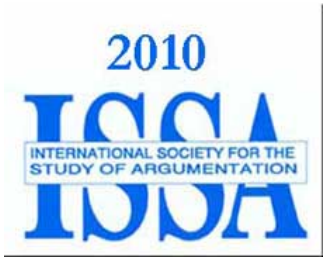
ISSA Proceedings 2010 – "Toulmin's Analytic Arguments"



1. Introduction

In this paper **[i]** I explicate and evaluate the concept of "analytic arguments" that Stephen E. Toulmin articulated in his 1958 book, *The Uses of Argument*. Throughout this paper I will refer to the 2003 Updated Edition, the pagination of which differs from the original, but aside from a new preface and an improved index, the text of which has remained unchanged.

My thesis is that Toulmin's definition of analytic arguments, and his corresponding distinction between analytic and substantial arguments, is unclear: it is therefore a mistake to employ the analytic-substantial distinction as if it is clearly established. Furthermore, I suggest that the distinction is not a crucially important component of Toulmin's model of argument layout, *contra* his claim that it is. I find that the agenda that Toulmin helped to inspire, of rejecting formal and other deductive standards as the paradigm of argument cogency and inference appraisal (cf. Gerristen, in van Eemeren, 2001; and Govier, 1987 and 1993), can safely proceed without trying to redeem Toulmin's definition of analytic arguments, or the analytic-substantial distinction. We should therefore bracket Toulmin's concept of analytic arguments, untroubled by the analytic-substantial distinction or its confusing formulation, while continuing to investigate the still contentious, but more valuable aspects of his theory of argument macrostructure, such as the nature of warrants and their field-dependent authorization.

My motivation is threefold: 1) Toulmin called the distinction between analytic and substantial arguments a "key" and "crucial" distinction for his 6-part model of argument macrostructure, attempting to ground that model in an anti-deductivist framework; 2) when they mention it at all, commentators of Toulmin's model (early and contemporary, critical and sympathetic, alike) usually gloss the distinction too simplistically, tacitly suggesting that it can be unproblematically explicated while nevertheless giving diverse interpretations of it; 3) when scholars neglect to take account of Toulmin's conception of analytic arguments and of the analytic-substantial distinction, they still illuminate other aspects of

Toulmin's model, profitably moving scholarship forward concerning issues such as Toulmin's influential concept of "warrant" (e.g. Freeman, 1991 and 2006; Hitchcock, 2003 and 2005; Bermejo-Luque, in Hitchcock (Ed.), 2005; Pinto, 2005; Klumpp, 2006; Verheij, 2006).

This paper will proceed as follows: First, because of considerations of space, I will provide only a brief synopsis of the problematic glosses of analytic arguments that commentators of Toulmin's model put forward.

Second, I will explicate and evaluate the "tautology test" for analytic arguments, showing that Toulmin inconsistently offers it as being *un*-authoritative. I indicate the confusing way formal validity is tied up with this first test for analyticity, showing that the tautology test does not help us to identify analytic arguments, as Toulmin asserts it sometimes does.

Third, I will explicate and evaluate the "verification test", showing that Toulmin inconsistently offers *this* formulation as being the *authoritative* one for analytic arguments. I suggest that like the tautology test, it also does not always help us to identify analytic arguments.

Finally, I will offer a summary of and response to Freeman's insightful comments on my interpretation (private correspondence, 2010). While his proposed interpretation of Toulmin's formulation of analytic arguments via the tautology test is interesting, I am reluctant to embrace it, without recourse to a broad interpretation of Toulmin's thought beyond his early articulation of analytic arguments as such, found in *The Uses of Argument*. Furthermore, I find that even if one accepts Freeman's interpretation, Toulmin's formulation of analytic arguments still suffers from a debilitating lack of clarity. My conclusion is that when appealing to Toulmin's 1958 articulation, we should conclude that it is irredeemably opaque. We may therefore safely put aside Toulmin's conception of analytic arguments, without trying to redeem it, while continuing to investigate the still controversial but at least more promising elements of the model of non-deductive argument macrostructure that Toulmin put forward in *The Uses of Argument*.

2. Problematic glosses

I want to very briefly mention some eminent voices who have implied through their analyses of Toulmin's model that analytic arguments can be clearly and

summarily explained, whether they agree with Toulmin's conception or not; I respectfully disagree with these readers of Toulmin, and think they may have missed just how confusing Toulmin's articulation of analytic arguments is.

First (van Eemeren, Grootendorst, and Krugier, 1987), and (van Eemeren, Grootendorst, and Snoeck Henkemans, 1996), though they thoroughly investigate the bulk of Toulmin's model in their authoritative treatments, nevertheless neglect to spend too much time explicating analytic arguments. In their briefest of comments on this element of Toulmin's theory, they imply that analytic arguments are in great part identified by their formally deductive character, while acknowledging that Toulmin "thinks that analytic arguments are [not] always formally valid." The three principal "tests" Toulmin offers for determining analyticity (the tautology test, the verification test, and the self-evidence test) are not scrutinized in their treatments, though they seem to paraphrase Toulmin's tautology test in their gloss.

Some interpret analytic arguments in terms of the tautology test (e.g. Manicas, 1966; Korner, 1959; Cowan, 1964), but who also spend too little space explicating it. These scholars, like van Eemeren, et al., spend the majority of their effort critiquing other aspects of Toulmin's theory.

There are also those who gloss analytic arguments in terms of the verification test (e.g. Hardin, 1959; Cooley, 1960; Castaneda, 1960; Hitchcock and Verheij, 2006; Bermejo-Luque, 2009); but these scholars by and large also do not dedicate much space to its explication, and pass over the other ways Toulmin suggests to go about identifying analytic arguments.

(McPeck, 1991) simply equates analytic arguments with formally valid ones, without providing any analysis. He does not mention any of Toulmin's tests for identifying analytic arguments. (Will, 1960) similarly says that "neglecting a few non-essential refinements", an analytic argument is one in which "the data and the backing together entail the conclusion."

Some sympathetic and early reviewers (e.g. O'Connor, 1959), and interpreters who are tellingly not in Philosophy departments (e.g. Brockriede and Ehringer, 1960), pass over talk of analytic arguments altogether, these latter scholars being impressed more by Toulmin's model and less by the theory behind it.

Finally, (Freeman, 1991) is worth mentioning, because in his extremely detailed

and influential discussion of "Toulmin's Problematic Notion of Warrant", he avoids ever referring to analytic arguments. Here is an example of authoritative scholarship concerning Toulmin's model that effectively ignores the analytic-substantial distinction, while fruitfully analyzing other distinctions that Toulmin makes. Whether agreeing or disagreeing with the substance of Freeman's analysis, the fact that he neglects to draw the reader's attention to the analytic-substantial distinction should be seen as a virtue of his essay, since if he had included such a discussion, it might have confused matters, and would in any case have been a divergent discussion from the topics he took on. This conclusion seems warranted when considering that none of the other scholars mentioned above were able to do justice to Toulmin's definition of analytic arguments. Almost all of them portray the analytic-substantial distinction as being more perspicacious than it really is, whether endorsing it or not, but in any case without sufficiently explicating it. A try at an adequate explication is in order, to which I now turn.

3. The initial formulation of analytic arguments: the tautology test

Toulmin's first attempt at articulating analytic arguments, and the analytic-substantial distinction, comes in the section "Analytic and Substantial Arguments", from pages 114-118. It is in these first formulations that Toulmin immediately sets the reader up for confusion, because his initial definition of analytic arguments via the tautology test seems to cast it in terms of formal validity, which he later (e.g. pp. 118, 125, 132, and 134) claims is an entirely different distinction.

I begin with Toulmin's statement on page 114 that even though "as a general rule" only arguments of the form "data, warrant, so conclusion" may be set out in a formally valid way, whereas arguments of the form "data, backing for warrant, so conclusion" may never be set out in a formally valid way, there is still "one special class of arguments which at first sight appears to break this general rule": Analytic arguments, according to Toulmin's initial conceptualization, are a special class of argument that "can be stated in a formally valid manner" (p.115), even when the argument is articulated as "data, backing, so conclusion". Toulmin illustrates:

Anne is one of Jack's sisters;
Each one of Jack's sisters has (been checked individually to have) red hair;
So, Anne has red hair.

The second statement of this argument is the backing for the warrant, and is obtained by starting with what would have been the traditionally termed "major premise" in a syllogistic argument: "All Jack's sisters have red hair." When this statement is "expanded" (cf. pp. 91, 101, 102, 104, 108, 110, 115, 116), we can, according to Toulmin, eliminate the ambiguity as to whether it is a factual piece of data or a generalized rule expressing an (in this case, implied) inference license, choosing to phrase it as the latter, what Toulmin calls a "warrant": "Any sister of Jack's will (i.e. may be taken to) have red hair." Then by a further act of expansion, providing the "authorization" for the warrant in an explicit articulation of why it should be accepted as a legitimate inference license, Toulmin generates a statement of "backing": "Each one of Jack's sisters has (been checked individually to have) red hair." Here is the second statement in the argument above, the argument that has the form "data, backing, so conclusion" (p.115).

Toulmin claims that this is the kind of argument that breaks the general rule (he says) of formally valid arguments only being able to be expressed in the form "data, warrant, so conclusion". Here, Toulmin claims, is an argument that goes "data, backing, so conclusion", and that is also formally valid; thus, according to Toulmin, it is an analytic argument.

But Toulmin is not content to define analyticity only according to the formally valid layout of a "D; B; so C" argument. He says the argument above is also analytic because "if we string datum, backing, and conclusion together to form a single sentence, we end up with an actual tautology". Toulmin seems to imply on page 115 that an argument passing the tautology test will thereby have its formal validity indicated, when he claims that "when we end up with an actual tautology . . . [we find that] not only the (D; W; so C) argument but also the (D; B; so C) argument can – it appears – be stated in a formally valid way". In this way he seems to explicitly tie formal validity to analytic arguments.

Toulmin then provides the strongly stated definition on page 116 that does *not* mention formal validity: "an argument from D to C will be called analytic if and only if the backing for the warrant authorizing it includes, explicitly or implicitly, the information conveyed in the conclusion itself." Toulmin repeats this definition on page 116, qualifying it by saying it is "subject to some exceptions", and then reiterates that "we have to bring out the distinction between backing and warrant explicitly in any particular case if we are to be certain what sort of argument we are concerned with on that occasion."

If we combine these criteria (that of formal validity and satisfying the tautology test) for analytic arguments, then we may say that Toulmin's first formulation is that an analytic argument is one which, 1) when the backing of an implicit warrant is explicitly articulated in the argument, then the argument is formally valid; and 2) when all the statements of this expanded, formally valid argument are expressed in a single statement, then that statement is repetitive, i.e., tautologous.

4. Problems with the tautology test

I remarked earlier that (Manicas, 1966) interpreted the concept of analytic arguments through Toulmin's tautology test. But we should remind ourselves that this test was meant as only a "provisional" definition of analytic arguments, and Toulmin explicitly called it such (p.118). Manicas' brief criticism of Toulmin's concept of analytic arguments thus is not too helpful, as it acknowledges only the provisional formulation of the concept, and does not recognize the different formulations Toulmin gave for analytic arguments in the second half of Chapter III. But is the tautology test really just a first try at defining analytic arguments? Does Toulmin ever truly abandon it in favor of the verification test (as Cooley and many others think is the case), or in favor of some other criteria? Does Toulmin retain the tautology test as a legitimate way to demarcate analytic arguments from substantial ones? These questions should not just be brushed aside, but I wonder if any of them can be answered with any kind of consistency according to Toulmin's book, because even though he offers the tautology test tentatively, and then explicitly rejects it as being an exhaustive criterion for analyticity, he nevertheless refers to analytic arguments later via this conception: How then to reconcile Toulmin's assertion on the one hand, that "in some cases at least, this criterion [the tautology test] fails to serve our purposes" (p.124), with his statement on the other hand, made fifteen pages later, that "[i]n the analytic syllogism, the conclusion must in the nature of the case repeat in other words something already implicit in the data and backing" (p.139)? These considerations make the concept of an analytic argument difficult to penetrate. Readers should be left wondering to what extent the tautology test is authoritative, and to what extent it is not, since Toulmin seems to say it is both.

Aside from the ambiguity throughout the text as to whether and to what degree Toulmin endorses the tautology test, what to my mind is odd in all this is that the argument Toulmin has set out as his example, with what would have been the

major premise "expanded" to be phrased as the backing of the associated warrant, is not at all formally valid, as Toulmin claims it is. Here is the expanded, supposedly formally valid, argument again:
Anne is one of Jack's sisters;
Each one of Jack's sisters has (been checked individually to have) red hair;
So, Anne has red hair.

But the truth of this conclusion is not formally entailed by the truth of the premises adduced in its support, due to the parenthetical clause in the backing. What if we adjust it to make it formally valid, and thus make it analytic, and thus render Toulmin's formulation consistent with his example? In order for the conclusion to follow formally (what Toulmin later will call "unequivocally"), the conclusion would have to read: "Anne has (been checked individually to have) red hair". Then the argument would read:
Anne is one of Jack's sisters;
Each one of Jack's sisters has (been checked individually to have) red hair;
So, Anne has (been checked individually to have) red hair.

But it would seem this is an illegitimate move, as retaining *in the conclusion* the parenthetical statement *found in the backing* changes the meaning of the conclusion: instead of being the claim that Anne *actually has* red hair, we have a claim that Anne has only been *checked* to have red hair. We want to keep the conclusion as it is: a statement about Anne in fact having red hair right now. So, Toulmin says that if Anne was right in front of someone, and that person was *right now* looking at Anne's hair, and it appeared red to her, then the argument would be analytic:
Anne is one of Jack's sisters;
Each one of Jack's sisters (it is now being observed, i.e., it now appears) has red
So, Anne has red hair.

