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PSYCHOLOGY AND SCIENTIFIC METHOD

THE CASE METHOD IN THE STUDY AND TEACHING OF ETHICS¹

THE study of ethics often seems to be looked upon as an elegant accomplishment rather than as a necessary preparation for life. Last year, in a large New England college, there were presented to the faculty programmes of study leading to many different professions. In but one of these, the ministry of the church, was ethics looked upon as essential. The study of ethics does not apparently lead any one to pursue a more moral life; and there is a wide difference between teaching a man ethics and teaching him to be ethical. It may be doubted whether anything but the inspiration of a great leadership ever influences men to any kind of righteousness.

I hold that every teaching of ethics should be adapted to make men ethical. Any other advertisement of it is itself most unethical.

There are as many moral standards as there are men united in a common purpose. Any one of these is admirable in some respects. Have they any points in common? And is there such a thing as an objective ethics which could command the adherence of all intelligent and instructed men in the same way that the teachings of the physical sciences to-day are accepted by the same class?

An experience of concrete ethical situations which I may claim to be both wide and deep has given me a respect for the fundamental agreements of different systems. Christian, Buddhist, Mohammedan, common sense, utilitarian, intuitionist ethics, yes, even the no-ethics of Nietzsche, give, if I may venture the periphrasis, a pragmatic sanction to the admonitions of our spiritual and secular pastors and masters, which is striking; and I have come to think that the principles of morality must be of a certain robustness to withstand the interpretations put upon them by men of such varied temper, training, and tradition.

I believe that all who study the subject agree with me that there are these fundamental likenesses. The natural inference would be that there is *an ethics* which could be generalized from them, giving us a rule of conduct binding, not from without, but in the very na-

¹ Read at the meeting of the American Philosophical Association, December, 1912.

ture of conduct itself. To find such a rule one must pursue the path of the physical sciences without more ado, leaving all metaphysical questions regarding the ground of moral obligation aside, to be settled, if at all, in their proper place.

It must not be assumed at the start that we know what right conduct is. There must be an unprejudiced search with no arrière pensée.

Meditation upon this has led me to consider the possibility and advisability of employing in the study of ethics the case method or system, now in use in the Harvard and other important law schools. I propose, therefore, to put and try to answer four questions, after which I shall endeavor to present the results of a two years' trial of the method at Dartmouth College, the only place, so far as I know, where it has been employed in ethics. If I am wrong in this, I shall be glad to be corrected, and I would rejoice to know that others had tried it, that I might profit by their experience.²

- I. What is the case method in law?
- II. Why adopt it for ethics?
- III. What is its value for the study of ethics?
- IV. What is its value for the teaching of ethics?

I

The case method, as applied to the teaching of law, I find attacked in an article by Dr. J. P. Bishop.³ He says of the authorities of the Harvard Law School, "They have swept the whole line of text-books away;" but he acknowledges that "the use of decided cases in elementary instruction has always been common and [he believes] universal."

President Eliot, upon being introduced to explain the formal adoption of the method, said:⁴ "He [Professor Langdell] told me that law was a science: I was quite prepared to believe it. He told me that the way to study a science was to go to the original sources. I knew that was true, for I had been brought up in the science of chemistry myself; and one of the first rules of a conscientious student of science is never to take a fact or a principle out of second-hand treatises, but to go to the original memoir of the discoverer of that fact or principle. Out of these two fundamental propositions—that law is a science, and that a science is to be studied in its sources—there gradually grew, first, a new method of teaching law; and, secondly, a reconstruction of the curriculum of the school."

² My attention has been called to the work of Professor Frank Chapman Sharp, of the University of Wisconsin, "The Influence of Custom on the Moral Judgment." Madison, Wis., 1908. As I shall show later in connection with a mention of casuistry, Professor Sharp's method bears no resemblance to mine.

³ *American Law Review*, 1888.

⁴ *American Law Review*, Vol. XXII., page 18.

Professor J. C. Gray, writing later in the same *Review*⁵ (in reply to Dr. Bishop's attacks), says that "no system will work of itself" and that law treatises may be necessary, though not for teaching. "The best material for a legal education would be real cases." Cases, not text-books, are the basis of instruction, supplemented, of course, by lectures. "The method of study by cases is the best form of legal education that has yet been discovered. It is the best because it is most in accordance with the constitution of the human mind; because the only way to learn to do a thing is to do it. No man ever yet learned to dance or to swim by reading treatises upon saltation or natation. No man ever learned chemistry except by retort and crucible. No man ever learned mathematics without paper and pencil."

