

ISSA Proceedings 2010 - Visual Argumentation. A Reappraisal



In memory of my mother

Visual argumentation is an incipient field in the broad domain of argumentation. Its existence has been well documented, thanks to the efforts of a few scholars, amongst whom I would like to mention Leo Groarke (Birdsell and Groarke 1996; Birdsell and Groarke 2006). Interestingly, two sessions were devoted to visual argumentation in the ISSA 2010 Congress, with 10 speakers, which is not so bad for a young field! Once admitted – even if not by all theorists of argumentation – that visual argumentation exists, it seems to me necessary at this stage of its development to reassess its definition [i].

Indeed, the first step was to give it legitimacy. This was done by giving many examples, most of them convincing, of visual arguments. Basically the task was to show that the verbal is not the only way of arguing: the stimulating discovery was that many verbal arguments can be translated visually or that an equivalent to verbal argument can be found in images. The first battle, therefore, was to gain legitimacy. Once it has been won, the problem, at least this is the way I see it, is not to go on accumulating more evidence of the existence of visual argumentation, but instead to discuss its definition and extension.

For my part, I am convinced that there are visual arguments, and I have advocated elsewhere in favor of them (Roque 2004). However, I feel uncomfortable with the definitions given to it, as well as with the way its relationship to verbal argumentation is generally understood. So, the main issue I would like to raise is the definition of visual argumentation, and the second one is its relationship to verbal argumentation, which I will examine through the complex issue of mixed media, that is, when argumentation is both verbal and visual.

1. Definition

Let us start with the definition. What is visual argumentation? Surprisingly, I did not find much discussion of it in the literature, perhaps because advocates of visual argumentation take it for granted that visual argumentation exists. However, an argument by example is not sufficient to assess a field. In fact, discussions on this topic are usually initiated by people who deny the existence of visual arguments. Indeed, within the field we often use the expression “visual argument” or “visual argumentation”, which is very practical. However, one might consider that in so doing, we are begging the question, when on the contrary the existence of visual arguments is what we should be showing.

For this reason, I would like to briefly summarize the wide range of definitions explicitly or implicitly given to visual arguments, without discussing each one in detail, as my overriding aim is to propose a rough classification of these definitions.

Yet, one could reply that the definition of ‘visual argument’ is so obvious that it does not require much discussion: a visual argument is an argument expressed visually. According to Birdsell and Groarke, “we understand visual arguments to be arguments (in the traditional premise and conclusion sense) which are conveyed in images” (Birdsell and Groake 2006, p. 103). And according to Blair, visual arguments are arguments “expressed visually, for example by paintings and drawings, photographs, sculpture, film or video images, cartoons, animations, or computer-designed visuals” (Blair 1996, p. 26).

These definitions have two components; the first is “argument” and the second “visually”. Even if the meaning of “visual argument” may seem obvious, this is not the case for me, for it can be understood in many different ways. Indeed, when we talk about “visual argument” or “visual argumentation”, what does this expression say about the kind of relationship between argument or argumentation and the visual? Let us look first at the “argument” component of the definition.

1.1. Argument

a) In a restrictive way, we can consider that an argument is verbal in nature, hence that the visual would be a mere illustration, or a “visual flag” **[ii]**. In this case, the argument is not visual. I will come back to this issue later.

b) The opposite opinion consists in taking the visual more seriously and accordingly considers that the argument itself is visual, or in other words, that

the argument is structured through a visual syntax. Now, the way we understand how the structure of an argument works visually depends on the conception of argument we favor. This is of course a huge and slippery issue in so far as there is no consensus on what an argument is or should be.

If we define argumentation as “an exchange of arguments between two speech partners reasoning together in turn-making sequences aimed at a collective goal” (Walton 1998, p. 30), the visual would be excluded from the realm of argumentation. Fortunately, other broader definitions allow us to take into account the possibility of arguing visually. For instance, according to Blair, “Visual arguments are to be understood as propositional arguments in which the propositions and their argumentative function and roles are expressed visually” (Blair 1996, p. 26). In this case, the visual is not a mere illustration of a verbal argument, since it contains propositions organized and structured argumentatively. Likewise, a visual argument has also been considered as “a concatenation of visual statements in a particular image [that] can [...] function as reasons for a conclusion” (Groarke 1996, p. 111).

These conceptions raise complex issues that are beyond the scope of this paper, in particular determining to what extent we can consider that an image contains “propositions”. Another problem is that, if we conceive of argument in the sense of a premise-conclusion structure, we need to find at least two propositions or rather “utterances”**[iii]** within an image in order for it to convey an argument. However, many images do not fit this scheme, as they contain only one “utterance”.

c) When faced with this problem, various solutions can be found. One is to consider a visual “utterance” as an enthymeme, understood as a truncated syllogism in which one of the premises or the conclusion is missing, or rather is not explicit (Smith 2007; Nettel 2005). However, in visual arguments reduced to one utterance, both a premise *and* the conclusion are missing. Therefore another solution is to choose a broader definition of argument, without reference to the syllogistic scheme. For example, if we consider that an argument consists of a claim plus reasons given to support this claim, an image containing a single utterance can match this definition when it presents a standpoint and gives reasons for supporting this standpoint (Blair 2004, p. 44).

d) A last distinction has been made. Some authors consider that an image may

present features of an argument, but that its function is different: given the narrow relation between images and pathos, they think that the function of an image is more persuasive than argumentative (for references, see Roque 2004, p. 102-106). Even scholars favorable to visual argumentation consider that a “visual argument is one type of visual persuasion” (Blair 2004, p. 49). Here again, I merely mention this wide issue without discussing it in more detail, as I simply want to give an overview of the definitions of the field.

1.2. Visual

Let us now turn towards the definition of the second component of the “visual argument”: the “visual”. At first sight, it is so obvious that it seems to be beyond discussion: if a visual argument is not an argument expressed visually, what could it be? However, this is exactly what I would like to question, for it obviously depends on what we consider to be the “visual”. Now, it seems to me that when we speak about a visual argument, in order to distinguish it from a (verbal) argument, we usually emphasize the channel of transmission. The visual, then, at least understood this way, is a channel. However, the channel alone is not sufficient for defining a kind of argumentation. In a similar way, semioticians have put into question the relevance of the criterion of the channel in semiotics: indeed, the classification of signs according to their channels of transmission rests on the substance of the expression, and this criterion is not relevant to the definition of semiotics, which is above all a form, not a substance, according to Hjelmlev (Groupe μ 1992, p. 58).

Yet there is another way of understanding the “visual”: not as a channel, but as a code, that is a set of rules that make it possible to give meaning to the elements of a message (Klinkenberg 2000, p. 49). And here again, the visual is opposed to the verbal, this time as different codes. But whatever the way “visual” is understood, it is not satisfying. The channel alone is not sufficient for a definition of argumentation, since the same argumentation can use two different channels: if I read a text for myself, it passes through the visual channel; and if I read the same text to someone, it also passes through the auditory channel. Furthermore, and conversely, the same channel can transmit different codes: for instance, chromatic codes, iconic codes, written signs, and so on, can all be conveyed through the visual channel.

Nor on the other hand, is the visual code alone sufficient to define visual argumentation accurately. Indeed, when emphasizing the visual code (as opposed

to the verbal), we suppose that a visual argument is only conveyed by an image. This is how the two definitions given above can be understood: visual arguments are arguments conveyed in images or visual arguments are arguments expressed visually. The trouble, however, is that most of the time a visual argument is not purely visual, but also contains verbal elements. In other words, except for isolated cases, a visual argument is composed of both a visual and a verbal code, as in advertising and political posters. It is a case of a multi-code system. In order to take these elements into account, I would suggest modifying the existing definitions of visual arguments and propose instead the following: a visual argument is an argument conveyed through the visual channel and sometimes using the visual code alone, but most of the time both verbal and visual codes combined within the same message. The fact that most messages conveying visual arguments are mixed codes has important consequences that have often been overlooked. I will come back to this issue in the second part of my paper.

Yet, every channel and every code has properties and specific constraints that need to be taken into account since they have consequences on the way the argument is transmitted (Groupe μ 1992, p. 58 - 59; Klinkenberg 2000, p. 47 - 48). From this point of view, the constraints of the channel and the properties of the codes are crucial, as it is not the same to transmit an argument verbally as to transmit one visually. To end with this point: we must keep in mind that when we talk about "visual arguments", at times "visual" refers to the channel, and at others to the visual code. It is therefore very important to avoid as far as possible this ambiguity and clarify in which sense we are using the word "visual". I hope to have contributed to a clarification of this point.

1.3. Argument & Visual

To go further, we now need to analyze the relationship between "argument" and "visual" in a visual argument. The issue is whether, in a visual argument, the argument itself is visual, or whether the argument is in fact verbal and just expressed visually. The answer to this question is important for it raises, again, the issue of the nature of arguments, in particular whether or not an argument is verbal in nature.

If I insist on this point, it is because it seems crucial to me to dissociate *argumentation* and the *verbal*. As long as we conceive of argumentation as verbal by nature, it will be difficult, if not impossible, to find room for visual argumentation, because of the hegemonic position the verbal has in

argumentation theory and practice. For this reason, as I have argued in the previous section, defining visual argumentation as an argument expressed visually is not sufficient. Indeed, it leaves unresolved the issue of whether or not an argument, a verbal argument, I mean, could be translated, transposed, transformed into a visual argument (Roque 2010). To make the dissymmetry between the verbal and the visual more obvious, I would say that an argument is never defined as an argument expressed verbally. So why should we have to define the visual by its channel of transmission, or by the visual code, if not because it would be a derived form of argument, translated and detached from the standard verbal argument?

In a previous paper on a similar topic, I wondered what was visual in visual argumentation. My answer was that what is properly visual in a visual argument is not necessarily the argument itself, but the way it is visually displayed (Roque 2010). The hypothesis underlying this claim is that most of the time arguments are a set of mental or logical or cognitive operations independent from the verbal, so that they can be expressed verbally as well as visually. Seen this way, a visual argument is just such an argument expressed visually. In other words, therefore, it is not the argument itself that could be considered visual, but the way it is displayed.

This last point is crucial, in my opinion, for the definition of visual argumentation. When we say that a visual argument is just an argument “expressed visually”, or “conveyed in images”, first, we implicitly admit or rather concede that such an argument moves away from its standard verbal presentation. And second, we tend to consider that the operation of expressing or conveying or transmitting the argument is a neutral one, when on the contrary an important part of visual argumentation consists in the syntactic operations that take into account the specificity of visual language.

This leads to the following issue: to what extent is an argument displayed visually different from the same argument presented verbally? I would say that it depends on the kind of argument at stake.

1.3.1. Arguments expressed either verbally or visually

It seems to me that in some cases at least, no hierarchy can be established between an argument expressed verbally or visually. This is the case, for instance, of the argument from authority as shown in fig. 1.



Fig. 1. Advertisement for Chesterfield cigarettes

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In this advertisement, Chesterfield cigarettes use a famous actor, Ronald Reagan, as an argument from authority to promote their brand. There is a strict parallel here between the same argument in a written form, a quotation from Reagan authenticated by his signature, and in a visual form, showing his smiling face, a cigarette wedged between his lips, and his left hand presenting a pack of this brand. **[iv]** The two codes, the verbal and the visual, are parallel and reinforce each other. In an example like this, if we ask what argument is at stake, it does not make sense to claim that the argument itself is visual. Nor does it make sense to hold that the argument is verbal and translated visually. The nature of the argument here is neither verbal nor visual. It is an argument from authority expressed through a double code.

Now, arguing that in this case the argument itself is not visual is not to deny the importance of the visual. On the contrary, my argumentative strategy here is to break the hierarchy between the verbal and the visual. Showing that in some cases at least an argument, such as an argument from authority, can be expressed visually or verbally, greatly helps to consolidate the place of the visual within argumentation theory and practice. Indeed, when showing this, we dislodge the verbal from its pretense to hegemony, since the same argument expressed visually would not represent a deteriorated and therefore suspicious use of a verbal argument. No, it deserves to be considered as a fully-fledged argument, as suitable as its verbal counterpart.

1.3.2. Arguments better expressed visually

Now, I said that some arguments can be expressed both visually and verbally without substantive changes: the differences are due to the constraints of the visual channel and the properties of the codes. This is mainly the case for arguments based on logical operations (like arguments from cause or consequence). Yet, in other cases, such as arguments by analogy, the arguments are much better displayed visually than verbally. The reason is that the main feature of the visual is simultaneity: an image enables us to grasp at the same time several elements simultaneously present in the same visual space. As Gombrich noted, “the family tree demonstrates the advantages of the visual diagram to perfection” (Gombrich 1982, p. 149). This is, I think, the main difference from the verbal, which is linear, successive, just like a string (Arnheim 1969, p. 246). The linearity of the verbal is of course very helpful for argumentation in general, in the sense of uttering a chain of propositions which string the concepts into a logical sequence, but it is unpractical for purposes of making explicit an analogy, while this is one of the best qualities of the visual (Arnheim 1969, p. 55). From this point of view, it seems to me that an argument by analogy is definitely much stronger when the similarity on which it rests is presented visually. This is in particular the case with diagrams. If we conceive of a diagram, as suggested by Nelson Goodman, as a kind of picture in which “the only relevant features [...] are the ordinate and abscissa of each of the points the center of the line passes through” (Goodman 1976, p. 229), then a visual presentation of an argument based on a similarity between two diagrams is more effective than the verbal presentation of the same argument.

Let me give an example. If I say that the temperature of the soil follows a regular cycle from January to December, which can be shown if we compare the temperature of the surface and that of a deeper layer, or if we compare it in different latitudes, my discourse does not have the same argumentative effectiveness as its visual presentation. Consider Lambert’s 1779 *Pyrometrie* (fig. 2), one of the first uses of a graph, in which the temperatures are shown on the ordinate and time on the abscissa.

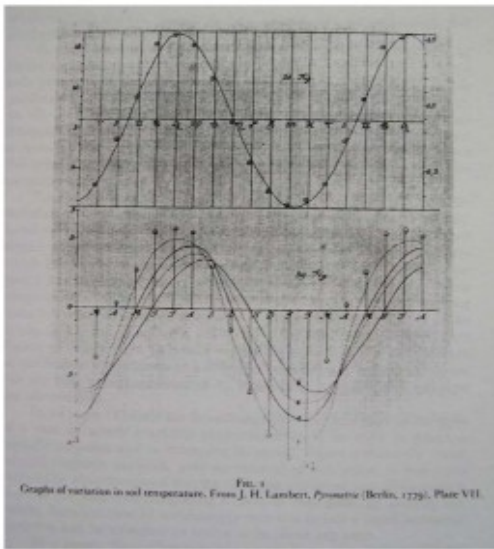


Fig. 2. Graphs of variation in soil temperature, from Lambert's *Pyrometrie*, 1779

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We see, at the bottom of the graph, the modifications of amplitude of the curve in function of different depths of temperature measurement. Above that, we find the average temperature of the soil in different latitudes. These diagrams fascinated the scientists of the time, for they provided an excellent visual argument, showing clearly the regularity of a phenomenon in spite of the modifications of depth and latitude. As Jakobson noted, "In such a typical diagram as statistical curves, the signans presents an iconic analogy with the signatum as to the relations of their parts" (Jakobson 1971, p. 350). This explains how these diagrams can fulfill not only a rhetorical but also an argumentative function (see also Kostelnick 2004, p. 226-234).

The impact of an argument based on visual analogy is not limited to science. We also find it frequently in advertising and political posters.



Fig. 3. J. Veistola, P. Lindholm, photographer, Finland, Untitled, 1969

In an anti-war poster (fig. 3), the graphic designer used a strong analogy between a grenade and the Earth to warn us against the dangers of war that could lead to the explosion of the Earth. It is an example of what Perelman calls “metaphoric fusion” (Perelman and Olbrechts-Tyteca 1970, p. 538). Since it moves the two domains of the analogy closer, this fusion “facilitates the realization of argumentative effects” (Perelman and Olbrechts-Tyteca 1970, p. 536). The same authors also note that satirical designers often use this metaphorical fusion of the two fields into one, creating strange beings or objects (Perelman and Olbrechts-Tyteca 1970, p. 540). Indeed the plasticity and simultaneity of the visual code is a fantastic tool for condensing an analogy in a heterogeneous shape that borrows some of its features from the two domains concerned by the analogy. This iconic feature which semioticians call “interpenetration” (Groupe μ 1992, p. 274) is much more appealing than its verbal counterpart. Showing a grenade-Earth is indeed more effective than just explaining that in the same way as a grenade can explode, so can the Earth if we do not put an end to war.

2. Classification

Since most frequently visual argumentation takes place alongside verbal argumentation, it is crucial to clarify how the verbal and the visual work together in mixed media, that is, when argumentation is both visual and verbal. Indeed, the problem is that, due to the hegemony of verbal argumentation, most scholars, even those favorable to visual argumentation, continue to assume that in the case

of mixed media, the argumentation is above all verbal, so that the visual plays a minor role (Adam and Bonhomme 2005, p. 194 and 217). This widespread opinion has dramatic consequences, in particular the fact that the part the visual can play is neglected. For this reason, it seems to me urgent to provide a classification of the different kinds of relationships between the visual and the verbal in mixed media argumentation.

