ISSA Proceedings 2002 – Improvisation In Organizations: Rhetorical Logic And Rhetorical Skill

What do you want? Everything we've learned has become false. We have to relearn our calling from top to bottom (Colonel Pétain, 1914)

"Everything we have learned has become false" has the ring of a eureka moment, of an organizational actor *in situ* suddenly seeing the need to think outside the proverbial box, and an illustration of Stephen Toulmin's (1964) view that we show our rationality by how we change our minds. It seems like an unusually startling argument, enthymematically presupposing as it does, the evidence of recent events, the Battle of the Frontiers in Alsace-Lorraine (August 14-22, 1914) which had been an unmitigated French disaster. But for Pétain, this famous quotation was a rhetorical move aimed at subordinates and superiors alike; it was his distinctive way of arguing, the "we" being his alternative to "I told you so."

Henri Philippe Pétain (1856-1951) was something of a maverick, the sort of organizational actor likeliest to see the need "to relearn our calling from top to bottom," and thus a powerful case-in-point of why organizations should value their dissenters (Willard, 1987; Willihnganz, Hart, and Willard, 1993; Hart, Willihnganz, and Willard, 1995; Willihnganz, Hart, and Willard, in press). Unlike most French and British generals, long before the Great War, Pétain understood the implications of the second wave of the industrial revolution that had blossomed around the army; he appreciated the new firepower of the modern battlefield, the new artillery and machine guns. He rejected the crown jewel of French military wisdom, the *offensive à outrance*, "offensive to the limit," in which elan and guts were expected to prevail over firepower. His heretical view was that "artillery conquers, infantry occupies" (Pétain, 1930), an obdurate truth

of the Western Front that most Great War generals would never grasp. As Mary Douglas (1986) might say, they were imps of their institutions, compelled to think in deep ruts, thus lending to the First World War its unsavory reputation for mindless slaughter.

The pre-war French army treated Pétain the way organizations often treat their mavericks. Someone wrote in his personnel file that he should never be promoted above the rank of brigadier general; he was tolerated but stigmatized in the military schools; he was banished to a small coterie of renegade "firepower fetishists," a label that was not meant as a compliment. And he seemed destined to be a permanent colonel (King, 1951).
But even the most hidebound organizations can be battered into change. French military operations of 1914 and 1915 were catastrophes. Even 1914's fabled "Miracle of the Marne" owed more to German timidity than French flexibility. And by 1917 the offensive à outrance mind-set had buried more than 1.3 million French soldiers. Amid this train of disasters Pétain's star glittered. He was the only French general (1914-1917) who succeeded with every task assigned him with minimal casualties (Carré, 1962). To higher commanders minimal casualties were objects of suspicion. It was the surreal logic of the day that commanders with the highest casualties were the most competent because they were pressing the offensive à outrance (Lottman, 1985; Ryan, 1969). Yet *despite* his low casualties, Pétain's successes couldn't be challenged. So at 58 in 1914, about to retire as a colonel, he rose to full general in eight months, the most meteoric rise in the history of the French army.

Pétain was a very unusual French general. He was flexible, open-minded, and attentive to the opinions of subordinates. Indeed where most Great War generals believed that subordinates were better seen than heard and that subordinates pointing out difficulties with upcoming plans were bad for morale, Pétain encouraged argument and debate among his staff (Griffiths, 1972; Lottman, 1985; Ryan, 1969); and as a battle commander he encouraged subordinates to speak frankly about local difficulties; where the majority of French and British generals saw the mention of difficulties as a sign of weakness, and often sacked such complainers; Pétain saw complainers as a source of vital information. He also possessed a profound understanding of the psychology of combat soldiers and thus was, by all anecdotal evidence, highly admired by the "poilus"**[i]**, French slang for ordinary soldiers.

Pétain's status with the poilus was so high that his reputation survived Verdun, 1916's horrific "Mill on the Muse" that in ten months resulted in (by the lowest estimates) 377,000 French and 337,000 German casualties. The poilus could see for themselves that Pétain was trying to win the battle by artillery, to be "lavish with steel, stingy with blood"(Carré, 1962, 172; the translation is Watt's, 1969, 244).

On May 1, 1916 Pétain was promoted to Commander, Army Group Center. It was a kick upstairs. The French generalissimo, Joffre, had tired of Pétain's cautiousness, the indecisiveness of a battle of material, and Pétain's constant demand for fresh troops to rotate in and out of the lines at Verdun. These rotations were meant to minimize the psychological effects of ceaseless bombardment, an idea completely alien to Joffre. So, "the savior of Verdun" was promoted *away* from Verdun, where Joffre fully intended that he become a glorified clerk. His successor was Robert Neville, who reputedly shouted from the steps of city hall at Souilly, "We have the formula." The "formula" was same old offensive à outrance. For that, Neville needed a specialist in ill-conceived offensives – his III Corps commander, General Charles-Marie-Emmanuel Mangin, whose most admiring biographers admit, had a sociopathic indifference to casualties. Mangin's men called him "butcher" and "man-eater," terms of endearment that doubtless explain why there were more suspected fragging attempts on Mangin than all other French generals combined. Under Neville and Mangin there would be no more coddling of the men and no more squeamishness about casualties (Brown, 1999; Horne, 1993).
By June there were disturbing early warning signs of a phenomenon that would challenge even Pétain (Horne, 1993, 318). *Poilus* by the thousands marching past staff officers started to "bah" like sheep and shout "down with the war." Generals were greeted with shouts: *Embusqués* (shirkers). French President Raymond Poincaré's car was pelted with rocks. Signs appeared along what French journalists called the *Voie Sacré* (Sacred Road) leading into Verdun saying *Chemin de l'Abattoir* (Slaughter House Road). The poilus were not happy warriors.

Still all might have been well. On July 1, 1916 the British launched their own disastrous offensive in the Somme River region, a meat grinder that drew Germans away from Verdun and gave the poilus breathing room. But where one might imagine that three years of maximum casualties and minimum results

would lead the politicians to sack Joffre, they in fact sacked him for neglecting the defenses of Verdun. They had good generals to choose as his successor (Pétain, Ferdinand Foch, and some others), but they picked Robert Neville, a vain, arrogant, and dishonest man caught in a great existential nightmare: He was in way over his head, and clueless (Painlevé, 1919).

To make a long and complicated story short and simple: Neville planned to attack well-entrenched Germans on a long, high ridge. On his orders his officers oversold the campaign to the poilus; the attack would be a war-winner; French artillery would destroy the German defenders. By all accounts this rhetoric of high expectations was successful; enthusiasm for the attack had been whipped up. But all these hopes were dashed. A Lieutenant later told a secret army commission of the Chamber of Deputies "at 6:00 AM the battle started, and at 7:00 AM it had been lost" (Watt, 1969, 250).

Casualty figures are unreliable for political reasons, but the minimum estimate of French casualties is 120,000. About these casualties, GQG (*Grand Quartier Genéral* – the French high command) made a fundamental mistake, though a common one for Great War armies. It first refused to release any figures, then weeks later issued unbelievably low figures. Basil Liddell Hart (1930, 45), who fought in the war and became one of its great historians thought the British erred in muzzling its press, "followed by the equally stupid practice of issuing *communiqués* which so veiled the truth that public opinion became distrustful of all official news and rumor was loosed on its infinitely more damaging course." By all accounts, this cynical distrust of the official and heightened trust of the unofficial was pervasive in the French army; so the rumor mill embroidered the truth, 100,000 killed and 200,000 wounded (Watt, 1969,184).

High expectations made for elaborate disappointment. Shortly after the battle, the politicians sacked Neville. And the poilus' rumor mill went wild, exaggerating the casualties by triple, saying everyone but Neville had predicted disaster, that Neville didn't care how many died, that Vietnamese soldiers were raping French women in Paris, that factory workers were making 15 Francs a day.

On April 17 the men of the 108th Regiment walked away from their trenches. Frightened officers corralled them, arrested a handful, and hushed the incident up. On May 3 the 21st Division of Colonial Infantry (which had served especially hard duty at Verdun) refused to budge. Some men were arrested, and the division went into action and was virtually annihilated, so rumors spread that the division

had been deliberately destroyed by French artillery. There were many variations on the rumor, whole units annihilated by French machine gun companies, or by poisoning, or by gas. No historian has uncovered evidence that any of these rumors were true or even partly true; but rumors scarcely need a grain of truth; they need only be believed (Shibutani, 1966). Shibutani sees rumors as a kind of collaborative problem solving especially in contexts of uncertainty exacerbated by low information.

On May 5, as if by spontaneous combustion, one after another French regiment mutinied. By May 19 Pétain (who had replaced Neville as generalissimo) was getting seven or eight reports of serious incidents a day. From April through July (by the French army's official estimate), 16 army corps (54 divisions, half the French army, more than a million men) were in a state of open mutiny (the army's euphemism was "collective indiscipline," the mutineers' euphemism was "strike"). The War Minister told President Poincaré there were only two reliable divisions between the Germans and Paris.

Most units said they'd defend their lines but no more. Others refused to return to the front, and refused emphatically to charge against undamaged machine guns, uncut barbed wire, and intact German trenches. Others threw down their arms and walked away. One battalion marching in good order toward the front mysteriously vanished into the trees. They hid in a cave and came out only after their general threatened to blow the cave's entrance, walling them in. Some tried to get to Paris, to join the thousands of deserters said to be walking its streets. By 1917 the desertion rate was 30,000 men per year (Watt, 1969, 199). Others wandered off and got drunk. Others were rounded up by cuirassiers (light cavalry) and herded back. Some units elected councils of NCOs and called themselves "strikers." Others set up Soviets (workers councils). One unit took over a town and set up an anti-war government.

Troops on leave grew increasingly rowdy, waving red flags, breaking train windows, trashing train stations, stealing food from restaurants (because they couldn't afford the high prices), and savagely beating policemen and train conductors.

Suspected fraggings had been common since Verdun, but given the heat of that battle it was impossible to confirm Mangin's suspicion that his "best" NCOs and junior officers were being shot by their own men. From the official record at least, the mutinies involved little violence. One group sacked its commander's office. Others refused to show up for reveille. The worst incident involved the near-fatal

beating of an officer whose caduceus were probably the reason (the French medical system was an ongoing scandal, the worst of all the allies).

Despite these behaviors, still the troops evidenced loyalty. Even deserters didn't tell the Germans the secret. Lower ranking officers who shared the risks of combat with their men were generally treated respectfully. The headquarters of ranking officers were often sacked, but no high-ranking officers were killed. The thousands of statements by the mutineers varied in wording and socialist lingo, but they can be captured in a single composite sentence: *We don't want revolution; we want the government to understand that we are men, not beasts to be led to the abattoir; and we want peace*. A military policeman asked strikers what would happen if the Germans attacked. Their answer was Verdun talking: "*Le Boches ne passeront pas*," The Germans will not pass (Pedroncini, 1996, 237). Grasping at everything except the possibility that GQG was to blame, GQG fire-breathers wanted executions, ruthless suppression, and a hunt for propagandists. Pacificist propaganda had to be kept from reaching the troops. *Papillons* (peace leaflets) were more prevalent in French lines and billets than toilet paper, and General Neville had an exaggerated fear of their powers of persuasion. Some French generals would blame the Papillons for the mutinies. Aside from naivete about persuasion effects, a central flaw in this alibi was that the poilus themselves were generating the best pacifist propaganda. There were almost too many trench newspapers to count, certainly too many to effectively censor. Despite their increasingly bitter content, they were one measure of morale, and, Pétain suspected, though he didn't use the phrase, they were opinion leaders better courted than censored.

Pétain cared what happened to his men and empathized with their plight. And he was an exceptional army man who could wince at the truth even in enemy propaganda: "Your offensive has pitifully failed!" said a leaflet. "It has caused you frightful losses" (Pedroncini, 1996, 47). The poilus scarcely needed to be told that, nor reminded of the glowing speeches by officers prior to the attack, the promises of decisive victory. It was one thing to over-sell a campaign to politicians, but quite another to over-sell it to troops. It was Pétain's special quality to understand the price they were now paying for lying.
His appreciation of the price of lying stemmed from his understanding of two interdependent yet distinct levels of conventional military communication. The most familiar labels – *formal* versus *informal* – form too sharp a dichotomy; they

blur the interdependence and interaction between the (at least) two levels of communication. So, purely as a literary device and emphatically not as a literal biological analogy, we prefer to speak of skeleton and sinew.

The skeleton of military communication is largely conventional, in Barbara O'Keefe's (1988) sense of the term**[ii]**. It functions within a strong culture whose rules, roles, and relations are designed with unusual explicitness. The goal of communication is cooperative achievement, which requires that each person behave appropriately within the context of his or her identity and role in particular situations. Conventional communicators follow rules and norms to shape their communication. They are mindful of the obligations and expectations associated with the roles they play, the roles others occupy, and any relevant rules governing interaction (e.g., when and how to salute an officer, deference to rank and norms of politeness, respectful disagreement). Armies have unusually explicit role definitions signified by rank, specialty badges, and achievement and award badges. As almost all military activities require closely coordinated teamwork soldiers play their roles with an eye to getting results. Their organizational rules are designed to produce smooth and error-free social interaction.

Overlaid on the skeleton is sinew, if you will, an equally conventional and highly theatrical communication system. The theatricality of military life is a necessary cliche among sociologists and literary critics (see Fussell, 1975). Conscripts fight in theaters, wearing costumes, observed by audiences, all overarched by a proscenium gut intuition that they are not in the "real world," an expression at least as old as the American Civil War and as current as the Vietnam era. The conventions of this communication system are vaguer than the skeletal conventions and more subject to whims and idiosyncrasies of individuals. Thus some individuals bellow obscenities at the top of their lungs – communication that seems at first glance to be prototypically "expressive" in O'Keefe's terms. To the superficial observer soldiers seem to be lashing out with whatever flits into their heads. But these outbursts are more analogous to ritual, the obscenity is grammatical (though sometimes a physical impossibility). Other soldiers develop very arcane argots designed to freeze their commanders out and to define an "in crowd." In this domain, formal rank is less important than perceptions of competence. Thus combat soldiers will ignore officers they don't respect regardless of rank, and combat medics respect their medical officers not because

they're officers but because they're physicians (see Stauffer, et al. 1949; Marshall 1978). The skeletal communications are based on authority; the sinew communications are based on legitimacy; and it was within this latter domain that the French army mutinies played themselves out.

Middle management, colonel to lieutenant, performed well. Finding themselves without legal control they capitalized on their legitimacy as fellow combat soldiers. Officers who shared the risks of combat were respected. These officers became complaint conduits upward and voices of persuasion downward. Up, they advised against rigid force, because the poilus had legitimate complaints. A colonel wrote that: "No rigorous measures must be taken. We must do our best to dilute the movement by persuasion, by calm, and by the authority of the *officers known to the men*, and acting above all on the good ones to bring the strikers toward the best sentiments." Thus, well-liked officers were sent among the mutineers both to listen, takes notes, and to talk. They talked patriotism, duty, and law; they reminded the soldiers that Germany had invaded France without provocation; and they had an argument-from-fairness that by all accounts was listened-to intently: The strikers were condemning troops now in the front line into serving more than their fair share. This use of middle management was unprecedented in the French army. It violated the basic – skeletal – legal principle of military discipline, that authority-was-authority; officers were interchangeable. Readers who have found Anthony Giddens' idea of "structuration" (wherein organizational actors both follow structure and change it) somewhat vague, will perhaps see here a clear-cut case as French middle management moved from authority to legitimacy.
Pétain listened to his middle management: Indeed his Directive Number One met more than half the mutineers' demands: No more assaults. He would wait for the Americans (who had declared war on Germany in April) and tanks. Commanders will ask only useful efforts from their troops. Officers were to understand the emotions of their men, to care about them, to reward them, to tend to their needs of all kinds. They were to be vigilant in inspecting food and sacking bad cooks.

Then Pétain went to the trenches – in itself an almost unprecedented rhetorical act. As Commander-in-Chief, Joffre saw enlisted men only at awards ceremonies behind the lines. Nearer the front, he visited only generals, so most poilus had never seen a Commander-in-Chief. So quite apart from anything he said or did, simply by going to the front, by *being there*, Pétain told the poilus they were

important. It was an almost perfect, completely unstated syllogism: The Commander-in-Chief is important; he is here; therefore we're important. Being there was, as anarchists of the day called their assassinations, the *propaganda of the deed*, an act of *coalescent argumentation* (Gilbert, 1997), an intuitive, visceral act that changed the role of Commander-in-Chief. Instead of an invisible, distant authority, he became a flesh and blood person. Only a few other Great War generals understood the rhetorical impact of senior commanders visiting the front (Britain's Herbert Plumer, for instance). But World War Two era generals, like Britain's Montgomery and America's Patton and Bradley, would mimic Pétain's model. In this they typify O'Keefe's (1988) rhetorical communicators who determine the identities and roles that will allow themselves and others to reach goals and then they create situations where these identities and roles can catch hold. They do not see situations, identities, and roles as pre-defined; rather, they see them as fluid and flexible – a resource, not a constraint.

Another resource, which played a larger role in military life than is often appreciated, was Pétain's personal appearance. He was tall, with the physique of a career-long mountain trooper; he had extremely pale skin, a token of his *Pas de Calais* origins, and impressed people as a living statue: "a marble statue; a Roman senator in a museum. Big, vigorous, an impressive figure, face impassive, of a pallor of a really marble hue" (Pierrefeu, 1920, 9; translation by Barnett, 1964, 197). His piercing eyes seemed color-coded to his horizon blue uniform. He was taciturn, even cold, yet this old bachelor attracted women in droves. It was partly looks; though in the grainy, black and white photographs of the era, he seems unimpressive; but it was chiefly a feminine side, a remarkable capacity for empathy.

Visiting some 500 units, including front lines, often standing in mud, sometimes standing on the hood of his car, sometimes on a tree stump in the middle of a field, Pétain cashed in all the credibility he had and created more in the bargain. No transcripts exist of his speeches; but observers (Carré, 1962; Pedroncini, 1996; Serrigny, 1959) kept rough notes that permit rough generalizations. He typically began by pointing out that he never made promises he couldn't keep. It was his reputation; it was deserved; but the radical departure from the French norm was that it needed to be said and that he actually said it. He then addressed the poilus' legitimate grievances: no more suicide charges, we'll wait for the Americans and tanks, better food and rest areas, improvements in the medical

system, and reliable leaves. The leave policy was risky: soldiers could easily not return and if they disappeared in great numbers, it would be impossible to find them. But because everyone knew it was risky, the poilus took it as a sign of trust (Carré, 1962). With these promises, he basically talked them back into the army. But far more important, he made good on his promises quickly. Within a month, rest areas for the first time had tents or huts, cots, showers, hot food with a varied menu, places to write letters, and even entertainment. All these things were conspicuously missing in the pre-Pétain army. French attacks virtually ceased, and when they ultimately resumed in late 1917 they were conspicuously successful because Pétain kept his most famous promise: Artillery conquered, then and only then, the infantry occupied.

During his mid-mutiny visits to the poilus, Pétain made other rhetorical moves whose radicalness is hard to appreciate at 90 years' distance. Now standard practices, they were in 1917 startling, astonishing, even breathtaking (Pedroncini, 1996). For instance, Pétain often drew older enlisted men aside, sometimes small groups, or even individuals. He kept the skeleton of his convention identity: He never faked fatherliness, says Pierrefeu, or tried to be their friend; every inch a general, he listened intently and respectfully to them; his aides took copious notes; though the complaints from visit-to-visit were quite repetitious, Pétain gave no sign of it; his icy blue eyes would drill into a speaker, as if the speaker was the most important person in the world; then he would shake hands and slap them on the shoulders. Those men almost always became Pétain champions.
Then, most radical of all, all Pétain visits ended with the poilus in military formation; and Pétain would ask the poilus whether they had advice for him, though usually only junior officers and NCOs had the nerve to speak. Again, a member of his staff took notes on everything said from the ranks. This was a revolutionary redefinition of the relationship between the Commander-in-Chief and the poilus, the former was *accountable* to the latter. Officers like Charles "*Le Boucher*" Mangin (1920) thought it was a confession of weakness, but Pétain genuinely believed that commanders were accountable. And that accountability was a logical prerequisite for a new role definition for the poilus – from put upon to depended-upon – for accountability draws its strongest legitimacy when it is mutual.

