

*THE SNAKE AND THE ROUNDABOUT: ETHICAL PARTICULARISM
AND THE PATTERNS OF NORMATIVE INDUCTION*

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Abstract : Using two examples of ethical choice, Philippa Foot's snake and the traffic roundabout, this paper offers an account of normative induction that characterizes particularism and generalism as stages of normative inquiry, rather than rival accounts of moral knowledge and motivation.

Ethical particularism holds that the evaluative cannot be "cashed out" in propositional form, and that it is descriptively "shapeless." Drawing on examples from law, this paper claims that, while individual normative inquiry may be viewed as encountering a shapeless particularist context of seemingly unlimited non-moral properties, normativity is driven by repetition of similar situations toward shared practices and descriptive predication. Rather than *retention* of epistemic status by defeated reasons, this illustrates *retirement* of relevant properties and accompanying reasons, transformation of the reasons environment, and a pluralist normative ontology.

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I suspect . . . that there is no way of cashing out propositionally the ways in which non-evaluative properties contribute to the evaluative natures of situations, actions, characters. . . . The particularist's claim is that the good-making relation cannot be cashed out in propositional form.

Margaret Little 2000: 283, 285

If this characterization by Margaret Little of moral particularism is correct, and if the statement is true, how, then, is moral knowledge communicable? How is it motivational? How is it even possible?

Moral knowledge is communicated in general propositions. The latter are derived from particular experience. This paper characterizes particularism and generalism as stages of normative inquiry, rather than rival accounts of moral knowledge and motivation. The generalism-particularism debate fails to recognize a crucial difference between individual moral choice in unique situations (it is dangerous to pick up a snake, but it may be more dangerous not to pick up this one), and those

in common problematic situations (entering a roundabout), where emergent practice drives generalization, both of which are imperative for social order.

The argument is developed from an analysis of “reasons holism,” a central tenet of particularism. I claim from examples in law that while the holism of reasons can always be found in the unique individual case, it may prove temporary in the case of public problems, where of necessity reasons must be *retired* for the emergence of general practices and the rules that embody them. I argue that this illuminates how the “good-making relationship” is “cashed out,” finding consistency inductively from experience, rather than deductively from principle.

I.

Ethical particularism is the view, opposing moral generalism, that the evaluative cannot be “cashed out” in propositional form (Little 2000: 283), that it is “shapeless” with respect to the descriptive (279), and that there is no descriptive pattern unifying the class of right acts. (Jackson, Pettit & Smith 2000: 99). Robust moral particularism emphasizes the

multiplicity and variety of reasons for a particular ethical decision, reasons that can shift polarity from case to case. It is a reaction against a form of generalism that claims a limited set of reasons can dictate the same result (Dancy 1993: 57).

Particularism emphasizes “reasons holism,” or the “context sensitivity” of relevant non-moral or factual properties. According to the holism of reasons, the list of such properties is long, and a consideration that is a reason in one context may not similarly be a reason in another, due to differences in the presence or absence of defeating and enabling conditions. This holism of reasons is claimed as an essential feature of all ethical choice.

By comparison, as a classical generalist position, R.M. Hare’s doctrine of universalizability holds that when a particular action is judged morally wrong, this is so on account of a discrete set of properties. Consistency demands that any action that shares these properties is also wrong:

Universalizability can be explained in various equivalent ways; it comes to this, that if we make different moral judgments about

situations which we admit to be identical in their universal

descriptive properties, we contradict ourselves. (Hare 1981: 21)

Ethical particularism has consistently contended, on numerous grounds, that the generalist's "list of relevant properties" required to support universalization cannot coherently be limited.

Generalists like W.D. Ross have recognized the problem of exceptions to every universal: no general can adequately account for all possible future cases. Particularism has more difficulty with Ross's more moderate view, that ethical generals offer only *prima facie* support for moral decisions. Jonathan Dancy has responded that this *pro tanto* (or "for the most part") position fails to account for defeated reasons in moral conflict, and for the "rationality of regret" that recognizes the unreduced epistemic status of the "defeated *ought*." (Dancy 1993:111)

