

# THE CLONING OF COBLENZ

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The Chit Chat Club rejoices in the variety of its members. We assemble each month, bringing quite different characters, professions, years of age and experience. There are among us greater and lesser scholars whose curious minds delve into multiple and diverse fields, greater and lesser wits who purvey frank humor and gentle irony. We hear high eloquence and precise prose. It is our differences which make us club together. How different a Club from a Committee. All of us have served, in our times, on a Committee or two: for some of us, daily life may be concatenation of Committees. I, for one, prefer a Committee which is quick about its business, decisive in its decisions, effective in its influence and short of meeting and of life. Committees, these days, are supposed to be composed of representatives of all classes, races, religions and of every sex and, in this era of affirmative action, action is forever put off by the interminable discussions, in which this miscellany of members propose, examine, study, draft and redraft, debate and deplore each phase of the problem they were summoned to solve.

Would it not be better if every Committee be staffed entirely by our Chit Chat Club brother, Bill Coblenz, a man often solicited and much experienced in civic and charitable committee service. He is a man who goes to the heart of a matter, who does not tolerate rambling commentary or inane argument, who knows the right combination of people, persuasion and money to get a job done. The life span of any committee constituted only by Coblenzes would be instantaneous: they would sit down, see the problem, state the answer, stimulate the activity and cease to exist. How efficient, how economic and how entertaining this brief, blessed session would be.

But, wait: how can we have so many Coblenzes? We could not merely gather up all members of the Coblenz family, for the mysterious working of the double helix has made each of them not only alike but different; each of them, like our Club Members, has been shaped by multiple influences. Yet could we not clone Coblenz? Could we not, using the recently discovered techniques of microbiology, replicate perfect copies of our perfect Committeeman. True, it has been done only in plants and in amphibians and, I think, once in mice, but our finest scientists tell us that, apart from some technical quirks, it can and perhaps will be done. But wait again: is it right to clone Coblenz or any other? Let us look at the problems: if we could clone this intelligent, benign and efficient Committeeman, could we not clone some dull and slavish clod to do the menial tasks or some vicious genius who would enslave us all? Is it ethical, some might ask, to clone or even to explore the science surrounding cloning? Many have expressed their concerns,

not only about this science and its technology, but about the entire field of what is popularly called “genetic engineering.”

My essay tonight is not about genetic engineering as such. Several of our members have addressed this subject in learned fashion. My remarks about our worthy brother, Mr. Coblenz, are not a serious proposal, nor are my remarks about cloning meant to reflect accurately the nature and responsibilities of this endeavor. I really intend to talk about how one might approach the ethical questions raised by an endeavor so new and so astonishing that we have no precedence, no analogies. How can one proceed wisely along a path that where no human has ever trod? We face similar problems in the employment of thermonuclear power, in certain environmental issues, in the use of computers and automata. Our moral assessments about the wise, humane and beneficent ways to live with these very new phenomena are beset with difficulties. We know how to make moral judgments because we have fund of experience about beneficial and harmful effects of our prior judgments; we can draw analogies based on similar experiences. In these areas, we lack these guides. We cannot formulate principles in a vacuum. How can we even think about the ethics of these phenomena of modern life? Must we abandon serious and careful analysis for slogans, demonstrations and sermons uttered in fear and frenzy?

We must become casuists. Our morality must become a casuistry. My essay is not about cloning or about Coblenz but about casuistry. Casuistry is a word not frequently spoken but, when it is, it is usually uttered in a disparaging tone. *The Oxford English Dictionary* defines casuistry as “that part of ethics which resolves cases of conscience, applying the general rules of religion and morality to particular instances in which circumstances alter cases or in which there appears to be a conflict of duties.” The entry then notes its use was “apparently at first contemptuous.” The accompanying entry “casuist” bears the comment, “often with sinister application.” An illustrative citation reads, “casuistry destroys by distinctions and exceptions all morality and effaces the essential difference between right and wrong.” The entry also refers to the definition of casuistry offered by the *Penny Cyclopaedia* of 1836, “the art of quibbling with God.” In the words of a 19<sup>th</sup> century commentator, “without a doubt, few words in history are as infamous as casuistry, it is certainly a peculiar task to attempt its rehabilitation.”

