ISSA Proceedings 2006 – Informal Logic And Pragma Dialectics

Pragma-dialecticians are mainly Dutch argumentation theorists, while informal logicians are chiefly Canadian reformers of logic. The two groups are further differentiated in that pragma-dialecticians find their disciplinary home in speech communications while informal logicians dwell in philosophy. Yet these two groups, richly represented at this conference, have interacted productively for over twenty years. What is their common ground? And how did each come to find it?

Fallacies

Initially I believe the groups met over informal logical fallacies, although there is not the only way of describing their common ground. So let us glance at what informal logical fallacies are. A fallacy is a false belief held by one or more persons to be true, in other words, a mistaken belief. A school of American literary critics (the New School) held in the mid-twentieth century that you should not consult the intentions of the artist in evaluating an artwork, and that those who did so committed the intentional fallacy (Wimsatt & Beardsley 1954). But such a mistaken belief (if it is mistaken) is not yet a logical fallacy.

A logical fallacy is a mistake in reasoning (or arguing), and frequently the statement so inferred will be false. But this is not necessarily the case. It is simply unproven by these premises in this inference, yet might be proven by some other combination of premises and reasoning. The distinction of informal from formal logical fallacies takes us to the circumstances that motivated the rise of informal logic, so we must look at it more closely.

Formal logics offer us certain forms of inference or argument as valid, and the charm of a valid form (or indeed of formal logic itself) is that when you substitute appropriate (true) premises, you are assured of getting a true conclusion. In this sense valid forms have probative force – they contribute to proving conclusions. In some cases the form is a way of organizing certain complete statements, as in modus tollens; in others you have a small number of statement forms into which you substitute subject and predicate terms, as in the Aristotelian syllogism. A

formal logical fallacy occurs when you substitute into an invalid form, one which will not prove a conclusion even when all of the premises are true. Examples are the fallacy of undistributed middle term in syllogistic logic, or negating the antecedent in propositional logic.

On the other hand an informal logical fallacy is a failed inference or argument whose fatal flaw is unrelated to any formal feature. Begging the question is an example, where we assume as true in a premise what we attempt to prove in the conclusion. The appeal to ignorance is another example, where we fallaciously claim that a conclusion is true because no one has disproved it. At this point a critic might object that we are mistaken in claiming that begging the question is unrelated to formal features. It involves the relation of premises to a conclusion, which is the form of an argument and hence a formal feature. But this an unhelpful way of speaking about arguments because the premise-conclusion relation is what constitutes an argument – without it, whatever use of language you have, it isn't argument. And even if we accept that the premise-conclusion relation is a form, it differs from the forms of formal logics in having no probative force. So it is not a form in the sense that the forms of formal logics are forms.

Informal Logic

The great insight, which arose with the work of John Woods, Douglas Walton(1989), Ralph Johnson(1996), and J. Anthony Blair(Johnson 1996: 2-51) in the 1970s and 1980s, was that where there were informal logical fallacies, there was also an informal logic. Put differently, given that formal techniques are of little or no avail in analyzing informal fallacies, the techniques we develop for dealing with such informal logical fallacies will constitute an informal logic. To deal with them effectively would be to have criteria for identifying them, to understand why they are fallacious, and to be able to avoid them in one's own reasoning and arguments. Informal has developed from little more than a list of fallacies, against which any given argument is checked, to a developed theory of argument in natural language and its appraisal.

So valuable is this insight that in my judgment we are today still in the early stages of exploring its implications. But a large part of its value at that time was its challenge to the accepted view among Anglo-American philosophers that classical (formal) logic and its progeny are the only logics worth serious attention. The problem with that view is that classical logic was developed by Frege(1986) and Russell(Whitehead & Russell 1927) with the goal of deducing all true propositions of arithmetic as theorems from a small number of axioms, and

beyond subsequent applications in computer languages and work in AI, it has proved to be of little use.

The conviction that classical logic is the gold standard is present in Susan Haack's discussion of all other logics as either rivals to (intuitionist), extensions of (Lewis' modal systems), or deviants from (Lukasiewisz's 3-valued) classical logic. Haack's is a discussion (1974)for which informal logic does not yet exist. Classical logic still prevails among professional philosophers in the U.S.A., where mastery of its propositional and predicate calculi is a leaving requirement of many better graduate programs in philosophy (e.g. according to websites visited in April 2006, Cornell, Vanderbilt, Yale, Harvard, Berkeley). The irony of this is that these budding professional philosophers are force-fed a logic they will almost never use in their work, unless they become mathematical logicians. Witness W.O. Quine, regarded by some as the most important logician of the later twentieth century. The techniques he developed for classical logic in *Mathematical Logic* and *Set Theory* and Its Logic are scarcely to be found applied at all in works like *From a Logical Point of View* or *Word and Object*, which established his reputation as an ontologist and philosopher of language. It isn't that in these works classical logic does no heavy lifting but that it does almost no lifting at all.

So it is perhaps not surprising that early steps toward developing informal logic moved tentatively away from classical logic and its progeny rather than breaking off decisively with it. In stimulating, carefully argued, and influential papers on specific informal fallacies in the 1970s and 1980s (Woods & Walton 1989) a variety of logics, some clearly formal, were drawn on. The debate this approach provoked at the first International Conference of ISSA (1986) was directed not so much at the reliance on formal logics as the plethora of logics drawn on. As Grootendorst and van Eemeren put it, we should not have to learn a complete new logic for each individual informal fallacy. A more parsimonious theory was desirable, and undergraduate teaching would require a simpler approach.

Pragma-Dialectics

What we should learn according to these founders of the Amsterdam School is how a critical discussion should be properly conducted, which would mitigate against committing these informal fallacies. But let's glance at how the Amsterdammers arrived at this point. Their quest for an improved understanding of argumentation in natural language was not directed against formal or any other logic so much as it challenged the work of rhetoricians, especially Perelman. For Perelman, logic is too entangled with mathematical concerns to be

of use for understanding argument in natural language (Perelman & Olbrechts-Tyteca 1969). So the technique he pioneered is not a new or informal logic but a new rhetoric. The successful argument persuades its listeners or readers and may be a quasi-logical one, or one based on the structure of reality, or one constituting reality. There is no criterion of success for an argument other than persuading its intended audience. Audiences may differ, so an argument successful with one may fail with another. Perelman avails himself of a universal audience also, one that accepts factual statements and scientific truths as premises for arguments. But little use is made of this universal audience to validate an argument. There is in fact no actual universal audience representing rationality – the deviser of the argument constructs the universal audience, and so it too differs from one rhetorician to another.

The notion of assessing premise acceptability against a universal audience has influenced the Amsterdam School test of premise acceptability as well as the community of model interlocutors of Blair & Johnson (Johnson 1996: 96-99 and Johnson 2000: 268) But van Eemeren et al. are restive with the argument types of the rhetoricians, finding it difficult to decide which type a given argument fits. They are also critical of Perelman for not making more use of formal logic in evaluating arguments and more use of the universal audience qua rationality for the same purpose. Rhetoricians on the other hand are more inclined to fault Perelman for relying too much on the universal audience, arguing that it won't carry the load Perelman places on it (Ede 1989) or that it is best understood as a metaphor (Scult 1989). One measure of Perelman's influence in invigorating philosophical rhetoric in the U.S. is the work of the late Henry Johnstone Jr. at Pennsylvania State University, including the founding of the journal *Philosophy and Rhetoric*.

The Amsterdam School terms its approach to argumentation "pragma-dialectical." "Pragma" captures the speech-act perspective and contrasts with the formal dialectic of Barth & Krabbe (1982: 62-111). "Dialectic" refers to the central dialogue model. Walton (*Informal Logic. A Handbook for Critical Argumentation* Cambridge: Cambridge University Press 1989 pp. 3-11) provides a typology of dialogues comprising quarrel, debate, persuasion, inquiry, negotiation, information-seeking, and educational. All involve question and response interaction between two parties, yet starting point, method, and goal differ in each case. E.g. the goal of debate is to impress a judge or audience, that of negotiation, personal gain. As the methods and goals differ, so too the criteria of

success. The informal logician must have some familiarity with the different types because actual dialogues can shift from one to the other and hence require assessment by differing criteria.

The model dialogue of the Amsterdam School is a variety of persuasion dialogue called the critical discussion. It arises from a difference of opinion with protagonist defending against antagonist. Pragma-dialectics offers rules for carrying out this discussion, a "dialectical code of conduct for rational discussants." (Handbook 152) Speech acts available to the protagonist generally fall into Searle's category of assertives (asserting a claim, repeating, or retracting it), but also include commissives (commiting oneself to defending a claim when challenged). Those available to the antagonist are directives (demanding defense of a claim) as well as commissives (accepting or rejecting an argument). Directives however are not available to the protagonist. (Ch. 5 passim)

Pragma-dialecticians divide the critical discussion into four stages: confrontational, opening, argumentative, and conclusive. In addition to the above speech-act strictures there are rules peculiar to each stage. I will touch briefly on all but the third, and then that at more length, drawing also on a later account linking rules and stages to informal fallacies (Eemeren & Grootendorst 1987: 283-301). The confrontational stage consists in one party expressing doubt of a claim advanced by another. Rule 1 reads "Parties must not prevent each other from advancing or casting doubt on a standpoint." This rule is violated when a party is pressured by an appeal to force or to pity, or attacked with an ad hominem.

Rule 2 applies to the opening stage: "Whoever advances a standpoint is obliged to defend it if asked to do so." A burden of proof arises no earlier than this explicit challenge, and it must be assumed for the discussion to proceed. The party assuming it becomes the protagonist, the other the antagonist. This rule cuts off a failure to assume the burden of proof, or an attempt to shift it illegitimately. At the concluding stage Rule 9 enjoins the antagonist to retract his doubt of a successfully defended claim, or the protagonist to withdraw a defeated claim. This rule can be violated by a successful antagonist claiming that the opposite thesis has been established. This involves the appeal to ignorance and can also involve a false dilemma. Rule 10 applies to all stages, enjoining both to avoid vagueness and ambiguity. Any fallacy of equivocation or ambiguity would violate this rule, as well as other infractions such as unclarity of reference.

Informal logicians are most interested in rules applying to the argumentative stage, where the protagonist shores up his claim against challenges. Rule 4 rules out defense with irrelevancies such as appeals to authority or to the people. Rule 5 makes the protagonist responsible for any unstated premises of his arguments, but prevents the antagonist from exaggerating such a premise to convert the argument to a straw man. Rule 6 relates to the common starting point and enjoins against concealing a premise as in the fallacy of complex question or many questions.

Differences

Given that both pragma-dialecticians and informal logicians make important use of dialectic, what distinguishes them? First and foremost, the pragma-dialecticians are focused on the process of dialectic which they term critical discussion, and which when properly carried out legitimizes the result. The result is not known at the start of the process, but it decides whether a certain proposition may be asserted or not. One could fairly say that this is a process of argumentation that legitimizes the result.

Informal logicians by contrast are focused on argument, a proposition or conclusion in support of which reasons or premises are advanced. These logicians consult a dialectical model to aid in determining whether this argument is sound, that is, whether as claimed the premises actually establish the conclusion. A dialectical process is hypothesized rather than any actual discussion being carried out between two parties, and the point of the hypothesis is mainly (though not exclusively) to generate objections to the argument. It is a way of helping the author of the argument think critically about his progeny by attempting to get the perspective of a sceptic disinclined to accept the claim that these premises establish this conclusion.

There seems little question that Blair and Johnson embraced the dialectical model to distinguish the new discipline they were creating, informal logic, from formal logics. For them argument as dialectical begins with calling a proposition into question, requires a respondent and questioner, and draws on background beliefs shared by a community (Johnson 1996: 90-92). Formal logic as such establishes the validity of argument forms by deducing them from axioms, or employing Gentzen's natural deduction techniques, or by using truth tables in the manner pioneered by the early Wittgenstein. As formal it has no relation to a dialectical process.

Even at this early stage of their thinking Johnson and Blair are clear that relative

to dialectic they are dealing with the product of a process – the argument – rather than the process itself. It is necessary to adequately grasp and evaluate the argument that it be viewed against the background of the dialectical process (Johnson 1996: 91). In more recent writing Johnson (2000: 313-320) has indicated that the informal logician needs to do more than consult what he now terms the dialectical tier. For example, he must gather whatever information is needed to decide whether the premises are reliable.

Conclusion

In this brief compass I could offer only a smattering of evidence for my claim that these two groups have interacted fruitfully for over twenty years. It is most desirable and most probable that this fruitful collaboration should continue. But rather than dwell on this happy prospect, I will comment critically on the dialectical model employed by Johnson and Blair. The model needs to be developed more carefully if its use is to be tailored to a product rather than a process. Johnson and Blair wrote initially of the roles of questioner and respondent that "two or more persons may occupy different roles at different points in the discussion" (Johnson 1996: 91). Blair repeated this in his paper read at this conference ("Inquiry and the Critical Discussion Model") and upheld under questioning (by the present writer) that the roles of questioner and respondent can be exchanged during the dialectical process.

If by this Johnson and Blair mean that the questioner can become the respondent and vice versa during the process relative to the argument for which the dialectical tier is invoked, they appear to me to lose something valuable for informal logic as well as the opportunity to distinguish it from pragma-dialectics. There in stage 2 of the critical discussion the respondent agrees to defend a proposition the questioner has challenged. In this dialectical process the questioner raises objections to the proposition. These are identical to arguments against the proposition, that is, they comprise one or more premises supporting as conclusion the negation of the respondent's proposition. The duty of the respondent is to respond to them.

The informal logician has a completed argument in hand before consulting the dialectical tier – this means a conclusion claiming support from one or more premises. An informal logical fallacy is as stated above always an unsound logical argument, not the ill-advised assertion of a claim or proposition. The duty of the questioner in this dialectical process is to challenge the claim that these premises establish this conclusion. If the process is properly conducted, neither party will

stray from their respective tasks: the questioner challenges the claimed support and the respondent defends it.

In any real critical discussion a respondent may actually challenge some assertion of the questioner and attempt to get her to assume a burden of proof relative to it. If she did so, the roles would switch relative to this new assertion. This may be a possible move when two different parties are carrying out a real critical discussion. But it is unacceptable in the dialectical tier because it leaves the task of assessing the original argument hanging incomplete and constitutes the assessment of the new argument created when a burden of proof is provisionally discharged by the questioner relative to her assertion. In short, this move converts the assessment of a product (an argument) by an informal logician into a critical discussion of a pragma-dialectician.

There are corollaries to this more tightly circumscribed dialectical model for informal logic which I will only hint at. They and indeed the model itself are much in need of further exploration and development. For the same reason why role reversal is ruled out, the respondent is not allowed to significantly change either the conclusion or the premises or the original argument. With one possible exception, such a move would constitute a new argument. The exception is the case of a convergent argument – the type for which the dialectical tier is most useful. The respondent is allowed to concede in this case that he can no longer uphold one (or even more) premises of a convergent argument, yet still maintain that he has successfully defended the argument against the questioner. The convergent argument is the one where the conclusion receives (or is claimed to receive) separate independent support from several premises, and it is always possible that one (or more) premises do not deliver the support yet the conclusion receives sufficient support from the remaining premises to still constitute a sound convergent argument.

