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The Persistence of Casuistry: a Neo-premodernist Approach to Moral Reasoning

Richard Arthur Mercadante
University of South Florida, mercadante.richard@spcollege.edu

The Persistence of Casuistry: a Neo-premodernist

Approach to Moral Reasoning

by

Richard A. Mercadante, Jr.

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Department of Philosophy
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University of South Florida

Major Professor: Stephen P. Turner, Ph.D.
Roger Ariew, Ph.D.
Kenneth N. Cissna, Ph.D.
Thomas Williams, Ph.D.

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<u>Dedication</u>

This dissertation is dedicated with sincere appreciation to my parents, Richard Arthur Mercadante (Sr.) and Loretta (Deborah) Inacio Mercadante. So much of who I am today is due to their persistence in teaching me three of the greatest virtues of life: patience, perseverance, and a good sense of humor.

<u>Acknowledgements</u>

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<u>Abstract</u>

The general purpose of this dissertation is to explore casuistry—case-based reasoning—as a discredited, rehabilitated, and, most importantly, persistent form of moral reasoning. Casuistry offers a much needed corrective to principle-based approaches. I offer a defense of a "principle-modest" casuistry and explore the epistemology of casuistry, describing the prerequisite knowledge required for casuistry. I conclude by arguing that casuistry is best understood as a neo-premodernist approach to moral reasoning.

Chapter One: The Controversy of Casuistry

> Casuistry destroys by distinctions and exceptions all morality, and
>
> effaces the essential difference between right and wrong.
>
> *Oxford English Dictionary*
>
> (quoted in Jonsen and Toulmin 12)

In a recent Gallup poll on abortion 49% of respondents indicated that they were prochoice, while 45% identified themselves as prolife (*Gallup Abortion*). Surveys like this one are often used to support the position that moral issues are reducible to two major positions, both supported by their respective principles. We often speak in either/or terms, supporting or rejecting, for example, the death penalty, euthanasia, homosexual marriage, or stem cell research. In addition, it is common for principles to be cited in support of each side of the debate. For example, when talking about abortion, the primary principle often cited by prolife supporters is some form of the *sanctity of life*, and the most important principle for the prochoice side, typically, is the idea of autonomy or *choice*. There are a number of questions, however, which can be raised from this oversimplification of important moral issues like abortion. Is this how people actually reason about moral issues? Is this the best way to frame moral issues—in a dichotomous manner—pitting one side against the other? If faced with a specific circumstance that causes us to question whether our principle-based reasoning is sufficient for resolving a particular case, would we be willing to reconsider how we use principles in our moral

reasoning? What if we were given another survey option? What if, in addition to the prolife/prochoice options, we were asked if abortion should be legal *only under certain circumstances*? Would most prolife supporters retort that any abortion is a violation of the sanctity of life? Would the majority of prochoice supporters object to the limitation placed on choice? Or would something else happen?

One possible answer to this question comes from another Gallup poll. Although the poll was conducted at the same time as the aforementioned poll, it offers a clearly-stated third option. In this poll, 27% of the respondents said that abortion should be legal under any circumstance, 22% said that it should be illegal in all circumstances, and 50% took the position that abortion should be legal *only under certain circumstances* (*Gallup Abortion*). The willingness of half of the survey participants to reject the prolife/prochoice options and to opt for the more qualified "certain circumstances" response is an example of moral reasoning that demonstrates a concern for the details surrounding specific cases. This focus on case-specifics is the hallmark of a particular method of moral reasoning: casuistry.

Casuistry—"case-based reasoning"—is as infamous as it is persistent. From the sixteenth century onward, casuistry has been discredited to such an extent that casuistry is almost always understood as a pejorative term. At the same time, particularly in the field of philosophical ethics, a minority voice has continued to suggest that a revival of casuistry is both warranted and essential for resolving practical moral problems. Recognizing casuistry's controversial history, defenders of casuistry often point to the inevitability of this ethical problem-solving approach. Albert Jonsen and Stephen Toulmin argue that few "intellectual activities have been more reviled than casuistry; yet

few practical activities are ... more indispensable" (11). In some fields, such as medicine or law, casuistry is clearly essential. Case-based reasoning allows medical practitioners to prudently arrive at a diagnosis after careful evaluation of an individual patient's symptoms; an accurate prognosis can only come after attention to the details of the specific case at hand. Likewise, in law, case precedents are integral to the process of legal reasoning. In a criminal sentencing, for example, legal discourse begins by examining the specific details of a new case. Then, by researching former, similar cases, lawyers employ arguments from analogy; they identify the circumstances surrounding a current case to determine how sufficiently similar those details are to former cases. Ideally, all convicted criminals who share the same *types* of crime, committed in *similar* ways will end up with, roughly, the *same* sentences. Unquestionably, casuistry appears to be built into the reasoning practices of both medicine and law.

However, in philosophical ethics, casuistry is far more controversial. Defenders of casuistry constantly run up against proponents of strict, principle-based approaches. These approaches discredit the more "theory modest" method of casuistry. Although most critics *misrepresent* casuistry as an ethical theory or even an anti-theory, casuistry is more accurately described as an "approach to ethical problem solving" (Kuczewski 101) or a "theory modest" "engine of thought" (Arras 29). Yet, despite the criticism that casuistry engenders, casuistry consistently demonstrates its *persistence*. This is particularly true in the more challenging dilemmas of philosophical ethics, for instance, in "border-line" cases involving dishonesty. I examine one such case in detail in Chapter Four. For now, a simple characterization of this type of problem will suffice. Regardless of how strong one's support might be for the maxim, "do not lie," questions inevitably

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arise regarding exceptions (counterexamples) to this rule. Would you lie to ensure that

serious harm is avoided? Would you lie in order to avoid hurting someone's feelings?

Would you lie about some topics, but not others? Is lying about your weight or income

taxes, for example, different from lying about your work history? What begins to emerge

from these questions is another question, which becomes central to this dissertation: in

dealing with practical moral problems, can you ever escape engaging the details of the

case at hand? Can you escape casuistry? Consider that even the most ardent supporter of

a principle-based approach to ethics must address counterexamples that might illustrate

the weakness of the principles they are upholding.

On a very practical level, it appears that casuistry is inescapable. Consider how

the rhetorical quality of casuistry appears to be built into the everyday language we

employ. As Jamie Wright observes,

> if only formal logic was acceptable, how would communication occur?
>
> How would history get told? Where would be the room for error and
>
> revision, correction and reapplication? Professors employ casuistry to
>
> relate old ideas to new ones. Politicians employ casuistry to form
>
> coalitions. Parents employ casuistry to get children in bed on time.
>
> Casuistic reasoning is intimately related to the process and business of
>
> language. If truths could not be stretched, and logic could not be
>
> expanded, language would be impoverished. (52)

Casuistry offers us important contributions that are often lacking in formal logic: human

dialogue and the ability to adapt to an ever-changing world. In Chapter Three, I explore

how casuistry overcomes the deficiencies of formal logic and other approaches to moral deliberation.

Perhaps the most basic premise that informs this dissertation is one that I take to be, relatively, non-controversial. This premise can be stated in the form of a conditional statement. *If* you want to deal constructively with specific moral problems, *then* you need an approach well-suited to offering solutions to practical moral problems. I take this observation not as a statement about the nature of moral reasoning itself, but simply as a reasonable premise to adopt when dealing with practical moral dilemmas. Determining how to deal with moral dilemmas properly is not an easy task. As Aristotle reflects, in the *Nicomachean Ethics*, "It is hard work to be excellent …To do this to the right person, to the right extent, at the right time, with the right motive, that is not for everyone, nor is it easy; wherefore goodness is both rare and laudable and noble" (1109a). Although it is certainly true that talking about specific moral problems typically involves a number of activities—gathering information, debating ethical theory, thinking in terms of how our decisions will influence future generations—when the goal is *to seek resolutions to specific moral problems*, the tool that seems most appropriate for the task is practical reasoning.

Given this premise regarding the need for practical reasoning in resolving specific moral problems, it would be wise to identify specific tools that would best help us work toward resolutions to specific moral cases. As Jonsen and Toulmin argue, "…casuistry remains the single most powerful tool of practical analysis in ethics" (16). But a simple question remains: *why*? Even though casuistic dialogue appears to be built into the world in an important way, there is little, if any, research that directly explores *why* this is the

case. What is it about casuistry that seems to make it inevitable? What, exactly, accounts for the *persistence* of casuistry? The question of why casuistry persists remains one of the most intriguing and unexplored aspects of casuistry. It is one of several questions that are explored in this dissertation.

In contrast to the truncated definitions of casuistry that denigrate casuistry to "quibbling with God" or to mere sophistry, Jonsen and Toulmin offer a rather lengthy definition of neo-casuistry:

> the analysis of moral issues, using procedures of reasoning based on paradigms and analogies, leading to the formulation of expert opinions about the existence and stringency of particular moral obligations, framed in terms of rules or maxims that are general but not universal or invariable, since they hold good with certainty only in the typical conditions of the agent and circumstances of action. (257)

Casuistry offers a method that focuses on concrete moral dilemmas and, thus, yields a more focused forum for debate.

In response to these issues regarding practical reasoning, moral deliberation, and concrete cases, I offer the following four theses:

1. Casuistry is *inevitable* for practical problem solving, despite criticisms to the contrary.
2. Once responses to critics are *clarified*, casuistry is shown to offer a highly successful method of practical reasoning.

3. An important key to understanding casuistry involves unpacking the epistemology of casuistry. I argue that the process of casuistic thinking involves four different *kinds* of knowledge: (1) knowledge of the "good," (2) knowledge of paradigm cases, (3) knowledge of differences between cases, and (4) knowledge of which paradigm shares the most similarities with the current case at hand.

4. Casuistry offers a neo-premodernist approach to moral reasoning, which sets casuistry apart from a number of other ethical approaches and helps to explain casuistry's persistence.

The general purpose of this dissertation is to explore casuistry as a discredited, rehabilitated, and—most importantly—a *persistent* form of reasoning, particularly in ethical discourse. This introductory chapter introduces the idea of casuistry and sets up the conflict between casuistry and its major contender: a strict, principle-based approach to moral decision making. The chapter introduces five major topics: (1) the history and definition of casuistry, (2) alternative conceptions of casuistry, (3) an example of how casuistry functions, (4) the problem with casuistry's nemesis: the "tyranny of principles," and (5) how the principle-ethics/casuistry conflict forms the basis for my thesis.

The History and Definition of Casuistry

Casuistry - "the art of quibbling with God."

—from *Penny Encyclopedia*, 1836

(quoted in Jonsen and Toulmin 12)

Given the controversial nature of the term, it might be best to offer some historical perspective and to attempt a working definition of casuistry. The history of casuistry is dominated by insults and scorn for what has been perceived as a sophistic method of case-based reasoning. Jonsen and Toulmin cite 1556-1656 as the period of "high casuistry" where summaries of moral opinions were put together by "summists" and the worldly Jesuits. Given their educational focus on rhetoric and discernment, both of these groups became important influences both within the church and in civil affairs. Casuists in this era became well-known for problematizing issues such as usury, generally understood to be charging interest on a loan. Interestingly, the Church's position on usury "moved from uncompromising condemnation to toleration over the course of ten centuries" (Jonsen and Toulmin 181). From a casuist's perspective, "the history of usury shows how successive developments in economic and social life gradually suggested that the original paradigm on which the formal moral views about moneylending had been based was too limited" (Jonsen and Toulmin 182). However, this process of determining when a moral position ought to be changed became a key issue for casuistry's critics, the harshest of which was the seventeenth century French mathematician, Blaise Pascal. Justifiably, Pascal criticized some of the Jesuits for permitting unwarranted exceptions to moral teachings for the rich and powerful (Houle).

Unfortunately, as I shall argue, Pascal failed to distinguish the *good* use of casuistry from its *abuse*. This is a crucial point. Casuistry's infamy is largely due to the uncritical acceptance of Pascal's questionable position that *all* casuistry is bad.

Pascal's critique is worth exploring in some depth. As Pascal observed, casuistry was sometimes used (or, more accurately, sometimes *abused*), to justify giving more lenient penances to wealthy sinners than to those less fortunate penitents. Very simply, if a priest wished to show leniency to a wealthy penitent who donated generously to the Church, a priest could offer an interpretation of a particular case that would appear to justify a lenient punishment. It is important to keep in mind that not all casuistry during Pascal's time fell into such misuse. Many priests offered prudent judgments that would be praised by both logicians and conscientious moral theologians alike. The one-hundred years from 1556 to 1656 mark the high point for casuistry. Shortly after this time, Blaise Pascal's devastating seventeenth-century critique of Jesuit casuistry, *The Provincial Letters*, resulted in a left a stain on this term that lasted over three-hundred years.

Championed by the newly-formed Jesuit order of Catholic priests, Pascal vehemently criticized casuistry for its laxity and relativism. Pascal's *Provincial Letters* offered a long-lasting, devastating critique of casuistry that still casts an ominous cloud over this "sophistical" term to this day. To be fair, many of Pascal's criticisms of casuistry are clearly legitimate. One of the most common criticisms involved the problem of commoners receiving rather harsh penances, although royalty often enjoyed very lenient penances, permitting them to continue sinning. Kolakowski notes that the "clientele of the Jesuits" were "nobility engaged in all sorts of worldly business" who were "people of questionable morals" searching for a "much less strenuous and less

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exhausting method of eternal salvation" than the Augustinians offered (58).   Jonsen and

Toulmin offer the example of King Louis XIV who was said to "abjure his mistress on

Holy Thursday, confess to his Jesuit confessor on Good Friday, take Communion on

Easter Sunday, and bring back his mistress on Easter Monday" (233). Kolakowski

highlights some of the more outrageous Jesuitical teachings that Pascal laments in the

Provincial Letters:

> The condemned statements, all 110 of them, include the permission to
>
> duel, to kill one's unfaithful wife, to kill false witnesses, as well as the
>
> judge, to take a false oath, to murder a thief to avoid the loss of one ducat,
>
> to cause abortion, to steal in serious need, to take interest on a loan (as a
>
> sign of gratitude, not as something due by justice), falsely to accuse
>
> another person of a crime in defense of one's own honor, etc. (63)

Most of these condemned statements were considered affronts to moral evaluation, given

that they allowed the practitioner of casuistry to justify, in certain cases, what was

typically morally abhorrent to common morality (for example, murder, lying, stealing).

Given Pascal's influential critique of some obvious offenses to moral reasoning, it

hardly comes as a surprise that casuistry has not been held in high esteem as a method of

moral decision-making. It is also easy to understand why the alternative offered by the

mathematically-minded Pascal emphasized an approach that applied principles to cases in

a deductive manner, similar to geometric proofs.

So what was it that prompted many of Pascal's contemporaries to share in his

penchant for a "moral geometry"? And why does this focus on ethical principles resonate

with so many of our contemporaries? One possible answer is that the use of a "moral

geometry" has a compelling *rhetorical* influence on people. Assuming that ethical problems can have clear-cut resolutions has a strong intuitive appeal. Such an approach offers a rather straight-forward manner for dealing with moral issues. Similar to the mathematical simplicity that informed the "sacred geometry" of the medieval cathedrals, "moral geometry" offers the clarity of deductive reasoning that casuistic processes cannot hope to attain. Consider that, for Pascal, a mathematician and contemporary of Descartes and Spinoza, rigor and formal necessity went hand in hand. Jonsen and Toulmin suggest that it should come as no surprise "that rhetorical tropes modeled on mathematics not only attracted Pascal personally but also carried conviction with his readers" (331). Thus, deductive reasoning served the "rigorist cause" in helping to "discredit all counterarguments", thus disparaging the "nonmathematical" Jesuitical methods found in casuistry. "Moral geometry" gives us clear-cut answers; casuistry gives us more problems.

However, despite Pascal's influential critique and casuistry's unwillingness to embrace a mathematical model for moral reasoning, casuistry has persisted. This is particularly true during those times in history that seem to lend themselves to a method that can clearly make judgments and distinctions about specific actions. An especially apt example is the medieval practice of Catholic confession. Given the range of offenses that a penitent might confess, a mathematical model of moral reasoning proved to be inadequate in addressing the needs of the confessional. What emerged was a set of texts that detailed specific penances for specific sins. The priestly guides for conducting confession—the penitential books—guided the clergy in making prudent decisions regarding the kinds of penance needed for one's sins. The penitential books contained

lists of appropriate penances for particular sins. These handbooks guided priests in a very specific way.   Consider how past medical cases might guide a contemporary physician in the diagnosis and prognosis of a patient or how previous legal cases might influence a judgment in a law court. Like the physician or the judge, the confessor would need to focus on the specifics of the case at hand and to become acquainted with case precedents before offering a well-informed response to an individual case. The directions given to confessions by the Fourth Lateran Council of 1215 highlight this approach. This council was responding to the Albigensian heresy that argued that priestly confession was unnecessary. The Council instructs priests to adopt the diagnostic skills of a medical doctor,

> to be discreet and careful in the manner of experienced
>
> physicians...diligently inquiring about the circumstances of the sin
>
> and the sinner, whereby he can learn what sort of advice to offer
>
> and what remedies to employ, making diverse attempts to heal the
>
> ailing person. (Jonsen and Toulmin 121)

The focus on particular cases as opposed to universal principles creates what the medievals call "cases of conscience" (*casus conscientiae*). The cases lend themselves to prudent decision making based on an understanding of all the facts pertaining to a specific case. This involves something different from viewing prudent decision making in a reductivist manner, in which a case could be reduced to one simple principle that could be applied to nearly every instance even remotely similar to the case at hand, similar to Pascal's "moral geometry."

The contemporary revival of casuistry might be traced back to an observation that is made in Kirk's 1927 *Conscience and Its Problems*: "the abuse of casuistry is properly directed, not against all casuistry, but only against its abuse" (127). Rather than join Pascal in his attacks, Jonsen and Toulmin offer a corrective to Pascal's view. In 1988, over four hundred years after Pascal's "final word" on casuistry, Jonsen and Toulmin argue that, although the abuse of casuistry is wrong, casuistry ("unabused") is a useful aide in solving practical moral problems. Well aware of casuistry's controversial history, Jonsen and Toulmin conclude that it is the *abuse* of casuistry, *not casuistry* itself, which deserves Pascal's scathing attack. The important point here is that an *abused* practice is not necessarily synonymous with a complete *condemnation* of that practice. In making this important distinction, Jonsen and Toulmin's 1988, *Abuse of Casuistry*, takes on the challenge of reviving casuistry as a respectable method of moral reasoning.

Casuistry and Consensus

The Abuse of Casuistry grew out of a research project for the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. The major focus was to develop guidelines for medical personnel who are often confronted with challenging moral cases. Interestingly, Jonsen and Toulmin observed that despite the high level of agreement of members of the Commission on *how* medical personnel should respond to specific, morally problematic cases, the individual *justifications* for their conclusions varied considerably. For example, a Rabbi's reasons for withholding life support might differ from the justification offered by an agnostic medical doctor or a Catholic priest. Jonsen and Toulmin note that "one outcome of this

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work was a casuistry (or moral taxonomy) for distinguishing acceptable from

unacceptable ways of involving humans as subjects in medical and behavioral research"

(vii). Jonsen and Toulmin recognized that although significant, deep-seated agreement

over the abstract principles governing research remained among members of the

Commission, a high-level of agreement was found on what should be done in *particular*

cases. It appeared that it was easier to agree on *resolutions* to cases than to share

commitments to *principles*. Apparently, the ability of the Commission to come to

agreement on specific cases had nothing to do with agreeing on principles; the ability to

reach consensus came about when the focus was on the *context of the case* at hand.

Rather than perpetuating interminable debate, casuistry uncovered statements on which

people agreed. The final outcome of this project was a moral taxonomy that established

the circumstances under which medical research on humans may be acceptable. In short,

the taxonomy that arose from paradigm cases proved to be a prerequisite for proper moral

understanding. In Chapter Three, I have much more to say about how taxonomy works

in casuistry, given that a proper understanding of what taxonomy is and how it functions

is key to understanding casuistry's persistence.

Alternative Conceptions of Casuistry

Before clarifying casuistry in more detail, it is important to note that there are

several alternative views of how casuistry might be conceived and practiced. One of the

best ways for understanding these views is to look at them on a continuum (Figure 1).

On the one extreme, some argue that casuists ought to rely heavily on principles

(principle-based). The opposite position questions whether principles are needed at all:

perhaps casuistry can stand on its own (principle-absent). A middle-ground view argues that although casuistry is not sufficient on its own, it need not become excessively reliant on principles nor should it reject principles all together (principle-modest). It is helpful to identify which of these three alternative conceptions of casuistry is worth reviving in order to be clear on what is meant by neo-casuistry. I argue that the *principle-modest* approach captures casuistry's highest aspirations.

> (1) *Principle–based*. Casuistry is not sufficient on its own,
>
> principles are most important; casuistry is merely a tool to apply
>
> principles.
>
> Example: Much of the applied ethics movement (1970s to present).
>
> (2) *Principle-modest*. Although casuistry is not sufficient on its own,
>
> principles are not the heart and soul of ethics.
>
> Example: Jonsen and Toulmin's *Abuse of Casuistry*.
>
> (3) *Principle-absent*. Casuistry is sufficient on its own, no
>
> principles are needed. Example: situation ethics of the 1950s.

(necessity of   (no
 principles)   principles)

more reliance   less reliance

(1) casuistry not   (2) principle-   (3) casuistry is
    sufficient on its   modest   sufficient on
    own   approach   its own
    principle-based   **principle-modest**   **principle absent**
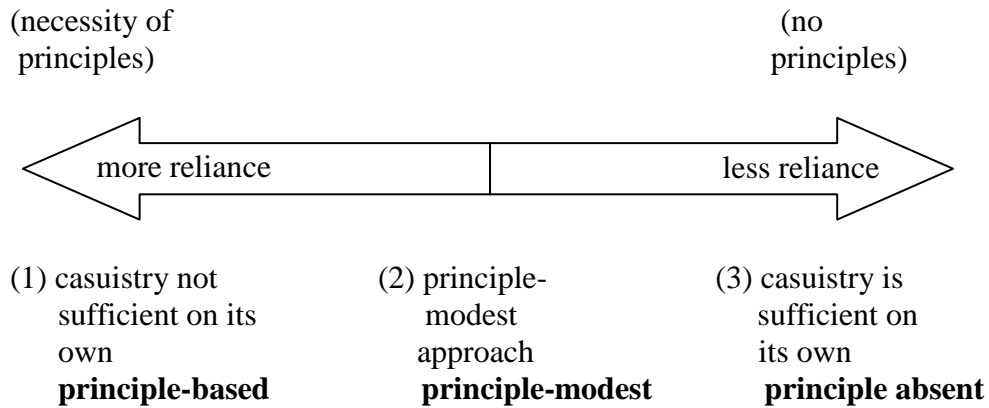
Figure 1 Casuistry: Alternative Conceptions

Those who argue for strong support for the necessity of principles in casuistic

thinking (1) tend to focus on casuistry as merely a *tool* to be used, primarily in complex

cases. This constitutes a representative number of thinkers, some of whom consider

themselves casuists, but many of whom are not, properly speaking, casuists. At the core

of this way of thinking is the idea that principles offer objective starting points for moral

reasoning. Thus, as the argument goes, beginning with objective principles overcomes

the interjection of subjectivity into the reasoning process. Indeed, one of the main claims

of the principle-based approach is that this view avoids the subjectivity of relying on

situation ethics or casuistry alone. From a principle-based perspective, subjectivity is a

serious threat to moral reasoning. This is an important point. The need for shared

assumptions (necessity of principles) is a main focus of the principle-based approach. In

this view, casuistry is merely necessary to complete the task of reasoning with principles.

