

ISSA Proceedings 2010 - Wellman And Govier On Weighing Considerations In Conductive Pro And Contra Arguments



1. Introduction

The concept of conductive argument remains unsettled and controversial in theory of argument. Carl Wellman (1971, p. 52) defined conduction as follows:

Conduction can best be defined as that sort of reasoning in which 1) a reason about some individual case 2) is drawn non-conclusively 3) from one or more premises about the same case 4) without appeal to other cases.

Wellman identified three types of conductive argument: *Type One* with a single pro reason, *Type Two* with multiple pro reasons, and *Type Three* with one or more pro reasons and one or more con reasons. Arguments of the conductive type are clearly non-deductive and, most theorists would argue, non-inductive as well. The term “conductive” indicates a ‘bringing together’ of independent reasons, much like an orchestra conductor brings together many instruments and musicians into a single performance.

The theoretical issues surrounding the concept of conductive argument are almost too numerous to even list in a paper focused on a particular issue. Are all conductive arguments case-based? Should we be talking of conductive *evaluations* rather than of *arguments*? Are deductive, inductive, and conductive argument (or evaluation) types an exhaustive and mutually exclusive list? If all conductive arguments are diagrammed as convergent, do we want to say that all convergent arguments are conductive? Even more fundamentally, why should we model various pro and con arguments on a single issue as *one* conductive argument? There are many other basic questions and issues that could be listed as well.

The focus of the present paper is on the concept of premise weight in Type Three conductive pro and con arguments. Some theorists want to restrict the concept of

‘conductive’ to Type Three pro and con arguments (or evaluations). The present paper tables that proposal and proceeds on a working hypothesis that understanding the more complex Type Three conductive arguments is a useful pathway for achieving a better understanding of the less complex Types One and Two.

2. Wellman’s ‘Heft’ and Premise Weight

Talk of ‘weighing’ reasons pro and contra is a common manner of speaking. “Premise weight” is an obviously metaphorical expression which some theorists view as an over-stretched and faulty metaphor with respect to its application in theory of argument. For example, Harald Wohlrapp wrote in his *Der Begriff des Arguments* (2008):

The upshot of the discussion of conductive argument is the following: The conclusion reached with arguments presented is not the result of a weighing, whatever that may be. (p. 333; trans. p. 21)

Trudy Govier is perhaps the only widely known theorist of argument who, in multiple publications, has endorsed and expanded upon Wellman’s concept of premise weight. For Govier, premise weight is not literally measurable, which implies that premise weight must be non-numerical in some sense.

It is important to note that “outweighing” is a metaphorical expression at this point. We cannot literally measure the strength of supporting reasons, the countervailing strength of opposing reasons, and subtract the one factor from the other. (1999, p. 171)

Carl Wellman, the originator of the concept of conductive argument, also seems to have understood premise weight to be non-numerical, as indicated in the following passage from his *Challenge and Response* (1971):

Nor should we think of the weighing [of reasons] as being done on a balance scale in which one pan is filled with the pros and the other with cons. This suggests too mechanical a process as well as the possibility of everyone reading off the same result in the same way. Rather one should think of weighing in terms of the model of determining the weight of objects by hefting them in one’s hands. This way of thinking about weighing brings out the comparative aspect and the conclusion that one is more than the other without suggesting any automatic procedure that would dispense with individual judgment or any introduction of units of weight. (1971, pp. 57-58)

In this passage, Wellman distinguishes two concepts of weight which we might conveniently call *scale-weight* and *heft-weight*. Scale-weight involves machinery, even if only a simple balance type of scale. The output of the scale-weight process is numerical. Even on a simple balance scale, the use of standard weights can provide numerical weight outcomes. Scale-weight outcomes, being numerical, are precise and absolute rather than non-numerically comparative. Scale-weight is probably the current default meaning of “weight” in both theory of argument and in everyday contexts.

As Wellman, Govier and others have noted, scale-weight is not suitable as the literal basis for the premise weight metaphor. Per Wellman, heft-weight is the correct literal basis for this metaphor, and Govier would likely agree. To my knowledge, heft-weight has not received very much analytical attention in the literature on conductive argument, perhaps because heft-weight is viewed as uselessly vague and subjective. If this characterization is indeed suitable, then the concept of premise weight in theory of argument falls prey to a destructive dilemma. If scale-weight is the literal basis of the premise weight metaphor, then the metaphor is faulty and over-stretched. If heft-weight is the literal basis of the metaphor, then the metaphor is suitable, but premise weight is thereby uselessly vague and subjective. Perhaps the only way to save the concept of premise weight is to further recharacterize heft-weight. But what would that be like?

In contemplating heft-weight, we can imagine a person lifting several items one at a time and making a verbal pronouncement on each one. Initially the pronouncements will be comparative in nature, such as: *much heavier than*, *heavier than*, *same weight as*, *lighter than*, or *much lighter than*. A set of comparative, ranked weight categories is thus progressively created. The objects ranked by comparative weight could then be divided into perhaps five or so categories of non-numerical, verbal weight quantities such as: *very heavy*, *heavy*, *medium*, *light*, and *very light*. We need not think of the objects as *individually* ranked *within* each weight category, however. The individual human being is here functioning as a comparative weighing machine. Due to the lack of precision of heft-weight, there would be blurred boundaries between categories, and some items would have disputable weight categories, even with just one individual doing the hefting.

The outcome of this individual weighing process is a series of judgments that is objective in the sense that the human body is typically a good, if only

approximate, weighing machine that provides a non-numerical, comparative, quantitative output. If one object had a lot more heft than another but a mechanical scale reported the reverse, we would properly believe we had a broken scale. This individual judgment of heft-weight is thus not subjective in the sense of individual personal preferences such as 'chocolate tastes much better than vanilla'. But is heft-weight valid only for each individual weigher and thus non-objective in the sense of not intersubjective?

It seems to me that heft-weight should be understood as potentially intersubjective and thus objective, despite being non-numerical. As Aristotle noted, the solitary human being is either a beast or a God; so the standard case of Wellman's 'hefting' individual is that he is a member of a group. Let's say this group has about forty or so people, like the pre-Neolithic human bands, and that there is a mixture of the young and the old, and the frail and the robust. While Wellman's individual lifter is doing his or her thing, the others are also picking up the same objects in the same way and classifying them into ranked weight categories.

It would soon be found that the mid-range of people in terms of physical ability generally find a group of objects heavy and another group of objects light in weight, approximately speaking. These objects would then become *intersubjectively* heavy, light, etc. The fact that the Milo's of this group, the athletically trained weight lifters, found most of the common objects to be light in weight, and the small or frail of the group found most objects to be heavy would all be understood and adjusted for by members of the little group in the usual way. In effect, the mid-range of human strength becomes a kind of standard, much as color words are defined in the standard context of normal daylight. We do not think that red things turn black on a dark night, and we do not think that heavy things literally become light in Milo's hands.

According to the above account, heft-weight, properly understood is non-numerical, approximate, comparative, and objective (intersubjective). On this characterization, heft-weight has many of the virtues of scale-weight, the major exceptions being lack of numerical output and consequent precision. Instead of numerical output, heft-weight provides non-numerical, comparative quantity categories of an approximate nature. Understood in this way, heft-weight is a very plausible literal basis for the metaphor of premise weight.

It might be objected that approximate, non-numerical quantities are not really quantities at all because quantities are *by definition* expressed as *symbolic* numbers. Although such a stance may have numerous defenders, the science of cognitive psychology has recently produced some interesting, and I think relevant, findings about what has been called the *approximate number sense*. Perhaps the term “quantitative capacity” would have been a better choice here than “number sense”, but the latter wording has taken hold. The distinction between two different quantitative ‘senses’ is more than just a conceptual one. While the *symbolic number sense* is processed in a spread-out fashion in the prefrontal cortex, the approximate number sense is embodied in another part of the brain called the *intraparietal sulcus* (Cantlon, et al, 2009) The two number senses seem to be connected in interesting ways. Current research provides preliminary indications that math education can benefit by co-developing the approximate sense and the symbolic number sense. (Halberda et al, 2008) Professional mathematicians are known to exercise their approximate number capacities when socializing at conferences. Classifying the approximate number sense as ‘mere intuition’ is likely an inappropriate over-simplification, given recent findings in cognitive psychology.

A commonly used example of the approximate number sense is when someone views several supermarket lines and classifies them as ‘shortest, short, medium, long, and longest’. Quantities are involved in this process, but typically no counting or symbols. Interestingly, other higher animals have this same ability, which provides obvious evolutionary advantages. The predator needs to choose which group of fleeing herbivores to chase; the fruit-eating animals need to pick which tree will provide the most fruit at the time. It seems quite plausible that this approximate number sense is involved in the process that produces heft-weight. The approximate number sense is comparative, non-numerical, and the product of individual judgment; and heft-weight is all of these things.

Unlike the other higher animals, humans in the process of discriminating quantities obviously verbally characterize the discriminated categories with comparative terms such as ‘*much more, more, about the same, less, and much less.*’ In fact, we do this for a great many types of categories. A very common number of categories in such quantitative verbal hierarchies is three to five to perhaps seven. Seven items apparently are a common maximum quantity for simultaneous cognitive focus in humans. Examples of such additional categories

include 'rich/middle class/poor', or super rich/rich/upper-middle-class/lower-middle-class/poor' - and so on. In premise strength, we have 'strong/moderate/weak', or perhaps 'very strong/strong/moderate/weak/very weak', as categories of discriminated support quantities. Non-numerical quantity categories seem to be essential in human cognition and communication.

In correspondence, Trudy Govier has remarked to me that if the judgment is made to not use "weight" in theory of argument, then "one would have to figure out some other way of speaking. One might speak of deliberating, or comparatively considering, or making judgments of comparative significance." (1/31/10) I think, and Govier might agree, that these potential substitutions for talk of premise weight would do less work overall than the premise weight concept, understood as heft-weight. We use comparative, non-numerical quantity categories in our reasoning all the time; so dismissing such reasoning as inherently faulty requires a high burden of proof which has not been met.

Non-numerical, comparative quantitative categories are frequently applied by speaking of *degrees* of this and that. For example, there are degrees of argument strength, degrees of importance, and so on in a great many areas of discourse. In her (2009), Govier has herself puzzled over the so-called 'degrees' of argument strength: "What are these degrees anyway? There is no answer." It seems to me that the principal point of confusion here has to do with "degrees" bringing in symbolic numbers - or not.

Of course, some decision theorists do apply numbers to verbal premise weight categories, e.g. "5" for "very strong", etc. This approach in my view is best regarded as a 'game technology'; there are some useful applications for it in contexts of decision making. This 'invented' numerical premise weight has no rational basis for conductive argument evaluation for at least one major reason: The exact selection of the number scheme can actually *determine the evaluation* for some arguments.

To provide just one example, choosing a number scheme of 3-2-1 vs. one of 10-5-2 for the three 'strong/medium/weak' verbal categories *determines* the evaluation of an argument with the following premise weight classifications: four strong pro reasons, five moderate contra reasons, and five weak contra reasons. This type of argument supports its conclusion on a 3-2-1 assignment but not on a 10-5-2 assignment. There is seemingly no way to argue for the rational basis of one

number scheme over another for labeling the commonly used verbal categories. Even the total number of quantitative categories is largely contextually determined rather than rule-based. For various reasons, applying numbers to verbal categories has limited theoretical use, if any.

If premise weight determination does not normatively involve the application of symbolic numbers, what positive account of premise weight emerges from the above account? I would argue that premise weight determination involves a classification of each individual premise into one of a small number of non-numerical quantitative categories. With the literal basis of Wellman's premise weight metaphor, the verbal quantitative categories could be named: '*very heavy*', '*somewhat heavy*', '*medium*', '*light*' and '*very light*'; the corresponding theory of argument categories would be similarly '*very strong*', '*somewhat strong*', '*medium strength*', '*somewhat weak*', and '*very weak*'.

These non-numerical, quantitative categories of premise weight categories are, to be sure, highly familiar ones. The intent of the above account is to provide them with a clearer grounding than they have previously received, to my knowledge. The fact that the exact names and even total number of such categories is variable and contextually determined is not in my view problematic.

The presumptive weight of an individual premise would in context be based on background knowledge and social values of the individuals and groups involved in argumentation. If a given premise weight is not agreed to, then it can be argued for using some version of the scheme for argument to a classification. Premise weights can thus be seen as intersubjectively determinable, contextually and within limits. The contextual reality of deep disagreements is not an effective objection to premise weight as a key term in theory of argument, contrary for instance to Harald Wohlrapp's critique of Govier on conductive argument.

We shall now apply the above account to some of Govier's critics on the concept of premise weight and conductive argument, particularly those criticisms focused on quantitative issues. The interpretation of Govier is my own and is of course quite arguable; hopefully it has some measure of accuracy and value.

3. Govier's 'Exceptions' and Issues of Quantification

Govier's detailed account of weighing reasons is put forward in Chapter 10 of her *Philosophy of Argument* (1999) and in Chapter 12 of her textbook, *A Practical*

Study of Argument, the current edition being the 7th (2010). In the first paragraph of her text's section on conductive argument evaluation, she writes of premises' "significance or weight for supporting the conclusion." (p. 359) She soon introduces the specifics of her concept of premise weight, as follows:

While acknowledging that we are dealing here with judgment rather than demonstration, we will suggest a strategy for evaluating reasons put forward in conductive arguments. The premises state reasons put forward as separately relevant to the conclusion, and reasons have an element of generality. That generality provides opportunities for some degree of detachment in assessing the conclusion. Since this is the case, we can reflect on further cases when seeking to evaluate the argument. (2010, p. 361)

Govier's explication of premise weight uses as its principal example an argument for the legalization of voluntary euthanasia; several of her major critics, including Harald Wohlrapp, have responded to her with further analyses of the same argument, so it is worth stating completely here:

(1) Voluntary euthanasia, in which a terminally ill patient consciously chooses to die, should be made legal.

(2) Responsible adult people should be able to choose whether to live or die.

Also, (3) voluntary euthanasia would save many patients from unbearable pain.

(4) It would cut social costs.

(5) It would save relatives the agony of watching people they die an intolerable and undignified death.

Even though (6) there is some danger of abuse, and

despite the fact that (7) we do not know for certain that a cure for the patient's disease will not be found,

(1) Voluntary euthanasia should be a legal option for the terminally ill patient.

Govier identifies the associated generalizations for the pro reasons as follows, each with its *ceteris paribus* clause:

2a. Other things being equal, if a practice consists of *chosen* actions, it should be legalized.

3a. Other things being equal, if a practice would *save people from great pain*, it should be legalized.

4a. Other things being equal, if a practice would *cut social costs*, it should be legalized.

5a. Other things being equal, if a practice would *avoid suffering*, it should be

legalized.

Each generalization is seen to have exceptions, which are the subject matter of the *ceteris paribus* clause.

For example, you could imagine social practices that would deny medical treatment to medically handicapped children, abolish schools for the blind, or eliminate pension benefits for all citizens over eighty. Such practices would save money, so in that sense they would cut social costs. But few would want to support such actions. Other things are not equal in such cases; the human lives of other people who are aided are regarded as having dignity and value, and the aid is seen as morally appropriate or required. (2010, p. 361)

The principle of cutting social costs has, in Govier's terms, a wide range of exceptions.

Perhaps Govier's most succinct statement about premise strength is in her (1999, p. 171):

A strong reason is one where the range of exceptions is narrow. A weak reason is one where the range of exceptions is large.

For Govier, and within the present paper, the following are treated as roughly synonymous expressions because all are quantitative in a similar way: premise *significance*, *weight*, *strength*, and *force*. At issue here is the quantitative force of reasons in the broadest sense, as least for Wellmanian 'type 3' conductive pros and cons arguments.

Harald Wohlrapp challenges and rejects Govier's account of a quantifiable range of *ceteris paribus* exceptions:

But why should the argument be weaker, because the associated if-then sentence has 'more exceptions'? Can I really compare the number of exceptions through enumeration? Must we not bear in mind that the general principles are situation-abstract and that, depending on how they are being situated, they can have arbitrarily many exceptions? Is there anything countable here? (2008, pp. 323-324; trans. p. 10)

I would like to address this important critique in two respects: (1) issues regarding the nature of these exceptions and in particular their quantifiability; and (2) the general role of the 'normal situation' and *ceteris paribus* in everyday argumentation vs. in scientific contexts. This second issue area will be addressed

in Section III of the present paper. What sort of things are these so-called exceptions?

As quoted above, Govier states that the point of framing the generalization associated with a conductive argument consideration is to identify additional *cases* falling within that generalization. According to Govier, these cases are then to be *reflected on* in the appropriate process of evaluating premise weight in conductive arguments. Such cases would seemingly be of two kinds, (1) actual cases past or present, and (2) fictional *a priori*, 'what if' cases, including potential future cases. It seems to me that the quantity of exceptions concerns not the number of items on a *list* of exception categories, which can be almost arbitrarily long. Rather, the quantity of exceptions must involve *cases*, actual or *a priori* as described above.

An illuminating question to ask at this point may be as follows: How does Govier come to reasonably believe that there are a great many exceptions to the generalization of cutting social costs? She obviously knows this from her experience living in a wide, but imprecisely delineated, moral community that one might call the developed democracies. She learned about the social values and behavior that create this 'wide range of exceptions' by experiencing multiple cases of a normative nature. Two critical questions for Govier's account are: (1) How and in one sense are such cases counted or numerically assessed, and (2) How and in what sense are such cases relevant to the concerns of normative logic?

Any individual's knowledge of how many exceptions there are to the principle of reducing social costs is imprecise, which suggests the involvement of the approximate number capacity described above. Explicitly counting exceptions to the principle of reducing social costs is not commonly done. We simply do not go around stating, for example, that there were 794 exceptions to the principle of cutting social costs in the U.S. Congress from 2005 to 2009. Instead, we learn in living which types of cases are very common and which are rare in our moral, legal, and social communities. We do not have in mind the details of most cases and we do not typically count them. We know of a great many cases in which social costs are borne so that other objectives can be attained. We know of comparatively few cases in which unbearable human pain is knowingly tolerated in favor of controlling social costs. Comparative, non-numerical, and individual judgment is being exercised, and that judgment has some objective basis in the

quantity of cases comprising the relevant evidence. We acquire knowledge of actual social values by experiencing a great many cases, both legal cases and cases the everyday sense or situations and decisions made. But how are these relevant cases evaluated and processed as evidence, and what concepts and issues within normative logic are involved?

A very fruitful distinction to employ here might be that between case-based legal argument, emphasized in common law-oriented legal cultures, and rule-based legal argument found in civil-law-oriented legal cultures. If I am correct in interpreting Govier's exceptions-based understanding of conductive argument as a matter of supporting cases in the widest sense of "case", then the legal model of processing cases, rules and social values may provide insight into the normative aspects of everyday conductive reasoning.

A particularly interesting account of case-based and value-based legal reasoning has been provided Trevor Bench-Capon and George Christie. A legal argument is a paradigm of an argued case. Of course legal arguments and reasoning have been foundational for normative logic since Toulmin. In comparing case-based common law legal argument with rule-based civil law legal argument, George Christie very effectively highlighted the distinctive role of cases in the former:

Under the approach to legal reasoning now to be described [case-based, common law], so-called rules or principles are merely rubrics that serve as the headings for classifying and grouping together the cases that constitute the body of the law in a case-law system. In such a system even statutes are no more than a set of cases, if any, that have construed the statute together with the set of what might be called the paradigm cases that are, in any point in time, believed to express the meaning of the statute. (2000, p. 147)

Arguing from a few precedent cases is of course a standard argument by analogy using the 'argument from precedent' scheme. But the picture becomes more complex, and more interesting, once social values are brought in, as theorized by Bench-Capon.

For Bench-Capon, a given case in law is appropriately decided within a key context of often many other cases, past, present and future:

A given case is decided in the context both of relevant past cases, which can supply precedents which will inform the decision, and in the context of future

cases to which it will be relevant and possibly act as a precedent. A case is thus supposed to cohere with both past decisions and future decisions. This context is largely lost if we state the question as being whether one bundle of factors is more similar to the factors of a current case than another bundle, as in HYPO, or whether one rule is preferred to another, as in logical reconstructions of such systems. (2000, pp. 73-74)

The context of cases is key because, according to Bench-Capon, “we see a case-based argument as being a complete theory, intended to explain a set of past cases in a way which is helpful in the current case, and intended to be applicable to future cases also. The two goals are closely linked. Values form an important part of our theories and they play a crucial rule in the explanations provided by our theories.” (2000, p. 74)

Bench-Capon believes that “the ‘meaning’ of a case is often not apparent at the time the decision is made, and is often not fixed in terms of its impact on values and rules. Rather, the interpretation of the case evolves and depends in part on how the case is used in subsequent cases.” (2000, p. 74). Thus case-based argument in law it is commonly not about a small number of cases implying a value scheme but is rather about potentially many relevant cases that modify value schemes in ways not always understood until later interpretations. There is a ‘theory of cases’ that new cases are constantly modifying.

What is the theoretical relevance of these legal arguments, understood as above, to conductive argument evaluation? The *factors* of legal argument analysis seem to me to be fundamentally the same as the *considerations* of general pro and con conductive arguments concerned with evaluative issues:

“The picture we see is roughly as follows: factors provide a way of describing cases. A factor can be seen as grounding a defeasible rule. Preferences between factors are expressed in past decisions, which thus indicate priorities between these rules. From these priorities we can adduce certain preferences between values. Thus the body of case law as a whole can be seen as revealing an ordering on values.” (2000, p. 76)

And further:

“In regard to legal theories cases play a role which is similar to the role of observations in scientific theories: they have a positive acceptability value, which they transfer to the theories which succeed in explaining them, or which can

include them in their explanatory arguments.” (2000, p. 76)

Cases both express and develop value schemes, which consist of both lists of values and their prioritization in contexts of conflict. Henry Prakken has endorsed this approach as well: “As Bench-Capon [2] observes, many cases are not decided on the basis of already known values and value orderings, but instead the values and their ordering are revealed by the decisions. Thus one of the skills in arguing for a decision in a new case is to provide a convincing explanation for the decisions in the precedents.” (Prakken, 2000, pp. 8-9)

It seems very plausible to me that these points are applicable well beyond legal argumentation. Perhaps weight in conductive arguments, at least those focused on evaluational issues, might best be understood on the model of the above approach to legal case-based arguments. Our daily experience and decisions, both collective and individual, form a kind of case history which both expresses and continually forms and re-forms our values. Philosophers in recent decades have tended to understand moral issues (and sometimes practical issues) in terms of *rule-based models* rather than in terms of *case-based models*, but this long-term emphasis may have been overdone. It seems to me quite plausible that the case-based reasoning model would readily apply to non-moral, evaluative, conductive reasoning as well.

The idea of value schemes evolving with case decisions is entirely consonant with Stephen Toulmin’s remarks in *The Abuse of Casuistry*: “Historically the moral understanding of peoples grows out of reflections on practical experience very like those that shape common law. Our present readings of past moral issues help us to resolve conflicts and ambiguities today”. (1988, p. 316) It seems to me that taking the case-based understanding of legal reasoning, together with modeling much everyday evaluative reasoning on legal argument interpreted as value-centric, is a very promising direction.