In fact, Toulmin says this argument is "unquestionably analytic"; however, this version of it, with the modified parenthetical clause in the backing, suffers from the same problem as the one with the unmodified parenthetical clause in the backing: It is only formally valid so long as the parenthetical clause in the backing is also included in the conclusion. The reason is that just because the color of someone's hair has been checked at one time, this does not mean it is now the color the person who first checked it saw it to be. Toulmin is right to see this as a shortcoming of the strength of the argument in question. He thinks of this as a

"logical type jump", from backing concerning the past to a claim concerning the present, and proposes to fix the type jump to show the argument's analyticity by making the backing refer to a concurrent time as the conclusion. But Toulmin does not address what actually makes it not analytic *according to his own definition*, and that is its formal invalidity. Because it is also true that the person who is (right now) checking the hair might be color blind, or she might see blonde or brunette or every other color as red, or her senses could otherwise be distorted. So the strongest formally valid conclusion someone could draw from her observation of looking at Anne's hair, even if she is looking at it right now, is that Anne's hair *right now appears* red to her! So, if we are being utterly candid, as Toulmin urges us to be, the revised argument would retain the parenthetical statement in the conclusion, and would be:
Anne is one of Jack's sisters;
Each one of Jack's sisters (it is now being observed, i.e., it now appears) has red hair;
So, Anne (it is now being observed, i.e., it now appears) has red hair.

Of course, no one usually looks at the color of someone's hair, and only allows herself to say that the hair she sees *appears* some color: usually, we uncontroversially believe someone's hair *is* some color based on our current perception, so long as no countervailing concerns intercede that might speak against that belief. So altering the conclusion this way seems illicit. Still, if formal validity is a criterion of analyticity (so that an argument D; B; so C breaks the rule of *not* being formally valid), then however believable is the claim in Toulmin's example that Anne has red hair, and however reliably it is reached via the backing, it would still *not* be "unquestionably analytic" (as Toulmin says it would be if Anne was standing right in front of someone) because even if she were standing right there, it would not be unquestionably formally valid without altering the conclusion by including the parenthetical clause.

Another way for the argument to be formally valid, instead of carrying over the parenthetical clause in the backing down to the conclusion and thus altering it, would be to *omit* the parenthetical clause from the premise and the conclusion altogether. Then either version of the argument (with or without the type-jump) would read:
Anne is one of Jack's sisters;
Each one of Jack's sisters has red hair;

So, Anne has red hair.

This is surely formally valid. But without the parenthetical statement, we just have the major premise, unadulterated ("unexpanded" as Toulmin might have said). And so the argument above is just an unexpanded traditional syllogism. But Toulmin wanted to show how an argument could be formally valid when an *expanded* premise was articulated in the argument as backing (cf. pp. 91, 101, 102, 104, 108, 110, 115, 116), that such an argument might also pass the tautology test, and that such an argument would therefore be analytic. So eliminating the parenthetical statement to gain formal validity just turns the argument back into a traditional syllogism, where according to Toulmin the unexpanded major premise is ambiguously phrased. Therefore this is not the kind of argument Toulmin would test for analyticity.

What I conclude as a result of these reflections is that either Toulmin's example is poor, in which case he has inaptly illustrated his conception of analytic arguments, or his conception of analytic arguments is flawed. In either case, the concept of analytic arguments is not doing the job Toulmin purports it to do, which is to theoretically inform our understanding of his model of argument macrostructure. What Toulmin has shown in these examples is that his first articulation of analytic arguments does not hold, because from the beginning, his example does not "break the general rule", as he says it does, of an argument of the form "data, backing, so conclusion" being formally invalid. So instead of showing (as he suggests he has) that it is doubtful whether any arguments with an expanded major premise can ever be properly analytic, what he has shown is that we still don't know what properly speaking an argument's being analytic even means! This is especially telling when one considers that for the remainder of the book Toulmin uses the terms "analytic" and "substantial" as if he had established a clear conception of what those terms meant, even though he contemporaneously adapts their definitions while working with them. Far from being a candid treatment, Toulmin's distinction at first blush obscures more than it reveals.

To summarize what I think I have thus far established: according to his illustration, Toulmin was wrong to say that analytic arguments break the rule of "data, backing, so conclusion" arguments being formally invalid, since those expanded arguments are *as they stand* formally invalid: expanded arguments with backing in place of warrant do *not* yield formally valid arguments unless one

modifies the statements in the arguments. This shows that expanded arguments are not analytic, but only if analyticity is just synonymous with formal validity, which Toulmin later claims is too crude a line to draw. These considerations are all made in light of the ambiguity as to whether Toulmin is consistent in his assertion that the tautology test is un-authoritative, which he explicitly maintains throughout his articulation of the verification test, but which he inconsistently implies *is* authoritative later in the book.

These reflections might be enough to show how unhelpful Toulmin's concept of analytic arguments is, due to its opaque initial formulation via the tautology test, but problems are compounded when we look at Toulmin's verification test, to which I now turn.

5. The verification test of quasi-syllogisms: the revised criterion of analytic arguments

As I mentioned at the beginning of this paper, and at the beginning of the last section, Toulmin ostensibly introduces the tautology test only provisionally, and then seems to reject it in favor of the verification test (though he later seems to adopt the tautology test partially). Still, according to the verification test, an argument is "analytic if, and only if . . . checking the backing of the warrant involves *ipso facto* checking the truth or falsity of the conclusion" (p.123).

I think I have shown that the tautology test should be rejected as a reliable indicator of analyticity because Toulmin's example never fulfilled what he purported it to, namely, an method of identifying analytic arguments. While Toulmin thought the tautology test shows that expanded arguments are rarely analytic, what he actually showed was that expanded arguments are rarely formally valid. In any case Toulmin wants to reject the tautology test for different reasons: because, he says, it does not allow us to determine the analyticity of an argument that has a quasi-syllogistic form (p.121). A quasi-syllogism is like a traditional syllogism except that instead of its major premise being expressed categorically, that statement is expressed in a qualified way (ibid).

Looking at the verification test by way of Toulmin's example of a quasi-syllogism, we find the following (by now hackneyed) argument:
Petersen is a Swede;
Scarcely any Swedes are Roman Catholic;
So, almost certainly, Petersen is not a Roman Catholic.

According to Toulmin the (formal?) validity of this argument is self-evident, so it should be classified as an analytic argument (p.122). Ignoring this further criterion of analyticity (the "self-evidence test") that seems to further complicate Toulmin's definition, if we interpret this argument's second statement as being ambiguous (which Toulmin claims we should do), then we can rephrase it to produce a generalized statement that allows us to infer the conclusion on the basis of the first statement; as an explicit warrant it might thus read: "If someone is Swedish then you may take it that he or she is not Roman Catholic". Then in a further act of expansion, if instead of an inference license, we state the backing that authorizes the warrant we get:
Petersen is a Swede;
The proportion of Roman Catholic Swedes is less than 5%;
So, almost certainly, Petersen is not a Roman Catholic.

Now this argument too, is analytic, though not because its validity is self-evident, nor because it is tautological when the statements are strung together, and certainly not because it is formally valid. It is analytic, for Toulmin, because if we were to check the truth of the backing, we would in effect be checking the truth of the conclusion. In other words, checking (exhaustively) to see that the proportion of Roman Catholic Swedes is less than 5% would be to check if Petersen is or is not a Roman Catholic. As such, according to the verification test, this argument is analytic, whereas according to the tautology test, it is not.

But there are few problems with this test for analyticity as I see it. First, to take the (Cooley, 1960) criticism: the verification test seems to be too broad, because it would call any argument analytic where backing-checking involves conclusion-checking. But this will include many arguments that, in Toulmin's own words are "not just implausible but incomprehensible" (p. 122) such as Toulmin's example:
Petersen is a Swede;
The proportion of Roman Catholic Swedes is less than 5%;
So, almost certainly, Petersen is *Roman Catholic.*

Here is an implausible (and perhaps incoherent) argument. But it is *still* analytic, according to the verification test, as checking the truth of the backing would involve checking the truth of the conclusion. But if this argument is analytic, then surely that speaks against the claim that formal logicians are wedded to the analytic paradigm, for they would not want to be wedded to a model of argument that allows one to infer the opposite of what one would expect to, on the basis of

the reasons one adduces. So, as with the tautology test, either the test is not authoritative, or formal logicians are not really wedded to Toulmin's conception of analytic arguments as he says they are.

Perhaps one could respond to Cooley by insisting that analyticity is a distinction made within the class of arguments that have good warrants and backings for those warrants, so this complaint would not hold (Hitchcock, 2010, private correspondence). But even if Cooley's objection can be handled in this way, then another problem with the verification test still remains: while some quasi-syllogisms that fail the tautology test might still be analytic by virtue of the verification test, it could also be the case that some quasi-syllogisms pass the tautology test, yet fail the verification test. If this is so, then passing the verification test is not only not a sufficient condition for an argument being analytic, as Toulmin says it is, it is not at all a necessary condition for an argument being analytic. Take this one premise argument:
Petersen is a Swede with blonde hair and blue eyes;
Therefore Petersen is a Swede of European descent.

The implied major premise might be "All Swede's with blonde hair and blue eyes are of European descent", which, when expanded, might become a warrant such as "On the basis of a person being a Swede with blonde hair and blue eyes, one may take it that such a person is of European descent". As such this is a quasi-syllogism that according to Toulmin's formulation should be tested via the verification test, as it is expanded from a universal affirmative major premise. In a further act of expansion we might obtain the backing for the above warrant, authorizing it as an inference license via a claim such as: "Every Swede whom I have met with blonde hair and blue eyes is a Swede of European descent". Then, when we include the backing in the original argument, we have the argument that is to be tested for analyticity:
Petersen is a Swede with blonde hair and blue eyes;
Every Swede whom I have met with blonde hair and blue eyes is a Swede of European descent;
Therefore Petersen is a Swede of European descent.

Does this argument pass the verification test? No it does not, as checking the truth of the backing will never involve checking to see if Petersen is a Swede of European descent, so long as my experience in dealing with Swedes with blonde hair and blue eyes has never included dealing with Petersen. This argument is not

analytic, then, according to the verification test, so long as I have never met Petersen.

But does this argument pass the tautology test? I think it is plausible to claim that it does, if, instead of assuming the argument to have been made *before* meeting Petersen, the argument is uttered *after* having met him. The ambiguity of the context as to whether Petersen is someone whom I have not yet met, or someone whom I have met, changes how the argument measures up to the verification test and the tautology test. For stringing the statements together is now repetitive, so long as the implication of the first premise is that Petersen is a Swede whom I have met:
Petersen is a Swede with blonde hair and blue eyes (whom I have met)
and *every Swede whom I have met with blonde hair and blue eyes is a Swede of European descent*
and *Petersen is a Swede of European descent.*

This argument is repetitive because conjoining the conclusion with the word "and" merely restates what is expressed in the first premise coupled with the second. So is the argument analytic? According to the tautology test: yes; but according to the verification test: no. Either may result depending on an ambiguous feature of the argument. It seems we can't be sure whether the argument is analytic, then, according to Toulmin's formulation, because even though it might pass the tautology test, that test is not meant to be a reliable test for quasi-syllogisms in the first place, and was the very reason why Toulmin introduced the verification test (p.121). Furthermore, this argument is not formally valid, as Toulmin seems to say it should be if it passes the tautology test.

So at this point we should be confused. First, it is not the case that on their own, either the tautology test or the verification test provides both necessary and sufficient conditions for determining an argument's analyticity: Toulmin's strong formulations are misleading. But furthermore, Toulmin introduced the verification test because in the case of quasi-syllogisms, it was supposed to more reliably indicate an argument's analyticity than the tautology test (pp.123-124). But it does not, as the above example shows: A quasi-syllogism may pass the tautology test but not pass the verification test. So it seems that two of Toulmin's principle tests for determining analyticity are flawed, and that neither can reliably determine an argument's analyticity. It therefore seems to be a mistake to use Toulmin's concept of analytic arguments as if it is clear. And considering that

many scholars simply pass over the concept without their analyses suffering as a result, this should suggest that analyticity does not represent the crucial component of Toulmin's model that he claims it does.

6. Freeman's comments

James Freeman graciously agreed to read and remark on an earlier version of this paper. Further quotations belong to this correspondence (2010). The most telling observation from his numerous helpful comments regards a rejoinder to the argument I offer whereby I claim that the parenthetical clause included in the backing "Each one of Jack's sisters has (been checked individually to have) red hair" destroys the formal validity of the argument in question and so according to Toulmin's own definition, forces a failure of the tautology test (see pp. 5-8, above). He suggests that we could interpret Toulmin as meaning (while not explicitly claiming) that in our adding of the parenthetical clause in the backing, we are really "simulat[ing] universal quantification through conjunction", and if so, that the following version of the argument (which is equivalent to the one Toulmin explicitly formulates) "is formally valid and its associated conditional is a tautology:

Anne is one of Jack's sisters;
Anne has red hair & Sister # 2 has red hair & … & Sister # n has red hair;
So, Anne has red hair."

Freeman says that "[f]or such arguments, the backing can be stated in the form of a conjunction which simulates a universally quantified statement because the backing concerns the objects in a finite set all of which have been observed and found to have a certain property and the backing statement simply reports this fact."

If Freeman is correct, then it seems there is an interpretation of Toulmin's example that does indeed pass the tautology test, and so is coherently analytic, according to Toulmin's own definition. If so, my critique on this front fails, and my claim that Toulmin's definition is opaque is rendered less convincing.

Unfortunately, my reply to Freeman's analysis must be very brief.

My response is that even if he is correct, and we justifiably construe Toulmin's backing in his example as being a conjunction of observation reports that simulates universal quantification, and so we see the example as correctly

exemplifying the tautology test, we would still have to reconcile Toulmin's confusing articulation concerning the degree to which the tautology test is authoritative; this is a significant interpretive hurdle to clear, if one wishes to defend Toulmin's definition of analytic arguments from the charge of opacity. It is no small thing that Toulmin was decidedly unclear concerning the degree to which the tautology, verification, and self-evidence tests each reveals arguments that are analytic. So even granting that the tautology test is a valid test on its own terms, in relation to the other tests, we still cannot say whether Toulmin took it as being authoritative or not, or the degree to which he took it to be authoritative, when dealing with the quasi-syllogism.

