

# ISSA Proceedings 2010 - The Absence Of Reasons



In 2003 I started my fieldwork in two law firms. As a part of a comparative ethnographic research project, my objective was to follow criminal cases in their preparation and performance. In addition, one of my own research questions was, how argument themes are prepared and tested during this course of preparation. I was looking for the becoming of arguments. The very first case I encountered was one of child killing. A young woman, already mother of two and married, hid her pregnancy, gave birth in a back yard, covered the newborn with leaves and left. The child was found dead three weeks later. This was certainly a case, especially as my first case, that was difficult to deal with for emotionally. But also with respect to my research question, this case was remarkable: What first frustrated and then struck me as quite significant was the lack of reasons given in this case. It is this absence of reasons that I want to explore in this paper.

In legal procedures argumentation is often viewed as the central means to establish rationality and legitimacy. This assumption is important, even if one would take issue with it, as it has meaning in the field, if only counterfactually. The professional participants in the field work on the assumption that the giving of reasons is essential for the legal procedure, especially in criminal cases. This notion that is at work in the field can be explicated by Habermas' notion of procedural rationality (1998). This procedural rationality in the legal realm incorporates the concept of communicative rationality. Similar to Habermas, Alexy's work in legal argumentation (1983) and also the work done in the context of Pragma-Dialectics can be conceived of as subscribing to a procedural rationality (see Feteris, 1999, pp 163). Following this notion, legal proceedings can claim to be rational, if they adhere to certain (normatively formulated) rules of communication as in the ideal speech situation or the rules for critical discussions. One of the basic rules is, that interactants have to give reasons when asked for them. It is through reason giving that legal procedures attain legitimacy.

This is especially true for German criminal cases with guilty verdicts, where

reasons are attached to motives and where the motivation of the defendant is central for the evaluation by the judge. An acquittal, on the other side, is never accompanied by reasons: it presents normality. The legal system thus demands good reasons and provides them in verdicts. For reasons to enter a case and a courtroom they have to be made explicit. Thereby the German criminal system rests on the assumption that people not only have reasons for what they did and do, but that they can name them.

This suggests that the failure to provide reasons might pose a problem for the legal procedure. I am now interested in the ways this failures are dealt with, thus in the how, not the why. In the following I shall first briefly describe my methodological take as well as the data this analysis rests on. My approach can be termed ethnography of argumentation in the sense introduced by Prior (2003). For the analysis I shall then concentrate on one case, the earlier mentioned case of child killing. In conclusion I will discuss my findings in the light of Wohlrapp's notion of argumentation as imposition. I will argue that the professional participants cope with the lack of reasons by prompting them to the accused.

### *1. Ethnography of argumentation*

This study is part of a broader project on the „Comparative Microsociology of Criminal Proceedings“(see Scheffer, Hannken-Illjes, & Kozin, 2010). The project comprised three case studies from three different countries, England, US, and Germany, thereby included two different procedural systems in criminal law: the adversarial and the inquisitorial. The case analyzed here stems from the data I collected in two extended periods of field-work in two defence-lawyer's firms. My objective during this fieldwork was to follow the development of criminal cases from their first appearance in the law firm to the final decision. The data consists of copies of files, audio recordings of lawyer-client meetings, ethnographic interviews, protocols of court hearings and field notes.

My overall research interest here is: how do argumentative themes develop towards arguments, how are they mobilized by the participants in criminal cases, how do they become strong and resilient. Hence, I am interested in the becoming of arguments. In Marcus (1995) sense of a multi-sited ethnography, I follow “the thing” through the different data and sites. Thus, different from classic ethnographic studies my focus is not on the site (I am not writing an ethnography of the law firm) but on a single phenomenon. In this case I follow the reason given for a deed through different places in the criminal procedure: the files, witness

testimonies, notes, but also field notes and the local newspaper.

The mobilization and making available of themes can be grasped methodologically by the approach Prior (2005) has outlined under the heading of an ethnography of argumentation. By stressing Toulmin's theory as one that is interested in historically dependent knowledge processes rather than in the mapping out of universal argument forms and by linking it to works in Science & Technology Studies, Prior argues for a focus on the production of premises rather than the description of inferential relationships. "Perhaps it is time to give the diagrams a bit of a rest and consider seriously the implications of seeing argumentation as sociohistoric practice, to ask how pedagogies can help attune students to the work of appropriating situated knowledge practices, to open up the ethnography of argumentation as a branch of the larger ethnography of communication" (p. 133). The underlying interest is to study the production of premises. The idea of focusing on the preparation of arguments and the conditions of a lack of argumentation falls in the same line of interest.

## *2. Demanding reasons*

The following analysis is sequential, thus I am focussing on the build up in time. The data for this case stems from the discovery file and the lawyers file, also from informal talks with the defence lawyer. It is a case of child killing: A young woman, let's call her Lena, kills her child - she gives birth and then leaves the baby behind. The baby dies and is found three weeks later. The woman is identified within 24 hours due to information by witnesses.

*In her first questioning by the police Lena remains silent.*

This silence is not remarkable in itself. The accused executes a right and behaves strategically prudent. By remaining silent she leaves room to maneuver for the defence, as she is not binding the lawyer too early to given statements (on the binding mechanisms of early statements see Scheffer, Hannken-Illjes, Kozin 2006). As she does not make any statement, there is also nothing reasons could be attached to. In this sense no reason is missing at this time. Hence, one way - and probably the only unproblematic way - to avoid giving reasons as a defendant is to remain silent. Once the defendant gives a statement and has to admit to the charges as Lena has to, not giving reasons would leave a blank noticeable for all professional participants in the procedure.

At the same time as the accused different witnesses are questioned by the police. Lena was identified this quickly due to witnesses, namely two students at her school. The first informed the police that she has a co-student who looked pregnant but when asked stated that she just had weight problems. One day she left the school sick and returned four days later, stating that she lost 16 pounds. Similar statements are given by other witnesses: many suspected the pregnancy, all of them bought into the explanations given by Lena.

It is striking that all witnesses were asked if they could name a reason for the killing. None of them could. Her father-in-law, her sister, her husband, her friends - always the same answer: "no, there is no reason I can think of." The police however, does not only ask one closed question: "Can you think of any reason why she did what she did" but rather make offerings: they offer good reasons that might explain why a woman leaves her baby behind. Marital problems? No, the sister says, they were very close, the perfect couple. The father says: "Always one heart, one soul". Did the woman have trouble with the two girls she already had? No, everybody says, she is a loving mother, nobody would think she has any problems with her kids. Some witnesses, as the father-in-law, explicitly state that they cannot think of any reason. Hence, the police suggest "good reasons" but none is taken up. This suggestion already hints at the necessity to find a reason. The answer "no, there is no reason" seems to be an uneasy answer for the police officers.

The case quickly drew the attention from the local media. They, too, start to suggest reasons. A local newspaper states that there is only one plausible reason: the husband was not the father of the baby. Hence, not only the police and prosecution look for reasons but also the media and hence the greater public. A week later the accused states that, yes, the baby was hers and denies that her husband is not the father. The husband agrees to a DNA-analysis: the results show that he is the father.

Now the missing reasons on the side of the accused first become apparent: she talks and gives a statement. This would be the first option for her to name her reasons. But she does not do so. This blank will become even more prominent in later statements.

Whereas most witnesses do not take on one of the offered reasons, one witness - the mother in law - brings up a reason by herself, taking the blank space left by

the accused's silence. In a letter to the prosecution she writes, that her daughter-in-law must have assumed that the baby was dead already and buried it lovingly under the leaves

*"You don't go to school as always in order to have a baby on the street"*

The mother-in-law argues with a model of normality against possible other reasons.

Up to this point several actors have tried to prompt Lena with reasons: the police, the media and most obvious her mother-in-law. The lack of a reason seems to be intolerable for the participants.

The accused herself is asked several times: why did you do it? She explicitly states, that she had no reasons. Later in the interview she is asked: "Why did you not want the baby to be found? She says that she does not want to say anything about this." Here an important difference becomes apparent: the accused answers some questions for reasons by executing her right to silence. These are treated as unproblematic in the following procedure: again she leaves space to maneuver in order not to narrow her options for defence too early. But she answers the question for she left the baby behind: by stating that she had no reason. As one can see in the following, this blank is an imposition not only for the prosecution, but - probably even more so - for the defence attorney.

90 days after Lena's arrest a reason lurks up, first appearing in a preliminary hearing: after stating once more that she does not know why she did not take the baby with her she states that she had to make a decision: either the baby or her professional training as planned. This reason, however, is not presented as a response to the question why she did what she did. They are developed later in the interview and are not presented as reasons but more or less as circumstances.

30 days later this circumstance is restated in an expertise by a psychologist, to which Lena agreed. Lena describes how, when she looked at the baby, she knew that it is either this baby or her training: she decided for the latter. Again this account is not given in response to the demand of reasons but later told in different context. Rather, she restates that she had no reasons.

The statement however, is taken up by the defence lawyer. When I asked him about the lacking reasons for the killing he quickly rejected that this lack existed,

claiming that the defendant feared to have to leave school. Hence, he took up a statement by the defendant, explicitly labelled by her as “not the reason” and turning it into the main reason he would rely on. The defence lawyer prompts his client with reasons. This reason can already be ascribed to her, but not as a reason. It is the defence lawyer who at last manages to attach a reason to the action.

### *3. Conclusion*

Wohlrapp (1995) argued that argumentation as a procedure is limited in its fidelity due to the fact, that interactants cannot give reasons for everything that might become controversial. Giving reasons for an action implies to distance oneself from this action in the sense that by giving reasons one would implicitly take into account that there are counter reasons and that thus, the action was false. Wohlrapp states that this distancing can be an imposition for a person, especially with respect to validity claims of truth. But also validity claims of right can, as the example of the child killing shows, can become impossible. What might be rather unproblematic in everyday conversations, becomes highly problematic in criminal procedures that cannot refrain from asking for reasons, even if the reason eventually given is explicitly claimed as not “the reason”.

In this case we face a double imposition: for the defendant the imposition to give a reason. In the preparation of the case the accused claims that she has no reason: she seems to be unable to just insert “something” (as for example her fear to have to leave school) as a reason. This might point to a difficulty the defendant in understanding the procedure she is part of: the criminal procedure does not need “the real reason” or even a “very good” reason, it needs a reason it can work with, hence a reason that allows (especially for the defense lawyer) for a certain strategy.

On the other side, the missing reason is an imposition for the criminal procedure, especially in a case like manslaughter. As the mother-in-law put it: “You don’t go to school as every day in order to have a baby on the street”. And in this sense this lack of a reason is not only an imposition for the prosecution or the judges but, maybe even more, for the defence lawyer. He is the one who finally attaches a reason to the action.

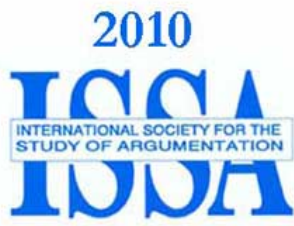
A methodological implication has probably become apparent: had I just looked at the trial in this case, the argument would have been entirely unproblematic to me.

But all professional participants know what career this argument has had in the file and in the testimonies. They, as I, could follow “the thing” through the proceeding. The focus on how arguments are produced can reveal mechanisms that are often not at the scope of legal rhetoric or court-room studies. And also the focus on the blanks and missing reasons can shed light on the production of legal rationality.

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# **ISSA Proceedings 2010 - Using Argument Schemes As A Method Of Informal Logic**



The method of using argument schemes for evaluating natural language arguments (NLA's) is based on two assumptions [i]. The first assumption is that there are, if not 'natural' kinds of NLA's, at least sortings of arguments into kinds that can be justified on epistemological or pragmatic grounds. The identity conditions of an argument kind can be represented in an abstract structure called an *argument scheme*. The second assumption is that with each identifiable kind of argument there is an associated standard that good arguments of that kind should meet. Accordingly, to use the *Argument Scheme Method* (or *AS Method*) of evaluating NLA's one begins by finding out to what kind a given NLA belongs; this can be done by determining which of the schemes it is an instance of. Having done that one proceeds to evaluate the NLA by determining how well it measures up to the standard associated with the kind to which it belongs.

### 1. *Argument Schemes in the Logic Literature.*

Schemes, although not known by that name, are familiar from the history of logic. Considering only the last hundred years we have, for example, H. W. B. Joseph at the beginning of the twentieth century describing analogical arguments as those that take us "from a certain ascertained resemblance between one thing and another (or others) to a further resemblance", schematically expressed like this: "because  $a$  and  $b$  are  $x$ , and  $a$  is  $y$ ,  $\therefore b$  is  $y$ " (1916: 538). Joseph wondered whether analogical arguments have any logical value. "Can we give any rules by which to judge their value in a given case?" he asked (1916: 539), and then went on to review some of the familiar criteria for good analogical arguments. Later, in the 1930's, Cohen and Nagel (1934: 286) outlined the Argument Based on Sampling as having this structure:

A certain proportion ( $r'$  per cent) of the sample  $P$  have the character  $q$ .

The  $P$ 's are a fair sample of a large collection  $M$ .

Hence, probably and approximately, the same proportion ( $r'$  per cent) of the collection  $M$  have the character  $q$ .

Cohen and Nagel too give some useful rules for evaluating such arguments relating to how the sample was obtained, etc. The tradition of identifying argument schemes for kinds of arguments that do not owe their strength to formal validity, and attaching a set of rules or guidelines for their evaluation, continued with the first edition of Copi's *Introduction to Logic* in 1953 and saw



considerable development in Wesley Salmon's *Logic* ten years later in 1963. [ii] As an example, look at Salmon's characterization of the *ad hominem* argument or, as he calls it, the argument against the man.

The vast majority of statements made by  $x$  concerning subject  $S$  are false  
 $p$  is a statement made by  $x$  concerning subject  $S$   
if  $p$  is false. (1963, p. 68)

All these examples of argument schemes come from logic books that take the articulation of deductive standards and methods to be the first goal of logic. So, in Salmon's work, and that of many others, the introduction of schemes may be seen as an attempt to do something for "non-deductive arguments" along the lines of what logical form can do for "deductive arguments".

Schemes have also been used to characterize bad arguments, like fallacies. Consider the conditions for the Strawman Fallacy offered by Johnson and Blair (1983, p.74):

$M$  attributes to  $N$  the view or position,  $Q$   
 $N$ 's position is not  $Q$ , but a different one,  $R$   
 $M$  criticizes  $Q$  as though it were the view or position actually held by  $N$ .

Here 'M' and 'N' are person variables and 'Q' and 'R' are propositional variables. The idea is that the Strawman Fallacy is a kind of argument that fits the given pattern and that all instances of the pattern (or scheme) are bad arguments. Other patterns of bad arguments like the fallacies of *ad hominem* (p. 79) and improper appeal to authority (p. 155) can also be captured by fallacy schemes. However, since there are legitimate appeals to authority as well as justified uses of *ad hominem* arguments, it is also possible to see many of the fallacies not as bad kinds of arguments but as bad instance of kinds of arguments that can have both good and bad instances. (Good and bad baseball games are both of the kind, *baseball game*; good and bad tomatoes are both of the kind, *tomato*). Even the strawman argument need not be bad if, for example,  $Q$  is entailed by  $R$  because then any doubt attaching to  $Q$  will transfer to  $R$ . Viewed this way, our attention is shifted from identifying fallacies to identifying different kinds of arguments and giving criteria for distinguishing good from bad members of the kind. To identify the kinds is to give the necessary and sufficient conditions for membership in each kind, and the expression of these conditions constitute an argument scheme.

The AS Method admits of a number of variations depending on how schemes are defined and on the nature of the larger theoretical framework which embraces them. In this essay a method of using schemes recently developed by Douglas Walton is considered. Given his pluralism about dialogue types we have to discern the role of argument schemes inside this broader dialectical model.

## 2. Walton's Approach to Argument Schemes.

In a series of articles and books including *Argumentation Schemes for Presumptive Reasoning* (1996), *Fundamentals of Critical Argumentation* (2006), Walton has developed a method of NLA-evaluation based on the use of argument schemes. The following overview of his theory mainly follows these two books. Speaking of the evaluation of NLA's, and the possibility that they can be in some sense "correct or reasonable", Walton writes,

Although the term valid does not seem to be quite the right word to use with many of these argumentation schemes, still, when they are rightly or appropriately used, it appears that they are meeting some kind of *standard of correctness of use* [my stress]. What is important to come to know is what this standard is, for the most common and widely used schemes especially, and how each of the schemes can be tested against this standard. (Walton 1996, p.1)

The standard Walton is speaking of is a *standard of correctness of use*. It is not immediately clear what the compass of this standard is, but I will assume that it includes a standard of premiss sufficiency since arguments could not be said to be used correctly (in their primary function) unless they were premiss sufficient. Hence, in what follows, I will explore Walton's views on the correct use of argument schemes in so far as they touch on the question of premiss sufficiency. Walton's approach brings together several key ideas taken from logic and dialogue theory. His focus is on arguments that are neither deductive nor inductive. An overview of what is involved is summarized in the following paragraph.

These arguments are inherently *presumptive* and *defeasible* . . . . Each of the forms of argument . . . is used as a *presumptive argument* in dialogue that carries a weight of *plausibility*. If the respondent accepts the premises then that gives him *a good reason* to also accept the conclusion. But it does not mean that the respondent should accept the conclusion uncritically. Matching each form of argument is a set of appropriate *critical questions* to ask. . . . These forms of

inference are called *argumentation schemes* and they represent many common types of argumentation that are familiar in everyday conversations. They need to be evaluated in a *context of dialogue*. They are used to *shift a burden of proof* to one side or the other in a dialogue and need to be evaluated differently at different *stages of a dialogue*. (Walton 2006, p. 84)

Here I have taken the liberty of italicizing the key concepts that we must understand in order to be able to appreciate Walton's method of argument evaluation. These concepts, which can be seen as falling into three groups, are partly explained by their interconnections. One group consists of 'presumption', 'defeasible' and 'plausible'; another group has 'dialogue', 'shifting a burden of proof' and 'stage of dialogue'. The third group, which connects with the other two, includes the concepts of 'argument scheme' and 'critical question'.

GROUP A: The concepts in the first group presuppose the distinction between monotonic and non-monotonic reasoning. Monotonic reasoning is of the kind that if it is premiss sufficient, then no additional information will change the fact that it is premiss sufficient. Valid deductive reasoning, and no other kind, has this character. By contrast, non-monotonic reasoning is such that new information (new premises included in an argument) can change the degree of an argument's premiss sufficiency. New premises may make an argument illatively stronger or weaker. In discussion of non-monotonic reasoning, it is usually the lessening of premiss sufficiency that is illustrated since that most dramatically makes a contrast with deductive reasoning. Walton divides non-monotonic reasoning into two kinds, inductive and plausible reasoning, and contrasts them as follows:

The basic difference between them is that inductive reasoning is based on gathering positive evidence that can . . . be counted or processed in some numerical way by statistical methods. Plausible argumentation is more practical in nature and is based on presumptions about the way things normally go, the way things normally appear, or practices that expedite ways of working together to perform smooth and efficient collaborative actions. (Walton 2006, pp. 73-74)

There is an interesting issue here about whether there is any difference at all between presumptive and plausible reasoning or whether they are the same thing. **[iii]** Walton seems to lean in the direction of thinking that *presumption* is the fundamental concept. Plausible reasoning gives us "some reason to think a proposition is true, provided [we] have no better reason to think it is false" (2006,

p. 74), but such reasoning, according to Walton, is based on generalizations that are presumptions about the way things normally go; hence, the more basic concept here is that of a presumption. In Walton's view the conclusions of presumptive reasoning - they are most often singular propositions - are also presumptions because they are inferred from generalizations that are presumptions (Walton 2006, pp. 72-74). Nicholas Rescher seems to see the relationship between the presumptive and the plausible as being the other way around. He refers to a basic principle that "Presumptions favour the most plausible of rival alternatives - when indeed there is one. This alternative will always stand until set aside (by the entry of another, yet more plausible, presumption)" (Rescher 1977, p. 38). So, for Rescher, the concept of plausibility is analytically basic to the concept of presumption, since presumptions are identified as being the *most plausible* of a number of plausible propositions. For the present purposes, it doesn't matter greatly which of the two views we adopt, Walton's or Rescher's, but we should mark this area as an unsettled part of the meta-theory of non-formal reasoning. The important point for now is that the kind of reasoning Walton is discussing is, like inductive reasoning, defeasible; that is, the conclusion reached is defeasible because the generalization it depends on (the major premiss) has exceptions.

