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Wide reflective equilibrium and conductive argument

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ABSTRACT: In this paper I compare and contrast Rawls's notion of reflective equilibrium with Wellman's notion of conductive argument. In the course of so doing I will address two key questions: (1) Are conductive argument and reflective equilibrium best understood as modes of reasoning or types of argument? and (2) What relationship (logical, pragmatic, etc.), if any, is there between them?

KEYWORDS: conductive argument, reflective equilibrium, John Rawls, Carl Wellman, W.T. Stace, Henry Aiken, H. L. A. Hart, judgment, moral philosophy

Bees cull their several sweets from this flower and that blossom, here and there where they find them, but themselves afterward make the honey, which is all and purely their own, and no more thyme and marjoram: so the several fragments he borrows from others, he will transform and shuffle together to compile a work that shall be absolutely his own; that is to say, his judgment: his instruction, labor and study, tend to nothing else but to form that.

--Michel de Montaigne, *Essays*

1. INTRODUCTION

The advent of deontic logic and more recently, of non-monotonic logics of belief revision, is rapidly changing the way in which contemporary philosophers engage the question of how moral beliefs are to be justified. The question itself, however, and the tradition of invoking non-standard logics in order to answer it, is far from new. In 1971 two proposals emerged independently of one another which, though having clear antecedents, were indicative of an non-deductive approach to moral justification. The first of these was Carl Wellman's notion of "conductive argument", put forward in his 1971 work *Challenge and Response*. That same year, of course, marked the publication of John Rawls's seminal *A Theory of Justice*, in which, among other things, Rawls introduced the idea of reflective equilibrium to many for the first time. Both proposals were novel, if not altogether new, but whereas Rawls's proposal went on to become an independent object of study in its own right, Wellman's languished and (until recently) largely failed to register an imprint in the philosophical community. The disparate response to the proposals is somewhat puzzling, especially since the two proposals emerge from the same confluence of philosophical positions and influences. They are quite similar proposals. Part I of this paper constitutes my argument for their similarity. I believe this argument establishes

that the relationship between reflective equilibrium and conductive argument is genetic (or, if one prefers, a rather clear sort of “family resemblance”) in nature. In Part II I will suggest a possible explanation for why Wellman’s version was met with indifference, while Rawls’s rose to prominence. In brief, my contention will be that Wellman’s proposal could have been misunderstood—both because of narrow views of argument then in prominence and because of strategic errors on his own part. My hope is that a side-by-side examination of Rawls’ and Wellman’s proposals will help us understand both better. As there is no better place to begin such an inquiry than at the beginning, it is to the origins of conductive argument and reflective equilibrium that I now turn.

2. ORIGINS

2.1 Rawls and Wellman

The lives of philosophers aren’t always interesting or revelatory regarding their ideas. With Rawls and Wellman, however, I believe there may be some point in looking at their philosophical backgrounds. The first similarity between them is obvious: both are among the first rank of 20th century American philosophers of political morality. Wellman’s work on rights is well known and appreciated among philosophers and jurists and Rawls is as close to a household word as any philosopher ever gets. Their mutual success is unsurprising, as their paths converged in interesting ways. Both did Ph.D.s in moral philosophy at Harvard: Wellman working closely with Henry Aiken and C.I. Lewis (Marilyn Friedman, et al. 2010) and Rawls with W.T. Stace (Freeman 2007). Both spent time in England as the result of an academic Fellowship: Wellman at Cambridge and later Oxford (Friedman et al.: op. cit.), and Rawls on a Fulbright at Oxford (Freeman 2007: op. cit.). Both also had personal contacts with and were deeply influenced by the ideas of H.L.A. Hart.

Of perhaps less moment to their respective careers but of particular interest to students of argument will be facts like these: Wellman, like Toulmin (and as some including myself believe, Hamblin¹) was influenced by Wittgenstein. During his stint at Cambridge he studied Wittgenstein’s original manuscripts with von Wright (Friedman et al.: op. cit.). Also of interest is Toulmin’s penumbral role in our story. Wellman’s teacher Henry Aiken directly engaged the ideas of Toulmin’s *An Examination of the Place of Reason in Ethics* in his own work (Aiken 1953). Wellman followed his teacher in doing the same thing in *Challenge and Response* (Wellman 1971: 63-67). Rawls too reviewed Toulmin’s book (Rawls 1951). Though these are interesting connections, the more telling similarities between them are the views of their teachers about moral reasoning, their aforementioned acquaintance with Hart, and that both were familiar with—and cite in the respective works at issue here—the work of Nelson Goodman. I begin with the views of their teachers.

¹ Johnson (2010) makes a rather strong case for Wittgensteinian influence both in these cases and in the larger case of informal logic more generally.

2.2 *Antecedents to Conductive Argument and Reflective Equilibrium*

No philosophical theory springs fully formed from the head of its creator. They are born of absorption of the lessons of one's philosophical forerunners and of one's own independent work and, naturally, dialogue with one's colleagues, friends, students, and interdisciplinary peers. But philosophical problems are in an important sense culturally specific to the historical moment in which they are born. Thus, to understand a proposed solution to a philosophical problem one has to first understand the problem, and this requires understanding the philosophical moment that gave rise to it. We are now more than thirty years past the proposals of Wellman and Rawls, and those proposals are addressed to problems that surfaced twenty years before they appeared in the forms in which we know them now. Hence it will help us to see the connections better if we understand something about the context in which their way of thinking about the problems the theories were devised to address was formed. Two controversies in particular are the gravitational centers of that context: The controversy over how to justify inductive inferences and the controversy over the role of reason in ethics and morality.

