

three? If one, then I fail to see how that warrant can be located within any specifi-able field. Suppose, then, that we connect each ground to the claim with a warrant of its own. How would the warrant for (1) be formulated? We might suggest:

Whenever there is a health threat to members of the public, there should be a law protecting members from that threat.

What field underwrites this warrant? Similar questions will, I believe, arise as warrants for (2) and (3) are fleshed out. But there is another, potentially more serious, problem. In this particular argument, it seems to me that none of the grounds is meant to function independently of the rest. The arguer is relying on their cumulative weight. Hence any attempt to tie the grounds individually to the claim will result in a distortion of the argument. And so we are back to the first, but equally unsatisfactory, alternative of attempting to formulate some one warrant that will link all three grounds to the claim. But I doubt that this can be done, for here we have an argument which straddles several fields (speaking loosely), crosses over borders, and is otherwise geographically messy. Yet the very fact that this argument seems to me quite typical of those found in everyday argumentation causes me to have real reservations about the universal applicability of Toulmin's pattern. For the assumption on which the model rests depends for its credibility on a concept (field of argument) for which Toulmin has not provided a satisfactory elucidation.

For the reasons indicated, therefore, I must conclude that Toulmin's theory of argument, as intriguing and exciting as it may appear to be, faces some severe challenges before it can be deemed successful. *

EDITORS' NOTE

This is the first part of Professor Johnson's critical review of An Introduction to Reasoning. The second and final part will appear in the next issue of ILN (iii. 3).

analysis of examples

Two analyses of examples appearing in ILN, ii/Supplement (June, 1980) have been received. They are printed below. We will continue to print such analyses throughout the year, as they arrive and as space permits, and we emphatically reissue our invitation to readers to submit their own critiques of these or other examples from the Examples Supplement.

THE ARGUMENT

A retired deputy inspector of the New York Police Department wrote the following letter in November 1978 to the New York Times in response to a Times editorial about discrimination against homosexuals:

I am in complete agreement with the last paragraph of your November 10 editorial on discrimination against homosexuals as a generality. However, unless a specific exception is made relative to "on the street" police work, we might be opening Pandora's box.

It is a well-accepted fact in police administration that recruitment of stable personnel is hampered by the inability of science to determine an adequate psychological test. In order to prevent the employment of an unstable police officer, with all its concomitant woes, every effort must be made to recruit only those whose personality traits fit within the parameters of normalcy, whatever that might be. Throughout the years, the news has been replete with instances of recruitment failures in this area. No one has yet been able to determine what kind or degree of pressure will trigger a flawed personality.

Unless we are ready to accept homosexuality as totally normal, we must consider it as being at least a flawed personality trait. Other flawed personality traits, if known to the recruiter, have been suffi-

cient grounds to exclude an applicant from obtaining entry into the police profession. In most instances, court action to brand this recruitment policy as arbitrary and capricious has been turned aside.

To legitimize one form of flawed personality trait would place New York City and the Police Department in a very tenuous legal position if, as a result of the employment of someone with an admitted personality flaw, injury to life or limb occurred.

My 35-plus years as a member of the New York City Police Department, I believe, qualify me as an expert with the right to urge caution on this issue. *

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A SLIPPERY SLOPE ARGUMENT FOR DISCRIMINATION

The retired police inspector is contributing a novel argument to the continuing debate about whether sexual orientation should be included in human rights codes as a prohibited basis for discrimination. Though prepared to concede that discrimination against homosexuals ought generally to be prohibited, he argues that a specific exception should be made for the hiring of "on the street" police officers. He offers no evidence that being a homosexual makes a person unsuited for such work. Instead, he argues that, in order to avoid hiring "unstable" police officers (e.g., policemen who will use unnecessary force or violence against citizens), recruiters must exclude all people with "flawed personality traits", since there is no way to determine which flawed personality traits produce unstable policemen. Since homosexuality is a flawed personality trait, homosexuals should be refused employment as "on the street" police officers. Otherwise, New York City could be placed in a difficult legal position if injury to life or limb occurred as the result of employment of someone with an admitted personality flaw.

An initial difficulty with this argument is that it leaves ambiguous the nature of the situation which could give rise to a difficult legal position. Is the inspector afraid of what might happen if a homosexual police officer proved unstable? Or is he afraid that a department which could not discriminate against homosexuals would be legally prevented from discriminating against anyone on the ground of having a flawed personality trait, with the result that non-homosexuals with flawed personality traits would be hired and prove unstable? The reference to "Pandora's box" and the comment that most court action to brand a selective recruitment policy arbitrary and capricious has been turned aside indicate that the latter is the inspector's concern. If so, he is implicitly excluding from consideration the possibility that homosexual orientation in itself might make a person unstable.

The weakness of the inspector's argument can be brought out by advancing the following parallel argument: "Unless we are ready to accept wanting to be a police officer as totally normal, we must consider it as being at least a flawed personality trait. Hence police departments should refuse to hire for "on the street" police work anybody who wants to be a police officer. Otherwise, they could be placed in a difficult legal position if injury to life or limb occurred as the result of employment of someone with an admitted personality flaw." The conclusion of this argument is absurd, since it would compel police departments to hire only unwilling draftees. Since it is as arguable that wanting to be a police officer is not totally normal as that having a homosexual orientation is not totally normal, the absurdity of the parallel argument shows that something is wrong with the argument under investigation.

What exactly is wrong? The crucial premises for the inspector's argument are that only people with normal (unflawed) personality traits should be recruited for police work, that homosexual orientation is a flawed (abnormal) personality trait, and that the hiring of police officers with one type of flawed personality trait would make it impossible legally to exclude anybody on the ground of having any type of flawed personality trait. The last of these premises seems to be false, unless the law is even more of an ass than it sometimes appears to be. The first two premises involve an illicit shift of meaning, in that one premise is acceptable only on one sense of "abnormal personality trait" and the other acceptable only on another sense of that expression.