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ISSA Proceedings 2006 – Women In Combat: Arguments Against Military Women In Combat

Through Media Depictions Of Jessica Lynch And Lynndie England

One in seven U.S. military personnel currently serving in Iraq is female. As of June 2003, women represented roughly 15% of active duty armed forces (Cook, 2003; Iskander, 2004).**[i]** Women's presence in the military is a logistical necessity, although one that continues to be defined by military dictates in part shaped by public sentiment. In early 2005, Army Secretary Francis Harvey elected to maintain current military regulations denying women access to what were considered "combat" positions, a decision that met with debate regarding the "non-linear" reality of modern warfare (Bender, 2005a; Bender, 2005b). Long-range missiles, insurgent attacks, and roadside bombs do not target the "front lines" alone, making the notion of a front line as obsolete as the belief that because they do not occupy what are designated "direct ground combat positions," women are distanced from fighting. The reality of modern warfare has bearing beyond the battlefield however, including an impact on the stories of women in the military and the way in which those stories are told.

The stories of Private First Class *Jessica Lynch* and Private First Class *Lynndie England*, two soldiers whose names and faces became famous during the U.S. war with Iraq, are examples of how the current context involving the shifting reality of modern warfare presents unique opportunity to study public arguments that include an element we describe as the *free radical*.**[ii]** As women who traversed traditional gender boundaries and faced situations considered far outside stereotypical feminine experiences, we argue Lynch and England are instantiations of the free radical "gender" in the context of the military. When it comes to the military, and specifically military roles such as positions in combat and POW prisons, or those stereotypically understood as far-removed from traditional feminine spheres, gender is a free radical, an element not entirely familiar or traditionally associated with the male-dominated institution. It is unstable because it does not draw from established scripts and in fact contradicts many long-held arguments against women's participation in the military, combat,

and war. The presence of atypical gender (that of woman) in combat and in the military, consequently, produces various possibilities for understanding a story and argument, as the free radical element of gender bonds to frames.

To account for the free radical, or explain this unusual and unfamiliar aspect of both women's stories, the narratives of Lynch and England were framed in a variety of ways through the media's telling of their incidents. The experiences of Lynch and England differ drastically, as does the media coverage of both women's stories. We bring the concepts of framing and free radical together and explore their mutual impact through an analysis of their respective mediated stories. Such an analysis reveals that in the context of women in the military, the free radical *gender* often is controlled through traditional and familiar scripts, as an analysis of the Lynch story reveals. However, as an analysis of England's narrative illustrates, those stories for which there are no traditional scripts on which to rely send us scrambling for a means to frame the story, tame the free radical, and allow for easier consumption and understanding. We explore the concepts of framing and free radical, as well as apply an understanding of their interactions to the stories of Lynch and England, and conclude with a discussion of the impact of such an analysis on the study of argument.

1. *Framing and Free Radicals*

Framing is a familiar concept to argumentation scholars, although its continuum ranges from discourse analysis to media analysis. In this paper, frames refer to "principles of selection, emphasis and presentation composed of little tacit theories about what exists, what happens and what matters" (Gitlin, 1980, p. 6). Entman (1993, p. 52) tells us, "To frame is to select some aspects of a perceived reality and make them more salient in a communication text, in such a way as to promote a particular problem definition, causal interpretation, moral evaluation, and/or treatment recommendation."

Frames are essential for public arguments since they select and give salience to certain aspects of perceived reality that cue a particular response. They define the problem and establish its terms for resolution (Gusfield, 1981). However, not all frames are equal. Their chance of catching on depends on how they comport with what we know about the world or how they resonate with other frames we are used to and employ regularly to make sense of our experiences.

Two criteria particularly relevant for our analysis are *narrative fidelity* and *empirical credibility* ("Frame Analysis," n.d.). Narrative fidelity refers to the congruence of a frame with one's life experiences (Gamson & Modigliani, 1989;

Oberschall, 1996). Sometimes the frame may require little or no explanation. Employees whose firm has filed for bankruptcy will easily catch onto the idea that this jeopardizes their pension fund. An invisible threat, such as the firm's loss of market shares, may require more elaborate mediation of the pension frame for employees to regard the firm's performance as threatening their retirement plans.

Although narrative fidelity provides the strongest possibility for catching on, a frame that does not relate to personal experiences still can have force if it fits with real world events as we know them, or has empirical credibility ("Frame Analysis," n.d.). When a country is directly attacked, media presentations will help citizens not directly struck to comprehend the event through comparable personal experiences of self-defense. For example, the 9/11 terrorist attack on the U.S. rendered the self-defense frame more credible than, say, the frame of legal redress, even though most U.S. citizens were not directly hit.

The concept of *free radical* is borrowed from chemistry. Atoms seek stability, which is achieved when an outer shell's capacity for electrons is full. Often atoms complete their outer shell by sharing an electron with another atom to form a molecule. As long as bonds don't split in a way that leaves an electron unpaired, the molecule is stable. When an electron is unpaired, however, it becomes a free radical. Free radicals are extremely volatile; they react swiftly to bond with other compounds in order to regain stability. Free radicals, then, are highly reactive molecules that actively seek stability ("Understanding Free Radicals and Antioxidants," 2006).

As we apply the notion of free radical to argument in this paper, it denotes a highly unusual and therefore unstable element within a story or argument that seeks a stabilizing bond. How an argument is framed may exacerbate the free radical's instability. That is, as with free radicals, when the dominant element of a story violates its frame, it may accelerate the search for a stabilizing bond. This element's volatility and bonding strength will depend on the frames it interacts with, each of which is socially constructed to consume the unfamiliar. In the sections that follow, we apply our conception of free radical to the notion of framing and explain how these concepts interact, and with what result, within the mediated stories of Lynch and England.

2. *Jessica Lynch*

Pfc. Lynch was a supply clerk in the Army's 507th Maintenance Company, which became lost and was ambushed in Nasiriyah, Iraq in late March of 2003. The

humvee in which Lynch was riding crashed and she was taken prisoner. She awoke a number of hours later in an Iraqi hospital and with extensive injuries. After spending nine days in the hospital, Lynch was rescued by U.S. Special Operations Forces and flown to Germany, where she underwent further treatment for her injuries and began her recovery. In the months that followed, Lynch's story was a media staple. She signed a book deal with Knopf Publishing and, in the wake of her book's release, appeared on ABC's *Primetime* with Diane Sawyer, *NBC's Today* show, and granted interviews to *Vanity Fair* and *TIME* magazine. Newspapers around the world continued to run coverage of Lynch's story for months after her return.

In the weeks following her capture and rescue, Lynch became the poster girl for the war, as well as women in the military. Her story, as originally told in the media, was one of a warrior, a woman breaking the mold who assumed her role in combat as a consequence of the unavoidable reality of modern non-linear warfare and an answer to critics who opposed the presence of women in support roles for fear of combat engagement. Lynch's story of heroics was useful for the military – it demonstrated that women could hold their own in combat and provided further argument for the protection of the military's resource of female soldiers. Lynch's story also was appealing to the media for its headline value; since the public seldom hears stories of gun-blazing woman in the throes of battle, Lynch's original tale received extensive media play.

The frame of "woman in combat zone" is not altogether familiar to Americans, yet within this frame particular stereotypes have operated; two long-standing and popular stereotypical frames are the *weaker sex* – women are not physically capable of competing with men on the battlefield, and *distraction* – male soldiers will become sidetracked from their duties by an overwhelming desire to protect their female counterparts.**[iii]** Both frames carry a degree of narrative fidelity and empirical credibility, and have long been employed in arguments against women's participation in combat. However, with the reality of non-linear warfare comes a third, supportive frame regarding woman in combat – that of *woman warrior*. The erosion of "front-lines" and the irrelevance of the designation "combat position" increase the likelihood that this frame will become more familiar in the future. However, the woman warrior frame does not yet carry significant narrative fidelity because it is not a part of our military history.**[iv]** To compensate for this deficiency and to acquire stability, the gender radical of *woman* requires a bond with *warrior* in a way that provides empirical credibility.

The story of Jessica Lynch instantiated this bonding. Her capture and rescue did not provide the fodder necessary for fleshing out the more traditional frames mentioned above. Instead audiences were regaled with the story of Lynch's heroic firefight with Iraqi forces. From the outset, however, the weakness of the bond was evident. In Lynch's case, the woman warrior frame ultimately failed to provide a convincing argument because it lacked empirical credibility. The frame's failure to provide a stabilizing bond created the need for a second frame with a stronger bond. Audiences were left with the tale of a wounded woman now in search of a different frame with greater familiarity and cultural traction.

3. *Woman Warrior*
In early April of 2003, *The Washington Post* broke the story of Lynch's capture with the headline, "'She was Fighting to the Death.'" According to *The Post*, Lynch "fought fiercely and shot several enemy soldiers . . . firing her weapon until it ran out of ammunition" (Schmidt & Loeb, 2003a). The account of Lynch's heroics detailed how "Lynch, a 19-year-old supply clerk, continued firing at the Iraqis even after she sustained multiple gunshot wounds and watched several other soldiers in her unit die around her in fighting." The article continues, "Lynch was also stabbed when Iraqi forces closed in on her position." Newspapers around the world ran similar stories quoting *The Washington Post's* account of her exploits in battle during the ambush, relaying information about her multiple gunshot and stab wounds (Hermann, 2003; Anidjar, 2003; Seamark, 2003).

Although *The Post*, and the plethora of papers that ran similar stories provided an extraordinary account of Lynch's experiences, the information itself was relatively suspect. In its rendition of Lynch's actions, *The Post* quoted unnamed "officials" and included their warnings about the story's accuracy: "Several officials cautioned that the precise sequence of events is still being determined, and that further information will emerge as Lynch is debriefed"; and the possible origin of the story: "Pentagon officials said they had heard 'rumors' of Lynch's heroics, but had no confirmation" (Schmidt & Loeb, 2003b). The lack of definite and identifiable sources as well as failure to commit to the events of a story and the reference to "rumors" suggests that the account provided by *The Post* and run by other papers was unreliable, or at least lacked empirical credibility. As *The Post's* account of Lynch's heroics was disseminated worldwide, so was the caveat of uncertainty. Newspapers carried conflicting reports, further contributing to the deterioration of the frame's empirical credibility. Moreover not all reporters and

outlets jumped on the warrior woman bandwagon. Publications including *Newsweek,* the *New York Times* and the *Los Angeles Times* did not run stories detailing Lynch's battle heroics. Craig Gordon of *Newsday* claimed the Lynch story as it was told by *The Post* "'didn't pass the smell test. She's a 19-year-old supply clerk, and they made her sound like Rambo. I had no way to check it, and it didn't ring true'" (Eviatar, 2003).

The reality of wars no longer fought from a combat zone with a recognizable front line to one in which all military personnel, men and women, are at risk, requires unfamiliar and non-traditional frames and scripts, such as that of woman warrior. The frame of a male soldier, guns blazing, fighting to the death is familiar, but what of female Rambo? Not only does this tale require we adjust traditional notions of "femininity" and "woman's capability" to include the actions of soldier, we also must allow for modifications in traditional understandings of what it means to be a soldier.

The unfamiliarity of such a story in American culture and the conceptual demands it makes of us formed a weak bond by connecting the free radical "woman in a combat zone" that Lynch instantiated with the frame of "heroic warrior," further eroding an already unstable frame. A lack of empirical credibility only placed additional strain on the frame and intensified its instability.

The lack of empirical credibility within the woman warrior frame eventually led to its deterioration. Weeks after *The Post* ran the headline "'She was Fighting to the Death,'" the BBC called the Lynch story "one of the most stunning pieces of news management ever conceived" (Kampfner, 2003). One month later *The Post* ran an extensive front-page story to correct erroneous initial reports concerning its Lynch coverage. The article stated, "Lynch's story is far more complex and different than those initial reports," and continued to amend the record: "Lynch tried to fire her weapon, but it jammed, according to military officials familiar with the Army investigation. She did not kill any Iraqis. She was neither shot nor stabbed, they said" (Priest, Booth & Schmidt 2003). Months later Lynch herself countered the original narrative of the ambush with a series of media interviews and the release of her book, *I Am a Soldier, Too: The Jessica Lynch Story* (2003), co-authored with Rick Bragg, a Pulitzer-prize winning journalist. Through her book and media appearances, Lynch finally had a hand in crafting her story – although what the audience received remained a product of question prompts, camera-angles, and editing. The story Lynch told through and with the media was not the story the public heard initially. The second frame with which the free

radical gender sought bonding was a traditional one that provided greater stability and therefore an enduring story. Whereas the first bond did not hold for lack of empirical credibility, the following analysis demonstrates a turn to and enthusiasm for the stronger bond and frame – one that carries narrative familiarity as well as empirical credibility – of *damsel in distress.*

4. *Damsel in Distress*
Contrary to the initial frame, the second frame narrates Lynch as a more traditionally feminine character. Instead of reports that Lynch emptied her gun into Iraqi forces until it ran out of ammo, audiences learn more about Lynch's personality and experiences that contribute to the frame of damsel in distress. She is depicted as hyperfeminine, as someone who must be cared for, and in general, as a woman who, when faced with a combat situation, performs along more traditional scripts of femininity than was relayed in the initial telling of her story. Upon release of her book, Lynch talked publicly about her experiences; the frame in which her story was first told shifted dramatically from a competent soldier and woman who could hold her own in any circumstance, to that of a woman who got herself into a situation she could not handle.**[v]**
The focus on Lynch's feminine appearance and qualities reinforced the damsel in distress frame.. Lynch was portrayed with traditional notions of femininity as a quiet, tiny, "doll-like" girl. Stories often stressed her size and appearance, with special emphasis on her diminutive stature and blond hair: "she's a cute blonde with a big smile, but she's also frail. At five feet two, Wirt County's 2000 Miss Congeniality weighs only 99 pounds" (Smith, 2003, p. 302). In the Primetime interview, Sawyer (2003), refers to Lynch as the "little girl with blonde hair" ([1]21:33:21)**[vi]** who, as a child, insisted on matching her socks to her hair bows (Gibbs & Stengel, 2003).
Far from accenting her role as a soldier, Bragg (2003) refers to Lynch's position of supply clerk as the housekeeper of the unit, a job more easily associated with traditional feminine tasks and far from the action. "If war was an elementary school play," Bragg writes, "[Lynch] would play a tree" (p. 45). As a female soldier, Lynch moved outside of a woman's traditional gender boundary, yet an emphasis on her appearance and the discussion of her role within the military as housekeeper and inanimate object demonstrated that Lynch corresponded with stereotypical notions of what it means to be a woman: cute, little, one who tends the house, and inactive.

