Virtue Ethics, Situationism and Casuistry: Toward a Digital Ethics Beyond Exemplars

Bastiaan Vanacker

Follow this and additional works at: https://ecommons.luc.edu/communication_facpubs

Part of the Communication Commons

Author Manuscript

This is a pre-publication author manuscript of the final, published article.

This Article is brought to you for free and open access by the Faculty Publications and Other Works by Department at Loyola eCommons. It has been accepted for inclusion in School of Communication: Faculty Publications and Other Works by an authorized administrator of Loyola eCommons. For more information, please contact ecommons@luc.edu.

This work is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License © Emerald Publishing Ltd, 2021.
Virtue Ethics, Situationism and Casuistry: Towards a Digital Ethics Beyond Exemplars

<table>
<thead>
<tr>
<th>Journal:</th>
<th>Journal of Information, Communication &amp; Ethics in Society</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manuscript ID</td>
<td>JICES-12-2020-0126.R3</td>
</tr>
<tr>
<td>Manuscript Type</td>
<td>Journal Paper</td>
</tr>
<tr>
<td>Keywords:</td>
<td>Ethics, Internet research ethics, Aristotle, Virtue Ethics, Situationism</td>
</tr>
</tbody>
</table>
Virtue Ethics, Situationism and Casuistry: Toward a Digital Ethics Beyond Exemplars

Introduction

In the summer of 2018, on a flight from New York to Dallas, actor and writer Rosey Blair asked to switch seats with a young woman so she would be able to sit next to her boyfriend. The woman agreed and her act of kindness landed her next to an athletic former soccer player, much to the delight of Blair who secretly reveled in her role as potential match maker. As the new seat partners were hitting it off, she turned to Twitter (#planebae) to share her excitement about the two flirting (Abad-Santos, 2018; Vanacker, 2018). She started to live-tweet their conversations, published pictures of the two (obscuring their faces) summarized their conversations (“They are chatting and smiling at each other” “They have touched arms a few times”). The final picture showed them walking around in the airport together.

The story went viral and was quickly picked up by the mainstream media. The male seat partner and Rosey Blair went on the morning shows and enjoyed their moment of fame. The modern-day fairy tale was the perfect fodder for the slow-news summer months. Blair’s tweets were in many ways a remarkable feat of digital storytelling: captivating and funny with a dose of self-deprecation and tongue-in-cheekness, digging into the familiar tropes of romantic comedies.

But the female passenger was not in on the joke. She did not appear on any of the morning shows and declined all media attention. Based on the info in Blair’s tweets, internet sleuths had identified her, causing the woman to delete all her social profiles. Soon after, she put out a statement in which she stated her dismay with being cast involuntary into this narrative and
claimed to have been “doxxed, shamed, insulted and harassed” and that voyeurs had come looking for her (Abad-Santos, 2018).

The feel-good story of the summer had quickly turned in to a dark tale of the loss of privacy in a society where recording devices are ubiquitous. Media accounts no longer focused on the love life of the protagonists, but on the actions of Blair. From a legal perspective, it is unlikely that Blair violated U.S. laws or had opened herself up to a civil lawsuit. While intuitively some may feel that a harm occurred here for which a legal remedy should exist, the American legal system with its strong protections for free speech is ill-equipped to do so.

Ethically, we are barely in a better position, as the main reason this episode turned from the feel-good story of the summer to a dark fable about privacy was the fact that the woman in question indicated that she felt violated by the course of events. Had she joined the other two in soaking up the fame, this example would never have turned into the cautionary tale that it became or have showed up in articles such as this one. Evaluating actions after the fact based on positive or negative outcomes that were impossible to foresee will not enable us to craft guidelines for future. This type of hindsight-mirror utilitarianism can hardly serve as a firm ethical guideline about the permissibility of taking pictures in semi-public spaces or of live-tweeting without permission of subjects. Because after all, how is one to know whether or not people will be pleased or not by the non-consensual recording and reporting of their image and actions in semi-public places?

In certain instances, this might not be all that complicated. For example, when a ride share driver made money by live-streaming his conversations with identifiable passengers on Twitch (Heffernan, 2018), the ethical (and perhaps legal) transgressions are obvious. But when Dr.
David Dao was removed with excessive force from a United Airlines flight in 2017, the recordings of his removal by his co-passengers propelled this case into the national headlines (some newspapers even dug up some unsavory details from his past) (Watkins, 2017). While these recordings showed Dao in a state of victimization and vulnerability, they ultimately may have helped him in winning a settlement and forced airlines and airport security to reconsider their practices. But is justifying a practice on this basis any more solid than denouncing Blair’s live-tweets because they resulted in the doxing of the young woman?

