Benjamin T.G. Mayes

Counsel and Conscience

Lutheran Casuistry and Moral Reasoning After the Reformation



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In his omnibus deprecare Altissimum,
Ut dirigat in veritate viam tuam.
Ante omnia opera verbum verax praecedat te,
Et ante omnem actum consilium stabile.
Ecclesiasticus 37:19–20

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Abstract

In much literature on early modern casuistry and conscience, Lutheran casuistry is denied a place, under-researched, or ignored. Yet in Lutheran Germany of the post-Reformation era (ca. 1580–1750), there was a genre of pastoral/ethical writings consisting in casuistry and in topically or thematically related theological counsels, aimed at instructing and comforting the consciences of Christians. An extensive example from this genre is GEORG DEDEKENN/JOHANN ERNST GERHARD (Ed.) (1671), *Thesaurus Consiliorum Et Decisionum* [Treasury of Counsels and Decisions], 4 vol., Jena: Zacharias Hertel. Lutheran casuistry, related to but also distinct from Roman Catholic and Reformed counterparts, arose especially as pastors looked within Holy Scripture, the medieval tradition, and the writings of Martin Luther and other Lutheran authorities for answers to ethical problems and doctrinal disputes. Dedekenn's *Treasury* was an anthology, addressing a wide range of dogmatic as well as practical matters. Dedekenn and the other editors of the *Treasury* did not view their counsels as necessarily obligating to a Christian's conscience. Instead, they viewed the counsels as wise advice, and they encouraged readers to avoid individualistic ethical choices and instead to engage in an "aristocratic" process of moral decision making in which one would consult the wise men of the past and present. The counsels included in the *Treasury* address inter-confessional disputes, intra-Lutheran disputes, sacraments, church government, pastoral ministry, social ethics, marriage, sexual ethics, and many other topics. By examining the cases and counsels on divorce and remarriage, one sees various arguments being made, and several sources of authority aside from Scripture being used, including medieval canon law and ancient Roman imperial law. Usually, a high degree of uniformity can be seen in the answers given in the *Treasury.* Yet an irreconcilable diversity in these cases on marriage presents a picture of the condition of marital practice in seventeenth-century Germany, a condition which was of concern to the editors of the *Treasury* and their friends.

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1 Casuistry

When facing the unknown, when faced with a difficult choice, one needs advice and wisdom. Laypeople can ask their trusted pastor for counsel. Students at university and divinity students at seminary can ask trusted professors for advice or answers. Pastors in the parish can ask trusted fellow pastors for an opinion. One finds wisdom more easily by asking trusted people than by solving problems alone. And if trusted people in the present can help, then surely trusted and wise people from the past can help as well. Soon after the beginning of the Reformation, people turned to Martin Luther, Johannes Brenz, and others for advice. These men, if not regarded as oracles, were regarded at least as living sources of wisdom. With the passing of the first generation of reformers and the lengthening of time, difficult choices did not depart. Lutherans desired a way to access the wisdom of the past and to instruct their consciences. While some continued consulting living authorities, others gathered the wisdom of departed teachers. Eventually the largest and most comprehensive collection of Lutheran pastoral wisdom saw the light: the *Treasury of Counsels and Decisions (Thesaurus consiliorum et decisionum)*, edited by Georg Dedekenn in 1623.

Although much recent scholarship ignores it, there is a substantial genre of Lutheran pastoral/ethical writings from the post-Reformation era (ca. 1580–1750), consisting both in casuistry and in topically or thematically related theological counsels. From the *Thesaurus conciliorum et decisionum* of Georg Dedekenn (1623, 1671), it is clear that this literature was uniquely Lutheran, pastoral, dogmatic, and practical. Chapter one of this book sets forth the state of the question regarding post-Reformation casuistry, including the rise of Lutheran casuistry, its sources, theological background, and practical setting. Chapter two introduces Georg Dedekenn and the other compilers of the *Treasury*. In chapter three, the prefatory material from the *Treasury* will be examined to show how this work, theological counsels, and casuistry in general were understood by their seventeenth-century practitioners. In this prefatory material, Georg Dedekenn, the sons of Johann Ernst Gerhard, Christian Grübel, and their friends explain why they did their work, how the work is configured physically, and what each compiler contributed to the

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work. Chapter four explores the contents of the *Treasury*, showing the broad extent of Lutheran casuistry and its pastoral, doctrinal, and practical focus. In chapter five, one area of the *Treasury* is examined in detail – divorce and remarriage – to determine the methods and arguments used, and to evaluate whether the purposes for the *Treasury* and the methods of moral reasoning discussed in the prefatory material for the work, correspond to the working out of the cases themselves. Finally, chapter six describes the decline of Lutheran casuistry and gives conclusions.

