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Definitions in law

Fabrizio MACAGNO

Università Cattolica del Sacro Cuore, Via Necchi 9, I-20123 Milano

Fabrizio.macagno@unicatt.it

La definizione riveste un ruolo fondamentale nel discorso giuridico, in quanto essa è sia uno strumento per evitare ambiguità interpretative che una premessa per sostenere l'applicazione di una norma ad una fattispecie. Le definizioni possono essere sia standpoint di discussioni argomentative in cui il significato di una regola è criticato che premesse di inferenza a fondamento di una decisione giuridica. In questo articolo, le definizioni vengono analizzate in relazione al duplice ruolo che esse hanno in argomentazioni giuridiche. Esaminando casi giuridici vengono confrontati i tipi più importanti di argomenti usati a sostegno di una definizioni, come per esempio l'argomento per autorità d'esperti o l'argomento per conseguenze, la cui pertinenza e forza probatoria è analizzata e valutata. Nell'articolo si evidenzia inoltre come la pertinenza comunicativa dei diversi tipi di definizioni, come per esempio la definizione operativa o la definizione induttiva, dipenda dal tipo di inferenze che esse supportano e dalla loro funzione argomentativa, quale può essere l'applicazione di regole a casi concreti o la spiegazione di concetti non chiari.

Parole chiave:

Definizione, discorso giuridico, argomentazione, onere della prova, ragionamento plausibile, schemi argomentativi, stasis

The definition was defined by Aristotle as "a phrase signifying a thing's essence" (Aristotle, *Topics*, I, 5). With the advent of modern ontological approaches (Sager, 2000: 216-217), this account has been strongly criticized because of difficulties in finding metaphysical and immutable characteristics shared by all fragments of reality denoted by the *definiendum*. On modern views, therefore, a different approach has prevailed, which analyzes definition as a relative concept (Schiappa, 2003), considered as a matter of choice or power. However, if we analyze the actual practice of legal argumentation, we can notice that definitions are challenged and defended, rebutted and successfully backed by arguments. These discussions show how definitions, even though they cannot be verified, can be supported by good reasons or not (see Walton, 2005: 179-184; Kienpointner, 1992: 259). On this view, definitions are described as commonly accepted opinions, or *endoxa*, which are acceptable in a dialogue until challenged. Interpreting Aristotle's theory of definition from a purely dialectical perspective (Giuliani, 1972: 130), we can conceive definitions as commitments which need to be supported by arguments when questioned. Assessing definitions becomes a matter of evaluating the whole argumentation provided in their support.

This theoretical background represents the framework of our analysis. Legal definitions will be examined from three perspectives: their pragmatic function, their propositional structure, and their argumentative role. In law, definitions

can be used for different pragmatic purposes: they can be employed to describe a concept, or to establish a new meaning for a term. The propositional content of definitional speech acts can be different. In law, like in ordinary conversation, there are different types of definition: we can define by providing examples, or showing the fundamental characteristics of the concept defined, or listing the constituent parts of the denotatum. All these definitions play different argumentative roles in legal discourse. At a third level, definitions can be thought of as premises in complex patterns of reasoning (for reasoning from definition in law, see Aarnio, 1977; Moore, 1980; Lindahl, 2004). They constitute the fundamental element of argument from classification, namely a pattern of inference in which a new property (or a name) is attributed to an entity on the basis of other properties (see Schiappa, 2003; Zarefsky, 2006: 404). The crucial importance of this pattern of reasoning can be shown by a legal example. In *State v. Page* (81 S.W.3d 781 (*Tenn. Crim. App.* 2002)), a teenager hit the victim on the head once with a baseball bat, killing him. The teenager did not intend to kill him, but his actions resulted in a homicide. Was that action murder or criminally negligent homicide? What is the definition of "murder"? According to some definitions, an essential element of this crime is the agent's knowledge of the consequences of the action committed, while other definitions only require that the agent is aware of his acts. Changing or modifying a definition allows one to support different types of conclusions based on the same evidence.

Our inquiry into legal definitions will follow two directions: on the one hand, we will take into consideration the structure of reasoning from definition, showing the logical and the semantic grounds on which it stands; on the other hand, we will focus on the strategies of redefinition, which may affect both the inferences from definition and some dialogical procedures such as the allocation of the burden of proof.

1. Types of definition in law

When used in a discussion or in a dialogue, definitions are not simply propositions, but the propositional contents of speech acts. For instance, some definitions are used to describe the meaning of a term ("murder is the unlawful killing of one human by another, especially with premeditated malice"), while others impose or establish a new meaning. A clear example can be found in contracts, where the parties establish new meanings for specific terms used in their agreements. The propositional content of such speech acts can have different structures: the identity between the definiens and the definitum can be expressed by indicating its parts, its genus and difference, its etymology, etc... The different types of definitional propositions have distinct argumentative forces, can be used in different types of arguments, and may differently influence the dialogical setting.

1.1 *Definitions in law: the pragmatic level*

From a pragmatic perspective, legal definitions can be divided into two broad classes, namely the descriptive and the statutory definition. At the speech act level, definitions are used for two basic purposes in law: explaining the meaning of an unclear or ambiguous word, and attributing a specific meaning to a word.

Statutory definitions correspond to performatives having a definitional discourse as their propositional content. Statutory definitions commit both the legislator and the people subject to the law, or the parties to a contract, to a particular definition of a word. Their argumentative purpose is to establish an unambiguous lexicon with a view to prevent potential ambiguities (Aarnio, 1987: 57). A clear example of these definitions in stipulative form can be drawn from contract law (*First National Bank v. American States Insurance Co.* N° 963164-01/09/98):

A loss payee is paid only for "Covered Property," defined as "buildings" and "business personal property." FNB concedes, as it must, that buildings and business personal property do not include business income.

