GETTING DOWN TO CASES: 
THE REVIVAL OF CASUISTRY IN BIOETHICS

ABSTRACT. This article examines the emergence of casuistical case analysis as a methodological alternative to more theory-driven approaches in bioethics research and education. Focusing on *The Abuse of Casuistry* by A. Jonsen and S. Toulmin, the article articulates the most characteristic features of this modern-day casuistry (e.g., the priority allotted to case interpretation and analogical reasoning over abstract theory, the resemblance of casuistry to common law traditions, the 'open texture' of its principles, etc.) and discusses some problems with casuistry as an 'anti-theoretical' method. It is argued that casuistry so defined is 'theory modest' rather than 'theory free' and that ethical theory can still play a significant role in casuistical analysis; that casuistical analyses will encounter conflicting 'deep' interpretations of our social practices and institutions, and are therefore unlikely sources of increased social consensus on controversial bioethical questions; that its conventionalism raises questions about casuistry's ability to criticize norms embedded in the societal consensus; and that casuistry's emphasis upon analogical reasoning may tend to reinforce the individualistic nature of much bioethical writing. It is concluded that, notwithstanding these problems, casuistry represents a promising alternative to the regnant model of 'applied ethics' (i.e., to the ritualistic invocation of the so-called 'principles of bioethics'). The pedagogical implications of casuistry are addressed throughout the paper and include the following recommendations: (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.

*Key Words*: casuistry, interpretation, methodology, pedagogy

THE REVIVAL OF CASUISTRY

Developed in the early Middle Ages as a method of bringing abstract and universal ethico-religious precepts to bear on particular moral situations, casuistry has had a checkered history (Jonsen and Toulmin, 1988). In the hands of expert practitioners during its salad days in the 16th and 17th centuries, casuistry
generated a rich and morally sensitive literature devoted to numerous real-life ethical problems, such as truth-telling, usury, and the limits of revenge. By the late 17th century, however, casuistical reasoning had degenerated into a notoriously sordid form of logic-chopping in the service of personal expediency (Pascal, 1981). To this day, the very term 'casuistry' conjures up pejorative images of disingenuous argument and moral laxity.

In spite of casuistry's tarnished reputation, some philosophers have claimed that casuistry, shorn of its unfortunate excesses, has much to teach us about the resolution of moral problems in medicine. Indeed, through the work of Albert Jonsen (1980, 1986a, 1986b, 1988) and Stephen Toulmin (1981; Jonsen and Toulmin, 1988) this 'new casuistry' has emerged as a definite alternative to the hegemony of the so-called 'applied ethics' method of moral analysis that has dominated most bioethical scholarship and teaching since the early 1970s (Beauchamp and Childress, 1989). In stark contrast to methods that begin from 'on high' with the working out of a moral theory and culminate in the deductivistic application of norms to particular factual situations, this new casuistry works from the 'bottom up', emphasizing practical problem-solving by means of nuanced interpretations of individual cases.

This paper will assess the promise of this reborn casuistry for bioethics education. In order to do that, however, it will be necessary to say quite a bit in general about the nature of this form of moral analysis and its strengths and weaknesses as a method of practical thinking. Indeed, a general catalogue of the promise and potential pitfalls of the casuistical method should be directly applicable to the assessment of casuistry in educational settings.

Before we can exhibit the salient features of this rival bioethical methodology, we must first confront an initial ambiguity in the definition of casuistry. As Jonsen describes it, 'casuistry' is the art or skill of applying abstract or general principles to particular cases (1986b). In this context, Jonsen notes that the major monotheistic religions were likely sources for casuistic ethics, since they all combined a strong sense of duty with a definite set of moral precepts couched in universal terms. The pre-eminent task for devout Christians, Jews and Muslims was thus to learn how to apply these universal precepts to particular situations, where their stringency or applicability might well be affected by particular factual conditions.
Defined as the art of applying abstract principles to particular cases, the new casuistry could appropriately be viewed, not so much as a rival to the applied ethics model, but rather as a necessary complement to any and all moral theories that would guide our conduct in specific situations. So long as we take some general principles 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’, even the most hidebound adherent of the applied ethics model, someone who held that answers to particular moral dilemmas can be deduced from universal theories and principles, would have to count as a casuist. So defined, casuistry might appear to be little more than the handmaiden of applied ethics.

There is, however, another interpretation of casuistry in the writings of Jonsen and Toulmin that provides a distinct alternative to the applied ethics model. Instead of focusing on the need to fit principles to cases, this interpretation stresses the particular nature, derivation, and function of the principles manipulated by the new casuists. Through this alternative theory of principles, we begin to discern a morality that develops, not from the top down as in most interpretations of Roman law, but rather from case to case (or from the bottom up) as in the common law. What differentiates the new casuistry from applied ethics, then, is not the mere recognition that principles must eventually be applied, but rather a particular account of the logic and derivation of the principles that we deploy in moral discourse.

