ISSA Proceedings 2014 – The Role Of Pragmatic Argumentation Referring To Consequences, Goals And Values In The Justification Of Judicial Decisions

Abstract: In this contribution I discuss the role of pragmatic argumentation referring to consequences, goals and values in complex structures of legal justification. From a pragma-dialectical perspective I describe the stereotypical patterns of legal justification in hard cases and specify the different ways in which these stereotypical patterns can be implemented in different contexts in which judges give a decision that they justify by referring to consequences, goals and values.

Keywords: argumentation, argumentation from consequences, goal argumentation, legal argumentation, legal values, justification of legal decisions, pragmatic argumentation, pragma-dialectics.

1. *Introduction*

In the justification of their decisions it is not uncommon for courts to use pragmatic argumentation in which they refer to the consequences of applying a legal rule in a specific case. In a 'hard case' in which the applicability of the rule is controversial, courts may argue that the consequences of applying the rule in the standard meaning would be 'absurd' in light of the purpose of the rule. An example of the use of pragmatic argumentation referring to undesirable or 'absurd' consequences in such a hard case can be found in the decision from the US Supreme Court in the famous case of *Holy Trinity Church v. US* (143 U.S. 457) from February 29, 1892.**[i]** In this case the Supreme Court had to decide whether or not the act prohibiting the importation of foreigners and aliens under contract to 'perform labour' in the United States (chapter 164, 23 St. p. 332) was applicable to an English Christian minister who had come to the United States to enter into service of the Protestant Episcopal Holy Trinity Church in the city of New York as rector and pastor.

According to the United States and the circuit judge the church was in error because the contract was forbidden by chapter 164, 23, St. P. 332, according to which it is 'unlawful for any person to assist or encourage in any way the importation or migration of any alien or foreigner into the United States to perform labour or service of any kind'. The opinion of the Supreme Court, delivered by justice Brewer, is that this immigration statute should, in the concrete case, not be applied to the act of the church, although the act is within the letter of this section (paragraph II). Brewer states that application in the broad meaning would have an absurd result, that is that the contracts for the employment for ministers, rectors and pastors would be included in the penal provisions of the act. He argues that the congress never had in mind any purpose of prohibiting 'the coming into the U.S. of ministers of the gospel'. He maintains that the meaning of a statute can be found in the evil which it is designed to remedy, in this case the practice of large capitalists who contracted their agents abroad for the shipment of great numbers of 'an ignorant and servile class of foreign labourers' under contracts by which the employer agreed to prepay their passage and the labourers agreed to work after their arrival for a certain time at a low rate of wages.

In its decision, apart from a reference to the system of the law and the historical context of the legislation, the U.S. Supreme Court uses argumentation referring to the absurd consequences of applying the rule in the standard broad meaning:

a consideration of the whole legislation, or of the circumstances surrounding its enactment, or of the absurd results which follow from giving such broad meaning to the words, make it unreasonable to believe that the legislator intended to include the particular act.

In its evaluation of the consequences the court refers to the purpose of the rule, that is to prevent the influx of cheap labour under contracts with poor conditions, as it can be reconstructed from the intention of the legislator in the parliamentary discussion that can be found in the reports of the committees and the congressional records. On the basis of this purpose, the court is of the opinion that the consequences would be absurd because they are not in line with what the legislator intended with the rule.

In a legal context such argumentation referring to the consequences of applying a rule in a specific case, in argumentation theory also called pragmatic

argumentation, plays an important role because the application of legal rules requires the consideration of the consequences of the application in light of the purpose of the rule.**[ii]** Especially in hard cases in which applicability of the rule is controversial, it is not uncommon that courts refer to the consequences of application of the rule in a particular meaning or interpretation in light of the purpose of the rule as it was intended by the legislator. In the justification of the U.S. Supreme Court in its decision of the *Holy Trinity Church* case we see some characteristics of the use of pragmatic argumentation in legal justification that I want to discuss here. The first is that pragmatic argumentation is used in a particular kind of difference of opinion, a so called 'hard case' in which there is a difference of opinion about the applicability of a legal rule. The standpoints in such a difference of opinion concern the applicability of the legal rule in different meanings or interpretations. The second is that in such a hard case pragmatic argumentation always forms part of a complex argumentation. The pragmatic argumentation is supported by other argumentation in which the (un)desirability of certain consequences is related to the purpose of the rule as intended by the legislator. Such a support is necessary because legal rules are a means to achieve certain purposes that are desirable from a legal, social, economic perspective. In the law, for this reason, the desirability of the consequences of application of the rule in the specific case must be evaluated from the perspective of the purpose of the rule.

In what follows, I go into the stereotypical patterns of complex argumentation in which *pragmatic argumentation* is used in the context of legal justification in hard cases. I shall discuss the implementation of pragmatic argumentation in stereotypical patterns of complex argumentation in legal justification. I explain the dialectical function of the different parts of the complex argumentation by characterizing them as argumentative moves that are put forward in reaction to certain forms of critique. Then, I give an exemplary analysis and explain the way in which the U.S. Supreme Court in the Holy Trinity *case* uses pragmatic argumentation by showing how the court instantiates general stereotypical patterns of argumentative moves in light of the institutional preconditions of the justification in the context of the specific case. I have chosen this case as an example because it is one of the few cases in which the U.S. Supreme Court makes an exception to the standard meaning of a statutory rule. For this reason it gives an extended justification in which it uses a combination of different forms of argument, among which pragmatic argumentation referring to the consequences

of the application of the rule in light of the purpose as it was intended by the legislator.

2. *The implementation of pragmatic argumentation in legal justification as part of a stereotypical pattern of argumentation*

In order to clarify the way in which pragmatic argumentation is implemented in the context of legal justification in a hard case I proceed as follows. I explain the dialectical function of the different parts of the justification in terms of argumentative moves that are put forward in reaction to certain forms of critique that are relevant from a legal perspective. I explain how the argumentative moves in which the judge reacts to these forms of critique can be reconstructed as different levels in the argumentation and how the hierarchical ordering of these different levels results in a stereotypical pattern of argumentation.

2.1 *The argumentation on the first level of the main argumentation: pragmatic argumentation*

A court that refers to the consequences of applying a rule in a particular interpretation uses argumentation that can be reconstructed as pragmatic argumentation, of which the legal implementation can be specified as follows in order to do justice to the the dialectical obligations of a judge.**[iii]**

1 In the concrete case, rule R should be applied in interpretation R' (with an exception for the specific case)

1.1a In the concrete case, application of rule R in interpretation R' leads to result Y'

1.1b Result Y' is desirable from a legal point of view

(1.1a-1.1b' If in the concrete case application of rule R in interpretation R' leads to result Y' and if result Y' is desirable, then rule R should be applied in interpretation R')

Scheme 1: Implementation of the general scheme of pragmatic argumentation in the context of legal justification

In a hard case in which there is a difference of opinion about the correct interpretation of the rule, in pragma-dialectical terms the argumentation is put forward in the context of a *mixed dispute* in which one party argues that a particular rule R should be applied in the concrete case in a specific interpretation R' and the other party argues that this rule should be applied in another interpretation R".**[iv]** This implies that the main argumentation, the

argumentation on the first level, should reflect the choice between the rival points of view of the parties in dispute and should therefore reflect the balancing of the two positions on the basis of desirable and undesirable consequences (Y'and Y"). In scheme 2 the different components of the complex argumentation on the level of the main argumentation are represented:

1 In the concrete case, rule R should be applied in interpretation R' (with an exception for the specific case) and not in interpretation R" (without an exception)

1.1a In the concrete case, application of rule R in interpretation R' leads to result Y'
1.1b Result Y' is desirable from a legal point of view

1.1c In the concrete case, application of rule R in interpretation R" leads to result Y"
1.1d Result Y" is undesirable from a legal point of view
(1.1a-1.1d' In the concrete case, if application of rule R in interpretation R' leads to Y', and Y' is desirable from a legal point of view, and if application of rule R in interpretation R" leads to Y", and Y" is undesirable from a legal point of view, then rule R should be applied in interpretation R')

Scheme 2: Pragmatic argumentation in the complex argumentation on level 1: the main argumentation in legal justification in a hard case
In scheme 2 the arguments 1.1a and 1.1b form an implementation of the positive variant of pragmatic argumentation and the arguments 1.1c and 1.1d of the negative variant, the positive variant serves to defend the part of the standpoint that the rule must be applied in interpretation R', and the negative variant serves to defend the part of the standpoint that the rule must not be applied in interpretation R". The complementing argument in which the weighing or preference is made explicit can be reconstructed as 1.1a-1.1d'.**[v]**

2.2 *The argumentation on the second and third level of the subordinate argumentation*
A judge who puts forward pragmatic argumentation has a dialectical burden of proof for answering the critical question why result Y'/Y" is (un)desirable from a legal point of view. Since legal rules can be considered as a means to attain certain goals that are desirable from a legal, social, or economic perspective, in

the law the desirability or undesirability (absurdity) of a particular result is evaluated in light of the goal of the rule.

The goal of the rule can be based on the explicit intention of the historical legislator as it can be found in legislative documents, etcetera (which is called a *subjective teleological* interpretation of the meaning of the rule). The court can refer also to what is called the 'objective goal' of the rule as envisaged by a 'rational legislator', as it can be reconstructed on the basis of the rationale of the rule in the context of the law as a whole (which is called an *objective teleological* interpretation of the meaning of the rule).**[vi]**

To justify that the consequences are acceptable/unacceptable from a legal perspective, therefore in the justification a second level of subordinate argumentation should be distinguished that reflects the supporting argumentation justifying the (un)desirability of the consequences in relation to the purpose or goal of the rule that can be reconstructed as an answer to the critical question. In legal theory this argumentation that refers to the goal or purpose is often characterized as argumentation from coherence with certain legal purposes, goals, policies, principles and values.**[vii]** In pragma-dialectical terms, it can be characterized as a specific form of *symptomatic* argumentation that is provided in support of the normative argument 1.1b. It is stated that the result Y' has a particular property that makes it desirable from a particular perspective that is relevant in that context. Here, in the justification of argument 1.1b, the symptomatic argument forms a justification of the positive evaluation of the result Y' in argument 1.1b. In this case the fact that result Y' is compatible with a particular purpose P (that is intended by the legislator) is considered as a property that makes that result Y' can be considered as desirable from a legal point of view (and for the justification of 1.1d a similar argument justifying the undesirability of Y").

On the basis of this characterization the argumentation on level 2 of the subordinate argumentation can be reconstructed as follows:

1.1b Result Y' is desirable from a legal point of view
1.1b.1a Result Y' is compatible with purpose or goal P
1.1b.1b Purpose P is desirable from a legal point of view
1.1b.1b.1 Purpose P is intended by the legislator/Purpose P is a rational purpose objectively prescribed by the valid legal order

1.1d Result Y" is undesirable from a legal point of view
1.1d.1a Result Y" is incompatible with purpose or goal P
1.1d.1b Purpose P is desirable from a legal point of view
1.1d.1b.1 Purpose P is intended by the legislator/Purpose P is a rational purpose objectively prescribed by the valid legal order

Scheme 3: The argumentation on level 2 of the subordinate argumentation
The argument 1.1b.1b/1.1d.1b, in its turn, can be questioned. This requires a further justification that provides an answer to the critical question in relation to this argument. Depending on whether a judge has referred to the purpose intended by the historical legislator (and thus opting for a *subjective teleological* interpretation of the rule) or the rational purpose objectively prescribed by the valid legal order (and thus opting for an *objective teleological* interpretation of the rule), in his supporting argumentation he will have to put forward different arguments.

To justify the compatibility with the intention of the historical legislator, the judge will have to refer to documents, such as parliamentary discussions, in which this intention is mentioned.**[viii]** To justify the compatibility with the intention of a rational legislator, the judge will have to refer to goals, principles and values underlying the rule that constitute the ratio legis, the rationale or purpose of the rule.**[ix]** The argumentative pattern on the level of this argumentation can be reconstructed as follows:

1.1b.1b Purpose or goal P is intended by the legislator/a rational goal objectively prescribed by the valid legal order
1.1b.1b.1 Purpose or goal P can be found in the following legal documents (….)/ Purpose or goal P is underlying the following rules, principles and values of the valid legal order (…)

Scheme 5: Argumentation on level 3 of the subsubordinate argumentation as an answer to further critical questions
In the preceding sections I have explained the stereotypical patterns of argumentation of which pragmatic argumentation forms part in legal justification. With this reconstruction I have clarified the dialectical obligations of a judge who justifies his decision in a hard case by referring to consequences of application of the rule in the specific case. These dialectical obligations define the dialectically relevant moves in the justification of legal decisions in a hard case: they prescribe

the elements of the justification that are necessary from the perspective of the dialectical role of the judge to account for the different decisions and choices that have to be made in the discussion process.**[x]**

These dialectical obligations make explicit the potential forms of critique that the judge will have to react to in a satisfactory way in order for his justification to be acceptable from a legal perspective. To clarify these dialectical obligations I have translated his legal obligations in terms of the answers that he will have to give to the different critical questions that can be asked in relation to the different argumentation schemes that form part of his argumentation on the different levels of the argumentation. In this way it has become clear that the judge will have to react to several kinds of critical question.

3. *Exemplary analysis of the use of pragmatic argumentation referring to consequences in light of the purpose of the rule in legal justification*

To show how courts may use pragmatic argumentation, and how they instantiate the general stereotypical patterns of complex argumentation, in this section I give an exemplary analysis of the way in which in which the U.S. Supreme Court in the Holy Trinity case uses pragmatic argumentation to justify its decision. I show how the court implements the general stereotypical patterns of argumentative moves I have described in the previous sections and I explain how this implementation is influenced by the institutional preconditions of legal justification. Since in U.S. law the 'core' of the decision is formed by that part that constitutes the '*ratio decidendi*' of the decision that is important from the perspective of the decision as precedent, I concentrate on the first part (I-VI) of the decision that ends with 'We find, therefore…' (The text of the relevant parts is attached at the end of this contribution).

As described in section 1, in the Holy Trinity case the Supreme Court had to decide whether or not the act prohibiting the importation of foreigners and aliens under contract to 'perform labour' in the United States (chapter 164, 23 St. p. 332) was applicable to an English Christian minister who had come to the United States to enter into the service of the Protestant Episcopal Holy Trinity Church in the city of New York as rector and pastor. The question was whether, as was decided by the District Court, the contract signed by the church was forbidden by chapter 164, 23, St. P. 332 according to which it is 'unlawful for any person to assist or encourage in any way the importation or migration of any alien or foreigner into the United States to perform labour or service of any kind'.

The Supreme Court decides that the decision of the District Court has to be reversed because the contract was not forbidden. In its view the rule regarding the prohibition is not applicable in the specific case because the meaning of the term 'labour' should be taken in the restricted sense of 'manual labour', which implies, in the opinion of the Supreme Court, that it does not concern the activities of a Christian minister. The Supreme Court justifies this interpretation by referring to the purpose of the rule as intended by the legislator, the U.S. Congress, that is to stay the influx of cheap unskilled labour:

We find therefore, that the title of the act, the evil which was intended to be remedied, the circumstances surrounding the appeal to Congress, the reports of the committee of each house, all concur in affirming that the intent of Congress was simply to stay the influx of this cheap unskilled labor.

This case constitutes a 'hard case' because different interpretations of the rule are under discussion, and as the highest court the Supreme Court has to decide which of the interpretations is correct from a legal point of view. As has been explained in section 2, such a hard case requires a complex argumentation in which the court must react to certain forms of criticism. In what follows, in 3.1, I address the justification of the appropriateness of the use of pragmatic argumentation that is presented in that part of the justification that begins with 'It must be conceded that ….'. Then, in 3.2, I address the justification of the application of pragmatic argumentation that is presented in the following part of the justification that begins with 'It will be seen that words …', and explain how the Supreme Court instantiates the stereotypical pattern of argumentation in which it refers to the consequences of application of the rule in light of the purpose as it is intended by the legislator.

3.1 *The justification of the applicability of the argumentation scheme of pragmatic argumentation*

The argumentation of the Supreme Court that is put forward to justify the applicability of the pragmatic argumentation in the concrete case can be found in the parts where the Supreme Court defends its narrow interpretation R' by referring to the absurd consequences of applying the rule in the broad interpretation R" in light of the purpose of the rule. As has been explained in section 2.2, in this case the Supreme Court has to defend a standpoint that concerns a preference for an adapted interpretation of the rule (R') and a rejection of a broad interpretation (R"):

1. In the concrete case, rule R should applied adapted interpretation R' (with a narrow interpretation of the term 'labour' that makes an exception for a Christian minister), implying that the rule does not apply to foreigners who perform labour as ministers of the gospel, and not in the standard interpretation R", (with a broad interpretation of the term 'labour') implying that the rule applies to all foreigners who perform labour.

The court acknowledges that the statute was applicable because the intention of the legislator was clear, but argued that an exception should be made. The court states that if the legislator had known the present situation, it would have made an exception for the concrete case on the basis of the absurd consequences in relation to the purpose of the rule and the values of the U.S. as a Christian nation. Since the court departs from the acknowledged standard interpretation of the rule and makes an exception for this case, it had an obligation to justify why this exception is justified.

From a pragma-dialectical perspective the justification offers a good example of how a court implements the stereotypical pattern of argumentation in hard cases because the different levels of argumentation are represented. In what follows, for the different levels of the argumentation distinguished in section 2.2 I explain how the various arguments are implemented in this case.

