

2 *Pro-et-contra* surveys

‘One of the most salient features of our culture is that there is so much bullshit. Everyone knows this. Each of us contributes his share. But we take the situation for granted.’

Harry Frankfurt¹

2.1 **Bulls**t**

In his treatise *On Bullshit*, the philosopher Harry Frankfurt argues that the world has a major problem: there is a lot of bulls**t. As any lawyer knows, this also applies to legal practice. In some cases, it is immediately obvious that we are dealing with bulls**t (when people for example contradict themselves). In other cases, however, it is much less easy to determine whether bulls**t is being presented.

One way to deal to with bulls**t is to simply accept it. Such a mindset reminds us of the practice of the *Sophists*, the lawyers of ancient Athens. In ancient Athens, professional lawyers were not allowed to appear before the courts. If an Athenian had to appear before a court, he consulted a Sophist to help him prepare a plea, which he was then obliged to perform himself (no need to say that this contributed to the development of rhetoric). Several famous Sophists were sceptics, who believed that a lawsuit was merely about the propositions formulated by the parties involved, but that the actual truth thereof did not matter to winning or losing. The sceptic Carneades (213-129 BCE), for example, stated that although the truth did not exist, debaters could always ensure that they got their way.²

This type of scepticism is not far removed from our way of thinking. In most countries, civil courts will take a ‘passive approach’ to truth in civil law. Courts then allow themselves to be primarily guided by the parties’ propositions, which then determine the scope of the case. To an extent, these courts consider a proposition made by one party to be ‘true’ insofar as it is not contested by the counterparty – regardless of the actual truth of that proposition. In a sense, these propositions create a legal reality that is not the real world. It is therefore important to have a clear picture of the asserted propositions.

Whatever one may think about this idea of the sceptics – some philosophers were highly critical (we will return to why in the next chapter) – it did inspire the development of a set

1 Frankfurt (2005), *On Bullshit*, 1.

2 Grenfell (1867), 614. We note that Carneades was not a Sophist.

of tools for examining the nature of argumentation. One of these tools, the *pro-et-contra* survey, is the subject of this chapter.

2.2 *Pro-et-contra* surveys

The above-mentioned Carneades advocated making a clear outline of the arguments supporting and refuting a main proposition. It is said that he used this outline to demonstrate how well he was capable of flipping positions and argue both sides – a sort of marketing for his services in ancient Athens.

Here we will follow a method developed on the basis of Carneades' idea by the Norwegian philosopher Arne Naess:³ the *pro-et-contra* survey, which we define as follows.

***Pro-et-contra* survey: an outline of the main arguments used to support or refute a proposition.**

A *pro-et-contra* survey can be helpful in several ways. Carneades used an outline of arguments because he believed that nothing is true, but anything can be argued. In contrast, Arne Naess regarded the *pro-et-contra* survey as a way to investigate one's own mode of reasoning. He was worried by developments in psychology which showed that people are more sensitive to arguments that confirm their opinions than to arguments that contradict them (a so-called *confirmation bias*⁴). To maintain the quality of his argumentation, Naess wanted to list all possible arguments for or against a proposition, so that he could explicitly weigh them up against each other. A *pro-et-contra* survey may be very useful for legal practitioners, for example when writing, analysing or refuting a plea.

2.3 How does a *pro-et-contra* survey work?

The *proposition* is the centrepiece of an argumentation. We will indicate this central statement with F_0 : *the initial formulation*. The zero indicates that there is no proposition that is more central to the argumentation. All arguments have a bearing on this proposition. Next, the *considerations* – the arguments for and against – are classified as follows.

3 Our discussion is based on Naess (2005), 75-95. Naess also developed the *pro-aut-contra* survey, a diagram of (a) the main arguments which, *according to a certain individual or group, support* a proposition; and (b) the main arguments which, *according to a certain individual or group, refute* a proposition. The *pro-aut-contra* survey ends with a conclusion, which indicates whether the proposition will be accepted or rejected. This conclusion presupposes that the arguments have been weighted. Although we will not discuss the *pro-aut-contra* survey any further, we will examine its conceptual implications (namely the assessment based on the criteria of tenability and relevance).

4 For other forms of bias see Section 4.4.

Arguments that have a *direct* bearing on the proposition are called ‘first-order arguments’. These can be subdivided as follows:

- arguments directly *supporting* the proposition are called first-order pro-arguments (P_1, P_2, \dots)
- arguments directly *countering* the proposition are called first-order contra-arguments (C_1, C_2, \dots).

