

ISSA Proceedings 2002 - I Don't Have Anything To Prove Here - The (Un)Reasonableness Of Evading The Burden Of Proof



1. Those who affirm must prove

Critical decision making, be it about future plans and policies or facts and theories often takes place in the context of an argumentative discussion in which two parties try to reach a decision. In the pragma-dialectical argumentation theory, the various moves made in argumentative discourse are seen as part of critical discussion aimed at resolving a difference of opinion concerning the acceptability of a claim or standpoint. The moves made by the parties involved, are regarded reasonable only if these are a contribution to the resolution of the difference. In an ideal model of a critical discussion the rules are specified that an exchange of discussion moves has to comply with to further the resolution. The soundness of the pragma-dialectical rules is based on their problem validity: the fact that they are instrumental in resolving a conflict. To resolve a difference of opinion however, the rules must also be acceptable to the parties involved. That means they should be intersubjectively approved.

That is why it is important to know what ordinary language users think of discussion moves that are deemed fallacious by the pragma-dialectical theory. In a comprehensive research project, we systematically try to find out if the theoretical norms are in accordance with the norms ordinary language (claim to) apply when judging argumentation. In this paper we would like to present the results of a study on the rule concerning the burden of proof.

In everyday discussions many things can go wrong. Some discussions hardly start, and others derail totally. Sometimes it goes wrong before the arguers put forward only one argument. For example, when one participant openly tries to disqualify his opponent by calling him stupid, untrustworthy or biased. An early obstruction of a discussion is also possible when the opponents cannot decide who has to defend his or her position. In principle the rule that ever since antiquity is

supposed to be valid is pretty clear: who asserts must prove.

By virtue of this rule, the party who puts forward a standpoint has to defend that standpoint by means of argumentation. In spite of the relative simplicity of the rule, in practice all kinds of things can go wrong with the distribution of the burden of proof.

For all the stages in a critical discussion, specific rules apply that should guarantee the resolution of the conflict. A violation of a rule by one of the contesters frustrates or blocks the resolution of the difference of opinion. In the pragma-dialectical argumentation theory such a violation is seen as a false discussion move or a fallacy. What do ordinary language users think of such 'false' moves? Do they also think they are fallacious? Are they always fallacious? A series of experimental studies about ordinary language users' norms indicates that ordinary language users indeed think that the traditional fallacies are unreasonable discussion moves (Van Eemeren & Meuffels 2002: 58). In that respect their pre-theoretical norms agree with the pragma-dialectical norms. This research however was restricted to the first pragma-dialectical rule: the so called freedom rule, which claims that every party in the discussion should be free to advance his standpoint or casting doubt on standpoints. The fallacies that have been studied so far are typical for the confrontation stage of a critical discussion such as the *argumentum ad hominem* and the *argumentum ad baculum*.

In the opening stage the parties decide to make an attempt to solve the difference of opinion: they make agreements about how are they going to proceed during the discussion, about the starting point of discussion - i.e. what are the concessions of both the parties that constitute the common grounds - and about the divisions of roles: Who is going to be the defender of the standpoint, the protagonist, and who is going to be the attacker of the standpoint- the antagonist. The rule for the opening stage which is known as the pragma-dialectical burden of proof rule is as follows: 'A party who puts forward a standpoint is obliged to defend it if asked to do so' (Van Eemeren & Grootendorst 1992: 117). This rule can be violated in a number of ways. For now we focused on one particular violation of the burden of proof rule. What happens when both parties in a discussion put forward a standpoint about a certain issue and one of the parties simply refuses to defend his own standpoint? According to the pragma-dialectical rule this is clearly fallacious. Do language users agree with this rule? Do they always agree or are there circumstances in which their judgments divert?

2. *Shifting the burden of proof in non-mixed disputes*

The term burden of proof comes from the field of law and refers to the obligation to prove the correctness or plausibility of certain facts. Unlike in every day life discussions, in procedural law there are specific rules for the division of the burden of proof. In case the rules are missing, the judge can decide.

Historically speaking the term 'burden of proof' stems from classical Roman Law in which this 'burden' (i.e. task; assignment, obligation) to defend one case was known as the *onus probandi*. This notion was related to the fundamental and legally established division of roles between prosecutor and defender in the process. The *onus probandi* regulated the procedural question which party should come when with evidence. Under Roman law, in all cases the prosecutor had to start by stating his case. Next, he had to put forward argumentation to defend his case. Subsequently the defender had to defend his counter case in the so-called *exceptio*. The prosecutor could react to the counter case in the *replicatio*. In short, the burden of proof lay in each case with the party who made the accusation (Rescher 1977: 25). The basis rule was: '*necessitas probandi incumbit ei qui dicit not ei qui negat*' ('the obligation or onus to provide evidence lays with him who claims not with him who denies the claim')

The parties in an every day life argumentative discussions are free to arrange the distribution of the burden of proof. According to the pragma-dialectical discussion model the parties first put forward their standpoints in the confrontation stage and make arrangements for the distribution of the burden of proof in the opening stage. It is possible that the parties agree to an arrangement according to which the party who initially doubted the standpoint agrees to defend while the party who put forward the standpoint attacks it. According to Van Eemeren and Grootendorst such an agreement to play the Devil's advocate can actually foster the critical testing of the standpoint (Van Eemeren & Grootendorst 1984: 162).

However, in a normal situation in which the parties do not explicitly agree on the distribution of the burden of proof, they may take it that the burden of proof lies with the party who put forward a standpoint. In the simplest situation there is a non-mixed dispute in which only one party puts forward a standpoint, while the other party just doubts the standpoint. In this case the burden of proof lies with the party who claims. In a more complex case there is a mixed dispute in which both parties put forward a standpoint on one issue. The one party claims that the proposition is acceptable while the other party thinks it is not acceptable is not

acceptable. In this situation both parties have the burden of proof and therefore there are two positions to defend.

In practice parties sometimes try to escape from the burden of proof by simply putting it on the shoulders of the other party. This is called the *fallacy of shifting the burden of proof*. The protagonist shifts the burden of proof in a non-mixed dispute if he challenges his opponent to defend the opposite of the original standpoint, like in the following example:

A: Journalists get more subjective every day.

B: How come?

A: Well, maybe you can explain that they are as objective as they used to be.

A puts forward a standpoint in the confrontation stage, while B casts doubt on that same standpoint. In the normal case B is only challenger and has nothing to defend; the burden of proof clearly lies with A. B is being saddled with the role of protagonist of the contrary standpoint. This move is of course only successful if B is willing to take that role and to defend his standpoint. A knows that B's possible failure to defend his standpoint will be to his own advantage.

Our earlier experimental studies show that ordinary language users in general think that the fallacy of shifting the burden of proof is highly unreasonable. In our research the respondent had to judge moves in short argumentative exchanges. We have strong indications that our respondents adhere to the pragma-dialectical burden of proof rule at least in respect of the fallacy of shifting the burden of proof (Van Eemeren et al. 2000).

Shifting the burden of proof however is not the only violation of the burden of proof rule. It is also possible for the protagonist to *evade the burden of proof*. One way of doing that is to present the standpoint in such a way that there is no need to defend it in the first place by giving the impression that there is no point in calling it into question. This can be done by presenting the standpoint as self-evident and using formulations such as: 'It is clear that...', and 'It goes without saying that...'. Another way is to give a personal guarantee of the acceptability of the standpoint and using formulations such as 'I can assure you...', 'You can take it from me that...' or 'It is my personal conviction that...'. This kind of move is powerful because it leaves the opponent with two options: accept the standpoint or openly abandon faith in the protagonist.

A third way of evading the burden of proof is to formulate the standpoint in such a way that is protected from any critical assessment. This can be done by using

'hermetic' wordings and leave out articles, as in 'Germans are essentially war mongers' or 'By nature women are nosy'. These formulations are fallacious because critical attacks will bounce off on an armor of immunity.

So far, these violations of the burden of proof rule can occur in simple non-mixed disputes. In more complex cases the parties in the discussion try to evade the burden of proof in mixed disputes. In a mixed dispute both parties in the discussion put forward a standpoint. One party claims that smoking is bad for your health while the other party claims that smoking is not bad for your health. Since there are two opposing standpoints, the dispute is of the mixed type. In a mixed dispute the default situation is that both parties have the obligation to defend their own standpoint. The question is: who will start; what will be the order of defense?

In the ideal model for critical discussions this problem of order is dealt with in the opening stage. In their decision-making, the parties can use the principle that the initiator of the discussion topic should start. This principle at least follows the conversational standard sequential of standpoint-argumentation-rejection/acceptance. Another rule of thumb that can be helpful in deciding which party goes first is the principle that the party who comes up with a new plan should start defending this plan. Or the party who attacks a generally accepted belief or opinion should start.

The problem of order can in principle be solved and when both parties agree it is not an obstacle of the process of conflict resolution. In practice it becomes troublesome when a party presents the problem of order as a *problem of choice*. The party who commits this fallacy lays the burden of proof solely on his opponents' side and denies any burden or commitment.

In fact, the arguer who commits this fallacy appeals to the principle of *status quo*. Just as in criminal law the party who wishes to change the status quo has the burden of proof. This means that the status quo has the status of *presumption*. Going against the status quo means proposing a new plan or policy or attacking a commonly accepted belief or opinion. However, in all of these cases both parties in the mixed dispute have the burden of proof for their own position irrespective of the type of standpoint[i].

Also, when it is impossible for one of the parties to defend his position because he has not access the required information it would be senseless to lay the burden of proof with this party. Because one of the parties cannot provide the necessary

proof for his standpoint the parties should agree in the opening stage that for now the burden of proof lies only with one or the parties. This situation is typical for accusations. When for instance in an every life dispute A accuses his fiancée B of cheating on him, it will be very hard for B to prove the opposite. That means that B should not have the burden of proof for her standpoint that she did not cheat. However B is obliged and also has the right to refute the arguments that A puts forward.

A: You cheated on me.

B: No, I certainly did not.

In our empirical study we want to find out whether the norms ordinary language users (claim to) apply when evaluating argumentation, are in agreement with these theoretical norms. How reasonable or unreasonable is the fallacy of evading the burden of proof in the eyes of naïve judges? Furthermore, we wanted to know whether the type of standpoint influences their opinions about this fallacy. Is, for instance, evading the burden of proof seen as less unreasonable when one is defending commonly accepted opinions or when one is defending the status quo against new proposals for change?

3. Experimental design

In our experimental study we used 32 argumentative dialogues. Each dialogue consisted of 2 turns and was preceded by a short situation sketch in which the parties were introduced and the dispute itself became clear. It was made clear to the respondents exactly what party put forward what standpoint. Only one thing we avoided to reveal: the order of standpoint presentation. The question who started the discussion was left open if possible. The respondents could be tempted to think that the person who started the discussion should start defending his standpoint. And that is what we tried to avoid.

In 16 of the dialogues party B claims that he has nothing to prove and that the opponent should prove his position. In 4 of those dialogues the last move is not fallacious at all because the issue is an accusation and it seems impossible for the defender to prove his innocence. As in the following example:

Robert and Anita are having an argument. Anita claims that Robert cheated on her. Robert denies the accusation.

Anita: Prove that you didn't cheat on me.

Robert: No, I have nothing to prove. You should prove that I did not cheat on you.

In another 4 dialogues the discussion is about a proposed plan. Speaker B fallaciously lays the burden of proof with the order party and evades the burden of proof. As in the following dialogue:

Eric thinks that it would be good to increase the maximum speed limit to 150 kilometers an hour. Peter thinks that it is not necessary and that we should leave it at 120.

Eric: Why should we leave it at 120?

Peter: No, you should explain to me why it should be 150.

Again in another 4 dialogues the discussion is about an alleged fact. We made sure that the standpoint was a commonly accepted belief or opinion. In a pilot research we checked our intuitions on this point.

John says that in general it is easier for Dutch high school students to learn French than English. Ellen thinks that that is nonsense. She believes that English is in fact much easier to learn.

John: Why do you think English is easier to learn?

Ellen: Why do I have to explain that? You tell me why you think French is easier.

In the last 4 episodes we constructed discussions about neutral standpoints: in these cases the positions did not go against the status quo.

The members of a political party are having a discussion about the question whether Adams is suitable for parliament. Mrs. Van Dyck thinks Adams is not suitable while Mr. Williams thinks Adams is suitable.

Williams: Why do you think Adams is not suitable?

Van Dyck: Why do I have to explain that? You should tell us why you think he is suitable.

As before one of the parties claims he has nothing to prove and fallaciously lays the burden of proof with his opponent. As can be seen in the examples we tried to use quite resolute formulations to make sure that respondents understand that the burden of proof is distributed to one side only.

The rest of the 32 dialogues were meant as fillers in the experiment. 10 of those were unproblematic reasonable, non-fallacious dialogues. To avoid alternative explanations in these non-fallacious dialogues we use the same kind of resolute formulations as we used in the fallacious dialogues.

For reasons of comparison we also included fallacious dialogues we used in earlier studies. Those include two types of ad hominem attacks and the fallacy of declaring the standpoint taboo. We changed the formulation of these fallacies to

let them look like our experimental items. Because we know what is to be expected this addition provides a good stability check.

A total of 70 (17 to 18 year old) Dutch high school students took part in the test. None of the respondents received any special schooling in argumentation theory. The respondents were to express their judgments on a 7-point scale (1= very unreasonable, 7 = very reasonable). In all cases the respondents had to judge the dialogue turn of the last speaker[**ii**].

4. Results

Table 1 shows the results for the fillers. These results as to results we found in our previous studies (cf. Van Eemeren et al., 19). That means the respondents reacted in a normal way and that there are probably no sample mistakes.

Table 1 Means for reasonable scores and standard deviation for fillers, per type of fallacy.

Type of fallacy	mean	(s.d)
<i>Tu quoque</i>	3.83	1.21
<i>Abusive</i>	2.49	1.07
Declaring the standpoint taboo	2.46	1.43

Table 1: Means for reasonable scores and standard deviation for fillers, per type of fallacy

The judgments about the reasonable dialogues are in accordance with what can be expected as well. The mean proves to be almost 5.7 (s.d.=.55) Given the fact that we used a seven-point scale, we may take it that the respondents evaluated these dialogues as reasonable in an absolute sense.

Discussion moves containing a fallacy of the evasion of the burden of proof are seen as unreasonable in an absolute sense, regardless whether the standpoint at issue had a presumptive status or not (see Table 2).

Table 2 Means of reasonable scores and standard deviation per type of dialogue.

Type of dialogue	mean	s.d.
fallacious		
no presumption (neutral)	2.72	.81
presumptive: commonly accepted belief	3.45	.98
presumptive: against new plan	3.48	1.16
non-fallacious		
accusation	5.28	1.01
other reasonable	5.68	.55

Table 2: Means of reasonable scores and standard deviation per type of dialogue

A further analysis reveals that the respondents did not differentiate between reasonable dialogues and dialogues containing accusations. In that respect the respondents reacted in accordance with the pragma-dialectical burden of proof rule. The discussion moves that contained a fallacy of evading the burden of proof were all considered as unreasonable in an absolute sense. Those results are also in accordance with the burden of proof rule.

The respondents – as was more or less expected – discriminated between the unreasonableness of the three types of violations. The fact that a standpoint has a presumptive status plays a role in their judgments. Evasion fallacies in case of commonly accepted beliefs are equally unreasonable but the respondents are less unreasonable than evasion fallacies in case there is a neutral standpoint.

In other words: the fallacy of evading the burden of proof is considered unreasonable no matter what kind of standpoint. But respondents are less strict in their judgments when the violator has the presumption on its side.

5. Conclusion

Language users make a sharp difference between fallacious and non-fallacious discussion moves; fallacious discussion moves are found to be much more unreasonable than reasonable discussion moves. The subjects were able to detect violations of the burden of proof rule. Also, presumption proves to play an important role in their judgments about the fallacy of evading the burden of proof. The paradigmatic case of presumption (the presumed innocence of the accused in a criminal cases) proves to be taken by the subjects just as was expected from a normative-theoretical viewpoint: in the eyes of language users, the accused who is not in the position to prove his innocence may put the burden of proof on the opposition.

NOTES

[i] There are a few exceptions to this rule. When the parties have argued about the same standpoint and nothing changed, it would be senseless to have the same discussion again, because the exact same outcome may be expected.

[ii] We split the total group of respondents into two subgroups; one group received dialogues in which the evasion of the burden of proof was explicitly motivated (I don't have to prove my position because you propose a new plan), the second group received dialogues without such an explicit motivation. There proved to be no significant differences between these two groups.

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Pracmatic View Of The Burden Of Proof



1. *A dialectical profile of the division of the burden of proof*

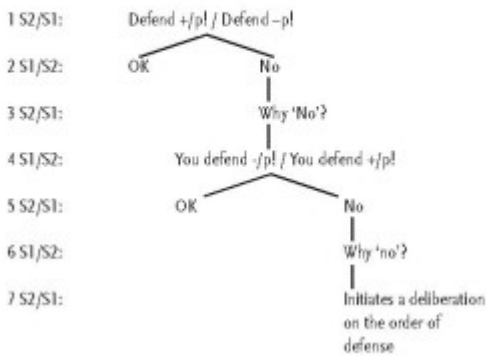
In an earlier paper, entitled 'Strategic maneuvering with the burden of proof,' we have explained our dialectical perspective on the division of the burden of proof in a critical discussion (van Eemeren and Houtlosser, 2002).

We did so by answering a series of interrelated questions from a procedural view of critical reasonableness: Why is there a burden of proof? A burden of proof for what? For whom? What exactly does the burden of proof involve? When is it activated? What means can be used to acquit oneself of the burden of proof? And when is one discharged? Because our responses were given in a critical rationalist vein, they are attuned to resolving a difference of opinion by critically testing the acceptability of a standpoint in the most systematic, thorough, perspicuous, and economic way. In the present paper we aim to complement this approach by offering a pragmatic solution for an important problem that may arise in 'mixed' disputes, where opposite standpoints are put forward regarding the same issue. The problem concerns the *order* in which the opposing standpoints are to be defended.

