ISSA Proceedings 1998 – Arguing Over Values: The Affirmative Action Debate And Public Ethics

1. Purpose and Rational

It has long been recognized that public values are inculcated through the stories and myths revealed in public discourse (see, for example, Cassirer 1944 and Eliade 1963). One story, especially pervasive in western societies, is the "rags to riches" phenomenon.

According to this narrative, known in the United States as the American Dream, individuals could, through their own determination, skill, or happenstance, overcome the circumstances of their birth and achieve greatness. This myth was exemplified in the nineteenth century stories of Horatio Alger.

Until the 1960s, in the United States, this narrative, with rare exception, was limited to white males. The Civil Rights Act of 1964 through its prohibition of discrimination eliminated many structural barriers to equal participation. But the removal of discrimination alone would not enable all Americans to compete equally. Some individuals came to competition hobbled by years of racism. Thus, a policy of Affirmative Action evolved. Affirmative Action established the requirement that government, and those who do business with the government, act affirmatively to recruit and promote women and minorities in order to foster equal participation in the American Dream. For three decades Affirmative Action, in varying incarnations, was the law of the land and resulted in significant changes in employment demographics. It also led to a backlash principally among arch conservatives and white males who claimed to suffer from "reverse discrimination."

In 1996, voters in the state of California overwhelmingly supported a state ballot initiative, Proposition 209, which abolished Affirmative Action in state employment and education. In California such propositions, if passed by a majority, become law. Somewhat surprisingly, one in four minority voters and one out of two woman cast their ballots to eliminate the very programs established for their benefit. Leaders in other states began similar initiatives and federal lawmakers moved to enact comparable national legislation. Other anti-Affirmative

Action activists continued to pursue judicial relief. Civil Rights leaders warned that elimination of preferences would significantly and adversely affect employment and educational opportunities for minorities.

This essay examines the remarkable and politically incendiary debate over Affirmative Action in the US. More specifically, representative anecdotes of the main public argumentation over the debate to abolish Affirmative Action will be analyzed to determine its nature and the implications it may have on race relations, public values, and notions of community. Such an inquiry is warranted for several reasons.

First, the Affirmative Action debate touches "the raw nerves of race, gender, and class – all of which are flash points of social debate and so emotionally charged that they beg for rational discussion and analysis" (Beckwith & Jones 1997: backflap).

Second, the public affirmation of legislation reveals public values. Anti-Affirmative Action argumentation began with reactionaries, was subsumed by conservatives and is now voiced by some liberals. Understanding the core values behind these shifting values reveal new conceptions of the "public" and "community" are therefore of interest to argument scholars in that they inform us as to how cultural narratives shape or fail to shape discourse in the public forum. Finally, while Affirmative Action may be a uniquely American program, how cultures cope with the diversity of their populace is an issue many nations must address. In Europe, in particular, many are struggling with issues of discrimination and segmentalism. Argumentation scholarship serves a useful public function if it can inform these debates through analog to what is transpiring in the US.

2. Competing Narratives
One profitable approach to understanding the debate over Affirmative Action is to first explicate the competing stories told by the opposing advocates. Supporters of Affirmative Action inevitably characterize women and minorities as victims of discrimination.

Such discrimination is historical fact. Prior to the civil rights movement and enactment of the Civil Rights Act in 1964, blacks in America were systematically relegated to second-class citizenship.

Segregation was not only evident in "whites only" lunch counters and drinking fountains, it was legal. Shortly before signing the Voting Rights Act of 1965, President Lyndon Baines Johnson called the sweeping changes of the era the

beginning of freedom for all Americans to share "fully and equally in American society" (57). But Johnson argued that removing barriers to freedom was not enough. In a now famous passage, Johnson argued that to be fair, more needed to be done:

"But freedom is not enough. You do not wipe away the scars of centuries by saying: Now you are free to go where you want, and do as you desire, and choose the leaders you please. You do not take a person who, for years has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say: 'you are free to compete with all the others," and still justly believe that you have been completely fair.' Thus it is not enough to open the gates of opportunity. All our citizens must have the ability to walk through those gates. This is the next and the more profound stage of the battle for civil rights. We seek not just freedom but opportunity. We seek not just legal equity but human ability, not just equality as a right and a theory but equality as a fact and equality as a result (57)."

For Johnson, equality required that society act affirmatively to level the playing field. Through enforcement of the Civil Rights Act and presidential Executive Order 11246 the Johnson administration required that those private contractors who did business with the federal government provide data as to the number of minorities in the work force contracted for employment. Employers were held accountable for disparities between the work force and the labor force regardless of the cause for these disparities. Thus, as Eastland (1996) argues, "the disparate impact approach made employers responsible for all that had happened to the shackled runners before they got to the starting line (47)."

The Affirmative Action policy instigated with Johnson was expanded under Presidents Nixon, Ford, Carter and even Reagan and Bush, though both of the latter two presidents opposed Affirmative Action. By 1996 Affirmative Action not only applied to blacks, but women and other racial and ethnic minorities. In order to achieve the goal of matching the percentage of women and minorities employed by a business or enrolled in a university with the numbers found in society, preferences for hiring and promotion were commonplace.
Sometimes this necessitated modifying hiring criteria, lowering standards, or taking into account the race, sex, or ethnicity of applicants. Governments utilized set-asides (guaranteeing a percentage of work for minorities and women only) and occasionally courts ordered quotas to achieve diversity in government

employment (e.g., police and fire departments).

The goal of such actions is a more diverse workplace and a reduction in poverty by those groups separated from the main stream by discrimination. Gains have clearly been made in the last 30 years, but supporters of Affirmative Action argue that there is much that remains to be accomplished. Edley (1996) presents the following evidence to document the racial disparities in economic conditions:
– black unemployment hovers at twice that among whites.
– the median annual income for black males working full-time is 30 percent less than for white males.
– while one in every seven white children under the age of six lives below the poverty level, one of every two black children does.
– according to the 1990 census, only 2.4 percent of the nation's businesses are owned by blacks.
– less than three percent of college graduates are unemployed, but whites are almost twice as likely as blacks to have a college degree.
– white males hold 97 percent of senior management positions in Fortune 1000 industrial and Fortune 500 service organizations.
Only 0.6 percent of senior management are African American; 0.3 percent are Asian and 0.4 percent are Hispanic – the median net worth of black households is only 8 percent of that of whites (42-44). Similar data is presented concerning the economic disparities of women.

Advocates of Affirmative Action also cite studies documenting the extent of discrimination in the current work place. Bergmann (1996) presents a study conducted by the Urban Institute in which pairs of men, one white and one black applied for entry level jobs chosen at random from the newspaper. Even though the pairs of men were matched in terms of physical size, education and claimed experience, and even though black job seekers were coached in mock interview sessions to act like the white person they were paired with, the Urban Institute found that the young white men were offered jobs 45 percent more often than the young black men. When the researchers paired whites with Hispanics fluent in English, the Anglos received 52 percent more job offers.
With this data in mind, the pro-Affirmative Action narrative becomes clear: women and minorities (victims) need protection and assistance from government (hero) lest they be discriminated against either intentionally or de facto by business and higher education (villains). Bergmann (1996) makes this contention

explicit:

"Exhortation against discrimination, which can be ignored, has not inspired much progress, nor have expensive lawsuits against a handful of discriminators – these can take decades to work their way through the courts. Affirmative action provides a series of practical steps for dismantling discrimination: rounding out promising candidates, getting rid of artificial barriers, outflanking influential people who do not want to see change, shoehorning capable candidates into positions not previously held by people of their race or gender, and grooming the best of them for larger roles (9)."

Of course, opponents of Affirmative Action tell a different story. When the Civil Rights Act and the Voting Rights Act were first proposed, the main opposition came from southern congress men. These men were seen as reactionaries stubbornly trying to preserve the segregationist south. As such they were largely marginalized.

One victory was in an explicit prohibition against the use of quotas to achieve integration. As the civil rights fights of the 1960s came to a close, Affirmative Action became a bipartisan effort. Richard Nixon oversaw a significant expansion of Affirmative Action. As did Ford and Carter. More importantly, explicit racism became unacceptable. Kinder and Sanders (1996) note that passionate defenses of segregation and deliberate appeals to racism that characterized campaign discourse in the south during the late 1950s were no longer publicly acceptable. In fact, there was little public opposition to Affirmative Action during the 1970s. This began to change with the election of Ronald Reagan.

One significant component of the Reagan revolution, as it came to be known, was the attitude that government was not the solution to the nation's problems, government was the problem. Whereas supporters of Affirmative Action applauded government's role of assuring redress for past discrimination and protection from current bigotry, opponents saw yet another instance of government intrusiveness. In addition, Affirmative Action itself had changed. While Johnson had originally presented Affirmative Action as a remedy for the consequences of slavery, the policy had been expanded to include women, Asians, Native Americans and Hispanics. Only white, non-Hispanic males were not covered by Affirmative Action. Yet, LaNoue (1993) calculated that during the 1970s the population of those eligible for Affirmative Action grew seven time faster than the population of those not so eligible, and more than five times faster

in the 1980s. As a result, in 1995, a year before Californians voted on the proposition to end preferences, 73 percent of the population fell within the protections of the policy (Eastland 1996).

The result of preferences being given to such a large percent of the population was a backlash among some white males. Stories of reverse discrimination circulated and some reached the courts. White males who scored higher on standardized tests, only to have their places taken by lower scoring minorities, sued for redress.

Alan Bakke, for example, sued the University of California at Berkeley med school for giving preference to an African American.

Similarly, standards for physically demanding jobs in law enforcement and fire fighting were softened to permit women to successfully compete. The emphasis on achieving "results" that mirrored societal representation also seemed more and more like quotas. It also had the unanticipated consequence of pitting women against minorities and minority against minority. In the case of Hopwood v Texas, a white woman was denied admission to the University of Texas' law school because the law school set aside 15 percent of its admissions for Hispanic students. And in California, U.C. Berkeley and UCLA refused to enroll Asian students in order to give preference to blacks and Hispanics because Asians were already disproportionately represented at those institutions.

The result of these changes was a preference policy that many Americans considered unfair. Pojman (1992, 188) indicates that "*Affirmative Action simply shifts injustice, setting blacks and women against young white males, especially ethnic and poor white males. It does little to rectify the goal of providing equal opportunity to all." In their 1993 study, Sniderman and Piazza of Stanford and Berkeley contend that their data shows whites oppose Affirmative Action mainly because it violates "convictions about fairness and fair play that make up the American Creed" (in Eastland 1996, 157). They conclude that "The principle of preferential treatment runs against the Creed. . . . It produces resentment and disaffection not because it assists blacks. . . but because it is judged to be unfair."*

Opponents of Affirmative Action further contend that this unfair policy is not warranted because minorities do not need protection from racism. Racism is a far less prevalent than it once was.

Sniderman and Piazza (1993) conclude that while prejudice had not disappeared, it "no longer organizes and dominates the reactions of whites; it no longer leads

large numbers of them to oppose public policies to assist blacks across-the-board" (in Eastland 1996, 157).

In fact, Wilson (1978) argues that economic class has more to do with black's lack of opportunities than does outright racism. Statistical analyses documenting income differentials came under attack by Sowell (1984), "Often the very same raw data point to different conclusions at different levels of aggregation. For example, statistics have shown that black faculty members earn less than white faculty members, but as these data are broken down by field of specialization, by number of publications, by possession (or nonpossession) of a Ph.D. and by ranking of the institution that issued it, then the black-white income difference not only shrinks but disappears, and in some cases reverse – with black faculty earning more than white faculty with the same characteristics"(114). Even if racism was responsible for the economic travails of blacks, Wilson (1990) contends that Affirmative Action is ill-equipped to redress these economic difficulties because its greatest benefits go to those among the minority community who need them the least.

"Minority individuals from the most advantaged families tend to be disproportionately represented among those of their racial group most qualified for preferred status, such as college admissions, higher-paying jobs, and promotions. Thus policies of preferential treatment are likely to improve further the socioeconomic positions of the more advantaged without adequately remedying the problems of the disadvantaged"(157).

The story told by anti-Affirmative Action advocates is that preferences are unfair and unnecessary. But the story does not end there. Those who favor the elimination of Affirmative Action also contend that it is disadvantageous to those it purports to assist.

First, it stigmatizes minorities and women. These advocates claim that when we see a black doctor or a Hispanic lawyer we assume they achieved their status because of a policy of preference, not because of their ability. And worse, we assume that they are less able because they needed help to even start their careers (Edley 1996). This stigmatization is especially problematic because the individual is powerless to thwart it.

A second adverse consequence of Affirmative Action is the fostering of a victim mentality. Affirmative Action preferences exist because minorities and women have suffered in the past, or will suffer absent these policies. That makes them victims. There would be no need for such preferences, say those opposed to

preferences, if there were no victims. But Steele (1990) argues that the very act of identifying blacks as victims encourages them to exploit there own past victimage as a source of power and privilege:

"In this way, Affirmative Action nurtures a victim-focused identity in blacks. The obvious irony here is that we become inadvertently invested in the very condition we are trying to overcome. Racial preferences send us the message that there is more power in our past suffering than our present achievements – none of which could bring us preference over others" (137).

The victim-focus debilitates because it creates self-doubt and leads to scapegoating. Connerly (1996) contends that "We are saying to young black kids, if at first you don't succeed, redefine success, because your failure must have been the result of culturally biased exams, the lack of role models, and a racist society. Our kids have come to believe that they cannot survive in a world without special consideration. Their competitive spirit has been weakened by this dependency on Affirmative Action" (67). The effect of this self-doubt is so pernicious that Steele considers advising his children to turn down preferential treatment, and Eastland celebrates a Hispanic fire fighter who turned down an Affirmative Action promotion.

The final way that Affirmative Action harms those it purports to protect, according to those opposed to this policy, is that it entrenches thinking in terms of race. Support for Affirmative Action is a belief that racial progress can be accomplished through the use of race-conscious policies. Supreme Court Justice Harry Blackmun made this assumption explicit in his opinion in *Regents of University of California v Bakke* (1978): "In order to get beyond racism, we must first take account of race. There is no other way. And in order to treat some persons equally, we must treat them differently" (xxv). To those who favor abolishing Affirmative Action this approach merely compounds the problem. The goal, argue these advocates, should be a color-blind society. This is the dream to which Martin Luther King spoke so eloquently: "I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character." In such a society equality would prevail and color would not matter. That is the purported goal of those who oppose Affirmative Action.

The importance of the appeal to equality is illustrated by the wording of the California proposition that ended Affirmative Action. No where in the proposition

is Affirmative Action mentioned. Instead, Proposition 209 is called the California Civil Rights Initiative (CIRRI). Its wording is taken from the Civil Rights of 1964. The proposition states: Neither the State of California nor any of its political subdivisions or agents shall use race, color, ethnicity, or national origin as a criterion for either discriminating against, or granting preferential treatment to, any individual or group in the operation of the State's systems of public employment, public education or public contracting." Supporters of Affirmative Action challenged the wording of the proposition even before the election alleging that the failure to state that the proposition abolished Affirmative Action was misleading. The court did not agree.

From this examination of the arguments offered in opposition to Affirmative Action it is reasonable to conclude that the story being told depicts white males as the victims of the unfair, unwarranted, counterproductive policy promulgated by misguided (villains) liberals. The heroes of this tale are those who reject preferential treatment and those who campaign against it.

3. Audience Adherence

California Proposition 209 passed with 54 percent of the vote. When broken down by race, ethnicity and gender we learn that 61 percent of males and 48 percent of females voted for the proposition. Twenty-six percent of blacks, 24 percent of Latinos, 39 percent of Asians, and 63 percent of whites favored this proposition.

Ladd (1995) analyzed survey data from 1985 to 1994. His findings indicate that Americans prefer hiring and admissions decisions be based on merit not on a preference to make up for past denials of opportunity. This data suggests that American voters are finding the arguments of the anti-Affirmative Action advocates more compelling. While we cannot be sure why this is the case, it appears this is not simply a case of citizens voting their own self-interest. Sizable numbers of women and minorities voted to end Affirmative Action, and studies by Kinder and Sanders (1996) lead them to conclude:

"Self-interest turns out to be largely irrelevant to public opinion on matters of race. For the most part when faced with policy proposals on school desegregation or Affirmative Action, whites and blacks come to their views without calculating what's in it for them. . . . And this means self-interest cannot explain the huge differences we see between black and white Americans on matters of racial policy" (88-89).

If the explanation lies, at least in part, on the narratives presented, we can identify several components of the anti-Affirmative Action argument that might

account for the .greater adherence.

First, these advocates successfully co-opted the hero of the Affirmative Action supporters. Martin Luther King is a powerful and revered figure in race relations. It is easy to see why tying their opposition to preferences to King's vision of a better, color-blind world rang true to many voters.

Second, those opposed to Affirmative Action invoked a powerful mythos – the color-blind world. From the Declaration of Independence which pronounced inalienable rights for all of us, through the formulation of the American Dream, Americans have always professed a belief in the equality of opportunity for all. That one group (or many groups) should receive preferential treatment runs counter to this core value. Especially when those asked to suffer had no direct part in the transgressions against women and/or minorities.

Third, opposition advocates more successfully combined examples and generalizations. The literature of those opposed to Affirmative Action is replete with cases of individuals who were passed over because of preferential treatment for women or minorities. These stories make the narrative more concrete and personal. There was a dearth examples of those who benefited from Affirmative Action. Perhaps this is an outgrowth of the stigmatization argument. Identification of one's self as the beneficiary of Affirmative Action is to call into question one's legitimacy. Nevertheless, the failure to personify the outcome of preferences has impaired the effectiveness of the pro-Affirmative Action narrative.

Finally, the movement from explicit segregationist and racist argument to what Himelstein (1983) calls the use of racial code words permits the advocate and audience to share the latent message without needing to make it explicit. Himelstein defines a racial code as "a word or phrase which communicates a well-understood but implicit meaning to part of a public audience while preserving for the speaker deniability of that meaning by reference to its denotative explicit meaning" (156).

In Himelstein's study conservative white politicians in Mississippi during the 1970s needed the support of racially resentful white voters, but they also needed to avoid being labeled racists. The solution was the use of code words. References to "racial discord" or "federal intrusion" or "outside agitation" reminded southern white voters that the real issue before them was race. Others who have profitably studied the use of racial codes include Rose (1992), Howell & Warren (1992), and Page (1978).

In the current debate, those opposed to preferences studiously avoid racist language and stridently deny racist intent. Nevertheless, their language conveys the same racist overtones to one who looks for it as David Duke's or George Wallace's. For those who feel threatened by women and minorities in the workplace or university, racial codes permit the evoking of those attitudes without the explicit use of racist argument. Similarly, those who are made uneasy by the successes of women and minorities have their concerns legitimated and allayed. Their uneasiness in not the result of their own bigotry or racism, it is the stigma which attaches itself involuntarily to those who may have benefited from preferences. It cannot be bigotry or racism if the same feelings are manifested in the benefiting individual.

4. Implications

The preceding analysis yields several implications. First, the Affirmative Action debate as currently practiced could endanger the sense of community necessary for consensus (Habermas 1984).

The use of racial codes necessarily undercuts and is antithetical to ideal speaking situations (Habermas 1970). In the same vain, employing Affirmative Action as a wedge issue, dividing liberal and conservative voices, threatens shared conceptions of the public. On the other hand, perpetuating racial distinctions, even going so far as to use racial distinctions in the quest to overcome such distinctions, marginalizes disparate voices and may equally obviate consensus building.

Second, the appeal to a color-blind world, while intuitively appealing, miscasts the debate. Contemporary perspectives on culture do not envision a homogeneous culture where race, gender and ethnicity merge to one. Such an eventuality may be undesirable even if it were attainable. For who is capable of divorcing themselves from themselves? As Cose (1997) writes: "Race is an essential part of who we are (and how we see others) that is no more easily shed than unpleasant memories. Few of us would choose to be rendered raceless – suddenly without a tribe" (xxii).