In a campaign of carrots, there was also a stick – mutiny trials and firing squads. Smith (1994) argues that the trials and executions were largely reassertions of

state legitimacy, a purely symbolic muscle flexing by the power structure. But he misses, we think, an important functional element of military punishment. For the British and French armies executions were purely rhetorical events meant to convey an unmistakable threat. Executions were witnessed by as many troops as possible, and were by all accounts horrifying things to see. And to assembled troops elsewhere, crimes, sentences, and executions were read out in detail, as grim arguments-by-example. Within that tradition Pétain disciplined ringleaders with restraint, though exact numbers and their reliability are unknown. Ultimately, some 23,000 jail sentences were handed out, along with 400 death sentences, of which only 49 (Smith's estimate) to 60-some (Watt's estimate) were carried out. Twenty civilians were also shot. The post-mutiny search for "leaders" may have been self-deception. Many socialists had tried to be leaders, but a common theme in all narratives of the mutinies is that they were largely leaderless. At any rate, there is remarkably little evidence that the trials and executions produced the desired result. Indeed anecdotal evidence from diaries, letters, and interviews suggests the opposite, that executions especially made many poilus angry more than fearful. It was Pétain's carrots, not his stick, that brought the poilus back into the fold.

Pétain and his middle management gradually restored the French army. It was later able to mount modest offensives. It was ultimately able to resist and rebound from the gigantic German offensives of 1918 (though all commentators agree that the infusion of fresh American troops into battle in itself was immeasurable tonic for French morale). Though the French army would never again have the naive elan of 1914, it is nonetheless plausible to say that Pétain and his middle management saved the army. As strikes, riots, and peace demonstrations throughout France were rampant in 1917, it isn't inconceivable that they saved France. They did it by capitalizing upon rather than being constrained by a strong culture. The Archimedean point on which all their rhetorical moves rested was the common identity of the officers and soldiers who shared risks, which the officers transformed into a powerful resource (and without which the mutinies might have become a revolution). Pétain's special contribution was his re-definition of the role of Commander-in-Chief and his relationship with the poilius, and in making promises he could and would keep.

NOTES:

[i] This appreciation of Pétain is not meant to bear in any way on the debate

about Pétain's role as Marshall of Vichy. Pétain was sentenced to death for treason. Charles de Gaulle commuted it to life; and Pétain died in prison in 1951.
[ii] In analyzing messages designed to achieve multiple goals (e.g., criticize others yet allow them to save face), O'Keefe uncovered three implicit communication theories, or three message design logics – Expressive, Convention, and Rhetorical. Stimulated by immediate events the expressive blurts out of whatever occurs to him or her, unedited and often inappropiate. The conventional follows politeness norms. And the rhetorerical tries to redefine identitities so as to achieve social cooperation.

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Postmodern Memorializing And Peace Rhetoric: Case Study of ‘The Cornerstone of Peace’, Memorial Of The Battle Of Okinawa

The Cornerstone of Peace is a monument which the Okinawa prefecture dedicated at the 50th anniversary of the end of the Pacific War and the Battle of Okinawa on July 23, 1995. According to its official pamphlet “*The Cornerstone of Peace,*” the memorial is “to remember and honor” all the dead from the Battle of Okinawa. Unlike most war memorials, it lists names regardless of the side on which they fought and their status as either combatant or noncombatant. Up to June 23, 2000, 237,969 names are inscribed on the wall, including 148,289 from Okinawa, 75,219 from mainland Japan, 14,006 from the U.S., 82 from U.K., 28 from Taiwan, 82 from North Korea, and 263 from South Korea. More are added as the war dead continue to be identified. With this materialized monument as a subject of rhetorical criticism, I will explore how the Cornerstone was intended to remember the battle in the unique postwar condition of this island

The Battle of Okinawa was one of the bloodiest ground campaigns by the U.S. army during World War II, causing over 200,000 casualties in total. In this battle, the Japanese imperial government used Okinawa as a seawall to hold American Army personnel outside the mainland (Himeyuri Peace Museum, 1990). Under this policy, the Japanese Army deployed in Okinawa virtually abandoned the defense of the island. Instead, with all the islanders, they had to endure the attacks of the U.S. troops to the last person in order to do maximum damage to the enemy’s forces and to buy as much time as possible for the central government (Himeyuri Peace Museum, 1990). This suicidal order massively expanded Okinawan civilian toll up to over 100,000, nearly one-third of Okinawa’s population then.
Although it was apparent that the cause of the massive civilian casualties was the Japanese imperial army among Okinawans, this was not recognized as a national memory. Oshiro (1999) explained the reason of the different remembrances

between Okinawans and mainlanders was that Japanese mainlanders tended to remember the Pacific war in the ideological framework of victimization symbolized by Hiroshima and Nagasaki atomic bombings so not to often estrange their own army.

Besides the wartime period, the abandonment of Okinawa again occurred after the Pacific war. George Feifer (2000) offers accounts of the postwar condition of Okinawa as a product of scapegoat policy. Shortly after the war, the Japanese government sacrificed the island this time as an outpost for the U.S. forces to be stationed. Some 75% of U.S. bases in Japan were concentrated on this island, which accounted for less than 1% of the Japan's landmass. This disproportionate amount of the U.S. military presence formed Okinawans' economic dependency on the bases-related business like "ground rents, bar sales, and retail income" (38), while those military personnel "committed nearly 5,000 crimes – including mugging, molestation, and murder" since the end of the war (36). Thus, local economic profit was used in a primary rhetorical strategy to support the bases on the island in addition to the national security of Japan. On the contrary, those crimes stirred up Okinawans' resentment toward the U.S. bases and it would peak at the rape of 12-year-old schoolgirl by three U.S. Marines in September 1995, around five weeks after the dedication of the Cornerstone of Peace. Okinawans' discontents toward the U.S. bases and the Japanese government, which militarized the island, was the unique context of the Okinawa memorial construction.

Thus, Okinawans' pains from the battle and the bases made them separate from mainland Japan, fueling the contemporary controversy over the U.S. bases on this island. In this tension, the Okinawa prefecture aimed to construct a memorial to cope with the massive civilian losses in a way that does not alienate the United States, the country against which Japan fought but which has become its contemporary military protector as well as the economic prop of Okinawa.
This complexity made the Okinawa memorial struggle to embrace respective positions regarding the Battle of Okinawa in a way that does not merely describe losses as glorious sacrifices for their country. Such absence of military heroism to romanticize war recalls the Vietnam Veterans Memorial, which articulates multiple positions as contested regarding the war. Using the Vietnam memorial as "a prototype of postmodern memorializing" (Blair, Jeppeson, and Pucci, Jr., 1996, 351), I will argue that the Cornerstone of Peace also fits within the postmodern

category in general but distinguishes itself in efforts to harmonize competing positions.

1. Collective memory shapes through a memorial

Derived from French scholar Maurice Halbwachs, “collective memory” suggests remembering an event proceeds within a social framework. Barbie Zelizer (1995) found one of major premises in contemporary collective memory studies among scholars who saw “memory as a social activity, accomplished not in the privacy of one’s own gray matter but via shared consciousness with others” (215). Thus, memory of any kind is not exclusively personal experience but also social, so thereby even those who have bodily experienced a certain event would modify their memory through the socially shared remembrances of it.

Memorials are one of those shared resources of the past, selectively representing a particular part of it. Kristin Ann Hass (1998) argues, “the work of any memorial is to construct the meaning of an event from fragments of experience and memory. A memorial gives shape to and consolidates public memory: it makes history” (9). Hence, a memorial designs history as a collective memory based on the selection from pieces of individuals’ experience and memory.

However, this strategic act of remembrance does not always reflect a social consensus regarding the past. Iwona Irwin-Zarecka (1994) pointed out “the social construction of ‘realities of the past’ is frequently a site of intense conflict and debate” (67). This is because some community members may oppose the resource of the past the majority proposes. In this regard, although seemingly univocal, the power relation in the contested resource of the past would distinguish dominant and marginalized groups.

Against different views toward the past, it is the postmodern commemoration that preserves those views without univocally making a dominant memory. Barry Schwartz (1996) raised a perspective of postmodernism as influential on contemporary collective memory studies by respecting positions of “minorities who would be otherwise deleted from history and by deconstructing” the dominant position (277). It is complex that multiple views are articulated in the postmodern memorializing.

In addition, when dealing with traumatic events or catastrophes, the process of memorialization is made more complex. Peter Gray and Kendrick Oliver (2001) pointed out the shift in remembering the national catastrophe toward the “new desire to extract lessons from catastrophes, to make collective memory a

humanistic tool for future remedial application” (10). This is because “while the representation of war as glorious had endured, especially in victorious states, the casualty rates of modern conflicts demanded an official response that valorized and memorialised mass suffering” (11).

Overall, the postmodern perspective and the future-based rhetoric feature contemporary war memorializing. These features will appear in the following analysis of the Cornerstone of Peace.

2. Analysis of the Cornerstone of Peace

I attend to three characteristics in the design of the monument and contemplate them in the context of Okinawa mentioned above. The Okinawa memorial seemingly represents the consensual memory of the Battle of Okinawa in remembering the large number of casualties, but in fact includes multiple positions toward the battle and allows for controversy over the way of maintaining peace for future.

Dubbed “Everlasting Waves of Peace,” fan-shaped walls surround the Peace Plaza within which the Flame of Peace is located as the focal point. The walls face the Pacific Ocean, from which the Sun rises in the East. Largely into two areas, the walls are divided by the main walkway, which leads to the Flame of Peace in the plaza and the sunrise. The Cornerstone of Peace is in the Peace Memorial Park, Itoman-city, where the harshest part of the Battle of Okinawa killed many people. The Peace Memorial Museum is located in the park, where visitors see the tragedy of the battle through displays of the atrocities of the Japanese army. This is located right next to the Cornerstone. In addition, there are various kinds of memorials for the dead of the Battle of Okinawa, such as the Memorial to Okinawa Normal Schoolchildren, Okinawa Shihan Kenji-no To, War Memorials to Koreans, the National War Dead Peace Mausoleum, and other memorials. Outside the park, there are several memorials all over the island, like Himeyuri-no-to Memorial to Nursing School girls.

A. Walls

The fan-shaped walls recall the design of Vietnam Veterans Memorial in Washington D.C. In both memorials the walls are made of black granite and engraved with the names of those who died in the wars. However, while the Vietnam Veterans Memorial lists only names of U.S. soldiers, the Okinawa Peace Memorial lists the names of al the dead: soldiers, civilian, Japanese and foreign.

In both memorials the bereaved families touch the name and rub a pencil on a

sheet of paper to trace the name. This ritualistic action connects the families with a soul of the dead symbolically and makes the dead sacredly remembered. Thus, both memorials enable the family to recall their personal stories in front of the names as well as generally emphasizing the individually victimized aspect of the war, which is often described as an inhumane national act.

The difference between the two memorials lies in the conspicuousness of the walls. In the Vietnam Veterans Memorial, the walls are less conspicuous because they are below the horizontal line of the land. The wall blends with the surroundings of the mall. On the other hand, in the Cornerstone of Peace, the walls are conspicuous above the ground as forming fan-shaped leaves around the Flame in the Plaza. The walls with planted trees are exposed to the real sun in the sky and the symbolic sun in the flame. This scenery represents the image that the sunlight blesses the souls of the dead and the trees as a part of the land as if enmity from the past has already been buried. Thus, the Vietnam memorial makes the names not outstanding in the site, while Okinawa memorial deals with the names as central figures, celebrating the friendship among Okinawans, mainlanders, and American people, who commonly enjoy today's peaceful days.

B. Flame of Peace

The "Flame of Peace" is located at the center of the plaza. This flame was originally taken from Akajima, Zamami Village, where the first landing took place in the Battle of Okinawa, and combined with the "Eternal Flame of Peace" of Hiroshima and the "Pledge Fire" of Nagasaki, the two sites of the atomic bombings (The Cornerstone of Peace).

The Flame linked the site to two other places Hiroshima and Nagasaki, where Japan was victimized by the U.S., shadowing the fact Japanese victimized their own at Okinawa. The association of Okinawa with Hiroshima and Nagasaki is intended to not only frame the Battle of Okinawa with victimized image but also to make it recognized as a national catastrophe by juxtaposing the battle with Hiroshima and Nagasaki atomic bombings.

This association appreciates Okinawans' feelings toward the war deceased by constructing an image that the Okinawa memorial deeply mourns them to an extent similar to Hiroshima and Nagasaki. On the other hand, the expression of Hiroshima and Nagasaki diverts hostile eyes from the imperial Army by reemphasizing the hostile dichotomy between Japan and the U.S. as well as integrating Okinawa into the side of Japan.

C. Names

Okinawa memorial carries the names of the war dead on their hometown basis, and distinguishes no roles and status in the battle.

The monuments are arranged into three areas: Okinawa Prefecture, other prefectures, and abroad. Starting from the left hand side from the Peace Plaza, the monuments to the people of Okinawa are placed in north to south order, starting with Kunigami village. Monuments for people from other prefectures also placed in north to south order starting with Hokkaido (*The Cornerstone of Peace*)

On the contrary, Vietnam Veterans Memorial reflects the chronological order in which American soldiers died in the war.

The 58,209 names are inscribed in chronological order of the date of casualty… The names begin at the vertex of the walls below the date of the first casualty and continue to the end of the east wall. They resume at the tip of the west wall, ending at the vertex above the date of the last death (*Vietnam Veterans Memorial*).

Visitors to the Vietnam Veterans Memorial walk along the wall and see the names in chronological order, connecting the deaths in the time flow in the war. The path along the wall seemingly leads visitors to walk on one-way traffic so to pass all the names, thereby making a sense to respect all the dead, individually inscribed but united in the one-folded wall.

However, in the Okinawa memorial the Main Walkway divides the leaves into two parts: the north (left hand) side for Okinawan casualties and the south (right hand) side for the dead from the outside of the island. Visitors easily find Okinawan casualties are much more than the rest from outside Okinawa by seeing the larger physical space for Okinawans' names. With a computerized information system, visitors "can search for the location of a specific person's name" in English, Korean, Hangul, Chinese and Japanese (*The Cornerstone of Peace*). Thus, the Okinawan bereaved families can find their family member's name without going through the names of the Japanese officers' and American soldiers, and vice versa. Or the Okinawans bereaved families can walk to the other leaves with different feelings.

Hence, visitors who have personal associations with the inscribed names can distinguish the meanings of the deaths according to the location of their names, although there is no distinction in the materialized monuments between Okinawans and non-Okinawans. Even those who do not have particular kinship with the war dead likely differentiate the meanings of the casualties remembered

in each area. The memorial seemingly remembers all the dead in an equal manner, but, in fact, allows visitors to recall the names in differently ways. The bereaved families from the U.S. and U.K. maybe go to their area and take pride in their brave soldiers to fight for justice.

From Okinawans' perspective, the north and south parts of leaves do not merely represent the dichotomy between the victimized and the victimizing because the location of the foreign dead includes the names of Taiwanese, and North and South Koreans, who were brought to the island to work for the military unit by the imperial government of Japan. They died in Okinawa just because they were brought there. The characteristic of their death is apparently victimized, maybe, rather than Okinawans, because those foreigners had originally no relation to the battle on this island.
If the names from Taiwan and the Korean Peninsula belonged to the north area with Okinawans, it would be highly intentional to make the north victimized and the south responsible in the battle. But this would be highly problematic since the memorial would implicitly associate the soldiers of the U.S. and their supporter from U.K. with the mainland imperial officers in killing Okinawans and those from Taiwan and the Korean Peninsula. From the U.S. and U.K. sides, the war was for justice to save Asia from Japanese imperial colonialism (Lloyd, 1995). Thus, the memorial allows people from the U.S. and U.K. to regard the meaning of their deaths as sacred and they would reject the labeling of their soldiers as responsible for the civilian deaths from Okinawa, Taiwan, and the Korean Peninsula.
Apparently, it was the atrocity of the imperial Army that must not be forgotten from the history. However, the Cornerstone of Peace, allowing visitors to think of the meaning of the deaths in multiple ways, never emphasizes the atrocious aspect of the Japanese army, who killed "a sizable portion of Okinawa's noncombatant population" (Takashima, 2000). But it simply represents the scale of casualties, thereby convicting the war itself as a dehumanized event.

General Ushijima Mitsuru, who was legally and practically responsible for direction of the imperial Army and Okinawans, is also inscribed in the non-Okinawans' area along with other high ranking officers and civilians from the other prefectures. Takashima (2000) pointed out that Okinawans were outraged to know General Ushijima and other ranking officers would be engraved in the memorial because they had never questioned the atrocities of the national army.

It was natural that the inscription of the General offended the feelings of Okinawans.
Hence, regardless of the victimized nature of the casualties from Taiwan and Korean Peninsula and from Okinawa, the evil side of the high rank officers of the imperial army, all the names are located based on their ethnic backgrounds. This creates the equality of the listed names, although there is room for concerned visitors to interpret the different meaning of the losses.

3. Conclusion

The Cornerstone of Peace directs the public attention from the past to future and is postmodern in articulating various positions toward the past as harmonized or compromised and opens the controversy over the interpretation of maintaining peace.
The Cornerstone was bound by Okinawa's relationship with Japan, and other international settings. The memorial was subject to "the uneven balance of political and economic power between Okinawa Prefecture and Tokyo" (Figal, 1997, 754). Thus, it was hard from Okinawans' perspective to represent their critical voice about the war and the U.S. bases so they likely conform to the dominant power of the mainland allied with the U.S. Yet, it was necessary to consider Okinawans' feelings toward the Battle and the U.S. bases.
Against this complexity, the memorial considers the respective positions, while at the same time, it became problematic "as a conveyor of historical knowledge, especially with respect to the question of causes and responsibilities for the war" (Figal, 1997, 750). Consequently, the memorial encourages "a commonplace peace rhetoric for the larger Japanese (and global) "family" of which Okinawa Prefecture is a member" (Figal, 1997, 754).
Unlike the Vietnam memorial, which functions as "a reflection of contradictory assessments of the war in American society as a whole" (Wagner-Pacifici & Schwartz, 1991, 410), the Okinawa Cornerstone was intended to harmonize competing views toward the battle under the name of peace for future. Thus, in an effort to find a common ground among those different positions, the future-directed rhetoric of peace obscures a historical critique of the Battle of Okinawa.
The memorial aims to closure the controversy over the past among Okinawans, Japanese mainlanders, and American people compromise on the past without constructing a dominant narrative that oppresses other views. Thus, this war memorializing is seemingly postmodern in representing the respective positions with some parts of the memorial.

However, the compromise in the different views toward the battle newly creates the controversy over the future. Ultimately both Okinawa and the superpowers agree not to repeat the tragedy of the war. Thus, what Okinawa and Tokyo are competing about is not the interpretation of the war in the past but the way of realizing peace in the future.

The controversy over the peace reflects the dichotomy between Okinawans and the superpowers in how to interpret the military power; thus the Okinawa memorial develops the controversy to the necessity of the U.S. bases on this island. Governor Ota aimed to make the Cornerstone "break vicious circle of bitterness and hatred" (Takashima, 2000, 27) by equally remembering all the war dead. This is Okinawans' message of peace for all over the world and they believe people should achieve the world peace by eradicating all militarism. Further, Ota regarded the bases in Okinawa as shaping a collective memory of the war tragedy: "Okinawa's past and present are tragically united by military objectives" (Robinson, 1995). In addition, Ota even considered the bases as a cause of the future tragedy: "The Okinawan people do not want to have bases that are related to warfare, … We want to use all our land in a productive way, not for killing people" (Kristof, 1995). On the contrary, the U.S. and its ally Japan celebrated the stability as a product of the U.S. bases in Okinawa.
Therefore, the contested views toward the U.S. bases again enmesh Okinawa in the power struggle with Japan and the U.S., which are influential on the economy of the island. Further analysis of the interaction between the memorial and public discourse of the bases would be necessary in order to explore how the memorial provides those superpowers with opportunities to rationalize military power as a peacekeeper. However, this study concludes that Cornerstone of Peace represents the massive casualties equally remembered as war tragedy, thereby finding a compromise view toward the past as postmodern memorializing and developing competing positions in the way of maintaining peace as the peace rhetoric.

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ISSA Proceedings 2002 – Aesthetic Arguments And Civil Society

The Public and its Problems, John Dewey (1927/1954) wrestles with the difficulty of a public forming an adequate opinion about its members' shared interests. American journalist Walter Lippmann (1922/1949) had argued that the complexity of the modern age, coupled with the average citizens' disinterest in reading and learning the results of accurate investigation, condemned them to a vulnerable state of disarray. Dewey allows that Lippmann's point is well taken, save its oversight of the potency of art. "Presentation is fundamentally important," he writes, "and presentation is a question of art… Artists have always been the real purveyors of news, for it is not the outward happening in itself which is new, but the kindling by it of emotion, perception and appreciation" (p. 183).

