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J Anthony Blair

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# Commentary on James B. Freeman's "Higher Level Moral Principles in Argumentation"

J. ANTHONY BLAIR

*Centre for Research in Reasoning, Argumentation and Rhetoric  
University of Windsor  
Windsor, ON, N9B 3P4  
Canada  
tblair@uwindsor.ca*

## 1. INTRODUCTION

Professor Freeman is interested in the possibility that argumentation theory and moral philosophy can learn from each other, and particularly in whether they can illuminate the point at which moral disagreements become deep—that is, not amenable to resolution by further argumentation. He concludes that argumentation theory shows us the mechanisms whereby moral disagreements can be reasonably addressed by arguments at many levels, and that moral philosophy provides the higher level principles that are the resources for argumentation at many levels of disagreement. The upshot, Freeman contends, is that the unwelcome prospect of deep disagreement about moral judgements is more remote than many fear.

There is some question in my mind about whether this is a paper on philosophical ethics rather than on argumentation theory. The argument-theoretic concepts that I find at work are the concepts of *warrant*, *defeater* and *burden of proof*. Freeman claims moral principles can function as warrants, and higher order moral principles can function as defeaters (in various ways). The defeat of an argument shifts the burden of proof, and as long as higher and higher order moral principles continue to be available, the burden of proof shifts back and forth between moral disputants and so argumentation can continue. Are such higher order moral principles available? Answering that question is where the moral philosophy of the paper kicks in. In order to accept Freeman's argument, it looks like we have to reject W.D. Ross's (1930) deontic particularism and also to accept J. Rawls's (1971) defence of his theory of justice. That is, it looks like Freeman's argument relies on accepting substantive positions in moral philosophy.

As a paper just on argumentation theory, the argument might be restated in conditional form. That is, *if* there are defensible higher order moral principles, then this is how they would work in moral argumentation. Rawls could then be presented as *illustrating* how one might try to argue for the existence of such principles. Freeman certainly knows that Rawls's theory is so controversial and there is such a huge literature on it that he can't defend it in a single paper. I am in no position to pass judgement on the success of his defences of Rawls, since I am not familiar with that voluminous literature; but Freeman's short list of References suggests that he does not take himself to have met

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all the pertinent objections. So I wonder whether he too takes his appeal to Rawls's defence of moral principles to be illustrative and so the argument of the paper to be conditional.

In the remainder of my comments I do two things. One is to raise some niggling objections, which I think can be met by some minor revisions. The other is, at the end, briefly to mention a larger worry about what I understand Freeman's enterprise to be.

## 2. HOW UNDERCUTTERS WORK

Other things being equal, if a habit is pleasurable for someone, it is morally permissible. Other things being equal, if a habit harms someone it is morally wrong. We are asked to suppose that one and the same habit is pleasurable for and harmful to a particular agent. The onlookers disagree about the moral implications of this situation. One holds that the moral weight of the pleasure of smoking outweighs the moral weight of its harm; the other holds that the moral weight of its harm outweighs the moral weight of its pleasure. Freeman proposes that argumentation theory tells us that this disagreement turns on the plausibility of the respective warrants of the two contending arguments, and so the issue moves up a level to question the adequacy of the backing for the two warrants. The backing can be challenged by appeal to a higher order moral principle.

A successful objection to an argument's warrant implies that it does not license the inference from the grounds or premises to the conclusion. Thus it undermines the inference as Pinto says (2001 pp. 102-103), or undercuts it, as Pollock says (2008 pp. 453-454). But undermining or undercutting the warrant of an argument does not imply that the argument's conclusion is false or wrong. Only a successful objection to an argument's conclusion implies that it is false or wrong, and thus overrides the inference (as Pinto says), or rebuts it (as Pollock says).<sup>1</sup>

Freeman makes a new distinction, for he wants to differentiate undercutting a warrant by calling its reliability into question, and undercutting a warrant by ruling it completely out of account. The former implies that the appeal to the warrant is suspended until the challenge can be met; the latter implies that the warrant is disqualified. By the way, notice that when two incompatible positions are being defended by arguments each with its own warrant, to undercut the warrant of one argument is not necessarily to back warrant of the contending argument. For perhaps there is some other warrant that justifies the inference to conclusion that the undercut warrant had failed to support. Even undercutting a warrant by disqualification does not imply that the conclusion is false.