It should be added that the cases cited are always actual cases, highly condensed, but with all essentials given, including the reasons for the judicial decision. Many case books have been published, and more are constantly being prepared.

II

Why adopt this system for ethics? Well, in part, because other methods seem to me to be ineffective, but chiefly because I am convinced that ethics, too, is a science and must be studied in its sources, viz.: *actual human conduct with the judgments passed upon it by the authorities of whatever group the agent belonged to, for the purpose of the judgment.* In this way we may possibly arrive at an objective ethics whose authority over all men would be equal and imperative. There is a respect paid by all intelligent and instructed adults to the laws of the physical sciences far beyond that ever paid by any but the most conscientious to the pronouncements of any ethical code. If there should be found, upon investigation, laws as absolute for man's successful continuance in society as there are now for his successful resistance to the forces of nature, exhortation of every sort would give place to instruction. The ideal of Socrates would have been attained. Plato's ironical remark that horse-breeding must be taught, but that statecraft "comes by nature," would no longer be pertinent. Definite laws and principles of behavior would have the approval of men of all schools. There would be no Catholic, Protestant, Buddhist ethics any more than there is now a Catholic, Protestant, or Buddhist chemistry, physics, or economics.

And the great value of the experimental method is that it never fails. The hypothesis which led to the making of the experiment may prove inadequate or incorrect: but that is a matter of indifference. One learns as much from such a failure as from success. These are what Bacon called *experimenta lucifera*.

⁵ *Ibid.*, pages 756 ff.

Now, what if it should appear, after wide experimentation by many observers, that there is no universal basis for ethical teaching? The result, for all except the morally feeble-minded, would still be valuable. There might be, indeed, for a time, a condition of things comparable to that of Greece under the Sophists. Men might reject laws imposed by external authority on the ground that they are conventional, not natural. Indeed that seems to me to be increasingly the temper of the men of this day. Old standards have lost their value, not only for the flippant multitude, but also for many who are far from flippant.

After the Sophists came Socrates, reducing the chaotic interpretations of life to a rule. The *concept* in its practical working convinced those who knew it that there was some objective order in worlds mental and moral. But, let us suppose for the sake of the argument that no Socratic concept for morals may now be found. Would it not be better for us to know this than to languish in ignorance? There is a state of mind which I am wont to call the *ignorance of bliss*. Surely no philosopher desires it. As Professor Perry has said, "No man wants to be even a *blessed* fool!"

If there be an objective morality which no intelligent man can disregard, its value will be incalculable. We shall know *what* to teach at least. If there be no such objective morality, then it will be wise for men to choose their standards according to temperament and tradition. They will know frankly where they stand, where other men stand, and what may be done in the premises.

Such a conclusion can be reached, one way or the other, only through a scientific study of actual human conduct. It can never be reached through a theoretic ethics based upon a metaphysical system. But let me say now that I do not propose the case method as the only way of teaching ethics. It must be supplemented later in a course by theory; for there are certain questions which can not be met at all by the case method.⁶ Note that the case method is not casuistry; for casuistry always presupposes an established moral law. The application of the law to the particular case is sought, but there is never a doubt about the law.⁷ The case method seeks to know what the law

⁶It is unjust and indiscriminating to condemn it on the ground that there is no recognition given to the non-empirical character of the moral imperative. Professor Patten's strictures upon the method, when he discussed it at the meeting of the American Philosophical Association, in December last, were based upon an entire misconception of its claims. Professor Patten discussed rather what he knew to be my own deductions from this study than the contents of this paper or the value of the case method.

⁷Professor Patten seems to me simply to have denied this assertion. I invite him to bring proof that it is not so. In this connection, too, I must notice the very interesting and valuable modern casuistry of Professor Sharp in the work

is: and nothing is presupposed unless it be that the cases considered are known in common speech to come under the general heading, moral.

One must frankly face a very great difficulty in the practical employment of this method in teaching ethics. Law students have great masses of cases carefully arranged and coordinated, *each one properly adjudicated, and that unmistakably*. There are few such cases for ethics except when we take law cases over bodily—a thing which I very often do. One of the immediate and imperative needs, if the method is to be more than a local experiment, is an association of those interested in studying, teaching, and practising ethics to prepare, criticize, and publish cases properly arranged and coordinated for the use of classes. No one man is competent to do this. It requires many minds and much time in order that the whole field may adequately be covered.

