ISSA Proceedings 1998 – Neutrality As Advocacy: The Argumentative Dynamics In A State-Sponsored, 'Neutral,' Educational Abortion Video

The abortion controversy in the United States seems to be one of those enduring areas of public argument that both confound and intrigue the argument scholar. As the nature of the debate has shifted across time (see Condit 1990 and Condit Railsback 1984), so too have the sites of contest. While two apparently diametrically opposed groups have long dominated the abortion controversy (those favoring *"choice"* and those favoring *"life"*), areas for agreement seem to be opening up. While the elevation of the two ideographs of life and choice has truncated debate so that the ultimate question has been whether women's choice to have an abortion, as narrowly conceived, outweighs the potential risk that a fetus is a human being (Condit 1990: 159), locations of argument are emerging that bypass this narrow debate. One example is found in the need for people from differing positions to work together on the development of state-sponsored informational videos.

As a result of the Iowa State Legislature's action during the 1996 legislative session, the Iowa Code was revised so that notification of the intent of a minor to obtain an abortion must be made to a parent or grandparent. In addition to such notification, the licensed physician performing an abortion is required to offer the viewing of a state produced video to the minor during the initial appointment relating to those services. As a result of this legislation, a committee was appointed by conservative Republican Governor Terry E. Branstad to develop the video. The end result of the committee's work is the video "You Are Not Alone," which is accompanied by a workbook and a physician's manual.

The interesting outcome of the video production process is that while the committee was disproportionately filled with those from the anti-abortion end of the spectrum, the video has been well-received by abortion providers and roundly

critiqued by those who oppose abortion (*Des Moines Register*, November 26, 1996). Having viewed the video as a member of my local Planned Parenthood of Greater Iowa community council, I decided to analyze the argumentative and visual structure of the video. I conclude that the video is an example of an attempt at neutrality that unintentionally functions as an argument for choice. Ultimately, I hypothesize that the need for consensus in the production of the video removed the grounds for anti-abortion arguments.**[i]** The rhetorical patterns, both metaethical and visual, of anti-abortion argument structure, as detailed by Randall Lake in *"The Metaethical Framework of Anti-Abortion Rhetoric"* (1986), would preclude any compromise, yet compromise was legislatively mandated. Additionally, because the video focuses on the decision-making process of the girl, it decenters the baby/fetus, again violating the basic structure (linguistically and visually) of anti-abortion rhetoric. At the point that compromise was legislatively mandated and agreed to by the committee, as it was in the case of the video, the entire argument structure of pro-life advocacy collapses.

This presentation offers an analysis of one of the most recent examples of attempts to place limits on abortion: notification and informed consent. While many of those in the pro-choice movement see those actions as attempts to further limit abortion access, the experience with the State of Iowa's video offers an alternative interpretation – that the need for neutrality limits the persuasive power of anti-abortion arguments.

1. History

The planning behind the video, and the decision making processes used, warrant attention. Appointed by conservative Iowa Governor, Terry E. Branstad, the committee initially developed a vision statement. The committee decided to accept as its vision:

To produce a factual, age-appropriate, culturally diverse video and written materials from a balanced viewpoint for all options set forth in SF13; materials that are medically accurate, unbiased, and presented in an objective, empathetic, non-directive manner to assist the minor in the decision making process. (Report to the Legislature: January 8, 1997)**[ii]**

The committee also developed an outline based on the vision. The video was to cover three "options":

1. "continue the pregnancy to term and retain parental rights following the child's birth,"

2. "continue the pregnancy to term and place the child for adoption following the child's birth," and
3. "terminate the pregnancy through abortion."
It is important to note, here, that the term used is "pregnancy," not baby or child. Within each of these three "options," the committee wanted the following issues to be addressed: medical/emotional, counseling, financial, and referral to public and private agencies.

With a general description of the video in mind, the committee solicited proposals from vendors, ultimately choosing American Media Incorporated (AMI) to produce the video. After selection, AMI further reassured the committee that "the nature of their business insures objectivity" (Report to the legislature: September 7, 1996). Of course, the committee did review and make suggestions as the various drafts of the video script were developed.

When the video was released, the *Des Moines Register* showed it to six girls, one of whom was pregnant. While the girls' consensus was that the video needed more, they thought that it did a "good job of treating the options equally" (January 31, 1997). However, anti-abortion advocates who viewed the video thought that it provided insufficient information on the negative effects of abortion (*Des Moines Register: November 26*, *1996*).

2. Pro-Life/Anti-Abortion Rhetoric

Anti-abortion rhetoric needs to be analyzed in both its verbal and visual form. As Celeste Condit notes in her book, *Decoding Abortion Rhetoric*, "fetal pictures *ar* persuasive" (79). Quite simply, Condit notes, "the fetus has an important substantiality that can be photographed. The meaning constructed from those pictures and that substance was not, however, a simple matter of natural fact" (79). Fetal images do not appear alone, but instead are framed through "complex rhetorical tactics that generat[e] a meaningful image of the fetus . . ." (79). The complex rhetoric surrounding abortion has its own form as well. As Randall Lake has noted in his many essays on the subject, a guilt and redemption pattern emerges.

Central to all of this work, too, is the word choice used to refer to the being/collection of cells inside a girl's/woman's womb that potentially will develop into a human being. As Kenneth Burke has argued, all language operates as part of terministic screens, which reflect, select and deflect our apprehension of "reality" (44-45). Within the abortion controversy, such terministic screens can be

seen in operation within the rhetoric of advocates.

For example, when the pro-life advocates use the term "baby," they are clearly selecting a focus on a creature that is human, individual, distinct from another being and that can be held. Within pro-natal U.S. culture, babies are highly prized creatures that are presumed innocent and have strong positive connotations. Additionally, babies have particular relations to others. In particular, babies have mothers, not women. By using the term baby, the terministic screen selects a focus on the collection of cells as a complete and isolable human being. In so doing, it also deflects the context within which the baby exists, a girl or woman's womb. In fact, in the visual images of the "baby," the woman is completely absent. The girl or woman is deflected from recognition. Finally, the use of the term baby does reflect the way in which a pro-natal culture speaks of the collection of cells located in a girl's/woman's womb. It reflects the emotional attachment to babies.

However, when pro-choice advocates use the term fetus, a distinct terministic screen is put into place. Fetus selects a more medical, technical focus. Fetus is a technical term, and it is a term that brings into focus the context: a girl or woman's womb. Fetuses do not have mothers. Instead, women carry fetuses. By selecting the more technical term and its associations, the individuality and isolability of the fetus is deflected. And, of course, fetus is an accurate reflection of the way in which the stages of gestation occur.

Babies have mothers. Babies can be murdered. Babies are warm and fuzzy (and usually smell good). Women carry fetuses. Fetuses cannot be murdered, but are aborted. And fetuses do not generate that warm fuzzy feeling, but more of the "oo-ick" feeling that gelatinous collections of cells usually do in biology classes. Central to pro-life rhetoric is the centering of the baby, and concomitant decentering of the girl/woman. This occurs on two levels: visual and metaethical. What follows is a more detailed analysis of both the metaethical and visual patterns of anti-abortion argument which decenter the girl/woman faced with a decision about her pregnancy.

2a. Metaethical Patterns

Randall Lake has provided two excellent analyses of the overarching form and content of anti-abortion rhetoric. He argues that as it paints a "moral landscape . . . the features of the human moral condition [are] presupposed by and depicted in anti-abortion rhetoric" (1984: 425). Part of this moral landscape is that "anti-abortion discourse relies explicitly and implicitly on theology and deontology for

the *content and form* of its arguments" (emphasis added, 1984: 426). The result is that "[a]nti-abortion rhetoric ultimately is grounded in alleged sexual Guilt; it victimizes women, and it posits childbearing and legislating against abortion as twin paths to Redemption" (1984: 426). Here, "[d]isorder generates Guilt" (1984: 428) with redemption occurring through victimage or mortification. Yet, with the video, disorder generates confusion, not guilt, and confusion is resolved through informed choice.

Lake's arguments demonstrate that the form and content of anti-abortion rhetoric are of a particular type, which support the conclusions of the advocates. I take this argument in a different direction, arguing that rhetoric that does not conform to the form and content expectations outlined in Lake's essay actually *work against* the conclusions drawn in anti-abortion rhetoric – the conclusion that abortion is immoral and that choosing to have an abortion is wrong. The "You Are Not Alone" video is one example of this.

Using Lake's writing from "Order and Disorder in Anti-Abortion Rhetoric: A Logological View" (1984) and "The Metaethical Framework of Anti-Abortion Rhetoric" (1985), a number of form and content markers may be discerned. First, moral absolutism, in the form of a clear delineation between right and wrong, is a necessary component of anti-abortion rhetoric. In content, this is reflected in rhetoric arguing for only one moral position, and in form it is reflected in the presentation of only one option: "life" (Lake 1986: 480-81; 1984: 426). In part, this deontological approach reflects the a priori recognition of moral truths, but such an approach also is necessary because of the moral condition of human beings, which composes the second element.

A second characteristic of anti-abortion rhetoric is that human beings' moral condition is always in question (Lake 1986: 487-90). For anti-abortionists, we cannot assume human beings will make the right choice, either because they are lazy or evil, and, hence, their choice must be guided, forcefully if necessary. Again, this is reflected in form and content, where only one choice is presented as acceptable and other options are rejected out of hand.

Finally, anti-abortion discourse is typified by the rhetor speaking for the "unborn" (Lake 1984: 434). In order to humanize the fetus, and in order to appear to be arguing for the fetus, and not against the woman, anti-abortion rhetoric often has the speaker speak as or for the fetus. This centering of the fetus, and decentering of the woman who is faced with an unwanted pregnancy, focuses audience attention primarily on the right of the fetus to life, and deflects attention from the rights of the woman to have reproductive autonomy. In many ways, as

demonstrated in anti-abortion advertising, the woman is absent, and the fetus/baby is foregrounded. The context of the fetus/baby is irrelevant, since its humanity is not at issue.

A more detailed analysis of anti-abortion rhetoric points to the content and form inconsistencies between the video and the rhetorical landscape of pro-life discourse. To develop this, I again turn to Lake's description of that rhetoric: Opposition to abortion is said to be based on the fact of the humanity of the fetus and the rule that it is wrong to take an innocent human life. In contrast, abortion can be defended only on utilitarian grounds of convenience, i.e., that the child is "unwanted" and would be a "hardship" for its mother. However, anti-abortionists warn, once utilitarian considerations are accepted in the place of hard and fast rules, humanity will become merely a matter of "definition," and society will be enabled to deprive any "unwanted" person or group of life without compunction. (1984: 430) Not only are the argument types distinguished, but a "clear preference for deontological over teleological ethics" emerges in anti-abortion discourse (Lake 1985: 480). To clarify the rhetorical
implications of this approach, Lake notes that "[d]eontological ethics tend to emphasize the threshol between absolute right and wrong; teleological ethics more overtly acknowledge gradation of right and wrong . . ." (1985: 481). However, when a range of actions are presented in the video, all as equally valid, then one clearly falls into an issue of gradation, which act is more good or more bad, as opposed to an issue of threshold where one determines what is right or wrong. Additionally, in anti-abortion rhetoric, one comes to understand a moral absolute not through the reasoned processing of information, but through intuition (Lake 1986: 494). With deontology's emphasis on rules, it encourages a belief in moral absolutes (1985: 485), yet no moral absolute is presented in the video.

Compounding the anti-abortionists approach to morality is their view that "humans are at best weak, selfish, and callous, and at worse maliciously immoral" (Lake 1985: 487). If human beings are weak, then providing them options is a bad idea because they will simply take the option that is most convenient. If they are malicious, then allowing options not only is a bad idea, but one must instead actively punish immorality and provide incentives for moral decisions. Such an approach would predict that, in the "Alone" video, the arguments for abortion would be merely utilitarian and the arguments for adoption or keeping the child

would be deontological. However, when adoption and keeping the child are lumped together in the pro-life advocacy, adoption also becomes untenable, since not "wanting" a child who might be a "hardship" is the same reason abortion is sought. In fact, one finds utilitarian arguments highlighted in all three segments of the video.

Within the anti-abortion moral landscape, there is not choice but life, a position that the video contradicts with its form when it includes a range of options. Lake writes, "The anti-abortionist view of the human moral condition is characterized by a belief that abortion is an abomination, that its continuance will eventuate in general moral collapse, and that the only path to recovery is to reaffirm the original moral sense by renewing our adherence to the moral law against abortion and by bringing the positive law into line with the moral law" (1984: 430). However, such absolutism is absent in the video. Instead of being able to replicate the guilt-victimage-redemption pattern of descent/ascent rhetoric, the video paints a landscape of confusion resolved by choice, thus privileging the choice ideograph.

The other formal and content element of anti-abortion rhetoric that is not replicated in the video is the technique of speaking for the "unborn." As Lake explains, while many of the other practices linked to sexuality can be seen as "victimless," "abortion appears to be an act with a victim, the fetus" (1984: 434). The result is that the anti-abortion rhetor can "claim to speak fo the unborn rather than only against women" (1984: 434). However, in the "Alone" video, young girls speak for themselves concerning each of their choices, and no one positions him or her self to speak for or as the fetus. Ultimately, anti-abortion discourse is "intransigent [and] uncompromising" in that it:

assumes a deontological, legalist, intrinsicalist, and absolutist theory of ethics in which right and wrong are measured by conformity to extant moral rules. Such rules are necessary to impose moral obligations on humans and, thereby, guide behavior that, absent the rules, would revert to a self-centered, evil state of nature. As universally valid measures of right and wrong, the rules must not be compromised under any circumstances. (Lake 1985: 496)

2b. Visual Patterns
Quite simply, visual arguments are central in anti-abortion advocacy. While Celeste Condit (1990) agrees with Kristin Luker's (1984) assessment that visual images do not change people's positions, they can "justify, integrate, and activate their beliefs. The images intensify commitment, motivate the believers to work for

the cause, and give them reason to believe that they can persuade others" (Condit 1990: 80). Rhetorically, anti-abortion visual images "replace narratives" while pro-choice images "summarize narratives visually" (81). As Condit explains:

Like narratives, visual images provide concrete enactments of abstract values and thereby allow a different kind of understanding of the meaning and impact of an ideographic claim about public life. They help "envision" the material impacts of abstract policy commitments. Images therefore provide a useful form of grounding for the acceptance of an argument. (81)

In other words, the rhetoric described by Lake would call for images that represent redemption, purity and innocence – all of which the fetus as baby do. According to Condit, fetal images operate metonymically (where a technical name is replaced by a different name that stresses a quality), metaphorically (where an identity is noted), and synechdochically (where part of an item is substituted for a whole) (82-9). In anti-abortion discourse, this means that baby is substituted for fetus, that the fetus is a human being, and that if part of the fetus is fully human then all of it is. The images support the centralization or selection of the fetus as baby in the advocate's terministic screen. Images of the "baby" create the impression that the fetus is separate from its context – a woman or girl's womb. This move of creating an unattached fetus is what Rosalind Petchesky and Barbara Katz Rothman have called the fetus in space (Petchesky 1997: 137). Its context within, and connection to, a woman is deflected.

Petchesky argues this move is central to anti-abortion discourse: "The strategy of antiabortionists to make fetal personhood a self-fulfilling prophecy by making the fetus a *public presenc* addresses a visually oriented culture" (1997: 134). In her analysis of the *Silent Screa* and of billboard advertising, Petchesky concludes that the "abstract individualism . . . effac[es] the pregnant woman and the fetus's dependence on her, [and] gives the fetal image its symbolic transparency, so that we can read in it our selves, our lost babies, our mythic secure past" (137). This move toward abstract individualism is one that is intensified by the present use of ultrasound technologies because "[t]reating a fetus as if it were outside a woman's body, because it can be viewed, is a political act" (139). Quite simply, "The 'public' presentation of the fetus has become ubiquitous; its disembodied form, now propped up by medical authority and technological rationality, permeates mass culture. We are all, on some level, susceptible to its coded meanings" (143).

