

ISSA Proceedings 2010 - The Latin Cross As War Memorial And The Genesis Of Legal Argument: Interpreting Commemorative Symbolism In Salazar V. Buono



In 1934, the Veterans of Foreign Wars (VFW), a private organization, erected a Latin cross[i] on federal land in the Mojave Desert to memorialize the veterans of World War I.[ii] The Mojave Cross is located in the *Mojave National Preserve*, on land known as Sunrise Rock.[iii] The presence of the cross first became an issue in 1999, when the Park Service denied a request from a Utah man to add a Buddhist shrine to the land near the cross. Subsequently, in 2001, Frank Buono, a former Park Service employee, filed suit against the Park Service alleging the cross violates the Establishment Clause of the First Amendment to the United States Constitution, which sets parameters regarding the relationship between government and religion.[iv]

In 2002, the lower (trial) court found for Buono and ordered the Park Service to remove the Mojave Cross. On appeal, the Ninth Circuit Court of Appeals (Ninth Circuit) agreed with the lower court, affirming the conclusion that “the presence of the cross on federal land conveys a message of endorsement of religion,” and permanently enjoined the government from maintaining the cross on federal land (*Buono v. Norton*, 2004). The Park Service prepared to remove it. Meanwhile, in 2001, the U.S. Congress prohibited the use of federal funds to remove the cross (Consolidated Appropriations Act, 2001). Then, in 2002, the Mojave Cross was designated a national memorial (Department of Defense Appropriations Act, 2002).[v] Congress again prohibited the use of federal funds to remove the cross (Department of Defense Appropriations Act, 2003). And, finally, Congress transferred one acre of land, on which the Mojave Cross sits, to the Veterans of Foreign Wars with the requirement that if it ceased to be a war memorial the land would revert to the federal government (Pub. L. No. 108-87, 2003).[vi] The Ninth

Circuit concluded that this last move was merely an attempt to circumvent the constitutional violation and thus stopped the transfer (*Buono v. Kempthorne*, 2007). The Department of Justice appealed this latter decision to the U.S. Supreme Court, arguing that the government would have to tear down a “memorial.” **[vii]** The VFW filed an *amicus* brief arguing that if the Ninth Circuit’s opinion were to be affirmed, memorials in national cemeteries would have to be removed, including the Argonne Cross and the Canadian Cross of Sacrifice at the Arlington National Cemetery (Veterans of Foreign Wars *et al.*, 2009). In contrast, the Jewish War Veterans of the United States filed an *amicus* brief arguing that the Mojave Cross is “a profoundly religious Christian symbol,” rather than a universal commemorative symbol of war dead, and that the federal government’s actions toward the cross and adjoining land underscores, rather than remedies, its endorsement of that religious symbol (2009, p. 5).

The Supreme Court decision in *Salazar v. Buono* was announced April 28, 2010. The Court chose to narrow its consideration to the validity of the land transfer, ruling 5-4 that the transfer did not constitute a violation of the original injunction. The Court also remanded the case back to the lower court to decide whether or not the land transfer constituted an “illicit governmental purpose” (*Salazar v. Buono*, 2010, pp. 1819-21). In narrowing the grounds for the decision in this way the Court left unresolved many of the questions that are raised by the presence of any cross on federal land, no matter how remote. Nevertheless, the written opinions of the Justices strayed far beyond the narrow confines of the decision itself, addressing many of the arguments used for and against the land transfer, the significance of the memorial, and its propriety.

This paper will examine the Mojave Cross case to explore the argumentative connection between religious symbols and public memorials. Our argument is that war memorials, such as the Mojave Cross, constitute a classical enthymematic (visual) argument that the U.S. Supreme Court attempted to silence by altering the space containing the memorial (or argument), thereby secularizing the memorial and stripping it of its (religious) meaning. We begin with histories of the legal precursors to the case and the generic evolution of war memorials, illuminating the contested nature of memorializing. Next, we use the Mojave Cross case to examine how monuments function as arguments, articulating three premises: that physical space is a key argumentative factor in memorializing; that placement in and ownership of the space serve as the memorial’s “voice” or

marker of intent; and that this spatial context aids in negotiating the secular/religious dichotomy. The policy implications raised by this case are significant, for both past and future memorializations and for legal arguments that can be made regarding the relationship of the individual to the state in matters of religious observance. What appears to be a relatively simple case on its face opens up a broad range of significant theoretical issues fraught with complicated legal and commemorative significance.

1. Background

The First Amendment to the United States Constitution provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof” (U.S. Const. amend. I.). These prohibitions are referred to, respectively, as the Establishment Clause and the Free Exercise Clause.

Specifically, the Establishment Clause prevents the government from promoting or affiliating itself with any religious doctrine or organization (*County of Allegheny v. American Civil Liberties Union*, 1989, pp. 590-91), or from having an official preference for one religious denomination over another. “Government in our democracy, state and national, must be neutral in matters of religious theory, doctrine and practice” (*Larson v. Valente*, 1982, p. 244). The Establishment Clause has been used to challenge religious prayer in public schools and Christmas displays on government property, among other issues.

Supreme Court jurisprudence has fluctuated on whether the Establishment Clause demands complete separation of religion and government or, alternatively, whether it simply commands non-preferential accommodation of religious speech and symbols. This ambivalence has resulted in a number of legal tests that are used to determine whether a specific government symbol violates the Establishment Clause. Among the criteria are whether the symbol advances or inhibits religion, whether a reasonable observer of the display would perceive a message of governmental endorsement or sponsorship of religion, and whether there is a perceived coercive effect. Recently, the Supreme Court employed a “passive monument” test, which inquired whether a plainly religious display conveyed a historical or secular message, as opposed to a religious message, in a specific non-religious context (*Van Orden v. Perry*, 2005).

The identity of the speaker matters tremendously under First Amendment jurisprudence. “[T]here is a crucial difference between *government* speech

endorsing religion, which the Establishment Clause forbids, and *private* speech endorsing religion, which the Free Speech and Free Exercise Clauses protect” (*Santa Fe Indep. Sch. Dist. v. Doe*, 2000, p. 302).

In *Pleasant Grove City v. Sumnum*, the Court addressed the speech of government owned monuments in particular: “government-commissioned and government-financed monuments speak for the government” because “persons who observe donated monuments routinely – and reasonably – interpret them as conveying some message on the property owner’s behalf.” Whether the government commissions, finances, or displays a memorial on its own land, “there is little chance that observers will fail to appreciate the identity of the speaker” (2009, p.1133). Similarly, Justice Stevens, dissenting in *Capitol Square Review & Advisory Bd. v. Pinette*, observed, “[T]he location of the sign is a significant component of the message it conveys” (1995, p. 800).

These two cases not only instantiate the notion of monuments in general as government speech, they also serve as precedent for the Mojave Cross case, illustrating that, even as a national monument, the cross engaged in a form of government speech. The question then should be the propriety of using a universally Christian symbol to “speak” for the government on behalf of all veterans of World War I.

2. A Brief History of War Memorials Prior to WWII

The sponsorship of war memorials has been a major area of controversy, involving veterans groups, state and federal organizations, and most recently, public insistence on private donations. However, according to architectural historian Teresa B. Lachin, “between 1880 and 1915, veterans groups and patriotic organizations were among the most active sponsors of monument crusades,” when newly established groups such as the American Legion and the Veterans of Foreign Wars became effective lobbyists for state and local projects (pp. 21, 44). In 1923, the U.S. Congress created the American Battle Monuments Commission, which “established official commemorative standards for military monuments built on battle sites and federally-owned property” (Lachin, p. 32). Differences in opinions over the appropriate design of the war memorials arose as the result of a general shift in architectural style away from a legacy of Civil War memorializing, conflicted feelings over U.S. participation in World War I, and a focus on overseas memorializing at notable battlefield sites. “Religious images and Christian symbols were...commonly used to express the ideals of ‘sacrifice,’ collective

heroism, and the 'sacred vocation' of military service, themes which had emerged in Europe and America in the early twentieth century," and these spiritual dimensions of military service were embraced strongly by sponsoring veterans groups (Lachin, p. 32).

The lack of symbolic universality implied by the cross was a consideration during World War I. Sectarian, yet inclusive, forms of religious symbolism occurred in gravesites of American war dead across Europe, which employed "spacious fields of uniformly lined American crosses" along with "intermittent Stars of David headboards [which] marked the dead of the Jewish faith" (Budreau, p. 120). Even then, the aesthetics of different sectarian grave markers led U.S. Army Chaplain Charles C. Pierce to recommend in July 1919 a standardized grave marker, similar to U.S. battlefield cemeteries and devoid of religious symbolism (Budreau, p. 122).

At the end of World War I, returning veterans, as well as the U.S. government, were initially more concerned with overseas memorializing. They wanted to make certain battlefields and cemeteries were properly marked and commemorated; stateside commemoration of World War I veterans was left largely to state and local organizations. Thus it is not surprising that veterans organizations and local community leaders "preferred traditional designs because they were familiar and even reassuring symbols of 'sacrifice' and fraternal or civic duty" as well as the fact that "vernacular designs...were among the most affordable and readily available monument types" (Lachin, p. 45). Moreover, "local and community groups were more limited in their economic resources and generally used traditional and vernacular designs to honor their 'World War' veterans" (Lachin, p. 42).

King argues in his book about World War I memorials in Britain that, "the common purpose amongst all who commemorated the dead was...expressed in their recognition of the sanctity of memorials"; and the most straightforward artistic convention to mark the memorial as sacred "was the use of the cross, recognizable both as the sacred symbol of Christianity and as, by the early twentieth century, a common form of grave marker, more especially the typical marker used during the war to identify the graves of soldiers" (1998, pp. 230, 231). King also notes that "the process of transformation through which traditional forms acquired connotations relating them specifically to the recent war [World War I] was most conspicuous in the case of the cross" (p. 129). In

1921, Charles Jagger, a British sculptor and World War I veteran, proclaimed that the cross “has been, and probably always will be the symbol of the Great War” (in King, p. 129).

Indeed, the VFW members who erected a memorial in the Mojave Desert employed exactly this symbol. And it is the presence of the cross specifically that drives this case, complicated by the National Park Service’s refusal to allow a Buddhist shrine to share space with the cross. This raises the question of what it is the cross represents - a war memorial or something more (or less)? There is no question it was originally intended to be a memorial to dead comrades-in-arms at the time that it was erected by returning war veterans. **[viii]** Yet the Mojave Cross was erected on federally owned land, without the express permission of the government. By declaring the Mojave Cross a national memorial (while the appeal was pending), Congress further complicated the case, thereby raising the question of whether one can nationally memorialize private speech without endorsing the message.

The identity of the speaker is also tied to space when the issue is a religious artifact on federal land. How is space negotiated in memorializing? What is being memorialized; is it the event or the war dead? Public memorializing such as the Vietnam Veterans and World War II Memorials undergo complex vetting processes that explicitly consider First Amendment issues and multiple audiences. Privately created shrines such as the Mojave Cross are personal, driven by grief and an immediate connection with the dead, and while they may hold symbolic meaning to a wider audience, they are not necessarily created for that audience, nor are they beholden to the religious neutrality that the federal government is expected to undertake.

Thus, when the Mojave Cross was declared a national memorial in 2002, its religious symbolism became a significant problem with regard to public memorializing. Classical commemorative architecture, used for many memorials, embraced signs which are “self-referential and limited to a closed system of legitimate signifiers” (Blair *et al.*, 1991, p. 266) and which can consistently be decoded by audiences familiar with both the sign and signifier [*e.g.*, the cross]. Yet the reliable interpretation of a sign is tied to the viewer’s understanding of its conventions - or “agreement about how we should respond to a sign” (Crow, 2003, p. 58) - and “habits and conventions may of course change over time” (Kurzon, 2008, p. 288-289). As social symbols, “war memorials are not endlessly

rigid and stable. Their significance has to be continually defined and affirmed by manifestation of the relevant sentiments” (Barber, 1949, p. 66). Such reaffirmation is made difficult in this case since there is no longer a plaque to identify the cross as a war memorial. When the signifiers change in meaning, or when the linguistic community changes, then war memorials, like other symbolic forms, change or lose their meaning: “[T]here are a large number of memorials from previous wars which have lost their meaning for the present generation” argues Barber (p. 66). Especially when considering the relationship between the symbolic and the aesthetic, “the aesthetic aspect of the memorial place or object must not offend those who want their sentiments symbolized” (Barber, p. 67). In the increasing religious pluralism of late-20th to early-21st century America, a symbol with such religious specificity as a Latin cross violates this commemorative expectation when declared a national symbol of the war dead.

We contend that the message conveyed by war memorials in general, and the Mojave Cross in particular, is not only government speech, but an argumentative claim about how to view both the war and the war dead. Recent Supreme Court precedent supports this view (see *Capitol Square Review and Advisory Bd. V. Pinette*, 1995, and *Pleasant Grove City v. Summum*, 2009). Indeed, the recognition that monuments make an argumentative claim is the underlying assumption of the rulings on government speech. The essence of the Establishment Clause is to preclude the argumentative nature of government speech surrounding religious symbols on government property. If the symbol is not argumentative, there can be no violation of the Establishment Clause.

Smith (2007) explains how monuments and other visual symbols work argumentatively, once Aristotle’s notion of the enthymeme is understood in its classical sense of a “syllogism based on probabilities or signs” (p. 121). Smith notes, “Enthymemes consist not only of logical propositions, expressed or implied, but also of appeals to emotions and character. For Aristotle, these modes of appeal are very closely related because even an emotional response requires reasoned judgment...” (p. 120).

Successful enthymemes identify with the “common opinions of their intended audiences” (Smith, p. 120). Those who create visual enthymemes [*e.g.*, war memorials and monuments] discover these common opinions in the culture and in the immediate context of the memorial, “incorporating them into their messages”

(Smith, p. 120). Birdsell and Groarke (1996) contend that commonplaces - culture-specific grounds of potential agreement between speakers and audiences - are not limited to verbal arguments; rather, visual commonplaces argue just as verbal ones do. Thus, according to Smith, a 'speaker' - whether government or private citizen - who "creates images that identify with an audience's common opinions can be said to be arguing" (Smith, p. 121).

However, these "common opinions" take many forms and have more than one side, which, in a visual argument, are not presented. The inability of visual arguments to depict multiple sides of an argument does not mean these opposing sides do not exist; they are simply not articulated (Blair, 1996; Smith, 2007). The Supreme Court explicitly acknowledged this argumentative characteristic of memorials when it rejected the idea that "a monument can convey only one 'message'"; indeed, a public memorial "may be intended to be interpreted, and may in fact be interpreted by different observers, in a variety of ways" (*Pleasant Grove City v. Sumnum*, 2009, pp. 1135, 1136).

Thus, the argument occurs enthymematically through the form and placement of the memorial. Foss (1986) elaborates this notion in her essay on persuasive facets of the Vietnam Veteran's Memorial, arguing that the number of messages a memorial can convey is limited by the creator's intent and the material features of the display, thereby diminishing or eliminating any interpretive ambiguity. The form of this particular memorial - the Latin cross - significantly lessens the variety of ways it may be interpreted, adding to its argumentative power. Similarly, the placement of the cross on federal land (or surrounded by federal land) shapes the viewers' understanding of the speaker in this instance.

The Supreme Court has acknowledged the relationship between form and surroundings when determining an Establishment Clause violation. In a case questioning the display of the Ten Commandments on the grounds of a local courthouse, Justice Scalia argued that, in combination with other symbols, a statue in the form of a tablet depicting the commandments would be interpreted as a religious icon, but would be read in conjunction with the other legal images present so that the viewer would understand the symbol's "argument" - namely that Judeo-Christian commandments undergird American law (*McCreary County v. American Civil Liberties Union of Ky.*, 2005). However, as noted above, no contextual or supporting visual cues exist with the Mojave Cross. Indeed, the sign that originally identified the cross as a war memorial was lost over time and was

never replaced. Thus, it is unreasonable to expect an observer to “read” the enthymematic argument in the way the Court describes; it is just as likely to be read as government endorsement of a particular reading of a religious artifact.

Writing the plurality opinion in *Salazar*, Justice Kennedy asserts that the observer should consider the intent of those who placed the cross on Sunrise Rock to “honor fallen soldiers,” rather than “concentrat[ing] solely on the religious aspects of the cross, divorced from its background and context” (p. 1820). Yet Kennedy’s assertion is problematic, when considered against standards of visual argument. Foss (1986) argues that a signifier cannot be devoid of material meaning - its form suggests meaning - and is central to the viewer’s understanding of the meaning of the artifact, through the enthymematic process. The iconic form of the Latin cross enthymematically reflects both the Christian attitudes of the VFW members who placed it, as well as the shared attitude of the people who took active steps to save it - namely, Congress. Thus, we argue, the Christian message is in large part *their* story, not simply the local VFW’s story. Justice Stevens made this point in his dissent when he suggested that, post-transfer, the message is even clearer, because after being enjoined from displaying it, Congress transferred the land specifically for the purpose of preserving the display (*Salazar*, p. 1832-33).