The period of philosophy in the English-speaking world surrounding the Second World War, as is fairly common knowledge, was dominated strongly by the ideas of the Vienna Circle. Equally well known is the fascination of the philosophy of this period with all things scientific. What is less well known is that there was opposition to the ideas of the logical positivists that was largely made up of two groups: followers of pragmatism, of which Wellman's teacher C.I. Lewis was a prominent representative, and holdouts from the losing side of an earlier philosophical controversy in the 1930's—the followers of various forms of metaphysical idealism. Idealism had largely fallen into disrepute prior to the emergence of logical positivism. The rise of symbolic logic in the 1920's and 30's and the increasing frequency with which it was applied to philosophical problems were contributing factors too. C.I. Lewis was among the early formal logicians who had contributed to its demise in this way. (W.T. Stace and Henry Aiken both were both staunch anti-idealists as well.)²

2.3 *The Justification of Induction*

Though empiricism was ascendent it was not without problems. One of the principal problems was how to justify inductive inferences, which were seen as necessary for science, but which were still problematic for reasons that Hume had indicated two centuries earlier. Unfortunately, there isn't space enough to tell the fascinating tale of induction in the twentieth century in this paper but it should be familiar enough to make its elision here at least excusable. The point of raising it in the first place is to introduce another character into the story of conductive argument and reflective equilibrium: Nelson Goodman. Goodman, like Wellman a student of C.I. Lewis³, is acknowledged (albeit in a

² Those interested in the issues mentioned here or this period in philosophy in general would do well to consult (Lewis 1934), which provides both a snapshot of the state of philosophy at the time and a foreshadowing of where it would go in the following twenty years.

³ Tellingly, the opening footnote on the first page of the main text of *Fact, Fiction and Forecast* reads: "My indebtedness in several matters to the work of C.I. Lewis has seemed too obvious to call for detailed mention."

footnote) by Rawls himself to have originated what came to be the now familiar notion of reflective equilibrium (Rawls 1999b: 18n). The work Rawls mentions in that footnote is the same—and only—work of Goodman’s cited in the bibliography of *Challenge and Response: Goodman’s Fact, Fiction, and Forecast* (Wellman 1971: 285). The kernel of Goodman’s view can be found on page 64 of this work:

The point is that rules and particular inferences alike are justified by being brought into agreement with each other. A rule is amended if it yields an inference we are unwilling to accept; an inference is rejected if it violates a rule we are unwilling to amend. The process of justification is a delicate one of making mutual adjustments between rules and accepted inferences; and in the agreement achieved lies the only justification needed for either.

(Goodman 1955: 63-4)

This strategy, I think, will sound familiar to many students both of Rawls and of *Challenge and Response*. It would have sounded familiar to pragmatist philosophers of the period too, as it bears more than a passing resemblance to Dewey’s “pattern of inquiry”. It certainly would have been familiar to Lewis, who wrote one of a series of responses to Dewey’s logical treatise, of which the pattern of inquiry is a part, in a 1930 issue of the *Journal of Philosophy* (Lewis 1930). It requires little imagination to think that Lewis’s students would have been at least aware of Dewey’s work as they tackled the problem of induction. But we need not rest on speculation alone, for in Wellman’s case, awareness of Dewey is evident from his explicit mention in Chapter 2 of *Challenge and Response*, notably concerning induction (Wellman 1971:41) and in Chapter 6 (op. cit.: 159-60) too. Rawls also cites Dewey, but in footnotes that have little to do with argument or reasoning (Rawls 1999b: 351, 358). Nevertheless, we may safely conclude that Rawls had at least some awareness of Dewey’s philosophy. This is interesting because it suggests that the similarity between reflective equilibrium and conductive argument may not be accidental, but traditional. The connection of Rawls and Wellman to Goodman, Lewis and perhaps Dewey puts their views squarely within the ambit of American pragmatism.⁴

2.4 *The Status of Moral Reasoning*

However interesting the justification of induction might be, it was never a principal concern either of Wellman or of Rawls. Their concerns were, from the beginning, primarily moral.⁵ The state of moral philosophy at the time of their graduate study though, was a much beset one. The general philosophical climate was one in which the study of morality was thought of as somewhat peripheral to the central concerns of philosophy.⁶ Even

⁴ Though he does not attempt to draw the lineage of the idea as I have done here, it is striking that in his review of *Challenge and Response* (Singer 1974) straightforwardly assumes that Wellman’s notion of justification is modeled on pragmatists like Peirce and Dewey.

⁵ Interestingly, Wellman’s interest was arguably more philosophically driven, as his career began with an interest in the philosophy of language that included moral language as a special study. Rawls, by contrast, came to moral philosophy only after a series of self-perceived failures at other disciplines and a turn in the army during the Second World War. Prior to becoming a philosopher Rawls had considered becoming a Presbyterian minister, but as Samuel Freeman (2007) records: Rawls’s experiences in Japan during the aftermath of the infamous Tokyo firebombing were significant in pushing him towards moral philosophy instead.

