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Commentary on Konishi

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In Response to: Takuzo Konishi's *A generalized stasis theory and arguers' dialectical obligations*

As an aboriginal of this pleasant land of rhetoric, I want to welcome one of the infrequent foreigners who has decided not just to read the standard guidebooks, but actually to visit and see the sights. It's a particular pleasure to welcome the author of this paper, since in a highly complimentary fashion he gives more deference to the rhetorical tradition than the natives themselves often do. The results of his careful study, I will suggest below, are fruitful for both Informal Logicians and students of rhetoric; even the moves I believe to be in a wrong direction turn out to point to interesting differences in the approaches the two fields adopt when studying argument. Let me begin, however, by summarizing what I see to be the major claims and arguments of this paper.

Ralph Johnson has recently been arguing strongly that arguers have *dialectical obligations*-- obligations, that is, not just to build a strong argument, but to reply to the doubts, objections, and alternative positions that may be raised against it. Certainly no one in rhetoric would disagree; the concept of burden of proof is basic to our textbook tradition, and has received a measure of scholarly attention (Kauffeld 1998). At this point, however, the informal-logical theory of dialectical obligations needs to be filled out. What is it, that an arguer must respond to?

Following a suggestion by Wenzel, to solve this problem Konishi turns to a bit of traditional rhetorical lore: the crown jewel of the classical rhetorical manuals, the stasis system. This list, originally formulated by the second century B.C.E. teacher Hermagoras, identified the key issues that might become centers of dispute at least in one range of controversies, thus defining the contours of what the arguer might need to answer. As it appears in Cicero's early work *On Invention* (*Inv.* 1.10-16), the stasis system is as follows. In response to an arguer's claim such as "You killed your mother!," the interlocutor can reply:

1) "I did not!"--creating the "conjectural" (factual) stasis.

2) "I did it, but it wasn't murder!"--creating the "definitional" stasis.

3) "I did it, but shouldn't be blamed!"--creating the "qualitative" stasis. This stasis had numerous, complexly ordered subdivisions, including *conparatio* (the deed was for a good end), *relatio criminis* (it was in self-defense), *purgatio* (deny you really meant to do it--offer an excuse), *remotio criminis* (some one else was really responsible--another excuse) and *deprecatio* (admit and request forgiveness).

4) "You have no right to speak to me like that!"--creating the "translative" (jurisdictional) stasis.

As it stands, however, this system is not adequate to define an arguer's dialectical obligations in all cases. Konishi therefore raises and at least partially meets four objections to stasis theory:

1. The Scope Problem: The classical stasis system seems to work only in forensic situations--the arguing that follows an accusation; and:

3. The Exhaustiveness Problem: Even within these situations, there is no proof that the stasis system specifies all the issues that can arise. These two problems Konishi deals with by revising the classical system. To make the system more generally applicable "to argumentation in any forum," Konishi expands the four issues as follows. An arguer may claim:

1) "X is P"--the stasis of predication.

2) "'X' and 'P' are to be understood in such & such a way"--the stasis of clarification.

3) "X is P unless some qualifying factor exists"--the stasis of qualification.

4) "This is the right person, place and time to discuss 'X is P'"--the stasis of procedure.

Quite rightly, Konishi argues that this generalized scheme will apply in many more situations than the Hermagorean system, and perhaps even all, thus solving the "Scope Problem." He is less optimistic about the system's ability to eliminate the "Exhaustiveness Problem." Each particular issue is certainly able to encompass *more* different kinds of claims, but whether the system as a whole encompasses *all*, cannot at this point be established.

2. The Exception Problem: The original Hermagorean stasis system included not only a list of staseis, but also a list of *asystata*--cases in which no stasis could be found, because (e.g.) the evidence was weak or confused. The existence of these cases appears to mean that the stasis system is less than totally useful. This problem Konishi handles by carefully going through each possible breakdown, and suggesting that the arguer, if she cannot use the stasis system to produce replies to objections, can at least use it to see that, and why, she can't. In that sense, there is no "Exception Problem" regarding the usefulness of the system, although there are limits (as we knew) on what can be argued.