A defeasible generalization, in contrast to an absolute universal generalization, is one that is subject to exceptions and that is defeated (defaults) in a case where one of the exceptions occurs. Defeasible generalizations often contain expressions like the word 'generally,' that indicate that the generalization has exceptions. (Walton et al. 2008, pp. 190n)

That exceptions are possible means that they can arise, and when they do arise they constitute new information which runs against the current of the generalization without contradicting it. For instance, that Goneril doesn't love her father may be surprising, but it is not inconsistent with the generalization that, typically, children love their parents.

GROUP B: Of central importance to Walton's approach to NLA evaluation is the concept of a dialogue, a conventionalized framework in which assertions and arguments can be made and questions can be asked. In Walton's view there are different types of dialogues and NLA's may be analyzed as occurring in one or other of the dialogue types. These types include persuasion dialogue, inquiry dialogue, negotiation dialogue, information-seeking dialogue, deliberation

dialogue and eristic dialogue (Walton 2006, p. 183). The dialogues are individuated on the basis of having different goals and different rules (Walton 2006, p. 178). Of importance here is that the standard for what makes the use of an argument of a kind a good one will depend on the standards of the dialogue type in which it finds itself. The standards for persuasion dialogue, for example, are given by a set of ten rules (Walton 2006, p. 177).

To have a burden of proof is to have to give a proof, if asked to do so. In the evaluation of NLA's, 'proof' must be taken in a modest sense, demanding something less than deductive certainty. In these contexts a proof should be considered as something akin to 'a good reason'. If a statement has a burden of proof attached to it, then whoever makes the statement must provide a good reason for it or withdraw the statement (Walton 2006, p. 8). Having successfully given the proof demanded, one no longer has a burden with regard to that statement. When burdens of proof are thus discharged in dialogues, they shift to the other dialoguer who must then decide either to accept the statement or make a new argument - a new 'proof' - that the statement is not acceptable. An important function of the burden of proof is that it provides a practical solution to the problem of argumentation going on forever: eventually there will come a point where one of the parties can no longer legitimately shift the burden back to the other side (Walton 1996, p. 24).

Dialogues have stages, Walton says. He may be referring to the stages of a critical discussion specified by van Eemeren and Grootendorst (1992, p. 35), but their analysis is not furthered by Walton. He is more concerned to point out that an argument placed later in the sequence of moves of a dialogue will have more history - a more developed context, more things to refer back to - than an argument that occurs near the beginning of the dialogue, and this difference may be a factor in the interpretation and evaluation of the argument.

GROUP C: *Argument schemes* "represent many common types of argumentation that are familiar in everyday conversations," says Walton (2006, p. 84). They are like logical forms of propositional logic in that they are not themselves arguments, but abstract structures that can have an infinite number of substitution instances that are arguments. The substituands in argument schemes are just the same as those in logical forms: names of individuals, properties, relations and propositions. What sets schemes apart from the better-known logical forms is the nature of the logical constants. In the schemes for presumptive arguments the

important constants are, 'in general', 'typically', 'normally', and other non-truth-functional operators such as 'is similar to', 'asserts that', and 'can be classified as'. Walton has pressed the analogy with logical form further holding that, like valid logical forms, "argumentation schemes can best be revealed as normatively binding kinds of reasoning" (1996, p. 1) that give the addressee a good reason to accept the conclusion provisionally. An example, slightly amended, of one of his argumentation schemes is this.

*Argument from analogy*

Case C1 is similar to case C2 in respects R1, R2, . . .

A is true (false) in case C1

Therefore, A is true (false) in case C2. (Walton 1996, p. 77)

What we may call the all-in-all, or all-things-considered, evaluation of an argument requires us to go beyond the initial step of identifying it as instancing a particular argumentation scheme. Being an instance of a scheme only confers *prima facie* support to conclusions. To determine whether an argument meets the standard for the argument kind, Walton affiliates with each argument scheme its own set of *critical questions* designed to guide an interlocutor in deciding whether the argument meets the standard for the argument kind. Since presumptive inferences are defeasible, an argument cannot receive its final evaluation until it is decided whether, on a given occasion, there is any information available to an argument assessor that will defeat the inference from the premises to the conclusion. The final, all-things-considered evaluation of the argument awaits the answers to the critical questions. For the Argument from Analogy, Walton introduces these questions.

Q1. Are C1 and C2 similar in respects R1, R2, . . . ? [P]

Q2. Is A true in C1? [P]

Q3. Are there differences between C1 and C2 that undermine the force of the similarity? [S]

Q4. Is there some other case C3 that is similar to C1, but in which A is false. [D] (Walton 1996, p. 79)

I have followed each of the questions with a letter in brackets. The letters indicate an attempt to classify the kinds of critical questions associated with argument schemes. 'P' indicates a question about premiss acceptability, 'S' a question about premiss sufficiency, and 'D' a question about possible defeaters. In Walton's 1996

list of 25 argument schemes[iv] there are also kinds of questions not associated with the scheme for analogical arguments: K-questions about the nature of conclusions, for example, and a catch-all of left-over issues dealt with by what we can call X-questions. As for the four questions associated with the scheme for analogical arguments, the first two are clearly about the acceptability of the premises. The third question might be viewed either as a question about sufficiency - do the similarities outweigh the dissimilarities? - or as a question about defeasibility: have relevant dissimilarities that cancel the inference been overlooked? The last question raises the possibility that another analogy, perhaps a better fit with the target situation, does not lead to the targeted conclusion. If there was such another analogy that would undermine the support for the conclusion. In other words, it is a D-question, putting the assessor on the lookout for inference-defeating pieces of information.

With this discussion of the key concepts in Walton's use of arguments schemes behind us, we are now in a position to outline the steps to be taken in employing his version of the AS Method.

0	Preparation	The target argument {P}/K is presented in standard form
1	Step 1	Identify the relevant standard by identifying the dialogue-kind in which {P}/K occurs
2	Step 2	Identify the argument scheme of which {P}/K is an instance
3	Step 3	Ask the critical questions associated with the scheme
4	Step 4	Evaluate {P}/K on the basis of answers given to the critical questions in light of the standards of the relevant dialogue type.

### 3. Characterization and Adequacy of the AS Method.

(A) *Characterization of the AS Method.* As a method for evaluating NLA's, how does the AS Method compare with other methods? First we may observe that it is a *direct* method in that it evaluates arguments without going through some other argument, as does the method of logical analogies, for example, or the *a fortiori* method which considers the comparative strengths of arguments. Moreover, the AS Method it is a *bipolar* method that can issue both the verdicts "good argument" and "bad argument." Not all methods are like that; for instance, some no-fallacy methods can only say that an argument is bad, never that it is good, and others like the method of formal logic can say that an argument is good but never that it is bad (because of the asymmetry thesis). Finally, the AS Method is a *textured* method, meaning that it can result in judgments placed between the poles of very good and very bad arguments: judgments that an argument is "pretty good but not very good", "middling good", "bad but not absolutely bad",

are possible depending on how well the argument does in light of the associated critical questions. Some of these questions it may deal with satisfactorily, others with difficulty resulting in a qualified judgment. Some methods of NLA-evaluation are not textured methods, for example the method of using formal logic.

(B) *Adequacy of the AS Method*. According to Govier, An account of argument cogency is a *reliable* one if it can be used by different people to get the same result. . . . And it is *efficient* if it can be applied in a fairly uncumbersome way. (Govier 1999, pp. 108 - 09)

We can take these ideas and adapt them to the notion of the *adequacy of a method* for evaluating NLA's. The adequacy of a method will be a function of two of the criteria mentioned by Govier, *reliability* and *efficiency*, to which we may add a third criterion, the *scope* of the method.

*Reliability*. By a method's reliability is meant, first, how objectively reliable it is. A sonic reader, for example, may be a highly reliable method of finding water underground whereas water-witching appears to be no more than 50% reliable. The objective reliability of the AS Method will depend on how well the inventory of schemes fits the arguments to be studied. Should we use the inventory of 15, 25 or 60 argument schemes? If our stock of schemes is too short, then some of the NLA's we may meet won't fit; if it is too long, then there is an increased risk of mis-classifying arguments, and so, possibly, mis-evaluating them. Ultimately, it is experience that will guide us in determining how long and detailed a list of schemes we should work with. Another factor that will determine how objectively reliable the method is, is how apt the associated critical questions are. If they fail to draw attention to factors that should be considered in evaluating a kind of argument, this will negatively affect the AS Method's *objective reliability*.

We can also consider the AS Method's *subjective reliability*. Will different people with the same level of education, similar backgrounds and who all care about relevant details, arrive at the same results when using the method correctly? On this question the AS Method shows great promise because well-formed critical questions will direct all assessors to consider the same issues about a given argument and this will diminish the effect of idiosyncracies and contribute towards interpersonal agreement in evaluation. But the AS Method could be subjectively reliable without being objectively reliable if the questions are not well-designed to probe argument strength.



*Efficiency.* As for efficiency, this concerns first how easy it is to learn the method and, second, once learned, how easy it is to use it. To use the AS Method, argument assessors have to master the concepts we reviewed above as well as well as the inventory of schemes and questions (15, 25 or 60 schemes each with its own set of several questions, depending on which of Walton's presentations they are asked to follow). The longer the list the more there is to learn. In addition, assessors must learn and be able to identify the dialogue type in which the argument occurs, and then learn how to judge an argument by the standard of that dialogue. As for applying the method, assessors must be able to match NLA's with schemes and then ask all the critical questions attached to the scheme, and determine when they have been satisfactorily answered. The method is - to use Govier's term - 'cumbersome' (Govier 1999, p. 109).

*Scope.* Plausible reasoning, claims Walton (2006, p. 74), is "the most common type of reasoning used in everyday deliberation, as well as in legal arguments." Thus the AS Method - or Walton's development of it - encompasses the most common type of reasoning. But, by the authors admission, it excludes deductive and inductive reasoning (Walton 1996, p. 13). The range of NLA's that the AS Method can deal with is therefore narrower than that of natural language deductivism which professes to be able to handle all kinds of arguments, including inductive and deductive arguments. There is a possibility, however, of broadening Walton's versions of the AS Method by including inductive arguments in the inventory of schemes since there already is a fairly well-developed literature of schemes and questions for such arguments (see, e.g., Salmon 1963).

The standard for the use of an argument will depend on the standard for the type of dialogue in which it occurs. The standards for dialogue types are expressed in the particular rules that will govern each type of dialogue. But Walton only gives us rules for persuasion dialogues, not for the other four kinds. Hence, until we have an explicit set of rules for all the types of dialogue (excepting, perhaps, the eristic type) the method is severely limited in scope.

#### *4. Issues Arising in Connection with Argument Schemes.*

(C) *Are the sets of critical questions complete?* In our recounting of the role that Walton gave to critical questions we noticed that the questions were of several kinds: P-questions concern premiss acceptability, S-questions concern premiss sufficiency, and D-questions are about the presence of possible defeaters, etc. All the schemes in both Walton 1996 and 2006 have associated P-questions, as one

would expect in a method of argument evaluation. It is puzzling, however, that S-questions are attached to about a third of the schemes in both Walton's 1996 and 2006 books. Since the schemes are supposed to be structures that provides *prima facie* premiss sufficiency, one wonders why S-questions would be included. Does this imply that some of the schemes do not have normative force on their own? We may also wonder why there is not a D-question associated with every scheme. That would be appropriate since the all-things-considered evaluation of a plausible argument must include an inquiry about possible information that would defeat and set aside the *prima facie* support for the conclusion. However, the 1996 book does not include D-questions with every scheme and the 2006 book has very few D-questions. This shortcoming can be repaired, but the method could not be considered objectively reliable unless there was a pertinent D-question attached to every presumptive scheme.

(D) *The moods of schemes.* We should pause to observe that argument schemes can be in any one of three moods. They can be negative as are Johnson and Blair's fallacy schemes; they can be neutral as are the ones from the logic books we reviewed at the outset, and they can be positive in mood as are the ones Walton has shown us. If schemes are in the positive mood then they are such that any argument that instantiates a scheme (and has acceptable premises) will make its conclusion *prima facie* acceptable. Such schemes, we noted, should not include S-questions since a measure of premiss sufficiency is guaranteed in virtue of being an instance of the scheme. Neutral-mood schemes, by contrast, do not confer *prima facie* acceptability on their conclusions. To compensate for this, they must include S-questions along with other critical questions. Thus two slightly different AS methods may be identified: one uses positive-mood schemes without S-questions, the other uses neutral-mood schemes with S-questions. Two consequences of these distinctions may be observed: the one is that if schemes are positive (or negative) then we will be left in want of a way to classify bad (good) arguments; the other consequence is that if schemes are considered as neutral then it will make no sense to talk of 'defeasible argument schemes' since being an instantiation of a scheme does not imply that the argument gives *prima facie* support to its conclusion. Walton's list of schemes in his 1996 and 2006 books suggest a mixed approach. Some of the schemes are neutral, some are positive.

Robert Pinto has argued that argument schemes are not normative (i.e., that they

are in the neutral mood), that they only serve to individuate argument kinds and that the evaluation of presumptive arguments depends on the asking of the critical questions associated with their schemes. He offers a case where the use of a certain argument scheme (i.e., an argument that is an instance of a scheme) would not establish a presumption to the satisfaction of a particular audience. The case turns on the evaluation of a ring. An argument from sign may be used to satisfy a customer that a ring is genuine gold, but a court trying an insurance claim about the same ring would ask for an argument from expert opinion. Hence, concludes Pinto,

The *schemes* can't be what provide the validation of presumptive reasoning, because the use of a particular scheme on a particular occasion itself always *stand in need of validation or justification*. (Pinto 2001, p. 111)

The case involves two different arguments, the one an instance of the scheme for Argument from Sign, the other an instance of Argument from Expert Opinion. Pinto's point is that the court would not accept the Argument from Sign as establishing a presumption for the conclusion (that the ring is gold). Only an Argument from Expert Opinion could establish such a presumption to the court's satisfaction. Hence, concludes Pinto, argument schemes are not normative, as Walton says that they are, in the sense that merely being an instance of a scheme means there will be a presumption for the conclusion.

There are different ways one might attempt to answer Pinto's argument. One is simply to say that Walton's claims about schemes and the arguments they generate is for everyday arguments, and the arguments used in courts are not 'everyday'. Perhaps. But with this retort one immediately admits a significant limitation to the range of the AS Method. Alternatively, one might maintain that the kind of dialogue a customer has with a sales person is a persuasion dialogue, whereas an insurance claim is more likely to be an inquiry dialogue, and then say that these dialogue kinds have different standards, and hence one should not expect an argument occurring in a persuasion dialogue to create a presumption in a legal setting. This may be right, but it introduces a serious complication to the AS Method: it means that we would have to have an index of which kinds of arguments have force in the different types of dialogues. Taken this way, Pinto's claim becomes not that schemes don't have normative force but that although they all can have normative force in some dialogue type or other, their normative force can vary depending on the dialouge in which they are used, and some of

them may not have normative force in every type of dialogue. There is something to this point, I think, but it doesn't go far enough to save the normative characterization of argument schemes because some Arguments from Sign may well be stronger than some Arguments from Expertise. This observation invites us to recover a distinction between weak and strong presumptions (see Whately 1846, p. 118), and then to ask of every argument of a kind how strong a presumption it affords. If we do this we will be obliged to re-introduce S-questions for each kind of scheme and then, I think, we have pretty much taken the normative character - at least as far as it relates to premiss-sufficiency - out of the schemes. Pinto's invented illustration is, therefore, telling.

(E) *Are the schemes sufficiently explicit?* Plausible reasonings, according to Walton, are based on generalizations which are presumptions. We would then expect each of the argument schemes to include a schematic sentence that holds a place for a presumptive generalization, but this is not always the case. Less than half the schemes in Walton 1996 and 2006, have a place for presumptive generalizations: some of the schemes include no generalizations at all, and some of them have generalizations which are neither marked as presumptive nor as plausible. This means that the presumptive generalizations required for plausible reasonings are sometimes part of a scheme and sometimes not, and it leads us to the question of whether the generalizations needed are premises or inference warrants. Should argument schemes have this general pattern:

[S1] Premiss:  $w$  is an  $F$   
Conclusion: Presumably,  $w$  is a  $G$  ?  
rather than this general pattern:

[S2] Premiss: Typically,  $F$ 's are  $G$ 's  
Premiss:  $w$  is an  $F$   
Conclusion: Presumably,  $w$  is a  $G$  ?

Walton's inventories of argument schemes includes both ones like S1 which have no presumptive generalizations as premises, as well as some like S2 that do. From the point of view of using the AS Method it seems to be preferable that the schemes should be of the kind that include generalizations as premises because this will show the assessors the schematic form that the presumption should take, and so leave less of the evaluation process to chance. A related reason to include the generalizations is that the D-questions, which are to be associated with all

presumptive schemes because they prompt us to probe for exceptions, are directly related to presumptive generalizations. Thus, schemes will be better logical instruments if they are fully articulated along the lines of S2, with the presumptive generalizations included.

### 5. *Summation*

The Argument Scheme Method for evaluating natural language arguments has roots in the history of logic and in fallacy theory. It is, however, a method still under construction. Although it shows promise in terms of subjective reliability, the indecision about how many argument kinds are to be included makes the method's objective reliability uncertain. In terms of efficiency, the AS Method is more complicated than some other informal methods in that one has to master not only the different kinds of dialogue, but also a relatively large number of argument kinds and, finally, an equally large number of sets of associated questions that go one-to-one with the argument kinds. This negative aspect of the method is somewhat compensated for by the consideration that the method has the potential for application to a wide range of NLA's, and it admits of intermediate judgments of quality. The full potential of the AS Method will become apparent when it has been given a consistent exposition: D-questions should be added for every scheme; every scheme should include a presumptive generalization; and all schemes should be in the same mood, preferably the neutral mood.

### NOTES

**i** My thanks to CRRAR colleagues Rongdong Jin and Ralph Johnson, and especially to Doug Walton, for discussion on an earlier draft of this essay, and to two sharp-eyed reviewers for these proceedings.

**ii** Salmon (1963) does not use the term 'schema' in connection with the following inventory of argument schemes, but he does attach questions to each of them: universal and statistical generalization (p. 85 ff.) statistical syllogism (p. 60 ff.), argument from authority (p. 63 ff.), argument from consensus (p. 66), argument against the man (p. 67 ff.), argument by analogy (p. 70 ff.). See also Merrilee Salmon (1984): inductive generalization (pp. 60-62), argument by analogy (pp. 64-67), statistical syllogisms (pp. 71-74), arguments from authority (pp. 78-80), *ad hominem* arguments (pp. 80-81), and argument from consensus (pp. 82-83).

**iii** Walton reflected that 'presumptive' indicates a temporary element whereas 'plausible' had more the feel of 'seems to be true'. Conversation, June 2010.

iv Taken from Kienpointner (1992).

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**ISSA Proceedings 2010 - An**

# Exploratory Study Of Argument In The Public And Private Domains Of Differing Forms Of Societies



## *1. Introduction*

In this paper, we focus on the functioning of argument in the public and private domains of communication in different societal forms. By doing so, we address several weaknesses in contemporary argumentation studies.

