

PONDERING  
ON PROBLEMS OF  
ARGUMENTATION

Twenty Essays on Theoretical Issues

*Edited by*  
Frans H. van Eemeren  
Bart Garssen

 Springer

## PONDERING ON PROBLEMS OF ARGUMENTATION

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## **Twenty Essays on Theoretical Issues**

Frans H. van Eemeren • Bart Garssen  
Editors

*University of Amsterdam, The Netherlands*

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# Preface

When preparing this collection of twenty essays we gratefully used as our source the *Proceedings of the Sixth Conference of the International Society for the Study of Argumentation* (ISSA) published by SIC SAT in 2007. These ISSA Proceedings provide a rich overview of what is currently going on in the study of argumentation and they offered us an abundance of interesting contributions to choose from. We thank SIC SAT (Scholarly International Centre for the Stimulation of Argumentation Theory) for its generosity in making this source available to us.

In making a selection for *Pondering on Problems of Argumentation* we were led in the first place by our wish to present a collection of papers that would give our readers an insightful and more or less balanced view of the kind of theoretical issues argumentation theorists are currently concerned with. It goes without saying that a balanced view can never be a complete overview. Fortunately the ISSA Proceedings are still available electronically and, in addition, another volume has been published based on the ISSA Proceedings that contains a selection of ISSA papers dealing with *Controversy and Confrontation* (John Benjamins, 2008).

We thank all contributors to *Pondering on Problems of Argumentation* for being prepared to amend and expand their papers in agreement with the comments made by the reviewers and for acting as reviewers when invited to do so. It goes without saying that we also want to thank all reviewers for their valuable comments. Our assistants Halvor Berggrav and Renske Wierda deserve our gratitude for their invaluable technical assistance.

Frans H. van Eemeren  
Bart Garssen

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# Problems of Argumentation: An Introduction

Frans H. van Eemeren and Bart Garssen

In *Pondering on Problems of Argumentation* twenty essays are collected that deal with theoretical issues in the study of argumentation. Although the list of theoretical issues discussed in these essays is by no means comprehensive, the issues that are treated are certainly representative of the kind of problems the international community of argumentation scholars is pondering on at the moment. Characteristically, this international community includes scholars from different academic backgrounds, varying from classicists, philosophers, and linguists to logicians, and social scientists. These scholars favour different approaches to argumentation, varying from formal and dialectical approaches to informal and rhetorical pragmatic approaches. Because most of the perspectives on argumentation that are en vogue are represented, this volume provides a multidisciplinary – and as far as different approaches are combined even interdisciplinary – outlook on the current state of affairs in argumentation theory.

In all contributions to *Pondering on Problems of Argumentation* the emphasis is on sharing theoretical reflections on argumentation rather than presenting the results of empirical experiments, qualitative analysis, case studies, or applications of theoretical instruments. Some of the contributions deal with problems of argumentation that have been recognized as theoretical issues for a considerable time, like the problems of fallaciousness and identifying argumentation structures. Other contributions discuss issues that have become a focus of attention only recently or regained their prominence, such as the relationship between dialectic and rhetoric, and the strategic use of the argumentative technique of dissociation. In line with new developments that have taken place, a new input to the theoretical study of argumentation is offered by researchers coming from disciplines that have matured during the past decades, such as pragmatics and discourse analysis. All the same, scholars stemming from long-established disciplines, such as the classics, also play a part in the renewal by shedding a new light on the problems of argumentation. For all contributions goes that their authors really ponder on problems of argumentation without claiming to have found the final theoretical solution to these problems. As it should be in the study of argumentation, all essays that are presented here are fully open to criticism.

The selection of essays we have made for inclusion in this volume reflects, of course, in the first place our own preferences. All the same, we think that this selection presents the readers at the same time with a fair overview of what is currently going on in the area of theorizing about argumentation. The five sections in which we have divided the essays reflect five spheres of interest that are different, but interrelated in many ways. The first section contains essays by authors with a shared interest in argumentative strategies: Frans H. van Eemeren and Peter Houtlosser, A. Francisca Snoeck Henkemans, M.A. van Rees, and Cornelia Ilie. The second section is devoted to problems of norms of reasonableness and fallaciousness; it consists of a varied series of essays by Scott Jacobs, Daniel J. O'Keefe, Trudy Govier, and Dale Jacqueline. The third section includes essays by authors with somewhat different approaches to the connected notions of types of argument and argument schemes: Manfred Kraus, Bart Garssen, Marianne Doury, and Eddo Rigotti. The fourth section combines a diverse range of essays pertaining to the structure of argumentation by G.C. Goddu, James B. Freeman, Andrea Rocci, and Leo Groarke. Finally, the fifth section discusses from various perspectives rules for advocacy and discussion and brings together essays by Erik C.W. Krabbe, Jim Gough, Thomas Goodnight, and Jean Goodwin.

## **Argumentative Strategies**

A first theme receiving a lot of attention in present day argumentation theory is the connection between dialectical and rhetorical insights. For a long time there has been a complete division between the dialectical and the rhetorical perspectives on argumentation. The protagonists of both the dialectical approach and the rhetorical approach seemed to have their own paradigms, and these paradigms were mutually isolated. A considerable conceptual gap existed between these argumentation scholars and they were, in fact, not communicating with each other. During the last decade, however, some important changes have taken place, which have led to various serious attempts at reconciling dialectic and rhetoric theoretically. These attempts often involved turning back to the classical roots of the two approaches to argumentation that are now competing, and to return to the constructive division of labour indicated by Aristotle.

Generally speaking, among dialectically minded and linguistically oriented argumentation theorists a much greater awareness has come into being of the importance of rhetoric due to their increased interest in the strategic functions of argumentative moves. Some argumentation scholars concentrating on strategies of argumentation combine an interest in pragmatics and discourse analysis with a renewed scrutiny of classical and modern rhetoric. The pragma-dialectical argumentation theorists use the notion of strategic manoeuvring to bridge the gap between the dialectical and the rhetorical perspective and include insights from rhetoric systematically in their dialectical approach (van Eemeren and Houtlosser, 2002). This development has led in pragma-dialectics to new explorations of the strategic function of the use of

well-known argumentative techniques such as dissociation and the use of rhetorical questions.

In “Seizing the occasion: Parameters for analysing ways of strategic manoeuvring,” Chapter 1 of this volume, Frans H. van Eemeren and Peter Houtlosser examine the parameters for establishing the strategic function of particular ways of manoeuvring in argumentative discourse. First, they use the theoretical notion of an “analytic overview” to take account of the results that can be aimed for in making an argumentative move. Second, they use the theoretical notion of a “dialectical profile” to consider the routes that can be taken in the discourse to get to these results. Third, they make use of the theoretical notion of “activity types” to include in the analysis the constraints imposed on the strategic manoeuvring by the more or less institutionalised context in which the move is made. Fourth, they rely on the theoretical notion of “commitment sets” to incorporate the obligations the parties have acquired in the discourse that define the argumentative situation. As a case in point, van Eemeren and Houtlosser illustrate how these four parameters play a part when characterizing the function of a certain way of strategic manoeuvring. They do so by analysing the manoeuvring aimed at influencing the outcome of the procedure for making an unexpressed premise explicit in the Moosbrugger case that Robert Musil described in *Der Mann ohne Eigenschaften* [The Man without Qualities].

In “Manoeuvring strategically with rhetorical questions,” Chapter 2, A. Francisca Snoeck Henkemans investigates what role the stylistic device of a rhetorical question can play in the attempts arguers make to reconcile their rhetorical aims with their dialectical aims by manoeuvring strategically. In the research project Snoeck Henkemans reports about, insights from classical rhetoric, pragmatics and modern stylistics are used to explore the possibilities for strategic manoeuvring by exploiting presentational means, such as rhetorical questions. In the literature three functions are ascribed to rhetorical questions in argumentative contexts: they are used to put forward standpoints or to put forward arguments and in the opening stage of a discussion they can be used to make a proposal for a common starting point. In her contribution, Snoeck Henkemans gives an analysis of the way in which rhetorical questions can fulfil these functions. She examines what dialectical and rhetorical goals might be served by executing certain moves by means of a rhetorical question rather than by other means. Snoeck Henkemans concludes by indicating how the types of strategic manoeuvring in which rhetorical questions can be instrumental may derail and in which violations of the rules for critical discussion such derailments result.

In evaluating strategic manoeuvres in the context of a critical discussion, the central question is whether these manoeuvres can stand the test of reasonableness. In “Dissociation: Between rhetorical success and dialectical soundness,” Chapter 3, M.A. van Rees considers various answers to the question when and why strategic manoeuvring with dissociation is sound and when it transgresses the bounds of reasonableness. After a brief discussion of dissociation for strategic manoeuvring, she looks first at how a number of scholars outside pragma-dialectics – Schiappa, Stevenson, Walton, and Aberdein – have approached this question. Then she explains

how the question is answered in pragma-dialectics. Van Rees concludes her contribution with a reflection on the merits of the various approaches.

In “Strategies of refutation by definition: A pragma-rhetorical approach to refutations in a public speech,” Chapter 4, Cornelia Ilie’s aim is to deal with refutation strategies that make use of argumentative definitions. Speakers often appeal to definitions to reinforce the power of their arguments or to refute their opponents’ arguments. According to Ilie, definitions that challenge widespread prejudices and stereotypes are generally perceived as powerful, especially because they often complement each other. The approach taken by Ilie lies at the interface between pragmatic and rhetorical analysis. She illustrates her analysis of strategies of refutation by definition with examples from Emmeline Pankhurst’s speech on women’s right to vote entitled *Militant suffragists* and delivered in Hartford, Connecticut in 1913. Pankhurst’s argumentation consists to a large extent of refutations based on definitions that define and re-define her political role and deep commitment to the cause of the suffragists.

## **Norms of Reasonableness and Fallaciousness**

Examining norms of reasonableness and tracking down fallacies that are not in agreement with these norms is one of the main tasks of argumentation theorists. Some argumentation scholars nowadays connect fallaciousness and non-fallaciousness with norms of constructive argumentative communication that go beyond the norms traditionally considered by argumentation theorists, even if they had already replaced a purely logical perspective on the fallacies by a broader framework of norms. There is also a growing interest among argumentation scholars in comparing theoretically motivated ideal norms for conducting argumentative discourse with the standards ordinary arguers seem to maintain when accepting arguments in real-life situations as persuasive or rejecting them as not acceptable. Among formally oriented argumentation theorists a challenging question is whether it is really necessary to make a division between fallacies that can only be dealt with by means of an informal approach and fallacies that lend themselves to a formal treatment. Considering this question may even lead to questioning the existing division between formal and informal approaches to argumentation.

Scott Jacobs argues in “Nonfallacious rhetorical design in argumentation,” Chapter 5, that while all fallacies are violations of argumentative standards, not all violations of argumentative standards are fallacies. The central consideration in making a judgment of fallacy is, according to Jacobs, whether the move concerned improves or degrades the quality of reasoning and disputation relative to how it might otherwise proceed. This is a rather different approach than typically taken by logically and dialectically oriented argumentation theorists. Looking at rhetorical strategy from the perspective of normative pragmatics, as Jacobs aims to do, leads to an interesting, perhaps counter-intuitive, consequence: “What looks like a fallacy when taken in the abstract or when judged against a typicalized situ-

ation may function constructively in the situation of its occurrence.” Jacobs claims that strategies that improve the overall quality of deliberation are not fallacious in the first place and that there is nothing wrong with using them in that situation. If they appear to be fallacious to an argumentation scholar this may be because the scholar has accepted textual appearances at face value without first considering the functional difficulties faced in that situation and the plausible functional rationale for using the strategy to adjust to those difficulties. Jacobs illustrates his point by an analysis of a reaction to Dr. Laura, a radio personality who recently claimed that homosexuality is an abomination according to Leviticus and cannot be condoned in any circumstances. The reaction to this on the Internet that Jacobs analyzes may look fallacious because of its mocking tone, but, according to Jacobs, on closer inspection it proves to build on a rhetorical strategy for promoting more reasoned debate on the issue of gay rights.

Daniel J. O’Keefe addresses in “Normatively responsible advocacy: Some provocations from persuasion effects research,” Chapter 6, an important aspect of the relationship between argumentation studies animated by normative concerns and social-scientific persuasion effects research, which characteristically has descriptive and explanatory aims. Specifically, he points to empirical findings that raise questions or puzzles about normatively proper argumentative conduct. Some of these findings raise normative questions about advocacy practices on the basis of the intrinsic properties of certain appeals. Other findings raise normative questions about advocacy practices on the basis of considerations outside the practices themselves, such as the desirability of the ends sought or the unintended effects of the practice. The larger purpose of O’Keefe’s contribution is not so much to offer definitive conclusions about normative analyses of advocacy but to point to some social-scientific research findings that indicate complexities in the analysis of normatively desirable argumentative conduct – including some ways in which practical persuasive success might not be entirely compatible with normatively-desirable advocacy practices.

In “Duets, cartoons, and tragedies: Struggles with the fallacy of composition,” Chapter 7, Trudy Govier considers the application to groups of the intentional language of emotions, attitudes, and beliefs. Such language, paradigmatically applicable to individuals, is by some also applied to groups. Govier considers whether this compositional phenomenon is based on mistakes, as some have said. First, the problem of “too little” arises, because no group or collective has a mind. Second, the problem of “too much” arises because Govier considers the fallacy of composition in analogical, deductive, inductive generalization, and inference-to-the-best-explanation. She pursues a gap-filling approach, exploring when and how we can legitimately reason from premises about individuals to conclusions about groups. After having done so, she returns to the problems of “too little” and “too much.”

According to Dale Jacquette in “Deductivism and the informal fallacies,” Chapter 8, informal logic and critical reasoning have often been distinguished from formal symbolic logic as a separate discipline by their concern with the so-called informal fallacies of reasoning. Symbolic logic textbooks sometimes make passing reference to the informal fallacies, but do not propose to model or treat them, and informal

logic and critical reasoning textbooks standardly argue that the informal fallacies are not amenable to formal symbolic analysis, and that they involve mistakes of reasoning that cannot be reduced to or explained as matters of deductive invalidity. Contrary to this trend, Jacqueline proposes a unified analysis of the informal fallacies that interprets them as answering to the conventional definition of deductive invalidity for logical inferences as those in which it is logically impossible or amounts to a syntactical contradiction for the assumptions to be true and the conclusions false; or, alternatively, where it is logically necessary that if the assumptions are true the conclusions must also be true. According to Jacqueline, this raises the question of the relation between informal and formal symbolic logic and questions their division.

## Types of Argument and Argument Schemes

An important research topic for argumentation scholars is the distinction between the various types of argument coming about by the use of different argument schemes. An argument scheme is a representation of the pragmatic principle of support that is used when in the argumentation a reason is advanced for accepting a standpoint. An argument scheme reveals the internal structure of a single argumentation: it characterizes the way in which the acceptability of the reason that is given is supposed to be “transferred” to the standpoint. There are several contemporary approaches to argument schemes, and in each of these approaches a specific typology of argument schemes is suggested. Common to most modern typologies is that they include argument schemes for “causal argumentation”, “comparison argumentation,” and “sign argumentation” – or similar categories of schemes. In some approaches, such as the pragma-dialectical approach and Walton’s approach, all argument schemes are, in principle, accompanied by specific sets of critical questions that enable a systematic evaluation of the type of argumentation concerned. There are also approaches in which the classification of argument schemes is meant to be an inventory of rhetorical techniques that can be used in the persuasion process.

There is a close relationship between the contemporary notions of argument scheme and the topical systems that are part of the classical theories of invention. These topical systems are intended to provide guidelines for finding and selecting the arguments that can be properly used in a public speech (rhetoric) or in a discussion (dialectic). The various topical systems proposed in Antiquity consist of ordered lists of more or less abstract types of arguments. In that sense, they indicate the locations (or topics) where the arguments can be found. Like in modern conceptions of argument scheme, in most of the classical topical systems a connection is made between the premises that can be selected and the thesis (standpoint) that is to be defended.

In “From figure to argument: *Contrarium* in Roman rhetoric,” Chapter 9, Manfred Kraus observes that in Roman rhetorical theory *contrarium* was variably considered either a figure of speech or an argument. He examines the pattern of this type of argument, which is most prominently expounded in the Rhetoric to Herennius and

in Cicero's Topics, where it is invariably illustrated by examples phrased as rhetorical questions. Cicero, who associates *contrarium* with the rhetorical enthymeme, claims it is based on the "third indemonstrable syllogism" of Stoic logic:  $\neg(p \wedge q)$ ;  $p \rightarrow \neg q$ . According to Kraus, however, the validity of this type of argument vitally depends on the soundness of the "incompatibility" that forms its major premise. Yet this appears to be the weak point of practical arguments of this type, as the incompatibilities they are based on generally only hold for the most part, and are reducible to standard topical argument schemes, such as *a minore*, *a maiore*, and *e contrario*. This is, Kraus suggests, why in practical usage such arguments are most often phrased as rhetorical questions. The persuasive force of this stylistic device, enhanced by certain strategic manoeuvrings and the use of fallacies such as shifting or evading the burden of proof, arguing *ad hominem*, and begging the question makes the audience eventually swallow a logically defeasible argument.

According to Bart Garssen in "Comparing the incomparable: Figurative analogies in a dialectical testing procedure," Chapter 10, figurative analogy is in most typologies of argument schemes characterized as a special case of comparison argumentation. In a figurative analogy, however, two situations from different domains are compared on an abstract level, while in literal analogies (comparison argumentation) elements from the same domain are compared on a concrete level. The argument schemes in the pragma-dialectical typology Garssen takes as his point of departure are categorized according to the way in which an argument scheme is to be evaluated: each of the main types of argument schemes comes with a standard set of critical questions. Seen from a pragma-dialectical perspective, the figurative analogy should not be classified as comparison argumentation because the standard critical questions going with comparison argumentation are not relevant to its evaluation. Garssen argues that figurative analogy is not a specific argument scheme, but rather a specific presentational device.

In "Argument schemes typologies in practice: The case of comparative arguments," Chapter 11, Marianne Doury attempts to show that the classification of arguments may be improved by comparing scholarly typologies of argument schemes with spontaneous typologies. Specifically, she suggests that, even if studies on "folk" analogy do not result in a systematic, hierarchically organized typology of subtypes of arguments based on comparison they do permit the identification of parameters that can be helpful in characterising comparative arguments as they appear in actual practise. Among the parameters she considers are domain constraint on the compared cases, epistemic status of the premises, nature of the assigned predicate, and dialectical orientation of the argument. When turning to the observation of actual argumentative practices, Doury focuses on the way in which comparative argument schemes are labelled by ordinary arguers, the indicators associated with these schemes, and the refutation devices they elicit. The purpose of her research is to assess to what extent the academic sub-classifications have counterparts in folk pre-theorization about argumentation; more specifically, in the spontaneous perception of argument schemes as revealed in the three areas she focuses her observations on. Doury's conclusion is that no exact correspondence can be found between scholarly approaches to argumentation and spontaneous pre-theorizations, but that a



continued “dialogue” between the two approaches may nevertheless lead to a better understanding of argumentative practice.

In “Whether and how classical topics can be revived within contemporary argumentation theory,” Chapter 12, Eddo Rigotti aims to identify the conditions for recovering classical topics in contemporary argumentation theory. Several features characterizing traditional topics seem to be incompatible both with certain methodological principles of modern epistemology and with contemporary communicative practices. The popular image of the topics as a “machinery” that automatically produces arguments suggests a claim that our epistemology could not admit. According to Rigotti, however, the topics need to be more precisely interpreted as constituting a component of argumentation theory that generates arguments by specifying their inferential structure. Another problem Rigotti mentions is that the traditional topics seem to presuppose a stable and shared conceptual system that is nowadays seen as problematic. In his contribution to this volume Rigotti provides a first sketch of a consistent and coherent model of topics that takes into account both modern semantics and pragmatics and the new argumentative practices exercised within modern society. Rigotti’s model serves three fundamental purposes: identifying the inferential processes activated in argumentative interactions, evaluating the dialectical and rhetorical effectiveness of argumentative discourses, and supporting the construction of argumentative interventions.

## **Structure of Argumentation**

For a long time already argumentation theorists have been making distinctions between different types of argumentation structures. Roughly, pragma-dialecticians, for instance, distinguish between “multiple” argumentation consisting of independent arguments, “coordinatively compound” argumentation consisting of interdependent arguments, and “subordinatively compound” argumentation consisting of dependent arguments. Informal logicians have their well-known distinction between “linked” arguments and “convergent” arguments that resembles the pragma-dialectical multiple–coordinatively compound distinction. Time and time again these distinctions are reconsidered and redefined. Another striking feature of the research concerning the structure of argumentation is that for all kinds of reasons the Toulmin model gets revisited very frequently. This happens, for instance, in order to amend Toulmin’s probability concept, but also in order to review his approach to modality. A recent development in the use of the Toulmin model is that efforts are made to apply this model to the analysis of visual argumentation – a prominent topic of study nowadays.

Though the intuition guiding the avowed distinction in studies of argumentation structure between linked and convergent arguments is easy enough to grasp, several theorists have pointed out that the problem of making the distinction clear

has proven hard to deal with. In “Against making the linked-convergent distinction,” Chapter 13, G.C. Goddu sketches the problem and then discusses why the problem has been so vexing. His suspicion is that the problem is vexing because it is impossible to solve. Instead of attempting to prove that this suspicion is correct, he argues that, even if we grant that there is a distinction to be made, there is no good reason to bother making it. Goddu presents and rebuts three reasons that have been given in the literature to justify making the distinction.

James B. Freeman argues in “Argument strength, the Toulmin model, and ampliative probability,” Chapter 14, that the concept of “inductive” or “ampliative” probability developed by Cohen (1989) in *An Introduction to the Philosophy of Induction and Probability* facilitates a proper explication of sufficient strength for non-demonstrative arguments conforming to the Toulmin model. The data and claims of such arguments are singular statements. Freeman explains that we may epistemically classify the warrants of such arguments as empirical (either physical or personal), institutional, or evaluative. Backing evidence and rebutting considerations vary with the epistemic type of warrant, but in each case the notion of ampliative probability for arguments with warrants of that type can be characterized. This means that ampliative probability may be used to define sufficient strength and related notions for Toulmin arguments.

In “Modalities as indicators in argumentative reconstruction,” Chapter 15, Andrea Rocci considers the role of modality in the rational reconstruction of standpoints and arguments. He examines when modal markers can serve as argumentative indicators and what kind of cues they provide for the reconstruction of argumentation. Rocci critically examines Toulmin’s hypothesis that the meaning of the modals can be analyzed in terms of a field-invariant argumentative force and field-dependent criteria. In doing so he makes use of the theory of relative modality developed in linguistic semantics by showing how this theory can provide a more adequate model for exploiting the modals as argumentative indicators. The picture resulting from this exercise confirms Toulmin’s intuition only in part. On the one hand, modals are always relational in nature and dependent on a contextual conversational background of propositions; on the other hand, only epistemic-doxastic modals directly express an inferential relation on the speech act level between a set of premises and a standpoint. Other modalities express relations (e.g. causal relations or final relations) that should rather be viewed as part of the content of the argument. Only indirectly non-epistemic modals can function as argumentative indicators.

Leo Groarke acknowledges in “Five theses on Toulmin and visual argument,” Chapter 16, that a growing body of argumentation literature recognizes “visual” arguments – arguments conveyed with visual images – as an important ingredient of public discourse and debate. Using political cartoons as examples, he discusses visual arguments from the point of view of Toulmin’s data-warrant account of argument. He attempts to show that the basic elements of the Toulmin model are evident in visual arguments, and discusses some ways in which the model needs to be expanded to give a full account of such arguments.

## Rules for Advocacy and Discussion

In particular among argumentation scholars favouring a dialectical perspective there has always been an inclination to try to formulate rules of discussion that are in agreement with certain normative ideals. The study of normative requirements for conducting a discussion that serves certain external goals of epistemic, evaluative or practical reasonableness is still very much alive. So is research that aims for proposing refinements or other specifications of existing models. It is an interesting development that also some prominent scholars have started to pay systematic attention to the soundness conditions of argumentation who have concerns regarding advocacy and debate as they are situated in argumentative encounters and situations that are traditionally more rhetorical. In addition, an interest has developed among these students of controversy in explaining other sources for creating orderliness in argumentative discourse than rules that have a normative force.

Erik C.W. Krabbe observes in “On how to get beyond the opening stage,” Chapter 17, that any well-structured argumentative exchange must be preceded by some preparatory stages. In the pragma-dialectical four-stage model of critical discussion, the clarification of issues and positions is relegated to the confrontation stage and the other preparatory matters are dealt with in the opening stage. In the opening stage, the parties involved in a difference of opinion come to agree to discuss their differences and to do so by an argumentative exchange rather than by, say, a sequence of bids and offers. They should also come to agree on the rules of dialogue, on roles, on logical principles, on types of argument, and on the propositions that can be used as basic premises. All in all, a lot of work needs to be done before the first topical argument can be put forward. Especially the opening stage seems prone to further disagreements and protracted discussions, e.g. about the admissibility of particular basic premises or particular kinds of argument. There is also the problem that a successful opening stage threatens to settle matters beforehand and thus put the argumentation stage out of business. Krabbe suggests some measures that could alleviate the workload of the opening stage, without making the argumentation stage otiose.

Freeman (2005) argues in *Acceptable Premises: An Epistemic Approach to an Informal Logic Problem* that universal common knowledge is the foundation for the presumptive acceptance of premises to test their acceptability as support for a conclusion in an informal argument. Some of the assumptions and conditions of this test of acceptability are challenged by Jim Gough in “Testing for acceptable premises within systems of belief,” Chapter 18, by questioning the viability of epistemic foundationalism to test for acceptability. After introducing five theoretical challenges to Freeman’s criterion for testing acceptability, he suggests an alternative and supports this suggestion by arguments and examples. In Gough’s alternative, premises contain beliefs that are located in systems that are not tied together by shared facts or common sense knowledge but by differing ideological assumptions or presumptions. The problem, according to Gough, is that conflicting common sense beliefs can authorize different presumptively reliable premises. To test these criticisms, he considers two sets of common arguments: the fit-by-nature argument that first appeared in Ancient

Greek philosophy and claims that women are inherently inferior to men and arguments for and against global warming. Finally, Gough offers four suggestions for how the critical analysis he presents contributes to a better understanding of what needs to be considered in the identification and evaluation of informal arguments.

According to G. Thomas Goodnight, advocacy offers a model of argument that invites critical understanding of situated communication. In “The duties of advocacy: Argumentation under conditions of disparity, asymmetry, and difference,” Chapter 19, he analyzes the historical beginnings of advocacy in classical Greek and Roman culture. Goodnight argues that advocacy practices have developed over time to offset inequalities of status, asymmetries of power, and differences among communities. Against this background he discusses the qualities of advocacy in the present digital age.

In “Actually existing rules for closing arguments,” Chapter 20, Jean Goodwin considers the basic shapes of account that theorists can give of how normative orderliness is achieved in argumentative discourse. Dialectical theories of argumentation have often accounted for its orderliness as a form of following rules. To advance the question of whether there are accounts of other shapes, Goodwin proceeds empirically, examining the accounts of good practice given by participants in closing arguments of U.S. trial courts. Such “native” accounts of argumentative activity are presumptively correct in that they likely achieve both “problem solving validity” and “conventional validity” – two of the prime desiderata of any theory of argumentation. Goodwin observes that there are almost no formally adopted rules for closing arguments, but that under the common law system rules may emerge from cases even without formal adoption. There are a variety of items which closing arguments “natives” – in particular, appellate judges and commentators – have explicitly named as rules.

Other items that are identified as “rules,” however, are indeterminate. A different shape of account is being given here of argumentative orderliness, which Goodwin names the “practical reasoning account.” Participants employing this account start by identifying who in the argumentative transaction has responsibility to manage the arguing; they then articulate the overall goals that this person should aim to achieve; and finally, they list some of the situational factors that this person should take into account in deciding what argumentative activity to allow. Goodwin concludes her contribution by noting some important differences between the rule-following account and the practical-reasoning account of the normative orderliness of arguing.

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**Part I**  
**Argumentative Strategies**

# Chapter 1

## Seizing the Occasion: Parameters for Analysing Ways of Strategic Manoeuvring

Frans H. van Eemeren and Peter Houtlosser

### 1.1 The Strategic Function of Argumentative Moves

People who are engaged in argumentative discourse are characteristically not only out to conclude their differences of opinion *their way* but also oriented towards reaching this conclusion *in a reasonable way*: they may be regarded to be committed to norms that are instrumental in maintaining critical standards of reasonableness and to hold others committed to the same standards. This means in practice that, while being out for the optimal rhetorical result, they may at the same time be presumed to hold at every stage of the discourse to the dialectical objective of the stage concerned. In their efforts to reconcile the simultaneous pursuit of these dialectical and rhetorical objectives, and to reduce any potential tension between them, they make use of what we have termed *strategic manoeuvring* (van Eemeren & Houtlosser, 2002). This strategic manoeuvring takes place by exploiting concurrently the available topical potential, the opportunities for framing the addressee's perspective and the presentational possibilities. Every move made in argumentative discourse involves strategic manoeuvring and it is dependent on various factors which *strategic function* a certain move can have. Analysing the strategic function of a particular way of manoeuvring therefore requires insight into the parameters that determine the strategic function a particular move may have at the point in the discourse where it is made.

### 1.2 Parameters Determining the Strategic Function of Argumentative Moves

In analysing the strategic function of a particular way of manoeuvring our starting point is that each instance of strategic manoeuvring belongs to *one of four categories*, which are connected with the four stages of a critical discussion (van Eemeren

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& Grootendorst, 2004): there is strategic manoeuvring that is to be reconstructed as part of the confrontation stage, strategic manoeuvring that is to be reconstructed as part of the opening stage, strategic manoeuvring that is to be reconstructed as part of the argumentation stage, and strategic manoeuvring that is to be reconstructed as part of the concluding stage. Each of these four categories allows for specific ways of strategic manoeuvring.

In analysing the strategic function of the manoeuvring that is carried out, in our view, for each category of strategic manoeuvring the following parameters must be considered:

1. the *results* that can be achieved;
2. the *routes* that can be taken to achieve these results;
3. the *constraints* of the institutional context;
4. the *mutual commitments* defining the argumentative situation.

### ***Ad 1. the results that can be achieved***

Theoretical insight into the various components of the *analytic overview* that ensues from reconstructing a piece of argumentative discourse pragma-dialectically as a critical discussion provides an analytic tool for substantiating the first parameter (van Eemeren & Grootendorst 1992, pp. 93–94). The outcomes that can be reached in a particular discussion stage consist of the various options for filling out the various components of the analytic overview applying to the stage concerned. In the confrontation stage, for instance, which aims at defining the difference of opinion, the results can be a non-mixed single, a mixed single, a non-mixed multiple or a mixed multiple difference of opinion, depending on the number of propositions involved in the difference and the positions assumed by the parties (van Eemeren & Grootendorst, 1992, pp. 13–25). In the same vein, the results that can be reached in the other stages can be determined. In the argumentation stage, for instance, reconstruction leads to a specific outcome regarding the arguments that have been advanced, the premises that have been left unexpressed, the types of argument schemes that have been applied, the kinds of criticism that have been levelled, and the structure of the argumentation as a whole. Because each discussion stage has its own distinctive constitutive components, which are reconstructed in the analytic overview, insight into an analytic overview enables us to track down systematically which kinds of results can be aimed for in each category of strategic manoeuvring.

### ***Ad 2. the routes that can be taken to achieve these results***

The theoretical notion of a *dialectical profile* provides an analytic tool for substantiating the second parameter (van Eemeren, Houtlosser, & Snoeck Henkemans, 2007, pp. 17–19). Dialectical profiles, such as the dialectical profile of argumentation by

comparison, represent the sequential patterns of the analytically relevant moves that the parties in a critical discussion can make to achieve an outcome of a particular stage of the discussion. The profile of the “explicitization procedure for unexpressed premises,” for instance, defines the procedural ways in which an implicit premise in the argumentation stage can be made explicit (van Eemeren & Grootendorst, 1992, pp. 60–72). It represents the possible routes the parties can take in the process that starts with the “production” of a supposedly incomplete argument and ends with an agreement about the unexpressed premise that is to be attributed to the protagonist. Because, in practice, the route that is actually followed is also dependent on the ongoing interaction between the parties, it is not fully predictable in which way exactly they will go through the procedure: what next step they can take depends on the earlier steps they have made but also on the steps made by the other party. Nevertheless, the set of alternatives to choose from is finite and indicated in the dialectical profile.

### ***Ad 3. the constraints of the institutional context***

An analytic tool for substantiating the third parameter consists of the empirical notion of argumentative *activity types* (van Eemeren & Houtlosser, 2005). Activity types are more or less institutionalised entities of verbal interaction that can be distinguished by empirical observation of communicative practices in the various domains of discourse. They manifest themselves in a great many culturally established variants, some of which have a clearly articulated format, such as a legal defence, a political debate and a negotiation. Argumentative discourse, typically but not exclusively, takes place in the context of activity types – or similar kinds of social backgrounds – that are regulated by conventional preconditions instrumental in shaping the communicative practice concerned. Depending on the activity type, and the prevailing conventional preconditions, different constraints apply with regard to the strategic manoeuvring that is allowed, so that in the various argumentative activity types the strategic functions an argumentative move may have are restricted in different but often fairly definitive ways. In a Dutch criminal trial, to name just an example, it is a precondition that arguments from analogy are not allowed, so that certain strategic possibilities for delivering proof are closed off and, at the same time, other strategic possibilities for the parties open up, in this case most obviously for the defendant.

### ***Ad 4. the mutual commitments defining the argumentative situation***

The *commitment sets* the arguers have developed when reaching the point in the discussion the analyst is concentrating on constitute an analytic tool for substantiating



the fourth parameter (van Eemeren & Grootendorst, 2004, pp. 54–55). These dialectical commitment sets determine together with their rhetorical analogues the argumentative situation the arguers are in at a specific juncture in the dialectical profile pertaining to that particular part of the discussion. At the point where he is expected to provide argumentation, an arguer may, for instance, be in an argumentative situation in which he and his discussion partner are committed to some clearly delineated starting points their acting has to be in accordance with. This is not to say that the commitment sets the arguers have acquired in the argumentative situation they are in are merely restrictions on their strategic manoeuvring in the continuation of the discussion: they also open up opportunities to use the other party's commitments to the advantage of one's own cause. In any case, the commitment sets determining the argumentative situation are a co-determining factor in establishing the strategic function of an argumentative move.

The four parameters just discussed allow for taking account of a finite set of considerations pertinent to analysing the function of the strategic manoeuvring that takes place when a certain argumentative move is made in a specific case of argumentative discourse. When taken together, these parameters, when put to good use with the help of the theoretical tools we mentioned, provide a good basis for analysing the strategic function of argumentative moves in each of the four categories of manoeuvring. As a matter of course, the analysis starts from how the strategic manoeuvring manifests itself in the discourse, i.e., in a particular choice made from the available topical potential, a particular way in which the opportunities for framing the addressee's perspective are used, and a particular way in which presentational possibilities are exploited. Although in strategic manoeuvring these three aspects always go together, and are connected inextricably, in argumentative practice the one aspect is often more prominently manifested than the other. The strategic manoeuvring may, for instance, come primarily to the fore in the topical choice that is made, say by the emphatic use of an argument from authority (*ex autoritate*), or in the way audience adaptation is realised, say by explicitly adopting the other party's arguments (*conciliatio*), or in the use of a certain presentational technique, say by a conspicuous repetition of the standpoint (*repetitio*). This is why, in our view, it is in principle recommendable to refer to the way of strategic manoeuvring at issue in a particular case by naming its most conspicuous manifestation in one of the three aspects: manoeuvring by argument from authority, manoeuvring by conciliation, manoeuvring by repetition, etc. Next, the four parameters we discussed can be used to determine the strategic function the particular way of manoeuvring referred to may have in the case concerned.<sup>1</sup>

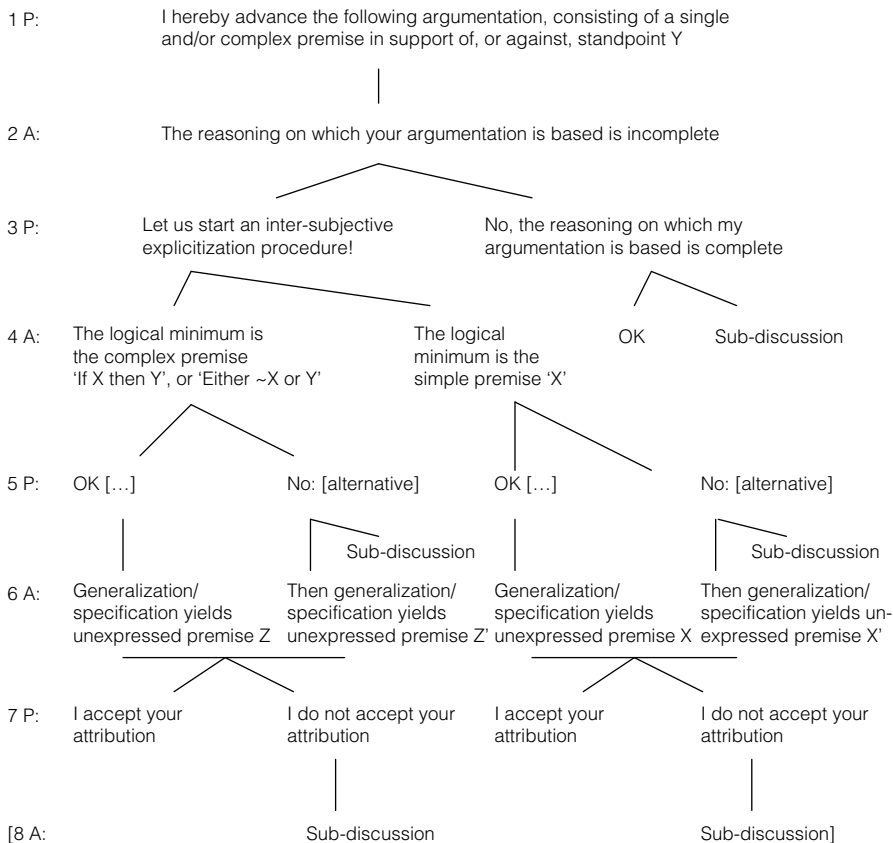
Summarizing, we can say that in analysing the strategic function of a particular argumentative move in a party's manoeuvring we have to take into account, first, which results the party concerned can achieve by making this move, so that it can be explained what kind of outcome may be aimed for by the strategic manoeuvring. The spectrum of relevant options open to be filled out in the analytic overview can

be of help in this endeavour. Second, we have to take into account which reasonable options are available to the party when making the argumentative move, so that it can be explained what route is taken by carrying out this particular way of strategic manoeuvring. The dialectical profile of the moves that are analytically relevant at this juncture in the discussion can be of help in this endeavour. Third, we have to take into account the institutional constraints of the argumentative discourse that is carried out, so that it can be explained what the conventional preconditions are that the arguer's strategic manoeuvring must meet in this particular type of discourse. An understanding of the kind of argumentative activity type in which the strategic manoeuvring takes place can be of help in this endeavour. Fourth, we have to take into account what is precisely the state of affairs in the discourse when the arguer's strategic manoeuvring takes place, so that it can be explained to what situational demands exactly his manoeuvring must respond. An understanding of the dialectical commitment sets and their rhetorical analogues defining the argumentative situation can be of help in this endeavour. If these four parameters are duly taken into consideration when analysing the strategic function of the manoeuvring that manifests itself in the discourse at the point the analyst is focussing on, it can be explained which strategic function a particular way of manoeuvring may have that is manifested in an argumentative move, characterized by a certain combination of topical choice, audience orientation and presentational design.

### **1.3 Strategic Manoeuvring with Unexpressed Premises: A Case in Point**

To illustrate how the parameters we have just discussed play a part in characterising the strategic function of the manoeuvring regarding a specific element of the discourse represented in the analytic overview, we shall now discuss how strategic manoeuvring can be used for influencing the result of the procedure for making an unexpressed premise explicit. The moves that can be made in this "explicitization procedure" are represented in the dialectical profile whose relevant parts are sketched below (P = Protagonist, A = Antagonist):

As the profile shows, minimally seven rounds of moves are needed to carry out the explicitization procedure in a systematic way. In the first round the protagonist advances argumentation (otherwise the explicitization procedure is not called for). In the second round the antagonist conveys that he considers the protagonist's argumentation incomplete (otherwise it would not be necessary to start the explicitization procedure). In the third round the protagonist either agrees with the antagonist's incompleteness claim and proposes to carry out the explicitization procedure, or claims that the reasoning on which his argumentation is based is complete as it



stands. In the latter case, the antagonist may in the fourth round either admit that the protagonist’s reasoning is complete or maintain his claim that it is incomplete and begin a sub-discussion – the proceedings of which we shall not discuss here. If the protagonist has indeed agreed with the antagonist’s claim that the protagonist’s reasoning is incomplete and has proposed to start the explicitization procedure, then the antagonist must propose an explicitization of the – simple or complex – premise that would constitute the “logical minimum” of the incomplete piece of reasoning. The protagonist may in the fifth round either agree with the antagonist’s explicitization of the logical minimum or propose an alternative logical minimum. If the antagonist does not agree with this alternative, he may begin a sub-discussion in the sixth round. If he does agree, or if no alternative has been proposed because the protagonist agrees with the antagonist’s explicitization of the logical minimum, the antagonist may in this round propose a pragmatically optimal generalization or specification of the logical minimum and attribute to the protagonist the responsibility for an unexpressed premise formulated on the basis of this generalization or specification. In the seventh round, the protagonist may agree with this attribution; then, the explicitization procedure is successfully completed. If he does not agree,

the antagonist has the opportunity to start, in the eighth round, a sub-discussion about the acceptability of the formulation of the unexpressed premise.

In showing how the dialectically relevant moves can be performed as strategic manoeuvres by exploiting certain features of argumentative reality as indicated in our list of parameters, we focus on the first four rounds of this dialectical profile. We shall here concentrate on the constraints of the argumentative situation at the particular point the discussion has reached, addressing the influence of the argumentative activity type in which the discussion takes place only (and only slightly) in our exemplary analysis in section 4.

Strategic manoeuvring with unexpressed premises already plays a part in the “production” of the argumentation by the protagonist; this production determines, after all, to a large extent the antagonist’s possibilities for interpretation and attribution. Therefore, we begin our discussion with the opportunities for strategic manoeuvring provided by this “production move.” With regard to leaving certain parts of his reasoning unexpressed, the protagonist has three options: he can leave no premise implicit, he can leave a simple premise implicit in which a presumed fact or a judgment is expressed or he can leave a complex inferential premise implicit in which this presumed fact or judgment is associated with the standpoint at issue. If the parties have committed themselves to both simple and complex premises that could, in some combination or other, constitute a complete argument that is according to the protagonist valid, then it is strategically best for him to advance that complete argument.<sup>2</sup> If the parties have committed themselves in the opening stage of the discussion to simple premises only, it is in principle most advantageous to the protagonist to advance in the argumentation a simple premise and leave a complex premise implicit. He may then be regarded to consider this complex premise as a “contextual starting point.” Similar considerations apply to the advantages of leaving a simple premise implicit.

In the second round, the antagonist can state that the reasoning expressed in the protagonist’s argumentation is incomplete. This move can be strategically valuable to him in particular when it is not unequivocally clear whether the protagonist’s argument is indeed incomplete. It depends on the procedural agreements between the parties concerning the logic that is to be used in the “intersubjective inference procedure” whether or not an argument may be considered complete or incomplete (van Eemeren & Grootendorst, 2004, p. 148). If the antagonist envisions that his opportunities for attacking the acceptability of an unexpressed complex premise are better than for testing the logical validity of the argument presented as complete by the protagonist, then it could be advantageous to him to label the argument incomplete and to elicit from the protagonist the request to start the explicitization procedure. If, on the other hand, the antagonist thinks that the argument will turn out to be logically invalid when it is considered to be complete, then it is more advantageous to him to refrain from stating that the argument is incomplete and to aim for entering the intersubjective inference procedure instead. Based on similar strategic considerations – does he envision to have better chances when checking the acceptability of the unexpressed premise than when testing the validity of the supposedly complete argument or the reverse? – the protagonist will in the third round either

agree that the reasoning on which his argumentation is based is not complete or claim that his reasoning is complete.

If the protagonist has acknowledged that his reasoning was not complete and requests to start the explicitization procedure, it is, in the first instance, the nature of the argument that was advanced that determines whether in carrying out the explicitization procedure the antagonist must aim for making the complex premise explicit or the simple premise. But even if the nature of the protagonist's argument forces the antagonist to make a specific type of premise explicit, there is still room left to formulate that premise *in a specific way* as the logical minimum. Particularly when a complex premise is left unexpressed, the formulations can vary, because there is no hard and fast rule prescribing that the unexpressed complex premise must be reconstructed in one particular way. Assuming that the participants have agreed on using propositional logic, the complex premise that makes the argument valid can be formulated as a conditional, a disjunction, etc. A disjunctive formulation of the unexpressed complex premise is, for instance, advantageous to the antagonist if the protagonist has used a negation in the explicit premise or in the standpoint supported by this premise, as in "Hank is ill, because he was not in the office today." If the antagonist formulates the unexpressed premise as a disjunction, as in "Hank is either not in the office or he is not ill," the accusation that a false dilemma was created is as it were incorporated in the formulation of the premise. In this case it will be more difficult for the protagonist to save his argumentation than if the antagonist had formulated the logical minimum as a conditional, as in "If Hank is not in the office, then he is ill." In the latter case, the protagonist could in the next stage easily save this last explicitization by means of a weakening generalisation of his statement: "It is usually the case that if Hank is not in the office, he is ill." In the case of a disjunctive formulation, such a "weakening strategy" cannot so easily be applied.

## 1.4 The Moosbrugger Case

A suitable case to illustrate how in carrying out the explicitization procedure the opportunities for strategic manoeuvring can be exploited is the argument about the applicability of the legal concept of "responsibility" in the (fictional) trial against the alleged murderer Moosbrugger described in Musil's (trans. 1979) novel *Der Mann ohne Eigenschaften* [The Man without Qualities]. We shall concentrate on the "production" move at the start and the possible responses to this move.

Moosbrugger, who, "in the course of his life, [...] had as often been confined in mental institutions as he had been let go, and had been variously diagnosed as a paralytic, paranoid, epileptic, and manic-depressive psychotic, until at his recent trial, two particularly conscientious forensic psychiatrists had restored his sanity to him" (p. 262), is accused of having murdered a prostitute. In the court room, "there was not a single person [...], the doctors included, who was not convinced that Moosbrugger was insane, one way or another" (p. 262). This judgment – which is formulated as "partly insane" in the course of the trial – is, however, not deemed sufficient to declare Moosbrugger "not responsible for his actions" (p. 262). "It was

not a way that corresponded to the conditions of insanity laid down by the law” (p. 262). This is how Musil represents the argumentation:

[The fact that Moosbrugger is “partly insane” is not sufficient to declare him not responsible for his actions.]

For if one is partly insane, one is also, juridical, partly sane, and if one is partly sane one is at least partly responsible for one’s actions, and if one is partly responsible one is wholly responsible; for responsibility is, as they say, that state in which the individual has the power to devote himself to a specific purpose of his own free will, independently of any compelling necessity, and one cannot simultaneously possess and lack such self-determination (p. 262).

The defence of the standpoint that Moosbrugger’s partial insanity is not sufficient to declare him not responsible for his actions proceeds in two stages. The first stage begins with the condition “if one is partly insane, one is also, juridical, partly sane, and if one is partly sane one is at least partly responsible for one’s actions” and ends with the (conditional) claim “if one is partly responsible one is wholly responsible.” In the second stage, this last claim is further defended as a sub-standpoint with the help of the argument starting with “for responsibility is ...” and ending with the claim “and one cannot simultaneously possess and lack such self-determination.” This last claim is left unsupported.

At first sight, the protagonist appears to present his argument in both stages as complete and deductively valid. It seems therefore obvious that the (potential) antagonist, who, according to the dialectical profile of the procedure for making unexpressed premises explicit, has to decide whether he regards the argument as complete or incomplete, should regard the argument as complete and steer towards testing the logical validity of the argument. However, precisely because the argument gives the impression of being complete and deductively valid – which can be taken to be a strategic aspect of the “production” of the argument – and logical testing stands a good chance of yielding a favourable result for the protagonist, it may strategically be more advantageous to the antagonist to first try to show that the argument is not complete and that one or more premises are lacking. On the basis of the following – less attractive but more conspicuous – paraphrase of the second stage of the argument, we shall discuss which premises the antagonist could declare missing, how he could phrase them, and what the strategic advantages are of the various ways of proceeding:

[If one is partly responsible, one is wholly responsible] for responsibility for one’s actions is the capability of determining one’s own doings, and one cannot simultaneously possess and lack such a capability.

This paraphrase makes it easier to note that it is indeed the case that in the argument some premises are missing. At the highest level there is even a complete piece of reasoning missing, which consists of the simple premise “[for] one cannot be partly responsible” and the complex premise “if one cannot be partly responsible, one can, if one is partly responsible, only be wholly responsible.” Adding the simple premise is necessary to show the relevance of the argument that follows, which is supposed to demonstrate the practical impossibility of the state of partial responsibility. Adding the complex premise is necessary to get from the hypothetically imaginable but at the same time practically impossible state of partial responsibil-

ity to the consequence that one can only be wholly responsible. Moreover, it is necessary to add the following complex premise to the argument: “if responsibility for one’s actions is the capability of determining one’s own doings, and one cannot simultaneously possess and lack such a capability, then one cannot be partially responsible.” Adding this premise is necessary to make it clear that the explicit premises “responsibility for one’s actions is the capability of determining one’s own doings” and “one cannot simultaneously possess and lack such a capability” can support the simple premise that has been made explicit, “one cannot be partly responsible.” These explicitizations lead to the following argument (in which the premises that are made explicit are represented in italics):

[If one is partly responsible for one’s actions, then one is wholly responsible] [because] *one cannot be partly responsible* [and] *if one cannot be partly responsible, then one can, if one is partly responsible, only be wholly responsible*; [one cannot be partly responsible] because responsibility for one’s actions is the capability of determining one’s own doings, and one cannot simultaneously possess and lack such a capability [and] *if responsibility for one’s actions is the capability of determining one’s own doings, and one cannot simultaneously possess and lack such a capability, then one cannot be partly responsible for one’s actions.*

A crucial observation applying to this reconstructed piece of reasoning is that it would have been superfluous to make the last (unexpressed) premise explicit if the – apparently tautological – premise that is explicitly presented (conveying that one cannot simultaneously possess and lack the capability of determining one’s own doings) would have been phrased as a disjunction. The disjunctive form would, after all, have expressed clearly that the basis of the reasoning is a dilemma: either one has the capability to determine one’s own doings or one does not have this capability. Because the premise is explicitly expressed in a non-disjunctive form, however, the antagonist is not legitimized to rephrase this premise as a disjunction. Therefore, it is impossible for the antagonist to state that a dilemma has actually been posed. This is too bad, because it also prevents him from observing that it is precisely this dilemma that is strategically exploited in the first stage of the argument. It is already in the first “logical” step of this stage of the argument (“if one is partly insane, then one is also partly sane”) that – almost unnoticeably – Moosbrugger’s partial *sanity* is taken as the starting point of the reasoning and used as a premise in the argument, instead of the fact that the poor man is “insane, one way or another” – which is what started the deliberation in the first place.

Although there seems to be little chance that the antagonist can successfully attack the dilemma that is actually there, it is precisely the antagonist’s manoeuvre of not considering the protagonist’s argument complete and look for missing premises in the reasoning that can help him to expose the dilemma in the second instance. Especially the explicitized premise “if one cannot be partly responsible [for one’s actions], then one can, if one is partly responsible, only be wholly responsible” allows him to maintain that the protagonist poses a dilemma. This premise could, after all, just as well have been: “if one cannot be partly responsible [for one’s actions], then one can, if one is partly responsible, only be wholly *non*-responsible.” In that case the complex premise – in combination with the simple premise “one cannot be partly responsible” – could never have supported the sub-

standpoint “If one is partly responsible, one is wholly responsible.” Thanks to the *arbitrariness* of the consequent of the explicitized complex premise, the antagonist can attack the argument that was presented as compelling by the protagonist as being *nó*t compelling. Unfortunately for Moosbrugger, in the legal reality of his trial, this will not have damaged the effectiveness of the manoeuvring of the judges, as they were not required to give any further account than the one they already gave.<sup>3</sup>

## 1.5 Conclusion

What can we now say about the function of the strategic manoeuvring conducted by the protagonist and the (projected) antagonist in the Moosbrugger case? In our analysis we have taken account of the four parameters of (1) the intended result of the explicitization procedure, (2) the routes the participants have taken in attempting to achieve this result, (3) the limitations and opportunities of the conventional preconditions of the activity type the participants in the Moosbrugger case are in, and (4) observations concerning the actual commitments defining the argumentative situation. Based on the fact that the protagonist presented the argument as complete and valid, his manoeuvring can be characterised as an attempt to preclude the explicitization procedure from coming off the ground. Based on our analysis of how the antagonist could reconstruct a particular missing premise and exploit it to show the arbitrariness of the consequent in the sub-standpoint of the protagonist, his manoeuvring can be characterised as an attempt to arrive at an explicitization of an unexpressed premise that enables him to show that the protagonist’s standpoint involves a non-sequitur, in this case because it is based on a false dilemma.

Thus we have shown that in carrying out the procedure for making unexpressed premises explicit, the various possibilities for making strategic manoeuvres to achieve the explicitization that is easiest to defend or to attack are dependent on both the aspired outcome and the argumentative routes that can be followed, and that, in practice, the way in which these possibilities are exploited always depend on the argumentative situation at hand and the broader context of the argumentative activity type. Even if we have not systematically shown how on the basis of these parameters the strategic function of argumentative moves can be established conclusively, we have at any rate indicated in which way these parameters can play a part in analysing the strategic function particular ways of manoeuvring may have in argumentative practice.

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## Endnotes

- 1 An arguer, for instance, may have decided to advance a negative standpoint in response to a positive standpoint, anticipating that his position is so strong that, in addition to challenging the positive standpoint, he can defend the contradictory standpoint. This way of manoeuvring primarily amounts to making an expedient choice from the “confrontational” topical potential. And if an arguer attempts to turn a difference of opinion into a non-difference when confronted with a standpoint that he does not want to discuss, this way of manoeuvring could in the first place be characterised as an “adaptation” to the other party’s position. And if, for example, in the argumentation stage an arguer wants to avoid a commitment to a premise left unexpressed in his argumentation and attempts to achieve this by presenting the argumentation as it stands as complete, the presentational aspect of the manoeuvring would spring to the eye first. In a general way, the soundness conditions for the various ways of strategic manoeuvring might be related in a general way to the three aspects of strategic manoeuvring by stipulating that: (a) each move is chosen in such a way that at the juncture concerned in the dialectical route that is taken it enables an analytically relevant continuation and can lead to one of the outcomes typical of the discussion stage concerned, (b) each move is in such a way adapted to the other party that it responds to the preceding move in the dialectical route that is taken, and (c) each move is formulated in such a way that it can be interpreted as enabling a relevant and responsive continuation to the preceding move.
- 2 This observation applies unless it must be assumed that the antagonist will consider one of the premises (or both premises) as evident, so that mentioning it will frustrate rather than further the protagonist’s attempt at convincing, as is explained in classical rhetoric.
- 3 Personal note F. H. van Eemeren: This analysis of the Moosbrugger case by my late co-author, Peter Houtlosser, was first published in Dutch in Houtlosser (2006).

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# Chapter 2

## Manoeuvring Strategically with Rhetorical Questions

A. Francisca Snoeck Henkemans

### 2.1 Introduction

In this paper I investigate what role the stylistic device *rhetorical question* can play in arguers' attempts to reconcile their rhetorical with their dialectical aims by manoeuvring strategically when carrying out particular discussion moves that form part of the dialectical procedure for resolving a dispute. The research I shall report on here, forms part of a larger project in which insights from classical rhetoric, pragmatics and modern stylistics are used to explore the possibilities for strategic manoeuvring with specific presentational means.<sup>1</sup>

Authors who have paid attention to the role of rhetorical questions in argumentative contexts, such as Slot (1993, p. 7) and Ilie (1994, p. 148) ascribe two main functions to rhetorical questions: they are used as a means of putting forward standpoints and as a means of putting forward arguments. Another function of rhetorical questions is mentioned by van Eemeren, Houtlosser and Snoeck Henkemans (2005): according to these authors rhetorical questions can also be analysed as proposals for a common starting point in the opening stage of a discussion. In this paper, I will concentrate on two of the three abovementioned functions of rhetorical questions: proposing a common starting point and putting forward argumentation. I shall first give an analysis of the way rhetorical questions can fulfil these functions, and then establish what dialectical and rhetorical goals might be served by executing the moves in question by means of a rhetorical question instead of by some other presentational means. Finally, I shall give an indication of how the types of strategic manoeuvring that rhetorical questions can be instrumental in may derail, and in which violations of the rules for critical discussion such derailed manoeuvrings may result.

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## 2.2 Rhetorical Questions in the Opening Stage and Argumentation Stage

According to the model for critical discussion, the argumentation stage of the discussion should be preceded by a dialogue in the opening stage by means of which the parties come to an agreement on which propositions they will regard as common starting points during the discussion. The dialectical profile that van Eemeren et al. (2005, p. 112) have sketched for the opening stage, specifies which moves of the discussants may contribute to achieving the aim of establishing in advance what will be the common starting points for the discussion. According to the profile, the dialogue about the starting points starts with a proposal by one party to the other party to accept a certain proposition as a shared starting point. The other party can accept or refuse this proposal, or accept it only on condition that some other proposition will also be accepted as a starting point for the same discussion.

Van Eemeren et al. point out that it is unlikely that in practice parties will execute the opening move of the starting point dialogue by means of a fully explicit proposal to accept some proposition. Arguers can, however, implicitly make such a proposal, and one way of doing this is to ask a rhetorical question (2005, p. 115). A rhetorical question is a stronger sign that the arguer is making a proposal to accept a starting point than an ordinary question about the other party's beliefs. This is so because with a rhetorical question the addresser indirectly makes it clear that a preparatory condition for a proposal has been fulfilled, namely that the addresser thinks that the other party will be prepared to accept the proposition that functions as the presupposed answer to the question. Also, by asking a rhetorical question, the arguer shows that he himself believes that the proposition he proposes to the other party is indeed acceptable, which means that the sincerity condition for a proposal has also been fulfilled. Let us look at an example:

- (1) I don't see why Google's rent-a-book program would not work. Isn't it true that libraries do not have many of the popular titles even if they are bestsellers?

The only sign that the arguer is making a proposal is the form of the rhetorical question, but in fact the arguer is making an assertion in which he presents the acceptance of the proposal as unproblematic.<sup>2</sup> According to van Eemeren et al. (2005, p. 121) this is the general pattern with rhetorical questions that are being used to make a proposal to accept something as a common starting point.

Similar analyses of the function of rhetorical questions are given by other authors. Ilie (1994), for instance, also describes rhetorical questions as attempts by arguers to arrive at the same commitments:

*The addresser's commitment to the implicit rhetorical answer* is indicated by his/her conviction that there is no other possible answer to the rhetorical question. The addresser's expectation is to induce the same commitment in the addressee. (p. 217)

And Rohde (2006), believes that a shared commitment by the discourse participants is a condition for felicitous rhetorical questions:

To be felicitous, rhetorical questions require that discourse participants share a prior commitment to similar, obvious, and often extreme answers. As such, rhetorical questions are biased, yet at the same time uninformative. Their effect is to synchronize discourse participants' commitments, confirming their shared beliefs about the world. (p. 135)

As is the case in example (1), the proposal to accept a common starting point often serves at the same time as an argument in the argumentation stage. The arguer then takes it for granted that the opponent will accept the proposal, so that he can use it as support for his standpoint. Ilie (1994) gives the following description of the arguer's aims in using a rhetorical question:

The addresser's ultimate goal is to elicit the addressee's agreement with the message implied by the rhetorical question, i.e. the addressee's agreement with, and preferably, commitment to the implication of the rhetorical question. By pursuing the ultimate goal, the addresser of a rhetorical question intends to induce in the addressee the disposition and the willingness to act on this shared commitment. (p. 219)

Rhetorical questions can be seen as indirect speech acts because they violate two of the rules for communication when taken literally. First, the addresser already knows the answer, so the question is superfluous. Second, the question is insincere, since the addresser does not expect to get an answer from the addressee. According to Houtlosser (1995, p. 255–256) these violations of the Principle of Communication can be made good by assuming that by asking the question addressers implicate that they want their addressees to accept the consequences of their commitment to what is indirectly asserted.<sup>3</sup>

As we have seen, rhetorical questions that are used to propose starting points are somewhat like “offers you can't refuse”: the arguer makes it seem as if the acceptance of the proposed starting point is taken for granted, since the proposition which the addressee is asked to accept in the opening stage is at the same time being used as an argument for the arguer's standpoint in the argumentation stage. In the argumentation stage, the rhetorical question thus serves as a means to urge the addressee to act on his commitment and recognize that the standpoint that is being defended by the argument the addressee supposedly accepts, should now also be accepted.

### 2.3 Rhetorical Questions and Strategic Manoeuvring

Van Eemeren and Houtlosser (2002) have proposed to integrate a rhetorical component into the pragma-dialectical theoretical framework by starting from the assumption that arguers make use of the opportunities available in a certain dialectical situation to handle that situation in the way that is the most favourable to them (p. 138). By manoeuvring strategically, arguers try both to uphold a reasonable discussion attitude and to further their own case (p. 142).

Each of the stages of the model of critical discussion has a specific dialectical aim, and, because, according to van Eemeren and Houtlosser (2002), “the parties involved want to realize this aim to their best advantage, they can be expected to

make the strategic moves that serve their interest best” (p. 138). In other words: each dialectical objective of a particular discussion stage has a rhetorical analogue.

In order to achieve both the dialectical and the rhetorical objectives that are associated with the different discussion stages, each party will aim to make the allowable moves that are specified in the dialectical profiles for every stage in such a way that these moves influence the result of the discussion as much as possible in its own favour. In van Eemeren and Houtlosser’s (2002) view, strategic manoeuvring can take place in making an expedient choice from the options constituting the “topical potential” associated with a particular discussion stage, in selecting a responsive adaptation to “audience demand” and in exploiting the appropriate “presentational devices” (p. 139). It is the latter aspect of strategic manoeuvring that I shall concentrate on here.

The dialectical aim of the *opening* stage as a whole is to establish an unambiguous point of departure for the discussion (van Eemeren & Houtlosser, 2002, p. 138). In order to achieve this, parties should come to an agreement on which procedural and material starting points they will accept for the duration of the discussion. According to van Eemeren and Houtlosser (2002), the rhetorical aim of each of the parties is to arrive at the point of departure that serves their own interest best: “Each party’s strategic manoeuvring will be aimed at establishing the most workable starting points and the most opportune allocation of the burden of proof” (p. 138).

As far as the first move of the opening stage is concerned, making a proposal to the other party to accept a proposition as a starting point, the *dialectical* (sub)aim is to give the other party the opportunity to agree or not to agree with the proposal, so that both parties can have a say in the matter and so that it becomes clear in advance which starting points have already been accepted and are therefore no longer open for discussion. The *rhetorical* aim associated with this move is that the arguer tries to ensure as much as possible that his own proposal will be accepted by the other party.

In what way can the presentational device “rhetorical question” be instrumental to achieving the dialectical and rhetorical aims associated with this particular move? By asking a rhetorical question, because it has the form of a question, it is clearer that the arguer is making a proposal than if the arguer were to have stated that a specific proposition is a common starting point or if he would have acted as if this were the case by using this proposition as an argument. The impression is at least given that the other party can still agree or disagree. In that respect using a rhetorical question to propose a starting point as in (b) seems to be halfway between (a), first asking the other party whether he agrees with a certain proposition and when this proves to be the case using it as an argument for the standpoint, and (c) using the proposition as an argument and thereby making it clear that it is to be regarded as a common starting point:

(a) P: Do you agree that X?

A: Yes, I do.

P: Then you should also agree with me that Y!

- (b) Y, because isn't it the case that X?
- (c) Y, because X

Dialectically speaking, option (b) seems a more reasonable way of getting a starting point accepted than for instance option (c). Rhetorically speaking, the advantage of proposing a starting point by means of option (b) instead of option (a) is that by asking a rhetorical question the arguer makes it seem as if the proposition he proposes to the other party has in fact already been accepted by the other party, so that it looks as if making the proposal to accept it is in fact superfluous.

The dialectical aim of the *argumentation* stage as a whole is to test the tenability of the standpoint or standpoints that have been put forward in the confrontation stage, starting from the point of departure established in the opening stage (van Eemeren & Houtlosser, 2002, p. 139). The rhetorical aim of this stage is to make the strongest case and launch the most effective attack.

When the protagonist has put forward argumentation, and the antagonist attacks its propositional content, the protagonist can defend the argumentation by pointing out that the proposition in question forms part of the list of propositions accepted by both parties in the opening stage. The protagonist and antagonist must then check whether this is indeed the case, and if so, the antagonist is obliged to accept the propositional content of the protagonist's argumentation. This method of defence by the protagonist is called the Intersubjective Identification procedure in pragma-dialectics (van Eemeren & Grootendorst, 2004, p. 146).

To make it clear that a proposition used in the argumentation is part of the shared starting points the protagonist can simply use this proposition in the argumentation without providing further defence for it. By doing so the protagonist implicitly makes it clear that he or she considers the proposition to be already accepted by the other party. However, by presenting the argument in the form of a rhetorical question, the protagonist refers in a more explicit way to the fact that he or she is of the opinion that the Intersubjective Identification procedure should produce a positive result: this presentation makes it clear that the proposition in question is presupposed to be already acceptable to that party. The protagonist thereby also indicates that the acceptability of the propositional content of the argument can no longer be at issue; an antagonist who wants to criticize the argument will now have to focus on the justificatory or refutatory potential of the argument. This way of proceeding could in principle further the dialectical testing procedure, since it makes it explicitly clear which procedures are supposed to have been carried out already, and therefore need not be repeated.

Rhetorically speaking, it is in protagonists' interest to see to it that their chances of obtaining a positive result of the testing procedure are optimal. The rhetorical question enables them to present their argument in such a way that it becomes clear that they expect their opponent to admit it already belonged to the agreed upon starting points. Criticizing the propositional content of the argument, therefore, seems no longer an option.

## 2.4 Derailments of Strategic Manoeuvring with Rhetorical Questions

As the analysis I have just presented has made clear, rhetorical questions can function as proposals in the opening stage of a discussion. Presenting the proposal to accept a proposition as a common starting point by means of a rhetorical question makes it possible to formulate the proposal in such a way that it becomes more difficult for the other party not to accept it. This is because the rhetorical question makes it seem that the proposition the arguer wants to use in the argumentation is in fact already part of the opponent's commitments. If this manoeuvre is successful, the protagonist can subsequently use the proposition as an argument in defence of his or her standpoint with the advantage of having made it virtually impossible for the antagonist to attack the acceptability of the propositional content of the argument without seeming to contradict himself.

As I have explained, using the presentational device of a rhetorical question can be a useful means of realizing important dialectical and rhetorical objectives in both the opening stage and the argumentation stage of a discussion. This, however, is not to say that the types of strategic manoeuvring to which the rhetorical question may be instrumental will always be in accordance with the rules for critical discussion. The manoeuvres in question may, of course, also go wrong and result in violations of these rules. I would now like to look at some possible ways in which such derailments may occur.

Since proposing a proposition by means of a rhetorical question indirectly amounts to making an assertion in which the arguer presents the acceptance of the proposal as unproblematic, there is, of course, a real danger of this type of manoeuvre resulting in a violation of rule 6, the starting-point rule:

Discussants may not falsely present something as an accepted starting point or falsely deny that something is an accepted starting point (van Eemeren & Grootendorst, 2004, p. 193).

According to van Eemeren and Grootendorst (1992, p. 151), in falsely promoting a proposition to the status of a common starting point, the protagonist tries to *evade the burden of proof*: He prevents the proposition from being questioned and thus avoids having to give a further defence. Whether or not this fallacy has been committed depends on whether or not the proposition in question is in fact acceptable to the opponent or not. Since in practice, the starting points of the discussion are generally not listed explicitly in advance, it will not always be possible to establish with certainty whether or not the starting point rule is really being violated. But even in cases where it is clear that a proposition has indeed been accepted by the other party, it is still possible for a violation of the starting point rule to occur, as van Eemeren and Houtlosser (2002, pp. 151–152) have made clear. They discuss the case of a rhetorical question being used in a *concordatio*: a figure in which an arguer uses an argument of the opponent to support his own standpoint. If a rhetorical question is used to this end, there is the following danger of derailment:

The danger of derailment stems from the fact that the opponent may be assumed to agree with the *content* of the argument but may *not* be assumed to agree with the way in which the argument is used to support precisely the opposite standpoint. (van Eemeren & Houtlosser, 2002, p. 151)

In the case of a *conciliatio*, it is clear that the propositional content of the argument should be acceptable to the opponent, since this opponent used the same argument earlier on in the same discussion, albeit in support of the opposite standpoint. That the argument should also be acceptable as a justification of the standpoint the arguer is defending by means of the *conciliatio* is not very plausible, however. According to van Eemeren and Houtlosser (2002), the use of *conciliatio* can be seen as a derailment if it is the case that:

the proponent just presupposes that the adopted argument has an unquestioning justificatory potential for his standpoint and leaves the opponent no room to question this presupposition. If a *conciliatio* is in this way derailed, the proponent relies on a starting point that is not yet accepted by the opponent and commits the fallacy of begging the question. (pp. 151–152)

So even when a rhetorical question rightly presupposes that the propositional content is already part of the opponent's commitments, there is still the danger that the arguer by making use of the rhetorical question puts so much pressure on the opponent that there is no room for the opponent to raise critical questions concerning the justificatory potential of the argument. The rhetorical question in itself, as we have seen, is already an attempt to get the opponent to act on his commitment to the proposition proposed, that is to accept the consequences of this commitment, which means recognizing that the standpoint that is being defended should also be accepted. The pressure on the opponent can be augmented by adding expressions such as "well then" to make even more clear that the opponent should now be prepared to draw the desired consequences. Example (2) seems to be a case of the arguer trying to force his opponent to accept the standpoint by making use of rhetorical questions:<sup>4</sup>

- (2) Do you tell the whole and complete truth to such a degree that the objective truth is told in minute detail every time you open your mouth? Well then, are you a liar?

In the example, the arguer is defending the (implicit) standpoint that the opponent does not have the right to accuse someone of lying if that person does not give a completely accurate account of something. The argumentation for this standpoint put forward in the form of rhetorical questions is: "you yourself are not capable of always telling the complete objective truth, while you would not consider yourself a liar." By using "well then" the arguer makes it explicitly clear that the opponent should either be prepared to call himself a liar (and it is presupposed that the opponent will not want to do that), or accept the arguer's standpoint. That the opponent may grant that he himself cannot always tell the complete truth, is of course no reason to assume that he should therefore also be willing to accept the standpoint.



## 2.5 Conclusion

Because of their twofold function as a question and an assertion, rhetorical questions can serve at the same time as proposals to accept a common starting point and as arguments the acceptability of whose propositional content is presupposed. It is this combination of token openness and actual shielding which allows for potentially effective manoeuvring in the opening and argumentation stages of a discussion. As we have seen, this type of manoeuvring may derail if the arguer ascribes unwarranted commitments to the opponent and tries to prevent this opponent from putting forward criticisms, either with respect to the propositional content or to the justificatory potential of the argument. These derailments may result in the arguer evading the burden of proof or begging the question.

## Endnotes

- 1 See for an earlier publication within this project Snoeck Henkemans (2005).
- 2 Rhetorical questions are often introduced by means of the expression “after all”. According to Sadock (1971), “after all” can even be used as a test for whether a question is rhetorical or not: it can occur with rhetorical yes-no questions but not with ordinary yes-no questions. “After all” is an expression which, according to Closs Traugott’s (1997) analysis may be used as an “as we know” connective, by means of which “appeal is made to obvious, inter-personally recoverable, largely societal norms” (p. 3).
- 3 If the rhetorical question functions as a standpoint, it is the addresser’s aim to get it accepted. If it functions as an argument, the addresser attempts to get the addressee to accept the consequences of his commitment to the propositional content of the argument, that is, to accept the standpoint (Houtlosser, 1995, p. 256).
- 4 Experimental research has provided evidence for the fact that rhetorical questions may be particularly effective in increasing persuasion and putting pressure on the opponent to accept a standpoint. According to Blankenship and Craig’s (2006) results, a message containing rhetorical questions increased participants’ attitudinal resistance to an attacking message more than a control message.

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# Chapter 3

## Dissociation: Between Rhetorical Success and Dialectical Soundness

M. A. van Rees

### 3.1 Dissociation and Strategic Maneuvering

As van Eemeren and Houtlosser (1997) have argued, discussants not only aim at resolving their differences of opinion in a rational fashion, but also in their own favor. To that purpose they carry out all kinds of strategic maneuvers, not the least of which is to represent the state of affairs in such a way that their own position is strengthened.

Zarefsky (1997, 2004) treats a number of techniques a speaker can use to represent matters in a particular way, or, as he calls it, to define the situation. One of the instruments that a speaker can deploy to do so, is the technique that Perelman and Olbrechts-Tyteca term *dissociation*, in which a concept that is considered by the audience as a unitary whole is split up in two new concepts that are placed on opposite positions on a value-scale of appearance *versus* reality. When Maria Montessori's granddaughter defends her grandmother against the criticism that she was vain by replying that her grandmother merely had a love of beautiful clothes, but was not vain (*De Volkskrant*, 1999), with this dissociation between the physical and the mental aspects of vanity, she defines the situation in a particular way, painting a considerably prettier picture of Maria Montessori than her critics did.<sup>1</sup>

An additional advantage of using dissociation is that it often takes the shape of a categorical statement like “x is something completely different from y”. In this way, a factual state of affairs is posited that is hard to question. Former Minister of Transport Jorritsma defended her decision to once again allow a violation of the noise limits for Schiphol Airport, notwithstanding an agreement to end the past policy of tolerance, with the powerful assertion “tolerating is something completely different from anticipating on a change of law which everybody thinks should be put into effect.” (*De Volkskrant*, 1998).<sup>2</sup> Allowing a violation of legal rules (in anticipation of a desirable change of law) here is declared with preemptory firmness to be something completely different from a policy of tolerance.<sup>3</sup>

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And, last but not least, a speaker can use dissociation to evade a potential accusation of inconsistency. Former Minister of Education Ritzen, for example, tried to cover up a contradiction in his position by introducing a dissociation between students participating in the university administration (which he earlier opposed), and students taking part in the university administration (which he later approved). Only in the latter case, he argued, students were responsible to the Dean only and not to the student population.<sup>4</sup>

Apart from these general effects, dissociation has various rhetorical effects that depend on the place in the dialectical profile in which the technique is used (van Eemeren, Houtlosser, & Snoeck Henkemans, 2007).<sup>5</sup> For example, speakers who in the confrontation stage of a critical discussion bring forward an opposite standpoint against a standpoint brought forward earlier, can through a dissociation make a concession on an innocuous or minor interpretation of the standpoint they reject, and in that way present their own standpoint with all the more force. This is what Maria Montessori's granddaughter does when she replies to her grandmother's critics with her claim that her grandmother loved beautiful clothes but was not vain. By way of the dissociation, she gives the impression that her opponents are mistaken, and she lends her own standpoint the status of the better, if not the last, word.

In evaluating strategic maneuvers in the context of a critical discussion, the central question is whether these maneuvers can stand the test of reasonableness. Such an assessment can only take place in a clearly and precisely formulated normative framework. One such framework is offered by the pragma-dialectical rules for critical discussion (van Eemeren & Grootendorst, 1982, 1992, 2004), against the background of which the concept of strategic maneuvering has been developed. The application of this framework enables the analyst to indicate exactly when and why a strategic maneuver by way of a dissociation transgresses the bounds of reasonableness.<sup>6</sup>

In this paper, I consider various answers to the question when and why strategic maneuvering with dissociation is sound and when it transgresses the bounds of reasonableness. First, I look at how a number of scholars outside Pragma-Dialectics have approached this question, and then I look at how it is answered in Pragma-Dialectics. At the end of this paper, I reflect on the merits of these various answers.

### 3.2 Other Approaches

So far, among argumentation scholars, not much attention has been paid to the question of whether and when dissociation is a sound argumentative technique. The only author who has written at some length about this topic is Schiappa (1985, 1993). Schiappa is of the opinion that dissociation is always unsound, because dissociation involves a real definition, in which one of the split-off terms is presented as the true or essential interpretation of the concept that is expressed by the original term. And real definitions are unsound, because they are essentialistic.

I agree with Schiappa that dissociation always involves a definition, and also that dissociation always invokes the opposition between appearance and reality. However, I do not agree that the latter necessarily is a consequence of the definition being a real or essentialistic one.

First of all, it is quite possible that the definition that is involved in a dissociation is preferred by the speaker merely for “methodological” reasons, without the speaker having the pretense to present a real definition or a description of the essence of the *definiendum*.<sup>7</sup> Only in a definition that the speaker expressly presents as real, such as in “Real peace is not the absence of conflict, but the presence of justice” (pronounced by Harrison Ford in the role of the President of the United States in the movie *Air Force One*), we can be sure that we have to do with an essentialistic definition.

More important is the fact that the opposition between appearance and reality in many cases does not play a role on the level of the definition at all, but rather on the level of the subject matter that is being discussed. On the level of that subject matter, entities are assigned to the categories distinguished in the dissociation, and what is at issue is whether they really belong there or only in appearance. For example, in defending her grandmother against her critics who called her vain, the granddaughter of Maria Montessori categorizes her grandmother as someone who was not really vain, but only had a love of beautiful clothes. Although at the bottom of this categorization lies a particular definition of the term “vain”, limiting the meaning of the term to the mental aspects of this quality, there is no pretense that this is the one and only true definition. What is at issue is that, against the background of this definition, Montessori merely appears to be vain, but cannot be called so in reality.