Making use of an analytic tool provided by Walton and Krabbe (1995), we describe the interactional situation in which our problem arises with the help of a *dialectical profile*. This profile specifies the moves that are admissible when dividing the burden of proof in a mixed dispute in the opening stage of a critical discussion. The profile starts from the situation that a mixed dispute has come into being in the confrontation stage between two parties. The profile includes both possibilities: the one in which the party that has advanced a *positive* standpoint is challenged first to defend this positive standpoint and the one in which the party that has advanced a *negative* standpoint is challenged first to defend this negative standpoint.

[Result of the confrontation stage: S1: +/p; S2: ?/{+/p}; -/p; S1: ?/ (-/p)]

Opening stage:



We are here concerned with the interactional situation that comes into being when a party, in response to the other party's challenge (in turn 1), refuses (in turn 2) to defend his standpoint. When asked (in turn 3) why he does not want to defend his standpoint, this party can (in turn 4) challenge the other party to defend his opposing standpoint. As the profile specifies, in such a situation the other party has (in turn 5) two possibilities: either he concedes to begin defending his own standpoint or he rejects the challenge. If the other party rejects the challenge, the first party may (in turn 6) require an explanation why the other party does not want to defend his standpoint. At this point, the other party may (in turn 7) no longer return the challenge, because he has already challenged the first party in his very first move (turn 1). Instead, the other party may initiate a deliberation on the order in which the standpoints at issue are to be defended.

Thus the dialectical profile makes it clear that the problem of establishing the order in which two opposing standpoints are to be defended amounts to a procedural problem concerning who will be the first to assume the burden of proof in a mixed dispute. In the opening stage of a critical discussion, a deliberation may be started over the order in which the defenses should take place, and this deliberation is to be initiated by the party that has started the process of challenging. The dialectical profile also makes it clear why this procedure is so. It is only after the party that has been challenged initially (in turn 1) has returned this challenge (in turn 4), that the order of defense can become pertinent. The order of defense can only be made an issue by the other party in the subsequent turns (turn 5-7).

2. *Acquiring a burden of proof*

The dialectical profile clearly specifies how and when the order of defense can

become an issue in a mixed dispute, but it does not specify how it can be decided what the order should be. In the various treatments of this burden of proof problem in the scholarly literature on argumentation, various kinds of would-be solutions have been proposed: epistemological, juridical, ethical, etc. In our pragma-dialectical approach we opt for a more general stance. We think that the way in which this problem is to be resolved depends in the first place on the institutional practice or context in which the discussion takes place. The opening stage of a critical discussion is designed precisely to accommodate the kinds of procedures and conventions that are operative in the various institutional practices and contexts. There are practices that are genuinely institutional, such as criminal lawsuits and parliamentary debates, and where fixed procedures determine how issues of order should be decided. There are also practices where no fixed procedures exist, but where nevertheless certain conventional rules are operative that are in agreement with the goals of the practice concerned. In a broader perspective, all everyday verbal interaction can be regarded as institutional in the Searlean sense (1969) that performing speech acts is a form of institutional, rule-governed behavior and specific types of speech acts in specific kinds of exchanges are subjected to specific kinds of conventions. If no genuine institutional procedures are operative in the context in which a discussion takes place, these specific kinds of conventions provide a pragmatic rationale for deciding on issues such as order of defense. In the remainder of this paper, we intend to explain what this *pragmatic rationale* consists of and how it can account for a certain decision on the order of defending when two opposite standpoints are advanced.

We start by presenting first two dialogues in which the parties advance opposing standpoint, and the first speaker requires the second speaker to defend his opposite standpoint first. The standpoint that introduces the issue is represented in *italics*. In the first dialogue, this standpoint involves an implicit accusation:

(1)

1. S1: My purple vase!
2. S2: Yes, what a pity, isn't it?
3. S1: *You dropped it!*
4. S2: I did not!
5. S1: Make me believe you didn't
6. S2: I beg your pardon?!
7. S1: Why not?

8. S2: Well, ...

In the second dialogue, the standpoint is an informative assertive:

(2)

1. S1: Jan is leaving for Warsaw tomorrow

2. S2: When exactly?

3. S1: *Ten a.m.*

4. S2: Is that so?

5. S1: Yes, isn't it?

6. S2: As far as I know, the train departs every odd hour

In a pragma-dialectical reconstruction of these dialogues as a critical discussion, the dispute can in both cases be characterized as *mixed* because the parties take opposite positions in regard of an issue: in dialogue (1), the issue is whether S2 has dropped the vase; in (2), the issue is whether the train leaves at ten a.m. In both disputes both parties have a standpoint of their own. Consequently, in both cases both parties have an obligation to defend their standpoints[**i**]. There is a problem, however. Temporarily or definitively (we cannot tell), the party whose standpoint is put forward first shifts the burden of proof to the other party, but this shift seems in case (2) more or less legitimate, but certainly not in case (1)[**ii**]. We think that by examining how in ordinary argumentative discourse a burden of proof is acquired and what the pragmatic rationale for attributing such a burden of proof can be, we will be able to explain this difference.

3. Relating the burden of proof to the pragmatic status quo

Reconstructing what people say and intend to convey in argumentative discourse as a series of moves in a critical discussion, as is aimed for in pragma-dialectics, amounts to an explicit analysis of these people's 'dialectical' commitments to certain propositions. Such an analysis can only be achieved if the dialectical commitments of the parties involved in the discussion can be derived from the 'pragmatic' commitments that are inherent in the way in which they have expressed themselves in the discourse, whether explicitly or implicitly. These pragmatic commitments can be traced by making use of insight provided by theories of language use that focus on how mutual obligations are incurred and acquitted in verbal communication and interaction, such as the Searlean speech act theory and the Gricean theory of rational exchanges.

In the first place, Searlean speech act theory and Gricean theory of rational

exchanges can be called upon in explaining the rationale for attributing certain pragmatic commitments to the participants in argumentative discourse. As Jackson (1995) observes, the Gricean maxims, in particular the Maxim of Quality (“Do not say what you believe to be false or that for which you lack adequate evidence”), support the general presumption that an assertion advanced in the discourse – and in our opinion this also goes for other types of speech acts – is acceptable. According to Jackson, this presumption is cancelled only if the interlocutor (1) has independent reasons to doubt whether the assertion is indeed acceptable or (2) whether the speaker is indeed behaving in a cooperative way, or (3) if the context indicates that the speaker himself deems his assertion less acceptable for the interlocutor (1995: 258). Ullman-Margalit (1983) expresses basically the same idea when she says that from a legal perspective an assertion being ‘presumptively acceptable’ means that the interlocutor is *entitled to regard it as acceptable***[iii]**.

In our opinion, the presumption of acceptability has an even more fundamental basis in the Interaction Principle. Van Eemeren and Grootendorst (1991) state this principle as a general prohibition against the performance of any speech acts that are not acceptable to the interlocutor. Unlike the Gricean maxims, the Interaction Principle involves a real requirement. A violation of this principle does not encourage alternative interpretations of what is said. On the contrary, such a violation obstructs the normal course of the interaction, and can even lead to sanctions**[iv]**. Anyone who performs a speech act is committed to complying with the requirement involved in the Interaction Principle, and this commitment gives rise to the presumption that the speech act that was performed is indeed acceptable. This presumption is similar to the presumption that motorists that approach a red light will obey the connected traffic rule and stop their car.

Until there are clear indications of the opposite, the interlocutor is thus entitled to regard the speech act performed by the speaker or writer as acceptable. If, however, there are indications that the speaker or writer has *not fully committed himself* to the requirement involved in the Interaction Principle, the situation is different. When, for instance, a speaker makes it known in advance that he anticipates opposition from his interlocutor, and – following up on this – the interlocutor does indeed express opposition to the speech act concerned, then the presumption shifts to the interlocutor. To regain the presumption of acceptability, the speaker has to adduce evidence that his speech act is acceptable after all. In

other words, he has acquired a burden of proof. Only after the speaker has succeeded in acquitting himself of this burden, the presumption shifts back to his position. If the interlocutor then intends to maintain his opposition, he, in turn, should acquit himself of the burden of proof for his opposite position. This is the only way in which he can regain the presumption for his opposition (see Rescher, 1977).

We think that this analysis can be taken a step further by observing that it is reasonable to let the presumption of acceptability remain with a speaker as long as the speaker's speech act does not go against the prevailing *pragmatic status quo*. This means that his speech act may not be at odds with the set of premises that are mutually shared by the parties involved in the interaction. This set of premises represents the 'pragmatic' status quo because rather than warranted beliefs or the general state of knowledge in a certain field, as in the 'cognitive' or 'epistemic' status quo, it refers to the list of premises that the particular parties involved in the discourse explicitly or implicitly accept and that define their *interactional relationship in the interactional situation at hand*[v]. The pragmatic status quo is challenged as soon as one of the parties involved performs a speech act that is inconsistent with the shared premises, for example because the state of affairs presupposed by its identity or correctness conditions conflicts with one of more of the commonly accepted premises.

4. Violating the pragmatic status quo

When may a speech act be assumed to be inconsistent with one or more mutually shared premises? We think that Kauffeld's (2002) analysis of the way in which a burden of proof is incurred in every day verbal interaction can be of help in answering this question. In Kauffeld's view, it depends primarily on the nature of the speech acts concerned when people engaged in verbal interaction incur a burden of proof and what the burden of proof involves. This means that the illocutionary point of a speech act and the implications of having made this point in a felicitous way are of decisive importance.

In our view, Kauffeld's account has the merit of complementing concerns with dialectical obligations in ideal situations with a pragmatic concern about the way in which burdens of proof are assumed in everyday verbal interaction. He achieves this complementation by showing how the performance of certain speech acts, i.e., proposing and accusing, can endow the speaker with certain *probative obligations*[vi]. We think that Kauffeld's approach can be generalized

and applied to all verbal interaction by means of speech acts. In our outline of how we think such a generalization can be realized, we adapt Kauffeld's idea that certain speech acts may have implications that - possibly or presumably - go against the interlocutor's interests. Our adaptation amounts to taking Kauffeld's idea to mean that a speech act may have implications that go against the interlocutor's view of the interactional relationship between the speaker and the interlocutor encompassed in the present *pragmatic status quo*.

According to our adapted account, a proposal would invite an adjustment of what the interlocutor until then took to be the shared expectation of how the interactional relationship between the communicators should be in the future; an accusation invites an adjustment of what the interlocutor so far regarded as the shared view of the relationship between them. In our conception of a pragmatic status quo, this would mean that both a proposal and an accusation have implications that are likely to be inconsistent with the list of mutually shared premises - or at least with what the interlocutor supposed the list to be.

Searle's taxonomy of speech acts may be of help in determining which types of speech acts may have implications that run counter to the interlocutor's view of his current interactional relationship with the speaker. 'Commissives,' for instance, can generally be expected to have implications that agree with the interlocutor's view of the interactional relationship between the speaker and the interlocutor. 'Directives,' on the contrary, can easily have implications that are in disagreement with the interlocutor's view. As a rule, promises do not introduce actions that the interlocutor will think inconsistent with agreed-upon desirables, but with requests this may quite well be the case. There is at least one class of speech acts in Searle's taxonomy that contains *both* types of speech acts. This is the class consisting of the 'assertives.' Some assertives are designed to provide the interlocutor with information that he did not possess before but that is expected to be consistent with what he already knows, such as 'informing' and 'explaining.' There are also assertives, however, that aim to make the interlocutor accept a view that he did *not* accept before and that cannot be expected to be consistent with what he already accepts, such as 'claiming' and 'accusing[viii].'

5. A pragmatic view on deciding the order of defense in a mixed dispute

Now we have explained what we mean by a *pragmatic status quo* and how we can determine whether or not a speech act may be considered to violate this *status quo*, we return to the problem of the order in which two opposing standpoints are

to be defended in a mixed difference of opinion.

In the pragma-dialectical view of argumentative confrontation, the speech act that initially introduces the issue can acquire the status of a standpoint in a dispute in two ways: either the person who performed that speech act makes it clear that he anticipates that the interlocutor will not accept this speech act at face value or the interlocutor makes it known that he is not prepared to accept the speech act at face value by performing a counter speech act (see van Eemeren, 1987; Houtlosser, 2002). In the first case, there is no presumption attached to the initial speech act, because the speaker or writer makes it clear from the start that this speech act may go *against the prevailing pragmatic status quo* between him and the interlocutor. In the second case, the speech act concerned initially *has* a presumptive status, because for all the speaker or writer knows - and also for all we know - this speech act *does not violate the prevailing pragmatic status quo*. This presumptive status is, of course, canceled when the interlocutor opposes this speech act with a counter speech act.

Let us assume for a moment that the interlocutor opposes the speaker's initial speech act with a counter speech act not only in the second case we discussed but also in the first situation, in which the speaker has made it clear that he anticipates such opposition. The interlocutor's reaction then agrees completely with this anticipation. Both cases can now be regarded as involving the kind of interactional situation of maximal opposition that can pragma-dialectically be reconstructed as a *mixed dispute*: the two parties have assumed contradictory standpoints and each party has a duty to defend its own standpoint. All the same, there is an important difference between the two interactional situations. In the first case, the standpoint that initiated the dispute has no presumptive status from the start, whereas in the second case it has. And the interlocutor's opposition has a presumptive status in the first case, but not in the second. In the second case it is, after all, precisely the interlocutor's opposition that first challenges the pragmatic status quo that is up to then supposed to prevail.

What are the implications for handling the burden of proof of this discrepancy between these two different interactional situations in a mixed dispute? In 'Strategic maneuvering with the burden of proof' (2002), we have argued for a conception of the burden of proof as consisting in an obligation for a party in a dispute to defend its standpoint if challenged to do so, but we have also argued for the acknowledgement of an additional, procedural obligation that was pointed

out by Hamblin (1970): the burden of initiative. Besides an obligation to defend a standpoint, a *burden of initiative* implies an obligation to defend this standpoint *at this particular juncture* of the discussion. Distinguishing the obligation to defend a standpoint from the obligation to defend it at this particular juncture of the discussion allows for the existence of an interactional situation in which a certain party has an obligation to defend a standpoint, but is not required to acquit itself of this obligation now. That is, at a particular juncture, a party that has advanced a particular standpoint does not have the burden of initiative[**ix**].

It is precisely the additional obligation of having the burden of initiative that we just emphasized which makes for the difference in the burden of the parties in the two cases we just discussed. In the first case, the speaker has both an obligation to defend *his* standpoint and an obligation to start the defense. In the second case, he does have an obligation to defend his standpoint, but not an obligation to defend it immediately. He is only required to defend his standpoint after the interlocutor has defended his standpoint. Whereas the *order* in which the two standpoints are to be defended coincides in the first case with the order in which they have been put forward, in the second case it does not. The latter of the two dialogues we presented at the beginning of our paper is, not coincidentally, an example of the interactional situation in the second case:

(2)

1. S1: Jan is leaving for Warsaw tomorrow
2. S2: When exactly?
3. S1: Ten a.m.
4. S2: Is that so?
5. S1: Yes, isn't it?
6. S2: As far as I know, the train leaves nine twenty

The first speaker's assertion (in turn 3) has acquired the status of a standpoint because of the second speaker's opposition (in turn 4). Nevertheless, the presumptive status of the first speaker's assertion is preserved because at the stage in which it was performed there were no indications that he performed a speech act that could be regarded as going against the prevailing pragmatic status quo; consequently, this speech act cannot bestow a burden of initiative on him. First, the interlocutor should justify his opposition. Once he has done so, the first speaker's assertive loses its presumptive status and this speaker is obliged to accept the burden of initiative. Then he cannot escape any longer from

defending his assertive against the interlocutor's opposition.

6. Conclusion

In this paper we have given substance to our pragmatic view of the burden of proof. Our claim was that a burden of proof is incurred as soon as a speech act goes against a prevailing pragmatic status quo. The concept of a pragmatic status quo can be specified in terms of a list of premises that are explicitly or implicitly accepted by the people who are having a dispute and define their current interactional relationship. Criteria for determining whether or not a burden of proof is incurred can be established by exploiting the idea that the performance of particular types of speech acts may have implications that go against the interlocutor's view of this interactional relationship. Decisions on the order in which two opposite standpoints must be defended can be justified by giving a truly pragmatic interpretation of the burden of proof concept that differentiates between a conditional obligation to defend a standpoint and a burden of initiative.

NOTES

[i] In a critical discussion, advancing a standpoint implies assuming a conditional obligation to defend the position expressed in that standpoint. When two opposing standpoints are advanced by different parties, both parties are required to defend their position.

[ii] In (2) it would indeed have been odd if S2 would in turn 6 have said that S1 should first prove that the train leaves at ten a.m.

[iii] In the law, the notion of presumption is applied to situations in which something is an 'impending issue.' What to do, for example, when someone has been absent for more than seven years: Should this person be declared dead or not? For legal purposes, it is then presumed that this person is dead. Ullman-Margalit (1983: 148) emphasizes this feature when she says that "[p]resumption entitles deliberators to make an assumption that they are otherwise not entitled to make." Jackson's use of the notion of presumption conforms to the legal use on the condition that the acceptability of a speaker's assertion can be considered an 'impending issue.' What to do when someone has said something: Accept it or not? The presumption is: accept, unless there is something that weighs against it.

[iv] The Gricean maxims, which are Jackson's basis for the presumption of acceptability, are not rules in the same sense. Unlike violating a "real" rule, violating a maxim does not lead to any sanctions but to an interpretation of the speaker's meaning that is different from the literal 'utterance meaning' (assuming

the Cooperation Principle still applies). Thus, in a Gricean perspective, the fact that the Maxim of Quality is not violated does not warrant the conclusion that what the speaker asserts is presumptively acceptable. Given that none of the other maxims are violated either, and, again, the Cooperation Principle still holds, it is only warranted to conclude that nothing else was meant than was literally said.

[v] What Rescher (1975) and others have called a ‘cognitive status quo’ (or ‘epistemic status quo’) is in fact subsumed in our concept of ‘pragmatic status quo.’ The concept bears some relation to Walton & Krabbe’s (dialectical) concept of ‘dark-side commitments.’

