ISSA Proceedings 1998 – Argument Mediation For Lawyers: The Presentation Of Arguments

1. The logic of law

Most lawyers have some awareness of logic, although the awareness is normally limited. The logical connectives '… and …' and ' … or …' are known, and maybe even the ambiguous interpretation of a composite sentence of the form 'a and b or c' is familiar. Some might regard the connective 'if …, then …' as the abstract form of a legal rule and the rule of inference Modus Ponens as the general template of legal reasoning.

Why do lawyers pay so little attention to logic? The main problem is that logic in its classical appearances (such as propositional or predicate logic) is not sufficiently satisfying as a model of legal argument: it is too far from the argument forms that lawyers use in practice. In recent years, there has been a large amount of research on the development of logical tools for legal argument (see, e.g., the work of Gordon [1993, 1995], Hage [1997], Lodder [1998], Prakken [1993, 1997] and Verheij [1996]). Argument forms that have been studied include arguments concerning exceptions to rules, conflicts of reasons and rule applicability.

The logical tools that have recently been developed can be categorized under three headings: *defeasibility*, integration of logical levels, and the process character of argument [Verheij *et al.*, 1997]. Defeasibility is a characteristic of arguments and, in a derived sense, of conclusions. A conclusion is defeasible if it is the conclusion of a defeasible argument. Defeat occurs if a conclusion is no longer justified by an argument because of new information. For instance, the conclusion that a thief should be punished is no longer justified if it turns out that there was a legal justification for the theft, such as an authorized command.

The *integration of logical levels* is for instance required if reasons are weighed. If arguments lead to incompatible conclusions, weighing of reasons is necessary to determine which conclusion follows. Additional information is necessary to determine the outcome of the weighing process. In some views, this information is on a higher logical level than the facts of cases, and the rules of law. However,

since there can also be arguments about the weighing of reasons, the integration of levels is required.
The *process character of argument* also led to the development of new logical tools. For instance, the defeasibility of arguments cannot be separated from the process of taking new information into account. During the process of argumentation conclusions are drawn, reasons are adduced, counterarguments are raised, and new premises are introduced. In traditional models, only the end products of the process are modeled.

The focus has been primarily on the technical development of the logical tools, and only in the second place on their practical adequacy for modeling legal argument. Presently a convergence of opinions on the necessary logical tools takes shape, and a systematic practical assessment of the logical tools becomes essential. In the research reported on in this paper, a step towards the practical assessment is made by the development of two experimental computer systems for *argument mediation* for lawyers. In computer-supported argument mediation, one or more users of the system engage in an argument that is mediated by the system: the system administers the argument moves and safeguards that the rules of argument are observed. It can, if appropriate, give advice to the user.
A new problem for argument researchers, as posed by the development of systems for argument mediation is how arguments should be presented to the users of the system. In this paper, we describe two experimental computer systems, the Argue!-system and the Argumentation Mediator, each using a different way of argument presentation. The two systems are based on a simplified version of Verheij's [1996] CumulA-model, which is a procedural model of argumentation with arguments and counterarguments.

Section 2 briefly discusses argument mediation and the two experimental systems of the present paper. In section 3, an example case of Dutch tort law is summarized, that will be used to illustrate the two systems of argument mediation. Section 4 contains an introduction of CumulA, the procedural model of argumentation with arguments and counterarguments, that underlies the two experimental systems. Section 5 and 6 contain sample sessions of the two systems. In section 7, the two systems are compared with each other and selected related systems, especially with regards to their underlying argumentation theories and user interfaces. Section 8 suggests a shift from argument mediation systems as theoretical to practical tools.**[i]**

2. Experiments with argument mediation

In the research on computer-mediated legal argument, computer systems are developed that can be used to mediate the process of argumentation of one or more users. The systems can mediate the process in which arguments are drafted and generated by the users, e.g., by

– administering and supervising the argument process,

– keeping track of the conclusions that are justified, and the assumptions that are made,

– keeping track of the reasons adduced and the conclusions drawn,

– keeping track of the counterarguments that have been adduced,

and

– checking whether the users of the system obey the pertaining rules of argument.

Recently several experimental systems for (legal) argument mediation have been developed (e.g., Room 5 by Loui *et al.* [1997], Zeno by Gordon and Karacapilidis [1997], and DiaLaw by Lodder [1998]). The systems differ on the user interfaces and on the underlying argumentation theory that is used.**[ii]**

A new problem for argument researchers, as posed by the development of systems for argument mediation is how arguments should be presented to the users of the system. In this paper, we describe two experimental computer systems, using different ways of argument presentation. The first, the Argue!-system, has a graphical user interface: the user of the system 'draws' argument structures, by clicking and dragging a pointing device, such as a mouse. The second, the Argumentation Mediator, has a template-based user interface: the user gradually constructs arguments, by filling in templates that correspond to argument patterns.

The two systems are based on Verheij's [1996] CumulA-model, which is a procedural model of argumentation with arguments and counterarguments.

3. An example taken from Dutch tort law: the 'bussluis' case

To illustrate the two systems of argument mediation, we use an example taken from Dutch tort law. In Dutch tort law, the liability to repair damages on the basis of tort is determined in two steps:

Step 1. Determine the general duty to compensate damages on the basis of tort (art. 6:162 BW)

Step 2. Determine the relative amount of imputability in order to find the portion

of the damages that has to be compensated (art. 6:101 BW)

For instance, assume that John has the general duty to compensate for certain damages, as suffered by Mary, on the basis of a tort committed by John. Assume also that the damages were partly due to Mary's own fault. If the judge decides that the damages must be imputed to Mary for 25 %, John only has to compensate 75 % of Mary's damages.

The logic of Dutch tort law enabled the somewhat surprising decision in the Dutch 'bussluis' case between a cab-driver and the local authorities (Dutch Supreme Court, March 20, 1992; Court of Justice of the Hague, September 15, 1994): although there was a general duty of the Municipality to compensate for the damages of the cab-driver, the actual portion of the damages that had to be compensated for was nil, because the damages were fully imputed to the cab-driver.

The reasoning can be summarized as follows:
Step 1. The Municipality had committed a tort against the cab-driver.
Therefore, the Municipality had the general duty to repair the damages (on the basis of art. 6:162 BW).
Step 2. The damages were fully imputed to the cab-driver. Therefore, the portion of the damages to be compensated for was nil (on the basis of art. 6:101 BW).

The case is discussed more extensively by Lodder and Verheij [1998] and Verheij and Lodder [1998].

4. CumulA: a model of defeasible argumentation in stages
CumulA [Verheij, 1996] is a procedural model of argumentation with arguments and counterarguments. It is based on two main assumptions. The first assumption is that argumentation is a process during which arguments are constructed and counterarguments are adduced. The second assumption is that the arguments used in argumentation are defeasible, in the sense that whether they justify their conclusion depends on the counterarguments available at a stage of the argumentation process.

The goal of argumentation is to (rationally) justify conclusions. In CumulA, the focus is on the process of argumentation, and on the defeasibility of the arguments used in argumentation. Argumentation is a process, in the sense that during argumentation arguments are constructed and counterarguments are

brought up. Arguments are assumed to be defeasible, in the sense that if an argument at some stage of the argumentation process justifies its conclusion, it not necessarily justifies its conclusion at all later stages. The defeat of an argument is caused by a counterargument that is itself undefeated.

For instance, if the Municipality has committed a tort against the cab-driver, a conclusion would be that the Municipality has the duty to repair 100 % of the damages. The conclusion can be rationally justified, by giving *support* for it. E.g., the following *argument* could be given:

The Municipality has committed a tort against the cab-driver.
So, the Municipality has the (general) duty to repair the damages.
So, the Municipality has the duty to repair 100 % of the damages.

Recall that in Dutch tort law, the general duty to repair damages and the portion of the damages to be repaired are established consecutively.

An argument as above is a reconstruction of how a conclusion can be supported. The argument given here consists of two *steps*.
An argument that supports its conclusion does not always justify it. For instance, if in our example it turns out that the damages are fully imputed to the cab-driver (as in the 'bussluis' case), the conclusion that the Municipality has the duty to repair 100 % of the damages would no longer be justified. The argument has become *defeated.* In the example, the argument:
The Municipality has the (general) duty to repair the damages.
So, the Municipality has the duty to repair 100 % of the damages.

does not justify its conclusion because of the *counterargument.*
The damages are fully imputed to the cab-driver.

CumulA is a procedural model of argumentation with arguments and counterarguments, in which the defeat status of an argument, either undefeated or defeated, depends on:
(1) the structure of the argument;
(2) the counterarguments;
(3) the argumentation stage.

We briefly discuss each below. The model builds on the work of Pollock [1987, 1995], Loui [1991, 1992], Vreeswijk [1993, 1997] and Dung [1995] in philosophy

and artificial intelligence, and was developed to complement the work on the model of rules and reasons Reason-Based Logic (see, e.g., Hage [1993, 1996, 1997] and Verheij [1996]).

In the model, the structure of an argument is represented as in the argumentation theory of Van Eemeren and Grootendorst [1981, 1987]. Both the subordination and the coordination of arguments are possible. It is explored how the structure of arguments can lead to their defeat. For instance, the intuitions that it is easier to defeat an argument if it contains a longer chain of defeasible steps ('sequential weakening'), and that it is harder to defeat an argument if it contains more reasons to support its conclusion ('parallel strengthening'), are investigated.
In the model, which arguments are counterarguments for other arguments is taken as a primitive notion [cf. Dung, 1995]. This is in contrast with Vreeswijk's [1993, 1997] model, in which conflicts of arguments (i.e., arguments with conflicting conclusions) are the primitive notion. In CumulA, so-called defeaters indicate which arguments are counterarguments to other arguments, i.e., which arguments can defeat other arguments. It turns out that defeaters can be used to represent a wide range of types of defeat, as proposed in the literature, e.g., Pollock's [1987] undercutting and rebutting defeat.
Moreover some new types of defeat can be distinguished, namely defeat by sequential weakening (related to the well-known sorites paradox) and defeat by parallel strengthening (related to the accrual of reasons).
In the CumulA-model, argumentation stages represent the arguments and the counterarguments currently taken into account, and the status of these arguments, either defeated or undefeated. The model's lines of argumentation, i.e., sequences of stages, give insight in the influence that the process of taking arguments into account has on the status of arguments.
For instance, assume that John has the general duty to compensate for certain damages, as suffered by Mary, on the basis of a tort committed by John. Assume also that the damages were partly due to Mary's own fault. If the judge decides that the damages must be imputed to Mary for 25 %, John only has to compensate 75 % of Mary's damages.

To summarize, CumulA shows
(1) how the subordination and coordination of arguments is related to their defeat;
(2) how the defeat of arguments can be described in terms of their structure,

counterarguments, and the stage of the argumentation process;
(3) how both forward and backward argumentation can be formalized in one model.

Verheij [1996] discusses the CumulA-model extensively, both informally and formally. The two argument mediation systems, discussed in this paper, have restricted versions of CumulA as their underlying argumentation theory.

5. The Argue!-system: a graphical interface

The first experimental implementation of CumulA is an argument mediation system with a graphical interface. It is referred to as the Argue!-system. The user 'draws' argument structures, by clicking and dragging a pointing device, such as a mouse. We discuss an example session, based on the 'bussluis' case. As a start, a statement is typed, 'The Municipality has committed a tort against the cab-driver' (*Figure 1*).

Figure 1

Statements can be justified by adding reasons (in the figure: 'The Municipality has acted against proper social conduct'), and can be used to draw conclusions ('The Municipality has the duty to repair the damages'). This is visually depicted in a straightforward way, by arrows connecting the statement-boxes (*Figure 2*).

Figure 2

The reader may have noticed that the statement 'The Municipality has committed a tort against the cab-driver' was first in a grey box, and now is in a white box. This is due to the different statuses that statements can have: if a statement is unevaluated it is in a grey box, if it is undefeated (i.e., justified), it is in a white box. In the example, the statement 'The Municipality has acted

against proper social conduct' is undefeated, since it has been added as an assumption. The other two statements become undefeated since there is an undefeated reason for them.

The line of argument continues in order to determine the amount of damages that the Municipality has to pay. At first, the conclusion is drawn that the Municipality has the duty to repair 100 % of the damages. However, the user recalls something about the importance of imputability (*Figure 3*).

The statement that the damages are fully imputed to the cab-driver is a counterargument to the argument that the Municipality has the duty to repair 100 % of the damages because the Municipality has committed a tort against the cab-driver. In order to indicate that one argument is a counterargument to another, a special visual structure is used (Figure 4).

Figure 3

Figure 4

Since the statement that the damages are fully imputed to the cab-driver is as yet unevaluated, the statement that the Municipality has the duty to repair 100 % of the damages is still justified. In order to justify the statement that the damages are fully imputed to the cab-driver, the relevant case is cited. Since the corresponding statement that the Court decided on the imputability, is added as a assumption, the conclusion that the damages are fully imputed to the cab-driver, becomes justified (Figure 5).

As a side effect, the statement that the Municipality has the duty to repair 100 % of the damages, has become defeated (visually indicated by the cross in the

corresponding box), since the argument that the damages are fully imputed to the cab-driver, now is a counterargument.

Now it is concluded that the Municipality has the duty to repair 0 % of the damages, on the basis of the reason that the damages are fully imputed to the cab-driver. If desired, the rule that warranted the connection between the reason and the conclusion, can be made explicit by the user of the system (Figure 6).

When the user has stated that the rule of art. 6:102 of the civil code determines the portion of the damages, the session ends (Figure 7).

Figure 5

6. The Argumentation Mediator: a template-based interface

The second experimental implementation of CumulA is a system for the mediation of argument with a template-based interface. It is referred to as the Argumentation Mediator. The user gradually constructs arguments, by filling in templates that correspond to argument patterns. We give an example session, again based on the 'bussluis' case. The opening screen of the implementation shows four 'Argue'-buttons**[iii]**, that give access to the available argument templates, and four 'View'-buttons, that give different ways of viewing the current stage of argumentation stage (Figure 8). In the example session, the functionality of the buttons will be explained.

When the user clicks the 'Statement'-button, a template for making a statement is shown (Figure 9). The user types the statement that the Municipality has committed a tort against the cab-driver. The statement can have be of two types, namely the query- and the assumption-type. A statement of query-type is a new issue**[iv]** of argumentation and no claim is made with regards to its justification status. Normally the goal of making a query-type statement is to *determine*

whether it is justified. A statement of assumption-type is taken as justified 'by assumption' and does not require further justification. Normally the goal of making an assumption-type statement is to use it for justifying other statements (of query-type). In the example, the statement that the Municipality has committed a tort against the cab-driver, is of query-type, since the user wants to establish whether it is justified.

The result of the argument move is the following. The icon in front of the sentence 'The Municipality has committed a tort against the cab-driver' consists of a question mark, indicating that the corresponding statement is of query-type, and a (grey) circle, indicating that it is currently neither justified nor unjustified (Figure 10). Now the user clicks the 'Reason/conclusion'-button to give a reason for the conclusion that the Municipality has committed a tort against the cab-driver (Figure 11).

Figure 8

Since reason that the Municipality has acted against proper social conduct is of assumption-type (indicated by the exclamation mark in its icon), the conclusion that the Municipality has committed a tort becomes justified, indicated by the (green) plus. Since the reason is of assumption-type it is also taken as justified (Figure 12).

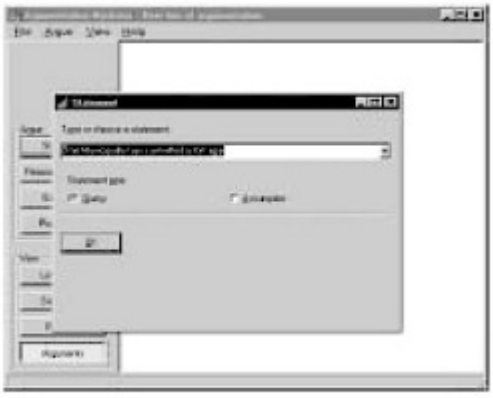

Figure 9

The 'Reason/conclusion'-template can of course not only be used for adducing reasons, but also for drawing conclusions. Below the user uses the statement that

the Municipality has committed a tort as a reason to draw the conclusion that the Municipality has the duty to repair the damages (Figure 13).

From the reason that the Municipality has the duty to repair the damages the user draws the conclusion that the Municipality has the duty to repair 100 % of the damages (Figure 14).

The user recalls that the imputability of the cab-driver can diminish the amount of damages to be repaired. By clicking the 'Exception'-button the user gets access to the exception-template. The user types the exception that the damages are fully imputed to the cab-driver, and selects the reason/conclusion it blocks (Figure 15).**[v]**

The result of the user's exception move is that the conclusion that the Municipality has the duty to repair 100 % of the damages is no longer justified, as indicated by the (red) cross (Figure 16).