Barbara Duden (1993) makes a similar argument when she describes the visual

iconography associated with anti-abortion rhetoric as "the skinning of woman's body" (19). In a particularly detailed analysis of the famed *Life* photographs taken by Lennert Nilsson, she argues that "the managed image has become a precondition for sight" (17). In fact, instead of considering Nillson's work as photographs, she argues we should assess it as photo*geny* because the object he was recording, the early stages of the human embryo process, were created through a process that "assemble[d] in visual form digital measurements of an object that cannot be perceived by the senses" (25). And, by delving within a woman's body, this process "skins" her. She is made absent, and the fetus becomes the focus.

How, then, does Petchesky propose we respond to fetal images? Since "[i]mages by themselves lack 'objective' meanings" and, instead, "meanings come from the interlocking fields of context, communication, application, and reception," (146) it seems that the images can be recoded. Petchesky's first call is to "restore women to a central place in the pregnancy scene" (147). Instead of showing the disembodied fetus as baby, show the women's bodies in which the fetus is located or from which the baby came. This, interestingly, is precisely what the "You Are Not Alone" video does. While images of fetal development initially were going to be included in the video, they were not and, instead, were located in the workbook that goes along with the video (*You are* 9-11). In the workbook, the fetus in space scenario is recreated, but the video overlays this with images of real girls who are faced with a decision about their pregnancies.

With the video, the fetus as baby, unconnected to a woman, is absent. And, so too, is the centralization of the baby. Young women play the central role in the video as they talk through the difficult *choices* they have made. The redemption is not in giving birth, but in making a decision. Both metaethically and visually, the video enacts choice, and instead of justifying, integrating, and activating anti-abortion beliefs, the video justifies, integrates and activates the value of choice.

3. The Video

Quite simply, in all ways the video violates the rhetorical characteristics of anti-abortion discourse. Metaethically, it presents an informed and considered choice between options as the way to resolve the intense confusion felt by pregnant girls. Moral absolutism is eschewed and, instead, information is held as inherently helpful to the decision-making process. As the vision statement of the committee indicated, the goal was to have "materials . . . presented in an objective, empathetic*, non-directive* manner" (emphasis added), not to present a single

moral absolute. With the emphasis on empathy, the moral condition of the girls was not questioned. Instead, the video highlighted girls' abilities to make good decisions, ones that in retrospect the girls could still feel good about. Because girls who had actually made choices spoke for themselves in the video, and because the video narrator was a girl herself, girls are central as content and visually. In order to examine the metaethical and visual rhetorical patterns that led me to these conclusions, a more detailed analysis of the video follows.

As part of the deliberations, Carol Hinton, the coordinator of the Iowa Department of Health's Decision-making Assistance Program, met with the committee. In one meeting (10/9/96), she indicated that she understood "that the whole thrust was to assure that minors knew that there were options and that there is support for whatever option if chosen." Clearly, the charge of the committee, and its own decisions, heavily influenced the rhetorical and visual format of the video. And, remembering Lake's description of the argumentative form, the video clearly violates pro-life patterns. It presents multiple choices as equally valid, not just one as morally acceptable. The ability of the girls to make a decision is not questioned but, instead, girls are reassured that they can make a good decision. And, finally, the fetus is not spoken for in the video; we hear the voices of girls/women, not the voice of the fetus.

The video is divided into three sections. The first section is titled "A Choice: Abortion," the second "A Choice: Becoming a Parent," and the third "A Choice: Adoption." Clearly using the rhetoric of choice, the video creates the impression that the choice itself is the final outcome. Using the metaphor of a kaleidoscope, the young female narrator explains:

Have you ever looked through . . . a kaleidoscope? I always think it's kind of neat, the way everything is all jumbled up, and then you move it just a little bit, and everything just falls into place and makes this real cool design. And sometimes, you know, life can be that way too. Especially when you have to make a difficult decision. Things can seem confusing at first; you might feel angry, depressed, relieved, scared or you might not want to admit what is happening. ("You" video) With this metaphor, confusion is not resolved by one particular choice, but by the exploration of all the options and the making of any choice.

The video goes to great effort to reassure the minor that making a decision that is informed will provide some relief. As the narrator explains, after she talks to people she trusts and then "thought everything through, I make a decision that's

right for me. Anyway, doing these things doesn't make the decision any easier, but I usually feel better knowing that I've thought everything through to make a choice that works for me." Here, relief/redemption comes not from making a decision proscribed for you by others, but by making the decision on one's own. And, the possibility that a range of choices are acceptable, determined by the conditions and experiences of the individual, is highlighted.

Within each section, the video also highlights the experiences of an actual girl/woman who made each of the decisions. In other words, the girls/women are centered visually by the video. They appear on the screen, talking for themselves. For example, the abortion segment opens with a discussion of the medical and emotional issues involved. It closes with the comments of a woman, Audre, who underwent an abortion as a minor. She explains:

Well I feel that having an abortion was personally the right decision for me for a lot of reasons. First of all, though I felt I was a fairly mature teenager, I was well aware and insightable [sic] enough to realize that I was not emotionally ready in any way to have a baby. And I certainly was not mentally or financially ready to have a baby. I was also fortunate I never regretted it . . . I never was upset about it or cried about it. It was just a decision I made and it was said and done and that was it and I went on with my life and as I look back, I'm grateful at that because I did get to go to school and I did have a child when I was financially and emotionally ready and that turned out to be a positive experience instead of a negative experience because I was ready at the time. Again, the issue of choice is highlighted. The realities of the girl are made central to the decision to abort. And, she is the image that fills the screen.

In the "becoming a parent" segment, the segment opens not on the health risks to the girl/woman associated with pregnancy, but on the risks to the fetus. The girls are encouraged not to smoke or drink, to eat well, and to employ good prenatal care. Only then does the video discuss the risks of pregnancy to the girl, but those risks are minimized. The video explains that good prenatal care can make the risks of childbearing relatively similar regardless of one's age. After a discussion of the other medical and emotional elements, the video shows Cindy, who explains:

I feel it was a really good decision because I have a lot of fun with my daughter now. . . I'm really glad that I did decide to make that decision. She's a part of me and she'll always be a part of me and it gives us a lot of sharing time together and

things to do.

After these comments, the narrator explains that, "Just like abortion, choosing to have the baby and become a parent isn't always an easy choice to make and there are others who should be involved in making that decision."

The final segment, "A Choice: Adoption," is one of the few places where the fetus is referred to as a baby. The segment opens with the narrator explaining: "Carrying the baby to term and placing the baby for adoption is another one of your options." The legal elements, as well as emotional and medical, are discussed. And, like in the other segments, this one closes with the comments of a girl/woman who made this choice. Paula reflects on her decision this way:
I have gone on to establish a career for myself, a very good career. And, I think within my situation, having a baby and a child to take care of, it would have been harder to accomplish those goals . . . I read a lot about adoption and I also read about parenting and I just decided that, for me at the time, adoption was the best thing to do. Again, the girl/woman is made central, and the unique conditions of her life are noted.

The video then concludes with a review of the decision making process, which includes:
* Gather as much information as you can.
* Then, consider the impact your decision is going to have on your life and others involved.
* And talk things over with at least one person you really trust, someone who can help you put things in perspective.
* And, then, when you've really thought everything through, make a decision that's right for you.

Choice is offered, the girl is made central, and, hence, the video does not model anti-abortion discourse either visually or rhetorically.

4. Conclusion
In many ways, the "You are not alone" video, in form and content, departs from the descent-ascent pattern inherent within guilt-redemption rhetoric and it also does not foreground the fetus. In terms of the moral pattern, it does not see childbirth as the solution to a descent into promiscuity, but instead sees moral absolution in the making of an informed decision. Its content offers three paths,

each equally possible and presented as equally acceptable. Its form enacts choice by offering three choices as neutrally as possible. Redemption is not found in making a particular decision (i.e. not to abort), but in any decision at all. And, the fetus is not spoken for. In fact, young girls are presented as important and valuable, and as capable of making a wise choice. And, it is the young girls who are continually foregrounded, with no images presented of the fetus.

However, this does not mean the video is unproblematic. At any point in which state intervention in a pregnancy occurs, one has to ask what is left of the girl or woman. Again, Barbara Duden's work is useful here. After watching a counseling session in Harlem for an immigrant who was pregnant, she concludes: Actually, the better the counseling, the more authoritatively convincing are certain modern ideas: that prenatal procedures are good, that pregnancies can be classified, imply risks, demand supervision, impose decisions, and require a large bureaucratic apparatus to arrange one's passage through the maze. What kind of woman remains after these notions are internalized? In what sense is it possible to call this being a woman? (1993: 26). While pro-choice advocates might be relieved that informational videos do not replicate the rhetorical patterns of anti-abortion discourse, concern should still arise because the videos continue the management of pregnancies in ways that are relatively new, relatively unseen, and relatively damaging as Duden points out. After viewing this video, one might ask: What type of girl is left once she is convinced that prenatal procedures are good (as discussed in the adoption and parenting segments)? What type of girl is left once she is convinced that pregnancies demand supervision, impose decisions, and require a large bureaucratic apparatus to arrange one's passage through the maze (especially since, for minors, medical professionals, state health officials, officers of the court, and family service employees are all involved). While what is left after the video may be a girl capable of making a choice, for what, for whom, and from where is the choice being made?

NOTES
i. As noted in the January 8, 1997, report to the legislature, the committee used a "consensus building process . . . to determine the content of the video and written materials." As a result of this process, the committee gave unanimous approval to the final products on January 7, 1997.
ii. The phrase "objective and empathetic" replaced the word "unemotional" in an earlier draft of the vision statement (Report to the Legislature, September 7,

1996).

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ISSA Proceedings 1998 – Pretending And Port-Royal Logic (Bad Reasoning And Pretend Reasoning)

The standard and approved ways of looking at fallacies start us off with a list of "tidy-looking dichotomies" (Austin 1964: 3). Reasoning is either *good* or *bad*, *cogent* or *non-cogent*, *correct* or *incorrect*, *sound* or *unsound*, *valid* or *invalid*. Sets like convincing or unconvincing can be found in some versions of the approved ways but not in all. And there are some versions that will include things like *misleading*, *deceptive*, and *blighted*, but their partner-words hardly ever show up.

It's easy to see that one side of this division is positive and the other, negative. Cases of reasoning put on the positive side are cases of 'good reasoning'. Cases put on the negative side are cases of 'bad reasoning.' Good reasoning is just good reasoning. Bad reasoning gets a special label. It is fallacious reasoning. It is easy to turn this all around and call a fallacy a case of bad reasoning. Sometimes it indisputably is. But sometimes it may not be. Or, anyhow, it may not be *just* a case of bad reasoning. Getting clear about the times when it is not and why it is not is what this paper is about. It's a matter of being fair to fallacies.

First a word about some long standing complaints concerning the standard, approved ways. In the early 1980's Woods and Walton complained that standard treatments of fallacies failed to provide a non-arbitrary way for sorting out cases of correct reasoning from fallacious ones. The standard treatments were mostly happy to take up the inherited list of names, usually in Latin but sometimes very colloquial – remember Flew's "No-true-Scotsman" (1977: 47) – and give supposedly illustrative examples. Most of these examples were contrived or made up to suit the names and many were so obviously bad that they provided more fun than instruction. And some turned out to be not bad at all.

More importantly, however, clear guidelines and explanations for sorting, for putting this case on one side and another case on the opposite side, were said to be remarkably absent from the standard treatments. For Woods and Walton, this absence came, in large part, from the lack of an adequate model of correct reasoning or argument. They saw their job to be that of providing such a model. This would involve setting out precisely formulated rules, procedures, requirements, and the like for correct (good) reasoning. With such a model firmly in place, it should be a bit of snap to get non-arbitrary guidelines and explanations for sorting the cases of correct (good) reasoning from incorrect (bad, fallacious) reasoning (1982: v).

So we now have a sure-fire, fail-safe way for detecting cases of bad reasoning and for sorting them out into two piles. Moreover, we can give reasons for putting this

case in one pile and that case in the other. Clearly, this is much better than what we are said to get in the standard treatments where it was mostly a matter of matching cases or samples with patterns.

The piles, however, have not changed. There are still two of them. And, by and large, we find in the pile of incorrect reasoning the same old list of patterns to which we have to match our samples. It may not be uninteresting to call attention to the similarity between this team's complaints and those formulated more than three hundred years ago by another team, the Port-Royal team. Arnauld and Nicole, too, complained about the contrived character of the stock examples found in the standard treatments (1970: 49,53).

Like the contemporary team, they believed that the standard treatment was disorganized, heteroclite, and uninstructive. Sorting, as they inherited the business, was more a matter of tradition and habit than of reasoned detection. They, too, thought the business needed fixing.

To fix it, Arnauld and Nicole, like the other team, gave priority to the model of correct reasoning. Correct reasoning or good reasoning was the standard or the norm. Bad reasoning or fallacious reasoning was just the opposite, it was non-standard, abnormal reasoning.

However, the older team gave a bit of a twist to their proposed renovation and they started out at a different point. Good reasoning, normal reasoning was mostly unproblematic, indeed, it was natural. There were no bogs here. The model was all right. Trouble came up when they noticed just how well bad, fallacious reasoning fared – even the wisest of the wise could find themselves on the wrong side of the divide. So this team got started not by proposing to fix the model, but by asking why or how anyone reasoned badly and why or how anyone would be tempted to follow bad reasoning.

Given the fact that good reasoning was natural and that nothing could possibly go wrong in its operations or procedures – the reasoning machine, like a computer, pretty much guarantees impeccable results – Arnauld and Nicole looked to the users. They drew the conclusion that if reasoning goes bad, it must be because users put bad stuff in the machine. When they asked why bad stuff was put in the machine, they answered by pointing to defects in the users. They were, we are, afflicted with weak or unruly wills. And so they (we) let passion, bad faith, interests, and the like take over the nest and let the bad stuff in. This will be how and why reasoning becomes fallacious. Shared passions, bad faith, interests and

the like, along with a penchant for the bad stuff anyway, make it easy for everyone to follow fallacious reasoning.

Put another way, if reasoning cannot go bad in terms of, or on the level of, its rules, procedures, or requirements, something about the ways in which we follow the rules and procedures and satisfy the requirements must make what we did abnormal. Qualifiers like insincerely or self-interested, pick out the ways in which what we did become abnormal. So, as it is easy to see, sorting out cases of reasoning in the old way is clearly different from sorting them out in the new way. Still, there are only two piles, bad reasoning is another name for fallacious reasoning (sophisms or paralogisms are thrown in too). Patterns of fallacious or bad reasoning remain the same, and the positive terms really do all the work (Austin would say they wear the pants, but that expression may no longer be available).

In this paper, I will not take these teams as 'stalking-horses.' I mention them so as to show that both the dichotomies and the assimilation of fallacies to bad reasoning have been around for a long time and are still kicking (*plus ça change* …). But I mention them, too, because they make it easy to see that, should one team reproach us for having produced a case of bad reasoning, the things we can say, or have to say, if we are to get ourselves off the hook will be very different from the things we can, or have to say, should the other team lay charges. Our 'outs' on one side are really kind and gentle. On the other side, either we may not be able to get out or there may be no point in trying to get out.

Looking at the allowable pleas should take us some distance in making clear that there may be more to fallacies than bad reasoning. Having made that clear, it may turn out that we are not any better off. Still we should take a look.

Looking may be easier if we clean up the place and rearrange the furniture a bit. The list of "tidy-looking dichotomies" can be seen not as a list of opposed features of reasoning but as a list of criteria for applying the labels, *good* reasoning and *bad* or *fallacious reasoning*. If we take the approved list, which is good enough for our purposes, *good reasoning* will be reasoning that is cogent, correct, sound, valid, and the rest. *Bad, fallacious reasoning*, of course, will be the opposite or the negation of good reasoning. It will not be cogent. It will be incorrect, unsound, invalid, and the rest. So we have two piles and the criteria for putting cases of reasoning in one or the other.

We may want to take some of these items off the list or add others, but it is easy to see that the items are just the rules, procedures, or requirements of good

reasoning. These will be the criteria. Set out in negative terms, as opposites, they will be the criteria for applying the negative, bad label. So reasoning will be said to be bad when the rules or procedures are not followed or the requirements not met, whatever those rules, procedures or requirements might be.

