ORIGINAL PAPER

Journal of Evaluation in Clinical Practice
International Journal of Public Health Policy and Health Services Research

WILEY

Rules, practices and principles: Putting bioethical principles in their place

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Abstract

Bioethics seems preoccupied with establishing, debating, promoting and sometimes debunking principles. While these tasks trade on the status of the word 'principle' in our ordinary language, scant attention is paid to the way principles operate in language. In this paper, we explore how principles relate to rules and practices so as to better understand their logic. We argue that principles gain their sense and power from the practices which give them sense. While general principles can be, and are, establishable in abstraction from specific practices, as they are in principlist bioethics, such principles are impotent as moral guides to action. We show that the purchase any principle has as a moral guide to action emerges from its indexical properties as a principle which has sense in a specific practice. The meaning of any principle is internal to the practice and context in which it is invoked and, therefore, principles are not kinds of master rule which dictate moral judgement in new contexts but rather chameleon-like rules which change with the contexture in which they are invoked.

KEYWORDS
epistemology, medical ethics, philosophy of medicine

1 | INTRODUCTION: FROM PRACTICES TO RULES, TO PRINCIPLES

Bioethics seems preoccupied with establishing, debating, promoting and sometimes debunking principles.[1–4] While these tasks trade on the sense of the word 'principle' in our ordinary language, scant attention is paid to the way principles operate and the place they have in our language use. How does the bioethicist's use of 'moral principle' relate to ordinary appeals to 'principles'? Why might this be important? One way of answering these questions might be to observe that principles are a category of rules and then provide a review of the wealth of literature on rule-following and meaning which has appeared since the publication of Ludwig Wittgenstein's *Philosophical Investigations*[5] triggered philosophical interest in rule-following in the mid-Twentieth Century. We eschew this approach and in this paper proceed via reflection by example in the mode of Investigative Ordinary Language philosophy.[6] We will begin with some examples of word use, projection into new situations, and novel uses to illustrate the role of rules in language use and meaning before progressing onto discuss different ways of conceiving the kinds of rules that facilitate this use. We will then reflect on the relationship of rules and practices and the status of principles as particular types of rules.

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2 | RULES AND SITUATIONS

If Chi asks (1) 'pass me the syringe', she has taken the word syringe and used the word in accordance with certain familiar uses and in accordance with how you learned the word through becoming acquainted with the rules for its usage in various situations. She's spoken the request reflexively, so to speak, without any need for prior thought about appropriate words for achieving the task of requesting the syringe. In turn, you hear it reactively, without any need for interpretation of Chi's words. Learning rules is what gives language users the ability to employ the word, to project it if you like, in(to) new situations beyond those in which they were first exposed to the word when learning it. Now, by way of contrast, if Chi says to you, (2) 'pour yourself a syringe, have a drink and relax', you'll want to set about trying to give sense to this new, unfamiliar and perhaps puzzling usage. How might we do that?

(S1) Is there a new artisan beer, made in honour of put-upon healthcare staff, which has been named 'Syringe'?

(S2) Has Chi discovered a new cocktail named 'Syringe', which she's made and is inviting you to pour for yourself, while finishing getting ready for an evening out?

(S3) Has Chi just completed a new mould in which you can cast a syringe from molten postconsumer waste plastic and is inviting you to pour in the molten plastic, grab yourself a beer from the fridge, and then sit back and relax while the syringe goes through the process of solidification?

What we do know is that when we use the word 'syringe'—which can be used as a noun to refer to a reciprocating pump consisting of a plunger or piston that fits tightly within a barrel or as a verb to refer to the activity of using such a reciprocating pump, as in 'can you syringe my ears'— those uses do not allow for the use of the word which would have sense as something I might suggest you pour and then drink. Sure, as we've shown through our examples, we can often find contexts or situations that give sense to otherwise puzzling or even *seemingly* nonsensical turns of phrase. However, that does not mean it makes sense in standard ways and standard contexts. Syringes are not normally things you can pour; just like pains are not usually things you can smoke, and while you might go on a date with a headache, headaches are not things with which you make plans and settle down if you like each other.

Careful weighing of and reflection on examples can show us how we often employ familiar words in new situations in ways which are unremarkable for speaker and interlocutor. In other examples, such as that of our drinkable syringe, imagination is required to make sense of the usage. Some of these uses (S1 and S2) invoke discontinuity with standard uses; we might say they are different concepts expressed by the 'same' word. Others (S3) express the same concept only extended into new, perhaps unexpected, situations and which will likely give rise to debate: are we 'pouring a syringe'-here or 'casting a syringe'?