On the level of the main argumentation the justification of the Supreme Court can be reconstructed as a complex argumentation, consisting of the positive and negative variant of pragmatic argumentation as described in scheme 3 in section 2.2.1. With argument 1.1a and 1.1b the court puts forward pragmatic argumentation in which it refers to the result of application in interpretation R' and states that this result would be desirable (the desirability is, as will be explained below, defended on a lower level of the argumentation). With argument 1.1c and 1.1d the court puts forward pragmatic argumentation in which it refers to the result of application in interpretation R" and states that this result is undesirable (absurd). This result would be that in interpretation R' the contracts for the employments of ministers, rectors and pastors would be excluded from the penal provisions of the act and that in interpretation R" the contracts for the employments of ministers, rectors and pastors would be included in the penal provisions of the act.

To justify that result Y' is desirable and result Y" undesirable, on the level of the

subordinate argumentation the argumentation put forward by the Supreme Court can be analysed as a reaction to doubt with respect to the first critical question, whether result Y'/Y" is (un)desirable from a legal point of view. As has been described in section 2.2, in its justification the court will have to deal with certain forms of doubt that are relevant from a legal perspective, in pragma-dialectical terms with the critical questions that are relevant for the specific implementation of pragmatic argumentation. The argumentation that the Supreme Court puts forward in defence of argument 1.1b and argument 1.1d, that the result Y' would be desirable and result Y" undesirable or 'absurd', can be considered as a reaction to the first critical question with respect to the desirability of result Y' and the undesirability of result Y".

In the argumentation consisting of 1.1b.1a and 1.1b.1b the court justifies the desirability of the result in light of the compatibility with purpose P of the rule mentioned in the conclusion of the decision that is 'to stay the influx of this cheap unskilled labour', pointing out that this purpose is intended by the legislator. In this case the court uses subjective-teleological argumentation by referring to the purpose as intended by the historical legislator.

To support argument 1.1b.1b, that purpose P is intended by the legislator, the court puts forward argumentation referring to certain authoritative sources from which the 'spirit of the statute' and the 'intention of its makers' can be inferred.

First, the court explains the intention of the legislature by referring to the common understanding of the words 'labour' and 'labourers' used in the first section of the act and by concluding that on the basis of the words it is clear that Congress had in mind only the work of the manual labourer as distinguished from that of the professional man, so that an exception for a Christian minister can be justified because the legislator has intended this (section III). As a support the court uses a selection of citations from precedents to justify its interpretation.

Second, the court explains the intention of the legislator on the basis of the legislative history by referring to the evil which the act was designed to remedy from the perspective of the situation 'as it was pressed upon the attention of the legislative body' (section IV). In the court's view the intent of Congress can be found in the evil the statute is designed to remedy, which can be found in the contemporaneous events, the situation as it existed, and as it was pressed upon the attention of the legislative body. The appeal to Congress was made 'to raise

the standard of foreign immigrants and to discountenance the migration of those who had not sufficient means in their own hands (….) to pay their passage'. The court adds that it appears also from the petitions in the testimony before the committees of Congress that it was this cheap unskilled labor which was making the trouble, and the influx of which Congress sought to prevent. Finally the court states that the extract from the report of the Senate committee (…) reveals also that 'It seeks to restrain and prohibit the immigration or importation of laborers who would have never seen our shores but for the inducements and allurements of men whose only object is to obtain labor at the lowest possible rate, regardless of the social and material wellbeing of our own citizens, and regardless of the evil consequences which result to American laborers from such immigration.'

In its conclusion the court stresses that all these sources, 'the title of the act, the evil which was intended to be remedied, the circumstances surrounding the appeal to congress, the reports of the committee of each house concur in affirming that the intent of congress was simply to stay the influx of cheap, unskilled labor'.

The way in which the Supreme Court instantiates the stereotypical pattern of argumentation reflects the preconditions for the argumentative activity in legal justification in the U.S. in the historical context of this decision.

4. *Conclusion*

In this contribution I have explained the role of pragmatic argumentation in legal justification from a pragma-dialectical perspective. I have characterized legal justification as an argumentative activity that plays a role in the resolution of legal differences of opinion in legal procedure. From a pragma-dialectical perspective I have shown how the stereotypical argumentative patterns of which pragmatic argumentation forms a part can be reconstructed in terms of the dialectical obligations of a judge. These dialectical obligations define the dialectically relevant moves in the justification of legal decisions in hard case: they prescribe the elements of the justification that are necessary from the perspective of the dialectical role of the judge to account for the different decisions and choices that have to be made in the discussion process.

Based on the dialectical characterization of the role of pragmatic argumentation and the obligations of the judge who uses this form of argumentation in a hard case I have reconstructed the stereotypical patterns of complex argumentation of

which pragmatic argumentation forms part. I have done this by translating the arguments that have to be given as reactions to various forms of critique that are relevant from a legal perspective. I have reconstructed the stereotypical patterns that are relevant for the justification of the appropriateness and the applicability of pragmatic argumentation in a concrete case.

By way of illustration I have given an analysis of the argumentation of the U.S. Supreme Court in such a hard case in which it had to account for an interpretation in which it departed from the standard literal meaning of the term 'labour' in the context of a statute. I have explained how the court instantiates in its justification the stereotypical patterns of argumentation by translating the arguments that are given in terms of the arguments that form part of the argumentative pattern on the different levels of the argumentation. In this way I have clarified how the court reacted to the various forms of critique that it would be problematic to refer to the intention of the legislator and the purpose of the rule in relation to certain 'absurd consequences' to establish the meaning of a legal rule.

Further research of the way in which courts maneuver strategically in the justification of the appropriateness and applicability of pragmatic argumentation must clarify how courts adapt their choices and presentational devices in light of the preconditions of the argumentative activity in a particular legal system.**[xi]**

NOTES

i. For the text of the decision see http://supreme.justia.com/cases/federal/us/143/457/case.html.

ii. Other terms for this form of argumentation are 'consequentialist argumentation', and for the negative form that refers to the unacceptable or absurd consequences of a decision 'argument from absurdity'. See for example Bustamante (2013), Carbonell (2013), MacCormick (1978, 2005). For a discussion of pragmatic argumentation in a legal context see Feteris (2002).

iii. For a discussion of the dialectical role of the judge in legal proceedings see Feteris (2012a).

iv. For a description of the structure of various forms of disputes see van Eemeren and Grootendorst (1992, chapter 2).

v. For a discussion of a pragma-dialectical reconstruction of weighing and balancing in legal justification see Feteris (2008c).

vi. For a discussion of a pragma-dialectical reconstruction of the various forms of

teleological argumentation see Feteris (2008a). For a discussion of the pragma-dialectical reconstruction of the argumentation in which courts refer to the intention of the (historical) legislator see Plug (2006).

vii. See for example Bertea (2005), MacCormick (1978, 2005) for a discussion of argumentation from coherence.

viii. 8 For a discussion of a pragma-dialectical reconstruction of the various forms of teleological argumentation see Feteris (2008a). For a discussion of the pragma-dialectical reconstruction of argumentation in which courts refer to the intention of the legislator see Plug (2006).

ix. For a discussion of argumentation referring to the ratio legis see Canale and Tuzet (2009).

x. For a discussion of legal justification as part of a critical discussion and the role of the judge see Feteris (1990, 1993, 2012a).

xi. For a discussion of the strategic manoeuvring in the Holy Trinity case see Feteris (2008b).

References

Alexy, R. (1989). *A theory of legal argumentation. The theory of rational discourse as theory of legal justification.* (Translation of Theorie der juristischen Argumentation. Die Theorie des rationalen Diskurses als Theorie der juristischen Begründung. Frankfurt a.M.: Suhrkamp, 1978.) Oxford: Clarendon Press.

Atiyah, P.S. & R.S. Summers (1991). *Form and substance in Anglo-American law: A comparative study of legal reasoning, legal theory and legal institutions.* Oxford: Clarendon Press.

Bertea, S. (2005). Does arguing from coherence make sense? *Argumentation,* 19, 4, 433-446.

Bustamante, T. (2013). On the argumentum ad absurdum in statutory interpretation: Its uses and normative significance. In E.T. feteris & C. Dahlman (Eds.). *Legal argumentation theory: Cross-disciplinary perspectives.* Dordrecht, etc.: Springer, 21-44.

Canale, D. & G. Tuzet (2009). Inferring the ratio: commitments and constraints. In E.T. Feteris, H. Kloosterhuis, H.J. Plug (Eds.)*, Argumentation and the application of legal rules.* Amsterdam: Sic Sat, 15-34.

Carbonell, F. (2013). Reasoning by consequences: Applying different argumentation structures to the analysis of consequentialist reasoning in judicial decisions. In E.T. Feteris & C. Dahlman (Eds.). *Legal argumentation theory: Cross-disciplinary perspectives.* Dordrecht, etc.: Springer, 1-20.

Eemeren, F.H. van (2010). *Strategic maneuvering in argumentative discourse. Extending the pragma- dialectical theory of argumentation*. Amsterdam: John Benjamins.
Eemeren, F.H. van & R. Grootendorst (1992). *Argumentation, communication, and fallacies. A pragma- dialectical perspective*. Hillsdale N.J.: Erlbaum.
Feteris, E.T. (1990). Conditions and rules for rational discussion in a legal process: A pragma-dialectical perspective. *Argumentation and Advocacy. Journal of the American Forensic Association*. 26, 3, 108-117.
Feteris, E.T. (1993). Rationality in legal discussions: A pragma-dialectical perspective. *Informal Logic,*
XV, 3, 179-188.
Feteris, E.T. (2002). A pragma-dialectical approach of the analysis and evaluation of pragmatic argumentation in a legal context*. Argumentation*, 16, 3, 349-367.
Feteris, E.T. (2004). Rational reconstruction of legal argumentation and the role of arguments from consequences. In A. Soeteman (Ed.), *Pluralism and law. Proceedings of the 20th IVR World Congress,* Amsterdam, 2001. Volume 4: Legal Reasoning. Archiv für Rechts-und Sozialphilosophie, ARSP Beiheft 91, 69-78.
Feteris, E.T. (2005). The rational reconstructionof argumentation referring to consequences and purposes in the application of legal rules: A pragma-dialectical perspective. *Argumentation*, 19, 4, pp. 459-470.
Feteris, E.T. (2008a). The pragma-dialectical analysis and evaluation of teleological argumentation in a legal context. *Argumentation.* 22, 489-506.
Feteris, E.T. (2008b). Strategic maneuvering with the intention of the legislator in the justification of judicial decisions'. *Argumentation*, 22, 335-353.
Feteris, E.T. (2008c). Weighing and balancing in the justification of judicial decisions. *Informal Logic,* 28,1, 20-30.
Feteris, E.T. (2009). Strategic manoeuvring in the justification of judicial decisions. In F. H. van Eemeren (ed.), *Examining argumentation in context. Fifteen studies on strategic manoeuvering.* Amsterdam: John Benjamins, 93-114.
Feteris, E.T. (2012a). The role of the judge in legal proceedings: A pragma-dialectical analysis. *Journal of Argumentation in Context,* 1, 2, 234-252.
Feteris, E.T. (2012b). Strategic manoeuvring in the case of the 'Unworthy spouse'. In F.H. van Eemeren, B. Garssen (Eds.), *Exploring argumentative contexts*. Amsterdam: John Benjamins, 149-164.
Kloosterhuis, H. (2006). *Reconstructing interpretative argumentation in legal decisions.* Amsterdam: Sic Sat.
MacCormick, N. (1978). *Legal reasoning and legal theory.* Oxford: Clarendon

Press.
MacCormick, N. (2005). *Rhetoric and the rule of law. A theory of legal reasoning.* Oxford: Oxford University Press.
MacCormick, N. & R.S. Summers (Eds.) (1991). *Interpreting statutes. A comparative study.* Aldershot etc.: Dartmouth.
Peczenik, A. (1989). *On law and reason*. Dordrecht: Reidel.
Plug, H.J. (2005). Evaluating references to the intention of the legislator. In: Wintgens, Luc J. (ed.) *The Theory and practice of legislation. Essays in legisprudence.* Aldershot: Ashgate p. 318-330.
Summers, R.S. (1991). Statutary interpretation in the United States. In: N. MacCormick and R.S. Summers (eds.)*, Interpreting statutes.* Aldershot etc.: Dartmouth, 407-460.

ISSA Proceedings 2014 – Ubiquity, Ambiguity, And Metarationality: Searching For The Fallacy Of Composition

Abstract: "Ubiquity" is the hypothesis that fallacies of composition are ubiquitous; "ambiguity" the hypothesis that "fallacy of composition" has at least three distinct meanings, often confused; and "metarationality" the hypothesis that the best places to search for fallacies of composition are meta-arguments whose conclusions attribute this fallacy to ground-level arguments. While testing these working hypotheses, I have found some historically important cases, for example, a step in the theological argument from design, as critiqued by Hume.

Keywords: argument of composition, composition, compositional argument, design argument, fallacy of composition, Hume, meta-argumentation, metarationality, parts vs. whole

1. *Introduction*

There are both theoretical and practical motivations for wanting to study the fallacy of composition.

From a theoretical point of view, such a study is a special case of a key and well-established branch of logic and argumentation theory. In fact, with some slight but not much exaggeration, one could reconstruct the past fifty years of this field largely as a series of footnotes to Hamblin's *Fallacies* (1970), and/or as a series of developments that culminate organically with Woods's *Errors of Reasoning* (2013). And, as we shall see, the fallacy of composition is special not only in the sense of being a specific case of fallacies, but also in the sense of being especially important.

On a practical level, getting clear about the fallacy of composition seems crucial if one wants to react intelligently to two of the greatest problems in the world today: global warming and the world-wide great recession. In fact, at least one philosopher has claimed that arguments for global warming typically involve an aggregation of temperatures from particular regions of the world, and "to group and average in this way is to commit the fallacy of composition" (Haller, 2002, p. 50); thus, it would seem to be almost a civic duty for a professional in this field to try to ascertain whether he is right. And with regard to the on-going great recession, Nobel Prize economist Paul Krugman (2013a) has blamed its persistence on the austerity policies that have been adopted by most countries with developed economies, and he has suggested that austerity has been the result of thinking that one can apply to a national economy the same policies that work for its constituent parts, such as households and individual firms; and this manner of thinking is what logicians and argumentation theorists call the fallacy of composition, a label which he himself occasionally uses (Krugman, 2013b). If Krugman is right, then such scholars have a civic duty to contribute to a clarification of this topic.

2. *The ubiquity thesis*

The fallacy of composition seems to be unique among the fallacies, insofar as its frequency and importance have been widely claimed, perhaps more than for any other fallacy. For example, in 1826, in the Elements of Logic, Richard Whately explicitly named and discussed this fallacy, saying among other things:

… Fallacy of Composition. There is no Fallacy more common, or more likely to deceive, than the one now before us: the form in which it is usually employed, is,

to establish some truth, separately, concerning each single member of a certain class, and thence to infer the same of the whole collectively. [Whately, 1826, pp. 174-75]

Moreover, at least since the epoch-making contributions of John Maynard Keynes (who died in 1946), economists tend to regard the fallacy of composition as the single worst pitfall in economic reasoning. They also consider the exposure of it to be the greatest accomplishment of the modern science of economics. They deem the avoidance of it the most important lesson one can learn from this science. And such claims are easily found in the writings of economists of both the left and right wings of the ideological spectrum, such as Paul Samuelson and Henry Hazlitt.**[i]**

However, despite such attention and such claims, scholars in logic and argumentation theory seem not to have done much work on the fallacy of composition, although textbooks tend to pay lip service to it.

Sometimes this scholarly neglect of the fallacy of composition is explained and partly justified in terms of its rarity or infrequency. For example, in the 1973 edition of his textbook *Logic and Philosophy*, Howard Kahane has a brief discussion of this fallacy together with its reverse twin, the fallacy of division. Here are his revealing words:

since non-trivial real life examples of these two fallacies … are unusual, textbook examples tend to be contrived or trivial. Thus one textbook writer gives as an example of the fallacy of composition the argument that '… since every part of a certain machine is light in weight, the machine as a whole is light in weight'. [Kahane, 1973, p. 244; cf. Copi, 1972, pp. 96-98]

Obviously, this explanation of the scholarly neglect conflicts with the ubiquity thesis reported earlier. Thus, the question arises whether the fallacy of composition is common and important, or uncommon and unimportant. This is largely an empirical question, to be resolved by following an empirical approach.

However, such an empirical investigation cannot be conducted with a tabula rasa, for we need to be clear about what we mean by fallacy of composition, and also we need to examine real or realistic material which typically does not come with the label 'fallacy of composition' attached to it. In other words, we need to be mindful of the fact that observation is theory-laden, and that the examination of

this material must be guided by some idea of what this fallacy means, and by some idea of what to do with the material under examination so as to test it for the occurrence of this fallacy. A brief elaboration of some of these ideas is thus in order.

3. *The ambiguity of 'fallacy of composition'*

To begin with, it is obvious that we need some understanding of what is meant by fallacy of composition. Unfortunately, historical and contemporary writings on the topic contain three notions that are prima facie distinct, but tend to be confused with each other.

First, there is reasoning from premises using a term distributively to a conclusion using the same term collectively; for example, "because a bus uses more gasoline than an automobile, therefore all buses use more gasoline than all automobiles" (Copi, 1968, p. 81). Second, there is reasoning from some property of the parts to the same property for the whole; for instance, "since every part of a certain machine is light in weight, the machine 'as a whole' is light in weight" (Copi, 1968, p. 80). And thirdly, there is reasoning from some property of the members of a group to the same property for the entire group; the so-called tragedy of the commons can illustrate this notion, that is, "if one farmer grazes his cattle on the commons, that will be beneficial for him; therefore if all the farmers graze their cattle on the commons, that will be beneficial for all" (Govier, 2009, p. 95).