[vi] “[I]n many kinds of illocutionary act, S does not, at least not typically, engage a larger obligation to provide, on demand, reason and evidence vindicating the truth and adequacy of her primary utterance. [...] But, other things being equal, where S makes a proposal or levels an accusation, she cannot responsibly dismiss an addressee’s demand for proof” (Kauffeld 2002, italics by the author). For empirical confirmation of this theoretical observation in as far as it concerns ‘accusing,’ see van Eemeren, Garssen and Meuffels (2003).

[vii] In his analysis of proposing, Kauffeld claims that the major reason for having to justify an act of proposing is that the one who proposes something is supposed to have good reasons for what he proposes and if he aims at having his proposal accepted he should inform the interlocutor of these reasons. In his analysis of accusing, Kauffeld suggests that a major reason for having to justify an act of accusing is that the accused party has a right to deny the accusation and can only do so properly if the accuser has provided reasons for his accusation.

[viii] The declaratives, in particular ‘language declaratives’ such as definitions and specifications, are likely to be open to the same problem, just as the ‘expressives.’

[ix] This is, in fact, a different way of making Rescher’s well-known distinction between an I(nitial)-burden of proof and an E(vidential) burden of proof.

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ISSA Proceedings 2002 - Fallacies As Derailments Of Strategic

Maneuvering: The Argumentum Ad Verecundiam, A Case In Point



1. *The current state of the art in fallacy theory*

As we all know, in 1970 Hamblin sketched a devastating portrait of the state of the art in fallacy theory. Since then, several new and constructive approaches have developed. In all these approaches, the fallacies are - more generally - viewed as “wrong moves in argumentative discourse” rather than as “arguments that seem valid but are in fact not” (see van Eemeren, 2001). Such a new approach is not only taken by Hamblin (1970) himself, but also by Woods and Walton (1989), Barth and Krabbe (1982), van Eemeren and Grootendorst (1984, 1992a), Walton (1987, 1992, 1995), Johnson (2000), Jacobs (2002), and many others. Although one can safely claim that Hamblin’s criticisms no longer apply to the present state of the art in fallacy theory, a fully satisfactory theory of the fallacies is still lacking. If only because the intriguing problem of the remarkable persuasiveness of (at least some of) the fallacies, which was in the traditional definition of a fallacy indicated by the word “seem,” has been completely ignored. In this paper, we shall argue that taking rhetorical considerations into account in a dialectical approach of the fallacies can lead to a better and more complete understanding of how a great many of the fallacies “work.”

2. *Ad hoc theoretical treatments of the fallacies*

A major disadvantage of various modern theoretical treatments of the fallacies is that they are, in more than one sense, *ad hoc*. This is so in the first place when they take the traditional list of the fallacies as it is handed down by history and recorded in the literature as their point of departure. Several informal logicians, and most notably Walton, tend to do so. The traditional list, however, is - in spite of Woods’ (1992) protestations -, instead of a systematic and theoretically motivated catalogue of the fallacies, a more or less arbitrary collection of the diverse kinds of argumentative moves that have been recognized as fallacious in the past. The older work of Woods and Walton (1989) is a good illustration of how this kind of label-oriented approach leads to an entirely different theoretical treatment of each individual fallacy. Such a treatment of the fallacies is therefore

also ad hoc in a second sense.

A fundamental problem that threatens fallacy theory if each fallacy gets its own theoretical treatment is that not only the treatments are at variance with each other, but often also the general perspectives from which they start. It is, of course, quite possible that all the judgments are made from one and the same perspective, let's say a logical or formal perspective, as favored by Woods, or an epistemological perspective, as Biro and Siegel aspire to develop (1992). More often than not, however, the one perspective is used in the one case and the other perspective in the other, or different perspectives get even mixed up. It often happens, for instance, that ethical or moral considerations all of a sudden get the upper hand over the logical or other considerations that were professed to be the only ones[i]. In his contribution to this volume, Wagemans (2003) provides a good illustration when he discusses Walton's (1999) treatment of the *argumentum ad ignorantiam*. In his analysis, Walton introduces, without giving much of a rationale, an *epistemic* norm to condemn such 'arguments.' Next, however, he starts classifying exceptions to this norm, and mentions, instead of epistemic considerations, practical considerations having to do with the *consequences* of applying the norm[ii].

We think that it is an important requirement of any theoretically adequate evaluation of argumentative discourse, whether the evaluation is given in terms of fallacies or not, that there is a common rationale for applying a certain set of norms that guarantees their coherence. This rationale should, just as the norms that are used in its implementation, be a reflection of a clearly defined philosophical ideal of reasonableness and rationality[iii]. Another important requirement is that the norms used in evaluating argumentative discourse can be made instrumental by means of specific and workable criteria that make it possible to decide in specific instances whether a certain norm has been violated or not. Otherwise the outcomes of the evaluative judgments will not just be ad hoc but even worse, unjustified(iv).

Another disadvantage of some ad hoc treatments of the fallacies is that the labels for the fallacies are not restricted to those cases that are considered unacceptable and unreasonable but are also applied to acceptable and reasonable cases. Confusingly, you can then have an *argumentum ad hominem* that is an *incorrect* argumentative move but also an *argumentum ad hominem* which is a *correct* move[v]. In our use of terminology, we shall call a spade a spade and reserve the

names of the fallacies for cases of the *fallacious* kind[**vi**].

At this juncture, it is good to observe that although it is generally acknowledged among argumentation theorists that an adequate theory of fallacies presupposes an adequate theory of sound argumentation, it is by no means generally acknowledged that, in addition, these two theories should be connected in such a way that each fallacy has, as it were, its sound “counterpart.” The relationship between the fallacy and its counterpart should in fact be such that the reason for the unsoundness of the fallacy is directly related to the reason for the soundness of its counterpart. As long as the traditional list of fallacies is taken as the point of departure for further reflection, it can be no surprise that this requirement is not fulfilled. Most fallacies on that list are just names of “wrongs” in argumentative discourse, and no sound counterpart is ever mentioned. In such an approach, the discussion of the problems involved in evaluating argumentative discourse *begins and ends with the concept of a certain fallacy*. When, for example, the problems of evaluating cases of ‘begging the question’ are discussed, first, the features are described that are deemed characteristic of the fallacy of begging question, and then, *on the basis of these features*, criteria are developed for identifying instances of begging the question in actual practice. This way of proceeding reveals a serious theoretical defect. Since the fallacy is the beginning and the end of the analysis, no independent account can be given of the sound counterpart of this fallacy, let alone of the way in which the two are related.

3. Systematic theoretical treatments of the fallacies

There are also more systematical treatments of the fallacies in which the requirements we just mentioned are at least partly taken into account. Among them are Hamblin’s (1970) and Barth and Krabbe’s ‘formal dialectics’ (1982)[**vii**], and van Eemeren and Grootendorst’s ‘pragma-dialectics’ (1984, 1992a)[**viii**]. Instead of taking the traditional list of fallacies as their point of departure, the dialectical fallacy theorists start from a conception of *sound* argumentation. They assume a critical rationalist perspective on argumentative discourse that is their rationale for designing particular dialectical systems or models of sound critical discussion. Fallacies are then conceived as argumentative moves that are excluded by the rules of a certain dialectical system, as in formal dialectics, or as moves that are infringements of the procedural rules for conducting a critical discussion, as in pragma-dialectics. In both cases, there are independent reasons for finding fault with particular moves that are made in the discourse and these

reasons are closely related with the general goal attributed to the dialectical exchange. In pragma-dialectics, for instance, this general goal is resolving a difference of opinion by testing the acceptability of a standpoint at issue[**ix**].

As systematic theoretical treatments of the fallacies, the dialectical approaches have much to recommend them. All the same, so far none of them offers the comprehensive fallacy theory we are aiming for. Apart from the fact that it is yet unclear to what extent formal dialectics can be usefully applied to ordinary argumentative discourse, there are some other desiderata left unfulfilled, which are also unfulfilled in pragma-dialectics. First, criteria that are specific enough to decide univocally whether or not a certain rule has indeed been violated are still largely to be developed. Second, none of these approaches provides any clue, let alone an explanation, as to why fallacies can be so persuasive that they run the risk of being left unnoticed.

An important reason why they have been so slow in developing the criteria that are needed to be able to check whether the rules are correctly applied in practice is that, so far, dialectical theorists have been primarily interested in the critical objectives presupposed by their rules, without paying much attention to other kinds of purposes that arguers have. What reasons a party may have in ordinary discourse for not complying with the rules, is usually not taken into account. These reasons, however, may be associated with purposes that are at odds with the proclaimed aim of a critical discussion. Moves that are made to realize such contrary purposes may sometimes inevitably lead to a violation of a rule for critical discussion. It is therefore imperative to know what these contrary purposes can be. Take the first pragma-dialectical rule for critical discussion, the so-called 'freedom rule.' This rule prohibits the parties to prevent each other from advancing a certain standpoint or attacking a certain standpoint. The critical rationale of this rule is that it enables people to initiate a critical discussion on any subject they wish. In order to know in which ways this rule can be violated, it can be of great help to know which additional purposes each of the parties may have, which of these additional purposes could be at odds with the critical objective of the freedom rule, and in which ways an attempt to achieve any of the other purposes may interfere with this critical objective.

Deviations from the rules of critical discussion are often hard to detect because none of the parties involved will be very keen on portraying itself openly as being uncritical. It can thus be expected that in order to realize a purpose that is

potentially at odds with the objective of a particular discussion rule, they will not use completely different means, but stick to the means that are available for achieving the critical objective and “stretch” these means in such a way that the other purpose can be realized as well. This predicament makes it necessary to know in advance in which - parasitic - ways the means that can be used to achieve the objective of a certain stage in a critical discussion can be employed to realize purposes that are at odds with this objective. Due to the fact that dialectical theorists have largely ignored the issue of cross-purposes in real-life argumentative discourse, it is not surprising that they have not been capable to come up with the kind of insight we are referring to. Perhaps Walton’s (1992) notion of a ‘dialectical shift,’ as developed further together with Krabbe (1995), in spite of its conceptual unclearness, comes closest to a tool for taking such complications into account.

4. Including the rhetorical dimension in a dialectical treatment of the fallacies

While fallacies have for a long time been defined as arguments that *seem* valid but are in fact not valid, the theoretical explication of this characteristic of fallacies has been completely abandoned since Hamblin issued the verdict that this feature brings an undesirable element of psychological subjectivity to the definition (1970: 254). Fallacy theorists are no longer concerned with the question of why fallacies “work.” Jackson (1995) is among the communication theorists who emphatically regret this, because along with this psychological element, the important issue of the *persuasiveness* of fallacies has disappeared from sight.

In recent papers, in our pragma-dialectical approach to the fallacies we have attempted to take due account of the persuasive aims of arguers engaged in argumentative discourse (van Eemeren and Houtlosser, 2002a, 2002b). We started from the assumption that such persuasive aims need not necessarily be realized at the expense of achieving critical objectives. The arguers’ endeavors to have things their way can be fully incorporated in their efforts to resolve a difference of opinion in accordance with the standards for critical discussion. While the arguers can be presumed to maintain these critical standards, they can at the same time be presumed to be out for an optimal persuasive result. In their efforts to achieve this result, they will resort to what we have termed *strategic maneuvering*, directed at diminishing the potential tension between the simultaneous pursuit of critical and persuasive aims.

Our view of strategic maneuvering as basically aimed at reconciling dialectical and rhetorical objectives does, of course, not automatically mean that the two objectives will in the end always be in perfect balance. If a party allows its commitment to a critical exchange of argumentative moves to be overruled by the aim of persuading the opponent, we say that the strategic maneuvering has got “derailed.” Because the maneuvering violates a particular discussion rule, it has become fallacious. In this sense, all derailments of strategic maneuvering are fallacious.

This approach of the fallacies as derailments of strategic maneuvering can be of help in developing criteria for identifying fallacious argumentative moves. In our view, each type of strategic maneuvering has, in a manner of speaking, its own “continuum” of sound and fallacious acting. Although fallacy judgments are in the end always contextual judgments of specific instances of situated argumentative acting, this does not mean that no clear criteria can be established in advance to determine whether a particular way of strategic maneuvering goes astray. Particular ‘types’ or ‘categories’ of strategic maneuvering can be identified, and for each of these types specific conditions can be determined that need to be fulfilled if the maneuvering is to remain sound. Certain manifestations of strategic maneuvering can then be recognized as legitimate while other manifestations can be pinned down as fallacious because the relevant conditions have not been met.

All fallacies are violations of a discussion rule, and the account just given explains why these violations are usually not immediately *apparent* to everyone. Because a party that maneuvers strategically will normally be regarded to uphold at all times a commitment to the rules of critical discussion, an assumption of reasonableness is conferred on every discussion move (see also Jackson, 1995). This assumption is also operative when a particular way of maneuvering violates a certain discussion rule and is therefore fallacious. Echoing the traditional definition of a fallacy, we can say that then the maneuvering still pretends to obey the rules of critical discussion, but in fact it does not.

5. Fallacies and derailments of strategic maneuvering

In principle, the approach we propose meets with virtually all the requirements of a comprehensive theory of fallacies we mentioned. To begin with, our approach does not begin and end with the fallacies, but takes the various *types of strategic maneuvering* as its starting point. In addition, this approach makes it possible to clarify - in reverse order - *the relation* between fallacies and their “sound

counterparts” by identifying for each type of strategic maneuvering a fallacious counterpart. The approach also allows us to explain the potentially *persuasive character* of the fallacies by attributing a critical pretension to every argumentative move, even if it is in fact fallacious. Finally, this approach provides a basis for developing criteria for *identifying* fallacious argumentative acting. It provides just a *basis*, and no more than that, because these criteria are the “negative counterparts” of the conditions that must be fulfilled for a particular type of strategic maneuvering to be sound. The criteria for determining fallacies can therefore only be fully developed in a systematic way if there is first a well-considered classification available of the diverse types of strategic maneuvering and a specification has been given of their soundness conditions.

A well-considered classification of types of strategic maneuvering is to be based on a systematic specification of the critical aims and the persuasive aims that the parties involved may be supposed to attempt to achieve at the various stages of an argumentative exchange. A good starting point for identifying these aims is, in our view, provided by the pragma-dialectical model of a critical discussion. Although this model specifies in fact only the critical objectives of the parties in the four discussion stages, each of these critical objectives has, as we have argued in earlier papers, its ‘rhetorical’ complement. This means that each party can exploit all the critical objectives to realize its own persuasive intents, and may thus arrive at making a move that optimally furthers its own case. The dialectical objective of the parties in the confrontation stage of a critical discussion, for instance, is to achieve a clear view of the issue on which the parties differ and the positions they assume. Each party involved can attempt to shape the issue and the positions taken in respect of this issue in the way it finds best to handle. These stage-related ‘local’ aims should, of course, be further specified to provide a more refined idea of the types of strategic maneuvering pertinent to the confrontation stage. For now, this degree of specificity should suffice to show that the strategic maneuvering by the parties at this particular stage will be aimed at maintaining the balance between an accurate and an advantageous interpretation of their dispute. In this way, at least one general type of strategic maneuvering has been identified. This makes it possible to examine its soundness conditions and the criteria that have to be taken into account for deciding whether or not the strategic maneuvering has got derailed, and a particular fallacy has been committed.

6. *Argumentation from authority and the argumentum ad verecundiam*

As a case in point, we discuss the demarcation of non-fallacious and fallacious moves in one particular type of strategic maneuvering. The type of maneuvering we have in mind takes place in the argumentation stage of a critical discussion when a party defends its standpoint by advancing a so-called 'argument from authority.' The argument from authority is a subtype of argumentation based on a 'symptomatic argument scheme', in which the argument provides a sign that the standpoint is acceptable. In the case of an argument from authority, the sign consists in a reference to an external source of expertise. Arguing from authority is potentially a sound type of strategic maneuvering, but it can derail and result in an *argumentum ad verecundiam*[x].

How can we specify the soundness conditions of this type of maneuvering? Imagine some people who are playing a game of scrabble[xi]. When one of them claims to have compiled a word but the others doubt that the combination of letters that has been laid out really constitutes a word, the first player may argue: "This is a word, because it is in the dictionary." Whether this appeal to authority is a legitimate strategic maneuver depends in the first place on the agreement the players have made prior to the game concerning the procedure that is to be followed for making out whether or not a would-be word is to count as a word. If the agreement consisted in letting the dictionary decide, there is nothing wrong, and the move would even be a strong one, unless it was also agreed that the *Concise Oxford Dictionary* would be the ultimate judge while the arguer refers to *Webster's*. If, on the other hand, the agreement was that a combination of letters would get recognition as a word *only* if it the word and its meaning are known to all concerned, an appeal to the authority of the dictionary would clearly be irrelevant, and fallacious. If nothing was agreed upon in advance, however, the appeal to the dictionary's authority could not be considered 'fallacious,' because then there is no norm or rule that could have been violated. If the other participants object to the appeal to the dictionary, it is to be decided in the second instance whether or not the *Concise Oxford Dictionary* is an admissible source of expertise. If it is then agreed upon that it is not, the appeal would be fallacious in retrospect.

Without too many problems, some more general pragmatic conditions can now be distinguished for sound strategic maneuvering by arguing from authority:

(1a) the parties in the discussion have agreed beforehand that an appeal to

authority is legitimate and

(1b) the agreement allows an appeal to precisely the authority that is actually appealed to;

(2a) the parties in the discussion have agreed in the second instance that an appeal to authority is legitimate and

(2b) the agreement allows an appeal to precisely the authority that is actually appealed to;

(3) the parties in the discussion have not come to any agreement about the legitimacy of an appeal to authority. If either the conditions (1a) and (1b) or the conditions (2a) and (2b) are met, no *argumentation ad verecundiam* has been committed and the arguing from authority may be regarded as sound strategic maneuvering. If condition (3) is met, no rule for critical discussion has as yet been violated, but the use of the argument from authority may introduce a new topic of discussion concerning its legitimacy.

7. Conclusion

In this paper, we have clarified the relation between fallacies and their sound counterparts by taking the type of strategic maneuvering involved as the starting point. We have argued that the pragma-dialectical model of critical discussion can be a basis for designing a systematic classification of the various types of strategic maneuvering. As a case in point, we have shown how the soundness conditions of strategic maneuvering by means of an argument from authority can be specified, and have thus provided criteria for identifying fallacious instances of this type of maneuvering. By developing a theoretical perspective on argumentative discourse in which dialectical and rhetorical considerations are integrated, we have illustrated how a general and systematic approach to the fallacies can be developed that also explains their potential persuasiveness.