Such confusion of meaning stems from the duality of voice that comes from commemorative sites in general. Such sites put forth two dramas: “One story... is ‘its manifest narrative - the event or person heralded in its text or artwork.’ The second is ‘the story of its erection or preservation’” (Balthrop, Blair, and Michel, p. 171). Part of the dispute over the meaning of the Mojave Cross comes from the duality of its voice, as the plurality and dissenting opinions in *Salazar* diverge along the lines of these narratives. The plurality opinion, written by Justice Kennedy, asserts that the proper way to read the Mojave Cross is to consider its manifest narrative, spoken in the voice of the veterans who constructed it. Seen this way, the cross was placed with the intent to “honor fallen soldiers,” and “although certainly a Christian symbol, the cross was not emplaced on Sunrise Rock to promote a Christian message” (*Salazar*, 2010, p. 1816). Using this reading of the Mojave Cross, Kennedy asserted that Congress was only attempting to preserve the manifest narrative of the commemorative site by transferring the land into private ownership. Now that the Mojave Cross is in private hands, concurred Justice Scalia, the only question that matters is whether

that manifest narrative is legal.

Justice Stevens considers the second story - the story of the site's preservation - in his dissent in *Salazar*. Stevens argues that when "Congress passed legislation officially designating the 'five-foot-tall white cross'... 'as a national memorial commemorating United States participation in WWI and honoring the American veterans of that war,'... the cross was no longer just a local artifact; it acquired a formal national status of the highest order" (*Salazar*, 2010, p. 1834). This means that, for Stevens, changing the scene of the Mojave Cross does not change the voice: "Once that momentous step was taken, changing the identity of the owner of the underlying land could no longer change the public or private character of the cross. The Government has expressly adopted the cross as its own" (*Salazar*, 2010, p. 1834). In focusing on the first story, the Court attempts both to freeze contemporary readings of the Cross in the [interpreted] voice of the original authors, "made whole" in the plurality's mind when the land was transferred to private ownership, and to ignore the changes to the symbol made by the second story - the one of its preservation.

Palczewski and McGeough (2010) argue persuasively, however, that "public memorializing is not a simple process of fixing history. What is memorialized is not a given, and in the process of memorializing particular public arguments are advanced. This explains why 'public memorials become sites of ideological struggle whenever they seek to shape and direct the past, present, and future in the presence of competing articulations'" (p. 33). Congress had several options in dealing with the Mojave Cross controversy: it could have allowed other religious symbols to be added; it could have changed the memorial to more clearly reflect the stated message or to avoid the sectarian message; or it could have allowed the cross to be removed, as was Park Service policy. Instead, the actions performed by the federal government in relation to the Mojave Cross included: denying a petition to place a Buddhist shrine next to it; passing an act to declare it a national memorial; passing a separate act to forbid the removal of national memorials commemorating World War I (of which there is only one - the Mojave Cross); and, finally, transferring the land to private owners under the condition that they keep the land as a war memorial or else forego their property rights. This story of preservation is not only remarkably active - it also highlights the significance and strategic use of space in defining the "voice" of the memorial.

3. The Role of Space in Visual Argument

Key to the Mojave Cross case, and to memorializing in general, is the sense of space. Unlike other war memorials employing religious symbolism, the Mojave Cross sits on land that holds neither spatial or historical connection to the war, nor to the soldiers that its builders commemorated. The only significance provided by the space, then, is its ownership. This fact renders the space surrounding the cross fungible, a feature that has been key to this controversy. We argue here in support of the following observations: first, that physical space is a key element of memorializing; second, that the secular/religious dichotomy is negotiated by the symbol's spatial context; and finally, that the "voice" or intent of the symbol is tied to the geography and ownership of that space.

The lack of physical space memorializing World War I veterans was significant, because, as we note above, post-war memorials either focused on overseas battlefields or on utilitarian "living memorials," usually in the form of named highways or auditoriums. The functional, living memorials of the post-World War I era United States "could not fulfill the human desire for monumentality and 'the need of the people to create symbols which reveal their inner life, their actions and their social conceptions'" (Lachin, p. 47). Furthermore, "physical objects and places are almost always required for the localization of the memorial symbol...[and] most war memorials implicitly recognize this social function of physical space" (Barber, p. 65).

Thus, during oral arguments for *Salazar v. Buono* in the U.S. Supreme Court, Justice Scalia asserted that the cross is "erected as a war memorial...in honor of all the dead," and that "the cross is the most common symbol of...the resting place of the dead" (transcript, 2009, pp. 38-39). The above-mentioned history of war memorializing indicates that the latter part of Scalia's observation is true; yet there are no war dead in the Mojave Desert. Scalia's point of view comes from battlefields and cemeteries, where religious symbols have been used throughout the 20th century, although they were not exclusively crosses. The scene is different, and the "sacred" ethos of the memorial comes from the interment, not from the symbol. Even then, many of these memorials used various [*e.g.*, non-Latin] crosses such as the Celtic Cross and the Cross of Sacrifice (or War Cross), which was specifically designed by the Imperial War Graves commission in World War I to differentiate it from more general Christian iconography. **[ix]**

The presence of crosses marking war dead also changes the argument made by a

memorial. In the context of a military cemetery – rows and rows of markers on a battlefield – the cross becomes secularized, marking sacred space sanctified by the blood of the fallen. The cross as gravestone marks an already sacred space, and serves as a sign for the site of a dead soldier. The cross-as-grave-marker is not generally interpreted as intending to promote Christianity to the viewer; rather, it serves as an indicator of the place of rest for an individual's remains, and potentially of that person's religious belief – just as Stars of David adorn the gravesites of Jewish war veterans.

Thus, in most instances when religious symbols are used, they are the symbol of the referent – the “sacred” ground of the battlefield or cemetery, where the blood of the war dead consecrated the space. But in this case, the reverse has occurred – it is only the presence of a commemorative cross that makes this space sacred. The current fight in the Mojave Cross case is over the land, and the only thing that makes this land different than anything around it is the cross: it holds no other commemorative significance. As Donofrio points out in her analysis of the World Trade Center attack site, “contestations over place, memory, and identity give rise to questions over who possesses the authority to direct place-making. When multiple parties claiming place-making authority advance conflicting conceptions of place, space can become a site of protest or campaign advocacy” (p. 153).

Palczewski and McGeough (2010) assert that “the interrelation between... memorials and the sacred deserves special consideration. Within the United States, ‘[b]y and large, patriotic space is sacred space...’ and memorials, in particular, are ‘fundamentally rhetorical sacred symbols’” (p. 25). Assuming the intent of the creators posited by the Court, the Veterans of Foreign Wars built the Mojave Cross to sacralize an otherwise unremarkable space, with the goal of commemorating their comrades-in-arms. Maoz Azaryahu, a geography scholar who studies the intersection of urban landscapes and memory, argues that this act, in itself, can render the land sacred: “authentic expression of popular sentiments, ...anchored in specific traditions of popular culture,” can indeed form a “sacred ground” through “unregulated public participation” (1996, p. 503). A “spontaneously constructed memorial space... exudes the sacredness with which the place is invested by the community of mourners,” argues Azaryahu – “as long as it belongs to the local landscape” (p. 503). This only holds true for as long as the public brings meaning to the memorial space through ongoing public

participation in the specific traditions, however. When those traditions fade or were nonexistent to begin with, or when the space no longer belongs to the “local landscape,” then, “by virtue of their very physical location, those war memorials are unsuited to their essential purpose” (Barber, p. 66).

Implicit in Barber’s argument is the assumption that as goes the land, so goes the voice. When the memorial space is cared for privately, the cross is “authentic expression,” a commemorative symbol of fallen brethren. However, its location on (or surrounded by) vacant federal property attended to by the National Park Service regulates both the message and the scene of the symbol. It regulates the message because, when land is federal, the religious symbol “speaks” with a federal voice. Furthermore, Congressional action removed the spontaneity and unregulated public participation crucial to the commemorative meaning of the space, thus replacing any remnant of the public commemorative voice. The subsequent attempt to make the land private was an attempt to return the Mojave Cross to its original meaning. It could not: the meaning had changed because the scene had changed. And without the scenic link to the original meaning, all that remains, symbolically, is a Latin cross, whose Christian exclusivity offends twenty-first century pluralist sensibilities.

Congress attempted to change the status of the space in order to change the voice. Faced with the application of the Establishment Clause, and recognizing that the cross on federal land was inappropriate whatever its purpose, Congress chose to transfer the land in order to quiet the perception of the federal voice endorsing a religious artifact. Similarly, the Supreme Court limited its decision to the space, namely the land transfer, for the same reason and because space can be controlled, whereas perceptions cannot. While it is true that the appeal challenged the land transfer, the Court was not limited to a narrow judgment on that issue alone. Certainly the government’s case was more broadly cast, opening the door for the Court to rule on the propriety of such memorializing, or even on the propriety of religious symbols on federal property. Instead, the Court elected to decide only the narrow question of the propriety of the land transfer as it related to the original injunction. In taking this approach the Court avoided having to rule on the presence of the cross.

Faced with a persuasive argument for an Establishment Clause violation, the Congress and the Supreme Court together created a situation where the only solution they saw was to try to accommodate both sides by making no decision on

the propriety of the cross on government land, allowing the land transfer and arguing that, even so, the cross is a permissible symbol of war sacrifice. Thus, they manipulated space to alter voice in order to accommodate - whom? To silence the argument made by the memorial? In the process, they attempted to secularize the cross, removing its religious meaning and substituting a secular, albeit patriotically sacred, message.

4. Where Does This Leave the Establishment Clause?

To argue that something violates the Establishment Clause of the U.S. Constitution would seem to be a fairly straightforward task. The Court has developed a number of tests to determine whether something is a violation. Yet the argument, as it has evolved, is not so simple. Despite its guarantees of religious freedom, the United States essentially sees itself as a Christian nation that accommodates other belief systems. The Court cannot be unmindful of public opinion and it has, in recent years at least, trod carefully the margin between protected speech, government speech, and accommodation of religious symbols.

In this case, the Justices diverged from one another on the question of the cross and the argument(s) it makes. Justice Alito, for example, argued that since the cross is not speaking in a government voice, therefore it is not propositional, thereby vitiating the Establishment claim. Alito ignores Court precedent in making what is, essentially, a circular argument. Justice Stevens, on the other hand, argued that Congress gave the cross a federal voice by making it a national monument, using federal money to maintain it, then prohibiting the use of federal money to remove it. Such actions would seem to support the claim of a violation of the Establishment Clause. In the end, though, the Court's plurality opinion narrowly circumscribed the grounds for the debate to technical issues, without addressing the propriety of turning the Mojave Cross into a national war memorial and then ensuring its continued existence in private hands.

5. Conclusion

Less than two weeks after the Supreme Court issued its decision, the Mojave Cross - which had been covered by pieces of plywood during the litigation proceedings - was stolen from its place on Sunrise Rock. On May 11, 2010, the *Barstow Desert Dispatch*, a local newspaper, posted an article describing correspondence they had received about the cross. The author claimed to know the thief, and explained that the cross was "moved...lovingly and with great care...[and] has been carefully preserved" (2010, online). The author claimed that

the person who removed it was a veteran who intended to replace it with a non-sectarian monument because both the “favoritism and exclusion” of the cross and the governments efforts to keep it in place violate the Establishment Clause. More specifically, the thief was offended by Justice Kennedy’s assertion that the Latin cross represented all World War I veterans, an argument which “desecrated and marginalized the memory and sacrifice of all those non-Christians that died in WWI” (*Desert Dispatch*, 2010). “We as a nation need to change the dialogue and stop pretending that this is about a war memorial,” argued the writer: “If it is a memorial, then we need to ...place a proper memorial on that site,...one that is actually recognizable as a war memorial” (*Desert Dispatch*, 2010). Local commentators blamed atheist activists. Then, on May 20, a new Latin cross was placed on Sunrise Rock - which the Park Service promptly took down, as it violated the ongoing injunction. Most of the coverage of these events came from either Christian or atheist newspapers and websites, revealing a continuing focus on the religious, not the commemorative, symbolism of the Mojave Cross.

Separated from a battlefield or military cemetery, the Latin cross loses its contextual referent to wartime. In order for a war memorial to have meaning to an audience other than the ones who created it, it “‘must simply, and powerfully, crystallize the loss of life and urge us to remember the dead’” (Balthrop *et al.*, p. 176). To do otherwise renders the memorial’s symbolism “culturally illegible as a marker of the event it commemorates” (Balthrop *et al.*, p. 176). All that the “reasonable observer,” to borrow the Court’s parlance, is left with is a Latin cross, the conventional meaning of which is a sign of Christianity. And because it has been declared a national memorial, the conclusion of the enthymeme is that the federal government endorses and protects the Latin cross as a national symbol. Moreover, the symbolic force and conventional stability of the cross cannot be overridden by verbal claims to the contrary: “The cross cannot take on a nonsectarian character by congressional (or judicial) fiat,” argued Justice Stevens in the dissent. “Making a plain, unadorned Latin cross a war memorial does not make the cross secular. It makes the war memorial sectarian” (*Salazar*, 2010, p. 1835).

NOTES

[i] A Latin cross consists of a vertical bar and a shorter horizontal bar at right angles to each other. The Mojave Cross is between five and eight feet tall and is made of four-inch diameter pipes painted white.

[ii] The Mojave National Preserve, operated by the National Park Service, is located in southeastern California. It encompasses nearly 1.6 million acres (approximately 640,000 hectares) between the cities of Barstow, California, and Las Vegas, Nevada. The Preserve is primarily federally owned land with approximately 86,600 acres of the land in private hands and another 43,000 acres belonging to the State of California (*Buono v. Norton*, 2002).

[iii] Since 1935, the cross has been a gathering place for Easter Sunrise services; visitors have also used the site to camp (*Buono v. Norton*, 2002).

[iv] The Establishment Clause prevents the government from promoting or affiliating itself with any religious doctrine or organization (*County of Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter*, 1989), or from having an official preference for one religious denomination over another (*Larson v. Valente*, 1982). To survive an Establishment Clause challenge, a government symbol must (1) have a secular purpose, (2) have a primary effect that neither advances nor inhibits religion, and (3) does not foster excessive state entanglement with religion (*See Lemon v. Kurtzman*, 1971).

[v] Congress designated the cross and its adjoining land “a national memorial commemorating United States participation in World War I and honoring the American veterans of that war.” (Department of Defense Appropriations Act, 2002). The Secretary of the Interior was directed to expend up to \$10,000 to acquire a replica of the original cross and its memorial plaque and to install the plaque at a suitable nearby location. §8137(c). After it was declared a national memorial, the Mojave Cross became the only national memorial specifically dedicated to World War I.

[vi] The land was transferred to the Veterans Home of California - Barstow, VFW Post 385E, in exchange for a parcel of land elsewhere in the Mojave National Preserve. *See* Pub. L. No. 108-87, (2003).

[vii] The district court stated “Buono is deeply offended by the cross display on public land in an area that is not open to others to put up whatever symbols they choose. A practicing Roman Catholic, Buono does not find a cross itself objectionable, but stated that the presence of the cross is objectionable to him as a religious symbol because it rests on federal land.” *Buono*, 212 F. Supp. 2d at 1207.

[viii] “The cross was erected in 1934, 60 years before Congress created the Preserve [although it owned the land]. Photos show the presence of wooden signs near the cross stating, “The Cross, Erected in Memory of the Dead of All Wars,” and “Erected 1934 by Members Veterans of Foreign [sic] Wars, Death Valley Post

2884." The wooden signs are no longer present, and the original cross, which is no longer standing, has been replaced several times by private parties since 1934" (*Buono v. Norton*, 2002).

[ix] The Cross of Sacrifice, or "War Cross," was developed by Sir Reginald Blomfield of the Imperial War Graves Commission, based on the shape of the Latin cross but including the shape of a bronze sword, turned downward. A Cross of Sacrifice stands in the U.S. Arlington National Cemetery to honor the Canadian war dead of World War I (King, pp. 128-129).

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ISSA Proceedings 2010 - Argumentation Schemes In The Process Of Arguing



1. Introduction

A look to the literature of the last years should be enough to realize that argumentation is a very complex phenomenon with many sides and manifestations and that many of the, some times, contradictory considerations about several aspects relative to the matter have their source in this complexity.

The definition of argumentation, provided by van Eemeren (2001, p. 11), constitutes a good place to start our reflection now, i.e. *“argumentation is a verbal, social and rational activity aimed at convincing a reasonable critic of the acceptability of a standpoint by advancing a constellation of propositions justifying or refuting the propositions expressed in the standpoint”*.

In this definition van Eemeren stresses the role of the argumentation as an activity, but most of the work done in the field is devoted to the analysis and evaluation of argumentations.

We want to stress here that the expressions “rational activity” or “reasonable critic” are related, most of the time, with probable or defeasible truth (Walton, Reed & Macagno, 2008). As Zarefsky (1996, p. 53) pointed out *“argumentation should be regarded as the practice of justifying decisions under conditions of uncertainty”*. The uncertainty may be relative to *the cognitive environment* of the interlocutors, as defined by (Tindale, 1999), or it could be an intrinsic quality of the issue in question, as a consequence of the influence of many unknown or difficult to foresee factors. Even if some times there is enough data to reach an unarguable conclusion, the opposite is much more frequent in everyday situations because ordinary argumentations deal, in most of the cases, with issues in which ethical or aesthetic values, personal tastes and other subjective feelings play a decisive role.

The uncertainty involved in much of the argumentations of real life makes difficult to fulfill the demands of deductive reasoning and, even after a careful reconstruction of the argument, we think that it is problematic to consider most of the ordinary reasoning as deductive, as proposed by the rules for a critical discussion of the pragma-dialectic. We think that in the practice the recourse to inductive inferences and to the use of heuristics, best explanations, analogies and other resources to achieve the resolution of the argumentation is necessary and frequent. The reconstruction of the reasoning done in practical argumentation as deductive, although helpful to assess it, in general does not correspond to what happens in actual practice.

