

LEGAL ARGUMENTATION
AS AN ILLOCUTIONARY ACT COMPLEX:
A CRITICAL ANALYSIS

by

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Introduction

Legal discourse can be analyzed as an appeal to logos, to reason. Certainly, this is not its only function; some people even doubt whether most speakers would think it important. But that doesn't affect the value of the approach. By examining to what extent one can analyze legal discourse starting from this function, one can also find out to what extent one can't.

The approach presupposes a working model for the analysis of the argumentative parts of legal discourse. This should be a model in which the communicative function is dominant. In studies of formal and informal logic, many proposals are available. But most of these are either monological, or even product-"minded", or too vague. Inspired by the Searlean theory of speech acts, Van Eemeren and Grootendorst have proposed a model [1984, 19-74; see also 1982]. They analyze the speech act "to argue" as an illocutionary act complex, situated on an above sentence level, formulating the following correctness conditions:

- *propositional content condition*: the constellation of statements S1, S2 (...Sn) consists of assertives in which propositions are expressed;
- *essential condition (for pro-argumentation)*: advancing the constellation of statements S1, S2 (...Sn) counts as an attempt by speaker S to justify opinion O to listener L's satisfaction, i.e. to convince L of the acceptability of O;

- *preparatory conditions (for pro-argumentation):*
 - (1) S believes that L does not (in advance, completely, automatically) accept the expressed opinion O;
 - (2) S believes that L will accept the propositions expressed in the statements S1, S2 (... , Sn);
 - (3) S believes that L will accept the constellation of statements S1, S2 (... , Sn) as a justification of O.

- *sincerity conditions (for pro-argumentation) :*
 - (1) S believes that O is acceptable;
 - (2) S believes that the propositions expressed in the statements S1, S2 (... , Sn) are acceptable;
 - (3) S believes that the constellation of statements S1, S2 (... , Sn) constitutes an acceptable justification of O [1984,44].¹

This proposal takes into account only the communicative aspect. It is completed by an analysis of the interactional aspect. The authors propose a conventional link between the illocutionary act complex of argumentation and the perlocutionary act of convincing. This means that an actor, proarguing O, always intends to convince L of the acceptability of O.

Please note that this link between the illocution and the associated perlocution is expressed in the essential condition. This condition, according to Searle's theory of speech acts, corresponds with a constitutive rule. According to Cohen's theory of perlocutions [1973], the directly associated illocutionary perlocution gives sense to the illocution. I emphasize this point because it is mainly this conventional link, and therefore the essential condition that I shall criticize.

Van Eemeren and Grootendorst think that the illocutionary perlocution of convincing is at least in some sense conventional, although the conventions involved won't be conventions of language, but rather conversational conventions founded on a culture of usage of language in certain cases [cf. Searle 1979,49; Morgan 1978,269]. I won't discuss this topic. My topic will be the conventionality of the intention to

¹ I won't discuss the points where this proposal deviates from classical speech act theory as formulated in Searle 1969. I also neglect the recognition conditions the authors propose [1984, 42-43], but see my conclusion.

convince, not the conventionality of the means by which this intention is pursued by S.

Preliminary amendment

To prevent a terminological mess, I want to make a preliminary amendment to the model. In the terminology of Van Eemeren and Grootendorst one can take three points of view in respect to an expressed opinion O. A positive point of view: "It is the case that O", [+O]. In that case one is bound to deliver a pro-argumentation. A negative point of view: "It is not the case that O", [-O]. In that case one is bound to deliver a contra-argumentation. And a zero point of view: [?O]. One doubts the tenability of a positive or negative point of view. In that case one is not bound to deliver a pro- or contra-argumentation, but takes the position of the antagonist.

In the model of pro-argumentation, a relation is constructed between the argumentative statements S1, S2 (... , Sn) and the expressed opinion O. I think this should be a relation between the statements S1, S2 (... , Sn) and the point of view [+O]. "To justify" ought to be related to human behavior. In an informal terminology "having an opinion" is part of human behavior. But in this model, the expressed opinion is just a statement, a statement *towards* which one *takes* a point of view. In that case, this "taking a point of view" is the behavior to be justified.