Then where does that leave scholars of argumentation? Promoting talk. Ideal, consensus advancing, talk. We have reached the moment when conversation about race relations is more than appropriate. Argumentation scholars have a unique opportunity to foster such talk. We need free, explicit, explorative, continuing conversation about where we are, where we might be going, and how we might profitably get there.

Finally, we need to reconceptualize the notion of victim presented in the argumentative discourse of both those who favor Affirmative Action and those who do not. Currently, both camps speak in terms of a zero-sum game. If women and minorities win, white males lose. If white males win, women and minorities lose. Such a perspective is neither profitable, nor conducive to reaching consensus.

Instead we might profitably build on the jointness of our circumstances; our shared investment in the collective. Edley (1996) writes of the need for interest accommodation. From this perspective advocates search for common ground and community rather than employing "moral calculation, rights-based litigation, or raw majority power. . . Perhaps the majority can each give a little, rather than insisting that one has all the entitlement marbles and the other must bear all the costs. For example, in a situation where layoffs of last-hired workers may obliterate the gains from Affirmative Action, some commentators have suggested job-sharing or wage reduction schemes" (251). Similarly, since much of the dispute over Affirmative Action concerns disagreement between whether it is necessary to use preferences to achieve outcomes or whether it is more important to assure an equitable process, Edley argues that a first step may be to reach consensus on the "disadvantages still worked by the lingering poisons of racial caste" (257). Only through moving the policy debate from the contentious quasi-judicial model to one of mutually beneficial negotiation can we hope to resolve the competing tensions and achieve community.

REFERENCES

Beckwith F. J. & T. E. Jones. (1997). *Affirmative Action: Social Justice or Reverse Discrimination?* Amherst, NY: Prometheus.

Bergmann, B. R. (1996). *In Defense of Affirmative Action*. New York: New Republic Books.

Cassirer, E. (1944). *An Essay on Man: An Introduction to the Philosophy of Human Culture.* New Haven: Yale University Press.

Connerly, W. (1996). The sweet music of equal treatment. In: F. J. Beckwith & T. E. Jones (Eds.). *Affirmative Action: Social Justice or Reverse Discrimination?* (pp. 64-69), Amherst, NY: Prometheus.

Cose, E. (1997). *Color-Blind: Seeing Beyond Race in a Race Obsessed World*. New York: Harper Perennial.

Eastland, T. (1996). *Ending Affirmative Action: The Case for Colorblind Justice.* New York: Basic Books.

Edley, C. Jr. (1996). *Not Black and White: Affirmative Action and American Values.* New York: Hill & Wang.

Eliade, M. (1963). *Myth and Reality.* New York: Harper Colophon.

Habermas, J. (1970). Toward a theory of communicative competence. *Recent Sociology* 2, 114-48.

Habermas, J. (1984). *The Theory of Communicative Action, Vol. I, Reason and the Rationalization of Society.* (trans.). T. McCarthy. Boston: Beacon Press.

Himmelstein, J. (1983). Rhetorical continuities in the politics of race: The closed society revisited. *Southern Speech Communication Journal* 48, 153-66.

Howell, S. E. & S. Warren. (1992). Public opinion and David Duke. In D. Rose (Ed.). *The Emergence of David Duke and the Politics of Race.* Chapel Hill: University of North Carolina Press.

Johnson, L. B. (1965). To fulfill these rights: Commencement address at Howard University. In: F. J. Beckwith & T. E. Jones (Eds.). *Affirmative Action: Social Justice or Reverse Discrimination?* (pp. 56-63), Amherst, NY: Prometheus.

Kinder, D. R. & L. M Sanders. (1996). *Divided By Color: Racial Politics and Democratic Ideals.* Chicago: University of Chicago Press.

Ladd, E. C. (June/July 1995). Affirmative action, welfare, and the individual. *Public Perspective* 6, 23-24.

Noue, G. R. (May 1993). The demographic premises of affirmative action. *Population and Environment* 14, 426-27.

Pojman, L. P. (1992). The moral status of affirmative action. In: F. J. Beckwith & T. E. Jones (Eds.). *Affirmative Action: Social Justice or Reverse Discrimination?* (pp. 175-99), Amherst, NY: Prometheus.

Rose, D. (1992). *The Emergence of David Duke and the Politics of Race.* Chapel Hill: University of North Carolina Press.

Sniderman, P. M. & T. Piazza. (1993). *The Scar of Race.* Cambridge: Harvard University Press.

Sowell, T. (1984). From equal opportunity to "affirmative action." In: F. J. Beckwith & T. E. Jones (Eds.). *Affirmative Action: Social Justice or Reverse Discrimination?* (pp. 99-120), Amherst, NY: Prometheus.

Steele, S. (1990). Affirmative action: The price of preference. In: F. J. Beckwith & T. E. Jones (Eds.). *Affirmative Action: Social Justice or Reverse Discrimination?* (pp. 132-141), Amherst, NY: Prometheus.

Wilson, W. J. (1978). *The Truly Disadvantaged.* Chicago: University of Chicago Press.

Wilson, W. J. (1990). Race-neutral programs and the democratic coalition. In: F. J.

Beckwith & T. E. Jones (Eds.). *Affirmative Action: Social Justice or Reverse Discrimination?* (pp. 152-63), Amherst, NY: Prometheus.

ISSA Proceedings 1998 – The Function Of Argumentation Dialogue In Cooperative Problem-Solving

1. Introduction

The aim of the research described in this paper is to understand the functional role of argumentation dialogue in cooperative problem-solving, and ultimately, to understand how argumentation can give rise to cooperative learning. By cooperative learning, we mean the type of learning that occurs specifically in virtue of cooperation between people in performing some activity. We propose refinements of known cooperative learning mechanisms on the basis of analyses of cognitive-interactive processes that are at work in argumentation dialogues, for the specific case of a corpus of cooperative problem-solving dialogues in the domain of school physics problem-solving.

Firstly, the study of argumentation dialogue is situated within recent tendencies in cooperative learning research. Then three hypotheses concerning the way in which argumentation dialogue could lead to cooperative learning are discussed: knowledge explicitation, attitude revision and co-elaboration of meaning in relation to conceptual change. An approach to analysing the extent to which these mechanisms are at work in argumentation dialogue is proposed, based on five interrelated dimensions: dialectical, rhetorical, epistemological, conceptual and interactive. Results of analysing these dimensions in a specific corpus are summarised. The analyses reveal the relations between participants' reasoning and the types of knowledge expressed during argumentation, the way in which

argumentation outcomes function with respect to changes in attitudes, and the argumentative contexts in which meaning is co-elaborated and conceptual change occurs.

2. The study of verbal interaction in cooperative learning research
During the last decade, the efforts of many researchers have been directed towards identifying specific forms and phenomena of verbal interactions between learners that correlate with learning effects, under certain specific conditions. This *interactions paradigm* (Dillenbourg, Baker, Blaye & O'Malley 1996) can be represented as follows : conditions -> interactions -> effects ["->" symbolises causality]. However, when one considers real cooperative learning situations, that usually extend in time over an hour or more, this linear schema turns out to be too simple.

Firstly, once learners become more competent at solving a given type of problem, and they have learned how to cooperate together better, then the form of their interaction usually changes (i.e. there is a backward arrow from effects to interactions).

Secondly, what is important for explaining learners' activity is not so much the set of objective conditions, but rather the way in which these conditions are understood by the subjects themselves. There is thus also a backward arrow from interactions to conditions, to the extent that subjects' understanding of the problem-solving situation is continually negotiated during verbal interaction. Given these facts, it is difficult to use existing quite general (neo-Piagetian and Vygotskian) theories of cooperative learning, that have often relied on a simple distinction between cooperation and conflict, in order to identify the precise interactional phenomena that can be correlated statistically with learning effects. What is required is the development of more specific and local models of cooperative learning (Mandl & Renkl 1992) that will enable us to understand how three types of processes interact dynamically: dialogue, cooperation and problem-solving. Cooperative learning will then be viewed as emerging from the complex interaction of these three processes.

It is within this research paradigm that we pose the question of the role, or *function*, of one specific type of dialogue – argumentation dialogue – with respect to cooperative problem-solving. If we could understand the way that argumentation functions in cooperative problem-solving, then this should help to gain better understanding of how and when cooperative learning occurs. There

are number of reasons for singling out argumentation for special scrutiny in the study of learning within the context of formal schooling.

Historically, argumentation or debate is one of the cornerstones of the teaching provided in occidental universities. One would expect that the ability to argue with respect to a specific point of view reveals a deeper form of understanding of the domain of discourse. More recently, a number of hypothetical cooperative learning mechanisms associated with argumentation can be abstracted from research on learning in different domains of cognitive science.These will be discussed later in the paper.

3. Understanding the functions of argumentation dialogue in cooperative problem-solving

In cooperative problem-solving, differences of opinion can arise on several levels – for example, with respect to local sub-goals of problem-solving, alternative solutions to problems, methods to be adopted, and ways of conceptualising the domain. In many cases, the participants may not be aware of these differences. In other cases they may be aware of them, but may simply 'let the matter drop' without argumentation. In the most infrequent case, participants may mutually recognise that their different proposals can not all be accepted, and engage in argumentation. When learners do engage in argumentation, there are a number of different reasons why they might do so. Thus Walton (1989) has proposed a typology of argumentative discussions according to the participants' subjective goals, such as attempting to persuade each other, to hit out at one's opponent, to cooperatively search for the truth of the matter at hand, or even to demonstrate to oneself that one's position is at least defensible. Clearly, all or any of these possibilities could obtain in specific argumentations between learners, although in practice it is difficult to identify which goals subjects are pursuing.

Here we adopt an approach to understanding the function of argumentation dialogue in cooperative problem-solving that depends on considering the dyad as a cognitive unit of analysis, on defining situational constraints and describing how argumentation functions with respect to the learners' overall activity. In other terms, instead of inquiring as to individuals' motivations, we inquire as to how argumentation influences the overall course of the learners' activity, how it contributes to its overall aims. Of course, individuals' motivations to argue may be in accordance with overall cooperative goals ; but they may, locally, diverge from them.

Elsewhere, we have described cooperative problem-solving activity as a process

of negotiation (Baker 1994, 1995) on the level of the problem-solving domain, as well as on that of managing the interaction itself. The overall goal of the activity is to reach agreement on a solution to a problem, under constraints relating to the knowledge domain (e.g. a solution expressed in terms of physics rather than biology may be required) and the social-institutional situation (e.g. the solution must satisfy the learner's conception of the teacher's expectations). The principal means by which this overall goal can be achieved is by successive refinement of proposed solutions, methods, sub-goals, … during the interaction. Negotiation can take place with respect to different objects, using different strategies simultaneously. For example, an argumentation that occurs on the level of attitudes towards a proposed problem solution can be accompanied by successive refinement of the meaning of terms used in the statement of the contested solution(s). Our aim is thus to understand the function of argumentation within such a negotiation process, oriented towards agreement with respect to a solution to a given problem.

Intuitively, there are a number of possible functions of argumentation with respect to cooperative problem-solving. One is that argumentation functions as a type of *decision procedure* with respect to the "common ground" of dialogue (Clark & Schaefer 1989). Thus, in the case where participants A and B propose, respectively, partial problem solutions p and q, and A and B mutually believe that both p and q can not be accepted, the proposition that emerges as the winner from the argumentation (e.g. p is successfully defended, q is refuted) is the one that is added to the common ground, and which forms part of the basis of subsequent joint activity.

According to this possibility, argumentation would have basically an *additive* function with respect to the common ground. Similarly, argumentation might have a *subtractive* function, in the case where a previously mutually believed proposition is removed from the common ground once it has been refuted in argumentation.

A second possibility would be the case where argumentation functions as a *verification procedure*: as a result of argumentation, the foundations of a given proposal are better established. Thirdly, argumentation could fulfil a *clarification function*: argumentation with respect to a proposal obliges the participants to co-elaborate a more precise meaning for it ("precization", in the sense of Naess 1966).

We explore possible functions of argumentation by working backwards from

possible cooperative learning mechanisms and attempting to determine the extent to which they could be triggered by correlate interactive processes, using an approach to argumentation analysis that is adapted to achieving these objectives.

4. Argumentation and cooperative learning mechanisms

Very little research exists on the study of spontaneously produced argumentative interactions in cooperative learning situations. Most research on argumentation and learning has been concerned with either the generation and evaluation of argumentative texts (e.g. Voss, Blais & Means 1986, Voss & Means 1991), or else on argumentative interactions that are provoked, in situations that were not designed to promote learning (e.g. Resnick et al. 1993). In our view, this state of affairs is largely due to methodological constraints that have excluded the study of spontaneous interactions in learning situations. This is illustrated by the long line of research that has been carried out within the "socio-cognitive conflict" paradigm (Doise & Mugny 1981).

Blaye (1990) has shown that, for a matrix classification task, although the number of socio-cognitive conflicts that occurred was not predictive of cognitive progress, results could not indicate whether or not argumentation related to learning. Our re-interpretation of this, and other, work is that the types of problem-solving tasks studied were not sufficiently complex in order for them to be *debatable*, i.e. argumentation dialogue, as a possible object of study, was effectively excluded from the experimental situation. Debatability requires a certain degree of complexity in the task domain, and the existence of different possible viewpoints from which to debate. In much research, these types of tasks, as well as spontaneous verbal interaction, are excluded since it is difficult to propose experimental measures of individuals' competence with respect to them. It seems that argumentation is most probably related to a particularly elusive form of learning – a greater degree of understanding in the task domain (Ohlsson, 1995).

Three main types of cooperative learning mechanisms, that could be triggered by argumentation dialogue, can be abstracted from the cognitive science literature: knowledge explicitation, attitude change and co-elaboration of meaning and knowledge in relation to conceptual change. We discuss each in turn.

In any argumentation dialogue, the participants will need to generate arguments (defences) in favour of their own proposals (theses), and counter-arguments (attacks) with respect to their opponents' proposals. In argumentations that occur in cooperative problem-solving situations, the arguments that are generated could be considered to correspond to the (often implicit) reasoning that underlies the

problem solutions that are proposed and debated. This process of *explicitation* of reasons or arguments is one possible mechanism by which argumentation may lead to cooperative learning, given that it relates closely to what has been termed the "self-explanation effect" (e.g. Chi, *et al.*, 1989 ; Chi & VanLehn, 1991).

Chi, VanLehn and colleagues demonstrated that subjects who were asked to "self-explain" their solutions to physics problems had improved problem-solving performance. In other words, the subjects who verbalised their understanding, when prompted by the experimenter, had better problem-solving performance than subjects who did not verbalise. Webb (1991) confirmed the effect by showing that the explanations produced had to be quite elaborated in order for the explainer to learn, which shows that it is the cognitive activity of producing explanations, perhaps involving restructuring of knowledge, that is important in learning. It should be noted that in these experimental situations, the subjects were in fact explaining to another person – the experimenter. To that extent, the self-explanation results could also apply to the situation where subjects make their reasoning and understanding explicit in argumentation dialogue. The basic mechanism at work here is in fact meta-cognitive (e.g. Brown 1987): learning may occur since explicitation of knowledge stimulates reflection and obliges a greater degree of coherence in a subjects' knowledge. In an argumentative interaction, the constraints on individual coherence might be expected to be even greater than in the case of self-explanation, since each participant can also impose these coherence constraints on their partners.

Whilst the explicitation mechanism makes appeal to the process of argument generation and evaluation during argumentation itself, a second possibility is that argumentation *outcomes* have some influence on the participants' cognition. One possible case would be the following: participant A believes that p, and proposes p as a possible solution to the common problem; B calls p into doubt, and an argumentation ensues, the outcome of which is that p is mutually recognised to have been refuted; this refutation leads to the effect that A no longer believes that p.

This is of course an idealised case: as Dennett (1981) has pointed out, it is quite possible to be obliged to accept the conclusion of an argument, but not to believe it. Clearly, there are many other possible links between outcomes of argumentation dialogue and changes in attitudes, such as belief. These possibilities can be explored more systematically by linking research on argumentation dialogue with research on *belief systems*, that has been carried

out in linguistic philosophy (Harman 1986) and in artificial intelligence (e.g. Doyle 1979, DeKleer 1986, Gardenförs 1992). Belief revisions may also occur during argumentation itself, as a result of the explicitation mechanism mentioned above. A third type of interactive learning mechanism that may be linked with the process of argumentation itself relates to the fact that in order to evaluate a proposal, to attack it or defend it, one often has to inquire into, or make refine, the precise *meaning* of the proposal.

Thus argumentation may be associated with negotiation of meaning and knowledge, and the refinement of concepts. Cooperative learning could occur by the internalisation (in the sense of Vygotsky) of these more refined meanings and concepts.

In summary, on the basis of existing research in cognitive science, there appear to be three basic mechanisms by which argumentation dialogue could lead to cooperative learning: explicitation of reasoning during argumentation leads to knowledge restructuring, argumentation outcomes lead to attitude changes, and negotiation of meaning during argumentation leads to better understanding in the domain of reference.

5. An approach to analysing argumentation dialogue in cooperative problem-solving situations

Given that our aim is to understand the functions of argumentation dialogue in cooperative problem-solving, within a theoretical framework that enables us to link these functions to possible learning mechanisms, we have seen that the following types of dimensions need to be analysed: the process of argumentation itself, including the generation of attacks and defences leading to determinate outcomes, attitudes underlying argumentation dialogue, together with changes in them, the domain of reference of the debate, the way it is conceptualised, and the way in which conceptualisations are refined during the interaction. We therefore propose an approach to analysing these types of dialogues along five dimensions: dialectical, rhetorical, epistemological, conceptual and interactive.

Along the *dialectical dimension*, argumentation is viewed as a verbal game to be lost or won. It is analysed here using the dialogic logic of Barth and Krabbe (1982) as a description language, and as a means of predicting argumentation outcomes (who has won and who has lost). Trognon (1990) has demonstrated the relevance of this dimension to the study of human cognition, since argumentation outcomes as predicted by dialogic logic generally correspond to human intuitions.

The *rhetorical dimension* is understood here not in the classical sense of the attempt to persuade an auditorium, possibly by non-rational means, but in the more general sense of the set of cognitive effects of sequences of argumentative speech acts (cf. Van Eemeren & Grootendorst 1984) on speakers as well as on hearers.

Taken together, the dialectical and rhetorical dimensions correspond generally to pragma-dialectics (Van Eemeren & Grootendorst) ; we distinguish the two dimensions here in order to study the relations between them (see discussion of attitude changes above, section 4 of this paper).

The *epistemological dimension* refers to the analysis of the nature of knowledge that is appealed to in argumentation, and which underlies it. This is important for the study of the types of argumentation considered here – and perhaps for many other types – for two main reasons. Firstly, certain arguments carry more 'weight' than others, in virtue of the type of knowledge that they appeal to.

For example, an appeal to commonly known facts, or to facts of perceptual experience, is usually difficult to refute. Secondly, it has been shown for teaching-learning domains such as physics, that certain types of knowledge are more firmly anchored in subjects' minds, and thus more difficult to change than others (DiSessa 1988). This aspect is also dealt with in belief revision research under the term *epistemic entrenchment* (Gardenförs 1992). In the teaching and learning of physics, we distinguish types of knowledge according to an epistemological approach to physics teaching and learning (Tiberghien 1994, 1996) – knowledge of theories, models and experimental fields –, according to domains of physics knowledge as it is taught (e.g. electricity, energy, mechanics, …), the social situation in which knowledge was acquired (at school, in the home, …), and the social position of a person from whom the knowledge was acquired (a teacher, a parent, an expert seen on television, another student, …). Thus, for example, from the point of view of learners, knowledge of a physics model acquired from a teacher may give rise to an argument that carries more 'weight' than one that draws on knowledge derived from reasoning carried out by another learner.