NOTES

[i] There is also a real danger that the ethical or moral considerations that are advanced are entirely ad hoc.

[ii] In Walton's view, arguments from ignorance are condemnable if knowledge is lacking that could provide positive proof for the derived conclusion, but not necessarily if not drawing a positive conclusion could have disastrous practical consequences. Someone, for instance, who does not know whether or not a gun is loaded, should in his opinion assume that it is loaded. This may be good practical advice, but it is not exactly based on epistemic grounds.

[iii] For instance, if an abusive personal attack is to be judged fallacious in a theoretically interesting way, a rationale is required that implies a certain general goal with which such an attack is supposed to interfere. One can then appeal to this rationale when a particular norm is invoked that prohibits abusive personal attacks in argumentative discourse.

[iv] These various requirements show that a theory of fallacies can be lacking in many ways. A fallacy theory may, for example, provide particular norms but no rationale to back them up. It may also contain criteria for applying the norms that are not consistent with, or not related, to the norms. A fallacy theory may even fail to provide any criteria at all but only mention exceptions to the norms.

[v] To many theorists it makes sense to say things like “not all fallacies are fallacious” or “fallacies are not always fallacious.” Van Eemeren and Grootendorst (1992b) have pointed out that this manner of speaking is unnecessarily confusing – to say the least.

[vi] Perhaps it is good to hasten to add to this somewhat negative remark that the use of the same label for fallacious as well as non-fallacious moves may also well be a sign that the authors concerned already have a hunch of the kind of relationship between non-fallacious and fallacious moves that we are going to discuss.

[vii] See also Barth and Martens (1980).

[viii] Perhaps some studies of communicative acting by Habermas (1984) and Schreier et al. (e.g., 1995) should be added to this list.

[ix] Viewed merely from the perspective of the problem-solving capacity of these theories, it is just a coincidence that many of the moves that are judged condemnable – or non-moves – in the theory turn out to be fallacies in the traditional sense as well.

[x] Some authors do not make a terminological distinction between arguing from authority and the fallacy that is traditionally called *argumentum ad verecundiam*. They use the latter term as the general label and make a distinction between fallacious and non-fallacious ways of using the *argumentum ad verecundiam*. In our terminology, an *argumentum ad verecundiam* is always a fallacy.

[xi] In scrabble, the parties take turns in trying to compile words from letters that have been randomly distributed among them and receive credit points for every word they succeed compiling.

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ISSA Proceedings 2002 - Responding To Multiculturalism In The Real World: Re-Envisioning

Argumentation Pedagogy To Include Culturally Diverse Methods Of Argumentation



Recent pedagogical trends in American universities emphasize teaching students “real world” critical thinking skills. Traditional argumentation courses are often perceived as a particularly good venue for teaching critical thinking, (Sanders, Wiseman, and Grass, 1994).

This seems to be recognized by administrators at many America colleges and universities as Winkler and Chesier (2000) suggest that university administration “support for argumentation courses has profited from recent nation-wide moves to expand instruction in critical thinking” (102). Traditional argumentation courses are often designed to cultivate reasoning, analytical, evaluative, research, thinking, and, of course, argumentative skills that hopefully extend beyond the classroom and benefit students in academic, professional, political, and personal venues.

Yet, we should consider whether argumentation pedagogy truly fosters critical thinking in a multicultural nation and world. Not only are universities becoming increasingly more culturally diverse, but also contact with people from other cultures is more likely nationally and internationally. Courses in argumentation often teach students the skills to engage in reasoned debate emphasizing certain element of the western tradition of rhetoric and argumentation. Traditional argumentation pedagogy focuses on “rational” inductive or deductive argumentation, analysis of arguments and fallacies, and the pursuit of truth. Mastery of these skills is usually evaluated with formal graded debates with a winner, a loser, and the “best” policy or value. These methods may no longer be appropriate preparation for students’ real world interactions because they neither simulates realistic intercultural interactions nor crosses cultural boundaries both within and outside the United States. If students are taught one method of argumentation and critical thinking that is specific to dominant western culture, valued over alternate ways of arguing and linked to simulated debates that do not accurately reflect deliberation in the real world, can we say that they are prepared to engage in discussion, debate, and argumentation in intercultural

settings? Responding to cultural diversity requires rethinking traditional argumentation pedagogy to reflect skills and values necessary for the “real” multicultural world, both inside and outside the classroom. This essay builds from the assumption that argumentation is a cultural phenomenon. Argumentation is a way of speaking and knowing that varies cross-culturally from reasoning styles, approaches to conflict, and evaluation of arguments. Thus, the relationship between culture and argumentation needs to be a central focus of argumentation pedagogies. Argumentation courses need to teach to and about diverse reasoning styles, relying less on formal debating as a method of assessment and more on exercises emphasizing collaboration, role-playing, and negotiation. In addition to content changes, we need to make changes in the way we teach. Drawing from theories of culturally responsive pedagogy, I argue that teachers must view educational interactions as cultured and attend to cultural variation in classroom interactions.

I will begin by establishing the link between argumentation and culture through a review of studies from multiple methodological orientations. Next, I will focus on current trends in argumentation pedagogy by identifying both the prevalence and the limitations of traditional Western argument. Finally, I argue that a multicultural argumentation pedagogy emphasizing argument as a cultural phenomenon addresses limitations of the traditional Western approach and offers an alternate vision of the standard college argumentation class.

1. The Connection Between Argumentation and Culture

Before discussing the complexities of argument and culture, it is important to clarify traditional argumentation pedagogy by identifying several aspects of the western tradition that are particularly emphasized. First, logical reasoning is a superior form of argument to emotional or ethos appeals. Second, inductive and deductive forms of reasoning are superior forms of logic. Third, the function of argumentation is persuasion to reveal the best probable truth in a particular situation. Fourth, argumentation assumes an oppositional win/lose dichotomous framework. Fifth, evaluation of arguments is outwardly critical but not self-reflexive about argument evaluation. Perhaps most importantly, traditional argumentation pedagogy assumes the universality of its approach and assumptions. Standards for evaluating the forms and functions of argumentation are often presented as cross-cultural universals.

It is important to note that although I link traditional argumentation pedagogy with western traditions and modernist assumptions, there are examples of

argumentation theory and practice that challenge these assumptions both from within (sophist cultural relativism) and outside (Native American approaches to argument) the western tradition. My argument is not that we should flatly reject the western tradition. Rather, my critique implicates trends in argumentation pedagogy that emphasize certain elements of the western tradition as superior forms of argument and through implicitly or explicitly perpetuating these elements as universals, exclude consideration of the inherently cultured nature of argument. In the remainder of the paper, references to the Western tradition of argumentation assume a tradition that emphasizes the elements listed above.

Though argumentation is generally taught and conceived from a traditional Western perspective, this is not the only perspective on argumentation. In fact, modes of and approaches to argumentation vary cross-culturally, even within traditional linguistic, political or national boundaries of culture. Philipsen (1997) defines culture as “a socially constructed system of symbols, meanings, premises and rules” (125). This definition, therefore suggests that it is the system, not geography, nationality or polity that determines a culture. One part of a cultural system is the speech code: “a system of socially constructed symbols and meanings, premises and rules, pertaining to communicative conduct” (126). Argumentation is an element of such a system.

While I will identify cultural forms, functions, and evaluations of argumentation, ubiquity among all members of a particular culture, should not be assumed. Rather, when making a claim about a culture, it is important to recognize that cultures are dynamic, we simultaneously belong to multiple cultures (i.e., American, University, Punk Rock) and that these conceptions of culture are not universal. There are multiple forms of reasoning, functions of argumentation and ways to evaluate a desirable or good argument that stand in contrast to what is taught in traditional argumentation classes. A quick survey of the forms, functions, evaluations and intercultural settings of argumentation nicely demonstrates the complex relationship between culture and argumentation and the limits of western argumentation pedagogies.

Forms of argument are styles or patterns of reasoning. Numerous studies advise that forms of argumentation and reasoning differ across culture. In their review of contrastive rhetoric, Warnick and Manusov (2000) suggest that, in written compositions, Asian students generally follow thought patterns that are different from the traditional inductive and deductive formats taught in English

composition classes. These thought patterns are often devalued in ESL classrooms because they do not follow the traditional Western organizational structure. In oral argumentation style, several studies indicate that Asians use narrative, quasi-inductive, intuitive, and indirect forms of reasoning (Choi, 1988; Eggington, 1987; Hinds, 1990; Li, 1986). Further, studies of Native American rhetoric suggest Native American protestors employ non-linear forms of reasoning as well as differing temporal perspectives (Lake, 1983, 1986, 1990; Morris and Wander, 1990). Several studies suggest that African Americans tend to use more abductive and narrative forms of reasoning (Bauman, 1986; McLairn, 1995). Finally, Warnick and Manusov indicate that, even among American students who were expected to use mostly inductive and deductive methods, there were variations in the form of reasoning employed. From this collection of studies, multiple forms of reasoning beyond inductive and deductive are identified including narrative, quasi-inductive, abductive, and indirect argumentation. Therefore, the dominant forms taught in that classroom do not correspond with the argument forms that people from varied cultures use in interactions.

Functions of argument (approaches and or goals) also differ across cultural boundaries. Much has been written about unique Asian approaches to argumentation, suggesting for example, that Japanese and Chinese nationals are disposed against debating and instead value upholding harmony, seeking sympathetic understanding (Becker, 1996). In analysis of Native American cultures, there is a similar emphasis on harmony. Argumentation scholar Nancy Woods suggests that Native American cultures tend to value community as opposed to the Western argumentation model in which there is a focus on rivalry and competition (Woods, 2001). Moreover, in his analysis of Native American protest rhetoric, Lake (1990) suggests that a function of persuasion is ritual enactment in which the action itself becomes an embodied argument. In his analysis of the rhetoric of Navajo culture, Philipsen (1972) suggests that talking things over is the most important means of persuasion and that public discussion is aimed at unanimous consensus and maintaining harmony in the community, suggesting that all argument does not share the same function in different cultures. The function of argument emphasized in traditional pedagogy is an oppositional win/loss debate model that does not correspond to the varied functions of argument in the multicultural world.

Arguments are also evaluated differently across cultures. A traditional Western approach assumes the primacy of logos. However, the role of ethos, or credibility, in other cultures is often more important than logical reasoning. Native American “elders are responsible for passing on the collective knowledge that our people have accumulated through thousands of years” (Arnold, 1997, 48). In concerns dealing with the past, therefore, elders might be looked to as experts in many Native American cultures. Within Native American communities, younger people tend to agree with those older and wiser than them meaning that Native American students may be unwilling to argue with elders both within and outside Native American communities (Woods, 2001). From a Western perspective as taught in traditional argumentation courses, faith in elders’ wisdom might be viewed as a weak argument if it is not also backed up with logic, reasoning, and facts.

Evaluating arguments is also related to epistemology. Kochman (1998) provides an example in his analysis of discursive differences between black and “mainstream white” cultures. He suggests that the appropriate truth-creating process in African American culture is making a ‘sincere,’ albeit oppositional, argument. While the oppositional nature would seem to fit into a traditional Western notion of argumentation, members of “white” culture, however, often perceive African Americans as argumentative, threatening, and overly emotional. Kochman argues that mainstream white society believes in the ultimate goal of objective truth and reason whereas emotions and beliefs are suspect because they imply subjectivity. According to the traditional Western perspective, which bifurcates emotion and reason, to be rational is antithetical to being emotional. From this perspective, African American argumentation, or emotional argumentation in general, is evaluated as irrational and inferior to logic and reason.

Further Examples of divergence in evaluation of arguments can be seen in analysis of social movement rhetoric. Campbell’s (1971) analysis of Black Power suggests that the movement used persuasion and reasoning that was judged ineffective (or even violent) by white audiences but was effective among Black audiences. Similarly, Lake’s (1983, 1986, 1990) series of articles referring to Native American protest rhetoric discuss how critics coming from a western perspective often judge Native American rhetoric as unsuccessful and unpersuasive because they impose Western standards of argument and persuasion on Native American rhetoric. In each case, the forms and functions of argument differed. Evaluation by members of the culture deemed the arguments

effective, but from a traditional Western perspective, the positions and arguments are devalued. As evaluations of argument differ across cultures, argumentation pedagogy should reflect multiple ways of evaluating an argument in use.

From the preceding review of literature, we can argue that the forms, functions and evaluations of argument differ cross-culturally. What happens in intercultural communication settings when interlocutors from various cultures use differing modes of argument? To answer this question, Glenn, Witmeyer, and Stevenson (1977) argue that differences in reasoning styles are apparent in studies of international negotiations. In an analysis of UN Security Council minutes related to 1967 Arab Israeli war, distinct patterns among Americans (factual induction) and Soviet Russians (axiomatic deductive). Neither group favored intuitive argumentation (analogical, emotional). Walker (1986) analyzed argumentation strategies in international negotiations. He concludes that reasoning styles vary among members first, second, and third cultures.

Dolino and Cecchetto (1998) suggest that intercultural argumentation also concerns elements of interpersonal communication and language. Facework and politeness strategies come into play in intercultural argumentative interactions. Moreover, language alone cannot traverse chasms of culture difference, leaving the non-native speaker is disadvantaged in the communicative event. Although most of the article deals with politeness and facework in interpersonal settings and decision-making, there are some interesting implications for argumentation, deductive reasoning and power dynamics. Use of deductive reasoning in intercultural settings with interlocutors who prefer abductive or indirect argumentation may be viewed as imposing a conclusion or solution upon dialogic partners. Ultimately, Dolina and Ceccetto suggest “decision making in intercultural communication is not a zero-sum game in which one wins and one loses, as in a straight argument, since with the success of interpersonal relations the company wins as a whole” (171). Interlocutors equipped with instruction in traditional argumentation pedagogy might engage in intercultural communicative interactions assuming the universality of western notions of reason and a bifurcated win/lose, right/wrong approach to conflict.

Traditional argumentation pedagogy ignores the strong link between cultural and argumentation. This risks excluding other cultural forms of argument while perpetuating one particular style of argumentation, neither preparing students for interactions in a multicultural world nor challenging the traditional Western way

of knowing and arguing. Challenging the traditional model is important to emphasize cultural diversity. Despite abundant research suggesting that argumentation methods are culture dependent, there has not been a significant push to teach argument from a cultural perspective.

2. Traditional "Western" Argumentation Pedagogy

Recognition that argumentation courses and textbooks teach a Western model of rationality is not new. Warnick and Manusov (2000) write: "[h]istorically the study and teaching of organizational patterns in argument has been centered in a Eurocentric model that emphasizes deductive and inductive patterns of justification" (381, see also: Foss and Griffin, 1995; Gehrke, 1998; Gilbert, 1997; Johnstone, 1996; Mallin and Anderson, 2000; Mitchell, 2000; Williams and McGee, 2000, Woods, 2001). This justification process is traditionally modeled as a form of competitive debate. In American universities, the argumentation course is often linked to intercollegiate debate in one of its many manifestations (e.g., CEDA, NDT, Parliamentary, etc.). Even if the focus is not on intercollegiate debate, most university argumentation classes focus on teaching skills necessary for formal graded debates at the end of the course.

In his review of argumentation textbooks, Tindell (1995) found that textbooks further reveal the prominence of inductive and deductive modes of logic and reasoning, and exercises in debate. Most textbooks, he reveals, focus on logic and critical thinking, provide a handbook for debate, or do a combination of both. Furthermore, Gehrke (1998) suggests four ways in which argumentation textbooks perpetuate a particular notion of argument and reason:

First, argumentation texts favor a particular logical model of reasoning: a western linear mode of logic. Second, there is an implicit assumption of the need to know the truth before engaging in argument. Third, these texts approach argumentation and debate from an oppositional model. Fourth, and perhaps most disturbing, the critical tools of argumentation are depicted as ways to assess others' reasoning and rarely one's own (78).

This suggests that one of the main tools available to argumentation instructors, textbook, perpetuate a Western model of argumentation, encouraging a sense of inertia in the curriculum of argumentation classes. Moreover, sole focus on the Western model is problematic in fostering an understanding of the complex connection between culture and argumentation.

Generally, argumentation texts do not address multiple styles of argumentation or

cultural differences, but several new textbooks address issues of culture. Nancy Woods' (2001) textbook, *Perspectives on Argument*, includes a chapter on culture and argumentation, a valuable first step in introducing alternate styles and asking students to recognize their own personal styles. Inch and Warnick (2002) also devote a section of their text, *The Use of Reason in Argument*, to the recognition of varied cultural patterns, but primary focus is the rational logical approach to reasoning. Makau and Marty's (2001) *Cooperative Argumentation* makes moves to recognize diverse cultural perspectives and is a valuable textbook to consider for a course in multicultural argumentation. While we should applaud such textbooks for attempting to include alternate perspectives, the traditional method remains the primary focus of argumentation pedagogy.

Recently, scholars have challenged traditional argumentation pedagogy from several critical standpoints. Feminist critics implicate the Western model of argumentation and oppositional debating as confrontational and warlike, enforcing patriarchal ways of thinking (Foss and Griffin, 1995; Makau, 1990, 1992, 1996; Mallin and Anderson, 2000). Mallin and Anderson (2000) contend, "argumentation is often characterized as an adversarial activity governed by war metaphors and infused with a win-lose ideology," which is damaging because it prevents collaborative solutions and enforces power hierarchies (121). Moreover, debate classes often reinforce patriarchal notions of competition over cooperation that is antithetical to critical thinking and productive discussion. Students are taught to exert power over each other and the competitive desire to win overpowers seeking a just outcome. While this paper will draw from collaborative methods of practicing argumentation skills, feminist criticism focuses more on gender and power than on the link between culture and argumentation styles. While cooperation becomes the main focus through which one might teach argumentation, I call for culture to be the central element.

