WALLER'S DEDUCTIVIST RECONSTRUCTION OF MORAL AND LEGAL ANALOGIES: A CRITICAL EXAMINATION

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Abstract. In this article, I discuss Waller's deductivist reconstruction of moral and legal analogies. After showing the diversity of a priori analogies, I focus on Waller's version of deductive reconstruction. I show that it can be seen as a result of two premises, which I examine in the third and fourth parts. The first premise is that in all good analogies there is a principle that subsumes both source and target case. I show that this premise can be defended for some types of analogies, but not necessarily for all. The second premise is that the general principle can be drawn as a conclusion from the source case. I bring two objections against this claim.

Keywords: moral and legal analogies; deductivism; similarity; principle.

INTRODUCTION

An analogical argument is based on the similarity between two objects. Some authors distinguish two types of analogical arguments. The former ones are based on empirical generalizations, while the latter ones – referred to in the literature as a priori analogies – are not. While the nature and structure of inductive analogies is fairly clear, a priori analogies are subject to debate. In this article, after showing that the class of a priori analogies is more heterogenous as generally seen in the literature, I will argue against a particular reconstruction of moral and legal analogies, developed by Bruce Waller.

The article will have four sections. In the first one, I will argue that the a priori analogies should not be seen as a homogenous class, but as including different types of analogies: normative, logical, mathematical. In the second section, I will introduce Waller's deductive reconstruction. I will see it as a result of two premises that I will examine separately in the third and fourth sections. I will argue against the second premise.

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1. A PRIORI ANALOGIES:
A HETEROGENOUS CATEGORY

An analogical argument has two premises: the similarity premise, which asserts that two situations, objects, etc. (X and Y) are similar and a second premise, which asserts that the object X has a certain property. In accordance with the use of terms in literature, I will call the term corresponding to object X *source* or *analogue*, while the one corresponding to object Y is called *target*. In some articles, Trudy Govier distinguishes between two types of analogies: inductive and a priori.[1] As viewed by Govier, the distinction is that in the inductive analogies, the source term should be a real one, while in a priori analogies, it may be hypothetical. Suppose, for example, that we argue by analogy that the crime rate in the city X will increase in the coming years, since, under similar circumstances, crime rate in the city Y has also increased. The argument has no force unless it is true that in reality there is a city Y which has been in a situation similar to that of X, and where crime rate has increased. On the contrary, to take Govier's example, in an a priori analogy, such as Thomson's unconscious violinist argument, it is irrelevant that the scenario of a violinist connected to a person's kidneys against his will is not a real or a plausible one. In a priori (moral) analogies, whether the respective scenario is realizable or not has no relevance, the relevant element being how such a situation would be evaluated from a moral point of view, if it were real.

It should be noted that classifying an analogical argument as a priori does not imply that its validity or soundness can be decided a priori (without recourse to empirical statements). In Govier's sense, the a priori characterization of an analogy means that the actual existence of the source case is not relevant to the strength of the analogical argument.[2] However, the fact that an analogy is a priori does not mean that the truth value of the two premises can be determined a priori, that is, not based on experience. At least in some cases, the similarity premise is not a

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[1] Trudy Govier, "Analogies and missing premises", *Informal, Logic*, vol. 11, nr. 3, 1989; Trudy, Govier, "Should a priori analogies be regarded as deductive arguments?"*, Informal Logic*, vol. 22, nr. 2 2002; Trudy Govier, "Some outstanding questions about analogies", in Bondy, P., & Benacquista, L. (eds.). *Argumentation, objectivity, and bias: Proceedings of the 11th International Conference of the Ontario Society for the Study of Argumentation (OSSA), 18–21 May 2016.* Windsor, ON: OSSA, https://scholar.uwindsor.ca/ossaarchive/OSSA11/ papersandcommentaries/111.