Whilst the epistemological dimension deals with the nature of knowledge, *the conceptual dimension* is concerned with the form of representation of knowledge, the way that it is conceptualised. In this case, what is crucial is not so much the way in which individual concepts are defined, but rather the way in which concepts are *differentiated* from each other (Vignaux 1988, 1990). In argumentation theory, this corresponds to what Perelman and Olbrechts-Tyteca

(1969) have termed "argument by dissociation".

Suppose that two people argue with respect to the question as to whether it is better for humanity to expend resources on growing plants to eat, or else on breeding animals. The way that the concepts "plant" and "animal" are differentiated may turn out to be crucial to the debate (in fact, the basic difference lies in the way in which each obtains energy – via photosynthesis or else via digestion).

Another important conceptual operation in this context is *generalisation*. Thus Walton (1989) has described how most debates have a tendency to move towards discussing more and more fundamental or general issues (he gives the example of a debate on the desirability of tipping that transforms itself into a discussion on the role of the state in regulating commercial affairs). In an analogous fashion, we might expect similar processes to operate in debates between learners, who should be led to discuss the fundamental conceptual framework underlying their activity.

Finally, the *interactive dimension* operates on the epistemological and conceptual dimensions, within a dialectical and rhetorical framework. It is concerned with the successive refinements of meaning and knowledge that occur in argumentative interactions.

These phenomena have been dealt with in linguistics by the study of reformulations (e.g. de Gaulmyn 1987; Vion 1992). In Baker (1994) we have analysed these successive refinements in terms of a general set of *transformation functions* that operate on the knowledge expressed in cooperative problem-solving interactions.

There are four classes of transformation functions:
extensional (the previous proposal is extended in some way, new information is added, elaborated, or derived by inference), contractional (the inverse of extension, where the content of the previous proposal is restricted in some way), foundational (the second proposal provides justification or explanation for the previous one) and neutral (the previous content remains unchanged, as in repetition or linguistic reformulation; this function thus works on the level of maintaining mutual understanding and agreement, rather than on problem-solving itself). Our basic hypothesis is that argumentative interactions impose a special type of *interactive* and *interactional pressure* (Bunt, 1995) on participants (to resolve the verbal interpersonal conflict, to be internally coherent, to preserve face, …) that may force meanings and knowledge to be refined.

In performing analyses along these dimensions, the dialectical dimension is primary. Precisely because it is extremely reductionist, it allows us to isolate more clearly those aspects of the argumentation dialogue that are not taken into account by this dimension. Similarly, we can use the normative dialectical model as a starting point for determining the dialectical rules to which learners' argumentations conform, within the context of a real interaction.

For example, although repetition of attacks may be proscribed within an ideal dialectical model, such repetitions may be performing other functions, such as ensuring that one's interlocutor has adequately perceived and understood the attack. The dialectical dimension is also primary to the extent that the other dimensions are only studied in terms of their relation to it. For example, the rhetorical dimension is studied in so far as it relates to (dialectical) argumentation outcomes, we must first isolate an utterance as an argumentative attack before asking the question as to its relative 'weight' along the epistemological dimension, and so on.

6. Presentation of the corpus and summary of results of the analysis

6.1 The corpus and the physics problem-solving task

The analysis techniques described above have been applied to a corpus of verbal interactions**(i)** collected in a physics classroom in the Lyon area (students aged 16-17 years). The corpus consists of transcriptions of four verbal interactions between pairs of students, seated side-by-side, each interaction having lasted approximately 45 minutes. The students' task was to draw "energy chains" for simple experimental situations – for example, a bulb is connected to a battery by two wires; a weight is attached by a string to the axle of a dynamo, which is also connected to a bulb by two wires (when the weight falls, the axle turns and the bulb lights up). Energy chains are simple qualitative models of energy storage, transfer and transformation; arrows correspond to different forms of transfer, and different types of boxes to reservoirs and transformers of energy. Energy chain diagrams must be constructed within constraints of certain simple rules, for example: "A complete energy chain must start and end with a reservoir" (this corresponds to the law of conservation of energy). The didactic rationale of this task (Tiberghien 1994, 1996) is that, by attempting to establish correspondences between the model and the experimental situation, under a set of syntactic rules, the students will be led to co-construct a *semantics* for the model, i.e. to have an understanding of the meaning of the concept of energy.

From the point of view of the study of argumentation and cooperative problem-

solving, this task presents a large space of debate, since the students draw on a variety of different types of knowledge – for example, knowledge of other areas of physics learnt in school, such as electricity, and knowledge of energy acquired in everyday life, such as with respect to household electrical appliances. Here we restrict ourselves to summarising results of a systematic analysis of the corpus. Fuller details, with detailed analyses of concrete examples, can be found in Baker (1996a, 1996b, *to appear*).

6.2 Summary of results
According to the explicitation learning mechanism, relating to the self-explanation effect mentioned above, participants in argumentation render explicit the steps of the reasoning underlying the problem solutions that they propose, in the form of defences. In this case, there should be a close correspondence between the type of knowledge that manifestly underlies their problem solving, and the type of knowledge that is expressed during argumentation. This assumption can therefore be evaluated by analysis along the epistemological dimension. Such an analysis produced two main results.

Firstly, students are generally stable and consistent in terms of the type of knowledge used in their argumentations, throughout a given interaction. For example, some students consistently argue in terms of facts of everyday experience – "a bulb connected to a battery will not shine forever" ; "my ear-rings shine but they do not give out heat ; so it's not true that whenever there is light there is heat". Others consistently make appeal to the institutionalised knowledge provided by the teacher, such as the rules of the energy chain model – "a complete energy chain must start and end with a reservoir" – or previously taught knowledge of electricity – "there must be a transfer from the bulb to the battery as well as one from the battery to the bulb, otherwise the circuit would not be closed". Stability of epistemic points of view probably relaes to the spontaneous adoption of specific roles with respect to cooperative problem-solving (e.g. "critic", "proposer"), as well as to the students' cognitions.
Secondly, there is often a mismatch between the type of knowledge expressed by a given student during argumentation, and the type of knowledge that manifestly underlies the solution proposed by the student. This implies that the explicitation hypothesis needs to be refined. For example, in one argumentation sequence, students A and B proposed the following energy chains for the battery-wires-bulb experimental situation (Figure 1):
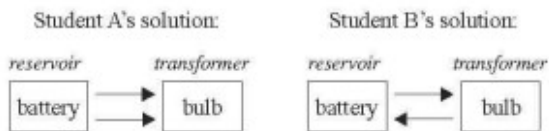
Figure 1 Energy chains proposed by students A and B for the battery-wires-bulb experiment

Figure 1 Energy chains proposed by students A and B for the battery-wires-bulb experiment

From our previous analyses of students' problem-solving in this domain (e.g. Devi, Tiberghien, Baker & Brna 1996) it was clear that B's reasoning was based on a confusion between knowledge of electricity and knowledge of energy: in his solution, the energy transfer arrows between battery and bulb go round in a circle, like the standard representation of electrical current in a circuit. However, in terms of energy, there should be a single transfer of energy, in the form of electrical work, from the battery to the bulb. Student B argues for his solution solely in terms of the rules of the energy model ("the chain starts with a reservoir [battery] and ends with a reservoir [the same battery], so it satisfies the energy model rule"), and not in terms of electricity. In this case (and others) therefore, the student's argumentative behaviour does not correspond to simple explicitation. In the case of student A however, she argues in terms of linear causal reasoning ("the energy is produced first by the battery, then flows along the two wires to reach the bulb"), which does correspond to the solution she proposes.

The conclusion that we can draw with respect to the explicitation mechanism is therefore that argumentation does not always stimulate explicitation of reasoning underlying proposals.
Rather, it may trigger the search for other forms of knowledge that are available in the problem-solving situation, which may be used in argumentation. There may be a number of explanations for this phenomenon. In some cases, beliefs underlying proposals may not be available to conscious inspection ; in others, the type of knowledge that is searched for may be viewed as providing stronger argumentative support than the knowledge underlying the student's original problem-solving processes. From this analysis we can propose a different mechanism by which argumentation could lead to cognitive change: the search for new knowledge sources as arguments may *widen the epistemic field of*

verification of proposals, and thus lead to improvement in the quality of solutions.

In order to study attitude change as a result of argumentation outcomes, we first analysed all argumentation sequences along the dialectical dimension, thus predicting outcomes (successful defence or refutation; in some cases, a non-dialectical compromise outcome was produced, or even no clear outcome). We then analysed the dialogue following the argumentation sequence in order to study students' verbal behaviour with respect to the conflicting theses and the outcomes. The criteria for attitude change used were quite simple: if a student asserted a proposition p, or its negation not-p, he or she was assumed to believe it, or its negation. For example, if student A's proposal p was refuted, yet A continued to assert p in the subsequent dialogue, this was taken as evidence for A's continued belief in p. In the case where p is no longer mentioned by A, then no interpretation could be made. For each argumentation sequence, and for each student, we constructed a belief system (a network of propositions linked to justifications) relating to the propositions expressed during the sequence. We could thus attempt to hypothesise the belief revision principles upon which the students operated, in relation to argumentation.

The results of this analysis were quite unequivocal: students were *falsificationist* with respect to proposals of their partners, and *confirmationist* with respect to their own proposals. In other words, in the case where there was at least one commonly accepted counterargument to a thesis T, then T would not be commonly accepted, irrespective of argumentation outcomes (for example, even if T was successfully defended). It appeared that a proposal/thesis had to be 'flawless' in order for it to be a candidate for the "collectively valid" (Miller 1987). Conversely, and again irrespective of argumentation outcomes, provided that a given student had at least one commonly accepted argument in favour of his or her proposal/thesis, then this was sufficient for that student to retain belief in that proposal (even if refuted in the argumentation). We can therefore say that the function of argumentation in the context of cooperative problem-solving (at least for this corpus) is not an additive one. Rather, argumentation functions as a means of eliminating 'flawed' proposals from consideration, as a means of eliminating certain candidates for addition to the common ground. The students' rationality seemed to be: "if there is something wrong with it, then that can't be the right solution". The remaining case is the one where for both of two conflicting proposals/theses, each has one or more arguments in favour of it, as

well as some in its disfavour. In this case, the students always attempted to find a compromise, by combining elements of each solution.

Finally, we analysed argumentation sequences along the conceptual and interactive dimensions, within a dialectical framework, in order to determine the dialectical contexts within which knowledge is co-elaborated, and its meaning transformed. Such transformations of knowledge and meaning take place in two contexts: as part of the argumentation process itself (the exchange of argumentative moves, attacks and defences) and as part of the process of finding an outcome to the argumentation.

Significantly, transformations of meaning and knowledge that took place during the argumentation process were often implicit (i.e. not expressed explicitly), and most often led to refinements that were positive, from a normative point of view. For example, with respect to the argumentation situation illustrated in Figure 1, student A's counter-argumentation with respect to B's proposal may be summarised as follows: "There are not two batteries in the experimental situation, so what you say is absurd."
Implicitly, this counter-argumentation (which was in fact fully mutually understood, and led to concession by B) works via an implicit *reductio ad absurdum* that includes an implicit elaboration of the meaning of the energy chain rule (R1): "A complete energy chain must start and end with a reservoir". In A's view, R1 should be reformulated to (R1') :"[R1]... and the beginning and ending reservoirs can not correspond to the same object". Assuming R1', then, if B's chain is complete, and the reservoirs correspond to "battery", then there must be two batteries in the experiment (!). But since there is clearly only one battery, then B's proposal is absurd. Interactive transformations that took place as a means of resolving the argumentation were, however, often superficial combinations of solutions on a purely linguistic level. For example, in the case where one student proposed that an energy transfer corresponded to "mechanical work", and another that it corresponded to "force", then the students juxtaposed elements of each solution, agreeing on the superficial compromise "mechanical force". As mentioned above, however, the desire to search for a compromise was always rationally motivated by the existence of opposed proposals, each of which had something in their favour and something in their disfavour (the desire to extract the 'grain of truth' from each).

The principal conceptual operation that was at work in these argumentations was

dissociation of concepts, and domains of knowledge, the most important case being dissociation of concepts relating to *energy* from those relating to *electricity*. In the battery-wires-bulb experiment, this dissociation process was triggered by the attempt to determine the meaning of the term "transfer", for the case of the transfers between battery (reservoir) and bulb (transformer).

Typically, as the result of a protracted discussion, the common interpretation could be summarised as : "I agree that there must be a second transfer from the bulb to the battery [see B's solution in Figure 1] in order to close the circuit ; but it's not really a transfer of energy". In this way, argumentations were not so much *resolved* as *dissolved*, by redefinition of the universe of reference.

This process of dissociation of concepts is potentially important for conceptual change in physics. In fact, the problem in this case is not to replace students' everyday conceptions with physics conceptions, but rather to enable them to dissociate the fields of appropriate application of concepts.

7. Conclusions

The basic question addressed here was as follows: what is the function of argumentation dialogue with respect to cooperative problem-solving? We understand this question as referring to the influence that argumentation has on the overall course of cooperative problem-solving activity. Our results indicate three basic functions for argumentation dialogue in this context. Firstly, argumentation functions as a *trigger for information search* within the problem-solving situation, as a means for evaluating the acceptability of different proposals. In this way, the process of verifying solutions could be improved. Secondly, argumentation functions as a *filter of defective proposals*, rather than as a means of identifying the most acceptable, or best supported, proposals. Thirdly, argumentation functions as a provider of a *special interactive pressure to co-elaborate meanings* of concepts in the domain of discourse.

In order to fully understand the implications of these results we need to recall an important feature of the argumentation situation studied here. The didactic situation is designed so that the elaboration of new understanding (of the concept of energy) is at stake for the students. The students therefore engage in argumentation with respect to concepts that they themselves do not yet fully master, and in the absence of help or arbitration from a person who does fully possess the requisite understanding (their teacher). Given these considerations, it is understandable that students search for information in the problem-solving

situation that can help resolve the conflict of opinions, that they reject defective proposals, and that they attempt to gain a better understanding of the domain of discourse (the didactic objective of the situation itself, from the point of view of the teacher and researchers).

These results are at present restricted to the corpus described above. Our ongoing work is concerned with applying the analysis method described above to other problem-solving domains, and to situations involving computer-mediated argumentative interactions (cf. Baker & Lund 1997). In our view, the way forward in understanding the function of argumentation in cooperative problem-solving situations is to elaborate a more systematic analysis of didactic and argumentative situations themselves (cf. Golder 1996). This should enable us to design situations that allow the emergence of argumentation dialogues that are productive from the point of view of learning.

NOTE
i. The corpus (in French) is publicly available at: http://www.ens-lyon.fr/~lund/DRED/

REFERENCES
Baker, M.J. & Lund, K. (1997). Promoting reflective interactions in a computer-supported collaborative learning environment. *Journal of Computer Assisted Learning* 13, 175-193.
Baker, M.J. (1994). A Model for Negotiation in Teaching-Learning Dialogues. *Journal of Artificial Intelligence in Education* 5(2), 199-254.
Baker, M.J. (1995). Negotiation in Collaborative Problem-Solving Dialogues. In: R.-J. Beun, M.J. Baker & M. Reiner (Eds.), *Dialogue and Instruction: Modeling Interaction in Intelligent Tutoring Systems* (pp. 39-55), Berlin: Springer -Verlag.
Baker, M.J. (1996a). Argumentation and Cognitive Change in Collaborative Problem-Solving Dialogues. *Research Report* N_CR-13/96 of the COAST Research Team, Lyon [http://www.ens-lyon.fr/COAST/coast.rapports.html].
Baker, M.J. (1996b). Argumentation et co-construction des connaissances. *Interaction et Cognitions* 1, 2/3, 157-191.

Baker, M.J. (to appear). Argumentation and constructive interaction. In: Andriessen, J. & Coirier, P. (Eds.), *Foundations of Argumentative Text Processing,* Amsterdam: Amsterdam University Press.

Barth, E.M. & Krabbe, E.C.W. (1982). *From Axiom to Dialogue: A philosophical study of logics and argumentation*. Berlin: Walter de Gruyter.

Blaye, A. (1990). Peer Interaction in Solving a Binary Matrix Problem: Possible Mechanisms Causing Individual Progress. In: H. Mandl, E. De Corte, N. Bennett & H.F. Friedrich (Eds.), *Learning and Instruction Vol. 2,1*, London: Pergamon Press.

Brown, A. (1987). Metacognition, Executive Control, Self-Regulation, and Other More Mysterious Mechanisms. In: F.E. Weinert & R.H. Kluwe (Eds.), *Metacognition, Motivation and Understanding*, New Jersey: Lawrence Erlbaum Associates.

Bunt, H.C. (1995). Dialogue Control Functions and Interaction Design. In: R.J. Beun, M.J. Baker & M. Reiner (Eds.), *Dialogue and Instruction, Modeling Interaction in Intelligent Tutoring Systems*, (pp. 197-214), Berlin: Springer-Verlag.

Chi, M.T.H. & VanLehn, K.A. (1991). The Content of Physics Self-Explanations. *Journal of the Learning Sciences* 1(1), 69-105.

Chi, M.T.H., Bassok, M., Lewis, M.W., Reimann, P. & Glaser, R. (1989). Self-Explanations: How Students Study and Use Examples in Learning to Solve Problems. *Cognitive Science* 13 (2), 145-182.

Clark, H.H. & Schaefer, E.F. (1989). Contributing to Discourse. *Cognitive Science* 13, 259-294.

De Gaulmyn, M.-M. (1987). Actes de reformulation et processus de reformulation. In: Bange, P. (Ed.), *L'analyse des interactions verbales, La dame de Caluire, une consultation*, Berne: Peter Lang.

DeKleer, J. (1986). An assumption-based TMS ; Extending the ATMS & Problem-solving with the ATMS. *Artificial Intelligence* 28(2), 127-162, 163-196, 197-225.

Dennett, D.C. (1981). *Brainstorms: Philosophical Essays on Mind and Psychology*. Brighton: Harvester Press.

Devi, R., Tiberghien, A., Baker, M.J. & Brna, P. (1996). Modelling Students' construction of energy models in physics. *Instructional Science 24*, 259-293.

Dillenbourg, P., Baker, M.J., Blaye, A. & O'Malley, C. (1996). The evolution of research on collaborative learning. In: H. Spada. & P. Reimann (Eds.), *Learning in Humans and Machines* (pp. 189-205), London: Pergamon.

DiSessa, A. (1988). Knowledge in Pieces. In: G. Forman & P. Pufall (Eds.), *Constructivism in the Computer Age*, Hillsdale NJ: Lawrence Erlbaum Associates.

Doise, W. & Mugny, G. (1981). *Le développement social de l'intelligence*. Paris: InterEditions.

Doyle, J. (1979). A truth maintainance system. *Artificial Intelligence* 12 (3), 231-272.

Eemeren, F. H. van & Grootendorst, R. (1984). *Speech Acts in Argumentative Discussions*. Dordrecht-Holland: Foris Publications.

Gardenförs, P. (ed.) (1992). *Belief Revision*. Cambridge: Cambridge University Press.

Golder, C. (1996). *Le développement des discours argumentatifs*. Lausanne: Delachaux & Niestlé.

Harman, G. (1986). *Change in View: Principles of Reasoning.* Cambridge Mass.: MIT Press.

Mandl, H. & Renkl, A. (1992). A plea for 'more local' theories of cooperative learning. *Learning and Instruction* 2, 281-285.

Miller, M. (1987). *Argumentation and Cognition. In: Social and Functional Approaches to Language and Thought*, London: Academic Press.

Naess, A. (1966). *Communication and argument. Elements of applied semantics* (English translation of En del elementaere logiske emner. Olso: Universitetsforlaget, 1947), London: Allen and Unwin.