Nevertheless, as we saw earlier, there certainly are cases in which dissociation involves a real, essentialistic definition. But why the dissociation in these cases should be considered unsound, Schiappa does not plausibly explain. Schiappa contends that definitions are not descriptions of reality, but methodological constructions, based on a particular theoretical perspective and serving particular aims, and that therefore it is misleading to present a definition with the pretense that one is making an objective claim about how things are. However, this argument meets with various objections. First of all, by saying definition *is* a methodological construction, Schiappa himself seems to apply an essentialistic definition of definition and neglects the fact that we merely can speak of different conceptions of definition. In the second place, in using the term misleading, which presupposes a conscious intention on the part of the speaker, Schiappa employs a psychologizing approach. But psychologizing does not provide a good starting point for the study of argumentation as a verbal activity (van Eemeren & Grootendorst, 1982). And finally, through this terminology, Schiappa takes a moral stance: misleading is bad. But just as it is not the province of the argumentation scholar to give a judgment on the truth of assertions (Hamblin, 1970), it is not up to him to assume the role of moral arbiter.

More than to the soundness of dissociation, argumentation scholars have given attention to a related concept, the soundness of persuasive definitions. According to Stevenson (1944), who introduced the term, in a persuasive definition, the descriptive meaning of a term is altered, while the emotive meaning is kept unchanged, with the aim of influencing the attitude of the audience. Dissociation often involves

a persuasive definition. In Stevenson's original example of a persuasive definition, for instance, the speaker accuses his opponent, who uses "culture" more or less as a term for literacy, of emphasizing merely the outer shape, the empty shell of culture: "In the true and full sense of the term, 'culture' means *imaginative sensitivity* and *originality*". Through this persuasive definition, clearly essentialistically phrased, by the way, in which the descriptive meaning of the term culture is altered, while the positive emotional meaning is preserved, a dissociation is introduced between real, inner, and merely apparent, outer, culture.

Logic textbooks, such as Copi and Cohen (1998), warn against persuasive definitions. Allegedly, these definitions are misleading, for they appear to give an objective description of the meaning of the word, while surreptitiously an emotional meaning is smuggled in. Moreover, the listener is not aware that the meaning of the word has been changed. Here, then, just like we saw earlier with dissociation, persuasive definitions are rejected on the basis of their deceptiveness. Moreover, now a second psychologizing element is introduced, whether the listener is or is not aware of the change in meaning.

Fortunately, there are other voices. Walton (2001, 2005) places the issue in the framework of his theory of the various kinds of dialogues. For him it depends on the type of dialogue in which the persuasive definition occurs, what the criteria are on which the soundness of a persuasive definition must be judged. At first sight, this seems to result in a rather heterogeneous set, applied *ad hoc*, and with the same moralizing and psychologizing stance that we saw others take before. For example, Walton considers a particular persuasive definition in a persuasive dialogue to be quite harmless, because it is clear what the speaker intends. For that same reason, he judges a persuasive definition from a political context in which the audience was not aware of the change of meaning unsound, for being deceptive. But another persuasive definition from a political context, in which there is a similar subtle, covert shift of meaning, he does not reject, this time on the consideration that ambiguity and subtle shifts of meaning are normal in this context. In the end, though, Walton arrives at a clear and simple dialectical position: persuasive definitions must be considered as "open to critical questioning and to the posing of counter definitions" and as "having a burden of proof attached".

The idea that persuasive definitions must be submitted to critical questioning and must be defended has also been proposed by Aberdein (1998). Responding to Burgess-Jackson (1995), Aberdein argues for concentrating on the role that the definition plays in the discussion. More specifically, the opponent should be allowed to have a difference of opinion with the speaker about the definition. Persuasive definitions that are not put up for discussion and for which no arguments or theoretical foundation are given, are unsound. In addition, Aberdein requires the core meaning of the term to be preserved.

Although I think that Aberdein's criteria are a big step in the right direction (for reasons that will become clear presently), still he does not really clarify their basis. Why is it necessary for the definition to be put up for discussion, and why should the core meaning be preserved? Aberdein, too, seems to take a moralizing and psychologizing stance: "Otherwise, (...) the persuasive definition can only serve to mislead".

### 3.3 The Pragma-Dialectical Approach

I will now contrast the approaches treated so far to that of Pragma-Dialectics. In a pragma-dialectical perspective, the criteria for the evaluation of dissociation are systematically linked to the rules of critical discussion. For the evaluation of dissociation, rule 6, the starting-point rule, in particular is relevant. This is because, through a dissociation, one of the starting points of a critical discussion is changed. Within a concept that up till then in the discussion was considered a unitary whole, a new distinction is introduced, and a definition of a term that up till then in the discussion was accepted and applied is replaced by a new one. So an agreement reached in the opening stage of a critical discussion about the content of a concept and the meaning of a term is altered.

According to the ideal model of critical discussion, when an agreement reached in the opening stage is changed, first a side-discussion must be held about the acceptability of that change, before the main discussion can be continued. In this side-discussion the speaker who uses the dissociation presents a proposal to the antagonist for the change of the agreement at issue. If the antagonist does not right away accept this proposal, the protagonist must withdraw it or defend it.<sup>8</sup> The dissociation can be maintained in the main discussion only if the side-discussion results in the antagonist accepting the conceptual and definitional change inherent in the dissociation. If the antagonist does not accept this change, and the protagonist nevertheless uses the dissociation in the main discussion as if the changed concept and definition belong to the mutually accepted starting points of the discussion, the protagonist commits a violation of rule 6 in the main discussion: a party may not falsely present something as an accepted starting point.<sup>9</sup> If the protagonist, however, puts the change up for discussion and the antagonist accepts it, the protagonist may use the dissociation without violating rule 6.

The two kinds of conditions for the soundness of dissociation mentioned here, can, following the distinction that van Eemeren and Houtlosser (2002) made between procedural and material starting-points, be referred to respectively as procedural and material conditions. If the protagonist puts up the change for discussion, the procedural condition has been fulfilled; if the antagonist accepts the change, the material condition has been fulfilled. In a dialectically sound dissociation, both kinds of conditions have been satisfied.

The procedural condition can be satisfied in two ways: the protagonist can bring forward as a standpoint his proposal for changing the starting-points, and he can give argumentation for that change. If the proposal for change has not been brought forward as a standpoint, adducing an argument for it will make it into a standpoint yet.

The protagonist brings forward his proposal for changing the starting-points as a standpoint by way of a recognizable performance of the speech act through which this change is introduced. By recognizably introducing a new conceptual distinction or a new terminological definition, the speaker makes the acceptability of his speech act into an issue. The performance of these speech acts is recognizable if they are performed explicitly, through the use of a performative formula, but also if they are performed implicitly, or even indirectly, the recognizability of these speech acts,

even if they are performed implicitly and indirectly, being taken care of by the rules and conventions for the performance of speech acts.

However, in dissociation the speech acts of definition and distinction often are not performed as such, but presupposed. This happens, for example, when the dissociation merely involves classifying an entity in one of two dissociated categories, the existence of which is presupposed. I already mentioned an instance of this in the dissociation that Maria Montessori's granddaughter applies: she presupposes the distinction between people who are vain and people who love beautiful clothes, and groups her grandmother with the latter category. If the change in starting-points is not brought forward as a standpoint, but is presupposed, and there are no arguments given for it, the distinction or definition is not put up for discussion. In that case the dissociation is procedurally unsound.

The material condition is satisfied if the antagonist accepts the proposed change in starting points that is put up for discussion. Although discussants in principle are completely free in drawing up a list of mutually accepted propositions (van Eemeren & Grootendorst, 2004), some general observations can be made about the criteria on which the antagonist may judge the acceptability of the distinction or definition inherent in the dissociation. These criteria are connected to the general and specific goals that are typical of these speech acts. Definition and distinction are language declaratives that have as a general purpose to clarify linguistic usage and concept formation and to solve demarcation problems (Viskil, 1994).<sup>10</sup> Specific to the language declaratives inherent in dissociation, moreover, is the goal to resolve a contradiction.

To start with the latter: through a dissociation a speaker can resolve a contradiction, because, within a notion that was thus far regarded as a unified whole, he makes a distinction between term I and term II, and by virtue of this dissociation he can, without contradicting himself, maintain that a proposition containing term I or deduced from a proposition containing term I is tenable, while a proposition containing term II or deduced from a proposition containing term II, is not. Given this specific goal, it is of crucial importance that the antagonist is indeed of the opinion that a distinction between term I and term II is valid. If the antagonist is of the opinion that the distinction between the two concepts is merely verbal or that the meaning of the two terms in actual fact comes down to the same thing, the contradiction cannot be resolved by the dissociation. This is one of the grounds, then, on which an antagonist may deem the change in starting-points brought about by a dissociation not acceptable. In spite of his adjuration that "It really is not a matter of just semantics", Former Minister of Education Ritzen, for example, could not convince members of Parliament of the validity of the distinction between students taking part in the university administration and students participating in the university administration: they accused him of merely trying to save face.

Also the general purposes of the language declaratives making a distinction and introducing a definition inherent in the dissociation must be achieved: these speech acts must contribute to linguistic and conceptual clarification and to the solution of demarcation problems. That means that they also should have some utility beyond the goal of solving a particular contradiction in the specific discussion at hand; in



other words, the definition and the distinction should not be used merely *ad hoc*. The appropriateness with regard to this general purpose can serve as a second criterion for the antagonist in judging the acceptability of the proposed change in starting points. For instance, an antagonist might prefer not to go along with the defense that was put up for the main sponsor of the Dutch skating team, an insurance company that congratulated the skaters in an advertisement on their victory, even though during the Olympic games sponsors are not allowed to use their sponsorship in their ads. This defense consisted of making a dissociation between real sponsors, who have lended support for an extended period, like the insurance company that stood under attack, and opportunist sponsors, the implication being that only the latter should be prohibited from using their sponsorship in their advertising.<sup>11</sup> In this dissociation, the meaning of the word “sponsor” is limited to a person or organization that lends financial support *during an extended period*. It is conceivable that the business world might consider this limitation, the consequence of which is that a person or organization lending financial support for a short period in time may not be called a sponsor, rather impracticable.

### 3.4 Discussion

The pragma-dialectical approach sketched here has considerable advantages over the ones I treated earlier. In the first place, in Pragma-Dialectics, contrary to the other approaches, the criteria are systematically theoretically founded. They are derived from their functionality in the light of solving a difference of opinion, which in pragma-dialectics is considered as the primary aim of argumentative discourse. The change in starting points intrinsic to dissociation must be put up for discussion and be accepted, not because otherwise the dissociation would be deceitful or misleading, but because it is impossible to resolve the main difference of opinion if the starting-points for the discussion are not shared.

In the second place, as an important consequence of the first point, the argumentation theorist no longer is condemned to take upon himself the role of moral arbiter. The only thing that counts is whether the way in which a discussion is conducted contributes to the rational resolution of a difference of opinion or prevents or hinders the achievement of that goal. The analyst merely checks whether the dissociation does or does not violate the procedural rules for rational resolution. In the case of dissociation, an argumentative technique that brings about a change in the starting-points of the discussion, the main rule involved is rule 6.

Finally, the pragma-dialectical approach has the advantage that the acceptability of the proposal for a change in starting points no longer is something that the argumentation theorist needs to judge. The theorist does not need to worry about whether a definition is good or a distinction tenable. That judgment is left to the participants themselves, who can start a discussion about that. The theorist can, however, help them conduct this discussion by proposing criteria that the discussants can use in their considerations.

What, then becomes of the essentialistic definitions that Schiappa and others warn against? A violation of rule 6 as set forth in this paper, unfortunately, is not the only thing that can go amiss with a dissociation. In the side-discussion about the proposed change in starting-points, everything that can go wrong in a discussion can go wrong; all the rules for critical discussion can be violated. Dissociation by means of a definition that is clearly presented as essentialistic is a case in point: with such a formulation, the protagonist immunizes his proposal against criticism. That comes down to a violation of rule 2, the obligation-to-defend rule, in the side-discussion about the acceptability of the proposed definition.

Strategic maneuvering travels between the poles of rhetorical effectiveness and dialectical reasonableness. Dissociation *par excellence* is a technique that can be used in strategic maneuvering. The rhetorical gains of that technique I have sketched at the beginning of this paper. What about its dialectical reasonableness? As long as the dissociation is put up for discussion and, if not accepted at first hand, is conclusively defended, there is no problem. Then dissociation can contribute to creating clarity about standpoints, to generating shared starting-points for attacking and defending arguments, and to ensuring that the conclusions drawn from the discussion are optimally precise.

## Endnotes

- 1 The full *Volkskrant* text from which the example is drawn is as follows: “That her grandmother is known for being ambitious and vain, she also deems irrelevant. And incorrect, as well. ‘She loved beautiful clothes, but was not vain’.”
- 2 The full *Volkskrant* text from which the example is drawn is as follows: “According to Jorritsma, the cabinet will not revert to a tolerance policy, as it was applied in 1997. ‘That was once, but never again, we said at the time. But tolerating is something quite different from anticipating on a change of law which everybody thinks should be put into effect’.”
- 3 For an overview of the different shapes dissociation can take, see van Rees (2003).
- 4 The full *Volkskrant* (1996) text from which the example is drawn is as follows: “Parliament forces Minister Ritzen to allow a student in the Faculty Board. (...) The proposal of the Labor Party and of D’66 frustrate Ritzens plans. With his bill Modernizing University Administration, the minister wants to bring an end to students participating in the administration of the University. ‘Students participating in the administration of the University is a dangerous thing’, Ritzen asserted last week. Tuesday the minister got ready to acquiesce in the majority opinion in Parliament. He called a student taking part in the Faculty Board ‘something different than students participating in the administration’. Ritzen: ‘A student taking part in the Board is accountable to the Dean, not to the student population. It really isn’t a matter of semantics.’ ‘You are simply trying to save your face’, Member of Parliament for the Socialist Party Poppe cried out indignantly, ‘so it would be mere coincidence that the Board member happens to be a student as well’. VVD member De Vries, too, was not impressed by the minister’s argument.”
- 5 For an overview of the different places in a critical discussion in which dissociation can be used and the dialectical and rhetorical effects of the technique in those places, see van Rees (2002, 2005b, 2006).
- 6 In van Rees (2005a) I discuss the soundness of dissociation from a Pragma-Dialectical perspective.

- 7 Crawshay-Williams (1957) shows that definitions are given for methodological reasons: in the light of a given purpose, it is useful (good method) to define a term in a particular way. For example, when one's purpose is to describe the grammar of a language, it is useful to define *language* as a set of sentences (giving rise to a dissociation between competence and performance or *langue* and *parole*); for other purposes, it may be more useful to define *language* as a means of communication.
- 8 See van Eemeren et al. (2007) for the dialectical profile of the opening stage of a critical discussion.
- 9 Grootendorst (1999), as well, considers the case of the "fallacy of incorrect dissociation" analyzed by him as a violation of rule 6.
- 10 The term language declarative is introduced by van Eemeren and Grootendorst (1984).
- 11 The full text in *Algemeen Dagblad* (19-02-2002) from which the example is drawn is as follows: "The insurance company is a solid sponsor that has been financially supporting skating as a sport for a quarter of a century. (...) Apparently Blankert doesn't recognize the difference between bona-fide financiers that have built sports and opportunist sponsors."

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# Chapter 4

## Strategies of Refutation by Definition: A Pragma-Rhetorical Approach to Refutations in a Public Speech

Cornelia Ilie

*If you are not well equipped with an argument against the assertion, look among the definitions, real or apparent, of the thing before you, and if one is not enough, draw upon several. For it will be easier to attack people when committed to a definition: for an attack is always more easily made on definitions.*

(Aristotle's Topics, Book II)

### 4.1 Introduction

Goal-oriented communication has long been the trademark of human interaction in a wide range of private and public settings. During the past three decades a renewed awareness has emerged in both academic and extra-academic circles about the growing role and extensive effects of rhetorically powerful discourse in all areas of human activity. This is particularly noticeable in political discourse, which is driven by the challenge and wish to argue in order to influence people's minds, to motivate people to act and even to manipulate people. That is why speakers do not only advance their own arguments in favour of their positions, but they also provide arguments discarding the other side's arguments. In controversies, definitions are often used to legitimate and refute arguments. Refuting an argument presupposes understanding that argument at every level of its literal meaning and pragmatic implicatures. In political disputes the act of defining contributes to further polarisation between adversarial positions and can therefore become rhetorically persuasive or dissuasive.

This paper examines the role played by refutation in the persuasion and dissuasion processes that rely on the use of definitions. In arguing, a speaker often appeals to definitions that reinforce the power of his/her arguments and/or to definitions that help to refute the opponent's arguments. Particularly persuasive are

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those definitions that are meant to stir up prejudices and stereotypes and thus to undermine the justifiability of the opponent's arguments and explicit/implicit definitions.

In order to illustrate the argumentative uses of definition in refutations, I have chosen to examine the various uses of definition-based refutations in Emmeline Pankhurst's speech on women's right to vote entitled *Militant suffragists*. This is a particularly significant speech, since apart from highlighting a very controversial issue in England and other countries at that time, it was delivered not in her home country, but in Hartford, Connecticut, which involved extra rhetorical processing and a special selection and presentation of the right arguments for that particular audience.

## 4.2 Refutation: An Interactive Process, a Performative Act and a Rhetorical Device

In institutional discourses and in public speeches refutation (Lat. *refutatio*) involves the use of rhetorical and argumentative devices with the purpose of countering an opponent's argument or rejecting the counterarguments of one's opponent. The complex uses and implications of refutation have raised great interest in both linguistics and rhetoric, which may account for the fact that there are several definitions of refutation (Moeschler, 1982; Rieke & Sillars, 1975; van Eemeren, Grootendorst, & Snoeck Henkemans, 1996; Verlinden, 2005). According to Rieke and Sillars, refutation designates both attacking others' arguments and defending one's own. Moeschler characterises the speech act of refutation typologically, describing the conditions that govern its use, the linguistic markers of refutation, and the role of refutation in conversation. In van Eemeren et al. (1996) an important distinction is made between strong and weak refutations. In a strong refutation "one is to attack the standpoint by showing that the proposition is unacceptable whereas the opposite, or contradictory, proposition is acceptable", whereas "in 'weak refutation' it is sufficient to cast doubt upon the attacked standpoint, without a defense of the opposite standpoint" (p. 4).

Dictionary definitions of refutations are useful in that they often implicitly contribute to highlighting various semantic perspectives on the occurrence and functions of different kinds of refutations. A comprehensive lexical definition of the notion of refutation is provided in *Webster's Revised Unabridged Dictionary* [Online], which highlights their communicative functions:

Refutation n. [L. *refutatio*: cf. F. *r[']e*[futation.]

The act or process of refuting or disproving, or the state of being refuted; proof of falsehood or error; the overthrowing of an argument, opinion, testimony, doctrine, or theory, by argument or countervailing proof.

Linguistically, refutation is the part of a coherent piece of discourse in which the speaker reminds or anticipates opposing arguments and responds to them. A pragma-linguistic definition of refutation is provided by *WordWebOnline* (n.d.):

### Refutation

1. The speech act of answering an attack on your assertions; e.g. “his refutation of the charges was short and persuasive” - defense [US], defence [Brit, Cdn]
2. Any evidence that helps to establish the falsity of something - disproof, falsification
3. The act of determining that something is false - falsification, falsifying, disproof, refutation

As a rhetorical device, refutation has been formalised within the arrangement of the classical oration, following the “confirmatio”, i.e. the section of a speech devoted to proof. The promoters of ancient Greek and Roman rhetoric established a method of presenting an argument which is known as classical oration and has several parts. Although there has hardly been any consensus about the precise number of parts, most scholars follow Cicero and Quintilian in identifying six: the *exordium* (= introduction), the *narratio* (= statement of facts), the *partitio* (= division), the *confirmatio* (= proof), the *refutatio* (= refutation), and the *peroratio* (= conclusion). According to Cicero, ethical appeals are particularly used in the first part (exordium), while emotional appeals are usually reserved for the conclusion (peroratio). Logical arguments are used prevalently in the four middle parts (narratio, partitio, confirmatio and refutatio). Typically, refutations are devoted to attacking opposite views and the opponent’s credibility, as well as providing counterarguments.

Refutation also applies to a general mode of argumentation within certain topics of invention, such as the contradiction, by means of which the speaker replies to the counterarguments of his/her opponent. Refutation can be achieved in a variety of ways, including logical appeal, emotional appeal, ethical appeal and wit (joke, humour, sarcasm, puns). In particular situations, speakers find it appropriate to present a refutation before the confirmation. For example, if an adversary’s speech is well received, it is usually helpful to refute his/her arguments before offering one’s own. Refutations apply to a variety of confrontational settings in which arguments are being attacked, denied, contradicted and/or rejected as being false, absurd, impertinent, wicked or unjust.

Aristotle was the first to emphasise the role of refutation in formal and informal arguments. In *Sophistical refutations* (trans. 1984) he argues that “there are two styles of refutation: for some depend on the language used, while some are independent of language.” At the same time, Aristotle warns against sophistical refutations, i.e. which appear to be refutations but actually are fallacies. In order to identify and discard fallacious refutations, he proposes a careful examination of “the definitions, real or apparent, of the thing before you”. This is why the present study proposes an analysis of refutations in connection with related definitions. In contemporary rhetorical scholarship, several functions of refutation in argumentation have been discussed by Walton (1985), Bailey (1990), Fahnestock and Secor (1990) and Ibsch (1997), among others. In a review of the rhetorical tradition of argumentation, Kastely (1997) proposes a re-consideration of persuasion as a kind of refutation in an ongoing dialogue between a rhetor and the audience, or between an author and the readers. He considers that Socrates, among the classics, and Kenneth Burke, among contemporary scholars, are the ones who best succeeded in upholding the civic dimensions of rhetoric through the dialogic use of language.

### 4.3 Argumentative Strategies of Refutation

By means of refutations, speakers position themselves in relation to their opponents by reinforcing their own standpoints and challenging or rejecting those of their opponents, thus marking the distance that separates them. Arguing against someone else's standpoint can be used to refute all those who oppose one's position. Objections to particular arguments can be raised in at least three ways: by directly attacking the opponent's statements or claims, by putting forward counter-statements or counter-claims, and by highlighting and contrasting the arguments in the two sets of statements or claims.

Claims can be refuted when they are contradicted by experience, testimony, authority, or common knowledge. Apart from considerable background and specialised knowledge, refuting an argument requires critical thinking skills, strong purposefulness and genuine personal commitment. According to Aristotle (trans. 1984), refutation by logical analogy was the ultimate level of human intelligence. There are certainly a number of reasons for this claim: refuting an argument entails understanding that argument in terms of contextual grounding and logical implications.

Refutations may take different forms depending on several factors, such as the specific situational constraints, the kind of discourse, the debated issue, the speakers' personality and goals, etc. More often than not, speakers resort to refutation in order not only to criticise their opponents and to attack their arguments, but also to defend their own arguments from the opponents' attacks.

According to Fahnstock and Secor (1990), "refutation is an indispensable part of all positive argument" (p. 307). On their view the preparation of a refutation presupposes establishing an implicit dialogue with the potential/real arguments of one's interlocutor/audience:

To begin with, refutation affects your first consideration of audience; you have nothing more than an easy demonstration argument (like "Running is popular") unless you see at least the possibility of an opposition. [...] Second, refutation influences the content and structure of almost any argument. If you are arguing to characterize something in a certain way and your opponent defines a key word differently, you will have to spend more time on your counterdefinition than you would if you were unchallenged. (p. 307)

Based on these considerations and on related research (Ibsch, 1997; Smith, 1964; Verlinden, 2005), it is possible to identify the following particular functions of refutations:

- to show why the adversaries' opinions are wrong and/or their arguments invalid
- to establish the audience's understanding and acceptance of the righteousness of the speaker's position/cause
- to demonstrate why the speaker feels his/her side of the argument is the better one, even when s/he doesn't necessarily think that the other side is entirely wrong
- to involve the audience by appealing to their shared community doxa, relevant experiences and basic feelings so as to bring about a change of mind



- to strike the right rhetorical chords in order to invite positive reactions and further support from the audience and the public at large

#### 4.4 Refutations by Definition and Re-Definition

In highly controversial debates the strength of a speaker's arguments is upheld not only by defending one's own standpoints and by attacking the adversary's standpoints, but also by supporting or rejecting particular definitions of key words as indisputable facts. Thus, even the prospect of refuting an argument entails understanding that argument at every level of its definitional meaning and logical implications. In the process of argumentation, skilful speakers do not simply use commonly more or less acknowledged definitions, but they generate instead new context-related and ideologically based definitions. This has been extensively discussed by Perelman and Olbrechts-Tyteca (trans. 1969), who claimed that a definition should always be regarded as an argument and should be evaluated as an argument. In the same vein, Walton (2001) considers that "a persuasive definition should be treated as a particular kind of argument" (p. 118).

Definitions play a crucial role in every field of human reasoning and interpersonal interaction. One way to argue appropriately is to be precise about the explicit and implicit meanings of the key terms of an argument. In this respect, the Socratic question "What does X mean?" is a natural starting point for any argumentative discourse. A basic definition may highlight a less known aspect of a notion, idea or issue, or it may re-evaluate a well-known and debated aspect of the issue under discussion. In political discourse, definitions are not necessarily conceived as universal axioms, but they are often clarifications or explanations of contextualised terms.

Three main aspects are significant when examining the use of definitions. In the first place, (i) the act of defining involves processes of identification, categorisation and particularisation of the entity or phenomenon to be defined. In the second place, (ii) the act of defining implies the communicative act of making something clear and tangible. In the third place, (iii) the act of defining entails determining the outline and boundaries of the entity or phenomenon to be defined. There are, accordingly, several types of argumentatively used definitions that display these features, as will be shown later in this paper.

- (i) Definitions are used to categorise things, people or ideas by either making generalisations or particularisations about them. Frequently, how one defines a term or concept can lead logically (through syllogistic reasoning) to a given conclusion, while other definitions might lead to different conclusions. Defining key notions allows a speaker to interpret the opinions involved in the argument in a way that makes logical sense to the listeners. To argue, as well as to refute, from definition, is a way to convince the audience that a particular ideological belief or commitment is reasonable because it can be supported

by evidence. Consequently, the conclusions devolving from this definition stand a good chance of being seen as appropriate, logical and acceptable.

- (ii) In the context of specialised discourse, such as political discourse, definitions function as speech acts and are used to signpost the central debate issues and thus to facilitate the audience's comprehension. By means of pragmatic analysis of argumentative definitions it is possible to examine the illocutionary force and perlocutionary effects of complementary and/or competing definitions provided by speakers and their interlocutors or opponents. At the discursive level, definitions are instrumental in the process of social construction of identities and ideological polarisation, by contributing to establish, or, on the contrary, challenge, a case of partial or total consensus.
- (iii) There are often pitfalls in adopting a particular definition of a key word: it may, for instance, encompass too large a lexical field or, on the contrary, it may exclude significant semantic features or pragmatic uses. It is important therefore to keep in mind that the use of definitions with unexamined assumptions often results in arguments that either "over-simplify" the issue under debate or "over-generalise" the issue under debate. This means that either too much or too little is claimed by these arguments, which makes them easily refuted by pointing out a simple distinction.

#### **4.5 Refutations in Public Speeches – Emmeline Pankhurst's Suffrage Speech**

On crucial issues such as the debate concerning women's right to vote, female speakers have been fully aware of the scepticism and/or opposition they faced and often tried to address it directly in their speeches. They often make creative use of their opponents' attacks by uttering refutations, which are normally stronger persuasion devices than the corresponding assertive statements. Women can be seen to deliberately start their speeches by admitting that there are those who disagree with their position, then continue by clarifying the two opposing positions for their audiences, and finally conclude by directly addressing the audience and facing their reactions. Their refutations are particularly targeted at the opponents' behaviour and communicative patterns, coherence, consistency and supporting evidence.

For the purposes of the present paper I have chosen to examine the definition-based refutations used in a speech entitled *Militant suffragists* and delivered by Emmeline Pankhurst in Hartford, Connecticut, on November 13, 1913, during a lecture tour in the U.S.A. (printed in Copeland et al., 1999). Emmeline Pankhurst (1858–1928) was one of the most eloquent and energetic leaders of the woman suffrage movement during the early part of the 19<sup>th</sup> century (Roberts, 1995). She was head of the so-called "militants" of England and often faced arrest and prosecution as a result of furthering the right of women to vote. She worked her entire life for the cause of women's suffrage, and was certainly not afraid to back up her words with action. According to Warner (1998) "Mrs. Pankhurst was born a Victorian Englishwoman, but she shaped

an idea of women for our time; she shook society into a new pattern from which there could be no going back.” In her tireless public speaking, suffrage meant more than equality with men. Her plea to the court in 1912 concluded, “We are here, not because we are lawbreakers; we are here in our efforts to become lawmakers”.

In 1903 Emmeline Pankhurst founded, together with other champions of women’s suffrage, the Women’s Social and Political Union (W.S.P.U). The motto of the Women’s Social and Political Union was “deeds not words”. It is a motto that could also serve well to sum up Pankhurst’s life, both as a woman and as a suffragette. The opposition the Liberal government of the time provoked, among all classes and conditions of women, furious and passionate protests. The W.S.P.U. adopted a French Revolutionary sense of crowd management, public spectacle and symbolic ceremony. Women’s suffrage was granted at different times in different countries. For example Finland granted women the vote in 1906, Norway in 1913 and Sweden in 1921. After a prolonged struggle women were finally given the right to vote on equal terms with men in 1920 in the USA and in 1928 in Britain.

The following aspects of refutation-oriented definitions will be particularly examined in Emmeline Pankhurst’s speech:

- What are the major types of definitions used as refutations and what are their distinguishing characteristics?
- How are definitions signalled linguistically and rhetorically?
- What particular rhetorical features co-occur with definitions?

## 4.6 Definition-Based Refutations in Emmeline Pankhurst’s Speech

The fact that Emmeline Pankhurst’s speech *Militant suffragists* is delivered in the United States and not in England, her home-country, places her in an entirely new rhetorical situation and conditions the way in which she structures her speech and confronts the new audience. Realising that she is addressing a different audience in the United States than back home in England, Emmeline Pankhurst adjusts her Hartford speech so as to involve her listeners both rationally and emotionally, by appealing to their personal experiences, as well as to the particular values and norms to which they were expected to subscribe. She appears persuasive from the start, by addressing directly the audience and simply explaining why she came there and in what capacity. This straightforward move enables her to establish direct contact with the audience and to better help them understand her position and her point of view. The speech has a powerful *ex abrupto* start where she refers to her political commitment by means of two explicit negations, as illustrated in example (1):

- (1) *I do not come here as an advocate*, because whatever position the suffrage movement may occupy in the United States of America, in England it has passed beyond the realm of advocacy and it has entered into the sphere of

practical politics. It has become the subject of revolution and civil war, and so *to-night I am not here to advocate woman suffrage*. American suffragists can do that very well for themselves.

While treaties of rhetoric normally advise young orators against starting a speech with a negation, Pankhurst deliberately violates this very principle in order to directly refute her audience's presumed expectations and to avoid potential misunderstandings. Both her first and second utterances consist of self-reference by denial which is meant to re-define her identity, which goes beyond an advocate's role. Throughout her speech, Emmeline Pankhurst can be seen to refute several of her American hearers' presumed assumptions about her role and intentions. Example (1) displays a double refutation of presupposed inferences about her presumed political role and ulterior motives. By refuting twice the unexpressed assumption that she comes as an "advocate" of woman suffrage, Pankhurst is actually re-defining the term to strengthen her argumentative position. At the same time, she performs a face-saving act in relation to the various categories of American listeners by reassuring them that, on the one hand, she trusts the professionalism and determination of her fellow American suffragists and, on the other hand, she does not intend to instigate rebellion or civil unrest in America.

Pankhurst's two introductory refutations concerning her role as advocate are also meant to challenge the audience's expectations in order to capture their attention. Moreover, she anticipates her next move by raising the listeners' curiosity, so as to prepare them for further explanations and clarifications of her actual role and position. On account of their anticipatory nature, these two refutations can be regarded as *refutations by anticipation*. Their main function in the introduction of the speech, as Cicero repeatedly pointed out, is to establish the speaker's authority by rhetorical appeals to ethos. To better grasp the meaning ascribed by Pankhurst to the key word "advocate", it is useful to examine its lexical definition, both etymological and context-related:

Advocate

Etymology: Middle English *advocat*, from Middle French, from Latin *advocatus*, from past participle of *advocare* to summon, from *ad-* "to" + *vocare* "to call", from *voc-*, *vox* voice (*Wordsmyth Dictionary-Thesaurus* [Online], 2006)

Advocate

1. a person who publicly supports or recommends a particular cause or policy
  2. a person who pleads a case on someone else's behalf
- (*Compact Oxford Dictionary* [Online], 2006)

According to these and other dictionary definitions, an advocate is mainly a supporter who voices a cause or a policy, which does not imply a deeper involvement in defending the respective cause or policy. It is precisely this aspect that prompts Pankhurst to re-define her role in the woman suffrage movement. She resorts to a *definition by negation*, which is often used to broaden the scope of prevalent semantic interpretations and to provide the rationale for positive identification of her actual role, as illustrated in example (2) below. As a result, the actual definition becomes more effective by discursive elimination of possible undesirable definitions and representations. Her two refutations create a moment of uncertainty for the audience,

who, at this point, can only speculate about her real intention: they may be wondering whether she refutes being described as an advocate due to certain unforeseen circumstances, or whether her refutation implies a stronger identification with her role in the suffragist movement.

The rhetorical strategy that Pankhurst uses here is called *procatalepsis* (from Greek “anticipation”) or *prolepsis* (from Greek “preconception”) and it enables the speaker to refute anticipated objections and/or to attack the credibility of preconceived judgements by providing counter-arguments. It is based on the well-known principle that a potential objection that is answered in advance is subsequently weakened. Procatalepsis, by anticipating an objection and answering it, allows an arguer to continue moving forward, while taking into account points or reasons opposing either the adversary’s train of thought or final conclusions. In (1) this particular refutational argumentation rests on two closely linked syntactic relations: a causal relation, marked by the logical connective “because” and a conclusive relation, marked by the logical connective “and so”.

By referring to the American socio-political scene and comparing it with the situation in England, Emmeline Pankhurst shows, on the one hand, that she is aware of conceivable objections to her line of argumentation, and on the other, that she does not rule out the existence of reasonable counter-arguments. In order to convey this message, she uses the rhetorical figure called *apophasis*, by means of which a speaker asserts or emphasises something by apparently seeming to pass over, or deny it. A frequently used strategy in apophasis is the repetition, as in example (1): “I do not come here as an advocate”, “I am not here to advocate woman suffrage”. Pankhurst utters these two almost identical refutations in order precisely to call the audience’s attention to sensitive facts without stirring up strong feelings in connection with the issue of women’s right to vote. The rest of her speech shows in fact that advocating woman suffrage is in fact her main topic.

To further clarify her position, Emmeline Pankhurst wants to make the audience aware of her non-American background with the purpose of opening a new perspective for them based on her own experience-related arguments in favour of the woman suffrage movement in England. After the two introductory refutations, she continues her self-presentation by defining her self-ascribed identity as “soldier”, and the other-inflicted identity as “convict”, as illustrated in example (2).

- (2) *I am here as a soldier* who has temporarily left the field of battle in order to explain – it seems strange it should have to be explained – what civil war is like when civil war is waged by women. [...] I am adjudged because of my life to be a *dangerous person*, under sentence of penal servitude in a convict prison. [...] I dare say, in the minds of many of you – you will perhaps forgive me this personal touch – that I do not look either very like a *soldier* or very like a *convict*, and yet I am both.

Whereas in (1) Pankhurst redefines herself through a definition by negation, i.e. refuting an implicitly presumed assumption, in (2) she refutes an explicit assumption with which she confronts her audience – i.e. that she may be neither soldier nor convict since it is hardly possible to identify her in either role. By foregrounding

her role as a particular kind of “soldier” (“I am here as a soldier who has temporarily left the field of battle”), she makes use of a two-sided definition, i.e. a definition that consists of a categorisation and a particularisation: she belongs to the category of soldiers, but within that category she has taken a particular position. Her refutation-based argumentation relies primarily on *figurative definitions* of the terms “soldier” and “convict”, both of which had been used to define her current social roles in England. By means of these definitions a creative parallel is drawn between her actual socio-political role, on the one hand, and two other roles that literally have nothing to do with it, on the other (i.e. the role of a soldier and that of a convict). Figurative definition is normally a memorable way of singling out particular meanings of the words under scrutiny. It is also pragmatically and rhetorically effective since it conveys attitude as well as meaning.

Pankhurst continues her speech by referring to “civil war” when “waged by women” and she implies that there is a distinction between a civil war waged by men and a civil war waged by women. This strategy is similar to the *rhetorical dissociation* discussed in Perelman and Olbrechts-Tyteca (trans. 1969), by means of which a seemingly unitary term is split in two and the speaker’s position is linked to the term that concerns a particular line of argumentation. In this respect, her definitions acquire more strength and become *polemical acts*, since she implicitly evaluates and qualifies the commonly assumed interpretations of the two notions. Also, Pankhurst describes herself metaphorically in two different and contradictory capacities: as a soldier in a civil war, i.e. a person normally worthy of respect, and as a convict, i.e. a person normally not worthy of respect. Her underlying message is that, in spite of important differences, the two notions have an important element in common: both roles are deprived of power and authority. The lexical definitions of the terms in several dictionaries support this interpretation, which reinforces Pankhurst’s multifaceted role. Thus, a soldier is defined as a “dedicated worker: somebody who works with dedication for a cause” in Encarta Online (n.d.), as a “person who contends or serves in any cause” in Random House Unabridged Dictionary (2006), and as an “active, loyal, or militant follower of an organization” in American Heritage Dictionary (2006).

The use of parenthetical statements is a powerful argumentative strategy in political discourse. Parentheticals are statements inserted within a speaker’s utterance, which are meant to convey essential parts of the speaker’s message though apparently treated as a secondary discourse while in reality they express an evaluation. The argumentative functions of parentheticals in political debates have been explored in Ilie (2003) in terms of topic shift and scope, sequencing in discourse and audience orientation. In Pankhurst’s speech, two metalinguistic parentheticals contribute to supplementing the argumentative definitions in example (2) and to strengthen the speaker’s ethos: “it seems strange it should have to be explained”; “you will perhaps forgive me this personal touch”. The former parenthetical is message-oriented and functions as a rational appeal (to *logos*), whereas the latter is addresser-oriented and functions as an emotional appeal (to *pathos*). Through the change in rhetorical appeal these parentheticals help to refocus the listeners’

attention and to mark the speaker's rhetorical transition from a lexical definition to a persuasive definition.

In a pragmatic perspective, Pankhurst's statements fulfil the role of speech acts since they generally have some ulterior motive in that they convey particular illocutionary forces, such as asserting, requesting, promising and apologising, which in turn are distinguished by the type of attitude expressed and the perlocutionary effect expected (Searle, 1969; Tsohatzidis, 1994). Some of her most powerful messages are conveyed in the form of parentheticals, as in example (2) above: "it seems strange it should have to be explained", "you will perhaps forgive me this personal touch". The former parenthetical involves a "double" speech act in the sense that an expressive speech act ("it seems strange") is embedded in a constative speech act of disputing. The aim of such a strategy is to enhance the perlocutionary effect on the audience. The latter parenthetical is formally conveyed as a speech act of apology. However, since the speaker's attitude is ironical, the apologetic force is cancelled out and the speech act acquires the illocutionary force of a pseudo-apology.

Among Pankhurst's roles, the one that raises most controversial interpretations is the role of convict and this is precisely what she wants her audience to become aware of. On the one hand, the notion of convict may have a rather neutral meaning, i.e. "somebody serving a prison sentence" according to Encarta Dictionary, but on the other hand, it can have a clearly negative meaning, i.e. "someone who is in prison because they are guilty of a crime", according to Cambridge Advanced Learner's Dictionary. The distinction consists in the existence or non-existence of guilt (+/- guilt). A more balanced view is taken by two other dictionaries, whose definitions include both the neutral and the negative meaning of "convict":

Convict

1. a person who has been found guilty of a crime or misdemeanour (synonyms: criminal, offender, transgressor, etc.)
  2. a person who is serving time in jail or prison (synonyms: prisoner, captive, etc.)
- (*Wordsmyth Dictionary-Thesaurus* [Online], 2006)

Convict

1. A person found or declared guilty of an offence or crime
  2. A person serving a sentence of imprisonment
- (*American Heritage Dictionary of the English Language* [Online], 2006)

These two lexical definitions succeed in giving a realistic picture of two practical implications in the use of the word "convict", which can only be distinguished in the right context. It is possible to infer from Pankhurst's speech that she draws the audience's attention to the tendency to interpret the meaning of the word "convict" more often in a negative, rather than in a neutral way, i.e. "presumed innocent until proven guilty".

Following up the argumentative strategy of refutation by means of definitions, Pankhurst continues with her refutational argumentation, as illustrated in example (3):

- (3) [...] it is about eight years since *the first militant action* was taken by women. *It was not militant at all, except that it provoked militancy* on the part of those who were opposed to it. *When women asked questions in political meetings and failed to get answers, they were not doing anything militant. To ask ques-*

tions at political meetings is an acknowledged right of all people who attend public meetings. [...] At any rate in Great Britain it is a custom, a time-honored one, to ask questions of candidates for Parliament and ask questions of members of the government. *No man was ever put out of a public meeting for asking a question until Votes for Women came onto the political horizon. The first people who were put out of a political meeting for asking questions, were women. [...] we were called militant for doing that ...*

Two major refutations are conveyed by Pankhurst in the excerpt above. For the first refutation she resorts to two related definitions: a *definition by negation* in which she denies the opponents' claims – "It [the action taken by women] was not militant at all" – and a *definition by explanation*, in which she points out that the act of asking questions is not necessarily militant, but it is "an acknowledged right of all people". While the major function of the definition by negation is to deny the opponent's argument in order to call into question its validity, an important function of the definition by explanation is to challenge the values to which one's opponents subscribe. In the first place, she denies her opponents' characterisation of women's actions as "militant", and in the second place, she reasserts the right of women and men to ask questions when attending public meetings, refuting the accusation of alleged militancy in question asking. It is significant to note in the following dictionary definitions that the meaning of the word "militant" is semantically and pragmatically related to the meaning of "soldier", used by Pankhurst earlier in her speech and illustrated in example (2).

Militant:

(Middle English, from Old French, from Latin *milicans, militant-*, present participle of *militare*, to serve as a soldier)

1. feeling or displaying eagerness to fight
2. having or showing a bold forcefulness in the pursuit of a goal

(*Merriam-Webster Online Thesaurus*, 2005–2006)

Militant:

Engaged in warfare; fighting; combating; serving as a *soldier*

(*Webster's Revised Unabridged Dictionary* [Online], 1913/2006)

While the two meanings listed in the lexical definition provided by *Merriam-Webster Online Thesaurus* indicate general features of a militant person, the meaning indicated for "militant" in *Webster's Revised Unabridged Dictionary* is a *definition by analogy*: "serving as a soldier". The key word "soldier" in example (2) is argumentatively correlated in Pankhurst's speech with the key word "militant" in example (3) by means of the rhetorical figure called *scesis onomaton*. This figure usually emphasises an idea by expressing it in a string of generally synonymous phrases or statements: the word "militant" is etymologically synonymous to "soldier" since it originates in the Latin verb *milicare* (from the noun *miles* = soldier), which means "to serve as a soldier" and implicitly to display a fighting spirit. After examining the structure and content of Pankhurst's speech it is reasonable to assume that she refutes particularly the label of war-like militancy ascribed by opponents indiscriminately to any action performed by women suffragists.



The second refutation in example (3) is related to the parallel the speaker draws between the attitude towards men and towards women, respectively, in relation to the right to ask questions. Although both men and women were in principle supposed to have the same rights, women were discriminated against since they were not allowed to ask questions at public meetings, while men had never been stopped from asking questions. When exposing this obvious injustice, Pankhurst's refutation is based on a *definition by analogy* and emphasises a clear situation of gender discrimination: for men it was normal to ask questions (no man was ever put out of a public meeting), but for women it was not (the first to be put out of a public meeting were women). This reinforces the idea that asking questions is not only an acknowledged right of citizens, but it is also potentially a very challenging act. Indeed, by asking questions people call into question an issue, a belief, a standpoint, a line of argumentation, etc. The goal of questioning practices is to hold political actors and decision-makers responsible in front of political peers and ordinary citizens. This is why Pankhurst insists on arguing that the right to ask questions was never questioned before the Votes for Women became a political question and men started to call women "militant".

A further type of refutation is the one enacted by means of dialogic strategies, as illustrated in example (4). By representing or quoting imaginary dialogue cues, Pankhurst enables her audience members to identify the polyphony of recognisable ideological voices:

- (4) "Put them in prison," they said; "that will stop it." *But it didn't stop it.* They put women in prison for long terms of imprisonment, for *making a nuisance of themselves* – that was the expression when they took petitions in their hands to the door of the House of Commons;

Pankhurst's multi-voiced rhetoric gives her refutations a strong theatrical touch. Reproducing the directive "Put them in prison" and emphasising the derogatory comments of the legal representatives ("making a nuisance of themselves"), she wants to involve her audience and to make them more sensitive to the suffragist cause that she defends. The polyphonic refutation in example (5), which continues in the same vein, is based on a definition by negation accompanied by correction:

- (5) *The whole argument with the anti-suffragists, or even the critical suffragist man, is this: that you can govern human beings without their consent.* They have said to us, "*Government rests upon force*; the women haven't force, so they must submit." Well, we are showing them that *government does not rest upon force at all*; it rests upon consent.

First, she denies the anti-suffragists' claim that "government rests upon force" and second, she makes a corrective statement: "it rests upon consent". In other words, her refutation consists in opposing the force of the argument to the argument of force used by anti-suffragists. A significant feature of the dialogic refutations above is the fact that the respective voices cannot be attributable to identifiable physical persons, but are generalisable and therefore more likely to have a stronger impact on the audience.

At the end of her speech, after having argued the legitimacy of the suffragist movement, Pankhurst adopts a different strategy: she starts to address specifically targeted members of her audience. This is illustrated in example (6), where she uses the rhetorical figure *apostrophe*, by means of which a speaker interrupts his/her speech and addresses directly a person or a group of persons.

- (6) *Now I want to say to you who think women cannot succeed*, we have brought the government of England to this position, that it has to face this alternative; either women are to be killed or women are to have the vote. *I ask American men in this meeting, what would you say if in your State you were faced with that alternative, that you must either kill them or give them their citizenship [...]?* Well, there is only one answer to that alternative; *there is only one way out of it*, unless you are prepared to put back civilization two or three generations; *you must give those women the vote*.

When she targets a particular category of listeners, namely those “who think women cannot succeed”, her intention is to enhance the appeal to pathos by displaying and eliciting emotionally loaded arguments. In the following utterance, where Pankhurst uses a rhetorical question, the targeted category of listeners is further narrowed down and includes specifically American men. Her goal is to shift the burden of proof from the suffragists to the decision-makers who, according to her, have to reach a final decision by choosing between two alternatives—one of which is obviously unacceptable, i.e. “women are to be killed”.

In extracts (5) and (6), Pankhurst’s commitment to the suffragist cause is conveyed by means of strong performatives: “we are showing them that government does not rest upon force at all” in (5) and “we have brought the government of England to this position” in (6). In the former case, the main verb conveys an ongoing activity, which may account for the emphatic illocutionary force. In the latter case, the main verb conveys a felicitously performed speech act of persuasion, whose perlocutionary effect is subsequently stated: “that it has to face this alternative; either women are to be killed or women are to have the vote.”

Throughout the speech, Pankhurst resorts to several offensive and defensive moves which are conveyed, on the one hand, by means of speech acts of accusation and on the other, by speech acts of explanation and justification. Her argumentation consists to a large extent of refutations based on definitions which define and re-define her own political role and the goals of her political cause. Starting from the audience’s presumed assumption about her identity as an advocate of women’s suffrage, Pankhurst chooses to re-define her current identity as going beyond and strengthening that of an advocate of the suffragette cause. She exposes her personal clash of identities when she admits that her self-assumed current identity is that of a soldier, whereas the identity inflicted upon her by the British law courts is that of a convict, as illustrated earlier in example (2): “I am here as a soldier who has temporarily left the field of battle in order to explain—it seems strange it should have to be explained—what civil war is like when civil war is waged by women. [...] I am adjudged because of my life to be a dangerous person, under sentence of penal servitude in a convict prison.” In re-evaluating the suffragette movement, Pankhurst re-defines the women’s suffrage movement as

more than just a matter of advocacy, but rather a matter of higher dignity, a subject of “revolution and civil war”: “[...] you must give those women the vote. Now that is the outcome of our civil war.” Her arguments show great determination and will power, as well as a deep commitment to the cause of suffragists.

## 4.7 Concluding Remarks

This paper has examined the role played by refutation in the persuasion and dis-suasion processes that rely on the use of definitions. In arguing, a speaker often appeals to definitions that reinforce the power of arguments and/or to definitions that help to refute the opponent’s arguments. The process of refutation in public speaking is meant to help the audience discover the factual errors and reasoning inconsistencies in a line of argumentation. By refuting the opponents’ previous or anticipated arguments, a skilful public speaker is primarily oriented towards the degree of coherence and consistency of informative and evaluative statements. The approach taken in this study lies at the interface between pragmatic and rhetorical analysis.

Pragmatically, definitions are instrumental in the process of social construction of identity and ideological polarisation, with a view to establishing support for the speaker’s arguments and to call into question the opponents’ standpoints. In Emmeline Pankhurst’s speech, definition-based refutations function as speech acts and are used to signpost the central debate issues and thus to facilitate the audience’s comprehension. Her refutations often become evaluative and/or polemical speech acts, being particularly targeted at the opponents’ behaviour and thinking patterns, coherence, consistency and supporting evidence.

The aim of the present study has been to illustrate the argumentative uses of definition in refutations by examining the various uses of definition-based refutations in Emmeline Pankhurst’s speech on women’s right to vote entitled *Militant suffragists*. This is a particularly significant speech, since apart from highlighting a very controversial issue of woman suffrage in England and other countries at that time, it was delivered not in her home country, but in the United States, which involved extra rhetorical processing and a special selection and presentation of the right arguments for the new audience. It shows that several factors are involved when successfully refuting an argument: relevant general background knowledge, critical thinking skills, intellectual abilities, personal commitment.

Three main pragmatic and rhetorical aspects are significant when examining the use of definitions in refutations.

In the first place, the act of defining involves processes of identification, categorisation and particularisation of the entity or phenomenon to be defined, as illustrated in example (1). Speech acts of defining have been shown to take different forms: *definition by negation*, as in examples (1), (3) and (5) and *definition by explanation*, as in example (3). Since the speaker uses these speech acts of defining for evaluation and debating purposes, they can be regarded as polemical acts.

In the second place, the act of defining implies the communicative act of making something clear and tangible so as to facilitate the audience's enhanced awareness of the issue under consideration. This is often effectively achieved by using *figurative definitions*, as in example (2).

In the third place, the act of defining entails determining the outline and boundaries of the entity or phenomenon to be defined. Relevant instances have been illustrated by the interplay of *definitions by negation*, as in examples (1), (3) and (5), *definition by analogy*, as in examples (2) and (3), and *definitions by rhetorical dissociation*, as in examples (2) and (3).

To sum up, the most salient cases of refutations that occur in Emmeline Pankhurst's speech appeal to the listeners' shared community doxa and are based on five different types of definitions: *definition by negation* (whereby the speaker proceeds to directly attack presumed assumptions of the audience or the interlocutors and to deny the validity or truth of their claim), *definition by explanation* (whereby the speaker puts forward counter-statements or counter-claims and provides reasons and/or concrete examples to support them), *figurative definition* (whereby the speaker makes implicit evaluative statements by resorting to unexpected comparisons and less plausible parallels in order to single out certain salient features of the issue under scrutiny), *definition by analogy* (whereby the speaker highlights and contrasts the opponent's arguments by correlating them with similar or comparable facts or phenomena) and *definitions by rhetorical dissociation* (whereby a seemingly unitary term is split in two and the speaker's position is linked to the term that concerns a particular line of argumentation).

The examples taken from Emmeline Pankhurst's speech show that her definitions co-occur and complement each other to a great extent, as they are woven into the overall structure of the speech, producing varying shades of emphasis and focus.

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**Part II**  
**Norms of Reasonableness and**  
**Fallaciousness**

# Chapter 5

## Nonfallacious Rhetorical Design in Argumentation

Scott Jacobs

### 5.1 Introduction

In previous papers I have argued that the traditional concepts of rhetorical strategy and argumentative fallacy are incompatible as they stand (Jacobs, 2000, 2002, 2005). Certain assumptions about strategy and fallacy block efforts to genuinely integrate logical and dialectical theories of argumentation with rhetorical theories. The problem arises from the traditional understanding of what can and should properly enter into achieving the goal of voluntary, informed consent. Both logical and dialectical theories of argumentation tend to equate this goal with decision-making that is based on “the merits of the case” according to “the force of the better argument” – and based on these considerations alone. When determining whether or not this standard has been properly upheld, logical evaluations tend to test directly the content and structure of the arguments that are made; dialectical approaches tend to evaluate the conduct and procedures by which the arguers themselves make and test their arguments.

This is of course an important difference. But the difference should not obscure the fact that both approaches are ultimately concerned with a common object: the argument. And this object is understood to consist of propositions that stand in a particular justificatory relationship: the truth, plausibility or acceptability of premises provides support or justification for the truth, plausibility or acceptability of a standpoint or conclusion.<sup>1</sup> The quality of this object is assessed either directly, as with the logical notion of cogency, or indirectly, as with the dialectical notion of testing procedures. Either way, it is the content of propositions and their justificatory relations that are put to the test, that are reconstructed and diagrammed, or that are otherwise the subject of evaluation.<sup>2</sup> What counts is the information value of propositional content and the reliability of the inferential procedures applied to that

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content. These are the features that determine for rational arguers the merits of the case and the force of the better argument.

This picture has allowed logical and dialectical theories to provide principled answers to the central normative questions of argumentation study: What is a good argument? How should reasonable arguers conduct themselves? It suggests standards for satisfying both the epistemic function of argument and the ethical responsibilities of social influence.

## 5.2 The Problem

So what, then, is the problem with the concept of rhetorical strategy and argumentative fallacy? The problem is to distinguish the two concepts in a meaningful way. This is a problem both at the level of theoretical principle and at the level of critical practice. While a case can be made that all fallacies involve rhetorical strategy (at least at the levels of arguer responsibility and critical judgment), we should not also conclude all rhetorical strategies involve fallacies.

But to avoid reaching this conclusion means escaping the following dilemma: On the one hand, rhetorical strategy is unavoidable in argumentative discourse. Any aspect of discursive design that we can identify as present or absent or otherwise variable will involve strategy insofar as it will involve a choice with differential consequences for decision-making. Simply pointing out such an aspect makes it a strategy for the critic because underlying such identification is an assessment that it should be, and therefore could be, used or else avoided, corrected, withdrawn, or replaced. And it becomes a strategy for the arguer insofar as the arguer can be held responsible for making a choice with foreseeable consequences. And choice of pretty much any content, any formulation of content, any style of presentation, any arrangement or organization at any level of formatting or institutional structuring has potential consequences for decision-making. Whether or not to color argument with rhetorical strategy is not a choice; the only choice is which color of strategy to use.

On the other hand, there would be no problem if for any choice among rhetorical strategies a “reasonable” strategy was available. But it is hard to see how that is so. In fact, it would seem that practically any rhetorical strategy and maybe every rhetorical strategy, by its very nature, must depart from an ideal of reasonable inference and free, open deliberation concerning the merits of the case. At least as far as this ideal has been explicated in logical and dialectical models all strategies are in principle suspect, and it is all too easy to find normative defectiveness if only one looks with a keen and stringent enough eye. Conceptual clarity and theoretical rigor would seem to lead inexorably toward an in-principle prohibition of rhetorical strategy.

The need to adapt to an audience or to the rhetorical situation in general is the key insight of the rhetorical tradition (Bitzer, 1968; Bryant, 1953; Wichelns, 1925). So it is no surprise that rhetoric is quite comfortable with the notion of strategy. But that is also its greatest problem – it is too comfortable with that notion. Take any standard you wish that is intrinsically rhetorical and it cannot make the kind of



evaluative distinction argumentation theory requires with regard to rhetorical strategies and fallacies. It is not enough that, as a consequence of a strategy, decisions get made; inferences occur; audiences are impressed, satisfied or convinced; that people judge a position worthy of assent; that a consensus is reached or a disagreement settled. Fallacies achieve this much – that’s why we worry about them. Strategic adaptation must do more.

It is a pragmatic presupposition of the activity of argumentation itself that argumentation is fallible in various ways and that the conclusions reached should, in principle, always be open to reconsideration given new arguments and evidence. People know that what seems reasonable may not be, that they sometimes get fooled, that they sometimes accept what they should not and sometimes reject what they should have accepted. Whatever the standards of rhetorical assessment – whether adaptation of discourse is held to a standard of appropriateness, eloquence, fidelity, evocativeness, social worth, or indigenous community norms – all such standards remain woefully underdeveloped as means of capturing this basic property. All such standards fail to subject to principled critique the argumentative judgments and practices of a community or those applied in a particular case. For none of these standards distinguishes clearly and coherently between what people *only think* and what *actually are* good or bad reasons, faulty or reliable inferences, correct or erroneous conclusions, weak or strong arguments, just, fair and open or closed, biased, and capricious procedures, informed or misinformed decisions. Where rhetorical standards do make these distinctions, they invariably do so by referring back to the standards of dialectical pragmatics or logic. And insofar as they do so, those standards face the same problems with strategy that face logic and dialectic.

And those problems are both epistemic and moral. The moral element of informed consent is found in an emphasis on voluntary choice, consent that is freely given or freely withheld, the choice arrived at without manipulation, coercion, or inducement. And this moral standard presupposes a rational decision. It must be an “informed” decision – made with full awareness and understanding and due consideration of all the relevant information and its implications. This is achieved by grounding conclusions in a reflectively apprehended justification (logic) or by testing claims and their justifications so as to obtain intersubjective certification (dialectic).

### 5.3 Epistemic Problems

Logic is the clearest of any of the approaches in explicating the fundamental epistemic function of argument. That function can be summed up by the question, How should people decide whether to accept (or reject) the propositional content of a claim as true (or false)? What is at issue here is the logical status of propositions and the conditions under which their content is assertable (or acceptable). Good arguments are strictly informational structures consisting of propositional content and

inferential operations. The only matters of concern are probability of the truth value of the propositional content and reliability of the inferential operations.<sup>3</sup> Take, for example, the very simple proof (of **P**) in propositional logic.

$$\begin{array}{l} P \vee Q \\ \sim Q \\ \hline P \end{array}$$

Given that  $P \vee Q$  and  $\sim Q$  are true, then  $P$  is necessarily true. Should either premise be false, no determinate conclusion can be drawn. On this view of a good argument, strategy has no place. Order of presentation is irrelevant. The expressions used are a matter of indifference so long as their truth conditions remain constant. One could just as well have used  $\sim\sim Q$  for the second premise or  $\sim P \rightarrow Q$  or  $\sim Q \rightarrow P$  for the first premise with no difference in argument quality. Strictly speaking, the propositions have no spatial or temporal existence at all – only a logical relationship; notational expression is just a placeholder for the proposition and not a genuine aspect of it. So, on the logical view, the rationality of an argument can obtain only from its inferential operation and its propositional content. All else is, strictly speaking, *nonrational* or *irrational*.

It should be clear that there is no place for rhetorical strategy in this picture. For if nothing else, rhetorical strategy is the manipulation of the materials of ordinary discourse, the arrangement of its elements, the formulation of expressions, the style, manner, and timing of their presentation. But none of this has logical relevance or existence. And to the extent that *any* such attribute of ordinary discourse has *any* impact on a person's decision, by definition that person has made an irrational decision. No wonder that for so long by so many rhetoric was a bad name. Logic could only consider it to be either harmless ornamentation and superfluous decoration or the very essence of sophistry, propaganda and demagoguery.

For dialectical theories, good arguments are activities defined in procedural terms. Whereas logical theories are first-order models of argument, dialectical theories are second-order models of argumentation. They are concerned with the use of logic to decide whether or not a standpoint is justified. These models are concerned with how people should proceed so that they might resolve disputes on the merits according to the force of the better argument. While the act of arguing presupposes the truth of its content and its sufficiency as justification for a claim, the rationality of argumentation is located in a system of procedural rights and responsibilities by which these presuppositions are tested and secured (cf. Alexy, trans. 1990; Goldman, 1994; Habermas, trans. 1981, van Eemeren & Grootendorst, 1984).

Now, this is not a complete escape from the epistemological problems of strategy. It is hard to see how clear meaning can be given to the standard of deciding an issue "on the merits" or "by the force of the better argument" without reference to the kinds of considerations raised by logic. To the extent that dialectics specifies

those epistemic presuppositions of argument, it is liable to see in strategy the same kind of aberration as logic would.

## 5.4 Moral Problems

Suppose though, that dialectical models could maintain a kind of agnostic position with respect to first-order epistemics, deferring to the judgments of the deliberators and focusing instead on the procedural quality of their deliberation. At this level another problem with strategy emerges. The democratic politics of dialectical deliberation call for *consensus* decision-making (cf. Dryzek, 1990; Gunderson, 2000; Gutmann & Thompson, 1996; Habermas, trans. 1990; Jacobs, 2003). In contrast to a vision of argumentation as a means to make truth effective, dialectic sees argumentation as a means to make truth decidable. Dialectic aims at consent, not persuasion. But, how does one distinguish those outcomes of argumentative engagement that are the result of reflective, voluntary consent from those outcomes that are the result of manipulation, coercion, or inducement—matters that are extrinsic to argumentative procedure or beyond the mutual control and agency of self-aware actors? It is these latter possibilities that dialectic must treat as problematic. If logic has problems with eloquence, dialectic has problems with influence.

Insofar as dialectic takes argumentation to presuppose self-determination and personal empowerment, it is hard to see as anything but fallacious whatever influences on decision-making might impede, resist, undermine or escape reflective consideration and free, autonomous choice. Likewise, misapplication of the procedural norms of argumentation counts as a fallacious misstep whether voluntary or not.<sup>4</sup> But, just as at the logical level, the closer one looks at the dialectical level of organization the more one finds in communication and interaction an irremediable infusion of nonrational sources of influence and domination; the more one finds people acting against an uncontrolled background, being controlled by that organization and not just controlling it, making choices in conditions not of their own choosing, possessing only partial understanding and awareness of the bases for their decisions, deferring to all manner of social and practical constraints, indulging and succumbing to biases and limitations, and deploying argumentative procedures inconsistently, carelessly, unsystematically, incorrectly, and in all manner of other ways that allow improper influences to hold sway.

## 5.5 Resolving the Problem

So, argumentation theory faces a problem that derives from the following propositions:

- (1) All violations of argumentative ideals are fallacies.
- (2) All rhetorical strategies are violations of argumentative ideals.
- (3) All argumentation is infused with rhetorical strategy.

Not only can there not be any strategic maneuvering that satisfies the constraints of logical or dialectical ideals, but given these propositions there can be no argumentation that does so either. So long as we see any violation of argumentative ideals as a fallacy and we see rhetorical strategy as the presentation of argumentative content so as to give favorable advantage to a standpoint beyond what it would otherwise have, we must find all argumentation to be fallacious. This is not a satisfactory picture. Something must give.

I see no way to avoid the third proposition, that all argumentation is infused with rhetorical strategy. For better or worse, all communicative presentations have effects on audiences. All speech acts have perlocutionary effects as well as illocutionary force (Austin, 1975/1962). Even the reconstructions presented by analysts and critics have rhetorical power. It is hard to see how one could even analytically factor out such an influence, let alone use argumentation free of rhetoric.<sup>5</sup> And avoiding the claim that all argumentation is infused with rhetorical strategy wouldn't get us very far anyway. Even if arguments and argumentative procedures could be designed that avoided the whiff of rhetorical strategy, they would still only carve out specialized, technical spheres of application. While this is the ameliorative project of logic and technical methodology, such a project does not really resolve the inconsistency in ordinary discourse between the fact of rhetorical strategy and the demands of argumentative ideals.

But there are ways to avoid the first two propositions – or at least to avoid their consequences. Consider first the claim that all violations of argumentative ideals are fallacies. No one in practice actually maintains such a position. When analyzing actual arguments, we simply overlook, excuse or forgive the myriad ways in which argumentative discourse fails to live up to theoretical ideals. In part, this is because we make judgments about the degree to which discourse deviates from ideal standards as well as the manner in which departures occur. We generally reserve the label of fallacy to deviations that are in some sense so serious that they should not be allowed. To make the charge of “fallacy” is to say that such a move should be ruled “out of order” (Hamblin, 1970), excluded in advance and prevented on principle, repaired or withdrawn when it occurs, and if not, then disregarded and dialectically quarantined. A fallacy is generally regarded as so bad that an argument is spoiled and making such a charge suspends deliberation. Clearly, no one in practice accepts the idea that all argumentation should be so treated.

Acknowledging and following through on the implications of this practice would at least expose the widespread practice by critics of smuggling in personal preferences disguised as principled judgments. It would at least call attention to the glaring need for argumentation theory to develop some systematic account of what is and is not an acceptable approximation to ideal standards (Gabbay & Woods, 2001).

The overlooked though pervasive violation of theoretical ideals in practice shows that while all fallacies are violations of argumentative standards, not all violations of argumentative standards are fallacies. For the most part, violations are simply overlooked, excused, forgiven, even justified, because the fact of violation is rarely the central consideration in making a judgment of fallacy. What is the central consideration is this: Does the strategy improve or degrade the quality of reasoning and dis-

putation relative to how it might otherwise proceed? This question is rather different from those typically asked by logically and dialectically oriented theorists. Such a question asks us to think of fallacies and argumentative discourse functionally, not conventionally. It requires conceptualizing argument situationally, and not just textually. It calls on the critic to analyze the features of particular messages rather than to apply the properties of general categories. And above all else, it involves thinking about fallacies comparatively, and imaginatively. This, in fact, has always been the implicit basis for good critical practice. I am merely suggesting that argumentation theorists make it explicit.

Notice one important feature of this kind of critical analysis: Even if argumentation theorists do not have metrics for relative approximations to ideal standards, it is still possible to employ a comparative method of judging what is better and worse among potential alternative strategies and tactics. The power of judgment depends upon inventional imagination and scholarly familiarity with the range of argumentative practices that might be brought to bear on the argumentative situation.

Finally, consider the second, middle premise: the proposition that all rhetorical strategies violate argumentative ideals. Here I would suggest the need to rethink the function of rhetorical strategies and the conditions in which they occur. Traditionally, argumentation theorists have identified the rhetorical function of discourse with that of persuasion, of winning the argument, and they have seen rhetorical strategy as maneuvers to gain favorable advantage in a bid to win over an audience (cf. Aristotle, trans. 1991; van Eemeren & Houtlosser, 1999, 2000, 2002). Such a conceptualization is perfectly consistent with a view of rhetoric as *arational* influence guided by the self-interested strategies of the individual arguer. But there is no deep reason to adopt such a view (Jacobs, 2000). And there is good reason not to.

From a psychological or motivational perspective, this conceptualization might characterize the cares (or lack of cares) of a salient portion of arguers. But this view of argumentative persuasion is at best incomplete, both descriptively and normatively. For it misses the accountability to reasonableness that is built into any claim made on the beliefs of others and the reciprocal exposure to influence that is presupposed in making such a claim.<sup>6</sup> Argumentation involves a transparent undertaking to achieve bona fide conviction of belief (as opposed to covert manipulation or undertaking to achieve pro forma acceptance or compliance). And conviction is a matter of rational decision-making in which both parties voluntarily subordinate their decision to the dictates of good reason. Such a normative aim is not external to argumentation; it is a constitutive aspect emergent from the very activity itself. To persuade through argumentation is to make the reasonableness of a position manifest (Johnson, 2000). “Winning” an argument is defined by the rules of a game that call for decision by the force of the better argument. Of course, advocates can exploit this character of argument, and judges can be fooled. But these possibilities still presuppose the core concept and remain parasitic upon it.

Seen in this way, rhetoric is effective not at the individual level of being persuasive, of winning an argument, or putting a position in a favorable light. Rhetoric is effective when people are empowered to make a reasonable decision, regardless of which, if either, side wins (Jacobs, 2002). By this norm, neither the advocate’s nor

the audience's perspective enjoys a privileged position. As with Mead's conception of social interaction where actors adjust and orient to each other with respect to the way all adjust and orient to the Generalized Other, so too do arguers (Mead, 1932, 1934; see Jacobs & Jackson, 1982). If there is any privileged position, it is to be found in the system of interlocking perspectives, i.e., in the rationality that is reflexively distributed in the activity by which individuals are engaged.

Seeing argumentation from the perspective of normative pragmatics (Jacobs, 1999; van Eemeren, 1990), the rhetorical function is not just persuasion but all those perlocutionary and institutional effects relevant to argumentation seen as reasonable decision-making. Rhetorical strategies are not just maneuvers that place a standpoint in a favorable light, but are any strategic design whose argumentative functioning is assessed with respect to whether or not for that context it optimally satisfies the normative requirements of the activity.<sup>7</sup> When rhetorical strategies are seen in this way, from the perspective of normative pragmatics, their functions extend beyond either logical or dialectical considerations. If logic is concerned primarily with the structure and content of arguments, and dialectic is concerned primarily with the procedures by which logic is put to use, then rhetoric is concerned primarily with the way in which procedures are adapted to the conditions of their employment and the way in which conditions are adapted to the requirements of the procedures that are employed.

I have described these two kinds of adaptation as making the best of the situation and making do in the situation (Jacobs, 2000, 2002). Both kinds of adaptation provide a legitimate role for rhetorical strategy in argumentation. First, relative to a real situation tactics may enhance – and not just degrade – the conditions for deliberation and decision-making. Call this the framing or conditioning function. Not all that goes on in argumentation is argument in the sense that logic and dialectic have recognized. Argumentation also involves creating the conditions for its own implementation. When things go wrong in argumentation, and before things go wrong, moves can be made to correct or avoid the problems, to improve the conditions for deliberation, and to otherwise attempt to set things right. Second, because the conditions for argumentation are always in some ways limiting, strategies may be deployed because they are the best method available for adapting to those limitations. Call this the heuristic function of rhetorical strategies. Strategies may not always work perfectly, and they may come at costs and with trade-offs, but they may be the most feasible solution to the multiple, competing demands faced in the situation.<sup>8</sup>

Looking in this way at the rhetorical function of argumentation reveals a new space in which it may play a legitimate role (and, of course, readjusts our notion of how rhetoric may function illegitimately). The space exists between real and ideal conditions. All argumentation departs in various ways and to various degrees from ideal conditions just as all argumentation is infused with rhetorical strategy.<sup>9</sup> Exactly what conditions are presupposed by ideal models has really never been specified, but it should be noted that the relationship between argumentation and less-than-ideal conditions runs deep. I think it is fair to say that if arguers found themselves in ideal circumstances they would have no need to argue. They would all have full access to all the relevant information. They would all recognize what were the pressing issues. They would all know what premises were credible. They would all be able to see

the full implications of their commitments, their beliefs, and values. They would all have ready at hand clear and definitive decision procedures that were epistemically reliable. They would all possess the needed epistemic virtues, such as open-mindedness, tentativeness of opinion, careful reflectiveness, and impartial commitment to finding the truth and avoiding error. They would all embody the needed deliberative virtues such as regard for the opinions of others, tolerance of pluralism, honesty, and candor. There would be no power imbalances, no political constraints on possible conclusions, no variations in expertise, engagement, or personal stake. But none of this is ever fully realized if realized at all. And that is why people must argue. And that is also why rhetorical strategy is not just something to be tolerated and contained. Rhetorical strategy is needed to change for the better the conditions of argument as we find them and to make do in the conditions that we cannot change.

Looking at rhetorical strategy within the perspective of normative pragmatics also leads to an interesting, perhaps counter-intuitive, consequence to which I now turn: *What looks like a fallacy when taken in the abstract or when judged against a typicalized situation may function constructively in the situation of its occurrence.* I have illustrated this consequence before (Jacobs, 2000, 2002) and I want to do so again in this paper. In particular, I will use this case to illustrate the interpretive stance a critic must adopt in order to take into account the rhetorical aspects of argumentation and discursive influence. Before doing so, however, I want to clarify what it is that I am up to and that I have been trying to show with such cases.

In considering cases like these, I am not suggesting that fallacies should be (or could be) corrected with “counter-fallacies” (cf. van Eemeren & Houtlosser, 2005). I am not claiming that “two wrongs make a right”. I am suggesting that fallacies and the conditions that encourage their occurrence should be managed by rhetorical strategies that improve the overall quality of deliberation. I am claiming that strategies that do this are not fallacious in the first place and that there is nothing wrong with using them in that situation. If they *appear* to be fallacious to an argumentation analyst that may be because the analyst has accepted textual appearances at face value without first considering the functional difficulties faced in that situation and the plausible functional rationale for using the strategy to adjust to those difficulties.

Nor am I making general claims about the motives and purposes of arguers. I am claiming that the starting point for assessment should be the communicative intentions expressed and the perlocutionary effects brought about. Arguers may self-consciously and deliberately seek to bring about the conditions that make possible mutual, voluntary and informed consent. They may have other motives. Their purposes may be closely aligned with their expressed intentions. Or their purposes may be incidental to those intentions or parasitic on them. Arguers may carefully calculate the likely results of a wide range of inventional possibilities. They may not. Their foresight may be accurate. It may be blind. But what matters most is whether or not their conduct optimizes the demands of reasonable decision-making and the degree to which arguers can be held responsible for the consequences of their conduct. A normative pragmatics requires a critical stance, one in which rhetorical strategy and argumentative contribution are reconstructed with respect to the rational requirements of the conversational exchange (Grice, 1989).

In illustrating this functional and contextual perspective, I have deliberately selected texts that would seem to most readers to be obviously fallacious. In entertaining defensible rationales for these questionable tactics I have been trying to show how the charge of fallacy might actually be answered in argumentative exchanges. Whether or not a contribution is fallacious is often contestable. The kind of rationales that should be engaged are always going to be arguments for how the strategies might improve the overall quality of the debate, given *this* situation. In speculating on alternative evaluations I have been showing how any evaluation depends upon some idea of what the context is and how the supposedly fallacious tactics function in a supposed context. Appeal to supposed properties that define certain stock categories of tactic or to generalized properties that seem apparent to inspection is just a way to substitute a situated occurrence with an imagined one. Such appeals are sufficient for many purposes. But discussions of a dangerous potential should not be taken to demonstrate a fallacious occurrence. And methodological convenience should not be confused for theoretical principle.

## 5.6 Case Study

Consider, then, the issues that arise in analyzing an open letter to Dr. Laura Schlessinger posted on that interlocking network of virtual interlocutors, the worldwide web. The background to the letter is explained as follows on one website (An Open Letter, n.d.):

Background:

Laura Schlessinger is a US radio personality who dispenses advice to people who call in to her radio show. Recently, she said that as an observant Orthodox Jew, homosexuality is an abomination according to Leviticus 18:22 and cannot be condoned in any circumstance.

The following is the open letter to Dr. Laura posted on the Internet:

Dear Dr. Laura:

Thank you for doing so much to educate people regarding God's Law. I have learned a great deal from your show, and I try to share that knowledge with as many people as I can. When someone tries to defend the homosexual lifestyle, for example, I simply remind them that Leviticus 18:22 clearly states it to be an abomination. End of debate. I do need some advice from you, however, regarding some of the specific laws and how to follow them.<sup>10</sup>

- a) When I burn a bull on the altar as a sacrifice, I know it creates a pleasing odor for the Lord (Lev. 1:9). The problem is my neighbors. They claim the odor is not pleasing to them. Should I smite them?<sup>11</sup>
- b) I would like to sell my daughter into slavery, as sanctioned in Exodus 21:7. In this day and age, what do you think would be a fair price for her?<sup>12</sup>



- c) I know that I am allowed no contact with a woman while she is in her period of menstrual un-cleanliness (Lev. 15:19–24). The problem is, how do I tell? I have tried asking, but most women take offence.<sup>13</sup>
- d) Lev. 25:44 states that I may indeed possess slaves, both male and female, provided they are purchased from neighboring nations. A friend of mine claims this applies to Mexicans, but not Canadians. Can you clarify? Why can't I own Canadians?<sup>14</sup>
- e) I have a neighbor who insists on working on the Sabbath. Exodus 35:2 clearly states he should be put to death. Am I morally obligated to kill him myself?<sup>15</sup>
- f) A friend of mine feels that even though eating shellfish is an abomination (Lev. 11:10), it is a lesser abomination than homosexuality. I don't agree. Can you settle this?<sup>16</sup>
- g) Lev. 21:20 states that I may not approach the altar of God if I have a defect in my sight. I have to admit that I wear reading glasses. Does my vision have to be 20/20, or is there some wiggle room here?<sup>17</sup>
- h) Most of my male friends get their hair trimmed, including the hair around their temples, even though this is expressly forbidden by Lev.19:27. How should they die?<sup>18</sup>
- i) I know from Lev. 11:6–8 that touching the skin of a dead pig makes me unclean, but may I still play football if I wear gloves?<sup>19</sup>
- j) My uncle has a farm. He violates Lev. 19:19 by planting two different crops in the same field, as does his wife by wearing garments made of two different kinds of thread (cotton/polyester blend). He also tends to curse and blaspheme a lot. Is it really necessary that we go to all the trouble of getting the whole town together to stone them? (Lev.24:10–16) Couldn't we just burn them to death at a private family affair like we do with people who sleep with their in-laws? (Lev. 20:14)<sup>20</sup>

I know you have studied these things extensively, so I am confident you can help. Thank you again for reminding us that God's word is eternal and unchanging. Your devoted disciple and adoring fan.

In analyzing and assessing the argument that can be seen in the letter, I will refer to four general roles in this exchange. First, there is the ostensible addressee of the letter, *Dr. Laura Schlessinger*. Second, there is *the disciple* who has ostensibly written the letter. Third, there is *the satirist* who has actually authored and posted the letter. Fourth, there is *the reader* who is projected by the letter posted on the web. This fourth category of role emerges in the reception of the letter by individuals from that heterogeneous, open-ended group of actual persons that make up *the audience*.

