

focus includes both an emphasis on the importance of women's interests and special attention to issues that especially concern or affect women. Thus, in bioethics, feminist ethics urges careful examination of the interests of women in matters of reproduction and as the almost exclusive participants in the profession of nursing. Special attention is also given, for example, to the distinctive needs of women in the area of medical research, to the moral complexities of surrogate motherhood, and to arguably sexist undercurrents in the promotion of in vitro fertilization and in various medical practices surrounding childbirth.

In feminist ethics, a critical eye is turned toward practices and institutions that may perpetuate and legitimate forms of oppression. Some of these practices and institutions, feminists argue, are so deeply embedded in our culture that they go unnoticed. Accordingly, some feminists have charged proponents of the ethics of care with naivete for accepting women's moral experiences at face value—without questioning the oppressive practices and attitudes that may have helped make certain experiences and ways of thinking typical for women. Perhaps women's proficiency at caring is related to their subordinate status.²⁶ In fact, nurturing, caring, and the disposition to preserve relationships at almost any cost may simply be the survival skills of an oppressed group; it has been noted that such dispositions are also found among persons of both genders who are members of groups that have been subjected to slavery or colonization.²⁷ Some feminists also argue that the value of mothering, so affirmed in the ethics of care, may be tied to the norm of the nuclear family—a norm that can be seen as discounting the perspectives of homosexuals, persons in single-parent families, and others who remain legally unmarried. They point out that caring has led some women to direct nearly all of their energies to others' needs, without adequately attending to their own. While caring is an admirable trait in many circumstances, these feminists maintain, it is sometimes better withheld when a focus on rights and autonomy is necessary. In general, they conclude, we must not valorize the traits that tend to perpetuate women's subordinate status.²⁸

How might we assess the ethics of care and feminist ethics as alternatives to recently dominant theories and to the idea that these theories can simply be applied in order to resolve concrete problems? The care perspective's emphasis on relationships and the affective components of the moral life merits careful attention; arguably, the traditional theories greatly underestimate their significance. (Ross's theory, which highlights morally significant relationships, is a partial exception.) The critical-minded attention of feminist ethics to oppression, inequalities, and issues pertaining to women and other disadvantaged groups is surely valuable. In addition, the feminist caution about gender stereotyping is well taken. Uncritical acceptance of traditionally feminine and masculine qualities may lead too easily to the assignment of people to "appropriate" roles (such as women to midnight infant feedings and men to aggressive professional pursuits).

However, the distance between the perspectives presently under discussion, on the one hand, and recently dominant theories, on the other, can easily be overdrawn. Utilitarians, for example, should be firmly dedicated to the eradication of oppression (given all of its bad consequences). Kantian respect for persons, while perhaps vague and abstract, is at least compatible with caring and special relationships (the validity of which could be impartially recognized). Caring attention to particularities might even provide a useful way of specifying or supplementing abstract but worthy principles.

In the end, Gilligan argues that "care" and "justice" are both only parts of a broader pluralistic spirit; one might adopt a similar attitude toward feminist ethics, concentrating on

whatever insight and illumination this perspective brings to ethics. Following is a concluding suggestion from feminist philosopher Susan Sherwin:

I do not envision feminist ethics to be a comprehensive . . . theory that can be expected to resolve every moral question with which it is confronted. It is a theoretical perspective that must be combined with other considerations to address the multitude of moral dilemmas that confront human beings. . . . Although very little of the literature in ethics addresses the issue of sexism or any other form of systematic oppression, surely the responsibility to do so in one's moral evaluations is implicit. Feminist ethics has assumed leadership in pursuing such analysis.²⁹

CASUISTRY: CASE-BASED REASONING IN HISTORICAL CONTEXT

Casistry, which has received a great deal of attention in recent years, is a method of moral reasoning that was reawakened from three centuries of slumber with the publication of *The Abuse of Casistry*, by Albert Jonsen and Stephen Toulmin.³⁰ Following Aristotle and other philosophers as well as theologians throughout the ages, the authors contend that the "top-down" reasoning inherent in deductivism and principle-based ethics (as they understand it) is entirely inadequate for the resolution of concrete problems, such as those that arise in bioethics. (Jonsen and Toulmin never clearly distinguish deductivism and principle-based ethics. While some of their criticisms concern both approaches, others concern only deductivism.)