Although this way of thinking shares some similarities with the applied ethics

movement that has flourished since the 1970s, much of applied ethics has little to do with

casuistry. This is an important point, given that casuistry is sometimes conflated

(improperly) with applied ethics. For example, casuistry is sometimes *inaccurately* viewed as simply one method or tool that might be used in the *service* of applied ethics. John Arras (quoted in Jonsen and Toulmin) describes, then criticizes, this misunderstanding of casuistry.

> So long as we take some general principle or maxims to be ethically binding, no matter what their source, we must learn through the casuist's art to fit them to particular cases. But on this gloss of 'casuistry,' the most hidebound deductivist, not to mention the more subtle partisans of reflective equilibrium, would have to count as casuists. So defined, casuistry might appear to be little more than the handmaiden of applied ethics. (329)

This highly limited (and I would argue, mistaken) notion of casuistry is often embraced by those who uphold a principle-based approach to casuistry.

Casuistry should not, properly speaking, be considered merely a tool used in applied ethics. In fact, much of applied ethics eschews casuistry in favor of a more principle-based approach to moral reasoning. Applied ethics, more often than not, starts with principles, not cases and case paradigms—the starting points for casuistry. Consider that most work in applied ethics involves starting from a theory or principle (categorical imperative, happiness principle, veil of ignorance) and applying this theory or principle to a specific case. At best, this would place the applied ethics adherents in the category of a principle-based casuistry. Thus, applied ethics, as typically practiced, is not casuistry. In fact, much of applied ethics can be done (and is done) without employing casuistry. As Arras argues (quoted in Jonsen and Toulmin), "What differentiates the new casuistry

from applied ethics, then, is not the recognition that principles must eventually be applied, but rather a particular account of the logic and derivation of the principles that we deploy in moral discourse" (330). Arras concludes that the term casuistry should be reserved for what he refers to as a "common law ethics model," what we might equate with case-based reasoning (Jonsen and Toulmin 330).

The key point for understanding most approaches to applied ethics or even principle-based views of casuistry is that when case-based reasoning is in the position of functioning merely in a *helping* mode, the starting point is still principles. In this way of thinking, casuistry is used merely as a method to flesh out those principles and apply them to specific moral problems. Importantly, in Chapter Three, I detail how the underlying logic of casuistry does not focus on applying principles. In addition to the logic of casuistry being different from both principle-based approaches and most applied ethics perspectives, it would be inaccurate to equate casuistry with applied ethics or even to include casuistry as a type of applied ethics. Quite simply, casuistry and applied ethics have fundamentally different ways of conceiving how logic and principles function.

A far smaller group of thinkers make up the opposite end of this continuum: the perspective that holds casuistry as sufficient on its own (alternative 3, principle-absent). Adherents of this approach view casuistry as a complete alternative to a principle-based approach, one in which principles play *no* role (or a far more nebulous role). As a stand-alone activity, casuistry is viewed as not needing any starting points—principles are irrelevant. Given that no principles are necessary, results of moral deliberations can be derived without any hidden shared theory or principles. The situation ethics movement, most prominent in the 1950s, comes close to falling into this category. Even when

situation ethicists invoke principles, these principles tend to play a very general, almost

mystical role in ethical deliberation. Consider Joseph Fletcher's version of situation

ethics in which the abstract principle of "love" functions to guide ethical decision

making. Jonsen and Toulmin outline some of the differences between situation ethics

and casuistry:

> Where the casuists had worked with a multitude of moral paradigms,
>
> principles, and maxims, situationists acknowledged no general principles,
>
> or only a single principle…Where the casuists had been attentive to
>
> 'circumstances' as one feature of moral life among many others,
>
> situationists reduced the moral life to a bare succession of circumstances.
>
> The casuists analyzed novel cases by analogy with prior or paradigm
>
> cases: situationists focused on moral choices that were concrete but unique
>
> and isolated. (272)

Interestingly, casuistry and situation ethics have been subjected to the same types of

criticism: these approaches have been criticized as too subjective and as insufficiently

"principled" in their approaches. The alleged lack of principles is key to this line of

criticism. Indeed, the condemnation of situation ethics by Pope Pius XII in 1956, along

with most of the academic criticism of situation ethics focuses on the *alleged* lack of

principles to guide moral discernment.

The middle way (alternative 2, principle-modest) contends that casuistry is not

sufficient on its own, but needs a "theory modest" employment of principles. When

casuistry is employed in philosophical ethics, defenders of this middle way abandon their

obsession with principles and accept an unproblematic understanding of what counts as

"good." This view attempts to counter the claim that principle-based reasoning is objective while casuistry is not. The obsession with principles tends to point up the indispensability of a theory-modest view of casuistry.

Each of these views of casuistry is often paired with some academic discipline or school of thought (virtue ethics, communitarianism, theology, sociology, biomedicine, feminism). The convergence of casuistry and these disciplines or schools of thought does not necessarily work in the same way in each case. For example, the way feminism converges with casuistry is very different from the way in which theology attaches itself to casuistry. I detail these divisions and the metaphysical issues raised by these convergences in the next chapter.

An important insight emerges from all of these alternative possible views. Regardless of their differences, all three views contend that practical moral problem solving typically requires that we employ some sort of *taxonomy* that organizes our past experiences in dealing with similar cases. We negotiate our moral lives by making connections between accepted paradigms of what good conduct is and how closely the particular circumstances that confront us fit those paradigms. In Chapter Three, I address the topic of exactly how taxonomies function as knowledge. My hope is that this brief reference to taxonomies might help to shed some light on a major factor that distinguishes these three alternative conceptions of casuistry from each other. Namely, the difference is based largely on the level of dependency that each alternative conception of casuistry places on principles.

Casuistry: An Example

  A simple example, accompanied by a diagram, might further illustrate what I take to be the proper use of casuistry (alternative 2, principle-modest). Consider the case of a middle school student who is caught throwing ice in the school cafeteria (Figure 2). The casuist starts with a "paradigm case": a clear-cut, unproblematic exemplar. The paradigm case may be an actual, "real" case that has occurred in the past. It may be a theoretical construct; in practice rarely do we come across ideal cases that can be evaluated without qualification. Using the paradigm case as the starting point, the casuist attempts to determine how much the particular case under consideration differs from the paradigm case.   If this was merely a case of a student "fooling around" (A), not *intending* injury, then we might judge the student on the basis of whether injury actually occurred. A student who was "fooling around," but actually caused major eye damage to another student, would probably be judged differently from a student who was "fooling around" but who caused no injury. In a similar manner, the *size* of the ice (B) might influence our judgment of the case. A smaller piece of ice is less likely to cause injury, whereas an unusually large piece of ice might be consistent with malicious intent or, at the very least, exceedingly poor judgment. Another factor to consider might be the number of times the student in question has committed this sort of infraction (C). First time offenders can be grouped separately from second or third time offenders. Another possible category for analysis might focus on intent (D). Similar to the reasoning used in legal cases, it might be argued that a student who throws ice with malicious intent and causes injury should receive a harsher punishment than a student whose intent was malicious, but who causes

no injury. The end result of a casuistic reasoning process is a taxonomy: a classification

of distinct, but related, groupings into which a particular case may fall.
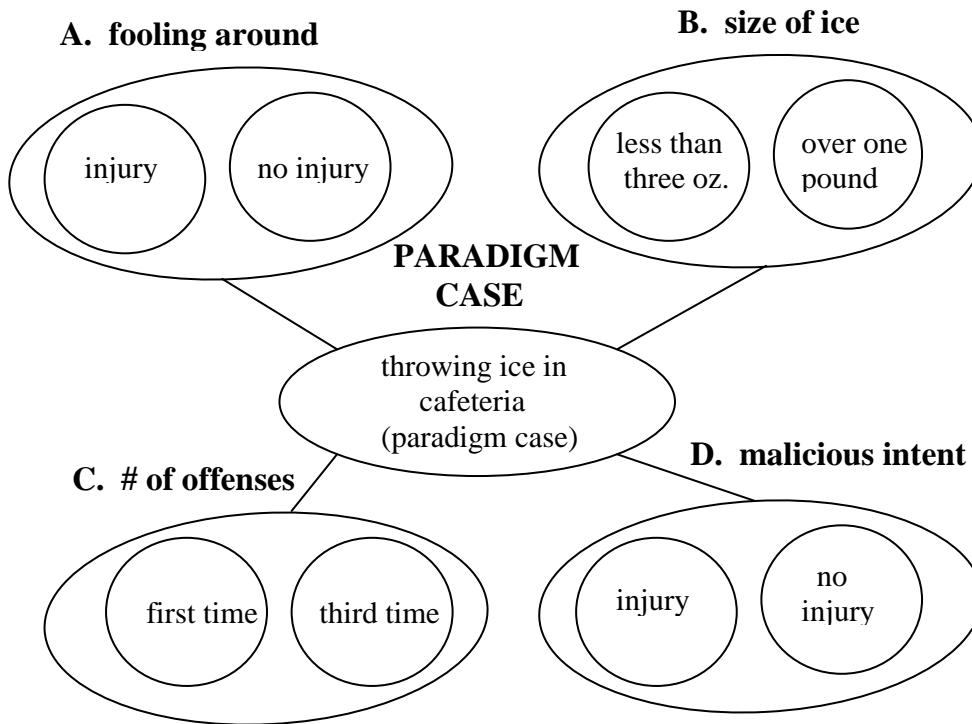
Figure 2 Casuistry Illustrated: A Taxonomy

Another way to understand casuistry's use of taxonomy is to look at two other

examples outside of philosophical ethics: common law and medicine. Common law

makes use of taxonomy: "a detailed and methodical map of morally significant likenesses

and differences" (Jonsen and Toulmin 14). Beginning with a paradigm case—a clear-cut

case of robbery, for example—the common-law casuist might attempt to argue how

specific cases may or may not be analogous to the model case. For instance, Figure 3

illustrates a very simple legal example of how cases may be analogous and dis-analogous.

In both cases 1 and 2, the thefts involved stealing a similar amount of money ($5 to $7) in

exactly the same manner (shoplifting) from the same type of establishment

(grocery/convenience store). Cases 1 and 2 are easily identified as analogous. However,

case 3 is dis-analogous to both cases 1 and 2. Case 3 involves at least three main

differences. First, there is a significantly higher monetary amount that was stolen

($100,000 instead of $5 to $7). Second, there is a far more serious, perhaps life-

threatening manner of theft (theft at gun point versus shoplifting). Third, there is a

different type of victim (Pentagon versus grocery/convenient store). Consider that cases

1 and 2 would hardly lead to federal charges; while case number 3 might very well lead

to federal charges and, if convicted, a mandatory prison sentence.

Table 1 Analogous Reasoning

	Case 1	**Case 2**	**Case 3**
what was stolen	$5	$7	$100,000
how it was stolen	shoplifted	shoplifted	at gun point
from whom stolen	grocery store	convenience store	Pentagon

Analogous reasoning involves making distinctions based on the specific differences

surrounding a particular case: the "who, what, where, when, how and why" of the case.

As Jonsen and Toulmin observe, "anyone who has occasion to consider moral issues in

actual detail knows that morally significant *differences* between cases can be as vital as

their *likenesses*" (14). What makes differences so important is their ability to alter the

category into which a specific case may fall. A robbery with intent to kill falls into a

different category and thus is subjected to a different ethical evaluation than a robbery where no malicious intent exists or deadly weapon is used. Case precedents function as starting points in making judgments of new cases that emerge. In a similar manner, clinical medicine's use of diagnosis clearly demonstrates the model of taxonomy that casuists find so useful. Medical students are trained to recognize cases that exemplify symptoms in order that they may, in the future, identify a particular disease or injury that fits the taxonomic classification. Just as a botanist can only identify specimens by knowing the taxonomy of currently known species, so the medical doctor must be familiar with the practical attributes of particular medical cases in order to make a proper diagnosis. Sometimes medical professionals will disagree in their diagnoses; this is often a result of the presumptive and revisable nature of casuistry. Given the deficiencies of principle-based approaches (abuse of misguided applications, impersonal application of principles, endless unresolved disputes), the use of casuistry is inevitable in fields like common law and medicine.

Although I have much more to say (in Chapter Three) about how analogous reasoning functions, it might be helpful to respond briefly to one challenge to analogous reasoning. When dealing with taxonomies, disagreements arise over what counts as a relevant feature of a case or what counts as a relevant distinction between cases. However, there is an important difference between *practical* disagreements found in analogous reasoning and more fundamental, *philosophical* conflicts often found in principle-based reasoning. Consider a situation that involves analogous reasoning dealing with taxonomies. For example, lawyers arguing over which case precedent best fits the current murder case at hand are involved in a debate that is structured within

rather specific rules for practical reasoning. The basic rules governing whether one case

is analogous to another case are relatively clear: you must justify sufficient similarity

between specific characteristics of the current case at hand and those of a case-precedent.

Given that the rules are clear, chances are increased that a resolution will prevail. In

addition, most differences involved in analogous reasoning point to "grey areas" as

opposed to diametrically opposed conclusions. For example, it would be far more

common to find a debate on whether a case is *second*-degree, versus *third*-degree murder

rather than a dispute over whether a case should be considered *first*-degree murder versus

third-degree murder. Because of the accepted, basic rules of analogous reasoning,

extreme differences are typically avoided. On the other hand, the *philosophical* question

of whether killing a human is morally wrong focuses on a more fundamental difference.

Because of their fundamental nature, conflicts over *principles* tend to be interminable.

Certainly, disputes over taxonomies and cases persist; like other functions of casuistry,

this form of moral reasoning is not perfect. On the other hand, as I show in Chapter

Three, if we are to deal with specific moral cases, then analogous reasoning with

taxonomies offers significantly more hope than principle-based approaches.

Casuistry and the Tyranny of Principles

It is the mark of an educated man to look for precision

in each class of things just so far as the nature of the

subject matter admits.

Aristotle

Nicomachean Ethics 1094b24-26

Perhaps the best way to situate casuistry in the field of philosophical ethics is by contrasting case-based reasoning with its major competitor: principle-based approaches. Before delving into the major differences between these two approaches, a cautionary note is in order. In laying out the rather stark differences between principle-based approaches to ethics vs. casuistry, it may be *mistakenly* concluded that principles have *no* role in casuistic thinking. As I argue in subsequent chapters, principles enjoy a role in casuistic thinking, albeit a *qualified* one. The key phrase associated with this idea is that casuistry is "theory-modest." For casuists, principles should neither dominate ethical discourse nor should they be excluded from casuistic thinking. In contrasting principle ethics with casuistry, my goal is to lay the groundwork for uncovering the proper role principles ought to play in casuistic thinking. Before moving on, it may be helpful to lay out the conflict that emerges between these two approaches.

Table 2 Principle-Based Ethics versus Casuistry

Principle-Based Ethics	Casuistry
focus on application of abstract principles	*focus on case itself*
ethics as a science	*ethics as an art*
primarily theoretical	*practical, informed by theory*
discourse bound by epistemology	*discourse bound by lived experience*
ethics as domain of philosophers	*ethics as domain of conscientious people*
geometric paradigm	*rhetorical paradigm*
debate only	*debate and dialogue*
find universal principles	*find workable taxonomies*
conclusions definitive	*conclusions probable*
absence of conclusions due to lack of consensus	*qualified conclusions*

Consider an example that contrasts casuistry with its counterpart: principle-based ethics. In 2004, a third-grader at Sun Valley Elementary in Birmingham, Alabama was suspended for "Possession of a weapon firearm replica" (Wolfson, "Tiny Toy Gun"). The nine-year-old boy had brought a small, one-inch long, plastic G.I. Joe toy handgun to school. Although his suspension was eventually lifted by the school board, the board remained unwilling to admit that there was something wrong with the rule itself: "Keep in mind that we're trying to run safe schools…Now sometimes the public does not like what we do to make schools secure, but at the same time we have to make sure that the

children are protected" (Wolfson, "Third Grader"). From a casuistic point of view, we might understand this as a case of a taxonomic misuse of the term "weapon." A small, plastic G.I. Joe toe gun does not seem to belong in the category of "weapon." However, consider the school board's principle-based (versus casuistic) perspective of this case. Underlying the school board's decision was an uncompromising commitment to the "no weapons" rule. The deontological "no weapons" rule is presented as inflexible, offering no exceptions; no distinction seems to be made between a real gun that can cause serious harm and a harmless, one-inch plastic toy gun. The decision to suspend the student, along with the rationale in defending the rule, points to a form or reasoning lacking in discernment and discretion. Consider the contextual factors that might have been examined by a casuist looking at a taxonomy of previous cases of "weapons possession": ability of alleged "weapon" to actually cause harm, age of accused, function for which the weapon was produced (to play with as a toy), apparent intent on bringing alleged "weapon" to school (seemingly to play with other G.I. Joe enthusiasts). Unfortunately, contextual factors were not considered, leading to a punishment contrary to common sense.

Casuists often charge that principle-based approaches like the one described above are at the center of the problems that plague moral reasoning. As Jonsen and Toulmin argue, the almost exclusive reliance on principles as the major focus in moral reasoning has led to a "tyranny of principles." The "tyranny of principles" is perhaps best understood by Aristotle's distinction between theoretical science (*episteme*) and practical wisdom (*phronesis*). Aristotle warns us that we should not expect the same kind of certainty in all fields of knowledge for "It is evidently equally foolish to accept probable

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reasoning from a mathematician and to demand from a rhetorician scientific proof"

(*Nicomachean Ethics* 1094b24-29). Unlike geometry, where rigorous, deductive

reasoning gives us certain conclusions that follow necessarily from indubitable

principles, ethics lies in the practical realm where flexible, inductive reasoning yields

probable conclusions that arise not from abstract principles, but from the specific,

contingent facts of individual cases. In theoretical pursuits, statements are "idealized,

atemporal, and necessary" while practical fields give rise to arguments that are "concrete,

temporal, and presumptive" (Jonsen and Toulmin 27). What casuists embrace are

"methods for resolving problems" not "chains of proof." To yield to the tyranny of

principles is to mistakenly treat moral problem solving as a *theoretical*, rather than a

practical science.

The deficiencies of relying primarily on formal logic, with its emphasis on the

deductive method—a procedure that involves reasoning from universal principles to

specific conclusions—are often cited by casuists as a major problem with principle-based

approaches. Certainly, casuists are not rejecting formal logic, only pointing out its

limitations as the primary method of resolving practical moral problems. Simply put,

formal logic, and the principle ethics approach that relies so heavily on formal logic, is

ill-suited to the resolution of specific moral cases. In summary, critics of the principle-

based approach to reasoning have charged that it (1) can be abused by misguided

applications (Jonsen and Toulmin), (2) is impersonal and lacks a "human face" (Smith

56), and (3) alienates people from their moral selves, isolates them from real experience,

and is "hazardously incomplete in defining ethics" (Reich 17-19). Principle-based

approaches often lead to endless disputes and to significant philosophical challenges.

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The dichotomies between principle-based ethics and casuistry suggest a continuing, and perhaps, never-ending tension between these two approaches. As important as this tension may be, there arises another crucial question. In the midst of the contentious debate between casuistry and principle-based approaches, why does casuistry *persist*? Given how diametrically opposed these two approaches appear, and how much effort principle-based adherents spend on discrediting case-based reasoning, why does casuistry continue to be inevitable in so many discussions? In a wide range of fields—not only in ethics, but in medicine, law, business, and education—the use of a case-based versus a principle-based approach appears inescapable. This concern takes a detour from the traditional discussion of the casuistry/principle-based debate. The key concern is this: *exactly why does casuistry persist? Is there an elusive quality that accounts for its inevitability or is there something more definitive that can be identified?*

Principle-Based Ethics versus Casuistry

Consider what is involved when someone engages in casuistry. At its most basic level, to practice casuistry is to allow for exceptions and qualifications: to recognize that *cases* can make a significant difference. In contrast to exceptionless forms of moral reasoning, casuistry views exceptions and qualifications as essential to proper moral reasoning about specific cases. In this sense, casuistry runs counter to a wide range of principle-based approaches. From strict interpretations of Kantian deontological moral reason to contemporary "no tolerance" policies, casuistry challenges some well-established theories and practices. In focusing on qualifications, casuistry becomes a particular *kind* of solution—one that participants with a penchant for principle-based

approaches often find unacceptable. Adherents of principle-based approaches often view

casuistry's focus on distinctions and qualifications as antithetical to proper moral

reasoning. What they uphold as a high value for moral reasoning is clarity and

definitiveness in moral evaluations. Principle-based approaches strive to avoid the

distinctions and qualifications that subvert the principles that they uphold. This major

division—between the *qualified* judgments of the casuists and the *universalized*

imperatives of principle-based theorists—is at the core of current debates in neo-

casuistry.

Principle-based approaches typically start moral discussions by invoking abstract

principles, such as "respect for life" or "respect for choice." In contrast, casuists begin

with cases. For example, Jonsen and Toulmin point to the case of 1984 vice-presidential

candidate Geraldine Ferraro, who personally opposed abortion while publicly upholding

a pro-choice stance. Despite the pro-Vatican's condemnation of Ferraro's position as

"inconsistent," a number of prominent American Catholics sponsored a full-page ad in

The New York Times that upheld abortion as an acceptable moral choice, *in some cases*.

Underlying this debate are

> two very different accounts of ethics and morality: one that seeks
>
> eternal, invariable principles, the practical implications of which
>
> can be free of exceptions or qualifications, and another, which pays
>
> closest attention to the specific details of particular moral cases and
>
> circumstances. (Jonsen and Toulmin 2)

Unfortunately, when the "right to life" is as unqualified as the "right to choose,"

temperate discussion, discriminating distinctions, and practical solutions are subordinated

to one's adherence to ultimate principles. The contentious tone that continues to dominate the public debates on abortion illustrates what can happen when principles are overemphasized in moral debates.

This example points toward an important distinction between two different types of problems. First, there is the problem that is caused by clashes of *principles* that appear to be interminable. The clash between "the sanctity of life" versus "the right to choose" is an example of this kind of problem. Second, a very different set of problems arise with trying to *apply* the principles to practical problems. Even when interlocutors agree on basic principles (e.g., "do good and avoid evil"), strong differences may still exist on how to apply the principles. This is a common problem among religious adherents who might agree on a number of basic ethical principles, yet disagree on the practical ramifications of those principles. In short, the major problem with both interminable disputes over principles and with their applications is that these approaches *offer no way to resolve practical moral problems*. In fact, the principle-based approach typically ensures that important ethical dilemmas will have no terminus. Given this orientation, the eternal return of debates on abortion, euthanasia, capital punishment, among many other topics, seems inevitable.