What are some of the ways in which we can not follow the rules and procedures or fail to meet the requirements? I suppose we could say that these things can be done in much the same way as spilling ink can be done: *intentionally, deliberately*, or on *purpose*. We may, of course run a red light or move a pawn three squares in any of these ways. But it is hard to think of anyone intentionally or deliberately, reasoning in a non-cogent or incorrect or invalid manner, or of producing an unsound case on purpose. So, maybe when a case of bad reasoning turns up, we will be better off to think of things like *mistakes, errors, oversights, slips, blunders, misinterpretations*, and the like.

Now, should anyone be charged with bad reasoning, it will be open to them to plead mistake, error, blunder, slip, and the rest. Such pleas may make them look stupid or silly or negligent, but the nice thing about these pleas is that they delimit a range of defects or shortfalls that can be, in principle, both detected and corrected. And when they are corrected, not only will anyone who slips be out of the frying pan, they may be out of the fire too. Things will be as they should. They will be back to normal.

So, taking fallacies to be cases of bad reasoning has an upside. If we have a full enough set of criteria, and if the criteria are clearly and precisely formulated, in principle if not always in fact, fallacies will be easy to detect. Moreover, if fallacies are cases of bad reasoning, fallacies will be both detectable and correctable. They can be fixed, made good, and that will be the end of it. It's rather like moving the cursor back and deleting this or that letter, word or sentence, or adding something, or changing the order, and so on. Once it's fixed, there's nothing bad left. This is a pretty happy, kind and gentle story. Still some versions of the approved list include, on the negative side, criteria like *misleading* and *deceptive*. They, however, look quite different from all the other couples.

In the case made famous by Austin and Hart, Finney made a mistake in the taps with the result that Watkins was scalded (Austin 1979: 195-197). In the same way, we may make a mistake, for example, in the grounds we give for some claim we put forth. One possible result of our mistake may be to mislead or deceive our audience. However, if we see "scalding Watkins" not as something

Finney did, but rather as *something that happened*, as *an accident*, then, "misleading or deceiving the audience," if it is the result of a mistake, *will not be something we do*. It, too, will be an accident. Looked at in this light, it is pretty clear that misleading and deceiving and all their neighbours can not be, just like that, criteria for grading or classifying cases of reasoning as bad any more than scalding Watkins *by accident* can be, without qualification, a criterion for putting Finney away.**[i]**

However, Finney would never had been brought to trial had it not occurred to the prosecutor that Finney might not have made a mistake in the taps at all. He might have turned the hot water tap just so as to scald Watkins. So, too, *we may not overlook* some piece of information, but *withhold* it (it's hard to do that by mistake or inadvertence) just so as to mislead our audience. We may *cook* the books (this, too, is hard to do by mistake or inadvertence) just so as to deceive our audience or the accountants.

Misleading and deception are things that we can do. Sometimes they happen as the result of something else we did. Sometimes we do them inadvertently. Then they are things we did not exactly do. Sometimes, however, we do them by design. We can work hard at doing them. Now we have a rather different story.

Suppose *misleading* and *deception*, for example, are not put on the list of criteria just so as to warn us off bad reasoning, to point to the bad things that might result from bad reasoning. They are put there because they really are criteria for applying the label *bad, fallacious reasoning.*

Of course, the label can not be applied if misleading and deception are thought to be the result of a mistake of some kind. So, should someone say: "Your argument is bad, fallacious because it is misleading and deceptive," they must believe that misleading and deception were part of my plan and not at all the result or consequence of some mistake or slip or whatever. What can I do? Deny it? (But what will I deny?) Apologize? Hang my head in shame? Run away? Make amends? Whatever I do, I may never be able to fix the damage I am said to have done. If my plan was to mislead or deceive by arguing as I argued, I can not correct anything. There is nothing really correctable, nothing that I would want to correct. This, then, is pretty clearly a very different story. Maybe it is a darker, more distressing story, one that may make us look pretty bad. But it is a story that must be told.

Arnauld and Nicole championed this story. They, too, put fallacies in the bad reasoning pile, but their criteria for doing so turn out to have little to do with the

rules, procedures, and requirements of reasoning or argument. Although we should take time to fully savour the procedures followed by the Port-Royal logicians, how they say one thing and then take it back, it may be enough to recall that they praised Aristotle for having picked out the fallacy of *ignoratio elenchi* and then went on to chide him for having put his foot in it. Arnauld and Nicole were really not so much concerned about Aristotle's putting his foot in it as they were intent on pointing out how his foot got there.

Aristotle, Arnauld and Nicole said, refuted Parmenides and Melissus by attributing to them doctrines they did not hold. Then they went on to say that Aristotle *insincerely* reported these doctrines. In saying this, they clearly rule out such things as distraction (Plato rang him on his cell phone just as he was transcribing these doctrines), poor light (power failure), fragmentary documentation (library rats made a meal of the manuscripts), mistakes (Aristotle took the wrong books). But they clearly ruled in the possibility that Aristotle put contaminated materials in the machine. His premises were false, but they say he made them that way. So Aristotle could not plead accident, mishap, or anything resembling these pleas. *Insincere* reporting is not something that can be done in any of those ways anymore than tying a string across the top of the stairs can be done unintentionally, accidently, or inadvertently (Austin 1979: 275).

Anyhow, Arnauld and Nicole, pressed or not by the time-frame of their little wager, were anxious to say something else. Namely that *insincerity* and all the other bad ways of doing things have darker, maybe deeper, causes in the form of passion, bad faith, and the desire to be right (for a fuller list see: Arnauld and Nicole 1970: 304ss). And all this comes from a weak and unruly will, not from stupidity or ignorance of the rules, procedures or requirements of good reasoning. If we still want to call a fallacy a case of bad reasoning, we will have to add more rules to our list. But such rules will have little to do with reasoning and much to do with the ways we expect everyone to do the things everyone does. Violating these rules gets us into another kind of trouble. Trouble that we can hardly get out of. In a way this is the line Arnauld and Nicole took. They say that we expect *l'homme de bien* to be sincere (1970: 304). But they give the line a rather special pitch or twist and it becomes unclear whether we are willing to let our passions, interests, and desire to be right run the show or whether we are so inclined. *Willingness* calls for reformation, more stringent rules, or a larger, vigilant police force. *Inclination* calls perhaps for genetic engineering or outside help.

Outside help is what Arnauld and Nicole called for. They made this appeal because they saw part of our nature as disposing us, even pushing us to give first place to our passions, interests, tribe, and the rest. So, with this story, *either* nothing we say can get us out of what we did – what can we say to the charge of insincere reporting, other than denying it? – *or* what we did comes naturally and there is not much point in trying to put a stop on doing what comes naturally (although we might want to cover it up or hide it). I have no inclination to follow Arnauld and Nicole along either of these paths, even though they may have correctly taken the lay of the land and set the terms of a wager. But I do believe Arnauld and Nicole were on to something that their inherited commitment to the dichotomy – good reasoning-bad reasoning – may have made it difficult to fully articulate. They alleged that Aristotle was really interested in making himself look good by making his predecessors look bad, not in getting at the truth of the matter. They said, in other words, that Aristotle was *putting down* his predecessors, not arguing with them. They went on to say that Aristotle consequently messed up his argument. That he used false premises, premises he made up. The result of which was a clear-cut case of bad, fallacious reasoning.

Arnauld and Nicole might have said that Aristotle was *not exactly* arguing, but doing something else. Had they really said something like this, they would have been able to see that the opposition is not between good and bad reasoning but between reasoning and something else, the something else being that which was really done. Then they might have drawn the distinction between a case that is a *faux raisonnement* and a case that is a *raisonnement faux*. It would, then, have been clear that the inherited dichotomies, patterns and stock samples put different fish in the same kettle. Arnauld and Nicole, of course, did not follow this line. But it is a line Austin followed and was quite good at following. That is where the next pull, not to say light, will come from. "That chap over there, he's all right I suppose, he's cleaning the windows, eh?" "Ah, *him*, he's *pretending* to be cleaning the windows right enough, cleaning 'em a treat too: but I see him taking note of the valuables through 'em all the time" (Austin 1979: 259).
Pretending to be a hyena at a party and pretending to be cleaning the windows are different cases. Success at the party depends on satisfying one set of criteria. Success at the windows depends on another, different set of criteria.
Pretending to be a hyena and taking a bite out of someone's calf, "taking a fair sized piece right out of it" (Austin 1979: 256) will be carrying the pretence too far, but really cleaning the windows may be a necessary part of pretending to be

cleaning the windows. The case is different, too, when on the stage we pretend to saw someone in half. Here delivering the genuine article will get us on the news or guarantee our 15 minutes of grim glory. There are, I believe, some important lessons to be drawn out. The lessons do not require imitating Austin's "hounding down the minutiae." Broad outline should be good enough.

Firstly, successfully pretending to be a hyena supposes a certain transparency in the pretending so that there will be little possibility of confusing the pretence with the genuine article. Something like this is certainly true of the magician also. What we admire is the skill in bringing the trick off, where bringing the trick off is being like the genuine article without the grim consequences. Cleaning the windows is different still. Here the pretence can not be transparent in just these ways. Indeed the window cleaner, if the pretence is to be any good, had better deliver the genuine article.

If the genuine article has to be delivered, why talk about pretence? Because the pretence covers over something else, it dissembles what is really being done (taking note of the valuables). If this is the case, there is no room for the window cleaner to slack-off or make mistakes. Austin's window cleaner clearly muffed his pretence. Something about the performance gave it away. Window-cleaners don't ordinarily stop cleaning the windows to take notes. They know the difference between a squeegee and a mop, Windex and motor oil. The successful pretend window cleaner does such a good job that no one knows what they were up to – until the valuables disappear.

Secondly, it is clear that pretending to clean the windows and taking note of the household treasures are not opposed to one another in any intelligible way. One is used to mask, dissimulate the other. We do one thing so as to hide the fact that we are really doing something else. This is where Arnauld and Nicole get back in. Aristotle, they might now say, just pretended to argue while what he was up to all the time was a 'put-down' of his predecessors. He cast the 'put down' in the form of Bocardo (or maybe it was Barbara), it looked good and genuine and got by for a long time. Parmenides and Melissus did look bad until someone checked the original documents. So we might pretend to argue while all we are really doing is putting someone down, venting our passion, protecting or promoting our interests, or any of the other things we do but do not want to come right out and do. Clearly, if we are to do these things, if they are to get by, our pretence had better be convincing. It had better be enough like the genuine article to get by.

The next case is different. Here there is an opposition between the genuine and

the sham, the spurious, or the fake. What is hidden or dissimulated is the sham, spurious or fake article. An example might be, if we are materially inclined, an imitation Rollex or a counterfeit bank note. These things had better be enough like the genuine article to get us to be tempted by a good deal, or to give the man two tens for the twenty without asking any questions. The more intellectually inclined will want another example. Here we need only think of a bad argument disguised as a good one or that is passed off as a good one. In this case, the resemblance hides the fake, spurious article. In the first case, the genuine article hides or dissimulates something else. It may be hard to keep these apart, but they are clearly different cases.

When we encounter a case of bad reasoning what we ordinarily do is pick out the mistakes, errors, slips, and the like and then correct them or try to get them corrected. Sometimes we get thanked for doing this, perhaps not right away, but thanks usually do come eventually. We may, of course, also chide the bad reasoner on not knowing things we think they ought to know, or for not interpreting information in the ways, given their training and experience, they are expected to interpret information. We may chide them on many other things, all of which will be related in some way to getting the argument fixed and reasoning straight or back on track.

When we encounter a case where someone is taken to be pretending to argue, we may indeed look for mistakes, errors or slips that will give the little pretence away (nothing so gross as a bearded queen on a bank note), but, also, ordinarily, we will try to bring out into the open whatever it was they were hiding (the fake bank note, the bad argument, the break-in, the put down, et cetera). We will chide them not on their mistakes or slips (we may be happy that they forgot that the queen does not have a beard), but on the abuse they have made of a perfectly honourable trade, window cleaning, engraving, arguing, or whatever. We will denounce them or turn them in. When we do, we do not expect any thanks from them (pace Hegel). Indeed, when we do point out the pretence, reveal the agenda or party line, all we may get is denial – "That's not what I was doing" or a shifting of the load, "You don't understand."**[ii]**

Of course, there may be cases where we do pick out the mistakes, errors, slips, and the rest without getting any thanks at all and, as it turns out, we lose the promotion or the job to boot. Then we may wonder what the bad reasoner was really up to in the first place.

This takes us back to the beginning. In the *De sophisticis elenchis*, Aristotle distinguished not between good reasoning and bad reasoning but between

genuine reasoning and reasoning that only seemed to be so. Reasoning that only seemed genuine is *sham* reasoning. Sham reasoning, Aristotle said, makes up a different class of arguments. Another name for sham reasoning was *fallacious reasoning.*

Right at the start, then, there were more than two piles into which arguments could be sorted. It will be easy to see why there are more piles if we remember Aristotle's striking example of the difference between the genuine and the sham: there are beautiful people who are beautiful thanks to their beauty, while others seem to be so by dint of embellishing themselves (164b, 21).

Clearly *looking beautiful* is not the *opposite* of beautiful, so we will not call the embellished person an ugly person but a person who looks beautiful by dint of embellishment. So, too, the opposite of a fallacy will not be a good argument, it will be a *genuine argument.* If this is the way it is, when we sort out cases of arguments, taking into account the distinctions and differences that show up, we will need *more and different* piles than the approved dichotomies allow for.

Moreover, it will appear that a fallacy need not be a bad argument, but only an argument that looks genuine by dint of a certain likeness to the genuine. Indeed, it may be the case that a fallacious argument is a good argument. But, whatever the case, there will have been both dissimulation and abuse of sorts (misuse and misconduct). This, without doubt, is what got Socrates' ire up.

Equating fallacies with bad reasoning will be unfair to fallacies. We will, moreover, be making a mistake, not as serious perhaps as the one that comes from assimilating winning a war to sneezing or horses to beds, but still serious enough (cf. Austin 1979: 179). It will be one that misleads us. For we may look for mistakes when we ought to be looking for misuse or abuse, we may call for corrections when apologies are needed and call for apologies when corrections will do. This is unfair to fallacies.

To be fair to fallacies, we may have to work harder at keeping *grading* separate from *sorting, classifying* or *cap-fitting.* Determining worth and merit using some scale – good to bad, strong to weak, 10 to 1, or whatever – is clearly different from putting things, good or bad, strong or weak, 10's or 1's, into different piles or putting caps on the different cases that appear. It may happen that some stock caps, off-the-shelf, made up in the shop before the customers come in, don't really fit. Can we pretend that the caps we have on hand will fit every head that appears? To be fair and honest we may have to tailor-make some caps.

NOTES
i. Moreover, it is equally clear that the thing to do in Finney's case is to fix the taps, to make them such that mistaking one for the other will be less likely. In the case of mistaken grounds, whether anyone gets taken in by them or not, the thing to do will be to correct the mistake or get it corrected. But even setting things straight will not be a guarantee against misleading and deception. After all, an impeccable calculation may mislead. Remember Austin's 3.75 men needed for building a cistern (1979: 194) and many of us know that telling someone your place of birth may mislead them about your first language or your genetic stock.

ii. Check the letters in the New York Review of Books where reasoned exchange is the major product. We find reproaches like blasé disregard, academic arrogance, hint, innuendo, caricature, larded with political and religious motives, bluff and posturing, and protective wall of unbreakable a priori conclusions. Such reproaches rarely give rise to corrections or straightforward rebuttals, they are mostly rebuffed, denied.

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ISSA Proceedings 1998 – Making A difference Or Not: Utterances And Argumentation

As a linguist, I am limited, in the study of argumentation, to the linguistic traces of the argumentative process. Fortunately, they are numerous, and exactly like the relation between fossils and life forms, they present the advantage to be testable and that one can be sure that, even if some aspects of the argumentative process do not leave fossilized traces, most do.

Arguments are utterances and therefore they share certain characteristics of utterances (as opposed to propositions or phrases). To highlight what is probably the most important feature of utterances as far as understanding the relation between an argument and conclusion, is the aim of this paper.

I had the opportunity (Nemo, 1995) to present here a description and account of argumentative relevance, which I will quickly summarize, before introducing new evidence for my main hypothesis.

