19.

Generalizing Stasis Theory for Everyday Use*

This paper attempts to revitalize an important source of rhetorical thinking from antiquity: the stasis (or status) system. It is argued that a "generalized" version of the system would be useful today as a resource for the production and assessment of argumentation about matters of shared concern in a society—not just as an aid for defendants in criminal cases. One generalizing move suggested is to integrate the sub-system known in antiquity as the "status legales," treating it as a subcategorization of the second of the "status rationales": that of "definition." A second generalizing move is to see the resulting conceptual system as a taxonomy of disagreements and controversies of all kinds that may occur in a society: ethical, political, etc.—not just criminal accusations. The paper suggests that those who learn to think about disagreements with this taxonomy in mind will be better able to understand what ongoing controversies are essentially about; however, it may also be a resource for debaters, helping them focus their argumentation on those points where they stand the best chance of persuading opponents.

Introduction: Public debate as trench warfare

When debaters disagree, it is important to understand the exact nature and scope of their disagreement. Each debater has an interest in knowing the precise reasons that make his opponents disagree with him, because if he wants some of his opponents to change their minds, those are the reasons he should try to refute. The onlooker, too, has an interest in knowing them, because they are probably the reasons that will best help him decide for himself.

However, public debaters often misrepresent and widen their disagreements. They distort each other's standpoints and reasons,

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representing them as either bizarre or toothless (two subtypes of the 'straw man' fallacy). Or they ignore the opponents' real reasons and attribute imaginary reasons to them. They speculate on their opponents' base, hidden motives. Often they see an opponent as part of a large, monolithic block, so that he is either a member of a conspiracy or at least a "useful idiot". Attacks on the opponent's ethics, intellect, and personality often follow. Partisanship and polarization flourish. Debaters see their own standpoint as representing righteousness, while any divergent standpoint is seen as opposite, usually in a dichotomous sense: there are no third positions, no neutral ground. This way, political and social debate may resemble trench warfare as in the First World War. In both, we can see a typical widening of the front zone where the two parties clash.

For onlookers who look to debates for enlightenment to choose a standpoint there is little help. They would be better served if the debate would focus on those smaller sectors of the front where debaters crucially disagree, and where a true breakthrough might most likely occur. Litigation lawyers know the need to focus their argument on potentially decisive points and present a coordinative argumentation rather than a multiple set of unconnected reasons—to use the terminology of Franciska Snoeck Henkemans (2000). Interestingly, an empirical study of televised political debates where representative audiences voted on issues before and after each debate showed that here too the coordinative strategy is superior: what we called "single ground" debaters performed significantly better in terms of votes than "multiple ground" debaters (Jørgensen, Kock and Rørbech 1994; 1998, this volume, Chapter 12). Readers of a famous essay by Orwell (1946) will know that to shoot a mad elephant (as young Orwell once had to) one should place one bullet in the exact right spot with great force. A similar piece of advice seems to be sound regarding deliberative argument.

Status theory as a focusing tool

Ancient stasis (status) theory was a tool to help forensic debaters focus their case. The central part of the theory was the *status rationales*: the conjectural, the definitional, and the qualitative, equivalent to the questions: What are the facts? How are the facts to be categorized? What particular circumstances characterize them?

These *status rationales* question the facts at issue, but another main part of *status* theory was the *status legales*, which question the laws by which the facts were to be judged.

Usually, four types of disagreement are mentioned. In all of them the debater argues that there is no clear one-to-one match between a law and a fact. *Ratiocinatio* is when there is no norm that meaningfully covers the fact, so we must reason by analogy from existing norms about something else. *Ambiguum* is where there is one relevant norm that may cover the fact, but it is ambiguous or abstract. In *scriptum et voluntas* there is also one relevant norm, but this time it is too specific; it may literally cover the fact, but the argument is that we should read the spirit of the law, not the letter. Finally, *contrariae leges* is where two or more norms which may cover the fact, but they point to different conclusions.

Notice that here we pass logically from cases with no applicable norms, to cases where one norm may apply, which is either too abstract or too specific, to cases with more than one applicable norm.