The appeal of principles is relatively easy to understand. Principles offer simple statements that everyone can understand. They offer a clear path in a morally problematic forest in which it is very easy to lose one's way. Principles are easy to remember, repeatedly invoked by society, and challenge people to aspire to the highest form of moral life. Why would anyone want to abandon principles? The Ten Commandments, for example, have served as guiding principles for centuries. But the

concern here is not with whether principles have appeal. Clearly they do. Nor is there a question of whether principles should be abandoned altogether. No theory-modest casuistry would make such an argument. One important question is the proper *role* principles should play in moral decision making. Should principles be at the forefront of moral deliberation, or is there a different role that principles ought to play?

The apparent need for focusing on ultimate principles in ethics is so entrenched in the minds of most thinkers that even a sympathetic reviewer questions whether casuists like Jonsen and Toulmin "need some type of universal principle" lest one face "problems of historicism or the potential collapse of casuistry into a type of naive relativism" (Alonso 641). However, such criticism appears to be misguided. As Jonsen and Toulmin observe, "So (it seems) once we accept rules and principles as the heart and soul of ethics, no middle way can be found between absolutism and relativism" (6). It is just this "middle way" that casuists seek. Casuists do not declare principles and rules null and void, rather they fashion a "limited and conditional role" for what has often been understood to be unlimited, unconditional ethical principles. This is an important point. Casuists are not unprincipled relativists; they argue for a more *qualified* role of principles in the decision making process. Unlike situation ethics, casuistry acknowledges the usefulness of principles as an integral *part of* (but not the essence of) solving moral problems.

In contrast to strict principle-based approaches, casuistry turns its attention toward individual cases and to debating the relative merits of choosing one solution to a specific problem over another solution. What casuistry *discourages* is a theoretical battle between abstract, universal moral principles. As argued earlier, casuistry should not be

conflated with a mere application tool for principles, rather casuistry focuses on an exercise of judgment that moves beyond applied ethics. The philosophical justification for this way of thinking is not new. As Jonsen and Toulmin recognize,

> Aristotle himself saw that ethics itself contains no essences and
> that there is accordingly no basis for geometrically rigorous
> theories in ethics. Practical reasoning in ethics is not a matter of
> drawing formal deductions from invariable axioms, but of
> exercising judgment—that is, weighing considerations against one
> another. It is a task not for clever arguers but for the *phronimos*
> (or "sensible practical person") and the *anthropos megalopsychos*
> (or large spirited human being). (341)

If Aristotle is correct, then the direction of many contemporary ethical discussions is seriously misguided. Current practices that focus on a battle of universal ethical principles (as well as much of the applied ethics movement) miss Aristotle's point: ethics belongs to the realm of practical reasoning. Importantly, practical reasoning goes far beyond merely knowing how to apply principles wisely. As a form of practical reasoning, casuistry does not merely *instantiate* principles; casuistry redefines the role principles play in moral reasoning.

In reducing moral reasoning to the application of principles, principle-centered approaches advocate a theoretical basis for moral debate in which practical moral solutions are often impossible. Consider the interminable debates on abortion, capital punishment, or euthanasia. A similar structure seems to dominate these debates. Rather consistently, one principle-based term is pitted against another. For example, the sanctity

of life is put up against the right to choose. In understanding ethical debate as an "all or nothing" battle between universal principles, the possibility of any sort of compromise or consensus is dismissed. As Jonsen and Toulmin conclude, "So (it seems) once we accept rules and principles as the heart and soul of ethics, no middle way can be found between absolutism and relativism" (6). This is a key problem with strict principle-based approaches: the inability to resolve important practical moral problems. If the principle-based approach cannot offer a viable way to resolve practical moral problems, then this approach is, at best, severely limited or, at worse, useless for addressing the myriad of practical moral problems that cry out for resolution.

This critique of principle-based ethics is neither a condemnation of principles themselves nor is it a claim that casuistry can stand on its own. The "theory-modest" approach of casuistry carves out a role for both casuistry and principles within casuistic reasoning. Rather than principles forming the "heart and soul" of ethics, the case under consideration becomes the starting point. Rather than a rigid use of principles, the casuist employs paradigm cases, taxonomies, and analogies as tools to explore the specific details surrounding an individual case. Furthermore, I also want to be careful to clarify that I am not suggesting that all casuistry is successful. There are situations in which casuistry fails to allow people to reach agreement. However, as I argue in Chapter Four, even the failures of casuistry exemplify casuistry's persistence. Consider that hardly any of Plato's dialogues, despite long debates on definitional issues, yield definitions considered satisfactory by all participants. At the same time, despite the lack of consensus, the exploration of the terms in question is viewed as an important exercise in clarifying terms and exposing errors in thinking about the terms. Likewise, to argue that

casuistry persists is not to contend that casuistry is always *successful*, merely that it is *essential* in contributing to a proper debate on practical moral issues.

The distinction between principles versus paradigm cases is an important one. In many ways, principle-based approaches consistently downplay the role of cases, privileging theoretical principles above particular cases. On the other hand, paradigm cases focus on particulars: specific examples of ethical behavior. These cases give us what we might describe as *phronetic* knowledge. This knowledge of particulars is, albeit, only useful for a specific group of cases—situations that share enough family resemblances with the paradigm case. Rather than being independent of cases, *phronetic* knowledge is very much connected to the particular case under discussion. The knowledge gained is not sufficient to gain insight into all cases of, for example, killing, but leads to insight into the specific set of cases that are similar to the paradigm case.

In some respects, this distinction between principles and paradigm cases shares similarities with the call that others have made for a "phronetic social science." Like casuistry's frustration with principle-based approaches, some critiques of social science have charged that social science has tried too hard to imitate the structure of the natural sciences. Bent Flyvbjerg argues for a phronetic social science to counter the more principle-based approach of the natural sciences. In a similar vein, Alistair MacIntyre points out that exceptions to social science rules prompt us to ask whether these rules can be universalized. With its reliance on paradigm cases, casuistry calls for a similar move away from the universalizing tendency of principle-based approaches. It also points to the need for the recognition that many principles are actually *based* on cases. This is an important observation. If principles are based on cases, then this puts the principle-based

adherents in the awkward position of downplaying the importance of the very methodology that forms the basis for principles in the first place.

Another way to understand this division between casuistry and its main contender (principle-based approaches) is to view these two approaches as engaging in different kinds of logics. The logic of the principle-based approach is heavily philosophical, focusing on traditional notions of *formal* logic: deduction, demonstration, entailment, and formal argumentation. On the other hand, casuistic reasoning has a close affinity to informal logic, focusing on the study of debate, rhetoric, argumentation, and ethics. As David H. Smith notes, "casuistry had its methodological roots in classical rhetoric not in philosophy. The moral reasoning employed is rhetorical" (39-40). Conceiving casuistry as a rhetorical activity contrasts with a more logical, demonstrative view of moral reasoning. As Miller (*Casuistry and Modern Ethics*) aptly notes,

> Eschewing the need to construct abstract, impersonal principles
> and a deductive methodology, a "rhetorical casuistry" sidesteps the
> inclination in ethical theory to view the moral life from Olympian
> heights, detached from concrete existential needs, practices, and
> concerns. For the casuist, like the rhetorician, the focus is on what
> Toulmin refers to as the local, the particular, and the timely. (223)

In an analysis (and criticism) of Jonsen and Toulmin, Stanley Hauerwas (whose criticism of Jonsen and Toulmin I outline in Chapter Three) echoes this rhetorical turn, stating that he is "sure that they are right to direct our attention to rhetoric as a crucial component for understanding moral reflection" (271). Practical deliberation involves dialogue and

informal logic, while the task of theoretical speculation is demonstration and universalized conclusions.

The contingent nature of casuistic thinking also contrasts with traditional philosophy's obsession with foundational metaphysics. Casuistry more closely resembles *rhetorical* modes of thought, in the best sense of the term, as opposed to formal, philosophical logic. Plato's characterization of the sophists as unphilosophical moral relativists highlights the difficulty philosophers often have in dealing with contingent, timely decisions: those practical daily affairs that rhetoricians have addressed throughout history. Interestingly, history's "first set of clearly formulated moral 'cases' " come from the philosopher/orator/legislator Cicero (Jonsen and Toulmin 75). Cicero put a "human face" on the abstract "natural law" theory of the Stoics, while Hermagoras of Temnos (second century B.C. E.) offered his influential theory of *stasis*: a stopping point in a contentious argument - the point in time when people agree to disagree. *Stasis* leads to the creation of substantive argument by locating a key idea in a speech and developing arguments for and against this central point. Unlike the mathematician, the rhetorician accepts conclusions to arguments as having degrees of *probable*, not *absolute*, certainty. The rhetorician might argue, for example, that there is "strong reason" to believe the guilt of a person in a particular case. A mathematician does not refer to conclusions as "strong" or "weak." It is not *strongly believed* that $1 + 1 = 2$. Rather, *it follows by necessity* that this is the case. In contrast, the neo-casuists propose that principles ought to have a "limited and conditional" role in ethical discourse; the focus of ethics should be on *solving practical moral problems*.

Conclusion

The casuist, like the rhetorician, begins with cases. Unlike casuistry, the principle-inspired approaches fall victim to what Jonsen and Toulmin refer to as the "tyranny of principles" (5-11). For the casuist, principles have a limited role; they don't take center stage, but perform in tandem with paradigms, taxonomies, and maxims. Interestingly, principle-based approaches consistently deny the importance of particular details in a case. For example, interlocutors on both side of the abortion debate often bracket out the details that they contend are irrelevant. Pro-life adherents typically ignore details regarding how a woman got pregnant, and pro-choice supporters typically choose not to distinguish between the differing reasons a person might give for wanting an abortion. As I argue in Chapter Four, despite their dismissal of the details surrounding a case, principle-based approaches almost always base their principles on *cases* and exceptions to cases (counter-examples). This insight leads to a troubling observation: principle-based approaches seem to deny the very knowledge that is needed to form principles in the first place. They deny cases and their particulars.

The "perennial divergences" between principle-based versus casuistic approaches is summarized by Jonsen.

> The counter-casuists wish to find the answer outside the case; the neo-casuists seek it in the reciprocity between circumstances and broader vision. The counter-casuists want a sure answer; the neo-casuists are satisfied with a plausible one. The neo-casuists insist that the circumstances of the case bear genuine moral meaning, even if they are not the 'locus of moral certitude'; for the counter-casuists the color of moral meaning comes to the case only from the light of principle and theory. (Keenan and Shannon xiv)

Having set up the conflict between casuistry and principle-based ethics it will now be easier to understand the more specific contributions and challenges of neo-casuistry.

Regardless of whether one is a supporter or critic of casuistry one conclusion appears to be beyond doubt: casuistry persists. From the casuistic point of view, we negotiate our moral lives by making connections between accepted paradigms of what good conduct is and how closely the particular circumstances that confront us fit that paradigm. In this sense, we cannot escape casuistical modes of thought. My exploration of casuistry takes on the following format.

- In Chapter Two, I review the literature of neo-casuistry and demonstrate how much of this research, unfortunately, is informed by principle-based approaches to casuistry. As I review this literature, I argue that both the principle-based and principle-absent approaches suffer from a number of insurmountable problems. In addition, I also offer a way around these problems: embracing a principle-modest approach to casuistry.

- In Chapter Three, I address a set of epistemological questions about what *kind* of knowledge is required to engage in casuistic reasoning. Exactly what kind of knowledge is casuistry? How do we come to know the paradigm cases? Do our biases undermine our understanding of paradigm cases in such a way to corrupt the practice of casuistry? What counts as a vital difference between these cases? How do we know when we have accurately identified such differences? How do paradigms, analogies, and taxonomies actually work? In short, Chapter Three explores the distinctions between the different *kinds* of knowledge needed to know paradigm cases.

- Finally, in Chapter Four, I offer a detailed example that illustrates the persistence of casuistry: the case of the lying bishop. I also explore the different kinds of casuistic persistence. In addition, I examine situations in which casuistry fails to produce agreement and I explain how these cases contribute to casuistry's persistence. I conclude with an argument that places casuistry in the category of a "neo-premodernist" approach to moral reasoning.

Chapter Two: Neo-Casuistry: Problems and Challenges

> "...it is a lesser sin if a man seduces a beautiful woman than an ugly one,
>
> for he is compelled by beauty, and, where there is greater
>
> compulsion, there is less sin."
>
> Alain of Lille,
>
> quoted in Jonsen and Toulmin 119

One way to understand the alternative conceptions of casuistry offered in the contemporary literature is to organize this scholarship into three major "conceptions of casuistry" noted in the previous chapter: principle-based, principle-modest, and principle-absent. This helps to clarify the different approaches both theorists and practitioners take toward casuistry. The classification also prompts several interesting questions. Does neo-casuistry fall into one of the major pre-established ideological categories? Have neo-casuists carved out a specific niche for themselves? Which of the three categories, if any, comes closest to fulfilling the proper role of moral reasoning? Probing the answers to questions like these points to a number of problems and challenges to neo-casuistry.

This chapter advances a very specific argument about casuistry: *both the principle-based and principle-absent approaches to casuistry are fraught with problems*. In this chapter, I suggest that the resolution to these problems is found in a principle-modest approach. This chapter focuses on the two views at the ends of the continuum: principle-absent, principle-based. The *principle-modest* conception of casuistry will be

developed and defended later, in Chapters Three and Four. The aim of this chapter is to

review the literature of neo-casuistry and to demonstrate how most of this literature, to

the detriment of neo-casuistry, focuses on understandings of casuistry that are in

opposition to a theory-modest approach. The recent literature on neo-causistry can be

organized around the following six major problems: (1) Is casuistry self-sufficient? (2) Is

religious casuistry theory-modest? (3) Does casuistry require shared understandings? (4)

Is casuistry plagued by subjective bias? (5) Is a theory-modest approach practiced in

biomedical ethics? and (6) Is a theory-modest approach practiced in feminist ethics?

Problem #1: Is Casuistry Self-Sufficient?

On one of the far ends of the spectrum is the view that casuistry is self-sufficient;

no principles are needed for ethical deliberation, individual cases are sufficient to

produce the desired result of resolving a moral problem. This "anti-theory" perspective is

often associated with those who *abuse* casuistry; seldom do serious casuists adhere to a

principle-absent approach to casuistry. One rare case where a casuistically-inspired

thinker actually does uphold this view is the ancient Greek Sophist Gorgias. In *Double*

Arguments (Plato), Gorgias supports the view that "nothing truly general can be said

about ethics, so that there is nothing left to be considered apart from particular cases and

situations" (Jonsen and Toulmin 60). Such a view was strongly criticized by one of

history's leading proponents of a principle-based view of ethics: Plato.

Interestingly, although few casuists practice a *principle-absent* approach, this is

the perspective attributed to a number of casuists by their critics. In creating a straw-man

argument, these critics miss a crucial fact about the current practice of casuistry: hardly

any self-identified casuists adopt the view that principles play *no* role in casuistry. One contemporary example of this mischaracterization of neo-casuistry is a study on "Casuistry and Social Category Bias" published in 2004 in the *Journal of Personality and Social Psychology* (Norton, Vandello, Darley). They claim to offer six "studies that demonstrate how casuistry licenses people to judge on the basis of social category information but appear unbiased—to both others and themselves—while doing so" (817). They offer a derogatory definition of casuistry: "specious reasoning in the service of justifying questionable behavior" (817). The authors conclude that "Casuistry may serve both to justify questionable decisions to others and to rationalize such decisions to oneself, allowing one to maintain what Pyszczynski and Greenberg called a desired 'illusion of objectivity'" (817). In this sense, casuistry functions to mask bad decision making by privileging social bias over principles. They view casuistry as both a private strategy that can involve rationalization as well as a having a public function. In the first sense, casuistry involves a private manipulation, in the second sense, a public deception. The authors offer a conclusion that conceives of casuistry as a way to socially construct the world in order to justify questionable moral stances: "casuistry demonstrates how individuals can creatively structure situations to compel their own behavior" (829). Interestingly, despite over sixty references to the term "casuistry," the authors reference only one source of academic literature dealing directly with casuistry: a 2002 unpublished doctoral dissertation of one of the authors (Norton). In suggesting that casuistry functions without principles, these psychologists characterize (or, more accurately, *mis-characterize*) the proper practice of casuistry.

As a contrast, consider a recent use of casuistry that is careful to point out the

proper role principles play in casuistry. This example also illustrates the difference

between the proper use and misuse of casuistry. A proper role for principles is identified

when historians revise principles based on newly discovered historical facts. Jaime

Wright examines a libel suit brought forth by a Holocaust denier against a book

publisher. Wright distinguishes between the proper use of casuistry employed by a

conscientious historian, versus "casuistry used for ill"—a Holocaust denier's defense as

his trial. Wright cautiously warns that

> Instead of dismissing all casuistic practices as inherently evil, it is
>
> important to study casuistry's functioning for two reasons:
>
> casuistry is a necessary and inevitable feature of language and
>
> casuistry is effective. I argue that there are good and malign forms
>
> of casuistic reasoning and I distinguish between them by
>
> comparing and contrasting historical casuistry with the practice of
>
> Holocaust denial. (51)

In this case, the "principle-absent" type of casuistry is more closely associated with the

reasoning involved in denying the Holocaust. Such reasoning typically involves a

rhetorical slight-of-hand to make a weaker argument sound like a stronger argument. The

reasoning invoked in Holocaust denial arguments resembles something akin to Plato's

critique of the Sophists' abuse of moral reasoning, which is largely responsible for

discrediting the field of rhetorical studies. On the other hand, a proper historical

reflection on the Holocaust would involve provisional judgments and narratives that

could be revised as new evidence comes forth. For example, the addition of recently

discovered evidence might cast new light on a historical topic. As new evidence is considered, the casuist revisits earlier understandings. The principle-absent approaches to casuistry tend to misrepresent one of the central tenets of casuistry: principles should neither be the center of attention in ethical deliberations, nor should they be ignored. Principles are not absent in the process of casuistic thinking. In summary, the answer to the question of whether casuistry is self-sufficient appears to be rather straight-forward: a proper understanding of casuistry recognizes that casuistry depends on understanding contexts and making *careful, qualified use of principles*. Casuistry is clearly *not* self-sufficient.

Problem #2: Is Religious Casuistry Theory-Modest?

On the other end of the spectrum, casuistry can be understood as decidedly principle-based. From this view, what is needed to make casuistry work is a strong reliance on principles or norms. The principle-based orientation has been the approach adopted by *traditional* religious orientations to casuistry, specifically in the Jewish, Christian, and Islamic faith traditions. The key observation with much of religious casuistry is this: rather than embracing a theory-modest approach, religious casuistry tends to be decidedly principle-focused. In part, this focus can be attributed to the similar foundational focus that Judaism, Christianity, and Islam share. As Jonsen observes, "The casuistries of these three faiths, although different in content and inspiration, are remarkably similar in the fundamental theology" (Jonsen *Blackwell 58*). At the same time, casuistry-inspired reasoning has existed alongside the more principle-based religious approaches. Most commonly, religious casuistry arises when specific, new

moral challenges arise in religious communities. As Jonsen puts it succinctly: "Religious

casuistry, then, is the practical reasoning of communities of faith" (Jonsen *Blackwell* 59).

For example, during the growth of the early Christian Church, a number of "new" issues

arose regarding how much of the Jewish traditions were required to be met in order for

someone to join the Christian Church. Many of these issues—circumcision, eating of

slaughtered animals—were addressed in "letters" from early apostles who tried to address

these specific practical concerns. In recent years, this religious/principled approach has

been explored in Judaism (Brody, Davis), Christianity (Biggar, Rudy), and in

Protestantism (Carson) and Catholicism (Odozor, Spohn). In nearly all cases, the main

focus has been on the principles and their applications to new situations (something that

looks like *principle-focused* casuistry).

On the surface, this *sounds* like casuistry. One could argue that it *is* casuistry, but

only in a qualified sense. For the most part all three of these faith traditions have

employed casuistry, in its heavily principle-based form, at some point throughout their

long histories. For example, this principle-based approach to casuistry is found in the

Jewish idea of *Halakhah*: "the expression of the moral and religious duties that

encompass and give spiritual meaning to Jewish life" (Jonsen and Toulmin 57). In

Halakhah, casuistry functions as a tool to help craft religious teachings that respond to

new situations. The shared perspective of a specific religious tradition prompts casuistry

to rely heavily on previously established norms and principles. Sacred scripture, along

with the commentary on these texts, yield principles that enjoy acceptance by members of

the Jewish faith. In a principle-based view of casuistry, these principles function as

premises in arguments that address particular moral dilemmas. It is for this reason that I categorize these traditional religious uses of casuistry as *principle-based*.

Even in situations that appear to be moving away from the strong reliance on principles, religious traditions have, rather consistently, fallen back on a principle-based perspective. For example, in recent times, in the Catholic tradition, a casuistic approach to moral theology has been offered as an alternative to the more traditional "act-centered" model of moral teaching employed in several Vatican-initiated documents addressing Catholic moral concerns: *Universal Catechism*, *Veritatis Splendor*, and *Evangelium Vitae*. However, the alternative offered falls clearly into the category of a principle-based approach to casuistry. Consider that most of the traditional (and current) focus in Papal encyclicals is on the identification of abstract, universal principles that admit of no exceptions. For example, the prohibition against abortion and artificial means of birth control are two of the most commonly debated issues between Vatican supporters and revisionist moral theologians. Unfortunately, all too often, these issues are reduced to principles to be applied to specific situations. Debates on both abortion and birth control are often reduced to principles of "sanctity of life" vs. "choice." In some cases, revisionists argue for a more principle-modest approach. For example, Spohn suggests that "The Catholic tradition would be better served by admitting the alternatives which it contains" (111). Because "norm centered ethics is not canonical," Spohn argues, the revival of the casuistic tradition itself is an integral part of the history of Catholic moral theology that might serve to "make the Church's moral guidance more intelligible in the future" (111). Interestingly, there is a long tradition in Catholic moral thinking that focuses on reasoning casuistically, particularly in confessional practice where specific

sins must be considered on a case-by-case basis. In the end, although some contemporary Catholic theology seems to focus on identifying paradigms or uncovering right relations, a great majority of Catholic moral theology views principles as the *primary* focus of ethics.

The practice of Islamic casuistry displays a similar desire to offer specific moral guidance based on established scripturally-based principles, with the key focus on *principles*. Jonsen points out that "Among the earliest and most fundamental moves of Islamic casuistry is the distinction of all moral law into five categories: obligatory, recommended, permitted, disapproved and forbidden (there is debate about whether any acts are neutral)" (Jonsen 58). Thus, the Koran's admonishment to "fight in the cause of Allah those who fight you," might be considered *permissive*, but not *obligatory*. Like just-war theory, noncombatants who do not aide the enemy may be considered exempt from the dictate to engage in battle. Despite the apparent move to invoke a casuistry of moral law, the Islamic version of casuistry, much like its Jewish and Catholic counterparts, focuses primarily on a principle-focused view of moral reasoning. As Jonsen concludes, "Crucial to each form of casuistry is the move between revealed text or universal ethical principle and the particular decision" (Jonsen, *Blackwell* 58). Again, the defining characteristic of this type of casuistry is that reasoning is *principle-based*.

