

Normativity: A Matter of Keeping Score or of Policing?

BERNHARD WEISS

ABSTRACT

Both Brandom and Wittgenstein see meaning and content as emerging from normative social practices. Wittgenstein says little about the constitution of such norms, other than that they are exhibited in practitioners' judgements of correctness. In addition, they appear already to be content involving, since the moves whose correctness is in question are moves such as *asserting that such and such*. In contrast, Brandom says a good deal about the constitution of the norms and promises a reductive programme. The norms are essentially inferential and are instituted in the social practice of attributing commitments and entitlements. In particular, we are urged to see the norm-bound move of assertion as capable of being understood in terms of the normative statuses of commitments and entitlements. Jeremy Wanderer calls this Brandom's bold conjecture. In this paper I use Wittgenstein's thinking about normativity to reflect on the defensibility of Brandom's bold conjecture.

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HERE'S HOW I READ THE PROJECT Bandom presents in *Making it Explicit*. We begin with a description of a normative practice, that is, a practice in which a participant is able to perform a range of actions —moves— that result in her adopting a certain normative status, or, perhaps better, each move, at least potentially, alters her current normative status. The normative practice is sustained by sanctions which properly apply to moves which are not entitled or to failure to perform moves to which the participant is committed. So the basic deontic statuses are those of commitment and entitlement. These are instituted through participants' monitoring of one another's performances, a feature of the practice which Bandom captures in the business of scorekeeping, namely, the procedure which participants employ to track one another's normative status. For Bandom, as I think for Wittgenstein¹, the normative practice is a linguistic or discursive practice, when sufficiently structured and complex (when, for instance and for Bandom, there is *inter alia* a transfer of commitment and entitlement between participants, and when these are sensitive to non-linguistic context and to non-linguistic activity). In this paper, my main aim will be to drive a wedge between Bandom's and Wittgenstein's conception of how to conceive of practitioners' monitoring of one another's practice. And in drawing attention to this separation, I aim to offer support to Wittgenstein's conception.

For now, let's focus on Bandom. A move, I take it, is describable without employing normative vocabulary. Thus described it is apt to be normatively assessed. So, for instance, Wanderer talks of moves involving placings of counter types, Loeffler talks of "types of vocalisations, gestures, bodily movements, moves of figures on a board" (2018, p. 58). So a move is a kind of doing involving a type

¹ Though McDowell (1987), for one, would demur, since he doesn't think that the normative linguistic practice admits of adequate description independently of content involving notions such as assertion.

of item, which determines the identity of the move. The same move may be performed on different occasions by performing the doing that is a move and employing in that doing items of the same type. So far as I can see, there is one kind of doing, and thus the identity of the doing is fully determined by the type it employs. I see no reason for insisting on this as a general conception of a normative practice, but since, ultimately, we are to see the practice as one of making assertions, this will equate to seeing the kind of doings as assertings. But this is for later. And, as we'll see, I think this is a view Wittgenstein would reject.

The main pragmatic aspect of Brandom's thought can now be seen to emerge, since, once the normative practice and its accompanying scorekeeping practice are described, we can begin to flesh out the details of how a move will alter a participant's deontic status in virtue of the normative relations that the move bears to other moves (whether performed or not). These relations we will be able to see as inferential relations, and the details of this story emerge in Brandom's inferential semantics.

So the passage is from the normative pragmatics—the account of a normative practice which is a discursive practice—to the inferential semantics: from rules to meanings, as the title of a recent collection on the programme has it (Beran et al. 2018). In other words, the account of the normative practice provides the resources to capture the fundamental concepts—those of inference and assertion—in terms of which content is explicated. We achieve a reductive account of meaning or content in strictly normative terms. It would thus seem, at first sight, that the normative pragmatic account should not make use of the deliverances of inferential semantics. But things need not be quite so straightforward. The two aspects of the programme might interlock in a complex way, with directions of dependency running in either direction, provided that no circularity emerges and no question is begged.

