NORMS AND EXCEPTIONS
A COMPARATIVE APPROACH TO CASUISTRY
DECEMBER 11-13, 2014

In the last few decades casuistry, seemingly defeated by the attack launched by Pascal in his Provinciales, has re-emerged in the context of bio-ethics. As it is usually the case, questions related to the present generate questions asked to the past.

Law (nomos) and equity, Aristotle famously argued in his Nicomachean Ethics, are not always identical: in some exceptional cases “It is impossible to lay down a law, so that a decree is needed” (1130 b, 27-29, transl. W. D. Ross). But how did different cultures and different “laws” – Christianity, Judaism, and Islam – address the relationship between norms and exceptions? To what extent is a comparative approach to casuistry – in the broad sense of the term – possible?

The conference will explore this topic through a series of case studies (hopefully, the implications of this mise en abyme will be also discussed).

The conference will take place at the Istituto di Studi Umanistici e Sociali della Scuola Normale Superiore, Florence, on December 11th-13th, 2014, in the framework of the Balzan Project “Comparing religions. A historical approach (16th-18th centuries),” coordinated by Carlo Ginzburg.

Please note that attendance to the conference is free of charge but pre-booking is required.

For pre-booking and information, contact comparingreligions2014@gmail.com
In May 2004 the Royal College of Paediatrics and Child Health [RCPCH] for England and Wales published its guideline regarding withholding or withdrawing life sustaining treatment in children [Royal College of Paediatrics and Child Health, Withholding or Withdrawing Life Sustaining Treatment in Children. A Framework for Practice (Second Edition, May 2004) First edition published in 1997]. The need for guideline was a result of the progression of sophisticated life-support systems that challenged prevailing concepts about definitions of death and about diseases and their irreversibility. Progress also raised questions on the effectiveness of further treatment and the futility of sustaining life beyond the point at which survival benefits the patient. These were independent of, but also galvanised by, the practice of organ donation. The guideline’s aims, as its creators emphasized was not to provide a prescriptive formula to be applied rigidly in all cases “but an attempt to guide management in individual cases,” or in the terminology of this conference, it was to provide a framework for casuistry. The text of the guideline begins by asserting the paediatrician’s vocational commitment to promote children’s health, treat their illnesses and save their lives. It then continues and says: “However, there are circumstances in which treatments that merely sustain ‘life’ neither restore health nor confer other benefit and hence are no longer in the child’s best interests.” The document then describes five situations “where it may be ethical and legal to consider withholding or withdrawal of life sustaining medical treatment.” The medical team was thus given permission, so to speak, to exercise a case-based approach to ethical issues. This new role and capability brought with it considerable clinical, moral, socio-cultural, legal and economic issues, issues that continuously challenge the goal of medicine and the values of those who provide care in contemporary institutions. These issues arise in many settings in medicine. They are especially prominent in my area of practice in paediatric intensive care, where children now often die following an active decision to limit or discontinue treatment. In my presentation I would like to use my experience and present case-studies that show the process in which these end-of-life decisions are taken. I will present research that shows how socio-cultural differences and religious value systems influence the ways in which both families and medical staff address these ethical vexing decisions.

My paper explores the cross-cultural history of the medical case narrative as an epistemic genre. I compare the development of the medical case in early modern Europe and early modern China, two eminently comparable medical cultures, as they were both based on a long tradition of written medicine compiled by scholar-physicians. The comparison is based on my own research for Europe, and, for China, on the excellent studies by Charlotte Furth, Christopher Cullen, and other scholars. There are some remarkable similarities between the early modern Chinese and European medical case narratives. In fact, the similarities seem at first to outnumber the differences. In my paper, I will mostly survey these similarities, while also briefly considering the main points of difference between the two genres. I will also try to explain these similarities: were they due to the intellectual contact and exchange between pre-modern Europe and pre-modern China? Or did the case narrative emerge, develop and flourish in each of the two cultures independently, as an indigenous cultural species?
What is a “case”? Are cases always brought forth to respond to new problems and circumstances, or may they be exploited to uphold conservative tendencies? And do cases always represent a disruption of existing norms?

By tackling these questions, the present paper would like to explore the use of cases in texts written for judges and the political elite about the administration of justice in Syria and Egypt between the 14th and 16th centuries. The historical context is that of the Mamluk domains (1250-1517) and the framework that of the debate which opposed the so-called secular justice of the Sultan and his officers (sīyāsah) to the religious justice of qadis, muftis and jurisprudents (sharī'ah).