The end of an argumentation may, as well, differ from the resolution defined by the ninth rule of the pragma-dialectic, “resolution, when it occurs at all, is rarely if ever absolute” (Jackson, 2008, p. 217). In negotiations, especially, but in other kind of dialogs also, both parts may reach an agreement considered acceptable for both sides, even if they maintain their initial points of view. But even in more

knowledge related environments, as scientific discovery, the selection of the most promising path for an investigation can be provisional, maintaining the parts, in the while, their opposite views.

One of the aspects we should pay more attention to is the substantive differences between argumentation considered as a process and argumentation taken as a product. First of all, we need to note that for 'process' we will take a slightly different meaning from the one used in the literature (Tindale, 1999) and that, for our purposes, we won't be differentiating the dialectical and the rhetorical sides of the argumentation. We will take the word process to include roughly all the aspects to consider when producing an argumentation.

To illustrate the kind of differences we mean, we can mention, for example, that what can be an important step for the analysis and the evaluation of the product of an argumentation, may be unconscious and fully implicit in the process or arguing. For instance, we use fast and incomplete inferences that are the outcome of "intuitive" processes of reasoning and that work efficiently in cognitive familiar settings. These kinds of inferences are different from the "reflective" inferences that deal with unfamiliar or more complex problems. Both terms are proposed by (Mercier & Sperber, in press) as an attempt to clarify the dual system view of reasoning proposed by several researchers in the field of psychology (Evans, 2003). This theory distinguishes two systems of reasoning: the system 1 processes are taken as automatic, mostly unconscious and heuristic; they work efficiently in ordinary circumstances but are inappropriate to deal with novelty or complexity; the system 2 cognitive processes are slower and require more effort but they are more reliable. The evaluation of the argumentation and the planning of written argumentations, stress the view of argumentation as a product, and help to trigger this kind of conscious processes, while in oral discussions and when we spontaneously recall an argument to justify a claim, the system 1 processes are likely to play a more important role.

It is important, as well, to take care of the particular controversial environments which give rise to different kind of argumentative dialogs as critical discussions, scientific inquiries, negotiations, debates etc. Nowadays it is widely accepted, that each type of argumentative dialog (Walton, 1989; Walton et al., 2008) calls for different requirements and dialectical moves, and that some of these moves would be unacceptable or even fallacious in one type of dialog but would be acceptable in another context. Even in scientific practice, in which we work under

high logical standards and methodological constraints, we find examples of the powerful influence of contextual factors. Take for instance the logical form of what is generally known as an abductive argumentative scheme and that the philosopher of science Marcello Pera (1994) puts in the class of the inductive arguments:

“an argument with this form: $((p \rightarrow q) \& q) \rightarrow p$. Should we say it is deductive and invalid according to deductive logic, or that it is inductive and correct according to inductive logic? Only the context provides an answer. If it is used to prove a proposition p , then the argument is deductive and deductive logic is pertinent to it. If it is used to confirm a hypothesis p , then it is inductive and falls within the legislation of inductive logic. Thus the very same argument with the very same form is potentially fallacious if it is used for one purpose and potentially good if used for another”. (Pera, 1994, p. 109).

We have to take into account also the noticeable differences that arise in everyday argumentations due to epistemological attitudes and motivations. For example, Schwarz and Glassner (2003) prove that students in ordinary contexts of argumentation do have better dialectical skills than the finished products they present; the contrary happens in scientific domains.

“...in every day issues we are generally highly skilful in challenging, counterchallenging, justifying or agreeing during conversation but the argument we hold are mediocre according to analytical criteria...We know “to move forward” but we don’t know very well “where to go”, ...

... In contrast, in scientific domains we are used to accept well-made arguments, but generally do not use them in further activities to convince, challenge or justify our view points. We “see the point” but “cannot move forward”; (Schwarz and Glassner, 2003, p. 232).

Besides, there are important differences between oral and written argumentation. To cite some of the more compelling, we note that in oral argumentation the statements are generally shorter; we have an immediate feedback from the opponent that helps us to find the path to retrieve the necessary information from our long term memory and also to decide the next move; it is almost always possible to give some kind of answer to the objections the opponent raises, often weakening or negotiating our point to accommodate the challenges, and to facilitate the communication and build consensus; and finally, our performance

has to take into account both, the objections that make shift the burden of the proof back and forth between the two parts in the dialog, and the conversational turns of it; In written argumentation, the opponent is not present and the abstraction to represent him/her makes more difficult the articulation of the arguments. The physical absence of the audience is one of the most salient characteristics of written argumentations (Bereiter & Scardamalia, 1987; Kellogg, 1994); and it is also well known that writing arguments becomes a difficult cognitive activity appearing many years after the children are able to defend their own points of view on oral discussions (Golder & Coirier, 1994, Golder & Puit, 1999). We also need to use more stylistic resources to make our point, because we have no access to non-verbal communication; and finally, the ordering and linearization of the text has to make sense, because there is no chances to improve it with the immediate feed-back of the opponent.

Furthermore, it is necessary to consider that these different factors interact among themselves in different ways and also with other elements of the social context, as, for instance, the status of the participants and their interest in maintaining the quality of the relationship between the interlocutors. Arguing is an interaction in which a person tries to persuade someone of something, but, on the other hand, the interlocutors are simultaneously strengthening or weakening the bonds between them. In many everyday discussions the two components are of similar importance and, so, we can't improve adequately our argumentative skills looking only to the cognitive side of the activity.

Pragma-dialectic provides a good framework for critical discussions that explains much of the complexities of argumentation, especially with the progressive inclusion of strategic maneuvering in the theory (van Eemeren & Houtlosser, 2002, 2009). Nevertheless it seems necessary some kind of expansion of this theory for practical or didactical purposes, namely, considering adaptations for types of argumentative dialogs different from critical discussion and including some more specific steps that those they already consider, to account for the differences between written and oral argumentations and also for those found between the production and the analysis of argumentation.

Furthermore, it would be useful, as well, to explore the integration of psychological frameworks and problem solving strategies used in the argumentative process with the more philosophical oriented, pragmatic and dialectical approaches to argumentation. These interdisciplinary frameworks

should inspire the design of protocols and other tools for the different tasks involved in the practice of argumentation.

2. Argumentation as process

Considering the argumentative process as explained above, we think that it can't be understood if we don't consider its rhetorical perspective. The evaluation of argumentation is often approached from a logical, formal or informal, perspective that usually presupposes a schematization of the argument that eliminates all the "rhetorical" elements of it, sketching mostly its dialectical skeleton. The role of the context is almost reduced to help to fulfill the implicit premises necessary to complete (mostly in a deductive sense) the inferences. Nevertheless, the study of argumentative processes is not possible without the integration of the arguer, the audience, the uttered arguments and the cognitive and social environment.

In order to persuade the audience, many strategic decisions have to be made about the selection of the arguments, their order, the choice of the words and the amount of information that will remain implicit, and these choices depend on broader contextual elements: *"Naturally occurring arguments are subsumed by and subsume other contexts of action and belief"*. (Jackson, 2008, p. 217).

Data and other kind of information about the topic available to the arguer and the intended audience are the first constituents of the context; the second and not less important element refers to the audience's views about the issue because, as we acknowledged, the difference of opinion that triggers the argumentation has its source in the existence of different points of view about an issue or even in a conflict of interests. Even in this last situation, when the parts agree to resolve their differences by argumentative means, they implicitly accept some rules and boundaries of reasonableness in which the dialog should take place.

The monitoring of the process can be better understood in a problem solving framework that integrates different levels of cognitive processing. Much of the work is made more or less automatically using competences mastered in the past, as consequence of maturing or learning processes. Other work has to be done consciously and requires careful planning, monitoring and revising. These processes change in function of the type of argumentative task: it is different to participate in a face to face debate, in a forum in the Internet, to write an argumentative essay, or to simply read an argumentative text.

In the next passages we will stress some differences between the processes of reading and analyzing a text, and that of writing one, before we focus in the role of the argumentative schemes in the process of writing.

The processes of reading and writing argumentative texts have some cognitive activities in common. The contrary would be uneconomical *“and it seems highly implausible that language users would not have recourse to the same or similar levels, units, categories, rules and strategies in both the productive and the receptive processing of discourse”* (van Dijk & Kintsch, 1983, p. 262) and the advances as critical reader and as argumentative writer interact with each other in a complex way, making their combination a good pedagogical strategy (Hatcher, 1999).

Nevertheless, even if we accept the fact that the writer or the speaker follows pragmatic rules, as, for instance, Grice’s conversational rules to make communication possible, and that the reader uses those same rules to interpret the intentions of the writer, it doesn’t mean we are dealing with the same task.

If, for example, we attempt to design a protocol putting forward the steps necessary to analyze an argumentative essay, and another one suggesting a procedure to write an argumentative text, the differences soon arise, and in our opinion, both processes have remarkable differences that difficult their reduction. In fact, the suggestions to direct the production of written argumentations inspired in analytical procedures, as in the critical thinking approaches, go usually far away from the previous model of analysis, and introduce the inputs relative to other specific aspects of argumentative writing that are usually considered as rhetoric.

To review an argumentation is a better-defined task than to write an argumentative text. Even if analyzing a text requires always some grade of interpretation of the sentences, and delicate decisions about which implicit premises need to be made explicit before checking the relevance, the sufficiency and the acceptability of the premises, the existence of fallacies, or the soundness of the inference, writing is a far more open-ended task. There are many different ways to write an argumentation that would reach successfully the intended goal of gaining the audience’s adherence, and the writer has to choose among these different possibilities. When we analyze a text, these choices are done and the task of the reader is reduced to check the reasonableness of the argumentation in

order to accept or not its claim.

Second, before we accept or not the standpoint of an argumentation, weighing the strength of the given arguments, we bring together the relevant information from the text (or the conversational context) in order to decide if it convinces us. But as writers we need also to keep in mind all the communicational and stylistic and rhetorical elements useful to maintain the attention of the reader, to keep a positive atmosphere in the relationship, to allow the reader to negotiate the outcome, etc. All these ingredients are necessary to allow the flow of the communication, and to reach the persuasive goal of the text. Certainly, the reader will focus his/her attention into the claim and into the strength of the reasons to defend it, and he/she will be less conscious of the role of those other elements, especially if the communicative quality of the text is adequate. Nevertheless, these elements are very important in the production and subsequent manipulation as a writer, of the text. A writer reviewing her/his argumentation needs to consider carefully not only the epistemological quality of the reasons and the soundness or reasonableness of his/her reasoning, but a much broader set of elements which are necessary to achieve her/his communicative purpose.

Briefly, the analysis and evaluation of the argumentation deals with the argumentation as a product, but writing a persuasive text is by itself a process open to a rich variety of possible outcomes that could match the goals and intentions of the writer. Therefore, the procedures to deal with one of the tasks or with the other have to show substantial differences.

3. Argumentive schemes

It is not necessary to tell that when we argue to defend or to rebut a definite standpoint, the arguments we provide have to be somehow linked to the standpoint. This link, which is currently known as the argumentative core of the argumentation, if adequate, assures the arguer that the acceptability of the arguments is transferred to the standpoint.

The consideration of argumentative schemes as an input in the process of elaboration of argumentations has its grounds in the venerable tradition of classical rhetoric (Tindale, 2004; Walton et al., 2008; Rubinelli, 2009). The Aristotelian notion of *topoi* and its correlative notion of *loci* in the roman rhetorical tradition, as in the influential work of Cicero, were purported as tools to help the future orators to find arguments for different kinds of dialectical discussions or rhetorical settings. It was, then, a system of invention intended to

provide guidelines for finding and selecting the proper arguments to support a claim. The actual term “argument scheme” was first used by Perelman and Olbrechts-Tyteca in French, but, by then, several other authors used this ancient notion with different names (Garssen 2001, p. 82)

Garssen (2001) gives an overview to the most important, classical and modern, approaches to this subject. He explains that the argumentative schemes can be used also as tools for the evaluation of argumentation and as a starting point for the description of argumentative competence in a certain language.

Several works on argument schemes as (Hastings, 1963), (Kienpointner, 1992), (van Eemeren and Grootendorst, 2004), (Walton, 1996), (Walton et al., 2008), among several others, have tried to put some order in the field, proposing different criteria to assure their cogency and to classify them. Nevertheless, both the criteria and also the amount of schemes taken into account vary largely, considering among them, for instance, from deductive patterns as *modus ponens*, to, in some cases, some of the classical rhetorical figures.

Presumptive argumentative schemes (Walton 1996; Walton et al. 2008) have their source in actual examples of commonly used patterns of reasoning. They correspond to defeasible reasoning and although they can be sufficiently strong to support a claim depending on the argumentative situation, the claim they support can be defeated if the circumstances change.

In the pragma-dialectical typology three main categories are considered, symptomatic argumentation, comparison argumentation and instrumental argumentation. Following (Hastings, 1963), each scheme comes together with a set of critical questions that helps to guarantee the correct application of the scheme. The questions are to be used by the antagonist in the dialectical process in case of doubt, and if asked, they automatically shift the burden of the proof from the antagonist to the protagonist. The pragma-dialectical classification is coherent, easy to grasp and fulfills its main function, i.e., help the user to assure the transference of the acceptability of the premises to the standpoint and, generally speaking, it can be sufficient to apply to the evaluation of arguments. Nevertheless this typology becomes clearly insufficient if we try to use it in the process of generating new arguments.

If we take into account the number of schemes proposed, we could put (Walton,

1996) and (Walton et al., 2008) proposals on the other side of the balance. Following Aristotle's idea of rhetorical topics and also most of the works above cited, they gather an extended list of argument schemes (around 60 in the last typology), each of what comes together with its corresponding set of critical questions; these questions are to be used in the same way as in the pragma-dialectic approach. In (Walton et al., 2008) they also attempt to provide a more systematic, if tentative, classification of the schemes, and to explore the use of them in artificial intelligence settings. Although, they also say, that much more work should be done to improve the proposals in this field, they mention the progress made in the use of the schemes and their critical questions in software designed to help arguers to analyze and to write new argumentations, and in multi-agent systems and automated reasoning.

Tindale (2004) thinks that argumentation is essentially rhetorical and, following Perelman's constructive conception of the argumentation, he considers it as a kind of communicative practice that helps us to change our point of view and directs our actions. He maintains that "elements of argumentative speech must have occurred as long as language has been in use" (Tindale 2004 p. 32) Argumentation as a form of communication invites collaboration; the arguer and the audience interact in a way that makes them coauthors of the argumentation. Tindale's rhetorical view extends the typology of schemes to some of the rhetoric figures that appear in the work of the sophists as set of strategies or types of arguments. For example he includes figures like the *peritrope*, which involves the reversal of positions that can be traced "in the writings of current argumentation theorists who advocate the importance and value of considering all sides of an issue, including that of ones opponent" (Tindale, 2004, p. 46).

For Garssen (2001; 2009) figures have probative force but they are not real schemes: figures have no associated critical questions, and the schemes don't possess the changes of language use that characterize rhetorical figures. Kraus (2007) analyzes in detail one rhetorical figure (*contrarium*) and shows that in general they are poorly warranted and based on defeasible commonsense arguments, but that they exert enough psychological or moral pressure on the audience to make them accept the implicit warrants without any protest or further request for argumentative backing, and so, becoming then, in some cases actual fallacies.

In his book *Fallacies and argument appraisal*, (Tindale, 2007) considers the

relationship between argumentative schemes and fallacies, and stresses, as some other authors also do, that the deceptive nature of some fallacies comes from the illegitimate use of an argumentative scheme that is in principle acceptable in other circumstances. Nevertheless, he also says that there are fallacies, as the *straw man*, which does not correspond with legitimate argumentative schemes. In any case, the criteria of appraisal call for a careful analysis of the rich and varied contexts in which they occur. The strategy to help arguers dealing with fallacies follows the critical questions procedure proposed by many other researchers for the evaluation of argumentative schemes.

Coming back to the beginning of this work, and without any doubts of the interest of the use of the schemes and critical questions to appraise the cogency of the argumentations, in the following section, we will be concerned mostly with the use of them in the first sense, i.e. as argument generators.

4. The role of the argumentative schemes in the process of writing.

In order to study the role of the argumentative schemes in the process of writing we need to overview the process as a whole. As we have seen, the process is the result of the interaction of multiple factors that have a different weigh in the various stages of the writing process. The relative importance of these factors depends, as well, of contextual circumstances related to the topic, the social context and the idiosyncratic features of the interlocutors. In consequence, the process of writing argumentation should integrate besides the traditional logical, dialectical and rhetorical elements, also inputs relative to the textual linearization or linguistic coding, the motivation and goals of the arguers and some other psychological and contextual considerations. Nor cognitive psychology nor argumentation theory alone have given a satisfactory account of the process of writing argumentative texts. As we have said the motivation of the arguers or the importance the issue at stake has for them is a crucial factor that determines much of the depth of the argumentation. For example (Igland, 2009) shows that adolescent students argue differently according to the challenges they face: arguing about a practical matter, a more abstract point or about a question related to similar controversies and discussions in the social environment. She also shows that they react differently when they think that there is some space for negotiation or that the matter is not negotiable.

