Analogy and Exemplary Reasoning in Legal Discourse

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Published by Amsterdam University Press

van der Velden, Bastiaan and Hendrik Kaptein.
Analogy and Exemplary Reasoning in Legal Discourse.
Amsterdam University Press, 2018.
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9. Undoing damage by analogy

As if (almost) nothing happened, with notes on the meaning of everything

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Hendrik Kapein and Bastiaan van der Velden (ed.), Analogy and Exemplary Reasoning in Legal Discourse. Amsterdam University Press, 2018
DOI: 10.5117/9789462985902/ch09

Abstract
A common error in conceptions of argumentation by analogy, precedent, paradigm, and metaphor consists in taking them too seriously, as if they had autonomous argumentative force. Argumentation by analogy is of heuristic value at best. The underlying argument from principle is decisive, reducing argumentation by analogy and like semblances of reasoning to (pia) fraus. Still the importance of analogy, precedent, paradigm, metaphor, and the like is not to be denied, related as they all are to ‘outward difference and underlying identity’. Issues of wrongful harm and even matters of rightful or wrongful life and death may be clarified by appeal to analogy and related notions.

Keywords: logical redundancy, heuristics, argument from principle, wrongful harm and damages

1 Introduction

Intellectual – and probably some real – harm has been done by wrong-headed conceptions of argumentation by analogy, precedent, paradigm, and metaphor. The common error consists in taking them too seriously, as if they had autonomous argumentative force. Still this is not to deny the reality of analogy, precedent, paradigm, metaphor, and the like. Let alone to deny the importance of these concepts, all related to ‘outward difference and underlying identity’. Issues of wrongful harm and even matters of rightful or wrongful life and death may be greatly clarified by appeal to analogy and related notions. Intellectual and hopefully even some real harm may be warded off in this way. This may be rather more
important than still more analysis of rule application – the usual analogy issue in legal philosophy.

These issues are to be discussed here as follows. Section 2 offers a succinct review of the redundancy analysis of analogy and related notions. The semblance of analogy is of heuristic value at best, the underlying principle is everything. Or: Occam’s Razor may be applied to do away with dangers implicit in common conceptions of analogical and related reasoning, notably so in wrong-headed appeals to precedent. But how might underlying principles, in their turn, be justified? This leads to Münchhausen trilemmas and worse: to a lack of any real justification. Thus, not just the analysis of analogy and related notions seems to end up in nothing: no fixed points, no meaning at all (section 3). Even life itself may be meaningless, resembling everything else at least in lacking any justification. But such scepticism starts from wrong-headed analogy: life is not just like one more thing or event, life is the context of everything. Thus any attribution of sense or nonsense to life itself is meaningless (section 4). Still determination of harm presupposes concepts of life, as harm is defined as the difference between two lives: one real and one hypothetical, as if nothing harmful happened. Such comparisons and their consequences are loaded with analogy and metaphor, like the notion of annulment of harm ‘as if (almost) nothing happened’ (section 5). Section 6 offers further and dramatic illustration of wrongful harm, its well-nigh impossible determination and compensation in matters of birth, life, and death. In the end, annulling at least part of one’s own harm and suffering may well presuppose analogy, metaphor, and related notions – however logically redundant – as ways of accepting life and making the best of it (section 7).

2 Argument by analogy, precedent, paradigm, and metaphor: so many cases of coordinated hallucination

Analogy, precedent, paradigm, metaphor, and related concepts play unquestionably major roles in legal and non-legal reasoning. Still their autonomous argumentative force is about nil. But on goes the academic debate on argument by analogy, precedent, metaphor, exemplar, and the like, without heeding the unintentional inexistence of such supposedly sensible reasoning and argument.¹ It is even contended (recently by Weinreb,

¹ See, for a reasonably recent overview of the state of the art of such ultimately superficial explanations of analogy and the like, MacCormick, 1998, though this is not to belittle any such contributions, certainly not those found in this book.
in 2005) that all legal reasoning is analogical, by want of literal identity of legally relevant facts. But then the redundancy of analogical argumentation in a broad sense was already exposed by the present author as far back as 1995.\footnote{But see also Prakken, 1997, for still older sources; and Raz, 2009, pp. 201–206.} The argumentative force of analogy, precedent, paradigm, metaphor, and the like depends on underlying general rules and principles, not on analogy, etc., themselves.

What was and is analogy about? As already noted in the introduction, travelling by rail with a non-standard pet may lead to the following ticket collector’s reaction (according to Dyson, 2006):\footnote{The oldest version of this story has been published in the \textit{Ninth Annual Report of the State Entomologist of Minnesota to the Governor for the Year 1904} (1904), p. 144: Everyone has heard the old story about the naturalist who was traveling with some pets, and the railway people had only made provision in their rules for charging for dogs. The ticket seller was therefore in doubt as to whether charges should be made for monkeys, cats and a large tortoise, which accompanied the naturalist. His judgment at last was given forth that the cats and monkeys would have to be paid for because under his instructions, he said, ‘Cats is dogs, monkeys is dogs, but that turtle is an insect, so we let them go free.’ The story does not state whether he would classify gophers and rabbits as insects also. Possibly not.}

Cats is dogs and rabbits is dogs but tortoises is insects and travel free according.

So, and \textit{e contrario}, the explicit rule must have been that dogs need a train ticket. Thus the ‘analogical’ core issue indeed is: how to make cats out of dogs? Or tortoises out of insects? Standard analysis proceeds in terms of relevant similarities, not to be extensively repeated here. Again: what are relevant and what are irrelevant similarities and differences? Everything resembles everything in an infinite number of respects (see among others Hampshire, 1959).

Relevant similarities and differences are to be determined by underlying, more general rules or principles (no principled distinction between rules and principles is made here). Thus the ticket collector may have more or less unconsciously referred to a principle like: small animals and/or other utensils living or dead travel free due to their relative harmlessness.\footnote{This is probably based on implicit \textit{e contrario} reasoning again; see on this Kaptein, 1993, explaining why \textit{e contrario} argumentation is a case of unintentional inexistence as well.}

Such a principle may be taken to be ‘implicit’ in the dog rule, but it cannot be derived from any dog rule whatsoever. Though the dog rule may be best explained by such a principle, such abductive reasoning or inference to the best explanation does not exclude a completely different explanation or justification of the same dog rule, at least not from a logical point of
view. There may be special reasons to treat dogs as paying passengers, in contradistinction to all other animals. Thus dogs may be regarded as uniquely intelligent living beings, on a par with most humans in having to pay train fares as well, and so on. Then again cats and tortoises enjoy free rides, *e contrario* or otherwise.

So cats can’t be made out of dogs after all, or tortoises out of insects, which will come as no surprise. There is analogy, at least in as far as ‘existence’ may be interpreted in some or other non-literal or even metaphorical sense. But there is nothing like analogical reasoning in the law or otherwise. Still appeal to analogy may yet lead to plausible or even true conclusions. This is the fate of all fallacies of course.