1. Utterances and argumentation

First of all, the distinction between proposition and utterance must be justified. If we consider the difference between proposition 1 and utterance (1):

1. Bill Clinton is alive.

(1) Bill Clinton is alive.

i.e. the difference between an unsaid proposition and an uttered proposition (the utterance), it must be remarked that 1 represents only the fact that Bill Clinton, is alive, whereas (1) represents both the fact that he is alive and the fact that this might (indexicaly and not theoreticaly) not have been the case. Consequently, the utterance (1) can represent only a moment when something has happened (an accident, an heart attack, an assasination attempt, etc...) whereas the proposition represents any moment in which 1 is true. In other words, the sentence is (only) an image of the reality whereas an utterance is the association of an image of the possible and an image of the reality: *an utterance consists, minimally, of the association of a proposition with a modal frame*, and hence receives the following description:

(1)

Bill Clinton may be alive – Bill Clinton is alive.

– may not be alive

The mere use of language implying a modal framing of reality. From this general standpoint a description of the argumentative value of utterances may be

proposed. The constraints which have to be described in order to account for it are at least four, one accounting for the argumentative value itself, as opposed to informative value for example, another accouting for the argumentative orientation, and the others for the argumentative strength of utterances.

1.1. Argumentative utterances

To account for the argumentative value of an utterance, that is to account for the fact that we can say things (which are by no means informative) such as " I'm your dad " (this to say for example " you should listen to me ") or " I'm not three years old " (this to say for instance " I shouldn't be treated like that "), the existence of a *scalarisation constraint* must be hypothetized.

An utterance E may be used as an argument for an utterance R, if and only if it makes a difference for R that E is the case or not.

If we consider the exemple (2) for instance:
(2)
(S)he came but too late.

it is easy to observe both that what is meant is that when she actually came, it didn't make a difference any more and that the meaning of " P but Q" (the encoded meaning of 'but') is simply, as we shall see again later, to indicate that *P is not making the difference it might have made because of Q.*

1.2. Argumentative orientation

To account for the argumentative or scalar orientation of utterances, that is to understand how a certain reality can lead to opposite conclusions, the *comparison constraint* must be spelled out: *Given the fact that the scalar (that is argumentative) value of an utterance depends on a comparison of the different possibilities which are introduced by the utterance, the scalar orientation of the utterance depends of the possibilities which are, or which are not, introduced.*

Among the linguistic traces of the existence of this constraint are what Ducrot calls the argumentative operators, for instance *peu* (little), *un peu* (a little), *presque* (almost), *à peine* (hardly). I could add trop (too much ot too many) or seulement (only) but it can also be shown on operator free utterances. If we consider the utterance (3) and (4) and the surprising relevance of answering/retorting (3) to somebody who has said (4):
(3)
Il a peu souffert (He suffered little or He didn't suffer much)

(4)

He suffered (He suffered)

First of all, it is clear that there is no need of any old information to understand what is going on: utterance (3) modal background consists in opposing suffering a little and suffering a lot, in which case suffering 'little' is not so bad. On the contrary, utterance (4) modal background consists in contrasting the fact of suffering with the possibility not to suffer at all, and therefore it presents the suffering as 'bad'. Thus, by answering (3) to (4), or by opposing them with a mais (but), what (4) actually reminds the speaker of (4) is that the person in question might not have suffered at all, a possibility which the first utterance was simply not considering at all.

Hence, the relevance and interlocutive value of the answer (4) is completely dependent on the difference suffering or not suffering makes, and not at all on any new information (4) would convey. Yet, there are no reasons to believe that (4), because it is clearly uniformative and therfore violating Grice's maxim of quantity, would be considered irrelevant: if it doesn't not change anything about the representation of the world, it does change locally the set of possibilities to be considered, in other words what we shall call from now on the interlocutive image of what is possible.

1.3. Argumentative strength

Two last constraints on scalar value account for argumentative or scalar strength. The first one is the scalar slope constraint: *Given the fact that an utterance E is an argument for an utterance R if it makes a difference for R if E is the case or not-E, then the argumentative strength of the utterance E depends basically on whether the difference that E makes for R is small or big.*

The second is the modal slope constraint and operates within the *scalar slope constraint*:

Given the fact that it makes a difference for an utterance R if E is the case or not, the more not-E will be possible (likely), the biggest the difference the fact that E is the case will make. And hence, the stronger the arugumentative or scalar value of the utterance E will be.

Linguistic traces of the existence of these constraints can be found in the use of words such as 'même' (even). If we consider utterance (5):

(5)

Même Pierre est venu (Even Pierre came) the fact that " Pierre came " is the

strongest argument to prove the success of a meeting is due to the fact that Pierre was the most unlikely to come.

1.4. Some examples
We shall illustrate this description with the dialog (6), a dialog which includes the discourse marker 'tout de même' ('even so') and which is taking place in a shop between a customer C and a seller S, should be considered.
(6)
– *C'est cher !*
– It's expensive !
– *C'est de la qualité !*
– It's quality !
– *Tout de même !*
– Even so !

It would be possible to say, as the first Ducrot for example would have said, that " It's expensive " is an argument for a conclusion and that " It's quality " is an argument for the opposite conclusion. But that's not what is really at stake in this dialog. The meaning of the answer " it's quality " in (6) is that " it cannot be inexpensive ", which, according to the *modal slope constraint,* weakens the first utterance scalar value: if it cannot be inexpensive because it's quality, then the fact of being expensive cannot make any longer a difference.
Hence, to bring back again some scalar value to the initial utterance, the customer will have to reply "Even so", this to say that "Even for quality it's expensive".

2. The difference it makes and the semantics of utterances
The next point I want to make clear is that the scalarisation constraint and its insistance on the importance of the difference what is said is supposed to make is not an adhoc and commonsensical hypothesis, nor something specific to argumentation. What is quite clear on the contrary it that even if what it means exactly has yet to fully explored, it should be considered as a linguistic discovery.
Why should it be so ? Mainly because the scalarisation constraint (SC) is shared by all utterances and appears in the most different contexts and speech acts. And because it is a key to the interpretation of utterances, either in the understanding the implicit of utterances or in the understandings of what argumentative connectives or operators actually encode.

2.1. The difference it makes and the implicit content of utterances

For instance, only the SC accounts for the fact that utterances children such as (7) may be uttered even by a mother to one of her own children:

(7)

I am not your dad

to say something such as "go and see your dad directly, I am not the relevant person for this". But this is also why saying (8):

(8)

I'm your dad.

sometimes mean things such as "Don't talk to me like that" and sometimes things such as "You can talk to me".

And this is still why it can be guessed that what the utterance (9):

(9)

On est Alsacien ou on ne l'est pas (one is Alsatian or one is not) is talking either about the difference it makes to be Alsatian or not, or about the difference the whole utterance makes, namely that there is no middle between the two possibilities. Similarly, as was observed within the Relevance Theory framework, this is why answering

(10)

He is French

to the question:

(11)

Does he know how to cook ?

may be explained by the sole hypothesis that this answer must be interpreted through the question "What difference does it make for cooking abilities to be or not to be French ?". This is also why, an even more subtle implicit of such utterances, one cannot answer:

(12)

It's right around the corner

to somebody looking for a gas station and asking:

(13)

Do you know where the closest Gas station is ?

if(s)he knows that the station is actually closed.

As a matter of fact, it seems that the scalar maxim: *Do not say something which makes no difference* (to what is at stake) would probably be the most direct description of cooperativeness. The same constraint is also present in indirect speech acts, such as:

(14)

It's hot in here.

(15)

the bin is full.

In which it combines with another feature, the X-dependency feature (Nemo, 1998), to produce the directive effect.

2.2. To make or not to make a difference: fossilized tracesmof the SC

When linguists try to describe discourse connectives, the main problem is to understand what exactly is at stake in the use of a connective. I have mentioned earlier that the meaning of 'but' was not to oppose but to indicate that something is not making the difference which it would be expected because of what follows (or as regards what follows). This description, which applies to the normal oppositive use of 'but', also account for all conversational uses and reinforcing uses such as (16):

(16)

He is stupid but stupid

in which what is said is both that there is stupid and stupid, as we shall see later, and that the person concerned is of the second kind, which refers to the scalar slope constraint (How important is the difference something makes).

Another example of the importance of the SC will be provided by the discourse marker De toute façon (often translated by 'anyway') and its various uses, all examples borrowed from Corinne Rossari's work on reformulative discourse markers (1994, 66-67). It must be noticed that in all the utterances of the form 'A de toute façon B', the utterance B imply that it makes no difference whether A or not A . So that with 'A de toute façon B', to use Rossari's phrase, " Il ne sert à rien de dire A puisque de toute façon B " (" It is not worth saying P as anyway Q "). Let us show this with a few examples:

(17)

A – Où as-tu trouvé ce sac ?.

B – De toute façon, c'est un modèle qui ne se fait plus.

A – Where did you find (buy) this bag ?
B – 'Anyway', it's a model which is not made any more.

In this dialog, what *de toute façon* means is that the question is not worth answering, because it wouldn't make any difference knowing where the bag was bought, as it is not made any more. Thus, this example must be related to example (19)

(18)
A – Quand on veut, on peut.
B – De toute façon, je ne veux pas.
A – If you want to, you can.
B – 'Anyway', I don't want to.

In this dialog, what 'de toute façon' means is that the first conditionnal utterance makes no difference, as its premise is not true, which is to say that it doesn't matter that " if you want to you can " when you actually don't want to do (something). Similarly, in:

(19)
Avec un type comme Ackley, si on levait les yeux du livre, on était foutu. De toute façon, on était foutu.
With a guy like Ackley, if you just lifted your eyes from the book, you were in deep trouble.
'In any case', you were in deep trouble. The monological context gives 'de toute façon' an autocorrective dimension: it is the conditionnal 'if you ...' which is presented as incorrect as it actually makes strictly no difference to lift your eyes from the book or not, being in trouble in both cases.

Other examples are even more interesting:
(20)
Écoute, c'est un bon prix, et de toute façon il n'est pas négociable.
Listen, it's a good price, and de toute façon it is not negociable. Because what is said is not that saying A is not worth, but that saying not-A, or arguing on A, wouldn't be worth. Or still because 'de toute façon' may apply its scalar disappointment value to whole discourses, discussions and conversations, either backwards, and to say that what was said makes no difference for the present or the future, as in utterance (22):
(21)
De toute façon, tout ça, c'est du passé !

'Anyway', all this is history !

or forward, as when (22) is uttered to say in advance that whatever could be said or asked, it would not and should not make any difference to the performative reality of the speaker not being there:

(22)

De toute façon, je ne suis pas là !! C'est clair ?

'Whatever they could say makes no difference', I'm not here !! Is that clear ?

All those examples showing, as so many other examples with other connectives would, the importance of the scalar dimension of utterances Example (23) finally, which combines the two discourse markers mais and de toute façon, is a good example of the way all the constraints interfere one with another:

(23)

L'équipe de France est une très bonne équipe mais, de toute façon, en finale il n'y a que des très bonnes équipes.

(The French team is a very good team, but anyway in a final, there are only very good teams)

The first utterance, uttered by a Brazilian player just before the final, is given as an argument for « we should respect the French team », but as it can be interpreted too as « we should fear them », the but indicates that the fact that the French is a very good team is not making the difference it might have made (i.e. to impress the Brazilian team for instance) because as in final there are only very good teams (things may not be otherwise, a modal slope development), playing the French team or another very good team makes actually no difference (as is indicated by de toute façon): because it is not possible to play in a final a team which wouldn't be very good, the fact of playing against a very good team loose all scalar value.

3. Making differences or not: the semantics of tautological and other anomalous utterances

It is not easy to account for the actual semantic interpretation of tautological utterances (Wierzbicka, 1991: 391-451), which is hardly linkable with the so-called propositional content or logical form that could be expected to be the fundamental meaning of the sentence. Nor to account for their pragmatic and conversational relevance: after twenty years of considerable focus on relevance, we still have almost nothing to say which could account for it.

However, the fact that neither semantics nor pragmatics could actually fully

account for such utterances has something to do with our way to understand the semantics/pragmatics interface: tautological utterances, among others, actually falsify the idea that there would be what is said on one side (the explicature) and what is inferred from what is said on the other side (the implicatures)**[i]**. As a matter of fact, it seems clear on such examples that accounting for the meaning of what is said and accounting for the relevance of what is said is exactly the same task. Let us consider first apparently tautological utterances such as:

(9) On est Alsacien ou on ne l'est pas.

(One is Alsatian or not).

As soon as (9) is interpreted as a *representation*, it is tautological one, because saying P or not-P is always true. But, if we consider that utterances are *comparisons*, and not representations, then the semantic meaning of (9) may be obtained directly: (9) refers to the difference it makes to be Alsacian or not, as far as something is concerned. Therefore, (9) is normally used to point to a DP (Distinctive properties) of Alsatians (compared implicitly to other French people), such as drinking a lot of beer, in order for instance to present as normal such ort such attitude. It must be noticed that what is observed here in a tautological utterance is not specific to tautological utterances. The semantic interpretation of utterances such as (24):

(24)

Les Alsaciens boivent de la bière.

(Alsatians drink beer).

Is a problem too, because to be meaningful it is not necessary that all Alsatians actually drink beer, because the referent of *Les Alsaciens* is also underdeterminated and finally because the fact that *boivent de la bière* (drink beer) must be interpreted as *boivent beaucoup de bière* (drink a lot of beer) remains equally unexplained. But here, once again, it is clear that as soon as (24) is not treated as a representation but as a comparison, all those semantic difficulties disappear.

The comparison versus representation thesis that we shall support as a starting point to understand tautological utterances also apply to all utterances of the form *Det N est Det N* (Det N is Det N), tautological double characterizations being precisely of the form *Det1 N1 est Det1 N1* (Det1 N1 is Det1 N1), but also to utterances of the forms *Det1 N1 est Det2 N1* (Det1 N1 is Det2 N1), ") or to paradoxal utterances of the *Det1 N1 n'est pas Det2 N1* (Det1 N1 is not Det2 N1)

form. For all this last kind of utterances, it must be remarked first that they escape the excluded middle constraint: things may be N and not-N in the same time, a situation which may be called the included middle.

(25)

Mes vacances n'ont pas été des vacances.

(My holidays were no holidays)

(26)

Ses vacances n'en ont pas été.

(His holidays just were not holidays)

(27)

Son père n'était pas un père.

(His (Her) dad was not a dad). Therefore, it is easy to understand that the relevance of tautological or paradoxal utterances is linked with the existence of this internal negation, which leaves many linguistic traces, for instance hedges:

(28)

La guerre est la guerre.

(War is war)

(29)

La guerre n'est pas toujours la guerre

(War is not always war)

(30)

Cette année, j'ai pris des vraies vacances.

(This year, I took real vacations) Hence, tautological and paradoxal utterances may be described as double comparisons: they both mobilize the DP of a class on one hand – the fact of not working for holydays for instance – and in the same time they either advance that no difference should be expected between the members of the class (about those DP) or on the contrary advance that a difference should be made![ii]

The utterance (28) would be a good example of the first case, as utterance (31):

(31)

Une voiture est une voiture

(a car is a car) which is used most of the time to say that all cars are the same, that *iI n'y a pas voiture et voiture* (there is no car and car). It seems, nevertheless, that contrasting (31) with the utterances (28) and (32):

(32)

Boys will be boys

(les garçons seront toujours des garçons) leads to observe the presence of an X-dependency feature in utterances (28) and (32), as thay both convey the idea that "there is nothing anybody can do about it", a feature which is not present in all tautologies, but in very different kind of utterances. The utterance (31) on the contrary may perfectly be used as an answer to a question of the form *Do you want this or that car model* ? to assert that it makes no difference to him (her). With (31), it must be noticed, it is not the DP of the class which are focused on (the fact that wars are cruel or that boys are unruly), but what may distinguish cars one from antother (being big, confortable or fast) and thus properties which are neither common nor distinctive.

If we consider finally examples such as (33):
(33)
Lui, c'est lui, moi, c'est moi.
(He is he, I am I) it is clear first that it is the necessity not to consider two people as one single entity**[iii]** which is at stake here, but also that 'considering' two people as one entity concerns one's *attitude* torward those people, and not inner properties of these persons.

