On the Intersection of Casuistry and Particularism

ABSTRACT. A comparison of casuistry with the strain of particularism developed by John McDowell and David Wiggins suggests that casuistry is susceptible to two very different mistakes. First, as sometimes developed, casuistry tends toward an implausible rigidity and systematization of moral knowledge. Particularism offers a corrective to this error. Second, however, casuistry tends sometimes to present moral knowledge as insufficiently systematized: It often appears to hold that moral deliberation is merely a kind of perception. Such a perceptual model of deliberation cannot offer a convincing account of the possibility of moral progress. This second problem is one to which particularism is itself prone. To redress it, other aspects of casuistry must be exploited: Casuistry contains an account of presumptive generalizations that explains how moral deliberation might be structured by rules while also depending at critical junctures on perception.

CASUISTRY IS OFTEN understood as a particularist view of morality. There are different ways of developing both casuistry and particularism, however, and thus different ways in which they can intersect and different questions one might have about the resulting positions. In this paper, I call attention to two very different concerns related to the intersection of casuistry and particularism. The first is that casuistry sometimes tends toward an unacceptable systematization or rigidity of method. So construed, casuistry conflicts with particularism, or at least with one very plausible form of particularism. The second is that casuistry sometimes relies too much on the idea that moral deliberation is a kind of perception. This is a problem that besets particularism as well, but for which casuistry, when properly developed, suggests a solution.

The sort of particularism I have in mind draws from Aristotle and from some of Wittgenstein’s later ruminations on the nature of moral values. It
is set out by John McDowell, David Wiggins, and, to some degree, Martha Nussbaum and Jonathan Dancy. In this account, moral deliberation centrally concerns the application to cases of descriptively “thick” moral terms such as “kindness” or “cruelty” (McDowell 1979; Wiggins 1987). Such terms lack definitions that could be set out in terms of necessary and sufficient conditions; instead, there are a variety of similarities and relationships among the cases that instantiate the concept. Because the terms lack clear definitions, a list of correct moral judgments eventually eludes codification (McDowell 1979; Nussbaum 1986). A moral agent masters, in this view, not a set of rules or principles, but a way of responding appropriately to the world (McDowell, 1979, p. 331).

Casuistry is plainly allied to this view. Casuistry denies that there is any correct overarching theory of morality; it claims that moral knowledge is instead “rooted in a concrete understanding of specific cases and circumstances” (Jonsen and Toulmin 1988, p. 330), and it emphasizes the complexity of moral judgments.

In addition to exploring the interrelationship of casuistry and particularism, I offer a defense of moral theory and moral reasoning. Accounts of moral deliberation that centrally involve theory and reasoning are out of vogue in bioethics, but much of the criticism depends on a narrow and distorted view of theory. Moral theory is derided as presupposing the possibility of rigid decision-making procedures or algorithms, and reasoning is said to be crudely deductive or “geometrical.” It is my belief that very few of those who have defended theory ever thought that moral judgments can be justified with, explained by, or derived from a moral theory in the straightforward way its critics suppose (O’Neill 1987). Rather than defend that exegetical claim, however, I will attempt to approach the question of the nature of moral theory from the other side, by showing why theory can and must figure centrally in an account of morality that is in an important sense particularist. Casuistry provides the frame.

THE LURE OF SYSTEM

The guiding idea in casuistry is the notion that one reaches a judgment in a new case by considering how it is analogous to “paradigms”—cases about which there is a considered consensus concerning the right judgment.¹ In deliberating about a new case, then, the task is to see which paradigm is most relevant. Given the complexity of cases, there will naturally be a variety of paradigms, and their application to specific cases will be complex. Some cases illustrate exceptions to the judgment associated
with the paradigm; these new cases might be thought of as “secondary paradigms.” Still other cases may call for further qualification of the rule. Thus there can be complex orderings or “taxonomies” of cases.

At its core, then, casuistry offers a picture of a potentially messy but nonetheless plausible kind of moral reasoning. In places, however, Jonsen and Toulmin seem to want to clean the picture up a bit. They sometimes appear to suggest that casuistry is not this sort of mere analogical reasoning itself, but a quasi-official system of knowledge that employs it.

