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A Historical Perspective of Casuistry and its Application to Contemporary Biomedical Ethics

by

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An Introduction to Casuistry as Case-Based Reasoning

Casuistry, from the Latin *casus* meaning "a case," is a method used in moral theology that attempts to apply a set of general principles in specific cases of human conduct. It relies upon knowledge of the law and moral theology in so-called "real world" situations for the purposes of informing conscience and guiding conduct.¹ In practice this means considering morally perplexing cases "in the light of certain ethical norms or rules," where "a definite view of the nature of the moral life is confronted with a well-described real or fictional situation."²

Casuists are skeptical of rules, rights, and theories divorced from history, precedent, and circumstance. Appropriate moral judgments occur, casuists say, through an intimate understanding of particular situations and the historical record of similar cases.³ The casuist looks for cases that are obvious examples of a principle - a case in which there is sure to be a high degree of agreement among most, if not all, observers. The casuist then moves from these clear cases to more dubious ones, ordering them by paradigm and analogy under some principle. Casuistry does not eschew principles, nor is it incompatible with them. Its nemesis may, in fact, be the absolutization of principles.⁴

Casuist theory typically holds that these principles of moral belief and knowledge evolve incrementally through reflection on specific, and subsequently, related cases. To support this thesis, casuists sometimes

consider an analogy to case law. When the decision of a majority of judges becomes authoritative in a case, their judgments are positioned to become authoritative for other courts hearing cases with *similar* facts. This is the doctrine of *precedent*. Casuists see moral authority similarly: social ethics develop from a social consensus formed around cases. This consensus is then extended to new cases by analogy to get the past cases around which the consensus was formed. The underlying consensus and the paradigm cases become enduring and authoritative sources of appeal. As a history of similar cases and similar judgments mount, more confidence is attached to those judgments. Eventually, a degree of moral certitude is found in the judgments, and the stable elements come together in the form of *tentative* principles. As confidence in these generalizations increases, they are accepted less tentatively, and moral knowledge develops. Just as case law (legal rules) develops incrementally from legal decisions in cases, so the moral law (moral rules) develops incrementally.⁵

Casuist ethicists expend much thought on the degree of probability or certitude required for responsible moral judgment. They do not mean probability in the statistical sense, but rather the likelihood of performing a morally right action in a specific case. In situations of profound moral importance they frequently require what they call the *via tutior*, the more safe course. In applying this rule to practical cases - particularly in medical bioethics - they insist almost unanimously that when a physician is in doubt about the efficacy of a treatment he must choose the safer course; even a remote possibility that a treatment would save a life makes that treatment mandatory.⁶ Today, many medical ethicists feel that a less stringent rule of moral probability can be safely followed than what has been inherited from the old casuists.⁷ The renewal of casuistic thought in contemporary bioethics will be the subject of this paper.

Historical Considerations

Although its full-blown development came much later, the roots of casuistry are found in the ideas and practices of three earlier cultures: the ideas of Greek philosophy, the judicial practices of Roman law, and the traditions of rabbinical debate that developed within Judaism.⁸

Aristotle (384-322 BC) argued that a theoretical approach to ethics did not illuminate the practical problems of human conduct in specific cases and situations. He noted the idea of a "first principle" that is certain and inherently justified in science conceived on an axiomatic model. But, he also held that principles in ethics are deeply embedded in the concrete world of human social conduct. This idea was a significant starting point of the Greek philosophers' search for "philosophical foundations" of ethics, and for "universal principles" in which the foundations might be expressed.

Culturally and socially, early Rome stood in marked contrast to fifth century BC Greece. They were a highly practical people with a strong sense of social hierarchy and respect for authority. As the Roman empire grew, the resulting proliferation of rules and laws led to significant changes in judicial practices. Two distinct groups of issues were functionally differentiated. On one side are issues that can be decided by applying *general* rules, or laws, according to the maxim, "like cases are to be decided alike." On the other side are issues that call for discretion or discernment, with an eye to *particular* features of each case, according to the maxim, "significantly different cases are to be decided differently." In this regard, Cicero (106-43 BC) bequeathed to history the first set of clearly formulated moral "cases." In his *De Officiis* are described a number of examples in which individuals are perplexed by a conflict of moral duty. This was the first "case book" that related a number of these dilemmas in order to analyze their moral logic.

Within Rabbinic Judaism, matters requiring moral discernment were resolved by discussion of earlier opinions and using them as "landmarks" from which to "triangulate" the way to resolution of the special problem. Historically, rabbinical debate was not only a precursor to Christian casuistry, but in fact, the two developed in parallel through the Middle Ages.