4. The Performance Problem: Stasis theory only helps the arguer locate possible objections; it doesn't "cause" her to respond to them--a problem that can in fact be raised generally against many of the lists that inhabit the classical rhetorical manuals. Konishi admits that it is indeed the case that the stasis system only provides for the invention of arguments; it does not guarantee that the arguer's performance will be in line. Nevertheless, as he points out *knowing* what one has to do is a necessary first step in actually doing it. If philosophers can provide an account of why one is obligated to respond, the stasis system helps fill in the blanks by showing how this obligation can be met. The "Performance Problem" is thus at least partially resolved.

So much for summary. Overall, the paper is a fine instance of interdisciplinary work because of its accurate, careful and sympathetic account of the foreign terrain being explored. The author has reviewed basically all the work on stasis in the last two generations, missing only one important article in a law journal (Hohmann 1989) and the work of an Italian classicist (Montefusco 1986)--sources which could hardly have been predicted. His handling of the "Exception Problem" is a particularly impressive demonstration of how the techniques of analysis ordinary within philosophy can enliven otherwise moribund rhetorical doctrines. I don't think anyone has paid this much attention to the doctrine of the *asystata* for two millennia; I find his account highly persuasive and in fact am going to borrow from it in my own work on issues. Equally impressive is Konishi's sympathetic defense of the value of the stasis system before the unforgiving gaze of philosophers. The stasis list--so typical of the resources of the rhetorical manuals--does not pretend to be a well-grounded theory of argument. Instead, it is a heuristic,

useful in a modest way when one is trying to actually fulfill one's argumentative responsibilities. If the philosophers are going to not only interpret the world of argument, but actually change it, they will eventually have to allow such practical heuristics some standing in their systems; as Konishi argues strongly in this paper.

Ironically, however, the very accuracy and care of Konishi's review of stasis serves to highlight the characteristic disciplinary preoccupations he brings with him. This is particularly the case, I think, in his review of the dual problems of "Scope" and "Exhaustiveness." The classical stasis system is clearly somewhat muddled. It needs help. Konishi helps it by making it more general. Now, such a strategy of generalization is not unprecedented. Cicero himself in his mature works abandoned the technical stasis system he'd learned in his youth, substituting instead a very general system of issues for any subject whatsoever (*Orator* 45): *sitne* (Is it?), *quid sit* (What is it?) and *quale sit* (What sort is it?). These questions are a recognizable extension of the Hermagorean stasis system, stating the questions of fact, definition, and evaluation in a more general form, and eliminating the worrisome fourth (procedural) stasis. And in modern times, Hanns Hohmann (1989) has vigorously advocated a similar system.

So the strategy of generalization is not unprecedented; still, there is an alternative approach to unmuddling the Hermagorean system. Instead of seeking increased generality, one might try to clean up stasis by seeking increased particularity. Instead of framing general questions that might arise in any controversy whatsoever, one might try to frame particular questions that arise in only some. For the stasis list, this might mean not abandoning the restrictions of the forensic context, but rather following them more carefully: creating a list that catalogued exactly and exhaustively the possible replies to accusations. But why might we prefer particularization over generalization?

First, the particularized version has the advantage of being plausibly exhaustive--a Problem, remember, that Konishi's generalized system was unable to solve. The stasis system in its particular guise, as a system of forensic issues, has been reinvented every time it has been forgotten. Contemporary sociologists, for example, have worked to develop a general theory of accounts--a theory of what can be said when one appears to have violated social norms. Although the particular lists of accounts vary (Schlenker & Darby 1981;p Scott & Lyman 1968; Semin & Manstead 1983; Schönbach 1990), in general, theories include most of the following possible replies:

> Claim innocence.
>
> Justify one's conduct.
>
> Offer an excuse.
>
> Apologize.
>
> Avoid giving an account.

A very similar list has been independently proposed as the underlying rationale of the defenses available in criminal cases under U.S. law. Robinson (1982) has concluded that in response to a criminal accusation, a defendant can:

> Deny the charge.
>
> Use a special defense defined by law.
>
> Justify his actions.

> Excuse his actions.