Perhaps a very broad characterization of the type of reasoning in question might be what Robert C. Pinto and others have called “*support by logical analogy*”. In his (2001, p. 123), Robert C. Pinto describes the method of logical analogy as “pre-eminently important.” Pinto further notes: “Though it [argument from logical analogy] is fairly widely recognized as a method for justifying negative evaluation of arguments and inference, in my view it can also provide grounds for positive evaluations as well.” Govier addresses refutation by logical analogy in her

textbook's chapter on analogical reasoning. I am not aware of her addressing support by logical analogy elsewhere. David Hitchcock has written a very interesting paper (1994) on conductive argument validity which utilizes, according to my understanding of it, refutation by logical analogy; I believe he does not address "premise weight" here specifically. The point I would like to add is that support by logical analogy would seemingly involve analogous cases that might be argumentatively addressed in the mass, rather than in the substantial detail of a standard two-case argument by analogy.

It might be objected that in focusing on Govier's talk of further cases to reflect on, I am hopelessly blurring the distinction between conductive and analogical argument. The claim that premise weight is commonly supported by, broadly speaking, analogical types of arguments does not imply that conductive arguments are types of analogical arguments. The main argument, the first tier of reasons above the conclusion (the main conclusion being at the bottom of the argument diagram), may be convergent but have analogical *subarguments* either in the dialectical tier or in corresponding evaluation arguments. It is interesting to note that analogical and conductive arguments are typologically 'cousins' in a sense in that both are inherently *comparative* in nature.

Not all conductive arguments are about valuational matters. Some theorists' efforts regarding the 'quantity of evidence' in conductive argument might best be seen as regarding conductive arguments with non-valuational conclusions rather than conductive arguments in general. For instance, in his *Cognitive Carpentry*, John L. Pollock proposed numerical quantitative assignments to premises for arguments that can be interpreted as statistical syllogisms. In his (2002), Alexander V. Tyaglo has applied probability theory to separate reasons in convergent arguments. The epistemic status of the probability numbers themselves makes this approach one of limited scope and value.

Ideas from Pollock and from Tyaglo may be applicable to *predictive* (or dispositional) conductive arguments that seem to be arguments from sign. An example of such an argument appears early in Govier's textbook chapter on conductive argument: "She must be angry with John because she persistently refuses to talk to him and she goes out of her way to avoid him. Even though she used to be his best friend, and even though she still spends a lot of time with his mother, I think she is really annoyed with him right now." (2010, p. 366) Whether it is useful to identify two (or more?), subtypes of conductive argument, the

empirical and the valuational, is an interesting question worth pursuing. The argument of the present paper concerns principally 'valuational' conductive arguments.

4. Cumulating Independent Reason Strands

The above account characterizes premise weight determination as normatively involving a scheme of argument to classification among a small number of non-numerical but quantitatively ranked categories, i.e. 'very strong', 'strong', etc. This claim is of course not at all novel. The present intent is to provide additional conceptual support and clarity for the concept of degrees of premise weight and argument strength. What is excluded for those who accept the above account is the view that premise weight is either entirely subjective or entirely objective, as would be implied by accepting the scale-weight model of premise weight or by rejecting the concept of premise weight altogether. The above account thus supports a middle ground of intersubjectivity.

Most of the above account has to do with the concept of individual premise weights. But, how are the various reason strands of a given argument to be normatively 'conducted' together into an evaluation of their net collective support, or lack thereof, for an argument's stated conclusion? More 'dustbin empiricism' might be helpful here in order to better develop what Robert C. Pinto calls *critical practice*, an aspect of which would here be a checklist of questions as a guideline to good conductive argument evaluation.

It seems to me that, descriptively, people commonly begin a conductive argument evaluation by viewing the whole argument and classifying considerations as major or minor. Ben Franklin famously crossed out opposing, equally (heft-) weighted considerations. Descriptively, it seems to me that we seem to hold those considerations identified as "minor" in reserve, in case there is a perceived 'tie' between the major considerations on each side. Arguments with, for instance, two strong pro premises, one weak pro premise, and two strong con premises may just be unresolvable, unless more considerations can be added or individual premise evaluation differences resolved by the arguers. But such common-sense observations and guidelines hardly constitute an example of adequate theory of argument.

It may very well turn out that normative logic has rather little to offer in terms of addressing premise cumulation in conductive argument. Harald Wohlrapp

famously argues exactly this point and offers his dialectical frame-integration account of resolution. But it seems to me that his approach rings true because it brings in values; a *frame* for Wohlrapp is a valuational perspective on a set of characterized (or recharacterized) facts. Addressing values directly is, as previously mentioned, also a feature of legal case-based, value-based reasoning. Values are commonly brought into contexts of everyday conductive argument as well.

5. Conclusion

A longer paper would have been able to further address a number of issues regarding premise weight. For example, the concept of *ceteris paribus* and the 'normal situation' highlighted in Govier's account deserves more extensive treatment. Also deserving of attention is Frank Zenker's interesting proposal that (1) deductive, inductive and conductive arguments all have premise weights, but that (2) the premise weights in deductive and inductive arguments are 'equal' and thus in a sense tacit. (Zenker, 2010) Perhaps the concept of premise weight could be useful in clarifying evaluation typologies along the following lines: (a) deductive evaluation is *structural* with equal-weight reasons; (b) inductive evaluation is *additive (or cumulative)* with equal-weight reasons; and (c) conductive evaluation is *comparative with*, unequal-weight reasons.

Overall, the logic of conductive argument remains somewhat obscure, but perhaps we are collectively making some small progress. A main take-away from the present paper, in my view, is that the concept of premise weight is a fruitful one that is entirely worthy of contemporary interest and further investigation in theory of argument.

REFERENCES

- Bench-Capon, T., & Sartor, G. (2000). Using values and theories to resolve disagreement in law. In J. Breuker, R. Leenes & R. Windels (Eds.), *Legal Knowledge and Information Systems. Jurix 2000: The Thirteenth Annual Conference* (pp. 73-84). Amsterdam: IOS Press.
- Bench-Capon, T. (2001) Review of: *The Notion of an Ideal Audience in Legal Argument*. *Artificial Intelligence and Law*, 9(1), 59-71.
- Cantlon, J., Libertus, M., Pinel, P., Dehaene, S., Brannon, E., & Pelphrey, K. (2009). The neural development of an abstract concept of number. *Journal of Cognitive Neuroscience*, 21(11), 2217-2229.
- Christie, G. (2000) *The Notion of an Ideal Audience in Legal Argument*.

Dordrecht: Kluwer Academic.

Govier, T. (1999). *The Philosophy of Argument*. Newport News, VA: Vale Press.

Govier, T. (2009). More on dichotomization: flip-flops of two mistakes. In J. Ritola, Ed., *Argument Cultures: Proceedings of OSSA Conference 2009*. CD-ROM, Windsor, ON. June 2009.

Govier, T. (2010). *A Practical Study of Argument*, 7th edition. Belmont, CA: Wadsworth Cengage Learning.

Halberda, J., Mazocco, M., & Feigenson, L. (2008). Individual differences in non-verbal number acuity correlate with maths achievement. *Nature* 455, 2 October 2008, 665-668.

Hitchcock, D. (1994). Validity in conductive arguments. In R. Johnson & J. A. Blair (Eds.), *New Essays in Informal Logic* (Ch. 5, pp. 58-67). Newport News, VA: Vale Press.

Jonsen, A., & Toulmin, S. (1988). *The Abuse of Casuistry*. Berkeley: University of California Press.

Kock, C. (2007). Is practical reasoning presumptive? *Informal Logic*, 27, 91-108.

Libertus, M., & Brannon, E. (2009). Behavioral and neural basis of number sense in infancy. *Current Directions in Psychological Science* 2009, 18(6), 346-351.

Pinto, R. (2001). Cognitive science and the future of rational criticism. In *Argument, Inference, and Dialectic* (Ch. 12, pp. 113-125). Dordrecht: Kluwer.

Pinto, R. (2009). Argumentation and the force of reasons. In J. Ritola (Ed.), *Argument Cultures: Proceedings of OSSA Conference 2009*. CD-ROM, Windsor, ON. June 2009.

Pollock, J. (1995). *Cognitive Carpentry*. Cambridge, MA: MIT Press.

Prakken, H. (2000) An exercise in formalizing teleological case-based reasoning. In J. Breuker, R. Leenes & R. Windels (Eds.), *Legal Knowledge and Information Systems. Jurix 2000: The Thirteenth Annual Conference* (pp. 49-57). Amsterdam: IOS Press.

Tyaglo, A. (2002). How to improve the convergent argument calculation. *Informal Logic*, 22(1), 61-71.

Wellman, C. (1971). *Challenge and Response*. Carbondale, IL: Southern Illinois University Press.

Wohlrapp, H. (1998). A new light on non-deductive argumentation. *Argumentation*, 12(3), 341-350.

Wohlrapp, H. (2008). The pro- and contra-discussion (A critique of Govier's "conductive argument"). Translation by Frank Zenker of: Wohlrapp, H. (2008) *Der*

Begriff des Arguments, Section 6.4. Würzburg: Königshausen und Neumann.
Retrieved from www.frankzenker.de/academia.

Zenker, F. (2007). Complexity without insight: *Ceteris paribus* clauses in assessing conductive argumentation. In S. Jacobs (Ed.), *Proceedings of the 2007 NCA/AFA Conference on Argumentation*, Alta, Utah, 810-181.

Zenker, F. (2009). *Ceteris paribus in conservative belief revision. On the role of minimal change in rational Theory Development* (Ph.D. Thesis, University of Hamburg). Berlin: Peter Lang (ISBN 978-3-631-57283-2).

Zenker, F. (2010). Deduction, induction, conduction: An attempt at unifying natural language argument structure. In *Proceedings of the 13th Biennial Argumentation Conference at Wake Forest University*, March 2010.

Zimmer, C. (2009). The math instinct. *Discover Magazine*. November, 2009, p. 28.

ISSA Proceedings 2010 - Can Argumentation Really Deal With Dissensus?



1. A Case of Unreconciled Dissensus

Book V of Milton's *Paradise Lost* presents a striking dissensus between Satan and the Archangel Abdiel over the nature of the Deity. Each presents an argument for his view which – not unsurprisingly – the other rejects. Milton sets the scene – The Almighty before a convocation of all angels has decreed his Son their Lord and has mandated that “to him shall bow/All knees in Heav’n, and shall confess him Lord” (V, 607-608) This decree Satan cannot abide. He resolves to rebel, never bending the knee, nor, if he can persuade them, will any of the angels under his command. Paraphrasing to bring out the underlying argument, Satan first proposes

(1) Prior to this decree, all Natives of Heaven (including the Almighty and his Son) have been equally free.

- (2) No one has a right to assume monarchy over one's equals in freedom. Hence
- (3) The Almighty has no right to proclaim this decree.

Although Satan offers two further arguments, Abdiel turns his critical questions exclusively to Satan's first. Again paraphrasing, his argument can be laid out quite straightforwardly:

- (1) The Almighty created you and indeed all the spirits of heaven, and endowed all with their glory. Therefore
- (2) Neither you nor all angels taken together are equal to the Almighty. Therefore
- (3) Justice gives you no right to enter with God in determining what are the laws or principles governing your relation. Therefore
- (4) The Decree of the Almighty is just.

Satan replies first by questioning Abdiel's first premise. What evidence is there for this creation, he asks. Who observed it? Do you remember your own making? Satan then continues

We know no time when we were not as now;
Know none before us, self-begot, self-rai'd
By our own quickening power....
(V, 859-861)

These observations bear on his assertion that "Our puissance is our own," i.e. we are not creatures of or subordinate or inferior to the Almighty. Satan ends his discourse by ordering Abdiel quickly to report his sentiments to the King. The dialectic thus ends at this confrontation stage.

With passions running as high as Milton portrays them, one wonders whether the argument could be advanced to a further stage. However, even assuming dispassionate interlocutors, the literary critic and legal scholar Stanley Fish has argued that it could never proceed to a rational resolution. Since his argument presents a challenge to the whole enterprise of argumentation, it deserves the attention of argumentation theorists.

2. Fish's Challenge to Argumentation

In arguing that rational resolution of their dispute is impossible, Fish focuses on Satan's asking Abdiel to show that we are created beings and construes the passage, already quoted,

We know no time when we were not as now;

Know none before us, self-begot, self-raised

as an argument, our self-creation being inferred from our lack of knowledge of a time when we were other than as now. Fish asks us to contrast this argument with that of the newly created Adam, aware for the first time both of his surrounding world and its beauty and of his body with its powers:

But who I was, or where, or from what cause

Knew not, ...

... how came I thus, how here?

Not of myself; by some great Maker then,

In goodness and in power preëminent;

(VIII, 270-271, 277-279)

Fish sees Adam arguing from the premise that he does not know how he came into being to the conclusion that he owes his being to a Maker first in goodness and power. In the context of his argument that all the angels are creatures of the Almighty, Abdiel has made a remark whose relevance he might have highlighted should Satan have permitted him to give evidence of that claim:

Yet by experience taught we know how good,

And of our good, and of our dignity

How provident he is, ...

(V, 826-828)

Adam and Abdiel's reasoning share this epistemological point: Our inferences may pass beyond the realm of experience in finding an explanation of the experienced realm or seeing some significance, e.g, the Deity's benevolent nature, which it points to. By contrast, Satan rejects both inferences *a priori*.

Fish sees both arguments as incompletely stated, both lacking a first premise. Given recent work on enthymemes, [i] I believe it better to say that both arguments instance substantial, as opposed to formal, inference rules or warrants.

Satan's warrant:

Given that x is consciously aware of no time when x was other than as now nor of any predecessor or progenitor of x

One may take it that x is self-created

Adam's warrant:

Given that x knows not how x got to this place of preëminent beauty possessed of a body of preëminent vitality

One may take it that x is the work of a Maker unsurpassed in goodness and power.

Fish now makes a crucial point for his argument that this exchange between Satan and Abdiel cannot go beyond the confrontation stage:

Since the first premise is what is missing, it cannot be derived from anything in the visible scene; it is what must be imported – on no evidentiary basis whatsoever – so

that the visible scene, the things of this world, can *acquire* the meaning and significance they will now have. (Fish 1996, p. 19, italics in original)

It is a commonplace that corresponding to an argument is a conditional statement, the conjunction of the premises being the antecedent, the conclusion the consequent. As Hitchcock (1985) has shown, arguments which some analyze as first-order enthymemes assume more than this associated conditional, namely some universal generalization of that conditional. As we have argued (2011), this universal generalization must be nomic, supporting subjunctive conditionals, and not merely accidental. It is never a description, an extensional statement whose truth conditions concern just the actual world. In many instances, it is an interpretation,^[ii] an intensional statement whose truth-conditions involve considering other possible worlds.^[iii] Hence, if to be derived from the visible scene means simply to describe some aspect of one's surroundings of which one is aware just through sense perception, we agree with Fish that the first premise cannot be derived in this way. We also agree that in the light of interpretive generalizations, certain descriptive features acquire meaning (or their meaning becomes disclosed). This point may be appreciated better in connection with warrants. Consider again Adam's warrant. Although the premise involves an aesthetic evaluation rather than a mere description, in light of this warrant Adam does not see himself in a randomly beautiful world but in one whose beauty is attributable to conscious agency. But if one has an explanation for some event or condition, that event or condition has meaning, at least in some sense or to some degree. Likewise, Satan's warrant is interpretive. It associates a meaning, being self-created, with the non-awareness of one's origination or of any originating progenitor.

Fish elaborates his position that first premises – alternatively warrants – cannot

be based on evidence by saying

In the absence of a fixed commitment-of a first premise that cannot be the object of thought because it is the enabling condition of thought-cognitive activity cannot get started. One's consciousness must be grounded in an originary act of faith - a stipulation of basic value - from which determinations of right and wrong, relevant and irrelevant, real and unreal, will then follow. (Fish 1996, pp. 19-20)

Following Fish, let us refer to this as the Miltonian position. Hence we understand the position asserting that by virtue of our warrants, we recognize what is relevant to what, that something's possessing a certain property is evidence that it possesses some further property, but that these warrants as principles of evidence are not themselves defensible through evidence and thus not defensible through argument. They are and must be accepted on faith, the faith constituting at least part of one's world view. One might say that warrants used in particular arguments derive in some sense from some fundamental warrant or warrants. But those basic warrants are not based on any evidence, their acceptance being an act of faith.

Continuing within the framework of the Toulmin model, we see another point at the core of the Miltonian position. Recall that non-demonstrative warrants are open to rebuttal. We have already seen that it is part of Satan's epistemological stance to recognize as real only what is disclosed by descriptive belief-generating mechanisms analogous to perception, memory, introspection. Hence, any warrant permitting us to infer something non-observable from what is observable must be rejected. The principle identifying "experience" with being is a blanket rebuttal of all such warrants. Again, such a rebuttal cannot be defended with evidence, but derives from the basic act of faith which stipulates what is real and unreal. Warrants, then, as constituting principles of evidence, and rebuttals, as ruling out certain inferential moves, are articles of faith, not subject to critical scrutiny or support through argumentation.

Fish sees in this picture of the structure of cognitive activity a challenge to the liberal ideal of open mindedness to all positions, including those incompatible with one's cherished opinions, an open mindedness including a willingness to revise one's viewpoints in light of argumentation. As such, the picture challenges much of the argumentation community's understanding of the practice of argument and its ideal conditions. For example, consider the pragma-dialectical

code of conduct for rational discussants. Van Eemeren and Grootendorst require that “the discussants must be able to advance every point of view and must be able to cast doubt on every point of view” (1984, p. 154). If asked, a party advancing a standpoint must defend it with cogent argument. If the defense fails, the proponent must retract the standpoint. If it succeeds, the challenger must retract her doubt. (Compare Rules 2 and 9 in (1992, pp. 208-209).) Clearly, on Fish’s picture if one tried to argue for a claim expressing the propositional content of a warrant one accepts, one would at best be arguing in a circle. Since the warrant determines what is deemed relevant or irrelevant, the very warrants one’s argument would instantiate would ultimately be acts of faith. Any proponent who realizes this realizes that he cannot argue cogently for that claim.**[iv]**

Even if the proponent failed to realize the futility of his attempted argument, it is hard to see how the discussion could ever proceed to the argumentation stage. This stage presupposes agreement on the rules of discussion. But if proponent and challenger have different, indeed incompatible originating acts of faith concerning their warrants, their very inference rules and rebuttals, grounded in such originating acts of faith, will differ and essentially differ. Remember these originating acts of faith are not subject to rational appraisal. Even if the parties attempted to bypass agreement on rules and proceed to argumentation, I do not see how the proponent could realize that his argument failed, if it did, or the challenger realize that the proponent’s argument was successful, if it was. If the proponent’s argument depends on an inference rule the challenger does not accept or the proponent would not recognize the force of the challenger’s rebuttal, the discussion could never reach the concluding stage. A critical discussion in the pragma-dialectical sense is impossible on the Miltonian position.

For the Miltonian, the belief expressing the faith of the originating act constitutes what is understood as reasonable by the person making that act of faith. Any viewpoint challenging that originating belief will be dismissed as unreasonable. “A reasonable mind is a mind that refuses to be open” (Fish, 1996, p. 20). Fish sees this Miltonian stance as typifying religious commitment, the shared faith of a religious community. Indeed, we might see it as typifying ideological commitments in general, and more generally as typifying world-view commitments. For the adherents of a religious tradition or an ideology with a core creed, challenges to the tenets of that creed might seem impossible. Again, a challenge to any facet of one’s world-view would seem absurd.

The liberal stance presupposed by argumentation theory's very understanding of argument as dialectical seems incompatible with the Miltonian stance of commitment. To seek to resolve a difference of opinion through argument, the parties must agree on the principles of evidence certifying the outcome. But especially if the difference concerns some opinion central to the world-view of one of the parties to the discussion, and world-views determine the acts of faith which determine principles of evidence, a dialectical discussion seems impossible. But to what extent are differences of opinion the result of differences over principles of evidence? Perhaps not all differences of opinion involve such differences, and this leaves a door open for the liberal view of argument.

One way for the advocates of argument to deal with this dissensus over world-view commitments would be to rule out argument over those commitments or over opinions essentially deriving from them, and to rule out appealing to any principles of evidence essentially dependent on them in any dialectical exchange, at least in any dialectical exchange in the public sphere. Not only does this accord with a liberal stance, Fish argues that it itself actually expresses a core ideological commitment of liberalism:

Liberalism rests on the substantive judgment that the public sphere must be insulated from viewpoints that owe their allegiance not to its procedure – to the unfettered operation of the market-place of ideas – but to the truths they work to establish. (Fish 1996, p. 22)

Liberalism presupposes that at least some issues of fact and principles of evidence can be disentangled from issues of ideology. That “a stage of perception...exists *before* interest kicks in” is a “prime tenet of liberal thought” (Fish 1996, p. 25). For liberalism, we might say, a viewpoint not justifiable through principles independent of ideological commitments cannot be taken seriously. It is as unreasonable from the liberal point of view as the viewpoints challenging that view are unreasonable from the viewpoint of those committed to that viewpoint.

If this characterization of liberalism is correct and the argumentation community is committed to the liberal stance, then it would seem that the argumentation community is intolerant of ideological commitment, including religious commitment. Such commitments are beyond the pale of argumentation and attempts to resolve them through argument futile. Such a viewpoint may well

have negative social consequences for the argumentation community. It suggests that most of the commitments by which persons see meaning and value fail to be rationally grounded, with all the negative emotive force of that characterization. Those with world-view commitments who might take umbrage over this characterization have a riposte. Liberalism's commitment to principles of evidence regarded as independent of world-view commitments and rejection of ideologically dependent principles is simply part of *its* ideological commitment! Liberalism is an ideology on all fours with other ideologies, but involving this distinct paradox: Liberalism's core principles concerning evidence are originating ideological commitments not subject to justification through evidence and therefore contradictory to those very principles themselves! How may we come to the rescue of argumentation?

3. Is Argumentation Caught in a Dilemma?

Let us say first that Fish's epistemological view contains a very important insight, one which I believe he shares with Peirce. (See "What is a Leading Principle" in (1955), pp. 129-134.) Peirce analyzes belief as a habit which develops under the stimulation of various experiences and the pathways we find most successful in dealing with these irritations. One type of belief-habit conveys us from one judgment, the premise, to another judgment, the conclusion, i.e. the belief-habit allows us to *infer* the conclusion from the premise. Clearly, since the experiences of different individuals will be different, we may expect them to develop different habits, including different inferential belief-habits. These differences will affect intuitions of what counts as a reason for what, intuitions of relevance. Hence we find Fish on solid ground when he allows that different persons will recognize evidence differently. To be able to infer a conclusion from a premise is to recognize that the premise or what it expresses has a certain *meaning*. Different persons then will recognize meaning differently and interpret situations differently. But we cannot agree that the first premise of any argument is imported or must be imported "*on no evidentiary basis whatsoever.*" Taking the assumption as a warrant rather than a premise, Fish in effect is claiming that no warrants can be backed, in Toulmin's sense, more generally that they and their associated nomic universal generalizations are immune to logical or epistemological evaluation. Is this true? Are they simply matters of faith?