In addition to the general casuistic approaches found throughout Judaism, Christianity and Islam, more specific, historical treatments of casuistry have been explored. Perhaps the most extensive collection of contemporary work on historical studies of religious casuistry appears in Keenan and Shannon's 1995 collection, *The Context of Casuistry*. Writing in the preface to this work, Jonsen laments the lack of

historical work on casuistry and quips that "It may be symptomatic of the a-historicism of many philosophers that they head directly for the theoretical arguments, with scant or any attention to the historical expositions" (Keenan and Shannon x). Although only one earlier article (Leites) focuses on historical work in casuistry, his criticism appears fair. It is more accurate to say that recent historical material on casuistry does exist, but the specific focus on moral decision making is not its central goal. For example, material related to the historical analysis of casuistry is offered in Leites's 1988 *Conscience and Casuistry in Early Modern Europe* and Gallagher's 1991 *Meduza's Gaze: Casuistry and Conscience in the Rennaissance*. Studies focusing on literary figures such as Milton (McCready), Defoe (Starr), and Shakespeare (Watson) analyze casuistry as a literary device. In addition, Green examines casuistry in the sociology of Simmel and Weber and distinguishes between good and degenerate forms of casuistry as means of sociological explanation.

Principle-based casuists make up the majority of casuists identified in Keenan and Shannon's collection of essays. These essays focus on a number of historical examples of practicing casuists or those who might be considered as precursors to the activity of casuistry. Interestingly, an analysis of these examples suggests that nearly all of these casuists were, either consciously or unconsciously, drawn to a principle-focused approach to casuistry. The collection of essays is largely the product that began at a session of the 1993 Annual Conference of the Society of Christian Ethics where five of the authors in this volume were present. The collection reflects their interest primarily in precursors and practitioners of casuistry. Shannon points out that the thirteenth-century theologian John Duns Scotus emphasizes God's free will as the determinate of the world's final

cause. Duns Scotus breaks from the traditional scholastic interpretation of natural law and focuses on the *contextualization* of human actions that must precede moral judgment. The physical structure of an act does not constitute the morality of an act; the intentions and circumstances—hallmarks of contemporary moral revisionist's views—make up the moral act. McCord Adams argues that another Franciscan, William of Ockham, offers a "modified right reason theory" as opposed to the standard interpretation that Ockham merely advances a standard "divine command ethics" perspective. However, Ockham's emphasis on principles is exemplified in his famous dictum that "entities must not be multiplied beyond what is necessary." By replacing obedience to God's command with the exercise of standards of reason, Ockham is viewed as recognizing God's graciousness in allowing human agents to participate in the creation of morality. At the same time, consider how both Dun Scotus and Ockham remain steadfast in their principle-focused perspectives. Another example comes from St. Francis of Assisi, whose commitment to poverty is based on a consciously-chosen principle to embrace the life that Jesus lived. As with most traditional religious thinkers, Duns Scotus, Ockham, and Francis all employ (primarily) a *principle-based* casuistry.

The focus on practical moral teachings is explored in the work of the fifteenth-century priest Bernardino of Siena and the sixteenth- century nominalist John Mair. Mormando points to connections between rhetorical and moral reasoning at work in Bernardino's sermons. Through anecdotes, fables, and vignettes, Bernardino's focus is on practical moral teachings—involving what could be identified as paradigm cases—as opposed to atemporal truths. Bernardino contributes to the understanding of moral theology as an art that deals with concrete, lived experience. Keenan's article on the

casuistry of the sixteenth-century nominalist John Mair looks at the moral agent from a nominalist perspective. Keenan's conclusions offer a tempered enthusiasm for casuistry. Keenan argues that Mair (along with Jonsen and Toulmin) tend to *display*, rather than *explain* why "something is right or wrong" (Keenan and Shannon 97). This is an important point. Once something is displayed, it can become the subject of particular knowledge that can be directly apprehended. Unfortunately, like many communitarian critics of casuistry, Keenan questions whether "some common vision" like virtue ethics is a necessary prerequisite for casuistry's success. I have much more to say about this important criticism in Chapter Three. For now, I offer the following observation. The view that a "common vision" is a prerequisite for casuistry is fraught with a number of problems. As I argue, very little (if any) "common vision" is necessary to have the *phronetic* knowledge necessary for casuistry. In this sense, Keenan's comments echo a misdirected criticism about casuistry: that casuistry is merely an accessory to the more important principles that ought to form the focus of moral deliberation.

Turning from "Continental casuists" who "wrote for policy makers and confessors," Keenan examines a British casuist who wrote in a more popular style: William Perkins, the "father of British reformed casuistry." Perkin's casuistry is especially significant given that it has its origins clearly in resolving practical moral problems. His casuistry grew out of his preaching; his focus is on instructional and practical concerns. Unlike many of the principle-based defenders of casuistry, Perkin's, casuistry is primarily informed by his daily engagement with everyday moral problems. We examine ourselves by exercising our individual conscience, an activity in which Perkins encouraged his readers to involve themselves. His casuistic bent led to a detailed

analysis of one-hundred and forty cases. For Perkins, like most Protestant thinkers, the scriptures, along with one's conscience, are the source of substantive knowledge made about how to act in particular situations. An important recognition is that *doubt* is often an inevitable part of decision making. Miller ("Moral Sources") builds on this theme by examining the "Doctor of Doubt," Jeremy Taylor. His "morality of modest expectations" problematizes the notion of lying by questioning whether lying is *always* morally wrong. Miller argues that Taylor demonstrates that an "absolute ban against lying...privileges justice at the expense of charity" (Keenan and Shannon 152). This points to an interesting question regarding whether casuistry can contribute to resolving conflicts between principles, like justice and charity. Taylor identifies the moral life as a complex one and he criticizes more simplistic approaches to understanding moral laws as absolute. In Chapter Four, I offer a detailed examination of a specific case—the lying bishop—that llustrates exactly how casuistry can assist in resolving conflicts between justice and charity.

In a similar vein, focusing on the practical concerns that are the heart and soul of ethics, another example from this same time period is explored by Hunter. He describes the seventeenth-century scientist Robert Boyle's interviews with two bishops. These bishops used casuistry to offer consultations and advice. His account is unique in that Boyle writes as a *receiver* of casuistical thought and advice, not a *giver* of that advice. What is being offered in both the case of Perkins and that of Boyle's bishops is a similar focus on *practical* concerns. Basically, these casuists employ a practical application of the scriptures to real-life cases. Boyle's and Perkin's concerns focus on the local and contingent: the hungry boy who steals food, whether the man who takes an oath by

compulsion is obliged to keep the oath, the moral challenge of commitments made through casual statements, just to name a few cases. The important point about nearly all of these examples cited is that discourse on practical concerns is strongly informed by religious *principles*. These examples demonstrate how the penchant for a principle-focused version of casuistry can be found even in religious thinkers who engage with practical moral problems on a daily basis.

In some cases, the adherence of religious thinkers to a principle-based casuistry is more subtle. Consider the nineteenth-century seminary textbook written by the Jesuit Aloysius Sabetti who, on the surface, appears to be a strong advocate of a principle-modest approach. Curran, however, describes how Sabetti weaves a concern for principles and norms with a juxtaposition of other cases in a conservative casuistry that is typical of Catholic moral theology at the end of the nineteenth century. Despite Sabetti's apparent principle-modest approach, Sabetti spends much time upholding the hallmark of the principle-based approach to casuistry: unchanging principles and norms. The emphasis on principles can be frustrating for those historians who recognize how the Catholic Church has changed moral teachings throughout its long history. Noonan traces the development in the moral doctrines of usury, marriage, slavery, and religious freedom in order to show that through "human will and the Holy Spirit" changes in moral teachings have occurred within the Church. For some observers of Church history, change, despite meeting with strong resistance, is a historical fact within Catholic moral teaching. This is true even though the Church tends to present universal principles as unchanging. Again, a recurring theme emerges: practitioners of a principle-based casuistry consistently return to principles as most important in ethical discourse.

Interestingly, this overemphasis on principles helps to reveal one of the strengths of casuistry. Casuistry can often deal with change *better* than principle-based theories. Although principle-based approaches often assume that all new cases can always be connected to some previously-established principle, the very business of casuistry *is* cases. Casuists assume that the focus of their moral deliberations (cases) can actually change over time. Consider the new cases involving theft of online intellectual property. The principle-oriented approaches struggle to try to understand how their established principles might apply to these new dilemmas. On the other hand, casuists are not attempting to apply established principles to cases in a deductive manner (the typical practice of applied ethics); the casuist is starting with the case itself and using the case to define the problem from the start. In Chapter Three, I address how this process works when I explore the topic of what *kind* of knowledge casuistry has to offer.

The editors of *The Context of Casuistry* conclude their collection of essays by making a call for a "context for casuistry" in order to avoid "relativistic tendencies." Interestingly, they seem to fall back upon a principle-based communitarian orientation to casuistry. They argue for *virtue ethics* as the context necessary in order for casuistry to flourish. The authors propose that virtues could provide a replacement for principles while avoiding the problem of deductive application of abstract notions to particular cases. The casuistry-virtues connection is certainly one fruitful area for further research in casuistry. Walton, for example, looks at *courage* and the role that casuistic thinking plays in defining this term. One way to think of virtues is that they could serve as a replacement for principles; the same might be said of conscience. However, as I argue in the next chapter, I think that this line of thinking is misguided. Rather than replacing

principles, virtues and conscience function as *helping* roles to casuistry. Unlike the use

of principles in moral reasoning, which are often used as part of a deductive argument, I

argue that virtues and a *good* conscience ought to function as one of many components

that contribute to casuistic reasoning. This raises one of the main issues that will be

explored in Chapter Three: does casuistry always need to be *aided* by something that

would function like principles do? Does casuistry always need something like a theory of

virtue? To conclude, and to return to our original question about religious casuistry, we

can respond that the vast majority of religious casuistry is *not* theory-modest.

Problem #3: Does Casuistry Require Shared Understandings?

One of the most pointed attacks against casuistry has come from critics who

emphasize the need for shared understandings as a prerequisite for proper casuistic

reasoning. Many of these critics might best be defined as communitarians (for example,

MacIntyre, Emanuel, and Wildes). The main criticism is that casuistry can only resolve

cases "within the context of a shared understanding of the good life" because "casuistry

has always presupposed a shared hierarchy of goods" (Kuczewski 100). In this sense, it

is argued that casuistry does not stand on its own, but must rely on a crutch. For

communitarians, an able-bodied casuistry owes its existence to principles and norms.

Without first understanding the shared assumptions of contemporary society, the

casuistry of the sixteenth century, for example, becomes seriously misapplied. Such

criticism is advanced by MacIntyre (506-7) and Emanuel (155) as well as Wildes, who

argues that Jonsen and Toulmin

attempt to transpose a particular model of casuistry, that of

Roman Catholic confessional practice, to contemporary moral

disputes. This attempt is flawed in that it fails to understand both

the history of the model it seeks to transpose and the morally

pluralistic context of secular, postmodern society. (33)

Wildes goes so far as to state that without such contextual commitments, the agreements

"of case analysis become a 'sleight of hand' like the healings of some televangelists" (47).

Communitarians argue that, without such a presumed shared understanding, we are left

with a Kantian-type quandary of individualism and autonomy, rather than agreement on

how to solve practical moral problems.

Consider one response to this communitarian critique of Jonsen and Toulmin's

casuistry. Tallmon offers two arguments in defense of casuistry, specifically directed

against Wildes's communitarian criticisms of Jonsen and Toulmin's conception. First,

Tallmon points out that Jonsen and Toulmin do *not* offer Roman Catholicism as the

exclusive basis for casuistry. This point is well-taken, because *The Abuse of Casuistry*

finds casuistry in classical, Jewish, Protestant, and secular rhetorical sources in addition

to Catholic influences. Second, "the context of Catholic theology can be distinguished

from the method of casuistry" (Tallmon 107) so that casuistry may be successfully

applied in a number of different contexts, including pluralistic societies. Although

Catholic theology might function as a prop for some historical casuistry, it certainly is not

the only support available to casuistry. Building on Tallmon's understanding, if there is a

common property that all casuistic thinking requires, it is a *functional* property. Assisting

casuistry in a *functional* role is significantly different from proposing that principles are

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the heart and soul of ethical deliberation. This line of thinking seems to support the idea that casuistry successfully resolves more specific moral problems than does normative or principle-based approaches. Consider, once again, the case where a rabbi, a Catholic priest, and an agnostic medical doctor might agree on the resolution to a specific case, while disagreeing on the justifications for their similar conclusion. They agree on the *result*, but they might disagree on the *reasons* that lead to that result. The rabbi and the atheist might agree, for example, to be merciful in providing medical aid to a specific criminal, but their respective reasons that lead to this conclusion might vary.

Consider another communitarian criticism. In a manner similar to that of the traditional religious supporters of casuistry, communitarians express concern that casuistry too easily degenerates into a relativistic, arbitrary, anti-foundational form of moral reasoning. Although the adherents of casuistry in traditional religion invoke scriptural warrants to support their arguments, communitarians view "shared values" as necessary prerequisites to casuistry. For communitarians, those casuists who ignore shared values as the starting point of moral reasoning offer an epistemologically incoherent conception of moral reasoning. Again, the appeal of principles becomes the primary focus. When communitarians employ casuistry, they tend to view community values (virtues) as primary, not permitting casuistry to stand on its own. The emphasis on shared understandings accounts for something very similar in structure to the principle-based approaches. I have more to say on the communitarian challenge to casuistry in Chapter Three. At this point, I hope that I have made, at least, a *prima facie*

case that casts some doubt on whether specific, shared understandings are required for successful casuistry.

Problem #4: Is Casuistry Plagued by Subjective Bias?

Overwhelmingly, the principle-based adherents of casuistry strive to avoid what they perceive as casuistry's Achilles' heel: subjectivism. Interestingly, subjectivism, and its alleged insidious counterpart— internal bias—is often cited as a main criticism by principle-based adherents. This line of criticism suggests that casuistry is especially susceptible to personal whims. Kopelman ("Case Method") takes up the issue of bias in the "describing, framing, selecting and comparing of cases and paradigms" (21). Our general views as to what is relevant in a particular case leaves casuistry open to the charge that personal bias governs many of the practical choices and decisions that are integral to casuistic thinking. For instance, consider how clinical trials are used in medical science in order to address issues of bias. It could be argued that casuistry appears to need some system of checks and balances (akin to clinical trials) in order to monitor its own biases. Invoking a more traditional Kantian solution, Arras proposes that casuistry might benefit by incorporating a Rawlsian "reflective equilibrium" that would allow cases and theories to work within a "symbiotic relationship" (48). Support for the "reflective equilibrium" view is also found in Mackler. In short, as the argument goes, internal bias must be overcome in order for casuistry to join the ranks of a legitimate form of moral reasoning. The criticism that casuistry suffers from bias shares a number of similarities with the communitarian critique of casuistry.

The most pressing concern in all of these cases of "bias" is that judgments made about vital differences between cases will be plagued by subjectivism. In Chapter Three, I offer an in-depth response to these critics by defending the position that a *principle-modest* form of casuistry responds adequately to these concerns and that casuistry can discern vital differences without falling into a subjective trap.

Problem #5: Is a Theory-Modest Casuistry Used in Bioethics?

Casuistry is clearly applicable to numerous ethical fields from dentistry to journalistic ethics (Boeyink). A great majority of recent work on casuistry has focused on biomedical ethics. An obvious reason for this is found in Jonsen and Toulmin's work with the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. Although traditional approaches to bioethics often emphasize theory-driven approaches that rely on the application of principles like autonomy and beneficence, casuistry provides a " 'theory modest' rather than 'theory free' " (Arras 29) approach that counters reductionist tendencies. For example, in reducing an ethical problem to the principle of autonomy, a traditional bioethical approach emphasizes the universal over the particular. In contrast, casuists attempt to avoid this reductionism and begin with a focus on the specifics of the case at hand.

Interestingly, a number of specific case-studies that neo-casuists address deal with biomedical ethics. These issues include medical ethics consultation and committees (Blake, Bliton, Carney, Chidwick, Tallmon, Winston), euthanasia (Brody), transplanting human fetal tissue (Miller, "Transplanting"), abortion (Rudy, Weston), and the analysis of ethical data to compare actual and ideal nursing practices (Gaul). Attention to

biomedical issues is not limited to journals that focus on health care ethics; the *Indiana Law Journal* (Dworkin) devoted an entire issue to a symposium on bioethics. Most of these biomedical journal articles are strongly sympathetic to Jonsen and Toulmin's neo-casuistry. At the same time, the research tends to focus on how casuistry could be applied to specific concerns in biomedicine, with little discussion on the *philosophical issues* that underlie the methodology of casuistry itself.

The enthusiasm for casuistry is also found in pedagogical issues related to medical ethics. Arras summarizes his recommendations for the use of casuistry as a pedagogical tool:

> (1) use real cases, (2) make them long, richly detailed and comprehensive, (3) present complex sequences of cases, (4) stress the problem of 'moral diagnosis,' and (5) be ever mindful of the limits of casuistical analysis. (29)

The health care ethics literature documents numerous expositions of casuistry that summarize the basic method to their respective audiences (Carson, Downie, Drane, Elliot, Hoffmaster, Hunter, Jonsen—*Westminster Dictionary*, Murray, Smith, Thomasma). Others offer more critical appraisals for casuistry's use in medical ethics (Tomlinson, Zaner). Most of this literature argues that the deductive, top-down model of reasoning from principles to practical conclusions is hopelessly flawed and that more practical, case-oriented approaches ought to be pursued. A number of interesting questions emerge from this literature. What makes a good case? What criteria may be developed for accurately identifying a paradigmatic case? How does the context or purpose of inquiry influence the criteria of a "good case"? Despite these intriguing

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questions, however, much of the biomedical casuistry literature turns its attention to the ever-present focus on *principles*.

Although a number of authors addressing biomedical issues, such as Blake, Tallmon, and Winston, are hopeful that casuistic modes of thinking can improve medical ethical discourse, both Bliton and Chidwick express reservations about casuistry, concluding that it is an unacceptable form or reasoning for consultation and committees. In a more tempered vein, Carney's examination of how medical practitioners actually make decisions concludes by characterizing casuistry as a useful, but incomplete, method of clinical ethical analysis. Likewise, Chidwick charges that casuistry is insensitive to details and situations, contains problems of bias, and often has difficulty arriving at conclusions. He argues that, in focusing on the values of the patient, a "consultation" approach is preferable to casuistry because it is more process oriented, incorporates diverse views, and aides in communication. Bliton's problems with casuistry concern the politicized/paternalistic issue of authority. He accuses Jonsen and Toulmin's casuistry of endorsing a "medicalized strategy" that upholds the physician as an expert ethical guide. A more nuanced discussion of ethical expertise is offered by Weinstein, who argues expertise can deal either with what you *know* or with what you *do*. Once the extent and nature of one's expertise is understood, ethical expertise becomes a useful source to be considered in ethical deliberations. Bliton and Chidwick's comments appear to be influenced by the need to focus on patient autonomy as the highest value. This approach is typical of biomedical ethics over the last several decades. The appropriation of the strict interpretation of the Kantian-inspired notion of "autonomy" is yet one more example of how casuistry in the bio-medical literature tends to focus on principles. In

contrast, as the more principle-*modest* adherents argue, while casuistry permits the values and expressions of the patient to play a role in ethical judgment, it does not prioritize autonomy, or any other one principle, as the main concern of ethics. In the end, the emphasis on principles places the vast majority of the biomedical casuistry literature squarely in the corner of a principle-focused approach. For the most part, a theory-modest approach to casuistry is *not* practiced in biomedical ethics.

Problem #6: Is a Theory-Modest Casuistry Used in Feminist Ethics?

In contrast to many authors who explore biomedical casuistry, some feminist ethicists writing about casuistry exhibit less reliance on principles. Indeed, similarities between casuistry and feminist ethics have prompted discussion regarding the mutuality of these two approaches. Both casuistry and feminist ethics criticize the rigid, absolutist, justice-centered tradition that has dominated ethics. In addition, the attentiveness to the details surrounding a particular case has contributed to casuistry's association with an ethics of care. For feminists, the justice-centered tradition is viewed as "male-centered." Carlson likens "creative casuistry" to "feminist consciousness" and argues that feminists employ casuistic strategies in reforming traditional moral precepts (16). Sichol characterizes the method of reasoning "from the concrete and the particular rather than from the universal and general" as a " 'feminine turn' in moral thought" (150). By allowing the "feminine" notion of care to direct moral discussions, the "masculine" idea of justice is tempered within the feminine "context of relationships." Feminist ethics offers an alternative to the "rights talk" that permeates ethical deliberations. Bioethics seems to provide a particularly fertile ground for feminist concerns, given its concern for

relationships between caregivers and patients, children and parents, and between spouses. Sichol concludes that "relationships will always make a difference, a morally relevant difference" (157). Likewise, the desire of casuists to turn to the particulars of a case suggest that casuistry and feminist ethics may share much in common.

Not all feminist ethicists are convinced of the casuistry-feminism connection. Some feminists see in casuistry an excessive principle-focused approach that contrasts sharply with feminist orientations to ethical decision making. Peach argues that "apparent similarities between feminist methodologies and casuistry do not render casuistry an approach to moral reasoning compatible with feminist concerns for improving women's lives in relation to abortion decisions" (143). Peach expresses concern regarding the "problematic essentialism" underlying the male-justice/female-care distinction. Although Jonsen and Toulmin claim that the Supreme Court's decision on abortion is casuistical, Peach notes that the trimester framework of the *Roe v. Wade* decision is "largely principled" and that the subsequent case of *Planned Parenthood v. Casey* fails to use *Roe v. Wade* as a precedent. In addition, analogous reasoning is subordinated to the process of principled reasoning. Even the more casuistical aspects of *Casey*, particularly its use of the "undue burden" standard, have given rise to further limitations on abortion. Thus, Peach, along with Carlson, views casuistry with suspicion, not enthusiasm. This is especially true where public policy is concerned. Part of the problem is that *Casey* gives greater discretion to "mostly male, mostly white judges, who have never had, and never will have, the experience of an unwanted or dangerous pregnancy" (Peach 156). As the argument goes, even though the judges might be focusing on specific cases, their lack of personal experience with similar cases in their

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own lives might limit their understanding of a case. If *Casey* is relying heavily on the perspective of mostly male judges who lack experience with unwanted pregnancy, for example, it would be easy to understand how their understandings of a particular case might be limited. The thinking here is that the greater distance that one has with the "local, particular, and contingent," the more difficult it is to grasp the myriad issues that might surround a particular case. This particular example illustrates a number of themes that I have raised thus far: at least some feminist casuistic ethics might be best described as principle-focused casuistry mistaken for a theory-modest casuistry. The question of whether shared perspectives are needed and the ever-present need to focus on the particulars of a case return as familiar themes. In any case, the feminist perspective seems to add an important contribution to the discussion of casuistry: the significance of human relationships and their ability to make a morally relevant difference in moral decision making.