So let me propose such a provisional classification, which I will attempt to roughly sketch out in what follows:

- The first category is what Groarke (2002, p. 140) calls a “visual flag”, when an image attracts attention to an argument presented verbally. It corresponds to the first phase of the old principle of advertising communication known as AIDA (attract Attention, maintain Interest, create Desire, and get Action) (Chabrol and Radu 2008, p. 22).

However, as Groarke and Tindale (2008, p. 64) rightly note, “In cases like this, the non-verbal cue that catches our eye is only a flag and not itself an argument or part of an argument, for the flag is not used to convey the message of the argument and only functions as a means of directing us to the text that conveys the actual argument”.

It is important to recognize the existence of visual flags, because it is true that many messages work in this way, but more importantly, because we have to separate them from other categories, in order not to confuse the part for the whole. What I mean is that for many scholars the visual flag is the general model of the relationship between visual and verbal in mixed media, as they consider that an image is unable to convey an argument by itself and can, at most, attract attention to a verbal argument. Even for an art historian like Gombrich, “the visual image is supreme in its capacity for arousal” (Gombrich 1982, p. 138). Precisely for this reason it is important to distinguish the visual flag from other possible relationships between text and image in mixed media.

- Indeed, another category can be identified when the visual and the verbal present parallel argumentations in which both contribute to the general meaning of the mixed work. In cases like this, there is no hierarchy between the visual and the verbal. Both present an argument, and it may happen that the verbal and the visual arguments belong to the same kind of argument. Their function is

redundant, as is usual in a communication process. This is particularly the case with arguments based on logical operations (cause, consequence). I would like to demonstrate the point by giving two examples:

In a series of engravings, which are considered as the first anti-war images



Fig. 4. Jacques Callot, Miseries and Disasters of War, 1633, engraving
Ceux que Mars entretient de ses actes méchants/Accommodent ainsi les pauvres gens des champs /Ils les font prisonniers ils brûlent leurs villages/Et sur le bétail même exercent des ravages, / Sans que la peur des Lois non plus que le devoir/ Ni les pleurs et les cris les puissent émouvoir.

(fig. 4), Jacques Callot uses a strict parallel between words and images. Both show the disastrous consequences of war and can be considered therefore as what Perelman calls a pragmatic argument, which “makes it possible to appreciate an act or an event according to its favorable or unfavorable consequences” (Perelman and Olbrechts-Tyteca 1970, p. 358). The text describes and the image depicts. Hence their parallel and redundant function. In this case there is no explicit conclusion, either verbal or visual. However, insisting on the terrible consequences of the behavior of soldiers during a war is an argument against war.

The second example is the advertisement for Chesterfield cigarettes analyzed above (see fig. 1): the argument is the same (argument of authority) and uses the same “authority” (Ronald Reagan); it is displayed verbally (through a quotation) and visually (through a photograph). Here, too, there is redundancy between the

two codes.

- A third category should be distinguished, when the argument is constructed using visual and verbal elements. In cases like this, that I propose to call “joint argument”, the visual and the verbal are closely intertwined in the making of the argument with a contribution from each. Mostly, the conclusion is given by the text. In an anti-war poster (fig. 5), the syntactic articulation between the verbal and the visual is given by the deictic “That” which refers to the image. The structure, then, is not a parallel between the verbal and visual codes, but a syntactic interaction between them thanks to a connector (Klinkenberg 2000, p. 235-36). In this case, the connector is verbal, and serves to articulate text and image. Now in this poster, the visual plays a central role in the construction of the argument. If we examine the relation between text and image, we can see that the poster is divided into two parts: the upper part contains the image and the text “Against that...” referring to the image, while the bottom part contains only text. This long text reads:

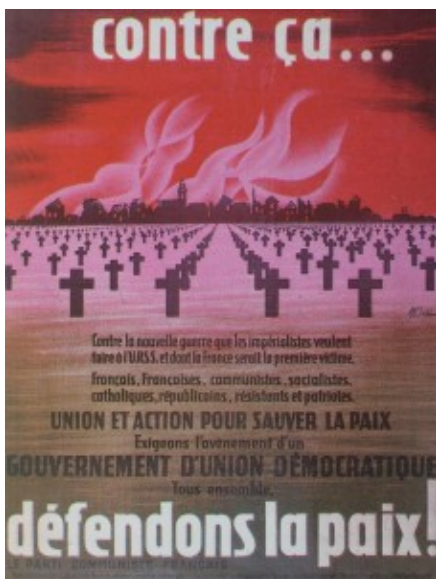


Fig. 5. Rival, Against that ...
Let's defend Peace! 1952,
poster for the French
Communist Party

Against the new war Imperialists want to wage on the USSR and whose first victim would be France, Frenchmen, Frenchwomen, Communists, Socialists, Catholics, Republicans, Resistance fighters and Patriots,

UNION AND ACTION TO SAVE PEACE

Let's demand the installation of a GOVERNMENT OF DEMOCRATIC UNION

All together,

LET US DEFEND PEACE!

This text contains no argument; it just draws the conclusion that we have to defend peace; its starting point is an opposition to war. However, no argument is given verbally to explain why we need to be opposed to war. The reason is that the premise that contains the argument is given visually: in the image we can identify again, as very often in anti-war posters, a pragmatic argument showing the bad consequences of war: in particular a village burning and a huge graveyard full of war victims. Let us note that in this and many other similar cases, the image therefore plays a central role in structuring the joint argument. This also shows that in mixed media argumentation, it is not true that the argumentation is mainly verbal and the image relegated to a mere illustration or flag.

- Lastly, the argument may be constructed through an opposition between the verbal and the visual. This is often the case, for a reason related to a particular feature of images: the fact that it is hard to use an image for the purpose of negation (except in codified interdiction signs when the picture showing the forbidden action is crossed out by a graphic mark; see Roque 2008, p. 187-88). Because of this characteristic, the visual and the verbal often combine their properties: the visual is used in order to describe the situation we reject; and the verbal in order to make this rejection explicit.



Fig. 6. Hans Erni, Atom War NO, 1954, poster for the Swiss Movement for Peace

In fig. 6, we are very far from the visual flag we commented on earlier, since we cannot say that the argument is verbal: the verbal just gives a name to the issue at stake, “nuclear war”, and adds its opposition to it: “No”. We might consider the “no” here as the conclusion of the argument. However, no reason is provided verbally to support the opposition to nuclear war, for it is given visually. Hence the crucial role of the visual in the argument. First of all, let us note that there is a redundancy between the verbal and the visual, as both are about nuclear war, expressed verbally in the text and visually through the “atomic mushroom cloud”. Now, the pivotal role of the visual in the argument comes from a plastic device, which is specific to the visual: its ability to fuse two different shapes and suggest accordingly their similarity, here the shape of the Earth and that of a skull. It is the same “metaphorical fusion”, or rather interpenetration we saw in fig. 3. In this poster, the Earth-skull (a device sometimes considered as a visual metaphor), contains different arguments. The first is once more the pragmatic argument, so frequent in anti-war posters, showing that in case of nuclear war, there will be no more life on Earth. The second is an argument by analogy: if nuclear war breaks out, the Earth will look like a skull. This analogy is of course reinforced by the features common to Earth and skull, namely their rounded shape. We can also consider that the argument is structured through an antithesis between the verbal and the visual, with the visual showing the consequences of nuclear war, and the text calling for a rejection of it.

By way of conclusion, I would say that it seems to me it is now time to initiate a broad discussion amongst those of us working in visual argumentation about the definition of the field. So as to provoke such a discussion, I have tried, in the foregoing remarks, to clarify somewhat the complex relation between the notions “argument” and “visual” in the definition of visual argumentation, which has led me to distinguish several categories. Finally, insofar as the most common situation is that of mixed media, both verbal and visual, I proposed a classification based on the part played by each in such mixed media arguments. I hope that my suggestions will contribute to a general debate that seems to me necessary at this stage in the development of visual argumentation.

NOTES

[i] I would like to thank the two anonymous reviewers as well as Ana Laura Nettel; their comments have greatly helped me to improve a previous version of this paper.

[ii] The term was coined by Groarke 2002, p. 140.

[iii] It is beyond the scope of this paper to examine why I prefer to speak of visual utterances instead of visual propositions. For the meaning of “utterance” (“énoncé” in French) see Ducrot 1980, pp. 7-18.

[iv] The fact that we can identify an *ad verecundiam* here instead of an argument of authority, since Reagan is not an expert in matters of cigarettes, does not change my point which is about the part played by the verbal and the visual in the argument.

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ISSA Proceedings 2010 - Health Care Reform And The Status Of The Public Sphere



The most important domestic policy debate in decades occurred in the United States in the first eighteen months of the Obama administration on health care reform. This debate provides a window into the functioning of the public sphere and an appropriate case for testing the degree to which American democracy remains capable of solving the grave problems facing the nation.

There is no question that the American health system was ripe for reform. Unlike every other developed nation in the world, more than 45 million Americans lacked health insurance of any kind and an estimated 25 million more were substantially underinsured, causing according to the Institute of Medicine roughly 18,000 people to die each year (“The Uninsured,” 2009, p. WK7). This situation was predicted to worsen substantially in the future (“If Reform Fails,” 2010, p. WK9; Abelson, 2010, p. WK8). The problem was not limited to those who lacked adequate insurance. Health outcomes in the United States were far below the rest of the developed world. The United States ranked 39th in infant mortality, and 42nd and 43rd respectively in adult male and adult female mortality (Kristof, 2010, p. A1). Despite these failures, the United States spent roughly fifty percent more on health care in domestic product than any other nation in the world (Rubin, 2010, p.7A). The vast spending was according to health care expert Peter V. Lee “literally bankrupting the federal government and businesses and individuals across the country” (Abelson, 2010, p. WK8).

The dysfunctional nature of the system should be obvious. And yet, for roughly a century proponents of reform had failed to achieve fundamental reform. In this situation, President Barack Obama made it his top priority to pass comprehensive reform and in March of 2010 achieved that goal, signing into law what is the most important piece of social legislation passed since Medicare (Tumulty, 2009, p. 26). It is appropriate to consider what his fight for reform reveals about the

functioning of the public sphere in the United States. Jonathan Cohn wrote in a comprehensive *New Republic* analysis of the battle for health care reform that Obama came “to view this debate as a proxy for the deepest, most systemic crises facing the country. It was a test, really: Could the country still solve its most vexing problems?” (2010, p. 15). While Obama’s victory demonstrates that at least in the face of true crisis real change is possible, a more detailed consideration is needed to assess the health of the public sphere.

1. The liberal public sphere

While the focus of most public sphere research in argumentation studies has been on the approach developed by Jürgen Habermas (1989) and extended by Goodnight (1982, 1992), Calhoun (1992, 1993), and others, that is not the most appropriate way to test the functioning of the public sphere in the health care debate. Using a broadly critical perspective, Habermas and his followers focus on access to argument, often dividing a controversy into multiple spheres or otherwise breaking the argument into parts. In relation to health care, however, a debate involving the entire nation took place. It is the functioning of the whole that is at issue here. The most appropriate way to judge this debate is by applying liberal public sphere theory (Rowland, 2003, 2005, 2006). Under this approach, the public sphere is best conceptualized not as a metaphor or a set of spheres, but as the place where the public does its business. The liberal public sphere contains all of the quite messy debate on a given topic that is found in Congress and other public bodies, the media, the internet, and the town square. It is the conceptual place where the nation confronts problems and chooses how to react to those problems.

A second reason that liberal public sphere theory is appropriate for evaluating the health care debate is that the intellectual roots of the theory are found in foundational works laying out American democracy. On this topic, James Madison (1999), the primary author of both the Constitution and the Bill of Rights and one of the two main authors of the Federalist Papers, is the most important single source. It is essential to recognize that while liberalism is widely attacked in the academy (Willard, 1996), in the larger political world, it “reigns supreme as the leading, and one might even say, overwhelming doctrine in the West” (Patterson, 1999, p. 54). It therefore is appropriate to evaluate the health care debate with an approach rooted in the perspective on which American democracy is based.

There are four primary actors in the liberal public sphere: the representatives of

the public, the public, the expert community, and the media. Each of these actors plays a crucial role in the functioning of the public sphere. The representatives of the public are decision makers in the legislative, executive, and all other government agencies. For the public sphere to function effectively, they must represent the views of various groups in society and authentically state their understanding of the facts of the controversy. If all views are not presented, a vital perspective may be ignored, resulting in policy that does not represent the entire community. But if the views are inauthentic, presented not as a genuine argument based on the best information available, but instead based only on political or ideological concerns, bad policy may result because of the failure to consider the best data. It is now widely believed that the decision to invade Iraq in 2003 represents such a case.

The role of the public is to pay attention to the debate and gather enough information to make a sensible judgment. In many cases, members of the public also may participate directly in the controversy by attending demonstrations, writing letters to the editor or blogs, or other means. While such participation aids the functioning of the public sphere by ensuring that multiple voices are represented, the key role of the public is to evaluate how well their representatives carry out their responsibilities.

The expert community serves the crucial role of providing information from the technical sphere that is relevant to the debate. While Goodnight (1982), Fisher (1984), and others have decried expert domination of public debate, a certain level of reliance on experts is inevitable. In relation to health care, for example, there is considerable debate on the amount of waste in the American system (Fairfield, 2010, p. BU7). This is a crucial issue because if there is significant waste there may be ways of reforming the system without dramatically increasing cost. On this issue, reliance on experts is essential. Ordinary citizens simply lack the knowledge base to judge whether medical care was necessary or wasteful in any given case.

The final actor in the liberal public sphere is the media. Their job is to provide the public with access to the views of the expert community and all sides in the debate. The media also serve a crucial function of testing the arguments of competing actors in the dispute. Most ordinary citizens lack the time or expertise to search out all sides in a given debate. The essential role of the media is to condense the debate for the public and also test the quality of the arguments

made in that debate.

It should be clear that the liberal public sphere serves two primary functions. First, it is the place where issues of public controversy are resolved through the democratic process. In a healthy public sphere, all of the primary actors present their views and the public acting through their representatives decides. But simple representation is not the only goal of the public sphere. The second goal is to produce policies that are in some sense sensible. In Federalist Number 37, Madison wrote of the importance of “combining the requisite stability and energy in government with the inviolable attention due to liberty, and to the republican form” (1999, p. 196). Here, he was concerned with product as well as process, a point that he also emphasized in the preamble of the Constitution when he justified the new form of government as designed “in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty.”

Writing at the birth of the American experiment with representative democracy, Madison recognized two primary threats to the liberal public sphere: the power of special interests and the danger of irrationality. In what is clearly the most important essay developing American liberal political theory, Federalist Number 10, he argued that problems of “unsteadiness and injustice” in government were often caused by a “factious spirit” that “tainted our public administration” (1999, pp. 160, 161). For Madison, a faction was “a number of citizens” “united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens” (1999, p. 161). Why were factions so dangerous? The answer is that they did not base their political principles in rational deliberation, but in “some common impulse,” such as an ideology or in self-interest. The problem of faction or what we now call special interest domination was especially significant because of the danger of irrational decision making. Madison implicitly noted this problem in Federalist Number 37, when he observed that “public measures are rarely investigated with that spirit of moderation which is essential to a just estimate of their real tendency to advance or obstruct the public good” (1999, p. 194). According to Matthews, Madison believed that “individual and collective tendencies toward the irrational were . . . multifaceted and powerful” (1995, p. 23).

Madison feared that special interests might undermine democracy by taking

advantage of public lack of knowledge and irrationality. And yet, he also believed that a political system that encouraged clash among competing perspectives in open debate was the best means of making good policy choices. His comment in Federalist Number 41 that “A bad cause seldom fails to betray itself” (1999, p. 230) is illustrative of his faith in reason tested through controversy. Madison was not naïve. He recognized the risk that “counterfeit” (1999, p. 501) public opinion could overwhelm the capacity of the system to make sensible policy choices. But he also believed that the only answer to this danger was still more public discussion and debate, a viewpoint based in his belief that “over the long run . . . cool and calculated rational argument would win out over passion and hyperbole” (Mathews, 1995, p. 144). His faith in the power of reason tested through controversy was obvious when he expressed his hope that we could “erect of the whole, one paramount Empire of reason” (1999, p. 500).

Liberal public sphere theory provides a means of assessing how close we have come to that “Empire of reason.” A controversy can be evaluated based on criteria (Rowland, 2003, 2005, 2006) tied to the purposes of the public sphere by considering the following questions:

- (1) Were the views of all of the relevant stakeholders represented in the debate?
- (2) Was the debate shaped by informed expert opinion? This question is especially relevant on issues where there is consensus.
- (3) Did the media report the dispute in a way that informed the public on the issue?
- (4) Did the public as a whole gather adequate information to assess the debate?
- (5) Did the better arguments in some sense win out in the end? In many cases, there may be no principled way to make this judgment, but in other cases, such as on global warming, there may be a wide consensus that action is needed. In such a case, a failure to act can only be seen as a failure of the liberal public sphere.

Based on these standards, a principled evaluation of how well the liberal public sphere functioned in the health care debate can be made.