So what sets these cases apart? Why is it that in some instances we agree with the non-consensual recording of people in semi-public places and in other cases it strikes us as a clear violation of well-established ethical norms? A careful analysis and comparison of these cases can generate these answers and provide a path forward. When a couple of weeks after #planebae, a New Yorker posted a picture of an elderly couple snuggling on the subway on Twitter, some people reacted by referencing to #planebae in denouncing this practice. One person tweeted:

“Here we go again. Did the world learn nothing from the #planebae fiasco?” (Stehle, 2018)

This kind of comparison of a new case against a previous case that has been agreed-upon as representing an ethical failure and identifying the similarities between the two is an informal example of what is known as the casuist approach. This article argues that progress can be made, especially in the field of digital ethics, by engaging in a type of casuistry that is rooted in virtue ethics as proposed by Sandra Borden. In doing so, I will start out with describing the recent popularity of virtue ethics as an approach to digital ethics and frame this in the context of the situationist critique of virtue ethics. I then argue how a casuistic approach rooted in virtue ethics can provide a contribution to the field of digital ethics and side-step some of the problems with
virtue ethics that have been pointed out by situationists. In conclusion, I suggest how internet research ethics can benefit from this approach.

**A Virtue Approach to Digital Ethics**

Numerous scholars have embraced virtue ethics as the favored ethical theory to deal with the ethical challenges posed by digital technologies (Vallor, 2016; Ess, 2015; Plaisance, 2013, Coeckelbergh, 2021). Broadly, they argue that an ethic rooted in practical wisdom or *phronēsis* is well-equipped to deal with the ever-changing nature of the ethical problems presented by digital technologies. They contend that a virtue-based ethic presents a less rigid framework than utilitarianism or Kantianism (or other deontological frameworks). In addition, they also claim that virtue ethics can serve as a global ethical framework for digital media better than other systems can, because of its open-ended, all-encompassing framework that focuses on cultivating an ethic, rather than focusing on articulating foundational moral principles.

More carefully, in *Technology and the Virtues*, Shannon Vallor explores how the various virtue ethics traditions (Aristotelian, Buddhist, and Confucian) can serve as a guidepost for us to live well and flourish in a time and society that have been thoroughly (re)shaped by emerging technologies. Vallor articulates a set of “technomoral virtues” (honesty, self-control, justice, empathy, care,…) as “virtues of character …most likely to increase our chances of flourishing” (p. 119). Plaisance (2013) argues that a neo-Aristotelian virtue ethics (inspired by the work of Philippa Foot) is best suited to “provide a framework for articulating ethical theory for the digital world that is as compelling, and perhaps more useful, than deontological claims” (p. 92). The project of virtue ethics, he argues, has human flourishing, or *eudaimonia*, as its end goal. A virtue ethics framework, therefore, Plaisance argues, relies less on moral claims about the
intrinsic goodness of foundational principles, but instead focuses on behaviors and guidelines
that contribute to the flourishing of our digital lives. The virtue ethics project attempts to
identify the behavior and practices linked to this human flourishing.

An important aspect of virtue ethics is the cultivation of moral habits. A virtue approach implies
that the correct actions become habitual. Much like it becomes a habit to look both ways when
crossing the street or like putting on a seat belt, doing the right thing in a given situation is
second-nature to the virtuous person. In the context of virtue ethics, habits have moral
dimensions that steer our moral actions. To the virtue ethicist, doing the right thing should
become a matter of habit (Coeckelberg 2021; Vallor, 2016). These habits are not innate, even
though some might have a pre-disposition to certain virtues, they need to be cultivated and
therefore are praise-worthy (Doris, 1998). One would not commend a person for being tall, but
one would commend an athlete for training to be able to jump high, even if his length helped him
in mastering this skill. A person possessing a virtue, patience for example, still deserves praise
for acting patiently. While that person may have had a predisposition for acting in such manner,
it is through cultivating this predisposition into a virtue that she would know how and when to
display this virtue in an appropriate matter. This person has cultivated the virtue of patience to
such a degree that it has become a robust part of her character. While acting patiently might have
become a habit, this person is still to be praised for successfully cultivating this virtue.