The situations we have proposed to give sense to the word 'syringe' as something one can pour, operate as exceptions, qualifications or adaptations to the standard rules for employment of this word; we

might even see them as constituting new rules. When these exceptions, qualifications and adaptations are in play, the sense of the word is discontinuous with its standard usage. This isn't merely an academic observation. The differences in sense have consequences. For example, the senses of the word syringe in S1–S3 do not allow us to move on in those situations and invite someone to perform a vaccination with those Syringes. Put another way, when the sense changes, the future possibilities for sense change. Unfortunately, when doing philosophy, we can be tempted to employ words in new ways, unconnected to their standard uses, but without qualifying those new uses by reference to new sense-conferring situations. Similarly, we might focus on stereotypical uses of a word without acknowledging that in some uses, in some situations, the meaning departs significantly from the meaning it has in stereotypical use. This can cause problems because the sense of terms taken in abstraction from their use is unclear, it hovers around, so to speak, trading on and gesturing at the word's familiarity in ordinary use—a syringe in a clinical setting—while gaining its sense as a new use which should exempt it from the further moves one might make with the term employed in its standard sense. A syringe which is liquid and perhaps even drinkable might have sense in some situations, but that means it is not something we can employ to penetrate the skin and draw blood. In short, situations count. The sense doesn't reside in the word, but in the use of the word in a situation. Familiarity with a word and its rules for use might lead you to think of the word as having meaning in abstraction, but as our examples illustrate, it is the situation which determines the sense of the word when used.

3 | PRINCIPLES, RULES AND CONCEPTS

So, how is this relevant to moral principles? It is, we argue, related in two interconnected ways. First, *rules*. Principles are kinds of rules, sometimes talked of as internal rules; this does not mean that we need a syringe to inject them under our skin or drink them to get them inside, but rather that they are rules we, as individuals, adopt based on commitment to certain general concepts. For example, the famous bioethical four principles are based on commitment to the general moral concepts of autonomy, harm, goodness and justice.[4,7] This brings us to our second point, *concepts*. Principles are principles *of* something: for example, a principle *of* justice. This means that they are subject to the changes in sense which come from the expression of those concepts in different situations, just as are other terms. As we've seen, this can have consequences of varying significance. We will begin with rules but as our discussion unfolds, we will become increasingly focused on concepts.

Understanding that principles are types of rules ties us back to our considerations with which we opened. So, what type of rule are moral principles? We might first contrast moral principles with rules put in place by, and which we observe with reference to, an external authority. For example, the rule that we 'Keep Off the Grass' communicated by the sign outside the faculty building, or the 'Do Not Enter' rule posted outside the operating theatre. Such rules might be seen as standing in contrast to what are called constitutive rules:

rules to which we are subject in virtue of our participation in a practice of which those rules are constitutive. The clearest example of such practices and their constitutive rules are games like football (soccer) or chess. Here the rules constitute that game and it is our observance of these rules which makes it correct to say of us that we are playing the game. Of these constitutive rules, there are those that we cite in defining elements of the game (e.g. scoring a goal) and those that regulate the way we play the game (e.g. bishops can only move diagonally). In this context, principles are another different type of rule, derived from the sort of game which is constituted by the two types of constitutive rules that guide good action within the game. So, we can establish principles for playing a game of football (maximise possession, press the nearest opposition player, etc.) or chess (control the centre of the board, keep your king safe, etc.).

Moral principles are different because they are usually invoked as means of rising above culturally-bound or communal preferences and values (even if they are conceived as emerging from them). Moral principles as they are invoked in bioethics by authors such as Beauchamp & Childress[4] and Gillon[7,8] operate without explicit reference to practices or external authority. Do these principles operate outside of any kind of practice at all and if so, what sense do we give to *those* principles? Here we might begin by thinking of practices which are less structured and institutionalised than the standard game examples so often found in literature on rules. The first example of practices we consider here are such practices around which professions are established, such as the practice of surgery or its specialisations. Here there is something recognisable as a practice, such as the practice of surgical bladder reconstruction or cardiac artery bypass graft surgery, but which does not have a set of codified rules in the ways that games like chess and football do. These examples of surgery-conceived-as-a-practice will have identifiable constitutive rules, which we can divide into rules of *definition* and rules of *regulation*. So, there would be some rules of surgical practice which serve to identify the practitioner as a surgeon, as opposed to an anaesthetist, nurse, patient or layperson. There will be other rules that regulate the practice, such as 'surgery should be practiced by qualified surgeons', 'surgery should be practiced for good medical reasons' (otherwise it is assault), 'bladders should be reconstructed to remove malignant tissue but where possible retain function' and so on. Once we have established the constitutive rules, we can establish the principles of good surgical practice. However, although we are here dealing with a less formal and codified form of practice-as-a-profession rather than practice-as-a-game, we are still far from something that might shed light on the basis of *moral* principles.