First, according to the casuists, no simple, unified ethical theory can capture the great diversity of our moral ideas; a consideration that helps to account for the fact that there is such extensive disagreement about ethical theories. Second, our actual moral thinking does not typically consist of straightforward deductive reasoning (deriving an ethical judgment from a supreme principle). *Practical wisdom* is required to determine which of various norms (principles or rules) applies in a complicated or ambiguous case. For example, if a patient awaiting admission to a fully occupied intensive care unit better fulfills admission criteria than someone already admitted, would it ever be right to admit the waiting patient if doing so would be detrimental to the one who would be displaced? Casuists doubt that the answers to such questions can be derived from a traditional ethical theory, such as utilitarianism or Kantianism, or from a set of abstract principles. Third, such approaches miss the fact that moral certainty, where it exists, concerns particular cases. For example, that a particular person acts wrongly in torturing for sadistic pleasure is far more certain than any full-blown ethical theory could be.

The alternative of casistry is a form of case-based reasoning. It begins with clear "paradigm" cases in which some *maxim* (a relatively specific principle or rule) is clearly relevant and indicates the right action or judgment. For example, if we learn that a man stole a car just for a thrill, we know he acted wrongly. From this and similar cases we can extract a maxim, "Stealing is wrong," which holds in the absence of unusual circumstances. The paradigm cases illuminate other cases by way of analogy. Maxims are refined as new cases are confronted in which the norms apply *ambiguously* (for example, if someone finds an expensive watch in a classroom and does not attempt to locate its owner) or in conflict (for example, if someone believes that temporarily appropriating a bicycle is the only way to save an innocent person's life). Often, the refinements involve stating exceptions.

In order to reach a defensible moral judgment in any particular case, we must first determine which paradigms are relevant. Difficulties arise, of course, when paradigms fit only

ambiguously or when two or more paradigms fit in conflicting ways. Jonsen and Toulmin see the history of moral practice as revealing an ongoing clarification of the use of paradigms and of admitted exceptions. This brings us to an important point.

Moral reasoning about cases cannot proceed without reference to actual moral traditions. Casuists assert the priority of *practice* over theory. Moral norms are to be found in practice; practice is not to be justified (or condemned) by absolute moral principles, because there are none. In rejecting the idea of a timeless, rationally required ethical theory, the casuists have important allies in such American pragmatists as William James (1842–1910) and John Dewey (1859–1952). But the emphasis on practice is not simply a broad historicism, grounding our understanding of morality in the developing Western moral tradition. Also crucial are the specific institutions and practices (such as those of American medicine) that provide the context for any set of ethical problems. To illustrate their method, casuists point to case law—including, in bioethics, classic cases such as *Quinlan*, *Conroy*, and *Cruzan*, which have greatly illuminated the ethics of terminating life-sustaining treatment.³¹

For an example of casuistry in action, consider the question of whether Jehovah's Witness parents have the right to refuse a blood transfusion for their young child who will die without one. Rather than appealing to an ethical theory or to general principles such as beneficence or respect for autonomy, a casuist would try to reason by analogy from cases about which we have relatively settled opinions. The casuist would cite various cases that support (1) the right of competent adults to refuse medical treatment for themselves and (2) the right of parents to make decisions for their children. Regarding the second right, we let parents send their children to private religious schools, for example. On the other hand, society tends to limit parental discretion if choices amount to serious neglect. Thus, while parents have much discretion over where to send their children to school, they may not keep them out of school (using the term broadly to include home schooling). The choice to keep them out of school is regarded as seriously detrimental to children's well-being. Similarly, a casuist might argue that because refusing a blood transfusion would ensure the child's death, such a choice would be seriously neglectful and therefore beyond the bounds of parental discretion. Unlike the parents, the child has not autonomously chosen to be a Jehovah's Witness. If and when the child becomes an adult, he or she may choose or reject this value system and make medical and other decisions accordingly.

How viable is casuistry as an alternative to recently dominant theories and top-down methods of ethical reasoning? It certainly avoids the remoteness from concrete problems that arguably plagues utilitarianism and Kantianism. Indeed, it seems to capture the way much of our ethical reasoning actually proceeds. Moreover, casuistry is capable of producing consensus even when people disagree about ethical theories. Furthermore, the casuists are surely right that at least some specific moral judgments are more certain than any ethical theory.

At the same time, a number of problems confront casuistry. Some concern the work of its currently leading proponents, Jonsen and Toulmin. For example, while they identify casuistry as an alternative to top-down approaches represented in the theories already described, they never clearly distinguish their primary targets: deductivism and principle-based ethics. This omission is significant, because some of their criticisms can be validly made against at most one of these approaches. For instance, while some specific moral judgments are more certain than any *complete ethical theory*, it is far from clear that such judgments are more certain than any *principle*. Since principle-based ethics involves

the use of principles (as opposed to the use of a complete ethical theory), the casuists' point about the locus of ethical certainty may only constitute an advantage over deductivism.