Gerhke (1998), coming from an existential perspective, calls for respecting alternate forms of arguing, embracing pluralism and dissonance, and encouraging self-reflexivity. He writes:

argumentation reconceived from an existential perspective, embraces a broad and often divergent set of possible ways of knowing and recognizes the fallibility and contingency of its own claims. Such a position requires that we embrace knowledge of others as truths to be equally examined and discussed without prior opposition (80).

In his recognition of a plurality of ways of knowing and repositioning the self in argumentation, Gehrke offers an important element to our discussion of argumentation pedagogy: self-reflexivity about one's own style of argument. Yet, Gerhke's argument does not specifically address argument and culture. While Gerhke argues for self-reflexivity and pluralism as a focus of argumentation pedagogy, I argue for an argumentation pedagogy that highlights culture as the central focus.

This corpus of literature suggests that traditional theories of argumentation pedagogy are based in western notions of reasoning, logic and oppositional debating. Yet lacking in this conversation is an analysis of the role of culture in argumentation. In fact, existentialism and feminism are also based in Western cultural assumptions. Despite recognition that we teach argumentation from a Western rational perspective, criticisms do not offer tangible suggestions for including the link between culture and argument into the course content. This may be because of the inherent Western cultural assumptions in these critical theories. While the prior critiques of argumentation pedagogy may destabilize the foundations via analysis of subjectivity and forms of oppression, they do not directly challenge the underlying cultural assumptions of the notion of argumentation. This paper argues that sole reliance on Western rational argumentation styles maintains and places a value on a way of knowing that is not common to all people in the nation or the world.

3. Multicultural Argumentation Pedagogy

To recognize cultural diversity and prepare students for intercultural interactions, it is imperative that we break away from models of argumentation that assume there is one correct way to make an argument. Moreover, if people from differing cultures come to an interaction with differing perspectives on argumentation, which is likely to happen, their education in argumentation should provide them with the tools to have a productive discussion and cooperation.

We must move away from traditional argumentation pedagogy. First, such an approach maintains the dominant ideology, which includes one way of knowing, emphasizes logic over emotion, and values opposition and winners. According to Leistyna and Woodrum (1999): "As microcosms of the larger society, schools also produce this social turmoil [a conflict of differences] by maintaining dominant beliefs, values and interests - cultural identities - through particular bodies of knowledge, pedagogical practices and curricula" (31). Second, highlighting the

western approach devalues and often silences other cultured forms of argument. Even if a course includes a short section on cultural styles of argumentation but then focuses more attention on a Western perspective, it will not lead to “multicultural transformation” (hooks, 1994, 38). Third, in real world interactions in which we constantly face people of different cultures and encounter various forms, functions, and evaluations of argument, traditional argumentation pedagogy with oppositional debates does not simulate intercultural interaction. Instead, it imposes a western method on all interlocutors. Without an understanding that arguments differ cross-culturally, successful intercultural interactions may be hampered.

Though the task of doing “culture” justice in pedagogy is a difficult one, we must attempt to address these issues and include more principles of multicultural education in our argumentation classrooms. A first step in this process comes with reconceptualizing argumentation pedagogy.

4. Re-envisioning the Content

Courses in argumentation can be powerful. We can teach critical thinking, multiple forms and functions of argument and reasoning, practice in using these skills, and ultimately, prepare students to actively engage in public, private, and professional deliberation and discussion. The challenge is implementation. In re-envisioning the argumentation course content, principles from multicultural education are valuable. Banks (1998), an advocate of multicultural education suggests:

major theorists and researchers in multicultural education agree that the movement is designed to restructure educational institutions so that all students, including middle class white males, will acquire the knowledge, skills and attitudes needed to function effectively in a culturally and ethnically diverse nation and world (69-70).

The remainder of the paper argues for a method of teaching argumentation from a multicultural and intercultural perspective. This method includes revisions to course content, alternatives to debating, and the creation of a culturally responsive classroom. A multicultural argumentation course should include four elements, introducing multiple forms, functions and evaluations of argumentation, avoiding cultural generalizations while teaching students to recognize when varied modes are being used, evaluating the usefulness of all approaches, and asking students to reflect on their own styles.

Initially it is important to teach multiple modes of argumentation. This can be accomplished with two interrelated approaches. First, instructors should identify multiple forms of reasoning in addition to the traditional emphasis on induction and deduction. Second instructors should provide empirical examples of potential cultural differences in argumentation forms, functions and evaluation. Although more research in cultural argumentation is needed, we can begin to incorporate these results into our courses and include discussion of abductive, narrative, quasi-inductive, analogical, affective, intuitive types of reasoning.

Teaching a variety of reasoning methods legitimates alternate perspectives, resonates with students' personal styles and prepares students for intercultural interactions. By highlighting empirical studies of argumentation in other cultures, instructors may begin to make the case that culture and argument are inevitably linked, providing a starting point for students to understand, for example, that members of a Native American culture might emphasize narrative reasoning and deference to evidence from elders. Both address the limitation that traditional argumentation pedagogy does not explicate the relationship between argument and culture.

Second, although avoiding generalizations may seem to contradict with teaching empirical examples of cultural variation in argumentation forms, functions and evaluation, the solution to this dilemma lies in striking a balance between relying on generalizations and understanding multiple forms of argument. Teaching critical thinking in a multicultural argument class should include instruction in recognizing and discovering many forms of argumentation in any given interaction. Instead of assuming a Western perspective or even that interlocutors should follow his or her personal style of argumentation, the student with knowledge of the link between culture and argumentation and a toolbox of various forms and functions of argument should be able to engage in intercultural interactions.

According to education theorists, Bowers and Flinders (1990) "introducing new knowledge often presents the danger that the knowledge will be represented as objective and thus universally true" (11). While this quotation was used in reference to presenting traditional Western knowledge, the admonition applies equally well to multicultural education. It is important that teachers emphasize the dynamic nature of culture and avoid the essentialist trap of associating a style of argumentation with all members of a particular cultural identity.

Third, we must teach to evaluate the usefulness of varied forms, functions and

evaluations of argument to what is appropriate in the particular situation or set of interlocutors. The toolbox metaphor is useful in this argument. A student who understands the link between culture and argumentation and who understands many ways of arguing will have a fuller toolbox than the student who learns only about the traditional inductive and deductive forms of reasoning and debate. The goal of a multicultural argumentation pedagogy is to provide each student with a full toolbox of different tools, and to teach them how to use and evaluate when to use each tool.

According to Bowers and Flinders (1990) "education should provide students with a basis both for understanding the forms of knowledge handed down from the past and for assessing their current value and usefulness" (5) In some settings it may be appropriate to use a logical, linear form of argumentation, but when faced with an intercultural communication setting, a student should be able to both understand alternate forms of reasoning and engage in discussion.

Argumentation, recognition and legitimization of various forms of argumentation are important. Despite criticisms of the Western rational method, my criticism does not assume that it is inherently problematic; rather that sole reliance in it is inadequate because such reliance devalues alternatives and teaches a method that is only useful in certain spheres with certain audiences. Leistyna, Woodrum and Sherblom (1991) contend:

if the United States is ever to achieve a critical, pluralistic democracy, it is essential that all society's members possess a clear understanding of difference. In order to develop such clarity, people need to be literate in multiple ways of perceiving and speaking about reality. Engaging a full range of perspectives is not an argument for a particular position or ideology, but, rather, it leads us to recognize that there are multiple audiences, and demands a willingness to understand and make ourselves understood in speaking and acting across our differences (11).

Teaching the Western model of argumentation values one perspective over others, which becomes problematic when students encounter conflict or situations that necessitate the use, understanding or recognition of argumentation in their intercultural sites. "A multicultural focus on knowledge construction includes discussion of ways in which the implicit cultural assumptions, frames of reference, perspectives, and biases within a discipline influence the construction of knowledge" (Banks, 1998, 75). As argumentation

instructors we should analyze the assumptions behind the Western approach, recognize its uses, and build from this discussion to incorporate other perspectives.

Finally, students should be encouraged to reflect on their own styles of reasoning. In her textbook, Woods (2001) includes a series of examples of student essays that demonstrate individual approaches to argumentation. In a reflection on cultural differences in argumentation, Lan Mai's student paper suggests:

The Vietnamese are taught not to argue with their elders. When I was a little child, my parents always told me that it is bad to argue with your parents and elders. Since the first grade, my teachers told us that it is bad to argue, even among friends. That is why I did not like to argue. I did not wasn't to be disrespectful to another person. When I came to the United States, I learned that in this society you are encouraged to argue for your opinion (43).

An assignment like this is valuable in encouraging students to start thinking about the link between culture and reasoning. Both reflection on one's own style of argumentation and knowledge of other forms can help to foster critical thinking in students, and exploration of appropriateness and the learning of many forms of argumentative expression.

Although teaching multiple cultural perspectives on argumentation increases the amount of content to be covered in the argumentation course, the benefits of preparing students with critical thinking skills for an increasingly diverse world are worth the extra effort.

5. Alternatives to Debating

The next aspect of multicultural and intercultural argumentation pedagogy is to design activities and assignments that allow students to learn multiple forms of arguing and simulate intercultural argumentative interactions. Multiple venues of practice in argumentation beyond merely debating (which can still be a valuable component in instruction as long as we challenge assumptions and evaluate the usefulness of debates) are an important element in an intercultural and multicultural argumentation classroom. Some advantages of debates are: allowing students to investigate both sides of an issue, enhancing critical thinking skills, increasing student motivation, and increasing student involvement in social issues (Bellon, 2000; Williams and McGee, 2000). Despite the benefits of debate, "an exclusive focus on in class debates can limit students' perception of the versatility of skills they are developing" (Williams and McGee, 2000, 105). Moreover, exclusive focus on debate emphasizes only one set of skills rooted in opposition

and winning. In addition to, or to replace, practice in debate, the argumentation course should include an assignment to prepare students for intercultural discussion and deliberation. I propose inclusion of an assignment in collaborative intercultural negotiation role-play.

Intercultural negotiation role-playing is based in three perspectives. First, Makau and Marty's (2002) new textbook, *Cooperative Argument*, argues for a cooperative model of argumentation for a deliberative community that values "caring justice, peace, equality, happiness, fulfillment, and sustainability" (5). Their model focuses specifically on cooperative problem solving and conflict resolution through methods other than the traditional, oppositional debates that are used in many argumentation classes.

Second, Williams and McGee (2000) suggest that a unit on negotiation can teach a cooperative form of argument that is appropriate and valuable preparation for future public or professional endeavors: "While the negotiation process might be viewed by some as still competitive, it offers an account of argumentative practice with a more cooperative framework and purpose, where a mutually satisfactory outcome is more likely" (135). This paper argues that we can extend this to intercultural settings. Negotiation simulates experiences that students may be likely to encounter in their lives in an increasingly multicultural world. Negotiation can also incorporate multiple forms of reasoning such as abductive and narrative as well as inclusion of emotion, thus providing practice in the forms of reasoning that are traditionally not valued in an oppositional debate with a winner and loser. This focuses on a different function of argument than simply using debates.

Third, in addition to the value of incorporating practice in a variety of modes of argumentation, role-playing allows students to represent different perspectives in an intercultural conflict. According to Mitchell (2000) "role play exercises encourage students to speak not as transcendent, pro/con commentators, but as situated actors in everyday circumstances, able to assume a variety of flexible rhetorical postures" (38). Pedagogical benefits of role-playing include: allowing students to experiment with new types of argumentation outside the mainstream, providing opportunities to try on the role of someone else, encouraging active kinetic learning and applying of concepts to an actual situation, seeing multiple sides of an issue, working cooperatively, and thinking creatively and critically (Kougl, 1996; Williams and McGee, 2000). A final and crucial benefit of role-playing is its effectiveness in inducing attitude changes such as decreasing

prejudice (Kibler et al., 1981). When dealing with intercultural issues and culture, this benefit can be especially important.

Building from Makau and Marty's call for more collaboration, Williams and McGee's call for teaching argumentation through negotiation, and research in role-playing, this paper suggests that an assignment that combines the three is particularly appropriate for teaching multicultural argumentation. Collaboration teaches students that competitive oppositional debating is not appropriate in all settings. Negotiation offers a way to work towards a collaborative solution using various forms of reasoning. Topics of negotiation exercises should consider issues of intercultural conflict in public and professional domains. Finally, role-playing offers students the opportunity to try on different roles and forms of argumentation.

6. Culturally Responsive Pedagogy

In addition to revisions in the curriculum discussed in the previous section, we must also consider revisions to the way we teach. If instructors are to provide a model for students, it is equally important that the instructor incorporate multiculturalism into their teaching methods. According to hooks (1994):

Let's face it: most of us were taught in classrooms where styles of teaching reflected the notion of a single norm of thought and experience, which we were encouraged to believe was universal. This has been just as true for nonwhite teachers as for white teachers. Most of us learned to teach emulating this model (35).

Bringing new ways of thinking into the classroom requires challenging this model of teaching.

Bowers and Flinders (1990) provide a theory of culturally responsive teaching, which is useful for creating a classroom environment that is consistent with the multicultural values being addressed in the content of a course in multicultural argumentation. In addition to curriculum changes, there are things that we as teachers can do to enhance the multicultural messages we send with new argumentation pedagogy. Recognizing that the classroom is a language and culture medium, Bowers and Flinders' goal is to "stress that students and the teacher, as members of different cultural traditions, communicate and learn from each other in an environment that might best be understood as an ecology of language and cultural patterns" (6). If we accept this claim, "the task of the teacher is twofold: (1) to recognize that the patterns of interaction taken for

granted within the dominant culture are not universally shared, and (2) to become aware of the patterns with which students most easily identify" (22).

In teaching from a multicultural perspective, teachers risk a performative contradiction in not embodying the values they are trying to profess. If instructors want to legitimize various cultural forms of argumentation, the first place to start is in the classroom by being aware of one's own behavior and cultural assumptions and the backgrounds and assumptions of students. If argumentation instructors profess that the Western traditional mode of reasoning is one of many modes of argument, then they should challenge themselves, recognizing and accepting diversity of reasoning in students.

Teachers must also be responsive to their students: "to teach effectively to a diverse student body, I have to learn these codes...often professors and students need to learn to accept different ways of knowing, new epistemologies, in the multicultural setting" (hooks, 1994, 41). Just as we teach our student to discover and recognize multiple forms, functions and evaluations of arguments, teachers must also constantly pay attention to their students.

In addition to changes in the content of argumentation classes, this paper suggests that instructors should consider techniques for teaching multiculturalism to keep lines of communication open and remain consistent with the value of diversity being taught in the content. According to Esposito (1999) "enhancing the sense of open communication should be a goal for any instructor in the twenty-first century because it enables students to feel more comfortable about embarking on a difficult and foreign subject" (236).

7. Conclusion

This paper is intended to open a discussion about the incorporation of culture and intercultural conflict into the argumentation course. To prepare students to think critically in the multicultural world calls for consideration of multicultural education. Culture clash and conflict seem to be an inevitable element of society, but communication courses can play a role in facilitating understanding and collaboration in multiple venues of intercultural interaction. Specifically through teaching divergent cultural perspectives on argumentation and reasoning, we can prepare students to understand situations and audiences better. The heart of multicultural education lies in critical thinking which is exactly what argumentation courses are supposed to teach. hooks (1994) argues "without the capacity to think critically about our selves and our lives, none of us would be able to move forward, to change, to grow" (202). From a multicultural perspective

critical thinking does not imply only Western notions of debate, analysis of fallacies, argumentation and logic, rather it should include understanding and distinguishing multiple forms of reasoning and being able to communicate and make arguments to different audiences. The changes to argumentation courses discussed in this paper attempt to prepare students to think critically in the real world.

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ISSA Proceedings 2002 - Reparations Or Separation? The Rhetoric Of Racism In Black And White



No issue has received less attention in the rhetorical study of race in American public address than that of reparations for slavery. This essay integrates traditional rhetorical analyses with cultural critique to examine the discursive tactics and strategies of contemporary arguments against reparations. We will consider how anti-reparations rhetoric echoes the appeals of pro-slavery and segregationist rhetoric, and reveals the rhetorical privileging of normative whiteness in the symbolic construction of racism. Our analysis offers a reading of difference and identity that draws upon theories of rhetorical coherence to interrogate the

underlying epistemological assumptions at work in the recovery of race in America and their implications for the our ability to find solutions to the problem of the twentieth century, the color line, as we enter the twenty-first.

If he gives to both North and South this terrible war as the woe due to those by whom the offense came, shall we discern therein any departure from those divine attributes which the believers in a living God always ascribe to Him. Fondly do we hope, fervently do we pray that this mighty scourge of war might speedily pass away. Yet if God wills that continue until all the wealth piled by the bondsman's two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn from the lash shall be paid by another drawn by the sword, as was three thousand years ago, so still it must be said 'the judgments of the Lord are true and righteous altogether'.

Abraham Lincoln (Andrews and Zarefsky, p. 295)

And seeing that this is our status in the United States today, it devolves upon us to project a remedy for our condition, if such a remedy is obtainable, or demand of this nation, which owes us billions of dollars for work done and services rendered, five hundred million dollars to commence leaving it; or endorse the petition of the colored lawyers convention, which was held in Chattanooga, Tennessee, asking Congress for a billion dollars for the same purpose. For I can prove, by mathematical calculation, that this nation owes us forty billion dollars for work performed.

Bishop Henry McNeal Turner

(Foner and Branham, pp. 480-81)

Seven score years ago, John S. Rock "advanced what was probably the first demand for distributions of land to slaves emancipated during the Civil war" (Foner and Branham, p. 368). Since that time, the call for reparations for slavery has gravitated between insinuation and agitation, but has never been silenced. While Rock's antebellum rhetoric is merely suggestive, John Smyth's claim during Reconstruction that "a debt of reparation is due from the white man to the black man can no longer be denied" (Foner and Branham, p. 823), expresses explicitly the discursive demand for justice that has continued to reveal itself in African American discourse. Perhaps it is Bishop Henry McNeal Turner's address of July 21, 1868, however, that most clearly illustrates the telos at the heart of this debate from its inception until today: the choice is between what Burke describes as identification and division, between reparations and separation. Indeed, even

as the interest on America's debt to its citizens of African descent continues to grow, the disinterested hostility toward the issue on the part of America's citizens of European descent suggests that we are far from crossing over, as we enter into the twenty-first century, the problem of the twentieth: the omnipresent color line that continues to separate us from our better selves.