In fact any analogon taken as a starting point is of heuristic value at best. It is no justification at all. The whole weight is on underlying, ‘bridging’ general rules or principles. Such general rules explain or even justify both the original analogon and the analogical conclusion. Thus it is with all analogical reasoning, not just concerning cats and dogs.

Complete induction from seemingly analogous pet cases to this general conclusion concerning analogy is apposite to be sure. This tears up more than a few textbooks. Or: Occam’s Razor indeed, not in order to kill the tortoise but in order to do away with any superfluous notions in understanding of so-called analogy and like reasoning.

What are the dangers in taking analogical reasoning too seriously? Semblances of analogy may play no major roles in adjudication. Still even in criminal law, appeal to misconceived analogy may lead to wrongful harm in the name of the law. Thus in the Netherlands a tongue kiss was treated as analogous to sexual penetration, in order to wrongly punish the innocent. What would be anything like a plausible bridging principle here? Again, the original analogon furnishes no ground at all for such ‘analogical’ reasoning, creating false impressions of lawfulness of such conclusions.

Less formal analogical argumentation, legal and otherwise, is obviously much more widespread and may be risky as well, or even lethal. Think here of J. Edgar Hoover’s infamous analogy:

Ships rely on lighthouses to navigate safely into harbor, even though we do not know how many such safe arrivals there are because of the lighthouses. In the same way the death penalty deters, even though we do not know how many murders are prevented in this way.

Again, what would be anything like a plausible underlying, bridging principle here? The same holds good for analogous criticism of capital punishment
like: killing convicts is officially authorized murder. And so on. Thus both adjudicative and informal analogy may be as dangerously suggestive as lacking any real backing in some or other plausible principle justifying the conclusion at hand. So hopefully this redundancy analysis of analogy already undoes some serious damage.

The same holds good for precedent, logically related to analogy as it is. In fact in adjudication precedent is explicitly appealed to much more often than analogy is, with more harmful consequences by repetition of original wrongs. Again, any precedent as just precedent does not imply anything. Everything may resemble everything here too. Still a case may be qualified as a precedent by a bridging principle or principles applicable in relevantly similar cases as well. Such principles do the real work, as they do in argumentation by ‘analogy’.

But is not this supposed sterility of precedent deeply at odds with elementary notions of equality and legal security? Imagine one twin objecting to a supposedly unjust pocket-money allowance ‘because the other twin already got more’. Are we sure such a precedent must be decisive in treating both twins equally? No, as any principle, rule, or whatsoever consideration backing the raise in allowance may be wrong. Then handing out more money a second time would be doubling error. Or: the principled solution would be to restore the overpaid twin to a rightful position, by paying less next time or in some other way.

Hobbes presaged this already in 1651 (ch. 11):

Ignorance of the causes, and original constitution of right, equity, law, and justice, disposeth a man to make custom and example the rule of his actions; in such manner as to think that unjust which it hath been the custom to punish; and that just, of the impunity and approbation whereof they can produce an example or (as the lawyers which only use this false measure of justice barbarously call it) a precedent; like little children that have no other rule of good and evil manners but the correction they receive from their parents and masters […]

Indeed even in informal argumentation such harmful wrongs are not limited to kids’ issues: think of university presidents justifying their chauffeur-driven company cars by appeal to colleagues enjoying the same privileges. The difference between men and boys is just the size of their toys: money wasted on such vanities is better spent on universities’ core businesses of course.

Even courts wrongly assume autonomous force in precedent ‘as such’ as well, with sometimes strange or even really harmful and unjust
consequences. Once again, any case may resemble any other in any respect. Thus the same logic of underlying principle is to apply, if there is to be any meaningful connection between a precedent and a later case. In fact courts and other authoritative bodies take pains at times to state one or another general rule applying to the cases at hand.

And then the more general the underlying rule or principle is, the more leeway there is for more or less similar cases to be freely decided upon. Appeal to reasonableness and equity or something like these may be the limiting case, as such principles leave room for just about any aspects of a case to be relevant, or not.

Even if a specific rule is formulated in order to justify a precedent, there is still no binding force at all in such precedent. Why not change the underlying rule? It may be stupid or even plain wrong. If it is so, no argument from equality and/or legal certainty may keep such a rule in place. Better to change it in good time, before things get worse. Lord Simon (1985) quoted once more:

Not all precedents are good precedent and the fact that it has been done before indicates that it is high time we stop doing it now.

Or Hobbes again (1651, ch. 26):

But because there is no judge subordinate, nor sovereign, but may err in a judgement of equity; if afterward in another like case he find it more consonant to equity to give a contrary sentence, he is obliged to do it. Nor any examples of former judges can warrant an unreasonable sentence, or discharge the present judge of the trouble of studying what is equity (in the case he is to judge) [...] No man’s error becomes his own law, nor obliges him to persist in it. Neither, for the same reason, becomes it a law to other judges, though sworn to follow it. [...] So no way is there any force in precedent as precedent. It is the same with analogy: any impression of legal authority backed by ‘official’ precedent is misleading.

The false force of precedent may even be created by the toleration or even furtherance of wrongs. Thus in administrative law an illegal building left standing for a sufficient length of time may lead to still more illegal buildings, as if a precedent tolerated by public administration gains legal force by this reason alone. Again – and in fact analogous to the pocket-money case – a better solution may be to have the original illegal building
demolished. In fact such fallaciousness by wrong-headed appeal to equality amounts to conflation of ‘is’ and ‘ought’ as well. Some fact or another does not by itself imply a norm, as a basis for allowing or even prescribing still more such facts or whatsoever.

So argumentation by precedent is unfit to determine legal and other issues of harm and compensation as well. No earlier decisions may be appealed to in order to reasonably and rightfully establish such harm and compensation. Once more the main ground must be found in underlying principle or principles (as further explained in section 5).

*Paradigmatic or exemplary reasoning* is not really different from reasoning by precedent, and thus not really different from reasoning by analogy as well. A precedent may be paradigmatic, but still its force is completely dependent on underlying principle not determined by any paradigmatic precedent itself. One more reference to children may serve to show this point. Here is Bambrough’s attempt to inescapably establish knowledge of at least one moral norm, the wrongness of unnecessary infliction of pain (as stated in 1979, p. 15):

> My proof that we have moral knowledge consists essentially in saying, ‘We know that this child, who is about to undergo what would otherwise be painful surgery, should be given an anaesthetic before the operation. Therefore we know at least one moral proposition to be true.’

Even if this may not, or even cannot, be denied, it may be justified by some or other underlying principle establishing some or other special status for children as opposed to adults, or even by advantages of easier surgery upon stationary patients. Again, the principle is not in the paradigm, however much Bambrough may want to convey the objectivity of some or other underlying principle like: inflicting pain for no good reason is really or objectively wrong. This may be right, but then children’s surgery is here of heuristic value at best as well. (Even if Bambrough’s moral truth prohibiting unnecessary pain may be established, what then about other moral truths, or moral truth? Then the same generalization problem rises again of course.)