One may question whether the casuistry/feminism problem concerns the casuistic methodology itself, or with the practical constraints embedded within current societal practices. Peach argues that in the public arena, "certainty, predictability, and fair notice of the rules are necessary to reliance upon and compliance with the legal system" (156). In the case of abortion, if we accept the premise that the locus of decision must always rest with the pregnant women, then Peach's conclusions seem appropriate. The feminist caution about casuistry's contribution to the abortion debate is an example of the wider concerns over casuistry's ability to influence public policy in a pluralistic society. Furthermore, it is yet another example of how much of neo-casuistry, as currently practiced, is decidedly principle-based. Clearly, some writing in feminist ethics appears

to move closer to a theory-modest casuistry than most other approaches previously discussed. We can safely conclude only with qualification that feminist ethics, to a certain extent, embraces a theory-modest approach.

Conclusion

Clearly, of all the alternative conceptions of casuistry, the principle-based perspective dominates the literature of neo-casuistry. In large part, the principle-based casuists see in their focus a corrective to what is (they argue) the spurious reasoning offered by casuistry. Examples of the abuse of casuistry are easily accessible. Consider the misguided casuistry of Alain of Lille (1128-1203), a casuist from the University of Paris. Lille argued that "it is a lesser sin if a man seduces a beautiful woman than an ugly one, for he is compelled by beauty, and, where there is greater compulsion, there is less sin" (Jonsen and Toulmin 119). Proponents of principle-based casuistry often cite cases like this one as an example of the corrupt nature of casuistic thinking. Viewed in this sense casuistry becomes a pejorative term. The corrective is often a quick return to traditional principles and a call to make a geometric-style application of those principles to the case at hand. The important point here is that this line of reasoning ignores the difference between the *abuse* and the *proper use* of casuistry. It is only when we turn to the third alternative—principle-modest casuistry—that the emphasis on the proper use of casuistry is brought to center stage.

Having examined six major problems that can be identified in the recent literature on casuistry, I am now ready to offer some specific arguments in defense of the third alternative: a principle-modest casuistry. The uniqueness of this form as casuistry can be

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demonstrated by asking a serious of epistemological questions about the principle-modest

approach. It is to these questions regarding the *kinds* of knowledge at work in casuistic

thinking that I know turn.

Chapter Three: What Kind of Knowledge is Casuistry?

In the first chapter, I introduced the concept of casuistry and its major point of

contention with principle-based ethics. In the second chapter, I explored several

alternative conceptions of casuistry and suggested that a "principle-modest" approach to

casuistry responds well to much of the criticism that has damaged casuistry's reputation.

In this chapter, I advance my argument for a "principle-modest" approach by addressing

a set of epistemological questions about the kind of knowledge required to engage in

casuistic reasoning. The answers to some of these questions lead to important

distinctions between a principle-modest neo-casuistry and its alternatives. In addition,

responses to some of these epistemological questions help to overcome specific criticisms

cast against casuistry. Exactly what kind of knowledge is involved in casuistry? How do

we come to know the paradigm cases? Do our biases undermine our understanding of

paradigm cases in such a way as to corrupt the practice of casuistry? What counts as a

vital difference between these cases? How do we know when we have accurately

identified such differences? How do paradigms, analogies, and taxonomies actually

work? In short, this chapter attempts to explore distinctions between the different *kinds*

of knowledge needed to know paradigm cases, analogies, taxonomies and to reason

casuistically.

Unlike the epistemology behind casuistry, the basic methodology of casuistry is

familiar to just about anyone who has ever had to work through a practical problem.

Perhaps one of the most basic questions about casuistic methodology is why anyone

would object to a method that appears to be so useful to resolving a wide variety of practical problems? To be fair, the reception of casuistry, as I have documented, has been fraught with misunderstandings. Largely due to Pascal's devastating critique, casuistry has seen more than its fair share of controversy and criticism, particular in the field of philosophical ethics. Casuistry's "methodology" can be summarized in the six characteristics of casuistry offered by Jonsen and Toulmin: (1) the reliance on paradigms and analogies, (2) the appeal to maxims, (3) the analysis of circumstance, (4) the focus on degrees of probability, (5) the use of cumulative arguments, and (6) the presentation of a final resolution. I address these characteristics in some length in connection with how we come to acquire the knowledge that is necessary in order to employ casuistic methodology.

A summary of some of my major arguments in this chapter might be useful in understanding my analysis of casuistry's epistemology. I argue that the process of casuistic thinking involves four different *kinds* of knowledge:

(1) knowledge of the "good,"

(2) knowledge of paradigm cases,

(3) knowledge of differences between cases, and

(4) knowledge of which paradigm shares the most similarities with the

current case at hand.

In most of these four divisions the neo-casuists and the critics of neo-casuistry (identified below as "traditional views") hold different views on what *kinds* of knowledge are needed in order for casuistry to function well. The epistemology of casuistry is outlined in the following chart:

Table 3 Casuistry: Prerequisite Knowledge

	knowledge of "the good"	knowledge of paradigm cases	knowledge of differences between cases	knowledge of which paradigm is closest to case
traditional views	derives from *tradition*	derived primarily from *principles*	derives from knowing how to apply *principles*	focuses on a *geometric* view of ethics
neo-casuistry revisions	tradition as either "thin" or non-existent	derived primarily from observation of *habits*	derived from reflection on past experience - *phronesis*	focuses on a *rhetorical* understanding of ethics

In exploring the epistemology of casuistry, a number of responses to casuistry's most trenchant criticisms may be found. I take each of these four kinds of knowledge and identify the traditional views often associated with them and the revisions that neo-casuistry offers. My goal is twofold: first, to offer a critical evaluation of casuistic methodology and second, to demonstrate how neo-casuistry can overcome some of its most pressing contemporary criticisms.

Knowledge of "the Good" as a Precondition for Casuistry

Perhaps the most basic epistemological question related to casuistry is what kind of knowledge (if any) precedes the act of case-based reasoning. For example, if we understand cases to be either "good" or "bad," this presumes an understanding of what is meant by the terms "good" and "bad." So what is "knowledge of the good" and how does this knowledge function in casuistic thinking? The principle-based casuists argue for the primacy of principles; an understanding of "good" is derived from the principles

to which we adhere. Adopting this view, however, leaves the methodology of casuistry in a peculiar position. When conceived as a principle-based endeavor, casuistic reasoning is largely relegated to a helping mode; principles are most important and casuistic skill simply helps to apply these principles to new cases.

Like the principle-based critics who hold this view, virtue ethicists and communitarians offer a similar challenge to casuistry. Although virtue ethicists do not invoke the need for a strong emphasis on *principles* as the main focus of ethics, they charge that casuistry can only function within a given tradition. The communitarian response to casuistry falls into two major camps. On the one hand, some communitarians attempt to integrate the idea of tradition found in communitarian thought with casuistry. From this perspective, communitarian thought and casuistry can co-exist. However, other communitarians and virtue ethicists argue against compatibility and they condemn casuistry for failing to recognize the primacy of tradition.

An instance of the former perspective is found in Keenan and Shannon's *Context of Casuistry*. As I discussed in the previous chapter, they offer what might be described as a communitarian-inspired casuistry. They argue for *virtue ethics* as a necessary prerequisite for casuistry. In a sense, the authors propose that virtues can provide a replacement for principles. They also contend that using virtues would avoid the problems that plague the deductive application of abstract notions to particular cases. Unlike principles, virtues function as character traits that cannot be reduced to one sentence premises. If we, however, accept Keenan and Shannon's proposal, then we are left with a vexing question: Whose virtues form the context for casuistry? Virtues, just like principles, can become molded into uncompromising moral abstractions by those

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who have the power to determine the moral or political contexts of historical periods. In this sense, those communitarians who seek to reconcile their thinking with casuistry share a similar flaw with their principle-based counterparts. Whether the primary emphasis is on virtues or principles, casuistic methodology is relegated to a secondary, less central, role in ethical deliberation. As I continue to argue, to privilege principles (or virtues) over case-based reasoning is to seriously misunderstand the proper function of casuistry. Key to this discussion is the question of what kind of knowledge of the "good" is needed in order for casuistry to function properly. Exactly what kind of knowledge is a necessary prerequisite for casuistry?

Those communitarians who reject the idea that casuistry can be compatible with communitarianism offer some pointed arguments in their defense. Whether casuistry necessitates an identifiable context that exhibits some sort of consensus among its members in order to reach solutions to practical moral problems is central to the concerns of other communitarian critics of casuistry. The communitarians who are most critical of casuistry tend to focus on the idea that the casuistic enterprise suffers from the reliance on biased starting points: *traditions*. Virtue ethicist Alasdair MacIntyre proposes that "a tradition is an argument extended through time in which certain fundamental agreements are defined and redefined in terms of two kinds of conflict" (*Whose Justice* 12). The two kinds of conflict arise between (1) supporters and critics of the tradition and (2) different interpretations within a tradition. MacIntyre attacks the liberal ideal of rationality and points to the importance of how a tradition (for example, Ancient Greek, Catholic, medical, legal) always informs ethical thinking. From this perspective, a particular tradition always informs any moral deliberation, which would include casuistic thinking.

To suggest that casuistry is *not* influenced by such a tradition would be, in the minds of critics sympathetic to MacIntyre, to ignore how "fundamental agreements" influence moral deliberation. If, as MacIntyre argues, no rule exists apart from its application, then *all* moral rules function within a tradition.

Much of the harshest criticism from communitarians and virtue ethicists focuses on the charge that casuistry fails to recognize this one insight: that tradition informs casuistic thinking. Building on MacIntyre's concept of tradition, the Christian theologian and ethicist Stanley Hauerwas argues that "…casuistry is only intelligible in an ongoing tradition" (271). Addressing the contemporary revival of casuistry, Hauerwas does not offer a wholesale condemnation of Jonsen and Toulimn's neo-casuistry. He is troubled, however, by their inadequate recognition of how tradition functions in casuistic thinking. In referring to Jonsen and Toulmin, Hauerwas contends that "… they fail to note how the intelligibility of casuistry depends on a tradition-formed community constituted and sustained by particular sets of virtues" (272). Crucial to Hauerwas's critique is his argument that "paradigms and analogies do not have the same status or function" (273). I would agree that paradigms and analogies do not have the same function or status as a set of virtues generated by a "tradition-formed community." Hauerwas's distinction, however, does not offer any significant challenge to casuistry. Paradigms and analogies are forms of reasoning, neither of which are *intended* to function like virtues. In casuistic thinking, paradigms and analogies do not function like ongoing traditions, rather, they are more like tools employed by the casuist. While paradigms give us ideal cases (with all of the challenges that go along with defining what counts as an ideal case), analogies give us processes by which we reason *about* cases. For example, we might identify several

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paradigm cases of when killing in self defense may be considered justified. Once

paradigms are identified, we then have to determine, through analogies, how similar or

dissimilar these cases are to the current case under consideration. In a sense, paradigms

are *prerequisites* to analogies. Without paradigms, there would be nothing about which

to reason analogically. Hauerwas borrows a Kantian turn of phrase to summarize his

argument: "Analogy without paradigms is empty" (273). Hauerwas's point is well taken

and noncontroversial: without paradigms, there would be nothing about which to reason

analogically.

If, as I have argued, Hauerwas' paradigm/analogy distinction does not conflict

with casuistry, then why does Hauerwas use this distinction as the basis of his critique of

casuistry? The answer is rather simple. Hauerwas argues that descriptions of cases rely

on virtues generated by a tradition and casuistry denies the need for a tradition. On the

surface, this sounds like a reasonable point. Indeed, unlike the paradigm/analogies claim,

this criticism, if proven to be justified, could pose a major challenge to casuistry. I would

argue, however, that Hauerwas's claim that a tradition is a necessary prerequisite for

casuistry is highly questionable.

Consider a simple question: Why are paradigm cases crucial to moral

deliberation? Paradigms are essential for several reasons. They offer unproblematic

examples that allow for starting points in moral deliberation. Paradigms also clarify what

counts as important in the moral evaluation of a specific issue. For example, a paradigm

case of killing in self defense might reveal a number of important factors for

consideration: intent of the defender, proportional response, among other considerations.

But from where do these considerations arise? They appear to come from our past

experience with previous cases and the judgments we make about these cases. And what informs these judgments that we make about cases? For Hauerwas, the answer to this question is similar to his explanation about the prerequisites for analogical reasoning. Analogical reasoning depends on prior descriptions of cases which in turn depends on a "tradition that sustains the practices necessary for that description to make sense" (278). Therefore, for Hauerwas, casuistry without tradition is impossible because description without tradition is impossible.

Although Hauerwas makes a strong case that some sort of tradition *can* inform the recognition, description, and understanding of cases, he does not seem to put forth a strong argument supporting the idea that this tradition must be anything other than an epistemologically *"thin"* tradition. Hauerwas makes a good point: if we could identify something like MacIntyre's notion of a tradition, certainly this *could* make a difference in casuistic thinking. For example, casuistry in "the Christian community is different from that done in other communities" (279). The types of concerns and terminology involved in working out moral problems within a Christian tradition might differ significantly from a non-Christian tradition. So Hauerwas' descriptive point is reasonable: something called a "tradition" often appears to make a difference in casuistic thinking. But this prompts two crucial questions. First, can we consider the notion of a tradition an intelligible concept that we can know and use in casuistic thinking? Second, exactly what *kind* of tradition does Hauerwas argue is a necessary prerequisite for casuistry and is Hauerwas correct that this tradition is really a necessary perquisite to casuistry?

The first question focuses on whether the very idea of a tradition is an intelligible concept and whether we can clearly identify how tradition functions to limit moral

discourse. Although the virtue-ethics and communitarian proponents assume that

tradition is not only intelligible, but essential, a number of questions arise regarding

tradition and other terms that form a "a large family of terms" used interchangeably with

the term *practices*. Consider, for example, terms such as *tacit knowledge*, *world view*,

ideology, and *presuppositions*. Turner argues

> The concept of practice, whether it is conceived cognitively, as a
>
> kind of presupposition, or causally, as a kind of mental trace
>
> which disposes thought or action in a certain way, is epistemically
>
> elusive. Practices are not directly accessible, and the means of
>
> accessing them indirectly are fraught with difficulties, of which
>
> underdetermination is the most obvious and pervasive. (43)

How can we know, for example, that the factor that determines why a group of casuists

chooses a particular paradigm was based on their commitment to a tradition? Those who

employ the term *tradition* tend to treat the term as a causal object. Virtue ethicists, for

example, tend to reify the term *tradition*; they talk in terms of a collective world view as

a real causal object. Then, they follow this line of reasoning with the contention that this

causal object (tradition) accounts for current thinking and behaviors.   Turner counters

that, rather than identifying a concept like tradition and associating this idea with tacit

cultural understandings, a more accurate explanation might be that we pick up *habits*

along the way which lead us to make statements and take actions. In other words,

that coming to belief or understanding involves the acquisition of habits, and that these acquisitions need not be thought of as acquisitions of a common object, and consequently the kinds of analogical reasoning we employ when we construe the explicit beliefs, actions and observances of others as following from different tacit premises should be understood in a wholly instrumental way. (122)

Although a full explication of the argument against concepts like tradition is beyond the scope of this discussion, it is important to observe that the idea of a tradition as a prerequisite for casuistry leads to numerous questions and challenges regarding how traditions function.

Two reasonable observations can be made about the use of the term *tradition* in attempting to undermine casuistry. First, the term itself is philosophically problematic. One can only adopt the virtue ethicist's commitment to tradition by ignoring the controversies over the epistemic status of terms like *tradition*. Second the manner in which virtue ethicists (among others) use this term as a causal object is open to criticism. Even if tradition can be shown to be an intelligible concept, questions remain regarding how a tradition can be *transmitted* to people in "other traditions" or to future generations. Even is one does not find the epistemological critique of the term *tradition* compelling, there still is at least one other major problem in how virtue ethicists use this term.

An examination of the second question—what *kind* of tradition does Haeurwas argue is necessary—brings up the possibility that these critics might be overstating their case. Consider that we are all reflections of our particular moral traditions. But does this necessarily mean that we are entirely at the will of these traditions? A person can be a

republican, a Protestant, and a member of the upper-middle class. Does this necessarily

mean that such a person will *always* exercise the same kind of judgment as other

members of these groups? Clearly, it is both possible and, in some cases, relatively easy,

to free ourselves from our traditional constraints in such a way that we are, at least, no

longer *complete* slaves to our biases.

But even if casuistic thinking is subject to a tradition, must this tradition be a

substantial one? Must all traditions share the same force and influence of, for example,

the religious traditions of Christianity or Islam? What if the community of casuists

addressing a particular case share a very *limited*, yet important set of practices or general

beliefs? Would this be enough of a "tradition" for casuistic thinking? An answer to this

question can be found in the work of Jonsen and Toulmin. Unfortunately, some of their

critics seem to miss the point that Jonsen and Toulmin make about how little prerequisite

tradition (or community, principles, or theory) is needed for good casuistic thinking. For

instance, Hauerwas seems to gloss over the point that Jonsen and Toulmin make

regarding the use of theory in casuistry. He points to their work on the National

Commission for the Protection of Human Subjects of Biomedical and Behavioral

Research as informing their understanding of casuistry. This much is certainly true and

readily admitted by Jonsen and Toulmin. Consider, however, what Hauerwas

understands to be Jonsen and Toulmin's position on the use of *theory* in casuistry.

Their experience on this commission seems to have left Jonsen and Toulmin to conclude that concentrating on 'cases' while leaving behind 'theory' might be a good way to 'do' ethics – that is, a way to get on with the task of building consensus about the good in and for our society (271-272).

But, the *theory-modest* proposal of Jonsen and Toulmin does not involve "leaving behind" theory. The key difference is that Jonsen and Toulmin, in contrast to their principle-based and virtue-inspired opponents, redefine the role of theory in ethical deliberation. If Jonsen and Toulmin are guilty of anything in this regard, perhaps it is in failing to be clear on the answer to one simple question: Exactly how much theory, tradition, or community is necessary for good casuistic reasoning? In short, I argue that the answer is not much.

Consider what is meant by a shared understanding of "the good." Kuczewski charges that casuists use a very broad "shared common understanding of the good" (105). He defends a principle-modest casuistry in his specific responses to the criticisms offered by communitarians. Kuczewski notes that "it is shared by thoughtful, moral persons, but it is not the product of an explicit deliberation and ranking process" (105). The casuists' goods are *noncontroversial* and do not necessitate a *community* that has come to specific metaphysical agreements about identifiable ethical principles; we need not know the ontological status or the nature of what is good, we simply need to *perceive* the good in particular actions. The determination of which "mid-level" principles, such as autonomy or beneficence, should prevail involves attempting to fit the particular circumstances surrounding a case to its respective paradigm (Strong 197). This way of conceiving the

communitarian critique of casuistry concedes that casuistry is *not* sufficient on its own; casuistic thinking merely needs a relatively basic, *unproblematic* understanding of the good. This is an important rebuttal to communitarians who find fault with casuistry. Without the need for significant debate over principles and shared assumptions, much of the communitarian's criticisms of casuistry dissolve.

A good example of how little tradition is needed in order for casuistry to function properly can be found in the commission work in which Jonsen and Toulmin participated. Consider the varied backgrounds and interests of the participants: men, women, blacks, whites, Catholics, Protestants, Jews, atheists, medical scientists, behaviorist psychologists, philosophers, lawyers, theologians, and public interest representatives (Jonsen and Toulmin 17). A number of traditions might be identified within this eleven-member commission: religious, professional, scientific, among others, however, "so long as the commissioners stayed on the taxonomic or casuistic level, they usually agreed in their practical conclusions" (17). Jonsen and Toulmin note that serious differences of opinion emerged only when participants explained their *reasons* for decisions. Agreement was reached on practical courses of action but individual justifications differed. For example, the atheists and theists might have different reasons for concluding that, in a specific case, withholding life support was not the appropriate moral response. Notice that this does not preclude the idea of moral presuppositions influencing the committee's decisions. Unfortunately, even commentators sympathetic to Jonsen and Toulmin [Keenan and Shannon] seem to miss this point. Keenan and Shannon argue that "even the casuistry of that bioethics commission was probably much more culturally bound than the authors admit. Casuistry is always ladened with the moral

assumptions of the culture in which it functions" (Keenan xxii). Acknowledging the existence of assumptions, however, is not tantamount to suggesting that these assumptions lead to insurmountable obstacles to good casuistry.

Consider a simple example of how a group of people with varied moral assumptions might reach the same conclusion on a particular case. Consider an eight-member ethics committee at a hospital addressing the question of whether to withhold life support in the case of a seventy-five-year-old woman in severe pain with a terminal disease. Although the bases for the committee member's decisions may differ widely, they may reach the same conclusion.
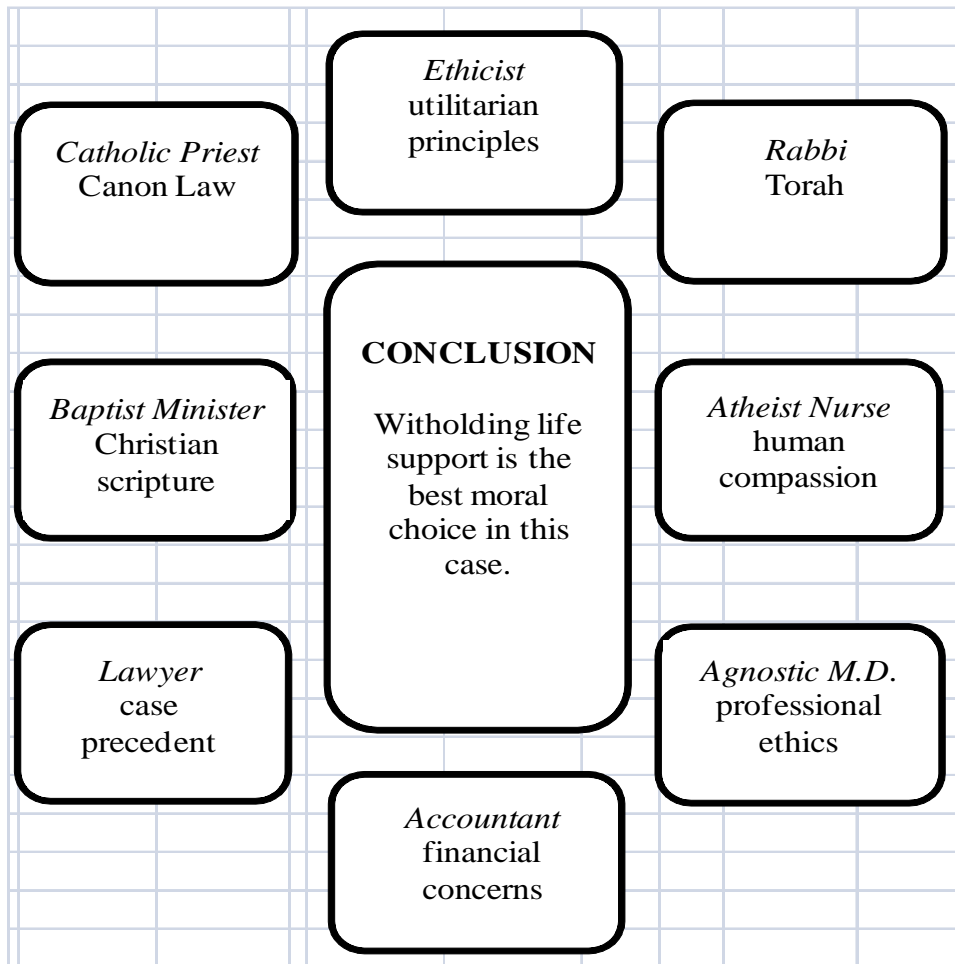
Figure 3 Reasons for Withholding Life Support

Far from agreeing on the reasons given in support of the conclusion, committee members

might very well disagree strongly with those reasons. Given the communitarian

argument for the influence of tradition on casuistic thinking, we might expect far more

conflicting opinions. Given the example above, however, we can readily see how people

of varied traditions could easily reach the same conclusion. Indeed, in this example,

some participants not only lack similar traditions, they might have little trust in some of

those traditions as sources of legitimate knowledge.   The atheist might place no trust in

Christian scripture, the Catholic Priest might be disturbed by the accountant's focus on

finances, and the agnostic medical doctor might find little reason to turn to the *Torah* for guidance. Clearly, similar conclusions can come from people with widely different moral traditions and assumptions.

