ISSA Proceedings 1998 – The Case For Cooperative Argumentation

For the past several decades, argumentation theorists and instructors have become increasingly committed to developing and adopting perspectives designed to improve the quality of critical reflection and deliberation. These scholars and ducators are particularly interested in developing an approach to argumentation designed to equip people around the world with the knowledge, skills and understanding needed for ethical and effective decision making. To this end, argumentation scholars are looking anew at basic assumptions within the field.

In this essay, I seek to contribute to this project by focusing on one such assumption. Specifically, I challenge argumentation theorists to reconsider the prevailing assumption that argumentation is inherently oppositional, adversarial, and confrontational. I suggest that a cooperative approach to argumentation theory, practice, and pedagogy provides an alternative grounding, one that overcomes key obstacles to ethical and effective individual and group decision making in diverse practical contexts.

1. The Prevailing Competitive Model

In their landmark treatise on argumentation, *The New Rhetoric*, published in 1969, Chaim Perelman and L. Olbrechts-Tyteca offered a viable alternative to the cartesian dualism dominating the field of philosophy at that time. Perelman, Olbrechts-Tyteca, Stephen Toulmin, Wayne Booth, and other scholars in the New Rhetoric school proposed a theory of argumentation that offered a middle-ground between the certainty demanded by (but never attainable to) formal logicians on the one hand, and the arbitrariness to which so many scholars and practitioners acquiesced during this time. New Rhetoric scholars sought to provide a rigorous theory of practical reasoning, grounded in history and context, while providing cross-contextual criteria for assessment. This quest for a rigorous, yet contingent approach to practical reasoning continues to drive much productive work in the field. A brief overview of some recent efforts reveals, however, that fulfillment of the work's potential has been hampered by unexamined acceptance of a key underlying assumption.

In their treatise, Perelman and Olbrechts-Tyteca assume that all argumentation is aimed at gaining or increasing the adherence of minds to a thesis. This basic assumption continues to undergird much work in the field today. In her insightful introduction to the Spring, 1996 special issue of Argumentation and Advocacy, for example, guest editor Catherine Helen Palczewski notes that the field continues to rely heavily on an "argument-as-war" metaphor. Even Trudy Govier – who has worked hard to "differentiate argument as rational persuasion from disputes or fights" – nevertheless adopts "vestiges of argument as combat" in her lexicon. Palczewski notes further that Brockriede characterizes argument in terms of "competing claims," while Zarefsky writes of argument as "verbal conflict."

Even Habermas, who pursues argumentation as a tool for achieving understanding, nevertheless "characterizes argument as an adversarial procedure" involving "proponents and opponents" (pp. 164-5). Similarly, in his otherwise laudable effort to link ethics with rhetoric, Herrick (1992) suggests that "rhetoric is oppositional or adversarial by nature" (p. 134).

The extent to which this perspective continues to take hold of the field is most strikingly revealed, however, in its impact on the otherwise innovative perspective advanced by Frans van Eemeren and Rob Grootendorst (1992). Their cutting-edge effort to overcome "both the limitations of the exclusively normative approach exemplified in modern logic and the limitations of the exclusively descriptive approach exemplified in contemporary linguistics" has led van Eemeren and Grootendorst to develop "pragmatic insight concerning speech acts and dialectical insight concerning critical discussion." They have sought to provide "a theoretical framework for analyzing and evaluating argumentative discourse as critical discussion" (xiii).

Van Eemeren and Grootendorst effectively identify and address shortcomings associated with viewing argumentation primarily as a suasory tool. Their perspective provides the basis for adapting argumentation to the critical discussion context. Grounded with this important insight, van Eemeren and Grootendorst encourage interlocutors to avoid obstacles to effective critical discussion.

Their effort to marry the best of rhetoric and dialectic in the service of critical discussion moves the field forward considerably. Yet even this innovative perspective rests on the potentially limiting assumption that argumentation is inherently oppositional. Van Eemeren and Grootendorst's pragma-dialectical model of critical discussion begins with a "confrontational" stage. Participants are

characterized as "opponents" and, at the end of discussion, participants check "balance sheets" to see who "has won the discussion" (p. 184).

In addition to presuming a competitive, oppositional and adversarial framework, van Eemeren and Grootendorst limit their perspective's contributions by presuming its inapplicability to a "context of discovery" (p. 138). From their perspective, argumentation is primarily a tool for resolving disputes, but may be less constructive for the preliminary discovery process.

2. Limits of a Competitive Framework

Van Eemeren and Grootendorst's presumption of inapplicability to a context of discovery helps to underscore some of the limits resulting from adoption of a competitive framework. When participants gather for discussion having already formed their opinions and seeking to persuade others, they are much less likely to encounter others' perspectives with full and open minds and hearts. Among other limitations, they are not likely to approach dialogue with what Martha Cooper (1994) identifies as key to full and engaged discussion. She refers to this central element as "response-ability," the ability to "reach out, recognition of the other, careful listening that allows the other to be heard, empathy that validates what is heard" (p. 3).

Similarly, participants in competitive or adversarial communication contexts tend to be more occupied with listening to reenforce their own perspectives than with listening for understanding. Yet only through development of understanding can participants fully contribute to ethical and effective decision making on complex moral, social and political issues of the day. Seyla Benhabib (1990) provides a fruitful overview of key elements required for the development of understanding. Among these are the will and capacity for reversing perspectives. She writes, for example, of "the capacity to represent to oneself the multiplicity of viewpoints, the variety of perspectives, the layers of meaning whcih constitute a situation" (p. 359). Benhabib emphasizes as well the importance of the will and capacity to represent to oneself "the world and the other" as seen by the other (Benhabib, 1990, p. 359).

These capacities have always contributed to the context of discovery, as well as to resolution of disputes. However, the advent of the 21st Century significantly increases both their value and significance. As I have argued elsewhere (Makau, 1996), this age of potential global perils calls upon us to develop heightened capacities to reason together. Confronting 21st century challenges responsibly and effectively will require sophisticated capacities to engage in meaningful and

effective dialogue across disciplinary boundaries and cultural borders. As Susan Welch (1990) suggests, "the equation of otherness with opposition is a dangerous fallacy because it has effects of truth. To the extent that it is believed, it shapes the relationships between nations and peoples" (p.35). When individuals in critical discussions view each other as rivals, they are inclined to "see differences oppositionally; rather than seeking mutuality, they seek to overcome their rivals" (Makau, 1996, p. 327).

The complexity of issues, technological proliferation, and increased cultural diversity and global interdependence which will characterize 21st century life dramatically heighten the importance of overcoming such obstacles and of constructing effective and ethical dialogic communities. Paoulo Freire (1994) notes insightfully in his last book, the Pedagogy of Hope, for example, that the challenges and opportunities associated with cultural diversity are relatively new phenomena in human history. Demographic changes, combined with technological proliferation, afford more and more people around the globe the opportunity to live and work in culturally diverse settings. As technological proliferation changes patterns of communication and more people around the globe both have the opportunity to, and the expectation of, identifying and addressing complex issues through the use of electronic media, the need and capacity for cross cultural dialogue will increase even further.

Approaching argumentation within a competitive framework limits the prospect of ethical and effective cross-cultural dialogic interaction. Competitive and oppositional frameworks limit, for example, the prospects of full inclusiveness, participation, and reciprocity – three qualities identified by Lana Rakow (1994) as linked with a "communicative ethic that could help guide relations – between individuals, between cultures, between organizations, between countries" (p. 3).

G. Thomas Goodnight (1993) offers similar insights. He invites readers to consider development of "an understanding of argument where critical-rationality and effective public persuasion productively inform and complement each other" (p. 331). In pursuit of this goal, Goodnight seeks a "responsible rhetoric," one which "takes discourse ethics as its informing dialectic" (p. 333). Goodnight notes that: "a responsible rhetoric is one whose argumentative practices take into consideration in the particular case both the need to engender effective deliberative outcomes and to preserve the communicative relationships that make such action meaningful to all concerned" (p. 335, italics in original).**[i]**

The cooperative model of argument highlighted below provides a framework for

Goodnight's vision of a responsible rhetoric. This model marries dialectic with rhetoric – as Goodnight, van Eemeren and Grootendorst, and others aspire to do. Perhaps most importantly, however, this model fulfills Goodnight's vision of a model grounded in a strong relational communicative ethic.

3. A Cooperative Model of Argument

The cooperative model of argument begins by rejecting the assumption that all argumentation is inherently confrontational, adversarial or oppositional. This perspective draws a distinction between competitive argumentation, which "aims at winning something," and cooperative argumentation which focuses on the "shared goal of finding the best answer or making the best decision in any given situation" (Makau, 1990, p. 57). According to this model, "argumentation is defined as the process of advancing, supporting, modifying, and criticizing claims so that appropriate decision makers may grant or deny adherence" (p. 57).**[ii]**

This perspective on argumentation emerged out of an exploration of the United States juridical context. The legal system within the United States is inherently adversarial. Grounded in the belief that the truth has the most optimal chance of surfacing in a courtroom if competing sides are given the fullest opportunity for suasory expression, the legal system adopted in the United States embraces a highly oppositional and adversarial view of legal advocacy. Lawyers for competing sides are expected to do all they can to win their clients' cases. Georgetown Law Professor Carrie Menkel-Meadow (1995), among many others, has recently challenged the efficacy of this approach, particulary for the pursuit of truth and justice. It is beyond the purview of this essay to address the merits of this case (though it will no doubt be clear from what follows that I endorse their critiques). It is worth noting, however, that even within this highly oppositional and adversarial context one can find a cooperative framework of argumentation.

Specifically, the final arbiters in the United States legal system are expected to adopt a cooperative, rather than a competitive, approach to argumentation. Justices on the United States Supreme Court are expected to give open, fair, and full hearing to all sides in any dispute and to work together, cooperatively and with open hearts and minds, in framing a reasoned and fair decision. Numerous studies of the Court reveal varying capacities to fulfill this vision, but none deny the overarching mandate for and efficacy of such practice if performed fully and well.

The cooperative model of argument borrows heavily from this practical context.

This model emphasizes reasoned deliberation, rather than advocacy. Individuals participating in cooperative argumentation are invited to work together in pursuit of reasoned, fair, equitable, and effective decision making. They are encouraged to view one another as resources who together are more likely to find or craft viable and responsible decisions than any individual is capable of discovering or creating. They are invited to share all available information with one another, to bring to bear insights garnered from their diverse backgrounds and experiences, and to participate in the kinds of respectful and open exchanges most likely to result in reasoned deliberations.

Recent scholarship on bioethical decision making endorses such a model for this practical context as well. Jonsen and Toulmin's (1988) overview of the constituent elements of phronesis, for example, reveals close parallels to the elements associated with cooperative argumentation.**[iii]** In A Matter of Principles? (1994), scholars representing the fields of medicine, philosophy, theology and law join Jonsen and Toulmin in embracing the view that contemporary bioethical issues can be resolved only through development and exercise of sophisticated practical reasoning and associated dialogic interactions. Their recognition of the contingency, the complexity, and the particularized and temporal nature of bioethical issues and problems underscores the importance of effective and ethical reasoned dialogue in this and related practical contexts.

As I have suggested elsewhere (Makau, 1997), these characteristics of contemporary social, political, and moral issues combine with "constraints of local location, limited epistemic frames and ambiguity" to create compelling needs for "dynamic dialogic interaction with concrete others whose beliefs, values, and interests differ from our own" (p.56). Only through such cross-cultural dialogic exchanges "can we hope to reason competently and morally" (p. 56) in juridical, bioethical, and other contemporary practical contexts. Benhabib (1992) notes, for example, that critical "judgment involves the capacity to represent to oneself the multiplicity of viewpoints, the variety of perspectives, the layers of meaning which constitute a situation. This representational capacity is crucial for the kind of sensitivity to particulars which most agree is central for good and perspicacious judgment" (pp. 53-54). Embracing a cooperative, rather than an adversarial, oppositional, or competitive approach to argumentation inspires development of this representational capacity.

Similarly, Cooper (1994) suggests that there are three elements required to develop response-ability: conditions conducive to reaching out in respect to one another, a willingness to listen, and the will and capacity to develop sensitivity to

the perspectives of others (p.3). Individuals who come together aspiring to reach a reasoned decision – rather than to win an argument or prize – are much more likely than their oppositional counterparts to listen to one another with fully open hearts and minds, and to share openly and respectfully. Decision makers who come together in the spirit of cooperation are much more likely to work together to reach reasoned, fair, and responsible decisions than are their counterparts who come together with balance sheets designating winners and losers in disputes.**[iv]** Finally, adoption of the cooperative framework in argumentation pedagogy promises to help create the conditions and to develop the capacities associated with Goodnight's vision of a responsible rhetoric. Instructors adopting the cooperative model encourage students to work collaboratively and to share information with one another. Student performances in these classes are assessed not on the basis of persuasiveness, but in terms of their contributions to the group's decision making process. In the cooperative argument learning environment, students are encouraged to view others as valuable resources, rather than as competitors. These classes – grounded in a strong communicative ethic – embrace and develop a connected epistemology.**[v]** Perhaps most importantly, this approach to argumentation theory, practice and pedagogy offers the promise of helping to "transform relationships and the larger culture so that the alientation, competition, and dehumanization that characterize human interaction can be replaced with the feelings of intimacy, mutuality, and camaraderie" (bell hooks, 1984, p. 34).

Numerous issues remain to be explored,**[vi]** including questions of the range and limits of participation in specific deliberative contexts. We do not need to resolve these issues to conclude, however, that we have much to gain and little to lose by adopting a cooperative framework and lense.

Most significantly, abandoning the assumption that argumentation is inherently oppositional, and embracing in its place the cooperative model of argument proposed in this essay will help argumentation theory fully exploit the "connection of theoretical and practical reasoning through dialectical argument" described by Goodnight as the "genuis of the Aristotelian system" (p. 229). Such an approach both engenders "effective deliberative outcomes" and preserves "the communicative relationships that make such action meaningful to all concerned" (Goodnight, 1993, p. 335). As Goodnight (1993) suggests, "the work of connecting 'a new dialectic' and 'a new rhetoric' is unfinished, but its prospects appear to be quite promising" (p. 339). Adopting a cooperative framework for argumentation

theory, practice, and pedagogy will position the field to realize this promise fully as we enter the new millenium.

NOTES

i. Richard Fulkerson (1996) provides an overview of similar efforts in the field of philosophy. He cites Maryann Ayim's call, for example, to replace the "dominant confrontational style" of contemporary western philosophy with an "affiliative nurturant style." He points further to Janice Moulton's critique of what she terms "dualism in philosophy," an approach in which "winning arguments rather than encouraging and developing good ideas becomes the role of the teachers." The work of Michael Gilbert on "coalescent argument" is also featured in Fulkerson's essay, as is my work on cooperative argumentation.

ii. For a detailed overview of this model, see Makau (1990).

iii. For a detailed account of the parallels, see Makau (1993).

iv. Philosopher Martha Nussbaum offers a similar perspective in her book, Cultivating Humanity (1997). She calls upon us to do what we can to foster a "democracy that is reflective and deliberative, rather than simply a market place of competing interest groups, a democracy that genuinely takes thought for the common good" (p. 25). The cooperative model of argument proposed in this essay is designed specifically to achieve this end.

v. For elaboration of this approach, see Belenky, M. F., et. al. (1986).

vi. See Goodnight (1993), p. 339 for a parrticularly fruitful overview of such issues.

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ISSA Proceedings 1998 – Abductive Limits To Artificial Intelligence In Adjudication Pervasive Problems Of Analogy, E Contrario And Circumstantial Evidence

1. Introduction

Not that long ago the following thesis was defended (as a more or less funny supplement to a doctoral dissertation, as is usual in The Netherlands): *The best circumstantial evidence for the existence of non-human intelligence is the fact that such intelligence made no attempt to contact us* (Kwint, 1997). It may be left to the reader to decide to what extent this argument is analogous, and/or e contrario, whether it relies on circumstantial evidence and whether it may be salvaged from the pitfalls of such arguments. Anyway, it will be argued here that there are limits to artificial intelligence in adjudication, based on problems pertaining to abductive argument in analogy, e contrario and circumstantial evidence. Such arguments seem to be based upon "original data", like analogata, denial of legal conditions and circumstantial evidence.

But analogy and e contrario cannot be but based upon underlying general rules and principles and the law as some or other kind of coherent whole. In their turn, such general rules, principles and coherent wholes cannot be exclusively based upon any original data. At best, such data play a subordinate role in validation or justification of general rules and coherent wholes. Analogously, the value of circumstantial evidence depends upon wholes of facts possibly related to such

evidence. Such wholes may contain factors explaining circumstantial evidence more adequately than the facts for which proof is wanted may do.

If this holds good, no artificial intelligence may be expected to generate the implicit premisses of abductive argumentation in adjudication. Artificial intelligence is expected to proceed from an input consisting of data derived from the law and from facts, ranging from statute law to specific adjudication and factual evidence, circumstantial or otherwise. Such input appears to be inadequate in principle.

There are quite a few general and abstract arguments against artificial intelligence in the law or at least purporting to show clear-cut limitations to such artificial intelligence. Counter-arguments stressing that the proof of the pudding is in the eating (analogy here too) may not be implausible against such abstractions. However, arguments presented here are to be quite specific, pointing to forms of argument in adjudication which cannot be thought away without completely curbing such adjudication. Analogy, e contrario and circumstantial evidence may seem rather special forms of argumentation, but in fact they are implicitly pervasive in adjudication. Similarity and difference are the life of the law, just as is circumstantial evidence for facts, rarely supported as such facts are by direct and indubitable evidence.

To clarify this particular argument against artificial intelligence in adjudication, the concept of abduction will be explained first. Here, a specific conception of validation of abduction will be proposed, as relying on explication of enthymemes (§ 2). Next, analogy will be explained as abduction of underlying general rules or principles from the original analogon. Analogy will appear to be a particularly weak form of abduction, as the original analogon contributes only a highly marginal part to evidence for analogy. Such evidence consists of implicit general rules and principles, relying upon some or other whole or wholes of the law in their turn (§ 3).

E contrario will be shown to strongly resemble analogy, notwithstanding their standard status as opposites. E contrario is denying the antecedent, equivalent to accepting the consequent, which is indeed abduction. Again, the starting-point of abduction, the legal condition denied, will appear to be only a marginal part of the evidence for the conclusion denied. Some kind of implicit whole or wholes of the law must be invoked here too, in order to exclude alternative sufficient conditions for the legal consequence to be denied (§ 4).

Unjustly neglected in discussion of legal argumentation is the logic of facts. Here the relationships between circumstantial evidence and the facts it purports to ascertain will be discussed. Such relationships appear to be abductive as well. Implicit premises here amount to exclusion of alternative explanations of circumstantial evidence, validating exclusive explanation by facts for which proof is wanted. The "whole" of the facts possibly having to do with explanation of circumstantial evidence is invoked here (§ 5).

Indeed, it is wholes of some or other kind that bear the brunt of abductive argumentation here, be it some or other kind of principled whole of the law when analogy and e contrario are concerned, or "the whole of the facts" in the case of circumstantial evidence. Wholes of whatever kind are notoriously problematic. Here it suffices to clarify that such wholes and their constituting principles, general rules etc. may not at all be reduced to the original, "raw" data adjudication starts from. This is clear in the discussion of analogy, e contrario and circumstantial evidence, but in fact this irreducibility has a more general background (§ 6).