By including backing for warrants in the layout of arguments, Toulmin is allowing that warrants are subject to evidentiary support. As is well known, given his

notion of argument fields, Toulmin allows distinctly different types of such evidentiary support.[v] But this does not gainsay the fact that warrants can be supported with evidence. Indeed the very considerations showing that Peirce and Fish would agree that different persons reason according to warrants belonging to different classes also shows that they would disagree on warrants not having evidentiary support. The experiences which led to the formation of the belief-habit constitute evidentiary backing for it. Furthermore, as Toulmin has taught us, not only can warrants be backed, they can be rebutted. But this is to bring negative evidentiary considerations to bear on evaluating the reliability of the warrant. Further yet, a challenger may raise the question of whether a rebuttal holds and a proponent may show that it does not, thus giving a further type of evidentiary support to the warrant.

Pace Fish, we can subject both Satan's and Adam's warrants to rational scrutiny. Consider the premise of Satan's warrant:

x is consciously aware of no time when x was other than as now nor of any predecessor or progenitor of x .

Substituting for ' x ' a referring expression denoting some being with a capacity for memory, the intended domain of this warrant, produces a logically consistent statement. There is nothing self-contradictory in saying

John is consciously aware of no time when John was other than as now nor of any predecessor or progenitor of John.

But consider the conclusion—John created John. Is the notion of a self-created being logically consistent? Although this, like all substantive philosophical positions, is open to debate, common sense might vote that self-creation is not coherent. But surely a warrant allowing one to pass from a consistent statement to one metaphysically incoherent is totally unreliable, if not invalid. That no being can create itself constitutes a serious rebuttal to Satan's warrant. By contrast, Adam's warrant is abductive, passing from a description/evaluation to an explanation. But one can certainly argue for an explanation by arguing that it is superior to its alternatives, which constitute possible or potential rebuttals. Such an argument, better the evidence included in the premises of the argument, constitute evidence for the warrant. Although Adam may reason according to his warrant without reflection, this *in itself* does not show that his warrant can only be accepted on faith.

Fish may now object that the critique betrays a superficial understanding of his position. Satan's warrant derives from his "faith" that the limits of his experience determine the limits of reality. This faith is essential to Satan. "The habit of identifying the limits of reality with the limits of his own horizons defines Satan – it makes him what he is" (1996, 19). Since you do not share Satan's essential commitment, you may judge that Satan's warrant may be rebutted. But you yourself have essential commitments, or at least commitments to one or more overarching basic or first principles, not open to *your* consideration because they determine the very structure of your rationality, including your capacity to critique other viewpoints. Fish endorses this position in a striking epistemological statement:

Evidence is never independent in the sense of being immediately perspicuous; evidence comes into view (or doesn't) in the light of some first premise or "essential axiom" that cannot itself be put to the test because the protocols of testing are established by its pre-assumed authority. (1996, 23)

Is *this* true? Suppose one's experience leads to forming an inferential belief-habit expressible as a warrant. Suppose one meets another whose stock of inference habits does not include this warrant. If one presents the evidence or paradigm instances of the evidence which led to the forming of one's belief habit, why cannot the other appreciate that they constitute positive evidence for that warrant, and indeed may even constitute sufficient evidence for acceptance? How is some essential axiom necessary to recognize this evidence *as* evidence? Again, on what essential axiom does one's recognition of the incoherence of a self-created being rely? The newly created Adam could have entertained an additional hypothesis in considering how he came to be in the environment in which he found himself with his body having the powers he is aware of. It all just popped into existence by chance. Does Adam need an originating faith to see which hypothesis he is aware of has higher probability? What essential axiom is necessary for him to see that given two rival hypotheses, the one with the greater likelihood is the one better supported by the evidence—the prime principle of confirmation?

Let us return to the confrontation between Satan and Abdiel. Satan believes he is the equal of the Almighty, at least in freedom. Abdiel believes he is a creature of the Almighty, and thus not equal. These "articles of faith" have a bearing on why Satan accepts the warrant

Given that x has declared the son of x Lord over all Y 's

One may take it that x has made a power grab

while Abdiel does not. Satan and Abdiel thus differ radically on the meaning of the event and thus on whether their experience constitutes evidence for their contrary interpretations. Now there is a profound epistemic difference between saying that the Deity made a certain proclamation and saying that by making this proclamation the Deity made a power grab. The first is a simple description of a publically observable event. The second is a claim about the intentions of the Deity, not open to public inspection. That Satan's and Abdiel's different views on the intentions of the Deity are due to fundamental differences in their originating commitments over their creaturely status constitutes a plausible explanation for their dissensus. By virtue of their different originating commitments, they interpret experienced features of reality differently. Could one amend the Miltonian claim to allow that accepting principles of evidence for descriptions of observable events may be independent of any originating commitment, together with recognizing when broadly logical concepts hold and making judgments or estimations of probability, but that accepting principles of evidence involving interpretive principles, including evidence for those principles themselves, is consequent upon an originating commitment?

Such an amendment constitutes a significant concession for the Miltonian to liberalism. Some principles of evidence may be disentangled from ideology. But if our examples of experiential backing for warrants, considerations of the incoherence of self-causation, or best explanations for evidence are cogent, we do have some sources of objective evidence and objective critique of principles of evidence. Hence, although we can agree with Fish that many rules of evidence one person acknowledges may differ from the rules of evidence acknowledged by someone else, and we can also agree that a person's commitments, especially in connection with value, ideology, and world view, issue in a set of inference habits specifically reflecting those commitments, we do not agree that these need to constitute the entire set of evidence principles and inference habits a person employs.

However, excluding argumentation from a significant role in the areas of meaning and value may make its role and the liberalism it expresses seem quite thin. Do most arguments in the *public sphere* confine themselves just to descriptions and the generalizations they support, assertions about broadly logical relations, or estimations of probability and their epistemic consequences? Do not the balance

of arguments in the public sphere concern meaning and value? The Miltonian can urge: True, you have shown that there are principles of evidence independent of originating commitments. But by contrast with the big existential questions, are not the issues of these arguments superficial? Contrast such concerns with the commitments of Satan and Abdiel. For Satan, the world, as disclosed to us by our experience, is all there is, and this experience, in itself, discloses no being on whom the world is metaphysically dependent. This core commitment determines his refusal to acknowledge any creaturely dependence. Hence any worship of another is "prostration vile" (V, 782). By contrast, at the core of Abdiel's world view is acknowledgment of creaturely dependence on the Almighty and trust in his providence. Are not these contrasting world views each the product of radially different originating commitments? But if you concede that argumentation cannot deal with dissensus over such world-view issues, you have made a great concession to my Miltonian position.

But why are Satan's and Abdiel's contrasting metaphysical beliefs immune to scrutiny on the basis of commonly recognized epistemic principles of evidence? Do ideological or metaphysical commitments and what they entail always lie outside what can be subject to critical discussion? Can argumentation play no role in adjudicating such disagreements? We turn to that issue in the next section.

4. Can Argumentation Not Deal With Certain Cases of Dissensus?

As Fish has indicated, these metaphysical commitments constitute "an originary act of faith" from which judgments of meaning and value follow. The propositional content of such an act of faith is some ultimate premise or "essential axiom." The warrants we apply in the "lower level" arguments we have been considering or the associated universal generalizations of these warrants are consequences of these essential axioms. It is by virtue of subscribing to some essential axiom that we recognize some statement as evidence for some other. In addition to the examples of evidentiary relations we have been considering – particular instances supporting and thus backing generalizations, recognition of broadly logical entailment and related concepts such as coherence or incoherence, recognition of relations of conditional probability – we may add recognition that certain descriptive properties such as having made a promise are relevant to certain evaluative properties, here being morally bound to fulfill it.

As we have seen, our previous considerations here cast real doubt on Fish's claim that recognizing relevance, i.e. recognizing what constitutes evidence for what, is

dependent on originating commitments. We can raise the same issue for Fish over lower level arguments of value. How are originating commitments involved in seeing that my making a promise is a reason why I am bound to keep it, at least a *prima facie* reason from which my obligation follows *ceteris paribus*? If someone disagreed about the obligation or just failed to see it, one might invite the person to carry out a thought experiment, imaginatively entering into a situation with the same deontically relevant properties, where that person would admit that the obligation was binding. But where does some essential axiom enter into this argument? The burden of proof, we may urge, is on Fish to show in all these lower-level cases how the recognition of evidential relevance derives from some essential axiom and would be impossible without the recognition of such an axiom. In light of the fact that expecting agreement over relevance in many lower-level cases seems straightforward, Fish has a heavy burden of proof. We shall see the import of this point shortly.

One strategy Fish might use to discharge this burden of proof would be to argue that we are being provincial. We are simply assuming that our recognitions of evidentiary relevance are universal. The fact that we can confidently expect agreement on judgments of relevance only shows that we have confined our circle of acquaintance to those sharing our originating act of faith or some basic principle overlapping with it significantly. That explains our intuitions of relevance and expected consensus. But imagine someone who holds that our making a promise is not much of a reason for saying we are obligated to keep it. Indeed, suppose the person held that our perceiving where making a promise with no intention to keep it would advance our self-interest in a given situation, we have reason to do just that. Now we are faced with someone with a different essential axiom from which it does *not* follow that making a promise is relevant to keeping it, or that self-interest always trumps moral regard for others. How would you argue with that person?

This question gains significant poignancy in light of our diverse world. People do disagree on fundamental commitments—for or against democracy as the proper form of government, for or against seeing the human individual as having a value superior to the human collective, for or against seeing facts in the world having a transcendental import. Can argumentation deal with dissensus over such commitments, which we may call world-view commitments? It is here that our considerations on recognizing evidentiary relations independently of world-view

commitments come to the fore. We may see world view commitments providing an overall, overarching, or comprehensive explanation, investing events in the world with meaning, or setting limits on the scope of any explanation. We have already seen how Satan's view of reality as co-extensive with experience and of himself and his angels as self-made led to radically different value commitments from Abdiel's view of his creaturely status. Given conscious recognition of a world-view, then, one is confronted with two sources for one's judgments of evidentiary relevance – one's individual recognition of relevance apart from any world – view commitment and judgments deriving from that commitment. Where such judgments agree, they are mutually reinforcing. Where they do not, adjustment either on the part of the world-view commitment or on the part of certain individual judgments or both is required to maintain consistency. The goal is to reach what Rawls calls reflective equilibrium. The point is that when in reflective equilibrium, there is a mutually reinforcing evidentiary relation between the world-view commitment and the individual judgments of relevance. "From below," the individual judgments support the "essential axiom" of the world-view commitment. "From above," that the individual judgments may derive from such an axiom supports such judgments. World-view commitments may then be supported by evidence and it seems we may recognize these support relations independently of the commitment.

We may now address the question of what should be the function of argumentation when dealing with world-view dissensus. Clearly, although complete reflective equilibrium may be an ideal, we expect that in actual cases equilibrium will be a matter of more or less. The more equilibrium, the greater the evidential support, the less the lower. Clearly also, *ceteris paribus*, reflective equilibrium is a sign of the reasonableness of both the fundamental commitment and the individual judgments, and a system in which there is greater reflective equilibrium is one with greater reasonableness. When persons or cultures with divergent world-views meet, they may be able then, to recognize the reasonableness of each other's world view commitments through recognizing degree of reflective equilibrium. An argument which *prima facie* showed why one's world view commitments functioned as basic principles for one's judgments of meaning and value would be a case for the *prima facie* reasonableness of both the world view commitments and the judgments of meaning and value. Surely such an argument could be appreciated as *prima facie* reasonable by someone not sharing those commitments, and indeed such an appreciation would be an act of

respect and deepening respect for those who do hold these commitments. But here is an obvious role for argumentation.

The role of argumentation goes further. Those holding one world view might come to recognize that the basic commitment, essential axiom of those in some other culture may possibly be in better reflective equilibrium or hold promise of better reflective equilibrium with their own individual judgments than their own basic axiom. Greater reflective equilibrium would be possible by either accepting the other culture's basic axiom or by modifying their own essential axiom to approximate that of the other culture. But this is tantamount to arguing for an essential axiom. That individual judgments are better accommodated constitutes evidence for the basic commitment.

Furthermore, this new essential axiom may account for individual judgments which the old did not. Consider a materialist and a theist with their contrasting world views. Could not both agree that human beings have human rights? Could not both substantially agree on what are those rights? But is it not conceivable that given one's world view, one might construct a *prima facie* more reasonable or otherwise better explanation of why humans have rights and justification for respecting those rights than one might be able to construct given a contrasting world view? Might this not move an adherent of the other world view, at least in some way, to reconsider her world view commitments? That is, has the dialogue not taken a step toward the resolution of the disagreement through argument? Again, we are speaking quite generally here, surely could not a *prima facie* acceptable explanation of human equality in one culture on the basis of its world view commitments influence the ongoing argumentation in another culture whose world view commitments may not provide an equally *prima facie* adequate explanation of human equality? Could not such ongoing argumentation lead to an increased convergence of points of view between the two cultures? At the least, entering such a dialogue may lead to a deeper understanding of one's world view and a more mature commitment to it.

Surely, it is plausible that dialogues involving cross-cultural argumentation might lead to such an outcome. But such dialogues have a necessary condition – the participants must be genuinely open to valuing reasonableness. But need this always be the case? Our considerations here have not shown any reason to refuse to invite those with divergent world view commitments or indeed with any difference in viewpoint over significant, existential issues into a critical

discussion. The question, of course, is whether they will accept the invitation. Satan certainly would not. If one's world view denies that there can be evidence of a certain type, or that certain values are not genuinely positive but rather perverse, or claims that certain explanations which in open court might be judged best explanations are not viable at all, there may simply be nothing to say to that person in a critical discussion aimed at showing the reasonableness of one's world view. Argumentation is limited by the willingness to enter into such dialectical exchanges. But for those who do accept the invitation, critical discussion offers a way of at least appreciating the reasonableness of others' world views, and quite possibly of deeper understanding and refinement of one's own. Issues of fundamental commitments, essential axioms, world-views are not then beyond the realm of argumentation. These claims are subject to support through argumentation where the recognitions of evidentiary relevance are independent of originating acts of faith. We see Fish's skepticism of argumentation not justified on any level.

What then is the place of argumentation (and thus the importance of argumentation theory) for the present time with its deep cultural differences, which militants may seek to exploit, even violently. Such militants may be closed to entering a critical discussion. But this is not because their world view commitments and those whom they oppose are based on originating commitments which for all parties are arbitrary and immune to rational evaluation. Their refusal in no way shows that the invitation to inquiry was conceptually incoherent or critical discussion an impossibility. By contrast, if critical discussion is a genuine possibility, then there is at least one place in this pluralistic but currently increasingly polarized world where divergent cultures may meet to critically examine their differences in peace, where argumentation provides the framework for such meetings.

NOTES

[i] For our analysis of enthymemes and references to related literature, see our (2011), Chapter 7.

[ii] For our definition of interpretation as a type of statement and our distinction of the basic types of statements, see our (2005a, Chapter 5.2, especially p. 105).

[iii] The types of associated conditionals assumed parallels the types of warrants an argument may involve. For a discussion of these types, see our (2005b).

[iv] He realizes this unless, of course, his originating act sanctions circular

inference.

[v] Some argumentation theorists have found Toulmin's notion of field problematic. In (2005b), we argue for replacing this notion with an epistemic classification. The points are still the same. Warrants can be backed, albeit in different ways, and different persons may develop different bodies of warrants.

REFERENCES

Eemeren, Frans H. van and Rob Grootendorst. (1984). *Speech Acts in Argumentative Discussions*. Dordrecht-Holland/Cinnaminson-U.S.A.: Foris Publications.

Eemeren, Frans H. van and Rob Grootendorst. (1992). *Argumentation, Communication, and Fallacies: A Pragma-Dialectical Perspective*. Hillsdale, NJ: Lawrence Erlbaum Associates, Publishers.

Fish, Stanley. (1996). "Why We Can't All Just Get Along." *First Things* 60, 18-26.

Freeman, James B. (2005a). *Acceptable Premises: An Epistemic Approach to an Informal Logic Problem*. Cambridge: Cambridge University Press.

Freeman, James B. (2005b). "Systematizing Toulmin's Warrants." *Argumentation* 19 (2005), 331-346.

Freeman, James B. (2011). *Argument Structure: Representation and Theory*. Dordrecht: Springer.

Hitchcock, David (1985). "Enthymematic Arguments." *Informal Logic* 7, 83-97.

Milton, John. (1962). *Paradise Lost: A Poem in Twelve Books*. Merritt Y. Hughes, ed.. New York: The Odyssey Press.

Peirce, Charles S. (1955). *Philosophical Writings of Peirce*. Justus Buchler, ed. New York: Dover Publications.

Rawls, John. (1971). *A Theory of Justice*. Cambridge, MA: Harvard University Press.

ISSA Proceedings 2010 - Concepts

And Contexts - Argumentative Forms Of Framing



1. Introduction

The concept of framing - and the underlying theoretical mindset - is familiar to a number of scholarly fields and discussions. Although the notion of framing has its roots in sociological thinking, it has made its way into many other fields. Thus, framing is applied to management studies (Hodgkinson et al., 1999; Conger, 1991; Smircich & Morgan, 1982), rhetorical studies (Kuypers, 2009; 2006; Cappella & Jamieson, 1997), media studies (de Vreese & Elenbaas, 2008; Scheufele, 1999; Entman, 1993; Iyengar, 1991), and linguistics (Tannen (Ed.), 1993) - to name but a few of the most relevant fields. Framing, then, has undergone quite an expansion from being conceived as a tool for micro-analysis of social interaction to its current broad interpretation and diversified application.

When taking this development into account it is not surprising that framing is also to be found within the field of argumentation and that it is used in various ways within this field. An overview of argumentation studies shows that use of the concept is distributed along a continuum from intuitive and implicit to theoretical and explicit. At one end of the spectrum we find a commonsensical use of framing that is often neither expanded nor explained (see inter alia Berteau, 2004; Freeman, 2001; Garrett, 1997). At the other end of the spectrum we find contributions that take their starting point in framing (and the literature on the concept) and bring it to bear on discussions that are of relevance to the theory of argumentation. Be it in the understanding of 'playful argumentation' (Hampe, Han & Payne, 2009), in the development of 'interpersonal arguments' (Hampe, Warner & Young, 2008) or in the conceptualization of 'non-deductive argumentation' (Wohlrapp, 1998) - again, only highlighting a few relevant examples.

Framing is used to define a number of processes and functions that oftentimes do not exist on the same plane of theoretical reasoning or level of empirical analysis. As we will unfold in the following, framing is sometimes thought of as cognitive processes of understanding while it is seen as communicative tools in other

contexts. The notion of framing is, in other words, not a simple, clear cut one; a point which is often stressed in the literature. Robert Entman, for instance, begins from the assumption that “despite its omnipresence across the social sciences and humanities, nowhere is there a general statement of framing theory that shows exactly how frames become embedded within and make themselves manifest in a text, or how framing influences thinking” (1993, p. 51). Michael Hoffman laments that “...in spite of its prominence in scientific discourses, the concept of ‘framing’ and its derivatives are used in very different ways. Obviously, there is no shared understanding of what ‘framing’ exactly means, and what kind of activities can count as ‘framing’ and which cannot” (2006, p. 2). And Kirk Hallahan sums up both the potentials and the problems: “although a theoretically rich and useful concept, framing suffers from a lack of coherent definition” (2008, p. 209). The question is, therefore, what we actually gain from introducing framing into various subjects and fields? If framing is not a clear concept, the subject it is intended to illuminate will not become clearer.

In an attempt to solve these issues in the context of argumentation and show how the notion of framing may become more useful to argumentation scholars we will reverse the typical order of application. Rather than applying the notion of framing to one or the other aspect of argumentation we will try to explain and clarify framing by starting from the field of argumentation. It is possible to draw parallels between classical argumentative concepts and the concept of framing (Pontoppidan, Gabrielsen & Jønch-Clausen 2010; Just & Gabrielsen 2008), and it is this line of thinking that we will build upon in the following. What may we learn about the types of argumentative moves that may be typified as framing by viewing them through the lens of classical theories of argumentation?

In order to answer this question we introduce the classical rhetorical theory of stasis, the teaching about how to locate the disputed point in a debate, as a means of clarifying and ordering what is meant by framing. There are four stases dealing with 1) fact (*status conjecturalis*), 2) definition (*status definitivus*), 3) quality (*status qualitatis*), and 4) jurisdiction or transcendence (*status translatus*), and we argue that when filtered through the stases framing refers to at least two different argumentative moves or patterns. One is an internal definition or categorization of the concepts in question; the other is an external shift or transcendence in the context of the case. As an example of the internal definition/categorization one can, for instance, argue that the recent fall in the

prices of real estate that has affected most of the Western hemisphere was not a bursting bubble, but a natural correction, thus redefining the matter and reframing the issue. And as an example of the external shift/transcendence of context one can argue that a house should not be bought as an investment, but because it is the house of one's dreams, thus changing the context of the argumentation and shifting the issue from an economic to an emotional frame.

In making the link between framing and the theory of stasis, we do not claim to offer a comprehensive analysis of the argumentative forms involved in framing – we only claim that the theory of stasis exposes that the notion of framing contains (at least) two different types of moves. Both definition and transcendence are argumentative forms of framing, but they point to two quite different ways in which a matter may be framed. Furthermore, we indicate that while framing is not just one argumentative move, it is nevertheless a particular type of argumentation which does not seem to include the issues of fact and quality as these are defined in the theory of the stasis. Thus, applying the stases to the field of framing both allows us to point to what argumentative frames are and what they are not.

The issue of how the stases may relate to and help clarify the notion of framing is primarily a theoretical one, but we will illustrate the notion that the stases point to basic argumentative forms of framing by means of generic examples constructed on the basis of the Danish public debate on the value of real estate – as we have already done in the initial example of how the stases of definition and transcendence may be linked to framing.

Before we begin our exploration of framing from the viewpoint of the stases, we unfold our initial claim; namely, that the concept of framing is a pluralistic one. Different scholars have stressed different aspects of the concept and developed it in different directions, and we will present a few highlights from the discussion of what framing is and how it should be studied. Following the introduction to the concept of framing as such we will delimit our notion of framing as a form of argumentation from the broader understandings of framing and thereby offer a definition of what is meant by framing in this particular study of the concept. Then we will briefly introduce the theory of stasis and go on to discuss how the stases may explain and typify what framing is.

2. Framing: A pluralistic concept

Since Erving Goffman introduced the concept of framing, it has not only been

developed and diversified, but also repeatedly challenged. Much of the subsequent debate derives from the great explanatory potential, but also the great vagueness of the concept as Goffman defined it. Frames, to Goffman, are the "...principles of organization which govern events - at least social ones - and our subjective involvement in them" (1974, p. 10-11). More specifically, frames are the "schemata of interpretation" that allow people to partake in social interaction; frames are means of locating, perceiving, identifying and labeling experiences that provide the interpreter with an understanding of what is going on and how he/she should react to it (1974, p. 21). In Goffman's microsociological conception, then, frames help individuals structure and interpret their surroundings, but this does not mean that frames are purely cognitive phenomena. Rather, Goffman suggests that frames do not just exist in our heads, but may be read out of - or perhaps into - the social interaction (1981, p. 62). Here, crucial questions arise: Are frames cognitive or communicative phenomena? And if they are both, how may they be studied as such?