Why would such a question be of importance to the study of argumentation? First, while an extensive literature exists on argument's role in democracy and public spheres, there is no corresponding literature regarding non-democratic societies. Such a concern is of importance because, in both ancient and modern times, most societies have not been democratic. While some might contend that democratic argument is paramount, that position fails to consider the daily lives of citizens in non-democratic societies and, in turn, neglects a fuller understanding of argument in all societal forms.

Second, an examination of the recent argumentation literature reveals extensive discussions of public argument. Unfortunately, there have been few attempts to link our understanding of the two bodies of literature.

Finally, many argumentation studies involve other variables such as culture, society, economics and politics. Most studies focus on argument and one other concept and few look at the argument's relationship to communication, culture, political systems, and cognitive functioning in terms of their systematic variation between societies.

This essay has two goals. First we explore argument's structure and functions in three prototype models of the relationship between the public and private domains of communication. Second, we illustrate each model with a historical example.

## *2. Background Assumptions*

We begin this paper by explicating several underlying assumptions. First, we use "domain" as an alternative to the more commonly used term "sphere." While dictionary definitions of the two terms are similar, the technical use of "sphere" has been narrowed by theorists such as Habermas (2006). Our use of "domain" is

meant to be broader and, in so far as the public domain is concerned, encompasses the “public sphere” as well as other “public” activities.

Second, our models involve both descriptive and normative elements. Since we know little about argument in cultures different from western societies, especially those of a non-democratic nature, the descriptive study of argument needs to be prior to the normative study of argument. Once we can describe argument in a society, we can then look at what is considered to be good argument in a society and how it relates to the normative role of argument across societies.

Third, our models are conceived of as encompassing both argument<sub>1</sub> and argument<sub>2</sub> (O’Keefe (1977)). Argument<sub>1</sub>, the domain of reason giving, linkages and conclusions is considered to be a fundamental dimension of all communicative messages (Hazen, 2007). On the other hand, argument<sub>2</sub>, controversy about points of view, is expected to be present in all models but differ in form.

### *3. The Nature of the Public and the Private*

How can we distinguish between a society’s private and public domains? This subject has received little attention and has no commonly accepted distinction. This can be seen in the work of Dewey, Goffman and Arendt.

Examining the literature closely, the ideas of the public and the private are used extensively in discussions but rarely defined. Dewey (1954) distinguished between the public and the private based upon the consequences of action. Actions that have consequences only for involved parties are considered private; actions that have consequences for parties beyond those initially involved are considered public.

Goffman, writing extensively about public interaction, merely hints at their conceptual differences. Combining his comments from two works (1963; 1971), it appears that public situations involve unacquainted people and non-participants where there is a “possibility of widely available communication” while private situations focus on interactants who are acquainted and fully participate in message interaction “addressed to a particular recipient” or recipients who are the only ones “meant to receive it” (1963, p. 154). When situations exist where interactants wish to engage in private communication despite the presence of others, they utilize various mechanisms to create what Goffman calls “a conventional engagement enclosure.”

Finally, Arendt (1958) presents a third position. She argues that the public realm involves two characteristics: 1) things that “can be seen and heard by everybody” (p. 50) and 2) the world that “is common to all of us and distinguished from our



privately owned place in it" (p. 52). Her definition of the private stems from what the public is not, i.e. what is unseen and unheard by others and what is not common to all.

We will keep our distinctions simple. The public domain involves communicative efforts, which are, in theory, addressed to anyone, even though they may only be heard by a small number. The private domain is conceived of as communication that is limited to a particular person(s) and is not conceived of as being addressed to or heard by anyone else. This definition involves communicative elements of intent, message behavior and effects. While the definition may sound like it is intentional in nature, when we use the phrase "addressed to," it can be either explicit or implicit in the message behavior. When we use the phrase "heard by," it can involve either the potentiality of or actual hearing.

Finally, this distinction between domains should not be construed as absolute. We distinguish between two hypothetical states that in practice are probably, more often than not, overlapping. Furthermore, our models are not meant to be isomorphic descriptions of particular societies, but instead to portray the three most distinct ways of thinking about societies and their public and private communicative relationships.

#### *4. Models of the Relationship of Argument to the Public and Private Domains of Society*

Our three models are predicated on two questions. First, in a particular society, is there a separation between the public and private domains? Second, if yes, what separation indicators in the society's discourse and operable criteria for differentiating between public and private domains can be seen? Theoretically, we expect to see sharp lines between the two domains. In practice, there probably will be some permeability between the two, even though there should be a preference for separation.

If no, what separations between the public and private domains exist and which is dominant? The criteria for determining one domain's societal dominance over the other are not totally clear. We can begin with the question of how argument works in each domain's discourse and which discourse elements surface when a conflict between the two emerges. As such, we begin by looking at what serves as argument's underlying grounds or assumptions, its ideational scaffolding, its forms, and normative standards for discourse evaluation.

Every society has ideas, values and ideologies that serve as the argumentative

backdrop for individual domains as well as societal discourse. These elements should not be thought of as determinative of argument but instead as providing resources for contesting positions. For example, cultural values like collectivism and power distance are sometimes treated as if they determine what happens in a culture. But there is increasing evidence that they are only one of several factors that are involved when people actually engage in argument (Hazen & Shi, 2009). It may be useful to think of such values as “people’s consensual ideologies” not determinants of behavior (Matsumoto, 2006, p. 50). A culture’s values or ideologies serve as an ideational set of building blocks that people utilize for the grounding of arguments, for providing concepts to build arguments, and for establishing the normative grounds for judging arguments in contesting their interests and positions. There may also be preferred structures for argument in particular societal domains (Kennedy 2001). In analyzing these argumentative elements, we are concerned with the degree to which one domain’s argumentative structures and functions are characteristic of the overall society, i.e. to what degree do they dominate?

The following three models are hypothetical and are created to maximize the theoretical differences between societies in terms of relationships between communication’s public and private domains. While each model will be illustrated by a specific society within a historical context, the examples should not be thought of as isomorphic with a model. The pragmatic exigencies of life in any society will create exceptions. Each example is chosen because, within theoretical and practical bounds, they appear fairly closely related to a particular model. One example per model is presented with acknowledgement that more extensive research should be conducted using multiple examples.

#### *4.1 Model One: Societies where the Public Domain Dominates*

Model 1 represents a society where there is no clear separation between the two domains and the public domain dominates the private. In this situation, not only is private information and communication made known to others, it is expected to conform to the forms and logic of the public domain and be judged by its norms. Some theorists suggest that this model may be particularly related to authoritarian societies. For example, Mamali (1996) claims that in communist societies, the state’s dominance of ideology and the means of communication have led to control of interpersonal communication. Arendt (1951) argues that totalitarianism can be distinguished from tyranny in that it limits private life as

well as public life, which is crucial because there are things that “can survive only in the realm of the private” such as love (1958, p. 51). While the connection between Model 1 and authoritarianism is an intriguing idea, it will not be explored in this paper.

Stalinist Russia in the 1930s will be used to explore Model 1. This era is distinct from other Soviet eras due to its high degree of control and terror that is only now starting to be fully understood by historians with full access to that period’s archives and survivors. Several historians have suggested that parallels to this era might be found in Maoist China (Figes, 2008), Nazi Germany, and maybe even some early twentieth century European states (Kelly 2002).

The ingredients for argument construction in Soviet society came from Marxist/Leninist ideology as embodied in Party discourse, especially focused on creating the “New Soviet Person.” Marxist-Leninist ideology was important because:

The Bolsheviks were deliberately ideological. . . they deemed it necessary to possess universal ideas to act at all. . . . distinguished by their simultaneous, absolute denial of any possibility of pluralism - intransigence rooted in a worldview based on class and class struggle, whereby only the interests of the one class, the proletariat, could become universal. (Kotkin 1995, p. 151)

The Party’s certainty stemmed from its view that Marxist/Leninism was “the only ideology providing a truly scientific analysis of reality” (Heller, 1988; p. 53).

While Marxist-Leninist ideology provided the assumptional grounds for argument, it was displayed in public discourse that was enacted through a massive structure of education, propaganda and media (Inkeles 1958). Such discourse became the citizen’s most important guide to the real intentions of the Soviet leaders since “the provenance and source of the words used by the regime is significant, determining the new sense of the word and creating new associations to supplement the meaning (Heller 1988, p. xiv).

The Party’s discourse not only provided meaning for Marxist/Leninism, it also created the discursive climate for “the productive, mobilizing power of the revolutionary narrative” (Hellbeck 2000, p. 81). Historians disagree about the discourse’s degree of influence on the average citizen, but they do agree that it “made its way into everyday (*bytovye*) decisions as well as into the language of political meetings and wall newspapers” (Kelly 2002, p. 636). The result was a situation where both dissenters and Party members were united in an “illiberal

consensus” based on the use of similar discourse (Hellbeck 2000, p. 87).

Closely related to the Party’s ideology and public discourse was the effort to create “the new Soviet Man” who “was to be free of egotism and selfishness, and was to sacrifice personal interests for the sake of the collective (Hoffmann 2003, p. 45). Thus, citizens faced “the demand of the Soviet party to lay open all personal relationships on the basis of forming a better, ‘new human being’” (Studer & Unfried, 2003, p 222). Such a person would “identify with the revolution . . . and thereby comprehend themselves as active participants in the drama of history’s unfolding” (p. 84) and “involve themselves in the revolutionary movement totally and unconditionally” (Hellbeck 2000, p. 74).

An analysis of Stalinist Russia’s argumentation shows that two overarching argumentative structures were present. The first argumentative structure was based on the dialectical affirmation of the public domain and rejection of the private domain. As Hellbeck states:

The very distinction between public and private . . . was fiercely rejected by the Soviet regime as a bourgeois notion. Moreover, Soviet revolutionaries waged war against the private sphere altogether, which they regarded as a source of anti-Soviet, individualist instincts. By contrast, the Soviet regime greatly valorized public speech and in particular, autobiographical speech, as an act of virtue. (2000, p. 89).

Thus, “the goals, interests, personal relationships, and development of the individual were systematically and unconditionally subordinated to the goals, interests, social relationships and unity of the collective” (Mamali, 1996; p. 225).

The argumentative equation of the public with Marxist/Leninist collective values and the private with capitalistic and anti-Soviet tendencies was present in several discourse forms. One was the public reciting of autobiographical aspects of one’s life. As Fitzpatrick states, “Soviet citizens of the 1920s and 1930s were used to telling the story of their lives in public. Numerous interactions with the state required presentation of an autobiographical narrative” (2005, p. 91). Furthermore, party members were routinely questioned publicly about their private life at party forums or in factory meetings. As Studer and Unfried indicate, “sessions of ‘self-criticism’ were often used to “bring to light a reality of ‘private life’ somehow different from the communist model” (2003, p. 213). Thus, a person had to be prepared at all times for public discussion and judgment of their private lives.

Also, a number of discursive and behavioral practices were used to narrow and control private communication. For example, intimacy and privacy were used by the state in so far as “interpersonal conflicts could be intentionally used to obtain greater control over the individuals” (Mamali 1996, p. 223). In addition, housing served as a behavioral argument in that “despite their best efforts to maintain boundaries between private and public spaces, communal apartment neighbors [could] never in fact truly be alone” (Harris 2005, p. 603). Thus, the Soviet state used a number of means to “radically reshaped established patterns of intimacy and its product, the sense of self” (Paperno 2002, p. 597).

One of the logical extensions of the first argumentative structure was the subjugation of private thoughts to public ideology. As Hellbeck points out: “a crisis of sorts” was created when people detected a “discrepancy between their actual private thoughts and what they were expected to think as Soviet citizens” which “stemmed from the conviction that in the Soviet context one’s private and public self ideally were to form a single, integrated whole. And if this could not be achieved, private, personal concerns had to be subordinated to, or be repressed by, the public interest” (2000, p. 90). Thus, the first argumentation structure was internalized so that private deviations from the public ideology would be thought of an incomplete process of changing old patterns of thinking.

Thus, “living a ‘normal’ life and being an ‘ordinary person’ in the former Soviet Union were difficult, if not impossible tasks” (Harris 2005, p. 584) since “no other totalitarian system had such a profound impact on the private lives of its subjects” (Figs 2008, p. 121). Thus, the practical discourse and behavior of the Soviet state reinforced the dialectical subordination of the private domain to the norms and ideology of the public domain.

The second argumentative structure was based on the dialectical opposition between the new Soviet society and those who would oppose it, i.e. enemies. Marxist/Leninist ideology was based on class distinctions, which by its very nature polarized groups. This logic permeated Soviet society, particularly in the communicative relationship between the public and the private domains.

Public discourse constantly referenced class struggle and featured words such as “struggle, fight and attack” (Fitzpatrick 1999, p. 17). This militant logic was further extended by the concepts of “conspiracy” and “vigilance.” Conspirators were thought to be hidden in society sabotaging the Party’s successes. The resulting logic often took on a tautological flavor. Guesva recounts the story of the

sister-in-law of Stalin's first wife, who "rationalizes the need to unmask hidden enemies everywhere because they must be responsible for wrecking: 'How else could it be that the textile factories were full of Stakhanovite overachievers, but there were still no textiles to buy in the stores?'" (2007, p. 333). Note the logical structure, which valorizes the new society and its highly motivated workers, while blaming hidden enemies for society's woes.

The logic of struggling against enemies directly affected the private world of Soviet citizens in two ways. First, surveillance was a pervasive threat for the average citizen, which could lead to a public accounting and punishment for their private words and actions. The pervasiveness of surveillance can be seen in the example of Solzhenitsyn, who during World War II, was arrested for criticizing Stalin in a letter. The result of this atmosphere was "that total surveillance and eternal search for hidden enemies . . . created an environment of unhealthy suspicion, finger-pointing, mass denunciations and back-stabbing, and virtually atomized individuals and destroyed social fabric, rarely sparing even families" (Guseva 2007, pp. 324-325).

Second, the societal practice of informing on others was highly encouraged and applauded. Soviet authorities used the story of Pavel Morosov, who was murdered after informing on his father, as a moral fable about putting the collective good above family. The significance of the story was "the fact that the legend was created and stubbornly supported for more than five decades" (Guseva 2007, p. 327). As Guseva noted: "even dinner table conversations were not always sealed from the ears of the secret police . . . [whose] diligence was met and even surpassed by that of ordinary citizens who often acted as undercover agents themselves: colleagues reported on colleagues, neighbors on neighbors, subordinates on their superiors, and family members of each other" (2007, p. 330).

The second argumentative structure was tied to several forms of punishment when someone was labeled an enemy. Members were expelled from the Party and anyone and their families were considered to be outcasts and treated as if they were "plague bearers" (Fitzpatrick 1999, p. 19). By the mid-1930s, the penalties became harsher with massive show trials and executions, which often "were organized for a broader audience" and constituted "an entertainment-cum-agitational genre" (Fitzpatrick 1999, p.27).

Thus, it can be seen that the two argumentative structures in Stalinist Russia had

the practical effect of erasing the line between the public and private domains and subjugating the private domain to the public.

#### *4.2 Model Two: Societies where the Private Domain Dominates*

Model 2, while similar to Model 1 in that the separation between the public domain and the private domain has broken down, differs in that the society and the public domain, is dominated by the private communicative domain. Over time the standards, norms and elements of the private domain's discourse patterns came to dominate the public domain; in other words the elements of private discourse "trumped" the elements of public discourse.

Societies that fit this model are relatively rare even though many technologically advanced Western societies may be moving in this direction. The fundamental distinction of such a society is that the private domain's discursive patterns have transcended the divide between the two domains and proven capable of dominating the public communicative domain.

The illustrative example for Model 2 is post 1974 American society. There is evidence indicating that American society in the first part of the 20<sup>th</sup> century possessed a clearer separation between public and private communication domains. However, since the end of World War II, the characteristics of American society have been evolving.

The private communicative domain's domination of a society poses certain ironies in that the private domain is usually considered to be the realm of privacy and thus would be out of place in the public domain. Yet elements of the private domain have increasingly become a staple of the American public domain.

Our example examines a) the nature of the American private domain and b) its intrusion into the public domain in three areas: political, legal, and popular culture. This analysis establishes the assumptional grounds of argument in American society and its subsequent framing.

First, the nature of the American private domain is discussed in the work of a number of scholars. Sennett argued that one of the factors leading to the decline of secular American public culture was what he called the "ideology of intimacy." At the root of this view are the beliefs that closeness between individuals is a moral good, as experiences of closeness and warmth with others develop an individual's personality and "the evils of society can all be understood as evils of impersonality, alienation, and coldness." For Sennett, "the sum of these three is

an ideology of intimacy: social relations of all kinds are real, believable, and authentic, the closer they approach the inner psychological concerns of each person" (1978, p. 259).

Parks, reviewing interpersonal communication research and theory, contended that "the ideology of intimacy has had a pervasive, if diffuse, effect on the study of interpersonal communication. Though it has relatively few champions, it has many adherents" (1982, p. 99). He further argued that the ideology's beliefs saw self-disclosure as related to attraction, empathy and mental health.

Philipsen's idea of an American code of dignity provides the final piece of evidence. While acknowledging the presence of the separate code of honor, Philipsen claims that the code of dignity is the dominant code and becoming more so with time. For Philipsen, the code of dignity refers to the "worth attached to individuals by virtue of their being a person" (1992, p. 113). Such an emphasis sees a person as "made up of unique feelings, ideas, and attitudes, with an intrinsic dignity without references to roles or titles" with communication serving as "a resource to make known a person's unique cognitive and affective world" (pp. 113-114).

Collectively, the three theorists provide evidence that the American private domain of communication is grounded in a series of assumptions about the individual's importance and their intimate relations with others. This, then, leaves us with the question of what is the ideological impact on the American public domain of communication?

Second, several scholars have documented the breakdown of the division between the American public and private domains. Sennett clearly believes that the private domain's ideology has intruded into the public domain, based on his view that the ideology of intimacy is the primary reason for the "fall of public man." Goodnight, bemoans the erosion of the public sphere "by the elevation of the personal" (1982, p. 223). Hill discussing the breakdown of the barrier between the public and the private, references the presence in public spaces, such as the classroom, of discussions grounded in personal experience (2001).

Philipsen provides a philosophical basis for the American movement of the private domain's norms and structures into the public domain, when he argued that in the code of dignity, "the individual person is existentially and morally prior to society" (1992, p. 118). If this is true, then conflicts emerging between the argumentative structures of the private and public domains allow the private domain to assert itself.



The ideology and argumentative structures of the private domain has increasingly become part of the American political scene. Sabato (1991) divided American press treatment of the private actions of public figures into three phases: 1) 1941 to 1966, when the press let pass activities seen as limited to the private sphere; 2) 1966 to 1974, when the discovery of private actions would be scrutinized to determine whether legitimate public connections could be inferred; and 3) 1974 forward, where no distinction was made between the two domains with regards to personal actions.

While many bemoaned the media's new attitude toward politicians as an intrusion into politicians' privacy, it should be seen instead as an extension of the private domain's values and discourse into the public domain. Graves' discussion of former Senator Packwood's sexual misconduct points out that society has changed over the last 30 years and as Lessard wrote about former Senator Hart, his unethical behavior became an issue for public concern because of an increasing "awareness of the dignity and equality of women" (2002, p. 3). The point that Graves made can be interpreted as an important instance of the code of dignity being used as the grounds for judging politicians in the public domain.

During the twentieth century, Warren and Brandeis' (1890) article about privacy has been considered to be the basis for the development of the legal doctrine of privacy, however, the article also spoke to the press's coverage of political figure's private lives. Graves (2002) has argued that Warren and Brandeis conceded that public officials surrender at least some protection of their privacy: "They wrote that 'in varying degrees,' political figures 'have renounced the right to live their lives screened from public observation" (p. 6).