Ohlsson, S. (1996). Learning to Do and Learning to Understand: A Lesson and a Challenge for Cognitive Modeling. In: P. Reimann & H. Spada (Eds.), *Learning in Humans and Machines: Towards an Interdisciplinary Learning Science* (pp. 37-62), London: Pergamon.

Perelman, Ch. & Olbrechts-Tyteca, L. (1969). *La nouvelle rhétorique. Traité de l'argumentation.* Paris: Presses Universitaires de France.

Resnick, L.B., Salmon, M.H., Zeitz, C.M., Wathen, S.H. & Holowchak, M. (1993). Reasoning in conversation. *Cognition and Instruction* 11 (3 & 4), 347-364.

Tiberghien, A. (1994). Modeling as a basis for analyzing teaching-learning situations. *Learning and Instruction* 4, 71-87.

Tiberghien, A. (1996). Construction of prototypical situations in teaching the concept of energy. In: G. Welford, J. Osborne & P. Scott (Eds.), *Research in Science Education in Europe* (pp. 100-114), London: Falmer Press.

Trognon, A. (1990). Relations Intersubjectives dans les Débats. In: A. Berrendonner & H. Parret (Eds.), *L'Interaction Communicative*, Berne: Peter Lang.

Vignaux, G. (1988). *Le Discours Acteur du Monde: Enonciation, argumentation et cognition*. Paris: Ophrys.

Vignaux, G. (1990). A Cognitive Model of Argumentation. In: F.H. van Eemeren, R. Grootendorst, J.A. Blair & C.A. Willard
(Eds.), *Proceedings of the Second International Conference on Argumentation* Vol.1 (June 19-22), chapter 40, pp. 303-310.

Vion, R. (1992). La Communication Verbale. Paris: Hachette.

Voss, J.F. & Means, M.L. (1991). Learning to reason via instruction in argumentation. *Learning and Instruction* 1, 337-350.

Voss, J.F., Blais, J. & Means, M.L. (1986). Informal reasoning and subject matter knowledge in the solving of economics problems by naive and novice individuals. *Cognition and Instruction* 3(4), 269-302.

Walton, D.N. (1989). *Informal Logic: a handbook for critical argumentation.* Cambridge: Cambridge University Press.

Webb, N.M. (1991). Task-related verbal interaction and mathematics learning in small groups. *Journal for Research in Mathematics Education* 22 (5), 366-389.

ISSA Proceedings 1998 – 'The Search For Grounds In Legal Argumentation: A Rhetorical Analysis Of Texas v. Johnson'

Legal opinions are essentially rhetorical documents: they pronounce a decision then justify that decision through a series of arguments aimed at particular audiences. Although law has often been held up as an archetype of practical argument, legal arguments must adhere to a stricter level of scrutiny then many other types of argument. Court decisions, particularly those made by the Supreme Court, are analyzed by a variety of experts, some of who have direct influence on the argument as it is being constructed (Golden and Makau, 1982: 172). These audiences constrain the possible means of persuasion which may be incorporated

into the argument.

These constraints serve to limit the types of arguments which may be made in a case, the types of evidence which may be used to support the argument, and the very form that the argument may take. Despite these restrictions, legal argument is dynamic; new arguments are made and accepted, the law changes over time.

Legal argumentation covers a wide variety of issues. Each issue has a different set of questions which must be addressed by the Court when it announces a decision. Free speech cases provide a limited set of non-legal concepts which the judge may integrate into the decision. These concepts include the speaker, the speech and the audiece of the speech. These become the materials which the judge may use to overcome the constraints set on the decision by the audience. In this paper, I will examine how the Court uses the construct of audience in the Texas v Johnson case. This case reveals how dynamic legal argumentation can be, even given the strict constraints the Supreme Court must operate under.

1. Developing a Theory of Constraints

Court documents are constrained by the expectations of the audience. These constraints are not formally codified; they exist in the author's conception of the expectations of this audience. The audience judges the correctness of a justice's interpretation of the law, and this judgment is internalized by the author of the opinion.

James Boyd White notes, "In every opinion a court not only resolves a particular dispute one way or another, but validates or authorizes one kind of reasoning, one kind of response to argument, one way of looking at the world and at its own authority, or another" (1988: 394).

Stare decisis is the most pressing constraint on a Supreme Court judge. Golden and Makau note, "Use of stare decisis gives the court's readers greater confidence in the Justices' impartiality" (Golden and Makau 1982: 160).

The tapestry of the law forms the backdrop for the finding of any particular case. The author of an opinion must weave his or her finding into the cloth in such a way as not to radically disrupt the patterns which the audience has come to expect for the type of case being decided. These patterns consist of the materials which a justice may use to justify the opinion including the constitution, state law, and prior court cases. Stanley Fish provides an excellent example of a decision which would be considered a break from the pattern of the law, "A judge who decided a case on the basis of whether or not the defendant had red hair would not be striking out in a new direction; he would simply not be acting as a judge,

because he could give no reasons for his decision that would be seen as reasons by competent members of the legal community" (1989: 193).

Fish's observations about the nature of the legal system culminated in the idea of the "interpretive community." Although there is no clear delineation of this community's boundaries, Fish did provide that an interpretive community is, "not so much a group of individuals who shared a point of view, but a point of view or way of organizing experience that shared individuals in the sense that its assumed distinction, categories of understanding, and stipulations of relevance and irrelevance were the content of the consciousness of community members who were therefore no longer individuals, but, insofar as they were embedded in the community's enterprise, community property" (1989: 141). Interpretive communities explain why judges are constrained in the writing of the opinion, the judges, invested in the community, are pressured to uphold the community's standards.

Fish's theory is reminiscent of Perelman and Olbrechts-Tyteca's theory of audience. Perelman and Olbrects-Tyteca argue that the primary criteria for whether an argument is reasonable is the universal audience. This audience is bounded by the culture; a culture shared by both the speaker and the audience (1969: 33). Fish's interpretive communities flesh out those boundaries; he defines the cultural expectations under which both the Supreme Court justices and their audience operate.

Fish's notion of interpretative community is far from static, "neither interpretive communities nor the minds of community members are stable and fixed, but are, rather, moving projects – engines of change – whose work is at the same time assimilative and self-transforming" (1989: 152). Change in the community occurs thorough interpretation. Each time a decision is made, it reflects both the concerns of the present situation and the interpretive community's conception of the past, "the hand of the past can appear to us only in an interpreted form, in the form of a constructed intention that can always be constructed again in the light of whatever evidence from whatever source seems relevant; and therefore the past we will be bound to will acquire its shape within the horizons of the living and lived-in present" (1994: 183). Each new situation encountered reshapes the community's conception of the past and leads the community into an alternate future. Much like Gadamer's fusion of horizons, Fish's interpretive community continually rewrites its history in terms of its present conditions (Gadamer 1989:

293).

Fish's theory of interpretive communities provides valuable insight into the norms of the legal community. The interpretive community of the law legitimizes a way of thinking about the law which is inculcated into its practitioners at each level of participation from law school through judgeship. Central to this socialization is the judicial opinion, it is studied by law students, read by lawyers, and written in respect to other opinions by judges.

Fish's interpretive community explains some of the constraints that a Supreme Court justice must negotiate when writing an opinion.

The judge must begin the discourse with a particular case; past cases are read in relation to the present circumstances. The community expects that the present case will be understood in relation to the past, but the present case also molds the past. Yet these constraints also free the opinion writer to manipulate the texts on which the opinion is based, as long as this manipulation is justified within the bounds of the community's expectations. Fish writes, "Interpreters are constrained by their tacit awareness of what is possible and not possible to do, what is and is not a reasonable thing to say, what will and will not be heard as evidence in a given enterprise; and it is within these same constraints that they see and bring others to see the shape of the documents to whose interpretation they are committed" (1989: 98).

Stanley Fish explains that the materials that the judge uses to justify an opinion are constrained, but he does not explain precisely the expectations for using these materials as support for an argument.

Ronald Dworkin's theory is an attempt to determine how these materials are used to support a legal argument. His position complements Fish's interpretive communities, Dworkin is interested in what counts as good evidence in a judicial opinion.

Dworkin views judicial opinion writing as argumentation. His primary goal is to discover the grounds of legal argument which serve as valid starting points for the legal community. Dworkin's work exemplifies the constraints placed by the audience on Supreme Court opinions; his search for correct interpretation of the law is an explanation of what first principles are accepted by the legal community. Dworkin is in search of theoretical disagreements, or what he calls "law's grounds." Like Stanley Fish, Dworkin notes that the grounds for legal argument are determined by the community: "Legal practice, unlike many other social

phenomena, is argumentative". Every actor in the practice understands that what it permits or requires depends on certain propositions that are given sense only by and within the practice; the practice consists in large part in deploying and arguing about these propositions. People who have law make and debate claims about what law permits or forbids that would be impossible.without law and a good part of what their law reveals about them cannot be discovered except by noticing how they ground and defend these claims" (1986:13).

Law's Empire, Dworkin's primary treatise on legal interpretation, presents two main themes: law is interpretation and law has integrity. It is the second theme that has drawn the greatest criticism from legal scholars. However, Dworkin's identification of the legal community's shared expectations provides an outstanding explanation of how judges are constrained by their community.

Dworkin notes, "Judges normally recognize a duty to continue rather than discard the practice they have joined" (1986: 87). The practice which constrains judges include a shared world view, set of values and vocabulary (1986: 63). Members of the legal community reinforce their standards through education and practice, judges are highly invested in their social structure. Each case a judge hears and decides adds to and reinforces those standards, the judge's decision in these cases rests on an interpretation of these standards.

For Dworkin, interpretation should be constructive. He defines this as, "a matter of imposing purpose on an object or practice in order to make of it the best possible example of the form or genre to which it belongs" (1986: 52). Dworkin notes that the object under question is constrained by the history of a practice. An interpreter of social practices, of which law is a subset, engages in creative interpretation. Creative interpretation using a constructive approach is "a matter of interaction between purpose and object" (1986: 52). The purpose, or context, of the interpretation sets the standards by which an object is to be judged. Dworkin does not believe that context provides an Archemdian point, but allows judgment of an interpretation.

There are three stages, or steps, to interpretation in Dworkin's theory. The first is called the "preinterpretive" stage. During this time, "the rules and standards taken to provide the tentative content of the practice are identified" (1986: 65-6). According to Dworkin, there is a strong need for consensus at this stage in order to preserve harmony amongst the interpretive community. This is when the raw materials of interpretation are decided upon. A judge must determine what counts

as evidence to the audience in terms of the particular decision being rendered.

The second stage is called the "interpretive stage." During this period the interpreter, "settles on some general justification for the main elements of the practice identified at the preinterpretive stage" (1986: 66). Here the interpreter finds a value judgment which shows the practice of law at its best. For Dworkin, this act of justification is solitary, but is preformed against the knowledge of the values of the community.

The justification process involves two types of issues: does the justification "fit" the practice which is being interpreted, and what types of substantive issues would show the practice in the best light? The justification for both of these issues includes an argument as to why the decision is worth pursuing; what values does it upholds for the community? The second stage allows judges to escape the constraints of the legal community, if only for a moment. It is in this stage that a judge frames the opinion and establishes the value hierarchy to which the legal materials gathered in the pre-interpretive stage will be applied.

Finally, there is a "postinterpretive" or "reforming" stage. During this stage interpreters adjust their conception of what is "really require(d) so as better to serve the justification he accepts at the interpretive stage" (1986: 66). Dworkin notes that in the real world interpretive judgments do not progress cleanly through each of these stages, but instead they are more a matter of, "seeing at once the dimensions of their practice, a purpose or aim in that practice, and the post-interpretive consequence of that purpose " (1986: 67).

Dworkin's most valuable contribution is his explanation of why conflicts of interpretation occur. He identifies core beliefs which can be used by an interpreter to explain where interpretations differ, "at the first level, agreement collects around discrete ideas that are uncontroversially employed in all interpretations; at the second the controversy latent in this abstraction is identified and taken up. Exposing this structure may help to sharpen argument and will in any case improve the community's understanding of its intellectual environment"(1986: 71). At the abstract level, there is no controversy, it is only when values are applied to concrete issues that interpretations differ. This echoes Perelman And Olbrechts-Tyteca's claim that it is only the creation of hierarchies, necessitated by particular concerns, which will bring values into conflict (1969: 80).

The analogy of a tree is used to explain Dworkin's conception of stasis. The trunk

represents the starting points of any argument in a field, those ideas which are uncontroversial to an audience. Dworkin calls this a plateau. The branches contain arguments that may be disputed, "(political philosophers) can, however, try to capture the plateau from which argument about justice largely proceed, and try to describe this in some abstract proposition taken to define the 'concept' of justice for their community, so that arguments over justice can be understood as arguments about the best conception of that concept." (1986: 74) This would suggest that differences of interpretation would occur not over the importance of a value, but in how it is portrayed.

Value arguments play a pivotal role in the justification of legal argument. However, these value arguments need connection to particular situations. The particularization of a value construct is done through the creation of a paradigm. Dworkin argues that the paradigms play a more important role in legal argumentation than abstract value propositions, "The role the paradigms play in reasoning and argument will be even more crucial than any abstract agreement over a concept. For the paradigms will be treated as concrete examples any plausible interpretation must fit, and argument against an interpretation will take the form, whenever this is possible, of showing that it fails to include or account for a paradigm case" (1986: 72).

Conceptions are values; universal and timeless, but they cannot come into play with out a connection to the events which precipitated the controversy being decided. Paradigms are specific to a particular set of events, they are the application of values.

Dworkin draws the most criticism is from his claim that law has integrity. While this statement may not seem problematic on its face, Dworkin uses the notion of integrity to ground the valid interpretation, "Law as integrity asks judges to assume, so far as this is possible, that the law is structured by a coherent set of principles about justice and fairness and procedural due process, and it asks them to enforce these in the fresh cases that come before them, so that each person's situation is fair and just according to the same standards" (1986: 239). Integrity in law accounts in some measure for the constraints placed on the judge. There is an expectation that judges will justify their opinion by relating it to other cases; i.e. use precedent. If the finding of the case is different than other cases like it, the judge must distinguish the present case from those that came before it.

Dworkin's search for the grounds of legal argument illuminates both the constraints which inhibit the author of a Supreme Court opinion and the moments

of freedom in the interpretive process.

There are two major constraints which emerge from Dworkin's theory.
First, judges are constrained during the pre-interpretive stage when they select the materials which will serve as the grounds. These materials are defined by the community and are expected to be used as support in the legal argument.
Secondly, the finding of an individual case should resonate with similar cases which have been decided previous to the instant case. This is the idea that law has integrity, law will treat individuals in the same situation in the same way.

During the interpretive stage, however, judges are able to shape the application of these materials by linking them to a value hierarchy. Different interpretations of the same case occur because judges establish different value hierarchies to support their reading of prior cases. The interpretive stage allows judges to frame the particular case.
Fish and Dworkin introduce two important concepts to a theory of legal interpretation. First, interpretation takes place against the expectations of a community. This community functions to provide the material for interpretation, as well as constrains how that interpretation is judged. Second, there is a sense of the political inherent in the community. Institutions are created by human beings and they reflect the concerns of humanity. Dworkin provides a mechanism by which the political concerns of the judge can be inserted into a free speech opinion.
Often, cases which invoke first amendment precedent are conflicts between the government and an individual. Jurists are asked to interpret the Constitution or to decide if a state or federal statute conflicts with their interpretation of first amendment protections. These cases invoke classic questions of hermeneutic theory – how do justices read precedent in relation to the complexities of speech rights in the present? Dworkin notes, "Contemporary lawyers and judges must try to find a political justification of the First Amendment that fits most past constitutional practice, including past decisions of the Supreme Court, and also provides a compelling reason why we should grant freedom of speech such a special and privileged place among our liberties" (1996: 199). The Supreme Court, when faced with a free speech case, must balance the needs of the community with its decision in a particular case.
The legal community expects that certain materials, most notably similar cases, will be used to justify the decision a judge is making is a particular case. Yet these

cases alone cannot establish a conclusion in a particular case. Drucilla Cornell points out, "no line of precedent can fully determine a particular outcome in a particular case because the rule itself is always in the process of reinterpretation as it is applied. It is interpretation that gives us the rule, not the other way around" (1992: 157).

Non-legal concepts allow judges a moment of freedom in interpretation. During the first stage of the decision making process, a judge must determine the relevant facts. Although these determinations are bounded by the issue at hand, this step allow a judge to choose the raw materials of a case. These facts are not nearly as constrained as the precedent used in the decision. In the case I have chosen to illustrate this argument, Texas v Johnson, each opinion uses the construct of audience to shape its application of precedent**(i)**.

Two types of audiences occur in this opinion. The first, which I call the constructed actual audience, is a description of the audience present at the time of the speech event. In this case, both Brennan and Rehnquist give presence to different persons present during the burning of the flag. The second type of audience which occurs in this case I call the event's attributed audience. Unlike the constructed actual audience, this description is not based on empirical data. Instead, this is an idealized audience, one based on values. Both of these audiences are rhetorical constructions; neither is an exact representation of the audience present during the speech event.

2. Texas v. Johnson

During the 1984 Republican National Convention in Dallas, Gregory Johnson participated in a march to protest the policies of the Reagan administration. At the end of the march, in front of Dallas City Hall, Johnson was handed a flag, which he burned while other protesters chanted. Johnson was the only one of the protesters to be arrested for the demonstration. He was charged with desecration of a venerated object.

In a 5-4 decision, the Supreme Court held that the Texas Statute infringed on Johnson's speech rights. The majority opinion, written by Brennan, isolated two major issues; 1) is flag burning expressive and 2) because flag burning is conduct, does the government have a legitimate interest in regulating the nonspeech elements related to the conduct? The majority found that flag burning was expressive and that Texas did not have a legitimate state interest to ban the activity because no harm was likely to result from this expression.

Brennan's majority opinion uses an interpretation of the audience in order to argue that flag burning is expressive conduct and as such deserves first amendment protection. He notes, "anyone who observed appellant's act would have understood the message that appellant intended to convey" (400). This construction allows Brennan to argue the factual claim that flag burning is expression because its message could be clearly understood.

Brennan uses the constructed actual audience in order to dismiss Texas's claim that it was trying to prevent a breech of the peace. He begins by recounting the scene which culminated with Johnson's burning of the flag, highlighting only the aftermath of the demonstration, "After the demonstrators dispersed, a witness to the flag burning collected the flag's remains and buried them in his backyard" (399). Brennan continues his interpretation of the constructed actual audience, "No one was physically injured or threatened with injury, though several witnesses testified that they had been seriously offended by the flag burning" (399). This interpretation establishes two of the arguments that Brennan will later rely on; first that because there was no threat to the audience, Johnson's speech rights should be paramount. Second, the interpretation of a message as offensive is not sufficient justification for abridging speech rights because no breech of the peace was likely from Johnson's action. These constructed audiences are presented before Brennan actually makes the argument that there was no likelihood of a breech of the peace, thus setting the stage for his later conclusion.

When Brennan does tackle the question of whether flag burning was likely to lead to a breech of the peace, he privileges the use of the constructed actual audience. Brennan lays out Texas's event's attributed audience, "The State's position, therefore, amounts to a claim that an audience that takes serious offense at particular expression is necessarily likely to disturb the peace and that the expression may be prohibited on this basis" (408). He rejects the use of an event's attributed audience for determining the likelihood of breech of the peace, "we have not permitted the government to assume that every expression of a provocative idea will incite a riot, but have instead required careful consideration of the actual circumstances surrounding such expression..." (409). This dovetails nicely with his own use of the collective to argue that Texas did not have a legitimate interest in preventing a breech of the peace in this particular case.