[2] In the a priori analogies, the source case may be hypothetical, but this is not necessary. There are two types of a priori analogies (as used in the moral context). In the former ones, an imaginary scenario is created to play the role of the source; violinist argument is like this. In the latter ones, the two terms are both real. An argument that draws the conclusion that sexual orientation discrimination is morally unacceptable, since it is similar to racial discrimination, which is also unacceptable, can be included in this category. Govier's characterization of a priori analogies takes mainly in consideration the first category. However, the second category is similar from a logical point of view, since, in our example, although racial discrimination is real, its existence is not relevant for the strength of the argument. The relevant fact is that racial discrimination would be morally unacceptable, if it were real.

priori, but depends on empirical judgments. This is shown by the fact that a judgment of similarity can be rejected on the basis of an empirical judgment. For example, the objection often raised against a version of the unconscious violinist argument – that unlike the violinist in the hypothetical scenario, women become pregnant, in most cases, by a voluntary act, even if they did not intend to give birth to a child – is such an empirical judgment, used to reject the similarity between the two scenarios. As for the second premise, in moral analogies, this is a moral judgment, for example one that asserts that a certain kind of practice is acceptable. The a priori or a posteriori status of these judgments is debated in the literature. However, classifying moral analogies as a priori does not imply an option on this matter.

Govier uses the general phrase *a priori analogy*, but discusses only moral and legal arguments. The questions that naturally arises is whether there are other types of a priori analogies and whether they have the same structure. Other authors also use the general phrase, but discuss only moral and legal analogies.[3] I will argue that analogical arguments used in other contexts are also a priori.

Most papers that discuss a priori analogies focus on moral or legal analogies. Analogies used in moral reasoning have two premises. The first states that two actions are morally similar and the second that, in the first situation, an action is morally evaluated in a certain way: permitted, forbidden, etc. The conclusion that is drawn is that, in the second situation, the corresponding action should be evaluated in the same way. However, these are not the only a priori analogies. In a similar way, analogies are used in the common law tradition, in judicial decision-making. The general structure of these arguments is the following: (P_1) Two cases are similar, (P_2) The first case was judged in a certain way, for instance a person was/was not considered guilty. Therefore, (C) The second case should be judged in the same way. In a different way, also in a legal context, analogical arguments can be used to justify regulations, to argue that a certain practice should be prohibited (or accepted). The conclusion of such reasoning is a normative one: that said practice must be prohibited, not that it is currently prohibited. Also, if we refer to the category of a priori analogies, the premise of this type of argument is also a normative one, stating that a certain practice must be prohibited, not that it is currently prohibited. This type of argument should be distinguished from another one, in which the premise states that a certain practice is regulated in a certain way and, for reasons of coherence, it is drawn the conclusion that another, similar, practice should be regulated in the same way. This argumentation scheme is not analogical, since the first premise and the conclusion do not refer to the same property: the former asserts how a practice is actually regulated, while the latter how it should be.

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[3] Fábio Perin Shecaira, "Analogical arguments in ethics and law: A defence of a deductivist analysis", *Informal Logic*, vol 33, nr. 3, 2013; Bruce N. Waller, "Classifying and analyzing analogies", *Informal Logic*, 21, nr. 3, 2001; David Botting, "The cumulative force of analogies", *Logic and Logical Philosophy*, 27, nr. 1, 2017.

The two types of a priori analogies previously discussed – moral and legal – can be placed in a single, more general, category: normative analogies, whose conclusion is a normative statement, drawn on the basis of an argument by analogy. Such normative arguments can also appear in other spheres, for example in the aesthetic one. For example, the argument that a painting is not beautiful on the basis that a painting (real or not) similar in different regards could not be considered beautiful is such an argument.

Normative analogies are not the only types of a priori analogies. Next, I will present two other contexts in which a priori analogies can occur. The first of these is that of determining the (in)validity of an argument. A way to determine the validity of an argument is to construct a similar one (with the same structure), about which we know whether it is valid or not. The initial argument will also be valid or invalid. The situation in which this strategy is most effective is the one in which the constructed argument is invalid, since the premises are true and the conclusion false. Such analogies can be called *logical analogies* and can be used for deductive arguments, in which the notion of structure is strictly defined, but also for other types of arguments, in which the notion of structure is looser.[4] To take a simple example, one way to determine whether the argument "All lawyers are college graduates. All engineers are college graduates. Therefore, some lawyers are engineers." is using an analogical argument. The argument "All dogs are vertebrates. All cats are vertebrates. Therefore, some dogs are cats." is invalid, since we know, without any logical test, that the premises are true, but the conclusion false. We can thus conclude that the original argument, similar to this one, is also invalid.