Stephen Toulmin, a colleague of mine from University of Chicago, and I are about to undertake a rehabilitation of casuistry. We are in the process of writing a book on the history of this peculiar and maligned activity (since published as *The Abuse of Casuistry. A History of Moral Reasoning*. University of California Press, 1988). We hope to prove that it was, in its best days, a highly respectable and effective way of arguing about novel moral issues. Our enterprise is not prompted by mere ethical antiquarianism. There is, at present, a renewed interest in cases of conscience which today are called “ethical dilemmas.” A recent reviewer of Sissela Bok’s fascination book, *Lying*, states, “her book is an example of what might be called the “new casuistry” in which moral philosophers examine specific cases...against the claims of a set of moral arguments.” He compares her book with another “distinguished example of the new casuistry”, Michael Walzer’s

“Just and Unjust Wars” and pays them both “high compliment...for their ability to convey the high moral stakes involved in their respective subjects.”

The questions posed by persons faced with dilemmas in which alternative courses of action vie for attention as “right” are the questions of the new casuistry. They abound in the daily newspaper; they emerge in the policy choices of government and business. Should the US pursue an aggressively public human rights policy or negotiate privately and quietly? Should National City Bank do business in South Africa? Should we ransom hostages and terrorists? The arguments surrounding such questions constitute the matter of a new casuistry. Unfortunately, due to the disrepute of casuistry, these arguments have little shape or form derived from an ethical method which is intellectual and morally respectable.

Casuistry has no home in contemporary academic moral philosophy. In the latter half of the last century, the great moral philosophers, such as Henry Sedgwick at Cambridge and GE Moore at Oxford urged their colleagues to develop theories of ethics; they distained discussion of particular issues in favor of the unsullied systems of deontology and teleology which they limned in pure logic. Indeed, one of their academic progeny, the estimable Oxford philosopher EM Hare, recently answered the question, “can moral philosophy help resolve the problems of medical ethics, by saying, in a somewhat timid voice, “well, yes, by helping you get clear about the meaning of words, like “wrong. He warned us to avoid, “particular cases and incidents” which can only confuse us more. Yet, are not the particular cases and incidents the only interesting matters for most of us?

The sinister and contemptuous connotation of casuistry derives from the brilliantly vicious attack upon its practitioners carried out by the theologian and mathematician Blaise Pascal. A devout Jansenist, he wrote, in 1654, *The Provincial Letters* which satirized casuistry with such literary style and wit, that it could not reply. Casuistry never recovered from the allegations of this polemic. As if the heart had been ripped from the enterprise, it lost its intellectual strength and did, indeed, degenerate into quibbling. But, for a century before Pascal’s attack, the casuists had addressed issues of great importance and produced plausible, if not perfect, resolutions of serious moral issues. Pascal, whose personal piety made him a moral rigorist, accused the casuists of making morality so complex that almost any choice could be right. For one with his clear insight into the life of the spirit, so tellingly revealed in his *Meditations*, moral choice had to be simple, straightforward, without distinctions or without excuses. Morality, for him, was to be as lucid as mathematics. Thus, the casuists, who had a sense of the real complexity of human choice and the human world, were anathema to him. They denied a precept of the Gospel which he held dear: “Let what you say be simply Yes or No: anything more than this comes from the devil.” (Mt6:34).

Casuistry is a modern word, appearing only in the 17<sup>th</sup> century. Yet the form is ancient. The Rabbis of the Diaspora crated an extensive casuistry which still exists in the wisdom of modern Halakic law. The Stoics of the Greco-Roman world taught a widely popular philosophy which included a refined casuistry. Fragments are found in Cicero’s great *Essay on Duties* which are today even familiar: who among the shipwrecked has a right

to the floating plank, the simple sailor or the head of state? How much truth must a realtor tell about the defects of a house? Above all, was the brave Regulus right to return to his death in Carthage because he had bound himself by oath to return? There is casuistry in the *New Testament*, particularly in the writings of Paul who struggled with the obligation of Christians to fulfill the Jewish observances and to avoid contamination from pagan custom.

Casuistry was given an official mandate and an interminable task in the early middle ages when the practice of personal confession to a priest became common in the western Christian Church. The confessor was required to judge the sins confessed in view of “the circumstances of sin and sinner” and, as a just judge or good physician, to impose a sentence or provide remedies in accord with the seriousness. Monastic scribes wrote volumes called Penitentials, in which various sins were listed and their seriousness assessed in light of such circumstances as the presence or absence of knowledge, of malice, of anger. Very little analysis or argumentation accompanied these verdicts.