Now, the association of the second and third notions with each other is very common. On the other hand, the association of all three is relatively rare, but does occur. One example may be found in the following textbook definition:

The fallacy of composition consists in treating a distributed characteristic as if it were collective. It occurs when one makes the mistake of attributing to a group (or a whole) some characteristic that is true only of its individual members (or its parts), and then makes inferences based on that mistake. [Halverson, 1984, p. 73]

4. *The metarationality hypothesis*

Besides this three-fold distinction and the ubiquity thesis, there is a third guiding idea that needs to be at least mentioned and tentatively stated before we proceed. In a previous work, I criticized textbook accounts of fallacies, and on its basis I formulated a problem and advanced an hypothesis. The problem was formulated in terms of the following questions: "do people actually commit fallacies as

usually understood? That is, do fallacies exist in practice? Or do they exist only in the mind of the interpreter who is claiming that a fallacy is being committed?" (Finocchiaro, 1980, p. 334; 1981, p. 15; 2005, p. 113).

Although these were not meant to be rhetorical questions, but rather open questions that required further investigation, it is perhaps unsurprising that some readers (e.g., Govier, 1982) did view them as rhetorical questions. Moreover, I did express "the suspicion that logically incorrect arguments are not that common in practice, that their existence may be largely restricted to logic textbook examples and exercises" (Finocchiaro, 1980, p. 333; 1981, p. 14; 2005, p. 111). Thus, some readers thought that I was claiming that fallacies are merely figments of critics' imagination, and "are in fact an illusion" (Jason, 1986, p. 92; cf. Govier, 1982).

Later, I tried to be more explicit and constructive about this issue when I elaborated a general approach to the study of fallacies. One element of that approach was connected to, and extracted from, Strawson's *Introduction to Logical Theory* and his notion of "the logician's second-order vocabulary" (Strawson, 1952, p. 15); that notion was extended to include 'fallacy' terminology, "since it ordinarily occurs when someone wants to comment about some logical feature of a first-order expression of reasoning. This means that the best place to begin with in the study of fallacies, or at least a crucial phenomenon to examine, is allegations that fallacies are being committed" (Finocchiaro, 1987, p. 264; 2005, p. 130).

In this vein, some elaborated the idea that fallacies are more like theoretical entities such as quarks in physics, rather than like concrete objects such as buttercups in everyday life (Grootendorst, 1987; Woods, 1988). This elaboration was a constructive suggestion and critical appreciation, and I am far from denying its viability.

However, I now believe that the project can be articulated more clearly, incisively, and constructively in light of the notion of meta-argumentation (cf. Finocchiaro, 2013b; 2013c). That is, I distinguish a meta-argument from a ground-level argument, and define the former as an argument about one or more arguments, or about argumentation in general. Then a ground-level argument can be defined as one about such things as natural phenomena, historical events, human actions, mathematical numbers, or metaphysical entities. A prototypical case of meta-argumentation is argument analysis, in which one advances and

justifies an interpretive or evaluative claim about a ground-level argument.

What I am proposing is that we search for fallacies of composition primarily in meta-argumentation rather than ground-level argumentation. However, this is not meant in the sense that we should be looking for meta-arguments that commit the fallacy of composition, but rather that we try to find meta-arguments advancing explicit conclusions that some fallacy of composition has been committed, i.e., that some ground-level argument embodies or commits a fallacy of composition. The working hypothesis is then that, at least as a first approximation, the fallacy of composition is primarily a concept of meta-argumentation, useful in the context of understanding and/or assessing ground-level argumentation.

5. *Hume's critique of a step in the design argument*

Let us now begin our empirical search for real or realistic material pertaining to the fallacy of composition. A memorable example of the fallacy of composition occurs in the design argument for the existence of God, at least according to the critique advanced in Hume's Dialogues Concerning Natural Religion. This charge is only one objection in the complex and multi-faceted criticism which Hume formulates; and correspondingly, it affects only one particular step of the design argument. Thus, even if cogent, this Humean meta-argument is not the end of the story; nevertheless, it is a crucial element of the over-all evaluation of the design argument.

It should be noted that Hume interprets the design argument primarily as inductive and empirical. In so doing, he is trying to abide by the principle of charity, for if one were to reconstruct the design argument as deductive and *a priori*, then according to Hume it could not even get off the ground, since it would be trying to prove a factual matter – that God exists and created the universe – from *a priori* considerations; and this for Hume is an inherently impossible task.

One version of the design argument is this: the universe was created by an intelligent designer (called God), because the universe is like a machine, and machines are made by (human) intelligent designers. This is, of course, an argument from analogy. Now Hume questions the analogical premise. How could one show that the universe is like a machine? Well, in Hume's own memorable words, spoken through the character Cleanthes, the answer is this:

Look round the world, contemplate the whole and every part of it: you will find it

to be nothing but one great machine, subdivided into an infinite number of lesser machines, which again admit of subdivisions to a degree beyond what human senses and faculties can trace and explain. All these various machines, and even their most minute parts, are adjusted to each other with an accuracy which ravishes into admiration all men who have ever contemplated them. The curious adapting of means to ends, throughout all nature, resembles exactly, though it much exceeds, the productions of human contrivance – of human design, thought, wisdom, and intelligence. [Hume, 1947, p. 143]

This does seem to provide empirical, observational support for the claim that the universe is like a machine. However, there are problems with this reasoning. In Hume's words, spoken through the character Philo:

But can you think, Cleanthes, that your usual phlegm and philosophy have been preserved in so wide a step as you have taken, when you compared to the universe houses, ships, furniture, machines, and, from their similarity in some circumstances, inferred a similarity in their causes? Thought, design, intelligence, such as we discover in men and other animals, is no more than one of the springs and principles of the universe, as well as heat or cold, attraction or repulsion, and a hundred others, which fall under daily observation. It is an active cause, by which some particular parts of nature, we find, produce alterations on other parts. But can a conclusion, with any propriety, be transferred from parts to the whole? Does not the great disproportion bar all comparison and inference? From observing the growth of a hair, can we learn anything concerning the generation of a man? Would the manner of a leaf's blowing, even though perfectly known, afford us any instruction concerning the vegetation of a tree? [Hume, 1947, p. 147]

Here, Hume is finding two things wrong with the subargument supporting the claim that the universe is like a machine. One problem is that although many parts of the universe are like machines, produced by intelligent design, many other parts (even when orderly arranged) are produced by natural causes such as attraction and heat. That is, Hume is charging that the subargument is a hasty generalization. But this is not the only problem; for even if all parts of the universe were machine-like, we could not be sure that the same would apply to the universe as a whole. In this second criticism, Hume is charging a fallacy of composition.

Hume's criticism of this subargument of the design argument is a meta-argument, and as such it is open to analysis, interpretation, and evaluation. Note, for example, that Hume's critical conclusion is based partly on an interpretation of the subargument in question, partly on a definition of the fallacy of composition, and partly on some evaluative principle. The interpretive claim is a reconstruction of this step of the design argument as transferring to the whole universe the same property which it claims to be able to observe in all (or many) of its parts; the property is that of being caused by some intelligent design. The evaluative principle is that it is illegitimate to transfer any such property from parts to whole in this case. Hume seems to give two reasons for this evaluative principle: first, the disproportion between such parts and whole is too great, presumably because the universe is infinite or indefinitely large; second, the transference from parts to the whole universe would be like reasoning from what happens to a human hair to what happens to a whole human body, or from what happens to a leaf to what happens to a whole tree. And this second reason amounts to a meta-argument from analogy, in which Hume argues that this subargument of the design argument is illegitimate because the subargument is an argument from analogy and is as illegitimate as the analogies from hair to human body or from leaf to tree.**[ii]**

6. *Concluding remarks*

My empirical and theory-laden search has found other important historical cases, which cannot be elaborated here, but which deserve a brief mention. One of these other examples is Aristotle's geocentric argument from natural motion: that the natural motion of terrestrial bodies is straight toward the center; and therefore the natural motion of the whole earth is straight toward the center. Galileo objected by arguing that if 'center' means center of the universe, Aristotle's argument begs the question; but if 'center' means center of the earth, the premise is empirically true, but the conclusion is inherently false. And the latter is a memorable counterexample that deserves further logical analysis, because it seems to undermine the formal validity of not only Aristotle's particular argument, but also of any argument from parts to whole (Aristotle, *On the Heavens*, 296b7-297a1; Galilei, 1997, pp. 83-84; cf. Finocchiaro, [1980, pp. 353-56; 2014b, pp. 59-63]).

A third case involves Robert Michels's argument for the so-called "iron law of oligarchy": that political parties inevitably become oligarchic even if they claim to

have democratic aims; and therefore, a democratic society inevitably becomes oligarchic. Political scientist Robert Dahl objected that such reasoning fails because there is a crucial disanalogy between such parts and such a whole: a democratic society allows competition among its parts, but a particular party does not. Similarly, sociologist Seymour Martin Lipset objected that there is another crucial difference: a democratic society has an anti-tyrannical system of checks and balances in its written or unwritten constitution, but political parties and labor unions do not (Michels, 1962; Dahl, 1989; Lipset, 1962; cf. Finocchiaro, 2013b).

Such examples are certainly real and realistic. They are obviously also historically important. The ground-level arguments are clearly compositional; i.e., they are arguments of composition, if I may be allowed to introduce an obvious term for a type of argument that leaves open the question whether it is incorrect or fallacious; that is, an argument from premises with distributive terms or about parts or members to a conclusion with collective terms or about the whole or class. And the ground-level arguments are more or less inferentially incorrect: incontrovertibly and memorably so in the case of Aristotle's geocentric argument from natural motion; arguably and cogently so in the case of the compositional step of the theological argument from design; and arguably and plausibly so in the case of Michels's support for the iron law of oligarchy.

However, some qualifications are in order. First, even if we take these claims as acceptable, one important conceptual qualification needs to be kept in mind about such examples of the fallacy of composition. For these claims amount to saying that we have found important historical examples of arguments of composition that are inferentially incorrect. However, as John Woods (2013; cf. Finocchiaro, 2014a) has recently stressed, the traditional concept of fallacy is that a fallacy is a common type of reasoning that appears to be correct but is actually incorrect. This conception contains five elements: frequency, generality, reasoning, apparent correctness, and actual incorrectness. Now, in my three examples, the ground-level arguments obviously meet the condition of being reasoning; they also meet the generality condition since they are arguments from parts to whole; and they possess apparent correctness, since the exposure of the flaws of the ground-level arguments required meta-argumentation by thinkers such as Galileo, Hume, Dahl, and Lipset. But I am not sure about their common occurrence and their actual incorrectness. In fact, the same features that make these examples

historically important may suggest that they are relatively uncommon; and their actual incorrectness could perhaps be questioned by questioning the critical meta-arguments of Galileo, Hume, Dahl, and Lipset. On the other hand, while such considerations would show that we have not found three examples of fallacies of compositions, they do not undermine the claim that we have found three important historical examples of seductive (i.e., apparently correct) arguments of composition. This problem required further reflection.

Another problem for future investigation concerns an issue which has received some discussion, with some promising and insightful results. The issue is that of the evaluation of the correctness of compositional arguments, and the formulation of useful evaluative principles. A key principle which I gather from this literature (e.g., Ritola, 2009) is that the evaluation of compositional arguments should not be limited to deductive evaluation, but should include inductive evaluation; for even when compositional arguments are deductively invalid, they often possess some plausibility, cogency, or inductive strength. Another principle, advanced by van Eemeren and Grootendorst (1992, p. 177; 1999), urges us to distinguish between absolute and relative properties (e.g., square vs. heavy) and between structured or heterogeneous and unstructured or homogenous wholes or aggregates; and it claims that properties are transferable from parts to whole (or vice versa) only if the properties are absolute and the wholes are unstructured. However, the 'only if' in this formulation should be taken literally and strictly, as not including the 'if', that is, the principle at best states necessary but not sufficient conditions for transferability; thus, more work is needed to find and formulate sufficient conditions.

NOTES

i. See, for example, Hazlitt, 1979; Nelson, 1999; Samuelson, 1955, pp. 9-10, 237, 273, 350, 374, 505, 550, 693; Samuelson & Nordhaus 1989, pp. 7-8, 183-84, 399-404, 666-67, 972, 993; and Wray, 2009. Cf. Woods, Irvine & Walton, 2000, pp. 262-83; Finocchiaro, 2013a. For a revealing and emblematic piece of evidence, which in the present context may also acquire aspects of so-called cultural tourism, one may view a sculpture labeled "The Fallacy of Composition": it adorns an outside wall of the building of the Faculty of Economics at the University of Groningen, and it was created in 1988 to commemorate the 50th anniversary of the foundation of that Faculty and to celebrate Keynes's epoch-making contributions to the science of economics; cf.

http://www.rug.nl/science-and-society/sculpture-project/sculpture1998?lang=en, consulted on July 24, 2012; I owe my first information about this sculpture to Govier (2007; 2009).

ii. There is much more to be said on this aspect of the Dialogues, namely Hume's employment of meta-arguments from analogy to criticize or strengthen various ground-level arguments from analogy. See Barker, 1989; and Finocchiaro, 2013c, pp. 201-203.

References

Barker, S. F. (1989). Reasoning by analogy in Hume's Dialogues. *Informal Logic*, 11, 173-84.

Copi, I. M. (1968). *Introduction to logic*. 3rd edn. New York: MacMillan.

Copi, I. M. (1972). *Introduction to logic*. 4th edn. New York: MacMillan.

Dahl, R. A. (1989). *Democracy and its critics*. New Haven: Yale University Press.

Eemeren, F. H. van, & R. Grootendorst (1992). *Argumentation, communication, and fallacies*. Hillsdale: Lawrence Erlbaum Associates.

Eemeren, F. H. van, & R. Grootendorst (1999). The fallacies of composition and division. In J. Gerbrandy, M. Marx, M. de Rijke & Y. Venema (Eds.), *JFAK: Essays Dedicated to Johan van Benthem on the Occasion of His 50th Birthday.* Amsterdam: University of Amsterdam, Institute for Logic, Language, and Computation. At <www.illc.uva.nl/j50/>, consulted on 18 June 2013.

Finocchiaro, M. A. (1980). *Galileo and the art of reasoning: Rhetorical foundations of logic and scientific Method*. (Boston Studies in the Philosophy of Science, vol. 61.) Dordrecht: Reidel [now Springer].

Finocchiaro, M. A. (1981). Fallacies and the evaluation of reasoning. *American Philosophical Quarterly,* 18, 13-22. Reprinted in Finocchiaro, 2005, pp. 109-27.

Finocchiaro, M. A. (1987). Six types of fallaciousness: Toward a realistic theory of logical criticism. *Argumentation*, 1, 263-82. Reprinted in Finocchiaro, 2005, pp. 128-47.

Finocchiaro, M. A. (2005). *Arguments about arguments: Systematic, critical, and historical essays in logical theory*. New York: Cambridge University Press.

Finocchiaro, M. A. (2013a). Debts, oligarchies, and holisms: Deconstructing the fallacy of composition. *Informal Logic,* 33, 143-74.

Finocchiaro, M. A. (2013b). The fallacy of composition and meta-argumentation. In D. Mohammed & M. Lewiński (Eds.), *Virtues of Argumentation: Proceedings of the 10th International Conference of the Ontario Society for the Study of Argumentation* (OSSA), 22-26 May 2013 (pp. 1-8). Windsor, ON: Ontario Society

for the Study of Argumentation. ISBN: 978-0-920233-66-5.
Finocchiaro, M. A. (2013c). *Meta-argumentation: An approach to logic and argumentation theory*. (Studies in Logic, vol. 42.) London: College Publications.
Finocchiaro, M. A. (2014a). Essay-review of J. Woods's Errors of reasoning: Naturalizing the logic of inference. *Argumentation*, 28, 231-39.
Finocchiaro, M. A. (2014b). *The Routledge guidebook to Galileo's Dialogue.* London: Routledge.
Galilei, Galileo. (1997). *Galileo on the world systems: A new abridged translation and guide.* Trans. and ed. M. A. Finocchiaro. Berkeley: University of California Press.
Govier, T. (1982). Who says there are no fallacies? *Informal Logic Newsletter,* vol. v, no. i, pp. 2-10.
Govier, T. (2007. Duets, cartoons, and tragedies: Struggles with the fallacy of composition. In F. H. van Eemeren, J. A. Blair, C. A. Willard & B. Garssen (Eds.), *Proceedings of the Sixth Conference of the International Society for the Study of Argumentation* (pp. 505-11). Amsterdam: Sic Sat.
Govier, T. (2009). Duets, cartoons, and tragedies: Struggles with the fallacy of composition." In F. H. van Eemeren & B. Garssen (Eds.)*, Pondering on Problems of Argumentation* (pp. 91-104). Dordrecht: Springer.
Grootendorst, R. (1987). Some fallacies about fallacies. In F. H. van Eemeren, R. Grootendorst, J. A. Blair & C. A. Willard (Eds.), *Argumentation Across the Lines of Discipline: Proceedings of the Conference on Argumentation 1986* (pp. 331-42). Dordrecht: Foris Publications.
Haller, S. A. (2002). *Apocalypse soon? Wagering on warnings of global warming*. Montreal: McGill-Queens University Press.
Halverson, W. H. (1984). *Concise logic.* New York: Random House.
Hamblin, C. L. (1970)*. Fallacies*. London: Methuen. Rpt., Newport News: Vale Press, 1986.
Hazlitt, H. (1979). *Economics in one lesson*. New Rochelle: Arlington House Publishers. 1st edn., 1946.
Hume, D. (1947). *Dialogues concerning natural religion*. Ed. N. K. Smith. Indianapolis: Bobbs-Merrill.
Jason, G. (1986). Are fallacies common?" *Informal Logic,* 8, 81-92.
Kahane, H. (1973). *Logic and philosophy.* 2nd edn. Belmont: Wadsworth.
Krugman, P. (2013a). Austerity wrought pain, no gain. *Las Vegas Sun,* January 8, p. 3.
Krugman, P. (2013b). The punishment cure. *The New York Times*, 8 December.