Figure 13

From the reason that the Municipality has the duty to repair the damages the user draws the conclusion that the Municipality has the duty to repair 100 % of the damages (Figure 14).

Figure 14

Although the exception that the damages are fully imputed to the cab-driver was an assumption, the user chooses to give a reason for it (using the reason/conclusion-template), namely that the Court decided on the imputability (Sept. 15, 1994). The type of the exception is changed to the query-type (Figure 17)

Finally, the user concludes that the Municipality has the duty to repair 0 % of the damages (Figure 18).

Until now, the session always showed the arguments that were constructed, since the ‘Arguments’-button of the ‘View’-panel was pressed. The other buttons of that panel give access to other information. For instance, the ‘Line of argumentation’-button gives access to the successive argument moves performed by the user

(Figure 19).

The ‘Statements’- and ‘Reasons’-buttons give access to the statements and the reasons (including the corresponding conclusions and exceptions) that have been entered by the user (Figure 20, 21).

7. A comparison of argument-mediation systems

In order to put the two discussed systems for argument mediation in context, they are briefly compared to three other systems, namely Room 5 by Loui et al. [1997], Zeno by Gordon and Karacapilidis [1997], and DiaLaw by Lodder [1998]. The system of section 5 is referred to as the Argue!-system, that of section 6 as the Argumentation Mediator. First, the underlying argumentation theories are discussed; second, the user interfaces.

7.1 The underlying argumentation theories

In the underlying argumentation theories of all five systems argumentation is *dynamic*. Statements can be made, and reasons can be adduced. In Room 5, Zeno and DiaLaw, argumentation is *issue-based*. No new conclusions can be drawn, since these systems focus on justification of an initial central issue. In the Argue!-system (section 5) and the Argumentation Mediator (section 6), argumentation is *free*, since there is no central issue, and allow both *forward argumentation* (i.e., drawing conclusions) and *backward argumentation* (i.e., adducing reasons).

All systems model a notion of *defeasibility* of argumentation. Room 5, Zeno and DiaLaw have a notion of *reasons for and against conclusions*.**[vi]** In Zeno and DiaLaw, weighing the conflicting reasons determines which conclusions are justified. DiaLaw, the Argue!-system and the Argumentation Mediator have an *undercutter-type exception* (see note 5). The Argue!-system models *defeat by sequential weakening* (see Verheij [1996, p. 122]): an argument is defeated since it contains an unacceptable sequence of steps.

Only DiaLaw has a notion of the *rules* underlying argument steps, as it is based on the theory of rules and reasons Reason-Based Logic (see, e.g., Hage [1996, 1997] and Verheij [1996]).

In Room 5, Zeno and DiaLaw, argumentation is considered as a *game with participants*. In Room 5 and Zeno, the game character is left *implicit*, but obtained by the distributed access to the systems, on the World-Wide Web. In DiaLaw, the game character is made *explicit* in the form of a dialogue game with two parties. The Argue!-system and the Argumentation Mediator have no explicit notion *of participants.*

7.2 The user interfaces

Room 5, Zeno, the Argue!-system and the Argumentation Mediator present arguments in a *visual* manner. Zeno, the Argue!-system and the Argumentation Mediator use a *tree*-like presentation. Room 5 uses a clever system of *boxes-in-boxes* in an attempt to avoid 'pointer-spaghetti'. In DiaLaw, and also in the Argumentation Mediator, argumentation is presented in a *verbal* manner, namely as a sequence of moves.

In Room 5 and Zeno, counterarguments (formed by reasons against conclusions) are *grouped together* in the visual argument structure. In the Argue!-system, counterarguments are shown by a *special visual structure.* In the Argumentation Mediator, counterarguments (currently only formed by undercutter-type exceptions) are visible in a *special viewing window*, namely the 'Reasons'-view. In DiaLaw, counterarguments are not directly accessible.

In the Argumentation Mediator and DiaLaw, the dynamic aspect of argumentation is shown by a *view on the sequence of moves.* In Room 5, Zeno and the Argue!-system, only *a view on the current stage* of the argumentation process is visible.

In Room 5 and the Argumentation Mediator, it is possible to switch between different views showing different types of information.

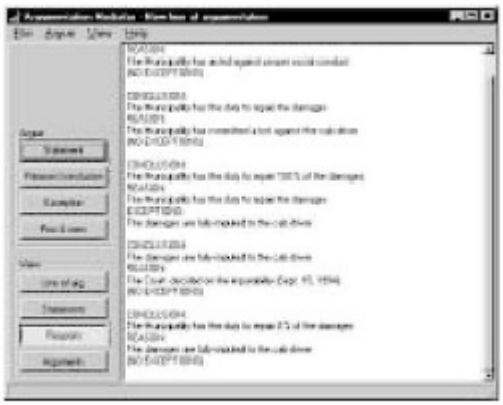

Figure 21

DiaLaw has a *text-based interface*; moves are typed at a command-prompt. The Argue!-system has a *graphical interface*: argument structures are 'drawn' using a pointing device. Room 5, Zeno and the Argumentation Mediator have a *template-based interface*: users fill in forms to perform an argument move. The Argumentation Mediator provides different forms for different moves to facilitate the user.

7.3 Conclusions

If we look at the above discussion, some conclusions can be drawn.

– An issue-based argument mediation system has the advantage that the process of argumentation has a focus, which can be useful, or even necessary (e.g., in a game-like situation). However, a system that is not issue-based (such as the two systems presented in this paper) adds flexibility, namely the possibility of forward argumentation.

– Current argument mediation systems have different notions of defeasibility. One should therefore strive for integration, or explicitly defend choices.

– A notion of rules should be included, or one should defend why it is not. Remarkably, none of the discussed systems with a visual, window-style interface has a notion of rules.

– Argument mediation systems with visual, window-style interfaces are obviously more user-friendly than text-based interfaces.

Among the visual interfaces, a template-based interface seems easier to use than a graphical interface (as in the Argue!-system), in which special visual structures have to be drawn. A system with different templates for different types of argument moves (as in the Argument Mediator) seems promising.

– The choice of argument moves that are available to the user, is crucial for user acceptance. A particular choice should not just be based on theoretical grounds, but must correspond to the needs of users.

8. Argument mediation systems for lawyers: from theoretical to practical tools

The recent advances in the theory of legal argument, especially with respect to defeasibility, integration of logical levels, and the process character of argument require a practical assessment. One way of such assessment is to build usable systems for argument mediation. In this paper, two experimental systems, namely the Argue!-system and the Argumentation Mediator, have been presented, and briefly compared to selected related systems, namely Room 5, Zeno, and DiaLaw. The differences between the underlying argumentation theories and user interfaces are striking, and show that argument mediation systems are still in their early stages of development. On the one hand, current argument mediation systems seem not yet sufficiently mature to be used as *practical* tools by practicing lawyers. On the other hand, they already turn out useful as *theoretical* tools, and help to enhance argumentation theory. The move from theoretical to practical tools will take serious effort, both by researchers and by system developers, but is manageable for the near future.

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NOTES

[i] Sections 4 and 5 have been adapted from Lodder and Verheij [1998] and Verheij and Lodder [1998].

[ii] In the argumentation theories of all systems for argument mediation discussed in this paper, argumentation is considered defeasible. Systems based on classical logic, e.g., Tarski's World by Barwise and Etchemendy (see http://csli-www.stanford.edu/hp/) are not discussed.

[iii] At the time of writing this paper, the 'Pros & cons'-button does not yet give access to a template.

[iv] This is the terminology used in the Zeno-project [Gordon and Karacapilidis, 1997].

[v] The exception is of undercutter-type [Pollock, 1987], as it breaks the justifying connection between the reason and the conclusion. I slightly prefer to speak of exceptions to rules, and not to reasons, that arise from rules (see the work on Reason-Based Logic by Hage [1996, 1997] and Verheij [1996]). However, the

current implementation does not give access to the rules behind reasons.
[vi] The 'Pros & cons'-button of the Argumentation Mediator suggests it has a notion of reasons for and against conclusions. However, as yet, no corresponding functionality has been implemented (see note 3).

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ISSA Proceedings 1998 – Argumentation Explicitness And Persuasive Effect: A Meta-Analytic Review Of The Effects Of Citing Information Sources In Persuasive Messages

Argumentative explicitness is commonly acknowledged to be a normative ideal for argumentative practice, but advocates might fear that explicit argumentation could impair persuasive success. The question of the persuasive effects of argumentative explicitness is an empirical one, however. This paper addresses one aspect of this matter, by offering a meta-analytic review of the persuasive effects associated with one aspect of the degree of articulation given to an advocate's supporting argumentation, namely, whether the advocate explicitly identifies the sources of supporting information.

1. Background

Argumentative explicitness is one commonly-recognized normative good in the conduct of advocates. That is, it is normatively desirable that advocates explicitly articulate their viewpoints: "Evasion, concealment, and artful dodging . . . are and should be excluded from an ideal model of critical discussion" (van Eemeren, Grootendorst, Jackson, & Jacobs 1993: 173). Explicit argumentation is normatively desirable because explicitness opens the advocated view for critical scrutiny. But explicit argumentation might not be instrumentally successful, that is, persuasive, which gives rise to the question: what is the relationship between argumentative explicitness and persuasive effects?

One facet of this question has been addressed by O'Keefe (1997), who reviewed research concerning the persuasive effects of variations in the explicitness of a message's conclusion (the degree of articulation of the message's overall standpoint or recommendation). His review suggested that better-articulated

message conclusions are dependably more persuasive than less-articulated ones.
This paper concerns the persuasive effects of variation in the explicitness of one facet of a message's supporting argumentation, specifically, whether the advocate explicitly identifies the sources of provided information. A number of studies have addressed this question, though many of these have never been systematically collected or reviewed. The purpose of the present paper is to provide a meta-analytic review of this research.

Meta-analytic literature reviews aim at providing systematic quantitative summaries of research studies (Rosenthal 1991 provides a useful general discussion of meta-analysis). Traditional narrative literature reviews emphasize statistical significance (whether a given study finds a statistically significant effect), but this can be a misleading way of characterizing research findings; whether statistical significance is achieved is a matter of, inter alia, sample size. Meta-analytic reviews instead commonly focus on the size of the effect obtained in each study, with these then being combined to give an observed average effect (with an associated confidence interval). In this paper, the effect of central interest is the persuasive outcome associated with variation in information-source citation.
A number of studies relevant to this question are ones commonly characterized as studies of the effects of "evidence" in persuasive messages (e.g., McCroskey 1969; Reinard 1988). The question of interest in these studies is what difference it makes to persuasive effectiveness if the advocate provides evidence supporting the message's claims. As Kellermann (1980) has pointed out, however, the concept of evidence invoked in this research is not carefully formulated and, correspondingly, evidence research has seen a large number of different experimental realizations of evidence variations (see Kellermann 1980: 163-164). Kellermann has argued quite pointedly for the importance of more careful conceptualization of the relevant message properties.
One of the message variations commonly represented in evidence research is information-source citation. That is, as part of manipulating the presence of "evidence" in a message, investigators have varied whether the message contains explicit identification of information sources. Thus in a number of studies, information-source citation has been manipulated simultaneously (that is, in a confounded fashion) with other variables (e.g., Harte 1972; McCroskey 1966).
The present review thus has a somewhat sharper focus than those in discussions of evidence, by virtue of being concerned specifically with information-source

citation (cf., e.g., Reinard 1994). This more careful specification of the message property of interest has also made it possible to locate relevant research not commonly mentioned in discussions of evidence (e.g., Berger 1988). Moreover, given that some studies have manipulated information-source citation in tandem with other variables, the present focus permits one to distinguish cases in which only information-source citation is varied from cases that simultaneously vary information-source citation and other message properties; studies of such joint manipulations are of distinctive interest, precisely because they shed light on the question of the effects of combining information-source citation manipulations with other variations.

2. Method

Identification of Relevant Investigations

Literature search. Relevant research reports were located through personal knowledge of the literature, examination of previous reviews and textbooks, and inspection of reference lists in previously-located reports. Additionally, searches were made through databases and document-retrieval services using such terms as "documentation," "evidence," and "support" in conjunction with "persuasion" and "persuasive" as search bases; these searches covered material through at least January 1998 in PsycINFO, ERIC (Educational Resources Information Center), *Current Contents, ABI/Inform, and Dissertation Abstracts Online.*

Inclusion criteria. Studies selected had to meet two criteria. First, the study had to compare two messages varying in information-source citation; specifically, the study had to contrast a message that explicitly identified the sources of (at least some of) the message's information (facts, opinions, and the like) and a message that presented the same information without such identifying source information. This criterion excluded studies that varied other aspects of the message's explicitness, such as the explicitness of the overall conclusion (e.g., Hovland & Mandell 1952), the completeness with which supporting-argument premises or conclusions were articulated (e.g., Kardes 1988), and the like.

Second, the investigation had to contain appropriate quantitative data pertinent to the comparison of persuasive effectiveness or perceived credibility between experimental conditions. This criterion excluded studies that did not provide appropriate quantitative information about effects (e.g., Babich 1971; Kilcrease 1977; McCroskey 1967b, studies 2, 6, 11, 12, and 13).

Dependent Variables and Effect Size Measure

Dependent variables. Two dependent variables were of interest. The dependent variable of central interest was persuasiveness (as assessed through measures such as opinion change, postcommunication agreement, behavioral intention, and the like). When a single study contained multiple indices of persuasion, these were averaged to yield a single summary.
The other dependent variable was credibility (as assessed though, e.g., measures of competence, trustworthiness, believability, and the like). Where multiple indices of credibility were available, these were averaged.

Effect size measure. Every comparison between a message providing information-source citations and its less explicit counterpart (without such citations) was summarized using r as the effect size measure. Differences favoring explicit messages were given a positive sign; differences favoring inexplicit messages were given a negative sign.
When correlations were averaged across several dependent measures, the average was computed using the r-to-z-to-r transformation procedure, weighted by n. Wherever possible, multiple-factor designs were analyzed by reconstituting the analysis such that individual-difference factors (but not other experimental manipulations) were put back into the error term (following the suggestion of Johnson 1989).
When a given investigation was reported in more than one outlet, it was treated as a single study and analyzed accordingly. The same research was reported (in whole or in part) in Cathcart (1953) and Cathcart (1955); in Harte (1972) and Harte (1976); in Hayes (1966) and Hayes (1971); in Luchok (1973) and in Luchok and McCroskey (1978), recorded here under the latter; in McCroskey (1967b, Study 1), McCroskey (1966, pilot study), McCroskey (1967a), and in McCroskey and Dunham (1966, Experiment 1); in McCroskey (1967b, Study 2) and in McCroskey and Dunham (1966, Experiment 2); in McCroskey (1967b, Study 3) and in Holtzman (1966); in McCroskey (1967b, Study 4) and in McCroskey (1966, major study I); in McCroskey (1967b, Study 5) and in McCroskey (1966, major study II); in Ostermeier (1966) and Ostermeier (1967); in Reinard (1984, Experiment 1) and in Reinard and Reynolds (1976), recorded here under the former; in Sikkink (1954) and Sikkink (1956); and in Whitehead (1969) and Whitehead (1971).

Analysis
The unit of analysis was the message pair (that is, the pair composed of an

explicit message and its inexplicit counterpart). When the same messages were used in more than one investigation, results were combined. Such combined results were computed in the following cases: results recorded under Cathcart (1953, 1955) reflect results from Cathcart (1953, 1955) and from Bostrom and Tucker (1969); results recorded under "McCroskey capital punishment" reflect results from studies 1, 3, and 4 in McCroskey (1967b); results recorded under "McCroskey pro-education" reflect results from studies 1, 4, and 5 in McCroskey (1967b) and McCroskey (1970).**[i]** Some designs used multiple messages but did not report results separately, and so were treated as having only one message (Berger 1988, second preliminary study and main study; Whitehead 1969, 1971); the consequence is that the present analysis underrepresents any message-to-message variability in these data.
The individual correlations (effect sizes) were initially transformed to Fisher's zs; the zs were analyzed using random-effects procedures described by Shadish and Haddock (1994), with results then transformed back to r. A random-effects analysis was employed in preference to a fixed-effects analysis because of an interest in generalizing across messages.