Casuistry, properly speaking, begins with the work of Raymond of Pennafort (1175-1275). This Dominican priest was widely engaged not only in teaching but in civil and ecclesiastical administration. His *Summa de Poenitentia* (1221) represents “an astonishing change of perspective and balance” over the earlier penitential literature. (MQ, 35). He has fully incorporated the discussion of sins and penances into a systematic framework. He divides his treatises in an orderly manner. Each treatise begins with a statement about how his discussion will proceed and with definitions of the principle terms. The “true and certain opinions” about the matter are then set forth, followed by a discussion of the doubtful questions and cases. This is the first systematic use of the term “casus” in the penitential literature, although it had been used in canonical literature.

Many books of casuistry in the style of Raymond of Pennafort appeared in the 14<sup>th</sup> and 15<sup>th</sup> centuries. A major event in the development of casuistry was the publication of *Institutionum Moralium* by Juan Azor, Jesuit Professor of Moral Theology at Alcala and Rome. Published in 1600, it announced itself as a book “in which all cases of conscience are briefly treated.” The brevity amounts to 3800 folio pages! Azor’s volume, perhaps more than any of its predecessors, initiated the conversation of high casuistry. For casuistry, as we shall explain below, cannot be understood except as a sustained conversation.

The flourishing of casuistry in the 16<sup>th</sup> and 17<sup>th</sup> centuries can be attributed to several factors. Some of these have to do with the matrix of theological thought in which it grew the explicit statement of a doctrine of natural law and the doctrine of probabilism. Several other factors have to do with the events of the time: the invention and propagation of the printed book, the institution of the Jesuit colleges through out Europe, and the spirit of debate and contentiousness fostered by the Reformation. Finally, there were new experiences to which the culture of European Christianity was exposed which raised previously unasked moral questions: the rise of mercantilism, the discovery of the

peoples of the Americas and the emergence of schismatic and heretical rulers. Each of these factors should be briefly explored.

The theological matrix provided two sources of nourishment to casuistry. The first is the development of a doctrine of natural law. The classical statement of this doctrine is found in Aquinas. There it is strong but sketchy: strong because it a clear general frame work for the moral life. It is sketchy in that it provides little direction for actual moral life. The precepts are very general; particular decisions are made by prudence, the virtue that perceives the relevance of circumstances to general rules. Further development of the doctrine of natural law, while elaborating it, does not move substantially beyond the outline of St. Thomas. The most elaborate development, by Jesuit Suarez, while affirming that particular decisions are reached by inference from the primary precepts, leaves open field for casuistry. Suarez writes,

*Human actions, insofar as concerns their rectitude or wickedness, depend to a great extent upon the circumstances and opportunities for their execution. In this respect, there is great variety and actions must be evaluated in view of this variety.*

A second question was formulated in the theological matrix: how does one deal with the uncertainty that seems to attach to moral opinion. Must one be certain of the correctness of one's decision in the same sense that one must be certain of the conclusions of a syllogism or a mathematical proof? If not, why not? At the end of the 16<sup>th</sup> Century, this became a central problem of theology and elaborate treatises on the problem of mathematical scientific and moral certitude were produced. The debate between "probabilists", "rigorists", "laxists" and "equiprobabilists" is forgotten today, yet in its arcane pages, questions were asked and answers formulated which speak to a serious modern problem: "Can we ever say with any certitude at all that this is right and that wrong?" Today, we throw up our hands at that problem; the casuists addressed it directly and seriously.

The events of the times that stimulated casuistry were the great increase in communication and the climate of contentiousness. Communication was enhanced greatly by the availability of printed books. The casuists, like so many others, were eager to express themselves in this new media. They wrote prolifically and their opinions were published widely. The number of editions of books of casuistry is astonishing. Also, there were not only books but there were increasing opportunities to study them. In particular, the Jesuit colleges founded throughout Europe in the 16<sup>th</sup> century were places devoted to the moral instruction of youth. Professors of casuistry were appointed in all of these colleges; each of them read the notes and books of his colleagues and each wrote his own book in confirmation or refutation. Casuistry became an official part of the Jesuit course of instruction to seminarians and lay students alike. Finally, a spirit of debate and contentiousness was in the air. The Reformation had thrust theological debate into the center of public consciousness; the disputations of the schools were not abstract discussions of abstract problems, but genuine and often bitter debates over interpretation of essential doctrines of the faith. While casuists did not attend too closely to the debates over moral issues with their Protestant opponents, they did so vigorously within the

Catholic camp among those whom they felt were affected by the Calvinist spirit of moral rigor, the Jansenists.