2. The health care debate

Despite the overwhelming rationale for reform, the Obama administration recognized that passing reform would be extraordinarily difficult. Enacting legislation requires passage in the House of Representatives with a simple majority and in the Senate with sixty votes to overcome a filibuster. With Democrats controlling sixty votes in the Senate, Obama needed either every

Democrat and both Independents or some token Republican support (Cohn, 2010, p.18). Given unremitting Republican opposition, he knew that getting this support would be quite hard.

Throughout the debate, advocates of reform focused on three primary points. They noted that the present system failed to provide high quality care to the uninsured and the under-insured and argued that without insurance reform almost any American could suddenly lose their coverage. Second, they claimed that costs were too high both for ordinary people and for the government. Finally, they argued that reform could address both the lack of coverage and the cost problem and improve the quality of care. Although there were a number of different proposals considered, the administration and leaders in Congress quickly fixed on the combination of an individual mandate that required all Americans to have coverage, insurance reform, and subsidies for the poor and middle-class to guarantee access to coverage. The intellectual roots of these ideas were on the right not the left. In fact, the core of the reform package could be traced to conservative proposals dating to the Nixon and first Bush administration (Alonso-Zaldivar, 2010, p. 5A; Krugman, 2009b, p. A17) and was quite similar to what Massachusetts had enacted under the leadership of Republican Governor Mitt Romney (Krugman, 2009a, p. A21).

The reform process was long and involved. Three different committees worked on the legislation in the House and two more in the Senate. In this period, the White House negotiated with stakeholder groups including consumers, doctors, hospital groups, insurance associations, and drug manufacturers in the hopes of building support for reform (Cohn, 2010, pp. 18-20). Although Obama was later criticized for not being involved in shaping the legislation (Dionne, 2009), retrospective analyses (Cohn, 2010) make it clear that the administration was involved from the beginning.

In the campaign, Obama played two primary roles: educator and cheerleader. On most occasions, he focused on educating the public. For example, in the summer of 2009 he went “on a public relations offensive to persuade Americans that overhauling the nation’s health care system will benefit not only those who lack insurance, but also those who have it.” He also tried “to tamp down some of the anger and unsubstantiated rumors,” explaining that his goal was to produce a discussion ““where we lower our voices, listen to one another and talk about differences that really exist”” (Stolberg, 2010, p. A14). This effort was continued

in a number of speeches and town hall meetings, including a radio address on August 22, 2009, where he denied the charge that the legislation would result in a “government run” medical system (Obama, 2009a). In addition, the administration responded to attacks with fact sheets and other information on the White House website and on the website of the group “Organizing for America” (“Reality Check,” 2009; “Setting the Record Straight,” 2009). Obama also used a widely praised speech to a joint session of Congress (“President Obama,” 2009, p. A28; “An on-target,” 2009, p. A20; Brooks, 2009, p. A21) to both make a positive case for reform and answer objections (Obama, 2009b).

Throughout the effort, Obama was attacked for coming “across. . . as a dry technocrat” and urged to “make the moral case for reform” (Krugman, 2009c, p. A27). Charles M. Blow criticized Obama for speaking “in thesis statements,” adding that the president “sometimes seems constitutionally incapable of concision,” an approach that in his view had not worked against “a campaign of confusion and fear composed of simple sound bites” (2009c, p. A15).

However, at various points of crisis in the process, Obama did make the moral case that his critics desired, acting in the role of cheerleader. This was evident when he faced wavering support among Democrats. In a meeting with Senate Democrats in early February, 2010, “the president’s appearance took on the air of a pep rally . . . with stinging criticism of Republicans,” but he also presented “a stern reminder,” a “warning” to Democrats, “against retreating from their priorities” (Zeleny, 2010, p. A18). Similarly, before the final votes in Congress, he “struck a populist tone, setting up the health insurance industry as his main target” in order to pressure “wavering members of his party . . . not to give into political fears” (Cooper & Herszenhorn, 2010, p. A1).

Obama’s strategy of educating first and then acting as a cheerleader reflected his faith that over time the liberal public sphere would work. Stolberg explained that Obama believed that “by listening carefully and appealing to reason he can bring people together to get results” (2010, p. A1). For most of the debate, it appeared that this approach would fail. At the end, however, even conservatives recognized that they had “underestimated” Obama who had been “tenacious” in making a case for reform (Gerson, 2010, p. A21). Obama took this approach because he knew that polling demonstrated that “opposition” was “linked to misunderstandings of health care reform” and “support for reform rises when poll respondents are read details” of the actual plan (Chait, 2009, p. 4).

In essence, there were two sets of conservative arguments against the proposed reform. Conservative policy intellectuals attacked the program as expensive, bureaucratic, not fiscally responsible, and likely to stifle innovation. Given the conservative intellectual roots of the proposal, however, some believed that a compromise could be reached (Dole, 2009, p. A20). While there was principled opposition to the proposal based on conservative small-government ideology, the dominant approach was an attempt to demonize the plan as a big-government takeover of the health care system. As part of the demonization effort, conservatives also tried to frighten seniors by claiming that the plan would produce major cuts in Medicare and in the memorable words of Sarah Palin create “death panels” that might deny care to the elderly and others (Goodman, 2009, p. 6B). From an argumentative perspective, the problem with the demonization effort was that it was largely untrue. The reform plan combined an individual mandate to purchase coverage with subsidies and insurance regulation. There was no take-over of the health care system and certainly no “death panels.” Both claims had been debunked in “an avalanche of reports” (Ruttenberg & Calmes, 2009, p. A1). This led Joe Klein to conclude that “The irrational attacks on health-care reform show what the GOP has become: a party of nihilists” (2009, p. 16). Charles M. Blow said that conservatives were “cooking up scary, outlandish claims,” and added that “the deceptions have worked” with “76 percent of Republicans” believing “that the health care plan will lead to a government takeover of the health care system” (Blow, 2009b, p. A15).

Although the various charges were discredited again and again, there is little doubt that conservatives succeeded in misinforming the people about the proposed legislation. On this point, it is notable that when conservative intellectual Jonah Goldberg responded to the attack that conservatives were misrepresenting the legislation, he ignored the substantive issues and focused on the fact that “Obama Care . . . has been tanking in the pool for weeks” (2009, p. A17). For Goldberg and other conservatives, success in persuading the people that the plan was a takeover of health care trumped the fact that the plan did no such thing. Sarah Palin implicitly admitted this point when she responded to critics who pointed out that the “death panel charge” was untrue by saying, “Establishment voices dismissed that phrase, but it rang true for many Americans” (Palin, 2009; Chait, 2009, p. 4). For Palin, facts didn’t shape beliefs; rather beliefs shaped facts. Many opponents of reform had a similarly cynical worldview. Chait observed that “right-wing populism deems the existence of a

widespread belief to be sufficient proof of its veracity” (2009, 4). The result was to shift “the terms of the debate, making it harder for legislators to focus on genuinely relevant issues” (Frank, 2010, p. BU5).

The debate went through several crises. Although Obama strongly supported crafting a bipartisan bill, total Republican opposition eventually forced Democrats to go it alone (Cohn, 2010, pp. 21-22). Drew noted that “Republicans had decided even before Obama was sworn in that they would use the rules to deny him success on every major issue. Such obduracy was without precedent in modern times” (2010, p. 50). This created a situation in which any Democratic senator could hold the bill hostage (Drew, 2010, p. 50). In this circumstance, it took considerable time for the reformers to resolve competing perspectives, but after significant political horse-trading, they eventually did so and the Senate passed a bill on Christmas Eve. At this point, it appeared that ultimate passage of health care reform was assured, but when unexpectedly a Republican won a special election for what had been Edward Kennedy’s Senate seat, taking away the 60th vote that Democrats needed to pass a final version of the bill, many concluded that “health care reform was effectively dead” (Cohn, 2010, p. 24). They spoke too soon. While the election upset was initially interpreted as reflecting widespread public anger against health care reform, polling indicated that was not the case (Drew, 2010, p. 49; Washington Post, 2010).

In this situation, Obama and leaders in Congress continued to work toward passing a final bill. As part of this effort, the president led a campaign to educate the public and persuade Democrats in Congress that they should continue to fight for reform. On January 29, 2010, Obama answered questions for almost 90 minutes at a House Republican retreat, where he “gave long, confident and informed answers” that were later judged to be generally “accurate” (Baker & Hulse, 2010, p. A11; Herszenhorn, 2010, p. A11). While many critics advised him to “worry less about making arguments,” he continued to have stubborn faith that people “are going to gravitate towards the truth” (Blow, 2010a, p. A19). Obama also held an all day health summit with leaders in Congress in which the President served “as moderator, M.C. and chief defender of Democratic policy prescriptions” (Stolberg & Pear, 2010, p. A1; Kaiser Health News, 2010a; Kaiser Health News, 2010b). Even some conservatives praised Obama for picking “out the core point in any comment,” and “trying to get a result” (Brooks, 2010b, p. A23). Ultimately, the result was to lead many to conclude that if Republicans were

unwilling to collaborate on reform Democrats should “take the necessary steps to bring a health bill to a vote” (“We Must,” 2010, p. A10).

In the final push to pass legislation, the president focused on the impact that the current health care system was having on ordinary people and also strongly attacked the insurance industry for both denying care and raising rates to astronomical levels. He was aided by the news that one major California insurer planned to raise insurance rates by almost forty percent (Kristof, 2010, p. A21) and by the finding of the Congressional Budget Office, a non-partisan organization widely respected for its objectivity, that the reform plan would reduce the Federal budget deficit by over \$130 billion in the first ten years and over a trillion dollars in the second ten years (Krugman, 2010, p. A23). At this point, many of the opponents of the legislation seemed increasingly irrational. There were several incidents of bitter name calling, racist and homophobic remarks being made, wild charges and even death threats (Hulse, 2010, p. A16) that “moved the discourse well beyond rational debate into political hysteria” (“Finally, Health Reform,” 2010, p. A10). Frank Rich argued that in order to find a precedent for the “overheated reaction,” to “what used to be considered Republican ideas” one had to look back to the response to the 1964 Civil Rights Act (2010, p. WK10).

Despite the loss of Kennedy’s seat in the Senate, Democrats could pass the legislation if the House could be convinced to vote for the same bill that had passed the Senate. Revision of the bill could be done in the Senate through a process called budget reconciliation that only required a simple majority. This happened, resulting in “the most sweeping piece of federal legislation since Medicare” (Leonhardt, 2010, p. A1). President Obama said on the night of final passage, ““This is what change looks like’” (Cohn, 2010, p. 25).

3. Assessment of the debate

Using the criteria established earlier, it is possible to assess the functioning of the liberal public sphere in the debate about health reform. Initially, it is quite clear that there was ample debate on all of the significant issues involved in health care reform. At the same time, it is also clear that much of the discussion was in Madison’s terms “counterfeit” debate. The legislation was portrayed “as socialism run rampant” and “as a government ‘takeover,’” while in fact it was a “fairly modest set of fixes” (Robinson, 2010, p. B7).

Was the debate informed by appropriate expert opinion? Here, there is conflicting evidence. On the one hand, the media cited expert consensus to debunk charges made against health care reform. In the case of one widely circulated anti-reform memo, two important fact checking websites researched each of the claims in the memo and concluded that they were largely false and misleading (“Vetting Claims in a Memo,” 2009, p. A16). The Congressional Budget Office also played a key role in the debate. The conclusion that the legislation would cut the budget deficit in both the short and long-term played a pivotal role in eventual passage of the legislation. At the same time that the expert community effectively commented on the legislation, it is also obvious that the expert consensus had a limited effect on public opinion. A substantial segment of the population continued to believe attacks on the bill that had been widely discredited, supporting Madison’s fear about the irrationality of the mass public.

Did the media report adequately on the legislation? At one level, the media did quite a good job. There was immense coverage of the legislation. At the same time, the focus of much of this coverage was on politics, with much less emphasis on public policy. Drew observed that “The messiness and the anger of on Capitol Hill were the story,” but “what was in the health care bill was not” (2010, p. 50). Still, there was enough policy coverage that major distortions about the legislation were uncovered. One review of the proposed legislation concluded that many of the allegations being made about health care reform have been based on misreading or misrepresentations” or simply “have no basis in the bill at all” (Bavley & Helling, 2009, p. A16).

The crux of the issue relates to the quite mixed data on whether the public gathered adequate information to make a reasoned judgment about the legislation. The unfortunate truth is that the public was terribly uninformed on many topics and frankly misinformed on others. First, it is important to recognize that public knowledge of the most basic facts relating to public policy is astonishingly low. For example, polling found that “only 1 person in 4” understood that “60 voters are needed in the senate to break a filibuster” (Blow, 2010b, p.A17). Second, the public was woefully uninformed about the details of the legislation. Karen Tumulty noted that “The more the public hears, the less it seems to understand” (2009, p. 26). A CBS poll found that “Just 42 percent said they had a good understanding of its likely impact” (2010).

In addition, a large segment of the public came to believe things that were not

true. Drew observed that “through repetition and lies, the Republicans were winning the propaganda debate” (2010, p. 51). On this point, *The New York Times* editorialized that “Republicans have scared many older Americans into believing that their medical treatment would suffer” under the reform, a claim that the *Times* rejected based on a careful review of the legislation (“Medicare Scare-Mongering,” 2009, p. WK11). Charles Blow cited an Indiana University Poll that found that by mid-summer 2009, the “obviously false and widely discredited” attacks had shaped public opinion to the point that “most Americans now believe that if health care reforms pass, health care services will be rationed and taxpayers will be required to pay for abortions” (2009a, p. A17). In addition, strident attacks on the legislation combined with what David Brooks labeled “a corrosive cynicism about public action” to produce a number of angry protests, name calling and in a few cases threats of violence (2010a, p. A23).

At the same time, polling indicates that “Americans closely tracked the final stages of the long-running debate over health care reform” and that they were quite critical of the job the media had done in reporting the debate, with 75 percent saying the media had “done only a fair or poor job of explaining the details of the proposals” (Pew Research Center, 2010a). This would seem to indicate a desire for more coverage of policy, but it also may reflect the public’s unwillingness to take steps to seek out material on the complex policy issues at stake.

By late summer 2009, the public had turned against the health care proposals with a majority disapproving of Obama’s job performance on health care and a plurality opposing the legislation (Fram, 2009, p. 6A). Public opinion changed little until ultimate passage (Rasmussen, 2010). In May 2010, a Kaiser Foundation poll found that public opposition had lessened and that the gap between those with a favorable and unfavorable view of the legislation was only 3 percent net unfavorable (Kaiser Family Foundation, 2010b). While over the course of debate on health reform, public support lessened, polling also consistently found support for both the need for health reform and for many of the elements found in the reform package (Kaiser Family Foundation, 2010a, pp. 1, 5). These polls found especially strong support for the creation of an insurance exchange, expanding Medicaid, subsidies to assist people in buying coverage, insurance reform, and a public option. Each of these elements drew more than 50 percent of the sample stating that they made them more likely to support the proposal (Kaiser Family

Foundation, 2010a, p. 5). The elements of the legislation receiving the least support included the individual mandate, the almost \$900 billion cost of the program, the specification of a basic benefits package and the proposed tax on high-cost insurance plans. These results strongly suggest broad support for the overall outlines of the policy passed by Congress. They also indicate a fundamental immaturity on the part of the American people. The public favored those items that added to their coverage or made it easier to obtain, but opposed efforts to rein in cost or require people to purchase coverage, policies that were needed to make the program function. Polling also indicated that only 18 percent of the American people favored Congress leaving the present system as it is (Pew Research Center, 2010b,).

The public opinion information indicates that the public as a whole strongly favored reform as long as that reform didn't cost them much. The polling also indicates that much of the opposition to the legislation was based on misinformation. This suggests a basic problem in American democracy. On any issue that is complex, it is easier to scare the people about the dangers of change than it is to inform them about the benefits of that change. Madison and the other Founders were profoundly worried about the dangers of majority tyranny and as a consequence built a number of checks into the system that made legislation difficult. What Madison did not recognize was that the inability of the public to process complex policy disputes might threaten the capacity of the liberal public sphere to confront problems that threatened the nation's wellbeing. Given the inherent complexity involved in confronting global warming, nuclear proliferation, financial reform, and so forth, the results of the health care debate are not reassuring.

At the same time, American democracy is representative in nature and the failure to persuade a majority of the public to support a given piece of legislation does not necessarily indicate a failure in the liberal public sphere. President Obama and Democrats in Congress were able to generate enough support for reform in the 2008 election that they ultimately had the votes to pass comprehensive reform. Because of that success, the misinformation campaign that began in mid-summer 2009 did not derail health care reform.

The final question - did the better argument in some sense win out? - may seem inherently partisan. Given the contested nature of the health care debate, it might seem that there is no way of answering the question in a principled fashion.

At the same time, while the Obama health care plan remains a contested issue, on two points there is universal agreement. A health care system that cost 50 percent more than any other in the world and still didn't cover 1/6th of the American people cannot be considered a well-designed system. The present system was unsustainable. Ultimately, what may have pushed reform over the finish line was that the failures in the present system left little option but reform. The opponents of reform persuaded a narrow majority that the Obama plan was dangerous, but overwhelmingly the American people still believed in reform. In that sense, the advocates of reform and the better argument won out and the Democrats in Congress carried out their responsibility to "represent" the American people by passing comprehensive legislation that according to Drew was "the greatest advance in health care coverage for Americans in decades, if not ever" (2010, p. 49).

