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Justification and Application on the Presupposition of a Semantic Principle of Universalizability

There can be no disputing the fact that a norm cannot exist without showing a reference to situations, however weak this may be. Every moral norm is "case-impregnated." Here, one can think of Hare's analyses of the descriptive, as distinct from the prescriptive meaning component of a moral norm,[3] or of Wellmer's discussion of the unavoidable "situational index" of every norm.[4] The hermeneutical insights into the situation dependency of norms[5] are not to be forgotten either, insights which, in existentialism, were heightened to the assumption of a kind of "situation ethics."[6] In order not to lose sight of the systematic problem, let us summarize these insights as follows: Simply because of its semantic content, every norm already incorporates a reference to situations, or to be more precise, it contains descriptions of situation features. (How this content is to be appropriately explicated—whether hermeneutically, semantically, or pragmatically—is not of consequence at the moment.) This observation is relevant to the application of (U) because the "purity" of the justification principle and, as a result, the thesis of the possibility of a distinction between justification and application could thereby be invalidated. If every norm in need of justification is tied to specific application situations in virtue of its case-impregnated semantic content, then these application situations must also become the object of any appraisal using (U). Then, however, it is no longer plausible why questions of application cannot also be—at least implicitly—the subject matter of justification. Furthermore, the distinction between justification and application appears artificial since it operates with a fictitious kind of separation of powers in morality, according to which the decision on the validity of a norm would be assigned to a justifying norm-giver, whereas the application would be in the hands of a separate,

independent authority. Since this fictitious separation of powers is not compatible with the reality of the legal world, transposing it to questions of morality seems to lead to even more absurd consequences.

The response to this objection depends on what role the semantic content of a moral norm plays in testing conducted by (U). This in turn can only be determined when it is clear what is to be understood by the idea of a "universalization" of norms in need of justification. What is simply the reverse side of that objection is the misunderstanding that a "generalization" in the sense of indeterminate generality is necessarily connected to the testing of the universalizability of norms, so that cognitivist ethics could only justify the validity of "general" norms or would transform concrete norms into abstract ones. Similar to the confusion of the moral principle with moral norms, this objection rates arguments belonging to the validity testing of a norm incorrectly as arguments belonging to the appraisal of its semantic appropriateness.

The range in meaning of the terms used in a norm is irrelevant to the universalizability of this norm. This applies even when the universalizability principle is understood in a weak sense as the meaning of the expression "ought" and not, as Habermas comprehends it, as a principle of general and qualified agreement of all those affected. As R. M. Hare has shown, there are two different levels on which one can proceed when analyzing the generality of a norm. At one level, we distinguish between general and specific norms and, at the other, between universal and singular norms. Only the first distinction relates to the problem of the determinacy of norms, which is under discussion here. The semantic content of a norm can be, to varying degrees, situation-specific or not, depending on the level of detail employed by the terms used in the norm in describing possible situation features. The difference between a general and a specific norm is therefore only one of degree. General norms can thus also be specified at will, depending on how well we are informed about the facts of an application situation. It is only between universal and singular norms that there is a mutually exclusive difference. This difference depends on the logical properties of the expressions used in formulating a norm. Whereas singular terms designate an individual constant, universal terms consist of individual variables which can be fulfilled by more than one constant. "Briefly, generality is the opposite of specificity, whereas universality is compatible with specificity, and means merely the property of being governed by a universal quantifier and not con-

taining individual constants."[7] Thus, even a highly situation-specific norm can still be universal as long as the terms relating to the situation features are applicable to more than one referent. This is for instance the case when the norm does not contain any proper names.

