

RELATING ETHICAL ARGUMENTS

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Ethical arguments, like legal arguments, usually compete with one another when we seek to apply them to concrete cases. Generally, no accepted decision procedures to resolve the conflicts are available and conventional analyses urge that the choice of the decision and arguments to resolve a controversy is open to the charge of irrationality. Though many disagree, the debates appear inconclusive as to what can be "proved" ⁽¹⁾.

Perelman has contended that the notion of proving a thesis should give way to a theory of argumentation on which is to be based a "New Rhetoric". This is to study not the means of proof used by mathematicians, but the means of proof of the human sciences, law and philosophy. He states :

"The object of this theory is the study of the discursive techniques that allow one to bring about or increase the adherence of minds to the theses that one proposes for their assent... It is good method not to confuse at the outset the aspects of reasoning relative to truth with those relative to adherence, but to study them separately... The logicians should complete their theory of demonstration by a theory of argumentation. ... They must analyze the argumentation presented by publicists in their journals, by politicians in their speeches, by lawyers in their briefs, by philosophers in their treatises." ⁽²⁾

It is the purpose of this paper to explore a different though related approach to the problem of dealing with ethical arguments. Although the study of techniques to bring about or increase the adherence of minds to the theses one proposes for assent can be fruitful,

⁽¹⁾ See Kai NIELSON, The good reasons approach revisited, *Archives of Law and Social Philosophy*, Vol. 1964 L, 4, pp. 455-484; Clement DOVE, On a Theory of the Justification of Ethical Principles, *Philosophical Studies*, Vol. 15 December 1964, pp. 81-85; William WARREN BARTLEY, *The Retreat from Commitment* (1964).

⁽²⁾ Ch. PERELMAN, *The Idea of Justice and the Problem of Argument*, 1963, p. 137, p. 142.

as indeed Perelman's work has shown, yet, if the adherence of minds is achieved, the problem remains of evaluating the resulting assent. Has it taken due account of the arguments submitted pro and con and is there a basis for considering it to be "right"? Analyses of types of argument in current use are revealing, but do not do enough to answer these questions. A reviewer of Perelman's work has suggested that there is need to advance from the level of classification of arguments to that of a "scientific theory of arguments" (3). If such a theory can be found or devised, it should solve many of the problems of argumentation which continue to plague us. However, the quest for such a theory would seem clearly doomed to only a very limited if any success and in any event, such a quest goes beyond what this paper will attempt. Yet further exploration seems warranted to grapple with the oft witnessed apparent inability to determine what a controversy is "about" when competing arguments are separately invoked to support theses which compete for acceptance. Frequently there is a failure to relate the arguments in a way to achieve such advancement in understanding as should be possible from a well conducted dialogue. The ancient fable of the six blind men of Hindustan who reported respectively that the elephant was something like a wall a spear, a snake, a tree, a fan, and a rope and

"in the manner of the House of Lords, delivered six separate opinions on the beast" (4)

has been used to suggest why philosophers do not agree even on what they are arguing "about".

The fable seems to have application to our problem. When we recognize the wide range of ethical arguments and the infinity of cases to which they may be invoked, it is apparent that seeking what the arguments are "about", calls for invention and caution. Studies on the logical question of determining a general rule for deciding whether a given statement is or is not "about" a given thing offer meager assistance in the realm of ethical arguments (5).

(3) *Times Literary Supplement*, Jan. 16, 1964.

(4) F. S. COHEN, *Field Theory and Judicial Logic*, in COHEN and COHEN, *Readings in Jurisprudence and Legal Philosophy*, 1951, p. 699.

(5) Nelson GOODMAN, "About", *Mind*, Vol. 70, 1961, pp. 1-24; "About" Mistaken, *Mind*, Vol. 74, 1965, p. 248.

Arguments, of course, may be used for their "causal effect", that is, psychologically to induce desired responses. Thus, for example, arguments appealing to "passion and prejudice", although cloaked in a different garb, and although not always easy to identify, are related to a decision in terms of cause and effect. They are used, when permitted, for their potency in producing the desired effect. In such uses, the "case" is only incidental and any justification of the decision is irrelevant.