Now I've noted that numerous presentations of the programme conceive of moves as doings employing items of certain types, which individuate the moves. It's easy to see that this technique of presentation has its virtues. For it gives the reader an apparently firm grasp of doings in the normative practice without presupposing access to the meaning or content of those doings nor of their properties as mapped out in the inferential semantics. So it allows for a smooth movement *from* the normative pragmatics *to* the inferential semantics, which is just what the logic of the programme seems to require. But it is important to realise that this is a simplification, not to say falsification, of anything resembling a linguistic practice. As Brandom and his expositors are well aware, co-typicality of items employed in different (token) moves is neither necessary nor sufficient

for these to count as the *same* (type of) move². Numerous features of language, such as tenses, indexicals, demonstratives and anaphora, allow expression of the same proposition in different contexts using type non-identical items. Such moves ought to be seen as the same prior to the spectacle made apparent by sensitivity to content. And, vice versa, items of the same type may be used in different contexts to express different propositions. Such moves ought not to be seen as the same, again, independently of the view arising from sensitivity to content.

Let me digress slightly here to consider perspective. Brandom's thought is thoroughly alive to issues of perspective, differences of perspective are incorporated both in the scorekeeping practice and in the inferential semantics (especially, in the discussion of *de re* versus *de dicto* attitude ascriptions; and in the account of knowledge claims). In scorekeeping terms, differences of perspective are catered for by sensitivity to differences between, e.g., commitments a participant undertakes and those which she acknowledges. Thus there will be differences in the deontic state that a participant will ascribe to herself and those which a scorekeeper may ascribe to her. This constitutes a kind of cognitive or epistemic difference in perspective. But there is another kind of difference of perspective: an expressive difference. What can be expressed and how it can be expressed from one perspective differs from what and how it can be expressed from another perspective. I'm not suggesting that Brandom is not alive also to expressive differences in perspective. Quite the reverse: inferential semantics is very careful about these differences. The concern I aim to develop is that the issue needs to be addressed already in normative pragmatics.

Let's jump ahead to look at an aspect of inferential semantics. When it comes to the application of inferential semantics to (subsential) terms, the crucial notion is substitution. Terms have indirect inferential roles through the inferences sustained when that term is substituted for or by another. And, importantly, we learn that the distinctive feature of singular terms is that they sustain only symmetric substitutional inferential relations; whereas predicates sustain relations which need not be symmetric. However, a problem arises with, for instance, deictic terms since these are not token repeatable: a use of "that dog" in a particular context is not in general repeatable and, certainly, if it is repeatable, this is a rare exception. But terms which cannot be repeated cannot be substituted, since, obviously, substitution involves re-use³. So token non-repeatables have no substitutional inferential role and are thus meaningless on

² Brandom MiE, p. 450; Wanderer 2008, pp. 125-6; Loeffler 2018, pp. 107-8.

³ This is at least clear for the notion of being substituted-in, perhaps not, for being substituted-for.

the inferentialist view which construes meaning *as* inferential role. As Brandom says,

Substitutional commitments relate to token repeatables. So unrepeatable tokenings must be sorted accordingly as some count as recurrences of others in order for any of them to have the sort of indirectly inferential significance in virtue of which their production can contribute to making a move in the language game. (MiE, p. 459)

And slightly later in the discussion of demonstratives:

[A] demonstrative tokening as such is unrepeatable; substitutional commitments govern repeatable expressions —those that can occur in more than one sentential context and that can be replaced in each context by others....If demonstrative tokenings could not recur, then they could play no substitutional role. They would in that case be semantically and cognitively idle. (MiE., p. 462)

Brandom's solution is to recruit the notion of anaphora in explaining how even token non-repeatables can recur, can have recurrence classes. So consider the following dialogue:

1. Mo: That dog is Bella's pup.
2. Flo: He's her what?
3. Mo: He's her pup.

Here the token of "that dog" in line 1 —in Brandom's terminology, /that dog/₁— recurs in lines 2 and 3, through the anaphorical link it bears to tokens of "he" in those lines: /he/₂ and /he/₃. Likewise /her/₂ and /her/₃ are recurrences of /Bella's/₁. So there are (at least) these recurrence relations: *Recur*(/that dog/₁, /he/₂); *Recur*(/that dog/₁, /he/₃); *Recur*(/Bella's/₁, /her/₂); and *Recur*(/Bella's/₁, /her/₃). Thus, although Mo makes two utterances, these count as the same type of move/utterance since terms recur from one utterance to the other and recur embedded in the same manner in the same structure⁴.

