

PRESUPPOSITION UNDER CROSS-EXAMINATION

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1. *Introduction*

“There is a rich and broad variety of phenomena that philosophers and linguists have discussed under the rubric *presupposition*”, writes Green.¹ This is indisputable, as is the equally rich and broad variety of attempts to analyse the phenomena in question. Our intention here is to examine whether some of the traditional and current theoretical treatments of presupposition are helpful in the practical understanding of certain features of questions formulated by lawyers in Court and, on a more general level, to see how question-and-answer sequences in criminal trials may make use of presupposition.

Three preliminary remarks may be relevant. First, virtually everything written about presupposition is challenged or contradicted by some authority on the subject, and therefore the account we put forward for discussion makes no claim to universal acceptance or to completeness.² Second, our account and use of juridical material, on the other hand, is intended to be reasonably straightforward and non-polemical. Third, we are presenting the data, not for any particular inherent interest, but simply as examples of presupposition in practice.³

¹ Georgia M. Green, *Pragmatics and Natural Language Understanding* (Hillside N.J.: Lawrence Erlbaum Associates, 1989), 71.

² For a substantial review of the presupposition debate see Rob A. van der Sandt, *Context and Presupposition* (London: Croom Helm, 1988).

³ Our data were collected at random in Courts 5 and 7 at Manchester Crown Court on October 29 and 30, 1990, taking notes on two criminal cases to which we shall refer as cases D. and S.

2. *The Presupposition Debate*

Presupposition refers to several fairly different types of phenomena, but in general it denotes a relationship between two propositions, statements or sentences (the distinction, though important, is not directly relevant to our discussion), whereby the truth or falsity of one may affect the “truth-value”, “appropriateness” or “honest usability” of the other. A basic example of why this relationship might be problematical is the following: If there is no king of France and therefore the proposition (that is, the presupposition) “There is a king of France” is false, one might ask whether the sentence “The king of France is bald” (which contains and relies on that presupposition) is true or false, meaningful or senseless, correct or incorrect, and whether it can be appropriate or honest of someone to utter the sentence seriously while knowing that there is no king of France.

The opinions which have been put forward may be summarised under four approaches: (1) If a presupposition is false then the sentence which contains it can be neither true nor false; (2) if a presupposition is false then the whole sentence will be false; (3) if a presupposition is false then it is somehow incorrect, odd or deviant for a person knowingly to utter the sentence; and (4) if a presupposition is false then the sentence cannot be used to make an assertion, ask for information, give a command, etc. We shall look at these four approaches in turn. The distinction between the semantic or logical account and the pragmatic account of the subject may be detected in these four generalisations, but it need not be made explicit for our purposes.⁴

Approach (1). Gottlob Frege, who was the first to use the term “presupposition”, claimed that if sentences contain definite descriptions as their subjects, that is, expressions that refer to particular objects — let us take “the king of France” or “Ulysses” as examples —, then they involve a presupposition that those objects exist and, if they do not, any sentences that contain them can be neither true nor false.⁵ The dispute concerning whether a sentence whose presuppo-

⁴ On this point see, for example, Geoffrey Leech, *Semantics* (Harmondsworth: Penguin, 1974), chapter 14.

⁵ Gottlob Frege, “Über Sinn und Bedeutung” in *Funktion, Begriff, Bedeutung: Fünf logische Studien* (Göttingen: Vandenhoeck & Ruprecht, 1975), 40-65, first published in 1892. Translated in P. Geach and M. Black, *Translations from the Philosophical Writings of Gottlob Frege* (Oxford:

sition fails (and lack of reference constitutes a failure) can have any truth-value is central to the debate surrounding the matter. Strawson⁶ has similar examples in mind when he writes. "S presupposes S'" is defined as follows: "The truth of S' is a necessary condition of the truth or falsity of S"; he therefore coincides with Frege's approach in claiming that, if the presupposition of a sentence is not true, then the sentence has no truth-value.⁷

We can anticipate here that an analysis of our data will tend to show that a failure of (this kind of) presupposition in practice does indeed result in the perception of a sentence as truth-valueless.

Approach (2). For Russell,⁸ on the contrary, sentences containing presuppositions of this type are simply false if their presuppositions are false. He analyses "The king of France is bald" into the two assertions: "There is one and only one king of France and he is bald." In other words, he regards "There is a king of France" as an assertion (not a presupposition) of the sentence and, since this is "plainly false", the whole sentence is just false. This view, that a sentence as a whole can indeed have a truth value (for example, by being false) even if the presupposition (as others would call it) is false, constitutes a second approach to the problem and is preferred by many.⁹ Sellars¹⁰ explicitly defends Russell's position in a polemic with

Blackwell, 3rd ed. 1980), 56-78.

⁶ P.F. Strawson, "A Reply to Mr. Sellars", in *The Philosophical Review* LXIII (1954), 216-231.

⁷ P.F. Strawson, *Introduction to Logical Theory* (London: Methuen, New York: John Wiley, 1952), 1975-76 and P.F. Strawson, "A Reply to Mr. Sellars" *supra* n.6, at 218.