The problem is hinted at in *The Abuse of Casuistry*, where Jonsen and Toulmin (1988, p. 142) approvingly describe the “High Casuistry” of the Jesuits and Summists as generating “a systematic taxonomy of human behavior” and organizing “distinctions and classifications that had been scattered and inchoate in the classical and patristic authors . . . into a standard way of describing moral behavior.” It is more explicit in later papers. In an account of “the exact features of casuistry as a technique,” for example, Jonsen (1991a, pp. 297-300) describes the ethicist as having to master the “morphology” of a case—the circumstances, “relevant moral maxims,” and “topics,” which are “invariant structures of argument” that make possible a standard way of developing and arguing about the case. Mastery of the morphology reveals “the invariant structure of the particular case, whatever its contingent features, and also the invariant forms of argument relevant to any case of this sort” (Jonsen 1991a, p. 301). The morphology in hand, the casuist can proceed to place the case within a taxonomy, itself also presumably standardized, since the cases within it are organized by invariant internal features.

In short, the casuist invokes a special technique and a systematizable body of knowledge that lead to a standard way of thinking about cases. Unsurprisingly, then, Jonsen and Toulmin (1988) believe that there can be expert moral opinions, witness their oft-quoted nutshell definition of casuistry as a method involving “procedures of reasoning based on paradigms and analogies, leading to the formulation of expert opinions” (p. 257), and they hold that casuistry requires an influential and well-structured social institution to “provide the locus for and lend support to” it (p. 338).

The thought that paradigms and taxonomies are more or less standardized should seem implausible to a particularist. First, as others have observed, it sits poorly with the complexity of our moral practices. Tom Tomlinson (1994, p. 13) has noted that “in any contentious ethical question, . . . there will also be alternative sets of paradigm cases to which
analogies can be drawn.” And Loretta Kopelman (1994) has argued that there will often be different views of the “morphology” of a case and about the way a case fits into a line-up. The problem is that casuistry has not taken sufficiently seriously its own lesson about the complexity of cases. It rejects principle-oriented theories because they are not sufficiently sensitive to the range of actual moral problems, then threatens to replace them with a rigid compendium of paradigms, maxims, defeating circumstances, and so on. But the particularist claim about the uncodifiability of moral judgments is not merely that there is no simple formula for all cases; it is rather, as McDowell (1979, p. 336) puts it, that “however subtle and thoughtful one was in drawing up the code, cases would inevitably turn up in which a mechanical application of the rules would strike one as wrong.” This sort of skepticism about moral formulae catches even the carefully nested casuist taxonomies in its embrace. For the particularist, moral judgments are right if they are correct applications of terms that are not fully explicable. Many cases might well be paradigmatic of a given moral obligation; but there is surely no standard description of “the” paradigm. A standardized guide to moral problems could only be arbitrary.

A second objection is related: If moral judgments rely on what is explicitly convention, they are also more susceptible to conservatism. As Mark Kuczewski (1997, pp. 79-80) has noted, a casuistry that depends on institutions can be bound by the strictures of those institutions. Casuistry might be coextensive with knowledge of the law or of a church’s teachings and might serve the interests of whoever controls the institutions. More broadly, however, a systematizable and officially sanctioned casuistry might exacerbate a tendency that examples can have to exert influence where they ought not, or to retain influence even after they are shown to be mistaken. One might be less likely to reevaluate them.

In short, then, if casuistry is overly standardized, one might worry whether it has traded a code of reason for a code of tradition—something resembling a volume on tax law rather than the Categorical Imperative. Casuistry must be developed more loosely. “Paradigm” should refer to any case in which there is a reasonably uncontroversial judgment, in which one marks off the unacceptable course of action by saying (as indeed one might feel compelled to say, there being little else one could say), “Well, you just don’t treat people that way.” This is one way of recognizing the particularist claim that in some cases one simply “sees” what is to be done. Some such cases could be called “basic paradigms.” A “taxonomy,”
then, is simply a collection of other cases that show exceptions to the general rule associated with a basic paradigm. To the extent that one develops literal taxonomies, they would be specific to actual conversations occurring in the framework of some structured social institution—a hospital, a government panel, a church—but they should be construed only as articulating for the purpose of a specific conversation what is implicit in common practice.