Brennan then uses the lower court's constructed actual audience to reinforce his argument, "the flag burning in this particular case did not threaten such a reaction. 'Serious offense occurred,' the court admitted, 'but there was no breach of peace nor does the record reflect that the situation was potentially explosive"

(401).

The opinion stays consistent by developing the constructed actual audience as support for the argument that no breech of the peace was likely as a result of Johnson's burning of the flag.

Brennan does, however, offer an event's attributed audience to argue that restrictions on flag burning could not be justified by classifying the action as fighting words. "No reasonable onlooker would have regarded Johnson's generalized expression of dissatisfaction with the policies of the Federal Government as a direct personal insult or an invitation to exchange fisticuffs" (409). This event's attributed audience does not hold the flag as a personal symbol, but is rather able to distinguish a critique of the government from their own emotions concerning the importance of the flag.

Brennan primarily uses the event's attributed audience to argue that Texas's second stated interest, to protect the flag as a national symbol, is a violation of the first amendment because it is a restriction of a particular point of view. He presents his version of Texas's event's attributed audience in order to show the Texas law would stifle expression critical of the flag, "The State apparently is concerned that such conduct will lead people to believe either that the flag does not stand for nationhood and national unity, but instead reflects other, less positive concepts, or that the concepts reflected in the flag do not exist, that is, that we do not enjoy unity as a Nation" (410).

The opinion ends with Brennan's event's attributed audience, one which is expressly contrasted with Texas's version, "We can imagine no more appropriate response to burning a flag than waving one's own, no better way to counter a flag burner's message than by saluting the flag that burns, no surer means of preserving the dignity even of the flag that burned then by – as one witness here did – according its remains a respectful burial. We do not consecrate the flag by punishing its desecration, for in doing so we dilute the freedom this cherished emblem represents" (420). Brennan thus presents a collective who uses expression to counteract the message of flag burning rather than taking serious offense and resorting to violence.

Rehnquist authored a powerful dissenting opinion, on which he is joined by White and O'Connor. Rehnquist's opinion is based primarily on the importance of respect for the flag, "For more than 200 years, the American flag has occupied a unique position as the symbol of our nation, a uniqueness that justifies a

governmental prohibition against flag burning in the way respondent Johnson did here" (422). This statement is followed by a long exposition on this history of the flag, both in war and in peace.

Once the value of the flag has been established, Rehnquist refutes the primary contentions of the majority opinion. He argues that flag burning is not expression; it is likely to cause a breech of the peace; and the state has a legitimate interest in protecting the integrity of the symbol. Rehnquist uses conceptions of the collective as evidence for each of his arguments.

After a lengthy exposition on the history of the flag in American life, Rehnquist argues explicitly with the majority's finding that flag burning should be considered expression protected by the first amendment. He begins by equating flag burning with fighting words, "his act, like Chaplinsky's provocative words, conveyed nothing that could not have been conveyed and was not conveyed just as forcefully in a dozen different ways" (431). After this analogy is made, he uses an event's attributed audience to justify the restriction of flag burning, "The highest source of several States have upheld state statutes prohibiting the public burning of the flag on the grounds that it is so inherently inflammatory that it may cause a breach of public order" (431). Interestingly, Rehnquist does not take up Brennan's challenge to provide specific instances where flag burning has provoked violence; instead he offers an interpretation of a collective overcome by the emotional drama of watching a flag burn.

Rehnquist's second main argument is that the state has a legitimate interest in protecting the flag. Rehnquist argues that the reaction of the collective is the most important factor in determining whether to protect flag burning, "The concept of 'desecration' does not turn on the substance of the message the actor intends to convey, but rather on whether those who view the act will take serious offense" (438).

Early in his opinion, Rehnquist notes the importance of the flag to the nation, "Millions and millions of Americans regard it with an almost mystical reverence regardless of what sort of social, political, or philosophical beliefs they may have" (429). The attributed audience created by Rehnquist is enamored with the power of the symbol. Such a collective would be so overcome by their emotional response that they would not recognize the value of the dissent it was witnessing. Thus, Rehnquist comes to the conclusion, "sanctioning the public desecration of the flag will tarnish its value – both for those who cherish the ideas for which it waves and for those who desire to don the robes of martyrdom by burning it"

(437). This event's attributed audience is typical of the strategy Rehnquist employs to counter Brennan's majority opinion; he uses his collective to support his value hierarchy which would place the protection of the symbol of the flag over the expression of dissent.

Texas v Johnson is an excellent example of the power the concept of audience has in shaping the law. Brennan and Rhenquist present very different visions of the audience, which leads to different conclusions about the legal status of flag burning.

3. Implications and conclusion

Justices must balance their interpretations of the law with the expectations of their audience. The audience constrains the interpretations that justices may impose on the law. Yet the judicial opinion is more than just the mechanical application of precedent to the current case; justices have the ability to interpret the law by manipulating the materials which they use to justify their opinion. The extent to which materials may be manipulated in the decision is also determined by the audience. Some materials are highly constrained: the constitution, statutes, and precedent. The legal community has developed expectations about the meaning of these materials and a justice cannot recreate these materials to suit his or her needs. When the author of an opinion uses legal materials as justification for a decision, these materials must be used in ways consistent with their past use. For example, a judge may not alter the findings of past cases; he or she must use a previous case without changing its content. Many areas of first amendment law have a long history of case law which follows a specific trajectory. The audience expects that when one of these cases is cited in an opinion it will be consistent with the way in which it has been cited in the past. However, the judge can frame the instant case in such a way as to call upon prior cases that support his or her conclusion. The art of using precedent is not in how it is used once it is called forth in the opinion, but in how it is called into the opinion in the first place.

Interpretations of the collective are one possible frame the author of the opinion imposes on these cases; these interpretations lead the reader to the set of precedent which the author wants to apply to the present case. Stanley Fish argues that a line of precedent does not simply announce itself to a reader, a judge must make an argument that the cases being cited are similar to the case being decided, "Similarity…is not a property of texts (similarities do not announce

themselves), but a property conferred by a relational argument…" (1989: 94). In other words, the justice who is writing an opinion is able to create the relationship between the extant case and the line of precedent which he or she believes is most relevant to the decision. Interpretations of the collective are one way that authors of opinions can justify their application of precedent. In this way the rhetorical construction of the collective serves as a focal point for the decision.

One way interpretations of the collective are strategically employed is to create an analogy between the case being decided and the body of law which the author of an opinion wants to associate this case with. However, this was not the only use of the collective in Supreme Court opinions. Interpretations of the collective were also used to ground arguments about the nature of the law. Constructed actual audiences and event's attributed audiences are used to support claims made in the opinion.

The Court primarily functions as an epidictic speaker. It establishes value hierarchies as a precursor to action. In free speech cases, the Court must balance the needs of speakers with the interests of the collective. Implicit in balancing is the creation of a value hierarchy; when the Court rules that one interest is more important than another it is declaring a specific ordering of values. Some of the values called upon in free speech cases – the promotion of a marketplace of ideas, the protection of individual self expression, and the promotion of democratic self government – are what Ronald Dworkin labels as concepts (1986: 70-1). Concepts are universalized values which serve as starting points in legal argument. The audience accepts these values in the abstract; the role of the author of an opinion is to connect these values to the extant case. This is what Dworkin calls the creation of a paradigm.

Interpretation of the collective is one way that judges create paradigms. These interpretations create links between the case under review and the values that the Court holds. Justices use their interpretations of the collective to argue that the case they are deciding is the embodiment of an already accepted value.

Paradigms are exceptionally persuasive arguments, but they are not static. Each time a judge encounters a new case he or she has the opportunity to create a new paradigm. Dworkin writes, "Paradigms anchor interpretations, but no paradigm is secure from challenge by a new interpretation that accounts for other paradigms better and leaves that one isolated as a mistake" (Empire 72). In order for a justice to create these new interpretations he or she must explain how the case

being decided is distinguished from prior case law. Interpretations of the collective allow judges to make these types of arguments. Texas v. Johnson illustrates the power the collective has in forming these paradigms. Brennan was able to successfully argue that the audience values expression over the symbolism of the flag. Rhenquist reverses this hierarchy in the hope that it may some day become a new paradigm.

NOTE

i. William Lewis has written an outstanding piece on the rhetoricity of this case.

REFERENCES

Cornell, D. (1992) From the lighthouse: The promise of redemption and the possibility of legal interpretation. In: G. Leyh (Ed) *Legal Hermeneutics: History, Theory and Practice.* (147-172) Berkeley: University of California Press.

Dworkin, R. (1996) *Freedom's Law: The Moral Reading of the American Constitution.* Cambridge: Harvard University Press.

Dworkin, R. (1986) *Law's Empire*. Cambridge: Belknap.

Dworkin, R. (1985) *A Matter of Principle.* Cambridge: Harvard University Press.

Fish, S. (1994) *There's No Such Thing as Free Speech, and its a Good Thing, Too.* New York: Oxford University Press.

Fish, S. (1989) *Doing What Comes Naturally: Change, Rhetoric and the Practice of Theory in Literary and Legal Studies.* Durham: Duke University Press.

Gadamer, H.G. (1989) *Truth and Method*. J. Weinsheimer and D. Marshall (trans): New York: Continuum.

Golden, J.L & Makau, J.M. (1982) Perspectives on judicial reasoning. In: R.E. McKerrow (Ed.) *Explorations in Rhetoric: Studies in Honor of Douglas Ehninger* (pp. 157-178)

Glenview: Scott Forsman. Lewis, W. (1994) "Of innocence, exclusion, and the burning of flags: The romantic realism of the law. *Southern Communication Journal* 60 4-21.

Makau, J.M. (1984) The Supreme Court and reasonableness. *Quarterly Journal of Speech* 70 259-278.

Perelman, C. and Olbrects-Tyteca, L. (1969) *The New Rhetoric: A Treatise on Argumentation.* J. Wilkinson and P. Weaver (trans). Notre Dame: University of Notre Dame Press.

Perelman, C. (1963) *The Idea of Justice and the Problem of Argument*. London: Routledge.

Texas v. Johnson. (1989) 491 US 397. US Supreme Court.

White, J. B. (1988) Judicial criticism. In: Levinson, S. and Mailloux, S. (Eds) *Interpreting Law and Literature: A Hermeneutic Reader.* (pp. 393-410) Evanston: Northwestern University Press.

ISSA Proceedings 1998 – What Are The 'Anarchical Fallacies' Jeremy Bentham Discovered In The 1789 French: Declaration Of The Rights Of Man And Citizen?

1. Introduction

The year 1998 deserves to be remembered for at least two different but convergent reasons. In 1748 – two and a half centuries ago – Jeremy Bentham was born in London, and half a century ago – in 1948 – the Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations in New York. Thus this year we celebrate both the two hundred and fiftieth anniversary of the birth of a major English philosopher, lawyer, reformer, and public policy analyst; and we also celebrate the fiftieth anniversary of the most influential manifesto of international human rights.

The conjunction of these two events provides an occasion for reflection on some of Bentham's views because he wrote an essay titled "Anarchical Fallacies" in which he attacked the most popular manifesto of human rights in his day, the 1789 French Declaration of the Rights of Man and Citizen. In light of Bentham's scathing criticisms of the French Declaration, one naturally wonders what he would have had to say today were he in a position to evaluate the United Nations Declaration. Would he say of it what he said of its French predecessor, that it

consists of "execrable trash," that its purpose is "resistance to all laws" and "insurrection," that its advocates "sow the seeds of anarchy broad-cast," and, most memorably, that any doctrine of "natural rights is simple nonsense: natural and imprescriptible rights, rhetorical nonsense, – nonsense upon stilts"?

2. Dubious Fallacies

Let us look more closely at Bentham's argument that the French Declaration is riddled with "anarchical fallacies." What, exactly, are "anarchical fallacies"? What is fallacious and what is anarchistic about them?

In 1824, more than two decades after he had written his essay on "anarchical fallacies," Bentham arranged with some of his younger friends to publish (in London and in English) a volume called *The Book of Fallacies*. In this treatise, the first substantial contribution to the subject since Aristotle, Bentham set out an account of what he regarded as the rhetorical and logical errors to which political discourse was especially vulnerable. One would naturally expect, therefore, to find in this book an elucidation of the "anarchical fallacies" he had already discussed many years earlier in his essay of that name.

But there are at least three problems. The first arises from the way Bentham defines "fallacy" in that book. "By the name of fallacy," he writes, "it is common to designate any argument employed or topic suggested, for the purpose, or with the probability, of producing the effect of deception – of causing some erroneous opinion to be entertained by any person to whose mind such argument may be presented." If this definition is applied to the French Declaration, a problem immediately arises: According Bentham's definition of fallacy, fallacies are the property of certain arguments (namely, the invalid ones). But the Declaration is a manifesto of aspirations, full of imperatives and hortatory pronouncements addressed to the people and the government of France. So it is not as such an argument, except in the most extended sense of that term, in which any propositions asserted on any subject constitute an "argument."

One might say, to be sure, that the Declaration is the product of an *implicit* argument, because it rests upon several tacit principles and beliefs from which its manifest content – those imperatives and exhortations – can be derived. But if it is this implicit argument Bentham wishes to attack, it is odd that he doesn't say so and that nowhere in his critique does he attempt to formulate that implicit argument. I think we must conclude that if the French Declaration is spoiled by fallacy, it is not because its reasoning is suspect, for a manifesto such as this does

not consist of a chain of reasons.

However, let us be charitable and concede that there is a loose and familiar sense of the term "fallacy," in which it is roughly synonymous with "error" or "erroneous belief" or "mistaken claim" or "objectionable principle."

This confronts us with the second problem:

Under Bentham's official definition of "fallacy," the French Declaration is surely not riddled with fallacies of any kind. The loose sense of the term "fallacy," as Bentham defines it – as an argument or other prose text "suggested, for the purpose, . . . of deception" – does not apply. For it is neither reasonable nor supported by any evidence Bentham cites to believe that the French authors of the Declaration wrote with the "purpose" of deceiving their intended audience.

But a deeper criticism of Bentham's definition now comes into view. His official definition of "fallacy" has to be judged fundamentally incorrect, because it transforms the concept of a fallacy into a complex intentional concept. (He said, it will be recalled, that a fallacy is "any argument . . . [with] the purpose of [causing deception].")

But in ordinary usage "fallacy" is not an intentional concept at all. That is to say, a reasoner can commit a fallacy by means of asserting an invalid argument without the intention to deceive anyone. If, as Bentham insists, the French Declaration suffers from fallacies, we should expect its authors and audience alike to be equally surprised to learn this. To suggest otherwise is to impugn the sincerity of the authors of the Declaration; neither Bentham nor history gives us reason to do that.

Bentham might offer a line of self-defense against this criticism by reminding the reader that in his definition of fallacy he also said that an argument is fallacious if there is some "probability" that it would deceive. Now a probability of deception is not an intentional concept, and so Bentham might well concede that although the Declaration is not intentionally deceptive, nonetheless there is a probability that it will deceive, in the sense of tending to cause the reader of the Declaration to believe the falsehoods and ill-advised exhortations contained in it. Yet a defense along these lines is unacceptable because it yields a conception of fallacy that is far too broad and indiscriminate. Virtually any prose text is likely to mislead some reader or even many readers, but we would not want for that reason alone to describe the text as fallacious.

As a third and final problem, we must note that one will look in vain in Bentham's

Book of Fallacies for any account of what he called the "anarchical fallacies" in his essay of that name. This appears to be a major oversight and a bewildering omission on his part. Having diagnosed the supposed fallacies in the French Declaration years before he wrote his *Book of Fallacies*, why should he fail to mention them in his later and longer work? To be sure, one can find reference in the *Book of Fallacies* to "anarchy"; there Bentham points out that the term "anarchy" is characteristically used as an abusive epithet in political discourse. This, he says, was especially true of those who oppose any political reforms; their tactic is to condemn as anarchic all new legislation, reforms, and ventures. Ironically, Bentham himself is vulnerable to the charge that his denunciation of "anarchical fallacies" in the French Declaration comes rather too close for comfort to being just another example of precisely the rhetorical abuse that he later criticized.

3. Anarchy Unlikely

Against that background, let us turn directly to why Bentham thinks the French Declaration, as he says, "sows the seeds of anarchy broad-cast," why he thinks it is a doctrine of "the rights of anarchy – the order of chaos." The Declaration does this, he says, because its tacit message is this: "People, behold your rights! If a single article of them be violated, insurrection is not your right only, but the most sacred of your duties."

This is a startling remark; no such radically anarchic language actually appears in the preamble or in any of the seventeen articles of the Declaration. The closest we come is in the second article, where all persons are told they have a "natural and imprescriptible … right of resistance to oppression" – something not found either in the American Bill of Rights of 1791 or in the 1948 United Nations Declaration. This leads Bentham to heap scorn on the very idea of an "imprescriptible" right – a right that no political or legal authority may (or can?) modify, suspend, or nullify. (In passing, we might compare the imprescriptibility of rights that Bentham attacks with the nonderogable human rights found in the International Covenant on Civil and Political Rights [1966] inspired by the Universal Declaration of Human Rights.

Today's nonderogable human rights are yesterday's imprescriptible natural rights. Their relative rarity under the current international law of human rights would have pleased Bentham, because this rarity constitutes a qualified endorsement of Bentham's utilitarian critique of imprescriptible rights.

Nonetheless, he would have rejected the idea that even one such right is nonderogable.)

Despite insisting that the rights listed in the French Declaration are imprescriptible, the Declaration is completely silent on what recourse the French citizens have if in their judgment any of their "imprescriptible rights" are violated. The measures it is appropriate for individual citizens (or group of citizens) to take to secure rights disrespected by their government is a question of judgment in the circumstances, not a matter for large-scale constitutional pronouncements.

So the silence of the Declaration on this point is neither evasive nor disingenuous; rather, it is evidence of sound political caution. Bentham, putting the worst face on the French Declaration, gratuitously assumes that insurrection is the implied (and only) weapon available to persons who judge they are deprived of their natural rights.

Bentham could, of course, point in particular to the Terror and in general to the instability of French society in the aftermath of 1789, and to the evident inability of the French revolutionaries of that day to govern effectively. He could make an argument in defense of his interpretation of the Declaration along the following lines: First, the Declaration does not rule out a right to violent insurrection as the appropriate response to a government that violates its citizens' rights; second, few if any of the rights proclaimed in the Declaration were operative under law in French society at the time it was promulgated. Therefore, he might conclude, the publication of the Declaration is a tacit invitation to insurrection, and the result of insurrection is anarchy. To put it another way, it would be only natural for believers in the "natural and imprescriptable" rights of man and citizen to use direct and violent measures in an effort to secure their alleged rights, and to be willing to overthrow any government that fails to accord such rights to its citizens. Thus Bentham might have reasoned.

But such an argument cannot be sustained without evidence to back it up, and in the entirety of his critique, Bentham never produces any such evidence. He never argues that reformers and enemies of the "ancient regime" in France, drunk on the intoxicating liquor of "natural and imprescriptible rights," were bound to lose all judgment and – casting prudence aside – would strike at every form of governing authority in their foolish zeal to obtain their alleged rights. He never explains why insistence on natural rights is the sole or the dominant cause of

political unrest in France.

Not only that, the Declaration's professed right to resist oppression need not be taken as a right of *violent* individual and collective resistance to government officials. We can, after all, think of collective *nonviolent* protest, of the sort made famous in the 1960s in the United States during the Civil Rights movement. If that is how we intend to act in exercising our right to resist oppression, it is not obvious why we should be told we have no such right.

Bentham overlooked the possibility of nonviolent resistance to government oppression; it probably never occurred to him to ponder, as many thoughtful philosophers and activists have argued in this century, that mass nonviolent civil disobedience is a legitimate form of protest even in a moderately just, liberal constitutional republic and a fortiori in an illiberal society. To be sure, Bentham was not an advocate, here or elsewhere, of civil disobedience. He lived in a day in which fear of "the mob" was a constant preoccupation of the English upper class, a worry made all the more troubling by the excesses of the French Revolution. Nevertheless, is it merely sentimental and anachronistic to suggest that the worst that can be said of the French Declaration on the point under discussion is that its use of the term "resistance" in this context needs careful interpretation? I think not.