In the first place, writing an argumentation requires the monitoring of the different steps needed to reach the goal of the argumentation: planning the

general strategy of the argumentation, translating to words, checking for local coherence... and finally reviewing the resultant text using linguistic, epistemological and rhetorical criteria. (Kellogg, 1994).

A second ingredient is the acquisition of the knowledge about the issue and about the concrete argumentative situation in which it occurs: social context, audience's characteristics, time constraints, possible sources of information, means, helps... The more the arguer masters the topic under discussion, the better the product will be.

A third focus of attention should be pointed to the epistemological or dialectical space: from the more automatic reasoning, followed by logic inferences and pragmatic processes, to the more conscious reflection about the global structure, argumentative stages and the adequate and reflexive use of argumentative schemes to support the claim.

And last but not least, the integration of the rhetorical space in order to negotiate with the audience, As (Golder, 1996) says, the negotiation with the addressee is one of the principal constituents of the argumentation, because the argumentative discourse is by itself polyphonic (Anscombe & Ducrot, 1983): even in writing argumentation the voice of the reader or the readers needs to be integrated in the text. The use of communicational and rhetorical devices designated in classical rhetoric as disposition and style, is also needed to make clear the content of the argumentation, to maintain the attention of the reader, to develop a positive ethos for the writer, and, as a consequence, a receptive attitude in the audience.

There is not a definitive psychological explanation of the way in which our brain or cognitive system realizes ordinary inferences, nevertheless, there are nowadays more and more suggestions to indicate that some of the skills that interact in the argumentative process are unconscious and automatic; others, nevertheless, as the overall planning, for example, require constant attention and monitoring.

Writers most of the times don't need to explicit all the implicit premises to grasp the logic of the inference, that is, the link between the reasons and the conclusion. They do it in an automatic form linking it with common knowledge taken from the actual situation in which they place themselves and the audience; the process occurs fast and unconsciously. (As an example, we think that the premise that states that "smoking is unhealthy" is enough to discourage smoking without any other implicit premise as "anything that is a danger to the health

should be avoided"). Besides, even if we try to explicit some of the information needed to strength the inferential nature of the argument, in many cases, it is quite difficult to decide where to stop it.

Some of the argumentative schemes are known and used by very young children in oral discussions with peers. To make the use of them conscious and to learn in a practical way when they lack the strength necessary to support a claim or even when they can become fallacies is important, but, nevertheless, even in Aristotle's pioneering works the knowledge of the schemes, by itself, was not a sufficient help to find the necessary arguments to justify a claim. As Rubinelli (2009) says, *"arguments ultimately derive from premises that put forward specific contents, and it is the ability to find these premises that enables speakers to argue actual cases. Readers can experience this for themselves. Try to use any of the topoi listed in the Topics to discuss a certain subject with someone. If you do not master a body of relevant material on the topic at stake, any topos chosen will be of no use; if you use inadequate material, your efforts will be vain! But if speakers have adequate material at their disposal, knowing the topoi will help them structure this material in an efficient argumentative framework"*. (Rubinelli 2009, p. 32)

The goal of written argumentation is to produce a meaningful text containing not only a sequence of ordered arguments but also other communicative elements as explanations, clarifications, etc., directed to persuade the audience of a standpoint supposedly in doubt or in dispute. A minimal argumentation will use a unique scheme, but in an elaborate written argumentation, due to the debatable character of the subject, there are always several arguments, each of them using one or a combination of schemes to justify the claim. There will be also other arguments to answer to presupposed objections and criticisms.

The writer has to cope simultaneously with linguistic requirements and rhetorical strategies that introduce elements of our actual and real world experiences. The dialectical and the rhetorical space can be dissociated for theoretical purposes but as Leff (2002) said, in the practice they have to interact if we want to achieve "effective" persuasion.

The use of the schemes depends on the choice of the arguments. But this task is decided in function of a general strategy that integrates the relevant knowledge about the topic, the appropriate use of the schemes and their rhetorical

properties. This, being a challenging cognitive process, could be made easier by the systematic learning of some of the schemes, *topoi* and fallacies with their respective critical questions. If we have a set of critical questions in mind when we plan to write argumentation, our arguments will be stronger and we could be ready to anticipate a rebuttal and to add some additional premises to reinforce or to warrant an argument. Some critical questions appear intuitively in the actual dialectical situation when we argue orally. For example, if we think that an “expert” can’t be considered as such and if we are interested in arguing, we will always ask for more information about him/her. But in writing the audience is not present, so it is good to have in mind some of these intuitively natural questions associated to the most used schemes. But once again, the study of the schemes should be integrated in a more general framework and to learn in an effective way it should be completed with intended practice, using debate first to reinforce our arguments and afterwards writing the corresponding argumentative texts.

We also think that a useful list of schemes depends somehow on the field, in which they will be used, be it legal argumentation, software design, education, etc. For pedagogical purposes it would be better than the use of a whole list of argumentative schemes, the adaptation of it to the age of the students and the adoption of the pedagogical approach known as constructivism. As much of the mastering of the use of the schemes is grasped simultaneously with the natural process of learning the language, the teaching of the schemes would be more efficient if we could relate them to the actual abilities of the students, making the topic knowledge affordable to them and arousing their interest and motivation. The new knowledge, as proposed by constructivism teaching, should be built on the actual knowledge of the learner.

As a consequence, the decision of including or not different argumentative schemes among the teaching strategies should be the result of empirical research. A good point to start the selection could be the study of the argumentative schemes used by arguers at different ages in natural environments both in oral and in written argumentations.

Another source to select the schemes and their fallacious counterparts, considered as wrong inferential moves, is a revision of the lists proposed by critical thinking, rhetorical and argumentation courses and textbooks and software tools for argumentation.

For instance, *Rationale* is a software tool, based on research done at the

University of Melbourne that helps students grasp the essence of good essay-writing structure. *Rationale*, is designated to facilitate the analysis of argumentations and the production of good reasoning in learning environments, so, there is a simple list of sources for arguments to support a claim (assertions, definitions, common beliefs, data, example, expert opinion, personal experience, publications, web, quote and statistics). Not every source has the same strength supporting a claim, and some of the possible reasons to support it could be presented using more than one of the categories. Nevertheless, the list and the critical questions associated with every item, offers a practical guide for students and people looking for an improvement of their arguing skills. Many critical thinking textbooks offer similar strategies.

The list proposed by *rationale* includes sources that appear in the classifications of argumentative schemes quoted above, as expert opinion and statistics. Other elements they use, as common beliefs or personal experiences, are more related to the topics of classical rhetoric, and finally, others are more linked to common scientific methodology or epistemological approaches.

Summarizing, we consider necessary to link the learning of the argumentative schemes to the progressive acquisition of them when acquiring the different communicative skills of the language. In general, we think that it is better to introduce them after their use and strengthening in oral argumentations, by means of strategic critical questions prompted in the debate. After being made conscious in these dialectical settings, they should be used for argumentative writing and marked by the teacher with more critical questions, if the arguers themselves have not given enough thought to the most salient of them, in order to reinforce the argumentation.

As an example, we can look at the argument form expert opinion (*ad verecundiam* in the rhetorical tradition). It is one of the schemes that appear in almost every classification of the different traditions, because it is one of the most used schemes. The argument from expert is presented by Tindale (2007), Walton et al. (2008) and many others as one of the defeasible argumentative schemes that could be a fallacy, if improperly used. The ubiquity of this scheme, even in early stages of the development of oral argumentation, and its persuasive efficacy justify its treatment in a pedagogical program of argumentative writing. First, we should confront the students with good and bad uses of the scheme and facilitate, with the help of critical questions, their thoughts and conscious grasping of it.

Then we would have to discuss the relative strength of expert opinion, compared with arguments from other sources, as data or personal experience, considering the adequacy of the choices for the intended audience.

The goal of instruction is then to foster the metacognitive skills of the writer, *“argumentative discourse is one of the most subtle and most elaborate ways to use language. In contrast to narration, in which temporal markers are often sufficient, it is more highly structured, containing many more modal expressions (might, may, sure, seem, likely, certainly, proves), that is, those in which speaker is implicated. In sum, argumentative discourse implies being able to think in both a metacognitive and a metalinguistic framework.”* (Kuhn 1991, p. 271)

The argument could be used to justify the claim or to reply to possible objections of the audience, but the argument needs to be integrated in an argumentative essay that has to fulfil all the communicative goals of the writer with respect to an intended audience. The choice of the title, the style, the introductory paragraphs, the length of the text, the use of reiterations, the emphasis, the order of the arguments, the use of metaphors are to be decided to adapt the text to the audience. In sum, all those elements that will be part of the argumentative text need to be considered in the process of writing.

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ISSA Proceedings 2010 - Controversy Over Uncertainty:

Argumentation Scholarship And Public Debate About Science



1. A rationale for studying “manufactured controversy”

The term “*manufactured controversy*” appears with some frequency in recent scholarship about the public rhetoric of science. But as this paper will show, it tends to be applied in isolated case studies that have not yet been connected with each other into a larger multi-case analysis. As a result, the definitional contours of the term have not been made entirely clear in the rhetoric and argumentation literature. This paper is a first step toward developing a definition of the term.

Scholars in the broader field of science studies have looked at the same phenomenon that rhetoricians have been calling *manufactured controversy*, but they use a different name for it, calling it the manufacture of public *uncertainty* about science. This paper will argue that the focus of these science studies scholars has been so effectively filtered through the terministic screen of uncertainty production that they miss some important characteristics of the phenomenon that are related to the way in which public *controversy* over scientific claims is constructed in the public sphere. Since one purpose of argumentation scholarship is to engage the theorization of controversy (Goodnight, 1991), argumentation scholars should be especially suited to the study of this aspect of the phenomenon.

To ground a call for scholarship on the argumentative dynamics of the “*manufactured controversy*”, this paper reviews some recent literature on the rhetoric of science and some recent literature from the broader field of science studies that explores cases where public uncertainty is created through the manufacture of scientific controversy in the public sphere. The goal of this paper is to set out a path for scholars of argumentation and rhetoric to make a useful contribution to the study of this phenomenon, and to briefly preview some of my own findings from a study that I have undertaken along that path, findings that I more fully develop in another longer paper (Ceccarelli, 2011).

2. Why call it a “manufactured” controversy?

The common term “*manufactured*” is used by scholars in rhetoric/argumentation studies and science studies to describe this phenomenon because in each case that they identify, they have established that there is little or no controversy among scientific experts about the science itself. Instead, scientific controversy is being *invented* for a public audience, often by special interest groups, in order to achieve certain political goals like delaying the enactment of regulatory public policy, or forcing the teaching of alternatives to the dominant scientific paradigm in public schools. The political motives of those who “manufacture” scientific controversy in the public sphere are most often revealed by scholars through the publication of “smoking gun” documents where rhetors acknowledge, often in private planning reports that have been leaked to the public, that controversy is being used as a tactic to manipulate the public (Luntz, n.d., pp. 137-138; Brown and Williamson, 1969, p. 4; Discovery Institute, n.d., p. 2, 4). Less often, the manufacture of controversy is revealed as a political tactic through statement inconsistencies that suggest the promotion of a controversy is a matter of expediency in a particular case rather than a matter of genuine belief that significant scientific uncertainty exists. **[i]**

3. Recent case studies in rhetoric and argumentation on “manufactured controversy”

In an article in *Communication and Critical/Cultural Studies*, Marlia Banning (2009) describes the public debate over the science behind global warming as a “manufactured - debate” (p. 291), a “‘disingenuous’ or ‘pseudo-controversy,’ in which commercial and political entities labor to generate a perception of widespread debate among a scientific community where instead there is a strong agreement” (pp. 286-287). She argues that commercial and political entities apply this strategy “in order to undermine public opinion and policy” (p. 298).

In addition to using the term “manufactured” to describe this controversy, Banning uses the terms “disingenuous controversy” and “pseudo-controversy.” Because there was no multi-case study of the “manufactured controversy” before Banning wrote her paper, she adopts her terminology from another provocatively named individual case study published in *Argumentation and Advocacy*. However, that article has nothing to do with science and actually reports the opposite of what Banning describes in her own case study. The article that she cites to give credit for the concept of “disingenuous” or “pseudo-controversy” explores a case where controversy is artificially deployed over the political speech of Ward

Churchill to close off debate, to “stifle dissent and ... alternative perspectives” and re-center an orthodoxy by diverting attention from the substance of genuinely controversial claims about politics and violent acts (Fritch, Palczewski, Farrell, & Short, 2006, p. 201). The case that Banning describes of public controversy over climate science is characterized in her article as doing the reverse of this – *inventing* scientific dissent where there is none (not silencing it), and *undermining* a scientific orthodoxy (rather than re-centering it). The term “pseudo-controversy” seems on its face to accurately characterize the political strategies being deployed in Banning’s case study, but the terminological link between her case and the case studied by Fritch et al. leaves readers with little hint about what might constitute the common characteristics of such cases. Given access to a multi-case study that examines the similarity between different instances of manufactured *scientific* controversy, Banning would not be forced to grasp for a theoretical link to another type of disingenuously manufactured controversy with which her case shares little in common.

In another recent study, this one published in *Quarterly Journal of Speech*, Marcus Paroske (2009) describes the case of AIDS dissent in South Africa as a “version of ‘manufactured controversy’” in which “arguments that exploit inherent uncertainty and urge delay” are used to counter the global scientific consensus about the cause of a disease (p. 152). Just as with Banning’s article though, Paroske struggles to ground the term in the literature. The citation he supplies for the term “manufactured controversy” is an essay in which the term itself never appears. The essay he cites, from the field of mass communication research, uses the term “manufacturing *doubt*,” not manufactured controversy (Stocking & Holstein, 2006). As I will demonstrate in the next section of this paper, the focus on controversy that Paroske offers as an argumentation scholar is different from the focus on doubt that has pervaded the literature that he cites as a theoretical ground for his case study. A multi-case study that examines the common argumentative dynamics of manufactured *scientific controversies* would provide a more solid theoretical grounding for future studies like Paroske’s in the field of rhetoric/argumentation studies.

A third example of rhetorical scholarship that introduces the concept of the “manufactured controversy” is a paper presented by Rachel Avon Whidden at the 2005 Alta conference on Argumentation and published in its proceedings. This paper discusses the “manufacturing of controversy” by intelligent design

advocates who create “the illusion of the presence of an actual debate within the scientific literature” (pp. 707-708). Unlike the cases studied by Banning and Paroske, this time a case is described in which controversy is being manufactured not in order to delay public policy, but in order to promote a *new* public policy that requires public schools to teach both sides of the so-called scientific “debate” over evolution. A reader encouraged by Banning and Paroske to think of manufactured scientific controversy as a tactic to *maintain* the status quo by delaying policy change might be surprised to discover the same concept being used to describe a tactic that seeks to *change* the status quo by initiating a new policy. Again, a multi-case study of manufactured scientific controversies would resolve any such potential confusion about the concept by exploring the characteristics that these cases share in common.

The fact that Banning, Paroske, and Whidden never cite each other, but they all use similar language to describe the key argumentative activity explored in their case studies is significant. Rhetoricians are discovering an important phenomenon in contemporary public discourse about science that needs theorizing: the manufactured controversy. A larger multi-case study can help us develop a better understanding of “manufactured controversy,” so that future uses of the concept can inform each other in the scholarly literature on public rhetorics of science. By examining the manufacture of controversy in all three of these cases identified by rhetoricians (global warming skepticism, AIDS dissent, and intelligent design), we can better appreciate the scope of this concept, in which the same types of appeals are deployed by those who would postpone government action (for example, to regulate carbon emissions) *and* by those who would create new government policies (like “teach the controversy” directives about evolution in public school science curricula).

4. The “science studies” literature’s focus on manufactured uncertainty

So far, I have established that the term “manufactured controversy” is being used by scholars of rhetoric and argumentation, but they have not yet developed a clear cross-citational grounding for the term. When we shift our gaze to the larger scholarly conversation about science policy and public debate, we find that some of the same cases are being studied in other fields, but the central phenomenon under examination there is called by a different name. Significantly, each of the terms coined for this phenomenon by scholars outside the field of rhetoric and argumentation studies emphasizes the amplification of *uncertainty* by those who

deny the scientific consensus.

For example, epidemiologist David Michaels (2008a) details a number of cases where industries have deployed a strategy he calls “manufacturing uncertainty” which entails “preventing or postponing the regulation of hazardous products by questioning the science that reveals the hazards in the first place” (p. x). “Industry has skillfully turned what should be a debate over policy into a debate over science. The retreat from regulation is fueled by the product defense experts who specialize in manufacturing uncertainty and creating not sound science, as they disingenuously claim, but something that sounds like science in order to allow toxic exposures to go unregulated and victims of these chemicals to go uncompensated” (Michaels, 2008a, p. 264).

Michaels (2008b) details numerous “campaigns mounted to question studies documenting the adverse health effects of exposure to beryllium, lead, mercury, vinyl chloride, chromium, benzene, benzinide, nickel, and a long list of other toxic chemicals and pharmaceuticals” (pp. 92-93). He also points to evidence of this strategy being used by the fossil fuel industry when it was “confronted by an overwhelming worldwide scientific consensus” on anthropogenic global warming (p. 92). The title of Michaels’ book, *Doubt is Their Product*, is taken from a tobacco industry internal memo which, when faced with evidence that tobacco causes cancer, candidly admits “Doubt is our product since it is the best means of competing with the ‘body of fact’ that exists in the mind of the general public. It is also the means of establishing a controversy” (Brown & Williamson, 1969, p. 4). Although this memo suggests the manufacture of *controversy* is the purpose of the strategy, Michaels’ terminological focus on the production of *doubt* directs our attention to how “mercenary scientists” (2008a, p. 60) exploit the natural limitations of epidemiological and laboratory studies of human disease to create confusion for the public. This terminological focus turns our attention away from how industry employees exploit fairness norms in the public sphere to effectively seed controversy and thus stall regulatory action.