4. Conclusion

In the health care debate, the liberal public sphere both failed and worked. Misinformation almost overwhelmed the debate at several points. The public showed little appetite for searching out the details of public policy and little ability to process complex arguments. It is telling that Obama was derided when he tried to calmly explain the rationale behind reform. Commentators clearly thought an effort to educate the people about the issues, an effort that implicitly treated them as citizens capable of rational deliberation, was naïve. In the end, a reform, the main elements of which the public favored, passed although a small plurality of the public opposed the legislation, in many cases because of misinformation about what was in it. Over time, support for the effort grew and by November 2010 a small majority favored the legislation (Thomma, 2010, p. All).

This result was by no means inevitable. Health reform had failed on several other occasions despite similarly strong arguments. The political skill of Democratic leaders in Congress and the administration, along with Democratic control of the House, Senate, and presidency undoubtedly played a role. At the same time, Obama's enlightenment commitment to reason also was clearly important. Obama believed that in the end the stronger position would win out if he remained committed to educating the people about the better arguments. Like Madison and Lincoln, he believed that sweet reason ultimately would be decisive. At many points in the debate, his faith in reason almost seemed quaint, but ultimately his

faith was justified, if only barely. As he demonstrated in the end game in the meeting with House Republicans and in the health care summit, there is power in mastery of argument. Rod Dreher noted that “Traditional belief in the effectiveness of reason, however imperfectly realized, has long been a stabilizing force in our liberal democracy. If that faith is slipping into irrelevance, we are going to lose more than our minds” (2009, p. 8A). Perhaps the ultimate lesson of the fight for health care reform is that at least as enacted by President Obama, faith in public reason has not yet slipped into irrelevance.

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ISSA Proceedings 2010 - Definitions And Facts. Arguing About The Definition Of Health.



1. Introduction

The aim of this contribution is to explore the role and use of so called persuasive definitions in the field of health and, more specifically, within the longstanding dispute about the definition of health. By persuasive definitions we mean those definitions that, while describing the meaning of a

concept, attempt to support some views about that concept (Stevenson 1938; Schiappa 1993; Schiappa 1993; Macagno & Walton 2008a and 2008b; Kublikowski 2009).

In our analysis, we will address some limitations in Edward Schiappa's views on this issue. Schiappa defends a rhetorical practice of definition by claiming that persuasive definitions that attempt to grasp the essence of facts are dysfunctional and should be avoided (Schiappa 1993, p. 412). By exploring the argumentative exchange around the definitions of health, we will show that if, indeed, these definitions have been constructed to promote a certain way of thinking about health more than to look at the essence of health, they don't lose sight of facts. Moreover, precisely their link to facts and their evaluation in light of facts by the scientific community are argumentative moves that promoted the development of important instruments to better understand, describe and measure health, e.g. WHO Classification of Functioning, Disability and Health (ICF) that we will describe below.

2. The use of definition in argumentation

According to Perelman and Olbrechts-Tyteca (1969, p. 213), definitions in argumentation can be involved in two phases of the reasoning process: they can be supported or validated as conclusions of arguments; they themselves can be the premises of arguments. The distinction between argumentation 'about definition' and argumentation 'from definition' was already clear in the classical theory of argumentation (Rubinelli 2009, pp. 3-29). An argumentation about a definition is designed to arrive at a definition. Reaching a definition of a concept is the end point of a discussion, as in the Platonic dialogues. Definitions are the standpoint to be established or refuted through argumentation. Thus, for example, one of Aristotle's *topoi* instructs on how to refute a definition by showing that a species has been assigned as a differentia:

Again, you must see whether he has assigned the species as a differentia, as do those who define 'contumely' as 'insolence combined with scoffing'; for scoffing is a kind of insolence, and so scoffing is not a differentia but a species. (Aristotle, *Topics* H, 144a 5-9. Transl. by Forster (1960))

But a definition can also be the starting point of a discussion, and functions as a premise to support or refute a standpoint. So, for example, we use the definition of a subject or a predicate to show the incompatibility of the predication. To quote another Aristotelian example, to see if it is possible to wrong a god, you must ask,

what does 'wrong' mean? For if it means 'to harm wittingly', it is obvious that it is impossible for a god to be wronged, for it is impossible for god to be harmed (*Topics B*, 109b 30-110a 1).

This paper mainly focuses on the use of definitions as standpoints of argumentations.

Perelman and Olbrecht-Tyteca (1969, p. 448) argued that these definitions function as claims about how part of the world should be conceptualized; how part of the world is. According to them, the speaker who constructs these definitions «will generally claim to have isolated the single, true meaning of the concept, or at least the only reasonable meaning corresponding to current usage». Schiappa refuted precisely this idea of a 'true meaning of the concept'.

In 1993, he discussed the nature of those persuasive definitions that are used rhetorically to the detriment of what, since Plato's time, are presented as 'real definition'. In particular, real definitions refer to the efforts to define things rather than words. They are concerned with what the defining qualities of the referent 'really' and 'objectively' are (what corresponds to Socrates' question: what is X?). The idea that a real definition of a word depicts what is 'essential' about the word's referent is at the basis of what Perelman and Olbrechts-Tyteca (1969, pp. 411-459) describe as dissociation: an arguer's strategy to dissect a unified idea into two concepts; one of which is seen as more valuable than the other. An arguer uses this pair by claiming that one definition is "better" or "more realistic", the other is "worse" or "mere appearance". According to Schiappa (1993, p. 404), there are two problems with this type of 'essentialism': firstly, the language of essentialism prevents understanding of important social needs involved with defining; secondly, dissociations are based on an untenable theory of language and meaning.

In line with the remarks by Robinson (1954), Schiappa concluded that real definitions do not and cannot describe things-in-themselves, and should be abandoned.

Our main claim is that in the field of health avoiding real definition is dangerous from a healthcare point of view. An analysis of the definitions of health and their development shows that their link to facts is a prerogative for the achievement of concrete outcomes, e.g. the improvement of health. For sociopolitical, economical and ethical reasons, the restoring of health is a main concern of society. But restoring health involves several aspects that a definition of health must

accommodate (Callahan 1973) if we want these aspects to be addressed through concrete treatment actions. Conceptual clarity in thinking about what health 'in reality' is is essential so that the notion can be operationalized in the best manner (Salomon et al. 2003). Failures in grasping the essence of health lead to poor description and measurement instruments. These failures can affect the actual treatment of the patient, when assumptions about health are made from a conceptual model that does not take into consideration what matters about health, and what has to be done to improve it. Definitions of health, as pointed out by Steinfels (1973), influence the way of dealing with the situation: notions of health and illness imply answers to three key questions about a given condition: what should we do? who is to do it? how should it be done?

3. Testing definitions. An Aristotelian perspective

For the reasons given above, definitions of health unavoidably face and are faced with factual issues. Indeed, if we analyze the development of the ongoing discussion about the definition of health, we see there an instance of the dialectical debate that Aristotle codified in the *Topics* when discussing the potential of the method of *topoi* for testing *endoxa*. In *Topics* A 2, 101a 37- 101b 4 we read that the method of *topoi*:

is useful in connection with the ultimate bases of each science; for it is impossible to discuss them at all on the basis of the principles peculiar to the science in question, since the principles are primary in relation to everything else, and it is necessary to deal with them through the generally accepted opinions (*endoxa*) on each point. This process belongs peculiarly, and most appropriately, to dialectic; for, being of the nature of an investigation, it lies along the path to the principles of all methods of inquiry.

As discussed elsewhere (Rubinelli 2009, p. 43-47), the primary principles of science must be addressed on the basis of *endoxa*, those propositions that are plausible and reputable because they are granted by all of the majority, or by the wise or by scientists (Aristotle's *Topics* A 1, 100b 21-23). *Topoi* are a method for testing *endoxa*, and the test is performed by looking at the world and searching for essential characteristics of things that can either confirm or refute the *endoxa* under analysis. *Topoi* help confirming or finding out contradictions in people's claims and, in the case of the definition of health (a primary principle for health sciences), by looking at whether *endoxa* describing what health is about contrast with evidence found in the reality.

Definitions of health are constantly tested dialectically and we can witness several attempts to refine definitions that, even if they have a persuasive power, do not exhaustively account for facts. Below, we shall focus on the two definitions of health that have captured most of institutional and academic attention.

The first definition refers to the so-called biomedical model of medicine. The core idea behind this model probably goes back to the mind-body dualism firmly established under the imprimatur of the Church. Classical science readily fostered the notion of the body as a machine, of disease as the consequence of breakdown of the machine, and of the doctor's task as repair of the machine. Thus, the scientific approach to disease began by focusing in a fractional-analytic way on biological (somatic) processes. The biomedical model has molecular biology as its basic scientific discipline. It assumes disease to be fully accounted for by deviations from the norm of measurable biological (somatic) variables (Engel 1977). The medical model descriptively suggests an idea of health as the absence of disease.

The persuasive connotation of this definition is clear. The biomedical model codified in the society a specific way of thinking about health with a main focus on its anatomical and structural characteristics. And again, as is typical of a persuasive concept, it offered a pragmatic understanding of health that focuses on the most measurable and manageable aspects of health.

Yet, it is a persuasive definition that was not developed without a look at health as a fact. Its core idea rests on the empirically verifiable assumption that restoring health implies first and foremost treating the health condition and limiting its negative impact at the mental or physical level.

What the biomedical model does not fully acknowledge is a consideration for other essential aspects around health that do matter in terms of improving functioning. And this lack of consideration was made explicit by those scientists who attempted to refine the idea of health (Engel 1977).

By looking from an argumentative perspective, the refinement of this definition was conducted by demolishing the following fallacy of denying the antecedent:

If disease, then no health

No disease

Health

If 'health' is 'absence of disease', by *modus tollens* it follows that the 'presence of

disease' indicates 'no health'. The inference from this assumption is that successfully treating a disease by ameliorating an abnormal condition of the body organism restores health. This inference can be more or less granted in dealing with cases where the health conditions can be completely eliminated by a specific treatment. But in cases where the health condition becomes chronic the situation is different. In those cases, the physical or mental impairments cannot be cured completely. These impairments limit the activities that individuals can perform. In order to improve the health conditions of those people, these limitations need to be considered. Thus, for instance, there will be cases where the restoring of individual levels of functioning at the physical level will need to be complemented with interventions in the environment (see, for instance, the restructuring of a house to accommodate the needs of a patient on a wheelchair). But this environmental component must be acknowledged as a possible factor that can impact on functioning in order for the health system to address it.

In addition to this, epidemiological data show that treatment directed only at the biochemical abnormality does not necessarily restore the patient to health even if there is evidence of corrections or major alleviations of the abnormality. Other factors play a role in restoring health, even in the face of biochemical recovery. Thus, for instance, it has been proven by several studies in doctor-patient communication that the behavior of the physician and the relationship between patient and physician powerfully influence therapeutic outcome for better or for worse. Thus, for instance, involving patients in treatment and management decisions has been proven to improve the appropriateness, safety and outcome of care (Stewart 1995; Collins et al. 2007 pp. 4-6). Again, as Engel explained (1977, pp. 131-132), insulin requirements of a diabetic patient may directly affect underlying biochemical processes, the latter by virtue of interactions between psycho-physiological reactions and biochemical processes implicated in the disease: insulin requirements may fluctuate significantly depending on how the patient perceives his relationship with his doctor. Doctor-patient communication is not, strictly speaking, a component of health, but it is a health-related domain in the sense that it can impact on health.

A definition of health must, thus, be broad enough to allow consideration for aspects other than the health conditions that might affect health at the mind and body level.

The limitations of thinking about health in terms of the health conditions alone

were explicitly addressed by the members of the United Nations that in 1948 – when they ratified the creation of the World Health Organization – presented a new definition of health as:

«a state of complete physical, mental and social well-being and not merely the absence of disease.» (WHO 2006)

This was, clearly, another persuasive definition that aimed at spreading in the society a certain way of thinking about health. It did not capture the essence of health. That health does not equal well-being is intuitively obvious. Also, setting the state of ‘complete’ well-being as the standard of health would make all of us chronically ill. How often can we claim to be in a state of complete well-being? And, if we are in such a state, how long does it last? (Callahan 1973; Jadad and O’Grady 2008) Yet, WHO definition was created by thinking empirically, in terms of the objective limitations of the biomedical perspective. Thus, we shall see below, even if this definition was and is still highly criticized, it prepared the ground for the development of more refined instruments for the description of health.

4. The International Classification of Functioning, Disability and Health (ICF)

The main criticism of the WHO definition of health presented above was inspired by the evidence that it conflicts with some facts. As Smith (2008) ironically comments, it is a definition that would leave most of us unhealthy all the time. From an operational point of view the idea that health implies ‘completeness’ is clearly impracticable, unattainable and not measurable.

Moreover, the claim of this definition instantiated a dialectical debate based on the application of a specific *topos*, namely that for dealing with things which are said to be the same. We read in Aristotle’s *Topics*:

[to refute similarity among two things] you must examine them from the point of view of their ‘accidents’ (...) for any accident of the one must also be an accident of the other (...) For, if there is any discrepancy on these points, obviously they are not the same. (*Topics* H 1, 152a 33-37)

The WHO definition equals health with well-being. But if we look at the contrary of health, namely, ‘disease’ (a term that includes injuries, disorders, aging, stress etc.), we see that while disease is incompatible with physical health (even if a person does not feel unhealthy, diseases affect body structures or functions at some level), a certain degree of disease is absolutely compatible with well-being.

A clear example of the distinction between health and well-being is explained by the disability paradox: many people who have serious and persisting disabilities report good or high level of well-being (Albrecht and Devlieger 1999). The health of those people is affected by the disease, but not so much their well-being. Thus, according to Aristotle's *topos*, the two things are not the same.

Another *topos* applied in the dialectical testing of the WHO definition is found in the passage of the *Topics* where Aristotle suggests to demolish claims by looking at their consequences (the so called *argumentum ad consequentiam*, Walton 1999):

You must examine as regards the subject in hand what it is on the existence of which the existence of the subject depends (...) for destructive purposes, we must examine what exists if the subject exists; for if we show that what is consequent upon the subject does not exist, then we shall have demolished the subject. (*Topics* B 4, 111b 17-13)

This *topos* has been applied by looking at the unacceptable consequences for society of equating health and well-being. More specifically, Callahan (1973, p. 80) noted that this equation «would turn the problem of human happiness into a medical problem, to be dealt with by scientific means». The medical profession would be the gate-keeper for happiness and well-being. These consequences are unacceptable, insofar as there is no evidence that medicine can ultimately restore happiness or can advice on how to deal with happiness.

But despite these lines of criticism, the appeal of the WHO definition to the 'not merely absence of disease' promoted a different view on health that, without diminishing the value of the biomedical perspective, complemented it. Indeed, thanks to this definition and its testing, a crucial assumption about health was made, namely that there must be consideration for both the actual health states in which people live and factors other than the health conditions that can influence those conditions (Salomon et al. 2003). These factors must be conceptualized and taken into consideration for healthcare purposes.

This assumption was translated in the creation of an instrument to describe health that could contextualize health in a broader context, namely the International Classification of Functioning, Disability and Health (ICF, WHO 2001).

The ICF allows us to classify a person's lived experience of the health condition in terms of levels of functioning that are directly linked to health condition as well as

levels of functioning associated with health conditions that result from interactions between the health condition and personal and environmental contextual factors.

Endorsed by the World Health Assembly in 2001, it focuses on the concept of 'functioning' and operationalizes health in terms of etiology - neutral dimensions of individual experience. The ICF provides categories to describe individual levels of functioning at the body, person and societal levels, and what can influence functioning. It has two parts, each with two components. Part one (Functioning and Disability) covers: 1) *body functions*, i.e. the physiological functions of body systems, and *body structures*; i.e. the anatomical parts of the body; 2) *activities*, i.e. the execution of tasks or actions by an individual, and *participation*, i.e. individuals' involvement in a life situation. Part two (Contextual Factors) covers: 1) *environmental factors* that make up the physical, social and attitudinal environment in which people live and conduct their lives; 2) *personal factors* or the particular personal background of an individual's life and living, e.g. gender, race, age and habit. Functioning in a specific domain is an interaction or complex relationship between the health condition and contextual factors, according to the following scheme (ICF, WHO 2001, p. 18) (Figure 1):

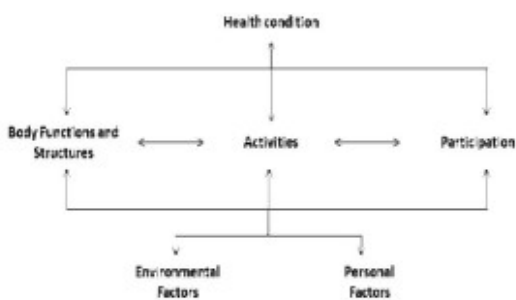


Figure 1

Functioning mirrors the 'lived experience' of the individual whose life and activities are affected by a health condition. The ICF model of functioning and disability makes it possible to describe the difficulties that individuals may face in all aspects of their life (Leonardi and Martinuzzi 2009). As we have recently claimed (Rubinelli et al. 2010), the ICF model of functioning offers an optimal operationalization of health.