The press also framed Lynch as someone who must be taken care of by others, which further supported bonding of her narrative with the frame of damsel in distress. In her book, Lynch recalls stories of her older brother looking out for her when they were little, and Bragg (2003) documents similar concern for Lynch on the part of her boyfriend, and her roommate Lori Piestewa. Lynch's parents hoped others were looking out for her daughter while she was in Iraq; Lynch's mother remarked, "'I always thought someone would care for her," (Bragg, p. 89). Finally, Lynch relied on others – the American soldiers who retrieved her from the hospital – to come to her rescue. Lynch recounted the event on *Primetime*: "He said. . . . We're here to take you home. . . . I clenched to his hand because I was not going to let him leave me here. He was going to take me out" (Sawyer, 2003, 22:34:53). In the abstract that begins the *TIME* interview, Lynch is quoted as saying "I was not going to be left behind" (Gibbs & Stengel, 2003). The story of Lynch's rescue reinforced her reliance on others and her own inaction.

The news media's selection of these portions of Lynch's experiences placed her in a frame that gave her a hyperfeminine persona. This frame, largely more recognizable and comfortable to audiences, accommodates narratives that rely on traditional and stereotypical understandings of what a woman should be that help audiences understand a woman's physical danger, especially when she steps outside the familiar.

The damsel in distress frame crystallized the image of a tiny, feminine, young blonde woman who must be looked after and protected by others and is finally rescued and brought to safety. This frame was highly successful since it did not require audience effort to stretch or scramble. The ease and comfort with which it was adopted is, in fact, demonstrated by the dismissal of factors that would have disrupted the frame. Lynch was criticized in the media for receiving accolades and becoming a public figure while others, such as Pfc. Shoshanna Johnson, and Pfc. Lori Piestewa, as well as the men who were killed in the ambush in Nasiriyah, did not received the same attention ("Clearing up the Record," 2003; Cock, 2003; Maxwell, 2003; Mitchell, 2003; Melone, 2003) and similar criticism for her book deal.**[vii]** The sweet, demure, girl-next-door image went untarnished by criticism regarding the handling of her story; in fact it was strengthened. One opinion column read, "Now, out of the fog of war and storm of publicity, steps a slight, painfully honest and self-effacing young woman," ("Exploiting Private Lynch," 2003). Far from hindering the damsel in distress frame, Lynch's innocence in the twisting of her story and her desire to right it coincided with notions of a woman who, at the mercy of others, only sought to do the right thing when it was within

her power. The damsel in distress frame, which has familiarity and cultural resonance, formed a strong bond with the free radical of gender in the context of combat. The stereotypical force of this frame, which Lynch embodied throughout her story, gave it empirical credibility and a stability that could withstand interference.

5. *Lynndie England*

Sense making for the pictures from Abu Ghraib was more complicated, given the empirical reality of the pictures. Seeing MPs inflict pain and humiliation of this magnitude on detainees was outside the human rights restrictions most Americans impose within the *POW* frame. Jailers of POWs within this frame have constraints: guards and prisoners are to be same sex, prisoners are to be accorded humane treatment, and the Geneva Conventions prescribe boundaries for how far you can go to gain information (torture crosses the line). The Abu Ghraib photos transgressed both the same sex norm and boundaries for acceptable treatment. They not only showed a woman participating in inhumane treatment of Iraqi detainees, but depicted her as a hypersexualized woman engaging in the deviant behavior of a dominatrix imposing non-consensual S&M humiliation on naked Iraqi men. There were multiple possible frames for what we were seeing: scapegoat, chain-of-command, promiscuity, human frailty, cultural bias, political culture, personality traits, and guard mentality among them. However, as we shall see, none stood still sufficiently to satisfactorily make sense of the violence depicted or for punishing England in a way that both dealt with her transgression of military code and disciplined the free radical of gender in the military that was forming culturally aberrant bonds. She had to be disciplined not only as a soldier but as a woman.

The May 10th issue of *New Yorker* magazine published an article by Seymour Hersh (2004) that brought to public light American MP abuses of Iraqi detainees held in Tier 1 of Abu Ghraib prison. His article was followed on April 27th by a segment on the CBS news journal *60 Minutes II* that showed images of naked Iraqis appearing in humiliating poses. They offered a spectacle of, to quote the Taguba Report, "sadistic, blatant, and wanton criminal abuse" (2004, p. 15). Hersh's response to the images was, "The photographs tell it all." This assessment was challenged when the storyline destabilized soon after the images, apparently taken as private souvenirs, became public. The meaning of these photos relied less on an official report than how they circulated publicly, and their

circulation gave public meaning to U.S. military complicity through the images of Pfc. Lynndie England. The outrage expressed in many quarters over the sexualized humiliation of the Iraqi prisoners initially focused on the chain of command. The soldiers said they were acting under orders and news outlets asked who had issued orders to treat prisoners in violation of the Geneva Conventions.

That thread of inquiry as the main story line ended quickly. Before Hersh's article broke the story and selected photos became public, the report of Maj. Gen. Antonio Taguba, which had investigated abuse of prisoners held at Abu Ghraib, exonerated the chain-of-command upward from Abu Ghraib. The lone exception was Brig. Gen. Janis Karpinski, the officer in charge of the prison, who was relieved of her command and given a written reprimand. With the military chain of command hermeneutically sealed from the atrocities, the story line returned to the MPs of Tier 1 with Lynndie England, the unlikely administrator of torture, as its public face. Given the photographic record of her actions, England was perfect for the role. As Richard Goldstein (2004) observed in *The Village Voice*, "When a dude acts out, it's dog bites man. When a babe misbehaves, it's bitch bites man – and unfortunately that's a story."

6. *Free Radical and Volatile Frames*
The public photos of England were unsettling to American stereotypes of military honor and female nurturance. Pictures of her dragging an Iraqi detainee on a leash and of her grinning with the thumbs up sign at a detainee forced to masturbate quickly became iconic images of the scandal. England's dominatrix pose cast her as Lynch's evil doppelganger, thereby rupturing her gender bonds with the frames of *military honor* and *honorable woman*. With neither narrative fidelity nor empirical credibility to traditional American beliefs, England, as embodiment of the gender radical, became a volatile element that sent the press scrambling to account for her actions.

Initial articles bonded her with the frame of *promiscuity*. The narrative of sexual deviance seemed to have empirical credibility with the dominatrix posed in the picture of "leash woman." This image catapulted the viewer into male prison culture where the stronger make the weaker their "bitches," and where England's S&M pose performed the alternate "bitch" role of overpowering woman. For some, such as ICeman (2004) posting on om_blog, England was a sexual fantasy incarnate. "Man, that girl really turns me on! I hope she puts ME on a leash…" For others she became the source of inspiration to do the same, as "The Lynndie"

– young people shooting pictures of themselves mimicking her finger-pointing pose – swept the internet ("Everybody's doing the Lynndie," 2004).

These popular culture appropriations were trumped by more sober accounts of her as promiscuous, as "an undisciplined, sexually overactive soldier" (Martz, 2004). Senators sat through a three-hour viewing of 1800 unpublicized images and videos that contained nude photos of England, England disrobed in front of the MPs, England bearing her breasts in front of the detainees, England having sex with numerous partners, and a video of her having sex with Spec. Charles Graner (Morris, 2004). To add to the confusion, her fallen status took an unexpected turn when her identity changed from Pvt. Lynndie England to pregnant Lynndie England. The father was Graner. Her body's condition, a gendered condition, became a refutation that she could have been ordered to perform the humiliations, as she alleged, but proof that she was twisted.

However strong their seeming empirical credibility, the England photos created such enormous inner confusion that their bonding of *gender* to *promiscuity* was challenged from the outset. Her instantiation of gender created a free radical of such volatility that it bonded to multiple frames, none of which offered a stabilizing narrative that could support a compelling and decisive argument.

Alongside official and press denunciations of her moral character, her background came under intense press scrutiny. Most press accounts situated her in a frame of *backwoods localism* (Churcher, 2004; Dao, 2004; Rennie, 2004; Sage, 2004). She lived in a trailer park in dirt poor Fort Ashby, West Virginia. Despite facing court-marshal, locals regarded her as a hero (Churcher, 2004). One local woman said, "To the country boys here, if you're a different nationality, a different race, you're sub-human. That's the way that girls like Lynndie are raised" (Churcher, 2004). Her family and others thought she was a scapegoat (Rather, 2004; Rennie, 2004). At best these depictions suggested local acculturation rendered her incapable of escaping local boundaries and, more likely, that she was stereotypically "white trash." While this frame could compliment her bonding with promiscuity, it also raised the possibility that her actions, while deplorable, were more a reflection of her environment than moral failure. Perhaps she was not twisted.

Her local environment, in turn, led to another possibility. Her account of her relationship with Graner and willingness to pose to please him fitted a frame of *human frailty*. She was weak (Valley, 2004), a follower (Cohen, 2004). She was only a high school graduate, a former chicken processor who lived with her family in a trailer, a blue baby born with a malformation of the tongue that gave her a

speech impediment, had a learning disorder, was a tomboy seeking acceptance, married on a lark when she was 19 but quickly divorced. This profiled her as an inadequate and insecure woman who, on top of everything else, was homely, "which," Neva Chonin (2004) offered to explain England's behavior, "matters to women in America." (see also Cohen, 2004). She lacked the internal resources to refuse her bullying boyfriend. In sum, "She is the sort of woman who gets used by others, most often men. . . . Some women always say yes" (Cohen, 2004, A23). Perhaps her actions were inexcusable, but they were explicable.

Set loose from traditional frames of woman and woman soldier, the iconic photos of England continued their erratic swirl through the next two years as her case moved toward trial and sentencing. During this period she was pictured as a pawn, unrepentant, without recognition of the gravity of her deeds, and pregnant as a result of her promiscuous behavior. She was a reflection of western victimage of the cultural other (Smith, 2004; "Leashes, lynchings," 2005), the victim herself of a Manichean political culture (Burma, 2004), or perhaps a reflection of desensitized prison guard behavior to which anyone in her situation was susceptible (Nicol, 2004). Eventually she also was the mother of a newborn child, which offered a completely different possibility for disciplining her, for finding a stable bond for this gender radical so disturbing to American understanding of women in the military. As with Jessica Lynch, a final bonding with an empirically credible frame relocated England into a story familiar to Americans that, in her case, opened the doors for atonement.

7. *A Trip to the Principal's Office*

After the military trial at which England was convicted, she gave an exclusive interview on October 14, 2005 to Stone Phillips, anchor of NBC's news magazine *Dateline* (Phillips, 2005). The interview was the first time England had given her side of the Abu Ghraib story to a national media outlet. Phillips opened the interview by asking England how she thought America saw her, what kind of person did they think she was? She answered that some supported her and others would like to see her shot in the streets of Iraq. As Phillips's line of introspective question continued, they opened the possibility to reframe her from the hypersexualized villain portrayed in the Abu Ghraib photos to a woman who had done something wrong but could be forgiven.

Having taken her through her explanation of the pictures, her role in them, and what she thought she was doing, they have this exchange:

SP: What are you guilty of?

LE: For doing the wrong thing, posing in pictures when I shouldn't have, degrading them (Iraqi prisoners) and humiliating – and not saying anything to anybody else to stop it. (Phillips, 2005)

Then, against the serial photographic backdrop of visual commonplaces of maternity – joyous young mom holding her newborn infant shortly after delivery, nurturing mom reclined while her sleeping infant nestles against her chest, and a video clip of responsible mom adjusting a pacifier in her toddler's mouth while repositioning him on her lap – Philips asks the now romanticized young mother:

SP: If your son sees your picture in his history book years from now, what are you going to tell him about what his mother was doing in a situation like this?

LE: Tell him the truth. Doing my job – what I thought was okay at the time and approved, and that his father played a major part in it.

SP: What do you want to say to those detainees that you were photographed with?

LE: I had no right to do that to them and I'm really sorry. I just hope they forgive me someday. (Phillips, 2005)

By the end of the interview, she has been bonded with a version of the *restorative justice* frame – an alternative justice frame to that of the legal code – *the trip to the principal's office*. In this script, the principal talks to the student about her misdeed before administering discipline. The conversation will assure the student that although she committed a serious offense, she is not a bad person. For this ritual of contrition to be valid, the student must be allowed to tell her side of the story, must acknowledge her part in what took place, recognize for what and to whom she must apologize, and then offer a sincere apology in order to restore her place in the school's community.

Phillips's questions and England's answers redeem her person, as is that of any student whose immaturity led her to follow someone older whose approval she sought and who bullied her into committing a grave misdeed, for which she is now contrite and apologizes. He reframes her from institutional justice, as administered by a military court, to a culturally familiar frame that could form a stable bond with community justice that can restore her to our midst. It allowed us to hear her account as the empirically credible narrative of a young mother of 22, loving and nurturing to her baby, used by an older man, and, unlike the person who denied she had done anything wrong when the story first broke, now recognized that what she did was wrong, for which she wants to apologize. We

can sympathize with this young woman, we can even forgive her.

8. *Conclusions*

Analysis of Lynch and England's instantiations of the military free radical *gender* offers a means to understand how we construct and consume the unfamiliar and provides insight into studying stories of public controversy, specifically those that contain a dominant element that acts as a free radical. As mentioned earlier, frames provide subtle cues that direct responses to a particular story or argument, but can also instruct us in how to address a free radical component of the story. In the case of the Lynch narrative, the enduring frame of damsel in distress molds how audiences consume and understand women in the military. Such a traditional and stereotypical frame can create difficulties when the public is presented with a story that does not fit, as is the case with England. Her story's remove from a familiar script makes it all the more sensational. Traditional and familiar frames pose the danger of relying on what is comfortable to explain and understand the extraordinary or unusual. Continual reliance on them as a means of stabilizing the free radical can stymie our potential to adapt and accept new conditions.

The notion of a free radical element within mediated arguments in the Lynch and England cases also is illumining of how unfamiliar or disturbing stories require frames that will support arguments capable of stabilizing their volatility. Our analysis raises the question of whether other elements have comparable volatility when their bonds to conventional frames are disturbed, such as race, cultural identity, and even national identity. It also raises the question of whether the idea of free radical typically would find instantiation in representative persons, such as Rosa Parks for desegregation, Teri Schiavo for right to die, and Elián Gonzalez for boundaries of political asylum.

Finally, our analysis of Lynch and England suggests that the efficacy of claims requires pairings that have narrative fidelity and/or empirical credibility within their frame. Without narratival bonds, contested elements destabilize conventional frames and create a search for new bonds capable of providing stabilizing arguments, such as is happening in the U.S. since the 9/11 attack. Free radicals function as inventional irruptions that may alter existing frame, create new meanings, and quite possibly create new frames. However, as the Lynch and England cases illustrate, these frames, as all frames, support a selective set of arguments. And, as both cases illustrate, the varying degree of stability to the permutations created by free radicals sometimes are resolved by culturally

inscribed frames that may provide greater comfort but, regrettably, have less relevance.