1.1 Post-Reformation Lutheran Ethics

Groups of Christians are recognized as distinct from others by the words they speak and the deeds they do. The Reformation of the Western church in the sixteenth century marked the division of Christendom into multiple, distinct groups. Christians now did not speak the same way, and often their deeds, the ways they lived their lives, were at odds with each other as well. Yet the various Christian groups did not become distinct all at once; their "confessionalization" was a process – to some extent gradual, but also marked by major milestones.[1]

For Lutherans, the spiritual heirs of the sixteenth-century reformer Martin Luther, a major milestone in the process of confessionalization was the 1580 publication of the Book of Concord, the definitive collection of Lutheran confessions. The time after Luther's death in 1546 and leading up to the Book of Concord marked the conclusion of the Reformation. During these decades, doctrinal disputes among Luther's heirs led to the formation of confessions and, eventually, to a significant degree of ecclesiastical consolidation. The Book of Concord of 1580, then, ushered in the era of Lutheran Orthodoxy. The career of Johann Gerhard (1582–1637) marks the beginning of "high Orthodoxy," which terminates with the deaths of Abraham Calov (1612–86) and of Johann Andreas Quenstedt (1617–88). This was a period of scientific flourishing in theology, of a deeper use of Aristotelian scholastic philosophy,

[1] Wolfgang Reinhard and Heinz Schilling introduced the term "Konfessionalisierung" in 1981 to designate a transformational process, emanating from religion, in which the medieval culture of unity developed into different systems of culture and religion, manifested in doctrine, piety, worship, and lifestyle. When the term is used by social historians, it does not mean "the formation of confessions" or of distinct ecclesiastical entities, but the process of transformation of society brought about by the spirit of a confessional Christianity. Church historians, however, use the term with reference to its primary object, the church, and thus use it to designate the process of differentiation of occidental Christendom into different confessions (Nieden: 2006, 4; Wallmann: 1992, 34–35).

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of a comprehensive systematization of dogmatics, and of omnifaceted apologetics. The next period, until ca. 1750 (the death of Valentin Ernst Loescher), is known as "late Orthodoxy." In this period, "the intellectual strength and the power of its thought among the people waned" (Kolb: 2006, 431–33).[2]

In the period of Lutheran Orthodoxy, the Lutheran churches defended the Christian message, made normative in the Lutheran Confessions, and did so with the use of Aristotelian philosophy, developing a unified ecclesiastical doctrine and defending it with sharp polemic against other confessions.[3] With the term "Orthodox," the churches of the Reformation claimed the concept of the church found in the ancient Christian confessions for themselves. By claiming to be "Orthodox," they claimed continuity with the Christendom of the Bible, of the ancient church, and of the first centuries (Matthias: 1995, 464–65).[4]

The Reformation era, especially the lives and thought of the major reformers, has been studied extensively. But the era of Lutheran Orthodoxy is the classical age of Lutheran Protestantism (Matthias: 1995, 466), and much historical work remains to be done in this area, particularly in the area of ethics. Through preaching, writing, and various forms of pastoral care, generations of Lutheran pastors taught their people God's Word regarding the right faith and life. They did this because of their conviction that God had spoken in His Son, Jesus Christ; because of their conviction that it was important to know God's will; and because of their hope for salvation for themselves and their hearers. An examination of the teaching of Orthodox Lutheranism will help us to understand an important and understudied period of German history, and it will open windows to historic Lutheran pastoral practice. Knowing this history can help modern pastors and people to reevaluate and re-appreciate their own practices and assumptions.[5]

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[2] Other periodizations exist (Matthias: 1995; Wallmann: 1992, 49–50; Appold: 2004, 89–90).

[3] Kenneth Appold (2004, 11, 317), however, notes a significant degree of academic freedom among Orthodox Lutherans at Wittenberg from 1570 through the end of the seventeenth century (cf. Sparn/Baur: 1992, 953–59).

[4] Luther himself used the term "orthodox" to describe his teaching, and thus the term does not belong only to Lutheranism after the Formula of Concord (Baur: 1995, 501–5). Heiner Kücherer (2005, 154) opposes using the term "Orthodoxy" to refer to Lutherans after the Formula of Concord include. Ernst Koch (2000) does not use the term.

[5] Hans-Christoph Rublack lists several tasks for research into the history of Lutheran Orthodoxy. Among other tasks, he recommends that future research should look at an exact picture of the Evangelical church of that epoch, including the accomplishments of Orthodox Lutheran thinking and of the organization of the church; and that research should be carried out on pastoral books, as part of the effort to describe the Evangelical clergy as a whole (Rublack: 1992b, 29–32). The present work will make a contribution to these two points.

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Lutheran ethical writings during the Reformation and post-Reformation periods were not all of one kind. One kind of ethical writing can be called "philosophical ethics." Despite Luther's rejection of Aristotle's ethics (Gass: 1881, 50, 96),[6] Philipp Melanchthon lectured on the *Nicomachean Ethics* at least eight times and published several commentaries on it, and many other Lutheran works of philosophical ethics were published in the sixteenth century (Kuropka: 2011; Hartfelder: 1964, 555–65; Stone: 2000, 61; Kusukawa: 1995, 69–70; Dittrich: 1932, 268–77; Gass: 1881, 95–97).[7]

Besides philosophical ethics, "theological ethics" were carried out in the *Loci theologici* of Melanchthon, Martin Chemnitz, Johann Gerhard, and others (Melanchthon: 2011; Chemnitz: 1989; Gerhard: 1610; 1625; 1864; 2009b). Georg Calixt was not the first Lutheran to write a work of ethics separate from dogmatics, but he was the first Lutheran to devote a particular work to moral theology from the standpoint of a regenerate Christian obeying divinely revealed law, not primarily from the standpoint of the philosophically discerned obligations incumbent on all human beings, and to do this separately from dogmatics. Calixt's method became the model for subsequent moral writing among Lutherans in the seventeenth and eighteenth centuries (Calixt: 1619; Pelt: 1848, 271–319; Gass: 1881, 329).