So what do these observations about presuppositions or assumptions suggest about how we should view the role of tradition in casuistic thinking? At most, it seems to indicate that a very *thin* tradition might be a necessary prerequisite to good casuistry. On the other extreme, we might even question whether *any* tradition is necessary. Consider the diversity among the participants. Was there any discernable tradition?   If the answer is no, then this leads to a revealing conclusion. Even if we take the idea of a tradition as meaningful—as something that we can identify and talk about as an object of understanding—must a tradition *always* be a prerequisite for casuistry?

In summary of the casuistry/tradition conflict, two points need to be made. The first point is that, if one agrees that the concept of tradition is elusive, then Hauerwas' call for tradition as a necessary prerequisite to casuistry dissolves. The second point addresses those critics who may accept the idea of tradition as intelligible. Even given this perspective, it is most accurate to suggest that casuistic thinking *may* involve, at best, a *range of traditions*. "Thick" traditions might involve groups or organizations that have a long history of sharing similar perspectives on fundamental issues. On the other end of the continuum, "thin" traditions might involve a diverse group of people who share the most basic commitments, many of which are unproblematic. For example, on the heavy or "thick" end of the spectrum might be a centuries-old religious tradition such as Judaism, with a set of revered texts and practices that inform a specific community. On the light or "thin" side might be a group of people (like the participants in the

Jonsen/Toulmin commission) whose common commitments might include some of the

most basic, unproblematic moral understandings we could imagine: do good and avoid

evil, do no harm, make the best one can out of even a bad situation. We need not even

look at this "thin" tradition as a reductive account that views our commonalities as some

sort of essentialist "common human empathy." Our "thin" tradition might simply be an

expression of our most basic habits of the heart and mind. The following figure attempts

to demonstrate what the range of "thick" and "thin" traditions might look like.

"do good and avoid
evil"

Western Medical Science   "just be nice"
Catholicism   "treat others the
Marxism   way you wish to
Apple Corporation Executives   be treated"
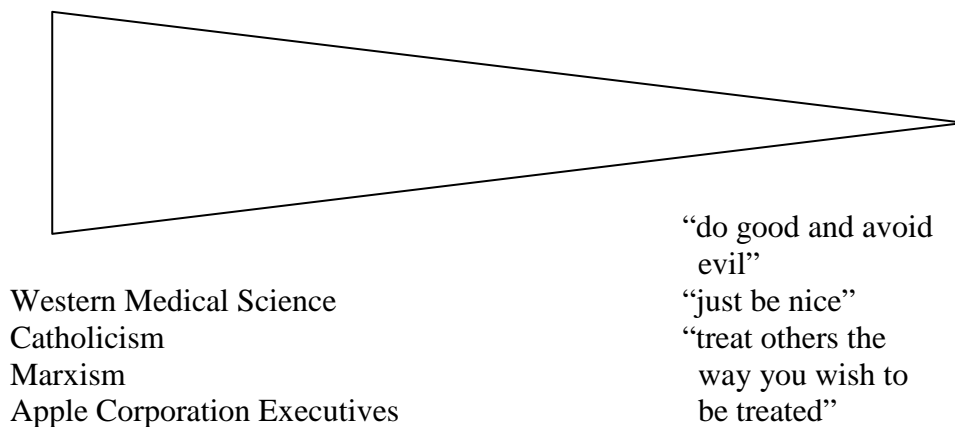
Figure 4 "Thick" and "Thin" Traditions

I would argue that this epistemically "thin" view of the good is all that is (minimally)

necessary for casuistry to work. Note that this does not preclude a "thick" tradition from

informing casuistry (again, assuming that one takes the term *tradition* as intelligible in

the first place). Certainly, it could be argued that this happens all the time, for example,

when Catholics get together to resolve moral problems or when atheists discuss moral

issues. Interestingly, some of the most cantankerous moral debates occur between

participants within a specific "thick" tradition. Consider the debate within Catholicism

over abortion or the controversies among Orthodox and Reformed members of Judaism

or the debate among U.S. medical doctors about health care policy. In conclusion, the

responses to Hauerwas's criticism can be simply stated: (1) the term tradition is fraught

with ambiguity, and (2) even if we grant that tradition is necessary for casuistry, certainly

not *much* tradition is required.

Knowledge of Paradigm Cases

What exactly are paradigm cases? How do we come to know paradigm cases?

How exactly do these cases function in casuistic reasoning? The answers to these three

questions shed light on one of the starting points in casuistic reasoning. The casuist

begins with a "paradigm case": a clear-cut, unproblematic example. For example,

consider the case of an innocent person who is killed. This case would be understood,

ceteris paribus, as an obvious, unproblematic illustration of an act that is morally wrong.

All other things being equal, killing an innocent person is simply wrong. This is one

example of a paradigm case. Thus, the case of a "clearly innocent person being killed"

may be used as a starting point, after which discussion would turn toward cases that move

away from the paradigm case. What about a case of a clearly innocent person who was

killed by *accident*? What if the clearly innocent person was seen as a *necessary sacrifice*

to save the life of one hundred other clearly innocent people? Notice that although these

types of cases identify controversies, paradigm cases are controversy-free; everyone

agrees on the moral conclusion about paradigm cases given that they are "clear-cut"

examples of right and wrong. The paradigm case serves as a spring-board for the morally problematic cases.

But paradigm cases are not limited to morally praiseworthy acts. Model cases can involve illustrations of unquestionably poor moral actions. Jonsen and Toulmin explain how a casuist might set forth a paradigm case for "killing" in a Judeao-Christian context.

> The cases are arranged so that the most obvious deviation opens
> the series. Under the Fifth Commandment, against killing, this
> might be a direct unprovoked attack resulting in the death of
> another; under the Eighth commandment, against false witness, a
> deliberate deception intended to harm another. (252)

Again, like their counterparts (examples of paradigmatic moral conduct), the moral evaluation of extreme cases of poor moral conduct yields no controversies; it is obvious to everyone that the case described is morally deplorable. From the paradigm case, other cases could now be considered that are far more problematic.

> Under the Fifth Commandment, it might be asked whether a judge
> was morally permitted to impose the death penalty; whether
> subjects may kill a tyrant; or whether self-defense extends to
> killing in defense of one's family, one's property, or one's
> honor…This gradual movement from clear and simple cases to the
> more complex and obscure ones was standard procedure for the
> casuist; indeed, it might be said to be the essence of the casuistic
> mode of thinking. (Jonsen and Toulmin 252)

Knowing what counts as a paradigmatic case of *poor* moral behavior, like the counterparts of *good* moral models, allows for clear understanding of right and wrong.

Unlike the debates that arise over problematic cases, agreement has already been reached in paradigmatic cases. We agree on the moral judgment we make of specific paradigm cases. Problems tend to arise only when we try to extract *principles* from these paradigm cases. For example, a Catholic physician and an agnostic might agree that life support should not be withheld in a specific case, but their principles or reasons supporting their conclusions might differ significantly. Again, to revisit a point made earlier, if principles are held up as the primary focus—the "real knowledge" needed for ethical deliberation—than the focus moves away from the particular and toward the universal, thus placing ethics in the category of a theoretical, rather than a practical science.

Furthermore, the more we move away from the particular, the greater the chance that interminable debates dealing with ultimate principles will forestall resolutions to practical moral problems. When clashing principles dominate discussions, practical moral problems remain unresolved. On the other hand, a pragmatic consensus is often reached about paradigm cases; more often people will agree on the paradigm cases than will agree on principles. The difference is also seen in the *type* of debate that stems from these two different approaches. Debates on principles often focus on abstract universal concepts (sanctity of life, for example). Debates over paradigms tend to focus on arguing about specific details surrounding the paradigm case.

Although it is not the goal of the casuist to derive principles from paradigm cases, the casuist does use paradigm cases to identify *maxims* that might function to guide moral

deliberation. Unlike a principle, which is typically invoked as inviolable and often

applied in a rigid manner to moral problems, a maxim functions more like a flexible rule

of thumb. Maxims are neither derived from law nor are they the same kind of knowledge

that principles or laws claim to be. Jonsen and Toulmin observe that maxims heavily

influenced moral instruction in the Middle Ages and Renaissance and "they were counted

as important argumentative devices in all traditional rhetoric" (253). These maxims are

used as one part of the moral reasoning process, unlike principles that serve as premises

in moral arguments. For example, the maxim "treat *equals* equally and *unequals*

unequally" might be applied to the example of killing a clearly innocent person. In the

case of euthanasia the casuist might prescribe guidelines for which groups of people

(those of sound health and mind) might justify an exception to the rule against killing.

Those who fall into the category of being of "sound health and mind" might be treated

differently than those people who are not of "sound health and mind." For example, an

argument could be made that only those people who fall into the category of being of

"sound mind" should be allowed to choose to die. Thus, the appeal to maxims allows for

a philosophical shorthand to replace the exclusive reliance on abstract principles.

Knowledge of Differences Between Cases

Along with paradigms, analogies play a pivotal role in the casuistic reasoning

process. Interestingly, analogies have piqued the interest of thinkers in a number of

fields: logic, legal theory, artificial intelligence (CBR—case-based reasoning), to name a

few. One interesting perspective that appears to have direct application to casuistry and

philosophical ethics comes from psychology. From a psychological view, analogies may

be seen as ways of organizing our world into familiar categories. Consider the following description from two psychologists who define the term *analogy*:

> But how do categories first get formed? One basic mechanism is *analogy*—the process of understanding a novel situation in terms of one that is already familiar. The familiar situation—often termed the *base* or *source* analog—provides a kind of model for making inferences about the unfamiliar situation—the *target* analog. In the course of reasoning by analogy, the novel target comes to be seen as another example of 'the same kind of thing' as the familiar analog. And the analogy between two specific situations may provide 'the seed' for learning a more general category or schema that encompasses both. (Genter and Holyoak 32)

They also point to an important question for casuistic reasoning in ethics: analogic reasoning may lead to insights that could be applied to future cases. In this sense, analogies become *methods of reasoning* that build upon past knowledge. Analogies become particularly useful when we encounter problematic cases. Unlike clear-cut cases, most problematic cases fit the source analog cases in a highly qualified manner.

Consider the case of confronting the "novel situation" of a student stealing a computer file copy of a final exam from an instructor. Before the advent of wide-spread computer use, this type of "theft of a computer file" case did not even exist. The source analog for this target analog case (theft of computer file) might involve the student breaking and entering a physical office space to steal a paper copy of an exam. However, the target analog offers a number of important differences. For example, in the target analog, there is no *physical* breaking and entering involved, because the "item" being

stolen is non-tangible (computer file). The traditional understanding of what counts as

"breaking and entering" does not seem to fit the target analog case. In addition, questions

might be raised regarding whether the content of the file was actually accessed. In the

source analog case, it is assumed that, once the paper exam is in the possession of the

student, the contents of the document are known to him. But in the target analog case,

suppose the question arises as to whether the file acquired by the student had ever

actually been opened? Did the student steal the test, or just a file with the test on it?

Were the contents of the stolen file inaccessible because of a password protection or

encryption? The end result of reasoning from analogy, in this situation, might be "a more

general category or schema that encompasses both" cases, as Genter and Holyoak suggest

above. Another possibility might involve a more specific rule or judgment that might

need to be created to focus on the specifics of this new case itself. In part, the field of

computer law has developed due to the limitations of reasoning from "source analog"

cases; new legal and ethical challenges yield new categories of understanding. Casuistry

is set up to deal with change; principle-based approaches are often caught off guard by

change. The challenges of reasoning by analogy increase as the similarities between the

source analogs and the target analogs decrease.

It is important to note that analogic reasoning is not only stretched to its limits by

cases like those involving new technologies. Any case that moves away from the source

analog in a significant manner can pose a difficulty. Returning to the example of

avoiding killing an innocent person, the target case of an "innocent person with a

painfully terminal disease" creates a different problem from the source analog. Is it

wrong to kill such a person? What if the person is "clearly innocent" but obviously in

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severe pain? Could we question whether "pulling the plug" on life support actually

constitutes "killing" or is this a different category, perhaps "letting die"? As we move

further away from the paradigm case, the casuist begins to make revealing discoveries.

The principles governing that ideal case apply less successfully to other cases. As Jonsen

and Toulmin recognize, "This gradual movement from clear and simple cases to the more

complex and obscure ones was standard procedure for the casuist; indeed it might be said

to be the essence of the casuistic mode of thinking" (252). Note that in moving away

from the paradigm case, the casuist does *not* advocate a total rejection of all principles

but questions the wisdom of using principles governing a paradigm *in the same manner*

when judging cases that are removed from the model case. In summary, the knowledge

of differences between cases (analogic reasoning) involves an attention to detail and a

recognition of which details are important. Consider Cicero's contention that the

virtuous person has to strive to become "a good calculator of one's duty in the

circumstances, so that by adding and subtracting considerations, we may see where our

duty lies" (*On Duties*, I, 59). Knowledge of "adding and subtracting considerations" is at

the heart of analogic reasoning.

Interestingly, our developed sense of *moral taxonomy* might be a more accurate

description of our orientation to the world than the virtue ethicist's argument that

tradition orients us to our world. The moral taxonomy that we develop from life

experience forms a set of precedents upon which further moral reflection may refer. This

taxonomythe process of classifying moral responses - is an activity that takes place in our

everyday experience of the world. Even if this taxonomy is influenced by tradition, it

does not necessarily become a slave to these commitments. It is precisely this taxonomy

that might bridge the gap between principle-focused communitarians and principle-modest casuists.

Consider the following explanation of how a moral taxonomy might work. Kuczewski concludes that what both communitarians and casuists must do is to work together in developing a faculty of judgment that, despite its limitations

> is able to identify the relevant circumstances, determine when to go
> thematic, and weave these factors into a solution that is stable and will
> reinforce what is best in the lives of the individuals and institutions
> involved" (113).

Certainly both the taxonomy and our reflections are informed by our social and historical constraints. But this criticism can be launched against nearly all approaches to moral reasoning. Even extreme interpretations of Kantian-inspired notions of moral reasoning that purport to be bias-free, show their true colors when this criticism is applied to them. For example, the American liberalism of the 1960s informs much of John Rawls's theory. It is highly unlikely that *The Theory of Justice* could have been written in the 1920s, or even in the 1980s. However, the observation that history and context *limit* our perspectives and our understanding of moral taxonomy does not necessarily mean that casuistry is forever trapped in a world of moral subjectivity.

One way to overcome the criticism that a moral taxonomy, like the view of the "good," might be disastrously plagued by subjectivity is to describe casuistry as suffering from *general* rather than *specific* bias. The less troubling form of bias—*general bias*—may be defined as those relatively uncontroversial presuppositions upon which nearly all members of a group agree. For example, in Western medicine, a general bias might

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include understandings derived from our moral taxonomy, ideas such as "do no harm," "drugs are acceptable forms of treatment," or "people with the flu typically have the following three symptoms." Rather than involving themselves in *specific* bias (making medical judgments on personal whims), medical doctors seem to be guilty of a *general* "Western medicine" bias. In many cases, this general bias is less insidious than its counterpart, given that clinical judgments are "always presumptive and revisable in the light of further experience" (Jonsen and Toulmin 44). Yes, *some* type of bias exists; this point must be conceded in any system of moral deliberation or even in human discourse. However, a *general bias* might be so uncontroversial as to escape the criticisms that are often launched against *specific* biases.

Another counterargument, or clarification, challenges the idea that casuistry's moral taxonomy is fraught with *specific bias*. Consider the case of a medical doctor who arrives at a prognosis. In such cases, is the doctor biased in the pejorative sense of the term? Is not the doctor's bias shown in what she chooses to perceive regarding the patient's symptoms and past history and the moral taxonomy that she employs? In a proper prognosis, it is probably more accurate to describe the doctor's alleged bias as "pattern recognition" (Jonsen and Toulmin 40). This is similar to the knowledge needed for the proper use of a moral taxonomy; our moral taxonomies help us to recognize patterns of past precedents that lead to our judgments about new cases. In this sense, it is inaccurate to refer to the doctor's reasoning process as exhibiting only general "bias."

Consider Kuczewski's response to the accusation that casuistry falls prey to a relativistic conventionalism. Kuczewski concedes that, because of their culturally-bound characteristics, values tend to support the *status quo*. What is needed is a way for

casuistry to self-consciously critique its own sympathies within the *status quo*. To this

end, casuistry's use of *degrees of probability* functions to qualify the claims that a casuist

might make. Even the level of agreement on what constitutes a paradigm case might

vary, even though all of those levels must certainly be high in order for a case even to be

considered an "intermediate" paradigm. As Kuczewski realizes, the "good casuist must

be able to distinguish the genuine from the intermediate paradigms" (109). The good

casuist employs practical wisdom in order to discern when new values or laws do not fit

the context surrounding particular cases. The good casuist must also recognize the

similarities that are properly considered significant. Rather than knowledge of the

"good" this is closer to practical (*phronetic*) knowledge. Simply put, casuistry is *not* an

exact science. Unlike a strict deductive, principle-based approach, casuistry employs

something akin to Aristotelian *phronesis* in sizing up a situation and making a prudent

response. Although Aristotle cannot be properly considered a casuist, many of his ideas

in the *Rhetoric* and *Nichomachean Ethics* lay the groundwork for contemporary casuistry.

Among the most useful contributions in this regard comes from Aristotle's insight that

the prerequisite for proper moral deliberation ought to be a *phronetic* understanding of

cases. Furthermore, the criticism that casuists are naive conventionalists is a reminder of

a question that can be posed to anyone who attempts to make moral judgments. Can

anyone ever step outside all of one's historical circumstances or biases in order to reach

an ahistorical, objective vantage point? Given that this concern plagues nearly all

conceptions of moral reasoning, it would be inaccurate to charge casuistry with this

inescapable flaw. Indeed, most of casuistry's critics adopt systems that involve appeals

to general understandings.

On the surface, some types of moral discourse seem to be intrinsically casuistic. Consider two ethical approaches: proportionalism and rule utilitarianism. In both cases, the morality of principles is tempered by a concern for how much good or evil an alternative would yield. In many cases, particularly those fraught with moral ambiguity, advocating the "lesser evil" is offered as the best moral advice. For example, Miller ("Transplanting") combines "the paradigm of just-war reasoning with canons governing the use of cadaverous tissue" (617) in order to avoid associating the transplanting of human fetal tissue with the ethical problems of abortion. This is similar to a situation in which you might have two close analogues (cases) that conflict. The casuistic choice is preceded by a reasoning process that attempts to determine which analogy is closer to the current case at hand. Miller distinguishes between intending and foreseeing a moral misdeed. If sufficient reasons exist, even those opposed to abortion may condone the procurement of human fetal tissue because researchers would not be intending (only foreseeing) the death of the fetus. However, and this is an important clarification, *proportionalism and rule utilitarianism are best viewed as principle-focused examples of casuistry*. True, in these ethical practices the principles tend to imply paradigm cases. However, in many of these cases, the principle applies in a non-problematic way, thus avoiding the problem of having to do much (or any) moral deliberation. In any case, the starting points for both of these approaches are principles, not cases. But what do you do when principles clash? Where do you find answers in situations where principles apply awkwardly or not at all to the current case?

The function of paradigm cases and maxims in analogic thinking illustrates the give and take between theory and practice that is essential to casuistry. In connecting a

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maxim to a specific case, a bridge is created between fact (the case) and theory (the maxim). Importantly, the bridge allows for traffic to flow in both directions. As Jonsen observes, "reflection oscillates between fact and theory. It refuses to allow itself to be trapped in the attractive but rigid confines of a theory…,At each oscillation between fact and theory, fact is seen in a different light and theory is challenged" (Keenan xiii). Although casuistry cannot make any clear declarations of how far the "oscillations" swing, Jonsen explains that casuistry "searches through all contexts…for partial illuminations that, in the end, make up a probable interpretation" (Keenan xii). In a similar manner, this "give and take" is present in another kind of knowledge necessary for casuistry: determining which paradigm best matches the current case under consideration.

Knowledge of Paradigm Case/ Current Case Similarities

It is important to emphasize that the way a principle-modest casuist arrives at the final resolution to a case does not involve applying rules to cases. Rather, it is the result of reasoning by analogy, using a taxonomy"a detailed and methodical map of morally significant likenesses and differences" (Jonsen and Toulmin 14). The vital differences are based less on traditional biases and more on the process of analogic reasoning. In this sense, reasoning through taxonomies results in a different *kind* of knowledge from knowledge of "the good" or merely having knowledge of paradigm cases. Taxonomies require a systematic effort. The categories found in taxonomies are most properly understood as generic, rather than specific. A category identifies a set of general characteristics that are common to one group. For example, in assessing the moral

culpability of political figures, one category might include politicians who have admitted to personal transgressions but have not violated any laws. This category would encompass a number of examples where general characteristics could easily be identified. Unlike the biological notion of *sui generis*—where a *genus* identifies the only known species in existence—categories employed in casuistic taxonomies are rarely (if ever) this specific. The kind of knowledge that taxonomies give us involve the ability to understand how cases make the difference in moral reasoning. Taxonomies work by structuring case-based knowledge in a way that is useful for moral deliberation. The process of taxonomic reasoning differs in important ways from the traditional approach of applied ethics where principles are applied to new cases. Principle-modest casuists reject the assumption that rules and principles reign supreme and that applications are merely instantiations of rules and principles.

One major difference is in how casuists view rules and their applications. Traditional approaches often draw a sharp distinction between rules and their applications. However, for principle-modest casuists, the process of *understanding* rules or principles and *applying* these rules or principles is not as distinct as one might think. Consider the possibility that the process of application might actually *contribute* to how we understand rules and principles. As Gadamer comments in *Truth and Method*: "application is neither a subsequent nor merely an occasional part of the phenomenon of understanding, but co-determines it as a whole from the beginning" (Gadamer 324). This view of how the understanding of rules or principles cannot be divorced from the application of these rules or principles is key to understanding how casuists view the use of taxonomies. Consider that the final task of the casuist is to conclude with the

presentation of a final resolution. The casuist begins and ends with the case. In contrast, the primary goal of principle-based moral deliberation is often the response to the following question: "Which side advances and defends the highest value or universal principle?" Because the casuist is engaged in a practical art, something akin to Aristotle's notion of practical reasoning (*phronesis*), it is only natural that a concrete conclusion is required. Browning likens the hermeneutical act with Aristotle's idea of *phronesis*: "The hermeneutical conversation is like Aristotle's practical wisdom because neither applies abstract universals to concrete situations. In both hermeneutical conversation and moral judgment, concern with application is there from the beginning" (39). With a casuistic approach, the desired outcome is the solution of a specific problem: "Who solves the problem in the best manner possible?" The casuist offers practical moral guidance so that one may solve the problem at hand and act in good conscience.   Indeed, it could be said that the experiencing of thinking and acting in practical terms augments one's own storehouse of practical wisdom.