## 3. *PRIMA FACIE* DUTY VS. ACTUAL DUTY

Freeman says that the priority rule (PR1) that says (*ceteris paribus*) duties of promise keeping take precedence over duties of benevolence implies that when an act A is an instance of promise keeping, the information that it is also a failure of benevolence is

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<sup>1</sup> Freeman refers this distinction as due to "recent work" in epistemology. Pollock first mentioned this distinction in the 1970s, and traces it to Chisholm (1957) and Hart (1948). Not so recent. Although Pinto also (and independently) made the distinction as recently as 2001, he knows Chisholm's work well and might unknowingly have been influenced by it.

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irrelevant to determining whether or not it is a (*prima facie*) duty.<sup>2</sup> That claim seems not quite right to me. We need the priority rule just because we have two conflicting *prima facie* duties and (presumably) without the rule we cannot decide which of them is our *actual* duty. So, given the priority of promise keeping over benevolence, the information that a case of promise keeping is also a failure of benevolence is not irrelevant to determining whether or not the act of beneficence is a *prima facie* duty for we already know that it is a *prima facie* duty. That's why there's a conflict and that's why we need a priority rule, if we can get one. What that priority rule tells us is that knowing the act conflicting with keeping a promise is a failure of beneficence is irrelevant as a determinant of our *actual* duty.

### 4. GENERALIZING FROM LOWER LEVEL TO HIGHER LEVEL PRIORITY RULES

There's also something that seems to me to be questionable about Freeman's contention that

we may regard our simple priority rule of promise keeping over benevolence as a special case of a more general priority rule ranking duties of perfect obligation over duties of imperfect obligation (p. 6).

The contrast between perfect and imperfect obligation is the contrast between having a particular duty to a particular identifiable person (or group) and having a type of duty towards a type person (or group). One might call it the distinction between having some duty in particular and having some duty in general. The idea is that we should perform particular acts that we know we morally owe to particular people (e.g., Dick should keep his promise to pay back his loan from Jane) before we seek some way of performing tokens of morally owed types of acts towards tokens of morally owed types of people (e.g., Dick should give charitably to those in need). But in a given case in which there is a conflict between a *prima facie* duty to keep our promises and a *prima facie* duty of non-malevolence, there is a known particular person or group to whom we have the *prima facie* duty of non-malevolence and a known particular act (or forbearance) of non-malevolence that we have a duty to perform. In other words, we have in that case a particular duty of non-malevolence, even though the duty of non-malevolence in general is a duty of imperfect obligation, since in general there is no particular person or group to whom we owe a particular act of benevolence. Thus, what motivates the distinction between duties of perfect and imperfect obligation does not apply in this particular instance, and as a result we cannot regard this priority rule as a special case of that distinction.

### 5. REVERSING A WEIGHTING VS. DEFEATING A WARRANT

In further discussion of the disagreement between John and Jim about the moral propriety of their friend Bill's smoking habit, Freeman introduces the supposition that both John and Jim agree with Mill's harm principle. Freeman discusses the implications of this

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<sup>2</sup> Actually, the conflict is usually between promise keeping and *doing* good to others, not *wishing* them well; so I would recommend replacing 'benevolence' with 'beneficence.'