Cases are here to be intended in a broad way both as “incidents” stemming from real life and questioning established legal practices and its interpreters, and as narratives from past authorities which, by virtue of their charisma, set out examples that function as authoritative precedents and, as such, are capable of producing norms and counter-norms.

In recent years, Christian casuistry – that is, Catholic as well as Lutheran casuistry – has been considered as the riposte to the early modern decline of Canon law, which had been rejected by Luther and, on the Catholic side, was becoming more and more a disciplinary code for clergy. Casuistry was thus equated to the positive law, although a law addressed to regulate a peculiar field of action: that of the conscience. Yet, such a penetrating survey underestimates an aspect of this new law of the conscience: while so modern in its value, it takes the old form of a code of exceptions, by focusing on “cases” and not on our idea of “norm” as pre-determined classifications of the whole human behaviour. Casuistry in fact stems from a medieval conception of law, grounded on the idea that law is not given by any divine or human entity, but is consubstantial to the natural reality. If law was not an attribute of a specific Herrschaft but a perennial feature of Land, to borrow Otto Brunner’s terminology, the connection between these two spheres could be represented only by case-by-case norms.

The need for “casuistry” – “casuistry” to be interpreted in a broad sense – was perceived with particular urgency in the early modern age, in a moment in which States and Churches were engaged in a symmetrical effort of imposing themselves on other forms of political relationships. As a consequence, a flood of both theological and jurisprudential practice invaded the book market, giving relief to the call for regulation. Through casuistry early modern magistrates managed to combine once again the law with social customs until, from the eighteenth century onwards, exception gradually became a synonym for abnormal.

This paper will not take up the challenge of considering the friction between norms and exceptions, a challenge which modern law still has to face. More modestly, it will try to understand which were the common elements between moral and political casuistry in early modern Europe by draw a comparison from some German and Italian texts both of legal and moral casuistry.

The mass spread of tobacco and coffee in the early modern Ottoman world sparked a controversy that reached as far as the remotest city on the trade routes. Historical accounts attest to troubles occurring in Damascus, Istanbul, Cairo, Mecca, Tunis, Sarajevo, and San’ā, among other places. For some, the substances were considered permissible pleasures, while others held that they were conducive to work and, consequently, encouraged their consumption. Others saw them as a great danger to the individual and to the moral and economic wellbeing of society as a whole. What began as excitement and bewilderment at the effects of these substances quickly became the source of great dispute. Various people from different ranks in society joined the debate: the learned ulāmā’ offered scholastic arguments for and against their use; Sufis encouraged their use for meditation and dhikr; poets composed poems on the virtues (or vices) of coffee and tobacco, sometimes staging the debate as if it were between the substances themselves; rulers participated by either allowing or prohibiting, and by endorsing or alleviating taxes. Argumentations of all sorts were adduced. Drawing on the plentiful studies on the social, cultural and economic history of the spread and use of tobacco and coffee in the early modern Ottoman world this paper aims to focus on the types of evidence and legal arguments adduced both in favour and against the consumption of tobacco and coffee. We shall look at the underlying theoretical assumptions that shaped the debate. How does Islamic legal theory (Arab. usul al-fiqh) and theology (kalām) figure here? What was the impact of the dominant theological theory of contingency (Arab. Al-tajwīz al-‘aqlī) on the practice of legal casuistry? What is the role of ‘probability’ in the process of legal reasoning? How were historical and medical ‘data’ as well as everyday ‘experience’ elevated to the rank of legal ‘evidence’? We shall explore these questions through a critical reading of this fascinating controversy.

Jewish law denounces gambling as sin. However, medieval and early modern rabbis permitted certain games of chance such as chess. Jews who could not control their urges sometimes swore ritual oaths against gambling. Hebrew jurisprudential texts question whether or not such oaths may be annulled in extenuating circumstances. A corpus of Italian rabbinic writings from 1718 addresses one such case in Ancona. Responsa penned by rabbis across Italy acknowledge the popularity of chess and analyse oaths to abstain from it. These jurists distinguished chess from other forms of gambling, and justified it on a number of grounds – namely that it sharpens intelligence and may be played without financial wagers. This paper considers applications of casuistry in a legalistic religion like Judaism by exploring how early modern Italian rabbis navigated norms and exceptions in order to enforce laws concerning gambling.