The fate of artificial intelligence in adjudication seems sealed by now. Successful artificial intelligence is expected to start from input consisting of original data, in order to produce output sufficiently resembling adjudication produced by judges. It does not matter how artificial intelligence is to reach results, as long as there is acceptable match. But such match is impossible in principle, as justification of adjudication cannot but consist at least in part of appeal to judicial authority deciding on general rules and principles and thus implicitly deciding on underlying wholes not completely determined by original data. It is exactly this underdetermination by original data which creates the need for authoritative decision. This is a matter of principle, apart from the practical inevitability to stick to the authority of the courts (§ 7).

Several objections may be put forward against this. First, analysis in terms of abduction of analogy, e contrario and circumstantial evidence may be questioned. Second, it may be objected that in the practice of adjudication, analogy and e contrario arguments often are no more than repetitions of earlier, comparable arguments, already contained in original data. Third, the conception of "original data" implied here may be too meagre, excluding the interpretative nature of legal data. Fourth, too much may be expected from artificial intelligence here (§ 8).

Of course, artificial intelligence may refute the sceptical view expounded here in

at least two ways. It may prove successful in adjudication after all, and/or it may refute the arguments about adjudication expounded here (§ 9).

Though statute law examples are used, it probably goes without saying that arguments concerning legal rules and principles are here to hold good for case law rules and principles too.

2. Abduction

Abductive arguments are endemic in daily life and, as will be shown, in adjudication. More often than not, "the most obvious" explanation of some or other phenomenon is taken to be "the" explanation, excluding other possible and possibly more plausible explanations. Such abduction may be explained and justified in several different ways (Josephson & Josephson ed., 1994, Brewer, 1996). Here it will be explained in terms of necessary and sufficient conditions:

p -> q

q

_____

p

Pirie offers a nice though not very everyday example, although he does not mention the concept of abduction (1985, pp. 7-9):

To those who confuse hopelessly the order of horses and carts, affirming the consequent is a fallacy which comes naturally. An occupational hazard of those who engage in conditional arguments, this particular fallacy fails to recognise that there is more than one way of killing a cat. … This fallacy receives a plentiful airing in our law courts, since it is the basis of circumstantial evidence. … 'She's just a tramp. Girls like that always flaunt themselves before men, and she did appear at the office party wearing a dress that was practically transparent!' (We can all see through this one.)

Are such arguments really fallacious? If so, very many everyday, scholarly and scientific arguments should be disqualified. A slightly disquietening possibility, but not at all to be excluded by logic alone. The example may serve to show the importance of enthymemes in justification here. The argument against the lady (which is of course not to develop in literal abduction) certainly is fallacious at first sight, but may be saved if other sufficient conditions or explanations of her dress may be excluded. Only then the sufficient condition stated in the abduction

may be taken to express not just one possible, but the one and only adequate explanation or sufficient condition for what is expressed in the antecedent in the abduction.

To express things in a slightly more formal fashion (though no specific conception of logic is presupposed here):

'p' =def 'The lady is a tramp'
'q' =def 'The lady wears a transparent dress'
p -> q
q

_____

p

is invalid, but may be justified by implicit premises expressing exclusion of alternative sufficient conditions:

r, s, …: alternative sufficient conditions for q

p -> q
q -> [p v r v s v …]
q
¬ r

¬ s

¬ …

_____

p

Such exclusion may not always work. Indeed, the lady may answer that she thought the dress to be to most fitting available from a purely esthetical point of view, and so on. Only if such alternative explanations may be discarded, the abduction may be developed into a valid argument, which of course may still be enthymatic in other respects. Also, exclusion of alternative sufficient conditions may be incomplete. There may be one or more alternative sufficient conditions overlooked, rendering abduction doubtful at best. This justification of abduction has indeed been criticised for its presumption that all possible alternative sufficient conditions can be excluded. Such impossibility is taken to impair logical validity, then (Josephson & Josephson ed., 1994). This is a misunderstanding both

of abduction and of logic in general. Logical validity has got nothing to do with truth or falsity of premisses, though doubtful status of premisses of course translates to doubtful status of conclusions.

Apart from exclusion of alternative sufficient conditions, a second line of defence against objections of abductive fallaciousness is more pragmatic than logical in nature, but still relevant here. For example: against the transparently dressed lady it may be put forward that although the "default" explanation chosen may not express a necessary condition, she herself is responsible for such an explanation, as she is expected to know that onlookers will expect in their turn that a dress like that expresses certain intentions toward the other sex.

This may be summarised in terms of responsibility for appearances. In daily life, such communicative, pragmatic justification of abduction may very well do. Such abduction seems inevitable and even indispensable in communication. However, it is precisely this penchant toward taking abduction for granted which may make abduction in the law rather more questionable. Judicial decisions are expected to rely on good argument, as such decisions often concern matters of no small importance and because there is (in general) no controlling and reviewing instance outside the judiciary.

Thus (apart from special cases in civil law, having to do with responsibility for appearances) justification of abduction in adjudication must have to do with exclusion of alternative explanations. Still, the practice of adjudication shows that such exclusion is not always explicated and still worse, that things may go wrong that way. Here this will be explained in some detail in three specific forms of adjudicative argumentation, but this is not to exclude the importance of abduction in other kinds of argumentation in adjudication in the law (and, of course, in other fields).

3. Analogy

The basic problem of analogy probably needs no further explanation here. Analogy does not rely on strict similarity, but on some or other likeness of factors otherwise different. Civil law adjudication would be inconceivable without such explicit and, still more, implicit appeal to likeness. But how is such likeness to be determined?

Anything may resemble anything in any respect, so how to single out relevant similarities? Several analyses have been tried out on this problem, with more or less unsatisfactory results (Kaptein, 1995, White, 1996). Conventional attempts to analyse analogy are hampered by the mistaken idea that the original analogon,

that is, the starting point of argument by analogy, must play a major role in justification of results. However, only underlying general rules or principles may determine relevant similarities. Indeed, such general rules or principles bear the brunt of argumentation by analogy (Kaptein, 1995).

This may be clarified by standard examples of analogy in adjudication. Here a less well-known analogy from Supreme Court of The Netherlands adjudication will figure in explanation of the abductive structure of analogy. Section 276 of the Commercial Code of The Netherlands reads: "No damage caused by a fault of an insured may be paid for by insurance, ..." This section is analogously applied to beneficiaries of insurance too (see Supreme Court of The Netherlands, 1976). Behind this is the so-called indemnity principle, determining that insurance is not to lead to enrichment of the insured. This may be formalised as follows, not only clearly showing the main role of underlying rule or principle, but also bringing to light the abductive structure of argument by analogy.

Again, no specific conception of logic is presupposed here.

'Fault of an insured (etc.) _ no insurance payment' =def 'q'
(section 276 of the Commercial Code of The Netherlands)

'No undue advantage is to be gained through insurance (indemnity principle)' =def 'p'

'Fault of beneficiary _ no insurance payment' =def 'r'

[q -> p, q] -> p
p -> r

_____

r

This will not do. Logic is no problem here, but the first premiss of the argument is, as it comes down to a petitio principii. There may be no inference of a general rule from a specific rule. This is a consequence of the problem of relevant similarities noted before. The problem may also be expressed by noting that 'q' may be inferred from widely varying general rules or principles. The highly implausible general rule 'No damage caused by any behaviour of an insured may be paid for by insurance' will do here too. Not all such general rules or principles may be relevant and/or plausible, but this is not the point here. However:

[p -> q] may hold, so

$$[p \rightarrow q, q] \rightarrow p$$
$$p \rightarrow r$$

_____

$$r$$

Which amounts to abduction: nothing wrong with the premisses now, but problematic logic this time. The same basic problem props up here too. Almost any general rule or principle may be adduced to infer q. Only by excluding such alternative general rules or principles may the abduction be justified. It would make little sense to formalise this, as there are virtually no limits to such alternative explanations of q.

Here the argument relies not so much upon exclusion of alternatives as upon justification of underlying general rules or principles. Anyway, original analogata play no important role in this respect. Underlying general rules or principles may instead be more or less justified by their proper place in something like the law as a whole, which is of course only marginally determined by original analogata. For example: the indemnity principle may be shown to fit in with the whole of insurance law and civil law, its denial being at odds with other important principles and rules determining insurance law and civil law. The aforementioned section 276, the original analogon, is of course no more than a small detail within these wholes.

On the other hand, the heuristic importance of original analogata may not be underestimated. But as justification of argument they are no good at all. One may even be tempted to deny the existence of argument by analogy altogether. Indeed, analogy may be regarded as pia fraus, or fraudulenta pietas, raising the semblance of solid foundation in specific data of positive law, whereas in fact analogy is not what it claims to be but implicit appeal to wholes underdetermined by original analogata or any specific data.

4. E contrario

Countless anecdotes criticise e contrario, still it is often used, at least in civil law adjudication. Explicit e contrario may be relatively rare, but appeal to some or other kind of difference is the life of the law just as much as appeal to likeness is. The problem of e contrario is obvious: how may it be that the law accepts a kind of argument at odds with simple logic? Starting from the same example again:

'Fault of an insured _ no insurance payment' =def 'a -> b' But a fault of a life insured person may not lead to exclusion of payment, as life insurance is

specifically aimed at insurance of risks for relatives of faults of persons whose lives are insured. This exception to general rules of insurance was probably overlooked by the legislature, so e contrario adjudication was unavoidable here. Or: a fault of a life insured person may not be taken to be a fault of an insured person in this connection, or:

¬a

[a -> b, ¬ a] -> ¬b

Which is no good logic of course and brings to light the basic problem of e contrario. Abduction here again, because denying the antecedent may here be taken to be equivalent to accepting the consequent:

[a -> b]->[¬ b -> ¬ a]

The problem seems to disappear when 'a -> b' may be interpreted as a replication or as stating a as a necessary condition for b:

[b -> a, ¬ a] -> ¬ b

But this will not do, as legal consequences are seldom if ever consequences of one specific legal condition only (Kaptein, 1993).

Like in the case of analogy, problems of logic are solved here at the cost of the quality of premisses: *petitio principii* again. Still, e contrario too may be validated by exclusion of alternative sufficient conditions for the legal consequence to be denied, or something like:

c, d, ...: alternative sufficient conditions for b

b -> [a v c v d v ...]
¬ a
¬ c
¬ d
¬ ...

_____

¬ b

Appeal to some or other kind of whole or wholes of the law is just as inevitable

here as it is in the case of analogy. Only if no other sufficient condition may be found anywhere in the law, the contested legal consequence may be denied because there is no legal condition for it at all. For example: exclusion of payment by the insurer may also be a legal and/or contractual consequence of the insured not having paid for the insurance. More so than in the case of analogy, relevant legal conditions may be limited by legal procedure. For example: appeal to wholes is largely irrelevant under procedural rules limiting relevant legal conditions to what is brought forward by parties.

Like analogy, e contrario may be regarded as *pia fraus*, or *fraudulenta pietas*, suggesting that denial of a legal condition will do the work while really relying on some more implicit premises. Again, original data determine little of the desired result, though probably more so than in analogy. Like analogy, e contrario may do well in contexts of discovery, but as such it is no good as justification.

5. Circumstantial evidence

Though almost all argument in the practice of law and adjudication has to do with disputed facts, little or no attention is paid to facts in jurisprudence and theory of legal argumentation (see also Golding, 1984). Here the specific problem of circumstantial evidence will be discussed, though this problem is only one of many having to do with evidence and proof (Wagenaar, Van Koppen & Crombag, 1993).

Circumstantial evidence does not lead conclusively to proof of the facts in question. Its relationship to the facts in question is more or less indirect in some or other way. Or: possible facts in the past for which proof is sought may be part of a historically adequate explanation of the circumstantial evidence presently available, but they may be not. In that sense, proof of facts from the past on the basis of presently available circumstantial evidence is a kind of archaeology (Kaptein, 1998). The issue here is the logic of the relationships between circumstantial evidence and facts for which proof is wanted. Thus the quality of circumstantial evidence in itself, apart from its qualities as proof for facts in question, is no issue here.

A simple example may clarify these abstractions:
If the landlady killed the boy, then a corpse must be found in the
closet (etc.)
A corpse was in the closet (etc.)

_____

The landlady killed the boy (etc.)

The corpse in the closet here figures as circumstantial evidence for the killing of the boy by the landlady. The premisses of this highly simplified argument may be more or less plausible, as the killing by the landlady may well do as an explanation of the corpse in the closet. Also, it may be taken for granted that there was in fact a corpse in the closet. But the logic of the argument is no good, or at best abductive. Again, things may be turned round: no more problems of logic then, but at the price of a highly implausible premiss:

If a corpse was found in the closet, then the landlady killed the boy (etc.)
A corpse was found in the closet (etc.)

_____

The landlady killed the boy (etc.)

The second argument is a *petitio principii* again, steering round the principal problem of circumstantial evidence. The killing may be a plausible explanation of the corpse in the closet, but it remains to be ascertained that it actually is the historically adequate explanation. Again, abduction is here to be validated by exclusion of alternative explanations or sufficient conditions for the circumstantial evidence available:

'The landlady killed the boy' = def 'e'

'A corpse was found in the closet' = def 'f'

g, h, ... : alternative explanations for the corpse in the closet

e -> f
f -> [e v g v h v ...]
f
¬ g
¬ h
¬ ...

_____

e

A difference, at least in degree, with analogy and to a lesser extent with e contrario here is that specific circumstantial evidence may well play a major role

in a fully explicit argument validating abduction. Circumstantial evidence may indeed vary from a tiny trace not having any obvious connection to the facts in question to evidence so overwhelming that scarcely any room is left for alternative explanations and thus for doubt concerning the facts for which proof is wanted. However, the basic problem remains the same. As long as there is no direct evidence, alternative explanations of circumstantial evidence cannot be excluded.

Analogy and e contrario may be regarded as more or less innocent varieties of *pia fraus*, or *fraudulenta pietas*. Circumstantial evidence however may well lead to really fraudulent conviction of the innocent, if insufficient attention is paid to the possibility of alternative explanations. This possibility points to the importance of something like "the whole of the facts" having to do in some or other way with circumstantial evidence available.

6. (Principled) wholes

Wholes are notoriously difficult to grasp and this has not just to do with their size. Here, the whole of the law may be understood as relying on notions of consistency and coherence. Consistency as such will not do, though it is an important quality of any set of rules and principles. Coherence goes much further and can only be understood as determined by general rules and principles allowing for the inference of more specific rules (Kaptein, 1996).

In the preceding discussion of analogy and e contrario it already became clear that specific legal rules cannot completely determine underlying general rules and principles. This may be generalised by noting that any set of specific legal rules may be organised in terms of alternative general rules and principles. Not all of such general rules and principles may be equally plausible. However, such plausibility cannot completely depend upon any original data given within a legal order.

This excludes the possibility that analogy and e contrario, though not to be based upon original data specific to them like analogata or legal conditions denied, may still be indirectly based upon any set of original data constituting the law as a whole. General rules and principles cannot be reduced to any set of original data, though their plausibility does of course depend in great part upon their capacity to better organise the manifold of data of the law than alternative general rules and principles do. So anything like the whole of the law must depend on general rules and principles. Such general rules and principles cannot in their turn be completely determined by any kind of whole or wholes in their turn. What then

may be underlying wholes in argument from circumstantial evidence to establishment of facts? This is a still more difficult question than it is in the case of analogy and e contrario, relying as they do on law as a principled whole. What may be "the whole of the facts", if this is a sensible concept at all? Of course it cannot mean: "everything in the world". At best, it may mean something like: everything possibly causally connected to the facts in question. Problems of causation here point to the importance of rules of thumb and other often implicit expectations concerning explanations of occurrences (Wagenaar, Van Koppen & Crombag, 1993, Kaptein, 1999). Such implicit expectations and explanations may seem to render irrelevant many factors in history preceding the facts in question. Their role may be more or less analogous to general rules and principles organising the whole of the law.

This may do in everyday or even not so everyday life, like in Pirie's transparent dress case (§ 2). However, it cannot lead to acceptable certainty on disputed facts in the law. In civil cases, facts may be established by rules of procedure like the absence of any disproof put forward by other parties. In criminal procedure this is of course out of the question. Criminal courts have special responsibilities concerning circumstantial evidence and impression has it that such responsibilities are not always taken seriously (Wagenaar, Van Koppen & Crombag, 1993). Miraculous things may have happened, even if everything seems to plead against a criminal defendant.

That is: things miraculous from the point of view of standard explicit and implicit expectations and rules of thumb on "how things normally happen" but still imaginable in the sense of not to be excluded on the basis of convincing evidence. Not a few convictions are based upon all too common assumptions on how things are happening in the world.

Artificial intelligence may not be expected to do better than humans here. Still, some courts in so-called civilised legal orders have been doing so badly in reasoning about facts that they may be better replaced by a simple kind of artificial intelligence letting all criminal defendants go free when there is no more than circumstantial evidence against them.

7. Abduction of artificial intelligence

Analogata, legal conditions denied, or pieces of circumstantial evidence as such offer no good reasons for the conclusions purportedly to be inferred from them. So the question concerning the feasibility of artificial intelligence in adjudication

is: may artificial intelligence conceivably supply the enthymemes in abduction, as exemplified in analogy, e contrario and argument from circumstantial evidence? For three distinct but related reasons this is highly unlikely.

The first reason already emerged from preceding discussion. Analogy, e contrario and argument from circumstantial evidence depend upon wholes which cannot be completely reduced to any original data. Analogy presupposes principles which presuppose wholes, e contrario presupposes wholes ascertaining that there are no alternative sufficient conditions. Analogously, circumstantial evidence may be useful only if alternative explanations may be excluded. Again, such exclusion presupposes something like a whole of relevant facts. How is any artificial intelligence fed with original data supposed to reconstruct such wholes?

Second, a principled whole or wholes in the law or in the realm of facts may even be impossible in principle, even apart from irreducibility to original data. Well-known criticisms of Dworkin's Herculean conception of law come to mind here (Kaptein, 1996). And even if such a principled whole would be possible in principle, in practice there could be no reasoned consensus on it.

Which leads to the third reason: adjudicative decisions may be more or less justified by reasoned recourse to general rules and principles, referring to something like the whole of the law, but then the question remains how to justify such general rules and principles and wholes in their turn. This is a notoriously difficult question, having inspired countless legal scholars to most impressive or at least more or less mind-boggling intellectual exercises.

Probably the most interesting, though rather theoretical contribution to this is the notion of reflective equilibrium (Rawls, 1971, Dworkin, 1986).

In practice however a very simple principle takes pride of place here. Notwithstanding Hart's principled distinction between finality and infallibility of adjudicative decisions, legal scholars, practitioners and laymen alike take it for granted that law is what judges do (Hart, 1994). How could it be otherwise? Such legal realism may be fatally flawed in as far as it is thought to apply to decisions as such, but something like it seems unavoidable even after rational reconstruction of principled reasons behind adjudicative decisions.

This means that justification of adjudicative decisions cannot but partly rely on authoritative decision at least concerning underlying general rules, principles and wholes. Of course, judicial authority in its turn ought to rely on the authority of argument, but then it is impossible in principle to completely reduce such authority to argument.