In addition to these kinds of ethical writings, another kind emerged at least by the early seventeenth century: an "ethic of conscience." This ethic of conscience originated from the complex of problems that arise in the life of faith in this world. It considers the condition of a Christian's conscience in many difficult situations in life and attempts to give answers and guidance (Weber: 1966, 59; Gass: 1881, 157).[8] It will be our task to examine this genre in more detail, especially one significant example of this genre, the *Thesaurus conciliorum et decisionum* of Georg Dedekenn (see below, chapter 2).

Lutheran ethics in the post-Reformation period were shaped by the ethical approaches of Luther, Melanchthon, and the Lutheran Confessions. For Luther's religious ethic, a fundamental paradigm is the paradoxical relationship of the two kinds of righteousness: being righteous before God (alien righteousness) and being righteous before other human beings (one's own righteousness) (Dittrich: 1932, 5; cf. Ap XVIII 75, IV (II) 12–14, 22–27;

[6] But cf. Luther's approval of Aristotle's treatment of ϱειικεια in book 5 of the *Nicomachean Ethics* in "Lectures on Genesis," 1535–45 (LW 8:171–72; WA 44:704).

[7] Melanchthon also lectured at least three times on Cicero's *De officiis* (Hartfelder: 1964, 555–65).

[8] The writers of the dedicatory epistle for the first explicitly-named Lutheran casuistry, Friedrich Balduin's *De casibus conscientiae* (1528, II2r–v), noted that Balduin's casuistry was separate from philosophical ethics; they described it as "theology" instead of "ethics."

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Bente/Dau: 1921, 337, 123, 127; Kolb/Wengert: 2000, 234–35, 122, 124–25; Kolb/Arand: 2008, 21–128).

Another fundamental aspect of Luther's theology which affects ethics is his view of the bound will. The will of a fallen human being is not free to decide between good and evil. In *The Bondage of the Will*, Luther depicts the human will as a beast of burden on which either the devil or God rides (Luther: 1525; WA 18:635; Luther: 1969, 140; cf. Dittrich: 1932, 11–12; AC XVIII, Ap XVIII, FC Ep II, FC SD II; Bente/Dau: 1921, 51–53, 335–37, 785–91, 881–915; Kolb/Wengert: 2000, 50–53, 233–35, 491–94, 543–62; Kolb: 2005). Yet despite his emphasis on the bondage of the will for salvation, Luther still had room to speak of the freedom of a Christian. Indeed, a Christian's good works, though caused by God, are still the work of the Christian himself (Dittrich: 1932, 23–24). And later Lutherans learned that for Melanchthon, the human free will was not nearly so bound as it was for Luther (Dittrich: 1932, 102; Melanchthon: 2011, 56–68).

A basic tenet in Lutheran ethics is that good works do not cause one's justification or acceptance by God, but are instead a result of justification. Good works follow faith. To use later terminology, justification begins the process of sanctification. The non-imputation of sins is the beginning of one's actual purification through the Holy Spirit. Through faith, the Holy Spirit and Christ himself dwell in believers and impart the life of God to them (Dittrich: 1932, 16–18; Gass: 1881, 73; Ap V 171–175 [III 292–296], SA III XIII, FC SD XI 17–19; Bente/Dau: 1921, 203–5, 499, 1069; Kolb/Wengert: 2000, 325, 644).

The conscience played an important role in Lutheran ethics and became a central element in the third kind of Lutheran ethical writings: ethics of conscience (see below, (chapter 1.8). Especially Melanchthon's view of conscience was important for this genre (Gass: 1881, 101).

For any discussion of ethics, one's view of authority for human life is vital. For Lutherans, canonical Scripture is the highest authority. Yet despite the Lutheran emphasis on "Scripture alone" as the standard by which teachers and doctrines are to be judged, other subordinate sources of authority were recognized, such as natural law (Ziegler: 2011; FC SD "Summary, Rule, and Norm" 3, Ap XXIII [XI] 2, 6, 8–12, 60; Bente/Dau: 1921, 363, 365–67, 379–81; Kolb/Wengert: 2000, 248, 249, 256; Dittrich: 1932, 81–82; Walther: 1906, 10, sec. 3n1). Also, since at least 1577, Lutherans confessed the "third use of the law," agreeing that God's law as contained in Scripture not only accuses sinners but also instructs Christians in holy living and gives a concrete form to the new life of faith and of the Spirit (FC Ep VI, FC SD VI; Bente/Dau: 1921,

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805–7, 963–71; Kolb/Wengert: 2000, 502–3, 587–91; Kittsteiner: 1992, 219; Dittrich: 1932, 23, 46–49, 104–5; Gass: 1881, 54, 84).[9]