Daniel Kahneman and Amos Tversky provide one possible answer to these questions. Kahneman and Tversky set up experiments testing peoples' reactions to a text in which specific words were changed. Thus, they have shown that people choose different courses of action according to the positive or negative framing of a matter; whether an event is framed in terms of 'saving' or 'dying' is literally a matter of life and death (Kahneman & Tversky 1984). Whereas this psychological take on the issue includes the communicated dimension of framing as the independent variable (the factor that is changed in order to measure people's reactions to the change), it is the cognitive dimension that is at the heart of the research.

A more explicit focus on the communicative dimension of framing is found in the work of cognitive linguists such as George Lakoff. Although maintaining the cognitive importance of frames, Lakoff focuses more on what causes the cognition than on the cognitive process as such; that is, his focus is on language. Lakoff coins the term surface frames for the communicative dimension of framing, and he studies how specific changes in the surface frames may alter our perception of the phenomena in question (Lakoff, 2004; 1999). His prime examples stem from political debate in the US, and he argues that the Democratic Party has overtaken frames that are to the advantage of the Republican Party instead of establishing their own alternative frames. For instance, framing the discussion on whether or not to lower the taxes in terms of 'tax relief' means that taxation is basically seen

as a burden, and this gives the Republicans the upper hand (Lakoff, 2004, p. 24-26). Although Lakoff is concerned with the effects of framing, he does not conduct experimental research, but focuses on the ways in which topics are framed in communication and what frames come to dominate public debates (and other communicative processes).

Within media studies a combination of the foci on communication and cognition is seen in several influential investigations. For instance, Shanto Iyengar and Donald R. Kinder (1987) and Joseph Cappella and Kathleen Hall Jamieson (1997) have conducted major studies that both identify dominant news frames and people's reactions to such frames. In this context the notion of framing is linked to that of agenda setting; what is presented in the news, how is it presented, and what are the consequences? (Dainton & Zelley, 2005, p. 199-200). Hence, there is a movement from the institutionalized forms of communication of the news media to the perception of the news that takes place in the minds of individual recipients.

The movement from media to recipients that characterizes studies of the communication and reception of news frames points to another crucial ambiguity in Goffman's conception of frames: are they individual or are they social? Goffman himself emphasized the primacy of the social, but nevertheless studied frames in their individual manifestations (1974, p. 13). The application of frames in media studies seems to begin from the social level and move to the individual level. In focusing on social movements Robert Benford and David Snow (1988; 2000) have performed a similar move. Furthermore, they emphasize how frames may provide the backdrop of not only individual, but also social action. Thus, the locus of framing is placed at the level of "situated social interaction," and quoting Mikhail Bakhtin Snow and Benford define framing as a dialogical phenomenon that exists "not within us, but between us" (2005, p. 205).

Addressing the issue of the individual or social character of framing, then, implicitly tackles the issue of their cognitive or communicated status as well. If frames are social, they are also communicated, existing as forms and patterns of dialogue and debate before they come to organize and define the individual's interpretation of social actions and events. This does not mean that studying cognitive reactions to or applications of frames becomes uninteresting, but it means that analysis of the communicated - or surface - frames is the place to start.

3. Argumentative frames

As our short review of the field shows, framing is a rather broad and slippery concept. Goffman's introduction of the concept laid the ground for this ambiguity, and two issues have been particularly central to the subsequent discussions on the definition and use of framing: are frames cognitive or communicative processes? And are they individual or social phenomena? As indicated above, different schools, fields, and perspectives have placed the emphasis differently, wherefore there are today both theories that view frames as pertaining to the level of individual cognition and theories that highlight the social and communicative aspect of framing. In other words: one concept, many interpretations.

In the following we will adopt a narrow focus, and instead of seeking direct answers to the traditional issues of framing – cognitive or communicative, individual or social – we will look at framing as argumentation and ask: which argumentative forms does framing represent? Should one particular form of argumentation or several different forms be linked with framing? In other words, what argumentative moves are performed when one argues by framing?

Before answering these specific questions, however, it seems necessary to consider what we generally mean by framing in an argumentative context. We must make an initial distinction between the types of argumentative moves that may be linked to framing and the types that may not. What we are looking for is a tentative and pragmatic definition and delimitation of the phenomenon of argumentative framing. The following considerations, then, are meant as a means of pointing at the type(s) of argumentation that will be analyzed and discussed in the following, not as an exhaustive list of argumentative frames, let alone a definition of framing as such.

For our specific purposes Jim Kuypers' rhetorical approach to framing offers a useful starting point. According to Kuypers "framing is a process whereby communicators, consciously or unconsciously, act to construct a point of view that encourages the facts of a given situation to be interpreted by others in a particular manner..." (2006: p. 8). Several keywords of this quote point to our understanding of what is at stake in argumentation that hinges on framing. First, the word 'construct' shows that we are dealing with argumentation that orders or forms the object of the argumentation – as opposed to argumentation that works by inferring or deducing the relevant conclusions. Second, the word 'interpreted'

suggests that argumentation based on framing is meant to make the audience view the object in a certain way – again, in contrast to making the audience infer particular conclusions. Finally, framing-based argumentation is characterized by its starting point in ‘a given situation’, not a given set of premises.

It is the move from the case to its premises that is at stake in framing-based argumentation – not the move from premises to conclusion which is the point of other argumentative forms. The argumentative forms of framing begin from a given situation and work by constructing a certain perspective that makes the audience interpret the case in a specific manner. Thus, framing is set apart from argumentative forms as such; the notion comes to encompass a certain set of moves within argumentation – a certain way of arguing. The type of argumentation which relates to framing and which we will seek to unpack by means of the theory of stasis, then, is argumentation aimed at changing and/or deciding what is to count as the premises of a case.

4. The teaching of stasis

The coupling of framing with argumentation aimed at changing and/or deciding what is to count as the premises of a case narrows in the argumentative field to which the concept holds relevance. However, it is not necessarily a singular definition pointing to one and just one argumentative form. Even when starting from a given situation, there are several possible means of constructing a perspective that will make the audience interpret the case in a certain way. In the following we will explore different possibilities; that is, specific argumentative forms of framing. Taking our starting point in the theory of stasis we will show that framing-based argumentation can be divided into (at least) two groups and that these groups refer to quite different modes of reasoning. In order to do so we will first present the rationale behind the classical theory and introduce the four stases that form the centerpiece of it. Then we will argue that two of the four stases – status definitivus and status translatus – represent two distinct forms of framing-based argumentation, whereas the other two stases – status conjecturalis and status qualitatis – should not be seen as framing devices. In unpacking the argumentative forms of framing that may be associated with status definitivus and status translatus we hope to establish a distinction that may help clarify what argumentative framing actually is and what it can be used for.

As is the case with other classical rhetorical concepts and systems, the origin of the theory of stasis is somewhat disputed – just as discussion on the right

interpretation of this theory prevails. In a work that is now lost Hermagoras supposedly was the first to present the theory of stasis as we know it today; that is to say, as a theory the purpose of which is to determine the central issue of dispute in a given case (Hohmann, 2001, p. 741; Braet, 1987, p. 79). The central question, then, is: at what level should discussion be conducted? There is some dispute as to how many levels the answer to this question should result in: three or four? (Hohmann, 1989). In the Greek tradition as introduced by Hermagoras and elaborated by Hermogenes four distinct stases were applied (Nadeau, 1964), but in the Roman tradition as primarily represented by Cicero and Quintilian only three stases were employed (Cicero De Oratore II, p. 113; Orator, p. 45; Quintilian Institutio Oratoria, book VII; for an exception to this rule see Cicero De Inventionem I, p. 10). The reason for only mentioning three stases was a desire to present a system that could be applied to rhetoric broadly, and the fourth status was said to relate only to the forensic genre (Hohmann, 2001, p. 742-743). As we will explain below, we tackle the issue of the fourth status differently and, therefore, propose to include all four in broader conceptualizations of the teaching of the stasis and not only in the version of the theory that pertains narrowly to legal disputes.

The theory of stasis, then, lists four possible levels of dispute – four different stases: status conjecturalis, status definitivus, status qualitatis, and status translatus. In the following table we present the four stases, the level at which each status operates, a classical example, and examples from the debate on the real estate market so as to begin the coupling of our modern example of choice and our theoretical focal point.

The four stases

Name	Status conjecturalis	Status definitivus	Status qualitatis	Status Translatus
Level of inquiry	The formal level At this level the facts of the case are discussed: what is the case?	The defining level At this level the categorization of the case is discussed: how should the case be defined?	The valuating level At this level the evaluation of the case is discussed: what should we think of the case?	The transcending level At this level the criteria of evaluation of the case are discussed: which criteria should be used to evaluate the case?
Classical example (Conley 1990, p. 32)	A man is caught burying a corpse in an isolated place and is accused of murder: he did not kill him.	He acted in self-defense and did not commit murder.	The action was honorable, because the man was an adulterer.	The current court is not the proper judge of this case.
Examples about real estate	Various market indicators point to imminent changes in the market: the prices of real estate are not falling.	Developments on the real estate market are expressions of: - a soft landing - seasonal changes.	It is positive that the prices are adjusted because: - we will avoid a collapse of the market - first time buyers are allowed to enter the market again.	The important issue is not prices, but: - psychological factors - economy on a larger scale - long-term market developments.

All four stases make for interesting forms of argumentation, but *status definitivus* and *status translativus* are of particular importance to the present investigation. These two stases may be identified as argumentative forms of framing: argumentation based on categorization and definition as well as argumentation based on displacements of the employed criteria of evaluation basically function to make the case appear in a certain manner, to make the audience interpret the various elements of the case in one way rather than the other – the central issue of our definition of framing. In other words, we claim that both *status definitivus* and *status translativus* are movements from the case to the premises; it is the understanding of the case as such that is at stake in these two forms of argumentation. In this sense, the two stases resemble Kuypers' observation that framing is about content as well as context (2009, p. 188), a point which we will explore in further detail below, but first let us consider the other two stases in order to explain why we do not think they are argumentative forms of framing.

Status conjecturalis and *status qualitatis* are classical enthymematic arguments in which the conclusion follows from the premises and, therefore, do not appear to be argumentative forms of framing. Two explications of the warrants that are often implicit in practical use of the stases may illustrate this: if the experts say there is no fall in prices, there is no fall in prices (*conjecturalis*); if the prices are falling, first-time buyers will benefit (*qualitatis*). In both cases the arguments follow inferential patterns rather than performing the establishment or shift in the premises of interpretation that is characteristic of framing. This is not to say that it would be impossible to reinterpret *status conjecturalis* and *status qualitatis* as argumentative forms of framing. We only argue that *status definitivus* and *status translativus* take up a special position since they are immediately compatible with the notion of framing. *Status definitivus* and *status translativus* also immediately point to two distinct forms of framing and this is what makes it particularly interesting to unfold them here.

The interpretation of *status definitivus* as an argumentative form of framing follows more or less directly from the usual definitions of *definitivus* on the one hand and framing on the other. First and foremost the term 'definition' is an explicit part of many definitions of framing (most notably Entman 1993, p. 52). A definition of the disputed issue – or case in question – is central to the audience's reading and interpretation of it. By placing a matter in one category, other categories are rejected. Moreover, definitions usually work at the level of specific

words or concepts at which attempts at framing is arguably most clearly visible (cf. Lakoff's notion of surface frames that is tied to a choice of words).

The discussion on how to categorize developments on the real estate market clearly illustrates how framing through definition works at the level of words and concepts: is an apparent fall in prices a bubble bursting, a soft landing or a natural correction? Each definition becomes possible by highlighting some elements of the case rather than others, and, in turn, functions to make the audience highlight the same elements when interpreting the matter. The choice of definition – or frame – actualizes one set of premises rather than other possible starting points of argumentation and alters the interpretation of the case that audiences are invited to make.

At its most basic, the strategy of definition can be described by the formula A is B wherefore this argumentative form of framing is internal to the case. As illustrated above, a definition is based on weighing the different elements of the case against each other: is the fall in prices accelerating (a sign of a bursting bubble), is it a slow movement (closer to the notion of the soft landing), was it long expected (a natural correction)? And how may the use of definitions induce audiences to interpret the case as either a fast, a slow, or an expected development?

To conclude the discussion of status definitivus, it is by considering, selecting, and labeling the available information that the case may be defined. When framing through definition, then, focus is directed inwards at the different elements of the case and the various categories that it is possible to apply to these elements. The form of framing that is exposed through consideration of status definitivus is about the conceptualization and categorization of the case. Thus, the interpretation of the case is steered or given direction by accentuating some elements of the case and ignoring others.

The interpretation of status translativus as a form of framing is, perhaps, less obvious. Classically understood, this status is a movement of the physical setting of a case: for instance, from the High Court to the Supreme Court or from a court of justice to 'the court of the people'. However, we believe that translativus may also be understood as a change of scenes in a broader, metaphorical sense (Just & Gabrielsen 2008). Here, we follow the line of thinking that suggests this fourth status must be redefined in order to be applied to a broad range of contemporary issues rather than just the juridical genre of classical times (Gross 2004; Kramer

& Olson 2002). Instead of delimiting *translativus* to being about deciding who should judge, we see it as being more broadly about deciding the criteria for judgment.

Thereby, *status translativus* becomes a general strategy that may be used outside of the narrowly forensic context. Moreover, this widening of the strategy makes the interpretation of *translativus* as an argumentative form of framing more apparent: changing the criteria used in judging a case is a basic way of influencing how the audience interprets the case. When understood metaphorically, changing the scene is akin to framing; it is a strategy that changes the premises of the case.

When this *status* is used by the participants in the debate on real estate several possible shifts are employed and discussed: should the developments on the real estate market be evaluated in the short or the long term? Should economic or emotional criteria be used as the basis of evaluation? And who should perform the evaluation – sellers, buyers, real estate agents, economists, or some other party? Depending on which frame is used – and which becomes dominant in the debate – the criteria for interpreting and evaluating the case change.

When reinterpreted in this manner *status translativus* can be described by the formula A should be evaluated on the basis of B, making it an argumentative form of framing that is external to the case. In opposition to *definitivus* which functions as an internal conceptualization of the case *translativus* works as an external contextualization. Rather than weighing the elements of the case and including/excluding them in the definition, the strategy of *translativus* works by setting up the factors or criteria which the case is held up against. As exemplified above the real estate market may be held up to the standard of making profit which is a frame of private economy, but it may also be reinterpreted as a matter of national economy or the economic frame may be swapped for an emotional one: buy with your heart rather than your wallet.

In sum, framing by means of *status translativus* directs attention outwards at the various factors with which the case should be associated and/or the criteria with which the case should be evaluated. The form of framing that is exposed through consideration of *translativus* is focused on the contextualization of the case. The interpretation of the case is influenced through a change of the external criteria on which interpretation and evaluation should be based.

As the examples of how *status definitivus* and *status translativus* may be applied

to the real estate market indicate the basic formulas of the two stases are rather similar at the formal level. This becomes most apparent when considering the type of definition that may be labeled dissociative (Perelman & Olbrechts-Tyteca 1969, p. 444): A is not B, but C; we are not witnessing a recession, but a deceleration. Almost the same extension may be used in the case of the basic formula of translatus: A should not be judged in terms of B, but C; you should not buy a house as speculation, but because you need a place to stay. The similarity in the two stases shows that they are both argumentative forms of framing, but the examples also illustrate the difference of the two stases as frames: one frames the case in terms of its internal concepts, the other frames it in terms of its external context.

5. Conclusion

We have drawn attention to the ways in which status definitivus and status translatus function as argumentative forms of framing. The levels of dispute that they represent are both about how to interpret the case – and about what should be the premises of the case – and it is in this sense that they may be understood as framing. However, the two stases do not represent the same form of framing; rather, internal definition and external transcendence are quite different moves. Thus, we have identified two distinct argumentative forms of framing that may clarify what framing is.

Such clarification is important because the notion of framing has been an export success. From its origin in the microsociological work of Erving Goffman it has, as we have briefly sketched out, been applied within a wide variety of fields. The concept of framing has proved to contain a large explanatory potential, but it has also become a diffuse and contested concept, and scholars have repeatedly called for a clarification of it.

By reversing the direction of import-export and applying the teaching of stasis – a center-piece of classical argumentation theory – to the notion of framing we hope to have contributed to the clarification of framing in the context of argumentation. Furthermore, we hope that this movement from argumentation theory to framing may be followed up by taking the revised and refined notion of framing back to the field of argumentation, that it will now prove to be both more readily applicable to studies of practical argumentation, and that such applications may be more rewarding.

In discussing framing in terms of the stases we have both pointed out that not all

forms of argumentation are framing and that there is more than one argumentative form of framing. Thus, we do not believe *status conjecturalis* and *status qualitatis* to be argumentative frames, whereas we believe *status definitivus* and *status translativus* to represent distinct argumentative frames. We are by no means certain that there are only two argumentative forms of framing, but the internal framing of concepts that emerges from the consideration of *status definitivus* and the external framing of contexts that is pointed out through the reconceptualization of *status translativus* are in our opinion very basic and important argumentative forms of framing. The identification of these two forms may form the starting point for both applications of the concept of framing in studies of practical argumentation and further refinements of the concept in terms of argumentation theory.

REFERENCES

- Benford, R. D., & Snow, D. A. (2000). Framing processes and social movements: An overview and assessment. *Annual Review of Sociology*, 26, 611-639.
- Bertea, S. (2004). Certainty, reasonableness and argumentation in law. *Argumentation*, 18(4), 465-478.
- Braet, A. (1987). The classical doctrine of status and the rhetorical theory of argumentation. *Philosophy and Rhetoric*, 20(2), 79-93.
- Cappella, J. N., & Jamieson, K. H. (1997). *Spiral of Cynicism. The Press and the Public Good*. New York: Oxford University Press.
- Cicero, M. T. (1993). *De Inventione*. Cambridge, Massachusetts: The Loeb Classical Library. Harvard University Press.
- Cicero, M. T. (2003a). *De Oratore*. *Retoriske Skrifter I*. Odense: Syddansk Universitetsforlag.
- Cicero, M. T. (2003b). *Orator*. *Retoriske Skrifter II & III*. Odense: Syddansk Universitetsforlag.
- Conger, J. A. (1991). Inspiring others. The language of leadership. *Academy of Management Executive*, 5(1), 31-45.
- Conley, T. M. (1990). *Rhetoric in the European Tradition*. Chicago: The University of Chicago Press.
- Dainton, M., & Zelle, E. D. (2005). *Applying Communication Theory for Professional Life*. Thousand Oaks: Sage.
- de Vreese, C. H., & Elenbaas, M. (2008). Media in the game of politics: Effects of strategic metacoverage on political cynicism. *International Journal of Press/Politics*, 13(3), 285-309.

- Entman, R. M. (1993). Framing: Towards clarification of a fractured paradigm. *Journal of Communication*, 43, 51-58.
- Freeman, J. B. (2001). Argument structure and disciplinary perspective. *Journal of Argumentation*, 15(4), 397-423.
- Garrett, M. M. (1997). Chinese buddhist religious disputation. *Argumentation*, 11 (1), 195-209.
- Goffman, E. (1974). *Frame Analysis: An Essay on the Organization of Experience*. London: Harper and Row.
- Goffman, E. (1981). A reply to Denzin and Keller. *Contemporary Sociology*, 10 (1), 60-68.
- Gross, A. G. (2004). Why Hermagoras still matters: The fourth stasis and interdisciplinarity. *Rhetoric Review*, 23, 141-155.
- Hallahan, K. (2008). Seven models of framing: Implications for public relations. *Journal of Public Relations Research*, 11(3), 205-242.
- Hample, D., Han, B., & Payne, D. (2009). The aggressiveness of playful arguments. *Argumentation*, online first, 1-17.
- Hample, D., Warner, B., & Young, D. (2009). Framing and editing interpersonal arguments. *Argumentation*, 23(1), 21-37.
- Hodgkinson, G. P. et al. (1999): Breaking the frame: An analysis of strategic cognition and decision making under uncertainty. *Strategic Management Journal*, 20, 977-985.
- Hoffman, M. (2006). Framing: An epistemological analysis. Retrieved July 13th 2010 from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=916007.
- Hohmann, H. (1989). The dynamics of stasis: Classical rhetorical theory and modern legal argumentation. *The American Journal of Jurisprudence*, 34, 171-197.
- Hohmann, H. (2001). Stasis. In T. O. Sloane (Ed.), *Encyclopedia of Rhetoric* (pp. 741-745). New York: Oxford University Press.
- Iyengar, S. (1991). *Is Anyone Responsible? How Television Frames Political Issues*. Chicago: The University of Chicago Press.
- Iyengar, S., & Kinder, D. R. (1987). *News that Matters. Television and American Opinion*. Chicago: The University of Chicago Press.
- Just, S. N., & Gabrielsen, J. (2008). Boligmarkedet mellem tal og tale. *Rhetorica Scandinavica*, 48, 17-36.
- Kahneman, D., & Tversky, A. (1984). Choice, values and frames. *American Psychologist*, 39, 341-350.
- Kramer, M. R., & Olson, K. M. (2002). The strategic potential of sequencing apologia stases: President Clinton's self-defense in the Monica Lewinsky scandal.

Western Journal of Communication, 66, 347-368.

Kuypers, J. A. (2006). *Bush's War. Media Bias and Justifications for War in a Terrorist Age*. Lanham: Rowman & Littlefield.

Kuypers, J. A. (2009). Framing analysis. In J. A. Kuypers (Ed.), *Rhetorical Criticism. Perspectives in Action* (pp. 181-204). Lanham: Lexington Books.

Lakoff, G. (1999). *Moral Politics: How Liberals and Conservative Think*. New York: Farrar, Straus and Giroux.

Lakoff, G. (2004). *Don't Think of an Elephant: Know Your Values and Frame the Debate*. Vermont: Chelsea Green Publishing Company.

Nadeau, R. (1964). Hermogenes' On Stases: A translation with an introduction and notes. *Speech Monographs*, 31(4), 361-424.

Perelman, C., & Olbrechts-Tyteca, L. (1969). *The New Rhetoric. A Treatise on Argumentation*. Notre Dame: University of Notre Dame Press.

Pontoppidan, C., Gabrielsen, J., & Jønch-Clausen, H. (2010). Topik - Et retorisk bidrag til den kritiske journalistik. *Nordicom Information*, 32(1), 47 - 59.

Scheufele, D. A. (1999). Framing as a theory of media effects. *Journal of Communication*, 49(1), 103-122.

Snow, D. A. & Benford, R. D. (1988). Ideology, frame resonance, and participant mobilization. *International Social Movement Research*, 1, 197-217.