⁸ Bertrand Russell, "On Denoting", *Mind* XIV (1905), 479-493.

⁹ Whether or how presupposition contrasts with assertion on the one hand and with entailment or other forms of implicature on the other (see Leech, *supra* n.4, at ch. 14), and whether there are so many and such great divergences among the various phenomena usually called presuppositions that it is difficult or undesirable to classify them all under any one heading (see David E. Cooper, *Presupposition* (The Hague: Mouton, 1974) *passim* and Lauri Karttunen and Stanley Peters, "Conventional Implicature", in Choon-Kyu Oh and David A. Dinneen, eds., *Syntax and Semantics* (New York: Academic Press, 1979), vol. II, 1-56), are important issues, but they are not directly relevant to our discussion.

¹⁰ Wilfred Sellars, "Presupposing", *The Philosophical Review* LXIII (1954), 197-215.

Strawson.

Whether Strawson¹¹ or Sellars¹² wins the argument on paper, the fact is that our data seem to support Strawson rather than Russell/ Sellars.

Approach (3). From the truth, the falsity or the truth-valuelessness of sentences containing (certain kinds of) presupposition, Sellars goes on to consider the beliefs of a person who utters such sentences. He argues that it would be “*incorrect* in terms of most useful conventions governing the orderly and unambiguous progression of discourse” for a person to utter a sentence like “Harry has stopped beating his grandmother” unless he believed both that Harry once beat his grandmother and that his hearer shares this belief. Strawson¹³ makes two related, though perhaps weaker, claims, namely: (a) “where S presupposes S’, it would be incorrect (or deceitful — the cases are different) for a speaker to assert S unless he believed or took for granted that S’” and (b) “it is perfectly possible both for S to lack a truth-value and for it to be a correct use of language for someone to assert S; and this will be so in the case where that person mistakenly believes that the presupposed statement S’ is true.” At least at certain points in his treatment of the subject, Cooper¹⁴ appears to support this view. He writes: “If S presupposes S’ then it is ‘odd’ or ‘inappropriate’ to assert S unless one believes S’ to be true”, later adding “deviant” and “incorrect” to these epithets.¹⁵

It seems improbable in the light of our data that, however defined, any false presupposition will in itself and in all circumstances make the utterance of a sentence which contains it inappropriate, deviant, incorrect or odd in any usual sense of these epithets.

Approach (4). In what seems to be the strongest claim of all made for presupposition, Fillmore¹⁶ distinguishes presupposition from “meaning proper”, and defines the presuppositions of a sentence as “those conditions which must be satisfied before the sentence can

11 Strawson, *supra* n.6, at 218-225.

12 Sellars, *supra* n.10, at 202-215.

13 Strawson, *supra* n.6, at 217.

14 David Cooper, *Presupposition* (The Hague: Mouton, 1974), 15.

15 *Ibid.*, at 46.

16 Charles J. Fillmore, “Types of Lexical Information”, in F. Fieffer ed., *Studies in Syntax and Semantics* (Dordrecht: D. Reidel, 1969), 120-121.

be used in any of the functions just mentioned”, namely “asking questions, giving commands, making assertions, expressing feelings, etc.” He goes on: “If the presuppositional conditions are not satisfied, the sentence is simply not apt; only if these conditions are satisfied can a sentence be appropriately used for asking a question, issuing a command”, etc. Keenan¹⁷ includes making sense within the ambit of presupposition: “In general I want to consider that the presuppositions of a sentence are those conditions that the world must meet in order for the sentence to make literal sense.” He adds: “We can extend logical semantics to account for the presuppositions of questions by defining their presuppositions to be the sentences which are logical consequences of every one of their answers ...”¹⁸

Our data seem to corroborate the view that questions are perceived as not making sense if the world fails to meet their conditions in some direct or immediate sense.

3. *Four Issues Concerning Presupposition*

There are four issues corresponding to these four general approaches or opinions about presupposition, which we wish to address by attempting to relate empirical data to the theoretical positions we have summarised. The issues are: 1) whether some sentences (statements or propositions) relate to others in ways that make the latter neither true nor false if the former are untrue (Frege, Strawson); 2) whether, on the contrary, sentences can have a truth-value even if their presuppositions are untrue; 3) whether a speaker’s or hearer’s beliefs have anything to do with the correctness or incorrectness, appropriateness or inappropriateness of (uttering) sentences (Sellars, Strawson, Cooper), and 4) whether certain world conditions must be satisfied for a sentence to make literal sense or to be usable as an assertion, question, etc. (Fillmore, Keenan).

On the first issue, our contention is that, whatever relation presupposition constitutes, the overall sentence — in our data, all sentences are either questions¹⁹ or answers — may be perceived as hav-

¹⁷ Edward L. Keenan, “Two kinds of presupposition in natural language”, in Charles J. Fillmore and D. Terence Langendoen, eds., *Studies in Linguistic Semantics* (New York: Irvington, 1983), 43.