NOTES

[i] Although there is no official count of the number of women currently serving in Iraq and surrounding areas, the Department of Defense pay records indicate a total of 59,742 women have served or are currently serving in Iraq, Afghanistan, and other countries involved in operation 'Enduring Freedom.'

[ii] We acknowledge Rosa Eberly, whose conversations with one of the authors concerning rhetors functioning as free radicals sparked our speculation about its applicability to the Lynch and England stories.

[iii] For more information on long-held arguments against women's participation in the military and combat, see Meyers (1992); Enloe, C. (1988).

[iv] While stories of Molly Pitcher and Deborah Sampson remain entertaining side notes in history textbooks, U.S. history is relatively barren of stories regarding capable and heroic military women. Deborah Sampson disguised herself as a man and soldier, and was a respected member of the Continental Army during the Revolutionary War. For more on Sampson, see Freeman & Bond's biography (1992). Mary Hays McCauly (better known as Molly Pitcher) is famous for bringing Continental soldiers pitchers in the midst of a battle during Revolutionary War. The stories of both women are telling in their disguise and in their support for male troops.

[v] In her analysis of the four Washington Post front page articles that introduced the story of Lynch's capture and rescue, Sanprie (2005) notes an identity split in the coverage of Lynch's story. While two of the articles revolve around Lynch's role as soldier, the other two articles distance Lynch from soldier and instead focus on topics such as her appearance, personality, family, and home. Sanprie argues that such a split makes it difficult for audiences to understand Lynch as both woman and soldier and reinforces the incongruity many perceive between those two roles.

[vi] The parenthetical reference here refers to the tracking number included on both the Primetime transcript and the videotape of the broadcast. The bracketed number "1" is constant throughout both materials; therefore, subsequent parenthetical citations will exclude the bracketed "1" and will include the tracking numbers referring to the hour, minute, and second of the broadcast.

vii. Private Shoshanna Johnson was also held as a prisoner in Iraq and like Lynch, sustained injuries. Johnson however did not receive nearly the same amount of

media coverage; neither did Lori Piestewa, Lynch's roommate who was killed during the ambush.

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ISSA Proceedings 2006 – Pragma-Dialectics And A Unified Understanding Of Interpersonal Disagreement

1. *The Demand/ Withdraw Pattern and Serial Argument*

The demand/ withdraw communication pattern (D/W) is a familiar concept in the marital interaction literature (Watzlawick et al., 1967; Christensen & Heavey, 1990, 1993; Gottman, 1994; Canary et al., 1995; Heavey et al., 1995; Caughlin & Vangelisti, 1999, 2000; Bradbury et al., 2000; Caughlin, 2002; Caughlin & Huston, 2002). Johnson and Roloff (2000a) link D/W to the concept of a serial argument through the notion of an argumentative role. Their interest lies in the extent to which occupying different interaction roles leads to different perceptions about the resolvability of serial arguments. For example, might it be the case that a partner who is in the initiator role in a serial argument is more likely to believe that the argument is resolvable than the partner who occupies the resistor role? The link to D/W is achieved when Johnson and Roloff (*Ibid*., 3) claim that one way the initiator and resistor roles can be enacted is through the embodiment of D/W.

Of course, pointing this out is not to claim a particularly strong conceptual connection between D/W and serial argument. Serial arguments may not involve D/W at all; for example, neither Trapp and Hoff (1985) nor Trapp (1990) mention it. However, a defensible view of D/W is that it implies serial arguing. When Johnson and Roloff (1998, 3) discuss the process of arguing in serial arguments, they mention three argument patterns that reduce the chances of reaching agreement, one of which is D/W.

Second, individuals may enact a demand-withdraw pattern (Christensen & Shenk, 1991). Sometimes, a complainant confronts another in a very direct and aggressive way, and the perpetrator responds by withdrawing from the conversation or by becoming defensive. In effect, by withdrawing, no resolution is reached, and the argument *may* reemerge at a later time. (My emphasis).

There is a question here about the motivational force of D/W, such that we can ask whether or not it is plausible to think that D/W typically occurs without serial arguing. The theoretical background of D/W (C.f. Bateson et al., 1956; Watzlawick et al., 1967; Jackson 1965a, 1965b) suggests that the relationship between D/W and the reemergence of the argument is stronger than a correlation (Cf. Friemann, 2005). From this older literature we can suppose a causal claim is being made for not only does it reduce the chances of a couple reaching agreement, but it *more than likely* causes the argument to reemerge at a later time. Such a claim is implicit in more recent statements like the following: "Also,

recall that dissatisfied couples enact patterns of negativity, which are likewise attributed to global, stable, and internal properties of the partner or the relationship" (Canary et al., 1995, 121).

If it is acceptable to claim that a couple caught in a D/W pattern are motivated to continue to enact the pattern (ignoring for the moment the issue of just how the pattern 'motivates'; but see Johnson and Roloff 2000a, for an interesting analysis of how this motivation may develop), then we might suppose that the subsequent argument episodes will somehow reflect the fact that they are the product of D/W. What happens when we broaden the perspective from an argument episode to a serial argument? Caughlin and Huston (2002, 114) lay out the possibilities.

K. L. Johnson and Roloff (2000) suggest, for example, that engaging in positive behaviors *during, after*, and *between* serial arguments may be an effective way of coping with the otherwise deleterious effects of recurring arguments (My emphasis).

Caughlin and Huston, through Johnson and Roloff, are suggesting that after an argument episode partners may mediate the negative effect of D/W with positive behavior. We can understand this mediating process in two ways. First, imagine an argument episode has just ended involving D/W, other negative behaviors, but positive ones as well. Suppose that after a while one partner, call him Peter, engages in some positive behavior (perhaps the same kind of behavior he expressed in the argument or different ones) toward his partner, call her Martha. These post-argument positive acts may have the effect such that Martha reevaluates the negative behaviors she experienced in the argument episode. Second, the buffering effect could run in the other direction: Peter's positive behaviors after an argument episode influences how Martha will think about the next argument episode. So even if Peter behaves negatively toward her the next time, she might not think that his negative actions are as significant as she might have, if he had not previously behaved positively toward her. In such a case, we are supposing that Peter's positive actions are done between argument episodes. The two examples assume that whatever behavior was exchanged during the argument episode was not enough to ameliorate the negative effect of D/W. For only if that is the case does it make sense to discuss behavior that could be exchanged between episodes. This must be part of the account of how D/W causes serial arguing.

With this understanding of the causal process consider the following quote from

Caughlin and Huston (*Ibid*).

Alternatively, in some cases, it may be more realistic to enhance the positive aspects of a marriage by increasing affectionate behaviors than it is to eliminate demand/withdraw, especially if the demand/withdraw occurs as part of discussions of intractable and recurring disagreements.

Given what has just been said about what we have to suppose when D/W causes serial arguing, this passage should be interpreted to mean that the affectionate behaviors referred to are to be expressed *between* argument episodes. Moreover, since Caughlin and Huston are talking about *intractable* serial arguments here, it is not only unrealistic to expect to eliminate D/W, but also unlikely that couples can motivate themselves to express enough or the appropriate kinds of positive behaviors to ameliorate its negative effects *during* argument episodes. In intractable disagreements – where emotional flooding would regularly occur (C.f. Gottman, 1999, 231) – the motivation sufficient for positive behavior during argument episodes is unlikely. Indeed, such lack of motivation would be the prime indicator that a couple's arguments have become intractable. So in these situations we are left with the possibility that couples can behave positively *after* and *between* argument episodes, where such actions are part of the larger serial argument.

2. *D/W in Pragma-Dialectics*

Weger Jr. claims that the pragma-dialectical approach to fallacies "maps on well to the known identity and relational outcomes associated with problematic interpersonal conflict behavior" (2002, 198). I see Weger Jr. making the following point: pragma-dialectics has identified ways in which interlocutors can violate the dictates of rationality in a discussion, and it turns out that when couples commit fallacies they not only harm their argument – considered as a logical product – but their relationship as well. Thus logic has consequences for marital satisfaction.

Keeping this in mind, I want to consider the consequences of theoretically integrating D/W, as a species of problematic interpersonal conflict behavior, into the pragma-dialectical approach to fallacies. The issue here is how we are to understand reconstructing D/W as a dialectical fallacy. By reconstructing D/W as entirely negative in its effects, Weger Jr. achieves an integration with pragma-dialectics in the sense that we can now say that a straightforward sanction applies to the enactment of D/W (as a violation of rule 2) in discussions.

What are the consequences of this integration for pragma-dialectics? Since D/W is reconstructed as a rule violation, we are taking a position on the motivational

force of D/W. This just means that we must suppose that it is possible to not violate the rule. This is implicit in any normative injunction for there would be no point to a rule if it were not possible to follow it. So the motivational force of D/W is not so great as to think that it cannot be overcome, for it must be possible for a couple to resist the effect of D/W. One way of understanding the situation where a couple resists D/W is to say that a serial argument is not created as a result of whatever negative effect it had. And hence the kind of D/W we would be talking about would not be what Caughlin and Huston (2002, 114) in a previous quote referred to as "discussions of intractable and recurring disagreements." For recall that for these types of discussions, my suggestion was that D/W was the dominant aspect of the argument episode, and that it was implausible to suppose that the couple could sufficiently motivate themselves to express enough of, or the right kind of affection during the episode to negate the effects of D/W, one which is the creation of a serial argument.

Is there a serious tension here between the nature of rule violation concerning our freedom of action and the motivational force of D/W in intractable disagreements? (For a general discussion of related issues cf. Wilson, 2002; and Dunning, 2005) There is a tension, but its seriousness can be overcome by incorporating more elements from the marital interaction literature into pragma-dialectics. If we are going to grant any unique motivational force to D/W at all, then I see three ways of understanding D/W and couple arguments.

First, there is the possibility that D/W exerts some influence on the couple yet they are able to control its effect to the extent that they do not violate any discussion rules. If D/W is in play in an argument episode, and a couple does not in fact violate rule 2 (or any other rule where D/W could plausibly be thought to have influence), then we can suppose that the couple were able to handle their diffuse physiological arousal (DPA) or emotional flooding. However, from the perspective of pragma-dialectics, there is no significant difference between this kind of argument and any other where no rules are violated. Pragma-dialectics grants that in real discussions interlocutors will feel tempted to violate the rules; but if they resist the temptation then nothing about the physiological aspects of emotional control is relevant.

The second possibility involves D/W exerting enough influence so as to cause a violation of rule 2. For an example of this we can look to Weger Jr. (2002, 207).

F: But how come you never want to go out with my friends? You never told me.

M: 'cause I don't like 'em.

F: Why?

M: Different

F: How?

M: I don't like 'em

F: Why though?

M: Don't like the stuff they say.

F: What do they say?

M: I don't know

Here D/W has enough force to cause the violation of rule 2, but Weger Jr. does not provide any more information about the argument in order to make a determination about whether or not it turned into a serial argument. Assuming that it did not turn into a serial argument, we can suppose that the couple were able to control their DPA to the extent that for instance, neither partner physically left the argument space. Does this issue, which is really about the duration of the argument, add anything to Weger Jr.'s analysis? Can any practical advice come out of supposing that the argument developed along these lines, i.e., that it did not become serial? How does pragma-dialectics address a couple's resistance to following the rules when they are motivated by D/W? Does pragma-dialectics have anything more to say than just "don't violate them"? If we look to the marital interaction literature tied to D/W, we find that we can say more than that. We can point to the work of Markman (1991), Gottman (1994, 1999) and others, who have suggested that negative affect is a key player in destructive patterns of marital interaction. Is it unacceptable to say that it is important for pragma-dialectics to acknowledge what research has identified is likely to be going on when couples violate rule 2 because of D/W? Its importance lies in the fact that this research can help us in determining intervention strategies for couples feeling DPA *during* argument episodes. In those instances where emotion gets in the way of clear thinking, being able to physically calm ourselves facilitates thinking. So, is there a place in pragma-dialectics for recommendations that deal with emotional flooding? Such recommendations would not look like the other rules for critical discussion, for they would be about, for example, recognizing when one is in a state of DPA by one's heart rate (Gottman, 1994, 437). Nevertheless, if we are looking for behaviors that can be undertaken during argument episodes where D/W causes violations of the rules, such physiological considerations are relevant.

The third possibility concerns arguments where the influence of D/W leads to a violation of rule 2, resulting in a serial argument. What position should be taken here on the motivational force of D/W? If we restrict ourselves to the most intractable of serial arguments where the duration is measured in decades and lifetimes, we can suppose the force of D/W so strong as to take Caughlin's suggestion and not try to do anything about the effects of D/W *during* argument episodes. In these cases claiming that violating rule 2 is a fallacy becomes problematic since the couple could not have done otherwise than what they did. However, recognizing such determinism during argument episodes does not prevent us from making normative claims about what should *happen* between them. So how should pragma-dialectics think about couples' thinking and behavior after the partners physically leave the argument space but before they return to the argument at a later time? One might think for example that behaviors constitutive of 'making up' might be appropriate here in the sense of ameliorating the negative effects of D/W (But see Johnson & Roloff, 2000b, 683). One suggestion that has some empirical support is that partners should not rehearse negative thoughts about the relationship between argument episodes (Cloven & Roloff 1991). Considering the impact of the thoughts of partners between argument episodes is essentially what marital theorists are concerned about when they talk of pre- and post-interaction appraisals (Bradbury & Fincham 1991).

Now by saying that when D/W causes serial arguing we can only think of suggesting behaviors to be employed between argument episodes, it might seem that I am treating all serial arguments in the same way. That would be a mistake, for I want to promote the notion that there are different degrees of intractability within serial arguments. Hence, even if D/W causes a serial argument, depending on how intractable we think it is, we may not want to claim that the couple could not have behaved otherwise. In such cases it would be appropriate to charge a couple with committing a fallacy. Yet, for serial arguments that we believe are seriously intractable, considering behaviors between argument episodes is the right move. But how does the couple know whether or not they are in a seriously intractable serial argument? I suggest that if partners find that they cannot stop rehearsing negative thoughts between argument episodes, they are caught in a seriously intractable serial argument which may be a marker for couple counseling (Canary et al., 1995, 121). On the other hand, partners who can control their negative thinking between episodes are in a serial argument where

they can suppose the normative rules of pragma-dialectics still apply.

Finally, where specifically can these considerations fit into pragma-dialectics? Gilbert (1997; 2003) has provided ways to think about emotion in pragma-dialectics. One of the issues here is the role, if any, expressive speech acts play in critical discussions (Van Eemeren & Grootendorst, 1992, 39; Van Eemeren et al., 1993; Gilbert 1995, 1997). Do they have a full-bodied legitimate role, or only a secondary one as instances of indirect speech acts? Whatever one's position is on this, everyone agrees that emotion can affect the resolution process. So if we are interested in not having that process spiral out of control, we should have procedural rules to prevent this from happening. And while it may be true that most arguments do not involve heated emotion accompanied by raised voices, the kind of argument that is the topic of this paper often does. Thus, while it is understandable that the pragma-dialectical model would not immediately lead one to think of behaviors geared to handle one's DPA, from a marital interaction perspective, this is an obvious issue.