None of these roles can be identified with a particular, actual individual. Rather, they constitute the footing one can take in the communicative encounter (Goffman, 1979). While Dr. Laura is a real person, she is best seen as a convenient and concrete representation of a general stance that has been adopted in the gay rights controversy in America and elsewhere. Her claim is not original that homosexuality should not be condoned because God declares it to be an abomination. The reference

to Leviticus has been widely cited by public opponents of gay rights, the vast majority of whom speak not as Orthodox Jews, but as Christians. The familiarity of the passage is part of what makes the letter interesting and worth reading. Likewise, the disciple is a fictitious construction, a literary device of satire. The disciple is presented as also representing the general stance taken by Dr. Laura. The questions posed are not skeptical challenges, but requests for clarification asked in the secure faith that a definitive, consistent answer will be provided. The queries are presented as a kind of backstage exchange where members of a team get their lines right (Goffman, 1959). Likewise, the satirist can no longer be taken as a single individual. The letter has been widely posted on websites. A Google search on March 13, 2007, found 33,100 sites for the English version alone. While its corporate construction over time may only be supposed, it is clear that a great many different individuals have enacted the role. While the audience of readers is as diverse in perspective and open-ended in membership as individuals who come across the letter, their role as reader emerges in their response to the letter. The reader is both a communicative construction and a stance the audience is invited to adopt. Satire is a kind of inclusionary communication that, like irony, invites the audience to share in the knowing attitude of the insider. That knowing attitude constitutes one projected reader.<sup>21</sup> But satire is also exclusionary. Readers may take on a stance of alienation, identifying with the disciple, rejecting the invitation of the author, and choosing to stand on the outside. So, when I use these terms, I will be referring to these categories of role.

The satirist's line of argument, though implicit and enthymematic, is pretty clear. The argument amounts to a kind of indirect proof or *reductio ad absurdum* taking the following form:<sup>22</sup>

SUPPOSE:	God says $p$
	<u>If God says <math>p</math>, then <math>p</math></u>
THEN:	$p$
BUT:	<u>not-<math>p</math>!</u>
REJECT:	If God says $p$ , then $p$

The letter cites several practices that are permitted, prohibited, or required by the Bible (God says  $p$ ). The letter-writing disciple asks questions that presuppose that he should be following each of those permissions, prohibitions, and requirements ( $p$ ). But, as any reader can see, no one today follows these practices nor should anyone follow such practices (not- $p$ !). And this is transparently obvious. The contradiction between what the disciple presupposes and what any sensible person knows to be the case demands that a premise be withdrawn.

Interestingly, the targeted premise appears to be the enthymematic filler (If God says  $p$ , then  $p$ ). What is being challenged in this open letter is not the fact of any Biblical pronouncement, but the assumed conditional statement linking the antecedent proposition (The Bible says  $p$ ) to the consequent ( $p$ ). But the satirist's argument is not just a series of refutations of particular practices. The target is the general principle that Biblical pronouncements are authoritative rules for conduct (i.e., If the Bible

permits/prohibits/requires a practice, then people can/should not/should engage in that practice). The satirist is making a cumulative demonstration. By going through so many cases of such variety, the cases no longer stand as exceptions to the rule, but as refutations of it. And the rule itself is what must be defeated since the ultimate target is the argument that homosexuality should be condemned because the Bible says it is an abomination. Since for many people this conclusion creates no obvious contradiction (and Lev. 18:22 and elsewhere do declare homosexual practices to be abominations), it is the linking rule that has to be defeated.

The force of the argument is made all that much greater by its *ex concessio* quality. Each Biblical reference is one that Dr. Laura could be expected to confirm, but each corresponding practice is one that Dr. Laura could be expected to not follow and not advocate. So, the underlying argument seems quite strong. It seems clear that if people oppose gay rights they will have to find a different rationale for that opposition.<sup>23</sup>

But there is also a clear tone of mockery, ridicule and derision in this letter. The listed practices and underlying attitudes and beliefs are wildly beyond the bounds of acceptability and stretch the imagination. No one real would be troubled by these Biblical passages because no one real would take them literally or seriously. But the ridicule is aimed at real people and real practices – people like Dr. Laura and practices like condemning homosexuality. The caricatured attitudes held by the disciple stand in for an indefinite range of Bible-based guidelines, values and customs that the pious see as ordinary and unremarkable and take very seriously. The satirist insinuates that this ordinary, unremarkable piety is ridiculous as well.

And there is a mean-spirited and biting personal cut to all this – personal at least to anyone of the audience who might be inclined to identify with Dr. Laura and the disciple. The disciple is made out to be a vacuous, authoritarian nitwit. His careful and comprehensive reading of the Books of Moses, his diligent efforts to follow Biblical guidelines, and his thoughtful puzzlement over how to proceed serve only to demonstrate a naive and shallow closed-mindedness. These are problems only for a dogmatic fundamentalist – and there is the clear implication that these *should* be problems for such a person.

The deeper idea in the satire is that these problems *necessarily* arise from a literal reading of the Bible and faithful undertaking to apply its pronouncements. But, of course, only an idiot who seriously tried to take up such a stance would ever run up against these problems. And the kind of people who appeal to the Bible as the basis for condemning homosexuality and opposing gay rights find no such problems. The fact that they do not suggests a whiff of opportunistic, self-serving hypocrisy. If fundamentalists do not see such an obvious inconsistency in their position, it is because they do not want to see it.<sup>24</sup>

Now, pretty clearly a critic should not ignore this kind of ridicule and caricature. It doesn't matter that no one takes the letter seriously. It doesn't matter that nothing is falsely presented as fact. And it doesn't matter that the satire presents a serious objection to the position that homosexuality should not be condoned because the Bible requires the faithful to adopt such a stance.

The caustic wit, mockery and ridicule would seem to invite assent not based on reasonable judgment of the merits of the case or recognition of the force of the better argument. Rather, the basis for assent would seem to be the seductive appeal of

extra-argumentative inducements. The satire would seem to use a strategic maneuver that offers the reader the pleasure of making fun of the opponent by reducing her to a strawman. And once that offer is accepted, the satirist's stance has been adopted. Moreover, a critic could easily think that the derision and ridicule pushes for withdrawal of Dr. Laura's standpoint (by anyone in the audience inclined to adopt it) not based on reasonable judgment of the merits of the case or acknowledgment of the force of the better argument, but based rather on a decision to avoid embarrassment, shame, and humiliation. No one likes to be made fun of, and this satire seems to be designed to exploit that tendency. So, taken as a contribution to an argumentative exchange, this open letter does not look to be at all consistent with an undertaking to resolve a disagreement through informed consent based on a well-reasoned, voluntary mutual decision. The satire looks to be pretty fallacious, despite the pedigree and long tradition of this genre of argumentative strategy (Swift, 1729; see Wetzel, 2000).

Now, all this may be the case. But it may not be all there is to this argumentative case. In showing what more may be found, I will illustrate the interpretive issues involved in considering the rhetorical aspects of argumentation from the standpoint of normative pragmatics. I want to first suggest a principle of charity, much along the lines of what has been proposed at the levels of logical and dialectical analysis (Gauker, 1986; Scriven, 1976; van Eemeren & Grootendorst, 1984): *Assume arguers design their contributions, for their situations, to achieve the best approximation to a reasonable resolution of the dispute. Look for such a rationale, consistent with plausible competencies and understandings, for what an arguer might be undertaking to do.*

This principle is made on the assumption that arguers, like actors in general, are to be held responsible for the foreseeable consequences of their actions. Charity demands that, where possible, we find how actors live up to that responsibility. We should be looking to see how their actions can be construed as undertaking to satisfy standards of good argument. And assuming not only morally responsible agents, but competent agents, we should assume that they could (or should) have taken into account the intensional possibilities and alternatives available to a competent agent and could (or should) have foreseen the plausible consequences that a competent arguer could see, given sufficiently diligent investigation of the situation.

This presumes a maximally strategic interpretation of rhetorical effects:<sup>25</sup> *Assume that the rhetorical design of an argumentative contribution has been strategically chosen for (or in spite of) its foreseeable consequences. The more manifest the consequence, the more plausible the attribution of strategy.* So, taken together, the assumptions of moral responsibility and argumentative competence provide a normative guide for critical assessment. They point the critic in the direction of discovering normatively acceptable rationales for argument and, should investigation fail to uncover plausible candidates or expose evidence of irresponsible choices, these two assumptions place the burden of proof on the critic to justify a charge of fallacy.

How would this be applied to the open letter to Dr. Laura? First, we ought to assume a complex and conflicting array of situational requirements for achieving the best argumentative discussion of an issue (O'Keefe, 1988; Simons, 1970). If I

am right, then rhetorical strategy can be treated as an effort to repair, compensate for, and otherwise manage the myriad defects in the situation itself. So rhetorical strategy ought to be taken as a kind of projection of the arguer's sense of rhetorical situation, and rhetorical strategies that deviate from ideal argumentative practice should be examined as efforts to manage the difficulties of situation.<sup>26</sup> We need not hold this or any argument accountable to satisfying all the requirements for critical discussion. Requirements can be managed at different times and by different messages. Requirements may change over time, be subject to trade-offs and judgments of relative importance and immediacy. Often it will be necessary to assess the quality of an argument like this open letter in the context of its moment and its position within a campaign addressing an unfolding controversy (Simons, 1970).

Second, critics should assume a complex and diverse audience of potential readers as an element of the complex and conflicting array of situational requirements. While this letter is officially addressed to a particular person, Dr. Laura Schlessinger, it need not have been posted for her reading. We need not assume that she or people with a standpoint like hers constitute the target reader from within the audience. It is, after all, an "open" letter. Nor should we assume that Dr. Laura is the role that *should* be the target audience or even part of the audience targeted for reading. Complex, diverse audiences may not be addressable as a whole. Any particular argument may be addressed to some segment of a fluid network of potential interlocutors. And while arguers should be accountable for influencing an untargeted but plausible segment of the audience, maladjustment for that segment may be a trade-off worth accepting.

What we should be looking for with a satirical letter like this are the kinds of audience and the kinds of situation for which something like ridicule and derision coupled with *reductio ad absurdum* argument would make a fitting and constructive contribution to the way in which the debate would proceed concerning gay rights. Now, it is possible that the contemptuous and dismissive attitude expressed by the ridicule in this letter would bring religious opponents of gay rights to actually engage more reasonably with the letter's argument and the issue in general. They might be led to make a thoughtful, considered response to the challenge to Biblical principle underlying the satire. But I doubt it. I think most observers would expect that this kind of derisive strategy would simply lead already committed Jews and Christians to simply turn their back on the argument altogether. The satire would probably just lead them to conclude that the author is not a morally serious actor worth engaging. It is an empirical possibility that such readers would be provoked to ask why otherwise reasonable people would express such profound disrespect in the first place and would be led to entertain as an answer that these people perceive a profound mistake of reasoning; but it is hardly a plausible possibility (Jacobs, 1982; van Eemeren, Grootendorst, Jackson, & Jacobs, 1993). Even if this possibility proved empirically to be the case, we shouldn't assume that such a consequence was the strategic point of the satirist. We should at least first look for a more plausible rationale.

So, consider another potential reader, not Dr. Laura or those who identify with her standpoint but those who stand uncommitted or are ambivalent about the acceptability of homosexuality. In particular, consider that subgroup who feels uncomfort-

able questioning Biblical pronouncements and are inclined to accede to religiously motivated opinions out of respect for that group's heartfelt religious convictions. Here we would have a subgroup of readers who have been caught by a kind of fallacy of a rather subtle and nonstandard sort. It is not the case that they have accepted a standpoint on the basis of an *ad verecundiam* fallacy. The problem would not need to have appeared in any argument they have encountered, and even if it had, that would not be the problem. The problem is a defect in their argumentative situation. The problem is in the frame of mind such a group brings to the controversy surrounding gay rights. The problem is an inclination to accept a Dr. Laura-type argument on its face, an inclination to give undue weight to the need to respect religious convictions in pluralistic democratic debate.

One might think it plausible that such a group in the audience could be shifted by the irreverent tone of the letter into temporarily suspending their own attitude of deference enough to consider the full force and implications of the indirect argument the letter makes. We need not assume that such readers would adopt the derisive attitude we hear in the letter. Just as we can analytically distinguish substance from tone, so also we should distinguish the force of each and not assume an identity of effect. One can accept the force of the indirect argument as reason to reject the principle that any Biblical pronouncement should be observed without also accepting the force of the derision as implicating that religious piety is also ridiculous. And such readers might draw their own implications from the presumably novel information provided in the letter without approving the uses to which that information is put in the letter. The derision and ridicule may simply be enough to drive a temporary wedge between such readers and the disciple portrayed in the letter. Suspending an identification between reader and disciple need not build an identification between reader and satirist. So, we might actually have here a strategy that only seems socially destructive but whose design is dialectically constructive. These readers may be left better informed, in a more suitable frame of mind, and better enabled to subsequently participate in the interlocking network of discussion and debate that constitutes the public sphere. At least, this is a more charitable rationale than simply taking satire at face value and deeming it fallacious.

But I don't think this is the best rationale available from the perspective of dialectical standards for argumentative discussion. I think there is another audience for whom this letter is even better designed. It is the audience of committed opponents to religious arguments such as the one made by Dr. Laura. It is those who already agree with the satirist's general standpoint that basing social policy on religious arguments is ridiculous and the satirist's particular standpoint that we ought to support gay rights.

For this audience, the derision and ridicule acts as an especially clear audience selection device. Unlike the uncommitted audience, such derision does not serve to dissociate reader from disciple; that has already happened. With this audience the ridicule serves to call out an identification of reader and satirist. These readers were already inclined to sneer and snigger at expression of religious piety. These are the kind of people who treat religious conviction (particularly fundamentalist conviction) as deviant and out of place in public debate. This audience is quick to

assume – at least in the abstract – that fundamentalists are ignorant, closed-minded, dogmatic, more or less stupid and irrational, and that there isn't much point in trying to argue with them.<sup>27</sup>

Now, how could this letter to Dr. Laura make a constructive contribution to the quality of critical discussion with respect to this audience? The contribution might come from presenting them with a reasonable argument to use in debate. The letter can be seen as designed to induce this audience to actually read the argument and to thereby equip themselves with substantively accessible evidence and reasons. I think it is safe to assume that the Biblical passages cited in the letter are not common knowledge among this community of readers. This is, of course, a general problem. Even the most devout disciple is bound to find the book of Leviticus pretty boring. And that is part of the point of the satire, that disciples and spokespersons like Dr. Laura use a conveniently selective citation of Biblical passages and would probably be surprised to see where the logic of citation leads. So, this kind of supporter of gay rights who reads this entertaining letter would wind up in a more informed position to debate the application of Biblical doctrine than religiously inclined opponents.

There remains, however, the matter of the derisive stance taken in the letter. Doesn't that obstruct reasonable discussion? Wouldn't it disable critical reasoning and serious engagement on the issues?

I don't think so. At least, I don't think that on balance, with this audience, in their situation, the satire is likely to steer the discussion further off course than it would otherwise go. And it is unclear what would be a better course of action with respect to the problems already surveyed.

First of all, I doubt very much that the attitude of irreverence and contempt already held by this audience of readers is going to be greatly affected for the worse by this message. This audience already holds such an attitude, which is why such readers answer the call of this letter by identifying with the satirist in the first place. Besides, whatever cost there is to any subsequent debate, it is plausible to think that it is more than offset by the subtle presuppositions of rationality for the opponent that are built into the substantive argument. The letter encourages the reader to think that when someone argues that homosexuality is wrong because the Bible clearly states it to be an abomination, that is *not* the end of debate (contra the disciple). There is a way to answer that may get withdrawal of the argument or at least an extension. What is more, by encouraging the reader to use this argument, the letter also encourages the reader to presuppose that the opponent is accountable to argument and is capable of acknowledging the force of the better argument. And those are presuppositions that ought not to be abandoned without strong cause in any particular encounter.

The second reason to not be too concerned about the derisive quality of the satire is this: This letter for this audience functions something like a *rehearsal* of an argument. The argument contained in the letter (i.e., its propositional content and inferential structure) is something to be taken back into the interlocking network of interlocutors who constitute the public sphere. Imagine how that might work. The argument will be reported among like-minded fellows, its facts and details listed as far as memory allows. Some people will return to the original or similar websites. Some will post their own (33,000+ are currently doing so). And in oppositional

argument concerning gay rights, there is a structural reason to think that the derision and mockery in the letter will not carry over much – or any more than would be present in any case. In the letter, the mockery, ridicule, derision, mean-spirited caricature and caustic wit are all expressed through the dual level frame of satirist and disciple (Goffman, 1974). Unless an advocate of gay rights makes the argument by self-consciously adopting the voice of the disciple, it seems unlikely that the satirical quality can be reproduced. It is far more plausible that the arguer's stance and attitude will reflect the local particulars of personal styles, interpersonal relationship, interactional forum, and the way the issue gets raised. And to reiterate a previous observation: the very availability of a substantive argument is likely to improve what the discussion would have been otherwise, if a "discussion" would have occurred at all.

## 5.7 Conclusion

So, depending on what the argumentative situation actually amounts to and which aspects of that situation we judge to be most important, we have here in this open letter to Dr. Laura perhaps a fallacious argumentative maneuver but perhaps instead a rhetorical strategy for promoting more reasoned debate on the issue of gay rights. The latter possibility is especially plausible to the degree that the satirist engages an audience of like-minded readers with the characteristics I have described. Despite its satirical form, the letter can be taken to channelize discussion in the direction of reasoned engagement, arming proponents of tolerance for sexual preferences with an objection based on reasoning and evidence, prompting religiously-oriented opponents to more deeply consider the justification for their own position, adding relevant information that neither side would likely be aware of, and providing proponents of gay rights with a line of engagement that treats their opponents as having accessible reasons for their stance and as being able to reason about the Biblical foundations of that stance.

And, somewhat paradoxically, this letter can be seen as designed to steer readers away from less productive kinds of argument and opposition. The satire encourages like-minded readers to take up substantive arguments rather than dismissive derision. It provides advocates with a response to Biblical injunctions other than gestures of dismissal and scorn. In short, the rhetorical strategies in this letter may be understood to enable, not disable, reasoned discussion of the merits of the case based on the force of the better argument.

## Endnotes

- 1 By "truth" I don't mean anything deeply theoretical or metaphysical. I mean much the same as minimalist and deflationary accounts of truth (Horwich, 1990) that do not depend on any



commitment to realism, objectivism, empiricism, correspondence theories, coherence theories, or pragmatist theories. Nor do I mean to restrict the range of propositions to which the term applies. It makes just as much sense to say that “It is true that it is wrong to be needlessly cruel to animals” or to say that “It is true that the Pieta is beautiful” as it does to say, “It is true that the Earth has existed for only 6000 years” or to say, “It is true that most of the people of France speak French.” Restricting considerations of truth to propositions of fact (as opposed to propositions of value or policy) creates the obvious problem of what to do about the validity of inferences in arguments like the following: Killing is wrong. Abortion is killing. Therefore, abortion is wrong.

- 2 van Eemeren and Grootendorst (1984) treat argumentation as an “illocutionary act complex,” in which a speaker “has put forward a series of assertions S1, S2, . . . , Sn in which propositions are expressed. (Propositional content condition).” While the term, “acceptability,” is used rather than “truth,” the reconstruction of arguments as assertives is clearly because of the central role that commitment to the truth of propositions plays in such acts. It is this constellation of assertives that stands in “a justifying or refuting relation to an expressed opinion (which consists of statements acting as a claim or conclusion)” (pp. 39–46).
- 3 The general features of this analysis apply just as much to inductive arguments as to deductive (cf. Adams, 1998), and as much to informal logic as to formal logic. Johnson and Blair’s (1983) account of premise adequacy or Toulmin’s (1958) model make the same kind of reductions in assessing argument quality.
- 4 This follows from distinguishing between problem-solving validity and conventional validity
- 5 Reformist programs of logic derive a quite different conclusion: Rational decision-making requires the development of specialized languages, techniques, and methods of inference and analysis. Implementation of formal languages in computer science, applications of probability theory, methodological developments in experimental design and measurement techniques all point to the fact that people can and have invented an ever-growing set of logical analytic tools that can be applied to an ever-broadening domain of problems. The problem is not that one cannot build “pockets of relative rationality” in the logical sense; the problem is that there are other aspects of rationality to which logic is blind. Consider the problem of adaptation: Say there are two different arguments for a claim, each of which has the same logical force. Or say there are two different ways of presenting the same argument (by definition, the two have the same logical force). But, one of the two choices is known to be much more persuasive than the other. Which choice induces a rational decision by an audience, and which choice an irrational decision? Regardless of whether the argument merits acceptance or rejection, does a decision by the audience in that direction indicate a rational decision? Or does it indicate (by contrast with the other choice of argument) an irrational decision tipped in the “correct” direction by coincidence with irrational qualities? Logic has nothing to say on the matter. Or consider the problem of eloquence. It is difficult to deny the intuition that certain arguments are made better in an epistemic sense by the strategic techniques of rhetorical invention. Martin Luther King, Jr.’s “I Have a Dream” speech is not much of an argument as far as its propositional content and inferential structure goes. But there is a clear sense that it merits the assent of a morally competent judge. The strategies used provide good reasons for assent; and not merely strategically fallacious grounds for persuasion. Logic stands mute in the face of this anomaly. But the problem of eloquence cuts both ways. I know of no characterization of eloquence or social worth that can distinguish what makes this speech worthy of assent in contrast to a speech like Adolph Hitler’s (1934/1985) address to the Nazi Party – at least, not without begging the question..
- 6 I take it that this is what Brockriede (1972) had in mind when calling attention to the bilateral quality of argument and the reciprocal risk involved in entering into reasonable discussion. Likewise, Wallace (1963) intended to draw attention to the intrinsic reasonableness of rhetoric.
- 7 This characterization of the function of rhetorical strategy is phrased so that dysfunctional and maladapted strategies can still be called rhetorical.

- 8 Notice that situational demands and the model requirements of an activity only compete and conflict with respect to a particular range of possible actions. The conflict arises because none of the available tactics can satisfy one requirement without violating another. Likewise, what in the conditions of argument should be treated as an opportunity and resource or as a constraint and obstacle is determined by the rhetorical techniques under consideration. For example, the self-interested obstinance of arguers may be a problem for a critical discussion aimed at mutual resolution of a dispute, but it can prove to be a strength and advantage in adversarial debate before a judge or jury (cf. Goodwin, 2000, 2001; Jacobs & Jackson, 2006).
- 9 The irony is that rhetorical strategy is both the grounds for closing the gap between real and ideal conditions and ineliminable source for deviation from the ideal.
- 10 Lev. 18:22 “You shall not lie with a male as with a woman; it is an abomination.” All footnotes to the letter are editorial additions drawn from the Holy Bible (Revised Standard Version). This version most closely aligns with the wording in the letter and appears to be the source for the letter. Other translations express pretty much the same meaning with small variations. Since the argument is widely made by Christian opponents of gay rights and is familiar mainly for that reason, reference to a Christian English translation of the Old Testament is consistent with the broader impact of the letter.
- 11 Lev. 1:9 “but its entrails and its legs he shall wash with water. And the priest shall burn the whole on the altar, as a burnt offering, an offering by fire, a pleasing odor to the Lord.” [End of a series of instructions from the Lord to Moses beginning with Lev. 1:2-3, “Speak to the people of Israel and say to them, When any man of you brings an offering to the Lord, you shall bring your offering of cattle from the herd or from the flock. /If his offering is a burnt offering from the herd, he shall offer a male without blemish; he shall offer it at the door of the tent of meeting, that he may be accepted before the Lord.”]
- 12 Exodus 21:7 “When a man sells his daughter as a slave, she shall not go out as the male slaves do.” [One of numerous ordinances introduced by Exodus 21:1 “Now these are the ordinances which you shall set before them:”]
- 13 Lev. 15:19–24 “When a woman has a discharge of blood that is her regular discharge from her body, she shall be in her impurity for seven days, and whoever touches her shall be unclean until the evening. /And everything upon which she lies during her impurity shall be unclean; everything also upon which she sits shall be unclean. /And whoever touches her bed shall wash his clothes, and bathe himself in water, and be unclean until the evening. /And whoever touches anything upon which she sits shall wash his clothes, and bathe himself in water, and be unclean until the evening; /whether it is the bed or anything upon which she sits, when he touches it he shall be unclean until the evening. /And if any man lies with her, and her impurity is on him, he shall be unclean seven days; and every bed on which he lies shall be unclean.”
- 14 Lev. 25:44 “As for the male and female slaves whom you may have: you may buy male and female slaves from among the nations that are round you.”
- 15 Exodus 35:1–2 “Moses assembled all the congregation of the people of Israel and said to them, ‘These are the things which the Lord has commanded you to do. /Six days shall work be done, but on the seventh day you shall have a holy sabbath of solemn rest to the Lord; whoever does any work on it shall be put to death.’”
- 16 Lev. 11:10–12 “But anything in the seas or the streams that does not have fins and scales, of the swarming creatures in the waters and among all the other living creatures that are in the waters is an abomination to you. /They shall remain an abomination to you; of their flesh you shall not eat, and their carcasses you shall have in abomination. /Everything in the waters that has not fins and scales is an abomination to you.”
- 17 Lev. 21:16–20 “And the Lord said to Moses, /”Say to Aaron, None of your descendants throughout their generations who has a blemish may approach to offer the bread of his God. /For no one who has a blemish shall draw near, a man blind or lame, or one who has a mutilated face or a limb too long, /or a man who has an injured foot or an injured hand, /or a hunchback, or a dwarf, or a man with defect in his sight or an itching disease or scabs or crushed testicles;”

- 18 Lev. 19:27 “You shall not round off the hair on your temples or mar the edges of your beard.”
- 19 Lev. 11: 3–8 “Whatever parts the hoof and is cloven-footed and chews the cud, among the animals, you may eat. /Nevertheless among those that chew the cud or part the hoof, you shall not eat these: The camel, because it chews the cud but does not part the hoof, is unclean to you. /And the rock badger, because it chews the cud but does not part the hoof, is unclean to you. /And the hare, because it chews the cud but does not part the hoof, is unclean to you. /And the swine, because it parts the hoof but does not chew the cud, is unclean to you. /Of their flesh you shall not eat, and their carcasses you shall not touch; they are unclean to you.”
- 20 Lev. 19:19 “You shall keep my statutes. You shall not let your cattle breed with a different kind; you shall not sow your field with two kinds of seed; nor shall there come upon you a garment of cloth made of two kinds of stuff.” Lev. 24: 10–16 “Now an Israelite woman’s son, whose father was an Egyptian, went out among the people of Israel; and the Israelite woman’s son and a man of Israel quarreled in the camp, /and the Israelite woman’s son blasphemed the Name, and cursed. And they brought him to Moses. His mother’s name was Shelomith, the daughter of Dibri, of the tribe of Dan. /And they put him into custody until the will of the Lord had been declared to them. /And the Lord said to Moses, /“Bring out of the camp him who cursed; and let all who heard him lay their hands upon his head, and let all the congregation stone him. /And say to the people of Israel, Whoever curses his God shall bear his sin. /He who blasphemes the Name of the Lord shall be put to death; all the congregation shall stone him; the sojourner as well as the native, when he blasphemes the Name, shall be put to death.” Lev. 20:12–14 “If a man lies with his daughter-in-law, both of them shall be put to death; they have committed incest, their blood is upon them. /If a man lies with a male as with a woman, both of them shall have committed an abomination; they shall be put to death, their blood is upon them. /If a man takes his wife and her mother also, it is wickedness; they shall be burned with fire, both he and they, that there may be no wickedness among you.”
- 21 This is what Black (1970) was pointing to when discussing the image of the audience implicitly signaled by a text. Kaufer (1977) suggests that in ironic communication there is a bifurcated audience – those who identify with the literal meaning (in this case, the disciple & Dr. Laura) and those who identify with the figurative meaning (in this case, the satirist).
- 22 Technically, the argument should only be called an indirect proof, but the distinction between indirect proof and *reductio ad absurdum* (where a common set of premises are used to derive both P and not-P) has been so blurred in textbooks and theoretical discussions that I have used both.
- 23 For example, at least for Christians, since the New Testament is seen as transcending the law, problems with Old Testament pronouncements are less severe. Paul’s letter to the Romans might also be cited (Romans 1:26–27): *For this cause God gave them up unto vile affections: for even their women did change the natural use into that which is against nature: And likewise also the men, leaving the natural use of the woman, burned in their lust one toward another; men with men working that which is unseemly, and receiving in themselves that recompence of their error which was meet.*
- 24 Nevertheless, I don’t think the insinuation is open or strong enough to be taken to be a *tu quoque* argument. One wouldn’t want to say that the satirist has made a communicative commitment to such claims. Perhaps it could be taken as a kind of functional substitute for such an argument.
- 25 Compare the discussion of maximally dialectical interpretation in van Eemeren et al. (1993, pp. 49–50; 66–67).
- 26 In this regard, rhetorical strategy can be seen according to the principle behind Gricean implicatures: “no deviation from rational efficiency without a reason” (Brown & Levinson, 1987).
- 27 I am assuming that they follow along the lines of the secular audience to preacher Jed Smock’s evangelical witnessing on college campuses. See chapter 7 in van Eemeren et al. (1993) and Jacobs (1982).

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# Chapter 6

## Normatively Responsible Advocacy: Some Provocations from Persuasion Effects Research

Daniel J. O’Keefe

This chapter addresses one aspect of the relationship between argumentation studies and social-scientific persuasion effects research. Persuasion effects research aims at understanding how and why persuasive messages have the effects they do; that is, persuasion effects research has descriptive and explanatory aims. Argumentation studies, on the other hand, is at its base animated by normative concerns; the broad aim is to articulate conceptions of normatively desirable argumentative practice, both in the abstract and in application to particular instances, with a corresponding pedagogical aim of improving discourse practices. Thus one of these enterprises is dominated by descriptive and explanatory concerns and the other by normative interests.

In some previous work I have explored the relationship between these two undertakings by taking up the question of whether there is any intrinsic conflict between normatively-sound argumentation practices and practical persuasive success (e.g., O’Keefe, 2003). The empirical evidence appears to indicate that a number of normatively-desirable advocacy practices – including clearly articulating one’s overall standpoint (O’Keefe, 2002), spelling out one’s supporting evidence and arguments (O’Keefe, 1998), and refuting counterarguments (O’Keefe, 1999) – commonly improve one’s chances for persuasive success.

This chapter approaches the relationship of normative argumentation studies and descriptive persuasion effects research from a different angle, by pointing to several empirical findings that raise questions or puzzles about normatively-proper argumentative conduct. My purpose here is less to offer definitive conclusions about normative analyses of advocacy, and more to point to some social-scientific research findings that indicate complexities in the analysis of normatively desirable argumentative conduct – including some ways in which practical persuasive success may *not* be entirely compatible with normatively-desirable advocacy practices.

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## 6.1 Background

As a preliminary, it may be useful to notice that at least some of my discussion will intersect with some of the concerns of pragma-dialectics. Pragma-dialectics is an analytical-normative model of critical discussion; it provides a set of normative principles (and corresponding analytic tools) for argumentative conduct aimed at the resolution of disagreement (e.g., van Eemeren & Grootendorst, 1984, 2004). But in recent years pragma-dialectics has also taken up questions concerning the nature of “strategic maneuvering” and its analysis from a pragma-dialectical standpoint. “Strategic maneuvering” refers to the advocates’ “attempt to make use of the opportunities available in the dialectical situation for steering the discourse rhetorically in the direction that serves their own interests best” (van Eemeren & Houtlosser, 2001). One of the questions van Eemeren and Houtlosser have addressed is specifically the question of when strategic maneuvering is normatively questionable (as opposed to normatively unobjectionable). At least some of my discussion will be seen to address that same question, albeit not necessarily from a specifically pragma-dialectical point of view.

However, a complexity is introduced by the natural divergence between the circumstance contemplated by (pragma-dialectical and other) ideals for critical discussion and the circumstance in which argumentation and advocacy often are undertaken. Ideals for critical discussion often seem to contemplate a situation in which at least two advocates undertake the articulation and defense of different points of view. There may be some third party to which the advocates’ arguments are addressed (as in legal proceedings), or each advocate may act as the other’s audience, but the key feature to which I want to draw attention is that there are two advocates.

But advocacy sometimes occurs in circumstances in which only one advocate is heard, such as consumer advertising. Yes, one may here think of the audience as (implicitly) the other advocate, but one would immediately want to acknowledge that the audience may not always be in the same sort of argumentative position as the advocate; for instance, the audience may not know as much about the relevant subject matter as does the advocate. And, yes, sometimes opposing views are available elsewhere; for instance, in the case of consumer advertising, consumer advocacy groups may publish opposing views or critical information. Even so, especially in instances of advocacy (such as commercial advertising) delivered through traditional media of mass communication, there is some asymmetry between the audience and advocate.

Moreover, there are circumstances in which there is potentially argumentation (in a broad sense) but not necessarily advocacy (in the usual sense). The kind of circumstance I have in mind is exemplified by those medical decision-making situations in which a patient is to choose among alternative courses of action. In such situations, health professionals can provide arguments and evidence that bear on that decision, even if they advocate no particular option.



So my interest here is broadly with any situation in which persons consider some potentially-argument-based claim, that is, some claim that might be supported by argument. I mention these contextual variations and divergences (between the circumstances of critical discussion and other circumstances) because I think that they bear on the task of transferring normative ideals from one circumstance to another – and because they foreshadow some of the complications to which I want to point.

## 6.2 Some Empirical Provocations

I now want to turn to a number of research findings in the social-scientific literature relevant to persuasion that seem to me to raise some questions about normatively-proper advocacy. I offer four examples, each considered individually, but I hope also to draw out some connections among these.

### 6.2.1 *Gain-Loss Message Framing*

One much-studied message variation in persuasion effects research is the contrast between (what are called) “gain-framed” and “loss-framed” appeals. A gain-framed appeal emphasizes the advantages of compliance with the communicator’s viewpoint; a loss-framed appeal emphasizes the disadvantages of noncompliance. So, for instance, “if you take your hypertension medication, you’ll probably get to play with your grandchildren” is a gain-framed appeal; “if you don’t take your hypertension medication, you might not get to play with your grandchildren” is a loss-framed appeal. The underlying substantive consideration (offered as a basis for acceptance of the advocated view) is the same in the two appeals; what varies is how that consideration is “framed” (for some reviews and discussion, see O’Keefe & Jensen, 2006; Rothman & Salovey, 1997; Salovey, Schneider, & Apanovitch, 2002).

A parenthetical remark here: Although it’s easy to gloss gain- and loss-framed appeals as involving substantively identical arguments, in fact the two framings are not necessarily logically equivalent. Each appeal’s central claim takes the form of a conditional. For the loss-framed appeal, the conditional is either “if not-A, then U” (if the recommended action A is not undertaken, then some undesirable consequence U results; “if you don’t wear sunscreen, you may get skin cancer”) or “if not-A, then not-D” (if the recommended action A is not undertaken, then some desirable consequence D is failed to be obtained; “if you don’t wear sunscreen, you may not have healthy skin when you’re older”). For the gain-framed appeal, the conditional is either “if A, then not-U” (if the recommended action A is undertaken, then some undesirable consequence U is avoided; “if you wear sunscreen, you can avoid skin cancer”) or “if A, then D” (if the recommended action A is undertaken, then some

desirable consequence D is obtained; “if you wear sunscreen, you can have healthy skin when you’re older”). As will be noticed, the loss-framed conditionals are not identical to their gain-framed counterparts. For instance, the conditional “if not-A, then U” is not identical to “if A, then not-U.” After all, it could be true *both* that “if not-A, then U” *and* that “if A, then U”; indeed, people do sometimes appear to reason in such a fashion (“I’m going to get cancer no matter what I do”). However, it is probably unwise to assume that the difference between these two conditionals is readily apparent to casual observers. Moreover, this way of reconstructing gain- and loss-framed appeals is not unimpeachable. For instance, although each appeal is a conditional, the consequence might be expressed differently, namely, as a changed probability of obtaining some outcome: “If you wear sunscreen, you decrease your chance of getting skin cancer” and “If you don’t wear sunscreen, you increase your chance of getting skin cancer.” And this alternative way of expressing the appeals makes them look substantively rather more similar. So, without overlooking the possibility that the two ways of expressing an appeal are not necessarily logically equivalent, we surely can say that the two ways of expressing an appeal involve the same underlying substantive consideration.

These gain-loss framing variations can be seen to involve the use of what van Eemeren and Houtlosser (2001) have called a “presentational device,” “the phrasing of moves in light of their discursive and stylistic effectiveness” (p. 152; see also van Eemeren & Houtlosser, 2000, 2005). As van Eemeren and Houtlosser (2005, p. 32) indicate, “certain instances of strategic maneuvering” can be “dialectically sound” (normatively unobjectionable) while others are “fallacious” (normatively dubious). The project they take up is that of “developing criteria” for identifying sound and fallacious maneuvering.

I don’t want to be detained here by the specific question of whether van Eemeren and Houtlosser’s particular criteria would classify this as a “sound” or “fallacious” presentational device – in good measure because their criteria are not yet entirely well-specified and in any case application of any such criteria is acknowledged to involve “context-bound judgments of specific instances of situated argumentative acting” (van Eemeren & Houtlosser, 2005, p. 32). But I do want to rely on our common intuitions here about what makes for normatively responsible (or questionable) advocacy.

So the question is whether we are indifferent, normatively speaking, to whether an appeal is phrased as a gain or as a loss. And my sense is that there is not much ground for concluding that an advocate’s choice of a gain- or loss-framed appeal has normative implications. After all, this seems *purely* a presentational device: the underlying substance of the argument is the same in the two cases, which makes it difficult to see how the use of one or another framing could generally be fallacious (normatively dubious).

And I think this normative indifference is unaffected by learning that the two ways of framing the arguments are not always identical in their persuasive effects. For example, for messages advocating behaviors that prevent dental problems (behaviors such as regular brushing and flossing), gain-framed appeals are generally more persuasive than loss-framed appeals (O’Keefe & Jensen, 2007). But this just seems to be an instance in which a presentational device can be chosen for its

persuasive effectiveness, without any normative hackles being raised. After all, it's the same underlying argument.

### 6.2.2 *Success Rate vs. Failure Rate*

But now consider a second (related, but distinct) example: The acceptability of a medical treatment or surgical procedure (e.g., the likelihood that patients will choose it) can be influenced by whether the outcomes are expressed in terms of the treatment's success rate or its failure rate. For example, a surgical procedure is evaluated more positively when it is described as having a 90% survival rate than when it is described as having a 10% mortality rate (for some reviews, see McGettigan, Sly, O'Connell, Hill, & Henry, 1999; Moxey, O'Connell, McGettigan, & Henry, 2003).

So, as with the first example, the two formulations (success rate and failure rate) are based on the same information – the same substantive consideration – but they present that information differently. Given the similarity to gain-loss appeal framing, one might naturally suppose that we would similarly be normatively indifferent to this success-failure presentational form.

And yet surely we are not normatively indifferent here. I think the common intuition would be that there is something wrong with knowingly and purposefully choosing one or another formulation. These varying success-failure treatment descriptions do represent a “presentational device” like gain-loss message framing, but somehow this second case seems to be a little different from the first.

Part of the difference is unquestionably the implied setting, namely, a circumstance in which a health care professional is describing a treatment option to a patient. Here, we might think, the health care professional has an obligation to present the information in as transparent and unbiased a way as possible – and so, for instance, we might think it would be normatively most appropriate to express the information both ways. But this seems a little too easy an answer, for three reasons.

First, there is no guarantee that expressing the information both ways will somehow neutralize the effects of a given expression. For instance, it might be that once patients have been exposed to the failure-rate information, it will not matter if they also have the success-rate formulation. There's not yet much empirical evidence concerning the effects of presenting both forms, so confident conclusions on this matter are premature. But one should not assume that presenting both forms will provide a normatively easy solution here.

Second, implicit in the idea that there is something normatively wrong about knowingly choosing one of these presentation formats may be the suggestion that it is somehow improper for the health care professional to have any advocacy role. Of course, there's nothing wrong with the professional's having a viewpoint (e.g., about whether the patient should undergo the procedure). The question is whether the professional ought to express that viewpoint, as opposed to being a disinterested adviser. The boundaries between these roles is blurry, and different patients might well have different preferences about the professional's role. But it is easy to

imagine that at least sometimes, it will be entirely appropriate for the health care professional to advocate a particular course of action – and in such a circumstance it would be misguided to complain that, by virtue of choosing one presentation format, the professional wasn't being an unbiased adviser. That is to say, if there's something normatively questionable about the choice of presentation format, it must be something other than that the knowing choice of format disqualifies the health care professional as an unbiased adviser (that is, something other than the practice's putative incompatibility with an unbiased-adviser role).

Third, surely we don't want to say that it's permissible to selectively choose a presentation format as long as one is in an advocacy role but not when one is in an information-provider role; presumably we want even advocates to be normatively responsible. If the presentation format itself inappropriately influences outcomes, then all invocations of that format ought to be subjected to the same normative sanction, regardless of the communicator's role as an advocate or an adviser. If it's normatively irresponsible to choose one presentation format when one's in a disinterested information-provider role, surely the presumption ought to be that it should be equally irresponsible for interested advocates to do so.

That is to say, even putting aside considerations of the communicator's role in this setting, there look to be normative questions that arise from the use of this variation. And that, in turn, suggests that we might usefully revisit the previous example concerning gain-loss message framing. I earlier suggested that the use of gain-framed or loss-framed appeals raised no normative concerns, but, given this second example, that conclusion ought to be reconsidered.

### ***6.2.3 Gain-Loss Message Framing Reconsidered***

Think about gain-loss message framing this way: Persons exposed to a gain-framed appeal will (sometimes) make different choices than if they had been exposed to a loss-framed appeal. And, of course, it's in the nature of things that this influence (of appeal framing) will be invisible to people – they will be unaware that their choices have been influenced by the particular way in which the appeal was framed. They will not know that if they had been exposed to a differently-framed appeal, they might have made different choices.

This way of putting things makes appeal framing look rather like a fallacy, at least in some traditional ways of thinking about fallacies. A long-standing characteristic worry about fallacies is that they lead an unsuspecting audience to be influenced in ways it otherwise would not have been. And here we might have a similar concern: Audiences will be influenced in ways they otherwise would not have been – not because of the substance of the appeals, but because of the phrasing of the appeals. (It's important here that these examples involve variations in expressing the same underlying substantive consideration. Differential effects because of correspondingly differentially meritorious arguments are no grounds for worries about normative misconduct.)

Indeed, this line of thinking makes one wonder whether it is possible for *any* presentational device – or at least any presentational device that makes a difference to persuasiveness – to be dialectically sound, that is, non-fallacious (not normatively questionable). If one way of expressing an argument has effects on people’s decisions that are different from the effects associated with some other way of expressing that argument, then the argument qua argument is presumably not getting its due. (Do notice that this way of formulating the problem relies on knowing the dancer from the dance – the argument from its expression. And while it may be useful for some purposes to separate the argument per se from its particular realization, that distinction ought not be presumed unproblematic.)

These first two examples can be thought of as representing presentation devices that potentially exploit human psychological weaknesses. We might wish that it wouldn’t matter whether outcomes were expressed as “90% survival” or “10% mortality,” but it does – and an advocate can exploit that fact in the service of the advocate’s persuasive aims.

Indeed, one might argue that audiences should be protected from their weaknesses in this regard. Extensive empirical evidence has pointed to various systematic biases in reasoning, such as “optimism bias” (in which people are unrealistically optimistic about, for example, their relative susceptibility to health risks). [Some time ago, Finocchiaro (1992) recommended closer attention to similar phenomena by argumentation scholars.] And there is now considerable discussion of the legal implications of these sorts of phenomena—such as questions of whether government action (such as restrictions on advertising) are appropriate or useful (e.g., Glaeser, 2006; Jolls & Sunstein, 2006; Trout, 2005).

For my purposes here, the central point to be noticed is simply that these findings point to a potential conflict between the practical interests of the advocate (who wants to persuade) and what we might think of as normatively-appropriate argumentative conduct.

I now want to consider two other examples that are rather different from these first two. The first two examples concerned cases in which normative questions are raised by certain advocacy practices where the normative considerations concern the nature of the practice itself. The next two examples point to normative considerations arising outside the nature of advocacy practices themselves.

### **6.2.4 Risk Information**

The third example requires a brief preface to express a general normative premise, namely, advocates should not knowingly give inaccurate information in support of their claims. This is the sort of premise that almost seems too obvious to state, much less justify. But I do take it for granted that most would think this normative standard unobjectionable.

So consider the circumstance commonly referred to as “risk communication,” that is, the presentation of information about risks of individual behaviors (e.g., smoking), environmental health threats (e.g., second-hand smoke), potential disease risks (e.g., risk of cardiovascular disease), and so forth. Advocates will often find it useful to present risk

information as part of their efforts at persuading people to undertake appropriate preventive or protective behaviors. I think we would take it for granted that such advocates should present accurate risk information and that the goal should be to give people an accurate picture of their risks (e.g., the risks of cigarette smoking).

But what if persons already overestimate the risk from (say) smoking? Should we try to convince them that their risk is actually not as great as they suppose? This is not a purely theoretical question. There is some evidence that people do overestimate the dangers of smoking and alcohol consumption. And these risk perceptions are related to behavior; that is, persons with greater perceived risk are less likely to smoke or drink (e.g., Lundborg & Lindgren, 2002, 2004). The plain implication is that if people were given accurate information about these risks, they would be more likely to engage in these behaviors.

I can't sort out here all of the normative questions stimulated by such findings. But, as examples, consider: Do advocates have an affirmative responsibility to correct such misperceptions? Or is it enough if the advocates do not themselves assert incorrect information?

That is, is it permitted that advocates passively exploit the audience's misunderstandings? Without actually asserting incorrect risk information, advocates might nevertheless (enthymematically) rely on the audience's misperceptions in constructing their arguments. And, just to make things more complex here, what if the person presenting the risk information is in an information-provider role (e.g., a health care professional), not an advocacy role? Is such a person normatively compelled to correct misunderstandings about the degree of risk? My purpose here is not so much to offer answers to such questions as it is to point to how these social-scientific research findings raise some complications with respect to the normative treatment of advocacy conduct.

Specifically, I want to draw attention to two points. The first is the conflict here between the practical interests of the advocate (hoping to persuade people) and normative interests (e.g., in having communicators convey, or rely on, accurate information). For the persuader to be maximally effective in forwarding the advocate's point of view may require abandoning what we would ordinarily take to be normatively-desirable practices of advocacy.

Second: These questions are not unique to considerations of argumentative conduct. They reflect long-standing, classic normative questions about weighing ends and means: We have some desired end (e.g., encouraging people not to smoke), and the question is what means we are willing to employ in order to achieve that purpose (e.g., knowingly providing inaccurate information, exploiting the audience's incorrect beliefs). These parallel classic questions in moral philosophy such as "When, if ever, is lying morally justifiable?"

### ***6.2.5 Self-Efficacy Appeals***

The fourth example concerns (what can be called) self-efficacy appeals. As background: For many behaviors that persuaders might want to encourage, the key barrier to behavioral performance is attitudinal – people aren't convinced that performing

the behavior is a good idea. For instance, consumers may need to be persuaded that a given product is worth purchasing.

But for some behaviors, the primary obstacle to behavioral performance is not attitudinal. Rather, it's a matter of one's perceived ability to perform the behavior, commonly called "self-efficacy" or "perceived behavioral control" (e.g., Ajzen, 1991; Bandura, 1977). For example, people may have favorable attitudes about exercising, but nevertheless not engage in those behaviors because of perceived inability: "I don't have the time," "I don't have the equipment," "the facilities are too far away," and so on.

In such circumstances, persuaders obviously should focus on changing such self-efficacy beliefs. That is, rather than wasting time trying to convince people that exercise is desirable, instead persuaders should focus on convincing people that they do in fact have the ability to perform the action (e.g., Allison & Keller, 2004; for similar research on topics other than exercise, see Blok et al., 2004; Luszczynska, 2004). Notice that this is a straightforward instance of adapting a message to an audience, in which an advocate strategically selects which arguments to make on the basis of which of the audience's current beliefs need to be changed (for general analyses of this sort of approach, see Fishbein & Yzer, 2003; van den Putte & Dhondt, 2005). [This seems not quite the same as what van Eemeren and Houtlosser, (2001, p. 152) call "selecting a responsive adaptation to audience demand," which involves "putting the issue in a perspective that accords with the expectations and preferences of the audience" (p. 153). Here, the advocate chooses substantively different arguments depending which of the audience's beliefs are targeted for change.] Indeed, a persuader who does *not* focus on such beliefs is presumably unlikely to be successful.

But the persuasive strategy of targeting self-efficacy beliefs might have a potentially undesirable side effect when used in the context of some health-related behaviors, namely, it might stigmatize those with unhealthy conditions as being personally responsible for their circumstance, even if they are not. (For discussion of such strategies, see Guttman & Ressler, 2001; for broader discussions of ethical aspects of health-related appeals, see Guttman, 1997a, 1997b.) I don't mean to say that this consequence necessarily guarantees that the strategy is somehow normatively defective; for example, some might find stigmatization unobjectionable here (or in general). But obviously these collateral unintended effects might make us normatively uneasy about self-efficacy appeals.

I want to draw attention to two points with this example. The first is that, as in the preceding case, there is here a conflict between the practical interests of the advocate (hoping to persuade people to engage in the behavior) and larger normative interests (e.g., in avoiding inappropriate stigmatization). If the persuader does what is maximally effective in this circumstance, then normatively undesirable consequences may follow.

The second is that this example, like the preceding one, represents a specific realization of common general problems of normative assessment. Judging the normative worth of actions often involves weighing a combination of desirable and undesirable consequences. In a sense, then, there's nothing special about this last case, save that it arises in the context of advocacy. And in that way, this example is akin to the preceding one (inaccurate risk information), in that both involve weighing competing nor-

mative considerations: The inaccurate-risk-information case involves weighing the desirability of the ends and the means; this case involves weighing the desirability of the ends (the intended effects) and accompanying unintended effects.

### 6.3 Conclusion

The examples discussed here are a varied lot. The first two examples (concerning gain-loss message framing and success/failure framing) raise normative questions about advocacy practices on the basis of the intrinsic properties of certain appeals. The second two examples (concerning inaccurate risk perceptions and self-efficacy appeals) raise normative questions about advocacy practices on the basis of considerations outside the practices themselves – considerations of the desirability of the end (the risk perception example) or the unintended effects of the practice (the self-efficacy example).

But even the success/failure framing example is connected to larger contextualizing questions about the appropriate role of health care professionals in advising patients – should they advocate particular courses of treatment? Merely present information to let patients decide? And what if patients are incapable of digesting the information? And this, in turn, leads me to underscore a broader point: Paternalism inheres in persuasion.

Advocates undertake advocacy because they think they know what other people should believe and do. And thus there is, to some degree, an inevitable collision between the usual sorts of normative interests of argumentation analysts (who are concerned that a good decision be reached, that the right outcome be obtained, with it being an open question just what the right outcome is) and the practical concerns of advocates (who are also concerned that a good decision be reached – but advocates already *know* what that decision should be). Perhaps we might say: Advocates are paternalistic about ends (they know *what* decisions people should make), and argumentation analysts are paternalistic about means (they know *how* people should go about deciding).

And so, necessarily, larger questions about (for instance) balancing ends and means will inevitably enter into discussions about normatively-proper advocacy conduct. A satisfactory general analysis of normatively desirable argumentative conduct cannot be oriented only to the analysis of argumentative devices themselves, but rather must be situated within a broader understanding of the larger ends sought.

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# Chapter 7

## Duets, Cartoons, and Tragedies: Struggles with the Fallacy of Composition

Trudy Govier

### 7.1 Introduction

A fundamental problem arises concerning much of our language about groups. The problem is this: we apply to *groups* the intentional language of emotions, attitudes, and beliefs. Such language is paradigmatically individual in application and yet we apply it to groups of all sizes – small, medium, large and very large – and of varying degrees and kinds of organization. In important contexts, we refer to groups not only as doing things and being accountable for what they do, but as having attitudes and intentions related to their actions. Groups may be said not only to undertake actions but to be resentful, hateful, generous, compassionate, accepting, suspicious or trusting. They may be said to hold beliefs and make value judgments, and reach decisions on the basis of these. Corporate boards and parliaments, for example, are organized groups empowered to act for still larger groups. They take decisions and act – and when they do so, it is on the basis of beliefs and attitudes which underpin their intentions and actions. Suppose, for instance, that a corporate board reaches a decision to spend millions on exploratory drilling in some area of the Arctic. Why? Its decision is made intelligible on the grounds that it knows the price of oil to be high and rising, and has evidence implying that the area in question contains oil. Or a parliamentary body might reach a decision to send peacekeeping troops to a particular country, on the basis of beliefs about the risks and needs of the people in that country, and the feasibility of its troops making a constructive difference in that context.

For those who contest the observation that intentional language is commonly applied to groups, I suggest a reading of journals and magazines containing commentary about economic and political affairs. You will find many attributions of actions to groups and you will find that these actions are rendered intelligible in much the way we make individual actions intelligible, namely by attributing

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beliefs, attitudes, and values to groups. My particular interest in this area stems from work on challenges of political reconciliation, and from seeing how questions about compositional attributions arise in that context. However, as the preceding examples will show, compositional attributions are by no means restricted to that sort of context.

For convenience, let us call the application of intentional language to groups the *compositional phenomenon*. The compositional phenomenon strikes many people as highly problematical. Many have raised difficulties about it, saying that it cannot possibly make sense for groups to think, feel, believe, and decide. Why not? Because groups are not *conscious*; there is no group mind. Some go even further, contending that groups cannot do anything, *qua* groups, and cannot properly be held accountable for their actions. This claim strikes me as implausible to the point of perversity, given such obvious phenomena as wars, elections and corporate activity; I will not explore it here. I will assume that groups, small or large, organized or not, can do things. In fact there are some things that can only be done by groups – performing choral works, reaching a jury decision, winning a soccer game, and passing laws in parliament being obvious examples.

In discussions of group conflict and its resolution, the compositional phenomenon is quite conspicuous. We find, for example, allusions to distrust, trust, apology, forgiveness, and reconciliation as phenomena in politics, in the relations between groups (Govier, 1997). Does such discourse make sense? Can we engage in it without systematically committing mistakes of logic and metaphysics? These questions will be the focus of this presentation. What I have in mind here is the Fallacy of Composition, in which we mistakenly infer conclusions about wholes or groups from premises about parts or individuals.

In this presentation, I consider a number of themes related to the compositional phenomenon. First, I consider several responses that would purport to eliminate it. I then move on then to set it in the context of theory of argument. The view I will take is that there really is a problem here, the Fallacy of Composition is genuinely a fallacy, and an important one – but that the gap underlying this fallacy can be plausibly bridged in some cases.

## 7.2 Some Preliminary Metaphysics

As discussed here, the problem of compositional attributions begins from the supposition that, with respect to intentional language, *group* attributions are problematical whereas *individual* attributions are not. This casting of the problem will seem correct to many. Nevertheless, there are several ways of resisting the dichotomous contrast between individual and group that constructs this problem. First, the individual can be regarded as a kind of plurality or collectivity. In the *Republic*, Plato envisaged a tripartite soul and a state based on this model. Hume too famously compared the self to a commonwealth. Seeking to understand personal identity, Hume argued that we attribute it on the basis of relations of resemblance

and causation between those ideas and impressions which are distinct perceptions of the mind. Stating that impressions cause ideas, which then cause further impressions, Hume said,

In this respect, I cannot compare the soul more properly to any thing than to a republic or commonwealth, in which the several members are united by the reciprocal ties of government and subordination, and give rise to other persons, who propagate the same republic in the incessant changes of its parts. And as the same individual republic may not only change its members, but also its laws and constitution; in like manner, the same person may vary his character and disposition, as well as his impressions and ideas, without losing his identity. Whatever changes he endures, his several parts are still connected by the relation of causation. (Hume, 1975, chap. 35)

Hume offered this comparison not as an argument from analogy, but rather as an explanatory illustration of his theory about causal relations among the distinct perceptions that constitute a human mind.

Hume, then, endorsed an account in which individual selves were compositional. As illustrated in the comparison between the self and the commonwealth, Hume argued that individuals are composite. The implication here seems to be that there is no categorical difference between the individual self and some composite entity such as a republic or commonwealth. If we were to endorse such an account, we might conclude that the dichotomy between *group* and *individual* levels of analysis be resisted and there would be no special problem about attributing to groups the same kind of properties attributed to individuals.

A differently oriented approach can provide different grounds for the same conclusion. Often emotions and attitudes that are attributed to individuals presuppose interactions with other persons, or are themselves the product of cultural patterns and responses. An individual who is suspicious of persons in another ethnic group may hold these attitudes because of beliefs and feelings acquired from traditions in the culture. To some extent, people believe, feel, and think as they do because of enculturation (Govier, 1997). Along the same lines, we speak of collective memory; for example, the collective memory of the Serbs includes long struggles against the Turks. An individual Serb who has been taught his history will know and use elements of this national narrative which appears and is taught as collective. Thinking along these lines, one might argue that we do not need to take an individualistic approach and try to account for group attitudes by arguing *up* to macro from micro. One could appeal to the cognitive importance of collective education and teaching, and insist that explanation goes in the very opposite direction, *downward* from macro to micro. But within such an account, one that would put group cognitions first, it would be essential to acknowledge that there are variations in individual responses to cultural traditions. While one person may inherit racial prejudice from his culture, another may find it repugnant and be motivated to struggle against it (Cohen, 2001; Moody-Adams, 1997).

These broadly metaphysical considerations argue against any dichotomous construction of the individual and the collective. But they cannot fully address the concerns of those who find compositional attributions problematic. As we will see, they fail to address specific gaps that arise when evidence about *individual persons* is

cited as support for conclusions about *groups of such persons*. Many arguments for compositional attributions are weak, falling into the well-known trap of the Fallacy of Composition.

### 7.3 On a Pragmatic Level: Three Disputed Responses – and a Further Proposal

Apart from these broadly oriented metaphysical arguments about individuals and collectives, there are three further reactions to the compositional phenomenon as it is commonly constructed. These are:

1. *The Forbidding Response.* On the forbidding view, all intentional language, as applied to groups, is based on error; compositional attributions should be banned because intentional language applies paradigmatically to individuals. It should not be extended to groups, because groups are not conscious and are thus not the sorts of entities that can have beliefs, attitudes, and feelings.
2. *The Legitimizing Response.* On this view, intentional language as applied to groups must be legitimate because it passes the only realistic and sensible test of legitimacy – namely actual use. Along the lines of ordinary language philosophy and the later Wittgensteinian philosophy, which stated that ordinary language is all right as it is, one might simply resist any systematic criticism of standard practice (Wittgenstein, 1963). After all, we regularly employ compositional attributions when they interpret and respond to actions and events; given that they do so, compositional attributions are functional. To seek to reform ordinary language on philosophical grounds would be misguided and futile.
3. *The Discriminatory Response.* On this view, there are indeed contexts in which intentional language applies to groups. We know from experience of war and intense conflict that nations and groups are often suspicious of each other and harbour feelings of resentment and hostility, based on felt grievances about wrongs of the past. That groups and nations have often had relationships characterizable in these ways are established facts of history. Such considerations are part of standard lore in the so-called realist school of international relations. Distrust and fear are frequently said to characterize relations between nation states. On the Discriminatory account, such negative attributions are allowed but if we attribute such traits as compassion, generosity, forgiveness, and trust to groups, that goes too far in the direction of idealism, being too emotional and value-laden to be realistic. Positive intentional attributions must be resisted or systematically reinterpreted as manifestations of self-interest. On the Discriminatory account, it is insisted that ethically positive traits are purely individual.

I submit that all three of these responses are open to criticism. An objection to the forbidding response is that it is dogmatic, inflexible, and unrealistic given standard practice. An objection to the legitimating response is that its confidence in ordinary language goes too far in avoiding explanation and justificatory argument.

An objection to the discriminatory response is that it is biased toward the negative. This response is grounded more in a Hobbesian attitude to the social world than in a sound theory of logic and language. Consistency indicates that if we can make sense of a nation distrusting, we can make sense of a nation trusting; if we can make logical and epistemic sense of a group resenting, we can make sense of a group forgiving;

In this presentation, I develop a fourth approach, along the following lines.

4. *Compositional Construction, or Gap-filling.* On this view, compositional attributions pose questions, especially when claims about group actions and attitudes are based on evidence about individuals. Real issues arise. The challenge is to acknowledge the gap and the problem, and find ways in which the gap can be bridged.

## 7.4 The Fallacy of Composition: Examples and Comments

To relate this problem more specifically to issues about argument and argumentation, I move to consider the Fallacy of Composition. I might add here that this fallacy has been strikingly memorialized in a sculpture by that name at the University of Groningen. This sculpture, a lighted structure, by Trudi van Berg and Jos Steenmeijer, occupies most of a wall on the building for the Faculty of Economics.<sup>1</sup>

As is well-known, the Fallacy of Composition is committed when there is reasoning from premises about *parts* to a conclusion about a *whole*. There are many interesting instances of this fallacy, and many important questions, that arise in material and physical contexts. Here, I consider primarily social phenomena, given my interest in compositional attributions to groups of people. In the social context, instances of this fallacy typically involve premises about individuals and conclusions about some group of which those individuals are members. There are, of course, many examples of such flawed arguments. I will mention several instances here.

**The Duet:** John is a terrific tenor and Susan is a brilliant soprano. So a duet by John and Susan will be superb.

**The Cartoons:** A Danish newspaper, under a particular editor, publishes some cartoons that are found to be offensive by some Muslims. Through this action, *Denmark* has offended *Muslims*.

**The Tragedy of the Commons:** If one farmer grazes his cattle on the commons, that will be beneficial for him; therefore if all the farmers graze their cattle on the commons, that will be beneficial for all.

**The Dinner Party:** No one would set out dinner for her family and exclude one member from the table, refusing for no good reason to allow the ostracized person to eat. You can see from this that it is wrong for some human beings to have inadequate food while many others enjoy good meals. Therefore the world community should accept responsibility for world hunger.

**The Utilitarian:** Each person desires his own happiness, and each person's happiness is in that way a good to that person. Therefore the general happiness is a good to the aggregate of persons.

In the Fallacy of Composition, the basic mistake is not merely quantitative. It arises from the fact that there are often significant structural differences between the micro and macro level. We go astray if we reason so as to fail to consider those differences. In the social context, which is our concern here, there are significant differences between individuals as such and groups comprised of these individuals in relationship with each other. Individuals in groups stand in relationships to each other and *interact* – sometimes cooperatively, sometimes conflictually, sometimes when occupying institutional roles, sometimes according to various habits and expectations (May, 1987). The nature and quality of the interactions between individuals in a group affects that group – even when it is very small, as in the case of the duet. If we reason that (simply) because John and Susan are both good singers as *individuals*, they will be good as a *duet*, we have ignored the fact that to present a successful duet, these two have to harmonize and work together. We have made a mistake, ignoring complications and complexities which may arise from their need to work together. The individual abilities of these two do not guarantee that they can successfully combine their talents.

In terms of the theory of argument, it is interesting to note that the Fallacy of Composition can appear in arguments of different types. If an argument is taken to be *deductive*, and the premises are about individuals while the conclusion is about a group, clearly that argument will be deductively invalid in the straightforward sense that it will be possible for the premises to be true while the conclusion is false. We may locate the Fallacy of Composition within this gap. If an argument is taken to be an *analogical* argument in which the primary subject is a macro phenomenon, while the analogue is described at the micro level, the analogy will be inadequate because there are relevant differences between the analogue and the primary subject. We consider the Fallacy of Composition in considering the nature and relevance of these differences. If an argument from individual to group is taken as *inductive generalization*, it can be criticized as hasty; the individual cases do not give sufficient evidence about the group as a whole. If it is regarded as an *inference-to-the-best-explanation*, there will be doubts about whether a compositional attribution to a group does, indeed, provide the best explanation of the possession of characteristics by an individual or individuals, given that individuals within the group may differ from each other and can exert a certain degree of autonomy.

Concerning the gap constitutive of the Fallacy of Composition, there are two crucial factors to be considered.

- a) The problem of *less*. The individuals, considered simply as individuals, are *less* than the group considered as such, because they do not stand in relationships to each other, do not interact, cannot be said either to cooperate or to be in conflict, and are not organized institutionally.
- b) The problem of *more*. The individuals, considered as such, are *more* than groups as such, since individuals have something every group lacks, namely *consciousness*. An individual can literally, by himself or herself, think, reflect, plan, choose, feel, amend her feelings and so on. No group has consciousness in the literal sense in which an individual has consciousness.



In pursuing the gap-filling approach, I will return to these basic problems of *less* and *more*. But first it will be useful to consider some approaches that will be resisted here.

## 7.5 Reducing Composition to Something Else?

In a version of the legitimating response to our problem, the very notion of a Fallacy of Composition may be contested. For example, one might say that there are recognized figures of speech in which one element serves to represent the whole – as when we say “all hands on deck” or “give us this day our daily bread”. The figure of speech here is that of synecdoche. And in these familiar expressions, it is quite clear what is being said. The *hand* represents the person of a crew member and the *bread* represents the nutritional needs of people. Surely these things are understood and only the most pedantic person would object to these ways of talking. Synecdoche, one might say, has been around for a while and is an unobjectionable device.

Within political discourse, consider this statement: “Berlin opposes Washington on Iraq.” In this locution, we find synecdoche insofar as the capital cities are named to represent the people of nation states. Pedantically we can spell it out: to say that Berlin opposes Washington on some matter is to say that Germans, as represented by their government in Berlin, disagree with Americans, as represented by their government in Washington, on policies regarding Iraq. One might insist that what is said is surely understood and perfectly legitimate; there is no problem here, we know what is meant, and synecdoche is an established mode of speech. But wait a minute: this case, unlike that of the hands on deck, this claim about Washington and Berlin involves at least one *compositional attribution*. There does seem to be some amount of philosophical mystery in the matter. What does it mean for a nation or collectivity (Germany as represented by Berlin, or Germans) to *disagree* with another nation or collectivity (the United States as represented by Washington, or Americans)? How are we to understand such claims? What sorts of evidence would support them? This is the compositional problem. The fact that we understand synecdoche in some other contexts does not make the compositional problem disappear in this sort of context.

It is sometimes said that the Fallacy of Composition has to be judged case by case and is in this respect a “material” fallacy and not a formal one. (In this context, “formal” and “general” should not be confused. My treatment claims to be general, but not formal.) (Govier, 1987, 1999). I leave the social sphere to find a simple example here. Consider, for instance, the case of a uniformly brown cookie; say it is a peanut butter cookie and its ingredients have been well mixed by the cook so that all its visible parts are brown. If we were to reason that because all the visible parts of the cookie are brown, the cookie itself is brown, we would reach a true conclusion. Yes indeed. However this result does not mean our argument from parts to the whole avoids errors in reasoning. We got to the true conclusion by luck alone. It does not follow from the fact that we sometimes get lucky and arrive at a true conclusion that the Fallacy of Composition is material and has to be understood on

a case-by-case basis. There is still something wrong with the argumentation scheme in the case because of the structural factor; there is a problem with any general scheme reasoning from parts to whole with no gap-bridging device. That we are lucky in some cases, because in those cases the shift from micro to macro happens in this instance *not* to be negatively relevant to the conclusion, does not show that the general scheme is rationally defensible.

Perhaps what is going on in compositional attributions is akin to, or an instance of, stereotyping. We too easily form a “them”, where instead distinctions and divisions are needed. In some cases, our simplistically formed category of “them” serves to buttress the polarization or even the demonization of an “out-group” as contrasted with an “in-group.” The basic mistake here is that a group is cast according to the attributes of some few individuals within it. Although some generalizations about groups may hold true, statistically, there are individuals within a group who do not fit the stereotype. And furthermore even a description that applies to a majority of individuals within a group may not apply to the group considered as a collectively.

The notion of stereotyping seems to fit the case of the Danish cartoons, a case which will receive special attention here because of its considerable political importance. Initially it was one editor who chose to commission and publish the contested depictions of Mohammed. This man, Flemming Rose, commissioned the drawings for a children’s book, and did that for reasons of his own. Rose suspected that Danes were self-censoring in their comments on Islam and Islamism because they were afraid of intense reactions, including physical violence, by radical Islamists. He wanted to find out whether people would be bold enough to make some drawings and send them in. Rose said, “I commissioned the cartoons in response to several incidents of self-censorship in Europe caused by widening fears and feelings of intimidation in dealing with issues related to Islam” (Rose, 2006). Flemming Rose was one individual in one particular situation, with his own quite specific goals and concerns. In the initial situation, there was little reason to deem him typical of Danes generally; nor was Rose in any way authorized to represent Danes as a collectivity. In their response to the distribution of the cartoons, some Muslims in some countries rioted, burned embassies, and advocated boycotts of Danish products on the ground that the cartoons were blasphemous and offensive. Now it is by no means clear that Flemming Rose offended *Muslims in general*, which was the interpretation of those inciting the riots and boycotts. But even if we say that he did, a vast leap is if made attitudes attributed to Rose are attributed to *Danes more generally*. Flemming Rose is not all Danes or most Danes; still less so did he represent the state of Denmark. (As embassies and products of Denmark were attacked, Danes began to rally to support Flemming Rose. At that point it could be more plausibly argued that “Denmark” supported his actions; this scenario seems characteristic of the polarization underlying serious group conflict.)

One of the strongest objections in the case was to a particular cartoon depicting Mohammed wearing a turban with a bomb in it. If Mohammed is represented as a terrorist and is the prophet of this religion, then, one might say, that the person who drew this particular cartoon was guilty of stereotyping because in his representation of the bomb in the turban, he implied that all Muslims are violent terrorists. About this suggestion, Rose commented,

Angry voices claim the cartoon is saying that the prophet is a terrorist or that every Muslim is a terrorist. I read it differently: *Some* individuals have taken the religion of Islam hostage by committing terrorist acts in the name of the prophet. They are the ones who have given the religion a bad name. (Rose, 2006)

It did not escape the attention of commentators that *violent* reactions to the stereotyping of one's group as *violent* only serve to confirm the very stereotype that one protests (Fatah, 2006). But then this whole matter is not, fundamentally, one where we would expect logic to reign supreme.

Some of these reflections suggest an inductive interpretation of the Fallacy of Composition, according to which we would assimilate it to another fallacy, that of Hasty Generalization. Leaving the cartoons and conflicts surrounding them, I turn here to a dispute regarding the South African Truth and Reconciliation Commission. Many of the TRC's early defenders – including Archbishop Desmond Tutu himself – emphasized stories of *individual forgiveness and reconciliation*, and then went on to speak of *national reconciliation* between black and white South Africans. (Tutu, 1999) The logical gap is apparent here. But what is its nature, exactly? Is the problem simply that there were not *enough* individual stories... the sampling of cases was not large enough, and possibly not representative, so that there is a problem of hasty generalization? To generalize to “*most*” or “*all*,” we need more of the *some*—and that is the problem? I do not think that is quite the problem here. Getting *more* of the *some* would not suffice, because it would not address the issue of level shift, from micro to macro, from relationships between individuals to relationships between large groups. For a group to forgive another group, or to reconcile with it, *group processes* are required. If we are to say that there is some kind of reconciliation between groups that have previously been opposed, then we have to be able to speak of the attitudes of these groups (either aggregatively or collectively) and we have to characterize them as shifting in ways that are reconciliatory. Compositional problems arise here as they do not if our concern is straightforwardly a matter of Hasty Generalization.

It is sometimes suggested that the Fallacy of Composition can be understood as involving Equivocation. On this account, there is a shift of *meaning* when we move from micro to macro level. If we use the same terminology in both contexts, we ignore this shift, and reason on the basis of an equivocation (van Eemeren & Grootendorst, 1992). For example, individuals may remember things, may experience traumas, and may work through those traumas in a quest for healing. People speak, as well, of the need on the part of nations and groups to collectively *remember* aspects of the past and *work through* traumas that have been experienced by the nation, and heal. But what does such language mean in the context of a collectivity? There has to be a shift in meaning, and when we make compositional attribution, we ignore that fact. On this interpretation the Fallacy of Composition might seem to be reducible to another fallacy, that of Equivocation.

As with the brown cookie, there are instances in which an answer to these questions seems easy to come by. Consider, for instance, the case of acknowledgement. Many discussions of post-conflict processes call for acknowledgement, by nations and groups, of wrongs committed by agents acting on their instruction and behalf.

And nations and groups really *can* acknowledge; it is easy to see what this means. A nation can, for example, establish memorial days, commission sculptures, build and maintain museums, issue official statements of apology and recognition, and establish institutions for funding projects. It is thereby acknowledging various historical facts, and committing itself to value judgments about them. So far as policy and expressive artifacts are concerned, collectivities are likely to have greater resources and more power than individuals. Individuals can acknowledge too. They typically do so by making statements of admission expressive of their beliefs and attitudes, and in the case of wrongdoing, those admissions allow that the acts were wrong, were done culpably, and should not be repeated. Groups are not disadvantaged compared to individuals when it comes to acknowledgement; in fact, given their greater resources, they may be more able to acknowledge and memorialize than are individuals.

But the fact that in this particular case and some others compositional attributions seem unproblematical only suggests a more general solution; it does not in itself provide one. General questions about the legitimacy of the shift have not disappeared. What would it mean for a *nation* to remember? To *forgive*? To show concern and generosity? To *deal with its past*? To *reconcile*? To say that there may be equivocation, that there is an alteration in meaning when we proceed from micro to macro, remains true for many cases. But these observations about equivocation do not fully handle the problem. What is the shift? What sorts of evidence (if any) can justify compositional attributions? The gap remains and must be bridged. How do we do it?

## 7.6 Ways to Bridge the Gap

There are human actions that are not the actions of individuals. These actions include such things as the singing of choral works, the waging of wars, and the conducting of national electoral campaigns. These are actions and they are human actions. It is people, human beings, who do these things. And people do not and in many cases cannot do them as individuals. So *how* do human beings do these things? How do we manage to sing the choral movement of Beethoven's Ninth Symphony? Conduct an election? Or dispatch troops to fight in a distant country? The answer is obvious: we do these things in organized groups, in which there are procedures and practices.

Suppose that the organizational structure is tight enough that a large group has a smaller sub-group authorized by its rules to deliberate and act in a range of cases. Let us call this sub-group the executive. Suppose further that the executive conducts deliberations in which people speak and reason together and reach decisions on the basis of its proceedings. In these deliberations, individuals put forward ideas and arguments and other individuals respond to them. Assuming even a modicum of democratic process in the case, the reasoning and decisions of the *group* are not necessarily those of any *individual* within it. There will be exchanges of information and judgment, argument, dialogue, and dialectical developments. The process in which various people make and respond to claims and arguments engages a number of people, and their arguments and responses affect each other. The decision may be

said to *emerge* from the deliberations of the group, and may be deemed to be a joint decision (Gilbert, 1987).

Suppose, for example, that the executive of a political action group decides not to send messages out to members using the national postal system. It reaches this decision after deliberations involving considerations about possible delays and losses that its members claim to have occurred within in that system. Its decision with regard to this matter indicates an attitude that may be attributed to the executive. Its attitude is one of distrust in the postal system. If the executive decision is known to the larger group and not opposed by them, thereby being tacitly accepted, we can attribute the attitude to the larger group. To consider another illustration, suppose the executive of a judges' organization meets to consider criticisms of a number of judicial decisions on matters pertaining to gender and its deliberations cumulate in an executive decision to organize workshops to educate judges on the matter. Let us suppose that the executive comes up with a policy and recommendation for action. Given this decision by the executive, certain beliefs and attitudes can be attributed to it. For example, if the executive is recommending educational workshops for judges, on gender themes, it must believe that judges need more information and training about gender and legal process, and that these workshops could provide them. Given its authorized role, the beliefs and attitudes attributed to the smaller group may also be attributed to the larger group, presuming that most do not object given information about this initiative. By their failure to object, they may be said to indicate tacit consent to these policies and to the beliefs and attitudes indicated by them.

Relationships and processes affect results. I am proposing that in such cases the gap between *individual* attitudes and those of the *group* may be bridged by the facts of group process. What A,B,C,D, and E come up with after meeting together emerges from their discussion and – because it emerges in this way – is distinguishable from what any one of them would have come up with individually. There is something distinctive about the process in which the decision has been reached, because it has involved these individuals *in relationship* to each other (Gilbert, 1987). The decision or action that results from the deliberations of the executive is a group product, attributable to the executive because it is a product of the interactions of its members, and attributable to the larger group if they tacitly consent. Because the decision or action can be attributed to this group, the intentional attitudes and beliefs implied can also be attributed to it.

The two members of a duet can speak directly to each other, but large groups cannot deliberate face-to-face. *Canada* cannot have a discussion except insofar as some representative persons have discussions in some contexts, and these discussions are publicized and become public. An obvious possibility is that of an explicit and authorized political process. If the context is that of the House of Commons in Ottawa, these participants are representative of the Canadian public because they have been elected in a process that is broadly accepted as legitimate. Given *representativeness* and *tacit consent*, policies adopted in the House of Commons can be regarded as those of Canada. Insofar as these policies are understood and stand unopposed, they can be attributed to Canada as a collectivity. The collectivity has engaged in deliberations and actions through its representatives.

A complication arises at this point. Where there is no group process, the problem of compositional attributions cannot be solved in this way (May, 1987). What about

more loosely organized groups or groups that are scarcely organized at all? It would seem that unorganized groups can act – as they do in various forms of street demonstration and protest. A recent example is that of extensive protests in Paris, with regard to the proposed law on youth employment. In some cases of street protest, people come together without there being a clear organizational structure constituting them as a collectivity. We may consider cases in which there is nothing like a designated executive enjoying powers granted by a collectivity in which persons are members or not. Suppose, for example, that 200,000 people have gathered in the center of Paris to express their discontent with a proposed law, and many of them are carrying signs and shouting slogans against that law. Given that participation in the protest is voluntary, given the context and the reasonable supposition that the meaning of signs and slogans is understood, it makes sense to attribute to these persons attitudes of opposition to the proposed law. (Indeed, the attribution of such attitudes is already implied when we describe a crowd as *protesting* the proposed law.)