What is at stake in tautological utterances hence is the necessity or not to make a distinction between things of the same type (or which belong together). And as regards finally the pragmatic or contextual dimension of the interpretation of such utterances, it appears to be important but very limited: in some contexts – *i.e. in contexts where a difference has been made – tautological utterances will be used to remind that no difference should be made, while in other contexts – i.e. in contexts where no difference has been, or could, be made – tautological utterances will be used to insist on the necessity for things to be kept separated, and neither altered nor confused***[iv]**.
The contextual dimension of these utterances is hence undisputable but limited to the determination of which of the two possible interpretation will be contextually valid.

4. Conclusion: utterances as implicit comparisons and the study of argumentation
That utterances convey implicit comparisons is of course very important to understand argumentation in general and enthymemes in particular.
In the first case because the most simple pieces of deductive or inductive reasoning cannot simply be described without taking into account these implicit comparison sets, as may be observed in such simple examples as (34) and (35):

(34)

He wasn't going far. Hence he took his bike.

(35)

He was going far. Hence he took his bike. the first utterance (34) implicitly comparing going by bike or by car (or train, etc..) while the second supposes that the choice to be made was between going by foot and going by bike.

And in the second case because if utterances are simply not representations – as may be observed again with (36):

(36)

Nadia n'est pas sa soeur.

(Nadiai is not her sister) an utterance which is not the assertion (and representation) that Nadiai is not heri (own) sister, but actually a comparison between Nadia and Nadia's sister – then the role of utterances in argumentative processes must be reconsidered.

What is actually important to notice hence is that:

– comparing is a way to *present* a reality in contrast with another;

– comparison is the process of highlighting differences;

– differences are not inferences;

– differences are not objective stimuli but realities which do not exist outside of the comparing process.

And that if utterances do consist of an association of an image of the reality with a modal frame, then what is needed in the study of argumentation is to take fully into account this modal framing.

NOTES

i. As A. Wierzbicka remarks (1991: 400), despite Levinson's agreement (1983: 110-111) about the fact that "exactly how the appropriate implicatures in these cases are to be predicted remains unclear", "context" appears to be "an excuse for analytical failure".

ii. A case which can be found in Chinese 'concessive' tautologies, for which, according to A. Wierzbicka (1991, 423), "The subordinate clause states an 'undeiable truth'but the main clause contradicts this truth with respect to a specific instance : since this particular entity (X) belongs to a certain kind, one might expect that it will have certain properties, generally seen as characteristic of that kind: and yet, the speakers point out, this particular X (X) doesn't have the

properties in question". But which must be considered together with all the numerous cases for which it is the existence of the necessity to make a difference which is stated : it might be the case that there are culture-specific interpration of such or such formula,, but the semantic content of these formula seems to be potentially universal.

iii. A. Wierzbicka's (1991, 431) example of the (Chinese) statement that "husband is husband", in a situation in which what is at stake is the way a group of housewives should behave with Mrs Tanaka, whose husband has just been gaoled, works the same way : it point to relationships with people, and insists on the necessity not to consider them as 'going together'.

iv. As for instance the Chinese tautologies of irreducible difference (Wierzbicka, 1991, 427).

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ISSA Proceedings 1998 – Phenomenological Argumentative Structure

1. Introduction[i]

What is the proper representation of phenomenological argumentative structure? By 'phenomenological argumentative structure' I mean the logical structure that an argument is perceived to have by mature reasoners – yet ones who are untrained in logic. Except for a few remarks, this paper will not be concerned with whether this informal ability to identify or match argumentative structure is an important reasoning skill; rather, it will be primarily concerned with *judging* or attempting to measure this skill. Instruments that have questions designed to do this include major standardized tests for graduate school admission, e.g., the United States-Canadian Law School Admission Test (LSAT), the Graduate Record Examinations (GRE), and the Graduate Management Admission Test (GMAT). Writers and reviewers of such tests need an appropriate foundation for developing such questions – they need a proper representation of phenomenological argumentative structure – for legitimacy, and because these tests affect people's lives.

A further motivation is cost. A single question on these tests probably averages about $2,000 to develop, so it is not a trivial matter when a test item is miscast and fails psychometric statistical review. Even given this, however, it may be that an attempt to represent phenomenological argumentative structure through (probably expensive) empirical studies would not be advisable. The results could be bewildering and not generalizable (one study found that the diagramatic aids examinees drew when taking like tests tended to be quite idiosyncratic – Cox & Brna 1995). Instead, the approach that this paper will take will be mainly philosophical rather than empirical.

It would certainly appear that the informal or nontechnical ability to identify or match argumentative structure is fundamental to reasoning well. With only one putatively clear kind of exception, the validity (for deduction), or more broadly, cogency (for both deduction and nondeduction), of an argument is entirely (for deduction) or largely (for nondeduction) a function of its logical structure or form (cf., e.g., Sainsbury 1991: Ch. 1; also Walton 1995: Ch. 5 for a distinction of 25 nondeductive argument structures or "schemes"). The same applies to the invalidity or lack of cogency of an argument. The only arguments that supposedly constitute an exception are those that proceed through conceptual analysis, that is, those that are termed 'materially' valid or invalid; a classic example is 'this is red all over, so it is not blue all over' (e.g., Read 1994). So apart from such arguments, and apart from conversational and rhetorical matters and matters

related to the actual truth values of premises and conclusions, to perceive the logical structure of an argument is to perceive that in virtue of which the argument is good or bad (deduction) or is to perceive much of what makes the argument good or bad (nondeduction). Naturally, then, a principal way of assessing the cogency of a given argument is to match its structure with that of an argument whose cogency is known or obvious. In the case of showing lack of cogency, this tactic is called 'refutation by logical analogy'. (Some of the presuppositions of these remarks will be defended in §3.)

2. Question Format
Typical questions on the standardized tests mentioned that ask the examinee to identify or match structure consist of a short argumentative passage, a question stem on the order of either
(*I*) The argument's method of reasoning is
or
(*M*) The pattern of [flawed] reasoning in the argument above is most similar to that in which one of the following [arguments]? and five answer choices. Since all answer choices must be cast in ordinary nontechnical prose, questions of type (*I*) generally concern only the grosser features of an argument's structure. Questions of type (*M*), however, can pertain to much more subtle features (since the examinee is not asked to explicitly identify them), and it is this type that will constitute our focus.

Notice that (*M*) questions create a somewhat artificial setting that usefully restricts the task in a number of ways. That the text in the passage (and normally in each of the answer choices) is supposed to constitute an argument is settled, although clearly in ordinary discourse "it is not always easy" to determine whether this is the case (Baum 1981: 91). Moreover, whether or not the argumentative structure is supposed to lack cogency is normally given in the question stem by whether or not a term such as 'flawed' appears in the stem. This can make a great difference in the argumentative structure that people perceive. Example (1), with 'flawed' appearing in the question

Example (1)
John is an excellent member of the team.
All the members of the team are fathers.
Therefore, John is an excellent father.
Which of the following exhibit the same [flawed] logical structure as that

exhibited in the argument above?

I. This is a fake diamond. All diamonds are hard. Therefore, this is hard.

II. This is a red apple. All apples are fruits. Therefore, this is a red fruit.

III. This is a big flea. All fleas are pests. Therefore, this is a big pest.

(A) II only

(B)* III only

(C) I and II only

(D) II and III only

I, II, and III**[ii]**

stem and (B) as the credited response, performed on the LSAT at pretest**[iii]** in a statistically acceptable, albeit marginal, fashion.

Havoc ensued, however, when, with the same credited response, 'flawed' was taken out. The reason seems plain: In the first case pretest examinees naturally took the rather informal**[iv]** fallacy of distributing an attributive adjective ("excellent", "big") across two different noun phrases as part of the argumentative structure. In the second case, with 'flawed' out, many pretest examinees interpreted the structure more formally and saw the passage, II, and III as exhibiting the same underlying "logical" (as opposed to 'illogical'?) structure; so they picked option (D). Hence in general, insofar as examinees can depend on the fallaciousness of the passage's argument being noted in the question, the matter of whether to interpret the argument charitably basically becomes irrelevant.

These factors direct and limit the interpretative task for examinees. Variations on such factors include leaving out the phrase 'pattern of' (or an equivalent) for arguments in which formal structure is not prominent or those in which conceptual connections are prominent; using a term such as 'questionable' instead of 'flawed' for suspicious, but not clearly fallacious, arguments; and specifying the number of flaws (e.g., 'Which one of the following exhibits both of the logical flaws exhibited in the argument above?'). But the wording of the question stem is not the only kind of constraint that defines the interpretative task; the other major constraint lies in how the passage argument and (especially) the correct answer choice are constructed. Other than that, obviously, they must be constructed to accurately reflect the stem's wording (and vice versa), I think that this constraint principally amounts to the injunction that the arguments normally not be substantially enthymematic. Arguments that were substantially

enthymematic could be too subject to variance in the perception or analysis of their structure to be fair and defensible material. Moreover, measurement of the ability to match structure could be confounded by the additional task of dealing with unstated premises or conclusions.

It might be wondered whether such constraints create a setting that is so artificial that the ordinary nontechnical ability of mature reasoners to identify or match argumentative structure is not really being measured. It seems, however, that these constraints, common to standardized tests, that function to direct and limit the interpretative task for the examinee, are probably just harmless *context surrogates*. For it is an argument's context and background information specific to its presentation that generally decides such matters as whether the discourse is supposed to constitute an argument or whether to apply a principle of charity and take an ostensibly fallacious argument as a cogent enthymeme (assuming that it has not had an "undeserved persuasive power on an audience" – Adler 1994: 276). Standardized tests that are not unduly long generally could not provide realistic surrounding context for arguments and still be reliable, since a test's reliability is an asymptotic function of the number of questions it has (assuming they are of equal quality) (e.g., Gulliksen 1987: Ch. 8). In addition, if a large amount of text were provided as surrounding context, the skills measured would be less definite insofar as the examinee would have more opportunity to apply unintended skills. An indication that context surrogates are harmless is a high correlation between performance on the test and the performance that the test is used to predict. On the LSAT, questions of type (*I*) and (*M*) appear in "Logical Reasoning" sections, which have a (very high) correlation of .483 with first-year law school grades (Roussos & Norton, in press: 2). This means that performance on these sections accounts for almost half of the variance in first-year grades, with the remainder being accounted for by all other factors including, e.g., students' first-year learning as well as personal problems or misfortunes. Hence, some, such as the noted psychometrician W.J. van der Linden (1998: personal correspondence), think that a substantially higher correlation may be a practical impossibility.

3. Formal Structure

My thesis here is that if the passage and answer choices in a question can be formally analyzed at all, the formal analysis that is the proper representation of phenomenological argumentative structure is normally that which *departs least* from what actually appears in these arguments, but with a special consideration

given to elements that figure in the arguments' purported validity or (more broadly) cogency. This seems correct for at least two reasons. First, almost any departure from actual text is *prima facie* questionable (cf., e.g., Sainsbury 1991: Ch. 6). A common departure is taking ordinary language universal or existential quantifications that are not in conditional or conjunctive form as if they were in these forms since that is how they are translated in first-order predicate logic. Of course the alternative that is closer to the actual text insofar as it expresses the surface logical structure is that of Aristotelian or syllogistic logic; and this alternative is preferable so long as it adequately expresses purported validity or cogency. So for example, the proper representation of the phenomenological structure of 'Some people are fools' is 'Some P's are F's', not '›x (Px & Fx)'. In a question of type (*M*) that was recently pretested on the LSAT and that failed statistically, the major premise in the passage was "children would be proud of themselves if their teachers were proud of them." This was supposed to be matched in the credited response with "any biography that flattered its subject would be liked by that person". Possibly, the difference between the two forms that these sentences exhibit, among other things, contributed to the lack of success of the question.

A second reason for understanding the proper representation of phenomenological argumentative structure generally to be that which departs least from the actual text is that this approach is logically *inclusive*. It respects and attempts to take into account all of the text that could reasonably be taken into account in light of the various established logics – syllogistic, propositional, first and higher order predicate logics; tense, modal, deontic, epistemic, relevance, and probabilistic logics; logic with generalized quantifiers; logic of indexicals; etc. – within the discipline of logic. A pragmatic side benefit is that an examinee who happened to be trained in logic could legitimately appeal to any of these logics in answering or later challenging a test question. However, since an examinee need not have any training in logic, it would be inappropriate to *de facto* require the examinee to have mastery of and endorse some particular logic or formal analysis by, for instance, insisting on a formal analysis that incorporates certain putative logical constants to the exclusion of others. This makes it critical that the formal analysis employed by test writers and reviewers be inclusive and close to the actual text.

For any argument, there is a strong temptation to proceed as if standard predicate logic can adequately or exhaustively represent its structure or form,

probably because this logic is firmly established and very familiar. But standard predicate logic does not in-corporate quantification over properties (as does a second or higher order logic). Nor does it incorporate generalized quantifiers (e.g., 'the', 'few', 'most') or modal (e.g., 'necessarily', 'can'), tense (e.g., 'in the future', 'now'), deontic (e.g., 'should', 'permissible'), epistemic (e.g., 'knows', 'guesses'), or probability operators (e.g., 'likely', 'there is a chance that') – all of which are quite reasonably regarded as logical constants. And so on. Hence, standard predicate logic, with its limited supply of logical constants ('all', 'not', 'if... then', etc., interpreted in the classical narrow way), can yield representations of structure that depart dramatically from actual text.

The appropriate recognition of the power and appeal of firstorder predicate logic, as well as syllogistic and propositional logic, seems to be to give these logics priority over less well-established logics in the formal representation of phenomenological argumentative structure. Certainly, 'deviant' logics on the order of manyvalued and Intuitionistic logics fall under the latter category. They have a substantial history now of attracting few advocates; so if even logicians are generally repulsed, it is hard to see how such logics could shed light on how ordinary mature reasoners perceive argumentative structure. Furthermore, first-order predicate logic has shown itself to be remarkably adaptable and extendable – from Russell's Theory of Descriptions and Davidson's proposal about adverbial modification (involving quantification over events) to an extension such as quantified modal logic**[v].**

In formally representing phenomenological argumentative structure it would be too simplistic to follow any such principle as Haack's (1978: 24-25):
. . . the optimal formal representation [is] the one which reveals the least structure consistently with supplying a formal argument which is valid in the system if the informal argument is judged extra-systematically valid. This is Quine's *maxim of shallow analysis* . . ."where it doesn't itch, don't scratch."

Compare Luebke (1995: 40): When can we say that two such arguments in ordinary language have the same argument structure? Must they be identical in respect of every one of their logical elements? The answer to this last question seems clearly no, for some of the logical elements of an argument function to advance the conclusion of the argument and others do not.

One problem with this kind of view is that it does not cover *fallacious* arguments; so there at least would have to be amendment in terms of 'invalidity in the

system', 'judged extra-systematically invalid', and 'purporting to advance the conclusion'. A more serious problem is indicated in how Haack is a little misleading with respect to Quine's view. Quine's "*maxim of shallow analysis*" actually says "*expose no more logical structure than seems useful* for the deduction or other inquiry at hand" (1960: 160). The inquiry at hand here is the proper representation of the logical structure that an argument is perceived to have by mature yet untrained (in logic) reasoners. Of course we (logicians) can distinguish between, on the one hand, the reasoning structure in an argument – how the "logical elements" function in purporting to establish the conclusion – and on the other hand, such features as surface logical structure and the structure of the argument's terms. But there does not appear to be any acceptable way of requiring untrained reasoners to take only the former into account.

Surely, question stems of type (M) do not suffice; and if these don't, nothing will (for instance, the question stem in Example (1) is worse). After all, although these questions explicitly ask the examinee to focus on the 'pattern of reasoning', they do not say anything to the effect that to determine this pattern one should ignore term structure and go logically deep when and to the extent necessary. They cannot do this since these concepts are technical or relative to a specific system of logic. Consider:

Example (2) (2/94 LSAT)
Government official: Clearly, censorship exists if we, as citizens, are not allowed to communicate what we are ready to communicate at our own expense or if other citizens are not permitted access to our communications at their own expense. Public unwillingness to provide funds for certain kinds of scientific, scholarly, or artistic activities cannot, therefore, be described as censorship.

The flawed reasoning in the government official's argument is most parallel to that in which one of the following?
(A) All actions that cause unnecessary harm to others are unjust; so if a just action causes harm to others, that action must be necessary.
(B) Since there is more to good manners than simply using polite forms of address, it is not possible to say on first meeting a person whether or not that person has good manners.
(C) Acrophobia, usually defined as a morbid fear of heights, can also mean a morbid fear of sharp objects. Since both fears have the same name, they

undoubtedly have the same origin.