¹⁸ *Ibid.*, at 48.

¹⁹ There is, of course, a sense in which questions cannot be said to be either

ing no truth-value and being somehow incoherent, if the (potential) presupposition is false.

In case D. of our corpus, prosecuting counsel, in cross-examining a defence witness, asks: "Didn't it surprise you that J. did nothing?" to which the reply is: "He did. He grabbed hold of him". Here there is a clear two-tier answer: one to contradict the false (or unacceptable) presupposition ("J. did nothing") and the other in effect to signal that the formal part of the question as put ("Didn't it surprise you?") cannot therefore be answered. In case S., a witness is asked: "J. having made the complaint, T. leaps up?" Witness answers: "J. never complained." Here again, the formally interrogative part of the question ("T. leaps up?") is left unanswered and indeed there is every possibility that the response to this part, if put without the absolute construction which formulates the false (or unacceptable) presupposition, might have been affirmative. Witness limits herself to rejecting the presupposition.

These questions are perceived as being somehow unanswerable just because their presuppositions are false and the reactions of the witnesses appear to be perfectly normal in the circumstances.

Our second issue, namely whether sentences with false presuppositions can have a truth-value, has in substance been treated with the first. Our data up to now, as we have shown, support the truth-valueless interpretation of (at least some) sentences with false presuppositions. This explains why many definitions, such as Strawson's quoted *supra*, include a requirement that a presupposition must be true if the overall sentence is to be either true or false. It may be, however, that this uniform view of the matter is too unrefined and, whereas if a presupposition is true the overall sentence may be a) true or b) false, if the presupposition is false, the overall sentence may be perceived as c) truth-valueless, d) false or e) true, depending on the proportionate weights or strength of the presupposition within the sentence. Let us take these five possibilities in turn.

(a) In case D., defense counsel asks the main prosecution witness: "Why did you wait until the 7th of February, almost five weeks, be-

true or false, in that they formally ask for information rather than give any. However, in this study we treat questions as having the same truth value, if any, as corresponding statements would have.

fore you complained to the police?" Witness accepts the presupposition (unhelpful to the prosecution) that she delayed, and answers: "At the time, I didn't think the injuries were as serious as they turned out to be."

(b) The same witness has testified that her son T. is "highly strung". Counsel asks: "And immediately he said it, T., who is highly strung, jumped up and swore at J.?" Witness simply answers negatively, without making any further reference to the true and acceptable presupposition that T. is highly strung (which, no doubt, counsel has made explicit in his question in order to encourage the witness to accept jumping up and swearing on the part of T. more easily than it would have been on the part of a more placid person).

(c) To the two fairly clear examples given *supra* of questions which cannot be answered because their presuppositions are (perceived as) false, here we wish to add a slightly more complex one. In a fast-moving cross-examination in case S., it is put to a witness that a certain P.D. had given a particular reply to a question from his employer B.S. Witness responds: "No, he didn't say anything like that." Counsel goes on: "And that reply didn't suit you, did it?" Witness: "What reply?" Here the witness is protesting because the question as put cannot be answered since its presupposition ("that reply") is at best ambiguous (between the real reply given by P.D. and the false one suggested by counsel), and at worst simply false (i.e. a straightforward anaphoric reference to counsel's own false version of P.D.'s reply).

(d) In case D., after some mention of a bottle, counsel asks a witness what T. did with the bottle once he had it in his hand. Witness's response is: "I never seen any bottle of any kind in T.'s hand", ignoring the formal question ("What did T. do ...?") but *de facto* asserting that it cannot be answered because of the false (or at least unacceptable) presupposition. The interesting point here is this: Has the witness answered the question (by denying the truth of the presupposition) or has she failed to answer it (by referring only to the presupposition and ignoring the formal question "What did T. do ...?"). Although the point is far from clear, it would seem that she has treated the question as false. We make this contention on the ground that it would surely have been unreasonable, indeed impossible, for counsel to say "Answer my question" after hearing the response made by the witness. In this dialogue, the presupposition

("once he had it in his hand") is so important and intrinsic to the substance of the question ("What did he do with the bottle?") that its falsehood makes the whole basis of the question false.

(e) With regard to our suggestion that a sentence may be perceived as true even if a presupposition is false provided the proportionate strength or weight of the presupposition is slight in the overall context, we are not in a position to be definite on this point but can only be tentative, on the basis of questions like the following from case D.: "And do you recollect that, before he left, T. apologised to J.?" J. is the defendant, charged with causing grievous bodily harm to the witness, V., during an attack on T. It is therefore crucial to ascertain whether T. apologised to J. (for starting the fight) or not, whereas it is immaterial whether J. ("he" in the question) left or not. It would be easy to regard the proportionate weight or strength of this presupposition as so insignificant as not to affect the truth of the overall sentence, and the witness could answer "yes" or "no" to the main question independently of J.'s leaving or not. However, J. did actually leave and therefore the witness's affirmative answer fails to exemplify our suggestion.