A ‘CASE DRIVEN’ METHOD

Contrary to ‘theory driven’ methodologies, which approach particular situations already equipped with a full complement of moral principles, the new casuistry insists that our moral knowledge must develop incrementally through the analysis of concrete cases. From this perspective, the very notion of ‘applied ethics’ embodies a redundancy, while the correlative notion of ‘theoretical ethics’ conveys an illusory and counterproductive ideal for ethical thought.

If ethics is done properly, the new casuists imply, it will already have been immersed in concrete cases from the very start. To be sure, one can always apply the results of previous ethical inquiries to fresh problems, but to the casuists good ethics is always
‘applied’ in the sense that it grows out of the analysis of individual cases. It’s not as though one could or should first develop a pristine ethical theory planing above the world of moral particulars, and then, having put the finishing touches on the theory, point it in the direction of particular cases. Rejecting the idea that there are such things as ‘essences’ in the domain of ethics, Toulmin (1981), citing Aristotle and Dewey, argues that this pursuit of rigorous theory is unhinged from the realities of the moral life and animated by an illusory quest for moral certainty. Thus, whereas many academic philosophers scorn ‘applied ethics’ as a pale shadow of the real thing (viz., ethical theory), the new casuists insist that good ethics is always immersed in the messy reality of cases, and that the philosophers’ penchant for abstract and rigorous theory is a misleading fetish.

According to both Jonsen and Toulmin, the work of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research provides an excellent example of this case driven method in bioethics (1988, pp. 16–19, 264, 305, 338). Although the various commissioners represented different academic, religious and philosophical perspectives, Jonsen and Toulmin (who both served, respectively, as Commissioner and consultant to the Commission) attest that the commissioners could still reach consensus by discussing the issues ‘taxonomically’. Bracketing their differences on ‘matters of principle’, the commissioners would begin with an analysis of paradigmatic cases of harm, cruelty, fairness and generosity, and then branch out to more complex and difficult cases posed by biomedical research. The commissioners thus “triangulate[d] their way across the complex terrain of moral life”, (Toulmin, 1981) gradually extending their analysis of relatively straightforward problems to issues requiring a much more delicate balancing of competing values.

Thus, instead of looking for ethical progress in the theoretical equivalent of the Second Coming – i.e., the establishment of the correct ethical theory – Jonsen and Toulmin contend that a more realistic and attainable notion of progress is afforded by this notion of moral ‘triangulation’, an incremental approach to problems whose model can be found in the history of our common law. Just as English-speaking peoples have developed highly complex and sophisticated legal frameworks for thinking about tort liability and criminal guilt without the benefit of pre-es-
established legal principles, so (Jonsen and Toulmin argue) ought we to develop a ‘common morality’ or ‘morisprudence’ on the basis of case analysis – without recourse to some pre-established moral theory or moral principles.

THE ROLE OF PRINCIPLES IN THE NEW CASUISTRY

Contrary to common interpretations of Roman law and to deductivist ethical theories, wherein principles are said to preexist the actual cases to which they apply, the new casuistry contends that ethical principles are ‘discovered’ in the cases themselves, just as common law legal principles are developed in and through judicial decisions on particular legal cases (Jonsen, 1986a). To be sure, common law and ‘common law morality’ (or ‘morisprudence’) contain a body of principles too; but the way these principles are derived, articulated, used, and taught is very different from the Roman law and deductivist ethical approach (Pitkin, 1972).

The Derivation and Meaning of Principles

Jonsen and Toulmin have sent mixed messages regarding their views of the derivation of moral maxims and principles. In some places they appear to incline towards a weaker interpretation of casuistry as the art of applying whatever moral maxims happen to be lying around at hand in one’s culture. At other places, however, Jonsen and Toulmin suggest a much stronger and more controversial view, according to which moral principles of ‘common law morality’ are entirely derived from (or abstracted out of) particular cases. Rather than stemming originally from some ethical theory, such as utilitarianism or Rawls’s theory of justice, these principles are said to emerge gradually from reflection upon our responses to particular cases.

Whichever view of the derivation of principles modern casuistry ultimately embraces, both are fully compatible with the casuistical thesis that the full articulation of those principles cannot be determined in isolation from particular factual contexts. In order to fully understand any principle or maxim, one has to ask, through a process of interpretation, how it might apply to a variety of situations. Thus, whereas ‘privacy’ might simply mean an undifferentiated interest in ‘liberty’ to a theorist unfamiliar
with the cases, to the casuist the meaning and scope of personal privacy is delimited and shaped by the features of the cases that have called for a public response. Thus, whether or not consensual sodomy is protected by a moral right of privacy will depend upon how the casuist interprets the features of previous controversial cases dealing with such issues as family life, contraception and abortion.