The roots of Christian casuistry are found within the New Testament itself. An often quoted example of incipient casuistry is found in Luke 20:21-22:⁹

They posed this question to him, "Teacher, we know that what you say and teach is correct, and you show no partiality, but teach the way of God in accordance with the truth. Is it lawful for us to pay tribute to Caesar or not?"

In the Pauline writings, examples of proto-casuistry include the resolution of issues such as eating sacrificial food (1 Cor 8:7-13) and the charism of virginity (1 Cor 7:8-9; 25-28).¹⁰

As Christianity spread throughout the world, it required Christian answers to the various questions of the day. Casuistry provided many of these solutions. These were preserved in the writings of the Church Fathers, and included topics as diverse as military service and proper dress for a Christian. Of particular importance were the writings of Tertullian (*On Spectacles*) and Augustine (*On Lying*).¹¹ Augustine's two treatises on lying exemplify the casuistic form. He took up questions as to whether good intention excuses one from guilt, and whether it is wrong to tell a lie in jest or as a figure of speech. In his *De Officiis*, Ambrose addressed himself to the many "duties" of the believer. He sought to articulate these

moral responsibilities in a concrete way that presaged the works of casuistry that would flourish 1,300 years later. As such, Ambrose has been called the first of the Christian casuists.¹²

Up to this point, casuistry was more a general method rather than a formal ethical model. The Scholastics, and St. Thomas Aquinas in particular, pursued a different path, approaching moral theology in a more speculative and metaphysical fashion.¹³

Casuistry became a central element in the life of Roman Catholicism with the requirement of auricular confession by the Fourth Lateran Council in 1215.¹⁴ The study of cases was motivated, in part, to facilitate the training of confessors in the application of the norms of the Decalogue to the "times, places, and person."¹⁵ This led to the development of specific courses in, and manuals of, "cases of conscience" to train clerics charged with the pastoral duty of hearing confessions.¹⁶

Within the Protestant tradition, the Cambridge Puritan preacher William Perkins (1558-1602) presented the first sustained treatment of casuistry in the English language in his *The Whole Treatise of the Cases of Conscience*.¹⁷

A significant turning point came in the mid-seventeenth century - a time of great religious controversy throughout the Christian world. In particular, Blaise Pascal in his *Provincial Letters* (1656-1657) set out a vitriolic attack on the practice of casuistry in the Roman Catholic Church and its principal practitioners, the Jesuits. The heart of Pascal's criticism of Jesuit casuistry was its laxness and hypocrisy. According to Pascal:

"...the license which they have assumed to tamper with the most holy rules of Christian conduct amounts to a total subversion of the law of God."

The casuists were hypocrites in that they pretended to be, in the midst of their laxness, something they were not - faithful Christians.

Pascal's attack on casuistry had devastating effects on the practice as a form of moral reasoning. The term itself came to mean an unfaithful application of principles. Over time, casuistry, as a model of moral reasoning, fell out of favor except in a few particular circles within Roman Catholicism, Judaism, and some denominations of Protestantism.¹⁸ To this day, *Roget's Thesaurus* lists the following synonyms, among others, for casuistry: *equivocation, mystification, word-fencing, hair-splitting, claptrap, mumbo-jumbo, empty-talk, quibbling, chicanery, subterfuge, and cop-out.*

Notwithstanding the above, St. Alphonsus Liguori's (1696-1787) more balanced approach reestablished the usefulness of the method. He developed a principle in casuistry known as equi-probabilism, whereby a

person could avoid the seeming obligation of a law only on condition that the contrary position was at least as probable. With such modifications, the casuistic approach has characterized Catholic moral theology, to some degree, until the Second Vatican Council.¹⁹

In the last thirty years with the emergence of the field of secular bioethics and the prominence of concrete moral dilemmas and controversies in moral philosophy, the theoretical models have proven to be inept in resolving such controversies and dilemmas in a secular world. One response to the particular dilemmas of medicine has been the attempt to develop a casuistry for bioethics.²⁰

Casuistry on Contemporary Bioethics

Bioethics, following the history of modern moral philosophy, has made use of different moral theories to resolve bioethical disputes.²¹ One conceptual difficulty in the use of moral theory is the difficulty of justifying the basis of one theory over and against other approaches such as utilitarianism and deontology.²² A second conceptual issue is that any theory requires a particular moral commitment or set of moral values in order to reach solutions to the dilemma.²³ Moral theorists have become mired in disputes about both the foundations and values which should be used in developing a moral theory.