Virtues manifest itself across a variety of circumstances. When we say someone is courageous, it
means that we have seen this person act in a courageous manner in a variety of settings. Perhaps
a person with a disability performing in public, or someone acting bravely in a war situation or
someone standing up for a minority viewpoint… Virtue ethics scholar Julia Annas (2015) argues
that we are able to and pick up on and recognize the consistency of that person’s actions in
different contexts and on the fact that this person consistently displays the same character trait in
a “robust” manner. (It has to be pointed out, however, that this not necessarily the case for all
character traits. Take generosity for example, even a generous person could not reasonably be
expected to give to every person who asks for a gift or donation.) In other words, virtue ethics is
more about being, cultivating and becoming rather than about learning a set of moral rules. For
that reason, virtue ethics is not always a great fit to teach in an applied ethics context. (I explored
elsewhere how this presents challenges and opportunities in the media ethics classroom
(Vanacker, 2020)).

Over the last decades, however, virtue ethics has come under criticism by scholars such as
Gilbert Harman (1999) and John Doris (1998, 2002). They either question the existence of
caracter altogether, or at the very least in the way they think it is described and used by virtue
ethicists. Doris, for example, argues that we may possess certain local character traits that will
guide our behavior in specific situations, but denies the existence of “robust” character traits that
reveal themselves across time and irrespective of situational variance. (Or, at the very least,
denies that many people possess these types of traits.).

Situationists argue that experiments in the field of moral psychology give us reason to doubt the
existence of robust character traits. They point to numerous experimental studies that reveal that
people’s decisions to help can be influenced by seemingly random environmental factors. These
experiments show, according to Doris and his colleagues, that situational factors rather than
character drive people’s actions (Merritt et al., 2010, pp. 356–357). Virtue ethicists have
challenged both the interpretation situationists have given to these studies (Sabini and Silver,
as well as their interpretation of virtue ethics (Upton, 2009). It lies beyond the scope of the article to give a complete overview of the back-and-forth between these two camps, but it seems safe to say that the situationist critique has presented a credible challenge to an individually-based virtue ethics that relies on the existence of cultivated moral character traits.

The philosophical debate between virtue ethicists and situationists is ongoing, but in the field of personality studies, it has become accepted that both personality and situations guide behavior what circumstances what traits will affect behavior is the main concern (Bleidorn and Denissen, 2015).

As a practical matter, virtue ethicists would acknowledge that most of us may not yet possess the virtues necessary to reach eudamonia or the character traits to successfully steer our behavior through the moral complexities of life. But some of us do. In the famous Milgram experiments, for example, most but not all the participants complied with the authority figure’s instructions to administer electric shocks. Virtue then, might not be attainable for most, but perhaps the study of these few moral exemplars can help us “improve our own character and conduct” (Doris, 1998, p. 512).

The Emulation Model and Digital Ethics

This so-called emulation model is an important feature of a virtue-based moral education as it asked those not in possession of a virtuous character to model their actions after the behavior of moral exemplars, people they identified as possessing and exhibiting moral virtue. Vallor addresses this issue in the context of “tecnomoral civility online” and acknowledges that many of us fail to live up to the norms of civility online and post our political views only to receive
approval from or to troll their peers. But there still is a “nonnegligeable” subset of users that behave in a civil way:

Who are the minority who ventured their opinions in the online public sphere even when they knew they would be challenged, and what is their civic character?...How did they come by the distinctive habits and virtues that allow them to use physical spaces and social media platforms effectively for civic purposes? What habits and practices, on and offline, cultivated in them the technomoral excellence?.... We can benefit from closer study of the character of such individuals, and, more importantly, how, where and from whom they began to acquire the technomoral virtues of honesty, courage, civility, and perspective they seem to exercise more readily than most. We might also learn how they would design or modify social media platforms to be more conducive to civic flourishing than they are at present (2016, p.185).

However, the situationists also have criticized the emulation model on epistemological and practical grounds. How does a person who is lacking virtue know what a moral exemplar would do? Virtue ethicist Rosalind Hursthouse (1999) has argued that when in doubt, I can just ask a moral exemplar, but that in most instances this may not be necessary as “I may well have a perfectly good idea of what the virtuous person would do in my circumstances, despite my own imperfection” (p. 36).