Meta-analysts of message effects research face a circumstance parallel to that of primary researchers whose designs contain multiple instantiations of message categories. Such multiple-message designs can be analyzed treating messages either as a fixed effect or as a random effect. The relevant general principle is that replications should be treated as random when the underlying interest is in generalization. This reflects the fact that fixed-effects and random-effects analyses test different hypotheses: a fixed-effects analysis tests a hypothesis concerning whether the responses to a fixed, concrete group of messages differ from the responses to some other fixed, concrete group of messages, whereas a random-effects analysis tests whether responses to one category of messages differ from responses to another category of messages (see, e.g., Jackson 1992: 110). A meta-analysis involves a collection of replications (parallel to the message replications in a multiple-message primary research design), and similar considerations (including whether the analyst is interested in generalization) bear on the choice between a fixed and a random-effects meta-analysis (for some discussion, see Jackson 1992: 123; Shadish & Haddock 1994). In the present review, the interest is naturally not in the concrete messages studied by past investigators, but in the larger classes of messages of which the studied messages are instantiations; hence a random-effects analysis was the appropriate choice. In

a random-effects analysis, the confidence interval around an obtained mean effect size reflects not only the usual human-sampling variation, but also between-studies variance; this has the effect of widening the confidence interval over what it would have been in a fixed-effects analysis (see Shadish & Haddock 1994: 275).

3. Results

Persuasion Effects

Details for each included case appear in Table 1. Effect sizes were available for 23 cases with a total of 5,358 participants. Across all 23 cases, the mean correlation was .064 [$Q(22) = 60.2$, $p<.001$]; the 95% confidence interval for this mean was .014, .114, indicating a significant persuasive advantage for messages providing information-source citations.

There were 13 cases (N = 2,106) involving the individual manipulation of information-source citation. Across these cases, the mean correlation was .073 [$Q(12) = 23.1$, $p<.05$]; the 95% confidence interval was .018, .128
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There were 10 cases (N = 3,252) involving the joint manipulation of information-source citation and another message feature. Across these cases, the mean correlation was .050 [$Q(9) = 37.1$, $p<.001$]; the 95% confidence interval was -.043, .144.

Credibility Effects

Details for each included case appear in Table 2. Effect sizes were available for 10 cases with a total of 2,601 participants. Across all 10 cases, the mean correlation was .077 [$Q(9) = 81.0$, $p<.001$]; the 95% confidence interval was -.053, .206.

There were 4 cases (N = 553) involving the individual manipulation of information-source citation. Across these cases, the mean correlation was .169 [$Q(3) = 10.9$, $p<.05$]; the 95% confidence interval was .028, .311.

There were 6 cases (N = 2,048) involving the joint manipulation of information-source citation and another message feature. Across these cases, the mean correlation was .009 [$Q(5) = 69.1$, $p<.001$]; the 95% confidence interval was -.170, .188.

4. Discussion

General Effects

Characterized very broadly, these results suggest that advocates have little to fear from explicitly identifying their information sources. For studies individually manipulating information-source citation, messages with more explicit argumentative support are significantly more credible and significantly more persuasive than their less explicit counterparts.

An Implicit Limiting Condition

One might plausibly suppose that the effects (on persuasiveness and credibility) of identifying one's information sources will depend in part on the nature of those sources. Two advocates who are equally explicit about their supporting sources might find different effects if one advocate's sources are plainly well-qualified and trustworthy where the other's are not.

The extant research literature does not provide extensive evidence that bears on this supposition, but two points can appropriately be made. First, in the great bulk of the research reviewed here, the sources identified in the more-explicit messages were ones likely to have been perceived as relatively high in credibility. In some cases, investigators pretested possible sources before constructing their experimental materials; for example, Bettinghaus (1953) used information sources identified in pretesting as persons thought competent to render judgments in the topic area. Investigators have commonly not intentionally sought to invoke palpably weak information sources. Thus there may implicitly be a limiting condition on the observed general effects, specifically, that persuasion- and credibility-enhancing effects of explicit source identification obtain only when the identified sources are of sufficiently high quality.

Second, the few studies that have varied the apparent quality of the identified sources have not produced consistent effects. Luchok and McCroskey's (1978) results suggested that citing poor-quality information sources would inhibit persuasion (compared to not providing source citations); however, in Cronin's (1972) study, citing low-credibility information sources was more persuasive than not citing any information sources.**[ii]**

At a minimum, then, one may say that the observed positive effects on credibility and persuasiveness obtain at least when the identified sources are recognizably sound. It is not yet clear whether there are specifiable general circumstances under which such positive effects might obtain with poorer information sources. Future research might usefully be directed at clarifying this potential limiting condition

Individual and Joint Effects

The best evidence for the effect of a given message variation obtains in designs in which that variation is manipulated independently of other message variations. In this research area, however, a number of studies have jointly manipulated information- source citation and other message properties (commonly capturing such joint variation under the general heading of "evidence"). Such designs, of course, obscure the possible causal mechanisms for any observed effects. In the research reviewed here, the observed mean effects (on credibility and persuasion) of such joint-manipulation designs are not dependably different from those of individual-manipulation designs, though the joint-manipulation mean is smaller and (unlike the individual-manipulation mean) is not dependably different from zero. Thus with respect to the research question of interest here – that is, the question of the effects of variation in information-source citation – the best evidence in hand (the evidence from individual-manipulation studies) indicates that both persuasiveness and credibility are significantly enhanced by information-source citation.

But these findings also speak to the research practice of jointly manipulating several message variables in this confounded way. Such quasi-experimental designs can be attractive for various reasons. In the early stages of research, uncertainty about possible mechanisms might recommend casting one's net widely. For field (as opposed to laboratory) experiments, quasi-experimental designs may be more practical (e.g., Gonzales, Aronson, & Costanzo 1988; Reynolds, West, & Aiken 1990). More generally, manipulating a suite of message features can appear to promise stronger effects: one might expect relatively larger impact by contrasting two messages that vary in several features (for instance, comparing a message that lacks both quantitative specificity and information- source citations against a parallel message that is both quantitatively more explicit and provides citations to the sources of its information) rather than just one feature. Interestingly enough, however, in the limited data afforded by this research area, there is no evidence of such enhanced impact. This concretely illustrates that the effects of joint manipulations are not necessarily the sum of the effects expected from the individual manipulations, and indeed may not be larger than the effect of a single manipulation. Insofar as experimental design in persuasion effects research is concerned, then, the lesson is that the manipulation of a suite of message features does not necessarily enhance effect size.

Explaining the Observed Effects

Credibility enhancement. One appealing possible explanation of the observed effects is that explicit identification of information sources enhances the communicator's credibility, which then leads to enhanced persuasion. Such a process would presumably involve receivers' invoking a credibility heuristic, in which the apparent credibility of the communicator is used as a basis for assessing the advocated view (see, e.g., Chaiken 1987; Petty & Cacioppo 1986).

This explanation leads to the expectation that communicators initially low in credibility might enjoy greater impact from explicit source identification than would high-credibility communicators. High-credibility communicators might not enjoy so much credibility enhancement from explicitly identifying their sources as would low-credibility communicators (because of ceiling effects), and so they might not obtain so much greater persuasive impact.

Evidence relevant to this expectation can potentially be obtained from research designs varying both initial communicator credibility and information-source identification. A number of studies have used designs of this sort, though commonly these do not provide sufficient quantitative information to permit useful meta-analytic treatment; however, it is possible to consider simply the direction of effect observed in such studies. As a broad overview, it appears that there is not a striking difference between highand low-credibility communicators in the character of the observed effects of information-source-citation variations on either persuasive outcomes or perceived credibility.

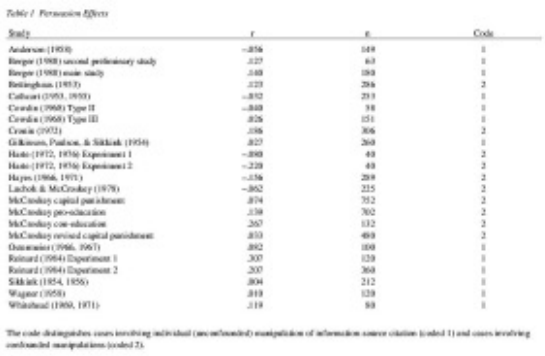

Table 1 – Persuasion Effects

Table 2 – Credibility Effects

With respect to persuasive effects, for communicators initially high in credibility, a number of studies have indicated that messages citing information sources have some persuasive advantage over those without such citations (Harte 1972, Experiment 1; McCroskey capital punishment; McCroskey pro-education; McCroskey revised capital punishment; McCroskey revised education), but several studies have reported effects in directions favoring messages without citations (Harte 1972, Experiment 2; Hayes 1966; Luchok & McCroskey 1978; McCroskey con-education). Similarly, for communicators initially low in credibility, in several cases messages with explicit citations have been more persuasive than their nonexplicit counterparts (Luchok & McCroskey 1978; McCroskey capital punishment; McCroskey pro-education; McCroskey revised capital punishment; McCroskey revised education), but in a number of cases the opposite direction of effect has been observed (Harte 1972, Experiment 1; Harte 1972, Experiment 2; Hayes 1966; McCroskey con-education). That is, the pattern of effects does not display the expected greater superiority of information-source citation for low-credibility communicators.

Concerning credibility perceptions, for communicators initially high in credibility, a number of studies have indicated that messages with information-source citations lead to more positive credibility judgments than do messages without such citations (Fleshler, Ilardo, & Demoretcky 1974; McCroskey pro-education; McCroskey con-education; McCroskey revised education), but several other studies have reported mixed effects or effects favoring messages without explicit citations (Harte 1972, Experiment 1; Harte, 1972 Experiment 2; Hayes 1966; McCroskey capital punishment). Similarly, for communicators initially low in credibility, some studies report that messages with information-source citations enhance perceived credibility more than do messages without such citations (Fleshler, Ilardo, & Demoretcky 1974; Hayes 1966; McCroskey pro-education; McCroskey con-education; McCroskey revised education), but other cases favor messages without such citations or report mixed directions of effect (Harte 1972, Experiment 1; Harte 1972, Experiment 2; McCroskey capital punishment). Again,

the pattern of effects does not suggest that low-credibility communicators enjoy some marked advantage over high-credibility communicators in the impact of information-source citations on credibility perceptions.

Thus variations in information-source citation do not seem to have dramatically different effects on the perceived credibility of, or the persuasiveness of, communicators initially high in credibility and those initially low. This research evidence is limited in a number of important ways (there are few relevant cases, effect sizes are not available, and nearly all the studies involve confounded designs), so one ought not make too much of what is in hand; future research could plainly be useful in clarifying the relevant relationships. But at a minimum the evidence to date does not give substantial encouragement to the supposition that the effects of information-source-citation variations depend in some crucial way on the communicator's initial level of credibility. This, in turn, suggests that credibility enhancement may not be the causal mechanism by which information-source citation enhances persuasion.

Argument enhancement. An alternative possible account is that information-source citation directly enhances belief in the relevant supporting argument, thereby making the message more persuasive. That is, quite apart from any effects that such citation might have on perceptions of the communicator's credibility, explicit source identification could enhance the persuasiveness of the supporting argumentation. For instance, a receiver might reason that a particular supporting argument is more likely to merit belief given the identification of the source of some information invoked by the argument. Thus the impact of the supporting argument might itself directly be enhanced by such explicitness, without any intervening step involving enhanced perceptions of the communicator's credibility. From this vantage point, the observed credibility-enhancement effect of information-source citation is epiphenomenal, that is, not implicated in bringing about the observed effects on persuasiveness.

This explanation underscores the importance of research focussed on identification of specific argument features that enhance the impact of individual arguments (and thus the impact of the messages in which they appear). One well-known body of research that might appear to bear on this question is elaboration likelihood model research concerning the role that variation in "argument strength" plays in persuasion (e.g., Petty, Cacioppo, & Goldman 1981). But as several commentators have noted (e.g., Areni & Lutz 1988), this research has not specified the properties that make specific arguments relatively more or less

persuasive. The present results suggest that information-source citation might be a candidate worthy of closer examination.

But there are at least two different means by which information-source citation could directly bolster the persuasiveness of supporting arguments. One possibility is that the effect arises through the receiver's careful scrutiny of the source-identification material; if this is the underlying process, then identification of low-credibility sources might diminish persuasiveness (because the receiver's close examination of the explicit identification material will reveal the source's weaknesses). A second possibility is a more heuristic-like process, in which the mention of an information source is taken as a sign of the merit of the argument, in a way that does not necessarily involve careful attention to the argumentative details; if this is the underlying process, then even identification of low-credibility information sources might enhance persuasiveness (that is, citing any information source may be taken as an indication of the argument's being worthy of belief).**[iii]**

5. Conclusion

Messages with more explicit identification of their information sources are significantly more credible and significantly more persuasive than their less explicit counterparts. Additional research will be needed to identify the limits of the observed effects (circumstances under which the effects do not occur, or are reversed) and to explain how and why the effects arise. But as a rule, advocates can appropriately be advised, on both normative and instrumental grounds, to explicitly articulate their argumentative support in this way.

NOTES

[i] The results recorded under McCroskey con-education are from McCroskey (1970); the results recorded under McCroskey revised capital punishment are from McCroskey (1967b, Study 5).

[ii] Warren's (1969) design varied the credibility of information sources, and Dresser's (1962, 1963) design varied both the credibility of information sources and the relevance of the provided material to the claims advanced; neither, however, contained a no-source-citation condition, and thus these studies could not provide evidence about the relative persuasiveness of leaving information sources uncited versus citing low-credibility sources.

[iii] Thanks to Sally Jackson for suggesting this possibility

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ISSA Proceedings 1998 – Definitions In Legal Discussions

1. Introduction

It is well-known that in many a legal dispute the question arises what the exact extension of a predicate is. The difference of opinion in such cases almost always concerns the question as to whether an incident comes under the reach of a concept that is expressed by a particular word or phrase in a legal text in which the rights and obligations of the persons holding legal rights are established (for example a law or agreement). In such cases of difference of opinion the lawyers are forced to declare what a certain word or group of words means in their opinion. And in the discussions that may be carried out they often also give definitions of the words or phrases concerned and will, in principle, have to justify the acceptability of such definitions.

The question now is: how do lawyers – and more particularly judges – deal with this kind of language controversy; what kind of definitions do they give and how do they present and justify them? I attempt in this article to give an interim answer – an interim answer due among other things to the insufficiency of the *systematic* research I have done into the judgements of judges in The Netherlands.

The article is set up as follows. In paragraph 2 a case is given in rough outline and in paragraph 3 there is the development of part of the legal discussion as a result of that case. In paragraph 4 I go into the question of which types of

definition can be distinguished and how the plausibility of each of these different types of definition can be argued. In paragraph 5 I reconstruct part of the legal discussion in the light of the typology of definitions dealt with in paragraph 5. Paragraph 6 constitutes the conclusion of this article.

2. A case: fire in a building[i]

Mr. Matthes owned a house of nine rooms. In 1979 the house was inhabited by Matthes with his wife and four children and also by a tenant and her son. All the rooms were in use by Matthes and the members of his family, except for one room on the first floor which was used by the tenant.

Matthes wanted to take out fire insurance with the Noordhollandse insurance company and submitted an application form for this purpose for an 'index/extended insurance for private house'. On the reverse of the form it stated:

1. the applicant declares: a. that the private house on which or in which insurance is requested, is of brick/concrete with a hard roofing, with no business or storage and without increased danger to adjoining properties'.

From 17 July 1979 the Noordhollandse insurance company insured the house for the period until 17 July 1989 including fire risk. The policy for extended building insurance dated 2 August 1979 referred to the house with the addition:

2. 'serving solely as private house'.

On Monday 3 December 1984 at about eight-thirty p.m. fire broke out in the house resulting in considerable damage. At that time the house was inhabited by Matthes and his wife and a total of five rooms were rented out to three different single gentlemen. Naturally Matthes claimed on the insurance company for the damage which amounted to some 500,000 Dutch guilders. However the company refused payment on the grounds of the insurance since in its opinion the premises insured no longer served as a private house but was used as a room rental business for which during the insured period the use of the insured object was altered, whereas Matthes had not informed the insurance company of the fact. The Noordhollandse appealed to article 293 of the Commercial Code of The Netherlands:

3. 'If an insured building is given a different use and is thereby exposed to increased danger, so that the insurer, if such had been in existence before the insurance was given, would not have insured the same at all or not on the same conditions, this obligation is terminated.'

Naturally Mattes did not agree with this and went to court. However the lawcourt, the court of justice and the Supreme Court successively declared him to be in the wrong.

3. The course of the legal discussion in this case
The legal discussion for the various authorities concerns to a large degree the question of what meaning should be given to the word 'private house' on the application form for the fire insurance and the phrase 'acting solely as private house' in the insurance policy. The lawcourt was of the opinion that the word 'private house' should have the following meaning:
4. 'a house that serves as a general rule for the permanent accommodation of several persons who are partially dependent of each other economically and furthermore have an emotional bond with each other.'