⁶ It has been persuasively argued in Kuklick (2001) that their time was one of movement away from the view that saw morality and ethics as objective enterprises. Indeed, at the time that Rawls and Wellman

those whose empiricism was not positivistic approached moral questions with some suspicion. Hence the moral philosophy of this period is rich in terse linguistic and logical analysis (of which R.M. Hare is perhaps the best-known example) and in quasi-psychological emotivist theories (for which C.L. Stevenson undeniably carried the banner for much of the twentieth century). Of course, there was also the positivistic skepticism of moral claims put forward by thinkers like John Mackie and A.J. Ayer.⁷ Wellman and Rawls did their dissertations in the linguistic style of analysis, shying away from emotivism and skepticism.⁸ In this they followed their teachers, in whose own work one finds a philosophical counterweight to skeptical and emotivist views of ethics. The following quotes show that while Aiken, Stace, and Hart all took seriously what we might call the “underdetermined” nature of moral claims, all three attempted to take those claims seriously and, importantly, objectively too. Consider Aiken (1952: 175-6):

we shall see that the vagueness of "competence" in ethical criticism is proper to it. The point is that the functions of ethical criticism are (a) to cause us to reflect deliberately and dispassionately, not to predict precisely what will occur, and (b) to produce agreement in our general decisions and in our procedures for resolving disagreements that arise inevitably in relation to the prevailing moral code. For such purposes the concept needs to be flexible and vague. Too much rigidity in meaning would render it useless. The “realities” with which ethical criticism is mainly concerned are "sober second thoughts" and "Calm passions," the settled convictions which determine our long-range behavior as social beings. It has no particular objective or goal in view, merely a way of settling differences that arise from our particular passions and preoccupations.

Aiken’s influence is felt in Rawls in the discussion that takes place there regarding moral objectivity. Rawls says (my emphasis):

[O]ur moral principles and convictions are objective to the extent that they have been arrived at and tested by assuming the general standpoint and by assessing arguments for them by the restrictions expressed by the conception of the original position. The judicial virtues such as impartiality and considerateness are the excellences of intellect and sensibility that enable us to do these things well. One consequence of trying to be objective, of attempting to frame our moral conceptions from a shared point of view is that we are more likely to reach agreement ... Objectivity then is attributed to those judgments which satisfy all the standards that the agent himself has in his liberty decided are relevant. (Rawls 1999b: 452-3)

The last emphasized clause shows, I believe, a strong resemblance to Wellman’s framework as well.⁹

were first formulating their views on ethics, Quine was making the highly influential arguments of “Two Dogmas of Empiricism” and *Word and Object* to the effect that meaning itself might be more an effect of one’s choice of conceptual scheme than of any fixed features of reality.

⁷ On these theories generally see Darwall and Railton (1997).

⁸ Goodman’s views were thought to fit hand-in-glove with Quine’s on this score. According to Kuklick, this was scandalizing to Lewis, who apparently thought of morality and meaning in more objective terms. It is also clear that neither Rawls nor Wellman would be completely comfortable with the relativism Quine’s view seems to entail.

⁹ The emphasis on *agreement*, albeit of a different sort than Goodman has in mind, also marks its emergence as something of a leitmotif in this discussion.

In Stace's work we find a very similar mode of thinking about ethics. Again the emphasis is mine.

Further [the moral philosopher] must hold—unless he is prepared to suppose that these non-logical processes have led men to truths by a mere fluke—he must hold that these non-logical thinking processes, though they may sometimes lead to error, yet have a definite tendency to lead to true conclusions, and have in fact led men to discover truths. He must admit that there exist non-rational¹⁰ mental processes which are nevertheless ways of discovering truth. [...] or it has been admitted that these non-rational processes lead to truth. That is, they have a certain degree of validity. (I shall define, in a moment, the sense in which the word "validity" is used here. It is not the logician's sense.) The question therefore arises how-being non-rational, they can yet be valid. And this, I claim, is a philosophical, and not a psychological, question. [...] I will, before going further, define in what sense the term validity is being used. It obviously is not the validity of the logician. In his language the non-logical series a-b-c-d although it may lead to a true conclusion, is by definition invalid. But I am choosing to use the word in another sense. I mean by a valid mental process, a process which, whether logical or not, leads to true conclusions with a frequency which is greater than can be accounted for by chance coincidence. (Stace 1945: 31)

Here one sees an obvious foreshadowing of the non-standard usage of the term 'validity' so ubiquitous in Wellman's text. Stace's emphasis that the interest is philosophical and not psychological is echoed in (Rawls 1999b: 104). Stace's influence is also present in Rawls's discussion of the circumstances of justice, particularly in his account of the relationship between morality and the concept of the self (op. cit.: 111).

These passages represent the views of Wellman's and Rawls's mentors, respectively. Add to them this passage from H.L.A. Hart, who both Wellman and Rawls claim as an influence on their philosophical thought:

In deliberation we consider whether to do, or not to do, something and we oscillate between these alternatives: we attend to reasons for or against the proposed action, and we attribute more or less weight to these reasons: we then decide what to do. In the theoretical case we consider whether something is or is not the case, and we attend to the evidence in favour of one or other alternative: we find the evidence in favour of one alternative convincing and then decide that it is or is not the case. In both cases we could substitute for the expression 'decision' expressions such as 'being certain' or 'making up our mind'. [...] The characteristic termination of the practical inquiry is the settled frame of mind when we are no longer undecided what to do. (Hart and Hampshire 1957: 12)

In this passage Hart gives what could justifiably be considered a protean account of Wellman's third type of conductive argument. The end-state of the "settled frame of mind" invokes both the outcome of Rawlsian reflective equilibrium and conductive argument alike, as does the clearly deliberative model of reasoning offered by Hart in this passage. Hart's influence on Rawls and Wellman is uncontroversial. When we look at all of these passages together, a general picture of moral reasoning emerges.¹¹

¹⁰ In Stace (1945: 28-9) the predicate 'rational' is explicitly reserved for application to deductive and inductive reasoning in this essay.