For example, if a researcher questioning whether or not he can scrape data from a social network site without people’s consent, in what way would the emulation model be helpful? Let us assume that this researcher considers his parent a moral exemplar and paragon of honesty, would merely
imagining what that parent, who perhaps never engaged in research, would do help this scholar in figuring out the right course of action? Situationists argue that if you can imagine what a virtuous person would do, the problem is not epistemological in nature. If the moral exemplar functions as a way to dislodge moral insights already in you, then the usefulness of the exemplar is limited. If the problem is that one knows the correct action, but fails to perform it, reflection about virtues is unlikely to be of much help. The moral exemplar approach also risks ignoring the problem that it may be challenging to discern if the situation of the moral exemplar is analogous to the one at hand, at least for a person lacking *phronēsis*. As we shall see below, casuistry can be useful in these novel contexts.

But as Vallor suggests, we can also use moral exemplars not as much to find a solution to a specific dilemma, but in order to understand the technomoral virtues they embody, knowledge we can then use in the design of digital technologies. But situationists are not convinced that reflecting on moral exemplars will facilitate ethical behavior or decision-making. These types of reflection about “virtue-theoretical ideals” might be useful to a degree, but Doris questions to what extent these virtue-theoretical ideals are “better suited to facilitating ethically desirable conduct than other ideals (e.g., Kantian, utilitarian)” (p. 518). If we were to design digital spaces in which people can flourish, in what way are articulated techno-moral virtues superior to, for example, deontological principles of transparency, accountability and privacy?

Going back to the Rosey Blair example from the beginning of this article, how could virtue ethics have assisted her? Had she possessed the virtues of self-control, perspective and empathy, she might have made different choices and realized that merely anonymizing the individuals’ faces on the photos she shared would not protect their privacy in the event the story went viral.
But like so many of us, she was deficient in virtue. Assuming she was aware that she lacked this character, she could then have thought about how someone she ethically revere would have gone about this. But she probably was too caught-up in the moment as she saw her live-tweeting go viral, that she lacked this ability to reflect. Indeed, one could argue that the social media environment is designed to reward anti-social behaviors at the expense of virtuous habits.

Situationists point out that these types of situations in which temptations (such as internet fame) may cause one to do the wrong thing (i.e. not acting on one’s values) and that our focus should be on avoiding them in the first place. (Doris gives the example of not accepting a dinner invitation of flirtatious colleague when one’s spouse is out of town). But let’s assume that she had realized she lacked the phronēsis to properly navigate this issue and that she needed to inform her decision by a moral exemplar, who could she have turned to? It is possible that she would have thought about a prolific tweeter whom she revere and imagined what that person would have done? But would Blair have been able to identify an exemplar who is in fact deserving of that title? Who are the paragons of virtue one can turn to when it comes to tweeting, and how can we identify them? People have live-tweeted or taken pictures of others and posted them online without much of a fall-out (see the David Dao example). So perhaps she would have considered a moral exemplar who live-tweeted in such fashion and concluded it was fine to do so as well, as long as the intention was not to shame her subjects. Or perhaps she would have thought about a moral exemplar who had never live-tweeted and tried to imagine how that person would go about live-tweeting if she were to live-tweet. Again, phronetic judgement could serve as a guide here, but if a person lacks the judgement to ascertain how to act in a given situation, how can that person possess the judgement to know what an exemplar would do, a situationist would argue.
Suffice to say that the because of the practical and epistemological objections illustrated by this example, situationists question the usefulness of exemplarism. And it seems that the novel nature of the problems presented by digital technologies only exacerbates these objections. But imagine that the moment that her story was shared and liked at a frantic pace, a message would have popped up on her phone alerting her to the fact that her posts were going viral and asking her to double check if her posts would not interfere with anyone’s rights or otherwise harm people. A nudge like this might have prompted her to reconsider her actions and would, from a situationist perspective, probably have been more effective. Situationists think that the role of moral exemplars is, at best, to act as a sort of conscience to help people do the right thing but that in many instances they will even fall short in this limited role.