Here the drafter of the contract stipulates the definition of 'Covered Property' to avoid ambiguities; this definition is clearly different from the shared meaning of 'property', but for the purpose of the agreement the term will refer to the new *denotatum*.

Avoiding ambiguities is a crucial problem in law. Definitions are stipulated to create a technical language void of polysemous words: the legislator may act as a lexicographer (Tiersma, 1999: 117), creating a lexicon which may be extremely different from the ordinary one (Hall, 1966: 15):

For example, burglary includes an "entry," but the image summoned by ordinary speech – a man inside a house – is not the legal meaning of "entry." Part of a hand inside a window, engaged in raising it, a bullet shot into a room, and even a hole bored in the floor of a granary, through which the grain drops into sacks held below the floor, are entries in the legal sense. The common-law definition of murder is killing a human being with "malice aforethought"; but "malice" does not mean malice, and "aforethought" is not premeditation in the dictionary sense.

Even though legal language is basically grounded on ordinary language, it differs from it because of new stipulated definitions. Obviously there might be conflicts between ordinary and statutory definitions: in these cases, statutory definitions prevail (see, for a borderline example of conflicting definitions, *Regina v. Ojibway* "Criminal Law Quarterly" 8, 1965: 137).

Definitions are used descriptively to clarify what words mean on the basis of their shared and common usage, described and reported in the most important dictionaries (Solan, 2006: 407). For instance, in *Muscarello v. United States* (524 U.S. 125 (1998)) the meaning of the verb 'to carry', in the

sentence 'carry the gun' was unclear to the parties, and had to be specified. In this case a descriptive definition was used, taken from Webster and Black dictionaries and defining it as:

to wear, bear, or carry them upon the person or in the clothing or in a pocket, for the purpose of use, or for the purpose of being armed and ready for offensive or defensive action in case of a conflict with another person.

Descriptive definitions are especially used to clarify the meaning of a technical term, for example in *Mescalero Energy, Inc. v. Underwriters Indemnity General Agency, Inc.* (56 S.W.3d 313-320. (Tex. App. – Houston [1. st. Dist.] 2001)), in which the controversy was about the meaning of the geological term 'formation'. Descriptive definitions primarily have a clarification role. However, they may be questioned by the other party, or challenged, comparing them with a different definition: when this happens, the source of the definition becomes a real argument supporting the definitional standpoint. For instance, in *Muscarello v. United States*, the descriptive definition cited above was challenged by putting forward another definition, that is "to move while supporting", equally backed by the authority of dictionaries. The clarification dialogue, namely an intervening dialogue set forth to solve a potential or actual misunderstanding, became a real discussion having as conflicting standpoints the descriptive definitions. To back the viewpoints, the parties used arguments by authority (Walton, 1997: 211-225) based on dictionaries; however, the authorities disagreed, and the parties resorted to another form of authority, namely argumentation by popular opinion (Walton, 1999: 223-226), used to establish which usage was the most commonly accepted by native speakers of a natural language. The second definition was shown to be grounded on the shared use reported in newspaper articles¹, and therefore was considered more acceptable.

¹ "The New York Times, for example, writes about "an ex-con" who "arrives home driving a stolen car and carrying a load of handguns", Mar. 21, 1992, section 1, p. 18, col. 1, and an "official peace officer who carries a shotgun in his boat", June 19, 1988, section 12WC, p. 2, col. 1; cf. The New York Times Manual of Style and Usage, a Desk Book of Guidelines for Writers and Editors, foreword (L. Jordan rev. ed. 1976) (restricting Times journalists and editors to the use of proper English). The Boston Globe refers to the arrest of a professional baseball player "for carrying a semi-loaded automatic weapon in his car". Dec. 10, 1994, p. 75, col. 5. The Colorado Springs Gazette Telegraph speaks of one "Russell" who "carries a gun hidden in his car". May 2, 1993, p. B1, col. 2 [...]. We recognize, as the dissent emphasizes, that the word "carry" has other meanings as well. But those other meanings, (e.g., "carry all he knew," "carries no colours"), see *post*, at 6, are not relevant here. And the fact that speakers often do *not* add to the phrase "carry a gun" the words "in a car" is of no greater relevance here than the fact that millions of Americans did *not* see Muscarello carry a gun in his car. The relevant linguistic facts are that the word "carry" in its ordinary sense includes carrying in a car and that the word, used in its ordinary sense, keeps the same meaning whether one carries a gun, a suitcase, or a banana." (*Muscarello v. United States*, 524 U.S. 125 (1998)).

In conclusion, definitions in legal argumentation play different roles according to their pragmatic function. Statutory definitions are aimed at avoiding or solving potential conflicts due to word ambiguity. Statutory definitions, in fact, always prevail over common definitions. Descriptive definitions are used to clarify the meaning of a term, and solve conflicts of opinion stemming from ambiguity.

1.2 *Definitions in law: propositional level*

Definitions can be characterized by different propositional structures. Some concepts can be defined by stating the genus and the difference, others by adding to the definition qualifications useful for the purpose of assessing the seriousness of an offence, still others by providing examples of the entities classified as such. In law, concepts can be differently defined according to the legislator's purpose. Some definitions are more useful for immediately classifying uncontroversial or paradigmatic cases, whereas other definitional discourses are extremely effective for categorizing new or borderline facts or events.