Dewey recognized art's relationship to the publicity principle, which lies at the heart of informed citizen participation in the political process of the modern state. The conditions of modernity – the invention of mass and instant means of communication, the rise of mass transportation and increased mobility, universal dependence on mass manufacturing, and concentration of population in urban centers – led to the eclipse of the public, he argued (pp. 110-42). The era of politics conducted under the Aristotelian assumption of prerequisite leisure had passed. Democracy's new realities were connected to the conditions of civil society: the network of associations existing outside the state and regulative of it through the force of publicly formed and communicated opinion on duly elected and appointed representatives. The need to participate in civil society, along with the conditions that fragment and isolate citizens, led Dewey to raise a different point than the connection of art to life. His regarded artists as the purveyors of news because art maximizes the publicity principle. It brings issues to those whose interests are at stake, raises their awareness, and shapes their political thoughts. His point is not about culture but about communication and specifically deliberation that lies at the center of civil society's political function.
At the conclusion of his analysis of why "the public" is in eclipse, as he considers the consequences of rapidly changing conditions of economy, work, travel, and

information transfer on human association, he notes that desires and purposes created by the machine age are disconnected from the ideals of tradition. He concludes, “Our Babel is not one of tongues but of the signs and symbols without which shared experience is impossible” (p. 142). More important than the information content of a literary work is the artist’s power to bond strangers in shared experience through portraits constructed with signs and symbols that evoke deeper reflection.

The freeing of the artist in literary presentation, in other words, is as much a precondition of the desirable creation of adequate opinion on public matters as is the freeing of social inquiry. Men’s conscious life of opinion and judgment often proceeds on a superficial and trivial plane. But their lives reach a deeper level. The function of art has always been to break through the crust of conventionalized and routine consciousness. Common things, a flower, a gleam of moonlight, the song of a bird, not things rare and remote, are means with which the deeper levels of life are touched so that they spring up as desire and thought (pp. 183-84).

Art’s evocative power leads Dewey to the claim that artists are the purveyors of news, not in providing information “but the kindling by it of emotion, perception and appreciation.” Art engenders the shared state of desire necessary for civil society to sort through its members’ differences and find the necessary bonds of association to sustain relations of mutual dependency.

The call for civil society is important for the study of rhetoric because it marks a peculiarly modern understanding of political relations. Dewey’s observations are suggestive for integrating a rhetorical approach to public art with this post-Enlightenment understanding by pointing to the role of aesthetic forms in shaping society. Viewed from this perspective, the *public arts* are always part of civil society. They are creations of imagination intended to be *performed*. Their performance brings members of society together as an *audience*. Their performance presents the artist’s claims about human feelings, relations, and actions. Their audiences are not just spectators whose function is to witness, they also are engaged by events “of which,” as Oliver Goldsmith (1772/1958) put it, “we all are judges, because all have sat for the picture” (p. 99). Their point is not so much evocation for evocation’s sake as for inducing *contemplation*. But more than that, since public arts are experienced communally, one who witnesses also might share the process of contemplating publicly. This is another way of saying they invite *deliberation*. Sometimes, when artistic portrayal is co-extensive with

actual events, these deliberations may organize public memory in other than official terms, thereby shaping society's understanding of its own historicity and the model of its own self-organization. This is to say that public art itself is part of the network of associations constituting civil society. Its contents cannot avoid engaging in the public dialogue contributing to society's self-regulating process of forming *public opinion* that might challenge the state's primacy in setting social purpose.

Specifically how public art might contribute to this dialogue is suggested by the responses it elicits. I wish to explore this relationship between public art and civil society's deliberative process by examining a specific case, the acclaimed film "In the Name of the Father" (Sheridan, 1993), in which an artistic production not only was contested for the portrait viewers were asked to judge, but was itself a participant in the larger frame of political deliberation it portrayed. Although my analysis will be restricted to this specific case, recent controversy surrounding the 1996 film release of *Some Mother's Son*, dealing with Bobby Sands' 1981 hunger strike in Maze Prison, and the 1999 "Sensations" exhibit at the Brooklyn Art Museum suggest this film is not an isolated case of art functioning as an argument form.

1. The Guildford Four: Art Intersects History

In 1974, the Troubles in Northern Ireland made their way to England where the IRA began a campaign of terrorist bombing**[i]**. The attacks continued into the fall, and unsuccessful police efforts to apprehend the perpetrators contributed to mounting public fear, as the IRA seemed able to strike at will. On October 5, 1974, they bombed two public houses in Guildford, Surry, killing 5 and wounding 70. Shortly thereafter, the police arrested four suspects who were charged with the bombing – Gerard Conlon, Paul Hill, Paddy Armstrong and Carole Richardson – who became known as the Guildford Four. The police also arrested another seven accused of supplying the bombs. The alleged ringleader of this group was Conlon's aunt, Anne Maguire, after whom the group was named the Maguire Seven. In addition to members of her immediate family, the Maguire Seven included Guiseppe Conlon, father of Gerard. Although they professed their innocence and despite subsequent confessions by two members of the IRA, who claimed sole responsibility for the Guildford bombing, both groups were convicted. The presiding judge at the Guilford Four trial openly expressed regret they had not been tried for treason since it carried the death penalty. All served prison terms without remission. Guiseppe Conlon died in prison professing his

innocence.

During their incarcerations the Guildford Four and Maguire Seven made continued pleas for judicial review, which the court refused to grant. Public opinion, on the other hand, increasingly held that their incarceration was a miscarriage of justice. This opinion strengthened when private pressure by influential institutional voices went public, as Lords Scarman and Devlin and then Cardinal Hume and Archbishop Runcie argued that the Guildford Four had been denied justice. In 1989 the Department of Public Prosecution agreed to look into the matter. By October the DPP had uncovered evidence that called the convictions into question. This newly disclosed evidence, which had been known to the police but not shared with the defense, gave Conlon and Hill secure alibis for the night of the bombing, Carole Richardson had been administered pethedrine while under interrogation, which could have induced a false confession, and the police apparently had manufactured records of what transpired during their interrogation of the Guildford Four and then lied on the witness stand. Roy Amlot QC for the Crown informed the court that the DPP no longer regarded the convictions as safe and on October 19, 1989 Chief Justice Lord Lane quashed the verdicts on the Guildford Four. A year later the convictions of the Maguire Seven also were set aside.
The Court's action initiated a national discussion of these convictions as a gross miscarriage of justice and possibly the most significant failing of the British legal system in modern history. The police, the courts, and the review panels had acted in ways that ignored or suppressed the evidence, denied the defense material facts that would have proven the innocence of the accused, and responded to public emotion from the wave of terrorism by making scapegoats of four youths whose only apparent crimes were to be Irish and without means.

No one disputed that a gross miscarriage of justice had occurred; the debated questions were how to interpret the quashing of the verdicts and how that would color public memory of the Guildford Four. In the immediate aftermath of the trial, public officials, participants, and common citizens joined the contest for shaping public memory.
In England, the Court's quashing of the verdict was taken as a sign that the system worked; that errors, when found, were corrected; and that justice ultimately prevailed. British Deputy Prime Minister Sir Geoffrey Howe told the House of Commons, "A serious miscarriage of justice, which has led people to be

wrongly imprisoned for many years, has been set right" (Forbes, 1989, Oct. 19). The Boston Globe reported that the British government was "portraying the decision as proof that British justice, even if extraordinarily delayed, works and that British officials [were] big enough to admit their mistakes" (Cullen, 1989, Oct. 20, p. 2).

In Ireland, the Court's action was greeted with greater misgiving. Irish Prime Minister Charles Haughey, while acknowledging that the verdict showed "the system has the capacity to correct its own mistakes," added that other mistakes had been made in cases involving Irish citizens now serving time in British jails for bombings they claimed not to have committed (Forbes, 1989, Oct. 19). Less politic expressions of distrust came from Irish voices not connected with the government. *The New York Times* quoted Paddy McManus, Sinn Féin's legal spokesman, who thought the decision, "far from being a vindication of the integrity of British justice, is a damning indictment of it" (Rule, 1989, Oct. 18, p. A7). Conlon himself was quoted in the *Christian Science Monitor* as expressing a view shared by many of his countrymen: "If you're Irish and you're arrested for a terrorist offense, you don't stand a chance" (McLeod, 1989. Oct. 23, p. 6). In Belfast and Dublin the release of the Four reinforced the foregone conclusion that the British judiciary was unjust. *The Boston Globe* reported that in Belfast the Court's decision was a cause for cynicism more than celebration. "It won't be justice," said one of Gerry Conlon's childhood friends, "until the policemen who put them in those cells take their place" (Cullen, 1989, Oct. 20, p. 2). The real issue was whether that would ever occur.

Following their release, the Guildford Four's moments of publicity soon became sporadic. They reassumed center stage four years later with release of the film, "In the Name of the Father," based on Gerard Conlon's autobiography, *Proved Innocent*. The debate that surrounded this film is revealing of the argumentative power that a rhetoricized aesthetic may exercise, as artwork merged with the historical events it portrayed to become a participant in their continuing development.

Before the film's release, there was roar of protest over its contents. The Maguire family was incensed at how Anne Maguire was depicted and it used the press to continue a family feud. Those familiar with the case were incredulous that Alasdair Logan, chief solicitor for the Four and the person who most doggedly pursued the legal basis for the reversal, was not portrayed in the film but was

reduced to fleeting mention in its credits. Logan expressed acceptance of the enlarged role given to Gareth Peirce in gaining the Four's release and casting Emma Thompson in her role since he understood the dramatic need for a strong female character to balance Daniel Day-Lewis's portrayal of Gerry. However, he challenged the film's depiction of British court proceedings as "a charade" and the false impression it created of the role of British police and the DPP, who actually discovered the falsified and suppressed evidence and who advocated that the verdicts be quashed. Others were concerned about the numerous factual errors in a film that was dealing with telling the truth. Finally, MPs expressed concern that the film painted a sympathetic picture of the IRA.

The MPs were particularly concerned that American audiences, whom they regarded as uninformed about the IRA, the Troubles in Northern Ireland, and the Guildford Four would be misled. Tory John Wittengdale, MP for Colchester South and Maldon warned the film would spread prejudices about Ulster. "It's a very good piece of cinematic fiction. As a drama it is well acted and directed. What it is not is a true story. It purports to tell a true story of the Guildford Four. It doesn't. This compounds my fears about the film. It means more people will see it and it will have more influence. It will lead to greater misunderstanding of the situation in Northern Ireland and the situation regarding the Guildford Four. It will reinforce prejudice." Lord Fitt, former leader of the SDLP and ex-MP for Belfast West stated: "As a film it was something to be seen. But for someone such as me who knew the whole facts behind the Guildford Four and the Annie Maguire cases, the film was a gross distortion… The film will undoubtedly go down very well in America, which is 3,000 miles away from all the realities of the Guildford Four." Tory Peter Bottomley, MP for Eltham who also was joint chairman of Ulster's cross party peace group New Consensus, thought Gerry Adam's visit to the US may have a connection to the film and said: "The film should be judged on its artistic merits. The IRA themselves should be judged on their abuse of human rights – they still have to turn away from turning women into widows, children into orphans and causing the event that has seen some people being wrongfully convicted." Labour's Harry Barnes, MP for Derbyshire North East, agreed with the spirit of these sentiments, though he recognized they rested on a problematic dividing line: "If drama and art could be divorced from life then the film is brilliant. But the problem is it rather cavalierly alters the way things occurred. Its high standing as art and drama and its emotional impact may be used on gullible people to argue a political case against the British state, which is then too

sympathetic to Sinn Féin's position." He concluded the film was unfaithful to the experiences of the Guildford Four and the Maguires "who themselves turned out to be victims, not just of the abuses by the forces of law and order in this country, but of the IRA" (Devlin & Clare, 1994, Feb. 9).
The MPs' concerns converged on their fears that the film would be taken as a truthful portrayal of what occurred, and that it would constitute a powerful narrative that so fused art with life as to shape public memory for the less informed of what occurred. If the film were to constitute public memory, its news, in Dewey's sense, could only legitimate Irish Republican aspirations in their ongoing war with Great Britain.

Jim Sheridan, who directed the film, responded that these were narrow-minded or misinformed reactions. This was not a documentary, but "faction." Changes in certain factual materials were necessary to condense 15 years into two hours, but such changes did not distort reality since the film was true to the essential facts. Sheridan maintained that his work had to be judged as an aesthetic endeavor entitled to exercise artistic license, and he attributed the onslaught of criticism to a British establishment that, in his view, never believed the Guildford Four were innocent and wanted to retry them in the press (Freeland, 1994, Jan. 19, p. C1). On the contrary, he espoused that his film was about filial bonds and injustice, and he described it as "a great victory against injustice" (Devlin & Clare, 1994, Feb. 9). He insisted that the film was not political, and not anti-British. When asked about his views on the Irish Republican dream of a united Ireland, his words were "to hell with all that" (Freeland, 1994, Jan. 19, p. C1). As for *In the Name of the Father* being sympathetic to the IRA, he dismissed the charge by claiming the film was not about the politics of the Troubles but about the developing relationship between a father and son and a miscarriage of justice. Sheridan's responses sought to confine discussion of the film to an aesthetic accomplishment that interpreted an historical event. Emma Thompson was more succinct in dismissing criticism that the movie was less art than politics and was bound to renew American sympathy for the IRA. "I don't give a fuck, quite frankly," she told *Vanity Fair* (Boynton, 1994, Jan. p. 112).
Certainly one might consider the film solely on aesthetic terms. Its emotional core of the father-son relationship between Gerry and Guiseppe invites us to contemplate the role of filial bonds in a young man's struggle to become independent. Yet "In the Name of the Father" is more than a film about the British legal system and the coming to independence of a son. Its distortion of

details in a portrayal of actual events assumed identity as a partisan political argument about the Troubles and as specifically aligned with the IRA and Sinn Féin in its anti-British sentiment, if not by endorsement of their political goals. I wish to consider how that argument develops.

2. The Argument for Conditions of War

Although Gerry is the emotional center of the film, its first two-thirds lead us through his experience against the backdrop of the Troubles and the IRA's role in resisting British domination. The film begins with the Horse and Groom bombing, then immediately cuts to Gareth Peirce driving the London night listening to a tape of the still imprisoned Gerry's version of his ordeal. The taped account returns throughout the film to frame events with Gerry's interpretation, thereby strengthening the impression that the film's flashback technique is dramatically recreating actual events. His narrative begins with his petty thievery recklessly and irresponsibly jeopardizing an IRA hideout in Belfast and its cache of weapons. The British army, mistaking him for a sniper, pursue with tanks and armed troops, while women, children and youths stage a street riot to forestall the army's advance. They hurl stones, bottles and Molotov cocktails to provide IRA rebels with cover while they move weapons hidden along the path of Gerry's flight. The opening scene of the bombing, juxtaposed with the street riot, interprets the IRA as a military combatant outdistanced in personnel and technology by the British army it opposes in the streets of its own neighborhoods, and as having significant support from Belfast's Catholics.

Gerry goes to London to avoid the consequences of being kneecapped by the IRA for his recklessness and in pursuit of the early 70s hedonistic ideals of sex and drugs. Meanwhile, the IRA presence is felt through its campaign of bombings on British soil. IRA operatives are portrayed as selecting targets for their military nature. Against the British account of Guildford as a terrorist bombing that murdered 5 and seriously injured 70, the film counters by depicting the IRA as acting on its own intelligence that the pub was a soldiers' hangout. The terrorism of the bombing is made ambiguous by portraying it as a continuation of the ongoing conflict depicted in the opening riot scene.

The police are pointed in Hill's direction. They arrest him and Gerry in Belfast and fly them to London for interrogation. The police are depicted as determined to extract a confession, irrespective of their actual guilt, in response to public pressure on the government to do something to stop the bombings and because

they are “Irish scum”. Gerry is subjected to nonstop interrogation and psychological torture and finally confesses in the face of threats to his father. The Four are convicted and sentenced to life in prison, while the Seven receive 12-year sentences.
Gerry and Guiseppe are imprisoned together where Gerry seems to accept confinement with disturbing resignation and absence of anger. His outcast status as Irish leads him into the company of the equally outcast black inmates, and joins them in consuming drugs. Soon this changes when Joe McAndrew, the IRA commando guilty of the pub bombing, enters the prison. He tells the Conlons he has confessed to the police, suggesting that the IRA has honor, as the British judicial system that ignores his confession does not: “I told them. They know. They know the truth. They can’t afford to face it. It’s a war. You’re one of those innocent victims. I’m sorry for your trouble.” When Guiseppe indicates his sympathy should be for the innocent victims of his attack, Joe defends his actions: “It was a military target, a soldiers’ pub.”
Joe becomes a pivotal character in the culture Gerry must endure, where English prisoners pose a continuing threat of physical and verbal abuse. He stands up to physical intimidation by English prisoners, precipitating a mess hall brawl. When Irish and black inmates join him in a fistfight with their white English counterparts, McAndrew signifies the possibility of leadership for the Irish and blacks to confront bullies who, by extension, are the duped pawns of British oppression.
Joe becomes Gerry’s mentor. On the tape Gerry narrates how Joe led him to see himself as a victim of British economic exploitation who would always be a victim until he fought back, to see the British as never voluntarily relinquishing their presence in an occupied country but having to be beaten out, and the prison as an extension of their colonial system that pits those with shared class interests against one another in order to maintain control. Without embracing the IRA’s alternative of military resistance, Gerry’s narrative of his political awakening inserts Sinn Féin’s interpretation of the injustice that lies at the film’s center as an indictment of the British judicial system’s incorrigibility.

Meanwhile, the film’s action depicts Joe using his status as an IRA soldier who can back his words to restore peace among the inmates. He is dignified before the prison officials, speaks to the English prisoners with a self-confidence that suggests he can back his words with action and that they honor. Joe commands respect that leads to improved conditions for the Irish and black inmates. The

bullying stops, prisoners start acting collaboratively, and relations within the prison appear as a model of what Sinn Féin is advocating and the IRA fighting for on the outside.
True to the Irish Republican interpretation of British authority, the chief prison officer, Bulgar, responds to the prisoners' newfound discipline as a threat to his authority. When Bulgar tires to reassert his authority, Joe leads a riot that gets national TV coverage. Bulgar orders in the riot squad and Joe and Gerry are placed in solitary confinement as ringleaders. As Joe is being taken away, he snarls at Bulgar, "You just signed your own death warrant." Through Joe, Gerry and we see the British screws as an extension of imperialist power, and prison as a site for continuing the war being fought on the outside. In this war zone Joe occupies the romanticized emotional space of a warrior who protects his own from a hostile environment. He is brave, skilled at what he does, and honorable within the code of war he is waging.

The last IRA scene depicts McAndrew gaining his revenge. As the prisoners watch a film, Bulgar is caught off guard by McAndrew, who sets him ablaze with a homemade torch. Gerry splits with Joe at this point, professing "In all my god forsaken life I've never known what it was like to want to kill somebody… You're a brave man, Joe, a brave man." Gerry asks to be returned to his cell. Joe tells the others to stand their ground, but the prisoners follow Gerry. While his parting may be seen as a rejection of the IRA and we may shudder at the IRA's limited and ruthless means, the film invites ambivalence in its viewers' response by making this IRA commando the only character capable of heroic action. Meanwhile, the facts remain that the British continue to subjugate the Irish, the Troubles continue and still touch Gerry, and there has been no cease-fire in the war.
Gerry joins Guiseppe's campaign to clear their names, but it quickly becomes apparent that, even in the judicial system, winning the Anglo-Irish conflict preempts pursuit of justice. When Mrs. Peirce visits Inspector Dixon to ask for Guiseppe's release, she pleads that he didn't do it, that the real bombers have confessed. Dixon is unmoved. Finally she says, "But he's dying; Guiseppe's dying," to which Dixon responds unsympathetically, "Lot's of people are dying; it's a dirty war."

The dirty war has more than one front, we learn, as the combat shifts from the street to the court. Peirce discovers how deeply this war has insinuated itself into

the legal system, with knowing suppression of evidence, false testimony, and a conscious choice not to disclose material facts to the defense. The dramatic final scene, in which Inspector Dixon takes the witness stand and perjures himself on his prior knowledge of Gerry's innocence, only to be confronted by Peirce with the damning evidence that he has lied and knowingly sent innocent youths to prison, shows the enemy to be a recalcitrant British judicial system. As its concluding proof of this point, the film reminds us that this is a story about real people whose history is still occurring. Before the credits roll we read about what has happened to each of its main characters since their release. We also learn that three policemen were tried but acquitted of charges to pervert the course of justice. "No policeman has been convicted of any crime in this case."

3. Debating History through Art

As far as we know, works of art have always prompted public discussion. The interesting feature of "In the Name of the Father" is how it became a participant in the discussion in a way that asserted ownership of the issues. From the perspective of the historical record discussed in the first part of the paper, the DPP was actively engaged in the process by which the verdicts were finally reversed. The British government, assuming the inevitability of judicial mistakes, posed the question as whether the system of self-correction works. In this case, where grounds to question the verdict led to further investigation, determination the verdict was not safe, and it's being quashed, the salient question was answered in the affirmative. By contesting for issue ownership, the film posed an alternative set of issues and evidence to answer them.