This moral instruction for Christians was often organized according to the "three estates": church (*ecclesia*), state (*politia*), and home (*oeconomia*) (cf. SA "Preface" 14; Bente/Dau: 1921, 459; Kolb/Wengert: 2000, 300; Luther: 1528, LW 37:364–65, WA 26:504.30–505.10; Lohse: 1999, 322–24; Honecker: 1992, 323–27; Elert: 1958, 49ff.; M. Heckel: 1968, 139–63; Honecker: 1968, 73–83; W. Maurer: 1970; Schwarz: 1984; Bayer: 1984).[10] Orthodox Lutheranism carried on these features of Reformation-era ethics while at the same time addressing new problems that arose.[11]

1.2 What Is "Casuistry"?

Lutherans by at least 1628 had developed a genre of casuistry.[12] "'Casuistry,' broadly conceived, is any effort to apply general moral principles in particular circumstances, particularly when two otherwise valid principles conflict, or when, for whatever reasons, we simply do not know how to apply our principles in our current circumstances" (Martin: 2008, 10; cf. Jonsen/Toulmin: 1988, 10; Kittsteiner: 1992, 175; Dittrich: 1932, 226).[13] Casuistry is made up of the examination and documentation of particular "cases." A "case" (*casus, Fall*) consists of a set of circumstances – in other words, a situation. Originally the Latin word *casus* (from *cadere*, "to happen, take place") meant the circum-

[9] For the Lutheran confessional definition of sin, see SA III I 1–3 (Bente/Dau: 1921, 477; Kolb/Wengert: 2000, 310–11).

[10] Dedekenn's *Thesaurus*, too, was organized according to the "three estates."

[11] Hans Emil Weber sees Lutheran Orthodox ethics as carrying on the distinctly reformatory faith (1966, 63). Honecker (1992, 334) and Gass (1881, 102–3), however, say that some of this faithfulness to tradition lapsed into convention-based social ethics, which was not thought through methodologically.

[12] Friedrich Balduin is commonly called the first Lutheran casuist due to his posthumous book of 1628, *De casibus conscientiae* (Martin: 2008, 39–40, 113; Walch: 1758, 2:1127; Balduin: 1628, [III2]v).

[13] James F. Keenan distinguishes directories and summaries of cases from casuistry in the proper sense. For him, real casuistry "addresses a dilemma, uses analogies, examines circumstances, resolves doubt, examines the intentionality of personal agents and gives its solution. . . . For casuistry, then, a case needs to be made, argued and demonstrated by an author with evident authority" (2003, 20). Keenan's distinction reminds us that there were several different casuistry-like genres which could have served as precedent for Puritan practical divinity (and Lutheran cases of conscience as well). This distinction, however, will not prevent us from calling these other casuistry-like genres "casuistry" in the broad sense. Seventeenth- and eighteenth-century Lutheran literature connected the terms "casuistry" and "cases of conscience," which was the normal term for Lutheran works of this genre (Deyling: 1768, 17; Baumgarten: 1752; Gotthold/Rechenberg: 1717; J. Olearius: 1678; Balduin: 1628, [II4]v).

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stances that gave rise to a particular legal ruling (Jonsen/Toulmin: 1988, 116–17; Jonsen: 1993, 13–16). Christian ethicists or moral theologians consider "cases" insofar as they are "cases of conscience" (*casus conscientiae, Gewissensfälle*). A "case of conscience" is essentially a scruple or doubt in which the conscience of a Christian, without information, is not able to judge correctly.[14] Lutheran theologians in the early seventeenth century viewed cases of conscience as occurring in self-examination and as giving even the devout a scruple. Thus, the treatment of cases of conscience was seen as an especially necessary part of theological contemplation, pertaining to the part of theological wisdom called "didactic." Casuistry literature unravels the knots that constrict the conscience, being directed against doubts and temptations that people encounter in life (Balduin: 1628, [II4]r–v).

Although Orthodox Lutherans were not all agreed on the nature of the conscience – as to whether it is a habit, power, faculty, or act of the mind – nevertheless there was broad agreement on how the conscience functions.[15] Melanchthon gave the classic Lutheran definition of the conscience as a practical syllogism in the intellect, in which the major premise is the law of God or the Word of God; the minor premise and conclusion are the application, approving something done rightly or condemning a transgression; and this approval is followed by happiness in the heart, and the condemnation is followed by grief. [This happens] in the natural order sanctioned by God; he wants this knowledge of his judgment to be in his rational creature and he wants the performance [of it] to be added, so that there might be a testimony concerning him, showing that God exists, commands righteousness, and prohibits and punishes unrighteousness.[16]

Modern definitions of casuistry do not always agree with the traditional definitions. "Situationism," as popularized especially by Joseph Fletcher, resembles

[14] Balduin also speaks of a *casus conscientiae*as meaning a "falling," "moral error," "occurrence," "accident," or "emergency" – meanings which are latent in the German *Gewissensfall* (1628, 41–42, sec. 1.16). In order to show the underlying Latin *(casus conscientiae)*, in which the range of meanings from "situation" to "falling" are present, we prefer to remain with the normal English translation of "case of conscience" (cf. Jonsen/Toulmin: 1988, 7, 127; Dittrich: 1932, 386, 392).