Lipset, S. M. (1962). *Introduction to Michels,* 1962, 15-39.
Michels, R. (1962). *Political parties: A sociological study of the oligarchical tendencies of modern democracy.* Trans. E. Paul and C. Paul. New York: Collier.
Nelson, A. (1999). Keynes. In R. Audi (Ed.), *Cambridge dictionary of philosophy, 2*nd edn. (pp. 467-68). New York: Cambridge University Press.
Ritola, J. (2009). Commentary on James E. Gough and Mano Daniel's 'The fallacy of composition.'. In J. Ritola (Ed.), *Argument Cultures: Proceedings of the 8th Biennial Conference of the Ontario Society for the Study of Argumentation* (OSSA, 2009). Windsor, ON: Ontario Society for the Study of Argumentation. ISBN 978-0-920233-51-1.
Samuelson, P. A. (1955). *Economics: An introductory analysis.* 3rd edn. New York: McGraw-Hill.
Samuelson, P. A., & W. D. Nordhaus. (1989). *Economics. 13th edn*. New York: McGraw-Hill.
Strawson, P. F. (1952). *Introduction to logical theory*. London: Methuen.
Whately, R. (1826)*. Elements of logic.* London: J. Mawman. Rpt., Bologna, Italy: Editrice CLUEB, 1988.
Woods, J. (1988). Buttercups, GNP's, and quarks: Are fallacies theoretical entities? *Informal Logic*, 10, 67-76. Reprinted in Woods, 2004, pp. 161-70.
Woods, J. (2004). *The death of argument: Fallacies in agent-based reasoning*. Dordrecht: Kluwer.
Woods, J. (2013). *Errors of reasoning: Naturalizing the logic of inference*. London: College Publications.
Woods, J., A. Irvine, & D. Walton. (2000). *Argument: Critical thinking, logic, and the fallacies*. Toronto: Prentice-Hall.
Wray, L. R. (2009). Teaching the fallacy of composition: The federal budget deficit." At the website: http://neweconomicperspectives.org/2009/08/teaching-fallacy-of-composition-federal.html. Consulted on October 19, 2012.

ISSA Proceedings 2014 – On The Persuasive Power Of The Best Explanation Argument

Abstract: Scientific realists claim that scientific realism must be accepted because it is the best explanation of the success of science. But arguments to the best explanation are objectionable. We explore the possibility that the greater or lesser resistance to those inferences depends on differences about the persuasion criteria that correspond to each context: participants of philosophical discussions usually apply stricter criteria than the ones considered to be persuasive in other kinds of argumentation.

Keywords: argument to the best explanantion, non-miracle argument, scientific realism.

1. *Introduction*

This paper focuses on the inference to the best explanation (IBE) as a kind of argumentation in philosophy of science. Several scientific realists argue that scientific realism is the best explanation for the success of science. But serious objections have been raised against IBE. Given the controversy generated by the IBE argument, this paper explores the possibility of the fact that the degree of resistance to accepting the inference to the best explanation depends on differences which are related to the persuasion criteria that corresponds to each context. We distinguish four different contexts in which IBE is used:

a) the common sense knowledge context;
b) the scientific research context;
c) the philosophy of science context: when talking about scientific theories some philosophers contend that the truth of a theory and the existence of the unobservable entities it posits are the best explanation of its success;
d) the philosophy of science context again, but in a higher level: when some philosophers argue that scientific realism is true because it explains the success of science better than the antirealist claims.

According to our hypothesis, participants of philosophical discussions often apply criteria that are stricter than the ones considered to be persuasive in other kinds

of argumentation, but many realists seem not to be aware of that. As they do not make any distinction amongst different contexts, they carry on IBE from every day belief formation to higher levels of philosophy.

We will start with a presentation of the no miracle argument (NMA) as an emblematic instance of IBE and we will try to show how realists use IBE simultaneously at different levels of argumentation. We will examine various formalizations of both NMA and IBE and we will compare the strength of IBE in different contexts. As a result, we hope to show that, contrarily to what realists believe, IBE is not a powerful tool for supporting their doctrine.

2. *The canonical formulation of the non miracle argument*

The so-called no miracle argument (NMA) is one of the most widespread beliefs amongst scientific realists. It can be synthesized, broadly speaking, in the idea that the explanatory and predictive success of our best scientific theories implies that they are true or approximately true because, if they weren't, their numerous successes would be a coincidence so surprising as miracles are. Putnam says it with the following words:

And the typical realist argument against idealism is that it makes the success of science a miracle. And the modern positivist has to leave it without explanation (the realist charges) that 'electron calculi' and 'space-time calculi' and 'DNA calculi' correctly predict observable phenomena if, in reality, there are no electrons, no curved space-time, and no DNA molecules. If there are such things, then a natural explanation of the success of these theories is that they are *partially true accounts* of how they behave […] But if these objects don't really exist at all, then it is a *miracle* that a theory which speaks of gravitational action at a distance successfully predicts phenomena; it is a *miracle* that a theory which speaks of curved space-time successfully predicts phenomena; and the fact that the laws of the former theory are derivable 'in the limit' fron1 the laws of the latter theory has no methodological significance (Putnam, 1978, pp.18-19).

Probably, many people would be persuaded by this argument because it has certain similarities with inferences that we make in everyday life. Some authors would try to justify this reasoning proclaiming that it is a special kind of inference, which Peirce called abduction or retroduction and after Harman is often identified under the name of inference to the best explanation.

3. *The IBE in everyday knowledge and scientific knowledge*

The incorporation of IBE in the second half of the twentieth century as an important concept for understanding the process of knowledge is mainly due to Hanson. He represented IBE as follows (Hanson, 1958, p. 86)

[1] The surprising fact C is observed
[2] But if H were true, C would be a matter of course
[3] Hence, there are reasons to suspect that H is true

As we have said, this type of inference is often used in common-sense knowledge. Van Fraassen, proposed an example that illustrates this: if you hear little noises that come from the interior of the wood walls, if in addition you see that a piece of cheese that had been left the night before on the table has disappeared and there are mouse droppings on the floor, you will accept the hypothesis that there is a mouse in the house. It is not fully clear whether van Fraassen would be willing to admit that in situations like these it is fair to say that the hypothesis is accepted as true (or probably true) or only that it is accepted as empirically adequate (Psillos, 1999, pp. 211ff); but in any case he rejects that a reasoning of this kind is valid in the scientific context. Recall that for van Fraassen the goal of science is not to find true theories but empirically adequate theories, i.e. find theories whose observational predictions are effectively met. According to van Fraassen, then, a scientist would not be entitled to believe that the predictive success of his theory implies that it is true and that the entities postulated by it, for example, the atoms, do exist.

Psillos suggests that if the reasons for van Fraassen to object the use of IBE in the scientific context are intended to prevent unwanted ontological commitments with new classes of entities because they allow inferring the existence of unobservable entities, then van Fraassen is wrong. Because the IBE is also used to infer the past existence of extinct species, i.e, a new kind of entities, from the discovery of fossils, and these animals, although unobserved by us, are not unobservable entities.

On our part, we believe that anyway there is a difference between the mouse and a possible extinct species. Although van Fraassen considers it appropriate not to draw any distinction between a theoretical vocabulary and an observational one, it seems undeniable that asserting the existence of an extinct species is very far from our everyday experience. There is a much more hypothetical and uncertain

character in the former assertion. In the event of having observed the behavior of mice, a prehistoric man surely would have reached the same conclusion as that a person of our day would, had he found the same indirect evidence of their presence. And, in fact, the finding of a fossil is a pretty different situation, to name one of the reasons because its identification as a fossil implies a controversial theoretical supposition. The case of the "Piltdown Man" is a good example.

Psillos extends the use of IBE from everyday life to scientific research very naturally. But at the scientific level, the postulation of theoretical entities, even though they might serve to explain and predict phenomena, has often been rejected. This was the case for atoms, which Mach never accepted. In addition, the entities of everyday life, such as the mouse that has eaten the cheese or the weasel that has eaten the hens during the night, belong to kinds of things that have remained unchanged for a long time, while theoretical entities have frequently resulted to not exist or their concepts have been modified so much that the realists have to make desperate efforts to sustain that the old theories were to some extent true and the entities they posited are eventually the same as those that are postulated today.

4. *The IBE in the philosophical argumentation*

Now let us consider the use of IBE at the philosophical level. According to what we have already seen, the example proposed by van Fraassen would have this form:

[1] The surprising fact C (the indications of the presence of a mouse) is observed
[2] But if H were true (if there is a mouse in the house), C would be a matter of course
[3] Hence, there are reasons to believe that there is a mouse in the house

But Putnam's argument about realism is considerably more complex. To begin with, in the text we quoted above there are overlapping arguments that operate at different levels of analysis. On the one hand, in a first meta-scientific level (MS 1), it is argued that the predictive success of scientific theories can be naturally explained if it is thought that theories explain properly how things really are in the portion of reality they deal with. On the other hand, Putnam climbs to an upper epistemological, a meta-meta-scientific level (MS 2) when he applies a similar form to argue not directly about scientific theories but about certain

epistemological conceptions, in this case, realism and antirrealism.

To facilitate the analysis, we will adopt a more precise formulation of the argument corresponding to MS 1. Magnus and Callender, for example, offered a schema that seems to pick up the core of Putnam´s argument (Magnus and Callender 2004: 320-338):

[1] The theory h is very likely to be successful
[2] If h were true, it would be very likely to be successful
[3] If h were false, it would not be likely to be successful
[4] Therefore, there is a high probability that h is true

At first sight, Magnus and Callender´s formulation of IBE differs from the one proposed by Hanson, because they do not make any explicit reference to the relationship between the explanatory and predictive power of a hypothesis and the likelihood of that being true. However, we can establish the connection because the success of a theory would be measured precisely according to its ability to explain and predict phenomena.

On the other hand, oddly, although Magnus and Callender´s schema aims to clarify the non-deductive form of IBE, it can easily be transformed into a deductive reasoning without adding any assumption. In fact, from the premises [1] and [3] of previous argument, that is,

[1] The theory h is very likely to be successful
[3] If h were false, it would not be likely to be successful

by *modus tollens* we can infer:

* Theory h is not false

And from there we can deduce the conclusion Magnus and Callender had reached:

** Theory h is very probably true

In this case, the crux of the matter is not in the kind of inference that leads to the conclusion but in the justification of the premises that associates the success of a hypothesis with a high probability of it being true. This situation was shown also by Musgrave, who feels that the classic formulations of IBE are deductively

fallacious. If you want to avoid the fallacy, he suggests, you should express the argument in this manner (Musgrave 1999: 285):

[1] If hypothesis H is the best explanation of the fact to be explained, then it is reasonable to accept H as true
[2] H is the best explanation of the evidence
[3] Therefore, it is reasonable to accept H as true

On the other hand, some authors -like Magnus and Callender- say that IBE is inductively fallacious. If all that is true, if IBE can't be justified either in an inductive or a deductive way, proponents of the idea that there is a relationship between the explanatory value of a hypothesis and its truth should think that the statement "If hypothesis H is the best explanation of the fact to be explained, then it is reasonable to accept H" is a reliable assertion on its own right, perhaps because it possesses a sort of intuitive evidence. In fact, it looks like some conclusions reached in everyday knowledge, as in the case of the mouse, rely on the implicit acceptance of that belief.

As we have shown, IBE is used at the meta-meta-scientific level (MS 2) to justify the scientific realism. Kukla expresses the argument as follows (Kukla: 12):

[1] The enterprise of science is (enormously) more successful than can be accounted for by chance
[2] The only (or best) explanation for this success is the truth (or approximate truth) of the scientific theories
[3] Therefore, we should be scientific realists

This argument may be reformulated so that the assumption that the virtue of being the best explanation involves the truth becomes explicit. This is achieved by adding the premise:

* If the scientific realism is the best explanation for the success of science, then realism is true.

The explication of this premise drives us back to considering the value of IBE in those different contexts in which it is used. Next, we will develop our conclusions in this regard.

5. *The scope of IBE*

According to what we have said so far, IBE is an instrument which has been used at least in the following contexts:

a) in the common-sense knowledge context;
b) in the scientific knowledge context, especially as a way of legitimating the belief in the existence of theoretical entities postulated by a specific scientific theory;
c) in the philosophy of science context, as a sort of generalization about scientific theories and the existence of theoretical entities ("successful scientific theories are approximatively true and theoretical entities postulated by them very probably exist");
d) in the philosophy of science context, but at a higher meta-philosophical order ("scientific realism is true because it is the best explanation for the success of the science").

We have already advanced that IBE probably has a different persuasive force depending on the context in which it is being used, that is, depending on the circumstances in which it is applied and the intended audience to which it is directed. In general, this remark seems to be true of any kind of inference, except perhaps those that are strictly deductive. It would seem that, for example, a simple enumerative induction would be more easily accepted in everyday life than in the context of scientific research, where it must comply with certain special conditions about the extension of the sample, its representativeness, etc. Inductivist philosophers often point out that the inductive inferences are used constantly in both common sense knowledge and factual sciences. But they have found it difficult to justify these inferences in the face of objections from Humean criticism so they had to elaborate more refined versions of the induction to reconstruct and validate their use when justifying scientific theories. From a philosophical point of view, Popper has not hesitated in sustaining that even if it were true that in everyday life and in the scientific research induction is continuously used, all who do so can be wrong. But even under the assumption that a persuasive defense of inductive inferences in factual sciences has actually been achieved, there is no room for them in, for example, formal sciences. The so called mathematical conjectures do not cease to be only conjectures no matter how many favorable cases they accumulate. Precisely, their interest lies in the fact that they seem to have no exceptions. But only a deductive demonstration could convert a mathematical conjecture in a theorem. Despite Mill´s attempt to

show that the laws of pure mathematics have arisen inductively and despite Quine's suggestion on the possibility that such principles are revisable in extreme cases, the prevalent conviction is that mathematical truths belong to the field of a priori knowledge. In the same vein, the fact that a kind of reasoning can be admitted in the context of common-sense knowledge or in factual sciences does not imply or makes it more likely that it is equally acceptable in the domain of philosophy.

Now we must ask ourselves: What relevance and validity the non-deductive inferences and in particular IBE could have in philosophical contexts? Philosophical discourse, even if we focus only in the philosophy of science, is so varied that trying to identify ways of justifying philosophical thesis seems more difficult than to agree about how to reconstruct the methodology of the factual sciences. But if we put aside the claim of naturalizing epistemology to the point where it would became simply one more of the empirical sciences, philosophy of science seems to depend essentially, although perhaps not exclusively, on a priori analysis. Notorious examples are the statements of Putnam about his well-known argument of the brains in a vat. After confessing that for several years he had many doubts about its validity, Putnam relates that his argument came to his mind while he was studying the Löwenheim-Skolem theorem and he saw a connection with some arguments developed by Wittgenstein. He points out that, even when some elements of his own argument have an empirical origin, it has a kinship with Kant's transcendental reflections because he developed it by thinking a priori about the conditions of the possibility of knowledge (Putnam 1981)

Another valuable testimony in favor of the independence of the philosophical inquiry with respect to the factual knowledge comes from Kuhn. Despite having been one of the creators of the so-called "historical philosophy of science", he confessed in his late works that his doctrine, also partially related to that of Kant, had been since its very beginning rooted in philosophical principles rather than in empirical data extracted from the history of science.

Philosophical discussions have a *sui generis* status. They cannot be empirically contrasted, as it is assumed that it can be done with common sense beliefs about the world or the hypothesis of factual sciences, neither can they be solved as problems of mathematics or pure logic. This does not mean, of course, that certain principles associated with inferences, such as the principle of induction or

the argument to the best explanation, become useless in philosophical discourse; but this shows that they deserve at least a special justification that so far seems to be out of our reach.

As an illustration of the difficulties involved in applying to philosophical theories concepts forged with the purpose of analyzing scientific theories, it should be noted, for example, that while the predictive success of a scientific theory could be a strong indication of its empirical adequacy, such an approach could not be extended to philosophical theories. It would be inapplicable because we can't even understand what empirical adequacy means for theories which, by its own origin, do not purport to describe the world in the same manner of the factual sciences. Similarly, while IBE presupposes a notion of explanation which, as in the Hempelian models, allows us to stablish the truth or the likelihood of the *explananda* as a consequence of the truth of the *explanans*, it is not clear in what sense a philosophical theory constitutes an "explanation" or a "best explanation". In addition, if we assume that the truth of a scientific theory means something like a correct description of both, the observable and non-observable characteristics of nature, it is not very clear in what sense we can say that a philosophical conception, as the scientific realism or its rivals, are "true" or "false".