Michael Mansfield QC (1994, p. 7), writing in *Sound and Sense*, notes that the film asks these three questions:

1. Who took part in preventing the defense from discovering the existence of a statement by an alibi witness for Gerry Conlon?
2. Who decided that the Balcombe Street siege defendants who confessed to the explosions in the Guildford case would not be prosecuted?
3. Who authorized the amendment of forensic science schedules so that connections between these incidents would be excluded?

Public art has less commitment to answering such questions with fidelity to historical details than to developing answers that provide insight into human motivations and consequences without undoing what took place. It seeks answers that provoke contemplating their meaning.

This point seemed entirely lost on those who took issue with the film's political stance on the Anglo-Irish conflict and posed the issue as one of facts v. artistic license. Casting the issue in this way revealed an inability to distinguish between arguments made from the historic record and those made from an artistic rendition of that record. More fundamentally, it ignores that artistic renditions are unabashedly biased because their commitment are to a compelling presentation of a particular story with its own meanings.

Fusing the historical record and artistic renditions *as if* they shared the same commitments and argumentative obligations produced arguments about the Guildford Four made *through* the film's lens. This resulted, for example, in the concern of a British journalist (Elliott, 1994, Feb. 13, p. 4) for the film's marginalized treatment of the Four's solicitor Alasdair Logan, taking the form of he and Logan speaking through the film's portrayal to defend British courts and lawyers. The argument they jointly develop was not to vindicate the British judiciary that, in fact, reversed the verdicts. Instead, they mounted a refutation of the film's indictment of the judiciary as if it were an historical statement. They complain of its factual inaccuracies and offer testimony of Logan's dogged persistence to gain judicial review, completely missing its irrelevance to answering the film's basic questions with a compelling presentation.

Similarly, British MPs responded to the film as if it were an indictment of the British judiciary uttered by an Irish Republican parliamentarian on the floor of Commons. They also discussed the Guilford Four through the film when they express fear that uninformed American audiences will conclude the meaning of the Four was their exposure of the British judicial system's invidious corruption and bias rather than the system's self-correcting process. The issue of the Four's *symbolic* significance, however, is conspicuously absent from the MPs' discourse. In the 38 news articles I examined, none reported what that meaning was. If its absence signifies a prevailing assumption that the case proved the judicial system worked, one can only wonder at the efficacy of such an assumption when the same institutional voices remained silent on the same judiciary's failure to convict a single police officer of the crimes millions of international viewers had now witnessed.

The point of public art is to create public meaning. Its arguments, accordingly, are about meanings, not facts. Moreover, the meanings it argues for are not necessarily caught by the facts. It adapts the basic facts to its narrative structure

to make a forceful presentation. Unlike history, therefore, film attracts us to its narrative through its characters and the conflicts they must face and resolve. To require that "In the Name of the Father" resolve its issues by accurately reporting the historical details, would change it from a dramatic presentation to a documentary, and moreover strip it, and public art generally, of making arguments that lead us to contemplate more basic commitments at stake in the ebb and flow of historical events.

Returning to the three questions Mansfield believes the film raises, its answers are fairly direct: The DPP prevented the defense from discovering that Conlon had an alibi witness; the DPP decided the real perpetrators of the Guildford bombings would not be prosecuted, and the DPP authorized keeping these two cases from intersecting. More significantly than these literal answers is the poetic license it takes in constructing them. The injustice of the Guildford Four is a fact. More important is the story – fabulous in many respects though it be – that searches for meaning as the fact of injustice intersects with the lives of Gerry, Guiseppe, and the families it disrupted beyond repair. We are asked to search for meaning in the acts of officials who responded to public pressure, to ethnic bias, and without regard for justice. We are asked to contemplate the meaning of a gross miscarriage of justice in terms of the Anglo-Irish conflict that produced fear, commando responses, and public hysteria.

The film uses artistic license to present its answers through Gerry's emotional and conceptual development. His emotional space becomes ours; it places us in relationship to his father, the British judicial system, the IRA, and the concrete manifestation of British/Irish relations. Since the argument of the film fuses his imprisonment with his national identity and class, our empathy for his victimization cannot be separated from his identity as a poor Belfast Catholic nor from the series of events that link his own transformation to the political experience of being Irish under British domination. Gerry's weaknesses as a young man are symptomatic of alienation not only from his father but also from the community of Ireland. He was powerless against poverty and military force. He could not escape the isolation of his private indulgences to participate in civil society because his sense of political identity derived largely from rejecting personal responsibility for his circumstances and conduct. His relationships with Joe as his mentor, and then with his father, mark his journey from isolation to contact. They rest on his own developing empathy, which diminishes his hostility

and encourages his willingness to listen.
His developing empathy, in turn, has political value because it binds him first, through Joe, to the community of an Ireland in opposition to its British masters, and then, through Guiseppe, to the community of those engaged in the campaign to clear his name. Gerry escapes his victimage through the politics of his anti-British sentiments. Moreover, his petitioning support for judicial review of his case defines him as a responsible agent. It asserts his challenge for power over his own life by enjoining the associative network of civil society to act on his behalf. Finally, our knowledge of his innocence encourages empathy with Gerry and the community of opposition to British injustice. This is not an argument from fact but for the meaning of being politically and morally responsible.

I began this discussion with Dewey's observation that artists contribute to public dialogue by breaking through the crust of conventionalized and routine consciousness on which superficial opinion rests to awaken deeper commitments from which desire and thought might spring. They are the purveyors of news. Dewey's advocacy urges us to interrogate an art work's capacity to engage sentiments and commitments borne of experience. If our judgments about the circumstances of our lives are colored by our commitments, unless and until we know what they are, we remain susceptible to the tyranny of tradition or the charm of performances designed to serve vested interests. The partisanship of this film's portrayal of the Guildford Four and the prejudice of British justice is its vehicle for arguing that the accused have a right to a fair trial, that they have a right to access all the evidence, that police investigations based on preformed conclusions are problematic, that authorities who knowingly distort the record should be held accountable, and that there is greater virtue in defending one's name against false accusation than accepting such an injustice with resignation.

Whether the film is a distortion, of course, is a matter of interpretation. Its argumentative and evocative power draws on the dominant narratives in British and Irish or other national civil societies by either reinforcing or refuting them. Regardless, by engaging these narratives in ways that have the potential to shape cultural memory of what occurred and what it means, blurring the line between art and life becomes more than a stimulus for public discussion. If an adequate opinion on the Troubles requires a rhetoric that asks us to read history through the deeper human aspiration to lead a life worth living, then this and similar works of public art are a necessary part of civil society's deliberative process by

which we form the idea of peace.

NOTES

[i] Unless otherwise note, my account of the historical event is based on the books by Conlon (1990), Hill (1990), and Maguire (1994), and on newspaper accounts in the London and Dublin dailies of October 18-20, 1989 and May 23 through July 28, 1990 reporting the quashing of the Guildford Four and Maguire Seven verdicts respectively.

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ISSA Proceedings 2002 – The Ordinary Practice Of Presuming And Presumption With Special Attention To Veracity And The Burden Of Proof

1. Introduction.
This paper offers an analysis of our ordinary concepts of *presuming* and *presumption* and of their corresponding everyday practices. Scholars encounter 'presumption' in several contexts: the lexicon of the law, as a term of art in studies of argumentation and rhetoric, and occasionally in philosophical discussions. In addition to these technical ideas of presumption, as ordinary persons we share plain senses for these terms, and we commonly engage in practices which can truthfully be reported using 'presuming' and 'presumption' in their everyday meaning. This essay concerns the commonsense concepts which ordinary language attaches to these terms.
Scholars agree that presumptions figure importantly in thought and speech, and many have called for further study of the topic (Blair, 1980, 2-3; Cronkhite, 1966, 270; Flew, 1976, 16-23; Rescher, 1977, 28-36; Ullmann-Margalit, 1983, 43; Walton, 1996, 17-18). However, few have investigated presumption from the vantage afforded by our ordinary concepts. Presumption was initially introduced into argumentation and communication theory by Richard Whately as a concept borrowed from the vocabulary of jurists (1963, 112-13). Subsequent scholarship

has favored his approach. Ullmann-Margalit is representative.

Explication is usually guided by the pre-systematic, everyday usages of the notion under consideration. In the present instance, however, it seems to me that the ordinary-language analysis of the notion of presumption … will not get us very far. Guidance in the present case is to be sought rather in the realm of the law (1983, 144).

While granting priority to analysis of ordinary concepts, this philosopher nevertheless develops an account of presumption based on technical legal concepts, without a glance in the direction of plain understanding and practice.

Jurists have made critically important contributions to our understanding of the work presumptions can do in argumentation, but our studies ought also be informed by an understanding of the ordinary act of presuming. To develop this theme, I will first critically examine the conception of presumption scholars have constructed by borrowing from the law; I will then offer an analysis of presumption as plainly understood; and, finally, I will indicate some light which ordinary conceptions throw on problems of continuing interest to students of argumentation. Ordinary ideas about presumption may well need improvement, but they arise at a rich nexus in our day-to-day affairs, and, as J. L. Austin famously taught, they comprise an indispensable starting point for inquiry (1961, 133).

2. Whatelian Conceptions of Presumption

In the following I refer to prevailing scholarly ideas about presumption as "Whatelian conceptions." This idiom glosses over some areas disagreement and delineates a concept somewhat clearer than Whately's own account of the topic. Nevertheless, the title conveniently recognizes the priority of his contribution.

Whatelian ideas about presumption are unified by their reliance on legal conceptions. Modeled on the codification of legal argumentation, they identify presumptions as a special kind of inference, based only in part on evidence related to the truth of the inferred proposition and grounded largely on considerations related to the context or circumstances in which the inference is drawn. Presumptive inferences, in this view, are distinguished, not by the truth of their conclusions as warranted by relevant substantive facts, but by the unique strength or force of the inferred conclusion, viz., it is to be accepted unless and until substantiated counter-arguments are adduced against it**[i]**. At their core Whatelian conceptions define presumptions in relationship to the burden of proof:

a presumption, the conclusion draw in an inferential act of presuming, stands good until rebutted by parties who undertake an obligation to provide substantiated objection to its acceptance. Finally, according to Whatelian views, presumptions are inferences which, in the appropriate circumstances and given the appropriate facts, relevant persons are *entitled* to draw; the burden of proof which falls on persons who refuse to accept a warranted presumption is in the nature of an obligation.

This technical formulation can be illustrated by the presumption thought by some to favor the status quo. Whately teaches that just as jurists recognize a presumption favoring the accused's innocence, so, too, elsewhere a presumption supports existing institutions, policies, and generally accepted beliefs. Suppose a ban on testing nuclear weapons is the established national policy. Given that fact, in Whately's view, relevant parties are entitled to infer that this is a satisfactory policy, unless and until parties opposed to the ban show that it should be lifted. Presumptive inferences favoring the status quo are not based *directly* on reason and evidence purporting to show, e. g., that a test ban is the best policy; rather they rest primarily on data related to the circumstances in which the inference is drawn, e. g., the fact that a prohibition is the status quo. Nor does this presumptive inference warrant the conclusion that such a ban is the best or probably the best policy. As Whately notes, it may well be that a better policy could be found. But relevant parties are entitled to presume that the test ban is satisfactory, and persons who would deny that have the burden of proof. Of course, whether a presumption favoring the status quo properly obtains and, if so, under what circumstances are matters of longstanding controversy (Goodnight, 1980, 304-337; Marsh, 1964, 46-53).

Whatelian conceptions of presumption have, I will argue, two deep infirmities: (1) the conditions which define *presumption* as a received term of art, while similar to our ordinary notions in important respects, are neither necessary nor sufficient to *presumption* in its plain sense, and (2) Whatelian conceptions do not satisfactorily identify what warrants presumptive inferences. It follows that received scholarly conceptions enable us to identify some, but not all, ordinary presumptions; they incline us to regard as presumptions some inferences which ordinarily would not count as such; and, what may be worse, Whatelian conceptions do not clearly identify an essential component of this mode of inference.

Let us begin with some ways in which technical conceptions of presumption concur with our ordinary notions. Notice first that *received scholarly conceptions, legal definitions, and commonsense broadly agree that presumptions are a kind of inference.*
On this point jurists are unanimous. As the legal theorists Morton and Hutchison observe, "A presumption occurs when we make a connection between two sets of circumstances such that upon proof of the first set we will believe (and more importantly *act as if we believe*) the second set also to be proved" (1987,11)**[ii]**. On this important point legal conceptions roughly fit plain day-to-day practices. To presume something in the course of ordinary thought or conversation is to take it in the broad sense of *mentally taking* which includes *assuming, inferring, concluding*, etc (*Oxford English Dictionary's* entries for 'take' 46-51). In place of, 'Dr. Livingstone, I presume', Stanley might well have said 'Dr. Livingstone, I take it'. Generally 'take' may be substituted for 'presume' with little distortion in the truth of the utterance paraphrased, though the original utterance will have been more precise. The anomalous character of such utterances as *'I presume that he speaks the truth, but I do not take it that he does' shows that *taking* is essential to *presuming.* A presumption is simply the conclusion taken (or available for the taking) in an act of *presuming*. We also speak of our reason for presuming this or that, and it would be odd to say *'Without having any basis for it, I presume that he will arrive at seven'. Although there are some differences in the status scholars assign to presumptions, today most agree with commonsense and the law in treating presumptions as inferences.

A second parallel is that *both Whatelian conceptions and ordinary practice* accord normative status to presumptions; both *recognize that presumptions are related to the distribution of responsibilities, rights, and obligation in conversations, dialogues, discourses, and other human interactions*. Whately, himself, is tolerably clear about this point. He takes the defining mark of presumption to be the strength of the presumptive conclusion which "must stand good till some sufficient reason is adduced against it" (1963, 112). By this Whately patently means that persons who would challenge a presumable proposition have an obligation to take up the burden of substantiating their position; *they can be called upon* to support their views, reason and evidence *can be demanded* of them (1963, 112-14). Advocates who enjoy the support of a presumption may find it expedient to provide support for their views, but they are under no obligation to do so (116). Unfortunately some rhetorical theorists fail to clearly grasp this

aspect of presumption and speak of the burden of proof as simply a practical, and not a necessarily normative, matter (Cronkhite, 1966, 272-73; Sproule, 1976). But scholars who have thought deeply about the matter recognize that presumptions have a basis in responsibilities and rights. In this respect enlightened Whatelian accounts tend to be in accord with the nature of commonsense presuming.

Connections to normative considerations can be seen across a variety of ordinary presumptions. The presumption that a person is speaking the truth is related to our supposition that she is responsible for the truth of what she says. Likewise, when we presume that we are welcome at an event to which we have been invited, our supposition is related to obligations incurred when the invitation was tendered. When we presume something, we take it as something we are entitled to infer, and this entitlement comes with expectations regarding the responsibilities of others. Correspondingly, when someone behaves presumptuously, in the pejorative sense of the term, that person's actions lay claim to something to which he or she is not entitled.

While Whatelians agree with commonsense in identifying presumptions as inferences that have a normative bearing, they diverge from our plain understanding and practice in what they regard as the defining feature of presumptions. For Whately and for most subsequent scholars, the essential feature of presumptive inference is the strength or force of its conclusion: a presumption stands good unless and until it is rebutted by substantial reason and evidence (Baird, 1950; Cronkhite, 1966, 271-5; Eemeren & Grootendorst, 1992, 120-121; Ehninger, 1959, 83-84; Flew, 1984; Gaskins, 1992, 267-69; Goodnight, 1980, 312-14; Hill & Leeman, 1997, 141-43; Perelman & Olbrechts-Tyteca, 1969, 71; Rescher, 1977, 28-34; Sproule, 1976; Ullmann-Margalit, 1983, 147-52; Walton, 1996, 18-20; Willard, 1983, 131). Granted, a burden of proof is ordinarily *associated* with *some* presumptions, e.g., were a person to make a proposal, it would be presumed that what she had to say might prove to be of interest, and the proposer would incur a related probative obligation. However, outside the courts, the strength which Whatelians take to be the identifying mark of presumption is neither a necessary nor a sufficient condition for the truth of reports that something has been or could be presumed. It is not hard to find ordinary presumptions that do not have this strength, and it is also possible to find inferences which do have that strength but are not presumptions.

The presumption of veracity is a good example of a presumption which does not have the strength received technical conceptions assign to this type of inference.

If Smith says (speaking seriously) that he will be home by seven, one would ordinarily presume that he is making a reasonable effort to speak the truth. But this presumption does not stand good until overturned by someone who accepts the burden of proof. Were Smith's wife to respond 'No, you won't', we would not be inclined to suppose that she had incurred a probative obligation. Pressed to defend her denial, she might well answer with no more than 'I know what I'm talking about, and I am not going to give any further attention to this matter'. Her behavior might seem less than fully cooperative, but there are no probative duties here which she has failed to discharge. Or, to muster a second example, suppose Smith advises Jones to invest in Northwest Securities. Here there is reason to presume that he is speaking out of regard for Jones's welfare. However, Jones can reject that presumption out of hand without incurring a probative burden. It simply is not the case that ordinary presumptions generally have the weight or force which Whatelians assign to them. So, if we are guided by Whatelian definitions, we would succeed in recognizing some ordinary presumptions, but others will escape our attention.

Argumentation theorists might object that their interests are adequately served by a Whatelian focus on those presumptions which are related to probative obligations. This objection rests on suppositions which are premature and probably mistaken. What sorts of presumptions figure significantly in argumentation is a matter to be determined by investigation, not by conceptual fiat, and it seems apparent that at least one presumption which does not stand in a Whatelian relationship to the burden of proof, the presumption of veracity, is of considerable interest to argumentation theorists. More importantly, this objection implies that the strength Whatelians assign to presumptive conclusions suffices to identify a subset of presumptions – those thought to be of special interest to students of argumentation. Proponents of this idea would be committed to the unfortunate view that whenever one of several parties has the burden of substantiating some proposition, a corresponding presumption favors the contradictory or contrary of that proposition. However, persons commonly incur burdens of proof in the absence of any clear presumption favoring a contrary or contradictory proposition. We routinely require undergraduates to produce essays in which they defend a position, and so have a burden of proof, but we do not commonly expect them to challenge a presumptively satisfactory proposition. Similarly, committees may be assigned to investigate matters and report recommendations with supporting argumentation regardless of whether there is a

presumption favoring alternative recommendations. Or a police officer, interrogating a suspect who has confessed to a crime, may doubt the veracity of the confession and may properly conduct her questioning on the supposition that the suspect has the burden of proof, but in this case there seems to be no clear presumption to the effect that the confession is false. Whatelian conceptions fail to specify a condition sufficient to identifying members of a subclass of presumptive inferences. Insofar as we rely strictly on Whatelian definitions, some of the suppositions that we take to be presumptions would not ordinarily qualify as instances of that kind of inference.

The analytical poverty of Whatelian conceptions is also apparent from their construction (Blair, 1980). They represent presumptions as conclusions which have a distinctive strength or force: presumptions impose a burden of proof on those who do not accept them. However, in order to recognize presumptions and to appropriately presume things, one needs to know when a conclusion of this kind would be order. What grounds and principles of inference warrant a presumptive conclusion? We would regard this as a proper question to ask about other kinds of inference. We would expect an analysis of causal reasoning to characterize the principle(s) of reasoning capable of warranting a causal conclusion and, also, the grounds on which such conclusions can be drawn (Hart & Honore, 1959, 8-58). We would hold the same expectation for analyses of inferences by sign, analogy, generalization, and so on. The rules of evidence in law do more than specify the strength of presumptive inferences, they also stipulate the grounds for various legal presumptions. In law presumptions are warranted by corresponding rules. What are the grounds and principles of reason that *generally* warrant presumptive inferences in the conduct of day-to-day thought and discourse?

Whately offers no clear answer to this question. He points to several grounds which warrant various presumptions: fairness (1963, 115, 117, 124, 126, 128), eminent authority (128), persistent good judgment (120), the collective agreement of a council or assembly (123), and the first appearance of truth regarding a proposition (131). He also notes that there are reasonable presumptions against any restriction (125) and against practices which have fallen into neglect (127). But Whately makes no effort to identify what these various grounds for presumption have in common or to otherwise identify the essential basis for this broad class of inferences. Subsequent scholarship has

turned up a number of potential warrants for presumptive inferences. Chaim Perelman and L. Olbrechts-Tyteca's hold that presumptive inferences are based on suppositions about what is normal and likely (1969, 71). Nicholas Rescher maintains that presumptions are warranted by their plausibility (1977, 37-41). Others have suggested that presumptions are to be rationally assigned on the basis of risk and the normative acceptability of error (Goodnight, 1980, 315-16; Ullmann-Margalit, 1983, 157-59). Doubtless, some ordinary presumptions are warranted by each of these considerations, but none identify the essential basis for plain presumptive inferences. Given appropriate circumstances, each may ordinarily also serve as the basis for inferences which are not presumptive. More specifically, the various considerations which scholars have put forward as the distinctive grounds for presumptive inferences would in many cases also be taken by laymen as basis for assumptions.