In law, the Aristotelian essential definition is called real definition (Solan, 2006: 403; Bayles, 1991: 256). Real definitions show the genus and the difference of the *definiendum*, and are interchangeable with it. The *definiendum* is described by stating its more generic semantic feature, the genus, and distinguishing the latter from the other related concepts, namely all the concepts which share the same generic feature. For instance, 'murder' is defined as "the knowing killing of another" (*Tenn. Code Ann.* § 39-13-201(a)(1); Moore, 1980: 176). The essential generic semantic feature of this concept in criminal law is 'to be a killing', which includes, in addition to 'murder', also 'manslaughter', 'justifiable homicide', 'infanticide', etc.; murder is distinguished from the other concepts, and in particular from manslaughter, by the difference 'knowing'. If this element can be demonstrated to exist in the event of a homicide, a 'killing of a man' is classified as a 'murder'; should the prosecution fail to show that the killing was committed knowingly, the defendant shall be simply presumed guilty of manslaughter (*State v. Page*, 81 S.W.3d 781 (Tenn. Crim. App. 2002)). Obviously, real definitions often involve the use of potentially controversial or ambiguous terms, like 'knowing' in the definition above. For this reason, the terms of a definition that may be not shared need to be defined. For instance, in the Tennessee Code the potential ambiguity of the term 'knowing' is partially solved by providing a general definition (*Tenn. Code Ann.* § 39-13-201(a)(1)):

"Knowing" refers to a person who acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.

Real definitions are extremely useful for establishing the presumption in favor of a classification. If a characteristic essential to a categorization cannot be proved by the prosecution or the plaintiff, such classification shall not apply, without any need for the defense to provide evidence supporting such conclusion (Solan, 2006: 403; for the type of reasoning from lack of knowledge and burden of proof, see Walton, 1996).

Definitions allocate on the prosecution the burden of proving that the entity falls into the category of the *definiendum*. For this reason, real definitions sometimes include other non-essential criteria to make the classification of prototypical cases easier and modify the weight of the burden of proof. For instance, in the *Canadian Criminal Code* the definition of 'rape' is made more specific by defining the essential element, 'no consent' as (section 244 (3); Temkin, 2002: 117):

For the purpose of this section, no consent is obtained where the complainant submits or does not resist by reason of:

- 1) the application of force to the complainant or to a person other than the complainant
- 2) threats or fear of the application of force to the complainant or to a person other than the complainant
- 3) fraud
- 4) the exercise of authority

The definition of the general concept of 'rape' is clarified by providing prototypical cases in which the victim can be classified as 'not consenting' to a sexual act with the alleged perpetrator of the offence. The general definition of 'no consent' in force before the amendment to the law allocated a too high burden of proof on the prosecution, which needed to demonstrate the absence of an inner state. For this reason, the lawmakers decided to lessen the burden modifying the definition and providing, instead of the semantic fundamental features of the concept, some prototypical situations in which the victim of an abuse could be clearly classified as 'non-consensual'. This type of definition is a powerful instrument for shifting the burden of proof in typical abuse cases onto the defense; once the prosecution has provided enough evidence to show that the complainant did not resist by reason, for instance, of exercise of authority, it is up to the defense to prove that the victim was in fact consensual. Similarly, some essential definitions like the definition of 'contract' may include defeaters, or prototypical situations in which some definitional elements cannot be true of the entities. For instance, a contract presumes freedom of the two parties in stipulating an agreement until the proof of the contrary has been provided. To make the shift of the burden of proof explicit in some typical abusive situations, the definition was more fully formulated in (Bayles, 1991: 261), and some exceptions were included in it: "a contract is a true, full

and free obligation between two parties, valid unless one of the two parties is insane, or has been forced..." (Emphasis added).

The other most relevant category of legal definitions is the so-called extensional or "incorporative" definition (Tiersma, 1999: 119). Extensional definitions can be either by enumeration or by example. In the former, the *definiendum* is not described; instead, a set including all the entities of which it may be possibly predicated of is given, such as in the following definition of 'security' (18 USC Section 2311):

"Securities" includes any note, stock certificate, bond, debenture, check, draft, warrant, traveler's check, letter of credit, warehouse receipt, negotiable bill of lading, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate; valid or blank motor vehicle title; certificate of interest in property, tangible or intangible; instrument or document or writing evidencing ownership of goods, wares, and merchandise, or transferring or assigning any right, title, or interest in or to goods, wares, and merchandise; or, in general, any instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, warrant, or right to subscribe to or purchase any of the foregoing, or any forged, counterfeited, or spurious representation of any of the foregoing.

Definitions by example do not include all possible instances of predication of the *definiendum*, but only the most prototypical cases. For instance, in the following will, the drafter instead of explaining the meaning 'artificial means' simply listed the most common types of operations classified as such (Bayles, 1991: 262):

[...] My living will states that if I would not recover from a disability I "not be kept alive by artificial means or 'heroic measures', including, but not limited to, any resuscitation efforts, the transplant of any vital organ, or the use of a respirator".

Definitions by enumeration and example may be extremely helpful to categorize an entity included in the definition itself. The definition establishes an equivalency between two names. However, extensional definitions are particularly risky in law, where a rule is kept general to be applied to new cases. Both definitions by enumeration and example cannot warrant a classification when a new entity or a controversial entity is considered. For instance, the above-mentioned definition of 'artificial means' only accounts for the listed techniques, not providing a criterion for categorizing other artificial practices such as nourishing the patient by intravenous injection.

Another type of definition that is fairly common in legal discussions is the definition by negation. Instead of providing a list of features characterizing the *definiendum*, a definition by negation identifies the concept to be defined relating it to its opposite. A thing is merely defined as not being its contrary. For instance, in *Milkovich v. Lorain Journal Co.* (497 U.S. 1 (1990)), 'opinion' was defined by the defendant in negative terms, namely as the contrary of

'fact'. Instead of highlighting the essential properties of the *definiendum*, the defendant simply asserted that opinions were opposite to facts; he then used an argument from contraries to draw from the premise that "facts are verifiable", the conclusion that "opinions cannot be proven to be true or false". Definitions in negative terms can be useful when the only available evidence is negative, and they can be used to develop arguments from opposites or contraries (A is good; B is the contrary of A; therefore B is bad). However, no further reasoning grounded on the semantic features of the *definiendum* can be based on these definitions.