This means according to the lawcourt in general:
5. 'that such persons have a greater concern for each other and each others interests than random otherwise respectable citizens may be expected to have and that the social control of their doings is greater than that normally found among the same citizens.' The situation on 3 December 1984 was, according to the lawcourt, other than that in 1979, since:
6. 'the private house was occupied on 3 December 1984 for the greater part by tenants who would require more privacy and whose behaviour was subject to less social control.'

According to the lawcourt this meant that a change of use in the meaning of art. 293 of the commercial code of The Netherlands took place whereby the house was subject to 'increased fire risk'. Matthes was thus put in the wrong and appealed.
He declared among other things to the court of justice that:
7. 'a building destined as 'private house' should retain this designation irrespective of whether it is occupied by the insured and his family or by the insured with a number of tenants.'

In short Matthes employed another definition of 'private house', namely:
8. 'a building destined mainly for residential purposes.'

In view of this definition of 'private house' there is no question of a difference in destination in the light of the policy, since at the time of the fire Matthes lived in

the house with his wife and three house-mates/tenants who did not form part of the family. Matthes contended further that:
9. ‘the manner in which the term ‘private house’ was interpreted by me was perfectly in keeping with the normal use of language, in view of the fact that the description ‘private house’ is the most obvious and was employed for the insured object as it was used during the fire.’

The court of justice refuted the plea of Matthes, supporting the rejection by yet another definition of ‘private house’. It stated:
10. ‘the term “private house” on the application form and the words “serving solely as private house” in the relevant policy are to be understood as “private house serving mainly as private dwelling for the insured whether or not with his family”.’

The court of justice then considered that:
11. ‘now that the insured building was inhabited by the Matthes family on taking out the insurance, consisting of husband, wife and four children, together with a tenant with one child, and that when the fire broke out it was occupied by Mr. and Mrs. Matthes with three tenants, there was a question of an actual alteration of usage.

This was all the more convincing now that according to Matthes’ own declaration the rooms concerned were rented out so that the revenue could contribute to the university expenses of his children, the which implied that rental of the accommodation could not be said to lack a certain business nature.’ And further:
12. ‘that private house as understood by the court should not be taken to mean a building of which, as in the present case, more that half the rooms are let to third parties, and that such building rather had the nature of an accommodation business for the insurance of which a different premium or conditions applied than to the insurance of a dwelling, the which was not contested by Matthes.’ And:
13. ‘the court of justice regarded as obvious the fact that a building of which the owner-occupier had at his disposal three rooms and a guest-room and of which the other five rooms had been let to third parties which in principle were independent of each other and had no reason to occupy themselves with the affairs of their fellow residents, even if they referred to themselves as a community, was exposed to a greater danger of fire than when this building was occupied by a family with children and a single tenant.’

At the court of justice Matthes thus was again said to be in the wrong and determined to appeal to the supreme court.

As plaintiff in appeal he declared essentially the same as before the court of justice, namely that based on the most usual definition of the term ‘private house’ there was no question of a change of use. In his summing up Solicitor General Asser also explored the definition of private house as given by the court and stated the following:
14. ‘The meaning given by the court to the concept “private house” seems to me, where there is talk of “private occupation by
the insured whether or not together with his family” hardly obvious in the first instance in the light of the proposition of the parties. I have not come across this very narrow interpretation of the concept “private house” anywhere, more particularly not in the propositions of the Noordhollandse. On the contrary, the Noordhollandse has stated in the memorandum of reply in appeal that in general speech a private house is considered to be a house occupied by a family, it being of no consequence whether the house is owner-occupied or rented by the occupiers. There should thus not be in the policy any clause stating a home “solely serving for own occupation”, according to the Noordhollandse. The Noordhollandse did state that the situation was different when there was a question of more independent tenants and more particularly an accommodation business, of which according to the Noordhollandse there was a question in this case. In this connection I would also wish to assume that what the court considered should be read thus that “private house” is taken to mean occupied mainly by a person alone or as a family, whereby the intention is other than occupation by tenants. The explanation of the court thus amounted to what the lawcourt considered in somewhat elaborate terms.’

Finally the Solicitor General advised the rejection of the appeal made by Matthes. The Supreme Court took this advice, considering more particularly the following:
15 ‘Against this background judicial consideration 4.4 is apparently to be so understood that Matthes, in the opinion of the court, could reasonably have understood from the term “private house”, or the words “serving solely as private house” – and that the Noordhollandse could reasonably expect that it should be clear to Matthes – that the use thus described included the situation of the insured who occupied the largest part of the building himself (whether or not together with his family), “a single tenant” was present in the building, but not

the situation in which as in the present case, the larger part of the building, namely more than half the rooms, was let to third parties, in which case the building, as the court stated "had rather the nature of an accommodation business".'

Law professor Van der Grinten in his note following the judgement criticises this pronouncement:
16. 'Has the court rightly assumed that the words "serving solely as private house" are to be interpreted as "dwelling serving for the private accommodation of the insured"? (…) I would be inclined to judge this differently than the court. The words "as private house" could be interpreted as "accommodation". The circumstance that an important part of the house was later – after taking out insurance – used by the tenants as residence does not involve any alteration in the use.'

At first sight this discussion is rather unsatisfactory. More particularly it is not clear on what the lawcourt and the court of justice each based their own definition of the term 'private house' and neither do either of the bodies go into the argument of Matthes that his definition of 'private house' fits in most closely with normal speech. Due to this fact the discussion has all the characteristics of a yes-no discussion but nevertheless one with considerable financial consequences. This naturally gives rise to the theoretical legal question of how free the judge is in giving meaning to non-legal terms in the explanation of written agreements and to what extent he can be required to motivate his definitions.

In short, this discussion – and more particularly the judgement of the court of justice – demands rational reconstruction. But this is only possible when we evolve a theory about definitions.

4. A pragmatic-dialectic approach to defining
The theory about definition and the theory about argumentation are closely related, as Viskil showed so convincingly (see Viskil 1994a, 1994b, and 1995). Definition is regarded as an important instrument in interpretation, assessment and formulation of points of view and arguments. According to the classic view, a definition is a statement concerning the essence of a thing. In modern theories with a perspective of dialogue on argumentation, a definition is considered in the first instance to be an instrument to clarify discussions. It is necessary for partners in discussion to clarify their terms, since not only the soundness of

arguments but also the acceptability of, for example, standpoints are only to be realised if the meaning of the terms is clear.

Viskil proposes considering definition as a speech act and in view of that fact he arrives at the typology of defining speech acts and thus corresponding definitions, to which the following three also belong:
17.
a. Stipulative definition
b. Lexical definition
c. Stipulative lexical definition.
The act of stipulative defininig is a section of the class of language usage declaratives, a subclass of declaratives. Stipulative defining is bound to felicity conditions (18) and (19) (see Viskil 1994a: 144 et seq.).

18. *Essential condition for stipulative defining*
Performing speech act T counts as establishing the meaning of a word (or phrase) in order to clarify this meaning for the listner or reader.

19. *Propositional content condition of stipulative defining*
Each proposition which is expressed in a sentence of which the subject term is formed by a quoted (group of) word(s) and the predicate exists (1) of a verb that indicates that the remaining portion of the predicate is the meaning of the subject term and (2) one or more words or groups of words with or without modifier.

Examples which meet the propositional content condition are the following.

20.
a. The word bungalow means ‘a house where all the rooms are on the same level’ (= connotative stipulative defining).
b. Inventiveness means ‘resourcefulness’ (= stipulative defining by means of the giving of a synonym).
c. I take breaker’s yard to mean: junkyard, centre for used car parts, wrecker’s yard and car damage businesses (denotative stipulative defining).

The act of lexical defining is a section of the class of language usage assertives, a subclass of assertives. This speech act is bound to the essential felicity condition (21) (see Viskil 1994a, 153 et seq.)

21. *Essential condition of lexical defining*

Performing speech act T counts as a description of the meaning in which language users use a word (or phrase) in order to clarify this meaning to the listner or reader.

The propositional content condition of lexical defining is identical to that of stipulative defining. The speech acts are thus identical with respect to content, but they differ in the illoctutionary purpose, which is also noticeable in the essential condition (but also of course in the preparatory condition and the sincerity condition). For that reason the examples given in (20) could also be examples of lexical definitions.

Some definitions are not purely stipulative or purely lexical, but partly stipulative and partly lexical. In the simplest mixture of these two speech acts the speaker or writer attempts to clarify a word by a description of the meaning of such word which is valid as an establishment of the meaning. This speech act can be indicated by the term 'stipulative-lexical defining'. There are at least two sub-types. First there is the case where the speaker or writer defines a term in the conventional way while declaring at the same time that in using that term he will also keep to that meaning, see example (22).

22. The word chair usually means a seating unit for one person and I shall be using it further in that sense.

In the second place there is the case in which the speaker or writer gives a *specification* of the lexical definition and declares that he will use the term in the meaning of the specification given, see example (23).

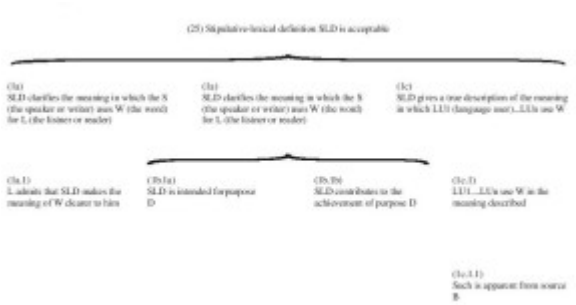
23. The word chair usually means a seating unit for one person, but I use this term in the sense of a seating unit for one person and provided with four legs.

In both cases the speaker or writer commits himself to a conventional meaning (the lexical aspect of the definition) but at the same time calls up a situation within which the defined term is used in conformity with the meaning, whether or not specified (the stipulative aspect). The class to which the speech act of 'stipulative lexical defining' is to be reckoned is that of the language usage declaratives. But otherwise than in the case of stipulative defining, stipulative-lexical defining is no ordinary language usage declarative, but a combination of a language usage declarative and an assertive. The conditions of success of the speech act 'stipulative-lexical defining'" then combines the felicity conditions of

stipulative defining with that of lexical defining (see Viskil 1994a: 156 et seq.)

24. *Essential condition of stipulative-lexical defining*
Performing speech act T counts as a description of the meaning in which language users use a word (or phrase) which has the force of establishing this meaning for the language usage of the speaker or writer, in order to clarify the meaning for the listner or reader.

Naturally the propositional content condition for stipulative-lexical defining is also equal to those of stipulative definition.**[ii]** That is to say that the sentences under (20) may also count as examples of stipulative-lexical defining.
Viskil also pays attention in his approach to the question of how definitions can be justified, for which purpose he makes use of the pragmatic-dialectic argumentation theory.**[iii]** The justification of a definition is based on the fact that the definition should solve the problems for which it is drawn up and is acceptable to the definer as well as to the persons for whom it is intended. The definer justifies his definition to convince the listener or reader of the acceptability of his definition and thus obtains inter-subjective agreement regarding the definition.



A stipulative definition should be an adequate attempt at clarification and be functional. A lexical definition should be an adequate attempt at clarification and contain a true proposition: the meaning that is described in a lexical definition should concur with the meaning in which the language users in question use the defined word. In order to be acceptable a stipulative-lexical definition should answer to three demands: the definition has to be an acceptable attempt at clarification, be functional and give a description of the meaning that agrees with the facts. The standard argumentation structure for the defence of the acceptability of a stipulative-lexical definition, when seen as described, appears to be as follows (see Viskil 1994a: 253).

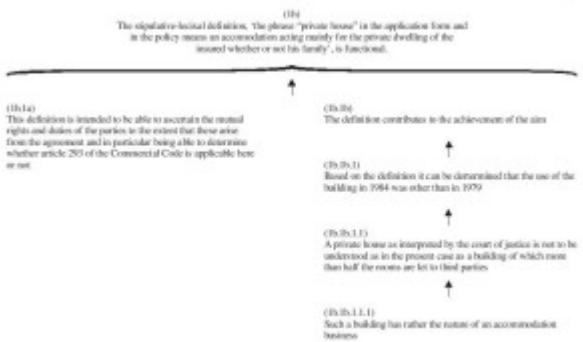
5. A rational reconstruction of part of the legal discussion of the case

A rational reconstruction of an argumentative discussion or a part thereof is a reformulation of that discussion or of such part of it with a view to the testing of its rationality. Such a reconstruction always assumes of course a theoretical perspective from where is reconstructed. Let us now look at our legal discussion through the spectacles of the theory sketched above regarding definition. We are now able to pose the following two questions: (a) of what type are the definitions which play a part in this discussion and (b) are the definitions given – dependent on their type – adequately justified?
Question (a) is of course not solely to be answered by regarding the form of the sentences in which the definitions are formulated. After all, we have seen that the three types of defining speech acts should be distinguished based on their illocutionary force, expressed also in the different essential conditions. If we base ourselves on the illocutionary purport we have to refer for the reply to question (a) to the difference between the legal bodies and the other participants of this discussion. The following legal rule is here important:
26. Should there be a difference of opinion between the parties concerning the explanation of a term in a written agreement, the judge of the facts of the case is at liberty to explain the term concerned independently, quite apart from what the parties advance in this connection.**[iv]**

In other words: in the matter of the case dealt with here the lawcourt and the court of justice were at liberty to give an independent meaning to the term 'private house', without having to take into account what Matthes and the Noordhollandse had advanced in that case. This explains, in my opinion, why neither the lawcourt nor the court of justice went into the argument advanced by Matthes that his definition of the term 'private house' linked up more closely with the normal use of language.

Rule (26) indicates further that defining speech acts which are advanced by judges in the context of the explanation of agreements, should be regarded in any case as being of a stipulative nature. After all, the definition by the judges of the term 'private house' cannot be regarded as other than an establishment of the meaning which is aimed at making matters clear(er) to the listener or reader. The question is however whether there can be any question of a purely stipulative definition. This amounts to the question of whether the judge is also at liberty to explain terms in an agreement – and certainly non-legal terms – entirely free of normal use. In my opinion the judge does not enjoy such liberty. After all, if we

assume that for the explanation of agreements it is a directive what the parties should have understood by it and what they were to expect of each other, this cannot be taken apart from the conventional meaning of terms which are used in a linguistic community. This leads to the fact that definitions that are given by judges in similar circumstances, bear the nature of stipulative-lexical definitions.



If we assume that the judge of the facts advances stipulative-lexical definitions in this context, we can also ask ourselves the nature of the sub-type of the given definition of 'private house'. It seems to me that we are here confronted with a specifying stipulative-lexical definition in the sense that the judge gives a specification of the daily term 'private house', as found, for instance, in Van Dale (the Dutch authoritative dictionary).

27. *Van Dale – Groot woordenboek der Nederlandse taal*, ('Van Dale – Large dictionary of the Dutch language'), 11th edition
private house (n), house, arranged as dwelling or where a person lives, as against *office, shop* (…);

The parties in the trial took a different position in this discussion. They will more particularly have to make clear to the judge what they were to expect of each other in the context of the agreement. It is therefore clear that they would make a claim in particular on the conventional meaning and thus advance definitions that were especially lexical. After all, as far as they are concerned it means especially giving a description of the meaning which language users within a certain language community give to a particular word or group of words. In our discussion this applies both to Matthes (see the verdicts (7), (8) and (9) above) as for the Noordhollandse, as far as this can be concluded from what Solicitor-General Asser said about it (see (14) above).
Once we have ascertained with what kind of definitions we are confronted in the discussion, we can also check whether the definitions are justified adequately

(question (b)). If we assume, for example, that the court of justice gave a stipulative lexical definition of the term ‘private house’, then for the reconstruction of the account of this definition structure (25) should be taken as basis. It is now striking that in the plea of the court of justice no attention at all was paid to two of the three coordinative primary arguments in this standard structure: no single word is addressed either to (1a) nor to (1c). Attention is paid on the other hand to the question of whether the definition is functional. This part of the plea may be (partially)
reconstructed as follows.
In the scheme of this article it naturally does not concern the question of whether the definition given by the court of justice was adequate and whether the argumentation advanced was sound. The above is to illustrate more than anything that for a critical judgement of this type of discussion and argument a rational reconstruction is necessary in terms of a theory regarding definitions.