This essay represents our attempt to help suture that separation by bringing together the traditional analysis of rhetorical argument with cultural critique in order to examine parallel strategies and tactics in the anti-reparations position. Specifically, we undertake a historical-critical overview of African-American calls for reparations, comparing the more polemical responses to this call with two other rhetorical antecedents: pro-slavery arguments in the early Nineteenth century, *and* pro segregationist arguments in the twentieth century. We then draw upon notions of rhetorical coherence which have emerged in each of our previous writings independently, yet that similarly depend upon the idea that the relationship between discourse and practice is the ultimate arbiter of what is true, what is just, and what has unfortunately never been realized in the American way. We offer these readings of the reparations debate in black and white to illustrate areas of contention, places of coherence, and points of departure for an enlarged understanding of the problems and possibilities that rhetorical discourse and inquiry pose for rationally addressing what Montague so accurately called "man's greatest myth: the fallacy of race." We conclude that the question of reparations occupies a volatile, albeit less-than-examined position in the complex argumentative relationship between racial difference and democracy, one which reveals in all its sorry glory the terrible complicities and incoherencies of American racial (in) justice.

"Be True to What You Put on Paper" - McPhail's Coherence and the Rhetoric of Racism

Upon contributing to this project I came to the realization that the (unspoken) question at the heart of the reparations debate is whether or not slavery was a crime. That is the fundamental issue. If it was a crime, then the call for reparations is just. It is right. And it is right in the most fundamental, most self-evident way that it possibly could be right in the light of the moral and rational principles of truth professed to be foundational in the West. It is rationally just because of its consistency with the rule of justice, the application of similar standards to similar cases; it is spiritually just because of its adherence to the

“golden rule,” of doing unto others as you would have them do unto you. These are the discourses that mark the moral authority of Western culture in terms of its ultimate values, and beliefs and truths. Western philosophy and religion have understood justice, as both essential and as practiced, as reflecting a sense of moral coherence. So if slavery was a crime, then the call for reparations is just and right and fair and should be addressed by a culture which professes both moral conscience and moral authority. It is this simple.

But what if slavery was not a crime. What if the basic belief is that it was just an error of judgment, or reason, is true? What if it *was* pre-ordained by God? Or history? What if it was just the way things were *supposed* to be? What if we *should* just be happy and move on? Under these conditions there are no need for reparations. If it was an error of judgment then it was the result of ignorance, and should be forgiven. If it was an error of reason it should also be forgiven, for fallibility is sometimes the price we must pay for enlightenment. If God pre-ordained it then it is, by definition, beyond the need for debate and the question is moot. If it was just the way things were supposed to be then I guess we *should* be happy for what we have. It could have been worse. Yes, if slavery was not a crime then all of the arguments made against reparations, especially those of David Horowitz, make perfect sense.

The certainly appear to make sense to the great majority of white people. They are, for many, self-evident truths. They are the *topoi*, in a sense, of whiteness, the places of argument sustained in the social and symbolic systems of privilege employed and enjoyed by people of European descent and heritage. It is clear that most white people are not in favor of reparations for slavery. If this were not clear, then the question of whether reparations are justified would be moot. There would be no need to speak of it. But we have been speaking of it for quite some time, and are speaking of it again today, and will continue to speak about it until it is resolved. My contribution to this conversation begins with the belief that for most white people the issue of reparations has already been resolved, while for most black people it has not.

I think this is what classical rhetoricians call *stasis*, the *point* of the argument. The very thing that *makes* an argument an argument. Its essence. Its reality. I think the reparations debate boils down to the question of whether or not slavery was a crime because this is the core issue in the arguments of both opponents and proponents, the essentially contested truth. The point at which they diverge. You

cannot have the debate without it. This may be what the sophist Thrasymachus called “the theory of the opposite party,” the thing that both sides agree upon by definition. It is the basic belief that presupposes argument itself. Either/or. Yes or no. Bivalence. One or the other. Complicity.

It is unquestioned belief. In foundational epistemologies it is the key criterion of truth: self-evidence. It is the starting point for Western philosophical and religious thought, the basis of the West’s moral and spiritual authority. “We holds these truths to be self evident.” Self-evidence has sustained itself through almost every system of intellectual thought since Plato: through rationalism, rational empiricism, mechanistic empiricism, and positivism. It resisted Hume, co-opted Kant, and remains untroubled by the assaults of postmodern and post Marxist theories. It is *the* resilient intellectual concept and psychological predisposition that justifies the West’s claim to moral authority and intellectual superiority. Self-evident self-justification. It is axiomatic. Extra-argumentative.

In theory it is elegant and even eloquent. In practice - at least at it applies to the West’s encounter with Africa - it is ugly. A great White Lie. Self-evidently untrue. The thorn in the side of reason, rationality, justice. This rupture between theory and practice in the West’s basic beliefs about its self and its African other has a long history. Hume, whose skepticism about knowledge apparently did not apply to his own, believed Africans to be inherently inferior. Hegel defined Africa as the antithesis of Europe. The Greeks were brought on board, and Aristotle and Plato were commissioned to justify the existence of slavery. The recruitment of God and Jesus sealed the deal. A great pantheon of intellectual and moral authorities denied as true the belief that slavery was a crime, one deserving of reparations above and beyond those already given.

The denial of slavery’s criminality by people of European decent is enthymemic in the rhetoric of racism, that rhetoric of special pleading and double standards, fallacious in form and substance, but resilient and diffident. My own study of the rhetoric of racism informs my belief that the issue of the criminality of slavery is at the heart of this debate. I began this study with the belief that racism is created and sustained complicitously, a symbolic misunderstanding that could be remedied by dialogic and non-oppositional discourse, through a rhetoric of coherence. I no longer know if this belief can be justified as true.

I have, in fact, begun to believe that racism may be beyond the reach of rhetoric. That is it not, as my friends Robert Golden and Richard Rieke put it over thirty years ago, a problem of persuasion but of pathology. They wrote in *The Rhetoric*

of Black Americans: “The study of the rhetoric of black Americans suggests the possibility that the rhetorical goal - communicating with white men about their beliefs and attitudes regarding black men - may be more a psychiatric than a persuasive problem” (1971, p. 6). Few scholars, black or white, have bothered to follow this line of inquiry, but I believe it offers an important starting point for the analysis of reparations and anti-reparations rhetoric.

The study of the rhetoric of African American reveals that demands for reparations have been sporadic, yet persistent. They appear in the rhetorics of John Rock, Issac Meyers, Bishop Henry McNeal Turner, W. E. B. Du Bois, Marcus Garvey, Malcolm X, Martin Luther King, Jr., James Foreman, and most recently Randall Robinson. Robinson’s *The Debt*, illustrates the degree to which the criminality of slavery is central to the debate, and echoes Golden and Rieke’s suggestions about the psychiatric character of its denial. In pointing to the international precedents that provide the legal justifications for African American reparations, Robinson writes:

Only in the case of black people have the claims, the claimants, the crime, the law, the precedents, the awful contemporary social consequences all been roundly ignored. The thinking must be that the case that cannot be substantially answered is best not acknowledged at all. Hence, the United States government and white society generally have opted to deal with this debt by forgetting that it is owed. The crime - 246 years of an enterprise murderous of both a people and their culture - is so unprecedentedly massive that it would require some form of collective insanity not to see it and its living victims (p 221).

Robinson believes that the nation’s racial problems can be addressed “only if our society can be brought to face up to the massive crime of slavery and all that it has wrought” (p.7). For the West to erase the color line, there must be some acknowledgement of a crime, and he sees slavery and its aftermath as a “long running multidimensional human rights crime,” a crime against black humanity (p. 229).

Robinson’s book is clearly meant to provoke guilt, though it accomplishes more. As such, if my theorizing of the rhetoric of racism is correct, the responses that reparations rhetoric will most likely elicit are denial and rhetorical reversal. Martin Reisigl and Ruth Wodak, in their recent exploration of discourse and discrimination, illustrate the strategic rhetorical uses of denial in response to guilt through a discussion of anti-Semitism. “Doubt, guilt feelings, and the need to

justify or rationalise one's behavior encouraged the development of strategies for 'dealing with the past': playing down the actions and events themselves, denying knowledge of them, transforming the victims into the causes of present woes" (2001, p. 95). Numerous other scholars in rhetorical and cultural studies agree that denial is an enduring topic of white racism. As such, we should consider its significance in this debate.

And this brings us to David Horowitz's anti-reparations manifesto, "Ten reasons why reparations for slavery are a bad idea for black people - and racist too." Horowitz marks his polemic explicitly as a response to Robinson's Debt, which he describes as an "anti-white, anti-American manifesto." Horowitz goes on to argue that "the claim for reparations is factually tendentious, morally incoherent and racially incendiary." Logically, it has about as much substance as the suggestion that O.J. Simpson should have been acquitted because of past racism by the criminal courts. Its impact on race relations and on the self-isolation of the African American community is likely to be even worse" (p. 1). The discursive moves made here by Horowitz reveal rhetorical reversals that epitomize the rhetoric of white racism.

Consider first the assumptions at work in his appeal to *logos* behind the O.J. analogy. If the two cases are to be treated the same, then it must be premised that black people as a whole, have like O.J. been accused of a crime, and should be excused of that crime because of past bad acts against them. But what is the crime that black people are accused of other than, of course, being black. It is at best, a faulty analogy. Consider also the appeal to *pathos* in the claim that the call for reparations is racially incendiary, and will result in further isolation of black people from the American mainstream. Reparations here have become the cause of racism instead of a response to it. Faulty causality? Post hoc ergo? These are only two of the many fallacies at work here.

Neither of these examples adequately warrants Horowitz's claims. But what of his appeal to *ethos*, his claim that the call for reparations is morally incoherent? There is no example, fallacious or otherwise, to support this claim. Only an enthymemic silence that rests upon the implied conclusions of the other: that blacks are comparable to criminals, that guilt provocation is ineffective at best, a form of racism at worst, and that white people are innocent. No crime was committed. But if a crime was committed, the real criminal is the very party that claims to be victimized, and whites are themselves "victims" of reverse discrimination.

David Horowitz has taken the rhetoric of white racial recovery to a new extreme. He has outdone Hernstein, Murray, D'Souza, and host of others committed to the defense of white superiority. He has publicly claimed that black people are in essence responsible not only for the contemporary conditions in which we find ourselves, *but for slavery itself*. "It was not whites but black Africans who first enslaved their brothers and sisters. They were abetted by dark skinned Arabs (since Robinson and his allies force us into this unpleasant mode of racial discourse) who organized the slave trade" (p. 1). Will reparations be assessed against them too, Horowitz wonders. Didn't *they* benefit from slavery too, he asks.

And answers that they did. "America's black citizens are the richest and most privileged black people alive - a bounty that is a direct result of the heritage that is under attack." Black people should be good Americans and support "the American idea," and not ask for reparations. Because black people don't deserve reparations, not like the Jews or Japanese did. These are Horowitz's words. "The Jews and Japanese who received reparations were individuals who actually suffered the hurt." Black people evidently are not individuals. We do not suffer hurt. Horowitz is, of course, in good company in making these claims. They were also made, Robinson reminds us, by Thomas Jefferson. We are "in reason much inferior." Our "*griefs are transient*." Logos. Pathos. No ethos.

Because the ethos is enthymemic. It is embodied in the "heritage that men like Jefferson helped to shape," the heritage that has justified the subordination and exploitation of African Americans as something other than criminal for centuries. It is the character of whiteness: its true character. Demands for reparations call that character into question, and thus in Horowitz's estimation will further alienate African-Americans from their American roots and further isolate them from all of America's other communities (including whites), who are themselves blameless in the grievance of slavery, who cannot be held culpable for racial segregation and who, in fact, have made significant contributions to ending discrimination and redressing any lingering injustice" (p.2)

Black people should not blame other Americans for a situation of our own making. Others are "blameless." They "cannot be held culpable." Nor should we blame America itself, since the America that exists now is not the same America that sanctioned slavery and segregation all those years ago. What we need to do is accept what we have and be happy. "What African-Americans need is to embrace America as their home and to defend its good: the principles and

institutions that have set them - and all of us - free." These are David Horowitz's words. They reflect his most basic beliefs. And they are racist.

They are in fact, the common topics of what Aaron David Gresson III (1995) describes as "white racial recovery," the "good reasons" beneath the claims, the uncontested warrants, the unspoken. David Horowitz simply gave them a voice. And he was really only saying what most white people basically believe. Most white people are not in favor of reparations for slavery. They apparently do not believe that slavery was a crime against African Americans or against humanity. They learn to believe this at an early age. Charles Gallagher found this attitude in many of his white students. "Many young whites refuse to feel in any way responsible for the roles whites have played in US race relations. The common response 'I don't feel responsible for my father's sins' reflects this sentiment," he explains. "Or, as another student put it, 'The slavery thing happened so long ago, they can't keep prosecuting us - I don't even know if my ancestors were here then, so I'm kind of sick of keeping that held against me'" (p. 347). One has to wonder here if Horowitz is not simply praising Athenians in Athens, only telling white people what they want to hear about themselves. *That they are innocent of any crime*. The call for reparations is an accusation of criminality that most whites are unwilling to hear or accept. David Horowitz exploits this unwillingness, and appeals to an ethos of whiteness based upon its own racialized "good" reasons.

This is the ethos persistently called into question by the rhetorical efforts of African Americans, and never more so than in the demand for reparations. Those demands, and the responses they have elicited, invite us to revisit Golden and Rieke's questions about the usefulness of rhetoric in race matters. "When forced to search deep into his own central belief system," Golden and Rieke write, "the white man discovers he perceives himself as a white man and holds beliefs of a primitive nature, that whites are not only different but better than blacks" (p. 7). Perhaps this continues to be the reason why black people, in the minds of most white people, do not deserve reparations. Because we are different and inferior. In the debate over reparations, then, it seems improbable that black rhetors will ever convince a majority of white people that reparations are warranted. Regardless of the eloquence of our arguments, the quality of our justifications, the coherence of our rhetoric. White people, collectively, will never be induced to believe that the historical enslavement and exploitation of black people was a crime. Regardless of the fallacies exposed, the rationalizations revealed, the

narratives deconstructed, black demands for reparations for slavery will never be persuasive to most whites. "How long," asks Randall Robinson, "must a few lonely blacks whistle wisdom through the lightless centuries?" (p. 243).

Of Judgments True and Righteous Altogether: Farrell's Coherence and the Ethics of Rhetoric

Upon contributing to this project, I came to the realization that the central norms I have elsewhere posited for rhetorical culture (competence, performance, coherence, and distance) were all norms of proportion. A rhetorical sense of proportion must take account of the many ways rhetorical practice departs from the preoccupation with singular conduct we find in the ethical treatises. Rhetoric is, first of all, a collaborative practice. It is a situated, eventful practice. It is audience-dependent and reciprocal. How do we formulate a sense of proportion that might be sensitive to these special traits. Much of what we have in mind for these aspects of the concept is captured by the adjective, "practical." Ethos in rhetoric, as we are exploring it here, is an emergent that results from the interaction among the rhetorical event/appearance, the place(s) occupied by the audience/agent, and the mediation performed by rhetorical exchange.

The ethos of rhetoric, a sense of practical proportion, is not one thing. It is many things. For every time we encounter someone who hits the mark precisely (Roosevelt's "First Inaugural," "I Have a Dream"), there are many other times when we miss it completely. Political campaigns are littered with the body parts of candidates who said or did something so spectacularly wrong that instead of making history they became history. And if this will not do, think of the Catholic Church in America. Or think of Enron. The list goes on. A second, and not terribly surprising conclusion is that the ethos of rhetoric is only as strong as is the actual performance of rhetoric in practice. Were we to be wedded to a practice, the performance of which only led to untrustworthy or suspicious results, the practice itself would surely be called into question. So it is with rhetoric.

This is entirely consistent with Aristotle's famous definition that ethos is character as manifested through speech. To this formulation, we would like to add the idea that ethos may also refer to the characteristic atmosphere or *aura* of an encounter setting, be it workplace, religious institution, concert hall, Department. Finally, we wish to suggest that ethos in rhetorical practice emerges from the way such practice fits into a larger picture. This is the sense of ethos we shall explore here. There have been numerous attempts to explore this sense of "fit." Some

have called it “prudence,” others “propriety.” There have been few, if any, attempts to explore the larger picture that emerges when a successful fit has occurred. We call this “coherence.” To make what some have characterized as a “practical turn,” we need, in a sense, to take inventory of the ways rhetoric might “fit in” to a larger picture, and then to ask whether there are any commonalities among these ways.

Some rhetoric achieves coherence by helping to complete a larger picture. Some rhetoric places its horizon within yet an even greater horizon. Some rhetoric, in a pragmatic vein, sets out to trace the implications of its place, and some rhetoric finds it necessary to subvert conventional practice in light of allegedly higher principles. What we have concluded is that - regardless of chosen option - all rhetoric achieves coherence by cultivating a sense of what we will call “practical proportion.” It is in his most famous lectures on character, the *Nicomachean Ethics* and the *Eudaimonian* ethics, that Aristotle gives us an introduction to the idea of proportion. To condense a discussion both complex and known to all, virtues are cultivated as habits of proper or proportionate action. Thus, the ethos of rhetoric is only as strong as is the actual performance of rhetoric in practice. Were we to be wedded to a practice, the performance of which only led to untrustworthy or suspicious results, the practice itself would surely be called into question. So it is with rhetoric. Finally, and this is critical to our analysis, it is sometimes the case that the real event or referent of rhetorical clash and argumentative mediation is not the one advocates actually think they are discussing. While controversy is typically explicit in focus, its referent often is not. Instead, it may be some aspect of history looming in the recesses of the lifeworld, still defying the capacity of rational speech to declare its meanings explicitly. This is one of many things we believe to have been occurring in the ongoing reparations controversy.