6. *Conclusion*

In summary, logicians have identified the use of IBE in common-sense thought and scientific research and that discovery has inspired its explicit use in philosophy of science to underpin scientific realism. However, this maneuver, especially when IBE is expressed in the no miracle argument, far from overcoming the resistance of scientific antirealists, seems to offer evidence that the persuasive power of IBE becomes increasingly weak as we move further away from the domain of the beliefs of common sense.

References

Hanson, N.R. (1958). *Patterns of Discovery.* Cambridge: Cambridge University Press.

Kuhn, Th. (1992). *The Trouble with the History Philosophy of Science.* Rothschild Distinguished Lecture. Cambridge: Department of the History of Science, Harvard University.

Kukla, A. (1998). *Studies in Scientific Realism.* Oxford: Oxford University Press.

Magnus, P.D. y Callender, C. (2004). Realist ennui and the base rate fallacy.

Philosophy of Science, 71(3)
Musgrave, A. (1999*). Essays on Realism and Rationalism*. Amsterdam: Rodopi.
Psillos, S. (1999). *Scientific Realism: How Science Tracks Truth*. London: Routledge.
Putnam; H. (1978). *Meaning and the Moral Sciences*. London: Routledge and Kegan Paul.
Putnam, H. (1981). *Reason, Truth and History.* Cambridge: Cambridge University Press.
Van Fraassen, B.C. (1980). *The Scientific Image*. New York: Oxford UniversityPress.

ISSA Proceedings 2014 – The Strategic Function Of Argumentative Moves In Corporate Social Responsibility (CSR) Reports

Abstract: A CSR report may be viewed as part of a virtual critical discussion in which the company acts as a protagonist claiming that their behaviour is responsible towards society. Social actors may be represented as virtual antagonists in the critical discussion who (virtually) doubt or critique this standpoint. This paper presents several argumentative moves used in CSR reports to build a better image of the business and persuade various audiences that the company acts responsibly towards society.

Keywords: adjudication, appeal to emotions, argumentation, argumentative move, audience demand, critical discussion, CSR report, organizational rhetoric, pragma-dialectic approach, strategic maneuvering.

1. *Introduction*

CSR is defined as the attitude companies adopt towards society, consisting in responsible business practice. CSR discourse has become lately a strategic issue for companies and their marketing operations. The methodological framework of this study is the pragma-dialectical approach to argumentation. In this framework, businesses and other social actors are represented as parties in a difference of opinion. CSR discourse may thus be viewed as a fragment of a virtual critical discussion in which the company acts as a protagonist and claims that their corporate business behaviour is responsible. Other social actors may be represented as virtual antagonist(s) who doubting or critique this standpoint. They may be held as having not agreed to the main standpoint at issue.

This study identifies several argumentative moves used in CSR reports to help the company prove to stakeholders and to the public opinion that the company acts responsibly towards society.

2. *The CSR report*

A CSR report is a discourse genre or subgenre which pertains to organizational communication. It opens with a CEO's letter and lists the most important contributions made by the company to social welfare, environment protection and sustainability.

CSR reports are meant to show how much, in which ways and with which effects a company invests in environmental and community protection. Responsibility towards sustainability and well being is the main focus of CSR discourse. CSR reports are usually issued in the first five months of the year for the previous year of the company's activity. A CSR report would tell mainly about the company's activity and operations with respect to their impact on human, social, technological and natural environment during the previous year. This account is to show all those interested in the existence and the activity of the company that, although interested in making profit, the company may yield various benefits to communities and contribute to sustainability and well-being.

When the CEO is not Warren Buffet himself, the CEO's letter introducing a CSR / sustainability report or an annual report is most often written by a free lance professional, also known as a 'writer-for-hire'. For instance, Andrew Wilson is reported to have a special formula for writing CEO's letters:

A company's product is pitted against its competitors. But a company's annual

report is pitted against the business media and the analyst community, which are susceptible to "groupthink in the way they look at companies," Wilson says. The CEO's letter can and should challenge the storyline with a more compelling, more in-depth, more accurate narrative. There's a double requirement to achieve this: "honesty, and a willingness to deal with the challenges the company faces." Wilson recommends that you "dramatically make the case for where the company wants to go and how it will get there despite the difficulties." (Murray, 2008)

More recently, a CSR report of good quality is written by a specialized agency, on the basis of a writing protocol obeying reporting regulations set by the Global Reporting Initiative (GRI). This is seen by Walmart, for instance, as a "multi stakeholder approach" (*Walmart 2012 Global Responsibility Report*, back of the front cover).

Writing a CSR report is part of the job of a specialist in what may sometimes be called *strategic writing*, a subfield of Marketing and of the Business Administration area. Courses, seminars, workshops are being held to train professionals in reporting about sustainability and corporate responsibility. It may be presumed that not all companies have the capacity of choosing the right means by which to have a report issued. The title of the report, usually mentioned on the cover, states the type of CSR report (it may a sustainability report) and the year(s) for which the report was drawn. Walmart, for instance, mentions 2012 on the cover of its CSR report for 2011, that is, the publication year of the report instead of the activity year reported about. To this adds another inconsistency or negligence in the first descriptive paragraph, "About the report", where the year 2012 is mentioned again instead of 2011:

(1) The report reviews our progress and performance *during fiscal year* 2012, reflects areas where we have achieved tremendous positive results and specifies areas of opportunity we must continue to focus on. The reporting timeline covers the period of *Feb. 1, 2011 – Jan. 31, 2012* and builds on our last report, issued April 2011. (*Walmart 2012 Global Responsibility Report*, front cover; my italics.)

The company has a clear advantage in using the CSR report as a strategic tool since it may present its actions and activities with no direct interference from any opposite party or media bias. If some years ago CSR reports of large companies obeyed to the GRI standards, but also to their own marketing goals, the latest CSR reports obey quite strict standards and they mention it at the end of the

report, giving precise indications on which particular GRI issue they are concerned with and also mentioning the place in the CSR report the issue is addressed (see *Wells Fargo & Company CSR Report 2011*). Therefore, it may be assumed that more recent CSR reports are less adapted to discourse analysis since they no longer reveal much of the companies' marketing and branding strategies which were more transparent in previous CSR reports.

3. *The CSR report discourse in the framework of pragma-dialectics: strategic maneuvering*

This study proposes to add to the list of domains relevant for argumentative analysis the field of organizational discourse, and mainly its subfield *strategic discourse.* There are many argumentative practices within the organizational domain which can be analyzed from the rhetorical and dialectical perspectives. Organizational rhetoric is considered to be "the art of reacting to rhetorical situations" arising in the company's activity, and dealing with these also involves "proactively and strategically" molding such situations. (Conrad, 2011, p. 130)

CSR discourse is conceived in the framework of this study as a manifestation of argumentative practice following specific patterns. Within the pragma-dialectical framework, the CSR report may be viewed as an argumentative type or subtype belonging to the public sphere. It is a highly institutionalized and conventionalized piece of discourse, a discursive and communicative category regulated by the Global Reporting Initiative (GRI).

The text of a CSR report may be analysed with the tools of the pragma-dialectical methodology. The analyst may identify or reconstruct in such text excerpts standpoints, or virtual standpoints, expressed or unexpressed starting points for argumentation, arguments, substandpoints of a protagonist representing the company / corporation. The antagonist is virtual, being represented by the various categories of stakeholders and/or the media.

The CSR report is a good opportunity for the company to act as a protagonist by advancing its credo with respect to business practice in correlation with CSR. Its actions and activities are presented here in the most advantageous way, the more so as the report is drawn by specialists and elaborated over a long period of time.

The extended pragma-dialectical theory introduces the notion of *strategic maneuvering* in order to allow the analysis and evaluation of argumentative

discourse by looking at the efforts of the speaker or writer to pursue rhetorical effectiveness and at the same time dialectical reasonableness. This study assumes that CSR reports of important companies are written by specialists in the field of strategic writing and global reporting. It might thus be interesting to look at how strategic maneuvering is achieved in this type of discourse, or discourse subgenre. In adopting this approach, I consider that the discourse excerpts from CSR reports I am analyzing come from a writer who, in his strategic maneuvering, is combining in a systematic way rhetorical techniques with efforts to fully comply with the dialectical rules for critical discussion (cf. van Eeemeren et al., 2012, p. 323).

One important assumption of this study is the idea that CSR reports of global corporations or of companies operating at a multinational level in various regions of the world may stand as very good or excellent examples of strategic maneuvering.

In a discourse analysis approach, CSR reports may be thought to act as a "descriptive" and "narrative" argumentation in favor of the standpoint *We are doing business / making profit responsibly / with responsibility* towards society and the environment. In this statement, the term *society* makes reference to all types of individual and group stakeholders, and the term *environment* points to human-made and natural environment.

Many CSR reports, mainly those published in the previous years, did not take into account closely all the standards of the GRI. This is why some of them do not advance this standpoint explicitly and it has to be reconstructed for the analysis. It may be considered as an unexpressed argumentative move: the corporation may not make explicitly the argumentative move of advancing this standpoint. Throughout the whole CSR report however, the company provides evidence to support it. The company is not only saying (implicitly) that *they are acting responsibly*, but also that they are doing this because they *have an ethical behaviour / care about the stakeholders.*

The main hypothesis of this study is that a CSR report is a well regulated piece of discourse illustrating at its best the concept of strategic maneuvering. This means that on most occasions, strategic maneuvering has "legitimate manifestations" in CSR reports of good quality, while the fallacious manifestations of strategic maneuvering are a most infrequent case in such reports.

A fallacious manifestation of strategic maneuvering consists in an argumentative move for which, at the point in discourse where it occurs, "certain soundness conditions have not been met that apply to the mode of strategic maneuvering concerned in that activity type and argumentative situation in which the maneuvering takes place." (van Eemeren & Houtlosser, 2009, p. 14)

In line with pragma-dialectical studies (van Eemeren, 2010, p. 269, note 5; van Eemeren et al., 2012, p. 323), I am using the term (*rhetorical*) *effectiveness* with regard to strategic discourse instead of the term *persuasiveness.* It can be considered that such discourse is more than simply rhetorical, or persuasive, since "persuasiveness is not by definition subjected to the requirements of reasonableness" (van Eemeren 2010: 269). Moreover, the discourse of the CSR report has or pretends to have communicative value to a high degree: it is informative, descriptive, evaluative, commissive. It is meant to communicate knowledge about the corporation from the inside, besides communicating the good intentions of the corporation towards society and the environment.

3.1 *Adaptation to the CSR report's audience demands*

Meant to convince an audience by a combination of rhetorical techniques and dialectical efforts, strategic maneuvering is concerned, among others, with adapting discourse to audience expectations and using various presentational (linguistic) devices.

As already mentioned, the audience of a CSR report is represented by stakeholders. In one of the CSR reports analyzed for this study (*Arcelor Mittal USA Corporate Responsibility Report 2012*, written by Jeff Fraga), the following categories of stakeholders are identified: employees, customers, suppliers, investors and lenders, government and regulators, non-governmental organizations, multilateral and business organizations, media, local communities. These can be found at local, regional, national, international level. The larger and/or more multinational a company, the larger and the more diverse and diversified its audience.

In designing the CSR report, a writer should take into account the various roles stakeholders play as a unitary group or, more obviously, as distinct groups. Stakeholders, as a unitary group and as distinct groups are the addressees of the CSR report. It is however assumed that:

1. most of the stakeholders are not aware of the contents of the CSR report;
2. the CSR report is mainly designed for the media, the government and some agencies which are able to disseminate parts of it to a larger audience on various occasions.

Various groups of stakeholders are the beneficiaries of the (CSR) actions and activities of the company. Such actions are of two types: actions directed specifically to certain groups of stakeholders as part of the routine activity of the company (for job seekers and employees, the company has created jobs and given stability to the current positions) and actions directed specifically to certain groups of stakeholders as part of the company's concern for society and the environment.

As previously mentioned, from the pragma-dialectical perspective, the CSR report may be reconstructed as a critical discussion. If the CSR discourse is represented as a critical discussion, the stakeholders may be represented as virtual antagonists. Each category of stakeholders may play the role of a *(virtual) antagonist of some (sub)standpoints*. They may also play the role of a *(virtual) protagonist of standpoints*, as they are introduced / reported by the writer of the CSR report.

By strategic maneuvering, a writer or a speaker should adapt the argumentative moves to audience demand. This means that the speaker / writer should:

a) seek to achieve communion with the audience;
b) privilege endoxa, by valuing at their most the beliefs of the many and of the wise;
c) make concessions to the audience, by taking into account their beliefs and commitments concerning the standpoint and the topic of the discussion;
d) be aware of contextual commitments of the audience, created in the particular argumentative situation.
Endoxa corresponds to "views generally accepted in a specific culture or subculture" (van Eemeren & Garssen, 2012, p. 52, note 1). In Aristotle's *Topics*, endoxa points to "commonly held beliefs" and "beliefs of the many or of the wise or both". (T. Irwin, *Aristotle's First Principles*, Clarendon Press, Oxford, 1988, pages 8 and 57, quoted by van Eemeren and Garssen 2012, p. 52, note 1)

A specific group of stakeholders may be made reference to in the report to act as

an antagonist of a company's standpoint. If so, this move is strategic as long as the critique or doubt on the virtual antagonist's side is brought about in the CSR report to be dissipated. In the following excerpt, the local community, the local authorities and possibly the government are categories of stakeholders which could act as antagonists. Although the company does not explicitly assure these categories of stakeholders that their dams will not fail, they show commitment to the structural soundness of the dams by pointing to / naming / evoking the most concerned category of stakeholders:

(2) It is important that our tailing dams are structurally sound to ensure they do not pose a risk to *local people's* health and safety to the environment. (*Steel: stakeholder value at every stage, Corporate responsibility 2013, Arcelor Mittal; my italics*)

Adaptation to audience demand in strategic maneuvering consists in ensuring "communion with the people the argumentative discourse is aimed at" by "achieving certain communicative and interactional effects on the audience." (van Eemeren & Garssen, 2012, p. 49) Therefore, it is important to take into account who the audience are and which their relevant views and preferences are. Taking the audience into account, which is the main purpose of a CSR report, means taking into account and valuing their individual and group values, views, preferences. Their views correspond to their "descriptive commitments" (idem), i.e. what they know, what they believe, what they believe they know about reality (facts, truths, presumptions, the 'real', in Perelman and Olbrechts-Tyteca's terminology, as quoted idem). Their preferences are considered by pragma-dialecticians to be their "normative commitments" and to include values, value hierarchies, and loci. Several types of such commitments could be identified based on the criterion of as it were *notoriety*: explicit commitments, or *concessions*, expressed in the opening stage of a critical discussion; implicit situational commitments (pertaining to the given situation – called contextual commitments by pragma-dialecticians); implicit general commitments, or endoxa. These three classes of commitments represent the *audience's frame of reference* (cf. van Eemeren & Garssen, 2012, p. 52). A special class of implicit situational commitments are the *acquired discursive* commitments which turn up along the discourse as a result of the argumentative moves made.

With reference to a CSR report, these commitments may be pertaining to the party producing the CSR report, since there is no direct and immediate

involvement of the other party when the report is being produced. The CSR report is thus a static discourse, it is an official document based on previous interaction and apt to subsequently yield reactions. At various points of the report, according to its sections, the target group and the specific groups of addressees may be different.

For instance, the media may be interested in all the elements of the report as a target group and as an addressee. Employees and customers are more interested in their workplace conditions and product quality and price, respectively. They are less concerned by the CSR report. The employees are most often targeted by one or several sections of the report, but are not always an addressee group, since it is not expected by the company that all employees read the report. The customers may well play the same roles as the employees, and not be aware of the CSR report contents. Nevertheless, any individual or smaller groups of these two categories of stakeholders may easily get in touch with the information in the CSR report by means of media and publicity. This is why it is important to distinguish, from a methodological viewpoint, between the target group as audience and the audience as simply audience of the report (case of the government, nongovernmental associations, etc.)

3.2 *Pointing to the audience*

It is assumed that in the case of a CSR report, the audience is represented by the stakeholders. A common presentational device used in the CSR reports is the *direct address to the audience* in the Introductory Section of the report, *The CEO's Letter*. This section in the 2013 Arcelor Mittal CSR report is titled *Letter from our CEO* and chairman. Lakshmi Mittal addresses the audience in a friendly and polite way: *Dear stakeholders*, by wishing them *Welcome* to the CSR report. This use of the direct address creates for the stakeholder the status of an interlocutor, an individual who is in some way given the opportunity to enter communication with the CEO. It also leads to think that the CEO envisages the CEO report as if it were written for the stakeholders. In fact, media is often the conveyor of the information included in the CSR report to the stakeholders.

Another common presentational device used in CEO letters and in CSR reports is addressing the *stakeholders indirectly*. This can be achieved in several ways.

a) *Describing the stakeholder*. The stakeholders may be defined as a whole group in the CSR report. This ensures that the company has a very positive image of the

stakeholder. This move can act as a *captatio benevolentiae*, especially when it appears at the beginning of the report. In the excerpt below, the report author chose to depict intellectual and professional qualities of the stakeholders to show that the company respects and highly praises the stakeholders, no matter the category:

(3) *Stakeholders* in today's digital world are smart. (*Steel: stakeholder value at every stage*, Corporate *responsibility 2013, ArcelorMittal;* my italics)

b) *Pointing to the stakeholders' benefits.* Pointing to various benefits stakeholders may have from the company's activity is a strategic move playing the role of an argument. For this study, the CSR Report of ArcelorMittal was examined to identify discourse fragments using explicitly the term *benefit* in relationship with the stakeholders. The excerpts (4) to (11) mention explicitly that there have been various benefits affecting the local communities. Figures, mention of places and years of activities allow the report author to appeal to logos and make the argument more convincing for the local community, the government, other organizations, employees. The stakeholders are pointed to by mentioning the particular activities addressing them and the specific benefits they may have had (my italics in the quotes).