Furthermore, Freeman's reading of Toulmin's example of an argument that passes the tautology test seems to go beyond *The Uses of Argument,* attributing to Toulmin more than Toulmin explicitly admits in the text. While I yield to Freeman's expertise as an interpreter of Toulmin's body of work beyond *The Uses of Argument*, and am happy to hear Freeman's interpretation offered "as a suggestion which might help clarify what Toulmin has to say", still, because Toulmin was less than clear on this point in *The Uses of Argument,* it seems his explicit formulation in that text is not saved.

In a word, Freeman's interpretation does not redeem the tautology test, nor Toulmin's definition of analytic arguments in *The Uses of Argument*.

7. Conclusion

I would like to suggest, in closing, that Toulmin's concept of analytic arguments found in *The Uses of Argument* is irredeemably opaque. If Toulmin's goal, through his conceptualization of the analytic-substantial distinction, was merely to motivate his model of argument macrostructure with an anti-deductivist approach, by showing that arguments can sometimes be cogent without being formally valid, then he succeeded: His examples all point to the idea that a conclusion may be reached legitimately, even if it is not reached formally. But if he meant to say something more subtle in the theoretical support for that model, then his formulation of analytic arguments and the analytic-substantial distinction does not accomplish that goal clearly. Perhaps it should not bother those who read Toulmin that his conception of analytic arguments in *The Uses of Argument* might be irredeemable: as inquirers interested and inspired by his anti-deductivist project, it seems possible to pass over Toulmin's analytic-substantial distinction, and yet to profit from examining his other, still contentious and provocative, but

at least more clearly articulated ideas.

NOTES

[i] My sincere thanks go to James Freeman, for his correspondence and for his permission to include that correspondence in this paper. My thanks also go to David Hitchcock, for his guidance, and for his comments on earlier drafts. Finally, thank you to the organizers and reviewers of ISSA 2010. Whatever errors or omissions found in this paper are my own.

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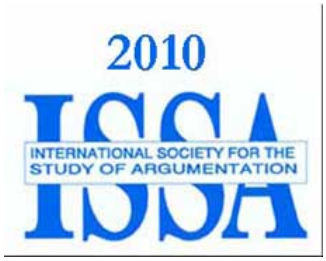
ISSA Proceedings 2010 – The Costs And Benefits Of Arguing: Predicting The Decision Whether To Engage Or Not



1. Introduction

Pragma-dialectical theory (van Eemeren & Grootendorst 2004) explains that a critical discussion has four stages: confrontation, opening, argumentation, and concluding. In the confrontation stage, two people discover that they have a disagreement, and in the opening stage they decide how to pursue it. This study focuses on the transition from the confrontation stage to the opening stage. Not all disagreements are explored or even expressed. When circumstances invite disagreement and then argument, sometimes we move forward and sometimes we move away. This is an investigation of the decision to engage or not. What factors predict engagement and which predict that no argument will be voluntarily forthcoming?

2. A Theory of Engaging in Arguments

Recent work (Paglieri 2009; Paglieri & Castelfranchi 2010; see Hample 2009) has analyzed the circumstances in which face-to-face arguments are most likely to escalate out of control, suggesting that people take these factors into account in deciding whether or not to argue at all. This paper takes that work as a theory of

argument engagement. Our most general claim is that people are predicted to engage in an argument when the expected benefits of doing so exceed the expected costs.

The essential model being tested here is
Beh ~ BI = f (S, P, C, B), (1)
where Beh represents behavior, BI is behavioral intention, S is the situation, P represents various aspects of the person, C is the expected costs of the behavior, and B is the expected benefits of the behavior. Our interest here is in a particular behavior, engaging in an interpersonal argument. While our design does not include a direct observation of arguing behavior, meta-analysis shows that behavioral intentions are highly correlated with behaviors (r = .83, Kim & Hunter 1993), and so BI serves us as a suitable proxy – that is, Beh is approximated by (~) BI. We theorize that behavioral intention to engage in a face-to-face argument will be a function of the characteristics of the situation that might or might not invite an argument, individual differences among people, and anticipated costs and benefits of arguing. S, P, C, and B can be operationalized in many ways. We will test only one set of instantiations, one collective example of how the model might be applied.

Equation 1 is essentially a cost-benefit model that makes room for personal and situational influences on the assessment of costs and benefits. Cost-benefit models are common in the social sciences and have a good record of accurate predictions in many domains. They go by various names, such as Subjective Expected Utility models, Predicted Outcome Value theory, Social Exchange Theory, Utility Theory, and others (e.g., Lave & March 1975; Thibaut & Kelley 1959; Uehara 1990).

Several particular applications of this general theoretical orientation are supportive of our current project. The literature shows, for example, that some formulation of costs and benefits predicts behavioral intentions, relational engagement, conflict engagement, and conflict resolution. Fishbein and Ajzen (1975) showed that an algebraic combination of positive and negative beliefs predicts attitudes, and that similar combinations of attitudes and norms predict behavioral intentions. Marek, Wanzer and Knapp (2004) found that the costs and benefits implied in one’s first impression of another person predicted whether roommate relationships would persist and be constructive. Similarly, the positivity of one’s expectations about a relationship predicted one’s emotional engagement

in the relationship, the amount of interaction, and the intimacy of exchanges (Ramirez, Sunnafrank, & Goei 2010). Bippus, Boren, and Worsham (2008) found that people who felt they were under-benefitted in a relationship were angrier, more critical, and more avoidant during conflicts, compared to people who felt properly- or over-benefitted. Vuchinich and Teachman (1993) analyzed data indicating that the likelihood of ending riots and family arguments increases as they go on because their costs increase; in contrast wars and strikes become entrenched. Both pairs of results were predicted from the premise that the prospects of concluding a conflict can be projected from the momentary and projected costs of continuation. These findings encourage us to theorize that people's intentions to argue or not will be predictable if we know how the people project their costs and benefits if they were to argue.

The S, P, C, and B elements of Equation 1 can be operationalized in a great number of ways, with each set of instantiations essentially providing a separate specification and test of Equation 1. Here, our main situational variable is the type of argument topic: whether it is personal, public, or occupational. Johnson (2002; Johnson et al. 2007) has shown that whether an argument concerns a personal or public *topic* (i.e., whether the argument is about something that directly affects the nature or conduct of the arguers' personal relationship or not) predicts how people think about and react to the argument. This is a distinction between whether the topic is internal (private) or external (public) to the conduct of the interpersonal relationship. Which of us should drive the car to the polling place is a private topic but who should be the next senator is a public one. We add workplace topics to Johnson's list in the expectation that these are also common topical sites for arguments, and seem to us to have a character intermediate between personal and public matters. The key person variables here are *argumentativeness* and *verbal aggressiveness* (Infante & Rancer 1982; Infante & Wigley 1986), which are important to many arguing phenomena (Rancer & Avtgis 2006). Argument topic (S) and both argumentativeness (P) and verbal aggressiveness (P) are variables that have been very useful in understanding and predicting argument behaviors and beliefs.

Our understanding of the costs and benefits of engaging in arguments is taken from Paglieri's (2009) work. He identified nine factors that should affect people's decision whether to engage or not. We have reduced these to seven, making use of previous concepts and scales whenever possible. The *cost* of arguing refers to

the cognitive effort involved, one's emotional exposure, and one's estimates of unwelcome relational consequences. The *benefits* of arguing immediately index what an arguer might get out of the interaction if it were to go well. The likelihood of *winning* is important in projecting possible benefits to an argument. A key consideration in whether outcomes might be attainable is whether the other arguer is expected to be *reasonable*, or might be stubborn or truculent. The *civility* of a possible argument has to do with whether it would be pleasant and productive, or angry and destructive. Whether an argument is thought to be *resolvable* or not has important consequences for relational satisfaction and other valued outcomes (e.g., Johnson & Roloff 1998). People feel that it is *appropriate* to engage in some arguments but not in others, and this has implications for whether participation would be more or less costly.

Expected costs (C) and benefits (B) are measured with essentially the same scales, arranged so that if a high score represents an estimate that an argument would be costly, a low score would imply that it would be beneficial (or vice versa). At this point in our theoretical development, we suppose that these are continuous linear matters rather than, say, threshold or step-function considerations. These cost and benefit measures are discriminable on their face, and if they should prove to be highly correlated, this will be substantively informative without endangering our test of the basic model. Dividing the general ideas of cost and benefit into several specific measures makes it empirically possible for a person to project engagement as being both highly beneficial and very costly, low in both respects, or high on one and low on the other.

Equation 1 specifies only that behavioral intentions will be some function of S, P, C, and B, without indicating the exact functional form. Our theory predicts that intention to engage will be heightened when benefits are expected to be substantial and decreased when costs become predominant. We predict that the intention to argue will be highest when the argument is expected to be resolvable, civil, low in effort, successful, appropriate, and beneficial, and when the other person is anticipated to be reasonable. We expect people to prefer non-engagement in the opposite conditions. Estimates of costs and benefits are specific to a particular argument and we understand these estimates to be the proximal causes of the decision to engage. But those estimates may well vary according to the type of argument topic (S) and the arguers' predispositions for argumentativeness and verbal aggressiveness (P). Furthermore, the size of the

effects of C and B on the decision to engage may also be moderated by S and P (i.e., cost estimates may be more forceful in one situation rather than another, or for one type of person rather than a different one). We expect to replicate findings indicating that people high in argumentativeness and verbal aggressiveness are more likely to engage. Since Johnson has shown that personal topic arguments are more involving that public topic ones, we expect that the causal system will reflect this difference, because public topic arguments have been found to be less costly (especially in emotional terms) than personal issue arguments. We make no hypotheses about the job topic arguments, since these have not previously been compared to personal and public arguments. While the P variables might have direct causal effects on the engagement decision, we expect that their effects will tend to be indirect, influencing and then being mediated by the cost and benefit estimates. We test our expectations by means of a structural equation model (SEM) that will reveal both the direct and indirect effects of P, C, and B on the intention to engage in arguing. The S variable's influence should be apparent when we contrast the structural equations predicting intention to engage for personal, public, and workplace topics.

3. Method

3.1 Procedures

Data were collected online. Respondents filled out the argumentativeness (Infante & Rancer 1982) and verbal aggressiveness (Infante & Wigley 1986) instruments, along with demographic items. Each participant then read stimuli describing a situation that invited an argument with a close friend, dealing with a personal, public, or workplace topic. Each participant responded to all three stimuli. The responses had to do with costs, benefits, and behavioral intentions. The study was approved by the Institutional Review Board at the first author's institution, where the data were collected.

3.2 Respondents

A total of 509 undergraduates at a large public Mid-Atlantic university in the U.S. provided data in exchange for extra credit in undergraduate communication classes. 207 (41%) were men, and 302 (59%) were women. Their average age was 20.1 years (SD = 1.83). Freshman constituted 11% of the sample, sophomores 32%, juniors 31%, and seniors 25%. Most (53%) self-categorized themselves as Euro-Americans. Asian-Americans (11%), African-Americans (10%), and Hispanic-Americans (5%) were also common in the sample. The other respondents were

scattered among other ethnicities and national origins, or declined to answer.

3.3 Argument Topics

Three argument topics were used in the study. All three were designed to invite but not require the respondent to participate in an interpersonal argument. In other words, they each constituted the first half of a confrontation stage (van Eemeren & Grootendorst 2004). All described the other potential participant as a "good friend" to control for relationship with the other person. The public topic concerned musical preferences: the friend remarks that the respondent's preferred sort of music is "awful." The personal topic dealt with the friend's new romantic partner. The respondent has not been enthusiastic about the relationship, and the friend says that the respondent has been holding back and should be more supportive. In the workplace topic, the respondent and friend work together, and the friend says that the respondent has not been doing his or her share of the work, placing more burden on the friend. In each case, the respondent might plausibly have engaged in a disagreement with the friend's standpoint or might have found some way to avoid an argument. The topics represent the S element in equation (1). The full text of the three topics is reported below:

PUBLIC TOPIC: You and a good friend are both very fond of music. Besides just listening to lots of music over the radio and on iPods, when you have a little extra money, both of you like to go to fairly expensive concerts. You really like different sorts of music, however, and always have. One day when you're just spending a little time together, your friend makes a remark about how good the sort of music s/he likes is, and says that the kind of music you like is awful.

PERSONAL TOPIC: You and a good friend have just had a third person come into your lives because your friend has been dating him/her. The problem is that you and the third person really don't get along very well. You don't like him/her because you don't trust him/her to treat your friend well, and he/she doesn't seem to like you, either. You and the third person have made some effort to be pleasant to one another for the sake of your common friend, but your friend has begun to notice that you seem to be holding back a little. One day when you're just spending some time together, your friend makes a remark about how you don't seem very sincere about liking the third person, and that you really should make more of an effort.

WORKPLACE TOPIC: You and a good friend work together in an office. You have essentially the same job and your common boss gives the two of you similar work to do. Your boss pays attention to how you're doing on your current tasks, and when one of you has finished, your boss gives that person the next set of assignments. You think that the two of you work at about the same pace and do about the same quality of work. But your friend has apparently begun to feel that you're not quite doing as much as he/she does. One day at work when you're just spending a little time together without much to do, your friend makes a remark about how you don't seem to be doing your share and that he/she is a little resentful about having to do extra work.

3.4 Measures

The P elements in Equation 1 were argumentativeness and verbal aggressiveness. As is the case with the other measures in the study, they were assessed with five-choice Likert items. Both are twenty item scales supposed to be composed of two ten-item sets. Argumentativeness (Infante & Rancer 1982) measures the motivation to attack another person's position, and resolves into a measure of argument-avoid and another of argument-approach. Verbal aggressiveness (Infante & Wigley 1986) is an index of one's predisposition to attack another arguer's character or qualities, and has been shown to have a two-factor structure (Levine et al. 2004). One factor measures pro-social impulses and the other, which Levine et al. suggested is the more genuine measure of verbal aggressiveness, measures anti-social inclinations.