Finally, popular culture is another area of increasing evidence that the private domain's values and argumentative forms have come to be central to the public domain. The rise of talk shows and other elements of radio and television dwell continually on the culture of intimacy where the facts of private lives are continually paraded in public and a lack of separation is evident. Carbaugh's study (1993) of the old Donahue talk show and a series of broadcasts from Moscow Russia in the late 1980s is a prime example. Carbaugh crystallizes the glaring inconsistencies between topics considered acceptable for public discussion in the United States and the Soviet Union. Donahue, reflecting practices in American popular culture, wanted to engage in discussions about various aspects of topics such as sex, utilizing elements of the "code of dignity" and its emphasis on the self. Such discussions were strongly resisted by Russian

audience members as publically inappropriate. Carbaugh believes that this is exemplary of what he calls “USAmerican discourse” where: “One is (and should be) an expressive individual, who communicates openly, and expresses feelings freely.” Carbaugh thinks this discourse serves as an argumentative “taken-for-granted consensus” that underlies Donahue’s behavior (2005, p. 122). Thus, it can be seen that these assumptions about a person’s nature function as the grounds for subsequent arguments.

One final example from popular culture concerns the ambiguous status of the internet as public or private communication. Williams illustrated this in a recent article, where in commenting on adolescent’s use of the internet, he said “not only did they casually accept that the record of their lives could be Googled by anyone at any time, but they also tended to think of themselves as having an audience” (2007, p. 84). While some assume that what they put on the internet is private, many are not making such a distinction and are presenting things as they would in the private domain, which may be another example of the private domain’s dominance of public discourse.

#### *4.3 Model 3: Societies where the Private Domain is Separate from the Public Domain*

Model 3, unlike the previous two models is one where there is a clear separation between the public and private domains of communication. In other words, the domain’s discourse standards and patterns remain separate and are not used to judge the other. It is unclear how absolute the line of separation is between the two realms in the everyday world of any particular society but for purposes of theory, we assume that a strong separation exists and leave the question of permeability for later theorizing. For a society to exemplify Model 3, there must be clear evidence of different norms and discourse forms in each domain, and examples of efforts to keep the two separate.

Postwar Japanese provides our illustrative example. This example’s usage is based on a number of distinctions drawn by scholars of Japanese society. Three binary distinctions between Japanese words are used to illustrate the differences between the public and private domains of communication. A paramount distinction is represented by the words *tatemae* and *honne*. *Tatemae* is considered to be the world of social relations and is often thought of as an individual’s façade for public behavior. On the other hand, *honne* is usually regarded as a person’s true feelings or inner reality, which is usually only

expressed in the private domain and to intimates.

A second distinction is between the Japanese words *uchi* and *soto*. They are often distinguished as in-group and out-group but a more literal translation is inside and outside with an implication of my house or household (*ie*) and outside my house. Lebra (1976) suggests that “the term *uchi* is used colloquially to refer to one’s house, family or family member, and the shop or company where one works. The essential point, however, is that the *uchi-soto* distinction is drawn not by social structure but by constantly varying situations” (1976, p. 112).

The third distinction is between the Japanese words *omote* and *ura*. There is a feeling of front or façade on one hand and bottom, rear or hidden on the other hand. As Lebra says: “*Omote* refers to “front,” or what is exposed to public attention, whereas *Ura* means “back” or what is hidden from the public eye” (1976, p. 112).

In general, all three distinctions can be taken as dealing with some aspect of the public (*tatema*, *soto* & *omote*) and the private (*honne*, *uchi* & *ura*) domains. Within the literature, it is clear that the distinctions denote two distinct domains where behavior and relationship norms differ.

The norms and discourse patterns in each domain are illustrated by Lebra’s use of the terms in her descriptions of Japanese society. In her early work (1976), Lebra combines the *uchi-soto* and *omote-ura* distinctions to create three types of situations and interactions in Japanese society. For our purposes, the key categorizations are the combination of *uchi* & *ura*, which she equates with intimate communication and *soto* & *omote*, which she equates with ritual communication.

In the intimate situation, Ego both perceives Alter as an insider and feels sure that his behavior toward Alter is protected from public exposure. Opposed to the intimate situation is the ritual situation, where Ego perceives Alter as an outsider and is aware that he is performing his role on a stage with Alter or a third person as audience. (p. 113)

In her later work, Lebra (2004) alters her framework slightly to include a negative side to both public and private forms of interaction, however her fundamental position remains the same. Thus, in both works, Lebra seems to be drawing a distinction between what would fit our definitions of the public and private domains and in doing so, specifies the distinctiveness of the domains.

Two examples from Lebra exemplify Japanese attempts to keep the two domains separate. In the first example of a 1996 interview, the wife of the newly appointed

Prime Minister had nothing good to say about her husband, which Lebra explains in the following fashion: “She acted according to the *seken* [surrounding world of community or public] expectation of a married couple; indeed, the Japanese audience took her words as a positive sign of her warmth toward the prime minister” (2004, p. 90). In the second example, Lebra describes what she calls the “sacred boundary between workplace and home” and states that “a man would be upset and terribly embarrassed in front of his coworkers if his wife telephoned or, worse yet, visited his workplace” (2004, p. 89).

At this juncture, it is important to discuss the argumentative character of the Japanese public and private domains. Lebra describes the public domain (*omote zone*) as involving courtesy, face work (*kizukai*), tact, honorifics, formalized greetings (*aisatsu*), set patterns of interaction (*kata*), whereas the private domain (*uchi*) involves intimacy, the use of familiar terms, and understood behaviors.

It can be seen that the kind of communicative behavior the Japanese display in the public domain clearly fits what many would call ritual behavior (in addition to Lebra; McVeigh, 1998; Barnlund, 1989). In this case, the argumentative ground is the display of proper levels and forms of politeness and tact. For example, if I use the proper forms of honorifics (i.e. exalting others and humbling self), then that demonstrates that I understand the situation and that my subsequent argumentation can be considered. Some may not see this as argument because of its formal nature and implicit messages.

Another example from Lebra demonstrates how argumentation works in such public settings. In a 1995 case, a member of the Japanese Diet was accused of breach of trust and embezzlement from two credit unions. His response was to express both “deep apology” (*fukaku owabi*) and his innocence. Lebra argues that his apology was to the public (*seken*), for “having been suspected of a wrongdoing and ‘because of my unworthiness [*futoku*]’ (*Asahi* 12/7/95)”. For Lebra, “to refer to *futoku* in a context such as this is a common practice, allowing one to express modesty or humility and often having nothing to do with guilt or moral offense” (2004, p. 11). Thus, the proper expression of courtesy to the public served as argumentative grounding for his subsequent assertion of innocence.

The communication factors in the private domain are not necessarily that different from what most would expect as private communication in Lebra (1976) refers to intimate communication in terms of things such as confidentiality, spontaneity, and communication of unity. Such things can serve as argumentative

grounds for communication in the private domain. When a person feels that the situation is confidential (otherwise hidden from the public or outsiders) and that what is being expressed is a true reflection of their inner feelings (*honne*), then the proper argumentative ground has been established for subsequent conclusions. Adams, Murata and Orito's (2009) observations on Japanese information privacy on the internet grow out of their belief that the Japanese have always had a strong sense of information privacy (as opposed to privacy of physical spaces or personal body) based on social norms in the past and now on specific legal protections. They use the work of Lebra, Doi and others to draw boundaries between situations involving one's inner group and outer groups. Within that inner domain, the intimacy necessary for interaction is predicated on personal privacy. As a result, they argue that a number of social norms were previously used to insure that confidentiality including the "as-if tradition," "information from nowhere," and "the impossible expression" was present in the private domain, even if there were doubts (2009, p. 339). Thus, the fundamental assumption of privacy or communication addressed to specific, intimate inside group members, serves as the ground for openness to the following elements of argument in private interaction. As they argue, "personal information is revealed on the basis of trust that it will be filtered and some of it passed on to known others within a short transitive span of relationship, but then disseminated no further" (p. 339).

In sum, the case of Japan exemplifies a society where the public and the private realms are seen as separate parts of life. The standards of discourse and standards for judgment used in the public realm would not be used in the private realm and vice versa.

### 5. Conclusions

This exploratory study has inductively demonstrated the utility of the three models for analyzing the role of argument in relationship to the public and private domains of society. From the historical examples, it seems clear that the theoretical nature of each model is an inexact fit to the society and the closer a society gets to a particular model, the more counter-balancing forces will be exhibited. Further historical examples of each model will help to reveal the degree to which tendencies are characteristic of the model and can be used to define the elements of each models.

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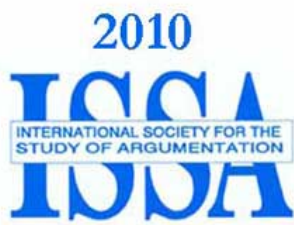
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# **ISSA Proceedings 2010 - Defining “Disruption”: Setting Limits On Student Speech Rights In The United States**



In December of 1965, three public school students - John and Mary Beth Tinker and Christopher Eckhardt - in Des Moines, Iowa, were suspended from school when they wore black armbands express their opposition to the Vietnam War. Although the armbands expressed a legitimate viewpoint on an important political issue, the students were sent home for violating school policy and were not allowed to return to school until they agreed to remove their armbands. Rather than meekly accepting their punishment, the students challenged their suspensions on constitutional grounds. As predicted by many commentators, both the federal district court (*Tinker* 1966)



and the United States Court of Appeals for the Eight Circuit (*Tinker* 1967) ruled in favor of school officials. The United States Supreme Court, however, reversed the lower courts and ruled in favor of the students in *Tinker v. Des Moines Independent Community School District* (1969), a landmark decision recognizing the student's First Amendment rights.

Writing for a 7-to-2 majority, Justice Abe Fortas noted that the armbands were a form of symbolic expression "within the Free Speech Clause of the First Amendment," that such symbolic expression is "closely akin to 'pure speech,'" and that neither students nor teachers "shed their constitutional right to freedom of speech or expression at the school house gate" (*Tinker* 1969, pp. 505-506). Although Justice Fortas believed that student speech should be protected, he also recognized that there were instances in which it might be suppressed. In an effort to delineate these circumstances, Justice Fortas noted that student speech could only be limited by demonstrating that it would "substantially interfere with the work of the school or impinge upon the rights of other students" (*Tinker* 1969, p. 508). Particular attention must be paid, Justice Fortas continued, to distinguish between legitimate regulation of disruptive student speech and efforts to "avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint" (*Tinker* 1969, p. 509). To insure that school officials did not engage in any content-based discrimination, Justice Fortas called on federal judges to independently review the facts and determine whether there was sufficient evidence to justify suppressing student speech.

Since *Tinker* was the first decision to extend speech rights to public school students, it is widely celebrated as a ringing affirmation of the importance of the freedoms guaranteed by the First Amendment to the United States Constitution. According to the majority opinion, students do not relinquish their speech rights when they enter a public school. Over time, however, the bold affirmation of student speech rights in *Tinker* has been undermined. Although the Supreme Court has never overruled or qualified the holding (Miller 2002, p. 640), lower court decisions have effectively reversed the decision. A precedent that was once offered to justify protecting student speech rights is now being invoked to justify limits on student expression.

This analysis treats these interpretations of *Tinker* as an exercise in definitional argument and explores the argumentative moves made in these consequential decisions. By diluting the rigorous definition of "disruption" originally set out by

Justice Fortas, federal courts have endowed school officials with a broad authority to suppress student speech. At the same time, by deferring to school officials all questions related to disruption, these decisions guarantee that the students will fail in their efforts to seek legal regress. This result illustrates the power of definitional argument and, more importantly, provides insight into the tenuous nature of student speech rights.

### *1. About Definitional Argument*

Argumentation theorists have long recognized the importance of definitions. In their influential work, *The New Rhetoric*, Chaim Perelman and Lucie Olbrechts-Tyteca (1969) observed that “the argumentative character of definitions always presents two closely connected aspects which must nevertheless be distinguished, since they deal with two phases of the reasoning; definitions can be supported or validated by argument; they themselves are arguments” (p. 213). Not surprisingly, definitional arguments are particularly common in law, as court cases often hinge on subtle interpretations of the language of statutes or the nuances of legal doctrine.

A complete summary of the work on definitional argument is beyond the scope of this analysis. The intent here is not to add to this literature, but rather to offer a case study illustrating the way in which definitional argument is employed in the ongoing controversy over student speech rights. The definition in play, as noted at the outset, is the meaning of the disruption standard originally set out in *Tinker v. Des Moines*. What is interesting for the purpose of this analysis is that *Tinker* was an easy case. Both parties essentially stipulated that the armbands were not disruptive. This allowed Justice Fortas to introduce a disruption test without explaining how the test might be applied in practice.

As those familiar with American constitutional law know, *Tinker* was one of the last cases decided by the Warren Court. Even before the decision was announced, Chief Justice Earl Warren had announced his retirement. President Lyndon Johnson, a Democrat, nominated his friend and political ally, Associate Justice Fortas, to be the new Chief Justice. Republicans in the Senate blocked the nomination by staging the first filibuster of a Supreme Court nominee. When the motion for cloture failed to achieve the necessary two-third majority, President Johnson withdrew Fortas’s nomination. The next president, Richard Nixon, nominated Judge Warren E. Burger to be Chief Justice and the Senate quickly confirmed him. Justice Fortas remained on the Supreme Court for another year,

but a financial scandal forced him to resign in 1969. Due to appointments made by Republican Presidents, the progressive Warren Court (Horowitz 1998) gave way to the more conservative Burger Court (Blasi 1983), which gave way to an even more conservative Rehnquist Court (Savage 1992). Based on decisions to date, it appears unlikely that the Roberts Court will reverse the trend to the right (Chemmerinsky 2007).

From the vantage point of the present, it is now recognized that *Tinker* was the “high-water” mark for student expression (Chemmerinsky 2004, p. 124). The Supreme Court has not, however, explicitly overruled the *Tinker* decision. With the notable exception of Justice Thomas’s concurring opinion in *Morse v. Frederick* (2007), the Justices have treated *Tinker* with deference for more than forty years. While *Tinker* remains good law, school officials have prevailed in the overwhelming majority of cases involving student speech rights. To achieve this result, judges interpreting *Tinker* have engaged in a form of definitional argument. By making two distinct argumentative moves, these lower court decisions have effectively undermined one of the notable decisions of the Warren Court.

The first of these moves involves the use of “persuasive definitions,” a tactic originally identified by Charles L. Stevenson (1938, 1944). As explained by David Zarefsky (1998), “a persuasive definition is one in which favorable or unfavorable connotations of a given term remain constant but are applied to a different connotation” (p. 7). In the case of student speech, this was done by subtly broadening the definition of disruption from student speech that is actually disruptive to include student speech that is potentially disruptive. This may seem an inconsequential distinction, but it has had dramatic consequences for students who seek relief in federal court. By broadening the definition to include speech that might potentially be disruptive, federal courts made it easier to demonstrate disruption, thereby diluting the constitutional protection that *Tinker* provided to students.

The second move involves the authority to define. While the argumentation literature recognizes “the power to persuade is, in large measure, the power to define” (Zarefsky 1998, p. 1), case studies involving definitional argument often highlight the language being manipulated. While the definitions are important, Edward Schiappa (2001) has encouraged argumentation scholars to think more broadly about the power to define. “Our lives can be profoundly affected by such

decisions,” Schiappa posits, “since the question of who should have the authority to make definitional decisions amounts literally to who has the power to delineate what counts as Real” (p. 26). In the case of student speech, lower court decisions marginalized *Tinker* by broadening the definition of disruption to include anticipation disruption and, at the same time, by delegating the authority to decide whether student speech might be disruptive to school officials. Either move, taken by itself, would arguably have been insufficient to achieve the desired result. In combination, however, these moves make it easy to justify restrictions on student speech or to rationalize the punishment of a broad range of expression.

## 2. *Tinker v. Des Moines Independent School District Revisited*

To illustrate the importance of definition, it is necessary to return to text of the *Tinker* decision. Once he set out the new standard for assessing student speech, Justice Fortas turned his attention to the facts of the case. Since the armbands did not interfere with the “rights of other students to be secure and to be let alone” (*Tinker* 1969, p. 508), the only question was whether the armbands were disruptive. Not surprisingly, the answer to this question was woven throughout the majority opinion. Early on, Justice Fortas noted, “Only a few of the 18,000 students in the school system wore the black armbands. Only five students were suspended for wearing them” (*Tinker* 1969, p. 508). There was, moreover, “no indication that the work of the schools or any class was disrupted. Outside the classrooms, a few students made hostile remarks to the children wearing armbands, but there were no threats or acts of violence on school premises” (*Tinker* 1969, p. 508). To substantiate this claim, the opinion stresses that the “District Court made no such finding, and our independent examination of the record fails to yield evidence that the school authorities had reason to anticipate that the wearing of the armbands would substantially interfere with the work of the school or impinge upon the rights of other students” (*Tinker* 1969, p. 509). To cinch the point, Justice Fortas observed, “Even an official memorandum prepared after the suspension that listed the reasons for the ban on wearing the armbands made no reference to the anticipation of such disruption” (*Tinker* 1969, p. 509).

In the final substantive paragraph of his opinion, Justice Fortas marshals the available evidence to support a definitional claim: “The record does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities,

and no disturbances or disorders on the school premises in fact occurred” (*Tinker* 1969, p. 514). This sentence is significant because it clearly states that only a “substantial disruption” or “material interference” can justify limiting student speech. In the words of Erwin Chemerinsky (1999-2000), “Mere fear of disruption is not enough. The burden is on the school to prove the need for restricting student speech and the standard is a stringent one: there must be proof that the speech would ‘materially and substantially’ disrupt the school” (p. 533).

There have only been three Supreme Court decisions dealing with student speech rights in the forty years since *Tinker* was decided. While each of these cases is important, none offers new insight into the disruption test. In *Hazelwood v. Kuhlmeier* (1988), the Supreme Court considered whether school officials could constitutionally review a student newspaper prior to publication. While the Court ruled in favor of the school, Justice Byron White’s majority opinion neatly distinguished the issue in *Hazelwood* from *Tinker*. According to Justice White, “The question whether the First Amendment requires a school to tolerate particular student speech - the question that we addressed in *Tinker* - is different from the question whether the First Amendment requires a school affirmatively to promote particular student speech” (*Hazelwood* 1988, pp. 270-271). While schools might need to tolerate student armbands, they were under no obligation to provide a platform such as a school newspaper for student speech. School officials “do not offend the First Amendment,” Justice White concluded, “by exercising editorial control over the style and content of speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical purposes” (*Hazelwood* 1988, p. 273).

The other two cases - *Bethel v. Fraser* (1986) and *Morse v. Frederick* (2007) - dealt with student speech more directly. In both cases, however, the Justices resolved the case without invoking *Tinker’s* disruption test. In *Bethel v. Fraser* (1986), the court considered the case of a student who had been suspended for delivering a sexually suggestive speech nominating another student for a position in student government at a school-wide assembly. Although there was some evidence suggesting the speech was disruptive, Chief Justice Warren Burger stressed the role that schools play in inculcating the “habits and manners of civility” (*Bethel* 1986, p. 687). While the armband in *Tinker* dealt with a significant political issue, the speech at issue in *Bethel* was “vulgar and offensive” (*Bethel* 1986, p. 683). All of this led the Chief Justice to conclude that “It was

perfectly appropriate for the school to disassociate itself to make the point to the pupils that vulgar speech is wholly inconsistent with the 'fundamental values' of public education" (*Bethel* 1986, p. 685-686).