Part of the issue here is the examples we employ. When we talk of constitutive rules and the principles that might be derived from them, we often use examples of games that are codified and institutionalised.* In part, this is because one of the purposes of

examples is to make something perspicuous. So, if we want to make the conception of rules, and in particular constitutive rules, perspicuous then it makes sense to select examples of practices which are familiar and in which the rules are in plain view even to the uninitiated. The flipside of selecting examples for this purpose is that we load the dice. Games vary much more widely than our examples hitherto might suggest and one of the ways they vary is in the degree to which they are codified and institutionalised. A game of 'catch' or 'tag' played by young children, which emerges spontaneously in a playground, might well have no priorly established or agreed rules but rather rules that emerge on the fly as the children begin to play. Presumably, the principles of play are made up on the fly too. Similarly, emergency surgery conducted in the field by nonprofessionals with make-do, repurposed tools—such as an emergency amputation following a severe crushing accident in a remote location—is surgery, but in a way which might not have nor adhere to the rules of surgery we previously discussed. What these cases illustrate is that we might have been too hasty in thinking of constitutive rules in the way we had, based on our initial examples of codified and institutionalised games like chess and football, and professional practice like surgery. In our later examples of spontaneous, improvised children's games and emergency field surgery carried out by lay 'surgeons', the practice's constitution is an ongoing product of the interaction of the participants over time and the rules that constitute it are equally products of that interaction. Where would principles fit in here? If principles can be established based on rules developed as the practice unfolds, then it seems that those principles cannot be anything other than retrospective.

So far, we have seen that principles are derived from rules of certain kinds, what are sometimes referred to as constitutive rules, which are those rules which define and regulate the practices they are constitutive of. As we have extended our range of examples, we have seen that some practices proceed in a manner in which the rules develop as the practice unfolds.

Now, it might be tempting to dismiss this second observation about practices as something we can discount, based on the assumption that these kinds of informal practices are nonstandard or exceptions. This would, we think, be mistaken. Indeed, we would argue that the concept of practice as something formal and institutionalised, with codified rules, is the *nonstandard* case—the refinement, if you like. Practices are constituted through the co-ordinated interaction of participants and the rules that constitute these practices remain implicit in those practices until such a time as it becomes useful to articulate them:

a. Perhaps we want to make our practices commensurable, as in sports, so that participants can compete and be ranked. Rules help us do this by ensuring we are all playing the same game.

b. Perhaps we want to explain what we have been doing, in which case we will do so by formulating the rules with which we acted in accordance, as a way of making intelligible our actions as the

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*For a prominent and now classic example of such a tendency, see John Rawls' paper 'Two Concepts of Rules'.[9] For critique, see Stanley Cavell's 'Rules and Reasons' in his *The Claim of Reason*.[10]

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actions they were within the practice: 'I was making a surgical incision, to remove the bullet, not stabbing him!'.

c. Maybe we want to teach someone the practice, and to do so we convey to them the rules they must learn to be competent in the practice: 'You need to take sharp sterile knife and carefully …'.

So, where do moral principles fit in all this? What practices are they derived from? Let's remind ourselves of what they are alleged to do: moral principles are alleged to tell us how to act or enable us to establish more specific rules for right action when we are confronted by moral dilemmas. They do so, it is argued, by being based on commitments to certain central moral concepts, such as autonomy or justice.[†] Here then, the principles are derived from the rules of our linguistic practices, shared by those who learn the principles: for example, we derive our principle of justice from the meaning of the word justice. The question is, then, how do linguistic practices relate to the examples of practices we've looked at so far: games, which are institutionalised and codified; games which are spontaneous and improvised; professional practice, such as contemporary surgical practice in medicine; or field, emergency versions of the same practice carried out by lay practitioners?

To help answer this question, let us consider the example of the principle that one should keep a *promise*. The question, as it pertains to our discussion here, might be stated as follows: from what is this principle derived? It seems clear that it is not derived from something akin to a formal, structured and institutionalised game of promising that has established codified rules, but from the sense of the word 'promise' used in standard contexts: a promise is a commitment to do such and such, unless the situation in which it is made invokes exceptions, qualifications or adaptations. Examples of cases in which exceptions might be reasonably invoked are when the sense of the promise is such that it amounts to an undertaking to *try* one's utmost to fulfil the commitment: 'I promise, I'll see you tomorrow'. Here there is not a commitment to a future state of affairs but a commitment to take all *reasonable* means to bring about that state of affairs. This differs from a contractual promise, which is a promise conditional on you fulfilling your part of the contract first: 'I promise I will give you £10 for the book'.

The sense of a promise is internal to the use to which the term is put in given situations. So, I can say to you 'I promise you'll win the race tomorrow' in a way that makes perfect sense as we complete our final training session. But the sense of 'promise' in this phrase is an adaptation from our 'commitment-to-fulfilment' sense of promise, becoming an 'expression-of-unwavering-confidence-in-your-ability' sense. So, the moral principle that promises be honoured applies in some situations but not in others in which promises are made. This (a) surprises no-one in those situations because language users are familiar with such adaptations to the promising rule; and (b) does not

amount to the promise having been broken. With this in mind, it seems clear that the principle that promises must be kept is really no more than a statement of the sense of the term 'promise' in a particular usage. The principle now looks a little different.