DELIBERATION AS PERCEPTION

To loosen casuistry is to raise a second concern, namely, that casuistry could become too loose, that too much could be made of “moral perception,” of the phronimos understood as one who reacts appropriately, case by case. This second problem arises not because casuistry is at odds with particularism but because casuistry might be tempted to commit a mistake that particularism also can make. In fact, however, casuistry can offer a useful corrective to this particularist error.

Particularists infer that deliberation is best thought of on the model of perception because the rejection of codifiability appears to rule out any generalization about circumstances and the drawing of inferences from those generalizations; there is nothing left to do but inspect the circumstances. Thus McDowell (1979, pp. 331-32) writes:

A kind person has a reliable sensitivity to a certain sort of requirement which situations impose on behavior. The deliverances of a reliable sensitivity are cases of knowledge; and there are idioms according to which the sensitivity itself can appropriately be described as knowledge: a kind person knows what it is like to be confronted with a requirement of kindness. The sensitivity is, we might say, a sort of perceptual capacity.

Likewise, Dancy (1993, p. 112) argues that deliberation over a moral case is analogous to grasping “the shape of the circumstances,” and Nussbaum (1986, p. 305) holds that “[p]ractical insight is like perceiving in the sense that it is non-inferential, non-deductive; it is, centrally, the ability to recognize, acknowledge, respond to, pick out certain salient features of a complex situation.”

Casuists sometimes endorse a perceptual account of deliberation while simultaneously systematizing casuistry. In The Abuse of Casuistry, for example, Jonsen and Toulmin (1988, p. 329) describe moral deliberation as a “perception or ‘discernment’” that “lies in the ability to see how and when strictness is the better course, how and when the deeper wisdom
lies in tolerance of exceptions.” Yet it seems natural to shift from systematization toward perception. Kuczewski apparently follows this strategy. Kuczewski argues against construing casuistry as a “freestanding” method of problem solving that has no need whatever of moral theory. If the placement of cases into taxonomies to reach conclusions is completely free of theory, then the process is thrall to our understanding of the facts, hence conservative and incapable of functioning when the governing facts—the salient characteristics of paradigms—are in flux (Kuczewski 1997, pp. 79, 86). A better casuistry, in Kuczewski’s view, admits not only that the facts come into play, but some background values as well.

Kuczewski is on the right track. However, the threat of conservatism is also generated by the purely perceptual mode of deliberation that he recommends, regardless of whether the agent grasps factual details or background values. Although there is much to recommend the metaphor of perception—it captures the way moral deliberation often feels and it recognizes the complexity of actual cases—a purely perceptual account of deliberation does not permit an adequate explanation of how one’s moral views can develop or progress, as is necessary if one is to be able to make judgments in especially difficult cases. Such progress is necessary, for example, in cases that turn on dramatically unfamiliar circumstances (of the sort for which bioethics is famous) and in cases in which one’s values seem to pull in contrary directions and one must be able (even if slowly and painstakingly) to reassess their pull. In both types of cases the past pattern, knowledge of which makes perception possible, does not provide enough guidance. Development is also necessary for moral reform: here, the past pattern provides enough guidance, but of the wrong sort. One must be able to question the pattern and wrest one’s judgments in a new direction.

What is needed to explain such development of moral views is some way of showing how moral practices can change, but in a way that is directed, since otherwise the change is a merely lateral evolution and not progress. Further, the change must be directed by resources available in the practices, for in the particularist metaphysics of value there is nothing outside the practices to guide them. But if one is serious about a perceptual model of moral deliberation, it is difficult to envision change that is directed by the resources themselves. In a perceptual model, the agent has only two resources at hand: the circumstances of the particular case and, because the rejection of generalization forbids one from parsing out sections of one’s practices, the entire pattern of past moral judgments. One
cannot learn first what to do in this sort of case, then what to do in that sort. Instead, the moral practice must be mastered quite programmatici-
cally. It is as if one must broadly “cotton on.”

These resources fail to permit an account of progress because they pro-
vide no critical leverage. The deliberator must be able to step back from a
tentative judgment and bring new resources to bear on the case; the cir-
cumstances of the case itself afford no way of doing that. But the second
resource—the moral practice that is extended in individual cases—provides
no critical leverage because it leaves nothing out. The agent has nowhere
in particular to stand, from which some judgments or some lines of thought
can be criticized.