Historian of science Robert Proctor (2008) likewise turns our attention to the manufacture of *uncertainty* (rather than the manufacture of controversy) with his invention of the term “agnogenesis” as a subarea in the new field of agnotology (the study of ignorance). Agnogenesis refers to the use of ignorance “as a deliberately engineered and strategic ploy” (p. 3). When we study agnogenesis, says Proctor, we explore “ignorance - or doubt or uncertainty - as something that

is made, maintained, and manipulated by means of certain arts and sciences” (p. 8).

Like Michaels, the examples Proctor chooses include global warming denial and the tobacco industry’s response to cancer studies. He says the latter “must rank as one of the greatest triumphs of American corporate connivance” (pp. 19-20) a strategy to question all assertions that we know the cause of cancer and “all efforts to ‘close’ the controversy, as if closure itself were a mark of dogma, the enemy of inquiry” (p. 12). So Proctor too recognizes the production of controversy as key to this rhetorical strategy, but he invents a term that focuses our attention on the creation and maintenance of ignorance as if that were the most significant characteristic of these cases.

Sociologists William Freudenburg, Robert Gramling, and Debra Davidson (2008) make a similar move when they coin the term “Scientific Certainty Argumentation Methods,” or “SCAMs,” to refer to “a clever and surprisingly effective political-economic tactic” that exploits the fact that “most scientific findings are probabilistic and ambiguous” in order to defeat or postpone proposed regulations (p. 2). According to these sociologists, “SCAMs can be remarkably effective even in cases where most scientists see findings as strong or robust – indeed, even in cases where the findings are backed by clear and emphatic statements of scientific consensus from the most prestigious scientific organizations in the world” (p. 5).

Freudenburg et al. describe several cases where controversy is manufactured by politically skilled actors to obscure an existing scientific consensus. But because they look only at how SCAMs manage uncertainty claims, they turn their scholarly gaze away from some of the other rhetorical tools used to invent an ongoing scientific debate in the face of overwhelming scientific consensus.

In studying manufactured *controversy*, scholars of rhetoric and argumentation can examine the same phenomenon scrutinized by those who call it manufactured doubt, agnogenesis, or SCAMs, but the terminological distinction points to a difference in emphasis that will reveal aspects of the phenomenon that are obscured by the broader “science studies” literature’s focus on uncertainty production. When the manufacture of *uncertainty* is the subject of analysis, scholars like Michaels, Proctor, and Freudenberg et al. demonstrate how conventional ignorance claims in scientific articles are taken out of context, data is cherry picked, and statistical methods are manipulated by strengthening

evaluation standards for studies with inconvenient results.

The rhetoric and argumentation scholar's focus on the manufacture of *controversy* can reveal instead how the illusion of an ongoing scientific debate is built to sustain that uncertainty through the exploitation of balancing norms and appeals to open-mindedness, freedom of inquiry, and fairness. By examining the common appeals used in global warming skepticism, AIDS dissent, and intelligent design advocacy, we can better recognize how political agents in these cases use argumentative tactics to force scientific controversies into existence in the public sphere, controversies over scientific data that do not exist to any significant degree in the technical sphere.

5. Some common argumentative characteristics of the manufactured controversy

The purpose of this paper is not to set out a detailed comparative analysis of the public argumentation involved in these three cases. To do that would take me beyond the word limit for an entry in this conference proceedings. But I will preview some of my findings from that comparative analysis (Ceccarelli, 2011) in the interest of better defining the concept of the "manufactured controversy" and supporting my argument that a sustained rhetorical study of several cases together can make a productive contribution to the existing literature on this subject.

After undertaking the comparative study of these three cases, I discovered that there are two types of manufactured scientific controversy: the epistemological filibuster that delays policy change (Paroske, 2009), and the fairplay wedge that initiates policy change. In both types of manufactured controversy, contrarian scientists are deployed in the public sphere and their voices are amplified through the exploitation of balancing norms in liberal democratic institutions of journalism, law, politics, and education, where one always expects two sides to be presented with equal force to guarantee an informed citizenry.

By exploiting these balancing norms, those who manufacture scientific controversy create a situation that puts defenders of mainstream science in a bind, where they cannot refuse to debate without seeming dogmatically unscientific and opposed to freedom of speech and freedom of inquiry, but where agreement to debate suggests to the public that there are two equally strong sides on the matter within the scientific community. To further constrain the response of mainstream scientists, those who manufacture scientific controversy describe academic practices like peer review and tenure as mechanisms for an

orthodoxy to inappropriately suppress those who have a dissenting view. By employing this argument, they weaken the persuasive power of the very practices of science that could be employed to contest the quality of oppositional claims in such debates. The narrative of controversy thus produced portrays skeptics as heroes in an unfolding scientific revolution, oppressed by mainstream scientists who are ideologically deaf to their appeals and who try to silence them so that others are not exposed to their heresy.

Without a clear understanding of these argumentative constraints, those scientists who respond to manufactured controversy often fall into the very traps that have been set for them, responding with arrogant dismissal that serves only to confirm their opponents' charges in the eyes of the public. This is why I think it is especially important for scholars of rhetoric to understand the argumentative strategies of those who would manufacture scientific controversy in the public sphere. Only by understanding these strategies can scholars of rhetoric and argumentation who teach scientists begin to help them develop a response that is more sensitive to audience and burden of proof, that reclaims democratic values for science, and that allows the public to see that those who manufacture scientific controversy in the public sphere do not always embody the scientific and democratic values they claim to champion.

The science studies scholar's focus on manufactured uncertainty is important for helping us understand how scientific data can be manipulated in the public sphere, but the argumentation scholar's study of how *controversy* is manufactured to nurture that uncertainty is equally important. It is my contention that a comparative study of the rhetorical strategies used in several cases of manufactured controversy can help us to better understand this important phenomenon that is increasingly the subject of isolated case studies in rhetoric and argumentation studies, and under some circumstances, such comparative study might help prepare scholars of rhetoric and argumentation to teach scientists how to more effectively respond to these strategies in public forums.

NOTES

[i] An example of this is Thabo Mbeki's refusal to distribute drugs to treat HIV infection after becoming president of South Africa because of the "uncertainty" raised by the scientific "controversy" over whether HIV causes AIDS. That this was a political tactic to justify a reduction in government spending is suggested by the fact that before Mbeki was president, he forcefully argued that even

unproven drugs should be distributed to AIDS patients because it is unethical to postpone action until all scientific uncertainty is eliminated. This case is excellently detailed in Paroske, 2009.

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ISSA Proceedings 2010 - The Collective Making Of Temporal Aspects In Public Debates



1. A cross-disciplinary perspective on argumentative indicators in contemporary public controversies

The starting point of this paper is the observation that arguers engaged in the defence of their standpoint in a controversy devote a significant part of their discursive activity to the representation of the debate in which they take part. Such a representation does not contribute directly to the exchange of arguments. It nevertheless provides the addressee with an interpretative frame which may be called upon in order to reach the real, deep meaning of the arguments that are being presented. To take an example, in the controversy surrounding astrology, the representation of the debate as the struggle between reason and obscurantism, or between light and darkness, is one that is favoured by the astrology detractors. As far as the astrology supporters are concerned, they portray themselves as the Galileo of modern times, as being the victims of a dominant institution - the Inquisition in Galileo's case, the "*official science*" in the case of astrology supporters (Doury 1993).

When representing the controversy, the construction of a temporal frame may constitute an important strategic stake for the participants. This construction has a double nature: it is events-constrained in that it depends on the factual chronology of the debate; it is also fundamentally discursive, in that the participants make a choice among the available events which punctuate the controversy in order to select some of them which will be given a specific argumentative relevance. The combination of the order of events and the order of discourse, to borrow Foucault's terminology, makes the temporal dimension a privileged ground for the integration of sociological and argumentative insights into the study of controversies, an integration that may contribute to the cross-fertilization of Argumentation Theory and Sciences Studies, from which both fields can benefit according to Keith and Rehg (2008).

The discursive construction of the temporality of a controversy may serve as a basis for various argumentative moves, such as arguments from the precedent, arguments from consequences, and analogy arguments. It can be realised linguistically by a number of grammatical or lexical elements. In this paper, we will adopt a lexical approach and focus on the French adverb "*désormais*" [from now on], in particular. We will show how "*désormais*" can be used to introduce a temporal breach in the chronology of a debate and how this temporal breach may be exploited in order to fulfil various argumentative purposes. We thus mean to illustrate how the linguistic investigation of discourse indicators such as "*désormais*" may enrich a sociological questioning within the theoretical frame of a socio-ballistics of controversies (Chateauraynaud 2009).

2. Ways of arguing: a pragmatic approach to argumentation

This part of our paper will briefly present some aspects of a new trend in contemporary French sociology, which tries to articulate a long-term analysis of public controversies, especially controversies involving science and technology issues, with an argumentative approach that takes a close look at the linguistic surface of discourse. In this approach, as mentioned in the introduction, temporality is a key topic. Taking seriously into consideration the way in which actors and arguments are evolving over time, through a long series of events, trials, debates or crises, invites us to consider each argumentative or discursive activity in its context (*e.g.* occurring before or after an event or a public declaration) and to take a closer look at the ways in which arguers - commonly named actors, players or protagonists in sociology - manage the temporal aspects

of the dispute or discussion: how do they invoke the past, the present and the future? How do they deal with emergency, delay, expectancy, anticipation or prophecy, and even more complex cases such as visions of the future already projected in the past? Let us take a short example that illustrates this point:

(1) *I have alerted very early* about the problem of lack of technical control on off-shore platforms and *now* we are *in front of the biggest oil slick in American history!* How would we avoid this kind of catastrophe *in the future?* How to be sure that it will *never occur again?* (intervention by an inspector, in May 2010, in the course of the big controversy surrounding the management of the disaster caused by the explosion of Deepwater HoRizon Platform - fragment extracted from a corpus built from American news sites)

This excerpt includes various discursive markers that contribute to the temporal framing of the off-shore platforms controversy. Different verb tenses are used to refer to different moments related to this controversy: past perfect tense to refer to a previous warning (“I have alerted...”), present to refer to the present disaster (“now we are in front...”), and future to refer to the necessity of adopting security measures (“How to be sure that it will never occur again”). Emphasizing devices (“*very early*”, “*the biggest oil slick*”, “*it will never occur again*”, as well as the exclamation mark) are used in order to stress the significance of this event and to justify its comparison to others in the “American history”. Such markers help us pinpoint the temporal aspects of a controversy on the linguistic surface of discourse. One such marker, among others, is the adverb “*désormais*” on which we focus in section 4.

By following and comparing a great number of public controversies or conflicts, on issues like asbestos, radioactivity, pesticides, endocrine disruptors, genetically modified organisms (GMOs), electro-magnetic fields, nanotechnologies, climate change, and many other issues, we have built a theoretical frame called “socio-ballistics”, in order to analyse and explain the different trajectories that public issues follow - especially concerning risk and uncertainty, technological promises and prophecies of doom (Chateauraynaud 2009). Some main questions asked by this sociological approach are: on what context does an argument or a counter-argument emerge? What kind of trajectory does it take, and through which modifications? What does it mean for an argument or a set of arguments to resist to criticism? Are the arguments immanent in the actor networks or are they produced by the disputing process itself with a contextual relevance impossible to

reproduce at a distance? How can an argument travel from small communities through different kinds of arenas and groups, winning in strength and in surface, and becoming, step by step, a watchword, a political tool, a rule of law or a common sense feature?

To understand the turning moments in the trajectories of arguments, we need to engage, in our conceptual and analytical toolbox, a theory of argumentation able to account for the actors' practical and critical reasoning. It is with the aim of describing accurately the argumentative bifurcations - by which some arguments may get more legitimacy or strength in public opinion, or, on the contrary, may lose their relevance, or definitively mark a clearcut opposition between camps (*nuclear can help fighting against climate change versus nuclear is too dangerous and toxic to help in anything concerning the environment!*) - that specific investigations on temporal modalities, adverbs and indicators become necessary - even if this level of analysis is seldom taken into account by sociologists. Before elaborating on the analysis of an adverb like "désormais", let us try to summarize a few properties linked to our "argumentative sociology scheme".

A working definition of argumentation, particularly relevant for sociological analysis can be the following: argumentation is a discourse or a device which may be linked to an ongoing action and which is organized through a disputing process - or its anticipation - in order to defend a standpoint, an opinion or a thesis, and designed to resist against hard and relevant contention or criticism. In this sense, argumentation contains, at least as implicit requirement, one or many counter-argumentations. The integration of an argumentative analysis into a pragmatic theoretical perspective[i] requires that one account seriously for the techniques by which protagonists themselves perform the tasks of identifying, classifying and evaluating arguments, when making such comments as : "This is not a good argument", "This is an argument ad hominem", "His reasoning lies on totally simplistic economic arguments ...", "it is not enough argument for ..." etc. (Doury 2004). By analyzing in detail argumentative activities in many arenas, including informal ones - like in everyday life conversation, or in specific negotiations involved in ordinary routines - the integration of external and internal aspects of disputes provide powerful analytic grids to detect what kind of arguments or counter-arguments an actor takes in charge and what kind of argumentative movement is produced in conversations or monologic texts and discourses.

There are three levels of analysis that a pragmatic approach needs to articulate:

- Frames, situations and arenas in which actors are faced with an argumentative constraint - with different strategies to escape from it (Goffman 1974, Boltanski & Thévenot 1991, Jasper 2005);
- The making of arguments as an activity around argumentative nodes or cores (Anscombe & Ducrot 1983, Perelman & Olbrechts-Tyteca 1988, van Emmeren & Grootendorst. 2004, Plantin 1990, Doury 1997);
- The transformation of arguments over time through a long series of redefinitions generated by disputes and controversies; during this disputing process some arguments are selected and become strengthened enough to join common representations and ordinary discourses (science studies revisited by Socio-Ballistics).

How is an alert, a criticism or a judgment taken into account by different actors and how does it enable them (or not) to transform collective devices, norms and institutions? What kind of disputing procedure is available and how do actors deal with the plurality of debate arenas or with the different forms of public discussion? How do controversies, public debates, court trials and political mobilizations affect the course of social transformations? These questions are part of a larger programme on dispute resolution mechanisms. In this programme, the key issue is: in what conditions can new arguments appear, become common places and have consequences on actions and decisions? Such questioning points to a circular property of social learning processes: it is through disputing trials that common grasps based on tangible assertions, resulting from collective tests, are gradually embedded in ordinary practices and social representations[**ii**].

Engaging into an argumentative process puts one's basic beliefs at risk: a first reason for this is that one is confronted with other beliefs which challenge his own; a second reason lies in the fact that elements derived from different arguments may come into contradiction with the principles underlying our beliefs and our fundamental values. This explains why, in many debates, accepting to enter a genuine dialogic process quickly leads participants to seek a compromise if they are oriented towards consensus and cooperation - having recourse to various processes that can help them to close as soon as possible the discussion ("we will not argue on this point", "*this would lead us too far*"). In the case of a dissensus orientation, however, the figure that Lyotard (1988) refers to by the

concept of *différend* (or “deep disagreement”), leads to a defence crystallization in order to reduce the views of others and to literally bomb one’s opponent’s arguments so that the latter cannot respond, aiming at reducing the latter’s scope of intervention. In both cases, the use of argument involves the faculties of both action and emotions.

3. The Sociological Ballistics and the dynamics of public issues

In *Les Sombres Précurseurs* (“The Dark Forerunners”, Chateauraynaud & Tornay 1999), we have tried to distinguish the main configurations (or “regimes of action”) which operate as social frames and help actors to organize their actions and judgments. Events, actors and argumentations, and, *a fortiori*, scientific expertise, do not play the same role according to the configurations in which they are mobilized.

- In the use developed here, the word “Ballistics” has no deterministic connotation but rather deals with uncertainty of trajectories in complex processes. This is consistent with the questions the analyst may try to answer about controversies: how do actors detect the right trajectory for an alarm, criticism or mobilization to succeed, and symmetrically, why do they sometimes fail to convince, to mobilize and to achieve their goals?

We thus consider that collective actors are intentional ones and that they develop a ballistics. But does ballistics imply a teleological rationality? Not necessarily, if endowed with a pragmatic sense: that is if we look at variations and bifurcations, unexpected movements and effects, and at the same time, the capacity of actors to adapt, or not, from one context to another, to change their targets in the course of action. Unexpected events and intense moments of argumentation are privileged opportunities for identifying and understanding the turning points in a long series of disputes and mobilizations. The key moments of argumentation are crucial (critical) and play an important role in the shifts, from vigilance to alarm, from alarm to controversy, from controversy to polemics.

Different programmes, called “mapping controversies”, deal with such conceptual and methodological problems. But, rather than focusing on “topics”, we endeavour to follow “sets of actors and arguments”, and in place of reifying “networks”, we account for long-term transformations, in which visions of past, present and future are taken seriously with a strict symmetry. Furthermore, a socio-ballistics allows us to distinguish different phases: emergence (making new

signs and problems visible), controversy (agreeing or disagreeing on facts and matters of facts), claims, denunciations and polemics (defining victims, responsibilities and guilt), political mobilization (with the aim of modifying or defending law and conventions), normalization and regulation (putting in practice texts and rules, by involving many actors in a process of governance ...).