Ancient *status* theories also included lists of so-called "practical issues," such as legality, justice, advantage, feasibility, honor, consequence. All these are examples of relevant norms (or norm systems) that may legitimately be invoked in social and political argument, but they are mutually heterogeneous, i.e., the set of relevant norms is "multidimensional," and hence the norms will necessarily tend to clash. For example, a debater might support a policy as advantageous; another might oppose it as dishonourable. This is the practical parallel to the issue of *contrariae leges*. But the main components of the *status* system—the *status rationales* and the *status legales*—were intended for legal argument; they presupposed the existence of explicit, formal rules (*leges*), which were meant to cover the facts of the case, i.e., to correlate *ius* and *factum*.

I suggest a way to generalize and integrate all these strategies into one scheme which can help identify and narrow down the decisive reasons not just in legal argument, but in deliberative argument as well, that is, in any social disagreement over action. Such a scheme might help clarify, for debaters and onlookers alike, what current disagreements are essentially about, and in particular what they are not about.

We should note that the differences between legal and political argument are not absolute. Legal argument often relies on informal norms used in practical reasoning; political argument often invokes legal considerations. Both kinds are about action—legal argument is about legal action in response to past acts, political argument is mainly about future action but also about evaluating and modifying past acts. In both cases acts are being supported or opposed with reference to norms of right action, which function as "warrants," to use Toulmin's term (1958). The difference is

mainly that legal norms are typically written statutes which are recognized as valid and operative by all; norms underlying political argument are usually informal, unwritten and not always recognized as valid by all, or to the same degree. Also, they are most often implicit rather than explicitly stated, and they are more heterogeneous or "multidimensional" than legal norms: some may be purely prudential and are perhaps only concerned with economic consequences; others may be virtue-ethical norms about moral conduct, fairness or justice; others again are in fact formal and legal, for example considerations as to whether a policy is constitutional.

Applying status theory to social and political argument

Status theory is a typology of the problems we may meet in correlating norms and facts, and since these problems are analogous in the two fields, I propose we use *status* theory to consider not just legal argument, but social and political argument as well.

For this purpose, I further propose to integrate the *status legales* in the *status rationales*. In the *status of definition*, we discuss how a fact can be subsumed under a norm. The *status legales* are about the same kind of discussion, but they start from the other end: the norms. The reason they are useful is that they specify the problems raised by the correlation of norms and facts. Finally, I also propose to include the "practical issues" of political argument among the many norms that are invoked, implicitly or explicitly, in political argument.

So this is how we may integrate and generalize the various components of ancient *status* thinking into a comprehensive typology of disagreement in social debates. 1) We generalize the formal legal concept of "laws" into a broader, more varied concept of norms. 2) We see the *status legales* as specifications of the ways in which the correlation between facts and norms may be contentious. 3) We use the "practical issues" to specify some of the varied norms that may clash in social debates.

The complete, integrated *status* system for practical debates is given in the following table (see table on pp. 338-339). I have named the cells with letters and number, filled in some terms drawn from ancient status theories and supplied examples for the different types of disagreement. We will look at some of these. (Notice that the table also contains examples and comments not cited in the text of this paper.)

But you may ask, Why do all this? Is this meant to be a better interpretation of what ancient rhetoricians meant? No, I propose it as a

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useful tool for handling current social and political disagreements. If public debaters and audiences would think about disagreements in terms like these, they might better avoid the characteristic widening of disagreements where debaters impute imaginary standpoints, policies, reasons, intentions and personality features to each other. With greater awareness of the specific type of disagreement in a particular case, debaters may be more conscious of the norms that their own argument relies on, and of those on the other side.

Let us look at some of the types of disagreement that our generalized and integrated version of the *status* system specifies. Those that primarily call for comment are those representing the four *status legales*, seen as specifications of the *status finitionis* (C5-F5 in the table). This is where the traditional system of *status rationales* is most notably enriched; the *status conjecturae* and the *status qualitatis*, on the other hand, are defined and subdivided by the present scheme in the same way as we find in ancient theory (more specifically that of Hermogenes).

If for example the disagreement is one where no pre-existing norm clearly and indisputably applies (cell C5 in the table), then that understanding might be a starting point for a discussion where both parties collaborate to find a relevant norm. Issues where such a search for relevant norms is indicated concern such "new" phenomena as are currently emerging in fields like bioethics and information technology: Cloning of higher organisms and stem cell research are activities where there is indeterminacy as to what categories may relevantly apply to the entities in question—and hence there are also quandaries as to what exisiting norms, if any, may relevantly apply to them. Various forms of digital file sharing are technological phenomena which, at least according to some, fundamentally question existing norms relating to property and intellectual rights, thus necessitating the formulation of new norms.

