

What is a Better Argument? Towards a Non-Consent-Based Criterion for Legitimacy

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September 2007

Paper prepared for the 6th Pan-European Conference on International Relations, Making Sense of a Pluralist World, Panel 4-6 'Law vs. Politics: A Focus on Norms', University of Turin, Italy, 12-15 September 2007

Abstract:

This paper argues that we must assess legitimacy of actions in terms of their correspondence with the better argument in a given debate. While scholars have repeatedly invoked notions like „good reasons“, „inherent persuasiveness“ or „the power of the better argument“ in their writings on persuasion and deliberative legitimacy, the meaning of these expressions remains obscure. Unable to establish independently the existence of an argument that constitutes the better one in a given debate, they circumvent the problem by turning the inherent persuasiveness of an argument into a question of factual consent under appropriate conditions. Thus they leave the original notion devoid of any meaningful critical force. Drawing on a pragma-dialectical approach to argumentation developed in Informal Logic, this paper presents a road to reconstructing and evaluating legitimacy arguments regardless of their factual acceptance on part of the parties concerned. Using illustrations from the debate on the legitimacy of the Iraq intervention in 2003, the paper will highlight the epistemological problem involved in arguing about war and show that scholars' preoccupation with actors' strategic versus authentic motivations is a theoretical fetish lacking empirical and normative reference and relevance.

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1. Introduction

This paper seeks to set out a conceptual analysis of the notion of a “better argument” and show how it can be meaningfully applied to questions of legitimacy. Scholars are frequently invoking the notion of a “better argument” in their discussions on normative change in the international order as well as the legitimacy of various governing arrangements and decisions. Oftentimes, the notion is associated with concepts like “persuasion”, “deliberation”, “truthfulness”, “arguing” and “communicative action” and delineated from “coercion”, “manipulation”, “rhetoric”, “bargaining”, and “strategic action”. More often than not, these concepts appear themselves to collapse into one another, creating elaborate and seemingly sophisticated theoretical frameworks. However, insofar as the notion of a “better argument” is in the course burdened with ontological assumptions about actor motivations and modes of action and operationally tied to the existence of specific substantial arguments and/or of factual consent under various conditions, it becomes empirically empty and normatively meaningless.

Trying to remedy this deficiency, I denounce that the notion of a “better argument” is thereby denigrated to a mere expression, a fashionable choice of words which make a text more impressive, but not more scientific. Rather than allow the notion to label scholars’ subjective evaluations of speaker authenticity or argument quality or their (intersubjective) observations of factual consent under appropriate conditions, I argue that the “better argument” deserves the status of a concept in its own right – a concept that is inherently critical, dialectical, contingent, agnostic to content and yet empirically manifest. Drawing on the pragma-dialectical approach to argumentation theory in informal logic, I submit that a better argument can be identified as a non-fallacious, dialectically relevant and non-repudiated argument in the context of a specific debate as constituted by the commitment-sets of the participants and evaluated by the conversational rules of a critical discussion. It cannot, that is, be defined in terms of the factual outcome of a deliberation (→ effective arguments), the supposed orientation of the speakers (→ sincere arguments), or its correspondence with certain substantive beliefs, for doing so would confuse content with consent, truth with truthfulness, and certain arguments with better arguments. Worse still, by awarding the label to arguments which pass the tests of factual consent, virtuous authorship and substantive correspondence, the notion of a “better argument” loses its critical force and ignores the very arguments that are supposed to be evaluated. Thus, as I will try to show, none of these tests reflects our intuitions concerning better arguments. In many cases, we will want to retain the possibility of calling an argument bad in spite of its being accepted by a large enough number of relevant enough people, call an argument good or persuasive in spite of its being uttered by a person with questionable character or motives, or call it bad or unpersuasive in spite of its correspondence with our favoured values.

But just how can we think of a better argument in a way that reflects these intuitions? Which other option is possible that allows to assign the label in a non-arbitrary, non-private, intersubjectively valid, i.e. scientifically meaningful way? Despite running the danger of being accused of objectivism, essentialism, and intolerance towards other points of view (the truth is relative), I argue that there is a route available to establish empirically, intersubjectively traceable

and unequivocally which argument in a given debate is the better one and that, moreover, such charges miss their point in trying to declare the notion of a better argument impossible, if not to think, then at least to authoritatively apply. The concept neither presupposes a correspondence-theoretic account of truth, nor is it essentialist in the sense of time- and spaceless applicability to a specific substantial argument. It may well be intolerant in the sense rejecting certain points of view as not meriting our appraisal, but this intolerance is the result of an evaluation of the justifications given for them, not of their mere being different from my own, personal convictions. It is, in short, not so much intolerance of points of view as it is considered rejection relative to a context of dialogue where a certain point of view, be it actually true or not, is not supported by the better argument. An argumentative perspective is agnostic or disinterested in the question of what is actually true, but it insists there is no way to approach that truth, if it exists, apart from the arguments offered for them. The search for truth, then, can be entirely replaced by the search for better arguments.

To show that such an endeavour is in fact not doomed to fail, I will proceed as follows. First, I reconstruct the context in which talking of “better arguments” became fashionable, namely communicative action theory, and try to show that the theoretical and methodological arguments made there do not really contribute to our understanding what the expression might mean. Instead, it dissolves into a notion without autonomous meaning, as it is equated either with factual consent under certain conditions or with certain substantial frames of reference. Second, I try to isolate the notion from concepts like persuasion, coercion, strategic action, authenticity and manipulation (3.1), distinguish better arguments from sincere and effective arguments (3.2) and clarify under which conditions speaking of a better argument is conceptually meaningful (3.3). Third, I will try to describe a procedure to determine its existence empirically show what this procedure looks like in practice, using the debate on the war on Iraq as an example.

2. Better arguments in context: Why communicative action theory does not help

The notion of a better argument has been invoked in the literature on normative change in international relations and on deliberative democracy (e.g. Bjola 2005: 277; Deitelhoff 2006: 19, 76; Hawkins 2006: 784; Johnstone 2003; Risse/Müller 2001; Payne 2001: 45; Mulligan 2005: 477; Müller 2004: 397, 404; Panke 2007: 7; Risse 2000: 7; Ulbert/Risse/Müller 2004; Bohman 1998). In almost all cases, its use is tied to a discussion of communicative action ala Habermas. The *first* strand of literature is concerned with issues of norm emergence, norm diffusion, and norm compliance. In this context, communicative action has been proposed as a mode of action that follows a logic that is distinct from both a logic of consequences and a logic of appropriateness, namely a logic of arguing (Risse 2000: 4). As such, communicative action claims explanatory leverage in situations where neither states' yielding to material power nor their adapting to pre-existing norms emerge as sufficient explanations for their changed behavior (Risse 2000: 1). In communicative action, states' compliance is not conceptualised as the result of coercion or an un-reflexive kind of socialization, but as the result of persuasion, i.e. a communicative process in which states actively engage each other through the use of arguments. Proponents praise their concept for being able to capture instances of deep learning,

i.e. situations where not only states' preferences change, but also underlying interests and identities (Deitelhoff 2006: 19; Risse 2000: 7; Checkel 2001 distinguishes "thick" and "thin" persuasion), and for its ability to cope with situations in which socialization to norms or distributive bargaining is not really an issue in terms of explanation, because the normative context or the terms and objectives of negotiations ("the rules of the game", Risse 2000: 2) are themselves unclear or not yet in place (Müller 2004: 401, Risse 2000: 19).

The *second* strand of literature is not so much concerned with how norms emerge, diffuse, or change, or why they are followed, but whether they are legitimate. In this context, communicative action is read as a set of conditions to be made fruitful in the assessment of the deliberative legitimacy of polities, regime principles, public institutions, authorities, or specific decisions (Follesdal 2006: 450f). Legitimacy, in this conception, is not simply a matter of participation, consultation of experts, or voting procedures, on the input side, or of effective and/or acceptable policies, on the output side, but of the manner in which agreement is reached, i.e. the "throughput" dimension of policy making (Papadopoulos/Warin 2007: 450; Klinke 2007: 3, 10). "Deliberationists" are thus neither satisfied by more inclusive procedures alone, as would be "participationists", nor are they willing to speak of the legitimacy of a decision if it is the result of some mechanism of preference aggregation (be it voting or representation), as "aggregationists" would (Papadopoulos/Warin 2007: 451). Rather, it is the public reasoning of free and equal citizens that constitutes the core of legitimate political decision making (Bohmann 1998: 401). Decisions are legitimate "if they could be the object of a free and reasoned consensus among equals" (Cohen 1989: 22), i.e. if they can be justified in such a way that everyone could freely accept, or at least not reasonably reject (Bohman 1998: 402). Deliberative democracy is, in Rainer Forst's (2001) words, "the rule of reasons".