An early example of the holist dimension of reasons was Philippa Foot's snake example: she noted in 1983 that it is dangerous to pick up a snake, but it may be more dangerous not to pick up this particular one. Dancy comments, "The dangerousness of not picking up this one is not reduced by the dangerousness of picking it up," and claims this

demonstration of the “variable valence of factual properties” shows that the opposing reason “retains its full force.” (Dancy 1993:111, citing Foot 1983)

However, consider Foot’s example in the context of circus snake charmers, who regularly gather venomous snakes for training and feeding. At first it is equally dangerous to pick one up, or not to; but through repeated experience a practice is established in which the parity of opposing valences is *retired*. The practice develops when the situation is repeated sufficiently to become a common problem. Circus snake performers will adopt, from experience, strict rules that govern when and how snakes are to be picked up. The equal dangers of picking up, or not, are removed by the practice. It is no longer the case, then, that (in Dancy’s words) “the defeated non-comparative *ought* can remain true.” (1993: 111) The example suggests other occasions in which retired reasons do not retain their full force in defeat. Note, however, that in this instance the retirement of reasons takes place within a discrete community.

Accordingly, I consider the case of entering a roundabout--but before any rule regarding rights-of-way. The rules of the road have derived for an *entire* community in a fashion comparable to the snake charmers' practice: from necessity driven by experience, by practices emergent from the experience of potential injury. In an early particularist world, there was no settled rule for when and how drivers first entered what might have been the first English roundabout. This is a world that was (as a phenomenologist might say) "pre-predicative" with regard to traffic circles. I shall characterize the holism of reasons here as an initial condition.

The list of relevant properties governing normative conduct can be shown to be initially long, demonstrable by a hypothetical early roundabout accident requiring inquiry into the right, good, or just result. Imagine yourself as the barrister representing Ms Quickly, who was struck by a lorry when she blithely dashed into an early roundabout. Damage and injury resulted, and a judgement must now be made as to a just accounting. As there was no governing rule, your client has sued the owner of the lorry, arguing that the lorry driver should have taken proper

action to avoid her. The lorry driver has counter-sued, claiming that she plunged recklessly into his path. But absent any rules of the road governing “plunging” or “avoiding,” that is not all that the two drivers can argue regarding justice or rightness. Both Ms Quickly and the lorry driver might extend the inquiry to any claim conceivably bearing on a better result.

As her advocate you may bring up everything favorable to the moral balance of her case, regarding the question of “who should pay,” including her being late to church, her unblemished driving record, and her unimpeachable character, and likewise the character of the lorry driver and the fact that the lorry was carrying a cargo of scandalous literature. Counsel representing the lorry driver also has ample arguments from which to draw, including the economic importance of his client’s trip, effects on his career and livelihood, indeed the fact that your client is wealthy and he is poor by comparison. Moreover, the opposing advocate may “reverse the valence” of your own arguments regarding Ms Quickly, claiming that they weigh against rather than in favor of her case (“she should have known better”). Indeed, it

is common among barristers to reverse the valence of opposing arguments in close cases not controlled by settled rule.

However, once the rule establishing a presumptive right-of-way for any vehicle *already* in the roundabout has taken hold, none of this is relevant; Ms Quickly's action, and the class of all similar actions, is now clearly predicable as wrong, and a judicial decision in her favor would be considered unjust. Indeed, the various reasons Ms Quickly might entertain to justify her haste in entering the already occupied roundabout, such as her being late to church, are discounted by the combination of rule and established practice governing other drivers, and their expectations that she will not enter the roundabout in such a manner as to require their emergency action. The ethical general derives motivational force from the entrenched rule and practice, and will override the individual reasons that she and other drivers may yet entertain about their own priorities.

I note for later reference that predication of Ms Quickly's hasty entry at this later stage as "wrong" or "bad" is not deductively related to a universal theory of rightness or goodness. This elucidates Little's

observation that “the good-making relation cannot be cashed out in propositional form.” The “thin” moral properties of good or bad, right or wrong, are revealed here as resultant properties, originating independently of the properties from which they result. I will return to this point below, where I anticipate particularism’s response.

How and why did the roundabout rule come about? A solution had to be found lest crashes in the roundabout continue unabated (Holmes 1881: 113-23). The process was likely one in which cautious drivers tended to wait before entering the proliferating roundabouts, gradually establishing a practice. Meanwhile there would have been disputes to be resolved, in which arguments regarding specific litigants and their actions, purposes, relative wealth, etc. were increasingly ignored or rejected, until eventually legal authorities adopted a rule based on the preferred practice.