(D)* There is no doubt that a deed is heroic if the doer risks his or her own life to benefit another person. Thus an action is not heroic if the only thing it endangers is the reputation of the doer.

(E) Perception of beauty in an object is determined by past and present influences on the mind of the beholder. Thus no object can be called beautiful, since not everyone will see beauty in it.

The credited response, (D), is a fairly straightforward instance of one variety, viz., 'if r then h, therefore if not r then not h', of the formal fallacy of confusing necessary and sufficient conditions. The argument in the passage may also be said to exhibit this particular fallacy, but notice that the term corresponding to 'r' is propositionally disjunctive only in the passage and that the passage's conclusion is a categorical statement, not a conditional as in (D). (The negation of 'r' is also clearer in (D)'s conclusion that it is in the passage – but this has more to do with the reasoning structure.) My point is, such differences must be taken into account in the writing and review of matching structure test questions. Phenomenologically, the flawed reasoning in the passage of Example (2) is not exactly parallel to that in (D) because of such differences. It might seem to be exactly parallel if one puts undue emphasis on the word 'flawed' in the question stem; in fact, the words 'reasoning' and 'parallel' are equally (un)emphasized there. Also, one might be fooled by the preceding propositional representation of the fallacy. But the kind of structural differences in question constitute a matter of degree, and they can *accumulate* to the point where the test item becomes dubious or indefensible. For instance, suppose that the passage in Example (2) consisted entirely of categorical statements. It is at least questionable whether the syllogistic error (all R's are H's, therefore all non-R's are non-H's) is the same as the propositional error.

To take another kind of example, suppose the passage and a noncredited response were a Modus Ponens and a Modus Tollens, respectively, the terms of which were all atomic statements (plus some negation). Suppose also that the credited response was a Modus Ponens, but its terms were all *really* complex compound statements. Would such a test item be defensible on the grounds that only in the passage and credited response are the patterns of reasoning the 'same', even though any Modus Ponens (Modus Tollens) can be turned into a Modus Tollens (Modus Ponens) simply by the application of contraposition to the major premise? The test item would at least be problematic.

In Example (2) I think that (A) is, among the noncredited options, the one that is closest to being correct. But it is not correct. And the same reason yields both of these judgments, viz., that (A), where at least the categorical statement is translated as a conditional (or vice versa), is a contrapositive inference, which of course is valid. The actual structural differences between the passage and (D) are relatively insignificant when one considers that the question stem asks one to pick the option with the most parallel flawed reasoning – so the focus is on reasoning structure – and that (A) is formally valid (and is not informally fallacious either), whereas the passage and (D) are formally invalid.

The principle that is emerging is this: In the construction and defense of questions of type (M), when a question stem emphasizes reasoning structure by the use of a phrase such as 'pattern of reasoning' or 'parallel reasoning', more weight can legitimately be assigned to reasoning structure than to surface logical structure and the structure of the argument's terms. Yet these latter must still be taken into account in determining overall (phenomenological) argumentative structure. In this way we adopt the principle that Haack rejects, namely, the proper or "best formal representation will be the one that exhibits the most structure" (1978: 24); it involves at least the argument's logical constants (broadly construed) and the logically significant pattern of occurrence of these logical constants, individual constants, variables, and predicate terms. Such a fine-grained notion of structure means that passage/credited response pairs in good matching structure test questions generally will not consist of arguments with *identical* structures. Accordingly, question stems should be cast in terms of reasoning or reasoning patterns that are *most similar* or *most parallel* to one another, like (M) and as in Example (2), rather than in terms of identity, as in Example (1). The weaker terminology also has the advantage of hedging one's bets against unnoticed structural differences.
Differences in term structure can themselves signal differences in reasoning structure, so we ignore the former to our peril. Luebke (1995: 40) says:
(a) if p then q, p, therefore q
(b) if (r and s) then (t or u), r and s and y and z, therefore t or u or v or w

These two arguments do not have exactly the same logical elements, but the pattern of reasoning that establishes the conclusion is the same in each case – *modus ponens*. Both arguments argue for their conclusion in the same way. So the argument structures, as opposed to the term structures, are the same. In fact,

(b) does not exhibit Modus Ponens since in (b)'s conclusion the consequent (t or u) of the conditional that constitutes the major premise is not affirmed; rather, the much weaker "t or u or v or w" is affirmed. For (b) to instantiate Modus Ponens, its conclusion would have to read 'therefore t or u, therefore [by twice applying the rule of inference of Addition] ((t or u) or v) or w' – but then, the overall pattern of reasoning is not simply Modus Ponens. Even aside from this, it is questionable whether (a) and (b) exhibit the same pattern of reasoning because the rule of inference of Simplification must be applied (twice) to (b)'s minor premise in order for it to be clearly the case that the antecedent (r and s) is affirmed. (Technically, this discussion is rendered somewhat indeterminate by the fact that in (b) the minor premise and conclusion are not even well-formed formulas.)

It will prove useful to examine the following case discussed by Massey (1995: 161):

Example 3
If something has been created by God, then everything has been created by God.
Everything has been created by God.

_____

Something has been created by God.

Massey says of this argument that it "instantiates. . . *affirmation of the consequent*" yet it "is valid." The reference to God in the argument is not essential; alternatively, the argument could be cast 'if something is physical, then everything is physical' (which, indeed, is one way of expressing a part of Bishop Berkeley's philosophy), etc. Massey uses this case to try to help establish what he calls "the asymmetry thesis" (1975: 66):
To show that an argument is *valid* it *suffices* to paraphrase it into a demonstrably valid argument form of some (extant) logical system; to show that an argument is *invalid* it is *necessary* to show that it cannot be paraphrased into a valid argument form of *any* logical system, actual or possible. I think Massey is wrong on all counts.

Example (3) would be regarded as a valid argument in standard predicate logic. As expressed in that system, the conclusion follows from the minor premise since oex›y (x = y) ('everything exists') is a theorem; and although the major premise is not used in drawing the conclusion, this does not matter formally since the system

is monotonic (i.e., "if you start with a deductively valid argument, then, no matter what you *add* to the premises, you will end up with a deductively valid argument " – Sainsbury 1991: 11). This last point itself indicates a problem with Massey's account. If it is not the case that the conclusion is being drawn *through* affirming the consequent of the conditional (major) premise, in what sense could Example (3) 'instantiate' the 'so-called formal fallacy' (1995: 160) of affirming the consequent? (The fallacy is 'so-called' for Massey since it is clear that the necessary condition he proposes for showing that an argument is invalid could never be satisfied.) If the machinery of standard predicate logic were all that we had at our disposal, we could still say that Example (3), understood as valid, commits a gross informal fallacy of irrelevance (of its major premise) (or we could say instead that the argument actually consists just of the minor premise and the conclusion). And in relevance logic, this fallacy is treated as a *formal* fallacy (e.g., Haack 1978: 199).

In a particularly plausible version of free logic, oex›y (x = y) is not a theorem; the logic does not require that every domain of interpretation be nonempty. This is plausible because it is hard to see the fact that there is something rather than nothing as a truth of logic (cf. Sainsbury 1991: 205-10). Standard predicate logic's requirement that every domain be nonempty seems to be merely a simplifying assumption that is innocuous for most purposes. But then this falsifies the sufficient condition, proposed by Massey, for showing that an argument is valid; "paraphrased" in a respectable system of (free) logic (if not also in relevance logic) Example (3) is invalid, although it is valid as paraphrased in standard predicate logic. Also falsified is the necessary condition for showing invalidity, since this is more or less just the contrapositive of the validity sufficient condition.

The strongest principle that Massey is entitled to, one that is true as well, is relativized to a system of logic:
An argument is valid (invalid) in *a system of logic* S if and only if there is some (no) valid argument form in S that the argument instantiates.

This is perfectly adequate to handle all the stock cases; for example, in propositional logic we would not want to say that a case of Modus Ponens is invalid merely on the grounds that it also instantiates the invalid form 'r, p, therefore q'. Moreover, the asymmetry this indicates between showing validity and invalidity seems offset by the opposite asymmetry that it is possible to show that an argument is invalid, but not that it is valid, simply by considering the

actual truth values of its premises and conclusion – if it has true premises and a false conclusion, the argument is invalid. So contrary to Massey, it is not true that "our ability to prove invalidity is markedly more circumscribed than our ability to prove validity" (1995: 164). What is true is, as Govier (1995: 175), puts it, "*formal analysis presupposes nonformal judgment as to the appropriacy of a paraphrase and the correctness of the logical system to which the argument is referred*."

As expressed in propositional logic, Example (3) is a clear case of the invalid form of affirming the consequent. So what is the proper representation of Example (3)'s phenomenological argumentative structure? I think that for cases like Example (3) "*nonformal judgment*" must say that the matter is seriously indeterminate. We cannot merely analyze the argument propositionally because there is logical structure (repeated from the major premise) in the minor premise and in the conclusion, and it functions in purporting to establish the conclusion. But as expressed in one respectable system of logic that takes account of this structure, the argument is valid (although informally fallacious); in at least one other respectable system it is invalid. A variation on Example (3) that is in some ways more interesting is 'if Lyra is a female sibling then she is a sister, Lyra is a sister, therefore she is a female sibling'. This argument is *materially* valid by virtue of the analytic truth that a sister (in the relevant sense) just is a female sibling, yet as expressed in propositional logic the argument is invalid. (One might want to say that the conditional here is somehow 'really' a biconditional; but notice that the same might be said of Example (3) and the 'physicalist' variation that I initially gave of it. However, in testing using short fixed texts, as in much communication such as legal contracts, the focus must be on what is actually said and not on anything like divining author meaning. Cf. Adler 1994: 275-76.) So to avoid confusion or *de facto* requiring examinees to endorse a particular system of logic, it seems that no such seriously indeterminate argument should appear in a question of type (I) or (M) on an exam like the LSAT. Simply not identifying the reasoning as 'flawed' could very well engender a statistically dreadful performance, as with Example (1).

The other moral to draw from this consideration of Example (3) has to do with the undeniable fact that in ordinary life we routinely evaluate arguments as invalid or fallacious. If Massey were right, many, if not all, of these judgments would be illegitimate. But he is not right, and this is especially telling since he presents perhaps the strongest theoretical case for the kind of view in question. The

positive alternative that is particularly appropriate for the study of phenomenological argumentative structure is a kind of "transcendental argument for arguments having a certain kind of structure: this is the structure arguments need to have in order for us to assess them in the ways in which we do" (Parsons 1996: 174). Needless to say, this helps to legitimate questions on an exam like the LSAT that ask test takers to match *flawed* patterns of reasoning.

4. Informal Structure

I think that, phenomenologically, the informal logical structure of an argument can include any of the argument's general elements that figure in the purported cogency of (that function in purporting to advance the conclusion in) any pattern of reasoning. The proper representation of a given argument's phenomenological argumentative structure will include these elements whether or not the given argument exhibits the pattern of reasoning in question. This point regarding informal structure corresponds to the point before regarding formal structure that such features as surface logical structure and the structure of the argument's terms need to be taken into account. But also as before, more weight can legitimately be assigned to the general elements that actually figure in the purported cogency of the given argument.

This approach has more substance to it than might be evident.

In the first place, it rules out purely syntactical features, such as the location of the argument's conclusion, as immaterial: these do not figure in the purported cogency of any pattern of reasoning.

Secondly, it coheres well with the established tradition in informal logic that the cogency of a nondeductive argument is largely a matter of its form. Salmon, for instance, indicates that a nondeductive argument is cogent if "the argument has a correct form, and. . .the premises of the argument embody all available relevant evidence"; so for example, the "correct" form of the "argument from authority" is 'x is a reliable authority concerning p, x asserts p, therefore p' (1973: 91; cf. Walton 1995: Ch. 5). Here, as is typical of informal structure, general elements that are not topic neutral (the concepts of a reliable authority and of asserting) are treated as logical constants. But this is hardly radical; it is a move that is routinely made even in *formal* (e.g., tense and deontic) logic.

This is a fundamental point that appears to be insufficiently appreciated by those who, like Lambert & Ulrich (1980: Ch. 1, sec. 3; cf. Massey 1995: 159-60), hold that informal fallacies cannot be structurally defined. Their ostensibly 'formalist'

view involves the claim that validity precludes fallaciousness, which is about as (im)plausible as its corollary, viz., that nondeductiveness precludes cogency (for more argument against the view in question, see, e.g., Johnson 1989; Govier 1995). In any case, notice that a consequence of the present approach seems to be that the fact that an argument purports to proceed through conceptual analysis (as with materially valid arguments) should be counted as an (informal) structural feature.

Regardless of the theoretical debate about the extent to which informal fallacies can, or should (Berg 1987; Brinton 1995), be structurally defined, there generally seems to be little difficulty in attributing and relying on such structure in practice – at least on major standardized tests for graduate school admission. Consider:

Example (4) (6/93 LSAT)

Genevieve: Increasing costs have led commercial airlines to cut back on airplane maintenance. Also, reductions in public spending have led to air traffic control centers being underfunded and understaffed. For these and other reasons it is becoming quite unsafe to fly, and so one should avoid doing it.

Harold: Your reasoning may be sound, but I can hardly accept your conclusion when you yourself have recently been flying on commercial airlines even more than before. Which one of the following relies on a questionable technique most similar to that used in Harold's reply to Genevieve?

(A) David says that the new film is not very good, but he has not seen it himself, so I don't accept his opinion.

(B) A long time ago Maria showed me a great way to cook lamb, but for medical reasons she no longer eats red meat, so I'll cook something else for dinner tonight.

(C) Susan has been trying to persuade me to go rock climbing with her, claiming that it's quite safe, but last week she fell and broke her collarbone, so I don't believe her.

(D)* Pat has shown me research that proves that eating raw green vegetables is very beneficial and that one should eat them daily, but I don't believe it, since she hardly ever eats raw green vegetables.

(E) Gabriel has all the qualifications we have specified for the job and has much relevant work experience, but I don't believe we should hire him, because when he worked in a similar position before his performance was mediocre.

Here I'd say that the appropriate representation of the informal fallacy is 's does not heed s's own credible advice a, therefore a is unacceptable'. This is

appropriate in that it is cast at the right level of specificity and generality so that it applies to both the passage and the credited response – here, (D) – yet does not apply to any noncredited response. If it were more specific, it might not do the former; if it were more general, it might not do the latter. There is fairly good indirect evidence that examinees perceive such fallacies in the manner indicated, and so, that such patterns belong to the proper representation of phenomenological argumentative structure. For example, on the LSAT for the period June 1991 to June 1997, pretest questions of type (*M*) with a term such as 'flawed' included in the stem were statistically rejected at a rate of 10.7%, which is not particularly high considering that pretest statistical rejection rates for the other question subtypes in Logical Reasoning sections ranged from 2.1% to 12.3% (source: Law School Admission Council statistical databases; a total of 3312 Logical Reasoning questions were pretested).

A third indication of the substance of the present approach is that it *helps* to explain the lack of success of some intended measures of the ability of mature yet untrained (in logic) reasoners to match argumentative structure, such as:
Example (5)
Professor X: The predictions made by professional economists concerning future economic conditions have not proved to be accurate and reliable, so despite the many contributions they make in keeping track of the economy, professional economists have only a limited understanding of the complicated causal structures that determine economic outcomes. For if one is unable to make accurate and reliable predictions about some subject area, one's understanding of the forces involved is probably quite limited.

Which one of the following arguments uses a pattern of reasoning that is most similar to that used in Professor X's argument?
(A) Economists have a limited understanding of the causes of economic events, so their long-term predictions are not reliable. As a result, their main contributions probably consist in keeping track of how the economy is doing.
(B)* Some students do not find advanced mathematics easy to master, so they will not pursue the study of mathematics beyond its more elementary phases. For if a person does not find a subject easy to learn, he or she will probably not pursue the study of it.
(C) Predictions made by astrologers only seem to be reliable, so astrologers do not really know what is going to happen in the future, despite the fact that many

people take their predictions quite seriously. For the predictions astrologers make probably seem to be reliable only because they are very general and vague.