A few words on *metaphor* and its paradoxes, not just for the sake of completeness. ‘The lion leapt’ was said of a Greek God. Still there are no human leaps like a lion’s leaps. (Do lions leap to conclusions?) Again, the paradox or even the lie in the metaphor is made good by some or other bridging principle on truly forceful leaping. So the lion does not do any real work here, however strongly imaginative he may be (see already Aristotle, around 330 BC, 1406b20). Or: metaphor is one more case of unintentional
inexistence, at least from a logical point of view, however strongly imaginative and rhetorically forceful it may be.\(^5\)

Why is metaphor discussed here at all, given its generally harmless nature, so positively and poetically different from analogy, precedent, paradigm, and their problems? Because metaphor may be enormously important in reinterpretting harmful human realities for the better. Thus serious setbacks may be negatively interpreted as damaging and darkening any positive prospects, or positively as challenges to be faced and to be learned from, in order to lead a still better life. Epictetus (in about 100 AD) compared life and its hardships to the Olympic Games, one more feast in which only hardship, pain, and perseverance lead to joy and glory – like life itself indeed. Such metaphorical reinterpretation may be a major way of undoing harm after all (to be detailed in section 7).

So analogy and related forms of reasoning are nothing special, at least not so from a logical point of view. It all comes down to application of general rules or principles to specific cases, like rule application in general. At least some intellectual – and real – harm may be undone this way.\(^6\)

3 Touching the void

Still in more than a few cases semblances of analogical and related forms of reasoning will go without much further saying. Who would object to the ticket collector’s sympathetic treatment of Dyson’s tortoise? Certainly not the tortoise itself, travelling free anyway. But suppose you’re travelling with a cat under the dog rule: why pay for the cat? Under what rule or principle not having explicit force of law by definition? Why concede to such window-dressing? Anyone disadvantaged by so-called analogical or like argumentation in the law may at least retort: this is outside the scope of the original rule – or some or other authoritative body would have catered for it. So the whole weight is on one or another bridging principle. How to justify such principles? Indeed if there are no bridging rules or principles, there is nothing like analogy at all, just false semblances of it.

Given the fact that analogy, precedent, and the like are appealed to because there is no ‘good enough’ rule of positive law at hand, the underlying

\(^5\) See on different conceptions of the logic of metaphor, Hintikka, 1994.
\(^6\) Relationships between analogy, precedent, etc., induction, abduction, and other non-existent schemes of argumentation are not to be further discussed here: see for example Kaptein, 1999, and 2006.
rule or principle may not be justified by appeal to positive law indeed. Or may such principles be ‘implicit’ in positive law, in such a fashion that ‘the body of positive law’ may be best explained and justified by reference to such principles? But then the same problem of endless likenesses arises on a meta-level. One and the same set of given legal rules may be derived from different principles. Of course some of these principles may be more plausible than others, but what are the criteria for plausibility here?

One way to express the general problem behind this is the well-known Münchhausen trilemma, originating in the famously fictional history of a count fully able to pull himself horseback out of a morass. Or: trying to justify some or other proposition, descriptive, normative, or otherwise, presupposes at least another proposition furnishing some or other basis. And so on, leading into an infinite regress. Alternatively attempts at justification by appeal to other propositions may end up in circular reasoning, the proposition at hand being presupposed in argumentation on behalf of it. Thirdly any such attempts at justification by appeal to the authority of ‘higher’ propositions may be halted at some arbitrary point, which is the predominant variety in practice of course. Not even mighty traditions of natural law against the ‘arbitrariness’ of legal positivisms may counter this.

For those who find this Münchhausen metaphor still too simplistic, here is another one. In order to determine whether a belief may count as knowledge, there must be a sound criterion of knowledge at hand. The test of such a criterion would then be something like its ability to pick out incontestable pieces of knowledge. If this is not to be circular there must be some other criterion of knowledge, and so on. Chisholm expressed this problem in terms of a wheel, or dialellus (in 1973). Less metaphorical are Nelson’s earlier observations on the impossibility of any epistemology (as explained by him in 1911). Any theory of knowledge furnishing criteria of knowledge, if it is to be a real theory of knowledge, ought to be knowledge itself, thus senselessly trying to set its own standards.

So up to now redundancy analysis of analogy, precedent, metaphor, and related forms of argumentation and expression does not lead to any really fruitful results either. Analogical reasoning and so on may be unmasked as hoaxes, but then in fact any argumentation purporting to offer reasonable or even rational grounds does not fare any better, trapped as it is in metaphorical
but still logically real Münchhausen trilemmas, circular wheels, or worse. No bridging rules or principles? Then no analogy and so on either.

Please note that this kind of debunking argumentation is exemplary as well, making use of two specific metaphors with purportedly more general meaning. Complete induction here again, one may well fear. Even this very debunking discourse falls foul of its own scepticism, pretending to express knowledge as it does.

Or should it simply be said that authority decides, putting up false appearances of argumentation coming down to more or less fraudulent window dressing? This is probably the most practical standpoint from the receiving end, for persons and (other) bodies bearing the consequences of official or not so official decisions or non-decisions. In the philosophy of law such semblance of argumentative underdetermination is discussed in terms of Legal Realism and Critical Legal Studies. Then false appearances of argumentative consistency or even coherence are no more than evening dresses hiding boundless discretion or even mala fides.

There seems to be only one way out: surrender to the inescapably irrational, not just in legal practice. What is the sense of it all?

4 The meaning of life, or in fact of everything

What is the sense of it all, including this petty intellectual exercise, this bloodless scribbling? At one small, seemingly inescapable step from this is questioning the meaning of life itself. Its ultimate meaninglessness seems hardly less obvious than the meaninglessness of every human enterprise, legal or otherwise. What is the sense of it all in an endless universe without any memory of any human fate whatsoever? Why write and read this essay, then, without any hope for meaning, value, purpose, or for whatsoever to be established on any firm ground?

If life and its enterprises are to have any meaning, there must be some or other standard or standards determining such meaning. Such standards fall foul of Münchhausen trilemma problems, like all standards do, leaving the meaning of life without any firm cognitive ground. This seems a well-nigh insuperable problem, that is, as long as the meaning of life is treated as an issue of knowledge and truth.

But what are the semantics of ‘the meaning of life’? Can there be any meaningful content of this concept, as a presupposition of any knowledge and truth about the meaning of life? Probably not, as false analogies behind semblances of meaningfulness of ‘the meaning of life’ will show.
Any determination of meaning or value presupposes knowledge of what is to be valued. But how to really know what life is while alive, being ‘in’ it, part of it, so to say? Thus any determination of the meaning of life presupposes a God-like vantage point of view. But religion in its so many and so often contradictory guises is not the subject here. Anyway, any proof of God’s or gods’ existence falls foul of Münchhausen trilemmas or worse as well. That is, if ‘God’ is a meaningful concept to start with. So no living being can have a clear concept of the meaning of life. Then there can be no conception of the meaning of life either.