2. Reasoning by definition in law

Legal definitions are basic argumentative instruments to apply a law to a case (Stevenson, 1938: 54; Bagolini, 1951: 425-426; Eng, 2003: 223-224). The argumentative dimension of legal definitions as plausible premises supporting the process of legal decision-making (see Soboleva, 2007: 53-53; Alexy, 1989: 234-243) can be shown analyzing reasoning by definition as a kind of plausible reasoning. Unlike deductive reasoning, leading from true premises to absolutely certain conclusions, plausible reasoning proceeds from premises that are only acceptable, and supports only plausible conclusions.

2.1 Structure of reasoning by definition

Legal reasoning from definition to the classification of an entity can be described as using the argumentative structure of argument from criteria to verbal classification (Hastings, 1963: 36-52) or argument from verbal classification (Walton, 2006: 129):

Argument from Verbal Classification	
INDIVIDUAL PREMISE:	<i>a</i> has property <i>F</i> .
CLASSIFICATION PREMISE:	for all <i>x</i> , if <i>x</i> has property <i>F</i> , then <i>x</i> can be classified as having property <i>G</i> .
CONCLUSION:	<i>a</i> has property <i>G</i> .

Table 1: Argument from verbal classification

This scheme highlights how a characteristic *G* can be attributed to an entity *a* on the grounds of another property *F*. However, this scheme does not explicitly refer to the concept of definition, nor does it point out the nature of legal definitions. This argument pattern may be conceived as the combination of a logical axiom (the *modus ponens* inference form which we can represent as *if p then q; p; therefore q*) with a semantic principle, namely the relation between two properties. The nature of the semantic link can be more deeply analyzed by taking into account the ancient notion of maxims, or general

inference rules based on semantic principles (Kienpointner, 1992; Rigotti, 2007a; 2007b). This link between semantics and logic has been clearly applied to legal reasoning in Cicero's *Topica* (see *Ciceronis Topica* III, 14, 15-15), later commented on by Boethius. Argumentation by definition can be explained as proceeding from the semantic rule establishing that "What the definition is predicated of, also the *definiendum* is predicated of" (Boethii *De Topicis Differentiis*: 184; Boethii *In Ciceronis Topicis* 1059c). This account of reasoning from definition can be explained using a modern legal example (*State v. Page*, 81 S.W.3d 781 (Tenn. Crim. App. 2002)):

In *Page*, the defendant hit the victim on the head once with a baseball bat. The defendant claimed that he did not intend to hit the victim. The defense argued that the defendant did not know he had hit the victim hard enough to kill him. In response, the state told the jury of the various definitions of "knowing," the essence being "that the defendant acted knowingly since he was aware of his acts and surrounding circumstances."

In the case above, the prosecution supported the indictment of second degree murder based on the definition of 'murder' stated below (*State v. Page*, 81 S.W.3d 781 (Tenn. Crim. App. 2002)):

For you to find the defendant guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:

- 1) that **the defendant unlawfully killed the alleged victim**; and
- 2) that the defendant acted knowingly.

A person acts "knowingly" if that person acts with awareness:

- 1) that **his conduct is of a particular nature**; or
- 2) that **a particular circumstance exists**; or
- 3) that the conduct was reasonably certain to cause the result.

The requirement of "knowingly" is also established if it is shown that the defendant acted intentionally. A person acts "intentionally" when that person acts with a conscious objective or desire either:

- 1) to cause a particular result; or
- 2) **to engage in particular conduct**.

The undisputable facts were that the defendant killed the victim; however it was controversial whether the offence was manslaughter or murder. The prosecution used the definition of 'knowing' above, stating in disjunctive form the essential elements of this crime. Then the following reasoning was applied (for the structure of the inference, see Rigotti & Greco, 2006; Rigotti, 2007a; Rigotti, 2007b):

MAXIM	ENDOXON
What the definition is predicated of, also the <i>definiendum</i> is predicated of	
	Murder is the unlawful killing of another by a person aware of the nature of his conduct, or conscious to engage in it
PRELIMINARY CONCLUSION	
What "unlawful killing of another by a person aware of the nature of his conduct, and conscious to engage in it" is predicated of, also "murder" is predicated of	
The <i>definiendum</i> is predicated of defendant's deed	The defendant unlawfully killed the victim with a bat and was aware of beating the victim on the head with a bat
Therefore the definition is predicated of the defendant's deed	The defendant murdered the victim

Table 2: Structure of the argument from definition

The strength of this kind of reasoning is grounded on the definition of 'murder', and in particular, on the definition of 'knowingly'. This definition is not a truth, but it is only taken for granted in law, and needs to be grounded on textual evidence or interpretation rules when challenged by the other party.

2.2 Reasoning by negative classification

The deductive *modus ponens* reasoning from definition is not the only type of logical axiom applied to the semantic rule of reasoning stemming from definition. When a disagreement arises regarding the classification of an entity, the most powerful type of reasoning consists in proving that the entity falls within the definition, or showing that such entity is excluded from such description. However, when it is the definition that is controversial, or when the pattern of reasoning from definition cannot be grounded on factual premises, a common strategy is the application of the axiom of disjunctive syllogism to argument from definition. The pattern of disjunctive syllogism can be represented as follows:

Either A or B
Not A
Therefore B

When this axiom is applied to reasoning from definition, the pattern of argument can be conceived as follows:

Reasoning by definition: disjunction	
DISJUNCTIVE PREMISE:	<i>a</i> is either A or B
CLASSIFICATION PREMISE:	A is defined as GD
DISJUNCTIVE PREMISE II:	<i>a</i> is either GD or B
INDIVIDUAL PREMISE:	<i>a</i> does not fall within GD
NEGATIVE CLASSIFICATION	<i>a</i> is not A
CONCLUSION:	Therefore <i>a</i> is B

Table 3: Pattern of inference from classificatory disjunctive syllogism

In the table above, disjunctive syllogism is applied to the argument scheme from classification. A semantic principle (*A is GD*) is applied to the disjunction premise (*a is either A or B*); from the combination of these two premises, a new premise is derived in which the category (A) is replaced with its definition (GD).