But suppose now that one hundred or so of these people begin to engage in property violence. Let us say that they throw stones and smash the windows on cars and shops. And suppose that such persons are a minority. Should we say that the protesting youth are engaging in property violence? That they are threatening, destructive? My account here would have the implication that these further attributions cannot be justified unless there is further evidence, according to which we would have grounds for attributing these attitudes to most of the individuals present or to the group as a whole. How do those present respond to the violence? Do they indicate support by cheering and joining in? Do they indicate opposition by shouting out against the violence or trying to prevent it? Or by leaving the scene? Do they indicate ambivalence and embarrassment by standing awkwardly by? If there is no predominant pattern of response in such a case, given that there is no representative executive to speak for the group, we cannot attribute either approval or disapproval.

Clearly, my account of gap-bridging presupposes that there is organization within the group. When representativeness and tacit consent are less clear, it is difficult to justify attributions to the group as a whole or even to a majority of its members.

## 7.7 Conclusion

I have argued here that there is an important sense in which compositional attributions are problematic. When premises are about individuals and conclusions are about groups, there is gap in the argument. The existence and understanding of this gap underpin the tradition of the Fallacy of Composition. I have maintained here that this fallacy is genuine and important, and I believe there is much to learn by logically probing claims about “the Danes,” “the West,” “Muslims,” and so on. Stereotypes, hasty generalizations, and unclear language often underlie simplistic polarization, at a cost both to accurate understanding and to decent relationships. For all the qualifications we may make about the individual/group dichotomy and the clarity of some concepts, there is a problem of compositional attributions. But

I am arguing against any notion that all such attributions should be resisted. On the contrary, I have claimed that some of them are unobjectionable because they can be warranted by a line of argument in which the gap is bridged. This warranting is most straightforward when groups are organized.

The gap defining the Fallacy of Composition can be bridged insofar as group structures and relationships provide contexts for people to think together and act on the basis of their joint deliberations. We can understand how the deliberations and actions of an interactive group provide grounds for attributing to it attitudes and beliefs: the individuals are not considered purely individualistically when they think and act together; thus they stand in relationships and constitute a group. Thus the problem of *less* is overcome: this was the problem that individuals as such have *less* than groups because they do not exhibit relationships. By these same mechanisms, the problem of *more* is overcome: this was the problem that individuals as such have *more* than groups in the sense that they have consciousness. We can attribute intentional attitudes to the group on the basis of interactions between its members, and thereby bridge this gap. Then, in virtue of *representativeness* and *tacit consent*, we can see how those attitudes and beliefs can also be said to characterize a larger group. Putting together emergence, representativeness, and tacit consent, we are able to bridge the gap constitutive of the Fallacy of Composition as it applies to groups and individuals.

## Endnote

- 1 A photograph of the structure ‘The fallacy of composition’ may be found by searching under that title in Google images. ([www.rug.nl](http://www.rug.nl))

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# Chapter 8

## Deductivism and the Informal Fallacies

Dale Jacquette

*If we think of a fallacy as a deception, we are too likely to take it for granted that we need to be cautious in looking out for fallacies only when other people are arguing with us.*

L. Susan Stebbing, *Thinking to Some Purpose* (1939)

### 8.1 On Deductivism

I want to propose and defend a general thesis concerning the nature of all fallacies of reasoning. One and all of which I maintain in distinctive ways are deductively invalid. More importantly, I want to say that the most accurate, complete and charitable reconstructions of these species and specimens of the informal fallacies are instructive with respect to the individual character of each distinct informal fallacy. Reconstructions of the fallacies as deductive invalidities are possible in every case, if deductivism is true, which means that in every case they should be formalizable in an expressively comprehensive formal symbolic deductive logic. Naturally, the only thorough way to convince anyone of the truth of the thesis would be to provide reconstructions of all of the fallacies as deductive invalidities. Only then can someone judge whether deductivism offers a good analysis of what are called the informal fallacies as specific types of deductive invalidities. What I propose to do instead is to take a seldom-discussed fallacy of particular interest owing to Walter Burleigh in his c. 1323 work, *De Puritate Artis Logicae Tractatus Longior* (*Longer Treatise on the Purity of Logic*).

Burleigh's fallacy challenges the deductive validity of the apparently innocent inference form of hypothetical syllogism. If Burleigh's argument were correct – and his purpose is only to challenge the reader's understanding of logic – then a potentially deadly blow would be struck against deductivism insofar as that philosophical

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stance proposes further to understand deductive validity *formally*, by which I mean simply the conformity of reasoning to specific approved and semantically justified inference *forms*. If a species or specimen of reasoning conforms to an approved deductively valid form such as hypothetical syllogism, which is Burleigh's particular target in the argument (although it could be contraposition, disjunctive syllogism, constructive dilemma, *modus ponens*, *modus tollens*, *reductio ad absurdum*, etc.), then, if deductivism is true, the reasoning will be deductively valid; otherwise, it will be fallacious.

If deductivism is true, and if deductivism is further interpreted formally as positive conformity with a deductively valid inference form as recognized by any sound system of formal symbolic logic—which is the thesis I propose to examine and defend—then any species or specimen of reasoning that upon the most complete and most charitable reconstruction does not conform to such a deductively valid form will automatically be fallacious. If deductivism on the formal interpretation is true, then all fallacies are first and foremost logical fallacies involving a deductive invalidity (on the most complete and charitable reconstruction), of a more general or specific nature. These fallacies can sometimes be collected together into more general categories, including but by no means limited to *ad hominem*, *ad ignorantium*, *ad vericundium*, and “slippery slope”, among many others. In other cases, fallacious reasoning is so distinctive in content and specific in application as to deserve a descriptive name, as we find especially in the case, among numerous others, of “the open question fallacy”, “the naturalistic fallacy”, “the intensional fallacy”, “the intentional fallacy”, or “the gambler’s fallacy”. If deductivism is true, then it is appropriate to speak of these fallacies as “informal” only in contrast with such blatantly “logical” fallacies as affirming the consequent or denying the antecedent. In fact, however, again if deductivism is true, all fallacies are formal logical fallacies, even when they are also something more. If deductivism is true, then there are no informal fallacies in the sense of deductively circumspect but in other ways logically objectionable inferences. Past efforts to formally explicate the distinction between logical validity and fallacy have faltered on the claim that any inference whatsoever can be regarded as conforming or failing to conform to a deductively valid or invalid form. We propose to overcome this limitation by requiring that the conformity to a deductively valid form test only be applied to inferences that are the most accurately, completely, and charitably reconstructed. This itself is an art rather than an algorithm. Whether in a particular case a reconstruction of an inference sufficiently approaches the ideal of accuracy, completeness, and interpretive charity is in each case an informal matter of judgment rather than algorithm or formal decision method. In this sense, informalism triumphs even over the formal deductivist theory of fallacies. With this understanding, however, and applying these criteria dialectically as approximating an ideal of interpretation, we can now maintain that if deductivism is true, then all fallacies of reasoning are most accurately, completely and charitably reconstructible as formally deductive invalidities.

## 8.2 An Assinine Fallacy

Ah, but *is* deductivism true? Deductivists should be particularly interested in what I will call *Burleigh’s fallacy*. I am not concerned that the argument directly threatens deductivism, for everyone agrees that the reasoning is fallacious. The indirect threat is rather to our understanding of *why* the argument is fallacious, and whether these reasons themselves have anything to do with deductive invalidity. If they do not, then of course the anti-deductivist case is made indirectly but with equal force by Burleigh’s argument. On the other hand, however, if deductivism is true, then it should be possible to diagnose Burleigh’s fallacy in an accurate, complete and charitable reconstruction as, in an interesting and instructive way, formally deductively invalid.

Hypothetical syllogism is a well-respected (typically derived) principle of deductive logic. The proposition,  $[[p \rightarrow q] \wedge [q \rightarrow r]] \rightarrow [p \rightarrow r]$ , is a theorem or tautology of propositional logic, and the corresponding inference rule is deductively valid, just as students in elementary logic have been taught in less

$$\frac{p \rightarrow q, q \rightarrow r}{p \rightarrow r}$$

regimented terms since ancient times. There is a parallel form of the inference in Aristotelian logic for the supposedly deductively valid syllogism in BARBARA:

$$\frac{\begin{array}{l} \text{All A's are B's} \\ \text{All B's are C's} \end{array}}{\text{All A's are C's}}$$

The principle, defying its innocuous appearance, is challenged by Burleigh’ fallacy. In *De Puritate Artis Logicae*, under the rubric, *Instantiae*, Burleigh writes:

Nam haec consequentiae est bona: ‘Dico te esse asinum, igitur dico te esse animal’, et tamen aliquid sequitur ad consequens, quod non sequitur ad antecedens. Nam sequitur: Dico te esse animal, ergo dico verum; et tamen non sequitur: Dico te esse asinium, igitur dico verum (Burleigh, 1955, p. 203).

An English translation by Paul Vincent Spade renders the passage as follows:

(26) For the inference ‘I say that you are an ass; therefore, I say that you are an animal’ is a good one, and yet something follows from the consequent that does not follow from the antecedent. For it follows: ‘I say that you are an animal; therefore, I say the truth’. And yet it does not follow: ‘I say that you are an ass; therefore, I say the truth’. (Burley, trans. 2001, p 7)

I gloss this putative counterexample to hypothetical syllogism in a slightly different way to facilitate unambiguous formalization. Since “A” might stand for either “ass” or “animal”, I restate the argument trivially to refer to a *swine* (S) instead of an ass, reserving “A” to represent *animal*. The indexicals in Burleigh’s original formulation are evidently not at issue. For “I” and “you” we can substitute *a* and *b* without obvious prejudice to the logic of Burleigh’s argument. The example in other

ways remains unchanged. Thus, we can attempt to challenge hypothetical syllogism by the following inference:

[All human beings are animals.]

[*b* is a human being, and hence an animal, but not (genetically) a swine.]

1. If *a* calls *b* a swine, then *a* calls *b* an animal.
2. If *a* calls *b* an animal, then *a* speaks the truth.
3. If *a* calls *b* a swine, then *a* speaks the truth (*b* is a swine).

We have nevertheless assumed that *b*, whatever his or her hygiene, politics or table manners, is not (genetically, at least) a swine. The assumptions appear true, but the conclusion by hypothesis is false. The form of inference in hypothetical syllogism is, moreover, paradigmatically deductively valid. Hence the sophism. This is why deductivists in fallacy theory need to take special notice of Burleigh's fallacy. There is a problem here and several potential sources of fallacy.

With the usual (minimal) bending and stretching to make an argument fit the Procrustean bed of Aristotelian logic, we can restate Burleigh's fallacy in the form of a syllogism in BARBARA:

1. All instances in which I have the property of saying to you that you are a swine are instances in which I have the property of saying to you that you are an animal.
2. All instances in which I have the property of saying to you that you are an animal are instances in which I have the property of speaking truthfully.
3. All instances in which I have the property of saying to you that you are an ass are instances in which I have the property of speaking truthfully.

Hence, the conclusion in any of these versions:

You [your name here] are a swine.

You [your name here] are a filthy swine.

You [your name here] are a damn filthy swine.

Etc. (according to an informal lexical-grammatical recursion established by field linguistics).

Of these increasingly uncivil formulations, we can amp up the vulgarity increasingly without limit if we choose, as long as we are qualifying a swine as a species of animal. This is part of the fun, and despite cultural differences over six centuries, part of the interest of Burleigh's fallacy. The challenge is that if we cannot plausibly identify, diagnose and defuse Burleigh's counterexample by exposing it as the fallacy it clearly involves, then we may have no choice but to reject hypothetical syllogism, and with it all of classical propositional logic. If the deductivist is forced to these concessions, however, then deductivism insofar as it depends on the possibility of uniformly substituting propositionally meaningful expressions into a supposedly deductively valid form like that of hypothetical syllogism *salva validitate* will not be defensible as a general theory of the fallacies.

Hypothetical syllogism, deductivism and formalism are not seriously at risk from what we acknowledge as a logical fallacy. We must nevertheless meet a

high standard of analysis to show convincingly in the single case that Burleigh's reasoning in the counterexample is deductively invalid. Intuitively, something in Burleigh's argument is logically amiss. We might suspect, for example, that the argument trades on some sort of hidden inconsistency. A useful method of testing some inferences is to see if they go through equally well for their negations or for the complements of key predicates in the propositions they contain. Although in progressive jurisprudence it is assumed that a person is innocent until proven guilty, we might take it upon ourselves in the present context to prove that you [whoever you are] are *not* a swine. What happens if we try to construct a counterpart argument of Burleigh's inference, to the effect instead that you are *not* a swine? Certain features of the argument are immediately fixed by the structure of a hypothetical syllogism leading to the opposite conclusion that you are not a swine.

We can always test an argument by seeing whether and how far we can modify it in order to attain the opposite conclusion. This method provides a way of judging at least one dimension of the argument's significance. What is at stake if we accept the argument? What if we can argue with minor adjustments but otherwise logically in exactly the same way to the opposite conclusion? If it turns out that we cannot, then why, exactly, can we not? The antecedent of the first assumption must state "If I say that you are not a swine, then...", while the entire conclusion must state: "If I say that you are not a swine, then I speak truthfully (you are not a (damn filthy, etc.) swine)". Now we narrow down our search space for an argument that through parity of form with Burleigh's fallacy that you are a swine might equally well and equally strongly justify the opposite conclusion. Here are some possibilities, none of which is finally satisfactory, with evaluations and brief commentary:

- 1a. If I say that you are not a swine, then I say that you are not an animal. FALSE! (There are animals other than swine.)
- 1b. If say that you are not a swine, then I say that you are an animal. FALSE! (There are things other than animals that are also not swine.)
- 1c. If I say that you are not a swine, then I do not say that you are not an animal. TRUE! (For the same reason that 1b is FALSE!)

The trouble with 1c. is that we then need to bridge an inference to the predetermined conclusion:

3. If I say that you are not a swine, then I speak truthfully (you are not a swine).

The question is how to get from 1c. to 3. It appears that what we need is something like:

- 2a. If I do not say that you are not an animal, then I speak truthfully. FALSE! (The sentence is false because it is compatible with my not saying that you are not a swine that I not speak at all, truthfully or otherwise.)

These formulations do not work. We can nevertheless reach the desired conclusion by revising the content of the inference to argue as follows: "If I say that you

are not a swine, then I say that you are not a cloven-hooved mammal. If I say that you are not a cloven-hooved mammal, then I speak truthfully. Therefore, if I say that you are not a swine, then I speak truthfully.” The argument for the sake of comparison has this form:

[All human beings are animals.]

[*b* is a human being, and hence an animal, but not (genetically) a swine; nor is *b* for that reason a cloven-hooved mammal.]

1. If *a* asserts that *b* is not a swine, then *a* denies that *b* is a cloven-hooved mammal.
2. If *a* denies that *b* is a cloven-hooved mammal, then *a* speaks the truth.
3. If *a* asserts that *b* is not a swine, then *a* speaks the truth (*b* is not a swine).

The syllogistic formulation for this counter application of Burleigh’s use of hypothetical syllogism now looks like this:

1. All instances in which I have the property of saying to you that you are not a swine are instances in which I have the property of saying to you that you are not a cloven-hooved mammal.
2. All instances in which I have the property of saying to you that you are not a cloven-hooved mammal are instances in which I have the property of speaking truthfully.
3. All instances in which I have the property of saying to you that you are not a swine are instances in which I have the property of speaking truthfully.

What should we make of the fact that there can be opposed applications of an argument form apparently instantiating hypothetical syllogism, a cherished albeit usually derived logical principle of deductive reasoning? Does the original conclusion that *b* is a swine get canceled out somehow by the fact that hypothetical syllogism with different assumptions can also be used deductively validly to conclude that *b* is *not* a swine?

I think that Burleigh’s defender would be right to object that the question of whether or not *b* is truly a(n) (etc.) swine was never at issue, that the putative counterexample to hypothetical syllogism depends instead on the fact of *b*’s not being in truth a swine (at least not in a metaphorical sense but rather in the sense of not being a cloven-hooved mammal – as to *b*’s personality or moral character, personal hygiene, and the like, we do not presume to judge). The problem is not with *b*’s specieshood, but rather with the deductive validity of hypothetical syllogism in all its formal applications. Nor need Burleigh’s defender implausibly argue that all applications of hypothetical syllogism as a result of the argument that *b* is a swine must therefore point away from the opposite conclusion that *b* is *not* a swine. There must be such (at least deductively valid) arguments, because in fact it is a truth about *b* that *b* is not in fact a swine in the sense of being a member of the greater porcine family. The trouble is that we can also use hypothetical syllogism validly to deduce the false conclusion that *b* is a swine from true assumptions. We cannot remove the logical difficulty posed for all formally executed

instantiations of hypothetical syllogism putatively derived by uniform substitution of propositions for propositional variables  $p, q$ , in the propositional schema for hypothetical syllogism (or the equivalent for the corresponding deductively valid syllogism).

We must either reject hypothetical syllogism as a valid form of deductive inference, whereby in the same stroke we reject all of classical propositional logic and hence all of the classical functional calculus or first-order predicate-quantificational logic, or we must argue correctly that Burleigh’s fallacy is avoidable in another way. If we can rightly show that Burleigh’s attempt to instantiate hypothetical syllogism is logically impermissible, then we can avoid this potential threat to the deductive validity of any and every legitimate instantiation of this unmistakably deductively valid argument form.

### 8.3 Analysis of Burleigh’s Fallacy

In fact, I think it is not only possible but unavoidable to conclude that Burleigh’s argument is a fallacy rather than a serious counterexample to the deductive validity of hypothetical syllogism. The solution to Burleigh’s fallacy can then be seen in the following symbolization:

1.  $\forall x[Sx \rightarrow Ax]$
2.  $\forall x,y[[Cx\phi y \wedge \forall z[\phi z \rightarrow \psi z]] \rightarrow Cx\psi y]$
3.  $CaSb \rightarrow CaAb$
4.  $CaAb \rightarrow [Ab \rightarrow C^T aAb]$  (or,  $CaAb \rightarrow [Ab \rightarrow T[Ab]]$ )
5.  $Ab$
6.  $CaSb \rightarrow C^T aAb$  (or,  $T[Ab]$ ) (HARMLESSLY) VALID!
7.  $CaSb \rightarrow C^T aSb$  DEDUCTIVELY INVALID!
8.  $CaSb \rightarrow Sb$  DEDUCTIVELY INVALID!

(Note that  $C^T aAb$  is not the same nor does it entail nor is it entailed by  $T[CaAb]$ . “Calls” (“C”) and Calls-true ( $C^T$ ) can be interpreted extensionally as opposed to “declares” or “states” (true), etc., which seem characteristically intensional. The inference on this interpretation breaks down on grounds of intensional non-inferability, if we agree that it is senseless to say that something becomes true merely because someone says or even sincerely believes that it is true.

What is needed to make the inferences in (7) or (8) carry is the following evidently false principle:

$$\forall x,y[Cx\phi y \rightarrow C^T x\phi y]$$

Alternatively, the equally false assumptions can also carry the conclusion if we were reckless enough to interpolate them:

$$\forall x[Ax \rightarrow Sx]$$

$$Ab \rightarrow Sb$$

$$Sb$$

$$\forall x[Sx]$$

It may be worth reflecting on the intuitive implausibilities that each of these assumptions bears.

The first,  $\forall x[Ax \rightarrow Sx]$ , says that all animals are swine. If we were prepared to ignore counterexamples like human beings and hummingbirds and dung beetles, then we could consider accepting such a universal, which in the meantime must remain conceptually and materially false. The second, as a particular instantiation of the corresponding universal generalization, must equally be judged false. We should not expect it to follow from the fact that  $b$  in particular is an animal that therefore  $b$  in particular is a swine. Thus, we must also reject  $Ab \rightarrow Sb$ .

We likewise obtain our conclusion in a deductively valid way if we simply assume it, by introducing without further ado the assumption that  $Sb$ . To conclude from this, as though having shown something worthwhile in a worthwhile way, that therefore  $b$  is a swine, is like proving the existence of God by assuming from the outset even if in disguised terminology that God exists. Even worse is the assumption that everything is a swine (God), by which one can only too easily and hence too trivially deductively conclude that  $b$  in particular is a swine (God). Thus, if we are interested in the argumentive significance of our reasoning, we will not leap to the otherwise independently insupportable conclusion that  $\forall x[Sx]$ , on the reasonable assumption that while there may exist swine, there surely also exist things that are not swine.

If there is no other way to support the conclusion that  $Sb$  in the present argument context, then we should probably come away from Burleigh's inference as showing only how badly things can go wrong if we try to instantiate deductively valid argument forms like hypothetical syllogism by subtly equivocal propositions, such as those that seem to be involved in Burleigh's fallacy. We pinpoint the equivocation when we reconsider the original inference.

When  $a$  calls  $b$  a swine,  $a$ , true enough, calls  $b$  an animal, on the grounds that a swine is an animal. These truth conditions, nevertheless, are rather different than the truth conditions by which we can with equal justification pronounce it as true that when  $a$  calls  $b$  an animal,  $a$  speaks the truth, since  $a$  speaks the truth in that case, not by virtue of  $a$  truly being a swine, but by truly being an animal other than a swine. These are altogether different truth conditions that are confused in assumptions (1) and (2). We avoid paradox and fallacy at the same time that we rescue hypothetical syllogism as a deductively valid form of reasoning by refusing to acknowledge the deductive validity of inferring (3) from (1) and (2), somewhat as Burleigh himself recognizes in his own solution to the problem in the *Longior*, where an evident equivocation in the referential meaning of the phrase "an animal" is the inadmissible pivot on which the evidently invalid inference turns.



We can also say, with less precision, perhaps, but at a more intuitive level, that to speak in both assumptions (1) and (2) of “an animal” is in the two assumptions to have in mind a very different animal, in one case “an animal” that satisfies the description of a porcine animal and another that does not satisfy the concept of a porcine animal, but instead only the description of a primate animal, of which being a porcine animal is not logically or conceptually subordinate, and more specifically of the animal subspecies of hominids, and finally of *homo sapiens sapiens*. Hypothetical syllogism is deductively valid only insofar as it involves not merely uniform “syntactical” terms loosely adapted from ordinary language, but only of referentially univocal terms that designate precisely the same objects or properties. Anything less than such a scrupulous substitution policy reflects on philosophical misjudgment rather than on the deductive logical validity of such basic inference principles as hypothetical syllogism. The fact that in colloquial expression we can refer by means of the same phrase “an animal” to entirely different kinds of animals should not lead us so far astray that we begin to question the deductive legitimacy of inference forms as fundamental as hypothetical syllogism. We are well advised accordingly to reject the counterexample to hypothetical syllogism that seems to be implied by Burleigh’s fallacy that on analysis is more appropriately categorized as Burleigh’s fallacy.

We detect the invalidity in Burleigh’s fallacy when we see that it depends essentially on an outright equivocation between two different meanings of “an animal”. The fact that it is appropriate in completely different circumstances to speak of the object of a certain true predication in two or more cases as “an animal” does not by itself give us any conclusive logical ground for concluding that therefore the predications in question refer in particular to the same kind of animal or to “an animal” of the same biological kind. This is where common sense with a little guidance should also incline, and where common sense for the philosophically trained is likely also to point. We avoid logical paradox in both cases by disambiguating the intent of a term, in this case a phrase, that can be satisfied in any of a number of different ways by rather different subcategories of the same general kind, and from which it would be sheer logical irresponsibility to infer that anything and everything that answers to the general category of being “an animal” is therefore the same kind of animal. We have in Burleigh’s argument, consequently, no serious challenge to the deductive validity of hypothetical syllogism, but at most instead only a cautionary example of how badly things can go wrong if we permit without scruple equivocations by which things belonging together in more general kinds are inferred as a result to belong together also in more specific kinds. This family of fallacies is to be avoided by refraining from rendering into the forms of hypothetical syllogism the very same propositions that merely appear to be syntactically the same in colloquial expressions when reference is made to an individual being “an animal” in one sense of the word in order to make one premise of the inference come out true, while a very different sense of the word is invoked to make another premise true. The slippage in meaning between two applications of “an animal” invalidate the putative counterexample to the general deductive validity of hypothetical syllogism that otherwise seems to be entailed by Burleigh’s fallacy, which has now been shown to be no more than Burleigh’s fallacy by equivocation.

## 8.4 Fallacious Reasoning

I want now to make a few theoretical remarks that are ultimately based, as I indicated at the outset, on the piecemeal reconstruction of individual fallacies as deductively invalid, taking Burleigh's fallacy as an illustration. The logical analysis of a fallacy takes some work, which is easily lost sight of when the analysis is presented in its most economical expression. The complete logical analysis of each fallacy poses unique problems of its own, an observation that does not contradict the proposition that all fallacies are formally deductively invalid inferences. To make this argument work requires a precise statement of what is meant by a fallacy, and it is the effort to clarify this concept that the real value of the exercise consists.

With these considerations in mind, we now characterize our provisional conclusions as follows. Burleigh's fallacy is deductively invalid. Deductivism as a theory of fallacies is not falsified by Burleigh's fallacy. Deductivism offers a promising theory of fallacies; the proof of this is in the pudding. Less metaphorically, the truth and pragmatic value of deductivism can only be properly assessed from the standpoint of the theory's ability to offer plausible reconstructions of "informal" fallacies as formal deductive invalidities. Deductivism implies that all fallacies are formal in the sense of violating accepted forms of deductively valid inference. Previous attempts to advance deductivism have faltered over the problem that any inference can be made to conform to a deductively valid (or invalid) form. We avoid the difficulty by insisting that conformity of a species or specimen of reasoning with a deductively valid (or invalid) form is ideally only to be made with respect to accurately, completely and charitably reconstructed inferences. Informalism triumphs against deductivism in a limited sense by virtue of the fact that judgments about the accurate, complete and charitable reconstructions of inferences are themselves not matters of formal logic.

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**Part III**  
**Types of Argument and Argument**  
**Schemes**

# Chapter 9

## From Figure to Argument: *Contrarium* in Roman Rhetoric

Manfred Kraus

### 9.1 Introduction

Roman rhetoricians knew about a certain rhetorical device called *contrarium*, which they, however, variably considered either a figure of speech or a certain type of argument, at times even both. This paper will try to analyze the function of this term that vacillates between the realms of stylistic embellishment and argumentation and to elucidate both its logical background and linguistic appearance.

In a first section, the development of the concept of *contrarium* from the *Rhetoric to Herennius* to Cicero and Quintilian will be sketched. Next, Cicero's account of the enthymeme in his *Topics* and its relationship to *contrarium* will be analyzed and, based on the examples offered by those authors, an analysis of the typical pattern of this type of argument will be given. A study of a selection of examples from Cicero's writings will reveal their underlying argumentative basis, before finally the persuasive force of the standard phrasing as rhetorical questions will be discussed.

### 9.2 *Contrarium* in Roman Rhetoric

#### 9.2.1 *Contrarium in the Rhetoric to Herennius*

In the fourth book of the anonymous *Rhetoric to Herennius*, which is arguably the oldest extant rhetorical handbook in Latin, most commonly dated to the mid-80s of the first century B.C.E., a feature called *contrarium* appears within a lengthy list of figures of diction (*Rhet. ad Her.* 4.25–26). It is defined as a figure “which, of two opposite statements, uses one so as neatly and directly to prove the other.” Unfortunately, the

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anonymous author does not go into any greater analytic detail. Instead, he prefers to offer a whole series of examples, as follows (Caplan, trans. 1954, p. 293, modified):

- (1) Now how should you expect one who has ever been hostile to his own interests to be friendly to another's?
- (2) Now why should you think that one who is, as you have learned, a faithless friend, can be an honourable enemy?
- (3) How should you expect a person whose arrogance has been insufferable in private life, to be agreeable and self-knowing when in power, and
- (4) one who in conversation among friends has never spoken the truth, to refrain from lies before public assemblies?
- (5) Do we fear to fight them on the plains when we have hurled them down from the hills?
- (6) When they outnumbered us, they were not equal to us; now that we outnumber them, do we fear that they will be superior to us?

It is obvious that in each of these examples one or more pairs of opposites are involved: (1) own interests versus another's; hostile versus friendly; (2) friend versus enemy; (3) arrogance versus agreeability; private life versus position in power; (4) truth versus lies; conversation among friends versus public assemblies; (5) plains versus hills; (6) them outnumbering us versus us outnumbering them; not even equal versus superior.

As the entire fourth book of the *Rhetoric to Herennius* is dedicated to *elocutio* and the theory of rhetorical figures, it would at first sight appear natural that what is being illustrated by these examples must correspond to some particular figure of diction (*exornationis genus*, 4.26). And, judging from the list of oppositions just quoted, it would further seem obvious that the figure in question can be none other than Antithesis. This clearly is Cicero's definition of *contrarium* in his juvenile work *De inventione*, roughly contemporaneous with the *Rhetoric to Herennius*. *Contrarium*, Cicero states (*De inv.* 1.42), is what is most distant from what it is said to be the contrary to, such as cold to heat or death to life (cf. also 2.165). In a related sense he uses *contrarium* to describe a particular fault in the use of definitions, in which an audience is offended by a definition strongly opposed to their habits (*De inv.* 1.93).

Yet in the *Rhetoric to Herennius* Antithesis has already been treated a few paragraphs prior to our passage, in 4.21, under the name of *contentio*, defined as language built upon contraries (*ex contrariis*). Later in the book (4.58–59), in the section on figures of thought, *contrarium* is in fact closely associated with *contentio*/Antithesis (and Comparison) as a purely stylistic device and part of *ornatus* (*ornandi causa*, 4.59; see also 4.46 on allegory *ex contrario* = irony). At 4.26, however, the author immediately points out that the feature in question "is not only agreeable to the ear on account of its brief and complete rounding-off, but by means of the contrary statement also forcibly proves (*vehementer ... conprobat*) what the speaker needs to prove; and from a statement which is unquestionable it infers what is questionable, in such a way that the inference cannot be refuted, or can be refuted only with the greatest difficulty." So what is in fact being demonstrated here is after all not simply the figure of Antithesis, not a mere embellishment of style, but a particular type of

argument (a similar argumentative use of *contrarium*, yet without the interrogative form, is also envisaged in its function as one of the argumentative steps in the elaboration of a *chreia*, 4.56–57). Such a shift in meaning need not necessarily be surprising, as that author is particularly guilty of frequent equivocations in nomenclature (see the list in Fuhrmann, 1960, p. 53, note 6).

But as the author leaves us abruptly at this point to pass on to the next figure in his catalogue, we are left on our own for making sense of this puzzling perception.

Besides the undeniable employment of pairs of opposites, there is, however, an even more striking stylistic feature that is common to all the examples, but which our author, strangely enough, does not address at all. All examples without exception are phrased as rhetorical questions. Yet a rhetorical question may indeed rightly be addressed as a figure. One would probably call it a figure of thought rather than of diction; but, as Interrogation, too, is regarded a figure of diction by our author (see next paragraph), a classification explicitly rejected by Quintilian (*Inst. Or.* 9.3.98), might it after all perhaps be this stylistic feature that makes *contrarium* justly appear within a list of figures of diction?

Such a guess is clearly supported by the closer context in which *contrarium* appears in the fourth book. It is presented as the last item within a more or less close-knit subset of related features described in paragraphs 21–26. Some of those also involve interrogative elements, viz. *Interrogatio* (4.22) and *Ratiocinatio* (4.23–24), the latter of which, judging by the examples presented, appears to be a kind of reasoning by question and answer. In 4.22, immediately following Antithesis, Exclamation (*exclamatio*) is treated in close connection with Interrogation; the last of the examples given for Exclamation in fact even *is* a question. This will become relevant. In 4.24–25 then, immediately preceding *contrarium*, there is a treatment of Maxim, both without and with an accompanying rationale (*ratio*). Yet a maxim accompanied by a rationale is one of the classical manifestations and definitions of the enthymeme (cf. Arist., *Rhet.* 2.21, 1394a31–b6; Quint., *Inst. Or.* 8.5.11). Thus this whole sequence of six manners of stylistic expression centres round the ideas of questions, antitheses, and reasoning.

If we further take into account that later on Quintilian, in his account of the enthymeme (*Inst. Or.* 5.10.2), remarks that a certain Cornificius used to call the enthymeme by the name of *contrarium*, we may fairly confidently assume that the *Rhetoric to Herennius* is also referring to some such kind of argument. In fact, based on Quintilian's remark, some scholars have sought to identify the author of the *Ad Herennium* with the said Cornificius.

But the argument in question is not identical with the enthymeme “from contraries” either, which is mentioned by Aristotle within his list of topical enthymemes in book 2, chapter 23 of his *Rhetoric* (1397a7–19), and which in Latin is known as the *argumentum e contrario* (e.g. “if war is a bad thing, peace must be a good thing.”). For in that case example (1) would have to run: “Who has been hostile to his own interests, will be *friendly* to another's”. For in an *argumentum e contrario*, two pairs of contraries are shown to be mutually concomitant. Here, however, the conclusion drawn is exactly the opposite: The person in question will be *even less friendly* (i.e.: *even more hostile*) to another's interests. For the meaning of a rhetorical question (at least of those based on declarative sentences) is tantamount to the denial of the

questioned proposition. So what is involved is rather a different topos, i.e. the topos *a maiore ad minus* or vice versa (cf. Aristotle, *Rhet.* 2.23, 1397b12–29). Quite similarly so for the rest of the examples.

What needs to be noted after all is that the anonymous author, although he appreciates the argumentative value of *contrarium*, primarily assigns to it a position among figures of speech. He chiefly regards it as a means of stylistic embellishment that ought to be completed briefly and tightly within one period (*breviter et continuatis verbis*, 4.25). This tightly links up *contrarium* with *continuatio* (period), of which it is one of three applications (4.27). And in fact, the example given for a *continuatio in contrario* at 4.27 is also formulated as a rhetorical question of a type absolutely analogous to the examples of *contrarium* discussed in 4.25, and might therefore even be said to provide an additional example: (6a) “If a person has not placed much hope in chance, what great harm can chance do him?” This would also strongly confirm our previous observations.

### 9.2.2 *Contrarium in Cicero, De Oratore*

In his *De oratore* from his mature period (55 B.C.E.) Cicero also mentions *contrarium* in a catalogue of rhetorical figures (*De or.* 3.207). The heading again clearly is embellishment of diction. In this catalogue, *contrarium* features in the same group with items such as gradation of clauses, epiphora, inversion of words, asyndeton, paraleipsis, correction, exclamation etc. Quintilian quotes this passage at length (*Inst. Or.* 9.1.34), but is not always sure of the precise meaning of each individual term. As Cicero unfortunately does not provide any examples, it is impossible to ascertain exactly what he means by *contrarium* here, but the context seems to indicate that he refers to a stylistic figure.

Almost the same catalogue recurs in the *Orator* from Cicero’s later years (46 B.C.E.) in a passage (*Or.* 135) that is again quoted verbatim by Quintilian (*Inst. Or.* 9.1.39). But whereas most of the other features such as gradation, asyndeton, correction, or exclamation reappear, *contrarium* is now omitted. Quintilian (*Inst. Or.* 9.3.90) tries to explain this fact by suggesting that in the *Orator* Cicero may have rejected some of the figures, because he had realized that they were not really to be regarded as figures of speech, but as figures of thought. In this respect he explicitly names *contrarium*, and suggests that it might be used here in the same sense as Greek *enantiôtēs*, which, unfortunately, is no great help, as the meaning of that term is equally vague. But the context would suggest that what is intended is an antithesis between complete sentences. Butler’s interpretive translation by “arguments drawn from opposites” (Butler, 1922, p. 499) is therefore somewhat misleading.

### 9.2.3 *Quintilian on Contrarium*

Quintilian, unlike the earlier Roman writers we just reviewed, is quite positive that *contrarium* is primarily a type of argument. Antithesis, he says, would be called

either *contentio* or *contrapositum* (*Inst. Or.* 9.3.81; 9.4.18). According to Quintilian *contrarium* is one of the traditional Latin appellations for the enthymeme, a view he attributes in particular to the aforementioned Cornificius (*Inst. Or.* 5.10.2; 5.14.2–3; 8.5.9–11). As the enthymeme drawn from contraries or incompatibles (*ex repugnantibus* or *ex contrariis*) is the most efficient of all, it has provided the general name for this kind of argument. Inversely to what we saw in the *Ad Herennium*, Quintilian even feels compelled to emphasize that “the use of the enthymeme is not confined to proof, but may sometimes be employed for the purpose of ornament” (*Inst. Or.* 8.5.10). Quintilian’s account, however, is clearly reminiscent of Cicero’s logical analysis of the enthymeme in the *Topics*.

### 9.3 Cicero’s Account of the Enthymeme in the *Topics*

#### 9.3.1 Context

In his *Topics* (44 B.C.E.) Cicero devotes an entire section (§§ 53–57) to the presentation of a number of “modes of inference” that may provide the logical structure for arguments. These “modes of inference” are a set of different types of syllogisms, strictly speaking Stoic syllogisms. They can be identified as the so-called “indemonstrables” (*anapódeiktoi*) or rather “undemonstrated” (Hitchcock, 2005, p. 239, note 3; Mates, 1953, p. 67) syllogisms of Stoic dialectics (Diogenes Laertius 7.79; Sextus Empiricus, *Against the Logicians* 2.223), which form a set of basic syllogisms, to which all valid arguments within the Stoic system are reducible (Bobzien, 1996, pp. 134–141; Frede, 1974, pp. 127–167; Mates, 1953, pp. 67–74).

#### 9.3.2 Definition

Cicero describes the third type of those arguments as follows: “But when you deny a conjunction of propositions, and take as posited one or more constituent propositions of this conjunction so that that which is left is to be refuted, this is called the third type of argument. From this spring the rhetoricians’ arguments concluded from contraries which they themselves call enthymemes.” (*Topics* 54–55; Reinhardt, 2003, p. 143). A few lines later he adds that this type of argument “is called third mode by the dialecticians, enthymeme by the rhetoricians” (*Topics* 56; Reinhardt, 2003, p. 145). It should be clear that the definition of enthymeme that Cicero here envisages differs greatly both from Aristotle’s account and from what traditional logic and rhetoric, based on Aristotle, have come to accept as the standard meaning of the term (a syllogism with one premiss suppressed). It appears to be a kind of “Stoic” variant, based on Stoic propositional logic.



### 9.3.3 *Logical Background*

A third Stoic indemonstrable is usually described by the following mode: “Not both the first and the second; but the first; therefore, not the second” (O’Toole & Jennings, 2004, p. 476), or, in formal language:  $\neg (p \wedge q); p \rightarrow \neg q$  (see Sextus, *Against the Logicians* 2.226; *Pyrrhonian Hypotheses* 2.158; Diogenes Laertius 7.80; Galen, *Institutio Logica* 14.4). The standard example given by the Stoics is: “Not both it is day and it is night; but it is day; therefore not it is night.”

It must be pointed out that a negated conjunction in the Stoic sense is not equivalent to an exclusive disjunction (The problem of the Stoic understanding of disjunction is discussed at some length in O’Toole & Jennings, 2004, pp. 497–520). For as a conjunction is true, if and only if both its conjuncts are true, a negated conjunction will be true, if at least one of its conjuncts is false. But they may as well both be false, as in the following example: “Not both Dion is in Rome and Dion is in Athens”, if Dion happens to be at a third place. Consequently, nothing follows from the negation of one of the conjuncts. A negated conjunction may thus be truth-functionally described by the truth-table 0111.

In addition to this truth-functional relation of “impossibility”, as O’Toole and Jennings (2004, p. 490) prefer to call it, it is further required for a third indemonstrable to serve as a tool for sensible proof that the conjuncts be somehow “in conflict” with each other, i.e. that it be logically or physically or semantically impossible that they can both be true. Otherwise this pattern of argument would be completely useless for proof. O’Toole and Jennings (2004, p. 490) may well be right in stating that this is the true sense of the Stoic concept of *mákhē* (“conflict”), reflected in the Latin *ex repugnantibus*, and usually translated as “incompatibility”.

We will not have time to dwell on the intricate details and peculiarities of Cicero’s description of the Stoic indemonstrables. What is most intriguing, however, is Cicero’s examples.

### 9.3.4 *Examples*

Cicero himself does not give a detailed analysis of his account of the enthymeme, nor does he specify how exactly it is related to a third Stoic indemonstrable. Instead, just like the author of the *Ad Herennium*, he gives a number of examples, as follows (*Topics* 55; see Reinhardt, 2003, p. 145):

- (7) To fear this, and not to be afraid of the other!
- (8) Do you condemn the woman whom you accuse of nothing?
- (9) Do you assert that the woman you say has deserved well deserves ill?
- (10) What you do know does no good; does what you don’t know do harm?

Apart from the fact that all the examples are in iambic metre and thus probably stem from some lost Roman tragedy or tragedies, it is evident that both in logical

pattern and stylistic appearance these examples are strikingly parallel to those given in the *Ad Herennium*. Examples (8), (9) and (10) had already been quoted only two years prior to the *Topics* in the *Orator* (166) under the name of *contrarium*, yet in order to demonstrate that in this kind of expression the antithesis would naturally produce a parallel rhythmical or even metrical pattern. So the equation with the enthymeme must have been a fairly late idea of Cicero's. The arguments are all stated in extremely succinct form, as is typical of enthymemes. And, exactly like the examples in the *Ad Herennium*, they are all phrased as rhetorical questions (or, in (7), as indignant exclamations, although in the originally unpunctuated texts of ancient Latin punctuation is of course liable to interpretation, a question mark being just as imaginable here). A thorough analysis of their syllogistic structure as third indemonstrables is given by Boethius in his commentary on the *Topics* (Stump, 1988, pp. 149–152; see Ripsosati, 1947, pp. 125–126). Expanded to full syllogistic form, (7) would read: "Not both fearing this and not being afraid of the other; but you fear this; therefore you should also be afraid of the other." Burnyeat (1994, pp. 41–42) is surely mistaken in taking this, by virtue of the exclamation mark, to be a double imperative ("Fear this, and do not get into a panic about the other!"). For we will remember from the *Ad Herennium* that exclamations, when uttered in a tone of indignation, may come very close to rhetorical questions. Yet the sense of this line as an indignant exclamation is attested beyond reasonable doubt, as it is one of Cicero's favourite quotations, which he twice employs elsewhere to support his respective claims that it would be foolish to worry about one's loss of dignity but not about one's financial difficulties, or to have feared Caesar, but not to be afraid of Antony (*Letters to Atticus* 12.51.3; 14.21.3). This exclamation is thus tantamount to a rhetorical question, which is equivalent to the denial of the second conjunct (Abdullaev, 1977, p. 268; Schmidt-Radefeldt, 1977, p. 378).

In like manner, (8) would read: "Not both no accusation and yet condemnation; but no accusation; therefore no condemnation." (9): "Not both saying the woman has deserved well and asserting she deserves ill; but you say she has deserved well; therefore you must not assert she deserves ill." (10): "Not both what you do know does no good and what you don't know does harm; but what you do know does no good; therefore what you don't know cannot do any harm."

Such analysis can easily be applied to the examples from the *Ad Herennium* as well. For instance, example (1) would read: "Not both being hostile to one's own interests and being friendly to another's; but this person is hostile to his or her own interests; therefore he or she cannot be friendly to another's". Similarly (2): "Not both being a faithless friend and being an honourable enemy; but this person is a faithless friend; therefore he or she cannot be an honourable enemy." And so forth.

In each case, in accordance with the pattern of a third indemonstrable, first a conjunction of two propositions is denied and then the first conjunct asserted, so that, as a consequence, the second conjunct is denied. The outward syllogistic form of these arguments is thus impeccable. Nevertheless they all have a decidedly probabilistic ring. One instantly feels that it will be quite easy to raise serious objections. As for (8), many examples in history testify to the fact that it is highly debatable whether having nothing to reproach a person of is strictly incompatible with condemning that

person (in the same way as its being day is incompatible with its being night). And if (7) were to draw on, say, the incompatibility of fearing a dog and not dreading a lion, lots of exceptions can be conceived of: What if the dog is a trained bloodhound and the lion just a kitten? Or else the lion may be safely behind bars, but the dog at large. The validity of those arguments thus seems to be strongly dependent on context.

Obviously the conclusiveness of such arguments vitally depends upon the kinds of incompatibilities that are presupposed. Yet whereas the standard examples of Stoic logic are all based on strictly exclusive logical, physical or semantical incompatibilities that would prove independent of context (day/night, in Rome/in Athens), Cicero's and the *Ad Herennium* author's clearly are not. The alleged incompatibilities they draw on, on closer inspection turn out to hold only in general or for the most part or in the absence of exceptional conditions. None of them are logical truisms or proven facts. They are not even universally valid, but allow for various exceptions and rebuttals, strongly depending on context. This is where the weak point of these arguments is to be found that marks them off from proper syllogisms. Even Cicero himself does not maintain that his enthymemes *are* third indemonstrables, but only that they "spring from" that particular argumentative pattern.

On the other hand, it cannot be denied either that in real practice arguments of that type can have a highly persuasive effect, which of course is of decisive importance in a rhetorical argument. In this respect, it is important to recall that Cicero's examples are all phrased as rhetorical questions (or, similarly, as an indignant exclamation), a striking feature Cicero does not address either in his analysis.

For an appropriate assessment of both the conclusiveness and persuasiveness of the kind of argument both Cicero and the *Ad Herennium* describe, thus, Cicero's account in purely syllogistic terms apparently proves insufficient and needs to be supplemented by a thorough analysis of the different types of incompatibilities that serve as the pivotal warrants in the individual arguments, authorising the transition from given data to a proposed claim. I have tried to show elsewhere (Kraus, 2006) that, precisely because of the strong context-dependency of the warrants implied, the model of the layout of arguments expounded by Stephen E. Toulmin in his book on *The Uses of Argument* (Toulmin, 1958/2003) can be profitably applied to the analysis of such arguments. We must therefore now look at the respective incompatibility warrants.

## 9.4 Variants of Incompatibilities

Cicero explicitly states that the type of argument he describes is as popular with philosophers as it is with orators (*Topics* 56; Reinhardt, 2003, p. 145), a statement for which both his philosophical writings and his speeches offer ample evidence. This, fortunately, considerably broadens the basis for an analysis of practical examples. Of course, as Cicero does not explicitly identify his own arguments as *contraria*, their identification can only be based on the coincidence of two features: interrogative form, and the presence of an alleged incompatibility as their logical basis. A sample

analysis of the individual character of the “incompatibility” warrants presupposed in each case yields that the alleged incompatibilities turn out to be ultimately based on a comparatively small variety of standard argumentative patterns.

By far the most popular type appears to be the one based on what one would call an *argumentum a minore*, such as in Cicero’s first example (8): “If you fear this, you should also be afraid of the other (as it is even more frightful).” Another fine instance of this type is found in *Tusculan Disputations* 2.34: “Can boys do this and shall men prove unable?” Similarly, in *Pro Caecina* 43: “Shall not that which is called “force” in war be called the same in peace?” The same pattern applies to most of the *Ad Herennium* examples, such as (3): If a person is intolerably arrogant in private life, he or she will be even more so when in political power. Or (5): An enemy defeated on the hills will be even easier to fight on the plains. A most celebrated example is found in *In Catilinam* 1.3: “Shall that distinguished man, Publius Scipio, the Pontifex Maximus, though he was a private citizen, have killed Tiberius Gracchus, who was only slightly undermining the foundations of the state, and shall we, who are consuls, put up with Catiline, who is anxious to destroy the whole world with murder and fire?”, and a no less famous one in *Philippics* 2.86: “What is more shameful than that he should be living who set on the diadem, while all men confess that he was rightly slain who flung it away?” The list could be as long as desired.

Conversely, an *argumentum a maiore* may also be used, such as probably in *Ad Herennium* (1): Who has ever been hostile (= not friendly) to his or her own interests, will be even less friendly to another person’s.

In other cases the argument is based on some kind of parallelism or analogy, such as in *De finibus* 2.13: “If these gentlemen can understand what Epicurus means, cannot I?” Or in *Tusculan Disputations* 2.39: “Shall the veteran soldier be able to act like this, and the trained philosopher be unable?”

An *argumentum e contrario* is involved e.g. in Cicero’s last example in the *Topics* (10): If what one knows does no good, what one does not know cannot do any harm. This veritable pattern of *e contrario* must of course not be confused with the appellation of the entire type of argument as *contrarium* in *Ad Herennium* (4.25–26) or in Quintilian (5.10.2).

Sometimes, if rarely, an argument is produced from semantically correlated terms, such as in *Orator* 142: “Why is it shameful to learn what is honourable to know? Why is it not glorious to teach that which it is most excellent to know?”

An even more sophisticated type of argument is the one from parts to whole used in *De natura deorum* 2.87: “When you see a statue or painting, you recognize the exercise of art ... how then can it be consistent to suppose that the world, which includes the works of art in question ... can be devoid of purpose and of reason?”

Lastly, there are also arguments from cause to effect, as (tentatively) in Cicero’s second example in the *Topics* (8): if there is no accusation, there can’t be any condemnation either; or, conversely, from effect to cause, such as in *Pro Caecina* 44: “Can you deny the cause when you admit the effect?”

It is evident that arguments based on a scalar effect (*a minore* and *a maiore*) account for the vast majority of these examples, and it is thus even debatable if not all arguments of this type may in one way or other be subsumed under this category.

Particularly Chaim Perelman and Lucie Olbrechts – Tyteca have classified the arguments discussed as *contrarium* in the *Rhetoric to Herennius* in a category which they call “arguments de double hiérarchie” (Perelman & Olbrechts – Tyteca, 1958, pp. 462–463). Yet particularly *e contrario* seems to resist such an attempt, and so do others. So there may after all be room for a variety of *topoi*.

It is crucial that from a purely logical point of view all these arguments are defeasible. Of course, arguments can also be constructed on the basis of indefeasible incompatibilities (such as the Stoic standard examples of e.g. day and night); yet in that case they would no longer be enthymemes, but valid syllogisms, and their background would not be reducible to topical patterns. This is not to say that arguments based on topical patterns are completely unsound; in fact in general they are most practical and useful in everyday life, and this is why rhetoric keenly embraces them. Yet their plausibility strongly depends on context.

Evidently, it is such or similar defeasible argumentative patterns that constitute the substantial warrants Cicero’s enthymemes are ultimately based on. These are the argumentative backings one would have to produce in support of the incompatibility warrants. These are, however, simple common sense arguments without any syllogistic structure, which may only account for inferences of a certain limited probability, greatly depending on context. To rhetoricians they are known as topical enthymemes.

This makes clear, why Cicero’s arguments from incompatibilities appear so poorly warranted from a logical point of view and why it may be necessary to hide those ultimate premisses, when arguing by such an enthymeme. For once their defeasible topical background is unveiled, any opponent will easily find the appropriate rebuttals to counter or rebuke any such argument. Viewed from this angle, Cicero’s whole theory of incompatibility appears to be a quasi-syllogistic construct devised to conceal the basic weak point of arguments of that type and to make them appear logically valid, as in fact Stoic rhetorical theory would demand. But on the other hand, it would also appear that, after all, this theory is not inappropriately placed in a work such as the *Topics*.

One last question is left for us to answer: If the arguments Cicero and the *Ad Herennium* describe are imperfect from a logical point of view, why should they appear persuasive at all?

## 9.5 Arguing by Rhetorical Questions

### 9.5.1 Rhetorical Questions as Statements

We will remember the striking fact that both the *Ad Herennium*’s and Cicero’s examples are unanimously phrased as rhetorical questions (or equivalents such as indignant exclamations). Yet rhetorical questions can be regarded as indirect speech acts (Anzilotti, 1982; Fogelin, 1987, pp. 264–266; Searle, 1975, 1979, p. 31; van Eemeren & Grootendorst, 1984, pp. 52–53), whose true function is not, as in real questions

(cf. Åqvist, 1965; Belnap, 1963), to elicit information, but to make a statement or an exhortation or reproach. With questions involving interrogatives such as “who”, “when”, or “why” things may be a little more intricate, but these are clearly the main functions of rhetorical questions based on declarative sentences such as those under scrutiny here. There is thus a discrepancy between their outward form and their illocutionary function (Ilie, 1994, pp. 45–51; “redundant interrogatives”, Rohde, 2006; see also Sadock, 1971; Slot, 1993; “constrained questions”, van Rooy, 2003). Only so rhetorical questions comply with the rule that participants in a discussion may not perform any speech acts other than “assertives, commissives, directives and usage declaratives” (van Eemeren & Grootendorst, 1984, p. 152). Furthermore, the statement implied in a rhetorical question of that kind is equivalent to the contradictory of its propositional content. This is what Ilie (1994) calls the “polarity shift” between question and implied statement (pp. 45, 51–52). “Can you condemn this woman?” is tantamount to “You *cannot* condemn her” (see Abdullaev, 1977, pp. 266–268; Conrad, 1982, pp. 420–421; Grésillon, 1980, pp. 277–280; Krifka, 1995; Meibauer, 1986, p. 128; Schmidt-Radefeldt, 1977, p. 384; van Rooy, 2003).

### 9.5.2 *Persuasive Force*

But rhetorical questions can do much more than that. They can exert a strong persuasive force. Ilie (1994, pp. 59–60) has demonstrated that rhetorical questions are basically multifunctional and that one of their major functions is eliciting agreement from the addressee. Rhetorical questions often are what one might call “loaded” or “leading” questions. They invite the addressee to infer and thereby to share the one and only answer intended by the proponent. At the same time they convey the impression of a strong commitment of the proponent to his or her statement (Ilie, 1994, pp. 53–59, 217). Clearly, the effect of the employment of rhetorical questions in an argumentative context will be not so much “to communicate doubt, perplexity, uncertainty” (Schmidt-Radefeldt, 1977, p. 389), but the “strengthening [of] persuasive effects” (Frank, 1990, p. 737). Frank even goes so far as to assert that “the primary function of [rhetorical questions] is to persuade” (1990, p. 737). Classicists will perhaps also compare what Pseudo-Longinus (*On the sublime* 18.1–2) has to say on the persuasive, even deceptive effects of figurative questions, particularly rhetorical questions. The claim that the persuasive force of arguments is strengthened by their formulation as rhetorical questions (see also Blankenship & Craig, 2006) has also been clearly supported by recent research in cognitive psychology (Cacioppo & Petty, 1982; Petty, Cacioppo, & Heesacker, 1981; Zillman, 1972, 1974).

Most certainly this is exactly the reason why Cicero’s enthymemes are in fact phrased as rhetorical questions. Instead of proper argumentative backing the rhetorical questions are employed in order to compensate the weakness of the respective implied warrants. The form of the rhetorical question (“How can you ...?”) puts strong psychological and moral pressure on the audience in order to make them accept without protest what is highly debatable, but vitally needed to make the argument work.

### 9.5.3 *Strategic Maneuverings and Fallacies*

This persuasive force of rhetorical questions in enthymemes as described by Cicero is ultimately assured or enhanced by a number of strategic maneuverings which, from a pragma-dialectical point of view, may be regarded as fallacious, i.e. as violations of some of the basic rules for Critical Discussion (see van Eemeren & Grootendorst, 1995b, pp. 135–136, 2004, pp. 135–157, 162–186; on the pragma-dialectical concept of “strategic maneuverings” and their possible “derailments” see van Eemeren & Houtlosser, 1999, 2002a, 2006; on the general possibility of fallacious moves in questions, see Walton, 1988, 1991b).

#### 9.5.3.1 **Shifting the Burden of Proof**

Van Eemeren’s and Grootendorst’s second rule for the opening stage of a Critical Discussion postulates that whoever advances a standpoint is obliged to defend it on the other party’s demand, i.e. has to accept the burden of proof (van Eemeren & Grootendorst, 1995b, p. 135). If an argument is phrased as a rhetorical question, however, the burden of proof may fallaciously appear to be shifted onto the side of the respondent, who, if not convinced by the argument, will now feel obliged to defend his or her conflicting standpoint, especially so with questions exerting strong moral pressure such as the “How can you ...?” type, as the respondent will literally feel being asked for evidence (“On what reasons can you ...?”) (van Eemeren & Grootendorst, 1992a, pp. 120–122; van Eemeren & Houtlosser, 2002b, pp. 22–24; cf. also Walton, 1998, p. 136).

#### 9.5.3.2 **Evading the Burden of Proof**

Whoever advances an enthymeme in a rhetorical question, may also be held guilty of evading the burden of proof in a twofold sense: first, because he or she obviously refuses to produce appropriate arguments, but replaces them by a rhetorical device instead (cf. van Eemeren & Grootendorst, 1992a, pp. 117–120; van Eemeren & Houtlosser, 2002b, pp. 22–24; Walton, 1996); second, because the proponent may, if he or she were to meet with unexpectedly fierce resistance from the part of the respondent, easily deny commitment and withdraw to the excuse that after all he or she only wanted to ask a question (Grésillon, 1980, p. 275; but see Meibauer, 1986, pp. 168–169).

#### 9.5.3.3 **Arguing Ad Hominem**

In certain cases, rhetorical questions may even result in an *argumentum ad hominem*, particularly so in aggressively put second person questions of the “How

can you ... ?” type, by which the addressee may with good reason feel personally attacked (Ilie, 1994, pp. 167–168, 206–208), as he or she may feel accused of logical (or moral) inconsistency and thus of intellectual (or, for that reason, moral) inferiority. Especially the so-called *tu quoque* subtype of the *ad hominem* argument aims at discrediting the opponent’s personal self by pointing out an inconsistency in his or her words or actions (Engel, 1994, p. 31; van Eemeren & Grootendorst, 1984, pp. 191–192, 1992a, pp. 110–113, 1995a, pp. 225–226; Walton, 1985, p. 243, 1987, 1988, pp. 206–207, 1991b, pp. 354–357, 1998, pp. 6, 135–136, 211–213; Woods & Walton, 1976), which is precisely what many of the above examples, such as e.g. (7), (8) or (9), do. By trying to silence the other party in this way, any such argument violates the first pragma-dialectical rule for Critical Discussion that parties must not prevent each other from advancing standpoints or casting doubt on standpoints (van Eemeren & Grootendorst, 1992b, p. 153, 1995a, p. 224, 1995b, pp. 135, 138–139). Regardless of whether *ad hominem* arguments are to be generally regarded as fallacious or rather as a basically legitimate kind of “ethotic” argument (for such a more favourable view, see e.g. Barth & Martens, 1977/1978; Brinton, 1985, 1995; Hamblin, 1970/1998, pp. 160–164; Hitchcock, 2006), it can hardly be denied that aggressive rhetorical questions can attack the personal self of the opponent and that this may have a highly persuasive effect (see van Eemeren, Garssen, & Meuffels, 2005, pp. 350–351).

#### 9.5.3.4 Begging the Question

Rhetorical questions of the kind used in such arguments may even be said in a certain sense to beg the question. For any such question may be taken to imply both warrant and conclusion at a time. Any expression such as “How can you condemn this person whom you accuse of nothing?” may on the one hand be interpreted as logically equivalent to the argumentative warrant “You can’t both not accuse and yet condemn a person”, but on the other hand also as a way of straightaway asserting the conclusion itself as incontestable and self-evident: “You can’t condemn this particular person” (see Walton, 1991a, pp. 233–235, 310–311; for a critical view, see Jacqueline, 1994, pp. 287–288). Begging the question in such manner is of course also a way of evading the burden of proof (van Eemeren & Grootendorst, 1995b, p. 140).

As all these features are “choosing from topical potential, adapting to audience demand, and utilizing presentational devices” (van Eemeren & Houtlosser, 2006, pp. 383–384), they fulfill all necessary conditions and can thus rightly be described as strategic maneuverings. Yet they can also be characterized as derailments of such maneuvering, as they all in one way or other violate basic rules for a critical discussion in the pragma-dialectical sense.

It is these and similar strategic maneuverings and fallacies inherent in the kind of rhetorical questions used in Ciceronian enthymemes that account for much of the persuasive force and moral pressure they exert on their audiences.



## 9.6 Conclusion

Our analysis of the type of argument referred to as *contrarium* by the author of the *Rhetoric to Herennius* but as enthymeme by Cicero in the *Topics* has yielded that arguments of this type, in spite of their ostensible syllogistic pattern primarily emphasized by Cicero, are, as a rule, rather poorly warranted, which is due to the fact that they are ultimately based on defeasible topical common-sense arguments. Their persuasiveness is rather assured by their pointed stylistic form. In this respect it appears that the ultimate reason for the standard phrasing of such arguments as rhetorical questions lies in the fact that the persuasive force of rhetorical questions, by way of various kinds of strategic maneuverings, will exert strong enough psychological or moral pressure on the audience to make them accept the implicit warrants without any protest or further request for argumentative backing.

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# Chapter 10

## Comparing the Incomparable: Figurative Analogies in a Dialectical Testing Procedure

Bart Garssen

### 10.1 Introduction

The evolutionary biologist Richard Dawkins argues that punishment is, scientifically speaking, out of date. He points out that it makes no sense to punish a car when it refuses to start and that it is equally irrational to punish criminals, because in their case something is broken as well: they come from poor families, received poor education or have poor genes. In comparing criminals to broken inanimate objects Dawkins uses argumentation that is based on an analogy. In most approaches to argument schemes this type of argumentation is considered to be a special type of reasoning by analogy or comparison argumentation, often called *figurative analogy* because of the abstract nature of the comparison.

In spite of the many differences that can be observed among the various typologies of argument schemes, there seems to be general agreement about the importance of analogy or comparison argumentation as a separate category of argumentation: all typologies include a category of this type of reasoning. On closer look however, there are terminological and conceptional differences among the approaches. Whately, one of the first modern authors who dealt with categorizing types of argumentation includes comparison argumentation and the argumentation form he calls “comparison of ratios” (1846/1963, pp. 90–91). Perelman and Olbrechts-Tyteca (trans. 1969) include analogy, identity relation (quasi logical) and the use of the rule of justice. Hastings (1962) distinguishes between comparison argumentation and figurative analogy. Both Kienpointner (1992) and Schellens (1985) follow Hastings and make a similar distinction. Govier (1987, p. 58) who does not have the ambition of presenting a complete list of argument forms makes a distinction between comparison argumentation (inductive analogy) and the *a priori* analogy (logical analogy).<sup>1</sup>

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Although all typologies include comparison argumentation, the figurative analogy is not always among the selected argument schemes. In addition, there is no general agreement on the argumentative usefulness of the figurative analogy. Hastings, for instance, claims that it has less argumentative force than the literal analogy. Some even dismiss the figurative analogy as a form that has no probative force and only serves illustrative purposes (e.g. McBurney & Mills, 1964). This is just a tentative sketch of the situation and certainly not an exhaustive account of all the typologies of argument schemes. It indicates however that there is no general agreement on the nature of comparison argumentation, and more specifically on the status of the figurative analogy. The question is: should the figurative analogy be seen as a special variant of comparison argumentation or should it be dismissed as a form of argumentation altogether? In this paper I argue that, seen from a pragma-dialectical perspective, argumentation that involves a figurative analogy certainly has probative force, yet it should not be seen as comparison argumentation, but instead as a special presentational device that is used to put forward other (symptomatic or causal) types of argumentation. I will discuss the two main variants of (literal) comparison argumentation in order to show that the figurative analogy is a radically different category.

## 10.2 Two Types of Comparison Argumentation

In the pragma-dialectical argumentation theory comparison argumentation is considered a specific argument scheme along with causal argumentation and symptomatic argumentation. The argument schemes are part of a dialectical testing procedure in which the antagonist and protagonist establish whether a premise supports a standpoint in an adequate way. Central to an argument scheme is the argumentative principle that enables a unique way of “transferring” the acceptability from the premise to the standpoint.

Using one of these argumentative principles involves invoking a special testing procedure in which certain critical questions that are systematically related to the argumentative principle are relevant. The fact that each argument scheme comes with a unique testing procedure that is different from the procedures that go with other schemes is the rationale to distinguish between these three principles and thus to distinguish between the three main types of argument schemes. For each of the main types, a number of variants can be distinguished in each of which the argumentative principle is used in a specific way.

According to van Eemeren and Grootendorst (1992), in argumentation based on a comparison relation the argumentation is presented “as if there were a resemblance, an agreement, a likeness a parallel, a correspondence or some other kind of similarity between that which is stated in the argument and that which is stated in the standpoint” (p. 97). This type of argumentation can be characterized in the following way:

	Y is true of X
<i>because:</i>	Y is true of Z,
<i>and:</i>	Z is comparable to X.

There are at least two variants of comparison argumentation that are organized according this general argument scheme and in which the principle of analogy is used.

### ***Variant 1: Comparison Argumentation and the Extrapolation of Characteristics***

In one of the variants based on the principle of analogy a comparison is made between the actual characteristics of one thing, person or situation and the actual characteristics of another thing, person or situation, as in the following example:

- (1) Camera surveillance in the centre of Amsterdam will prove to be very effective, because in London, camera surveillance proved to be highly effective before.

In this argumentation two elements that belong to the same class (London and Amsterdam, being both cities) are compared: it is claimed of Amsterdam that it has certain properties because London has those properties and Amsterdam is comparable to London. In this case, the comparison argumentation involves a prediction based on an extrapolation of shared properties, as is shown in figure 1.

Figure 1: Comparison argumentation as an extrapolation of properties<sup>2</sup>

Situation referred to in the premise		Situation referred to in the standpoint
Relevant similarity	1	1
Relevant similarity	2	2
Relevant similarity	3	[3 extrapolated]

In this type of comparison argumentation the argumentative principle of analogy is used by extrapolating a property from a list of commonalities. In the argumentation itself these similarities are not expressed, but they come about in the critical testing procedure that may follow advancing comparison argumentation. The first step in this testing procedure is to ask whether the elements compared in the argumentation are, in principle, comparable. If asked to do so, the protagonist is obliged to show that the elements compared belong to the same class. The testing procedure can take different routes from here. Since the relevant similarities that function as a base for the extrapolation remain implicit, the antagonist can ask the protagonist to bring up one or more relevant similarities. The protagonist is then forced to provide additional argumentation in which he mentions one or more relevant similarities. This may lead to extra criticism from the side of the antagonist: the similarities mentioned may be not actual similarities at all, or they may be not relevant for the issue at hand.<sup>3</sup> The antagonist himself can also criticize the argumentation by pointing at differences between the elements that are compared. The protagonist is then forced to show that these differences are not relevant or that the similarities are more important. In this way it is established in the testing procedure whether the intended extrapolation of characteristics is possible or not; the more relevant similarities there are, the more likely a successful extrapolation is.

A typical characteristic of this type of comparison argumentation is that both the standpoint and premise are descriptive in nature: in both propositions a state of affairs is expressed.

### ***Variant 2: Comparison Argumentation and the Principle of Consistency***

In a second variant of comparison argumentation the principle of analogy is combined with the principle of consistency.<sup>4</sup> The general idea in this variant is that people should act in a consistent way and that if they acted in a certain way in one situation, they should act accordingly in a situation that is similar in relevant respects. A specific instance of this general maxim is the rule of justice which “requires giving identical treatment to beings or situations of the same kind” (Perelman & Olbrechts-Tyteca, trans. 1969, p. 218).<sup>5</sup> According to the rule of justice, persons, institutions or groups that belong to the same category should be treated in a similar way. Just like in the former variant of comparison argumentation, the arguer claims that what is mentioned in the standpoint is comparable to what is mentioned in the premise. This happens for instance in the following example:

- (2) The European committee should grant Belgium higher agricultural subsidies because it granted Italy higher subsidies as well.

There is, however, an important difference with the former type of comparison argumentation: application of the principle of consistency does not involve an extrapolation of characteristics. The central issue is whether the two elements (persons, groups etc.) really belong to the same category and whether this category is really relevant to the claim made in the standpoint. Another difference with the first variant of comparison argumentation is the fact that in this case the standpoint is by definition normative in nature: in the standpoint the claim is made that some person (or some group) should be treated in a certain way.

This type of argumentation is very similar to the type of reasoning that Govier calls *a priori* reasoning. In this type of argumentation someone is prompted to behave in a consistent way: you should do X because you would also do X in a similar situation (existing or not). For Govier an essential property of *a priori* reasoning is that the example that is used in the comparison can be fictitious. An example of such a non-existing situation is the commonplace question pacifists are often faced with: but you would use violence if your mother was attacked wouldn't you? If the antagonist addressed admits that someone imagined or not should be treated in a certain way, he should admit that (real) persons belonging to the category should be treated in the same way.

Just like in variant 1, using this kind of comparison argumentation presumes that there are similarities between what is mentioned in the standpoint and what is mentioned in the premise. And again, these similarities are not mentioned in the premise themselves. Although the critical questions that go with variant 2 are more or less

the same as those that pertain to variant 1, the dialectical testing procedure proceeds in a slightly different manner. Again, a preliminary step is to establish whether what is mentioned in the standpoint is really comparable to what is mentioned in the argument. After establishing this, the antagonist may ask the protagonist to mention similarities (or at least one similarity) to justify the claim that the two persons (or groups) really belong to the same (moral) category. In his reaction to this, the protagonist is forced to present additional argumentation. The antagonist could also point at differences to show that the two persons or groups do not belong to the same category. As a reaction to this, the protagonist has to show that these differences are not relevant or that they are outbalanced by the similarities.<sup>6</sup>

In conclusion, seen from the perspective of a dialectical testing procedure, there seem to be two variants of comparison argumentation. In both variants the principle of analogy is used but there are some differences concerning the decisions that have to be made in the testing procedure.

### 10.3 The Figurative Analogy

The question remains whether the figurative analogy should be seen as a special form of one of the variants that are described above or whether it should be seen as a third variant of comparison argumentation. In my view the figurative analogy does not involve comparison argumentation at all. One striking quality of the figurative analogy is the fact that the elements that are compared are situated on a different level or experience, are from different “spheres”, or are of a completely different type. To illustrate this, Hastings (1962) presents the following example of the figurative analogy that is put forward by Truman in his defence of the claim that the US should strike immediately at the beginning of the conflict with Korea:

- (3) The best time to meet the threat is in the beginning. It is easier to put out a fire in the beginning when it is small than after it has become a roaring blaze (p. 114).

Fire and war clearly belong to different classes of events. That makes it impossible to compare them in a direct way. In this case we have to look for similarities, not so much between the concrete features of fire and war, but between the abstract relations within what is said in the premise and what is said in the standpoint. It is predicted that the war in Korea will become unmanageable if we do not act immediately and that is exactly the reason why we should act now. Truman does not make a direct, literal, comparison between war and fire. That is why the standard critical questions that go with comparison argumentation (*are there similarities? are there differences?*) do not really apply. In fact, no figurative analogy could stand the test if we would use these questions in this form. We could try to amend the standard critical questions for figurative analogies by rephrasing them but, as we will see, this will not bring us much further.

Apparently this is not a normal comparison but a comparison of the abstract relations within one situation and another, hence Hastings' characterization of the



relation as a “comparison of ratios”. Perelman and Olbrechts-Tyteca (trans. 1969) characterize the “resemblance of structures” as follows:

A and B together, the terms to which the conclusion relates [...], we shall call the *theme*, and C and D together, the terms that serve to buttress the argument [...], we shall call the *phoros* (p. 372).

This can be illustrated by means of a much-quoted argument put forward by President Lincoln in his reply to the national union league on June 9, 1864:

- (4) I have not permitted myself, gentlemen, to conclude that I am the best man in the country; but I am reminded, in this connection, of a story of an old Dutch farmer who remarked to a companion once that “it was not best to swap horses while crossing a stream”.

The figurative analogy in Lincoln’s argument (*I should not resign at this moment because one should not swap horses while crossing a stream*) can be reconstructed as follows:

Standpoint	Theme (A – B): changing president – being in the midst of a war
Premise	Phoros (C – D): swapping horses – crossing a stream

What becomes clear from this reconstruction is that the two situations share only one similarity. In both cases the general rule “it is unwise to make important changes while you are in a difficult situation” applies. It does not make much sense to look for more similarities. This makes the figurative analogy very different from “normal” comparison argumentation, where it is always implied that there is a series of similarities, as was shown in section 2 of this paper.

Perelman and Olbrechts-Tyteca stress the fact that the situation mentioned in the premise is familiar or well known to the audience: “In the ordinary course, the phoros is better known than the theme of which it should clarify the structure or establish the value [...]” (trans. 1969, p. 374). It is clear that it does not make sense to punish a car, that a small fire can be put out much easier than a roaring blaze, and that it is unwise to change horses while crossing a stream. The general rule underlying the situations mentioned in the standpoint and the premise stands out in the phoros: it is the only real similarity between otherwise very different cases.<sup>7</sup>

The argumentation is presented in such a way that the listener is able to see that a general rule counts for both the situation mentioned in the premise and the situation mentioned in the standpoint. By making this clear the arguer indirectly puts forward this rule as an argument in defence of his standpoint. That means that the figurative analogy is not argumentation based on a comparison relation but a way of presenting another type of argument scheme. For example, in his argumentation Lincoln indirectly claims that he should not resign because at the moment the Americans are in a difficult situation and it is unwise to change your leaders in a situation like this. In this argument he does not use comparison argumentation, but symptomatic argumentation: Lincoln should not resign now because we are at a crucial moment in the war and typical for crucial points in a war is that you should not change leaders.

Figurative analogies are very similar to proverbial comparisons like “that is like throwing out the baby with the bathwater”. It is clear from the start that asking the standard critical questions that go with comparison argumentation to evaluate argumentation in which such idiomatic expressions are used is ludicrous. In fact, we know that the proverb means something like “you should be careful not to lose the good parts when you get rid of the bad parts of something”. Although the reconstruction of such idiomatic proverbs may be much easier, the same kind of reconstruction applies to figurative analogies.

## 10.4 Conclusion

In the context of a dialectical testing procedure there are at least two variants of comparison argumentation that seem to be relevant. In the first variant of comparison argumentation a prediction about a state of affairs is made by comparing this state of affairs to another state of affairs. In the second variant of comparison argumentation the standpoint is defended that someone has to be treated in a certain way by comparing this person to someone else.

The figurative analogy does not have a place in this category, because on closer look no argumentative comparison is made. The figurative analogy is a presentational device that is used to put forward a specific kind of rule. This means that figurative analogy is used to put forward other types of argumentation such as symptomatic argumentation or causal argumentation in an indirect way. This leaves open the question why an arguer would choose this indirect way of putting forward argumentation. In further research it is best to analyse the figurative analogy in terms of strategic manoeuvring: when and in what contexts is it advantageous to use this presentational device and what exactly makes the figurative analogy more effective than a direct presentation of the argumentation?

## Endnotes

- 1 See Doury (2008) for an overview of different criteria used for classifying comparison argumentation.
- 2 See Fearnside and Holther (1959, p. 23) for a similar representation of the internal organization of this variant of comparison argumentation.
- 3 The problem of how to determine whether a similarity is really relevant is an important question, but this will not be addressed here.
- 4 When introducing *a priori* argumentation, Govier uses the notion of consistency.
- 5 Perelman and Olbrechts-Tyteca categorize argumentation that involves the rule of justice as quasi-logical based on a relation of identity.
- 6 An even more basic question is whether in a certain discussion there is intersubjective agreement about the use of the rule of justice. In principle it is possible that a party refuses to agree on this use.
- 7 The principles of interpreting figurative analogies are not equal to Searle’s principles of metaphorical interpretation (Searle, 1979, pp. 103–112) but there are important similarities.

The interpretation of a metaphorical statement like “Sam is a pig” as “Sam is filthy, gluttonous and sloppy, etc.” is possible because of Principle 2: “Things which are *P* are contingently *R*. [...] if the metaphor works, the property *R* should be a salient or well known property of *P* things” (Searle, 1979, p. 107). A well known and salient property of pigs (*P*) is that they are filthy etc (*R*). In a figurative analogy the phoros (*P*) has a salient or well known property (*R*) that is instantly recognisable to the listener. The difference is that for an interpretation of the figurative analogy this property (*R*) is to be generalized to obtain the general rule: “it was not best to swap horses in mid stream” becomes “it is unwise to make important changes while you are in a difficult situation”. This generalization is facilitated by the comparison between phoros and theme: it is the only similarity that they share.

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# Chapter 11

## Argument Schemes Typologies in Practice: The Case of Comparative Arguments

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Most studies dealing with analogy or comparison emphasize the pervasive character of the discursive processes they refer to, and regret the lack of any satisfactory theoretical account for them. The present paper tries to take a more positive stance: it starts from the many insightful essays on comparative arguments and proposes to make them enter into dialogue with actual argumentative practices.

In order to avoid the pitfall mischievously mentioned by Christian Plantin, who claims that “any proposition of synthesis of existing typologies finally results in an additional typology” (2005, p.50, my translation), I propose a non-exhaustive inventory of the main parameters classically identified in academic works, parameters which permit a sub-categorization of arguments based on a comparison. It results in four main oppositions within the general class of comparative arguments: figurative / literal analogies; qualitative / quantitative analogies; *a priori* / predictive analogies; confirmative / refutative analogies. I then turn to the observation of actual argumentative practices. My focus is on three ranges of phenomena: the way comparative argument schemes are labelled by ordinary arguers; the indicators which are associated with them; the refutation devices they elicit. The purpose of such an approach to comparative arguments is to assess to what extent the academic sub-classifications have counterparts in the folk pre-theorization of argumentation (and, specifically, in the spontaneous perception of argument schemes) as revealed by the three sorts of discursive clues mentioned above.

### 11.1 Theoretical and Methodological Issues

#### 11.1.1 *Classifying Argument Schemes*

The question of the internal structure of argumentation and the identification of the various argument schemes is central to argumentation studies. Analyzing argumentation requires that the analyst adopt a somewhat acrobatic but necessary

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middle position in order to place herself at an intermediate level, between the argumentation *per se* (its very content, which is proper to a specific text / discourse) and its “logical” structure (its possible translation into a general logical scheme, which misses most of the substance of the argumentation).

Distributing the various arguments we are confronted with into general schemes, according to the nature of the relation which links the argument to the conclusion, allows the analyst to move away from the literal and specific content of an argumentative discourse in order to gain in abstraction. It makes it possible to compare various argumentative discourses which mobilize argumentative strategies by resorting to similar configurations of argument schemes, though dealing with different subject matters.

To date, however, researchers in the field of argumentation studies, and more particularly in the French-speaking world, have no systematic, coherent typology of argument schemes at their disposal. The present situation results from a great reverence towards current classifications of argument schemes that are considered as untouchable – hence the loss of any ambition to produce and to systematize new typologies.<sup>1</sup> In France, existing typologies are in the large part directly inspired by the one proposed by C. Perelman and L. Olbrechts-Tyteca in the *Traité de l'argumentation*. Their classification may be of great help because of the variety of the argument schemes it comprises (and because of the associated definitions it includes), but it is weakened by a lack of coherence of the classification criteria adopted and therefore, by the heterogeneity of the categories considered as argument schemes.