Another context in which a priori analogies can have an argumentative role is that of mathematical reasoning. Although the arguments specific to mathematical reasoning are deductive, analogical reasoning can play an important role. Before being proven true in a deductive manner, some mathematical theorems can be plausibly shown by analogy. In such situations, analogical arguments can act as a preliminary step before the concluded theorem is deductively proven. We can give an easy example of such an analogical mathematical argument. Cone and pyramid are similar three-dimensional figures: both have a two-dimensional base, an apex, and a lateral surface created by connecting the apex with all points on the base. The volume of a cone is the product of the area of the base and h/3. Therefore, the volume of a pyramid is also the product of the area of the base and h/3. This theorem can also be deductively proven, without the help of an analogical argument. However, it cannot exclude the possibility that, in some cases, a mathematical result derived from an analogical argument could not be proven in a deductive way.

I drew the distinction between three types of a priori analogies, not necessarily the only ones: normative, logical and mathematical. These three types of analogies

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[4] Logical analogies are analysed in Trudy Govier, "Logical Analogies", *Informal Logic*, vol. 7, nr. 1, 1985, but the author does not see them in the context of the distinction between a priori and inductive analogies.

are a priori, since their soundness does not depend on the empirical existence of the analogue. However, there are significant differences between the use of analogies in the three fields and for this reason their reconstruction should be treated separately. Even more, within each category, we may find other important distinctions between different contexts of using analogies.

A remark is needed here about the role of argument reconstruction. Formally, any argument can be reconstructed as a deductive argument, for instance by adding a conditional that has as antecedent the conjunction of the premises and as consequent argument's conclusion.[5] However, such a reconstruction would be useless, as long as the conditional statement in question cannot in any way be supported or criticized independently of the two components. A good reconstruction of an argument should not be that general, but adapted to the specific type of argument. In order to obtain such a reconstruction, the three types of arguments cannot be discussed together

In the next sections we will focus on the reconstruction of some normative analogies: those in the moral and legal fields, in the sense mentioned above.

2. WALLER'S DEDUCTIVE RECONSTRUCTION

As presented above, moral analogies have two premises: the first states that two actions are similar in all relevant regards and the second that, the first action is morally permitted/forbidden/obligatory. As a result, the second should be morally evaluated in the same way. Legal analogies share the same general structure. Without intending to classify possible reconstructions of moral analogies, I will distinguish two types of reconstructions. The first one – which I will call *standard reconstruction* – is based the regular structure of an analogy and doesn't identify a deeper structure. The second reconstruction is based on the idea that moral analogies should be seen as deductive arguments, in which general principles play a central role. I will call this reconstruction, as supported by Bruce Waller, *deductive reconstruction*.

Before discussing Waller's schema – my main focus in this paper – I will briefly develop the standard reconstruction, in my approach. Moral analogies are based on a very general principle: similar situations should be treated alike. More precisely, actions or situations similar in all relevant descriptive regards are similar from an ethical point of view as well. (Discussion is similar for other normative domains) Formulated in this way, this principle can be seen as stating a form of supervenience: one in which ethical properties supervene not on all descriptive properties, but only on those that are ethically relevant. I will not examine further this schema and this principle of ethical supervenience, but it is worth noting that

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[5] Some authors, for instance Leo Groarke, in "Deductivism within pragma-dialectics", *Argumentation*, vol. 3, nr. 1, 1999, defend the thesis according to which all arguments should be interpreted and reconstructed as deductive ones. Here I don't discuss this general thesis.

in the standard reconstruction analogical arguments can also be seen as a deductive argument. Thus, in an analogical argument principle of normative supervenience should be added as a further premise in order to move from the explicit premises to conclusion. But, one can argue that, if this principle of ethical supervenience were a conceptual truth, analogical arguments would be deductive. Therefore, in this approach, the problem of the deductive character of the analogical ethical arguments is reducible to the character – conceptual or not – of the principle of ethical supervenience. I will not examine further in this article the principle of ethical supervenience, but I want to notice that from this discussion results that ethical analogies could be deductive in this standard reconstruction. This leads to the idea that Waller's reconstruction should be rather described as a principle-based one, in the sense that, as we will se in detail in the remainder of this section, has an ireducible appeal to moral principles. However, in this article I will call its reconstruction deductive, as it is generally used in the literature.