A clear example of its use can be found in *Adams v. United States* (78 Fed. Cl. 556 (2007)), an employment law case between some investigators and their employer (the U.S. Department of Health and Human Services or HHS). The employees sued the employer claiming that they were denied overtime pay under the *Fair Labor Standards Act*. The employer challenged the claim stating that the plaintiffs were not entitled to overtime pay, as they were merely carrying out an administrative duty and therefore they were subject to the administrative exemption to the overtime requirement. The crucial problem in the defendant's argument was the classification of the investigators' work as administrative. Their work did not involve management responsibilities, and consequently could not be classified as administrative under the *Fair Labor Standards Act*. The strategy used was to deny that their job fell under the contrary and only alternative to 'administrative work', that is 'production work'. This dichotomy was commonly shared and indisputable; however, they needed to show that the definition of 'production' did not apply to the plaintiffs' work. Thus, the defendant chose a peculiar definition of 'production work', describing it as a job of "employees whose primary duty is to produce the commodity that the enterprise exists to produce or market are engaged in 'production' activity" (29 C.F.R. § 541.205(b)). 'Production work' was contextually defined by enumeration, in order to narrow down the possible types of production duties. The 'production work' of HHS was then defined as "the sponsoring of federally-funded health care and benefit programs". As the plaintiffs' work concerned criminal investigations, and since criminal investigations did not fall under the concepts of "sponsoring health care and benefit programs", plaintiffs' duties could not be classified as 'production work'. Therefore, they were classified as 'administrative'. The defense's reasoning can be represented as follows:

	PREMISES	ENDOXA
DISJUNCTIVE PREMISE		Either a work is administrative or it is production
RULE OF INFERENCE		What the definition is predicated of, also the <i>definiendum</i> is predicated of
CLASSIFICATION PREMISE	"Sponsoring of federally-funded health care and benefit programs" is the definition of production work of HHS	
CLASSIFICATION PREMISE II	What "Sponsoring of federally-funded health care and benefit programs" is predicated of, also "production work of HHS" is predicated of	
DISJUNCTIVE PREMISE II	Either a work "sponsors federally-funded health care and benefit programs" or it is production	
INDIVIDUAL PREMISE	The plaintiffs' duty was criminal investigations	
NEGATIVE CLASSIFICATION		Criminal investigations are different from "sponsoring of federally-funded health care and benefit programs"
CONCLUSION	Therefore plaintiffs' work was administrative	

Table 4: Classificatory disjunctive syllogism applied to *Adams v. U.S.*

This table represents the structure of the application of reasoning from disjunctive syllogism to natural language and reasoning. The combination of the axiom with the argumentation scheme is explained by applying the new logical form of the scheme to a set of premises. The endoxical propositions, such as the maxim, are listed in the right-hand column, while the asserted propositions are shown in the left column.

At a procedural level, the role of this argument was to provide evidence with a view to shifting the burden of proof onto the plaintiff. The classification of the duties as 'administrative' was hard to prove, and the argument was indirect and based on an unshared and not commonly accepted definition of 'production work'. This argument collapsed when the definition of 'production work' was challenged. In fact, the plaintiff replied by using a direct definitional argument, and rebutted the indirect classification argument advancing a negative argument by definition. 'Administrative work' was defined by using the commonly accepted definition, and described as "primarily involving or affecting significant management responsibilities", including "specialized management consultation, overall management functions, contract negotiation and administration, and the like" (*Fair Labor Standards Act* of 1938, 29 U.S.C.S. § 201). The indirect argument did not provide positive evidence to prove that plaintiff's work affected management responsibilities, and therefore, the court found that the defendant failed to show that plaintiffs' primary duty qualified for administrative exemption (*Adams v. United States* 78 Fed. Cl. 556 (2007)).

The parties used a type of reasoning which is only indirectly definitional, as the logical axiom that they applied does not directly lead to a classification on the basis of a definition. This passage is mediated by the alternative between 'production' and 'administrative work'. This dichotomy is purely semantic, and may be represented as a different definition of 'production work'. The species 'production' can be conceived as defined by negation: the paradigm (or genus) 'dependent work' is divided into two species, 'administrative' and 'production'. The two species can be defined by simple negation of the opposite (for instance, '*production work*' is *what is not 'administrative work'*), as the binary paradigm allows one to identify one extreme of the opposition by exclusion of the other.

This case shows how different schemes can be used in arguing from definition in law, and how different logical axioms are triggered by different types of semantic analyses, or definitions. However, it also appears from the above-mentioned cases that patterns of reasoning from definition cannot be considered all equal from an argumentative point of view.