A related but even stronger objection to Bentham's views emerges here. Let us put the French Declaration aside for the moment and think of its American and United Nations counterparts. I challenge anyone to point to any anarchic consequences in political behavior directly caused by widespread belief among Americans two centuries ago in their Bill of Rights, or among any who believe in the human rights cited in the United Nations Declaration during the half century since its promulgation. Whatever political actions have been engendered by belief in these rights, there is little or no evidence that their chief effect has been to nourish seeds of insurrection and anarchy where prior to such declarations no such inclinations existed. On the contrary, the violence associated with belief in human rights and with protests against violation of such rights almost invariably comes from the police and government officials who use their power (as the British did in Amritsar in the 1920s, as the local police across the United States did in anti-union riots of the 1930s, and as the Chinese did in Tiananmen Square in the 1980s) to crush those who nonviolently protested violations of their human rights.

Perhaps the aftermath of the storming of the Bastille in the summer of 1789 was

different; perhaps shrieks and cries in the streets of Paris of "natural and imprescriptible rights" did play a prominent causal role in ending Bourbon rule and paving the way for the abuses that culminated in the Terror and then in Napoleon's reign. But if that is what Bentham believed, and what prompted him to denounce the French Declaration within a few years of its promulgation, it is most unfortunate that he so conspicuously failed to say so.

I can only conclude that Bentham has not made out his case for the claim that the French Declaration – or any of the other largely aspirational manifestos of that day and later that were drafted along the same lines – is invalid, unsound, or false because of its "anarchical fallacies".

ISSA Proceedings 1998 – Metaphorical Politics: Mobilization Or Tranquilization?

Politicians tend to express themselves indirectly. Sometimes they do so because they live in a totalitarian society, in which free expression is prohibited. Political crisis and war or severe economic crisis also affect directness and explicitness of political rhetoric. Politicians in prosperous democratic society, however, also see advantages in indirect or non-literal linguistic strategies. Commercialization of society, media, and politics reinforce this trend. Floating voters form an

increasing segment of the electorate and politicians want to attract these voters by means of indirect statements with limited political content.

Metaphors are a form of indirect communication that has many advantages for politicians who know how to use them and when. Why is it that metaphors are essential to political rhetoric and mass communication? What does metaphorical reasoning include? How do politicians use metaphorical reasoning? How do social scientists deal with the study of metaphors in politics?

1. Metaphorical Reasoning and Cognitive Blending

Contemporary theory and research in cognitive science have widened scientific interest in metaphors, a literary device with ancient roots. Cognitive schema theory suggests that the mind generates virtual simulations, similar to computer software programs that interpret the physical world. Appropriate external stimuli activate these internal schemata, which help us understand and react. Human action and reaction are thus mediated by schema-driven cognition. Metaphors reflect and drive these schemata. Metaphor is thus both a facet of language and a dimension of cognition.

According to traditional Aristotelian theory, metaphors were linguistic phenomena that included the substitution of one word for another. The Oxford English Dictionary seems to follow this path when it defines metaphor as "the figure of speech in which a name or descriptive term is transferred to some object of different form, but analogous to, that to which it is properly applicable" (OED 2).

Going beyond this, modern metaphorical theory has created terminology to denominate elements of the metaphorical expression. In this lexicon,(A) is the topic, tenor, or target, the ground, which is the actual subject of discussion; (B) is the source or vehicle, which is an idea from a different sphere of life, which is literally used to describe the subject (A); between (A) and (B) exists a blended space producing tension (C). The interaction between these two ideas (A) and (B) generates a new, figurative, blended meaning (C), and a new view upon the subject. Older theories of metaphorical comparison and substitution neglect (C), the value added by the fusion of (A) and (B), which is at the core of the interaction theory (Turner and Fauconnier, 1995; Lakoff and Turner 1989; Ortony, 1984).

Metaphorical reasoning involves a kind of analogical thinking, as in the following simile: "A" is like "B," it begins; therefore, it continues, "C" follows. "All men are mortal," one classic syllogism begins. "Socrates is a man; Socrates is mortal." This syllogism is not, strictly speaking metaphorical. In it, Socrates is not like a

man; he is a man. Nevertheless, the form is similar, analogically wrapping one pattern, Socrates, into another, man. Other forms of reasoning follow similar analog dynamics (Beer, 1993).

Such interaction theory allows for a less normative perspective of metaphors than has been traditional. In the traditional perspective metaphors were not appropriate for scientific discourse. Scientific reasoning was fundamentally different – a simple, logical, linear, systematic – kind of cognitive process. Scientific discourse, as a consequence, consisted of analytic language. Scientific and logical reasoning was expressed through logical argumentation dealing with the relation of arguments to the probandum. Metaphors, in this view, belonged not to science but to practice, to pragmatic argumentation and reasoning. Pragmatic reasoning and argumentation look at subjective reactions of the audience. The relation between the arguing person and the addressee is an essential part of pragmatical argumentation (Weinberger, 1995: 37-39, 52). Emotion plays a dominant role in the relation between the arguing person and the addressee. Logical reasoning and argumentation, to the contrary, solely rely upon ratio and cognition. According to interaction theory, however, the metaphor generates a new meaning (C). The juxtaposition of two separate domains of knowledge, like European unification (A) and bicycle (B), can be energising. One has to ride a bicycle in order to keep it moving. Jacques Chirac, the French president, used this metaphor in an interview with the newspaper Figaro to defend his view upon the political unification of Europe. The mixing of the issue in question, the European Union, with an issue completely strange to the context, bicycle, generates new meaning for the issue in question. The European integration should progress in order not to abolish former results.

Not only persuasive communication and creative arts, but also science profit from this extraordinary interactive dimension.
Case-based reasoning is at the heart of the Anglo-American legal tradition. In case-based reasoning, a current case is interpreted in the light of a previous one. An abortion case comes before the United States Supreme Court; it is understood in terms of the Court's earlier decision in Roe v. Wade. In rule-based reasoning, the current case is compared with a body of rules or laws. Continental European jurisprudence, for example, tends to be based less on precedents from prior cases than on principles derived from central legal codes. Finally model-based reasoning found in the social sciences, uses mathematical models as core

schemata for interpreting social behavior. Rational choice models are one example of the application of such templates to various social phenomena (Beer,1985; Sylvan and Voss, 1998).

There are, of course, famous philosophical figures of speech Plato's cave, Hobbes Leviathan. The law, according to the American Jurist Oliver Wendell Holmes, was a jealous mistress. According to one account, one core image of Einstein's theory of relativity came from a trolley ride around the Ring in Vienna (Feuer, 1974).

Beyond such specific images, however, metaphorical processes are central to reasoning. Contemporary social scientists consider metaphors to be much more than a linguistic phenomenon. Philosophers beginning with Vico have challenged the standard linguistic perspective. Instead of seeing metaphor as an embroidery of the facts, such thinkers viewed it as a way of experiencing facts. Metaphor is a form of non-literary or figurative language which was thought to precede, historically or logically, the concretised meanings of literal or scientific discourse, a secondary development (Gresson, 1987: 184-185). Metaphor is thus an important element of both literary style and cognitive process.

Metaphors are also a critical dimension of political style and process, finding their clearest expression in political rhetoric. Metaphor is, indeed, most often used because the speaker or writer estimates this opportune in relation to the audience. Metaphors are brief, implicit interactive comparisons. Insinuation has proved to be more persuasive than direct statements. Metaphors are expressed in words, but they include much more than metaphorical language; these express a (metaphorical) thinking process. Metaphor is part of symbolic style, which can be opposed to logical style. The meaning it represents draws upon our real-world experience; metaphors are connected to language use and to context; these are style figures that transgress or manipulate grammar. Because we do not have metaphorical words but metaphorical wordgroups or expressions, metaphors do not belong to the field of grammar (De Landtsheer 1994, 1998; Ortony, 1984 Fraser, 1984; Dudley, 1984; Lepschy, 1976; Lasswell, 1949).

It is quite difficult to explain what metaphors are, how they work, and how to identify them. It is, however, as Saint Augustine suggested, rather easy to recognise metaphors. Regardless of language or nationality, people show a natural ability to identify metaphors, even in a foreign language. The reason seems to be that metaphors are absurd or meaningless when taken literally. One has to interpret the metaphor, one has to take into account the context of the metaphor, in order to understand the message. Metaphor introduces a conflict in

a sentence, as the sphere where to it refers is obviously incompatible with the sphere of the utterance in general.

Resolution of this conflict results in interpretation of the metaphor, in a sense similar to that intended by the speaker or writer. Mother and war belong to different, conflicting spheres of life. Mother embraces you and offers love, comfort protection and warmth. War is death and killing. Saddam Hussein nevertheless named the Gulf War the "mother of all wars". A sentence containing a descriptive statement referring to the issue in question, the Gulf war, is injected with emotion, the reference to a personal issue like mother. Metaphor uses a procedure that introduces duality, contradiction, or even conflict into a sentence. To picture the ruling government as the Titanic or as a metro wagon that has lost its way surprises and excites the mind. Metaphors are strange elements, unexpected in a particular context. Shifting between schemata dynamises content and catches attention.

We are used to thinking of metaphors in connection with literary similes, allegories, and parables. When a man tells a woman that she is a rose, for example, he offers and invites a schema for appreciating her. When the woman's jealous stepsister responds that the rose is infected with aphids, the stepsister simultaneously extends the metaphor and transforms its meaning. She reshapes the original cognitive schema. In the former example, the rose is infected with aphids makes an effective metaphor, as it is full of suggestion.

Metaphors can be considered as a comparison statements with parts left out, or as compressed similes. "You are a rose" would be less effective when formulated as a simile, an explicit comparison between two unlike things, saying that you are like a rose. Even less effective is a literal comparison, such as you are like your stepsister in which two similar things are explicitly compared, or an analogy. You are to your stepsister like a rose to an aphid is an analogy, for which four terms are needed (Miller, 1984). The sentence "purple turns into black and blue after a while" can be viewed as having strictly literal meaning in a family context, in which a boy felt himself a bruise on his leg. This sentence becomes metaphorical when pronounced in a television interview by the opponent of the Dutch purple coalition between socialdemocrats (red) and conservatives (blue).

The classical rhetorical arsenal includes pre-formatted categories. A brief listing and selective definition of some of these suggests their heavy dependence on explicit or implicit metaphorical processes:

Allegory – an extended or continued metaphor;

Metonymy – substituting for the name of a thing the name of an attribute;
Parable – comparison, allegory;
Synecdoche – substituting a whole for a part or a part for a whole;
Topos –
Trope – use of a word or phrase in a sense other than is proper to it.

A restricted metaphorical concept includes only the last kind of figurative language, the trope, which is based on direct transfer of name because of similarity. Metaphors in a broad sense include also most of the other forms of non-literary language use. Experience teaches us that most definitions still allow for a slightly different personal interpretation, even when specifications are given. The reason is that metaphors can be placed on a continuum, ranging from the living metaphors to dead metaphors. Awareness of metaphors differs both personally and culturally. Living metaphors are creative and original vehicles which illuminate the mind. Like a new pair of shoes these catch our attention during a long walk as they appear to small and look nice; dead metaphors are like an old pair of shoes: these are unspectacular and so often used and comfortable that one is no longer aware wearing these. Dead metaphors are no longer considered to be metaphors. The stronger the reference to the literary meaning, the more significant the conflict that the metaphor causes within a sentence. Commonly used metaphors generate weak references to literary meaning; these references may even disappear over time (De Landtsheer, 1998; Mooij, 1976).

2. Metaphorical Rhetoric – Emotion, Visualization, and Personality
The traditional formulation of rhetoric, with similar Aristotelian roots, distinguishes between three major sorts of rhetorical appeals – logos, ethos, and pathos. We have already discussed the metaphorical dependence of reason on prior models of reasoning. These ordered forms of rationality provide an implied metaphorical template for the kinds of reasons that are rhetorically given. The concept of "logos" should not be confused with formal logic. It means simply that the speaker should give a more or less coherent argumentation.
Arguments can be of various origin: personal history, religion, culture. These should, however meet the criterion that they are plausible, or seem reasonable to the audience.
Ethos, in a similar way, relies more directly and heavily on pre-existing patterns of customs and norms. "Ethos" depends upon the status of the speaker; the higher the position, the better his or her reputation, the more ethical rhetoric is

perceived. Pathos, finally, is effective precisely because of its explicitly metaphorical invocation of prior experiences from a wide spectrum of collective life. Pathos is not the least important aspect of rhetoric. The speaker uses high doses of emotion in his speech in order to persuade the audiences of his or her point of view (Windt, 1987: xvii, xviii).

Pathos suggests a dimension of politics that many analytic and scientific observers find very disturbing. On many occasions, emotion dominates reason. The speaker's main objective is audience support. Most election campaigns are full of emotion-dominated rhetoric. After the elections, the corpses have fallen out of the closet, Karel van Miert, the present European commissioner used to say while he was an opposition party-leader of the Belgian social-democrats (ethos). His metaphor (pathos) argued that the governing parties deed not keep their promises made during election campaign (logos). This refined metaphor was a powerful mixture of reason and emotion. Metaphors are the politicians' keys to citizens' emotions. The powerful suggestion mechanism activated by metaphor triggers underlying emotions.

The distinction made by Ricoeur between emotion and feelings seems relevant to understand politicians' handling of metaphors in order to trigger emotions. Emotion is what we consider an irrational, non-cognitive, strictly physiological event. Emotion is a first order experience that can be contrasted with feeling, a second order experience. In other words, emotions are general and feelings are attached to specific objects (Dobrzynska, 1995: 597; Ricoeur, 1975). Politicians intentionally and cognitively produce metaphors, because they feel that arousing emotions in the audience is a good way to persuade the audience.

In spite of their common human foundations, reason and emotion have traditionally been viewed dualistically, as opposing forces. Because of its emotional content, classical philosophy opposed itself to rhetoric: Rhetoric was philosophy's evil twin (Farrell, 1974}. Reason and emotion are, nevertheless, very compatible and have a delicate relationship one to another. We have already suggested the metaphorical dimension of reason itself, as abstract models of reason are applied in the world. It is also worth noting that reason itself involves emotion: The passion for reason can be as powerful and productive, misleading and counter-productive, as other emotions. As we have noted, metaphors activate conscious and sub-conscious, rational and emotional responses.

These different kinds of appeals exist in an uneasy tension. Political rhetoric uses

all the dimensions of metaphors in its persuasive quest. Metaphors are a mountain full of wild flowers; these evoke non-linguistic primary processes that have powerful effects.

The symbolic or imaginative language (metaphors are a mountain of wild flowers) is synthetic and exists along with the linguistic, analytic, rational expression (metaphors evoke non-linguistic primary processes that have powerful effects) (Paivio, 1979, Bateson, 1972).

Persuasive effects of metaphors can be explained by means of a modular theory of the mind. According to this theory, left brain hemispheric (linguistic) messages are interpreted literally, while images are processed in the right brain hemisphere. Metaphor often creates in the mind of the audience a visual image as well as a verbal meaning. The fact that metaphors are processed both literally and imagically produces more retention and persuasive effect; metaphors increase the degree of attitude change and memorisation of the audience (Opfer & Anderson, 1992: 5-7). Metaphors thus mobilise broader potentials for human communication. The mobilisation of public opinion is considered to be an irrational process, just like collective human behaviour itself. This view by political psychologists and anthropologists clearly differs from the notion of rationality as posited by Aristotelian and Cartesian philosophy and epistemology (Haskell, 1987: 91; Bateson, 1972: 464; Osgood, Suci, & Tannenbaum, 1967: 273).

Personality variables may affect metaphoric communication. Political psychology suggests that the strong drive felt by politicians to establish a firm sense of self may positively affect their symbolic capacities. The compensation hypothesis suggests that some politicians may have poor self-integration. Poorly integrated individuals seem to lack adequate boundaries between self and other, between feeling and thought, and between fantasy and reality. Both the creative activity of producing metaphors and the interpretation of metaphors may reduce anxiety (Feldman, 1994; Haskell, 141-162; Billow, Rossman, Lewis, Goldman, Kraemer, and Ross, 1987: 154-156; Lasswell, 1948).

The interpretation of metaphors, stimulates personal and emotional; interpretation and may also make anxiety more painful. Psychiatry considers the handling of metaphor as one of the most striking aspects of schizophrenic language. Metaphors have tremendous effects upon subjects with non-integrated personalities. The seriously disturbed seem to get emotionally upset by metaphors. The metaphorical utterances of other are responded to as if they are literal communications. In less disturbed subjects moderate anxiety levels may

also heighten creativity, which is necessary for the production of metaphors (Bateson, 1972; Billow, Rossman, Lewis, Goldman, Kraemer and Ross, 1987: 151-156).

Clinical experiences teach that one should distinguish between purer metaphors and similar forms of figurative speech such as metonymy, similarity metaphors, proportional metaphors and proverbs. In the case of purer metaphors, the schizophrenic individual will feel the need to disturb communication by inaccurate, autistic, and/or literal responses. This is most often not the case when other forms of figurative language are used. New and powerful metaphors may generate even more effects than dead metaphors. Reasons may lay in the fact that the interpretation of new metaphors relies upon the context, while other forms depend upon learned associations (Mahler, 1968). It can be concluded that a main rhetorical effect of metaphorical communication is a broadening of the emotional dimension of cognition.

3. Metaphorical politics – Complexity, Diversity and Drama
Metaphorical reasoning and metaphorical rhetoric are central components of politics. Metaphors are part of political speech in all its forms: rhetoric by politicians, politicians' discourse mediated by mass media, political texts written by journalists, philosophers, and literary authors. Nowadays, sound bites have proved to be more often quoted by mass media than other expressions by politicians.
Sound bites are usually metaphors (Opfer and Anderson, 1992). The power to impose metaphor is also the power to impose a form of political reasoning – and also a form of political order. Metaphors thus reflect, interpret, and construct politics.
Metaphors in politics seem to differ strongly from other metaphors, used in religion, advertising, journalism and sports though they may include elements from these other domains (Dirven, 1989: 22-38). A notion of community with individual identities is an aim formulated by both US and European policy-makers. The use of a mosaic metaphor that recognizes individual communities as part of the whole within a shared framework seems more appropriate than the melting pot or rainbow metaphor (Etzioni, 1997: 21-32). The "War on Drugs" metaphor used by the US government directs attention to restrictive measures, while driving attention away from treatment, prevention and curing (McGaw, 1991: 57-74). Italian politicians nowadays use horticultural metaphors in order to forget

about past scandals and to give a "rosy" description of current affairs (Ferrarotti, 1996). The populist discourse by the right-wing Italian politician Silvio Berlusconi shows a preference for metaphors from the domains of football, war and the bible (Semina and Masci, 1996: 243-269). Sports metaphors were used in a distinct way by former US presidents Lyndon Johnson and Ronald Reagan. Johnson's rhetoric used the "starting line" metaphor to describe the need to establish equal competitive conditions. Reagan emphasised the "runners" idea in stressing that competitors need to rely on athletic character (Walk, 1995: 36-55). Defeated presidential candidates seem to share the same pattern in metaphor use (Corcoran, 1994).