More recently, in *Morse v. Frederick* (2007), the Supreme Court considered the case of a Joseph Frederick, a high school student who unfurled a 14-foot-long banner with the words "Bong Hits for Jesus" as he and his classmates watched the "Olympic Torch Relay" pass through the streets of Juneau, Alaska, on its way to the 2002 Winter Olympics in Salt Lake City, Utah. Believing the message was intended to promote illegal drug use, Principal Deborah Morse destroyed the banner and suspended Frederick from school. On appeal, a divided Supreme Court upheld Frederick's suspension while avoiding the question of whether the banner disrupted school activities. Writing for the majority, Chief Justice John Roberts held that "schools make take steps to safeguard those entrusted to their care from speech that can reasonably be regarded as encouraging illegal drug use" (*Morse* 2007, p. 397). While acknowledging that the banner's message was cryptic, the majority nonetheless held that it might reasonably be interpreted as promoting illegal drug use. As such, the Chief Justice concluded, "school officials in this case did not violate the First Amendment by confiscating the pro-drug banner and suspending Frederick" (*Morse* 2007, p. 397).

Taken together, these four Supreme Court decisions create a conceptual framework for dealing with the questions raised by student speech. *Tinker* is the foundation as it holds that student speech is protected so long as it does not interfere with the "rights of other students" or cause a "substantial disruption." Subsequent decisions have narrowed the scope of protection afforded to student speech by exempting speech in school sponsored publications, by exempting speech which is "vulgar and offensive," and by exempting speech that advocates illegal drug use. For all other student speech, however, *Tinker* remains the law of the land. Because of *Tinker*, public school students have a First Amendment right to wear symbols to communicate political messages so long as the speech does not offend the rights of others or disrupt the school activities.

In the four decades since the *Tinker* decision, federal judges have used the framework created by the Supreme Court to decide "literally dozens" of cases involving student speech (Chemerinsky 2000, p. 542). While *Tinker* remains good law, many of these lower court decisions have upheld restrictions on student speech. To justify this result, judges frequently cite *Tinker* as a precedent to

warrant the actions of schools officials. This means that a decision that was originally intended to protect student speech is now being cited to justify limiting student speech. This may seem an implausible result, but it neatly illustrates the power of definitional argument. By changing what counts as disruption and who decides whether student speech is disruptive, these decisions have significantly limited the speech rights of students.

### *3. Diluting the Disruption Standard*

In *Tinker*, the Supreme Court held that student speech could be suppressed if it would “substantially interfere with the work of the school or impinge upon the rights of other students” (*Tinker* 1969, p. 508). Given how little time Justice Fortas devoted to the “rights of others” in his decision, this element of *Tinker* has received little scholarly attention. Douglas Frederick (2007) has gone so far as to suggest that the “rights of others” test was never applied by the Supreme Court and is, therefore, nothing more than dicta by the *Tinker* Court” (p. 492). To date, *Harper v. Poway Unified School District* (9th Cir. 2006) is the only decision in which a federal court used the “rights of others” test to limit student speech (Lau 2007, pp. 366-367). Many decisions invoking the language of *Tinker* do not even mention the rights-of-others exception (Calvert 2008-2009, p. 1182).

While Justice Fortas offered a stirring defense of student speech rights, his opinion does not offer a clear standard for assessing student speech. In one oft-quoted passage, Justice Fortas reasons that speech is protected unless “the forbidden conduct would ‘materially and substantially interfere with the requirements of appropriate discipline in the operation of the school’” (*Tinker* 1969, p. 509). Working with this theme, Justice Fortas uses the following iterations in the pages that followed: “material and substantial interference with schoolwork or discipline” (*Tinker* 1969, p. 511), “materially and substantially interfer[ing] with the requirements of appropriate discipline in the operation of the school” (*Tinker* 1969, p. 513), “materially disrupts classwork or involves substantial disorder” (*Tinker* 1969, p. 513), and “substantial disruption of or material interference with school activities” (*Tinker* 1969, p. 514).

From the outset, scholars like Mark Yudof (1995) recognized that *Tinker*’s disruption test was “treacherous, difficult, and unpredictable” (p. 367). Anne Proffitt Dupre (2009) analogized *Tinker* to a “kaleidoscope” that “changes color and meaning depending on how one looks at it” (p. 23). The ambiguous nature of the test is evident in a series of questions posed by Judge Richard Posner of the

Seventh Circuit Court of Appeals in *Nuxoll v. Indian Prairie School District* (7th Cir. 2008): “What is ‘substantial disruption’? Must it amount to ‘disorder or disturbance’? Must classwork be disrupted and if so how severely?” (p. 674)

Not surprisingly, the ambiguity inherent in the disruption test has led to conflicting interpretations. As originally framed by Justice Fortas, the disruption test protected student speech and required school officials to demonstrate that the speech at issue had materially and substantially interfered with the learning process. An example of the rigorous application of the *Tinker* standard can be found in *Burch v. Barker* (1988), a Ninth Circuit Court of Appeals decision that dealt with a school district policy that required high school students to submit all student-authored content to school officials for review before it could be distributed at school events. When students distributed 350 copies of *Bad Astra* at the senior class barbecue held on school grounds, they were formally reprimanded by the principal who had not previously approved the content of the unauthorized newspaper. The students challenged the principal’s decision as a violation of their First Amendment rights and the Ninth Circuit Court of Appeals ruled in their favor.

To justify this outcome, the Ninth Circuit rigorously applied the standard set out by Justice Fortas. In the words of the court, “*Tinker* cautioned that before deciding that school interference is warranted courts should look to concrete evidence of disturbance or disruption resulting or potentially resulting from specific expression” (*Burch* 1988, p. 1153). Since the decision hinged on the factual question of whether there was actual disruption, the Ninth Circuit took particular care when recounting the evidentiary record. Rather than responding to actual disruption caused by the content of so-called “underground” newspapers, school officials had acted proactively and implemented a prior review policy. This was the very sort of speculative reasoning that originally led the Des Moines School District to ban political protest. To support this claim, the Ninth Circuit cited the passage in *Tinker* where the Supreme Court held the “undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression” (*Burch* 1988, p. 1153, quoting *Tinker* 1969, pp. 508-509). In this case there was, simply put, no proof of actual disruption. If anything, the Ninth Circuit concluded, “this policy [of prepublication review] appears to be based upon far less justification than the action of the school principals in *Tinker*, which was directed as specific expression in an atmosphere



of political turmoil" (*Burch* 1988, p. 1154).

Decisions like *Burch* are, however, an anomaly. In the majority of the student speech cases, lower federal courts have sided with school officials. What is particularly interesting, however, is the way in which these decisions invoke *Tinker* to justify limiting student speech. While the sheer number of cases makes generalizations difficult, most of these decisions feature one of two distinct argumentative moves. The first of these moves is a subtle change in the definition of disruption. In *Tinker*, the Supreme Court required either a "substantial disruption" or some form of "material interference." Rather than rigorously applying this standard, federal courts have ruled in favor of school officials claiming that they acted preemptively to prevent an anticipated disruption.

One early case clearly featuring this definitional move is *Guzick v. Drebus* (6th Cir. 1970). Like the students in *Tinker*, Thomas Guzick, Jr., sought to express his opposition to the Vietnam War. Instead of an armband, Guzick wore a button soliciting participation in an anti-war demonstration to be held in Chicago on April 5, 1969. This sort of advocacy was expressly banned at Shaw High School in East Cleveland, Ohio, which had a longstanding policy that prohibited students from wearing "buttons, badges, scarves, and other means whereby the wearers identify themselves as supports of a cause or bearing messages unrelated to their education" (*Guzick* 1970, p. 596). When Guzick refused to remove his button, he was suspended from school by Principal Drebus until such time as he agreed to abide by the school's policy.

Guzick appealed and, based solely on the factual record, one might expect him to prevail as he was asked to remove the button based solely on the "undifferentiated fear or apprehension of disturbance." The principal acted because of the potential for trouble, not in response to what actually transpired. This was not, however, how the case was ultimately decided. While acknowledging that there was no proof of actual disruption, both the federal district court and the Sixth Circuit Court of Appeals ruled in favor of the principal. To justify this result, both decisions necessarily broadened the definition of disruption. While *Tinker* had cautioned against limiting speech based on the "undifferentiated fear or apprehension of disturbance," the Sixth Circuit concluded that the risk was real because "the wearing of buttons and other emblems and insignia has occasioned substantial disruptive conduct in the past at Shaw High. It is likely to occasion such conduct if permitted henceforth" (*Guzick*

1970, p. 599, quoting *Guzick* 1969, p. 479). The no-symbol rule was imminently reasonable, the Sixth Circuit concluded, because anticipated disruption posed a real risk. In the words of the Court, “Surely those charged with providing a place and atmosphere for educating young Americans should not have to fashion their disciplinary rules only after good order has been at least once demolished” (*Guzick* 1970, p. 600).

At first blush, the distinction between “substantial and material disruption” and the “reasonable expectation” of disruption may appear trivial. Under closer scrutiny, however, it becomes clear that this is meaningful change in the standard for assessing student speech. Justice Fortas wanted proof that the speech caused a substantial and material disruption, not a theory alleging that the speech at issue had the potential to disrupt classroom instruction or school activities. Under such a relaxed standard, Frank LoMonte (2008-2009) complains, *Tinker* is nothing more than an “empty proposition” which holds “that as long as the government acts somewhere in the vicinity of reasonableness, it may freely, without fear of reprisal, regulate the content of student speech” (p. 1324).

The second move does not involve a definition, but rather considers who has the power to define. In *Tinker*, it should be remembered, Justice Fortas used the evidentiary record to demonstrate that there was no disruption. There is, however, a larger constitutional issue. Rather than deferring to school officials, the majority opinion in *Tinker* suggests that judges must carefully review the claims of school officials and independently determine whether there is sufficient evidence to justify suppressing student speech. On this point, C. Thomas Dienes and Annemargaret Connolly (1989) have observed, “the language and spirit of *Tinker* is not judicial avoidance, nor judicial deference under a rationality standard. . . . Instead, the Court demands substantial government justification for the burdens that school officials impose on student speech” (p. 359).

Justice Black’s dissenting opinion in *Tinker* is noteworthy because he claims, “the Court arrogates to itself, rather than to the State’s elected officials charged with running the schools, the decision as to which school disciplinary regulations are ‘reasonable’” (*Tinker* 1969, p. 517). Rather than empowering judges to oversee public schools, Justice Black would willingly defer to the authority of school officials. To do otherwise, he warns, would cause irreparable harm to the educational system: “And I repeat that if the time has come when pupils of state-supported schools, kindergartens, grammar schools, or high schools, can defy and

flout orders of school officials to keep their minds on their own schoolwork, it is the beginning of a new revolutionary era of permissiveness in this country fostered by the judiciary” (*Tinker* 1969, p. 518).

In the discussion of the definition of disruption, it is easy to miss the importance of who has the power to define. According to Justice Fortas, judges should rigorously review claims by school officials that student speech is disruptive. Under the opposing view espoused by Justice Black, courts should generally defer to school officials. While Justice Fortas wrote for the majority, Justice Black’s position has prevailed in subsequent cases involving student speech rights. This shift in thinking is particularly evident in the Supreme Court’s decision *Bethel v. Fraser* (1986), where Chief Justice Burger argued “the determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board” (p. 683). Justice Byron White cited this passage with approval in the majority opinion in *Hazelwood v. Kuhlmeier* (1988). Lower courts have followed this lead while broadening the definition of disruption, essentially guaranteeing victory for school officials in cases that are litigated (Chemerinsky 2004-2005, p. 127).

The significance of the power to define is not lost on the Justices and the deference question is prominently featured in many of the arguments over student speech rights. In his dissenting opinion in *Morse v. Frederick* (2007), for example, Justice John Paul Stevens criticized the majority’s deference to the judgment of a high school principal. To Justice Stevens, “The beliefs of third parties, reasonable or otherwise, have never dictated which messages amount to proscribable advocacy. Indeed, it would be a strange constitutional doctrine that would allow the prohibition of only the narrowest category of speech advocating unlawful conduct, yet would permit a listener’s perceptions to determine which speech deserved constitutional protection” (pp. 441-442). Other commentators have been more pointed in their criticism. Commenting on *Morse*, Mary Rose Papandrea (2007) highlighted the Supreme Court’s willingness to accept school administrators’ reasonable “interpretation of meaning and effect of student expression generally.” Before this decision, Papandrea concludes, “only prison wardens were granted this sort of deference.”

One case that clearly illustrates the deference to school officials is *Poling v. Murphy* (6th Cir. 1989), a case involving a student running for president of the student body at Unicoi County High School, in Erwin, Tennessee. At an all school

assembly prior to the election, Dean Poling delivered a speech in which he challenged his classmates: “If you want to break the iron grip of this school, vote for me for President. I can try to bring back student rights that you have missed and maybe get things that you have always wanted. All you have to do is vote for me, Dean Poling” (*Poling* 1989, p. 759). Not surprisingly, his classmates stood and loudly cheered Poling, much as they responded to appeals from the other candidates.

Principal Ellis Murphy and other officials were upset because the speech included an unflattering reference to the assistant principal. Poling was not suspended, but the principal disqualified him from serving in student government. Since it would have been expensive to create new ballots without Poling’s name, students were informed that any votes cast for Poling would not be tallied. Rather than appealing his disqualification to the school board, the Poling family brought a civil rights action against Murphy and the board of education.

The Sixth Circuit Court of Appeals upheld the decision to disqualify Poling and distinguished between pure student speech (such as Tinker’s armband) and expressive activities (such as school newspapers and assemblies) that are sponsored by the school. What is more interesting, however, is the surprisingly amount of deference that the Sixth Circuit was willing to show to local officials. In the decisive passage, the Sixth Circuit writes: “Local school officials, better attuned than we to the concerns of the parents/taxpayers who employ them, must obviously be accorded wide latitude in choosing which pedagogical values to emphasize, and in choosing the means through which those values are to be promoted. We may disagree with the choices, but unless they are beyond the constitutional pale we have no warrant to interfere with them” (*Poling* 1989, p. 763).

Such deference is arguably as important as the definition of disruption. If courts are unwilling to review decisions made by school officials, student speech will always be disruptive and seldom worthy of First Amendment protection. Taken together, these two definitional moves have undermined the promise implicit in the original *Tinker* decision. Under the current interpretation, the only student speech worthy of constitutional protection is so innocuous that there is absolutely no evidence that would support a reasonable finding of potential disruption. Federal judges are generally content to defer to the judgment of school authorities and have shown little interest in independently reviewing these

decisions.

One way to illustrate the impact of these definitional moves is to consider *Lowry v. Watson Chapel School District* (8th Cir. 2008), one of the few cases in recent years in which students prevailed. This case came about when Chris Lowry, Colton Dougan, and Michael Joseph, protested a mandatory school uniform policy that required students to wear a uniform while in school, on a school bus, or waiting at a bus stop. The policy exempted jewelry such as wristbands, so long as the jewelry did not overlap any part of the uniform. The policy also included a provision declaring that “any attempt to defeat the uniformity intended by this policy is prohibited.”

Several students expressed their opposition to the uniform policy and the way in which it was being enforced by wearing black armbands to school on October 6, 2006. Although the armbands did not cover the uniform, the students were disciplined because school officials believed they were trying to thwart the policy. Citing *Tinker*, the students challenged their suspension. When the case went to trial, the school district admitted that the students were punished because “the black armbands signified disagreement with the student apparel policy” (*Lowry* 2008, p. 757). More significantly, the school district also stipulated that the black armbands caused “no material disruption or substantial interference with the school” (*Lowry* 2008, p. 757).

The similarity between the students in *Lowry* and the students in *Tinker* was not lost on the court. While the school district tried various arguments to distinguish *Tinker*, the 8th Circuit was not persuaded. The court held the distinction between protesting the Vietnam War and the dress code was “immaterial” (*Lowry* 2008, p. 760). So too, the court was not convinced that there was a meaningful distinction between a policy intended to prevent a rumored protest (*Tinker*) and a ban on efforts to undermine uniformity that was adopted before any mention of a protest (*Lowry*). “We hold that *Tinker* is so similar in all constitutionally relevant facts,” the 8th Circuit concluded, “that its holding is dispositive” (*Lowry* 2008, p. 761).

While the student’s armbands were ultimately protected in *Lowry*, the opinion suggests that this is because the facts “nearly mirror *Tinker*” (*Lowry* 2008, p. 759). In the majority of student speech cases, however, the courts ultimately rule in favor of schools. This judgment is substantiated by expert opinion (Chemerinsky 1999-2000, 2004; Nuttall 2008; and Yudof 1995) and by academic

studies (D'Angelo and Zirkel 2008). "Where students won," Nuttall (2008) concludes, "the factual situations tended to resemble *Tinker* closely, to involve other constitutional rights as well, or to make a showing of potential disruption nearly impossible (for example, when the speech occurred away from the school)" (p. 1300). While the reasoning in the individual cases defers, the decisions hinge on the definition of disruption and how much deference is shown to school officials.

#### *4. Definitional Argument and the Future of Student Speech Rights*

If this analysis is correct, the future of student speech rights can only be characterized as dismal. When the case was decided in 1969, *Tinker* was heralded as a great victory for students and for the First Amendment. Over the ensuing decades, however, the precedent has been devalued by a series of lower court decisions that weaken the definition of disruption. At the same time, these decisions show great deference to the judgment of school officials. Because of this development, Chemerinsky laments, the courts have effectively "deconstitutionalized" the First Amendment as it pertains to public school students. (Chemerinsky 2004, p. 127). "The Supreme Court's position has evolved (actually, devolved) so much since 1969," Thomas C. Fischer (1993) concludes, "that *Tinker* has been rendered nearly obsolete, although never explicitly overruled" (p. 1993). The final legacy of *Tinker*, Perry A. Zirkel (2009) warns, will likely be more "symbolic" than "substantial" (p. 602). This explains why, as Chemerinsky (1999-2000) has aptly noted, "thirty years after *Tinker*, students do leave most of their First Amendment rights at the schoolhouse gate" (p. 546).

While scholars may debate the weight that should be given to the speech rights of students, the *Tinker* decision and its progeny remain a fascinating case study illustrating the power of definitional argument. By broadening the definition to include the potential for disruption, federal judges transformed a precedent that protected students into a precedent that can be used to suppress student speech. Writing about the power of such argumentative moves, Edward Schiappa (1993) noted that "a successful new definition changes not only recognizable patterns of behavior, but also our understanding of the world" (pp. 406-407). In this case, the new definition changed schools from a vibrant forum for students to explore new ideas into dour institutions devoted to the indoctrination of the young and the inculcation of a particular set of preferred values. The original definition of disruption offered by Justice Fortas in the majority opinion emphasized the

importance of individual rights, whereas the new definition emphasizes the importance of socialization and conformity valued by Justice Black in his dissenting opinion.

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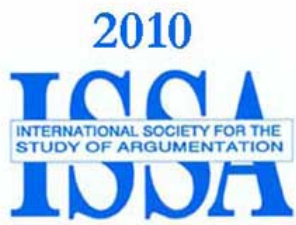
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# ISSA Proceedings 2010 - Reasonableness And Strategic Maneuvering In Cold-War Editorial Argumentation



Over the last 150 years the New York Times, quite arguably the most influential newspaper in the world, has invoked the concept of reasonableness 746, 762 times (not counting adverbial uses, such as reasonably) to describe people and the decisions they make, the objects they construct, the processes they design, and, of course, the arguments they make and have. Turning to the editorial page, the official record of the Times' judgments on the meaning of important political events and their attempts to persuade policymakers how to respond to them, we find 22, 314 invocations of reasonableness. The editorial page's use of reasonableness matters because of its influence on elite decision-making, its significant inter-media agenda setting function, and because it explicitly purports to represent and cultivate a public voice. The Times' editorial page is one of the few self-avowed organs of what John Rawls calls public reason. John B. Oakes, the page's editor from 1956-1977, went as far as defining the "editorial we", the voice of the editorial page and by extension its readers, as nothing short of the "community of the reasonable and responsible." Where Rawls (1996) points to the U.S. Supreme Court as the exemplar of public reason, we point to the Times editorial page. The Times editorial page too gives public reason "vividness and vitality in the public forum," though much more frequently and directly (237). This does not imply the page's attempts to embody public reason are without controversy, far from it. The editorial page is a rhetorical battleground where what counts as public reason, and thus what counts as reasonable, is defined and debated. It speaks as advocate and advisor, interlocutor and instructor.