⁴ I do have a concern about Brandom's account here. There seems to be a tension between his account of the nature of the anaphorical link —what it accomplishes— and his application of it to deictical expressions to secure their substitutional-inferential roles. For, on the one hand, the link is one in which the anaphorical dependent *inherits* its substitutional role from that of its antecedent; and on the other

To be sure, Brandom's concern here is with ensuring token repeatability of *terms* because the notion of substitution demands repeatability. Above I was talking about repeatability of moves —equivalently, sameness of moves— which may not be subject to the same motivation. Granted, but I think the reason just enunciated shows that token repeatability of move ought to be a consequence of token repeatability of terms and, moreover, a welcome one. It is hard to see how the notions of commitment and entitlement would apply to a move which cannot be repeated. And conversely, until we have a conception of sameness of move, commitments and entitlements (to moves) are ill-defined.

Thus, by drawing on some of the resources of inferential semantics, in particular, the notion of anaphora (in relation to phenomena such as deixis), we can substantiate a notion of sameness of move. At first sight this seems fine. Recurrence isn't itself a semantic relation and, by charting the relations of recurrence between terms, a scorekeeper can keep track of when one move is the same as another. But the situation warrants more careful thought. We need to look at the scorekeeper's practice in this new light, specifically, at her recording of moves, the notion of sameness of move and her recognition of sameness of move.

Let's take these issues in turn. First, recording of moves; rather than characterising practitioners as committed (or entitled) to (type) sentence *s*, the scorekeeper will have to shift to something like: Flo is committed (entitled) to *s* in context *c* and to moves which count as the same. A first problem relates to the context variable. Although we are supposed to see the business of scorekeeping as one which is engaged in implicitly —and so presupposes no explicit propositional knowledge— I can't see how to make sense of this idea once we need to *record* context. Implicit scorekeeping is manifest in scorekeepers' practice and, in particular, in their application or withholding of sanctions. So it is a capacity applied to moves within the practice made *in context*, and this is precisely how many of us view linguistic understanding. But the record of Flo's commitment isn't just a capacity exercised *in context*, it is a record *of* context which is then made available in some *other* situation. Given that it is a hard theoretical question to make explicit contextual features of an utterance which are relevant to its interpretation (and so to relations of deixis and anaphora) it seems far-fetched indeed to imagine that scorekeepers are able to record these

hand, the deictical expression has no substitutional role independently of its anaphorical recurrence class. Clearly, the latter cannot depend on the temporal precedence of the former; rather, *somehow* (though I'm not sure how), the range of possible anaphorical linkages of the demonstrative to its anaphors give the former a substitutional inferential role which it shares with those very anaphors.

contextual features.

Allow me to clarify the objection by considering this response. Scorekeepers, it turns out, are speakers. And, as competent speakers, we are sensitive to contextual features which bear on the proper understanding of an utterance. So here we attribute no more to the scorekeeper. The difference is however this. The scorekeeper assesses moves for correctness and, on Brandom's model, any move must be assessed against the background of a practitioner's other commitments and entitlements. In fact, the move is first incorporated by detailing the consequent alteration in a practitioner's overall score and then applying or withholding sanction to the move. So the practitioner's commitments and entitlements must be available to the scorekeeper at this later stage; these inform her practice of applying sanctions. But this means that the context, as it features in those records, is not merely a capacity exercised with due sensitivity to the context *in which* it is exercised, it is a record *of* context made available to her keeping of score in some other context. This is a very different capacity to that we attribute to speakers and one which seems to require, not merely a sensitivity, but an awareness of contextual features which is utterly implausible.

My suggestion for the scorekeeper's record of the commitment (entitlement) also makes mention of the criterion of identity for moves. Once again, that criterion would be made apparent in fully developed theories of anaphora, deixis and tenses (amongst others). I think the remarks about context apply to this criterion too. Of course, speakers implicitly grasp the criterion in their appraisal of speech acts; but what we have here is not merely the appraisal of speech acts (as the same move or different moves in the normative practice); but a record of a range of (token) moves to which the practitioner is committed (entitled). These feature in her calculation of the practitioner's deontic status and thus the scorekeeper must be credited with an awareness of the criterion of identity, which transcends the mere capacity to assess one (token) move as being the same or different to another.