The implementation of the ICF as an instrument to describe health has been

proven to advance health practice for the improvement of individual health. To quote an important instance of this improvement, we can think about the use of the ICF in rehabilitation. Rehabilitation is the core strategy for the medical specialty known as Physican and Rehabilitation Medicine (PRM), a major strategy for the rehabilitation professions and a relevant strategy for other medical specialties and health professions, service providers and payers in the health section. When based on the biomedical model, rehabilitation is seen as a process of active change by which a person with disability is enabled to achieve the knowledge and skills needed to achieve optimal physical, psychological and social functioning. According to this view, it is the individual and not the environment who has to change or who has 'to do the work'. The biomedical perspective is of utmost importance to enable people to achieve optimal capacity. Yet, it is equally important to enable relevant persons in the immediate environment encompassing family, peers and employers, to remove environmental barriers and to create a facilitating larger physical and social environment, to build on and to strengthen personal resources and to develop performance in the interaction with the environment (Stucki et al. 2007). The targets for interventions outside the health sector are mainly within the environmental component of the ICF. While these interventions may be provided by, or in co-ordination with, sectors outside health, their common goal is to improve functioning of people with health conditions.

As illustrated by Rauch et al. (2008), the ICF facilitates the description of a patient's functioning. Since the description of a functioning state can be very complex in many health conditions and clinical situations taking into account a multitude of limitations in all aspects of functioning and the interacting contextual factors, multidisciplinary team work with comprehensive expertise in varying areas of functioning is required. The ICF provide a common language and a structured documentation form which can be used commonly across disciplines. Moreover, the ICF supports the detection of the important patient's perspective. Healthcare providers are often faced with the patient's subjective perspective of functioning and the corresponding negative and positive feelings. The use of the ICF can contribute to the active involvement of the patient by suggesting topics of discussion which are relevant in his life with a health condition.

5. Conclusion

Definitions can come out of ideologies. They are often presented to promote a

certain way of looking at facts according to the point of view of the person or group of person behind them. But the analysis of the definitions of health shows that their use for healthcare progresses requires attention for the essential characteristics of health. Poor descriptions of health have negative ethical, socio-political and economical implications. Attempts to be persuasive, in this sense, never ignore facts and cannot escape the test in light of facts. As Charles Peirce would probably conclude at this point: "Facts are hard things which do not consist in my thinking and so and so, but stand unmoved by whatever you or I any men or generations of men may opine about them". We can decide that health is whatever we like it to be. But to make patients feel better, we cannot invent a definition of health.

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ISSA Proceedings 2010 - Contemporary Trends: Between Public Art And Guerrilla Advertising



One of the most discussed areas in Contemporary Art is *Public Art*. It has existed as a distinctive trend since the early Seventies. Born as a form of guerrilla art that tried to invade non-institutional spaces through performing actions, the term refers today to works of art in any media that have been planned and executed with the specific intention of being sited or staged in the public domain, usually outside and accessible to all. Advertising shows something similar in so-called guerrilla advertising, which avoids the institutional displays in favour of unexpected happenings and perturbant installations, which are not immediately recognizable as commercials. The aim of this paper is to articulate and compare the two terms in order to define them in a dialectical, non-dogmatic way, underlining their argumentative development. This shows on one hand the passage from the work of art as an aesthetical object to contemplate inside a museum to a dialectical event developed as performances, installations and happenings that transform the public space, creating a gap into normal life, that gives space to a new unexpected point of view on our everyday reality. On the other hand advertising using similar strategies starts using new unexpected spaces like zebra crossing, public toilets, underground floor, just to recall some examples. not only to persuade the consumers, but also to entertain them through a more and more interactive setting. Moreover, we'll try to answer following question: *Does guerrilla advertising put into question contemporary art's creative power?*

1. An articulated definition of Public Art

The name Public Art itself seems to be more a general feature of any art form, rather than a relatively new trend; any artistic expression needs, in fact, to be public in order to exist, so even a museum is a public space, not only the so-called non-institutional spaces. Nevertheless, Vito Acconci stated that a Museum is a "simulated" public space where people go in order to find art, so this could be

defined a museum's audience and therefore a specific audience. "A museum is a "public space" but only for those who choose to be a museum public. A museum is a "simulated" public space; it's auto-directional and uni-functional. When you go to a railroad station, you go to catch a train, but in the meantime you might browse through a shop. When you go to the museum, you have to be a museum-goer" [i] (Matzner et. al., 2001, p.45). So we define Public Art as the art forms performed or realized in the public domain meeting a generic public audience. But does this audience share some common information? In other words, does a generic public exist? Gerard A. Hauser pointed out that, according to Dewey, "the public is in eclipse" (Hauser 2005, p.268). Last but not least we could also add a quotation of the geographer Yi-Fu Tuan, who pointed out in 1976 that: "When the space seems familiar to us, it means that it has become a place" (Dean-Millar 2006, p. 14). This could become another interesting criteria by which to examine good and bad examples of Public Art and we could attempt to add another definition: "Public Art transforms landscapes and spaces into familiar art-places." If we accept these assumptions, we could also affirm that an effective artistic intervention creates dialectical objects that revitalise the surroundings and those who live and stop there while creating or recreating a sense of belonging and reflection. The place is something known to us, something that belongs to us in a spiritual and non-material way and to which we belong. After this last reflection on the concepts of space and place, it is important to see in which ways they are transformed by public art works. Following my research journey and that of some artists close to me I have tried to articulate public art works typologies according to the following groupings:

- *Permanent site-specific* interventions: long lasting installations which always imply an official project.
- *Temporary site-specific* interventions: which could be official or unauthorised installations.
- *Audience-specific* interventions: performances and happenings planned according to the inhabitants of a specific area.
- *People-specific* interventions: projects shared with one or more people with whom we have already a relationship.

1.1. The origin of Public Art as a politically and socially engaged art form

Before analysing these actual typologies it is important to dedicate some words to the development of Public Art from its first appearance. As we said previously, even if its origins were quite different, we often tend to identify Public Art with

the so-called *permanent site-specific* works, carried out in collaboration with the institutions, which generally tend to lose their dialectical power after a while, as monuments do. The economist Pierluigi Sacco points out that *"If a general interlocutor is asked what Public Art is, the answer will probably be: an equestrian statue or another type of monument. For a long time, Public Art was primarily this: an exercise in commemorative rhetoric to which - in the best case scenario - citizens get used to and in the worst they regard it as a permanent affront"* (Sacco 2007, p. 11). Nevertheless, the concept developed in a more complex way starting with extemporary art actions at the end of the Seventies. The first public art works were performances and happenings which created statements against the official art world or politically engaged ones. Public Art developed art actions that we could call *visual* and *verbal argumentative speech acts* that can be interpreted following the three principles of visual communication pointed out by Leo Groarke: -The first is the principle that images that are designed for argument, are communicative acts that are in principle understandable. Among other things, this principle implies that images that are, taken literally, absurd or contradictory should be interpreted in a non-literal way, for it is only in this way that they can make a comprehensible contribution to discussion. -A second principle of visual communication is the principle that argumentative images should be interpreted in a way that makes sense of the major (visual and verbal) element they contain. This implies an interpretation that interprets each of these components plausibly, and plausibly explains their connection to each other. -The third principle of visual communication is the principle that we must interpret argumentative images in a way that makes sense from an "external" point of view-in the sense that it fits the social, critical, political and aesthetic discourse in which the image is located. (Groarke in Van Eemeren, 2002, p. 145).

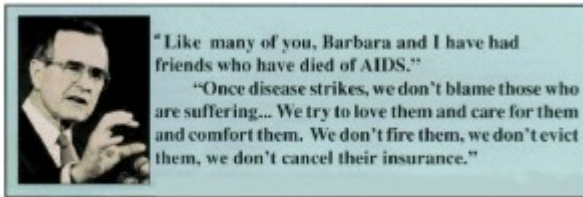
Then, in order to determine the most evident key of interpretation, in order to fulfil the previous second principle: making sense of the major, it can be useful to use Sorin Stati's scheme, divided into pragmatic functions and argumentative roles. The pragmatic function and the argumentative roles are similar semantic factors because they concern the goal of the speaker, but only the argumentative roles reveal his real purposes. The pragmatic functions and the argumentative roles could also be explained as the text meaning and the speaker's meaning, pointing out the discrepancy which often characterises the discourse. The expected or the unexpected relationships between pragmatic functions and

argumentative roles are often the result of a strategy to differentiate or to emphasise various types of communication; they often create a surprise effect that is welcomed in art works. **[ii]**

1.1.1. Group Material: participation through interpretation

Group Material, a New York-based collaborative group founded in 1979 was one of the first examples of Public Art. They questioned issues related to democracy, discrimination and the art establishment, creating audience-specific projects, created in order to exercise a critique or to recall forgotten events or situations. *“Our working method might best be described as painfully democratic, because so much of our process depends on the review, selection, and critical juxtaposition of innumerable cultural objects, adhering to a collective process is extremely time-consuming and difficult. However, the shared learning and ideas produce results that are often inaccessible to those who work alone. Our exhibitions and projects are intended to be forums in which multiple points of view are represented in a variety of styles and methods. We believe, as the feminist writer Bell Hooks has said, that “we must focus on a policy of inclusion so as not to mirror oppressive structures. As a result, each exhibition is a veritable model of democracy. Mirroring the various forms of representation that structure our understanding of culture, our exhibitions bring together so-called fine art with products from supermarkets, mass-cultural artifacts with historical objects, factual documentation with homemade projects. We are not interested in making definitive evaluations or declarative statements, but in creating situations that offer our chosen subject as a complex and open-ended issue. We encourage greater audience participation through interpretation.”* **[iii]** They were not interested in making definitive evaluations or declarative statements, but in creating situations that offer a complex and open-ended issue. They encouraged greater audience participation through interpretation. The *“AIDS Timeline”*, a mixed-media installation, (wall paper in a gallery, a poster on a bus and pamphlets distributed in several places) reconstructs, for instance, the history of AIDS as embedded within a web of cultural and political relations. *“They tried to recreate a chronology of the syndrome. The timeline suggests that AIDS has been constructed through both a bio-medical discourse of infection, incubation, and transmission as well as a cultural vocabulary of innocence and guilt, dominance and deviance”* **[iv]**. The bus poster showed an image of President Bush with a quote referring to insurance coverage of people with AIDS and conveyed positive norms of behaviour: *“Like many of you Barbara and I have had friend who have*

died of AIDS. Once disease strikes, we don't blame those who are suffering...we try to love them, to care for them and comfort them. We don't fire them, we don't evict them, we don't cancel their insurance" (Ex.1).



Ex. 1

In the meantime, a pamphlet about the insurance industry and AIDS written by Mary Anne Staniszewski was distributed to tie in with the poster publicity in order to transform its message into an argumentative role of *critic* against hypocrisy.

1.1.2. Guerrilla Girls and the Girl Power

Among the best examples of Public Art, we also remember the collective feminist group of the "Guerrilla Girls" founded in 1985. They assumed the names of dead women artists and wore gorilla masks in public, concealing their identities and focusing on the issues rather than on their personalities.. They define themselves as it follows: "*We're feminist masked avengers in the tradition of anonymous do-gooders like Robin Hood, Wonder Woman and Batman. How do we expose sexism, racism and corruption in politics, art, film and pop culture? With facts, humour and outrageous visuals. We reveal the understory, the subtext, the overlooked, the unfair. We've appeared at over 90 universities and museums, as well as in The New York Times, The Washington Post, The New Yorker, Bitch, and Artforum; on NPR, the BBC and CBC; and in many art and feminist texts. We are authors of stickers, billboards, many, many posters and other projects, and several books including The Guerrilla Girls' Bedside Companion to the History of Western Art and Bitches, Bimbos and Ballbreakers: The Guerrilla Girls' Guide to Female Stereotypes. We're part of Amnesty International's Stop Violence Against Women Campaign in the UK; we're brainstorming with Greenpeace. In the last few years, we've unveiled anti-film industry billboards in Hollywood just in time for the Oscars, and created large scale projects for the Venice Biennale, Istanbul and Mexico City. We discussed the Museum of Modern Art at its own Feminist Futures Symposium, examined the museums of Washington DC in a full page in the Washington Post, and exhibited large-scale posters and banners in Athens, Bilbao, Montreal, Rotterdam, Sarajevo and Shanghai. What's next? More creative*

complaining! More facts, humour and fake fur! More appearances, actions and artworks. We could be anyone; we are everywhere“ .[v]

They create billboards containing visual and texts, often using the pragmatic function of the *rhetorical question*, in order to express the argumentative role of *critique* and *recall* about the fact that sexism and racism are pervasive throughout the world of art and popular culture. Women artists and artists of colour are greatly underrepresented in art museums. Women and people of colour are also under acknowledged and underappreciated in the film industry. Let's analyse two of these posters.



Ex. 2

The visual of the first (Ex. 2) is based on Ingres' famous *Odalisque* apart from the head, that has been disguised with the typical gorilla mask. The headline goes: *"Do women have to be naked to get into the Met. Museum?"*. From this rhetorical question we can infer an argumentative critical conclusion well explained through the words of the artists themselves, who comments on the development of the situation after their work:

"On September 1, 2004, we did a recount. We were sure things had improved. Surprise! Only 3% of the artists in the Modern and Contemporary sections were women (5% in 1989), and 83% of the nudes were female (85% in 1989)." [vi]

In another billboard, they create an ironical list of the false advantages of being a woman artist, to state their lack of opportunities:

"Working without the pressure of success

Not having to be in shows with men

Having an escape from the art world in your 4 free-lance jobs

Knowing your career might pick up after you're eighty

Being reassured that whatever kind of art you make it will be labeled feminine

Not being stuck in a tenure teaching position

Seeing your ideas live on in the work of others

Having the opportunity to choose between career and motherhood

Not having to chose on those big cigars or paint in Italian suits

Having more time to work when your mate dumps you for someone younger
Being included in revised versions of Art History
Not having to undergo the embarrassment of being called a genius
Getting your picture in the art magazines wearing a guerrilla suit”

Here the Girls attack not only the difficulties of being recognized as a female artist, but also the difficulties of balancing a professional life with a personal one in a society which undervalues women’s contributions. Later, this artistic trend of moving out from the institutions became a simply formal trend of showing something outside the museum or the gallery and it was embraced by the official institutions as a land of possibility for big and long lasting “urban furniture”.

So even if its origins were quite politically and socially engaged, this is why we often tend to identify Public Art with these so-called *permanent site specific* works, carried out in collaboration with the institutions; in the following paragraph, we will analyse some examples.

1.2. Permanent Site-Specific art works: Jeff Koons

Permanent site-specific projects refer to those interventions that place more or less articulated sculptures or installations in open spaces permanently. Broader processes correspond with these operations: Let’s take for example “*Balloon Flower*” by Jeff Koons, displayed as a permanent installation in Potsdamer Platz in Berlin (Ex. 3).



Ex. 3

He has realized a blue flower by the “bending” of a steel air-ballon. *Balloon Flower* is the perfect example of the ability of the American artist to transform a common image into popular mythology. *Balloon Flower* is a monument to

nostalgia and reflects the way in which children see the world. *Balloon Flower* provides the viewer with a sensuous image with strange tensions between lightness and weight, between the ephemeral and the eternal.

*“For Koons, there are great links, and indeed parallels, between man and flower. While flowers have their annual cycle, so too do humans, but our year is made of strange markers, many of them associated with life and with sex: Valentine’s Day, anniversaries, Spring... And all these events can involve flowers.”***[vii]** So it also acts as a symbol of time and of human relationships, the perfect metaphor to be set in a public square. Nevertheless, we are far from the political engagement of the works we have previously analysed.

Moreover, despite the good intentions, the outcomes of this type of projects are often questionable because using public space can also involve the risk of creating a celebrative product, limited therefore to delimiting a landscape or changing a horizon, rather than a dialectical object. Vito Acconci is very critical in this regard: *“What’s called public space in a city is produced by a government agency (...). What’s produced is a product. (...) What’s produced is a “production”: a spectacle that glorifies the corporation or the state.”***[viii]** In the last two decades, we have a countertrend which tries to recall the first ideals of this art form, moving from the *permanent site specific* to the *temporary site specific*, to the *audience specific* and finally to the *people specific projects*, according much more importance to the human community of a given space, than to the space itself.

1.3. Temporary Site Specific art works: Christo and Jean Claude

“The process allows artists to work on the public environment and integrate their vision of space and of the social processes that take place in it. The artist is called upon to work not for himself but for the people who interact in that specific context” (Scotini in Sacco 2006, p.100). Temporary site-specific installations involve artistic actions or installations of brief duration that create events more or less incisive on the context. Being ephemeral, they maintain their dialectical power as they do not become part of the common landscape, in front of which the citizen tends to be more and more indifferent. Emblematic in this regard is Christo’s *“Wrapping of the Reichstag”*, realized in 1995 (Ex. 4).