However, for the judge who seeks assistance from the arguments submitted to him, the arguments are important. They should play a part in determining among alternative possibilities of decision. Persons deciding ethical or legal cases, in practice may employ varying "methods" of decision and the causes or reasons for their decisions may be known or unknown to them. Moreover, what purports to be deliberation may be a rationalizing process with little or no attempt to deal with the support which arguments provide in justifying the decision. In an analysis of what ethical arguments are "about", it is essential to consider the relationship between the arguments, the decision and the justification. We frankly must face the question of the extent to which there can be a logic for the discovery of a right decision and its justification. In this connection we may consider Popper's comment on the conceiving or the invention of a theory. He said :

"The initial stage, the act of conceiving or inventing a theory, seems to me neither to call for logical analysis nor to be susceptible of it. The question how it happens that a new idea occurs to a man — whether it is a musical theme, a dramatic conflict, or a scientific theory — may be of great interest to empirical psychology; but it is irrelevant to the logical analysis of scientific knowledge..."⁽⁶⁾

Despite this apparent rejection of logical analysis for "discovery", Popper thinks it is important for testing theories. He says :

"It is another matter if we want to reconstruct rationally the subsequent tests whereby the inspiration may be discovered to be a discovery, or become known to be knowledge. In so far as the scientist critically

(6) Karl L. POPPER, *The Logic of Scientific Discovery*, 1959, p. 31.

judges, alters, or rejects his own inspiration we may, if we like, regard the methodological analysis undertaken here as a kind of 'rational reconstruction' of the corresponding thought-processes. But this reconstruction would not describe these processes as they actually happen; it can give only a logical skeleton of the procedure of testing. Still, this is perhaps all that is meant by those who speak of a 'rational reconstruction' of the ways in which we gain knowledge." (7)

The application of ethical arguments to a concrete case presupposes a prior process of considering the arguments for and against the alternative choices which are presented and a justification of the decision. The justification in a real sense will control and determine the decision. The relating of arguments to see what they are "about" is considered in this paper to be a part of a discovery and testing process. Although the justification is distinguishable from the problem of relating the arguments, both are inter-related. It will be contended that ideally an explicit logical structure of operations is required for the better understanding of the inter-relationship.

Such an explicit logical structure of operations cannot be expected to provide an axiomatic or formal logic to demonstrate what the arguments are "about". Yet certain conditions which are applicable to an axiomatic logical system also will apply to the desired logical structure of operations. Thus Windelband's comment with reference to Aristotelian logic :

"... the processes of deducing, proving, and explaining, in which the ultimate task of science consists, must be preceded by the searching out of the starting-points for deduction, of the ultimate grounds of proof, and of the highest principles of explanation." (8)

can be applied to the search for a logical structure of operations for the relating of arguments.

To adapt this comment to find a starting point for a logical structure to relate ethical arguments, we need to anticipate how such a logical structure might "work" and what such a logical structure would be intended to "do". It is reasonable to assume that if there were a readily available language game applicable to the

(7) *Ibid.*, p. 32.

(8) W. WINDELBAND, *A History of Philosophy*, 1901, p. 137.

vast number of ethical principles and the infinite number of cases to which they are invoked, the problem of relating principles and cases, either would be solved or be well on the way to solution. The continued existence of the problem strongly indicates, at least, that no adequate language game has been found. Ethical arguments as applied to cases generally cannot be so applied within definitive meanings and truth values. Decision procedures with sufficient rigor appear to be lacking. The possibility of progress in determining what the arguments are "about" depends on a further exploration of a "constructivism", which Perelman seems to have accepted. We need to use but go beyond the classification of arguments and to explore a logic both for discovery and testing and to utilize such assistance as the manipulation of symbols can give us.

Polanyi has said that the mere manipulation of symbols does not in itself supply new information, — it is effective because it assists the inarticulate mental powers exercised by reading off their result. In developing his thesis, which seems akin to what others have called "constructiveness", Polanyi says :

"All our conceptions have heuristic powers: they are ever ready to identify novel instances of experience by modifying themselves so as to comprise them. The practise of skills is inventive; by concentrating our purpose on the achievement of success we evoke ever new capacities in ourselves. The search for a solution consists in casting about with this purpose in mind. This we do by performing two operations which must always be tried jointly. We must (1) set out the problem in suitable symbols and continuously reorganize its representation with a view to eliciting some new suggestive aspects of it, and concurrently (2) ransack our memory for any similar problem of which the solution is known. ... But his success will depend ultimately on his capacity for sensing the presence of yet unrevealed logical relations between the conditions of the problem, the theorems known to him, and the unknown solution he is looking for." (9)