[15] Later (chapter 1.8), we will deal with the Orthodox Lutheran concept of "conscience" in greater detail.

[16] "*Conscientia* est syllogismus practicus in intellectu, in quo maior propositio est Lex Dei seu verbum Dei. Minor vero et conclusio sunt applicatio approbans recte factum vel condemnans delictum, quam approbationem in corde sequitur laetitia et condemnationem dolor naturali ordine sancito a Deo, qui vult in creatura rationali hanc notitiam sui iudicii esse et executionem accedere, ut sit testimonium de ipso ostendens esse Deum et praecipere iusta et prohibere iniusta et punire" (Melanchthon: 1953, 790; cf. Melanchthon: 2011, 511; Dittrich: 1932, 98; Gass: 1881, 101–2; Martin: 2008, 187, 194; Balduin: 1628, 7, sec. 1.3). For Luther's view of the conscience, see below, chapter 1.8.

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traditional casuistry but is much less stable and consistent, and much more subjective and relativistic (Fletcher: 1966; Jonsen: 1993, 17–19, 22). Several twentieth-century Protestant theologians, particularly Karl Barth, condemned and rejected all forms of casuistry as being too rigid "to do justice to the unique particularities of the historical situation." For them, situations are radically unique (Biggar: 1989, 24–25, 27; Barth: 1961, 5–31).[17] This recent rejection of casuistry goes hand in hand with the view of the conscience set forth in modern theology. "[T]he popular modern superstition [of] 'conscience' is an exclusive private daemon, wholly impermeable to rational persuasion, which will produce instant verdicts that differ from individual to individual in such a way that no one could possibly say that anything or anyone was wrong (or even right)" (Chadwick: 1969, 7).[18] In the face of an older casuistry on the one hand, viewed as static and inflexible, and the modern situational and existential rejection of casuistry on the other hand, some modern theologians have attempted to chart a middle course (Biggar: 1989; Jonsen/Toulmin: 1988, 2, 6; Denecke: 1972).

1.3 Anglican and Reformed Casuistry

At the beginning of the seventeenth century, casuistry started to be published by English Protestant authors.[19] Richard Baxter, Robert Sanderson, John Sharp, and especially Jeremy Taylor were leading writers of this literature.[20] For Anglicans, the genre was for use both by pastors and by laity, which explains why much of the literature was written in English instead of Latin. While the English casuists followed pre-Reformation casuistry in many respects (Wood: 1952, x–xxii, 57; Kirk: 1927, 202), their divergence from older models of casuistry, as well as their rejection of contemporary Jesuit casuistry, has been well-documented (Stone: 2000, 80; Vallance/Braun: 2003; Kelly:

[17] Barth's basic thrust is that situations, and the human beings in those situations, are radically unique and therefore there can be no "ethics filled out with material content."

[18] Annegret Freund examines the meaning of the term "Gewissen" in the leading German systematic theologians of the twentieth century. In so doing, she discovers a large degree of diversity, while at times being able to identify commonalities. One such commonality is that the conscience is viewed by most theologians exclusively as an encounter with God, either God's condemning word of law, or his gospel. Thus, according to them, the conscience is exclusively passive, existential, and unable to be educated (Freund: 1994, 177, 181).

[19] On the rise of Anglican casuistry, see Wood (1952, 38), Jonsen and Toulmin (1988, 158–60), and Walsham (2003). On Anglican casuistry in general, see Prieur (1970), Slights (1967), Kelly (1967a; 1967b), Brown (1959), Bailey (1953), and McAdoo (1949).

[20] Johann Georg Walch called Taylor "the prince of writings on cases of conscience, especially in the English people" (Walch: 1758, 2:1133; cf. J. Fabricius: 1722, 83–85; Stone: 2000, 60).

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1967b, 12–13, 117).[21] Anglican casuistry especially had much in common with the Puritan tradition of casuistry. "English casuists wrote with the intention 'not of correcting the work of their predecessors but of amplifying it.' Bishops drew from the work of 'puritans' and vice versa" (Vallance/Braun: 2003, xii).

The Reformed had their casuistry as well, beginning with William Perkins's *Whole Treatise of the Cases of Conscience* (1606).[22] Writing in the mid-eighteenth century, the Lutheran theologian Johann Georg Walch listed Heinrich Alsted, William Ames, Perkins, Joseph Hall, Jeremy Taylor, Robert Sanderson, and Andreas Rivetus as the chief Reformed casuists (Walch: 1758, 2:1132–34).[23] Latin and German translations of their works were known in Germany, being printed not only in Reformed cities but in a few Lutheran ones as well (Alsted: 1621; Ames: 1630; Perkins: 1603; 1608; 1690; Hall: 1677; Taylor: 1705; Sanderson: 1674; Rivetus: 1632).