1	**Classical terms**	1. *Status conjec-turae*	2. *Status finitionis* (the *status legales* are inserted here: C4-F4)			
2	**What are we de-bating?**	What are the facts?	What norms apply to the facts? (Legal norms [statutes], ethical norms, ideological norms, value concepts, "doxai", "common sense", formal and informal topoi …)			
3	**Argume ntation theory**	Truth/ Accepta-bility	Relevance			
4	**Classical subtypes**		Assimilation *Ratiocinatio*	Ambiguity *Ambiguum*	"Letter and Intent" *Scriptum et voluntas*	Conflict of law *Contrariae leges*
5	**Disagree -ment type and appro-priate rhetor-ical strategie s**	Disagree-ment about facts Give evidence Increase prob-ability	No norms clearly apply Argue from either conse-quences or analogy	One disputable (vague) norm applies Interpret norm to either include or exclude facts	One disputable (strict) norm applies Dissociate between literal and intended meaning	Two or more contra-dictory norms apply: Argue to show that norms on own side have more relevance and/or weight than those on other side
6	**Com-ments**		Mostly novel pheno-mena	Many debates in politics and ethics belong here (cf. Warnke)	Often a last resort in argument	Many debates in politics and practical ethics Cf. "conductive reasoning" "Value pluralism" "Incommensurability "Normative meta-consensus" Norms invoked include: legality, justice, advantage, feasibility, honour, consequence
7	**Example s:**		Cloning, Stem cell research, File-sharing,	Abortion	Anti-abolitionis ts: "Black slaves not intended by 'all men created equal'"	Invasion of Iraq: Spread democracy, Depose tyrant, Self-defence *vs.* Legality, Human and material costs Resulting chaos Muhammad cartoons: Defend free speech internationally *vs.* Gratuitous offense to minority locally
	A	B	C	D	E	F

3. *Status qualitatis*					
What specific features and circumstances of the facts should be considered?					
Weight, Strength, ”Sufficiency”, ”Good Grounds” (= gradual and quantitative considerations)					
Counterplea *Antilepsis*	Counter-statement *Antistasis*	Counter-accusation *Antenklema*	Trans-ference *Metastasis*	Mitigation *Syngnome*	Mortification
Norm recognized, but breach justified by extraordinary circumstances ”It is just”	Norm re-cognized, but set aside ”It is necessary”	Norm recognized, breach blamed on object of breach ”They asked for it”	Norm recognized, breach blamed on external party ”They made us do it”	Norm recog-nized, breach attenuated ”Mitigating circum-stances”	Norm recognized, breach deplored, forgiveness asked ”I apologize”
All these resemble, or are even identical with, those issues where contradictory norms apply (F5); the difference, if any, is that in the *status qualitatis* (as we are here), one argues for an exception to the strict application of a certain general norm, the relevance of which is not contested					
Liquidation of informers under German Occupation; Whistleblowing	Torture, ”extra-ordinary rendition” ; ”illegal combat-tants”	Retaliation in war	”We were under orders”	Victim gets back at tormentor	“I misled people, including even my wife. I deeply regret that.”
G	H	I	J	K	L

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Disagreeing debaters might also find that they both agree on a certain norm, but that their disagreement is about interpretation, that is, about whether the fact they discuss can indeed be meaningfully subsumed under this norm that they both happen to support (cell D5). The philosopher Georgia Warnke (1999) has written about this sort of "interpretive" disagreement. The abortion issue in the United States is a prime example; the problem is that the participants in that debate do not realize it. Both sides are surely "pro life" as well as "pro choice," but the disagreement is on whether the removal of a new foetus, or fertilized egg, constitutes the taking of a human life, and whether a woman's choice to have a new foetus removed from her body can be seen as her own choice.

Disagreements belonging in cell E5 are those where a strict and literal understanding of a norm (either written or unwritten) is opposed by one that will read a different underlying spirit into that norm. For example, anti-abolitionists in the debate on slavery in the US in the Nineteenth Century were apt to believe that the words in the Declaration of Independence about "all men" being "created equal," when read in the right spirit, did not really apply to black slaves, although they admittedly saw them, in a certain sense, as men.

Again, two disagreeing debaters in the abortion controversy might find that they mutually endorse the other side's interpretation of the norms that are invoked. Then we have a dispute belonging in cell F5: there is agreement on two relevant norms which in the specific case point to opposite conclusions, and the crucial point is now whether the argument relying on one of these norms can be made to appear weightier than the argument relying on the other.