¹¹ The case that the view emerging from these passages was a going concern among moral philosophers in general during the period in which both Rawls and Wellman were trained could be strengthened with further examples. I believe such examples could easily be found. The view expressed in Nowell-Smith (1954), for example, comes to mind as a contemporary, similar view to those laid out here. Interesting-

2.5 Features of Moral Reasoning

If we excise the notion that rationality means deploying a deductive or inductive argument in defense of those propositions to which one adheres, then we may fairly characterize the general view of moral reasoning that emerges as possessing the following characteristics:

- (1) Moral reasoning clearly is demarcated from other types of reasoning.
- (2) As a type, moral reasoning is characterized as non-deductive and non-inductive, and yet as attended with at least some concept or intuitional proto-concept of “validity”.
- (3) Moral reasoning is seen as inherently vague—but not problematically so, as this vagueness doesn’t stop us from forming respectable moral judgments.
- (4) Moral reasoning is a reflective process that involves weighing considerations and counter-considerations.
- (5) Moral reasoning is held as something not to be reduced to psychological or social processes, but as something which is properly philosophical in character.
- (6) We now pass on to the comparison of reflective equilibrium and conductive argument, wherein it will become apparent that both conceptions fit this framework.

3. REFLECTIVE EQUILIBRIUM AND CONDUCTIVE ARGUMENT

3.1 Reflective Equilibrium

In Rawlsian reflective equilibrium, one seeks a state of balance between a triad of one’s considered (intuitive) judgments, principles, and larger-scope background theories and data.¹² The judgments in question are meant to be understood as judgments about particular cases. Suppose, for example, that we had heard of someone stealing a loaf of bread to feed his hungry children. Our immediate intuitions about such a case might be that the theft in question isn’t necessarily wrong. Some might even hold that it is necessary. The point, however, is that the judgment of rightness or wrongness is made only with reference to the particular case at hand. The principles, by contrast, are more or less nomological commitments, e.g. “One ought not to steal.” The background theories and data include (in wide reflective equilibrium at least) all other relevant theories and data. In our simple case this might include data about the economic situation of the thief, the incidence of kleptomania in the general population, a theory of the positive law against stealing, and so on. All of these things then, considered judgments, principles, and background theories and facts have to be balanced against one another in order for our thinking about them to become settled in a way that would permit us to say what we think, on balance about them.

Rawls presents reflective equilibrium as a rational process, not as a form of argument. While he claims that the end-product of the process is justification, he never

ly, depending on how widely one draws the boundaries of the ideas at issue, the heritage of the sort of view espoused by Rawls and Wellman may stretch even further back. In fact, Rawls (1999b: 42-5) claims Aristotle and Sedgwick as early proponents of views like his.

¹² I shall here intentionally gloss over Rawls’s distinction between wide and narrow reflective equilibrium. My account shall favor the former, as I believe Rawls is fairly clear that ultimately wide reflective equilibrium is required for “full” moral judgement. See Rawls (1999b: 42-5).

claims that the conclusion is “valid” in any sense analogous to the standard logical usage of the term. Thus his view exemplifies the first and second of the five characteristics. It plainly possesses the third and fourth characteristics too, and Rawls (1999b: 104) is explicit in asserting that reflective equilibrium is not purely psychological.

3.2 *Conductive Argument*

On first blush Wellman’s notion of conductive argument seems rather different than Rawls’s account of reflective equilibrium. This principally is because of Wellman’s explicit usage of the terminology of argument. This usage underscores that for Wellman, conductive arguments are supposed to be just that: arguments. They are supposed to have a sort of validity that he explicitly proposes as a new member of the same family as deductive validity and inductive strength (Wellman 1971: Ch. 3, *passim*.) It is the newness of his proposal that demonstrates the first and second of the five characteristics outlined in Section 2. Although Wellman describes three types of conductive argument, it is the third that is the most interesting and that has garnered the most attention. I shall here limit my comments only to this third type. According to Wellman, this type of conductive argument is distinguished from the others in that it includes the consideration of propositions that would appear to undermine the conclusion in addition to propositions that would appear to support it (i.e. ordinary premises). One’s final determination as to the merit of the conclusion is determined by “weighing” these positively and negatively relevant considerations and choosing accordingly. Clearly Wellman’s view satisfies the fourth of the five characteristics laid out in Section 2.5.

Wellman is explicit that the weighing process involved in drawing the conclusion of a conductive argument is not one of assigning a definitive order or priority to the set of premises, as if one were taking a precise measurement of the weights of several masses. Contrary to such a picture, Wellman (1971: 71) offers the metaphor of “hefting” objects in one’s hands to feel which is heavier. This is metaphor is demonstrative of the third of the five characteristics and, I believe, is reflective of the Wittgensteinian influence on Wellman I mentioned earlier in Section 1 (compare, e.g., Wittgenstein 1964: sections 81-88). The lack of precision in the hefting metaphor also squares well with the approach from which both Rawls’s and Wellman’s work springs and which I described with the three quotes from Aiken, Stace, and Hart in Section 2.4.