Judicial authority is a most complex phenomenon, having to do with tradition and many more factors outside the spheres of argumentation, logic and principle. It is inconceivable that any kind of artificial intelligence is to take over such a role. Nobody in her right mind would accept adjudicative decisions created by artificial intelligence (though some judges do so badly that one might wish artificial intelligence to step in).

The same holds good for argument from circumstantial evidence. Doubts on uncertain facts have to be settled in the end and again it is up to the judiciary to do so. Still there remains the uncertain feeling that there may be something like objective truth on the past after all. If so, the practical necessity of judicial determination of uncertain facts cannot escape principled criticism of arbitrariness. Which may indeed reduce the difference with artificial intelligence arbitrariness.

It cannot be excluded beforehand that artificial intelligence may reach adjudicative decisions in ways completely different from human heuristics. That is not the problem here. What counts is the quality of conclusions and arguments produced, not the ways in which such conclusions and arguments are produced. This quality cannot but partly depend on judicial authority, not to be replaced by artificial intelligence, however intelligent, in any way.

8. Objections

Several objections may be put forward against this criticism of artificial inteligence in adjudication. First, analysis in terms of abduction of analogy, e contrario and circumstantial evidence may be questioned. Second, it may be objected that in the practice of adjudication, analogy and e contrario arguments often are no more than repetitions of earlier, comparable arguments, already contained within original data. Third, the conception of "original data" implied here may be too meagre, excluding the elementary interpretative nature of legal data. Fourth, too much may be expected from artificial intelligence here.

The first objection cannot be conclusively answered here. Still it remains to be seen whether more plausible explanations of analogy, e contrario and circumstantial evidence are available or even conceivable. Also, such alternative explanations may well bring to light the very same problems. At least abductive explanations put forward here have the edge over alternatives in at least two respects.

First, such explanations lead to logically valid inference (a problem in alternative explanations) and second, they bring to light hidden backgrounds of analogy, e

contrario and circumstantial evidence. The second objection starts from an indubitable fact of adjudication, but is in fact irrelevant. Surely many analogous and e contrario arguments are no more than repetitions of precedents. But this is not the point here. Time and again analogies and e contrario arguments prop up which cannot be derived from adjudication in the past. Adjudication in modern legal orders is full of examples of this, indeed often setting the lead for future adjudication. What matters here is the importance of analogy etc. not featured in adjudication
before.

This objection fails completely in the case of circumstantial evidence. In practice, no two cases of circumstantial evidence are exactly identical and it may even be doubted whether this is a theoretical possibility. To the contrary, it may be most dangerous to take it that circumstantial evidence is identical in consequences for facts of charges (or for contested facts in civil or administrative cases) to consequences decided upon in earlier cases of more or less identical circumstantial evidence.

Third, the conception of original data expounded here may wrongly leave out of account that such data mean nothing without interpretation and that within such interpretation general rules and principles already go hidden. No doubt this objection has some truth in it. However, it is especially in analogy, e contrario and circumstantial evidence arguments that such interpretative loading of original data won't do the work or may even dangerously develop into uncritical preconceptions.

Analogy cannot be based upon interpretation indeed. One more example: according to section 7a: 1612 of the Civil Code of The Netherlands, selling a house is of no consequence for renters of the house (to simplify things a bit). Analogy here has it that donating a house will have the same consequences for renters, based on the underlying principle that renters are to be protected against any such changes of ownership. Of course there is no sensible interpretation of the concept of sale including the concept of gift. It is the same with e contrario. Interpretation of a legal condition in such a way that it may lead to a valid e contrario conclusion by itself cannot be plausible, as such interpretation would amount to unacceptable replication (§ 4).

It probably goes without saying that interpretative loading of circumstantial evidence is not only implausible but even downright dangerous. Such interpretation would amount to implicit recourse to normal expectations and

everyday rules of thumb, not just leading to abductive failure in argument but to abduction to jail or other undeserved punishment of the innocent as well.

Against the fourth objection it may be conceded that artificial intelligence in adjudication may make sense without going all the way. Artificial intelligence may be much more successful in procedural law and/or in other areas of legal argumentation in which argumentation appealing to undetermined wholes is largely irrelevant. On the other hand the question arises whether such artificial intelligence is really more than advanced data retrieval. The argument expounded here claims no more than that artificial intelligence cannot go all the way.

9. Conclusion

If any artificial intelligence would come up with anything like a refutation of this sceptical view of artificial intelligence in adjudication, the main contention of this article must of course be abandoned.

Such a refutation may take two different forms: artificial intelligence does the job, or artificial intelligence refutes the arguments expounded here. Anyway, who does not like results argued for here may well skip the artificial intelligence part and restrict attention to the abductive logic of analogy, e contrario and circumstantial evidence. Even these abductive results may be abducted by artificial intelligence. However, it is to be expected that before any such intelligence is to be taken seriously, the humane intelligence of artificial intelligence and argumentation specialists will step in.

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ISSA Proceedings 1998 – The Good Case For Practical Propositions: Limits Of The Arguer's Obligation

To Respond To Objections

1. Introduction

This paper will discuss several questions about public deliberative argumentation raised by Trudy Govier's conception of a Good Case. In the interests of "developing realistic standards for the evaluation of arguments and argumentation," Govier distinguishes between an Exhaustive Case for a proposition and a Good Case. Unlike the *Exhaustive Case*, she observes, "the *Good Case* does not require that the arguer respond to *all* objections and *all* alternative positions." (Govier, 1997: p. 12) This important concept has special significance for studies of the public argumention which enables groups, institutions, polities, etc. to reach decisions regarding their future acts and policies. It may be that Govier's conception of the Good Case identifies a basic contour of the normative ideal for public deliberative argumentation. To explore this possibility, I will, first, attempt to identify an ideal function for public deliberative argument which plausibly implicates a Good Case as its normative ideal. Second, I will try to clarify the concept of a Good Case as a norm for deliberative argumentation.

2. The Normative Status of a Good Case in Public Deliberation

The issue here is not whether Govier's conception is important. Most approaches to the study of argumentation would, I think, recognize that given limitations of time, circumstances, etc., often an arguer could not reasonably hope to establish an Exhaustive Case for her position; the best that could be expected from an advocate in many situations is a Good Case – a body of argumentation which, at least provisionally, dismisses some remaining objections and (possibly) some alternative positions. Rather, the issue concerns the normative status a of *Good Case* as contrasted with an *Exhaustive Case*. Is the concept of a Good Case merely remedial, applying to argumentation which falls short of the ideal Exhaustive Case, or does the concept of a Good Case delineate an ideal appropriate to some modes of argumentation and, specifically, to those which involve interpersonal deliberation about practical concerns? I do not hope to answer this very difficult question; in the discussion which follows, I will only attempt to show it poses a serious choice for students of argumention.

The view that an Exhaustive Case is the normative ideal against which all modes

of argumentation are to be assessed has widespread and well articulated support in current studies of argumentation. It has able champions in the pragma-dialectical approach to the study of argumentation developed by Eemeren and Grootendorst and significantly elaborated by many others. According to pragma-dialectics, the norm of an Exhaustive Case corresponds directly to *the* ideal end served by argumentation. In this well-known view, argumentation ideally serves to *resolve* disagreement on the merits. (Eemeren & Grootendorst, 1992: 34; Eemeren, Grootendorst, Jackson & Jacobs, 1993: 25) Resolving a disagreement is held to require more than merely settling a difference of opinion by setting aside or repressing doubts and objections; rather, resolution of a disagree occurs ". . . only if somebody retracts his doubt because he has been convinced by the other party's argumentation or if he withdraws his standpoint because has realized that his argumentation cannot stand up to the other party's criticism." (Eemeren & Grootendorst, 1992: 34) A resolution-oriented system is "structured in such a way as to assure that if it comes to any settlement at all, the settlement is one recognized by both parties as correct, justified, and rational. Hence, one characteristic of the ideal model is an unlimited opportunity for further discussion; an ideal system does not constrain the possibilities for expansion of a discussion" (Eemeren et al., 1993: 25).

In short, the ideal of resolving a disagreement on the merits requires, according to pragma-dialectics, that proponents of a standpoint establish an Exhaustive Case, a case which answers all pertinent doubts and objections to the satisfaction of the parties to the disagreement.

Of course, a pragma-dialectical approach to the study of argumentation would not dismiss the idea of a Good Case as normatively or theoretically insignificant. Since a merely Good Case may leave some outstanding objections and alternative positions unanswered, a Good Case necessarily falls short of the ideal of resolving disagreement. It seems that proponents of a Good Case would necessarily violate the first two rules pragma-dialectics identifies for the conduct of ideal critical discussions:

(i) such proponents would in some way inhibit other parties from advancing standpoints or casting doubt on standpoints relevant to the disagreement and (ii) they would sometimes fail to defend their standpoint when another party requests that they do so (Eemeren & Grootendorst, 1992: 208).

But pragma-dialectics recognizes that in real life argumentation is often

conducted under less than ideal circumstances and constraints:
". . . practical demands such as the need to come to a decision now or an artificial limitation on the range of standpoints available for consideration will restrict the principle of open exploration of possible standpoints and the grounds for those standpoints."(Eemeren et al., 1993: 33) "Actual argumentative practices," are held to be shaped by these practical demands, "and institutions developed to control argumentation are built to over come or compensate for these constraints."(Eemeren et al., 1993: 34) Accordingly, in a pragma-dialectical view, the concept of a Good Case and corresponding argumentative practices are to be regarded as approximations to the ideal of an Exhaustive Case made necessary by limiting circumstances. The deformities of a merely Good Case, in this view, may be practically necessary, but a pragma-dialectical approach to the study of argumentation seems committed to interpreting a Good Case as a mere approximation to the ideal of an Exhaustive Case.

No doubt pragma-dialectics articulates a powerful ideal model for the conduct of argumentation. The view that argumentation ideally serves to resolve disagreement through an open-ended critical discussion is widely shared. It is explicitly drawn from Barth's and Krabbe's formalization of rules for the conduct of critical discussions, work with roots in the formal dialectics of the Erlanger school. (Eemeren, Grootendorst & Snoeck Henkemans, 1996: 246-275) A comparable conception of the ideals of argumentation have developed by the critical theorists Jurgen Habermas, Karl-Otto Apel, and their students.(Benhabib, 1990: 336-355; Habermas, 1990: 90) Indeed, the idea that argumentation ideally aims at a mutually satisfactory resolution of disagreement through an open-ended exchange of reasons and objections runs at least back to Plato's Socrates. And it seems apparent that full rational resolution of disagreements is the predominate ideal appropriate to some kinds of arguments, viz., scientific and theoretical argumentation among experts. Nor would I want to deny that resolving disagreement on the merits is an important, though often unrealizable hope, in other contexts.

But must we suppose that all modes of argumentation are subordinate to a single ideal end? "Aren't there many different forms of argumentative interaction and not just one ideal type?" asks Robert Maier.(Maier, 1989: 55) Western scholarly traditions provide ample historical precedent for the view that there are several distinct modes of argumentation with distinct normative structures which do not reduce to a single ideal type. Aristotle, all will recall, distinguishes between the

argumentative discourse among the learned in the sciences and theoretical disciplines, i. e.,dialectic, and the argumentative discourse addressed to ordinary citizens regarding the practical concerns and legal affairs of the community, i. e., rhetoric. (Aristotle, 1954: 1356a25-1358a35) And he quite explicitly warns against expecting argumentation outside the sciences to conform to scientific standards of reasoning and proof. (Aristotle, 1941: 1094b10-25) Similar distinctions between dialectical argumentation and rhetorical argumentation come down to us from the traditions of rhetorical study that run from Isocrates through Cicero and Quintilian. And something like these distinctions survive in the argumentative practices of our own time.

But it is not so clear what the traditions which recognize distinct rhetorical modes of argumentation identify as an ideal that might correspond to the dialectical ideal of fully resolving disagreement on the merits of reasoning and evidence. Aristotle, for example, identifies three distinct modes of rhetoric: deliberative, judicial, and epideictic. (Aristotle, 1954: 1358b1-25) He assigns each an end, but the ends Aristotle adduces for his rhetorical genre are not ideal functions of these modes of argumentation. Rather, the end for each genre is the basic proposition that an advocate must be prepared to sustain if she is to carry the day when arguing that kind of case. Isocrates, Cicero and Quintilian are each concerned with characteristics of the ideal orator and with the education necessary to produce such an advocate. But their discussion of the ideal orator is so speaker centered, so single source specific, that is not immediately easy see what these students of rhetorical art take as the ideal for dialogues or argumentative interactions between rhetors. And it can seem that the traditions of rhetorical art are preoccupied with questions about how to persuade audiences to the exclusion of interest in norms of discourse as related to the ideals of any type of argumentation.

Nevertheless, it is, I think, possible to identify from within the inheritance of rhetorical studies an ideal which remains relevant to our public discourse about practical affairs, whether that be the political discourse of a state, the institutional deliberations of an organization, or the deliberative dialogues within informal groups. As a starting point, I offer an ideal articulated by the great Athenian leader Pericles. Speaking in 430 B. C. E. as the official voice of the city in honoring the Athenians who had fallen that year in war, Pericles provided a now famous inventory of the achievements and institutions which he claimed comprised the greatness of classical Athens. His final boast is of special interest to students of argumentation. The great distinguishing excellence of Athens,

according to Pericles consisted in her citizens' ability to muster the greatest daring in action, while carefully debating beforehand the expediency of their measures. The courage of others, he maintained, was the result of ignorance; deliberation made them cowards. (Thucydides, 1952: 2: 40) Here, I suggest, we have the kernel of an ideal for deliberative argumentation. Simply put, a Periclean ideal expects deliberative argumentation to issue in well-informed and resolute action suited to the exigence at hand. A precise statement and thorough defense of this suggestion is beyond the scope of the present essay. Here I want only to indicate that something like this ideal is at least implicit in classical rhetorical conceptions of deliberative excellence, that this ideal continues to animate significant contemporary reflection on deliberative argumentation, and that ideal seems to implicate something like Govier's conception of a Good, but less than Exhaustive Case, as one of its primary norms.

Consider Pericles's boast as an expression of the culture which gave rise to classical rhetorical arts. Pericles was not alone in lauding Greek deliberative excellence. Nicole Loraux's celebrated study of the Athenian funeral oration reminds us.

For Herodotus, the history of the cities is that of decisions, and on the Greek side there was no battle that was not preceded by a genuine debate: various opinions had to be expressed before the best carried the day, for according to the optimism then reigning, the best always did win the day. This strictly political schema is Greek, of course, and stands in stark contrast with the false deliberations of the barbarians (Loraux, 1986: 205).

Pericles' boast casts the deliberative excellence of Athens in terms of this Greek commonplace regarding the ideals of deliberation. A Periclean ideal for deliberative argumentation is implicit in the cultural value ascribed to rhetorical art by the traditions of study which descend from Isocrates through Cicero and Quintilian. (Kimball, 1986: 26-28; Schiappa, 1995: 50) In this connection, the opening paragraphs of Cicero's *de Inventione* are instructive. Here Cicero rehearses a myth which attributes the civilization of men, first, to the founding of cities and, then, to discourse which was both wise and eloquent:

. . . after cities had been established how could it have been brought to pass that men should learn to keep faith and observe justice and become accustomed to obey others voluntarily and believe not only that they must work for the common good but even sacrifice life itself, unless men had been able by eloquence to persuade their fellows of the truth of what they had discovered by reason.

(Cicero, 1949: I.3)

According to Cicero, excellence for rhetorical argumentation consists not simply in persuading the community; persuasive success can corrupt a community, if the discourse is not well argued (Cicero, 1949: I.4) Rather, ideal rhetorical argumentation eloquently articulates the truths of reason so as to engender just and appropriate action by the community, while cultivating the habit of such virtuous action. In these traditions of rhetorical art, the orator is to learn from dialectical training, but her own argumentation, responding to the demands of public dialogue, needs a vigor, timing, and grace which is missing in dialectical disputation (Quintilian, 1920: 12.2.11-15).

As inheritors of a culture shaped both by traditions of rhetoric and of dialectic, contemporary students of argumentation inhabit a world in which the Periclean ideal for deliberative argumentation is still very much alive. John Dewey's analysis of *The Public and its Problems* can serve as a indication of the continuing vitality of that ideal. According to Dewey, the central problem of democracy is to transform the actions of self-interested individual hands so that they will act jointly as required by social needs. (Dewey, 1927: 82). This great pragmatist holds that the first prerequisite for drawing individuals into a functioning public (add: group, committee, team) capable of responding to community needs is mutual recognition of the consequences of joint action; however, in complex modern societies, Dewey argues, the agency of joint action is hard to perceive (Bitzer, 1978; Dewey, 1927: 131) Thus, the "prime difficulty . . . is that of discovering the means by which a scattered, mobile and manifold public may so recognize itself as to define and express its interests" (Dewey, 1927: 146). The second prerequisite is a sense on the part of individuals of participating in the life of the community and especially through "the give-and-take of communication" (Dewey, 1927: 154). For Dewey, the only possible way to satisfy these requisites for the development of an effective public consists in "perfecting the means and ways of communication of meanings so that genuinely shared interest in the consequences of interdependent activities may inform desire and effort and thereby direct action" (Dewey, 1927: 155). And, more specifically, the creation of an effective public depends upon the development of argumentation regarding shared interests and concerns. "The essential need," Dewey writes, "is the improvement of the methods and conditions for debate, discussion and persuasion. That is *the* problem of the public." (Dewey, 1927: 208) Thus, in Dewey's analysis of the public and its problem, the predominate ideal for public

deliberation has a clear Periclean echo: to debate the expediency of measures vigorously beforehand and to generate a public which both does and is capable of wisely deciding and acting on its decisions. Dewey's pragmatism both reflects and influences much twentieth century thinking about rhetorical argumentation (Bellah, Madsen, Sullivan, Swidler & Tipton, 1985: 167-218; Bitzer, 1968; Bitzer, 1978; Sproule, 1997).

At this point it might be objected that the ideal for deliberative argumentation which I have attributed to Pericles is not an aspiration for a kind of argumentation but rather an ideal for institutional arrangements – a matter for political, social and organizational theory, not centrally a matter for students of argumentation. This is an important and difficult objection for which I have no decisive answer. But I doubt whether students of argumentation can or should avoid the question of how deliberative argumentation prepares arguers for action and both carries over into action and conditions a group's capacity to act. At the macro-level of organization, argumentation has an irreducibly social structure within which duties are assigned to advocates and norms are defined in terms of the execution of those duties. Where argumentation addresses the concerns and interests of a group, institution or community, it is hard to see how macro-level evaluation can assess the social organization of the argumentation without consideration of how that structure interacts the larger life of the group, institution or community.
It is, I think, a platitude that the quality of argumentation within a decision-making group conditions the group's capacity to decide and act on its decisions. So I think argumentation theorists properly have an interest in how the norms for argumentation relate to the broader engagement of persons within communities of arguers. On that note, I should like to return to the significance of Govier's concept of a Good, but not Exhaustive, Case.