Reimagining Moral Exemplars

When reading this situationist critique, one may come away with the impression that discerning and acquiring virtues is an individual endeavor. But that is not so; the acknowledgement of peers is a crucial part of Aristotle’s ethics (Coeckelberg, 2021); one learns and acquires the virtues in a community of peers (i.e. virtuous men). Maria Merritt (2009), who subscribes to the situationists critique of virtue ethics, citing psychological research, warns that this acknowledgement of peers can be ethically taxing. Confirming with the norms of respected exemplars can lead to a cognitive complacency and norm-conformity that impedes the ethical reflection needed to steer one away from easily available but self-serving unethical actions.

Blair’s behavior, for example, might have confirmed with what she thought was virtuous behavior in her community of social media posters: showing initiative and inventiveness by turning a mundane event into a light-hearted and popular instance of modern storytelling. Merritt
therefore prefers guiding procedures outside of interpersonal relationships and argues that “[i]n order to put virtue ethics effectively into practice, agents need a reliable way to track and organize many substantive ethical considerations that are theoretically unified in the abstract conception of ‘what the virtuous person would do’” (p.25). She instead stresses the importance of accountability to independent, external review.

Some have warned against this narrow conception of moral exemplars as guideposts that is the target of the situationists’ critique. Plaisance (2007), in his study of moral exemplars in the media disavows the view of moral exemplars as people whose qualities and traits other media professionals ought to strive to possess as well (p.71). Instead, he considers virtues as that which allows groups and individuals to flourish in their lives or professions. Virtues then, and Plaisance refers to the work of Alasdair McIntyre and Philippa Foot in this context, allow individuals to reach what they consider to be common goods.

Similarly, Borden (2015) refers to McIntyre as well in pointing out this functional argument in adopting his concept of practices as immediate context in which virtues are developed. Practices are “established social activities with a high degree of cooperation, coherence, and complexity, marked by joint commitment to shared goods and standards of excellence, whose members acknowledge the authority of a shared history and tradition” (p. 172). In introducing this functional argument, this strain of virtue ethics shares similarities with the program of a pragmatist ethicist like Philip Kitcher (2011), who argues that ethics in the first place should be considered as a solution to a problem. He suggests that ethical norms developed in ancient societies to solve the problem of altruism failures, where some members would not engage in
reciprocating the altruistic behaviors they themselves had benefited from. These norms developed through deliberation within these communities.

In this view, ethical norms develop in response to what a society has identified as a problem facing a community, not earlier. So, and this is relevant in the discussion regarding digital ethics, it may take a while for ethical problems to be labeled as such: “People need not always be aware of their problems. Proliferation of mechanized vehicles might give rise to a period during which traffic was unregulated. Some of the population, people unaffected by the accidents befalling others, might see no difficulty in the status quo. The same can occur with the ethical project” (p. 240). Similarly, many of us may see no problems with the proliferation of cameras in our semi-public spheres until incidents such as the ones described in the opening section jumpstart the discussion.

But as societies have grown in size, it has become harder to continue the conversation that led to the development of these ethical systems, Kitcher observed. Nevertheless, Kitcher proposes that we try to have informed discussion among equals about how to solve the problems of our time that need to be solved. (He focuses largely on the problem of equal resource distribution so everyone has the means to live what he or she considers to be a worthwhile life.) This non-essentialist, pragmatic approach, in which the good is not considered to be discoverable external to the specific conditions and traditions a community encounters seems to be compatible with a virtue ethical project that sees the virtues in service of human flourishing. This compatibility can also be seen in the fact that both avoid the pitfall of relativism by pointing out the existence of objective minimal conditions required for humans to thrive.
Kitcher is not blind to this connection between his brand of pragmatism and virtue ethics:
“The ancients wondered if virtue could be taught. Pragmatic naturalism takes the catalog of virtues to be something generated from ideal conversations. A prior issue, then, is how to produce good simulations of those discussions. To renew the ethical project in the ways suggested, deliberators capable of approximating the conditions of mutual engagement are needed. Where will they come from” (p.370)? How can the conversation take place within a community, a conversation that will lead to a theorizing of the virtues that then could lead to articulation of practices conducive to human flourishing that could applied in the area of digital ethics in general or digital research ethics in particular? We turn again to Sandra Borden (2016), who departs from the notion that virtue ethics is indeed embedded in social and moral structures and their respective practices where they function not as an end in themselves, but as a means to invigorate practices, people and institutions. Engaging in these practices allows participants to define and practice their virtues in the pursuit of a common (but not necessarily identical) good that is rooted in tradition and a common purpose. In order to do so, she deftly proposes an approach rooted in casuistry.