III

What is the value of this method as applied to the study of ethics? Some will say, This is not ethics at all—it is sociology. Ethics is a normative science. It has to do with what ought to be, and can never be illumined by the study of what is. I challenge this traditional and conventional point of view. Governor S. E. Baldwin, I think, commenting upon the case method in law, scornfully compares the study of cases to the study of multitudes of apples in order to arrive at the law of gravitation. His criticism is more witty than pertinent. The observation of falling bodies under many different conditions by many observers may well lead to enlightenment upon the law of gravitation.

It is just a wide patient observation which has made that law a synonym for all that is valid and permanent in our knowledge. Where is such solidity, permanence, or agreement in ethical law? Honesty, truthfulness, temperance, honor, integrity, magnanimity, and the rest, change their minds when they cross the sea into alien territory.

One of the most notable and valuable books upon ethics of recent before mentioned and in other writings, which has been thought by some to be a prior discussion of this method: but a very slight review of these writings will convince any one that our methods have nothing in common except the inductive principle. His book is based upon replies received to a *questionnaire* addressed to some hundreds of students at Wisconsin. The questions are all casuistical. He seeks to know the ground of individual judgments of moral conduct and to discover if possible the sources of such judgments. I seek to know *what has happened*: and to discover, if possible, a law running through the judgments *which society has made through its duly appointed officials*. I do not, in any case, study opinions, but seek the established facts.

years is the text-book of Dewey and Tufts. Not the least valuable part is Part I., wherein are brought together the various standards of many peoples and religions for purposes of comparison. I do not criticize that admirable book when I say that we need to have a mass of cases drawn from the original sources for each of the groups, clans, nations, religions. The interesting and valuable books of Spencer, Westermarck, Tylor, McLennan, Lang, Spencer and Gillen, Hobhouse, Sutherland, and many others, contain material which is corroborative of many theories; but this material is not in the form needed by us. One of the most valuable of authors for this study is Sir Henry Maine, who presents fully the customs and judgments of society in some of its most primitive forms.

The study of cases brings us into direct and vivid contact with reality. We meet men in concrete situations being judged favorably or unfavorably *by the authorities of the group to which they belong*; and we realize pragmatically the exact value of conduct. Its value is no longer of the closet, theoretic, but demonstrated. That there is need in the study of cases for some heuristic is apparent—otherwise we should be lost in the contemplation of things and never find the Divine Idea. That heuristic, however, should never be the particular ethical theory in which the investigator has been chiefly trained; though it is unavoidable that this theory should color his conclusions somewhat. It should be determined by the nature of the problem considered; and we can have no better example to follow than Socrates in his search for the concept.

I have called the course at Dartmouth *cases of conduct*—a phrase suggested to me by Professor G. H. Palmer when he was told the nature of the proposed experiment. It is not—*emphatically*—*cases of conscience*, and all material should be historical. For this reason cases taken from fiction are not considered. They represent some one man's ideal. Historical cases, properly attested, alone give us the means of objective judgment.

The abundance of material is bewildering, and the outlook for the attainment of order apparently hopeless—but sociology, economics, psychology, and history have had similar difficulties to grapple with and their success is encouraging. I believe that if a small number of earnest investigators shall initiate this method of study, they will find valuable material, not only in the publications of anthropologists, but, also, and most significantly, in the investigations of contemporary sociologists, enlightened prison officials, social workers, and others. The field is ripe for the harvest.

Whether this method may prove more advantageous for the study than for the teaching of ethics, I am not sure. The time of my

experiment—two years—is very short; and the small number in classes—an average of nine members—leaves results as to teaching uncertain; but I feel confident that in the *study* of ethics, at least, this method will be found fruitful.

IV

What is its value for teaching? First, its concreteness. Theory is strictly relegated to a later part of the course and men are shown the actual penalties inflicted for transgression of group standards, customary morality. Of necessity we can consider penalties only; for there are no courts for the awarding of rewards for action, if we except the Nobel Prize Committee and the Carnegie Hero Committee, which cover a very restricted field.