Using a dissociation in (4), by means of the phrase *real change*, contributes to distinguishing the role of ArcelorMittal compared to that of other companies. The local stakeholders are explicitly referred to so as to identify their main point of interest in the report:

(4) … in Liberia, where we operate an iron ore mine. *We are bringing real change to the country,* but in doing so we want to ensure we are sensitive to local stakeholders and *bring them long term benefits.* We have set up *52 local consultation forums* and last year ran *103 workshops with the local community.* (p. 3)

The appeal to logos by evidential arguments is often the case. On the one hand the GRI requests numerical information an details, but at the same time the company puts itself in a favorable position when reminding the stakeholders of concrete measurable projects:

(5) There have also been some important *economic and social benefits:* between 270 and 600 jobs were created between *2006 and 2011;* the *$20.7 million of*

programme investments during the same period generated an estimated *$45 million of extra local economic activity;* and the area has become more attractive as a leisure and fishing destination. There is also *less risk* of flooding and harmful algal blooms. (p. 48)

When the contribution of the company to the living standard of a community is obvious, the appeal to emotions is most often the case. The CSR report may thus touch upon sensitive issues, as employment. Even if the project is not yet in place, as in (6), the company will announce its commitment for the future as an appeal to *pathos:*

(6) As part of the *Inuit Impact and Benefits Agreement* negotiated with the Qikiqtani Inuit Association, Baffinland will look first to the five closest *North Baffin communities when it hires new employees.* (p. 52)

By using the term *benefits,* the CSR report may make reference to a series of *benefits* derived from one another, in a cause to consequence relationship. In (7), employing local people leads to training them, which leads to an enhancement of their skills, which may lead to long-term benefits for the larger community:

(7) Along with our contractors, we employ nearly *3,000 employees in Liberia*, *96% of whom are local*. Because we are investing in the *ongoing education and training of employees and contractors,* we also have the opportunity to raise *the skills level of the local population.* This has *long-term benefits for the country and its citizens,* as well as for ArcelorMittal. (p. 52)

The company points to the total "number of beneficiaries of ArcelorMittal Foundation projects in 2013", which is 3.06m (p. 57. The information on various benefits is summarized in a more convenient way, then repeated in (8) and supplemented by the number of projects developed by the company:

(8) In 2013, over *three million people* benefited from *558 projects* supported by the Foundation in communities surrounding our steel plants and mines. (p. 56)

The stakeholders in poor countries and important categories of population are targeted by the projects, and explicitly referred to repeatedly as in (9) and (10), again with evidential mentions of numbers as:

(9) The Foundation promotes the exchange of best practice *across the globe*. For

example, in several countries of the Americas – *Argentina, Brazil, Mexico, Trinidad & Tobago* and *Venezuela* – the Foundation supports a project Seeing is Believing, which focuses on testing *children's* eyesight. Detecting and addressing problems with *children's* sharpness of vision are key to supporting *pupil* performance at school. This project benefited 16,812 children in 2013. (p. 56)

(10) In Ukraine, the ArcelorMittal Foundation invested in the repair of *three schools, a kindergarten, a boarding-school for deaf children* and a *health improvement camp for children*, which will help them to play and study in a safe and warm environment. The facilities are located in the towns around *Kryviy Rih.* In 2013, 12,950 pupils benefited from these facilities. (p. 57)

If not explicitly mentioned, the beneficiaries are included in a larger group, *those affected* by the changes involved in establishing the company's operational premises and facilities:

(11) We do everything we can to avoid involuntary resettlements, and where this does prove to be unavoidable we always aim to adhere to international standards and comply with the national or relevant regional authorities' guidelines on resettlement and compensation. In practice this means *consulting those affected and devising an approach that will best benefit those affected, and offer them a better quality of life as a result*. (p. 71)

c) *Pointing to the cooperation of the stakeholders.* This kind of address is emotional and apt to create communion between the company voiced as we and the very heterogeneous group of *stakeholders*. Moreover, in (12) the combination between the first person plural pronoun (we – our) and the noun stakeholders in the context of a directive speech act (*we need*) is in itself emotional while creating a positive image of any stakeholder virtually capable, as the text of the report is saying, of *support and understanding.*

(12) We need the *support and understanding of our stakeholders.* Effective engagement to ensure they have a good understanding of our business and the decisions we take is vital. (Lakshmi Mittal, letter to employees, February 2014, quoted in *CSR Report Arcelor Mittal,* 2013, p. 65.)

d) *Naming / Evoking explicitly the stakeholders.* A presentational device used in the latest CSR reports is *naming the audience.* As previously mentioned and shown in excerpts (4) to (12), the audience of a CSR report is at times identical

with the groups which CSR discourse and the report itself are targeting. *Naming the audience / Evoking the target groups* is the handier presentational device for the contents of the CSR report which is mostly narrative and descriptive, with no explicit "auctorial" presence. It is different in point of narrative perspective and stance from *The CEO's Letter,* which addresses the audience directly.

This becomes obvious from the very title of the 2013 ArcelorMittal CSR report: *Steel: stakeholder value at every stage.* The function of the colon here is ambiguous. Does it stand for a copula – is – or for a verb, such as *produces*, or for a passive structure, such as *is invested with*? This ambiguity may be voluntary and help achieve a rhetorical – poetic – effect through ellipsis.

3.3 *Calling upon the emotions of the audience*
A presentational device used to call upon the emotions of the audience is the *use of emotionally endowed words.*

In (12), terms such as support and understanding in connection with the notion of stakeholder (pointing to almost any recipient of the CSR report message) ensure emotional overload. To this add the repetition of the word understanding, the use of such words as to ensure and vital. If the CSR report is to be conceived as able to be fit in the pragma-dialectical model of critical discussion, then these statements act as a listing of starting points in the opening stage of a critical discussion.

Moreover, ArcelorMittal presents itself as the "world's leading steel and mining company" (see main website of the corporation. http://corporate.arcelormittal.com/). The presentation of the corporation on the website homepage is strongly rhetorical, by an artful appeal to emotionally endowed words: "Guided by a philosophy to produce safe, sustainable steel, it is the leading supplier…"

4. *The CSR report discourse as an argumentative activity type*
The discourse of the CSR reports resembles the activity type *adjudication.* It addresses at the same time a particular class of stakeholders or the stakeholders as a whole, and a third party. It may have as a particular goal, for instance, to show the investors that the company is acting responsibly towards them and to convince the government that the company is socially responsible. We are speaking in this case of a double fold effect, with different pursued consequences

with the two categories of audience. And the same piece of discourse may have a more convincing force on the latter category than on the former or vice versa. For the examples provided, it may be judged by the government that the company has done its best to comply with social responsibility commitments, among others. The consequence may be new regulations favouring the company, and not the investors.

In this way, a CSR report fragment of discourse functions as an argumentative activity type of adjudication. The burden of proof belongs to the company: they can show by means of the CSR report that some possible allegations about the negative consequences of their activity were fought, and that the company invested a lot of its profit in activities making benefit large categories of population, economy and the standard of living in particular settings. The public opinion – through dissemination by the media –, the local and governmental authorities may play the role of the judge in an adjudication to settle the 'virtual dispute' between the 'profit seekers', the company, and "those affected" by the changes brought about by the company, and this in a reasonable way. The kinds of proof that count as acceptable are, for instance, as mentioned in the analysis of the excerpts provided in the study, the projects the company is mentioning in the CSR report, the specific targeted groups named as such and the numbers of members in target groups addressed by the projects. This is meant to convince the specific adjudicator in each case. The CSR report may be seen as a weakly institutionalised type of argumentative discourse which the standards of the GRI tend to institutionalise more by codification and formalisation of procedural and material starting points. The facts and the figures are evidential, and they have argumentative potential since they bring about a change of perspective in the dispute, by providing the other party and the adjudicator with elements responding to virtual critical questions.

5. *Conclusion*

This study is part of a larger research on the rhetoric of corporate social responsibility discourse. The goal of the larger research is to show that the recently established very strict standards of CSR reporting by the Global Reporting Initiative have provided a framework in which companies may report strategically about their business. The first CSR reports played a lot upon rhetorical devices to persuade the stakeholders they were doing their job by complying with responsible behaviour towards society. The latest ones are guided

throughout this endeavour by clearly delineated regulations. These regulations allow them to adopt strategic maneuvering in order to convince the society at large and any virtual adjudicator that they are acting responsibly and at the same time persuade their audience on the merits.

This study took as the main reference text some excerpts of the ArcelorMittal CSR report for 2013. It highlighted some of the argumentative moves instrumental in resolving a virtual difference of opinion. Adaptation to the CSR report's audience demands is achieved by including in the report specific data, figures, details on the company's sustainable projects, and mainly the specific actions carried for each category of stakeholders as requested in the GRI guidelines. Complying with this is explicitly shown in some reports with precise reference to the particular GRI standards (Walmart). An argumentative move contributing to strategic maneuvering is pointing to the audience by describing it (properties / qualities of the audience / stakeholders), pointing to their benefits, pointing to their cooperative behaviour, and evoking the particular groups of stakeholders in order to say which advantages the company's activity have brought them. Calling upon the emotions of the audience is as well achieved separately or by one of the previous moves, by exploitation of the audience's positive face (qualities), social status (specific groups targeted by the company's activity), and emotionally endowed words.

It also appears that the discourse of a CSR report could be represented, at least n part, as a semi-institutionalised type of adjudication, since it addresses not only a virtual antagonist which may be part of the audience, but also a third party having an upper role in the settling of the dispute. The CSR report may be considered as the testimonial of the company made to ensure adjudication of the virtual dispute in favour of the company.

Acknowledgements:
This study is funded by "Dunărea de Jos" University of Galaţi, under its annual research strategy. I am very grateful to Marianne Doury, Researcher, and Isabelle Veyrat Masson, Director, at the CNRS Laboratoire Communication et Politique, Paris, as well as to Frans H. van Eemeren, from International Learned Institute for Argumentation Studies. They have always assisted me throughout the last years for documentation and research purposes. I am also acknowledging support from Agence Universitaire de la Francophonie.

References

Conrad, Ch. (2011). *Organizational Rhetoric. Strategies of Resistance and Domination*. Cambridge: Polity Press.

Eemeren, F. H. van (ed.) (2009). *Examining Argumentation in Context: Fifteen Studies on Strategic Maneuvering*. Amsterdam: John Benjamins Publishing.

Eemeren, F. H. van (2010). *Strategic Maneuvering in Argumentative Discourse. Extending the Pragma-dialectical Theory of Argumentation*. Amsterdam / Philadelphia: John Benjamins.

Eemeren, F. H. van & Garssen, B. (eds.) (2012). *Exploring Argumentative Contexts.* Amsterdam: John Benjamins Publishing Company.

Eemeren, F. H. van & Garssen, B. (2012). Exploiting the room for strategic maneuvering in argumentative discourse. Dealing with audience demand in the European Parliament. In F. H. van Eemeren & B. Garssen (eds.), *Exploring Argumentative Contexts* (pp. 43-58).

Eemeren, F. H. van & Garssen, B. (eds.) (2012). Topical Themes in Argumentation Theory. Twenty Exploratory Studies, *Argumentation Library*, Volume 22. Dordrecht / Heidelberg / London /New York: Springer.

Eemeren, F. H. van & Garssen, B. (2012). Some Highlights in Recent Theorizing: An Introduction. In F. H. van Eemeren & B. Garssen (eds.), *Topical Themes in Argumentation Theory* (pp. 1-14).

Eemeren, F. H. van, Garssen, B., Meuffels, B. (2012). The Extended Pragma-Dialectical Argumentation Theory Empirically Interpreted. In F. H. van Eemeren & B. Garssen (eds.), *Topical Themes in Argumentation Theory* (pp. 323-343).

Eemeren, F. H. van & Houtlosser, P. (2009). Strategic Maneuvering. Examining Argumentation in Context. In F. H. van Eemeren (ed.), *Examining Argumentation in Context* (pp. 1-22).

Murray, D. (2008). *Frankly, dear shareholders… The secret to a readable and effective CEO letter.* http://www.becontentwise.com/Article.php?art_num=5093

ISSA Proceedings 2014 – Rules Is

Rules: Ethos And Situational Normativity

Abstract: One question in the debate between the rhetorical and dialectical approaches concerns the availability of rules and standards. Are there objective standards, or are they changeable and situational? In Part One I briefly identify three concepts, context, audience and ethos. In Part Two I focus on ethos and how it is endemic to argument with familiars. Part Three shows that ethos concerns many local factors is situational. Finally, in Part Four, it is shown how the pragma-dialectical Rule 1 is situational.

Keywords: context, ethos, pragma-dialectics rhetoric, Grice, familiars, argumentation.

"*If rational means scientific, there can be little doubt that most people are irrational*" (Burke 1984, 17)

1. *Introduction*

I am going to distinguish, for the purposes of this talk, between rhetoric and dialectics in a particular way. I do not mean this to be the only difference or the essential difference, but the one I am focusing on for this discussion. I want to say that dialectics is concerned with rules that are to one degree or another independent of a particular audience or context, while rhetoric takes rules as being relative to audience and context. This is not to say that audience is completely irrelevant to dialecticians, but rather that the rules and their applications do not vary much as audiences change.

In my paper, "Natural Normativity" (Gilbert 2007), I argued that rules emerge from the interaction of interlocutors in a natural way governed primarily by social mores, face goals, and relationships. There are three important components of this interaction: ethos, audience and context. It will be noticed first that each of these is a sub-species of the subsequent. Ethos refers to an individual, and an audience is composed of individuals. Audiences occur in contexts that delineate who and what they are. Contexts are overarching and range from extremely broad to relatively narrow and concrete.

While there is disagreement between the two primary camps in Argumentation

Theory, some things are acceptable to both. Each side agrees that context, from geographic to socio-political, has a role in defining how an argument will proceed. No one thinks an argument taking place in a formal Japanese business setting will be the same as one occurring at a fender bender in Italy. On the other hand, while rhetoricians may believe that different rules will obtain in different context, the dialecticians are more inclined to imagine that the rules will only change *mutatis mutandis*. Similarly, the idea that different audiences hold different sets of beliefs and loci will receive a nod from most theorists. The difference here will be that dialecticians tend to be more concerned with truth than belief. This distinction is highlighted by Burke (1984).

Calling traditional wisdom and loyalty "fallacies," when they have guided the lives of most humans throughout history, surely cannot mean that we should not base our behaviour on them. It cannot mean that they never give us good reasons to believe (in) something, and to act on the basis of that belief. (18)

In short, we normally separate belief and truth, the former only coming under examination when questioned.

2. *Familiars*

The component on which this talk will focus is ethos. Ethos is the finest in the sense that it typically applies to the particular partner with whom one is immediately engaged. First, let me reiterate my usual parameters. My primary focus is on dialogical arguments between two people or, perhaps, three or four. Secondly, most of the time we argue it is with what I call *familiars*: people we know, have argued with before, and will argue with (or at least communicate with) again. This is of vital importance: Each of these people, people in our lives, has an ethotic standing that is a result of our past interactions. So, the sense of ethos I am talking about here is not the kind that adheres to well known public figures or famous orators. Rather, it is the kind that leads you to trust your auto mechanic, rely on your best friend, and be wary of the colleague who always feels too inquisitive about what you're working on.

Following Aristotle (1986) Brinton stresses the importance of ethos in assessing speeches. Fair-mindedness in the presentation of speech influences us as to the credibility of the speaker: "character is almost, so to speak, the controlling factor in persuasion" (Aristotle in Brinton 1986 247). Brinton uses the term "ethotic argument" as follows: "So argument will be regarded as ethotic whenever the

credibility of some person or persons is introduced or otherwise appears as a factor in persuasion or reasoning" (Brinton 1986 247).

Now I am happy to follow Brinton in taking an ethotic argument as one in which the ethos of the speaker becomes an issue. But I think it is important to distinguish between an ethotic *argument* and an ethotic *rating.* While the former has the ethos of the speaker as its subject, the latter is omnipresent in all arguments whether ethos is the subject or not. An individual's ethotic rating [ER] comes first and most assuredly from previous interactions. Even when encountering someone for the first time the associations they carry, the context they bear, and the situation in which that encounter ensues all form a basis for at least a preliminary ER. Who introduced you, the purpose of the meeting, it's importance to you, the initial power standings of those involved, all serve to create an initial tentative ER.

The preceding makes it sound as if an ER is a simple single factor such as might be applied to a public figure with respect to her "approval rating." With familiars this is not the case because our interactions with them range over a large number of occasions and activities. If we consider the sorts of factors that go into an ethotic rating, we quickly see that it can vary from factor to factor. Perceived traits such as honesty, trustworthiness, reliability, and loyalty are obvious, but as well there is enthusiasm, empathy, intelligence, humour, vision, and sensitivity among others. Here context also plays a role. In a business setting with a colleague reliability might be paramount, while in a casual setting with a friend, sympathy and humour might be at the top. The friend you go to a music concert with might be a different person from the one who goes with you to a ball game. It is also important that Music Guy may well be aware that his preference is in that direction, and not toward baseball. It's not that he's bad company, or a bad person, it's just that he spends all his time at the game chatting about music. My baseball friend can, in fact, talk about music, but when Ball Gal is at the game with me, her focus is on balls and strikes rather than music. This does not make her a better person, but a better baseball companion, and that is why I choose Ball Gal over Music Guy when I have an extra ticket for the Blue Jays game.