Put differently, ‘meaning of life’ in the sense of ‘value of life’ presupposes a standard or standards determining such meaning. Given the lack of life-independent, ‘absolute’ standards, such standards must be part of what they are to apply to. Such self-reference excludes any sensible concept of the meaning of life as well. So there is something deeply wrong with the semantic meaning of the (purportedly) real meaning of life. ‘What is the meaning of life?’ is the wrong question to ask, or maybe the depressingly wrong question. Kant’s metaphor of meaningless questions (as stated in 1787, pp. 82–83) may cheer things up again:

To know what questions may reasonably be asked is already a great and necessary proof of sagacity and insight. For if a question is absurd in itself and calls for an answer where none is required, it not only brings shame on the propounder of the question, but may betray an incautious listener into absurd answers, thus presenting, as the ancients said, the ludicrous spectacle of one man milking a he-goat and the other holding a sieve underneath.

‘Life’, ‘meaning of life’, and related concepts are analogical or better: metaphorical at best. Life is not something in life, like the lives and deaths of others are. Even one’s own life is not something ‘in one’s life’. This excludes any real vantage point of view vis-à-vis one’s own life or in general. So life as ‘the context of everything’ may be more or less metaphorically comprehended in terms of one’s own life and the lives of others – at best. ‘Life is everything’, though it may feel like nothing at times.

This again shows dangers of analogy, in likening life to things or events in life. Strong as the inclination to this may be, it still leads to the seemingly inescapable meaninglessness of life. Thus sensations of meaninglessness in life may be translated in terms of the meaninglessness of life, with attendant deadly consequences at times. Why not step out of life if it is senseless after all? This is a really harmful and dangerous analogy, as if life were like a thing, event, or whatever reality in life.
But life is not meaningful or meaningless in any literal sense, and happily so, however strongly subjective experience may go against this grain. Not any meaning of life but meaning in life is what matters. Not everything needs a foundation, given so much sense and meaning to be found in life. There is no sense and meaning outside life. In fact the ends of life are given and chosen with and in life, however ever-changing and however much reason, therapy, passion, and sometimes moral consideration may try to transform them. Hume aptly expressed the point as follows (in 1751, Appendix 1, no. 5) though he is not alone in this of course:

It appears evident that the ultimate ends of human actions can never, in any case, be accounted for by reason [...] Ask a man why he uses exercise; he will answer, because he desires to keep his health. If you then enquire, why he desires health, he will readily reply, because sickness is painful. If you push your enquiries farther, and desire a reason why he hates pain, it is impossible that he can ever give any. This is an ultimate end, and is never referred to any other object.

Perhaps to your second question, why he desires health, he may also reply, that it is necessary for the exercise of his calling. If you ask, why he is anxious on that head, he will answer because he desires to get money. If you demand Why? It is the instrument of pleasure, says he. And beyond this it is an absurdity to ask for a reason. It is impossible there can be a progress in infinitum; and that one thing can always be a reason why another is desired. Something must be desirable on its own account.

Meaning is and ought to be in life. Acceptance of life as presupposition of anything meaningful may even lead to positively valuing life as having meaning after all, if only in a metaphorical sense (see also section 7, on Epictetus’s metaphors of life).

Hume overcame his intellectual scepticism by an elementary escape from loneliness, so easily leading to illogical extrapolation of sadness to senseless of life as such (as published in 1739–40, I.iv.7):

Most fortunately it happens, that since reason is incapable of dispelling these clouds, Nature herself suffices to that purpose, and cures me of this philosophical melancholy and delirium, either by relaxing this bent of mind, or by some avocation, and lively impression of my senses, which obliterate all these chimeras. I dine, I play a game of backgammon, I converse, and am merry with my friends; and when, after three or four hours’ amusement, I would return to these speculations, they appear so
cold, and strained, and ridiculous, that I cannot find in my heart to enter into them any farther.

With this paradigm case of great heuristic value Hume seated himself back into life. This stance may be compared to Wittgenstein’s practical rebuttal of epistemological scepticism concerning facts (as published in 1969, no. 7):

My life shews that I know or am certain that there is a chair over there, or a door, and so on. – I tell a friend e.g. ‘Take that chair over there’, ‘Shut the door’, etc. etc.

This is paradigmatic argumentation again, however implicitly. Any doubts about knowledge, meaning, truth, or whatever presuppose the reality of chairs to sit in – hopefully in good company – and so much more. This is the positive side or in fact the practical solution of Münchhausen- and Nelson-like sceptical issues. Aristotle’s salty fishes come to mind here, as noted already by him around 330 BC (1400a):

Thus, Androcles of Pitthus, speaking against the law, being shouted at when he said ‘the laws need a law to correct them’, went on, ‘and fishes need salt, although it is neither probable nor credible that they should, being brought up in brine; similarly, pressed olives need oil, although it is incredible that what produces oil should itself need oil’.

There is an end to searches for firm ground. So be seated behind fish plates and/or other treats in blissful safety from threats, in flickering lights of cosy fires. Life is not a suicide club after all.⁹ But this does not always go without saying, of course. Things may not always be as mellow as they were at Hume’s fireplace. If life is to be decently lived some or other way at all, law is indispensable. At least murder and manslaughter, theft, damage, fraud, and like misdeeds are to be sanctioned some or other way, just as there ought to be basic rules of procedural law.

Any natural law theory and/or legal positivism needs to heed such ‘laws of nature’, rightly summarized not just by Hobbes in the Golden Rule (in 1651, ch. 15; italics original):

Do not that to another, which thou wouldest not have done to thy selfe [..]

⁹ A rather elementary fact already noted by Hart in 1961.
'As if one is the other person': if any analogy or even metaphor may be fundamental, here it is (culminating of course in Kant’s grandiose idea of *Menschheit* or humanity as the fundamental moral concept). Whatever their legal, moral, or even higher status, this Golden Rule and its basic implications are presuppositions and constituents of any decent society (see on evolutionary and other aspects of this Midgley, 1991). Münchhausen-like scepticisms are no threat to this either.

So there is firm ground after all, not just under chairs at cosily sociable fireplaces. While such seating arrangements are better taken for granted, basic norms of decent society may need good hard thinking to further develop them into more or less coherent sets of practicable principles and rules, at least on paper. This is reflective equilibrium, or optimally reasonable statement of such rules and principles in their mutual conflict, coordination and coherence in practice (see on this Rawls, 1951, 1999; and Raz, 1992).

Thus there are general rules and principles not just backing analogy, precedent, and the like. Cats may be dogs in the end, given the reasonable rule that sizeable pets pay fares, while presumably smaller tortoises end up as insects from a legal point of view. Just like crime ought not to pay, or that liability implies lack of due care in principle, or that rights ought not to be enjoyed at the wrongful expense of others, or even that the innocent ought not to be convicted (even if this is not explicitly stated in the law), that other parties ought to be heard as well, and so on. This is the basis of legal reasoning not just by analogy, precedent and the like. (Please note that this is not at all about the sterile natural law versus legal positivism issue.)