Neither of these theories is a perfect match with the classical system. The theory of legal defenses, for example, leaves out the procedural stasis, which in courtroom settings is handled at the pretrial phase. The theory of accounts leaves out questions of definition, possibly because social life is not managed by formal rules and so this reply is unlikely to arise. Overall, however, the sociological and jurisprudential lists bear a close resemblance to the classical system, or are indeed improvements of it. The highly vexed third stasis with its innumerable subdivisions has been in contemporary times cut up into two or three separate issues (Justification, Excuse, Apology)--an increase in clarity, at the "cost" of an increase in complexity. This repeated reinvention provides some, though hardly conclusive, evidence that these are all the issues that arise in forensic controversies--that is, some evidence that a *particularized* stasis system does in fact survive Konishi's Exhaustiveness Problem.

Second, the particularized version has the advantage of being more useful--an important criterion for a heuristic. The doctrine of stasis was not just an isolated tool for analyzing issues; rather, it provided an overarching organizational scheme for a heap of detailed advice about how to handle each. In Cicero's manual *On Invention*, for example, the "detailed advice" stretches for 103 sections--more than fifty pages in the English translation. With respect to just the "justification" subdivision of the third stasis, Cicero tells us that the defender should proceed

> by proving that he punished the offence [which justified his own conduct] more lightly
> than the offender deserved, and by comparing the punishment which he inflicted with the
> crime that he had committed. . . . The force of the severest attack of the prosecutors, by
> which they point out that the whole judicial process will be thrown into confusion if
> privilege is given of punishing offences without convicting the criminal, will be lessened,
> in the first place if it is demonstrated that the offence was of such a nature that it would
> seem intolerable not only to a good man, but to any sort of free man at all; in the second
> place that it was so manifest that it could not be questioned even by the offender; then
> that it was of such a nature that he who punished it was in duty bound to punish it . . . .
> (*Inv.* 2.83-84)

and so on. If what is desired is to give an arguer help in predicting and meeting possible objections, the particularized stasis system, with its related set of commonplace lines of argument (*topoi, loci*), certainly has the advantage of its stripped-down, generalized cousin.

In sum, a more particularized version of the stasis system seems to help deal with the "Exhaustiveness Problem," and creates what seems to be a more useful inventional tool. What Konishi calls "the Scope Problem" is in this perspective "the Particularization Advantage." I would argue further, however, that the particularized approach to issues is not only more useful, but the *only* one that can claim any standing specifically as *a theory of objections*.

Remember that Konishi looks to stasis to help resolve a particular problem in contemporary argumentation theory. What he seeks, he says, is "a comprehensive list of the dialectical materials that an arguer needs to consider in constructing and delivering argument"--a list of all the "potential objections and alternative positions." Now, the original Hermagorean system, and the modern theories of accounts and legal defenses are exactly this. All these lists focus on only one particular claim: something like "Your hurt me!" or "You did it!" They then go on to itemize the many possible replies an interlocutor could make in response. As Konishi puts it, in

the Hermagorean system each stasis contained positions to which "the arguer must be ready to reply."

But note the significant shift here between the particularized and generalized systems. The generalized stasis system is no longer a list of types of *objections*. Instead, it is a list of types of *claims*. The list itself contains things the arguer may find herself saying: "X is P;" "'X' means such & such'" and so on. Once he has introduced his revised system, moreover, Konishi himself speaks almost exclusively of the "arguer's claims." For example:

> The two questions that have emerged in this section are whether the new stasis theory exhausts all types of *claims* that arguers make. . . .

> The generalized stasis theory is a tool with which an argument critic can lay out an argument to see on which stases *the arguer advances her or his thesis*, anticipates the interlocutor's objections and alternative positions and replies to them [emphasis added].

Similarly, when he comes to analyze a sample extended argument--Johnson's own case for dialectical obligations--he proceeds entirely by noting the various claims Johnson makes. Finally, it is worthy of note that while Konishi's system does enable him to analyze Johnson's claims, it seems a quite weak predictor of the objections that actually arose against them. Johnson (2000)--who, as *the* theorist of dialectical obligations, can presumably be trusted to fulfill them--lists five main objections to his claims:

> The dialectical tier is unnecessary.

> The claim to originality is overstated.

> The definition of argument is too restrictive.

> The definitions of practice and product are circular.

> There is no one meaning of "argument."