The Priority of Practice

In the applied ethics model, principles not only ‘come before’ our practices in the sense of being antecedently derived from theory before being applied to cases; they also have priority over practices in the sense that their function is to justify (or criticize) practices. Indeed, it is precisely through this logical priority of principles over practice that the applied ethics model derives its critical edge. It is just the reverse for the new casuists, who sometimes imply that ethical principles are nothing more than mere summaries of meanings already embedded in our actual practices (Toulmin, 1981). Rather than serving as a justification for certain practices, principles within the new casuistry often merely seem to report in summary fashion what we have already decided.

This logical priority of practice to principles is clearly evident in Jonsen’s and Toulmin’s ruminations on the experience of the National Commission for the Protection of Human Subjects. In attempting to carry out the mandate of Congress to develop principles for the ethical conduct of research on humans, the commissioners could have straightforwardly drafted a set of principles and then applied them to problematic cases. Instead, note Jonsen and Toulmin, the commissioners acted like good casuists, plunging immediately into nuanced discussions of cases. Progress in these discussions was achieved, not by applying agreed-upon principles, but rather by seeking agreement on responses to particular cases. Indeed, according to this account, the Belmont Report which articulated the Commission’s moral principles and serves to this day as a major source of the ‘applied ethics’ approach to moral reasoning, was written at the end of the Commission’s deliberations, long after its members had already reached consensus on the issues (Jonsen, 1986a, p. 71).
The Open Texture of Principles

In contrast to the deductivist method, whose principles glide unsullied over the facts, the principles of the new casuistry are always subject to further revision and articulation in light of new cases. This is true not only because casuistical principles are inextricably enmeshed in their factual surroundings, but also because the determination of the decisive or morally relevant features of this factual web is often a highly uncertain and controversial business.

By way of example, consider the question of withdrawing artificial feeding as presented in the case of Claire Conroy.¹ One of the crucial precedents for this case, both legally and morally, was the Quinlan² decision. What were the morally relevant features of Karen Quinlan's situation, and what might they teach us about our responsibilities to Claire Conroy? Was it crucial that Ms. Quinlan was described as being in a persistent vegetative state? Or that she was being maintained by a mechanical respirator? If so, then one might well conclude that Claire Conroy's situation — i.e., that of a patient with severe dementia being maintained by a plastic, nasogastric feeding tube — is sufficiently disanalogous to Quinlan's to compel continued treatment. On the other hand, a re-reading of Quinlan might reveal other features of that case that tell in favor of withdrawing Conroy's feeding tube, such as the unlikelihood of Karen ever recovering sapient life, the bleakness of her prognosis, and the questionable proportion of benefits to burdens derived from the treatment.

Although the Quinlan case may have begun by standing for the patient's right to refuse treatment, subsequent readings of that case in light of later cases have fastened onto other aspects of the case, thereby giving rise to modifications of the original principle, or perhaps even to the wholesale substitution of new principles for the old. The principles of casuistic analysis might thus be said to exhibit an 'open texture' (Hart, 1961, pp. 120ff.). Somewhat in the manner of Thomas Kuhn's 'paradigms' of scientific research (Kuhn, 1970), each significant case in bioethics stands as an object for further articulation and specification under new or more complex conditions. Viewed this way, casuistical analysis might be summarized as a form of reasoning by means of examples that always point beyond themselves. Both the examples and the principles derived from them are always subject to reinterpretation.
tion and gradual modification in light of subsequent examples.

Teaching and Learning

In contrast to legal systems derived from Roman law, where jurors are governed by a systematic legal code, common law systems derive from the particular judicial decisions of particular judges. As a result of these radically differing approaches to the nature and derivation of law, common law and Roman law are taught and learned in correspondingly different ways. Students of Roman law need only refer to the code itself, and perhaps to the scholarly literature explicating the meaning of the code's various provisions; whereas students of the common law must refer directly to prior judicial opinions. Consequently, the so-called 'case method' of legal study is naturally suited to common law jurisdictions, for it is only through a study of the cases that one can learn the concrete meaning of legal principles and learn to apply them correctly to future cases (Patterson, 1951).

What is true of the common law is equally true of 'common law morality'. According to the casuists, bioethical principles are best learned by the case method, not by appeals to abstract theoretical notions. Indeed, anyone at all experienced in teaching bioethics in clinical settings must know (often by means of painful experience) that physicians, nurses, and other health care providers learn best by means of case discussions. (The best way to put them to sleep, in fact, is to begin one's talk with a recitation of the 'principles of bioethics'). This is explained not simply by the fact that case presentations are intrinsically more gripping than abstract discussions of the moral philosophies of Mill, Kant, and Rawls; they are, in addition, the best vehicle for conveying the concrete meaning and scope of whatever principles and maxims one wishes to teach. Contrary to ethical deductivism and Roman law, whose principles could conceivably be taught in a practical vacuum, casuistry demands a case-driven method of instruction. For casuists, cases are much more than mere illustrated rules or handy mnemonic devices for the 'abstracting impaired'. They are, as Jonsen and Toulmin argue, the very locus of moral meaning and moral certainty.