5 Undoing damage by analogy, as if nothing happened

Still such principles, however reasonable and right, are violated at times. Fishes may be stolen, chairs wrongfully wrecked, other bodies, and even persons, may be wrongfully harmed or even killed. So much more real harm may be done, against so many more rules. Something must be done about such violations. One obvious sanction is compensation for wrongful harm. Even staunch sceptics probably appeal to such a principle in order to obtain redress for wrongful harm done to them.

Wrongfulness may be determined in terms of legal rules and principles in a wide sense. But how to establish amounts of harm? And why are offenders to pay for what they have done? This is much more important than any issue of legal reasoning, analogical or otherwise, may ever be. Here too the
life of the law is facts, harmful or otherwise, not rules. About 90 per cent of adjudication, and other kinds of conflict resolution, is not about contested law but about contested facts, determination of harm done being a major part of this.

Harm and compensation will be explained here in a four-stage sequence. First: what is harm and amount of harm? Second: what is needed to ‘undo’ harm? Third: who is to effect this? And fourth: what makes undoing harm equivalent to preventing it?

First, harm is to be understood as ‘the difference between the world including a cause leading to a less valuable state of affairs, and a world without such a cause and its consequences, other things equal’. This of course is a counterfactual conception of harm, as discussed by Feinberg, Coleman, and others (see Gardner, 2012). This conception competes with a number of others, among which differential conceptions are predominant: harm as the negative difference between the harmful situation and the situation before harm set in. This discussion is not really relevant here, however much the counterfactual conception seems superior in more than a few respects – which is not to imply that it is completely unproblematic.10 Note as well that the concept of difference is used here in a metaphorical sense, rather unlike the difference between (e.g.) two physical lengths (this is related of course to the lack of literal meaning of ‘life’ as used here). So ‘harm’ is more or less metaphorical as well, however immediate its experience may be.

What kind of difference may be meant here? Is it difference in terms of monetary value, like somebody’s or some body’s capital ‘with’ and ‘without’ harm? This is the legal principle, related to the price or even market value of persons and/or goods harmed or even destroyed completely. What about immaterial harm, then? To what extent may such harm be analogous to material harm, in terms of monetary or other value? This is hard to really determine in differential terms any way of course.

How to apply such a ‘differential’ concept of harm to specific cases of some importance, legal and/or otherwise? In rather simple cases like damage to a bicycle or a book the harm involved may be determined without recourse to anything like complex calculation of differences between two complete lives. It may be the same with harm done to bodies of different kinds. Thus harm done by crashing a company car without further damage may be none too complex to calculate.

10 See again Gardner, 2012, for a good overview.
But then even bicycles may be involved in or even cause rather more serious harm. Thus a juvenile pushbike rider may have been so seriously smashed in a road accident that he is physically, mentally, and/or emotionally severely handicapped for the rest of his life. How to determine (relevant) harm in such cases? If such harm may be ‘measured’ in terms of any criteria at all, monetary or otherwise?

Two lifelines are to be set out, one real, one counterfactual, to be compared in terms of the accidental harm concerned. But then actual or hypothetical lives are not lines to start with, or at best they are so in a metaphorical sense only. Remember the concept of life ‘as such’ being meaningless. Still this may be no big problem concerning the determination of harm in life. At stake here are two life histories, neither of them real yet, only one to become real, and to be set out in relevant respects and details beforehand.

How to predict such histories that have not yet happened, or that may never happen at all, quite apart from the time-warp paradox involved? This may be difficult if not even well-nigh impossible. About real life one might at least come to know at the very end of it, but then by then it is too late to do anything about any harm done – which is what determination of harm is good for in the first place, at least in legal respects.

Second, what indeed is undoing of harm? By restitution, compensation by payment of damages, or otherwise? This ought to amount to creating a situation as if no harm would have been done at all. Or: victims are to be restored to their original rightful positions. Thus, the theft of a bike may be undone by the return of the bike in its original state, plus damages to compensate for temporary loss of the good concerned.

But how to compensate for more serious harm caused by loss of limb and worse? As noted before, it may be impossible to exactly determine amounts of such harm. Even if such amounts could be reliably established, how may later payment of damages or whatever measures ex post facto ‘make up’ for earlier harm done?

This may be expressed in terms of the equivalence of two lives, one actual and including harm and compensation, the other undisturbed (lines above ‘the normal line of life’ represent added value or compensation, lines below represent loss of value or harm):

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This is to be equivalent to

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These lines interpreted in temporal terms rather simplify real-life harm and compensation of course, not just because full compensation is a limiting case. Harm may be temporary, done away with by restitution or otherwise, but other kinds of harm may be lasting, for example as a consequence of damaged physical, mental, and/or emotional health. This may be represented as follows:

........................................... ⋯ ⋯ ⋯

........................................... ⋯ ⋯ ⋯

........................................... ⋯ ⋯ ⋯

How then may a harmed and compensated life be more or less equivalent to a life without harm? Or again: how to make cats out of dogs? What is the sense of the moving metaphors in Isaiah 40:4?

Every valley shall be exalted And every mountain and hill brought low; The crooked places shall be made straight And the rough places smooth [...]  

‘Bridging’ principles may be something like: optimize total value over time, or more specifically: life is not to be harmed. But then what makes a harmed and compensated life equivalent or even analogous to an unharmed life?

This essentially depends on the human capability to transcend time, in order to ‘combine’ later gains with earlier losses so as to end up with a neutral result and thus with an undisturbed future. That is, in ideal cases of full equivalence of harm and compensation. Then the end result of harm and compensation, ‘added’ to each other – however distinct at least in terms of time – amounts to a life as if nothing wrong was done in it at all.

Man is more than past, present, and future. As Kant (in 1787, pp. 408 f.) and others rightly expressed it: personality is consciousness of identity in time (see also Kaptein, 2013). Wittgenstein wrote (in 1921, 6.4311):

If by eternity is understood not endless temporal duration but timelessness, then he lives eternally who lives in the present.

Our life is endless in the way that our visual field is without limit.
Laden with metaphor this all is of course, life and 'lifelines' predominantly so. Two lives are to be equivalent: an unharmed life and a harmed and compensated life. How to determine such equivalence, given the meaninglessness of the concept of life? Also, turning back the clock is a literal impossibility of course. Still it may be effected by compensation for harm done. Ideally, this puts victims back to unharmed positions 'as if they lived eternally', unencumbered by experiences and memories of harm.

Analogy may come ever more clearly to the fore in the third issue: why are offenders and nobody else to undo harm in principle? Offenders' liability presupposes more than harm done. More or less apart from extreme cases of strict liability, basic preconditions of liability for harm are wrongfulness, causation, and absence of overriding excuses.

Still the question remains why offenders satisfying all such conditions are to pay for harm done. Why do offenders incur debts for wrongful harm done by them? Why are they to pay in a wide sense? Concepts of retributive justice and other intuitively attractive but intellectually ultimately unsatisfying notions have been appealed to in order to establish this obligation or even duty.