The situation is significantly different with regard to the Anglo-Saxon tradition of argumentation studies. Approaches like Pragma-dialectics (van Eemeren & Grootendorst, 1992), sometimes propose classifications of argument schemes that are firmly based on an articulated and systematic theory of argumentation, which accounts for the classification decisions resulting in a general typology. Unfortunately, the pragma-dialectical classification of argument schemes leaves us with three main categories of arguments, which are undoubtedly consistent, but are still somewhat too broad. The distribution of traditional specific categories into such general categories (or their mere disqualification as argument schemes) still remains problematic.

Beyond these theoretical difficulties, the application of the model – *i.e.*, attempting to identify argument schemes used by arguers in everyday discussions – is far from being simple. The reasons for such difficulties are numerous. However, one of them deserves to be expanded here: there is no systematic attention paid to the way academic typologies of argument schemes reflect or recompose the spontaneous classifications of argument that can be identified through ordinary argumentative practices. My point here is not to assume that the former should perfectly match the latter, and that academic typologies of argument schemes should conform to the line of classifications issued from folk pre-theorizations of argumentation. Rather, I suggest that a better understanding of the junctions and divergences between them could be helpful in improving the applicability of the theory to the analysis of actual argumentative practices.

### 11.1.2 A Descriptive Approach to Argumentation

The conception of argumentation that will be illustrated here is descriptive (Doury, 2006). Its purpose is to account for any discourse – be it monological or interactional – in which argumentative processes can be identified, whichever the objectives that can be assigned to the speakers or to the situation of communication (that is, irrespective of whether a discourse may be characterized as a critical discussion or not). The analysis ought to highlight the discursive and the interactional devices used by speakers who face conflicting standpoints and need to take a stand and to elaborate their position in such a way as to hold out against contention. Such an objective requires, when dealing with interactional data, to combine argumentation theory with insights derived from the analysis of conversations (and particularly the notions of negotiation and of face-work; Brown & Levinson, 1987; Kerbrat-Orecchioni, 2005; Traverso, 1996). When dealing with monological data, analyzing the way in which the main speaker's discourse integrates elements from the opposing standpoint requires the use of some concepts and principles belonging to the “linguistique de l'énonciation” (Authier-Revuz, 1982; Ducrot, 1980).

Such a descriptive approach should shed light on the spontaneous conceptualizations of the argumentative activity speakers rely on when engaged in communicative events involving negotiations of opinions. In particular, it is possible to show that people relate the arguments they are confronted with general categories, which may be identified through the use of:

- explicit designations: “let's take an example”, “do not generalize!”, “don't compare apples and oranges!”, “if I'm allowed a parable...”, ... (Doury 2004)
- indicators preferentially associated with a specific argument scheme; thus, appeals to consistency (such as “soyons logiques”, or “il faut être cohérent” in French) are often indicators of either *a pari* arguments, or *ad absurdum* arguments.<sup>2</sup>
- specific refutation processes: the rebuttal strategies used by arguers in order to challenge the opponent's arguments are valuable indicators of speakers' awareness to the various argument schemes involved in the argumentative process.

In this paper, we will consider the three kinds of classification clues mentioned above: we will confront the scholarly conceptions of comparative arguments with the spontaneous ones that arise from comparative argument phrasings and their actual refutations in argumentative discussions.

## 11.2 Sub-classifications Within Comparative Arguments

After Woods and Hudak (1992), I assume that there is nothing like a settled semantic consensus from which to start in order to propose a synthesis on comparative arguments. The following paragraphs are devoted to a non-exhaustive inventory of

the main criteria used by authors in argumentation studies in order to distinguish sub-categories within the broad “comparative arguments” type.

### 11.2.1 *Domain Constraint*

A frequent sub-classification within comparative arguments is based on what Brown (1995) calls the *domain constraint*, that is, the fact that objects of the comparison belong to the same / to different domains. According to this constraint, comparative arguments fall into two sub-categories depending on whether they rely on:

- i) comparisons which associate situations or cases resulting from two heterogeneous domains of knowledge, as is clearly illustrated by the quotation from C.S. Lewis, cited by Govier (2001, pp. 350–351)

You can get a large audience together for a strip-tease act – that is, to watch a girl undress on stage. Now suppose you came to a country where you could fill a theatre simply by bringing a covered plate onto the stage and then slowly lifting the cover so as to let everyone see, just before the lights went out, that it contained a mutton chop or a bit of bacon, would you not think that in that country something had gone wrong with the appetite for food?

In cases of *different-domain analogies*, the predicate which is transferred from the analogue to the target subject is rephrased so as to fit with the target domain (Juthe, 2005, pp. 8–9). (For instance, in the previous example, the claim “something has gone wrong with the appetite for food” changes into “something has gone wrong with the appetite for sex” in order to make sense for the strip-tease issue).

- ii) and comparisons which associate situations from the same domain of knowledge, or *same-domain analogies*. In such cases, the predicate which is transferred from the analogue to the target subject remains unchanged (Juthe, 2005, p. 6). According to Brown (1995), the domain constraint may be determined by norms specific to a discipline. For instance, linguistics and law favour same-domain analogies, whereas biology resorts to different-domain analogies.

The homogeneity or the heterogeneity of the domains of knowledge involved in the comparison may result in subtypes within the major type of “comparative arguments”. The well established opposition between *figurative* comparison and *literal* comparison is based on this criterion. The domain-constraint parameter is even more decisive for instance for Perelman, who founds on it the distinction between comparison arguments (which he defines as a subtype of quasi-logic arguments) and arguments by analogy (a subtype of arguments establishing the structure of reality; see Perelman & Olbrechts-Tyteca, 1988). Comparative arguments are thus split into two completely distinct classes of argument schemes.

According to Brown (1995, p. 92), this distinction provides ordinary speakers with an important guideline to evaluate the analogies they are confronted with; “folk logic” assumes, that the closer the domains of reference are, the better the analogy is (expressions such as “you can’t compare apples with oranges” testify to such a belief).

Although intuitively acceptable, the line drawn between these two types of comparative arguments is often quite blurred in practice. It may be more adequate to think of it in terms of a gradual move from arguments of comparison that bring together two cases from overlapping domains of reference, to arguments of comparison implying cases resulting from extremely distant domains. Between the two extremes, we may find intermediate cases, such as a comparison involving two situations within the same cultural area but temporally distant from one another – as in arguments from the precedent.

The first category of arguments by comparison (when the reference domains overlap) is very close to arguments by example, which some authors consider as belonging to the comparative argument schemes. For instance, for Plantin (1996, p. 50), “Inductive argumentation analogically extrapolates for all cases an observation drawn from a few cases”.<sup>3</sup> Similarly, Amossy (2006), following Aristotle, equates argumentation by example with analogy (for instance, one chapter in her book *L’argumentation dans le discours* is entitled: “L’exemple, ou la preuve par l’analogie”). The same could be said of Schellens’s (1985) classification of argument schemes.<sup>4</sup>

On the contrary, authors like Perelman, Blanché (1973), Eggs (1994), Govier (2001) or Kienpointner clearly distinguish between comparative arguments and arguments by example. Perelman considers argument by example as another subtype within the arguments establishing the structure of reality (Perelman & Olbrechts-Tyteca, 1988). Kienpointner (1992) considers inductive argument as belonging to the warrant-establishing argument schemes. The same could be said of the Pragmadiialectical classification of argument schemes, according to which arguments from example belong to the symptomatic type (van Eemeren, Grootendorst & Snoeck Henkemans, 2002).

## 11.2.2 *Qualitative / Quantitative Orientation*

Another way of differentiating comparative arguments consists in opposing comparisons based on quantitative considerations (*A is as p as B / A is more p or less p than B*) and comparisons based on qualitative considerations (*A is like B*). For Perelman, quantitative comparisons are typical of what he dubs “arguments by comparison”, as opposed to “arguments by analogy” – that is, he tends to merge the first and the second criteria. He then justifies the fact that he considers comparison as a quasi-logical process as follows:

By saying “his cheeks are red like apples” or “Paris has three times as many inhabitants as Brussels”, or “He is more beautiful than Adonis”, we compare realities in a way which seems more likely to be proved than a mere resemblance or analogy claim. This feeling is due to the underlying idea of measurement behind these utterances, even if the slightest criterion for proceeding to this measurement is lacking. In this sense, comparison arguments are quasi-logic arguments. (Perelman & Olbrechts-Tyteca, 1988, p. 326, my translation)

I assume that criteria (1) and (2), though often associated, should be distinguished. Though qualitative/figurative analogies on the one hand, and quantitative/



literal analogies on the other hand are sub-categories which present a higher degree of intuitive immediacy, a figurative comparison may be grounded on quantitative considerations – and conversely, a comparison may be literal *and* qualitative.

### 11.2.3 *The Epistemic Status of Premises*

A third criterion within comparative arguments relates to the epistemic status of the compared cases: the analogy may involve two real facts, or a real fact and a hypothetical, invented one. As Govier (1989, pp. 142; 2001) points out, the fictitious nature of the analogue is acceptable because its first quality is not its veracity, but rather the fact it is being consensually evaluated – be it positively or negatively – by the audience. She thereby opposes *inductive* analogies and *a priori* analogies, that is, analogies that are not empirically based (Govier, 1989). Inductive analogies are by nature predictive: given that objects  $O_1$  and  $O_2$  share properties  $p_1, p_2 \dots p_n$ , one can expect that they will also share  $p_{n+1}$ , which  $O_1$  is known to possess. This is not true for *a priori* analogies, which do not *reflect* anything about reality, but which *propose a constructed vision* of it<sup>5</sup> :

If we accept the conclusion of an *a priori* analogy we do not, in effect, *predict* that a feature will or may belong to the primary subject. Rather we *decide* to describe or treat the primary subject in some way. The basis of *a priori* analogies is an appeal to handle relevantly similar cases in relevantly similar ways. (Govier, 1989, pp. 142–143).

Many descriptions of the *a priori* type thus involve an appeal to consistency (see for instance Waller, 2001, p. 201).

Once again, criterion 2 and criterion 3 are linked: quantitative comparisons usually make sense if both elements of the comparison are held to be true. Nevertheless, the epistemic status of the compared cases may be relevant even in qualitative comparisons: this is the reason why I keep the last two criteria separate.

The distinction proposed by Johnson (1989) between arguments by analogy involving a hidden conditional (that is, a universal claim which, when introduced in the description of the structure of the argument by analogy, makes it deductively valid) and inductive arguments by analogy corresponds in some way to Govier's distinction between *a priori* analogies and predictive analogies, even though Johnson's distinction focuses on reconstruction issues where Govier insists on the epistemic status of the compared cases.

The *a priori* / predictive analogy opposition is deemed to have consequences on the predictable rebuttals of a comparative argument. According to Brown (1989, p. 163), who opposes proportional analogies to predictive analogies, the former focus on the general principle that grounds the analogy judgment, whereas the latter focus on the assigned predicate transferred from the analogue to the target-subject. Hence, discussions contesting the comparative argument will be more abstract when addressing proportional analogies than when addressing predictive analogies.

### 11.2.4 *The Dialectical Orientation of the Argument*

A fourth opposition within comparative arguments distinguishes between those assuming an essentially positive function (i.e., supporting the arguer's standpoint) and comparison arguments assuming an essentially negative function (i.e. rebutting the adversary's argument). The negative use of analogy has been labelled "rebuttal analogy", or "refutation by logical analogy". According to Govier (1985), this is an analogy designed to refute the opponent's argument by showing that it is parallel to a second argument in which a comparable premise leads to a clearly unacceptable conclusion. The refutation by logical analogy may be seen as a sort of *ad absurdum* argument (see for example Eggs, 1994, p. 228; Whaley, 1998, p. 355).

Logical analogies are clearly *meta-arguments*, since the objects they compare are themselves arguments.<sup>6</sup> As such, they testify to the existence of a highly abstract human skill: the ability to distinguish the logical core of arguments "from content which may be varied while leaving the essence of the argument intact" (Govier, 1985, p. 31).

This latter remark (about the potential meta-argumentative dimension of analogy) raises the issue of the nature of the assigned predicate (the predicate known to be attached to the analogue, and which is to be transferred to the target-subject). The aim of comparing two arguments is not just to assume that they share a common deep structure: this could be the case for explicative or illustrative analogies. Rather, our concern here is with argumentative comparative arguments. In conflictual encounters, the purpose for using meta-argumentative analogies (analogies between arguments) is, on the ground of a shared deep-structure, to transfer a judgment about this structure ("this argument is flawed" / "this argument is conclusive"), from the analogue-argument onto the target-argument (Woods & Hudak, 1989). More generally, in such situations the assigned-predicate which is targeted by the comparative argument (whatever sub-type it comes under) is often an evaluative one (Perelman & Olbrechts-Tyteca, 1988, pp. 328–329): "you would judge  $O_1$  negatively / positively;  $O_1$  is comparable to  $O_2$ ; therefore, to be consistent, you have to judge  $O_2$  negatively / positively". The nature of the assigned-predicate may thus constitute a significant clue for the heuristic *vs.* polemical orientation of the argument (Borel, 1977, pp. 54, 63).

Some additional criteria allow to characterize other subtypes within comparative arguments. For instance, as Declercq (1992, p.108–109) points out, when the comparative argument has a narrative form, it may consist in a parable or a fable (Eggs, 1994). When the comparison is aimed at emphasizing the differences rather than the similarities between two cases, it may result in an *a contrario* argument (Eggs, 1994); if it is based on a double hierarchy, according to Perelman, it becomes an *a fortiori* argument. However, in this paper we will focus on the first four criteria.

## 11.3 The Perception of Comparative Argument Schemes by Ordinary Speakers

Let us now turn to the issue of the perception of comparative arguments by ordinary speakers.

### 11.3.1 *Explicit Designations of Argumentative Schemes*

A first access to spontaneous classifications of argument schemes is provided by the terms used by speakers in order to label the arguments they are using or the ones they are confronted with.

The observation of argumentative discussions shows that various designation processes may be found, the most frequent being “comparison”, “image”, and “analogy”. There is no real surprise in the predominance of terms which refer to the whole category of comparative arguments: the comparative nature of the link between premises and conclusion seems to be easily grasped by intuition (as suggested in Garssen, 2002) and thus a reliable parameter on which to ground a consistent class of arguments.

Beyond such general designations, more specific terms may be found, such as *parable* or *metaphor*, but they are undoubtedly few. This observation suggests that sub-categorizing the general “comparative argument” type does not answer any communicative need of arguers. When pointing to comparative arguments in their own discourse (for discourse planning issues or for offering the addressee an interpretative support) or in the adversary’s discourse (mostly for critical purposes), general designations are sufficient.

A further investigation should examine whether such designations are applied to argumentative processes that would actually be considered as part of the comparative type by scholars, or whether their technical meaning is modified so as to cover a slightly different range of phenomena.

### 11.3.2 *Indicators of Comparative Argumentation*

A second way of addressing the issue of the (sub)classification of comparative arguments by ordinary speakers is to assess the specificity of the indicators associated with such arguments. Snoeck Henkemans’s (2002) study on indicators of analogy thus identifies an important list of words or expressions, most of which refer to the global category. Nevertheless she suggests that some constructions are more specific; such is the case for *as though*, *as if* or *that’s like saying*, designed to introduce “an imaginary comparison between events, actions, things or persons” and therefore provide strong clues for figurative comparisons (Snoeck Henkemans, 2002, p.971). French expres-

sion “c’est comme si” (or even more, “c’est comme si on disait”) has the same specific orientation. An illustration of “as if” associated with a figurative analogy is given in the following example, where “William Dode” reacts to a quantitative comparison between working time for a teacher in public *vs.* private schools (allegedly 18 hours in the former and up to 45 hours in the latter); the targeted conclusion of the quantitative comparison was, of course, the privileged status of public teachers:

- (1) Newsgroup: fr.soc.travail.independant  
William Dode  
20 sep 2007 19:45

Taking into account only the time spent by teachers for giving classes as working time is like [French: *c’est comme si...*] assessing executives’ working time in the private sector by taking into account only the time they spend with their clients. According to this calculation, what a lucky guy I am! I only work 18 hours a year ;-)

The mode of calculation used as an analogue is a hypothetical one; hence the analogy is clearly figurative. Moreover, it reminds of a rebuttal analogy because of its pragmatic orientation to refutation. It is very similar to the analogy introduced by “that’s like saying...” [French: *C’est comme si tu disais...*] in example 2. “Nymphostar”’s response is a reaction to a previous message denouncing the social pressure exerted on women so that they get married early:

- (2) Newsgroup: af.philo, thread choosing is renouncing (choisir c’est renoncer)  
Nymphostar  
17 jan 2001 20:44

Oh, how stupid you are! If family and society put us under pressure in order to prevent us from ending as a spinster, it’s part of the game. There must be a reason! And other people only continue the whole thing in order to pressure us into living! It’s as if you said that a young bird old enough to fly isn’t in control of its choice when its mother pushes it out from the bed – sorry, from the nest – so that he starts flying.

In this case again, the analogue (the claim attributed to the addressee about the young bird) is an invented one. The comparison aims at suggesting that the opponent’s argument is unacceptable by comparing it to an obviously flawed one. The sub-categorization of the argument as a figurative analogy is signalled by the expression *It’s as if you said...*

Constructions such as “it’s as if / though...” or “it’s like saying...” are very good predictive marks for a figurative analogy. Unfortunately few indicators are that reliable; most of them orient towards a specific sub-classification only when associated with other indicators of analogy (of the type listed by Snoeck Henkemans). In such cases, “one has to be consistent” or “be logic!” orient toward an analogy based on the justice principle; “all the more reason for...” or “a fortiori” suggest that the analogy may be... *a fortiori*; “in contrast” or “conversely” may be clues for an *a contrario* comparison; etc. Such an association is illustrated in the example below, where

“Alexis Coudeyras” objects to a previous message opposing an armed intervention in Chechnya on the ground that it would result in civilian deaths:

- (3) Newsgroup : fr.soc.politique. Thread: Allons nous passer l’an 2000 avec un génocide comme date historique ?

Alexis COUDEYRAS

1999/12/10

So you are against intervention in Iraq or in Kosovo. Because there too, it caused the death of many people among civilians (cf. 1 million deaths in Iraq and a population starving because of the embargo). You should be coherent.

Here, a parallel is being drawn between a previous armed intervention in Iraq or in Kosovo and a possible intervention in Chechnya on the ground that both caused (or would cause in the case of Chechnya) civilian deaths. The parallel is signed by the word “too”; the conclusive orientation is indicated by an appeal to consistency.

### 11.3.3 *Refutation Strategies*

The last approach to spontaneous sub-classifications of comparative argument focuses on rebuttal strategies used by arguers in order to challenge the opponent’s arguments. Such strategies are valuable indicators of arguers’ awareness of the various argument schemes involved in the argumentative process.

In the pragma-dialectical model of argumentation, each main type of arguments (symptomatic, comparative, causal) is associated with a specific set of critical questions which must be answered in order determine whether a given argument meets the criteria relevant to that type of argumentation (van Eemeren et al., 2002, p.96). What is assumed here, is that a parallel should be drawn between the critical questions elaborated within scholarly studies in argumentation and the actual spontaneous criticism of argumentation that is performed by ordinary speakers through refutation moves in argumentative discussions.

Actual refutations addressed to comparative arguments are often pre- or post-faced by wide-spectrum refutation formulas which cover the entire class of comparative arguments. Such formulas result in dissimilarity statements («ça n’a rien à voir», «ce n’est pas comparable») or in argumentative injonctions (“il faut comparer ce qui est comparable”, «il ne faut pas tout mélanger»...). Some of these formulas are specifically devoted to the refutation of comparative arguments; some others may be found in any case where two objects or situations are related (whether the relation is based on a similarity or on a causal determination, for instance).

According to van Eemeren et al. (2002), the main critical question to ask about argumentation based on analogy is:

Are there any significant differences between Z and X? Such differences can be pointed out in two ways: by claiming that Z has a certain characteristic that X does not have, or vice versa. Both forms of criticism are serious charges because basing argumentation on a relation of analogy assumes that X and Z share *all* characteristics relevant to the argument. (pp. 99–100)

This critical question guides most of the general refutations of comparative arguments directly – by pointing out the differences presented as essential between the compared cases, or indirectly – by proposing a counter-analogy presented as more conclusive than the one raised by the opponent because of its better adequacy to the target. However, each of these rebuttal strategies works at the specific level of the compared cases, without intervening directly at the level of the more abstract common property on which the comparison is based. Such refutation moves suggest that their authors perceive arguments by analogy as being first of all arguments from case to case (even if the inference from one case to the other presupposes in some way an unstated general principle) (Govier, 1989, p. 147; Guarini, 2004, p. 155). The frequency of such moves (evoking a property possessed by the analogue but not by the target subject, contesting an analogy by proposing a counter-analogy) argues for a non-deductive reconstruction of the argument by analogy.

Besides the former strategies of refutation, addressing any kind of comparative argument, some others take specific forms according to the subtype of the comparative argument involved in the discussion.

As far as the epistemic status of the comparison elements is concerned, one may expect that it entails specific modes of evaluation in an argumentative discussion. As Govier (2001) puts it:

Some aspects of inductive analogies [that is, analogies that are empirically grounded] make their evaluation different. The most obvious of these is that in the inductive analogy, the analogue must describe something real, and the quoted facts must be genuine. Imaginary examples are fine for *a priori* analogies, but not for inductive ones. The similarities on which inductive analogies are based are between empirical aspects of the primary subject and the analogue. We cannot determine the extent of the similarity merely by reflecting on structural features, as we can for *a priori* analogies. (...)

Another significant fact about inductive analogies is that the cumulative effect of similarities is an important factor. In an *a priori* analogy, what is important is that the similarities relevant to the conclusion hold. If they do, it does not matter whether there are many further similarities or none at all. But in the inductive analogy, the sheer number // of similarities does matter. The closer the two cases, in detail, the more likely it is that the inferred conclusion will be true. This means that the evaluation of inductive analogies depends more on factual background knowledge than does the evaluation of *a priori* analogies. (pp. 370–371)

The importance of factual background knowledge is illustrated in the following example from a thread about war in Iraq in an Internet newsgroup. “Provocator” has just drawn a comparison between the US embargo against Iraq and the embargo against Cuba, which, according to him, has made no victim despite its long-lasting; the aim of this comparison is to contest Gilles’s emphasis on the importance of civilian deaths during the war in Iraq (particularly because of the US embargo). The sequence runs as follows:

- (4) Newsgroup: soc.culture.belgium  
 Gilles (21 feb 2003):  
 (...) And what about the embargo? No victims?

Provocator (21 feb 2003)

(...) As far as the embargo is concerned, Cuba has been under embargo for +-35 years without causing any casualties! Basically, an embargo against a country kills or doesn't kill depending on what suits best your demonstration. As always! Well then, go back to your pro-dictator demonstrations.

Gilles

23 feb. 2003, 13:11

(...) the embargo against Iraq, associated with an intensive bombing, is in no way comparable to the embargo endured by Cuba, neither in its historical conditions, nor in its field of application.

(...) Comparing the embargo on Iraq with the embargo on Cuba is nonsense, they are essentially different.

Embargo on Cuba is an economic embargo imposed by the United States since 1960 and Cuba, a member of the COMECON until 1989 has always traded more or less freely with the USSR and other COMECON members plus China. As a symbol of the communist resistance to the American imperialism, Cuba was even very generously supported by the USSR. The harder period for Cuba was the end of the Soviet era in 1989, but since Castro decided to liberalize the market at the beginning of the 90s, the European Union started investing in and trading with Cuba. In 2001, Cuba welcomed over 2 millions tourists and Cuba was the first South American country to use Euro in trading with Europe. So, please, try to compare what is comparable!

The initiative comparison introduced by "Provocator" is a literal one (it concerns two embargoes imposed by the United States on dictatorial countries). It clearly is an inductive one: it involves two historical situations, which can be empirically investigated. It has a refutative orientation: it aims at contesting "Gilles"'s indirect claim (*via* the rhetorical question "What about the embargo? no victims?") and intends to transfer the predicate "did no cause any death among civilians", from the Cuba embargo, onto the Iraqi one.

In "Gilles"'s second message, the comparison between the embargo on Cuba and the embargo on Iraq is contested on the ground of a detailed analysis of the historical context of the embargo on Cuba. The difference between the two embargoes is not explicitly stated but the addressee is expected to infer it by using his own knowledge of the historical context. All the differences that are put forward by "Gilles" are meant to block the transfer of the assigned predicate.

The same observation can be made for quantitative comparisons, i.e., the refutation focusing on the balance between similarities and differences between the terms of the comparison, or on the accuracy of the quantitative data.

Let us now turn to the question of the homogeneity versus the heterogeneity of the areas involved in the comparison. Confronted with comparative arguments which associate cases resulting from highly heterogeneous domains of knowledge, arguers cannot base their refutation on the denunciation of factual differences between the compared cases. On the other hand, the refutation may focus instead on what Perelman calls the "interaction" between the *phoros* and the *thema* provoked by the com-

parison. Besides the characteristic of the *phoros* that is meant to be transferred onto the *thema*, a phenomenon of contagion may be observed between other features of the *phoros* which extend to the *thema* of the argumentation (Perelman & Olbrechts-Tyteca, 1988, p. 508). Such an interaction can be subject to criticism, as illustrated by the following message, in which the author criticizes a comparison made by a French politician between students engaged in a protest movement and toothpaste (that is, between unquestionably heterogeneous elements). The comparison reads:

“Students are like toothpaste: once out of the tube, there is no way to get them back”.

The comparison is criticized in a reply on a political Internet newsgroup as follows:

- (5) Newsgroup: fr.education.divers, fr.soc.politique  
Hussard Helmut  
16 Feb 2005 11:03

No need to be a qualified professor of literature to realize that the image is not trivial, but clearly insulting. The compared term (students, a human population, hence a priori worthy of respect) and the comparing term (toothpaste) are merged, owing to a shared sordid characteristic: their alleged capacity of escaping in an uncontrolled flood which cannot be contained. Given the -established - level zero of consciousness of toothpaste, the students' protest movement would be, as toothpaste is, submitted to obscure physical laws, whose only “raison d'être” (like the law of the slice of bread and butter that always falls on the bad side) is to cause maximum trouble to the Minister.

The comparison between students and toothpaste is denounced as activating more than the alleged shared characteristic (the fact that both are “impossible to contain”): these additional features are “the lack of consciousness” and the obedience to physical laws aimed at causing maximum trouble to the environment. Thus, the criticized comparison is seen as revealing a highly negative perception of the students' protest movement. Here, the same type of criticism of the comparison as is shown in example 4 would make no sense, since from a factual point of view, there is no doubt that students are very much different from tooth paste.

## 11.4 Conclusion

Studies on analogy do not result in a systematic, hierarchically organized typology of sub-types of arguments based on a comparison. Nevertheless, they permit the identification of various parameters (domain constraint on the compared cases, epistemic status of the premises, nature of the assigned predicate, dialectical orientation of the argument) which may help characterize comparative arguments as they appear in actual practice. Actual argument by analogy show a tendency to preferentially aggregate characteristics so as to favour literal/predictive/confirmative analogies on the one



hand, and figurative/*a priori*/refutative analogies on the other; however, beyond these two preferred patterns, any combination seems to be possible – though less frequent.

My last remark pertains to the methodology partly applied here (and illustrated also by Snoeck Henkemans's (2002) on analogy indicators) which is based on identifying discursive clues (such as a-theoretical designations of argument schemes, indicators, or refutation processes) in order to specify the argument scheme involved. However disturbing this might be, scholars authors are not infallible, and their analysis is sometimes subject to discussion. The same has to be said about ordinary speakers' intuitions; the fact that they sometimes label their argument "a comparison" or "an image" does not guarantee that such a description necessarily fits the deep structure of their talk. Besides, the colloquial use of terms such as "example" or "analogy" does not cover the exact corresponding concept in the theory of argumentation. For instance, whereas "it is not comparable" can hardly be found in response to an argument from example, a comparison may well be introduced by expressions such as "let's take an example". Clearly, there is no exact correspondence to be found between learned approaches to argumentation and spontaneous pre-theorizations of it. Nevertheless, an accurate and cautious dialogue between the two approaches may lead to an increased understanding of argumentative practice.

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## Endnotes

- 1 It is possible to extend the criticism addressed by Hamblin (1970/2004, chap.1) to fallacies' classifications to arguments' typologies in general.
- 2 On indicators of arguments by analogy, see Snoeck Henkemans (2003).
- 3 All the quotations from French authors in this paper have been translated by me.
- 4 According to Kienpointner, "Les arguments peuvent-ils faire l'objet d'une classification exhaustive? Sur la complétude des typologies d'argument" (Conference on "Structures argumentatives et types d'arguments", Paris, May, 26th, 2006).
- 5 As Woods & Hudak (1992) put it, "analogies are not objets trouvés, (...) analogies are made, not found." (p. 206).
- 6 Woods & Hudak (1989) extend this property to all arguments by analogy, which they define as "arguments about arguments, meta-arguments" (p.127); hence the designation of this category as "arguments by parity of reasoning".

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# Chapter 12

## Whether and How Classical Topics can be Revived Within Contemporary Argumentation Theory

Eddo Rigotti

### 12.1 Preliminary Remarks and Cautions

The title of the present paper might sound like a typical many-question fallacy, as it hides, under the form of a double indirect question, two standpoints. Indeed, since both standpoints are declared and as many interrogatives signal their questionable nature, what is hidden is only the relationship between the standpoints. Now, if for a certain aspect, as suggested by the word order too, the meaningfulness of the how presupposes an affirmative answer to the whether, in another perspective, the reasonableness of the whether, that is properly at issue here, totally depends on the how. In other words, my investigation aims to identify the conditions at which classical topics can be retrieved. I start recalling the context of this investigation.

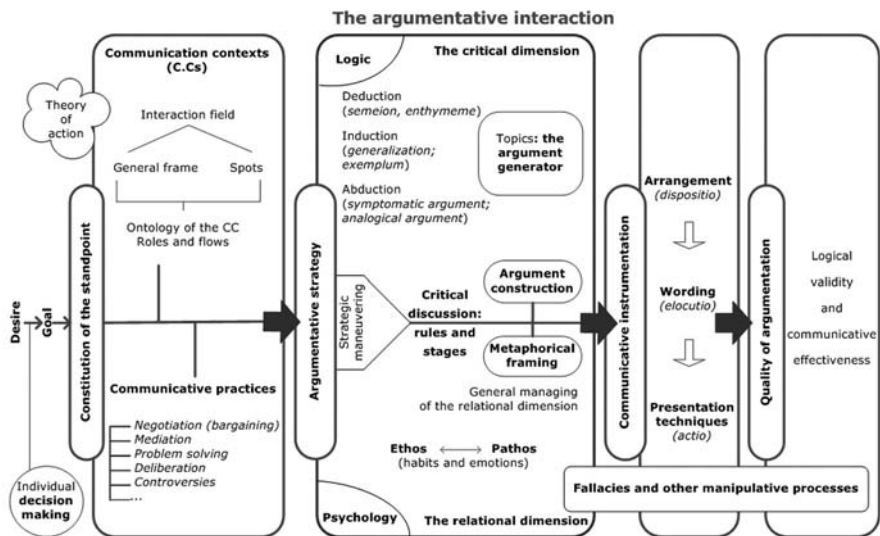
In 2004 the Swiss Virtual Campus entrusted a team of scholars belonging to three Swiss universities (Lugano, Neuchâtel and Geneva) with the construction of a systematic online course, *Argumentum*<sup>1</sup>, devoted to argumentation in different fields of its application. The purpose, target, educational aims and technological arrangement of this e-course are illustrated by a paper of Stefano Tardini (2007). What specially matters here is the fact that, possibly in connection with the declared applicational guidance of the course, topics turns out to be a strategic chapter. Perhaps not by chance the doctrine of topics figured as a strategic component in traditional rhetoric too, which was undoubtedly oriented to application. It seems that, apart from the theoretical relevance of a retrieval of topics, an applicational orientation demands a topical component.

Both from a theoretical and a practice-oriented point of view it could be useful to see how topics actually runs within this communication sciences-oriented model for the design and the construction of argumentative discourses (see Rigotti & Greco, 2006), as it can offer a comprehensive image of the complex role played

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by topics in a working model. A diagram, which an indeed vague likeness induced us to name “fishbone” and which proved to be useful in orienting users’ navigation, represents the constitutive components of this model in the framework of their mutual relationships.



As it simulates the dynamic nature of the object it stands for, i.e. the human activity of designing argumentative strategies, this diagram reminds rather a script than a scenario. Topics represents a sort of *engine* of this model as it reproduces the process of generation of arguments which allows the development of the argumentative dynamics.

Indeed topics plays a crucial role with regard to the three main functions of the model:

- The analysis of argumentative interactions aiming at identifying the inferential processes they activate;
- The evaluation of the dialectical validity and rhetorical effectiveness of argumentative discourses;
- The support of the planning and construction of argumentative interventions by offering a rich toolkit of alternative argumentative instruments.

As the diagram suggests, topics could also be conceived of as the *core* of the model, i.e. as the component which many other components are linked to with different functions: as constitutive factors (the logical structure of argumentation and its relational dimension – second rectangle of the map), as conditioning factors (the communicative practices and interaction contexts within which argumentation develops and which topics depends on – first rectangle) (see Bigi, 2007; Cigada, 2007; Morasso, 2007;

Rigotti, 2006) and as instruments (the “equipment” for communication consisting of arrangement, wording and presentation techniques – third rectangle).

First of all, we have to make explicit our relation and our attitude towards the state of the art. We were faced with a particularly complex situation. A big body of theoretical proposals and technical instructions concerning topics is offered by a very long tradition, since the Greek antiquity until the last centuries. Starting from Aristotle’s *Topics* (Ross, 1958) and the other rhetorical works of the *Corpus Aristotelicum*; *Rhetoric* (Ross, 1959) and *De sophisticis elenchis* (Ross, 1958), this tradition has grown in a quite complex doctrine aiming at systematically finding out the logical relations (inferences) implied by the conceptual system. Numerous works from the classical tradition and the Middle Ages have left us important contributions, both in form of sections of general treatises – from Aristotle’s *Rhetoric* to *De oratore* (Wilkins, 1972) by Cicero, from the *Rhetorica ad Herennium* (Cancelli, 1992) to Quintilian’s *Institutionis oratoriae libri XII* (Winterbottom, 1970), from Abelard’s *Dialectica* (De Rijk, 1970) to Peter of Spain’s *Summulae logicales* (Bochenski, 1947) and Buridan’s *Summulae de dialectica* (Klima, 2001) – and in the form of more specific works – Aristotle’s *Topica*, Cicero’s *De inventione* (Hubbel, trans. 1949) and *Topica* (Tredennick & Forster, 2004), Boethius’ *De differentiis topicis* (Stump, trans. 2004).

Contemporary argumentation theorists are not at all polemical or even indifferent towards the dialectical-rhetorical tradition in general. However, in my opinion, contemporary studies in argumentation do not consider this heritage adequately as topics is concerned. They seem to deal with it rather cautiously, almost with a certain reluctance. This reluctance can be well understood and, to a certain extent, justified. First of all, topics was developed by the ancient scholars on the basis of a doctrine of the conceptual system that has been only partially kept on by modern gnoseologies, and was in any case integrated and somehow “disguised” in various different theories. Perhaps, a usual image of topics – often presented as a “machinery” that automatically produces arguments – suggests a claim that can worry present day argumentation theorists also because our epistemology does not admit the existence of a method, in the sense of a mechanical procedure, able to construct proofs.

Moreover the presentation of topics traditional treatises and commentaries have transmitted to us adopts a particular philosophical language hard to be understood within our modern culture; but, first and foremost, it seems to presuppose a sort of fixedness (in other words, homogeneity and stability) of the conceptual system to which topics is applied; a fixedness which is apparently incompatible with the irreducible diversity of positions and attitudes in our present day society. In any case, the stability and homogeneity of the semantic system have never been absolute: now as in the past the conceptual system is deeply modified in the course of communication – meant both in the sense of communication among people and of a “dialogue” with reality through experience. Often the conceptual area which is involved needs in turn to be “renegotiated” through argumentation. And so, argumentation is often aimed at discussing the categorization of the concerned issue. Now, on the one hand, we must acknowledge that the topical tradition has been since the antiquity aware of the complexity and uncertainty (fuzziness) of the conceptual system (and

of its dangerousness for argumentation), as witnessed by intensive investigations on semantic, i.e. pre-logical, language bound, fallacies and by a rather large semantic-based component of topics itself. Yet, on the other hand, we could not ignore that the present day extreme cultural and ideological differentiation has made the task of semantic analysis and renegotiation decisively more relevant and complex: apparently, within the modern agora, which is characterized by a strong cultural variety, there is no shared conceptual system.

The contemporary studies in argumentation, on their behalf, have not worked out in detail (at least until now) this matter (neither autonomously, nor in connection with tradition), despite of several important efforts (like Braet, 2005; Grennan, 1997; Hastings, 1963; Katzav & Reed, 2004; Kienpointner, 1992; Perelman & Olbrechts-Tyteca, 1958; Toulmin, Riecke, & Janik, 1984; van Eemeren & Grootendorst, 2004; Walton, 1996, 2005a).

Nevertheless, there is a strong awareness of the importance of the elaboration of this component for the development of our discipline: one of the scholarships that have been mostly contributing to contemporary argumentation theory, the Dutch *Pragmadiialectical school of argumentation*, is elaborating an integrated pragmatic model of *strategic maneuvering* (van Eemeren & Houtlosser, 2002) combining the dialectical and rhetorical dimensions, within which the relevance of the topical component is clearly identified and acknowledged in its importance. Indeed van Eemeren and Houtlosser notice that “in argumentative discourse, whether it takes place orally or in writing, it is generally not the arguers’ sole aim to win the discussion, but also to conduct the discussion in a way that is considered reasonable” (p. 135). Strategic maneuvering is aimed at “diminishing the potential tension between pursuing at the same time a ‘dialectical’ as well as a ‘rhetorical’ aim” (p. 135) in all stages of a critical discussion, and involves, beside other strategic choices, the selection of the more adequate arguments from the paradigm of arguments which might support a certain standpoint (*topical potential*). The model of topics, which is being developed in *Argumentum*, can be regarded as a support for the topical potential choice and evaluation (in terms of logical validity and communicative effectiveness). This model focuses mainly on the single arguer’s strategic maneuvering in his/her argumentative intervention, which has to be always considered, however, in the context of a critical discussion.

In fact, we decided not to do away with the Aristotelian tradition of topics because we are convinced of its utility for the current phase of argumentation theory, but our approach to the tradition is neither philological, in the sense of a commitment to reconstruct for each author the role topics plays in his general view, nor do we strive for a kind of “sectarian fidelity”. Our aim is not, in any case, a mere “revival” of the topics elaborated by the Aristotelian tradition. Such a system of topics would be for several aspects incompatible with various semantic, epistemic and gnoseological theories we have largely adopted in the last centuries, and would imply a general ontology hardly compatible, for certain aspects, with the results of the modern sciences and with the ontological manifoldness characterizing the scientific culture of our present day society.

We want to construct a new building adopting, with respect and gratefulness, all the useful contributions inherited from this tradition. Thus, if our model is remi-

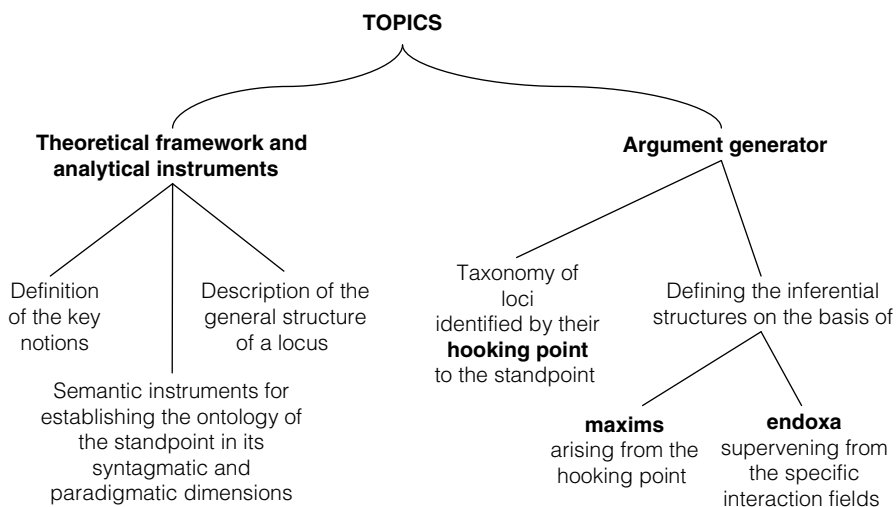
niscent of the traditional model in a number of significant aspects, the differences are surely not neglectable:

- We are aiming at constructing a consistent and coherent model (and, by the way, no such model is in fact provided by the tradition; in particular, the traditional topics did not succeed in establishing, for the locus itself, a convincing connection between the endoxical and the topical components).
- Our model takes into account modern semantics and pragmatics and is involved in the theoretical and methodological debate characterizing the contemporary theory of argumentation;
- It considers, by constructing the taxonomy of loci, the new argumentative practices exercised within the modern society.

This component of Argumentum consists of two main parts, each of which is in turn subdivided into several sections.

The first part is devoted to the theoretical framework and the analytical instruments necessary to face topics. Firstly, a definition of some key notions of topics is proposed and discussed. Secondly, a relevant section is devoted to illustrating the use of various semantic instruments for establishing the ontology of the standpoint in its syntagmatic and paradigmatic dimensions. Finally, the inferential structure of a locus is analyzed focusing on the maxims arising from different knots of this ontology (hooking points) and on the endoxa they evoke in the culture that is shared both by protagonist and antagonist.

The second part focuses on the argument generator, which includes a taxonomy of loci, and the presentation of one or more maxims arising from each locus, with their application in specific arguments.



In this paper I shall concentrate primarily on the former part of our topics, because it concerns the theoretical foundations and provides the analytical instruments nec-

essary for the use of the second part; the taxonomy of loci, though belonging to the latter part is concisely presented because of its theoretical relevance.

## 12.2 Definition of Some Key Notions

I come to introduce some definitions our model is based on: topics, locus, endoxon, hooking point, maxim, argument.

Topics traditionally indicates a systematic method to find arguments<sup>2</sup>. According to Aristotle it corresponds to “a method following which we are able to put forward arguments about any standpoint (πρόβλημα) starting from propositions which have already been accepted (ἐξ ἐνδόξων)” (*Topica*, 100a 1). Now, as topics and, more in general, rhetoric were considered in antiquity as “technai”, i.e. as arts and not as sciences, their cognitive purpose was not put in the foreground. In order to underline the scientific nature topics should acquire in contemporary argumentation theory, we focus on its explanatory commitment in relation to human argumentative competence by adopting the following definition:

Topics is the component of argumentation theory by which all (theoretically possible) relevant arguments in favour and against any standpoint are generated by specifying their inferential structure through a system of loci (Rigotti & Greco, 2006).

The claim of generating all relevant arguments in relation to a certain standpoint might appear unreasonable. The notion of generation is to understand in the meaning this term is bound to in the theory of generative grammars. Therefore I am not claiming that our model of topics is able to actually *produce* all relevant arguments, even though it is capable of suggesting a certain number of arguments through a careful analysis of the fragment of possible or real reality referred to by the standpoint. As a matter of fact, no model of topics could ever be considered exhaustive in this sense, given that any fragment of reality shows endless aspects that bear endless relations with endless other fragments of reality.... Nonetheless topics generate all relevant arguments as it is expected to assign to each possible argument a precise inferential structure that is related to the ontology of the standpoint. In other words, an argument is legitimated as such insofar as it receives from topics the characterisation of its inferential structure.

Indeed, two fundamental notions are involved by our definition of topics: standpoint and locus.

A standpoint is a statement (simple or complex) for whose acceptance by the addressee the arguer intends to argue.<sup>3</sup>

Two remarks are necessary. Firstly, a standpoint is a particular type of statement which (1) did not yet receive a shared justification (neither by evidence nor by a previous inference); (2) is bound to a commitment of immediate justification by an inferential procedure (it is candidate to figure as conclusion). Secondly, a standpoint is in any case a statement, even though it can be subject to different modalities and



thus provide logical equivalencies to other types of utterance (advices, orders, questions, proposals and so on).

The notion of locus plays a fundamental role within our model of topics where it represents the basic constituent.<sup>4</sup>

A locus is a “sub-generator” of argumentative procedures consisting of one or more maxims in the form of truth conditions linking the truth value of the standpoint to the truth value of propositions that refer to a specific aspect of the ontology of the standpoint and are already accepted by the intended public.

It is worth noticing that the inferential process cannot be activated if the maxim is not combined (crossed) with propositions that have already been accepted by the considered public, as they typically correspond to opinions that are considered within the community. This component of the argumentative procedure was named by Aristotle endoxon: “what is already within the shared opinion”. It is interesting to directly quote, in this relation, the Aristotelian definition (*Topica*, 100b.21): “*Endoxa* are opinions that are accepted by everyone or by the majority, or by the wise men (by all of them or the majority, or by the most notable and illustrious of them)”. An endoxon is thus an opinion that is accepted by the relevant public or by the opinion leaders of the relevant public.

In the above-proposed definition of locus, the notions of *hooking point* and *maxim* are involved: the aspect of the standpoint that the maxims of a certain locus refer to represents the hooking point of the locus to the standpoint and gives the name to the locus itself.

Maxims are implications bridging the truth value of the standpoint to the truth value of propositions referring to the hooking point; these implications generate inferential processes in connexion with fitting endoxa; each inferential process defines, within the locus, the form of a subclass of arguments. All the maxims of the same locus share the same hooking point to the standpoint.

Finally, we arrive at the definition of argument:

We consider an argument as the actual application of a maxim to one or more proper endoxa, deducing the standpoint from the maxim for a certain public who shares the above-mentioned endoxa.

Let us consider an example that helps us recognizing the relations between these last key notions of topics. If we consider the *locus from the final cause*, we observe that all the arguments it generates origin from a particular aspect of the standpoint: the immediate and mediate purposes of an action. It is first of all to remark that, as the presence of an immediate purpose (intention) is a constitutive trait of an action (no intention, no proper action), this locus can help ascertaining, depending on the presence or absence of a finality, the proper nature of the state of affairs the standpoint possibly refers to as an action: whether it is properly to be considered an action or a mere event, like an involuntary behaviour (*You just stepped on my foot! I didn't do it on purpose!*). However the same locus can generate other kinds of arguments. Let us suppose that the nature of action (of intentional behaviour) has already been defined and that the arguer aims to determine what kind of action was properly fulfilled, e. g. whether this action should be described as murder or as a

case of self-defence. The argumentative process – starting from the principle that an evidently impossible state of affairs can not figure as a purpose – could develop in the following way: if it has been ascertained from a number of circumstances that the victim was evidently not capable of causing serious damages to anybody, then the locus from the final cause can exclude a possible defense intention and allows inferring that the hypothesis of murder is possible. In the latter case the presence or absence of a motive allows specifying the murder as a rational or as an irrational behaviour.

Other maxims are generated by this locus, dealing, for example, with the evaluations of instruments, means, strategies, and are used to establish their quality (the quality of an instrument *can ceteris paribus* be argued from the quality of the purposes it allows to fulfill)

All these procedures, as different as they may be, are established in relation to the same hooking point: the finality of the action.

It is clear that within the same locus, i.e. by referring to the same moment of the semantic-pragmatic structure (ontology) of the standpoint, different kinds of argument can be found. Their variety depends on two mutually connected factors:

- 1) the border which is posed in the standpoint between what is already ascertained and what is still disputed (in the first example, the status of action has not yet been ascertained and is thus being disputed, whereas in the second example it is taken for granted and what is disputed is the quality of the action);
- 2) the specific maxim. For example, within the locus of the final cause, referring to a different border between ascertained and disputed, we have found two different maxims: (1) If a behaviour does not have a final cause, it cannot be defined as action in a strict sense; (2) If for an action, the final cause that is put forward is evidently meaningless or incompatible with the actual circumstances, another final cause must be identified.

### ***12.2.1 Standpoint, Maxims and Hooking Point in the Tradition of Topics***

The concept of *standpoint* clearly corresponds to the Aristotelian term *pròblema* (Aristotle, *Topica*, book 1) and to the medieval term *quaestio*.<sup>5</sup> Each one of these terms underlines by means of its morphological structure different aspects. *Pròblema*, which derives from the verb *pro-ballo* (“to throw ahead”), expresses an idea of proposal or suggestion, and is close to the idea of *claim*. The term *thesis* is present as well (Arist., *Topica*, 104b. 18), but is used only in particular cases, i.e. usually when quoting assumptions or statements from very famous persons, often going against the public opinion (example like *panta rei* or *human beings are what they eat* could sound as fitting). The Latin term *quaestio*, expressed by Cicero also as *id de quo agitur* or *id quod quaeritur*, focuses on the need for proofs to support the standpoint. The modern term *standpoint* is analogous to *pròblema* in expressing the fact of taking a position.

As for that special kind of premise that corresponds to *maxim*, in Aristotelian texts it is usually indicated in a very generic way either with the term *protasis* (in the sense of “premise”), or, more frequently, introducing the statement of the maxim itself while illustrating the locus (*topos*). In Severinus Boethius’ Latin it is indicated as *propositio maxima*, a phrase that was then reduced by other authors to *maxima*.

We still owe to Boethius the notion of *differentia loci*, in other words the specific feature of a locus, referred to also by the title of one of his works, *De topicis differentiis* (Stump, 2004), where Boethius summarizes his conception of topics. The topical difference (*De topicis differentiis* 32) is the aspect related to the standpoint which one or more maxims can refer to, or from which, thanks to the maxims, it is possible to deduce inferences regarding the standpoint (*unde ducuntur argumenta*). The correspondence with our notion of hooking point is rather evident.

### 12.3 Instruments of Semantic Analysis

The definition of *locus* brings to light the constitutive connection between the locus and the ontology of the standpoint. Now, a rather powerful instrumentation for semantic analysis is needed in order to define the ontology of the standpoint in its strictly internal structure and in its syntagmatic and paradigmatic contexts. The analysis of the conceptual system, namely the semantic analysis, is therefore preliminary to the study of topics. By the way, we have to remark that, as Aristotle often recommends, a fine semantic analysis is in every case useful to apply as a preliminary treatment of the statements that are involved in the argumentative processes, in order to avoid polysemies and other sources of fallacies.

The semantic instrumentation performs two main tasks. Firstly, it aims at proposing a tool for semantically and pragmatically analyzing the utterance that constitutes the standpoint; secondly, it allows to elicit the inferential implications from the semantic-pragmatic structure of the standpoint. For the former task, we exploited our enough long experience in semantic analysis by introducing some essential moves of Congruity theory – an approach which aims at combining the semantic and the pragmatic levels (Rigotti, 1993; Rigotti & Rocci, 2000). For the latter task, the doctrine of the conceptual system in terms of *categories* and *predicables* elaborated by Aristotle (Aristot., *Topica*, I, IV, V, VI) and the Aristotelian tradition proved to represent a powerful resource.

Beside the analysis of the conceptual system in terms of categories and predicables, two other precious contributions come to argumentation theory from the Aristotelian tradition, and allow considering adequately, beyond the *strict ontology of the standpoint* (i.e. the possible fragment of world directly referred to by the standpoint), the *syntagmatic and paradigmatic context of the standpoint*: the doctrine of causes (Arist. *Physica*, II – Ross, 1958) and the doctrine of oppositions (see in particular Arist. *Analytica Priora*, Abelard’s *Dialectica* and Peter of Spain’s *Summulae logicales*).

## 12.4 Taxonomy of Loci

In the Medieval literature on topics, loci were distinguished, according to their proximity to the standpoint, into intrinsic, extrinsic and middle loci.

The basic distinction between intrinsic and extrinsic loci can be found already in Cicero (alii in eo ipso de quo agitur haerent, alii assumuntur extrinsecus), where he declares (M.T. Ciceronis Topica) to have translated with *extrinsecus* the Greek word *atechnos*, used by Aristotle to indicate argumentation that was not generated through the discourse. In fact the word *atechnos* was used in Aristotle's *Rhetoric* for indicating all extra-discursive proofs: witnesses, written proofs (laws and contracts), torture.... On the contrary, the term *entechnos* referred to discourse-related argumentation. Our classification draws on the one made by Themistius, followed also by Boethius. Openly quoting Themistius's classification (Graeci quidem Themistii diligentissimi scriptoris ac lucidi), Boethius (De topicis differentiis, 28 – Stump 2004) distinguishes in his classification (partitio) of the topoi: (1) the loci taken from those factors that are directly established by the standpoint (vel ex ipsis sumantur quae in quaestione sunt constituta), (2) the loci taken from the outside (vel extrinsecus ducantur), and (3) those loci which are situated almost on the borderline between the previous two (vel quasi in confinio horum posita vestigantur).

Moreover, the intrinsic loci include not only those things which have been posited in the standpoint, but also those that necessarily have to be accepted on the basis of the reality (in the sense of possible state of affairs) of the standpoint, and that either follow it or come together with it. They correspond to all those aspects that constitute the possible fragment of world expressed in the standpoint or that *coexist* with it (by belonging to the same possible world). The notion of *syntagm*, introduced in modern linguistics, and meant as the set of relations *in praesentia*, seems to us to be the most appropriate to interpret this notion (e.g. Hjelmslev, 1953). We will then speak of *syntagmatic loci* to indicate all the classes of arguments that refer to aspects that are ontologically linked to the standpoint, either directly or indirectly, such as the extensional relations of terms, dependent on the semantic content, on the hierarchy of predicates, on the relationship between the whole and its constituent parts; included in this group of loci are also the classes of arguments assuming as a hooking point those pieces of world, traditionally called causes, effects, circumstances and concomitances, that condition the state of affairs the standpoint refers to.

In Themistius' and Boethius' (ibid., pp. 28–29) tradition, the extrinsic loci are instead described in a definitely more vague way: "Extrinsic loci are not so 'separate' and detached as not to leave somehow visible from a certain perspective what the standpoint refers to" (Non sunt ita separata atque disiuncta, ut non aliquo modo quasi e regione quadam ea quae quaerentur aspiciantur). When considering the loci included among the extrinsic ones (similarity, opposition, major-minor, ...), it is nonetheless quite clear that they correspond to those relations *in absentia* (of alter-nativity) defined by modern linguistics (Hjelmslev, 1953) as *paradigmatic*<sup>6</sup>. Thus we speak of *paradigmatic loci* referring to classes formed by arguments that are based on paradigmatic relations, both of opposition (see the notion of semantic

paradigm in Rigotti and Greco, (2006)) and of analogy (similarity). In my opinion, the evident uncertainty of Boethius' definition is per se significant: this kind of loci correspond to states of affairs that are not themselves directly connected with the standpoint, but are indirectly linked to it as they belong to a more or less abstract class of states of affairs comprising the standpoint too. A typical example is the locus from opposition, which allows to rebut a standpoint, if an alternative state of affairs is the case, or to support it, when all the alternative states of affairs can be excluded. As different as it may appear, the locus from analogy shares the fact of referring to a class of states of affairs comprising both the standpoint and the locus. The inferential procedure is here quite complex as it focuses on the existence, in all members of the class, of equivalent conditions that are expected to generate equivalent implications. For example, in "If the captain of a ship can not be chosen by lot, neither can the governors of a city", the force of the argument "The captain of a ship can not be chosen by lot" resides in the discovery of essentially identical conditions that, though embedded in different situations, demand to be treated the same way.

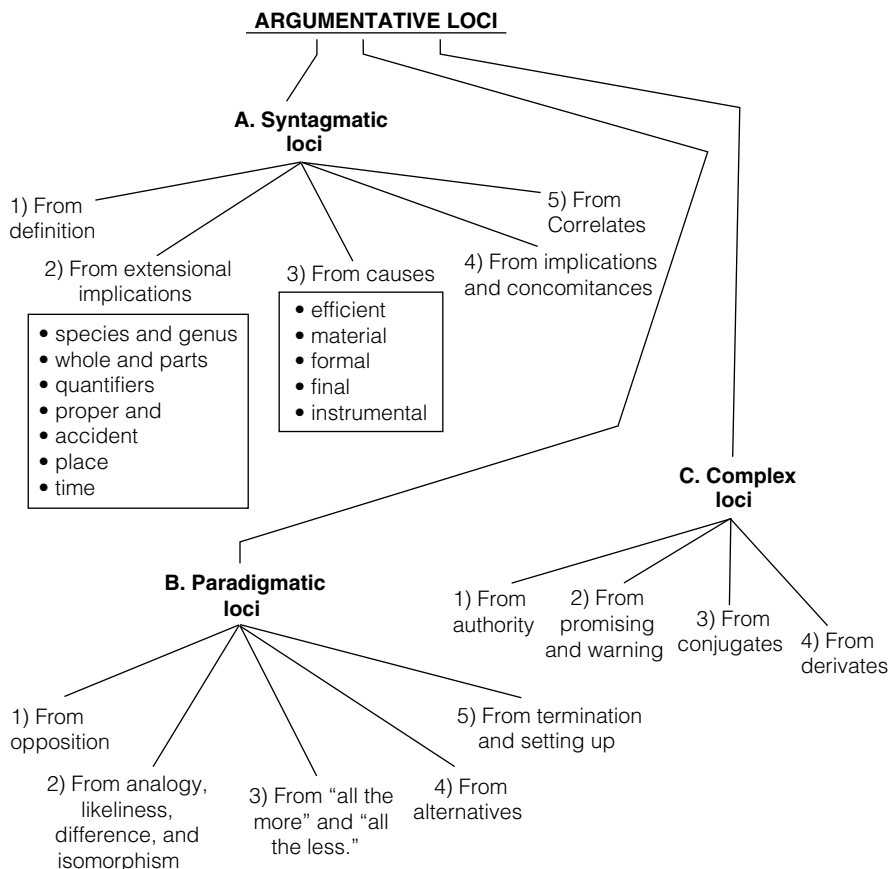
As regards the *loci medii* (also indicated as *mixti*), they are characterized simply by being on the borderline (in *confinio*) between extrinsic and intrinsic ones. The label of *complex loci* seemed to be more adequate to account both for the frequent contamination they show between paradigmatic and syntagmatic loci, and for the frequent inclusion of extra-discursive elements. A prime example of this is the *locus from authority*, which, pointing to the quality of the "producer" of the message, recalls the syntagmatic locus from agent and efficient cause; nevertheless, the aspect on which this locus levers in argument construction does not belong to the ontology of the standpoint as the proper locus from agent does, but to the communicative situation in which the standpoint is being discussed. They have properly a meta-discursive nature. This difference becomes quite clear once we compare an argumentation from agent like "This product is good because it originates from an expert producer" with an argumentation from authority like "This product is good because this was said by an expert", which should be properly interpreted as "[The proposition] 'This product is good' [is true] because it was said by an expert", where the validity is not based on the thing, but is guaranteed from outside.

Close to the *locus from authority*, a *locus from promising and warning* deserves to be included among the complex loci, even though its complexity depends also on different aspects. Indeed, both these argumentative (typically interactional) strategies, which are specific of action-oriented argumentation, aim at changing the evaluation of the co-arguer's decision by modifying the set of factors on which such decision must be based: by promising or warning we try to "prove" or "refute" the expediency of a decision. The validity of this move depends both on the relevance of the object of promise or warning and on the reliability of the act of promising or warning.

*Derivates* and *conjugates* are loci whose role is more *elocutionary* than dialectical. *Derivates* refer to the so called etymological figure ("If he is an entrepreneur, he should stick to managing enterprises") and derive their argumentative power from implications of various kinds (obligations, duties, expectations) bound to the semantic structure; as in our case, it is frequently a matter of the connection between the status of a certain being and its tasks. *Conjugates*. Instead, draw on the semantic

relations implied by morphological patterns (“Those who fought against us have lost, then those who will fight against us will lose”) and activate one or more syntagmatic or paradigmatic loci.

We propose the following diagram to represent the taxonomy of loci Fig. 3, where the three domains of syntagmatic, paradigmatic and complex loci appear with their articulations.



**Fig. 3** Typology of argumentative loci

## 12.5 Two Applications of the Model

Now I conclude the presentation of our model of topics by applying it to the analysis of two arguments. The former belongs to the syntagmatic domain and the latter one belongs to the paradigmatic domain.

- A. Let us consider an apparently quite simple argumentation, which looks very much like an advertisement:<sup>7</sup>

This butter is natural. It was made from fresh alpine milk.

From a first analysis it is possible to identify one component playing the role of standpoint, and another one playing the role of argument.

**Standpoint**       ?This butter is natural

**Argument:**

 «It was made from fresh alpine milk»

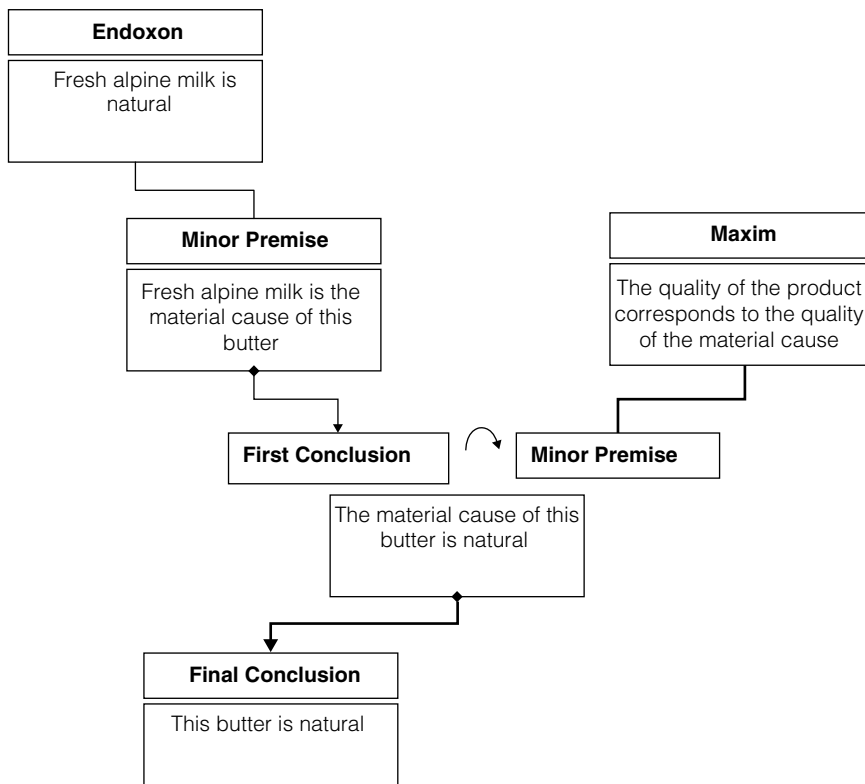
If we ask ourselves which is the aspect of the standpoint the argument is hooked to, we will identify the locus the argument comes from. Actually, *milk is the material from which butter is made*, thus we are faced with a *locus from the material cause*. It is easy at this point to elicit the maxim, i.e. the principle on which the argumentative force of the message is based: “If the quality of the material cause is good, the quality of the product is too”.

We will now turn to the analysis of the inferential structure of the locus. Our analysis turns out to show that the logical process at the basis of our argumentation is quite complex. In order for the maxim we stated to generate the desired conclusion (i.e. the standpoint to be supported), *This butter is natural*, the following minor premise is necessary: *The material cause of this butter is natural*.

This premise is obtained by a reasoning that is intertwined and combined with the inferential process of the locus. Such reasoning is constituted by a syllogistic structure with an endoxon, i.e. a proposition which is agreed upon by the participants in the argumentation (*Fresh alpine milk is natural*), in the place of the major premise; in the place of the minor premise there is a *datum* (*The material cause of this butter is fresh alpine milk*) linking the subject of the endoxon that has the function of terminus medius, *Fresh alpine milk*, to the locus (*the material cause of this butter*) and generating a preliminary conclusion (*The material cause of this butter is natural*). The preliminary conclusion “proves” that a certain aspect of the standpoint has a certain property. This aspect becomes the hooking point for the maxim. As a consequence another syllogistic structure (an hypothetic one) comes into being: the preliminary conclusion, playing the role of a minor premise, is applied to the maxim of the locus, which plays the role of the major premise; from this derives the final conclusion that coincides with the standpoint which had to be supported.

So the inferential structure consists of two different procedures, based on a maxim and on a shared endoxon respectively.

The following diagram shows how the two syllogistic processes (based, respectively, on the endoxon and on the maxim) work together in our argumentation, and, so, it makes explicit their synergic working:



It is possible, thus, to say that the locus presents an enthymematic component and a topical one. Each component is based on a specific major premise: the endoxon and the maxim, respectively. The two components have distinct and complementary functions: the maxim is responsible for the inferential mechanism and defines the law, while the endoxon links the argument to a shared opinion in the community. We could even say that the topical component ensures the inferential force, while the enthymematic component provides the persuasive effectiveness. In other words, topics guarantees the logical consistency of the procedure but, if this procedure is not combined with an endoxon, it remains a mere logical mechanism with no hold whatsoever on the interlocutor. Considering our example, if it is not obvious to the public that fresh alpine milk is natural, then the reasoning, even if correct, loses its persuasive force. Thus the endoxon constitutes the link to the *common ground* between arguer and addressee, allowing the argumentation to be adequate to the actual interaction field for which it has been designed.

It is necessary to notice, however, that by making explicit the inferential structure of the locus we do not guarantee the validity of the arguments generated by it. It is necessary then to include a phase in which the arguments are evaluated, in order to verify their reliability. We will then propose an evaluation of the force of the argumentative process that could be useful both for a critical analysis of the argumentation



and to build possible counter-arguments. By the way it is often the case that a locus might be absolutely reliable in certain applications and unacceptable in others.

For our locus we propose the following evaluation: this locus is indeed widely used in advertising. It hides the risk of two possible fallacies. First of all, when a certain product is at issue in the standpoint, this suggests that only the mentioned product has the property taken into consideration (in our example: that it is natural). This is though an obvious implication in advertisements and can be “forgiven” because of the explicit delimitation to which this particular type of messages is submitted; besides it is always possible to develop a more correct interpretation of the message, such as: “*At least as far as this product is concerned* we can say that... (it is natural)”. Secondly, the good quality of the material cause is a necessary but not sufficient condition for the good quality of the product: it is necessary to consider also the processing of the raw material, its hygienic conditions, the conservation of the product, etc. Thirdly, it is also worth considering in which sense good quality is to be understood: a worthless material, for example, could be “recycled” to produce high quality products. Rags, for instance, make very bad clothing but are particularly good to make a fine sort of paper.

Finally, it has to be observed that this argumentation is probabilistic in nature. This does not depend on the kind of proceeding (which clearly consists of the combination of two rigorous deductive processes), but on the probabilistic nature of the propositions used as major premises (both the endoxon and the maxim).

#### B. Giuseppe Buffi’s argumentation at the origin of the University of Lugano

An actual example, drawn from the contemporary history of Italian Switzerland, will be useful to bring to light the logical structure and the communicative relevance of the locus from isomorphism. For me personally, it is also the occasion to remember a dear friend, the former director of the Department of Education and Culture of Canton Ticino, Giuseppe Buffi.<sup>8</sup>

The argument concerned is based on a paradigmatic locus; this locus belongs to the general class of analogies, together with the loci from likeness and from difference: the *locus from isomorphism*. This argument is drawn from the contemporary history of Italian Switzerland: in 1996, when the University of Lugano was founded and Giuseppe Buffi presented the unexpected novelty to the representatives of the Cantons with an older university tradition, in fact he exploited the locus from isomorphism to back an ex post facto announcement: *It is true: the Canton of Ticino never discussed its project of building a university with the Confederates, but it decided and planned its realization and only then they made the announcement. However, exactly the same happens when a young couple wants to have a child: they conceive and then run to announce it to their parents.*

An adult son and an adult daughter, when building a new family, though still strongly bound to their family of origin, are themselves responsible for their own choices. So Ticino, adult son of the Confederation, consciously deciding, gives birth to a new university and only then makes the announcement to the “parent-cantons”.

In this case, the simile rests on an accepted isomorphism of the two systems. Two conditions are entailed by an isomorphism: (1) there is a bijective mapping

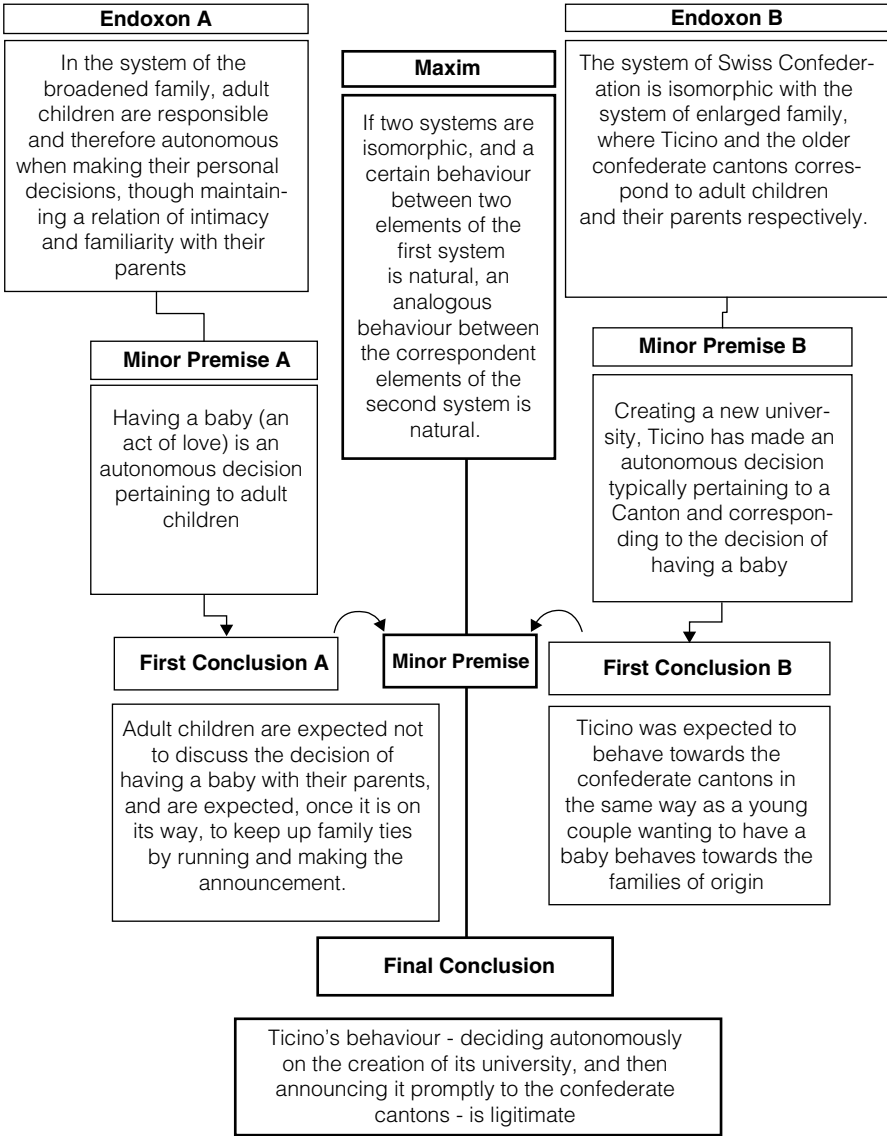
between the two systems (there is one and only one element of the second system corresponding to each element of the first one) and (2) if in the first system a relation  $R$  holds between the two elements, in the second one an analogous relation  $R'$  holds between the correspondent elements.

In the considered example, the argumentation refers to an accepted isomorphism between the enlarged family and the Swiss Confederation. On the one hand, in this isomorphism the parents (the families of origin) correspond to the older cantons – cantons having a consolidate university tradition – while the Ticinese community corresponds to the young couple; on the other hand, the responsibility-bound autonomy of the young couple towards their parents is analogous to the responsibility-bound autonomy of Ticino towards the older cantons. The maxim activated by this argument establishes in general that, given such an isomorphism, if  $P$  holds for two members of one system,  $P'$  is expected to hold for the correspondent members of the other system. Thus, if a certain behaviour is legitimate among certain members of the enlarged family, an analogous behaviour is legitimate, in analogous circumstances, also for the correspondent members of the Swiss Confederation: as the young couple does not usually communicate the plan of conceiving a baby to the parents, but the announcement is made *ex post facto*, so Ticino is expected to communicate the foundation of a new university to the older cantons only after having already given life to the new institution. The following synergic representation highlights the different components and the steps of the argument supporting Buffi's unexpressed standpoint (*it has been natural for the youngest canton not to have announced the plan of opening a university before the decision had been made*):

Our analysis turns out to show that the inferential process at the basis of this argumentation is quite complex. The inferential structure of the argument consists of three different inferential procedures, one of which assumes a maxim of the locus from isomorphism as its major premise, whereas the other two assume as many endoxa as their major premises. Let us start considering the syllogism based on the maxim: in order to reach the desired conclusion, it is necessary to assume a complex minor premise, corresponding to the conclusions of two endoxa considering the system of a family, on the one side, and the family-like structure of the Swiss Confederation, on the other side:

1. Adult children are not expected to discuss the decision of having a baby with their parents, and are expected, once it is on its way, to keep up family ties by running and making the announcement.
2. Within the isomorphic system of Switzerland, Ticino is in an analogous position towards the older Cantons.

These statements need in turn to receive a justification, which can be obtained respectively from two other inferences that are intertwined and combined with the inferential process of the maxim. Such inferences are constituted by syllogistic structures with endoxa (endoxon A and B respectively in the diagram), in the place of the major premises. In the place of the minor premises, there are more specific propositions (minor premises A and B in the diagram), linking the subjects of the endoxa (“adult children” and “Ticino” respectively) to the *terminus medius*<sup>9</sup> (in A



“responsible and autonomous in decisions of one’s competence”; in B: “making a decision of creating a university is autonomous analogously to the decision of making a baby”), and thus deriving the First Conclusions A and B. The first conclusions “prove” that a certain aspect of the standpoint (Ticino’s behaviour towards its confederates while creating its university) has a certain property (being analogous to adult children behaviour towards parents in relation to the decision of having a baby), which is exactly what the maxim “lacks” in order to generate the final conclusion. The small curved arrows in the diagram represent the fact that the final

conclusions *are exploited* together as minor premise associated to the maxim for generating the final conclusion.

Such an argument does not base its inferential strength simply on the locus from isomorphism, but in the degree of reliability of the isomorphism between a family and the Swiss Confederation (endoxon B), and in the degree of reliability of the endoxon concerning the behaviour of a young couple (endoxon A). Whereas the endoxon A refers to a generally shared connection between responsibility and autonomy of decisions, and shows a certain strength, the endoxon B is strictly connected to the institutionalised structure of the interaction field, which is constituted, in this case, by the Swiss Confederation. Notice that the minor premise B refers both to a juridical feature of the specific interaction field concerned and to its cultural identity, and does not come from the inferential scheme of the locus, as it is a datum emerging from the actual context of interaction.

The awareness of the Swiss cantons of forming a family-like community is clearly evoked: in relation to this component, Buffi's argument may at least partially sound as a warning (*Of course, none of you would doubt that we are a family!*). And this argumentation can easily develop into other possible moves: the newborn university is, in this case, the little grandchild of the elder Swiss universities and must therefore be recognized and loved.

Such an example presents the application of a locus which is strictly connected both to the institutionalised and to the interpersonal dimensions of the Swiss nation. On the one hand, Swiss federalism is evoked with its juridical implications (each canton, in fact, has formally the right to open a university); on the other hand, the feeling of willingly belonging to the Swiss community is activated through the metaphor of the enlarged family. We could also notice that the institutional aspect was per se legally sufficient to justify Ticino's behaviour, but the choice made by Buffi within the topical potential allowed him to save and consolidate a cordial relationship with the other cantons.

## 12.6 From the Log of the Topical Enterprise

The model of topics concisely outlined in this paper does obviously not claim to build a fully accomplished theoretical body. The general design was defined by specifying objectives and key-notions, the main components were shaped in order to correspond to the constitutive factors of the processes of argument construction and its functioning was also verified and illustrated in a number of applications. However, the current state of our topics reminds one of a building site rather than of a finished building. In this last page I shall try to focus on some questions that will guide our further work in topics: answering these questions could help to advance the realisation of the project, but might also demand some significant revisions of the model.

A first critical point concerns the instrumentation of semantic analysis. At the present level of elaboration it has been assembled in a provisional fashion, combining rather heterogeneous theories and doctrines deriving both from traditional ontology and contemporary semantics. An important effort is necessary for merging these two

components in order to create a homogeneous semantic instrument. In particular, we have to reinterpret the doctrine of causes within a semantic framework, in terms of higher level predicates; the theory of modality (See Rocci, 2005) should be taken into particular consideration for topics as it could help facing the problem of *status causae*. Furthermore, we need to enrich the toolkit of semantic analysis by integrating two relevant components: the doctrine of oppositions and the doctrine of predicables.

Another question concerns the fulfilment of the model, starting from loci and maxims. The revision of the semantic component might considerably modify the definition and, maybe, the number of loci and rearrange their general typology. In particular, the assignment of certain loci to one of the three classes seems to require further consideration. As regards maxims, since their logical strength resides in implications, it could be objected that our topical reconstruction of argumentative processes represents a superfluous and even useless complication. We should of course ask ourselves whether this complexity depends on the designers' sophistications or is it indeed due to the real complexity of the object. However, more importantly, we need to point out that the maxims are nevertheless indispensable as they contribute to the study of argumentative processes in defining the conditions under which the implications are valid, by establishing when they actually work. In fact, not for all *p*'s and *q*'s the implication " $p \rightarrow q$ " is valid. In any case, maxims should be studied more in depth: their identification has to be advanced and their logical properties should be investigated more systematically in order to define the conditions of their validity.

In relation to the endoxical component, we have experienced that, although it could seem to increase the complexity of the model, it is essential for understanding how argumentation actually works within its many diverse fields of application. In this connection we have remarked that a deep knowledge of these fields of application is necessary; thus an adequate treatment of the endoxical component requires an intense interdisciplinary collaboration.

Topics is obviously a building that is being constructed and we are fully aware that it cannot be thought single-handed enterprise. Within our building site there is no "no admittance" sign.