The last three apparently take aim at Johnson's various definitions--Konishi's second stasis. The first two, I suppose, attack specific factual claims Johnson has made--Konishi's first stasis. But how would the stasis system have enabled Johnson to predict just these objections? Obviously, since he made factual and definitional claims, he could reasonably expect them to draw some objections. But why just these responses? A generalized stasis system, with its focus not on the interlocutor but on the arguer, proves unable to say.

In sum, Konishi's generalized stasis theory is no longer a list of objections, but a list of claims. It appears to resemble in this respect Aristotle's category scheme, in that it attempts to catalog exhaustively what someone can say about "X." But identifying types of claims provides only partial help with the basic task of discovering the "dialectical materials that an arguer needs to consider in constructing and delivering argument." Konishi's system does not provide the needed supplement to Johnson's conception of dialectical obligations.

I suspect that it is the case that comprehensive lists of objections can be compiled only when they are limited to objections that arise in particular kinds of disputes. Whether or not I'm right, my suspicion is a symptom of a deeper divide between scholars working in the rhetorical and informal-logical traditions. Informal logicians not infrequently set out to model "all arguments" (Freeman 1989, 34); Johnson himself is looking for the dialectical obligations that are present whenever someone argues (personal communication). Students of rhetoric, although they occasionally make more grandiose claims, when they get down to work more characteristically

and productively focus on particulars. When presented with something like the Hermagorean stasis system, informal logicians tend towards increased generalization of the system, or relating it to more general theoretical projects. Students of rhetoric, by contrast tend towards increased particularization of the system (e.g., Hultzen 1958), or application of it to particular cases.

I have argued that, from the rhetorical point of view, Konishi's revised stasis system is not going to provide Johnson's theory of dialectical obligations the support it needs. Let me close with a final note about how Konishi's careful work actually suggests something stronger: that Johnson's project of defining universal obligations is probably going to hit some rocky ground. Johnson has not asserted that an arguer is responsible for answering every possible doubt, objection and alternative position that can be raised against her. Instead, Johnson has tended to make rather quantitative claims when defining the contours of an arguer's dialectical obligations. The arguer is responsible for replying to the more salient objections, those more frequently "found in the neighborhood of the issue" (2000, 332). Konishi's stasis scheme suggests instead that the arguer's dialectical obligations have *substantive* boundaries, not just quantitative ones. There are, in other words, whole classes of objections and alternative positions that the arguer does not have to respond to. Consider the "stasis of procedure," in which an interlocutor claims that it is not the right time, place or manner to argue the question. Quite rightly (at least in many cases), Konishi argues it is the "interlocutor, not the arguer, [that] has a burden of proof" on this issue. Furthermore, if the more "particularized" version of the stasis system is adopted, I suspect we'd encounter yet further burden of proof "shifts" in the staseis of Justification and Excuse. If a defendant claims he was insane when he did the deed, it is up to him to prove it, not up to the prosecution to prematurely answer this alternative position.

Why is this a problem for Johnson's theory? Suggesting only quantitative limits for dialectical obligations allows Johnson to evade specifying why the line between the obligatory and nonobligatory is drawn precisely where it is drawn. Ideally, one might suppose, one should answer all the objections; in the press of circumstances, however, one may be excused if one just does the best that one can--answering the best of them. But if instead entire classes of objections are in practice outside of the arguer's dialectical obligation, Johnson must say why. Why *is* an arguer obligated reply to objections that the facts aren't what she says, but not to objections that her argument is out of place? That is not a matter of more or less, or a practical accommodation to human limits. We cannot answer that question without a more exact account of how dialectical obligations arise, and thus what their limits are. This is not a problem any stasis system can handle; it is up to the theorists of dialectical obligations to try to fill this gap.

Let me sum up. Konishi's work displays all the strengths of the informal logician, especially evident in the care and exactness he brings to dealing with the Exception and Performance Problems. Speaking within my own discipline's characteristic preoccupations, however, I am more sceptical that his generalized stasis system will be able to deal with Scope and Exhaustiveness, and I've argued that instead a more particularized system might be preferred. Since I'd look forward to discussing these matters with him in more detail, I hope he extends his stay in the pleasant land of rhetoric.

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