In the absence of a unified moral theory for resolving dilemmas in applied ethics a number of strategies have emerged to meet the challenges of moral pluralism. One of the strategies which seeks to avoid the dilemmas of moral theory is the effort to revive the practice of casuistry.²⁴

In spite of casuistry's tarnished reputation, some philosophers have claimed that casuistry, stripped of its unfortunate excesses, has much to teach us about the resolution of moral problems in medicine.²⁵ This "new casuistry" could appropriately be viewed, not so much as a rival to the applied ethics model, but rather as a necessary complement to any and all moral theories that would guide our conduct in specific situations.²⁶ In contrast to methods that begin from "on high" with the working out of a moral theory and culminate in the deductive application of norms to particular situations, this new casuistry works from the "bottom up", emphasizing practical problem solving by means of nuanced interpretation of individual cases.²⁷ Instead of focusing on the need to fit principles to cases, this interpretation stresses the particular nature, derivations, and function of the principles manipulated by the new casuists. Through this alternative theory of principles, we begin to discern a morality that develops, not from the top down as in most interpretations of Roman law, but rather from case to case (or from the bottom up) as in the common law. What differentiates the new casuistry from applied ethics, then, is not the

mere recognition that principles must eventually be applied, but rather a particular account of the logic and derivation of the principles that we use in moral discourse.²⁸

Thus, in the practice of casuistry, properly understood, a comprehensive ethical theory does not *precede*, but *follows* the study of particular cases - though it is surely true that moral problems are construed around "an already perceived but, as yet, inarticulate moral notion" exemplified by particular cases.²⁹

This focus suggests that casuistry and clinical ethics consultation are very much the same - both are forms of reasoning directed toward practical resolutions that lead to decisions and to practical actions.

Consider how the casuist might approach the case of the father's refusal to become a donor. The casuist would begin by identifying particular features in the case rather than appealing to universal principles, utilitarian calculations, or rights. The casuist would then attempt to identify the relevant precedents and prior experiences with other cases, attempting to determine how similar and different this case is from experiences with other cases. In assessing what the father should do, the casuist would determine whether we typically insist, in relevantly similar cases, that parents bear comparable inconvenience and risk to offer their children some chance of survival. In determining what the physician should do, analogous cases would be considered in which breaches of confidentiality are justified or unjustified. The objective is to act in light of any strong social consensus found in precedent cases in medicine and law. Such cases would indicate, for example, that physicians have a right and sometimes an obligation to breach confidentiality in order to prevent harm to others. Examples of these cases include reporting gunshot wounds and venereal diseases, and in some contexts, warning intended victims of a patient's threatened violence.

The casuist might also ask whether the father's refusal to donate would cause a *harm* to his daughter or would only *fail to benefit* her and whether a threatened or actual breach of confidentiality might be justified in an effort to force him to donate. Similarly the casuist would ask whether a lie ("the father is not histocompatible") or a milder form of deception ("for medical reasons the father should not donate") could be justified to prevent wrecking the family. The casuist would attempt to answer these questions by appeal to maxims grounded in experience and tradition, as well as by reasoning from analogous cases.

Conclusion

Today's casuists have reminded us of the importance of analogical reasoning, paradigm cases, and practical judgment. Biomedical ethics, like ethical theory, may have unduly minimized this approach to moral

knowledge. Casuists have also rightly pointed out that generalizations are often best learned, accommodated, and implemented by using cases, case discussion, and case methods. These insights can be utilized by connecting them to an appropriate set of concepts, principles, and theories that control the selection and analysis of cases. Biomedical ethics has long been driven by two kinds of analysis: case study and ethical theory. Cases such as *Quinlan*, *Bouvia*, and *Baby M* are discussed across the literature of the field, form a shared resource, and become integral to the way we think and draw conclusions. They profoundly influence our standards of fairness, negligence, paternalism, and the like. A proper account of moral judgment is critical for biomedical ethics, which cannot flourish without a link between theory, principles, and decision-making. Sensitivity to context and individual differences is essential for a discerning use of principles. Casuistry is notable for no other reason than its long history of attempting to deal with this problem.³⁰

Finally casuistry, as a formal ethical model - and within its historic context, developed within a culture where there was a consensus on certain moral values and principles (the Decalogue and the teachings of Christ, as an example). Within Catholic moral theology, casuistry functioned within the context of a common belief in God, the destiny of humankind, the acceptance of the principles of double effect, of totality, and the theory of probabilism.³¹ Unfortunately, in contemporary applied ethics, such as hospital ethics committees, there is rarely a consensus on principles. This appears to be true even among groups that one might believe to be alike in their beliefs, such as Roman Catholicism, or even Christianity in general. The greatest weakness of casuistry in contemporary bioethics would appear to be the very nature of our pluralistic society with its lack of universally accepted values and principles. This, of course, is made worse by the ever-widening rift between religious and secular society.

Casuistry, it would appear, may function well as a method of case analysis, but there is legitimate concern as to whether it can be a reliable theory of bioethics in practice.

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