Crisis situations of diverse origin and restrictions upon individuals generate public speech that is highly metaphorical. Metaphors belong to ornamental and symbolic style (contrary to sign-oriented or factual style), which is assumed to "infect" political discourse during severe political or economic crises. Style is simply the order and movement politicians give to their thought (Lasswell, 1949: 21). An acceptable explanation for this is that the need for "emotion" dominates crisis), and that metaphors predominantly belong to the emotive component of language (as far as this component can be divided from the cognitive). Speech by political leaders may thus be less cognitively, but more metaphorically and emotionally, powerful during crisis situations. At the same time, leaders may wish to conceal how things really are, both for the population and for the enemy in times of war (Dobrzynska, 1995; Lackner, 1995; De Landtsheer, 1994; Gaus, 1982; Ricoeur, 1975; De Sola Pool, 1956)

Culture, ideology, and gender affect the content of metaphors. Navigation metaphors are commonly used in The Netherlands, while French politicians prefer culinary metaphors and Chinese politicians use poetic ones. Marxism-Leninism uses construction metaphors, while capitalist society produces nature metaphors.

Several studies indicate that extremist political discourse both from the left and from the right differs from discourse by other ideological groups in using more metaphors. The extreme right seems to use relatively more cleaning and illness metaphors than other ideological groups. Female political discourse seems less metaphorical than male political speech. In times of prosperity, metaphors resemble everyday life and everyday-life speech, because they, for instance, include many proverbs and biblical expressions (De Landtsheer, 1998: 129-144; Karvonen, 1994: 441-452; Edelman, 1977: 35; Koeller, 1975: 222; Mooy, 1976:

16).

One of the major emotive functions of metaphors can be to reassure the audience. Metaphors picture reality and life as simple, they simplify complex situations and thereby give the audience a sense of confidence. Everyday life and nature metaphors are particularly fitted for democracy, prosperity and democratic politicians.

Different family models seem to affect underlying conservative (paternal model) and liberal (nurturing parent model) metaphorical models (Lakoff, 1995: 177-213). One should not allow people to become rich while sleeping, said the Dutch social-democratic prime minister Wim Kok before winning the 1998 Dutch elections. Kok thereby explained to his citizens-electors that his policy aimed at protecting working people.

Metaphors also allow people to escape from realty. Therefore they even sometimes refer to drama, music, film and games. I would love to have an African rhythm in Belgian politics, answered a Belgian politician when was asked whether he would accept a certain colleague that had gone to Africa to start a new career in his party. Metaphors, thus, relax the audience, sometimes even by reflecting repressed aggressive or psychotic feelings.

Different metaphors reflect and enhance power in different contexts. Current theory and research suggest that some metaphors are more important than others. According to one body of thought, there exists a deep metaphorical structure, a generative metaphorical grammar, resting on the common human experience of embodiment.

In other words, our bodies provide a fundamental "source" schema for much of our relation to the world (Johnson, 1990; Lakoff and Johnson, 1983). It is obvious that the metaphor of the body underlies a good deal of contemporary political discourse.

Traditional political philosophy relied heavily on the implied metaphor of the "body politic," giving a corporeal form to an abstract, intangible entity, the state. The metaphor of the "state as person" is very much alive and well today. Using this metaphor, some analysts have generated elaborate scripts for the Gulf War, with frames for different settings and slots for various characters (Lakoff, 1991; Beer and Balleck, 1997). Though they may also have indirect bodily referents, other metaphors are important in their own right.

In a seminal, though now neglected work late in his career, the distinguished political scientist Karl Deutsch (1966) suggested that machines had provided a

powerful modern template for political life. The Newtonian expansion of celestial mechanics thus found its political counterpart in the checks and balances of the American Constitution. Deutsch also imagined a third, emerging model for politics, the network. Modelled on the proto-science of cybernetics in vogue during the middle of the 20th century, the network concept has considerable resonance in the communications revolution at century's end.

Beyond these core metaphors of body, machine, and network, nature, war and game there is enormous diversity and variety in political metaphors. Metaphors for politics and political community include a variety of terms. Some of these are presented in *Table I.*

These metaphorical shifters create a blended, hybrid space where the metaphorical sources and political targets coexist in a dynamic relationship (Turner and Fauconnier, 1995). The variety of choice, the richness of this metaphorical menu provides political actors and observers with an infinite inventory of rhetorical resources.

Table I Metaphorical Sources for Political Targets

Politics-as-Activism	Politics-as-Medicine
Politics-as-Art	Politics-as-Modernization
Politics-as-Balance	Politics-as-Myth
Politics-as-Beast	Politics-as-Narrative
Politics-as-Blood	Politics-as-Neighborhood
Politics-as-Body	Politics-as-Network
Politics-as-Bureaucracy	Politics-as-Nightmare
Politics-as-Business	Politics-as-Orchestra
Politics-as-Chaos	Politics-as-Order
Politics-as-Coalitions	Politics-as-Pattern
Politics-as-Coercion	Politics-as-Peace
Politics-as-Commons	Politics-as-Pollution
Politics-as-Communication	Politics-as-Power
Politics-as-Competition	Politics-as-Prison
Politics-as-Container	Politics-as-Process
Politics-as-Conversation	Politics-as-Race
Politics-as-Cooperation	Politics-as-Reason
Politics-as-Corporation	Politics-as-Religion
Politics-as-Discourse	Politics-as-Repression
Politics-as-Disease	Politics-as-Resources
Politics-as-Disease	Politics-as-Science
Politics-as-Dominance	Politics-as-Science
Politics-as-Dream	Politics-as-Slavery
Politics-as-Education	Politics-as-Sport
Politics-as-Family	Politics-as-Story
Politics-as-Fantasy	Politics-as-Submission
Politics-as-Force	Politics-as-Suffering
Politics-as-Force	Politics-as-System
Politics-as-Game	Politics-as-Technique
Politics-as-Health	Politics-as-Theater
Politics-as-Hell	Politics-as-Therapy
Politics-as-House	Politics-as-Torture
Politics-as-Land	Politics-as-Village
Politics-as-Machine	Politics-as-Violence
Politics-as-Market	Politics-as-War

Table 1. Metaphorical Sources for Political Targets

4. Metaphorical Meaning and Metaphorical Power-Leaders, Elites and Citizens
Metaphors are political language, social life, and political life in a nutshell. The statement by some scholars that political language is interchangeable with politics also holds for metaphors. Political metaphors are condensed politics. The use and understanding of metaphors is interwoven with political life and with

political culture.

This is what makes studying political metaphors so rewarding for social scientists. Metaphors adapt to circumstances of war and peace, prosperity and crisis, dictatorship and democracy. Metaphors always keep their charm, persuasive power and attractiveness, regardless of their content, regardless of the person who uses them, regardless of the medium that "distributes" them. Political metaphors exist in all ages and all places. The content and form of political rhetoric's provides important information about public beliefs and values. Audiences participate in constructing political discourse.

The politician searches for the best possible arguments to support a position. A final selection is made on the basis of audience appeal. The same holds for the style that politicians choose (more or less formal, dialect or not, what kind of metaphors,...). Political metaphors are always a function of the context and of the needs and interests of the audience involved. The audience is always incorporated in the chosen rhetorical style and metaphors. This is especially the case when political speech is what Windt calls "expressive". Politicians, or demagogues in this case, try to clarify their positions on issues in which the audience is interested, they adjust their language to meet the culture of their audience. The metaphors used by demagogues thus provide particular insights for social scientists. Doctrinaire politicians, on the other hand, focus on ideas and disregard the audience; their language is "impressive language", which focuses on pure ideas. Democratic rhetoric should balance between impressiveness and expressiveness (Windt, 1987: xvii, xix). For the above reasons, social scientists undertake content analysis of metaphors as a form of political analysis. Metaphorical analysis shows that De Klerck and his party managed to give an international impression of a "new" South Africa" while preserving their privileges (wa-Mwachofi, 1995: 331-352), or that despite obvious differences, election speeches by political opponents in New Zealand share underlying assumptions (Lyons, Stephens, Morgan, Praat, Tuffin, 1996: 77-90).

Metaphorical reasoning lies at the heart of political analysis, communication, and decision. Understanding the metaphorical construction of politics reveals previously hidden dimensions of political communities and previously hidden meanings of political discourse. It suggests new solutions to long-standing political conflicts and new areas for political co-operation. In our globalized, multicultural society, metaphors tap primary human experiences and cross boundaries. They can encourage greater mutual understanding and advance the

search for peace. Metaphorical rhetoric is often successfully used by national political elites during severe political, military and economic crises. Metaphors, as these elites know, reassure and comfort their citizen audiences. Metaphors may help people to face periods of misery. During more prosperous times, political elites are aware that metaphors widen their voter audiences.

Metaphorical soundbites have considerable persuasive and mnemonic effects. Bright metaphors bring politics closer to the citizen.

Metaphors increase political participation, and further democracy.

Metaphors, however, may also carry stereotypes, deceit, and manipulation, in the various forms in which they are "distributed", from traditional storytelling to Web pages. They may tranquilize people, and they may promote war, crime and civil disturbance; they may euphemize torture and state terrorism (Jones, Gwyneth, 1997; Crelinstein, 1991; Ping-Lin Liu, 1965). Metaphors can be instruments of propaganda. The impact they have on schizophrenics show that they can influence segments of the population in a powerful way. The master in metaphors dominates his or her environment, regardless of its scale. And he or she always can deny what metaphors imply. Metaphors are crucial devices in maintaining and shifting meaning. If politics is a game, then every political-X means an element in game-Y." If political community is a family, then every element of political life is interpreted in terms of the categories and roles that family life provides. Metaphorical power flows directly from metaphorical capability to maintain and shift meaning. Metaphorical politics are about the power of meaning and the meaning of power. What political metaphors really mean are patterns of human political life.

REFERENCES

Balbus, Ike (1975). Politics as Sports: The Political Ascendency of the Sports Metaphor in America. *Monthly Review*, 26, 10.

Bateson, S. (1972). *Steps to an ecology of mind*. New York: Ballantine Books.

Beck, Brenda (1987). Metaphors, Cognition and Artificial Intelligence. In: Haskell, (1987)(ed.). *Cognition and Symbolic Structures: The Psychology of Metaphoric Transformation.* (pp. 9-30), Norwood, New Jersey: Ablex Publishing Corporation.

Beer, Francis A. and Barry S. Balleck (1996). Body, Mind, and Soul in the Gulf War Debate. In: Mary E. Stuckey (ed.), *The Theory and Practice of Political Communication Research*. Albany, New York: SUNY Press.

Beer, Francis A. (1993). Words of Reason, *Political Communication*.

Beer, Francis A. (1995). Games and Metaphors. *Journal of Conflict Resolution*.

Billow, Richard, Rossman, Jeffrey, Lewis, Nona, Goldman, Deborah, Kraemer, Susan and Patrick Ross (1987). Metaphoric Communication and Miscommunication in Schizophrenic and Borderline States. In: Haskell, (1987)(ed.). *Cognition and Symbolic Structures: The Psychology of Metaphoric Transformation.* (pp. 141-162), Norwood, New Jersey: Ablex Publishing Corporation.

Chilton, Paul; Ilyin, Mikhail (1993). Metaphor in Political Discourse: The Case of the 'Common European House'. *Discourse and Society*, 4, 1, Jan, 7-31.

Choi,-Jung-Min, Callaghan, Karen A. & Murphy, John W.(1996). *The Politics of Culture, Race, Violence and Democracy*. Westport, CT: Praeger Publishers.

Corcoran, Paul E. (1994). Presidential Concession Speeches: The Rhetoric of Defeat. In: Kendall, Kathleen E.; Corcoran, Paul E.; Bauman, Sandra; Herbst, Susan; Meyrowitz, Joshua Symposium: Strategic Communication Problems in Presidential Campaigns. *Political Communication*, 11, 2, Apr-June, 107-164.

Crelinstein, R.D. (1991). *In Their Own Words: The World of the Torturers.* Paper presented at the III Pioom Symposium "Torturers and their Masters: The Politics of Pain", The University of Leiden, Netherlands.

Czarniawska Joerges, Barbara; Jacobsson, Bengt (1995). Political Organizations and Commedia Dell'Arte. *Organization Studies*, 16, 3, 375-394.

De Sola Pool, Ithiel (1956). Variety and repetition in political language. In: H. Eulau et al. (eds). *Political Behavior. A Reader in Theory and Research* (217-231). Library of Congress.

Deutsch, Karl W. (1966). *The Nerves of Government: Models of Political Communication and Control.* New York: Basic Books.

Dirven, Rene (1989). Metaphors in Politics: The Case of Apartheid. *Communication and Cognition*, 22, 1, 22-38.

Dobrzynska, T. (1995). Translating metaphor: Problems of Meaning. *Journal of Pragmatics* 24, 595-604.

Dudley, A. (1984). Concepts in Film Theory. Oxford, UK: Oxford University Press.

Edelman, M. (1974). *The Symbolic Uses of Politics*, Urbana, Illinois.

Etzioni, Amitai(1996-1997). The Community of Communities. *Responsive Community* 7,1, winter, 21-32.

Ezrahi, Yaron (1995). *The Theatrics and Mechanics of Action: The Theater and the Machine as Political Metaphors*. Social Research.

Farrell, Thomas B. (1993). *Norms of Rhetorical Culture*. New Haven, Yale University Press.

Feuer, Lewis S. 1974. *Einstein and the Generations of Science.* New York, New York: Basic Books.

Feldman, (1994). Personality and Politics in Japan. *Politics and The Individual*, IV, 2.

Ferrarotti, Franco (1996). Le Radici Tagliate [Cut Roots]. *Critica Sociologica*, 116, Jan-Mar, III-IV.

Feuer, Lewis S. 1974. *Einstein and the Generations of Science.* New York, New York: Basic Books.

Fritzsche, P. (1994). *Social Stress. A New Approach to Explain Xenophobia.* Paper VIII th Conference of the Dutch Society of Political Psychology. Amsterdam, The Netherlands.

Fraser, B. (1984). The Interpretation of Novel metaphors. In: Ortony, A. (ed.), *Metaphor and Thought*, New York: Cambridge University Press, 172- 185.

Gaus, Helmut (1979). *The Function of Fiction. The Usefulness of Functional Analysis for the Study of Cultural Phenomena*, Ghent, Belgium: Story Scientia.

Gaus, Helmut (1982) *Menselijk Gedrag in Perioden van Langdurige Economische Recessie*. Een Schets. Malle, Belgium: De Sikkel.

Gastil, John (1992). Undemocratic Discourse: A Review of Theory and Research on Political Discourse. *Discourse and Society*, 3, 4, Oct, 469-500.

Gresson, Aron David (1987). Transitional Metaphors and the Political Psychology of Identity Maintenance. In: Haskell, Tobert E. (ed.). *Cognition and Symbolic Structures: The Psychology of Metaphoric Transformation.* Norwood, New Jersey: Ablex Publishing Corporation.(163-185).

Haskell, Robert E. (1987) (ed.). *Cognition and Symbolic Structures: The Psychology of Metaphoric Transformation*. Norwood, New Jersey: Ablex Publishing Corporation.

Holy, Ladislav (1994). Metaphors of the Natural and the Artificial in Czech Political Discourse. *Man*

Howe, Louis E. (1994). *Political Immunology: Political Subjectivity (Subjection) in the Information Age*. New Political Science.

Johnson, Mark (1990). *The Body in the Mind: The Bodily Basis of Meaning, Imagination and Reason.* Chicago: University of Chicago Press.

Jones, Gwyneth (1997). The Neuroscience of Cyberspace: New Metaphors for the Self and Its Boundaries. In: Brian D. Loader (ed.). *The Governance of Cyberspace: Politics, Technology and Global Restructuring* (pp. 46-63), London: Routledge.

Karvonen, Lauri (1994). Political Language: Do Women Make a Difference? *Innovation*, 7, 4, 441-452.

Koeller, Wilhelm (1975). *Semiotik und Metapher [Semiotics and Metaphors]*. Stuttgart: Metzlzsche Verlagsbuchhandlung.

Lackner, M. (1995). Des termes subtils porteurs d'un grand message. Remarques a propos de quelques particularites linguistiques du discours politique en Chine. *Relations Internationales*, nr.81, 77-88.

Lakoff, George (1995). Metaphor, Morality, and Politics, or, Why Conservatives Have Left Liberals in the Dust. *Social Research*, 62, 2, summer, 177-213.

Lakoff, George (1991). Metaphors of War. *Propaganda Review,* 8, fall, 18-21, 54-59.

Lakoff, George (1991). Metaphor and War: The Metaphor System Used to Justify War in the Gulf. *Peace Research*, 23, 25-32.

Lakoff, George and Mark Turner (1989). *More than Cool Reason: A Field Guide to Poetic Metaphor*. Chicago, Illinois, University of Chicago Press.

Lakoff, George (1987). *Woman, Fire and Dangerous Things*. Chicago: Chicago University Press.

Lakoff, George & and Mark Johnson(1980). *Metaphors We Live By*. University of Chicago Press.

De Landtsheer, Christ'l (1994). The Language of Prosperity and Crisis. A case study in Political Semantics. *Politics and The Individual*, Volume 4, Number 2, Hamburg: Kramer Verlag: 63-85.

De Landtsheer, Christ'l (1995). Political Communication. In: *Politics, Groups and The Individual, V 2, Special issue on "How to make a politician"*, ed. by C. De Landtsheer, Norderstedt, Germany: APP Verlag.

De Landtsheer, Christ'l (1998). The Political rhetoric of a Unified Europe, In: Feldman, Ofer & De Landtsheer, Christ'l (eds). *Politically Speaking: A Worldwide Examination of Language Used in The Public Sphere* (pp. 129- 145), Westport, Connecticut, Praeger.

Lasswell, H. D. & Lerner, D. and Sola Pool, I. de (1952). *The Comparative Study of Symbols.* An Introduction. Stanford, USA: Hoover Institute Studies, Stanford University Press.

Lasswell, H. D. (1949). The Language of Power. In: H.D Lasswell, Nathan Leithes and Associates (eds.), *Language of Politics. Studies in Quantitative Semantics*, (3-19) New York, USA: George W. Stewart Publisher Inc.

Lasswell, H. D. (1949). Style in the Language of Politics. In: H.D. Lasswell, Nathan Leithes and Associates (eds.) *Language of Politics, Studies in Quantitative Semantics* (20-39), New York, USA: George W. Stewart, Publisher Inc.

Lepschy, G. (1976). Interpretation and Semantics. *Cahiers de Lexicologie*, 29: 64.

Loader, Brian D. (ed.) (1997). *The Governance of of Cyberspace: Politics, Technology and Global Restructuring*. London: Routledge.

Lyons, Antonia C.; Stephens, Christine; Morgan, Mandy; Praat, Angelique C.; Tuffin, Keith (1996). Constructing New Zealand: Common Linguistic Resources in New Zealand Political Discourse. *Australian Journal of Communication*, 23, 1, 77-90.

Mahler, Margaret S. & Manuel Furer (1968). On Human Symbiosis and the Vicitudes of Individuation. New York: International University Press.

Miller, (1984). Images and Models, Similes and Metaphors. In: Ortony, Andrew (ed.) *Metaphor and Thought* (202-250), Cambridge, Cambridge University Press.

McGaw, Dickinson (1991). Governing Metaphors: The War on Drugs. *American Journal of Semiotics*, 8, 3, 57-74.

Mooy, J. J. (1976). *A Study of Metaphor. On the Nature of Metaphorical Expressions, with Special Reference to their Reference.* Amsterdam, The Netherlands: North Holl. Publ. Co. OED 2. Oxford English Dictionary II. CD Rom.

Opfer, Joseph & Anderson, Peter (1992). *Explaining the Sound Bite: A Test of a Theory of Metaphor and Assonance*. Paper presented at the Western Speech Communication Association Convention in Boise, Idaho.

Ortony, Andrew, ed. (1984). *Metaphor and Thought*. Cambridge, United Kingdom: Cambridge University Press.

Osgood, Charles E., Suci, George J. & Tannenbaum, Percy H. (1967). Semantic Measurement in Communication Research. In: *The Measurement of Meaning* (pp. 272-342), Urbana, Chicago: University of Illinois Press.