I think the underlying problem here is the holistic nature of scorekeeping. For it means that keeping score, which underlies the normative nature of the practice, has to be seen as an artifice, as a pretence. As MacFarlane (2010) makes very clear, the normative statuses of commitment and entitlement are devices employed by the scorekeeper to keep track of practitioners' scores⁵. They aren't themselves commitments and entitlements to *do* anything; which is why both Brandom and his expositors talk of them as commitments and entitlements to things, to types; one is committed or entitled to a sentence, not to asserting a

⁵ See below for more discussion of this point.

sentence. Normative assessment of action only emerges in the application or withholding of sanction *after* the holistic assessment of a speaker's overall deontic status. That is, the scorekeeper can only react to a move once she's factored that move into her calculation of the speaker's various commitments and entitlements, which thus only play a role in keeping track of a speaker's score. I'll return to this below.

Brandom's treatment of anaphora is, specifically, not an account of how speakers recognise anaphorical links; it is an account of the nature of those links. There's no problem, so far as I can see, in that account at the point at which it is developed in *Making it Explicit*. For there, Brandom is deeply enmeshed in developing inferential semantics against the presumed background of normative pragmatics. But that alters radically if anaphora becomes of interest in the scorekeeping practice and thus in the normative pragmatics; since there it needs to be guaranteed that anaphorical links can be recognised (and so employed in assessments of recurrence) independently of judgements about content. However, it is surely thoroughly implausible to suppose this possible⁶. Consider the following cases:

1. Tom gave Dick the posy; but he didn't like it.
2. Tom gave Dick the posy; because he didn't like it.
3. Tom gave Dick the posy; because he liked it.

There is clearly an issue about how the occurrences of "he" in each of these sentences is to be read: is it anaphorically dependent on the prior occurrence of "Tom" or of "Dick"? As I read the sentences it is anaphorically dependent on "Dick" in the first and third sentence but on "Tom" in the second. How do I make those judgements? Presumably I do so, by testing the plausibility of the possible interpretations in context. But, if this is anything like right, then recognising anaphoric links and so assessing relations of recurrence is not something that can be done prior to accessing content. And this means that assessing recurrence, though required by keeping score, is not available to the scorekeeper. So scorekeeping is impossible⁷.

⁶ See MiE, p. 460, where Brandom seems to highlight just this point.

⁷ Whereas McDowell (2005, pp. 128-9) argues that we have no right to see moves in the norm-governed game as assertions; I've argued that, if they resemble moves in discursive practice, the very notion of move (of same move) is unavailable to the scorekeeper. My argument hinges on the observation that sameness of move is not a syntactic notion, but presupposes semantic relations. McDowell thinks that in

In another context, Wittgenstein speaks about “[a] queer conception arising out of a tendency to sublime the logic of our language” (1958, §38). I think scorekeeping is another manifestation of this tendency. This ought to sound like an odd accusation. After all, the logic of our language is, in good pragmatistic fashion, grounded in consequential normative relations between moves; however these, in turn, are grounded in another practice, that of scorekeeping. And the problem is that this practice is ulterior to the practice of using a language. And this is how the logic of our language is sublimed. The pretence of scorekeeping, I hope to have shown, unravels; but it is, from inception, sustained by intuitions which ought to jar with pragmatism. For one, the practice is itself solitary; we might, for instance, imagine scorekeepers using entirely different techniques to keep score: placing counters in labelled commitment and entitlement boxes (Wanderer 2008); marks on a whiteboard (Loeffler 2018). True, scorekeeping eventuates in assessments incorporated in the communal practice; but it does so by holistically manipulating, what I want to call, a body of information in solitary fashion. And the availability of that “body of information” appears to depend on Representationalist assumptions, specifically, the scorekeeper is presumed to be able to label moves. Though I think this is already problematic in the simple presentations which take moves to be individuated by the type of entity deployed, I’ve tried to argue that it is unsustainable when we consider a practice which bears resemblance to a discursive practice.

I think the crucial commitment leading to this situation is Brandom’s conception of an autonomous discursive practice (ADP) as one involving only one type of move, a type which we can come to see as assertion. Let me explain.

