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Michael J. Hoppmann

Northeastern University, Department of Communication Studies

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Hoppmann, Michael J., "Commentary on: Paul van den Hoven's "Mimetics in judicial argumentation: A theoretical exploration"" (2013). *OSSA Conference Archive*. 77.

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Commentary on: Paul van den Hoven's "Mimetics in judicial argumentation: A theoretical exploration"

MICHAEL J. HOPPMANN

*Department of Communication Studies
Northeastern University
360 Huntington Avenue, Lake 204, Boston, MA 02115
USA
m.hoppmann@neu.edu*

Professor van den Hoven points our attention to the difference and interaction of two central parts of persuasive texts: the mimetic part, which introduces new information to the audience and is usually found in the classical *pars orationis* referred to as *narratio* and the diegetic part concerned with "[...] those elements in which the discussant qualifies or evaluates objects or events in the discourse world." traditionally found in the classical *argumentatio*. Van den Hoven claims that while there is a long and sophisticated tradition within argumentation theory dealing with the diegetic part, argumentation theory fails to recognize the importance of the mimetic part, especially as it deals with pictures, visuals and persuasive narratives. While most of his examples stem from the classical *genus iudiciale* and modern legal discourse, his findings can probably be amplified to other genres as well.

I find van den Hoven's paper well researched, pleasantly written and – above anything else – thought provoking. One of the thoughts it has provoked in me, I want to address in this short reply. It is the thought about the *telos* and territory of the various disciplines that are active in the field of persuasive communication.

Van den Hoven's main claim, as I understand it, is that current argumentation theory neglects the mimetic part of persuasive texts (in the widest sense of text, including speeches, dialogues etc.). In order to substantiate this claim, he shows that a) mimetic elements have a strong influence on the audience (especially in the legal sphere) and that b) modern argumentation theories, with minor exceptions, give little attention to this part. I have no doubt about the correctness of a) and my only concern about b) is that I wish the author would have given some attention to the emerging complex of strategic maneuvering within pragma-dialectics, which – to my understanding – tries to cover some of these questions.

My main question however, concerns a missing element c) that mimetic elements lay within the territory of argumentation theory, that it is argumentation theory's business to take care of them. In order to answer this question, one needs to address the *telos* of modern argumentation theory in some more detail.

But before engaging in some more detail with this territory, task or aim of argumentation theory, I would like to take a brief look at the examples and theorists that van den Hoven himself refers to. I think it is no coincidence that many of the sources and examples he works with are borrowed from our neighboring disciplines. The first large example, the famous syllogism about Socrates' mortality is one such item. Many argumentation theorists may share Perelman's description that

classical syllogistics, and modern formal logic, are not part of argumentation, but of demonstration, and as such better covered by logicians than by argumentation theorists. Similarly on the other side Burke's pentad and the ethos effects one achieves by attributing honesty to one agent or identifying another one as a salesman in his shop, would traditionally be covered by rhetoricians rather than argumentation theorists.¹ Finally, many of van den Hoven's examples stem from legal psychology or persuasive effect research, which, once again, seems to take care of the phenomena under consideration quite well.

This fact by itself, that the phenomena van den Hoven considers are currently treated by other disciplines is of course not a sufficient counterargument² to his claim. It could be – as the author seems to indicate – that these disciplines *so far* treat questions, which argumentation theory should incorporate. But why is that so, what is the aim and territory of argumentation theory?

Van den Hoven defines the aim of argumentation theory as follows: "Argument theory aims at an assessment of the reasonability of the discourse." or, hoping that the author would permit a slight paraphrase of this definition, it aims at assessing those elements within a discourse that are reasonable. But is this the case for most of the examples of mimetic elements that he presents? Is there a standard of reasonableness (or should there be one) of the presentation of the picture of a brutal crime scene or of the audience reaction to it? Should there be normative standards for the amount of suggestive vocabulary one may introduce into a persuasive narrative? Neighboring disciplines of argumentation theory, first and foremost rhetoric and psychology are well aware of those effects and treat them under a variety of names. But they usually assess them without judgment, working descriptively rather than normatively. What do we stand to gain, and can we even achieve this gain, if we widen the territory of argumentation theory to include elements that are without any doubt persuasive, but mainly achieve their effect through non-reasonable means?

I am not certain that I find the answers to these questions in van den Hoven's text. And until they are substantiated in some more detail, it seems to me that what one should ask for is not so much the widening of the territory of modern argumentation theory (which would be the result of including mimetic effects in its job description), but rather a stronger cooperation between argument theory and its neighbors – above all empirical psychology and rhetorical theory.

This impression by no means reduces the value of van den Hoven's essay; on the contrary, it points to the desire to further engage in the interesting questions he raises.

¹ This is not to say that an individual person must at some step in his or her academic career decide whether they are a logician, argumentation theorist, classicist, moral philosopher or empirical psychologist – there are some famous examples of individuals who excelled in a number of neighboring disciplines, but rather that one uses the dominant toolset of either discipline one at a time.

² If anything, producing a counterargument to van den Hoven's claim is not my aim in this reply – my maximum aim is more modest and amounts to a critical question.