Analogy may be a heuristic tool here as well, in showing things to be rather simpler. Remember wrongfulness being a condition for liability. Harm to be compensated for must have been a consequence of wrongful conduct. Compensation in its turn comes down to undoing harmful consequences in principle. Or: such undoing is equivalent to having done the right thing from the start. The bridging principle may be something like: do not disturb the peace. One implication is: do not do wrongful harm. Another is: undo wrongful harm done. It is consequences that count, and here consequences of not inflicting wrongful harm and compensating for it ought to be equivalent in principle, by leading to undisturbed lives in the end.

This is why offenders are to pay and nobody else in principle. Undoing consequences of harm done is doing the right thing after all, leading to the same harmless consequences. Relocating burdens of harm, however sensible according to economic or other criteria, violates this equivalence from the start. Still insurance and/or public fund money and/or other means of compensation may do victims much good. Indeed not all offenders are able and willing to fully pay for what they did wrong, if they are brought to task at all.

The analogy – or better, equivalence – of doing the right thing and compensating for wrongful harm by offenders themselves may also be one or even the main force behind the deeply felt difference between some or other accidental gain, like winning a lottery, and compensation by
offenders themselves. Such accidental benefits may be helpful in handling consequences of harm, still they do not amount to anything like undoing harm by offenders themselves. Indeed victims' satisfaction on compensation in large part depends on offenders bearing the burden of it (see on this Kaptein, 2004).

Thus full compensation for harm done by offenders is equivalent to doing the right thing from the start. Though it may be rather much cheaper and more comfortable for both victims and offenders to abstain from doing wrongful harm of course. Costs of compensation may be rather much higher than of rightful conduct, even if paid for by third parties like insurance companies, just as so much harm cannot be fully compensated for in principle. And in no way could any compensation afterwards be any sort of license to inflict wrongful harm with the promise – however sincere – to undo it later on.

Fourth, forcing offenders to pay is analogous to prevention of wrongful harm in principle. Again, payment for harm done ideally comes down to undoing harm, as if nothing wrong had ever happened. Payment may be necessitated by failed prevention. Still there is a second chance here as well, by preventing harm ‘as if’ it never happened. Thus regarded retribution in its original sense of full restitution is analogous or even equivalent to prevention of harm.

So analogy is important in analysis of harm, compensation, liability, and prevention. Again bridging principles do the work, demonstrating identity behind semblances of difference, linking factors not at all analogous at first sight.

6 Wrongful death, wrongful birth, wrongful life: priceless?

Too much wrongful harm ‘within’ life may not be adequately compensated for. Wrongful harm transcending life – concerning matters of wrongful birth, life, and death – cannot really be undone at all in principle. Serious or probably the most serious harm however is caused by killing, or at least by wrongful killing. How to determine such harm and related compensation, if such harm may be meaningfully compensated for any way at all? What may be roles here not just of analogy but also of concepts of life, literal and/or metaphorical? Like issues arise in cases of wrongful birth – the mirror image of wrongful killing so to say – and in cases of wrongful life.

First, then, the problem of harm through wrongful killing, so often unspeakably tragic. Such harm relates both to direct victims and to their
more or less intimately related survivors. How to determine harm done to the wrongfully dead, including harm through suffering so often preceding involuntary death? How to determine the difference between life and death? Between a living person and ‘its’ dead body? The following solution may be unsatisfactory for more than scientific reasons:

What differentiates a person from a thing? Not as simple a question as it may appear, yet we all behave as though we know the answer. Our modest experimental approach is to transform persons into things and things into persons, observing what has been gained or lost in the process. A simple way of transforming a person into a thing is by the skilful use of a gun, but this technique is frowned upon as unscientific.

Dead bodies are things inside life, but remain outside life by definition as well. Indeed life being the context of everything meaningful, death, or at least one’s own death, cannot be comprehended as a thing or event in life at all. Death is the end of life at best, at least in a literal sense. Wittgenstein (1921, 6.4311) quoted once more:

Death is not an event in life. Death is not lived through.

Put differently one cannot say, ‘I am dead’, as more or less analogous to ‘he is dead’. In fact even ‘he is dead’ cannot be taken literally, as there is no more ‘he’ left. One’s own death or in fact any death ‘in itself’ cannot be any kind of experience in life. There is nothing like death, or at least there is nothing known about death as death by definition. So any difference between life and death, however fearful death may seem, may not serve in any determination of harm. Which is not to say that there is no difference between life and death.

Or may harm as a consequence of wrongful killing still be determined by the ‘difference’ between two lives, that is, by comparing a normal life expectancy with a wrongfully shortened life? This of course leads back to the standard conception of harm as the difference between two lives. So it is plagued by all the problems noted before, and even more of them. What makes a longer life more worthwhile than a shorter life? Anyway an all too long life or even eternal life would be rather dreary to say the least.

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11 As offered by MacLeod in 1964, p. 63.
12 See also Edwards’s classic contribution to this subject, as published in 1967.
Still this impossibility of determining harm through wrongful killing does not at all imply that wrongful killing does not make a difference. Life is not a suicide club (*bis*). Most people do not want to die, let alone be killed, for whatever reasons. This and nothing else is the main rationale behind moral and legal prohibitions of killing without some or other really overriding excuse like the need for self-defence.

Indeed religious fanaticism violates this basic prohibition of killing on the basis of really harmful analogies of life and death. Thus death is taken to be like life in being some or other kind of afterlife. If virtuous death leads to rewards of eternal bliss in heaven death may not be so bad after all, just as living in hell may be regarded as just punishment for dead unbelievers. But then such analogies of varieties of life and death as afterlife are totally unfounded of course, lacking any bridging principle outside life as it is known. It is deadly belief at best, at odds with any rationality but still showing the enormously suggestive power of wrong-headed analogy. (So much for religion inspired by fear of death and its wilful transformation into eternal life in heaven or hell.)

The prohibition of killing is not just based on normal people’s aversion to premature and oftentimes violently painful death. It is also justified by human aversion to losing near or even distant relations. At least subjectively, harm caused by such losses may be enormous. One’s own death may not be imaginable in principle, other people’s death is a stark human reality. There are real differences between life with loved ones, with family and friends, and life without them, especially in the knowledge of their wrongful suffering and death. At least here such harm may be determined by the ‘difference’ between harmed and unharmed lives. Immeasurable harm in more than one sense is the result in most cases. Is this the reason why most jurisdictions do not offer compensation to relatives’ for deaths ‘as such’? Though damages may be paid for economic contributions ended by wrongful death of relatives of course. Thus damages may be ordered in order to compensate for the loss of a family income earner, in order to at least more or less restore such a family’s financial situation to a state as if nothing wrong happened.

The ideal solution for both victims and their relatives would of course be literal restitution here as well, by reversing MacLeod’s probably unscientific experiment in resurrecting the dead at the expense of their wrongful killers, with extra payment to compensate for harmful pain preceding killing and for lost time in life. This would be realization of original positions after all.