Casuistry

Casuistry is a method of ethical decision making that eschews subjecting cases to top-down theoretical frameworks such as utilitarian or deontological ethics in an effort to apply general principles to specific situations. Instead, casuistry can be seen as somewhat akin to the common law legal system (Paulo, 2015) where precedent setting cases are used to adjudicate novel ones. If a case is deemed to follow in the line of cases controlled by the precedent, then the legal
principles applied in the precedential case govern the case at hand. If shrewd lawyers are able to convince a court that the facts of the case distinguish this case from the precedent, then different legal principles need to be applied. In other cases, courts may decide that the precedent no longer is valid or should be modified.

Similarly, when deciding on a course of action, the casuist relies on experience and knowledge of previous cases that presented similar problems, investigates the similarities and differences of the novel case with the established case (the paradigm case), and relying on this comparison, principles, experience and good judgment, comes to a decision for the situation at hand. If the case is deemed similar to the paradigm case, the rule articulated in the paradigm case stands, if the case is deemed to be deviating from the paradigm case, an exception to the paradigm’s case rule is articulated (Borden, 1995).

Casuistry has a rich history and was practiced by the Jesuits in the fifteenth and sixteenth century, but the practice fell in disrepute as it gained a reputation for being a pernicious form of moral sophistry. Kenneth Kirk’s (1936) Conscience and its Problems and –more recently– Jonsen and Toulmin’s The Abuse of Casuistry: A History of Moral Reasoning (1988) provided strong arguments for its rehabilitation. The practice has gained some traction in bioethics. In popular culture, the approach has been embraced by Malcolm Gladwell in his podcast Revisionist History.

Jonsen and Toulmin’s call for a revival of casuistry find its genesis in their work as biomedical research ethicists charged with crafting guidelines for research on human subjects. They found
that they were successful in doing so because they bracketed theoretical commitments and instead proceeded in a taxonomical manner, by comparing a complex case to a paradigmatic case that had a clearer answer. In discussing these cases, they referred to principles and duties to guide their decision making, but these concepts originated in the process of debating, not from any a priori adherence to them.

There are a number of approaches towards casuistry, identifying paradigms and drawing analogies from them (Kuczewski, 2012), but they all attempt to situate the case at hand vis-à-vis a paradigm case. Jonsen (1991) has identified three steps in the casuistic method he proposes. The first step consists of parsing through the case, pinpointing the “circumstances”, the facts as well as the maxims, “brief rule-like sayings” (p. 298) that govern the situation at hand. These make up the morphology of the case. Maxims can gain or lose importance in light of changing circumstances. The ultimate goal of casuistry is to figure out which maxim controls the case. For example, the maxim “you shall not record and publish people without their knowledge and consent in semi-public places” could be said to govern the #planebae case. On the other hand, another relevant maxim could be that “great storytellers use digital media to create engaging content.” The question then becomes which maxim carries the day. Dr Dao’s case might spawn different maxims, such as the requirement to document when we see examples of abuse of police power. In this phase, the casuist also recognizes topics, which are invariable forms of discourse that can be particular to certain activities. In journalism that may be truth-telling, privacy or, serving the public interest, in research these topics may include consent, harm-minimization, or transparency.
During the next step, the casuist categorizes cases and lines them up starting with a paradigm case, a case that is clearly ethically wrong or right. A line-up is then created by moving away step-by-step from the paradigm case by altering circumstances, and in this way compiling a taxonomy of cases. These cases are considered to be “analogous” to the paradigm and the casuist has to figure out whether the current case should be decided similarly to the paradigm or warrant an exception to the maxim expressed in by the paradigm. For example, the case of the ride-share driver streaming his conversation with passengers on Twitch may be considered a paradigm case as most people would consider this unethical, violating the maxim that one should not record or photograph people without consent. How does the #planebae case stack up to this case? There clearly are some differences about the place where the recording took place, the way the recording took place (Blair did not record anything, only reported what she overheard and snapped some pictures), the expectation of privacy, the intentions of actors etc. Similar cases such as the New York metro picture or the United case could also be added to the taxonomy, and in doing so the casuist embeds a case in its moral context.