Ex. 4

The artist wrapped the past and future building of the German government in silver polypropylene, *covering* a building that was becoming ever more an anonymous element of the landscape and ever less a place of belonging and memory. This happening created an oxymoron that could be expressed as follows: “Cover to rediscover!” with many possible argumentative implications, implying, for instance, the necessity of taking into account all historical, political and even aesthetical connotations connected with this building in order to revisit the German identity. The Reichstag was constructed to house the “Reichstag”, which was the name of the German Parliament, till 1933 when the building caught fire under circumstances still not clear. This gave to the Nazis the excuse to suspend most of the rights provided by the constitution, in the so called “Reichstag Fire Decree”. The building started being used for propaganda’s purposes, becoming a negative symbol and one of the main target of the Red Army bombing. Later it remained on the Western border near the Berlin wall representing the failure of democracy. After the reunion the possibility of pulling down the Reichstag was taken into serious account because of its difficult restoration, but probably also for its political and historical antithetical implications. At the end the choice of it as the future Government Building was the result of the want to return the capital from Bonn to Berlin and also the need to rescue a place from oblivion underlining its regained role. This choice was also a possible implicit question: “If you don’t talk and look at the past, would it become easier to accept?” Using the argumentative role of *thesis* to stress the importance of talking about the past in order to overcome it. At the time when Christo proposed his project the emotive and historical argumentative power returned forcefully to the fore and suddenly this “forgotten place” became a familiar place again, too familiar, warm and

insidious, for the contrasting historical events it recalled, one need only consider that the artist had to wait 25 years for the necessary authorisation. This wait became an integral part of this beautiful work which apparently lasted only 15 days but contributed to giving back a landmark to the Berliners, which would last for many years.

1.4. Audience Specific: Annalisa Cattani, Amanda McGregor, Adriana Torregrossa, Dragoni-Russo

With audience-specific, the art critic and curator Marco Scotini refers to projects aiming at a more profound and capillary involvement of the social structure. There are many Italian examples, often starting with an infringement of regulations, evading permission and invading unexpected spaces, the casual public finding itself in the vicinity is the first recipient and often becomes a voluntary or involuntary protagonist of the work.

The following project by Annalisa Cattani: *The girls of Trieste* (Ex. 5) followed this line.



Ex. 5

In this case, involvement happens by acting on memory. A pre-existing monument became the drive of the work. Too often monuments lose their function of *manere* and *monere* (staying and reminding) as the etymology of the term would mean, becoming backgrounds only for photos or points of reference for finding one's bearings. In this case "The girls of Trieste", a monument to the women who sustained their men during the war by symbolically sewing the flag became, with the addition of an embroidered cloth with tens of names taken from the archives

of the psychiatric hospital, the voice of the forgotten women deceased in mental hospitals, in memory of what happened and as a warning of that which should never happen again. Following Hauser's point of view "*when artistic portrayal is co-extensive with actual and I would add with historical events, these deliberations may organize public memory in other than official terms, thereby shaping society's understanding of its own historicity and the model of its own self-organization*" (Hauser 2005, p. 270). The London artist Amanda McGregor proposed an *Alternative City Planning* for the town of Letchworth, involving people, occupying various roles in the social structure, in a psychodynamic journey, towards the place they live in, guided by an exercise of "creative visualisation", that produced unexpected looks, hidden desires, ways for alternative solutions. In this case, the citizens involved became effective interlocutors who could really take part in determining the urban planning of their town, not simply by voting the members of the administration. It created that which Matzner pointed out as follows: *It is not about the gap between culture and public, but it is to make art public and artists citizens again* (Matzner 2001, p.107). Over the years, this type of operation in Public Art has acquired ever greater complexity and prominence. The artist, therefore, often becomes the voice of marginal cultures, the artists Siah Armajani and Mischa Kuball express themselves as such in this regard: *Public Art comes in through the back door, like a second class citizen (...)Public Art can present itself as the voice of marginal culture, as the minority report, as the opposition party* (Matzner 2001, p. 45). In this regard, it is necessary to mention a very interesting and effective work by Adriana Torregrossa: "*Article 2*". The operation outlined by the artist takes the title from the second article of the Italian Constitution which grants citizens the possibility of expressing their own culture. Torregrossa made it possible to sing the prayer of the end of the Ramadan in the marketplace in Turin in order to produce a critical answer to article 2 as, in Torregrossa's point of view it was not respected in this town where there are not enough places dedicated to minorities to grant their rights (Ex. 6).



Ex. 6

Piazza del Mercato di Porta Palazzo in Turin is an area inhabited for the most part by immigrants of the Islamic religion; this is why she wanted to transform the market just for a few minutes into a Middle-Eastern square, in order to give immigrants the presence of a familiar and shared place for a brief time. Two Bolognese artists, Dragoni and Russo, created an interesting audience-specific project, Noting the presence of makeshift seats at the bus stops in the suburbs, the artists intervene adding a name plate stating: *Gift of the Dragoni-Russo family*, mimicking those which can be found on church pews. This subtle criticism of the negligence of the city's administration shows, at the same time, a provincial stance on socialisation, a tendency toward making domestic a public space, which thus becomes a place. A further implication associated with this definition of Public Art is given by the artists Siah Armajani and Mischa Kuball: "*Public Art must go beyond the personal gesture of the artist, must transcend pure subjectivity and respond to the urban, social and political structure that define a given place*" (Matzner, 2001, p.461).

1.5. People Specific: Darth

As regards people-specific projects, reference is made to works implying ever closer relational processes and at times involving actual neighbours. A small number of people are involved. In relation to this, we recall the work "*Venti-trenta-quaranta metri*" by Annalisa Cattani. This sound installation, showing a speaking hole in a castle, makes the artistic action an engine that brings into play sense and memory processes among neighbours while transforming the form into a dialectical object. As for many other fortresses and castles, it is narrated that the Rocca di Stellata fortress had an underground passageway of uncertain depth - between twenty and thirty metres - which would have connected it with the villa of the owners. However, for years, there has only been weak proof of this story, consisting in an accidental excavation and the recounting of the children of

yesteryear who made the entrance of that cave the setting for their adventures. The image of this space, by now lost and covered with sand by the floods of the Po river, has been excavated in memory of Sergio Calori, Ermete Migliari and the watchman Ramon, and serves as a release for a flurry of rumours and stories from those who lived inside the fortress, from those who observed it in the immediate vicinity and finally of those who still diffuse its memory today. In each of the declarations, the underground passageway is present together with the sense of limit, of the prohibited, towards a threshold that was not to be crossed and became a mental matrix of the protagonists of an age. Another example is given by the *“Encounters behind closed doors”* with Darth, a group of artists and curators, that became, to all intents and purposes, a meta-artistic work and was created from the necessity to problematize the distance between generic and specific audiences, but among specialists in the most mindful way. During this meeting, artists, curators and gallerists were invited without an audience, just for the founder of the association, in order to reestablish a shared language among specialists. Sometimes, in Italy contemporary art concentrates too much on a sort of universal audience losing the specificity of the discipline and also its argumentative force. The result of these encounters was videotaped and shown just as a trailer in some galleries in order to let people taste the atmosphere, but also to point out the impossibility of reproducing the event which was an emotional and argumentative mix that had to be lived and not re-enacted.

Let's now see how this development in Public Art affected advertising.

2. Guerrilla advertising between viral marketing and audience-specific



Ex. 7

Public Art influenced Guerrilla Advertising most of all: a relatively new trend in advertising whose aims and forms can be compared with those of Public Art. *“Guerrilla advertising”* is a catch-all phrase for non traditional advertising campaigns that take the form of theatrically staged public scenes or events, often carried out without city permits or advance public hype. It was first coined by author Jay Conrad Levinson in 1984 to refer to unconventional, non-big-media-dependent brand-building exercises (...) These were once a low-budget strategies for start ups and small businesses unable to afford a thirty-second spot.” [ix]

Even with this point of view, its origins are very similar to those of Public Art which emerged as an answer against the big and rich art world, to create new spaces for creativity. Let's start with some audience-specific examples. As we showed previously, these kind of performances and happenings create a gap in every day life; they appear all of a sudden and are oriented to the audience and not to a given or chosen space. They imply an interaction with the public and correspond to what is normally called viral marketing. Like its name implies, it is a way of spreading your message like a virus from person to person. Microsoft covered Manhattan in butterfly stickers for example. This approach is particularly effective in social advertising. Let's take an example made to let people quit smoking, creating peculiar trashcans on the streets that warn smokers of dangers. (Ex. 7).

To make people aware of Prisoner's rights, Amnesty did a stickering campaign in order to reach people from the audience one by one. The sticker simulated an hole in the street showing a prisoner inside with a message in his hands saying: *"Thousands are held prisoners for their beliefs in places worse than this. Write until you free them all. Amnesty International"*. To raise awareness for the Weingart Homeless Center (Ex. 8), they took a non traditional approach that made people imagine themselves homeless if only for a moment, provoking a *self critique* for the indifference they were victim of. They photographed a dozen of the 70.000 people living on the streets of Los Angeles.



Ex. 8

They then took those images, removed their faces and made them into photo-realistic cardboard cut-outs. They placed the cutouts in upscale shopping centres in Beverly Hills and Santa Monica. Soon the homeless could not be ignored. This project not only raised awareness, but it also raised funds. Amnesty International in Germany celebrated the 60th anniversary of human rights in 2008 with *"Frau im Koffer"*, *"Woman in suitcase"*, an ambient

advertising campaign at German airports. *"Woman in Suitcase"* (ex. 9). It consisted in putting a woman in a transparent suitcase and sending her around

the baggage carousel of the airport, again using the visualization instead of the verbal thesis to shock and to criticise our indifference towards this problem.



Ex. 9

Now even big-name brands are taking the guerrilla approach. It offers a way to engage highly targeted audiences, to develop a streetwise identity or simply to reach consumers who are so inundated with advertisements that they tend to ignore them. The advertising industry is in a state of flux, in an age where we can choose what media we utilise, the traditional channels of TV, press and poster are no longer always the most appropriate for a brand to reach its target audience. As a result, global brands are opting to implement ever more inventive and original schemes to get their products talked about. All of a sudden poor and low budget guerrilla methods like stickering, graffiti, etc have become new and creative earning opportunities. On the other hand, this trend has disempowered the political feedback of these operations, promoting big scale temporary site-specific installations much more decorative than argumentative near the viral trend.

2.1. Temporary Site-Specific or Ambient Campaigns

These are very high budget campaigns which create a big urban installation to promote the products in an unexpected way. Ravensburger, the manufacturers of many popular puzzles and games, recently launched a billboard campaign in Berlin, Germany to promote sales of their 1001 piece puzzles. The boards are shaped like puzzle boxes and contain images of internationally recognized landmarks, such as The White House. The “boxes” are surrounded by real, three-dimensional rubble, giving the impression of a “life sized” puzzle. Nevertheless, this visual hyperbole remains a figure of style that simply creates a sense of wonder and a “fairy tale effect” (Ex. 10).



Ex. 10

2.2. People Specific Advertising

Guerrilla marketing can also work as a form of neighbourhood marketing, as happened in a door to door stickering. A sticker featuring the model Eva Padberg holding Otto's catalogue with the order number, was attached to the spycam of thousands of houses around Germany. In a similar campaign, the customers are reached one by one and they feel important and special; the dimension is very domestic.

3. Conclusions

In the overall context of possible definitions of Public Art and Guerrilla Advertising lies the relationship between self, environment and others which no longer converges today in a single *topos* but flows in a dialectical dynamic in which art creates stages of visual reflection. When advertising does something similar, surely the main goal remains to get you to do something. Whether that something is buying a product, seeing a movie or, as in the picture above, stop smoking, marketers play on psychological principles to affect our behaviour and tend to close the discourse. On the contrary Public Art started and continues to gain new democratic spaces for creativity. All operations placed outside institutional spaces also bring into discussion the inside and, therefore, the system of art and culture in general while turning to the world as a source of experience and knowledge. Furthermore, the projects of brief duration more than others put the status of the work of art as an eternal and stable expression into decline while promoting the short-lived aspect as an argumentative content and not only as pure form. On the other hand guerrilla advertising and advertising in

general shows the capacity of creating or of embodying the *avantgarde* trends, opening many implication that go much further the promotion of a product or in the case of social advertising of an attitude, they diffuse a life style and a life philosophy even normalizing controversial situations.

NOTES

[i] *“The consequences on human association of rapidly changing condition of economy, work, travel and information transfer on human association, he notes that desires and purposes created by the machine age are disconnected from the ideal of tradition. (...) Our Babel is not one of tongues but of the signs and symbols without which shared experiences is impossible” (...) The remedy for this breakdown is art. More important than the content of an artwork is the artist’s power to bond strangers in shared experience through portraits constructed with signs and symbols that evoke deeper reflection. (...) The freeing of the artist in literary presentation, in other words, is a much a precondition of the desirable creation of adequate opinion on public matters as is the freeing of social inquiry. Men’s conscious life of opinion and judgment often proceeds on a superficial and trivial plane. But their lives reach a deeper level. The function of art has always been to break through the crust of conventionalized and routine consciousness(to touch the deeper levels of life so that they spring up as desire and thought” (...) “They are creation of imagination intended to be performed their performance brings members of society together as an audience. Their performance presents the artist’s claim about human feelings, relations and actions. Moreover their audiences are not just spectators whose function is to witness, they are also engaged. They don’t simply have to contemplate, they invite deliberation (Hauser 2005, p. 268-269).*

[ii] *L’étude de ces deux couches du signifié des phrases pourrait servir comme définition de la pragmalinguistique.” (Sorin Stati, Le Transphrastique, Puf, Paris, 1990, p.16).*

Here is a simplified version of the scheme:

Pragmatic Functions

performing function (the speaker performs an act of doing rather than saying)

recall function (the speaker reminds to his interlocutor facts he has to know, or invites him to note an evidence)

erotetic function (pertaining to question, pertaining to a rhetorical question)

assertive function (frasal context, that gives a new information)

epistemic function (expression of the locutor in order to proof that he knows

something)

directive function (orders, invitations, advices. We distinguish two classes:

1: directive whose goal is to provoke a verbal action.

2: directive whose goal is to provoke a non verbal action

expressive emotional function

commissive function: (its two main variants are: menace and promise)

Argumentative Roles

Positive: approval, thesis, conclusion, justification.

Negative: disapproval, objection, critique, self-critique, blame

[111] Group Material from Democracy: A Project by Group Material, Dia Art Foundation, 1990, p.2.

<http://www.franklinfurnace.org/research/projects/flow/gpmat/gpmattf.html>

[iv] Group Material from Democracy: A Project by Group Material, Dia Art Foundation, 1990, p.2.

<http://www.franklinfurnace.org/research/projects/flow/gpmat/gpmattf.html>

[v] <http://www.bampfa.berkeley.edu/exhibition/132>

[vi] <http://www.guerrillagirls.com/posters/getnakedupdate.shtml>

[vii] http://www.christies.com/LotFinder/lot_details.aspx?intObjectID=5101408

[viii] http://www.businessweek.com/innovate/content/aug2006/id20060804_290886.htm

[ix] <http://digitallabz.com/blogs/11-examples-of-viral-marketing-campaigns.html>

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ISSA Proceedings 2010 - Strategic Maneuvering And Appellate Argumentation



Strategic maneuvering can account for the complexities of appellate argumentation in the U.S. This specialized type of reasoning is distinct from the activity type of adjudication identified in strategic maneuvering, a theory that explains the interplay between rhetorical and dialectical features of many types of argumentation. Van Eemeren and Houtlosser (2009) describe strategic maneuvering as a way of reconciling how arguers

pursue “rhetorical aims of effectiveness” at the same time they retain “dialectical standards of reasonableness” (p. 5). My goal to extend strategic maneuvering theory and then apply it to the appellate argumentation in the majority and dissenting opinion in *Boumediene v. Bush* (2008, 553 U.S. 723). To do so, the essay explains strategic maneuvering in appellate argumentation, describes the *Boumediene* case, emphasizes how rhetorical features permeate the dialectical processes of appellate argumentation, and gives examples of the argumentation of Justice Anthony Kennedy and Chief Justice John Roberts in this case.

1. Strategic maneuvering in appellate argumentation

Strategic maneuvering consists of explanations of how arguers reason in different activity types by selecting topical potential, framing arguments for particular audiences, and utilizing rhetorical tactics to influence these audiences. Van Eemeren and Houtlosser (2002, 2006, 2009) identify four different activity types—adjudication, mediation, negotiation and public debate. Then they distinguish each activity type according to stages of critical discussion: confrontation, opening, argumentation and conclusion. The type closest to appellate argumentation is adjudication, an activity in which a legal dispute takes place in a specific jurisdiction during the confrontation stage; arguers construct arguments according to the rules of a context in the opening stage; arguers interpret and offer concessions about facts and evidence in the argumentation stage; and a third party adjudicator settles the dispute in the concluding stage (pp. 7-10).