I don't think this amendment makes any essential difference, it just simplifies and corrects the model and the terminology.² If one delivers an argument contra O, one delivers an argument that it is not the case that O. If one appears not to be able to deliver an argument that O is acceptable, it appears that one is not able to deliver an argument that it is the case that O, *which of course does not mean that it is not the case that O!* Thus, successfully attacking O means justifying [-O]. Successfully doubting O, that is successfully attacking [+O] or [-O], doesn't justify anything else than that one may maintain his doubt.

The amended model for pro-argumentation is:

² Yet I think, this amendment is very important in argument theory, has wide implications, and has an important explanatory force towards many points of confusion.

- *propositional content condition*: the constellation of statements S1, S2 (... ,Sn) consists of assertives in which propositions are expressed;
- *essential condition (for pro-argumentation)*: advancing the constellation of statements S1, S2 (... ,Sn) counts as an attempt by speaker S to justify opinion [+O] to listener L's satisfaction, i.e. to convince L of the acceptability of [+O];
- *preparatory conditions (for pro-argumentation)*:
 - (1) S believes that L does not (in advance, completely, automatically) accept the expressed opinion [+O];
 - (2) S believes that L will accept the propositions expressed in the statements S1, S2 (... , Sn);
 - (3) S believes that L will accept the constellation of statements S1, S2 (... , Sn) as a justification of [+O].
- *sincerity conditions (for pro-argumentation)* :
 - (1) S believes that [+O] is acceptable;
 - (2) S believes that the propositions expressed in the statements S1, S2 (... , Sn) are acceptable;
 - (3) S believes that the constellation of statements S1, S2 (... , Sn) constitutes an acceptable justification of [+O].

The problem

The question I want to raise is whether this model is correct if we aim at the analysis of the argumentative parts of legal discourse. This may seem a rather odd question, because the model is pretended to be a descriptive model, not a normative pragmatic model. So, the model is correct or it isn't, but we can't amend it just because we change our goals, or the context, or our concept of reasonableness. How then can we raise the question whether it fits the analysis of *legal* reasoning?

The theory of speech acts tries to describe the conventions which govern the usage of language. In the model we see the conditions which L may expect to be fulfilled when S performs the illocutionary act complex "to argue". But conventions hold within a certain community. So one can ask: Which community, who are the S and

the L in the model? The drafters of the model seem to pretend that this description of the illocutionary act complex and the associated perlocutionary act is universal. In their opinion, S doesn't argue at all if the essential condition is not fulfilled, the essential condition which expresses the link between "to argue" and "to convince". *In other words, S and L are every S and L in any context.*

I don't agree with this point of view. I don't think that these conditions exclusively describe everything we denote with the illocutionary verb "to argue", or with the explicit performative formula "I argue that ...", or with the illocutionary indicators, such as "because", "thus", "therefore", etc. My thesis is that the link between the illocutionary act complex and the perlocutionary act is less definite, generally, than the model suggests. But, in certain argumentative contexts, specific conventions may hold. If such specific conventions hold between illocution and perlocution, these will be reflected of course in the formulation of the essential condition (and also in the formulation of the third part of the preparatory and the sincerity condition). But in that case, this essential condition isn't universal, founded in the meaning of language. It is a context dependent condition, founded on the usage of language in specific cases.

Van Eemeren and Grootendorst have formulated their proposal working on a normative theory about rules for rational (I would prefer to call it reasonable) discussions. They propose a dialectical discussion model [1984].