Assumptions and presumptions are similar in a several key respects. Both are based, at least in part, on suppositions about inferential context; neither directly rests just on substantive grounds for the truth of the conclusions drawn. If we see the mailman approaching our domicile with letters in hand, we may infer that the mail is about to be delivered, but it would be a joke to describe this inference as an assumption and pretentious to call it a presumption. Here the strong substantive basis for the inference precludes the sorts of considerations which lead to assumptions and presumptions (which is not to deny that such suppositions might be lurking in the background of our substantive inference). Also, the kinds of considerations which in some cases warrant presumptions may in other cases serve as the bases for assumptions. If the occurrence of a certain event is known to be very probable, in dealing with others who share this knowledge one might assume that the event is going to occur, but in some circumstances, one might as well presume that it is going to happen. And here we also see a third similarity between presumptions and assumptions, sometimes these forms of inference may lead to much the same conclusion. Any good taxonomy of inferences would classify assumptions and presumptions as very close neighbors – subsets of the larger class of suppositions grounded (partially) on contextual considerations**[iii]**.
Nevertheless, assumptions and presumptions are distinct kinds of inference. Their categorical difference is apparent from the contrasting ways they can be described and evaluated (Kauffeld, 1995, 158-172; Llewelyn, 1962, 163). Assumptions do not have force or strength; it seems odd to speak of a *'strong' or

*‘powerful assumption’ in favor of something, nor would one seriously and literally compare the force of various assumptions. We assess assumptions as ‘safe’ or ‘risky’. Presumptions, on the other hand, may have force and strength; it is natural to speak of a ‘weighty presumption’, and there is nothing odd about the idea of presumptions outweighing each other. It follows that adequate analysis of presumptions ought to show how the basis for this kind inference ordinarily differs from the kind of considerations which plainly warrant assumptions.

Unfortunately, the several warrants for presumptive inference articulated by Whately, and by other scholars who have similarly modeled their thinking on legal conceptions, fail this test; they do not suffice to differentiate between assumptions and presumptions. Considerations pertaining to fairness, eminent authority, persistent good judgment, manifest truth, what is normal and likely, plausibility, risk and tolerance for error, all these kinds of consideration might ordinarily serve as bases for either assumptions or presumptions. Whatelian conceptions, in short, fail to provide a satisfactory view of what essentially warrants presumptions in day-to-day affairs.

The merits and infirmities of Whatelian conceptions of presumption are mirrored in the ways studies of argumentation have profited from their use. It should come as no surprise that they have been found useful in areas of research and pedagogy which readily admit of rules positing or stipulating presumptions that govern probative responsibilities. Thus, Whatelian presumptions have been put to work in the construction of dialogues designed to model argumentation subject to regulation under idealized conditions (Rescher, 1977; Walton, 1996). Similarly, Whatelian conceptions of presumption have served as the framework for structuring competitive student debates (Ehninger & Brockriede, 1966; Hill & Leeman, 1997). These applications of the concept share with courtroom argumentation the possibility of establishing rules which prescribe presumptive inferences and allocate probative obligations. However, when we attempt to move from these rather rarified and regulated contexts to argumentation and discourse in the larger world of practical affairs, we encounter limitations due to the infirmities of Whatelian conceptions. As pragma-dialectical approaches to the study of argumentation suggest, we should be able to see how a speaker’s probative obligations are related to the larger set of responsibilities speakers incur in serious efforts to communicate (Eemeren & Grootendorst, 1990, 6-17). Conceptions of presumption which diverge widely from ordinary practices of presuming cast limited light on, e.g., the connections between the responsibilities

speakers have for the veracity of their utterances and the obligations they may incur to argumentatively defend what they say. Or, to look at the matter from another angle, we have to account for how argumentation works under less than ideal circumstances, in a world of practical affairs not routinely subject to stipulation and regulation. If our ideas about presumption are to be of help in analyzing and evaluating real world arguments, they need to illuminate how probative responsibilities are incurred in practical argumentation. Conceptions of presumption which fail to identify what generally warrants presumptive inference are ill suited to this task.

3. The Essentials of Presuming

What, then, in ordinary day-to-day thought and discourse is a presumption? And more specifically, what distinguishes this kind of inference from other kinds of inferring? These questions call for analysis of the cognate term with special attention to its coordinate verb presume. Whatever *presumptions* are, we certainly take them in acts which can in truth be described as *presuming something*. So, if we determine the truth conditions, i. e., the semantics, of *presume*, we may infer the essential constituents of acts of presuming, and by that route we may come to identify what presumptions are and the grounds on which they may legitimately be taken**[iv]**.

Ordinary presumptive inferences have a definite form. In the plain sense of the term, *to presume that p is to take that p on the grounds that someone will have made that the case rather than risk criticism, painful regret, reprobation, lose of esteem or even punishment for failing to do so*. The superior presumes that his subordinate will comply rather than risk reprobation for disobedience. The wife presumes that her husband will pick up her mother; ‘He would not dare forget that’ she says. Smith might presume upon his friendship with Jones by entering the latter’s home, expecting Jones to acquiesce rather than suffer Smith’s resentment upon being expelled. Where practical considerations preclude relevant calculations based on the risk of resentment, it is hard to see how one can in truth speak of a person’s presuming something. If it is known that there is no chance of effective disapproval and resentment, we could not seriously and literally speak of presuming something. Were one were to say *‘Smith knows that no one will be upset or bothered if he is late, and it certainly would not cause him any regret, so I presume that he will arrive on time’, one would have packed a somewhat ironic sense into one’s use of ‘presume’.

In presuming that *p* a person comes to hold that *p* by reason of the supposition

that some person has or will have made it the case that *p* rather than risk resentment for acting otherwise. Presumptions start as propositions which can be made true by what someone does. If Jones says that the game will begin at seven, we may presume that he has made a responsible effort to speak the truth in view of the risk he runs of criticism for failing to do so. Here what is presumed is the proposition that Jones is speaking truthfully. Derivatively we may also presume that the game will start at seven.
The calculations about resentment which lie at the heart of presumption draw on a wide range of considerations. In paradigm cases resentment is the pain, indignation, or agitation felt because of a wrong done to oneself and/or one's fellows. The primary cases of resentment are instances in which *A* believes that *B* has wronged *A* or *A*'s fellows, and *A* thereupon feels pain, indignation, etc**[v]**. But regret is also a form of resentment. When prudent persons calculate the risk that their actions may cause resentment, they include the prospect that they would regret, e.g., a wrong which tarnishes their character. While the primary examples in which persons calculate a risk of resentment involve the possibility of causing persons to experience pain, indignation, etc., often it is not essential that they might actually undergo such feelings. In many cases, we calculate resentment where the action in question is merely of a kind which could cause persons to feel wronged, injured, upset, etc. There may be a risk of resentment in lying to people, whether or no they are likely to become emotionally upset by the deception. The risk of resentment ranges over the attitudes and behavior which express resentment: sullen anger and indignation, severe retribution and punishment. One chances resentment by acting in ways which may be believed to be wrongful and thus are kinds of behavior which can cause pain and evoke a retributive response.

Presumptions comprise a large class of inferences, generating a many of the expectations and suppositions we form about the conduct of persons. This fact is reflected in the idioms used to identify presumptions, e.g., 'He/she would not dare to (do anything so outrageous as …)'. Here one recognizes the familiar form of an inference taken by reason of the risk of resentment. Similarly, a teacher might confidently expect students in her classes to turn their papers in on time, and when asked the grounds for her apparent optimism, she might reply 'They wouldn't dare turn them in late; I dock tardy papers a full letter grade and accept no excuses'. In other situations we mark out presumptions with expressions that identify our expectation that a person would not be willing to bear this guilt or

that anxiety. These examples serve as reminders that presumptions pervade our lives.

Presumptions are inferences persons make–and can be expected to be make–about each other's conduct, so they are subject to certain abuses. Accordingly, we have a sense of the term 'presumptuous' which designates brash and insolent uses of this form of inference. Presumptuous behavior, in the clearest cases of such effrontery, consists of conduct which is offensive but which the offender expects will be tolerated because no one will dare to give effective expression their own displeasure in view of the prospect that the offender would react with indignation, etc. Thus we regard abusive presumptuous behavior as 'insolent' and 'high handed' and we ask of it 'How does he expect to get away with that?' or 'Just who does she think she is?' or 'How dare she?'
Supposing that the preceding analysis articulates conditions essential to presuming and presumption, does it suffice to identify instances of this type of inference and to distinguish them from other modes of inferring? Several considerations argue for an affirmative answer. It would be odd to affirm that one's partner would be unwilling to risk resentment of an appropriate caliber and still refuse to take the corresponding presumption concerning that partner's behavior. One would pause were one told *'Mary said she would be here by seven; we know she cannot stand the thought of being late; still I would not take it (would not presume) that she will be on time'. Perhaps this is not a head-on contradiction, but one could hardly make sense of this utterance without supposing that some further, unspecified conditions, render problematic Mary's arrival at the designated time, e. g., unknown to her, the public transit on which she depends has broken down.

The power of our analysis is also shown by its capacity to distinguish between presumptions and assumptions in terms which fit the differences between these modes of inference noted above. In presuming, a conclusion is taken on the supposition that so and so would see to the truth of the inferred proposition rather than risk resentment for failing to do so. Assumptions, on the other hand, are inferred on the supposition that in the circumstances at hand no relevant party or fact is likely to trouble the inferred conclusion. Accordingly, we describe *assumptions* as suppositions 'taken for granted'. This belief that a supposition is uncontroversial – that everything argues for it and nothing against – is something 'we take upon ourselves'. If we are in error and others challenge our assumption,

the grounds on which it immediately rests provide little basis for responding to the challenge. So assumptions do not, themselves, have strength or force. On the other hand, we regard *presumptions* as suppositions 'we are entitled to' because it is incumbent upon someone else to make them true. Consequently, presumptions may have force; failure to concur in a presumption may occasion criticism and resentment**[vi]**.

When approaching the roles which presumptions play in discourse and argumentation, it is useful to distinguish between

1. *standing presumptions*, which are generally available on the supposition that prudent associates will avoid occasioning foreseeable resentment, and
2. *special presumptions*, which an agent deliberately generates by providing others with grounds to presume things favorable to that agent's ends and projects. Standing presumptions are based on shared beliefs about what constitutes right and proper conduct and on the supposition that our associates are mature and prudent persons. For example, in the absence of indications to the contrary we presume self-reliance on the part of our associates, because we suppose that they would not risk the condescension and loss of respect which foreseeably is directed toward persons who do not exercise a good measure of autonomy (Butler, 1897, 248-51). Other things being equal, this standing presumption is generally available; its warrant does not depend on actions designed to generate the appropriate inference. However, in social intercourse persons do not rely just on the presumptions which are generally at hand. Often a person wants others to presume particular things which promote her ends and projects. Suppose one were trying to borrow an item of value from strangers, one would want them to presume that the object will be promptly returned, but, given the circumstances, one might find it necessary to take specific measures designed to warrant that presumption. So, one might voluntarily post a monetary bond to guarantee punctual return of the object. Such cases show that, persons also recognize special presumptions, which are deliberately engaged by an agent's acting in ways designed to provide others with reason to presume things which promote that agent's projects.

In summary, to presume that *p* is to suppose that someone will have made it the case that *p*, rather than hazard the resentment which would be occasioned by failing to do so. This analysis marks out a broad class of inferences based on the risk of resentment, and it suffices to distinguish that class of inferences from the neighboring class of assumptions, which are based on the supposition a

proposition does not require further thought and/or discussion in the circumstances at hand.

4. Presumptions, Speech Acts, and the Burden of Proof
It should now be apparent that our ordinary concept of presumption and corresponding inferential practices are sufficiently clear and complex to warrant serious scholarly attention, but it can seem that these "pre-theoretical" ideas diverge so far from received scholarly conceptions as to raise questions about their value in studies of argumentation. More specifically, it might seem that ordinary concepts decouple presumption and burdens of proof and, so, forfeit interest from argumentation theorists. By way of concluding this essay, I will try to indicate that, on the contrary, our analysis of ordinary presuming enables us to better identify how pertinent obligations are related to presumptions and, so, affords a more perspicuous view of how probative burdens are distributed and function in argumentation.
First, our analysis of presuming supports an account of how argumentatively significant obligations are incurred in a variety of speech acts. In studies of regulated argumentative dialogues, Douglas Walton classifies presumption as a kind of speech act (Walton, 1996; Walton, 1993). As regards ordinary presumptions, this idea would be mistaken. Granted, some acts of presuming may be explicitly performed by saying such things as 'I presume that p'. However, if there is any stuffing to talk about "speech acts," it must be essential to the performance of a speech act that some message source say something (or do something that is virtually equivalent), but ordinary presumptions are often undertaken tacitly, without saying anything. Still, Walton rightly senses that many presumptions of interest to argumentation theorists are generated in the performance of speech acts.

As I have argued in detail elsewhere, a broadly Gricean analysis of utterance-meaning shows that speech acts are performed by speakers deliberately generating special presumptions (Kauffeld, 2001a, 2001b; Stampe, 1967). In the simple case of seriously saying something, a speaker openly undertakes responsibility for the truthfulness of her utterance and, thereby, engages a special presumption of veracity. In speech acts on the order of *proposing* and *accusing*, speakers enlarge their commitment to veracity to include a probative obligation to argumentatively support what they say. By strategically incurring burdens of proof, accusers and proposers generate presumptions favorable to securing

consideration for their argumentation (Goodwin, 2001b; Kauffeld, 1998b). In short, a clear understanding of ordinary presumption supports theoretical analysis of how burdens of proof and other argumentatively significant obligations are generated in day-to-day argumentation.
Second, this account of the pragmatics of presumption and probative obligations in speech acts enriches critical interpretation and evaluation of real world public argumentation. Studies of the Lincoln-Douglas Debates, of argumentation in the contest over ratification of the United States Constitution, and of forensic advocacy in the O. J. Simpson trial show that a grasp of ordinary presumptions enables precise interpretation of the strategic genesis of probative burdens in complex and critically significant public discourses (Goodwin, 2001a; Kauffeld, 1994, 2002). Moreover, since the content of an obligation is often determined by the transaction in which the obligation is undertaken, unpacking the communicative transactions in which probative burdens are generated often reveals what advocates must show to discharge those obligations and gives insight into the persuasive force of their argumentation (Kauffeld, 1998a, 2002). In short, analysis of ordinarily presuming supports close study of the complex connections between presumptions and probative obligations in real world discourse.

I have been arguing that our ordinary concepts of presuming and presumption contribute importantly to studies of argumentation. Part of my discussion has critically essayed scholarly notions about presumptions which derive primarily from the law. I do mean to suggest that argumentation theorists should abandon study of how jurists construe presumptions and probative burdens; on the contrary, I think that more remains to be learned from work by legal scholars (for example, see: Allen, 1994; Gaskins, 1992). But I hope to have shown that analysis of presumption as ordinarily conceived provides correctives to received Whatelian conceptions of this kind of inference and may enable us to better understand the genesis of discursive obligations in real world argumentation. Much work on presumption in argumentation (and discourse generally) remains to be done. We need to understand how presumptive inference can serve as a basis for trust, more study needs to be devoted to the presumptions engaged in specific kinds of speech such as *testifying* and *praising*, and we have just begin to understand the various functions of presumption in defeasible argumentation. But we have now reached the present essay's legislated limits.

NOTES

[i] Here I overlook the fact that legal conceptions generally recognize both rebutable and non-rebutable presumptions. I do not, however, underestimate the significance of this fact as it raises serious questions about Whatelian attempts to define 'presumption' in terms of the burden of proof.

[ii] The law uses 'presumption' in two distinct ways: (1) as a rule which mandates that certain facts warrant a specific conclusion and (2) as an inference drawn in compliance to such a rule. As Sir Courtney Peregrine Ibert explains, "A presumption in the ordinary sense is an inference… But a legal presumption, or, as it is sometimes called, a presumption of law… is something more. It may be described, in Stephen's language, as 'a rule of law that courts and judges shall draw a particular inference from a particular fact, or from particular evidence, unless and until the truth' (perhaps it would be better to say 'soundness) 'of the inference is disproved" (1910, 15).

[iii] Scott Jacobs suggested in conversation that presumptive inferences may be a particularly strong subset of assumptions. Various considerations argue for this suggestion. For one thing, where a person presumes something, she may also assume that this presumption is in the circumstances a practically sufficient basis for proceeding without further inquiry; here a presumption seems in turn to warrant an assumption. Such complexities might incline one to suppose that presumptions are a subclass of assumptions. I am strongly inclined to suppose that they are, instead, neighboring subclasses of a larger genus, but I am by no means certain as to how to handle their various interactions.

[iv] Presuming belongs to a large sub-class of taking. Some kinds of taking are marked by the terms in which what is taken is, or is believed to be, available. Accepting seems to be an example of the acts which fall into this category. One can accept something which is given or offered; however, the thief can hardly be said in literal truth to accept what he takes. Presuming is like accepting in that what is taken, i. e., the presumption, is necessarily available, or is at least supposed to be available, on certain terms. What are they? An answer to this question shows us the grounds which warrant presumptive inferences.

[v] I am using 'resentment' in the ordinary sense which encompasses the sense of injury and ill-will persons feel toward the authors of a wrong or affront. In this ordinary sense 'resentment' is the generic term for the negative reactive attitudes persons have toward wrongs done to them and their fellows (Strawson, 1968, 75-80). In a thoughtful discussion, Murphy and Hampton emphasize the personal nature of the injuries which characteristically cause resentment; their account

links resentment to wrongs which threaten a person's self-respect or self-esteem (1988, pp. 15-18 and 54-58). While we are certainly prone to resent affronts, in plain usage the category of resentment is somewhat broader including wrongs done to persons with whom we identify at considerable distance. One can resent the wrongs done under apartheid simply on the grounds that they produced severe injury to innocent fellow humans.

[vi] Our analysis also illuminates a line along which the grounds for these two modes of inference converge. If all rational creatures believe as a matter of common sense that, e. g., the future will resemble the past, then one might assume that tomorrow will be much like today because no one will be inclined to dispute this, or one might presume that tomorrow will resemble today because no one would be so foolish as to risk the ridicule that would come from disputing this proposition. Both inferences rest on much the same data: everyone knows that p, but they remain distinct modes of inference because their respective conclusions are warranted on distinct principles of inference.

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ISSA Proceedings 2002 – Consensus And Power. The Facts Of Democracy

In a democracy, Hannah Arendt writes, “the people are supposed to rule those who govern them” (Arendt, 1986, 62). The meaning of this phrase may not be entirely clear at once, as happens often with such platitudes. Nevertheless, it is instructive for three reasons.

Firstly, by explicitly talking about “ruling” and “governing”, Arendt leaves no room for doubt concerning the fact that, in the words of John Rawls, even in democratic societies, “the fundamental relation of citizenship includes among other things the relation between free and equal citizens who exercise ultimate political power as a collective body” (Rawls, 1996, xlv).

Secondly, by distinguishing between “the people who rule” and “those who govern”, Arendt suggests that the citizens in a democracy cannot or ought not to take power in their own hands directly. In order to understand what it means to

be a citizen in a contemporary democratic society – one way of formulating the aim of this paper – we must therefore study not only the mutual relations between the citizens, but also the relationship between the citizens and those who exercise power.
Thirdly, since in a democracy the people are supposed to rule, political power in a democracy is supposed to be "ultimately the power of the public, that is the power of free and equal citizens as a collective body" (Rawls, 1996, 136, 38), as Rawls puts it (quite rightly replacing the chimerical notion of 'the people' with the legal notion of 'the citizens').

In this paper I will investigate whether these three features of a democracy may be the starting point for an interpretation of public reason in democratic societies that does not reduce, cynically, all (democratic) politics to the conquest and the exercise of power, but that doesn't start directly from moral principles either. We may see this intermediate way, if we pay close attention to the role of public argumentation and discussion in a democracy. For, if power is supposed to be ultimately power of the citizens considered as free and equal, the stable exercise of power in a democracy presupposes that the general structure of political authority and (at least a great number of) the actual political decisions and actions "are justified by reasons which are acceptable to many citizens" (Rawls, 1996, 136, 38). And precisely in and through public argumentation and discussion that such reasons may be discovered. The suggestion is that the term 'democracy' refers to specific conditions or rules for the conquest and the exercise of power and that these conditions or rules create a particular balance of power that confers a form of reasonableness to the exercise of power.
The purpose of this essay is therefore to explain how political power in a democracy can acquire a form of reasonableness, what sense of 'reasonableness' is meant here and what the role of public argumentation and discussion is in creating such a 'public reason'. I will focus on the interpretations of public reason that have been presented by John Rawls and Jürgen Habermas**[i]**. Rawls and Habermas are not only the most influential political philosophers of the moment**[ii]**, but their interpretations may also be considered as the extremes of a spectrum in which the different interpretations of public reason can be arranged that are currently being proposed under the general label of 'deliberative democracy'**[iii]**.