Brandom and Wittgenstein agree that we need to reject the idea that grasp of a rule is grasp of an interpretation. The regress of interpretations shows this conception of normativity—what Brandom calls, “regulism”—to be a confusion. So ultimately rules are grasped implicitly:

What this [the regress of interpretations] shows is that there is a way of grasping a rule which is *not* an interpretation... (Wittgenstein 1958, §201)

Thus far Brandom and Wittgenstein keep company. But Wittgenstein goes on to say that grasp of a rule which is not an interpretation “is exhibited in what we call ‘obeying the rule’ and ‘going against it’ in actual cases” (*loc cit*). I take this

order to see moves as assertions we need to see them as serving social ends such as informing, which is content involving. So we agree that scorekeeping cannot ground discursive practice without illicitly helping itself to notions of content.

to be Wittgenstein claiming that there is no norm-governed practice simpliciter. Any norm-governed practice needs to include a practice whose role is to monitor moves in the practice. Let's call this the policing practice. Brandom, I think, sublimates the policing practice in that of scorekeeping. According to Brandom, moves within the policing practice are auxiliary moves and, though we can allow for them in normative practices, an ADP *need* only include assertions⁸.

*Disavowals, queries, and challenges*⁹ are three other speech acts auxiliary to assertions that it is *useful* [my emphasis] —from a scorekeeping point of view— to include in a model of the game of giving and asking for reasons. (MiE, p. 192)

I want to use Wittgenstein's work to claim that these moves, moves of calling out one another's moves as correct or incorrect, are essential to norm-governed (note, not necessarily discursive) practice¹⁰. Finally, I'll turn to some comments on how things alter when scorekeeping is jettisoned in favour of a policing practice.

There is a very different emphasis in Brandom's and Wittgenstein's discussion of norm-governed practices. I've portrayed Brandom's discussion as one in which we imagine practitioners keeping score on one another, thereby assessing one another's moves and applying or withholding sanctions as appropriate. I don't think this distorts the presentation (in both Brandom and his expositors); it is one in which we consider fully functioning practitioners. Wittgenstein, in contrast, frequently thinks about induction into a norm-governed practice: how the induction is carried out and what it achieves. He points to the use of examples and illustrations of use when explanations and justifications run out. The learner's performances are monitored; assessments as correct allow her to go on,

⁸ See MiE, p. 192; Loeffler 2018, p. 67. Isn't it strange that a discursive practice, a practice of *assertion* is also described as the practice of giving and *asking* for reasons?

⁹ In much discussion of the normative practice, it is assumed that challenge to a move consists in making an incompatible move. But this can't always be so: I may object to your move, not because I am committed to an incompatible move, but simply because your move apparently lacks entitlement. Again, I think that one is tempted to conceive of challenge in terms of incompatibility if you see all moves as assertions. For then my challenge to your assertion needs to be an assertion incompatible with yours. No other assertion —at least not one which doesn't make use of notions like *reason*, *inference* and *justification*— can bring your assertion into question.

¹⁰ In my (2010) I argue at greater length that Wittgenstein sees the policing practice as essential to normative practices and in my (2018) I argue that there needs to be a move of retraction (or disavowal). Retraction, I argue, is essential because it distinguishes the retrospective nature of normative assessment from the purely prospective nature of mutual encouragement and discouragement.

as incorrect hold her back.

The words “right” and “wrong” are used when giving instruction in proceeding according to a rule. The word “right” makes the pupil go on, the word “wrong” holds him back. (Wittgenstein 1978, VII, 39)

Though no episode of instruction is proof against misunderstanding, we ought not to see this as entailing that understanding transcends what is made available to the learner —the learner is not expected to “guess the essential thing” (Wittgenstein 1958, §210). Rather, grasp of a rule needs to be seen against the essential precondition of custom and habit, sustained by the brute fact of agreement between practitioners.

There are two important points for us here. The first is that Wittgenstein takes monitoring of performances to be an *essential* feature of the practice¹¹. And the second is that this element of the practice has a distinctive role in training learners, in teaching how to follow the rule. Because of this, the situations in which use is monitored, are situations in which what is being tested, is grasp of the rule. Policing use need not be performed against a background of other attributed commitments and entitlements, other deontic statuses; this isn’t a holistic enterprise. To be sure, a situation may fail to allow this: a learner’s use of, say, a colour term may not be capable of being assessed properly because she misperceives some aspect of the set-up. But this rarely happens: teacher and learner generally appreciate the situation in similar ways and are able to proceed in concert.