A dialectical discussion can be characterized as a discussion about an expressed opinion O. The protagonist takes a positive or negative point of view: "It is the case that O" or "It is not the case that O". The antagonist doubts the tenability of this point of view. The disputants explore the possibilities of a consensus about this point of view by discussing it according to a set of discussion rules they agreed upon. If the antagonist, forced by the arguments of the protagonist, has to give up his doubt, there is a consensus. The antagonist is forced to give up his doubt if the protagonist argues with success that his point of view follows from statements the antagonist is obliged to admit (his concessions). If the antagonist cannot be forced to give up his doubt, the protagonist cannot reasonably stick to

his point of view.³

Although Van Eemeren and Grootendorst are very well aware of the descriptive character of the "speech-act-part" of their work, and of their pretensions of "context-independence" (in the Searlean sense: context seems to be embodied in the essential condition), it is my opinion that this dialectical context has influenced the analysis of the illocutionary act complex. It is highly plausible that in a dialectical context the convention holds that every actor, pro-arguing O, ought to intend to convince L of the acceptability of [+O], and thus that L expects S to have this intention. But is this also plausible in a non-dialectical context, which I think the context of legal reasoning at least sometimes is?

So, the question I want to raise whether the descriptive model is correct if we aim at the analysis of the argumentative parts of legal discourse, may seem an odd question as long as we see a theory of speech acts as a pure linguistic theory. As soon as we develop it as, or relate it to a communication theory, it is not. For example, a thesis within the theory of speech acts that some conditions are rather indefinite but can be specified within certain contexts, isn't strange as soon as one accepts that the conventions which govern perlocutions are part of it. Exploring the conventionality of the perlocutionary act "to convince" leads to a conclusion that there seem to be certain conventions, but that these conventions evidently vary per context.

I shall try to argue my thesis that we must reconsider the idea of a rigorous conventional link between the illocution "to argue" and the perlocution "to convince" as expressed in the essential condition, and that several amendments of the model are necessary to make it a working model for the analysis of the argumentative parts of legal discourse.

First I shall describe a certain legal context and assume that the concept of reasonableness in this context is (at least partly) defined by the dialectical discussion model. This means that one can only reasonably maintain a positive or negative point of view, if one is able to defend this point of view against doubt by reaching a consensus about its acceptability. Any minor pretention would be useless in

³ Well known examples of this type of discussion are the dialectical parts in the Platonic dialogues. Of course, the importance of this dialectical discussion model has to be judged in the light of modern theories of science.

this context. So S will be expected to do so, and thus in a description of the act complex, this can be formulated as the essential condition.

Unfortunately, we shall be forced to conclude that if this concept of reasonableness is correctly chosen, a judge S often won't be able to meet his argumentative obligations: his acting is not reasonable. This is a very unattractive conclusion. So I shall withdraw this dialectical concept of reasonableness and replace it by a less severe, non-dialectical one. According to this new model, judge S also bears argumentative obligations. But now S is not obliged to *convince* L of the *acceptability* of his point of view, that is to reach a consensus with L about this point of view. He is "only" obliged to show to L's satisfaction that his point of view is not excluded.

If you are willing to admit: (i) that it is imaginable that a context exists in which the obligations of a judge S are given by this amended concept of reasonableness and, (ii), that in this context L expects S to fulfil these obligations and, (iii), that the illocutionary act complex that S carries out to fulfil these obligations and which L understands as such is the illocutionary act complex "to argue", then you have to admit that the given set of conditions does not correctly describe this act complex because L doesn't expect the essential condition to be fulfilled.

Analysis of a legal context

Our question is: when can S believe (or be allowed to believe, from a normative point of view) that L will accept the constellation of statements S1, S2 (... , Sn) as a justification of [+O], so that he will be convinced of the acceptability of [+O]? We have to state this question, because an attempt to convince L that is beforehand abortive in the eyes of both S and L, doesn't fulfil the essential condition. This means that, according to the model of the illocutionary act complex, S didn't argue [+O] at all.