Fout! Objecten kunnen niet worden gemaakt door veldcodes te bewerken.

We shall speak of argumentative convergence when different arguments are brought together in order to strengthen a standpoint or a position in a field crossed by social tensions and forces, creating a justificatory system around an argumentative node. The difference between convergence and juxtaposition or addition – think of the arithmetics model of argumentation $A + B + C$ used by Bruno Latour (Latour 2005) – is crucial: convergence supposes that different argumentative logics are linked by a form of solidarity – in the case of addition, you can cut one element without affecting the others. For instance, the strength of argumentative devices like the ones used by many activists comes from the articulation of risk issues, democratic questions, governance of sciences by competition and the critique of the “new big brother” developed by states and firms under the concept of “global security”. Another good example of argumentative convergence is provided by the GMOs case: in France, anti-GM movement has succeeded in bringing together a health and environmental issue and an economical struggle about property on seeds in agriculture. In order to identify and analyze the way in which a convergence or a divergence occurs, over time, in argumentative devices, we must focus on indicators and marks, often forgotten by social analysts. The following section, devoted to French adverb “*désormais*” [from now on], aims at illustrating the way a focus on a specific linguistic device can contribute, in connexion with the scrutiny of other temporal organizers, to the ballistics of a specific controversy.

4. The temporality of debates: events and discourse. The case of “désormais”

Let us now try to show how the observation of specific linguistic devices may serve the general research programme outlined above.

According to French grammarians (*e.g.*, Pinchon 1969, p.74), “*désormais*” [from now on] is considered as having a durative value, as is the case with “always” or “never”: it marks the beginning of a period which is supposed to continue unbroken for a certain time. In that, it contrasts with adverbs indicating the moment in which an action takes place (“yesterday”), its frequency (“often”,

“seldom”) or the ordering of the events (“then”, “before”, “after”).

“Désormais”, like “depuis” [since] and “dorénavant” [from now on, henceforth], indicates the beginning of a period that is at stake. It may have a framing function (Le Draoulec & Bras 2006) when it appears at sentence initial position. From this position, the adverb has scope over all the sentences that follow it in paratactic coordination as in example 2:

(2) *Désormais*, on connaît parfaitement l'état des centrales à l'Est ; on les inspecte régulièrement ; leurs opérateurs sont formés en Europe ou aux Etats-Unis ; on leur fournit simulateurs, ordinateurs, systèmes d'alarme. (corpus nucléaire)

From now on, the condition of the nuclear power station in the Eastern Europe is well-known; inspections are carried out on a regular basis; the operating staff is trained in Europe or in the United States; they are provided with simulators, computers, alarm devices.

“Désormais” poses a temporal scheme characterized by the stop of an ongoing process at the present moment. The so-called “present moment” may be identified with a specific event that occurred recently, or may be assimilated with the very moment in which the sentence is being uttered. The period which follows this stop is presented as homogeneous and lasting, if not as irreversible.

When combined with future tense, and under certain conditions (which will be detailed below), “désormais” may gain a performative value: it is presented as if, by its very utterance, it could make happen the period that starts after the temporal breach. This performative value may be illustrated with the use of “désormais” introducing local conventions in scientific papers as in example 3:

(3) Cet article s'inspire des réflexions issues de la théorie de l'Argumentation dans la Langue (*désormais* AdL).

This paper builds on insights from the Argumentation Within Language Theory (*henceforth* AwL).

Along the same lines, the performative value of “désormais” may be illustrated by examples issued from political discourse. For instance Nicolas Sarkozy, since his election as President of France, hammers in his public speeches his will to profoundly re-orientate French politics and to inaugurate a new era through various political reforms. Such an ambition is associated with the recurrent use of

the adverb “désormais”. Here is an example of the speech he delivered in July 2008 at the Conseil National de l’UMP:

(4) Nicolas Sarkozy : moi j’ai été élu pour agir/ (.) j’ai été élu pour conduire un mouvement de réformes SANS précédent\ (.) dans notre pays \ (.) et j’veux dire à nos partenaires européens\ (.) la France est en train d’changer\ (.) elle change beaucoup plus vite\ (.) et beaucoup plus profondément qu’on ne le croit\ (.) *désormais*/ (.) quand y a une grève ne France personne ne s’en aperçoit [souriant, bras ouverts en fin de phrase] [applaudissements, rires] *désormais*/ (.) cher Jean-Claude Gaudin (.) on peut réformer les ports (.) parce qu’on est JUSTE (.) *désormais* on peut dire que l’problème de la France (.) c’était qu’on travaillait pas assez (.) alors que le monde ne nous attend pas (.) on peut réformer profondément (.) les 35 heures (.) *désormais* (.) on peut faire la politique pour laquelle on a été élu\ (.) tout simplement parce que j’n’ai pas menti aux Français (.) avant l’élection/ (.) et j’n’ai pas davantage l’intention (.) de leur mentir (.) après\ (.) je vous remercie\ [fin du discours]

Nicolas Sarkozy: I have been elected in order to take action, I have been elected in order to lead a reform movement WITHOUT precedent in our country. And I want to tell our European partners that France is in the process of change. It is changing faster and a lot more profoundly that one can imagine. *From now on*/ (.) when there is strike in France none will notice [smiling, opens hands at the end of his sentence] [applauds, laughs] *from now on*/ (.) dear Jean-Claude Gaudin (.) we can reform the ports (.) because we are CORRECT (.) *from now on* we can admit that the problem of France was (.) that we were not working ENOUGH (.) but the world is NOT going to wait for us (.) we can reform PROFOUNDLY (.) the 35 hour workweek (.) *from now on* (.) we can take the political decisions for which we were elected \ (.) simply because I did not lie to the French people (.) before the elections/ (.) and I do not have the intention (.) to lie to them (.) afterwards\ (.) thank you\ [end of speech]

The expression of the will to change French political scene comes before a succession of four instances of “désormais”. Nicolas Sarkozy identifies the turning point that is marked by this adverb with his accession to the Presidency. The first instance of “désormais” introduces some kind of mockery dear to the President. The following three “désormais” characterize the opening era by the emergence of new potentialities, marked by the repetition of “désormais, on peut” (“from now on, we can ...”)

“Désormais” gains a performative value because of various characteristics of the speech situation:

- First, the fact that it appears at the end of the speech, which is usually a strategic position for public, media-covered, political discourses;
- Second, the sentence initial position of “désormais”, which constitutes a linguistically strategic position;
- Third, the fact that the speech, at this moment, is addressed to Nicolas Sarkozy’s European partners, which confers a certain degree of solemnity on it;
- And finally, the fact that “désormais” is uttered by the Head of the State, who is (or at least, is supposed to be) in a position to make the announced change happen.

In brief, it is because Nicolas Sarkozy says that, under the above specified circumstances and in this specified phrasing, that the periodization introduced by “désormais” stands for a political commitment.

On the basis of the preceding linguistic observations, one can suggest that “désormais” constitutes an interesting indicator of the construction and modification of the key moments of a controversy. It often testifies for the arguers’ disposition to leave behind them a disowned or, on the contrary, idealized past and to picture themselves in a more or less reversible future which may be hoped or feared. In close connection to this temporal function, “désormais” may re-define the repertoire of arguments available at some point of a controversy.

From this perspective, the case of the nuclear controversy is exemplary: no doubt, there is a “before” and an “after” Chernobyl. The accident of the Ukrainian nuclear plant was argumentatively constructed as a breaching point of the debate, and was used to disqualify former acceptable arguments, such as the accusation of gloom-mongering addressed to the anti-nuclear activists. In example 5, “désormais” helps to elaborate a chronology of the events discussed in the nuclear debate that is argumentatively significant:

(5) Or la catastrophe de Tchernobyl a porté un rude coup aux programmes nucléaires occidentaux, *désormais* en pleine récession. (*L’Événement du Jeudi*, 18/04/1996)

Now the Chernobyl disaster has dealt a serious blow to western nuclear programs, which suffer *from now on* from a severe recession.

The remainder is a brief case study on the role of “*désormais*” as a temporal organizer of a debate on four main controversial issues: GMOs, Nuclear power, Asbestos and Nanotechnologies.

The first range of observations that the study of “*désormais*” permits is the identification of the events presented as turning points, as marking breaches in the controversy that may re-define the arguments considered as relevant at a given moment of the debate.

Such a turning point may be explicitly matched with a specific event in the sentence that contains “*désormais*” or in the larger co-text. It may consist in:

An administrative or judicial decision that imposes new norms:

(6) La directive EURATOM du 13 mai 1996 fixe *désormais* les coefficients de dose pour chaque tranche d'âge. (corpus nucléaire)

Euratom n°96-29 directive of 13 May 1996 sets *from now on* the maximum permissible doses for each age bracket.

-A political decision which may have consequences on connected domains:

(7) Dans l'ex-Union soviétique et aux États-Unis, en raison des programmes de démantèlement des armes nucléaires, des quantités considérables de plutonium sont *désormais* disponibles et peuvent être utilisées à la production d'énergie ou doivent être mises à l'abri de détournements à des fins belliqueuses. (corpus nucléaire)

In former Soviet Union and in the United States, because of nuclear weapons disarmament programmes, considerable amounts of plutonium are *from now on* available and may be used for the production of energy or they have to be protected from any traffic for military purposes.

- A technical test which may define a new state of knowledge :

(8) Mais nous avons fait des tests et nous sommes *désormais* sûrs qu'il n'y aura pas de problème lors du passage à la nouvelle année. (corpus nucléaire)

But we made some tests and *from now on* we are sure that there won't be any problem on the arrival of the New Year.

In connection with the identification of the event pointed at by “*désormais*”, the analyst may also discern the characteristics of the new period.

- The rupture may be epistemic, and “*désormais*” may introduce a period characterized by a new state of knowledge. In turn, this state of knowledge may act upon the arguments that may henceforth be advanced on the issue at stake. From a Perelmanian perspective, arguers try thus to re-define which “facts and truths” are likely to provide “points of agreement” on the disputed matter (Perelman & Olbrechts-Tyteca 1988, p. 89).

Example 9 shows *a contrario* the connection between the definition of new points of agreement and argumentation. The speaker, who is a scientist, admits the validity of studies which establish a connection between nuclear tests and increasing thyroid cancers. Nevertheless, he tries to disconnect these factual assertions from political or judicial claims they might support (claim for a compensation for the Mururoa and Fangataufa veterans).

(9) Si le lien entre essais nucléaires et taux anormalement élevé de cancers thyroïdiens est *désormais* “acquis”, la prise en charge des soins des vétérans de Moruroa et Fangataufa paraît-elle légitime ? Je ne veux pas me prononcer là-dessus, je suis un scientifique. (corpus nucléaire)

Assuming that the connection between nuclear tests and an abnormally high rate of thyroid cancers is *from now on* established, are the Moruroa and Fangataufa veterans justified in demanding the reimbursement of their treatment? I don't want to take a stand on that, I am a scientist.

It's up to scientists to bring an epistemic breach in a controversy; it is up to the social actors to draw the political conclusions from the new state of knowledge. The fact that this scientist has to make explicit his argumentative neutrality shows how plausible the argumentative interpretation of his epistemic claim was.

- The rupture may also be deontic. A statistical survey of our four corpora shows an important rate of “*désormais*” associated with deontic expressions or markers of normativity or juridicity, such as “we must / have to”, “we cannot... anymore”, “it is mandatory to...”, “it is imperative that...”.

(10) Le POE rapproche encore un peu plus toutes les fonctions nécessaires à l'exploitation des tranches, mais sa situation interdit *désormais* la reproduction d'une tranche 2 par simple translation de la tranche 1. (corpus nucléaire)

The Operational Pole of Exploitation brings even closer all functions necessary for

the exploitation of the blocks, but its location precludes *from now on* the reproduction of a block 2 by a simple transfer of block 1.

(11) Le Conseil des Ministres de la Communauté a également définitivement approuvé la directive concernant l'étiquetage des produits à base d'amiante et les recommandations qui devront *désormais* y être incluses. (corpus amiante)

The Council of Ministers of the Community has also approved permanently the directive dealing with the labelling of asbestos-based products and the recommendations that will have to be included *from now on*.

The event pointed at by "désormais", in this case, is often a political, administrative or judicial decision, which induces a characterisation of the period in terms of emerging constraints on rights and obligations.

Finally, given the content of the controversies we studied, which are connected to science and technology, "désormais" often introduces a new era characterized by new technical possibilities. "Désormais" is then associated with terms such as "to permit/allow", "be able", "be capable", "can", "possible"...

(12) Il est *désormais* capable d'effectuer 135,5 mille milliards d'opérations par seconde, laissant loin derrière lui son concurrent direct, le japonais Earth Simulator de NEC. (corpus OGM)

From now on it is capable of carrying out 135,5 thousand billions operations per second, leaving far behind its direct rival, Japanese NEC Earth Simulator.

(13) L'homme sait *désormais* intervenir à cette dimension, qui est celle de la molécule, là où les lois de la Physique classique ne s'appliquent plus et où les effets dits quantiques permettent des réalisations inouïes. (corpus nanos)

From now on one knows how to operate at the scale of molecules, where laws of classical physics do not hold anymore and where the so-called quantum effects allow unprecedented achievements.

The connection with argumentative matters here might lie in Aristotle's locus which specifies that in a deliberative context, what is possible should be preferred to what is impossible. More generally, claiming that a given line of action is feasible is a prerequisite for taking a stand on this action, be it for supporting it or for deterring the audience from adopting it.

To conclude, the present paper is part of a research on the temporal dimension of controversies. Of course, the focus on “désormais” we adopted here does not claim to exhaust the question. We only suggest that adverbs like “désormais”, in association with other temporal organizers, constitute interesting clues to investigate the discursive elaboration of the temporal dynamics of controversies. “Désormais” thus allows the analyst to identify the events presented as significant by the arguers, inasmuch as they constitute turning points of the debates. The periodization introduced by “désormais” may then be characterized in terms of the constraints imposed on the argument repertoire, to the redefinition of which this adverb contributes. Such an analytical approach, rooted in argumentation theory and discourse analysis, may fruitfully serve a socio-ballistics of controversies, which aims at accounting for the trajectories of sets of actors and arguments, as well as for the emergence of argumentative convergences or divergences.

NOTES

i In this paper, « pragmatic » refers to a sociological trend developed in France at the end of the eighties (Boltanski & Thévenot 1991, Latour 2005). Born at the confluence of ethnomethodology, sociology of science and sociology of critique, this perspective links sociology with other pragmatic trends in philosophy, linguistics and sociolinguistics.

ii On the concepts of « grasp » [*prise*] and « trial » [*épreuve*], see Chateauraynaud 1997.

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ISSA Proceedings 2010 - Going

For Broke: The Meta-Argumentation Of Desperation Strategies



I have always been intrigued by Hans Reichenbach's pragmatic justification for induction (Reichenbach 1938; Salmon 1974). It is curiously compelling even as it leaves a lingering and unsatisfying aftertaste. The source for both its attraction and its aftertaste is its almost desperate appeal at the meta-argumentation level: we do not know if

anything will work to give us knowledge of patterns in nature - we cannot even assume that there are patterns in nature - but if anything will work, inductive reasoning will work!

When the conditions are right, desperation arguments can be very strong. Reichenbach's argument meets some of those conditions, but only some of them.

1. Measures for arguments

There is something exciting about desperation strategies like the "Hail Mary" passes on the last plays of American football games, when a team down to its last play throws caution to the winds and throws the ball up for grabs with hope and a prayer that it might be caught rather than dropped or intercepted, or the decision by a hockey team, down by a goal near the end of regulation time, to pull its goalie for a sixth attacking skater. The chances for success may be small and the risks may be high, but the potential payoff is great and they seem to be perfectly reasonable strategies in the circumstances. However, the reasoning behind those strategies is worth a closer look because not all structurally identical arguments are as compelling as Reichenbach's appeal. We need the resources to tell them apart.

The primary resource is logic, but it only goes so far. Having been taught very well by a logician, we know that it is wrong to say that the present king of France is bald. He also thought it is wrong to say the past king of France was bald, but most of us never paid as much attention to that part of the lesson (Russell 1905, pp. 484ff.). Extrapolating, I suspect that most of us would also shy away from saying that the future king of France will be bald.

Although both “The present king of France is bald” and “The past king of France was bald” fail to describe the situation, they miss the target in different ways, and the difference becomes immediately obvious when they are put into conversational contexts. Anyone asserting that the king is bald would be corrected: “There is no king!” In contrast, someone making the assertion about the past king would be met with a request for clarification: “Which one do you mean?” If the only yardstick available is a semantic taxonomy consisting of just the two values true and false, the difference is lost. Truth-values are not enough (Strawson 1950). The dialogical context makes that clear.

And, of course, the same thing applies to arguments: the semantic axis is not a sufficient yardstick for all the measures we need to take. Some differences are visible only in context through a dialectical lens.