6. Conclusion

I assume for the time being that the discussion which I have given here is representative of those cases in which judges have to make a judgement on the meaning of non-legal words and groups of words when explaining written agreements.
It may be concluded that in this context judges give other types of definitions than the parties. Judges advance stipulative-lexical definitions whereas the parties make use of lexical definitions. In addition is can be stated that judges on the justification of the plausibility of the definitions they give do not pay any attention to arguments which are concerned with the question of whether the given definition of a word or group of words makes the meaning clear or clearer, neither do they answer the question whether the description of the meaning agrees with the facts, but merely go into the question of whether the definitions they provide are functional. Further research should indicate to what extent this picture is right and, if it is, to what extent this development has its origins in the specific nature of this kind of legal discussion.**[v]**

NOTES

i. See Supreme Court of The Netherlands 10 August 1988, NJ 1989, 238.

ii. See Van Haaften (1996) for treatment of the question of which types of definition generally arise in the context of legislation and judicial pronouncements.

iii. See F.H. van Eemeren & R. Grootendorst (1992) regarding the basic assumptions and approach of the pragmatic-dialectic argumentation theory.
iv. See also the final pleading of the Public Prosecutor for the Supreme Court of The Netherlands dated 6 February 1987, NJ 1987, 438, under 3.2 with further references.
v. It is perhaps good to notice that what I have said about definitions is by no means in contradiction with the now rather generally accepted idea of – as H.L.A. Hart calls it – 'open texture' of legal concepts and concepts in general, which means that it is in principle impossible to frame rules of language which are ready for all imaginable possibilities. That is to say that however complex our definitions may be, we cannot render them so precise as for them to be delimited in alle possible directions. It is thus not possible for any given case to say definitely that the concept either does or does not apply to it. As Hart (1983:275) puts it: 'We can only redefine and refine our concepts to meet the new situations when they arise'. But of course all this does not mean – as sometimes people seem to conclude – that definitions are of no use at all.

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ISSA Proceedings 1998 – The Diagnostic Power Of The Stages Of Critical Discussion In The Analysis And Evaluation Of Problem-Solving Discussions

1. Introduction

Problem-solving discussions, conducted in all situations where people jointly have to solve problems and reach decisions, are an important part of public as well as private life. Since considerable interests are often at stake, it is important that these discussions be carried out in such a way as to ensure that the best possible decision is reached. In view of the importance of safeguarding the quality of problem-solving discussions, it is relevant to develop instruments for analyzing and evaluating such discussions. These instruments should make it possible to establish whether participants act in a fashion that is conducive to the goals of problemsolving discussions, and, if not, in what respects, at what points in the discussion, and in what ways. Such an analysis of the ways in which discussions can go wrong will yield a basis for teaching participants how to avoid these counterproductive practices in future.

In this paper, I will show that the ideal model of critical discussion, which is central to the pragma-dialectical approach to argumentative discourse developed by Van Eemeren and Grootendorst (1984, 1992), provides a diagnostic instrument which may be used in carrying out such an analysis. The model specifies the stages of critical discussion through which rational resolution of a difference of opinion is attained, and the speech acts which have to be performed in each of these stages. So far, the model has been applied mainly as an heuristic and analytical instrument for the dialectical reconstruction of discursive texts (Van Eemeren et al. 1993) and as a framework for systematizing the various fallacies which may hinder the rational resolution of differences of opinion (Van Eemeren and Grootendorst 1984, 1992). I will demonstrate that the model can be used also for determining the quality of problem-solving discussions qua discussion, that is,

as the medium through which the resolution of differences of opinion is accomplished. In a pragma-dialectic perspective, a discussion qua discussion is good if it provides optimal opportunity for the systematic critical testing of ideas. What this comes down to is that a good discussion is one which optimally enables the execution of the stages of critical discussion. The quality of a discussion qua discussion, then, may be determined by examining how well it enables the execution of the stages of critical discussion. In this paper, I will examine a real-life problem-solving discussion in this fashion, showing that an analysis along these lines enables the analyst to gain a rather precise insight into what went wrong in the discussion, in what respects, and why.**[i]**

2. The context of the discussion

The discussion took place during the staff meeting of an organization which initiates and manages co-counseling groups. Three of the participants, A, B, and D, are paid staff members of the organization: A and B full-time administrators, D a part-time group coordinator. The fourth one, C, is a volunteer, a representative of the group leaders. C and D are members of the training program committee; A and B regularly meet with the board of directors of the organization. The topic of the discussion is the organization of additional training for group leaders, after the one year of basic training which they receive. A has opened the discussion with the question "where does it belong".

That something did go wrong in this particular discussion is certainly the opinion of at least two of the participants. After more than one hour of discussion without a decision having been reached, A, in line 1659, queries:

(1)
A: that would have to be something for that kind of committee.
1655C: but they'd have to have something to start from
A: but they'd [have] to have something to start from
D: [yes: hm]

(2)
A: and do we have any ideas on that, then
1660
(2)
because that's one thing I'm worried about

After a fifteen (!) seconds pause, C gives the following answer:**[ii]**

(2)
C: well, so what they'd have to start from is the inventarization we're going around in circles
1665A: ye::s [no but that's what the problem]
C: [and we've been doing that] for the past hour or so,
C and A obviously are of the opinion that the discussion has got stuck.

As a first step towards uncovering what occasioned A and C's complaint, I will briefly relate what points of view are brought forward in the discussion and how the linear process of trying to resolve the differences of opinion evolves.

After A's introduction of the question, B briefly sketches the past situation and then argues for the view that the organization of additional training belongs to the domain of the training program committee: a standpoint which A, later in the discussion, also will advance. B's arguments elicit no reaction; instead, D argues for his own point of view: he questions the need for additional training. A and B attack one of the two arguments which D adduces, but the one which he himself declares most important – the group leaders have never asked for additional training – remains undiscussed. C then brings up another point: who is supposed to pay for the training. During the ensuing discussion of this point, D repeatedly questions the need for additional training, but his questions receive no answer. C replies with practical proposals for finding out what possible topics for training might be and for integrating additional and basic training. The discussion ends in general banter about the financial state of the organization.
After this intermezzo B once again brings up for discussion the standpoint that the program committee should organize the training. D objects by pointing out that nobody on the committee can take on additional work. When B rejects this line of argument as merely practical, D brings in another argument: others may do the job just as well; he then once again poses the question what need there really is for additional training. B says she would like to discuss this question at another occasion, but C `answers' it by bringing forward a standpoint of her own: before anything else, an inventory of the topics on which training is required must be taken; that is the only sensible basis for any policy at all. A counters that a committee charged with organizing the training could do this; C maintains that it should be done before appointing a committee, repeating her policy argument. A then changes tack. He points out that an agreement has already been made to organize additional training and that it is high time something were done about it.

D denies the binding force of this agreement and claims that it is not at all clear what urgency there is for such training. C brings forward doubts of her own against the status of the agreement. The discussion bogs down in an exchange of reproaches.

A manages to soothe the parties and re-initiates the discussion about the question where the organization of additional training belongs. C responds by naming the sources for the inventory which she once again proposes. A doesn't react to this, but argues for his own proposal to charge the program committee with the organization. C asks for a response to her proposal. A then repeats his own proposal and says it amounts to the same thing. B supports A's proposal. C once more repeats her proposal. Asked for his opinion, D says he agrees, but only because it will show there is no need for additional training. When B reacts to this with the statement that added training always is necessary, C reiterates that an inventory of the topics on which training is needed must be taken first, A repeats his proposal to charge a committee with this task, and C repeats that first there needs to be an inventory. The discussion closes with both C and A lamenting the fact that the discussion is moving in circles, after which C unilaterally puts an end to the impasse by implementing her own proposal through distributing the tasks for inventarization among those present.

C and A's lament, we can see now, is justified: the discussion has got stuck in a repetition of standpoints without any progress being made. C forces a breakthrough, but none of the differences of opinion have been resolved. In fact, the various standpoints have hardly been discussed at all.
A and B's standpoint, that the organization of additional training belongs to the domain of the training program committee, receives direct discussion at only one point, when D argues against it by saying that it is not feasible and that there are other people who can be charged with the task. The first of these counterarguments is rejected as merely practical, the second receives no response at all. For the rest, C and D's reactions concern the standpoint only indirectly; they address presuppositions of the question to which it is presented as an answer.
D's standpoint, that there is no need for additional training, is only responded to with regard to a subordinate issue; his main point remains undiscussed. D's questions regarding this need are reacted to by C with practical proposals for conducting an inventory and for integrating initial and additional training. A and

B, implicitly or explicitly, declare these questions out of order.
C's standpoint, that an inventory of the topics on which additional training is required must be taken first, is not discussed at all; A, who is C's main opponent, does not respond to her arguments, but invariably replaces her proposal with his own one.
By investigating how the successive stages of critical discussion have been executed in this particular discussion, I think we can reach a diagnosis of how this unfortunate course of events could develop. I will deal with the stages in their order.

3. The confrontation stage
In the confrontation stage of a critical discussion, the differences of opinion which the discussion addresses must be externalized. Our discussion pertains to a multiple mixed difference of opinion: involved are three main standpoints and three contra- standpoints against these, and all of these standpoints meet with doubt. The three main standpoints are: additional training belongs to the domain of the program committee (A and B); it is unclear what the need for additional training would be (D); before anything else, an inventory of the topics on which additional training is required must be taken (C).
The three main standpoints are expressed, but this is not the case for the doubt against them, the contra-standpoints, and the doubt against these. That this doubt exists and that these contra-standpoints are being maintained can only be inferred from the fact that the participants repeatedly respond to the expressed standpoints by bringing forward a different standpoint of their own.
In itself, the fact that doubt and contra-standpoints are not expressed explicitly is not unusual, nor does it necessarily form an impediment to a proper execution of the procedure for resolution of a difference of opinion. But the fact that the various positions which the participants take have not been clarified, almost undoubtedly is one of the causes for the defective execution of the subsequent stages which we shall encounter below.
At another level, a more serious defect can be observed. Behind the differences of opinion which get talked about in the discussion, the existence of another difference of opinion may be divined; this one, however, is not talked about.

As A makes clear when he refers to the earlier agreement (in lines 850-880), the issue of additional training has been around for quite some time, without anything being done about it. A mentions that he even had to account for this to the board

of directors:
(3)
A: That's sort of the way it is the expectations of uh
D: yes
A: the board
D: yes [but]
940 A: [and and that]'s e- because of because I've, yes, because I'm involved because of course I've mentioned that the other time I said well hh uh (.), the additional training, that was on the staff agenda, that was last time then we didn't get to it ((…)), well, then there was a big hullabaloo right away, gee what a shame ((…))
955 you see, so that's the expectation there

Later, A attributes this failure to execute the agreement to the training program committee (of which C and D are members):
(4)
A: I'm also to blame for this myself I think, but I think, like, the program committee
1065 as well as far as that is con- if there would have been time for that so to speak, huh, or space at least that is my estimation, I don't know whether that is the case, then that could've been worked out (.) or faster. right? but now

This opinion doesn't surface until almost three-quarters of the discussion has gone by and it is at no point explicitly made into an issue for discussion. Earlier in the discussion, it is mirrored only indirectly in the content of A and B's standpoints: the organization of additional training is the province of the program committee.

D, in turn, feels that he cannot be expected to take this task on in the context of the part-time job which he holds. That comes out most clearly in the part of the discussion in which the participants engage in reciprocal reproaches:
(5)
B: yes well I think you as a member of the program committee, that it's up to you
1130 to fill in the details on that. how is a board supposed to know, hh
D: make it into a full-time job then, then I'll do it

D, too, fails to make this opinion of his into an explicit issue for discussion. It only indirectly surfaces in the fact that, whenever A and B try to assign the committee

of which he is a member the task of organizing added training, D puts the need for this training into question.

4. The opening stage

In the opening stage the roles of protagonist and antagonist must be distributed and the shared starting points for the discussion must be established. In our discussion, neither of these tasks gets performed properly.

All participants have the role of protagonist for their own standpoints. In addition, they all have the role of antagonist against the other two standpoints and that of protagonist for the contra-standpoints against the same. In our discussion, however, the latter two roles do not get performed adequately. The participants hardly address each other's arguments and points of view. They argue almost exclusively in favor of their own standpoints. They thus simply replace one standpoint by another, without subjecting the replaced standpoints to any criticism. They don't seem to realize that taking a different point of view implies doubt and a contra-position, which carries a burden of proof, against the original one. This may very well be a consequence of the fact that in the confrontation stage the various positions of the participants were not clarified.

As to the shared starting points: one of these is certainly that at some point and by someone an inventory must be made of the topics on which additional training is required. This idea is a presupposition of a number of contributions of various participants, and it is challenged by no one. But the fact that it is a common starting point is not established by any one. In itself, that is not strange – common starting points typically remain implicit -, nor is it particularly wrong, but the discussion could have been simplified considerably if it had been. The discussion could then have been reduced to the questions of when and by whom the inventory should be taken.

More serious is the fact that on other issues there exists a profound but unacknowledged difference of opinion as to what belongs to the common ground. On the one hand, according to D, before the question of where additional training belongs can be discussed, there must be agreement about the need for such training, and according to C, data must be available about the topics for which this training is required. Neither agreement nor data exist. So, with neither whether nor what established, A and B demand an answer to where. A and B, on the other hand, take it for granted that there exists a long-standing agreement to organize additional training, and that it is merely a question of who is going to do

it. Whether and what are no longer relevant issues, according to them.
The result of this implicit difference of opinion as to what does and does not belong to the common ground, is that the discussion cannot progress. Every time A and B pose the question where, D and C return to the questions whether and what. And those questions cannot be answered in the discussion because A and B consider them no longer relevant.

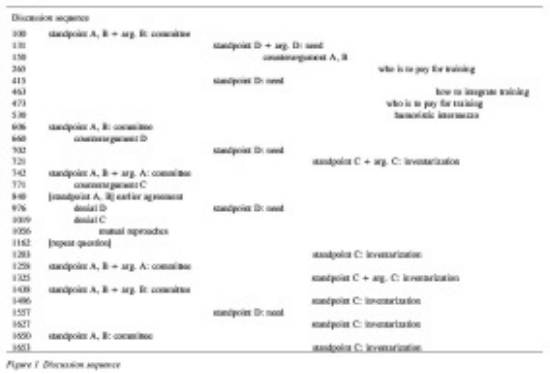

Figure 1 – Discussion sequence

5. The argumentation stage
In the argumentation stage, the protagonist brings forward argumentation for his standpoint, to which the antagonist critically responds. In our discussion, the execution of this stage is flawed in several respects. Partly, this is the direct result of the inadequate division of dialectical roles mentioned above: the participants hardly react to the standpoints and arguments of the other party. A crass example of this is A, who does not at all respond to C's proposal, but instead presents one of his own, and when B and C protest and demand a reaction, repeats his own proposal and claims it boils down to the same thing.
But in other respects as well, the connection between the various contributions is rather loose. This applies, for one thing, to the local relevance of these contributions. Many of them relate only superficially to the preceding utterances of the co-participants. Examples are the passages where D asks whether there is any need for additional training, and C replies with practical proposals for finding out what possible topics for training might be and for integrating additional and basic training. The recurrent absence of local relevance results in conceptual confusion, talking at cross purposes, false agreement and, in the end, a fragmentary discussion of the standpoints.
Overall relevance, as well, is less than ideal. The participants hardly seem aware of the main thread of the dispute. Digressions abound. As a result, the discussion

takes a meandering course (see Figure 1: discussion sequence). A topic or proposal will get discussed for a shorter or longer while, but every time, before the discussion is brought to a close, another topic emerges, which in turn is not dealt with decisively, after which earlier topics once again come into focus, are again not dealt with decisively, etcetera, without, and that is the point, any progress being made.**[iii]**

6. The closing stage

In the closing stage, the results of the defence of the standpoints, which has been undertaken in the argumentation stage, are determined. If a standpoint has been defended successfully, the antagonist must withdraw his doubt; if the standpoint has not been defended successfully, the protagonist must withdraw it. In our discussion, this stage, too, is only partially performed.

Apparently, since every one in the end cooperates in implementing C's proposal, that is the proposal which all participants accept. In itself, that is not surprising, since no one has objected to the idea of inventarization. But the other proposals have not been refuted, nor have they been retracted. A keeps on defending his proposal to the very last, even when B voices agreement with C's. D, too, maintains his own standpoint; he combines it with C's. In addition, the `acceptance' of C's standpoint is not the result of a weighing of the different standpoints. Such an assessment simply has not taken place. In pragma-dialectical terms, then, the difference of opinion has been settled, not resolved.

In large part, the inadequate execution of the closing stage can be traced back to the deficiencies in the preceding stages which I have pointed out. Because the different positions of the participants with regard to each other's standpoints have not been clearly explicated, making up the balance becomes more difficult. Because the participants mainly take on the role of protagonist for their own standpoints, other standpoints and arguments have not been scrutinized critically and therefore cannot be rejected or accepted on the basis of a critical assessment. And, finally, such assessment is hindered by the fact that the participants hardly have any awareness of the main thread of the dispute: they lack an overview of what has been adduced pro and contra the different standpoints.