These 22, 314 invocations of reasonableness are not random. An analysis of the

invocations of reasonableness on the *New York Times* editorial page from 1860 – 2004 reveals that reasonableness has several distinct meanings, modifies a large, but stable, class of referents, and works through a set of image schemata that demonstrate how reason is profoundly conditioned by our bodily experience. The meanings of reasonableness, we found, are flexible but finite. As used in the editorial page the term has four primary meanings: the capacity to and the results of judging in a contextually sensitive, prudent, manner (6% of total uses), the capacity to and results of using sound reasoning and credible evidence to support assertions (24%), the capacity to and the results of making impartial assessments and distributing social goods equitably (24%) and, the capacity to and results of proposing and abiding by fair terms of social cooperation (46%). In relation to meaning, our analysis revealed three important dimensions: First, reasonableness refers to both the capacities of reason and the results of reasoning. Second, the meanings of reasonableness do not change over time as much as the frequencies of particular invocations of the term fluctuate in response to the times. Third, and most importantly, we found that in most of the extended socio-political controversies the editorial page commented on there was more than one of these meanings in play. That is, at the heart of the controversy was a dispute over which of these meanings should prevail. The critical question, then, is not what the meaning of reasonableness is, but, how and why arguers, both at the Times and represented in its pages, come to advocate for one of these particular meanings over another and what are the consequences of that choice. The answers to this question have important implications for argumentation and democratic theory. These include, first, correcting for the omission of the political dimensions of equity and social cooperation in the accounts of reasonableness informing argumentation theory and, secondly, introducing an important critical component to the ideal of public reason (Hicks 2002, 2003, 2007; Hicks, Margesson, & Warrenburg 2006; Hicks and Dunn 2010).

In the present essay we turn our attention to the temporal dimension of the project, focusing on those periods when the invocation of reasonableness significantly peaked and asking how the interpretation of reasonableness responded to and shaped the political events and pressures of those periods. There are two historical periods when the Times' invocations of the concept have peaked. The first is between 1890 and 1919. Over 50% of the uses of reasonableness in the entire population of editorials occurred in this epoch, commonly known as the progressive era. During this period the U.S. underwent a

profound transformation, not only in the physical landscape of the country but, more importantly, through the invention of a distinctively modern, liberal governmentality that had to address the effects of rapid industrialization, the birth of modern transportation, the demands of organized labor, and the spread of U.S. hegemony and imperialism.

The second peak, and our focus here, occurred in the late 1950's. The majority of these editorials address the Cold War, often focusing on the tactics of brinkmanship and the accompanying threats of nuclear war. These Cold War editorials are of particular interest because they depart from other editorials in their depiction of reasonableness. Specifically, they consistently focus on reasonableness as a strategic projection, an image to be crafted, and as a game to be played, albeit with the most serious of consequences. This is not to say that this is the first and only time that a strategic depiction of reasonableness found voice in the Times. But Cold War editorials do so more consistently and with a different emphasis. Rather than using the term to assess some person, argument, demand or amount as reasonable, these editorials portray reasonableness simultaneously as an ethical standard to evaluate the convictions and actions of interlocutors and as a strategic prop to be used by actors in political theater. A close reading of these editorials demonstrates how the meaning of reasonableness itself became the object of strategic maneuvering in the Cold War: The Times and the political actors portrayed in these editorials shifted between strategic and ethical accounts of reasonableness to suit their particular interests, exploiting the duality of reasonableness as capacity and standard to privilege their own views and to condemn the conduct of their interlocutors.

In what follows we show how the higher-order conditions of argumentation, namely the ethical and political commitments underwriting a critical ideal of reasonableness, served as the locus of strategic maneuvering in the editorial argumentation of the New York Times concerning Soviet Premier Nikita Khrushchev's visit to the U.S. in September 1959 and the proposal for the complete disarmament of nuclear weapons he offered during that visit.

Khrushchev was a gifted rhetorician whose strategic maneuvering consistently challenged the Eisenhower administration. Khrushchev used each of the three methods common to strategic maneuvering: shifting the focal point of disagreement to his advantage, building popular support by provoking his audience's fears and appealing to their desires, and presenting his claims in a

visceral language and in a voice that could shift registers effortlessly. By 1959 he had mastered the rhetoric of reasonableness, using its moderate tone, its conciliatory stance, and its collaborative ethos, to back the Eisenhower administration into a series of argumentative dilemmas that threatened to reveal its military vulnerabilities, to cause its allies to doubt its commitments, and to expose its foreign policy as incoherent. To effectively counter Khrushchev meant winning the fight over what it meant to be reasonable. This contest occurred in the pages of the Times.

### *1. Sweet Reasonableness: Strategic Maneuvering and Second-Order Conditions*

From 1955 to 1960 Nikita Khrushchev campaigned to transform the menacing image of the Soviet Union cultivated during Stalin's brutal rule. The goal of the Soviet's new public relations push, launched at the 1955 Geneva conference, was "to destroy the West's stereotype of Soviet leaders as unreasonable, uncompromising monsters who speak only in insults and with whom there is no point in negotiating, since the end of capitalism is their life's ambition" (Geneva: Russian Tactics Analyzed 1955, p.E5). To counter these stereotypes, Khrushchev used Geneva as an opportunity for strategic maneuvering through the exploitation of presentational choice, refashioning the Soviet's foreign affairs rhetoric and the negotiation tactics of its delegates. Absent from the 1955 Geneva conference "were the old ferocious Soviet speeches replete with phrases like 'imperialist warmongers' and 'capitalist cannibals.' Gone too were the isolation and secretiveness of the Soviet delegates" (Geneva: Russian Tactics Analyzed 1955, p. E5). Instead the Soviets adopted a deliberately moderate tone in their statements and their delegates eagerly pursued the spotlight. "This whole complex of conduct," the Times argued, "seemed to be a means of saying we are reasonable men. We are making concessions. If you will make concessions too, we can reach agreement" (Geneva: Russian Tactics Analyzed 1955, p. E5).

Khrushchev's rhetorical campaign continued through the reconvening of the Geneva conference on May 11, 1959. The forty-one days of talk at Geneva failed to produce any binding resolutions other than an agreement to continue meeting. Khrushchev used the impasse as an occasion to call upon what Perelman and Olbrechts-Tyteca (1969) term the locus of the irreparable, proclaiming that the conferences' failure created an urgent need for continued talks, but now with him and Eisenhower present. Eisenhower believed that renewed talks were premature, insisting he would not go to the summit unless there was "reasonable

hope for agreement there," which he regarded as a remote prospect at best (Geneva Again 1959, p. E1). The second round of talks, carried without Eisenhower or Khrushchev present, backfired, escalating the conflict between the two countries over the U.S. military presence in Berlin. Khrushchev, through a series of interviews with former New York Governor Averell Harriman issued an ultimatum to President Eisenhower. Khrushchev was quoted as saying that unless Eisenhower agreed to a settlement in Berlin he would "act unilaterally and terminate our rights himself." Harriman also quoted Khrushchev as saying that: "Your generals talk of maintaining your position in Berlin with force. This is a bluff. If you send in tanks they will burn and make no mistake about it. If you want war you can have it, but remember it will be your war. Our rockets will fire automatically. In the event of fighting your troops would be swallowed up in a single gulp" (Geneva Again 1959, p.E1). Soviet First Deputy Premier Frol Kozlov echoed this hard line and issued an 18-month deadline for the withdrawal of U.S. forces. Eisenhower immediately denounced Khrushchev's ultimatum as irresponsible, citing it as evidence that despite his public appearance Khrushchev was unreasonable. Eisenhower also quickly reassured Germany that the U.S. military commitment was an "an immovable stone" (Geneva Again 1959, p.E1).

In what turned out to be a brilliant rhetorical maneuver, Khrushchev directed Soviet Foreign Prime Minister Andrei Gromyko to issue a statement that his conversation with Governor Harriman had been misinterpreted; he had made no threat nor should the 18-month deadline be understood as a precursor to force. Khrushchev then argued that this misunderstanding, and its potentially grave consequences, made a face-to-face meeting between him and Eisenhower imperative. Khrushchev suggested that only a visit by each leader to the other's country, along with a summit meeting between them, could correct this misunderstanding. In essence, Khrushchev claimed that the Cold War was motivated by a profound lack of understanding that could only be remedied by increased contact. This appeal was effective, especially among the British who joined him in a call for a summit. While Eisenhower stood firm in his insistence that any meeting between himself and Khrushchev be preceded by discernable progress on the Berlin issue, he was undermined by the State Department, who, heavily influenced by British pressure, issued an invitation to Khrushchev for a ten-day tour of the United States that would culminate in a summit to be held at Camp David (The Great Ike-Nikita Mystery 1993, p.28).

The news of Khrushchev's impending visit ignited a firestorm of editorial argumentation in the Times; the most potent being written by Henry Kissinger. Kissinger (1959) argued that U.S. foreign policy's overreliance on nuclear deterrence forced every decision to be weighed in terms of the risk of total annihilation, making us more likely to waver in our convictions. This vacillation would be exploited by Khrushchev, whose strategy, Kissinger argued, was to communicate with each of the Western powers independently, accentuating their disunity to negotiate a series of concessions from each that would further empower the Soviet Union. The New York Times echoed Kissinger's fears. The Times forwarded concerns - attributed to unnamed high-level U.S. diplomats - that Khrushchev would use the summit to back Eisenhower into a rhetorical corner. Summits, by their very nature, demand that the parties either reach a fruitful resolution or end in failure. There is a tremendous pressure on the heads of government to make concessions, even if they are imprudent, to avoid being culpable for a summit's failure. Exploiting this pressure, the Times argued, was precisely Khrushchev's strategy. By continually proclaiming the Soviets' desire to reach a reasonable agreement - while simultaneously making no real concessions and issuing demands that U.S. would never satisfy - Khrushchev could appear as "reasonableness itself," claiming that despite his best efforts, the U.S. refused to negotiate in good faith. The U.S. would appear as the unreasonable aggressor determined to fan the flames of war.

The predictions that Khrushchev would continue to cast his intentions within the rhetoric of reasonableness were correct. On the eve of his talks with Eisenhower, Khrushchev made a "fervent appeal for a reasonable approach" at Camp David. "May God give us the strength," he said to a large and supportive audience at the University of Pittsburgh, "to solve matters by reason and not force. That is what the people are expecting from us" (Khrushchev Open Talks with Eisenhower Today, 1959, p.1). The intelligence, wit and affability Khrushchev displayed in his press conferences and encounters with American citizens embodied reasonableness, dispelling the caricatures of him as a "communist devil" painted by anti-communist ideologues (Windt, 1971). The fears that Khrushchev would use reasonableness as a means for cornering Eisenhower on Berlin, were, however, misplaced. Rather than trying to force a specific agreement on Berlin, Khrushchev "readily dropped his ultimatum after only two days of talks" (Windt, 1971, p. 15). Instead he upped the ante, proposing complete disarmament. We will discuss this proposal and the strategic maneuvering it engendered in the next

section. But first let's attend to the forms of strategic maneuvering his "fervent appeal" for reasonableness motivated.

Eisenhower faced a delicate argumentative task at Camp David. If the U.S. negotiated specific settlements it could send the European alliance the message that major decisions were being made without their consent. Not only could this appearance of indifference further strain relations within the alliance, it could also signal that the United States' commitment to extend its nuclear umbrella was wavering. Either of these interpretations could, as Kissinger warned, be exploited to the Soviets' advantage. If, on the other hand, the U.S. refused to offer or entertain specific proposals, trading only in generalities, the moral ground would be ceded to the Soviets. The inability to make or meet specific demands, particularly in the context of Khrushchev's show of reasonableness, would surely confuse the American citizenry, perhaps shaking their convictions in the moral superiority of the United States. More damaging yet would be the inevitable attributions of unreasonableness. By appearing to be unwilling to propose or defend a standpoint, the responsibility for breaking the summit would fall squarely on Eisenhower's shoulders. Khrushchev had made it clear that he would not hesitate in blaming Eisenhower for the continuation of the Cold War. And once successfully framed as unreasonable aggressors the U.S. could find it virtually impossible to defend its growing investments in Latin America and Southeast Asia as legitimate attempts to curb communist expansion.

Given the disastrous consequences of appearing as belligerent and unreasonable, the Eisenhower administration had to maneuver out of Khrushchev's argumentative trap. We can discern the outlines of their rhetorical strategy by analyzing the arguments made by administration officials in the New York Times, which were often echoed on the editorial page. This strategy proceeded in three steps: representing Khrushchev's reasonableness as just a political performance, contrasting this image of reasonableness with the true ideological conviction motivating Soviet political behavior, and, finally, to claim that the discrepancy between Khrushchev's projection of reasonableness and his real convictions made it clear that the summit should be treated as nothing more than a public relations front in the Cold War.

First, reasonableness was consistently described as a strategic rhetorical performance and often marked as an affectation. For instance, in the July 19<sup>th</sup>

article "Drift to the Summit Marked by Confusion," the Times echoes the sentiment of anti-communists who were convinced that Khrushchev would put "up a tremendous show of peaceableness, reasonableness, and respectability at the summit as a smokescreen for the eventual ejection of the West from Berlin" (Schmidt, 1959, p.E3). The use of performative terms like show, image, display, appearance, and illusion to modify reasonableness is prevalent throughout the Times editorial argumentation. Reasonableness is also described in affective terms, such as tone, attitude, and emotional expression. Take for example the editorial "Mikoyan Talks with Nixon," where the Soviet minister's reasonableness is "reflected" in "his smile and attitude." That article invokes the most common way of casting reasonableness in affective terms: "sweet reasonableness." Matthew Arnold popularized this phrase in his exegesis of Paul's petition in Second Corinthians: "I beseech you by the mildness and gentleness of Christ." The Greek word, which the King James Bible translates as gentleness, *epieikeia*, means more properly, Arnold argued, reasonableness with sweetness, or sweet reasonableness (Arnold 2010, p.207). One who is sweetly reasonable has a disposition defined by generosity, goodwill, magnanimity, and clemency towards the faults of others, a disposition at odds with popular representations of the Soviets, in general, and extended to Khrushchev, in particular. The Times indictment of Khrushchev's appeals to reasonableness worked through a simple dissociative strategy: Khrushchev's performance of "sweet reasonableness" was an illusion; his real motivation was to increase Soviet power.

Second, Khrushchev was portrayed as an ideologue, who despite his proclamations of reasonableness remained convinced of Communism's superiority. Take, for instance, Salvador de Madariaga's, the former ambassador of Spain to the U.S., influential essay in the Times magazine which claimed that "On Mr. Khrushchev's own showing, indeed on his own words, his position is incompatible with that of every reasonable man in the West. The Soviet Union is out to bury capitalism, i.e. liberal democracy. We are therefore in the presence of an irreconcilable struggle of sovereign wills" (de Madariaga 1959, p.SM17). Even a relative moderate like Harrison Salisbury, a Times correspondent who respected Khrushchev and was deeply familiar with Soviet life, suggested that the meetings would most likely be unproductive because Khrushchev was "proceeding on the firm assumption that the Soviet economic and social system will prove itself more productive than that of the United States. He is a convinced, if somewhat unorthodox Marxist" (Khrushchev's Russia - 8, 1959, p.E1). The



presupposition common to de Madariaga's and Salisbury's arguments, despite their political differences, was that reasonableness is threatened by unwavering conviction. Reasonableness, on this view, demands ideological flexibility, a mind that is not so committed to its own account of the truth that it fails to see the truth in the other's standpoint. Conviction of the wrong kind, either too intense or too sequestered, is the mark of an unreasonable person. Khrushchev, it was routinely argued in the Times and elsewhere, was unreasonable because of the intensity of his conviction, displayed in his speeches and his service as one of Stalin's lieutenants. The conceit of these arguments is that liberalism, always defined as concomitant with capitalism, is inherently reasonable because it allows for deliberation and choice, while communism subsists on dogmatic zeal.

Third, once Khrushchev was rendered unreasonable, all that was necessary was to remind the reader that to the communist negotiation was a weapon. Armed with the knowledge that the summit was a battle in the ongoing propaganda war, rather than a genuine negotiation, the goals of the summit could be redefined in purely strategic terms. Strategically maneuvering through defining the type of argumentative activity being used, and, therefore, the normative standards of assessment proper to that type, the Times routinely quoted Eisenhower and his administration trying to lower expectations of the summit, downgrading the possibility of successfully negotiating any binding agreements and suggesting that the most that could be hoped for was the relaxation of tension and perhaps laying the groundwork for future meetings (Geneva Again 1959 p.E1).

This three-prong strategy was designed to demonstrate that the second-order conditions of argumentation were absent, thereby making the negotiations illegitimate. Second-order conditions refer to an advocates cognitive and psychological ability to engage in critical discussion, or genuine negotiations, aiming for rational resolution and, more importantly, are committed to embodying a "reasonable discussion attitude" when encountering their interlocutors (van Eemeren, Houtlosser, & Snoeck Henkemans 2008, p.478). If Khrushchev's ideological convictions were so intense as to blind him to the obvious economic and political superiority of liberal-capitalism, then his blindness was more the product of constant exposure to Soviet propaganda than any inherent personal defect. Such a characterization was a rhetorical move that squared his obvious intelligence with his presumed dogmatism, rendering him incapable of engaging in genuine argumentation. Because these second-order conditions of

argumentation were lacking, the burdens of reciprocity and good will associated with reasonableness were lifted. This left the U.S. free to enter the summit in “bad faith,” just as it accused the Soviets of doing, treating the summit as an exercise in propaganda and using the talks as an opportunity to discover weakness in their interlocutor’s position that could be exploited at a future date.

The goal of the Eisenhower administration’s strategic maneuvering was to circumvent the argumentative dilemma contained in Khrushchev’s calls for reasonableness: How can advocates project reasonableness without signaling retreat, or even the willingness to retreat, from any of their prior commitments? The administration’s strategy utilized the press as a platform to argue that their interlocutor’s calls were a mirage, and therefore, the subsequent negotiations were an illusion, albeit an illusion absolutely necessary for maintaining peace.

## *2. Disarmament and Distrust: Strategic Maneuvering and Third-Order Conditions.*

On September 18, 1959, the second day of Khrushchev’s visit, he augmented his calls for reasonableness with a bold proposal for complete nuclear disarmament. Now Eisenhower had an even more vexing question of how to respond to this grand proposal without appearing to be unreasonable, or justifying Khrushchev’s claims that the U.S. was the unreasonable aggressor sustaining the Cold War. This would require more strategic maneuvering.

Khrushchev caught the Eisenhower administration completely off guard. In a speech given to a large, supportive audience at the University of Pittsburgh, Khrushchev “called for ‘general and complete’ disarmament in four years” (Soft & Hard 1960, p.E1). The speech envisioned a nuclear free world where the U.S. and the Soviet Union lived as “good neighbors.” Khrushchev told the crowd about his “dream” of a “day when all of the arms would be sent to the open hearth furnaces to be melted down for peaceful uses, when the atom was only used for peace and when the sword is beaten into ploughshares” (Salisbury 1959, p.14). This was a deft strategic maneuver. Not only did Khrushchev use this proposal to maneuver topically, revising the anticipated disagreement space constituting the upcoming Camp David summit – the U.S. military presence in Berlin and its implications for German reunification – he reconstituted the audience and their demands, radically increasing the moral constituency that the Eisenhower administration had to address. By making his appeal directly to the American citizenry, rather than to diplomatic officials behind closed doors, Khrushchev sought to create the appearance of an ethical gap between the public and the administration.