So let's consider DPA. In discussing the importance of re-negotiating the opening stage of a discussion, Gilbert (2003, 3) notes that re-negotiation may not occur, "in no small part, because we are conditioned to ignore the emotional aspects, to pretend they are not there or are peripheral to the real activity of the discussion." In the context of serial argument, an important part of being prepared to re-negotiate the opening stage is recognizing DPA, and expressing how you feel in order to let your partner know what you are experiencing. Taking a basic idea from the marital interaction literature, we can suggest that the partner should stop arguing for a while to allow him or her to calm down. Gottman (1999) suggests 20 minutes, while Yovetich and Rusbult (1994, 163) cite the clinician's rule of thumb that you should count to 10. And the time issue matters for pragma-dialectics because if the break was initiated by one partner and it lasts too long, that partner may violate rule 2: "a party that advances a standpoint is obliged to defend it if the other party asks him to do so" (Van Eemeren & Grootendorst, 1992, 208). Here the proposed remedy for dealing with the physiological effect of D/W may be in danger of having the same consequence as breaking rule 2. However, if we can assume that partners are able to determine when a break is being used to calm down rather than being used to avoid defending or opposing a standpoint without argument, should we suggest that the technique of asking for a break be part of the considerations surrounding the opening stage? Or perhaps it should be appended to rule 2? The benefit to tying the technique to rule 2 is

that here there is explicit acknowledgment of an interaction. We have one partner asserting something, and the other expressing the desire for a defense of that assertion. The way this exchange happens may cause a partner to become emotionally flooded. On the other hand, we might want to say that this technique applies to the interaction at a meta level since partners may become flooded at any point. Hence, the technique should be available to partners at all times.

What about the behaviors that were suggested for use between argument episodes? The whole notion of behaviors engaged in after and between an argument episode in a serial argument, raises the issue of an argument's end. About this, Gilbert (2003, 5) states that, "One of the difficulties we face with emotional argumentation is deciding just when an argument with strong emotional content is over." We can suppose that for a conservative interpretation of pragma-dialectics, a partner walking out of the room or ending the argument episode in some other fashion constitutes a settlement of the dispute. Yet, since we are considering a serial argument the settlement does not last. What can be said here? I do not think pragma-dialectics has taken any position on what should be done by partners between argument episodes. Assuming it is a legitimate concern for pragma-dialectics – which it is since a plausible view of D/W is that it typically leads to serial argument – perhaps we can claim that in these kinds of discussions there are behaviors that reduce the likelihood of turning your serial argument into an intractable one. Here it seems correct to tie these considerations to the resolution stage of those arguments that constitute serial argument, and not to suppose they are relevant to disputes generally.

3. *Conclusion*
I have tried to bring the fields of argumentation theory and marital interaction closer together, for this is necessary if we are going to understand arguments between couples. Weger Jr. has made an important step by incorporating D/W into pragma-dialectics. I have argued that D/W is a concept that has been used to imply serial arguing. By examining the issues that serial argument raises, we can suggest that partners be aware of emotional markers so they themselves can recognize that sometimes the most rational course of action is to take a break. As argumentation theorists it is up to us to promote the idea that it is proper to have the attitude that re-negotiating the opening stage can have a positive impact on the process of arguing. Furthermore, to be able to suggest rational courses of action for those caught in a serial argument is part of argumentation theory's

purview. As a step in that direction, if partners can recognize they are engaging in negative mulling between argument episodes, their success or failure in countering such thoughts will indicate to them whether or not their relationship requires more than willpower to repair.

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Role Of Pragmatics, Rhetoric And Dialectics In Scientific Controversies

1. *Introduction*

Scientists use natural language with a formal orientation to report the results of their scientific works. This formalism may include logics and mathematics. Even when this is the case, however, extensive use is made of natural language. Other than in communicating their findings, language is used by scientists in the proper building of science. In other words, language is constitutive of science, as it is of all other social human activities. In this preliminary work I study aspects of the use of language in the actual production of science. Specifically, I have in mind that activity by scientists of informal discussions with colleagues, as might start in coffee-breaks, or as happens in more regular meetings. These discussions, sometimes contentious, are often responsible for new ideas, that can solve scientific problems.

As Laudan rightly asserts, the fundamental aim of science is the solution of problems, while scientific theories may be considered as "attempts to solve specific empirical problems about the natural world" [Laudan, 1977]. Epistemology, dealing with questions concerning knowledge, tries to explain how such solutions and theories are created and critically evaluated, thus accounting for the growth of knowledge.

From Aristotle, and up to the first half of last century, scientific endeavor and the resulting science have always been considered as epistemically certain and undisputable. Yet, in practice, the activity of scientists has ever been immersed in controversies. Reflecting this contradiction, epistemology in the last decades has been troubled by a dichotomy, that either considers science from a normative viewpoint or from a descriptivist one.

Recently, I had the opportunity to elaborate a model of the practice of science for epistemic use [Ferreira, 2005], which aims at solving the impasse of this dichotomy in favor of an intermediate acceptable position. In this paper I will deal with some language aspects of that model, wherever it applies to spoken language cases of the practice of science. In what follows I will present an outline

of the model, to subsequently briefly discuss the incidence of rhetoric, dialectic and pragmatics in relation to the epistemics of the model. I finish by revisiting a related case of the practice of science, in terms of the use of language.

2. *The model*

The production of scientific theories is described by this model as a unified and interactive process of generation (discovery, invention) and justification. The implicit feedback mechanism between justification and discovery consists in advancing or justifying a hypothesis from the evidence of data or from established results, a process called generative justification [Nickles, 1985]. More explicitly: starting with a problem, a scientist tries to find a solution to it, by searching heuristically the space of data and previous knowledge. The assessment of the hypothesis' plausibility, or some assurance of its correctness, comes from the context of justification, as hypothesis' generative support, reducing its conjectural status. Let us remark that this is quite different from justifying a claim indirectly by testable consequences, as in Popper's model, where discovery is considered only a psychological process, devoid of epistemic interest. It is appropriate to stress that the model here presented is a unified model of scientific problem solving and theory production, and that it recovers an epistemic role for the discovery/generation context.

In the derivation of the above model, use is made of the consideration of the need for efficiency of research activities, which imposes a connection between generation and justification. This allowance for efficiency of means to ends adds to the epistemic *rationality* of the process, contributing to enlarge the amplitude of this concept. The remarkable consequence of this feature, however, is that it connects the epistemic appraisal of science to the work of practical scientists. This translates to saying that rationality becomes agent-dependent [Laudan, 1996, 128]. When deciding on how to use experimental evidence to better support a hypothesis, or, on less than rigorous heuristic procedures, the strategies of different researchers will usually vary. Different individual background assumptions and cognitive aims may bring what should be a "rational discussion" down to (or up to!) a controversy. This points to the controversial character of science in practice, as corroborated by its history, but generally not acknowledged at all.

Regarding our modeling task, this characteristic of science renders the above model incapable of representing the activity of real scientists. However, it

suggests that, somehow, to represent science properly the model should incorporate that controversial aspect! And that is what I propose: to embed the concept of controversies in the previous model.

In proceeding to this intent, use is made of the concept of controversies, as formulated by Marcelo Dascal [1995, 2003 p. 280]. Very briefly, *controversies* are a type of dialogical polemical exchange between at least two persons, who confront each other in oral or written debates. In the case of scientists, the unpredictable reactions of the opponents, as characteristic of these polemics, and the protagonist's responses, guarantee the necessary criticism for assuring the rationality of the process of searching for solutions to scientific problems or to developing theories. In [Ferreira, 2005], I have argued for the following two claims:

1. The incorporation of the concept of controversies gives my previous model the ability to account for the activity of scientists closer to reality than the other available models (of Popperian or Kuhnian extraction), and

2. Scientific controversies form a privileged, if not the most appropriate, argumentative environment, that renders possible the invention and justification of new scientific theories. The acceptance of these claims can be verified by anticipating, or rather observing, the process of development of scientific controversies in practice, identifying the moves from discovery/generation to justification, and vice-versa. The model, in brief, recovers an epistemic role for discovery and it allows analyzing science closer to reality than other available models. As all models, however, it may not represent well all epistemic aspects of the activity of scientists.

3. *The use of language in the practice of science*
The practice of science is actually organized to be controversial, considering its procedures of daily discussions with colleagues, scientific conferences, the refereeing of papers, proposals for research funding, public debates, etc. In all these activities, the use of natural language is ubiquitous. The role played by language in our model, however, is very different from the one in the positivists' and neo-positivists' models. In the later, language is used to examine logically, in the form of statements or propositions, the ideas of discovery, and to passively register the accumulation of scientific justified results, as Meyer (1980) asserts. This author argues properly that scientificalness cannot be disclosed by the language used in science in the form of scientific statements. In the proposed

model, on the other hand, language has a very important active role, being constitutive of the whole process of the practice of science as a controversy-based activity carried out by scientists. This scientific endeavor is one of human activities that demands our cognitive capacity at its maximum, where language plays the roles of "environment, resource and tool of cognition" [Dascal, 2004], in intimate interaction with thought.

Accounting for the paramount importance of language in scientific controversies, the toolbox to use for its study should contain several disciplines for language studies, and mostly, pragmatics, rhetoric and dialectics, considering that controversies are instances of language use, moreover spoken language use. The importance of dialectic and rhetoric to describe and promote dialogical understanding and interpretation closely related to science was first recognized and theorized by Aristotle. Only recently, however, have these arts been considered as possible cognitive tools for the formation of modern scientific theories and the appraisal of scientific progress. Pragmatics, introduced by and after Paul Grice for elucidating aspects of the communicative function of language, is the appropriate instrument to study controversies, according to Dascal [1995].

The whole process of epistemic assessment of the practice of science in terms of controversies is not all-transparent, however. If one thinks of the individual researcher as a member of a research team, it is fair to accept that he would build for himself a controversy-oriented attitude, in order to anticipate the polemical confrontations he might face in his daily practice. To take account of that, I have suggested that scientific controversies unfold in a dual space of inter- or external, and intra- or inner controversies [Ferreira, 2005]. In other words, scientific controversies comprise a dual dialogical argumentative space, internal and external to the knowing subject.

4. *An example of scientific of controversy*

To illustrate this brief study of controversies by means of language, I will use an example of a real scientific controversy, described in [Ferreira, 2005], from where I use parts of the same text, as composed from interviews, and which appear here between quotations marks. The protagonists are researchers whom I know**[i]**, and who allowed me to report and comment on their accounts. To facilitate the exposition, I will call them A, B and C. I interviewed them separately, and at different times, because of logistic conditions. At the time of the interviews they were not informed of the concept of controversies, and as far as I know, they did

not know it.

This controversy belongs to systems theory, a subject of applied mathematics and engineering. This is interesting, because it shows that controversies can happen even within the mathematical sciences. However, it will be described here without any formulas or equations. A more complete analysis of the controversy, including some mathematical expressions, is promised to appear.

"The debated problem deals with the notion of decoupling for implicit and generalized systems. The polemic started when analyzing a simple example of a system, from whose state and output equations it was possible to see that a disturbance input is eliminated from the output expression, and so does not influence the output. However, the same expression also shows that the initial condition of the output is influenced by the initial condition of the disturbance – which is incompatible with the standard notion of decoupling. Based on this last fact, two of the researchers, say, A and B, defended the view that the perturbation influences the output, and the third one, C, the originator of the discussion, argued that it does not".

I start now describing some of the polemical moves of the controversy, as recovered from the recording of the interviews, and concomitantly, analyzing the corresponding language that would have been used. This is, of course, a virtual language. The fact that we do not have a recording of the actual utterances that were exchanged limits drastically the possibilities of analysis.

"In the beginning, C had to convince the others of the mathematical interest of the problem under discussion. In the first two or three days, the confrontation went off as a dispute, where opinion and emotion prevailed over arguments, and where each one complained that he did not understand the point of the others, or to be misunderstood by them". This starting part of the controversy pertains to the question of acknowledging what is at stake, with very polemic corresponding moves. The nature and relevance of the problem were disputed. The controversy spreads rapidly favoring the focus on new topics relevant to the initial problem. The scope of the problem is enlarged and finally becomes more clearly delineated. The reasons for the lack of mutual understanding at the beginning may be due to unshared undisclosed interpretative assumptions. Our epistemic model, however, allowing controversial generative-justifying criticism, can contribute to render hypothesis less biased by background beliefs, increasing the possibility of

justifying a hypothesis within common grounds. The pragmatics of the discourse is of paramount importance at this stage, because communicating ones intentions and understanding others' is most relevant to decreasing the polemic content of the interchanges.

"In the sequel, with arguments more philosophical than mathematical, C, dialectically adopting the point of view of B, and using B's standard definition of decoupling, conceded that the system of the example discussed should be declared as not decoupled from the disturbance. However, the consequences of this result would not be so interesting from a theoretical perspective, since then it would be very difficult to find examples of decoupled systems at all". At this stage, the controversy becomes more argumentative, and the moves are dialectical and rhetorical. (See [Van Eemeren & Houtlosser, 2002] for studies on these perspectives in argumentative discourse analysis). Since at this stage the mutual understanding is better established, the prevailing intention is to persuade the opponents. The use of persuasive arguments by one of the contenders may motivate another participant to initiate an inferential process, which might permit the appreciation of a different viewpoint, or perhaps add some new feature, to achieve a more comprehensive understanding of the problem. Appeals to logos are present, but also to order and pathos. Style of reasoning starts to appear, as the controversy tends to a discussion. However, pragmatics is always important in controversies and we should consider the 'marriage of pragmatics and rhetoric', as attempted in [Dascal 2003, p. 600].

In continuation, after much discussion, A, now willing to accept the decoupling hypothesis (that is, in terms of the model, 'reasoning to the item being justified'), began to agree that it might be interesting to consider a weaker definition of decoupling. From this moment on, in reality, the participants found themselves contending about which concept of decoupling was significant for the problem discussed. It resulted that with a weaker definition of decoupling the exemplified system could be, after all, considered decoupled.

The evolution of this controversy, from the initial dispute to the final resolution, through the criticism of the confrontation process, led to the disclosure of the interpretative background assumption underlying the standard definition of decoupling. The whole process extended along one month, with almost daily meetings. The participants expectations, as regards the possibility of a solution, often changed from optimism to pessimism and vice-versa. On the other hand, in the last stage of the controversy, the time needed to formulate precise

mathematical definitions and to elaborate the necessary proofs was much shorter than in the preceding stages.