It is important to note that this analysis can also lead to an insight that a case is in the wrong taxonomy. In digital ethics for example, copyright as a legal issue has often been analyzed as an issue of theft and copyright holder organizations have stated that downloading copyrighted content is akin to stealing a car. However, this taxonomy may not work well and perhaps copyright infractions should be seen as a matter of free riding, an altogether different taxonomy. Umbrella concepts such as privacy could benefit from a careful taxonomy exposing and delineating the multitude of underlying interests that are often lumped together under a common denominator. It is for this reason that some argue that casuistry is promising for computer ethics
because it aids in categorizing newly brought-up issues. Coleman (2007) argues that casuistry serves as a compromise between those who believe computer ethics require a new ethical framework and those who don’t, by linking the new cases in existing taxonomic frameworks or - if needed - by creating new paradigm cases and taxonomic categories.

The act of applying the moral judgement of one case (the paradigm case) to another and deciding whether the same judgement applies is what Jonson calls “kinetics,” in reference to the moral movement between the different cases. It is not a mechanical or mathematical process, but it requires prudential reasoning, or phronēsis as described by Aristotle, a reasoning “cultivated by critical reflection upon human experience and the human condition” (303). As Ess has argued (2006), casuistry is linked to phronetic judgements as the reflection required to determine if there are analogue cases in our experience, whether or not the likeness is in fact real and relevant and how the resolution of the current case can be informed by the previous case. This link between phronēsis and casuistry is important as it inoculates it (casuistry) from the epistemological criticism of the situationists questioning how non-virtuous people could ever hope to attain the traits of the virtuous person or how they could know what this person (the moral exemplar) would do. They can now refer to the taxonomy of cases and the paradigm cases to inform their judgement. It is noteworthy to point out in this context that the word paradigm means “example”. This of course does not eliminate the role of moral exemplars altogether. In the field of research ethics, for example, it could be argued that certain experts would be more likely to possess the type of judgement that casuistry requires. A judgement that is based on experience and acknowledgement that creating this taxonomy is not and idle intellectual exercise or worse,
mere sophistry (a criticism often leveled at casuistry), but relates to the lives and well-being of real people.

If there were to be clear agreement within a community that Rosey Blair acted unethically, that could be the paradigm case against which later cases would be measured. This knowledge could be helpful to those who find themselves in a similar situation, more helpful perhaps than imaging what a moral exemplar would do. Through this comparison and reflection, guidelines could be developed and ethical concepts such as “privacy,” “public space,” or “implied consent” could be refined. If we were to accept the Rosey Blair case or the live-streaming Uber driver as paradigm cases, ethical progress could be made in the debate we have, as a community, about how other cases follow or deviate from the paradigm cases we identified. In doing so, virtue theorists can engage in exemplarism without the drawbacks pointed out by the situationists against virtue ethics: “Cases capture the nexus of virtue ethics: They narratively unite persons, their actions, and the situations in which their actions take place. Moral exemplars are situated in socially embedded accounts, not reduced to a list of individual traits. Casuistry’s methodology helps even the moral agent without fully developed virtues to better understand the particular situations she faces by using comparisons and generalizations” (Borden, 2016, p.334).

As smart doorbells, camera-equipped drones and face recognition technology will become more prevalent in our lives, foreseeing the ethical problems of new technologies might be a challenge as we might lack a taxonomy of casuistry to measure these new technologies against. But often times the taxonomies may be there, but the community to integrate them into their practices is lacking. During the roll-out of its Facebook Live feature, for example, Facebook unabashedly
encouraged its users to embrace the opportunity to “create, share, and discover live videos” (Simo, 2016). New users received almost no instructions or warnings other than: “Remember: They can see and hear you!” and this reassuring message: “Try it! Just relax, go live and share what’s happening.” Facebook Live has been used by suicide victims to livestream their own deaths. In numerous instances Facebook was slow in taking them down, creating a situation in which copy-cat suicides were a possibility (Vanacker, 2017). More recently, terrorist attacks have been livestreamed and shared raising even more ethical concerns about the ethical responsibility of platforms (Jordan, 2020). What is surprising is not that these things occurred, but that the Facebook management did not foresee that this would happen and only after the fact took measures to deal with this issue. Or, in casuistic terms, that it failed to place the use of this technology in a taxonomy.