Although Jonsen and Toulmin have yet to consider the concrete pedagogical implications of their casuistical method, we can venture a few suggestions. First, it would appear that a casuistical
approach would encourage the use, whenever possible, of real as opposed to hypothetical cases. This is because hypothetical cases, so beloved of academic philosophers, tend to be theory-driven; that is, they are usually designed to advance some explicitly theoretical point. Real cases, on the other hand, are more likely to display the sort of moral complexity and untidiness that demand the (non-deductive) weighing and balancing of competing moral considerations and the casuistical virtues of discernment and practical judgment (phronesis).

Second, a casuistical pedagogy would call for lengthy and richly detailed case studies. If the purpose of moral education is to prepare one for action in the real world, the cases discussed should reflect the degree of complexity, uncertainty, and ambiguity encountered there. If for casuistry moral truth resides 'in the details', if the meaning and scope of moral principles is determined contextually through an interpretation of factual situations in their relationship to paradigm cases, then cases must be presented in rich detail. It won't do, as is so often done in our textbooks and anthologies, to cram the rich moral fabric of cases into a couple of paragraphs.

Third, a casuistical pedagogy would encourage the use, not simply of the occasional isolated case study, but rather of whole sequences of cases bearing on a related principle or theme. Thus, instead of simply 'illustrating' the debate over the termination of life-sustaining treatments with, say, the single case of Karen Quinlan, teachers and students should read and interpret a sequence of cases (including, e.g., Quinlan, Saikewicz, Spring, Conroy, and Cruzan) in order to see just how reasoning by paradigm and analogy takes place and how the so-called 'principles of bioethics' are actually shaped in their effective meaning by the details of successive cases.

Fourth, a casuistically-driven pedagogy will give much more emphasis than currently allotted to what might be called the problem of 'moral diagnosis'. Given any particular controversy, exactly what kind of issues does it raise? What, in other words, is the case really about? As opposed to the anthologies, where each case comes neatly labelled under a discrete rubric, real life does not announce the nature of problems in advance. It requires interpretation, imagination and discernment to figure out what is going on, especially when (as is usually the case) a number of discussable issues are usually extractable from any given controversy.
Since the new casuistry attempts to define itself by turning applied ethics on its head, working from cases to principles rather than vice-versa, it should come as no surprise to find that its strengths correlate perfectly with the weaknesses of applied ethics. Thus, whereas applied ethics, and especially deductivism, are often criticized for their remoteness from clinical realities and for their consequent irrelevance (Fox et al., 1984; Noble, 1982) casuistry prides itself on its concreteness and on its ability to render useful advice to caregivers in the medical trenches. Likewise, if the applied ethics model appears rather narrow in its single-minded emphasis on the application of principles and in its corresponding neglect of moral interpretation and practical discernment, the new casuistry can be viewed as a defense of the Aristotelian virtue of *phronesis* (or sound, practical judgment).

Conversely, it should not be surprising to find certain problems with the casuistical method that correspond to strengths of the applied ethics model. I shall devote the second half of this essay to an inventory of some of these problems. It should be stressed, however, that not all of these problems are unique to casuistry, nor does applied ethics fare much better with regard to some of them.

**What Is 'a Case'?**

For all of their emphasis upon the interpretation of particular cases, casuists have not said much, if anything, about how to select problems for moral interpretation. What, in other words, gets placed on the 'moral agenda' in the first place, and why? This is a problem because it is quite possible that the current method of selecting agenda items, whatever that may be, systematically ignores genuine issues equally worthy of discussion and debate (O'Neil, 1988).

I think it safe to say that problems currently make it onto the bioethical agenda largely because health practitioners and policy makers put them there. While there is usually nothing problematic in this, and while it always pays to be scrupulously attentive to the expressed concerns of people working in the trenches, practitioners may be bound to conventional ways of thinking and of conceiving problems that tend to filter out other,
equally valid experiences and problems. As feminists have recently argued, for example, much of the current bioethics agenda reflects an excessively narrow, professionally driven, and male outlook on the nature of ethics (Carse, 1989). As a result, a whole range of important ethical problems — including the unequal treatment of women in health care settings, sexist occupational roles, personal relationships, and strategies of avoiding crisis situations — have been either downplayed or ignored completely (Warren, 1989, pp. 77–82). It is not enough, then, for casuistry to tell us how to interpret cases; rather than simply carrying out the agenda dictated by health professionals, all of us (casuists and applied ethicists alike) must begin to think more about the problem of which cases ought to be selected for moral scrutiny.