Why was this casuistry literature not written and published among Protestants until the beginning of the seventeenth century? It has been suggested that casuistry seemed inseparable from the confessional, the abuses of which had been an argument that Protestants used against the Roman Catholic Church; also, a work of casuistry is a large and difficult task – too much for the sixteenth-century theologians who chose to spend their time in the controversies of the day (Wood: 1952, 38; cf. Jonsen/Toulmin: 1988, 158–60). Yet eventually casuistry was written. Perhaps the moral theologies and systematic presentations of ethics were not flexible nor sensitive enough to address all situations; in an age of conflict, ethical behavior also became controversial; new developments in life arose which congregations were not able to judge on their own (Gass: 1881, 147).[24] These are the kinds of answers that have been

[21] On the issue of casuistic method, Vallence and Braun (2003, xvii–xviii) and Franklin (2001, 84) characterize Anglican casuistry as probabilioristic (concerning which term, see below, chapter 1.4).

[22] The first part had been published in 1604. The treatise was quite popular, experiencing at least nine editions between 1606 and 1651. Another treatise on conscience appeared earlier in German-speaking lands (Perkins: 1603). Margaret Sampson (1988, 98) says that there was an English Protestant casuistry written in 1523. But this early casuistry was isolated and not part of a major effort at publishing casuistry, such as there was among Lutherans, Anglicans, and Puritans in the seventeenth century. James F. Keenan (2003) argues that *The Whole Treatise* is not truly a "casuistry," but is rather a directory in the first part and a summary of cases thereafter. Keenan's observation, that there were several possible predecessors for Perkins, is helpful, but his narrow usage of the word "casuistry" will not prevent us from using it in a wider sense.

[23] On Alsted, see Stone (2000, 76, 88–89). Keith Sprunger (1972, 161) lists the main English Puritan casuists as Greenham, Perkins, Ames, and Richard Baxter, and the main Anglican casuists as Jeremy Taylor, Joseph Hall, Robert Sanderson, and John Sharp. Richard Muller (1980, 312) adds John Downham.

[24] Gass's suggestions here, which he applies to both Reformed and Lutheran casuistry, are not completely satisfying. See below, chapter 1.6.

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suggested. Yet these suggestions do not answer the question of why casuistries only started to be written in the 1590s among the Reformed and in the 1620s among the Lutherans. The factors mentioned – e.g., conflict, ethical behavior as controversial, new developments – existed both long before and long after the turn of the seventeenth century.[25]

Just as Lutherans had several different kinds of ethical literature, so also the Reformed could write some philosophical ethics, relying on Aristotle, and other theological ethics. In their casuistry, the Reformed looked to Scripture rather than to Aristotelian philosophy for the duties they set forth.[26] The most distinctive aspect of Reformed casuistry, however, is its focus on the assurance of election. Examining theologians such as Perkins, Ames, John Downham, John Bunyan, and Richard Baxter, one finds that their greatest case of conscience was "whether a man be a childe of God or no" (Muller: 1980, 311; Perkins: 1631; Sprunger: 1972, 162, 166, 171; Merrill: 1966, xiv–xv). All in all, the English Reformed casuistry was focused on the personal assurance of salvation, and for the most part it was meant also for the laity, thus being written in the vernacular (Sampson: 1988, 99; Merrill: 1966, xiv).

Of course, the Reformed focus on personal assurance of salvation was the indication of fundamental theological problems, according to Lutheran writers. To be sure, the writers of the dedicatory epistle for Balduin's *De casibus conscientiae* did not have nearly as much criticism for the Reformed as they did for the Roman Catholic versions of casuistry, yet the criticism was still biting, dealing with the distinctive Reformed doctrine of the conscience. The "Calvinists," they say, often deal with cruel things, though they sometimes try to temper God's providence with human wisdom. Afflicted consciences and people anxious about their salvation are not helped by their counsels, but are given the "wine of desperation and of the infernal pit." This is due to Reformed doctrines "on the absolute love of those who will be saved, the absolute hate of those who will be damned, the will of the sign and another will of good-pleasure, particular syllogisms, genera of individuals, good grief, and similar paradoxes."[27] However, the critique of the Reformed position on the

[25] We will suggest a reason for the delay in Lutheran casuistry-writing below (chapter 1.6).

[26] Stone sees philosophical ethics and theological ethics as separate phases in the life of the Reformed churches, rather than different genres that could exist simultaneously (2000, 61–63, 75; cf. Gass: 1881, 137–39).

[27] "de absoluto salvandorum delectu, & damnandorum odio, de voluntate Signi a beneplacito alia, particularibus syllogismis, generibus singulorum, dolo bono, similibusque paradoxis" (Balduin: 1628, [IIII4]r). Balduin did not treat the question of assurance of election as a case of conscience at all (Martin: 2008, 100–101, 260; but cf. Gerhard: 2001). According to Stone (2000, 78), the casuistry of Perkins and Ames allowed for no mitigating circumstances. They were convinced that the practice of

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conscience should not obscure the fact that casuists such as Perkins and Ames could describe the functions of the conscience syllogistically, similar to how Melanchthon and Balduin described the conscience (Merrill: 1966, xiii; Sprunger: 1972, 170).