This is, no doubt, a caricature of two huge bodies of literature, and one that cannot do justice to the peculiarity of the arguments made. However, I will not dwell on the discussions about the theoretical priority or exclusiveness of different logics of action (Risse 2000; Müller 2004), their empirical sequencibility or co-existence in international negotiations (Holzinger 2001; Ulbert et al. 2004), or comment on issues of "feasibility" (Bohman 1998) or "economy" (Dryzek 2001) in the literature on deliberative democracy. Rather, my argument is that both strands of literature rely heavily on talk of "good reasons" or "better arguments", and they do so in similar ways, but they rarely if ever explain what is meant by the term. This might not be much of a problem if no burden of proof is attached to the term, i.e. if nothing is to be shown or explained by it. As I see it, however, one should not start from the presumption that it is empty talk to refer to a better argument, for that would mean suggesting that scholars did not intend the term to mean something nontrivial. In fact, if it is correct that the prevailing of the unforced force of the better argument is constitutive for communicative action and the normative praiseworthiness of the agreements reached by it, then not knowing what the better argument is means not knowing whether communicative action took place and whether an agreement was legitimate. If, on the other hand, communicative action is a question of actors' strategic vs. consensus-oriented motivations or of institutional context, then the notion of a better argument does not really have any tangible meaning and can be abandoned. In any case, mixing up these two aspects of communicative action – the conditions of the ideal speech situation and eventual acceptance of

the better argument – brings us into conceptual confusion that extends well beyond the confines of this debate. We may end up with “coercion”, “enforcement”, “power”, “material incentives”, “deal”, “strategic action”, “utility-maximizing behavior”, “self-interest”, “logic of consequences”, and “bargaining” on one side of a dichotomy, and “persuasion”, “deliberation”, “better arguments”, “rationally motivated agreement”, “truth-seeking behavior”, “normative orientation”, “appropriateness” and “arguing” on the other. With enough repetition, we may end up thinking that these expressions somehow naturally “belong” to each other, which is, of course, not the case (see below at 3.).

As indicated above, scholars like to use the expression “better argument” in their studies, but they rarely if ever explain it. It is striking to observe that the expression almost always occurs as an object in the respective sentences, not as subject. For example, Müller (2004) writes ten times that in communicative action actors are “ready”, “supposed” or “unwilling” to “accept” or “submit to” or be “convinced by” the “better argument” (see also Risse 2000: 7). Payne (2001: 45) writes that “frames are ostensibly employed to highlight the persuasive force of a resonant ‘good idea’ or ‘better argument’”. Risse (2000: 10) writes that communicative action “counterfactually presuppose[s] an ‘ideal speech situation’ whereby nothing but the better arguments count”. And Deitelhoff (2006: 19, my transl.) writes that the occurrence of persuasion “testifies to the force of a better argument”, and that a genuine argumentative process is one “in which the better argument prevails” (Deitelhoff 2006: 76). Similarly, Bjola (2005: 277) explains that “a successful communicative action is thus one in which the ‘better argument’ wins”. In all these cases, reference to the expression is made to specify something else, not to specify it.

As Hawkins (2006: 784) comments on Risse (2000) (and the point can be extended to all of the above mentioned authors): “Risse suggests that arguments determine international outcomes, and that “better arguments” prevail over less good arguments. However, he says little about what constitutes a better argument.” In fact, he says nothing on this question. Now, my question is simple but provocative: If we don’t know what the “better argument” is, what substantial meanings can the rest of these sentences have? If communicative action is in such a crucial way defined by the fact that better arguments prevail, and we don’t know what exactly it is that has to prevail, how can we ever identify communicative action as operative in real world settings? Obviously, with no such account, the concept becomes entirely worthless.

With matters as simple as that, one might wonder how so many studies informed by the concept of communicative action could have been published? The answer is rather simple: Scholars did not in fact try to establish what a better argument is, but instead focused on the conditions conducive to communicative action as associated with the ideal speech situation. These conditions could be called the motivational, contextual, and procedural conditions of communicative action. On the motivational dimension, it is required that actors are able to empathize, willing to argue from a not narrowly self-interested, “moral point of view”, and prepared to change their minds, i.e. they must be “truth-seeking” or “consensus-oriented”. Second, on the contextual dimension, a “common lifeworld” has to be in place to provide participants with rather unproblematic background knowledge and normative beliefs that they can build on. Third, on the procedural dimension, everyone interested must have access to a

public discourse, where he be treated as equal with regard to the right of making and rejecting claims, and where relationships of power, dependency and coercion must be absent (Risse 2000: 10f).

It is easy to see that these conditions can hardly be seen as empirical givens, especially in international relations, where mistrust, self-interest, anarchy and power are commonly said to rule. Recognizing this criticism (e.g. Keck 1995), which calls into question the applicability of the concept of communicative action to IR in the first place (Risse 2000: 14; Ulbert et al. 2004: 2; Deitelhoff 2007: 13), scholars have retorted in three ways. First, they have not become tired to emphasize that the ideal speech situation was never meant to describe empirically the context in which arguing takes place, but instead is a “counterfactual presupposition”, which arguers have to make, but which, ideal as it is, will never be fully realized in practice (Risse 2000: 17f; see also Deitelhoff 2006: 28; 2007: 14, 16, 34; Müller 1994: ??).

For this emphasis may well be valid, but still begs the question as regards the applicability of the concept, scholars have, secondly, argued that “approximations” (Deitelhoff 2007: 14) or “functional equivalents” of the ideal speech conditions do nevertheless in fact exist in IR. As regards the contextual requirement of a common lifeworld, it has been pointed out that (1) even anarchy itself “constitutes an, albeit thin, collective (social) interpretation of the world” (Risse 2000: 15) that (2), states ritualistically construct common narratives of historical events that can serve as backgrounds (Müller 1994: 33-35), that (3) a dense network of international institutions provides the resources to fill this gap (Risse 2000: 15; Ulbert et al. 2004: 12), that (4) the institution of diplomacy as constituted by the socialization of professional diplomats and their personal relationships makes the assumption of incompatible lifeworlds rather implausible (Deitelhoff 2006: 126-128). Finally (6), as I understand Deitelhoff’s original argument, NGOs can consciously construct institutional and normative structures conducive to a lifeworld (Deitelhoff 2006: 27; Deitelhoff 2007: 15f): The lifeworld itself can be made, if it does not already exist. As regards the procedural requirements of “inclusiveness, publicity, equality and fairness” (Deitelhoff 2007: 15), or the “absence of power relationships”, Risse, for example, argues that the condition of “equal access” can be “relax[ed] as long as the condition of nonhierarchy of participants in a discourse can be met”, i.e. as long as access “does not determine what counts as a ‘good argument’” (Risse 2000: 18). For Deitelhoff, and theorists of deliberative democracy, the question more specifically seems to be one of institutional design. Rather than implausibly denying the existence of power asymmetries, they seem to change gears to assert that it is a function of the institutional setting if they play out (Bohman 2001: 43). That way, specific rules governing the access of different groups to international negotiations and the rights accorded to them become empirical indicators of Habermas’ theoretical conditions (see e.g. Klink 2007: 19-27; Papadopoulos/Warin 2007). As regards the motivational dimension contained in the ideal speech situation, it has been argued “that it is not necessary to make heroic assumptions about truth-seeking actors” as long as actors “must demonstrate their truthfulness and their open-mindedness to the „better argument” and can be shown to become argumentatively entrapped (Ulbert/Risse/Müller 2004: 2). Whatever one thinks of this last “as-if” move; as soon as we concede that actor motivations are empirically unobservable and thus in the realm of theorists metaphysical beliefs which are altogether irrelevant to deciding a social theoretic dispute, it

becomes clear that, on theoretical grounds at least, the proponents of communicative action have a convincing case as regards the applicability of the concept to international relations.