In the early or novel legal case, just as in the contemplated individual act, there are aggravating and mitigating factors everywhere you look, on both sides, and moral particularism does not accept restrictive rules of relevant evidence. The various properties available as

reasons and advanced as arguments are narrowed by the emergence of cautionary practices, and the process of normative induction compares them in a gradual, rather than immediate, process, seeking Hume's essential ingredient of similarity. Hume wrote "[w]hen we have found a resemblance among several objects, that often occur to us, we apply the same name to all of them, whatever differences we may observe in the degrees of their quantity and quality, and whatever other differences may appear among them." (Hume 1896: 16) Normative generalism, we might then observe, is a product of establishing a commitment to finite and predicable (and "namable") expectations.

This is not to deny the illustrative value of particularist dilemmas. The famous trolley problem has demonstrated the variable valence of individual intentional states. A comparable real dilemma occurred with the prosecution in 1999 of physician Jack Kevorkian, convicted of second degree murder for providing a device to a patient who pushed a button releasing fatal chemicals. Kevorkian placed himself in the trolley position of tragic choice among alternative individual destinies. His case was initially unique, but the problem has demonstrated sufficient

repeated practical similarity for inductive comparison and predication, such that relevant properties have been subject to the process of inductive inquiry.

II.

Having illustrated what I have called the *retirement* of reasons, what reply would particularism give to this account? Jonathan Dancy insists that defeated reasons always retain their epistemic status, and emphasizes instead how the “salience” of certain reasons guides moral decision. He writes, “defeated reasons are the normal result of moral conflict, where we face reasons of some strength on both sides of a disputed question, and so the question becomes what sense can be made of moral conflict by the sort of theory of moral reasons that I have been beginning to outline.” (1993:109) Here Dancy draws on an observation by Bernard Williams that formed the latter’s own critique of generalist theory:

It seems to me a fundamental criticism of many ethical theories that their accounts of moral conflict and its resolution do not do

justice to the facts of regret and related considerations: basically because they eliminate from the scene the *ought* that is not acted upon. (Williams 1973:175)

Dancy then observes, “the defeated non-comparative *ought* can remain true. . . . Ross tried to capture this in his theory of prima facie duties, as Williams acknowledges, but he failed to retain the defeated comparative *ought* in its full vigour. The general idea is that the defeated *ought* has made its contribution by diminishing the overall rightness of the action that we in fact choose. That this is not sufficient as an account can be seen in Philippa Foot’s excellent example of picking up a snake.” (1993: 111)

As I have emphasized, missing from Dancy’s vision is the pervasiveness of adjusted practice, which populates the landscape of reasons supporting his perception of salience. Dancy observes that “some of the properties of a situation are relevant to the question of what one should do, and some are not These relevant properties are *salient*; they stick out or obtrude, and should catch our attention if we are alert.” When moral decisions are explained, according to Dancy,

salience is the critical measure: “When we come to give a description of the situation, the various saliences (i.e. the shape of the situation) make a difference to how we should go about it.”

The father who tells his child not to take the flowers from the next door garden because that would be stealing should not be seen as subsuming this action under the general principle ‘Stealing is wrong’ (or perhaps ‘Do not steal’), but rather as pointing to the most salient feature of the situation (that the flowers belong to somebody else), which in this case gives sufficient reason for the child not to do it. (1993: 113)

Salience, I conclude, consists *inter alia* in the acceptance of already existing patterns from normative induction. In coming upon a roundabout, dominating the holism of reasons would be the rule and practice of yielding to traffic already there. Particularism accepts the patterns of normative induction without recognizing that they have themselves emerged from a stage of indeterminate particularism. Surely, the landscape of normatively derived patterns is pluralist, and ill-suited to universal description, supporting Margaret Little’s observation

regarding the difficulty of “cashing out the good-making relationship.”

But that does not imply a dominant and essential particularism.