The C and B elements of Equation 1 were measured in several ways. *Cost* of arguing was measured with ten items, dealing with the time and effort expected, complexity of the anticipated argument, likelihood of emotional exposure for self and other, and the possibility of damaging the friendship. *Benefits* of arguing involved six items asking globally whether the respondent would regret the argument or find it beneficial. The other's expected *reasonability* was operationalized with six items that referred to whether the friend would be stubborn, reasonable, open-minded, and mature. *Resolvability* refers to the estimate of whether the argument could be productively concluded (Johnson & Roloff 1998). The likelihood of *winning* asked for projections about who would win the argument and who had the better supporting evidence and reasons. *Appropriateness* included seven items asking whether this was the right time, place, topic, and person for an argument. *Civility* (Hample, Warner, & Young

2009) is a set of ten items asking the respondent to say whether the argument would be cooperative, hostile, open-minded, and so forth.

The dependent variable is behavioral intention to engage in an argument, and this was assessed separately for each of the argument topics (S). Seventeen items were used. These expressed the respondent's willingness to argue, to exchange reasons and evidence, to confront, to concede, and so forth.

Descriptive statistics including Cronbach's alphas for all these variables are presented in Table 1. Table 2 shows the correlations between the trait measures and the other variables for each topic type. These are provided for the benefit of future meta-analysts, and readers should notice that these variables are calculated by simply averaging their component items, with reverse scoring as appropriate. Other results in this report concern the latent variables calculated as part of our structural equation modeling.

4. Results

4.1 Measurement Model

Structural equation modeling (SEM) has two steps. First, the measurement model must be evaluated. The measurement model refers to our theorized connections between particular response items and the concepts they are supposed to measure. Although we planned that a particular set of items (e.g., for appropriateness) would represent the general concept we specified, whether those items measure it properly is an empirical question. In SEM terms, the individual items are indicators and the general concept (e.g., appropriateness) is a latent variable. Latent variables are unmeasured and are understood as the unobserved causes for the values of the indicator items. Only with a passable measurement model can the theoretical model (here, Equation 1's instantiations) be properly assessed.

We conducted confirmatory factor analyses (CFA) on our measures. Because LISREL (a standard SEM software package) does not permit missing data, our sample size for these and other SEM analyses is 473. Given the number of parameters involved in the study compared to our sample size, we conducted separate CFAs on the trait and then the cost, benefit, and intention measures. We parceled indicators for each measure (Little, Cunningham, Shahar, & Widaman 2002). This involves averaging two or more indicators to create a composite indicator. The purpose of parceling is to permit some of the random measurement

error to cancel out before the indicators enter the model. Each parcel had two to five indicators, and we created three or four parcels for each latent variable. Details on the parcels are available from the authors.

The trait measures were argumentativeness and verbal aggressiveness. Hamilton and Hample (in press) have recently shown that two of the argumentativeness items (items 16 and 18 in the standard numbering) seem to form an ability factor. Items 16 and 18 loaded poorly on the proposed ability factor in this study and so these items were dropped from our analyses. This left four trait measures: argument-approach, argument-avoid, VA-prosocial, and VA-antisocial. The CFA was reasonably successful in spite of a significant overall fit test: c^2 (48, N=473) = 129.49, $p < .001$, RMSEA = .061, c^2/df = 2.70, NFI = .96. All of the parcels had substantial R^2s with their latent variables, ranging from .45 to .80.

The remaining variables assessed the costs, benefits, and intentions for the three argument topics. All these variables were included in a single CFA. The third parcel for *winning* had an R^2 less than .10 for all three topics, and so was dropped from the analyses. In addition, one item from *benefits* performed badly in the exploratory factor analysis used to inform the parceling, and that indicator was dropped as well for one topic. The CFA was again reasonably successful in spite of a significant fit test:

$\chi 2$ (2208, N=473) = 5934.75, $p < .001$, RMSEA = .071, c^2/df = 2.69, NFI = .89. The R^2 between the parcels and their latent variables ranged from .21 to .87.

Tests of the measurement model showed it to be a reasonable fit to the observed data. The latent variables (e.g., argumentativeness) are well defined by their indicator variables (i.e., their response items). If there is a problem in the overall analysis, it will be attributable to the underlying theory and not to the measurement techniques.

4.2 Structural Model

The second phase in SEM is usually more theoretically interesting than the measurement step. The theory (here, our instantiation of Equation 1) specifies a set of causal relations among the latent variables. This causal system is called the structural model. It models the possibility of causal influence from exogenous

variables (those not theorized as caused by any other variables in the system) to endogenous variables (those that have at least one cause in the system). The idea is to test the theorized set of relationships among the latent variables against the observed relationships. If the observed and theorized relationships are similar (i.e., they "fit" one another), the structural model is successful. A successful structural model is in turn good evidence for its generative theory.

Our initial structural model defined the P variables (the subscales for argumentativeness and verbal aggressiveness) as causes of the cost and benefit estimates, and the cost and benefit variables then were modeled as causing the behavioral intentions. Fit statistics for this model were χ^2 (3291, N=473) = 9541.24, $p < .001$, $c^2/df = 2.90$, RMSEA = .076, NFI = .84. However, the most notable result was a null one. None of the P variables had significant effects on any of the cost-benefit variables. Without exception, the paths from the P variables to these estimates were nonsignificant. Prior to discarding the P variables entirely, we explored the possibility that they might instead have direct effects on the behavioral intention measures. One of them did, although only for the public issue topic. Therefore we retained the P measures in the model, but placed them in the same causal phase as the cost-benefit variables. An interesting implication of the lack of influence of P variables on the C and B elements is that the estimates of cost and benefits in argumentative contexts seem to be fairly person-independent matters, at least insofar as argumentativeness and verbal aggressiveness are concerned.

After trimming the model by eliminating the nonsignificant paths between the exogenous and endogenous latent variables, we obtained a reasonably good fit for the new model: χ^2 (3090, N=473) = 7485.53, $p < .001$, $c^2/df = 2.42$, RMSEA = .064, NFI = .88, CFI = .92. The main results are best conveyed by the structural equations. All the coefficients detailed below are statistically significant. The coefficients are unstandardized. Error terms are omitted. All the variables are measured on the same 1 – 5 metric.

BIPub = .12*ArgApp + .18*Civil – .10*Reason + .53*Win – .18*Inapprop (2)

BIPers = .54*Win – .14*Inapprop + .07*Benefit (3)

BIWork = -.17*Unresolv + .15*Cost + .70*Win – .08*Inapprop (4)

The R^2 for each equation was substantial. The behavioral intention to argue on a public topic was predicted with an R^2 of .66. For personal topics, the figure was .61. For workplace topics, the R^2 was .73.

Table 3 reports the correlations among the endogenous variables as well as those within each topic's set of cost-benefit exogenous variables. The BI intercorrelations indicate that intention to engage in argumentation had some consistency from topic to topic (about 10% – 20%), with the public and personal topic intentions least strongly related. The correlations among the exogenous variables reveal that for the most part, these latent variables had quite consistent covariation across topic types. Particularly strong relations appeared between these pairs: unresolvability/civility, civility/cost, unresolvability/reasonability of other, civility/reasonability, and reasonability/cost. Given the direction of scoring, all of the correlations seem to be reasonable. Several other pairs also had noticeable relationships. As a consequence of these correlations, the exogenous variables that lack a direct path to intention had indirect effects that passed through other exogenous variables. The strength and consistency of several of these relationships suggest that it may be possible to simplify future models by condensing some of the cost and benefit conceptions.

As Equations 2, 3, and 4 imply, the intention to engage in arguing has different causes depending on the topic type. The public topic argument was the only one to show any effects for a P variable, engagement being more likely for those having high argument-approach scores. Public topic arguing was also more likely when the argument is projected to be civil, the respondent feels confident of winning, when arguing would be appropriate, and when the other party is expected to be unreasonable. This last finding was unexpected. We had supposed that engagement would be more attractive when the potential arguing partner is projected to be reasonable. These are not the same considerations as for the other two topic types. For the personal topic (Equation 3), the strongest consideration was whether one would win the argument, somewhat supplemented by a sense of potential benefit, and inappropriateness was again a deterrent. In the workplace (Equation 4), intention was highest when one expected to win, even at some cost, and when the argument was projected as being resolvable and appropriate. The positive coefficient for cost was also unexpected. We projected that higher costs would make engagement less likely.

The only predictors that appeared in all three equations are winning and appropriateness, and of the two, regression coefficients show that winning was far more important; in fact, it is the most important predictor in all three equations. These two variables had the same sign in each equation. The other person's expected reasonability was relevant for the public topic, but not for the other two types. Benefit was mainly a consideration for the personal topic, and cost only in the workplace. So although intention to engage was well predicted for all three topic types, the intention-relevant considerations were quite different. In this study, the S variable for Equation 1 was far more important than the P variables: The P variables had little predictive effect, but distinguishing among the topic types produced different structural equations. Two effects (cost in Equation 4 and reasonability in Equation 2) were unexpected. Below we will revisit our initial understandings of cost and other's reasonability.

5. Discussion

People do not have to argue whenever arguing is invited. One can be challenged, or provoked, or confounded, and any of these makes arguing possible but not necessary. In pragma-dialectical terms (van Eemeren & Grootendorst 2004), we can find ourselves partway into a possible confrontation stage, needing to make the next move. In response to the protagonist we might change the topic, fall silent, concede, or otherwise avoid engagement. Or we might express disagreement. Should that occur, the original protagonist might then move away from the matter, or might initiate the opening stage of discussion. In the opening stage arguers make joint decisions about how to proceed. However, somewhere in the confrontation stage or in the transition to the opening stage, people must decide whether or not to engage in arguing. This has been a social scientific investigation of when the decision to engage is made and when it is rejected.

The most general statement of our theory is in Equation 1, which posits that the engagement decision will be influenced by one's general predispositions, situational features, projected costs, and projected benefits. Given the innumerable possible ways of implementing this general view, we adapted Paglieri's (2009) theory for empirical use. We operationalized personal variables as argumentativeness and verbal aggressiveness; situational variables as topic (public, personal, or workplace); and costs and benefits as resolvability, civility, other's reasonability, costs, prospects of winning, appropriateness, and possible benefits. Several variables – most notably the traits – fell out of the model. Others

had only indirect effects rather than the direct ones we expected. Two had effects that we did not anticipate. A fair judgment is that we have not confirmed our model, but have begun to develop it.

Our final structural equation model was a reasonably good match to our data. The most stringent assessment of fit is the c^2 test, but it tends to report significant departures between a model and a data set when sample sizes are large and so is often discounted. Here we know that while our measurement model was reasonable it was also imperfect, with the consequence that its departures were carried forward into the fit test for our structural model. In our view, the most important results were the R^2 results for Equations 2, 3, and 4. They indicate that our structural model is able to account for about two-thirds of the variance in engagement intentions.

The most influential predictor in Equations 2, 3, and 4 was winning. The expectation one would win the argument had a very strong and positive relationship to one's willingness to engage. We suppose that the prospect of winning carries two sorts of rewards. One is the likelihood of achieving whatever instrumental aims are involved in the argument – getting agreement on music, on the dating partner, or on workload. The other is a positive feeling – perhaps of pride, superiority, dominance, or the thrill of victory. A glance at Table 3 shows that winning has some connection to benefits, although other pairs of exogenous variables are more closely associated. So both sorts of motive – personal and instrumental – may well be in play here.

The other exogenous variable that appeared in all three structural equations was inappropriateness. While not as influential as winning, it has a consistent effect on the intention to engage. Appropriateness scales involved the propriety of arguing on that topic, with that person, and at that time. We conceived inappropriateness as a cost of arguing, but it obviously has some connection to the situation as well.

In fact, all of our cost and benefit measures reflect the circumstances of the potential argument. This is because an actual argument is always situated and always takes place in concrete reality. In that sense, everything in our model except the traits can be understood or re-understood as situational. One might win against one opponent but not against another; more benefits might accrue in

one argument compared to another; one antagonist might be reasonable and another truculent; and so forth. It is interesting that the P variables essentially disappeared from our models (excepting the relevance of argument-approach to the public topic). Other scattered evidence has suggested that the influence of personality tends to evaporate once an argument is joined (Hample 2005), and the present results imply that our participants responded in that way instinctively. Cost and benefit estimates appear to be situationally calibrated without much influence from the personal traits we have studied here.

Two of our results were unexpected. For the public topic engagement was more likely the *less* reasonable the other person was thought to be. In the workplace, the *higher* the costs the more likely the respondent was to decide to argue. We thought that other's reasonability would promote engagement and that high costs would discourage it. Our best explanations of these unexpected findings have to do with the argument topic types.

Public topics can be about social issues, ideas, or minor interests (Johnson 2002). Here, the public topic was about musical taste. For some people some of the time, arguments might be taken up for the sake of entertainment (Hample 2005). Perhaps on a topic such as musical preference, it might be more fun to argue with a stubborn opponent who would keep the interaction going.

Another possibility – one that is of more methodological concern – concerns how people interpret the word "argue." Commonly arguments are seen as nasty episodes, unproductive and threatening (Benoit 1982; Gilbert 1997). Benoit showed that when people expect an exchange of reasons and disagreements to be pleasant and constructive, they call the episode a "discussion." The place of other's reasonability in Equation 2 is consistent with the idea that one can only engage in an "argument" with an unreasonable opponent; otherwise one will be discussing. If this is so, we will need to be very careful in working with these ideas in other languages (a Romanian data collection is under way, and one in Italy is planned).