The same witness is asked: "Do you feel somewhat protective about T. because of his disability?" Witness accepts the "truth" of this question even though T. has no "disability" in the normal sense: he is merely "highly strung" and educationally backward. This, then, is merely a matter of terminology and the witness's affirmative reply is inconclusive.

In respect of the third issue, namely whether a speaker's or hearer's beliefs have anything to do with the appropriateness of (uttering) sentences, counsel may indeed have genuine beliefs about what is presupposed in his questions, or alternatively he may simply want to present information about certain material by getting a witness to admit or deny it. In any of these cases, the mere formulation of the presupposition may in itself achieve all he wants to achieve.

The following is an exchange from case D., in which both a chair and a sofa are material to the prosecution case. Counsel: "You could have got up off the sofa and said to J..." Witness: "Chair!" Counsel: "What?" Witness: "Chair". Counsel: "Thank you for the correction." Nothing in the beliefs, attitudes or knowledge of counsel has any influence whatsoever on the effect or the effectiveness of his question;

even though the presupposition is incorrect, it makes no difference whether his mistake is deliberate or accidental. Let us imagine that this witness has previously been deceitful or forgetful; it is possible that she might not have noticed or corrected the presupposition of the question, which is not directly relevant at this point in the case. However, whether being honest or deceitful, she might easily have let the mistake pass, since the question is not “about” what kind of seat she could have got up from, but only about her ability to stand up, since it is just as easy to arise from a chair as from a sofa. Our contention is that it is immaterial whether the questioner has made a genuine mistake or wilfully tried to trap the witness into allowing a false presupposition to pass, and that neither his question nor his behaviour is in any way odd, deviant or inappropriate. The consequences that follow from a true presupposition may be different linguistically or objectively from those of an incorrect one, but the speaker’s belief is irrelevant to any such consequences.

On the “correctness” or otherwise of asking questions with false presuppositions, we contend that this procedure is normal, useful, effective, fully accepted and conventionalised as a method of carrying out juridical business, including verifying doubtful information and introducing new information.²⁰

In regard to our fourth issue, whether certain world conditions must be satisfied if a sentence is to make literal sense or to be usable in any of its normal speech-act functions, it would seem that this also relates to the matter of a presupposition’s truth or falsehood. Keenan²¹ claims that if a certain world condition is not met, then any sentence which presupposes it is either senseless or will be understood in some nonliteral way, for example, as a joke or metaphor. He goes on to list nine different types of presupposition, giving various examples of each type. For instance, his first example (under the heading of “Factive Predicates”) is the following: “That Fred left surprises Mary”, of which the presupposition is “Fred left”. This ex-

²⁰ If a presupposition is seen as potentially detrimental to an opposing party’s case, then counsel may object to the question which contains it. Whether the deliberate use of such a question, as a device to allow a jury to hear inadmissible evidence, is ethical or not is a deontological matter that we cannot discuss here.

²¹ Keenan *supra* n.17, at 45.

ample is very similar to our own: “Didn’t it surprise you that J. did nothing?”, which was left unanswered because, we contend, the presupposition was perceived as false. It seems clear, then, that if the world negates a presupposition, in the sense of making it untrue, then the overall sentence becomes senseless.

In case D. also, counsel begins the question quoted *supra* with an absolute construction describing a “condition in the world”: “J. having made the complaint, T. leaps up?” to which the witness replies: “J. never complained.” The failure of the world to validate the initial assumption (“J. made a complaint”) leads to an unanswerable question.

Of the four general opinions treated, then, the first and fourth seem to be corroborated (showing that a false presupposition or a non-conforming world can make a question truth-valueless), whereas the second and third seem to be contradicted (meaning that a false presupposition does not make a question which contains it merely false or “unusable”).

4. *Presupposition in Cross-examination*

We now wish to elaborate on these findings by examining the functions of presupposition in cross-examination on a more general level.

One of the fundamental facts about the language of the criminal Court is that it is used largely to “tell a story”. Whatever the relations may be between what is told and any extralinguistic, real-life events, these events in themselves are not transported into the Courtroom. What happens is that each party — usually through counsel — attempts to present in words a representation or narrative reconstruction of the events. The fact that documents, photographs, maps and other physical objects, such as weapons or garments, may also be shown in evidence, only confirms that what is being put to the Court is a narrative version of events, not the events themselves. Irrespective of the epistemological status of the facts in the outside world, the aim in Court is to put forward a narrative account that will be plausible or credible, coherent, unambiguously structured, resembling what the judge and jury, relying on their own experience, could believe.

As Bennett and Feldman explain,²² “trials rely on a standardized means of packaging and analysing information: the story. Storytelling simply provides defendants with a means of reconstructing an incident to their best advantage and presenting the reconstruction to an audience who will judge it according to its plausibility.” (What Bennett and Feldman say of defendants applies equally to the prosecution case).