Thus the problem of looseness, like the problem of rigidity, threatens
to lead to moral conservatism. The perceptual metaphor presents moral
deliberation as fundamentally an ability to conform with practice.

CASUISTICAL REASONING

Fortunately, casuistry shows how to incorporate abstract reasoning–
the making of generalizations and thence inferences about particular cases–
in a way that can correct a strictly perceptual account of deliberation.
The core of the casuistic position, recall, concerns a kind of analogical
reasoning:

the general considerations that carried weight in similar situations provide
warrants that help settle future cases. So the resolution of any problem
holds good presumptively; its strength depends on the similarities between
the present case and the precedents; and its soundness can be challenged
(or rebutted) in situations that are recognized as exceptional. (Jonsen and
Toulmin 1988, p. 35)

The guiding thought is that one makes defeasible generalizations: one
presumes, when approaching a new problem, that what held in a similar
case elsewhere will also hold here, unless one can show that there is a
relevant difference. In other words, a paradigm case correlates with a
moral rule of the form, “If these circumstances obtain, then this judgment
holds—unless other circumstances defeat the judgment.” This is a require-
ment for consistency among moral judgments, although one that admits
an out-clause. Given a rule that, other things being equal, doctors should
tell the truth to their patients about their patients’ conditions, a question
about consistency arises when one says in some case that the doctor need
not tell the truth. The point of saying the requirement is one of consis-
tency is that it generates a rational compulsion: it compels the deliberator either toward a like judgment or to articulate some feature of the case that makes it an exception.

In this account, the role of inferential reasoning can be diverse. First, one can make very specific appeals to other cases. Second, if one can discuss cases and judgments in some degree of abstraction—and the very idea of comparing cases implies that one can—then one can discuss modestly general rules and principles. Third, by natural extension, one can engage in the construction of moral theories and appeal to the very general principles so crafted.

It is the third sort of appeal that is especially controversial and confusing but also important. If casuistry is to remain true to the central particularist claim that moral judgments are uncodifiable, yet a theory is to be related in an explanatory or justificatory way to all moral judgments, then the principles of that theory must themselves be uncodifiable. Whether there is room for theory building within casuistry then depends on whether there can be a high-level principle that is *uncodifiable*, in the sense that it would not unequivocally determine correct judgments in all cases, yet is linked to rules, values, and judgments in a way that helps to explain or support them. A general principle about respect for persons, for example, could perhaps be related to a presumption against lying in such a way as to partly explain and support it. To say that a principle is uncodifiable is to hold that it exhibits what H. L. A. Hart (1961) called an “open texture.” Its explanatory relationship with other norms could of course be nothing like a proof in math or logic, in which the meanings of the terms relevant to the proof are precisely and relatively uncontroversially specified (and where any controversy, as over the meaning of the conditional operator, can be bracketed through stipulation). The question is whether there can be a less rigid kind of argumentative relation between norms.

The possibility of such a relationship is suggested by the “specificationist” account of rules proposed by Henry Richardson (1990) and developed by David DeGrazia (1992). Richardson and DeGrazia aim for a balance between perceptual and “deductivist” views of moral deliberation. They propose that moral deliberation is guided by several general but conflicting and defeasible principles that are continually revised and “specified,” resulting in rules that are increasingly precise, whose application to cases is ever clearer, but that are still defeasible. The overall system of principles, rules, and judgments is justified not merely by the seeming appropriateness of its moral judgments in individual cases—which
would amount to a perceptual account of deliberation—but by its overall coherence. Coherence, here, is understood to involve not only logical consistency among principles and rules but also “argumentative support” among them and between the system of principles and rules—i.e., a theory of morality—and other theories that bear upon moral beliefs, such as theories about the person and about society, for example. The idea is not only that norms are made compatible with one another, but that explanatory relationships exist among them and among various theories.