shared higher order principle for their disagreement. According to Freeman two things are implied. First, Jim, who had weighted Bill's health more heavily than his pleasure, must now reverse his weighting, since we are supposing that no harm is done to anyone but Bill himself by Bill's smoking, and so by Mill's principle he should be free to choose his pleasure from smoking over the harm to his health. And second, Jim's original warrant is defeated and John's warrant is backed. Jim's warrant was, "Given that  $x$ 's smoking is harmful for  $x$  [...], even though producing pleasure for  $x$ , one may take it that  $x$ 's smoking is wrong" (i.e., harm avoidance trumps pleasure). John's warrant was, "Given that  $x$ 's smoking is producing pleasure for  $x$ , even though harming  $x$  [...], one may take it that  $x$ 's smoking is right" (i.e., pleasure trumps harm). (I think Freeman means 'morally permissible' when he says 'right' here.) I would note two points about what Freeman says here.

First, I don't think the two things Freeman claims can happen. Jim's warrant says that you can get to the moral impermissibility of smoking from the fact that it harms the smoker, even if he gets pleasure from it. Certainly, if the warrant is defeated, then you can't get to the moral impermissibility of smoking from the fact that it harms (only or mainly) the smoker, even if he gets pleasure from it. But it doesn't follow from the fact that harm avoidance doesn't trump pleasure that pleasure trumps harm. Jim doesn't have to reverse his weighting. If Jim's warrant is defeated, all that follows is that he can't get to his conclusion via that warrant. It doesn't follow that he must accept the converse of his warrant (the two warrants are not contradictories). Nor does it follow that he can't get to his conclusion via some other warrant (the two warrants aren't exhaustive). And so it does not follow either that Jim must accept John's warrant, that you can get to the moral permissibility of smoking from the fact that it gives the smoker pleasure, even if it harms (only) him.

Second, Mill's harm principle is a principle of political morality. It prescribes the limits on one person's or a state's right to interfere with a citizen's liberty. It does not prescribe individuals' moral duties except as these relate to interfering with another's liberty. Freeman endorses Boone's view that the harm principle is about "the only justification for making actions impermissible." But Mill is very clear that he has in mind "the dealings of society with the individual in the way of compulsion and control," and his principle is about limits to "the [...] purpose for which power can be rightfully exercised over any member of a civilized community, against his will."<sup>3</sup> Thus the harm principle does not imply that it is morally permissible to seek pleasures at the cost of harms to oneself. It implies only that the state or a private citizen has no right to interfere with such a choice; it does not imply that such a choice is morally right. So the fact that John and Jim agree about the harm principle has no bearing on what Bill morally ought to do or is morally entitled to do with respect to weighing his pleasure from smoking against its harm to him. Freeman needs to find a different higher order moral principle to illustrate his point that agreement on such a principle can produce a resolution of a lower order disagreement.

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<sup>3</sup> *On Liberty*, Introductory.

## 6. A LIMIT TO THE APPEAL TO RAWLS

Freeman appeals to Rawls's methods of justifying his basic principles of justice as a model for justifying higher order principles that might be appealed to in arguments aimed at resolving moral disagreements. Freeman notes that Rawls uses two lines of argument, namely a contractarian appeal to a hypothetical agreement by all rational parties (the agreement in the original position behind the veil of ignorance), and the test of a reflective equilibrium between particular moral judgements and moral principles.

But Rawls introduces the social contract argument only to justify his two basic principles of justice, not to justify any and all moral principles. Only the appeal to a reflective equilibrium applies to moral principles generally.

## 7. FREEMAN ON MORAL CULTURES AND ARGUMENT CULTURES

Towards the end of the paper Freeman uses the terms "moral cultures" and "argument cultures." What is a moral culture, such that one moral culture can be different from another? Freeman says that if John is a contractarian and Jim is not, they come from different moral cultures. Calling a disagreement about metaethical positions a cultural disagreement strikes me as stretching the notion of a culture beyond its admittedly elastic limits. I would have thought differences of moral cultures would play out at the level of basic moral disputes. If John thinks that a wife should be obliged to be sexually available at the bidding of her husband whereas Jim thinks that such an obligation is morally obnoxious, then one might describe them as belonging to different moral cultures, or more generally, if John thinks a woman's role in marriage is to bear and raise children and be available on demand for the sexual pleasure of her husband and Jim thinks such a role is morally offensive, then they belong to different moral cultures. Their views about moral rules, roles and relationships reflect different cultural heritages, and different ways of organizing cultural institutions such as marriage, child rearing, and sexual practices. On the other hand, if John is a contractarian and Jim is a consequentialist, they hold different metaethical theories of justification, but not necessarily different cultural beliefs.