It must be stressed that the “vagueness” in Wellman’s model—for which at least one reviewer of *Challenge and Response*, e.g. Shope (1974), attacked Wellman—is intentional. It is, however, at odds with the usual sense of precision one seeks through the use of argumentative language. Thus, Wellman’s usage of the language of argument should be seen as primarily polemic in nature. Wellman means to claim for moral deliberation (under form of conductive argument) the same sort philosophical respectability enjoyed by ordinary deductive and inductive arguments. Indeed, he says as much, and explicitly tries to turn the tables on the presumption in favor of the formal logician’s concept of validity (Wellman 1971: 70-71). Though moral deliberation is not deductive or inductive in nature, we might imagine Wellman saying, it is still reasoning—and not just reasoning of second-class sort, but full-blooded argument on a par with scientific or epistemological argument. Moral arguments are just arguments of a different sort, and as such are philosophically respectable. Of course (as informal logicians are well aware) it wasn’t possible

to say this directly in the philosophical climate of the 1970s and immediately to be understood, as the only standard for what counted as good reasoning was deductive argument.¹³ In order for Wellman to make his case about moral reasoning, those boundaries had to be challenged. Hence my claim that Wellman's use of the terminology of argument was intentionally polemic, and was aimed at maintaining a philosophical place for moral reasoning. This is how Wellman's view shows the fifth of the characteristics that brings his views into the same "family" as those of Rawls, Hart, Aiken, and Stace.

4. CONCLUSION: ARGUMENT AND JUDGMENT

If Rawls's and Wellman's views are so similar, one might justifiably wonder why Rawls's view has been so successful while Wellman's has (at least until recently) languished. That Rawls's view was better received is attributable, I think, to two very important factors: (1) He does not characterize reflective equilibrium as a type of argument or even as an inferential process, and nowhere asserts that the deliverances of reflective equilibrium are "valid" in anything resembling the logician's sense and so speaks the language of his time. (2) The kernel of Rawls's view was present in his doctoral dissertation in 1952, and was developed gradually, over time, and alongside his larger-scope conclusions about moral and political philosophy in a series of articles in highly regarded and widely read journals. The first few chapters of *A Theory of Justice* give one a sense of the development of the key components of Rawls's thinking along these lines. By contrast, the philosophical community encountered Wellman's theory without any such preparation. Even those who understood it as a pragmatist theory didn't adequately appreciate the Wittgensteinian aspects of it, or recognize the polemic intent behind his usage of the language of argument. Wellman could perhaps have been clearer about these things, but judging by the similar reception of works by fellow trailblazers Hamblin and Toulmin, it isn't at all obvious that it would have made much of a difference if he had been. Few orthodoxies in the history of philosophy have run as deep as the commitment to formal logic.

For all that, however, the story is at root a hopeful one for informal logic. When we see Wellman's notion of conductive argument in its proper context in the history of philosophy and if we consider reflective equilibrium as a sister notion, then I think perhaps the most important conclusion to be drawn is that contrary to what we might think, there was a sense, in mainstream Anglophone philosophy, well before the 1970s, that it was possible to reason in perfectly respectable ways that (a) were not subsumable under existing rubrics for inductive or deductive argument, (b) that these processes of reasoning were not just non-monotonic, but non-formal, (c) that the proper account and investigation of these ways of reasoning was philosophical, i.e. not a matter to be considered a "quirk" of human cognitive activity of interest only to psychologists, and yet (d) was still true to the phenomenological aspects of what it is like actually to make a balanced moral judgment, or if one prefers, true to the way in which we often actually proceed when we argue about moral matters. This, I think, is a conclusion informal logicians should find very comforting indeed, as all of these are key themes of the informal logic movement. Still, it is important to bear in mind, that all of the philosophers named in this paper, and

¹³ That climate was one in which, Kuklick (2001: Ch.13-14) alleges (I believe with some justification), ethics was generally not held in high regard.

many more besides them during this time period thought of ethics as an area of study unlike more “tractable” areas such as epistemology, the philosophy of science and the philosophy of language. If ethics is a “less-settled” area, the operational assumption seemed to be, then more openness with regard to acceptable methods must be allowed. And if such methods are successful in ethics, an informal logician may wish to add, then why not in other domains too? The fact that the family of theories under discussion here took significant impetus from Goodman’s proposal about inductive reasoning in the philosophy of science highlights the importance of this question.

In arguing for opening the field to non-deductive and non-formal methods in ethics, Rawls, Wellman, and their teachers implicitly challenged another operational assumption too: That something counts as reasoning only if it is an argument. Rawls clearly rejects this assumption. The reading of Wellman I’ve suggested here doesn’t settle things as to what he might think about this assumption, but it seems to me to be at least possible that he is the more radical of the two. In conductive argument what we have is a conception that doesn’t just challenge the assumption, but that challenges the meanings of its very terms. If Wellman asks us to re-imagine the theory of argument, then what Rawls (pace Montaigne in the quote with which this paper begins) seems to give us with his talk of the “excellences of intellect and sensibility” is a theory or a model of judgment. It is here that I see the principal difference between them, and where I think that Rawls is perhaps more in step with what Stace, Aiken, and Hart were attempting to articulate in works like those quoted in Section 2.4. This raises the interesting question of whether and how theory of argument and theories of judgment are related, but that question will have to wait for another time.