An additional problem, which I can only flag here, concerns not the identification of 'a case' — i.e., what gets placed on the public agenda — but rather the specification of 'the case' — i.e., what description of a case shall count as an adequate and sufficiently complete account of the issues, the participants and the context. One of the problems with many case presentations, especially in the clinical context, is their relative neglect of alternative perspectives on the case held by other participants. Quite often, we get the attending's (or the house officer's) point of view on what constitutes 'the case', while missing out on the perspectives of nurses, social workers and others. Since most cases are complicated and enriched by such alternative medical, psychological and social interpretations, our casuistical analyses will remain incomplete without them. Thus, in addition to being long, the cases that we employ should reflect the usually complementary (but often conflicting) perspectives of all the involved participants.

Is Casuistry Really Theory-Free?

The casuists claim that they make moral progress by moving from one class of cases to another without the benefit of any ethical principles or theoretical apparatus. Solutions generated for obvious or easy categories of cases adumbrate solutions for the more difficult cases. In a manner somewhat reminiscent of pre-Kuhnian philosophers of science clinging to the possibility of 'theory free' factual observations, to a belief in a kind of epistemological 'immaculate perception', the casuists appear to be claiming that the cases simply speak for themselves.
As we have seen, one problem with this suggestion is that it does not acknowledge or account for the way in which different theoretical preconceptions help determine which cases and problems get selected for study in the first place. Another problem is that it does not explain what allows us to group different cases into distinct categories or to proceed from one category to another. In other words, the casuists' account of case analysis fails to supply us with principles of relevance that explain what binds the cases together and how the meaning of one case points beyond itself toward the resolution of subsequent cases. The casuists obviously cannot do without such principles of relevance; they are a necessary condition of any kind of moral taxonomy. Without principles of relevance, the cases would fly apart in all directions, rendering coherent speech, thought, and action about them impossible.

But if the casuists rise to this challenge and convert their implicit principles of relevance into explicit principles, it is certainly reasonable to expect that these will be heavily 'theory laden'. Take, for example, the novel suggestion that anencephalic infants should be used as organ donors for children born with fatal heart defects. What is the relevant line of cases in our developed 'morisprudence' for analyzing this problem? To the proponents of this suggestion, the brain death debates provide the appropriate context of discussion. According to this line of argument, anencephalic infants most closely resemble the brain dead; and since we already harvest vital organs from the latter category, we have a moral warrant for harvesting organs from anencephalics (Harrison, 1986). But to some of those opposed to any change in the status quo, the most relevant line of cases is provided by the literature on fetal experimentation. Our treatment of the anencephalic newborn should, they claim, reflect our practices regarding nonviable fetuses. If we agree with the judgment of the National Commission that research which would shorten the already doomed child's life should not be permitted, then we should oppose the use of equally doomed anencephalic infants as heart donors (Meilaender, 1986).

How ought the casuist to triangulate the moral problem of the anencephalic newborn as organ donor? What principles of relevance will lead him to opt for one line of cases instead of another? Whatever principles he might eventually articulate, they will undoubtedly have something definite to say about such
matters as the concept of death, the moral status of fetuses, the meaning and scope of respect, the nature of personhood, and the relative importance of achieving good consequences in the world versus treating other human beings as ends in themselves. Although one’s position on such issues perhaps need not implicate any full-blown ethical theory in the strictest sense of the term, they are sufficiently theory-laden to cast grave doubt on the new casuists’ ability to move from case to case without recourse to mediating ethical principles or other theoretical notions.

Although the early work of Jonsen and Toulmin can easily be read as advocating a theory-free methodology comprised of mere ‘summary principles’, their recent work appears to acknowledge the point of the above criticism. Indeed, it would be fair to say that they now seek to articulate a method that is, if not ‘theory free’, then at least ‘theory modest’. Drawing on the approach of the classical casuists, they now concede an indisputably normative role for principles and maxims drawn from a variety of sources, including theology, common law, historical tradition, and ethical theories. Rather than viewing ethical theories as mutually exclusive, reductionistic attempts to provide an apodictic foundation for ethical thought, Jonsen and Toulmin now view theories as limited and complementary perspectives that might enrich a more pragmatic and pluralistic approach to the ethical life (1988, Chapter 15). They thus appear reconciled to the usefulness, both in research and education, of a severely chastened conception of moral principles and theories.

One lesson of all this for bioethics education is that casuistry, for all its usefulness as a method, is nothing more (and nothing less) than an ‘engine of thought’ that must receive direction from values, concepts and theories outside of itself. Given the important role such ‘external’ sources of moral direction must play even in the most case-bound approaches, teachers and students need to be self-conscious about which traditions and theories are in effect driving their casuistical interpretations. This means that they need to devote time and energy to studying and criticizing the values, concepts and rank-orderings implicitly or explicitly conveyed by the various traditions and theories from which they derive their overall direction and tools of moral analysis. In short, it means that adopting the casuistical method will not absolve teachers and students from studying and evaluating either ethical theories or the history of ethics.
Indeterminacy and Consensus