1. Strategic Rationality

Let me quickly call to mind some views on the public reasonableness that is demanded of citizens in a democracy and on the rationality or reasonableness that the exercise of power can acquire in a democracy. A first view I will only mention in order to set it aside. According to so-called rational choice theory we may attribute to agents a form of strategic rationality, according to which it is rational to choose among the options available the particular option that realises their desires or preferences optimally, taking into account the options that other agents involved in the interaction are likely to choose.
Rational choice theory assumes that the set of agents, the set of alternatives, the set of preferences the agents are endowed with are *given* and not subject to change in the course of the political process (Elster, 1986, 105). Argumentation and discussion *about* preferences or alternatives is therefore no part of rationality according to this interpretation. If reasons or arguments are exchanged, this exchange takes the form of conditional offers of cooperation and forbearance and pointing out reasons others have (given their preferences and the available alternatives) to accept these conditional offers. Pointing out such reasons to them may involve indicating the reasons I myself have to comply with the agreement of cooperation (should the others agree) (Postema, 1995, 72).

The positions I have summarily labelled 'deliberative democracy' appear to share as a defining characteristic the claim that this notion of strategic rationality is too 'thin' to be a realistic model of public reason**[iv]**. As is well known, one of the major problems with this limited interpretation of rationality (in addition to objections against what we may call its individualistic moral psychology and its conception of the political process as purely instrumental) is that it makes it difficult to explain the stability of the political and social order. For there is no reason to assume that the set of alternatives and preferences which are 'given' at some moment of history will be freely and willingly accepted by the majority of the citizens, except as part of a provisional *modus vivendi.* A political order or a particular line of policy which rests on such an acceptance of a *modus vivendi* is, however, only as stable as the balance of power (the given set of preferences and alternatives) on which it rest. If we want to explain why our democratic societies constitute a more or less stable political order or if we want to discover a more stable foundation for contemporary society we must therefore attribute to citizens a broader notion of rationality. This means "equipping them to act as reasonable persons" (Hollis, 1998, 126-127).

These objections notwithstanding, one point concerning the rationality of power and concerning the relationship between the citizens and those holding political power is worth noting. The point is connected with certain situations of interaction (the so-called prisoner's dilemma's) that have been the subject of a lot of analysis. In such situations options are available that require coordination of choices or cooperation by the agents but that are also more attractive to all involved than outcomes in which no coordination or cooperation takes place. Since it is even more attractive to deviate *unilaterally* from the cooperative option, however, and since an outcome in which an agent is the only one to choose the cooperative option is for that agent less attractive than the situation which no one chooses the cooperative option, no rational agent will chooses the cooperative option. In such situations no coordination or cooperation between rational agents will take place. Such situations lead therefore to outcomes that are less attractive to all concerned than cooperation.

If there is a body, however, that has the political power to enforce a cooperative option and thus take a way the fear that a cooperative attitude will be taken advantage of, cooperation is a rational option and will therefore take place. The exercise of political power realises an outcome that is more attractive than the outcome that would have been realized when no political power was exercised. In this sense we may say that the exercise of power is rational from the point of view of the citizens; it is an expression of their strategic rationality.

The point that is interesting to note is that this rational exercise of power is only possible, if those holding power can maintain a certain distance of or a certain autonomy from the individual citizens. For although it is rational to choose the cooperative option (when that option is enforced), rational agents must nevertheless be *forced* to choose the cooperative option, as is obvious from the fact that it remains rational to deviate unilaterally from the cooperative option, if they can do so with impunity. The rationality of power has an air of paradox about it: even though the citizens acknowledge that the exercise of power is rational, it is also rational to deviate from the option enforced by this rational political power.

2. Overlapping consensus

A second interpretation of public reason has been proposed by John Rawls, in particular in his second major book, *Political Liberalism*. According to Rawls the political culture of contemporary democratic society is characterized by what he has labelled 'the fact of (reasonable) pluralism and 'the fact of oppression'. These expressions refer to the fact that "the diversity of (…) religious, philosophical and

moral doctrines found in modern democratic societies is not a mere historical condition that may soon pass away. It is a permanent historical condition". The only way to overcome this diversity of what Rawls calls 'comprehensive' doctrines is "by oppressive use of state power" (Rawls, 1996, 36, cf. 54). Given these conditions the most reasonable basis for social unity is according to Rawls a "political conception of justice" that regulates the basic structure of society and that is the focus of "an overlapping consensus". To the extent that the political decisions of those in power are intended to put this political conception into practice about which citizens have reached an overlapping consensus, the exercise of power may be called reasonable: reasonable citizens can reasonably be expected to endorse the exercise of power.

My attention does not go here to the content of the political conception about which an overlapping consensus may arise but to the very idea of an overlapping consensus and to the interpretation of public reason and of the reasonable exercise of power that this idea entails. The overlapping consensus has three characteristics of which at least the two last ones seem difficult to combine.

Firstly, the political conception of justice is "complete": "public political discussion, when constitutional essentials and matters of basic justice are at stake, are always (…) reasonably decidable on the basis of reasons specified by (the) conception of justice" (Rawls, 1996, xlix-l, see also 44, 225).
Secondly, Rawls insists that an overlapping consensus must not be taken for a *modus vivendi*. An overlapping consensus focuses on a conception of *justice* with which the citizens agree for *moral* reasons**[v]**.
The *third* characteristic is the most important: the *overlapping* consensus is, as the word itself makes clear, a mere overlapping consensus. The political conception about which an overlapping consensus arises, does not rest on shared reasons: each "individual citizen as a member of civil society" finds in his own comprehensive doctrine the arguments to convince himself or herself that the conception truly contains the principles of a just and democratic society. For example, the principle of toleration may be defended either by referring to the value of individual freedom, or to the virtue of Christian charity. According to Rawls's picture of how an overlapping consensus arises, "public justification happens when all the reasonable members of political society carry out a justification of the shared political conception by *embedding* it in their several reasonable comprehensive views"**[vi]**.

What's more, public reason demands of us that we do not form an opinion or at any rate do not express an opinion about the arguments that supporters of other comprehensive doctrines bring forward in support of the political conception. (These restrictions are part of what Rawls has called "the limits of public reason" and – in earlier papers – "the method of avoidance of controversy"): "Citizens do not look into the content of others' doctrines, and so remain within the bounds of the political. Rather, they take into account and give some weight to only the fact – the existence – of the (…) overlapping consensus itself"**[vii]**.

It will be obvious that, in Rawls political philosophy, public discussion and argumentation do not contribute to establishing the consensus. "Public" justification "happens" when there are political principles at which the comprehensive doctrines existing in society converge. In order to determine whether or not this is the case, we do not even have to talk to supporters of doctrines different from our own. We can find out by other means, such as referendums or surveys. Of course, once an overlapping consensus concerning a conception of justice is established, this conception may form a public basis for political discussion (for example, about how to apply the conception in particular cases or in novel situations). Consensus is only the basis for public political discussion, not its result. Moreover, the political conception which is the object of an overlapping consensus is 'complete' and therefore "give(s) an (…) answer to all (…) questions involving the constitutional essentials and basic questions of justice". Citizens who want to act in a way that is reasonable according to Rawls' interpretation of public reason, will only engage in public argumentation and discussion *after* all important political issues are settled**[viii]**.

The reason for this lack of appreciation for public argumentation and discussion is quite simple: Rawls does not believe that public argumentation and discussion will lead to a consensus, to a common basis for social life. Quite the reverse, argumentation and discussion will only lead to more discussion; it will only lead to endless controversy and therefore does not solve the problem of social unity and stability.

Many critics of Rawls's political philosophy have argued that an interpretation of public reason according to which public argumentation and discussion are only of minor importance is contrary to the facts of social life in a democracy. Rawls is absolutely right in claiming that every plausible interpretation of our contemporary democratic society must start from the fact of pluralism and the fact of oppression. But we must also take into consideration the fact, just as typical of the political culture of a democratic society, that "people continue to

debate moral questions with reasons they take to be compelling, (…). They engage in moral discourses in everyday life as well as in politics, most especially disputes about concerning constitutional principles. (…) Citizens tacitly attribute to each other a moral sense or a sense of justice operating across the boundaries between different worldviews”**[ix]**.
Rawls cannot deny the relevance of this fact to political philosophy**[x]**, since it challenges the very idea of an overlapping consensus. It demonstrates that citizens are willing to criticize each other’s reasons for agreeing to the conception of justice, thereby to jeopardize the overlapping consensus and to start controversies and discussions without knowing whether they will lead to a consensus.

Moreover, the problem is not only that argumentation and discussion, contrary to Rawls’ interpretation of public reason, is of major importance to the political culture of democratic society. If Rawls is trying to argue simultaneously that the political conception about which an overlapping consensus exists, is a conception of *justice* but should *not* be the subject of public discussion, his position may be inconsistent. For the following epistemological principle seems plausible: a speaker who makes a sincere statement is thereby committed to the claim that others would converge stably on his statement, unless the speaker could fault the judgment of the others (as being misinformed or prejudiced or incompetent). This principle is called ‘the ideal of consensus’ by John Skorupski**[xi]**.
If I believe myself to have good arguments for a particular judgment (for instance concerning the moral justification of a certain conception of justice), these arguments must be good enough for others and so I must believe that those others will (ultimately) come to agree with my judgment. Consequently, if Rawls persists in conceiving of a political conception as a *moral* conception of *justice* – limited to the political, it is true – but to which citizens agree for *moral* reasons and which creates a social structure which we may call *fair* or *just*, he cannot consistently proscribe discussions about the grounds of the political conception.

This epistemological objection and the general epistemological principle on which it rests, have direct practical bearing on the relationship of citizenship. For the commitments to argument and discussion that follow from the ideal of consensus are not unconditional: if I have reasons to doubt the judgment of certain others, we may consistently ignore the fact that they object to our (moral) judgments, while continuing to view these judgments as justified. But this does not apply

when the objections come from a fellow citizen. To recognize somebody as a fellow citizen, is, at least on Rawls own conception of this, to recognize him as a reasonable being, whose judgment on political issues cannot be faulted: "In order to fulfill their political role, citizens are viewed as having the intellectual and moral powers appropriate to that role, such as a capacity for a sense of political justice given by a liberal conception (…)" (Rawls, 1996, xlvi). Where political issues are at stake, we cannot ignore the objections or criticism of other citizens.

What Rawls does not seem to appreciate is the fact that to examine, criticize and discuss arguments may be a mark of respect for the person who has brought them forward. "Looking into the content" of doctrines different from our own, may be part of our respect for the citizens supporting those doctrines. If, adopting Rawls' limits of public reason, we refrain from judging the statements and arguments brought forward in support of a doctrine different from our own, we may perhaps be able to recognize what validity certain of these arguments have for their supporters – relative to their particular religious, moral or philosophical doctrine. In this sense we acknowledge that the supporters of different doctrines have the right to form their own opinion concerning the moral principles of our society on the basis of whatever (reasonable) doctrine they happen to support. However, we are not able to view their choice in favor of the political conception of justice and their arguments in support of that choice as claims to validity that may demand our judgment**[xii].** Consequently, we do not view supporters of other doctrines as person who may have the capacity to come to a sound judgment about a political conception of justice.

In short, Rawls' interpretation of public reasonableness appears to imply that citizens adopt towards fellow citizens supporting a different comprehensive doctrine, an 'objective' of objectifying attitude of an observer (as opposed to a 'reactive' attitude in the sense of Strawson or a 'performative' attitude in the sense of Habermas). This suggest that public reasonableness is in Rawls's interpretation a form of strategic rationality: as citizens in pluralistic societies, we have to live with others who have a profoundly different view on life; and as *reasonable* citizens, our only aim is to coordinate our social life in a way that we find morally acceptable. This form of strategic rationality is only modified by the mere fact that citizens happen to share certain moral values, as embodied in the political conception that is the focus of an overlapping consensus. Certain values may be shared, but the valuing by the citizens is different and the respective

valuing is indifferent to supporters of different philosophical, moral and religious doctrines (Postema, 1995).

3. Communicative power

Any plausible interpretation of democratic legitimacy and of public reason in a democracy must acknowledge the importance of public argumentation and discussion for political an social life. As is well known, such an interpretation was presented by Jürgen Habermas. Habermas distinguishes between '*administrative*' power, the sanctioning, organizing, and executive power of the state and its servants that is necessary to enforce decisions on the one hand, and 'communicative' power, the kind of power that is created in and through communication or free and fair deliberation on the other hand.

Communicative power comes into existence when opinions gain approval in 'the process of opinion- and will-formation', as Habermas calls it, that takes place in the political public sphere and in parliament. By taking over from Hannah Arendt the term communicative *power* Habermas wants to indicate that the state, as the apparatus of public administration, can be forced to some extent to execute and enforce the decisions agreed upon after public discussions. To the extent that the exercise of administrative power is subordinate to communicative power and consequently executes the decisions agreed upon after public discussion, it may be called 'reasonable'. In general, therefore, the reasonableness of political power – administrative or communicative power – derives from the consensus among the citizens that is produced in public deliberation.

Obviously, not every consensus is rational or reasonable. Consensus in a discussion may be imposed by insincere rhetoric, by manipulation and deception and by excluding speakers, objections and arguments from the discussion. In a democratic public sphere, conceived as ideal, all this is excluded, however. For human rights and democratic principles are, according to Habermas, nothing but the legal translations of rules of reasonable discussion. These rules are assumed to neutralize all undue influence: before "taking the floor" in the public sphere, those who hold (political, social or economic) power must, as it were, lay it down. In short, in the public sphere of an (ideal) democracy, a 'cooperative search for truth' takes place. Consequently, the exercise of power is proper from a democratic point of view only if it is aimed at executing the results of this search for truth.

Moreover, if, starting out with different positions, citizens finally reach agreement

after a free and fair debate in which the different opinions and arguments have been questioned and criticized without mercy, such an agreement may be considered an indication that the conclusion is true. So when citizens, 'respected as free and equal' agree after discussion to the same conception of justice for a democratic society and are convinced that it is a morally right conception for which sound moral reasons can be given, then that consensus is an – of course, defeasible – indication that the principles in the conception are morally right, truly principles of a just society (analogous to the predicate 'true' that we attribute to empirical statements or scientific theories).
Undoubtedly, in Habermas's interpretation the requirements for legitimate government are very strict: political power is legitimate, if it is reasonable, if, that is to say, those in government execute the decisions about which citizens have reached consensus after discussions under conditions of rational communication. That may be an attractive ideal of radical democracy. But it implies that communicative power comes into existence only when citizens reach agreement. Critics of Habermas have pointed out time and again that his confidence that discussion leads to consensus and that disagreement is only temporary, is an aspect of what Richard Rorty likes to call 'the Enlightenment idea of reason'. That is to say: "the theory that free and open discussion will produce "one right answer" to moral as well as to scientific questions"**[xiii]**. The same objection is voiced by Rawls in his *Reply to Habermas* accuses Habermas position of being "a comprehensive doctrine that covers many things far beyond political philosophy"**[xiv]**: such a theory of reasonable discussion cannot be an acceptable basis for a political philosophy.

Much that has already been said about Habermas' theory of rational discussion must not be repeated for the purpose of this essay. With regard to the interpretation of the interpretation of political reasonableness, it is sufficient to refer to the facts about contemporary society that Rawls has called "the fact of reasonable pluralism". Within the time span that is *politically* relevant, "conflicts arising from the burdens of judgments always (…) remain and limit the extent of possible agreement"**[xv]**. What is more, Rawls rightly emphasizes that the existence of disagreements and pluralism in contemporary society is not a deficiency which would disappear in an ideal democracy. Quite the reverse, they are part of what makes our societies democratic and, moreover, what we especially appreciate in our societies: "This pluralism is not seen as a disaster but rather as the natural outcome of the activities of human reason under enduring

free institutions. To see reasonable pluralism as a disaster is to see the exercise of reason under the conditions of freedom itself as a disaster", (Rawls, 1996, 136, xxvi-xxvii, cf. also 39, 135); (Rawls, 1999a, 673). If Habermas presents disagreement as a shortcoming and looks forward to an ideal democracy without disagreement, he does not quite understand what makes our societies democratic.

4. Discussion and power without consensus

Rawls and Habermas present us with their interpretation of political reason. Both of these interpretations appear to be contrary to some uncontroversial facts about democracy. The fact that their interpretations are both in one way or another unsatisfactory may suggest that they share certain assumptions that are problematic.

However different their interpretations may be, Rawls and Habermas accept the same general idea about what constitutes a reasonable exercise of power. This is idea that the exercise of power is proper only if we are able to show in advance and on the basis of independent criteria that a political decision is reasonably acceptable to the citizens. In all other cases the relations in the polity are nothing but relationships of brute power**[xvi]**. In Rawls's interpretation the exercise of power is reasonable, if we can show that it is subjected to certain political principles about which there exists an overlapping consensus among the citizens. According to Habermas, power is reasonable if it aims to put into practice the decisions about which citizens have reached consensus after reasonable discussion. In both cases the exercise of power is deemed proper or legitimate, if it is somehow sanctioned by an existing consensus. In that sense coercion is, in principle, unnecessary in a democratic polity. However, the problem is that such a consensus just does not exist. If ever something like Rawls' overlapping consensus were to arise, it might be jeopardized at any moment, because citizens refuse to accept limits to public discussion as proposed by Rawls and insist on discussing freely with every other citizen all matters of political importance and they do so with good reason. Yet at the same time, they know very well that such discussions will not or will not always lead to reasonable consensus, as Habermas expects**[xvii]**.

An alternative interpretation of political reasonableness suggests itself, if we consider the following two points.

Firstly, both Rawls and Habermas assume that the significance of public argumentation and discussion, politically speaking, is that it will lead ultimately to

consensus, to a common opinion or will. In the case of Habermas this assumption is obvious. But this conception of the significance of public argumentation and discussion is also assumed by Rawls. For Rawls imposes limitations on public discussion because he correctly expects that such discussions will not lead to consensus. This shows that he does not expect anything else from public discussion an argumentation. In contrast to this view of public discussion, we must acknowledge that what is shared in the public sphere of a democratic society is not – or not primarily – the *product* of deliberation, that is to say, a shared conclusion. What is shared is the *process* of deliberation, the very existence of a public sphere: the fact that citizens who live geographically dispersed deliberate with each other and speak out about the exercise of power by the same rulers**(xviii)**. As a matter of fact, the role of argumentation and discussion in a democracy appears to be paradoxical: on the one hand, public argumentation is argumentation in a true sense: it is a complex of speech acts with which we try to convince a listener; but, on the other hand, the political significance of public argumentation and discussion cannot be reduced to that of a process leading to consensus, because often it does not.
Secondly, in an article discussing Rawls's overlapping consensus and his limitations on public discussion and pleading in favor of the political virtues of unlimited discussion, Jean Hampton has pointed out that Thomas Hobbes has an alternative solution for the problem of social unity and stability: "It would be, in (Hobbes's) eyes , a hopeless task to try to find any significant overlap of views in pluralist societies such as ours (…). Stability (…) is something that we pursue via polity and not via consensus on ideas. Only a ruler with the power to have the last word is able to forestall conflict"**(xix)**. Since in the interpretations of Rawls or Habermas the legitimate exercise of power is sanctioned, ideally, by the consensus of the citizens, those in power precisely do not have the independence to speak the last word.

Obviously, these two remarks are connected: if we expect public discussion among citizens to produce a common opinion or will (contrary to the first remark), we do need independent rulers in order to 'speak the last word' (contrary to the second remark). In order to understand the legitimacy of power in a democracy, we must acknowledge that, even in a democracy, political power is in a sense autonomous. It is more than administrative power, more than a matter of putting into practice principles or policies agreed upon by the citizens. Consequently, we must accept that democratic politics is the struggle for power

and is fought according to its own rules. Whoever wants to rule, however lofty his or her intentions, must accept the rules of the game.
In order to understand the reasonableness that political power may acquire in a democracy we must acknowledge that the political significance of public argumentation and discussion cannot be reduced to the fact that it leads to consensus and that we may therefore need independent rules to “speak the last word”. How must we then conceive of the relationship between this independent exercise of power and its endorsement by the citizens, so that we may say that the exercise of power derives some reasonableness from it?