Arguments that do *not directly* apply to the proposition but support another argument, are called ‘second-order arguments’:

- arguments *supporting* a first-order pro-argument are called pro-pro arguments (P_1P_1, P_2P_1, \dots)
- arguments *weakening* a first-order pro-argument are called contra-pro arguments (C_1P_1, C_2P_1, \dots)

In the same way, a contra-contra-argument counters the contra-argument, while a pro-contra-argument reinforces this contra-argument.

The survey should be structured in such a way that it is clear how the arguments relate to the initial formulation and the other arguments. Things may not become much clearer if the survey extends deeper than the third or fourth order. If an argumentation is so complex that a sixth order must be introduced, for example, it may be more convenient to split it up into several sub argumentations.

Example: Martin Luther’s King ‘I have dream’ speech

Let us take the following excerpt of Martin Luther King’s famous speech, held on 28 August 1963:⁵

‘Five score years ago, a great American, in whose symbolic shadow we stand today, signed the Emancipation Proclamation.⁶ This momentous decree came as a great beacon light of hope to millions of Negro slaves who had been seared in the flames of withering injustice. It came as a joyous daybreak to end the long night of their captivity. But one hundred years later, the Negro still is not free. One hundred years later, the life of the Negro is still sadly crippled by the manacles of segregation and the chains of discrimination. One hundred years later, the Negro lives on a lonely island of poverty in the midst of a vast ocean of material prosperity. One hundred years later, the Negro is still languished in the corners of American society and finds himself an exile in his own land. And so we’ve come here today to dramatize a shameful condition. In a sense we’ve come to our nation’s capital to cash a check. When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of

⁵ Text based on audio recording, see www.americanrhetoric.com/speeches/mlkihaveadream.htm.

⁶ Martin Luther King here refers to Abraham Lincoln (1809-1865), who signed the Emancipation Proclamation in 1863.

Independence, they were signing a promissory note to which every American was to fall heir. This note was a promise that all men, yes, black men as well as white men, would be guaranteed the 'unalienable Rights' of 'Life, Liberty and the pursuit of Happiness.' It is obvious today that America has defaulted on this promissory note, insofar as her citizens of color are concerned. Instead of honoring this sacred obligation, America has given the Negro people a bad check, a check which has come back marked 'insufficient funds.'

But we refuse to believe that the bank of justice is bankrupt. We refuse to believe that there are insufficient funds in the great vaults of opportunity of this nation. And so, we've come to cash this check, a check that will give us upon demand the riches of freedom and the security of justice.

We have also come to this hallowed spot to remind America of the fierce urgency of Now. This is no time to engage in the luxury of cooling off or to take the tranquilizing drug of gradualism. Now is the time to make real the promises of democracy. Now is the time to rise from the dark and desolate valley of segregation to the sunlit path of racial justice. Now is the time to lift our nation from the quicksands of racial injustice to the solid rock of brotherhood. Now is the time to make justice a reality for all of God's children. It would be fatal for the nation to overlook the urgency of the moment. This sweltering summer of the Negro's legitimate discontent will not pass until there is an invigorating autumn of freedom and equality. Nineteen sixty-three is not an end, but a beginning. And those who hope that the Negro needed to blow off steam and will now be content will have a rude awakening if the nation returns to business as usual. And there will be neither rest nor tranquillity in America until the Negro is granted his citizenship rights. The whirlwinds of revolt will continue to shake the foundations of our nation until the bright day of justice emerges.

But there is something that I must say to my people, who stand on the warm threshold which leads into the palace of justice: In the process of gaining our rightful place, we must not be guilty of wrongful deeds. Let us not seek to satisfy our thirst for freedom by drinking from the cup of bitterness and hatred. We must forever conduct our struggle on the high plane of dignity and discipline. We must not allow our creative protest to degenerate into physical violence. Again and again, we must rise to the majestic heights of meeting physical force with soul force.

The marvellous new militancy which has engulfed the Negro community must not lead us to a distrust of all white people, for many of our white brothers, as evidenced by their presence here today, have come to realize that their destiny is tied up with our destiny. And they have come to realize that their freedom is inextricably bound to our freedom. We cannot walk alone.'