Finally, the third reaction to charges of inapplicability, this time not formulated as a charge of theoretical misfit, but empirical relevance, was to radically downsize the amount of situations purportedly explained. Thus, instead of a world full of communicative action, a world in which arguing was “all-pervasive during all phases of international negotiations” (Ulbert/Risse/Müller 2004: 1), we now rather hear of islands of authentic persuasion in a sea of strategic action (Deitelhoff 2006: 28; Deitelhoff 2007: 16). This moderation, of course, does not make these islands any less significant or consequential if they lead to outcomes such as an international criminal court with universal jurisdiction, the ban of landmines. To sum up, proponents of communicative action defended their innovation against charges of inapplicability by arguing that its conditions must not be misunderstood as empirical constants realized fully at any time. Rather, approximations of these conditions can be found in real world settings, which is sufficient to identify certain agreements as the result of a rational discourse and qualify them as “reasoned consensus”. The occasions on which this qualification can be made might well be rare, but not insignificant.

Now, whatever the merits of this approach may be in terms of theory development, it really has nothing to do with the identification of “better arguments”. Maybe this was never the goal of the scholars advocating an communicative action based approach to IR, but then we still have to ask why they did not omit the expression altogether. In my view, there are two reasons. First, the politics of disciplinary delimitation and the corresponding practice of citation has guaranteed that this specific choice of words didn’t get lost in the adoption of Habermas. From this perspective, citing a wonderful expression like the “unforced force of a better argument” is a matter of identification, not of theoretic necessity. Second, I take at least some scholars to mean more with it, namely to indicate a special normative quality of agreements that are reached through a process of genuine communicative action. They use it to emphasize a kind of normative praiseworthiness associated with such agreements, i.e. legitimacy, which arises from the fact that it is not based on coercion, but the free assent of the parties involved. Put differently, agreements of this sort are normatively superior to coerced agreements because they don’t reflect interests backed by (material) power, but the availability of mutually acceptable reasons, which possibly transcend narrowly self-interested positions. They are, in other words, superior because they respect the autonomy of the parties involved. (This, in turn, also gives us reason to believe that compliance effected on that basis will be more stable as no incentive to defect and no need for enforcement remains).

But if this second interpretation is correct, we still have not been demonstrated the theoretical necessity of the notion of a “better argument”. The reason is that this account of legitimacy relies on the motivations of actors to accept an agreement, not the quality of the arguments for that agreement. What is required is that actors freely accept the agreement, not that better arguments support it. But it is by no way a logical contradiction that actors freely accept arguments which are not the better ones!! As so much of social psychological research shows, acceptance is not a function of argument quality alone, and is in many cases not related to it at

all. Declaring an argument the better one because it was (supposedly) freely accepted is identifying argument quality with eventual acceptance by definitional fiat! That way, “better arguments” become coterminous with “accepted arguments”, which leaves the first notion without any critical force and dissolves it into the second.

The logical flaw involved in this kind of reasoning might be obvious enough, but it reemerges in actual empirical research on communicative action. Here, at least in my reading, the notion of “better argument” becomes a function of factual consent under appropriate (i.e. ideal speech situation) conditions. This becomes clear if one looks at the research strategy scholars use to demonstrate instances of communicative action empirically. A bit simplified, both Risse (2000) and Deitelhoff (2006; 2007) proceed in a similar way: First, they identify a change of position. Risse (2000: 23, 25), for example, posits a change in the Soviet position towards German reunification. Deitelhoff (2006: ??; 2007), using extensive content analysis, documents the growing support of states for an ICC-statute with universal jurisdiction. Second, they argue this change cannot be explained in terms of interests and power, which shows the necessity of an alternative explanation. Thus, making use of counterfactuals, Risse (2000: 24) argues that the Soviet Union, albeit under pressure, could have prolonged the process, opt against German NATO membership, and was still powerful enough to leave its soldiers on German soil. Deitelhoff (2006: 16) stresses that the relatedness of an ICC to security issues and the potential impact on state sovereignty makes the adoption of such a statute rather unlikely from traditional theoretical perspectives, and points to the fact of its adoption despite intense US opposition and pressure. Having cleared the ground for an alternative account that way, they go on to assert that, third, the favorable contextual and procedural conditions for communicative action identified above were in fact in place. Thus, Risse (2000: 23-28) points out that “uncertainty” prevailed, that several years of leadership interaction had created a “common lifeworld establishing mutual trust”, that the negotiations included “televised public discourses” (→publicity), and argues that “Western leaders treated their Soviet counterpart as equal and serious negotiation partner” (→equality/fairness), that both avoided “aggravating language” (→respect), and that at least the Soviets “were open to persuasion”, i.e. did not have fixed preferences. Deitelhoff (2007: 25-28) points to forums mainly made up by law experts (→common knowledge), consensus requirements, equal participation rights, and public argumentation and emphasizes particularly the regional conferences, where a “nearly idealtypic discourse setting” favoring a free exchange of views – also recognized by the participants as such – was present.

These three steps taken together can now be accepted as indirect proof that communicative rationality governed (at least parts of) these negotiations (Hanrieder 2006: 19). But: It would be faulty to conclude that the “winning position” under these conditions was a “better argument”. In fact, no convincing data to that effect is presented. Risse presents none at all, and Deitelhoff’s data cannot really do the job. By adding an analysis of frames used as justifications to her content analysis, she certainly goes further than other scholars before, but neither are “frames” the same as arguments, nor can their success attest to their quality. As Tine Hanrieder has argued, Deitelhoff (2006) in effect equates the existence of a rational consensus with the adoption of NGO positions, thereby “implicitly assuming that it is NGOs that have the better arguments” (Hanrieder 2006: 46). This, in turn, is explained by Deitelhoff’s apparent conviction

that the more “generalizable” arguments are the more morally acceptable and thus better arguments, and that these are promoted by NGOs (Deitelhoff 2006: 141ff, 153). Now, the problem with this determination is, first, that it contradicts Deitelhoff’s own assertion that the persuasiveness of arguments can only be decided from within a discourse (Deitelhoff 2006: 95f) and, second, that “generalizability is a purely formal operation that can be performed on any norm” (Hanrieder 2006: 32). By identifying NGO arguments with better arguments and better arguments with generalizable arguments, then, one denies the principal openness of a process of communicative rationality as regards its result (Hanrieder 2006: 46) and preempts the possibility that pragmatic arguments (the “political reality” frame) turn out to be the better ones (Hanrieder 2006: 33). But, insofar as one accepts that “teleological” morals are in principle equally justifiable as “principle-based” morals (from a philosophical point of view), privileging the latter is a “substantial decision which is at odds with formal generalizability or at least not reducible to it” (Hanrieder 2006: 33). So, notwithstanding the otherwise impressive quality of Deitelhoff’s analysis, her data does not speak to the question of better arguments.

In sum, I take these to be the two faults of analyses that speak of better arguments in the context of a communicative action approach:

- To infer from the existence of an agreement reached under appropriate conditions the nature of a “better argument”. That is, even if all parties involved in an argumentative exchange approximating the ideal speech situation accept some argument, we cannot simply declare it the better one.
- To identify certain substantial arguments as better arguments, just because they employ some generalizable frame of reference.

Of course, it is not quite correct to say that we cannot make these kinds of identification. Rather, we should not. The reason is that otherwise we lose the conceptual space for developing a genuinely critical concept of “better argument” that has a meaning in itself, and does not remain a mere notion in the language game of communicative action theory. The rest of this paper is intended to present some thoughts that can contribute to this goal.

3. Isolating “better argument” as autonomous concept

To begin a clarification of the concept of a “better argument”, it is helpful to contemplate how it is (not) related to a couple of other concepts often encountered in context. Second, it is helpful to distinguish better arguments from sincere arguments and effective arguments, which is the meaning given to the term by social scientists most of the time. Against this background, it is possible to give an account of the conditions that allow to speak of a better argument in a meaningful way.