Factual truth in itself does not convince Courts, or indeed anybody else, of its truthfulness. What epistemologists sometimes call the “criterion of truth” is a very elusive element. It is something over and above “the facts” that convinces: the structure of the narrative, the teller and the telling of the story. Jackson²³ shows that plausibility is “a matter of the internal coherence of the narrative.” Just as a novel may seem realistic, not because of its content alone, but by reason of the skill or style with which it is written, so also in Court, form and content compose one total version to be accepted or rejected in preference to an alternative version put forward by an opposing party. This involves both the credibility of witnesses and the information they present. If a witness fails to give the impression of being reliable, trustworthy, honest and even clear-minded, then that person’s story will carry little weight, irrespective of its epistemological status. “Quite apart from the inherent credibility — or its absence — of the propositions uttered by the witness, the English law of evidence in practice requires consideration of the credibility of the witness, as the maker of the proposition”.²⁴ It is a juridical convention or rule that witnesses give their evidence bit by bit in response to questions from counsel. Two immediate objectives of questioning in Court, therefore, are to construct and present an account of the relevant events and to show the witnesses putting forward that account in a certain light, positive or negative as the case may be. It follows that some questions may be weighted more towards the information, others more towards the credibility of the witnesses. Presupposition performs a crucial function in both of these objectives.

²² W. Lance Bennett and Martha S. Feldman, *Reconstruction of Reality in the Courtroom* (New Brunswick: Rutgers University Press, 1981), 171.

²³ Bernard S. Jackson, *Law, Fact and Narrative Coherence* (Merseyside: Deborah Charles Publications, 1988), 58.

²⁴ *Ibid.*, at 8.

It is well established that counsel must not “lead” their own witnesses, except on specific points and to a limited extent. This means that they cannot normally put leading questions in their examination-in-chief or re-examination. They are, however, allowed to do so in cross-examination, that is, in questioning witnesses who appear for an opposing party. A “leading question” is a relative, rather than an absolute entity²⁵ being one whose semantic structure either suggests the answer desired by the questioner or assumes the existence of disputed fact: it amounts to “prompting” a witness. A typical leading question would be the following from case D.: “You thought your brother was really over-reacting, didn’t you?” Clearly, then, leading questions are closely related to those containing presuppositions, but the latter category is much broader. As Walton concedes²⁶ “Indeed, every question has some presupposition ... Even the most innocent question has presuppositions.” (It is worth noting Walton’s implied opposition between presupposition and innocence). His informal definition, “A presupposition of a question is a proposition that one becomes committed to automatically, simply by giving any direct answer to a question”,²⁷ gives an accurate account of what happens in Court. In loose terms, a presupposition in a question is a name, mention, advertence or reference to something, or to the truth, existence, factualness, correctness or knowledge of something, which, though not predicated of the subject by the verb in the main clause of the question, is used in order to ask the question. We posit no necessary ontological, epistemological or even cognitive status for this something, nor any attitude to it on the questioner’s part, other than the fact that he names, mentions, adverts or refers to it in order to ask, or in the process of asking, his question.

Since, according to the rules of evidence, “whatever actions are undertaken by counsel in cross-examination... have to be packaged in the organisation of the talk into question-answer sequences ... a counsel has to design questions so as to elicit, or get the examined party’s agreement to, certain facts or information ...”²⁸ In other words, coun-

²⁵ Colin Tapper, *Cross on Evidence* (London: Butterworths, 7th ed., 1990), 270.

²⁶ Douglas Walton, *Informal Logic: A Handbook for Critical Argumentation* (Cambridge University Press, 1989), 31.

²⁷ *Ibid.*, at 53.

²⁸ J. Maxwell Atkinson and Paul Drew, *The Organisation of Verbal*

sel may either (a) attempt to get a witness to tell (part of) the story as he would like it to be told, or (b) he can tell the story himself (in the form of questions) and attempt to get the witness's agreement or at least his tacit acceptance of it, in accordance with Walton's definition of presupposition.

In case S. of our data, in cross-examining the main prosecution witness, counsel went on several times to his next question without waiting for, or showing any overt interest in, the witness's answers. On more than one such occasion, the judge intervened to say: "Sorry, may we have the answer?" This witness was being cross-examined through an interpreter, which reinforced counsel's intimation to the jury that the witness's reactions, whether affirmative or negative, were of little relevance to the narrative which he, counsel, was unfolding before them.²⁹ For example, after the witness has denied going into his employer's office, he is asked: "And P.D. went into the office with you, didn't he?" Witness answers: "No, he did not go with me". We note that this reply covers the "fact" in question ("P.D. went into the office") and the presupposition of the question ("You went into the office", expressed by "and ... with you"), which is precisely something that the witness has explicitly denied. Similarly, counsel goes on to suggest that another employee gave a certain reply when asked a particular question. Witness responds: "No, he didn't say anything like that." Counsel then presupposes the reply which has just been rejected, asking: "And that reply didn't suit you, did it?" to which the witness responds: "What reply?" Counsel ignores this response and continues with his cross-examination. Although he has failed to obtain the witness's acceptance of his presupposition, he has at least ensured what is surely one of his main objectives, namely that the jury should hear it. This same witness repeatedly perceived counsel as attempting to tell a different story from his own, and he interpreted counsel's questions as statements rather than requests for information. He answered several questions (or, alternatively, countered several interrogatives)

Interaction in Judicial Settings (London: Macmillan, 1979), 105.