(D) Astrologers make predictions about future events in which people have a keen interest, so they are likely to be believed by many people, despite the fact that their predictions are not very reliable. For it is easy to fool people when their emotions become involved.

(E) Astronomers make accurate predictions about phenomena such as eclipses and the appearance of comets, so they must understand the causes of such phenomena. For if one understands the causes of a range of phenomena, one will probably be able to make accurate predictions about those phenomena.

The psychometric statistical characteristics of this question, pretested on the LSAT, were very bad. A relatively straightforward indication of this is what is called a 'fifths' table (source: Law School Admission Council statistical databases):

The 3110 examinees who took this question are divided into five groups ('fifths') based on their performance on the two scored Logical Reasoning sections (which comprise a total of about 50 questions). The columns in the fifths table show how many of each fifth chose the various answer options (e.g., in the bottom fifth, 80 examinees chose (A)). As judged by this fifths table, the question would be a fairly good one if (E) were the credited response – but (B) is. For instance, of the examinees in the top fifth, a full 50% chose (E), whereas only 19% chose (B). Both the passage and (B) exhibit the simplified nondeductive reasoning structure 'if p then probably q, p, therefore q'. Option (E)'s major (conditional) premise has the same structure at this level of analysis as that in the passage and (B), yet with respect to this premise (E) exhibits an informal variant of the fallacy of affirming the consequent. However, in conditionalized form (in its major premise) option (E) embodies the reasoning pattern 's understands the causes of x, therefore probably s can make true predictions about x'. Surely, this is a common reasoning pattern. The only other argument in the test item that has the general elements of this pattern is the passage, where the conditional is a probabilistic contrapositive of the conditional in (E). (The corresponding conditional of the first sentence in option (A) differs in that it is not general, not probabilistic, and is the fallacious reversal of the conditional in the passage.) Again the point to make is that embedded structure that has nothing to do with a given argument's cogency (here, the passage and (E)) nevertheless must be taken into account in determining that argument's phenomenological argumentative structure.

NOTES

i. An earlier version of this paper was presented at Law School Admission Council. The paper has benefited from discussion on this occasion and with Kenneth Olson, and from written comments by Deborah Kerman and Stephen Luebke.

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iii. Before any test item is used in a scored section of an LSAT exam, it appears in an unscored section of a previous LSAT; this is known as 'pretesting'. The purpose is to determine the item's psychometric statistical characteristics so that if these are acceptable, the item can later be incorporated according to specification into a section that will be scored. The statistics used are primarily those of a three-parameter Item Response Theory model. The three parameters are measures, roughly speaking, of (a) how well the item discriminates among examinees of differing ability, (b) how difficult the item is, and (c) the probability of examinees of very low ability answering the item correctly, perhaps by guessing (e.g., Lord 1980). Also used are statistics of Classical theory, for example, how well performance on the item correlates with performance on the test section as a whole (e.g., Lord & Novick 1968).

iv. Recently, this fallacy has apparently been adequately formalized in first-order predicate logic for some types of attributive adjectives. See Ben-Yami 1996.

v. Indeed, there has even been work on "a unified account of a fairly wide range of logical systems," including "classical logic, relevant logics such as Anderson and Belnap's R, close relatives of fuzzy logic, some modal logics and many weaker, but still interesting, nonstandard systems." Slaney 1990: 74.

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ISSA Proceedings 1998 – Evaluating Tests For Reconstructing The Structure Of Legal Argumentation

1. Introduction

In legal argumentation, as well as in everyday argumentation, it is often difficult to distinguish between multiple (also called convergent) and coordinatively compound argumentation (also called linked). In legal argumentation the importance of the distinction between these two kinds of complex argumentations becomes clear in complaints about the justification of judicial decisions. Since the interpretation of the relation between arguments can be of influence on the decision, (one of) the parties to the proceedings may criticise the way the judge interprets this relation. Disagreement about the argumentation being multiple or coordinative compound will then be submitted to a higher court.

This was, for example, the case in HR 5 juni 1992, *NJ* 1992, 539. Mr Van der Vlies, the proprietor of a number of pleasure boats, bought a plot on the Spanish Water. The original owner of the plot, Spanish Water Resort, has, at some time in the past, announced an allotment plan. It was according to this plan that a yacht-basin would be constructed. This yacht-basin has in actual fact never been built. Now Van der Vlies demands that the yacht-basin be built as was agreed. One of the questions that need to be answered by the Court in this case is whether or not there is an actual agreement between the two parties. In order to be able to address this question the Court assesses the six arguments (a through f) with which Van der Vlies justifies his claim. The Court of Appeal concludes that there has never been an agreement between the parties. In his appeal to the Supreme Court Van der Vlies argues that:

(…) in answering the central question the Court of Appeal has, unjustly, limited

itself to the assessment of the separate arguments, thereby ignoring their mutual correlation and connection, or so it seems judging by the Court's decision. Moreover, it is, in the absence of any justification whatsoever, unclear why arguments a, c and e do not play any part at all in the relationship between Spanish Water Resort and Van der Vlies, but that, moreover, even if one or more of these arguments did not play any part when judged on their own merit, it is unclear whether they may play such a part when considered in mutual correlation or connection.

In other words, Van der Vlies is of the opinion that the Court of Appeal has wrongfully reconstructed his argumentation as being multiple which influenced the evaluation of his argumentation negatively. Now the Supreme Court has to decide as to whether the argumentation of Van der Vlies was multiple or coordinatively compound.

Sometimes the text or the context may provide clues that give evidence to interpreting the structure of argumentation. Studies on this type of clues in the fields of argumentation and informal logic often provide useful insights into the reconstruction of legal argumentation. Textbooks in these fields also provide tests that can be of use when textual and contextual clues are not available. A classification of these tests is proposed by Walton in his book *Argument Structure: A pragmatic Theory* (1996). It is not surprising that Walton concludes that the tests are not to be overestimated, for several authors of the tests are already very modest about the use of the tests. Since legal argumentation does not always provide textual or contextual clues that can be of help, it seems appropriate to find out if and when these tests can be of use to decide on the structure of argumentation.

First I will give a short overview of Walton's classification of the tests that are proposed in textbooks. Then I will take a closer look at some of the problems to which Walton draws attention when it comes to implementing these tests as well as to the test which he himself regards as superior to the others. Finally I will look at the way(s) in which judges arrive at decisions in actual practice when there are no textual or contextual clues on the basis of which a decision can be made as to whether the argumentation of a party is multiple or coordinative compound.

The context in which legal complex argumentation is presented, is that of a judge or a party to the proceedings who tries to remove doubts that the other party or a higher judge may have with regard to the standpoint. To contest this standpoint

successfully, the other party needs to know whether it is necessary to refute only one of the arguments or all of them.

2. Four tests to trace coordinative argumentation

In *Argument Structure* Walton (1996: 118 e.v.) presents an overview of various tests that are used in textbooks to determine whether argumentation is multiple or coordinative compound. In order to evaluate these tests on their usefulness he classifies them and distinguishes between the following four types of tests.

1. Falsity/ No Support Test: If one premise is false, the conclusion is not given any support.

2. Suspension/ Insufficient Proof Test: If one premise is suspended (not proved, not known to be true), the conclusion is not given enough support to prove it.

3. Falsity/ Insufficient Proof Test: If one premise is false, the conclusion is not given enough support to prove it.

4. Suspension/ No Support Test: If one premise is suspended (not proved, not known to be true), the conclusion is not given any support.

The differences between these four types of tests are based on the different ways in which the premise-requirements and the conclusion-requirements are stated. In some tests, the premise is assumed to be false. Walton calls this premise-requirement the *falsity-requirement.* In other tests the premise is assumed not to be proved (established, supported, or known to be true). This premise-requirement is called the *suspension-requirement.*

Apart from these two different premise-requirements, Walton distinguishes two different conclusion-requirements. The first one is called the *no-support requirement.* This means that the conclusion is not given any support at all when the premise is removed.

The second conclusion-requirement is called the *insufficient-proof requirement.* This means that the conclusion is not given enough support to prove it when the premise is removed. On the basis of these four requirements, Walton distinguishes four types of tests to be used for determining coordinative compound argumentation, the basic assumption being that the conclusion is supported by two premises. Walton (1996: 121) focuses on the first two tests, the *Falsity/No support Test* and the *Suspension/ Insufficient Proof Test*, because they are prevalent in textbooks. Both tests have been discussed and criticised extensively. I will discuss two of his major points of criticism. In doing so, I will make use of some of Walton's examples as far as they could be examples

encountered in legal texts or textbooks.

3. Objections to the Falsity/ No support Test

In Walton's view (1996: 133), one of the main problems that arise when using the *Falsity/ No support Test*, is to be expected in case a standpoint is defended by evidence-accumulating argumentation. The following case is an example of this type of coordinative argumentation:

(1)

The defendant refuses to adjust appearance

The defendant refuses to address customers properly

Therefore, the defendant is, to a serious degree, not suited for the job.

According to the *Suspension/ Insufficient Proof Test*, the argumentation is coordinatively compound, because, if the one premise is suspended, the other by itself does not supply sufficient evidence to prove the conclusion. When the *Falsity/ No support Test* is applied, however, this same argumentation appears to be multiple, because if the one premise is false, the other premise still gives some support to the conclusion.

Since it is characteristic of evidence-accumulating or cumulative argumentation that every one of the arguments give some support to the standpoint, it is not possible to trace this type of argumentation by using the *Falsity/ No support Test*. Cumulative argumentation will always be analysed as multiple.

The test can however be used to trace complementary argumentation, which is another type of coordinative argumentation. In complementary argumentation one of the arguments supports the standpoint directly. The other argument supports the standpoint indirectly and is advanced to anticipate criticism on the first argument**[i]**:

(2)

The defendant refuses to address customers properly.

The defendant's job is for 80 % directly concerned with customers.

Therefore, the defendant is, to a serious degree, not suited for the job.

By using the Falsity/ No support Test, the structure of this argumentation is coordinative, because, if one premise (the first one) is false, the other premise gives no support to the conclusion. Although the Falsity/ No support Test is not a very useful test because it is in principle not possible to distinguish between multiple and cumulative argumentation, it can be used to distinguish between multiple and complementary argumentation.

4. Objections to the Suspension/ Insufficient Proof Test

According to Walton (1996: 139, 170) a serious counter-example to the *Suspension/ Insufficient Proof type* of test is the `bad' convergent argument**[ii].** By this he means argumentation in which both arguments are inadequate, incorrect or irrelevant reasons for accepting the standpoint. He gives the following example:

(3)

George appears nervous.

Rodney says that George is guilty.

Therefore, George is guilty.

Here Walton assumes that we know that Rodney has a criminal record, is a habitual liar, and has been bribed to testify against George. We also know that George is terrified that the charges against him will ruin his career and reputation. Walton states that intuitively the arguments are multiple. But it comes out coordinative compound in the Suspension/ Insufficient Proof Test: if one argument is suspended, the other gives insufficient support to prove the conclusion. So, the outcome of the test does not correspond with intuitive analysis, although its not clear on which this intuition is based. But Walton takes us even one step further. Because we are dealing, in this example, with premises of which neither is sufficient to prove the conclusion, the Suspension/ Insufficient Proof Test is not useful at all. Therefore Walton suggests that bad argumentation should be excluded from the test. To confine the range of applicability of the test, he builds in three restrictive conditions: a plausibility, a consistency and a probative relevance condition. The latter is descried as: `one proposition is probatively relevant to another if it gives some reason, justification, or basis for proving the other'. Example (3) should be excluded from the use of the test on the grounds that the premises are not relevant. As Walton states: `The premises are weakly relevant (perhaps), but their probative strength is minimal or even non-existent'.

The implication seems to be that plausibility, consistency and relevance are conditions decisive for the sufficiency of arguments:

only if arguments are sufficient, it is possible to make use of the Suspension/ Insufficient Proof Test. If we take a look at the example (3), however, how are we to decide whether or not the arguments are irrelevant and thereby insufficient?

To answer this question I make use of the distinction between interpretative,

analytic and evaluative relevance as proposed by Van Eemeren and Grootendorst (1992b). In order to be able to deal adequately with the concept of relevance, they introduce analytic relevance as an intermediary concept between interpretative and evaluative relevance.**[iii]** Since both propositions in the example are considered to be arguments, interpretative relevance does not seem to be at stake.**[iv]** The arguments seem to be analytically relevant, because in principle they are in support of the standpoint and could give some justification for proving the standpoint. The arguments could for example have been brought forward by someone who does not know that Rodney is a liar or that George worries about his reputation. But even without any external information, the arguments in principle give some justification to the standpoint from an analytical point of view. The arguments do, however, appear to be evaluatively irrelevant, because they turn out to be untrue or unacceptable and will be rejected on the ground that we know that Rodney is a liar etc..

In this view the relevance condition which excluded the example from the Suspension/ Insufficient Proof Test refers to analytic relevance. Since in the example (3) the analytic relevance condition seems to be met, it should not be excluded from the test. In Walton's interpretation, relevance refers to evaluative relevance. In this interpretation the evaluation of the argumentation is incorporated in the analysis.**[v]**

The next example (4) illustrates that, although both arguments could be considered as bad argumentation and their probative strength might be minimal, the Suspension/ Insufficient Proof Test can be used to decide whether the argumentation structure is coordinative or multiple.

(4)

George appears nervous.

In earlier contacts with the police, George was very much at ease.

Therefore, George is guilty.

By using the Suspension/ Insufficient Proof Test, this argumentation would be reconstructed as complementary argumentation, because if one of the arguments is suspended, the other by itself does not supply sufficient justification. Only if taken together, the arguments seem to be analytically relevant. At the same time they probably won't be effective from an evaluative point of view.

Although both examples illustrate that bad argumentation does not need to be excluded from the Suspension/ Insufficient Proof Test, it is still not clear whether

the argumentation in example (3) is multiple or cumulative. If we would use this test the question remains how to decide if an argument is in principle sufficient to prove the conclusion. In example (1) the wording of the standpoint can be seen as an indication to analyse the arguments as cumulative. The use of the intensifier `to a serious degree' suggests that the standpoint requires strong evidence. It is therefore more likely not to analyse the arguments structure as multiple, but as cumulative coordinative. But if there are no such internal clues, it is difficult to distinguish multiple from cumulative argumentation by using the Suspension/ Insufficient Proof Test.

5. Walton's Degree of Support Test
After evaluating the various tests, Walton (1996: 181) proposes his own version of the Degree of Support Test as new test which can be used best to determine coordinative argumentation.**[vi]** One of the advantages he mentions is that this test is not absolutistic: it is not an `all-or-nothing' kind of test (1996: 121). He emphasizes that the distinction between multiple and coordinative argumentation is rather a question of how well the conclusion was supported before the premise was removed versus how well it is supported once the premise is taken away. This Degree of Support Test works as follows. First you have to block one premise out of your mind and ask what support of degree the other premise by itself gives to the conclusion. Then you repeat this process for the other premise. Next you add these two weights of support together, and you ask what degree of support both premises together give to the conclusion. If there is a significant jump from the first joint degree of support to the second, the argumentation is coordinative.

To examine this test I give the following example of a case in which an employer wants to terminate an employment contract.**[vii]**
(4)
The employee, Mr Jones, misbehaved.
The employee, Mr Jones, improperly charged more hours than he had actually worked.
Therefore: dismissal of Mr Jones is justified.

The judge who has to evaluate this argumentation, has to decide whether the argumentation of the employer is multiple or coordinative. By using the Degree of Support Test to decide on the relation between the arguments, the judge first has to determine what degree of support the misbehaviour (arriving late at his job after a trip to Geneva) of Mr Jones provides to justify his dismissal. Let us assume

this argument gets value 2. Then the judge has to determine what degree of support the fact that Jones improperly charged more hours than he had actually worked, provides to the justification of his dismissal. Let us assume this argument gets value 3. The sum of these arguments is 5. Now he has to compare this value 5 to the degree of support both premises give together. Not only is this very difficult to determine, but even if we assume this value to be 7, it is still very hard to decide whether the difference between 5 and 7 is significant or not and whether the arguments are therefore multiple or cumulative coordinative. Encountering problems like these, it is difficult to understand why this test should be better than the other tests. It does not seem to be very useful to resolve the problem of distinguishing between multiple and cumulative coordinative argumentation.