## Endnotes

- 1 Argumentum is an online course financed by the Swiss Virtual Campus (see [www.argumentum.ch](http://www.argumentum.ch)), and realized by the university of Lugano (responsible for the leading house, Eddo Rigotti, project coordinator, Sara Greco Morasso).
- 2 Thinking of tradition it is interesting to focus on the origin of the word topics: indeed this will allow us identifying a lexical area characterized, in modern Indo-European languages, by a considerable vagueness. And etymology appears to be particularly helpful for explaining the different and imprecise uses that have been made of two keywords concerning this component of argumentation theory. The word topics refers to *tópos*, which means place, but also appropriate place or place where a certain set of objects is collocated (as in Latin *sedes*, "Itaque licet definire locum esse argumenti sedem", Cicero, Topics, 8). In our case, objects are arguments and *tópos* (Latin, *locus*) stands for the place, almost in the sense of a shelf, where arguments of a certain kind are grouped; in other words, a class of arguments. Aristotle proposed to distin-

guish between common places (κόιννοι τόποι) – i. e. types of arguments that can be applied to any issue because they refer to general logical aspects of the discourse or to the general conditions of the argumentative situation – and specific places (ίδιοι τόποι), which exclusively regard the different cognitive and practical areas. The word commonplace, which was kept on by many modern languages (lieu commun, Gemeinplatz, luogo commune, obščee mesto) has lost much of its original meaning, and now indicates a trivial, obvious communicative move, used by anyone in everyday speech. The evolution of the word *topica* has brought to an analogous semantic reduction. If *tópos* was indicating the place where arguments of a certain kind were grouped, topics corresponded to the system that included and ordered arguments by types. In English *topic* stands for the subject, the matter concerned by a discourse. (We could mention also the term *topic* as opposed to *comment* in generative semantics.

- 3 And we signal this fact by putting a question mark on the left of the utterance. For example, the following proposition: ? War is ever avoidable. is a standpoint and not a simple statement.
- 4 It is often the case that the term *argument* is used to indicate both an arguments and a locus. Thus, instead of saying “argument belonging to the locus from authority”, one can speak of “argument from authority”.
- 5 “Quaestio est in dubitationem ambiguitatemque adducta propositio” (Boethius, *De topicis differentiis*, Book I). The term *quaestio* is translated into English through question with the meaning of standpoint in the expression “begging the question”, a fallacy referring to the fact that the arguer asks to accept his standpoint without proving it (he begs the question). See D. Walton (2005), “Begging the question in arguments based on testimony”, *Argumentation* 19: 85–113. See in particular p. 91.
- 6 Perhaps merely as a homage to Themistius, in this class was included also the consolidated judgement (*rei iudicium*) – a basic locus for jurisprudential praxis – despite its heterogeneity, i.e. its non “artificial” (extra-discursive) nature, similar to that of testimony.
- 7 Indeed the argumentative aspect is quite relevant in advertisement. See Wüest (2001).
- 8 Giuseppe Buffi (1938–2000) was member of the State Council of the Republic and Canton of Ticino and Director of the Department of education and culture from 1987 to 2000.
- 9 *Terminus medius* (middle term) is named, in the traditional logic, the term occurring in both premises of the syllogistic structure, that allows the connection between the subject and the predicate in the conclusion, but which must be absent from the conclusion.

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**Part IV**  
**Structure of Argumentation**

# Chapter 13

## Against Making the Linked-Convergent Distinction

G. C. Goddu

### 13.1 Introduction

The intuition guiding the avowed distinction between linked and convergent argument structures is easy enough to grasp – in various arguments some of the premises appear to *link* together to form a single reason for the conclusion, while other premises appear to constitute separate reasons which independently *converge* on the conclusion. Though the intuition is easy enough to grasp, as James Freeman has recently pointed out: “the problem of clearly distinguishing linked from convergent argument structure has proven vexing” (Freeman, 2001, p. 397). Indeed, the question remains whether the intuition truly captures a real distinction.

In recent work, I have argued against some of the top contenders for how to make the linked-convergent distinction (Goddu, 2003, 2007). Here I shall argue against making the distinction at all. In section 2, I shall sketch out the problem and briefly discuss why the problem has proven so vexing. My suspicion is that the problem is vexing because it is impossible to solve. I shall not, however, attempt to prove that here. Instead, in section 3, I shall argue that, even if we grant there is a distinction to be made, there is no good reason to bother making the distinction. In particular, I shall present and rebut the three reasons that have been given to justify making the distinction.

### 13.2 Preliminaries

Suppose we have a given set of premises  $\{P_1, \dots, P_n\}$ , for a given conclusion  $C$ . If we are interested in this argument’s structure, we are interested in how to partition  $\{P_1, \dots, P_n\}$  into subsets. Each subset is a reason for the conclusion. If a subset contains more than one premise, then those premises are linked and at least part of

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the argument's structure is linked. If a subset contains exactly one premise, then that premise is independent and at least part of the argument's structure is convergent.<sup>1</sup>

Solving the problem of argument structure, then, is just a matter of finding some relation that accurately partitions the set of premises into sets of reasons. In particular, premises linked by the relation are in the same reason set and premises not so linked are not in the same reason set. The most plausible candidate for this relation is some articulation of "dependent support". To see this, consider the ways various authors try to articulate the notion of linked—"each of which needs the other to support the conclusion" (Thomas, 1986, p. 58); "each premise is somehow incomplete in itself" (Freeman, 2001, pp. 397–98); "the premises work together as a logical unit in such a way that the amount of support offered by one or more premises is dependent on the other(s)" (Bassham, 2003, p. 69).

So why is the problem of clearly articulating the linking relation so vexing? Firstly, there is little consensus on what conditions an adequate version of the distinction must satisfy. For example, is an adequate linking relation one that, in principle at least, would allow us to partition the premise set of *any* argument? On the one hand, the failure of a given proposal to assign a structure to various cases has been used as a reason to reject that proposal. On the other hand, Douglas Walton and Robert Yanal explicitly reject this "completeness" requirement in defense of their preferred proposal. But without some consensus on even moderately clear conditions of successfully solving the problem of argument structure, the problem is going to remain intractable.

Secondly, there are numerous distinct and sometimes conflicting intuitions involved in the crucial concepts of "support" and "dependence/independence". On the one hand, the notion of support is often left unexplicated such that theorists rely upon their various intuitions to decide whether one statement supports another. (I fully admit that I will provide no improvement on this situation in this paper.) On the other hand, the various explications of the "dependence/independence" of that support clearly show that there are multiple incompatible intuitions in play. For example, does it even make sense to talk in terms of one premise "influencing" the support that another premise provides to the conclusion? Many say "yes", but some say "no" and the proposals for making the linked/convergent distinction differ accordingly. Even among those who say yes, intuitions differ over (a) whether the influence has to be zero for a premise to be independent or whether it just has to be below some (vague and unspecified) threshold, or (b) whether the influence has to be total for a premise to be dependent or whether it just has to be above some (vague and unspecified) threshold.<sup>2</sup> With no clear set of success conditions available, adjudicating these differences in intuitions and the proposals that result from them is problematic at best.

While the lack of clear adequacy conditions and the multiplicity of candidate dependence/independence concepts might be reasons for us to suspect that there is no viable linked/convergent distinction to make, they certainly do not prove there is no such distinction. Indeed, without a set of clear success conditions one can neither demonstrate that some proposal for the linking relation is adequate nor demonstrate that no proposal will be adequate. In order to refute the possibility of a coherent

linked/convergent distinction, one would need to show that no proposal works for any plausible set of success conditions – a task I certainly cannot hope to undertake here. Instead I shall adopt another strategy. Putting aside my own suspicions that there is no coherent distinction to be made, I shall argue that regardless of whether there is a coherent distinction, there is no utility in making the distinction. The work we want to do in evaluating arguments can be done equally well without making the distinction. Hence, we ought not make it. I turn to the details of this argument now.

### 13.3 Against Making the Distinction

Given the difficulty of specifying the relations that are being picked out by the linked-convergent distinction, the utility of making the distinction ought to be significant in order for us to keep trying to solve the problem. Even if we grant for the moment that there is a linked/convergent distinction to be made, the significance cannot merely be that we are recording a true fact about the given argument. After all, we could, for example, partition the premise set according to the number of atomic sentences involved in each premise. Premises with a single atomic sentence would go into one subset, premises with two into another, and so on. I suspect this partitioning would be easier to accomplish than the alleged linked/convergent partitioning. Yet, most would agree that partitioning the premise set in terms of the number of atomic sentences is not worthwhile. So defenders of making the distinction need to provide some reason to bother with making the distinction.

According to Freeman (2001), “that for *logical* reasons we should want to distinguish linked from convergent arguments is easily shown” (p. 403). Freeman argues that the distinction has “distinct implications for argument evaluation” (p. 405). In particular,

with convergent arguments, the unacceptability of one premise need not destroy the cogency of the entire case given for some claim. Notice however that should two or more premises be linked, the unacceptability of one means that the entire reason constituted by these premises fails to be cogent. (p. 405, see also p. 413)

Walton (1996) writes:

The key, then, to understanding the purpose of determining whether an argument is linked or convergent resides in looking at the argument from a critic’s point of view. The critic needs to know whether it is necessary to refute both these premises, or if it is enough to find fault with just one, in order for the whole argument to fall down. (p. 175)<sup>3</sup>

So, when it comes time to evaluate an argument, if we have determined its structure, i.e. whether some of the premises are linked or not, we will be able to see how much work needs to be done to refute the argument, at least in terms of rejecting premises. In particular, we need only refute one premise from each reason subset in order to reject all the reasons for a given conclusion. Why is rejecting a single premise from each reason subset sufficient? There is a strong and a weak answer to this question.

The strong answer is that only reasons provide support for conclusions. Hence, premises that are merely a proper part of a reason subset cannot provide support for the conclusion independently of being part of the reason. Freeman, who endorses what Walton calls the “Suspension/No Support Test”, viz. “If one premises is suspended, the conclusion is not given any support” (Freeman, 2001, p. 411, 417) at least implicitly accepts the strong answer.

The weak answer is that only reasons provide sufficient support for conclusions. Hence, premises that are merely a proper part of a reason subset cannot provide sufficient support for the conclusion independently of being part of the reason. The premise might provide some support on its own, but not sufficient support. Advocates of what Walton calls the “Suspension/Insufficient Support Test” would presumably accept the weak answer.

Unfortunately, counterexamples to both tests (and hence both the strong and weak versions of the key reason for making the linked/convergent distinction) seem legion.

Consider, for example:

A.

1. Either George is not male or George is a brother.
2. George is male.
3. Thus, George is a brother.

(A) appears to be a canonical example of an argument with a linked structure and yet it fails the Suspension/No Support Test, for surely premise 2 alone provides some support for the conclusion. More generally, take any example of a two-premise argument, P1, P2 / C that is accepted as convergent. Now construct the following argument:

B.

1. Either not both P1 and P2 or C.
2. P1
3. P2
4. Thus, C

(B) also appears to be a canonical example of a linked argument structure and yet it *must* fail the Suspension/No Support Test, since premises 2 and 3 clearly support the conclusion independently of either premise 1 or each other.<sup>4</sup>

Perhaps, in order to save the reason for making the distinction, one might bite the bullet and just accept that argument (A) and instances of (B) constructed in the right way are really arguments with a convergent structure. Freeman, however, cannot bite this bullet, since Freeman understands support in terms of positive relevance and then *analyzes* relevance in terms of canonical inference rules. He writes: “A set of statements P1, P2, ...Pn is relevant to a statement Q if there is some n-premised inference rule in C [the canonical set of inference rules] licensing the inferential move from P1, P2, ..., Pn to Q” (p. 415). Indeed, in his explication he takes it for

granted that standard inference rules such as *modus ponens*, *modus tollens*, and, disjunctive syllogism are canonical inference licenses. He writes, for example, “just as clearly—the challenger being a normal human being—the inference rule *modus ponens* is part of her stock of inference licenses” (p. 418). Freeman explicitly links his analysis of relevance to the linked/convergent distinction as follows:

Our general understanding is that premises should be linked when there is some multi-premise inference rule which renders them together relevant to the conclusion. Premises are convergent when for each there is some warrant or inference rule which constitutes that premise a mark for the conclusion or renders it individually relevant to the conclusion.” (p. 417)

Call what Freeman advocates here, the Inference Rule Test for the linked/convergent distinction.

Freeman holds that the Inference Rule Test and the Suspension/No Support Test give the same answers. After all, he writes: “Our explication of the linked-convergent distinction through relevance and its explication through inference rules means that our approach favors Walton’s Suspension/No Support Test” (p. 417). But, as the examples above show, the Suspension/No Support Test and the Inference Rule Test do not give the same answers. (B)-type arguments fail the Suspension/No Support Test, but are instances of canonical inference rules. Freeman has to give up something.

One option is to keep the Suspension/No Support Test, but give up his analysis of relevance in terms of inference rules. In this case, Freeman has to bite the bullet and say that what appear to be canonical examples of linked argument structures are really convergent. Indeed, once one gives up on the canonical examples, what sort of cases is Freeman left with as examples of linked argument structures? One example that seems to satisfy the Suspension/No Support Test is the following:

C.

1. The moon is out.
2. Grass is green.
3. Thus, all is well in Denmark.

After all, if either premise is suspended, then the other gives no support to the conclusion. But (C) seems to be, on first glance anyway, an example of a convergent argument structure.

On the other hand, Freeman could give up the Suspension/No Support Test, but keep his analysis of relevance and the Inference Rule Test. But giving up the Suspension/No Support Test (or the Suspension/Insufficient Support Test) means giving up his justification for making the distinction in the first place.

Interestingly enough, Walton himself rejects both the No Support and the Insufficient Support Tests, so it remains unclear on what grounds Walton holds his “key purpose for determining” an argument’s structure. At the same time, though not as strongly committed as Freeman, Walton (1996) also stresses the importance of logical form. He writes: “The main clue to judging whether an argument is linked or convergent is the argument’s structure” (p. 160).<sup>5</sup> Perhaps then one might try to hold to the Inference Rule Test (or Clue) as a justification for making the

distinction – remove part of the inference rule and the reason for the conclusion no longer exists.

One problem is that simple inference rules, in Freeman's sense of rules, are easily embeddable in larger inference rules. The (B)-type cases above show this. Start with canonical inference rules P1/C and P2/C. Given that disjunctive syllogism is a canonical inference rule, the following is an allowable inference rule, viz. either not P1 and P2 or C, P1, P2 /C. But in this case rejecting P1 does not remove all allowable inference rules to C from the premise set. Hence, a critic cannot rely merely on the argument's structure (at least according to the Inference Rule Test) in order to determine which premises need to be rejected.

But a more significant problem is that an argument's form is not the relevant variable in determining which premises need to be rejected in order to refute a given argument. Consider the following argument:

D.

1. The die is red.
2. The die shows an odd number.
3. Thus, the die is a cube.

Situation 1: There are 8 red tetrahedral dice with only even number faces, 1 red standard cube die, and 8 blue standard cube dice. In this case, the premises together force the conclusion, but separately each premise alone provides very weak evidence for the conclusion. Hence, we only need to refute one.

Situation 2: There are 8 red standard cube dice, 1 red tetrahedral die with only even number faces, and 1 blue standard cube die. In this case, both premises strongly support the conclusion independently of the other, but together conclusively support the conclusion. Hence, assuming that the context allows 88% to count as sufficient support, each premise alone sufficiently supports the conclusion and so both premises would have to be refuted.

Situation 3: There are 8 red standard cube dice, 1 red tetrahedral die with only even number faces, and 10 blue standard cube dice. In this case, premise one strongly supports the conclusion, while premise 2 does so only weakly, but again together conclusively support the conclusion. In this case, only premise one would have to be refuted. The situation can be adjusted yet again so that only premise 2 would have to be refuted.

Argument (D) is a single argument with a single logical form, yet all possible patterns of what premises would need to be rejected to refute argument D can be instantiated. Hence, which premises need to be rejected to refute an argument need not co-vary with the argument's logical form. If argument structure is linked to argument form, as both Freeman and Walton maintain, which premises need to be rejected does not co-vary with an argument's structure either. But then what is offered as the prime reason for making the linked/convergent distinction, i.e. giving the critic valuable information about which premises need to be refuted, isn't really a reason for making the distinction at all. [To see this another way, consider situation 2 split into two cases: Case 1: The support required in the context for the argument to count as acceptable is preponderance of the evidence. In this case, both

premises need to be refuted. Case 2: The support required is 100%. In this case refuting either premise is sufficient. But then the actual support that the premises give, both individually and together, is not the determining factor for what premises need to be refuted – the variable is the degree of support required in the context.]

Are there other reasons to make the linked/convergent distinction? Walton gives two other reasons: (1) the distinction helps identify whether an arguer begs the question and (2) the distinction helps in identifying unexpressed premises. I shall address these two reasons in turn.

Suppose the justification for P1 of the argument, P1, P2 / C is C itself. According to Walton, whether this is a case of begging the question depends upon whether P1 and P2 are linked or not. If they are linked, then the reason for C is justified by C itself, which is a case of begging the question. If the premises are not linked, then only one of the reasons for C is justified by C itself, so is not a case of begging the question (Walton, 1996, p. 36).

This reason is a very specific case of the key reason discussed above. In this case we have a reason to reject premise 1 (at least insofar as it is used to justify C). The question then is whether this rejection is sufficient to reject the argument for C. But whether P2 is sufficient by itself for C depends (as argument (D) shows) on whether the support P2 gives by itself is more than what the context requires in order to accept C. But, as we have seen already, whether P2 gives this required support fails to co-vary with whether or not P2 is linked to P1. Hence, whether an arguer has committed a begging of the question does not depend on the argument's structure.

Walton's (1996) only comment on his final reason, i.e. that the distinction helps in identifying unexpressed premises, is as follows:

Over and above the recognition that an argument has an identifiable form, however, our main method for identifying non-explicit premises will be the method of diagramming itself. For example, if a stated premise is part of a linked structure that clearly requires some other unstated but presumed premise to support its conclusion, then that unstated premise can be identified by the method of diagramming. Hence, a large part of the best method for filling in enthymemes is, in fact, the identification of linked structures, as part of the method of diagramming. (p. 249)

This reason appears to assume that we can identify linked-structures independently of our access to all the premises involved in that structure. After all, we are supposed to use the structure and the explicit premises to which we have access in order to fill in the missing premise(s) of the structure. But what are these alleged structures? Given Walton's commitment to using an argument's form as at least a clue to its logical structure, one might think these structures are logical forms such as *modus ponens*, etc. But Walton's first sentence seems to suggest that these structures are something over and above the argument's form. If they are something over and above an argument's logical form, Walton needs to specify what they are and how we recognize them before we can evaluate his claims that identifying argument structure will help us identify unstated premises.

If, on the other hand, the linked structures we can identify prior to having all the premises are just logical forms such as *modus ponens*, etc, then determining an argument's structure becomes completely superfluous to identifying missing



premises. It is the form that is doing the work, not the additional fact that arguments with that form are linked (or convergent). Even if we assume that all *modus ponens* or whatever are linked (an assumption I am not fully prepared to make), a person could identify a suppressed premise for a *modus ponens* without even knowing of the linked/convergent distinction. Hence, we can identify unexpressed premises without ever appealing to the argument's structure at all.

### 13.4 Conclusion

We do not need to make the linked/convergent distinction in order to (a) identify what premises can be rejected to refute a given argument, (b) determine whether the argument is a case of begging the question, or (c) identify unexpressed premises. Hence, unless other reasons are forthcoming to justify making the linked/convergent distinction, we have no good reason for making the distinction. That the problem of specifying the linked/convergent distinction has proven extremely vexing is beyond question. Should we keep expending effort trying to solve this problem? Not if, as I have established here, there is no good reason to make the distinction.

### Endnotes

- 1 Given this set-up, arguments with a single premise are automatically convergent. This set-up is not without precedent (see Vorobej, 2006). However, if this result is bothersome, just restrict the discussion to arguments with two or more premises.
- 2 For a more detailed discussion of the varying intuitions see Walton (1996), especially chapters 4 and 5.
- 3 Walton repeats the claim again on p. 176. Note also that earlier, on p. 169, Walton gives a version that makes it sound like a test, i.e. if need to refute just one, then linked; if both then convergent.
- 4 To generate a counterexample to the Suspension/Insufficient Support Test, just start with an argument where at least one of P1 or P2 is by itself sufficient for the conclusion.
- 5 By "structure" here Walton means logical form in the sense of *modus ponens*, etc., though his subsequent discussion of arguments with no known structure, i.e. form, indicates that Walton's understanding of 'structure' is narrower than Freeman's sense in terms of inference licenses.

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# Chapter 14

## Argument Strength, the Toulmin Model, and Ampliative Probability

James B. Freeman

### 14.1 The Problem

Many within informal logic hold that to be logically good, the premises of an argument must constitute grounds adequate for the conclusion. This criterion is also expressed by saying that the premises must support the conclusion with sufficient strength or weight, sufficient that is to transfer the acceptability of the premises to the conclusion. But “strength,” “weight” are obviously metaphorical. What does argument strength or weight of premises mean literally? How in a given case may one determine degree of strength, and how much strength is necessary to be sufficient? These are open questions. To be sure, support is sufficient if the premises deductively entail the conclusion. To be sure also, for non-demonstrative arguments, many textbooks offer a “popular” answer – the premises must render the conclusion *probable*. More specifically, the probability of the conclusion, given the premises, must be sufficiently high.

But what is this relation? There is not even terminological agreement in the literature. Plantinga (1993, p. 139) calls it epistemic conditional probability. Skeyrms (2000, p. 21) calls it inductive probability, using “epistemic probability” for a distinct notion, the inductive probability of a statement given one’s stock of relevant knowledge. The very use of “inductive” may be contentious. Some, Govier (1987, pp. 37–54) in particular, believe there are various types of non-demonstrative argument, inductive being only one. Following Cohen (1989), we propose to call the relation “ampliative probability.” Inductive probability suggests being inductive in the stereotypical sense of being based on generalizations supported by evidence concerning particular observed instances. Ampliative induction “extrapolates beyond the existing data” (p. 1), the hallmark of any non-demonstrative argument,

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and may be applied to non-empirical issues of “ought” in addition to “is.” However, Plantinga (1993) has succinctly characterized the problem:

What is the relation between a pair of propositions  $A$  and  $B$  when the epistemic conditional probability of  $A$  on  $B$  is high? [In asking the question of an argument, we may clearly let  $B$  be the conjunction of the premises.] What kind of account or analysis can we give of this relation? What makes it the case that  $P(A/B)$  is high? (p. 139)

Let us designate the ampliative probability of  $C$  with respect to  $P$  by  $\Pr_A(C/P)$ . Where  $P$  is the conjunction of the premises of a non-demonstrative argument, are we thus saying that the relation denoted by  $\Pr_A(C/P)$ , and thus the concepts of argument strength or weight, satisfy the axioms of the probability calculus? In (1977) and (1989), Cohen has raised significant objections to this claim. Probability on the standard theory satisfies the complementational principle:  $P(\sim B/A) = 1 - P(B/A)$ . Where  $D$  is the data that five voters interviewed support Jones and  $C$  the claim that the next voter to be interviewed will support Jones, assuming a voting population of any significant size, the strength of the argument from  $D$  to  $C$  is intuitively weak;  $\Pr_A(C/D)$  is low. But it does not follow that  $\Pr_A(\sim C/D)$  is high. (If anything, it is lower.) The data simply do not give us strong reason to accept either the conclusion or its negation.

It seems that the multiplicative principle for conjunction may also be counterexemplified. In (1989, p. 19), Cohen asks us to “suppose an art historian declares two pictures to be genuine Vermeers.” Let  $p_1, p_2$  denote these two paintings respectively. Let  $P_1$  abbreviate the statement “Painting  $p_1$  is a genuine Vermeer” and similarly for  $P_2$ . Let  $V_1$  abbreviate the statement “The art historian vouches for  $P_1$ ” and similarly for  $V_2$ . Then consider the argument:

$$\frac{V_1 \& V_2}{\therefore P_1 \& P_2}$$

Let us assume that the art historian’s examining and rendering an opinion on  $p_1$  does not affect his judgment on  $p_2$  or vice versa. It would seem then that  $V_2$  is not relevant to  $P_1$  and  $V_1$  is not relevant to  $P_2$ . Suppose the art historian is highly respected and his judgment thus highly reliable. Suppose we want to say then that  $\Pr_A(P_1/V_1)$  is high, e.g. = .9, likewise for  $\Pr_A(P_2/V_2)$ . Hence  $\Pr_A(P_1/V_1 \& V_2) = .9 = \Pr_A(P_2/V_1 \& V_2)$ . But does it follow that  $\Pr_A(P_1 \& P_2/V_1 \& V_2) = .9 \times .9 = .81$ ? Does it follow that the more paintings an expert vouches for, the weaker the argument? Why, having examined both paintings, is the weight, strength, probative force of the expert’s voucher thus weakened? Should the multiplicative principle hold, then, should the expert vouch for three paintings, the strength of his voucher would be weaker yet. If he vouched for seven,  $\Pr_A(P_1 \& P_2 \& \dots \& P_7/V_1 \& V_2 \& \dots \& V_7) = .4783$ , less likely than not. But is this true? Cohen (1989) comments,

The warranty for the conjunction seems no less reputable, and no less thoroughly researched, then for either of the conjuncts.[...] Of course, the *chance* of both pictures’ being genuine may well be a lot less than the chance of just one’s being genuine. But is the credibility of their genuineness to be judged in terms of such chances [...] or in terms of the reputation of the author of the warranties that have been given you? (pp. 19–20)

Cohen has proposed an alternative account of ampliative probability. Is this account more suitable to explicate the notion of strength, weight, or ground adequacy, for non-demonstrative arguments? This is a huge question, since the class of non-demonstrative arguments is very diverse. But there is an intriguing way to cut down this question to approach a partial answer. In (1977), Cohen offers ampliative probability as an account of strength for a particular class of non-demonstrative arguments, including arguments frequently found in judicial contexts. In (1958), Toulmin proposes a jurisprudential model or analogy as a general understanding of argument. The conjunction of Toulmin and Cohen as seeing jurisprudential or judicial arguments as somehow typifying a wider, even generic class of arguments is striking. To what extent can Cohen's concept of inductive probability be applied to assessing strength of arguments properly understood according to Toulmin's jurisprudential model?

## 14.2 Toulmin Arguments and Warrants

Although Toulmin proposed his model as a general account of the layout of arguments, there is implicit in his discussion a feature which arguably constitutes a significant limitation. In presenting his layout, all the examples of claims are singular statements:

Harry's hair is not black.  
 Petersen will not be a Roman Catholic.  
 Wilkinson has committed an offence against the Road Traffic Acts.  
 Harry is a British subject.  
 (1958, pp. 97, 99)

Likewise, the data statements are all singular:

Harry's hair is red.  
 Peterson is a Swede.  
 Wilkinson was timed driving 45 m.p.h. in a built up area.  
 Harry was born in Bermuda.

Toulmin's discussion considers no examples where claim or data are generalizations. If one accepts that universal generalizations are legitimate statements, which may be argued from or for, that such statements appear neither as claims or data in Toulmin's model constitutes a significant limitation.<sup>1</sup> Thus, the class of arguments to which the Toulmin model may be applied is apparently restricted to arguments from singular premises to singular conclusions. But this is not an insignificant class of arguments. Let us refer to the non-demonstrative members of this class of arguments as Toulmin arguments. Such arguments then proceed from singular data premises to singular conclusions or claims. The warrants of such arguments are less than universal, subject to conditions of rebuttal, and may be backed in various ways.

As we shall develop in this paper, the combination of backing and rebuttals for a given warrant determine its degree of ampliative support, which then constitutes the strength or ampliative probability of the corresponding argument. We now come to a crucial point. As we have indicated in Freeman (2005b), although Toulmin saw arguments belonging to fields and criteria for evaluating arguments as field dependent, determined by what is recognized as good arguments by practitioners within that field, we may classify the warrants of arguments epistemically. The faculties or belief-generating mechanisms enabling one to grasp the connection indicated by a warrant in the first place and to identify the rebuttals and backing bearing on what Toulmin would call the warrant's authority and currency constitute different factors determining the strength of the warrant. We contend that determining the strength of non-demonstrative Toulmin arguments involves taking account of these epistemic factors and that this strength can be understood through Cohen's account of ampliative probability.

In Freeman (2005b), we distinguished three types of contingent warrants—empirical, institutional, and evaluative. Empirical warrants, such as

Given that	$x$ is a member of a colony of bees
One may take it that	$x$ will return repeatedly to a blue colored food source

concern connections recognized through observation. These connections can not only be between overtly observable events or conditions, as in our example, but may concern connections between intentions and behavior.

Given that	$x$ intends to return the book
One may take it that	$x$ will take some action causing the book's return
Given that	$x$ has mailed the letter
One may take it that	$x$ wants the addressee to receive it.

The former we call empirical physical warrants, while the latter are empirical personal warrants. Empirical warrants are supported "from below," by observation of particular instances. Institutional warrants by contrast are supported from above, through our understanding of constitutive principles. We understand "institution" in Searle's (1969) sense as a system of constitutive rules (p. 51), where such rules "do not merely regulate, they create or define new forms of behavior" (p. 33). The paradigm cases of institutional warrants are legal warrants. For example,

Given that	$x$ is a contract signed by both parties
We may take it that	$x$ is valid

Toulmin's perhaps most classic example illustrates a legal warrant:

Given that	$x$ was born in Bermuda
We may take it that	$x$ is a British subject

Clearly, one would not observe to see whether contracts signed by both parties are valid (whatever observing validity might mean). Rather, one would consult the relevant section of contract law. Our reading, involving not simply observation but understanding, of that section would constitute evidence backing the warrant. Likewise, an empirical survey of those born in Bermuda to determine whether they were British subjects would be wrongheaded. Rather, as Toulmin (1958) tells us, the warrant is “implicit in the British Nationality Acts” (p. 101), and to back it one would appeal “to the statutes governing the nationality of people born in the British colonies” (p. 104).

With many philosophers, we recognize that evaluative properties, such as intrinsic goodness or badness, rightness or wrongness, virtuousness or unrighteousness, supervene upon other properties. For example, the badness of a given situation may be consequent upon the pain involved. Evaluative warrants then are of the sort<sup>2</sup>

Given that	$x$ is pleasurable
We may take it that	$x$ is intrinsically good
Given that	$x$ is an instance of promise keeping
We may take it that	$x$ is a duty
Given that	$x$ practices benevolence
We may take it that	$x$ is virtuous.

May ampliative probability give an account of strength for Toulmin arguments with these various types of non-demonstrative warrants, and may it let us define and identify when strength is sufficient? We need first to give an account of ampliative probability.

### 14.3 Cohen’s Conception of Ampliative Support and Ampliative Probability

In (1977), Cohen presents an account of ampliative support, referred to as inductive support, for empirical universally generalized conditional statements. A paradigm example might be

Any colony of bees returns repeatedly to a blue colored food source.

To gain evidence for this statement, one designs a series of tests. The design is motivated by entertaining the hypothesis that discriminating the color blue explains why the bees return repeatedly to the source and seeking to rule out plausible alternative explanations. In test  $t_1$ , one simply notes bee behavior. Do bees return to a particular blue card which has been a food source? However, perhaps it is not the *color* of the food source, but its shade, relative position, or smell (Compare Cohen, 1977, p. 130). There is some finite number of alternative hypotheses, which introduce relevant variables. The various shades or various relative positions of the card are values of the first two variables. Although there are infinitely many values of these two variables, experimenters will identify a finite number of ranges within which these values will fall and select a representative from each range. By contrast, smell

of food might be regarded as a variable having just two values. Either there is smell of food on the card or there is not.

The series of variables gives rise to a series of cumulative increasingly complex tests. Assuming that shade, relative position, and smell of food are taken in that order, in test  $t_1$ , none of these variables are varied and the return of the bees to the card noted. In test  $t_2$ , the blue card is surrounded by other cards of differing shades of grey from black to white. The bees continue to return to the blue card. This shows that shade is not a causal factor, and the generalization has passed test  $t_2$ . In test  $t_3$ , both shade and relative position are varied. If the generalization holds for all tested combinations of values of these two variables, the generalization passes test  $t_3$ . In test  $t_4$ , experimenters may place a glass cover over the food to remove its smell. This variable is then varied in combination with the previous two. Should the bees continue to return to the blue card, the generalization has passed test  $t_4$ .

The number of tests which a generalization has passed determines its degree of inductive support. Where the number of tests is  $n$  (and hence the number of variables deemed relevant is  $n-1$ ), degree of support may be understood as a function  $s[H, E]$ , where  $H$  is the universally generalized hypothesis being tested,  $E$  is a body of evidence, the results of a series of canonical tests.  $s[H, E]$  maps into  $\{0, 1/n, \dots, i/n, \dots, n/n\}$ . Let  $E$  represent the total body of evidence generated by the  $n$  tests. If  $H$  fails even test  $t_1$ ,  $s[H, E] = 0$ . If  $H$  passes  $t_1$ , then  $s[H, E] \geq 1/n$ . If  $H$  passes  $t_i$ , then  $s[H, E] \geq i/n$ . If  $H$  passes  $t_i$  but fails  $t_{i+1}$ , then  $s[H, E] = i/n$ . If  $H$  comes through all  $n$  tests without falsification,  $s[H, E] = n/n$ .

If a hypothesis fails test  $t_i$ , one may modify the hypothesis by adding to the antecedent the condition that the falsifying values of the relevant variable do not hold. For example, should height of the food source from the ground be a relevant variable and should the blue colored source of food be placed above a certain distance from the ground, say  $m$  feet, bees will no longer return to it, then one could modify the hypothesis to read

Any colony of bees returns repeatedly to a blue colored food source placed no more than  $m$  feet above the ground.

The revised hypothesis will not be falsified by the test varying relative position.

We thus have a definition of inductive support as a binary relation holding between a generalization and a body of evidence. Cohen (1977) points out that to be genuine, tests results are "always replicable, within appropriate limits of precision" (p. 133). Hence, if  $E$  is genuinely, positively to support  $H$ , "E must also state grounds for inferring the replicability of the results it reports" (p. 134).  $E$  contains reports of the tests  $t_1, \dots, t_i, i \leq n$ , where  $n-1$  is the number of relevant variables. At each test  $t_i$ , only the variables up to  $i-1$  are varied and  $E$  reports only about the results of those variations.  $E$  is implicitly saying that none of the variables  $v_1, \dots, v_{n-1}$  were varied in test  $t_i$ . Hence, assuming  $v_1, \dots, v_{n-1}$  is a complete list of the relevant variables,

The reported outcomes must have ensued solely as a result of the reported experimental circumstances and can be expected, so far as similar causes produce similar effects, to recur in the same circumstances, whenever all variants of other relevant variables are again absent. (Cohen, 1977, p. 134)



Cohen sees evidential replicability as having two important implications. First, we may meaningfully introduce a unary support grading for a hypothesis  $H$ . From  $s[H, E] \geq i/n$ , we may infer  $s[H] \geq i/n$  (1977, p. 134). We may refer to  $s[H]$  as the reliability of  $H$ . The inference is defeasible because there may have been mistakes in drawing up the list of relevant variables. The second implication is that even if  $E$  ultimately falsifies  $H$  at level  $i+1$  but at no level previously, this does not mean that  $s[H, E] = 0$  or that  $s[H] = 0$ . Rather  $s[H, E] = i/n$ .  $H$  has passed tests  $t_1, \dots, t_i$  and must be given credit for that. The reliability of  $H$ ,  $s[H] = i/n$ .

Given this concept of reliability, we may define a concept of inductive probability.<sup>3</sup> Suppose  $s[(x)(Rx \rightarrow Sx)] = i/n$ . Consider the argument

$$\frac{Ra}{\therefore Sa}$$

How probable, in the sense of ampliative or inductive probability being defined, is the conclusion given the premise, i.e.  $\Pr_A[Sa, Ra]$ ? It is also  $i/n$ . Thinking of probability, as Cohen does, as a grading of the soundness of an inference rule, the inductive probability of an inference rule will be the same as the reliability of the generalization corresponding to that rule. Cohen notes that as statements of inductive support are empirically defeasible, so are statements of inductive probability. In particular, such assessments may need to be significantly revised upon the discovery of new relevant variables.

Cohen has thus given us an answer for how strongly the premise of a certain type of non-demonstrative argument supports its conclusion. If the premise of the argument ascribes some property, relation, or condition to some particular or particulars and the conclusion ascribes some further property to these particulars, where the universally generalized conditional corresponding to the inference rule of the generalization is empirical, the strength of support is the same as the degree of inductive support for that generalized conditional given by a series of canonical tests designed with reference to the variables understood relevant to confirming or falsifying the generalization.

Clearly for empirical physical warrants as illustrated in our examples, the body of evidence determining the degree of ampliative probability constitutes the backing for the warrant, while the values of relevant variables constitute potential rebuttals. Cohen's analysis thus marks an advance over the simple statement of Toulmin's categories by indicating a canonical construction for the backing of (at least some) empirical warrants from which we may derive an objective answer to how strongly the premise or premises of the argument support the conclusion, based on our current knowledge of the relevant variables. This raises a significant question. As presented, Cohen's concept of ampliative probability applies to arguments with empirical physical warrants. Does ampliative probability have a wider application? In particular, may it apply to Toulmin arguments with personal, institutional, or evaluative warrants? Let us approach this question by first asking about Cohen's conception of the scope of ampliative probability in (1977).

## 14.4 Ampliative Probability and the Toulmin Model

On Cohen's view, the class of arguments whose strength can properly be appraised by ampliative probability consists of those arguments to whose warrants corresponds a generalization whose inductive support we may in some way assess. As our discussion suggests, Toulmin arguments with empirical physical warrants are the paradigm case of arguments whose strength can be meaningfully described as a degree of ampliative probability. Although our examples thus far have involved statements ascribing just monadic properties, this class of arguments clearly includes those with statements ascribing relations. Hence, arguments of the form

$$\frac{\phi a_1, \dots, a_m}{\therefore \psi a_1, \dots, a_m}$$

where  $\phi a_1, \dots, a_m$ ,  $\psi a_1, \dots, a_m$  are singular statements concerning physical matters of fact, are also arguments with empirical physical warrants. Corresponding to the warrants of such arguments are nomic universals (not just accidental generalizations) of the form

$$(\forall x_1) \dots (\forall x_m) (\phi x_1, \dots, x_m \rightarrow \psi x_1, \dots, x_m)$$

Neither  $\phi x_1, \dots, x_m$  nor  $\psi x_1, \dots, x_m$  need be atomic predicates. Indeed,  $\phi x_1, \dots, x_m$  could be a conjunction, where the conjuncts after the first indicate that some relevant variable at least some of whose values falsify an unqualified statement of universal connection does not have such values in this case. But such universals are supported by the series of canonical tests Cohen has used to characterize inductive support.

Physical nomic universals may be appealed to as covering laws in causal explanations. But we may also have personal explanations, appealing in addition to the beliefs and desires of conscious agents. Such explanations also involve nomic universals, supporting what we called personal subjunctives in Freeman (2005a). Statements asserting a general connection between some overt observable behavior and some intention which explains it, such as

If a person were to strike a match, that person would intend for the match to light.

If a person were to put the car key into the ignition and turn it, that person would intend for the car to start.

are paradigm cases of personal subjunctives. As Cohen points out, humans accept a huge stock of such personal generalizations, using them in interpreting and making inferences about human behavior. Such generalizations are standardly not storable with exact precision and are not supported by experimental observational evidence controlled for relevant variables as with physical generalizations at least in scientific contexts. "The level of phenomena with which they deal is altogether too variegated and complex" (Cohen 1977, p. 247). Rather, such generalizations express our presumptions about what is normal or to be expected in human behavior, with the acknowledgment that there can be abnormal situations where these presumptions must be set aside. Such common sense presumptions

can be learned from various sources and may be confirmed, up to a point, by observation of human behavior. They are thus empirical. That they are open to rebuttal in situations not normal makes them analogous to the physical universals which may be falsified given the operation of certain relevant variables. The condition of being in such an abnormal situation constitutes a relevant variable in the personal case. Normally, persons who strike matches intend for them to light, but not when they are demonstrating that matches cannot light in a vacuum. As with physical generalizations, these rebutting conditions are open to empirical observation.

There is a clear analogy between the physical and personal nomic generalizations corresponding to the empirical physical or personal warrants of Toulmin arguments. Observation that  $\phi$ 's are  $\psi$ 's constitutes zeroth level of support for physical generalizations. Common sense understanding of motivation together perhaps with observation of behavior constitutes at least a basic level of support for personal generalizations. Observation of the effect or non-effect of various physical relevant variables can lead to a higher level of support or to a refined statement of the generalization. Consideration of special factors in a situation which might affect a person's motivation and observation to see the effects of these factors could lead to more strongly supported personal generalizations or generalizations refined to assert that the falsifying values of the relevant variables do not hold.

As with the arguments whose warrants correspond to physical generalizations, the arguments whose warrants correspond to personal generalizations are of the form

$$\frac{\phi x_1, \dots, X_m}{\therefore \psi X_1, \dots, X_m}$$

where  $\phi x_1, \dots, x_m$ ,  $\psi x_1, \dots, x_m$  express properties or relations concerning overt human behavior or the intentions, motivations, or other dispositions underlying such properties. Here again, premise and conclusion are singular statements.

Corresponding to institutional warrants are nomic institutional generalizations. For example,

If a contract were signed by both parties, it would be valid.

If someone were born in Bermuda, he or she would be a British subject.

Since the evidence for such claims does not consist in observed confirming instances, to speak of such generalizations as supported to a certain degree through a series of canonical tests gathering experimental, observable evidence is not meaningful. However, we believe that the notion of ampliative probability can be extended to arguments with institutional warrants. A comprehensive discussion of this issue demands a separate inquiry. But we may indicate the strategy here. Suppose one questioned a legal generalization corresponding to a legal warrant. How might one argue for the generalization? As Cohen points out in (1970, pp. 157ff), one could give an argument from legal precedent. This would involve first identifying the branch of law involved. That issue seems straightforward for our two examples. Cohen indicates that "Next we have to determine the legal variables that are relevant

to this branch of law” (1970, p. 157). Variables relevant to whether a signatory to a contract was bound by its provisions include whether or not the person was under duress when he signed the contract or whether or not he was mentally competent. Variables relevant to citizenship include whether or not one has formally renounced that citizenship.

We can then, at least theoretically, define a series of canonical tests analogous to those presenting evidence for empirical generalizations based on experimental results. If a contract between two persons is valid, then both are bound by its provisions. If one defaults on his obligations, the other has good grounds for redress in the courts. Presumably, a suit might pass through courts at various levels, but in each instance there will be a highest court which has rendered a verdict. The evidence then consists of the records of these highest court decisions. If the decision went for the plaintiff in every case, then the generalization would be fully supported. If the decision went for the defendant, given certain values of a relevant variable, then the generalization would have less than full support. However, qualifying the generalization to rule out the disconfirming values of the relevant variables yields a more strongly supported generalization, and a stronger corresponding argument. Hence, an argument from the premises that both parties signed the contract and neither were under duress would be a stronger argument for the conclusion that the contract was valid than one where the sole premise was that both parties signed the contract. For both arguments with empirical warrants and arguments with institutional warrants, resistance to potential rebuttals indicates a stronger argument, a strength appropriately indicated by a degree of ampliative probability.

Likewise, evaluative warrants can be rebutted. That some experience is pleasurable is a *prima facie* reason to say that it is good. That one has promised to do *X* is a *prima facie* reason to say that one ought to do *X*. But a pleasurable experience purchased at the expense of frustrating the legitimate interests of others is not good, nor is keeping a promise when some alternative action involves a weightier obligation. Given an evaluative generalization then and a recognized set of relevant variables, one can envision a series of canonical test cases, where individual situations are submitted to the test of conscience or moral sense. (Compare Cohen, 1970, p. 174). As with legal generalizations, evaluative generalizations qualified to indicate that certain values of relevant variables do not hold are more strongly supported than unqualified generalizations by this series of canonical tests of conscience. Likewise, arguments with evaluative warrants whose premises include assertions that rebutting conditions do not hold are stronger than arguments which do not, a strength which is also expressible through a higher degree of ampliative probability. Hence for each type of contingent warrant in our epistemic classification, the concept of ampliative probability applies to Toulmin arguments with such warrants. But how much ampliative strength is sufficient strength? What level of probability is necessary for ground adequacy? We turn to these questions in the next section.

## 14.5 Ampliative Probability and Assessing Argument Strength

Can we use Cohen's concept of ampliative probability to assess under what conditions premises are sufficiently strong so that their acceptability (should they be acceptable) is transferred to the conclusion? The question of degree of sufficiency or strength depends upon the context of the argument we are considering. This is obvious from judicial practice. In criminal cases, the prosecution must establish its case beyond a reasonable doubt. In civil cases, the plaintiff must establish his or her case on balance or preponderance of evidence. In (1977), Cohen shows how ampliative probability can be used in explicating both of these concepts. But let us begin by considering everyday contexts of argument, not those embedded in a formal legal proceeding.

Consider the argument

a ignited the fuse  
 $\therefore$  a intended to explode the bomb.

Certainly the warrant of this inference corresponds to a generalization presumed to hold typically, albeit not universally. *Ordinarily* when one ignites a fuse (connected to a bomb), one intends to explode the bomb. However, the warrant would be rebutted if we knew that the agent believed the bomb to be a fake, the fuse defective, or that the agent intended to douse the fuse with water before the flame could reach the bomb. But suppose we have no reason to believe that any of those rebuttals held in *a*'s case. (This is *not* to say that we have evidence that they are *not* the case.) Then it would seem that if the premise were acceptable, so would be the conclusion.

Why is this argument sufficiently strong to justify our accepting the conclusion or regard the conclusion as a rational belief in light of the premise? Cohen (1977) presents the following rule of acceptance for rational belief for singular propositions based on singular premises:

For any singular proposition *S* about the individual or individuals  $a_1, a_2, \dots, a_n$ , accept *S* if and only if for some *R* you know that *R* states all the relevant evidence available about  $a_1, a_2, \dots, a_n$  and that  $p_1[S, R] \geq k^4$ , where *k* has to be greater than zero but its more precise level is to be determined in accordance with the nature of the subject-matter and the best available list of relevant variables for tests on generalizations about the subject matter (p. 319).

Consider the premise. To be sure, if we had additional premises stating that *a* did not believe the bomb to be a fake, or the fuse defective, or that *a* did not intend to douse the fuse with water, we would have a stronger reason to accept the conclusion than if we had just the premise that *a* ignited the fuse. But in ordinary contexts, do we need this additional information to render the conclusion acceptable? Toulmin (1958) characterizes rebuttals as "conditions of exception" (p. 101) and in their light, "the conclusion holds good 'presumably'" (p. 101). In ordinary contexts, the burden of proof would be on the challenger to present evidence that any of these three conditions of rebuttal held. In ordinary contexts, there is not a mandate to make evidence

countering such rebuttals available. Hence we may judge the premise as stating all the relevant evidence available.

What about the measure  $k$ ? Can we justify that in ordinary contexts  $\Pr_A[a \text{ intended to explode the bomb, } a \text{ ignited the fuse}] \geq k$ , where  $k$  satisfies the conditions of the criterion? I believe we can in this context, and that frequently we need not specify a list of relevant variables together with evidence that the generalization corresponding to the warrant is inductively supported to degree  $k$ . Where a generalization qualified by “usually” or “normally” states the way things are, there is a presumption for it which renders it acceptable.<sup>5</sup> These generalizations describe the default situation and we may let  $d$  indicate a level of support for such generalizations. But in the contexts we are discussing,  $d$  will indicate the minimum level of inductive probability necessary to render the conclusion acceptable given the premises, i.e.  $\Pr_A[S, R] \geq d$ . We might define  $d$  as the least level of support beyond which we are dealing with abnormal or exceptional relevant variables. If it is not a matter of common knowledge that a generalization describes the default situation, then we shall need ideally to resort to a series of cumulative tests on recognized (non-abnormal) relevant variables to verify that it does. The point is that common knowledge can certify that in ordinary circumstances the level of ampliative support and ampliative probability is  $d$  independently of an overt series of canonical tests. Of course, should we have a best available list of relevant variables before us, should we see that variables  $k+1$  and higher are exceptional, and that the generalization passes canonical tests through level  $k$ , we would again have that  $\Pr_A[S, R] \geq k$ . There are hence at least two ways to recognize that  $\Pr_A[S, R] \geq k$ .

Explicating the concepts of proof beyond reasonable doubt and proof on balance of evidence by means of ampliative probability is straightforward. Clearly, some contexts will demand a higher level of evidence than others. Although all things being equal,  $S$  may be acceptable on evidence  $R$ , some contexts, such as Anglo-American criminal court proceedings, may require that we know that all things *are* equal, that our evidence  $R$  encompasses this information. For example, ordinarily

a uttered a falsehood under oath

would be taken as sufficient reason for holding that

a perjured himself.

But clearly there are excepting conditions which we may regard as the operation of relevant variables— $a$  unknowingly uttered a falsehood,  $a$  did not understand what he said,  $a$  made his statement under duress. Let us assume that the listed conditions constitute a complete account of the relevant variables. Clearly then, as long as we have no information that one of these relevant variables constitutes a rebutting condition in this case, the more information we have that a relevant variable is favorable for applying the warrant—i.e.  $a$  knowingly uttered a falsehood, understood what he said and the practice of taking oaths, and was not under duress—the stronger our argument.

Where  $n$  is the total number of relevant variables in this case,  $R_1x$  being the telling of an untruth under oath,  $R_2x, \dots, R_nx$  being the conditions that relevant

variables  $R_2, \dots, R_n$  do not constitute rebuttals in this case, and  $Sx$  the condition that  $x$  perjured himself, then the generalization

$$(\forall x)([R_1x \ \& \ R_2x \ \& \ \dots \ \& \ R_nx] \rightarrow Sx)$$

is fully supported. Consequently

$$\Pr_A[Sa, R_1a \ \& \ R_2a \ \& \ \dots \ \& \ R_na] \geq n/n.$$

(Compare Cohen, 1977, pp. 249–50). By adding the information  $R_2a, \dots, R_na$  to  $R_1a$ , one removes all reasonable doubts in this case and the argument from  $R_1a \ \& \ R_2a, \dots, \ \& \ R_na$  to  $Sa$  constitutes a proof beyond reasonable doubt. This is not to say that the argument is logically valid or that the corresponding generalization is logically true. It is logically possible that we have a Plantinga scenario here. An alien scientist from Alpha Centauri has captured  $a$  and so altered his mind that he regards knowingly uttering a falsehood under oath to be a morally permissible act. But being a research subject of Alpha Centaurean scientists is not a relevant variable. Proof beyond reasonable doubt then is proof from premises that all *recognized* relevant variables in a given case are favorable or non-rebutting.

What may we say then of proof on balance or preponderance of evidence? Let us imagine a situation in which a proponent presents reasons for a conclusion and an opponent seeks to rebut his points by presenting reasons for the denial of the conclusion. We can imagine them proceeding in a point-counterpoint manner, although this need not be their actual procedure. Suppose the proponent presents a reason  $R_1a$  for a conclusion  $Sa$ , where  $s[(\forall x)(R_1x \rightarrow Sx)] = 1/n$ , i.e.  $\Pr_A[Sa, R_1a] = 1/n$ . But suppose  $R_2$  constitutes a rebutting condition here, i.e.  $\Pr_A[Sa, R_1a \ \& \ R_2a] = 0$  and  $\Pr_A[\sim Sa, R_1a \ \& \ R_2a] = 2/n$ . The challenger may answer by presenting another reason for  $Sa$ ,  $R_3$ . This in turn may be rebutted. If each of the proponent's reasons are rebutted by the challenger, then the proponent has failed to establish his case. On the other hand, if the challenger rebuts only some of the proponent's reasons, leaving others unrebutted, the proponent has shown his case on balance of evidence. He has presented more evidence for his conclusion than the challenger has presented for its denial (Compare Cohen, 1977, pp. 252–53). The proponent would have shown his case on balance or preponderance of evidence, even though he had not shown that all relevant variables were favorable. The more considerations the proponent produces, the stronger the argument. "Decisions based on a greater total weight of evidence come out as being sounder, even if the actual truth of the matter is not beyond reasonable doubt" (Cohen, 1977, p. 254). Ordinarily if both sides are allowed to present all available relevant evidence which they deem important, the jury will have sufficient evidence to decide the case where there is a reasonably high ampliative probability for their conclusion. (Compare Cohen, 1977, p. 254). Hence, the notion of ampliative probability allows explication—at least for the class of Toulmin arguments we have identified—of standards of proof which are less than demonstrative, i.e. deductively valid, but which give us objective reason for accepting a conclusion in light of the acceptability of the premises.

We have shown for Toulmin arguments with warrants which can in principle be backed by evidence generated through canonical tests that Cohen's notion of ampli-

ative support and ampliative probability may be applied to determine the degree of strength with which the premise supports the conclusion, and whether that degree is sufficient to render the conclusion acceptable in light of the premise. Our discussion leaves many open questions. We have not discussed how relevant variables are ordered or how one could bring about agreement on their proper ordering, and the effect ordering could have on determining argument weight. We must leave these issues to a further inquiry.<sup>6</sup>

We have implicitly assumed that if a warrant does not hold universally, but only typically or generally, that some rebutting conditions require us to set the warrant aside in certain instances. However, Toulmin in (1958) does not seem to require that less than necessary warrants be always accompanied by rebuttals. “[Other warrants] authorize us to make the step from data to conclusion *either tentatively, or else subject to conditions, exceptions, qualifications*” (p. 100, italics added). Again, it is possible that “a warrant can be supported by pointing to a general correlation only, and not to an absolutely invariable one.” (p. 102) Suppose that our initial observation of bee behavior, canonical test  $t_1$ , indicated that only 90 percent of the time bees returned to a blue colored food source. One might reply that some yet to be identified relevant variable was operative here in 10 percent of the cases. Identify and remove that variable. Then observe bee behavior in a corrected test  $t_1$ . This approach in effect accepts the dictum Cohen endorses, “Same cause, same effect” (See 1970, p. 172; 1977, pp. 170–172.) But does one want to build this assertion into the very understanding of non-demonstrative warrant and the nomic generalization corresponding to it? Corresponding to certain warrants could there simply be statistical nomic generalizations? If so, the class of Toulmin arguments we have delimited in the paper would be a limiting case of a wider class of Toulmin arguments assessing whose strength would involve additional considerations.

Finally, we have already indicated that not every argument is an instance of the Toulmin model. Kienpointner (1992) presents a typology of arguments where he distinguishes warrant-using from warrant-establishing arguments, and these from arguments by analogy and by authority (See p. 182). If the premises of a warrant-establishing argument presented the data of some series of canonical tests, the strength of the argument would apparently be the same as the degree of inductive support. May this be generalized? To what extent may the strength of arguments not in the warrant-using class be appraised through ampliative considerations? These again are questions for further inquiry. To the extent that we have shown here that ampliative probability can be used to define and assess the strength of Toulmin arguments, we have begun an account of argument strength and ground adequacy for non-demonstrative arguments.<sup>7</sup>

## Endnotes

1 As we argued in (1991), Toulmin regards universal generalizations of the form “All A are B” as either presenting statistical reports about a finite class of objects or as warrants, and thus strictly



- speaking inference rules and not statements, not able to stand in either data or claim positions in arguments. However, this view involves significant problems, as we show in (1991), pp. 56–61.
- 2 Here we are taking “x is intrinsically good,” “x is a duty,” “x is virtuous” to ascribe these properties outright or absolutely, as opposed to ascribing *prima facie* goodness, obligation, or virtue.
  - 3 For Cohen’s argument that this concept, which fails to satisfy both the Pascalian principles for negation and conjunction, rightfully deserves to be called a concept of *probability*, see (1977), pp. 199–200 and the sections referred to there.
  - 4 I.e.  $\Pr_A[S, R] \geq k$ .
  - 5 For our discussion of the connection between acceptability and presumption, see (2005a), Chapter 2, especially pp. 21–30. For presumption for the normal, see Perelman and Olbrechts-Tyteca (trans. 1969), p. 70.
  - 6 Cohen addresses these issues in (1977, pp. 140–142).
  - 7 This version of the paper was originally published in *Informal Logic* 26 (2006), 25–40. We want to thank two anonymous referees of *Informal Logic* for comments which have allowed us to greatly improve an earlier version of the paper.

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# Chapter 15

## Modalities as Indicators in Argumentative Reconstruction

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### 15.1 The Semantics of the Modals and the Reconstruction of Arguments

This paper addresses the role of modal expressions as argumentative indicators and the importance of considering the semantics of modality in the reconstruction of argumentation. Modal expressions include modal verbs, such as the English *may*, *can*, *must*, *should*, *will* and many other lexical and grammatical devices. For instance, in English we find modal adjectives (*possible*, *necessary*, *probable*, *likely*, *certain*), adverbs (*maybe*, *necessarily*, *certainly*, *probably*, *likely*, *perhaps*) and nouns (*possibility*, *necessity*, but also less obvious ones like *risk*).

The present investigation builds on previous linguistic work on the semantics of modality (see Rocci, 1997, 2000a, 2000b, 2005a, 2005b, 2006, 2007) which showed that modals can function as indicators of relations between discourse units in a text or dialogue, and that epistemic modals, in particular, can serve as signals of inferential, and hence argumentative, relations.

Here we consider what this analysis entails for the task of reconstructing the structure of argumentation. To do so we will first go back to Toulmin's views on the relevance of modality for understanding the structure of arguments and, more precisely, to the views he states in the very first chapter of *The Uses of Argument* concerning modals and fields of arguments. We will argue that Toulmin is indeed after something which is crucial for the semantics of the modals and relevant for the reconstruction of arguments, but, at the same time, his analysis is problematic on important respects.

In the second part of the article we will present a view of modality, originating in linguistic research on formal semantics, which we believe can capture Toulmin's insights but is not plagued by the same problems and thus can serve as the basis for a treatment of modals in their role of indicators of argumentation.

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Before entering the discussion of modality it is useful to spend a few words on the notion of an argumentative indicator, which we take from Pragma-Dialectics. Houtlosser (2002) defines the notion argumentative indicator as follows:

“*argumentative indicators* [...] point to speech acts that are instrumental in the various stages of dispute resolution. Argumentative indicators may make it clear that argumentation has been advanced and how this argumentation is structured” (pp. 169–170)

A first question which arises concerning potential argument indicators is to know when, under what conditions, a given expression can be said to be an indicator of argumentation. In the pragma-dialectical approach the notion is not restricted to expressions that *always* refer to arguments. van Eemeren, Houtlosser and Snoeck-Henkemans (2007, p. 1) say that an argumentative indicator is “a sign that a particular argumentative move might be in progress, but it does not constitute a decisive pointer”.

It is important here to observe that the non-conclusive nature of the indicator may depend on the *polysemy* of the linguistic structure involved (such as with the connective *because*, which can be used both in arguments and in explanations), but it can also depend on the fact that the indicator does not *refer* to the argumentative move itself but to some other semantic or pragmatic categories, which, for a variety of reasons, can happen to be often – not necessarily always – concomitant with that argument move. Many of the indicators discussed by van Eemeren et al. (2007) are, in fact, of the latter type. For instance, these authors (pp. 172–173) observe that the use of future tense markers (*will, shall, be going to*, etc.) is an indicator that some type of causal argumentation scheme is being used to support the standpoint. Contrary to the case of *because* mentioned above, the link between the future and the argument scheme in question is indirect and connected with different forms of causal reasoning in *different* ways. On the one hand, statements in the future tense are often *predictions*, and predictions are often justified causally by arguments *from cause to effect* – such as in (1). On the other hand, in (2) deliberation on future actions is often justified by the positive/negative nature of the (later) future consequences of these actions. In this second case both the standpoint (Stp) and the argument (Arg) refer to the future, and the inferential link goes *from the evaluation of the effect to the evaluation of the cause*:

- (1) Arg: Storms have devastated the crops throughout the country. Stp: The price of vegetables will increase.
- (2) Stp: Travelling with Mark is definitely a bad idea. Arg: He will annoy you to no end with his strange fixations about hygiene in hotel rooms.

We will come back to varieties of causal argumentation later in the paper. For now, let us establish a distinction between *direct indicators* – which are signs that, in some of their uses, *refer* to argumentative moves (e.g. the connective *because*) and *indirect indicators*, which refer to semantic or pragmatic categories *correlated* to argumentative moves. This distinction will help us dealing with the modals’ role as indicators.

A second question concerning indicators is what exactly does these expressions tell us about the argument being put forth. As observed by Houtlosser (2002, p. 169), in order to be able to evaluate an argument we need *at least*<sup>1</sup> to reconstruct:

- (a) What is the thesis / standpoint / conclusion that is argued for, what is its precise content;
- (b) What is the force of conviction with which the thesis is presented;
- (c) What statements are presented as arguments or premises supporting the conclusion;
- (d) What is the nature of the inferential link that is established between the arguments/premises and the conclusion, that is what kind of deductive rule, topos or argumentation scheme is applied;
- (e) What implicit premises need to be supplied by the audience in order to saturate the requirements of the argumentation scheme or topos.

Linguistic expressions of modality have been addressed as indicators mainly with respect to the *force* of standpoints and considered to be indicators only when they manifest a specific kind of modality, namely *epistemic modality* (cf. Snoeck Henkemans, 1997, pp. 108–117). Snoeck-Henkemans observes that the degree of commitment expressed by the modal “enables the analyst to determine what degree of justificatory or refutatory potential the argumentation should have, in order to lend sufficient support to the standpoint” (p. 113).<sup>2</sup>

According to Snoeck-Henkemans (1997) only what linguists call *epistemic* modalities – many logicians would prefer here to speak of *doxastic* modalities – are used to indicate “the extent to which the speaker is prepared to commit himself to the truth or acceptability of the propositional content of his standpoint” (p. 109) and are not “part of the proposition towards which the speaker has put forward a standpoint” (ibid), while other kinds of modality, like deontic modality, are part of the proposition and thus cannot play the role of *force* indicators.

As we will see later, we basically agree with Snoeck-Henkemans in positing a fundamental distinction between the epistemic and the other kinds of modality with regard to argumentation. Nevertheless, we think it is worth exploring the possible role of all the modalities as (direct or indirect) indicators with respect to the five dimensions mentioned above in (a)-(e). To do so it is useful to start from Toulmin’s position.

## 15.2 Modals and Fields of Argument: Force and Criteria

Interestingly, Toulmin seems to have subscribed to the idea that all kinds of modals, not only those that we called epistemic, act as indicators of the force of the claim, and are intimately connected to the structure of argumentation, at least if we look at the extensive discussion on modals and fields of argument in the first chapter of *The Uses of Argument*. We will show that in this chapter Toulmin comes close to capture a fundamental insight on the semantics of the modals, one which is of capital importance for the reconstruction of argumentation, namely their context dependency; but, trying to muster the modals as evidence for his thesis on the field dependence of argumentation, ends up blurring one fundamental distinction between epistemic-doxastic modality and other kinds of modality.

Toulmin (1958) suggests that modal terms should be understood in terms of their argumentative functions and that their meaning can be analyzed in terms of a stable *force* and “field dependent” *criteria*:

These terms – “possible”, “necessary” and the like – are best understood, I shall argue, by examining the functions they have when we come to set out our arguments (p. 18).

Toulmin proposes to draw a strict parallel between modal meanings and phases in a process of inquiry or argumentation as shown in Table 1 below.

Toulmin explicitly connects this analysis in terms of phases with his quest for a new “procedural” notion of argument form, based on a judicial metaphor, as an alternative to the notion of argument inherited from logic. In fact, according to this analysis the various modals are to be considered as illocutionary markers signaling different kinds of speech-acts relevant in the process of argumentation.

In the second chapter of the book a related pragmatic-argumentative analysis is fleshed out for the epistemic modal adverb *probably*, and for other probability idioms. Toulmin criticizes the statistical interpretation of the semantics of probability expressions, proposing a speech-act based alternative where to say “Probably p” is seen as “asserting guardedly or with reservations that p” (p. 85). Toulmin’s speech-act account of *probability* has been the object of considerable attention by argumentation scholars: Freeman (1991), which follows Toulmin’s views in many respects, criticizes it at length, while Ennis (2006) has recently put forth a qualified defense of it.

Finally, in the third chapter, Toulmin introduces the category of (*modal*) *qualifier* as a distinct component in the so-called “Toulmin model”, meant to provide an “explicit reference to the degree of force which our data confer to our claim in virtue of our warrant” (Toulmin 1958, p. 101) and exemplified by epistemic expressions such as *necessarily*, *probably*, *presumably*, *almost certainly*. The latter certainly represents the best known contribution of Toulmin to the analysis of modals in arguments and seems to be the one from which the prevailing view of modality in argumentation theory stems.

Here, however, we would like to focus on the less quoted remarks of the first chapter, as it is here that one finds the stronger claim that all kinds of modals – not only those we call epistemic or doxastic – are argumentative markers and that their meaning should be understood in terms of an invariant argumentative *force* and context-dependent *criteria*. Toulmin illustrates the role of *must* in the speech act of drawing a conclusion with examples like the following:

- (3) Under the circumstances, there is only one decision open to us; the child must be returned to the custody of its parent.

**Table 1** Modals and phases of an argument according to Toulmin (1958)

<b>Modal Markers</b>	<b>Phases of the Argument</b>
Possibility: <i>may / possible/ [can]</i>	Putting forward an hypothesis as worth considering;
Impossibility: <i>cannot</i>	Ruling out an hypothesis;
Necessity: <i>necessarily/ must</i>	Having ruled out other hypotheses, presenting one particular conclusion as unequivocally the one to accept.

- (4) Considering the dimensions of the sun, moon and earth and their relative positions at the time concerned, we see that the moon must be completely obscured at the moment.

The role played in the argument characterizes the specific, field invariant, *force* of the modal; while the *logical type* both of the conclusion of the premises varies according to what Toulmin calls the *field of argument*. In fact, the whole discussion of the modals in Toulmin is instrumental to assert the field dependence of the criteria of soundness for argumentation (against the idea of formal validity).

To use the only example of modal operator that Toulmin discusses at length in the first chapter, the force of the “modal” *cannot* consists in “ruling out an hypothesis”, but the criteria of this “ruling out” may vary: physical ability, rules and regulations, linguistic conventions, etc.

The criteria behind the different uses of *cannot* (like 3–6 below) can be made explicit following a common pattern, presented in (9):

- (5) Your physique being what it is, you can’t lift that weight single-handed – to attempt to do so would be vain.
- (6) The seating capacity of the Town Hall being what it is, you can’t get ten thousand people into it – to attempt to do so would be vain.
- (7) The nomenclature of sexes and relationships being what it is, you can’t have a male sister – event to talk about one would be unintelligible.
- (8) The by-laws being as they are, you can’t smoke in this compartment, Sir – to do so would be a contravention of them.
- (9) “P being what it is, you must rule out anything involving Q: to do otherwise would be R and would invite S”

According to Toulmin this kind of analysis would show, on the one hand, the invariant argumentative *force* of the modal, and on the other, the variety of facts and considerations that can saturate the variables P, Q, R, S and define the field dependent *criteria* of the modal.

Here Toulmin points to a crucial insight to understand the semantics of the modals and their role in arguments: modals, in fact, are not *one-place operators*, but *relational predicates*. Their apparently widely divergent uses can be reduced to a common *logical core* and to the saturation of certain variables with propositions indeed belonging to different semantic types. The *semantic type* of these propositions and their precise identification sometimes can be made explicit by the syntax of the modal sentence, or recovered from the preceding discourse, but in many uses it must be inferred by the hearer. The same modal word, in different uses, preserves the invariant force taking up different criteria, relevant for the field under discussion.

Where Toulmin’s proposal becomes problematic is in its identification of the *logical core* of the modals with a “role” – in fact a kind of speech act – in an argumentative process, so that the modals become direct argumentative indicators in *all* their uses. The evidence against Toulmin’s suggestion is indeed strong, even if this might not be apparent to a reader who has not passed a great deal of time looking at the behavior of the modals in discourse.

In fact, Toulmin chooses his examples quite aptly. For instance, the fact that he chooses, unexpectedly, to focus his discussion on the impossibility manifested by *cannot* rather than on possibility or necessity modals is not devoid of consequences – as we will see later. Toulmin, on the other hand, does not tell us much about *can*: it's not clear whether he considers it an expression of possibility like *possible* and *may* (that is introducing an hypothesis worth considering), nor the exact relationship in which *can* stands with respect of *cannot*.

Interestingly, if we look at *can* certain problems inherent in Toulmin's view become more apparent. Consider a sentence like (10.a) below, derived from one of Toulmin's *cannot* examples:

(10.a) John can lift 100 kg single-handed.

Here the criteria called forth by the modal appear to be the same of Toulmin's *cannot* example: "John's physique being what it is". The modal seems to indicate *what is possible to accomplish with respect to John's muscles, and physical build in general*. The paraphrase of *can* with *possible* seems fitting. But can we say that the above criteria coincide with the *kind of evidence* at our disposal in evaluating the hypothesis in (10.a)? Let us consider different kinds of arguments that might be relevant for (10.a):

(10.b) John can lift 100 kg single-handed. He has an exceptionally powerful physique.

(10.c) John can lift 100 kg single-handed. I've seen him doing so with my own eyes.

(10.d) John can lift 100 kg single-handed. The trainer told me so.

If in (10.b) we rely indeed on our knowledge of John's physical build to come to the conclusion via a *causal* argument scheme. At the same time, John's physical build is the criteria of the modal. This is what we expect from Toulmin's hypothesis.

But let us consider (10.c), where we base our argument on *testimony* and *example* relying quite solidly on the Aristotelian axiom that *ab esse ad posse valet illatio*. Here we expected that the criteria of the modal should change as the grounds of our argument change. But there is a strong intuition that they don't: in (10.c) *can* continues to mean "possible with respect to John's physical build". This is even clearer in (10.d) where the argument is based on the authority of an expert (*argumentum ex auctoritate*) but *can* does not mean "possible with respect to what an authority said" – the modality is still about the physique.

It has to be stressed that this does not mean that the criteria of the modal cannot change. They do change. Consider (10.e):

(10.e) John can lift 100 kg. The trainer has given his permission / is OK with it.

Here *can* is no longer referring to physical conditions but to the authority of the trainer. Toulmin was right in saying that the meaning of the modals involves a contextual component, but examples (10.b, c, d) showed us that this contextual component does not always change as we change the grounds of our conclusion.

This suggests that the “criteria” of the modal and the “grounds” in the argumentative sense are not the same thing.

Let us consider a related issue. We have successfully paraphrased *can* with *possible* in (10.b, c, d): the arguments have to do with what is possible or impossible to do with a physique like John’s. However it is not sure that this *possibility* corresponds to the act of “putting forward an hypothesis as worth considering” as Toulmin would have it.

It seems that in the above arguments the arguer rather presents *conclusive* evidence to assert the general *compatibility* of the action with the agent’s body, rather than presenting an *uncertain* hypothesis on this action taking place on any particular occasion.

Interestingly, we can convey the very same compatibility as being *the content of a hypothesis worth considering* if we add a second modal, of a different kind, which we would call epistemic or doxastic:

- (11) Maybe /Perhaps /It (may/might) be the case that John can lift 100 kg single-handed

Here one could still erect a last dike to defend Toulmin’s hypothesis by pointing out that Toulmin never says that *can* expresses possibility. However, Toulmin says that *possible* expresses possibility, and yet we can have (12):

- (12) Perhaps it’s possible to re-set the body’s aging clock and maybe make someone live longer. (example retrieved through Google)

Here the two epistemic markers *perhaps* and *maybe* do refer to an hypothesis worth considering, but *possible* – which here takes “biological laws” as its criteria – is definitely part of the content of that hypothesis. Moreover Toulmin sees *must* as always expressing a *conclusion* as its force, while the grounds on which the conclusion is based may pertain to different fields, for instance *legal vs astronomical*, as illustrated by Toulmin’s examples in (3) and (4). Yet, in (13) we find *must* embedded as the *content* of an hypothesis worth considering:

- (13) If someone wants, for instance, to buy clothes, he must know where to buy them. He must go to different shops. Maybe he must negotiate with the salesperson. (source Google)

Clearly, *must* in (13) does not indicate an act of conclusion, nor any other kind of speech act.

The above discussion shows two things:

- (a) Modal criteria do not always map on types of reasons for a conclusion and
- (b) Modal force does not always correspond to the force with which the standpoint is advanced or to a phase or type of speech-act in an argumentative discussion.

It might seem now that there is little to salvage in Toulmin’s hypothesis. Yet, in the next section we will argue that, despite the flaws of Toulmin’s implementation, looking at the context dependency of the modals and to the different *logical types*<sup>3</sup>



of propositions that are presupposed by it remains a key task in the reconstruction of arguments involving modal statements.

### 15.3 Another View of the Modals' Context Dependency: The Theory of Relative Modality

A rich and flexible account of the dependence of modalities on contextually determined sets of propositions can be worked out in the theory of *Relative Modality* developed within formal linguistic semantics.

The fundamentals of the theory stem from seminal papers by German linguist Kratzer (1977, 1981, 1991).<sup>4</sup> Kratzer showed that, in natural language, *necessity* is to be understood in terms of *logical consequence* of the modalized proposition from a presupposed conversational background of propositions belonging to a certain logico-ontological type, while natural language *possibility* is to be conceived in terms of compatibility with it.

This contrasts with the absolute conception of necessity and possibility in modal logic. Hughes and Cresswell (1968) characterize this absolute necessity as follows:

When we say that a certain proposition is necessary, we do not mean that, things being what they are, or the world being as it is, it cannot fail to be true; but rather that it could not fail to be true no matter how things were, or no matter what the world turned out to be like. (p.23)

Medieval philosophers had already observed that words like *necessarily* are often used in a relative way, to convey the necessity of an entailment (*necessitas consequentiae*):

(14.a) If Alfred is a bachelor, he must be unmarried.

(14.b) Alfred is a bachelor. He must be unmarried.

Neither the first nor the second utterance means that if Alfred happens to be a bachelor in the actual world then he will be unmarried no matter what the world turns out to be like – the latter kind of meaning, the *necessitas consequentis* of the Medievals, is captured by the modal predicate logic formula in (15). Rather, both (14.a) and (14.b) mean that no matter what the world turns out to be like, if Alfred is a bachelor he will be unmarried – that is the *necessitas consequentiae*, captured by the formula in (16).

(15)  $B(a) \rightarrow \Box \neg M(a)$

(16)  $\Box (B(a) \rightarrow \neg M(a))$

Basically, in Kratzer's approach, necessity modals are taken to indicate that the argument proposition is *necessarily entailed* by (that is *logically follows* from) a set of propositions, called the *conversational background* (CB) of the modal:

(17) Must/Necessarily (CB,  $\varphi$ )  $\Leftrightarrow \Box (CB \rightarrow \varphi)$ <sup>5</sup>

Or, alternatively:

(18)  $[[\text{must/ necessarily } (CB, \varphi)]] \Leftrightarrow [[\varphi]]$  is a logical consequence of CB

Likewise, the basic structure of relative possibility can be defined by (15) or (16) :

(19)  $\text{May/ Can/ Possibly } (CB, \varphi) \Leftrightarrow \neg \Box (CB \rightarrow \neg \varphi) \Leftrightarrow \Diamond (CB \wedge \varphi)$

(20)  $[[\text{Can/May/Possibly } (CB, \varphi)]] \Leftrightarrow [[\varphi]]$  is logically compatible with CB

A proposition is a possibility relative to a given conversational background CB, if and only if the proposition is logically compatible with CB – that is if they form a consistent set of propositions. Sometimes, the conversational background may be expressed, as Kratzer remarks, by phrases such as *in view of* – as in (21),

(21) In view of the laws of our country, you must pay taxes

which are quite similar to the phrases used by Toulmin to make the *criteria* of the modal explicit. But most of the times the hearer has to infer the conversational background of the modal from the context and the co-text of the utterance.

The various interpretations of the modals and their finer nuances can be expressed in terms of the different conversational backgrounds restricting the modal operator. One of the appeals of the theory is precisely that it allows for an indefinite number conversational backgrounds, while at the same time makes it possible to characterize broad classes of uses of the modals on the basis of the kinds of propositions that enter the background.

A critical, and somewhat tricky, aspect of the theory is the notion of *proposition*, which is not intended to mean a linguistic object, nor a mental object, nor an assertion or other speech act, nor a premise, but is taken ontologically to mean a *possible state of affairs*, something that can possibly be a fact, or in other words, a fact in some possible world or situation.<sup>6</sup>

In the following paragraphs I will propose a particular version of the theory of Relative Modality (based on Rocci, 2005a) through a series of informal paraphrases for different notions of relative necessity or possibility corresponding to major classes of conversational backgrounds. The classification of conversational backgrounds and the formulation of the paraphrases draw from a vast pool of analyses in the logical and linguistic traditions, which Rocci (2005a) discusses extensively. In drawing from this body of research the proposed paraphrases make a number choices among partially alternative proposals, and I have added pointers to the relevant literature for the less obvious ones.

Ultimately, however, the justification of these paraphrases lies in their capacity of illuminating the myriad of uses of the modals, and, with respect to the purpose of this study, in their potential for argumentative reconstruction. The examples analyzed in the following pages are meant to provide a partial illustration of this potential.

A first type of modality is characterized by a conversational background containing propositions that are “facts of a certain kind in the actual world”. These modalities deal with what is necessarily or possibly the case *in view of facts of such and such kind*. We will call this first kind of modality *ontological*.<sup>7</sup>

We can paraphrase modalities with ontological conversational backgrounds as follows:

- (i) A possible state of affairs is entailed by or compatible with facts of such and such kind.

If ontological modalities are mainly concerned with “natural causality”, the normative modalities (*deontic* and *anankastic*) bring in the world of human actions, social conventions and institutional realities. *Deontic* conversational backgrounds can be characterized by the formula:

- (ii) An action is entailed by or compatible with norms or ideals of such and such kind.

While in *anankastic* conversational backgrounds (Cf. Conte, 1995):

- (iii) A social/institutional fact is entailed by or compatible with the set of social/institutional facts of the relevant kind.

And, finally, we have *doxastic* (or *epistemic* as linguists prefer to call them)<sup>8</sup> conversational backgrounds:

- (iv) A (hypo-)thesis is entailed by or compatible with a relevant set of beliefs held by the speaker at the moment of utterance.

Ontological modalities range from very general physical or natural necessity or possibility (what is possible/ necessary in view of physical/natural laws) to the consideration of very specific sets of circumstances – be they agent oriented (what is necessary/possible in view of certain internal features of an agent) or circumstantial (what is necessary/possible in view of certain facts of the external world). Ontological possibilities are what is possible in view of a certain aspect of the structure of reality.