Bruce Waller argues that at the core of analogical moral arguments is a deductive argument based on a general principle. More specifically, he reconstructs these arguments by an argument with three premises: (P_1) We both agree with case a; (P_2) The most plausible reason for believing a is the acceptance of principle C; (P_3) C implies b (b is a case that fits under principle C). Waller takes the famous example of the violinist argument, brought by Judith Jarvis Thomson in the abortion debate. She imagines a scenario in which a person is kidnapped, and then connected to a gravely ill violinist, whose only chance to survive is to stay connected to that person. According to Thomson's argument, this scenario is similar to that of a woman who becomes pregnant as result of a rape. Most people would agree that the person who was forced to connect to the violinist does not have any obligation to keep him plugged. Consequently, abortion in case of rape is also permissible. In Waller's view, this argument can be reconstructed by an argument with three premises. The first one is that person is allowed to disconnect the violinist. The second one is that the moral verdict in the violinist case can be best explained by a moral principle: "We do not have an obligation to save or sustain a life when we have done nothing to take on that obligation". The third premise is that abortion in case of rape fits under the same general principle. Therefore, abortion in case of rape is also morally permissible. Waller's reconstruction is interpreted in two ways.

Guarini and Shecaira see the argument in two steps. As a first step, from the fact that in situation A, the two speakers believe that a certain normative statement is correct, we conclude, by inference to the best explanation, that a general principle is correct.[6] Then, through a deductive argument, based on the general principle, it can

[6] Marcello Guarini, "A defence of non-deductive reconstructions of analogical arguments", *Informal Logic*, vol. 24 nr. 2, p.167; *Informal Logic*, vol. 33, nr. 3, 2013; Fábio Perin Shecaira, "Analogical arguments in ethics and law: a defence of a deductivist analysis", p. 407.

be drawn the conclusion that also situation B, which fits under the same principle, must be similarly treated. Guarini and Shecaira consider that Waller's reconstruction is not a fully deductive one, as long as the first step is an argument based on inference to the best explanation.

Botting argues that this interpretation as a partly deductive reconstruction is wrong.[7] Actually, Waller does not talk about two arguments – one deductive, the other non-deductive –, but about a single deductive argument. I think that is undebatable that the first two premises can be seen as leading to an intermediary conclusion – that principle C is true – which, together with P_3, leads to our conclusion. The important point of departure between Botting's and Shecaira's interpretation of Waller's approach is that the former sees it as a fully deductive and the latter not. Botting seems right when he says that Waller supports a fully deductive reconstruction, but his interpretation can be true only if the first argument, from P_1 and P_2 to C, is also deductive. But, as Guarini and Shecaira notice, it seems very similar to an inference to the best explanation, which is a non-deductive form of reasoning. Therefore, Botting should argue that the first argument is not a genuine instance of the inference to the best explanation or that it is a special case of this type of inference. I will not develop here an argument for any of these approaches. I am not interested in characterizing his approach as fully deductive or not, but rather in seeing Waller's reconstruction in two steps: one in which the principle C is deduced through a form of reasoning apparently similar to inference to the best explanation, and the second in which it is used in order to draw the conclusion about the target case.

Based on this two-step interpretation, the validity of Waller's reconstruction is based on two premises: (1) In all strong moral analogies, a general principle C can be formulated, such that both cases (source and target) will fit under that principle; (2) This general principle can be drawn as a conclusion from the source case. I think this approach is useful in order to draw the distinction between two different claims that can be supported: that there is a general principle that covers both source and target cases and that it can be seen as a conclusion of an argument based on the source case. Sunstein expresses perfectly this difference when he states that the analogical reasoning implies a principle that subsumes both source and target case, but this principle is not given in advance, but obtained as a result of the analogical reasoning.[8]

Both premises are debatable and can be challenged. Although I don't have a decisive argument for (1), I will show that it can be supported in some situations, but I will argue against (2).

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[7] David Botting, "The cumulative force of analogies", p. 407.
[8] Cass R. Sunstein, *Legal Reasoning and Political Conflict*, New York, Oxford University Press, 1996, pp. 65–66.