3. Conflicts of definition and semantic analysis

Definitions are instruments establishing the conditions of a classification, or the characteristics which need to be proven true (or plausibly true) of an entity with a view to classifying it in a particular way. Legal definitions connect factual data with legal consequences, and determine the weight and the allocation of the burden of proof. As highlighted in the analysis of reasoning from verbal classification, a categorization of an entity is acceptable if both factual evidence and the definition are accepted. The first step is to assess the facts, and then choose a definition supporting a classification based on the available facts and suitable to the purpose of the arguer. In the ancient tradition these two steps were considered part of the process of evaluating the shared knowledge called *stasis*. *Stasis* was articulated in four levels: *conjectura*, *finis*, *qualitas*, and *translatio* (see Barwick, 1965: 96; Cicero, *De Inventione* 10-11), namely the stasis of fact, definition, quality and jurisdiction (for a detailed introduction to the concept of *stasis* in the ancient tradition see Heath, 1994; Braet, 1987; for its applications to communication, see Marsh, 2006). When facts are not challenged, the successive step is to name them, and therefore to choose an appropriate definition. In law, definitions are usually set forth in the laws or, in case of company law, in the agreements. Several definitions are expressed in a general format that is subject to interpretation to allow for better flexibility of the law; moreover, the terms used in several definitions are often similar in meaning to the words commonly used in ordinary conversation. As a result, legal terms can be interpreted and redefined, and interpretations can be used as instruments for defending a particular viewpoint (for the concept of redefinition, see Stevenson, 1938).

Redefinition strategies can be classified in two broad categories according to their purpose: they may pursue the goal of altering the reasoning from classification, or they may be aimed at shifting the burden of proof.

3.1 *Redefinitions and reasoning from redefinition*

As seen above, definitions represent the core premise of reasoning from classification. Redefining a term has the effect of modifying the whole reasoning process, allowing one to reach a classificatory conclusion even when unsupported by the facts. Obviously, redefinitions to be effective need to be disguised and hard to identify. For this reason, redefinition strategies are usually based on the ambiguity stemming from the difference between the meaning that legal terms have in ordinary conversation, and the specific meaning they have in legal discourse.

A clear example can be found in *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990), where the meaning of the legal terms 'fact' and 'opinion' was modified based on their everyday meaning.

In this case, Milkovich, a high school wrestling coach, sued Lorain Journal Company's newspaper for publishing a column stating that "Anyone who attended the meeting . . . knows in his heart that Milkovich. . . lied at the hearing..." (Milkovich, 497 U.S. at 5, 110 S. Ct. at 2698, 111 L. Ed. 2d at 9). According to the shared definition, a statement to be considered as 'defamatory' needs to meet the requirements of being false, stated with malice, and damaging someone's reputation. The defendant chose not to prove that the proposition was in fact true (Milkovich's behavior was controversial at that time); instead, he decided to show that the assertion was not verifiable, based on the fact that the journalist had expressed an opinion and not reported a fact. The defendant's argument can be summarized as follows:

Either a statement is an opinion or a factual statement
Factual statements are verifiable
This statement is an opinion
Therefore it is not a fact
Therefore it is not verifiable

This type of reasoning from oppositions is grounded on a binary paradigm (for instance, men can be either *dead* or *alive*, no third possibility is allowed), and the affirmation of one extreme implies the negation of the other together with all its relevant characteristics (Rigotti, 2005: 74). In this case, within the category of verifiable statements opinions were opposed to facts; as the journalist's statement was an opinion, then it was held to be not verifiable. However, the defendant altered the paradigm constituted of the legal terms 'opinion' and 'fact'. In law, a factual statement has the particular meaning of a statement "that relates to an event [**18] or state of affairs that existed in the

past or exists at present and is capable of being known" (*Oilman v. Evans*, 750 F.2d at 981 n.22). The difference between 'statement of fact' and 'opinion' in law is not drawn based on the relation between speaker and proposition, but on the grounds of a judgment, on which its verifiability stands (*Janklow v. Newsweek, Inc.*, 759 F.2d 644 (8th Cir. 1985)). In this latter view, a factual statement does not mean 'a representation of a state of affairs', but 'an assertion referring to a verifiable fragment of reality', and opinions are not held as 'assertions reporting a viewpoint', but 'assertions whose propositional content is related to values'. The legal semantic paradigm under which assertions fall is the *nature* of the judgment, while in ordinary conversation they are usually classified as kinds of *illocutionary acts*. The everyday meaning of 'fact' and 'opinion' is based on the different types of relation between the speaker and the proposition; however this classificatory criterion is not the same as in law, where the crucial issue is to evaluate the truth or falsity of the *judgment*, assessing the relation between the proposition and the denoted state of affairs. The defendant redefined a legal concept modifying its genus, or the paradigm to which it belongs. On this view, the statement was no longer defined as a kind of 'judgment' but a kind of 'act' (Atelsek, 1981). In the following table, the semantic analysis of the redefinition is represented.