What about the idea of an "argument culture"? Freeman proceeds to characterize the differences in the arguments an essentialist and a contractarian would use as a difference in "argument cultures." To be sure, they use different arguments, which is to be expected given that their metaethical theories differ. But how is this a difference in cultures? It seems to me that Freeman can say everything he wants to say about the nature of these disagreements without invoking the concept of culture. And if he can drop it without loss, it plays no role in his theorizing. I wonder if Freeman isn't trying too hard to reference the stated theme of the conference, "Argument Cultures."

## 8. APPEALING TO PRINCIPLES

What about the general project that Freeman is proposing here? I have so far made niggling criticisms, but nothing that challenges the basic thesis of the paper, namely that the possibility of appealing to ever higher order moral principles in moral arguments starting from basic level moral disputes holds out the promise of resolving such moral disagreements rationally, that is, by means of arguments. I suspect that what lies behind

Freeman's detailed examination of Rawls's defence of his general principles of justice is his appreciation of the fact that where the principles come from is vital. For unless the principles can be defended independently of the issues in dispute at the basic level, they cannot serve in arguments as warrant backers or warrant undercutters.

I wish Freeman had chosen a different example to work with, for it seems to me that whether or not someone smokes is not a moral issue, assuming their smoking affects no one else. Whether the pleasure is worth the health risks is a prudential question. The choice of example matters, because we need to be able to see that any appeal to a higher order moral principle does not beg the question, for that is always the worry with appeals to moral principles. There are always the risks that the principle is a rationalization, that is, a generalization that is acceptable only if the particular judgement that's in doubt is already accepted, or that other things are in fact not equal when it is assumed they are. We might get a clearer picture of whether moral principles work the way Freeman thinks they do if he were to demonstrate their possible application using an example that is clearly a moral issue.

I think we tend in fact try to get someone who disagrees with us about a moral matter to change his or her mind in other ways than by appealing to higher order principles. One way is to try to get the person to imagine his or her preferred action under a different description. We try to get the person to frame the choice differently. Another way is to criticize the weighting directly.

If John weighs doing a favour over keeping a promise, he is unlikely to be persuaded to change his mind by an appeal to the *prima facie* priority of promise keeping over beneficence, because in the present case he either denies that other things are equal or else he denies that promise keeping does have *prima facie* priority over beneficence. Instead, we might try to get John to see his choice under a different description. We might say, but do you really favour having a reputation as a nice guy over having a reputation as someone with integrity, someone who can be trusted? Alternatively, we might challenge John's priorities in this case. We might try to give specific reasons why, in these particular circumstances, doing this favour is less important and keeping this promise is more important than John had originally calculated.

It is true that Freeman does not claim that appealing to higher order moral principles is the only way to use arguments to try to settle moral disputes, but he does not discuss alternatives such as those I have mentioned, and so he doesn't try to show that appealing to higher order moral principles is to be preferred.

## 9. CONCLUSION

Freeman is arguing, against those who see first-order moral disagreements as deep disagreements, that is, as irresolvable by rational means, that appealing to higher order moral principles is a way to use arguments to resolve such disagreements. I have argued, in effect, that Freeman has some details wrong, and that his paper needs to be revised over these objections. I think such argument repair is possible without changing the thrust of the paper. At the end I register a worry—no more than that—that from the point of view of wanting to resolve first-order moral disagreements, there might be ways of arguing that might be more effective than appealing to higher order moral principles.

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[Link to reply](#)

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