3. CAN WE FIND A COVERING PRINCIPLE?

Let's start with the first premise. In any correct moral analogy, the morally relevant similarities of the two situations compared can be used to draw a general principle. Let's take the following argument: "Gambling and recreational drugs are similar. Recreational drugs are banned or at least severely limited. Gambling should be also severely limited". If we could make a complete list of the relevant similarities between gambling and recreational drugs – for instance, they are addictive, harm others and do not benefit anyone – it would be used to formulate a general principle: "Practices that are addictive, harm others and do not benefit anyone should be banned or severely limited". The conclusion that gambling should be banned or severely limited can be drawn from this general principle. In order to make sure that the principle that is drawn is correct, it is necessary to have a full list of similarities. For instance, in our example, if the last similarity is not present, the resulted principle is a logically stronger one and could be challenged.

Therefore, the problem of formulating a covering principle is equivalent to the problem of making a full list of similarities between the source and the target. Govier argues that a full list of the similarities between source and target cannot be obtained. Her argument is that if such a list were obtained, the conclusion could be drawn directly from the general principle. For instance, in the example above, if we know the general principle according to which all practices that are addictive, harm others and do not benefit anyone should be banned, the analogical argument would become useless. An objection to Govier's argument can be raised. The general principle that covers both situations is not deduced from or included in the similarity principle. Therefore, the two arguments – the one based on the general principle and the analogical one – are logically independent and separately support the conclusion.

From this point of view, a distinction between two versions of analogical arguments is important. In the first version, the similarities between source and target are listed, while in the second one they are not listed.[9] In the first version, the argument is reducible to a deductive one. For instance, let's rephrase the previous argument like this: "Gambling and recreational drugs are similar: both are addictive, harm others and do not benefit anyone. Recreational drugs are banned or at least severely limited. Gambling should be also severely limited". In this version, the argument can be reconstructed such as the conclusion is drawn from the general principle and the fact that recreational drugs are also banned has a secondary role: to weakly support the general principle. In this interpretation, the argument is rather a principle-based one, not an analogical one. The second version, in which the similarities are not listed, but left opened, is the standard one, which we usually find in the moral reasoning. In this version, similarities are not mentioned or in any

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[9] Fábio Perin Shecaira, "Analogical arguments in ethics and law: a defence of a deductivist analysis", pp. 417–424.

way implied or assumed. The similarities and so the covering principle are not included in the analogical argument, but rather result of further examination. This means that the analogical argument is completely independent from the principle-based one and gives further strength to the conclusion.

I have argued that the existence of a covering principle does not lead to the conclusion that the analogical argument is useless. Therefore, the possibility to formulate a general principle and a principle-based argument for the normative conclusion does not cancel the role of the analogical argument. I didn't bring any positive argument for the fact that a general principle and a principle-based argument can actually be formulated. This is what I will try to do in the following paragraphs.

The problem that it should be examined is whether the situations or actions that are seen as similar in a moral analogy are considered like this in virtue of a list of common features. The problem that we are discussing here is close to another one, discussed in cognitive psychology: *how do people build their concepts?* Some psychologists, among which Eleanor Rosch plays a preeminent role, developed a family resemblance theory of concepts, according to which people classify objects based on the similarities between them, not on a list of common features.[10,11] According to this view, two objects can be seen as similar even if they do not share any common features. This resemblance-based view of similarity can be contrasted with a rule-based one, according to which two objects are seen as similar in virtue of some common features. Since both views may be correct, for different concepts, the question is which of them is more adequate in the context of moral analogies.[12] For instance, applied to our previous example, the question is whether gambling and use of recreational drugs are similar in virtue of some features they share or in virtue of some family resemblances.

Although I will not give a definite answer to which view is more adequate for reconstructing moral analogies, a sketch of an argument can pe developed. Analogical reasoning plays a central role in common law, where it is used by judges in their decision-making. Judges base their decision on the similarity between that particular situation and a case that was previously judged. In many cases, common-law judges not only resolve a specific dispute, by using an analogy, but also formulate general principles, which will be applied to future cases.[13] Rules are

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[10] Eleanor, Rosch, Carolyn B. Mervis, "Family resemblances: studies in the internal structure of categories", *Cognitive Psychology*, vol. 7, nr. 4, 1975.