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13 Think here again of Hume’s escape from loneliness as quoted in Section 4.
Again this is impracticable, at least for now. Indeed one thing making deadly crime so chillingly special is its definitive and final doing away with real creditors entitled to whatever restitution and/or compensation by offenders. Which of course is no good reason to let such offenders go free.

Next there is the problem of wrongful birth. This relates to seriously handicapped human life and incurable suffering. How to determine harm in such cases? The relevant difference must be: wrongful life compared to no wrongful life born at all. Again and as in the case of wrongful death, such a difference is meaningless in principle. What is non-life?

Still the problem of wrongful life may be simpler than the problem of wrongful death. The dead may not be resurrected, but the wrongfully born may simply be killed, ‘as if nothing happened’, apart from payment for wrongful harm suffered by parents concerned. This would come down to perfectly undoing harm in principle. But this is probably frowned upon as unscientific as well, or at least as immoral, as it comes down to killing in its turn.

Here difficult issues arise: where are relevant distinctions between abortion and killing very young children, probably being scarcely conscious of who they are and what is happening to them? Again what is the value of life? What is the ‘sanctity’ of a life spent without any conscious meaning whatsoever? As explained before, the ends of life are in life or there are no ends at all (section 4). Raz’s standpoint as expressed in 1991 (p. 94) may be as unpopular as it is rational in the end:

[...] I find it difficult to accept a transcendent value of survival. Life seems not so much intrinsically valuable as a precondition for doing anything valuable. But if so life should not be valued (except on instrumental grounds) except in as much as it is spent in valuable pursuits. There is no intrinsic value in vegetating life. [...] Survival is to be (intrinsically) valuable only if it is used to engage in valuable activities.

Indeed all meaning is in life (see already section 4). So why not end vegetating life, probably spent in serious suffering as well? Still parents and others may very strongly object to any ‘euthanasia’ as the principled solution to problems of wrongful birth. At least as far as the parents are concerned this involves a paradox or even outright contradiction. They did not want the child, wrongly born as it is. But as soon as the harm sets in, or even before the harmful occurrence of birth, they may staunchly refuse to part with it.

14 On this see previously, and most interestingly, Singer, 1995 [1994].
Indeed from parents’ point of view harm done through wrongful birth is the difference between their lives without and their lives in the company of the children concerned. How to determine relevant differences between such lives? And what would make up for such differences in terms of damages, if restoring original positions by eliminating the wrongly born is no option after all? ‘Difference’, ‘damage’, and ‘damages’ are no more than vague metaphors here again, without any clear underlying principles, however starkly real tragedies concerned may be.

And what about the wrongfully born themselves, in as far as they are able to form any conception of themselves and their place in the world? How to live in the knowledge that one ought not to have been born, ought not to be there at all? How are the wrongfully born to determine the harm done to them? Or how to imagine one’s own non-existence? Living without or with compensation expressing their unintentional existence? That is, in as far as severely and oftentimes severally handicapped children reach sufficient levels of consciousness and self-consciousness to conceive of such questions? And so on, and so on, with nothing like any clear answer in sight.

Lastly, wrongful life may be the simplest case in principle, concerning determination of harm. ‘Life itself’ is no longer at stake here. As in the standard case two lives are to be compared, one real and one hypothetical, without interference causing wrongfully harmed life. Still relevant differences may not be reliably established at all, at least because prediction of a full human life is impracticable in these cases as well of course. Restoration of the original position ‘as if nothing wrong happened’ is impossible in such cases anyway. So damages may be paid for harm done to children concerned and to their parents, at least in order to secure a more or less tolerable life. Also such damages may serve as expressions of respect to the harmed, like: ‘Yes, wrong was done, so payment for it is due.’

Again, and of course reflected in positive law and in adjudication, putting prices on human lives is deeply problematic. Lack of quality of life may be restored or at least compensated for by monetary means to a certain extent. But valuing life as life, life being the context of everything valuable in whatever respect, remains deeply problematic. All that may be said is something like: life is valuable as a precondition for anything valuable. So any compensation for life issues is analogous to compensation for harm in life at best. Remember life itself is nothing, and everything.

What is the sense of this analogical analysis of wrongful birth, life, and death issues? Probably not much more than still more bringing their inexorable tragedies to light. The analysis may seem more or less intractable.
Sure enough, but this intractability is not so much an issue of the analysis as of life and death themselves.

7 Man from dog to God – not just so to say

So what is undoing damage by analogy? At least three things. First there is the autonomous ‘logic’ of analogy unmasked. Nothing like argumentation by analogy, precedent, paradigm, or metaphor has any logical force at all. Again this does not imply that there are no analogies, precedents, metaphors, etc. Their differences and identities are determined not by themselves, but by underlying rules or principles. So do not be fooled and do not fool anyone else by taking such argumentation at face value.

Remember that underlying or bridging principles are to be explained and justified in their turn, at least to parties bearing the consequences of their application in adjudication and in other kinds of conflict resolution. Some wrongful harm may be prevented this way, both by avoidance of fallacies and by more adequately justifying consequences for parties concerned.

Second, any such principles may be put in doubt, up to and including doubts about the meaning of life itself. But depressing thoughts on the meaninglessness of life and living may be dispelled by the insight that ‘life’, the ‘meaning of life’, and related concepts are analogical or metaphorical at best, or just non-concepts. So there can be no meaninglessness of life. All meaning is in life. This may not undo all melancholy, but still. Life is to be lived, by basic principles more or less given by life and society itself. Not everything can be put in doubt. Thus even staunch sceptics rightly want their wrongful harm undone by offenders in the first place.

Third, more or less useful semblances of analogy also serve in analysis of harm and amounts of harm, including well-nigh indeterminable and interminable harm done by wrongful death, birth, and life. Undoing wrongful harm is ‘analogous’ to not doing such harm in the first place. Still undoing harm in as far as feasible at all is rather more expensive than doing the right thing from the start in most cases, both for offenders and for victims. Indeed so much wrongful harm is not really undone ‘as if nothing happened’, in as far as such ‘turning back the clock’ is feasible at all.

No doubt such rational recommendations are most helpful on paper, clearing up intellectual confusion. But may propagation of such insights really forestall wrongful harm and thus lead to a better world? This makes one think of one more dog-like set of analogies or even metaphors – leaving out cats, tortoises, and insects this time:
A stationmaster and a passer-by are engaged in casual conversation, while the station master’s dog walks around on the platform. An express train runs past at speed. The dog tries to race the train, in vain of course. The passer-by inquires after any possible reasons, motives, or causes why the dog would do so. ‘I have no clue’, the station master retorts. ‘Actually I’d rather like to know what the dog will do with the train if it ever gets hold of the thing.’

However lucid the analysis of undoing damage by analogy may be, it relates to legal and real-world practice like the dog to the train. No great influence to the better in legal handling of damage may be expected from this contribution anyway. Abstraction galore, so far removed from legal realities and real life.