3.1. What a better argument is not: Irreducibility to persuasion, coercion and sincerity

For one, better arguments are often said to effect “persuasion”, which is both too simple and not true. Persuasion can refer not only to an outcome, but also to a process, and an attitude itself. As process, it describes a message-based interaction geared toward attitude change. As such, it

can be effective or ineffective in really changing attitudes, i.e. in producing persuasion as outcome. This outcome, in turn, can – substantially – be called a persuasion in the sense of an attitude or a conviction. I take the outcome-meaning to be the decisive one, for we can then speak of successful or unsuccessful persuasion with regard to specific attitudes that were advocated. Note that persuasion in this sense is agnostic as to the motives speakers have for adopting an attitude or the manner that attitude was advocated. It does not require that speakers truly believe what they adopt as attitude or that the adoption was the result of some rational discourse. Understood this way, coercion is just a special case of persuasion where acceptance of an attitude is effected by the threat that A will bring about a state of affairs undesired by B, and B takes this as a sufficient reason to adopt that attitude.¹ True, the vehicles for attempts persuasion are often arguments, but they are by no means the only relevant factors not is their quality often decisive. Source characteristics like expertise and likability, (personal) message relevance and even linguistic features in the verbal presentation of a message (hesitations, hedges, tag questions etc.) are at least equally important (Ziegler et al. 2002: 496; Holtgraves/Lasky 1999: 779). At any rate, persuasion is complex psychological associated with a myriad of “psychological mechanisms [...] such as heuristic processing and attributional reasoning, affective mechanisms such as classical and operant conditioning, and social role mechanisms such as maintaining social relationships, power status or favorable self-identities” (Bar-Tal 1998: 57), which means that persuasion-as-outcome cannot be equated with the effects of argument quality. For example, fear inducing messages accompanied by action recommendations are “likely to result in increased persuasion *regardless of the quality of the arguments* supporting this recommendation” (Das et al, 2003: 652, my emphasis). It may even be the case that the “same argument, when presented in a „powerless style“², will result [...] in less attitude change than when presented in a powerful style (Holtgraves/Lasky 1999: 779).

Second, agreements based on better arguments are often distinguished from agreements based on force. As has been pointed out above and in the preceding paragraph, they have been presented as the antithesis of coercion (e.g. Klinke 2007: 11). This goes so far as to Risse’s (2000: 18f) assertion that an “arguing situation should disproportionately empower the weaker actors” and that they have probably worked in “situations where instrumental interests of actors (material or ideational) are stacked against the arguments being made.” This, of course,

¹ Scholars of IR, of course, have burdened the term with a lot of presuppositions and almost always used it as the opposite of coercion (e.g. Bukovansky 2007: 176f; Chayes/Chayes 1993: 205; similar distinctions can be found in Checkel 2001: 553; Checkel 2003; or Steffek 2005: 233f), but this is not necessary. It may even become a source of confusion if some use it to label the “process by which agent action becomes social structure, ideas become norms, and the subjective becomes the intersubjective” (Finnemore/Sikking 1998: 914), some take it “as a principal method of inducing compliance’ (Chayes and Chayes, 1995: 26, c.f. Payne, 2001: 55) and some use it interchangeably with “rhetoric” and “deliberation” (Bukovansky 2007: 177), thereby mixing process with outcome, references to individual agents with references to collectives, and normatively connoted ways of speech with ways of interaction. Worse, by loading the term with issues of legitimacy, speaker motivations (“he was convinced, not persuaded”) and speaker authenticity (“he used rhetoric/manipulation, not sincere arguments”), IR research on persuasion loses connectivity to research in social psychology, where such imputations are rather foreign.

² “Powerless style refers to linguistic features like frequent hesitations (e.g., um...), hedges (e.g., I kinda think...), and tag questions (e.g., right?...OK?) in the verbal presentation of a message” (Holtgraves/Lasky 1999: 779).

suggests that weaker actors' interests are backed by the better arguments and lets us assume that when strong actors prevail, it was because of their power and not their arguments.³ However, since there is no logical connection between actor characteristics (here, their "power") and the quality of their arguments whatsoever, this dichotomization is badly misleading. Someone having power must not be precluded from possibly having the better arguments by stipulation. What is the better argument depends on the arguments made, not on who made them.

Third, better arguments are often distinguished from manipulative arguments. It is hard to say what exactly is at issue here, but since we often hear of "pretexts", "propaganda", (mere) rhetoric(al action), "authenticity" and "genuineness" in this context, I feel there are two considerations at stake, one motivational, the other a genuinely wrongheaded conclusion derived from it. Only, this time we don't talk about the motivations an actor has in accepting an argument (freely, because of deeper insight vs. coerced), but about the motivations a speaker has in making an argument (because he "really believes what he says" vs. he "only says it because it might work"). Again, whatever the motives may be, the quality of the argument remains totally unaffected by them: My argument that a foreigner should be sent home to his country of origin because he violated a provision of the criminal code that envisages his expulsion might be quite correct even if I'm a Nazi and not caring about the criminal code at all. Labeling my argument a pretext might serve to show my being morally repugnant, but this is not the same as showing that I actually made a bad argument. In fact, whenever "rhetoric" or "manipulative" is meant as a substantive property of an argument intended to delineate it from a "good" argument, we really are faced categorical mistakes. Conceptual confusions of this kind are by no way bagatelle, especially on questions of legitimacy, but they make it even to peer-reviewed journals. Matlary's article on *The Legitimacy of Military Intervention* exhibits exactly this confusion about reasons and motives. She writes that "justification here refers to what is just according to some standard (a particular legal canon, for example) rather than a mere pretext for action, such as 'he justified the invasion with humanitarian arguments'" (Matlary 2004: 133). But this distinction of "justification" and "pretext" is like pitting "talking" against "swearing". Humanitarian arguments *are* justifications by some standard. That these may be unconvincing in a particular case does not make them any less a justification. Equating a bad justification with a pejorative and motivationally laden term like pretext gives too bad a name to a bad justification and risks to draw it down the drain along with its morally repugnant author.

In sum, the above paragraphs have a simple morale: The question of whether an argument is good or bad, or better or worse has, of course, nothing to do with why it is accepted, that it is accepted, why it is made, or by whom it is made: Neither consent, nor authorship, nor the motives for each can help us understand what a better argument is. As obvious as this may be at this point, it doesn't seem to be understood very well.

³ Webb comes at least close to a similar juxtaposition: "I will argue below that while the power of different state and non-state actors did help shape the outcome of the OECD's discussions, outcomes sometimes were not consistent with the preferences of powerful actors when weaker actors were able to justify their claims in terms of widely shared norms." (Webb 2004: 791)

All of this points to the fact that the notion of a better argument should be understood as an autonomous and inherently critical concept. It can neither be positively identified with sincere speech (since reasons are categorically different from motives), or negatively with the arguments of powerful actors (since those may nevertheless have the better arguments), nor can it be inferred from the occurrence of some form of “uncoerced” persuasion (since actors may be subject to faulty reasoning even under these conditions⁴). To bring out these differences, I propose to distinguish between sincere arguments, effective arguments, and better arguments.

3.2. *Distinguishing sincere, effective, and better arguments*

Sincere arguments are arguments that a speaker “really” believes. To be qualified as “sincere” or “authentic”, their utterance has to correspond to and correctly represent a speaker’s contemporary state of mind. This condition refers to an actor’s truthfulness – as opposed to the truth of what he says. A violation of this condition justifies charging him with “insincerity”, “lying”, “deception”, or, if you want, “rhetoric” (Markovits 2006: 252f). However, since truthfulness is a validity claim associated with the expressive dimension of statements, it cannot be established with reasons, but only demonstrated through consistent behavior (Habermas 1995: 69). Moreover, to pin sincerity down empirically is virtually impossible, for that would require an account of what goes on inside actors’ heads. This requirement in turn makes the concept useless as a social scientific category, because its “validation” relies on the *imputation* of intentions and states of minds to actors, not intersubjectively verifiable facts. Also, it runs the dangers of “too easily collaps[ing] the relation between claims to truthfulness and truth claims [...], oversimplif[ing] human psychology [and] denigrat[ing] ‘rhetorical’ forms of speech” (Markovits 2006: 250). Thus, I am convinced it is necessary to ban beloved labels such as “manipulation”, “rhetoric”, “deception”, and “propaganda” entirely from our conceptual apparatus: In my opinion, these labels reflect nothing but substantive prejudices about reasoning actors likely to delegitimize their arguments without having actually evaluated them in the first place.⁵

⁴ On “reasoning competences that are clearly minimum fundamental prerequisites for entry into scientific dialogue [and which,] in the community of scientific discourse [...], are taken for granted” Kuhn (1991: 65) notes: “The present research makes clear that these competencies should not be taken for granted as universal human attributes. Instead, they are cognitive achievements that are fully attained and practiced by only a small proportion of the human population.” (Kuhn 1991: 270). Examining the (uncoerced!) reasoning of 160 subjects on everyday issues such as the causes for unemployment, crime, and the education system, Kuhn (1991: 65) found that “for each of the three topics less than half of our subjects produce any genuine evidence [i.e. evidence that bears on the correctness of the theory] at all.” Also people in the higher education group (“college”) produce genuine evidence only in 6 out of 10 cases (Kuhn 1991: 89).