Between the late middle ages and the early modern period both states and churches judged suicide as the worst act a man could ever commit. The former considered it a crime which deprived the kingdom of a subject, the latter saw in it a sin which was worse than homicide itself, as “the self-killer damned not only a body but also his soul” (Augustine) and went against the natural law, according to which “every man must love
and beyond, becoming a matter-of-fact reference for whoever approached the Iberian
Pereira reached a broad circulation and popularity, both within the Spanish monarchy
of Indians was permitted in the name of the concept of “common good,” even thou in
Juan de Solórzano Pereira (1575-1655), I will discuss the bases on which forced labour
will discuss the norm that prohibited Indians’ enslavement in Spanish-America as well
Imagined Casuistry. Indians and the Construction of Exceptions in the Work of
ANGELA BALLONE

irony, arguably, work? The paper will address this question using Pascal’s
most effective weapon – irony, that elusive rhetorical device – and its impact. How does
understand the reasons of its success. Which kind of materials did Pascal use? How did
seemingly disappeared. Recently, the atmosphere has changed. Faced with the
(1656-57)
For a few centuries casuistry, the target of Blaise Pascal’s
Provinciales
CARLO GINZBURG (Scuola Normale Superiore)
Casuistry and Irony: Some Reflections on Pascal’s Provinciales
For a few centuries casuistry, the target of Blaise Pascal’s Provinciales (1656-57) seemedly disappeared. Recently, the atmosphere has changed. Faced with the surprising revival of casuistry, it is time to look more closely at Pascal’s text, trying to understand the reasons of its success. Which kind of materials did Pascal use? How did he rework them? This detailed reconstruction will pave the way to an analysis of Pascal’s most effective weapon – irony, that elusive rhetorical device – and its impact. How does irony, arguably, work? The paper will address this question using Pascal’s Provinciales as a case study – also keeping in mind the close relationship between casuistry and case studies.

ANIELA BALLONE (Scuola Normale Superiore)
Imagined Casuistry. Indians and the Construction of Exceptions in the Work of Juan de Juan de Solórzano Pereira (1575-1655)
Starting from the exception of Yanaconas Indians in the viceroyalty of Peru, this paper will discuss the norm that prohibited Indians’ enslavement in Spanish-America as well as the exceptions to it. Using as a starting point the work of the jurist and royal officer Juan de Solórzano Pereira (1575-1655), I will discuss the bases on which forced labour of Indians was permitted in the name of the concept of “common good,” even thou in theory they were not to be enslaved. The treatment reserved to the Indians was a core aspect in both the spiritual and temporal agenda of the Crown, and one that brought to the fore crucial aspects of the Spanish right in looking after the inhabitants of the Americas. Thanks to his author’s extensive experience in the field (18 years living in Lima) and the successful career in the Council of the Indies, the work of Solórzano Pereira reached a broad circulation and popularity, both within the Spanish monarchy and beyond, becoming a matter-of-fact reference for whoever approached the Iberian Atlantic.

While Solórzano Pereira was adamant in defending the king of Spain’s efforts in safeguarding the freedom of his Indian vassals, he also defended the fact that there were exceptions to that fundamental rule. In the case of the Yanaconas, the construction of the myth of their voluntary service in favour of Spanish colons allowed Solórzano Pereira – and the Spanish Crown – to safeguard both the norm (Indians were free and not to be enslaved) and the exception (Indians were compelled to work for Spaniards) in Spanish-America.

My argument will be that, by ways of constructing the exception to the ways in which Indians were categorised by his contemporaries (e.g. on the basis of the three classes of barbarians described by Aristotle), Solórzano Pereira utilised an “imagined exceptional case” (that of the Yanaconas) with the aim of putting into use moral casuistry to explain why Indians were being forced to work in Spanish-America and, at the same time, defend the Crown’s discourse in claiming the Americas as part of her possessions.

SANJAY SUBRAHMANYAM (UCLA/ Collège de France)
“Morality and Empire: Cases, Norms and Exceptions in 16th Century Portuguese Asia”
In this paper, I will address questions of the rights – and in particular the rights of non-
Christians, as well as non-Catholic Christians – in the 16th century Portuguese empire. These were above all commercial rights, often in the context of claims of monopoly or priority by the Portuguese Crown, or by its named agents. These questions were discussed in a variety of texts, in various genres. I will focus on a handful of these, some with known authors and other anonymous. In conclusion, I will briefly comment on how similar matters were dealt with at the edges of the Portuguese empire, by Muslim juricounselists in the Mughal port of Surat.