The new experiences that Christian Europe faced raised moral questions. Out of these, three archetypes or great cases emerged: the problem of usury fostered by the rise of trade and mercantilism, the problem of how to deal with the Indians of the Americas, and the problem of obedience to a heretical or schismatic ruler, occasioned by the Anglican Schism. The question of usury was most carefully analyzed by Molina; the problem of the Indians by Vitoria, and the problem of the obedience to a schismatic king by Suarez. Their analyses offer superb examples of the casuistic mind at its most skillful. Their conclusions fed into the stream of the casuistic conversation.

During its high period, casuistry must be understood as a sustained conversation. The single casuist did not create and analyze a case in an individualist fashion, isolated from his fellow casuists. Casuists were, on the contrary, in intense communication. This communication was through the printed word rather than face to face and, while slow and ponderous by modern standards, it was extensive and deep. The casuist would not think of discussing a case without surveying the opinions of the “dependable authors” on the same case or one similar to it. Each casuist had, in memory or at his fingertips, the works of the “dependable authors.” When the immense tome of Azor is opened, 40 pages of authors cited or consulted are found; at each question or dubitation, the opinions of those authors whom the writer considers to have something significant to say are quoted or paraphrased (not always accurately). Thus, the casus, through time, is surrounded by an increasing flow of opinion. Some of that opinion is not contested and expands into a pool of certain doctrine. Out of that pool flow opinions that almost all casuists accept: it is the river of more probable opinion. Other opinions are challenged, by arguments that command wide acceptance by other casuists and thus form tributary streams of “less probable opinion.” Finally, certain opinions rush over a rocky course of objections and are diverted into trickles of “hardly probable opinions”, some of which finally evaporate in the sands. Casuistry cannot be understood apart from this flow of conversation.

It is a fascinating journey to follow the casuists debating the great issues of their day. The doctrine of “just war” is a product of their arguments, and the problem of usury, associated with the emergence of modern banking, was exquisitely dissected, as our Chit Chat Club brother John Noonan has brilliantly recounted in his history of that subject. However, time prevents us from taking these voyages. As we conclude, we note one of the triumphs of casuistic reasoning, and then we return to our opening issue: the cloning of our Chit Chat Club brother, Coblenz.

As we face issues such as those raised in molecular biology, nuclear power and artificial intelligence, we are like the casuists who encountered the great issues of the religious schism, the discovery of the Americas and the rise of mercantile economy in the 16<sup>th</sup> century. These were radically new realities. There was no fund of wisdom and experience to guide personal and public decisions. When the Emperor Charles of Spain asked the great casuist Francisco Vitoria of Salamanca, “Do I have any authority over the peoples of the new lands?” Vitoria prepared a casus. Reviewing the literature of the ancients

about royal authority, he tested it against the current situation. He discarded arguments which seemed unsuited to the new circumstances distinguished others which seemed partly relevant and attempted to construct a policy for the king's conscience and the governance of the kingdom: it is a policy remarkable for its astuteness, its moral probity and is remarkably modern in its defense of the rights of the people of the Americas. It can stand the test of moral critique, but unfortunately, could not survive the challenge of practical politics and greed, although its one beneficent result was the prevention of the institution of slavery in South America.

Vitoria produced a classic of casuistry: an argument in favor of a moral position which fully respected the circumstances of the situation. In our time, we cannot deal with the ethical problems of genetics or the nuclear era with simple statement of principle or with proclamations and condemnations. We must take the cases one by one, argue the principles offered pro and con and relate them to the circumstances of time and place. Whether or not we should clone Coblenz cannot be answered in principle. Give me a case, richly detailed with circumstances, and I shall examine the arguments. My examination will be challenged and refined by other casuists. Out of this rational, sustained conversation, should come a resolution, not suited for all men, all time and all places, as Cicero described the moral law, but which meets the needs of the time and responds to the exigencies of our nature. I will begin this casuistry by proposing the principle that a world with more than one Coblenz is unimaginable, but might it not be fun?