-algorithms as we can

find in human affairs usually apply only to very minor aspects of life. For example a postal

service may require a precise minimum value of stamps on letters of a certain weight and with a

given destination. Evidently postal rules constrain the preparation of envelopes, but they do not

regiment the way that stamps are stuck on, let alone how letters are posted, let alone what they

contain, let alone how we are to live.[6]

Ethical principles of the sorts that have usually been advocated are in any case not even remotely

like postal regulations; they are not even quasi-algorithms. On the contrary, the ethical

principles that have received most attention are highly indeterminate rather than quasi-

algorithmic; they may constrain but do not regiment action; they are more likely to recommend

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[6] Strictly speaking even postal regulations are never more than quasi-algorithms: even in this well-regulated domain we may lick and stick in various ways. True algorithms belong in formal systems that abstract from everything that they do not determine.

types of action, policy and attitude than to offer detailed instructions for living. Suggestions of

principles that require a great a degree of uniformity are constantly criticised—and not just in

recent years. Aristotle noted in introducing the principle that virtue lies in the mean that this is

not be understood arithmetically, or as we might say algorithmically, so that in determining the

right amount of food there is no quantity that is right for all persons without variation: what is

right for Milo the wrestler would be too much for another person.[7] Practical principles of all

sorts are subject to analogous criticisms: prescribed drugs must be appropriate to the disease and

body weight of the patient; financial plans must be adjusted to the life circumstances and income

of the saver; criminal sanctions must be scaled to the offence for which the criminal is convicted.

The degree of uniformity or differentiation to be prescribed in particular aspects of life is a

matter for substantive practical reasoning, and (where relevant) for ethical reasoning. There is

no basis for a general objection that practical principles, or rules, leave too little discretion,

although there may sometimes be good reasons for thinking that one or another principle or rule

would do so.

The thought that   principles, including rules, might provide complete, regimenting guidance has

been a recurrent worry in ethics and in bioethics during the last 25 years, and a common enough

worry at earlier times. I have argued that it is a misplaced worry, and believe that is also a worry

that a slight attention to well-known philosophical discussions of concepts, rules and

indeterminacy could have averted. It has long been known that concepts, and hence also

principles and rules that use concepts, are indeterminate, and that it is fruitless to seek to

complete them by looking for rules for the application of rules, which can lead only to an infinite

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[7] Aristotle, *Nicomachean Ethics*, tr. and ed., Roger Crisp, revised edition, (Cambridge University Press), 2014, 1106b.

regress. On this point both Kant and Wittgenstein are in agreement, although some contemporary writers have ignored Kant's discussions of concepts, rules and principles and assumed that a Kantian position must embrace some form of ethical rigourism.[8]

3. Varieties of Judgement

Even if practical principles (including rules) never provide complete guidance, there may still be a major deficiency in all forms of 'principilism'. The deficiency may lie not in the excessive determinacy of practical principles and rules, and their consequent lack of sensitivity to differences, but on the contrary in their excessive abstraction or indeterminacy and consequent failure to guide action. The short and classical answer to this objection is that it is quite evident that (being invariably indeterminate) principles and rules cannot fully guide action, and that it is well known that they must be complemented by judgement. This 'admission' that practical principles are not by themselves sufficient for guidance will be welcome to the opponents of 'principilism', but many of them will go on to point out that it simply shows that principles are pointless, because judgement not merely *supplements* but can *supplant* principles.

Those who make this claim are in effect suggesting that judgement alone can, does and presumably must underpin ethical reasoning. The burden of proof for this strong claim lies with the proponents of varieties of 'situationism'. In general it is not hard to understand why, *if* they think that judgement can guide action without appeal to principles, they object to principilism.

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[8] A *locus classicus* is Immanuel Kant, *CPR*, A133/B172, where he argues that there cannot be complete rules for the application of rules. For a contrary reading of Kant, see Charles Larmore, 'Moral Judgment', *Review of Metaphysics*, 35, 1981, 275-96; 278.

But it is quite hard to find clear accounts of judgement by which to assess the claim that it can carry the entire task of ethical deliberation.

Since it is common ground between the advocates of 'principilism' and 'situationism', let us accept that there will always be a gap between a (necessarily indeterminate) practical principle, that can at most require or recommend some act *type*, and the particular act that is done and may (or may not) conform that requirement or recommendation. Disagreement begins with the attempt to understand what might be meant by the claim that this gap must be 'filled by judgement'. How can judgement engage with (or reach toward) the particular? What is the process of judgment? How do we do it? In ethics, and in bioethics, the sort of judgement that we need to understand is *practical judgement*, i.e. judgement that guides action (at least to some degree). Yet surprisingly a great deal of writing on ethical judgement by the opponents of 'principilism' is not about practical judgement at all. It is about the ways in which we assess and judge the situations in which action will be done: it judges situations that are already there to hand rather than future action.