⁵ As Walton explains: „What frequently happens, [...] is that arguments are automatically dismissed as irrational or fallacious, as soon as they are categorized as propaganda. For the term ‘propaganda’ has such highly negative connotations that people tend to see only the arguments of their opposition as describable with this label, as if their own arguments could never be” (Walton 1997: 383). Similarly, in trying to account for the common tendency among political scientists to dismiss justifications as rhetoric, and in an effort to counter that tendency, Majone explains that justificatory arguments „are alien to the philosophy of decisionism. In part this is because reasons given to justify or explain a decision are often different from the decision maker’s original motives or ‘revealed preferences’ and thus appear to be mere rationalizations. But [...] it is not necessarily dishonest or merely ‘rationalizing’ to use arguments based on considerations different from those that led to the adoption of a certain position. There is no unique way to construct an argument: data and evidence can be selected in a wide variety of way from available

That said, it should have become clear by now that we need to distinguish between the observation of the persuasive force of an argument and the evaluation of this persuasive force (see Walton 1996c: 40). The first perspective takes the “better” argument to be the one that in fact persuades, i.e. the one that is “successful” or “effective”, as I shall call it. This interpretation refers to the social scientific, empirical investigation of the dynamics of actual processes of persuasion as it is conducted by social psychologists⁶ and scholars of IR⁷. Here, the question is why certain arguments are accepted by real actors. The second perspective does not attempt to explain persuasion. Rather, it seeks to specify the conditions that allow to call an argument “better” in a normative-theoretical sense. Here, the better argument is an argument that *should* be accepted by reasonable people because of its formal and dialectical qualities. This is the domain of logic and argumentation theory. In Douglas Walton words:

„Logic does not describe simply how people in fact derive conclusions from premises, according to their beliefs, but as a normative function of guiding and evaluating reasoning according to standards of validity, truth, intelligibility, and coherence. Psychology, sociology, anthropology, and other empirical sciences deal with the behavioral dynamics of how reasoning is actually carried out by individuals or groups. Logic focuses on reasoning from a normative point of view, to judge it as either weak or strong, good or bad, valid or fallacious“ (Walton 1992: 31).

So, I distinguish sincere arguments, which correspond to the actual state of mind of a speaker, effective arguments, which are arguments that are successful in changing real persons minds, and better arguments, which are praiseworthy of our assent because of their inherent qualities. There may be times when an argument deserves all of these qualifications simultaneously. But since the relevant considerations are categorically different in each case, they are not reducible to each other: An argument can be effective, but not sincere or better in a normative sense. It can be sincere, but not effective or better. Most importantly for our discussion, it can be the better one, even if a speaker does not truly believe it or it is unsuccessful in changing anyone’s

information, and there are several alternative methods for analysis and ways of ordering values. There is nothing intrinsically reprehensible in selecting the particular combination of data, facts, values, and analytic methods that seems to be most appropriate to convince the people who have to accept or carry out the decision. If analysts are reluctant or unable to provide such postdecision justifications or explanations, policymakers have no choice but to turn elsewhere for assistance“ (Majone 1989: 19).

⁶ Als erklärungskräftig wurden hier framing-Effekte (Tversky/Kahneman 1981), Autoritätseffekte (Cialdini 2004), Gruppeneffekte (Jervis) sowie Vertrauheits- bzw. Resonanzeffekte (Festinger 1978) identifiziert (für

einen Überblick siehe Chaiken et al. (1996), für eine politikwissenschaftliche Anwendung siehe z. B. Cobb/Kuklinski 1997). Alle diese Effekte beruhen auf lebenspraktisch verständlichen aber potenziell irreführenden Urteilsheuristiken (Gigerenzer/Todd 1999) und stellen in gewisser Weise Abweichungen von einer

„baseline of rationality“ dar, die immer implizit unterstellt wird.

⁷ Keck/Sikkink (1998), Finnemore/Sikkink (1998), Chayes/Chayes (1995), Franck (1995), Ulbert (2005), Crawford (2002), Schimmelfennig (1995), Sell (2003). Several mechanisms to explain the construction of intersubjective knowledge are offered here: Flockhart (2006) speaks of „complex socialization“, Keohane (??) speaks of „learning“ or „complex learning“, respectively, Wendt (1999) of „imitation“ (Wendt 1999), Hurrell of (2002) “internalisation”, “socialization”, and „discursive enmeshment“, Payne (2001) and Checkel (2003) of “persuasion”, Cedermann/Daase (2003) of „sociation“, and Koh (1997), Tallberg (2002) and Chayes/Chayes (1995) or “enforcement” and “management”.

mind. Theorists working in the tradition of discourse ethics might dispute particularly this last conclusion and insist that the identity of a better argument can only be determined from within discourse and by its participants. If that means that we have to respect the commitment sets and warrants of the speakers involved, I agree. However, if it means that an analyst is denied the authority to evaluate an argument as good or bad when participants' see things differently, I disagree. As criticized above, arguing that we have to call that argument "better" which actors accept in a free and fair discourse deprives us exactly of the critical force the concept inhibits, and is really just a contextually pimped up version of the effectiveness account. True, actors will inadvertently consider the argument that convinced them the better one, but this is not how discourse theorists use the term. They say that "in communicative action, the better argument wins", not "in communicative action, the better argument – as determined by the speakers – wins". While the second version is certainly true, the first version turns analysts into victims in terms of critical capacity: They simply declare the argument that wins under these conditions the better one.

Concerning legitimacy, the implication of this critique is that discourse ethics really contains two accounts of what makes a decision legitimate. The first account holds that decisions are legitimate by virtue of their being freely acceptable by all parties concerned. The second account holds that decisions are legitimate if they are supported by the better arguments.⁸ As Bohman points out in his discussion of the procedural conditions of legitimacy: "By virtue of these ideal procedural conditions, the decision reached is fair and one all could accept. The problem is that this account does not show why the reasons for any such decision are good reasons" (Bohman 1998: 402). It goes without saying that both accounts focus on important aspects of legitimacy, namely autonomy preservation and epistemic value. With so many scholars concerned with the former aspect, I try to make a contribution to the latter.

Most of what I have said so far concerned a clarification of what a better argument is not. Since I hope to have shown that the expression merits attention as an autonomous and irreducible concept, it is now time to present some preliminary thoughts as to what is involved in speaking of a better argument.

3.3. What a better argument is: "Better argument" as a dialectical, concrete, and radically contingent concept

First, speaking of a better argument requires that more than one argument is considered, and that the arguments considered take position on the same issue. Without competing arguments, an argument might be good, but not better. Without their speaking to the same issue, they do not compete. Thus, speaking of a better argument requires a conception of dialogue and a conclusion in doubt. The dialogue need not be an actual conversation between two participants, a proponent and an opponent; it is sufficient if several arguments can be reconstructed as dialogue (i.e. we need no verbal utterances, no physical or temporal proximity of speakers, and

⁸ For a similar distinction of "three constitutive sub-types of legitimacy that together define the notion of 'rightfulness': views of legality, views of justification and acts of consent" (Gilley 2006: 502) see Beetham (1991). My two accounts correspond the second and third of these "subtypes".

not even a plurality of speakers – we can also discuss with the devil’s advocate in ourselves). What is necessary, however, is that the participants argue to a common conclusion A, with the proponent trying to establish it (“A is true”), and the opponent trying to cast doubt on it (“A has not shown to be true”) or prove its opposite (“not-A is true”). In short, “better argument” is a dialectical concept.

Second, speaking of a better argument requires that arguments are actually analysed. Here we encounter what is probably the greatest shortcoming of IR theory concerned with arguments: Despite the prominence of the term argument, it is almost never conceptualized. Even the German ZIB debate hardly if ever gives a definition or cites the relevant literature.⁹ Neta Crawford, which purports to „propose a new theory of argument and change in world politics“ (Crawford 2002: 1) is surprisingly thin on these matters as well. The field of policy analysis fares somewhat better in this respect (Majone 1989; Fischer/Forester 1992), but here, too, one hardly finds analyses of concrete arguments but of classes of arguments. Consequently, statements on their merits remain obscure. From an argumentative perspective, it is impossible to declare “humanitarian” or “legal” arguments the better ones. The fact of the matter is that such statements refer to classes of arguments defined by the frame of reference they share. This reflects not only an unhelpful typology of arguments, it also obscures the fact that is a particular legal argument that might be better, not a way of reasoning. In short, speaking of a better argument requires argument analysis.