Richardson (1990, p. 300) distinguishes the notion of argumentative support from both perception and deduction: “although there is no meaningful measure of the strength of argumentative support, it remains—unlike the grounds invoked by the intuitionist—fully subject to discursive statement and criticism.” The process of specification is perhaps best understood as a process of interpretation and clarification. It can be thought of as a kind of conceptual exploration, or, as Wiggins (1987) says in another context, as the elucidation of a concept, which he contrasts with the reductive analysis of a concept. To elucidate a concept is not necessarily to provide a criterion for what counts as an instance of the concept; rather, it is to reflect upon the employment of the term, perhaps considering a variety of instances of its use, and set out what Wiggins calls its “marks”—general features of the use of a term that help provide a handle on what is at stake in the term. Because this process is not tantamount to fully specifying the content of the concept, it also need not be thought capable of eliminating it. There might be some descriptive material within it that is not fully captured in the concept’s marks, indeed that cannot be captured except with reference to the concept itself.

If the development of theory is understood as involving this notion of argumentative support or elucidation, then theory building is possible within a particularistic casuistry. One can make generalizations about the applications of values to cases and can try to sort out the relationships between these generalizations. One might conclude that each helps to explain another or that some reflect a further, underlying moral belief. A variety of moral requirements seem to be concerned in various ways with an intrinsic valuing of human nature, with a concern for individuals’ autonomy, or with a concern for their welfare. Considerations of kindness, for example, imply an underlying respect for others: kindness requires a recognition of another’s intrinsic worth; kindness without such respect is mere pity. One similarly might conclude that respect for others is a thread running through many of our moral practices. Respect for others might
come to be seen as a kind of organizing theme, more fundamental to our moral practices than at least many other norms.

To grasp this conception of theory, it is important to underscore the important role it admits for moral perception. First, plainly, moral theorizing does not, in this picture, provide a foundational justification of moral practices. A community’s practices have to be seen, rather, as self-underwriting in a limited way: what justifies them are the judgments made in the paradigms of kindness, cruelty, honesty, and so on, together with those judgments’ coherence (understood in the rich sense above) with other judgments and with other views that are relevant to morality. It is reasonable to speak of these judgments as being justified perceptually. A basic—that is to say, unanalyzable—recognition of the moral implications of some situations gets moral practices off the ground. One then acquires the ability to extend such practices to difficult new cases and to criticize those practices by theory building—i.e., by generalizing judgments, adopting rules and principles, and exploring their interrelationships. But then, with this messy structure in place, a second type of perception is necessary in order to apply the rules, as was recognized by no less a principlist than Kant (1929, p. 177): “If understanding in general is to be viewed as the faculty of rules, judgment will be the faculty of subsuming under rules; that is, of distinguishing whether something does or does not stand under a given rule. . . . General logic contains, and can contain, no rules for judgment.” Thus perception is involved at both ends of moral deliberation, preserving the Aristotelian thought, dear to casuists and particularists, that in grasping ultimates in both directions we rely on “intuitive reason” (Aristotle 1985, p. 165).

It is also important to emphasize that in this conception, theory need not analyze out that which it seeks to explain and organize. Theory starts with specific judgments and the broader patterns of responding to the world denoted by thick terms such as “kindness” or “cruelty.” To engage in theory is to search for order in these judgments and patterns, but it need not be the case that the patterns could entirely be gotten back out of the theory. This is the point of saying that theory elucidates rather than analyzes. Thus a moral theory would be not only open-textured, but also a somewhat background phenomenon. One is still left talking about kindness and cruelty. While theoretic considerations might elucidate what is involved in acting kindly, and might even provide useful criticism of misbegotten attempts to be kind, one cannot simply wheel the theoretic apparatus into place to fully articulate what kindness is all about.
This view of moral theory differs in respects from the specificationism of Richardson and DeGrazia. Of course, the positions are similar. Both are intended to admit considerable complexity in moral practices, both regard moral practices as constantly under development, and both embrace the idea that moral principles and rules are defeasible but nonetheless directive. But specificationism does not admit the existence of a diverse array of unanalyzable moral categories, shading into each other, elucidated but not exhausted by theory, argumentatively connected to theory but not derivable from it. Second, because such a structure will be messy, perhaps disappointingly so for some, it abjures determinacy. The specification model seems to suggest that moral practices have, at any one time, a determinate and rather intricate structure consisting of high-level, mid-level, and case-level norms. The casuist might endorse Richardson’s examples of specification, which involve already well-specified, fairly narrow rules, but should be skeptical whether they are part of an overall theoretic structure capable of giving determinate judgments. Individual judgments may not follow easily from the existing theoretic structure; laborious and not always conclusive argument will be required.