It should be said that this controversy, as one might imagine, also occurred within the inner reflections of each participant, when anticipating the next day's moves [Ferreira 2005]. In this inner space of the controversy, language is used in mental processes, and is studied as such by *psychopragmatics* [Dascal 2003, p. 422].

NOTE

[i] One is my colleague, Paulo Sérgio Pereira da Silva, from the University of Sao Paulo. The other two are Emmanuel Delaleau, from École Nationale d'Ingénieurs de Brest, and Michel Fliess, from École Polytechnique, in Paris. I am grateful to them for the interviews.

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ISSA Proceedings 2006 – Towards A "Pragma-Dramatic" Approach To Argumentation

1. *Language and space*

Years ago, when I was a boy scout, I got lost with my group in the middle of nowhere. We found a local man and asked him for directions. "Go that way, not this way. Then, turn this way, that way, not that way. Then, that way but never that way or you'll get lost", he said. While he spoke he did not make any gesture with his hands, his head or his eyes that would allow us to tell "that way" from "this way" or from "that way".

If an experienced actor, whether professional or amateur, would have to perform a scene in which his character spoke like the farmer whom I just mentioned, unless indicated, the actor will fill his/her performance with gestures, tying the words with specific points in the space that surround him/her.

We will try to discuss in this paper about the way in which theatre ties the words with the space and the time in which it develops and what pragmatics can say about these bonds.

In his classic book "Drama as literature" Jiri Veltrusky makes an update for the study of drama. For him, saying that drama is dialogical not only refers to the fact that the action of the play is constructed in and by speech turns, but, more deeply, to the bond between this literary form and time and space. For Veltrusky, the dialog develops not only in time but also in space. It takes places always in an extralinguistic situation that shapes the dialog (1987: 17).

So, if we are going to attempt a study of daily interaction as if we were studying a theatre play, we must include in the analysis not only the words said in that certain order, but the entailment between saying and that specific and changing "here / now" (idem).

Without any doubt, the works of Ervin Goffman, mainly "The Presentation of Self in Everyday Life", are the most famous attempt to distinguish theatre (drama) categories in daily interactions. But according to our opinion, Goffman tried maybe too hastily to transpose many concepts from a very restricted form of theatre. Nevertheless, we will take his definition of an 'encounter as the minimum

unit of analysis, understood as a continuous of space, time and actors communicating. An entrance, an exit or an interruption of the communication marks the end of one encounter and the beginning of another. (Goffman 1956: 27)

There is also another essential divergence between our point of view and Goffman's that we would like to point out. According to Goffman, "the central understanding (of the scene) consists in that the audience does not have the right or the obligation to participate directly in the dramatic action that happens in the scene" (Goffman 1956:125). We think that, being part of a scene, the audience (the agents) can never escape away from the dramatic action.

Plus, to study daily argumentative interaction, which develops without any previous written script, we should move from the study of drama, as a fixed literary object, to the way in which the actors and directors train to develop improvised action on stage. The ideas and exercises developed by Keith Johnstone have been widely accepted and used for the training of actors improvising and for the creation of improvisational spectacles.

When an argumentative interaction is considered as a scene, an 'encounter', conformed by a finite number of oral exchanges, many different elements come together, and can influence, in a decisive way, in the good or bad result of the whole interaction.

Many of these elements have to do with the psycho-social characteristics of those who participate in the interaction, with the form in which those characteristics are selected, activated and they are interpreted in the specific course of the exchange. (Calsamiglia & Tusón 1999: 45). "When we are trying to understand discourse in all its complexity, we must to be able to give account of what we say, how we say it and how we move it" (Poyatos 1994, our translation)

We can grasp here the need to tie the effort of a description of the total argumentation phenomenon with the tools from the pragmatics, defined by María Victoria Escandell as "a discipline that really takes fully in consideration the extralinguistic factors that determine the use of the language, all those factors to which a purely grammar study cannot refer". (Escandell 1993:16)

But let's return to another point of disagreement with Goffman. He claims that, when someone appears, the others surrounding him will try to obtain data out of him, or to recall information that they already have about him, in order to define the situation and get to know, previously, how to provoque a desired response from this individual. (Goffman 1956: 225)

Nevertheless, we here think that the problem is not to obtain or recall information

from the individual. If it were so, it would only be an inferential problem and its solution would be described in statistical terms, and would be enough to adjust, in its methodological aspect, the social theory of the dramatic action in Goffman.

If we recall the distinctions by McKoon and Ratcliff (1992) about automatic and strategical inferential processes, we can say that Goffman's proposal was only interested in strategic inferential processes (that is semantic, instrumental, and predictive processes) specially set in the conscious nature. But there is another type of processes, the automatic ones, to which Goffman did not refer. These non-conscious processes, then, show a leak in Goffman's proposal and deserve to be articulated on a theory that deepens in the theatrical practice and takes advantage of the instrumental power of the pragmatic analysis.

2. *The Status as respective value in the argumentative scene*
The term "status", it is currently used in a wide range of disciplines: sociology, engineering and even laws. However, its use in theatre context is relatively new. We owe it mostly to the work of Keith Johnstone, whose book "Impro: the improvisation and the theatre" was first published in 1969.

In his book, Johnstone, without an explicit speculative eagerness, attracts our attention on "see-saw principle" of status: "I go up and you go down" (1987:37). Status flow through the body and its expression (idem). He sees this phenomenon as a constant: "Each flexion and movement implies a status" (p. 33). Please note that the concept of status in Johnstone does not have direct connection with the sociological use of the term.

In these two sentences we can see that "status transactions" (Johnstone 1987: 72) are equivalent to the concept of "power". So, to emphasize three distinguishing characteristics in Johnstone's observation of status:

1. Resemble an invisible seesaw,
2. Is transmitted through body and its expression,
3. Each expression implies a status.

When Johnstone speaks of "status", he speaks of "power", and he does so without any – at least- conscious debt to the Western philosophical tradition. It is not his interest. He only tries to explain something that, in his experience as acting director, appears once and again.

We will understand status, then, as the name of the relative position of, at least, two subjects in a certain time; that is to say, the status of anyone of the subjects involved in interaction necessarily refers the status of their interlocutor. By

extension, we can also talk about status as the origin or cause of that relative position.

Following Echeverría (1989: 383-386) we can say that an important characteristic of the Western metaphysical tradition in the treatment of power is its reification. For centuries, the western philosophy understood power as a substance, like "something" that is there, independently from the observer. It seemed to be a mysterious being, of great elusive capacity. Sometime seems that we are grasping to it, soon to discover that we have lost it.

A little of this mystery seems to infuse Johnstone's description of the status as "an invisible see-saw". In example, Johnstone says that when actors weren't acting:

[...] Space flowed around [them] like a fluid. [...] The bodies of the actors continually readjusted. As one changed position so all the others altered their positions. Something seemed to flow between them. [...] It's only when the actor's movements are related to the space he's in, and to the other actors, that the audience feel 'at one' with the play. The very best actors pump space out and suck it in [...] (Johnstone 1987: 57)

Thus, almost like a hydraulic model, the status is transferred from one individual to another one depending on the actions that they carry out and the value that we grant him as observers.

We are attempting here a philosophical approach, which avoids the reification of the phenomenon; we can thus say that power is a linguistic phenomenon. It results from the subjects' capacity of language. This is what Johnstone describes when saying that any expression implies a status.

Status appears, therefore, as a distinction that we make in language. This distinction does not take place as the expression of an answer from our biological structure to what happens in our milieu. It is a product of the power of language to generate experiences.

When we speak of power, of status, we are not describing. When we describe, the distinctions we make belongs to what we observe. However, when we judge, we make an adscription. It is the observer itself who confers to the observed something that appears only in and by the process of observing.

Judgements do not speak only about the organizations and phenomenon they talk about, but about the relation that we establish with them. Consequently, judgements work as synthesizers of the form in which we are in the world, or what Heidegger (1993: 53-59) calls the *Dasein.*

In one word, power is a linguistic distinction that does not talk about a substance, whose existence we assume independent from us. On the contrary, power always lives as a judgement we make.

Power constitutes a phenomenon resulting from a judgement stated by an observer over the greater capacity a certain organization has to generate action. When saying greater, we are recognizing that we compare the capacity to generate action between equivalent organizations. When we say action capacity, we do not talk about an undertaken action. The judgment is not about the action itself but about the dominion of the possible.

The lack of continuity of the judgements and the changing character of the here/now in which they take place, lead us to suppose that, being the power a relative position, two agents cannot have the same status at the same time. The distribution of the power is always unequal. Thus, opposing to Watzlawyck's idea about symmetric and complementary communication (1981: 68-70), we are developing a model in which every status transaction includes a "move" from an agent, and a reaction from the interlocutor, that resets the whole interaction. The difference in the status distribution, and the attempt of the agents to repair it, keep the system going.

This lack of continuity of actions that brings a scene into life has been beautifully explained by the screenwriting coach Robert McKee, who replaces the expression "turn" by 'beat': "A beat is an exchange of behaviour in action/reaction. Beat by Beat these changing behaviors shape the turning of a scene" (1997: 37)

Thus, we can say that these "moves" that readjust the relation of power, modifying the scene, in spite of being unceasing are discontinuous, can be understood as Status Moves within a transaction that we call scene.

What is relevant here -and Johnstone didn't remark- it is that each subject can effect him/herself or the other subject, affecting the dynamic balance. Then, in each speech turn, we can make one of four movements:

1.a "St" opposed to "Sq" increases its status: I am so depressed.

1.b "St" opposed to "Sq" diminishes its status: Though I'm not that depressed.

2.a "St" increases the "Sq" status: You are a very kind

2.b "St" diminishes the "Sq" status: got your degree recently?

Please observe that in the statements 1.a and 1.b the movements are directed to

oneself and in the cases 2.a and 2.b are oriented to the Sq. In the cases 1.a and 2.a the movements are aimed to increase the status and in the cases 1.b and 2.b are aimed to diminish the status.

We can observe, also, different argumentative movements in the conversational interaction (that can be defined in terms of speech acts according to the standard pragmatic theory) that imply as well redistributions in the status of the subjects. Depending on our position respect to a point of view, one will say that we are:
– Accepting (1.b)
– Introducing (1.a)
– Rejecting (1.a)

If we ad argumentative elaboration to our support or rejection (Hofer & Pikowsky 1993: 146), we will say that we are:
– Refuting (1.a)
– Supporting (1.b)
– Closing (1.a)

Upon this point, we should recall that, as Johnstone says, we have been told not to see the status seesaw. The status only becomes visible when the actors are in conflict. At the beginning, recognizing that all movement implies a status that readjusts our power relationship -by changing or reinforcing it- can lead to a kind of paranoiac scenario in which all the movements are seen as threats. This is nothing more than a counterattack from the idea of the power as a precious object that everybody wants to steel.
What should happen, on the contrary, is that to guarantee the possibility of rationality and argumentation, the relation must be able to readjust itself fluently. This is, precisely, the golden rule of improvisation: "you shouldn't block your partner"

3. *Status, power in space.*
If we follow Johnstone's idea that status is basically territorial. (1987: 57) That is to say, frequently, power relationships are readjusted in space; we can recall what we said before. Including the Status Moves in the description of a scene may allow us to restore the bonds between speech acts apparently disconnected.
Thus, for example, a disqualification, that could be understood as a mere transgression of one of the commandments for argumentation, may be seen here as an attempt to readjust the power relationship that responds to a nonverbal

Status Move (i.e., the difference of height of two colleague's podium at ISSA conference) that allow reasoning rather than obstruct it.

Describing the judgements on power of the participants in a daily argumentative interaction, that is to say, to include, for example, the Status Moves in a mediation process is a first attempt to formalize the dramatic components of the argumentation.

Anyway, we still have a long way to go before being able to put together the concepts of pragmatics and the descriptive tools that theatre can give us. Nevertheless, we have observed, working in negotiation workshops, that the possibility of describing our own status movements during a conflict, facilitates the understanding of an interpersonal conflict.

In a broader sense, besides to request your collaboration for continue on developing a "pragma-dramatic" approach for argumentation, we want to invite you to look at the power relationships surpassing the two temptations of the power as an object: It is not a jewel that we must protect, nor a poison that we must extirpate. The power can become a dance, a game, and a seesaw.

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ISSA Proceedings 2006 – Legal Arguments For Political Violence: The Assassination Of The Duke Of Orléans (1407)

Die ich rief, die Geister
Werd ich nun nicht los.
Johann Wolfgang Goethe, *Der Zauberlehrling* (1797)**[i]**

1. *Introduction: Conflict and Assassination*
The early 15th century in France was characterised by a power vacuum created by recurrent bouts of madness suffered by King Charles VI. The chief contenders for filling this vacuum were Louis, Duke of Orléans, brother of the king; and his cousin John the Fearless, Duke of Burgundy (Calmette 1964, pp. 103 ff.; Vaughan 2002, pp. 29ff).**[ii]** In spite of occasional protestations and oaths of cousinly love, the conflict between Louis and John had proceeded to the stage of iconographic induration: the Duke of Orléans had adopted the emblem of a knotty stick, with the motto "*je l'ennuie,*" which literally means "I vex him," but can also be read as a gambling term, "I challenge him." The Burgundian in turn had embraced the image of a plane, together with the Flemish device "*Ic houd,*" which literally means "I hold," but also has a gambling connotation: "I accept [the challenge]" (Huizinga 1984, p. 211).**[iii]**

When a prolonged political propaganda campaign, designed to discredit Louis in the eyes of the people, and to deprive him of his influence at court, proved unavailing, John resorted to sterner measures. He hired a band of thugs and had Louis killed in a dark street in the Marais district of Paris on 23 November 1407

(Monstrelet 1857, pp. 154ff.; Pintoin 1841, pp. 730ff.). Having previously examined the political arguments and propaganda aimed at defending the Duke of Burgundy against the charge of having assassinated the Duke of Orléans (Hohmann 2003), I now propose to examine the legal arguments surrounding these events.

2. *Designing a Defence for the Duke of Burgundy*
In his approach to the case, John of Burgundy ranged successively over all three main levels of the rhetorical *stasis* or *status* system, developed in antiquity to analyze and lay out for use the options available to a legal defendant.**[iv]** When the news of the assassination first broke, he at first implicitly denied any involvement in the deed (*status coniecturalis*, issue of fact) by ostentatiously participating in the funeral ceremonies for his dead cousin Louis, with whom he had celebrated a public reconciliation a few days earlier. John, clad in mourning clothes, held one of the four corners of the drape covering the coffin, and cried and moaned in a show of grief, together with the other relatives of the king's dead brother (Monstrelet 1857, p. 160).