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Commentary on “WIDE REFLECTIVE EQUILIBRIUM AND CONDUCTIVE ARGUMENT” by Stephen Patterson

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1. INTRODUCTION

Stephen Patterson reminds us of the articulation of a family of forms of reasoning providing ethical legitimacy either to claims or to those making moral or, more generally, ethical judgments. The question is how to understand these forms of reasoning. Are they forms of argument or are they forms of judgment and just how might the two differ?

Patterson provides a very nice compact history of several authors whose work contributed to understanding the relevant sorts of reasoning to legitimacy. Two figures come in for special consideration as beneficiaries of this historical trend. These are John Rawls and Carl Wellman. Patterson ends in suggesting that Rawls offered a theory of judgment while Wellman a theory of argument.

This discussion seeks to trace part of Patterson's line of thought and in doing so to take note of reasons for saying that Rawls and Wellman invoked *both* argument and judgment in their accounts of ethical reasoning. Their views individually and jointly seem to highlight forms of argument that one way or another have strong elements of what seems best counted as judgment. Good public reasoning for Rawls depends upon judgments emerging from within a set(s) of beliefs and principles articulated by reason and accepted on a basis in a shared sense of justice, where the entire set is constructed so as to be coherent, and thus overall the set is in reflective equilibrium (of one or another strength). (See Rawls 1971: Part1, 2001: Part I) Good reasoning for Wellman reduces to reasoning that meets all the challenges facing beliefs with attendant decisions and attitudes and thus rests not only in the inference to conclusions of justified behaviour and decision, but also upon the judgments of what challenges to meet and how to meet them. The ethical judge in the best position for making such judgments is one having a number of different characteristic abilities, the list of which might vary across competent persons and would be open to dispute, but nonetheless would be a matter of general agreement. (See Wellman's discussion of ideal observer ethics and standards of competencies in chapter 12 of Wellman 1971.) It is interesting to note that both Rawls and Wellman rely on judgment in a further way. Rawls, brings in judgment in thinking of the equilibrium that arises from also considering alternative relevant philosophical, religious, social and other views and finding their relative force as potential influences in shaping the thinker's views of justice. Such judgments lead to a view in wide reflective equilibrium. (Rawls 1971: 122-ff., 2001: 31) Wellman draws attention to weighing considerations for and against a conclusion in his discussion of reasoning. (Wellman 1971: *passim*.) Thus Rawls and Wellman are exemplars of philosophers who have changed reasoning in ethics in the direction of something different from the deductive and inductive forms allowed by other

thinkers. They have moved the understanding of ethical reasoning away, for example, from what Paul Taylor called the verification of a particular ethical claim, and the validation of a general ethical norm. (Taylor also spoke of the vindication of a way of life which arguably is in the spirit of some of the changes Patterson highlights. See Taylor 1961.)

This discussion questions the wisdom of seeking to force a choice between judgment and argument in the understanding of reasoning in ethics. And yet in the end the discussion wants to agree with a pivotal claim Patterson makes: Understanding Rawls and Wellman requires seeing their work as attempts to capture ethical reasoning as actually practiced and lived. (Patterson 2011) It is here, that is in seeing ethics and ethical reasoning in the everyday, that this discussion urges research should continue to spend its time; and here, in the everyday, argument and judgment are distinct but not really separated. The ethics of triage, for example, involves reasoning that only could be seen as argument since triage involves decisions that have a public element to them bearing on the distribution of scarce resources. However, it might be said that in triage, the critical part is a matter of judgment that does not seem to rest upon any inferences; the critical part is that formation of integrative insight that orders the relations between the salient factors of the case for example between the care priorities at a horrible accident scene. Arguments, provide background norms and beliefs. And as John Stuart Mill said, they come in later to justify what was done, after the judgment and the commitment of effort and attention that goes with it.

2. ARGUMENT OR JUDGMENT?

There are differences between the views of Rawls and Wellman on relevant matters. Still Patterson highlights their shared salient features and seeks to treat them together in his conclusion. According to Patterson, their contribution was to show that the forms of reasoning they spoke of are reputable and:

(c) that the proper account and investigation of these ways of reasoning was *philosophical*, i.e. not a matter to be considered a “quirk” of human cognitive activity of interest only to psychologists, and yet (d) was still true to the phenomenological aspects of what it is like actually to make a balanced moral judgment, or if one prefers, true to the way in which we often actually proceed when we argue about moral matters. (Patterson 2011)

This discussion applauds Patterson's presentation of the important precursors of Rawls and Wellman. However while there are several reasons to reflect upon this history, constraints allow only a few comments on other aspects of the paper. There are several claims Patterson makes that are of interest here:

1) Contrary to what Patterson says, it looks like both Wellman and Rawls *did* want to talk of moral and political reasoning in terms of a theory of argument. For Rawls, this amounted to a complex form of public reasoning resting in a reasonable overlapping consensus of considered views (ideally) in full reflective equilibrium giving all in a society a shared view of political justice. Anyone deciding a matter from within that basic consensus will develop considered views or judgments with an “intrinsic reasonableness, or acceptability, to reasonable persons that persists after due reflection” (Rawls 2001: §10.4). But in fact there will be conflicts between persons and within persons. And these will impede persons coming together in their considered judgments. Assuming that matters of political justice are amenable to reasoned agreement and that this is reached

through the exchange and reflection upon reasons for claims, some means of ensuring a reasonable consensus of basic views is needed to assure a working chance of agreement. These matters of the proper basis of reasoning and the proper forms of interactions in reasoning required articulation. And, of course, Rawls is renowned for the careful development of the detail of this theory of public reasoning about justice. But while Rawls's account provides more, this much seems to be a theory of argument. Indeed, complaints about Rawls's theory of ethical and political reasoning have dwelt on the point that this theory renders the basis and the process of reasoning too standardized and its inferences too abstract to be acceptable.