Third, and related, speaking of a better argument is radically contingent. This point has two aspects. For one, it means that the better argument is always relative to other arguments considered in an evaluation: What is better depends on who are the candidates. Suppose two boys P and O at the beach, P arguing the world is flat, O it is a ball. Now, P argues that the ocean doesn’t run out from the horizon (it is still there), which is what would have happened if we pour water on a ball, and therefore it is no ball. O argues it is a ball, because his mother told him. P retorts that O’s mother is silly anyway, as she insisted that babies are brought by storks the day before. O runs away, crying. Suppose further this is the whole conversation. Who has the better argument? The first boy! Not only did he make a prima facie plausible hypothetical argument with empirical implications, he also called into question O’s mother’s competence on factual matters in response to O’s argument from authority. O, on the other hand, had nothing but the trust in his mother’s words. Of course, we can point out that P’s argument requires the assumption of a wall at the horizon, and that O’s mothers’ “competence” on reproduction does not necessarily affect her competence on astronomy, and, most importantly, tell the story of how

⁹ Durchsucht man beispielsweise den ZIB-Index⁹ nach den einschlägigen argumentationstheoretischen Texten von Toulmin (1958, 1979), van Eemeren (1990), Grice (1975), Klein (1980), Walton (1990, 1992, 1995, 1996, 1998), Govier (1987), Hamblin (1970) und Perelman/Olbrechts-Tyteca (1969), so ergibt sich, dass die meisten der genannten Autoren überhaupt nicht zitiert werden und lediglich Toulmin, van Eemeren und Klein Erwähnung finden. Dies ist allerdings nur in drei von zwanzig Beiträgen der Fall⁹ (Ecker-Ehrhardt 2002; Holzinger 2001 und Schimmelfennig 1997), wobei Schimmelfennig als einziger alle drei genannten zitiert..

mankind learned the world is a ball.¹⁰ But it would be a severe analytical mistake to impute that knowledge to O and declare that he had the better arguments! HE did not HAVE them! As things stand, O only made an appeal to authority, that authority was questioned, and O did/could not dispel the doubts. He loses.

The lesson to be learned from this example is that argument analysis must rest on an account of commitment sets, i.e. the statements, claims, and arguments a speaker is committed to. The totality of commitments taken on by the speakers defines the dialogue as an empirical – and analyzable – entity. It constitutes the only safeguard against the dangers of imputation and helps the analyst to distinguish the arguments that *were* made and the arguments that *could be* made. Argument analysis, that is, must proceed from a *closed world assumption* (Walton ??). The crucial importance of distinguishing actual and potential arguments in the identification of better arguments becomes all the more clear when we realize that an analyst can in practice neither know nor consider all potential arguments (after all, both fantasy and publishers' tolerance have their limits). Consequently, only the group of actual arguments can serve as the basis of argument analysis that does not run the danger of mixing analysts' private convictions about which are the best arguments that exist "out there" with what has really been argued for.

The second aspect relating to the importance of contingency follows directly. When the existence of better arguments depends on the relevant commitment sets, so does their non-existence: It is by no means clear that it is always possible to identify a better argument. To say it is possible to identify arguments as better is not to claim that whenever two or more arguments compete, one will be the better one. Had P argued that *his* mother told him the world was flat, there would have been no basis to privilege one appeal to authority over the other. Likewise, if X argues that his holy book tells him to kill infidels, and Y argues that infidels are human as well, and must therefore not be killed, and this is the whole conversation, then no basis to adjudicate the two claims exists. Apart from Y not having argued why humans must not be killed, X can readily accept that infidels are humans and still insist that these particular humans are covered as deserving death by his book (note that this argument is by no means outrageous; the Western death penalty argument works in an analogous way; just replace "infidel" with "criminal" and "holy book" with "legal code"). In short, looking for better arguments can result not only in positive identifications, but also in the uncovering of incommensurabilities.

All of this indicates that using the expression "better argument" as a social scientific concept instead of a sign of personal assent, requires careful, extensive, and detailed analysis. The next section gives some preliminary thoughts as to how such analysis might be conducted.

4. How to identify a better argument: A pragma-dialectical approach

The previous section tried to isolate "better argument" as an autonomous concept and specify it as inherently critical, dialectical, concrete, and contingent. Against the background of formal logic

¹⁰ For a collection of typical arguments on that "debate", see http://de.wikipedia.org/wiki/Flache_Erde;20.8.2007.

(4.1.), this section introduces a pragma-dialectical approach to argumentation theory (4.2.) and tries to outline a procedure that can be used to evaluate arguments in real world settings (4.3.). I submit that a better argument can be identified as a non-fallacious, dialectically relevant and non-repudiated argument in the context of a specific debate as constituted by the commitment-sets of the participants and evaluated by the conversational rules of a critical discussion. To illustrate the procedure, I will use the debate on the war in Iraq as an example.

4.1. The problems of formal logic

Traditionally, the field of argument analysis has been occupied by formal deductive logic (Walton 1992: 165). A glance helps to introduce some basic concepts. First, the elements an argument is composed of are called propositions. They fall in one of two groups: They are either premises (or, depending on the author, “assumptions”, “reasons”, or “evidence”) or they are conclusions (or “assertions”, “claims”, or “thesis”).¹¹ In an argument, the former serve as the reasons to accept the latter. In traditional formal deductive logic (comprising propositional logic, categorical logic and quantificational logic¹²), the ultimate “test” an argument has to pass before it is considered “good” is that of *soundness*: A good argument is one in which all of the premises are true and the argument is valid – with validity meaning that “it is impossible for all of its premises to be true and its conclusion to be false” (Fogelin/Sinnott-Armstrong 2005: 50, Walton 1992: 167).¹³ To show that an argument is valid, it is (1) translated into a formal notational system and

¹¹ This basic conception has also been called the (P+I) model (premises plus an inference) (Johnson 2000: 184) or the semantic conception of argument (Walton 1992: 167-170). It is also adopted by Kuhn (1991) when she defines an argument as “assertion with accompanying justification” (Kuhn 1991: 12). Similarly, for Copi (1986: 6) an argument “is any group of propositions of which one is claimed to follow from the others, which are regarded as providing support or grounds for the truth of that one.” Copi, Irving 1986: Introduction to Logic, 7th ed., New, York, NY.

¹² For an introduction, see Fogelin/Sinnott-Armstrong (2005: chapt. 6 - 8)

¹³ For a typical analysis of a “good” argument – i.e. one that satisfies the principles of truth and validity – consider the classic example:

- (1) All humans are mortal (major premise)
- (2) Socrates is a human (minor premise)
- (3) Therefore, Socrates is mortal (conclusion)

As we can take the truth of the premises for granted, this argument will be sound if it can be shown to be valid. To demonstrate this is the case, formal logic would proceed as follows: Proposition (1) is a substitution instance of a universal affirmative (“All S is P”), while (2) is a substitution instance of a particular affirmative (“Some S is P”) (here, an individual constant). To bring (1) into a form suitable to our argument form, we can reformulate it as the universally quantified conditional “for all things that are, if they are human, then it they are mortal” ($[x] [Hx \supset Mx]$). To make clear that Socrates is such a thing that is human, premise (2) can – but here does not have to be - reformulated as the existentially quantified conjunction “there is at least one thing that is Socrates and human”. Because if a universal conditional is true, all of its instantiations are true, we can write “for all things that are Socrates, if they are human, then they are mortal” (1’). With (2), it follows by modus ponens that “Socrates is mortal” (3). The argument is valid because “it has a proper instantiation whose form is valid in propositional logic” (Fogelin/Sinnott-Armstrong 2005: 231). We can see this if we put the argument in standard form:

- (1) $(x) (Hx \supset Mx)$ \rightarrow (1’) $Hs \supset Ms$ (Universal Instantiation)
- (2) Hs \rightarrow (2) Hs
- (3) $\therefore Ms$ \leftarrow (3) $\therefore Ms$ (modus ponens, valid)

The right part is a substitution instance of the modus ponens, and (1) \rightarrow (1’) is valid because it is a universal instantiation. This demonstrates the conclusion to be valid.