When talking about familiars we tend to know what are their strengths and weaknesses. Let's change the context to the office. I know that Office Guy is an excellent researcher, while Business Gal is a first rate planner. These, like those above, are all personal aspects we might consider skills, talents, or preferences

rather than moral characteristics or virtues. Yet, they can often play a role in an argument as when, for example, you are deciding who to invite to what or who to assign to what. Very often when we are talking about ethos we are referring primarily to trust, and how reliable a speaker is with respect to their authority and veracity. These characteristics are of the first importance and are certainly the sorts of things that Brinton has in mind. But notice that what they have in common with the previous characteristics is that they all concern *behaviour*, how people behave or are expected to behave in different situations depending on our historical awareness of their previous behaviour.

In some world ruled by Informal Logic we ought only pay attention to what is in the speech being presented, and not the character of the proponent. But that is, first, close to impossible, and, secondly, it does not seem desirable. I say it's not possible because we use past interactions to both form and facilitate current ones. I cannot and would not want to blank out my memory each time I encountered someone or listened to a speech or argument put forward by them. At this time we in Toronto have a mayor, Rob Ford, who has become internationally notorious for unseemly behaviour including drunkenness, smoking crack cocaine, lying and boorish statements and actions. If he makes a statement denying various allegations it would be foolish of me to accept them at face value and ignore the fact that he has frequently denied charges that he will subsequently accept. His ethotic rating is so low, that he is beyond belief in both the figurative and literal senses.**[i]**

When we read about ethos, whether in the context of the Aristotelian sense or in regard to appeals to authority (for example, Walton 1989, Willard 1990), there seems to be a sense that the ER is one complete thing that applies to a person, but I suggest this is not generally the case, and especially not when interacting with familiars. To see that it's not always the case in the Aristotelian sense consider once again Mayor Ford. While there are some people who believe everything he has said, most of those who still support him believe he has lied and mislead regarding aspects of his personal life and behaviour. But they still have faith in his ability to save Toronto taxpayers money and believe in his mantra, "stop the gravy train."**[ii]** So his ethotic rating with respect to his ability to control himself at a party may be very low, he is still trusted when it comes to municipal money management. Tindale is relevant here.

This is related to the expert's ethos. A speaker cannot give herself or himself

trust; the audience extends that to them. But this can be a crucial factor in whether an audience will accept what an expert says, and, depending on its strength, can give that acceptance durability in the face of conflicting evidence. (Tindale 2011, 341)

The point I am making is that trust adheres to an expert, i.e., a person, with respect to a specific domain of information, and not necessarily to everything they utter. Indeed, this is one of the standard caveats of rules for agreement from authority: make sure the speaker is an expert in the right field. Thus Johnson & Blair (1983, 144 ff) are clear that there is a field S, and that expert A asserting Q, must be an expert in field S. Music Guy, might be unreliable in many areas, might even be personally un-respected by you, but nonetheless is widely regarded to know everything there is to know about fifties and sixties Rock and Roll. You might not trust him to repay the $50 he wants to borrow, but you'll always let him settle an argument about who wrote "The Book of Love." Certainly, ethos can be a general idea pertaining to an individual, but that is not the only way it can be applied. In fact, much of the time we're more particular and more discerning. We have expectations of the people we talk to, and standards we expect them to uphold. So, if we ask Music Guy who sang the lead in the premiere performance of Bizet's *Carmen*, and he does not know we expect him to say so.

3. *Beliefs*

As cited above, Burke points out that we invariably rely on uncertain information embedded in shared beliefs and loci. Without these all arguments would end up in an infinite regress. Mind you, saying that many beliefs are taken for granted does not mean they must be accepted. To the contrary, any belief can be questioned, and if questioned, must be defended. "Feed a cold, starve a fever," is a common belief dating back to 1574, and while widely believed by others worldwide, will turn out to be false if challenged (Fischetti 2014). "Chicken soup is good for colds," may or may not be true. But if our family accepts the maxim, then when little Emma has a cold the question is not, should we research the issue, but rather, who's going to make the chicken soup. Since, as Perelman has taught us, arguments begin with shared beliefs, they all depend on situational components deriving from context, audience and ethos. Thus, "dialectical reasoning begins from theses that are generally accepted" (Perelman 1982, 2).

It is important here that I reiterate my stipulation that my concern is with familiars. When it comes to people with whom we do not interact, the situation is

quite different as then their public reputation is all we have to go on. In consequence, I would be loathe to accept the word of Mayor Ford on *anything*, as he has shown he lies about some things. Most of my friends, tradespeople and professionals, on the other hand, follow Grice's Maxims (Grice 1975) or *I am aware of their exceptions.* I know, for example, that Simon is very honest, but always misjudges how long it will take him to complete an assignment, and that my friend Deanne invariably exaggerates somewhat to improve the drama of a story. One way of thinking of this is just how far, how seriously, and how crucially they stray away from the maxims. In fact, when considering rules we may need not go much further than Grice's maxims. We expect people to be truthful (or at least honest), relevant, clear and reasonably concise (Grice 1975, 26-27).**[iii]** Violation of these rules indicates a potential invoking of the Cooperative Principle [CP], whereby we force the utterance into accordance with said rules. But the CP cannot be invoked if we have no knowledge of the situation and/or audience. Returning to ethos, I offer the following definition.

An ethotic rating is a symmetrical relationship between a proponent and interlocutor based on value judgments regarding qualities relevant to the specific situation, where those judgments are based on previous interactions and/or information.

The relationship is symmetrical because both parties will be applying ERs to each other, and the awareness of that process is itself a component in the interaction. So our reaction to people is frequently relevant to Grice's maxims making alterations, mutatis mutandis, for cultural variation. These are based on previous interactions, except in the null case of an initial meeting. Even then, such factors as who made the introduction, the context, location and known goals can provide at least minimum pre-interaction grounds for a rating. In other words, context and situation *always* plays a major role. It colours our expectations, as well as our evaluative sensitivities insofar as context determines what sort of behaviours, beliefs and values are deemed appropriate and acceptable at a given time and place.

4. *Rules*

The pragma-dialectic approach, as propounded by van Eemeren & Grootendorst (1987) contains a set of ten rules designed to govern a critical discussion [CD]. A CD is an *ideal form of argumentation*, and following the rules maintains its integrity. The underlying idea of the rules is to create a situation in which the

interlocutors are being fair, open and focused on obtaining the truth. This is expressed in Rule 1: "Parties must not prevent each other from advancing or casting doubt on standpoints" (1987, 287). Of course, ideal CDs are as rare as hen's teeth, and this is acknowledged when the concept of strategic maneuvering was introduced in the late 1990s. Arguers want to and will make their points in persuasive ways so as to convince their partners to agree with them. This is fine and perfectly normal in most situations; some would argue it is inevitable. Thus, van Eemeren and Houtlosser write, in 2002:

Strategic manoeuvring may take place at several levels of an argumentative move. The basic aspects of strategic manoeuvring are, in our view, making an expedient selection from the topical potential available at a certain discussion stage, adapting one's contribution optimally to the specific expectations and demands of the audience, and using the most effective presentational devices. (392)

One is, nonetheless, limited by the dialectical rules mentioned above. The question is, how far can one push persuasive techniques without crossing the line so that an argument becomes derailed. An argument is said to be derailed when it violates one of the rules.

An argumentative move is considered sound if it is in agreement with the rules applying to a specific stage of a critical discussion and it is considered fallacious if it violates any of these rules and hinders the resolution of a dispute (393).

Now as I said in Part One, and very loosely speaking, the dialectical approach takes argumentation as being first governed by rules, and subsequently controlled by audience. For me, this raised a question (and I am not sure it applies only to the dialectical approach,) and that is this. There are very many contexts, especially when that is broadly taken, where rules are violated. In particular, there are situations in which the ethos of a proponent is such that one is culturally enjoined from responding in an argumentative manner. Much as we learn in the west that boys don't hit girls, so the ER of an individual may preclude responding in a full and open way. So what happens when we have a conflict between a cultural norm and an argumentative rule? There are many cultures, for example, where arguing with a person who is older is unseemly and rude. Their ethotic rating comes not from personal experience, but from their contextually defined status, or, perhaps more likely, the ER I have of this individual is

overridden by the context. This cultural ER means that I cannot contest their opinions or beliefs, and this is opposed to the PD rule 1 where preventing argument is outlawed.

When I ask my Asian students about such arguments they are clear that they never argue with their elders; it is simply not done. In a similar vein, my Italian students explain that arguments never really end because no matter what, no one ever backs off or accepts "defeat," a violation of Rule 9. Rule 10 states: "Formulations must be neither puzzlingly vague nor confusingly ambiguous and must be interpreted as accurately as possible." But many cultures, aboriginal, Talmudic, and so on present arguments that by design or tradition are both ambiguous and confusing. When arguments are narratives, they may consistently violate this rule.

I could go on but I prefer to get to the question all this seems to raise, viz., are these situations of fallacy and rule violation, or would they be considered not arguments at all. What I mean to ask is this, if the ER of a proponent is such that one is not permitted to disagree, or if permitted to disagree then only to a limited extent, are we in an inherently fallacious situation, or is there simply no argument taking place. Obviously, one answer may be that there is an argument going on, but it's not a critical discussion, but even then the question of fallaciousness still arises. One might need to ask, as bizarre as it sounds, can a culture commit a fallacy? If a culture, religion or tradition marks an individual or class of people with an ethotic rating that precludes disagreement, then how can we assess the quality of their arguments?

On the dialectical model of argumentation rules, and following them, is the very heart of the project. As a result, unimpeachable ERs are inherently a violation of dialectic rules insofar as argumentation is severely limited. It strikes me, in consequence, that it is best for the dialectical view to claim that no arguments are taking place. The alternative is to charge that a culture is inherently fallacious. This is akin to what Malcolm Gladwell did in his analysis of the 1997 crash of Korean Airlines flight 801 (Gladwell 2008). He maintained the crash occurred because of the culture of deference that precluded a co-pilot from arguing forcefully with a pilot.**[iv]** In this sense it is the ethotic relations imbued by the culture that is at fault.

Ethotic ratings are ubiquitous for the simple reason that we almost always know

those with whom we are interacting, and when we don't, we use the context to fill in as much as possible. Our partners always have markers of gender, race, class, age, and often status, wealth and cultural background. All of these influence our view of our protagonists, limit the actions and reactions we will have, and generally undermine a level playing field. So the question of violating various rules applies not only to severe cases such as the Korean deference issues, but in our own "egalitarian" society as well. It strikes me that on the dialectical model, because of the pervasive nature of ethotic evaluation, that virtually all argumentative interactions will become fallacious, which, of course, makes it an empty concept.

On the rhetorical view, this is not really a problem. It's not a problem because the audience centred nature of the view means that relations need to be explored in order for the interaction to be understood. As Willard, an extreme rhetorician, explains, arguments must be examined in situ, and the Argumentation Theorist must get her hands dirty by examining the human relationships that exist amongst the audience members (Willard 1989, 93). In this way ethotic relations are recognized as existing and as permeating the interaction, but now they can be examined for mis-use and abuse, rather than having their simple existence be evidence of a fallacy.

I dearly hope that I have not created a straw man in the description of the dialectical position. If I have, I apologise and beg for clarification. But it strikes me that a rule-based system cannot account for the personal dynamics that are inherent to human interactions. That said, I believe the rules, be they the pragma-dialectic ten commandments or the Informal Logic evaluative triumvirate, are important and useful. My issue is not with them as rules, but rather with them as the first basis for evaluation.

NOTES

i. This is not to say that Mayor Ford does not have his supporters. See Tindale (2011) for a discussion of this phenomenon.

ii. It is notable that even though almost every claim he has made regarding the money he has saved has been challenged, he is still believed by some.

iii. Grice's maxims require cultural variation and can be quite different in a variety of situations. Written with British gentlemen of a certain class in mind some alterations may be quite startling, e.g., in some cultures saying the minimum is rude, and in some being honest is not always expected. That,

however, is a different talk.

iv. Grice's maxims require cultural variation and can be quite different in a variety of situations. Written with British gentlemen of a certain class in mind some alterations may be quite startling, e.g., in some cultures saying the minimum is rude, and in some being honest is not always expected. That, however, is a different talk.

v. There is not universal agreement with Gladwell's claim. Cf. http://www.nytimes.com/2008/12/29/opinion/29iht-edbeam.1.18978412.html?_r=0 for example.

References

Brinton, Alan. 1986. "Ethotic Argument." *History of Philosophy Quarterly* 3 (3):245-258.

Burke, Richard J. 1984. "A Rhetorical Conception of Rationality." *Informal Logic* 6 (3):17-26.

Eemeren, Frans van, and R. Grootendorst. 1987. 'Fallacies In Pragma-Dialectic Perspective.' *Argumentation* 1 (3):283-302.

Eemeren, Frans van, and P. Houtlosser. 2003. "The Development of the Pragma-dialectical Approach to Argumentation." *Argumentation* 17 (4):387-402.

Fischetti, Mark. 2014. "Fact or Fiction?: Feed a Cold, Starve a Fever ". Scientific American Accessed May 2, 2014. http://www.scientificamerican.com/article/fact-or-fiction-feed-a-cold/.

Gilbert, Michael A. 2007. "Natural Normativity: Argumentation Theory as an engaged discipline." *Informal Logic* 27 (2):149-161.

Gladwell, Malcolm. 2008. *Outliers: the story of success* 1st ed. New York: Little, Brown & Co.

Grice, Paul H. 1975. "Logic & Conversation." *In Studies in the way of words, 394.* Cambridge, Mass.: Harvard University Press.

Johnson, Ralph H., and J. Anthony Blair. 1983. *Logical self-defense*. Toronto: McGraw-Hill Ryerson.

Perelman, Chaim. 1982. *The realm of rhetoric*. Notre Dame, Ind.: University of Notre Dame Press.

Tindale, Christopher W. 2011. "Character and Knowledge: Learning from the Speech of Experts." *Argumentation* 25 (3):341-353. doi: 10.1007/s10503-011-9224-9.

Walton, Douglas N. 1989. "Reasoned Use of Expertise in Argumentation." *Argumentation* 3:59-73.

Willard, Charles A. 1989. *A theory of argumentation*. Tuscaloosa: University of Alabama Press.
Willard, Charles A. 1990. "Authority." *Informal Logic* 12 (1):12-22.

ISSA Proceedings 2014 – Towards A Foundation For Argumentation Theory

Abstract: I shall present and analyze numerous principles that argumentation theorists do agree upon (and some closely related one which they do not) and argue that the set presented here offers at best limited grounds for cross-theoretical evaluation.

Keywords: Acts, expressions, informational content, reasons, arguments, repeatable, abstract object

1. *Introduction*

Argumentation theorists disagree about many things. For example, is conductive reasoning distinct from deductive or inductive reasoning? Could a painting or a judo flip be an argument? How many types of fallacies are there? Are there any enthymemes? Is relevance an independent condition of a good argument? Can a non-virtuous arguer give a good argument? Are arguments better construed as acts or as propositions or as sentences? Are all arguments dialectical? Answering these sorts of questions are among the current challenges of argumentation theory.

One impediment to answering these questions is that differing answers are often grounded in different theoretical frameworks. Hence, the issue is not merely one of trying to marshal 'the best' reasons for a particular answer to one of these questions, but rather to produce 'the best' overall theory. But now a new problem emerges – how do we assess, across theories, whether theory X is right for saying an argument can have an infinite number of premises say, while theory Y is wrong

for saying an argument cannot? We could of course try to adjudicate theories in the standard way in terms of simplicity, explanatory depth and breadth, etc., but such comparisons rarely generate a neat linear ordering. One theory may have advantages in one area of explanation, but do worse in another. Even worse, the theories may not agree on even the basic ontology and not agree on what sort of thing an argument is (or could be). Hence, one might doubt that it is possible to construct a fully adequate theory of argumentation.

My concern here is to at least begin to explore the possibility of adjudicating basic ontology issues in argumentation theory. What, if anything, are the constraints on an adequate theory of argumentation at the basic ontological level (at least from the perspective of argumentation theory)? Are there any substantive principles that are accepted by all theories that might serve as grounds for adjudicating amongst competing theories? In this paper I shall present and analyze numerous principles that argumentation theorists do agree upon (and some closely related ones which they do not) and argue that the set presented here offers at best limited grounds for cross-theoretical evaluation, though I shall also point to some possible paths forward.

2. *Background agreement*

Argumentation theory does not take place in a vacuum. Indeed, for there to be a recognizable argumentation theory (as distinct from say particle physics or pre-Imperial Roman history or basket weaving or World Cup football) there must be much that is at least tacitly agreed upon, such as at least: there are thinking beings, there are material objects such as chairs, buildings, stars, etc. The thinking beings perform various kinds of actions and have various kinds of goals, beliefs, and desires. There are languages which thinking beings use to communicate information with each other. There are various academic disciplines that categorize this information, etc.

I am not claiming that these tacitly agreed upon items are definitely known or true or unchallenged. Paul Churchland (1981) doubts there are beliefs. Trenton Merricks (2003) argues that there are no macro-sized non-conscious material objects while Jason Turner (2011) argues there are no composite objects at all. All I am suggesting is that, as argumentation theorists, we presuppose that argumentation is a human activity that occurs within the context of human beliefs and desires and goals within a world of tables, chairs, buildings, etc.