Wellman is much more aggressive about his views of justification being accorded the status of a theory of argument in ethics. As an encapsulation of his position, consider:

In my view, to argue is to make a claim to validity on behalf of the argument one is using... To say that an argument is valid is to claim that when subjected to an indefinite amount of criticism it is persuasive for everyone who thinks in the normal way; ... (Wellman 1971: 99)

Many more details should come forward and form a proper account of the theory of argument of each of these philosophers. However, what is given should be sufficient for present purposes. At the same time to claim that *both Rawls and Wellman did offer what could be called a theory of argument* is not to deny Patterson's primary point in this connection. This complication will emerge shortly.

2) Patterson's point with respect to whether both Rawls and Wellman developed theories of argument seems to turn on the issue of whether the reasoning they spoke of need be inferential. For Rawls, the answer seems to be no, it is not inferential. Patterson says that Rawls "never claims that the conclusion [of the process of reflective equilibrium] is..." logically speaking valid (p. 10). Yes, but the issue remains as there is still the question of whether the process of reflective equilibrium is only part of what goes into the justification of beliefs, principles, considered convictions and so on. Judgment that delivers reflective equilibrium might work with reasoning involving inference. Rawls says that "The sense of justice (as a form of moral sensibility involves an intellectual power, since its exercise in making judgments calls upon the powers of reason, imagination and judgment" (Rawls: 2001: 29). Even more explicitly Rawls claimed the following:

An essential feature of a well-ordered society is that its public conception of political justice establishes a shared basis for citizens to justify to one another their political judgments: each cooperates, politically and socially, with the rest on terms all can endorse as just. This is the meaning of public justification. (Rawls 2001: §9.2)

If there is no conflict in judgment about questions of political justice—judgments about the justice of certain principles, and standards, particular institutions and policies, and the like—there is nothing so far to justify. To justify our political judgments to others is to convince them by public reason, that is, by ways of reasoning and inference appropriate to fundamental political questions, and by appealing to beliefs, grounds, and political values it is reasonable for others also to acknowledge. Public justification proceeds from some consensus: from premises all parties in disagreement, assumed to be free and equal and fully capable of reason, may reasonably be expected to share and freely endorse. (Rawls 2001: §9.2)

Wellman also seems quite clear on the subject:

Although the conclusion of a conductive argument is a particular judgment, conduction is not to be identified with that judgment alone; it is the reasoning leading to the judgment. If ethical judgment is rational, and I believe that at its best it is, then the ethical judgment of the particular case does not stand alone but is the conclusion of a rational argument. (Wellman 1971: 52)

Judgment and argument work together (in multiple ways) to provide proper support for ethical assessments or commitments. Given these passages as indicators, it seems clear that for Rawls and Wellman reasoning in ethics or on matters of political justice can be inferential and involve judgment as two distinct aspects of a single undertaking.

Rawls did allow those making judgments to come to see the world and situations of interest through intuitions based in and expressing (wide or possibly full) reflective equilibrium in their conception of justice. But in meeting the thoughts of others and in drawing one's own conclusions about what is just with respect to some matter, one must consider the views of others and offer arguments involving inferences concerning aspects of the case at hand or perhaps involving some abstract generality. Wellman urged that the worth of an argument is its capacity to withstand challenge, even as it involved weighing considerations bearing inferentially, though neither deductively nor inductively on the conclusion.

Perhaps Patterson might agree that A) Rawls and Wellman offered theories of practical reasoning in argument each involving subtle and pivotal roles for judgment to play. Rawls imagined weighing the "force" or appeal of various theories or orders of thought in articulating a general concept of justice (Rawls 2001: 31). Wellman imagined weighing the logical force of pros and cons in particular cases in the practice of ethics (Wellman 1971: 25-26). So B) Rawls and Wellman recognize various judgments of logical force apparently operating in a non-deductive fashion in ethical reasoning. Also perhaps C) *these philosophers understood that judgment and argument are distinct*—they can be separated conceptually, each conducted without the other when seen in a certain light, *but also understood that they must work together in certain complex forms of reasoning such as the moral or political*. Even more can be said about the distinctness and connections of argument and judgment.

3) There are those argument based judgments that do involve inferences: judgments of which economic policy to adopt with respect to taxation or international trade for example, judgments that come at the end of a long line of complex (often inductive) inferences conducted in a context of public reasoning and against some clear rubrics specifying the ethical or political significance of various possible trends and outcomes; judgments that do come to be out of inferences. So: D) *Some moral or political judgments arise from arguments involving inference from evidence to claim*.