One might therefore wonder whether casuistry is so different from principle-based ethics. Casuists claim that moral certainty is to be found in particular cases. However, giving priority to the particular over the general may be undermined by the following possibility: *Grasping the ethical significance of a case is indistinguishable from grasping a prima facie principle or rule that applies to that case.* We can grasp that a man beating a child is wrong. However, in order to make this judgment, we must also grasp the prima facie wrongness of some kind of action, such as harming the innocent or hurting children, for it is something about the man's action that is understood to make it wrong. There seems to be no reason to claim that judgments about particular cases are more certain than judgments about prima facie principles or rules relevant to such cases. Indeed, it is not clear that the two kinds of judgments can be completely separated.

Another possible charge against casuistry is that it is overly "intuitionistic" in resolving difficult cases. Suppose we start with the established view that a competent adult patient may refuse medical treatment. May such a patient also refuse all nutrition and hydration? If so, what makes this second kind of case *relevantly similar* to the first, such that the maxim guiding the first (respecting competent adult patients' refusals) applies also to the second? Where matters are debatable, how does one *justify* particular judgments? At this point, the casuist is likely to vest decision-making authority in community judgment. Such a judgment becomes incorporated into the community's evolving traditions and practices. For example, our society has judged that food and water can be thought of, in medical settings, as similar to medical care, so a competent adult patient may refuse them.

While casuistry can respond to the charge of being overly intuitionistic by appealing to traditions and practices, it must then confront the charge of being too *accepting* of the latter. Why take at face value the ethical convictions woven into our cultural traditions and professional practices? American medical practice, for instance, may embody a vision of the physician-nurse relationship that is elitist and sexist. Therefore, is it not unsound, as contemporary feminists would insist, to appeal to established medical practice in considering issues concerning the interactions of physicians and nurses? To take another example, arguably neither broad cultural traditions nor the professional practice of researchers has sufficient critical "edge" to confront squarely the question of whether animals should be used in biomedical research and, if so, with what restrictions.

Finally, by focusing so exclusively on cases, casuistry risks (1) being unable to make progress with especially controversial issues and (2) missing very general and fundamental issues, the resolution of which may be relevant to specific cases. As an example of problem (1), case analysis is almost certainly insufficient to illuminate the moral status of animals. In our society today there is fundamental disagreement about animals' moral status, so people are likely to have widely varying responses to individual cases. Regarding (2), fundamental issues can be missed because of excessive faith in precedents (judgments about previous cases). How do we know our precedents are right? For example, the fact that Medicare covers renal dialysis and kidney transplants, open-heart surgery, and certain other treatments may seem to weigh in favor of funding heart transplants. But perhaps we never should have funded those other treatments in the first place.³²

In conclusion, while casuistry embodies important insights about ethical reasoning, it faces significant challenges. Contrary to the claims of recent defenders, casuistry may be compatible with principle-based ethics. Further reflection on its strengths and weaknesses

may suggest that casuistry is best regarded as part of a more comprehensive model of ethical reasoning.

REFLECTIVE EQUILIBRIUM AND APPEALS TO COHERENCE

Recently dominant approaches (whether deductivist or principle-based) are sometimes criticized for viewing ethical justification as essentially "downward"; that is, *theories or principles*, assumed to be firmly established, are thought to justify our judgments about particular cases. On the other hand, casuistry may oversimplify the nature of ethical reasoning in the opposite direction. Casuists claim that ethical certainty lies in *cases*, the study of which allows us to identify maxims to be used and revised in exploring new cases. Arguably, each of these models is excessively rigid in giving priority to one level of ethical conviction: general norms (theories or principles) or particular cases. Perhaps our ethical insights and reasoning lack any such exclusive foundation.

According to the model of *reflective equilibrium*, formulated by John Rawls, no level of ethical conviction deserves such priority.³¹ Justification occurs at all levels of generality: (1) theories, (2) principles and rules of differing degrees of specificity, and (3) judgments about cases. Judgments that seem especially compelling at any level can be used to revise less certain judgments at any other level.

The reflective-equilibrium model directs us to start with *considered judgments*, that is, those judgments about which we have a high degree of confidence after careful and extensive consideration. These judgments differ in some ways from the paradigm case judgments of casuistry. First, considered judgments may be of any level of generality. Some may be specific case judgments (as in casuistry); others may be rules such as a prohibition of rape; men counts as a considered judgment only if it is reasonably believed not to have resulted from bias. (Casuistry, again, ties its paradigm case judgments so closely to accepted practices that many such judgments may be suspected of bias.) Considered judgments serve as a basis for revising other ethical beliefs, or judgments that one may hold, in an effort to achieve a more coherent overall set of beliefs. (What coherence involves is described later in this section.)