If we suppose that deliberative argumentation on public issues aims ideally at well-informed and resolute action which meets the exigence at hand, then it is also plausible to suppose that Govier's concept of a Good Case marks out the contours of a normative ideal for deliberative argumentation. In order for argumentation to issue in appropriately vigorous action, it must be possible to bring the argumentation to some sort of closure within limitations set by time and circumstances. Very often action – whether private or public, individual or joint – must be taken within the temporal limits of the opportunity to act; all too often if action is not taken in a timely fashion, the problem at hand deteriorates into a

new and more intractable difficulty. And where joint or public action is required, the window for timely action may be further circumscribed by circumstances which limit the opportunity and resources available for deliberation and debate. There are serious costs associated with public (and group) deliberation involving scarce resources of time, energy, information processing, education and trial. The time required to deliberate about one problem all too often is time taken away from the effort to resolve another pressing difficulty. And where these resources do not seem to members of the community or the group to be well spent, where the deliberation drags on and on without conclusion, it comes to seem to many that deliberating is a waste time. There then arises the serious possibility that members of the community or group will lose confidence in the community's or group's capacity to deliberate, and the community or group's ability to deliberate regarding its concerns and to vigorously execute its decisions is apt to deteriorate. In short, if the deliberation of a community, institution or group is to issue in well-informed and resolute action, its argumentation needs to prudently come to some kind of closure within the temporal limits fixed by the opportunity to act and by the resources which can be devoted to deliberation. While it is practically important to bring deliberative argumentation to appropriate closure, if all potential doubts and objections are to be considered, then deliberation may ramify indefinitely. The range of doubts and objections which can be raised with respect to a prospective course of action is, in principle, limitless. The consequences of action ramify indefinitely into the future, so the potential for dire outcomes which can be raised against any prospective course of action is limited only by the imagination of those inclined to oppose adoption of that course of action. And in many situations, the array of alternative courses of action which could be considered is vast. It follows that that if deliberative argumentation is to issue in well-informed, appropriately vigorous and timely action, some conception of a Good Case is needed which limits the range of objections to be considered.

3. A Good Case in Deliberative Argumentation

Govier's conception of a Good, but less than Exhaustive Case emerges in connection with her efforts to clarify what Ralph Johnson has called the second tier of argument appraisal (Govier, 1997: 1). Govier and Johnson recognize two tiers or levels on which arguments can be evaluated. The first level, referred to as the logical tier, "is the familiar one of premises and conclusion: an argument is evaluated, at this level, on the basis of how well its premises support its conclusion" (Govier, 1997: 1). The second *dialectical* tier concerns how well the

argument addresses objections and alternative positions. This is an important distinction; the second or dialectical tier for argument evaluation corresponds roughly to the level of case construction discussed in textbooks on debate and argumentation theory.And as a clarification of Johnson's original terminology, Govier suggests that, instead of speaking of two tiers, argumentation theorists speak of "building a case for a position."(Govier, 1997: 12) Constructing a case, in Govier's view, is a matter of presenting a main argument for the arguer's position and responding to objections and alternative positions "by offering cogent supplementary arguments in which either there is rebuttal or refutation, or the original position is amended"(Govier, 1997: 12). A Good Case requires that the arguer have a cogent main argument for his or her position and that he or she respond to objections and alternative positions with cogent supplementary arguments, but "unlike the Exhaustive Case, the Good Case does not respond to all objections and all alternative positions"(Govier, 1997: 12).

Govier concludes her account of the Good Case with two questions for further discussion, both of which are critical to whether the concept of a Good Case can serve as a normative ideal for public deliberative argumentation. First, Govier asks, "just *which* objections and alternative positions the arguer should address, in order to have a Good Case." This is a conceptual question about the caliber of the standards to be applied in determing whether objections and alternative positions are to be addressed. Are the objections to be answered the most telling, those put forward by the most influential or prestigious person, or, as Govier is inclined to suppose, those which are *dialectically* significant? (Govier, 1997: 13). The second question, which Govier raises in concluding her essay is how should we regard the possibility that arguing "on the dialectical tier may go on indefinitely"? For while Govier distinguishes between a Good and an Exhaustive Case, still within the limits of a Good Case she envisions the possibility that "arguing can go on forever, and new arguments and argumentation may be expected to emerge at any time" (Govier, 1997: 14). In the discussion that follows, I will take up these questions as they arise with respect to public deliberative argumentation, and I will offer an answer to the first question which, in turn, responds to the second by suggesting how deliberative arguments can be brought to suitable closure.

An important clue to answering these questions is, I think, provided by Govier's claim that "the arguer has a *dialectical obligation* to respond to objections and alternatives put forward by the audience. If we can clarify the nature and content of that obligation, then we can hope to determine what objections she is bound to

answer and when she can claim to have established a Good Case. It is entirely natural, and in keeping with terminology commonly used in studies of argumentation, to refer to this *dialectical obligation* as the arguer's *burden of proof,* i. e., her probative obligations. In this connection, studies of the roles speech acts play provide compelling reason to believe that in much ordinary argumentation, the probative burdens which structure an arguer's case are generated by speech acts which initiate the dialogue between the arguer and those to whom her arguments are addressed (Eemeren et al., 1993: 91-96; Kauffeld, forthcoming). Thus, we may reasonably expect to find, at least, a preliminary answer to Govier's questions by reflecting on the burdens of proof undertaken in such speech acts as *accusing, proposing, advising,* and so on.

At this point, our inquiry faces an important choice. An arguer's probative burdens may be structured by any of various kinds of speech act. A proposer's burden of proof, for example, differs somewhat from the probative responsibility an arguer can undertake in an act of imperative advice, and both will differ from the probative burdens undertaken in making an accusation. (Kauffeld, 1986: 277-285; Kauffeld, forthcoming) This suggests that there is not a single answer to Govier's questions; what objections and alternative positions the arguer ought to address will vary depending on the kinds of speech act in which she incurs her burden of proof.

We cannot hope to survey the available variety of speech acts. If our inquiry is to remain manageable we must focus on a particular kind. The remarks which follow will focus on the speech act of proposing. Speech acts of this kind have suitable scope: in principle, any proposition which can be put forward for discussion and consideration can be proposed. Moreover, the burden of proof which proposers incur has properties which closely approximate Govier's conception of a Good Case.

Typically proposals are made in order to induce tentative consideration of a proposition or propositions which the addressee might otherwise be inclined to regard as not worth considering. (Kauffeld, 1986: 166-181; Kauffeld, 1995: 85-86; Kauffeld, forthcoming) In making a proposal, the speaker states the proposition(s) for which she is seeking consideration, and she openly commits herself to answering whatever doubts, objections and questions her addressee may have about her proposition(s) and her reasons for adopting it. This open assumption of a burden of proof is calculated to provide the addressee with reason for supposing that the proposer may well have diligently thought through the matter while taking her addressee's interests into account. Failure to provide adequate

answers would subject the proposer to criticism for making imprudent use of her addressee's time and attention, and the addressee may reasonably be expected to suppose that the speaker would not openly risk such criticism without first carefully preparing her case. Accordingly, the addressee is to presume that what the speaker has to say on behalf of her proposal may prove to be of interest, and on this basis, the proposer expects that her addressee will have good reason to at least tentatively consider the proposal.

Proposing, in short, is designed to induce participation in a dialectical exchange wherein the speaker has the burden of proof.

The burden of proof which a proposer openly incurs closely approximates the responsibility to establish a Good Case, in Govier's terms, for her proposal. To establish a Good Case, it will be recalled, the arguer must (i) provide a cogent case for her position and (ii) respond to some, but not all, objections and alternative positions with cogent supplementary arguments. These conditions are closely approximated by (i) the proposer's commitment to provide reasons for adopting her proposal which are well thought out and which take her addressee's interests into account and (ii) the proposer's pledge to answer her addressee's doubts and objections. Notice that while the proposer is committed to answering whatever doubts and objections her addressee raises, she is, nevertheless, not committed to providing an Exhaustive Case. The proposer's commitment to respond to objections is a token of her larger duty to make prudent use of her addressee's time and attention. Accordingly, she is committed to provide cogent supplementary arguments only to those doubts and objections *which are worth considering*, and she is at liberty to dismiss some objections by arguing that they do not merit consideration. Thus, the proposer's burden of proof does not require that she respond to all objections and alternative position by providing supplementary arguments.

The proposer's burden of proof is nicely exemplified by the probative obligations undertaken by the authors of the *Federalist Papers* at the outset of their argumentation. The *Federalist Papers* is a series of eighty-five letters written under the pseudonym of Publius by Alexander Hamilton, James Madison, and John Jay. Published in 1787 and 1788 during the course of public debates over ratification of the United State Constitution, the Papers provide a powerful and competently argued body of discourse advocating adoption of the newly proposed Constitution. The opening letter is a model of the probative burdens undertaken by proposers. There Hamilton proposes the Constitution for the careful and

candid consideration of his countrymen, and as rationale for the careful and unbiased attention he is seeking, Hamilton openly commits himself to its defense.

Yes, my countrymen, I own to you that after giving it an attentive consideration, I am clearly of opinion it is your in interest to adopt it [the new Constituion]. I am convinced that this is the safest course for your liberty, your dignity, and your happiness. I affect no reserves which I do not feel. I will not amuse you with an appearance of deliberation when I have decided. I frankly acknowledge to you my convictions, and I will freely lay before you the reasons on which they are founded. The consciousness of good intentions disdains ambiguity. . . . My arguments will be open to all and may be judged of by all. They shall at least be offered in a spirit which will not disgrace the cause of truth. . . . In the progress of this discussion I shall endeavor to give a satisfactory answer to all the objections which shall have made their appearance that may seem to have any claim to your attention (Hamilton, Madison & Jay, 1961: 35-36).

Here, Hamilton deliberately and openly commits himself to arguing for the proposed Constitution, showing his addressees that it is in their interest to adopt it, and he pledges to satisfactorily answer all those objections which arise in the course of the debate and which merit attention. He commits himself to providing a satisfactory answer to all objections, but holds open the possibility of dismissing some as unworthy of attention.

We are now in a position to offer an answer to our first question:

What kinds of objections and alternative positions need to be addressed in constructing a Good Case? For argumentation on behalf of a proposal, objections and alternative positions should be answered with satisfactory secondary argumentation (a) if they have been raised or put forward by other participants in the dialogue and (b) if they are worth considering, given the circumstances. This is a comfortably broad rule of thumb. In principle objections which raise doubts about the cogency of the proposer's arguments, the thoroughness of his consideration of the interests bearing on his proposal and of the consequences likely to attend its adoption – all these deserve cogent answers. In fact this rule of thumb is so broad that, at first glance, it seems almost uninformative. But that is a misunderstanding. In argumentation on behalf of proposals the important question is, What shows that an objection or alternative position is not worth considering? If an objection is raised or alternative position is put forward, the proposer presumably has a responsibility to answer. Her answer, however, may be that the objection or alternative position is not worth considering, and in the

event that this is her response, she has the burden of showing why the objection or alternative position is to be disregarded.

The text of the Federalist provides indication of the grounds on which objections may fail to merit consideration. Publius argues, for example, that objections which raise potential harms or dangers which cannot be foreseen within the time the proposal must be weighed do not merit consideration. This line of thought plays a sweeping role in the *Federalist Papers*. Many of the dangers projected as possible consequences of following the plan proposed in the Constitution, Publius maintains, would occur only if the legislature adopts this or that specific policy in spheres which any form of government must leave to the law-giver's discretion. Since neither Publius nor his opponents can foresee whether Congress would enact the policies in question, these objections do not merit consideration (Hamilton et al., 1961: 185, 196, 207-208, 228-289). Elsewhere, an objection may fail to be worthy of consideration, if it cannot be substantiated, (Hamilton et al., 1961: 156-57) if it raises a theoretical possibility which is contrary to fact (Hamilton et al., 1961: 166-67), if it is entirely at odds with commonsense (Hamilton et al., 1961: 146), if it posits a danger that safeguards reduce to a very low level of risk (Hamilton et al., 1961: 157-87). There are, no doubt, other grounds for dismissing objections as unworthy of consideration, but these examples suffice to illustrate how proposers can limit the range of objections to which they must respond by providing supplementary arguments.

How, then, can the proposer bound her argumentation, or is she committed to an endless dialogue? As Govier observes the concept of a Good Case leaves open the possibility that, even though the arguer does not have to exhaustively answer all objections, still the range of objections she should answer might be indefinitely large (Govier, 1997: 14). This important point holds for a Good Case on behalf of a proposal. A cogent body of argumentation for a proposal, which includes cogent supplementary arguments in response to all objections which have been raised and seem worth considering, cannot entirely rule out the possibility that tomorrow new objections might arise that are not only worth considering, but are also telling. For this reason I would prefer to speak of an Apparently Good Case, rather than a Good Case. I have used Govier's terminology because I have been trying to build on her ideas. To describe an body of argumentation as an Apparently Good Case does not imply that it is not a Good Case; things may be as they appear. But it does imply that, upon subsequent viewing, econsideration, re-evaluation, etc., the arguments which now seem good *might* turn out to be

defective (Kauffeld, 1995: 79; Perelman & Olbrechts-Tyteca, 1969: 415-419). Given that an Apparently Good Case for a proposal leaves open the possibility that subsequently significant new objections might arise, how could such argumentation reach closure as required by the Periclean ideal for deliberative argumentation?

An Apparently Good Case for a proposal reaches closure, not by exhausting the domain of conceivable objections, but by affording powerful reason for drawing the argumentation to a conclusion. When the proposer has provided a cogent case for her proposal and has provided cogent supplementary arguments to all those objections which seem to be worth considering, she is in a position to claim that she has discharged her burden of proof. She is also in a position to claim that her addressees now have an obligation to carefully consider the arguments she has offered on behalf of her proposal – arguments which cogently call for its adoption, and she is in a position to demand that if deliberation is to continue, opponents of the proposal justify the time and energy that delay will involve by accepting the burden of proof (Kauffeld, 1995: 84-86). These are powerful grounds for bringing a deliberation to close; they are the terms on which Publius brings argumentation in the *Federalist Papers* to its conclusion (Hamilton et al., 1961: 523-24). Often, where the persuasive force of an Apparently Good Case for a proposal does not provide adequate reason to conclude a deliberation, the deliberation ought to continue.

But we have, at any rate, reached the temporal and physical limits of this essay. I have been exploring the idea that Govier's concept of a Good Case may delineate the basic contour of the normative ideal for evaluating public deliberative argumentation. I have tried to identify a normative ideal for deliberative argumentation and have tried to elaborate Govier's conception in ways which would fit that ideal. My discussion leaves many important questions unanswered. Is the potential persuasive force of an Apparently Good Case for a proposal capable of supporting vigorous and timely action as envisioned by the Periclean ideal for deliberation? How can that ideal be more clearly formulated? On what grounds can it be defended besides the empirical footing outlined above? I hope to have indicated that argumentation theorists may productively inquire after the normative ideals for deliberative arguments, but whether such inquiry requires that we recognize a variety of ideals for argumentation, rather than positing variation from *the* ideal of resolving disagreement, remains an open question.

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ISSA Proceedings 1998 – Promoting Interscholastic Debate

Among Tallahassee Secondary Schools

Introduction

It is difficult to believe that Florida's capital lacks a comprehensive program designed to promote and further interscholastic debate among its youth, but it is true. Although there have been Tallahassee high school debate programs in the past, presently none of the ten institutions responsible for educating high school students, nor the eight responsible for educating middle school students, support, in any capacity, a competitive debate team.While interscholastic debate continues to flourish in neighboring Florida cities such as Jacksonville, Tampa, and Orlando, Tallahassee remains sedentary.

This apathy toward interscholastic debate cannot continue, as academic debate represents a necessary co-curricular activity designed to develop and hone a variety of skills: organizational, research, oral presentation, and critical thinking. In fact, developing these skills has been identified as essential in responsible education, as Stewart, an associate professor of education, stated in an article entitled, "Secondary School Imperatives for the '90s – Strategies to Achieve Reform,"

Today's society makes the ability to analyze, reason, draw conclusions, and formulate intelligent decisions more important than ever. Critical thinking and decision making are essential for enhancing and perpetuating a democratic society, dealing with the ever-increasing complexity of societal issues and problems, processing the tremendous proliferation of information, and functioning in a highly technological age (Steward 1990: 72).

To rectify this glaring oversight by local administrators and teachers, members of the coaching staff of the Florida State Debate Team are prepared to launch a communication campaign designed to introduce competitive debate to Leon County. The purpose of this paper is to describe the elements of that campaign.

1. Description of the status quo

As stated earlier, presently there are no competitive debate teams among the Tallahassee schools, public or private. That is not to say, however, that to these schools 'debate' is a foreign concept. In fact, many of the secondary schools

currently employ teachers and/or administrators who were at one time debaters. Unfortunately, these life experiences have not been enough to establish any type of long-term commitment to interscholastic competition.

In April 1996 contacts were established at each of the following secondary education institutions. Surprisingly, each person who was contacted was enthusiastic about beginning a debate program. While this does not guarantee 100 percent adoption, it does mean that the diffusion campaign can address issues other than the benefits of debate as those are already understood.

2. Goals of diffusion campaign

As with any co-curricular reform, comprehensive changes take time, especially when one is targeting multiple sites. It would be unreasonable for us to expect that each of the above-mentioned schools will begin a debate program immediately. Therefore, we offer several incremental goals of this campaign. This tactic is supported by Stanley Pogrow:

While paradigm shifts are important in the evolution of knowledge, they are extremely rare. Most fields do not have even one per century. Moreover, they are seldom involved in the creation of breakthrough products. Indeed, most lucrative patents and products are incremental refinements of existing technologies (Pogrow 1996: 659).

We have no definitive time frame, though we expect a 'paradigm shift' to take several years.

First, we must establish a debate program at the individual secondary education schools in the Tallahassee area. Though most likely the initial diffusion will primarily target the high schools, it is our intention to involve the middle schools as soon as possible. While middle school participation is not essential to the survivability of high school programs, naturally it will be beneficial to establish 'feeder' debate programs for the high schools. Moreover, middle school students do have the mental capabilities to be involved. In fact, some of the most successful intercollegiate debaters began their careers in middle school.

Second, we must develop a local debate league wherein students have the opportunity to engage in interscholastic competition. The purpose of the league is to provide low-intensity competition for beginning programs as an alternative to the weekend invitational tournaments already available for more experienced debaters and/or established debate programs.

Third, we must provide local teachers with the necessary skills to successfully continue the league under their own administration. While initially the

administration of league competition will be handled by the coaching staff of the Florida State University Debate Program, it would be a tremendous strain on our resources should we need to continue such direct involvement. Therefore, the sooner the local schools can take over the administration the better. Finally, we must provide teachers with the necessary information to be able enter their debaters in state and national competition.

Part of the debate experience is to be able to travel, meet people from different areas of the state and country, and participate in well-attended tournaments. Local programs should compete against the more experienced programs as soon as possible. That is the only way to learn. Therefore, teachers must be made aware of tournament schedules, most notably those in Florida and Southern Georgia.

3. Analysis of the target audience

At first glance one might assume that as long as the teachers want a debate program, or students want to compete, that would be enough. Unfortunately, it is not that simple. Introducing and developing interscholastic debate among secondary schools in Tallahassee involves the consideration of several sub-populations: school administrators, teachers, students, and parents. Each of these sub-populations will have different reasons for adopting the innovation, and different perceptions related to cost of the innovation.

Campaigns should be designed with regard for audience characteristics, including capacity variables such as age, education, and intelligence; demographic variables such as gender and ethnicity; and personality, life-style, and psychographics variables (McGuire 1989: 47).

The next section will isolate the various sub-populations of the target audience, assess their individual needs, and consider the possible quantitative and qualitative costs to each sub-population. While some characteristics are 'homophilous' (Rogers 1995: 19), they are worth noting separately.