Many comparisons have been made between Puritan casuistry and Roman Catholic casuistry, especially of the Jesuits, but no unanimity has so far emerged (Martin: 2008, 263; Vallance/Braun: 2003; Stone: 2000, 77–80; Jonsen/Toulmin: 1988, 161; Sprunger: 1972, 180; cf. Vilmar: 1938, 129). A thorough analysis will require a larger number of examples of the casuistry of both sides, as well as familiarity with other ethical genres. The same caveat applies for comparisons between Lutheran and Reformed casuistry.

1.4 Roman Catholic Moral Theology and the Debate Surrounding Probabilism

The Middle Ages handed down contradictions in some areas of Christian faith and life to Christians of the sixteenth and seventeenth centuries.[28] Lutherans and Roman Catholics alike inherited the same contradictions, but developed differing ways of managing them. The Roman Catholic tradition of casuistry presented various ways of handling the contradictions and resolving doubts on individual cases (Döllinger/Reusch: 1889, 6).[29] In the history of Western Christian casuistry, there were three stages. First, penitential books arose in the course of the sixth and seventh centuries. Next, after canon 21 of the fourth Lateran Council (1215) made annual confession mandatory for all Catholics, there began the era of the "summists," who prepared summaries of cases for pastors hearing confession. The third period began with the Council of Trent. In this period, Roman Catholic casuistry became much more detailed and methodologically sophisticated (Kittsteiner: 1992, 176–77; Döllinger/Reusch: 1889, 7).

In the sixteenth through eighteenth centuries, Roman Catholic writers produced the most casuistry works.[30] Pierre Hurtubise estimates that close to

piety would lead one to realize what the Word of God required. This was in stark contrast to the Jesuit casuistry of Juan Azor, which allowed for many exceptions.

[28] E.g., the legitimate grounds for divorce and remarriage (see below, chapter 5).

[29] For assessments of Roman Catholic casuistry and moral theology, see Hurtubise (2005), Kittsteiner (1992, 209; 1988, 196), Sommerville (1988, 183), Jonsen/Toulmin (1988, 140, 153–57, 159), Theiner (1970, 34), and Gass (1881, 196–210, 213).

[30] Christian Grübel makes this clear in his dedicatory letter for the *New Appendix* of the 1671 edition of Dedekenn's *Thesaurus* (1671, a3r).

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1300 first editions of casuistry works were produced by Roman Catholic writers between 1550 and 1799, with the greatest concentration (414) being printed between 1650 and 1699 (Hurtubise: 2005, 26). Why did Roman Catholic writers produce so much casuistry? To some extent, new discoveries and new situations were producing new moral questions, and people were beset with a "scrupulous worry" which fueled the economy surrounding the publication of casuistry. In addition, the genre was produced to such a great extent due to the new responsibilities placed on clergy and laity by the Council of Trent – including more frequent confession and Communion – and to the poor education of the clergy. The 1586 Jesuit *Ratio studiorum* made the study of cases a major component in the curriculum for practical-track Jesuit students, whose major duty would be the hearing of confessions. So central was casuistry to their education that these students were called *casistae.* The academic-track Jesuit students (the *scolastici*) also had casuistry as a major part of their preparation (Hurtubise: 2005, 13–15, 20; Nieden: 2006, 140–44; Koch: 2000, 105; Döllinger/Reusch: 1889, 13–23; cf. Jonsen/Toulmin: 1988, 144, 149–50; Kittsteiner: 1988, 186; Gass: 1881, 180).

In the seventeenth and eighteenth centuries, Roman Catholics fought an internal war over appropriate forms of moral theology, moral decision making, and casuistry. In the course of the debate, distinctive schools of thought emerged (Fleming: 2006). Because these schools of thought represent basic possibilities for moral decision making in doubtful situations, and because Lutheran casuistry is occasionally compared with them, a brief review of these Roman Catholic schools of thought is necessary.[31]

In many cases, there can be no full certainty on whether a particular action is required, permissible, or impermissible. If two or more views present themselves as possible courses of action, and neither is certain, then the arguments for one side or the other can be of differing strengths. If both opinions have the same weight of arguments for them, they are "equally probable" *(aeque probabilis)*. Here it should be noted that "probable" means "approvable" or "having weighty authority," not "statistically likely" (Martin: 2008, 293–94; Franklin: 2001, 67; Kantola: 1994, 179, 182).[32] If one of the two opinions has more arguments for it than the other has, it is "more probable" *(probabilior)*, and the opinion with less arguments is "less probable" *(minus probabilis)*. Someone is following the "more probable opinion" if he, for example, enters

[31] Döllinger and Reusch provide a clear conceptual taxonomy for this material (1889, 3–5).

[32] Kantola, however, argues that the two concepts of probability – based on evidence of things and based on the testimony of people – are related.

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a contract whose permissibility has stronger reasons speaking for it than against it; someone is following the "less probable opinion" if he enters that contract despite the fact that weaker reasons speak for it than for the opposite opinion. This probability can be based on internal reasons, in which case it is called "intrinsic probability" *(probabilitas intrinseca)*, or on external reasons (i.e., the testimony of accepted authorities), in which case it is called "extrinsic probability" *(probabilitas extrinseca)*. These terms started to be used among Roman Catholics at the end of the sixteenth century.