For example, one might initially believe it appropriate to deceive prospective patients in an important biomedical study if deception seems necessary to attract a sufficient number of participants. But Kant's principle that we should not treat persons merely as means casts doubt on this initial judgment. Prospective participants are not treated as ends in themselves unless they are given full information about what their participation would involve. This revision of judgments moves "downward" (from principle to case), but in the present model one may also revise "downward" (from principle to case), but in the which a psychiatric patient threatens to kill an identified third party, we might revise a principle of patient confidentiality to allow exceptions in this sort of case. One point stressed by defenders of the reflective-equilibrium model is that revisions are never considered final; we must always admit the possibility that our ethical convictions (sometimes even considered judgments) will require modification in light of further considerations. Thus, while we strive, through continual reflection, for a state of equilibrium in our total set of ethical convictions (hence the model's name), we are never finished with moral inquiry. New problems arise, and fresh information and novel insights make us question old judgments. As in casuistry, moral reasoning is viewed as dynamic and is not expected to produce a final, rationally necessary theory.

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But how do we know which judgments or norms should get revised when there is a conflict? In the cases previously mentioned, why not (1) reject or revise the prohibition against treating persons merely as means or (2) retain confidentiality as an exceptionless principle, instead of the other way around in each case? How can we *justify* any particular resolution of conflicts? In brief, conflicts are to be settled by making revisions that seem to produce the greatest *coherence* in our overall system of ethical convictions.

Appeals to coherence may be understood, more specifically, to include requirements of logical consistency, argumentative support, and plausibility (reconcilability with our moral experience).³⁴ *Logical consistency* is simply the avoidance of outright contradiction. For example, it is logically inconsistent to hold that killing an innocent person is always wrong, yet hold that it would be right to grant this person's request to be killed on grounds of mercy. *Argumentative support* is the giving of reasons that back up one's ethical views (reasons that, of course, must be consistent with one's reasoning about other ethical issues). Thus, if one favors paternalistically prohibiting the use of certain drugs but opposes paternalistic seat belt laws, one must provide a reason that supports the claim that paternalism is justified in one case but not in the other. (Paternalism will be discussed in detail later in this chapter.) Wherever there is ethical controversy, lack of argumentative support for a particular position suggests dogmatism and invites reasonable doubts that the position is really justified. The third requirement for selecting from among alternative viewpoints is *plausibility*: Suppose someone argues that no actions are ethically right or wrong (a logically consistent position) and gives as a reason (argumentative support) for this view the fact that ethical judgments are subject to seemingly endless dispute. This view is utterly implausible. It implies that it is not wrong to commit genocide out of sheer racial hatred. Thus, in the present model one seeks logically consistent judgments, supported by ethical reasons or arguments, that are largely plausible upon reflection.³⁵

The reflective-equilibrium model, involving appeals to coherence, appears to be gaining support as more theorists and professionals question the adequacy of more traditional approaches. The model is especially favored by those contemporary philosophers who identify with the spirit of the early American pragmatists (who saw ethical reasoning as dynamic and rejected claims of an absolute foundation for morality). The model incorporates the case-based reasoning of casuistry, as well as the downward argumentation associated with principle-based ethics.³⁶ It concedes to deductivism that sometimes theoretical thinking is needed to check our particular judgments. Depending upon how it is developed, the model can also include many insights and elements of virtue theory as well as the ethics of care and feminist ethics. Overall, it may seem to offer a flexible and balanced approach to moral reasoning.

Nevertheless, the model of reflective equilibrium has its difficulties. Arguably, it buys flexibility and freedom from dogmatism at the cost of vagueness and lack of structure. By contrast, deductivism, which identifies a single principle as a basis for ethical justification, provides a framework or method that may be easier to conceptualize. And casuistry, by focusing on concrete cases, may provide a clearer method for approaching some issues. A critic could argue that, in the reflective-equilibrium model, one might not know where to start or how to proceed. A defender of the model might respond as follows. Theoretically, we start with considered judgments; in practice, we often simply start wherever we have ethical concern, and we use various tools of reasoning as we work toward more coherent positions. While this model is receiving increasing attention in bioethics and appears to have many strengths, it may be premature to judge its overall adequacy as an alternative to casuistry and recently dominant approaches.