¹¹ It is true that Wittgenstein does appear to concede the contingency of training; but where he does so he retains the essential nature of monitoring practice:

But couldn’t we imagine that someone without any training should see a sum that was set to do, and straightaway finds himself in the mental state that in the normal course of things is only produced by training and practice? So that he knew he could calculate although he had never calculated. (One might, then, it seems, say; The training would be mere history, and merely as a matter of empirical fact would it be necessary for the production of knowledge.)— But suppose now that he is in that state and calculates wrong? What is he supposed to say to himself? And suppose he then multiplied sometimes right, sometimes again quite wrong.— The training may, of course, be overlooked as mere history, if he now *always* calculates right. But that he *can* calculate he shews, to himself as well as to others only by this, that he *calculates* correctly. (Wittgenstein 1978, VI, 33)

Though, in such a case, there may be no training involved in induction; this is only shown (to the practitioner himself and other practitioners) through monitoring of his practice as correct.

Disputes do not break out ... over the question of whether a rule has been obeyed or not. People don't come to blows over it, for example. That is part of the framework on which our language is based... (Wittgenstein 1958, §240)

No teaching situation is proof against failure; every teaching situation depends on a background of similarity of response. But we ought not to build that background into the “perspectives” of practitioners; we ought not to see a practitioner's use only against the setting of her “perspective”.

Now it might be argued that Brandom need deny none of these aspects of following a rule, of norm-governed behaviour. One might say that the elaborate business of scorekeeping presupposes the institution of norms and explains how these are monitored by practitioners in a practice which can, ultimately, be seen as discursive. And one might be encouraged to think this by the fact that the scorekeeper uses deontic statuses —those of commitment and entitlement— which, presumably must, therefore, be extant in the practice.

I don't think this is the right way to read things for two reasons. First, as MacFarlane (2010) notes, commitments and entitlements as they figure in the scorekeeping practice are commitments and entitlements to types of entity; they aren't commitments and entitlements to doings. So they relate only indirectly to proprieties governing doings in the practice. And Brandom notices as much; in a passage quoted by MacFarlane he revealingly says:

Deontic statuses are just something to keep score with, as balls and strikes are just statuses that performances can be treated as having for scorekeeping purposes. To understand them, one must look at actual practices of keeping score, that is, at deontic attitudes and changes of attitude. (MiE, p. 194; quoted by Macfarlane at 2010, p. 91)

So we needn't think of the scorekeeping practice as parasitic on the prior institution of norms; rather it issues in norms because its upshot is the assessment of moves as appropriate or not. The proprieties of practice emerge from the assessment of moves in the practice; and the assessment of moves takes place via the scorekeeping practice. Here's MacFarlane:

To take a subject *A* to be committed to *p*, then, is to attribute to oneself entitlement to sanction *A* unless *A* is entitled to commitment to *p*. The talk of “entitlement to sanction” here is deontic in the strict sense; it concerns permission to act in a certain way. However, “entitled to a commitment to *p*” in the explanans remains unexplained. What we need is an explanation of the attitude of attributing entitlement to commitment to *p* —one that does

not presuppose prior understanding of commitment to p or (on pain of circularity) the attribution of commitment to p . (MacFarlane 2010, p. 93)

And he goes on to conclude that Brandom's pragmatism depends on an ability to explain the attitude of attributing a commitment to p in terms of genuinely pragmatic notions such as the entitlement to sanction. I think MacFarlane is convincing on this point. The success of Brandom's programme depends on seeing scorekeeping as eventuating in the attitudes which institute norms.

My argument here has been that this is not a possible programme. Scorekeeping presupposes what it sets out to explain, that is, we can only understand the scorekeeper's practice—in the end, her attribution to herself of entitlements to sanction—by supposing she is sensitive to aspects of the content of moves in the practice. I think there is an alternative model available and that is to treat the practice as involving a policing practice. If we do so, we consider moves which are genuinely pragmatic: they are entitlements or commitments to *do* certain things. Moreover, the approach to meaning is direct and not indirectly holistic. It involves the establishment of norms for the use of terms.

What are the doings which attract normative appraisal? There's no general answer to this question because there is no limit to the range of normative practices we might imagine. Of course, Brandom is right that when we turn to discursive practices, assertings will be a, perhaps the crucial kind of doing. But the crucial difference when considering the normative appraisal from the perspective of a policing practice, rather than from that of scorekeeping, is that here we need only consider a capacity exercised in context (with due sensitivity), not one involving a record and therefore awareness of relevant context.

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