²⁹ On the use of interpreters and the effects of witnesses' inability to speak the language of the Court see, for example, Susan Berk-Seligson, *The Bilingual Courtroom: Court Interpreters in the Judicial Process* (Chicago: Chicago University Press, 1990), and Marco Jacquemet, "If he speaks Italian it's better: Metapragmatics in Court", *Pragmatics* 2/2 (1992), 111-126.

with the phrase “No, that’s a lie”, meaning (a) that counsel was telling a story rather than asking for information and (b) that counsel’s story was untrue.

5. *Fallacies or Legitimate Elicitation Strategies*

Although, according to Walton,³⁰ “Even the most innocent question has presuppositions”, and the leading question is only a sub-category of question, he outlines other types which he calls fallacious because of their use of presuppositions.

(a) The “fallacy of many questions” or of “complex questions” occurs “when a question is posed in an overly aggressive manner”,³¹ thus making it a deceptive tactic and a fallacy. (b) Since “asking questions may be a form of asserting propositions in dialogue”,³² this function of asserting propositions may make any question deceptive or fallacious. “If the answerer clearly would not want to be committed to a presupposition of a particular question, then the question may be described as loaded”.³³ A loaded question is one that has a “presupposition that the (average) answerer is not committed to”.³⁴ His example is “Have you always been a liar, or are you just starting now?”, to which the “best” reply may be to object to the question itself. (c) The black and white fallacy (“Is a zebra black or white?”) presupposes that one of two suggested answers must be correct. (d) In the fallacy of “begging the question” the “question” referred to is the issue or point of disagreement, and the question is said to be “begged” when the proposition in dispute is not proved but is expressed in the premisses of the argument.³⁵ Walton cites Engel’s example: “What are your views on the token effort made by the government to deal with this monstrous oil crisis?”, whose formulation describes the government’s efforts and the oil crisis in advance of any answer.

Even an open or undirected question may be followed by a “candidate answer”, either immediately or after a pause on the wit-

³⁰ Walton, *supra* n.26, at 31.

³¹ Walton, *supra* n.26, at 19.

³² Walton, *supra* n.26, at 28.

³³ Walton, *supra* n.26, at 31.

³⁴ Douglas Walton, “Question-Asking Fallacies”, in Michel Meyer, *Questions and Questioning* (Berlin, New York: Walter de Gruyter, 1988), 198.

³⁵ *Ibid.*, at 205.

ness's part.³⁶ In case D., counsel asks "When had you last seen your brother before that?" After a moment's pause, he adds: "Was it that day or the day before or weeks or what?" Here the "prompting" becomes "prodding", with a suggestion that the question may be answered in terms of days or weeks rather than, for example, minutes.

We would contend that these types of question are legitimate and useful devices when employed in the Courtroom for doing normal juridical business.

There is a principle among advocates that they should avoid asking questions to which they do not already know the answers. This is only one of many reasons why an otherwise relevant question may be avoided, the main reason being that it might not contribute to the story as counsel wishes to tell it. This principle, in one sense, shows that the question is not a single univocal type of speech act or form;³⁷ it is an analogical form in that the similarities between the various types of question are vague and may be reduced to the fact that they are all performed most usually by a verb in the interrogative mood and they usually require a reply. However, the most significant difference between questions put in Court and all other types of question is that the latter normally do, while the former normally do not, seek to elicit new information from an answerer, their purpose usually being to allow the known information to be narrated (known, that is, to the questioner). Certain characteristics of questioning in Court follow from this last factor and they explain why we contend that Walton's fallacies have no application to Courtroom questioning.

All witnesses in criminal trials are "called" either by the prosecution or by the defence. Every witness expects, therefore, that the first counsel to question him will be "on his side" and friendly, whereas the second will be against him and unfriendly. Naturally, then, the examiner-in-chief tries to help the witness who, in turn, will wish to be helpful by giving the answers that he thinks or detects counsel would like. The cross-examiner, on the contrary, will be

³⁶ See Hanneke Houtkoop-Steenstra, "Normative and analytical perspectives on interviewing techniques", in Harm Pinkster and Inge Genee, eds., *Unity in Diversity: Papers presented to Simon C. Dik on his fiftieth birthday* (Dordrecht: Foris, 1990), 137-8.

³⁷ See Ruth M. Kempson, *Presupposition and the Delimitation of Semantics* (Cambridge: Cambridge University Press, 1975), 189.

regarded as trying to trap the witness, who will attempt to avoid the answers that this counsel wants. Even in the case of an impartial witness, an uninvolved person who has nothing to gain or lose from any particular outcome of the case, the normal social desire to help someone who has asked for, or been offered, one's help will gravitate towards seeking those aspects of one's knowledge, recollection or view of the truth that are consistent with the story which that person is telling, while fending off, or evading, those aspects that seem to go against it.