Snow, D. A., & Benford, R. D. (2005). Clarifying the relationship between framing and ideology. In H. Johnston & J. A. Noakes (Eds.), *Frames of Protest. Social Movements and the Framing Perspective* (pp. 205-212). Lanham: Rowman & Littlefield.

Smircich, L., & Morgan, G. (1982). Leadership: The management of meaning. *The Journal of Applied Behavioral Science*, 18(2), 257-273.

Tannen, D. (Ed.) (1993). *Framing in Discourse*. Oxford: Oxford University Press.

Wohlrapp, H. (1998). A new light on non-deductive argumentation schemes. *Argumentation*, 12, 341-350.

Strategically Manoeuvring With Reporting In The Argumentation Stage Of A Critical Discussion



1. Introduction

This analysis is part of a larger research project[i] which investigates the argumentative potential of reports within the theoretical background of pragma-dialectics enlarged with rhetorical insights, as it has been developed by van Eemeren & Houtlosser (1999, 2000, 2002). We are more specifically interested in exploring the possibilities for strategic manoeuvring with anonymous reports, i. e. reports that provide no specific reference to the information source, but vaguely place it under the responsibility of the community as it is the case with utterances such as *People say that*, *The word goes that*, *Rumour has it that*, etc. This analysis is confined to the investigation of the dialectical and rhetorical goals that might be served in using the specific presentational device of anonymous reports in the argumentation stage. In doing it, we shall first provide a pragmatic description of this type of assertives in order to point to the effects of their use in discourse. In general terms, in using anonymous reports, the speaker has the possibility to advance information for whose truthfulness he cannot be apparently held responsible. Given this peculiarity of presentation in adducing arguments, we shall examine how the dialectical aim of the argumentation stage is fulfilled, while, in point of rhetorical goal, we shall describe to what extent the use of this presentational device makes the speaker's arguments stronger and more efficient.

2. Anonymous reports: pragmatic description

Anonymous reports such as *People say that*, *The word goes that*, *Rumour has it that*, etc. may be defined as an instance of indirect reported speech characterized by the occultation of the identity of the information source. They belong to the large category of hearsay evidentiality which opposes, according to Gâță (2009, p. 490), two main subcategories, quotative vs. non-quotative and reporting one's assertions vs. reporting the other's words. According to this classification, anonymous reports are non-quotative and they are used to report the other's words.

Reporting amounts to the accomplishment of a polyphonic communicative act where boundaries may be set between the constitutive voices, i. e. the original speaker and the reporting one. Given the existence of the two instances, the question of commitment to content rises: Who commits to which content? Since reporting represents the linguistic process meant to entirely or only partially display or render an original utterance, in terms of commitment and responsibility taken, in the indirect reported speech, the speaker is generally supposed to vouch for the previous performance of a speech act where he was either the addressee or a witness. In reporting it, he makes himself responsible for the interpretation of this initial speech act and engages upon rendering both its content and the form under which the content was initially uttered. Coulmas (1986, p. 2) speaks about a change in perspective when referring to indirect reported speech: unlike the direct style where the reporter quotes the reportee's speech and reports it from the latter's perspective, in the indirect reported speech, the reporter interprets the reportee's discourse and reports it with his own words. An accurate reporting depends on several conditions: the reporting speaker's access to the context where the initial speech act was performed, his capacity to correctly decode the communicative effect aimed at by the original speaker and, not in the least, his real intention to provide a faithful report. Since the insertion of reports in the host discourse is meant to achieve certain purposes, speakers may resort to deliberate omissions, emphases, adaptations or alterations of the original speech act in a way that best suits their interests. Moreover, Bakhtin (1981, p. 340) states that "the speech of another, once enclosed in a context, is – no matter how accurately transmitted – always subject to certain semantic changes".

In reporting another's speech, speakers signal the degree of correspondence between the reported content and the original one through the type of reportive prefix used. In English, there is a wide range of phrases that can be used in making anonymous reports, their selection depending on what the reporting speaker can or is willing to disclose about the author's identity of the original speech act or, more generally, about the context of performance of the initial speech act. The type of reportive prefixes we focus this analysis on puts forward the community as the author of the original speech act. This doxa voice may be directly designated by the hyperonym *people* or the indefinite *they* combined with a speech verb (*say, tell, rumour, report, etc.*) or metonymically by speech nouns such as *word, rumour, report, story, etc.* In the latter case, the nouns may be combined with a movement verb lexicalizing the indefinite trajectory in spreading

the report and may optionally take a locative, resulting into utterances such as *The word / story / report goes that, There is some talk that, There is a rumour abroad / afloat / in the air that, There is a report going, Some gossip is flying round*, etc. We also include in this category of reportive prefixes the idiomatic phrases *Rumour / Report has it* which feature speech nouns as well as the passivised structures *It is said / reported / rumoured that*, etc.

In using this type of reportive phrases, the reporting speaker holds himself responsible for reporting information which circulates within a community, without being able to specify the identity of the original speaker and to certify whether the reported content is the exact representation of the original one. In spite of this information implicitly communicated to the hearer, when using anonymous reports in an argumentative context, the speaker is expected to have a certain position to the content. Therefore, be it less overtly, the speaker commits himself to the truth of the propositional content reported, and, moreover, as anonymous reports represent a subclass of assertives, he is expected to be able to present evidence to account for it if requested (van Eemeren & Grootendorst 1992, p. 38).

In point of discourse effects, the speaker benefits from the apparent attitude of reserve implied by the use of anonymous reportive prefixes which put forward the community as lying behind the creation and circulation of the report. Resembling at this point the popular opinion type of utterances by seemingly invoking commonly accepted presumptions and opinions, anonymous reports enable the speaker to bring some information to the hearer's attention. This form may be favoured against the plain assertion because the opacity of an anonymous report allows him to do more than he claims to be doing: while only pretending to ensure the further transmission of the content, he hides behind the public voice with a view to getting across some information and to using it in the argumentation.

3. Arguing with anonymous reports

As an instance of assertives, anonymous reports may be used in a critical discussion at the confrontation stage where they can express the standpoint at issue; at the argumentation stage, as arguments adduced in defence of that standpoint or in the concluding stage to express the outcome of the discussion (van Eemeren & Grootendorst 1992, p. 38). According to the model of critical discussion, "the argumentation stage corresponds with the phase in which one party adduces arguments in order to overcome the other party's doubts about the

standpoint, and the other party reacts to those arguments” (van Eemeren, Grootendorst & Snoeck Henkemans 1996, p. 282).

In the argumentation stage, the arguers proceed to justify or refute the standpoint at issue, resorting to argumentation schemes which enable them to create specific relationships between the arguments adduced and the standpoint in case. According to the pragma-dialectical theory of argumentation, there are three main types of justifying relationships argumentation is based on, i.e. argumentation by comparison, instrumental argumentation, and symptomatic argumentation (van Eemeren & Grootendorst, 1992, pp. 96-102). When making use of a particular argumentation scheme, the speaker takes the first step in a dialectical testing procedure that verifies whether the argumentation is resistant to specific forms of criticism. As a protective measure in ensuring the success of the justification process, the speaker may respond in advance to the anticipated criticism raised by the opposition by providing responses to possible objections.

Dialectically, anonymous reports are vulnerable because of the speaker’s impossibility to produce evidence for the truthfulness or correctness of the content reported since he acknowledges having had access to the information via hearsay. That is why advancing anonymous reports as arguments is excluded in argumentation in institutionalized contexts such as legal, political, academic discourse since practicing argumentation in these contexts is necessarily evidence-based. Nevertheless, in less constraining types of discourse, resorting to anonymous reports to support a standpoint is current when disclosing unconfirmed information, as it is the case with journalistic discourse where there is a protection policy of information sources. However, even in this context, choosing anonymous reports as arguments does not comply with the dialectical standards of reasonableness. This particular way of presenting an argument implies the speaker’s impossibility to have access to the context where the initial speech act was performed, therefore to the initial assertive act, and to prove the truth of the propositional content. But this is exactly what the speaker wants to elude: he deliberately prefers to build his plea based on arguments whose accuracy is difficult to check and thus more difficult to refute.

For instance, when arguing that

(1) During recession some rich people become richer. People say that the billionaire Bill Jones has seen his fortune doubled since last November.

the speaker uses an anonymous report as an argument from example, a subtype

of symptomatic argument, to support the standpoint that *during recession some rich people become richer*. The dialectical profile established by van Eemeren, Houtlosser and Snoeck Henkemans (2007, pp. 154-155) for the symptomatic argumentation describes the type of relationship the speaker creates between the argument and the standpoint at issue as “a property, class membership, distinctive characteristic, or essence of a particular thing, person, or situation” that is mentioned, implying “that this thing, person or situation also has the characteristic property that is ascribed to it in the standpoint”. In advancing this argument from example, the speaker builds his argumentation by pointing out to the existence of a relation of concomitance between what is stated in the argument and what is stated in the standpoint. In (1), the billionaire Bill Jones’s financial growth since last November counts, in the arguer’s point of view, as an illustration of the generalising statement claimed in the standpoint which is typical for the argumentation of example where “separate facts are represented as special cases of something general” (Garssen in van Eemeren, Houtlosser & Snoeck Henkemans 2007, p. 155). There are several elements of concomitance that the speaker bases his argumentation from example on: the lapse of time referred to (*since last November*) coincides with the recession period, *the billionaire* Bill Jones’s present financial state accounts for his belonging to the class of the rich, and, not in the least, what counts in (1) as the unexpressed premise the arguer can be held responsible for, having one’s fortune doubled is a sign of getting richer. In the case of argumentation from example, the weight of the example ensures the transfer of acceptability from the argument to the standpoint and, in advancing one, the arguer is bound to wonder whether the particular case invoked is really representative for what is claimed in the standpoint. However, unless the speaker can produce evidence to account for the truth of the reported news concerning Bill Jones’s financial growth, the argumentation scheme he uses cannot resist the exam of dialectical reasonableness. This is also proved in (2) where the speaker uses coordinative argumentation in order to supplement the potency of the example expressed through an anonymous report with an additional argument from example:

(2) Much daunting stories and myths about the beige spider often give people the creeps: the word goes that this species can eat out flesh portions after injecting a form of anesthetic in the victim’s body, not to reveal that its dimensions are justly impressive. **[ii]** (http://www.articlealley.com/article_784314_54.html)

The characteristic of devouring victims is reinforced by the impressive dimensions

of the arachnid, which results into picturing a savage description of the beige spider. These features are thought to be relevant for considering the spider a fearful species that makes daunting stories circulate on its account. In this case, the argument from example appears as more resistant to attacks since it provides factual data that can be verified with respect to their accuracy. The fact that this content is presented as the object of an anonymous report, a common opinion that is widely spread around, is meant to substantiate its truth value. Nevertheless, this strategic choice is bound to fail provided that evidence cannot be produced to prove the information right.

In the following excerpt, the anonymous report functions as a causal argument:

(3) I am considering buying a house on the outskirts. The word goes their price will rocket in the following years.

Argumentation based on a causal relationship is defined by van Eemeren, Houtlosser, Snoeck Henkemans (2007, p. 164) as representing the cause of the standpoint, or, the other way round, the standpoint as the cause of the argument. In (3), the argument features the cause of the result presented in the standpoint, namely that the predicted boom in the price of outskirts houses is the cause for considering buying one. In using this argumentation scheme, the speaker holds himself responsible for considering that prognosticated rising prices of houses leads to wanting to buy one at a lower price. The speaker presents the content of the anonymous report as sufficient cause leading to making the decision referred to in the standpoint. The causal relationship proposed by the speaker is supported by the fact that the realization of the state of affairs described in the causal argument is very likely to happen and matches people's beliefs and representations of life: continuous rise in prices is not excluded in the context of unstable financial market. Nonetheless, as it was the case with (1) and (2), (3) may be reasonably accepted as long as proofs can be adduced to support the truth of the propositional content.

Irrespective of the type of argumentation scheme where anonymous report arguments may be included, in using them, the speaker advances contents whose truthfulness he commits to, even though he presents them as belonging to and emanating from the community. Being unable to vouch for the truth of the content, the speaker presents this information as widely circulating around with a view to conferring it argumentative tenability. In fact, the arguer is well aware of the fact that, psychologically, people are bound to accept as true what many

others have accepted as such since one condition in ensuring the survival and perpetuation of rumours – to which anonymous reports are similar – is that they should match people's beliefs or representations of life. Anonymous reports appear therefore as making part of a strategic schema used by the speaker in order to make a standpoint seem valid based on what people say and which should consequently be granted credibility.

4. Strategic manoeuvring with anonymous reports

Van Eemeren and Houtlosser (1999, 2000, 2002) enlarged the pragma-dialectical approach to argumentation by incorporating a rhetorical component in the framework, starting from the prerequisite that, in argumentative discourse, arguers conduct the discussion based on reasonable standards in a way that is most favourable to them. Along the resolution process deployed within a critical discussion, arguers strategically manoeuvre with a view to reduce “the potential tension between pursuing at the same time a ‘dialectical’ as well as a ‘rhetorical’ aim” (Van Eemeren & Houtlosser 2002, p. 135). For each of the stages of a critical discussion, there is a dialectical aim corresponding to the allowable moves specified in the dialectical profile balanced by a rhetorical aim consisting in making the moves in the most efficient and convenient manner that serves the arguers' interests. According to Van Eemeren and Houtlosser, “strategic manoeuvring can take place in making an expedient choice from the options constituting the ‘topical potential’ associated with a particular discussion stage, in selecting a responsive adaptation to ‘audience demand’, and in exploiting the appropriate ‘presentational devices’ ” (2002, p. 139). Our approach focuses on the analysis of anonymous reports as presentational device in an attempt to describe them as achieving the dialectical and rhetorical aims in the argumentation stage.

The dialectical objective in the argumentation stage is to test the tenability of the standpoints that have shaped the difference of opinion in the confrontation stage, starting from the point of departure established in the opening stage (van Eemeren & Houtlosser 2002, p. 139). The rhetorical aim is for the arguers to make the strongest case and to launch the most effective attack. In order to achieve it, they will adduce arguments in favour or against the standpoint in the most efficient way possible. In using anonymous reports as arguments, the speaker takes benefits from the credibility of *Everybody thinks so* type of utterance on whose pattern *People say / The word goes that / Rumour has it that*, etc. utterances are shaped. Practically, in building their case, speakers act as if

the contents prefixed by these reportive phrases were widely acknowledged truths on which basis acceptability is transferred to the standpoint they are meant to support. In point of strategic manoeuvring, awarding a content a wider scope of circulation than it might be the case reveals the arguers' attempt to present the argument in a way that makes them stronger. It is more difficult to attack the voice of the community and besides, within a cause - effect reading (*there is no smoke without fire*), people are bound to grant credibility to rumours or assumptions presented as commonly shared within a community. When considering the anonymous report argument, one cannot refrain from wondering whether the content reported might not be the speaker's opinion which he presents as emanating from the community. In choosing this presentational device, the speaker counts on stirring the hearer's attention and curiosity since, according to psychologists (DiFonzo & Bordia 2007), rumours, to which anonymous reports are similar, feed on emotions, incite people and may result into changing their attitudes and behaviour. Consequently, people do not remain impassible to rumours, but in judging them, they are more likely to consider first the consequences or implications of what is rumoured and secondly consider their accuracy.

In the following excerpt, by employing anonymous reports in his argumentation, the speaker presents his argument in a way that makes it more prominent and grasps the hearer's attention.

(4) From the middle ages onwards (and probably even earlier) Belgium also has been a prime source for marble, actually it's not a genuine marble but a dense and hard limestone that shows very appealing ornamental patterns. Especially the red "marble" found around Rochefort and the black "marble" encountered around Yvoir where in high demand and got exported throughout Europe (the word goes that there's Belgian marble in St Peter's church in Rome).

(<http://www.mindat.org/article.php/563/Belgium,+Calcite+paradise>)

In this case, the example is suspended between brackets as an additional and supplementary extra-argument, apparently unnecessary in the economy of the discourse, yet mentioned just to replenish the argumentation process. Despite this facultative appearance of the example, the speaker is well aware of the role it has, namely bringing the particular on the stage in order to exemplify the validity of the claim, i.e. *Belgium has been a prime source of marble from the Middle Ages onwards*. Another gain is that the hearer will examine the argument from the

perspective of the source, the community, which facilitates belief and contributes to lending credibility to the standpoint. However, this might not be the case when the hearer is knowledgeable about the truthfulness of the propositional content put forward in the anonymous report (namely the source of the marble used in building St Peter's church in Rome) and proceeds to attack the argument and point to its invalidity. Proving the argument wrong is one of the ways to refute anonymous reports. A more rhetorically-oriented means to do it is to undermine the authority of the source used to grant credibility to the anonymously reported information. This can be done by advancing counterarguments emanating from an authority which is superior to the community. In this case, the anonymous report finds itself counterattacked with the same rhetorical device – the use of an authoritative source to prove the content true. This is reflected in the following excerpt where the speaker rejects the truth of what is anonymously reported around by introducing information originating in the Granth Sahib, the Holy Scripture of the Sikhs, a supreme authority in the speaker's point of view:

(5) But many misconcepts have taken place. For example, people say that sikhs cannot eat beef. This is utterly nonsense. It is not said in the granth sahib that beef cannot be eaten. And either is it said that people cannot eat meat.

The force of anonymous reports when used to put forward argumentation lies in the authority of the information source. In spite of the vague reference to the identity of the source, the speaker counts on the rhetoric use of anonymous reports which are based on popular-opinion like reading and are therefore readily granted credibility. The use of anonymous reports in argumentation appears therefore as an instance when the speaker reveals himself as being prone to persuading the opponent at the expense of remaining within the boundaries of dialectical reasonableness.

5. Conclusion

Anonymous reports represent a particular type of reported speech characterised by the occultation of the information source. In uttering them, the speaker transfers the responsibility for the creation and circulation of the information to the community. In spite of this denial of authorship, when used in an argumentative context, the speaker commits to the truthfulness of the content reported and may use the utterance as an argument, taking benefit from this particular way of putting forward information. Being dialectically vulnerable because of the speaker's impossibility to account for the truthfulness of the

content, anonymous reports represent rhetorical tools strategically manoeuvred by arguers in order to construct the most efficient claim and to attain their persuasive goal. While only pretending to restate what the others rumour round, arguers advance an argument in a way that best suits their interest, namely under the cover of the community voice, an authoritative instance, which makes any attack directed against the validity of the argument more difficult to pursue.

NOTES

[i] The research is financed by the Ministry of Education, Research, Youth and Sports of Romania, within the PN II -PCE - ID 1209/2007 research project.

[ii] All the examples in this paper are provided with their original spelling.

REFERENCES

- Bakhtin, M. M. (1981). *The Dialogic Imagination*. (C. Emerson & M. Holquist, Trans.). Austin: The University of Texas Press.
- Coulmas, F. (1986). Reported speech: some general issues. In F. Coulmas (Ed.), *Direct and indirect speech* (pp. 1-28). Berlin: Mouton de Gruyter.
- DiFonzo, N., & Bordia, P. (2007). *Rumour psychology: social and organizational approaches*. Washington, DC: American Psychological Association.
- Eemeren, F. H. van, & Grootendorst, R. (1992). *Argumentation, Communication, and Fallacies: A Pragma-Dialectical Perspective*. Hillsdale, NJ: Lawrence Erlbaum Associates.
- Eemeren, F.H. van, Grootendorst, R., Snoeck Henkemans, A.F., Blair, J.A., Johnson, R.H., Krabbe, E.C.W., et al. (1996). *Fundamentals of Argumentation Theory. A Handbook of Historical Backgrounds and Contemporary Developments*. Mahwah, NJ: Lawrence Erlbaum Associates.
- Eemeren, F.H. van, & Houtlosser, P. (1999). Strategic manoeuvring in argumentative discourse. *Discourse Studies* 1, 479-497.
- Eemeren, F.H. van, & Houtlosser, P. (2000). Rhetorical Analysis within a Pragma-Dialectical Framework. *Argumentation* 14, 293-305.
- Eemeren, F.H. van, & Houtlosser, P. (2002). Strategic Maneuvering: Maintaining a Delicate Balance. In F.H. van Eemeren & P. Houtlosser (Eds.), *Dialectic and Rhetoric. The Warp and Woof of Argumentation Analysis* (pp. 131-159). Dordrecht: Kluwer Academic Publishers.
- Eemeren, F. H. van, Houtlosser, P., & Snoeck Henkemans, A. F. (2007). *Argumentative Indicators In Discourse: A Pragma-dialectical Study*. Dordrecht: Springer.

Gătă, A. (2009). A Taxonomy of Evidential Functions. In I. Mohor-Ivan & G. I. Colipcă (Eds.), *Proceedings of the International Conference Identity, Alterity, Hybridity*, Galați, 14-16 May 2009 (pp. 482-491). Galați: GUP.

ISSA Proceedings 2010 - Drug Advertising And Clinical Practice: Establishing Topics Of Evaluation



1. Introduction

Preservation of patient autonomy in clinical decision-making is strongly advocated in Western models of medical practice. Ensconced in a physician's legal and moral responsibility is a duty to ensure the patient receives objective and impartial information that will support his/her ability to make an informed choice. Yet, there is a subtle disparity between 'presentational' and 'persuasional' strategies of providing information on risks and benefits in therapeutic decision-making (Fisher 2001). The process of informed consent, while institutionally sanctioned, is subject to social and political influences (Goodnight, 2006).

Like all institutional practices, doctor-patient interactions feature bounded communicative rationality. In order to reach an informed agreement, participants in a discussion may in principle appeal to ideal norms of consensus formation. In the routines of reasonable practice, such norms are constrained by the conventions, boundaries, interests and customs of an institutionally regulated forum. In the case of medical consultation, the interests of time and resources engage provider and client in a reciprocal exchange of argumentation, but from quite different perspectives, with different risks at stake. At the ontological level, a patient has his or her health to consider. At the professional level, a doctor has a duty to do no harm, a practice to consider, as well as state of the art credentials backed by peer review and licensing. If the consultation is productive, different

risks are minimized for both doctor and patient. Presumably, presumption – the right to question sufficiency of evidence and to say no – resides with the patient because his or her risks involve the less reversible outcomes of mortality. Best practices should be reviewed critically to evaluate communication norms, recognizing that such standards change over time because medical care evolves, state and private programs transform, and aspects of the human condition alter.

2. Biopolitics in the medical domain

The relationships between the institutions of medicine and the conventions of health constitute a subfield of the broader area of biopolitics. State regulations, scientific research, professional training, and public participation configure standing best practices for this field that maintains, as a core feature, the communicative exchange between doctor and patient. Schulz and Rubinelli (2008) define the “doctor-patient interaction” as “an information-seeking dialogue” where ideally a reasonable exchange occurs between requests for and provision of information to support the doctor’s principal goal to convince the patient of most likely diagnosis or best treatment option. Yet, the therapeutic relationship between a doctor and a patient is an iterative process complicated by the potential for emerging uncertainty and probability in medical discourse (Gilbert & Whyte 2009; forthcoming). The ‘reasonable’ exchanges in medical practice typically occur in the form of deliberative discussion where the future is not entirely known, relevant evidence is gathered and assessed, options evaluated, and a decision reached or deferred (Goodnight, 2006).