A preliminary question is: who is S, who is L and what kind of expressed opinion is O in legal discourse? Of course there are many possible answers to the preliminary question, depending on the context. Let us assume a context. There are two parties P1 en P2. They have a conflict of opinion about the expressed opinion O1. P1 takes a positive point of view: "It is the case that O1" or [+ O1]. P2 takes a negative point of view: "It is not the case that O1" or [- O1]. So,

there is a *compound* dispute. S settles conflicts of opinion about opinions from the set $O = \{O_1, O_2 \dots, O_n\}$. Suppose, P1 and P2 cannot reach consensus in a discussion. P1 can't convince P2 that O_1 is the case; P2 can't convince P1 that O_1 is not the case. Suppose furthermore that this situation blocks certain actions of P1: P1 wants to act according to a situation in which $[+ O_1]$ is accepted, but he is not allowed to do so because of the attitude of P2. This blockade can be broken through by a verdict of S. P1 is designated to put the conflict before S. It is not decided yet which party gets the presumption and which party bears the burden of proof. The judge S takes a passive position.

Elsewhere I have given an analysis of the argumentative obligations of S in such a context, starting from the idea that S aims at an appeal to reason, and accepting a dialectical discussion model [1986]. I have distinguished between *internal* obligations - the obligations of S to the parties in the particular dispute - and *external* obligations, the obligations of S to the community concerned. The community concerned is defined as the community whose behaviour is influenced by the way S settles a dispute in which it (the community) wasn't involved directly.

It depends on the discussion model we choose which obligations S has to fulfil. The normative model determines which argumentative obligations we *may* impose on S (and on P1 and P2), *given this model*. Therefore these obligations may change if we decide that we prefer another normative discussion model because the dialectical model doesn't fit the situation.

When, in a dialectical model, we lay an argumentative obligation upon S for every positive or negative point of view he takes towards a certain expressed opinion O, this leads to the following conclusions:

S will be able to meet his internal argumentative obligations, because his points of view are zero-standpoints; he plays the role of the antagonist who questions the acceptability of the positive or negative points of view adopted by the parties. He doesn't take a positive or negative point of view himself.

In many cases S will not be able to meet his external argumentative obligations. With respect to the community concerned, S plays the role of protagonist because he adopts positive or negative points of view to one or more expressed opinions. And the

sources from which, according to the model, S can draw statements S1, S2 (... , Sn) to argue his attitude towards O, are insufficient.

I shall repeat the argument which leads me to the second conclusion. (Whether or not the first conclusion is tenable isn't important here.) Let us suppose it is the first time a conflict about an opinion O is put before S. So there is no casuistry yet. The parties give only one argument for their points of view:

P1: "[+ O1], because it has not been proved that [- O1], and the presumption ought to be given to P1";

P2: "[- O1], because it has not been proved that [+ O1], and the presumption ought to be given to P2".

Suppose that S gives the presumption to P1. Then it is easy to see that P2 didn't deliver a *prima facie* case for his point of view and, more important, it is plausible that P2 won't be able to deliver such a case by further (sub)arguments. It seems unthinkable that there is a set of statements, such that they all are statements which S has admitted or is obliged to admit, from which it follows that the presumption ought to be given to P2. Thus, S can simply settle the conflict. He can satisfy the point of view [+ O1].⁴

Now let us focus on the external implications of this decision. Suppose two other parties, say P3 and P4, have a conflict of meaning about the expressed opinion O2. They learn how S settled the conflict about O1. What do they learn? I think this. If S behaves rationally, he will give the presumption to the positive point of view. Why? Because if the conflict would be put before S, and S would give the presumption to the negative point of view, now the other party would be able to deliver a *prima facie* case that the presumption ought to be given to him, drawing his argument from a category concessions of S which we can label: *statements of S, expressed in comparable contexts*. The strength of his case is related to the number of

⁴ Please note that if S would have given the presumption to P2, P1 would have been in a hopeless position. Also note that S is *not* obliged to justify internally why he gave P1 the presumption. Both P1 and P2 had an obligation to defend their point of view, according to the discussion rules. By meeting the point of view [+O1], S doesn't take this point of view against P1 and P2. He just maintains a zero point of view [?O1], which implies that, according to the presumption, the solution is [+O1].

conflicts in which S has given the presumption to the positive point of view.

This fact will strongly determine the dispute between P3 and P4, even if they won't put their conflict before S. This applies to all disputes about opinions O within the community concerned, because S is appointed to settle these conflicts if parties can't. So, S decided a problem of choice within the community, which we can describe in terms of taking a point of view in respect to an opinion. This opinion A is:

For all conflicts of meaning about an opinion O, the presumption ought to be given to the positive point of view.