Opinions were also considered in terms of safety. The "safer opinion" *(opinio tutior)* is the opinion which, if one follows it, he will avoid transgressing a law with more certainty than if he had followed the "less safe opinion" *(opinio minus tuta)*. For example, someone is following the "safer opinion" if he refuses to enter a contract whose permissibility is doubtful to him; someone is following the "less safe opinion" if he enters that contract despite such doubt (Döllinger/Reusch: 1889, 3–4; Fleming: 2006, 28, 109).

In accordance with these different kinds of opinions, various theories were developed in the course of the seventeenth and eighteenth centuries. First, "tutiorism" said that one must follow the safer opinion even if the less safe opinion is more probable. That is, if one doubts whether an action is permissible, one may not do it. (One must have certainty in order for it to be permissible.) And if one doubts whether an action is required, one must do it. Tutiorism was the strictest of all the moral theories and was generally rejected by Roman Catholic theologians as being too rigoristic (Döllinger/Reusch: 1889, 4; Fleming: 2006, 5; Franklin: 2001, 67; Kantola: 1994, 13).

Second, "probabiliorism" said, in agreement with tutiorism, that one may follow the safer opinion even if it is less probable, but one may only follow the less safe opinion if it is more probable than its opposite. That is, certainty of the permissibility of an action was not required for one to do it, as long as it had more authority for it than against it, and uncertainty about whether an action was required did not compel one to do it, as long as it had more authority against it than for it. This moral theory was strict, but not nearly so strict as tutiorism. The authorities invoked by probabiliorists tended to be restricted to the Bible and early church fathers (Döllinger/Reusch: 1889, 4; Fleming: 2006, 5; Hurtubise: 2005, 266; Kantola: 1994, 13, 191).

Third, "aequiprobabilism" said that one may follow the less safe opinion if it and the safer opinion are equally probable (Döllinger/Reusch: 1889, 4–5; Fleming: 2006, 6; Kantola: 1994, 13).

Finally, "probabilism" said that one may follow the less safe opinion even if it is less probable than the safer opinion, so long as it is probable to some

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extent. The extent to which the less probable opinion still had to be "probable" led to differing kinds of probabilism, with some probabilists being close to aequiprobabilists, and others being extremely lax on how improbable the less probable argument could be. Probabilism allows a group to hold two or more mutually exclusive positions at the same time. It also allows one to posit portions of one's authority (e.g., Scripture) as contradictory to each other and then hold to one side or the other, rather than reconciling the statements and accepting the authority as a whole. The Jesuits fostered probabilism, but others did, too, such as Bartolomé de Medina (d. 1580), a Dominican. The authorities invoked by probabilists were not restricted to Scripture and ancient fathers, but included scholastic theologians, canonists, and contemporary authorities (Döllinger/Reusch: 1889, 5; Fleming: 2006, 143–51; Hurtubise: 2005, 15, 266; Franklin: 2001, 75–76; Koch: 2000, 65–66; Kantola: 1994, 13, 191; Jonsen/Toulmin: 1988, 164–65, 169, 376; Gass: 1881, 190, 196, 203–10; Vilmar: 1938, 128–29).[33]

Lutherans in the seventeenth and eighteenth centuries were aware of these developments among Roman Catholic moral theologians. While some Lutherans found some of the Jesuits' ethical categories to be helpful in writing their own moral theologies,[34] the general Lutheran reaction was quite negative toward the Jesuits and probabilism. A major problem in Lutheran eyes was that in Roman Catholic casuistry, the conscience was supposed to accept a whole range of authorities beyond Scripture. Lutherans also condemned their doctrine of moral probability, their direction of intention, their mental reservation, their arbitrary changing of the definitions of moral subjects, their distinction of philosophical and theological sins, their distinction between mortal and venial sins in a superficial manner, and the sufficience of attrition. Thus, probabilism was one part of a host of Jesuit problems, but an important problem that the Orthodox Lutherans vigorously rejected (Kittsteiner: 1992, 209; Dittrich: 1932, 391; Döllinger/Reusch: 1889, 26–27, 332; Walch: 1758, 2:1125–26).[35]

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[33] Writing in 1775, Walch depicts probabilism according to its coarsest features as a specifically Jesuit doctrine: "Probabilismus, Durch dieses Wort drückt man eine gewisse Lehre der Jesuiten in der Moral aus, die darinnen bestehet, daß wenn der Mensch etwas vornehme, dabey er ein wahrscheinlich Gewissen hätte, so sündige er nicht, wenn gleich die That unrecht und dem göttlichen Willen zuwider wäre. Der Grund solcher Wahrscheinlichkeit soll vornemlich der Ausspruch eines gelehrten, frommen und angesehenen Mannes, dergleichen ein Jesuit wäre, seyn. . . . Sie ist so unvernünftig und gottlos, daß man nichts schlimmers ausdenken könnte" (Walch: 1775b).

[34] E.g., Calixt and Buddeus (Gass: 1881, 282, 332).

[35] Gass gives his own criticism of Roman Catholic casuistry rather than of seventeenth-century Lutherans (1881, 191–93, 216–17). Roman Catholics themselves found much of this problematic as well.

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