Khrushchev drove a wedge between the populace and the government, ratcheting up domestic pressure on the Eisenhower administration in the run up to a contentious US election. On September 19<sup>th</sup>, in a speech given at the Ritz-Carlton Hotel in New York, Khrushchev remarked that he was overwhelmed by the American people's desire for peace, a desire at odds with how they were represented by their government. The U.S. people, he claimed, were both friendly and peaceful, whereas the U.S. "government still had to prove" that it truly desired peace (Salisbury 1959, p.14). This bifurcation between the desires of the people and of the State was a prominent theme in the speeches he gave during his trip. With each call for disarmament, Khrushchev sought to distance the people from their President, suggesting that Eisenhower was misappropriating his popular support, attempting to brandish it as weapon in the coming talks and turn the talks into a "bull contest." Eisenhower risked turning the Camp David talks, Khrushchev warned, into a contest to see "who was more stubborn, who had the stronger legs and the longer horns and would shift the other from his position" (Salisbury 1959, p.14). In essence, Khrushchev argued that the American people were reasonable, but their leader was not.

This tactic incensed the Eisenhower administration. They were backed into another argumentative dilemma. How could they reject an offer of complete disarmament and still appear to the world as reasonable? How could they appear to entertain Khrushchev's proposal without appearing to waver in their commitments to extend the nuclear umbrella to their NATO allies? Again their response was to focus on the meaning of reasonableness itself. And again it was the editorial page of the Times that provided the platform for doing so.

Khrushchev's proposal was immediately portrayed as disingenuous. A "thinly disguised piece of demagogic propaganda," was how it was described by Salvador de Madariaga, (de Madariaga 1959, p.SM17). Times correspondent Harry Schwartz declared that Khrushchev was attempting to sell himself as "the apostle of peace and disarmament to the masses" (Schwartz 1960, p.E3). The editorial page claimed that "the spectacular but fraudulent Soviet disarmament plans are essentially propaganda devices to exploit mankind's hopes and fears and they cannot be met by pleas of reasoning, but only by equally dramatized but honest proposals that will persuade the world"(Reply to Khrushchev 1960, p.24).

The public relations battle, the Times editorial page contended, needed to be

fought through redefining what it means to be reasonable. This, rather than mere platitudes of good will, the Times argued, entails “an assumption of reciprocal reasonableness or sincerity” (Reply to Khrushchev 1960, p.24). Circumventing the dilemma posed by Khrushchev’s proposal required more than a smear campaign. It was necessary to forward a counterproposal that would conclusively demonstrate the “revolutionary mind’s” inability to reciprocate and prove that Khrushchev was insincere. The Western counterproposal differed from the Soviet’s plan by offering “phased and safeguarded agreements” (The News of the Week in Review 1960, p.E1). The counterproposal involved a system of strict controls and verification protocols, a series of safeguards the Times and the Eisenhower administration were confident that the Russians would fail to “even consider” (Soft and Hard 1960, p.E1). The U.S. proposal held that “in the first stage, nations would notify the IDO of proposed space launchings. In the second stage, the use of space vehicles for nuclear weapons would be banned, the production of fissionable materials for weapons would halt and nuclear stockpiles would be reduced. In the third stage, nuclear weapons and military missiles would be eliminated” (The News of the Week in Review 1960, p.E1). At each stage each country would have the right to use inspections to verify that the other had complied with the terms of the agreement. In contrast, the “Soviet plan postpones any action on nuclear disarmament until the third stage when, within one year, all nuclear weapons and missiles would be abolished” (The News of the Week in Review, 1960 p.E1) and lacked verification provisions. The discrepancy between the two proposals, in particular the Soviet’s plan to delay the destruction of their weaponry until the U.S. had decreased its military presence in Europe, made it clear that Khrushchev had no real intention to follow through on his proposal. In short, the counterproposal exposed Khrushchev’s intention of using the proposal as a strategic maneuver to push the U.S. out of Berlin before reneging on his promise to disarm.

The effectiveness of this strategy depended on the Times redefinition of reasonableness as reciprocity and sincerity, both components of the social cooperation meaning. If Khrushchev rejected the counterproposal, refusing a series of inspections to verify that the terms of the agreement were satisfied, the U.S. had legitimate grounds to treat his proposal as mere propaganda. This characterization worked in tandem with the strategy of claiming that Khrushchev’s calls for reasonableness were an illusion and insufficient to satisfy the second-order conditions of argumentation. But the counterproposal went

further, demonstrating that the third-order conditions of argument were missing. Third-order conditions refer to the “external conditions” that “need to be fulfilled to conduct a critical discussion properly.” They “pertain . . . to the power or authority relations between the participants” and how those relations of power define the discussion situation (van Eemeren, Houtlosser, & Snoeck Henkemans 2008, p.478). These conditions include the presence of a social and political environment conducive to critical discussion to manage differences of opinion and the use of genuine negotiation to allocate risk and responsibility. There are minimum political thresholds of freedom, autonomy, and equality necessary to rely on critical discussion as a mode of conflict resolution. There are also affective thresholds, such a trust, confidence, and openness that must also be met to ensure critical argumentation proceeds properly. Neither the political nor the affective thresholds could be met because the two nations did not trust each other enough to generate and secure the requisite commitments underwriting a proposal to abolish nuclear weapons. Moreover, the Soviets were unwilling to abide by the terms needed to construct an environment of global governance capable of enforcing those commitments. Without such a system of global governance, any proposal that did not provide the means of generating and securing “reciprocal reasonableness,” could be tagged as utopian, fraudulent, or both. In short, the way out of the dilemma Khrushchev’s offer presented was to show that the socio-political environment was too fragile, or too hostile, to ensure that it would be carried out. Hence, for the Times, the Eisenhower administration’s refusal to take the proposal seriously was seen as reasonable and its refusal to entertain the idea of a world without nuclear weapons was taken as prudent.

### *3. Conclusion*

The rhetorical battle between Eisenhower and Khrushchev played out in the Times has the potential to extend our understanding of the relationship between strategic maneuvering and reasonableness. Khrushchev’s strategic maneuvering embodied the three primary tactics identified by van Eemeren and Houtlosser (2001): exploiting topic potential to frame the issue in contention to one’s advantage, adapting one’s argument to the fears and desires of the audience, and enhancing the presentational force of one’s argument. The U.S. response, however, did not stay within these three parameters. Instead, the editorial argumentation in the Times consisted of a complex set of strategic maneuvers that revolved around claims that the higher order conditions of argumentation

were absent.

The first of these maneuvers argued that Khrushchev's calls for reasonableness were a performance that was belied by the intensity of his ideological convictions and, therefore, should be taken as an elaborate ruse. This move was designed to show that the second-order condition of argumentation, the ethical disposition needed for critical reasonableness, was absent. Ironically, the Times did not argue that what was necessary was a genuine show of reasonableness, or that the U.S. embodied the ethical dispositions required for it. What the Times left ambiguous was whether or not reasonableness within the context of international relations could be anything other than a performance, whether or not reasonableness itself could serve as a genuine ethical standard for assessing the actions of the two superpowers.

The second strategic maneuver claimed Khrushchev's grand proposal for disarmament could be exposed as unreasonable, if a strategic counterproposal could show that, when pressed, Khrushchev would refuse the ethical obligation of reciprocity. This move was designed to show that the third-order conditions of argumentation, the social and political environment of mutual interdependence and trust argumentation demands, were absent. The irony is the U.S. had no expectation that its counterproposal would be taken seriously, and the Times made it clear that the Eisenhower administration would not want it to be accepted, as they too would refuse to live with the verification protocols the counterproposal set out.

Should these ironies lead us to conclude that these strategic maneuvers were derailments of critical discussion or did they expose the real limitations of Khrushchev's claims, and therefore, work as effective tactics in the confrontation stage of the negotiations? The answer lies in whether or not Khrushchev's calls for reasonableness—for the negotiations to be modeled on fair terms of social cooperation and the goodwill necessary to enact them—are taken as sincere or insincere. The Times clearly judged Khrushchev's call for reasonableness and the disarmament proposal it engendered as insincere. But on what grounds besides the portrayal of Khrushchev and his colleagues as unreasonable—an unreasonableness that was not the product of any particular action or personal trait but an allegiance to a rival ideology?

While we can't say that the Times' assumption was mistaken, that Khrushchev

was indeed sincere. We can say that the Times Cold War editorials clearly express an ideology that saw argumentation, at least in international relations, as nothing more or less than a weapon in an ongoing propaganda war. The Times shared George Keenan's view that Soviet power is "impervious to logic of reason, and it is highly sensitive to the logic of force" (1947, §5, ¶1). This view effectively renders critical discussion moot; Khrushchev's arguments and proposals were prejudged as empty rhetoric in the service of power. But what if Khrushchev's call for reasonableness and his proposal for disarmament was not simply a ploy to expose U.S. military vulnerabilities, but an attempt to create an opening for genuine negotiation? Of course, he would have had to maneuver carefully to ensure that he did not tip his hand and set off alarms within the hard-liners in his own government. He would have to strategically use the U.S. press to pressure Eisenhower to meet with him personally and in private. And he would have to hope in that meeting both he and Eisenhower would have the opportunity to correct their misunderstandings and to build trust, restoring the higher-order conditions of argument essential to forging a lasting peace. Of course, this is our conjecture. But it may not be ours alone. Secretary of State Christian Herter invited Khrushchev to Camp David in spite of Eisenhower's clearly stated opposition. Herter knew Eisenhower would be furious, but was persuaded by British intelligence reports that Khrushchev sincerely wanted to pursue disarmament, despite the forces in his own government that refused to even consider it (The Great Ike-Nikita Mystery 1993, p. 28). For those laboring under the ideological assumption animating the Times Cold War editorials, however, this possibility was simply inconceivable; an assumption that is, itself, clearly unreasonable.

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# ISSA Proceedings 2010 - “I Have Like A Message From God” - The Rhetorical Situation And Persuasive Strategies In Revival Rhetoric



## 1. Nokia Missio

*Nokia Missio* is a Christian revival movement that began in the Lutheran church in Nokia, Finland, after the charismatic awakening of the vicar, Markku Koivisto, in 1991. He began to hold revival meetings that featured intense praise and prayer and the use of spiritual gifts, such as speaking in tongues and healing through prayer. This was in considerable contrast to traditional Lutheran meetings (Juntunen 2007; Pihkala 2007; Nokia Missio n.d.). Soon, tensions arose between the Nokia revival and the rest of the Lutheran congregation. Koivisto then founded *Nokia Missio*, a registered association, but remained a minister of the Evangelical-Lutheran Church.

The bishop of Tampere repeatedly called the practise and theology of Koivisto in question (Pihkala 2007 & 2006; Koivisto 2007; Aro-Heinilä 2006, pp. 130-131). With *Nokia Missio* the discussion about the place of charismatic Christianity within the Lutheran church reached an acute stage (Laato 2001, p. 1). It should be noted that, for most Finns, Christianity is known in its Lutheran and non-charismatic form (97 % of those who belong to a religious group or church in Finland, belong to the Evangelical-Lutheran Church; Väestö n.d.; Uskonto Suomessa n.d.).

Finally, Koivisto announced his resignation from the Lutheran church altogether

and founded a new church alongside the Nokia Missio association. *The Nokia Missio Church* started in August 2008 (Nokia Missio, n.d.; Nokia Missio perustaa uuden kirkon, 2008).

Since 2003, meetings have been held in a multipurpose arena in Tampere. In 2005, the activities have expanded also to elsewhere in Finland. The meetings are visited by members of different denominations as well as by members of the Lutheran church (Nokia Missio, n.d.; Hovi 2009).

No research has yet focused on the rhetoric of this movement (*Karismaattisuuden haaste kirkolle* 2007; Hovi 2009; Riihimäki 2009). Since the rhetoric of *Nokia Missio* differs remarkably from what Finns are accustomed to regarding religious speech, it is an interesting object of analysis. It would seem that the rhetoric is a part of the movement's success. I here present an initial analysis in order to shed light on the rhetoric at play.

## *2. The Revival Meetings of Nokia Missio*

The analysed material consists of all publicly available audio recordings from the revival meetings in Tampere of the first year of the *Nokia Missio Church* (Seurakunnassa puhuttuja saarnoja n.d.; Äänitallenteet, n.d.).

Based on the recordings, the meetings of *Nokia Missio Church* (hereafter *NMC*) usually follow this broad pattern: (1) an introductory part; (2) the main sermon; and (3) a concluding part (with music and prayer).

I focus on the introductory part, which usually comprises the following elements, the internal order of which varies from meeting to meeting (the order of the individual parts is not important - I only wish to give an overall impression of the content of these meetings): (a) words of welcome; (b) announcements; (c) worship-session; (d) testimonials; (e) words to the audience, "divine speech"; (f) worship-session; and (g) collection sermon. These elements are often present, although not in every meeting or in the same form (e.g., in meetings with a Holy Communion, the introductory part differs both in structure and in tone, cf. 10.8, 21.9, 5.10, 9.11.08).

Worship often flows together with prayer, song, words to the audience, and testimonials. "Praise" refers to song of praise including declarations of faith in God. "Words" refer to words from God, "divine speech" that the speaker understands to be mediated from God through the Holy Spirit and the speaker.

I exclude the part that usually receives most consideration when Christian persuasive verbal communication is in focus: the main sermon. I hypothesise that the introductory section may be of similar importance as the main sermon and therefore warrants an analysis on its own. Even though the main instructional content of the evening is presented through the sermon, the introductory section performs two important functions. First, it sets the stage, as it were, by focusing the evening on basic tenets of Christian life such as it is understood within *NMC*. This is clearly beneficial for the subsequent sermon, but also, second, the introductory section offers a variety of stimuli that on their own can have a substantial impact on the attendees.

I venture to assume that, for many attendees, the introductory part of the evening may determine whether they will experience emotional or cognitive change during the meeting.

### *3. The Rhetorical Situation*

I take my departure from Lloyd Bitzer's groundbreaking article (1968) on the rhetorical situation. Bitzer writes that rhetorical "discourse comes into existence because of some specific condition or situation which invites utterance", and he defines *the rhetorical situation* as follows (p. 6): "a complex of persons, events, objects, and relations presenting an actual or potential exigence which can be completely or partially removed if discourse, introduced into the situation, can so constrain human decision or action as to bring about the significant modification of the exigence."

Some situations present some kind of defect, challenge, or problem, which calls for a change or treatment, as it were. If this change can be started or partially or completely be realised through speech, we have a rhetorical situation. As Bitzer puts it, communication gets a rhetorical meaning in a similar way as an answer is born as a reaction to a question.

The rhetorical situation has three components: *exigence*, *audience*, and *constraints*. Bitzer describes *exigence* as "an imperfection marked by urgency; it is a defect, an obstacle, something waiting to be done, a thing which is other than it should be" (p. 6). This imperfection creates a need for rhetoric.

The rhetorical situation requires an *audience*. According to Bitzer, a rhetorical audience consists of people who (a) can be influenced to think or act in a certain way, (b) who have the possibility, and (c) the will to create the change that can correct the problem.

The third element concerns *constraints*. This includes such elements of the situation that, “have the power to constrain decision and action needed to modify the exigence”, such as beliefs, attitudes, traditions, etc., that stand in the way of the audience responding properly to the exigence (p. 8).

Bitzer (pp. 12-13) describes a four-stage life cycle of the rhetorical situation: beginning, maturity, decay, and resolution, as follows.

*Beginning*. The rhetorical situation arises when a problem surfaces. The situation cannot develop further until there is an audience and rhetorical prerequisites are present. At this stage, the speaker needs to make the target-group aware of the problem.

*Maturity*. When the problem, the audience, and the circumstances are in a favourable constellation to each other, the situation is mature. The audience is aware of the problem and sensitive to the rhetorical response of the speaker. A rhetorical situation may, however, be more or less complex, and can be weakened in several ways, for example because of two or more simultaneous rhetorical situations that compete for attention, or because the audience is scattered.

*Decay*. When the situation develops further, it may become partly solved or more difficult to influence, perhaps because (a) people have formed their opinion about the situation or because (b) the interest for the matter has diminished.

*Resolution*. The rhetorical situation is resolved or disappears either since the problem no longer can be corrected (rhetorically) or because the problem has been dealt with, corrected, or for some other reason has ceased to exist.

Bitzer’s original article sparked a discussion about the rhetorical situation. Miller (1970) argued that the speaker has a greater creative space than Bitzer’s theory allows for. Vatz (1973) argued that situations are rhetorical, not the other way around, that the rhetoric controls the response of the situation by creating and defining the situation. These criticisms are still pertinent.

Incomplete as it may be, Bitzer’s theory is widely used. It helps in understanding some important prerequisites for persuading an audience. Although persuasion research has shown that numerous additional variables are at play in the persuasion process (see, e.g., Hart & Daughton 2005), Bitzer’s approach can be satisfactory for certain types of analyses. To keep my analysis focused and to maintain a specifically verbal-rhetorical perspective, I find that Bitzer’s theory provides a good starting-point.

The material does, however, invite many other kinds of approaches as well and, where useful, I will complement Bitzer's approach with a few observations taken from Classical rhetoric, modern psychology, and speech communication.

#### *4. Analysis*

##### *4.1 Introduction*

As I go through the introductory part of the meetings, all spoken parts are analysed except for announcements and the collection sermon. The collection sermon certainly contains persuasive moves, but it would better be analysed as a type of sermon.

*NMC* has edited the recordings slightly by deletions. The lengths of the recordings indicate that in most cases only little of the spoken portions of the evening has been deleted. The average length of a recording is 1h 25m.

After an overview of the situation of the audience, I advance in the order typical for the meetings: words of welcome, praise and prayer, testimonials, and divine speech. Throughout I focus on the rhetorical situation and its life cycle in relationship with the audience.

##### *4.2 Overview of the Situation of the Audience*

Along with actual members, each meeting is visited by a diverse group of people. This is considered by the organisers who at times address those who do not yet believe as this church does (e.g. 2.11.08, 6m 56s, "flee you who do not yet know Jesus ... change your course tonight").

It is unlikely that those very critical to the church would attend, but rather the attendees' relationship with *NMC* ranges from curious guests to steadfast supporters. The starting point is rhetorically favourable: the members of the audience have chosen to attend. Consequently, the audience fulfils Bitzer's first condition for a rhetorical audience, that it is possible to influence it. Since the change in question is a change of opinion, values, lifestyle, etc., it is in principle possible to achieve the desired effect also, the second condition for a rhetorical audience.

Without a will to change, the third condition, a rhetorical address cannot effect change. The first task is thus to remove this constraint by awakening and strengthening the will to change. I here want to use the idea of the life cycle of a rhetorical situation as a template for the rhetorical situation from the point of view of different categories of attendees.

From this perspective, some of the participants can be placed at the beginning of

the life cycle of a rhetorical situation, others at the mature stage. Regarding the third and fourth stages, the rhetorical situation never decays, nor is it resolved. Those who decide that this church no longer interests them, no longer attend the meetings. For those who continue to attend, the situation is never truly resolved since fortification of one's faith and growth in Christian life are lifelong processes. Thus, the rhetorical exigency can be upheld indefinitely. Bitzer (1968, pp. 12-13) notes that some texts speak to us because they speak to situations which persist and that are in some measure universal, and mentions as examples Socrates' apology and the Gettysburg Address.

We can, then, assume to find the following four groups of attendees that require three different rhetorical strategies in order to be reached effectively.

(a) Non-believers, who only have a slight or temporary interest in the meetings (e.g. accompanying a friend). This is presumably a very small group. Here the rhetorical strategy needs to be to make the exigence clear. In other words, the speaker needs to let a rhetorical situation arise. According to Bitzer (1968, p. 2), however, "it is the situation which calls the discourse into existence", not the other way around. Should we, then, understand the situation so that these non-believers are at the very beginning of a rhetorical situation, that they do have a problem but are not aware of it? Or is it, contrary to Bitzer's theory, possible to give rise to a rhetorical situation through speech? I would suggest the latter, but with the comment that it is much more difficult to create an exigence than to respond to one.