High costs encouraged arguing on our workplace topic (Equation 4). The particular topic we chose – the accusation of laxity and the consequent over-burdening of one's friend – may have been seen as having notable costs to begin with. Light complaints (implying minor costs) might be disregarded at work or might call out some sort of conciliation, just to smooth things over. If this

reasoning is correct, perhaps high costs are a prerequisite to workplace arguing. However, the same line of thought might make a similar prediction for personal topics, and we did not see a positive loading for cost in Equation 3. Another possible explanation of this result is that the very fact of being ready to suffer high costs in arguing is an effective way of rebutting the accusation of laxity, by demonstrating with one's own behavior that the person does not fear efforts but rather embraces them when they are in the common interest. Conversely, the actor may feel that avoidance might lead, in this particular case, to confirming the opponent's accusation ("You see? You avoid committing to argue when it is too effortful, the same way you skirt your workload and let me struggle on your behalf!"). Since the accusation of laxity is specific to our workplace scenario, this line of reasoning may explain why a positive association between high costs and intention to argue is not observed in the other situations. Moreover, if this explanation is correct, it implies that such an association will emerge whenever an accusation of laxity is launched, regardless of whether this happens in a public, personal, or workplace context.

This investigation did not offer much support for the importance of the P element in Equation 1, but the S variable was quite important. Situations can be distinguished on many grounds. Here we chose to feature Johnson's (2002) distinction between personal and public topics, and added workplace topics to her list. We found the distinction among topic types to be important. The intention to engage had only modest consistency from one topic to another (varying from 10% to 20%), and our structural equations were noticeably different from one topic to another. Although winning was a predominant predictor and appropriateness a lesser one for all three topics, the effects of civility, other's reasonableness, the argument's perceived resolvability, benefit, and cost depended entirely on which topic was in play. We only instantiated each topic type with a single example in this study, so we are a long way from offering firm conclusions. But we are encouraged that topic type will prove to be an important consideration in understanding why people engage in arguing and why they don't.

Finally, using scenarios to manipulate situational variables proved to be effective, but it also inevitably introduced other variables that were not contemplated by the model and yet may have had an impact on the respondents' estimates. If we look carefully at the scenarios used in this study, some potentially relevant factors appear: for instance, the personal and workplace scenarios involve an accusation

against the respondent, who is supposed to have done something wrong, whereas nothing of the sort is present in the public scenario; similarly, in the public and personal scenarios the matter of the dispute is fairly subjective (tastes in the first case, feelings in the second), while the workplace scenario is about settling an objective matter (whether or not the respondent did a fair share of work); moreover, the attitude of the respondent towards the friend is characterized differently across all scenarios, as an attempt to help in the personal case (respondent tried to get along with his/her friend's partner, even though the friend was not satisfied by the effort), while in the workplace scenario the respondent was just doing a fair share of work (although the friend does not think so), and in the public scenario the topic of discussion was musical tastes, with no pro- or anti-social attitude towards the friend. The fact that these and other similar factors may have influenced the participants' responses is no reason to abandon scenario-based manipulations of situational variables. It simply suggests that further research is needed to provide more robust and fine-grained assessment of the model, including studies that use other methods to operationalize situational factors.

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Appendix Tables

Table 1

Descriptive Statistics for Multi-Item Measures

Table 1
Descriptive Statistics for Multi-Item Measures

	Cronbach's Alpha	N	Mean	SD
Argument-avoid	.85	509	2.70	.65
Argument-approach	.84	509	3.37	.57
VA – prosocial	.78	509	3.29	.55
VA – antisocial	.82	509	2.69	.60
Behavioral Intention				
Public	.87	509	3.56	.52
Personal	.84	490	3.22	.49
Workplace	.90	490	3.48	.57
(Un)Resolvability				
Public	.75	508	2.82	.64
Personal	.80	488	2.71	.64
Workplace	.80	489	2.58	.62
Civility				
Public	.84	508	3.58	.58
Personal	.80	489	3.35	.54
Workplace	.80	489	3.38	.55
Reasonability				
Public	.68	509	3.23	.62
Personal	.74	490	3.13	.62
Workplace	.71	489	3.24	.57
Costs				
Public	.80	508	2.72	.61
Personal	.80	489	3.23	.57
Workplace	.79	489	2.99	.55
Winning				
Public	.69	490	3.19	.51
Personal	.66	480	3.16	.48
Workplace	.76	478	3.29	.55
(In)Appropriateness				
Public	.87	508	2.63	.70
Personal	.84	490	2.69	.66
Workplace	.85	489	2.85	.70
Benefits				
Public	.83	507	2.94	.66
Personal	.80	487	3.24	.65
Workplace	.80	489	3.25	.61

Note. Means and standard deviations are on a 1 to 5 scale.

Table 2

Correlations Between Exogenous and EndogenousVariables

	VA Prosocial	VA Antisocial	Arg-Avoid	Arg-Approach
VA Prosocial				
VA Antisocial	-.38			
Arg-Avoid	.32	-.00		
Arg-Approach	-.04	.26	-.51	
BI Public	-.05	.10	-.31	.44
Uresolv Public	-.15	.24	.00	.02
Civility Public	.33	-.33	-.02	.10
Reasnbl Public	.23	-.19	.07	.01
Cost Public	-.12	.23	-.02	.11
Win Public	.09	.06	-.13	.27
Inapprop Public	.00	-.02	.30	-.24
Benefit Public	.07	.03	-.22	.24

BI Personal	-.06	.06	-.14	.19
Ureslv Personal	-.15	.17	.11	-.10
Civil Personal	.23	-.29	.02	.05
Reasnbl Persnl	.28	-.14	.07	.08
Cost Personal	.01	.13	.05	.03
Win Personal	.12	.09	.06	.20
Inapprop Persnl	-.00	.11	.17	-.12
Benefit Personl	.13	-.01	-.12	.18
BI Work	.05	-.01	-.23	.33
Uresolvbl Work	-.12	.17	.06	-.06
Civility Work	.20	-.27	.02	.06
Reasonbl Work	.19	-.09	.05	.02
Cost Work	-.05	.15	.02	.06
Win Work	.10	-.02	-.09	.18
Inapprop Work	-.04	.04	.16	-.16
Benefit Work	.10	.02	-.15	.17

Note. Correlations with absolute values of .09 or higher are significant at $p < .05$.

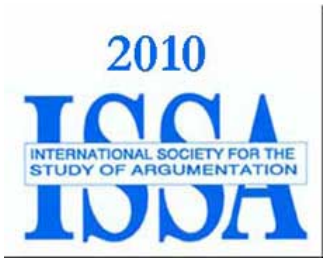
Table 3

Correlations Among Endogenous and Exogenous Latent Variables

Endogenous Variables, All Topics						
	BIPub	BIPers				
BIPers	.31					
BIWork	.44	.42				
Exogenous Cost-Benefit Variables, Public Topic						
	Unreslv	Civility	Reasnbl	Cost	Win	Inappr
Civility	-.59					
Reasnbl	-.66	.70				
Cost	.47	-.67	-.63			
Win	-.05	.28	-.05	-.11		
Inappr	.25	-.34	-.08	.25	-.38	
Benefit	-.13	.02	.13	.06	.23	-.18
Exogenous Cost-Benefit Variables, Personal Topic						
Civility	-.64					
Reasnbl	-.52	.66				
Cost	.37	-.39	-.75			
Win	-.01	.26	.01	.21		
Inappr	.35	-.42	-.20	.04	-.37	
Benefit	-.34	.40	.36	-.10	.52	-.45
Exogenous Cost-Benefit Variables, Workplace Topic						
Civility	-.76					
Reasnbl	-.53	.74				

Cost	.45	-.55	-.65			
Win	-.25	.27	.08	.09		
Inappr	.29	-.28	-.20	.14	-.21	
Benefit	-.27	.35	.38	-.20	.39	-.18

ISSA Proceedings 2010 – The Absence Of Reasons



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

In legal procedures argumentation is often viewed as the central means to establish rationality and legitimacy. This assumption is important, even if one would take issue with it, as it has meaning in the field, if only counterfactually. The professional participants in the field work on the assumption that the giving

of reasons is essential for the legal procedure, especially in criminal cases.This notion that is at work in the field can be explicated by Habermas' notion of procedural rationality (1998). This procedural rationality in the legal realm incorporates the concept of communicative rationality. Similar to Habermas, Alexy's work in legal argumentation (1983) and also the work done in the context of Pragma-Dialectics can be conceived of as subscribing to a procedural rationality (see Feteris, 1999, pp 163). Following this notion, legal proceedings can claim to be rational, if they adhere to certain (normatively formulated) rules of communication as in the ideal speech situation or the rules for critical discussions. One of the basic rules is, that interactants have to give reasons when asked for them. It is through reason giving that legal procedures attain legitimacy.

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

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

1. Ethnography of argumentation

This study is part of a broader project on the „Comparative Microsociology of Criminal Proceedings"(see Scheffer, Hannken-Illjes, & Kozin, 2010). The project comprised three case studies from three different countries, England, US, and Germany, thereby included two different procedural systems in criminal law: the adversarial and the inquisitorial. The case analyzed here stems from the data I

collected in two extended periods of field-work in two defence-lawyer's firms. My objective during this fieldwork was to follow the development of criminal cases from their first appearance in the law firm to the final decision. The data consists of copies of files, audio recordings of lawyer-client meetings, ethnographic interviews, protocols of court hearings and field notes.

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

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

2. Demanding reasons

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

In her first questioning by the police Lena remains silent.

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

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

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

The case quickly drew the attention from the local media. They, too, start to suggest reasons. A local newspaper states that there is only one plausible reason:

the husband was not the father of the baby. Hence, not only the police and prosecution look for reasons but also the media and hence the greater public. A week later the accused states that, yes , the baby was hers and denies that her husband is not the father. The husband agrees to a DNA-analysis: the results show that he is the father.

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

Whereas most witnesses do not take on one of the offered reasons, one witness – the mother in law – brings up a reason by herself, taking the blank space left by the accused's silence. In a letter to the prosecution she writes, that her daughter-in-law must have assumed that the baby was dead already and buried it lovingly under the leaves

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

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

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

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

90 days after Lena's arrest a reason lurks up, first appearing in a preliminary hearing: after stating once more that she does not know why she did not take the

baby with her she states that she had to make a decision: either the baby or her professional training as planned. This reason, however, is not presented as a response to the question why she did what she did. They are developed later in the interview and are not presented as reasons but more or less as circumstances.

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

The statement however, is taken up by the defence lawyer. When I asked him about the lacking reasons for the killing he quickly rejected that this lack existed, claiming that the defendant feared to have to leave school. Hence, he took up a statement by the defendant, explicitly labelled by her as "not the reason" and turning it into the main reason he would rely on. The defence lawyer prompts his client with reasons. This reason can already be ascribed to her, but not as a reason. It is the defence lawyer who at last manages to attach a reason to the action.

3. Conclusion

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

In this case we face a double imposition: for the defendant the imposition to give a reason. In the preparation of the case the accused claims that she has no reason: she seems to be unable to just insert "something" (as for example her fear to have to leave school) as a reason. This might point to a difficulty the defendant in understanding the procedure she is part of: the criminal procedure does not

need “the real reason” or even a “very good” reason, it needs a reason it can work with, hence a reason that allows (especially for the defense layer) for a certain strategy.

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

A methodological implication has probably become apparent: had I just looked at the trial in this case, the argument would have been entirely unproblematic to me. But all professional participants know what career this argument has had in the file and in the testimonies. They, as I, could follow “the thing” through the proceeding. The focus on how arguments are produced can reveal mechanisms that are often not at the scope of legal rhetoric or court-room studies. And also the focus on the blanks and missing reasons can shed light on the production of legal rationality.

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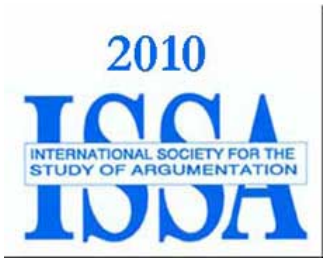
ISSA Proceedings 2010 – Using Argument Schemes As A Method Of Informal Logic



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

1. Argument Schemes in the Logic Literature.

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

A certain proportion (r' per cent) of the sample P have the character q.
The P's are a fair sample of a large collection M.
Hence, probably and approximately, the same proportion (r' per cent) of the collection M have the character q.

Cohen and Nagel too give some useful rules for evaluating such arguments relating to how the sample was obtained, etc. The tradition of identifying argument schemes for kinds of arguments that do not owe their strength to formal validity, and attaching a set of rules or guidelines for their evaluation, continued with the first edition of Copi's *Introduction to Logic* in 1953 and saw considerable development in Wesley Salmon's *Logic* ten years later in 1963.**[ii]** As an example, look at Salmon's characterization of the *ad hominem* argument or, as he calls it, the argument against the man.

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

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

Schemes have also been used to characterize bad arguments, like fallacies. Consider the conditions for the Strawman Fallacy offered by Johnson and Blair (1983, p.74):
M attributes to N the view or position, Q
N's position is not Q, but a different one, R
M criticizes Q as though it were the view or position actually held by N.

Here 'M' and 'N' are person variables and 'Q' and 'R' are propositional variables. The idea is that the Strawman Fallacy is a kind of argument that fits the given pattern and that all instances of the pattern (or scheme) are bad arguments. Other patterns of bad arguments like the fallacies of *ad hominem* (p. 79) and improper appeal to authority (p. 155) can also be captured by fallacy schemes. However, since there are legitimate appeals to authority as well as justified uses of *ad hominem* arguments, it is also possible to see many of the fallacies not as

bad kinds of arguments but as bad instance of kinds of arguments that can have both good and bad instances. (Good and bad baseball games are both of the kind, *baseball game*; good and bad tomatoes are both of the kind, *tomato*). Even the strawman argument need not be bad if, for example, Q is entailed by R because then any doubt attaching to Q will transfer to R. Viewed this way, our attention is shifted from identifying fallacies to identifying different kinds of arguments and giving criteria for distinguishing good from bad members of the kind. To identify the kinds is to give the necessary and sufficient conditions for membership in each kind, and the expression of these conditions constitute an argument scheme.