(2) a truth table is used to check if there is a possibility that its premises are true and the conclusion false.¹⁴

The problem with formal logic is that it can hardly be applied to real-life arguments. First, real-life arguments are not famous for containing self-evident truths such as “all squares are rectangles” or “if it rains, the earth becomes wet” which are commonly used in the famous syllogisms. This makes an assessment of their soundness almost impossible. Second, real-life arguments are often lengthy chains of inferences located in a discourse often populated by a range of other arguments pertaining to the same contested issue. This makes their reconstruction – or rather their translation into formal notational systems – impracticable.¹⁵ Third, real-life arguments are typically based on presumptive and plausible inferences rather than deductive ones. This means that the notion of deductive validity itself is misleading as a standard for argument appraisal. All of these problems have their roots in the fact that “the categories of formal logic were built up from a study of the analytic syllogism [which] is an unrepresentative and misleadingly simple sort of argument” (Toulmin 2003 [1958]: 135).¹⁶ The problem is this:

“It is one thing to choose as one’s object of theoretical study the type of argument open to analysis in the simplest terms. But it would be quite another to treat this type of argument as a paradigm and to demand that arguments in other fields should conform to its standards regardless, or to build up from a study of the simplest forms of argument alone a set of categories intended for application to arguments of all sorts: one must at any rate begin by inquiring carefully how far the artificial simplicity of one’s chosen modal results in these logical categories also being artificially simple [...] We may end up by thinking that [...] only our original,

¹⁴ As an example, consider the truth table for modus ponens (if p then q, p; therefore q)

Premise	Premise	Conclusion	
p	p	p \supset q	q
T	T	T	T
T	F	F	F
F	T	T	T
F	F	T	F

The modus ponens is valid, because there is no way for the premises to be true and the conclusion to be false.

¹⁵ Regarding that for rather simple propositions like “some cats are bigger than some dogs” we come up with quite elaborate expressions like “ $(\exists x)(\exists y)(Cx \& Dy \& Bxy)$ ” (Fogelin/Sinnott-Armstrong 2005: 224), we should think twice before proceeding on that road. Consequently, it seems no coincidence that formal logic often devised “artificial content as the means of studying thinking” (Kuhn 1991: 6). In fact, most examples treated in the textbooks are not longer than three lines where the truth of a conclusion is unequivocally deduced from the premises.

¹⁶ According to Toulmin, analytic syllogisms represent a very special type of argument because here, the procedure for verifying the backing of an argument “involves ipso facto verifying the conclusion” (Toulmin 2003 [1958]: 134), whereby “it becomes impossible to accept the data and backing and yet to deny the conclusion, without positively contradicting oneself” (Toulmin 2003 [1958]: 134). Walton (1992: 163) makes a similar point, saying that “since Aristotle, [...] there is the attempt to suppress the idea of an interactive context of discussion.” According to him, Aristotle’s theory of the syllogism “became ‘logic’ and his ‘informal’ conception of argument trailed off to nowhere” (Walton 1992: 194).

peculiarly simple arguments are capable of attaining to the ideal of validity” (Toulmin 2003 [1958]: 133).¹⁷

Apparently for this reason, formal logic has been charged of conducting circular and “completely unconvincing” reasoning (Johnson 2000: 103, 105-107).

4.2. The contribution of informal logic: Dialogue types, presumptive arguments, fallacies

To remedy this deficiency, scholars of informal logic have come up with a more useful conception of sound argumentation which builds on an account of how reasoning is actually carried out by individuals and what standards their arguments can reasonably be expected to meet. It is broader both in terms of its understanding of validity and its conception of argument, as it recognizes that an argument cannot be understood and evaluated apart from the context of dialogue in which it was made, and that it may not be deductively valid, but still good in the sense of pragmatically contributing to the goals of a dialogue. This conception is thus both dialectical and pragmatic.

Two notions are particularly important to understand the pragmatic and dialectical nature of this conception: Those of dialogue and presumption. A dialogue is defined by the participants involved, their commitment sets, the sequenced exchange of speech acts or “moves”, a set of rules governing locution, turn taking, commitment insertion and retraction, and success, and the overall goal of the dialogue (Walton 1992: 83). According to Walton (1992: 110-112; ??:133-137; 1996: xx; 1998), six “pure” types of dialogue can be identified: In a persuasion dialogue, the overall goal is to prove or disprove a proposition as true or false to resolve a conflict of opinion. The participants try to convince each other of their respective positions, using arguments that start from premises their counterpart already or presumably accept. In a negotiation dialogue, arguments are put forward to achieve the recognition of some demand or interest. Here the primary goal is to reach an agreement to a conflict of interest where truth is not necessarily an issue. In a deliberation dialogue, the goal is to decide the proper course of action in a situation of choice, i.e. to resolve a conflict of behavioural strategies. In an inquiry, the goal is not so much to remove an unsettledness arising from a conflict of opinions, interests, or courses of action, but to find the causes of some state of affairs. Here, what is to be produced is an explanation of *why* something is the case, not an argument *that* something is or should be the case.¹⁸ In an

¹⁷ See Walton for a similar critique: „Many logic textbooks emphasize as basic the semantic concept of an argument as a set of propositions with truth-values, stressing tests and criteria that are concerned with truth-functional relations on these truth-values (like first-order deductive validity) or with conditional probability-values on these propositions. This semantic orientation systematically encourages students to think that logic is a precise mathematical calculus that can be applied to propositions, in abstraction from the context of an argument, with its subtleties of interpretation and presumptions of background knowledge. For purposes of teaching deductive logic, syllogisms, or the probability calculus, this may be a useful way to view an argument [...] but the problem is that it abstracts too much from the context of use of arguments, and gives a false sense of precision, when the real need is to deal with questions of identifying, analysing, and evaluating arguments as they occur in realistic cases in natural language discourse“ (Walton 1996c: 37).

¹⁸ This simple distinction might also be a useful one for students of International Relations. As this discipline sometimes seems to have a fetish with explanations which are often the exclusive concern of

information-seeking dialogue, the goal is to provide one of the participants with information (often in the form of arguments) he does not yet have. Finally, in an eristic dialogue (or quarrel), the goal is to vent one's grievances, also in highly emotive ways, in order to possibly access the cathartic function such a battle of words may have.

In our context, the relevant dialogue type is the persuasion dialogue.¹⁹ As indicated, it consists of two participants with one trying to establish a proposition, the other casting doubts on it or trying to establish its opposite. To fulfil their respective obligations, they take turns in putting forward speech acts such as questions, assertions, assumptions, presumptions, retractions und concessions, some of which are assembled to arguments. Attached to these speech acts are obligations which speakers have to fulfil in order to use them appropriately. For example, making an assertion obligates a speaker to justify it, if questioned: „Assertion always carries with it a burden of proof, because assertion implies substantive commitment to the proposition asserted“ (Walton 1996a: 27). Assumptions, on the other hand, can be made or retracted relatively freely whenever participants think that hypothetical arguments can bring their dialogue along: „Supposition (or assumption) [...] requires only the agreement of the respondent, and carries with it no burden of proof on either side“ (Walton 1996a: 27). Likewise, presumptions can be made relatively freely to allow a participant to clarify his position; however, once conceded (granted) by the other, it becomes part of his commitment set as well, and can then be retracted (denied) only by arguing positively against it from then on. For the first participant, this means that a presumption, once introduced has “only a burden to disprove contrary evidence, should it arise in the future sequence of dialogue. The burden here has three important characteristics – it is a future, conditional, and negative burden of proof“ (Walton 1996a: 27). If this burden is not met, for example, if the participant could not dispel the critical doubts levelled against his presumption, he is forced to retract it and not use it in further arguments any more – unless, of course, he is able to reestablish it at a later point.²⁰

Now, to understand what makes the evaluation of real-world argument possible and meaningful, one last notion has to be added: The notion of fallacies. Traditionally, fallacies are arguments that seem to be valid, but in fact contain defective inferences that cannot guarantee the truth of a conclusion, given that all premises are true. „When defective styles of reasoning get repeated over and over, because people are often fooled by them, then we have an argumentative *fallacy* that is worth flagging with a name“ (Fogelin/Sinnott-Armstrong 2005: 339, emph. in orig.). Most

papers concerned with methodology and epistemology (KKV 1994, How the cases you choose affect the answers you get, Mills methods, Chalmers, Nuts and Bolts,), it is astonishing to see that what many studies actually do in the course of their presentations is to make arguments. After all, they go to great lengths in the first place to establish the propositions (“hypotheses”) that might provide useful explanations later. Greater awareness of these different modes of reasoning could help to replace the question “what is your independent variable?” with the more instructive question “what are you going to argue?”.