We could consider that we here deal with a foundational type of problem: man's place in the world, God, and existential questions shared by many. In this light, the rhetorical situation can be understood to exist even though one is not actively aware of it. By addressing this group of attendees, it may from one perspective seem as though the problem is brought about by rhetorical address, but from another perspective the address only makes a dormant problem clear. In fact, Bitzer allows for a rhetorical situation to consist of elements that make up "an actual or potential exigence" (p. 6).

To complicate matters further, one could argue that the problem created in a revival setting is what Bitzer calls a sophistic rhetorical situation, one that is not real or genuine in the sense that a critical examination cannot certify its existence. A sophistic rhetorical situation can be the result of error or ignorance, or fantasy, in which exigence and constraints are "the imaginary objects of a mind

at play” (p. 11). However, if the exigence can be made to seem real for the attendees, this distinction becomes rather academic.

(b) Non-believers who have a personal interest in what *NMC* can offer, perhaps due to some spiritual need that makes them receptive to a gospel of salvation. If one can connect this exigence with a salvation-existential message, the rhetorical situation can be made acute and steer the listeners towards a mature rhetorical situation, and to conversion.

(c) Believers, who do not live the type of charismatic life of revival of *NMC*, but who are more or less interested in it. Also here the rhetorical strategy first needs to focus on making the exigence clear, not regarding conversion as for groups *a-b*, but regarding the need for a charismatic life.

(d) Charismatic revival Christians, who belong to *NMC* or a similar group. Here the rhetorical strategy needs to focus on upholding the rhetorical situation by focusing on spiritual development, commitment, etc.

Consequently, the challenge for the speaker is twofold: (a) to make the exigence clear, and (b) to move listeners from the beginning to a mature state of the rhetorical situation. Regardless of when the exigence first arises, during a revival meeting the speaker exerts considerable influence and can make the listener clearly aware of a problem, in Bitzer’s words, of “an imperfection ... a thing which is other than it should be”. Here the problem is the need for salvation and conversion is the answer. The final goal, however, for all groups, is to advance into group *d* (cf. 23.11.08, from 11m 9s).

Although these groups can be seen as being on different stages in the life cycle of a complex rhetorical situation, it is more precise to view them as being in four different rhetorical situations, each with its own exigencies and constraints. If one views these as four different, less complex, rhetorical situations, it is easier to describe the various elements that affect each group, as I have done above. This would, then, in part help explain why only some participants are (presumably) effectively met each meeting: it is because two or more simultaneous rhetorical situations weaken a situation (Bitzer 1968, p. 12).

#### *4.3 Persuasive Moves in Words of Welcome*

In the transcripts I have indicated certain features, simplified from Seppänen (1997), for example the following:

*now* - emphasis

OPEN UP - spoken loudly

>never< - spoken more rapidly

<yes> - spoken more slowly

\$happy\$ - passage said smiling

@love@ - a change of tone of voice; explanation within double parentheses

((3s)) - approximate length of pause

I have not converted the speech into normal sentences (e.g. no capitals are used, with the exception of "I"). The examples are my translations of my transcripts from the audio recordings in Finnish.

In the words of welcome of the first meeting after the summer-break of 2008 we find several persuasive moves.

(1) how many of you, have been *looking* forward to these evenings? ((1s)) *I* have waited all summer and I have ((1s)) already had a taste ... as this our revival through finland tour has begun and ... today we are here ... and ((2s)) it's been absolutely *amazing* already and I believe that today, today god meets us here god's *presence* is already ((1s)) in this place. I'll read ... ((reads Psalm 135)) @hallelujah! praise the name of the lord ... @ let's here stand up ((music starts to play)) and let's ... give the *best* to god ... ((raises his voice)) father thank you for being in this place ... thank you that ... you *speak* to us ... today is the day of *salvation* and of *healing* and ... good things will happen to us (10.8.08, 0m 10s-3m 9s)

The persuasive technique used here is typical of the words of welcome. The main objective is to arouse a sense of expectation (this is clear during the first few minutes of the majority of meetings, e.g. 10.8, 7.9, 5.10, 7.12.08 and 11.1, 22.2, 5.4, 31.5, 14.6.09).

First, the speaker testifies that he has awaited these meetings. As a role model he indicates the ideal: expectation. Then, indirect greetings from the ongoing revival tour set a background; it has already been "wonderful".

The speaker declares that God will meet the attendees. This may trigger a wish to sense what the speaker seems to be sensing. The expectation of change is a recurring element in the meetings (cf. also 18.1.09, 1m 15s, "lord we expect you to change us today lord appear! ... change in our lives those things that need to be put right").

The passage from Scripture exhorts the hearers to praise the lord and the command to rise activates the attendees: they cannot only observe from the outside, participating as spectators, but they should all stand in worship of God.



Praise is far more than singing: the attendees are in the presence of God, where God can be revealed and even healings can take place (cf. 11.1.09, 2m 32s: “I hope that also you have a feeling of expectation, as I do ... that during worship god will heal the sick”; 16.11.08, 1m 30s).

Before the singing starts, the speaker focuses on the presence of God and sets forth a Christian ideal with a life filled with joy, salvation, and healing, and anticipates “good things for us” this evening. The prayer is in itself a mini-sermon or testimonial.

During the first few minutes of the evening we see an attempt to trigger expectations and deep emotions among the attendees. This gives the meeting an intensive start and corresponds well with the classical rhetorical goal of the *exordium* to raise the audience’s interest (*Ad Her.* I.6-7; *Inst.* IV.1.5). This interest may, however, not be without tension: such a strong beginning can create an exigence. It is unlikely that all members of the audience can identify with the intensively devoted charismatic output by the speaker. This can cause emotional tension, which in turn gives the speaker an opportunity to show the way towards a fuller life with God.

In the worship-session that follows, the expectations and keywords mentioned in the beginning are reinforced and carried forward through the lyrics of the songs and in-between comments by the worship-leader. For example, one speaker explains how the lyrics of a song help to expect that, “heaven draws close tonight”, and as the music begins, his voice is filled with emotion and he almost starts to weep (31.8.08, 4m 8s-6m 53s); or ecstasy can be mimicked through speech, music, non-lyric singing, and chanting (16.11.08, to 2m 59s); or music, speaking in tongues, blowing, and shouting can be combined in a suggestive manner (15.2.09, from 7m 9s).

The chapter of Tampere commented critically that the meetings are designed so that religious ecstasy results (Aro-Heinilä 2006, p. 147). The material is certainly a rich source for an analysis of *actio* - the delivery - even though we only have one component, the voice, available. This indicates the richness of the performance in rhetorical terms. Aristotle considered the voice to be the prime element regarding delivery (*Rhet.* III.1.4).

At the beginning of another meeting we find similar features, “>we experienced something *wonderful* and *strange* never before \$experienced\$ he he the presence of god’s *spirit* and *anointment*< ... OPEN up your hearts and receive from god ...

>he wants to give ALSO TO YOU<” (5.4.09). Here the speaker testifies that she experienced wonderful things and indicates that the same can happen now, and tries to engage the attendees.

The speaker wants the attendees to feel the presence of God (cf. also 19.4.09, 1m 25s, “he fills you with the spirit now ((2s)) the holy spirit blows ((1s)) over all of this great crowd”; and 7.12.08, 1m 45s).

On many occasions, the speaker amplifies expectations by conveying an impression that the specific meeting is unique. This is well illustrated in the following passage where Koivisto speaks just before his sermon: “let us all ... pr..pray along with this song ((2s)) that that *here today and now* IS NOT AN *ORDINARY* night but *a night where the word of god* becomes alive” (11.1.09, 14m 1s). The formulations about a special night are typical (cf. 25.1.09, 2m 30s).

In summary, the main objective of the words of welcome is to arouse a sense of expectation of “good things” during the evening, specifically a meeting with God. This is achieved by activating the attendees physically and emotionally through (a) a positive message; (b) claims that this particular meeting is unique; (c) appeals to the attendees to participate wholeheartedly, with open minds; and (d) through a varied use of voice in the delivery (*actio*). This last technique is important throughout the evening.

#### 4.4 Persuasive Moves in Praise and Prayer

In the following, a man presents the worship-session at the beginning of a meeting, after which a woman continues with a prayer of thanksgiving.

(2) >receive wh..that which god wants to give (you) during the worship< ... ((praying, with stronger voice; worship-music plays)) ... you can remove all those bonds that people have ... you will crush all hindrances from the road towards that your name would become exalted ... we want to *hand* over at this moment also all those friends ... save them ... ((a woman continues, emotionally)) ... lord, we like want to believe in you. we want to *choose*, I *choose* to believe in you (1.2.09, 0m 13s-2m 2s)

The man underlines that God wants to give something to the attendees and he encourages them to receive it. They are repeatedly reminded not to be passive listeners. In the prayer we have what could be called a manipulative prayer, that is to say speech that formally is a prayer but contains material that seems to fulfil the combined function of prayer, teaching, and emotional suggestion of the audience (see also example 1). An important indication of this is the dominance of

statements of belief (e.g. “you can remove all those bonds that people have”) over requests and thanksgiving.

Since the audience is at least formally joining in this prayer, the speaker becomes the mouthpiece for the congregation. Considering the context, the music, and the group dynamics of many people gathered together and standing in front of a stage with a religious authority addressing God, it is easy to be drawn into joining the prayer also on a deeper level. Through the prayer, the attendees may come to acknowledge the statements of belief and of intent verbalised by the speaker.

In this way, the prayer-leader can “smuggle in” certain beliefs, wishes, goals, and so on into the consciousness of the congregation, as described by the group of theories known as dual processing (see also the beginning of 21.9, 2.11, 16.11.08, and 18.1.09). According to these theories, there are two different modes of processing, one unconscious, rapid, automatic, and high capacity, and one conscious, slow, and deliberative. The first tends to be intuitive, stimulus bound, and impulsive, whereas the other is analytic and reflective (Evans 2008, pp. 256-257).

By creating a mode of reception that is experience-based rather than cognitive-deliberative, it may be possible to reach some hearers more effectively. Through this technique it may even be possible to increase the resolve to embrace the goals and beliefs of the movement among those who rationally would not do so otherwise. It can also increase the expectations concerning the rest of the evening, for example regarding the main sermon, divine speech, and healing.

The speaker also formulates the thoughts presumably of those who lack certainty (i.e. *ethopoeia*, the rhetorical simulation of living character in discourse, in particular to understand or to portray the feelings of the character): “lord, we like want to believe ... I *choose* to believe in you.” The purpose seems to be to act as a mediator on behalf of those who need a push into faith, so to speak, by putting herself in their position.

In summary, praise and prayer is mainly used in order to create a mode of reception that is experience-based rather than cognitive-deliberative. The use of music is crucial in order to engage the attendees physically and emotionally. This makes it possible to smuggle in certain beliefs, goals, and so on into the consciousness of the attendees by bypassing the critical cognitive sift. During worship and prayer the speaker functions as a mouthpiece for the whole congregation, drawing it into the prayer, indirectly committing the attendees to

the contents of it.

#### 4.5 Persuasive Moves in Testimonials

Examples are a powerful inspiration and have a prominent place in revival meetings. By providing paragons of the ideal, the speakers facilitate an emulation of this ideal.

The following excerpts (3.1-6) are from the meeting 5.4.09, which begins with claims about the time we live in.

(3.1) god appears forcefully. and now is not only the time to give one's life to jesus if you don't know god but also the time to *be lit* with god's fire ... to *burn* for the lord (0m 0s-3m 19s)

If carried away by the *pathos* of the speaker, the listener can share the experience of a special time in history. The participants may suddenly feel that the situation projected is real and that God's acts are upon them. A rhetorical situation can thus be carried from beginning to maturity through rhetoric itself. It can be heard from the reactions of the audience that the mood is in fact rising.

After the opening-words, testimonials of God's work follow. The soft background-music that at times rises to a crescendo supports the impression of miraculous events. The effect of the auditive stimulus of rhythm and harmony should not be underestimated: it is a vital part in creating a certain air of spirituality and God-presence.

(3.2) ((reads text)) @*thank* you lord,@ someone has written on the web, @today I found *faith*.@ ... thank you lord, that also today is such a night when *your* life (- -) this night who does not *know* jesus ... today could be *li*.. ((stronger voice)) the eh best day of your LIFE (4m 20s-5m 11s)

Against the background of others who have "found faith", the speaker suggests that now could be the night when those who do not "know jesus" find faith as others have before them.

Some of the "works of the Lord" are fairly mundane: a lease for an apartment and a new job. These testimonials testify to the all-encompassing scope of spiritual life (cf. 5.4.09, 5m 23s). During an evening of "testimonials and prayer" (19.10.08) the organiser even made up a list beforehand with headings under which those wishing to testify could register, such as, "how God has guided in getting a place of study".

The meeting continues with acts of physical healing.

(3.3) a woman who suffered from serious cancer ... radiation treatments for the tumour in her abdomen had not been effective. >as a physician I would say that if that kind of radiation treatment is taken in the abdomen for a long time then it is < *palliative* ... there was nothing to be done. she got this prayer cloth. ((1s)) the other day the patient went to a check-up ... and <*the tumour had disappeared without a trace*>... *PRAISE BE TO GOD!* ... *FATHER WE EXPECT ALSO TODAY GREAT DEEDS* ... *NOTHING* is impossible (6m 13s-8m 17s)

Here an extraordinary healing is used as a backdrop for increasing the intensity of the thanksgiving. "Great deeds" are expected also today, "nothing is impossible" for God. The message is emphasised by *genus grande*. Since this modus is rarely used by speakers in Finnish society it generates an emotional response even regardless of content (cf. *Speech Culture in Finland* 2009, Ch. 1). Sharp exclamation is discouraged by the classics (*Ad Her.* III.11.22). Note also the ethically questionable argument of authority, where a physician at least indirectly uses her authority to confirm the miracle.

In summary, testimonials provide paragons of the ideal, *exempla* for God's work in the lives of individuals. One type of testimonial relates to conversion and leads up to the idea that this very night could be the night when non-believers find faith as others have before them. Another type of testimonial illustrates how all aspects of life are governed by faith. A third type substantiates the belief that God heals physical ailments.

The testimonials are also used to manipulate the mood of the evening. By effectuate use of background-music, in combination with fantastic testimonials and the use of *genus grande*, the mood of the meetings rise, leading up to the feeling that "nothing is impossible" (see also 14.9.08, 16m 32s-21m 28s; and 30.11.08, 11m 5s-17m 10s).

#### *4.6 Persuasive Moves in Words to the Audience, "Divine Speech"*

The following words to the audience should be understood against the belief that a person with the proper gifts of the Spirit (*1 Cor.* 12-14) can receive "words of knowledge" and the power of healing. Since the mood of the meeting from the previous (example 3.1-3) is already intense, it is easier to accept that such gifts are at play than the case would be in a more serene service.

(3.4) ((background-music softens; Koivisto speaks gently)) ... came to my mind that *today* there are are many individuals that god mee..mee..touches by the area of the abdomen ((4s)) a..and you feel already *now* ((4s)) that that the *ailment* that

you have had there ((2s)) there comes already *now* relief and the *pain* leaves at this moment ... there are *also* these eeh these *cancer* growths. and *today* in the name of jesus ... know and ALSO *FEEL* that it disappears the tumour. (9m 11s-9m 55s)

The passage exhibits three typical traits for this kind of divine speech. First, the person or persons targeted are defined by describing how they feel or think and what their problem is. These kinds of descriptions typically contain both vague and specific details. Second, some kind of promise or hope of healing is proclaimed. Koivisto even goes so far as to saying that the pain leaves, “at this moment” (the declaration of instantaneous healings is critically noted by the chapter of Tampere; Aro-Heinilä 2006, p. 147).

Third, the style is remarkably soft and almost tentative. This gives the impression that the speaker is “listening in” the situation through the Spirit. Lowering one’s voice is another example of *actio*, here underlining the importance of what is said.

The next passage exhibits another gift of the Spirit: prophecy. The recipient of the message is not specified. It can be received by whoever who feels that it speaks to him or her.

(3.5) as god’s, holy spirit is poured >we will become< a *crossroad*-people ... a country where *sound* and *light* become one >and ... god ope..has opened< his heaven ... I felt that god wants today to give <*your* voice the harmony of clarity there where *you* go.> ((loudly)) ... not just *your* words but ... *powerful*, and they cause healings when you pray for the sick, and they cause conversions (11m 41s-12m 58s)

The speaker indicates that God will make something special out of the Finnish people and that God will speak powerful words through “your” mouth. The syntax in this passage is erroneous and several phrases lack a coherent meaning. We seem to have *aposiopesis* at a few places (see also example 3.4). Combined with the use of abstruse symbols and, again, *genus grande*, the speaker conveys a sense of exceptionality and urgency.

How different groups are taken into account is exemplified during the same meeting when Koivisto address the elderly:

(3.6) I have like a *message* from god ((1s)) that ... suddenly ... it is just arranged that you’ll have new friends, new contact, perhaps some..someone young or some..someone kind of younger anyway who *comes* to see you and *helps*. today god has <heard your prayer> (11m 41s-12m 58s)

Koivisto promises that their prayers have been heard and that these people will get new friends. This is a hazardous rhetorical strategy: the message is comforting, but unless carried through in real life, will cause disappointment.

Sometimes the speaker combines several types of speech, such as tuition, evangelising appeal, and divine speech (e.g. 5.4.09, 14m 16s-16m 55s). By pushing many buttons, the speaker can address many levels of thought and emotion at the same time. Combined with an intimate address, the speaker can give the impression that he (and God) knows and reaches out to the hearer personally, as in phrases like these: “dare today. surrounded by god’s love to encounter also what’s in your innermost ... you get ... forgiveness” (15m 40s).

In summary, divine speech is predominantly of three types: promises or proclamations of physical or emotional healing, prophecies, and words of knowledge. Regarding healing, the promises vary from a promise of instantaneous healing “now” to the beginning of a process of healing. The prophetic words are often visions regarding how things or people will change according to God’s plan (e.g. 23.11.08, 1m 11s).

The recipients of words from God are defined by describing how they feel or think and what their problem is (*ethopoeia*), at times quite intimately. In the case of physical ailments, the description typically contains both vague and specific details. Second, some kind of promise is proclaimed. The speakers do not shrink from promising instantaneous physical changes and improvements in the life-situation of the hearers.

The style is soft and almost tentative, giving the impression that the speaker is “listening in” what God wants to say or do. Lowering once voice underlines the importance of what is being said.

## 5. Conclusion

It is easy to understand why the public interest regarding the Nokia revival has been most unusual. Any theological aspects aside, even just a rhetorical analysis of these meetings raises questions regarding the ethical integrity of the movement.

My analysis gives plausible confirmation to the hypothesis that the introductory part of the evening plays a key role regarding how the attendees are affected during meetings (only a field-survey could confirm this with certainty).

Using Bitzer’s idea of the life cycle of a rhetorical situation as a template for different categories of attendees, I have described the strategies needed for four

different rhetorical situations, each with its own exigencies and constraints. Briefly put, the speaker needs to (a) make the exigence clear, and (b) move listeners from the beginning to a mature state of the rhetorical situation.

I have above summarized the analyses of four different types of spoken material in the introductory part of the meetings. Briefly put, change is effectuated in several ways and through several channels, pushing different emotional-experiential and pre-deliberative buttons. Together with the main sermon, which was not taken into account here, it is understandable how the meetings of *NMC* can attract certain types of attendees and effectuate change in their lives.

Throughout the meetings, *actio* stands out as the dominant feature alongside the dramatic content of what is said. The speakers exhibit a most varied use of voice and the performance is amplified with background-music and song. During proclamations the speakers often reach *genus grande*, speaking with an abundance of assurance whereas they during divine speech often lower their voice and speak softly and tentatively. A varied use of voice is in line with the ideal that a speech should delight (*delectare*).

The most striking feature of the meetings of *NMC* is the intensity - the almost tangible emotional experience -, which is apparent even just from audio recordings. This could not have been achieved without the use of various rhetorical techniques and persuasive strategies.

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