In respect to this opinion, S takes a positive point of view. But very likely, a large group within the community will doubt the tenability of this point of view. If there would be a discussion between this group and S, S would be obliged to defend his positive point of view in respect to A, according to the dialectical discussion rules. In my opinion, S delivers a *prima facie* case if he shows that there is a set of statements so that [+ A] follows from this set, and so that each of these statements falls within one of the next categories C:

- (1) statements to which S is committed by some competent authority;
- (2) statements which reflect views apparently held by the community concerned;
- (3) statements which fit into the pattern of statements under category (2);
- (4) statements which S has successfully defended against the community concerned before.

Let us stipulate the following, very tentative definitions. Someone acts *rationally* if he acts according to explicit rules or to rules which can be made explicit, or feels obliged to justify his acting if he deviates from such a rule by reinterpreting, amending or repealing the rule. Someone acts *reasonably* if he acts rationally according to rules which are accepted by the community concerned. If you want to accept these descriptions, poor as they are, it will be clear that the *rationality* of S's acting is presupposed. If not, we can't predict S's acting in future conflicts from his acting in the past. The question is whether S's acting is also reasonable.

If we accept the dialectical model, and say that a rule ought to be accepted by the community if it is well defended according to the model, then there are good reasons to suppose that S's acting often won't be reasonable, because S won't be able to make his *prima facie* case. Let us have a look at the four categories (1), (2), (3) and (4). Category (1) is a strong one, but only if the authorities filled it. Further, there is the problem that every statement needs an interpretation. If the interpretation isn't clearly correct, S needs additional statements to justify his interpretation. Category (4) of course depends on former successes, based on (1), (2), and (3), so it isn't an independent source. This implies that S must draw his statements from categories (2) and (3). But if one realizes that the conflicts will often proceed from a conflict of interests within the community, one cannot expect these sources to be very rich. So, often S won't be able to make his case.

Another discussion model

The rationality of S's acting is evident, and arguing the reasonableness seems not attainable. It seems clear to me that this must not lead us to the conclusion that there is no reason for S to argue at all. The alternative is to amend the dialectical discussion model we choose because it doesn't seem to meet the requirements of an adequate problem-solving strategy as far as the external justification is concerned. It doesn't meet the requirements because it doesn't fit the type of problems closely enough. In my opinion another model should be proposed to operationalize the concept of reasonableness in these contexts, a model in which "rhetorical" elements, such as the ethos of the judge against the community can be accounted for.

Does S necessarily try to convince L of the acceptability of [+A]? I don't think he does. The fact that S is appointed to settle these conflicts of meaning, shows that it is recognized that these conflicts cannot always be settled on evident, objective grounds, known by the community. There is room for different opinions. Because the community needs a decision, S is invested with authority. This authority of S must be founded on presupposed rational behavior, according to our stipulative description of rationality.

It seems plausible that we expect S to do more than just acting rationally. At least in the majority of the cases we expect him to

decide reasonably. What that means is not clear at all. But as far as his argumentative obligations are concerned, the dialectical conditions seem to be too severe. So, let us withdraw the dialectical model and, for the sake of our analysis, chose an extremely "weak" model. S is obliged to prove that he can reasonably adopt his point of view, but according to the new model this means that S has to show that his point of view [+A] *can not be excluded*. A point of view [+A] is a reasonable point of view if it is compatible with statements that S has admitted or has to admit. S can amend or withdraw earlier statements, but according to the description of rationality, he is obliged to justify such a correction.

I won't discuss the further characteristics of a discussion model with these obligations for judge S. I won't discuss the question whether this model isn't too weak to fit a legal context. It will do if you can imagine a context in which these are the obligations of S and L expects S to fulfil these obligations. Furthermore I want you to admit that S, fulfilling these obligations, performs the complex speech act "to argue", although he evidently doesn't meet the essential condition which I repeat: Advancing the constellation of statements S₁, S₂ (...), S_n) counts as an attempt by speaker S to justify his point of view to listener L's satisfaction, *i.e. to convince L of the acceptability of [+/-O]*. More important, L doesn't expect S to meet this condition. That is the point I want to make.