Obeng, Samuel Gyasi (1997). Language and Politics: Indirectness in Political Discourse. *Discourse and Society*, 8, 1, Jan, 49-83.

Paivio, Allan (1979). *Imagining and Verbal Processes*. Hillsdale, New York: Lawrence Erlbaum Press.

Ping-Lin Liu, A. (1965). *Adaptation of Traditional Storytelling to Political propaganda in Communist China*. Paper Centre for International Studies, Massachusetts Institute of Technology, Cambridge, Massachusetts.

Ricoeur, P. (1975). *La Métaphore Vive.* Paris, France: Editions du Seuil.

Semino, Elena & Masci, Michela (1996). Politics Is Football: Metaphor in the Discourse of Silvio Berlusconi in Italy. *Discourse and Society*, 7, 2, Apr, 243-269.

Sniderman, Paul M., Richard A. Brody, and Philip E. Tetlock, eds. (1991). *Reasoning and Choice: Explorations in Political Psychology*. Cambridge, United Kingdom: Cambridge University Press.

Sweetser, E.(1995). Metaphor, Mythology, and Everyday Language. The

Netherlands: *Journal of Pragmatics* 24, 585-593.

Sylvan, Donald A. & Voss, James F. (1998)(eds). *Problem Representation in Foreign Policy Decision Making*. Cambridge, United Kingdom: Cambridge University Press.

Tano, Daisuke (1995). The Birth of the Arbeiter Body and Politics in the Third Reich. *Soshioroji*, 40, 2, Oct, 59-78.

Turner, Mark and Gilles Fauconnier (1995). Conceptual Integration and Formal Expression. *Journal of Metaphor and Symbolic Activity* 10, 3.

Weinberger, O (1995). Argumentation in Law and Politics. *Communication and Cognition* Vol. 28, Nr. 1, 37-54.

Walk, Stephan R.(1995). The Footrace Metaphor in American Presidential Rhetoric. *Sociology of Sport Journal*, 12, 1, Mar, 36-55.

wa Mwachofi, Ngure (1995). Apprehending the Power and Ideological Import of Metaphor in President de Klerk's Rhetoric. *Howard Journal of Communications*, 5, 4, summer, 331-352.

Weinberger, O. (1995). Argumentation in Law and Politics, *Communication and Cognition* 28, 1: 37-54.

Windt, T. & Ingold, B.(1987). *Essays in Presidential Rhetoric.* Dubuque, Iowa: Kendall/Hunt Publishing.

ISSA Proceedings 1998 – Practical Guidelines For Justifying Decisions About Major Projects

1. Introduction

Quite a few American inventions have become a worldwide success: Environmental Impact Assessment (EIA) is one of them. This policy instrument was introduced in 1970 by President Nixon, through the National Environmental Policy Act. Today, EIAs are applied in almost every country in the world.

An EIA is carried out before work is started on a major project, such as the construction of a railroad, highway or airport. The purpose of an EIA is to rationalize the decision-making process involved with such a project. In order to achieve that purpose, the parties involved are obliged to follow certain rules when exchanging information. These rules can be seen as a code of conduct: they specify the rights and obligations of the project proponent, the competent authority that has to decide on the project, and the citizens and interest groups that make use of the possibility of public participation (Wood 1995, Robinson 1992).

What Environmental Impact Assessment comes down to is that the decision-making process is divided into two successive discussions.

In the first discussion, the main role is played by the project proponent, who has to draft a public document – an Environmental Impact Statement (EIS). An example of an EIS that was written in the United States is the one about a controversial plan to transform the top of Mount Graham, Arizona, into a so-called astrophysical area studded with telescopes (United States Department of Agriculture, Forest Service 1988). A Dutch EIS about a very controversial project is that concerning the extension of Schiphol Airport by means of adding an extra runway (Project Mainport en Milieu Schiphol, 1993a). In documents such as these, the project proponent has to explain his plans and indicate any reasonable alternative options for the proposed activity. Furthermore, he has to forecast and evaluate the effects of the project and of the alternative options. The project proponent's forecasts and value judgements are not taken for granted: they have to be substantiated by arguments which support the accuracy of the predictions and the acceptability of the value judgements.

The EIS serves as the input for the second discussion, in which the competent authority takes the lead. The competent authority has to decide whether or not the project may be carried out and, if so, in what way. This means that the competent authority has to choose between the alternative options described in the EIS. The final decision is then made public in a so-called Record of Decision (ROD), which has to be supported by argumentation showing that the information provided by the EIS played an important role in the decision-making process. This argumentation is also required so that opponents of the project may challenge the decision in a court of law; to be able to criticize a decision successfully, it is necessary to know the grounds for the decision (Wood 1995: 183).

2. This paper

The pragma-dialectical argumentation theory developed by van Eemeren and Grootendorst (van Eemeren & Grootendorst 1992) provides an instrument for analysing and evaluating discussions. This instrument consists of an ideal model for a critical discussion, that indicates which moves have to be made by participants who are trying to resolve a difference of opinion in a reasonable way. The ideal model may serve as a framework for the analysis and evaluation of real-life discussions.

As we will demonstrate in this paper, there is a striking resemblance between this pragma-dialectical ideal model and the first discussion in the procedure of Environmental Impact Assessment, dealing with alternatives and their consequences. However, the second discussion, in which the competent authority justifies the decision, clearly deviates from the model. The difference between these discussions is already evident from the size of the documents: the output of the first discussion – the EIS – is usually much more voluminous than that of the second discussion – the ROD. But, of course, size as such is not the issue. The issue is that the competent authority's obligations in the second discussion are poorly defined, which is not very beneficial to the rationality of the decision-making process about major projects. This observation is not just a theoretical one. The analysis of Dutch RODs shows that the argumentation in these documents often has important shortcomings. This means that there is a need for guidelines for improving the quality of the argumentation in an ROD. That is what we focus on in this paper.

3. Evaluating argumentation systematically and critically

The pragma-dialectical ideal model makes clear that parties who want to resolve a difference of opinion as reasonably as possible have to pass through four stages (van Eemeren & Grootendorst 1992: 35):

1. the confrontation stage, in which it becomes clear that there is a difference of opinion;

2. the opening stage, in which the parties agree on certain rules for the discussion they are about to undertake; for instance, agreement has to be reached on the criteria that will be used for evaluating the argumentation put forward;

3. the argumentation stage, in which argumentation is put forward *and* evaluated, not on an ad hoc basis but using the mutually agreed criteria from the opening stage as starting point;

4. the concluding stage, in which the parties jointly establish the result of the

discussion.

In the case of an Environmental Impact Assessment, the first discussion focuses on the questions: what does the plan amount to? What are the alternative options? And what about the effects of the plan and of the alternative options?
The way in which this discussion is organized has striking similarities with the ideal model. The most convincing example is that the argumentation the project proponent puts forward in support of his factual claims and value judgements is not evaluated ad hoc: it is *systematically* tested, using criteria agreed upon at an earlier stage of the discussion. What is the case? The procedure of Environmental Impact Assessment includes a stage in which so-called guidelines for the Environmental Impact Statement are laid down (in EIS jargon, 'the scoping stage') before the writing of the EIS has actually started. It is these guidelines that are indicative for the evaluation of the information presented in an EIS. So, the evaluation of an EIS can be called 'systematic', just like the evaluation of argumentation in a critical discussion, since it is based on criteria that the parties have agreed on beforehand.

The evaluation of an EIS is also *critical*. In *Reconstructing Argumentative Discourse*, van Eemeren, Grootendorst, Jacob's and Jackson have clearly and convincingly outlined that the pragma-dialectical ideal model presupposes all kinds of conditions that are not always met in practice (van Eemeren et al. 1993: 30-34); for instance, the condition that the parties involved have no interest in a specific outcome of the discussion, that they are open-minded and (e.g.) that a proponent who defends a standpoint is absolutely willing to be open to any criticism of his argumentation.
In the case of an EIA, one cannot make the assumption that the parties involved are open-minded: the project proponent wants to have it his way and very often the competent authority also has an interest in the implementation of the project. So, in the case of an EIA, important conditions for a rational procedure are usually not met.
However – as van Eemeren, Grootendorst, Jacobs and Jackson have pointed out – the very purpose of institutionalized rules is to deal with such unfavourable circumstances. And that is what happens in the procedure of EIA, at least in the Dutch and the Canadian procedure. To guarantee that the EIS is not only systematically but also critically tested, in these countries the evaluation of this document is left to a committee of independent experts, who have no interest at

all in the implementation of the project (Commission for Environmental Impact Assessment 1998, Ross 1987).

All in all, reaching agreement about the relevant evaluation criteria beforehand, together with a systematic and critical testing afterwards, results in a rational development of the first discussion in a procedure of EIA. It also justifies a certain confidence in the accuracy and acceptability of the forecasts and evaluations of effects presented in the concluding chapter of an EIS. In this chapter, the effects are usually presented in a matrix, with the alternative options on one axis and the relevant criteria on the other axis, and the criteria scores in the cells of the matrix.

4. Record of Decision

In the second discussion, the competent authority has, as already mentioned, the duty to make a decision and to justify this decision in a so-called Record of Decision. In almost every country that applies Environmental Impact Assessment, the obligation to justify the decision is laid down by law. However, concrete requirements for the ROD have not been formulated in any of these countries. The American regulations, for instance, only mention the requirement that an ROD should contain the following elements (Wood 1995: 185):

1. a statement explaining the decision;
2. an explanation of the alternatives considered;
3. the social, economic and environmental factors considered by the agency in making its decision.

So, it is obvious that the decision on a project has to be justified, but it is not clear how that should be done. Contrary to the project proponent who writes the EIS, the competent authority is not committed to any rules. Freedom in itself is of great value, of course, but in the case of decision-making on major projects that same freedom results in RODs that vary considerably from case to case and often raise many questions.

What lies at the heart of the problem? As to an ROD, one could say: something goes in, and something comes out. The matrix in the EIS can be seen as the input, and the outcome is the final decision; that is, the choice of one of the alternatives described in the EIS (among which is the no-action alternative, which means that the project will not be implemented at all). If we take a close look at Dutch RODs, it appears that in general the input as well as the outcome are quite clearly presented. However, the problem does not concern input or output, but the

'missing link' in between: the process of balancing, of weighing the effects of the options. In this respect, the ROD about the expansion of Schiphol Airport is a clear example.

In this ROD, the Dutch government justifies its choice to expand Schiphol Airport by building a fifth runway. This option is compared with "a more environmentally friendly alternative". Including such an alternative in an EIS is a legal obligation in the Netherlands. The expansion of the airport has a twofold objective: firstly, it should enable the airport to develop into a so-called mainport; secondly, it should improve the environmental quality of the surroundings, which means for example that it has to lead to noise reduction and a reduction of the safety risks posed by plane crashes. The ROD refers to this twofold objective as "the core of the balancing process"; however, it adds that "criteria in terms of spatial quality and costs" are also part of the balancing process (Project Mainport en Milieu Schiphol, 1993b: 9).

Both the fifth runway and the 'environmental alternative' turn out to meet the mainport objective, which means that the choice depends on the environmental effects and on the – apparently also relevant – spatial and financial effects of the options. The striking thing here is that the government's preferred option fails to meet the safety standard: instead of reducing safety risks, it will increase them. According to the government, this requires "supplementary policy"; however, the government does not clarify what it means by that. Moreover, it is explicitly stated that the environmental alternative is better for the environmental quality than the preferred alternative.

Then why not choose the environmental alternative? The justification is extraordinarily short: "The government considers the spatial and financial consequences to be not acceptable" (Project Mainport en Milieu Schiphol, 1993b: 9-10). Criteria that do not belong to the "core of the balancing process" have apparently been decisive. But why? What part have the spatial and financial consequences played in the decision-making process? And where exactly can one draw the line between acceptable and unacceptable? These questions remain unanswered.

5. What to do?
We confine ourselves here to providing only one example illustrating the problems in Dutch RODs: as a rule, the input (facts and values with regard to alternative options) and the output (the decision) are crystal clear; the balancing

process in between, however, is a black box. All in all, there is a remarkable discrepancy between the project proponent's obligation to provide full and fair disclosure in the first discussion and the competent authority's freedom in dealing with a crucial step in the second discussion.

The final question is: is there a way to justify a decision more rationally? The answer to this is yes, and inspiration can be drawn from the pragma-dialectical ideal model for a critical discussion. As explained before, the first discussion (about alternatives and effects) is rational because the evaluation of the argumentation presented by the project proponent in an EIS is not ad hoc, but based on criteria the parties have mutually agreed upon beforehand. This concept could also be applied to enhance the rationality of RODs in the second discussion.

In 1990 a Dutch quality newspaper published an interview with the Canadian philosopher and fallacy expert John Woods about fallacies (*NRC Handelsblad*, 19 June 1990). The title of the article was taken from a remark Woods made about his sister: Women are bad drivers. Look at my sister.

The first part serves as a standpoint; this standpoint is supported by the second part, the argumentation. The connection between the two is made by the unexpressed premise, that in everyday conversation is usually left implicit. The missing premise here is: what goes for my sister, goes for women in general. This premise makes clear what argumentation scheme has been applied; in this case the scheme of 'reasoning by example'.

If one wants to evaluate the argumentation, it is not enough to evaluate the standpoint and the argument separately; the unexpressed premise also has to be evaluated (van Eemeren & Grootendorst 1992: 94-102). For the evaluation of this premise, two questions are relevant:

1. Is it acceptable to justify a general statement with an example?
2. If so, is the example used in this specific case an appropriate one?

In other words, for the evaluation of the argumentation here, two questions are relevant:

1. Is it acceptable to apply this argumentation scheme?
2. If so, has the scheme been applied correctly?

For the argumentation to be valid, the applied argumentation scheme must be acceptable and have been applied correctly in this specific argumentation. Whether or not this is the case can be tested by the commitments the participants made at the opening stage of the discussion.

Argumentation in an ROD could be evaluated in a similar way. The decision functions as a standpoint, and this standpoint is supported by the facts and values from the matrix, serving as arguments. The connection can be made through the method that is used in the decision-making process and is left implicit here. In decision theories, this method is referred to as a 'decision rule'. The missing link here, i.e. the decision rule, has much in common with the unexpressed premise in a single argumentation. So, for the evaluation of the support of the decision and the missing link here, similar questions could be asked:
1. Is it acceptable to apply decision rule X?
2. If so, has decision rule X been applied correctly?

The first question suggests that decision makers may choose from a whole set of decision rules. And that in fact is the case. Much research on decision rules has been done by researchers in such disciplines as psychology, economics and sociology. Descriptive as well as normative research has provided insight into a number of issues: what decision rules are available? How do people use them? And how should they be used in specific situations? There are also researchers – for instance, the Dutch sociologists Gallhofer and Saris – who, through textual analysis, made a reconstruction of decision rules that were applied in specific political situations.

Two examples of rules that are often applied in decision-making about major projects are the following.
First of all: the conjunctive rule, or as Gallhofer and Saris – with reference to Herbert Simon – call it: 'Simon's rule' (Gallhofer & Saris 1996: 36-38). This rule entails that for certain effects or aspects minimum requirements or critical values are set. The strategy that leads only to satisfactory outcomes, will be selected. In the Schiphol case this rule was intended to be applied: the chosen measure would have to meet two requirements, i.e. that of the mainport and that of the environment.

The second example is a rule known as 'maximizing number of attributes with greater attractiveness'. Montgomery and Svenson provide the following definition: "This rule implies that the alternative with the greater number of favorable attributes is chosen. That is, if one alternative is more attractive than another alternative on a greater number of attributes, then the former alternative should be chosen" (Montgomery & Svenson 1976: 286).
Decision makers have several decision rules at their disposal, but they usually fail

to make clear in their RODs which rule they have applied. This is problematic, because if the decision rule itself remains unclear, it will not be possible to evaluate the acceptability of the rule or to check its application. In other words: the balancing process remains a black box. A solution would be to select one rule and make it compulsory for all major projects, but that is not a very realistic idea. The best thing to do is to demand that it is clearly explained in an ROD what decision rule has been taken as a starting point and why. That is what readers need to know and what decision makers should pay attention to.

6. Concluding remarks

Environmental Impact Assessment is supposed to rationalize the decision-making process. As we have seen, this policy instrument achieves this purpose as far as the input of the decision-making is concerned. But at the same time, the instrument is remarkably 'liberal' with regard to the discussion in which the competent authority has to justify its decision. Further improvement of the rationality of decision-making processes requires that more attention be paid to these RODs, and especially to 'the missing link', the bridge between input and outcome.

This can be achieved by obliging a competent authority to divide its ROD into three parts:

1. input (with reference to the main conclusions of the EIS)
2. balancing
2.1 explanation and justification of the decision rule that is applied
2.2 application of the chosen decision rule to the case at hand
3. decision: given 1 and 2, what is the best alternative?

RODs that are structured in this way create better opportunities for a critical evaluation, because two crucial choices of a competent authority are made explicit: the selection of the appropriate decision rule and its application. This makes it easier to debate the final decision in an orderly fashion – which, in the end, is what RODs are all about.

On top of that, a starting point for rationality is that arguments and criteria for evaluating those arguments precede a conclusion. In the case of major projects, one often suspects that it is the other way around: the conclusion comes first – "We want that fifth runway, period" – and the arguments are 'collected' afterwards. This is possible because there are no prior commitments a competent authority has to deal with while justifying a decision. Decisions about major

projects may, however, result in private citizens and the environment suffering significant damage. Therefore, at an early stage of the second discussion agreement should preferably be reached on how to balance the pros and cons of alternative options. The opening stage of the ideal model for a critical discussion is obviously present when the project proponent writes the EIS. It would definitely be beneficial to a systematic and critical evaluation of the argumentation in an ROD to oblige the competent authority to make certain commitments in advance. It should at least commit itself at an early stage to the use of a particular decision rule. Together with the application of the three-part structure we have provided, this commitment would certainly improve the quality of Records of Decision.

REFERENCES

Eemeren, F.H. van and R. Grootendorst (1992). *Argumentation, Communication and Fallacies; A Pragma-Dialectical Perspective*. Hillsdale, New Jersey: Lawrence Erlbaum Associates, Publishers.

Eemeren, F.H. van, R. Grootendorst, S. Jackson and S. Jacobs (1993). *Reconstructing Argumentative Discourse.* Tuscaloosa and London: The University of Alabama Press.

Commission for Environmental Impact Assessment (1998). New Experiences on EIA in The Netherlands; Process, Methodology, Case Studies.Utrecht: Commission for EIA.

Gallhofer, I.N. and W.E. Saris (1996). *Foreign Policy Decision-making; A Qualitative and Quantitative Analysis of Political Argumentation*. Westport, Connecticut and London: Praeger.

Montgomery, H. and O. Svenson (1976). On decision rules and information processing strategies for choices among multiattribute alternatives. *Scandinavian Journal of Psychology* 17, 283-291.

Project Mainport en Milieu Schiphol (1993a). Planologische Kernbeslissing Schiphol en omgeving, deel 1, Ontwerp Planologische Kernbeslissing. Den Haag: SDU-DOP.

Project Mainport en Milieu Schiphol (1993b). Integraal Milieu-effectrapport Schiphol en Omgeving. Den Haag: Ministerie van Verkeer en Waterstaat.

Robinson, N.A. (1992). International Trends in Environmental Impact Assessment. *Boston College Environmental Affairs Law Review* 19, 3, 591-621.

Ross, W.A. (1987). Evaluating Environmental Impact Statements. *Journal of Environmental Management* 25, 137-147.

United States Department of Agriculture, Forest Service (1988). Final Environmental Impact Statement, Proposed Mt. Graham Astrophysical Area, Pinaleno Mountains, Coronado National Forest. Tucson.

Wood, C. (1995). *Environmental Impact Assessment; A Comparative Review*. London: Longman Scientific & Technical.