One need not believe in the existence of uniquely correct answers to all moral questions to be concerned about the casuistical method’s capacity to yield determinate answers to problematical moral questions. Indeed, anyone familiar with Alastair MacIntyre’s (1981) disturbing diagnosis of our contemporary moral culture might well tend to greet the casuists’ announcement of moral consensus with a good deal of skepticism. According to MacIntyre, our moral culture is in a grave state of disorder: lacking any comprehensive and coherent understanding of morality and human nature, we subsist on scattered shards and remnants of past moral frameworks. It is no wonder, then, according to MacIntyre, that our moral debates and disagreements are often marked by the clash of incommensurable premises derived from disparate moral cultures. Nor is it any wonder that our debates over highly controversial issues such as abortion and affirmative action take the form of a tedious, interminable cycle of assertion and counter-assertion. In this disordered and contentious moral setting, which MacIntyre claims is our moral predicament, the casuists’ goal of consensus based upon intuitive responses to cases might well appear to be a Panglossian dream.

One need not endorse MacIntyre’s pessimistic diagnosis in its entirety to notice that many of our moral practices and policies bear a multiplicity of meanings; they often embody a variety of different, and sometimes conflicting, values. An ethical methodology based exclusively on the casuistical analysis of these practices can reasonably be expected to express these different values in the form of conflicting ethical conclusions.

Political theorist Michael Walzer’s remarks on health care in the United States provide an illuminating case in point. Although Walzer might not recognize himself as a modern day casuist, his vigorous anti-theoretical stance and reliance upon established social meanings and norms certainly make him an ally of the methodological approach espoused by Jonsen and Toulmin (Walzer, 1983, 1987). According to Walzer, if we look carefully at our current values and practices regarding health care and its distribution – if we look, in other words, at the choices we as a people have already made, at the programs we have already put into place, etc. – we will conclude that health care services are a crucially important social good, that they should be allocated
solely on the basis of need, and that they must be made equally available to all citizens, presumably through something like a national health service (1983, pp. 86ff.).

One could argue, however, that current disparities — both in access to care and in quality of care — between the poor, the middle class and the rich reflect equally ‘deep’ (or even deeper) political choices that we have made regarding the relative importance of individual freedom, social security, and the health needs of the ‘non-deserving’ poor. In this vein, one could claim that our collective decisions bearing on Medicaid, Medicare, and access to emergency rooms — the same decisions that Walzer uses to argue for a national health service — are more accurately interpreted as grudging aberrations from our free market ideology. According to this opposing view, our stratified health care system pretty well reflects our values and commitments in this area: a ‘decent minimum’ (read ‘understaffed, ill-equipped, impersonal urban clinics’) for the medically indigent; decent health insurance and HMOs for the working middle-class; and first cabin care for the well-to-do (Dworkin, 1983; Warnke, 1989).

Viewed in the light of Walzer’s democratic socialist commitments, which I happen to share, this arrangement may indeed look like an ‘indefensible triage’; but placed in the context of American history and culture, it could just as easily be viewed as business as usual. Thus, on one reading our current practices point toward the establishment of a thoroughly egalitarian health care system; viewed from a different angle, however, these same ‘choices we have already made’ justify pervasive inequalities in access to care and quality of care. The problem for the casuistical method is that, barring any and all appeals to abstract principles of justice, it cannot decisively adjudicate between such competing interpretations of our common practices (Dworkin, 1983). When these do not convey a univocal message, or when they carry conflicting messages of more or less equal plausibility, casuistry cannot help us to develop a uniquely correct interpretation upon which a widespread social consensus might be based. Contrary to the assurances of Jonsen and Toulmin, the new casuistry is an unlikely instrument for generating consensus in a moral world fractured by conflicting values and intuitions.

In Jonsen and Toulmin’s defense, it should be noted that abstract theories of justice divorced from the conventions of our society are equally unlikely sources of uniquely correct answers. If
philosophers cannot agree amongst themselves upon the true nature of abstract justice — indeed, if criticizing our foremost theoretician of justice, John Rawls, has become something of a philosophical national pastime (Daniels, 1989; Arneson, 1998) — it is unclear how their theorizing could decisively resolve the ongoing debate among competing interpretations of our common social practices.

It might also be noted in passing that even Rawls has become increasingly loathe in his recent writings to appeal to an abstract, timeless, and deracinated notion of justice as the ultimate court of appeal from conflicting social interpretations. Eschewing any pretense of having established a theory of justice ‘sub specie aeternitatis’, Rawls now claims that his theory of ‘justice as fairness’ is only applicable in modern democracies like our own (Rawls, 1980, p. 318). He claims, moreover, that the justification of his theory is derived, not from neutral data, but from its “congruence with our deeper understanding of ourselves and our aspirations, and our realization that, given our history and the traditions embedded in our public life, it is the most reasonable doctrine for us” (Rawls, 1980, p. 519; see also Rawls, 1985, p. 228). Notwithstanding the many differences that distinguish their respective views, it thus appears that Rawls, Walzer, and Jonsen and Toulmin could all agree that there is no escape from the task of interpreting the meanings embedded in our social practices, institutions and history. Given the complexity and tensions that characterize this moral ‘data’, the search for uniquely correct interpretations must be seen as misguided. The best we can do, it seems, is to argue for our own determinate but contestable interpretations of who we are as a people and who we want to become. Neither theory nor casuistry is a guarantor of consensus.