Appellate argumentation has some similarity with adjudication (van Eemeren & Houtlosser, 2009) because this type of argumentation includes a decision about a legal dispute from third party adjudicators. However, appellate argumentation differs significantly from adjudication because it emanates from and is reconstituted in multiple discourses, does not follow defined phases of critical discussion, and incorporates the reasoning of multiple arguers over time about the meaning of a disputed legal principle. For example, *Boumediene* evolved from other appeals of Guantanamo Bay (Gitmo) prisoners who claimed their legal rights had been violated when the U.S. military took them in custody following September 11, 2001. Many attorneys (petitioners) advocated for the detainees, and many other attorneys (respondents) represented the government in other jurisdictions before this case ended at the Supreme Court. The nine Supreme Court judges did not come to a consensus; they came to different conclusions

written in multiple opinions, interpreted legal arguments written prior to the case from disparate viewpoints, and targeted their arguments to particular audiences. The overlapping and intersecting argumentation emanate from appeal attorneys and judges recycling and reusing arguments about Gitmo detainees they extracted from public and congressional debates, prior legal cases, statutes and executive orders, the U.S. Constitution, and precedents. What also differentiates appellate argumentation from adjudication is that arguers do not follow an established set of legal rules for presenting evidence and interpreting legal principles, nor do they apply the law as it is formulated by legislators (Feteris, 2008). The decision that results from appellate argumentation is not correct, but it is rhetorically persuasive for judges' target audiences. The adjudicators consist of multiple judges that are political appointees rather than a single adjudicator, and judges usually contest each other's legal interpretations within a single written opinion.

Judges' legal philosophy frequently foreshadows what their legal interpretations will be and predicts what evidence and arguments they will borrow and reuse from legal history and tradition, political forums, public debates, and relevant decisions from other legal jurisdictions. This process of borrowing and reusing of arguments is prominent in judges' strategic maneuvering enabling them to weave their arguments from multiple discourses into an opinion that reflects their choice of legal topics, adapt arguments to particular targeted audiences, rely upon specific types of reasoning, and create rhetorical framing and embellishing of arguments. In *Boumediene*, the judges' argumentation moves back and forth between political justifications for the detention of prisoners at Gitmo based on threats of terror to the U.S., political motives for locating the detainees at Gitmo, the legal rights of citizens and foreigners incarcerated on Cuban land, and the legitimacy of legal processes available to detainees.

2. *Boumediene v. Bush*

The *Boumediene* decision illuminates the complexity of issues and the intricacies of strategic maneuvering in appellate argumentation. After suicide bombers attacked the United States on September 11, 2001, President George Bush declared a war on terror that he waged through a military offensive in Afghanistan and through the arrest and incarceration of hundreds of "enemy combatants" at Guantanamo Bay, Cuba. Eventually, Congress created new laws that identified the legal restrictions on Gitmo detainees' rights: they could be held

and interrogated without legal counsel in the Detainee Treatment Act (DTA, 2005); incarcerated and interrogated without knowing what evidence the government had against them in the Combatant Status Review Tribunals Act (CSRT, 2005); and detained with only a cursory hearing before military personnel in the Military Commission Act (MCT, 2006). After national and international legal advocates eventually met with some Gitmo detainees and initiated challenges to their conditions of custody and interrogation, several challenges made their way to the Supreme Court resulting in the 2008 *Boumediene v. Bush* decision that focused on the rights of Gitmo prisoners to habeas corpus—to be brought before a judge and to hear evidence and charges against them. The *Boumediene* decision (553 U.S. 723) guaranteed habeas corpus rights to Gitmo detainees and declared sections of DTA, CSRT and MCT unconstitutional. Subsequent citations for *Boumediene* are by page number.

Lakhdar Boumediene, a Bosnian citizen captured while working in Algeria, was classified as terrorist sympathizer and designated as an “enemy combatant” before being incarcerated at Gitmo. No charges were filed against him in 2002 at the time of his incarceration nor did he receive legal assistance until 2006. The site of the Gitmo prison became an issue because it is located on a military base that is not formally part of the United States. In 1903, the United States and Cuba agreed on a lease that gave Cuba sovereignty over Guantanamo Bay but granted the U.S. complete jurisdiction and control of this area. Attorneys representing Boumediene claimed that Gitmo was under the control of the U.S. and therefore prisoners held there were entitled to the constitutional provisions of habeas corpus; whereas the attorneys for the government concluded that Gitmo was Cuban territory and neither citizens nor foreigners incarcerated there had these rights. Another issue concerned whether or not the laws passed by Congress subsequent to incarceration were constitutional since they approved of severe military interrogation of Gitmo detainees even when these prisoners lacked knowledge about why they had been detained and what legal recourse they had.

Boumediene is a significant case because the majority opinion reinterpreted the principle of habeas corpus in relation to Gitmo detainees by designating jurisdictions to which this principle applies, made new law regarding prisoners of war, declared unconstitutional prior legislation, resulted in the release and repatriation of some Gitmo detainees, and provided guidelines for legitimate legal proceedings to be used with high threat Gitmo detainees. This 155-page decision

consisted of Kennedy's detailed majority opinion and Roberts' dissenting opinion plus one concurring opinion written for each side.

The Supreme Court decided the case on June 12, 2008, in a 5-4 decision. Justice Kennedy wrote the opinion for the majority and Chief Justice Roberts wrote the dissent. The majority opinion in *Boumediene* concluded that prisoners at Gitmo had the right to the protection of habeas corpus under Article I, Section 9 of the U.S. Constitution and declared parts of the DTA and MCA as unconstitutional.

3.1. Dialectical processes

The appellate jurisdiction establishes broad procedural rules so that legal arguers from one side of a case contest the arguments of the other; it does not prescribe the content of argumentation, nor specify what constitutes effective appellate argumentation. Dialectical processes typically include a collaborative method in which logical reasoning and dialectical procedures guide how arguments are constructed within a discourse (van Eemeren & Houtlosser, 2002). In appellate argumentation, however, dialectic takes the form of back and forth adversarial arguments between attorneys who present written and oral arguments before a panel of judges that decide what the law means. In 50-page briefs, attorneys representing *Boumediene* and other similarly situated Gitmo prisoners petitioned the Supreme Court to hear their case on legal grounds, and attorneys representing respondents, the Bush administration, filed 50-page briefs refuting petitioners' legal claims and asserting new claims of their own. After the Court agreed to hear this case, the attorneys for both sides presented a condensed version of their briefed arguments and orally defended them by responding to questions from several of the nine judges deciding the case. Following the completion of oral arguments, the judges gathered as a group to discuss the appeal attorneys' arguments, took a preliminary vote, rendered a split decision, and identified which judges would write the formal majority and dissenting opinions for the official Supreme Court record (Schuetz, 2007b). The appellate court norms for dialectical process also facilitated argumentation between attorneys representing adversarial positions in the civil court cases that preceded this Supreme Court opinion. Typically, the outcome of one segment of the dialectical process, the briefs of the appeal attorneys, leads to a preliminary decision among the judges following oral arguments, and culminates in judges writing a formal decision for the permanent record. Instead of producing one definitive consensus decision, appellate argumentation typically showcases the opposing views and the unresolved issues that remain between the majority and

dissenting opinions in the published formal decision. In one sense, the majority opinion is the winner because this interpretation gains official standing as law; however, the minority judges also present reasons for their dissenting opinions (Schuetz, 2007b). Because the published decision acknowledges differences remaining among the judges deciding the case, these opposing views foster political and public debates about the disputed legal principle long after the decision appears in print.

Judges do not conform to a specific standard of reasonableness, such as reasonable doubt and preponderance of evidence, as they do in other types of U.S. adjudication. Instead judges often select evidence and make claims in line with their rhetorical goals, political allegiances and legal philosophy. Since the U.S. President appoints members of the Supreme Court based on partisan views and many judges serve for life, it is not surprising that judge's viewpoints permeate the content of appellate opinions as they did in *Boumediene* (Schuetz 2007a). Kennedy's arguments, for example, reflected his legal realist philosophy, and Roberts' reasoning mirrored his legal pragmatist philosophy. Legal realism, a liberal position, permits judges to deviate from the norms of judicial predecessors' decisions in order to consider the legal circumstances of new situations. Kennedy's opinion relied on historical arguments; he claimed habeas corpus should be granted to Gitmo prisoners to maintain the continuity of the common law legal tradition. In contrast, legal pragmatism assumes that the law making is an ongoing activity that serves the needs of the people and maintains the separation of powers between the executive, legislative and judicial structures of government. Relying on pragmatism, Roberts justifies Bush-initiated statutes as necessary for fighting the war on terror. Specifically, he argues that the situational facts related to this war demand the incarceration of enemy combatants at Gitmo without benefit of habeas corpus rights. Neither judge follows a set of explicit rules about how to argue, such as deciding a case based on legislative intent, nor do they embrace an objective or an idealized judicial standard of what constitutes effective appellate argumentation.

3.2. Rhetorical processes

The strategic maneuvering in appellate argumentation integrates rhetorical goals with dialectical reasoning but does not equally balance the two. Following van Eemeren and Houtlosser's theory (2007), arguers can "neglect their persuasive interests for fear of being perceived as unreasonable" by an audience, or they

may prefer one “critical ideal” over another (p. 61). Justices Kennedy and Roberts did not neglect their interests; they overtly stressed their persuasive goals, expressed their respective legal viewpoints about the Constitution, and identified which branch of government had responsibility for making law. In doing so, both judges used rhetoric to persuade their particular legal, political and public audiences about the reasonableness of their arguments (Tindale, 2009). Particular audiences refer to those groups of people for whom judges craft their opinions; these audiences share a common national legal heritage but hold disparate views about how judges should interpret the meaning of legal principles in a case.

Although the appellate courts require attorneys to address the judges deciding their case in both briefs and oral arguments, judges often write opinions for much broader audiences, including legislators, other members of the judiciary, political and military leaders and the public. Specifically, appeal attorneys for Boumediene initially met a legal obligation to persuade a majority of Supreme Court judges that government policies were unclear, sometimes contradictory and created injustices against Gitmo detainees. Government attorneys also met their obligation by defending legislation (DTA, CSRT, and MCA) and explaining that detainees’ rights needed to be restricted to protect the United States against terrorism.

Winning the right to present a case to the Supreme Court results from attorneys for the disputing parties convincing a majority of appellate judges that their arguments are more compelling reasons than those presented by their adversaries. The standard of reasonableness in appellate argumentation is the intersubjective agreement between judges and their particular audiences about the meaning of a legal principle in a given dispute, a standard of reasonableness similar to Stephen Toulmin’s (2001) definition. Achieving intersubjective reasonableness depends on the extent to which attorneys’ and judges’ claims rely on relevant evidence, present cohesiveness and coherent reasons, explicate legal principles, and create compatibility between attorneys’ and their clients’ viewpoints and between judges’ viewpoints and those of the particular audiences they address. Additionally, attorneys and judges pursue intersubjective reasonableness when they situate their interpretations of legal principles in relevant contexts, relate their reasons to provisions of the Constitution, and use evidence from precedents that reinforce their rhetorical goals.

3.2.1. Definitions

Judges' strategic use of definitions is a common rhetorical maneuver in appellate argumentation. Following Schiappa (2003), definitions are "rhetorical induced, linguistic propositions that are historically situated" (p. 3). Judges strategically use definitions to establish the reasonableness and force of their arguments, resulting in different definitions of key legal terms for the majority and dissenting opinion in a single case. In *Boumediene*, both Kennedy and Roberts used stipulative definitions, descriptions, and ruptures to frame and embellish their arguments. Stipulative definitions enable arguers to assert a particular definition and make it seem like an indisputable fact (Zarefsky, 1998). Appellate judges stipulate definitions to reinforce their preferred meaning of legal terms and reinforce a theme that advances their rhetorical goals.

(1) Both Kennedy and Roberts stipulate definitions of habeas corpus. Using a broad scope, Kennedy defines the right of habeas corpus as "any type of action relating to any aspect of detention, transfer, treatment, trial or conditions of confinement of an alien who . . . is or was detained . . . as an enemy combatant" (p. 759). He contrasts this definition with the one supplied by government attorneys that limits the scope and asserts that "non citizens designated as enemy combatants and detained in territory located outside our Nation's borders have no constitutional rights and no privilege of habeas corpus" (p. 760). Roberts' narrow definition of legal rights makes clear that habeas corpus is not at all appropriate for foreign enemy combatants housed in Cuba. And in fact the government should hold these prisoners as long as necessary to make sure they can never harm the U.S. again (p. 843). Roberts further stipulates that only the government has the power to make law and limit the rights of detainees and the Supreme Court should not question that right (p. 851). The aforementioned stipulative definitions support the respective legal rhetorical goals and legal and political viewpoints of each judge.

Descriptions provide details about why judges support or reject legal principles relevant to a particular dispute. Zarefsky (1998) points out that descriptions "function strategically by redefining a phenomenon without acknowledging that a redefinition is taking place and a new point of view is being promoted" (p. 5). Appeal judges use detailed descriptions of disputed provisions of the law as a means of redefining the issues in ways that reinforce the judge's goals.(1) For example, Kennedy describes DTA's provision for a military hearing to be so restrictive that Gitmo prisoners lack any legal recourse at all (p. 789). Roberts'

alterative description claims that the DTA gives all the rights that any enemy combatant should have because it enables them to hear “newly discovered or previously unavailable” evidence against them (p. 850). Kennedy claims any legitimate military hearings must create a review identifying the reasons for a prisoner’s detention and must limit the power of the government to abridge those rights. For him, the CSRT process is defective because it prohibits detainees from hearing what charges have been made against them and why these charges have been made. He describes one provision of CSRT as flawed because “the [detainee] does not have the assistance of counsel and may not be aware of the most critical allegations that the Government relied upon to order detention” (p. 807).

(2) In siding with government attorneys, Roberts describes existing law as appropriate for all prisoners. He concludes, “Detainees not only have the opportunity to confront any witness before the tribunal but they may call witnesses of their own. . . . As to classified information, while detainees are not permitted access to it themselves,” they can ask a “personal representative to summarize that evidence and they can appeal their case to a District of Columbia circuit court” (p. 844).

3.2.2. Framing appellate arguments

In addition to definitions, appellate judges frame their arguments by utilizing history and precedents associated with their own particular legal viewpoints. The claims appellate judges make, the evidence they select and emphasize, and the reasoning process they adopt advance their rhetorical goals. In *Boumediene*, Kennedy locates habeas corpus in the common law legal tradition, invokes definitions from the Magna Carta, and relates both to the due process provisions of the U.S. Constitution. Roberts stresses the purpose of Bush administration laws regarding Gitmo detainees and then asserts these laws should remain in force to help the Bush administration fight the war on terror.

Audience-directed framing refers to argument moves (van Eemeren & Houtlosser, 2006, 2009), and framing refers to the slant or point of view that surfaces in the claims judges make, the evidence they emphasize, the values they evoke, and the legal viewpoints they stress. In appellate argumentation, judges writing for the majority pursue different legal goals with different audiences than those writing dissenting opinions. Judges’ framing of arguments depends on several factors related to their legal philosophy including their role and legal reputation on the

Court and political allegiances. Kennedy and Roberts constructed very different arguments about the rights of detainees. In doing so, they addressed particular audiences, not the universal audiences sharing common views about what constitutes justice that Chaim Perelman (1963, 1980) conceptualizes. Judges target audiences by framing their arguments from an explicit legal viewpoint that resonates with the beliefs and values held by particular audiences in

(1) Justice Kennedy's legal realism accounts for his framing of arguments for audiences that already agree with his premise that law should be relevant to contemporary circumstances and congruent with the common law legal legacy. This premise informs the following chain of reasoning:

(1) the tradition of due process in U.S. law affords legal rights to incarcerated citizens and to foreigners;

(2) a fundamental legal right for all detainees in U.S. custody is habeas corpus;

(3) Bush-initiated laws restricted the due process rights of Gitmo detainees;

(4) Boumediene and other similarly situated detainees should be released because these laws violate the principles of the Constitution; and

(5) provisions of DTA, CSRT, and MCT that violate the Constitution should be overturned. This configuration of claims informs Kennedy's audiences about his rhetorical goals, legal viewpoint, political values and the slant of his interpretations:

Kennedy makes clear that habeas corpus rights emanating from the common law tradition once provided a safeguard against the powers of monarchs and should continue as a safeguard against the restrictive provisions of Bush-initiated legislation that denies rights to detainees.

(1) Justice Roberts' legal pragmatism informs his approach to questions about which structure of government should make laws during wartime - the Supreme Court or the Congress. The framing of his arguments likely resonates with the views of his conservative legal and political audiences because he valorizes the laws initiated by Bush and passed by the conservative Republican Congress after September 11, 2001. Roberts' framing is predictable since Bush appointed him in 2006 with the expectation he would represent the conservative agenda of the government. As expected, Roberts aligns his arguments directly with those of government attorneys in this way:

claiming that Kennedy and the majority unfortunately have ignored the will of the American people, "who today lose a bit more control over the conduct of this Nation's foreign policy to unelected, politically unaccountable judges" (p. 853).