What is an abnormal or flawed personality trait? In the context of recruitment of policemen, it is an unusual trait of character which one might reasonably suspect would be a source of instability under the pressure of police work. For example, a candidate who had an odd affect, or who was unusually taciturn, sullen, vindictive, hot-tempered, suspicious, aggressive, withdrawn or resentful, would be judged to have a flawed personality which would make him unsuitable for "on the street" police work. It seems unlikely, however, that recruiters would avoid hiring people whose personality was abnormal in the sense of being unusual, if there was no reason to suspect that the abnormal personality trait would be a source of instability; consider, for example, unusual gregariousness. Indeed, on the street police officers probably need an abnormal ability to remain cool under provocation.

On the other hand, the claim that homosexuality is either totally normal or a flawed personality trait appears to rest on a general claim that any abnormal trait is a personality flaw. One could of course quibble that homosexuality is not a personality trait at all. More importantly, the sense of "abnormal" or "flawed" involved in the underlying general claim is a much broader one than that involved in the description of police recruitment policy. An excessively gregarious or excessively calm person is not totally normal and in that sense has a flawed personality, but such traits would not be considered flaws in the context of police recruitment.

Is homosexuality a flawed trait of the sort one would suspect would be a source of instability? Perhaps, but to maintain this thesis the deputy inspector would have to present evidence. In this connection, it is noteworthy that he states that "in most cases" court action to brand as arbitrary and capricious a recruitment policy which bars all those with flawed personality traits has been unsuccessful. The statement implies that in some cases the courts have agreed that the policy is arbitrary and capricious, and one can reasonably ask whether they would not do so if it were used to automatically exclude all homosexuals. Prima facie, a homosexual orientation does not have the sort of connection with the use of unnecessary force that other abnormal traits do.

Some final comments are appropriate on the appeal to his authority as an expert with which the retired inspector concludes his letter. His long experience and relatively senior rank in the police force lend considerable authority to his description of police recruitment policy and of the results of court challenges to that policy--although one would wish he had used a more precise wording than "flawed personality trait" in describing the policy. But he goes beyond the scope of his expertise when he says that science is unable to devise a psychological test for instability. He is in a position to know that science has not yet developed such a test, but not in a position to know that science cannot develop such a test. And in fact one could imagine that a careful study of the psychological background of police officers who go berserk under pressure or who abuse their position of authority might result in a fairly accurate profile of the sort of person who should not be a police officer on the street. Furthermore, if the retired inspector is offering a slippery slope argument, he goes beyond the scope of his authority in claiming that legitimizing the hiring of homosexuals as on the street police officers would make it legally impossible for the police department to bar anyone on the grounds of having a flawed personality trait and thus open the way to legal action by injured citizens. Such a claim needs to be justified by a careful examination of the rulings of the courts in similar cases, an examination in which the principles and precedents are brought out. If it is to be accepted on authority, it should be on the authority of a competent lawyer who has studied the relevant documents. At best, the police inspector's argument establishes the need to get a legal opinion on the question he raises.

GENERAL REMARKS

Slippery slope arguments are not always bad. Sometimes accepting one thing logically commits you to accepting a lot of other things, and it's reasonable to point that out. But often it only looks as if accepting the one thing commits you to accepting the others, and the slippery slope can in fact be avoided. In general, one should be suspicious of "slippery slope" or "thin end of the wedge" arguments. More often than not, they don't stand up to critical examination.

On the substantive question of discrimination, the general principle is that it is justifiable to discriminate against someone

on the basis of a certain trait if (and only if) possession of that trait is relevant to their suitability for the benefit they are being denied. Human rights codes codify the judgement that such traits as race, colour, creed, sex or national origin are never relevant per se to the receipt of benefits in a given society. Those who would argue that sexual orientation is sometimes relevant need to provide evidence in support of their claim, since its relevance is not immediately obvious. The lack of such evidence is the glaring weakness of the above letter. *

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Analysis of #8

I take the conclusion of this argument to be that homosexuals should not be allowed to become police officers in the N.Y.P.D. The grounds offered are that homosexuality is a "flawed personality trait" (#3) and that the employment of persons with such traits is an unacceptable risk for New York and the N.Y.P.D. (#4).

I think that the major flaw in the argument is the author's classification of homosexuality as a flawed personality trait. If this classification is acceptable, then the author's conclusion follows; if not, then the author has failed to establish his conclusion.

Can homosexuality be placed in this category? I think not. The phrase "flawed personality trait" is left rather vague, but one thinks perhaps of things like the tendency to use excessive force, or to panic under pressure. Such traits, if known to exist in a candidate, would seem legitimate disqualifiers. However, it is unclear that homosexuality belongs to this category. First, a flawed personality trait is something that can be changed, but there is very little evidence that a homosexual can change his or her sexual identity. Second, we can all understand why a tendency to use excessive force, for example, is a trait that would disqualify a candidate for the police force. There are many circumstances in which such a trait might surface with detrimental consequences both to the community and the police force. But what circumstances are we to imagine which would "trigger" a homosexual with adverse effects on the community? The author needs to address these and other points before we can accept the classification of homosexuality as a "flawed personality trait." One final point. In the last paragraph, the author attempts to establish himself as an expert on this issue. However, the issue is, in large measure, a conceptual one. 35 years as a member of the N.Y.P.D. certainly entitle the author to some respect, but they do not qualify him as an expert on conceptual matters.

For these reasons, then, I find the author's argument unacceptable. *

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