Conventionalism and Critique

The stronger, more controversial version of casuistry and its ‘summary view’ of ethical principles gives rise to worries about the nature of moral truth and justification. Eschewing any theoretical derivation of principles and insisting that the locus of moral certainty is the particular, the casuist asks “What principles best organize and account for what we have already decided?” Viewed from this angle, the casuistic project amounts to nothing more than an elaborate refinement of our intuitions regarding cases. As
such, it begins to resemble the kind of relativistic conventionalism recently articulated by Richard Rorty (Rorty, 1989).

Obviously, one problem with this is that our intuitions have often been shown to be wildly wrong, if not downright prejudicial and superstitious. To the extent that this is true of our own intuitions about ethical matters, then casuistry will merely refine our prejudices. Any casuistry that modestly restricts itself to interpreting and cataloguing the flickering shadows on the cave wall can easily be accused of lacking a critical edge. If applied ethics might rightly be said to have purchased critical leverage at the expense of the concrete moral situation, then casuistry might be charged with having purchased concreteness and relevance at the expense of philosophical criticism. This charge might take either of two forms. First, one could claim that the casuist is a mere expositor of established social meanings and thus lacks the requisite critical distance to formulate telling critiques of regnant social understandings. Second, casuistry could be accused of ignoring the power relations that shape and inform the social meanings that its practitioners interpret.

In response to the issue of critical distance, Jonsen and Toulmin could point out that the social world of established meanings is by no means monolithic and usually harbors alternative values that offer plenty of critical leverage against the regnant social consensus. As Michael Walzer has recently argued, even such thundering social critics as the prophet Amos have usually been fully committed to their societies, rather than ‘objective’ and detached; and the values to which they appeal are often fundamental to the self-understanding of a people or group (Walzer, 1987). (How else could they accuse their fellows of hypocrisy?) The lesson for casuists here is not to become so identified with the point of view of health care professionals that they lose sight of other important values in our culture.

The second claim, while not necessarily fatal to the casuistical enterprise, is harder to rebut. As Habermas has contended in his longstanding debate with Gadamer, interpretive approaches to ethics [such as casuistry] can articulate our shared social meanings but ignore the economic and power relations that shape social consensus. His point is that the very conversation through which cases, social practices and institutions are interpreted is itself subject to what he calls ‘systematically distorted communication’ (Habermas, 1980). In order to avoid merely legitimizing social
understandings conditioned on power and domination – for example, our conception of the appropriate relationship between nurses and physicians – casuistry will have to supplement its interpretations with a critical theory of social relationships, or with what Paul Ricoeur has called a ‘hermeneutics of suspicion’. (Ricoeur, 1986).

**Reinforcing the Individualism of Bioethics**

Analytical philosophers working as applied ethicists have often been criticized for the ahistorical, reductionist, and excessively individualistic character of their work in bioethics (Fox et al., 1984; Noble, 1982; MacIntyre, 1982). While the casuistical method cannot thus be justly accused of importing a short-sighted individualism into the field of bioethics – that honor already belonging to analytical philosophy – it cannot be said either that casuistry offers anything like a promising remedy for this deficiency. On the contrary, it seems that the casuists’ method of reasoning by analogy only promises to exacerbate the individualism and reductionism already characteristic of much bioethical scholarship.

Consider, for example, how a casuist might address the problem of heart transplants. He or she might reason like this: Our society is already deeply committed to paying for all kinds of ‘half-way technologies’ for those in need. We already pay for renal dialysis and transplantation, chronic ventilatory support for children and adults, expensive open-heart surgery, and many other ‘high tech’ therapies, some of which might well be even more expensive than heart transplants. Therefore, so long as heart transplants qualify medically as a proven therapy, there is no reason why Medicaid and Medicare should not fund them (Overcast et al., 1985).

Notwithstanding the evident fruitfulness of such analogical reasoning in many contexts of bioethics, and notwithstanding the possibility that these particular examples of it might well prevail against the competing arguments on heart transplantation, it remains true that such contested practices raise troubling questions that tend not to be asked, let alone illuminated, by casuistical reasoning by analogy. The extent of our willingness to fund heart transplantation has great bearing on the kind of society in which we wish to live and on our priorities for spending within (and
without) the health care budget. Even if we already fund many high technology procedures that cost as much or more than heart transplants, it is possible that this new round of transplantation could threaten other forms of care that provide greater benefits to more people; and we might therefore wish to draw the line here (Massachusetts Task Force, 1984; Annas, 1985).