Another way of understanding how taxonomic reasoning differs from traditional principle-based approaches is to look at an example of the knowledge needed to do traditional applied ethics (applying principles) as opposed to the kind of knowledge needed to understand which paradigms best match up with the current case under consideration. A good illustration of this contrast comes from the moral reasoning found in traditional religions discussed in the previous chapter. There is a common thread that finds its way through all of these religious examples. In the final chapter of *Context of Casuistry*, Kopfensteiner concludes that even in neoscholastic manuals of theology, "the casuist's art of applying principles and norms to concrete situation and problems is still a

necessary part of the moral enterprise" (207). Traditional religious moral discourse, structurally, is very similar to much of the activity that we know call "applied ethics." Unlike the neoscholastic tradition just introduced, a *principle-modest* casuistry moves in a different direction. It moves away from viewing ethics as an application of principles.

In this sense, casuistry becomes more focused on *interpretation* and *understanding*. It becomes more of a "hermeneutical art." Kopensteiner argues that moral reasoning should reject an *essentialist* metaphysics and adopt a *personalist* metaphysics. He argues that this non-essentialist metaphysics would better account for moral decision making. In this sense, casuistry becomes more like a "hermeneutic" enterprise, not an exact science as the neoscholastic manuals have traditionally held. Kopfensteiner uses "the recent epistemological developments within the philosophy of science as a heuristic by which to critique the moral casuistry found in the neoscholastic manuals" (217). Kopfensteiner outlines how a constructivist view of science (offered by thinkers like Kuhn, Hanson) challenge the positivist's view that language mirrors reality. With its emphasis on precision, scientific discourse presumes that language pictures reality. However, work on the cognitive effects of metaphor has challenged this notion, arguing that language "changes and grows through a metaphoric process" (Kopfensteiner 210). Kopfensteiner argues that the Cartesian penchant for certainty must be replaced with an understanding of moral casuistry as a "hermeneutical art" that recognizes the constitutive nature of language. It is precisely this "hermeneutical art" that is missing from much of the principle-based casuistry of traditional religious argument.

Interestingly, the knowledge of which paradigm shares the most similarities with the current case at hand is only necessary in a framework that recognizes the importance

of the particulars of a case. This is exactly what is missing from principle-based approaches: the *recognition that the details of specific cases are crucial to moral deliberations*. Consider how both pro-life and pro-choice advocates tend to ignore the details of a case. Abortion is considered either morally right (or wrong), without regard to the specific details of a case. Pro-choice advocates are often disinterested in how the pregnancy was conceived and pro-choice advocates typically pay little attention to the reasons someone might want an abortion. In contrast, for casuists, a complete knowledge of a case is essential to understanding and, thus, properly judging what should be done in that case. In the case of avoiding killing an innocent person, it would be necessary to know who this person is, what evidence there is that this person is clearly innocent, whether the action to be taken is properly called killing, among other details. These details would determine how similar this particular case is to the paradigm case. Interestingly, this is where casuistry and its principle-based critics often clash. Allowing exceptions to a universal principle becomes problematic for adherents of principle-based approaches. A paradigm that allows for no exceptions views casuistry as the enemy.

The casuist contends that one can *both* focus on circumstance while employing principles. The key is that the starting point is not a principle-based approach, but a case-based approach. Casuists recognize the proper role of principle, but they also are quick to identify cases that are "replete with qualifications." The qualifications are prompted by the specific details of the circumstance itself: the who, what, where, when, why and how. For example, the severity of an inflicted injury might be an important qualification to take into consideration in a case where one person has harmed an enemy. Other

qualifications might include the age or mental stability of the person who committed an

act or whether the action was premeditated.

> These were the qualifications that Aristotle, Cicero, and the
>
> classical rhetoricians had taught aspiring orators, if they were to
>
> argue properly and carefully, under the heading of *Topics*. The
>
> casuists incessantly called these circumstances to attention; they
>
> insisted that 'circumstances make the case' and inevitably modified
>
> moral argument about it. (Jonsen and Toulmin 254)

In exercising practical moral reasoning—Aristotelian *phronesis*—the interlocutors in a

debate over a moral issue should have contact with the particulars of the case at hand. To

return to the example of judging a potential murder case, those evaluating the case need

to know the specifics in order to be able to tell whether they are dealing, for example,

with clearly innocent people. Likewise, knowledge of the case specifics would be

necessary to determine whether killing is justified given the particular circumstances of

the case at hand. For example, the principle "don't kill innocent people" would not

necessarily suffice in all cases. Consider whether we typically charge doctors with

murder when no ill intent or negligence is involved. A doctor who did her best to save a

patient may have lost the patient not due to negligence, but as a double effect of a

medical procedure. Innocent people are killed in a number of cases that do not count as

murder, such as in war or in accidental vehicular deaths. To apply one rule universally

would be to ignore an analysis of the circumstances surrounding the case.

Another part of determining which paradigm matches the current case at hand is

the degree of probability that the casuist assigns to the final resolution of a case. By

adding a qualifier to judgments of particular cases, individuals are made aware of the

degree of certainty a moral claim might carry. For example, can we say with a

high/medium/low degree of certainty that, in this case, killing this innocent person is

morally wrong? Although paradigm cases are least likely to necessitate qualification,

moral judgments made on highly problematic cases have varying degrees of probability.

Aristotle recognized that moral reasoning often does not yield precise conclusions. As

Aristotle argues, moral reasoning should not be expected to yield the same type of precise

conclusions as other fields.

> The same exactitude is not to be looked for in all fields of
>
> knowledge, any more than in all kinds of crafts. It is the mark of
>
> an educated man to expect just that exactitude in any subject that
>
> the nature of the matter permits. For it is unreasonable to accept
>
> merely plausible arguments from a mathematician, and to demand
>
> formal demonstration from an orator. (1094b)

In the case of euthanasia, killing innocent people takes on varying degrees of judgment

based on the particular facts surrounding a specific example. We could say, for example,

that in a case that exemplifies all of the qualities of the paradigm case, it is highly

probable that our ethical conclusion is the correct one. On the other hand, we might have

a situation in which the case at hand is riddled with numerous problems, leading us to be

less confident in our judgment. The sensitivity to a particular case is increased by

focusing on the *degrees of probability*. The final moral evaluation of a case is supported

by a series of arguments and references to case precedents that lend support to a

recommendation that might range from weak to strong. The supporting reason behind a

moral opinion accumulated by a casuist, "resembles the rhetorical and commonsense discourse that piles up many kinds of argument in hopes of showing the favored position in a good light" (Jonsen and Toulmin 256). Thus, through the accumulation of good reasons, casuists strengthen their moral judgments. Unlike contemporary moral debates that often see solutions as an either/or clash of values or principles, the invoking of probability helps to temper dogmatism and enhance understanding and dialogue.

Even principle-based approaches seem to, perhaps unwittingly, rely on an understanding of the case-based reasoning that make up taxonomies. Consider Plato's use of counterexamples. Socrates often challenges his interlocutor's contentions by offering counterexamples. For example, consider the discussion in Plato's *Euthyphro*, where Euthyphro defines piety as that which is dear to the gods. Socrates leads Euthyphro to conclude that the gods do quarrel and thus, often differ as to what is dear to them. The counterexample of the quarreling gods is an illustration of how case-based prior knowledge is often a prerequisite for understanding a general concept (in this example, the definition of piety).   One of most common ways that Plato has Socrates engage principles is by subjecting proposed principles to a series of counterexamples. This seems to suggest not only an inescapable need for casuistry, but the need for a focus on particular cases in allegedly strict, principle-based moral deliberations. In many cases, principles rely on the same knowledge on which taxonomies rely: prior knowledge of particular moral cases. Thus, arguments over principles can always be challenged by knowledge of particular cases. Even principle-based approaches do not seem to follow their own guidelines.

Taxonomies differ from principles in a number of ways. Unlike principles, taxonomies are derived from observation and reflection of everyday experience. Taxonomies also can be more easily shared and critiqued than principles. Even people of differing backgrounds can dialogue about the practical differences between cases without becoming excessively focused on theoretical principles. Unlike principles, the epistemic status of taxonomies allows for taxonomies to be more easily revised. Taxonomies do not lay claim to undisputed knowledge; they only seek to capture the best thinking in conventional wisdom on how to organize and distinguish between practical cases. In contrast with principle-based approaches, the ability to make revisions and corrections to a taxonomy lends itself more readily to the task of practical moral problem solving.

Conclusion

Casuistry is a type of knowledge that combines two components: one content-centered, the other skill-oriented. The casuist first becomes acquainted with the specifics of a case and then applies analogical skills to find a case-precedent that closely matches the case at hand. The more specific responses to the question, "What kind of knowledge is casuistry" yield a number of insights into the four types of knowledge needed for casuistic thinking. First, "knowledge of the good" need only be epistemically "thin" in order for casuistry to work. This is an important point often missed by communitarians and virtue ethicists who would argue that casuistry must build upon a tradition. Casuistic knowledge is easily shared among people of diverse ethical backgrounds and political temperaments. Second, paradigm cases function as starting points for moral deliberation. Due to their non-controversial nature, these paradigms allow for common starting points

in moral debate. Third, knowledge of differences between cases allows for a viable way

of encountering novel situations. Unlike principle-based approaches that focus on

abstract principles, casuistry turns the focus of moral deliberation on the vital differences

between the current case and specific case precedents. Finally, having knowledge of

which paradigm shares the most similarities with the current case at hand allows the

casuist to integrate principles and cases in order to allow for qualified conclusions.

Having explored the kind of knowledge that casuistry employs, I am now able to turn to

the final chapter: a discussion of the different kinds of casuistic persistence and why I

refer to casuistry as a "neo-premodernist approach to moral reasoning."

Chapter Four:
Casuistry and Persistence: Neo-premodernist Moral Reasoning

> "He condemned nothing hastily or without
>
> taking account of circumstances…he had none
>
> of the inaccessibility of a rigid moralist."
>
> > Victor Hugo commenting on
> >
> > Bishop Myriel in *Les Miserables* (13)

So far I have argued that casuistry is inevitable for practical problem solving, and I have responded to the major criticisms of casuistry. I have also tried to show how casuistry can offer a successful method of practical reasoning and how casuistry proposes a different approach to moral "knowledge" than other methods, particularly approaches that emphasize principle-based reasoning. It seems appropriate, for this final chapter, to offer a specific example that illustrates casuistry's persistence. Importantly, this persistence does not also imply that casuistry is always successful (in the sense that it always resolves moral problems). As I demonstrate, situations in which casuistry fails to produce agreement also contribute to casuistry's persistence, albeit in a different manner. Finally, I conclude with an examination of how best to categorize casuistry, defending the placement of casuistry as a "neo-premodernist" approach to moral reasoning.

The Case of the Lying Bishop

A pivotal scene from Victor Hugo's *Les Miserable*—in which a bishop lies to
authorities in order to give the protagonist an opportunity to improve upon his sorry
life—offers a rich example of casuistry's persistence. Some justification for this choice
is in order. First, Hugo takes great effort in detailing the backgrounds of the main
characters involved in this scene, thus giving the casuist easy access to personal past
histories and motivations. The life and temperament of Bishop Myriel occupies nearly all
of the first fifty-eight pages of the novel; the main character, Jean Valjean, plays a central
role throughout the entire novel. Second, the practical moral problem in question focuses
on one of the most basic of all moral categories: promise-keeping. Third, this scene
offers a number of qualities common to nearly all moral debates. The situation described
lends itself readily to simple deontological and utilitarian conclusions. The scene
prompts moral questions about intentions, outcomes, circumstances, authority,
responsibility, and promise-keeping. The example also points to how casuistry might
respond to the tensions between charity and justice. Finally, a variety of
reasons/traditions/principles may be invoked for the same conclusion that Hugo wishes
the reader to draw: the bishop's lie is a morally defensible one.

Hugo begins his novel, set in early nineteenth-century France, with a long and
detailed description of Charles-Francois-Beinvenu Myriel (Bishop Myriel), a man of
about seventy-five years old who was made a bishop following a chance encounter with
Napoleon. A number of examples serve to identify the bishop as an "upright man." He
willingly takes on tasks that other clergy refuse: he accompanies a condemned man to his
execution and he travels dangerous roads to minister to the poor, despite the danger of

bandits. He is clearly a bishop of all his people. Myriel understands the importance of rhetorical adaptation, becoming familiar with "…all of the dialects of the South" (13) so that he may serve all of the people under his care. Myriel insists on exchanging the enormous palace that he was given when he became bishop for a small building serving as an overcrowded hospital. Hugo describes the bishop's budget in exhaustive detail. Myriel keeps less than ten percent of his salary for himself, giving away most of his money; he is a man who consistently shows a preferential option for the poor. He leads a simple life with his sister and a maid, who both revere him. We are told that the only luxuries he retains are some silver plates and cutlery, along with "two massive silver candlesticks inherited from a great aunt" (23). His home welcomes all; he insists on having no locks on any of the doors.

One night in October, 1815, the bishop responds to a knock on the door in his customary manner: "Come in." Unbeknownst to the bishop, the man who enters is Jean Valjean, an ex-convict who has been turned away from several locations in town, despite offering to pay for dinner and a room for the night. Valjean, now in his mid-forties, has been in jail since he was twenty-six. He stole a single loaf of bread to help his sister and her starving children, then earned additional sentencing for trying to escape from prison on several occasions. He is embittered by his incarceration and is viewed by nearly everyone he encounters as an unkempt, intimidating vagrant—a threat to society. The Bishop welcomes Valjean warmly. He provides him with food and a bed for the night, even using his silver plates to honor the house guest. Despite being outwardly thankful for the kind reception, Valjean considers murdering the Bishop in the night. Instead, he decides to steal the silver plates that he enviously eyed over dinner.

Upon waking the next morning, the Bishop's maid becomes hysterical when she

discovers that the silver plates have been stolen by Valjean. Myriel's response is

decidedly more stoic: "Madame Magloire, for a long time I have been wrongfully holding

this silver. It belonged to the poor. Who was this man? A poor man, quite clearly"

(104). With another knock on the door (and another welcome), the police arrive with

Valjean. The bishop approaches the brigadier and Valjean.

> "Ah, there you are!" he said, looking at Jean Valjean. "I'm glad to
>
> see you. But I gave you the candlesticks, too, which are silver like the rest
>
> and would bring two hundred francs. Why didn't you take them along
>
> with your cutlery?"
>
> Jean Valjean opened his eyes and looked at the bishop with an
>
> expression no human tongue could describe.
>
> "Monseigneur," said the brigadier, "then what this man said was
>
> true? We met him. He was acting like a fugitive, and we arrested him in
>
> order to find out. He had this silver."
>
> "And he told you," interrupted the bishop, with a smile, "that it had
>
> been given to him by a good old priest at whose house he had slept. I see
>
> it all. And you brought him back here? It's all a mistake."
>
> "If that's so," said the brigadier, "we can let him go."
>
> "Please do," replied the bishop. (105)

When the authorities have left, the bishop spends a brief time alone with Valjean. The

bishop tells Valjean, "Do not forget, ever, that you have promised me to use this silver to

become an honest man" (106). Dumfounded, Valjean listens to the bishop's final words

to him: "Jean Valjean, my brother, you no longer belong to evil, but to good. It is your soul I am buying for you. I withdraw it from dark thoughts and from the spirit of perdition, and I give it to God!" (106) Valjean quickly leaves the city to pursue a new course in life.

Before I approach this case from a casuistic perspective, perhaps it is instructive to analyze this case from the view of casuistry's counterparts: principle-based approaches. Consider two of the most common of these approaches: deontology and utilitarianism. Deontologically, this case might be reduced to a simple issue of truth telling. One could argue that truth-telling ought to be a high value in any culture and that the bishop's lie seems to offend the seemingly universal commandment, "thou shalt not lie." Furthermore, it might be argued that this lie is particularly troubling for two reasons. First, the bishop, as a recognized moral leader, knows full well that lying is morally wrong. He cannot claim ethical ignorance. Certainly if anyone is *expected* to tell the truth, it should be those who are looked up to as the moral leaders of society. Second, the bishop's lie appears to be a violation of two realms: ethical and legal. From an ethical perspective, the bishop's lie goes against the good conduct expected of any honest person. Good people avoid lying. From a legal perspective, the bishop's lie might even be considered a crime. The bishop clearly appears to be giving false information to authorities or, at the very least, deliberately misleading the police to believe that "It's all a mistake." But what about the bishop's peculiar reasoning: that the silver actually "belonged" to the poor? This rather odd perspective calls up questions, at the very least, of whether what the bishop told authorities was the "whole truth and nothing but the truth." The bishop, clearly, has chosen to mislead the police into believing that Jean

Valjean was "given" the silver, when the details of the story clearly indicate otherwise. More accurately, can we accuse the bishop of aiding and abetting a known criminal? No matter how much sympathy Hugo's writing evokes for Valjean, the deontologist would be remiss if she did not uphold the duty to tell the truth.

This deontological interpretation of the case might be looked upon as another example of viewing ethics more like geometry and less like rhetoric. For example, the reasoning described above can be expressed syllogistically:

Lying is morally wrong.

The bishop lied to the police.

Therefore, the bishop's lie to the police was morally wrong.

As noted before, by their very nature, the principle-based approaches *decontextualize* cases. Notice what is absent from this form of reasoning. We are not asked to take into consideration the bishop's long-standing penchant for helping the poor and redeeming souls. We are deliberately steered away from any discussion of how, in some cases, lying to authorities might be the better moral choice. The context of the injustices of the penal system—a primary theme in Hugo's novel—are ignored. Quite simply, the details of the case are dismissed before being discussed; they remain hidden from serious moral consideration.

Similarly, from a utilitarian perspective, a singular focus emerges. When we attend to the consequences or the outcomes, the evaluation is no longer based on the duty to tell the truth, but on our best understanding of what Valjean might do following the bishop's lie; the *consequences* become the key moral concern. Based on Valjean's life, consider what would be most reasonable to expect of Valjean. Valjean gets sentenced for

five years in horrid conditions for what would be considered today a misdemeanor: stealing one loaf of bread. Hugo paints a bleak (if accurate) picture of the penal system in early nineteenth-century France. His extended sentence, caused by his repeated attempts to escape from prison, has resulted in Valjean spending most of his adult life in prison. Clearly, he is justifiably disgruntled, and the mistreatment he receives following his release from prison strengthens his disdain for society. Given that rehabilitation was non-existent, there is little doubt that Valjean is destined for a continued life of crime. So, from all that we know, there appears to be only one reasonable prediction regarding what will happen if Valjean is left to his own devices after the incident with the bishop: Valjean will pursue a life of crime. But what of the bishop's view? Far from reaching the conclusion just noted, the bishop tells Valjean that "you have promised me to use this silver to become an honest man," even though Valjean has made no such promise. Should we consider this another lie from the bishop? Should we expect that the bishop's utilitarian calculation is more accurate than that of our own?

Although drawing a more qualified conclusion than that of the deontological syllogism, the reasoning employed in the utilitarian analysis still ignores nuances of the case, despite having engaged some of the particulars of Valjean's past. The most important insight lost is that the minority opinion (that of the bishop) might be a more accurate predictor of future events. Just as we did with the deontological argument, we can lay out the utilitarian reasoning syllogistically.

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Nearly all of the evidence suggests that Valjean is a bitter ex-

convict who will continue a life a crime if he is let free.

The bishop has decided to let Valjean go free.

Therefore, the bishop's action will, most likely, result in Valjean

pursuing a life of crime.

(and thus, the bishop's lie is morally wrong).

Once again, ignoring parts of the context allows for a principle-based approach to make a

reasonable, yet less than ideal, moral judgment. True, the utilitarian has a substantial

amount of evidence to support the view that Valjean will probably lead a life of crime.

At the same time, the special circumstances of this particular case —the ability of the

bishop to trigger a transformation in Valjean—becomes a crucial piece of *qualitative*

evidence that cannot be assessed *quantitatively*. Furthermore, we can ask whether

consequences ought to be the primary focus of moral evaluation. Both the deontological

and utilitarian perspectives described above miss Hugo's rather obvious message about

the bishop's lie. We can move toward a casuistic conclusion to this case by speaking in

Aristotelian terms: the lying bishop made the correct moral choice for the *right person, to*

the right extent, at the right time, and did so with the right motive.

It would not be accurate to suggest that, simply because Hugo wants the reader to

approve of the bishop's lie, we can then conclude that this is the best (or even a

defensible) moral evaluation of the bishop's action. What Hugo does appear to offer,

especially to principle-based adherents, is a series of implied challenges. Are the

deontologists content to allow the bishop to "tell the whole truth" even if this would

result in Valjean being sentenced for life? Are they so confident that truth-telling should

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be upheld in all situations? Can they ignore numerous details, regardless of how the specifics call out for prudent consideration? Are the utilitarians willing to deny the successes of reformed sinners? Are they confident that a consequentialist orientation can be adequately free from misjudgment about future events? These questions—and many more like them—point to an inevitable quality about particular moral cases: the persistence of casuistry.

Two different kinds of persistence are easy to identify. The first kind can be termed c*ritical persistence*, given that its major focus is to provoke new insight into a moral problem, without (necessarily) offering a constructive solution. The second kind of persistence, *constructive persistence*, is the result of entering into a casuistic analysis and offering an actual resolution to a problem. We can liken *critical persistence* to a Socratic gadfly who causes just enough irritation to elicit some sort of response. For example, given Hugo's emphasis on the specifics of the case, even the devout deontologist would find it difficult to ignore the possibility that the bishop's lie is the best moral option. Indeed, on nearly every page, Hugo crafts the tale of the bishop's lie in such a way that the reader must confront a somewhat troubling conclusion: that lying is the *best* option *in this case*. Certainly, the bishop has other options. Indeed, his lie might be viewed as a *supererogatory* act; this would be in keeping with Hugo's depiction of Bishop Myriel as consistently going above the call of duty. Even so, in making the highest moral choice, the bishop is depicted as making the *best* moral decision.

Consider what might happen if we try to "explain away" the challenge that lying might be the preferred moral option. It seems that this would cause the challenger to meet the casuist on his own turf. But suppose the deontologist were to challenge this

statement: "Why do I need to engage the particulars of the case? Lying is wrong regardless of the case." The key issue here is that it is reasonable to expect the deontologist to explain why, in this case, his principle-based position is superior to the common sense of just about anyone who reads this story. Addressing counterexamples as challenges is a reasonable expectation of any fair debate. To condemn the bishop's lie is, in a sense, to reject the magnanimity of the bishop and, in turn to ignore what many see to be the obvious: the bishop took the correct moral action. In any case, any sort of discussion on this particular topic would have to involve an engagement with the details of the case. Although the deontologist might not wish to entertain a discussion of the specifics of the case—given that the details are considered irrelevant in a deontological analysis—she still must respond to reasonable casuistic challenges. Why should we ignore the details? Certainly, the deontologist has responses to questions like these. However, in responding, the deontologist is demonstrating the inability to ignore casuistry. In short, the deontologist is illustrating casuistry's persistence.