This view of theory is also not perfectly congruent with that of Jonsen and Toulmin. Jonsen and Toulmin (1988, pp. 285ff) suggest that theory is useful for defining the scope or boundaries of morality (which they think Kant attempted), for redressing imbalances in morality (the project of Bentham, who sought to emphasize the concern with welfare), and for “making a case for morality” (attempted by some moral theologians, and perhaps by Dewey). At least the first two roles can be met by the account of theory adumbrated above. Perhaps the third can as well, if “making a case for morality” includes the tasks of describing moral practices and showing why there are no metaphysical impediments to admitting their authority—one of the goals that McDowell and Wiggins have assigned themselves. But theory should do somewhat more than Jonsen and Toulmin acknowledge.

Toulmin (1994, p. 311) suggests that appeals to theory “are helpful only to the extent that they throw incidental light on particular cases.” Jonsen (1995) acknowledges that general principles are a necessary complement to casuistry, but hedges regarding the content of that complementarity. In one paper, he compares the relationship between theory and practical judgment to the relationship between a bicyclist traveling across a country and a balloon floating above the bicyclist. The point of the metaphor may be that the balloon helps the bicyclist get her bearings, a role that
would be essential and substantive. But Jonsen suggests a weaker relationship. “The biker looks up from time to time at the pennants flying from the top of the balloon. On each, a principle can be emblazoned and the biker can recite one or several as he or she steers toward a resolution of a case” (Jonsen 1991b, p. 15). It is not clear what sort of guidance this is, or whether it is really guidance. What Jonsen has in mind is perhaps captured in Kuczewski’s (1997, p. 115) suggestion that “casuistry has the principles of all theories available to it,” but that different moral theories are applicable to different cases and it is the task and special ability of the person of practical wisdom to recognize when one or another, or none of them, is relevant. In this picture, it appears that principles give the person of practical wisdom a way of articulating judgments that are in fact justified only perceptually. The principles generate no rational compulsion. As Jonsen (1991b, p. 15) says, theory and judgment are, like balloon and bicyclist, “not connected, except by shouting.”

THEORY IN THE BACKGROUND

Recourse to a more directive kind of theoretical discussion is necessary if theory is to “redress imbalances in morality” in the way Bentham’s utilitarianism did. And it is this response, of course, that shows how casuistry can correct the conservatism generated by a purely perceptual account of deliberation. Roughly, the idea is that a judgment can be criticized both by appealing to judgments in other cases and, abstracting those judgments, to very general, theoretic observations. Indeed, the very individuation of a case can be affected by appealing to other cases and generalizations.

Recourse to theory also facilitates a response to another set of problems sometimes imputed to casuistry. These problems have to do, in various ways, with how a case (or for that matter a principle) can shed light on another case. Kopelman has argued that paradigm cases cannot serve the purpose to which casuistry puts them. If one picks uncontroversial cases as paradigms, then “they may not be helpful at the very point one needs help–in solving controversial cases”—since what makes cases controversial is precisely that they do not fit the paradigms; on the other hand, if one picks controversial cases as paradigms, then individuals will of course disagree about whether and how it is a paradigm (Kopelman 1991, p. 29). Dancy (1985) has lodged a similar objection about reasoning from case to case. He argues that in the case one is reasoning from, presumably, the judgment is easy, but in the case under consideration, the
judgment is hard, and therefore the circumstances of the two cases must be different in important respects. And if they are, then it is not plain why the easy case sheds light on the harder case.