This danger, inherent in questioning, applies just as directly to questions in Court as to interrogation in any other situation which allows one person to question another in a sustained manner: in confrontations between parents and their children, policemen interviewing suspects, employers interviewing prospective employees, examiners conducting oral examinations or even teachers questioning pupils. Roberts and Forman³⁸ suggest that riddles are playful models of the interrogation process, thus indicating that the process itself is inherently akin to some kind of trap, danger, difficulty or trickery for the "subordinate" or victim, who has to answer the questions put by the "superordinate", who is asking them. "In these situations", write Roberts and Forman,³⁹ "the subordinate usually is deemed to have less knowledge and power, and the superordinate to have more, at least with regard to the specific context of a given interrogation."

This is a natural outcome of socialisation in those societies in which interrogation is a normal occurrence. It follows that any questioners who are skilled and interested in "the truth", or in neutralising the potential distortion attributable to the "riddle effect", will take positive steps to elicit the former and avoid the latter. Some of the rules of field work developed by linguists and others may provide an analogy here. It is known, for example, that if a linguist doing field work asks a native speaker of a foreign language to pronounce a particular word in isolation, the response will be a "careful" or unnatural pronunciation rather than the normal conversational

³⁸ John M. Roberts and Michael L. Forman, "Riddles: Expressive Models of Interrogation", in John J. Gumperz and Dell Hymes, eds., *Directions in Sociolinguistics: The Ethnography of Communication* (Oxford: Blackwell, 1986), 180-209.

³⁹ *Ibid.*, at 184.

version; consequently, as an elicitation technique, linguists ask questions which are not exactly those whose answers directly interest them, but others, designed to discover what they really want to know. In particular they are careful not to be the first to pronounce the word they want to hear, but to entice the informant to do so. Medical practitioners, similarly, in history-taking and diagnosis avoid asking questions in a way that may suggest the answers they expect or desire, and they are careful not to let the patient detect their reaction to any answers, desired or not. Yet it would be strange to accuse linguists, doctors or their methods of being fallacious or deceptive in using skilled techniques designed to elicit responses that will help them in their legitimate objectives.

Leaving aside any deliberate decision to deceive, factors that may negatively influence a case being put forward in Court are, among others, a witness's bad memory, a poor imagination that cannot visualise what is being described, a personality which is easily led, unpleasant or hesitant, or even such practical characteristics as inability to estimate time or distance; yet none of these involves any moral wrong or blame on anybody's part. Presuppositions built into questions are therefore a legitimate and natural method of attempting to counteract or compensate for such potential weaknesses in individual witnesses.

6. *New Information*

The last point is related to another important factor, namely the introduction of information which is new to the dialogue. A presupposition may bear no relation to anything in the forefront of a witness's consciousness and counsel may use the device to introduce what is *de facto* new information without signalling explicitly that he is doing so.⁴⁰ In case D., counsel asks: "Do you recall that, just before your brother left, you actually⁴¹ apologised to him?" thus presupposing the important point that the witness apologised — thereby

⁴⁰ On presupposition as a means of introducing new, or misleading, information see for example Elizabeth F. Loftus, "Shifting human color memory", *Memory and Cognition* 5(6) (1977), 696-699.

⁴¹ On the use of "actually" to signal and reinforce unexpected or surprising information see Leo Hickey, "Surprise, surprise, but do so politely", *Journal of Pragmatics* 15 (1991), 367-372.

admitting responsibility — for starting the fight. Indeed by conspicuously omitting some significant or prominent item, a questioner may appear to be deliberately refraining from prompting a witness. In the same case, counsel asks: “Did you pick up or take hold of anything in the room?” The word “anything”, being vague, gives an impression of openness, whereas the question as a whole introduces the notion that the witness did pick up something in the room (the presupposition) to attack another person who has not yet given evidence; the concept of picking up or taking hold is new, but the newness may pass unnoticed because of the conspicuous self-restraint in relation to what exactly was picked up.

One of the main uses of presuppositions, then, is to present this kind of new information together with plausibility, as constituent elements of an overall narrative process. This can sometimes be done either by counsel through his presuppositions on their own, irrespective and independently of any answers to his questions, or by a witness’s silence or explicit replies to the presuppositional element in questions.

Under cross-examination, a prosecution witness in case D., who claims to have been injured by the defendant, is asked: “Is it your understanding of the situation that whether or not you get compensation will depend on the outcome of this case?” To which the answer is: “That’s true”. It is noteworthy here that the witness ignores the formal question and any implications of what linguists call the “projection problem”,⁴² that is the embedding of presuppositions in certain types of subordinate clause (“Is it your understanding that ...?”), and confirms that the presupposition is correct; counsel is in fact suggesting to the Court that she may be lying or exaggerating in order to gain a conviction and thus obtain compensation for her injury. Indeed the phrase “That’s true” is one which is often used in conversation for conceding something against one’s own interests, as is happening here. Self-interest is a possible motive for giving true or false evidence, for exaggerating or otherwise varying “the truth”, and it is reasonable that it should be taken into account. This type of question is a normal means of bringing such matters to the attention of the Court, not as facts but as possibilities, while allowing

⁴² See D. Terence Langendoen and Harris B. Savin, “The Projection Problem for Presuppositions”, in Charles L. Fillmore and D. Terence Langendoen, *Studies in Linguistic Semantics*, *supra* n.17, at 540-60.

witnesses to accept or reject them as they think best.