Also, consider that one's *commitment* to ignore the details of cases does not necessarily imply that ignoring details is even *possible*. This is as true for the deontologist as it is for utilitarians. One may question whether it is even possible, as an act of human reasoning, to "bracket out" the details in a case presented to you. Is a casuistry-free, principle-based approach even in the realm of human achievement? Can we ever completely escape contextual considerations? In either case, casuistry's persistence is assured. It might be said that the inability to escape from case-based reasoning is the "cunning of casuistry." Try as one may, the nature of practical moral problems continually cries out for a focus on specific objections and clarifications.

The second type of persistence , *constructive persistence*, builds on the first type, *critical persistence*, and moves beyond it to attempt an actual resolution. Consider what happens when we begin to *recontextualize* a specific moral problem. Is it even possible to address the specifics of a controversy without engaging in casuistry at some level? Take a look at how a casuist might address the case of the lying bishop. For this purpose, it might be useful to employ steps that Jonsen and Toulmin identify as typical of casuistic thinking. Although Jonsen and Toulmin are careful to note that casuists typically do not offer an explicit methodology, a procedure can be inferred from casuistic practice. We can explore the bishop's lie using the six steps identified by Jonsen and Toulmin: *the reliance on paradigms and analogies, the appeal to maxims, the analysis of circumstances, degrees of probability, the use of cumulative arguments, and the presentation of a final resolution.*

The *reliance on paradigms and analogies*, the first characteristic of casuistry, often demonstrates the connection between a specific case and a corresponding principle. The starting point is the case that might be considered the "most obvious deviation." As Jonsen and Toulmin note, "These extreme examples served as 'paradigm cases' illustrating the most manifest breaches of the general principle, taken in its most obvious meaning" (252). These outlier cases are so clear-cut as to avoid any ambiguity; everyone "would concur that there is no reason *not* to consider the act an offense" (252). In such non-problematic cases, the vast majority of people, regardless of upbringing, religion, or other societal factors, would agree that lying (for example), in this particular case, is morally wrong. Although their justifications may differ for why lying (in this particular case) is wrong, the final moral evaluation of the action would be the same. Indeed the

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individual justifications may seem rather peculiar to the majority of people. Consider

that the bishop justifies his own lie, in part, by reasoning that the silver actually belonged

to the poor, thus, because Valjean is poor, the silver is really his.

The basic principle at work in the case of the lying bishop might be expressed as

"telling the truth is a moral expectation". The eighth commandment comes closest to the

case of the lying bishop: "Thou shalt not bear false witness against thy neighbor"

(Exodus 20:16). Jonsen and Toulmin offer some interesting observations about how a

casuist might approach this commandment.

> Under the Eighth Commandment, it might be asked whether
>
> deception is justified by great benefit to the deceiver, or if it
>
> can prevent a great harm, whether harmless deception is
>
> permissible, whether mere concealment by itself constitutes deception.
>
> (252)

From the starting point of the eighth commandment, we can begin by identifying outlying

cases where lying is clearly wrong. When would it be clearly permissible to *not* tell the

truth? In response to this question, we might identify cases where truth telling would,

unquestionably, lead to the death of an innocent person. From there, we could move to a

less certain case, perhaps where truth telling might have a high probability of leading to

the death of an innocent person. We would engage in a "gradual movement from clear

and simple cases to the more complex and obscure ones" (Jonsen and Toulmin 252) in an

attempt to construct a rank order of cases. Jonsen and Toulmin refer to this movement as

the "essence of casuistic thinking" (252). We might represent this visually on a

continuum, ranging from cases where it is unquestionably wrong to lie to cases where lying might be the best moral choice.

lying is morally wrong	lying is best moral choice

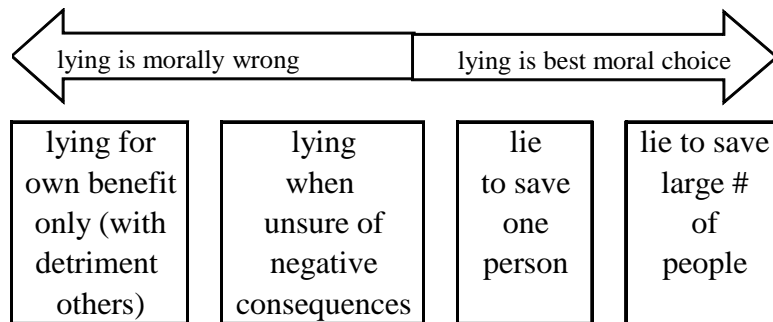| lying for own benefit only (with detriment others)	lying when unsure of negative consequences	lie to save one person	lie to save large # of people

Figure 5 Lying: A Continuum

What the casuist begins to recognize is that as we move further away from the paradigm case, the principles governing that ideal case apply less successfully to other cases that, while holding some similarities, offer increasingly specific distinctions. Note that in moving away from the paradigm case, the casuist does *not* advocate a total rejection of the basic principle that "telling the truth is a moral expectation." What the casuist *does* reject is the practice of using principles governing a paradigm in the same manner when judging cases that are removed from the model case. This focus on paradigms and analogies assists the casuist in sorting out ethical problems, for example, that point to tensions between charity and justice. The casuist does not fall into the principle-based trap of seeing these two worthy values as polar opposites. Rather, the particular case under consideration is placed on a continuum that compares the details of the present case with other cases on the extreme ends. When we give up our prejudice that ethics is about debating ultimate values, we become open to reasonable distinctions that allow us to see a case from a different perspective.

The case of the lying bishop involves several important case-based facts that are hardly in dispute. If the bishop were to tell the truth about Valjean's theft, Valjean would certainly go to jail, most likely for life. The penal system of the time was, by just about any standard, unjustly harsh. Valjean had never been known to commit a violent crime. Valjean's initial incarceration was due to stealing a single loaf of bread. One might clearly fault the bishop, for example, if Valjean was a known murderer who announced his intent to kill several people in town. This is the kind of case that would clearly fall on the left side of the continuum (lying is clearly wrong). However, the details of Valjean's case might be identified as follows: he engaged in a petty crime (by nearly anyone's legal standard), he has shown no signs of violence, he has served his time, he is on parole and has obeyed the terms of his parole (with the exception of the theft), and the victim of the theft (the bishop) does not wish to press charges. In the first step in our casuistic application—*the reliance on paradigms and analogies*—we have situated the case of the lying bishop into a category that would support a noble lie. In doing so, we can see why casuistry persists: the category of lying may be looked upon as an "umbrella term" under which hundreds (perhaps thousands) of cases may be found. To assume that we can treat all of these varying cases in the same manner is to ignore the practical distinctions so common to our everyday understanding of our moral world.

In the second step of casuistry, *the appeal to maxims*, the casuist avoids searching for universal principles and, instead, seeks maxims: "formulas drawn from traditional discussions and phrased aphoristically" (Jonsen and Toulmin 252). Jonsen and Toulmin note that maxims heavily influenced moral instruction in the Middle Ages and Renaissance, and "they were counted as important argumentative devices in all traditional

rhetoric" (253). These maxims often represent taxonomies for dealing with different situations, rather than principles that serve as premises to significant life decisions. In the case of the lying bishop, the aphorism of "tempering justice with mercy" might serve as one example of a maxim. In everyday moral reasoning, it is easy to identify how maxims function. In evaluating the case of Valjean, for example, we might be influenced by the maxim "Don't kick a man when he is down," or "Treat others the way you would want to be treated," or "Give a guy a break." Clearly, these maxims are not meant to serve as premises to sound arguments; more often than not they are just short hand expressions for deeper moral sentiments. This is not to suggest, however, that maxims should be quickly dismissed from consideration. As Jonsen and Toulmin suggest, they are "important argumentative devices" (253). Consider why readers feel empathy for Valjean. What makes the bishop's lie a noble one? Why, in this case, might readers approve of a lying bishop? Hugo seems to be relying on the reader's storehouse of maxims in order to instill compassion for Valjean. The presence of maxims is, yet, another challenge that the principle-based ethicist must address. Given that these maxims tend to direct the moral deliberator toward a resolution to the problem, this is another example of the *constructive persistence* of casuistry.

The *analysis of circumstances*, casuistry's third step, is often mistakenly viewed as antithetical to principle ethics. Allowing exceptions to a universal principle becomes problematic for those who wish to stay in a paradigm that allows for no exceptions. The zealots on the extreme fringes of deontology, for example, will refuse any exception to the statement that "lying is morally wrong." Likewise, the most staunch utilitarian will insist that the moral evaluation focus on the consequences of the bishop's lie. The

analysis of circumstances, however, does not eschew principles; the analysis leads to the recognition that rules sometimes need to be qualified. As Jonsen and Toulmin point out,

> These were the qualifications that Aristotle, Cicero, and the
> classical rhetoricians had taught aspiring orators, if they were to
> argue properly and carefully, under the heading of Topics. The
> casuists incessantly called these circumstances to attention; they
> insisted that "circumstances make the case" and inevitably
> modified moral argument about it. (254)

In exercising Aristotelian *phronesis*, the interlocutors involved in debating the case of the lying bishop should have contact with the particulars of the case at hand. They should know, for instance, the specific people with whom they are dealing. In this case, you have an "upright man" (the bishop) who chooses to lie in order to help another man on the verge of redemption (Valjean). This case is filled with many specific details that are (almost) impossible to ignore. Any principle-based approach that ignores the circumstances of "who, what, where , when, why, how, and by what means" quickly finds itself having to respond to the casuistic rebuttal that these circumstances must be (at the very least) addressed before committing to a resolution to the case.

The fourth step in casuistry centers on *degrees of probability*. By adding a qualifier to judgments of particular cases, individuals are made aware of the degree of certainty a moral claim might carry. Although paradigm cases are least likely to necessitate qualification, moral judgments made on highly problematic cases have varying degrees of probability. In the case of the lying bishop, there is a high degree of probability that, had the bishop told the truth about the theft, Valjean would find himself

back in jail, probably for life. What is not as clear is the probability that Valjean would actually use the stolen silver to lead a virtuous life. Whereas the rigor of principle-based approaches often look for definitive resolutions, casuistic approaches are comfortable with more qualified conclusions. Where circumstances dictate, casuists are perfectly comfortable with probable conclusions. With casuistry, one is not forced into making an unqualified moral judgment.

The *use of cumulative arguments*, the fifth step in casuistry, employs a series of short arguments in advance of a moral claim. This counters the tendency of the principle-based approaches to develop lengthy, complicated deductions from ultimate principles. The supporting reason behind a moral opinion accumulated by a casuist "resembles the rhetorical and commonsense discourse that piles up many kinds of argument in hopes of showing the favored position in a good light" (Jonsen and Toulmin 256). In the case of the lying bishop, there is an accumulation of arguments. These arguments are not presented in a deductive manner, rather they are offer a variety of different supports for the resolution. The bishop is a good man attempting a virtuous action—helping in Valjean's redemption. Valjean has suffered unjustly at the hands of a harsh penal system. There is no victim, given that the bishop does not wish to press charges against Valjean. All of these reasons—and many more—accumulate to support the resolution that the bishop is morally justified in his lie.

For casuists, each case concludes with the *presentation of a final resolution*. The casuist begins and ends with the case. Because the casuist is engaged in a practical art, something akin to Aristotle's *phronesis*, it is only natural that a concrete conclusion is required. Notice that in a principle-based approach what is sought is an abstract,

epistemological or ontological solution. "Is it morally permissible to praise a bishop who lies?" The discourse is framed so that a debate ensues about the value that can be identified. With casuistry the desired outcome is the solution to a specific problem. "Who solves the problem in the best manner possible?" is the focus for casuists. Would a truth-telling bishop resolve the problem better than the lying bishop? The casuist's task is to offer practical moral guidance so that a moral problem may be resolved. It is this last step—the presentation of a resolution— that is most illustrative of the *constructive persistence* of casuistry. In the end, what is most needed is a resolution to the problem of the case at hand, not the invocation of a universal value. The appropriate question for this case should not be whether lying is morally wrong; rather, the pressing question of immediate concern is whether the the lying bishop should be condemned for his lie.

Casuistry: A Neo-premodernist Approach to Moral Reasoning

The numerous attacks on casuistry have prompted my discussion of casuistry to focus largely on defending casuistry; I have said much about what casuistry is *not*. I would like to offer some reflections on what casuistry *is* and to attempt to situate casuistry within its appropriate philosophical/historical category. On the one hand, some critics seem to view casuistry as a post-modern activity; they depict casuistry as an activity with little concern for grand narratives for developing appropriate normative directives for moral action. On the other hand, there are critics who identify casuistry's failure as its inability to live up to the rational standards of Modernity. In this sense, the charge is that casuistry is plagued by an inferior use of logic when compared to its principle-based counterparts. One might conclude that casuistry cannot win for trying.

There is a third option. Properly understood, I would argue that casuistry is best described as a *neo-premodernist* activity. In this sense, casuistry has far more in common with the skepticism of the sixteenth-century humanists than with either the Modernists or postmodernists. Given the misunderstandings surrounding casuistry, placing casuistry into an appropriate category—and understanding what this "new" category means— is important.

The first use of the term neo-premodernism appears in a Fall 1933 interview that Stephen Toulmin gave to the *Journal of Advanced Composition* (Olson). Toulmin recalls an "intelligent and amusing" comment regarding a lecture he was giving at a "meeting with the speech communication people." The comment characterized Toulmin's lectures as "neo-premodern."   He describes this "wonderful phrase":

> I confess that in some ways I'm more a neo-premodernist than I am a
> postmodernist. I think the thing to do after rejecting Cartesianism is not to
> go on through the wreckage of the temple but to go back into the town
> where this heretical temple was built and rediscover the life that was lived
> by people for many centuries before the rationalist dream seized hold of
> people's minds. (304)

In his 1990 *Cosmopolis: The Hidden Agenda of Modernity*, Toulmin argues that the chosen agenda of Modernity

set aside the tolerant, skeptical attitude of the 16th century

humanists, and focused on the seventeenth-century pursuit of

mathematical exactitude and logical rigor, intellectual certainty and

moral purity, Europe set itself on a cultural and political road that

has led both to its most striking technical successes and to its

deepest human failures. (x)

The counterpart to casuistry— the principle-based approaches—holds steadfast to the

dream that ethics can be an exact discipline of with a heavy dose of logical rigor.

Toulmin challenges the assumption of seventeenth-century science and philosophy that

questions should be considered *independent of context*. In contrast, Toulmin argues that

the goal should be "to *recontextualize* the questions these philosophers took most pride in

decontextualizing" (21). In focusing on the details of a particular case first, this is

precisely what casuistry does; casuistry *recontextualizes* the ethical discussions that have

been *decontextualized* by adherents of the principle-based approaches.

To characterize casuistry as a neo-premodernist activity is to argue that casuistry

differs in *kind*, not *degree*, from the principle-based approaches. Critics of casuistry,

working within a Modernist paradigm, argue that casuistry is a degenerate form of moral

reason. In this view, casuistry differs in *degree*. On the other hand, defenders of

casuistry tend to look upon casuistry as a different *kind* of activity, one that consciously

chooses not to buy into the Modernist focus on universal, exceptionless ethical principles.

Yet, as a theory-modest endeavor, casuistry also refuses to become plagued by the

deficiencies of postmodern practices. Casuistry neither embraces foundational principles

as the focal point of ethics nor does it engage in the wholesale rejection of principles.

The counterpart of casuistry is much like the traditional view of Modernity. Toulmin describes a period beginning in 1630 where where "the focus of philosophical inquires has ignored the particular, concrete, timely and local details of everyday human affairs: instead it has shifted to a higher, stratospheric plane, on which nature and ethics conform to abstract, timeless, general, and universal theories" (*Cosmopolis* 35). Modernity has been dominated by principle-based ethical perspectives that have their origins in Henry Moore and the Cambridge Platonists, rather than the casuists of the sixteenth-century. In speaking of casuistry versus principle-based approaches, we are talking about two different *kinds* of moral approaches, not two approaches that differ in *degree*.

Interestingly, Toulmin observes that the "Quest for Certainty" typically occurs in times of the most turmoil. We might extend this thinking to suggest that principle-based ethical approaches tend to take center stage on the most difficult of ethical issues. Abortion, capital punishment and euthanasia are just three examples of challenging ethical topics on which principle-based approaches have laid exclusive claim. Uncertainty becomes most unacceptable on issues that are framed in such a way as to offer only two choices. According to the principle-based view, skepticism becomes a luxury that can be embraced only be the weak-minded, particularly in "important" moral debates. Just as Toulmin argues that the "Quest for Certainty" was not the result of detached study but a response to the tumultuous sixteenth-century thirty years war, the rigor of principle-based ethics may be seen as the most convenient response to the most challenging ethical problems. As Toulmin puts it, in the sixteenth-century

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for the time being, that change of attitude – the devaluation of the

oral, the particular, the local, the timely, and the concrete –

appeared a small price to pay for a formally 'rational' theory

grounded on abstract, universal timeless concepts.

(*Cosmopolis* 75)

Whereas debating the specifics of cases often leads to skepticism and seemingly endless

qualifications, principle-based approaches appeal to our desire for closure; we want

answers to our moral problems, not continual debates.

Given this analysis it is all the more odd that principle-based approaches, more

often than not, leave us with ethical stalemates. The topics of abortion, capital

punishment, and euthanasia have achieved closure only in the eyes of the extremists on

both sides of the debates.   These stalemates are yet another source of casuistry's

persistence. Just as the practical philosophy of Aristotle coexisted with the idealistic

philosophy of Plato during the Middle Ages, casuistry functions concomitantly with

principle-based approaches. Far from dismissing casuistry, the stalemates resulting from

principle-based approaches give rise to casuistry. Ironically, the principle-based

approaches, unwittingly, end up not only having to tolerate casuistry but also becoming

dependent on casuistry to keep their own ethical programs alive. For principle-based

practitioners, each new case that arises, whether it involves lying, cheating, stealing or

any other basic ethical problem, leads to at least two discussions. First of all, in order to

discuss the case, you need to know the details of the case. Inevitably, this leads to

questions of clarification so that the case might be classified properly, for example, as a

case of lying, cheating, or stealing. Second, you then have the subsequent principle-

based discussion of ethical values. Even when ethics is viewed as a theoretical philosophy the simple fact remains that, in nearly all cases, what gives rise to ethical discussion is a particular case. As Toulmin summarizes, we might conclude that "By now, it will be clear that we need to balance the hope for certainty and clarity in theory with the impossibility of avoiding uncertainty and ambiguity in practice" (*Cosmopolis* 175). It is precisely this ambiguity with which casuistry is best equipped to deal.

Conclusion

It might be instructive to return to the definition of casuistry with which I began this dissertation. The definition comes from the *Oxford English Dictionary*: "Casuistry destroys by distinctions and exceptions all morality, and effaces the essential difference between right and wrong" (Jonsen and Toulmin 12). My hope is that I have made a strong argument to suggest, that, at the very least, this view of casuistry is highly flawed. In contrast, I have defended casuistry as essential to proper reasoning about practical moral problems. As opposed to the insurmountable problems that plague principle-based (and principle-absent) approaches, a principle-modest casuistry offers a path around these problems. At the same time, defenders of a principle-modest casuistry are careful not to negate the role of principles in moral reasoning. My defense of casuistry is not merely polemical. As a principle-modest casuist I have not tried to rid moral reasoning of ethical principles; rather, I have attempted to articulate the proper role for principles. By examining the kind of knowledge necessary for casuistry, I have highlighted some of the differences that casuistry makes, particularly when contrasted with alternative methods of practical moral reasoning. Finally, as a meta-ethical defense of casuistry, I have argued

that casuistry is best described as a kind of probabilistic humanism: a neo-premodernism. As a meta-ethical explanation and summary, I conclude with three observations.

First, in an important sense, all roads lead to casuistry. Regardless of the chosen approach, anyone engaging in moral deliberation ends up confronting casuistic considerations. To say that all moral accounts end up having to appeal to casuistry is simply to say that to *reason* about practical moral issues is to *deal* with practical cases. Those who reject casuistry often seem to miss this point. They act as if one can opt out of casuistic considerations. To fail to acknowledge valid examples that test principles is to dismiss, rather than engage your opposition. Seen in this way, casuistry is not a threat to other ethical approaches.

Second, regardless of whether casuistry fails or succeeds, it persists. In addition to recognizing the limitations of other forms of moral reasoning, casuistry recognizes its own limitations. Certainly there are situations where casuistry ends up in stalemates. Casuistry significantly reduces the chance of this happening, but it does not claim to resolve all practical moral problems. My defense of casuistry does not argue that it is *flawless*, merely that it is *inescapable*. In a similar manner, many Platonic dialogues end without definitive resolutions to definitional disputes. Despite the "failure" of these dialogues, they often provide important clarification of issues and concepts. Likewise, "failure" of casuistic thinking to resolve moral problems must not lead to the conclusion that casuistry is useless.

Third, the persistence of casuistry extends far beyond the field of moral reasoning. As a principle-modest form of reasoning, casuistic reasoning can be found in a variety of fields where practical problems (not just moral dilemmas) arise. Although beyond the

scope of this dissertation, there are a number of applications of casuistry that, I suspect, may function in a similar manner to how casuistry works in moral deliberation. Consider the immediate reception of Jonsen and Toulmin's landmark study. The multidisciplinary interest in *TheAbuse of Casuistry* was evident in the variety of book reviews found in several different disciplines. Reviews surfaced in journals of philosophy (Macintyre, *Abuse of Casuistry*), ethics (Kemp), theology, (Buckley, Brown, Gaffney, Keenan, *Abuse of Casuistry*), rhetoric and communication studies (Arnold, Warnick), medicine (Miles), and medical ethics (Hoose). There are probably a number of fields that could benefit from exploring how and why casuistry persists. It would not be too much of a stretch to envision that future research on casuistry could focus on non-moral issues that are found in debates on practical issues involving business communication, economics, politics, or even engineering.

In the end, the debate is not about whether casuistry is the "correct" method nor whether casuistry succeeds all of the time. When casuistry does not resolve a practical moral problem, it is highly unlikely that any other approach will lead to a resolution. Regardless of what method of moral deliberation one embraces, everyone ends up having to confront cases. One might even view casuistry as the most generic form of moral reasoning: dealing with practical moral cases is best accomplished using a method designed specifically for this purpose. As a neo-premodernist approach to moral reasoning, this is exactly what casuistry does best.

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About the Author

Richard A. Mercadante, Jr. (b. 1963) grew up in Middleton, Massachusetts. He

graduated from Masconomet Regional High School (1981) and earned degrees from

Suffolk Univeristy in Boston (B.S. Philosophy, 1984), Boston College (M.A. Philosophy,

1988), and University of South Florida (M.A. Communication, 1992). He has taught

courses in philosophy, ethics, communication, theology, humanities and interdisciplinary

studies at a number of high schools and colleges, including Jesuit High School, Tampa

(1988-2006) and St. Petersburg College (2006-present).