The future king of France presents an entirely different set of problems but philosophers of language have a well-stocked toolkit at their disposal to account for the future French monarch’s shortcomings as a subject: we can identify non-rigid designation or non-attributive referential uses of descriptions (Kripke 1980, pp. 3-15; Donnellan 1966) along with the various speech acts that might be performed using that future indicative sentence (Austin 1975, pp. 4-7; Ryle 1953, Ch. 2). Are we making a prediction, claiming clairvoyance of a sort, or giving reassurances to the wig industry? Perhaps it is someone declaring his intention of seating Frans van Eemeren on the throne: “The future king of France will be bald!” Before we can decide whether the target has been hit or missed, we need to determine which of the many possible targets was in the sights. The pragmatic perspective has to be brought to bear here.

And, once again, the same thing applies to arguments: the logical and dialectical axes are not enough. We need all the conceptual apparatus we can get! We would be remiss not to exploit all the available resources. Pragmatic considerations are especially important for argumentation theorists because arguments are at least geometrically, if not exponentially, more complex than single, discrete speech acts, but also because there can be so many different purposes and functions and goals and desiderata for arguments – ranging over logical, rhetorical, and dialectical considerations but also including social, epistemological, emotional, political, and ethical factors, along with many others. There are many, many more targets to hit or miss.

One particularly troublesome complication is that whatever the targets are for

any given set of arguers, they are moveable targets. The possibility of hitting the target and achieving closure cannot be assumed. Arguments are open-ended in at least three ways, representing three ways in which the target can be moved out of reach. First, as Aristotle and Pyrrho pointed out, there is the danger of an infinite regress in seeking justification for one's justifying premises. Second, procedural issues can always be raised, moving the argument to the meta-level. Going "meta" can be the first step in another sort of infinite regress (Krabbe 2007, p. 810 is a clever presentation of this). And third, stubborn or creative opponents can always raise new objections, press old ones, or simply refuse to acquiesce in any resolution by filibuster or turning a deaf ear (Cohen 1999). Together, they can be so densely intertwined that it is remarkable that closure is ever reached!

In practice, if the first concern is not put to bed in the opening stages of a critical engagement, it will be finessed further down the process as differences emerge from the common ground that makes argument possible.

The other two concerns, however, are less easily disentangled. The line between the dialectical tier and meta-level argumentation is permeable (Finocchiaro 2007). Ground-level objections to an argument can generally be recast as criticisms of the argument and comments about the argument. Conversely, much of what one might want to say on behalf of an argument can, and perhaps ought, to be included in the argument in the first place.

Of course, the fact that many objections can be cast as meta-commentary, and vice-versa, does not mean that they should be (Cohen 2007). The dialectical tier and the meta-level of argumentation are useful analytic tools for distinguishing otherwise comparable arguments, and that provides a compelling reason why the distinction between these two dimensions to arguments should not be collapsed. The "desperation arguments" behind those last-minute desperation strategies provide cases in point.

2. Reichenbach's "desperation argument"

What Reichenbach's pragmatic justification for induction has in common with Hail Mary passes is that both apparently invoke an "It's-this-or-nothing-so-it-might-as-well-be-this" kind of reasoning. The dialectical lens reveals some differences; taking a meta-perspective reveals others.

There is nothing inherently irrational about going for broke. What would, in some contexts, be a case of throwing caution to the winds can, in other contexts, be completely rational, a strategy sanctioned by all the resources of game theory.

After all, there is nothing in the least bit desperate about opting for the optimum strategy - and when nothing else can possibly succeed, the one strategy with any chance at all is obviously the best. That is, the arguments in support of desperation strategies need not themselves be desperate in any sense of the word.

What distinguishes desperation strategies is the willingness to accept normally unacceptable risks. Sixth attacking skaters do increase the chances for scoring goals all the time, not just at the ends of games. The downside is that to a much greater degree, they also increase the chances of giving up goals, thereby making it an unacceptable risk. Accordingly, let us reserve the term "desperation arguments" for those arguments that employ inferences and appeals that would be unacceptable in less extreme circumstance.

Reichenbach's argument on behalf of induction is just such an argument. It also has some pretty illustrious company in the history of philosophy including Pascal's Wager, James on the Will to Believe, and, in some renderings, Kant's transcendental arguments.

The pivotal premise in Reichenbach's reasoning is that whether induction works or not depends on the nature of the world, which is precisely what induction is supposed to discover. That is, the target conclusion of induction is that the world has discoverable regularities grounding our predictions about the world. The order of nature cannot, then, be a premise for justifying induction. Reichenbach's insight is that if the regularity of nature is a sufficient condition for the viability of induction, the viability of induction is a necessary condition for the regularity of nature - where the sufficiency of the order of nature is causal while the necessity of the viability of induction is epistemological. As he phrased it, "The applicability of the inductive principle is a necessary condition of the existence of a limit of the frequency [of a probabilistic occurrence]," i.e., of our living in what Reichenbach calls a "predictable" world. Therefore, if the world is at all predictable, induction will work. Contrapositively, induction won't work only if the world is unpredictable. But if the world really is completely unpredictable and induction won't work, then nothing else will work either! In other words, if anything works, induction works.

The conclusion, then, is the modest one that we are justified in using induction, not that induction works. What about our belief in induction; is the belief justified? As an act, yes, we are justified in believing that induction works. In

terms of the content of the belief, no, the proposition that induction works is not justified. It is a pretty palatable argument with a pretty bad aftertaste.

The most striking difference between Reichenbach's reasoning and the reasoning behind Hail Mary passes is urgency. The clock is running out on the football team but the problem of induction has been a philosophical staple for centuries and it will be around for centuries more. It is not going anywhere.

We are not desperate for an answer. We are, as Reichenbach's argument implicitly underscores, free to use induction even if it cannot be justified in the way that foundationalists would like or in a manner consonant with the Cartesian quest for certainty. The worst-case scenario in Hail Mary passes is what is already the almost inevitable scenario: losing the game. The worst-case scenario for Reichenbach would be either the dogmatism of insufficiently justified beliefs or the skepticism of only tentatively-held beliefs. Of course, there is no consensus as to how inevitable or how unobjectionable these positions are. Pragmatic fallibilism is, in effect, really just an amalgamation of the two. On even a modest externalist account of knowledge, we might not actually be deprived of any knowledge in this worst-case except possibly some of our second-order beliefs regarding which of our beliefs should be counted as knowledge - a fairly mild worst-case scenario by any reckoning!

3. Desperate circumstances

The decision to use a sixth skater at the end of an ice hockey game brings some additional factors into focus. As noted, it increases the chances of scoring a game-tying goal, but it also increases the chances of yielding a game-clinching goal for the other team even more, so it is not a very good strategy when down by a goal in the middle of the game when lower risk strategies are still available. The problem becomes one of figuring out at what point the balance scale between patience with persistent 5-skater attacks and resorting to 6-skater attacks tips in the other direction. While there is a very significant difference during the course of a game between being down by two goals rather than one, there is no real difference at the end of the game between having lost by one goal and having lost by two. At some point, the sixth skater becomes the best strategy.

Contrast the hockey situation with the following situation from a game of bridge. South, the declarer, has landed in a shaky contract. She is missing the king of trumps, the evidence from the bidding strongly suggests that it is probably in the West hand, to her left, but her only chance of winning is if the king turns up in the

East hand, to her right. Since that is her only chance, she adopts a line of play premised on the assumption that that is indeed where the king is. It is a risky strategy, the evidence is against the premise, but it is her only chance.

What differentiates this case from the hockey team's sixth skater is the fact that the risky strategy based on an unlikely assumption is not merely her best chance, it is her only chance to make the contract. Surely, that would make it a good strategy, right? Not necessarily. Context matters. It might not matter much whether a team loses by one goal or two, but in rubber bridge it does matter whether one goes down by one trick or two, and in duplicate bridge or tournament play it matters even more.

There are several important points of contrast with Reichenbach's argument.

First, the bridge example was set up as a genuinely desperate situation because of the negative evidence against the king being on the right. The justification for the strategy relies on an unjustified premise! That premise is too improbable to use in less urgent circumstances, but desperate times call for desperate actions. The urgency justifies the strategy. In contrast, not only is there no comparable urgency in the case for induction, but neither are there any useful probabilities to go on, neither to respect nor to override, when it comes to the premises. Probabilities, understood as the limits of frequencies, are part of what is at stake in induction.

Second, when the circumstances are right, the argument supporting the strategy of playing west for the king is very strong, and what makes it strong, is that it is both the only strategy that can succeed and, a fortiori, the best strategy. That makes dialectical closure very easy: to any objection that the strategy probably will not work there is the ready answer that there is no other option.

Reichenbach's argument has neither that source of strength nor the associated access to easy closure. He does not claim that induction is the only way to discover patterns in nature, and he does not conclude that it is necessarily the best way. All that is claimed is that if there are any ways to that knowledge, induction will be one of them. It could be that any world in which induction works will be a world in which other methods work even better. Consequently, Reichenbach cannot deflect objections the same way. The objections he can counter are those that question whether induction will in fact work (probability, remember, is not the issue). His reply would simply be, well, in that case nothing will work. It is not so much an admission of defeat as it is recognition that the

situation is desperate.

Third, the bridge game can be differentiated from the hockey case by context: in duplicate play, going down by two tricks might be significantly worse than going down by only one. There are still reasons for playing cautiously. There are no counterparts to degrees of defeat for induction, so any counter-considerations against throwing caution to the winds do not apply.

When it comes to induction, then, we find ourselves in a very curious spot: it is not a typical desperate situation because it lacks the urgency of, say, limited time, that characteristically licenses desperate action and it is not an appeal to the only or the best of a limited choice of options, but the usual constraints against acting desperately are also absent.

4. Arguments, strategies, and commitment

The resolution of the apparent paradox of permissible desperation in a non-desperate situation is, appropriately enough, pragmatist. What we need to do is subject Reichenbach's argument, which is itself an explicit meta-argument, to a meta-level analysis of its own. What, for example, is it trying to establish? What are the conditions necessary for its success and what, if it is successful, are the conceptual consequences? Is it the appropriate kind of argument to use here? One final comparison case will bring some additional relevant issues into greater relief.

An alcoholic, having hit rock bottom in her life - failed marriages, a ruined career, alienated friends, etc. - turns to Alcoholics Anonymous as a last resort. She commits to the twelve-step program in its entirety. The program requires that she surrender her life to a higher power, and even though she had never been able muster up that kind of faith before, she does so now because nothing else has worked and she is indeed desperate. "At that point, I had nothing left to lose," she later explained, "so it was either that or nothing." (The example is from a story on All Things Considered on National Public Radio.)

As in the bridge game, there is only one option that is regarded as having any chance at a success. Also like the bridge game, the crucial premise initially had little or even negative credibility. Theism was never something she could credit in her earlier life but, as we know, desperate circumstances call for desperate measures. The situation certainly qualifies as desperate, so the woman's post facto explanation apparently could just as easily have been a prior justification.

This is where the analogy with the bridge game begins to fall apart. The bridge player can act as if the king is on his right even though when push comes to shove he believes that in all likelihood it is not there. At the card table, acts and beliefs do not have to be in full agreement. That disconnect is what makes the strategy possible, but it is not available to the alcoholic. An essential part of what it means to surrender to a higher power is to believe in that higher power. The act cannot be separated from the belief because the act is first and foremost an act of belief. She cannot act as if she is completely surrendering to a higher power while at the same time harboring serious reservations about it. It would fatally compromise the commitment.

The analogy further deteriorates with respect to voluntarism. Perhaps the Red Queen can believe six impossible things before breakfast, but we cannot always simply choose to believe whatever we want, the way that we can adopt a strategy or a course of action. Some beliefs, at least, are more like events that happen to us than actions on our part. The difference is important because in the alcoholic's case it is a belief that is being justified, not merely a course of action - and a belief that she could not really credit. Still, even if faith involves incredible beliefs and is not something that can in the normal course of events be willfully chosen, the "miracle of theism" does happen, and it happened to the woman in question.

Finally, the comparison completely collapses with respect to when and what kind of justification is possible. The norm of antecedent justification was ruled out for this particular woman by everything in her world-view, thereby creating a dilemma. Analytically, the decision to adopt an unjustifiable strategy is itself unjustified. The decision to embrace an unjustifiable premise, if that were even possible, would be similarly unjustified. However, we cannot rule out the possibility that an antecedently unjustifiable, but momentous, choice will radically alter the agent's circumstances or her epistemic landscape, thereby becoming justifiable, albeit only in retrospect. In the alcoholic's case, we can say that since what was for her an antecedently unjustifiable choice did pay off, the decision became "retroactively justified" in the sense developed by Bernard Williams (Williams 1976).

Because of these three factors - the clear possibility of a disconnect between thought and action, the possible impossibility of being able to choose belief, and the problematic possibility of retroactive justification -- the bridge player and the alcoholic are in radically different epistemic situations.

How do things stand with Reichenbachian inductivists? Are they more like the bridge player or the recovering alcoholic in regards to their epistemic and strategic situations?

Prima facie, it is belief, rather than action, that is at stake. The context is epistemology, after all, and the focus of Reichenbach's discussion is explicitly the "principle" of induction, rather than any specific inductions. The practice of induction is not really the issue: it is a fact of our lives. We will continue to make inductions regardless. What is at question is its epistemic status.

Reichenbach's pragmatism is both more consistent and more extensive than the argument so far reveals. It extends beyond the consequentialist reasoning of desperation arguments to the nature of belief, and it dissolves the boundary between belief and action: "We do not perform... an inductive inference with the pretensions of obtaining a true statement. What we obtain is a wager" (Reichenbach in Pojman p. 500). That is, what gets justified is our expectations, attitudes, and behavior, not merely an academic's commitment to an abstract proposition. The content of the principle of induction is defined by the contours of the practice. Incidentally, this vitiates, but does not completely eliminate, the specific problem of voluntarism with respect to beliefs.

Since extreme desperation entails acting against our best beliefs, does that mean Reichenbach's pragmatism precludes the necessary and enabling disconnect between belief and action that we found in the bridge game? As is so often the case with pragmatism, the answer has to be a nuanced Yes and No because the constitutive concepts are evolving along with the discussion. Thus, Yes, Reichenbach's approach does get in the way of dissociating belief and action because he so conscientiously conflates them. It would be disingenuous of a Reichenbachian inductivist to say that he does not really believe the principle of induction but is just acting that way. When a pragmatist says he believes something, we must be careful in interpreting what he means by believing. What justifies action, justifies belief. There is, then, a new concept of justification in effect. Unlike its verificationist cousin, Pragmatist consequentialism is based on reasons for actions, broadly understood, rather than just evidence for propositions, very narrowly understood (Locke 1935).

Reichenbach is fully aware that no accumulation of evidence from the past could ever suffice close the book on justifying induction, so retroactive justification is not a possibility here, not even in the looser pragmatic sense of justification. But

perhaps even that kind of justification is unnecessary. We already are inductivist beings, and there is a lower bar for existing beliefs (Harman 1984).

On the other hand, we can also say No, Reichenbach's pragmatism is not inconsistent with distancing oneself from one's own beliefs because there is a new concept of belief in effect, too. The "principle" that Reichenbach is arguing for is a rule for action, not an abstract proposition. The goal of his argument is actually very modest, namely, that we agree to accept this guide to action at least on a trial basis. The lack of supporting evidence or the presence of undermining evidence is not a deal-breaker.

Pragmatist belief is characterized by fallibilism. While that serves to immunize pragmatists from dogmatism, it also acts as a damper on commitment. Pragmatist beliefs are held, if not at arm's length, then at least at a finger's breadth remove. If we wanted to put it ungenerously, we could say that pragmatists don't really believe their beliefs, at least not with the complete dogmatic conviction demanded by the 12-step recovery program of Alcoholics Anonymous.

Thus, even though the argument is presented as "It's this or nothing," it really isn't desperate in the same way as the other arguments. If successful, the conclusion is a pragmatically justified pragmatist's belief, i.e., the provisional adoption of a proposed course of action. It is not something that would satisfy hyper-cautious epistemologists, including both Descartes at one end and skeptics at the other, viz., a discrete proposition conclusively supported by a foundationally grounded proof. But neither does it qualify as epistemically reckless - or even particularly desperate.

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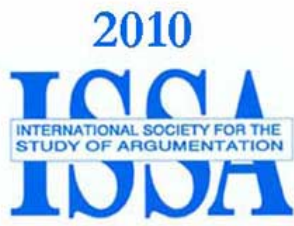
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ISSA Proceedings 2010 - Agent-Relative Fallacies



1. Introductory

My topic is an issue in the individuation and epistemology of fallacious inferences [i]. My thesis is that there are instances of reasoning that are fallacious not in themselves, that are not intrinsically fallacious, but are fallacious only relative to particular reasoning agents. This seems like a peculiar notion. It would seem that if it was fallacious for you to reason a certain way, and I do the same thing, I would be committing a fallacy as well. Bad reasoning is bad reasoning, no matter who is doing it. But it is useful to ask: What would it take for it to be possible for there to be such a thing as an agent-relative fallacy? Here are two sets of conditions, the obtaining of either of which would be sufficient for the existence of agent-relative, or extrinsic, fallacies. Type One is that there are two agents who are intrinsically alike, molecule-for-molecule doppelgangers, one of whom is reasoning fallaciously while the other is not, due to differences in their respective environments. The other scenario, Type Two, is that there are two agents (who are not doppelgangers) who engage in intrinsically identical instances of reasoning, one of whom reasons fallaciously while the other does not, due to differences located elsewhere in their minds that affect the epistemic status of their respective inferences. I will attempt to demonstrate that it is at least possible for agents to meet either set of conditions, and that in fact some people do meet the Type Two conditions, so agent-relative fallacies are not only possible, but actual.