A *pro-et-contra* survey of this argumentation, in which we stay as close as possible to the original text, could be as follows:

F_0 : There will be neither rest nor tranquility in America until the Negro is granted his citizenship rights. The whirlwinds of revolt will continue to shake the foundations of our nation until the bright days of justice emerge.

C_1 : Five score years ago a great American in whose symbolic shadow we stand today signed the Emancipation Proclamation. This momentous decree is a great beacon light of hope to millions of Negro slaves who had been seared in the flames of withering injustice. It came as a joyous daybreak to end the long night of their captivity.

C_1C_1 : But 100 years later the Negro still is not free.

$P_1C_1C_1$: One hundred years later the life of the Negro is still badly crippled by the manacles of segregation and the chains of discrimination.

$P_2C_1C_1$: One hundred years later the Negro lives on a lonely island of poverty in the midst of a vast ocean of material prosperity.

$P_3C_1C_1$: One hundred years later the Negro is still languished in the corners of American society and finds himself in exile in his own land.

C_2C_1 : So we've come here today to dramatize a shameful condition.

P_1 : In a sense we've come to our nation's capital to cash a check, a check that will give us upon demand the riches of freedom and the security of justice.

P_1P_1 : When the architects of our Republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every American was to fall heir. This note was a promise that all men – yes, black men as well as white men – would be guaranteed the unalienable rights of life, liberty and the pursuit of happiness.

$C_1P_1P_1$: It is obvious today that America has defaulted on this promissory note insofar as her citizens of color are concerned.

$P_1C_1P_1P_1$: Instead of honoring this sacred obligation, America has given the Negro people a bad check, a check which has come back marked 'insufficient funds.'

$C_1C_1P_1P_1$: But we refuse to believe that the bank of justice is bankrupt. We refuse to believe that there are insufficient funds in the vaults of opportunity of this nation. So we've come to cash this check.

P_2 : We have also come to this hallowed spot to remind America of the fierce urgency of now.

P_1P_2 : This is no time to engage in the luxury of cooling off or to take the tranquilizing drug of gradualism.

$P_1P_1P_2$: Now is the time to make real the promises of democracy.
 $P_2P_1P_2$: Now is the time to rise from the dark and desolate valley of segregation to the sunlit path of racial justice.
 $P_3P_1P_2$: Now is the time to lift our nation from the quicksands of racial injustice to the solid rock of brotherhood.
 $P_4P_1P_2$: Now is the time to make justice a reality for all of God's children.
 P_2P_2 : It would be fatal for the nation to overlook the urgency of the moment.
 $P_1P_2P_2$: This sweltering summer of the Negro's legitimate discontent will not pass until there is an invigorating autumn of freedom and equality – 1963 is not an end but a beginning.
 $P_2P_2P_2$: Those who hope that the Negro needed to blow off steam and will now be content will have a rude awakening if the nation returns to business as usual.

P_3 : And that is something that I must say to my people who stand on the worn threshold which leads into the palace of justice. In the process of gaining our rightful place we must not be guilty of wrongful deeds. Let us not seek to satisfy our thirst for freedom by drinking from the cup of bitterness and hatred.

P_1P_3 : We must forever conduct our struggle on the high plane of dignity and discipline.

P_2P_3 : We must not allow our creative protests to degenerate into physical violence. Again and again we must rise to the majestic heights of meeting physical force with soul force.

P_2P_3 : The marvellous new militancy which has engulfed the Negro community must not lead us to a distrust of all white people,

$P_1P_2P_3$: for many of our white brothers, as evidenced by their presence here today, have come to realize that their destiny is tied up with our destiny.

$P_2P_2P_3$: They have come to realize that their freedom is inextricably bound to our freedom. We cannot walk alone.

The survey above illustrates both the relationships between the considerations and the relationships between the considerations and the initial formulation. Let us make a few remarks here. Firstly, in this argumentation the initial formulation is found at the end of the text. This will not always be the case. The initial formulation may also be found elsewhere, for example in the beginning of the text or even in the title. Secondly, some of the strongest points made in this speech are contra-contra arguments. In other words, contra-contra arguments can act as pro-arguments. Thirdly, it is of course possible to analyse the arguments in even more detail. One must, however, weigh off precision against usability and clarity. Fourthly, there is not one right *pro-et-contra* survey, as other divisions may be chosen. We advise to choose the division that is best fit for the purposes of the particular survey in order to make optimal use of this instrument.