There are two types of judgement that can be directed towards situations or acts that are already to hand, and neither is a form of practical judgement. In the first sort of non-practical judging we ask ourselves whether a particular case falls under some given concept, principle or rule: Was this a case of professional negligence? Was that a case of child abuse? Was the consent given to this or that medical intervention freely given? The adjudicating flavour of the examples is no accident. For in these cases we are assuming both that a situation – an action and its context— is already there to be judged and that there are accepted standards against which it should be

judged. Judgement used to determine whether a case at hand falls under given description may

be called by either of the Kantian terms *subsumptive judgement* or *determinant judgemen*t9.

A second sort of non-practical judgement is also directed towards situations or acts that are

already to hand, but with the difference that it does not assume that the relevant concepts or

standards (rules, principles) are already given. Kant discussed this sort of open-ended judgement

of cases that are to hand, and labelled it *reflective judgement*. In reflective judging we may ask,

for example, 'What sort of treatment of a patient was taking place in this case?', 'How should we

describe the attitude of medical researchers who approach their subjects in this or that way?' or

'How should we characterize the mental state of this patient?'. Reflective judging of situations –

of actions and their context— has played a large part in case-centred, 'situationist' writing in

bioethics and beyond, under various labels.

However neither determinant nor reflective judgement is forms of practical judgement. Both

assume that the case to be judged is *ready to hand*, whereas practical judgement by definition is

directed at action that has yet to be performed. Practical judgement cannot therefore be directed

at particulars: the point after all is to work out what to do. It is undertaken *on the way* to acting,

not in order to grasp and judge a particular act that has already been done. Practical judgement is

therefore neither subsumptive (determinant) nor reflective. It strives towards *specificity*, with a

view to shaping action; it does not and evidently cannot grasp not-yet-existing particulars.10

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9 Kant draws a sharp distinction between two types of theoretical judgement: "If the universal (the rule, principle or law) is given, then the judgement which subsumes the particular is *determinant*... If, however, only the particular is given and the universal has to be found for it, then the judgement is simply *reflective*", See   Kant, *CJ*, 5:179. See papers in section 2, above.

10 The exception may seem to be the case of retrospective ethical judgement of action already performed. However such cases begin with subsumptive or reflective judgements, and may then move onto a

Yet many 'situationists' have viewed ethical judgment as some version of reflective judging. Two quite different version of this position are common. Some writers – many are ethical particularists—take a more or less *perceptual* or *intuitionist* view of ethical judgement, which they see as at least somewhat analogous to Kant's conception of reflective judging (the particular is given, and the task is to find the appropriate description). They characterise this task variously as a matter of intuiting, perceiving, appreciating or appraising the salient characteristics, including any salient ethical characteristics, of particular situations that have arisen.[11]

The thought that ethical judgement is a capacity to judge particular cases is puzzling in two ways. First, particularists depict capacities to judge as quasi-perceptual, yet there are many disanalogies between ethical and perceptual judgement, particularly when it comes to resolution of disagreement. Secondly, and more perplexingly, the assimilation of practical to perceptual judgement seemingly overlooks the fact that practical judgement is directing at shaping a particular act or attitude rather than at responding to an act or attitude that is already to hand. It is as if the central feature of ethical judgement had dropped out of the picture in favour of a concern with 'seeing' or 'reading' the situation that precedes action. Important as it is to

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practical judgement of an   appropriate response to what has been done. A judge begins with a retrospective, non-practical judgement of the crime committed, and   then makes a practical judgement about the sentence to be imposed.   Only the latter is a practical judgment

[11] For versions of ethical particularism see David Wiggins,   'Deliberation and Practical Reason', in his *Needs, Values and Truth: Essays on the Philosophy of Value*, Aristotelian Society, 6, Oxford: Blackwell, 1987; Jonathan Dancy,   'Ethical Particularism and Morally Relevant Properties', *Mind*, 92, 1983, 530-47; McDowell, John 'Deliberation and Moral Development' in Stephen Engstrom and Jennifer Whiting, eds., *Aristotle, Kant and the Stoics*, (Cambridge University Press), 1996, 19-35. For discussion of reflective judging in earlier Wittgensteinian writing see Onora O'Neill, 'The Power of Example', in *Constructions of Reason*, (Cambridge University Press), 1989, 165-186.

perceive or read the context in which one acts, doing so cannot disclose what should be done. Moral connoisseurship is not enough to guide action.