7. Conclusions

In this paper, I have examined a problem-solving discussion which the participants themselves declared unsatisfactory. I outlined the development of the discussion and pointed out what went wrong. The participants turned out hardly

to have responded to one another's standpoints and arguments. As a result, with regard to none of the three main standpoints could the differences of opinion be resolved. By looking at the way the stages of critical discussion were executed in this discussion, I then was able to establish how exactly this had come about. None of these stages turned out to have been performed fully. In the confrontation stage, the various positions of the participants were not clearly explicated, nor was the underlying difference of opinion brought out and put up for discussion. In the opening stage, the positions of antagonist and of protagonist of the contra-standpoint were not taken on, nor was there full agreement about the starting points for the discussion. In the argumentation stage, contributions often were only loosely connected, and in the closing stage no assessment was made of the various positions. Through this analysis, then, the sources of the unfortunate development of the discussion could be established.

To be sure, the analysis carried out in this paper only revealed whether the discussion process did enable the procedure for resolution of a difference of opinion. I did not establish how well this procedure itself was carried out. That would imply evaluating the substance of the moves which were made: whether contradictions and inconsistencies were present, whether any fallacies were committed, what the quality of the arguments was, and whether the assessment of these arguments was appropriate. My purpose in this paper has been solely to demonstrate that the model of critical discussion can be used fruitfully as a diagnostic instrument in the evaluation of problem-solving discussions qua discussion, that is as a process creating the conditions for rational resolution of a difference of opinion. I might as well mention here that in view of this purpose something else was not done, either: I did not present a detailed account of my reconstruction of the positions of the participants and of the moves they made in the discussion.**[iv]** Obviously, in a full analysis and evaluation all of these tasks must be performed.

The process-oriented diagnostic use of the model of a critical discussion which I have demonstrated in this paper has several advantages. In the first place, because it focusses on the interactional processes between participants, it gives perspective on some of the deeper, social causes of the derailment of discussions. In this discussion, for instance, it turns out that there is a conflict of interests, connected with the different institutional positions of the participants, which hinders the progression of the discussion. A and B, who try to obtain a decision as to where the organization of additional training should be placed, are policy-

making staff members who regularly meet with the board of directors of the organization and who have to set things in motion. C and D, who launch concrete questions and objections regarding the need for and the content of additional training, stand, as volunteer group leader and group coordinator, respectively, and as members of the training program committee, with both feet in the arena of practical action. They are the ones who have to put the proposals of the policy-makers into effect. Obviously, the interests and responsibilities of these two parties differ. This difference is at the root of the different positions which they take in the discussion and of their persistence in maintaining these positions.

In the second place, applying the model of critical discussion makes it possible to enumerate the tasks which, if performed, create the conditions for a discussion to issue in as good a decision as possible. These tasks would include: making sure that the different standpoints which are at stake are explicitized, encouraging participants to react critically to standpoints and arguments, stimulating participants to take stock of their common ground, keeping an eye on the main thread of the discussion, providing summaries of arguments pro and con, guarding against digressions, making relevant distinctions, ensuring critical final assessment of all positions, etcetera. A list like this, derived from the steps which should be taken in the different stages of critical discussion, may help participants in problem-solving discussions to improve the quality of their participation: it may thus provide an instrument for safeguarding the quality of problem-solving discussions.**[v]**

NOTES

[i] That it is justified to analyze problem-solving discussions as critical discussions, is argued in Van Rees (1991).

[ii] Most pauses last no longer than one second (Jefferson 1989).

[iii] In itself, such a meandering course is not unusual, but ordinarily, contrary to what happens here, it produces progress towards consensus (see Fisher 1980).

[iv] How such an account can be given, is demonstrated in Van Rees (1995, 1996).

[v] There is a point here which may be so self-evident as to escape notice. The concept of critical discussion makes it possible to develop a workable conception of quality. So far, quality of problem-solving discussions has been an extremely unmanageable notion (Hirokawa et al. 1996). In a pragma-dialectical framework, a precise elaboration of this concept becomes possible: the quality of a discussion is directly linked to the degree to which it enables the rational solution of a

conflict of opinion.

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ISSA Proceedings 1998 – Argumentation As Normative Pragmatics

1. Introduction

I am told by my informants that in Dutch the term argument has intrinsically positive connotations, that positive approval is built into the use of the term. Arguments and arguing are good things. That may be the case for Dutch, but in American English the term argument is starting to become a bad name. People accuse argument of being a force for social exclusion, a means of enforcing hierarchies of power and privilege. Others see in it adversaries, antagonists, contestants, winners and losers, conflict, competition, criticism, and social alienation. It is found in the trickery and stratagems of lawyers and spin doctors whose doubletalk can make anything seem reasonable. Argument appears to others as just one more instrument in the arsenal of slick Madison Avenue admen and selfserving Washington politicians who can justify anything, promote anything, excuse anything, and get away with anything. There is even disenchantment with its seeming use as a forum in which experts and authorities may dither and debate any issue until the public finally loses interest or it is too late to do anything meaningful. We live in a world in which O.J. Simpson walks, Bill Clinton smirks, greenhouse gases still spew into the atmosphere, the tobacco companies continue to sell cigarettes to children, and the lawyers all get rich. If argumentation isn't part of the problem, it isn't much of a solution either. At least, that's how it seems to many people these days.

Now I happen to think this is all mistaken. I happen to think argumentation has a lot to offer in the way of solutions to these kinds of problems. And I think most of you will agree with me. But I also think that this suspicion and this mistrust of argumentation has little to do with the kind of concerns we have traditionally emphasized as a field of study. I think that is why there is suspicion and mistrust, mistaken as it may be. I think these people see something about argumentation that we academics tend to overlook and need to address. What ordinary people see are problems in the pragmatics of argument.

2. Traditional Pictures

For most of its contemporary history, argumentation theory has been dominated by a particular picture of what an argument is. The picture is a visual model that looks like this:

(1)

All Greeks are men.

All Athenians are Greeks.

– – – – – – – – – – – – – – – – –

Therefore all Athenians are men.

(Copi, 1953: 163)

or sometimes it looks like this:

(2)

Harry was born – – : – – Harry is a British subject in Bermuda

A man born in Bermuda will be a British subject.

(Toulmin, 1958: 99)

or other times it looks like this:

(3)

P1 P2 P3

C

P1. Frances is very successful in her career.

P2. Frances has a secure and supportive marriage.

P3. Frances had a stable and secure childhood.

C. Therefore, Frances is a happy person.

(Hughes, 1992: 82)

Whatever the details, the general character of the picture remains pretty much the same. What we see is a picture of arguments as semantic structures, as assemblies of propositions. It is an essentially geometric and logical conception of argument (Toulmin, 1976). In order to highlight the structural form of inference, we have come to treat arguments as very abstract entities. In fact, we think of them so abstractly that we easily slip into talking about arguments simply as ideas, as virtual entities that exist independently of any medium of expression, without any time or any place of occurrence. This picture invites us to think of arguments deprived of their functioning, stripped of their context, divorced from the social engagements in which they actually occur, and even isolated from the

issues and concerns that motivated their production in the first place.

I think many if not most of us at this conference are not altogether happy with this picture. But we are comfortable with it. It is a picture that has insinuated itself into most of our theoretical puzzles, and I am afraid that it has instilled in us a kind of occupational blindness, a trained incapacity to work with aspects of the actual phenomena that ultimately we are really concerned with. Even when we remind ourselves that these models are only that – models of arguments and not the actual arguments themselves – we still tend to narrowly restrict our selection of real-life cases. We still tend to work with those cases that most directly correspond to the model form. We still tend to present sanitized cases that are already standardized, unitized, explicated, and otherwise neatened up for easy application of the models. That's fine, if you are concerned only with the properties of arguments that these models were designed to highlight in the first place – properties like premise acceptability, argument strength, or inferential form. But if you are concerned with other properties of argument, properties having to do with interpretive meaning, functional design, procedural organization, situational adaptation, and the like, we need something else.

3. Normative Pragmatics

I think that something else is normative pragmatics. I want to suggest that normative pragmatics provides a useful corrective and a helpful complement to the kind of modelling we ordinarily undertake when we analyze and evaluate arguments. I like the term "normative pragmatics" – which was first coined by Frans van Eemeren and Rob Grootendorst – because it cuts across the old distinctions between rhetoric and dialectic and because it insists on attention to the uses of argument in ordinary language (van Eemeren, Grootendorst, Jackson & Jacobs, 1993). I like it because the terms points to analytic practices that are empirical in much the same sense that the broader field of discourse studies is empirical: Our theories and principles ought to be accountable to the actual practices and intuitions of natural language users (van Dijk, 1997). I believe that argumentation is first and foremost a linguistically explicable phenomenon, and as analysts we must hold ourselves

accountable to the details of actual messages. Simply put: in normative pragmatics, messages become our object of study. That's an idea that I like to think echoes J. L. Austin's (1962: 148) injunction summing up his 1955 William James lectures at Harvard. He concluded:

(4)
"The total speech act in the total speech situation is the *only actual* phenomenon which, in the last resort, we are engaged in elucidating."

Austin was suggesting a unit of analysis for analytic philosophy in contrast to the traditional attention to propositions, and he was suggesting standards for assessing utterances far more varied than simply that of truth and falsity. And that's one of the things that I find very appealing about normative pragmatics.

But the study of argumentation is not just pragmatics; it is *normative* pragmatics. So, it is not simply empirical; it is also critical. And it is the complex interplay of empirical and critical attitudes which truly animates the normative pragmatic study of argumentative messages. One thing this means is that the scope of argumentation theory extends beyond clearcut instances where arguments obviously occur. As argumentation theorists we should be concerned with discourse where arguments *should* be used, whether they are used in any obvious way or not. The observation that some discourse is not an argument (and so it's not our problem) doesn't necessarily carry much weight. It might, but the real question to be asked is whether or not it is *useful* to examine some discourse with respect to how we think argument *should* work in this context. The real question is whether or not the perspective of argumentation theory provides a useful frame of reference for analyzing and assessing what is going on in the discourse. So, as students of argumentation from the perspective of normative pragmatics, we must be concerned with a wide range of discourse, messages, and interactions whose properties can be explicated with an interest in their argumentative functions and structures despite their overt appearances.
Now, I don't intend to hawk in my talk today any particular version of normative pragmatics. Normative pragmatics is a broad genre that encompasses many particular theories and research paradigms. I want to simply argue today for two ideas that I think are fundamental to any particular approach to normative pragmatics. Those two ideas are this: First, normative pragmatics calls for a return to the study of the *communicative* properties of actual argumentative messages. Second, normative pragmatics makes central the analysis and assessment of the *functional* properties of those argumentative messages. I am convinced that if argumentation theory is going to have anything important to say about the kinds of misgivings so many people have about contemporary argumentive practice it must address those two properties. And it's the

importance of those two properties to which I now turn.

4. Expressive Design

First, let me talk about the need to attend to the communicative properties of actual argumentative messages. Too often the problem of reconstructing arguments has been a problem of refashioning stated propositions, filling in missing premises, drawing out implied conclusions, but without any real sensitivity to the total message that is being conveyed. Oftentimes it seems that argumentation theorists treat the vagaries and complexities of communication as though this were an analytic *predicament*, as something to be solved through methods that render what is said into the "actual" argumentative form. Another way to think about these features, one which flows naturally from a pragmatic understanding of messages, is to see the interpretive problems of communication as an analytic *puzzle* – not as a barrier to analysis, not as a predicament, but as a thing to be analyzed, as a fact to be explained. The traditional response treats communication as a curtain drawn over the underlying argumentative structure, as something to be brushed aside if possible. Normative pragmatics invites us to treat communication as a tapestry into which the argument itself has been woven (Jacobs & Jackson, 1992). I am here reminded of Manfred Keinpointner's (1998) observation in his address Wednesday that figures of speech are fundamental to language, and not just ornamental.

Information conveyed in a message is not limited to what can be extracted from sentences by rules of syntax, semantics, and logic. And the information constructed by means other than these rules should not be discounted or dissolved. When people interpret a message, they construct a context of assumptions and inferences that make sense of what was said and of what was not said but could have been said, and that make sense of how and when all of it is said. The words are not the message. The words and sentences are simply part of an assembly of *cues* that people use to construct the message. It is the context of interpretive assumptions and inferences that is the message. And it is the message that has argumentative functions.

To see what I mean, consider Senator Edward Kennedy's nationally televised account of what happened the night in which, following a party at a summer cottage on Chappaquiddick Island, he apparently drove off a bridge; his passenger, Mary Jo Kopechne, drowned; and then the Senator waited all night until the following morning to report the accident. This speech, given in July of 1969, marks a turning point in American political history. It occurred at a time

when the overwhelming majority of Americans and political commentators expected that Ted Kennedy would not only one day run for President of the United States of America, but would become President of the United States of America. Short of a bullet, few people believed anything would stop his ascension. Of course, no one saw the bridge. And, apparently, neither did Kennedy. Here are two excerpts from his speech. The first excerpt refers to the time immediately following the accident after the Senator had failed in his own efforts to swim down to the submerged car and find Miss Kopechne and get her out. The second excerpt reports what the Senator did after waking in his hotel room the following morning.

(5a)

Instead of looking directly for a telephone after lying exhausted in the grass for an undetermined time, I walked back to the cottage where the party was being held and requested the help of *two friends, my cousin, Joseph Gargan, and Phil Markham*, and directed them to return immediately to the scene with me – *this was some time after midnight* – in order to undertake a new effort to dive down and locate Miss Kopechne. . . . In the morning, with my mind somewhat more lucid, I made an effort to call a *family legal advisor, Burk Marshall*, from a public telephone on the Chappaquiddick side of the ferry and then belatedly reported the accident to the Martha's Vineyard police. [Underlining has been added – *ed*.] (Senator Edward Kennedy's Address to the People of Massachusetts July 25, 1969)

The speech as a whole is clearly an exercise in political apologia. This is a speech of self-defense, and the details of the story told in that speech convey an argument to the effect that the Senator was not culpable of any wrongdoing in the events preceding or following Miss Kopechne's death. Both of these passages help to convey information that supports this claim. The passages suggest the impression of a distraught and disoriented young man searching for help from his friends. The Senator does not overtly argue that his actions were not motivated by some scheme to cover-up his involvement in the accident. Nor does anything he says logically imply that. But the impression given is clearly a contrast to such scheming, and that is the argument these passages are no doubt intended to convey.

To see that this is part of the message, simply consider the underlined passages ("two friends, my cousin, Joseph Gargan, and Phil Markham," "a family legal advisor, Burk Marshall"). Both characterizations are true, and both

characterizations are no doubt relevant to explaining Kennedy's conduct. But the truth and relevance of the descriptions per se are secondary to the commonsense knowledge these labels invoke. Harvey Sacks (1972) called such labels "membership categorization devices." Sacks claimed that labels like "friend," "cousin," or "family legal advisor" give particular meaning and motive to associated activities like, in this case, "requesting help" or "making a call." They also imply their adequacy relative to other possible labels. That is, people assume that these labels are not merely descriptively sufficient; people assume that these labels are the most sufficient descriptions relative to other possible descriptions. And that pragmatic assumption is where the real argumentative impact of these labels is to be found. The role of this pragmatic assumption can be seen by considering an alternate possible description. what if Kennedy had said this?

(5b)

Instead of looking directly for a telephone after lying exhausted in the grass for an undetermined time, I walked back to the cottage where the party was being held and requested the help of *two attorneys, my long-time political aide, Joseph Gargan, and former U.S. Attorney for Massachusetts, Phil Markham* , and directed them to return immediately to the scene with me . . . . . In the morning, with my mind somewhat more lucid, I made an effort to call *long-time advisor for the Kennedy political machine and a man Bobby Kennedy considered the sharpest lawyer he ever met, former Assistant Attorney General Burk Marshall.*

Now, these descriptions are equally true, and perhaps equally relevant to explaining Kennedy's conduct. But these descriptions suggest quite different motives and activities, and in no way do they communicate the impression that Kennedy was not involved in a cover-up that night or was not capable of hatching some scheme to try to save his career from catastrophic political scandal, to say nothing of charges of reckless driving, driving under the influence, and involuntary manslaughter.