With the exception of the most abstract kind of metaphysical possibilities, which rarely come into play in everyday discourse, ontological modalities are submitted to time, and are causal in nature: they concern the possibility/necessity of a certain event to become the case in view of the causes.

The fine tuning of the restrictors that apply to each ontological interpretation of the modals – that is the precise content of the conversational background – is determined in the context of utterance. Compare the following examples involving John, a famous pop singer :

- (22.a) John can't sing. His golden voice is gone for good. (permanent internal physical circumstances)  
 (22.b) John can't sing. He has a sore throat. (temporary internal physical circumstances)  
 (22.c) John can't sing. He's stuck in a traffic jam. (external physical circumstances)  
 (22.d) John can't sing. The concert organizers rescinded the contract. (external social circumstances)

The second sentence of examples (22.a–d) provides at the same time a specification of the kind of ontological conversational background that the modal takes and presents an argument based on the causal argumentation scheme *from cause to effect* refuting the standpoint contained in the sentence modalized by *cannot*. For these examples Toulmin’s analysis of *cannot* seem to hold. But let us see why exactly it is so.

The *cannot* sentences can be taken as *indirectly indicating* the refutation of the standpoint “John will sing (tonight, next season, etc.)” because they directly assert the causal incompatibility of the future action with facts of a certain kind. What is impossible given a certain kind of facts will continue (monotonically) to be impossible no matter what additional kinds of facts we consider. If John’s sore throat rules out the singing, it won’t help observing that he arrived on time, or that he is very talented, etc.

Now, if we consider that we are supposed to *know* what we are asserting – per the felicity conditions of assertion – we can see that any asserted ontological impossibility also entails epistemic impossibility. This contributes to make *cannot* special, and apt to indirectly convey refutations based on causal argumentation schemes.

This is not the case with *can*, as what is ontologically possible with respect to certain facts (e.g. the singer’s physique) might still happen to be made impossible by other circumstances (e.g. the traffic jam). Ontological possibilities don’t entail epistemic ones. However, very often they *implicate* them pragmatically on Gricean grounds: if I assert that John *can* sing, because his throat got well, when I *know* that *he won’t* because he’s stuck in a traffic jam, I am being logical but quite uncooperative, as it would be more informative to say that he *could* sing, or *would be able* to do so. So, also *can* ends up as frequently having epistemic implicatures in causal argumentation.

The second major class of conversational backgrounds is represented by the family of *normative* modalities, which includes *deontic* and *anankastic* backgrounds.

While ontological modality is a universal one and can affect any kind of state of affairs, *deontic* modality applies only to a certain type of states of affairs: *human actions*. Deontic conversational backgrounds are not made by propositions that are actual facts in the world, but by propositions that are *ideals*. There can be many subtypes of deontic conversational background:

- (23.a) John must leave the country. The new immigration law was voted by the parliament. (what the application of the law entails)
- (23.b) John must leave the country. So that he can live and continue the fight. (what the realization of the political goals entails)
- (23.c) John must leave the country. So that he can provide for his family. (what the fulfilment of a goal-moral obligation entails)
- (23.d) John: “I must leave the country. I cannot stand the vulgarity of the times.” (what the satisfaction of the aesthetic preferences entails)

An elementary type of ideal proposition, often neglected but quite relevant for argumentation, is represented by simple *goals*. A goal is the possible desired end state of a course of action (cf. Rigotti, 2003). Consider the following example:

(24.a) The Socceroos must keep cool heads in the heat of the world spotlight. (from an Australian football news website just before the 2006 World Cup)<sup>9</sup>

The conversational background of such a modal can be provided by a phrase like *given their goal of advancing in the tournament* or *if they want to do well in the World Cup*. However the Socceroos text leaves such a goal for granted without specifying it linguistically. This kind of deontic conversational background is characterized by a special kind of causality, which is specific to human actions where possible posterior future states of affairs can, *qua* goals, be the cause of preceding human actions, with an apparent time reversal between cause and effect. Since the conversational background coincides with the cause of the action, it can be taken, again, to map on a *reason* in a peculiar type of argument from cause to effect, which is typical of *practical reasoning*.

Typically goals are not sufficient *per se* to entail determinate courses of action. Normally, they do entail particular courses of action jointly with certain real world conditions. This gives rise to a particular mixed conversational background, where the action is the necessary implication of the conjunction (set theoretic union) of the goal and some set of real world conditions akin to those considered in ontological modality. This kind of composite conversational background is the one typically connected with *practical reasoning* (Cf. Walton, 1996, 2006, pp. 299–333)<sup>10</sup> and has been called *deontic-practical* for this reason (Kronning, 2001a). For instance, if we look at the wider context of the above Socceroos example we find precisely this kind of practical reasoning:

(24.b) The Socceroos must keep cool heads in the heat of the world spotlight, however, for despite their high hopes they are the underdogs of their group, with a world ranking of 42. They must face Asian champion Japan (No.18), defending champion and five times World Cup winner Brazil (No.1) and the powerful 1998 semifinalists Croatia (No.23).

Because of their conversational background, deontic-practical modalities can be indirect indicators that an argumentation based on practical reasoning is being put forth. But this is not necessarily so: (13) above contains a clear example of deontic-practical modality but it does not correspond to an argument of the speaker based on practical reasoning.

Anankastic modality (cf. Conte, 1995) is a distinct type of normative modality and differs from deontic modality as it is based on norms but does not require the modalized proposition to be a human action. In fact, anankastic modality is better characterized as an ontological modality referring to the peculiar ontological level that is institutional reality. Consider the following example:

(25.a) To be elected in the Italian Senate, you must be at least 35 years old.

Contrary to deontic modalities, the anankastic modality expressed by (25.a) does not concern actions, and cannot be translated into an imperative, as demonstrated by the absurdity of (25.b):

(25.b) \*Be 35 years old, if you want to be a Senator!

If it turns out that someone was elected and was not 35, the election is null. Nullity is different from violation. This difference is related to Searle's distinction between *regulative* and *constitutive* rules (Searle, 1969).<sup>11</sup> *Violation* describes a situation where a certain behaviour contrary to regulative rules takes place, while *nullity* refers to the fact that a certain (expected, intended) institutional state of affairs turns out not to be the case, because its constitutive conditions are not satisfied. Only conventional, social facts are subject to anankastic modality:

(26.a) \*Water must be (mostly) H<sub>2</sub>O

is difficult to interpret, but

(26.b) To be called "water" a liquid must be (mostly) H<sub>2</sub>O

is much more acceptable, because language is conventional and semiotic relations are institutional states of affairs.

## 15.4 The Proper Relation of Epistemic and Non-Epistemic Modals to Argumentation

We can now move to the closer examination of the *epistemic /doxastic* conversational backgrounds. By examining the way in which these backgrounds work and by comparing them with the other backgrounds discussed above, we will show why, contrary to what was hypothesized by Toulmin, only the *epistemic/doxastic* uses of the modals relate constitutively to the structure or "form" of the argument – to the *inferential relations*. These modals function as *direct indicators* of argumentatively relevant speech acts, such as putting forward a hypothesis for consideration or concluding that a hypothesis must be the case.

On the other hand the various shades of *ontological* and *deontic* modality express relations between the modalized proposition and sets of facts, values or norms that are part of the *content level* of the argumentation and may or may not be exploited inferentially through specific argumentation schemes, as we have seen in the preceding section. Non-epistemic modals are *indirect indicators* of argumentation connected to the level of argumentation schemes, that is, to the level of the specific content relations on which the acts of argumentation rest (Cf. Snoeck Henkemans, 2001 for a similar two-level view of argumentative discourse relations).

Let us consider example (27a–b):

(27.a) I can't see Louis' car in the parking lot.

(27.b) He must have already left the University.

It is quite natural to understand the first utterance (27.a) as corresponding to what Aristotle calls a *sign*. For Aristotle (*Prior Analytics*, 70a 7–9) when something regularly occurs, or more generally is the case, in concomitance (or before, or after) something else is the case, that something is a *sign* of the occurrence of this something else (the *denotatum*). Of the two concomitant facts, the *sign* is the

better known fact – often a perceptually accessible fact – and the *denotatum* is the unknown, less accessible fact. If our argument is indeed based on a *sign*, the explicit premise does not suffice to account for the inferential process involved. To obtain our conclusion, we also need to supply a second implicit premise stating the regular co-occurrence of the *sign* and its *denotatum*. Such an argument scheme has been analyzed among others (see for instance Walton 1996, 2006) by Rigotti (2005), whose analysis we follow here. A plausible reconstruction of the unstated premise of our argument is (27.c),

(27.c) “Generally, if Louis’ car isn’t in the university parking lot, he is not at the university”

which, in turn, could be derived from the knowledge of the fact that Louis almost always drives to the University and parks his car in the University parking lot.

We can now appreciate the difference in the way *ontological* and *doxastic* modalities relate to argumentation. As the analysis of the argument scheme of the sign in (23) shows that, contrary to the ontological modalities examined above, the necessary entailment here does not correspond directly to a *causal* relation between facts. Rather a (hypo-)thesis is entailed or compatible with a relevant set of beliefs held by the speaker at the moment of utterance.

Let us now consider two examples taken from Kratzer (1991),<sup>12</sup> which are particularly clear thanks to the incompatibility of the English possibility modal *can* with purely doxastic conversational backgrounds (cf. Papafragou, 1998) and the incompatibility of the possibility modal *may* with most ontological backgrounds:

(28.a) Hydrangeas can grow here.

= Growth is compatible with the conditions of soil and climate

(28.b) There may/might be hydrangeas growing here.

= “They grow” is compatible with what I know/believe to be the case.

In the first case we have an ontological modality where we assert the compatibility of the growth with some kind of real world conditions, most likely the conditions of soil and climate. In this case we can have an argument about *whether hydrangeas can grow here*, where we can take a standpoint like:

(28.c) I am absolutely certain that they can.

= I am absolutely certain that their growth is compatible with the conditions of the soil and the climate.

On the contrary, it would be bizarre to have an argument about whether they *may* grow here. In fact, *There may / might be hydrangeas growing here* is not something about which one can have a discussion, it is rather a standpoint of uncertainty in a discussion about whether they *do* grow here. It means that my evidence – just *any* type of evidence I may happen to have – does not contradict the hypothesis, which is the interpretation of a possibility modal saturated with a doxastic conversational background. This is why an utterance like (28.d) would sound rather bizarre:

(28.d) \*I am absolutely certain that they may/might.

= ? I am absolutely certain that the hypothesis that they grow here is compatible with all the evidence I have.

Such an utterance would involve making explicit the meta-cognitive operation implied by the doxastic qualification,<sup>13</sup> which is usually not required in a discussion. Pinto (2001) makes a similar point in arguing that the “secondary” doxastic attitudes other than simple belief – doxastic possibility is one such attitude – that take scope on the conclusion of an argument are not properly part of the *content* of the standpoint, but have a structural role in the argument. The following passage is worth quoting in full:

Might one then [...] try to construe the cases involving the secondary doxastic attitudes as concerned with second-order meta-cognitions about first-order propositions (e.g. one presents reasons for straightforwardly believing the proposition that the evidence for a first order proposition is counterbalanced by the evidence against it)? At least some cases can and probably should be interpreted along these lines. But even in these cases the *point* of getting someone accept the second order proposition is typically to modify his or her attitude toward a first order proposition.” (Pinto 2001, p. 13).

Let us consider another example involving, this time, a *deontic* modality. To utter

(29) John must leave the country

I need not know *exactly* why he must, what pressing needs or lofty goals, what obligations, what laws, norms and regulations necessitate his departure from the country. I might just have confidence in someone in the know, an expert, and subscribe to the belief that “John must leave” on the basis of his/her authority. Just as I can ask a gardener about the compatibility of a certain soil or climate with the growth of hydrangeas. But my relying on the expert does not change the conversational background of the modal: what makes the departure a deontic necessity is not the word of the expert but still those needs, goals, obligations, laws, etc. ...according to the circumstance. What makes the growth possible is not the word of the expert, but the soil and the climate. Even if my belief comes into being because of the expert, the deontic or ontological necessity comes into being because of something else.

Of course, a different, more Toulminian, scenario is also possible: because of my knowledge of said goals, needs, laws, etc. I might happen to be entitled to conclude that our friend must leave the country. In that case my inferences follow the same path of the deontic consequence. But what has to be stressed that this is *possible* – maybe even typical, expected – but it is *not* part of the nature of a deontic necessity modal to be a *conclusion* of an inference from laws and regulations; just as it is not part of the nature of an ontological modality to be a *conclusion* drawn from the knowledge of whatever real circumstance necessitates or is compatible with the state of affairs that falls in the scope of the modal. This is why these modals are *indirect indicators*.

On the contrary, epistemic/doxastic uses of must refer exactly to that: to what is necessary to conclude from the beliefs of the speaker at the moment of utterance. If I say



## (30) Louis must have already left the university

I mean that a certain state of affairs is necessarily the case in view of what I know or believe. If I use such a construction I am automatically arguing – at the very least I am arguing with myself (cf. Rocci, 2005c). The evidence that makes up the modal's conversational background cannot be but something I know or I believe. When I use an ontological modality, the facts that make something possible or necessary are *per se* something that I may or may not know. Also in the case of deontic modality, strangely enough, social reality continues to exist and to exercise its peculiar causal power even if I ignore it. As the classic maxim goes: "ignorance of the law is no excuse".

The above observations prompt us to conclude that epistemic modality truly belongs to the form of argumentation. An epistemic modal like *must* indicates a relationship between a proposition and the evidence available to the speaker at the moment of utterance.

In the above example it is also presupposed that the speaker did not directly witness Louis' leaving the University: one cannot add to example (30) *and I saw him leave with my own eyes, believe me!*. In fact, the speaker of (30) does two things: she shows her own chain of inference, and, by showing it, offers to the hearer reasons to reach the same conclusions. If the speaker does present such evidence to the hearer or points to it in some way, then the epistemically modalized utterance becomes an act of argumentation in the strictest sense. If such evidence remains the private belonging of the utterer, the utterance does not count as *interpersonal (dialogical)* argumentation, but remains an instance of *intrapersonal (monological)* argumentation (Rocci, 2005 c).

Applying the theory of Relative Modality to the analysis of modal markers as indicators can also help us in reconsidering the role of epistemic expressions as markers of the degree of commitment of the speaker towards the standpoint. While all epistemic expressions share this function, there seem to be a noticeable difference between mental state predicates such as *I think, I believe, I'm sure that* and the epistemic readings of context dependent modals such as *may* or *must*. Compare *must* and *I'm sure*, which more or less share the same *strong assertive* degree of force:

(31.a) He went home early tonight. He must have been tired.

(31.b) He went home early tonight. I'm sure he was tired.

While *must* in (31.a) unequivocally points anaphorically to the preceding sentence as the manifestation of the argument supporting the standpoint in the modalized sentence, *I'm sure* in (31.b) is more fuzzy and less direct in pointing to the evidence. What the verb puts onstage is the *subjective* commitment of the speaker, rather than the inferential relation. In (31.b) it is easy to interpret the state of certainty of the speaker as stemming from various kinds of evidence, which may include the fact that he left early but are not limited to it: perhaps he also looked tired, his wife had told the speaker that he was tired, etc.

Nuyts (2001) has observed that the mental state predicates (e.g. English *I think*, Dutch *ik denk*, German *ich glaube*) often seem to imply a more subjective source for the speaker's belief, which is not necessarily intersubjectively shareable, and are therefore much less univocal in pointing to the arguments that are invoked to support the standpoint.

Rather than just markers of the strength of commitment *must* and other modals should be considered also as the same time as relational indicators of the link between premises and conclusions, similar, in this respect, to argumentative connectives such as *therefore* and *because* (cf. also Freeman, 1991, p. 117).

Finally, what do modals tell us about arguments? Going back to the list of types of information needed for reconstruction, which we introduced in the first section of the paper, we can see that epistemically interpreted modals help us (a) to recognize the standpoints being advanced, (b) to make explicit the force of the commitment towards the standpoints, and that at the same time they prompt the anaphorical recovery of premises (c). We have also seen that non-epistemic modals can be *indirect* indicators and that they can convey information on the argumentation schemes being used (d).

## 15.5 Modal Conversational Backgrounds in Argumentative Discussions: Vagueness, Divergence and Shifts

Concluding the present paper, however, I would like to go back once again to the non-epistemic interpretations to show how a careful consideration of the context dependence of the modals – which is made possible by the theory of Relative Modality – can still play an important role in the reconstruction of arguments even in cases where there is no direct correspondence between the underlying semantic structure of the modal and the structure of the argument.

Whether they are exploited as sets of premises or not, conversational backgrounds of non-epistemic modals do enter in every case into the content of the standpoint and they have to be made explicit if we want to reconstruct the argumentation in order to evaluate its soundness.

We have already noticed that in order to use a modal is not necessary that the addressee should be able to recover precisely *every single proposition* in the CB set. This level of specification of the conversational background is not necessary for the modals to function in communication. For instance, we might be simply announced that

(32) Unfortunately, tonight John can't sing.

and led to infer that there are some *causes* that make the event impossible which remain unspecified.

As Lycan (1994, p. 195) poignantly observes “when the context fails to supply any very specific cue” for the determination of the modal conversational background, “a modal assertion is often utterly pointless”, as amusingly illustrated in the following quotation from a popular novel:

“And the insurance?” Callaway asked. “When may the beneficiaries expect to have the claim approved?” Dora smiled sweetly. “As soon as possible,” she said, and shook his hand. (L. Sanders, *The Seventh Commandment*, quoted in Lycan, 1994).

A different case is represented by discussions involving deontic standpoints that take place between people that do not share the same set of values, but might not know or might not be fully aware of the fact that they don't share the relevant values. This can happen, for instance, in situations of intercultural communication where people might tacitly refer to different traditional or religious values. For instance someone might utter

(33) You must not contradict John in that way!

Intending a supposedly shared deontic conversational background that includes the value

(34) Openly contradicting people older than you is disrespectful

which is not made explicit. The respondent might object to this standpoint, having in mind a different set of cultural values which does not include the above commandment but rather the commandment

(35) Speak your mind openly and honestly.

The fact is that since the saturation of the CB is *covertly* different, the standpoint being *put forth* and the standpoint being *objected to* are not the same:

(36) Standpoint put forth by the proponent =

The action of you (= the respondent) contradicting John is incompatible with the set of cultural norms  $N_1$ .

Where  $N_1 = \{ \text{"Openly contradicting people older than you is disrespectful", ...} \}$

(37) Standpoint objected to by the respondent =

The action of me (= the respondent) contradicting John is incompatible with the set of cultural norms  $N_2$ .

Where  $N_2 = \{ \text{"Speak your mind openly and honestly", ...} \}$

In terms of the pragma-dialectic model of the critical discussion (cf. van Eemeren & Grootendorst, 2004) we can say that the divergent saturation of a supposedly shared conversational background gives rise to a defective *confrontation* stage,<sup>14</sup> which hinders the resolution of the difference of opinion.

One thing is to argue *within* a certain set of norms – e.g. two lawyers arguing within the same legal system – another thing is to move to a higher level discussion about identified disagreements about the propositions making up the deontic conversational background and their hierarchy within the value system. If such a disagreement remains covert in the implicitness that the use of modals allows such a discussion might never begin, to the detriment of intercultural understanding.

A final case – which was hinted at by language philosopher David Lewis in his famous article on *scorekeeping in a language game* (Lewis, 1979/1991) – is represented by the implicit and more or less covert *shifts* of modal conversational background that may occur during an argumentative discussion: Lewis imagines a conversation where A – an elected official – discusses with B about the ways he might deal with an “embarrassment”:

- (38) A: “You see, I must either destroy the evidence or else claim that I did it to stop Communism. What else can I do?”  
 B: “There is another possibility, you can put the public interest first for once!”  
 (Adapted from Lewis, 1979/1991, p. 425)

Here the shift in the modal conversational background is quite sharp, as B proposes a course of action which is arguably not a possibility consistent with the quite restricted deontic-practical CB presupposed by A – something like *In view of my goal of being elected again*. In fact, the shift serves to open a new argumentative dialogue game embedded in the other: before deciding what to do, we need to discuss what kind of values motivate our actions.

Each of the above three cases – the vagueness, the covert divergence and the shift of the conversational background – would deserve a more detailed analysis.

For now, however, it is sufficient to have shown, in this brief exploration of a rather vast domain, that there is, after all, much to salvage in Toulmin’s intuition of the context dependence of the modals, and that the theory of Relative Modality offers the basic semantic tools to explore such intuitions without incurring in the problems that afflict Toulmin’s original account.<sup>15</sup>

**Acknowledgement** An earlier stage of the investigation presented here was first presented in a shorter paper entitled “Modality and its conversational backgrounds in the reconstruction of argumentation” ISSA 2006. 6th International Conference on Argumentation. Amsterdam, June 28-30, 2006, which appears in the proceedings of the conference.

## Endnotes

- 1 van Eemeren et al. (2007) propose a more comprehensive list of relevant kinds of information, which follows systematically from the stages of the model of critical discussion. For the purposes of the present article it is not strictly necessary to consider this broader list.
- 2 In Houtlosser (2002) and van Eemeren et al. (2007) epistemic expressions modifying the force of the assertion are discussed in relation to the *confrontation stage* also as (indirect) indicators of the act itself of putting forth a standpoint in the confrontation. For instance, a weak assertive expression such as *I believe* can be used “to convey the speaker’s expectation that his assertive will not be immediately accepted by the interlocutor” (Houtlosser, 2002, p. 174), at least, not without supporting arguments.
- 3 Toulmin has been rightly criticized (cf. van Eemeren, Grootendorst, & Snoeck Henkemans, 1996, p. 155) for the vagueness of his use of the term *logical type* and its unclear relationship with *field of argument* and other notions in his model. One of the goals of our work on modality is also to contribute to a sound semantic typology of standpoints.
- 4 Earlier, more informal, approaches to the semantics of the modals that have several points of similarity with Kratzer’s are Wertheimer (1972) and White (1975). For a fairly comprehensive and technical account of the current state of the art in the theory of Relative Modality see Kaufmann, Condoravdi, and Harizanov (2006).
- 5 Actually, the formulas in (13) and (15) provide the semantics of the relative modal operators indirectly, by translating them in terms of an absolute modal quantifier ( $\Box$  and  $\Diamond$  respectively) and of a truth-conditional connective ( $\rightarrow$  and  $\wedge$  respectively), for which a standard semantics is assumed. The semantic clauses in (14) and (16), on the other hand, define the semantics

of the modals equivalently, through the relations of *logical consequence*, and *logical compatibility*, for which a possible world semantics can be given as in Kratzer (1991, p.641): a proposition *p* is a logical consequence of a set of propositions *A*, if and only if *p* is true in all the worlds of the “universe” *W* in which all the propositions belonging to *A* are true; and analogously a proposition *p* is logically compatible with *A*, if and only if there is at least a world in *W*, where all the propositions of *A* and the proposition *p* are true.

- 6 I take this to be the main philosophical significance of the notion of proposition in possible world semantics. In the technical implementation of the theory the definition of proposition is, in fact, rather counterintuitive: a *proposition* is just a set of possible worlds, the set of worlds in which the proposition holds true, in which it is a fact. One of the reasons of the scarce intuitive appeal of this definition is that the theory takes the notion of possible world as primitive rather than the notion of *possible state of affairs* or *possible fact*.
- 7 Another, better established, name for this kind of modality is *alethic* (cf. Kronning, 2001a; Lycan, 1994). However some authors, especially linguists, reserve the term alethic for purely logical necessity and possibility, which are only the most abstract of ontological modalities. So, we use ontological instead of alethic to avoid confusion. Kratzer (1981) speaks of these as realistic *conversational backgrounds*.
- 8 Note that strictly speaking epistemic conversational backgrounds, in the logician’s sense of the word, that is conceived as dealing with knowledge rather than with *belief*, should be treated, as Kratzer (1981) suggested, as a kind of ontological (realistic in Kratzer’s terminology) background: the background consisting of the facts that happen to be known by the relevant agent or by the relevant epistemic community. On the contrary, *doxastic* backgrounds are not a kind of ontological background. One of the main differences between our discussion of modal meanings and Kratzer’s is that hers does not use doxastic backgrounds to capture “epistemic” modal meanings, but uses instead a more complex apparatus (cf. Kratzer 1991, pp. 643–645) making modality *doubly relative* to a true epistemic background (“in view of the available evidence”), and to a second stereotypical conversational background (“in view of the normal course of events”). Some interesting shortcomings of Kratzer’s strategy in accounting for the way an epistemic modal (must, in particular) is used in arguments are mentioned by Stone (1994). For a more thorough discussion of these theoretical options see Rocci (2005a, 2005b).
- 9 *The World Game*, June 9, 2006. Retrieved August 15, 2006 from <http://www6.sbs.com.au/socceroos/index.php?pid=st&cid=71987>.
- 10 According to Walton (2006, p. 300) the simplest form of practical reasoning is the following: - I have a goal *G*. - Carrying out this action is the means to realize *G*. - Therefore, I ought (practically speaking) to carry out this action.
- 11 For a more detailed discussion of the collocation of anankastic modality with respect to constitutive rules see Conte (1988, 1993).
- 12 “Epistemic modality is the modality of curious people like historians, detectives, and futurologists. Circumstantial modality is the modality of rational agents like gardeners, architects and engineers. A historian asks what might have been the case, given all the available facts. An engineer asks what can be done given certain relevant facts” (Kratzer, 1991, p. 646).
- 13 On the meta-cognitive nature of epistemic modality see also the interesting remarks in Papfragou (1998).
- 14 “In the *confrontation stage* of a critical discussion, it becomes clear that there is a standpoint that is not accepted because it runs up against doubt or contradiction, thereby establishing a [...] difference of opinion” (van Eemeren & Grootendorst, 2004, p. 60).
- 15 Here a final note is due with respect to this article’s relationship with Toulmin’s contribution. The fact that a large share of this article is devoted to discuss and, in part, to refute views that Toulmin expressed fifty years ago can only be taken as a sign of the intellectual vigour and vitality of his thought. We do not dare to dream that, in fifty years, our own contribution could be considered wrong in such an interesting and insightful way.

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# Chapter 16

## Five Theses on Toulmin and Visual Argument

Leo Groarke

### 16.1 Introduction

A growing body of argumentation literature recognizes “visual” arguments—arguments conveyed with visual images—as an important ingredient of public discourse and debate. A number of authors (among them Birdsell & Groarke, 1996, 2006; Blair, 2003; Groarke, 1996, 2002; Shelley, 1996, 2003) have shown how such arguments can be understood in terms of the theories of argument manifest in pragma-dialectics, informal logic, and contemporary and traditional rhetoric. The present article considers such arguments from the point of view of the data-warrant account of argument that Toulmin famously develops in Chapter III of *The Uses of Argument* (Toulmin, 2003).<sup>1</sup>

A survey of the various genres of visual argument lies beyond the scope of the present article, so I will focus my discussion on a particular kind of visual argument: i.e. those forwarded in political cartoons.<sup>2</sup> This is a useful genre to consider because it plays a relatively obvious role in public debate. As the international debates over the *Jyllands-Posten* caricatures of the Islamic prophet Muhammad demonstrate, cartoons can themselves be the subject of intense political debate. In trying to understand the relationship between visual arguments and the Toulmin model of argument, they are relevant because they provide many clear examples of images used to convey arguments in the traditional premise—conclusion/standpoint sense.

Because a full and detailed discussion of the Toulmin model and visual arguments is not possible here, I will limit my discussion to five theses on Toulmin and visual argument. Taken together, they are intended to show the ways in which the Toulmin model can—and cannot—be applied to visual arguments. The first four theses suggest that the key components of the Toulmin model can be expressed in images, and in this way function as an essential element of visual arguments. The last thesis suggests that the Toulmin model has some shortcomings when applied to visual argument.

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In presenting my theses on Toulmin and visual argument, I will not directly discuss argument evaluation. That said, my account does imply that visual arguments can be assessed in the same way that Toulmin evaluates verbal arguments—i.e. by assessing the plausibility of the Toulminian elements they contain. In this way, my account suggests that we can usefully employ the Toulmin model in the assessment of visual argument.

## 16.2 Visual Arguments and Visual Meaning

Visual arguments forward premises and conclusions which are, wholly or partially, expressed by (non-verbal) visual means. Some arguments accompanied by visual images are not visual arguments because the images in question are coincidental, purely aesthetic, or function as visual flags that attempt to capture one's attention (but play no role within the argument in question).<sup>3</sup>

Photographs, drawings, cartoons, logos, symbols, film footage, dramatic performances, etc. may all function as key components of visual arguments. In many (but not all) instances, visual arguments combine visual and verbal elements. In the case of political cartoons, images that express as arguments (or, more simply, stand-points) employ labels or captions and in this way incorporate verbal cues. In the world of working argument, combining visual and verbal elements is an effective way to combine the strengths of verbal and visual modes of communication.

The framework I assume in understanding visual arguments is rooted in the pragma-dialectical “principles of communication” which make meaning possible in all argumentative contexts. They assume that speech acts can be understood; that speech acts are sincere; that speech acts are not superfluous; that speech acts are not futile; and that speech acts are appropriately connected to other speech acts (van Eemeren & Grootendorst, 1992).

These assumptions, implicitly or explicitly, guide the interpretation of all speech acts. They are particularly important when one attempts to understand “indirect” speech acts which are not (verbally) explicit. They explain, to take a standard example, why we do not interpret the claim that “Julie is a block of ice” as a literal claim but as a metaphor that functions as a way of saying that she is cold and unfriendly.

Groarke (2002) shows how the pragma-dialectical principles of communication can be applied to visual arguments and their components. In such a context, the images used to express argument components can be understood as “indirect” speech acts and interpreted accordingly.<sup>4</sup> It is this which explains why we understand a cartoon which presents a politician as a raging bull not as the literal claim that the politician is such a creature, but as a metaphor that claims that they are acting as though they were.

The principles of communication provide a general framework for the interpretation of the verbal and visual arguments. They show that verbal and visual meaning is ultimately founded on a shared set of assumptions. As in the case of verbal arguments and claims, they imply that the interpretation of visual arguments and claims

are inherently open to debate. This does not mean that “anything goes” in the interpretation of images, but that an interpretation of an image, like the interpretation of a sentence, must be defended in terms of the principles of communication.

In trying to understand the visual images in visual arguments, the key aspects of the principles of communication can be expressed as three principles of “visual communication” (Groarke, 2002). They assume that images in visual arguments can in principle be understood; that images have a meaning that can be understood in terms of the major (visual and verbal) elements they contain; and that such images should be understood in terms of their social, critical, political, and aesthetic context.

As there are different kinds of verbal meaning, there are different kinds of visual meaning embedded in visual arguments. In the realm of argumentation, the following taxonomy reflects distinctions made in Shelley (1996, 2003); Groarke and Tindale (2004); and Birdsell and Groarke (2008):

*Argument Flags*: images used to attract attention to an argument (e.g., the use of arresting images to catch our attention in United Colors of Benetton advertisements).

*Visual demonstrations*: images used to convey information which is most clearly presented visually (e.g., a book photographs used to illustrate the look of Victorian homes in San Francisco, or a graph that charts the relationship between GNP and military spending).

*Visual metaphors*: images used to convey some claim or idea figuratively, by presenting a metaphor in images (e.g., John Heartfield’s famous 1933 photomontage of Goering, which depicts him as a butcher by presenting him with a blood spattered butcher’s cleaver and apron, with war scenes in the background).

*Visual symbols*: images used to refer to something they represent (e.g. the use of the color orange to refer to the Netherlands, or a skull to refer to death).

*Visual archetypes*: images used to refer to popular narratives which can function as a vehicle for visually establishing meaning (e.g., an absurdly long extended nose, which refers to the story of Pinocchio, and has become a visual symbol of a liar).

All five kinds of visual meaning may be evident in political cartoons (though visual demonstrations are less frequent). In attempting to analyze visual arguments in terms of the Toulmin model of argument, any of the five kinds of meaning may be relevant in the study of a particular argument.

### **16.3 Thesis 1: Data and Conclusion can be Conveyed with Visual Metaphors**

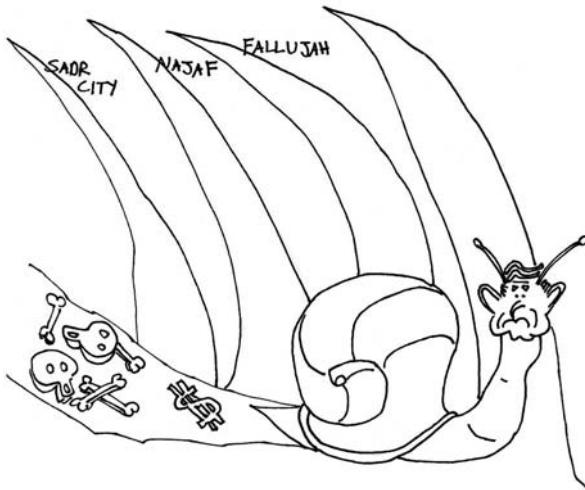
On the basis of this general understanding of visual argument and visual meaning, it is natural to ask whether, and to what extent, Toulmin’s famous account of “The Layout of Arguments” can be applied to visual arguments.

The foundation of Toulmin’s account of “” is his distinction between the evidence or “data” (D) an argument provides and the claim or “conclusion” (C) it establishes (Toulmin, 2003, p. 90). The thesis that visual arguments can provide data (premises) for a conclusion is already established by a growing corpus of visual arguments

which have been recognized in the argumentation literature. For many examples, see Blair (1996, 2003); Birdsell and Groarke (1996, 2008); Cameron (1996, 2003); Gilbert (1997); Groarke (1996, 2002); Groarke and Tindale (2004, 2008); and Lunsford, Ruskiewicz and Walters (2005).

In the present context, it is especially significant that the data and conclusion that make up an argument are, in political cartoons, often expressed through visual metaphors. An example which can illustrate this point is the political cartoon: “Progress in Iraq” (below). In this case, George Bush, the President of the United States, is presented as an unhappy snail who slides past three difficult Iraq battles (at Sadr City, Najaf and Fallujah) presented as blades of grass. The caption suggests progress but the image makes it clear that it is intended ironically. The cartoon claims that America has *not* made significant progress in the war in Iraq by presenting George Bush as a snail moving “at a snail’s pace” —the classic embodiment of slowness.

In support of this claim, the cartoon suggests two kinds of data. The first is embedded in the blades of grass, which list of three battles in which progress has been difficult and slow. The second is implied in the slime trail associated with a snail, which is, in the cartoon, interspersed with bones, skulls, and a dollar sign—symbols that suggest that the “progress” which has been made has left a trail of death, destruction and fiscal expenditure. Combining these elements, the cartoon argues (*conclusion*) that Bush is not making progress in Iraq on the basis of (*data*) the difficult battles at Sadr City, Najaf and Fallujah, and the human and financial cost of the Iraq war.



PROGRESS IN IRAQ

Putting aside the question whether this is a good argument, this example illustrates how a political cartoon can, via a visual metaphor, present data and conclusion. In doing so it shows that such cartoons can visually convey the essential element of arguments from a Toulminian point of view. In light of this conclusion,

it is natural to ask whether other components of the Toulmin model can be visually presented in political cartoons.

## 16.4 Thesis 2: A Warrant can be Visually Expressed as Connection

Beyond data and conclusions, the most basic component of the Toulmin model is the notion of “warrant.” As Toulmin (2003) explains:

Even after we have produced our data, we may find ourselves being asked further questions of another kind. We may now be required not to add more factual information to that which we have already provided, but rather to indicate the bearing on our conclusion of the data already produced.[...]

Supposing we encounter this fresh challenge, we must bring forward not further data, for about these the same query may immediately be raised again, but propositions of a rather different kind: rules, principles, inference-licences or what you will, instead of additional items of information.... These may normally be written very briefly (in the form ‘If D, then C’) but for candour’s sake, they can profitably be expanded, and made more explicit: ‘Data such as D entitle one to draw conclusions, or make claims such as C’, or alternatively ‘Given data D, one may take it that C.’

Propositions of this kind I shall call *warrants* (W). (pp. 90–91)

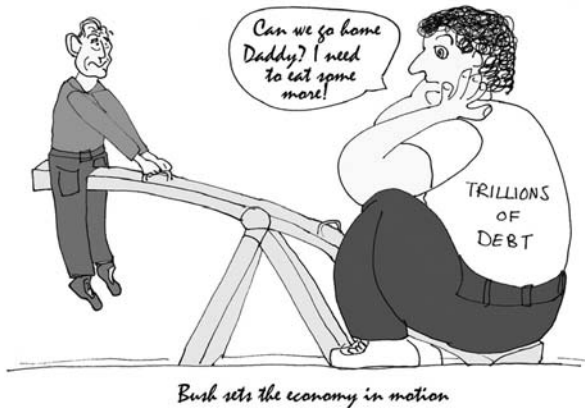
Toulmin’s notion of warrant is a powerful feature of his account of argument which identifies, in a precise and concrete way, the relationship between data and conclusion that holds an argument together. Like verbal arguments, visual arguments must depend upon a warrant, for there must be some principle, rule or general inference pattern that links its data to the claim that it supports. This itself shows that visual arguments can be analyzed and assessed in terms of warrants.

In many cases, the arguments conveyed in political cartoons have, like many verbal arguments, warrants which are not explicitly expressed. But the extent to which the components of Toulmin’s model can be applied to visual arguments is particularly evident in images in which warrants are *visually* expressed.

In the case of political cartoons, this can be accomplished by presenting a warrant as a physical object that connects data to the conclusion that the cartoon defends. An example may be found in the cartoon “Bush sets the economy in motion” (below). It presents George Bush on top of an unbalanced teeter-totter, unable to move. Bush is stuck because a gigantically obese boy sits on the other end of the teeter-totter. The boy, “Trillions of Debt,” is presented as Bush’s offspring. He is distracted and bored and unwilling to move, and only interested in going home to eat some more.

One might summarize the argument in the cartoon as the claim (*conclusion*) that the Bush economy cannot move because (*data*) it has accumulated trillions of dollars in debt which it needs to service (i.e. feed). The warrant for the argument can be described, in standard Toulminian ways, as the conditional “If a government accumulates and services trillions of dollars in debt, it cannot move its economy” or as the general principle “Governments that accumulate and service enormous debts are unable to move their economies the way they want to.”

In applying the Toulmin model, Toulmin and those who follow him express warrants verbally. There are in many cases good reasons for doing so, but our example shows that warrants can be *visually* expressed. In this particular case, the warrant behind the argument in the cartoon is visually embodied in the teeter totter, which physically connects the Bush economy to the debt it has incurred. This connection embodies the inverse relationship between mobility and debt that the argument in the cartoon depends on: more debt means less mobility, and vice-versa. As the argument assumes this warrant, the cartoon depends upon its visual analogue.



### 16.5 Thesis 3: Qualifiers can be Visually Expressed as Situational Uncertainty

Beyond data, conclusion and warrant, “qualifiers” might be said to be the most important component of Toulmin’s account of argument. As he puts it:

Some warrants authorise us to accept a claim unequivocally, given the appropriate data – these warrants entitle us in suitable cases to qualify our conclusion with the adverb ‘necessarily’; others authorise us to make the step from data to conclusion either tentatively, or else subject to conditions, exceptions, or qualifications – in these cases other modal qualifiers, such as ‘probably’ and ‘presumably’, are in place. It may not be sufficient, therefore, simply to specify our data, warrant and claim: we may need to add some explicit reference to the degree of force which our data confer on our claim in virtue of our warrant. In a word, we may have to put in a qualifier. (Toulmin, 2003, p. 93)

Qualifiers can be applied to the evidence in an argument as well as its conclusion because the data for a conclusion may, like the conclusion itself, be certain or uncertain.

Within the images in political cartoons, qualifiers can be expressed by depicting metaphorical situations which are inherently uncertain. To the extent that the situation in the cartoon is uncertain, the statements it makes—usually by meta-

phorical means—are be similarly understood. In this way, a cartoon can visually transmit uncertainty (or certainty) to the data and/or conclusions in an argument it conveys.

In “The Gambler” (below), President Bush, a Texan, plays a role in archetypical cowboy narrative which features two gamblers at a card table. Bush is dressed in a cowboy outfit. Across a card table labelled “Kyoto” one sees Bush’s adversary: an entity which represents the destructive forces of nature which threaten to be unleashed by the global climate change the Kyoto Accord is trying to prevent. The stakes are high—the whole world is on the table—but Bush has a cocky attitude (he looks like he may have had too much to drink), and is confidently raising nature’s bet.

One might summarize the conclusion the cartoon conveys as: Bush is *probably* being foolish in betting against climate change. The data for this claim are the visual claims that (i) the destructive forces of nature are in a strong position (they hold a strong hand—a full house made up of aces and tens), and (ii) the enormous stakes on the table.



THE GAMBLER

Despite the strong claims that make up the data in the cartoon, the argument’s conclusion is qualified. Visually, the image is qualified by presenting the scenario

in a way that keeps Bush's hand out of view, leaving the viewer with no way to be *certain* that Bush is being foolish. The image strongly suggests that Bush is foolish, but in a poker game like the one depicted it is always possible that Bush holds the better hand.

It is significant that the extent of the qualification expressed in the cartoon image could be easily adjusted—by varying the hand dealt to the forces of nature. The better the hand pictured, the more likely that Bush is making a mistake, and vice-versa. One could achieve the same effect by showing the hand that Bush has been dealt (in which case, the quality of his hand would convey the likelihood that he would win his bet).

In this case, the probability or improbability of the conclusion is equivalent to the uncertainty and uncertainty of the bet depicted. In other cases, plausibility or implausibility can be visually expressed through other kinds of uncertainties depicted in political cartoons. A cartoonist who wants to claim that a particular politician is doing something that is *likely* to lead to disaster can accomplish this by depicting them in a situation which is *likely* to precipitate an accident. And so on.

## 16.6 Thesis 4: The Backing of an Argument can be Conveyed with Visual Metaphors

One last component of the Toulmin model of argument is the notion of “backing.” Toulmin (2003) introduces the notion by noting that: “Standing behind our warrants ... there will normally be other assurances, without which warrants themselves would possess neither authority nor currency—these other things we may refer to as the *backing* (B) of the warrants” (p. 98).

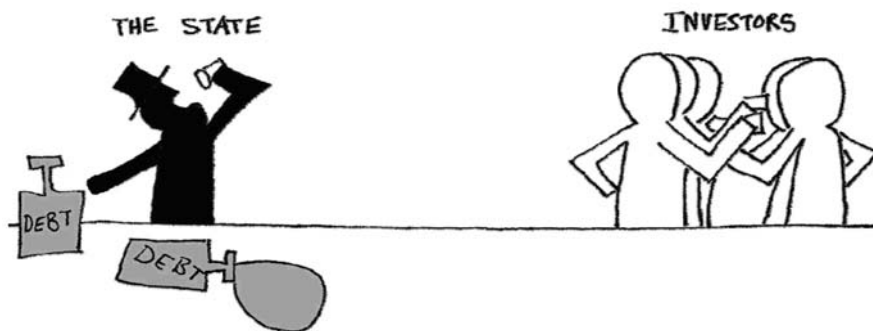
It is helpful to think of the backing for a warrant as a general claim or principle that supports it. In considering examples of political cartoons, we have already seen that there are specific ways in which data, conclusions, warrants and qualifiers can be conveyed in the images that appear in political cartoons. In the case of backing, it can be said that political cartoons can provide a backing for a warrant in the same way that they provide data for a conclusion—i.e. through the use of visual metaphors.

Put another way, a backing is a special case of data which provides evidence for a warrant, and can, therefore, be expressed in a similar way. Consider, for example, the warrant embodied in the teeter-totter in the cartoon “Bush sets the economy in motion” (above). Verbally, it can be expressed as the proposition that a nation's economy cannot move if it saddled with great debt.

A backing for this warrant must provide evidence that this is so. The cartoon below illustrates one way in which a backing can be provided for the warrant in question. In this case, it depicts the state addicted to debt as a dark and solitary drinker at a bar. This forlorn figure stands alone at one end of the bar, drowning

himself in more debt. A happy set of investors mingle and toast one another at the other end of the bar.

The state with a serious debt problem is, the image suggests, a social outcast abandoned by investors. In a world where the rise of global markets means that state economies rely on investors to “fuel” their economy, the principle conveyed in the cartoon provides a backing for the warrant of our previous cartoon (that a state with a heavy debt load cannot move).



## 16.7 Thesis 5: The Toulmin Model has Shortcomings in the Realm of Visual Argument

The political cartoons which have been cited illustrate ways in which the components of the Toulmin model can be expressed in the visual arguments conveyed by political cartoons. Though this itself suggests that the Toulmin model can be usefully applied to the analysis (and evaluation) of such arguments, it is important to end this paper by noting that there are ways in which the model fails to capture some important aspects of such arguments.

In this context it is important to emphasize the truism that a key goal of political cartoons is *humour*. In trying to understand the arguments they convey, this is an important point because it makes cartooning a rhetorical endeavour. A good cartoonist does not, in view of this, eschew emotion in favour of some objective, unemotional ideal. In many cases, they revel in what might, in a verbal context, easily be dismissed as “abusive” ad hominem (in criticizing Bush, for example, cartoonists make fun of his ears and “chimpanzee” face—which are drawn in ridiculously exaggerated proportions).

To dismiss political cartoons on this account is to misunderstand the cartoon genre—much as one misunderstands a farce if one reads it as though it were a history book.<sup>5</sup> As James Klumpp has said, “We must expect and accept a certain amount of puffery in the argument that appears in a political cartoon.”<sup>6</sup> In such context, biting satire, caricature and exaggeration are to be expected. One



must be able to see beyond them in assessing and analyzing arguments that are forwarded.

This aspect of political cartoons highlights the role that an understanding of genre needs to play in any attempt to understand different kinds of visual argument. It would have to distinguish between conventions that govern our understanding of cartoons and those that might, for example, govern the use of visual evidence in the courts, in geometric proofs, and so on.

Considered from this point of view, the Toulmin model of argument is problematic, for it contains no mechanism that clearly recognizes the different assumptions that govern different genres of visual argument. Toulminian “fields” vary according to content, but changes in genre imply much more significant differences. Without a mechanism that explains genre, it is difficult to see how the Toulmin model can properly explain the role that pathos plays in political cartoons or, more generally, unique aspects of other kinds of visual (and verbal) argument.

A less obvious, but equally important, feature of a political cartoon is its *conciseness*. One black and white panel is what most cartoonists have in their attempt to make some significant political remark. It is in part this that accounts for the force of political cartoons—which are an attempt to squeeze a powerful comment into a very limited space. At the same time, it means that cartoons rely heavily on their viewer’s ability to bring significant background knowledge and context to the image they concoct.

In many cases, this means that it is not new data that is the crux of an argument conveyed in a political cartoon, but a recasting of what we know in a way that sheds new light on data we already assume. Often the goal is a new way of seeing what we already know—of showing that it is right or wrong or peculiar or something to take note of.

In a deep way, this aspect of political cartoons suggests that a model of argument that can more comprehensively explain cartoons and other visual arguments must see argumentation as something more than the accumulation of new data for conclusions. It will have to place more emphasis on the ways in which we use argument to reconfigure and reorder the data we already possess.

## 16.8 Conclusion

In arguing that there are ways in which the Toulmin account of argument does not capture important aspects of cartoons and visual arguments, I am not suggesting that we should dismiss the Toulmin model out of hand. I have already shown that its components are evident in visual arguments. This itself suggests that the Toulmin model can be a key tool in the analysis and assessment of visual arguments. That said, a fully satisfactory theory of visual argument will have to recognize the limits of the Toulmin model and find ways to overcome them.

## Endnotes

- 1 In my discussion I will use the model as a practical tool in the analysis of arguments (I leave for elsewhere a discussion of the important implications which Toulmin's view of argument has for the philosophy of argument).
- 2 To simplify the matter of copyright and permission, and to illustrate very specific aspects of visual meaning, I have drawn the cartoons used in this paper. In a forthcoming book, I apply the notions developed here to a much broader range of historical and contemporary examples.
- 3 For one account of the role of images (and other non-verbal elements) in argument, see Groarke and Tindale (2004, 2008, chap. 3).
- 4 In some ways this is an ironic label, insofar as images tend, in many cases, to be more direct than words.
- 5 Some may follow Plato and think that the appeal to pathos and humour that characterizes political cartoons sullies arguments in such contexts. I think it should instead be said that political cartoons should not be criticized for mixing emotion, pleasure and serious political commentary. Considered from this point of view, it might be argued that political cartoons appeal to the whole person—their affective and cognitive inclinations—and that argument theory needs (as Gilbert, 1997 has argued) to do a better job in recognizing the value of such argument.
- 6 I presented an earlier version of this paper at the Ontario Society for the Study of Argument, at Mc Master University in May, 2005. I am indebted to James Klumpp for his insightful comments on that day.

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**Part V**  
**Rules for Advocacy and Discussion**

# Chapter 17

## On How to Get Beyond the Opening Stage

Erik C. W. Krabbe

### 17.1 Introduction

What is the opening stage? And why would it be hard to get beyond it?

The opening stage - as many will know - is one of the four discussion stages contained in the familiar pragma-dialectical model of critical discussion (van Eemeren & Grootendorst, 1984, 1992, 2004), which constitutes a normative model for argumentative activities aimed at the resolution of a difference of opinion. It is one of the merits of this model that, in its description of the ideal argumentative process, it does not limit itself to argumentation in the proper, but narrow, sense of advancing arguments for a standpoint, but includes discussion stages where other necessary steps for the resolution of differences of opinion are located. Remember that there are just four stages, and that they are, in order, the following:

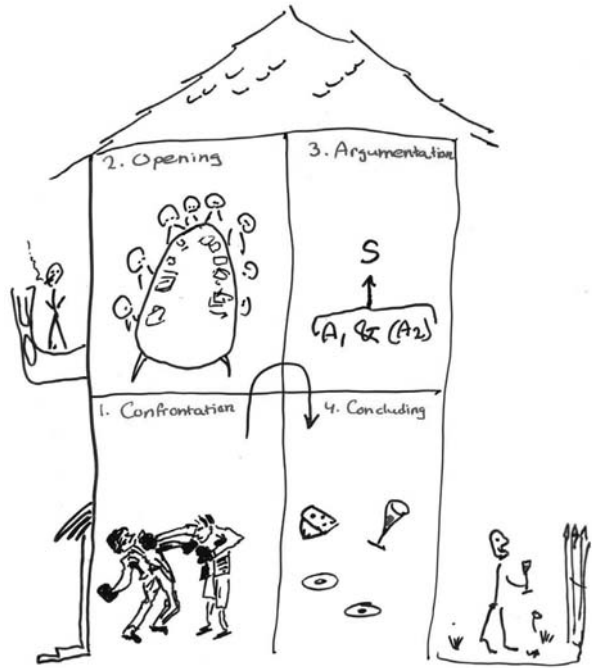
1. Confrontation Stage
2. Opening Stage
3. Argumentation stage
4. Concluding Stage.

Contrary to what may be expected, the opening stage does not figure as the first stage (whereas the concluding stage finds itself indeed neatly placed at the end). This is a vagary of nomenclature that sometimes breeds confusion even among experts. Apart from that, it is clear that the process of argumentation proper has been placed in the third stage, the argumentation stage, and that the first two stages figure as preparatory stages.

The problem I want to discuss actually pertains to both preparatory stages, namely: how can one get them completed, in a satisfactory way and within a reasonable time, to move on to what is properly called argumentation. However I will discuss this problem with special reference to the opening stage.

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**Fig. 1** The House of Stages

To enhance a more lively remembrance of the four stages of discussion you could picture them as a house with four rooms (see Figure 1).

When guests enter into this house they start on the ground floor in Room 1, a kind of gym – a place suitable for boxing exercises – which represents the confrontation stage, i.e., the stage where a difference of opinion is made explicit. The goal is to get, ultimately, to Room 4, another ground floor room, giving on to the garden, where refreshments are served – drinks and tidbits – which room represents the concluding stage, i.e., the stage where agreements are achieved. Now to get there, our guests have to pass through two other rooms, both on the upper floor, which represent the opening stage (Room 2) and the argumentation stage (Room 3). In Room 3, the actual business of argumentation is going on: for instance, a standpoint *S* is being supported by argument. But before one gets there, a lot of preparatory work needs to be done. The agenda will be presented in the next section, but one thing that has to be settled is the choice of a system of discussion rules that the parties are going to adhere to. No wonder Room 2 is packed with theorists of argumentation debating these rules. The complexity of issues and the multiplicity of perspectives is making one wonder whether any agreement will ever be reached at all. One would be fortunate to see the people in Room 2 manage to come to an agreement about just the shape of their table. Even that issue can be nasty, as was the case at the opening stage of the Paris Peace Conference about Vietnam. As some will remember, in 1968–69 the shape of the table was debated for months. This, of course, was a case of opening a negotiation dialogue, not a persuasion dialogue or argumentative discussion. Yet, the case of the Paris Peace Conference constitutes a classical illustration of how dif-

difficult it may be to get beyond the opening stage of a discussion. (Which is not to say that the issue of the shape of the table was unimportant at the time.)

The rest of this paper will be organized as follows. As I announced before, I shall first present the agenda for Room 2, i.e., a task list for the opening stage, assembled from pragma-dialectic writings (Section 2). Then I shall illustrate these tasks in a dialogue (Section 3), point out some problems (Section 4) and start on some sketch of a way to adapt the architecture of critical discussion in order to overcome these problems (Section 5).

## 17.2 The Agenda

Coming from downstairs (the gym) with a freshly formulated difference of opinion our guests must now, in Room 2, consider what they will do about their dispute. Fortunately there is, put up on the wall, a large piece of paper on which their tasks are listed. They must come to agreements on the following issues:

1. whether to opt for discussion, i.e., whether to engage in some kind of discussion at all, or rather do something else, for instance, draw lots or have recourse to violence (van Eemeren & Grootendorst, 1984, pp. 85, 88, 105, 1992, p. 35, 2004, pp. 68, 137);
2. whether to opt for argumentative discussion (persuasion dialogue), which is aiming at rational conviction (rather than, for instance, negotiation dialogue aiming at a compromise or an eristic altercation);<sup>1</sup>
3. what global discussion rules to use to organize the discussion, i.e. what system of persuasion dialogue to adopt (van Eemeren & Grootendorst, 1984, pp. 88, 105, 1992, pp. 35, 39, 2004, pp. 60, 68, 137, 142–43);
4. who will perform the role of Protagonist and who will perform the role of Antagonist, with respect to each of the propositions constituting the difference of opinion (van Eemeren & Grootendorst, 1984, pp. 85, 88, 105, 1992, pp. 35, 39, 2004, pp. 60, 105, 137, 141–42);
- 5a. what logic system is to determine the underlying concepts of validity and consistency (van Eemeren & Grootendorst, 1992, p. 94, 2004, p. 148);
- 5b. what procedures to adopt for testing for validity and consistency in concrete cases that may arise at the argumentation stage (van Eemeren & Grootendorst, 2004, p. 148);
- 6a. what argument schemes to admit and to what standards applications of these schemes should conform in order to be correct (van Eemeren & Grootendorst, 1992, p. 159, 2004, p. 149);
- 6b. what procedures to adopt for testing for admissibility and correctness of application of argument schemes in concrete cases that may arise at the argumentation stage (van Eemeren & Grootendorst, 1992, pp. 158–59, 2004, pp. 149–50);

- 7a. what propositions to accept as basic premises, whether as axioms or as defeasible presumptions, to function as starting points for arguments (van Eemeren & Grootendorst, 1992, pp. 35, 149, 151, 2004, pp. 60, 68, 137, 145);
- 7b. what procedures to adopt for testing for acceptability of basic premises in concrete cases that may arise at the argumentation stage (van Eemeren & Grootendorst, 2004, pp. 145–48).

A glance at this paper on the wall should convince the participants that they need not fear to run out of work, unless they would skip, or only summarily discuss, large parts of the agenda. The dialogue in the next section will serve as an illustration.

### 17.3 A Dialogue

In their conversation, as recorded below, Ophelia and her father will demonstrate the various tasks that need to be performed to complete an ideal opening stage. Numbers in brackets indicate the various items on the agenda.

Polonius: To say it just simply and in unadorned language: dolphins are astoundingly intelligent.

Ophelia: Why do you say so, father?

Polonius: Oh dear, didn't you see the latest issue of the Proceedings of the National Academy of Science?

Ophelia: Stop, daddy. If this is an argument, you are skipping the opening stage.

Polonius: Am I?

Ophelia: Yes, before you can present an argument we must first agree what to do about our difference of opinion. [1] Shall we discuss it?

Polonius: By all means.

Ophelia: [2] Contentiously? Or by rational persuasion?

Polonius: Rational persuasion would be perfect, sweetheart. Someone will try to convince the other that dolphins are really smart.

Ophelia: And someone else will try to cast doubt on that proposition. [3] What discussion rules shall we use? How about the pragma-dialectic model?

Polonius: Fine. [4] Let me be the Protagonist.

Ophelia: And I shall be the Antagonist. [5a] I suggest we use classical propositional logic.

Polonius: [5b] And we'll check specific cases by truth tables. [6a] I suppose arguments from authority will be acceptable?

Ophelia: I do not fancy them. But OK, provided the authority is impeccable.

- Polonius: [6b] Scientific journals would count as such?
- Ophelia: And the bible.
- Polonius: [7a] Now, what propositions do we agree about to begin with? I presume that if a species uses proper names they must be astoundingly intelligent?
- Ophelia: Absolutely! But only humans do.
- Polonius: Ho stop! We are not yet through with the opening stage.
- Ophelia: What more?
- Polonius: [7b] As a general procedure to agree on basic premises, I suppose you will gladly accept Freeman's manual (2005) in its entirety?
- Ophelia: With pleasure. But now let's have our argument.

It is obvious that in this conversation between Ophelia and Polonius the opening stage was cut down so as to retain just the barest exchange needed to address each item on the agenda. (Nevertheless what was said sufficed to give Polonius a very strong position as a Protagonist in the next room.) It is not hard to imagine that a more serious opening stage would have to be much more involved and protracted.

## 17.4 Problems

The most striking problem about the opening stage is its tremendous workload. Given that it is at that stage unknown what arguments will turn up in the next room, how can one make sure that enough argument schemes, procedural methods, and substantive propositions have been agreed on to have a fruitful argumentation stage? When is an opening stage completed? This I shall call the *completion problem*.

The completion problem becomes even more pressing on three counts. First there is the indefinitely long list of propositions to be screened for eligibility as basic premises. Perhaps this list can be handled more systematically and more efficiently by agreeing on procedures to establish basic premises instead of considering them one by one. Even so the discussants need to consider, section by section the issues in Freeman's book (2005).

Second, what if the discussants do not immediately agree on a proposed basic premise, or on the appropriateness of a type of argument, or its conditions of correctness, or on some matter of logical theory, or on some detail of one of the testing procedures? How do they settle their differences? If they decide to resolve them by critical discussion, this would lead to yet another opening stage to prepare for the argumentation stage of this inserted discussion. And if differences of opinion were again to arise in the opening stage of this inserted discussion, this could lead to yet another inserted discussion, and so on. Thus, the danger of an infinite regress looms ahead.



Third, even when both parties agree after some time that their discussions at the opening stage now provide a sufficient basis for them to proceed to the next room, they could, at the argumentation stage, run into unforeseen problems that necessitate a return to the opening stage. According to van Eemeren and Grootendorst, as soon as the Antagonist overtly doubts some explicit or implicit premise used by the Protagonist, a new difference of opinion (a subdispute) arises occasioning a new discussion (a subdiscussion):

Besides advancing contra-argumentation against all or part of his opponent's argumentation, a discussant can also indicate that he does not accept all or part of it. This he does by casting doubt on the statement or statements concerned or by describing them as insufficient justification or refutation. In all these cases this means that strictly speaking a *new* dispute has arisen which in turn gives rise to a *new* discussion, the outcome of which may, however, be crucial to the resolution of the original dispute. (van Eemeren & Grootendorst, 1984, p. 89)

Applying the pragma-dialectical model of critical discussion to this new discussion (the subdiscussion), one must conclude that, upon entering a subdiscussion, another opening stage is called for. Since the opening stage of the original discussion may be so construed as to include the opening stages of the subdiscussions, one may also express this by saying that a return to the opening stage of the original discussion is required. For instance, a return to the opening stage would be required if Polonius, in the argumentation stage, were to present an argument that is thereupon criticized by Ophelia. The example below continues the dialogue recorded above at the point where the discussants enter the argumentation stage.

Polonius: Dolphins are astoundingly intelligent, because they are a species that uses proper names and if a species uses proper names they must be astoundingly intelligent.

Ophelia: But how do you know they use proper names?

Polonius: That was in the Proceedings of the National Academy of Science<sup>2</sup>.

Ophelia: Ho stop, daddy. Mine was an expression of doubt, so we are having a subdispute and must first return to the opening stage.

Van Eemeren and Grootendorst suggest that for subdiscussions one could do with the blanket stipulation that they must be "conducted in accordance with the same premises and the same discussion rules accepted in the original discussion" (van Eemeren & Grootendorst, 2004, p. 147). But it seems hard to exclude the possibility that the special character of some premise would require some special provisions as to the way it should be defended. For instance, the original discussion may be about some moral proposition, and not require a deductive proof, whereas one of the premises used by the Protagonist may belong to applied mathematics. If so, upon each utterance of doubt, expressing a difference of opinion, a return to the opening stage would have to follow, a circumstance that would aggravate the problem of getting beyond the opening stage.

There is, however, also a reverse problem, which arises if the parties would indeed succeed in bringing their opening stage to definite completion. This is the *fixity problem*, the problem that, once the opening stage has been completed, hardly anything is left for the argumentation stage. The decisions taken at the opening stage seem to suffice to determine completely the formal and informal logic that governs the argumentation stage as well as the set of available basic premises. Thus it seems to be determined whether or no an acceptable argument for the initial standpoint can be put forward. Hence the opening stage all but determines the outcome of the argumentation stage, all interesting matters having been discussed at the earlier stage. Given that the argumentation stage is usually seen as the heart of the argumentative process, this is at least an odd result.

A more technical and theoretical problem is that of the relation between the concepts of metadialogue and that of an opening stage. This is the *status problem*: does the opening stage belong to metadialogue? In a former paper I used the opening stage as an example of metadialogue (Krabbe, 2003) because it contains dialogue about dialogue. But within pragma-dialectical theory the opening stage is clearly positioned as one of the stages of the ground level dialogue. This needs to be sorted out.

## 17.5 Solutions

At this point I would be glad to conclude my paper since, as usual, I see many problems but hardly any solutions. Nevertheless I shall present some suggestions to steer between the Scylla of the completion problem and the Charybdis of the fixity problem. The goal is of course to get a more realistic, yet normatively strict, set of rules for dialectic.

Foremost, I think it would be a good idea not to try to treat all tasks on the agenda of the opening stage on an equal footing. These tasks may be relocated at different points of the dialectic procedure.

As far as I see there are four possible locations for these tasks:

1. outside the discussion;
2. at the opening stage of the discussion;
3. in a metadialogue embedded in the discussion;
4. at the argumentation stage of the discussion.

The first location lies outside the dialectic process. The idea is to remove some tasks from the dialectic procedure and to presuppose that these tasks were performed before the discussion starts. This way of removing items from the agenda could be considered for (1) the decision whether to engage in discussion at all and (2) the decision to engage in persuasion dialogue and (3) the decision to engage in a specific type of persuasion dialogue which is characterized by a specific set of discussion rules. The task of the dialectician is just to describe a certain system of discussion rules and does not include the description of rules that govern the decision to select the very system he describes.

The second location coincides with the present location of these tasks at the opening stage as a preparatory stage of the dialectic process. The following tasks on the agenda could keep their place at this stage: (4) the decision who is to perform what role; (5a) the decision on logical theory and (6a) the decision on appropriate argument schemes including some of the theory of correct application of these schemes; for the other items, which concern procedures ((5b), (6b), and (7b)) or propositions ((7a), and (7b) again) it could be made optional to what extent they are to be discussed at the opening stage.

The third option for locating tasks on the agenda would be to execute them in a metadialogue, which in a sense amounts to returning to the opening stage. This metadialogue must however be embedded in the argumentation stage, i.e., at the point where the participants enter the metadialogue, it must be functionally relevant for the purpose of that stage. This option is suitable for discussing details of the procedures that take care of (5b) the application of logic, of (6b) the application of argumentation schemes, and of (7b) the testing for acceptability of basic premises. Consequently, these matters will be discussed only when, at the argumentation stage, the occasion arises to do so. Metadialogue can also be used for (7a) the determination of the status of proposed basic premises.

The fourth location is the ground level discussion itself. It is another suitable location for (7a) the introduction of basic premises, supposing that the Antagonist is free to concede propositions that may be used as basic premises in addition to those granted at the opening stage.

Reorganizing in this way the agenda of the opening state may not, in all respects, provide a solution for the completion problem, but it will at least mitigate the trouble. For if such a reorganization is accepted, one forgoes the ambition to achieve completion of the original agenda at the opening stage. Even for the part of the agenda that remains at the opening stage completion is not necessary, since there is lots of room to make repairs later in the metadialogues.

But how about the danger of an infinite regress? To avoid an infinite regress in the opening stage, it suffices to stipulate that the opening stage, in its reduced form, should not itself exhibit argumentative discussion but rather be limited to some uncomplicated version of negotiation dialogue<sup>3</sup>. However, a theoretical regress in the metadialogues cannot be ruled out in this way, since, presumably, these must be argumentative. In this case, however, infinite regress can be condoned as an acceptable idealization. Moreover, infinite regress will not occur in practice, since, as we know, real discussions are all finite in length.

About the other two problems I shall be brief. Upon reorganizing the agenda, the fixity problem disappears now that more of the tasks are left to the argumentation stage and its embedded dialogues. As to the status problem: we see that not all of the tasks of the original opening stage need to be performed at a metadialogical level, though some will. So part of what used to be the opening stage will retain the status of ground level discussion, and part will be reassigned to the metalevel.

## Endnotes

- 1 In the pragma-dialectical writings this item and the preceding one occur as one issue of deciding to discuss.
- 2 May 2006.
- 3 I am thinking of a simple system of offering, accepting, and rejecting, without recursion, and without embeddings of dialogues of other types.

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# Chapter 18

## Testing for Acceptable Premises Within Systems of Belief

Jim Gough

### 18.1 Introduction

Many informal logic texts inform their readers to test premise acceptability in order to determine whether or not support or justification for a conclusion in an argument is cogent or warranted (for example Govier, 1985; MacKinnon, 1985). In some logic texts, premise acceptability is the first test which precedes and takes logical priority over tests of premise relevance and an adequate set of acceptably relevant premises to establish sufficient evidential grounds for a cogent argument. So, for example, Govier (1985) argues for a priority ranking of the cogency test that she calls the A acceptance, R relevance, and finally in priority order the G or grounds test for argument cogency. One of the standard tests for premise acceptability is whether a premise satisfies the common knowledge condition. However, this test is considered potentially problematic because it is believed that common knowledge varies by context and situation. Some theorists, such as Snell in *The discovery of the mind* (1953) and Jaynes in the *Origin of Consciousness and the Bicameral Mind* (1976), argue for a psychological or in the latter case a psychophysical origin for historical variations in the common sense belief set. Common beliefs change over time, change by audience, and change due to varying knowledge conditions, as argued by Thomas Kuhn, in the *Structure of Scientific Revolutions* (1962), his ironic contribution to the *Encyclopedia of the Unified Sciences*. So, according to these views, there is little “common” about common knowledge.

At the same time, there seems to be the prevalent countervailing belief that common knowledge is universal; that is, there are some common beliefs that do not vary by time, context or situated knowledge base. There have been few thorough and systematic attempts to demonstrate the theoretical underpinnings of such claims to universal, common knowledge as the foundation for the presumptive acceptance of basic premises. Freeman in his book *Acceptable Premises: An Epistemic Approach to an Informal Logic Problem* (2005) offers a considered and sustained attempt to

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provide a critically argued philosophical foundation to test for the acceptability of universal common knowledge in order to provide the theoretical protocol for the common knowledge acceptability test. While generally supportive of Freeman's efforts (see my review of his text in *Choice*, November, 2005), I will (following his suggested approach) provide some critical challenges that could hopefully provide the means for useful changes to the text, both in terms of additions and re-thinking of some aspects of his common sense foundationalism in theory and practical application.

## 18.2 Freeman's Foundationalism

Freeman argues for an epistemic foundation for common beliefs. These beliefs ground what he calls *presumptively reliable premises* in an argument, premises if denied shift the burden of proof to the challenger since they have common sense epistemic and pragmatic theoretical warrant (Freeman, 2005, pp. 21–72). The basic beliefs can be about experiential matters of perceptual fact, subjective introspective reports, the motive(s) of other minds which account for their successful behaviour and judgements and intuitively-based ethical values behind a sense of common conscience (Freeman, 2005, pp. 369–371). Such beliefs, claims Freeman, are basic if they are immune to a plausible challenger's criticisms. In a dialogical context, when a proponent asserts a basic belief, which has pragmatic consequences for making successful judgements in an argument, the burden of proof to defend the basic claim moves to a challenger. The failure of a challenger to refute the fundamental premise establishes its contingent [subject to other possible challenges] *presumptively reliable* accountability. Freeman defends his analysis of common knowledge using Reid's notion of common sense. Freeman's trump on plausible objections to common sense conditions for universal claims about perception, introspection and ethical intuition is to theorize that each of us is equipped with a *life design plan*, (Freeman, 2005, pp. 43–56) a natural (principle of our) human *constitution* (Freeman, 2005, pp. 191, 212–213, 239, 242), or a moral *conscience* (Freeman, 2005, pp. 274–275) which grounds common sense beliefs.

Freeman's account is detailed and technically thorough, providing a needed theoretical foundation for *presumptively reliable premises*. However, following his own analysis, it will still be useful to present some critical challenges to his foundationalism. These challenges are intended to open up some further possibilities for enhancing his views. The challenges will be of two general kinds—theoretical and practical. The theoretical challenges should help to illuminate both inherent critical issues and some of the practical problems in applying his views to arguments in the public domain. Arguments that occur in this domain occur in public debates about what policies or decisions should be made that involve the public good. These arguments have taken place since the earliest discussions in the market place of Athens. Hence identification of theoretical challenges in this general context should help us to understand problems with the practical application of some of Freeman's claims

about common or universal basic beliefs as they underpin arguments. This also follows Freeman's practical claim that we must consider the pragmatic consequences of accepting or rejecting any basic belief or premise.

### 18.3 Theoretical Challenges to Freeman's Common Sense Foundationalism

The first theoretical challenge to Freeman's foundational account is his claim that presumptively reliable beliefs have their authority in the theoretical construct of a natural human constitution, plan of life, or conscience (Freeman, 2005, pp. 242–250). At worst, this may be an incidence of begging the question about the plausible authority for presumptively reliable beliefs. For example, it begs the question to claim that in the case of the sadist and the masochist that “the mechanism to feel satisfaction has been warped” since the theoretically imagined mechanism is supposed to provide the foundation for a normative account that cannot presume it exists (Freeman, 2005, p. 238). At best, this may be a place holder for a subsequent reduction to a Rylean inspired behavioural account in the *Concept of Mind* that eliminates the need for “mind talk” (similar to Freud's suggestion in *Civilization and its Discontents* that his tripartite psyche account will be replaced by a subsequent neurobiological account).

The second theoretical challenge, following Reid's common sense view, is that common sense is not uniform (Freeman, 2005, pp. 126–135, 367). It is not illogical to have two common sense claims about the same subject or area in conflict with each other (Fearn, 2001, p. 91). So, it is logically possible for two presumptively reliable beliefs asserting opposing claims. For example, a common belief which is assumed to be presumptively reliable is that taking a human life is murder and wrong. At the same time, there is a presumptively reliable belief that taking the human life of a fetus is *not* murder. These are not binary opposites but they are conflicting common sense beliefs. The challenge is to identify how we can reasonably decide that one is more presumptively reliable than another. It is not clear if Freeman meets the challenge. It is Freeman's failure to recognize this challenge that contributes to his faulty presumption in favour of a universal, common sense foundation as the source of all basic beliefs.

The third challenge is a version of the *ought-is* confusion. Freeman's analysis seems more about what we ought to do than what we, in fact, do when we argue. This presents a gap that needs to be filled. Under ideal conditions, presumptive reliability can be established for basic beliefs and basic premises but much argumentation occurs in less than ideal conditions. It won't do, even on the basis of some ascetic observer scenario, to assume the presumptive reliability of a belief and then condemn a challenger for not satisfying the conditions of the burden of proof. The real world does not operate in this way. This game of argumentation is played under less than ideal rules by people using less than optimal knowledge of how to argue well. Freeman argues that plausible belief-generating mechanisms

can generally be assumed to generate reliable beliefs. However, these ideal theoretical mechanisms may not be in play for both proponent and challenger. Indeed, traditionally philosophy has been open to the challenge posed by different belief-generating mechanisms. For example, existentialists such as Nietzsche challenge the belief-generating mechanisms of Hegel's rationalism and Lutheran dogmatism to establish the acceptable basis for beliefs.

The fourth theoretical challenge involves Freeman's consistent use of the perceptual analogy to account for shared intuitions, shared sympathies and universal moral sense (Freeman, 2005, pp. 191–192, 238). Just as we have a perception of "yellowness", we equally have a sense of empathetic sympathy, rightness and duty. However, Mill's classic example of comparing natural auditory sensations to equally natural, pleasurable sensations is a dis-analogy because, in the latter case, inclination, disposition, deliberation, and attention are required but not in the former. Pleasurable sensations are not significantly like auditory perceptions. For example, I don't intend to see or hear in the same way that I experience pleasure. As well, I don't correct mistaken judgements in the first case the same way I do in the second one. However, Freeman suggests that in terms of the basic beliefs inherent in common sense, perception, intuition and introspection provide a sound foundation or source for similar basic beliefs. This seems to be parallel to Mill's dis-analogy, especially since intuition and introspection are not analogous to perception.

The fifth theoretical challenge involves Freeman's use of testimony, personal and expert, as the content of basic premises in an argument (Freeman, 2005, pp. 292–308). There is an ambiguity inherent in personal testimony, which he fails to acknowledge. My personal testimony may be a report of my feelings, personal preferences, subjective desires or likes, etc., whose authority is authenticated by me in a belief generating process called *opinionation* (for a more extensive discussion of the differences between opinionation and argumentation (Gough, 2001)). There is an ambiguity here about whether it is my personal feelings about *x* that give it authority or my asserting testimony about independent events that actually took place. Freeman seems unaware of this ambiguity (Freeman, 2005, pp. 290–291) in his discussion of the acceptability of expert testimony. As well, there is a personal testimonial about what took place in a particular time at a particular location. The authority for this testimony is clearly different from that of an opinion. To further confuse the situation, I may be self-deceived about the source and nature of my own personal testimony. The challenge is to integrate these qualifications into the reliability test of presumptive acceptability of personal testimony.

There is a similar possible confusion in the case of expert testimony. To trust such testimony, personal interpretation needs to be incorporated into qualifications of what constitutes presumptively reliable expert testimony. For example, there was a failed attempt by the U.S. government to find experts to testify on the nature of religion in its efforts to establish that scientology was *not* a religion; this was due to the fact that no definition of religion was exempt from differing and conflicting



interpretations. There were no interpretation free facts to appeal to in this case. Expert testimony is not exempt from personal and institutional interpretation especially since expertise is parceled off in very limited and constrained departments. An expert in psychoanalysis is not an expert in behaviourism or even some behaviourist school or theory.

These five theoretical challenges suggest that there may be critical problems with Freeman's foundational basis for deciding on presumptively reliable premises. Ideologically-based foundational beliefs may be an important part of our psychological belief-generating mechanisms and independent of the basic beliefs of others. So, it isn't that a challenger shares but challenges a basic belief of the proponent. The situation is not so accommodating. It is rather that the basic belief of the proponent may not be shared by the challenger and no amount of pragmatic hand wringing or shifting burden of proof can accommodate or rectify this fundamental difference. Any appeal to shared basic conceptual beliefs falls short of Freeman's shared common sense mechanisms and warrants.

These theoretical issues or problems with Freeman's account point to the critical issue that his own epistemological view is not neutral. Instead his epistemology is itself grounded in an ideology, an ideology found in a psychological or conceptual system of beliefs. This underlies the practical problems with Freeman's approach to premise acceptability based on a universal common knowledge base.

## 18.4 Conflicting Belief Systems

There is a rhetorical tradition for understanding arguments based on the notion of conflicting systems of belief. On this view, beliefs are not independent of each other but make sense only within a system or a set. What one belief is connected to provides its plausibility (or acceptability) within the set. Systems of belief are relative to different individuals in different groups in different contexts. Any universal common beliefs are inter-subjectively or cross-culturally related on the basis of some kind of translation manual.

The importance of belief systems in understanding the dialogical context of arguments has been identified by several people in the area (e.g. Gough, 1985; Groarke & Tindale, 2001; Rescher, 2001). The systems of belief are conceptual and provide us with a way of coherently approaching the world and critically confronting the views of others. They provide security in one's individual identity within a system of beliefs and a sense of stability in one's world view. Within these systems, there are core, fundamental, or what Freeman would call, *basic* beliefs and there are (Quine, 1978) *peripheral* beliefs that are tempered by both empirical experience and the conceptual core content of the system of beliefs. Both kinds of beliefs may change over time or their location can change from periphery to core or core to periphery. This is a kind of hermeneutical to-and-fro movement from external limits to internal constraints and from external bombardments to internal amendments.

Peripheral beliefs are subject to critical bombardment from outside the system and critical challenges from the core set within the system. The system is not based on correspondence relative relations but coherence relative relationships, in order to provide a meaningful base of the system's value or integrity. System integrity is more important to the system and its set of basic beliefs than any so-called "empirical reality check", since no such check is made outside or independent of the interpreted set of beliefs.

## 18.5 Practical Challenges to Freeman's Common Sense Foundationalism

To illustrate the role played by basic beliefs in conceptual systems, I will provide some examples of arguments from public debates both historical and current. It is my view that in these debates there is a conflict between basic fundamental beliefs and what different belief systems accept as presumptively reliable premises. So the need is only partially epistemic since there needs to be some kind of conceptual, psychological, negotiation between belief systems in order to identify [a] what are in fact cross-system basic beliefs and presumptively reliable basic premises, and [b] ways of critically evaluating what are mistakenly taken to be basic beliefs and presumptively reliable premises. Following my earlier critical response to Reid's common sense epistemology, there may be conflicting common-sense beliefs which authorize different presumptively reliable basic premises. There is some confusion over border crossings and what mediation should take place to alleviate conflicts. Freeman may be correct in his view that we should argue from a universal common sense foundation, but it remains doubtful that we *do* argue from such a foundation.