In an unfettered dialogue, conversation may follow the norms of exchange defined by normative approaches to argumentation, such as pragma-dialectics. Then, conversational rules are embedded resources of critical appeal used to reach and refine an informed agreement. In domains of practice, such as medicine, these norms are bounded by context. In the situated deliberations of medical consultation, Schultz and Rubinelli (2008) point out, asymmetries of doctor-patient interests result in discussions that depart from but are accountable to ideal norms. Departures due to unequal expertise, availability of time, and risk are nevertheless justified within the conventional practices of medicine. The practices of such biopolitics invite critical inquiry into how greater symmetries – that empower the doctor or the patient as needed – are reaffirmed or change.

Institutions that are relatively stable may develop known and trusted settings for communication. The forums of practice are legitimated by professional roles and

habits of advocacy that sustain and develop over time in ways that accommodate the needs of more inclusive publics. From time to time, institutional practices undergo shocks. New changes unsettle what is taken for granted as legitimate practices underwriting trustworthy communication. Modern medicine is in a state of rapid change due to the development of research and new options for treatment. Holmer reports that there are “more than 1000 new medicines in development – for Alzheimer disease, cancer, heart disease, stroke, infectious diseases, AIDS, arthritis, Parkinson disease, diabetes, and many other diseases – promising even more effective treatments and better outcomes in the future” (1999, p. 382). Trained doctors must master new medical options and techniques through reading journals, conference attendance, and industry detailing. The public faces an even greater educational challenge. Publicity has increased exponentially the amount of information available to the public, as Holmer confirms: “More than 50 consumer magazines about health care appear on the newsstands every month. Many television stations have a physician dispensing medical news. Nearly one quarter of the Internet is devoted to health care information” (Holmer, p. 380).

Medicine has been in a constant state of change, matching traditional remedies against new scientific research and findings. While drug advertising has been around for 300 years, much of it has offered unproven promises sold by ‘snake oil’ rhetoric. For example, between 1708 and 1938, “advertisements for patented medications claiming to treat everything from dandruff to infidelity could be found in magazines, newspapers, and traveling medicine shows” (Ghanji, 2008, p. 68). Marketing strategies then changed due to the strict regulation of pharmaceuticals. Dissemination of information about medical care and treatment became regulated by state rules that permitted scientific information in medical journals to guide the decisions of physicians while limiting advertising of prescription miracles to publics. In the 1990s, the expert model was partially dismantled by the United States and New Zealand which permitted direct to consumer (DTCA) advertising. The practice of DTCA has grown even as it remains significantly controversial (Coney, 2002; Mackenzie, Jordens & Ankeny *et al.*, 2007; Vitry, 2007).

We believe that argumentation studies should initiate critical practices in order to appraise the controversy brought about by these growing institutional appeals and examine the potential for advertising to influence the dialogical relationship

and deliberative norms of physician-patient engagement. The development of such norms requires critical attention to the consequences of advertising campaigns upon the relative communicative positions of doctor and patients who reason together and argue in the interest of health.

3. Institutional practice 'in flux'

Biopolitics includes controversies in the critical study of argumentation concerning the risks, resources, and boundaries of medical practices in the pursuit of health. The area includes questions of policy, expertise, and personal decision-making in the social-cultural spaces of influence. Particularly in times of wide-spread changes brought about by research, new technologies, or pressing population health conditions, institutional practices move from steady-state convention to conventions in flux, with resulting debates over the advantages and disadvantages of change. In this respect, David Dinglestad *et al* (1996) report "drugs are not only widely used but also widely debated." The question of advertising impacts on patient-doctor exchanges remains highly contested (Calfee, 2002; Gellad & Lyles, 2007; Gilbody, Wilson & Watt, 2005; Hoffman & Wilkes 1999, Rosenthal *et al.*, 2002; Bell *et al.*, 1999a, 1999b, 1999c). Much of the debate poses the economic ambitions of pharmaceutical companies against the kind of cooperative reasoning between doctors. In this respect, patient autonomy is integral to achieving competently fashioned informed consent, weighing the risk benefit of therapeutic intervention, and minimizing the medicalisation of normal human experiences (Mintzes, 2002; Wolfe, 2002; Main *et al.*, 2004).

Recently, the debates have been located primarily in the United States and New Zealand, the only countries where DTCA is fully permitted. In countries where DTCA is prohibited, pharmaceutical companies find other avenues to market their products to consumers; for example, internet, direct mail, meetings with patient groups, consumer targeted websites (Main *et al.*, 2004). As Sweet observes (2010, p.1), "electronic detailing, interactive websites, email prompts and viral marketing campaigns using social networking sites such as YouTube, MySpace and Facebook are among the tools being used". As the European Community, Canada and Australia ease regulatory changes or face pressures to do so, internet circulation of medical information is making national boundary conditions for practice vulnerable.

The marketing arm of the pharmaceutical industry has sponsored initiatives that have "revolutionized how medical information and treatment options are

disseminated to the public” (Bhanji, p. 71). Protagonists argue that such advertising increases the self-diagnosis of conditions that would otherwise go untreated (Main *et al.* 2004). For example, Donohue and Berdt assert that DTCA “increases awareness and expands the treatment of underdiagnosed conditions, such as hypercholesterolemia and depression” (Donohue and Berdt, 2004, p. 1176). Indeed, DTCA is argued to be “an excellent way to meet the growing demand for medical information, empowering consumers by educating them about health conditions and possible treatments” thereby playing potentially “an important role in improving public health” (Holmer, p. 180).

Antagonists argue that “many pharmaceutical companies” engage in “repeatedly” misleading the public and doctors (Troop and Richards, 2003). While drug companies do meet standards established for informing consumers of risks, critics complain that the risks are not fully disclosed, alternative cheaper options discussed, or much actual public health information provided (Main *et al.*, 2004). The net result of DTCA in New Zealand and in the United States has been to increase “medicine enquiries by consumers to prescribers, and subsequent prescribing to consumers” (Rosenthal, 2002). Furthermore, DTCA typically promotes the use of more expensive and newer medications to large consumer populations with chronic conditions (Rosenthal, 2002). The debate continues to evolve. Recently, marketers of DTCA position advertising do not directly recommend to consumers that they take the advertised medication but instead encourage consumers to talk to a doctor about the medication’s costs and benefits. Thus, proponents of DTC advertising argue that it is “an opportunity for improved patient education and may stimulate clinical dialogue with the physician” (Robinson, 2004, p. 427). We are especially interested in considering how DTCA might potentially impact on the deliberative dialogue of clinical practice.

In this sense, these drug debates “are not timeless manifestations of the nature of drugs but rather contingent features of social structure and social struggle” (Dinglestadt *et al.*, 1996). Troop and Richards (2003) proffer an explanation for this problem: “the advertising/marketing and the health paradigms are so very far apart that dialogue and compromise are far from easy. The language of the marketing and advertising arms of industry is characterized by ‘bottom lines’, ‘market share’, ‘brand loyalty’ and ‘disease creation’. These are concepts foreign to most health professionals whose framework is the care of individuals in patient-

centered and evidence-based paradigms.”

The combination of new products and increased advertising constitutes an accelerating structural shift in how information is rendered accessible to publics. The result is an ongoing struggle which places the norms of doctor-patient communication at stake. The costs and benefits are complicated. On the one hand, false expectations of new medicines may increase pressures for marginal prescriptions and undermine trust and responsiveness of patients denied these ‘breakthroughs’ by a physician. On the other, advertising performs a public health role; even if the result of advertising is over-prescription and inflated expectations, it is arguably better to influence a class of potential patients to come in for treatment than remain in isolated misery.

So potentially great are the stakes of this influence on practice, that critical intervention into the controversy is warranted. The contextually driven cultural controversies – the biopolitics – that influence drug advertising bear implications for how publics may perceive medical conditions and new norms of interaction with doctors. Case studies of controversies over pressures on institutional practices of professional-client argumentation open the way for: (1) the development of new standards for assessing the intent of health messages posited by advertisers, and (2) the development of standards for clinical communicative competence, so that clinicians might accommodate the impact of biopolitics on the clinician-patient dialogue and, subsequently, clinical determination (outcome). Hence, we contend that biopolitics offers a space for appraising and re-conceptualising institutional norms of reasoned exchange, as in the clinical consultation. We inquire into biopolitics specifically in regard to controversies associated with DTCA and the mental health domain.

4. Advertising for Mental Health

Mental health advertising is a good place to begin critical case studies because it is both prevalent and highly controversial. According to Bhanji, “approximately 20% of the 50 most advertised drugs in the United States were medications used to treat psychiatric and neurologic disorders. Antidepressants, antipsychotics, and anticonvulsants are among the top five most heavily advertised classes of medicine” (Bhanji, 2008, p. 69). The controversy over mental health advertising rests in a long history of debate (Goldman & Montagne, 1986; Seinberg, 1979, Lion, Rega & Taylor, 1979). One of the prominent question in the ongoing debate has centered on whether DTC marketing of psychiatric medications “leads to

over-prescribing of more expensive drugs, as critics contend, or de-stigmatizes mental illness and promotes use of effective medications, as proponents claim " (Bhanji, 2008, p. 68).

The biopolitics of mental illness and medical institutions was changed in the 1950s by the development of tranquillizers and antipsychotics that "made possible for the first time the treatment and control of mentally ill people outside of an institutional setting" (Dingelstad *et al.*, 1996, p. 1829). Now, in most developed countries people suffering or in remission from psychosis are routinely treated in the community. In the 1990s "a new era in the sales of psychotropic drugs began in most western societies" with a "dramatic increase in the sales of antidepressants" (Lovdahl, Riska & Riska, 1999, p. 306).

Reportedly, pharmaceutical companies have substantial "economic interest in maintaining patients on medications for chronic conditions like depression" (Donohue and Berndt, 2004, p. 1176). Pursuing such interests, the pharmaceutical industry appears to emphasize persuasion not information in drug promotion and, in the case of depression, advertisements appear "more unscientific and less informative than other types of drug advertisements" (Quin, Nangle & Casey, 1997, p. 597). Quinn *et al.* (1997) found that metaphors are used instead of science generally in the area of mental health (Owen, 1992). Hence, depression is frequently "reduced to a simple single entity (darkness) for which there is only one treatment (medication) by which health (sunlight) will be restored" (Quinn *et al.*, 1997; Owen, 1992).

Mental health advertising is controversial on several fronts. First, many advertisements are misleading. For example, in the common advertising of antidepressants, serotonin reuptake inhibitors are frequently promoted using information that is inconsistent with scientific evidence on the treatment of depression (Lacasse, 2005, p. 175). Moreover, while drugs for mental illness are often advertised as non-addictive, the technical distinction in drug advertising materials regularly fails to acknowledge difficulties encountered with withdrawal. Finally, it is not clear that altering body chemistry by itself furnishes a cure for mental illness.

In biosychosocial approaches to mental illness, explanatory models of illness are elicited and negotiated between the clinician and the patient (Bloch and Singh 2001). Ideally, the clinician endeavors to understand the patient's problem in the

context of the patient's beliefs, cultural lifestyle and norms in order to recommend best treatment for the patient who is expected to comprehend the benefit of and comply with treatment (Andary *et al.*, 2003, p. 137). A process of negotiation is required to reduce the conflicts between the patient's and doctor's models in order to reach a "mutually accepted explanatory model" (Andary *et al.*, 2003, p. 141), as cooperation with treatment requires the clinical intervention to match the patient's explanatory model of illness (Sue & Zane, 1987; Andary *et al.*, 2003). In other words, the negotiated model of illness helps the clinician to justify the treatment and win the patient's cooperation (Andary *et al.*, 2003, p. 141). In the domain of chronic mental illness, the patient's explanatory model is rarely static with the chronic nature of mental illness potentially generating conflicts of understanding that evolve an iterative process of therapeutic decision-making. The movement of meaning across the illness experience and dialogic consultation is subject to contemporaneous biopolitics. Hence, interpretations of DTCA are subject to modification by the patient's chronic illness experience and sociocultural vulnerability to mental illness diagnosis; the chronic and in-flux state of mental illness impose challenges for advertisers wanting to maintain their appeal to audience for extended periods of time. The clinician must accommodate the patient's shifting perspectives on therapeutic decisions. Interpreting conflicts of therapeutic decision-making with a biopolitics framework appears useful.

5. Case Studies: Analyses of DTCA for insomnia and depression

Discussion in this paper is directed to two instances of commercial advertising – insomnia and depression. Previous studies of DTCA have provided a synchronic study of medical topics through content analysis of DTCA, applying coding schemes of argumentation (Bell *et al.*, 2000; Main *et al.*, 2004; Mohammed & Schulz, 2010). Taxonomies of persuasive appeals include biomedical concepts of effectiveness, social-psychological enhancements, ease of use, and safety, as well as sociocultural concepts of appeal, such as categories of rational, positive, humor, nostalgic, fantasy, sex and negative appeals (Mohammed & Schulz, 2010). The analyses to date have considered the audience of DTCA in terms of the relationship between pharmaceutical drug company and consumer, with the doctor pitched as an intermediary agent (bearing in mind that pharmaceutical appeals direct to health practitioners occur through alternative media, such as academic journals, professional development programs and personal marketing strategies which incorporate gifts, dinner functions and so forth). However, we inquire as to what purpose the DTCA might serve for the clinical practitioner in

his/her patient interaction. If DTCA aspires to influence the consumer then it must be sensitive not only to the socio-cultural contexts of illness but also to the diachronic unfolding of controversies associated with patient-centered determination of diagnosis and management of illness in doctor-patient deliberation. Specifically, the call to 'consult your doctor' in drug advertisements imposes challenges for the clinician, implying that doctors should not only own the knowledge of remedies but be also sensitive to the controversies associated with medications, the concerns of patients about their drug regimens and the socio-political elements influencing consumer choice. The criticism contrasts appropriate norms of reasoning in a clinical context against the world depicted for patients by advertising.

Gilbert and Whyte (2009; forthcoming) assert that if reasons are to be used for building effective and purposeful communication in the clinical context, then the interlocutors must share a common reference of argument standard. Relevant are Johnson and Blair's (1994, p. 55) RSA criteria for assessing arguments in a clinical communication construct (Gilbert & Whyte, 2009; 2010). Socio-cultural-political experiences as well as biomedical beliefs of the interlocutors influence the notions of relevance, sufficiency and acceptability of evidence that the interlocutors bring to the deliberative dialogue of the clinical encounter. Recognizing zones of difference and realizing intersections of common understanding in what constitutes reasonable argument supports the development of mutual intelligibility in discourse. Lack of mutual intelligibility is a source for potential conflict or misunderstanding.

In the spaces of medical care as envisioned by advertising, doctor and patient standards of sufficiency, relevance and acceptability in DTCA are drawn from the socio-cultural milieu of consumer experience, as drug companies develop strategic appeals to motivate consumer behavior. The DTCA standards challenge the biomedical basis of clinical diagnosis and management and introduce a dynamics to the static model of patient-centeredness, by requiring clinicians to acknowledge the relationship between uncertainty, social milieu and technicality of knowledge in medicine. Thus, we examine appeals of DTCA advertisements in the marketing of Rozerom and Cymbalta in the USA. We adapt the RSA criteria of Johnson and Blair (1994) for the analysis: *Standard of sufficiency*: The premises of an argument must have the appropriate types and amounts of evidence to support the conclusion. *Standard of relevance*: The premises of an argument must bear

adequate reference to the conclusion. *Standard of acceptability*: The premises must be acceptable to the audience for the conclusion to be true and hence worthy of the audience's belief. These criteria challenge the development of a framework of argumentation that encompasses the clinical rationality of providers and the uncertainties, anxieties and insecurities of potential patients – in the span of what are asserted to be publicly informative, non-stigmatizing, soundly-based, helpful advertisements.

5.1. *Depression: 'Cymbalta' (Depression hurts)*

A 2008 'Cymbalta' television commercial constructs a space for 'taking the first step', a theme that receives more elaborate articulation on its web site. The commercial is constituted by a voice over, a female announcer speaking with a concerned and reassuring voice about the move from depression to Cymbalta upon obtaining a consultation and prescription with a health care provider. Like many such commercials, a dialogue ensues between the claims narrated within the flow of music and the images of women and men captured by screen shots that play darkness against light across the facial articulation of emotion. The diachronic development moves initially from recognition and definition of a personal issue, naming related mood and body disorders, to a self-recognized condition. "Depression can turn you into a person you don't recognize, unlike the person you used to be," the add asserts, voicing over briefly a middle-aged woman with a frown and a black male adult sitting in a dark room while a child with a soccer ball backs out and closes the door. The relevance of the claim is nearly open ended, available to anyone who feels out of sorts with aches and pains. The sufficiency of evidence is unquestioned as victims lost pop up briefly, isolated and alone even in a crowd. As the voice moves from a warning to call a doctor if one thinks of suicidal impulse, to an acknowledgment that thoughts of suicide might be a drug induced effect, the framed examples change to movement with purpose, one smiling woman entering an elevator, another scratching a cat, and a male setting down a sawhorse in his workshop. Meanwhile the conditions of restriction and risks continue to be spoken as the screen unfolds happier people, turning first frowns into soft smiles, with a child with the soccer ball taking his dad out to play. Thus, the standard of acceptability is posed at radical odds, as the spoken message meets criteria of warning while the visual argument dramatizes success. The patient who is encouraged to self-define as depressed and to get help is directed toward a physician who has to sort out a reasonable space for accepting, weighing risks and benefits over time.

We propose that the physician may use the ads to consider strategy for prompting the patient's illness narrative to move beyond biomedical considerations to the agenda of social participation. However, the physician must not only astutely detect the advertising appeals that are directed to consumers within the design of the advertisement but apply sensitivity in analyzing the impact of those appeals on the individual patient. For, not all advertising techniques of persuasive appeal will impact equally on each and every patient. However, the physician could arguably use the ad imageries to stimulate dialogue that might help to reveal the patient's concerns of his/her illness within the socio-political context of his/her everyday world. For example, the son-dad imagery might impact more strongly on parents distressed by the impact of their illness on family members and dialogue might subsequently reveal potentially stressful contributors to the perpetuation of depressive illness contained within the patient's familial relationship mix, which may not be remedied by drugs alone. The ad imageries promote a social ideal that may be far removed from the patient's social reality. Other issues might be more complex and therefore more difficult to analyze, however, if advertisements lean on socio-political mores to persuade consumer as patient, then there is a duty for the doctor to appreciate these elements impacting on the patient's resourcefulness in managing their illness. As controversies are addressed, the doctor and patient may each shift their assumptions on what counts as relevant, sufficient and acceptable by considering the arguments posited by each other in dialogue for supporting or challenging the appeals in the ads.

5.2. Insomnia: 'Rozerem'

The Rozerem commercial addresses what is asserted to be a medical condition in an inventive manner. Interestingly, a frumpy-looking male wanders into his nighttime kitchen and is hailed by Abe Lincoln, reading a newspaper, who gives him the greeting: "Hey, sleeping beauty." "I didn't sleep a wink," the man says and Abe says, "I know," at which Abe's beaver chess partner chimes in, "He cheats." Someone in a space suit floats at the counter throughout. The man attributes his lack of sleep to stress at work and the beaver says that insomnia is common, establishing relevance. The dreamscape recedes and several clips of women up late at night are shown as the narrator voices over those who shouldn't take the medicine and its risks. The stress condition is not addressed, nor is asserted the established differences with other dependant alternatives. Rather, in the end, Abe the beaver and the spaceman return to counsel, "Just talk to your doctor." "Because your dreams miss you," juxtaposes a fantasy world where

stress is banished versus a vigilant world where stress-relief requires judgments of hazard and habit. Oddly enough, a figural dream featuring iconic representations of honesty, industry, and exploration sets in motion a myriad of questions that only medical professionals can complete. Whereas the depression commercial minimizes self-esteem of the viewer in relation to the situation, the insomnia commercial maximizes self-esteem – each without bringing into conditions of refined judgment of relevance, the question of sufficient discussion of alternatives, or a coherent narrative of acceptability.

As in the preceding example, this ad proposes opportunities for the physician to identify and explore the patient's perspectives on his/her illness, and in this instance, the issues of self-esteem and independence in the management of illness being. Ambivalence may be a self-protective mechanism to minimize the acceptance of illness and so divert the stigma associated with diagnosis; hence the ad's clever way of playing down the potentially underlying causes of insomnia. Instead, insomnia is treated as a rather ordinary problem, a shared experience with the iconic characterization of animals, and certainly not presented as a social stigma to the same extent as depression. The ad suggests that insomnia is a condition readily solved. The persuasive techniques provide a useful means to explore why the patient might be impacted by the ad and stimulate dialogue to reveal interpretations of stress, influences on self-esteem and expectations of therapy (whether chronic or acute), all potential points of controversy in the DTCA. Stimulating dialogue this way might assist the physician to better appreciate the socio-political impacts on the patient's attitude to illness and so assist the physician to determine an effective communication strategy for therapeutic recommendations.

The two DTCA examples, above, have been considered in a relatively simple analysis to illustrate how biopolitics may be applied to the analysis of controversial elements of DTCA to assist physicians and their patients co-construct interpretations of illness which can be used to inform an effective communication strategy for therapeutic decision-making. More detail on this proposal for analysis will now ensue.

6. Integrating biopolitics into clinical communication

Clinical communication is now recognized as a core clinical skill and models of doctor-patient communication in western medical school curricula promote patient-centered approaches. In the medical literature, notions of personal,

professional and institutional discourses have been identified as relevant to the construction of meaning and shared understandings that inform clinical problem-solving and decision-making (Roberts *et al.*, 2000). Challenges to patient-centered approaches are identified in sociolinguistic barriers, institutional cultures of hospital/clinical settings and differences in ethno-medical systems (Diaz-Duque, 2001; Fisher, 2001). However, while the models of clinical communication have expanded to accommodate social contexts of decision-making, there is still a tendency to limit the scope of social inquiry to patient-centeredness elements concerning the patient's age, gender, socioeconomic status and race (including language background) and the physician's professional training and experience in the context of the structural features of organized clinical settings (Atkinson, 1995; Clark *et al.*, 1991; McWhinney, 1989; Roberts *et al.*, 2003).

We have considered the controversies in DTCA of mental illness therapies as potential influences on the deliberative dialogue in doctor-patient consultation. We propose a biopolitical dimension to clinical communication frameworks. Figure 1 illustrates a framework for considering the complexities of deliberative dialogue in the clinical consultation.