To the extent moral judgments might involve nothing more than an intuitive, or a perception-like insight into the particular moral character of what has gone well or poorly in a situation, moral judgments might be non-inferential and appraising or assessing in ways that do fit the term judgment. For example consider judging actions or persons or circumstances involving different forms and degrees and levels of danger in one person lying to another. Or again, to the extent that one might come to understand what is appropriately next in the flow of an undertaking, what might be the acceptable next steps in the treatment of the illness of a loved one (where the choice between options is underdetermined), in the education of one's child, in the work of preparing oneself for an important meeting with one's employer over some disputed matter of office policy, one might fill in the next steps of a narrative of one's life and do so making moral judg-

ments into the future drawn on without deciding matters through any inference. And all of these "fillings-in" perhaps then would be like what Patterson suggests moral judgments are. So: E) It does seem that at least *some moral judgments for which there are good reasons do not rest upon inferences nor is it clear they are formed or arrived at in that way.*

As well, there are judgments that come to be from arguments that seem not to involve inferences at all. (Or should these be called simply judgments from non-inferential reasoning?) Kant spoke of seeking, being a suitor for, or wooing agreement or assent of all others in matters of aesthetic taste. The persons forming a judgment of taste take the part of being "suitors for agreement from every one else" (see Kant 2008: §9 and Arendt 1993: 222-26). Hannah Arendt spoke in this way of wooing agreement in moral judgments, finding this idea in §19 of Kant (1951), see: Arendt (1993: 222). John Stuart Mill spoke of what might be rational to adopt as a principle of ethics as long as there are considerations sufficient to incline the intellect to agreement, even though these do not constitute proof (Mill 1957: 7). In all of these cases E) *there is presumably room for argument leading to ethical judgments without inference.*

These points about argument, inference and ethical judgment join others above to raise questions about Patterson's claims. Thus, to summarize the contentions of this discussion thus far, it seems:

- (A) Rawls and Wellman both offered theories of practical argument.
- (B) Rawls and Wellman also presented interestingly similar views of one aspect of judging not resting in but serving ethical and political reasoning—this in terms of weighing considerations or conflicting views in practical arguments. (Judgments enter this reasoning in other important ways according to Rawls and Wellman.)
- (C) Wellman and Rawls did hold that the reasoning they spoke of is inferential or is part of a whole involving inference.
- (D) Some ethical judgments are appraising and assessing as judgments are often seen to be, and are inferred from good reasons.
- (E) At least some moral judgments for which there are good reasons do not rest upon inferences nor is it clear they are formed or arrived at in that way (that is they do not arise in or from arguments).
- (F) Some ethical reasoning from good reasons culminates in judgment and the reasoning is argumentation that is non-inferential.
- (G) Wellman did, while Rawls did not wish to speak in terms of validity other than that of logically valid arguments.

To what extent one could generate a plausible theory of ethical judgments that leaves all judgments supported inferentially or noninferentially, through argument or through some other means is perhaps an interesting set of questions. Nevertheless, the clean division between theories of judgment and theories of argument with respect to ethical and political reasoning seems questionable. That said, it is time to turn to what this discussion has treated as one of Patterson's pivotal points.

3. THE CRUX OF THE SEPARATION OF JUDGMENT AND ARGUMENT

Patterson makes a suggestion that will repay attention. (Patterson 2011:10) Moral reasoning has a phenomenological aspect that is not captured in the model of argument as constrained by logical validity or even logical cogency or inductive strength. The clue to understanding moral judgment lies in its role in organizing everyday living as opposed to its epistemic function. Neither Rawls nor Wellman need disagree. They might contend that they were examining how ethical reasoning operated in everyday life. But in reply one might begin by saying that life for most is not spent in public reasoning and while everyone's life would be improved by a plausible and accessible commons of public reason, such a need seems out of reach on both counts. As well, thinking not of Rawls, but now of Wellman one might begin by saying that everyday life is not found in the constant pursuit of the epistemically well bred, nor in constant struggle to defend one's beliefs and decisions. To a large extent, if fortune smiles reasoning is not only or even predominantly agonistic in one's life, but instead is frequently and for long stretches mutualistic. In a mutualistic world, ethical judgment can become concerned with weaving what one biologist is known for calling a lifeline—the natural course of one's life both biological and social as befits human possibility and individual opportunity. Being a good ethical judge in such an undertaking involves integrating and in the face of interruption re-integrating one's life with that of others one encounters so as to enhance the possibilities and opportunities for the richest complexity one and others would choose on careful reflection. This, of course, is deliberately vague in many ways and simply obscure in others. The point is to make another suggestion than the epistemic enterprise endorsed by Wellman. The point is to suggest that the real crux of the judgment-or-argument choice that Patterson outlines is to sound a reminder of what lived consequences are at stake—or could be.

1) If one were to take seriously Patterson's call for an intensification of activity with respect to understanding moral or political judgment and its relation to argument, there are two topics that deserve a passing mention in conclusion. The first is that of thinking of reasoning competence more and the abstract structural virtues of good ethical reasoning less. Rawls gives an extended study of a competent system of public reasoning. Wellman devotes a chapter length discussion to the matter of competence and pays particular attention to the import of competence to the reasoning process as aimed at truth. There is much to be considered here that will illuminate the subject of acceptable ethical judgments.

2) A further topic that Patterson's paper highlights is that of the nature and role of community in supporting or enabling ethical judgment. This, the special emphasis of this conference, is a reminder that regardless of whether one persists in thinking that research should choose between argument or judgment or the two, separate but in relation to each other as foci for studying ethical reasoning, none of that work should take ethical reasoning outside of where it has its relevance and so outside of that which shapes its character, namely, everyday life in community. Rawls certainly respects the importance of community, but the community of his views of public reasoning is, according to some, idealized. Whether this is so and if so what then is not the concern of this discussion. However, what is of immediate salience is that Patterson's discussion strikes a reminder of the community dimension and quite reasonably urges further attention to it.

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