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

2. Walton's Approach to Argument Schemes.

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

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

The standard Walton is speaking of is a *standard of correctness of use*. It is not immediately clear what the compass of this standard is, but I will assume that it includes a standard of premiss sufficiency since arguments could not be said to be used correctly (in their primary function) unless they were premiss sufficient. Hence, in what follows, I will explore Walton's views on the correct use of argument schemes in so far as they touch on the question of premiss sufficiency.Walton's approach brings together several key ideas taken from logic

and dialogue theory. His focus is on arguments that are neither deductive nor inductive. An overview of what is involved is summarized in the following paragraph.

These arguments are inherently *presumptive* and *defeasible* . . . . Each of the forms of argument . . . is used as a *presumptive argument* in dialogue that carries a weight of *plausibility*. If the respondent accepts the premises then that gives him *a good reason* to also accept the conclusion. But it does not mean that the respondent should accept the conclusion uncritically. Matching each form of argument is a set of appropriate *critical questions* to ask. . . . These forms of inference are called *argumentation schemes* and they represent many common types of argumentation that are familiar in everyday conversations. They need to be evaluated in a *context of dialogue*. They are used to *shift a burden of proof* to one side or the other in a dialogue and need to be evaluated differently at different *stages of a dialogue*. (Walton 2006, p. 84)

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

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

The basic difference between them is that inductive reasoning is based on gathering positive evidence that can . . . be counted or processed in some

numerical way by statistical methods. Plausible argumentation is more practical in nature and is based on presumptions about the way things normally go, the way things normally appear, or practices that expedite ways of working together to perform smooth and efficient collaborative actions. (Walton 2006, pp. 73-74)

There is an interesting issue here about whether there is any difference at all between presumptive and plausible reasoning or whether they are the same thing.**[iii]** Walton seems to lean in the direction of thinking that *presumption* is the fundamental concept. Plausible reasoning gives us "some reason to think a proposition is true, provided [we] have no better reason to think it is false" (2006, p. 74), but such reasoning, according to Walton, is based on generalizations that are presumptions about the way things normally go; hence, the more basic concept here is that of a presumption. In Walton's view the conclusions of presumptive reasoning – they are most often singular propositions – are also presumptions because they are inferred from generalizations that are presumptions (Walton 2006, pp. 72-74). Nicholas Rescher seems to see the relationship between the presumptive and the plausible as being the other way around. He refers to a basic principle that "Presumptions favour the most plausible of rival alternatives – when indeed there is one. This alternative will always stand until set aside (by the entry of another, yet more plausible, presumption)" (Rescher 1977, p. 38). So, for Rescher, the concept of plausibility is analytically basic to the concept of presumption, since presumptions are identified as being the *most plausible* of a number of plausible propositions. For the present purposes, it doesn't matter greatly which of the two views we adopt, Walton's or Rescher's, but we should mark this area as an unsettled part of the meta-theory of non-formal reasoning. The important point for now is that the kind of reasoning Walton is discussing is, like inductive reasoning, defeasible; that is, the conclusion reached is defeasible because the generalization it depends on (the major premiss) has exceptions.

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

That exceptions are possible means that they can arise, and when they do arise they constitute new information which runs against the current of the

generalization without contradicting it. For instance, that Goneril doesn't love her father may be surprising, but it is not inconsistent with the generalization that, typically, children love their parents.

GROUP B: Of central importance to Walton's approach to NLA evaluation is the concept of a dialogue, a conventionalized framework in which assertions and arguments can be made and questions can be asked. In Walton's view there are different types of dialogues and NLA's may be analyzed as occurring in one or other of the dialogue types. These types include persuasion dialogue, inquiry dialogue, negotiation dialogue, information-seeking dialogue, deliberation dialogue and eristic dialogue (Walton 2006, p. 183). The dialogues are individuated on the basis of having different goals and different rules (Walton 2006, p. 178). Of importance here is that the standard for what makes the use of an argument of a kind a good one will depend on the standards of the dialogue type in which it finds itself. The standards for persuasion dialogue, for example, are given by a set of ten rules (Walton 2006, p. 177).

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

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

be a factor in the interpretation and evaluation of the argument.

GROUP C: *Argument schemes* "represent many common types of argumentation that are familiar in everyday conversations," says Walton (2006, p. 84). They are like logical forms of propositional logic in that they are not themselves arguments, but abstract structures that can have an infinite number of substitution instances that are arguments. The substituands in argument schemes are just the same as those in logical forms: names of individuals, properties, relations and propositions. What sets schemes apart from the better-known logical forms is the nature of the logical constants. In the schemes for presumptive arguments the important constants are, 'in general', 'typically', 'normally', and other non-truth-functional operators such as 'is similar to', 'asserts that', and 'can be classified as'. Walton has pressed the analogy with logical form further holding that, like valid logical forms, "argumentation schemes can best be revealed as normatively binding kinds of reasoning" (1996, p. 1) that give the addressee a good reason to accept the conclusion provisionally. An example, slightly amended, of one of his argumentation schemes is this.

Argument from analogy
Case C1 is similar to case C2 in respects R1, R2, . . .
A is true (false) in case C1
Therefore, A is true (false) in case C2. (Walton 1996, p. 77)

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

*Q*1. Are C1 and C2 similar in respects R1, R2, . . . ? [P]

*Q*2. Is A true in C1? [P]
*Q*3. Are there differences between C1 and C2 that undermine the force of the similarity? [S]
*Q*4. Is there some other case C3 that is similar to C1, but in which A is false. [D] (Walton 1996, p. 79)

I have followed each of the questions with a letter in brackets. The letters indicate an attempt to classify the kinds of critical questions associated with argument schemes. 'P' indicates a question about premiss acceptability, 'S' a question about premiss sufficiency, and 'D' a question about possible defeaters. In Walton's 1996 list of 25 argument schemes**[iv]** there are also kinds of questions not associated with the scheme for analogical arguments: K-questions about the nature of conclusions, for example, and a catch-all of left-over issues dealt with by what we can call X-questions. As for the four questions associated with the scheme for analogical arguments, the first two are clearly about the acceptability of the premises. The third question might be viewed either as a question about sufficiency – do the similarities outweigh the dissimilarities? – or as a question about defeasibility: have relevant dissimilarities that cancel the inference been overlooked? The last question raises the possibility that another analogy, perhaps a better fit with the target situation, does not lead to the targeted conclusion. If there was such another analogy that would undermine the support for the conclusion. In other words, it is a D-question, putting the assessor on the lookout for inference-defeating pieces of information.

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

NLA Evaluation by Walton's Method of Argument Schemes

0	Preparation	The target argument {P}/K is presented in standard form
1	Step1	Identify the relevant standard by identifying the dialogue-kind in which {P}/K occurs
2	Step 2	Identify the argument scheme of which {P}/K is an instance
3	Step 3	Ask the critical questions associated with the scheme
4	Step 4	Evaluate {P}/K on the basis of answers given to the critical questions in light of the standards of the relevant dialogue type.

3. Characterization and Adequacy of the AS Method.
(A) *Characterization of the AS Method*. As a method for evaluating NLA's, how does the AS Method compare with other methods? First we may observe that it is a *direct* method in that it evaluates arguments without going through some other argument, as does the method of logical analogies, for example, or the *a fortiori*

method which considers the comparative strengths of arguments. Moreover, the AS Method it is a *bipolar* method that can issue both the verdicts "good argument" and "bad argument." Not all methods are like that; for instance, some no-fallacy methods can only say that an argument is bad, never that it is good, and others like the method of formal logic can say that an argument is good but never that it is bad (because of the asymmetry thesis). Finally, the AS Method is *a textured* method, meaning that it can result in judgments placed between the poles of very good and very bad arguments: judgments that an argument is "pretty good but not very good", "middling good", "bad but not absolutely bad", are possible depending on how well the argument does in light of the associated critical questions. Some of these questions it may deal with satisfactorily, others with difficulty resulting in a qualified judgment. Some methods of NLA-evaluation are not textured methods, for example the method of using formal logic.

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

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

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

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

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

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

The standard for the use of an argument will depend on the standard for the type of dialogue in which it occurs. The standards for dialogue types are expressed in the particular rules that will govern each type of dialogue. But Walton only gives

us rules for persuasion dialogues, not for the other four kinds. Hence, until we have an explicit set of rules for all the types of dialogue (excepting, perhaps, the eristic type) the method is severely limited in scope.

4. Issues Arising in Connection with Argument Schemes.

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

(D) *The moods of schemes*. We should pause to observe that argument schemes can be in any one of three moods. They can be negative as are Johnson and Blair's fallacy schemes; they can be neutral as are the ones from the logic books we reviewed at the outset, and they can be positive in mood as are the ones Walton has shown us. If schemes are in the positive mood then they are such that any argument that instantiates a scheme (and has acceptable premises) will make its conclusion *prima facie* acceptable. Such schemes, we noted, should not include S-questions since a measure of premiss sufficiency is guaranteed in virtue of being an instance of the scheme. Neutral-mood schemes, by contrast, do not confer *prima facie* acceptability on their conclusions. To compensate for this, they must include S-questions along with other critical questions. Thus two slightly different AS methods may be identified: one uses positive-mood schemes without S-questions, the other uses neutral-mood schemes with S-questions. Two

consequences of these distinctions may be observed: the one is that if schemes are positive (or negative) then we will be left in want of a way to classify bad (good) arguments; the other consequence is that if schemes are considered as neutral then it will make no sense to talk of 'defeasible argument schemes' since being an instantiation of a scheme does not imply that the argument gives *prima facie* support to its conclusion. Walton's list of schemes in his 1996 and 2006 books suggest a mixed approach. Some of the schemes are neutral, some are positive.

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

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

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

There are different ways one might attempt to answer Pinto's argument. One is simply to say that Walton's claims about schemes and the arguments they generate is for everyday arguments, and the arguments used in courts are not 'everyday'. Perhaps. But with this retort one immediately admits a significant limitation to the range of the AS Method. Alternatively, one might maintain that the kind of dialogue a customer has with a sales person is a persuasion dialogue,

whereas an insurance claim is more likely to be an inquiry dialogue, and then say that these dialogue kinds have different standards, and hence one should not expect an argument occurring in a persuasion dialogue to create a presumption in a legal setting. This may be right, but it introduces a serious complication to the AS Method: it means that we would have to have an index of which kinds of arguments have force in the different types of dialogues. Taken this way, Pinto's claim becomes not that schemes don't have normative force but that although they all can have normative force in some dialogue type or other, their normative force can vary depending on the dialouge in which they are used, and some of them may not have normative force in every type of dialogue. There is something to this point, I think, but it doesn't go far enough to save the normative characterization of argument schemes because some Arguments from Sign may well be stronger than some Arguments from Expertise. This observation invites us to recover a distinction between weak and strong presumptions (see Whately 1846, p. 118), and then to ask of every argument of a kind how strong a presumption it affords. If we do this we will be obliged to re-introduce S-questions for each kind of scheme and then, I think, we have pretty much taken the normative character – at least as far as it relates to premiss-sufficiency – out of the schemes. Pinto's invented illustration is, therefore, telling.

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

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

[S2] Premiss: Typically, F's are G's
Premiss: *w* is an F

Conclusion: Presumably, *w* is a G ?

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

5. Summation

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

NOTES

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

ii Salmon (1963) does not use the term 'schema' in connection with the following inventory of argument schemes, but he does attach questions to each of them:

universal and statistical generalization (p. 85 ff.) statistical syllogism (p. 60 ff.), argument from authority (p. 63 ff.), argument from consensus (p. 66), argument against the man (p. 67 ff.), argument by analogy (p. 70 ff.). See also Merrilee Salmon (1984): inductive generalization (pp. 60-62), argument by analogy (pp. 64-67), statistical syllogisms (pp. 71-74), arguments from authority (pp. 78-80), *ad hominem* arguments (pp. 80-81), and argument from consensus (pp. 82-83).

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

iv Taken from Kienpoitner (1992).

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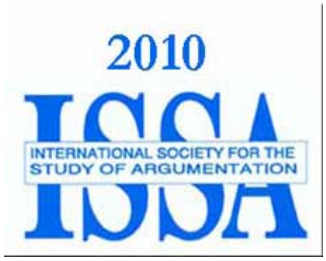
ISSA Proceedings 2010 – An Exploratory Study Of Argument In The Public And Private Domains Of Differing Forms Of Societies



1.Introduction

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

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

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

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

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

2. Background Assumptions

We begin this paper by explicating several underlying assumptions. First, we use "domain" as an alternative to the more commonly used term "sphere." While dictionary definitions of the two terms are similar, the technical use of "sphere" has been narrowed by theorists such as Habermas (2006). Our use of "domain" is meant to be broader and, in so far as the public domain is concerned, encompasses the "public sphere" as well as other "public" activities.

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

Third, our models are conceived of as encompassing both argument$_1$ and argument$_2$ (O'Keefe (1977). Argument$_1$, the domain of reason giving, linkages and conclusions is considered to be a fundamental dimension of all communicative messages (Hazen, 2007). On the other hand, argument$_2$, controversy about points of view, is expected to be present in all models but differ in form.

3. The Nature of the Public and the Private

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

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

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

others, they utilize various mechanisms to create what Goffman calls "a conventional engagement enclosure."

Finally, Arendt (1958) presents a third position. She argues that the public realm involves two characteristics: 1) things that "can be seen and heard by everybody" (p. 50) and 2) the world that "is common to all of us and distinguished from our privately owned place in it" (p. 52). Her definition of the private stems from what the public is not, i.e. what is unseen and unheard by others and what is not common to all.

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

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

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

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

If no, what separations between the public and private domains exist and which is dominant? The criteria for determining one domain's societal dominance over the other are not totally clear. We can begin with the question of how argument

works in each domain's discourse and which discourse elements surface when a conflict between the two emerges. As such, we begin by looking at what serves as argument's underlying grounds or assumptions, its ideational scaffolding, its forms, and normative standards for discourse evaluation.

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

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

4.1 Model One: Societies where the Public Domain Dominates

Model 1 represents a society where there is no clear separation between the two domains and the public domain dominates the private. In this situation, not only is private information and communication made known to others, it is expected to conform to the forms and logic of the public domain and be judged by its norms.