And in addition to comparing what was said to what could have been said, consider the related matter of things left unaddressed – what was *not* said and was omitted as an issue altogether. Again we can see that people make a kind of pragmatic assumption in interpreting discourse: The assumption goes that if something was not mentioned, it must not be important and what was mentioned must be informationally sufficient for the purposes of the message. So, consider the following alternate story, again based on previously excluded but true and presumably relevant information. What if Kennedy had added this passage to his

first excerpt?

(5c)
Instead of looking directly for a telephone after lying exhausted in the grass for an undetermined time, I walked back to the cottage where the party was being held and requested the help of *two attorneys, my long-time political aide, Joseph Gargan, and former U.S. Attorney for Massachusetts, Phil Markham* , and directed them to return immediately to the scene with me – this was some time after midnight – in order to undertake a new effort to dive down and locate Miss Kopechne. [*I did not alert any of the other five women and three men at the party, including Raymond LaRosa, a fireman trained in scuba-diving rescue*.]
Withholding the information about who was not alerted can be seen to have a pretty clear argumentative impact once the information is provided. And I think most people would think that omitting that information from the story is deceptive in some way. But what kind of assumptions are constructed for Kennedy's story that are *falsified* by this new information? I'm not exactly sure what kind of propositions we should reconstruct here – or even whether explicating substantive assumptions is what is really called for here. The assumption of some very general pragmatic principles of communication may be all that is needed. But the point to see is that whatever those assumptions are, they create an impression of sincere and honorable intentions, and those assumptions are not the kinds of assumptions that we ordinarily "explicate" when reconstructing an argument. But they ought to be explicated – at least they ought to be explicated if we want to explain why people consider political speeches like this one to be so sleazy and why people think politicians can get away with anything these days. And whatever the pragmatic principles of interpretation are that people are using to make sense of Kennedy's story, we should see that they are principles that have a real impact on the argumentative reasoning encouraged in the message.

Now, my point about Kennedy's argument is not to show simply that it is defective in some important way. Rather, the point is to see that the kind of information that I have just provided, exposes the message as defective and so this kind of critical comparison tells us something important about what kind of a message is being communicated. People would not have these intuitions of defectiveness given this information if they did not also have certain intuitions about the argumentative message design in Kennedy's story. Consider another example of message design. This one appears somewhat simpler, and that is part of what is

tricky about it. It's the product claim for Tylenol:
(6)
Tylenol. The pain reliever hospitals use most.

That product claim is repeatedly presented in ad copy as a compelling reason to conclude you should choose Tylenol over other pain relief products. But again, what assumptions do people make in constructing the message conveyed by these words? How, exactly, do people see the product claim, "Tylenol is the pain reliever hospitals use most," as somehow supporting the tacit main claim, "You should choose Tylenol for pain relief"? Presumably, there is some kind of sign reasoning that depends on the reliability and authority of hospital choice as an indication of the reasonableness of one's own personal choice of Tylenol. But how much deeper do we go? Deeper, I would say, than we are ordinarily used to going as argumentation
analysts.

One of the complexities here is that in almost all their ads, Tylenol offers additional product claims to superiority. For example, one ad features this header in large bold print in the page center: "There are more pain relievers than ever. But there's only one that hospitals use most. TYLENOL." Then in the bottom righthand corner, beside a picture holding a bottle of Tylenol capsules, appears the following ad copy:
(7)
Nothing's more effective. Nothing's safer.
TYLENOL products give unsurpassed pain relief without the stomach irritation you can get with aspirin or other kinds of pain relievers.
For you and your family, doesn't it make sense to choose the pain reliever hospitals use most? There's only one.
TYLENOL.
The pain reliever hospitals use most.

Another ad appears over a picture Extra-Strength Tylenol geltabs placed across from a row of three boxes of pain relievers containing aspirin, naproxen sodium, and ibuprofen. The header reads: "Your stomach knows the difference between these pain relievers… And this one." The ad copy in the bottom righthand corner explains:
(8)

The pain relievers doctors call NSAIDs – aspirin, the latest drug with naproxen sodium, and even ibuprofen – have a number of similarities.
An important one has to do with your stomach. To varying degrees, every NSAID brand can sometimes irritate your stomach.
That's because NSAIDs may reduce your stomach's natural ability to protect itself.
But TYLENOL is different. It won't irritate your stomach. You know how well TYLENOL works. And now you know it's definitely gentler to your stomach.
The choice is clear. The choice is yours.
Tylenol. The pain reliever hospitals use most.

The claim that Tylenol is the pain reliever hospitals use most is repeatedly placed in a slot where conclusions might be found. Now, should we conclude from this juxtaposition of ad copy that the advertisers are arguing that the preceding copy are the reasons hospitals use Tylenol most? Should we conclude, for example, that hospitals use Tylenol most because they believe nothing is more effective (*as* effective?) and nothing is safer (*as* safe?) as Tylenol? Should we conclude that hospitals use Tylenol most because it is gentler on people's stomach than the available alternatives? No Tylenol advertisement ever explicitly makes that kind of link. And nothing logically requires such a link. However, people do seem to naturally assume that these reasons are juxtaposed in texts for just this sort of rationale. Again, I think it is fair to say that people have a tendency to make a pragmatic assumption that if a connection makes sense, and it's an obvious connection to draw, and nothing is done to prevent that connection, then that connection should be drawn. Granted, this is a somewhat tenuous connection, but simply because it is tenuous doesn't mean it's not conveyed – only that it is conveyed tenuously.

Still, even if we take the product claim about hospital use in isolation, there is more being communicated than simply that product claim and some warrant about the reliability of signs or authority. To see what more there is, consider some additional information: The actual reason hospitals use Tylenol most is because Tylenol gives its product to hospitals for free. When they find this out, many people feel misled (though maybe not surprised).
What does that show us about the original message that people must be constructing from these Tylenol ads? Well, at a minimum, it should be seen that the problem with tricky ads like this one is not at the level that ordinary people

often think it is. It's not at the level of a lie, or some falsification of stated content. And it is not at the level of some vagueness in word meaning or ambiguity of phrasing. That's all clear enough. The problem is with the pragmatic assumptions people make in constructing the message. Even if people took the hospital claim to be an independent reason for choosing Tylenol, they pretty clearly construct some substantive backing for the argument: They feel justified in assuming from this ad that the reason hospitals use Tylenol most is because hospitals think Tylenol is the best quality pain reliever. (And not, e.g., that hospitals think Tylenol is just not noticeably worse than any other pain reliever – which is really all that a statement like "Nothing's safer" really says. See Jacobs, 1995.) That must be part of what people take to be the argument here, or else they wouldn't think it's a deceptive ad (as opposed to, say, just an underinformative ad) when they find out that such an assumption is not true.

So, if as argumentation theorists we are going to be able to see what is going on in an argumentative message, and if we are going to be able to properly assess the troubles in those messages, we are going to have to take into account the expressive design of those messages and the pragmatic principles of interpretation on which those designs are based.

5. Functional Design

It is not only the communicative properties of messages – their expressive design – that normative pragmatics calls attention to. Arguments also have a functional design: Their meanings are implicated in chains of social and cognitive consequences that have a bearing on the deliberative process. Understanding that functional design is key to seeing what makes something a useful or obstructive contribution to the decision-making process. Now by this I do not mean *simply* that argumentation theory should be concerned with persuasive effects. Instead, I mean something related to that: argumentation theory should be concerned with the way in which argumentative messages enhance or diminish the conditions for their own reception. Argumentative messages may be designed either to open up or to close down the free and fair exchange of information. Argumentative messages may be designed either to encourage or to discourage critical scrutiny of the justification for alternative positions. I think one of the real insights of normative pragmatics is that argumentation is self-regulating and self-sustaining in just this way. Now, this is a practical matter, and argumentation theorists have traditionally been loathe to address matters of the practical design and social engineering of discourse structures. But the pragmatic problems and

solutions of argumentative practice exist in the form of discourse strategy – and not just discourse norms – and at the level of institutional procedures – and not just inferential schemes.

One such practical institutional context that has held considerable research interest for myself has been the procedures of third-party dispute mediation. As a system of
dispute resolution, mediation creates a context which in certain *ways* of arguing are reasonable and functionally constructive and in which other ways of arguing are not. Consider the following exchange between a divorcing husband and wife who have been required by the court to attend a mediation session for the purpose of trying to work out a custody and visitation arrangement for their children:
(9)
01 M: Okay. Mrs. ( ), let's hear from you, what kind of plan do you think that we could reach
02 W: Well um I'd like for them to live a normal ( )=
03 H: =What's normal, cocaine addict uh uh (aren't you) a patient, outpatient [uh uh uh oh and] and uh=
04 W: [My ( ) people]
05 H: =uh trick every night? Is that, is that it, is that it?
06 W: I don't under[stand]
07 H: [She had] a fifteen year old kid coming over and staying the day while these kids were locked up in the front yard while I was at work every day, I have a witness proof for that
08 M: Okay=
09 W: =you do, who
10 H: Ann Cray.
11 M: Let=
12 H: =she was the one who told me about it all= [cause 'sher fifteen year old son
13 M: =Let's [hear Let's hear what, what your plan would be

This exchange comes early on in the session. The husband (H) has just proposed a plan in which he gets custody of the two children and the wife gets visitation privileges. The mediator (M) then turns to the wife (W) to hear what kind of plan she advocates. I want to focus on the contributions of the husband in turns 03, 05, 07, and in 10 and 12. He makes an argument that, taken in the abstract, is more

or less reasonable. It might be pictured this way:
(10)
P1 P2 P3
C

P1. W is a cocaine addict
P2. W is an outpatient at a psychiatric hospital
P3. W carried on an affair with a minor while locking up the kids in the front yard.
C. W will not provide an acceptably normal environment for the kids if given custody.

If the wife is in fact a cocaine addict, an outpatient at a psychiatric hospital, and has carried on an affair with a minor while she locks up the kids in the front yard, there is strong reason to conclude that she is not going to provide an acceptably normal environment for her children if she gains custody.

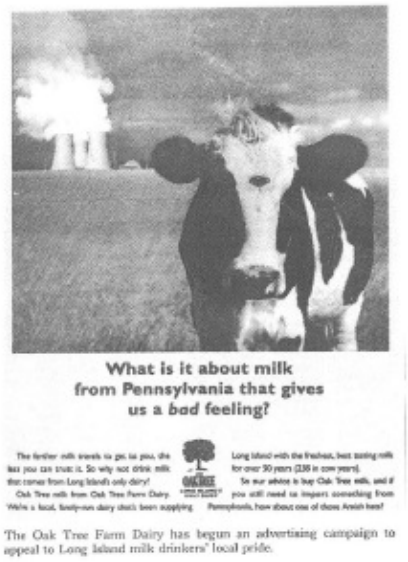
That's not a bad argument in principle. But it still should not be called a good argument – at least, not in context. The argument might be a good one for a courtroom or on radio talkshows, but not in mediation. The problems have to do with the pragmatics of the argument. Its tactical design is objectionable. For one thing, it is procedurally out of order. The husband not only interrupts the wife, he does so at a time when she hasn't even yet described her proposal. But deeper than that, consider what the argument does by the way it is put forward: it seems more designed to censure, embarrass, and shame the wife than to convince her she should not take custody of the children. Notice the taunting ("Is that, is that it, is that it?") and the offensive formulations ("addict" "trick every night"). The husband's label in announcing "witness proof" amounts to a barely veiled threat that these arguments are about to come up in court if the wife resists his proposal. Either the husband is picking a fight, or he is acting in a way that will bully the wife into making concessions to avoid further public humiliation. The husband's argument certainly can hardly be expected to enlist the wife's cooperation in a collaborative search for a mutually agreeable resolution based on a sincere and careful weighing of the merits of the case. But that is precisely what is called for by the argumentative situation the husband is in: Mediation is an argumentative forum in which the disputants themselves must arrive at a resolution of their disagreement. The mediator only keeps procedural order, and does not make judgments about the merits of either party's case. In other words, a rational argument here (unlike in, say, a courtroom) must be adjusted to the

need to create and maintain a framework of joint problem-solving. That is a functional requirement that is just as crucial to argument quality as requirements of premise adequacy.

One of the things that normative pragmatics quickly reveals is the close connection between the expressive design of messages and their functional rationale. Much of the functional design of arguments has to do not just with what is said when, but with how the information gets conveyed. And one of the real concerns we should have about fallacies is not just what norm of good practice they violate – but how do fallacies pass without notice? How does a fallacy get away with it? One of the very general problems of contemporary argumentative discourse is that information gets conveyed in ways that let the communicator avoid commitment or accountability to the message. The framework of intersubjectivity on which communication relies becomes strained and problematic to the point that what the receiver finds cannot with any certainty be attributed to the intentions of the sender.

Phenomena like this should not be treated as methodological or analytic predicaments but as empirical facts with normative consequences. Think back to the Tylenol ads. The ads never say that their product claims are the reasons why hospitals use Tylenol most. The Federal Trade Commission would no doubt act against that claim. But then, Tylenol claims no such rationale – they only insinuate that rationale in such a way that they are not committed to defending it. And so the ads can keep coming out and readers can continue to be misled.

But we should not think that fallacies always occur by virtue of some sort of covert misdirection, some kind of camouflage or disguise. This framework of intersubjectivity can be exploited and abused in other ways as well – in ways that turn on the very obviousness of the trickery. It is a tactic that depends not on disguising the misuse of argument, but on flaunting it and even reveling in its own audacity.



The Oak Tree Farm Dairy has begun an advertising campaign to appeal to Long Island milk drinkers' local pride.

Example (11)

Example (11) is an advertisement for milk from Oak Tree Farm Dairy of Long Island, New York. At the top is a picture of a three-eyed cow standing in front of the Three-Mile Island nuclear power plant. Beneath the picture is the header: "What is it about milk from Pennsylvania that gives us a *bad* feeling?" (11)
This is obviously a joke, and meant to be taken as such. The ad plays upon memories of the Three-Mile Island nuclear accident, knowledge that radiation can cause mutations and birth defects (e.g., three-eyed cows), and the more recent reports of the Chernobyl nuclear accident where the release of radioactive fallout actually contaminated the milk supply in nearby areas. The ad is not *seriously* suggesting that milk from Pennsylvania may be radioactively contaminated. The middle third eye on the cow is fake, and it is *obviously* fake. The joke is a kind of "hook" by verbal misdirection that is commonly used in print ads as a set-up and lead-in for the written material that follows. You see the introduction and think, they can't really mean this. So you read on, and it turns out they don't really mean it. The advertisers are leading into something else about Pennsylvania milk that gives them a bad feeling.

The *real* concern raised in the ad copy has to do with the freshness of the milk, because it must travel all the way from Pennsylvania to get to New York City (whereas Oak Tree Dairy is a "local" dairy from Long Island).

Now, we wouldn't ordinarily call this kind of a tongue-incheek strategy of maligning a competitor deceptive. It involves no seriously claimed falsehoods. Nothing is concealed in the strategy. Nothing is disguised. It is not an effort to

mislead or fool anyone. Everything is quickly cleared up. It is all above board, out in the open, and anything false is presented as such. It just looks like a pseudo-argument whose functional design really has more to do with attracting a reader than with convincing them of anything. (If there is anything misleading and deceptive about the ad in the ordinary sense, it is an implication that the milk from Oak Tree Dairy does not travel as far as milk from Pennsylvania. In fact, all of the milk processed at the Dairy comes from farms around Syracuse in upstate New York [NYTimes, 1992, Dec. 20, p.15]. Moreover, the shipping time of processed milk from Pennsylvania is only negligibly greater as far as it affects freshness.)

Nevertheless, this is a pretty sleazy tactic. It's functional design ought to be considered fallacious. What we have here really is an argument. It only seems to be a *pseudo*-argument harmlessly posing as an argument. The argument only pretends to pretend. Why do I say that? Well, consider what people are going to be thinking about next time they are standing at the dairy shelf trying to decide which milk to buy. Simply raising the concern of radioactive contamination is perhaps enough to get people to think about it the next time they are buying milk, even if the concern is only raised tongue-in-cheek, and even if people know and remember that. In fact, this is an increasingly common tactic. By flaunting the fallaciousness of the argument a knowingly cynical audience is drawn in and disarmed by the very act of exposing what is going on. Thus, in another instance of this tactic, NBA superstar Grant Hill hawks Sprite soda on the television screen while a small cartoon picture of him in the corner chings up and down like a cash register tab. Each time the little picture of a grinning Hill pops up, he is covered in an even larger pile of money. The message is clear: Hill is only advocating drinking Sprite because he gets enormous sums of money to do so. And the audience knows that. And Sprite knows the audience knows that. So why not bring everyone in on the joke that Grant Hill – or any other celebrity – is a credible product sponsor? "Image is nothing. Obey your thirst" goes the Sprite ad campaign motto. But it is Hill's celebrity image that is the only reason for his presence in the ad. And attraction to him is the cause for attraction to Sprite. And we know it. And we know they know we know it. *We* have the image of seeing through it all – even when seeing through it shows us that seeing through it is part of how we get sucked in. So what? That's what makes it all so cool. And a stupid reason becomes a good reason to drink Sprite. As Bill Clinton has shown us all, it's okay to argue disingenuously if you share the smirk.