Secondly, the opportunity to use the Socratic midwifery. In considering a case of murder, theft, arson, adultery, or other, the student gives testimony himself as to the unmistakable judgment of society—not his own opinion or the *opinion* of a judge, but the imposition of a penalty which has been enforced. There is not even a question whether it *should* be enforced. It has been—*voilà tout!*

But I am far from saying that there are no obstacles in the way of its successful use in teaching. Some of them are here given.

1. The unfamiliarity of the young with ethical situations.
2. The extreme conservatism and conventionality of the young.
3. Their inexpertness in abstraction and generalization.
4. The lack of a case book.
5. The apparently discursive character of the course, which often makes the student lose the thread of the discussion.
6. The amount of time needed is greatly in excess of that needed for dogmatic instruction.

Most students, I find, prefer to be taught by the lazy and inefficient lecture method, and as a part of good teaching must always be to lead the student *to think it good*, some concession must be made to their prejudices. It may easily be that the truest method of teaching—and I hold that this is the Socratic—will be, for a time at least, unpopular. In such case one must choose between being thought a good teacher and being one in reality.

The chief value of the case method as *an introduction* to ethical study—and this is all that I claim for it—is that students may and do become deeply interested in, not personal morals only, but also and more significantly, in large social movements and questions of public policy.

A few words about the exact method used in the class-room.

Some preliminary discussion of the aims and methods of the

course is followed by (a) dogmatic instruction in the nature of scientific method; (b) by study of the text of Dewey and Tufts on "Early Group Morality"; (c) by a direct study of several primitive cases of group morality in the first chapter of Dewey and Tufts; (d) by a careful consideration of the four methods of judging conduct in Spencer's "Principles of Ethics," the student being required to present a written digest of each of these chapters which are also discussed in class.

After this much preparation an attempt is made to *educe* from the class a provisional classification of all possible forms of conduct which meet with social judgment. It was found that all cases could be considered under four heads. Cases relating to:

- I. The preservation of life and limb.
- II. The preservation of property.
- III. The preservation of security in the first two.
- IV. The preservation of liberty, bodily and mental, culminating in the preservation of the power to hold and express individual opinion.

While this classification was avowedly tentative and subject to change, it was interestingly confirmed by my colleague, Professor W. H. Lyon, of the Tuck School, Dartmouth College, and a member of the New York bar. He said that the first two classes covered commercial and criminal procedure at law and the last two taken together would correspond roughly to actions in tort. The statement of this fact to the class by Professor Lyon made a visible impression.

At this point the class was invited to discover and bring to the class-room cases under the four divisions taken in order. These were then analyzed according to a formula again *educed* from the class by suggestion on my part, though no undue pressure was brought to bear.

This is the formula:

In order properly to use any case it is necessary

(a) To have it stated in all its essential characteristics and in these alone—following the analogy of law cases.

(b) One must decide which aspect of the case is to be considered, that of the agent or that of society reacting upon his act.

(c) If one shall choose to consider the aspect of social retribution (positive or negative) one must carefully distinguish the object sought to be attained. Sub-headings for this division are

1. Punishment (as a general answer).
2. Example.
3. Prevention of further transgression.
4. Reform of the offender.

5. Restitution to the injured.

6. Revenge (vengeance, "getting even," atonement).

(d) Whether the object sought was actually attained.

(e) Whether the action of society was the cause or only a cause or perhaps not a cause at all, of the resulting change in conduct.

This analysis, while in principle the same, varies in form with different types of cases.⁸

Hundreds of cases, some trivial, some important, were brought in by students and treated objectively. The word *ought* is rigorously excluded. One seeks simply to find out the *results* of the action; and I have applied the term the physics of ethics or ethical physics to our procedure. This seems to me equally characteristic of the text-book used in the second semester, Perry's "Moral Economy." Most of the cases considered were taken from contemporary life. They included all kinds of *killing* from accidental killing to deliberate murder and an effort was made to grade all killings according to the severity of the judgments made upon them. Killing of enemies in war, killing in self-defense, in defense of women and children attacked, etc., was contrasted with killing for revenge, avarice, brutality, and the like. The killing brought about by carelessness in the use of machinery, neglect of sanitary precautions, recklessness in running railroads, etc., where many lives are lost and much suffering is incident, yet little or no punishment is inflicted, was contrasted with cases of manslaughter where a relatively severe penalty is inflicted, to bring out the principles, tentatively assumed, that

1. The group punishes severely anything which threatens group continuance.

2. It is indifferent to killing where such does not appear to endanger the *idea of society*, as in railroad accident cases.