There is an argument that has a long history in the ideas about the relationship of women to society that I call the *Fit-by-Nature* argument. Here are some common features in this argument:

## 18.6 Basic Presumptions of the Fit by Nature Argument

1. *There is a natural condition of women*, which separates them from men. [authorities for this source are religion + politics]
2. This condition which is common to all women is not *something that any woman deliberated about or chose but rather something she (and every other woman) discovered about herself and more significantly men discovered about her (and every other woman)*. [the authorities for this source are religion + science]

3. It is a FACT that women have this common condition or set of features. Such *facts cannot be contested, are non-controversial*, and so by force of logic must be accepted. [the authority for this source is primarily science]
4. This common, *natural condition is taken to be an acceptable discriminating feature to identify women* and separate them from men *because* no society or individual or group gave this feature to women. It occurred without the interference or intention of any human being, which is good. [the authority for this source can primarily be found in the history of views in philosophy]
5. There is a common belief that that which is natural is good. So, by analogous or parallel reasoning, what is natural to women must be good (following 4. above) and an uncontested or uncontroversial or factual good (following 3. above).
6. What is natural is found in the natural world, the world of nature. The way that we find things in the natural world is through observation. *Observation identifies for us physical (by definition, observable) features* of the natural world. [the authority for this source is primarily science + politics]
7. In the natural world, the value(s) of things or entities is often identified and categorized in terms of their natural function(s). *Purpose follows natural function*. If we discover something's purpose, then we discover its value or goal or aim or reason for existing. [the authority for this source is in science + philosophy]
8. The world of civilization or society should be governed by the natural world, in the sense that what is natural is what should be promoted in our society or civilization through its customs, traditions and regulatory laws or edicts. *Society should be the mirror of the situation in the natural world*. If something occurs in the natural world, then it should be valued in society. [see Assumption 9]
9. Sometimes the argument has the following nuance. What is natural is identified as what is approved by God. Since God created the natural world and everything in it, then the laws and features of the natural world which serve to continue its existence must be good and since all good comes from God, that which is natural must come from God. This view *links God with the natural world* so that the two cannot be separated. This view has a separate set of supporters and objectors. [Natural Law; see Assumption 10]
10. That which is natural has come about by some kind of design, either evolutionary or God-given design, and is not the result of any random or accidental set of occurrences. Accidental occurrences are generally not valued as much as deliberate or deterministically decided occurrences and not open to alteration on the basis of free will. [see Assumption 9]
11. That which is natural describes the role and function of women in society (and men). [see Assumptions 9 & 10]

There may be more assumptions at work in the ensuing argument, but these will be sufficient to demonstrate some of the presumptions and questionable assumptions at work in this argument, that seem to function as basic premises.

## 18.7 The Argument Built on the Basic Assumptions of the Fit by Nature Argument

From the set of Assumptions above, the following support is offered in the argument:

1. Women are fit, by nature, to bear children. Men are, by nature, not fit to bear children. [or, another way of putting this same claim: There are identifiable physical biological differences between women and men. These are factually determined and not a matter of anyone's subjective values.]
2. Human beings are composed of a physical and a psychological nature, which is linked by our understanding of the causal relationship between the physical nature and the psychological nature. [This is a version of a view known as dualism; we are all composed of a physical and non-physical nature.] Or, (alternative reading of this claim) a human being's physical nature is a replica or mirror of that human's psychological nature, making the two identical. [This is a version of a view known as monism, or physicalism or materialism]. One's nature includes tendencies, talents, dispositions, capacities and abilities, which may be unique according to one's gender.
3. Women are by nature [not by choice or anyone's deliberate actions (see Presumptions 3 & 6)] weaker than men. This is simply a matter of fact, which can be tested by any number of observations.
4. If women are by nature physically weaker than men (as in #3 above) then it follows that they must be psychologically weaker than men as well. [innate or determined by God: see Presumption 9]
5. Certain roles, positions, jobs or situations in society require strong (both physically and psychologically: see #2 above) individuals who naturally are able to take control and rule, rather than be ruled by events. These are positions of socio-political power or authority in any state or government.
6. In the natural world, outside civilization and society, the stronger naturally rules the weaker. [This situation is good and should be followed in any society or civilization, which hopes to be good by functioning well according to the natural order of the world: see Presumptions 2–5 and 8–10]
7. So, in society the male should naturally assume a position of rule over the female to preserve the natural order of the world of nature and society. Any political organization, which preserves the natural organization of the genders in the natural world, is good in the sense that it is more efficient and it preserves the well-being of everyone.
8. The discrimination against women in any political state is acceptable because it is not the result of any deliberate actions of one gender over the other but rather a natural discrimination [as such both deterministic-inevitable] defined by features beyond any individual's deliberate decision or control.
9. Men are fit by nature to assume various roles in society, which involve leadership, ruling, management and authority over women.

10. Society should direct, through the use of customs, practices, codes and enforced laws, men into certain roles and women into other roles, according to their respectively different natures.
11. The education of children should be based on their subsequent natural roles in society (Mahowald, 1994).

## 18.8 Basic Differences Between Challengers and Proponents

This fit-by-nature argument is an example of a set of beliefs which are connected and supported by an ideological worldview. From the first presentation of the argument by Glaucon to Socrates in *The Republic of Plato* (Mahowald, 1994, pp. 1–32), the argument is based on the fundamental belief that physical gender differences are significant for psychological, intellectual and political distinctions separating the two genders. Males are fit to rule and females are fit to be ruled. Mary Wollstonecraft, (Gough, 2005; Mahowald, 1994, pp. 112–128) John Stuart Mill, Harriet Taylor, (Mahowald, 1994, pp. 151–185) Simone de Bouvoir (Mahowald, 1994, pp. 201–221), and others see the faults in this historically enduring argument (in all of its variations and nuances) finding that there is no epistemic research to support any of the claims. These claims are more ideological, part of an ideologically based system of beliefs rather than a consideration of empirical reality. Wollstonecraft finds the view so irrational as to be absurd (Gough, 2005) and Mill finds it completely lacking in any empirical comparisons to other “natural” possibilities (Mahowald, 1994, p. 152).

Freeman is correct to claim *there is a need for presumptively reliable beliefs common to a universal audience*; this is what ought to be the case, according to Mill, Wollstonecraft and others (Mahowald, 1994), yet he appears mistaken that there is such an audience that shares this same presumptively reliable belief about the nature of women. In spite of the extensive experience of both men and women, the fit-by-nature beliefs have survived for centuries, however impractical, perceptually unreliable or intuitively implausible they appear to be (according to Freeman). So, there is something missing from Freeman’s foundation account of common knowledge and its reliable presumptions.

In case this fit-by-nature argument may appear to be an example of an historical anomaly, it will be useful to consider another argument currently prominent in the public domain. Despite extensive scientific evidence collected by proponents of the Kyoto Accord’s restrictions on greenhouse gas emissions, conservative challengers claim that the evidence is not presumptively reliable. The reason for this conflict is fundamental to the differences between proponents and challengers in this public debate; the fundamental challenge, current to Kyoto, is similar to the earlier creationists’ challenges to evolutionary theory and current intelligent design challenges to the theory of evolution.

A fundamental presumptively reliable belief of the challengers is that the measurements or tests used to either make predictions or retrodictions (in the case of the effects of greenhouse emissions), are grossly inadequate. So it is not necessary to reduce greenhouse gas emissions, given any amount of accumulated evidence which is based on an unreliable source. This basic belief is in conflict with the empirical scientists' belief that computational models and other measurement mechanisms are as accurate as necessary to give us good reasons to reduce greenhouse emission.

The conflict in this case is based on two conflicting basic conceptual beliefs, both presumed to be reliable. First there is the belief that a computational model is the best way to change the information content of systems to accurately predict inter-system relations and extra-system consequences within constant changes to the system. The challengers literally cannot see that this basic belief (and the mechanisms that support it) is reliable. Such inability to see can only be based on environmental factors, according to Freeman [since there is only minimal conceptual content to his "being appeared to" phenomenal account]. Instead, they believe that science is only as good as the stable unchanging evidential base of its predictions. It is difficult to imagine how an appeal to a shared set of presumptively reliable basic premises could occur and be used to attempt to resolve this conflict. However, that is precisely what we might hope an argument could accomplish. Again, Freeman appears right in his analysis of what is needed in such cases but it remains questionable whether there are ideological neutral, presumptively reliable beliefs of the kind he requires in such cases.

The following representative argument for global warming should give us some ground for making this criticism.

## 18.9 Arguments for and Against Global Warming

*Background:* According to ecologists, the earth is a closed system of interconnected species and organisms that is subject to internal change and attempts to retain, renew, and continue to exist as a dynamic entity.

*Basic Assumption 1:* The earth as a dynamic system continues to change but always following patterns that are internally predictable, with suitable computer modeling, over protracted periods of time.

*Basic Assumption 2:* The earth is a throughput system with energy coming into the system from without and waste from the use of energy remaining inside the earth (system) trapped in sinks.

*Basic Assumption 3:* The earth is a closed system (an economic system by comparison is an open system) and strategies for responding to a closed system are not identical in efficiency or acceptability to an open system. Examples of closed systems are a biotic system or the system proposed by the Giaa proposal.

*Basic Assumption 4:* Although it is not necessarily formally logical, there is a widespread belief that the future in many relevant respects resembles the past, a regularity which is assumed in induction.

*Basic Assumption 5:* A system is coherent when all parts relate or connect to each other, given that the set of possibilities is finite.

*Sub-Conclusion:* Changes to the earth's atmosphere at the level of the biosphere can be best accounted for by considering the elevated levels of CO<sub>2</sub>, methane and hydrocarbon emissions (Desjardins, 1999, pp. 259–286, 394–343).

## 18.10 The Argument from Kyoto Opponents

The arguments against the Kyoto Accord often have the following (or similar) components:

*Presumption 1:* All measurements of global warming fail to be adequate. All climate projections are merely computer models, through which scientists try to take into account as many variables as they can, with whatever mathematical formulas they believe apply. More sophisticated models take into account literally hundreds of factors but, by necessity, contain thousands of best-guesses, or are simply silent on certain subjects. No model is better than the assumptions that went into its design. By definition, models are nothing more than a collection of scientific theories, prejudices and guesses. So, using computers to predict the future is simply a high tech veneer over the plain fact that climate modeling is sheer guesswork.

*Presumption 2:* The increased levels of carbon dioxide will either (a) not produce the ecologist's predicted outcomes, or (b) other more serious problems need to be remedied. This supports an argument against signing an international accord to limit greenhouse gas emissions.

## 18.11 Conclusion

On Freeman's account, a basic presumption in an argument can be undercut by relevant factors against its acceptance. However, the challenger to the proponent of the Kyoto Accord has a different set of presumptions, equally basic and in conflict to the proponent's basic presumptions. In this situation, science is of no help in forging a set of presumptively basic beliefs because the belief-generating mechanisms of science are in doubt. The differences in basic beliefs between proponent and opponent of Kyoto restrictions are *ideological* which doesn't necessarily make them biased or distorted. Instead, these differences need to be addressed by a negotiated process of mediation, by which a shared set of presumptively reliable beliefs can be determined. This is a negotiated starting point not a presumptively reliable epistemic foundation.

If Freeman can accommodate this kind of psychological/ideological component to the epistemologically grounded/presumptively reliable basic set of beliefs, then his foundation will become fluid yet more psychologically and epistemologically reliable. Human beings have a sense of self-identity, satisfaction and community

within a shared system of beliefs. If we understand this belief system and the confusions created by ambiguities in personal and expert testimony, then we can understand the tendency to try to preserve the integrity of the system's coherence rather than to respond to outside, peripheral challenges.

Shared intuitions, common value beliefs, and interpretations, in fact, need to be negotiated through considered argumentation, not presumed on the basis of "some aspect of our human constitution" or the need to "avoid some hypothetically unacceptable bad consequences" questioning our ability to make good judgements. It is not belief-generating mechanisms that are at fault but the ideological commitments behind the use of these mechanisms that create the conflicts in public debates and need to be mediated through considered argumentation. As one proponent of the rhetorical model of argument suggests,

The challenge is to try to see the problem *from the perspective* of the author, despite the vast distance between us. To imagine what the world looked like for Plato, is to think in terms of the assumptions and traditions that to a certain extent constrained his thinking. Then one can begin to assess his reasoning on *its own terms*, not on ours. (Tindale, 1999, p. 76)

Following this suggestion, there is at least one possible example of such a mediation. The system of beliefs known as free-market environmentalism is fundamentally at odds with the system of beliefs of deep ecologists. In the first case, there is a basic belief in the growth of self-created wealth. In the second set of beliefs there is a fundamental or basic belief in growth. Unlike the first system, the ecologist believes that growth is subject to the natural evolutionary conditions of the life system and as such should be in accord with maintaining the overall health, well-being or integrity of the ecosystem. These two sets of beliefs are in conflict over the basic beliefs at the core of each system. Growth is interpreted differently according to each system (Gough, 2003). There is nothing *prima facie* in common between these two basic beliefs about growth. However, the use of the idea of sustainable growth has been moderately successful in finding a negotiated mediation point between the two basic beliefs about growth. Economic growth is constrained by the limits of the ecosystem to maintain both the integrity of the economist's basic belief in growth and for the ecologist there are possible non-ecological uses of the natural world that are marginally potentially acceptable. This is tenuous mediation subject to rejections, compromises and constant revisions—it is a fluid not a fixed foundational base (Fisher, 1981).

Finally, somewhat broadly, it is possible to outline some features of these two examples which may help us to understand some important conditions involved in the critical study of argumentation. First, there is a diagnosis issue. Both of these examples illustrate that there is no formal, straightforward way of diagnosing a logical problem outside the confines of formal conditions, conditions which seem not to apply to arguments by ordinary people in the public domain, arguments that persist using the same assumptions over a protracted period of time, like the "fit-by-nature" argument. Between the protagonists and antagonists, there is no consensus on what is to count as the normal conditions of arguing acceptably or even what is rational (Lloyd, 2007, p. 157). So, we need to approach argument identification and evaluation from an understanding of the context that frames the argument and gives us the



basis for diagnosis. To use a crude medical metaphor, it is well known that no two patients exhibit exactly the same symptoms, with exactly the same intensity, effect or conditions. So, while a general diagnosis can be made, a good diagnosis requires that one pay careful attention to the individual patient in a specific social, cultural context. Otherwise the diagnosis could go wrong.

Second, in both examples, what is claimed to be a value neutral concept or identification, nature or women, is very value-laden and specific to the argument. While the idea of a social group or a collectivity is universal, the content of the group's perception of the world, how to make judgements and how best to organize human interrelations is specific to differing groups (Lloyd, 2007, p. 150). After working through a context relative diagnosis of the logical or reasoning problems, it will be necessary to further evaluate how the group organizes central ideas, concepts and relationships involved in their arguments. Often, as in the case of the "Fit-by-Nature" argument about women there will be the suggestion that there is a power or political dimension that shades all the relations involved in framing the argument. Men just want to have and retain political power, which also is a theme found in the eco-feminist's claims about environmental relations in Western dominated views (Mahowald, 1994, p. 502). To determine problems with an argument we may need to look deeper into the context in which the ideas in it are placed or framed.

Third, what constitutes rationality may be distributed differently depending on the underlying ideology which prevails. So, for example, in the rejection of arguments favouring a sacrifice of some human interests to the interests of the natural world, there is an ideological condition that it important such that: "in practice, nature has been, and continues to be, as much normative as descriptive, as much a way of introducing value judgements, as setting out what there is, as much a matter of ideology, in fact, as of identifying what all can agree is there to be investigated" (Lloyd, 2007, p. 150). The very conceptualization or identification of the main issue of the argument is imbedded not in some neutral observation of a detached factual description but imbued with values in the very determination of the identification. This means that argument appraisal needs to take account of the underlying description of the main issue as it is framed within an argumentative context, not assume a formal process or procedure that is universally agreed to by all participants who are essentially playing the same game.

Fourth, it is necessary to evaluate not just the content and detached structure of the argument but the nature of the participation of the arguer or "how people think" as part of the process of identifying the logical framework for accurately evaluating the argument. This involves consideration of the *law of participation* not just the law of excluded middle, the law of identity or the law of non-contradiction. It is not just the content of a belief in an argument that should be part of the evaluation but the nature of what it is a belief about within the framing context of a system of beliefs. Measuring participation involves paying careful attention to considerations of group solidarity, as men frame the arguments about women in such a way as to preserve their social/political status or power, so that the "pragmatics of intercommunicative exchange" (Lloyd, 2007, p. 166) is understood. For the individual identifying and evaluating the argument, understanding that there are components of pragmatic rationality, not just

formal logic, inherent in the framed context of an argument is to potentially produce: clear-headedness in an appreciation of a situation in all its potential complexity, correct judgements as to which principles are the ones to apply and in what ways, and a sensitivity to the reactions of others affected by decisions taken” (Lloyd, 2007, p. 166).

Arguers individually participate in exchanges as members of a group woven together by ideology, group solidarity, the need to consider the reaction of other members of the group, and self-identity as a group member. This goes well beyond the considerations of formal logic. The diversity across the ideologically framed domains of the anti-feminist, pro-feminist, anti-Kyoto, pro-Kyoto participants is not incommensurable but open to mediation and negotiation, provided that there is a sensitivity to the context. Global hypostatization, goes well beyond the context framed evidence provided about how people participate within systems of belief. In a 1911 book called “Feminism”, published by the Women’s Writers League, the feminist philosopher May Sinclair identified her arguments as directed against an ideology represented by “the man we believes what he reads (in the conservative dominated) Sunday paper”. In this identification she expressed her insightful knowledge of the framed system of beliefs of her opponent and she framed her responses to this ideologue appropriately, neither creating an ad hominem reaction nor straw man misrepresentation of his views. Subsequent feminist writers would have done well to follow her lead.

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# Chapter 19

## The Duties of Advocacy: Argumentation Under Conditions of Disparity, Asymmetry, and Difference

G. Thomas Goodnight

Traditionally, an advocate is “one called to” the aid of another (Tasker, 1926, pp. 139–140). A friend or member of the family, who does not have the standing or resources necessary to speak, may be in need of intervention and representation. A professional analyzes a case and makes a recommendation to a client who must evaluate, respond, and choose. A cause, whose time has come, may demand support or opposition by virtue of interests threatened to self or allies. In all these situations, “one who pleads, intercedes, or speaks for, or in behalf of, another” is an advocate (Advocate, 1991, p. 194). Such arguers “adopt a stance, advance a cause, and attempt to produce the result in behalf of an interest of a person, group or cause” (Cohen, 2004, p. 9).

The deployment of reasons on behalf of another is one of the oldest forms of human communication. The most celebrated line of advocacy is found in forensic oratory at the bar of justice. In this respect, “advocacy is one of the most ancient and honorable of all callings” (Timberlake, 1922, p. 25). Yet, the act of communicative intervention itself may be even more ancient than representation in adversarial proceedings. In Homer’s *Odyssey*, the intervention of reason is coupled to the “plaint,” “an audible expression of sorrow, lamentation, grieving,” that constitutes a request for recognition which an interlocutor may grant or withhold (Plaint, 1991, p. 956). Advocates become involved and strive to construe distress, promise to make things right, or exploit the confusion. In the trials of a hero, Odysseus, Homer wrote of arguments among mortals and gods poetically, and thus scripted cultural performances of collective memory and lessons for generations of advocates in the making (Goodnight, 2003).

If the practices of advocacy reach far back over time (Advocate, 1911, pp. 241–242), its contemporary scope is likewise broad. Elias Cohen observes, “The techniques of advocacy cut a wide swath. Modes include jawboning, demagoguery, rhetoric, mass communication, and traditional public relations; publications in mass media, trade, and scholarly materials; formal legal proceedings, formal representa-

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tion of individuals and groups, and formal surrogate decision-making. There are virtually no limits to the breadth or narrowness of the cause in time, space, or intended effects” (2004, p. 9). The duties of advocacy are situated variously in the different enterprises of argumentation practices (Dewatripont & Tirole, 1999, pp. 25–31); yet, whether to persuade masses or to ward off personal attacks, all forms of advocacy exhibit the characteristic qualities of intervening argumentation: reason-gathering, intervention, argument-making, contention, and risk in the outcome.

In contemporary argumentation theory, advocacy plays a subordinate role. For instance, Douglas Walton has characterized debate – a paradigmatic case of advocacy – as occupying a half-way house between a quarrel and a dialogue (1989, p. 4). The point is well-taken. Advocates do hit opponents with their best shots, while expecting judges to be convinced by the modesty of their own positions. All advocacy, it seems, is argumentation that runs into communication predicaments – as in the case of the dueling expectations of debaters. Unlike in dialogue, the expectations, standing, and resources of advocacy contests are rarely normatively equal, transparent, or distributed without contention. Yet, the sometimes revered and sometimes make-do, situated, contingent constructions of practice shape the ways individuals, groups, and nations learn how to argue. Further, across time, movements strive to reform practices and to create – through advocacy – more reasonable social and political practices. Inquiry into practice-establishing argumentation should yield an understanding of the traditions of argumentation and the futures current practices face. Thus, I join with Charlotte Jørgenson who holds that “debate should not be perceived as second-rate critical discussion” (1998, p. 431), and so turn to independent critical inquiry into advocacy practices. To liberate advocacy from the half-way house of dialogue, one may start by imagining two distinct worlds, depicted early on by Cicero (1913, pp. 138–140): the scene of interlocutors engaged in dialogue, conversation, or reflective thinking, and the places where debaters are called upon to take up the duty to plead, engage in dispute, or construct a publicly defensible judgment.

*Argument in a world of interlocutors.* Conversational argument takes many forms. Strangers at a social gather to exchange opinions about matters of the day; partners engage with depth in open, reflective encounter; or alter sits ego down for a critical discussion. In each of these cases, the duties of argumentation are connected with the freedom to present issues, the responsibilities to partake in equal exchange, making oneself available for open critical discussion, and the telos of coming to an informed agreement – where only the force of the better argument will do. Here, argumentation is effective reasoning, not reasoning to affect; thus, to be worthy of recognition, an interlocutor must be willing to support reasons with evidence, warrants with backing, and claims with precise qualifiers linked to reservations open for inspection. The normative assumptions of critical thinking, informal logic, pragma-dialectics, or communicative reason alike imagine argumentation to be regulated by reciprocity, reflexivity, sincerity, and a freedom to assert and reply (Habermas, 1981, pp. 1–45; van Eemeren, Grootendorst & Snoek Henkemans, 1996, pp. 163–188, 213–312).

*Argument in a world of advocates.* Imagine taking up a position when one is called into a private quarrel, a public debate, a professional case, or a spiritual cause.

Contention is already underway among interested parties. One's own freedom to exchange views openly cannot be presupposed. Indeed, the standing of an arguer's intervention is from the outset contested and need be defended. The advocate is free neither to pick issues nor to change positions easily. Like a dialogue partner, the intentions of a rival may be to give one an education – of sorts; but a rival in a dispute is not likely to be open, disclosive, or even agreeable. The best one can hope is that a common set of procedures may regulate norms of discussion. A mix of formal codes and customary practices govern the construction and development of reasons; but interpretation, application, and situations vary enormously. In the very acts of arguing, claims multiply. The manner of conducting debate itself may become as controversial as the initial question at hand. Further, what are reasonable precedents or expectations for a judgment in one case may or may not serve to validate reasoning in another. In the end a decision may be reached, but even if everyone is satisfied with the process, interlocutors will undoubtedly disagree and may dispute the outcome at another time. As Houtlosser and van Eemeren (2002) might agree, argument in an advocacy world is all strategic maneuvering all the time.

This paper addresses argumentation in the latter world. The essay is premised on the assumption that practices of argument enact, *and* sometimes alter substantively, conventions of reasoning, communication norms, and standards of validity. All acts of advocacy put into play current understandings of the norms and rules of argument. The pressures within a particular dispute always put at risk state of the art conventions against the development of alternative understandings and strategies. Epoch-making disputes are debates where the challenges of intervention into human affairs are brought to a reflective discussion, the problematics of communication debated, and the domain of what counts as reasonable put to the test. The address visits secular moments in the public sphere from the classical world, Enlightenment, Modernity, and our current time of Globalization. The aim is to recall advocacy's agonistic within the classical world, but also to illustrate how cultural projects in the public sphere, from the Enlightenment forward, have changed ideas about the social and political practices of reason. Specifically, I contend: (1) The Enlightenment attempted to rectify issues of standing to offset disparities of position among advocates. (2) Modern movements worked to mitigate asymmetries in power where a side in a social dispute typically had all the risks and few of the resources to determine interests. (3) Globalization prompts change by generating patterns of argumentation in new and different configurations. The reading is meant to open a field of study into argumentation by sketching select cultural, social and political projects. The standpoint taken is that of critical appreciation of practice within the secular sphere.

## 19.1 Classical World

Classical advocacy is recorded in the histories, plays, philosophies, proceedings, and rhetoric, primarily from the Greek and Roman worlds. Advocacy episodes, practices, and criticism form the base of humanities, and the dramas of advocates who engage in public contest has been rediscovered across generations since the

Renaissance. The classical world created a sense of advocacy as a personal contest or struggle among citizens in the public sphere (Kennedy, 1968, p. 419).

### 19.1.1 *Greece*

Among ancient Greeks, it was not customary for the advocate to actually plead the cause of an accused at trial. Yet, speech writers would help level the playing field. Isocrates received 20 talents (\$18,000) a speech. The advocate was expected to address a public cause, rather than argue to condemn or support a special interest (Yunis, 1996, p. 10). “In the Athenian *ekklesia* the speakers did not speak on behalf of, or for or in place of someone” or a party. Yet, we are told the Greeks were “masters of the art of advocacy,” as Aristotle reminds us that the orators in pushing a particular public decision created “political life as a theatre of endless struggle between the oligarchs (who never disappeared) and the demos” (Urbinati, 1999, p. 9, 2000).

The single most famous moment of advocacy, of course, is Pericles funeral oration, a paradigm that stands as “a definitive document in the history of political communication” (Yunis, 1996, p. 82). There are three points that are central to understanding the duties of classical advocacy.

First, Pericles begins the speech with a predicament he faces in praising the Athenian dead:

The friend who is familiar with every fact of the story may think that some point has not been set forth with that fullness which he wishes and knows it to deserve; on the other, he who is a stranger to the matter may be led by envy to suspect exaggeration if he hears anything above his own nature. (Thucydides, 2006)

To intercede and give meaning to the lives lost in battle risks saying too little or too much, and so Pericles acknowledged the difficulties of intercession, the problem of rendering personal loss and grief public and purposeful.

Second, the main argument of the speech equates the sacrifice of the soldiers with the values of the community, and it is the special quality of the community that renders the death worthwhile and understandable. The claim supports Pericles’ own imperial policy of course, and requests--by suggestion--the citizens’ tacit support, if not their outright emulation of the sacrifices. In this sense, a direct claim of advocacy underwrites an indirect claim, the words of praise for others that can be spoken, while the indirect claim – that death in the pursuit of his own policies is worthwhile – he cannot address without circumspection.

Third, in order to deal with complex communication, advocacy argument is a creature of blended forms; in this case blending encomium – words of praise – with deliberation, justifications for policy. At the other end of the register is vituperation. The conditions of validity in a mixed form require balancing demands to provide perhaps a formally imperfect but overall fitting treatment of opposing reasons. Blended forms are contingent, paradigmatic creations that may be modeled, varied, or changed over time.

The duty of an advocate, judging from the performance of Pericles, is to deploy argument that (1) situates the act of intervention into discussion by addressing the predicaments of communication, (2) works together public resolutions that may be openly discussed with claims more difficult to address directly, and (3) constructs argument with blended forms, assembling a new model from recognizable cultural conventions to suit the unique obligations of circumstances. Greek advocacy was known for placing these complex demands in balance.

### 19.1.2 Rome

The change from republic to empire in ancient Rome was accompanied by evolving complexities of advocacy practice. Henry John Roby (1902) describes the Roman trial:

For the accused, indeed for all involved, character was under question, and reputations were at stake. For the patron-client of the republic, it was the question of whether and to what extent would the patrician stand up for his ward, the patriarch for his clan, and friend for his fellow. Advocacy was personal and public. Accusations deserved defense in situations of necessity where there was no standing [for] a women or child, to succor where an accused was unable to self represent, to equalizing the playing field where the accuser was talented, determined, and ruthless. (p. 407)

For the empire, the sense of pleading as a personal duty was “institutionalized and regulated, but the contest could be no less dangerous for politics and prosecution, charges and cases were linked into opposing social networks questing for power.” James May concludes that “in the hands of a rhetorically skillful advocate, particularly one endowed with a very strong personality, the rhetoric of advocacy can be an extraordinarily powerful weapon” (1981, p. 308). Argument was a double-edged sword.

The Roman world refined advocacy into a defined practice, a site where social reality is constructed and contested, case by case. The arguers did not occupy the pro-con dual position of speaker-audience or dialogue partners. Rather, a triadic relationship among pleader, adversary, and judge defined the flow of exchange. Quintilian observes that the *exordium*, or beginning of a speech, was the crucial place where an arguer would begin a narrative that positioned parties (himself included) to the dispute in the unfolding debate. Characteristically, each position is fraught with predicaments in creating a reasonable position.

*The act of intervention, to take a stance:* The question that is foremost in advocacy discourse is the stance which authorizes an intervention through argument into the case and proceedings. If an advocate speaks as a friend, the stance may be discounted as special pleading; or as a professional, indifferent technique. According to Quintilian, the act of intervention is best positioned as a response to a duty, of being called to intercede (1921, p. 11). The duty may be family affiliation, professional obligation, or citizen vigilance. Indeed, the history of advocacy in Rome moves from defining reasonable intervention from moral duty to sanctioning pro-



fessional representation, with each case having its own unique requirements and possibilities.

*The confrontation of a rival, to dispute a case:* Dealing with a rival is no less daunting. The advocate has to decide whether to refute an opponent's claims on the merits alone, or to question the very act of attacking the cause or client on behalf of whom he intervenes. The advocate may depersonalize the dispute by sticking to the case at hand, or move toward vituperation by expanding the range of issues to the motives of an opponent and the impropriety of the prosecution's act of argument itself. To ignore the arguments of the rival may show disdain, but also be interpreted as cowardice; there may be strategic value in counterattacking the opponent, but such arguments may divert from the strength of the case. Questions of politics as well as experience weigh into every decision.

*The convictions of a judge, to make the argument:* A judge presents no fewer dilemmas than the rival. For instance, even a judge who appears to be favorable to one's cause may fish-tale and withhold support simply because he wants to appear fair. Even attorneys who have a great reputation can presume no guarantee of success for there is a "natural prejudice in favor of those who are struggling against difficulties, and a scrupulous judge is always specially ready to listen to an advocate whom he does not suspect to have designs on his integrity" (1921, p. 11). The dilemma arises in each case whether to flatter and encourage the judge in order to gain favor, or to threaten a judge or jury with the ill will of the Roman people, while hinting at accusations of bribery, in order to discipline the decision.

For the Romans, advocacy is a positioning of argument that pits intercessor, rival, and judge in a series of communication predicaments surrounding a case (Cicero, trans. 1920, pp. 41–51; Kennedy, 1968, p. 433). The choice of a line of argument is always risky business. As discourse flows and influences the decisions of participants to evolve positions, the pressures of debating expand the issues, matters at stake, and disagreements – even if argument continues. Cicero speaks of an advocate facing "that terror, that dread" which arises in being drawn into pleading a cause. (trans. 1930, p. 125; see Fantham, 2004; Powell & Paterson, 2004). In the contest among intercessor, prosecutor, and decision-maker, the proliferation of issues always creates at least some indeterminacy of what really is at stake. "*Quae res ea est?*" Cicero asks rhetorically in his famous speech *Pro Roscio Amerino*, "What is the real reason?" (trans. 1930, p. 127).

Advocacy situations put the standing (*dignitas*) of the arguers and institutions in jeopardy, as well as put at risk serious consequences (*gravitas*) for all. However treacherous the domain of advocacy may be, it is better than its alternative: sheer violence. "In every free nation, and most of all in communities which have attained the enjoyment of peace and tranquility, the [art of oratory] has always flourished," Cicero extols. "Humans do not have to act on impulse, but alone of creation can put thought into word and decide (trans. 1948, p. 23)." Then he adds, "What too is so indispensable as to have always in your grasp weapons you can defend yourself, or challenge the wicked man, or when provoked take your revenge" (trans. 1948, p. 25). If at times, argument was only a preliminary to politics by more direct means, disputation could at least might function as a break on unbridled assertions of power.

Whether one emulates the Greek legacy of balance and cleverness or the Roman penchant for moral propriety and political confrontation, the agonistic traditions constitute a powerful legacy. The contest of reasons is embedded still in contemporary norms encompassing human relations, social institutions, human understanding, and politics. For instance, the uses of argument often are held to be a test of character: we expect that in any case, the better person, with the better reasons should prevail; and if not, injustices are never closed to skeptical treatment or open debate. Yet, advocacy has moved beyond the political and moral contests of dynastic politics. When neo-classical thinking is renewed, the social practices of argumentation are coupled with progressively more open, democratic vistas of social change. The very idea of what is reasonable has been tested and expands across the discourses of Enlightenment, Modernity, and Globalization.

## 19.2 Enlightenment

The Enlightenment transformed advocacy structures. Religious, educational, and social institutions slowly and selectively were changed to fit a new sense of human rights and human progress. The recovery of neo-classical thinking about advocacy and its aims was important in this project. The powers and prerogatives, checks and balances of emergent democracies, for example, were meant to restrain tyranny through the pressures of counter-veiling argumentation within the state. According to Chenevix, the rise of nations reflect the strivings to turn the exigencies of geography, structures of government, and memories of a people into practices consonant with ancient, yet newly forming national character (1832, pp. 365–366). In the span of Enlightenment, the self-understanding of advocacy traditions itself unfolded within democratic norms through (1) the strivings of national character, (2) education outfitted for democratic cultures, and (3) social movements that extended Enlightenment thinking by reforming the very standing of advocacy practice itself.

Advocacy and myths of national origin and character go hand and hand. Across many Enlightenment projects, the rise of nations was imagined as unique, progressive, and reaching different potentials of “civilization” (Guerard, 1934, p. 2). In the United States, national character was thought to be unfolding as public spiritedness, a nascent public sphere, where argument blossomed. Alex De Tocqueville writes of his travels with a mail coach across a virginal, frontier America. “Day and night we passed with great rapidity along roads, which were scarcely marked out through immense forests.” Only abandoned shacks and lonely cabins interrupt the journey.

Nothing can be more miserable than these isolated dwellings. The traveler who approaches one of them towards nightfall sees the clicker of the hearth flame through the chinks in the walls; and at night, if the wind rises, he hears the roof of boughs shake to and fro in the midst of the great forest trees. Who would not suppose that this poor hut is the asylum of rudeness and ignorance? Yet no sort of comparison can be drawn between the pioneer and the dwelling that shelters him. Everything about him is primitive and wild, but he is himself

the results of the labor and experience of eighteen centuries. He wears the dress and speaks the language to the cities; he is acquainted with the past, curious about the future, and ready for argument about the present.... (1831, p. 317)

De Tocqueville is disappointed that the American he meets is not exactly conversant with French politics, but when questioned about his own politics, the backwoodsman's thoughts are clear and precise; "with the Bible, the axe, and some newspapers" and a sense of argumentation the pioneer makes his way into the wilderness. "It is difficult to imagine the rapidity with which thought circulates in these deserts," de Tocqueville concludes (1831, p. 318).

In 18th century America, the study of argument arose out of the classical tradition, which constitutional founders believed useful in structuring the republic, and was inflected in its colleges and universities as a national discourse. The 1797 *Columbian Orator* was an advocacy handbook filled with dialogues, speeches, poems, plays, controversies; voices of young and old, native Americans, slaves, English officers, women, and fictional characters to foster the discourse of a national imaginary. The handbook with updates persisted nearly until the civil war (Bingham, 1998). The advocacy tradition was recreated as a guide to practice blending classical advice with practical situation in James J. McElligott's *The American Debater* where advocacy takes on the plurality of forms required in public life and civil society. Today the debater "may be in a village meeting, discussing the expedience of making a road or building a bridge; tomorrow in a convention, arguing the propriety" [of constitutional change]. Now he is busy among the friends of education...now in a synod, or council, or convocation, exchanging counsels on matters of high religious concernment; and now, again, perchance in Congress, debating questions of law, or tariff, or revenue, of treaties, of peace, of war, and I know not what all" (1859, p. 20). The uses of argument for a pluralistic society spurred a tradition of argumentation and debate pedagogical texts continuous through the 21st century. This tradition traveled, too, McElligott's text was adopted in early modern Japan (Branham, 1994).

Advocacy was more than the discourse of nation or the honing of talent for civil society, however. Enlightenment views fueled a trajectory of reason toward universal emancipation. The legacy of the Enlightenment found its way into social movements that challenged the disparities of standing between full-citizens enabled to vote and speak in the public sphere and those who could not vote and were accorded no voice. As of old, advocacy was a contest of argument, but there was something else, too. In slave narratives, citizens could read of the lives of slaves who could read, reason, and think, make sense and make choices of their surroundings (Douglas, 1845). The particular act of advocacy performed an argument with universal implications, giving witness to bigotry that had ruled out the reasons of human beings by asserting self-limiting qualities to a group (Foster, 1979). So, too, women such as Elizabeth Cady Stanton took to the public podium as advocates of extending standing to argue in the public sphere through granting suffrage. For Stanton, the reason to accord universal recognition of the right to advocacy was the solitude of self. It is the individual alone who in interior deliberation bears the consequences of decision. The widest latitude of "self-dependence, self-protection, self-support"

are necessary to cope with nature and the social world “fitting every human soul for independent action” which includes above all experience and judgment in making self-determinations (Stanton, 1892, p. 248).

John Stuart Mill formulated the case for emancipation in relation to argumentation as well as any one. “All our recent constitutional reforms, and the whole creed of reformers, are grounded on the fact that suffrage is needed for self-protection.” Just as Cicero detected reluctance bordering on dread to advocate a cause, so Mill detects that even well-intentioned people with the power to represent are reluctant to intervene into problems of others, and may not have the experience to recognize the gravity of the injustice or harm involved. “The remedy is plain,” he told a cheering audience at Bristol in January of 1871, “put women in the position which will make their interest the ruler’s own interest.” Only then can it be assured that interests are addressed “by real arguments, addressed to their own reason, by people who can enter into their way of looking at the subjects in which they are concerned” (1988, p. 66). The outcome of granting standing is not a particular policy; but, through enfranchisement the public sphere is broadened, as classes formally consigned to a privatized world take on possibilities of public power. Full citizenship in a democratic public sphere is a norm of government with advocacy as an inalienable right to standing for purposes of self-defense at its core.

### 19.3 Modernity

Suffrage offers the standing of citizenship, which situates advocacy as a matter of right and duty in questions of common interest. While formal equality is crucial, it does not offset asymmetries of power among individuals or social groups. An asymmetry in argument is where advocacy arrangements are such that one party need acknowledge no burden of proof for its claims, while the other never manages to meet expectations of proof in a satisfactory way, notwithstanding the merits of the case. Put differently, one group takes all the winnings and the other all the risk in a partnership where it would make more sense, not to mention be fairer, to share risks and benefits in a cooperative arrangement.

Social advocacy is a discourse of modernity and it is characterized by struggle to create social change in the interests of mitigating systematic material and other inequalities. Social argument emerged from the combination of moral and scientific normative practices and epistemic efforts, and is embedded in a restricted, but powerful urban imagination. Modern thinking has created a legacy of institutional relationships that invests advocacy (1) in achieving citizen competence, and (2) in struggles for the renewal and reform of public institution.

The road to social advocacy during the industrial revolution was prepared by the literary public sphere (Habermas, 1991). Fiction is a place where the abuses of factory-town England could be translated into the sentimental plots of families and friends who endured hardships under the petty tyrannies of middle management. The transfer of fiction to reality was accomplished by burgeoning social sci-

ences. Scholars measured the spread of disease in the new science of epidemiology, gathered data through survey as Charles Booth's estimations of poverty in London (1967), and deployed new technologies of communication, such as the camera, to render evidence vivid and undeniably real in "studies that seek to measure social problems, heighten public awareness of them, and recommend possible solutions" (Gilbert, 1997, p. 101). "To fix social ills, reforms would begin with children," featuring a style of advocacy that combined sentimental tugs with scientific fact (Hawes, 1991, p. 38). Other causes would soon follow. Slum housing, poor health, hunger and labor were the targets of advocates, whose findings were fed to the press; and, the clamor gave rise to efforts in the university to develop new policies (Mann, 1963, p. 1). State reform was targeted by informal groups of associations seeking the establishment of public institutions to meet social needs. These civil society associations were "essential not only in protecting minority viewpoints but in creating 'the occasion for a diverse participation in public discourse' . . . , a quality De Tocqueville (1840) earlier recognized as distinguishing American civil society" (Cox & McCloskey, 1996, p. 273).

Social advocacy merged with progressive reform movements and the "terms of politics changed for ever [through] bitter political struggle and momentous social change" (Stears, 2002, p. 1). Argumentation in this realm, advanced by the press, paradoxically has an Aristotelian proclivity to avoid extremes and cultivate citizen virtue, while calling attention to dire human circumstances with graphic, emotional headlines. Advocacy acts as an engine of social change, rather than an individualistic *agon*. The design of the progressives was to transform the urban scene – with its many different uprooted ethnic populations – into a venue of citizen participation across well-run, prosperous city landscapes. The aim of progressivism was to advance of democratic practices generally thereby serving the polity at large (Hofstadter, 1955).

The formula of advocacy case-making was repeated across many social issues: A harm is discovered, described, measured, and rendered vivid. A public is awoken that was unaware. The harm festering in one of the city's byways is morally outrageous in itself, but worse if left untended can spread to safer more secure parts of the city. An assembly of state regulators, professional experts, and civil society volunteers are engaged, through public discussion and debate, to respond to the social problem – that is ameliorated over time.

Progressives exuded "confidence in man's collective ability to reorder his environment and reshape his destiny" through shaping the national state to meet "social and economic as well as political needs" (Ekirch, 1974, p. 6). Such public argument is powerful because it couples the ethos of science to the legitimacy of competent public administration. On the other hand, progressive advocacy is sometimes undermined by populist anger at social inequities (real or alleged) and fundamentalist fears of pollution brought on by civic participation (Douglas & Wildavsky, 1983). Nevertheless, the legacy of modern advocacy has created an enduring world of public institutions and systems.

Modern advocacy continues to be fought out in the realm of social reform, as spokespersons for the disadvantaged intervene through argument into the welfare

state (Freddolino, Moxley, & Hyduk, 2004; Lens, 2005). Such advocacy institutions range across the full spectrum of education, social welfare and civil society concerns. Further, public institutions that are the result of these interventions themselves may become corrupted, self-serving and pursuing interests that enhance their own power and wealth. Thus the practices of education, medicine, welfare, transportation and legal institutions precipitate public debate. Yet, even when institutions work well, the provider-client relationship within institutions create asymmetries. Experts hold power over clients. Doctors are busy and expensive, patients are sick and needy, for instance. To rectify imbalances in deliberative relationships, movements arise that support new communication rules, duties, and training. Informed Consent is lately been accorded the status of a right in the medical field (Goodnight, 2006).

In the modern world, asymmetries of power are woven into advocacy arrangements across key institutions. Asymmetries of knowledge and authority are not in themselves unreasonable, since it may be preferable or useful to trust an expert, rather than to take time to achieve equal knowledge of an issue. However, there is a risk to any exchange. Too much authority lodged with expertise risks a public that is angry, confused, and unable to respond appropriately to recommendations; too much catering to public trends risks weakening institutional practices and standards. Communicative competence is on the line every time doctor and patient, lawyer and client, engineer and community, psychiatrist and therapist engage in an advocacy encounter.

So far my analysis has been largely historical. History is additive, of course, so advocacy customs in places and cases still features agonistic engagement of debate as a trial of character, where standing is crucial to secure rights for self-representation, and where social causes course through civil society to reform public institutions, regulate policy, and lend support to the underprivileged. Yet, advocacy practices typically are refreshed and change with each generation. Presently global corporations and states display ever-expanding “advocacy” practices to defend their own interests (Heath, 1968; Schuetz, 1990). Rapidly developing technologies of exchange and communications carry, transform, and combine markets, institutions, public relations, advertising, and critical practices in new ways across the globe. Controversies follow on a grand scale.

## 19.4 Globalization

The rights of citizens and the practices of social advocacy now enter into new predicaments. Citizen advocacy depends upon a connection between cause and effects at the local and national level; yet as Karen Mundy and Lynn Murphy (1981) report, the “centers of power” are increasingly “beyond national boundaries, while forms of democratic participation and societal compromise remain territorially grounded increasingly in increasingly hollowed out welfare states” (p. 88). The age of globalization heralds radically new political configurations and the decline of the state (Rosenau, 1997, p. 353; Strange, 1996, p. 73).

The same communication and transportation technologies that accelerated the conditions of globalization at the end of the Cold War have become available to advocates who think globally about “environment, women’s rights, human rights, Third-World debt and globalization” itself. Thus, global advocacy networks assemble (Keck & Sikkink 1998, 1999). Ethan Nadelmann describes these NGO activists as “transnational moral entrepreneurs” who “specifically target normative change by framing problems in terms of “cosmopolitan values” rather than “state interest”. “The goal of TANs [transnational advocacy networks] is not just to influence outcomes, but to change the terms of the debate, substituting unacceptable positions with more inclusive, democratic normative structures,” he concludes (in Klotz, 2002, p. 53). The 1990s appeared to be near achieving a “political globalism” underwritten by expanding transnational, cosmopolitan social and environmental projects (Polletta, 1999; Wapner, 1996). The arguments of these cosmopolitan advocates were to be hurled quickly around the globe by new communication technologies.

The question remains, however, whether international advocacy of the digital age offers new argument practices. Groups in the 1990s did take extensive advantage of speedy, widespread media in holding international conferences on women, human rights, and the environment. Just as the modern mail system had extended the power of social movements in the 18th and 19th century, so new communications made a leap in efficient communication. Messages were delivered in hours or minutes, rather than weeks or days. Yet, global communications appear to act as something more than a supplement to traditional social movement message-making.

New, global media wages argument by assembling differences. Consider a few illustrations. The first TAN herself was probably Princess Diana who was a center of pro and con argument-- first within the British tabloid press and then worldwide (Maslin, 2004). Yet, at the same time she managed to link her beautiful appearance, and I would say spirit, to the deformities of bodies by being seen with the victims of landmines. Her act of intervention and adoption of a global cause resulted in a blended popularity that sustained public voyeurism into Windsor life while glimpsing a man-made plague (McGuigan, 2000). In a contemporary version of this blending, the stunning Angelina Jolie gives interviews where she knowledgeably advocates alleviation of the suffering in Africa, even while television ‘journalists’ ask about her husband, Brad Pitt--and the children.

Another peculiar case: Kathryn Olson and I (1994) first studied the influence of international networks through analysis of fur, when a style of argument that turned fashion to cruelty, high style to low taste drifted from Europe to North America. Anti-fur advocates mixed questions of lifeworld choices and public visibility, untraditionally. Subsequent anxieties promoted over animal use and rights had no single solution, no focal point of advocacy, apart from the negative: stop wearing it, and think. Similarly, in the last few years convict diamonds have become a center of advocacy where a splashy gift is turned to a stigma, as the costs to Africa are assessed (Campbell, 2002). Controversy over “conflict commodities” seek to curb “dangerous appetites” without affirming specific propositional claims driving human rights groups (Tam, 2004, p. 704).

Finally, advocacy strategies find their own encounters with contention across the networked world. The *Pategonian Toothfish*, which is apparently as homely as it is tasty, became the cause of flagging environmentalists who redenominated this denizen of the deep in the 1990s as the *Chilean Sea Bass*. The fish is back, and New York chefs are in the news for their refusal to serve up one culinary creation. Pirates are at fault, it seems. The other side of the debate is well represented on the *Web*, however, by recipe sites that guarantee a *Bass* fish dish as sizzling, mouthwatering, and extra-tasty. In the colorful world of global advocacy, the glamorous and obscene exchange places, as accepted conduct is put under the stress of objection, and contention is lifted out of disciplined forums and put up for accidental display and encounter.

In each case, argumentation departs from standards of informal logic; neither meeting standards of relevance, support of a single claim, or points entered into contention directly. Yet, controversies swirl. It appears that argument performs on the *Web* what Charles Willard (1996) has prompted us to search for all these years, a culture of dissensus. Different interests in celebrity and policy blend, opposition multiplies without affirming claims, and a deliberative space opens accidentally from the delivery of a search engine. Controversies flow and exchange as inventive expressions of difference. *Web* combinations of circulating assertions, associations, disputes and denials invite rethinking traditional forms, fora, customs, or practices of exchange or interaction.

Advocacy is making arguments with a difference, but for some the *Web* – however vast – is but another utilitarian challenge for control, rationalization, and use. Cyberadvocacy, a venture capitalist wager, is but a brave new world to capture and colonize. Stella Harrison of the Juno consulting group reports. “Everyday it appears we see some new innovation – computers are smaller, easier to handle, less expensive, in price, and constantly providing increased capacity.” Globalization moves beyond modernity by virtue of disgorging an “information surplus,” she says (2001, p. 624). The entry costs of advocacy have gone down, as mass access to new technologies have gone up. Whereas the *Net* did create a digital divide, mass distribution of cheap cell phone technology to the developing world will mitigate the information gap. Across the globe advertising agencies and public relations firms are in a horse race to be the first to feed on the new social networks convened by technology uses. Yet, adjustment is unpredictable; this year’s gotta-have it gadget often becomes last year’s eight track tape. New communications have a near talismanic quality for the private sphere, yet it remains unclear what the organizing principles of advocacy for virtual space will be.

Klumpp, Hollihan and Riley (2001) were among the first to recognize the compelling and unique qualities of the cybersphere for argumentation, as they observed that the mix of network movements, international organizations, and new communication technologies create novel networked economies of contention and resistance (p. 579). Others now deploy socio-biological metaphors to describe viral nets of influence and the survival of the fittest contesting memes (Blackmore, 1999; Dawkins, 1989). It may be too early to parse the spaces of virtual advocacy by root metaphors, however. Patterns of exchange are too complex, too chaotic, and evolving too rapidly. Still, styles of argument are emerging.



At one level, arguments spread and mutate across the *Internet* much like the murmurs of rumor, gossip and the crowd (Levy & Nail, 1993). *Web* argumentation, commonly, is shallow and self-elaborating; the circulation of pictures, texts, and self-assembling claims spread across subscription lists, bulletin boards, and chain-letters. Every one receives such daily messages, by the millions. Note also that mass media and interactive sites stylistically now begin to resemble and mirror one another, even as simulations, reality, and fictions exchange places.

At another, communities form counterfactual discussions where institutional advocacy structures themselves are put under pressure by criticism. Just as TANS attacked the indifference of the state, so Blogs undermine the hegemony of mass mediated corporate news by breaking open to critique the methods by which stories are selected, framed, and argued (Blogosphere, n. d. ; Technocrati, n. d. ). Like the devil's advocate in cannon law, bloggers argue day by day, story by story, for restoration of competence, impartiality, and responsibility in the press.

The consequences for advocacy are mixed.

Advocates were upbeat, for a time. Between *Web* capacity to circulate information and the mass media need for content, *Nike's* unconscionable exploitation of child labor would be made public (Sellnow & Brand, 2001). The indifference of governments to genocide in abandoned post colonial territories would be seen, daily. With September 11, 2001, however, these expectations crashed. At least some global advocacy networks have a serious negative side, it seems.

Thus, a contest over what will become prevailing uses of advocacy on the *Web* swirls across the globe. Sites like *openDemocracy.com* herald a new "digital commons" where you can tour the multi-ethnic performances of public culture served up as a riot of images from the rain forest, carnival, and street samba heavens – sound, visuals, and symbols subversive of up-tight, rule-governed deliberations; at other URLs supported by researchers in Amsterdam and Los Angeles e-government rationalizes services making states more responsive, and citizens *Web* service dependent; and on a third variety of sites, disturbing acts of brutality circulate unevenly and for undetermined reasons across national and international spaces. Sales, surveillance, and censorship thus contest with hacker-cultures, open source software, and online communities, as the technologies of connection and diversion swarm across boundaries and mutate avenues of participation. The future grows uncertain.

One thing is abundantly clear, however. There is a renaissance of advocacy underway. Modern mass media propaganda, advertising and entertainment are being superseded by the revival of the forms of communicative interaction and the renewal of the practices of agonistic intervention. New communication technologies have often given rise to novel advocacy practices, and we are in the midst of a communications revolution. The inventiveness of new networks, the blended forms that fuse picture, graphics, and tropes together, the speed of circulation and commentary, inventive methods of aggregation, measurement and simulations – all these are trajectories of expanding advocacy worlds. Yet, the world has not been born anew.

It turns out that the disappearance of the state was a premature announcement (Bob, 2001, p. 311; Johnston & Laxer, 2003, p. 39, p. 80). The sentiments of universal declarations do not translate well for peace-keepers caught between factions on the ground (Belloni, 2001). Yet raised expectations of human rights has given rise to contestations of ethnic identity. Presently, cosmopolitan ideas, urban politics, and fundamentalist demands collide across the globe, and new rounds of constitutive national debates emerge. Thus, diaspora politics and pan-nationalisms meet with forces of integration and dispersion at home. Advocacy struggles for ending disparity among citizens, mitigating asymmetries of power, and accommodating difference spread. Understanding the predicaments of national debates in a globalizing world is a key challenge for our own, 21<sup>st</sup> century, globally-networked, argumentation community.

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## Chapter 20

# Actually Existing Rules for Closing Arguments

Jean Goodwin

Our interest in argumentation is provoked at least in part by the apparent paradox it presents. People are arguing because they disagree, sometimes deeply. But despite their disagreement, their transaction is orderly – at least, somewhat orderly. Furthermore, this orderliness apparently has a normative element; it establishes grounds for participants to critique each other’s conduct as good and bad. How is this normative orderliness achieved, even in the face of disagreement? – That must be a central question for any theory, especially one that aims to deepen our understanding of the normative pragmatics of arguing (Goodwin, 2002, 2007; Jacobs, 1999; van Eemeren, 1994).

In this essay, I want to probe one rather abstract aspect of this question, about what I will call the general “shape” of the account we should be giving of argumentative orderliness. In attempting to understand or explain argumentative talk, how should we *represent* the activity? What basic *model* should we be using? In what *terms* should we explain the affairs? What *story* should we tell about them? Or, again, to put this generally, what *shape* should an account of arguing take?

One common approach to this question has been to say that we should account for arguing as a form of following rules. This has been the approach of many theorists proposing “dialectical” models for argument, including Rescher (1977), Walton and Krabbe (1995), and of course most prominently, the pragma-dialectical school (e.g., van Eemeren & Grootendorst, 1988, 1992). According to an account of this shape, although arguers disagree about many things, they agree about the rules of argument, which “provide established procedures for co-operation in order to reach solutions for disagreements” (van Eemeren & Grootendorst, 1988, p.499). These rules of argument lend order to an argumentative transaction. They also express the fundamental norms or ideals arguers should live up to. Talk which follows the rules is normatively good, while talk which breaks them is bad. A theory of argument is thus “a system of descriptive and/or normative rules for the performance of the communicative act complex of argumentation” (1988, p. 506).

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There are good reasons to find this shape of account attractive to explain argumentative orderliness, for it has proved attractive for other fields. Consider: A current in social science initiated by Peter Winch takes off from one interpretation of Wittgenstein and holds that we understand any form of life when we know the rules of that particular game. Again, a Searleian approach to speech acts represents them by the rules that constitute them. Again, Chomsky's model of syntax shows how what on the surface appears complex behavior can be the outcome of the recursive application of a limited set of simple rules. Again, contemporary cognitive science tells us that in acting humans are following "scripts" laying out the basic rules for an activity. And so on; other twentieth and twenty-first century tendencies could be cited, such as the axiom systems of formal logic and the instructions which constitute the activities of computers.

Working in parallel to these diverse projects, argumentation theorists may readily propose that arguing, too, is constituted through rules. The theory of argument should therefore proceed by articulating those rules.

But is this so? Is rule-following the general shape of account we should be giving about arguing? Most of the above rule-following accounts in other fields have been criticized, and undoubtedly some of the criticisms bear against an account of rule-following in arguing as well. In this paper, however, I want to explore the very abstract question about the ruliness and possible unruliness of arguing by adopting a very concrete, empirical method, examining the shape of account arguers themselves give when they talk about their own activity.

Although arguers may be wrong, even fundamentally deluded or lying about what they are doing, there is nevertheless good reason to take what they say about their activities, in their activities, as presumptively correct. According to van Eemeren and Grootendorst (e.g. 1988), there are two ultimate desiderata that any shape account, any model, representational scheme or explanatory mode must meet: "problem solving validity" and "conventional validity." This means that any account of argumentative transactions must on one hand elucidate how arguing accomplishes something. And on the other hand, the account must also be acceptable to the (or a) community of arguers. Now, the accounts of argument actually put forward by arguers in their arguing – the "native" or "vernacular" theories of argument, of whatever shape – presumably are offered as attempts to get arguing to work better; they are furthermore already "intersubjectively" accepted by the arguers (or some of them). So "native" accounts of arguing meet the two desiderata, and are *one* good place to start building more sophisticated theories (an approach which has also been proposed by scholars working in the ethnography of communication, e.g. Craig, 1996, 1999; Philipsen, 1992).

The "natives" I will be studying here are participants in the closing arguments of trials in the United States. Although I do not follow authorities such as Toulmin and perhaps Perelman in taking legal argument as *the* paradigm for argument generally, there still can be little doubt (a) that trial "natives" are arguing, and (b) that they're arguing in a sophisticated fashion. As to (a), the practice I will focus on – the trial advocates' final address to the jury – is variously called "closing argument, final argument, jury argument" or even just "argument," and standard training manuals

urge participants to “*argue!*” (Mauet, 1996, p. 367), leaving little doubt that much of what is happening in this context is relevant to argumentation theory. As to (b), participants in closing arguments are trained and experienced professionals, inheriting a long tradition of practice, facing complex situations and with strong incentives to perform well; all of which assure us that what is happening in this context is worthy of attention.

Closing argument practice is also worthy of attention because its “natives” can be expected to be quite articulate about what they are doing. Legal arguers not only are likely to argue *well*, they are likely to argue quite *self-consciously*, thematizing matters that might in more relaxed contexts ordinarily remain implicit. This is in part because of the professionalism of the activity, which renders practitioners more self-aware, but even more because of its adversariality. Practitioners are likely to become very articulate when they have an opportunity to accuse their opponents of failing to perform correctly, and in such accusations they will be pushed to give an account of what went wrong (see also Philipsen, 1992). And finally, in legal contexts there are judges – indeed, an entire array of trial and appellate judges – who are empowered to announce what ought to be done. For all these reasons, we can expect participants in closing argument to give us relatively extensive accounts of what they are doing, and why it is or is not good – accounts whose shape we can examine.

Finally, closing arguments are worthy of attention here because participants in them are likely to be sympathetic to giving an account of their practice in terms of rules. Lawyers are used to thinking in terms of laws, that is, rules for all sorts of activities, including rules for arguments. Judges are empowered to announce (or interpret) the procedural laws governing their courtroom, that is, to set or enforce normative rules. If we find that even in closing arguments there are things going on that aren’t conceived of as following (or breaking) rules, then it is likely that arguing in other, less overtly rule-oriented contexts is *at least* that “unruly,” too.

So I am going to ask: is arguing well in closing arguments fundamentally a matter of following rules? – is rule-following the shape of account we should be giving? Or is closing argument unruly – and if so, how is its normative orderliness achieved, even in the face of disagreement? And I’m going to answer these questions in a preliminary fashion by examining the participants’ own accounts of the ruliness and unruliness of closing arguments in U.S. trials.

## 20.1 Rules for Closing Arguments

Courts (and in some cases, legislatures) do promulgate rules governing various trial procedures. Notably, these rules give almost no coverage to advocates’ closing arguments – in contrast, say, to their more detailed treatments of what can be said by witnesses during the trial proper. The U.S. Federal Rules of Criminal Procedure (1996), for example, specify only that the prosecutor speaks first, the defense counsel second, and the prosecutor last; nothing else is said about the process or content of closing argument (Rule 29.1). This lack of promulgated rules is not a serious



blow to an account of closing argument as rule-following, however, since in a common law system rules can emerge incrementally through decisions on individual cases, as opposed to being announced by a central authority. And indeed, there are many pronouncements about closing arguments made by judges considering appeals based on alleged irregularities of closing argument procedures. Legal scholars (senior practitioners, law professors and students, and judges) summarizing the case law regularly produce lists like the following:

(1) General Rules Governing Closing Arguments...

Several forms of conduct are prohibited in closing argument:...

Providing Improper Statements of the Law....

Attacking the Law or the Court's Rulings....

Misstating the Evidence....

[Personally] Vouching for [the truthfulness of] Witnesses....

Stating Personal Beliefs....

*Improperly Exciting Prejudice, Passion, or Sympathy.* Inflammatory language is improper and may be grounds for mistrial. Avoid any derogatory remarks about opposing counsel or the opposing party, or improper stories or descriptions designed to provoke sympathy for the client or prejudice against the opponent. Along the same lines, arguing an impermissible inference is improper by, for example, implying that the defendant is wealthy or has insurance coverage and so can afford the judgment. Also beware "conscience of the community" arguments, appealing to policy objectives divorced from the law or the facts of the case.

*Advocating the Golden Rule.* In closing argument, do not suggest that the jurors put themselves in the place of one of the parties. A Golden Rule argument is rarely expressed as "do unto others as you would have them do unto you." If it were that simple, no one would ever violate the rule against such arguments. You must avoid implying the Golden Rule, by asking the jury to put itself somehow in the shoes of a party....

Asking the Jury to "Send a Message" to the Defendant When Punitive Damages Are Not an Issue in the Case....

Accusing Defendants of "Hiding the Ball" or Withholding Evidence....

Contrasting the Wealth of the Defendant and the Poverty of the Plaintiff....

Appealing to the "Conscience of the Community"....

Making the "Us Against Them" Argument....

Injecting the Plaintiff's Attorney's Personal Experience....

Encouraging "Comparative Awards"....

Justifying a Large Award With the Promise of Judicial Remittitur....

(Ronzetti & Humphries, 2003; emphasis added).

These lists, often like this one explicitly identified as sets of "rules," vary in details, but have similar general outlines and share many specific items (see the Appendix for an overview of the material).

Now, at least some of the entries of list (1) appear without controversy to be rules for closing argument. Consider the prohibition against Golden Rule arguments, the seventh item above, and one that appears on most lists. Advocates may not ask jurors to put themselves into the position of one of the parties, when considering (for example) how much money they themselves would want as compensation for an injury. In this list item, a relatively well-defined sort of talk is being given a name by closing argument "natives" and is being acknowledged as something mutually known to be forbidden. In other words, this item looks like a normative rule governing the argumentative transaction.

Furthermore, the rule against the Golden Rule *acts* like a rule; when participants deploy it to solve closing argument problems, they make the familiar moves of rule-based reasoning (see e.g. van Eemeren & Grootendorst, 1992, p. 104). They begin by stating and perhaps briefly justifying the applicable rule as something already apparent to all, as for example:

(2) What every lawyer should know is that a plea to the jury that they “should put themselves in the shoes of the plaintiff and do unto him as they would have done unto them under similar circumstances ... (is) improper because it encourages the jury to depart from neutrality and to decide the case on the basis of personal interest and bias rather than on the evidence.” The use of such a “Golden Rule” argument so taints a verdict as to be grounds for a new trial. (*Loose v. Offshore Navigation*, p. 496; citations omitted)

They may go on to interpret the rule, either to explicitize it further or to establish exceptions to it:

(3) McNely also contends that the district court permitted defense counsel to engage in an impermissible “golden rule” argument at trial. McNely charges that defense counsel engaged in a prohibited golden rule argument by inviting the jury to put itself in the defendants’ position when considering McNely’s alleged work place misconduct and evaluating whether he was terminated because of his disability. However, an impermissible golden rule argument is an argument “in which the jury is exhorted to place itself in a party’s shoes with respect to damages.” As in *Burrage*, “in this case the argument complained of was not in any way directed to the question of damages; rather it related only to the reasonableness of appellee’s actions.” Accordingly, the argument was not impermissible. (*McNely v. Ocala Star-Banner*, p. 1071; citations omitted)

And finally, they must also interpret the situation presented by the trial, comparing the actual closing argument talk with the “Golden Rule” talk prohibited by the rule:

(4) Defendant objects to the following comments made during the prosecutor’s closing argument:... “When you left your house this morning, did you leave \$23,000 on the bed [as the defendant did]? Did you leave \$2,500 in the headboard of your bed? Did you leave \$500 in the kitchen drawer? Did you leave \$26,000 in your apartment when you left this morning?”... [In these comments, the prosecutor did not] invoke the “golden rule” argument by encouraging the jury to depart from “neutrality and to decide the case on the basis of personal interest and bias rather than on the evidence” and compare their behavior to that of the defendant. Instead, the prosecutor simply called on the jury to employ its “collective common sense” in evaluating the evidence and to draw reasonable inferences therefrom. *Id.* at 5. (*U.S. v. Abreu*, p. 1470; citations omitted)

The Rule against the Golden Rule looks like a rule, and acts like a rule; it is a rule. Good closing arguments are thus in part a matter of following rules.

## 20.2 Unruly Closing Arguments

Still, there are reasons to be suspicious whether *everything* in closing argument is governed by rules like the rule against the Golden Rule.

Notice, first, that the rule list in (1) is predominantly negative (see also Kirk & Sylvester, 1997 on this point). These are not rules defining what good closing argu-

ment is; these are rules carving out specific forms of badness. Participants and commentators apparently are able to practice and recognize good arguing, but are unable to specify it with the same exactness that they can identify the bad.

Notice, again, the rather mixed-up character of the list in (1), typical of such lists generally. It resembles Borges' "Chinese Encyclopedia" in jumbling highly specific prohibitions with more sprawling proscriptions. The sixth item on the list, what is often called the "rule" against inflaming passion and prejudice, is a good example of sprawl. Closing argument activities that have been thought to inflame passion or prejudice include personal attacks on parties or witnesses, appeals to the opinions of the community, appeals to pity and fear and attempts to arouse anger – that is, the argumenta ad hominem, ad populum, ad misericordiam, ad baculum and ad indignationem. At least five traditional fallacies are mixed together here: broad coverage indeed for a single rule.

Can it be narrowed? "Native" attempts to define the contours of this "rule" more exactly quickly lead to circularities or worse. In (1), for example, "improperly" exciting prejudice is forbidden. What is "improper"? "Improper stories" are improper, as are "impermissible inferences." A U.S. Supreme Court opinion is often quoted in this context, making a similarly tautological pronouncement: An advocate

may prosecute with earnestness and vigor – indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one. (*Berger v. United States*, p. 88)

"Foul blows," of course, are by definition what one ought not to strike, while "legitimate means" of course may be pursued. And worse than circularities are contradictions. In another commonly quoted phrase, advocates are permitted at times to make arguments that are "illogical, unreasonable, or even absurd" (Lagarias, 1989, p. 1.12; Smith, 1992, p. 2.12; Stein, 2005, pp. 1–51). If these are "legitimate," what then is "improper" and "impermissible"?

Courts and commentators have themselves noticed these problems with this common closing argument "rule." They acknowledge that determining impropriety is not an "exact science;" the doctrine is "extraordinarily complex," and courts are "perpetually divided" over it (Lessinger, 1997, p. 780; Montz, 2001, p. 69; Spiegelman, 1999, p. 133). "The law surrounding closing argument," one admits, "generally lacks specific rules and is not so technical as other bodies of law" (Stein, 2005, pp. 1–5). Trying to put this situation in a cheerful light, some describe how in closing arguments advocates are "released" from the "highly regulated process" that confines them during the rest of the trial (Nidiry, 1996, p. 1306). Another quotes with approval from an opinion which is confident that "though there can be no detailed handbook rules,... everyone, including the trial judge, knows the limits beyond which a lawyer should not trespass" (Lagarias, 1989, p. 36). In more negative terms, commentators complain that the "rules" of closing argument give advocates "no clear map," and that the "rule" against passion and prejudice in particular is a "broad catch-all without any true definition" (Headley, 2004, p. 806; Kirk & Sylvester, 1997, p. 326).

The prohibition against passion and prejudice thus appears to be one significant example of the way in which closing argument cannot be reduced to rules. But if we cannot talk about closing argument (only) as rule-following, how are we to talk about it? For I don't think we should rest with cheerful but empty assertions that good arguing is *just* a matter of contextual judgment or an exercise of some inarticulatable prudence (and so on). Every argumentative event may be unique, but there are presumably some reasons why most are orderly; indeed, some reason for identifying them as *argumentative* events at all. Trial "natives" appear able at least sometimes to determine when some talk is an improper appeal to passion and prejudice. How, if not by applying rules, do they manage to do this? What shape of account do they give of their practice?

Examining the opinions of judges struggling with this particular issue and the associated scholarly commentary, we can observe that though unruly, the participants' understanding of passion and prejudice is not disorderly. Analysis of whether some specific closing argument talk should be criticized as appealing to passion or prejudice regularly proceeds in three steps: (a) acknowledgment of the responsibility and power of a participant in the transaction to manage the arguing; (b) articulation of the overall goals that participant is responsible for achieving; and (c) partial articulation of some of the situational factors that participant should take into account in evaluating the propriety of the arguing.

Consider the following examples, drawn from a well-known legal encyclopedia and from an appellate opinion:

(5) Matters related to the closing argument of counsel, such as the extent of allowable comment thereto and the allowance of rebuttal arguments, rest largely in the discretion of the court. Generally speaking, counsel must restrict his or her argument to the issues of the case, the applicable law, pertinent evidence, and such reasonable inferences and deductions as may be drawn therefrom. The introduction of purely emotional elements into the jury's deliberations by closing arguments is prohibited conduct.... Within the foregoing limits, a district court is entitled to give attorneys wide latitude in formulating their arguments. (*Corpus Juris Secundum*, Federal Civil Procedure §943)

(6) The denial of a new trial on the issue of damages is reviewed for abuse of discretion.... No doubt, final arguments must be forceful. And, generally, counsel are allowed a "reasonable latitude" in making them. "When a closing argument is challenged for impropriety or error, the entire argument should be reviewed within the context of the court's rulings on objection, the jury charge, and any corrective measures applied by the trial court."... [But] consistent with plain error review, we must reverse when necessary to preserve "substantial justice". In sum, in order to serve "the interests of justice", we must abandon our deference for the district court's decision.

Obviously, awards influenced by passion and prejudice are the antithesis of a fair trial. This case was fertile ground for such bias. By its very nature, it was extremely emotional. Indeed, part of the damages involved "emotional distress". But, this did not permit appeals to emotion – quite the contrary. In cases of this type, counsel must be unusually vigilant and take the greatest care to avoid and prevent such appeals, in order to keep the verdict from being infected by passion and prejudice. Unfortunately, the Whiteheads' counsel did just the opposite. Our close and repeated review of the Whiteheads' closing argument convinces us that it caused the verdict to be so influenced.

First, the Whiteheads' counsel made statements that appealed to local bias. On numerous occasions.... This repeated emphasis on Kmart being a national, not local, corporation was exacerbated by counsel's shameless refusal to abide by the district court's sustaining

Kmart's objections to counsel's comments concerning [these arguments]... Counsel made other highly prejudicial statements during closing argument.... Of course, we need not find that each statement, taken individually, was so improper as to warrant a new trial. Rather, taken as a whole, these comments prejudiced the jury's findings with respect to damages... (*Whitehead v. Food Max*, pp. 276–77)

Both of these examples start by assigning to the trial judge primary responsibility for determining whether or not some talk constituted an impermissible appeal to passion or prejudice; even the appellate court which is about to overturn the judge's decision acknowledges his discretion, assigning itself the power to reverse only if that discretion was abused.

Both of them proceed by noting multiple and indeed competing principles regulating the trial judge's discretion. On one hand, advocates should have room to argue vigorously – to have “wide latitude” to make “forceful” arguments. On the other hand, the trial must be “fair,” and the arguments “restricted” to the issues and evidence. The fact that the two examples order these principles oppositely suggests that neither trumps the other; it's equally valid to say that “closing argument should be vigorous, but fair,” as it is to say that “the argument should be restrained, yet forceful.”

Each of these, finally, notes some of the aspects of the situation that need to be considered by the judge in determining the appropriate balance between fairness and zeal for a particular case. Degree of emotionality versus reliance on issues, evidence and inferences is mentioned in (5), while (6) notes the number of passionate statements, their variety, and the way they continued despite warnings. Even together, these factors don't constitute a complete list; other commentators note the importance of the advocate's intent, which party (prosecution or defense) is making the appeal, whether the appeal was neutralized by a reply in kind, the relationship of the appeal to the evidence, and the strength of the rest of the case, among other things.

Overall, if I were to give this shape of account a name, I would call it “good arguing as practical reasoning.” Contrast it with the idea that normative orderliness in arguing is achieved through following rules:

First, a rule is established prior to the transactions in which it will be applied. And anyone, inside or outside of a transaction, is equally well positioned to say whether a rule is being followed. Rule-based argumentative orderliness is thus independent of any specific argumentative transaction. By contrast, practical reasoning occurs only from a position within a transaction (including of course the position of a critic of the transaction). Indeed, the first step in practical reasoning as sketched above is to determine “who I am” – what responsibilities and powers this “I” has in this transaction. Of course, all responsibilities for managing argumentative talk need not fall on a single participant. In the trial setting, for example, the judge has discretion to oversee the entire transaction, but the appellate court can overturn decisions that are an “abuse of discretion,” advocates are responsible for their own activities to their clients and to the court system, and legal commentators take the license to pass judgment on all. Still, in this approach orderliness in argument is achieved only *within* a transaction, through the activities of the participants themselves.

Again, a rule points activity in one direction. Although rules may conflict, and have exceptions, any given rule must be relatively univocal – otherwise it wouldn't qualify as a rule. Ideally, therefore, application of a rule to a situation will produce a single clear answer. Practical reasoning, by contrast, even under ideal conditions points the participant towards multiple and competing normatively valued goals. This is true for closing arguments – with goals of both fairness and zeal – and I believe more generally. Karen Tracy has argued that all communication is *dilemmatic*, pulling participants in two (or more) directions (Tracy, 1997). This means that in general there is not going to be any one normatively good way to argue, but rather multiple defensible choices reaching different balances between the various goals.

Finally, a rule sets the aspects of the situation that are relevant to determining whether the rule is being followed. As noted above, there is room for free play in interpreting the arguing in order to compare it with what the rule allows or prohibits, but the play is constrained by the rule. By contrast, practical reasoning is relatively unconstrained. The factors articulated by a practical reasoning account of arguing direct the reasoner's attention to certain aspects of the situation, but the factor list never pretends to be complete and can expand to attend to novel or previously invisible aspects of the situation, as they appear. As Sunstein (1996) has put it, factor lists are "specific but nonexhaustive," allowing the users to be attentive "to (much) of the whole situation," however it happens to turn out (pp. 143–44; see also 1995).

### 20.3 Conclusions

What can we learn from the "natives" of closing argument about the shape of the accounts we should be giving of argumentative orderliness more generally?

Participants in closing arguments do treat some aspects of their activity as a matter of following rules. If we were to adopt this shape of account to construct a more general theory of argumentation, we would explain that argumentative transactions are orderly, and activities in them good or bad, because participants know the rules, interpret the rules, and interpret the situations to see if they meet the rules. The task for argumentation theorists would then be to articulate more precisely the rules, to systematize, justify and critique them.

But, as I have tried to show, some aspects of closing argument practice appear to be irreducible to rules. Instead, participants in closing arguments treat their activity as a matter for practical reasoning. If we adopt this shape of account to construct a more general theory of argumentation, we would explain that argumentative transactions are orderly, and activities in them good or bad, because participants figure out their responsibilities, recognize dilemmatic goals, and sort through the factors they need to consider in deciding what to do. The task for argumentation theorists is then to articulate more precisely the practical reasoning involved in these three tasks, and to systematize, justify and critique this reasoning.

If we do adopt accounts of the second shape, admittedly we will be taking argument as unruly. Still, we will be able to see how arguers achieve some order in their disagreements, and in particular, how they and we can justify the judgments of good and bad that we want to make.

## Appendix

### Lists of “Rules” for Closing Argument

Items commonly appearing on lists of closing argument prohibitions:

- A. Don't misstate the law.
- B. Don't misstate the evidence.
- C. Don't mention facts not in evidence.
- D. Don't comment on privileged matters (e.g., on a criminal defendant's failure to testify).
- E. Don't vouch for the credibility of witnesses.
- F. Don't state personal beliefs about the case.
- G. Don't appeal to passion and prejudice.
- H. Don't make personal attacks.
- I. Don't make “Golden Rule” arguments.
- J. Don't mention insurance (when arguing about damages in a civil case).
- K. Don't mention the wealth or poverty of the parties (when arguing about damages in a civil case).

Commentators and the items they discuss:

- Ahlen (1994): A, B, D, F, G, H.
- Benner & Carlson (2001): A, B, C, D, E, F, G, H, I, J.
- Cargill (1991): C, D, F, G, I.
- Carney (1997): A, B, C, E, F, G, H, I, J, K.
- Headley (2004): C, G, I, J.
- Kirk & Sylvester (1997): C, G, H, I, J.
- Lagarias (1989): A, B, C, F, G, I, J, K.
- Montz (2001): A, E, F, H, I.
- Ronzetti & Humphreys (2003): A, B, E, F, G, I, K.
- Smith (1992): B, C, E, F, I, J, K.
- Stein (2005): A, B, C, E, F, G, H, I, J.
- Sullivan (1998): C, D, E, F, G, H, I.
- Tierney (2003): C, F, G, H, I, K.
- Tobin (1995): D, F, G, H.

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