Such use of presupposition as a means of presenting information which is new to an audience is analogical to its use in ordinary conversation to convey information that is, or whose telling is, socially undesirable, information for example of a personal type, ranging from the fact that the speaker has received an official decoration (boasting) to the fact that he has cancer (embarrassing). One may say something like "When I got my decoration I had to wear a bow tie" or "I'm sorry I'm late; my lump has started to trouble me again". The hearer may have no previous knowledge of the speaker's decoration or "lump", but the use of presupposition is an indirect way of informing him; it is more polite or socially acceptable probably because it allows the hearer to respond either to the main assertion, to the presupposition, or to both, as he thinks fit.

Let us take this point relating to new information a little further. According to Delin,⁴³ who studies presupposition conveyed by cleft constructions, "In the frequent cases in which part or all of the presupposed information is in fact new to the hearer, however, one of the effects [...] is to mark information as intended to be *accommodated* by the hearer [...] the syntactic signalling of presupposition is seen as a signpost to hearers to treat information in a particular way, rather than as a signal of assumptions about the *current* state of the discourse". The particular way she has in mind is that "antecedents have to be found or created" for the new information,⁴⁴ and this tests a witness's credibility by putting him in a position where he must quickly accept or reject it, if he notices what is being presupposed.

In cross-examining a prosecution witness in case D., counsel asks the question previously cited: "J. having made the complaint, T. leaps up?" In answering "J. never complained", the witness focusses on the presupposition, which she is unwilling to accept or accommodate. It is relevant for counsel to establish that J. had warned T. that if he continued to behave in a certain way he, J., would take action against him; the witness, on the contrary, wishes to convey that no warning (complaint) was issued but that J.'s attack on T. was sudden. In such cases, counsel would like the witness to agree to some

⁴³ Judy Delin, *Accounting for Cleft Constructions in Discourse: A Multi-Layered Approach* (Edinburgh: SCRC Publications, 1990), 18-19.

⁴⁴ *Ibid.*, at 19.

(new) information that has not yet been established or accepted, and this may be one way of establishing such information because, if it is accepted either by explicit confirmation or implicitly by any answer to the main question without rejecting the presupposition, then it forms part of the narrative, from that moment on.

These considerations tend to suggest that new information built into a question as presupposition may be treated by hearers either as acceptable "fact" or as part of the question and hence neither more nor less "factual" than the rest of the question. Witnesses may explicitly or implicitly accept new information formulated as presuppositions, they may advert to it specifically in order to contradict it or they may contradict it in a general way. In an example already cited, counsel asks: "Didn't it surprise you that J. did nothing?" Witness answers: "He did. He grabbed hold of him." The outcome of this attempt on counsel's part to formulate a main question ("Didn't it surprise you?") while adding an unaccepted factor to it ("J. did nothing") is that it gives extra credibility to the witness's answer in that she explicitly rejects the presupposition while implying that the question, as put, is unanswerable.

7. *Conclusion*

"Facts" do not carry their own guarantee of acceptability or "criterion of truth" around with them and they are relevant to judicial proceedings only as extrajudicial antecedents of an overall narrative version and explanation of events. Apart from the story being told, there are two main factors in the verification of the story: the demeanour of individual witnesses, and the plausibility or consistency of the whole narrative as presented to the Court. Lawyers speak of the "quality" of evidence: evidence may be of good or bad quality in the sense of standing up to scrutiny and being convincing, or otherwise.

Presupposition is one form of indirectness, a method of verifying facts and credibility by making it a little easier for witnesses to give one answer rather than another so that, if they then reject the easier and choose the more difficult, some additional weight may be attached to the answer chosen. It thus elicits a "better quality" evidence, in the sense of being more likely to convince, more plausible, more persuasive or more coherent. In allowing counsel to present his

story, while formally asking questions and thereby respecting the rules of evidence which require witness participation in the storytelling, it seems to test new information somewhat more efficiently than old, by relying more directly on witnesses' perception of what is actually being asked so as to accept or reject it. It is also one method by which evidence may be checked against a witness's earlier testimony or that of another witness in a manner that does not alert him to the immediate or entire purpose of the questioning, thus adding some extra credibility to his evidence if he seems to be in full control of a coherent and consistent (part of the) story.

Presupposition, then, has three basic uses in Courtroom questioning: it can help to tell the story, it can introduce new items of information and it can help to test witness credibility. In each case it makes a legitimate, effective and perfectly respectable contribution to the judicial process.