6. Conclusion

So, I hope I have made a compelling case that normative pragmatics has a central role to play in argumentation studies. I should say as an aside that I do not see pragmatics as a substitute for traditional logical analyses – formal, informal, or otherwise. It is, I think, useful to recall that H. P. Grice's (1975) foundational essay on the theory of conversational implicature is introduced as a way of saving the literal meaning of such logical terms as "and," "or," and "if…then," and is entitled "Logic and Conversation." As I said earlier, I see normative pragmatics as a corrective to traditional analyses and as a complement to those studies, not as a replacement of them.

But I do see normative pragmatics as an indispensable part of argumentation studies. The principles of pragmatic interpretation and practical reasoning that underlie message use are just as fundamental to argumentation as are the principles of epistemic inference. And the pragmatic demands on argumentation are just as central to argument quality as are traditional standards of argument cogency. Only when we recognize this, can we begin to really answer the misgivings and mistrust of ordinary people who must live with arguments as objects with consequences and not merely as objects for study.

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ISSA Proceedings 1998 – The Rhetorical Audience In Public Debate And The Strategies Of Vote-Gathering And Vote-Shifting

In the pragma-dialectical approach to argumentation, as represented by van Eemeren & Grootendorst (e.g., 1992) or Walton (1989, 1992, 1995), *critical discussion* provides the normative model for rational argument. But do the norms for critical discussion also apply to political *debate*? As rhetoricians, we insist that critical discussion and political debate are different genres with different norms. Critical discussion is *dialogic,* debate is *trialogic* (Dieckmann 1981, Klein 1991). The arguers in the discussion address each other with the cooperative goal of *resolving the dispute;* debaters do not argue in order to persuade each other, but to win the adherence of a third party: the audience (Jørgensen, in press).
Because of its trialogic nature, a debate must answer the needs of the *audience.* This means that a debate should be evaluated in relation to the functions it fulfils.

This does not mean that our approach is oriented toward uses and gratifications in the traditional sense. We are interested not only in the functions of debate, but also in the specific features of debates that serve these functions; and our approach is normative.

We shall concentrate on *issue-oriented debates,* such as the Irish debate over the Ulster peace plan, or the Danish debate over the Amsterdam treaty. What we have to say about the rhetorical audience and the quality of public debate has particular reference to how debate is conducted on TV.

Opinion polls will tell us that the audience of such debates consists of three groups: those in favour, those against, and the undecided. Commentators typically refer to the undecided as those who have not made up their minds yet, implying that all the others have indeed made their minds up. Accordingly, it is assumed that the outcome depends on the remaining undecided voters.

But this is misleading. Both among those in favour and among those against, there are many who have not made their minds up, and who may well change sides – under the influence of events or arguments. To document this, we may cite a poll in the French daily *Libération s*hortly before the referendum in France on the Maastricht treaty in 1992. Here – interestingly – voters were asked whether they might change sides on the issue. No less than 37 % of those who intended to vote yes admitted they might also vote no, and conversely for 34 % of those who said they intended to vote no. It is probably true that especially in matters concerning the European Union many voters are in two minds; they feel that there are arguments on both sides of the issue, and they are constantly weighing them against each other.

What this means is that on any issue, the audience represents a spectrum of opinion, with unmoveable partisans at both ends, and with a fair number of voters near the middle of the road who lean to one side but who may be shifted. But debaters and TV programmers tend to make the undecided their primary target because they falsely believe that the static and simplistic Yes-Undecided-No model says all one needs to know about the debate audience. They forget the lesson of the Danish referendum which rejected Maastricht because many voters changed sides at a late stage, even at the polling station.

To understand how some voters can thus be in two minds, we shall propose a model of the debate audience (inspired by Tonsgaard 1992). This, in turn, will allow us to distinguish between the different functions of debate for the public audience.

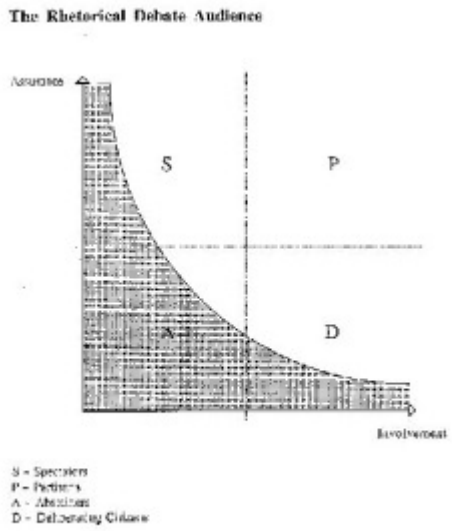

Figure 1

In this figure, the undecided are represented by the grey area beneath the curve. The white area represents the decided voters, i.e. those who say that they are going to vote yes or no, respectively. Those near the curve are the hesitant voters. The point is that there are two variables which may explain why voters hesitate. These are represented by the two axes.

The x axis represents *involvement in the issue,* that is, how important the voter perceives the issue to be. The y axis represents the voter's feeling of *assurance* on the issue. Those high in both assurance and involvement belong in the area marked "P" (for partisans). What they will want from debates is mainly reinforcement of their existing views. Those low in both assurance and involvement will belong in the area marked "A" (for abstainers, because these people will probably end up not voting at all). But it is also possible to have a quite fixed and assured view of the issue, either for it or against it, and yet feel that it is all quite distant and uninteresting.
These voters – high in assurance but low in involvement – will be in the "S" area (for spectators). They will probably feel little need for guidance because they know what they think – but more of a need for entertainment, and some need for reinforcement. Finally, many voters – certainly in Denmark – see the European issue as highly important, but also as complex and baffling; and that is why they are hesitant. These voters – who are high in involvement but low in assurance – belong in the "D" area (for deliberating citizens). Although they lean to one side, they feel they need to know and understand more, because they are still in two minds; hence they want the ongoing debate to give them guidance for the decision they confront.

This segmentation of the debate audience reflects the analysis of three of the audience roles defined by Gurevitch & Blumler (1977). Their account also includes roles for "media personnel" and "party spokesmen", as seen in the *following table*.

The Complementarity of Roles in a Political Communication System

Audience	*Media Personnel*	*Party Spokesmen*
Partisan	Editorial guide	Gladiator
Liberal citizen	Moderator	Rational Persuader
Monitor Watchdog	Information	Provider
Spectator	Entertainer	Actor/Performer

In our context, we may disregard the "monitor" role, since we regard it as less relevant for members of a debate audience, and more applicable to, for example, political scientists and commentators. What the voter seeks when he appears in the partisan role is precisely "reinforcement of his existing beliefs"; as a spectator, he seeks "excitement and other affective satisfactions"; as a deliberating citizen – or, as Gurevitch and Blumler have it, "liberal citizen" – the voter seeks "guidance in deciding how to vote" (1977: 276). Our model of the debate audience explains the notion of audience roles and their underlying parameters. The model also implies that there are two basically different ways that a debater can try to increase adherence to his view, dependent on which segment of the our model he mainly appeals to.

1. The debater can prefer to appeal mainly to those who are rather high in assurance, but low in involvement. These people will basically tend to choose the spectator role. Since they are rather assured about their views, the debater must concentrate on those voters in this group who lean to his side already. Those who plan to vote for the side anyway will merely have their enthusiasm boosted. Those who might not have voted may be stimulated to come out and do so. Thus the way this strategy may gain votes is by mobilizing some of the undecided vote. We call this strategy *vote-gathering*.

2. The other general strategy is to appeal to those voters who lean to the other side but who may be won over. These people are high in involvement, that is, they think the issue is important; but they are low in assurance. Typically, they are deliberating citizens who acknowledge that there are two sides to the issue and that their decision should be based on the weight of the arguments. As we have pointed out, there are often a substantial number of such voters on both sides. We

call this strategy *vote-shifting*.

The distinction between vote-gathering and vote-shifting was one of the perspectives we became aware of in a study of televised public policy debates in Denmark (Jørgensen, Kock, and Rørbech 1994; 1998). In these debates we found voting patterns suggesting that some debaters are particularly good at vote-gathering, others at vote-shifting. For example, in one debate, in front of a hundred representative jurors, one debater gathered no less than 14 votes from the undecided group, but she shifted only one from the opposite side; the opponent gathered just 5, but shifted 9. This is shown in figure 2, where the grey columns show votes gathered and the white ones show votes shifted.

If it is true that some debaters excel at gathering votes, while others are good at shifting votes, then we may ask: What are the essential features of the two types of argumentative strategy that have these distinct effects? Observations from our empirical study have led us to the following hypothesis, which is also consistent with much rhetorical theory. We believe the typical vote-gathering debater will tend to *broaden* the front between the two opposite sides, while the typical vote-shifter will tend to *narrow* it.

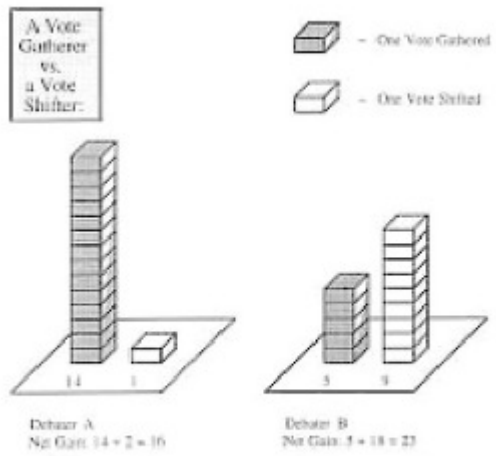

Figure 2

The typical vote-gatherer will tend to claim fundamental, black-and-white differences and introduce a series of further points of contention that will broaden the front between the two sides. He will claim a fundamental ideological opposition between the two sides; he will impute a series of further claims and positions to the opponent that have not been mentioned by the opponent himself; he will see the opponent's proposal as "the thin end of the wedge," as part of a

large campaign, or even of a conspiracy; he may attack his opponent's motives, he may bring in matters that cast doubt on the opponent's intelligence, ethics, or good will; he will typically attack the weakest arguments made by the opponent, trying to make them out as ridiculous, or as self-contradicting. Front-broadening arguers generally spend much energy on refutations of arguments made by the opponent, and on counter-refutations of refutations, and so on *ad infinitum*. In all this, the issue at hand will often disappear in a confusing verbal duel. As audience, we may find ourselves turning our heads back from right to left and back again, as if watching a tennis match. Refutation and counterrefutation are what we would call *secondary* argumentation, as distinct from *primary* arguments. These are the grounds offered by the debaters in direct support of their standpoints – i.e., the main merits of their own proposal, or the drawbacks of the opponent's. Throughout, the front-broadening debater introduces topics of disagreement that are not necessary to elucidate the disagreement at hand.

The vote-shifter, on the other hand, will argue so as to narrow the front, concentrating on the specific issue that separates the opponents. He will, for example, concede that the opponent has certain weighty arguments, but he will then try to show that his own arguments are weightier. He will typically narrow or demarcate his claim, stating, for example, that he does not advocate a federal superstate in Europe, but that he does strongly advocate a union of nation states for certain reasons. He will concentrate on his own *primary* grounds for his claim; for example, he will concentrate on the main reasons why he thinks the Amsterdam treaty is a good idea (or, if he is against it, a bad idea), and he will spend less energy refuting the opponent's grounds, or counter-refuting the opponent's refutations. We might add that this emphasis on primary grounds, rather than on refutation, is one point where our normative criteria, based on audience needs, differ from the norms for critical discussion.

Furthermore, the front-narrowing debater will treat his opponent with politeness and respect and avoid face-threatening attacks on his person, ethics, and competence. In all these manouevers, the debater seeks to find and preserve whatever *common ground* there is between the opposite sides, narrowing the front to what is absolutely necessary.

In terms of the traditional rhetorical appeals, the vote-gatherer will rely heavily on *pathos* and will, for instance, use Atkinson's "claptraps" in abundance (Atkinson 1984). As is well known, Atkinson described two principal types of claptrap: the *contrast*, which is clearly a front-broadening feature, and the *list of*

three, a schematic figure of great dynamism, known from ritual and folk literature. Both are clearly front-broadening devices to enhance the feeling of "us" against "them". The use of these devices will help the vote-gatherer boost the partisan's spirit and give the spectators a good show. The vote-shifter, in contrast, relies mainly on *logos* appeals and avoids devices that may appear cheap or facile. As for *ethos*, the vote-gatherer will tend to impress by being either sparkling or passionate, while the vote-shifter tends to be a more academic type, perhaps slightly stiff and dry, but serious and knowledgeable.

All in all, it is clear that of these two types of argumentation, the vote-gatering, front-broadening type is by far the more "telegenic", as media people say. This brings us to the role of TV in public debate.

Now, our point in contrasting the two types is of course not that debaters should become pure vote-shifters and never try to be vote-gatherers. Surely good debaters are those who manage to combine elements from both strategies. Nor do we claim that vote-gathering is bad rhetoric at all times. Many situations call especially for vote-gathering; but issue-oriented debate does not. The problem is that many forces in modern TV-mediated democracy unite in suppressing the kind of political argument that aspires, and inspires, to vote-shifting debate. TV debates, when best, are both entertaining and informative. But at times there is a conflict. What works well as TV is often front-broadening features that leave little opportunity for shifting rhetoric to unfold; what boosts and entertains partisans and spectators often alienates the deliberating citizen looking for guidance. In consequence, the media furthers the transformation of citizens to a body of, in Jamieson's words, viewers "observing the 'sport' of politics" (Jamieson 1992: 191).

Front-broadening, vote-gathering TV debates thus appear to be the modern version of sophistic rhetoric. Sophistic debate is basically a type of combat, with debaters in the role of gladiators, in Gurevitch and Blumler's term. Such a debate may serve a mobilizing purpose for us if we are partisans of the gladiators, but that role easily slips into the purely *spectatorial role* where debaters are as much actors, at whose performance we either applaud or hiss. This audience role echoes Aristotle's description of the auditor as "spectator" in epideictic speech, vs. the role as "judge" in political and forensic speech. According to Aristotle, the spectator is concerned with the ability of the speaker (Rhetoric III, 1358b). The spectator, as George Kennedy explains, "is not called upon to take a specific action, in the way that an assemblyman or juryman is called upon to vote"; the

whole event becomes “an oratorical contest” (p. 48, note 77) – which is also how commentators see it when they discuss which politician “did best” in a TV debate. Thus the deliberative function of debate is suppressed by the simplistic question, so dear to the media, of “who loses and who wins”. While spectators see such debates as a sports event, its effect on partisans may be described in the words of Perelman & Olbrechts-Tyteca on the epideictic genre: “the argumentation in epidictic discourse sets out to increase the intensity of adherence to certain values” (1969: 51).

What is problematic with the spectator and partisan roles according to the deliberative ideal is that they tend to turn the audience into mere bystanders rather than participants in the political process. Only as deliberating citizens do we become a genuine rhetorical audience in Bitzer’s sense of the word – an audience of decision- makers, “capable of being influenced by discourse and of being mediators of change” (Bitzer 1968, 1992: 7).
We may compare our view here with Walton’s pragmatic approach: Walton is critical of debaters who have *fixed positions*, so that there is no “genuine chance of either side persuading the other” (1992: 157). However, Walton ignores the trialogic nature of debate, which makes it quite acceptable for debaters to be unwilling to be persuaded by each other. What threatens the legitimacy of debate is when it is conducted in such a way that there is no chance of anyone in the *audience* shifting to the other side.

To sum up, what we advocate in issue-oriented debate is that vote-shifting argumentation be allowed to unfold – i.e., argumentation strongly characterized by the features we have called front-narrowing. The purpose of course is not the shifting of voters as such. We call for more vote-shifting argumentation for normative reasons.We propose that if debaters argue with the shiftable voters on the opposite side as their primary addressees, this would stimulate them to produce *convincing* argumentation, i.e., arguments that those on both sides of the boundary who recognise the force of argument would consider weighty – whether they are persuaded by them or not. Thus, the deliberative goal would not be lost, namely that of providing citizens with the best arguments on both sides, to be weighed against each other, in order to reach a decision. The net result at the polling station would perhaps be pretty much the same. But decisions would be made on a firmer basis, and debates would better serve the purpose of informed political argument. They would not degenerate into mere sports events for

spectatators or peptalk for partisans, and citizens might remain active participants in the political process.

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