School Administrators

The adoption of new programs in Tallahassee schools is largely based upon a 'site-based' decision-making process. That is to say, for the public schools of Leon County, as well as the private schools, curricular and co-curricular decisions are largely left up to the Principal and/or the Assistant Principal for Curriculum. Most likely, administrators will choose to support a debate program in order to provide an enriched academic environment for their students. If, however, this does not

become a motivation, it could be that once several schools in the district adopt a program, administrators might choose to adopt out of some sort of 'peer pressure' (Rogers 1995: 265). That is to say, administrators will want representation of their school at a local interscholastic competition.

Administrators will primarily be concerned with whether the innovation is compatible with the stated 'vision' of their school. "An innovation can be compatible or incompatible (1) with sociocultural values and beliefs, (2) with previously introduced ideas, or (3) with client needs for the innovation" (Rogers 1995: 224).

In a restructured environment, it is the school's responsibility to make sure the necessary alignments between curriculum and accountability are in place, that people's roles and responsibilities are designed to serve the school's mission, and that people at appropriate decision points are empowered to do what is best for students (Jenkins and Houlihan 1991: 194). Therefore, a successful diffusion campaign must consider the unique needs and characteristics of each individual school.

Once this has been established, administrators will immediately consider the projected costs. Administrators are going to have two major concerns: time and money. Naturally, a debate program requires the time of both teachers and students. Additionally, a message is sent to a teacher that he/she will have more duties. Administrators must be prepared to compensate the teacher, in some way, for taking on more duties. " . . . schools that are succeeding with SBM [School Based Management] frequently reward individuals and groups on progress they make toward school goals" (Odden and Wohlstetter 1995: 36). This compensation usually takes the form of money, release time (i.e. an extra 'preparation' hour), a teacher's aide, or the assistance of a student teacher. While there are certainly existent debate programs where no such arrangement is possible, administrators have more success enlisting and maintaining the support of teachers when compensation is offered.

Administrators will also be concerned with the financial burden placed on the school. Nothing is free, and the schools of Leon County are especially aware of this. Initially, schools will not have a "debate budget." If we are to be successful, it is important that we provide inexpensive opportunities for competition. We can also make administrators and teachers aware of alternative possibilities for funding, such as corporate sponsors and bake sales.

Teachers

In creating a debate program, support from the Administration is only the beginning. Now, the support of teachers must be enlisted. Teachers and their organizations will assume an increasingly central role in shaping educational policy and implementing and operating school programs. Where this process has already occurred, the optimism, energy, and commitment released by the promise of teacher-defined educational reform have enabled schools to make great strides in important areas. Teachers have gained more respect from students because students know that teachers are trying to make education more relevant. Carefully planned teacher action can be the cornerstone of effective schools (Futrell 1988: 379-80).

Teachers are most likely to adopt this innovation to provide academic opportunity for their students: Teachers' implementation practices . . . [are] strongly influenced by their beliefs about students, as well as by their perceptions of student changes that result [ed] from their use of the innovation. As teachers gain[ed] new insights into their students' potential and the curriculum's effects on students, they . . . [are] willing to make further changes in their practice (Englert, Tarrant and Rozendal 1993: 457). Visible signs of academic improvement, or increased self-confidence among the students, will reaffirm a teacher's decision to adopt.

Teachers are most likely to continue the use of an innovation if their students demonstrate early success: Teachers take large risks when they depart from the instructional routines that are familiar to themselves and their students – routines that have predictable short- and long-term effects. When an innovation is implemented and their students make strong early progress, teachers are more likely to continue using the innovation. In turn, this affects their willingness to take further risks. On the other hand, if student progress is too slow or too long-term to gauge, teachers are less comfortable in taking serious risks (Englert et al. 1993: 458).

Therefore, a successful campaign will provide ample opportunity for students to succeed (i.e. local, low-intensity league competition), and reward beginning students for their efforts (i.e. with plaques and certificates).

Teachers might also choose to adopt based upon his/her desire to broaden professional horizons, and/or lend support to colleagues. Undoubtedly, the ability to train debaters and/or administer a debate team increases the marketability of a teacher. There are also possibilities for earning CEUs, or Continuing Education

Units, by attending workshops or lectures related to debate. Leon County Schools, for instance, has identified several objectives which can be met by attending a debate workshop (i.e. interpersonal/group communication and language arts instruction).

Finally, there are the 'lesser involved' teachers, or those who are not directly involved but whose support is vital. Other teachers in the school must be supportive to guarantee the survivability of the program. Oftentimes the Director of Debate relies on the judgment of his/her colleagues to recruit potential debaters (students who exhibit certain skills). Additionally, debaters frequently need to miss classes in order to compete, and it is essential that 'uninvolved' teachers recognize the importance of debate and competition. Traditionally, debate tournaments are considered 'school functions' warranting excused absences. Therefore, a successful campaign will either reach, in some way, those teachers as well, or at least make involved teachers aware of their colleagues' importance in the process.

In terms of cost, teachers are likely to be concerned with the following: acquiring knowledge about debate and administering a program, and strain on personal resources. Some teachers might really want to have a debate team, but might feel intimidated due to lack of knowledge, or discouraged due to projected strain on personal resources. A successful campaign will offer a variety of alternatives so as to not discourage an interested teacher.

In terms a acquiring the knowledge, a successful campaign will cater to several levels of experience, providing plenty of 'hands on' suggestions. " . . . a successful reform needs an effective pedagogical approach and intensive training for teachers in these pedagogical techniques" (Pogrow 1995: 21). In this particular target population some teachers were at one time involved in competition (either in high school or college), some were at one time directors of a debate and/or forensics program, but some have had no experience whatsoever. Therefore, as we lend assistance to these teachers, we need to adjust the level and amount of our assistance to the capabilities of the teacher.

We do not want a teacher to be offended because we are offering remedial assistance, nor do we want to risk resistance or 'discontinuance' (Rogers 1995: 21) because we are offering assistance which is too complex (Rogers 1995: 242).

. . . abstract theoretical principles cannot take concrete form without reference to specific classroom practice and activities. Successful change efforts require the provision of specific, concrete, and usable remedies to educational problems. In

fact, . . . teachers [do] little concrete development of the curriculum when they [are] given only abstract principles upon which to base their actions. . . . Research must be translated into a comprehensible set of teaching strategies that can guide teachers in the day-to-day details of classroom instruction (Englert et al. 1993: 447-8). As we introduce debate to the various schools, we must also make necessary teaching materials available, such as textbooks, worksheets, handouts, and classroom exercises.

In terms of the strain on personal resources, teachers are most likely going to be concerned about their time. Even when some sort of compensation is offered, this activity can require a great deal of time and energy. Teachers will want to be able to balance these demands with other commitments, both personal and professional. Spending time with debaters detracts from other classroom preparation, grading, as well as personal time with one's friends and family. Therefore, a successful campaign will provide teacher's withvarious strategies, namely life experiences of experienced debate coaches, to achieve that balance.

Students
Obviously, a debate program needs debaters. In creating a new debate program, teachers will most likely begin by recruiting students from their classes. There are other avenues as well. A successful diffusion campaign will encourage the possibilities of 'Open Houses' and sign-up sheets to involve as many students as possible. Some teachers might have the misconception that only the "A" students will be good debaters. We need to dispel this stereotype, encouraging teachers to accept every level of student, as long as he/she is willing to work.
Students will have their own reasons for becoming involved. Namely, students will focus on the possibility of academic advancement, the creation of a more respectable vitae for college, the thrill of competition, and the social opportunities of meeting other students. It is our responsibility to make students aware of the inherent and broad scope of benefits of this activity.
In terms of the costs, students are likely to be concerned with the strain on resources, both time and money. Debate is an activity that will 'cut into' time a student can devote to other extra- or co-curricular activities. For instance, students involved with sports teams, band, and other after-school clubs sometimes find it difficult to attend all weekly meetings and competitions. We must make students aware of the feasibility of integrating this new activity with others to which they are already committed. It can be done.

Money can also be a factor for these students, as traditionally high school students are responsible for various costs, such as xeroxing, office supplies, and perhaps meals at tournaments. Initially, it will be important for us to encourage teachers to provide office supplies for their debaters, and tournaments could be scheduled in such a way as to avoid necessitating the purchase of meals.

Parents

Given that this innovation involves the support of minors, parents must not be overlooked. Because debate represents a 'new' activity, parents will be interested in how this activity can be beneficial to their children. Parents are likely to have similar priorities as their children, such academic achievement and preparation for college.

Parents will also be concerned about the strain on their child's resources (i.e. time away from school, homework, and other co- or extra-curricular activities). Additionally, parents are going to want this activity to be fun and personally rewarding for their child. Parents will also have monetary concerns, as most likely they will be called upon to assist their children in debate-related expenses. A successful campaign will have to address these concerns, encouraging teachers to prioritize parental involvement. This can be done by inviting parents to watch their children compete, asking parents to chaperone debate trips, and providing parents with tangible evidence, such as a trophy showcase or a monthly newsletter.

4. Diffusion strategy

In consideration of the description of the status quo, the goals of the campaign, and the priorities and concerns of the target audience, we propose the following diffusion strategy, to begin the Fall 1996, for developing interscholastic debate in Tallahassee. This section will highlight some of our intentions.

The coaching staff of the Florida State University Debate team will initially be responsible for motivating the previously discussed target population. We are arguably the most appropriate 'diffusion channel' as, we possess a great deal of empathy (Rogers 1995: 342) for new debate coaches. We were all, at one time, a beginning debate coach. We can easily speak from personal experiences and help new debate coaches 'troubleshoot' when there are questions.

Diffusion investigations show that most individuals do not evaluate an innovation on the basis of scientific studies of its consequences . . . . Instead, most people depend mainly upon a subjective evaluation of an innovation that is conveyed to

them from other individuals like themselves who have previously adopted the innovation (Rogers 1995: 18).

First, we must continue to enlist support from school administrators. Prior contacts have predominantly been over the phone. Beginning in Fall of 1996, however, we will aggressively seek appointments with either principals or assistant principals at the currently uninvolved schools. Administrators will be able to explain their school's vision, and we will be able to offer suggestions for creating a program which will meet the school's needs. This should increase the likelihood of adoption, as Rogers has warned, "Change projects that ignore clients' felt needs often go awry or produce unexpected consequences" (341).

Second, we must create an atmosphere wherein administrators and teachers feel they are not alone. "Teachers need frequent and ongoing opportunities to talk with other members of the teacher-researcher community to continue to enhance their practice" (Englert et al. 1993: 460). To accomplish this, in part, we will create a local debate league, entitled the Greater Leon School Debate, or GLSD. This will help to establish a network among the interested parties. The League will have bi-monthly competitions, to be held on a rotation basis at the various contributing high schools, where there will be ample opportunity for teachers to interact.

. . . interpersonal channels are more effective in persuading an individual to accept a new idea, especially if the interpersonal channel links two or more individuals who are similar in socioeconomic status, education, or other important ways (Rogers 1995: 18). Additionally, the League will distribute a mailing list to the local teachers, so they can contact one another as the need arises.

Third, we must continue to schedule events which will help facilitate the development of the individual programs. In September of 1996, for instance, we plan on hosting a full-day workshop for interested teachers and students. We will provide researched lectures on the 1996-97 national high school debate topic, a forum for teachers to discuss their concerns, and a demonstration debate performed by members of the Florida State Debate Team. We are also considering a Fall weekend workshop for teachers, offering a repeat of information from Summer 1996, as many teachers might not have wanted to 'give up' their summer; and we will offer more advanced instruction for the teachers we have already assisted.

Fourth, we must make teachers aware of the possibilities for interscholastic

competition. We will begin on October 7, 1996 with the first GLSD competition. We hope to schedule another within three weeks after that. We would like to encourage the beginning programs to prepare students for the annual Florida State High School Debate Tournament, held within two weeks after the first GLSD competition. If, however, new programs do not feel prepared to compete against more experienced debaters from elsewhere in Florida and Georgia, we would like to encourage them to come and watch those debates. Finally, we will provide teachers with the 1996-97 high school tournament schedule (weekend invitationals) for both Florida and Georgia.

Fifth, in the interest in sustaining the individual programs, we are considering the feasibility of assigning each one of our debaters to a particular school in the area. Innovators must provide follow-up support and assistance over a longer period of time to effect significant changes. Researchers, too, may need to address the longitudinal nature of teacher development and learning in planning, evaluating, and explaining their instructional studies (Englert et al.1993: 454). Our debaters would then be responsible for meeting with teachers and students, perhaps twice a month, to assist in coaching. Traditionally, these 'assistant coaches' are monetarily compensated. We are aware, however, that beginning programs might not yet have a budget. Therefore, we would either a) compensate them ourselves (out of previously attained grant moneys from the National Forensic League), or b) simply require our debaters to do this as part of their grade.

Sixth, we are hoping to create, in the next year or two, a commuter summer high school debate institute for both teachers and students. This institute will be held at Florida State, and run for approximately two weeks. During this time, students will be placed in 'labs,' of varying levels of experiences, and teachers will be provided with instruction regarding both the debate topic and directing a debate program.

5. Considerations in projecting rate of adoption
As with the adoption of any innovation, there are several factors which will influence the success of this diffusion campaign. It is important to remember that although the decision to support a debate program is largely based upon the school administrators, we must not overlook the entire "social system" (Rogers 1995: 23).

First, the rate of adoption in Tallahassee cannot, in total, be measured against similar efforts in other communities.

There are also differences in the rate of adoption for the same innovation in

different social systems. Many aspects of diffusion cannot be explained by just individual behavior. The system has a direct effect on the diffusion through its norms and other system-level qualities, and also has an indirect influence through its individual members (Rogers 1995: 23). The Tallahassee system presents some unique problems, namely the nonexistence of any form of competition in the status quo. Also, the public schools of Leon County have been required to make a great deal of curricular adjustments over the past few years.

Developing a league 'from scratch' is much more difficult than merely enlarging a league to include the participation of more schools. The three Florida State coaches involved in the diffusion have mostly been involved with 'healthy' high school debate communities. A successful diffusion will have to reach each school equally, providing the necessary information for handling the unique frustrations that new directors and new debaters experience. Second, the amorphous nature of the type of "innovation-decision" (Rogers 1995: 28) will make the diffusion process more complex.

By definition, the introduction of interscholastic debate to Tallahassee is considered an "optional innovation-decision" in which teachers at the individual schools could decide whether they wished to support a debate program (Rogers 1995: 28). Given that it takes more than one program to have interscholastic competition, however, the survivability of a Tallahassee league, or even individual programs for that matter, basically depends upon a "collective innovation-decision" (Rogers 1995: 28). It is incredibly important for us to establish a network among the teachers in order to create some perceived interdependence. Teachers must be prepared in such a way as to feel a sense of responsibility, that if one should decide to 'back out' of the League, that action will affect many other programs.

Third, teachers must view this new role of a debate coach as somewhat voluntary. There have been many teachers who have been 'forced' to take on the added responsibility of directing a debate program. Historically, these teachers make less of an attempt to research the debate topic, and are not as concerned about registering his/her debaters in competitions.

Even when successful innovations are identified, reforms often fall short of intended goals because of the way innovators attempt to put innovations into practice. Often innovators attempt to disseminate research through a 'transmission model' by telling teachers how to teach. But this model has failed to make long-lasting changes in teaching practices. . . . An emerging view of professional development recommends the enhancement of current practice by

integrating research-based strategies and innovations into the teacher's classroom repertoire (Englert et al. 1993: 441-2).

Finally, we must encourage the involved teachers to involve their peers. While we are certainly capable of informing local teachers about the benefits and feasibility of a debate program, local teachers are the individuals who must 'spread the word.'

If individuals are convinced to adopt new ideas by the experience of near-peers with an innovation, then the more interpersonal communication an individual has with such near-peers, the more innovative the individual will be in adopting the new idea (Rogers 1995: 303).

We are debate coaches, but lack the life experiences and accompanying concerns of the secondary educator. Therefore, we can only do so much without their continued efforts to widen the network. Certainly there are other predictors as to the rate of adoption, but the preceding discussion highlights the major considerations we must have as we begin to diffuse the information among secondary educators. What we must do is continue to monitor our communication strategies, and be willing to alter our approaches when necessary.

6. Conclusion

It is a travesty that interscholastic debate does not exist among Tallahassee's secondary schools. Currently there are interested and enthusiastic teachers in most of these facilities. It is our duty, as those who have benefited both personally and professionally from the activity, to provide local educators with the necessary tools to provide this wonderful academic opportunity for their students. We look forward to doing all we can to guarantee that Tallahassee's youth has this opportunity in the 1996-97 academic year.

Appendix – 1996 Summer Debate Workshop for Teachers

Dear Teacher,

You are cordially invited to attend the 1996 Debate Workshop for Teachers, sponsored by the FSU Debate Team, June 17 – 19. Sessions on all three days will be 8:00 am – 11:30 am; 1:00 pm -3:00 pm. This Workshop is designed to provide educators with the necessary tools to develop a competitive debate team. Instruction will include, but not be limited to, to following:

– how to begin and maintain a debate program
– how to instruct basic debate theory (instructional materials provided)
– how to involve your school in a nationally recognized educational honor society

(National Forensic League)

– how to prepare for the 1996-97 national high school debate topic:

Resolved: That the federal government should establish a program to substantially reduce juvenile crime in the United States.

Presently, there is no competitive debate in the Tallahassee area. This Workshop is designed to change that. You will be a pioneer, but not alone. The goal of this Workshop is to set the groundwork for the youth in this area (7th grade and up) to develop valuable skills while at the same time enjoy the competitive arena. Moreover, this is an ideal way to increase your marketability as an educator. In-service credit is available for teachers.

As you are most likely already aware, debate can provide your students with the necessary skills to achieve both academically and professionally. Your students will polish various skills: organizational, research, oral presentation, and critical thinking. Additionally, debaters develop a keen awareness of current issues, both foreign and domestic. What you might not be aware of, however, is an impressive list of influential individuals who were at one time debaters: Lyndon Johnson, Joan Heggins (former Mayor of Tallahassee), Gerald Kagan (former Chief Justice of the Florida Supreme Court), Lawrence Tribe (Dean of Harvard Law School), Lee Iacoca (President of Chrysler), Ann Richards (former Governor of Texas), and Mark Fabiani (one of President Clinton's spokespersons), to name of few.

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ISSA Proceedings 1998 – Quintilian And The Pedagogy Of Argument

This essay deals with a Sophistic approach to argumentation known to ancient Greeks as antilogic and to Romans as controversia. I will use the terms interchangeably, along with other cognates like controversial reasoning and "in utramque partem," or reasoning on both sides of a case. I will claim that controversia represents a major alternative to the Aristotelian tradition of argument. Broadly speaking, Aristotelian argument assumes an individual thinker who follows the dictates of deductive logic and who works to develop a sound proposition subsequently defended against all opposition. Controversia proceeds by placing multiple claims in juxtaposition and then negotiating the conflicts among them. It fully embraces the contingency of its setting, emphasizing dialogical interaction between specific parties, on a unique occasion, with a particular purpose. If Aristotelian argument is predicated on the drive towards formal validity and epistemological certainty, antilogic is based on the inevitable contention between probable opinions and the possibility of consensus among interlocutors. If Aristotelian argument proceeds in a linear, monological fashion, controversia approaches knowledge indirectly, tacking back-and-forth among opposing positions and assuming that "truth" is provisional and will reveal itself in mixed, ambigous form. Antilogic is thus dialogical, sceptical, contextual, and ultimately practical, all of which I will try to clarify as we proceed.