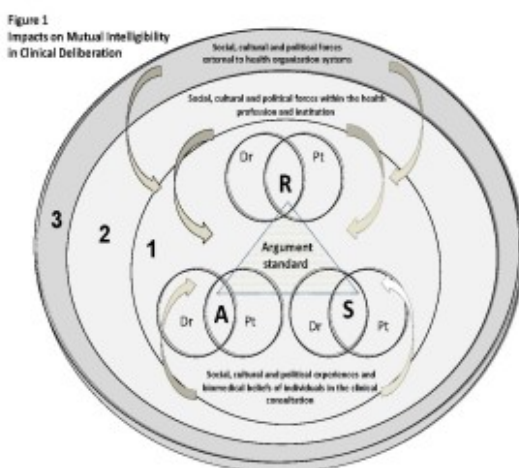


Figure 1

Diagram 1 is an illustration of the layers of communicative complexity associated with the construction of meaning and decision-making in the dialogue of clinical encounters. Clinical communication experts recognize the essential impact on the doctor-patient relationship of implicit beliefs, understandings and attitudes borne of both the patient's and doctor's individual socio-cultural and linguistic experiences. A common set of argument standards is determined by the

integration of the socio-cultural values as well as biomedical beliefs of the interlocutors (i.e. the patient and the doctor) in the clinical encounter, which most likely influence argument construction, interpretation and evaluation. Locating common intersections of relevance, acceptability and sufficiency across the patient and doctor's implicit beliefs, understandings and attitudes generates a common argument standard for effective communication. The RSA triangle at the centre of Figure 1 captures this common intersection in the fundamental communication of the clinical encounter. This is the central zone of clinical deliberation (labeled 1 in Figure 1).

However, one cannot isolate the communication experiences of the doctor-patient relationship to mere artifacts of individual language, culture and experience. For dialogue to be effective, arguments of RSA must also accommodate the contemporary socio-political attitudes of the health profession and institutions which influence the underlying premises of ethical and reasonable clinical practice. This encourages doctors to generate what is referred to as 'institutional discourse', a strategy for articulating individual and professional experience within the context of more broadly sanctioned institutional policies and practices (Roberts *et al.*, 2000). Hence, impacting on the fundamental communication between doctor and patient are the sociocultural and political expectations of the medical community for feasible and defensible practice, ensconced in virtues of professionalism. For example, informed consent is a process institutionally sanctioned, bound up with legal and ethical codes of professional conduct, while subject to social and political influences (Goodnight, 2006). This layer of communicative complexity is represented in the second tier of Figure 1 (labeled 2 in Figure 1), exerting a secondary but phenomenally important impact on the RSA standards of argument adhered to by doctor and patient in the clinical encounter.

Clinical communication experts have acknowledged the dimensions of doctor-patient interaction across the two levels of communicative complexity described in the preceding paragraphs, essentially generated within the health professional domains. What we propose is a new 'tertiary' dimension to doctor-patient interaction, which predicates the social, cultural and political forces on communication external to health organization systems. This element in our framework is, we believe, missing in current manifestos on clinical communication. In other words, to date, the health professional system has failed to acknowledge the pervasive effect on doctor-patient dialogue of public debate

and controversy on human understanding of health, lifestyle and medical condition. DTCA illustrates how socio-cultural perceptions of illness may be construed by advertisers as valuable concepts of remedy and cure within the milieu of fuzzy logic in spaces of public controversy. A bio-political analysis of DTCA provides us with opportunity to examine the possible non-medical motivations of individual beliefs, attitudes and intentions which nevertheless assert sanctions on clinical meanings and interpretations and may therefore ultimately influence decision-making in the dialogue of clinical deliberation. In summary, a biopolitical analysis accessing the three zones of clinical deliberation might yield a more comprehensive strategy for understanding and generating an effective communication strategy in the domain of clinical practice.

Clinicians, we argue, would be wise to appreciate the broader complexities of patient's decision-making beyond the immediate environment of personal, professional and institutional notions of healthcare, which until now have dominated the definitions and explanations of clinical cultural and communication. Being alert to a broader range of persuasive strategies stimulated by controversies over therapies would seem to enhance a clinician's knowledge of the patient's socio-cultural and political reality beyond the mere clinical environment. As controversies over (mental illness) therapies emerge during the juxtaposition of 'doctor' versus 'patient' explanatory models of illness in clinical dialogue, the astute clinician would seek to understand the biopolitical basis of the patient's reasoning for either cooperating with or sabotaging options for treatment.

Examining the controversies over therapeutic options using a biopolitical framework may support the clinician adopting a more adaptive and smarter holistic approach to developing mutually agreed explanatory models of illness with his/her patients, conducive for optimizing therapeutic concordance. This essentially requires the interlocutors to reach a mutual understanding on what qualifies as rational evidence in the communicative encounter, which Gilbert and Whyte (2009) define as the *mutual intelligibility* of argument standard. While acknowledging potential zones of difference, it is the ability of the interlocutors to identify and harness overlap that builds agreement in a communicative encounter. Hence, as controversies over mental illness therapies emerge in the explanatory models of illness posited by the doctor and patient during clinical dialogue, the doctor and patient must negotiate their differences and work

towards establishing a common rationality for therapy. This requires each to realize the common intersections of understandings of relevance, sufficiency and acceptability of arguments and to use these to focus the case for therapeutic decision-making. The focus on establishing common elements of relevance, sufficiency and acceptability for optimizing mutual intelligibility within the milieu of fuzzy logic of the clinical encounter is captured in *Figure 2*. The RSA interface represents the ideal position for concordance on therapeutic decisions, where all criteria of relevance, sufficiency and acceptability in the arguments for therapeutic decision-making are equally agreed upon by the doctor and patient. Outside the core argument standard, RSA standards may be more or less equally distributed, which demands a more deliberative practice of medical consultation to address the asymmetries of doctor-patient interests and reach therapeutic concordance.

Figure 2 Optimal Mutual Intelligibility (MI)
Realizing common intersections of understandings of relevance (R), sufficiency (S) and acceptability (A)

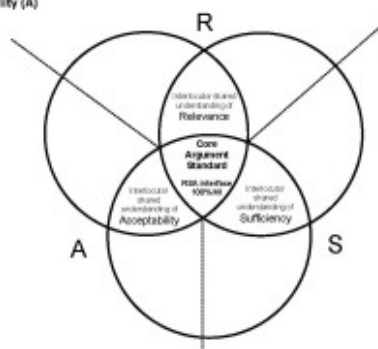


Figure 2

7. Conclusion

Drug advertising is part of an ongoing controversy that places pressure on the practices of doctor patient communication. Advertisements directed at mental illness are especially controversial. Argumentation studies should become engaged with how institutions are working strategically to change the boundaries of institutional practices – as such strategic developments alter the availability and nature and duties of reasonable communicative exchange. In the debate over drugs, both sides have a defensible position. Advertisements do perform a public health service; they do indicate ways to name conditions that may be subject to treatment; and, the sales role is qualified by adherence to regulatory policy that makes public statement of risks mandatory and the movement of the industry to

support doctor consultation rather than immediate demand for prescription. On the other hand, advertising succeeds by adding to its information a mix of rhetorical appeals, clever arrangement, stylistic emphasis, and aids to memory that render vivid a message. There are no risks to the industry if consumers buy more than necessary or if they pressure doctors for prescriptions. Indeed, the public health rationale becomes a thin justification in the case of mental health where the costs of a disease untreated is figured to be much greater than nearly any rate of over prescription. DTCA may, in fact, be a useful tool for clinical practice.

REFERENCES

- Andary, L., Stolk, Y., & Klimidis, S. (2003). *Assessing Mental Health Across Cultures*. Bowen Hills, Queensland: Australian Academic Press.
- Atkinson P. (1995). *Medical Talk and Medical Work: The Liturgy of the Clinic*. London: Sage Publications.
- Bahnji, N. H., Baron D.A., Lacy, B.W., Gross, L.S., Goin, M.K., Sumner, C.R., Fischer, B.A., & Slaby, A.E. (2008). Direct-to-consumer marketing: An attitude survey of psychiatric physicians. *Primary Psychiatry*, 15(11), 67-71.
- Bell, R.A., Kravitz R.L., Wilkes M.S. (1999a). Direct-to-consumer prescription drug advertising and the public. *J. Gen Intern Med.*, 14, 651-657.
- Bell, R. A., Kravitz, R. L., & Wilkes. M.S. (1999b). Advertisement-induced prescription drug requests: Patients' anticipated reactions to a physician who refuses, *The Journal of Family Practice*, 48(6), 446-452.
- Bell, R. A., Kravitz, R. L., & Wilkes, M.S. (1999c). The education value of consumer-targeted prescription drug print advertising, *The Journal of Family Practice*, 49 (12), 1082-1098.
- Bell, R. A., Kravitz, R. L., & Wilkes, M.S. (2000). Direct-to-consumer prescription drug advertising, 1989-1998. A content analysis of conditions, targets, inducements, and appeals. *The Journal of Family Practice*, 49(4), 329-335.
- Berndt, E. R. (2005). To inform or persuade? Direct-to-consumer advertising of prescription drugs. *The New England Journal of Medicine*, 352(4), 325-329.
- Bhanji, N. H. (2008). Direct-to-consumer marketing: An Attitude survey of psychiatric physicians. *Primary Psychiatry*, 15(11), 67-71.
- Bloch, S., & Singh, B.S. (2001). *Foundations of Clinical Psychiatry* (2nd Ed.). Melbourne: Melbourne University Press.

- Johnson, R. H., & Blair, J. A. (1994). *Logical Self-Defense* (3rd Ed.). New York: McGraw-Hill.
- Block, A. E. (2007). Costs and benefits of direct-to-consumer advertising: the case of depression. *PharmacoEconomics*, 511.
- Bonaccorso S.N., & Sturchio J.L.(2002). For and against: direct to consumer advertising is medicalising normal human experience: again. *British Medical Journal*, 324 (7342), 910-911.
- Calfee, J. E. (2002). Public policy issues in direct-to-consumer advertising of prescription drugs', *Journal of Public Policy & Marketing*, 21 (2), 174-193.
- Clark, J. A., Potter, D.A., & McKinlay, J.B. (1991). Bringing social structure back into clinical decision making. *Soc. Sci Med.*, 32(8), 8 853-866.
- Coney, S (2002). Direct-to-consumer advertising of prescription pharmaceuticals: A consumer perspective from New Zealand. *Journal of Public Policy and Marketing* 22(2), 213-223.
- Cymbalta, Depression hurts. Youtube, <http://www.youtube.com/watch?v=kX-RryzCG8E>. Accessed July 30, 2010.
- Dartnell, J.G.A., (2001). *Understanding, Influencing and Evaluating Drug Use*. Melbourne: Therapeutic Guidelines Limited.
- Dinglestad, D., R. Gosden, B. M., and Vakas, N. (1996). The social construction of drug debates. *Social Science and Medicine*, 43(12), 1829-1838.
- Direct to Consumer Advertising (DTCA) of Prescription Medicines and the Quality Use of Medicines (QUM)*. 2004. Accessed June 2010 at: www.health.gov.au/internet/main/publishing.nsf/Content
- Donohue, J., & Berndt, E. (2004). Effects of direct-to-consumer advertising on medication choice: The case of antidepressants. *Journal of Public Pol Marketing* 23, 115-127.
- Fisher, S. (2001). Doctor talk/Patient talk: How treatment decisions are negotiated in doctor-patient communication. In D.D. Oaks (Ed.), *Linguistics at Work: A Reader of Applications* (pp. 99-121), Cambridge, MA: Heinle & Heinle.
- Gellad, Z.F., & Lyles, K.W. (2007). Direct-to consumer advertising of pharmaceuticals. *Am J. Med* 2007, 120(6) 475-480.
- Gilbert, K. and Whyte, G. (2009). Argument and medicine: A model of reasoning for clinical practice. In J. Ritola (Ed.), *Argument Cultures*. Conference proceedings of the 8th Ontario Society for the Study of Argumentation (OSSA) Conference [CD]. University of Windsor: OSSA.
- Gilbert, K., & Whyte, G. (forthcoming). The use of arguments in medicine: A

- model of reasoning for enhancing clinical communication. (revised version of OSSA2009 paper). *Monash University Linguistics Papers (MULP)*.
- Gilbody, S., Wilson, P., & Watt, I. (2005). Benefits and harms of direct to consumer advertising: a systematic review. *Quarterly Sat Health Care* 2005, 14(4), 246-250.
- Goldman, R., & Montagne, M. (1986). Marketing 'mind mechanics': decoding antidepressant drug advertisements. *Social Science and Medicine*, 22, 1047-1058.
- Goodnight, G.T. (2006). When reasons matter most: pragma-dialectics and the problem of informed consent. In P. Houtlosser & A. van Rees (Eds.), *Considering pragma-dialectics* (pp. 75-85), Mahwah, NJ: Lawrence Erlbaum Associates.
- Goodnight, G. T. (2008). Strategic maneuvering in direct to consumer drug advertising: a study in argumentation theory and new institutional theory. *Argumentation*, 22, 359-371
- Hoffman, JR, & Wilkes, M. (1999). Direct to consumer advertising of prescription drugs. *British Medical Journal*, 318(7194), 1301-1302.
- Holmer, A. F. (1999). Direct-to-consumer prescription drug advertising builds bridges between patients and physicians. *JAMA*, 281(4), 380-382
- Kravitz, R.L, Epstein, R.M., Feldman, M.D., Franz, C.E., & Azari R., et al. (2005). Influence of patients' requests for direct-to-consumer advertised antidepressants: A randomized controlled trial. *JAMA*, 293, 1995-2002.
- Lacasse, J. R. (2005). Consumer advertising of psychiatric medications biases the public against nonpharmacological treatment. *Ethical Human Psychology and Psychiatry*, 7(3), 175-179.
- Lacasse, J. R., & Jonathan, L. (2005). Serotonin and Depression: A disconnect between the advertisements and the scientific literature. *PLoS Med*, 2(12): e392.doi: 10.1371/journal.pmed.0020392
- Lion, J., B. Regan, R. Taylor et al. (1979). Psychiatrists' opinions of psychotropic drug advertisements. *Social Science and Medicine*, 13A, 123-125.
- Lovdahl, U., Riska, A., & E. Riska, E. (1999). Gender display in Scandinavian and American advertising for antidepressants. *Scandinavian Journal of Public Health*, 27, 306-310.
- MacKenzie FJ, Jordens, C.F., & Ankeny, R.A., et al. (2007). Direct-to-consumer advertising under the radar: the need for realistic drugs policy in Australia. *Intern Med J.*, 37(4), 224-228.
- Main K.J., Argo J.J., & Huhmann B. (2004). Pharmaceutical advertising in the USA: Information or influence? *International Journal of Advertising*, 23, 119-142.
- McWhinney, I. (1989). The need for transformed clinical method. In M. Stewart &

- D. Roter (Eds.), *Communicating with Medical Patients*. Newbury Park, CA: Sage Publications.
- Mintzes, B. (2002). For and against: Direct to consumer advertising is medicalising normal human experience. *British Medical Journal*, 324, 908-909.
- Mohammed, D., & Schulz, P. (2010). Argumentative insights for the analysis of direct-to-consumer advertising. Paper presented at the 7th International Conference on Argumentation, Amsterdam, June 29-July 2, 2010.
- Owen, J. (1992). Images used to sell psychotropic drugs. *Psychiatric Bulletin*, 16, 25-26.
- Park, J. S., & Grow, J. M. (2008). The social reality of depression: DTC advertising of antidepressants and perception of the prevalence and lifetime risk of depression. *Journal of Business Ethics*, 79, 379-393.
- PhRMA, *Principles and Guidelines. Direct to Consumer Advertising*. Available at: 222.phrma.org/principles_and_guidelines/.
- Quinn, J. Nangle, M., & Casey, P.R. (1997). Analysis of psychotropic drug advertising. *Psychiatric Bulletin*, 21, 597-599.
- Riska, E., & Hagglund, U. (1991). Advertising for psychotropic drugs in the Nordic countries: metaphors, gender and life situations. *Social Science and Medicine*, 32, 465-471.
- Rozepam Commercial, Your dreams miss you. YouTube. Accessed July 30, 2010. http://www.youtube.com/results?search_query=Rozepam+commercial&aq=f
- Roberts C., Sarangi, S., Southgate, L., Wakeford, R., & Wass, V. (2000). Oral examinations - equal opportunities, ethnicity, and fairness in the MRCGP. *British Medical Journal*, 320(7231), 370-74.
- Robinson, A.R., Hohmann, K. B., & Rifkin, J.L. et al. (2004). Direct-to-consumer pharmaceutical advertising: physician and public opinion and potential effects on the physician-patient relationship. *Arch Intern Med.*, 164(4) 427-432.
- Rosenthal M.B., Berndt, E.R., Donohue, J.M., Frank, R. G, & Epstein, A.M. (2002). Promotion of prescription drugs to consumers. *New England Journal of Medicine*, 246, 498-505.
- Seidenberg, R. (1971). Drug advertising and perception of mental illness. *Mental Hygiene*, 55, 21-31.
- Sue, S., & Zane, N. (1987). *The role of culture and cultural techniques in psychotherapy: A critique and reformulation*. *American Psychologist*, 42, 37-45.
- Sweet, M. (n.d.). Pharmaceutical marketing and the Internet. *Australian Prescriber*

www.australianprescriber.com/magazine/32/1/2/4/

Troop, L., & Richards, D. (2003). New Zealand deserves better. Direct-to-consumer advertising (DTCA) of prescription in New Zealand: for health or for profit? *The New Zealand Medical Journal*, 116(1180).

Vitry, A. (2007). Is Australia free from direct-to-consumer advertising? *Australian Prescriber*.

Wolfe, S.M. (2002). Direct-to-consumer advertising: Education or emotion promotion. *New England Journal of Medicine*, 346(7), 524-526.

ISSA Proceedings 2010 - A Formal Model Of Legal Proofs Standard And Burdens



This paper presents a formal model that enables us to define five distinct types of burden of proof in legal argumentation. Four standards of proof are shown to play a vital role in defining each type of burden. These standards of proof are defined in a precise way suitable for computing in argumentation studies generally, but are based on a long tradition of their use in law. The paper presents a computational model based on these notions that represents a dialectical process that goes from initial claims where issues to be decided are set, and produces a justification for arriving at a decision for one side or the other that can withstand a critical evaluation by a particular audience. The role of the audience can be played by the respondent in some instances, or by a neutral third party audience, depending on the type of dialogue. The paper builds on previous work (Gordon, Prakken and Walton, 2007; Gordon and Walton, 2009) that has applied the Carneades model to studying burden of proof in legal argumentation.

1. Some Features of Previous Work

This survey is very brief, but fuller accounts can be found in Gordon and Walton,

2009, pp. 250-256). Gordon (1995) modeled legal argumentation as a dialectical process with several stages. Freeman and Farley (1995) presented a computational model of burden of proof as a part of a dialectical process that moves ahead to a conclusion under conditions where knowledge is incomplete and uncertain. In their model standards of proof are defined that represent a level of support that must be achieved by one side to win an argument. Burden of proof is seen as acting both as a move filter in a dialogue, and as a dialogue termination criterion that determines the eventual winner of the dialogue. Prakken and Sartor (2006) constructed an argumentation-based formal model of defeasible logic called the litigation inference system that separated three different types of burden of proof in legal argumentation called the burden of persuasion, the burden of production and the tactical burden of proof. Prakken and Sartor (2009, p. 228) described these three burdens as follows. The burden of persuasion specifies which party has to prove some proposition for it to win the case, and also specifies what proof standard has to be met. The burden of persuasion remains the same throughout the trial, once it has been set. Both the burden of persuasion and the burden of production are assigned by law. The burden of production is the provision of sufficient evidence to consider the case. The tactical burden of proof is determined by the advocate on one side who must judge the risk of ultimately losing on the particular issue being discussed at that point if he fails to put forward further evidence concerning that issue.

The introduction of an audience in formal models dialectical argumentation, based on the work by Perelman and Olbrechts-Tyteca (1969), has now been carried forward in recent computational models. It is a feature of the formal system of value-based argumentation frameworks (Bench-Capon, 2003) that in practical reasoning, or reasoning about what should be done in a particular situation, the acceptability of an argument should depend in part on the values of the audience to whom the argument is addressed. Bench-Capon, Doutre and Dunne (2007) offer formal dialogue systems that allow for prioritization of the values of the audience to be used as part of the process for evaluating the argument. They build a system of formal dialogues for carrying out evaluation of arguments in this manner, and give soundness and completeness results for the dialogue systems. This idea of incorporating the audience into the dialogue structure for arguing with burden of proof is an important part of the model presented in this paper.

2. Burdens and Standards of Proof in Legal Settings

Burdens and standards of proof are used in many different contexts of legal procedures to determine how strong an argument needs to be to meet a standard appropriate for its use in that setting. A simplified description of the sequence of argumentation in a typical civil procedure, roughly based on the law in California, can give the reader some idea of such a sequence of argumentation. At the first stage, a civil case begins by one party, called the plaintiff, filing a complaint that makes a claim against the other party, called the defendant. In addition to the claim itself, the complaint contains assertions about the facts of the case that the plaintiff contends are true and that are sufficient to prove that the defendant has breached some obligation and entitling the plaintiff to compensation. At the next stage the defendant can choose from several options for making a response. One of these is to file an answer in which the allegations are conceded or denied. The answer may also contain additional facts called an affirmative defense that contains counterarguments to the arguments previously put forward by the plaintiff. At the next step, the plaintiff can reply by conceding or denying these additional facts in the defendant's previous move. The next stage is a process of discovering evidence, which may take place for example by the interviewing of witnesses and the recording of their testimony. The next stage is the trial where the evidence already collected is presented to the trier, a judge or possibly also a jury, and further evidence is introduced, for example by the examination of witnesses in court. At the closing stage of the trial the judge makes a decision based on the whole body of evidence brought forward during the trial, or if there is a jury the judge instructs the jury about the law applicable to the case. The jury then has the duty of deciding what the facts of the case are, and making a verdict based on those facts. As part of the closing stage, the judge enters a judgment as a verdict, which may then be later appealed if there are grounds for an appeal.

To describe how the chain of argumentation goes forward through the different stages of the sequence of dialogue, it is important to distinguish between different kinds of burden of proof at different states. The first can be called the burden of claiming. When a person makes a claim at the first point in the sequence described above, he has a right to a legal remedy if he can bring forward facts that are sufficient to prove that he is entitled to some remedy. The second type of burden of proof is the burden of questioning, or it could be called the burden of contesting. If one party makes an allegation by claiming that some proposition is true during the process of the argumentation, and the other party fails to present a counterargument, or even to deny the claim, then that claim is

taken to be implicitly conceded. This type of burden of proof is called the burden of questioning because it puts an obligation on the other party to question or contest a claim made by the other side, by asking the other side to produce arguments to support its claim. This brings us to the third burden, called the burden of production in law, or sometimes burden of producing evidence. This is the burden to respond to a questioning of one's claim by producing evidence to support it. We are already familiar with this kind of burden of proof as it is the one typically associated with burden of proof in philosophy. This is the burden to support a claim by arguments when this claim is challenged by the other party in the dialogue. The fourth type of burden of proof is called the burden of persuasion in law. It is set by law at the opening stage of the trial, and determines which side has won or lost the case at the end of the trial once all the arguments have been examined. The burden of persuasion works differently in a civil proceeding than in a criminal one. In a civil proceeding, the plaintiff has the burden of persuasion for all the claims he has made as factual, while the defendant has the burden for any exceptions that he has pleaded. In criminal law the prosecution has the burden of persuasion for all facts of the case. These include not only the elements of the alleged crime, but also the burden of disproving defenses. For example, in a murder case in California, the prosecution has to prove that there was a killing, and that it was done with malice aforethought. But if the defendant pleads self-defense, the prosecution has to prove that there was no self-defense. This is an important point, for it shows that this fourth type of burden of proof varies with the context, that is, with the type of trial. The fifth type of burden of proof is called the tactical burden of proof. It applies during the sequence of argumentation during the trial, when a lawyer pleading a case has to make strategic decisions on whether it is better to present an argument or not. To make such a judgment, the advocate on each side needs to sum up and evaluate the whole network of previous arguments, both on its own side and the other side, and then use this assessment to determine whether the burden of persuasion is met at that point or not. This is a hypothetical assessment made only by the advocates on the two sides, and the judge and jury have no role in it. The tactical burden of proof is the one that is properly set to shift back and forth during a sequence of argumentation.