So there is a vast swathe of propositions that I suspect we agree upon and take for granted when we are doing argumentation theory. But much of this that we presuppose does not itself impact or help us adjudicate disputes in argumentation theory since it is against this presupposed backdrop, when trying to understand the human activity of argumentation, that the disputes themselves arise. Hence, even if it turns out that Merricks is right that there are no baseballs (or any other non-conscious composite objects), but merely atoms arranged baseball-wise, then, while a part of our presupposed background is not quite accurate, the inaccuracy is not something that affects our argumentation theory. We can argue about whether baseballs were in the strike zone just as easily as whether atoms arranged baseball-wise were in the strike zone. So despite the existence of large-scale agreement, we have not necessarily made much progress in terms of helping adjudicate theory disputes in argumentation theory, since it is against the large-scale agreement that the disagreements arise.

3. *Substantive agreement*

Is there anything substantively relevant to argumentation theory that all argumentation theorists agree upon? (or at least should agree upon?) At the very least it seems hard to be counted as doing argumentation theory if one does not accept:

(1) *There are acts of arguing*

Hard, though perhaps not impossible. Could there be a world in which people give/express arguments (and so there is a need for argumentation theory, and yet there is no arguing)? Perhaps they give arguments as a form of poetry or entertainment. The question of course is whether what the people give should in fact be called 'arguments' (or whether even if called 'arguments', the study of them should be called 'argumentation theory'). If we say 'yes' because historically they once used them to argue, but now do not, then the world is not a world in which there are no acts of arguing. If we say 'yes' because what they give/express correspond with what we give/express when we argue, then the matter is inconclusive since it may be that it is the usage of the giving/expression to argue that allows the giving/expression to be called an argument. So without the arguing, the giving/expressing in our hypothetical world would not be the giving/expressing of an argument. Regardless, even if it really were a possibility that one could do argumentation theory without there being acts of arguing, that possibility is quite remote from the situation in which we actually find ourselves –

one in which there are acts of arguing.

Given the plausible background assumption that action theory and argumentation theory are not the same thing, we should also accept:

(2) *Not all acts are acts of arguing*
(2), unlike (1), is not a precondition for doing argumentation theory, but rather a fact about the background world that is presupposed and yet is relevant to argumentation theory. Given the world of agents with beliefs and desires, and goals and wants and needs who act on those beliefs and desires to achieve their goals in a world of tables and chairs and money, etc., there are in fact acts that agents perform that are not acts of arguing. My sitting down before turning on the computer was not an act of arguing. Your eating of breakfast this morning (assuming you ate breakfast this morning) was not an act of arguing. In general acts of poety reading, prophesying, walking, etc are, most of the time anyway, not acts of arguing. This of course leaves open where the line is between acts of arguing and acts that are not acts of arguing. For example, are acts of persuading (or attempted persuasion) all acts of arguing or not. Are at least some acts of explaining also acts of arguing? Is proving a type of arguing or not?

While we may disagree on where the line is, we agree that there is a line to be drawn. For the notion of arguing to be a relevant sub-class of action, then there need to be examples of action that do not fall into the sub-class – otherwise arguing and acting start to look like two different names for the same thing. Hence, any theory that ultimately claimed that all acts (or none) are acts of arguing is to be rejected.**[i]** So what to make of the critical thinking textbook – *Everything's an Argument?* Despite the title, the actual claim of the book is that every instance of language or symbol use is a form of argument, which, even if stronger than most argumentation theorists are willing to accept, is still much weaker than the claim that all acts are acts of arguing.

(2) is not to be confused with the related:

(Z) Not all acts could be acts of arguing.

Put another way (Z) is: there is some act that could not be an act of arguing, or there is some act for which it is impossible that it be an act of arguing. While I suspect that many argumentation theorists agree with (Z) – there just are some acts that could never be acts of arguing, I am not sure that such agreement is

justified. Indeed, if exemplifying, providing an example to show a certain kind of object, act, or state of affairs is possible, is a kind of arguing and any action could, in the right circumstances, be an act of exemplifying, then every act could be an act of arguing.**[ii]** (This does not mean that there is a possible world in which every single act in that world is an act of arguing – it merely means that for every act x, there is some possible world in which x is an act of arguing.)

Some argumentation theorists hold that there must be a linguistic component for an act to count as an act of arguing. Others disagree – consider for example, Michael Gilbert's (2003) judo flip example. Regardless, if it is true that an act of arguing must involve a linguistic component, then any act with no linguistic component is not and (assuming it could not be the same act if it had a linguistic component) could not be an argument. But since argumentation theorists do not universally agree on whether an act of arguing must involve a linguistic, or even symbolic, component, we cannot use such an appeal to ground accepting (Z).

While argumentation theorists disagree about what is and is not an act of arguing and disagree about whether there are boundaries to what acts could be arguings, theorists at least agree that:

(3) *At least some acts of arguing involve the expression of reasons*

Stipulate that to express reasons it to give a symbolic representation of the reason. For many those expressions are limited to linguistic expressions – for others, pictorial expressions with no linguistic component will also count as expressions of reasons. But given the stipulation, Gilbert's judo flip may be the giving of a reason, but not the expressing of one. Hence, I cannot say that argumentation theorists agree that all acts of arguing involve the expression of reasons. But what of:

(A) All acts of arguing involve the giving of reasons.

According to Tony Blair (2003), "[e]ven the broadest definitions of argument, such as those of Willard (1989) and Gilbert (1997), presupposes some element of reason-using." Is there then no arguing if one is just giving the conclusion without reasons for it? While plausible, I am not sure that all argumentation theorists agree. For example, Maurice Finocchiaro (2003), argues that in at least some instances an argument is merely a defense of its conclusion from objections even if no reasons are given for that conclusion. Others allow the possibility of zero-

premise arguments and if one thinks that for every argument there is a corresponding potential arguing, then again it seems one is committed to the possibility of an act of arguing that does not involve the giving of reasons.(See Goddu 2014) So as plausible as (A), I hold off from adding it to list of agreed upon principles. [It may turn out that resolving the Finocchiaro case or the zero-premise argument case will ultimately vindicate (A). In the former, one might hold that the rejection of objections to a given conclusion themselves constitute reasons for that conclusion, whereas in the latter, perhaps one might reject that for every argument is a corresponding potential arguing. Regardless, I leave (A) off the list for now.]

Could you have an expression of reasons that was not part of an act of arguing? I suspect so. When I give an example of a reason, I express it, even if I do not argue. If I merely repeat someone else's reasons, I express them without arguing with them. A computer that generates complexes of sentences in the form: "A, B so C" may express reasons without any act of arguing happening. So I suspect we have evidence for:

(B) Not every expression of reasons is part of an act of arguing.

But I put (B) aside on the grounds that there may be some dispute about what counts as the expressing of a reason.

Finally, it is part of our background presuppositions about language and symbols and representations in general that they have meaning or content. Hence, all argumentation theorists should agree that:

(4) *Expressions of reasons have informational content*

Of course we may disagree about how to capture the notion of informational content – say in terms of propositions, or some primitive 'same content as' property, or something else. Regardless, we still agree that there is informational content that is distinct from the expression – "x is a bachelor" and "x is an unmarried male of marriageable age", or "x = 25" and "x = 5 squared" may have the same informational content, but are definitely not the same expressions.

Argumentation theorists, as far as I can tell, agree on (1)-(4). At the very least they act and write as if they do even if they have never explicitly uttered or written them. I suspect most would assent to (A) and (B) as well, but for the

moment I am putting those aside. (Though what follows does not change if (A) and (B) are put in the mix.) If I am wrong and argumentation theorists do not even agree on (1)- (4), then the prospects for moving forward are quite limited. If we cannot even agree on the basic constituents out of which the data we are trying to explain are constructed, then we will certainly never agree on any attempt to explain and organize that data. But is agreement on (1) – (4) enough for any progress? I turn to that question in the next section.

4. *Any payoff?*

Does (1)-(4) provide us enough agreement to make progress on our disputes? I suspect not, since the background presuppositions and (1)- (4) are currently consistent with:

(Y) There are no arguments.

Proof: Suppose the word 'argument' were stricken from our language as a myth, say on the par of 'subluminous ether' or 'phlogiston'. Could one still do argumentation theory with the ontology presupposed in (1)-(4)? Yes. There would be acts of arguing which we would try to distinguish from acts that were not acts of arguing. At least some of those acts of arguing would involve the use of expressions that had informational content. One could still debate whether the act or the expression or the informational content was the most important aspect of what was going on. One could still distinguish combinations of actions and expressions that in a certain context for a certain audience would be more likely to achieve assent than other combinations of actions and expressions in that context. One could talk of the logical properties holding between different pieces of informational content. One could ask whether the actions or the expressions or the informational content could be partitioned into various categories such as good, bad, rational, irrational, deductive, inductive, conductive, abductive, enthymeme, fallacy, convergent, divergent, virtuous, etc. One could, in short, I suspect recapitulate much of argumentation theory without the word 'argument' referring to anything at all.

One might claim that all this shows is that the word 'argument' is ambiguous – sometimes it is used to refer to the acts of arguing, sometimes to reason/claim expressions, sometimes to the informational content of those expressions. Granted. But I was not trying to show that (1) – (4) entail that there are no arguments – I was merely trying to show that (1) – (4) are consistent with there

being no arguments. The fact that (1) – (4) would also be consistent with 'argument' being a disjunctive ontological category, i.e. x is an argument iff x is an act of arguing or a reason/claim expression or the informational content of a reason/claim expression is beside the point. Put another way, (1) – (4) is consistent with none of the three contenders being arguments and with all of them being types of arguments. Nothing in (1) – (4) privileges one possibility over another. But note that even if one accepts that the word 'argument' is ambiguous, the word could still be excised for clarity's sake with no ontological loss – in other words, at the very least one could be a reductionist about arguments – they are nothing over and above acts of arguing or reason/claim expressions or the informational content of reason/claim expressions (and if the ambiguity was causing theoretical problems, then for the sake of accurate theory we might decide to excise the word anyway.)

But if (1) – (4) are consistent with there being no arguments, or with just acts being arguments or with all three ontological categories including types of arguments, then agreement on (1) – (4) alone will not help us adjudicate disputes concerning the nature and types of arguments. We cannot resolve disputes concerning enthymemes or fallacies or whether there are deductive, inductive, conductive, and abductive types of arguments if we cannot agree whether there are arguments at all, or if there, are what ontological category they fall into. Suppose, however, that, in addition to ~(Y), i.e. there are arguments, we add:

(C) Arguments are repeatable

to our list of agreed upon principles. Roughly speaking, repeatable entities can happen, exist, or be instantiated more than once. On most views, material objects are repeatable, but the temporal slices of material objects are not. Your desk chair is probably the same chair as yesterday. Even if the person in the next office is sitting in the same type of chair as you – they are not sitting in the very same chair. Similarly, on most views properties are taken to be repeatable even if the particular instantiations of them are not.

Argumentation theorists write and act as if arguments are repeatable. We worry about how to correctly extract the arguments from given texts, we expect our students to give us Anselm's argument and not their own muddled version of it, we speculate about how an argument would fare when given in different situations or to different audiences, and so on. This is not to say that we agree on

the identity conditions of arguments – by no means. But argumentation theorists do not take the identity conditions to be so stringent that arguments are not repeatable.

But holding to (1) – (4), ~(Y), and (C) has significant consequences for argumentation theory. Assume that the only three plausible candidates for arguments are some sort of act, expression, or abstract object. I know of no attempt to define argument that does not fall into one of these three categories (though I can find you various works where a given definition in one place puts arguments in one ontological category, but in another place puts arguments in a different ontological category – oops!). But given (C) we should also accept, what I take is a controversial claim in argumentation theory, viz.:

(*) Arguments are abstract objects.

The reason is simple. Neither acts nor expressions are repeatable. I raise my hand. I raise my hand again. While I performed two acts of the same type, I did not perform just one act – one act happened before the other and temporal location is one of the identity conditions of acts. Similarly for expressions: the first 'the' on this page may be the same type of symbol as the second 'the', but the two 'the's are not one and the same expression – they are located in different places and composed of different molecules of ink. Abstract objects of various stripes, on the other hand, are repeatable – informational content construed as propositions say, or act types or expression types which are properties. Hence, adding (C) to our list of agreed upon principles brings with it a commitment to arguments being a kind of abstract object.

Note that it does not commit us to a particular type of abstract object. Hence, those who favour act talk might opt for act types over propositions. I suspect that such solace will be short lived, for though I will not argue it here, I strongly suspect that any appeal to act types, to get the typing correct, will ultimately appeal to the informational content. For example, my giving Anselm's argument in a high falsetto in English while someone else presented Anselm's argument in booming Danish will count as instances of the same act type, for the purposes of identifying arguments, in virtue of the informational content presented since most of the other act types these two particular acts fall under do not overlap.

Regardless, I am not here trying to argue for the truth of (*), but merely to show

that given (1) – (4), commitment to ~(Y) and (C), short of finding another ontological option for arguments beyond the three standard ones used in argumentation theory, commits one to (*). If arguments as abstract objects cannot be tolerated, one is free to reject that arguments are repeatable (and live with the consequences) or even to reject ~(Y) and just give up on arguments altogether and focus, in one prefers, on, say, arguings and types of arguings instead.

5. *Conclusion*

On the one hand I have made no progress on the list of issues I used as examples at the beginning of this paper. The principles we, as argumentation theorists, agree upon so far, are too minimal to help us resolve these issues. But I do hope that I have at least provided four possible avenues for moving forward. Firstly, we could try to find more principles that argumentation theorists agree upon. (Perhaps one might try to appeal to the principles offered in George Boger's "Some Axioms Underlying Argumentation Theory"? I suspect however that the tenets he gives are not generally agreed upon or non-contentious, even if widely accepted within one strain of argumentation theory.) For example, I strongly suspect that argumentation theorists also agree on some principles roughly like the following:

(D) All arguings involve the expressing/giving of a claim.
(E) All arguers have some goal to be achieved by arguing.
(F) Some arguings happen for the purpose of changing belief, promoting action, convincing, persuading, demonstrating.

One can hope that finding more agreed upon principles will generate a better basis for adjudicating disputes. Note however, that even adding (D) – (F) to our list of agreed upon principles does not change the results of section 4.

Secondly, we could deny that there are arguments and focus instead on arguings, reason/claim expressions, and the informational content of such expressions (and the relationships and uses and types) of each and see if dissolving talk of arguments also dissolves the original problems. Thirdly, we could deny that arguments are repeatable and trace out the consequences for argumentation theory. Fourthly we could accept that arguments are repeatable and focus on arguments as abstract objects and trace out the consequences of that. For example, it is not at all clear that arguments as abstract objects can have missing premises – perhaps the expressions of the arguments in texts can have missing

components (given the arguments we take those expressions to express), but the arguments themselves cannot. Hence, commitment to (*) might also commit one to 'enthymeme' not being a property of arguments at all. I leave it up to you which path you shall follow.

NOTES

i. John Woods (1992) appeals to similar principle with regards to relevance – any theory of relevance that makes everything relevant to everything or nothing relevant to anything is to be rejected.

ii. The issue is made more complicated by the problem of trying to type acts or identify the identity conditions of an act – could act x have happened two minutes later and still be the same act? On some theories of the nature of acts the answer is 'no', but on others it is 'yes'.

References

Blair, J.A. (2003). Towards a Philosophy of Argument. In J.A. Blair, et. al. (Eds.), *Informal Logic* @25: Proceedings of the Windsor Conference (CD-ROM). Windsor, ON: OSSA.

Boger, G. (2005). Some Axioms Underlying Argumentation Theory. In D. Hitchcock (Ed.), *The Uses of Argument: Proceedings of a conference at McMaster University,* 18-21 May 2005 (pp. 40-47). St. Catherine's, ON: OSSA.

Churchland, P. M. (1981). Eliminative Materialism and the Propositional Attitudes. *Journal of Philosophy,* 78, 67–90.

Finocchiaro, M. (2003). Dialectics, Evaluation, and Argument. In J.A. Blair, et. al. (Eds.), *Informal Logic @25: Proceedings of the Windsor Conference* (CD-ROM). Windsor, ON: OSSA.

Gilbert, M. A. (1997). *Coalescent Argumentation*. Mahwah, NJ: Lawrence Erlbaum Associates.

Gilbert, M.A. (2003). But why call it an argument?: In Defense of the Linguistically Inexplicable. In J.A. Blair, et. al. (Eds.), *Informal Logic @25: Proceedings of the Windsor Conference* (CD-ROM). Windsor, ON: OSSA.

Hitchcock, D. (2009). Informal Logic and the Concept of Argument. In D. Jacquette (Ed.). *Philosophy of Logic* (pp. 101-129). Amsterdam: Elsevier.

Lunsford, A., Ruszkiewicz, J., and Walters, K. (2013). *Everything's an Argument*, 6th ed. New York: Bedford/St. Martin's.

Merricks, T. (2003). *Objects and Persons.* Oxford: Oxford University Press.

Turner, J. (2011). Ontological Nihilism. *Oxford Studies in Metaphysics*, 6. Oxford:

Oxford University Press.
Willard, C. A. (1989.)*A Theory of Argumentation*. Tuscaloosa and London: University of Alabama Press.
Woods, J. (1992). Apocalyptic Relevance. *Argumentation* 6, 189-202.