In previous work, I have traced the philosophic foundations of antilogic in the sceptical pragmatism of Protagoras and pursued the basic features of antilogical practice in a number of post-Periclean sources (Mendelson 1998). I have also explored Cicero's *De Oratore* as an exemplary model of controversia (Mendelson 1997). As many of you know, the *De Oratore* displays considerable interest in an appropriate pedagogy for rhetoric, operating often as a master-class in the protocols of "in utramque partem."**[i]** With the transition from Cicero to Quintilian, pedagogy takes center stage. The presence of controversial reasoning in Quintilian has, of course, been noted before (Bonner 1969, 1977; Clark 1957; Kennedy 1969; Marrou 1956; Murphy 1990). In the present essay, I will argue, however, that controversial reasoning is not just an incidental element, one techne "inter pares" (among equals); it is, instead, the very heart of Quintilian's approach to rhetorical education. In other words, the *Institutio Oratoria* is principally involved in developing the concept of an "ideal orator;" and, as was the case with Cicero a century before, Quintilian is firmly committed to the notion that the "one and only true and perfect orator" is he who is able "to speak on both sides about every subject" (*De Oratore* 3.80). More specifically, I claim here that the pedagogy of controversia is ascendant in Quintilian because it fosters a sense of decorum (the ability to negotiate disagreement in ways appropriate to particular circumstances), while decorum, in turn, is essentially coordinate with prudence (the general ability to respond to controversy with dignity and common sense). Seen in this way, Quintilian articulates a syncretic vsion of argument, education, and culture, a vision of what Richard Lanham aptly describes as "the rhetorical paideia" (1993: 158; cf. 161).

In pursuit of this agenda, I will

1. briefly review the history of the controversial tradition,

2. explore Quintilian's own method of argumentation and inquiry,

3. focus on the role of the progymnasmata exercises and declamation in the "Institutio," and

4. extrapolate some general principles of controversial education from Quintilian and speculate on their potential contribution to a reconception of argument pedagogy today.

1. The History of Controversial Pedagogy

Quintilian is a neo-Sophist in the sense that his approach to education is pragmatic in focus and argumentative in nature (see Marrou 1956, Colson 1924, and Greer 1925). The first and, arguably, the most influential representative of

Sophistic education was Protagoras, who declared himself "a Sophist and educator" and whose subject was the "proper care of [his students'] personal and public affairs," so as to help them succeed as speakers and citizens ("Protagoras" 317b-318e). Among Protagoras's many works, one book, the *Antilogiae*, appears to have been a textbook, and begins with the famous dictum that "on every issue there are two arguments (logoi) opposed to each other on everything" (Sprague 1972: 4). Marrou cites this concept as the core of Sophistic pedagogy and notes that Protagoras's own educational program was "astonishing in its practical effectiveness" (1956: 51). Naturally, antilogical practice and pedagogy undergo significant transformation over time, most notably in the hands of the Academic sceptics.

In Book XII, Quintilian notes that the critical practices of the New Academy are particularly "useful" because their "habit of disputing both sides of the question approaches most nearly the actual practice of the courts" (12.2.25).**[ii]** In his commitment to Academic controversia, Quintilian is clearly following the lead of Cicero, who summarizes the Academic method this way: ". . . the only object of the Academics' discussions is by arguing both sides of a question to draw out and fashion something which is either true or which comes as close as possible to the truth" (*Academica* 2.8). Such a position is founded on the antithetical scepticism of Pyrrho of Elias (4C BCE) who advocated a suspension of judgment during the assessment of alternative arguments in any particular case. Sextus Empiricus describes Pyrrhonistic scepticism as the ability to set up antitheses which account for the "equal weight of opposing states of affairs and arguments" (1.8). The sceptical tradition – as A. A. Long makes clear – is given institutional status in the New Academy first by Arcesilaus, who denies the existence of universal criteria adequate to warrant any claims to absolute truth. Instead, he transfers his attention from universals to the discovery of probable explanations arrived at through arguments between pro and contra positions (Long 1974: 91). Carneades continues the tradition by rejecting any dogmatic claims to certain knowledge, honing the practice of "in utramque partem" as a tool of critical scepticism, and insisting that prudential judgment is always contingent, never necessary. Judgment, in other words, cannot be dictated by criteria laid down in advance (see 2.13.2-5).

The principles of the New Academy pass into the Roman tradition though Cicero, who is unquestionably the major source for Quintilian's own philosophical perspective. So while Quintilian may claim that it is unnecessary to "swear allegiance to any philosophical code" (12.2.26) and while his own philosophical

interests tend in the direction of moral philosophy rather than epistemological speculation, his practice as a critic and educational theorist clearly reflect the traditions of the New Academy. In particular, he ascribes to the assumptions that all claims must be argued because more than one probable position exits, that judgment is best deferred as alternative logoi are weighed, and that criteria for judgment are developed out of the circumstances of the case. The pragmatism of his pedagogy is consequently grounded in a substantial philosophical tradition, a tradition that elevates the methods of argument themselves to the status of philosophical praxis.

I skip over here the interesting historical events that condition the adaptation of controversia in the Late Republic and Early Empire. I point out only that, as Chester Starr notes, "when one man became sovereign in Rome . . . the significance of political debate waned swiftly" (1965: 51). Indeed, the inevitable decline in oratory became a favorite subject for such first-century writers as Seneca the Elder, Petronius, and Tacitus. In this period of decline, says Grube, "rhetoric took refuge in the schools" (1965: 257), while much public oratory was given over to sententiousness and declamatory display. In such a climate, Quintilian is distinctly neo-Sophistic in his insistence on practical argument. Nowhere is this emphasis more emphatic than in his own methods of inquiry.

2. Quintilian's Critical Method

Quintilian opens the *Institutio Oratoria* this way: "I was asked by certain of my friends to write something on the art of speaking . . . [because] they urged that previous writers on the subject had expressed different and at times contradictory opinions, between which it was very difficult to choose" (1. Pr. 1-2). Several books later, in his discussion of rhetorical invention, he notes that his first task is to canvas "the infinite diversity of opinions among writers on this subject" (3.1.7; cf. 3.1.1). The initial step for Quintilian, then, is to survey the "multiplex ratio disputandi" (the multiple ideas in dispute) that make-up the landscape of opinion on any point at issue. In the process, he is distinctly non-dogmatic, remaining independent of the various schools that dominated the educational theory of his day and allowing his readers to exercise their own judgment in reviewing a controversy.

Instances of Quintilian's critical method are available at every turn in the *Institutio*. For example, after the reference to "contradictory opinions" that opens Bk. I, Quintilian immediately engages the question of whether or not it is better to educate a child at home or at public school (see 1.2.2-17). "Contradictory

opinions," he repeats, fully condition this topic and must be acknowledged, for while "eminent authorities" favor the public schools, "(i)t would . . . be folly to shut our eyes to the fact that there are some who disagree" (2.2.2). These critics, he goes on, are "guided in the main by two principles," and he lays out each of these contra-arguments in significant detail. What is particularly interesting about this exercise in argumentation is that Quintilian begins with prolepsis, the anticipation of opposition, and in dealing with differences he avoids a simple claim/rebuttal structure, choosing instead to oscillate back and forth between contesting positions. The procedure as a whole operates, as Colson noted, more like a "discussion" than a treatise, and this dialogic approach becomes standard practice throughout the *Institutio* (1924: xxxix).

Similar examples of controversia are everywhere. In Bk. II alone, Quintilian takes up such issues as the choice of an appropriate teacher, memorizing commonplaces, the controversy over declamation, and the place of rules in oratorical training. The protocol of inquiry, analysis, and invention in all cases is controversia: the author first surveys the diversity of opinion on the topic in order to weigh the probabilities on each side. In his discussion of declamation, he writes that "I now come to another point in which the practice of teachers has differed. Some have not been content with . . . . Others have merely suggested [that] . . . . Both practices have their advantages . . . . But if we must choose one . . . " (2.6.2). The dominant tropes of these supremely non-dogmatic inquiries are "on the contrary" and "on the other hand," as the rhetor works his way through the various nuances of an argument and models for his readers the actual practice of controversial reasoning.

In sum, controversial methodology is ubiquitous in the *Institutio* because for Quintilian every question involves an "infinite diversity of opinions" (cf. 3.11.2). In confronting this multiplicity, Quintilian would himself reflect the breadth of interest advocated by Cicero's Crassus and sample "all the available" arguments as a prelude to judgment. And while the argumentative exercises that fill out the *Institutio* may not always rise to the level of theoretical insight imagined by Crassus, there remains an admirable congruence between Quintilian's own critical method and the practice of argumentation that he would advocate for his students (see 2.2.8).

3. The Progymnasmata, Declamation, and the Protocols of Argument
Roman students began composition study with a grammaticus, a teacher

responsible for both grammar and an introduction to literature and literary style. The grammaticus would initiate composition training with the progymnasmata, a series of increasingly complex exercises fully involved with argument from the outset (Marrou 1956: 274ff, Bonner 1977: 213-49). At about sixteen, the student progressed to the tutelage of the rhetor, moving to the more difficult exercises in which the protocols of argument become the explicit focus of study. The exercises begin with a retelling of fables in which students "feign" the speech of given characters addressing contentious topics, such as monkeys deliberating on the founding of a city (in Clark 1957: 182). Composition, therefore, begins with imitation and impersonation, and in the context of mock-debate. Students pass next to "fictitious narratives" from literary sources and imitate the conversation of the people involved, like Medea justifying the theft of the Golden Fleece. These stories (called "argumentum") were followed by chreia, exercises based on well-known maxims, like "money is the root of all evil." In this case, the student was asked to provide the argumentative reasoning that supports the claim inherent in the maxim itself (see Hock and O'Neill). It is notable that even in these early exercises, the young rhetor is routinely given a specific character along with some situational data, so that invention always proceeds in relation to the requirements of a particular argumentative context. Moreover, rhetorical invention is, from the beginning, dialogical (always in response to previous speech) and practical (always generated with a particular occasion in mind).

While the early progymnasmata are often argumentative, argument itself comes to the foreground in the exercise of "refutation and confirmation." Quintilian suggests that in response to a literary episode, students "annex" a number of claims on both sides of the case, thereby establishing dialogue between competing logoi rather than propositional reasoning as the framework for argument (2.4.18-19). And because the students would recite their compositions aloud to the class, all were exposed not simply to binary oppositions but to highly varied perspectives on such subjects as whether or not Romulus could actually have been suckled by a she-wolf (2.4.18). In these exercises, says Quintilian, "the mind is exercised" by the variety and multiplicity inherent in the topics, as the rhetor must deal not simply with abstract conceptions of pro and con but with "degrees" of vice and virtue (2.4.21).

The increasingly subtle challenges in argumentation progress to "comparisons" between characters and to "impersonations," such as Priam pleading with Achilles for the return of Hector's body. Finally, the progymnasmata culminate in philosophical "theses" and in debates on the law, both of which tend to

complicate a priori assumptions, subvert simple binaries, and remind students that controversiality suffuses philosophical as well as literary composition. Throughout the exercises, the pedagogical focus remains essentially the same: the rhetor, unlike the philosopher and dialectician, is operating in response to specific contingencies by calculating the relative merits of opposing positions and developing the skills of sceptical inquiry, rhetorical invention, and pragmatic judgment. At all points in the process, the student-orator is guided by the principles of "in utramque partem" and contemplates not simply what can be said in behalf of a proposition but also what can be said in favor of the other side. Because each student must routinely compose orations that contradict each other, it is not so much the truth of one's claim as it is the process of argumentation that is the ultimate subject of the progymnasmata and its elegant continuum of exercises.

Two additional ideas deserve mention here. First, Quintilian allocates a pivotal role to stasis theory (3.6); and, as Michael Carter points out, stasis – the effort to define the specific point at issue in argument – originates in the contention of opposing forces (1988: 98-99). The very act of arriving at a stasis is an act of controversiality, a conversation among contrasting opinions in a shared conflict. Second, in Bk. X Quintilian digresses to emphasize the role of "facilitas," the resourcefulness and spontaneity acquired from continual interaction with other discourse. Such facility leads not only to a storehouse of materials appropriate to any argument, but also to the habit of easy exchange that allows orators to respond in accordance with all situations (10.1-2). Like sprezzatura, its Renaissance counterpart, "facilitas" is an element of character or ethos, a habit of mind to be nurtured by exposure to both opposition and variety. Both stasis theory and rhetorical "facilitas," therefore, assume the importance of opposing positions in argument.

We pass now to declamation, which Quintilian calls "the most useful of rhetorical exercises" (2.10.2). The exercises themselves are mock forensic or judicial debates on specific points of law or history in which the student orator takes on a persona and works within the confines of a situational narrative. Indeed, if declamation is presented effectively, it should mimic, says Quintilian, the "real contests" and messy debates the student will encounter in public life (10.1.4). By the first-century CE, declamation had been divided into two kinds: the suasoriae or deliberative speeches on questions of history or politics, and the controversiae or forensic speeches on specific legal cases. As for suasoria, Philostratus lists

these examples: the Spartans debate whether or not to build a wall and fortify themselves from attack, and Isocrates attempts to dissuade Athenians from their dependence on the sea (1965: 514 & 584). In most cases, student-orators were asked not only to respond to historical circumstances they had studied in literary sources, but to impersonate a specific character and address a particular audience. Matters of ethos, audience, and decorum were therefore paramount. Before I take up these matters, it may help if we have some idea of the classroom practices that characterized instruction in declamation.

The procedure was as follows: the teacher would present a declamatory problem and provide some introductory analysis ("divisio") of the case, addressing opposing perspectives and how these might be arranged and presented. The students were then assigned the same or a similar case and allowed to select a stand.

They would then write out and read their initial draft to the teacher, who would question all pupils carefully in order to "test their critical powers" (2.5.13). It was assumed that the young orator would deal with pertinent aspects on both sides of the case, not just those in favor of the chosen position. The student would next prepare a more polished composition for memorization and delivery before the class as a whole, and sometimes before the public at-large. A distinctive feature of the declamatory process, then, was that the speeches were constructed with a responsive audience in mind. Typically, all students would declaim either for or against the same case, so that each speech was subject to peer review and examined in the context of diverse opinion. Further, the public nature of individual performance tended, says Quintilian, to give these speeches the feel of "mimic combats" similar to "the actual strife and pitched battles of the law courts" (2.10.8). At the very least, students subjected to the arduous, confrontational, semi-public performance of declamation would quickly become aware that rhetorical argument is addressed to a critical audience, that argument itself was always at least dyadic, and that, under these circumstances, "the all-important gift of the orator" was a "wise adaptability" to "the most varied emergencies" (2.23.1).

Fanciful as they often were, the suasoriae (the declamatory impersonations of historical figures) nonetheless function as instruction in the principles of ethos and audience. The Roman student had been prepared for role-playing by earlier exercises, but suasoria evoke much greater depth of detail and a more specific question to be addressed. So, when faced with the case of Alexander debating with his generals over whether to ignore the oracles and enter Babylon (Seneca

1974: suasoria 4), the student was not simply acting "ex persona" (in the character of) and delivering a dramatic monologue like Browning's Andrea del Sarto; he was arguing in a specific historical context, with well-defined positions on either side, to an audience fully alert to the circumstantial data of the case. Quintilian's refers to these exercises as "absolutely necessary" to the expansion of the pupil's understanding of human motive and response and notes that his own students assume as many different roles in their declamations as comic actors on stage (3.18.51). When we recall that students often declaim on both sides of a case and must regularly defend a position contrary to their initial inclinations, it is easy to see how this variety of impersonation serves to break down one's natural egocentrism and open the mind to claims that might well have seemed alien. Impersonation, in other words, tends to liberalize one's allegiances and breed tolerance. In brief, declamation is a dramatic experience in occupying the space of the other, of giving voice to a person who speaks in a different key, of "identifying" to the point of consubstantiation. To act the part of someone else is to bring the theoretical concept of "in utramque partem" to life.

And then there is the matter of audience. At its best, suasoria goes beyond the notion of recognizing what is unique in an audience as a technique to effect persuasion. Such an effort remains monological to the extent that it does not admit the potential for difference that the audience always represents. When combined with the lessons of impersonation, the invocation of and address to the audience as persons in their own right serves to multiply the voices one responds to in controversy. If impersonation invites the dialogical extension of the argument beyond the orator's initial presumptions, the presence of an audience (which is seldom uniform) expands the conversation into "multiplex ratio disputandi" and invites a more comprehensive vision of the topic. In the process, the opposing parties in dialogue generate new possibilities for invention, as ideas shift, oscillate, and transform in the give-and-take of alternatives. Invention takes place, as Montaigne says, by "polishing our brains through contact with others" (1948: 112). As we turn from suasoria to controversia (the declamatory exercise devoted to forensic rather than deliberative cases), we turn also from the theatrical to the dialectical, for the controversiae represent a substantial increase in logical rigor. Seneca the Elder records this popular topic of school debate: "A young man captured by pirates writes his father for ransom. He is not ransomed. The daughter of the pirate chief urges him to swear that he will marry her if he escapes. He swears. Leaving her father, she follows the young man, who, upon his return to his home takes her to wife. A well-to-do orphan appears on the scene.

The father orders his son to divorce the daughter of the pirate chief and marry the orphan. When the son refuses to obey, the father disowns him" (in Clark 1956: 231). Obviously, any defense of realism in the practice of such controversia could not be based on the events of the case itself. It was the verisimilitude of the argument rather than the case itself that Quintilian saw as essential to controversial reasoning.

Students would begin their analysis of the controversia by first identifying the stasis and the likely arguments in opposition (10.5.20). Quintilian notes that it is simply not adequate in forensic argument to take up only accusation or defense, because "sufficient acquaintance with the other side of the case" is a prerequisite for effective persuasion (10.5.21). In the case of the pirate's daughter, the controversy was likely to turn on a question of law vs. equity: is this law universally binding, or is equity a higher virtue than the written statute? Strong cases could be made on either side, and careful reasoning would be required. In another case entitled "The Poor Man's Bees," there is a controversy between the rich owner of a flower garden and a poor neighbor whose bees invade that garden (Quintilian 1987: #13). The rich man spreads insecticide on his flowers, kills the bees, and the poor man brings suit. In his sample declamation, Quintilian fills out the poor man's speech in considerable detail, especially his refutation, which provides a comprehensive recapitulation of each point in the rich man's case before the poor man's detailed rebuttals (see Clark 1956: 247-50). What is interesting here is that the dialogue between opposing parties is incorporated into a single speech. As a result, declamatory orators become practiced not only in thinking "in utramque partem" as preparation for their own claims but also in providing what Bakhtin would call a "double-voice" within the boundaries of one's own utterance. When Quintilian treats "altercatio" or debate proper (6.4), he reiterates the point that careful consideration should always be paid to "the arguments of the opponent" (6.4.14). Even when students find themselves in agreement, he says, it is best for them to practice their skills in "altercatio" by taking different sides and testing their ideas through "mimic battle" (6.4.21). And because students are regularly arguing both sides, their classroom experience may well serve, says Quintilian, to reduce the eristic ill-will often directed "at those who hold opposite opinions" (3.8.69).