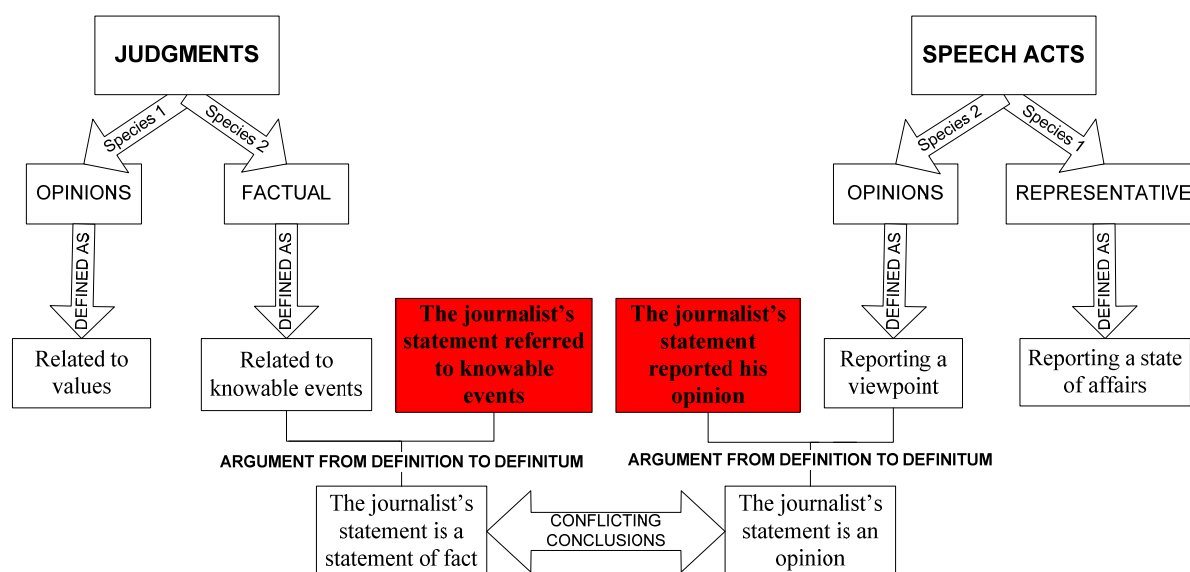


Fig. 1: Conflict of definitions and conflict of classifications

The same fragment of reality, namely the fact that the journalist expressed his viewpoint on an alleged lie of the coach, is differently framed by the two definitions. According to the legal definition, the journalist's statement is described as a judgment, which can be a fact or an opinion according to its relation with the denoted state of affairs. On the defense's definition, the journalist's words are categorized as a kind of speech act, which can be

divided into representative speech acts or opinions. The arguments from verbal classification (or from definition to *definitum* in this case) grounded on the legal definition and the defense's redefinition result in apparently conflicting conclusions. The same statement is categorized as a statement of fact, according to the legal semantic system, and as an opinion, according to the everyday meaning. The defense's potentially manipulative move consists in advancing the ordinary meaning of 'opinion' as contrary to the legal concept of 'statement of fact'.

3.2 *Redefinitions and burden of proof*

The second category of redefinition strategies includes the techniques used to shift the burden of proof. A concept can be redefined to lessen the burden of proof, or avoid the need to prove standpoints that cannot be supported by evidence. However, redefining a concept is sometimes extremely risky in law, as explicit redefinitions are often challenged on the grounds of textual evidence. Powerful redefinitions often involve a deeper semantic analysis, altering the presuppositions of a specific semantic feature in the original definition.

A clear case of a subtle redefinition shifting the burden of proof is the above-mentioned case *State v. Page*, in which the defendant hit the victim with a bat and caused his death. The goal of the prosecution was to prove that the homicide was voluntary, and therefore classifiable as a 'murder'. However, the requisite of showing that the killing was committed 'knowingly', in compliance with the definition of murder as 'knowing killing', is extremely hard to achieve. In *Tenn. Code Ann.* §§ 39-11-106(a)(20), -302(b), knowing is defined by statute as follows:

"Knowing" refers to a person who acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result.

The defendant was in fact guilty of killing a man; however, he was surprised at his death, and was intoxicated, even though conscious of his actions. The prosecution could not prove that he was aware that his conduct was certain to cause the result, and redefined the concept in a disjunctive form (*State v. Page*, 81 S.W.3d 781 at 785, Tenn. Crim. App. 2002):

A person acts "knowingly" if that person acts with awareness:

- 1) that his conduct is of a particular nature; or
- 2) that a particular circumstance exists; or
- 3) that the conduct was reasonably certain to cause the result.

The disjunctive form allowed the prosecution to lessen the burden of proof. Since the defendant was aware of hitting the victim, he was aware of his conduct.

The defense, however, objected to this redefinition, opposing a definition of 'knowingly' grounded on a semantic analysis of the adverb (*State v. Page*, 81 S.W.3d 781 at 788, Tenn. Crim. App. 2002):

However, a knowing second degree murder is strictly a "result-of-conduct" offense. See Ducker, 27 S.W.3d at 896. The result of the conduct is the only conduct element of the offense; the "nature of the conduct" that causes death is inconsequential.

The defense's definition of 'knowingly' was based on the scope and presuppositions of the verb to which this adverb is referred, that is, 'killing'. In the defense's view, killing, unlike abuse, could not be described as an event, but as an outcome resulting from an action. The qualifications of an adverb refer to the semantic properties of the verb from which it depends, and in the specific case of 'killing', from 'being a result of a conduct' and not 'a conduct'. For this reason, the definition of 'knowingly' in this context was expressed by the defense as a conditional finding: 'if the person acts with awareness that the conduct is reasonably certain to cause the result'.

This example shows how redefinitions are crucial in legal reasoning for procedural reasons. Definitions are premises in reasoning from classification, and therefore are instruments used to fulfill the burden of proof. Modifying a definition may have the effect of increasing or lessening the burden of proof, thereby easily shifting the burden of disproving the conclusion on the other party. Redefining a crime may result in redefining the dialogical game between prosecution and defense (see *Rhodes v. J Brigano* 91 F.3d 803 (1996)).

The analysis of the cases in this section shows important characteristics of redefinitions of legal terms. They can be used to affect the reasoning from classification, or influence the burden of proof. In the first case, redefinitions can change the possible conclusion supported by factual evidence in reasoning from classification; in the latter case, they include in (or exclude from) the elements taken for granted or needed to be proven in a definition some characteristics, with a view to modifying the type and weight of evidence to be provided. The two strategies are effective when they are hard to identify and grounded on ambiguities or subtle semantic analyses.

4. Conclusion

Definitions are crucial argumentative instruments in law. They support the classification of entities in legal categories, and consequently warrant the enforcement of legal consequences. However, in order to understand their role, it is necessary to understand their dialectical nature and their function in

reasoning from classification. Definitions are general *endoxa*, or commonly accepted propositions, which may have different pragmatic functions and propositional structures. However, each type of definition plays a particular function and has different argumentative weight in reasoning processes, triggering various types of inferences. Different types of definition differently reflect the structure of the thing defined, and therefore are differently grounded on the shared knowledge constituting the foundation for their acceptability. Similarly, reasoning from definition is a pattern of inference including distinct types of definitions and kinds of legal axioms. However, all these reasoning patterns can be assessed according to the strength of their relation with the shared semantic system. The endoxical nature of legal definition allows one to analyze conflicts of definitions as conflicts between types of common knowledge.