6. If the tests fail

Now the question is how the argumentation structure should be analysed if there are no indications and the tests don't work. Van Eemeren en Grootendorst (1992: 81) recommend, in what they call `borderline cases', to make use of the strategy of *maximally argumentative analysis.* This strategy sets off by analyzing the argumentation as multiple if no good reason can be found to opt for coordinative.

In literature on legal practice this strategy is also recommended to the defence of parties in legal procedures: if a party is not sure whether the argumentation of the opponent is multiple or coordinative, it should be analysed as multiple. By way of this strategy the defence is required to react to each single argument of the court. If the defence would analyse the argumentation as coordinative and react to just one of the single argument, there is a risk that the judge interprets them as independent arguments. Then the defence will fail because one or more independent arguments have not been taken into consideration.**[viii]**

If we look at the jurisprudence not only the parties to the proceedings but also the court starts by analyzing the argumentation as multiple.**[ix]** Sometimes this strategy of maximally argumentative analysis is extended. In the example (4) of the argumentation that was put forward to justify the dismissal of Mr Jones, it was unclear whether the argumentation was multiple or coordinative. The judge who had to decide on this, chose the following solution:

(5) Appellant's misbehaviour is not enough serious that it justifies dismissal. The court considers the fact that appellant improperly charged more hours than he had actually worked, not sufficient to justify dismissal. Even if both grounds for

dismissal are considered in conjunction, there is not sufficient justification for dismissal.

Here the judge starts by evaluating each of the single arguments on its own, which implies that they interpreted the argumentation as multiple. After that, he evaluates the argumentation in conjunction, which implies that he interpreted the argumentation as coordinative. By using this strategy, the judge prevents the party that is put in the wrong, to criticise the interpretation of the argument structure in appeal. The judge, as it were, anticipates the criticism that the analysis and therefore the evaluation was incorrect. Does this mean that this extended strategy of the maximally argumentative analysis is advisable in all `borderline cases' in which the court is unsure about the relation between the arguments to be evaluated?

In the example (5) the evaluation of the arguments are relevant to the argumentative strength of the arguments that are brought forward by the employer. Neither argument seems to be either untrue or irrelevant; they are just not strong enough to accept the standpoint. In other words, the judge criticises the argumentative force of the arguments; not their propositional content. If he would not have accepted the propositional content because Mr Jones did not misbehave and did not charge more hours than he had actually worked, then the maximally argumentative analysis would suffice. It is only useful to extend the strategy if the refutation concerns the argumentative force because of the arguments being insufficient or irrelevant.

7. Conclusion

Summarizing we could say that all three tests can be useful to distinguish complementary coordinative argumentation from multiple argumentation. But they don't seem very useful to distinguish cumulative coordinative argumentation from multiple argumentation.

This is particularly the case if there are no internal clues, such as the wording of the standpoint, that indicate what will count as sufficient defence. Although the applicability of the tests is limited, there seems to be no need to exclude bad argumentation beforehand, if relevance and therefore sufficiency are seen from an analytical point of view. In case there are no textual or contextual clues and the tests are not applicable, the strategy or the extended strategy of maximally argumentative analysis seems to be appropriate.

NOTES

i. Cumulative argumentation is one of the two types of coordinatively compound argumentation that are distinguished by Snoeck Henkemans (1992: 96). The other type is complementary argumentation.

ii. This kind of counter-example also concerns the Falsity/ No support Test. Here I focus on the Suspension/ Insufficient Proof Test.

iii. Van Eemeren and Grootendorst (1992b) demonstrate that in a pragma-dialectical approach of relevance problems the three types of relevance (interpretative, analytic and evaluative relevance) should be clarified in terms of domain, object and aspect these types of relevance refer to.

iv. If we are dealing with utterances that can't be interpreted or reconstructed as arguments, than there is of course no need to ask whether the structure of the argumentation is multiple or coordinative.

v. See, for example, Freeman (1991: 107) who states that 'it would be a distinct disadvantage for a diagramming procedure to require us to make evaluative determinations before we could display the structure'. In case this is inevitable 'we should keep evaluative issues at a minimum'.

vi. Other Degree of Support Tests are advocated by Thomas (1981) and Yanal (1988).

vii. District court Breda, 27 november 1984 (Praktijkgids 1985/ 2253).

viii.This happens, for example, if arguments have the appearance of an obiter dictum (See Plug 1995).

ix. At first sight, the maximally argumentative analysis seems to be in favour of the plaintiff. Whereas the burden of proof lies with the plaintiff, each of his arguments is in principle enough to prove his standpoint. At the same time it should be considered, however, that at least one of his arguments should be resistant to all kinds of criticism (his argument has to be acceptable, relevant, strong, etc.). The defendant for his part can limit his criticism to one point. As for the discussion about the principle of maximally argumentative analysis versus the charity principle, see Van Eemeren and Grootendorst (1992: 81) and Walton (1996: 211).

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ISSA Proceedings 1998 – Arguing About Dying

1. Introduction

That each of us will die is a given, and thus there is no argument to be made about dying. But we do argue about some aspects of the dying process: how we die, whether we ought to or can have some control over the time and manner of our death, who (if anyone) should be allowed to help us die, even what counts as "help" – questions like these are being more openly debated than ever.

The most basic questions are thrust before us with increasing frequency, in the United States, thanks among other things to the repeated headlines generated by Dr. Jack Kevorkian (whose invention of a "suicide machine" several years ago helped "set the stage for a national debate on physician-assisted suicide" (Brunelli 1998: B3). Though he is an extreme example of someone who thinks matters of life and death are for individuals to decide, Jack Kevorkian has dramatically and undeniably done much to force the issue of a putative "right to die" onto the public agenda (Tye 1998: A1; Editorial 1998: A14).

On the other hand, although hospice care continues to receive largely very favorable press in the United States ("Hospices are Best . . ." 1998: A28), as recently as early in 1998, the *New York Times* had a major article entitled "As Life Ebbs, So Does Time To Elect Comforts of Hospice" (Stolberg 1998: A1), highlighting some of the ways that even dying patients who do (eventually) have access to hospice care may end up with precisely what they and their families were trying to avoid: a death burdened with procedures and machines, discomfort

and distress of several kinds.

The issue I wish to consider here is this: To what extent do the hospice movement and the right-to-die movement – separately or together – adequately reflect values held to be central in contemporary United States society, and do these movements (again, separately or together) give appropriate room for physicians to exercise the compassion towards the dying that the dying desire? Since it is clearly impossible in the time available to explore all the ramifications of this matter, I wish to concentrate on one salient feature of the debate. I will focus on the opposing views of two dominant movements, broadly defined: the Hospice movement (under which umbrella I include such institutions as the Center for Care of the Dying at George Washington University), and the Right-to-Die movement, to which I shall give the umbrella term "Hemlock" – borrowed from the classically allusive Hemlock Society (and exemplified by such organizations as Compassion in Dying and the Voluntary Euthanasia Society); my emphasis today will be on *the differences in the kinds of arguments* the two movements rely on to bolster their positions. By making those differences explicit – more specifically, by making the underlying claims (the hidden premises) explicit – I hope it will be possible to reduce the confusion and tension that arise for casual observers. The confusion stems largely from the fact that the two movements – though ostensibly concerned with the same issue – generally seem to be at loggerheads. Their respective approaches to the dying process appear incompatible; my aim is to see whether and how a passable bridge between the two can be built.

2. Why Hospice vs. Hemlock?
The object of my attention at times appears to be a moving target. Even the "Hospice Movement" is by no means a monolithic entity – though there is a "National Hospice Organization" in the United States that represents roughly 3000 hospices. As for "Hemlock," I include under that heading not only the organization that calls itself the "Hemlock Society," but also individuals and organizations that quite probably would not approve of the direct use of a killing potion like hemlock despite sharing a commitment best expressed by the idea that each of us has a "Right to Die."
A brief word is perhaps in order about the very different origins of these two loosely knit groups. Hospice grew out of the very religiously based convictions of a particular individual – (now Dame) Cicely Saunders – who sought to improve care of the dying as a Christian duty. Saunders insisted from the outset that

palliation of pain – but not release from pain by a drug-induced death – should be the end goal. Just as sympathetically, Saunders and others in the Hospice movement have repeatedly spoken out against therapies that chiefly have the effect of prolonging the dying process. Hemlock (as I am using the term), quite in contrast, grew out of a generalized societal interest in personal rights and autonomy.

When, why, and how these rather abstract concepts moved into public consciousness is itself a major topic, well beyond the scope of this paper. Briefly, I suggest that the sharp increase in what medical technology has made it possible to do for patients at the end of life and the concomitant rush to what Daniel Callahan has called "technological brinkmanship" (Callahan 1993: 40-42 et passim) not only raised consciousness and concern about death and dying but suddenly made matters of autonomy and rights a critical personal issue for many individuals. Physicians and patients alike quickly saw that the right of a patient to refuse unwanted treatment had implications for the end of a patient's life.

The result is the growth, essentially side by side, of a movement that emphasizes "caring" for dying patients when "curing" is no longer a feasible goal, and of a public sensitivity to the individual's right to do what he or she wants with respect to death. "Hospice" and "Hemlock" – though concerned with the same issues – are "in very different places," as current jargon would have it. The time has come to look more closely at what those places are.

3. The Heart of the Matter

A prior step to analyzing the appropriateness of a position is identifying the key principles underlying that position. Only when we understand the tenets of the hospice approach to dying and of the more general right-to-die approach can we fairly assess, let alone compare and contrast, the conclusions drawn by adherents of each approach. For purposes of discussion, I have constructed two statements for each of the movements that I believe express basic tenets of the position maintained by supporters.

Since an essential feature of the point I want to make is that – despite the shared goal of making the dying process as little burdensome as possible – there are fundamental differences between the two approaches, I have expressed the tenets in blunt and direct language that highlights both the connections and the disconnections. Doing this will help draw attention to the differences – which are what need to be reconciled if a meeting ground between hospice and hemlock is to be found.

Let's take a look at all four statements, without commentary. Hospice first:

A. Hospice and the End of Life: Basic Tenets

(1) Dying is a natural process that ought not to include being distracted by suffering, the fear of suffering, or loneliness; no one should have to die alone or in pain.

(2) Affirming life means doing nothing to prolong or delay the dying process; human dignity is maintained by living life fully to the end.

The Hemlock statements look like this:

B. Hemlock and the End of Life: Basic Tenets

(1) Everyone has a right to make decisions about when and how to alleviate the pain that may accompany his/her own dying; no one should interfere with an individual's efforts to manage pain or seek help in managing it.

(2) An individual's life is his/her own – and only the individual in question can know when that life has reached its tolerable limits, when the maintenance of personal dignity requires making a choice in favor of one's own death.

As they stand, these four statements are mere assertions; a very generous interpretation indeed would be required to see even enthymatic arguments in the positions thus stated. Let us try, however, to turn these assertions into arguments.

The greater differences appear in the pair of tenets A (2) and B (2); each relies on a very different idea of what "dignity" means. In the remainder of my remarks, I shall confine my attention to the first of the tenets in each pair, A (1) and B (1), because they deal with what is basically the same issue – viz., pain. Nevertheless, closer analysis reveals that the two statements in this pair are by no means identical; the emphasis is certainly different.

For ease in reference, I shall use a kind of short-hand and call the assertions under discussion "Hospice (1)" and "Hemlock (1)."

Let's take a look at one way the argument might be sketched in these examples, bearing in mind that a similar exercise could – and needs to be – carried out as well for Hospice (2) and Hemlock (2).

Hospice (1), it will be recalled, looks like this:

Dying is a natural process that ought not to include being distracted by suffering, the fear of suffering, or loneliness; no one should have to die alone or in pain.

The premises required to turn that into an argument might look something like the following:

A. Dying alone or in pain is extremely unpleasant and therefore undesirable.

B. It is undignified (unworthy for human beings, etc.) to have to go through this kind of unpleasantness.

C. It is unnecessary to have to go through this kind of unpleasantness.

D. As members of a community (the community of human beings – implicit in the sweeping "No one should have to") we have a collective responsibility to spare each other from unpleasantness that is undignified (unworthy of our status as human beings) as much as possible; when the unpleasantness is unnecessary, the burden of that collective responsibility is especially heavy.

Steps should be taken (to the extent possible) to reduce the pain that may accompany the natural process of dying, and to assure that those who are dying are not left alone.

Hemlock (1) was this:

Everyone has a right to make decisions about when and how to alleviate the pain that may accompany his/her own dying; no one should interfere with an individual's efforts to manage pain or seek help in managing it.

The argument for this tenet might look like this:

A. Knowledge of and experience in pain control are not the monopoly of the medical establishment (witness the successes of faith healing, alternative medicine, New Age holism, etc.).

B. The medical establishment in any case manifestly fails to manage pain adequately (numerous anecdotes testify to this fact).

C. Each individual knows his or her own pain limits (toleration level) better than anyone else.

Individuals should be free to decide for themselves when and what they need in the way of pain medication; the decision should not have to be filtered through anyone else (most especially not through the medical establishment).

Similar discrepancies exist between the premises – the kinds of arguments – that would surface were we to look behind the scenes at the second of the two assertions made on behalf of each movement; time does not permit taking that step here. But this one example should make clear the usefulness of having the arguments made explicit. That usefulness lies primarily in the way possibilities for rational discussion emerge. Agreement on what norms society should respect has so far proved elusive; with strong proponents defending the Hospice positions and others equally strongly defending "Hemlock," it is no wonder. What remains to be

considered are two issues – whether unpacking the arguments in this manner can point us in the direction of a workable compromise and whether a better understanding of the arguments behind the positions would increase the likelihood of finding common ground (or at least reaching agreements on where limits should be set for individuals who are members of a community). I turn next to a brief exploration of these questions.

4. Common Ground – and Disagreement
Let us go back to examine more closely what appears to be the common ground on which these two movements stand. Because although both speak in favor of pain control, stressing the importance of palliative care, the premises leading to the conclusion that palliation is important are very different, as we have seen. The extent to which the similar conclusions that stem from these different premises settles the matter at hand – whether one can appropriately seek medical assistance in dying – also turns out to be distinctly different. And these discrepancies in turn shed light on the other, larger differences we know exist between the two movements – as, for example, in Hospice (2) and Hemlock (2).

Let's look at pain control, where the agreement seems strongest. Even here, the common ground turns muddy once pain has been successfully alleviated. For Hospice supporters, palliation – an important goal – is not an end in itself. Rather, it is (perhaps primarily) merely a means of making it possible for patients to live life fully until the end; for that to happen, it is taken as a given, it is imperative that patients die without the distraction of pain. For many within the Hospice movement, the period when life is ebbing but pain has been (largely) controlled is first and foremost a period for spiritual growth, for taking care of "unfinished business" with God and/or with family and friends.

For Hemlock supporters, palliation comes closer to being an end in itself; being as free from pain as one can reasonably be made to be is no more than what any rational individual would want for him- or herself. But there is another, far more important, issue for Hemlock supporters. Even when pain has been satisfactorily dealt with, it is not spiritual growth that is the main consideration, but rather the firm conviction that one has a right to dispose of one's own affairs – including making choices about ending one's life.

For some, making decisions of this sort may well be part of a spiritual journey, but it is a form of spiritual journey with which many adherents of the Hospice philosophy are uncomfortable. Hospice supporters seem far more certain that they know what the final journey should look like for everyone, though they

certainly allow for great individual variations in the details. Hemlock supporters believe that no one can know for someone else what the end should entail, and that no one should have the right to impose on another his or her conception of what is appropriate.

Herein lies the central element of the disagreement. Hospice supporters see getting rid of pain as important, but as a step toward something else of even greater importance; Hemlock supporters see alleviation of pain as a good, but as one that is in the final analysis almost incidental to the real point: the autonomous person's freedom of choice and right to self-determination. Thus, although Hemlock proponents would welcome – would applaud – the removal of pain, they will not be likely to change their minds about who should be making the end-of-life decisions. In other words, their position would be this: take away my pain (thank you very much), but I still want to make decisions about the end of my own life. Indeed, I have a right to do so. The crux of the matter is in the rights and autonomy of the dying – but it is only when the arguments have been spelled out in at least the degree of detail I have given here that the divergence in rationale becomes manifest.

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