A second way of conceiving of capacities to judge cases without relying on principles appeals not to ideas of perception or intuition, but to ideas such as cultural norms, or traditions, or exemplary figures. Judgment is then seen as modelled on the precedents of those who judge well within a given area of life or tradition. Just as legal decisions are thought of as appealing to the precedents set by good judges, and just as technical judgements are to match those of skilled technicians, or professional judgements those of highly competent professionals, so ethical judgements are to match those of saints and heroes, or the teachings of ethical exemplars such as Jesus or the Buddha. Many communitarians and virtue ethicists have favoured this account of ethical judgement.[12]

Undoubtedly the deeds and words of exemplary traditional figures can be influential and important in shaping ethical judgements. But these examples work only because we can discern the principles that inform them. Appeals to cases that are known through religious, traditional or literary sources, or from personal experience will be mute unless we can discern their guiding principle. For pointing to the past—or present— judgements or deeds of saints and heroes is never enough: since cases differ, mere imitation will not be enough. Rather the principle and spirit of the past deed has to be known or shown to be relevant to some present case— which inevitably differs in various respects. Once again it helps to consider practical judgement outside

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[12] The single most   influential account of ethical judgement along these lines is probably still that given in   Alasdair MacIntyre *After Virtue*, (Duckworth, London , 1981, but such views are   widespread among hermeneutic and communitarian writers.

ethics: we may be able to see fairly readily that a sportsman or a technician, a judge or a

physician, judges situations well, yet need to make some effort to grasp just which considerations

have guided action and how the example could guide our own action. In generalising from one

known case to another and differing case, deliberators have to take it that certain aspects of the

past case are the important ones that should (if possible) be realised in the present case: in short

they have to act on the principles embedded in the past cases. If we try, for example, to use the

parable of the Good Samaritan to guide action we have to grasp some answer to the very

question to which the parable provided an answer in its time: 'Who is my neighbour?' Mere

imitation may go in the wrong direction: when we think about care or help for others today it is

not, for example, very useful to construe one-to-one encounters in deserts as paradigmatic.

Those 'situationists' who view ethical judgement as analogous to perception, or as a form of

intuition, take a spectator view of ethics and overlook the need for practical judgment that shapes

action. Those 'situationists' who view ethical judgement as embedded in social and cultural

contexts may or may not be correct, but misrepresent their approach if they claim to dispense

with principles. They merely think that morally important principles use or should use the act-

descriptions and norms of a certain society or culture, and so that while ethical reasoning begins

with indeterminate prescriptions, still they are *less* indeterminate than the principles some others

prefer. These social norms or rules and norms may or may not differ from those that are

commonly argued for in ethical theories, or specifically in bioethics: they are principles none the

less. Whether they are superior or more authoritative principles than the less socially

determinate principles proposed by Beauchamp and Childress, or by other writers on bioethics, is

not here to the point. What is to the point is that those who appeal to social and culturally

determinate values *nevertheless* have to find an account of judgement that will work in tandem with principles.

4. From Principles to Practical Judgement

It seems then that there is no way of dispensing with principles, unless it is possible to establish a quite radical form of ethical particularism, a task of the greatest epistemological difficulty. Most would-be opponents of principles are in a position that is remarkably close to that of 'principilists'. They accept that ethical deliberation will use some (not-too-abstract) principles, whose act and agent descriptions are invariably indeterminate (although they may disagree about how indeterminate they must be) and they will also have to show how the move from principle to act is to be made. Practical judgement cannot however be a matter of inference from principle, or from principles combined with (determinant and reflective) judgements about the context and situation to hand in which action is performed , or attitudes are adopted. The indeterminacy of principles ensures that there is no inference from a principle to a particular act.

And yet practical judgment must shape action. In doing so the fact that certain principles form the starting point for judgement is crucial. A physician who adopts the principle of doing nothing to patients without their informed consent will find that this principle rules out many possible ways of acting and thereby *to some extent* shapes her action. A patient who is committed to following a prescribed course of treatment will equally find that *some* ways of life are ruled out, and that the commitment shapes his life to some extent. If for a moment we imagine an agent who is committed to a single principle and faces a single decision then   the

task of practical judgement is limited but not particularly hard: any act that does not violate that single principle is acceptable. Practical judgement is just a matter of ensuring that action does not violate the relevant principle.