As of the time when a judge or critic is trying to decide the application of ethical arguments to a concrete case, the "unknowns" which are being sought, include what the arguments are "about". Hence the needed logical skeleton should provide, if possible, concepts sufficiently comprehensive so as to embrace every conceivable

(9) Michael POLANYI, *Personal Knowledge*, 1958, p. 83, p. 128.

able "reasonable" argument. As Perelman observes, what is reasonable is not limited to what is expressed by means of carefully worked out deductive systems; it extends to every thesis a thinker claims to display for the community of man, starting from those generally accepted in the surroundings he knows. Perelman says there is no criterion for judging this form of dialogue and the conclusions which follow from it, "save the philosophical vision of the interlocutors" (10). Yet in seeking to understand the role of argumentation and the audience to which it is addressed, he invokes the notion of a

"universal audience which is then not a concrete social reality but a construction of the speaker based on elements in his experience... Of course, the universal audience never actually exists; it is an ideal audience, a mental construction of him who refers to it..." (11)

For Perelman, argumentation is not concerned with demonstration. The purpose of his construct of a "universal audience" is to illumine the social contexts of argumentation. He contends that because audiences accept not only facts and values but also hierarchies, constructs of reality and connections between facts and values, a totality of common beliefs, it is possible to argue with more or less effectiveness (12).

Though "universal audience" as a mental construction can and does throw light on what ethical arguments are "about", a more comprehensive construction is needed to utilize the "constructivism" which seems envisioned by Polanyi and others. Polanyi has noted that whatever rules of rightness a person tries to fulfill and establish — be they moral, aesthetic or legal — he commits himself to an ideal (13). Obviously this paper does not claim to have found or devised any construction of conceptions with heuristic powers adequate to relate ethical arguments to each other and to the infinity of cases and to decisions and to justifications. However, it will attempt briefly to sketch an approach which seems pertinent to the

(10) *Supra*, note 2, p. 167.

(11) *Ibid.*, p. 169.

(12) *Ibid.*, p. 170.

(13) *Supra*, note 9, p. 334.

tasks of the judge or critic in evaluating the application of ethical arguments to concrete cases.

The approach would make use of the notion of approval, a notion long established as significant for ethical judgments. This notion would be used by the judge or critic as a part of the proposed construction. The construction would be used for evaluation and determining what ethical arguments, in their application to concrete cases, are "about". It would appeal not to what Hume has called a "sentiment of approval" (the pleasing sentiment of approbation) but rather to what he has called a "judgment of approval", made in moral deliberations in which "we must be acquainted with all objects, and all their relations to each other, and from a comparison of the whole, fix our choice or approbation" (14). The challenge persists as to how such a notion of approval can be less vague than the previously suggested need for "philosophical vision" and how it can serve as a part of a useful construction.

In deliberating on the application of ethical arguments to concrete cases, the judge or critic is engaging in an intentional activity to which the question "What are you doing now?" would seem applicable. Hampshire has observed that more often than not, we have not previously expressed to ourselves our intention, or formulated it in words, but that it is the possibility of our declaring, or expressing our intention, or expressing our intentions from moment to moment, and if the question is asked, that gives sense to the notion of intention itself¹⁵. Ethical problems arise in a social context and their resolution constitutes a resolution of social relations. An understanding of what the application of ethical arguments to concrete cases is "about" needs to be considered in the light not only of the arguments as such, but also of an evaluation of the resolution to be achieved of the social relations and behaviors which are in issue. Hence for our construction we would postulate that the application of ethical arguments to concrete cases is "about" the achievement of a state of affairs which, on reflection, would receive our enduring approval.

No novelty is claimed for such a construction. Ethics long has

(14) David HUME, *Enquiry concerning the Principles of Morals*, ed. SELBY-BIGGE, 1902, Reprint 1957, p. 290.

(15) Stuart HAMPSHIRE, *Thought and Action*, 1959, p. 97.

been considered to be a discipline which concerns itself with judgments of approval and disapproval. Continued commendation is associated with the good and "Criticism and Regret" with intentional moral actions⁽¹⁶⁾. If we accept the view "that the concepts in terms of which we understand our own mental processes and behavior have to be learned, and must, therefore, be socially established, just as much as the concepts in terms of which we come to understand the behavior of other people" (17), the construction may have a special usefulness. The problem of understanding what ethical arguments is "about", involves subject matter quite different from that of Physics. However, in considering the theoretical aspects of the problem and an approach to make as explicit as possible the concepts by which argumentation is understood, the proposed construction may be compared with what Carnap called the "second method" of Physics. Carnap in considering a syntactical and semantical description of a system of Physics, asked what we would do if our purpose was to teach a layman to understand the system — a layman being defined as one who did not know Physics but has normal senses and understands a language in which observable properties of things can be described. Carnap noted that the higher the physicists went in the scale of terms, the better did they succeed in formulating laws applying to a wide range of phenomena, and says that they were inclined to choose a method which