The two distinguished pairs are important for Hare because his thesis of the universalizability of moral norms is connected to the logical property of universal terms. We can justify a moral norm by showing that we would also observe or recommend it in every other situation that is sufficiently similar to the given one, and we do this even if we find ourselves in the place of others.[8] This presupposes that we can apply the proposed norm, at least hypothetically, to different situations on the basis of its semantic properties. Obviously, this cannot be done with singular terms. In *this* respect, universalizable moral norms do not differ from descriptive propositions whose meaning rule compels us to apply a predicate we ascribe to a thing because of certain properties to every other thing whose properties are similar in all relevant aspects to those of the first one.[9] For Hare, the special character of moral judgments, in contrast to purely descriptive ones, lies in their "prescriptiveness." The compulsion to apply a universal proposition to all similar situations does not only arise from the fact that the semantic properties of universal terms obligate us to observe this rule, if we do not want to pay the price of an incorrect use of language; rather, it also arises from the fact that, by using the predicate "ought," we commit ourselves to a recommendation or to a moral principle which we follow not only in the given situation, but also in all other situations belonging to the semantic extension of this norm. The logically compelling force, which inheres in a moral norm on account of the universal terms contained in it, cannot unfold, as it were, until I have already decided to regard a proposed norm as being motivationally binding (recommendable) for my action and that of everyone else.[10] Every moral norm is "synthetic" in virtue of its prescriptive meaning components.[11] Hare's metaethical position does not prescribe what norms we should choose; rather, it only explicates the fact that we are subject to certain semantic rules—by attaching the expression "ought" to a proposed action—*when* we recommend this action. What rules, maxims, or principles I decide on depends on what kind of person I am. "I have been maintaining that the meaning of the word 'ought' and other moral words is such that a person who uses them commits himself thereby to a universal rule."[12]

Already on the basis of these logical distinctions, it is clear that, with the choice of a specific moral norm, nothing has yet been decided about whether it is justifiable. We shall not know that until we have subjected the chosen norm to a test procedure, which for Hare consists in checking whether we would accept the same norm in other situations too. Nor does the specificity of the semantic content belong in this test procedure because the logic of the expression "ought" simply obligates us to formulate the norm hypothesis in universal terms and to regard it prescriptively as being motivationally binding for me and for others with regard to me. This is a necessary condition in order to be able to enter a justification procedure in the first place—a procedure by means of which the proposed norm is hypothetically applied to different situations. Every norm we subject to the universalization test has that specific semantic content we gave it when originally choosing it.

Our original question was, however, whether the universalization procedure enjoins us to consider the application situation in greater detail and, to this extent, is not neutral in respect of application, but can intervene in the semantic content of a norm, thus modifying it. After all, following Hare, we continually spoke about "situations" in our elucidation of his semantic analysis of normative propositions. Thus we still have to specify more precisely what is meant when the universalization principle demands that a proposed norm be accepted even when we find ourselves in a situation different from the original one.

For this procedure, a special aspect of the hypothetical comparison of situations is essential. The procedure can lead to the result that I reject a norm because of its nonuniversalizability only if I myself come to the realization that I cannot will the validity of such a norm under changed conditions. However, this insight remains inaccessible as long as I perceive the changed situation merely from my own perspective. What therefore also forms a part of the comparison of situations is that I put myself in the place of the other person affected by the consequences of my action and reflect on whether I still want to accept the proposed norm as binding for me and others now that I have also considered the needs and interests of the other person.[13] This requirement to change perspectives should not be confused with other versions of universalist ethics in the tradition of G. H. Mead,[14] according to which the change in perspective also incorporates the agreement of the other person; we shall return to this later. For the present, it is sufficient to understand this requirement—following Hare—in a weaker sense and

simply attribute it to the meaning of the word "ought." According to that, the perspective of the other person is one of the variable situation features which, by reason of the universalization principle, I have to consider when reflecting on whether I want to observe the proposed norm in other situations too.[15] Since the word "ought" is used not only prescriptively—designating a norm that is motivationally binding for my will—but also in the sense of a universal rule, I have to combine my will hypothetically with that of another person in order to decide—according to my will thereby expanded to include the perspective of the other person—whether I can still will the application of the proposed norm.[16] If, having undertaken this expansion of my perspective, I nevertheless make a one-sided decision in favor of my own interests and without considering those of the other person although, had I done so, I would have actually had to reject the proposed norm, then not only do I use the word "ought" incorrectly for semantic reasons, but I also contradict myself.[17] What has to be examined now, however, is whether this hypothetical expansion of my perspective, which is linked to the comparison of situations, is necessarily coupled with a change in the semantic content of my proposed norm. When, on finding myself in a concrete situation, I universalize my mode of action in accordance with the perspective of the other person, don't I have to consider aspects belonging to this concrete situation where I want to perform this action and apply the corresponding norm?