Difficulties arise because practical judgement is never just a matter of making a decision that conforms to a single principle. Agents must always shape their action in the light of commitments to multiple principles, of which only a small minority are likely to be ethical principles. The greatest threat to an ethic of principles arises not from the fact that principles are 'too abstract' or 'too rigid', but the from the fact that life is full of cases of (potential) conflicts between principles, including in many cases conflicts between ethical principles. There are countless well-known of instances of conflict among ethical principles: *to save a friend from murder, a lie must be told* (Kant's example); *to save a life, a doctor must be kidnapped* (Mill's example); *to feed the hungry, the Sabbath must be breached* (Christ's example). There are also innumerable instances of conflict between ethical and other practical principles: conflicts between medical needs and hospital budgets; between civil liberties and public health requirements; between quality of life for patients and for their carers; between professional responsibilities and personal projects.

In fact conflicts can even arise from the multiple implications of a *single* practical requirement, which can, it seems, require two incompatible acts. In so-called Buridan moral dilemmas agents are depicted as faced with two indiscernibly differing ethical requirements, such as 'rescuing one of two drowning twins', when rescuing both is impossible.[13] Seemingly, if 'ought' implies 'can',

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[13] See in particular Ruth Barcan Marcus, 'Moral Dilemmas and Consistency', *Journal of Philosophy*, LXXVII, 1980, 121- 136, esp. her   discussion of   requirements for ethical consistency on 125.

two rescues cannot be managed, and nothing differentiates the two cases, it cannot be the case that both rescues are obligatory: but since (by hypothesis) they are indiscernible and not compossible, neither can be obligatory. Others, in particular Bernard Williams, have discussed examples of conflicts between obligations which are not quite Buridan cases, since the two incompatible actions are discernibly different, although they appear to fall under a single principle, for example the dilemma posed by a choice between 'rescuing one's drowning wife' and 'rescuing a drowning stranger', where two rescues are impossible. Williams concludes that any ethics centred on principles and obligations is flawed: it commits agents to a relentless impartiality, and so to neglect of personal attachments and life projects, and appears to disallow rescuing one's wife rather than the stranger.[14]

These examples are not of cases where two (or more) principles are *intrinsically* not jointly satisfiable, because the types of action, policy or life that they prescribe are always incompatible. We can imagine such cases, and all that we can conclude is that it would be incoherent to accept both (or all) of a group of principles that are intrinsically incompatible. Nobody can take themselves to have obligations both to give away all worldly goods and to make a fortune; nobody can view it as obligatory to be open and to be secretive with all; nobody can commit his life both to fundamental medical research and to being a member of a closed religious order. Nobody can be committed to two or more principles or rules whose enactment is *intrinsically* incompatible.

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[14] Bernard Williams, 'Persons Character and Morality', in his *Moral Luck*, (Cambridge University Press), 1981, 17-18.

The practically significant and recurrent instances of conflict between principles arise not when they are *intrinsically incompatible* but when they are *contingently incompatible in a specific situation.* This is the sort of dilemma that forms the background to enormous amounts of writing in bioethics. For example, at a roadside accident in the US a prudent person who is committed to helping others who have been injured may find that prudence and commitments to help conflict, because intervening may expose her to legal claims. This one example must serve here for innumerable other cases of conflict, many of which cannot be resolved by mere time management (doing A, then doing B). Does the evident and pervasive possibility of contingent conflicts between principles tell against the coherence or the usefulness of practical principles, and in particular of ethical principles? Contingent conflicts between practical principles certainly make practical judgement a demanding task.[15] But I do not think that contingent conflict shows that the very idea of commitment to practical principles is incoherent.

5. Practical Judgment on Multiple Principles

Agents *usually* bring multiple commitments and principles, and multiple goals, to any deliberative task. The first part of their task is to judge whether there are ways of acting that satisfy the claims of all significant principles (and do not obstruct other goals), so avoiding both (moral) conflict and (moral) failure. While many of these incipient conflicts might be resolved either by time management or by giving up activities or projects that are permissible but not required, others cannot be. In particular conflicts between ethical and other principles that set requirements may be very hard to resolve.

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[15] See Barbara Herman, 'Obligation and Performance', in her *The Practice of Moral Judgement*, (Harvard University Press, Cambridge, Mass) 1993, 159-83, for a   reasoned view of deliberation as a task.