There are, admittedly, problems with declamation, especially as the genre came to dominate Silver Age Roman letters and gave way to theatrical excess. Professors of rhetoric began to invite the public more and more often to open

recitations, first to impress the parents of their students and to attract additional clients, later to display their own brilliance before ever-expanding crowds. Quintilian is himself candid in noting that declamation became "so degenerated that the license and ignorance of declaimers may be numbered among the chief causes of the decline of eloquence in Rome" (2.10.3). Marrou complains that declamatory narratives became much too fantastic; but he points out that declamation can be defended as an isolated opportunity for the practice of public eloquence during a period of decline in political freedom (1956: 288). It is Quintilian's defense, however, that remains the strongest: for it is always possible, he claims, "to make sound use of anything that it naturally sound" (2.10.3). His method for insuring the soundness of declamation was to insist that they remained "modeled on the forensic and deliberative oratory" for which they were intended as training (2.10.8). Seen from this perspective – as " foil(s) wherein to practice for the duels of the forum" – the progymnasmata and declamation represent a rite of passage, a transition from theory and exercise to a mature recognition of the requirements for successful advocacy in an environment conditioned by difference, disagreement, and change (5.12.17).

4. A Contemporary Role for Controversial Pedagogy

I would like to think that the presence and import of controversial reasoning in the "Institutio" has been sufficiently established to substantiate my principal claim that argument "in utramque partem" resides at the heart of Quintilian's pedagogy. I have also tried to indicate that Quintilian's pedagogy takes on its full resonance only when it is reassociated with its philosophical base, which is Sophistic in origin and sceptical in nature, which is firmly anchored in contingency and the unavoidable multiplicity that conditions all "res humana," which casts a wide net in its search for knowledge and accepts a vision of truth that compounds opposing views, and which finally is thoroughly practical in its drive towards application in the world at-large. Only when Quintilian's classroom protocols are placed in relation to their philosophical context can we begin to realize the rich possibilities that flow from the confluence of rhetorical theory and the pedagogical tradition.

The question before us now, however, is more pragmatic: i.e. what specific practices might be adapted from Quintilian's pedagogy that, "mutatis mutandi," can contribute to our rhetorical paideia? Thomas Sloane has recently noted that despite the revival of rhetorical studies, our conception of "inventio" remains "impoverished" and that, in general, rhetorical pedagogy has not kept pace with

critical theory (1997: 127-28).**[iii]** To my mind, the study of Quintilian and the legacy of controversia puts us in a position to rectify this imbalance and reassert the connection between the rhetorical tradition and the classroom. The scope of the present essay, however, allows for only modest and provisional suggestions.

I begin with what Perelman might call "starting points," preconditions for argumentation extrapolated from the practice of controversial reasoning and intended for discussion by students, provocative ideas antithetical to the traditional assumptions of what Deborah Tannen calls "the Argument Culture" (1998). Starting point #1: Argument deals with probabilities but does not preclude our ability to defend one position as stronger than others. On the contrary, controversia assumes (somewhat optimistically) that when "multiplex ratio" are weighed effectively, the preponderance of probability will favor one side over others. #2: All opening positions are partial in the dual sense that they are biased in favor of their own presumptions and they do not represent all that may be said about the subject. #3: If we accept our partiality, we must also accept the possibility that exchange with others could prompt us to change our minds. #4: If we accept our partiality, we should be inclined to suspend judgment until all positions have be addressed. And #5: the ground rules for judgment in the context of scepticism and probability cannot depend upon standards of certainty but will grow out of the exchange between parties engaged in conflict, what Blair and Johnson call the "epistemic standards of the audience" (1987: 49). Such are the preconditions for controversial argument that students might consider.

But what of practical methods, concrete extensions of Quintilian's own practice that could contribute to our teaching? I will mention two possibilities, both of which fall under the heading of invention. In the first place, Quintilian's curriculum identifies invention with dialogue and the process of symbolic exchange. Perelman and Olbrechts-Tyteca, of course, maintain that argument always develops "in terms of the audience" (1969: 5). The progymnasmata embraces and pragmatizes this essentially dialogical view by asking students to first imitate, then refute, then both agree and disagree with the claims of a text. Once this procedure of alternating support and critique has been established in the preliminary exercises, dialogical exchange is dramatized, as students first imagine, then (in declamation) actually confront other parties in controversy. Two implications follow from the primacy of dialogue: first, contact with other students in response to controversy should begin early and be repeated often. In other words, students need to come out from behind the keyboard and take their

place in front of and face-to-face with other students and perspectives (cf. 1.11.9). For teachers of composition, this means an increased oral component in argument training. The second implication of dialogue's primacy is that we must work harder to stimulate the continuous give-and-take that constitutes real-world argument. Argument "in utramque partem" implies repeated reversals: first one side speaks, then the other, then the other again, and so on. Instead of single-exchanges or the statement/rebuttal procedures of forensic debate, argument pedagogy must seek to simulate the ongoing conversation of actual controversy (see Leff 1987: 3).

The second potential candidate for pedagogical adaptation falls under the heading of "imitatio." This subject is so vast and so diffused throughout Quintilian's curriculum that I can scarcely do more than add my voice to those of James Murphy and Dale Sullivan in calling for a reassessment of its once-esteemed pedagogical role (1990: 44-53; 1989, resp.; cf. 10.2.1-28). Suffice it to say that our neo-Romantic tendency to equate imitation with the surrender of identity runs counter to the classical tradition. "Mimesis," says Aristotle, is a natural part of the learning process ("Poetics" 1447a-b), but the degree of adhesion to the original source varies considerably. There is no reason to assume that imitation, as it "supplements, improves, and illustrates its ostensible models" is not a creative act (Russell 1981: 108). Within the general category of pedagogical "imitatio," I would identify two specific options for adaptation to our classrooms. The first is impersonation or role-playing. To impersonate is enter into dialogue with another perspective, to integrate into one's self what had been unfamiliar (cf. 6.2.26). Conversely, impersonation allows students to distance themselves from their own presumptions and explore unexamined partialities. Furthermore, role-playing is fun; it evokes the ludic impulse in the service of instruction. It can transcend the appeal to reason alone and motivate the student in special ways. My own efforts to encourage role-playing in class have done more than any other technique to loosen the grip of dogmatic assumptions and to prompt an appreciation for the many-sidedness of argument. The second possible adaptation comes with declamation and the promise of case-study as a vehicle for experiencing the full complexity of circumstantial argument. Case-study exercises have been popular for some time in professional writing and legal studies, but they run counter to the emphasis of most argumentation texts on propositional structure and the demands of logos over audience, ethos, and situation (Mendelson 1989). What declamatory exercises can provide is a dramatic evocation of the multiplicity,

ambiguity, and contingency that characterize actual controversy. Michael Billig points out that the nuance of human affairs can never be reduced to method, so "finite laws [or rhetorical precepts] are likely to be embarrassed . . . by novel particulars" (1987: 62 and 68). As Quintilian recognized, the well-conceived declamatory exercise is the capstone of rhetorical training because it exposes the rhetor to the complexity of novel particulars and requires a full measure of "facilitas" and decorum in return.

Of course, any pedagogical theory or method only has value to the extent that it serves a larger purpose. For Quintilian, that purpose was the cultivation of oratorical excellence in the service of moral dignity and public virtue (12.1-2; see Lanham). I would myself offer a variant rationale for the pedagogy of "in utramque partem." A controversial pedagogy seeks at all points to generate two or more positions in conflict and to stimulate a productive dialogue among these sides as the appropriate means for understanding and perhaps even resolving the problem at hand. Because of the contingent nature of the problems that rhetoric is designed to address, problems about which there are always multiple points of view, judgment cannot proceed along abstract, technical lines (cf. Kahn 1985: 30-36). According to Cicero, decorum is that facility ("facilitas") that allows one to comprehend what is appropriate in complex issues and to work expediently towards a viable resolution ("Orator" 71; Leff 1990). Decorum, therefore, is a "two-fold wisdom" which accommodates not only eloquence in an effort to articulate the issues but also persuasion in order to have an effect on the world. As such, decorum is ultimately cognate with prudence, the knowledge of appropriate action in response to specific situations ("De Oratore" 3.55 & 3.212). Classroom exercise in argument "in utramque partem" was, for Quintilian, the principle means of preparing students not only to respond to arguments with decorum but also to play their part in the public sphere with prudence.

In Aristophanes' "The Clouds," students go to the "thinking school" to learn to bicker with their parents and import corruption into the body politic. Quintilian reverses the moral orientation of advanced education, of "thinking schools," but he continues to place argument at the heart of the curriculum. Only through the prudent management of controversy can the student become what Quintilian terms a truly Roman "wise man;" i.e. one who reveals his virtue "in the actual practice and experience of life" (12.2.7). The methods of controversial reasoning, of "in utramque partem" at work throughout Quintilian's pedagogy are the tools that allow for the realization of this goal. For contemporary teachers, they are also the means by which we can invite the wisest of Roman teachers back into the

classroom. I encourage you to welcome him.

NOTES

i. For a discussion of controversial reasoning in the De Oratore, see Thomas O. Sloane (1997: 28-53). The present paper was essentially completed before I could read Prof. Sloane's distinguished new book (On the Contrary), which deals with many of the same ideas as this paper. I would, however, acknowledge, the influence on my own thinking of Prof. Sloane's work and especially his earlier book (1985).

ii. All references to the Institutio Oratoria are to the Bulter edition and will include passage references in parenthesis. Unless otherwise indicated, all numerical references are to Quintilian.

iii. For two modern adaptations of the progymnasmata, see Comprone (1985) and Hagaman (1986).

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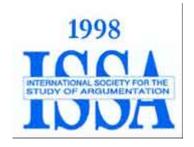
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ISSA Proceedings 1998 – Visual Rhetoric: From Elocutio To Inventio

1. The Semiotic Ornatus Perspective on Visual Rhetoric
In his article "The rhetoric of the image" Roland Barthes assumes that if classical rhetoric were to be rethought in structural terms it would "perhaps be possible to establish a general rhetoric of the signifiers of connotation, valid for articulated sound, image, gesture" (1977: 50):

"This rhetoric could only be established on the basis of a quite considerable inventory, but it is possible now to foresee that one will find in it some of the figures formerly identified by the Ancients and the Classics; the tomato, for example, signifies Italianicity by the metonymy and in an other advertisement the sequence of three scenes (Coffee in beans, coffee in powder, coffee sipped in the cup) releases a certain logical relationship in the same way as an asyndeton" (: 49f).

This 'figurative' approach to visual rhetoric is pursued more fully in the text "Rhétorique et image publicitaire". Here Jacques Durand defines rhetoric as the art of fake speaking ("l'art de la parole feinte") (1970: 70), and describes its task as transforming or converting the proper expression ("le language propre") into a figurative or rhetorical expression ("language figuré"). What is said by using a rhetorical figure or trope could also have been said in a different, or normal, manner. Durand sought to "find a visual transposition of the rhetorical figures in the advertising image" (1987: 295) by examining more than one thousand magazine advertisements. This was done by considering "a rhetorical figure as a transformation from a 'simple proposition, to a 'figurative proposition'" (: 295). In these cases Barthes and Durand are exponents for what I will call a semiotic ornatus perspective on visual communication and argumentation, i.e. a search for meaning through a search for metaphors, metonymies, repetitions, inversions, and the like in visual communication.

My point here is not to dismiss or reject the great importance and semiotic value of a text such as "The Rhetoric of the Image". Indeed, in this paper I use the concepts of anchorage and relay taken from Barthes' influential article. However,

as the major point of departure for both theoretical and analytical texts dealing with visual rhetoric, such a semiotic perspective is problematic in several ways. In this working paper I will briefly touch upon four arguments where this is the case. I will then try to sketch an alternative approach to visual rhetoric by taking the point of departure in the rhetorical art of inventio, rather than in the art of elocutio.

2. Four Arguments for the Lack of Usefulness of the Semiotic Ornatus Perspective
Argument 1: The 'transformation theory' is problematic.

The ornatus perspective on visual rhetoric is based on what we could call the 'transformation theory', i.e. the presumption that expressions (either verbal or visual) are transformations from a 'natural' or 'normal' way of expressing the same thing. A point can be expressed in ordo naturalis, the natural or ordinary way. However, if we want to add more emotional power and better adherence, the same point can also be expressed in ordo artificialis, the artful or artificial way. So, we have a distinction between the proper way of saying something (langage propre), and the rhetorical or figurative way of saying something (langage figuré). The theoretical problem with this theory of transformation from the natural to the figurative expression – which is a traditional rhetorical view – is, of course, that it is difficult, if at all possible, to distinguish between the two ways of expression, and to define what the so-called natural expression is. It is easy to presuppose a 'natural order', but rather difficult to say what this natural order of a figurative expression might be. The transparent or 'sober' expression is itself a rhetorical choice and strategy. What then, is this kind of expression a transformation from?

This presumption of a 'natural' or 'normal' expression is equally problematic when dealing with visual representations. A distinctive feature of an iconic representation is that it has a 'natural presence' in its own right. In other words, it is what it shows. When dealing with images one can choose between countless expressions created by techniques of editing, framing, duration, mise-en-scène, and so on. Often, it is rather difficult to judge one expression as more 'natural' than another. Of course, we tend to notice when the regular conventions of a particular genre of images are changed: If the commentator in a news programme is seen in extreme close-up or from a bird's-eye perspective, or if the characters in a movie suddenly face the camera and start talking directly to the audience. In rhetoric, however, the main purpose of figurative language is to stir the emotions unnoticed, without drawing attention to the language style itself. In fact, a general rule of rhetoric is that the language and the language form must be

transparent – as an unnoticed window through which we see the message.

Argument 2: Ornatus is a very limited part of rhetoric, and the semiotic ornatus approach therefore contains a limited understanding of rhetorical persuasion.
Ornatus is but one of four elements of elocutio, in addition to perspecuitas, puritas and aptum. Furthermore, elocutio is but one of the five stages of composition. To make tropes and figures the starting point of a discussion of visual rhetoric is therefore a violent limitation of the art of rhetoric, because it only entails a fourth of a fifth of the art. Consequently, we no longer talk about rhetoric but rather of stylistics.
Tropes and figures are primarily means of expressing arguments – found in the stage of inventio – as evidently as possible. They are means for catching audience attention, making the audience remember the arguments in the speech, and, most importantly, stirring the emotions of the audience. Of course tropes and figures can have a persuasive effect, and they can show or illustrate important arguments or lines of reasoning. But they do not constitute the argument or the reasoning itself.
From an argumentative point of view, tropes and figures constitute the micro perspective whose main task is limited to creating rhetorical pathos. In this sense, ornatus performs a rhetorical and a persuasive appeal. But the emotional appeals of ethos and pathos do not give a comprehensive and understanding view of rhetoric unless they are connected to the most important rhetorical appeal, – logos. A unity of ethos, logos and pathos is thus a prerequisite in the search for a theory of visual rhetoric.

Argument 3: Ornatus is embedded in verbal language.
Because of the strong connection between ornatus and the verbal language – where the first in a sense is embedded in the second – the ornatus perspective gives us a very unhelpful and unmanageable starting point for critical and theoretical treatment of visual rhetoric.
Whereas the general and universally valid thoughts of argumentation and topoi in inventio are more or less free from the constraints of verbal expression, the tropes and figures of ornatus often are their verbal form or shape. The meaning of tropes and figures such as prosopopoeia (confirmatio), anaphora, and alliteration are embedded in the expressions themselves. Expressions and meanings such as these are either impossible to find in visual representations or can only be located with an unreasonable constraining of both the figurative expression and the visual

representation.

Argument 4: The semiotic ornatus approach can say nothing about hierarchies of values, or of the importance of the rhetorical situation.

Because the semiotic ornatus approach neither deals with hierarchies of values nor with the rhetorical situation, it provides only a limited contribution to knowledge about the structures, elements and effects of visual argumentation. The fundamental structuralist view of pictures and visual argumentation in this approach also tends to concentrate primarily on relations inside the picture frames, and therefore tends to overlook the rhetorically very important aspects of the rhetorical situation: For instance the classic concepts of the right moment of speaking, kairos, and of proper adaptation of the speech to the occasion, aptum (decorum). These are necessary and important rhetorical considerations concerning the relations between the five constants in the rhetorical situation. Cicero puts it this way: "no single kind of oratory suits every cause or audience or speaker or occasion" (*De Oratore* III.liv.210).

Along with the importance of the rhetorical situation itself, also the concepts of topoi and hierarchies of values are important for understanding argumentation. In *The New Rhetoric*, Chaim Perelman & Olbrecths-Tyteca says that "all argumentation aims at the adherence of minds" (1971: 14). Adherence of minds requires that the rhetor finds a common ground of values or attitudes both for himself and the audience. A common ground – or warrant – is required in order to persuade. Basing the argumentation on the common ground that "democracy is good", a politician opposed to membership of the EU can try and persuade an audience that the EU is an undemocratic institution. If members of the audience accept that the EU is undemocratic, they will be influenced (or even persuaded) into casting a "no" vote to membership of the EU, on the basis of their adherence to the warrant that democracy is good. We cannot make considerations like these through the semiotic ornatus approach. This is because it is not a theory about argumentation, merely one about semiotic signification. Of course, semiotic theories are significant. But it is important to remember that analysis of semiotic signification does not automatically include analysis of argumentation. The attempt to understand persuasive signs and discourses through tropes and figures, or through concepts such as denotation, connotation, paradigm, and syntagm, does not entail thoughts or concepts that in a reasonable way can account for situational constraints or for the elements, structures, and hierarchies

of argumentative topoi and values. Neither can the semiotic ornatus perspective in a practical analytical way distinguish between a statement and an argument, or distinguish between a good and a bad argument.

3. A Rhetorical Conception of Argumentation – Inventio as the Point of Departure
As already indicated, the project of Roland Barthes – and of his followers – is more semiotic than it is rhetorical. "The Rhetoric of the Image" is more about semiotic signification than it is about rhetorical argumentation. It is furthermore doubtful that we can find one general or universal rhetorical form independent of medium or substance, and if possible, it is certainly doubtful both that such a form represents a truly persuasive rhetorical operation, and that such an operation has its ontological foundation in ornatus. We are more justified in claiming that such universal ways of argumentation and appeals are to be found in the rhetorical art of inventio, which is not in the same way tied up in and embedded in verbal language. I believe that two assumptions are important with inventio as the point of departure for a theory or an analytical view of visual argumentation:
(A) Rhetorical argumentation is an attempt to gain adherence to a claim or an attitude among an audience. This is done by strengthening and changing relevant hierarchies of lines of reasoning, values or viewpoints (common topics), by appealing through the three rhetorical proofs: ethos, logos and pathos.
(B). Practical rhetoric can be characterised as situational intentionality. Rhetoric rests on the orator who tries to promote his intention and gain adherence to his points in a particular situation through the use of language.

Let's take a closer look at these two points:
(A) The Understanding of Argumentation as Creating or Changing Persuasive Hierarchies
According to Aristotle (A.I.3; 1354a), we can distinguish between proofs that belong to the art of rhetoric, 'intrinsic proofs' (entechnoi) and proofs or things that do not, 'external proofs' (atechnoi).**[i]** The "intrinsic proofs" are proofs that are furnished through the speech and which may reside in the character of the speaker (ethos), in a certain disposition in the audience (pathos) or in the speech itself (logos). Only these proofs – or ways of appeal – Aristotle says, are intrinsic to the art of rhetoric. He considers the rational logos appeal as the most constitutive point of departure for rhetorical argumentation, while the emotional appeals of pathos and ethos are necessary supports for logos. They are supports or pillars that indicate the degree of credibility, importance and value in the

argument.