Hare himself seems to give an affirmative answer to this question. He not only calls for the consideration of all the facts of the particular case and for the use of imagination,[18] but also compares the justification procedure of universal prescriptivism to "a kind of exploration," where we "look for moral judgements and moral principles which, when we have considered their logical consequences and the facts of the case, we can still accept."[19] By relating the justification of a norm to the specific case, to the external and internal facts, to the particular circumstances and the people affected, as well as to the consequences and side effects, Hare does not seem to distinguish between the justification and the application of a norm. Rather, it seems as if justifying a norm in an application situation focuses on proving that this norm is the one applicable under the particular circumstances of the case. To this end, we have to, as in any exploratory research process, advance hypotheses, experiment with the marginal circumstances of the situation and with the needs of the other person, and check the elicited results in respect of whether we could accept them without self-contradiction. But then

the change of a norm hypothesis in a situation would also form a part of the process of moral justification.

In order to decide whether this impression is correct, we have to look at the entire construction of Hare's moral theory once again. The requirement of considering all the particular features of a given case is situated within the context of the justification of a norm, the criteria of which issue exclusively from the logic of the word "ought." The facts we refer to in this process thus only serve the examination of the legitimate use of the word "ought" in conjunction with a universal normative proposition. In order to establish the *validity* (as we could also say) of a normative proposition, we have to consider what consequences could arise from its application to particular facts and whether we are willing to accept these consequences. The facts, to which we relate a proposed norm in the context of these deliberations, need therefore be only hypothetical.[20] Then, however, it does not even matter whether they belong to the particular application situation or not. This does *not* mean that the particular features of the application situation could not be relevant to the deliberation on whether the norm could still be accepted if these or similar features were considered in a different situation. Yet, the consideration of these facts within the framework of these deliberations is logically independent of the circumstance that they are facts belonging to the application situation. The selection of the relevant facts is exclusively determined by the goal of testing the universalizability of the norm. What does not belong in this sphere are deliberations of the following kind: whether the proposed norm is the right or appropriate one *in this situation* too, whether it would not have been better to have favored a different norm on considering all the features of the situation, or whether the originally proposed norm should be modified in this situation. The only focus of interest in this sphere is the proposed norm and its semantic content, inasmuch as it is determined by universal terms. The situational index or case-impregnated character of a proposed norm, which cannot be circumvented even by restricting the terms to universal ones, does not in itself transform a deliberation aimed at justification into one oriented toward application. If we have arrived at the result that the norm is justified because we can also accept it in similar situations and if we were in the place of the person affected, this judgment is valid only to the point to which the semantic content of this norm extends. The semantic content is given prior to justification. It seems questionable that Hare himself would agree with this interpretation of his justification principle. Since he often condenses the

argumentation situation of a justification to the application situation and thereby attaches his metaethical analyses to act-utilitarian positions,[21] the difference between justification and application is only of marginal significance for his position. That does not however affect our distinction. True, in every norm proposal which we subject to the universalizability test in an application situation, there is implicitly the claim that, with this proposal, we have suggested the right norm for this situation. *If* we believe our proposed norm to be appropriate, we need not expressly enter a deliberation on application after having completed the justification. However, we do not confirm this implicit claim by deliberating on whether we would still accept this norm as being valid if we considered still other features of the application situation, or put ourselves in the place of the concrete other. Merely by chance does it then *seem* as if, by establishing that the norm specifically related to this application situation is universalizable, we had also passed positive judgment on its appropriateness. In these cases it is improbable that we would declare a norm to be universalizable and justified but not appropriate to the situation. Nevertheless, because the set of features drawn upon when ascertaining universalizability is accidentally congruent with the set on which we would base our judgment of situational appropriateness, it does not follow that this has to be so in every case. The difference between the logical roles that the reference to situation features in justification and application situations plays in each case requires that the application problem be isolated, even though it seems at first glance as if the difference actually played only a minor role. In any case, Hare's semantic interpretation of the meaning of "ought" does not lead to an abandoning of the distinction between justification and application. It does not tell us what we should do when, in a situation, we have to select the relevant features which have to be brought into relation with a norm that is appropriate to the situation. It is not until we have hypothetically formulated a norm that we can, with the help of the universalizability principle, test whether it is morally valid.