A period of speculation over the identity of the author of this assassination was ended on Friday of the same week, soon after the funeral for the late duke, when John of Burgundy, threatened with a search of his house in Paris, where the assassins had found refuge, admitted to his uncle, the Duke of Berry, and to Louis of Anjou, King of Sicily, that he had ordered the murder. At this point he used an excuse (*status qualitatis*, issue of quality) by claiming that in ordering the deed he had succumbed to temptation from the devil (Monstrelet 1857, p. 162). This may strike a modern audience as a bit of a stretch, but it should be noted that contemporary records show that this excuse was used in nearly ten percent of the successful applications for royal letters of remission at the time (Gauvard 1991, p. 430).**[v]** On Saturday, the Duke of Burgundy, in spite of his general reputation for fearlessness (he had earned his honorific of *sans peur* at the battle of Nicopolis in 1396 [Champion 1911, p. 4]), thought it wise on this occasion to leave Paris speedily and stealthily in order to escape possible arrest (Monstrelet 1857, p. 164).

But John of Burgundy soon regained the initiative. With his advisers, he began to compose and publish a detailed explanation of his action (Monstrelet 1857, pp. 171ff.; Schnerb 1988, pp. 78ff.), and some three and a half months after the assassination, on 8 March 1408, he appeared in the hall of the king's residence in Paris (the Hôtel de Saint-Pol) to offer his justification to the Dauphin of France

(the king was too ill to attend), the assembled nobility, members of the University of Paris, as well as "a numerous body of the citizens of Paris and people of all ranks." (Monstrelet 1840, p. 61; Monstrelet 1857, p. 178). This time, the duke relied primarily on the *status definitionis* (issue of definition), by claiming that his deed was not punishable homicide, but the deserved punishment of a traitor and a defensible act of tyrannicide. As so often in history, violence was thus justified as a means of preventing violence: the basic defence offered was that the Duke of Burgundy had ordered the assassination to protect king and kingdom against Louis' plans to kill the legitimate monarch and to seize power illegally (Géruzez 1836, pp. 127ff.; Munier-Jolain 1896, pp. 43ff.). By presenting his defence to this special assembly, rather than to the *Parlement de Paris* (Autrand 1981), the highest court of the realm, the duke also implicitly invoked the fourth level of the stasis system, the *status translationis* (issue of procedure), effectively claiming that he, as a peer of France, could be judged only by the king, not by the ordinary courts.

A further implicit element of his case was fear: his audience was intimidated by the enthusiastic popular support that had been evinced when the duke re-entered Paris after his cautionary absence, and by the multitude of armed men he had brought with him (Monstrelet 1857, pp. 176f.; Pintoin 1841, pp. 752ff.). This none too subtle *argumentum ad baculum* was in addition reinforced by the elaborate security precautions accompanying the assembly in the Hôtel de Saint-Pol: all audience members had to enter through a single door and were searched; and when John the Fearless finally appeared, he was sure to make all aware that under his richly embroidered outer garment he was wearing armour (Ehlers 1999, pp. 137ff.).

3. *Jean Petit's Arguments*

The duke did not speak himself; the defence was presented by Jean Petit, since 1405 Doctor and Professor of theology at the University of Paris, whom John the Fearless had employed as an adviser since 1406. The speech has survived in a number of different separate manuscripts, and in the chronicle of Enguerrand de Monstrelet; though he belonged to the Burgundian party in the ensuing civil war between the followers of duke John and the supporters of the house of Orléans, who became known as the Armagnacs, this chronicler nevertheless has also transmitted to us in full the replies made by advocates on behalf of the widowed Duchess of Orléans about six months later.**[vi]**

As he repeatedly emphasised in his speech, Jean Petit was not a lawyer. His

oration has the form of a medieval thematic sermon,**[vii]** rather than that of a classical legal defence speech. But the form of the thematic sermon is that of a syllogism, familiar to lawyers as the basic traditional logical form of a legal argument (Feteris 1999, pp. 26ff.). A major premiss lays out the legal norm to be applied, which links certain legal consequences with certain required factual antecedents. The minor premiss then states that these factual antecedents have occurred in the present case, and the conclusion asserts that the specified legal consequences thus apply.

Being a theologian, Jean Petit starts his argument in his first article with a biblical theme: "Covetousness is the root of all evil" (St. Paul, 1 Timothy 6:10) (Monstrelet 1840, p. 63; Monstrelet 1857, p. 184). But he quickly moves to the concept of high treason, which he treats in his second article as one of the possible consequences of covetousness, and as the greatest crime deserving the most severe punishment (Monstrelet 1840, p. 64; Monstrelet 1857, p. 187). So the legal core of Petit's defence case is the concept, derived from Roman law, of the *crimen laesae maiestatis* (French: *crime de lèse-majesté*) or *crimen maiestatis imminutae*, often abbreviated as *crimen maiestatis* or simply *maiestas* (Mommsen 1899, pp. 537ff.). This concept refers to the superior dignity and venerability of public office holders, which is violated by attacks on them. The *crimen laesae maiestatis* was initially instituted in the Roman republic as a way of safeguarding plebeian magistrates, who did not enjoy the protection against political violence afforded to patrician office holders by virtue of the fact that they were also regarded as religious functionaries and thus as sacrosanct. Later, the concept of *maiestas* was expanded to cover all offences against the state, including *perduellio*, i.e. war-related treason in the narrower sense. After the demise of the Roman Empire, the use of the concept was restricted to the Holy Roman Emperor (*imperator*), who claimed to have assumed the authority of the ancient Roman emperors. But since the 13th century, the French king was recognised as *imperator in regno suo* (emperor in his kingdom), and thus attacks on him could clearly be seen as a violation of *maiestas* (Guenée 1992, p. 191). A not insignificant problem was presented by the fact that Louis of Orléans had not yet openly attacked his royal brother. But Jean Petit argued that Louis had already committed covert attacks; and it was also well established in Roman law that in the case of serious crimes, especially against the state, the planning and the attempt were sufficient to deserve punishment (Mommsen 1899, pp. 97f.).

In the third article of his major premiss, Petit cites the biblical examples of

Lucifer, Absalom, and Athaliah to prove that covetousness could easily lead to disloyalty and treason, which then deserved severe punishment (Monstrelet 1840, pp. 67ff.; Monstrelet 1857, pp. 195ff.). But in his fourth article, he introduces yet another basis for his justification of Duke John's assassination of Louis of Orléans: the *concept of tyrannicidium* (tyrannicide) (Monstrelet 1840, pp. 70ff.; Monstrelet 1857, pp. 203ff.). In fact, he claims very broadly that "it is lawful for any subject, without any particular orders from anyone, but from divine, moral, and natural law, to slay, or to cause to be slain, such disloyal traitors" (Monstrelet 1840, p. 71; Monstrelet 1857, p. 206). This is a remarkable extension of such a right, which previous authorities, if willing to consider it at all, had tended to restrict to the people as a collective, or to formally instituted magistrates (Coville 1932, pp. 179ff.; Black 1992, pp. 148ff.; Schmale 1997, pp. 269ff.; van den Auweele 2000, pp. 49ff.). Because of his position at the University of Paris as a Doctor and Professor of Theology, it would be easy to conclude that in his speech Jean Petit legitimised tyrannicide and killing in the interest of the state in the name of the Faculty of Theology (thus Ehlers 1999, p. 138). But this was not the case, which is shown not merely by the University's later repudiation of his position, but also by the speech itself. In a rather curious move in the introduction, Jean Petit not only emphasises that he speaks only because he has been commanded to do so by the Duke of Burgundy, whose commands he cannot refuse, but he also notes that he might well be asked whether it would not be proper that such a defence should be presented by a lawyer rather than a theologian, to which he replies, rather surprisingly, that it certainly is not proper for him "who is neither a lawyer nor a theologian," and he continues "were I a theologian, it might become a duty under one consideration, namely, that every doctor of theology is bounden to labour in excusing and justifying his lord, and to guard and defend his honour and good name, according to the truth, particularly when his aforesaid lord is good and loyal, and innocent of all crimes" (Monstrelet 1840, p. 63; Monstrelet 1857, pp. 183f.). Since everybody in the audience knows that Jean Petit is in fact a theologian (he had received his doctorate in the subject on 15 May 1405), his counterfactual assertions to the contrary can only mean that he is not on this occasion speaking in that capacity, that he is acting as a servant of the duke rather than as a scholar; and he may well be respecting a specific wish of the faculty of theology not to be associated with his appearance on behalf of the duke (Coville 1932, pp. 209f.). Beyond that, these remarks are eerily reminiscent of the liar's paradox, for even as Jean Petit asserts the theologian's duty to speak the truth, he violates that duty and negates its applicabilty to himself by falsely

denying that he is a theologian. The attentive listener or reader can hardly escape the conclusion that the speaker's relationship to the truth is somewhat disturbed here, and his veracity not beyond question.

Moreover, in his extensive study of this case, Bernard Guenée (1992, pp. 192ff.) has found the use of the concept of *tyrannicidium* in Petit's argument puzzling, since that concept does not fit the facts of the case very well, and so it has to be reinterpreted in ways that approximate it very closely to *maiestas.* To begin with, Louis had not yet seized power illegally, which was the core of the concept as defined by St. Gregory, on whom Petit relied (Monstrelet 1840, p. 70; Monstrelet 1857, p. 203). It is true that this definition also referred to the unjust exercise of power, and it could be argued, and Petit did so to some extent, that the Duke of Orléans had on various occasions abused the lawful authority entrusted to him by the king. But the core of John the Fearless' defence was clearly that by his deed he had prevented Louis from seizing power illegally. Nowhere is this more apparent than in the widely disseminated iconic representation of the assassination, which shows the Lion of Burgundy mortally striking a Wolf representing the Duke of Orléans (a wordplay, since the French word for wolf, *loup*, invokes the first syllable of the name Louis), who is trying to grasp the crown of France (Hohmann 2003, p. 512). This confirms that Louis was not yet a full-blown tyrant, because he had not yet made himself king, and the authorities cited by Petit do not support the notion of a *preventive* tyrannicide. Punishing an *attempted* seizure of power is much more readily encompassed by the *crimen laesae maiestatis*, which does after all include planned or attempted treason against the sovereign.

It should also be noted that the concept of *tyrannicidium* sorely lacked a solid *legal* foundation. Jean Petit implicitly acknowledges this when he supports the claim of justified tyrannicide first by theological authorities such as St. Thomas Aquinas and John of Salisbury (undergirded further by, among others, St. Peter) (Monstrelet 1840, p. 71; Monstrelet 1857, pp. 206f.), then by moral philosophers such as Cicero and Boccaccio (Monstrelet 1840, pp. 71f.; Monstrelet 1857, pp. 207f.), and finally by three examples of the Bible: Moses' slaying of the oppressive Egyptian overseer, Phineas' killing of Zimri, and the defeat of Lucifer by the archangel St. Michael (Monstrelet 1840, p. 74; Monstrelet 1857, pp. 214f.). In the Douët-d'Arcq edition of the speech, Petit begins his philosophical references with a mysterious "Anaxagoras Philippus" (Monstrelet 1857, p. 207) who fortuitously expresses a position on tyrannicide consonant with Petit's own. Other texts show

that this is a garbled version of a reference to "Aristotle's *Politics*", but that work, while generally hostile towards tyrants and showing some sympathy towards the idea of tyrannicide, does not contain such an emphatic endorsement of that concept. One may surmise that Jean Petit relied on a gloss in a collection of abstracts here, rather than on the original work (Coville 1932, p. 216); but the fact remains that the partisan advocate, having found a supportive reference, was apparently not inclined to check its accuracy. Another example for his tendency to improve his sources rhetorically is provided by a quotation from St. Gregory's *Moralia*, where Petit adds to a definition of "tyranny" some words including attempted tyranny in the ambit of the term (Coville 1932, p. 220), which is of course very important here because, as noted before, Louis of Orléans had not openly seized power.

As if to hide a rather weak point, Petit refers to legal authorites only in the middle of his case for the concept of tyrannicidium. Significantly, he here again emphasises that he is no lawyer, that his legal studies are limited and a thing of the distant past, and he does not produce specific citations. Moreover, the three legal points he makes do not specifically address the idea of tyrannicide and can thus be used as support only by means of rather forced analogies and *a fortiori* arguments: He refers to the punishment of deserters and destroyers of chivalry, thieves and highway robbers, and thieves found in a house at night (Monstrelet 1840, p. 72; Monstrelet 1857, pp. 208f.).

So, given these difficulties, why indeed did Jean Petit give the problematic concept of tyrannicidium such a prominent place in his pleading on behalf of John the Fearless? I would like to suggest that there are at least two answers to this puzzle posed by Guenée. I propose to show that the reasons for Petit's choice of legal arguments have to be understood from the perspective of his overall rhetorical strategy and its relationship to both the legal and (even more importantly) the political posture of the case.

4. *Rhetorical Functions of the Use of tyrannicidium*

First, the legal point: maiestas or treason is an offence against the *state* or the *sovereign*. Consequently, it is primarily incumbent upon *them* to prosecute and punish traitors. But no such prosecution had been instituted against the Duke of Orléans. This is a big problem for Jean Petit's case; how big it is we can judge from the fact that he is prepared to sail very close to the wind in dealing with it, when he suggests that a (hypothetical) king might be unable to punish the offender "from weakness of intellect or want of force" (Monstrelet 1840, p. 73;

Monstrelet 1857, p. 213). Charles VI was not present when Petit delivered this speech, but his oldest son and heir apparent was, and all other members of the audience were also well aware of the actual king's fragile mental health and tentative grip on power, and thus Petit's remark could be seen as a thinly veiled and highly offensive reference to his lord and sovereign. But by defining the offender as a tyrant, the daring monk suggests a specific remedy: tyrants may of course be slain by private citizens as a matter of self help, without any formal governmental authority, and that is a point emphasised by Petit in his three biblical examples: Moses, Phineas, and St. Michael all acted without any specific permission or command from higher authorities (Monstrelet 1840, p. 74; Monstrelet 1857, p. 214).

But even more significant for our understanding of Jean Petit's rhetorical strategy is the realisation that his speech was but another piece in a long-term political campaign by John of Burgundy against Louis of Orléans, begun already by John's father, Philip the Bold. And a very important part of that campaign had been the characterisation of Louis as a tyrant (Hohmann 2003, pp. 510f.). Thus Petit was able to build on and reinforce the already widely accepted notion that Louis was indeed a tyrant who deserved to be deposed and, if necessary, killed. By defining Duke John's act as tyrannicide, his defence also shifted the focus from the damage done to state and sovereign to the oppression of the people, whose support John would need if he wanted to tighten his grip on power, because the majority of elite power holders had supported the king's brother, which helped to precipitate John's ultimate decision to resort to assassination.

Jean Petit's speech was delivered to a large crowd including citizens of Paris, and it was given in French. The Latin that would have been appropriate if the learned had been the primary audience was reserved for some of the more technical (and often less persuasive) portions of the oration. Moreover, his arguments were widely disseminated in other parts of France as well. And this wider popular audience was now told again and again that Louis was indeed a tyrant. In the fourth article of his major premiss, Jean Petit used the term "tyrant" and its cognates well over twenty times (Monstrelet 1840, pp. 70ff.; Monstrelet 1857, pp. 203ff.). This was followed by a long list of the supposed offences of the Duke of Orléans against the king and his family. These accusations ranged from witchcraft and poisoning to attempts to burn the king, make alliances with his enemies, turn the queen against her husband, induce the pope to act against the king, and prolong the schism of the Church, to efforts to raise armies and lay taxes

weighing heavily upon the people (Monstrelet 1840, pp. 75ff.; Monstrelet 1857, pp. 217ff.).