In contrast, when the journalistic profession first started to use live streaming apps such as Periscope and Meerkat, they embraced their potential but also reflected about the ethical pitfalls of these apps in contrasting them with other (paradigmatic) forms of live coverage (Tompkins, 2015). As a professional community concerned about its shared goals, practices, and standards of excellence, these new technologies and their implications for contributing to the thriving of the journalistic profession were discussed. It is this type of community-based discussion that can generate standards for ethical practices.

Casuistry Applied

Initially, Borden (1995) used this method in the field of journalism ethics in a descriptive fashion by analyzing posts debating ethical issues on a journalistic list-serve through a casuistic lens. Casuistry as descriptive ethics has been used in other contexts as well, for example in nursing
ethics (Gaul, 1995; Slettebo, Bunch, and Haugen, 2004). Later on, Borden (2016) linked casuistry with a MacIntyrean virtue ethics described above where the goal is not so much to articulate specific norms of conduct as it is to connect traditions, practices and concepts. Casuistry’s ultimate goal is to provide “evolving taxonomies of cases with thickly described particular circumstances that can guide moral discernment in a narrowly applicable range of similar-enough cases” (p. 342).

The challenge in having these discussions and setting up these taxonomies is that it requires a community with shared moral ecologies, practices, traditions and standards of excellence, or to put it in Kitcher’s terms, it requires a community that has a common problem that ethics can provide an answer to. For certain professions, this community requirement is problematic.

Applying casuistry to journalism, Borden acknowledged that journalism’s lacks of “institutional structure” (p. 343) to provide the well-defined forums in which casuistic debates can take place was a complicating factor.

In the context of digital research ethics, however, this institutional structure already exists in the form of the AOIR Ethics Working Committee which produced three valuable reports consisting of guidelines regarding internet research ethics. The work of Heidi McKee and James Porter (2009) has been a central source the approach of this committee. McKee and Porter have proposed a rhetorically-based casuistic approach to deal with ethical issues internet researchers face. For example, when is someone publishing content online an author whose text can be used freely within the legal confines of copyright law and under what circumstances is that person a research subject whose consent should be obtained? They argue that casuistry is well-suited to address these types “borderline ethical questions” (p.23) and embrace it because they think, as
Kircher above, that the art of deliberation and dialogic interaction is vital to moral reasoning. In their book, they offer a number of heuristics related to internet research ethics that could assist researchers’ phronetic judgement when faced with a dilemma.

Similarly, the guidelines developed by the AOIR Ethics Working Committee work from the “bottom up in a case-by-case based approach without making a priori judgements whether some research per se is unethical” (franzke et al., 2019, p.4). The authors acknowledge their indebtedness to the casuistic approach mentioned above by stating their commitment “to a casuistics or case-based approach, i.e., one that seeks to discern close analogies between a current context and ethical dilemma and those of antecedent cases and examples for the sake of developing the best possible resolution” (franzke et al., 2019, p.3). The documents of the AOIR working committee present an approach to ethics that goes well beyond a best-practices or check-the-boxes approach, but strive to a certain degree of reflexivity on the part of the researcher by identifying moral exemplars.

For example, in the companion resources to the third edition, the Utrecht data school is identified as a “best practice” (p.56), what seems to amount to a moral exemplar. However, rather than stating this by highlighting its commitment to ethics, it may be insightful to explain at a more granular level, by means of a case example, why this is in fact the case. In doing so, this example could serve as a paradigm case and the starting point of a taxonomy of cases. Building and presenting an explicit taxonomy of cases, not just as a means to derive guidelines but also as a way to provide moral exemplars and stimulate ethical discussion might further deepen the rich debate about research ethics that is already ongoing at AOIR.
Conclusion

As this essay demonstrates, a casuistic approach based in a virtue ethics framework could in theory be well-suited to address ethical issues relating to emerging technology in general, and research ethics in general. Theoretically, I say, as developing taxonomies in practice may not always be doable. Contrary to the legal field, which is supplied with a glut of case law to develop something similar (though not identical) to a taxonomy of cases described above, casuistic research ethicists face challenges to compile a critical mass of cases. Examples of problematic research ethics often are addressed behind the closed doors of institutional review boards and are not made public. Nor is there a lot to be gained for researchers to voluntary step forward and talk about that one time they practiced poor research ethics. As long as these hurdles are not cleared, moving from articulation of best practices to a genuine casuistic approach will remain an elusive goal.

References