Some theorists suggest that this model may be particularly related to authoritarian societies. For example, Mamali (1996) claims that in communist societies, the state's dominance of ideology and the means of communication have led to control of interpersonal communication. Arendt (1951) argues that totalitarianism can be distinguished from tyranny in that it limits private life as well as public life, which is crucial because there are things that "can survive only in the realm of the private" such as love (1958, p. 51). While the connection between Model 1 and authoritarianism is an intriguing idea, it will not be explored in this paper.

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

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

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

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

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

The Party's discourse not only provided meaning for Marxist/Leninism, it also created the discursive climate for "the productive, mobilizing power of the

revolutionary narrative" (Hellbeck 2000, p. 81). Historians disagree about the discourse's degree of influence on the average citizen, but they do agree that it "made its way into everyday (*bytovye*) decisions as well as into the language of political meetings and wall newspapers" (Kelly 2002, p. 636). The result was a situation where both dissenters and Party members were united in an "illiberal consensus" based on the use of similar discourse (Hellbeck 2000, p. 87).

Closely related to the Party's ideology and public discourse was the effort to create "the new Soviet Man" who "was to be free of egotism and selfishness, and was to sacrifice personal interests for the sake of the collective (Hoffmann 2003, p. 45). Thus, citizens faced "the demand of the Soviet party to lay open all personal relationships on the basis of forming a better, 'new human being'" (Studer & Unfried, 2003, p 222). Such a person would "identify with the revolution . . . and thereby comprehend themselves as active participants in the drama of history's unfolding" (p. 84) and "involve themselves in the revolutionary movement totally and unconditionally" (Hellbeck 2000, p. 74).
An analysis of Stalinist Russia's argumentation shows that two overarching argumentative structures were present. The first argumentative structure was based on the dialectical affirmation of the public domain and rejection of the private domain. As Hellbeck states:
The very distinction between public and private . . . was fiercely rejected by the Soviet regime as a bourgeois notion. Moreover, Soviet revolutionaries waged war against the private sphere altogether, which they regarded as a source of anti-Soviet, individualist instincts. By contrast, the Soviet regime greatly valorized public speech and in particular, autobiographical speech, as an act of virtue. (2000, p. 89).
Thus, "the goals, interests, personal relationships, and development of the individual were systematically and unconditionally subordinated to the goals, interests, social relationships and unity of the collective" (Mamali, 1996; p. 225).

The argumentative equation of the public with Marxist/Leninist collective values and the private with capitalistic and anti-Soviet tendencies was present in several discourse forms. One was the public reciting of autobiographical aspects of one's life. As Fitzpatrick states, "Soviet citizens of the 1920s and 1930s were used to telling the story of their lives in public. Numerous interactions with the state required presentation of an autobiographical narrative" (2005, p. 91). Furthermore, party members were routinely questioned publicly about their

private life at party forums or in factory meetings. As Studer and Unfried indicate, “sessions of ‘self-criticism” were often used to “bring to light a reality of ‘private life’ somehow different from the communist model” (2003, p. 213). Thus, a person had to be prepared at all times for public discussion and judgment of their private lives.

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

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

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

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

Public discourse constantly referenced class struggle and featured words such as "struggle, fight and attack" (Fitzpatrick 1999, p. 17). This militant logic was further extended by the concepts of "conspiracy" and "vigilance." Conspirators were thought to be hidden in society sabotaging the Party's successes. The resulting logic often took on a tautological flavor. Guesva recounts the story of the sister-in-law of Stalin's first wife, who "rationalizes the need to unmask hidden enemies everywhere because they must be responsible for wrecking: 'How else could it be that the textile factories were full of Stakhanovite overachievers, but there were still no textiles to buy in the stores?'" (2007, p. 333). Note the logical structure, which valorizes the new society and its highly motivated workers, while blaming hidden enemies for society's woes.

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

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

The second argumentative structure was tied to several forms of punishment when someone was labeled an enemy. Members were expelled from the Party and anyone and their families were considered to be outcasts and treated as if they

were “plague bearers” (Fitzpatrick 1999, p. 19). By the mid-1930s, the penalties became harsher with massive show trials and executions, which often “were organized for a broader audience” and constituted “an entertainment-cum-agitational genre” (Fitzpatrick 1999, p.27).
Thus, it can be seen that the two argumentative structures in Stalinist Russia had the practical effect of erasing the line between the public and private domains and subjugating the private domain to the public.

4.2 Model Two: *Societies where the Private Domain Dominates*
Model 2, while similar to Model 1 in that the separation between the public domain and the private domain has broken down, differs in that the society and the public domain, is dominated by the private communicative domain. Over time the standards, norms and elements of the private domain’s discourse patterns came to dominate the public domain; in other words the elements of private discourse “trumped” the elements of public discourse.
Societies that fit this model are relatively rare even though many technologically advanced Western societies may be moving in this direction. The fundamental distinction of such a society is that the private domain’s discursive patterns have transcended the divide between the two domains and proven capable of dominating the public communicative domain.

The illustrative example for Model 2 is post 1974 American society. There is evidence indicating that American society in the first part of the 20th century possessed a clearer separation between public and private communication domains. However, since the end of World War II, the characteristics of American society have been evolving.
The private communicative domain’s domination of a society poses certain ironies in that the private domain is usually considered to be the realm of privacy and thus would be out of place in the public domain. Yet elements of the private domain have increasingly become a staple of the American public domain.
Our example examines a) the nature of the American private domain and b) its intrusion into the public domain in three areas: political, legal, and popular culture. This analysis establishes the assumptional grounds of argument in American society and its subsequent framing.

First, the nature of the American private domain is discussed in the work of a number of scholars. Sennett argued that one of the factors leading to the decline

of secular American public culture was what he called the “ideology of intimacy.” At the root of this view are the beliefs that closeness between individuals is a moral good, as experiences of closeness and warmth with others develop an individual’s personality and “the evils of society can all be understood as evils of impersonality, alienation, and coldness.” For Sennett, “the sum of these three is an ideology of intimacy: social relations of all kinds are real, believable, and authentic, the closer they approach the inner psychological concerns of each person” (1978, p. 259).

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

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

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

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

Philipsen provides a philosophical basis for the American movement of the private

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

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

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

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

Finally, popular culture is another area of increasing evidence that the private domain's values and argumentative forms have come to be central to the public domain. The rise of talk shows and other elements of radio and television dwell continually on the culture of intimacy where the facts of private lives are continually paraded in public and a lack of separation is evident. Carbaugh's study (1993) of the old Donahue talk show and a series of broadcasts from

Moscow Russia in the late 1980s is a prime example. Carbaugh crystallizes the glaring inconsistencies between topics considered acceptable for public discussion in the United States and the Soviet Union. Donahue, reflecting practices in American popular culture, wanted to engage in discussions about various aspects of topics such as sex, utilizing elements of the "code of dignity" and its emphasis on the self. Such discussions were strongly resisted by Russian audience members as publically inappropriate. Carbaugh believes that this is exemplary of what he calls "USAmerican discourse" where: "One is (and should be) an expressive individual, who communicates openly, and expresses feelings freely." Carbaugh thinks this discourse serves as an argumentative "taken-for-granted consensus" that underlies Donahue's behavior (2005, p. 122). Thus, it can be seen that these assumptions about a person's nature function as the grounds for subsequent arguments.

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

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

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

Postwar Japanese provides our illustrative example. This example's usage is based on a number of distinctions drawn by scholars of Japanese society. Three binary

distinctions between Japanese words are used to illustrate the differences between the public and private domains of communication. A paramount distinction is represented by the words *tatemae* and *honne. Tatemae* is considered to be the world of social relations and is often thought of as an individual's façade for public behavior. On the other hand, *honne* is usually regarded as a person's true feelings or inner reality, which is usually only expressed in the private domain and to intimates.

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

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

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

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

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

In her later work, Lebra (2004) alters her framework slightly to include a negative

side to both public and private forms of interaction, however her fundamental position remains the same. Thus, in both works, Lebra seems to be drawing a distinction between what would fit our definitions of the public and private domains and in doing so, specifies the distinctiveness of the domains.
Two examples from Lebra exemplify Japanese attempts to keep the two domains separate. In the first example of a 1996 interview, the wife of the newly appointed Prime Minister had nothing good to say about her husband, which Lebra explains in the following fashion: "She acted according to the seken [surrounding world of community or public] expectation of a married couple; indeed, the Japanese audience took her words as a positive sign of her warmth toward the prime minister" (2004, p. 90). In the second example, Lebra describes what she calls the "sacred boundary between workplace and home" and states that "a man would be upset and terribly embarrassed in front of his coworkers if his wife telephoned or, worse yet, visited his workplace" (2004, p. 89).

At this juncture, it is important to discuss the argumentative character of the Japanese public and private domains. Lebra describes the public domain (*omote* zone) as involving courtesy, face work (*kizukai*), tact, honorifics, formalized greetings (*aisatsu*), set patterns of interaction (*kata*), whereas the private domain (*uchi*) involves intimacy, the use of familiar terms, and understood behaviors.
It can be seen that the kind of communicative behavior the Japanese display in the public domain clearly fits what many would call ritual behavior (in addition to Lebra; McVeigh, 1998; Barnlund, 1989). In this case, the argumentative ground is the display of proper levels and forms of politeness and tact. For example, if I use the proper forms of honorifics (i.e. exalting others and humbling self), then that demonstrates that I understand the situation and that my subsequent argumentation can be considered. Some may not see this as argument because of its formal nature and implicit messages.

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

(2004, p. 11). Thus, the proper expression of courtesy to the public served as argumentative grounding for his subsequent assertion of innocence.

The communication factors in the private domain are not necessarily that different from what most would expect as private communication in Lebra (1976) refers to intimate communication in terms of things such as confidentiality, spontaneity, and communication of unity. Such things can serve as argumentative grounds for communication in the private domain. When a person feels that the situation is confidential (otherwise hidden from the public or outsiders) and that what is being expressed is a true reflection of their inner feelings (*honne*), then the proper argumentative ground has been established for subsequent conclusions. Adams, Murata and Orito's (2009) observations on Japanese information privacy on the internet grow out of their belief that the Japanese have always had a strong sense of information privacy (as opposed to privacy of physical spaces or personal body) based on social norms in the past and now on specific legal protections. They use the work of Lebra, Doi and others to draw boundaries between situations involving one's inner group and outer groups. Within that inner domain, the intimacy necessary for interaction is predicated on personal privacy. As a result, they argue that a number of social norms were previously used to insure that confidentiality including the "as-if tradition," "information from nowhere," and "the impossible expression" was present in the private domain, even if there were doubts (2009, p. 339). Thus, the fundamental assumption of privacy or communication addressed to specific, intimate inside group members, serves as the ground for openness to the following elements of argument in private interaction. As they argue, "personal information is revealed on the basis of trust that it will be filtered and some of it passed on to known others within a short transitive span of relationship, but then disseminated no further" (p. 339).

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

5. Conclusions

This exploratory study has inductively demonstrated the utility of the three models for analyzing the role of argument in relationship to the public and private domains of society. From the historical examples, it seems clear that the

theoretical nature of each model is an inexact fit to the society and the closer a society gets to a particular model, the more counter-balancing forces will be exhibited. Further historical examples of each model will help to reveal the degree to which tendencies are characteristic of the model and can be used to define the elements of each models.

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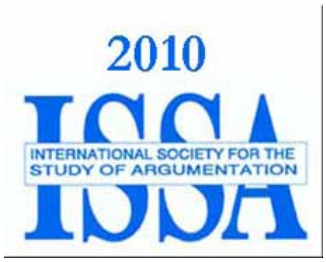
ISSA Proceedings 2010 – Defining "Disruption": Setting Limits On Student Speech Rights In The United States



In December of 1965, three public school students – John and Mary Beth Tinker and Christopher Eckhardt – in Des Moines, Iowa, were suspended from school when they wore black armbands express their opposition to the Vietnam War. Although the armbands expressed a legitimate viewpoint on an important political issue, the students were sent home for violating school policy and were not allowed to return to school until they agreed to remove their armbands. Rather than meekly accepting their punishment, the students challenged their suspensions on constitutional grounds. As predicted by many commentators, both the federal district court (*Tinker* 1966) and the United States Court of Appeals for the Eight Circuit (*Tinker* 1967) ruled in favor of school officials. The United States Supreme Court, however, reversed the lower courts and ruled in favor of the students in *Tinker v. Des Moines Independent Community School District* (1969), a landmark decision recognizing the student's First Amendment rights.

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

Since *Tinker* was the first decision to extend speech rights to public school students, it is widely celebrated as a ringing affirmation of the importance of the freedoms guaranteed by the First Amendment to the United States Constitution.

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

This analysis treats these interpretations of *Tinker* as an exercise in definitional argument and explores the argumentative moves made in these consequential decisions. By diluting the rigorous definition of "disruption" originally set out by Justice Fortas, federal courts have endowed school officials with a broad authority to suppress student speech. At the same time, by deferring to school officials all questions related to disruption, these decisions guarantee that the students will fail in their efforts to seek legal regress. This result illustrates the power of definitional argument and, more importantly, provides insight into the tenuous nature of student speech rights.

1. About Definitional Argument

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

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

As those familiar with American constitutional law know, *Tinker* was one of the last cases decided by the Warren Court. Even before the decision was announced, Chief Justice Earl Warren had announced his retirement. President Lyndon Johnson, a Democrat, nominated his friend and political ally, Associate Justice Fortas, to be the new Chief Justice. Republicans in the Senate blocked the nomination by staging the first filibuster of a Supreme Court nominee. When the motion for cloture failed to achieve the necessary two-third majority, President Johnson withdrew Fortas's nomination. The next president, Richard Nixon, nominated Judge Warren E. Burger to be Chief Justice and the Senate quickly confirmed him. Justice Fortas remained on the Supreme Court for another year, but a financial scandal forced him to resign in 1969. Due to appointments made by Republican Presidents, the progressive Warren Court (Horowitz 1998) gave way to the more conservative Burger Court (Blasi 1983), which gave way to an even more conservative Rehnquist Court (Savage 1992). Based on decisions to date, it appears unlikely that the Roberts Court will reverse the trend to the right (Chemerinsky 2007).