Neither here nor in the minor premiss (Monstrelet 1840, pp. 77ff.; Monstrelet 1857, pp. 223ff.) does Petit offer much supportive proof for his allegations. Instead he relies on the repetitive effect of first listing the offences hypothetically at the end of the major premiss, and then immediately asserting their actuality at the beginning of the minor. Moreover, he can rely on the fact that the people have long been exposed to rumours "confirming" the truths of these accusations (Hohmann 2003, p. 511). Most importantly, he concludes the litany of Louis' transgressions with the accusations that weigh most heavily on the minds of the people and need no proof for them because they are confirmed by their prolonged experience: the Duke of Orléans' prominent role in imposing military burdens and heavy taxes on the people of France (Monstrelet 1840, pp. 77, 80; Monstrelet 1857, pp. 222, 241). That this strategy could work quite well, certainly in addressing a popular audience in Paris, is shown by the fact that even before Jean Petit's speech, the good people of that city had rather welcomed the news of Louis' death. The chronicler tells us that "the Parisians were not well pleased with the Duke of Orléans, for they had learnt that he was the author of all the heavy taxes that oppressed them, and began to say among themselves in secret 'the knotty stick is smoothed'" (Monstrelet 1840, p. 56; Monstrelet 1857, p. 165), this of course a reference to the war of emblems between the two Dukes (Huizinga 1984, p. 211).

One day after Petit's speech, on 9 March 1408, John the Fearless obtained an audience with the king and a royal pardon (Famiglietti 1986, p. 68; Vaughan 2002, p. 72). But this was not to last very long.

5. *Defending the Duke of Orléans*

The reply to Jean Petit's speech on behalf of John of Burgundy was given by a spokesman for the widowed Duchess of Orléans a little more than six months later, on 11 September 1408, in the Great Hall of the Louvre in Paris, to an audience quite similar to that addressed earlier by Jean Petit, now including the queen, but again not the king himself. The speaker on this occasion was the Abbé of Cerisy,**[viii]** but the chronicler tells us that he was given the text to be read by the Duchess, and nowhere is there any claim that the speaker is the author. It does appear likely that the speech was drafted primarily by Guillaume Cousinot, who was one of the advocates at the Parlement of Paris (Delachenal 1885; Gaudry 1977) and an adviser to the Duchess, and later became the Chancellor of the new

Duke of Orléans; he delivered a subsequent recital of the legal demands of the Duchess in person, and we may surmise that the abbé was chosen as a speaker to counteract the religious authority of the advocate employed by John the Fearless.**[ix]**

It is interesting to note that while this reply predictably emphasises that the Duke of Burgundy acted without proper authority outside the established legal process (Monstrelet 1840, pp. 90f.; Monstrelet 1857, pp. 271ff.), it does not question the legal status of the charge of tyrannicide. So rather than challenging the substantive normative underpinnings of Jean Petit's accusations, it proceeds to deny their factual basis (Monstrelet 1840, pp. 104ff; Monstrelet 1857, pp. 313ff.). In the process, the defence of the Duke of Orléans gets caught in a rhetorical trap of sorts by following the order of the charges chosen by the wily monk; consequently, the reply ends on a not very convincing denial of Louis' only too notorious involvement in financial improprieties, costly military burdens, and heavy taxes (Monstrelet 1840, p. 110; Monstrelet 1857, pp. 332ff.).**[x]**

At this point, John the Fearless was no longer in Paris; he had left the city in order to come to the aid of his brother-in-law John of Bavaria, Bishop of Liège, who was confronted with a revolt by his flock (Monstrelet 1857, pp. 257f.). And so this time, the Duke of Burgundy's opponents were able to prevail and to have the Duke of Orléans exonerated (Monstrelet 1857, p. 348). But proceedings against John the Fearless came to nothing when news of his great victory at Liège reached Paris, which he soon re-occupied (Monstrelet 1857, pp. 387ff.). Later, the royal pardon for him was renewed in a grand ceremony at Chartres, and at the command of the king, the children of Louis of Orléans forgave him as well, and yet again a lasting peace was sworn that did not last (Monstrelet 1857, pp. 390ff.)

6. *Conclusion: Aftermath and Reflection*

I will conclude with a brief summary of some subsequent vagaries of Jean Petit's defence of tyrannicide (Coville 1932, pp. 251ff; Guenée 1992, pp. 249ff.). Petit replied to the defence mounted by the supporters of Orléans with a "Second Justification of the Duke of Burgundy" written in 1409, and he attempted to improve on this somewhat prolix and diffuse document by a more concentrated tract entitled "Against the Builders of Sepulchres", published in 1410, in which he compared the defenders of Duke Louis with those who built ornate sepulchres for the prophets in order to pretend that they venerated those whom they had in fact rejected. But in all these propaganda efforts, Jean Petit continued to express reservations about his own activities (Coville 1932, pp. 271f.). He died on 15 July

1411.

After his death, his justification of the personal use of violence against tyrants was virulently attacked by the Chancellor of the University of Paris, Jean Gerson, who had earlier been a supporter of the Burgundian cause, but changed sides after 1413, probably not coincidentally soon after Burgundian control of Paris had collapsed in August 1413 (Coville 1932, pp. 413ff.). Somewhat ruefully, Gerson justified his new-found zeal for the condemnation of Jean Petit by quoting Cicero: *inter arma silent leges* (surrounded by weapons, laws are silent) (Coville 1932, p. 438).

Gerson's campaign of counter-persuasion succeeded in 1413-1414, when a "Council of the Faith" called in Paris condemned the doctrine, not without some manipulative help by Gerson, who was very much the initiator and a dominant presence (Coville 1932, pp. 439ff.). On 25 February 1414, Jean Petit's *"Justification du duc de Bourgogne"* was solemnly burned in front of the cathedral of Notre-Dame in Paris (Vaughan 2002, p. 196).

But the decision expressed by this spectacle was overturned not much later by the somewhat more official Council of Constance in 1416, which ultimately declared the issue to be a secular matter open to debate, requiring an examination of circumstances in individual cases by lawyers, rather than being resolvable by theologians on the basis of general religious doctrines.**[xi]** This outcome was undergirded by a stalemate of conflicting interests: The Teutonic Knights wanted to keep the concept of tyrannicide available in case it might prove useful against the Polish King Ladislas, while the Polish delegation not surprisingly pleaded for a condemnation of Petit's position. The English doctors were not amenable to such a step because their own current king Henry V owed his position to the fact that his father Henry IV had been brought to power by the murder of Richard II. And John the Fearless used his influence (and bribes) to prevent a condemnation of Jean Petit (Coville, 1932, pp. 503ff.; Guenée 1992, pp. 251ff.).

In France, Jean Petit's doctrine was soon rehabilitated, only to be turned against its supposed beneficiary (Schnerb 1988, pp. 200ff.; Guenée 1992, pp. 277ff.; Vaughan 2002, pp. 276ff; Schnerb 2005, pp. 671ff.). On 29 May 1418, the Burgundians regained control of Paris yet again, and both the University and the Parlement quickly recanted their support of the decision of the Council of the Faith of 1413-1414 that had condemned and burned the propositions on tyrannicide attributed to Jean Petit: time again to quote Cicero on laws surrounded by arms. But then not much later, on 10 September 1419, the future

Charles VII (Vale 1974; he had become the Dauphin of France in 1417, after the successive deaths of his two older brothers [Famiglietti 1986, p. 177]) laid a trap for the ascendant John the Fearless who loomed as a large stumbling block on Charles' way to the throne. The deed was done when the dauphin and John met on the bridge across the Yonne near its confluence with the Seine at Montereau, to the Southeast of Paris and East of Fontainebleau. The Duke was cut off from his own supporters, surrounded by followers of the dauphin, and killed in a manner reminiscent of the slaying of Louis of Orléans, a little less than twelve years earlier. There has been some controversy over the role of the future king in these events, but the emerging scholarly consensus no longer doubts that he was centrally involved (Vaughan 2002, pp. 276ff.; Schnerb 2005, 671ff.). His father Charles VI certainly accepted this as fact when he used the assassination of John the Fearless as a justification for his (ultimately unsuccessful) attempt to disinherit the future Charles VII and to institute Henry V of England as his successor in the treaty of Troyes on 21 May 1420 (Ehlers 1999, p. 146). The former champions of tyrannicide were now aggrieved victims of that idea, and a Burgundian propaganda campaign ensued which tried to undermine the growing power of the dauphin Charles (Guenée 1994, pp. 45ff.). Moreover, the assassinated duke's son and successor Philip had inscriptions commemorating the foul deed put up in Montereau, Paris, Ghent, and Dijon; and, to ensure an even wider dissemination and stronger propagandistic effect of the grisly tidings, also in major centres of pilgrimage: Rome, Jerusalem, and Santiago de Compostela (Ehlers 1999, p. 145; Bonenfant 1999).

The next century saw yet another such reversal of positions when the Huguenot scholar François Hotman initially attacked (from exile in Switzerland) the French king Charles IX for his involvement in the St. Bartholomew's Night Massacre of 1572; in 1573 Hotman published a pamphlet entitled *De furoribus Gallicis (On the French Outrages)*, in which he declared that the king had forfeited the loyalty of his subjects and should be deposed. And in 1579 an anonymous work (ascribed to "Junius Brutus," possibly a member of court circles in Navarre) entitled *Vindiciae contra tyrannos* (*A Vindication* [of the rights of citizens] *against Tyrants*) was published in Basel, asserting that tyrants could be justly killed by anyone (Allen 1961, p. 331). But when Henry III recognised the Protestant Henry of Navarre (the future Henry IV) as his legitimate successor in 1584, Huguenot scholars began to reject the Vindiciae they had so recently hailed, and Hotman himself declared that resistance against Henry of Navarre would be a sin (Allen 1961, p.

337). Which did not discourage François Ravaillac, who killed Henry IV on 14 May 1610, justifying his act as tyrannicide against a Protestant usurper, disregarding the king's conversion to Catholicism in 1593. And yet again, the shadow of the learned monk, though only dimly perceived, was raised and reburied: After the king's assassination, the Parlement of Paris demanded that the Faculty of Theology institute proceedings to revive the condemnation of Jean Petit's doctrines that had been expressed in 1413, and thereby to undo their hasty rehabilitation, by both the University and the Parlement of Paris, which had occurred in 1418. The Faculty of Theology complied on 4 June 1610 (Coville 1932, pp. 568ff.).

Is there a lesson in all of this for our own time? Contemplating these controversies, we are a reminded, if such a reminder is needed, of the dialectical ambiguity and rhetorical fungibility of propositions and arguments in contexts saturated with power politics.**[xii]** And certainly these events, just like Goethe's poem *Der Zauberlehrling*, also makes us aware yet again that once we invoke a general empowering formula, we cannot control its use so as to guarantee that it will work only in our favour. Or, to put it more specifically, those who would claim and justify the right to strike pre-emptively may be wise to remember that in consequence they could well find themselves pre-emptively struck.

NOTES
[i] The spirits whom I called – I cannot now dismiss: Johann Wolfgang Goethe, The Sorcerer's Apprentice (1797).
[ii] For the wider European political background of this conflict see Ehlers 1999, pp. 131ff.; on the conflict between Armagnacs (supporters of the house of Orléans) and Bourgignons (supporters of the house of Burgundy) see Schnerb 1988; on the period in general see Tuchman 1979; on the general history of France during that time see Denieul-Cormier 1980, Beaune 1991, Duby 1991, and Kerhervé 1998; on the history of Burgundy see Cope 1987 and Schnerb 1999; on conditions in Paris during the period see Favier 1974.
[iii] Ehlers 1999, p. 137 points out that (somewhat ironically in its French translation: Je maintiendrai) this motto is now a component of the royal Dutch coat of arms.
[iv] For an overview of stasis/status theory and further references see Hohmann 2001.
[v] The exact figure is 8.8% (Table 22). It should be noted, however, that the

intervention of the devil was prominently cited in the justifications for the letters of remission only in 3.0% of the cases: as the first reason in 1.5% and as the second reason in another 1.5% Gauvard 1991, p. 431, Table 23b). On violence in general in the period see also Gauvard 2005.

[vi] In studying these speeches, I have consulted, in addition to the 1857 edition, the manuscript fr. 5733 in the Bibliothèque nationale de Paris, which Guenée identified as the best text for the justification of the Duke of Burgundy (Guenée 1992, p. 315, n. 56). But for ease of reference for the English-speaking reader, I also cite the 1840 London edition in referring to the speeches; Johnes' translation is incomplete and occasionally also inexact, but these shortcomings do not affect the passages relevant for this paper. The collaboraters of Jean Petit, the different versions of the speech, as well as various summaries of it that were circulated in the 15th century, are discussed in detail by Coville 1932, pp. 117 ff., 133 ff., 169 ff.); see also Willard 1969.

[vii] On medieval sermons see Longère 1983; on theological disputations in the Middle Ages see Basan, Fransen, Wippel et al. 1985.

[viii] Monstrelet names as the speaker the "abbé de Saint-Fiacre", but this is mistaken: there was no such position, and the speaker is correctly identified in other sources as Thomas du Bourg, 27th Abbé of Cerisy (Coville 1932, p. 228)

[ix] Coville 1932, pp. 230ff. discusses the different surviving texts of the speech; as with Jean Petit's speech, he regards some isolated texts as more reliable than that transmitted by Monstrelet; but in this instance, too, the differences are not relevant for the discussion in this paper. Coville is less skeptical than others about the actual authorship of the Abbé of Cerisy, and parts of the speech remind him of the eloquence of Jean Gerson; but he admits that no definite ascription of authorship is possible (pp. 246 ff.).

[x] Even Alfred Coville, who shows that most of Jean Petit's accusations are not securely grounded in the historical evidence (Coville 1932, pp. 299 ff.), does admit that Louis of Orléans did indeed commit financial abuses, which were not merely invented (though they may have been exaggerated) by Jean Petit (pp. 362 ff.). Coville's argument (pp. 362 f.) that the Duke of Burgundy also received royal largesse, specifically for his military expedition to Turkey and the ransom for John the Fearless after the battle of Nicopolis (won by the Turks) is not quite persuasive in this context, since these were legitimate military expenditures, rather than funds supporting the duke's lavish lifestyle.

[xi] It is therefore not quite correct when Schmale (1997, p. 269) asserts that Jean Petit's teachings were condemned by the Council of Constance. For details

see Coville 1932, pp. 522 ff.

[xii] On the political uses of history in the events surrounding the assassination of Louis of Orléans see Dequeker-Fergon 1986.

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