Toward the close of the Twentieth century, a series of episodes emerged, where attempts were made to reconcile, or make amends with aggrieved groups. Apologies and partial reparations were made to the offspring of interned Japanese-Americans during World War II, to Jews whose property, wealth, and art had been confiscated by Nazis and hoarded in Swiss banks and many others. Even the Catholic church got into the act, apologizing (eloquently) for its blindness and long-standing anti-Semitism. There were also apologies for the Inquisition, and to Galileo, for being prematurely correct on the relationship between earth and sun. Along with the apologies, specifically targeted groups financial reparations, as

symbolic acknowledgment of their inestimable loss. And then the rhetorical envelope was pushed. A group of renowned and somewhat controversial, led by a coalition including Louis Farrakhan, Jesse Jackson, and Cornel West began an insurgent movement demanding reparations, because of slavery, for living African-Americans.

The movement for civil war reparations to the descendants of slaves had gathered considerable momentum in the United States; for instance, the Chicago City Council's aldermen voted 49 to 1 in favor of reparations. And until February, 2001, there were few of the sort of specifics that could divide constituencies of support. But on the last day of Black History month, David Horowitz decided to print on one of the most prominent sites of the internet what he called, ala, Letterman, "The Ten Reasons why Reparations are a bad Idea, and Racist too." Most of the manifesto proclamations in evidence with these more public sentiments are not at all new. They are preceded by clear antecedents in pre-and post-civil war racist arguments.

This is evident from Horowitz's first argument, introduced by the ambiguous caption, "*There is no Single Group that Benefited Exclusively from Slavery.*" And it reads, "If slave labor has created wealth for Americans, then obviously it has created wealth for black Americans as well, including the descendents of slaves. The GNP of black America makes the African-American community the tenth most prosperous 'nation' in the world. American blacks on average enjoy per capita incomes in the range of twenty to fifty times that of blacks living in any of the African nations from which they were kidnapped. The ambiguity serves to mask the argument's incoherence. It could refer either to any single group benefiting from slavery, to the exclusion of other groups; or, it could refer to groups which benefited exclusively from slavery, while benefiting from nothing else. Of course, neither of these refuted positions have ever been advocated by proponents of reparations.

We believe this to be the strategy of straw man argument. But this is not the real source of the difficulty. The deeper difficulty is that David Horowitz is here doing something he will do throughout his diatribe; he is recycling blatantly racist arguments from the antebellum South, as well as the late Fifties segregationist South. The argument essentially shows African Americans content with their inferior social position, slowly but surely getting their piece of the American dream. Here is historian, Paul Johnson: "Southerners argued that to take a black from Africa and set him up in comfort on a plantation was the equivalent,

allowing for racial differences, of allowing a penniless European peasant free entry and allowing him, in a few years, to buy his own farm.” James Kilpatrick, in his openly racist diatribe, *The Southern Case for School Segregation*, hangs the argument out for all to see: “The Negroes of America are better off materially, culturally, and politically than any Negroid people in the world, and their lot improves at an incredible speed.” How did this happen, one might ask. Surely not through the “Negroid race”’s *native* abilities: “The question that never seems to be convincingly answered is why the Negro race, in Toynbee’s phrase, is the only race that has failed to make a creative combination to civilization.”

Of course, a race that has contributing essentially nothing to civilization while improving its lot exponentially, can only have benefited disproportionately from its centuries of tutelage. From the perspective of Kilpatrick, however, we have come far enough to already witness “the potentially degrading influence of Negro characteristics.” Now, Kilpatrick is honest enough to admit that his “is a ‘racist’ thesis.” David Horowitz does not. Instead, he is content to build sophistry upon sophistry. In one entry, we are told that “racism” essentially ended with the end of the Civil War. And where oh where is the gratitude of the Negro race for America having “given” the race its freedom? And as part of the rhetorical smokescreen surrounding his reasons, David Horowitz presents himself as the victim of university and journalistic political correctness.

For Horowitz, the failure to be invited to speak on a college campus amounts to censorship, just as the editorial decisions of newspapers as to whether to accept these “arguments” as suitable for appearance in news journals. For anyone forced to confront these logistical decisions directly, there is an alternative explanation for Horowitz’s “persecution.” One co-author of this essay has on his campus a fairly well known professor who has claimed, repeatedly and publicly, that the Holocaust never occurred. On still other campuses, there are proponents of creationism, abject homophobia, and still further extremities in cause. While inquiring minds may disagree, a generic recalcitrance regarding open debate with such advocates has emerged. Why? Because open debate leaves a residue of legitimacy on positions long discredited. This may seem like conspiracy to the already paranoid victim. But it is surely not censorship.

If Horowitz had been shooting for the purity of analytic distribution, he surely failed. But if his goal had been, say, to muddy the deliberative waters, considerably greater credit must be ceded. But for all the sound and fury David Horowitz’s polemic managed to stir, his was not to be the last word. In mid-

March of this past year, a decision was made which would dramatically shift both the venue and the genres of the reparations controversy. Instead of continuing to engender deliberative, across-the-board reparations proposals, reparations advocates have initiated a series of class-action law suits against firms, universities, news agencies who prolonged and benefited from conspicuous features of slavery.

One would have difficulty overestimating the significance of this shift. It takes the question of accountability from the legislature to the Courts (where, we are tempted to say, it belongs). It also changes the operative argumentative genre from deliberative to forensic discourse. Perhaps most important, reparations litigation allows the hidden referent of this controversy to emerge, without the sort of vitriol and evasion sponsored by the David Horowitz's of our political culture. Here is Charles J. Ogletree, Jr.: "A full and deep conversation on slavery and its legacy has never taken place in America; reparations litigation will show what slavery meant, how it was profitable and how it has continued to affect the opportunities of millions of black Americans." With all due respect to the complexities of America's bicameral legislature, this would not be the first time an aggrieved people has had to rely upon the courts to conduct business others would sooner ignore. For thirteen consecutive years, the Congress has refused to even appoint a study group to explore the issues of reparations. In this as in previous revelatory episodes of civil rights history, neglect may prove to be the mother of invention.

There is, of course, a special irony in the fact that the litigation project seems a direct outgrowth of the weakest of Horowitz's premises (on groups who benefited disproportionately from slavery). Perhaps David Horowitz and the Committee on Reparations may find some way of sharing credit for this. A final irony rests with the likely defendants themselves. We have already heard from several them. Recently, the *Chicago Tribune* intoned: "Long before all of the sad facts have been accumulated, it will have become clear that the benefits of slavery were not restricted to a few parties in either North or South. What Lincoln himself saw as a national stain implicated a complex web of economic, political and cultural forces. No one was immune, then or now. And to the extent that the ill effects of slavery still plague our nation, we are all liable." Noble words. But perhaps in the *Tribune's* haste to shed the yoke of litigation, it lost sight of the similarity between its current stance and the original reparations position. We are, indeed, all liable.

Rhetoric, Reparations, or Resignation: The Hope(lessness) that Race Creates

No phrase more clearly epitomizes the consciousness underlying the demand for reparations for slavery advanced by African Americans than “forty acres and a mule.” It reveals an understanding of the fact that people of African descent could never truly gain equality without access to this nation’s most valued and protected privilege: the ownership of land. Yet the phrase itself reveals the rhetorical incoherence that has always circumscribed race relations in America. Some historians contend that the promise of land and the means of sustaining it were never even offered to African Americans, while others suggest that it amounted to little more than insincere inducements by those who wished to garner the support of ex slaves for their own ends. Claude Oubre (1978) suggests that the belief held by African Americans that they would receive reparations in the form of land and livestock can be traced to the rhetorical efforts of both abolitionists and legislators. “It appears that the concept of land distribution may have originated within the abolitionist camp. Less than one month after the war began, abolitionist William Goodell demanded that Congress confiscate land belonging to rebels and redistribute it among freed slaves” (p. 181). Oubre argues that a number of pronouncements by Union army officials and legislators, along with the confiscation acts enacted during the war, gave many African Americans both free and slave the impression that they would be compensated by the government for over two hundred years of unpaid labor.

Those pronouncements were, however, motivated less by benevolence than by opportunism. Indeed, few whites were sincerely committed to creating the conditions that would lead to racial equality for blacks, much less providing them land. Oubre concurs in his discussion of the failed legislative attempts to provide land for newly freed blacks in Louisiana. “Although the majority of congressmen never really intended to give the freedmen land, the action of high ranking military and political officials convinced freedmen that there was substance to all the land rumors they had heard,” he explains. “This belief, unfortunately, by creating a false hope, deprived many freedmen of the incentive to acquire land through their own efforts” (p. 184). For Oubre, the failed legislative attempts to provide African Americans with land represents the “tragedy of Reconstruction... since without the economic security provided by land ownership the freedmen were soon deprived of the political and civil rights which they had won” (p. 197). He nonetheless concludes that the few individual African Americans who were able to acquire land achieved “a personal triumph against overwhelming odds” (p.

198). Their limited success, however, stood in stark contrast to the hopelessness that masses of African Americans experienced in the aftermath of Reconstruction, a hopelessness created and sustained by the rhetoric of white racism.

That rhetoric ranged from the opportunism of those who appealed to the belief held by many blacks that the nation would make reparations for the crippling legacy of slavery, to a reliance upon the traditional mechanisms of fear and violence that has been used to maintain social control. As Cal M. Logue (1977) observes: "The new rhetorical status of blacks challenged the power of whites. Spokesmen for the white community perceived Reconstruction as 'that new revolution which aims at the overthrow of the Constitution of the country, and the subversion of these heretofore free and independent Commonwealths'" (p. 241). Logue argues that whites "communicated two persuasive appeals as a means of convincing blacks to accept the submissive role circumscribed by the rhetorical contract: a verbal bribe and a rhetorical threat" (p. 244). These strategies replaced the sanctions which restricted blacks during slavery, and exploited a rhetorical situation which whites perceived as threatening to their political rights. Whites were urged by political leaders and public figures to "prepare for the struggle." "Journalists, speakers, letter writers, and 'poets' contributed to the verbal campaign to control the political behavior of blacks" (p. 242). At the end of the nineteenth century, white Americans were persuaded to believe that demands political and social equality and opportunity for black Americans would ultimately lead to their victimization at the hands of "black Republicans," and their northern abolitionist allies.

At the end of the twentieth century, a similar phenomenon occurred in response to government efforts to address the long legacy of racial discrimination through affirmative action. This new rhetoric of racial recovery drew upon many of the same figures and tropes of whiteness that emerged during Reconstruction, but also reflected more subtle and insidious forms of racial reasoning. Gresson offers important insights into the parallels between the rhetoric of Reconstruction and contemporary anti-reparations rhetoric. He argues "that white political and economic recovery efforts in America have resulted largely in judicial, occupational, and symbolic losses for Blacks and others previously targeted for so-called mainstreaming" (p. 12). He also suggests that contemporary white racial recovery rhetoric plays upon the fears and insecurities of European Americans, casting them as "victims" and revealing an historical amnesia that reverses the realities of racial oppression and discrimination. "Many whites," he explains, believe the story that Blacks and others are *privileged*. Because they see and

hear images of Black success... they 'feel' that all Blacks have the power and opportunity to be model successes. Because they see many of their own family and friends suffering, they believe white men have had to pay for Black success. This is the new white racial story. In this new white racial narrative, moreover, the white male is the victim (p. 211-2). While the story may seem new, its rhetorical motives and racial reasoning are as old as the exigencies that have historically shaped the ways in which white Americans see themselves in relation to people of African descent.

What is new, however, is the "spirit of opportunism" which Gresson suggests shapes racial recovery rhetoric on both sides of the color line. That opportunism is revealed in the rhetoric of black conservatives, whose denial of white culpability in the contemporary problems that best black Americans has been instrumental to the success of white recovery efforts. Gresson persuasively documents the ideological and material complicity of black conservatives in the resurgence of racism in America, and his suggestion that these African Americans "collude with the white man's agenda" (p. 182) is confirmed by their anti-reparations rhetoric. William Macklin (2000), in discussing the call for reparations advanced in Randall Robinson's book *The Debt*, notes that "while many blacks have joined the call for reparations, some have balked" (p. A12). He cites, for support, George Mason University economist Walter Williams, who refutes the claims of reparations advocates regarding the destructive effects of slavery with the preferred rhetorical strategies of black and white neoconservatives: the argument from anecdote. Maclin notes that Williams claims "that slavery actually benefited blacks by forcibly moving an estimated 20 million Africans to the New World. "I would say that my wealth is much higher being born in America than if I had been born in Africa," said Williams. "And I would say the same thing about any African American." Williams certainly isn't alone in his view. For many Americans, the idea of reparations is an affront, evidence of the stiff-necked refusal of blacks to move beyond the past. Others see it as a sham that would shower the undeserving with tax-funded cash (p. A12).

The fallacy at work in William's synecdochal substitution of the part for the whole is also revealed, albeit more subtly, in Macklin's racial reasoning as well. The "many Americans" and the "others" of which he speaks are clearly white, but their race has been erased to give the impression that the resistance to reparations is as widespread among African Americans as it is among European Americans.

Neil Steinberg's discussion of the issue of reparations suggests otherwise. Steinberg, a white writer for the *Chicago Sun Times*, offers a compelling account of the reparations debate in black and white, its central issues, and its reliance on the rhetorics of racial recovery and reasoning. "My column last week on the issue of reparations for slavery seemed to have touched a nerve with a lot of people, white and black," he writes. "Most gratifying of the many responses I got, and thought were worth sharing, were letters and emails from African Americans who were astounded to find a white person expressing an opinion that made sense to them" (p. 16). Steinberg, who argues in favor of reparations, also comments on the responses of his white readers, who largely rejected the call for reparations. "White readers, on the other hand, tended to take what I call the 'that's not my table' approach. Their relatives were in Ireland or Sicily, or somewhere else, and the whole thing is not their problem" (p. 16). Most whites, Steinberg notes, invoke a rhetoric of denial, and many echoed the arguments made by Horowitz in his rejection of the call for reparations. Steinberg also indicates that many of the responses of white readers revealed an underlying racism, sometimes subtle, sometimes, not. "Many who wrote in opposition of reparations had an amusing tendency to unconsciously illustrate the pervasive racism that blacks are still up against. Perhaps sensing the loathsomeness of their opinions, they tended to write anonymously" (p. 16). Steinberg ends his column on what he implies is a more positive note, with these words from a reader whose race is not identified: "Your column put this issue in very clear words. The United States should set this matter right... I don't have the answers, but we should at least start" (p. 16).

Whether or not this country is willing or able "to set this matter right" remains to be seen. Our reading of this controversy in black and white leads us in two directions, toward both the possibility of reparations and the probability of resignation. The point at which we do agree, however, is that the opponents of reparations are ultimately opportunists, those who play to our least ethical, rational, and compassionate impulses to advance their own agendas. This is certainly our view of David Horowitz and those like him who would distort historical and rhetorical realities in the service of self-interest. Gresson's observations concerning the invidiousness of this opportunism is instructive: "It is similar, for example, to that spirit of opportunism that inspired the imaginative white male in Boston in 1990 to kill his pregnant wife in a Black neighborhood, accuse a Black male, and induce the mayor, police force, and city to fall in frenzy upon the Black community" (p. 170). Like Charles Stuart, David Horowitz is more

than willing to exploit the primitive, basic belief held by most whites, that they are inherently different and thus inherently better than blacks. We wonder if any rhetorical effort can overcome this condition, which Golden and Rieke correctly observed, may be more a problem of pathology than persuasion.

As rhetoricians invested in the possibilities of ethical rhetoric we continue to hope that a more coherent understanding of discourse and difference might help us to erase the problem of the color line as we enter a new millennium. Perhaps the shift from the deliberative to the forensic realm offers some hope, but this too remains to be seen. With the ideological shift toward the right on the Supreme Court, a shift facilitated in large part by the appointment of a black conservative, one wonders whether the legal system will be any more responsive to the needs of African Americans. Gresson suggests that the rhetoric of white racial recovery had already found its way into the judicial process well before the appointment of Clarence Thomas. "At the conclusion of a recent reversal of an earlier landmark case, Justice Thurgood Marshall accused several of his peers of 'selective amnesia' and of insulating 'an especially invidious form of racial discrimination from scrutiny of the Sixth amendment.' Marshall, a Black justice and member of the body voting on the earlier landmark case, declared the spirit of the previous decision violated" (p. 176). What Marshall saw as "selective amnesia," another distinguished black jurist, Paul L. Brady, labels "a certain blindness."

A federal judge and "grandson of a slave," Brady (1990) contends that "the white majority has willfully blinded itself to the humanity and worth of Americans of African descent in order to preserve the best portion for itself" (p. ix). He comments on the incoherence of America's treatment of African Americans, and the continuing role of race in shaping American cultural and rhetorical norms: There has been no official act of the American government to memorialize slavery, nor has proper recognition been given to those who helped end it. Rather, our society honors those who supported the system of man's inhumanity to man. Included are the many leaders who renounced their citizenship and betrayed their oaths of office. They are compassionately remembered by memorials and statues, because race determines recognition in our nation, and not deed (p. 320).

Brady's critique of white America's moral blindness concludes with a clear statement of the ethical, rational, and emotional grounds of the call for reparations. His is an argument not only from anecdote, but from history as well, and it reveals what we both believe is best understood as a call for rhetorical

coherence: "As black Americans we share our humanity and aspirations with all this nation's peoples, but history and experience contradict that truth, and we continue to suffer from that contradiction. The principles found in the Declaration of Independence and in the Constitution have been neither completely accepted nor appropriately resolved," he concludes. "Instead, further contradictions and inconsistencies have been introduced throughout our history, rendering our government practically incapable of perceiving the tragic result" (p. 327). While it seems unlikely that the courts will be able to achieve what the government could not, there always exists the possibility that justice might become something more than the interests of the stronger might or the protection of privilege. As the century of the problem of color ends, and the century of the challenge of conscience begins, perhaps European and African Americans will move beyond separation and toward reparations. We do not have the answers, but believe that it would indeed be a good start.

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ISSA Proceedings 2002 - Image Vernaculars: Photography, Anxiety, And Public Argument



1. Introduction: Visual Argument as Discourse About Images

There exists the assumption in rhetorical studies that visuality (often described in terms of “surveillance” or “spectacle”) is inherently antithetical to the goals of rational discourse in the public sphere. Indeed, John Dewey’s infamous charge in *The Public and Its Problems* that “vision is a

spectator; hearing is a participator” seems to suggest no positive place for the visual in the practice of deliberation (1928/1954: 219). And Dewey is not alone; as Martin Jay (1993), David Michael Levin (1993), and others have observed, suspicion of the power of visuality dominates political theory and philosophy in both the European and American traditions. One goal of my research is to challenge such conceptions by encouraging us to think more productively about how visual images function as inventional resources in the public sphere.