SILVIA BERTI (Universita La sapienza, Roma)
“The Double Exception, Religious and Civil, of a Sabbatarian Grocer. The Case of Edward Elwall (1676-1744)”
An irregular and unquiet believer, the grocer and mercer Edward Elwall, from Wolverhampton, Staffordshire, formerly a Presbyterian, some forty years after the Toleration Act, was attracted by Baptism, Quakerism, and until the end of his life held Unitarian and Sabbatarian views. In 1726 he had to face a trial on religious and civil grounds, for blasphemy and for his firm decision to keep his shop closed on Saturdays and open on Sundays. This case study enables us to look into the dialectics between the power of norms (even the most liberal ones) and the vindication of irrepressible freedom of conscience in 18th century England.

MARTIN MULSOW (Universität Erfurt)
“The Exceptionality of Atheism: Can There be an Exemption of the Consensus gentium?”
There have been many arguments against the possibility of atheism. In the early modern period, the argument from the “consensus gentium,” the – alleged – fact that all nations and cultures know in one or another way the worship of god, was one of the most popular of them. However, from the 16th century onwards there was a growing number of travel reports about distant peoples which apparently had “neither faith nor any shadow of religion” – such as the Topinamba Indians or the “Kaffirs” (from Arabic Kāfir = disbeliever; meaning the African Xhosa). How did the theologians react? Were there casuistic solutions to the problem, stating that some exceptions from the consensus might be possible? Or would any exception necessarily destroy the whole argument? Theologians tried hard to make their case. Some of them pointed to the “paucitas”
of atheistic peoples (Adam Rechenberg), some admitted that there were “temporary atheists” (Gisbert Voetius). But there were also empirical counterstrategies to deal with the “dissensus”. I will focus on two books, which appeared in the late 17th century: Johann Ernst Gerhard’s *Umbra in luce, sive consensus et dissensus religionum profanarum, Judaeismi, Samaritanismi, Muhammedismi, Gengis-Chanismi, atque paganisi*, Jena 1667, and Andreas Müller’s *Oratio orationum i.e. Orationis Dominicae versions fere 100 praeter authenticam*, Berlin 1680, that appeared under the pseudonym Thomas Ludekenius. Gerhard, a theologian and orientalist from Jena University, had learned dozens of languages and tried to come to terms with the multiplicity of religions in the world by showing (in the line of Athanasius Kircher and others) how the idolatrical religions were depravations of the true “light.” He interpreted objects and images that he had collected according to his interpretative frame. Müller’s work belongs to a tradition since Conrad Gesner to translate the paternoster in all extant languages. Context was the Christian mission as well as the linguistic research into unknown languages. There was a link to the discussion on the “consensus gentium” as well, however, because if there was no equivalent to the word “god” found in exotic peoples’ language, then the translation could not be accomplished, and the consensus argument was in danger. Müller, Leibniz, Ludolf, La Croze and many other linguists discussed in extension the problems of translating “god” for instance into the Hottentot language. What did they think about norm and exception?

**GIOVANNI TARANTINO** (University of Melbourne)

*“The Casuistical Lectures of Samuel Pike and Samuel Hayward (1755)”*

The role of a casuist in a Protestant country could not be anything other than an advisory one. In 17th century England casuistry was generally viewed as a question of “self-reliance”, as each believer was expected – with appropriate learned guidance – to be their own casuist. What’s more, it largely concerned issues of grace and the assurance of salvation. However, as Keith Thomas has remarked, in the 18th century the majority of Protestant theologians gradually stopped stressing the sinfulness of following an erroneous conscience, and began to take the view that what mattered most was a sincere intention. “Cases of conscience” thus increasingly became nothing more than targets of satire. But some religious writers, especially nonconformists such as the Sandemanian minister Samuel Pike and the Independent minister Samuel Hayward, continued the tradition of regulating the conduct of their congregations. The auditory attending their joint weekly “casuistical exercise” at Little St Helen’s, Bishopsgate, London, were urged to come up with “serious cases of conscience, arising from the difficulties they met with in the course of their experience, and to conceal their names.” Curiously, the practice of raising issues anonymously had first been encouraged by the founder of *The Athenian Mercury* (initially called *The Athenian Gazette: or Casuistical Mercury*), who encouraged readers to submit queries.

**ANNA BELGRADO** (Università di Pisa)

*A Reading of the French Jesuit Joseph-François Lafitau’s Moeurs des sauvages américains comparées aux moeurs des premiers temps (1724).”*

My aim is to discover potential tensions in the relationship between Lafitau’s design – e.g. to attest the traces of the original and true religion in the customs of both ancient pagan peoples and contemporary savages of America (the “norm”) – and different sorts of difficulties or incongruities he runs into while trying to fulfil it (the “exceptions”).

Information:
attività culturali
050 509307
554-323-654
eventiculturali@sns.it
comparingreligions2014@gmail.com