In a democracy, the rules of the political game compel those struggling for power to submit regularly to the decision of the voters. At the time of the elections, ideally, the citizen who is subjected to political power, acts as a powerbroker apportioning power. As Hannah Arendt has put it in the quotation with which I started this paper “the people are supposed to rule those who govern them”. To understand the role of political reason in this game of power, however, we must not overlook the fact that a citizen not only holds power as a voter, but also has the right to speak, and perhaps more importantly, to *listen* in the public sphere.

Because of that double role, politicians struggling for power in a democracy cannot disregard the opinions that are being formed in the public sphere. The expression ‘communicative power’ that Habermas has adapted from Arendt is very useful to express the fact that the rules of the struggle for power in a democracy ensure that those in power cannot ignore opinions that gain acceptance in the public sphere. My suggestion is therefore that we will understand how political power acquires a certain form of reasonableness in a democracy, if we understand this notion of communicative power correctly.

Three remarks are in order.
Firstly, although I am happy to appropriate the expression ‘communicative power’, I do not want to use this expression in the very idealized meaning that it has in the work of Habermas (and Arendt). Communicative power is, in my view, not the privilege of the one common opinion about which the citizens have reached agreement. Moreover, I do not imagine that the public sphere in which communicative power is generated, is in some sense exceptionally reasonable and free from relations of power. It is the rules of the power game that force politicians to get involved in what happens in the public sphere. We know what they want even in the public sphere: they want power and obedience. Other

citizens may not directly strive for political power, but they seek fame, prestige or influence, or indeed may try to promote their own interests. We cannot presuppose that speakers in the public sphere intend to participate in 'a cooperative search for truth', to use another term of Habermas. Communicative power as I would like to use the expression, is a purely rhetorical concept. It is a function of the support that an opinion enjoys in the beliefs of the citizens. But this does not imply anything about the wisdom of the opinion or the fairness of the process in which the opinion has gained support.

Secondly, communicative power is an attribute of opinions or beliefs that are formed, confronted and judged in the public sphere. Although public argumentation and discussion in the public sphere is not imagined to be fair or equal, to the extent that it involves a process in which opinions or beliefs are formed, it displays a certain reasonableness. For instance, it does exclude violence, coercion and bribery. The fact of the matter is that we may be able to force or bribe someone to say whatever we like, but we cannot make him believe it. Violence, coercion and bribery are in principle excluded from the public sphere because of the fact that any speaker, however unscrupulous, has to compete for the opinion of the citizens(xx).

Thirdly, opinions or beliefs imply the claim that they are true (or correct, or valid) and based on sound arguments. Opinions or beliefs are therefore by definition vulnerable and temporary: as soon as we realize that there aren't any sound arguments for one of our beliefs or that the arguments that used to justify it to us, appear no longer sound to us, we feel we should give it up. Communicative power is therefore an attribute of opinions which are vulnerable to objections. By formulating convincing objections to opinions that circulate in the public sphere, we change the balance of communicative power, so to speak. To the extent that those holding political power – in the narrow sense – are dependent on communicative power, we may affect their political power by discussing and criticizing opinions in the public sphere.

Conclusion

We are now in a position to explain in what sense the exercise of political power may acquire a measure of reasonableness in a democracy and what is required of the citizens of a democratic society. To put the matter metaphorically, we may say that political power in a democracy is reasonable to the extent that it acquires the vulnerability or fragility of opinion. A little more clearly, we may say that citizens in a democracy have reasons to comply with a particular decision of those

exercising power, even if they do not agree with that decision. They have reasons because they know that public argumentation and discussion in the public sphere will not lead – in the time available – to a consensus, to a common opinion, and also because they know that those decisions are linked to opinions about which the debate may be reopened at any moment so that there may always be new opportunities to convince their fellow citizens of their own opinion.
To conclude, what is demanded of reasonable citizens in a democracy is not that they accept certain limits of public argument and discussion, nor that they are willing to subject all their opinions to merciless criticism in a so-called rational discussion. What is demanded of reasonable citizens is that they have sufficient confidence in the process of public argumentation and discussion and in the communicative power that opinions may gain in the public sphere, so that they are willing to give a certain amount of autonomy to those exercising power.

NOTES
[i] (Habermas, 1992); (Rawls, 1996). In 1995 Habermas and Rawls discussed their respective positions in The Journal of Philosophy: (Habermas, 1995), (Rawls, 1995).
[ii] (Larmore, 1999), 599.
[iii] For a overview of these interpretations, see (Blaug, 1996) and (Bohman, 1998).
[iv] (Elster, 1986); (Blaug, 1996, 50-51) ;(Dryzek, 2000, 10-12); (Bohman, 1998, 401).
[v] (Rawls, 1996, 147); (Rawls, 1987, 422) ; cf also (Larmore, 1996,121, 145).
[vi] (Rawls, 1996 657, 387, my emphasis, cf. 384, 386, 38, 529). That is what Rawls means when he stipulates that a political conception of justice must be ‘freestanding’ : “justice as fairness is to be understood at the first stage of its exposition as a freestanding view that expresses a political conception of justice. It does not provide a specific religious, metaphysical, or epistemological doctrine beyond what is implied by the political conception itself (…) The political conception is a module, (…) that in different ways fits into and can be supported by various reasonable comprehensive doctrines (…)”, Ibid., 144-145.
[vii] (Rawls, 1996, 387, cf. 375).
[viii] (Habermas, 1996a, 84) = (Habermas, 1996b, 106): “What Rawls calls the “public use of reason” presupposes the shared platform of an already achieved political consensus on fundamentals. The citizens can avail themselves only post festum, that is, as a consequence of the emerging “overlap” of their different

background convictions".

[ix] (Habermas, 1996a, 78) = (Habermas, 1996b, 99). See also (Scheffler, 1994, 16-17). (McCarthy, 1994, 53), (Baynes, 1992, 55).

[x] Of course, Rawls does not deny the fact, but he denies that it is relevant for political philosophy: "all discussions are from the point of view of citizens in the culture of civil society, which Habermas calls the public sphere. There, we as citizens discuss how justice as fairness is to be formulated, and whether this or that aspect of it seems acceptable – (…) It is the culture of the social, not of the publicly political" (Rawls, 1996, 382-383, see also 214-215). It is not clear to me how we must view these discussions "in the culture of civil society": are they discussions between supporters of the same comprehensive doctrines (inside the associations that are dependent on a particular doctrine) or are they fundamental discussions between supporters of different doctrine in which we also discuss the arguments that supporters of different doctrines from our own bring forward in favour of the political conception of justice?

[xi] (Skorupski, 1996, 110); (Skorupski, 1985-1986); Cf. (Wright, 1992). (Habermas, 1996b, 108); (Habermas, 1981, 417-418) = (Habermas, 1984, 397-399). This general epistemological principle applies especially in the case of moral judgments and arguments, since we are apt to accept that the force of moral judgments and arguments are not relative to a personal perspective.

[xii] (Habermas, 1996b, 105) = (Habermas, 1996a, 83): "Observers can describe what happens in the political realm, for example, that an overlapping consensus has occurred. (…) But in the objectifying attitude of observers citizens cannot penetrate each others' worldviews and judge their truth content from the internal perspective peculiar to each. (…) They cannot take a stand on what committed participants claim to be true, right, and valuable from their first person perspectives".

[xiii] (Rorty, 1991b, 175-176). Cf. (Rorty, 1991a).

[xiv] (Rawls, 1996, 376).

[xv] (Rawls, 1996, li, 240-241). Cf. (McCarthy, 1994, 55); cf. (Baynes, 1992, 57-62).

[xvi] (Rawls, 1999b, 578); see also (MacIntyre, 1985, 11); (Taylor, 1995, 308-309); (Larmore, 1999, 600).

[xvii] One of the merits of Habermas's interpretation of democracy is the fact that he explicitly analyses the notions of power and force. This suggests that power, coercion and even force are inevitable aspects of even the most democratic society. That insight, however, is spoiled by the emphasis on

consensus. (This was pointed out to me by Wilfried Goossens). If decisions are freely made by consensus, what need is there for a state apparatus with the administrative power to enforce them? The use of coercion is an indication that something went wrong, that a rational consensus is not always possible or that citizens are not always reasonable enough to abide by reasonable decisions. In Habermas's interpretation of democracy, administrative power and coercion are defects of actual democratic societies which would disappear in an ideal democracy. But then the meaning of the expression 'communicative power' is uncertain. For in Habermas's interpretation it gets its meaning because of the opposition to 'administrative power'. Habermas uses the expression to indicate that the state apparatus and those with administrative power can be forced to execute the decisions reached in the public sphere. Ultimately, the origin of political power is still the gap between the ideal democracy that includes ideal consensus and perfectly reasonable discussions which are purged of all power on the one hand and the actual situation of contemporary society on the other hand.

[xviii] (Taylor, 1995, 261-263).

[xix] (Hampton, 1989, 800-801); cf. also (Gauthier, 1995).

[xx] For the conception of argumentation and discussion on which this and the following paragraph are based, see (Heysse, 1998).

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ISSA Proceedings 2002 – Toulmin's Warrants

In *The Uses of Argument* (1958), Stephen Toulmin proposed a new, dialectically grounded structure for the layout of arguments, replacing the old terminology of "premiss" and "conclusion" with a new set of terms: claim, data (later "grounds"), warrant, modal qualifier, rebuttal, backing. Toulmin's scheme has been widely adopted in the discipline of speech communication, especially in the United States. In this paper I focus on one component of the scheme, the concept of a warrant. I argue that

those who have adopted Toulmin's scheme have often distorted the concept of warrant in a way which destroys what is distinctive and worthwhile about it. And I respond to criticisms of the concept by van Eemeren, Grootendorst & Kruiger (1984), Johnson (1996) and Freeman (1991). Their criticisms show the need for some revision of Toulmin's position, but his basic concept of warrant, I shall argue, should be retained as a central concept for the evaluation of arguments.

1. Toulmin's conception

Despite the pluralism implicit in his title, Toulmin articulated his proposal for the layout of arguments in the context of a single use of argument, that of justifying one's assertion in response to a challenge (Toulmin, 1958, 12). The proposed layout emerges from consideration of the questions that could arise in such a challenge. Prior to the challenge, there must be an assertion, in which there is involved a *claim*, by which Toulmin appears to mean the proposition asserted. A challenger's first question in response to such an assertion is something like, "What do you have to go on?", to which the answer will be *data* (Toulmin, 1958, 97) or *grounds* (Toulmin, Rieke & Janik, 1984, 38). But a challenger who accepts as correct the information given in answer to such a question can still ask a further question: "How do you get there?", to which the answer will be the *warrant* (Toulmin, 1958, 98; Toulmin, Rieke & Janik, 1984, 46). Whereas the data or grounds are the basis of the person's claim, the warrant is the person's justification for inferring the claim from those grounds. Justifying a step from grounds to claim, according to Toulmin, requires appeal to general considerations: "What are needed are *general*, hypothetical statements, which can act as bridges, and authorise the *sort* of step to which our argument commits us." (Toulmin, 1958, 98; italics added) Warrants may be qualified by such *modal qualifiers* as "probably" or "generally" or "necessarily" or "presumably", a fact generally reflected by qualifying the claim; if the warrant is defeasible, then conditions of exception or *rebuttal* may be mentioned. Finally, a challenger may ask for justification of the warrant, to which the answer will be a proposed *backing* for the warrant.

To repeat Toulmin's hackneyed and familiar example, suppose someone asserts, "Harry is a British subject." A challenger requests justification of this claim, to which the reply is, "Harry was born in Bermuda." The challenger further asks how this ground supports the claim, to which the reply is, "A man born in Bermuda is generally a British subject." As a defeasible warrant, this assertion

has conditions of rebuttal, which could be made explicit: “unless neither of his parents is of British nationality or he has changed his nationality”. Asked to justify the warrant, the author of the claim will cite the British Nationality Acts, where these rules for determining nationality are set out. (Toulmin, 1958, 99-102)

Toulmin equivocates on whether a warrant is a statement or a rule, often within the space of one or two pages**[i]**. The equivocation is harmless, since a warrant-statement is the verbal expression of a warrant-rule. But a rule is more basic than its verbal expression as a statement. A warrant, then, is a general rule which licenses or permits a step from grounds of a certain sort to a corresponding claim. It is implicit in the arguments people put forward to justify their claims (Toulmin, 1958, 100), or at least not always explicit (Toulmin, Rieke & Janik, 1984, 56). Although the same universal sentence may be used in one context to state one’s grounds for a claim and in another one’s warrant for inferring a claim from grounds, the two statements will differ in their logical function. For example, the sentence “All the children in this class have been vaccinated” when used to support a claim provides supposedly established information, but when used to justify an inference licenses a transition from grounds to a claim which is being established; the difference in function could be “hinted at”, Toulmin coyly claims, by expanding the sentence to read in the first case “Whoever is a child in this class has been found to have been vaccinated” and in the second case “Whoever is found to be a child in this class you may take to have been vaccinated”. (Toulmin, Rieke & Janik, 1984, 47-48; Toulmin, 1958, 99)

Toulmin’s concept of warrant has parallels in theoretical discussions of reasoning. It corresponds to what Charles Sanders Peirce calls a “leading principle” of a class of inferences, which he defines as a proposition related to a habit of inference which states that every proposition c which is related in a given general way to any true proposition p is true (Peirce, 1955, 131). Similarly, it corresponds to what John Pollock calls a “reasoning scheme” or “reason-schema” (Pollock, 2000, 243). The concept of an argumentation scheme derived from the work of Perelman and Olbrechts-Tyteca (1958) is similar. Toulmin’s warrants, Peirce’s leading principles, Pollock’s reason-schemas and Perelman’s argumentation schemes are all general principles in accordance with which we reason or argue. They are not grounds from which we argue. The distinctive contribution of all four theorists is their claim that the rules by which we draw conclusions from reasons, or support claims with reasons, are in general not purely formal but substantive.

Neither Peirce nor Pollock justifies their assertion that our reasoning proceeds in accordance with such implicit principles; they seem to take this as a fact evident to all those who reflect on their own reasoning. Perelman and Olbrechts-Tyteca cite numerous examples from the western rhetorical and literary tradition to support their taxonomy of argumentation schemes. Toulmin's only justification for distinguishing warrants from the other components of arguments is that they are responses to a different question from a challenger. He provides no justification for his claim that an adequate response to the question, "How do you get from your grounds to your claim?" must be a general hypothetical statement rather than a particular one confined to the specific case. If one were to construct such a justification from the hints he gives, it might be that one needs to be able to justify the warrant independently of the particular case to which it is applied, and that such an independent justification can only come if it makes no reference to the particular case, i.e. is general.

2. Misconceptions

2.1. A warrant is not a kind of premiss

In some of the textbook literature, warrants and grounds are presented as two different types of premisses. This attempt to fit Toulmin's scheme into traditional terminology is radically misconceived. Toulmin himself explicitly presents his distinction between grounds and warrant as a replacement for the traditional distinction between minor premiss and major premiss: "Is there even enough similarity between major and minor premisses for them usefully to be yoked together by the name of 'premiss'?" (Toulmin, 1958, 96) His negative answer to this question emerges in his subsequent distinction of warrants from grounds, with no proposal of a common genus, and is reflected in the complete absence of the word "premiss" from both editions of his textbook.

In order to decide whether a warrant is a premiss, we would have to clarify what we mean by the word "premiss". The word, and its Latin and Greek ancestors, have a long history in the western logical tradition, going back to Aristotle's word *protasis* (*Topics* 101b15-16). In this tradition, a premiss is that from which an argument starts, i.e. that from which the conclusion is presented as following. If we ask which component or components in Toulmin's scheme fit the traditional meaning of the word "premiss", the answer is quite clear: Toulmin's grounds are premisses in the traditional sense, propositions *from which* the claim is presented as following, but no other component of Toulmin's scheme is a premiss. In

particular, a warrant is not a premiss. The claim is not presented as following from the warrant; rather it is presented as following from the grounds *in accordance with* the warrant. A warrant is an inference-licensing rule, not a premiss.

2.2. A warrant is not *an implicit premiss*
It follows immediately that the warrant is not an implicit premiss. It is true that warrants are implicit, at least in Toulmin's initial formulation: "data are appealed to explicitly, warrants implicitly." (Toulmin, 1958, 100) But, as already argued, they are not premisses. And in fact they may be explicit, according to Toulmin's later position in his textbook (Toulmin, Rieke & Janik, 1984, 46, 56). It is not their implicitness which distinguishes warrants from grounds, but their functional role.
Toulmin's scheme is completely antithetical to the traditional approach of attributing implicit premisses to arguments. The supposed implicit premiss is on Toulmin's approach not a premiss at all, but a warrant.
It strikes many commentators as a mere verbal difference to call an implicit component of an argument a "warrant" rather than a "premiss". But the distinction is more than verbal. The implicit-premiss approach assumes that a good argument must be either a formally valid argument, or a modally qualified formally valid argument, or a formally inductively strong argument, or an argument possessing some other sort of formal connection adequacy. But arguments which intuitively strike us as quite respectable are not formally correct, in any of these senses. To reconcile their intuitive respectability with the assumption that a good argument has a formally adequate connection between premisses and conclusion, the fiction of an implicit premiss (variously called "hidden", "missing", "tacit", "unexpressed", etc.) is invented. And the problem becomes one of discovering something that is not there. In particular, if one seeks an implicit premiss whose explicitation will produce a formally valid argument, then it can be proved that any such implicit premiss will be at least as strong as the proposition that it is not the case that the premisses are true and the conclusion false**[ii]**. But this proposition, though a logical minimum, is less strong than the implicit assumption which sophisticated argument analysts attribute to arguments. So one resorts to ad hoc devices to explain and predict this stronger assumption, e.g. the notion of a "pragmatic optimum" (van Eemeren & Grootendorst, 1992, 64-68).

Toulmin's concept of a warrant explains immediately why the implicit assumption

is stronger than the logical minimum required to produce some sort of formal connection adequacy. The implicit assumption is not an implicit premiss, but the statement of a rule used to infer the conclusion from the premisses (or, in Toulmin's terminology, to license the step from the grounds to the claim). As a rule, it is general. It applies not only to the argument at hand, but also to all arguments similar in the relevant respects. The warrant entitles us to infer (presumptively) not only the British nationality of Harry, but also the British nationality of a host of others born in Bermuda: Jane, Sarah, George, Sam, and so on.

There is another substantive difference between regarding the implicit assumption as an implicit premiss and regarding it as a warrant. When one searches for an implicit premiss, one is looking for something which the argument needs in order to be a good argument or for something which the arguer actually used to generate the conclusion from the premiss(es)**[iii]**. In either case, one assumes that there is a unique answer to one's question. The warrant approach, however, needs no assumption of a unique answer to the search for what is implicit in an argument's inference of a conclusion from its explicit grounds. If it is not possible to ask the author of an argument, "How do you get from your grounds to your claim?", the question is better construed as the question, "How might you get there?" And to this question there will in general be a variety of possible answers, varying according to how wide a scope of generalization one assumes and which parts of the content of the argument one abstracts from. As to scope, the warrant Toulmin constructs for his imaginary argument about Harry is limited in scope to human beings; it does not license inferences from the birth in Bermuda of snakes, chickens, cows and other non-human animals to their being British subjects. A broader warrant would equally well license the inference about Harry, but it lacks the required backing. As to the parts of the content from which one abstracts, consider a common argument that marijuana should be legalized because it is no more dangerous than alcohol, which is legal. Among the general rules which would license the step in this argument from the grounds to the claim are the following: given that something is no more dangerous than alcohol and that alcohol is legal, then you may take it that that thing should be legalized; given that something is no more dangerous than something else that is legal, then you may take it that the first thing should be legalized; given that marijuana is no more dangerous than something that is legal, then you may take it that marijuana should be legalized; given that one thing is no more dangerous than another

which has a certain social status, then the first thing should be given the same social status; and so forth. These possible warrants differ from one another with respect to which parts of the argument's content one abstracts from – "marijuana", "alcohol", "legal" or some combination of these content expressions. The question, then, is not which of these possible warrants the argument actually assumes, for this question has the false presupposition that just one of them is so assumed. The question is rather whether any of these possible warrants is an established warrant, i.e. whether the step from grounds to claim is in fact justified. It is a question of argument evaluation, not a question of argument reconstruction.