Yet something must be said about how the task is achieved, or the process of practical judgement will remain a mystery. Clearly we cannot expect to find a complete account of the moves to be made: that could be given only if there were complete rules for judging providing a practical algorithm. In the absence of a practical algorithm, practical judging simply seeks to identify *some* act or pattern of action that adequately meets the several requirements of the case. In many cases commitment to a plurality of principles that set requirements sets a problem that can be resolved. The task has considerable analogies with solving a design problem. In building a hospital numerous constraints must be met. The hospital must be built of available and affordable materials; it must afford adequate shelter and insulation for the climate and for the needs of vulnerable patients; energy consumption and other running costs must be affordable; technical services must be adequate; local planning requirements must be met; the project must be completed within budget. These design and financial criteria constitute a set of constraints and standards which cannot all be met perfectly, and that also cannot always, or perhaps generally, be traded off against one another: a hospital that is poorly insulated or leaks will be inadequate even if it is very affordable. Nevertheless, it is possible to build hospitals in ways that meet all these demands.

Practical judgement too is a matter of finding some act, or pattern of action, or policy that meets a plurality of requirements and recommendations of varying sorts. It is not best thought of as a matter of 'balancing' different principles or different obligations (whatever that might mean). Often great success in living up to one requirement goes no way to compensate for failure to meet another. Great success in seeking patients' informed consent to their treatment does not

compensate for providing them with substandard care. High rates of successful surgery do not compensate for failure to obtain patients' consent. The difficulty of practical judgment is that it has to satisfy a plurality of requirements, yet conflict is not resolvable by fantasising that there is some metric for balancing and trading off different sorts of requirement. Practical judgement is a matter of living up to rather than dismissing multiple requirements. Although there is no algorithm for practical judgement, it can be done better or worse, and may improve or deteriorate. Agents who fail to respect requirements, or who fail to identify obvious lines of action that respect all requirements do not show good practical judgement.

6. Judgement, Conflicts and Remainders

Practical judgement is clearly always difficult and often not wholly successful. However there is more than might at first sight seem likely that can be done in the face of intractable conflict that brings two (or more) principles of obligation into contingent conflict. I shall comment very briefly on two strategies for dealing with recalcitrant conflict between ethical and other requirements.

The first strategy is one of forward planning and evasion. We have a lot of knowledge about circumstances that are likely to create conflicting requirements. A medical practice that regularly overbooks appointments; a patient who covertly places herself under two physicians; a medical researcher who does not handle conflicts between patient care and research interests properly, are all heading into situations in which they are likely to find themselves committed to principles that cannot both be respected, and so to find themselves facing difficulties of practical

judgment. Foresight, care and proper institutional structures can do a lot to avert many of these problems. Creating, reforming and adjusting institutions, practices, ways of life and traits of character can reduce and avert contingent conflicts between principles and make practical judgement feasible. 16

Needless to say, foresight and reform have their limitations. Often we find ourselves in situations in which there is no way of acting that can satisfy all requirements, and indeed in which nothing that the relevant agents could have foreseen or done would have averted the potential for conflict. The most extreme situations, which often give rise to 'dirty hands' problems, are those in which institutions and practices themselves are based on unacceptable principles, institutions and action of various sorts. Even where nothing is deeply awry, we act against the background of determinate configurations of institutions and practices, of habits and customs, of virtues and failings, of skills and incompetence, of capabilities and vulnerabilities, all of which may variously help or hinder attempts to live up to multiple principles. In daily reasoning about action it will often be pointless or misleading to assume these away. Often agents may think that had institutions been better, of had they themselves made better decisions in the past, no contingent conflict would have arisen. But they will realise that, in the world as it is, they cannot avoid a degree of moral failure.

Where existing realities force hard choices it may be impossible to meet all of the various requirements— ethical and legal, prudential and social, technical and professional— that agents take seriously. The most that they can then do is to recognise the claims of unmet, indeed

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16 See Ruth Barcan Marcus, *op.cit*, "we ought to conduct our lives and arrange our institutions so as to minimize predicaments of moral conflict", 121.

contingently unmeetable, requirements and recommendations. 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 and attitudes such as regret or remorse. There are also other, more active and practical approaches to failure, to meet requirements, and these may be more important that the attitudinal responses that have been so much emphasized in discussions of 'remainders'. More active responses might include expressions of apology, commitment to reform, the provision of compensation, forms of restitution, making good and the like.[17]

The importance of foresight and institution building, and of an active approach to remainders, in dealing with practical conflict, does not show that principles are dispensable. It shows that living up to practical principles is hard and demanding. Taking principles seriously is not – as one eminent particularist has suggested-- a matter of finding "a system of rules by which to spare themselves some of the agony of thinking and all the torment of feeling that is actually involved in reasoned deliberation"[18]. It is a matter of working to make practical judgements that do not violate requirements, and of actively acknowledging and seeking to make good any remaining failure to meet important requirements.

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[17] See   Barbara Herman, 'Obligation and Performance', *op cit.*

[18] David Wiggins, *op. cit*, 237.