The question of when a burden of proof is met by a sequence of argumentation in a given case depends on the proof standard that is required for a successful argument in that case. Law has several proof standards of this kind of which we

will briefly mention only four. The law defines the standards using cognitive terminology, for example proposing assessment of whether an attempt at proof is credible or convincing to the mind examining it. However, these cognitive descriptions, although they are useful in law for a judge to instruct the jury on what the burden of proof is in the case, are not precise enough to serve the purposes of argumentation theory generally, or for attempts to provide argumentation models in computing. According to the scintilla of evidence standard, an argument is taken to be a proof even if there is only a small amount of evidence in the case that supports the claim at issue. The preponderance of evidence proof standard is met by an argument that is stronger than its matching counterargument in the case, even if it is only slightly stronger. In other words, when the argumentation on both sides is in at the closing stage, if the argumentation on the one side to support its ultimate claim to be proved is stronger than that of the other side, then the first side wins. The clear and convincing evidence standard is higher than that of the preponderance standard, but not as high as the highest standard, called proof beyond reasonable doubt. The beyond reasonable doubt standard is the strongest one, and it is applicable in criminal cases.

There seem to be two options with respect to defining the standards. One is to define them in the cognitive terms familiar in the kinds of definitions given in Black's Law Dictionary for example, in its various editions. The other is the attempt to make the definitions precise by proposing numerical values representing degrees of belief or probability, that attach to each claim to be proved. For example, preponderance of the evidence could be represented by a probability value of .51, while beyond reasonable doubt could be represented by a higher probability value of .81. Although attempts of this sort have been made from time to time, we do not think that this is a useful approach generally. We will propose a third way. This third way will respect the three principles of any formal account of argument accrual formulated by Prakken (2005). The first principal is that combining several arguments together can not only strengthen one's position but also weaken it. The second principle is that when several arguments have been accrued, the individual arguments, considered separately, should have no impact on the acceptability of the proposition at issue. The third principle is that any argument that is flawed may not take part in the aggregation process.

3. Argument and Dialogue Structures

In Gordon and Walton (2009, pp. 242-250) we presented a simple abstract formal model designed to capture the distinctions between the various types of burden of proof. Here we summarize the elements of the formal model that define the standards and burdens of proof. The formal model assumes that we have different types of dialogue that can be defined, sets of argumentation schemes with critical questions, as well as rules and commitment stores for each type of dialogue. In presenting these definitions we abstract from all these other components, to produce the simplest model that enables us to distinguish between different kinds of proof standards and burdens of proof that are important to know about. We begin with a definition of the notion of an argument suitable for our purposes representing the premises of an argument, the distinction between types of premises, and the conclusion of the argument. In this model, the proponent of an argument has the burden of production for the ordinary premises, while the respondent has the burden of production for exceptions.

Let L be a propositional language. An *argument* is a tuple $\langle P, E, c \rangle$ where $P \subset L$ are its *premises*, $E \subset L$ are its *exceptions* and $c \in L$ is its *conclusion*. For simplicity, c and all members of P and E must be literals, i.e. either an atomic proposition or a negated atomic proposition. Let p be a literal. If p is c , then the argument is an argument *pro* p . If p is the complement of c , the argument is an argument *con* p .

Conclusions can be generated from premises using the inference rules of classical logic and argumentation schemes. This definition of the concept of argument does not represent a fully developed argumentation theory. It merely contains enough structure to enable us to model the distinction between the various kinds of burden of proof. But we need one other thing to accomplish this purpose. We also have to model argumentation as a process that goes through several stages. Hence we introduce the notion of a dialogue that has three stages, an opening stage, an argumentation stage and a closing stage. This notion of dialogue that is suitable for our purposes is defined as follows.

A *dialogue* is a tuple $\langle O, A, C \rangle$, where O , A and C , the *opening*, *argumentation*, and *closing* stages of the dialogue, respectively, are each sequences of *states*. A state is a tuple $\langle arguments, status \rangle$, where *arguments* is a set of arguments and *status* is a function mapping *literals* to their *dialectical status* in the state, where the status is a member of $\{claimed, questioned\}$. In every chain of arguments, a_1, \dots, a_n , constructable from *arguments* by linking the conclusion of an argument to a

premise or exception of another argument, a conclusion of an argument a_i may not be a premise or an exception of an argument a_j , if $j < i$. A set of arguments which violates this condition is said to contain a *cycle* and a set of arguments which complies with this condition is called *cycle-free*.

For our purposes, the opening and confrontation stages of the dialogue as defined by van Eemeren and Grootendorst (2004) are both included as parts of the opening stage. We also draw a distinction between a stage of argumentation and a state of argumentation. Each dialogue is divided into its three stages, according to the definition above. The *status* function of a state maps literals to their dialectical status in that state, where the status can be either that of being claimed or being questioned. We disallow the construction of chains of arguments that contain a cycle. This definition has implications for the modeling of circular argumentation and the fallacy of begging the question, but there is no space to discuss these implications here. Confining the arguments of a stage to those that are cycle free is meant to simplify the model at this point.

The next concept we need to define is that of an audience that is able to assess the acceptability of propositions. We draw upon the recent literature on value-based argumentation frameworks (Bench-Capon, 2003) where arguments are evaluated by an audience. In law the role of audience is taken by a trier of fact, which could be a judge or jury in a legal trial.

An *audience* is a structure $\langle \text{assumptions}, \text{weight} \rangle$, where $\text{assumptions} \subset L$ is a consistent set of literals assumed to be acceptable by the audience and weight is a partial function mapping arguments to real numbers in the range $0.0 \dots 1.0$, representing the relative weights assigned by the audience to the arguments.

There are different methods an audience can use to evaluate arguments. In value-based argumentation frameworks, the audience uses a partial order on a set of values (Bench-Capon et al., 2007). In our system a numerical assignment is used to order arguments by their relative strength for a particular audience.

The next concept we need to define is that of an argument evaluation structure. It brings together the three concepts of state, audience and standard, providing the general framework necessary to evaluate an argument.

An *argument evaluation structure* is a tuple $\langle \text{state}, \text{audience}, \text{standard} \rangle$, where

state is a state in a dialogue, *audience* is an audience and *standard* is a total function mapping propositions in L to their applicable proof standards in the dialogue. A *proof standard* is a function mapping tuples of the form $\langle \text{issue}, \text{state}, \text{audience} \rangle$ to the Boolean values *true* and *false*, where *issue* is a proposition in L , *state* is a state and *audience* is an audience.

We can now define notion of the acceptability of a proposition.

A literal p is *acceptable* in an argument evaluation structure $\langle \text{state}, \text{audience}, \text{standard} \rangle$ if and only if $\text{standard}(p) (\text{state}, \text{audience})$ is *true*.

Basically what this definition stipulates is that a proposition in an argument evaluation structure is acceptable if and only if it meets its standard of proof when put forward at a particular state according to the evaluation placed on it by the audience.

Next we define the various proof standards that are used to evaluate arguments. All of these proof standards need to make use of the prior concept of argument applicability, as defined below. In this definition, P is the set of premises of an argument, E is the set of exceptions, and c is the conclusion of the argument.

Applicability of Arguments. Let $\langle \text{state}, \text{audience}, \text{standard} \rangle$ be an argument evaluation structure. An argument $\langle P, E, c \rangle$ is *applicable* in this argument evaluation structure if and only if:

1. the argument is a member of the arguments of the *state*,
2. every proposition $p \in P$, the premises, is an assumption of the *audience* or, if neither p nor the complement of p is an assumption, is acceptable in the argument evaluation structure and
3. no proposition $p \in E$, the exceptions, is an assumption of the *audience* or, if neither p nor the complement of p is an assumption, is acceptable in the argument evaluation structure.

This definition has three requirements. The first is that the argument is within the state being considered. The second is the every premise has to either be an assumption of the audience, or if neither it nor its complement is an assumption, it has to be acceptable in the argument evaluation structure. The third is that no exception is an assumption of the audience, or if neither it nor its complement is an assumption, is acceptable in the argument evaluation structure.

4. Proof Standards

Now we are ready to define the various standards of proof. The weakest of the proof standards, called the scintilla of evidence standard, is defined as follows.

Scintilla of Evidence Proof Standard. Let $\langle state, audience, standard \rangle$ be an argument evaluation structure and let p be a literal in L . $scintilla(p, state, audience) = true$ if and only if there is at least one applicable argument pro p in $state$.

A proposition meets this standard if it is supported by at least one applicable pro argument. Both the proposition and its negation can be acceptable in an argument evaluation structure when this standard is being applied. However, this is the own only standard according to which both the proposition and its negation can be acceptable.

The next standard to be defined, one of the three most important proof standards in law, is that of the preponderance of the evidence, the standard applied in civil cases.

Preponderance of Evidence Proof Standard. Let $\langle state, audience, standard \rangle$ be an argument evaluation structure and let p be a literal in L . $preponderance(p, state, audience) = true$ if and only if

1. there is at least one applicable argument pro p in $stage$ and
2. the maximum weight assigned by the audience to the applicable arguments pro p is greater than the maximum weight of the applicable arguments con p .

The preponderance of evidence standard is satisfied if the maximum weight of the applicable pro argument outweighs the maximum weight of the applicable con arguments, by even a small amount of evidential weight.

According to the next standard, that of clear and convincing evidence, in addition to the conditions of the preponderance of evidence standard, the maximum weight of the pro arguments must exceed a threshold and the difference between the maximum weight of the pro arguments and the maximum weight of the con arguments must exceed another threshold.

Clear and Convincing Evidence Proof Standard. Let $\langle state, audience, standard \rangle$ be an argument evaluation structure and let p be a literal in L . $clear-and-convincing(p, state, audience) = true$ if and only if

1. the preponderance of the evidence standard is met,
2. the maximum weight of the applicable pro arguments exceeds some threshold α , and
3. the difference between the maximum weight of the applicable pro arguments and the maximum weight of the applicable con arguments exceeds some threshold β .

It is easy to see that the clear and convincing evidence is only satisfied by an argument that has greater weight than that required to meet the preponderance standard. It has to exceed the threshold as well as meeting the preponderance standard. In the model we do not set any specific threshold. The beyond a reasonable doubt standard is defined in a comparable way to the clear and convincing evidence standard, except that the maximum weight of the con arguments must be below the threshold of reasonable doubt.

Beyond reasonable doubt proof standard. Let $\langle \text{state}, \text{audience}, \text{standard} \rangle$ be an argument evaluation structure $\langle \text{state}, \text{audience}, \text{standard} \rangle$ and let p be a literal in L . *beyond-reasonable-doubt* ($p, \text{state}, \text{audience}$) = true if and only if

1. the clear and convincing evidence standard is met and
2. the maximum weight of the applicable con arguments is less than some threshold γ .

We have not given precise numerical definitions of the thresholds, because these need to be set by the dialogue rules applicable to a particular case.

5. Accrual in Argument Evaluation

We do not use summing up the weights of the applicable pro and con arguments as part of our system of argument evaluation, because arguments cannot be assumed to be independent. Also, in our view proof standards cannot and should not be interpreted probabilistically. The first and most important reason is that probability theory is applicable only if statistical knowledge about prior and conditional probabilities is available. Presuming the existence of such statistical information would defeat the whole purpose of argumentation about factual issues, which is to provide methods for making justified decisions when knowledge of the domain is lacking. Another argument against interpreting proof standards probabilistically is more technical. Arguments for and against some proposition are rarely independent. What is needed is some way to accrue arguments which does not depend on the assumption that the arguments or

evidence are independent. Thus the question is how to approach argument accrual.

We have to leave it to the audience to judge the effects of interdependencies among the premises on the weight of an argument. However, our model satisfies all three of Prakken's (2005) principles of accrual. As a reminder we repeat these here. The first one is that combining several arguments together can not only strengthen one's position but also weaken it. The second principle is that when several arguments have been accrued, the individual arguments, considered separately, should have no impact on the acceptability of the proposition at issue. The third principle is that any argument that is flawed may not take part in the aggregation process. Prakken explains the first principle as follows. The principle that accruals are sometimes weaker than their elements is illustrated by a jogging example (Prakken, 2005, p. 86). In this example, there are two reasons not to go jogging. One is that it is hot and the other is that it is raining. But suppose we accrue these two reasons, producing a combination of reasons for not going jogging. Does the accrual make the argument even stronger? Not necessarily, because for a particular jogger, the heat and the rain may offset each other, so that the original argument becomes weaker. It may even be the case that for another jogger the combination of heat and rain may be very pleasant. In this instance, the accrued argument may even present a positive reason to go jogging.

Another example Prakken (2005, p. 86) gives is that of two witnesses who make the same statement. We can represent this situation as shown in Figure 1, with two separate arguments for the conclusion that the statement is true.

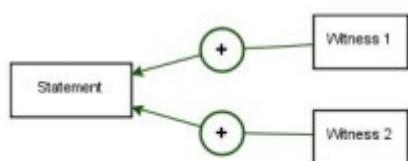


Figure 1: Independent Testimony of Two Witnesses

What Figure 1 shows is a convergent argument, each of which has one premise. Witness testimony is fallible as a form of argumentation, and therefore neither argument is conclusive by itself. Let's say that the standard is that of the preponderance of the evidence, and for the sake of the example we assign each argument a probative weight of .5. Let's say that the testimony of one witness agrees with the testimony of the other. In such a case, normally if we were to

accrue the two arguments together and combine them into a single argument, because of the agreement testimony of the witnesses, the probative weight supplied by the combined arguments would be greater than .5.

However, Prakken (p. 86) asks us to make the following additional supposition: “if the witnesses are from a group of people who are more likely to confirm each other statements when these statements are false than when they are true, the accrual will be weaker than the accruing reasons”. This situation is represented in Figure 2.

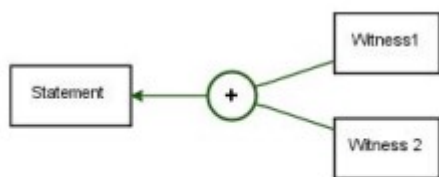


Figure 2: Accrued Testimony of Two Witnesses

In Figure 2 we now have a linked argument, a single argument with two premises. Accrual has now taken place, and the original pair of argument shown in Figure 1 has been combined into a single argument.

What happens now is that since we know that the two witnesses are from a group of people who are more likely to confirm each other statements when these statements are false than when they are true, the probative weight both premises supply when combined into a single argument is less than it was before. In Figure 2, we have assigned a probative weight of less than .5 to the argument representing the accrued testimony of the two witnesses.

6. Burdens of Proof Defined

The issue to be discussed in persuasion dialogue is set at the opening phase. When arguments are put forward on both sides during the argumentation stage, they are judged to be relevant or not in relation to the issue set in the opening phase. The burdens of claiming and questioning apply during the opening stage. The burden of production and the tactical burden of proof apply during the argumentation stage. The burden of persuasion is set at the opening stage, but is applied at the closing stage, where it determines which side has won the case and which side has lost. The burden of proof is also used hypothetically by each party during the argumentation stage to estimate its tactical burden of proof.

During the opening stage, where the burdens of claiming and questioning apply, a proposition claimed is taken to be conceded unless it is questioned by the other party. Because it is taken to be conceded, it requires the audience to assume that it is true. The burdens of claiming and questioning are defined as follows.

Burdens of Claiming and Questioning. Let s_1, \dots, s_n be the states of the opening stage of a dialogue. Let $\langle arguments_n, status \rangle$ be the last state, s_n , of the opening stage. A party has met the *burden of claiming* a proposition p if and only if $status_n(p) \in \{claimed, questioned\}$, that is, if and only if $status_n(p)$ is defined. The *burden of questioning* a proposition p has been met if and only if $status_n(p) = questioned$.

Only propositions that have been claimed at an earlier state of the argumentation sequence can be questioned. Therefore a questioned proposition satisfies the burden of claiming. This way of formulating the model gives only minimal requirements for raising issues in the opening stage. Rules for a specific type of dialogue can state additional requirements. For example in law, in order to make a claim the plaintiff must accompany it with facts that are sufficient to give the plaintiff a right to judicial relief.

The burden of production comes into play only during the argumentation stage of a dialogue. The proponent who puts forward an argument has the burden of production for its premises, and this burden can be satisfied according to the proof standard of scintilla of evidence. The respondent has the burden of production for an exception. The burden of production is defined as follows.

Burden of Production. Let s_1, \dots, s_n be the states of the argumentation stage of a dialogue. Let $\langle arguments_n, status_n \rangle$ be the last state, s_n , of the argumentation phase. Let *audience* be the relevant audience for assessing the burden of production, depending on the protocol of the dialogue. Let *AES* be the argument evaluation structure $\langle s_n, audience, standard \rangle$, where *standard* is a function mapping every proposition to the scintilla of evidence proof standard. The *burden of production* for a proposition p has been met if and only if p is acceptable in *AES*.

An objection to this way of defining the burden of production would be that since scintilla of evidence is the weakest proof standard, using it to test whether the

burden of production has been met is too weak. It might seem that any arbitrary argument, even one that is worthless would be sufficient to fulfill the burden of production. However, there are resources in place to ensure that this does not happen. For one thing, such a worthless argument can be defeated by critical questioning, or by attacking its premises. During the argumentation stage, implicit premises underlying the argument can be brought out by critical questioning and attacked. We can see then that the burden of production for an argument might be met at some state during the argumentation stage, but then fail to be met at some later state where the argument has been attacked or questioned.

The burden of persuasion has been met by one side at the closing stage if the proposition at issue that is supposed to be proved by that side is acceptable to the audience. The burden of persuasion for a trial is set by law, and therefore it is assigned by the judge who has to instruct the jury about it, if there is a jury. The standard of proof for a criminal trial is that of beyond reasonable doubt, whereas the standard of proof for a civil trial is that of preponderance of the evidence. The burden of persuasion is defined as follows.

Burden of Persuasion. Let s_1, \dots, s_n be the states of the closing stages of a dialogue. Let $\langle arguments_n, status_n \rangle$ be the last state, s_n , of the closing stage. Let *audience* be the relevant audience for assessing the burden of persuasion, depending on the dialogue type and its protocol. Let *AES* be the argument evaluation structure $\langle s_n, audience, standard \rangle$, where *standard* is a function mapping every proposition to its applicable proof standard for this type of dialogue. The *burden of persuasion* for a proposition p has been met if and only if p is acceptable in *AES*.

How the burdens of persuasion and production work in a criminal trial is worth noting briefly here. The prosecution has the burden of persuasion to prove its claim set at the opening stage. The defendant has the burden of production for exceptions. For example, in a murder trial the defendant has the burden of production for self-defense. However, in a criminal trial, once this burden has been met by the defendant, the prosecution has the burden of persuading the trier of fact, beyond a reasonable doubt, that the defendant did not act in self-defense. Our model represents this situation is by making the exception and ordinary premise after the burden of production has been met.

The tactical burden of proof, which applies only during the argumentation stage,

is the only burden that can shift back and forth between the two parties. To meet the requirements for tactical burden of proof, an arguer needs to consider whether stronger arguments might be needed to persuade the audience. This assessment depends on whether the audience reveals its evaluations to the parties on each side as the argumentation stage proceeds. In a trial, however, this does not happen.

Tactical Burden of Proof. Let s_1, \dots, s_n be the states of the argumentation phase of a dialogue. Assume *audience* is the audience which will assess the burden of persuasion in the closing phase. Assume *standard* is the function which will be used in the closing stage to assign a proof standard to each proposition. For each state s_i in s_1, \dots, s_n , let AES_i be the argument evaluation structure $\langle s_i, \text{audience}, \text{standard} \rangle$. The *tactical burden of proof* for a proposition p is met at state s_i if and only if p is acceptable in AES_i .

The tactical burden of proof comes into play when a proponent has an interest in proving some proposition that is not acceptable to the respondent at that state, given the argumentation that has gone forward so far. In a real example, evaluation of the tactical burden of proof would depend on how relevance is modeled in the type of dialogue.

7. Conclusions

In this paper we presented formal structures to represent argumentation in dialogues, and incorporated the notion of audience into the formal structure. We argued that whether a burden of proof is met by a sequence of argumentation in a given case depends on the proof standard that is required for a successful argument in that case. We defined four such proof standards, scintilla of evidence, preponderance of evidence, clear and convincing evidence, and finally, beyond reasonable doubt. We used the model and standards to distinguish five types of burden of proof: burden of claiming, burden of questioning, burden of production, burden of persuasion and tactical burden of proof.

REFERENCES

- Bench-Capon, T. (2003). Persuasion in Practical Argument Using Value-Based Argumentation Frameworks. *Journal of Logic and Computation*, 13(3), 429-448.
- Bench-Capon, T. J. M., Doutre, S., & Dunne, P. E. (2007). Audiences in Argumentation Frameworks. *Artificial Intelligence*, 171(42-71).

- Eemeren, F. H. van, & Grootendorst, R. (2004). *A systematic theory of argumentation: The pragma-dialectical approach*. Cambridge University Press.
- Freeman, K., & Farley, A. M. (1996). A Model of Argumentation and Its Application to Legal Reasoning. *Artificial Intelligence and Law*, 4(3-4), 163-197.
- Gordon, T. F. (1995). *The Pleadings Game; An Artificial Intelligence Model of Procedural Justice*. Dordrecht; Boston: Kluwer Academic Publishers.
- Gordon, T. F., Prakken, H., & Walton, D. (2007). The Carneades Model of Argument and Burden of Proof. *Artificial Intelligence*, 171(10-11), 875-896.
- Gordon, T. F., & Walton, D. (2009). Proof Burdens and Standards. In I. Rahwan & G. Simari (Eds.), *Argumentation in Artificial Intelligence* (pp. 239-260). Berlin, Germany: Springer-Verlag.
- Perelman, C., & Olbrechts-Tyteca, L. (1969). *The New Rhetoric*. Notre Dame: University of Notre Dame Press.
- Prakken, H. (2005). A Study of Accrual of Arguments, with Applications to Evidential Reasoning. *Proceedings of the Tenth International Conference on Artificial Intelligence and Law* (pp. 85-94). New York: ACM Press.
- Prakken, H., & Sartor, G. (2009). A Logical Analysis of Burdens of Proof. In H. Kaptein, H. Prakken, & B. Verheij (Eds.), *Legal Evidence and Proof: Statistics, Stories, Logic* (pp. 223-253). Farnham: Ashgate Publishing.