Thus regarded, efforts are better redirected from scholarly to more useful activities. Try to abstain from doing wrongful harm in the first place, however hard it may be to really determine what is right and wrong, legally and otherwise. And try to undo wrongful harm as well, equivalent as such undoing is to doing the right thing in principle. Do not live and let others live with unnecessary burdens of debt and associated guilt feelings. Debts are to be paid, unnecessary guilt and guilt feelings are to be avoided.

Most harm is left to be borne by victims themselves of course, without any prospects of outside compensation. One last and in fact grandiose set of analogies and metaphors may serve to show how experiences of harm may be transformed for the better.

Harm may make victims feel like proverbial dogs. Sad and harmful thoughts and emotions on the meaninglessness of life may be based on wrong-headed analogies, life being taken for something unjustifiable in life. This and so much more may make one feel depressingly insignificant, small, paltry, and worse. But again life is not a thing, or fact. Life is the ultimately inexplicable ‘context’ of everything. This holds good not just for human life, but also for any individual human life. So man need not feel small, sad, ‘outside the world’. Wittgenstein quoted one more time (1921, 5.621 and 5.63):

The world and life are one.
I am my world [...].

Experiences of unhappiness may feel like absence, as not being there in and with the world. But man is or at least ought to be ‘everything’. If God is everything, then man may be God or at least ought to feel like being a, no more or less than any other human being. Bad logic? Abstract metaphor?
Sure enough, but then no less plausible and consoling for that. Better feel like God than like a dog. So forget yourself, simply be there, ‘be your world’, as Hume so vividly suggested in his doing away with scepticism by simply living (see above, section 4).

But then human or so often inhuman life-worlds are not always that cosy and comfortable at all. So often such worlds may not be changed at will. Still human powers in reinterpreting reality for the better may be unlimited in principle. This is another analogy of man and God, based on a bridging principle of omnipotence. Man may conceive of a life-world in which nothing necessarily is what it is. Not everything needs to be taken literally. Reality does offer so much playroom for the better. Reality may be ‘recreated’ in order to be more acceptable from a human point of view. Setbacks may be seen as challenges, losses may make room for new gains and so much more. Or: let reality shine in the best possible light.

So much harm is self-inflicted, by wrongful interpretation and experience of realities which do not need to be what they seem to be, and by human self-interpretation forgetting that man is or at least ought to be God. At least some harm may be undone this way, by recreating reality as if it never happened. Man offends against himself in the first place, and this is not just a metaphor. Try not to be a victim, try to be the master of your own world.

Remember that all harm comes down to subjective experience in the end, not always changeable at will, but still .... Epictetus tried to convey part of this by noting that everything has two handles. The art of life is finding the right one. When Epictetus lost his lamp to a thief he reacted by pondering whether the thief might make still better use of the lamp and next got himself a simpler source of light.

‘The soul is like a vessel filled with water’ reflecting reality according to the quality of the soul. Paradigmatically metaphorical argumentation here of course, offering real enlightenment still highly relevant in modern lives and times. He even compared life to the Olympic Games, reinterpreting setbacks as challenges to be proudly overcome. Or even to a festival (in about 100 AD, bk. 4, ch. 1, § 108):

God has no need of a fault-finding spectator. He needs those who join in the holiday and the dance, that they may applaud rather, and glorify, and sing hymns of praise about the festival.

Here indeed it is not logic, but heuristics and well-nigh poetic suggestion doing the real work of conveying human possibilities or even omnipotence.
Which of course is not to say that well-nigh infinite varieties of physical and psychic suffering are all amenable to radical reinterpretation for the better at will. Suggestions of reinterpretative omnipotence are not to be taken as belittling of so much suffering. Any undeserved suffering ought still to be undone in the first place. Such undoing may not just be effected by material means, including compensation. Sincere apologies for wrongful harm done may do much good as well. Also, physical, mental, and emotional therapies remain indispensable in many cases. But at least some depression may be more or less healed by trying to become master of one’s own world.

This holds good for reinterpretation of reasons and/or causes behind wrongful harm done as well (as in fact is already implicit in Epictetus’ handling of the stolen lamp). Too much resentment against offenders may sadly and seriously add up to suffering as a consequence of being wrongfully harmed. Human reality may be more positively interpreted. Pain as a consequence of mere accident is more easily borne than pain wrongfully inflicted. As movingly expressed by Rousseau, probably unconsciously following Epictetus in this (in 1782, Eighth Walk):

Whatever our situation, it is only self-love that can make us constantly unhappy. When it is silent and we listen to the voice of reason, this can console us in the end for all the misfortunes which it was not in our power to avoid. Indeed it makes them disappear, in so far as they have no immediate effect on us, for one can be sure of avoiding their worst buffets by ceasing to take any notice of them. They are as nothing to the person who ignores them. Insults, reprisals, offences, injuries, injustices are all nothing to the man who sees in the hardships he suffers nothing but the hardships themselves and not the intention behind them, and whose place in his own self-esteem does not depend on the good-will of others.

Victims are to free themselves from their offenders, qua offenders to be conceived ‘as nothing’. Sometimes semblances of intentional or even mala fide harmful conduct are better reinterpreted as accidental events with unhappy consequences, ‘as if’ offenders did not really do it. At least such offenders are not to be taken too seriously in wrong respects. They may be respected as fellow human beings, but not always as fully responsible offenders setting out to do harm to specific victims. Also, too many victims take anonymous wrongdoing as directed against them personally, and/or

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15 See on this paradigmatically Sacks's telling story about different and in fact sometimes rather indifferent hospital treatments undergone by him after a mountaineering accident (1984).
misinterpret accidental wrongdoing as fully intentional, with again harmful consequences for both victims and offenders. Again this is far from totally effective against so many varieties of victimization, and still less anything like complete practical wisdom of course.

Reinterpretation of seemingly saddening realities does not imply that there is no reality left at all. Trying to make everything relative and subjective, as if nothing is what it is, leads to loneliness and worse. Indeed there is no ‘we’ without reference to truth and falsity with respect to a common reality.\(^{16}\) This goes rather further than unquestionable chairs to sit in. This common reality has to be taken for what it is in so many respects. Not respecting inevitable facts leads to frustration only. In fact positively interpreting the world starts with acceptance of ultimately unchangeable givens, to be charitably reinterpreted. Such benign relativism is the total opposite of any sceptical relativism and its indifference to what there is and may be for the better.

Nothing needs to be what it is. What is the meaning of everything? To be as good and beautiful as it may be. ‘Ethics and aesthetics are one’ (as Wittgenstein famously noted in 1921, 6.421). Man makes the meaning of everything. So make the best of it. Nothing in life needs to be what it is on sometimes so ugly faces of it. Thus analogy and metaphor may be as logically redundant as they are indispensable for any human life and any human relationship in and with the world. Indeed the very reason why there is nothing like argumentation by analogy and the like is the very same reason why the world may be positively reinterpreted after all: everything resembles everything in an infinite number of respects. So leave your intellectual pets like the logic of analogy and worse – and some more real bugs – behind.

**About the author**

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\(^{16}\) As so convincingly explained once more by Frankfurt, in 2006.