Column F in the table is the deliberative counterpart of *contrariae leges*—cases like those where two or more normative concepts are used as warrants on opposite sides. We face such issues all the time. The invasion of Iraq was supported by some with reference to defence against terrorism, dissemination of democracy and the need to overturn tyrants, but it was opposed by others with reference to its non-compliance with international law, the loss in human and material terms, and the dangerous chaos that would be its likely consequence.

All of these considerations were in some sense potentially relevant to the issue, so we had a case of what Carl Wellman (1971) and Trudy Govier (1987, 2004) have called "conductive reasoning," i.e., we must somehow weigh the pros against the cons. Such situations exemplify the "value pluralism" propounded by Isaiah Berlin (1998, 2002), that is, the

understanding that several norms may be relevant to a given issue, but argue for opposite decisions—and this not only between two disagreeing debaters, but also inside the mind of an individual. Other philosophers have recently emphasized the "incommensurability" that obtains between such norms, which implies that it cannot be objectively determined whether one or the other norm should have priority because the relevant norms belong to different dimensions (see, e.g., Raz 1998, and Kock 2003; this volume, Chapter 6). In legal argument the status of *contrariae leges* describes such situations, and if we apply status thinking to social disagreements we are reminded that similar contradictions are common there as well, probably more so.

Besides value pluralism and incommensurability, another concept that may be illuminative in polarized debates about controversial issues is that of normative metaconsensus. The political theorist John Dryzek defines it as "agreement on recognition of the legitimacy of a value, though not extending to agreement on which of two or more values ought to receive priority in a given decision" (see, e.g., Dryzek & Niemeyer 2006, p. 639). In the Iraq debate, both supporters and opponents of the invasion might probably agree on values such as spreading democracy as well as respecting international law. The dispute would then be narrowed down to one about the priority, in the specific case, of one norm over the other; that is, there would be normative metaconsensus. Normative metaconsensus might also be said to exist between the two sides in the abortion debate. Life and choice are two values that both sides recognize, and their dispute is either one of interpretation because both these notions are vague, or one of priorities.

In proposing to apply status thinking to deliberative disputes I do not suggest that we can expect consensus on issues like the ones I have mentioned. The belief that rational argumentative discourse will necessarily lead to consensus (or towards consensus) has been championed by Habermas in philosophy and by political theorists such as Elster (1986). In argumentation theory, the pragma-dialectical school builds on the hypothetical assumption that the purpose of all argumentation is for the discussants to resolve their dispute. But as John Rawls and others have maintained, there are reasons why people may not ever agree on issues where values are involved; hence his term "reasonable disagreement" (1989, 1993). One of these reasons is precisely the fact that people may, even within the bounds of reasonableness, interpret values differently; this is the main idea in Georgia Warnke (1999). Another reason that people may

prioritize values differently; or, in the terminology of Perelman and Olbrechts-Tyteca (1969), their value hierarchies differ.

Nevertheless, although consensus cannot, for these reasons, be expected to emerge, in some cases it actually might, and of course that would be welcome. But in the absence of consensus, to realize that there is normative metaconsensus is also an achievement. It would reveal that a dispute is not always an all-out clash between monolithic blocks that reject each other's values. Thus it would help narrow down the scope of the disagreement and focus everyone's attention on where it actually is rather than on where it is not. The polarization and the trench warfare we often see in public debates would lose some of their fuel. Moreover, debaters on both sides might find more persuasive arguments for their views. The status system in antiquity had this kind of purpose. The reason it might work like that is that it helps us focus on the decisive points of disagreement. If one could change opponents' minds about those, then one might change their minds about the whole issue. Similarly for undecided onlookers. They too would more likely take our side if we were to focus on the decisive point of disagreement and make them accept our case on that precise point.

To complete the picture, let us briefly consider the types of disagreement represented by the cells G5-L5. In G5, we have issues where a norms is recognized, but where the presence of "exceptional" circumstances is invoked to justify the suspension of that norm. For example, during the Nazi occupation of various European countries, including my own country, Denmark, many individuals known or assumed to be informers against members of the resistance movements were summarily liquidated by resistance men. No law or social norm was invoked to justify these killings or the fact that no legal steps were taken against them after the war, only the completely exceptional nature of the situation was invoked.