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

The first of these moves involves the use of "persuasive definitions," a tactic originally identified by Charles L. Stevenson (1938, 1944). As explained by David Zarefsky (1998), "a persuasive definition is one in which favorable or unfavorable connotations of a given term remain constant but are applied to a different connotation" (p. 7). In the case of student speech, this was done by subtly broadening the definition of disruption from student speech that is actually disruptive to include student speech that is potentially disruptive. This may seem an inconsequential distinction, but it has had dramatic consequences for students

who seek relief in federal court. By broadening the definition to include speech that might potentially be disruptive, federal courts made it easier to demonstrate disruption, thereby diluting the constitutional protection that *Tinker* provided to students.

The second move involves the authority to define. While the argumentation literature recognizes "the power to persuade is, in large measure, the power to define" (Zarefsky 1998, p. 1), case studies involving definitional argument often highlight the language being manipulated. While the definitions are important, Edward Schiappa (2001) has encouraged argumentation scholars to think more broadly about the power to define. "Our lives can be profoundly affected by such decisions," Schiappa posits, "since the question of who should have the authority to make definitional decisions amounts literally to who has the power to delineate what counts as Real" (p. 26). In the case of student speech, lower court decisions marginalized *Tinker* by broadening the definition of disruption to include anticipation disruption and, at the same time, by delegating the authority to decide whether student speech might be disruptive to school officials. Either move, taken by itself, would arguably have been insufficient to achieve the desired result. In combination, however, these moves make it easy to justify restrictions on student speech or to rationalize the punishment of a broad range of expression.

2. Tinker v. Des Moines Independent School District Revisited

To illustrate the importance of definition, it is necessary to return to text of the *Tinker* decision. Once he set out the new standard for assessing student speech, Justice Fortas turned his attention to the facts of the case. Since the armbands did not interfere with the "rights of other students to be secure and to be let alone" (*Tinker* 1969, p. 508), the only question was whether the armbands were disruptive. Not surprisingly, the answer to this question was woven throughout the majority opinion. Early on, Justice Fortas noted, "Only a few of the 18,000 students in the school system wore the black armbands. Only five students were suspended for wearing them" (*Tinker* 1969, p. 508). There was, moreover, "no indication that the work of the schools or any class was disrupted. Outside the classrooms, a few students made hostile remarks to the children wearing armbands, but there were no threats or acts of violence on school premises" (*Tinker* 1969, p. 508). To substantiate this claim, the opinion stresses that the "District Court made no such finding, and our independent examination of the

record fails to yield evidence that the school authorities had reason to anticipate that the wearing of the armbands would substantially interfere with the work of the school or impinge upon the rights of other students" (*Tinker* 1969, p. 509). To cinch the point, Justice Fortas observed, "Even an official memorandum prepared after the suspension that listed the reasons for the ban on wearing the armbands made no reference to the anticipation of such disruption" (*Tinker* 1969, p. 509).

In the final substantive paragraph of his opinion, Justice Fortas marshals the available evidence to support a definitional claim: "The record does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities, and no disturbances or disorders on the school premises in fact occurred" (*Tinker* 1969, p. 514). This sentence is significant because it clearly states that only a "substantial disruption" or "material interference" can justify limiting student speech. In the words of Erwin Chemerinsky (1999-2000), "Mere fear of disruption is not enough. The burden is on the school to prove the need for restricting student speech and the standard is a stringent one: there must be proof that the speech would 'materially and substantially' disrupt the school" (p. 533).

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

The other two cases – *Bethel v. Fraser* (1986) and *Morse v. Frederick* (2007) –

dealt with student speech more directly. In both cases, however, the Justices resolved the case without invoking *Tinker's* disruption test. In *Bethel v. Fraser* (1986), the court considered the case of a student who had been suspended for delivering a sexually suggestive speech nominating another student for a position in student government at a school-wide assembly. Although there was some evidence suggesting the speech was disruptive, Chief Justice Warren Burger stressed the role that schools play in inculcating the "habits and manners of civility" (*Bethel* 1986, p. 687). While the armband in *Tinker* dealt with a significant political issue, the speech at issue in *Bethel* was "vulgar and offensive" (*Bethel* 1986, p. 683). All of this lead the Chief Justice to conclude that "It was perfectly appropriate for the school to disassociate itself to make the point to the pupils that vulgar speech is wholly inconsistent with the 'fundamental values' of public education" (*Bethel* 1986, p. 685-686).

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

Taken together, these four Supreme Court decisions create a conceptual framework for dealing with the questions raised by student speech. *Tinker* is the foundation as it holds that student speech is protected so long as it does not interfere with the "rights of other students" or cause a "substantial disruption." Subsequent decisions have narrowed the scope of protection afforded to student speech by exempting speech in school sponsored publications, by exempting

speech which is "vulgar and offensive," and by exempting speech that advocates illegal drug use. For all other student speech, however, *Tinker* remains the law of the land. Because of *Tinker*, public school students have a First Amendment right to wear symbols to communicate political messages so long as the speech does not offend the rights of others or disrupt the school activities.

In the four decades since the *Tinker* decision, federal judges have used the framework created by the Supreme Court to decide "literally dozens" of cases involving student speech (Chemerinsky 2000, p. 542). While *Tinker* remains good law, many of these lower court decisions have upheld restrictions on student speech. To justify this result, judges frequently cite *Tinker* as a precedent to warrant the actions of schools officials. This means that a decision that was originally intended to protect student speech is now being cited to justify limiting student speech. This may seem an implausible result, but it neatly illustrates the power of definitional argument. By changing what counts as disruption and who decides whether student speech is disruptive, these decisions have significantly limited the speech rights of students.

3. Diluting the Disruption Standard

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

While Justice Fortas offered a stirring defense of student speech rights, his opinion does not offer a clear standard for assessing student speech. In one oft-quoted passage, Justice Fortas reasons that speech is protected unless "the forbidden conduct would 'materially and substantially interfere with the requirements of appropriate discipline in the operation of the school'" (*Tinker* 1969, p. 509). Working with this theme, Justice Fortas uses the following iterations in the pages that followed: "material and substantial interference with

schoolwork or discipline" (*Tinker* 1969, p. 511), "materially and substantially interfer[ing] with the requirements of appropriate discipline in the operation of the school" (*Tinker* 1969, p. 513), "materially disrupts classwork or involves substantial disorder" (*Tinker* 1969, p. 513), and "substantial disruption of or material interference with school activities" (*Tinker* 1969, p. 514).

From the outset, scholars like Mark Yudof (1995) recognized that *Tinker*'s disruption test was "treacherous, difficult, and unpredictable" (p. 367). Anne Proffitt Dupre (2009) analogized *Tinker* to a "kaleidoscope" that "changes color and meaning depending on how one looks at it" (p. 23). The ambiguous nature of the test is evident in a series of questions posed by Judge Richard Posner of the Seventh Circuit Court of Appeals in *Nuxoll v. Indian Prairie School District* (7th Cir. 2008): "What is 'substantial disruption'? Must it amount to 'disorder or disturbance'? Must classwork be disrupted and if so how severely?" (p. 674)

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

To justify this outcome, the Ninth Circuit rigorously applied the standard set out by Justice Fortas. In the words of the court, "*Tinker* cautioned that before deciding that school interference is warranted courts should look to concrete evidence of disturbance or disruption resulting or potentially resulting from specific expression" (*Burch* 1988, p. 1153). Since the decision hinged on the factual question of whether there was actual disruption, the Ninth Circuit took particular care when recounting the evidentiary record. Rather than responding to actual disruption caused by the content of so-called "underground"

newspapers, school officials had acted proactively and implemented a prior review policy. This was the very sort of speculative reasoning that originally led the Des Moines School District to ban political protest. To support this claim, the Ninth Circuit cited the passage in *Tinker* where the Supreme Court held the "undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression" (*Burch* 1988, p. 1153, quoting *Tinker* 1969, pp. 508-509). In this case there was, simply put, no proof of actual disruption. If anything, the Ninth Circuit concluded, "this policy [of prepublication review] appears to be based upon far less justification than the action of the school principals in *Tinker*, which was directed as specific expression in an atmosphere of political turmoil" (*Burch* 1988, p. 1154).

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

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

Guzick appealed and, based solely on the factual record, one might expect him to prevail as he was asked to remove the button based solely on the "undifferentiated fear or apprehension of disturbance." The principal acted

because of the potential for trouble, not in response to what actually transpired. This was not, however, how the case was ultimately decided. While acknowledging that there was no proof of actual disruption, both the federal district court and the Sixth Circuit Court of Appeals ruled in favor of the principal. To justify this result, both decisions necessarily broadened the definition of disruption. While *Tinker* had cautioned against limiting speech based on the "undifferentiated fear or apprehension of disturbance," the Sixth Circuit concluded that the risk was real because "the wearing of buttons and other emblems and insignia has occasioned substantial disruptive conduct it the past at Shaw High. It is likely to occasion such conduct if permitted henceforth" (*Guzick* 1970, p. 599, quoting *Guzick* 1969, p. 479). The no-symbol rule was imminently reasonable, the Sixth Circuit concluded, because anticipated disruption posed a real risk. In the words of the Court, "Surely those charged with providing a place and atmosphere for educating young Americans should not have to fashion their disciplinary rules only after good order has been at least once demolished" (*Guzick* 1970, p. 600).

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

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

standard. . . . Instead, the Court demands substantial government justification for the burdens that school officials impose on student speech" (p. 359).

Justice Black's dissenting opinion in *Tinker* is noteworthy because he claims, "the Court arrogates to itself, rather than to the State's elected officials charged with running the schools, the decision as to which school disciplinary regulations are 'reasonable'" (*Tinker* 1969, p. 517). Rather than empowering judges to oversee public schools, Justice Black would willingly defer to the authority of school officials. To do otherwise, he warns, would cause irreparable harm to the educational system: "And I repeat that if the time has come when pupils of state-supported schools, kindergartens, grammar schools, or high schools, can defy and flout orders of school officials to keep their minds on their own schoolwork, it is the beginning of a new revolutionary era of permissiveness in this country fostered by the judiciary" (*Tinker* 1969, p. 518).

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

The significance of the power to define is not lost on the Justices and the deference question is prominently featured in many of the arguments over student speech rights. In his dissenting opinion in *Morse v. Frederick* (2007), for example, Justice John Paul Stevens criticized the majority's deference to the judgment of a high school principal. To Justice Stevens, "The beliefs of third parties, reasonable or otherwise, have never dictated which messages amount to proscribable advocacy. Indeed, it would be a strange constitutional doctrine that would allow the prohibition of only the narrowest category of speech advocating

unlawful conduct, yet would permit a listener's perceptions to determine which speech deserved constitutional protection" (pp. 441-442). Other commentators have been more pointed in their criticism. Commenting on *Morse*, Mary Rose Papandrea (2007) highlighted the Supreme Court's willingness to accept school administrators' reasonable "interpretation of meaning and effect of student expression generally." Before this decision, Papandrea concludes, "only prison wardens were granted this sort of deference."

One case that clearly illustrates the deference to school officials is *Poling v. Murphy* (6th Cir. 1989), a case involving a student running for president of the student body at Unicoi County High School, in Erwin, Tennessee. At an all school assembly prior to the election, Dean Poling delivered a speech in which he challenged his classmates: "If you want to break the iron grip of this school, vote for me for President. I can try to bring back student rights that you have missed and maybe get things that you have always wanted. All you have to do is vote for me, Dean Poling" (*Poling* 1989, p. 759). Not surprisingly, his classmates stood and loudly cheered Poling, much as they responded to appeals from the other candidates.

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

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

763).

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

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

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

The similarity between the students in Lowry and the students in Tinker was not lost on the court. While the school district tried various arguments to distinguish *Tinker*, the 8th Circuit was not persuaded. The court held the distinction between protesting the Vietnam War and the dress code was "immaterial" (*Lowry* 2008, p.

760). So too, the court was not convinced that there was a meaningful distinction between a policy intended to prevent a rumored protest (*Tinker*) and a ban on efforts to undermine uniformity that was adopted before any mention of a protest (*Lowry*). "We hold that *Tinker* is so similar in all constitutionally relevant facts," the 8th Circuit concluded, "that its holding is dispositive" (*Lowry* 2008, p. 761).

While the student's armbands were ultimately protected in *Lowry*, the opinion suggests that this is because the facts "nearly mirror *Tinker*" (*Lowry* 2008, p. 759). In the majority of student speech cases, however, the courts ultimately rule in favor of schools. This judgment is substantiated by expert opinion (Chemerinsky 1999-2000, 2004; Nuttall 2008; and Yudof 1995) and by academic studies (D'Angelo and Zirkel 2008). "Where students won," Nuttall (2008) concludes, "the factual situations tended to resemble *Tinker* closely, to involve other constitutional rights as well, or to make a showing of potential disruption nearly impossible (for example, when the speech occurred away from the school)" (p. 1300). While the reasoning in the individual cases defers, the decisions hinge on the definition of disruption and how much deference is shown to school officials.

4. Definitional Argument and the Future of Student Speech Rights

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

While scholars may debate the weight that should be given to the speech rights of students, the *Tinker* decision and its progeny remain a fascinating case study

illustrating the power of definitional argument. By broadening the definition to include the potential for disruption, federal judges transformed a precedent that protected students into a precedent that can be used to suppress student speech. Writing about the power of such argumentative moves, Edward Schiappa (1993) noted that "a successful new definition changes not only recognizable patterns of behavior, but also our understanding of the world" (pp. 406-407). In this case, the new definition changed schools from a vibrant forum for students to explore new ideas into dour institutions devoted to the indoctrination of the young and the inculcation of a particular set of preferred values. The original definition of disruption offered by Justice Fortas in the majority opinion emphasized the importance of individual rights, whereas the new definition emphasizes the importance of socialization and conformity valued by Justice Black in his dissenting opinion.

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