¹⁹ For an in-depth examination of the different types, see Walton (1998).

²⁰ As Walton explains: „A presumption is [...] a kind of speech act that is halfway between a (mere) assumption and an assertion, [They] go forward on a kind of of negative logic, or oblique relationship to burden of proof. [It] can be put forward [...] even if there is no positive evidence for it (or not enough to justify an assertion). But if new evidence comes in at some later point in the dialogue – new (negative) evidence that refutes the proposition in the assumption – then that proposition has to be given up as a presumption that still holds“ (Walton 1992: 5).

simply, we can distinguish formal, inductive, and informal fallacies. Formal fallacies occur when the rules governing truth-functionally equivalent transformations in formal logic are violated.²¹ Inductive fallacies occur when the rules governing statistics and probability calculation are violated, such as in *hasty generalizations* (unrepresentative samples) or the *gambler's fallacy*.²² Finally, we may encounter informal fallacies when certain kinds of statements or expressions are used to justify conclusions of quite different kinds. Here, we can distinguish genetic fallacies which cite the source of a conclusion as proof for its truth or falsity, such as in the *argumentum ad hominem* (against the person; subtypes: circumstantial ad hominem; guilt by association type, tu quoque type), the *argumentum ad verecundium* (from authority), the *argumentum ad populum* (from majority opinion), or the *argumentum ad antiquitatem* (from tradition), to name but a few. In all these cases, premises are introduced which may well be correct in themselves, but are irrelevant as to the conclusion they purportedly support. In a sense, they all are *ignoratio elenchi*: „they ignore what has to be proved“ (Schleichert 2004: 52, Walton 1998: 21). The same verdict applies to arguments that appeal to emotions like pity (*argumentum ad misericordiam*) or a preference for compromises (*argumentum ad temperatiam*) or cite the positive/negative consequences of accepting/rejecting a conclusion as proof for its merits (*argumentum ad consequentiam*[?], subtype: *argumentum ad baculum*). Apart from genetic and consequential fallacies, we can classify fallacies arising from circular reasoning, such as *petitio principii* (begging the question)²³ and fallacies arising from the use of ambiguous expressions²⁴, such as the fallacies of equivocation²⁵ and slippery slope arguments.

Now, the original contribution of informal logic is that not all of these traditional fallacies are in fact in any case fallacious. Rather, they can become a source of arguments that „ can be quite successful and correct, in carrying out the job [they were] designed to accomplish, even if [they were] only plausible, rather than being deductively valid or inductively strong“ (Walton 1992: 3) These arguments are inherently fallible, but plausible enough to shift a weight of presumption to

²¹ Examples include the fallacy of affirming the consequent (if p then q; q; therefore p) or the fallacy of denying the antecedent (if p then q; not p; therefore not q) in propositional logic, or the fallacy of the illicitly distributed subject (all smokers are money squanderers; all smokers oppose prohibiting smoking; therefore all money squanderers oppose prohibiting smoking) or the fallacy of deriving an affirmative conclusion from a negative premise (No smoker lives healthy; some money squanderers are smokers; therefore some money squanderers live healthy) in categorical logic.

²² The gambler's fallacy consists in the false conviction „that each possible outcome will occur the average number of times in each series of trials“ (Fogelin/Sinnott-Armstrong 2005: 308).

²³ The fallacy here consists in „[is] petitioning for (asking to be granted) the principle (or issue to be proved)“ (Walton 1998: 26). Such fallacies are by no means easy to discern. Consider the argument “It's always wrong to murder human beings; Capital Punishment involves murdering human beings; therefore Capital Punishment is wrong”: “Here the first premise is true by definition, since calling something murder implies that it is a wrongful killing. The second premise is, however, question-begging, for calling capital punishment murder assumes the point at issue, that is, that capital punishment is wrong. As a result, anyone who objects to the conclusion would or should raise exactly the same objections to the second premise, and one could not give any adequate reason for the second premise without first arguing for the conclusion“ (Fogelin/Sinnott-Armstrong 2002: 395).

²⁴ See Fogelin/Sinnott-Armstrong (2005: 339-376) on „fallacies of clarity.“

²⁵ Such as in „Nothing is better than complete happiness; a tuna sandwich is better than nothing; therefore a tuna sandwich is better than complete happiness“.

the other side in a context of dialogue.²⁶ That means, even an argument cannot guarantee its conclusion beyond any doubt, an opponent should reasonably accept it, unless he can produce evidence to the contrary. Consider the argument “if a bear is in the area, we can find footsteps with the characteristics [x,y,z]; over there are such footsteps; therefore a bear must be around.” Strictly speaking, this argument commits the fallacy of affirming the consequent (the footsteps could also be artificial) and, furthermore, rests on an untrue premise (because bears walking on asphalt, for example, leave no footsteps). Nevertheless, I would have a very good reason to load my rifle. The argument is plausible enough to justify our assent. If, however, we learn the footsteps were located on the wall of our library, concluding that we encounter a student joke would be more appropriate. Thus, while certainly fallible and traditionally classified as a fallacy, this *argument from sign* as a very good and acceptable argument as long some special exceptions are not (known to be) in place. The inference rests on a presumptive conditional which requires neither universality nor an inductive (statistical) proof, but only that typically, [x,y,z]-footsteps are associated with the presence of bears. Should evidence of exception emerge later on, we can still modify the conclusion.²⁷

As the class of arguments traditionally classified as fallacies in formal logic might become the source of quite reasonable arguments in informal logic, distinguishing the two becomes key. Most simply, in informal logic, a fallacy is identified with an unannounced, illicit dialectical shift from one context of dialogue to another, i.e. a severe violation of the rules of argumentative discourse as prescribed by the rules of dialogue for each type. It is not simply an invalid argument or a mere blunder (Walton 1992: 240-246), but a „sophistical tactic to try to get unfairly the best of a speech partner in dialogue“ (Walton 1996d: 296). For example, while an *argumentum ad baculum* might be quite admissible and normal in a negotiation dialogue, it cannot be used in a persuasion dialogue, because a threat cannot guarantee the truth of a conclusion. Likewise, if a speaker starts to attack his counterpart personally in a persuasion dialogue, he commits a shift to a quarrel, and thereby an *ad hominem* fallacy. On the other hand, it is not reprehensible to appeal to authorities in a persuasion dialogue, provided that a speaker uses it correctly, that is, withdraws it in case critical questions arise as to the competence of the cited authority in the domain concerned, which he cannot satisfactorily answer. In general, the persuasion dialogue provides the most restrictive conditions as to what participants are allowed to do in terms of the making, withdrawing, and granting of premises and the types of arguments that can legitimately be used to prove or criticize a proposition. Together with an awareness of what can go wrong in arguing (the fallacies of traditional logic), this dialogical background can offer an analyst enough critical bite to evaluate arguments as good or bad, better and worse.

²⁶ „Plausible argumentation is based on a kind of reasoning that goes forward tentatively and provisionally in argumentation, subject to exceptions, qualifications, and rebuttals. Plausible argumentation is opinion-based – it is inherently subject to retraction as an argument continues and new evidence is brought into the discussion.“ (Walton 1992: 3).

²⁷ “The conditional that links the sign to the hypothesis in the argument-from sign-warrant is not governed by the operator ‚necessarily‘, or even ‚probably.‘ It is governed by the operator ‚normally‘, but subject to exceptions – [by] presumptive conditionals and plausible reasoning“ (Walton 1996c: 270).

4.3. Outlining the procedure

[Implications of the pragma-dialectical approach for argument analysis:

-reconstruction rules: identification of conclusion, commitment sets, and warrants

-evaluation rules: exclusion of fallacies, interpretation and reconstruction of the dialogue as a critical discussion, check of repudiations: does the presumption still hold?]

5. Looking for the better argument in the Iraq debate: An illustration

[not finished due to time constraints; the detailed analysis can be found in Heppt 2007]

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