Cell H5 represents issues of a partly similar nature, including the use of "extraordinary rendition" and physical pressure bordering on torture against so-called "illegal combatants" captured in Iraq, Afghanistan, etc. Whereas in G5 cases the basic norm outlawing the liquidation of one individual by another is simply suspended by exceptional circumstances, in H5 cases there is more of a weighing of contradictory norms against each other, with one being regretfully "bent" because trumped by another, based on self-defence.

Cases represented by cells I5-L5 show gradually increasing degrees of recognition of the norm that is being broken: In I5 cases, the victim of the norm breach is cited as giving cause for it and deserving retaliation ("they

asked for it"). In J5 cases, no degree of mitigation of the norm breach itself is sought, yet the perpetrator seeks acquittal or at least mitigation for himself by seeking to shift the blame to a third party, supposedly so powerful that no alternative was available for the perpetrator ("we were under orders"). In K5 cases the perpetrator admits his transgression and his responsibility for it, yet he seeks mitigation in the fact that, e.g., the victim had long tormented or provoked him—a circumstance that may indeed explain and even mitigate the transgression but never justify it. Finally, in L5 the perpetrator fully recognizes the transgression and his own responsibility, seeking mitigation only as an act of mercy, following his avowal of guilt and contrition. This strategy may be exemplified by former President Clinton's words, "I misled people, including even my wife. I deeply regret that" (words which came after a series of attempts at some of the strategies discussed above).

Let me reiterate that what I see as the most useful feature of this proposal to generalize status theory to everyday disagreements is the integration of the four *status legales* as a series of specifications of how we may disagree about the definition or nature of the act we debate. As an example, consider the debate on the Muhammad cartoons published by a Danish newspaper in 2005. In October of 2008, the debate was revived in another newspaper between its editor, Tøger Seidenfaden, a leading critic of the cartoons, and Frederik Stjernfelt, a well-known academic (Mogensen 2008). Seidenfaden argued that the cartoons were an act of gratuitous offence denying due empathy to a domestic minority not deserving such treatment, namely all those Muslims in Denmark who are peaceful and want integration, and thus the cartoons were likely to set back integration. Stjernfelt, a self-declared enlightenment thinker, argued that the cartoons were part of a global struggle for freedom of speech, against special rights for cultural groups, and he rebuked Seidenfaden for wearing "blinkers" and seeing only "the tiny Danish corner" of the issue, ignoring the global aspects.

As an onlooker, I cannot help wondering why these two debaters, both highly articulate and intelligent men, did not see more clearly the simultaneous relevance of two contradictory norms, both of which they probably both support. In other words, there was normative metaconsensus between them, but they did not realize it. Stjernfelt persisted in assuming that opposing the cartoons constituted a betrayal of the principle of free speech, and rejected the relevance of the "gratuitous offence" argument as "tiny"; Seidenfaden, on the other hand, appeared similarly insensitive to the

global context, where some Muslims in fact acted violently to curtail freedom of speech, and he was unwilling to concede that the cartoons might relevantly be seen in that context—in which the domestically-based criticism of them (and of the Danish government's no-comment attitude to them) might appear as a failure to stand up for free speech. As an onlooker, I find it obvious that the quarrel between the two sides in this debate was not about any one of them betraying one or the other of the norms invoked (empathy with deserving minorities and free speech, respectively), but about how to interpret these norms, how they were relevant to the case, and in particular what relative weight or priority should be assigned to them. In other words, the disagreement was primarily an instance of the deliberative counterpart of *contrariae leges* (cell F5), with elements of interpretive disagreement (cell D5)—and the debaters should have realized that, or have been made aware of it. As a general principle, I would argue that onlookers looking for guidance on a controversial issue are let down by a debate where each debater only insists on the exclusive relevance of his "own" favoured norm. What might have helped onlookers more would be mutual recognition by the opposite sides that contradictory norms are relevant, plus a motivated bid from each side as to why its favoured norm should be given priority in the case at hand.

Even more generally, I suggest that democracies like ours need a greater awareness among debaters, audiences, journalists and educators that social disputes should not be seen as all-out clashes along enormous front lines, but may usually often be narrowed down to focused disagreements on more specific, but also more potentially persuasive points. I suggest that the insights contained in status theory as presented here can help promote such an awareness. Let us not be like the two lovers in Matthew Arnold's famous poem "Dover Beach," who feel that "we are here as on a darkling plain/ Swept with confused alarms of struggle and flight, / Where ignorant armies clash by night."

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