Roberts refers to one recent appellate case, *Hamdi v. Rumsfeld* (2004), claiming it provides sufficient guidelines for hearing the legal cases of Gitmo detainees. Roberts leaves out key features of the precedent when he notes that at the time Congress passed the DTA, it provided for a military hearing that met all of the due process provisions outlined in the *Hamdi* decision and required the government to provide an evidential basis for classifying detainees as enemy combatants. In contrast, Justice Kennedy emphasizes that drawing this conclusion from *Hamdi* is flawed and inapplicable to *Boumediene* because this decision applies only to the due process rights of American citizens detained at Gitmo, not to foreigners or to habeas corpus. Nonetheless, Roberts stresses that *Hamdi* is a correct decision for addressing detainee rights and no other decision is needed. This defense of *Hamdi* probably is the best precedent he can find that reinforces the theme of his narrative: foreign detainees pose a threat to the United States and this threat justifies restrictions to their legal rights.

4. Conclusion

This essay extends the strategic maneuvering theory of argumentation to account for the rhetorical features of appellate argumentation in common law legal systems. Although dialectical processes, such as advocacy and defense of interpretations of legal principles in appellate attorney briefs and oral arguments, aim to influence appellate judges to develop a consensus opinion, this outcome rarely occurs. Rather appellate judges create disparate judicial arguments with radically different interpretations of legal principles that reflect their individual goals with particular audiences. Judges writing for the majority create an interpretation of what the national law is at the same time judges writing for the minority promote arguments that fuel dissent in public and political forums. While appellate decisions reflect a majority vote, they rarely create legal or public consensus.

In appellate argumentation, rhetorical processes are in the foreground and dialectical processes are in the background. The argumentation of the majority and dissenting judicial opinions reflect judges' rhetorical choices in the way they define, frame, embellish, and reason from precedent. My analysis of *Boumediene* shows that appellate argumentation is an activity type that differs from adjudication. It consists of multiple discourses; the phases of critical discussion are not defined; the reasoning is intersubjective; judges pursue rhetorical goals related to particular legal, political and public audiences; and the final published

argument continues public debate about a legal principle rather than creates a consensus agreement.

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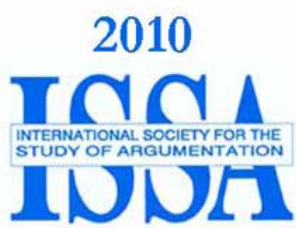
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ISSA Proceedings 2010 - The Rationality Of Rhetoric: How To Cope With Human Limitations



The Problem: Obeying rules of pragma-dialectical model in real life is unreasonable

Within the pragma-dialectical theory of argumentation (van Eemeren & Grootendorst 2004) discussants try to resolve a difference of opinion in a maximally rational way **[i]**. These rational agents are willing to engage in long-lasting and most complex discussions and sub-discussions when assessing the plausibility of standpoints. Other needs have to stand aside. In order to account for rhetorical moves, the concept of strategic manoeuvring has been added to the pragma-

dialectical model (van Eemeren & Houtlosser 1999, 2006; van Eemeren 2010), with rational agents aiming for rhetorical effectiveness while still maintaining dialectical standards of reasonableness. However, the extended pragma-dialectical argumentation theory does not account for systematic interaction between rhetoric and dialectics. Rhetoric is a supplement that may be taken into account, a non-rational appendix to rational argumentation that has to subordinate to the demands of the dialectical rules (cf. a similar critique by Hohmann 2000).

A specific problem arising from the idealizations of the pragma-dialectical model is that it cannot be implemented in real life. As pointed out by van Eemeren (2010, p. 4), “the ideal of a critical discussion is by definition not a description of any kind of reality but sets a theoretical standard that can be used for heuristic, analytic and evaluative purposes”. The model establishes normative standards of reasonableness for criticizing arguments, but it does not provide rules for constructing rationally justified arguments in practice.

To illustrate this last point, let us see where the ideal model of pragma-dialectics takes us, if we strictly obey its rules, i.e. if we proceed in a strictly rational and dialectical manner. According to rules 7 and 8 of the ideal model (van Eemeren & Grootendorst 2004, pp. 147-151), all premises and justifications of an argument that were left implicit need to be reconstructed, in case of any doubt, by means of the *intersubjective explicitization procedure* and the *intersubjective testing procedure*. These procedures ensure a mutual understanding of the premises and argument schemata that have been used in an argument, and they test whether these premises and schemata are admissible and have been applied correctly. One can imagine how large the expenditure of time would be in real life if agents would follow these rules. Almost every argument contains one or the other implicit premise. The propositional content of statements is fuzzy and the formal shapes of argument schemata are far from clear. It may take hours for the discussants to agree on the precise content of a proposition or the shape of an argument scheme and its applicability. Usually, the validity or invalidity of an argument depends on just those formal and semantic particulars (cf. also Krabbe 2007 on the functional overload of the opening stage with such issues).

Perfectly rational agents, however, would never let this keep them from resolving their difference of opinion in a maximally rational way. Thus, they accept a rule that one would better not insist on in real life: The protagonist may at any time

retract any speech act that he has performed (rule 12 in van Eemeren & Grootendorst 2004, pp. 153f.). This is to say that the antagonist has to accept that the protagonist puts forth claims consecutively, just to retract them one after the other. Expenditures of time carry no weight in the ideal model, after all. This course of action is rationally justified as long as the testing out of several claims serves rational objectives. There is only one thing that must not happen even without any time pressure: discussants must not end up with an infinite regress. That is why the following rule holds in the ideal model: The protagonist and the antagonist may perform the same speech act only once, and they must in turn make one move of speech acts (rule 13 in van Eemeren & Grootendorst 2004, p. 154).

The rules presented so far are normative. Any deviation from the rules counts as a fallacy, i.e. as a deficient move in argumentation (van Eemeren & Grootendorst 2004, pp. 174ff.), a derailment of strategic manoeuvring (van Eemeren & Houtlosser 2006, pp. 387f.; van Eemeren 2010, pp. 187ff.). If we compile a catalogue of those fallacies, we find quite useful moves on this list such as: presenting pros and cons in a systematic way is fallacious as you are allowed only one speech act in turn; at the same time, repetitions of speech acts, e.g. due to noise or misapprehensions, are not allowed in the discussion; premises that are taken as a matter of course must not be left implicit, but have to be made explicit as soon as an argument is challenged; the same holds for argument schemata, they have to be made explicit and be tested for their correct application.

The fact that these rules are hardly ever met in real life need not be of any concern to the ideal model, as it is absolutely legitimate to make idealized assumptions. The more so as these rules are not meant to be used for conducting real-life argumentation. What is astonishing, however, is that adhering to these very rules of the ideal model seems highly unreasonable in real life, although the rules should specify a rational course of action. Why is it, then, that not following the pragma-dialectical rules seems reasonable rather than irrational?

2. A problem analysis: Human constraints are not taken into account

Although the ideal model might work in an idealized world it would hardly be applicable in real life. And the reason for being so seems quite obvious: human beings are by nature subject to various constraints, and it is these constraints that make obedience to the rules seem irrational. Among the most important human constraints are the following.

(1) *The limit of time*: Humans do not live forever, and therefore they cannot discuss issues forever.

(2) *The limit of information*: Humans only have limited access to the information relevant to their decisions. Sometimes they have to argue on the basis of premises the applicability of which has to be assumed but just cannot be verified.

(3) *The limitations of memory*: Sooner or later, humans forget the things they hear. Most humans are not able to follow a discussion without losing one or the other information.

Humans cannot pursue the resolving of a difference of opinion in a perfectly rational way simply because they are not perfectly rational agents. Instead, they have emotions and intuitions, which they rely on in social contexts, and this is what they do within discussions, too.

By largely ignoring these limitations the pragma-dialectical model decreases its applicability in the real world. Nonetheless, a more applicable model can be derived from the ideal model by systematically taking into account the limitations of human beings.

3. *The solution: A rhetorical model of argumentation*

The question then is: If agents are aware of their limitations, how could they best deal with them? How may they arrive at a result that is as close to the ideal result as possible? Rhetoric offers answers to these questions by recommending well-proven, problem-oriented guidelines for discourse. Rhetorical considerations permit the effective composition of a speech. They cannot neutralize human constraints, but they can reduce the negative effects of these constraints.

A praxis model of rhetoric has to be put next to the ideal model of pragma-dialectics in order to understand the rationality of real-life argumentation. It is not idealized, perfectly rational *homines dialectici* that act within such a praxis model, but *homines rhetorici* with limited time, limited rationality and limited memory. *Homo rhetoricus* is quite aware of his limitations, and he tries to reach the best result under the given circumstances. He knows about his limited memory that makes him forget things. He knows that supposed premises may be false and that this could lead to false conclusions. He knows about his limited rationality that goes against rationally justified results. However, he tries to get the most out of the resources available. His objective is to persuade the recipient nonetheless. He merely succeeds in reaching a compromise between invested time and desired thoroughness, between logical complexity and logistic efforts,

between plausibility and rationality (a similar idea can be found in Jacobs 2006). The sustainability of these compromises must prove in the course of time by success or failure of diverse rhetorical strategies and by their consequences in practical life.

3.1. Two simple examples: Alliteration and metaphor

Three examples (two simple ones and a more complex one) may illustrate the idea. The rather simple ones concern alliteration and metaphor. Below are given some well-known advertising slogans.

(1) *Don't dream it. Drive it.* (Jaguar)

(2) *Britain's best business bank* (Allied Irish Bank)

(3) *Today Tomorrow Toyota* (Toyota)

(4) *Persil - washes whiter.* (Persil)

Advertising slogans need to be short and memorable to be successful. And the memorability of the slogans just cited is established by alliterations. Those mnemonic sentences are imprinted not only on the speaker's memory, but also on the hearers' ones. With respect to a praxis model of rhetoric this means that figures of repetition, like alliteration, are a direct answer of rhetoric to a concrete problem that *homo rhetoricus* has, namely that of limited memory.

The second example concerns metaphors in science. I choose the Bohr Model of atoms. Bohr's model depicted atoms as small, positively charged nuclei that are surrounded by electrons, and these electrons travel around the nucleus just like the planets move around the sun in our solar system. Although this model is obsolete in modern physics, the metaphor is still alive in modern theories that speak of atomic orbitals, electron clouds, and wave-like behaviour of particles. These metaphors acquired the function of names for abstract relations. It seems that metaphors like "orbit" or "path of an electron" are helpful, if not necessary, to envisage extremely abstract configurations. If I think of an "orbit" and the "path of an electron" I automatically think of small globules revolving around a central nucleus, i.e. I am transferring a concrete image in my mind to an abstract relation. This is an original rhetorical technique - with all its problems and dangers. Metaphors help to imagine abstract ideas. They transform abstract entities into concrete entities. And it is the concrete things that humans can best

think about. Metaphors thus fill in linguistic gaps so that we may articulate concepts that we otherwise would not have been able to talk or even think about. With respect to my praxis model of rhetoric, this means that linguistic and cognitive limits of *homo rhetoricus* are compensated for by the rhetoric mean of metaphor.

3.2. A complex example: Usage declaratives

As a third and last example the rhetorical function of usage declaratives is to be analyzed. Usage declaratives are speech acts that explicate the usage of a word, for example definitions or paraphrases of a certain term. From the language economic point of view, paraphrases of a term (and the like) are violations of the commandment of brevity: "If you can say it with fewer words, then do so!" The use of more words than necessary is justified only (a.) if quality rises with quantity, that is: if you can say it more precisely by using more words. Or (b.) if it saves you words in the long run by introducing definitions.

The rational justification of the second possibility is quite straightforward. If one needs fewer words by introducing new terms, then the usage declarative indirectly meets the requirements of brevity. But what about the first possibility that quality rises with quantity? What is the rational justification from *homo rhetoricus'* point of view? Does not the use of ambiguous terms offer rhetorical advantages, if you do it right? The solution proposed here goes as follows: *Homines rhetorici* are well aware of the fact that they do not have precise expressions for everything in their language. However, their limited rationality suffices to recognise that imprecise wordings may lead to misunderstandings. If discussants understand one and the same term in different ways, for example, they might think that they have a difference of opinion, though they both agree concerning the issue and only construed a term as different meanings. Or the other way round: they use the same term, but mean different things. It might appear as if they agree, although they diverge in substance.

But every speaker knows, at the same time, that his audience knows about the problem of vagueness. *Homo rhetoricus* anticipates this problem in his communication, and he tries to avoid any obscureness that could, from his point of view, become a problem. It is because of the available language, the limited rationality, the limited time for preparation, that he cannot avoid all ambiguity. It is not because he would act in bad faith.

3.3 The functionality of ethos

But why, then, should *homo rhetoricus* not deceive and mislead his listeners by vagueness? After all, he subordinates everything to the goal of persuading his audience. The reason is that there is a subsequent speech for every *homo rhetoricus*, when he has to step in front of an audience once more, and the audience again knows about the problem of vagueness. If in the meantime it should prove that he manipulated and misled his audience last time, then he would find it much more difficult to persuade his audience once again. (This is not the *universal* audience that Perelman & Olbrechts-Tyteca 1969 employed and which Tindale 2006 also relies on to ensure rationality. It rather is a *particular* audience consisting of imperfectly rational individuals).

Rhetoric introduced the technical term *ethos*, denoting the overall moral character of a person, his habits, his conducts, and his convictions. Every *homo rhetoricus* carries around with him such an ethos mark. Every convincing speech raises his ethos in the listeners' view, if it proves of value in the long run. Every speech that turns out to be demagogic lowers his ethos in the listeners view. Ethos is a moral asset. *Homo rhetoricus* cannot afford to squander his credibility because his actions are geared towards long-term success. His arguments are always evaluated against the background of his credibility. On the one hand, the arguments of a notorious liar do not count. On the other hand, it is only with great effort, that the arguments of an acknowledged authority can be challenged.

If, for example, the sky diving instructor tells me to put on the harness this way around, as otherwise I should not be safe, then I would need very good reasons for rejecting his advice. In case of emergency, it does not occur to many of us to question the expert opinion and trust the lay assessment instead. The instructor has a self-interest in his customers' reaching the ground safely. His reputation depends considerably on that. This is why he would not mislead us. But if an unknown skydiving pupil tried to convince me that it would be a better idea to put on the harness the other way round, then I have every reason not to let me be convinced. There is not enough deposit in his ethos account. Even if his arguments sound as plausible as possible, he still would not be able to compete with the instructor's opinion.

Taking ethos into account, effects that in rhetoric the status of a person gains importance. Which is, from a pragma-dialectical point of view, a deviation from the rational course of action. But in practice we have to rely on the assertions of other people, as no one can know everything and verify everything. And this is why the

accumulation of credibility – of ethos – is so important. Scrutinizing all proponents' standpoints in conformity with the pragma-dialectical rules would impede not only all of our communication activities, but would impede most of our actions.

3.4. Rules within the praxis model

Certain rules hold within the praxis model of rhetoric, which are normative, just as the rules in the ideal model of pragma-dialectics are. In contrast to the dialectical ones, though, these rules have to be applicable in practice and have a chance to lead to results in real life. A normative persuasion rule is on top.

(1) Persuasion rule: "Try to maximize your success of persuasion in the long run!"

The main objective of *homo rhetoricus* is to win discussions. He wants to persuade others, not figure out the truth. The ethos mechanism acts as a counterbalance to this dangerously egocentric rule.

(2) Ethos mechanism: "Every conviction effected by the speaker that proves untenable, lowers the ethos of that speaker, and therewith the persuasive power of all consecutive contributions of the speaker who is made accountable for effecting the untenable conviction."

As *homo rhetoricus* is to maximize his long-term success over a long sequence of contributions, he needs to take into account the ethos mechanism whenever he puts forward an argument, since the ethos account cannot be high enough for reaching the long-term success.

Regarding the disposition of a speech, I assume a normative rule of disposition.

(1) Disposition rule: "When speaking, take into account the constraints that you and your recipients are subject to."

The constraints mentioned here regard the available time, language, memory etc. The use of various rhetorical means can be derived from this rule: shortening, amplification, repetition, and metaphor. These methods are permitted as long as they serve the resolution of a problem that arises from the limits of *homo rhetoricus*.

No more rules are needed to get the model started. The interaction of the ethos mechanism and the normative rules should result in the effect that it would be unreasonable and irrational for *homo rhetoricus* to pursue persuasive success by

rhetorical tricks. The looming decline in ethos prohibits short-term thinking.

4. Summary

Limits of time, language, rationality, and so on prevent human beings from strictly obeying the rules of the ideal model. The most rational solution to this problem is to deviate from the rules. The rhetorical model offers a rational justification for a compromise between an ideal acceptability check and the constraints that apply in practice. This compromise is associated with both a cost and a promise. The cost consists of uncertainty whether the maximally rational solution has been reached. The promise is that no better solution could be reached under the given circumstances.

The optimality of rhetorical compromises can only be guaranteed over a whole series of discussions. Hence the most important rule within the rhetorical model is: "Try to maximize your success of persuasion in the long run!" The ethos mechanism acts as a counterbalance. It assures that every untenable conviction effected by the speaker lowers the ethos of that speaker. And this also lowers the persuasive power of his consecutive speech acts. Various rhetorical means can be derived from the rule of disposition. These figures are aimed at dealing rationally with the constraints of time, language, memory, and so forth.

NOTE

i I would like to thank two anonymous reviewers for their helpful comments on an earlier draft of this paper. The remaining shortcomings are my own.

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