As we can see from our brief discussion of the promise, the status of a promise is derived from the sense of the promise, as that was made in a given situation. The classic moral principles differ. In the case of bioethical moral principles like 'autonomy' and 'justice' they aren't derivable from the sense of the term when used in a given situation because people tend not to declare that they will be just or observe another's autonomy just before they instigate or join a practice. So, from where do the principles derive their moral force? Moral principles are defined and refined through abstract reflection on the meaning of the terms of which they are principles: The principle of autonomy is derived from 'meaning' of autonomy. The problem with this (in contrast to the promise example) is that such abstract definitions are impotent in practical contexts, because, as we have seen, it is the practical context, or the situation, which confers sense. Put another way, when one is faced with a moral dilemma, moral principles are about as much use as a liquid syringe would be for someone who needs to adminster an injection.

4 | CONCLUSION: BIOETHICAL PRINCIPLES, ABSTRACT DEFINITIONS AND BEGGING THE QUESTION

To conclude, we will summarise what we have argued so far. We began by showing, via a brief grammatical investigation, that words used in different situations can have different meanings (e.g., our examples of the use of the word 'syringe'). This sets things up by showing how what we might assume to be safe abstract accounts of word meaning (we all know what 'syringe' means, right?) can be problematic in certain contexts/situations, and, moreover, this can have consequences for future courses of action; so, there might be sense to be found in the suggestion one pours oneself a syringe, but that brings local entailments, such as, outside of a joke, we cannot ask if we might subsequently use the same syringe to administer a vaccine. At the outset, therefore, we can say that we should exercise caution about acting on and establishing rules based on abstract definitions, because abstract definitions are partial accounts of uses which thereby load the dice.

We progressed to differentiate between kinds of rules, and we showed that principles are derived from *constitutive rules*. These are rules which constitute games and practices. We proceeded to argue that a lot of the literature on constitutive rules goes wrong by focusing exclusively on examples of institutionalised games with codified rules, like football and chess. We pointed out that professions (like surgery) have constitutive rules which are much less prescriptive than institutionalised games with codified rules. Further, we pointed to spontaneous and improvised games (children playing catch or tag) and field emergency versions of professional practices (perhaps something like battlefield surgery done by soldiers with no medical training or

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[†]In response to critique, some proponents of principlism admit that it does not provide a precise mechanism for resolving dilemmas, but suggest that it should involve processes of 'specification and balancing' and 'deliberation and judgement'. Nevertheless, even within such a mediated model, the principles still serve the function of guiding action in some way.

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implements) in which constitutive rules are co-produced in the interactional production of the practice. We further proposed that such informal practices with noncodified rules are not the exceptions but are the standard form of practice, of which institutionalised, formalised professional practices and games, with codified rules are refinements.

While we can discern a logic in deriving principles from institutionalised, formalised professional practices and games, with codified rules, it is a little less clear how one establishes principles in the case of co-produced, in-situ, informal practices in which the rules are not codified but established as the practice unfolds; any principle derived from these rules will be posthoc or retrospective and will not necessarily extend to subsequent informal practices with noncodified rules.

So, where do moral principles come from, if there isn't a codified practice with constitutive rules (like in football or chess) from which to derive principles? Well, moral principles are derived from the meaning of the moral terms they are principles of: for example, justice or autonomy. But this throws us back to the start and our observation about the meaning of 'syringe' and the situationally-specific meaning of terms. If the abstract meaning of 'autonomy' or of 'justice' is the source of the force of the principle of autonomy or justice how does that help us when justice or autonomy means different things in different situations?

The problem is that the meaning of those terms, autonomy and justice, is often the very thing that is in question when there is a moral dilemma. In such cases, moral principles beg the moral question because the very thing they are supposed to adjudicate on is also what brings the local applicability of the principle into question. Consider an example, if we have locally conflicting views on whether the autonomy of a patient is being observed or violated, invoking a principle of autonomy based on an abstract definition of autonomy is not going to help. Invoking a moral principle of autonomy, derived from a general, abstract definition of autonomy, is little more than a rhetorical exercise without genuine moral force. The practices are where the moral action is.[11–13,‡]

CONFLICT OF INTEREST STATEMENT

The authors declare no conflict of interest.

DATA AVAILABILITY STATEMENT

This is a conceptual piece that doesn't include data.

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‡The central argument of this paper is indebted to the writings of Frank Ebersole[14] and to literature on rules and rule-following.[5(secs185-242),10,15,16]