REFERENCES

- Aarnio, A. (1977): *On Legal Reasoning*. Turku (Turun Yliopisto).
- Alexy, R. (1989): *A Theory of Legal Argumentation*. Oxford (Clarendon Press).
- Atelsek, J. (1981): *An Anatomy of Opinions*. *Language in Society*, 10, 217-225.
- Bagolini, L. (1951): *Value Judgments in Ethics and Law*. *Philosophical Quarterly*, 7, 423-432.
- Bayles, D. (1991): *Definitions in Law*. In: J. Fetzer, D. Shatz & G. Schlesinger (eds.), *Definitions and Definability: Philosophical Perspectives*. Dordrecht (Kluwer), 253-267.
- Boethii, A. M. S. (1988): *In Ciceronis Topica*, translated, with notes and introduction by E. Stump. Ithaca (Cornell University Press).
- Boethii, A. M. S. (1978): *De Topicis Differentiis*, translated by E. Stump. Ithaca (Cornell University Press).
- Braet, A. (1987): *The Classical Doctrine of Status and the Rhetorical Theory of Argumentation*. *Philosophy and Rhetoric*, 20, 79-93.
- Ciceronis, M. T. (1994): *Topica*, editio, commentario critico instruit G. di Maria. Palermo (L'Epos).
- Ciceronis, M. T. (1998): *De Inventione*, introduzione, traduzione e note a cura di M. Greco. Galatina (Congedo).
- Eng, S. (2003): *Analysis of Dis/agreement – with Particular Reference to Law and Legal Theory*. Dordrecht (Kluwer).
- Giuliani, A. (1972): *The Aristotelian Theory of the Dialectical Definition*. *Philosophy and Rhetoric*, 5, 129-142.
- Hall, J. (1966): *Analytic Philosophy and Jurisprudence*. *Ethics*, 77/1, 14-28.
- Hastings, A. C. (1963): *A Reformulation of the Modes of Reasoning in Argumentation*. Evanston, Illinois (Ph.D. Dissertation, Northwestern University).
- Heath, M. (1994): *The substructure of stasis-theory from Hermagoras to Hermogenes*. *Classical Quarterly*, 44, 114-29.
- Kienpointner, M. (1992): *Alltagslogik: Struktur und Funktion von Argumentationsmustern*. Stuttgart (Fromman-Holzboog).
- Lindahl, L. (2004): *Deduction and Justification in the Law. The Role of Legal Terms and Concepts*. *Ratio Juris* 17/2, 182-202.

- Marsh, C. (2006): The syllogism of apologia: Rhetorical stasis theory and crisis communication. *Public Relations Review*, 32/1, 41-46.
- Moore, M. (1980): The Semantics of Judging. *Southern California Law Review*, 54, 151-294.
- Rigotti, E. & Greco Morasso, S. (2006): Topics: the argument generator. In: E. Rigotti *et al.*, *Argumentation in financial communication*, Argumentum eLearning module. <http://www.argumentum.ch/>.
- Rigotti, E. (2005): Towards a typology of manipulative *processes*. In: L. de Saussure & P. Schulz (eds.), *New Perspectives on Manipulative and Ideological Discourse in Pragmatics and Discourse Analysis*. Amsterdam (John Benjamins), 61-84.
- Rigotti, E. (2007a): Can classical topics be revived within the contemporary theory of argumentation? In: F. H. Van Eemeren, J. A. Blair, C. Willard & B. Garssen (eds.), *Proceedings of the Sixth Conference of the International Society for the Study of Argumentation*. Amsterdam (Sic Sat), 1155-1163.
- Rigotti, E. (2007b): Relevance of context bound loci to topical potential in the argumentation stage. *Argumentation*, 22, 519-540.
- Sager, J. (2000): *Essays on Definition*. Amsterdam (John Benjamins Publishing Company).
- Schiappa, E. (2003): *Defining Reality. Definitions and the politics of meaning*. Carbondale / Edwardsville (Southern Illinois University Press).
- Soboleva, A. (2007): Topical Jurisprudence: Reconciliation of Law and Rhetoric. In: A. Wagner, W. Werner & D. Cao, *Interpretation, Law and the Construction of Meaning*. Amsterdam (Springer), 49-63.
- Solan, L. (2006): Definition / Rules in Legal Language. In: K. Brown (ed.), *Elsevier Encyclopedia of Language and Linguistics*. Elsevier / Amsterdam.
- Stevenson, C. L. (1938): Ethical Judgments and Avoidability. *Mind*, 47, 45-57.
- Temkin, J. (2002): *Rape and the Legal Process*. Oxford (Oxford University Press).
- Tiersma, P. (1999): *Legal Language*. Chicago (The University of Chicago Press).
- Walton, D. (1996): *Arguments from Ignorance*. University Park (The Pennsylvania University Press).
- Walton, D. (1997): *Appeal to Expert Opinion*. University Park (The Pennsylvania University Press).
- Walton, D. (2005): Deceptive Arguments Containing Persuasive Language and Persuasive Definitions. *Argumentation*, 19, 159-186.
- Walton, D. (2006): *Fundamentals of Critical Argumentation*. Cambridge (Cambridge University Press).
- Zarefsky, D. (2006): Strategic Maneuvering through Persuasive Definitions: Implications for Dialectic and Rhetoric. *Argumentation*, 20, 399-416.