2.3. A warrant is not an ungeneralized indicative conditional
Freeman (1991, 53) says that for Toulmin warrants are expressible in the form, "If D, then C", where D are the data and C the claim. Taken at face value, this reading misses the generality of warrants, which is one of their key features. For Toulmin, a warrant never has the form, "From these data, you may take it that this claim is true." It always has the form, "From data of this kind, you may take it that a corresponding claim of this sort is true." He may be mistaken in believing that inference-licenses are always general, but this belief is a key part of his conception of a warrant, and it must be respected in presenting his position.
Toulmin does in fact write that warrants are expressible in the form, "If D, then C"(1958, 98), but he expressly describes warrants as general, hypothetical statements, as quoted above. And every example of a warrant given in his textbook and accompanying manual is a general statement which covers more than the particular argument of which it is a warrant. To make Toulmin's position consistent, we must construe him as meaning "If D, then C" to express a generalized conditional, generalized over some component content(s) of D and C **[iv]**.

3. Objections
3.1 Difficulty of practical application
Van Eemeren, Grootendorst & Kruiger assert that "it is often difficult in practice to establish… exactly which statements are the data and which statement is the warrant." (van Eemeren, Grootendorst & Kruiger, 1984, 205) They note that the main distinction is supposed to be the difference in function, between providing the basis of the claim and justifying the step from this basis to the claim. Other criteria can be used in combination with the functional one: particularity of the

data vs. generality of the warrants, explicitness of the data vs. implicitness of the warrants. In practice, they allege, data and warrants "are totally indistinguishable" (van Eemeren, Grootendorst & Kruiger, 1984, 205).

Van Eemeren, Grootendorst & Kruiger do not justify their claim of frequent difficulty in practice of making the distinction. They illustrate it with an invented and rather unrealistic example; the example raises a specific problem which will be the next objection discussed. The way to test a claim that it is difficult in practice to apply a certain theoretical distinction is to take some examples and apply it. I did this for a sample of 50 arguments extracted by random sampling methods from several hundred thousand English-language monographs in the library of a research-intensive university (Hitchcock, forthcoming). For 49 of the arguments, I had no difficulty in singling out an applicable "inference-licensing covering generalization", as I called it, and distinguishing it from the grounds adduced in explicit support of the claim. The generalization so distinguished was sometimes convoluted and difficult to state in comprehensible English, but that difficulty does not tell against the legitimacy of Toulmin's distinction between data or grounds on the one hand and warrant on the other. On the basis of this sampling, I conclude that the claim of van Eemeren, Grootendorst and Kruiger is false: it is seldom difficult in practice to distinguish the grounds of an argument from its warrant.

3.2. Occurrence of general statements as grounds and of particular statements as warrants

As their illustration of the supposed difficulty of establishing which statements are the data and which statement is the warrant, van Eemeren, Grootendorst & Kruiger (1984, 205) invent a scenario in which the warrant in Toulmin's hackneyed example functions as the datum and the datum functions as the warrant. Someone says, "Harry is a British subject." Asked "What have you got to go on?", she replies, "A man born in Bermuda is a British subject." Asked "How do you get there?", she replies, "Harry was born in Bermuda." If we follow Toulmin in taking the functional distinction as basic, then the datum is a general statement, not a particular one, and the warrant is a particular statement, not a general one.

This example raises a problem for Toulmin's claim that warrants are general and data or grounds particular. Since Toulmin does allow that a universal statement can function as a datum, he should say that data or grounds are usually particular statements. As to the warrant in the hypothetical example, it is in form a

particular statement but in function a general inference-licensing rule. If one takes the step from the datum that a man born in Bermuda is a British subject to the claim that Harry is a British subject, one is using something like the following warrant: Given that a man born in Bermuda has some property *P*, you may take it that Harry has property *P*. (Alternatives are possible: one could limit the scope of the warrant to citizenship status, for example.) This statement has exactly the form of a general inference-licensing rule which Toulmin takes to be most distinctive of a warrant. But it is logically equivalent to the particular statement that Harry was born in Bermuda, as can be proved by deducing each statement from the other**[v]**.

Hence, although the datum in this hypothetical example looks like a particular statement, in its function it is a general rule. The point is quite general: every particular statement is logically equivalent to a general statement. For example, a particular statement in a first-order language of the form "*a* has property *P*" is logically equivalent to the corresponding second-order universal generalization, "For any property *Q*, if everything with property *P* has property *Q*, then a has property *Q*." Thus any particular statement can function as a general rule.

Although the hypothetical example of van Eemeren, Grootendorst and Kruiger is unrealistic, examples do occur in which a particular claim is defended by a universal statement. One did, in the sample of 50 arguments mentioned above; it was the one argument of the 50 for which it was difficult to supply a warrant. It occurs in an early 18th century dialogue between two fictional characters who have opposite attitudes to such practices as making the sign of the cross with holy water and wearing surplices, Philatheus opposing them as "Popery" and Timotheus defending them. In the immediate context of the argument extracted by random sampling techniques, Timotheus has characterized the refusal of dissenters like Philatheus to make the sign of the cross with holy water and wear surplices as superstition, on the basis of a mutually agreed definition of superstition as undertaking to make laws of prescribing and refraining in the name of God where God has left us at liberty; Timotheus points out that God has made no laws prohibiting making the sign of the cross with holy water or wearing surplices. Philatheus then says, "I perceive, *Tim<otheus>*, thou resolv'st never to be long in the right: for observe, superstition is to be charg'd upon those, who say these things are injoin'd by God, and necessary to religion, when in Truth they are not so." (Oldisworth, 1709, 141) Here Philatheus claims that Timotheus is in the

wrong. He supports his claim with an atemporal universal generalization, in fact an immediate consequence of the agreed definition of superstition. The difficulty presented by this example is that there is no content common to the claim and the supporting ground on which one could generalize to formulate a warrant; that is, there is nothing like the phrase "is a British subject" in the hypothetical example just discussed. The ground can be made relevant to the claim, however, by supposing that the error alleged in the claim is the error of superstition. In that case, the warrant would be: Thou, Timotheus, say'st these things are injoin'd by God, and necessary to religion, when in Truth they are not so. Though a particular statement, this warrant can function as a general rule, since it is logically equivalent to the following second-order generalization: Whatever is true of anyone who says things are enjoined by God and necessary to religion when they are not, is true of Timotheus.

The fact that a first-order particular statement is logically equivalent to a second-order universal generalization, and thus can function as a general rule of inference, enables us to solve a problem for Toulmin's conception of a warrant raised by a number of critics, including Clark (1956), Cowan (1964) and Freeman (1991, 51). We sometimes encounter arguments such as, "John will not come to the party, because John won't come if Mary is coming." Here, it is alleged, the explicit premiss has the conditional form characteristic of a warrant, whereas the assumption which licenses the inference – that Mary is coming to the party – is a particular fact of the sort typical of a datum. Freeman takes such examples as showing that it is impossible to determine in the case of some arguments *as products* which statements are data or grounds and which statement is the warrant. (He concedes that in an actual conversation, in which there is a *process* of arguing, one can determine which is which by asking the arguer the questions Toulmin takes to elicit the two types of responses: What do you have to go on? How do you get there?) But in the example it is quite clear what the datum is. The arguer has put forward as support the conditional proposition that John won't come to the party if Mary does. This is probably a particular indicative conditional rather than a general one, but even if it were general ("John never goes to parties to which Mary goes"), it would still be functioning as the datum or ground of the argument. How do we know? Because it is the only proposition cited in support of the claim. The warrant is an implicit covering generalization, which may be expressed in Toulmin's quasi-canonical warrant form as follows: If some proposition p is true if Mary is coming, then you may take it that p is true. And

this rule is logically equivalent to the proposition that Mary is coming**[vi]**. To identify this proposition as the warrant is quite consistent with Toulmin's characterization of a warrant as a general inference-licensing rule.

3.3. Misconstrual of the function of generalized conditionals in premissory position

Freeman (1991, 53-72) argues at length against what he takes to be Toulmin's claim, that explicit conditional statements which occur in premissory position are to be construed as warrants, not in the traditional fashion as premisses. Consider the argument: "Peter is a Swede; Scarcely any Swedes are Roman Catholics; so, almost certainly, Peterson is not a Roman Catholic**[vii]**." Freeman construes Toulmin as asserting that general categoricals like the second statement in this argument are either summaries of data, in which case they can serve as backing, or permissive warrants which can go beyond the observed data; similarly for generalized conditionals. Toulmin needs to show, Freeman asserts, that open-ended generalizations like "hydrogen atoms have one proton in their nucleus" always function in arguments as warrants when they are in premissory position. Freeman finds Toulmin's arguments for this position inadequate: they either beg the question or rest on false assumptions about the use of words like "every" and "any". Likewise, Ryle fails in an earlier attempt (Ryle, 1950) to establish that all hypothetical statements express inference rules (Freeman, 1991, 61-68). Freeman notes that Mill anticipated Toulmin's analysis of some universal affirmative categorical propositions as warrants, referring to them as "a memorandum for our guidance" (Mill, 1973, 180). But Mill also allowed, as does Nagel in his critique of instrumentalism in the philosophy of science (Nagel, 1961), that such propositions can be regarded as part of our knowledge of nature, functioning sometimes as premisses. To construe them in such contexts as inference rules is to misconstrue the structure of the argument.

The first thing to note about Freeman's objection is that Toulmin's distinction between data (or grounds) and warrant does not stand or fall with his alleged insistence that all explicit conditionals or universal categorical statements in premissory position are to be construed as warrants rather than premisses. One can allow that explicit conditionals sometimes function as premisses, i.e. in Toulmin's terminology as "data" or "grounds". Here is a realistic example, adapted from a published advertisement about safe driving. Suppose that a driving instructor is explaining to a class what to do if your car starts to skid on

an icy road: take your foot off the gas and turn the steering wheel in the direction of the skid. That will straighten the car out, the instructor might explain, and you can then regain control of the car. “Don’t step on the brakes. If you step on the brakes, your wheels will lock. And if your wheels lock, your car won’t turn.” The claim in the quoted argument is, “Don’t step on the brakes.” The grounds are quite clearly the two conditionals, which as stated have a general applicability to all students being addressed and to all situations in which the car they are driving starts to skid on an icy road. The warrant is something like: “If your car starts to skid on an icy road, don’t do anything that prevents the car from turning**[viii]**.” Since the only propositions which play a role in supporting the claim are the three generalized conditionals, at least one of them must function as a ground. And none of these three conditionals is a mere summary of observed data; all have the open-endedness which is characteristic of a warrant. Faced with examples like this, Toulmin must admit that not all open-ended conditionals which are explicit in arguments but are not the claim are warrants; some are grounds.

Such an admission does not undermine the distinction between data or grounds and warrant. It simply shows that explicit generalized conditionals in premissory position are sometimes grounds. This fact of course reopens the first objection above: how are we to tell in a given case whether an explicit open-ended conditional in premissory position is a ground or a warrant? The default position seems to be that anything explicitly adduced in support of a claim is a ground. It takes some specific indication in the text that an explicit generalized conditional or universal categorical proposition is functioning as a warrant to rebut the presumption that it is a ground. One such specific indication, extremely common in mathematical proofs, is the insertion in the argument of a prepositional phrase containing a name of the proposition, as in the sentence: “A certain neighborhood of this invariant set [represented by a closed curve whose equation has just been given – DH] is compact, and therefore, on the basis of Theorem 6, it will follow from the asymptotic stability that this set will be uniformly asymptotically stable and uniformly attracting; … ” (Zubov 1964, 164)**[ix]** Propositions so cited are conclusions of an earlier proof, as in the present case, where Theorem 6 reads: “An asymptotically stable closed invariant set M of a dynamical system f(p, t), having a sufficiently small compact neighborhood, is uniformly asymptotically stable and uniformly attracting.” (Zubov 1964, 29) The fact that theorem 6 is cited with the prepositional phrase “on the basis of” (and in other more typical cases by the preposition “by”) rather than being stated in full before the conclusion

indicator “therefore” shows that it is not functioning as a premiss but as an inference-license, i.e. in Toulmin’s terms as a warrant. Another indication is that the generalized conditional occurs after the conclusion has been drawn from a premiss (i.e. datum or ground in Toulmin’s terminology) which immediately precedes it, as in the following invented but realistic expression of spousal concern: “You look very tired, so I think you should put off the house-cleaning you were going to do tonight. You shouldn’t exert yourself when you are tired.” Here the ground is that the addressee looks very tired. The conditional which follows the claim seems to come after the argument has already been stated. It does not sound like an additional piece of information offered in support of a claim, but rather like a justification of the step from the ground to the claim, i.e. like a warrant. Although warrants are usually implicit, this example is typical of those are cases where they are explicit.

3.4. Absence of warrants from arguments as products and from our conscious reasoning

Freeman (1991, 81-84) argues that the category of warrant should be jettisoned in analysing arguments as products, on the ground that they are not parts of arguments as products and so not something to be included in argument diagrams. They are not parts of arguments as products, he holds, because they are only implicit in such products and phenomenologically we are not aware of the rules according to which we draw conclusions in our reasoning. This is a strong argument. In laying out the structure and content of an argument, we do well to be faithful to the text we are analysing and to be cautious about adding to, or subtracting from, what is actually said or written (or thought, if we are analysing our own private reasoning). Otherwise, we run a serious risk of distorting the text under examination by understanding it in the light of our own prejudices, a distortion which is to be particularly avoided if we are dealing with a serious argument.

In general, then, the warrant is not part of the analysis of an argument, not something to be included in its diagramming. Identification of the warrant is part of the evaluation of the argument. The evaluative question is: Is there a justified rule of inference in accordance with which the claim/conclusion follows from the data/grounds/premisses/reasons? There may be more than one possible warrant, depending on which repeated content expressions are generalized over and to what extent. Without the opportunity to ask the arguer, “How do you get there?”,

we must ask, “How could you get there?” and consider whether any of the possible rules of inference which would license the step from premisses to conclusion is in fact justified.

3.5. Difficulty of assigning some warrants to fields

Johnson (1996, 129-130) objects that the examples Toulmin gives of warrants are sometimes difficult to assign to a specific field. This is a fair objection to Toulmin’s claim that all warrants are field-dependent. Toulmin sometimes writes as if the body of human knowledge is parcelled out into fields, each of which comes with its established warrants, which an arguer uses to select grounds relevant to his or her claim. This model fits some arguments well. Construction of a case in law, for example, often proceeds by listing the conditions which jurisprudence in the legal system has determined are individually necessary and jointly sufficient to prove the desired conclusion. Each condition in turn may have established criteria for determining whether it is met. Constructing one’s arguments with reference to a hierarchy of such conditions is the well known stasis theory of the rhetorical tradition. But not all arguments can be constructed with reference to the established warrants of a field. Much everyday reasoning, for example, takes place in terms of common-sense knowledge. Suppose that a jealous husband claims that his wife is having an affair, on the ground that he saw her walking to the bus stop with a man from her office (Toulmin, 1984, 48). His warrant is that a married woman seen walking to the bus stop with a man from her office is having an affair with that man. Besides being of dubious validity, this warrant does not belong to a field with established warrants, analogous to law or science or medicine. It is a generalization (a false one) about human behaviour, but hardly the subject-matter of an organized body of knowledge.

In response to Johnson’s objection, we would do well to give up Toulmin’s strong field-dependency thesis. Some warrants belong to specialized fields, but some are just generalizations, more or less rough-and-ready, based on common experience. Sometimes we construct arguments by selecting data which established warrants indicate are relevant to our claim. Sometimes, however, as in medical diagnosis, we draw a conclusion from the data we observe, and can only with difficulty articulate our warrants, or even our data, afterwards; expert diagnosis is often intuitive and not readily expressible in words.

Qualification of Toulmin’s field-dependency thesis, however, does not refute his claim that an argument’s grounds are distinct from its warrant.

4. Summary

An argument whose function is to justify a claim does so by providing grounds in support of this claim; we may also call these grounds reasons or data, and we may if we wish retain the traditional labels “conclusion” and “premisses” for the two components. Implicit in any such argument is the claim that the claim follows from the grounds. It does so if and only if there is some justified covering generalization of the argument, possibly qualified as holding “generally” or “presumably”. Any such justified covering generalization is what Toulmin means by a “warrant”. Warrants are not premisses, and in particular they are not implicit premisses. And they are not merely the particular assumption that the claim is true if the grounds are; they are general.

Objections against the practical applicability of the distinction between warrants and grounds often rely on invented, decontextualized, unrealistic examples of “arguments”, which are irrelevant to the question of applicability to real arguments. The distinction was quite easy to draw for a sample of 50 arguments selected by random sampling methods from English-language monographs in a research-intensive university. Examples where the stated grounds are generalizations and the implicit assumption a particular statement are quite consistent with Toulmin’s claim that warrants, which are usually implicit, are general, for every particular statement is logically equivalent to a universal generalization of the next order. Explicit conditionals in premissory position, even open-ended ones, must be presumed to be grounds, perhaps contrary to Toulmin’s own position; the existence of realistic arguments in which all supporting statements are open-ended generalized conditionals proves that such conditionals are sometimes grounds. The presumption that explicit conditionals in premissory position are grounds can be defeated by textual indications that they function as warrants. The implicitness and frequent indeterminacy of the warrants for arguments as products show that warrants are generally not components of arguments, to be included in their reconstruction or in a diagram of their structure. Questions about an argument’s warrant arise when one comes to evaluate it, and in particular to evaluate whether its conclusion follows from its stated premiss(es). The question is not “How do you get there?” but “How might you get there?” And then: “Is one of the ways you might get there a reliable route?” Less metaphorically, is there a justified covering generalization? If so, then the inference is warranted; if not, it is not.

Toulmin's field-dependency thesis needs qualification. Many warrants belong to definite fields, in which there is an organized body of knowledge. But many do not. Some are common-sense generalizations. Others are purely formal.

NOTES

[i] "Propositions of this kind I shall call warrants (W) … our warrant will now be some such statement as … the relevant laws give us a warrant to draw this conclusion." (Toulmin, 1958, 98-100) "Such a general, step-authorizing statement is called a warrant… the difference between grounds and warrants (facts and rules) is a functional difference." (Toulmin, Rieke & Janik, 1984, 46-47; italics in original)

[ii] Proof: Suppose not. Then the implicit premiss is compatible with the opposite, i.e. with the proposition that the premisses are true and the conclusion false. Hence the expanded argument with this implicit premiss made explicit will not be formally valid. QED

I formulate the logical minimum in terms of the negation of a conjunction (construing both negation and conjunction truth-functionally, in the classical sense) rather than in terms of a conditional, because the semantics of the indicative conditional are a matter of dispute. The logical minimum is equivalent to a truth-functionally defined Philonian or "material" conditional.

[iii] For the distinction between needed "gap-filling" assumptions and used "gap-filling" assumptions, see (Ennis, 1982).

[iv] Verheij (forthcoming) describes Toulmin as inconsistent in occasionally seeming to refer to an instance of a conditional statement (i.e. an ungeneralized particular conditional) as a warrant. Verheij notes that elsewhere Toulmin unambiguously emphasizes the generality of warrants.

[v] From left to right: Suppose that, given that a man born in Bermuda has some property P, you may take it that Harry has property P. Then in particular, given that a man born in Bermuda was born in Bermuda, you may take it that Harry was born in Bermuda. But obviously a man born in Bermuda was born in Bermuda. Therefore Harry was born in Bermuda.

From right to left: Suppose that Harry was born in Bermuda. Suppose that, for some arbitrary property P, a man born in Bermuda has some property P. Then Harry has property P. By conditionalization, for an arbitrary property P, if a man born in Bermuda has some property P, then Harry has property P. Hence, since P was an arbitrary property, if a man born in Bermuda has some property P, then Harry has property P. QED

[vi] Proof: Left to right: Suppose that, if some proposition p is true if Mary is coming, then you may take it that p is true. Then, in particular, if it is true that Mary is coming if Mary is coming, then you may take it that Mary is coming. But obviously, if Mary is coming, then it is true that Mary is coming. Hence Mary is coming.
Right to left: Suppose that Mary is coming. Now suppose that an arbitrary proposition p is true if Mary is coming. Then p is true. Hence, by conditionalization, if an arbitrary proposition p is true if Mary is coming, then p is true. Hence, in general, if some proposition p is true if Mary is coming, then p is true. QED
[vii] This is Toulmin's example. Freeman actually proposes the example: "If Mary is coming to the party, John won't. Mary is coming to the party. So John won't." But the conditional statement in this argument is not a candidate for a warrant, because it is not general. If someone actually propounded this argument, its warrant on Toulmin's analysis would be purely formal: A true conditional with a true antecedent has a true consequent. This is just modus ponendo ponens.
[viii] In what Toulmin calls a "more candid" form: For any propositions p and q, given that your car is starting to skid on an icy road, and your car won't turn if p, and p if you do q, you may take it that you are not to do q. This is logically equivalent to the injunction not to do anything that will prevent your wheels from turning if your car starts to skid on an icy road.
[ix] The example comes from the sample of 50 arguments previously mentioned, i.e. from (Hitchcock, forthcoming b).

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