3. Lack of attention and old custom alone are responsible for society's neglect of things more directly subversive of its principle than some which are severely reprobated.

Ideally, for such a study, the judgments of society in all stages should be collated. It is manifestly impossible to do this in the classroom. It is the work of future advanced students and teachers to bring together as many varieties as possible of each of these classes relating to life, property, security, and liberty that material may not be wanting for a sound induction. Meantime, sufficient cases were produced by the class to make a very impressive exhibit. I pro-

⁸ Mill's methods of proof should, theoretically, be used. It can not be done with a class perhaps quite untrained in logic. The most one can do is to guide the class in the spirit of these rules.

pose next year to prepare the cases myself, not to depend upon the students, who are sometimes very blind to excellent cases.

Let me insist that this study of cases, however vague it may seem to some from this brief and necessarily imperfect presentation, is always an objective study of what has happened, not in the least of what ought to happen or of individual opinions. It is essentially a legal study. If objection be made that it ought not to be called ethics, I must insist that we need first to find out what is being done before we can with any confidence say what ought to be done; and that which is done will probably enlighten us very much regarding possibilities.

A social group *qua* group will always act in certain specific ways regardless of moral imperatives, so called, regardless of exhortation to mercy. If the group is to survive, treason in any form, when known, must be visited with death, at least during times of stress. It has been so visited.

Cases under the other three great categories, property, security, liberty, culminating in liberty of opinion and speech, must all be taken to be but shadings away from cases of life. In the end all ethics is a question of survival of personality, linked to the survival of the body. All that a man hath will he give for his life, but that life may mean the death of the body. The apex of my pyramid I have called *liberty of propaganda*, for if a man may not express *himself*, he might as well be dead!

In conclusion, I give brief indications of the tentative results derived from this study. They invite and welcome the frankest—but, I hope, understanding—criticism.

The locus of all moral situations is the conflict of interests.

Ultimate decisions rest with the individual.

There is no morality where there is coercion.

The individual may do as he will so long as he does not deny his own nature and purpose in life.

Individuality is the goal of social progress, the satisfaction of all interests, hence, development of *all* personalities, the only ultimate, but this is hardly probable in an evolving society.

The place of *intention* is clearly defined in social practise, but conflicting interests often bring about the punishment of unintentional offenders.

No universal law has been found except that each organism or organization applauds its upholder and condemns its threatener.
TREASON IS NEVER FORGIVEN IF KNOWN TO EXIST.

The only *ought* is the intelligent recognition of the place of all interests and consequent prudent adaptation to them.

Men get their moral impulsive power through loyalty to some group, however small or large. Intelligence alone is not sufficient to make men moral.

This is the merest sketch of a method which has been interesting and fruitful to me individually. Should there be shown sufficient interest in it, I hope to elaborate later on. This is submitted in real humility as an effort toward solving a difficult problem, and criticism is eagerly awaited.

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THEORY OF INDEPENDENCE

AMONG the several elements constituting the philosophical theory now known and vigorously defended as the new realism, the doctrine of independence occupies a central place. The authors of the recent publication bearing the title of this modern school¹ have not failed to realize this, and Professor Perry, of Harvard University, devotes his contribution in the "cooperative" effort to a thorough discussion of the object's independence of consciousness. Stated in its simplest terms, the theory of independence is the view that a real object does not owe its existence or its qualities to the fact of its being cognized. To this is added the belief that the real object is nevertheless such as may be known. In fact all the physical objects of experience are real objects and they are capable of being cognized *in toto*. There is no residuum which is from its nature unknowable. It is clear that such a view commits us to a definite type of viewing consciousness on the one hand and reality on the other. In opposition to Berkeley it is claimed that no object is real if it can be shown that its existence is identical with its being perceived. In opposition to Locke and to Kant it is just as stoutly maintained that it is foolish to look for, or to believe in, without looking for it, some thing at the basis of the qualities perceived, which itself can never be an object of perception. The identical thing which is at one moment an object of perception is at the next moment, if I shut my eyes and cease thinking of it, an object unperceived, but none the less (and equally none the more) a real object. As far as the object and its reality is concerned, my perceiving it or your perceiving it is not merely an unimportant accident; it is even less than that. It does not affect the nature of the object in the least. The object passes in and out of consciousness unscathed.

¹"The New Realism: Cooperative Studies in Philosophy." New York: Macmillan, 1912.