Holistic particularism rests on a classification error, that of considering the individual dilemma as typical of all moral experience. Particularism has challenged the very notion of identity in real normative life, what Dancy terms “the rich multiplicity of lived situations.” (1993: x) In conventional explanations of the inductive process, similarity among objects of inquiry is commonly presumed. Hume’s remark, “when we have found a resemblance among several objects, we apply the same name to all of them, whatever differences we may observe in the degrees of their quantity and quality, and whatever other differences may appear among them,” implies that an important part of the inductive process is the *finding* of similarity. The question to be addressed is whether, and how, similarity among normatively defined situations comes to be recognized and named.

The trolley problem is illustrative but hardly representative in demonstrating the valence of intention. It originated with Foot in 1967 (as an improvement on two older chestnuts, the explorers trapped by a

fat man stuck in the cave entrance, and the judge faced with the mob threatening mass violence if the innocent man is not executed) in order to critique “the doctrine of the double effect.” (Foot 1978: 21-23) “The doctrine of double effect offers a way out of the difficulty, insisting that it is one thing to steer towards someone foreseeing that you will kill him and another to aim at his death as part of your plan.” (Foot 1978: 23) Such hypotheticals, as well as Dancy’s everyday dilemmas (having to return a book to someone who stole it from the library, or break bad news to his sister, 1993: 60, 116), may serve to highlight aspects of individual moral conflict, including that they are not controlled by rule or principle, which is why they seem to support a global particularism. But in cases of successive experience with similar conflicts, as in medically assisted suicide, the practical resolution of real dilemmas takes precedence.

Medically assisted suicide illustrates a further aspect of normative induction hidden from reasons holism, and hence missing from the generalism/particularism debate: the *transformation*, by repeated experience, of the reasons environment--of the character of available

reasons. In 1999 Dr. Kevorkian's tragic decision took place when the risk of imprisonment was great, because criminal prosecution was the only option in a legal environment that recognized few of the medical, legal, and social considerations that accompany current debate. Philippa Foot's 1977 paper, "Euthanasia," treated the issue as an indeterminate dilemma, anticipating the questions--regarding living wills, better medical procedures, and patient protections--that would have to be, and gradually have been, addressed. (Foot 1978: 40, 48-51) These have influenced the course of practice and legislation in the forty years since Foot's essay.

General rules are products of experience and necessity, and of a common situation that is explored in repeated judgements. In focusing only upon the defeated *ought*, particularists ignore that new reasons are forthcoming as old ones are retired. The distinction between the *retirement* and *continued truth* of defeated reasons indicates a critical difference in perspective with particularism. Retirement implicates successive points of experience within a community. Dancy's perspective is synchronic and individual, whereas normative induction is

diachronic and social, treating moral decision as a process of inquiry, with distinct stages of reasoning.

How is moral knowledge possible? In order to work it must be communicated, as science communicates natural knowledge. This paper proposes that the “shape” of moral generalism is to be found in the social response to discrete problems, revealing a pluralist, but not stubbornly particularist, nature to the normative landscape, one with pronounced (but not necessarily globally consistent) patterns and propositions. If this were not the case, there would be no communicable and actionable moral knowledge.

REFERENCES

Dancy, Jonathan. 1993. *Moral Reasons*. Oxford & Cambridge, Mass.: Blackwell.

Foot, Philippa. 1967. “Abortion and the Doctrine of Double Effect.” In Foot, 1978.

_____. 1978. *Virtues and Vices*. Oxford: Blackwell.

- _____. 1983. "Moral Realism and Moral Dilemma," *Journal of Philosophy* 80, 379-98. Reprinted in Gowans, 1987
- Gowans, C.W., ed. 1987. *Moral Dilemmas*. Oxford: Oxford University Press.
- Hare, R.M. 1963. *Freedom and Reason*. Oxford: Clarendon Press.
- Holmes, O.W. 1881. *The Common Law*. Boston: Little, Brown & Co.
- Hooker, Brad, & Margaret Little, ed. 2000. *Moral Particularism*. Oxford: Oxford University Press.
- Hume, David. 1896. *A Treatise of Human Nature*. Oxford: Clarendon Press.
- Jackson, Frank, Philip Pettit & Michael Smith. 2000. "Ethical Particularism and Patterns." In Hooker & Little, ed., 2000.
- Little, Margaret Olivia. 2000. "Moral Generalities Revisited." In Hooker & Little, ed., 2000.
- Williams, Bernard. 1973. *Problems of the Self*. Cambridge: Cambridge University Press.