Consequences

Now let us return to our main subject, the descriptive model of the illocutionary act complex, and let us face the consequences of our analysis. S argues [+A] but his arguments are not sufficient to convince L of [+A]. First solution: the descriptive model is correct, the conventions which govern the speech act "to argue" are given in the model, the essential condition is fulfilled, this arguing counts as an attempt, but it is a *defective* attempt. I hope that my analysis made clear that this is no real solution.

Second solution: the model is correct, but the essential condition is not fulfilled, so S *does not argue at all*. The illocutionary act complex that S performs corresponds to the illocutionary verb "to explain", or perhaps "to account for". We can't accept this solution because S tries to convince S of something, namely that [+A] is *not ex-*

cluded. He aims at more than just explaining his decision.

Third solution: the model is correct. If we carefully examine the analysis, we can see that S isn't the protagonist of a point of view in respect to A. He is the antagonist, doubting [-A]. The argumentative parts of his discourse anticipate on this antagonistic role. S is the *protagonist* of the opinion B:

L won't be able to defend [-A] against my doubt.

And because L cannot convince S of [-A], S is free to take the positive point of view, because he is invested with authority.

Please note that arguing [+B] equals arguing that [+A] is not excluded. Note further that in our analysis of the legal context, there was a problem of choice: should P1 get the presumption or should P2 get the presumption? Generalized: should the party who is the protagonist of the positive point of view in respect to this particular set of opinions $O = \{O1, O2, \dots, On\}$ get the presumption or not? *S took position in this problem of choice*. L didn't, he just doubted [+A]: [?A]. This third solution is correct in its description of S's obligations, but incorrect where it denies the fact that S is the protagonist of [+A].

This leads us to a fourth solution: the model has to be amended. S has to justify a positive point of view, but he doesn't intend to convince L of the acceptability of his point of view. Wrongly, the descriptive model links *arguing* to *justifying* to *convincing*. These are not the expectations of L.

Two proposals can be made. First we can accept that it is not "to convince" which is the directly associated perlocution of "to argue", but "being justified". When S expresses: "[+A], because S1...Sn", every L expects the constellation S1...Sn to count as an attempt by S to justify his holding the point of view [+A] to L's satisfaction. What it means to count as such an attempt depends on the context, even if S and L agreed that S has to appeal to logos, to reason. For S being a judge, invested with authority, this is quite something else than for S being a disputer in a scientific debate. The conditions of the illocutionary act complex become:

- *propositional content condition*: the constellation of statements S1, S2 (...Sn) consists of assertives in which propositions are expressed;

- *essential condition (for pro-argumentation)*: advancing the constellation of statements S1, S2 (...Sn) counts as an attempt by speaker S to justify him holding opinion [+O] to listener L's satisfaction;
- *preparatory conditions (for pro-argumentation)*:
 - (1) S believes that L does not (in advance, completely, automatically) accept that S can hold [+O];
 - (2) S believes that L will accept the propositions expressed in the statements S1, S2 (... Sn);
 - (3) S believes that L will accept the constellation of statements S1, S2 (... Sn) as a justification of him holding [+O].
- *sincerity conditions (for pro-argumentation)* :
 - (1) S believes that [+O] is acceptable;
 - (2) S believes that the propositions expressed in the statements S1, S2 (... Sn) are acceptable;
 - (3) S believes that the constellation of statements S1, S2 (... Sn) constitutes an acceptable justification of him holding [+O].

In my opinion, this is the most specific general descriptive model of the illocutionary act complex "to argue".