[11] In more detail, according to this view, objects are classified based on the *psychological distance* between, a concept that is designed to give a quantitative measure to the similarity between two objects. Two objects will be similar if the psychological distance between them is small (a more precise criterion can be worked out).

[12] In "Analogy and missing premises", Govier seems to accept a family resemblances view of similarity when she states: "we are often able to see or sense important resemblances between cases without being able to spell them out exhaustively in just so many words" (p. 49).

[13] Larry Alexander, Emily Sherwin, *Demystifying legal reasoning*, New York, Cambridge University Press, 1008, pp. 50–63.

important in this context because they ensure fairness and predictability. In order to feel fairly treated, people need to understand what precise rule they should not violate, a rule based of family resemblances would not be sufficient. Similar, but not identical, arguments, may be brought for moral reasoning, in which principles play a central role as well. Therefore, even if a family resemblance approach to similarity can be adequate for other fields, is not adequate for common law or moral reasoning. However, this concept can be adequate for other normative uses.

4. DRAWING A GENERAL PRINCIPLE
FROM THE SOURCE CASE: TWO OBJECTIONS

The second premise that should be accepted by Waller is that the covering general principle C can be drawn as a conclusion of an argument in which the first premise is the verdict in the source case and the second premise is that the most plausible reason for believing a is the acceptance of principle C. I will start with an observation. In his formulation, the premises of the argument are "We both agree on case a" and "The most plausible reason for believing a is the acceptance of principle C". The vocabulary of these statements is psychological – *believe*, *agree* – which, I think, can be misleading. The premises should not be interpreted in the context of discovery, but in the context of justification: after all, it is not relevant why people believe something, but why it is actually true.

My focus will be not on the transition from premises to the conclusion, but rather on the premise P_2. My argument is that we cannot have a justification to support that a certain principle is the most plausible reason for supporting a verdict in a particular case, since any normative statement about a particular situation can be equally justified by a number of different general principles. For example, the statement that there is no obligation to support the violinist in Thomson's argument can be justified by many different principles.[14] First, in the violinist example, the person just lets the violinist die by disconnecting him, not directly kill him (As I understand the example, disconnecting will not immediately kill the violinist.) Since the distinction between *killing* and *letting die* is morally relevant, the general principle can be formulated in two ways: (i) just letting the dependent person die is acceptable or (ii) both killing and letting him die are acceptable. The permissibility of disconnecting the violinist leaves both possibilities opened. Secondly, in the violinist example, the person is forced to enter in a dependence relation with the violinist. What about a situation in which the person is not forced, but doesn't play a role in the causal chain of events? But about a situation in which the person plays such a role, but does not intend the result? Again, the general principle can be formulated in many ways, based on these distinctions. Therefore, the same claim

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[14] Lilian Bermejo-Luque, "Deduction without dogmas: the case of moral analogical argumentation", *Informal Logic*, vol. 34, nr. 2, 2014, p. 329.

(that disconnecting the violinist is permissible) can be explained by a number of different principles, which lead to different results in analogical arguments. Furthermore, these principles are equally plausible in light of this argument. Therefore, we cannot have any reason to draw a particular principle rather than another one.

A partial reply can be given to this argument. Waller's reconstruction cannot be so easily rejected, since all principles that could account for the moral verdict in the case of the violinist logically imply a minimal moral principle. Thus, regardless of whether the other principles are accepted, those who accept that disconnecting the violinist is permissible must accept a minimal principle that can formulated like this: "It is morally permissible to let a person whose life depends on you die if you did not contribute at all to his reaching this state of dependence and if keeping him alive would require significant sacrifice on your part". In the same way, for all moral situations, a minimal principle can be formulated, which must be true in order to explain a certain moral verdict. Therefore, the premise P_2 helps us to draw a minimal principle, which includes all relevant elements of the case.