The point is that, no matter where we stand on the particular issue of heart transplants, we might think it important to raise such 'big questions', depending on the nature of the problem at hand. We might want to ask, to borrow from a recent title, "What kind of life?" (Callahan, 1990). But the kind of reasoning by analogy championed by the new casuists tends to reduce our field of ethical vision down to the proximate moral precedents, and thereby suppresses the important global questions bearing on who we are and what kind of society we want. The result is likely to be a method of moral reasoning that graciously accommodates us to any and all technological innovations, no matter what their potential long-term threat to fundamental and cherished institutions and values.

CONCLUSIONS

The revival of casuistry, both in practice and in Jonsen and Toulmin's (1988) recent defense, is a welcome development in the field of bioethics. Its account of moral reasoning (emphasizing the pivotal role of paradigms, analogical thinking, and the prudential weighing of competing factors) is far superior, both as a description of how we actually think and as a prescription of how we ought to think, to the tiresome invocation of the applied ethics mantra (i.e., the principles of respect for autonomy, beneficence and justice). By insisting on a modest role for ethical theory in a pragmatic, non-deductivist approach to ethical interpretation, Jonsen and Toulmin join an important chorus of contemporary thinkers troubled by the reductionism inherent in most analytical ethics (Williams, 1985; Hampshire, 1983; Taylor, 1982).

As for its role in bioethics education, no one needs to tell teachers about the importance of cases in the classroom. It's pretty obvious that discussing cases is fun, interesting, and certainly more memorable than any philosophical theory, which for the average student usually has a half-life of about two weeks. Moreover, a casuistical education gives students the methodologi-
cal tools they are most likely to need when they later encounter bioethical problems in the 'real world', whether as health care professionals, clergy, lawyers, journalists or informed citizens. For all of the obviousness of these points, however, it remains true that all of us teachers could profit from sound advice on how better to use cases, and some such advice can be extrapolated from the work of Jonsen and Toulmin.

For all its virtues vis-à-vis the sclerotic invocation of 'bioethical principles', the casuistical method is not, however, without problems of its own. First, we found that the very principles of relevance that drive the casuistical method need to be made explicit; and we surmised that, once unveiled, these principles will turn out to be heavily theory laden. Second, we showed that the casuistical method is an unlikely source of uniquely correct interpretations of social meanings and therefore an unlikely source of societal consensus. Third, we have seen that, because of the casuists' view of ethical principles as mere summaries of our intuitive responses to paradigmatic cases, their method might suffer from ideological distortions and lack a critical edge. Moreover, relying so heavily on the perceptions and agenda of health care professionals, casuists might tend to ignore the existence of important issues that could be revealed by other theoretical perspectives, such as feminism. Finally, we saw that casuistry, focusing as it does on analogical resemblances, might tend to ignore certain difficult but inescapable 'big questions' (e.g., "What kind of society do we want?"), and thereby reinforce the individualistic tendencies already at work in contemporary bioethics.

It remains to be seen whether casuistry, as a program in practical ethics, will be able to marshall sufficient internal resources to respond to these criticisms. Whatever the outcome of that attempt, however, an equally promising approach might be to incorporate the insights and tools of casuistry into the methodological approach known as 'reflective equilibrium' (Rawls, 1971; Daniels, 1979). According to this method, the casuistical interpretation of cases, on the one hand, and moral theories, principles and maxims, on the other, exist in a symbiotic relationship. Our intuitions on cases will thus be guided, and perhaps criticized, by theory; while our theories and moral principles will themselves be shaped, and perhaps reformulated, by our responses to paradigmatic moral situations. Whether we attempt to flesh out this
method of reflective equilibrium or further develop the casuistical program, it should be clear by now that the methodological issue between theory and cases is not a dichotomous 'either/or' but rather an encompassing 'both-and'.

In closing I would like to gather together my various recommendations, strewn throughout this paper, for the use of casuistry in bioethics education:

1. Use real cases rather than hypotheticals whenever possible.
2. Avoid schematic case presentations. Make them long, richly detailed, messy, and comprehensive. Make sure that the perspectives of all the major players (including nurses and social workers) are represented.
3. Present complex sequences of cases that sharpen students' analogical reasoning skills.
4. Engage students in the process of 'moral diagnosis'.
5. Be mindful of the limits of casuistical analysis. As a mere engine of moral argument, casuistry must be supplemented and guided by appeals to ethical theory, the history of ethics, and moral norms embedded in our traditions and social practices. It must also be supplemented by critical social analyses that unmask the power behind much social consensus and raise larger questions about the kind of society we want and the kind of people we want to be.

ACKNOWLEDGEMENTS

This article is based upon a presentation at a conference on 'Bioethics as an Intellectual Field', sponsored by the University of Texas Medical Branch, Galveston, Texas. The author would like to thank Ronald Carson and Thomas Murray for their encouragement.

NOTES


BIBLIOGRAPHY


The Revival of Casuistry in Bioethics