2. Type One Agent-Relative Fallacies

So could there be agent-relative fallacies of the first sort, Type One, in which one of two intrinsically identical doppelgangers reasons fallaciously and one does not? For such a thing to be possible, I think it is necessary that a strong thesis of internalism, or individualism, about mental content be false. Mental content internalism is the view that the mental supervenes on the physical, meaning that there cannot be a mental difference between two agents without a physical difference between them. Content internalism is a somewhat beleaguered position nowadays, in part because of Hilary Putnam's famous Twin Earth thought experiment (Putnam 1975, *passim*) and arguments from Tyler Burge (Burge 1979, *passim*), in favor of content externalism. Putnam imagined a Twin Earth that is identical to Earth in every way, including Twin Earth counterparts of you and me and this podium, except that where we have water, Twin Earth has a liquid they call "water" that behaves just as water does, but which is not H₂O - its chemical

composition is XYZ. While the thoughts of a thirsty earthling turn to water, the denizen of Twin Earth has no thoughts about water, as she has never had any contact with water (i.e. H₂O). Instead, her thoughts run to the stuff that is XYZ, which we might call twin-water. The earthling and her counterpart are doppelgangers (putting aside of course that we are composed in part of water) who behave the same way and make the same sounds, but they are mentally different, since one has water beliefs and desires, and the other does not (provided that content externalism is correct).

Suppose externalism is correct, and molecule-for-molecule doppelgangers can differ mentally. What one is thinking would not be an intrinsic feature of a thinker. Could this engender as well situations in which one doppelganger reasons fallaciously and one does not? Here's how it seems that it might. A widely noted feature of content externalism, for better or worse, is that it seems to undermine to an extent one's introspective knowledge of one's own thought contents. In particular, it seems to allow for errors about comparative content – that is, errors as to whether two thought tokens have the same or different contents, because the sameness or difference in content of two thought tokens depends in part on the respective connections to the environment those thought tokens have, and that's something that is unavailable to introspection, and about which it is easy to be mistaken. For example, one might suppose that one's assent to the sentence “water freezes at 0 Celsius” and one's assent to the sentence “water is now running from the garden hose” mean that one has two beliefs involving the same natural kind concept, *water*. But suppose that one has moved, unawares, from a water-environment to a twin-water-environment, and that the general belief about the conditions at which water freezes was prompted by experiences long ago with water, and is sustained by memories of water, while the current belief about what is coming out of the garden hose is caused by one's perception of twin-water. It is plausible in this circumstance to suppose, if content externalism is right, that one believes that *water freezes at 0 Celsius* and that *twin-water is coming out of the garden hose*, despite the fact that one takes oneself to be employing the same natural kind concept in both instances. Suppose then it occurs to one to infer from those beliefs that *something is both coming out of the garden hose and freezes at 0 Celsius*. This will appear to be valid to the agent, an instance of lambda-abstraction (x is F; x is G; thus something is both F and G), but it will not be valid because the agent equivocates, using a term with different contents in the different premises, and trades on the supposed identity

of content in inferring the conclusion. (I am taking it that the different meanings of 'water' in this argument are sufficient for it being equivocation even though in a fairly straightforward sense the subject seems to be guilty of no shortcoming with respect to her *logical* skills.)

The example might seem too fanciful, as it involves someone being switched unawares from Earth to Twin-Earth (and the notion of Twin-Earth itself is a bit dubious, as it may be physically impossible for there to be a substance that superficially is just like water but has a different molecular substructure). But Tyler Burge's version of externalism holds that an individual's thought contents can be dependent on the practices of the linguistic community to which she defers, and switching unawares from one linguistic community to another is not so far-fetched. For instance, the word 'billion' picks out different numbers in different English speaking linguistic communities. The US has always used the "short scale", on which 'billion' picks out 1,000,000,000 (ten to the ninth power, or a thousand millions). Although this short scale is becoming the dominant scale, there is a long scale according to which 'billion' refers to ten to the twelfth power (or a million millions - a trillion on the short scale). The long scale was operative in Australia, among other places, and is still used on some official documents. Suppose Suzy was raised partly in Australia (when the long scale was popular there) and partly in the US and belongs to both linguistic communities equally. Suppose further that Suzy doesn't know exactly how many a billion is, just as I - I must admit - do not know exactly how many is a googolplex. Just as I can have beliefs that employ the concept of *googolplex*, such as my belief that a googolplex is larger than a trillion, even though I do not know how many a googolplex is, Suzy can have beliefs that employ the concept (or *a* concept) of *billion* without knowing how many a billion is.

Suppose Suzy is living in Australia for the summer and reads in an Australian newspaper that "The US national debt is \$13 billion" and she confirms this in her economics class at an Australian university. She comes to believe the (true) proposition expressed by that sentence. That winter she spends in the US and there she reads about Bill Gates and his net worth of \$53 billion, and she comes to believe that true proposition too. She defers to the experts and the rules in each of her linguistic communities, intending to mean by 'billion' whatever that terms means in her community. Now it occurs to her to put together her true beliefs about the US national debt and about Gates' net worth, and she concludes

that Gates has more than enough to pay off the US debt (although of course this is not the case). As with the water/twin-water inference, one probably would be reluctant to question Suzy's logical acumen, but it looks like she equivocates (provided that Burgean social externalism is right), and she is open to at least some degree of reproach, for not making sure that she was not doing this. (Though I think you could construct examples where this linguistic shift is so subtle that she's not subject to any reproach at all.) And had both of her linguistic communities used the short scale, she could have had the same experiences and have been the same from the cranium in, but she would not have equivocated, as the premise expressed by "The US national debt is \$13 billion" simply would have been false. So *what* she is thinking - and whether she is thinking fallaciously - is not an intrinsic feature of hers. ('Chicory' and 'football' are also examples of terms that have different extensions in different English-speaking communities, but which are similar enough that there is a potential for this sort of confusion.)

There are several ways of resisting this conclusion but I do not think any of them work. For instance, one might insist that because Suzy's inferential behavior indicated that she took the concept expressed by "billion" to be the same in each inference, it must have been the same concept each time. So there must have been a false premise, but no equivocation and no logical error. This has some appeal, as we are reluctant to judge this victim of the vicissitudes of travel as logically deficient. But this, it seems, is to reject content externalism in favor of some sort of internalist theory of the individuation of mental contents, an inferential role theory of some sort. So the first kind of extrinsic or agent-relative fallacy is possible on the condition that content externalism - a leading theory of mental content - is the case. And the sort of content externalism that must be true here is not necessarily as strong as the sort claimed by Putnam and Burge. All you need, I think, is that at least indexical or demonstrative thoughts - involving 'here', 'I', 'now', 'that' and so forth - are individuated in an externalistic manner. For example, from 'You said hello' and 'You smiled', it follows that you both smiled and said hello, only if 'you' picks out the same person each time (and perhaps that you have good grounds for supposing that it does as well). (I'm assuming here that as long as the term is indexed the same way in each premise, or the same thing is demonstrated, and the agent is entitled to suppose that it does, then the conclusion follows validly. David Kaplan has argued against this, actually (Kaplan 1989, pp. 587-590), saying that the *potential* for distinct referents, when there are distinct demonstrations, creates the *actuality* of

equivocation. So it is fallacious, on his view, even if the same object is demonstrated each time. This implies that one cannot deductively reason with premises using demonstratives, or at least not in a way that depends on the identity of the distinctly demonstrated demonstrata. I do not think this is a good idea, though, as the 'water' and 'billion' examples, and cases of two people with the same name, show that there is the potential for distinct referents in a much wider set of situations. I think this too narrowly circumscribes the sort of terms with which we can deduce.)

The possibility and actuality of Type One agent-relative fallacies thus depends only on a fairly plausible metaphysical claim about the individuation of mental thought contents.

3. Type Two Agent-Relative Fallacies

The second type of agent-relative fallacy is that an inference is fallacious for one agent but not for another, because of differences elsewhere in their minds that affect the epistemic status of their respective beliefs. This is to be in a way holistic about fallacies, maintaining that whether an inference is fallacious depends not just on that inference considered in isolation, but on the rest of the agent's web of beliefs as well. One way to illustrate this (and this example is due to my colleague Michael Veber) is to consider the case of *ad verecundiam*, or irrelevant appeal to authority. *Ad verecundiam* is committed when someone argues for a proposition by pointing out that some authority or expert has asserted that proposition, when in fact the proposition is outside the authority's area of expertise. Of course, it can be hard to say whether something falls within one's area of expertise or not, as expertise can be a matter of degree. Suppose I say that we should accept the claim that there is probably intelligent life elsewhere in the universe because scientists Carl Sagan and Stephen Hawking have said so. It would be a commission of *ad verecundiam* to accept a proposition that falls within the purview of science, broadly, just because some famous scientists have asserted the proposition, but it would not be if one had evidence that the proposition was within those scientists' area of expertise. So I take it that whether the appeal to authority is fallacious or not depends not just on whether the cited experts are genuine experts on the matter at hand, but also on whether one has good grounds for taking them to have such expertise. Were I to defend a claim about string theory on the grounds that it was asserted by a stranger on the train, I would be guilty of *ad verecundiam* even if it so happened that this

stranger were, unbeknownst to me, the world's leading expert on string theory. So it seems plausible that two people could make the same appeal to the same authority in defense of the same claim and that one does so fallaciously and one does not, because one lacks the right sort of evidence about the authority's expertise and the other has it.

I suppose that you could resist the claim that these two people with different evidence available to them nevertheless made the *same* appeal to authority, as adducing the evidence of expertise is *part of* the appeal to authority. If the appeal to authority really were the same for each person, then the one agent's superior evidence isn't playing the role that it would need to, in order to stave off *ad verecundiam*.

So consider another type of case. Various philosophers have theorized that particular forms of inference are fallacious - or at least that they don't confer justification on their conclusions. David Hume (arguably) thought this about induction, William Lycan and Vann McGee have argued that *modus ponens* (or at least some instances of it) are invalid, and Baas van Fraassen has argued against abduction (or inference to the best explanation). Let's take van Fraassen. He's argued that inference to the best explanation, or abduction, doesn't confer justification on its conclusions because - and this is just one reason among several - for any good explanation E of a set of data, there is an infinite number of equally good explanations of the data that are inconsistent with E (van Fraassen 1989, p. 146). Van Fraassen is a brilliant philosopher and he has evidence against abduction, but we shall suppose that he is wrong, and that inference to the best explanation is a legitimate way of inferring justified conclusions. Suppose further that while he tries to abstain from inference to the best explanation in his daily life, he frequently engages in it anyway. (C.S. Peirce, who introduced abduction to modern logic, thought that abduction was the first stage of all reasoning, and that nobody could avoid it.) Van Fraassen, for instance, receives a paper from a student that is a word-for-word duplicate of a paper published years ago by a notable philosopher, and infers that the paper is likely plagiarized, rather than that the exact similarity between the papers is a matter of coincidence. So abduction is (generally) not a fallacious form of reasoning, van Fraassen engages in abductive reasoning on a daily basis, but he has a theory that abduction is fallacious and must be eschewed. What are we to say about the status of van Fraassen's own abductive inferences?

Well, they are not fallacious in the sense that they have a form that is particularly likely to lead to error. Presumably, van Fraassen is no more likely to fall into error using abduction than anyone else is; we will stipulate that. There is a question, though, as to whether he'd be epistemically justified in the conclusions he reaches through abduction, given that he has reasons to think abduction is no good. So for this sort of agent-relative fallacy to be possible - where an otherwise perfectly good inference is fallacious because the agent has evidence that it is fallacious but employs it anyhow - two things need to be the case. *One* is that it is sufficient for a truth-preserving inference to be fallacious that it fails to preserve epistemic justification. *Two*, it must be the case that if an agent has evidence that a particular sort of inference is fallacious but draws that inference anyhow, then she is typically epistemically unjustified in the conclusion that she draws. This would mean that the evidence that van Fraassen has against abduction would be a defeater for the particular abductive inferences he makes. If these conditions are met, then the van Fraassen abductive inferences (and similar cases) would be fallacious (even though they are just like yours and yours are not fallacious).

So, the first one: for an inference to be fallacious, is it sufficient that it be unable to deliver epistemic justification of the conclusion, even if the inference is truth-preserving? Well, the question of how to define 'fallacy' has proven quite difficult, and is necessarily beyond the scope of this short paper, so I will just point out that it is difficult to distinguish between fallacies and non-fallacies without bringing epistemic justification into it. Consider 'this entire throne is made of gold, thus the seat of this throne is made of gold'. This does not seem fallacious though superficially it is fallacy of division, and I think this has something to do with the fact that belief in the conclusion is epistemically justified by the premise.

The second condition: if one has evidence a particular inference type is fallacious, but one goes ahead and employs it anyhow, would one's resulting conclusions be unjustified? Let me point out that to answer 'yes' here is not to commit *tu quoque* (as when one says 'your argument in favor of vegetarianism fails, because you're eating a hot dog right now!'); rather, a 'yes' answer would mean that evidence about one's evidence can undermine one's justification for first order propositions, as one must respect the evidence one has about one's evidence. So the situation is not just that one's beliefs are at odds with one's inference, but that one has evidence against the reliability of the inference that one is not

properly respecting. To assert that if one has evidence that an inference type is fallacious, but one draws inferences of that form anyhow, then the inference is epistemically unjustified is perhaps to endorse the following *epistemic descent* principle (a principle moving from second-order epistemic claims to first-order ones[**ii**]):

(EDJ) If S believes with justification that y is unjustified (where y is an inference rule), and S believes that p only as a result of employing y, then S's belief that p is unjustified.

This is not to say that in order for a first-order belief to be justified, one must have any particular second-order belief about the first-order belief – surely children may have justified first-order beliefs even if they lack any second-order beliefs – but that one must *not* have a justified second-order belief that the first-order belief is unjustified. In fact, a stronger principle seems defensible:

(EDU) If S believes without justification that y is unjustified, and S believes that p only as a result of employing y, then S's belief that p is unjustified.

The idea here is that as long as one does believe that a particular first-order belief is unjustified, it would be unjustified for that agent. This is one strand of a broader view: defeaters themselves don't need to be justified in order to defeat justification. (For instance, although one is normally warranted in relying on her memory in forming beliefs about the past, one is not warranted in doing so if one is convinced that her memory is unreliable. This is so even if her reasons for thinking her memory to be unreliable are poor ones – that she believes it is sufficient to make her unjustified in forming beliefs about the past based on her memories.) To commit *tu quoque*, though, one would say that because the agent believes the inference rule is unjustified, or sometimes acts as if it were unjustified, the agent's conclusions gotten through the use of that inference rule must be *false or dismissable*. The epistemic principles above, which underwrite the supposition that there may be Type Two agent-relative fallacies, claim only that the agent's second-order beliefs about justification can defeat the agent's *epistemic justification* for certain first-order beliefs. Very possibly, they would *not* defeat the epistemic justification for someone who lacks the relevant second-order beliefs.

Perhaps we should reject (EDJ) and (EDU), however. Reliabilist theories (which say, in their crudest form, that knowledge is true belief generated by a reliable process and that justified belief is any belief generated by a reliable process) are

thought to counter the intuition behind such principles as (EDJ) and (EDU). So perhaps to get the verdict that one in the van Fraassen situation reasons fallaciously, one must adopt some sort of evidentialism or internalism about epistemic justification, and reject reliabilism. But it isn't so simple. Reliabilism has problems in characterizing processes. Is abduction the process van Fraassen employs in his daily life, drawing conclusions about student plagiarism and many other things? Yes, but so is 'trusting a source when one has evidence it is untrustworthy' or 'dismissing the testimony of an expert epistemologist on the subject of epistemology' and others, which are unreliable processes. (I am indebted to Richard Feldman (2005, *passim*) here.)

Additionally, if a reliabilist theory includes a "no defeater" condition, as Alvin Goldman's in fact does, then having evidence that abduction is unreliable can make one's abductive inferences unjustified, whereas one who had never given abduction any thought at all, would be justified in her abductive inferences. (Perhaps this is another case of epistemology destroying knowledge.) So it is unclear exactly what the verdict of the major epistemic theories would be for a case like this one. There is no clear reliabilist road to denying the possibility of Type Two agent-relative fallacies (by way of denying (EDJ) and (EDU)), as various forms of reliabilism allow that one's evidence about one's evidence can affect the epistemic status of one's first-order judgments.

4. Conclusion

In this paper, I've explained the notion of an agent-relative fallacy and I've defended their plausibility. The possibility of such fallacies does not depend on the truth of any outrageous claims. In Type One cases, the thesis that the fallaciousness of an agent's inference is an extrinsic feature of the agent is dependent principally on the thesis that what an agent is thinking is an extrinsic feature of the agent (as per content externalism). In Type Two cases a particular inference is fallacious for one agent but not for another because the inference is epistemically justified for one agent, but not for the other. All we need here are plausible - even to reliabilists - epistemic descent principles about the possession of epistemic defeaters.

NOTES

i I am grateful to Michael Veber, and to many members of the audience from my presentation on 1 July, 2010, at the Seventh Meeting of the International Society for the Study of Argumentation, in Amsterdam, for very helpful comments on an

earlier version of this paper.

ii An epistemic ascent principle, on the other hand, moves from first-order epistemic claims to second-order ones. The so-called “KK” principle – if S knows that p, then S knows that S knows that p – is probably the best-known example of an epistemic ascent principle.

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