The second proposal is a model which describes the conventions of the illocutionary act complex in the specific context we analyzed. If judge S argues a point of view against the community concerned (an external justification), and if the normative discussion model that we have chosen appears to be adequate in this context, these conventions are correctly described by the following model:

- *propositional content condition*: the constellation of statements S1, S2 (...Sn) consists of assertives in which propositions are expressed;
- *essential condition (for pro-argumentation)*: advancing the constellation of statements S1, S2 (...Sn) counts as an attempt by speaker S to justify him holding opinion [+B] to listener L's satisfaction, i.e. to convince L of the acceptability of [+B] = [+([+A] is not excluded)].

- *preparatory conditions (for pro-argumentation):*
 - (1) S believes that L does not (in advance, completely, automatically) accept that S can hold [+B];
 - (2) S believes that L will accept the propositions expressed in the statements S1, S2 (... , Sn);
 - (3) S believes that L will accept the constellation of statements S1, S2 (... , Sn) as a justification of [+B].
- *sincerity conditions (for pro-argumentation) :*
 - (1) S believes that [+B] is acceptable;
 - (2) S believes that the propositions expressed in the statements S1, S2 (... , Sn) are acceptable;
 - (3) S believes that the constellation of statements S1, S2 (... , Sn) constitutes an acceptable justification of [+B].

Conclusion

There are verbal means which are conventionally used to achieve the effect that L understands that S is performing the illocutionary act complex "argumentation". The recognition of this intention can be a problem. Like all verbal means, these aren't absolutely clear and unambiguous. They are also used in non-literal speech acts, etc.

Our question was: what does it mean for S's utterance to count as an argumentation? What is the illocutionary intention to be recognized by L? We have examined a proposal and have observed that its conditions were too specific. I have proposed another set of conditions which I think is general, that is, holds as a minimal set in every context.^{5,6}

⁵ In the terminology of Bach and Harnish: for S's utterance to count as an argumentation, S must (R-) intend L to take S's utterance as a reason to think that S fulfils these conditions. And his argumentation is successful as an act of communication if L recognizes S's (R-) intention [1979, 15v].

⁶ In my opinion the propositional content condition and the essential condition are success conditions, the sincerity conditions are felicity conditions, while the preparatory conditions will usually be success conditions. The conditions describe a paradigmatic case as far as the

In specific contexts this set of conditions can be extended or specified. I analyzed such a context in legal reasoning. If I see it right, Van Eemeren and Grootendorst analyzed the protagonist role in a dialectical discussion as a specific context. In my opinion we have to assume a hierarchical structure of "contexts", defined by the set of "mutual contextual beliefs" shared by the participants [Bach and Harnish 1979,5]. As far as these are relevant for inferring the illocution from the locution, and as far as these are conventionally related to the context, they can be seen as part of the essential condition.⁷

Elsewhere [Van den Hoven 1984,35-52] I have argued that justifying one's point of view can imply a range of obligations, depending on the pretensions a speaker has. Which pretensions he can or may have, depends on the goals he pursues. And which goals he can, may or has to pursue is determined by (or determines) the context.⁸ If we want to conduct research in semiotics and law, exploring the interrelations between legal semiotics, communication studies and argument theory, a careful description of several specifications of the general model in their relevant contexts seems an important issue.

References

K. Bach and R.M. Harnish, *Linguistic Communication and Speech Acts* (Massachusetts: MIT Press, 1979).

sincerity conditions are concerned [cf. Bach and Harnish 1979, 55v]. In certain contexts it is quite clear that an actor isn't involved "personally" in an interaction, but purely "professionally". I also want to stress the future tense of the verb in the second and third preparatory condition. In an interaction, S may expect that he will have to give further arguments to justify some of his statements S1, S2 (...Sn) or their justifying force.

⁷ "Conventional" shouldn't be taken here only in the sense Searle uses it, but in the sense Lewis uses it [1977, 42].

⁸ Cf. Rowland [1981:56f.], who defends a purpose centered view of argument fields, saying that all important characteristics of an argument field can be traced to a shared purpose, and Toulmin [1979:120] who concludes that "Context determines criteria". Probably we can also formulate the inverse and say that a shared set of criteria determines a context, and that a shared purpose, together with the connected criteria, constitute what we can call a field or context.

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