Aristotle then ascribes two modes of argument to rhetoric: the enthymeme, which is a rhetorical syllogism, and the example which is considered a rhetorical induction. The enthymeme is viewed as the most important kind of deductive demonstration and proof. This significant rhetorical way of providing proof is characteristic in its dealing with topical reasoning and thought patterns which arrange information and unite it in a coherent and persuasive form of argumentation. By topical reasoning I mean topics in Aristotle's sense of the word: structural argumentative forms without content in their own right (B.XVII; 1391b). These are structures of rational argumentation that are manifest as common topics, or common structural forms of argumentation.

Aristotle points to "the possible and the impossible" as an example of a common topic. For instance: "[I]f one like thing is possible, so is the other" (B.XVIII.5; 1392a). This latent persuasive structure can be found in practical everyday argument such as: "When countries similar to ours can do without the EU, Norway too can do without the EU".

In other words, our use of specific arguments is based on a variety of common topics in which the arguments and their premisses are embedded. The rhetorical appeal of a specific argument is placed on this foundation of common topics, and is furthermore based on common social, cultural and universal human values and premisses.

In their treatment of such common topics – or loci according to their terminology – Chaim Perelman and L. Olbrehts-Tyteca in *The New Rhetoric* talk about the quantity locus and the quality locus (1971: 85-92). The first term implies that something is better than something else for quantitative reasons, such as the superiority of that which is accepted by the majority. Thus, the quantity locus is the foundation of the democracy warrant mentioned above.

Opposed to this, there is the quality locus which emphasizes superiority of the unique, and it therefore implies that one bright person may be more right than several who are not so bright. Common topics such as these can be found both in verbal and in visual argumentation. For instance, in advertising it is possible to argue both by means of images and in words that a product is a good one because may people use it.

If we accept this line of reasoning, that some topical arguments can be manifested both in verbal and in visual communication, we can also assume that although visual and verbal argumentation are different forms or substances of communication, they do at least share some kind of common argumentative

ontology. If this is the case, we may use the art of rhetoric to say something about visual argumentation. Contrary to what is the case with the semiotic ornatus approach, this kind of general perspective may run into fewer problems in the inter-semiotic translation of rhetorical appeal from one substance or medium to another.

In Aristotle's *Rhetoric*, logos is described as the primary and only independent rhetorical proof (A.I.3, A.II). The proofs of ethos and pathos are always secondary, and they are always dependent on logos. The rhetorical enthymeme is, as he describes it, "the flesh and blood of proof" (A.I.3, 1354a; p. 66). By looking at Aristotle's rhetorical enthymeme we can locate its persuasiveness in two assumptions:
1. The existence of common and interconnected topoi in the form of human values, attitudes and convictions, that tie social and cultural groups together and create the foundation upon which the persuasive appeal can be built.
2. The assumption that a person will accept the conclusion in the rhetorical enthymeme, if he or she accepts the premises in the same enthymeme.

This Aristotelian conception of enthymemic argumentation presupposes that a strong stirring of emotions will follow from the acceptance of an attitude or an assessment. As pointed out by for instance Edwin Black (1978: Chapter IV & V), the emotional effect is, in a way, a consequence of the attitude or assessment that the argumentation creates.
If the rhetorical proofs and the use of topoi/loci are to function in a persuasively controlling way, they need to function in a structured hierarchy of values. Hierarchies such as these arrange our conception of the world, and hence our attitudes and actions. Broadly speaking, we induce change in actions and attitudes by introducing different structures or compositions of these hierarchies, or by exchanging the values or common topics upon which they are based. To label the EU as an undemocratic institution is to categorize EU into a persuasive hierarchy of values based on the locus of quantity, or more specifically on the grounding value or warrant: "Democracy is good".
An understanding of verbal as well as visual rhetoric requires an understanding of rhetorical operations such as the cognitive structuring of topoi, values and attitudes. We cannot find any good explanations or accounts of conditions and circumstances such as these by using the semiotic ornatus approach. Instead, we may use for instance Stephen Toulmin's model of argumentation (1958, Toulmin

et al. 1978), which contains the possibility of placing argumentative elements in a structured hierarchy.

Toulmin's model takes a pragmatic and analytical approach to argumentation by focussing on the process of argumentation and on the structuring of elements. Hence, we may learn something about the function of the various elements in a persuasive discourse by using the model.

It is of course not possible to unfold neither the argumentation theory of Toulmin nor its implications here. But I believe that a model of argumentation such as the one from Toulmin can give us not only the possibility of seeing the structures both of a single argument (the micro level) and of a more elaborate string of reasoning (the macro level). It can also provide us with a view of the hierarchical layout of arguments. By determining which elements function as claim, datum and warrant, it can illustrate the connection between the elements, and indicate which elements that are based on one another.

Let us now go to the second assumption for inventio as a starting point for a theory or analytical view of visual argumentation. My argument so far presupposes that rhetorical discourse is always driven by intention in a particular situation, and that is has the persuasiveness as its most important constitutive feature. I have chosen to term this conception of rhetoric as situational intentionality.

(B) Rhetoric as Situational Intentionality – The Persuasive Continuum

With very few exceptions, rhetorical theorists generally agree that rhetoric has to do with persuasive discourse. Rhetoric is not constitutively about style, form or genre, but rather about intentionality. Placing intentionality at the core of rhetoric gives us an useful limitation and distinction. Consequently, a discourse is not rhetorical if it is not consciously intentional. I do not behave rhetorically when screaming "ouch!, that hurts!" when I accidentally hit myself with a hammer and thereby unintendedly "persuade" my wife to come to my rescue.

Even if we limit rhetoric to intentionality, we are still left with a tremendously broad topic which is hard to get into proper theoretical perspective. One may say that I behave intentionally when asking for the salt, or when I slam the door during a quarrel. But is it rhetoric?

As I indicated above, it may be hard to distinguish between what is rhetoric and what is not. With the limited propositional syntax of images (Messaris 1997:x), this distinction turns out to be even more problematic in visual argumentation. Maybe such a distinction is not very practical. Maybe we should rather

distinguish between different forms or degrees of rhetoric or intentionality, depending on how "much" rhetoric is needed to get the adherence of minds in the audience.

In this manner, we can distinguish between different forms of rhetoric according to the relationship between the orator and the audience, and according to the degree of their disagreement, divergence or opposition. In a rhetorical perspective it is the positions in the communicative situations that are interesting, as different positions lead to, or at least demand, different forms of rhetoric.

When a teacher explains how the EU is functioning, the teacher is using rhetoric in a broad persuasio sense. Here, the teacher's intention is to create an understanding of the EU, and in so doing, language is mainly used referentially. If a student objects to the truthfulness and relevance of the account, the teacher's subsequent attempt at persuading or convincing the student of the accurateness and the relevance of the argument would maybe still be dominated by referential language. What is important here, however, is that it is also likely that the teacher's discourse would now contain a higher degree of persuasiveness because of the student's opposition. The teacher would arrange or manage his discourse according to the objections of the student, and he would try to put forward the best reasons and arguments for his own view. He would thus exercise rhetoric in a restricted persuasio sense.

We can thus place the different rhetorical appeals and addresses on a continuum between a slightly opposed audience and a strongly opposed audience. This is what I will term the persuasive continuum. It is common and classical rhetorical knowledge that an orator cannot successfully speak in the same way to audiences that are either negative or positive to the message. We can find it in the already mentioned remark of Cicero that an orator should not always speak in the same way to everybody, against everybody, for everybody or with everybody, and we can also find it in Socrates' remark that it is not difficult to praise Athenians in Athens.

4. Can This Understanding of Argumentation Contribute to an Illumination of Visual Rhetoric?

Towards what kind of analytical approach to visual rhetoric do these considerations about rhetorical argumentation point? Of course, this is neither the time nor the place to unfold a full theory of visual rhetoric. Still, it is clear, I think, that at least three elements must be more central to such a work:

1. The rhetorical proofs (ethos, logos and pathos)

2. The argumentative hierarchies of values and topoi
3. The situational intentionality of rhetoric

A few remarks are needed to point the direction of such a rhetorical inventio approach to argumentation in visual argumentation. First of all, the difference to the semiotic ornatus approach lies in the possibility and choice of questions one is directed to, and may ask, in connection with a treatise of visual argumentation. While the semiotic ornatus approach will lead the examiner of visual rhetoric to ask questions of how to find visual elements which somehow fit the rhetorical figures of ornatus, the approach lacks the possibility of asking questions about the kinds of proof, the argumentative hierarchies, and the situational intentionality. These kinds of questions, I believe, may not only be asked, but will also be satisfyingly answered through the approach such as the one I indicate here.

Before continuing with the remarks about which questions and possible answers the inventio approach might direct us towards, it is necessary to provide a more precise indication of what I mean with the term visual rhetoric, and what the particular visual contribution in a piece of visual rhetoric might be. This we will do with a short – and by no means complete – listing of different kinds of visual techniques and manifestations that can perform visual rhetoric. This overview covers visual rhetoric in moving images, although it also includes the rhetoric of non-moving images. We can distinguish at least three basic kinds of visual rhetoric, or main areas where the visual plays an important role in the argumentation.

1. *The Rhetoric of Mise-en-Scène*
The term rhetoric of mise-en-scène includes the visual aspects within a single shot (or picture or photograph) that are used to support or co-create the rhetorical intention of the message. This may for instance be setting, colours, shapes, symbols, and cameramovement, -angle, -perspective, and -distance.
The rhetorical function of such visual techniques, or visual rhetorics, is to induce general moods and feelings in the viewer, and to create associations. Primarily, they are emotional appeals (ethos and pathos) and particularly dependent on anchoring in order to create a complete rhetorical argument, including the appeal of logos. The concept of actio, as it is treated by traditional rhetoric, can be seen as a special and significant part of the mise-en-scène.

2. *The Rhetoric of Editing*
The rhetoric of editing includes the creation of meaning and argumentation

through the connecting of different images; The use of fades, dissolves, cuts, following or breaking the rules of continuity to support the rhetorical message; The use of editing pace, for instance rapid editing as a way of signifying energy and youth, and thereby performing a certain ethos appeal.

3. *The Rhetoric of Dispositio*

The rhetoric of dispositio concerns the global form of and organising of either a single image or a longer construction of moving images. In a treatise of images in advertising, Scott (1994: 266) talks about "the arrangement of visual argument", and how the order of argumentation may be guided by the layout of an advertisement. The film theorists Bordwell & Thompson discuss the rhetorical form (1990: 99ff.) of a film, and illustrate with a film that begins with "an introduction of the situation, goes on to a discussion of the relevant facts, then presents proofs that a given solution fits those facts, and ends with an epilogue that summarizes what has come before". This thus follows the traditional rhetorical dispositio. However, we should not necessarily think of the traditional rhetorical dispositio when we are talking about the rhetoric of dispositio. By rhetorical dispositio, we here mean a global arrangement of the visual elements which convincingly supports – or even creates – the intentional message.

We have to remember, however, that these kinds of visual rhetorics are not rhetorical in their own right. Yellow colour, fast editing, round or square shapes or lines, the global form or dispositio of a film, are all elements that acquire their rhetorical significance from the rhetorical discourse which they are a part of.

The viewers' determination of the rhetorical significance of or meaning of a particular discourse does partly take place through what we may term the rhetoric of anchoring and relaying. The rhetorical meaning is in part created horizontally or diachronically, when we as readers of a text or viewers of a television programme are continuously evaluating and perceiving the elements and events in a discourse. We do this while keeping in mind our expectations for the future of the discourse and our experience with the discourse so far (Holub 1984: 90). Within reception theory (see for instance Iser 1978) this particular creation of meaning is described by the terms 'wandering viewpoint', 'protension', and 'retention'.

But the rhetoric of anchoring and relaying is also partly a vertical or synchronous creation of rhetorical meaning. The reader or viewer create meaning of the rhetorical discourse through a continuous hermeneutic movement between the visual expression and for instance a written text, spoken words, sounds or music.

Not even the rhetorical discourse itself is rhetorical entirely in its own right. Rather, the discourse gains its rhetorical significance from a rhetorical situation (As pointed out by for instance Bitzer 1968). The viewer thus performs several intermingling rhetorical hermeneutic movements when trying to recreate a mediated argument: A horizontal and a vertical hermeneutic movement between the different elements in the rhetorical discourse, a movement between the rhetorical discourse and the rhetorical situation, and a movement between the elements in the discourse and the rhetorical situation.

Keeping in mind that the rhetorical situation is created by, or even has its ontological foundation in, an instance of situational intentionality, we can now more clearly see the importance of the concept of situational intentionality. We may also understand why it is problematic that the semiotic ornatus approach, with its inherent structuralist view, overlook the significance of situational considerations.

Some Questions and Considerations Concerning the Rhetorical Proofs:

When using the rhetorical appeals in criticism and analysis of visual discourse, we must first consider whether visual argumentation is actually able to persuade in a traditionally rhetorical sense. In Aristotle's view, the emotional proofs of such pure verbal texts are thought to function as supporting pillars for logos, which is the primary proof and the most constitutive point of departure in rhetorical argumentation. Does visual argumentation function in the same way? Can visual expressions rather be expected to evoke emotional dispositions that in turn create an attitude that fits the emotional disposition? Does visual argumentation operate in a different order, where the emotional effect does not emanate the acceptance of an attitude, but rather produces it?

Is it typical for visual argumentation to evoke and stir emotions, and then (for instance through verbal support) to legitimate these emotions with fitting attitudes? We may ask whether the basic persuasive elements and structures are common to both visual and verbal argumentation, but that their place or order in the persuasive motion are different in the two instances. A discussion of questions such as these constitutes one of the many small steps towards a more comprehensive understanding of visual rhetoric.

A reasonable point of departure might be an investigation of the use of more particular analytical considerations about the rhetorical appeals in visual rhetoric. Possible questions might be: Which appeals are mainly made by the visual part

and which are made in the verbal part of the expression? Which are present and which are absent?

Some Questions and Considerations Concerning the Argumentative Hierarchies of Values and Topoi:

The above reflections about argumentative hierarchies of values and topoi indicate another group of appropriate considerations and questions both in the theoretical uncovering of structures and elements in visual rhetoric, and in the practical critical analysis. These are considerations and questions such as: What is the topical foundation for the argumentation? Which topoi and values constitute the persuasive hierarchies, and how is the argumentation and its elements structured in these hierarchies? Which place and function does visual communication occupy in this structure of argumentation?

These circumstances can favourably be uncovered through argumentation analysis by using Toulmin's model of argumentation. This is so first of all because this type of analysis can illuminate both the hierarchies and structures of the argumentation, and the foundational values and topoi in the appeal. Secondly, this type of analysis may place a single argument into a larger structured hierarchy of arguments, topoi and values.

In the illumination of the function and value of images and visual representation in rhetorical utterances, the advantage of the Toulmin model is that it can more clearly show the function of the visual expression in the arguments of a persuasive discourse. Does it function as claim, data or warrant? What is the relation between the visual expression and the degree of explicitness in the argumentation? What is the connection between the visual expression and the kinds of claims, data and warrants in the argumentation?

Some Questions and Considerations Concerning the Concept of Situational Intentionality:

We should consider and clarify the communicative situation both in the attempt to say something about how a rhetorical discourse works and how well we can expect it to work. As previously mentioned, there are two significant elements: the rhetor's intention with the message and the discourse, and the audience's opposition.

Generally speaking this perspective implies that the stronger the opposition, the greater the necessity of using verbal anchoring in the structuring of the desired hierarchy of topoi and values. The opposite also applies: the slighter, or weaker,

the opposition, the less important the verbal anchoring will be. For instance:

The weaker the opposition in the audience
– the better is the possibility of succeeding rhetorically by visually confirming and supporting the present hierarchy of values and topoi in the audience,
– the greater is the possibility of succeeding rhetorically with hidden, indirect and vague argumentation through visual expressions.
– the more indirect and ambiguously advocating can the rhetor be,
– which is best done visually. And the lesser is the importance of giving clear and explicit guidance about what the audience is to do, or how or why, – which is very difficult to do visually.
– the more dominating can the aesthetic and emotional appeal through ethos and pathos be, – which is best done visually.
– the greater is the possibility succeeding rhetorically by mere creation of associative effects, – which is best done visually.
– the greater the value of what in advertising is known as product knowledge and product memory, – which is easily performed visually.
And the less the necessity of attitude – and action-changing rhetoric, which is difficult to perform visually. That is, the more functional will what we could call affirmative rhetoric be.

The stronger the opposition in the audience
– the greater is the demand for rhetor to create changes in the topical hierarchy of values in the audience, – which is rather difficult to do visually.
– the greater is the demand for explicit, direct and specific argumentation, – which is best performed verbally.
– the greater is the demand for discursive or analytical argumentation. That is a more "rational" line of reasoning, where the appeal of logos is central. This does, of course, not mean that emotional appeals are out of the question.
– the less is the value of product knowledge rhetoric and product memory rhetoric, and the greater the demand for rhetoric designed to change attitudes and action. In other words, the less effective affirmative rhetoric is.

5. A Few Concluding Remarks
This has been a very short and tentative account of some problems in the use of the semiotic ornatus approach to visual rhetoric, and a very limited indication of an alternative possibility. Even though this is truly work in progress, hopefully these considerations have made it somewhat clearer that a turn from elocutio to

inventio is required in the quest for a more comprehensive theory of visual rhetoric.

Compared with the semiotic ornatus perspective, such a turn improves the possibility of understanding visual rhetoric on its own terms without a distorting reliance on the formal structures of the verbal language. It can also better take the more general considerations about the rhetorical proofs, the argumentative hierarchies, and the situational intentionality into account.

Furthermore, an approach of this kind can more fully and precisely make explicit and explain the invisible and implicit macro level, supporting – and to a certain degree creating – an instance of visual argumentation. It is an approach that has the potential of uncovering the connections between such a macro level and the micro level of a particular piece of argumentation.

Of course, this rhetorical inventio approach is also problematic in several ways. For instance, in its present form there is a tendency to rely on a purely rational, Aristotelian understanding of rhetoric and argumentation, with the risk of neglecting some of the more irrational elements in visual argumentation. However, even though both the rhetorical art of inventio and the Toulmin model of argumentation are in many ways attached to rational – and in some degree verbal – argumentation, it still seems to entail the most comprehensive and illustrating approach. Although the semiotic ornatus approach leaves no room for the inventio approach, the latter can actually embody the first.

Here we have only briefly looked at a small part of what a rhetorical inventio dominated theory of visual argumentation would consist of and implicate. Naturally, adjustments will be necessary in the further search for a truly visual, comprehensive and illustrating theory of visual rhetoric.

NOTES

i. We here use Lawson-Tancred's translation of entechnoi and atechnoi, what Perelman & Olbrechts-Tyteca (1971: 9) term 'technical' and 'extra-technical' proofs, what L. F. Bitzer (1968: 8) terms 'artistic' and 'in-artistic' proofs, and what the Loeb translation terms 'artificial' and 'inartificial' proofs.

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