"begins at the top of the system, so to speak, and then goes down to lower and lower levels. It consists in taking a few abstract terms as primitive signs and a few fundamental laws of great generality as axioms. Then further terms, less and less abstract, and finally elementary ones, are to be introduced by definitions; and here, so it seems at present, explicit definitions will do... The calculus is first constructed, floating in the air, so to speak; the construction begins at the top and then adds lower and lower levels. Finally by semantical rules, the lowest level is anchored at the solid ground of the observable facts..." (18)

Ethical arguments being normative in their import, the construction does not directly contemplate lowest level semantical rules "at

(16) *Ibid.*, Ch. 4.

(17) Peter WINCH, *The Idea of a Social Science*, 1958, p. 119.

(18) Rudolph CARNAP, *The Interpretation of Physics* — 1939, in FEIGL and BRODBECK, *Readings in the Philosophy of Science*, 1953, pp. 314-315.

the solid ground of observable facts". A normative social theory, as Northrop has pointed out, is one designating a *possible* state of affairs for a given society, and differs from a factual social theory, designating a state of affairs in accord with what actually exists ⁽¹⁹⁾. Yet we need to recognize that it is not in principle impossible for social science disciplines to establish conclusions having objectivity. Nagel has said, with reference to social sciences :

"A search for formulas is a phase in the search for invariant relations in a subject matter, so that formulations of these relations are valid irrespective of the particular perspective one may select from some class of perspective on that subject matter." ⁽²⁰⁾

The construction would not disregard "observable facts". The reminder is relevant that in considering any theory, proof must not be confused with truth and that proof is a relation between propositions, whereas truth is a relation between propositions and facts. The roles both of proof and truth need to be considered in argumentation.

Carnap stated that his second method cannot yet be carried forward in the pure form indicated even for Physics. That it cannot now be carried very far forward in dealing with ethical arguments, is too obvious to need mention. We may accept Nagel's comment in discussing methodological problems of the social sciences, that most competent students today do not believe that an empirically warranted theory, able to explain in a single set of integrated assumptions the full variety of social phenomena, is likely to be achieved in the foreseeable future. Yet we may agree with him that the important task is to achieve some clarity in fundamental methodological issues in the structure of explanations in the social sciences ⁽²¹⁾. For this task the suggested construction may be further explored, since ethical arguments are relevant in the social sciences. The construction may be used to indicate a way in which the justification of ethical arguments, as applied to concrete cases may be better

⁽¹⁹⁾ F. S. C. NORTHROP, *The Logic of the Sciences and the Humanities*, 1947, p. 278.

⁽²⁰⁾ Ernest NAGEL, *The Structure of Science*, 1961, p. 501.

⁽²¹⁾ *Ibid.*, p. 448, p. 449.

understood, by considering the arguments from a point of view of high generality — namely: whether the acceptance of particular arguments would lead to states of affairs, which, on reflection would receive our enduring approval. Testing the arguments by treating them as asserting that the decision which they are alleged to support is entitled to such enduring approval should help reveal the gaps in the arguments and at the same time tend to assist understanding and communication of what the arguments are “about”.

The ordering of conceptions in accordance with recognized logical forms can lead to fruitful application to novel situations⁽²²⁾. Bertrand Russell has said:

“Given some statement in a language of which we know the grammar and the syntax, but not the vocabulary, what are the possible meanings of such a statement, and what are the meanings of the unknown words that would make it true?

...

We know much more (to use for a moment, an old-fashioned pair of terms) about the form of nature, than about the matter... Thus great importance attaches to the question: What are the possible meanings of a law expressed in terms of which we do not know the substantive meaning, but only the grammar and syntax?...”⁽²³⁾

The proposed construction, employing a “vocabulary” at the top of the system needs to develop a grammar and a syntax to permit a larger perspective in the application of ethical arguments to concrete cases.

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⁽²²⁾ Ernst CASSIRER, *Substance and Function*, 1923, reprint 1953, p. 116.

⁽²³⁾ Bertrand RUSSELL, *Introduction to Mathematical Philosophy*, reprint 1948, p. 55.