However, the difficulties of P_2 are not solved. In the example, as well as in other examples, the obtained principle removes the morally irrelevant elements from that situation. For instance, the fact that the connected person is a violinist or that what makes him dependent is a kidney disease are such morally irrelevant elements (he could just as well be an engineer who has a serious liver disease). But in this example the morally relevant elements are relatively easy to delimit, since the scenario is intentionally built to include these relevant elements. It is not the same in other examples, in which the source case is not an imaginary case. For instance, if we try to explain by a more general principle the fact that banning interracial marriage is unacceptable, we will face many obstacles, since interracial marriage has many features and can be described in diverse ways. The fact that an interracial marriage is a consenting union between two adults is clearly a part of the relevant description, but, justifiably or not, many people would not accept that this description is sufficient and, consequently, that all consenting unions between two adults should be accepted.[15] A real analogical argument – for instance one that draws an analogy between interracial marriage and same-sex marriage – could direct us to find a relevant general principle, but the recourse to the verdict in one situation is not sufficient.

P_2 faces a second difficulty as well. If from the source case we draw just he minimal principle, the cases that do not completely fall under this principle will not be deduced and the corresponding analogy will be considered simply wrong. Anyway, if two cases are similar enough, even if not completely similar, the

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[15] See, for instance, Julie Novkov, "The Miscegenation/Same-Sex Marriage Analogy: What Can We Learn from Legal History?", *Law & Social Inquiry*, vol. 33, nr. 2, 2008, for the claim that many elements of the interracial marriage, apart from this general definition, are morally and legally relevant in order to assess the miscegenation laws.

analogical argument has some strength and relevance, which is not captured by the deductive reconstruction. Let's suppose, for instance, that between two judicial cases. A and B have many similarities, but also a relevant, yet small, difference. In the case A, the defendant was considered guilty, and the judge has good reasons to consider that, since the difference between the two cases is small, the defendant in the case B should also be considered guilty. If we try to apply Waller's scheme, as I have argued, the principle that can be drawn from will be the minimal one, including all relevant elements, and it is not sufficient to draw any conclusion about any case that is dissimilar, even if just a little.[16]

A deductivist could try to defend Waller's schema by saying that the principle resulted from the source case cannot be easily or immediately drawn, but rather after testing them against other cases and intuitions.[17] These further cases and intuitions will help us to reject some alternative principle and to draw the most plausible one, not necessarily the minimal one. I don't think that this defense is successful. The first step of the Waller's argument implies that the source case is essential for drawing the conclusion C, which should not be already supported based on other cases. If many different cases are used in order to show that a certain principle is true, the entire point of arguing from the source case will be lost; the general principle is already supported, and the analogical argument will be reduced to a principle-based one.

5. CONCLUSION

In this article I argued against Waller's reconstruction of moral analogies. I saw this reconstruction as based on two premises: that a general principle covering both the source and the target case can be formulated and that this general principle can be drawn as a conclusion of an argument. I think that framing Waller's view like this is useful because the first thesis is important in itself, not only as a part of a deductive reconstruction. I argued that in some types of moral and legal analogies, but not necessarily in all, a covering principle is likely to exist. However, this principle is not obtained from the source case, but rather after the analogical reasoning.

A conclusion that emerges from my article, but was not emphasized enough is that a priori analogies are very diverse and cannot be analyzed as a homogenous class. First, I have shown that the category of a priori analogies includes normative, mathematical and logical analogies. Differences between them are significant; for

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[16] My objection is very similar to a serious objection developed in M. Guarini, "A defence of non-deductive reconstructions of analogical arguments", pp. 159–161, according to which Waller's deductivist reconstruction fails to account for an important feature of analogical arguments: they are not a matter of categorical decision (valid or not), but come in different degrees of strength.

[17] See M. Guarini, "A defence of non-deductive reconstructions of analogical arguments", p. 155. I should mention that the author does not defend Waller's approach.

instance, the principle of normative supervenience, formulated in the second section, plays an essential role for normative analogies, but does not have any correspondent in the other domains. But also the class of normative analogies is heterogenous enough, since I have shown that a rule-based approach plays a central role in law and ethics, but not necessarily in other normative fields. Eventually, even in the moral and legal field, analogical arguments can be used in different ways: to settle individual cases, to support a regulation, to compare from a moral point of view some real practices and situations, and others. If logical and mathematical analogies are analyzed, it is likely to find a similar diversity, which should be taken into account in a full analysis of a priori analogies.

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