The objection assumes that one has a fairly good understanding of what is morally important about the hard case—it is because one does that the comparison case is seen to differ from it in ways that undermine the attempted analogy. Thus the objection is related to another objection that Dancy develops against using one case to compel a judgment in another case (and implicitly against using generalizations to compel a judgment). In proposing that comparisons can resolve a case, Dancy (1985, p. 147) says, the idea is “that we are to determine the similarity of [cases] A and B in respects relevant to [the moral property] F-ness before we have determined their similarity (or otherwise) in respect of F-ness; and that we should work from the first decision to the second.” One needs to know that the two cases are similar in a range of respects and that those respects comprise all the properties relevant to F-ness in the two cases. But one cannot know this for the two cases until one has made moral judgments in them. An analogy is possible, then, only if one already has a moral judgment in the case that one is purportedly trying to settle. The deliberator mistakenly takes herself to be picking out the relevant nonmoral facts in the problem case and then reaching a moral judgment by means of the comparison, but to say that these facts are relevant is just to give the moral judgment. Thus the individuation of the case involves the judgment, at which point everything important about moral deliberation collapses into the individuation of the case, and moral deliberation reduces to perception.

Part of the response to these objections is to agree that it is only rather easy problems that are settled by a direct comparison to a single case. Hard cases are not settled by appeal to some one case, but by considering a range of related cases and debating the respects in which they seem to be related. Yet more difficult cases may require a much broader kind of discussion.

The other part of the response starts with the observation that the objections fail to do credit to the way comparisons not merely facilitate but also compel individuation. Of course, a case is sometimes deeply plumbed and remains hard; it is then not likely to be resolved by bringing one more comparison or theoretical observation to bear. But when wrestling with hard cases one is searching for the best response, and adverting to related cases helps the deliberator work toward a view of the case at hand, a view
that is developed in part by making the comparison. Because the comparisons are seen as directive, because they place a burden of proof upon the agent, they force the agent to sharpen her view of the case at hand. This is the “moral triangulation” described by John Arras (1991). He suggests that one need not think of deliberation as a two-step process in which one first sees what is morally important about the case, and then places it on a chart under a relevantly similar paradigm. Rather, one can go back and forth between one’s view of the case at hand and one’s view of other cases.

The response also points to what I have tried in this paper to add to Arras’s picture: the complex use that can be made of some rather abstract, theoretical considerations about what is involved in judgments in specific cases. These considerations, open to interpretation and debate though they may be, can provide some guidance about the relationships between various kinds of considerations, and this sort of understanding—not the conclusion of a proof but a step-wise elucidation of practice—makes it possible for theory to provide modest critical leverage. Using one’s conclusions about the relationships among norms, one sometimes might find what seem to be incoherencies within moral practices. Thus, although theory is drawn out of practice, it can reflexively refine and criticize practice. At times such criticism might come to bear upon a case at hand; more often, perhaps, it is oblique. It might be, that is, that theoretic considerations have force primarily when thinking about cases at some remove. The discussion of moral problems takes a variety of forms and occurs at various levels of abstraction, sometimes in order to reach a judgment in a specific case and sometimes only to talk about classes of cases in the abstract. Theoretical claims are perhaps relevant primarily in rather abstract discussions. After all, it is odd to imagine someone appealing to Kant or Mill in the context of any actual case. To philosophize in the midst of a case would evince a kind of moral callousness. But even if this is right, theoretical discussions could still provide a framework that influences perceptions of judgments and within which hard cases are more likely to be resolved.

NOTES

1. Jonsen and Toulmin (1988, p. 308) also sometimes use “paradigm” to refer to the moral rules that a case illustrates. I will reserve the term to refer to cases.
2. In another paper, Jonsen (1995, p. 241) describes the array of topics that the ethicist must master as a “memory palace,” which he explains is “an imaginary building of ample proportions, divided into many rooms, large and small, into which the data of memory [are] placed like furniture and decoration.” To see how to approach a case, one could picture oneself wandering through the palace and perusing items in the rooms.

3. Nussbaum sometimes describes her view as a “narrative approach” to moral deliberation. In bioethics, “narrative ethicists” think of the right judgment as what best fits the case, in the way that the best ending fits a story. A narrative conception of rationality may also fall back upon a perceptual sort of reason, for the right ending is to be identified not by applying rules but by being appropriately sensitive to the details of the developing story and settling noninferentially upon the appropriate conclusion.

4. This view of justification draws from the notion of “wide reflective equilibrium” introduced by John Rawls (1971) and developed by Norman Daniels (1979).

REFERENCES