Of course, one need not turn to theory to find examples of anxiety about the relationship of images to deliberation. The presence of visual images in public argument tends to produce a certain amount of anxiety in the general public as well. Part of that anxiety stems from fear that images can be “manipulated,” in often undetectable ways, and thus pollute the apparent “purity” of public deliberation. In our increasingly digital age, the litany of notorious examples is by now quite familiar: the digitally “altered” O.J. Simpson mug shot in *Time magazine*, for example, or *National Geographic’s* publication of a photograph in which the pyramids of Giza were moved closer together to facilitate production of the image on a vertical cover (Ritchin, 1990: 17). Indeed, “exposing” such “faked” photographs has become something of a cottage industry in recent years.

But such charges are not unique to digital culture, and of course, photographs could be manipulated long before computers came along. In working on a book about documentary photographs produced by the U. S. government during the 1930s (Finnegan, in press), I encountered several instances in which public actors charged the government with lying, staging, or manipulating its photographs. In my study of one of these controversies (Finnegan, 2001a) I became fascinated not with the question of whether the photographs had been manipulated, but with the *rhetorical resources that the argument about manipulation afforded the arguers*. One of the ontological foundations of photography is, of course, its apparent transparency or “realism”; Bryson (1983) calls this the “natural attitude,” Barthes (1977) refers to it as the “message without a code.” The assumption of the inherent truth of the photograph grounds many controversies about visual images.

Recent, important work in argumentation studies has helped us begin to challenge suspicion of the visual and systematize our thinking regarding the rhetorical and argumentative features of visual practices. Willard (1978, 1981) explored the implications of argument as “non-discursive symbolism.” Goodnight (1991) and Olson and Goodnight (1994) allowed space for the visual or non-

discursive in the study of controversy. Birdsell and Groarke (1996) opened the door wide for scholarship on visual argument in their two-volume special issue of *Argumentation and Advocacy*. In those issues and elsewhere since, scholars of argument have explored and sought to articulate the possibilities of a theory of visual argument (Birdsell and Groarke, 1996; Blair 1996; Fleming, 1996; Groarke 1996). Other critics have used the case study approach to explore specific moments in which visual practices intersected with instances of argumentation (Shelley, 1996; Barbatsis, 1996; LaWare, 1998; Deluca and Delicath, 1999; Finnegan, 1999; Pickering and Lake, 1999; Finnegan, 2001a). Thus far most research on visual argument has tended to focus upon definitional questions (i.e., *do visual arguments exist? How are they defined?*) or instances of visual argument (i.e., *visual argument X produces Y effects*). Most recently, in her 2001 Alta keynote address, Catherine Palczewski argued that we must explore what she calls “the productive limits of argument.” Defining argument as “a mobile, almost living creature,” Palczewski called upon argumentation scholars to explore “moments in which argument plays out its productive limits, in which its identity opens and destabilizes” (2002: 3). For Palczewski, these moments include the continued theoretical exploration of the visual argument.

My project contributes to these recent conversations and extends them to suggest that we may benefit from paying attention not only to the discourse of images, but also to discourse *about* images. That is, I am interested in exploring the grounds of visual argument: how and why are people able to make particular kinds of arguments about visual images? Using examples from controversies involving photographs and image-making practices, I posit the existence of “image vernaculars” that ground claims made about photographs - in particular in this essay, claims about photographs’ relationship to truth or nature. If “vernacular” may be taken to mean colloquial, everyday ways of communicating, and “vernacular argument” may be defined as the use of relatively intuitive, everyday, enthymematic modes of reasoning based upon social and cultural norms in a given context, then we may define “image vernaculars” as *relatively stable, culturally- and historically-situated topoi available to public actors who wish to make arguments about visual images*. While the focus of this particular essay is on only one of these so-called image vernaculars, in what follows I speculate more generally about the nature and function of image vernaculars in public argument, with three very brief case studies as critical touchstones.

2. *Images in Controversy: Three Cases of Naturalism at Work*

Consider three images. The first: a photograph made of a steer's skull by a U. S. government photographer in 1936. Widely distributed as visual evidence of the devastating drought of that summer, the photograph generated controversy when a local newspaper editor in Fargo, North Dakota, declared it to be a "fake." Arguing that the steer in question could not have died as a result of the present drought, the editor claimed that the photographer had "staged" the image by using the steer's skull as a "moveable prop." He further argued that United States government was trying, for political purposes of course, to make the drought in the plains states look worse than it really was. The resulting controversy forced the government agency that sponsored the photography project to respond aggressively to the charges of propaganda, and almost ended the project altogether.

The second image is a more recent, and likely more familiar, one: *Time* magazine's digitally altered cover image of O.J. Simpson's mug shot. This image, too, produced intense controversy when it appeared in June 1994 - especially when placed against another news magazine's "unaltered" mug shot. While *Time* editors argued that the mug shot was altered merely to add drama to the story of the tragic downfall of a sports hero, others disagreed. Some argued that the new image, substantially darkened when compared to the original mug shot, constituted a visual judgment of guilt. Some charged *Time* with "lynching" Simpson on the cover of a national news magazine. Others, particularly those in the journalistic community, argued that the digitally altered image wasn't altered *enough*, that norms of photojournalistic practice had been violated by visual artists who should have made the image look more like a painting and less like a photograph.

Finally, image three - an old photograph but a decidedly twenty-first century controversy. In 1998 a daguerreotype purported to be the earliest surviving photograph of Abraham Lincoln was put up for auction at Christie's in New York. Known as the "Hay Wadsworth daguerreotype," the controversial portrait featured a gangly young man with light-colored eyes and unruly hair. The photograph had been owned for many years by the family of Alice Hay Wadsworth, the daughter of Lincoln's private secretary John Hay. Yet its identity as Lincoln was far from conclusively established. The daguerreotype's owners put the image through a battery of tests, from the traditional authentication methods

used by Lincoln scholars and photography experts to elaborate digital imaging tests and examination by forensic scientists. While some noted Lincoln scholars vociferously disputed the scientific findings, many information technology specialists and forensic scientists concluded that the image was indeed that of Abraham Lincoln. In the end, despite a range of evidence suggesting that the image might in fact be that of Lincoln, the daguerreotype failed to sell. No one at the auction, it appeared, wanted to take a chance on a face that was so strangely unrecognizable. For even those who argued that the image was conclusively that of Abraham Lincoln could not deny one thing: *it does not look like Lincoln*. (For detailed discussions of each of these controversies, see Finnegan (2001a), Finnegan (2000), and Finnegan (2001b), respectively).

In each of these three cases, the relation of the photograph to some notion of “truth” or “nature” was assumed by those who responded to the image. In the case of the skull photograph, the veracity of the image was challenged by those who believed that the skull did not legitimately represent the condition of the land it seemed to illustrate. If the photographer had moved the skull, then the drought conditions the images appeared to present were “faked.” In the Simpson controversy, critics challenged *Time’s* alteration of visual evidence typically used in legal settings for identification purposes: the mug shot. Here, a genre of imaging presumed to be “truthful” and legally inviolable was manipulated by a journalistic organization in ways that appeared to make a biased judgment. And, in the Lincoln daguerreotype case, at issue was the very definition of authenticity itself. Participants in that debate questioned whether the photograph could be a “real” Lincoln if it did not “look like” our culturally inherited image of the man.

The “image vernacular” in each of these three cases is grounded in a set of presumptions about the nature of photography; it is these presumptions that in turn made it possible for people to mobilize particular arguments about and with the images. Elsewhere, I have called this particular presumption the “naturalistic enthymeme,” which I have defined as the capacity of a photograph to make an argument about its own realism (Finnegan, 2001a). In this sense, most photographs may be conceived of as visual arguments insofar as they are always making an argument about their “natural” relation to what they depict. Here I extend that definition to add that the naturalistic enthymeme may be one of several identifiable image vernaculars in operation at moments when and in places where visual images participate in public deliberation and, more

specifically, controversy.

3. Speculative Thesis One

Image Vernaculars are not universal, but based upon codes of communication conditioned by visual culture.

In asserting that image vernaculars function as available topoi, I do not wish to suggest that they do so universally. Indeed, it may appear that way, for the power of image vernaculars lies precisely in their enthymematic nature as implicit, apparently given, norms of communication. But image vernaculars are not universal; they are, in fact, entirely dependent upon context, broadly conceived. In their exploration of the possibilities for a theory of visual argument, Birdsell and Groarke (1996) note the importance of having a relatively sophisticated understanding of the contexts in which images appear. One of the contexts they describe is that of “visual culture.” The naturalistic enthymeme is an available image vernacular because it mobilizes cultural assumptions about the evidentiary force of the photograph; what is important to remember is that those assumptions, in turn, are not themselves natural, but they *appear* natural because they are the products of a visual culture that valorizes the apparent naturalism of visual images.

Valorization of the evidentiary force of photographs predates the medium itself. The ocularcentrism, or eye-centeredness, of Western culture has been well-documented (Jay, 1993; Jenks, 1995; Levin, 1993). The development of pictorial perspective is typically offered as a key moment in the history of Western representation, important in part because it constructed our belief that vision itself is pictorial and hence, that pictures are “natural” (Snyder, 1980). The dominance of pictorial perspective after the Renaissance intensified with the Enlightenment’s faith in rationality, giving rise to what Martin Jay (1993) has called “Cartesian perspectivalism,” a “constellation of social, political, aesthetic, and technical innovations in the early modern era, which combined to produce what has in retrospect been called ‘the rationalization of sight’” (49). Cartesian perspectivalism valorized the visual orders of science, giving visual representations the aura of “truth.” In addition, it used the visual convention of the “monocular, unblinking fixed eye” to put the viewer in a position of authority over the representation (53-55). From these longitudinal developments came two key elements of Western beliefs about vision: first, that what is pictured somehow represents what one would see if one had “been there,” and furthermore, that

what is pictured is somehow more “true” because it has the appearance of naturalness.

Photography was a technology perfectly matched to the demands of Cartesian perspectivalism and a viewing public becoming increasingly comfortable with the norms of naturalistic representation. Lady Elizabeth Eastlake, writing a monograph on photography in 1857, argued that photography was not an art (a hotly debated question of the time) because it does not create, but merely reproduces that which is before the camera. The camera was, for Eastlake, important not for its aesthetic force but for its evidentiary force; it was “the sworn witness of everything presented to her view” (1857/1980: 65).

Even in more visually sophisticated times, the link between the photograph and nature has remained strong. When Barthes (1977) discussed the “message without a code, ” he did not mean to suggest that photographs present reality objectively. But, he did observe that because the photograph constitutes a “perfect analogon” to reality (17), its “demonstrative status” masks its “connotative” one (19). In other words, for Barthes the unique property of the photograph is that our interpretation of its connoted message depends in good part on *our acceptance of the photographic message as denotative* - that is, objectively neutral or “true.” Given that the photograph is assumed to be “true” until we are given reason to believe otherwise, the photograph derives its peculiar evidentiary force in large part from the viewer’s acceptance and perpetuation of the naturalistic enthymeme. The naturalistic enthymeme grounds the photograph’s evidentiary force, and hence constitutes a powerful - in Western culture, perhaps the most powerful - image vernacular.

4. Speculative Thesis Two

Image vernaculars become particularly salient and explicit in moments of controversy, when the usually implicit norms of visual communication are challenged.

As Olson and Goodnight observe, controversy challenges accepted norms of communication and functions to “block enthymematic associations and [. . .] disrupt the taken-for-granted realm of the uncontested and commonplace” (1994: 250). In each of the three cases discussed above, it was in the moment of controversy that assumptions about the nature of visual imagery as evidence were laid bare and contested. In the skull controversy, the newspaper’s editors offered concrete facts to challenge the apparent naturalism of the photograph as an illustration of the effects of the drought. They argued that not only was it

impossible for the skull to have died as a result of the recent drought, they also explained that the parched land on which the skull stood was in fact not drought land to begin with, but an alkali flat, common terrain in the region. In the case of the so-called Lincoln daguerreotype, the ways in which the norms of communication were challenged were in fact more profound than those participating in the controversy may have believed. Boggled down in the mire of the technical sphere, scientists and historians argued about the minutiae of detail in the Lincoln photograph; they even measured the vein patterns on his hands and ran the image through software used to “age” missing children. They debated intensely about the use of digital methods of authentication. In the end, the controversy was at heart a debate about the meaning of *authenticity* in digital culture, a fundamental conflict between the dichotomous processes of *recognition* and *identification*. Those who disputed that the image was Lincoln invoked a rhetoric of recognition by basing their arguments upon the age-old assumption that “seeing is believing,” that what we must trust best are, as one Lincoln photography scholar put it, “the judgments of [our] eyes” (Barber, 1995: 78). In contrast, those who contended that the daguerreotype was a representation of Lincoln relied not on a rhetoric of recognition, but rather on a rhetoric of identification which valorized the possibility of digital imaging to move us beyond what our eyes can see, and as a result beyond the boundaries of the viewing subject. In the end, the controversy challenged the continued relevance of the naturalistic enthymeme to visual culture. What it suggested is that if our methods of analyzing visual evidence shift from those of recognition (think driver’s licenses and mug shots) to identification (think digital analysis), then it is possible that the very definition of authenticity may itself be transformed.

5. Speculative Thesis Three

Image vernaculars should not be imagined as a typology or genre category; rather, they are best explored as they emerge organically from the discourse of a given controversy.

In positing the existence of image vernaculars, I do not wish to construct a situation in which image vernaculars become a set of categories or a typology, where, for example, one would make one’s goal the collecting of examples of naturalism. As Brockriede (1974) observed about similar approaches to rhetorical criticism, such an approach would merely reproduce the desire to describe and categorize, not to explain or analyze. Because they are grounded in the contingency of history and revealed in the play of discourse in a given

controversy, image vernaculars are best studied, as Olson and Goodnight (1994) exhort, “from the ground up.” We should think of image vernaculars as a kind of heuristic device that enables us to open up moments of controversy and visual argument – to test, as Palczewski encourages us to do, the productive limitations of argument.

6. Speculative Thesis Four

There are multiple image vernaculars, and more than one may be mobilized at the same time in a given controversy.

The three cases I discuss here suggest important justifications for the third thesis rejecting categorization, and in so doing move us toward consideration of a fourth. In each controversy, we may identify multiple image vernaculars mobilized in the discourse about the photographs. Though my primary focus up to this point has been on the evidentiary force of the naturalistic enthymeme, there are other image vernaculars at play when we engage photographs in controversy. One of these is association. The associative force of images is invoked by viewers who recognize, and associate, often implicitly, the ways in which particular images participate in complex histories of representation. These associations are inevitably tied to our collective understandings of history and memory. Barbie Zelizer (1998) uses the notion of “collective memory” to frame her discussion of the associative force of Holocaust photographs. She observes that visual images construct collective memory in complex ways, that while “images help stabilize and anchor collective memory’s transient and fluctuating nature,” at the same time, “images, particularly photographs, do not make obvious how they construct what we see and remember” (6). In addition, “images of collective memories are composites,” often constructed from or making reference to other images (6). As a result, photographs always and consistently speak to more than just the moment at hand, and to images other than themselves. John Berger (1982) writes, “An instant photographed can only acquire meaning insofar as the viewer can read into it a duration extending beyond itself. When we find a photograph meaningful, we are lending it a past and a future” (89). Embedded in the process by which viewers lend a photograph “a past and a future” is the photograph’s associative force.

The Simpson controversy, for example, was about more than the ways in which the mug shot cover challenged the identity of the mug shot as evidence. Those who responded to Time’s publication of the mug shot image with charges of

racism read the photograph associatively, placing it in a context much broader than that of the mounting case against Simpson. Thus, for many African Americans the darkened mug shot was simply another in a long line of visual representations designed to oppress and demean blacks. In the case of the Lincoln daguerreotype controversy, responses were grounded not only in the question of the image's authenticity, but in the broader question of the associative force of "Lincoln" as a cultural icon. Because "we," as Americans, "know" Lincoln, we think we "know" what Lincoln "looked like."

7. Image Vernaculars, Visual Culture, and Public Argument

In this essay, I have defined the term "image vernaculars" and suggested four qualities of image vernaculars to consider if we are to understand how public actors mobilize their assumptions about photographs. Image vernaculars are relatively stable, culturally- and historically-situated topoi available to public actors who wish to make arguments about visual images. Using examples of three images in controversy, I posited four theses about image vernaculars:

1. image vernaculars are not universal, but based upon codes of communication conditioned by visual culture;
2. image vernaculars become particularly salient and most explicit in moments of controversy, when the usually implicit norms of visual communication are challenged;
3. image vernaculars should not be imagined as a typology or genre category; rather, they are best explored as they emerge organically from the discourse of a given controversy; and
4. there are multiple image vernaculars, and more than one may be mobilized at the same time in a given controversy.

What, then, is the utility of such an elastic concept, both to our understanding of visual culture and to argumentation theory? At this early stage in my project, it is difficult to speculate. I recognize that I have not necessarily identified anything particularly "new" here - but this is, in fact, precisely the point. Because image vernaculars are ubiquitous in that they ground our everyday ways of talking about images, they reflect the things we already know and believe about images. In the language of semiotics, what I call image vernaculars here might be described variously as "codes," "connotations," "icons," or "symbols." They may be seen to reflect "ideologies" or "dominant discourses" which viewers must "decode," "resist," or "appropriate." In linking familiar topoi such as naturalism and

association to an argumentation framework, I am not reinventing the wheel so much as bringing a different set of assumptions to the investigation of visual practices. Such assumptions will, I hope, expand the limits of our investigation of visual practices in both argumentation and visual culture studies. The study of image vernaculars enables critics to lend apparently implicit, “natural” modes of reasoning a past and a future, as Berger says, and in doing so, become better able to understand not only how images make meaning, but also how we make meaning from and with images.

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