"Reasonable Hostility": Its Usefulness and Limitation as a Norm for Public Hearings

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Abstract: "Reasonable hostility" is a norm of communicative conduct initially developed by studying public exchanges in education governance meetings in local U.S. communities. In this paper I consider the norm's usefulness for and applicability to a U.S. state-level public hearing about a bill to legalize civil unions. Following an explication of reasonable hostility and grounded practical theory, the approach to inquiry that guides my work, I describe Hawaii's 2009, 18-hour public hearing and analyze selected segments of it. I show that this particular public hearing raised demands for testifiers on the anti-civil union side of the argument that reasonable hostility does not do a good job of addressing. Development of a norm of communication conduct for this practice, as well as others, must engage with the culture and time-specific beliefs that a society holds, beliefs that will shape not only how to argue but what may be argued and what must be assumed about particular categories of persons.

Résumé: L'hostilité raisonnable est une norme de conduite communicative premièrement développée à partir d'études de discussions publiques dans des réunions centrées sur l'éducation dans des communautés des E.U. Dans cet article je réfléchis sur l'applicabilité et l'utilité de cette norme aux audiences publiques sur un projet de loi au niveau de l'état aux E.U. qui vise la légalisation des unions civiles. Après avoir exposé la notion d'hostilité raisonnable et l'approche qui guide mes recherches, je décris une audience publique de 18 heures en Hawaii en 2009, et j'analyse certaines de ses parties. Je montre que cette audience publique a créé des exigences, sur ceux qui ont attesté contre l'union civile, qui ne sont pas bien répondues par l'hostilité raisonnable. La mise au point d'une norme de conduite communicative pour cette pratique, ainsi que pour d'autres, doit tenir compte de la culture et des croyances à un temps spécifique d'une société, des croyances qui influencent la façon d'argumenter, le contenu permissible des arguments, et les suppositions sur des catégories particulière des personnes.

1. Introduction

When ordinary citizens marshal themselves to speak in public meetings, it is because they care deeply about a disputed issue. In speaking out, people's talk brings together reason-giving and feeling expression in complex packages. In this paper I examine citizen testimony in a public hearing held by the Hawaiian senate judiciary committee as it considered whether to extend the rights of marriage—but not the name—to couples of the same sex. Based on study of this hearing I reflect about whether "reasonable hostility," a conduct norm I developed for local-level governance bodies, should be extended to public hearings about value-laden issues concerning the rights of categories of persons.

In a keynote at the OSSA conference several years ago Christian Kock (2007) argued that argumentation theorists had something to learn from "scholars who scrutinize words, texts, and utterances to see how people use them to act" (p. 1). I am that kind of scholar. I believe the best way to develop proposals about how people *ought* to speak in particular practices is to look closely at how they actually speak. To be sure, getting from what people typically do to what they ought to do requires a leap, but without a solid anchor in what is, a norm's relevance and usefulness will be limited.

I begin by providing an overview of grounded practical theory, the meta-theoretical approach that guides my work. Then I describe reasonable hostility, the norm of communicative conduct I developed for sites of local governance during times of community dispute. After briefly describing Hawaii's hearing about civil unions, I argue why reasonable hostility is a useful norm, albeit one that does not address the most difficult problem that arguers confront. The context—that is, the unique combination of setting, issue, and existing societal beliefs about talk that are relevant to this occasion—raised difficulties for testifiers espousing an anti-civil-union stance. Using excerpts from the public testimony, I show that anti-civil-union speakers gave considerably more attention to face concerns than those testifying in favour of the bill. These different levels of face-attention displayed in these person-rights focused public hearings cue a limitation in reasonable hostility, as well as other normative argument models.

2. Preliminaries: Developing norms for discourse practices

As would most argument scholars, I start from an assumption that norms for conduct need to be contextually anchored. Ideals

of how people ought to talk (or write) need to be responsive to the particular aims and demands of the situation. Among argument scholars the terms for referring to context(s) and its types vary by theorist. Toulmin (1958) gives us the notion of field; Walton (1989), dialogue types; and van Eemeren and Garssen (2009), drawing on the linguist Stephen Levinson (1992), give us activity types, of which European parliamentary debate would be one example.

My own starting point is the notion of discourse practices. A discourse practice is a nameable talk-focused activity in social life. Parliamentary debate is one kind of discourse practice, as are exchanges at academic conferences, meetings of city councils, and public hearings of legislative bodies. But rather than assuming these are "argument contexts," I would begin more broadly, simply conceiving of them as communicative practices. The difference that a broader frame makes—a communication practice rather than an argument context or type—is that it legitimates debate about a practice's purposes. Just how important should pursuing quality argument-making be when it comes into tension with showing respect to others, building relationships for tomorrow's battles, or getting something done even if that something is less than optimal? These are the routine challenges that confront participants in actual practices.

Bob Craig and I (Craig & Tracy 1995; Tracy & Craig 2010) developed grounded practical theory (GPT) as a hybrid social science/rhetorical method to enable melding description of communicative action with a critical assessment of better and worse ways to act in a focal practice. The entry point for GPT is to identify the problems and dilemmas faced by participants in the multiple roles they occupy, as well as those faced by the group or an institution as a whole. This is accomplished by immersing oneself in the discourse of a practice. Following a construction of the practice's problems, a GPT analyst seeks to identify the discourse moves and strategies that reveal and manage the practice's problems. The final goal of GPT research is to construct a norm of conduct. The norm aims to be a situated ideal of good conduct, one that is built from the ground up and that takes account of the multiple legitimate aims that are intrinsic to a studied practice.

3. Reasonable hostility—A local governance norm

Based on 35 months of study of one Western U.S. community's school board meetings (Tracy 2008, 2010), I proposed that reasonable hostility is a desirable conduct norm to be pursued in

sites of local governance during times of strong disagreement. The right of citizens to express outrage is a central part of just about any notion of democracy. Yet the norm of conduct for public life that most frequently is espoused is civility (e.g., Carter 1998; Kingwell 1995; Tannen 1998). Strong criticism of ideas, as I evidenced in this case study, is invariably infused with powerful negative sentiments. People connected to a position favouring (or opposing) a particular set of ideas typically experience comments from those opposing their position as being personally insulting, rude, and hostile. That is, while advice about how to speak in public life frequently assumes that ideas and persons are easy to separate, most people do not experience it that way. Language is morally loaded (Bergmann 1998) and strong expression about an idea is regularly experienced as hostility toward the idea expresser. Typical speakers in local governance meetings see themselves as "saying what needs to be said," "passionate yes, but not uncivil." Targets, in contrast, regard the same speech moment as "hostile," "uncalled for" and "over the line." Simply put, civility is a contested term. It is the other who needs to be more civil. As political scientist Herbst (2010) notes, to call for civility is not a neutral move. It regularly functions as a strategic one in which someone seeks to restrict and resist the expression of an opposing other.

Reasonable hostility assumes that people are connected to the ideas they espouse and that emotion and argument will be intertwined in discourse expression. Such an assumption is not a radical one among argument scholars (e.g., Macagno & Walton 2010). Gilbert (2005), in fact, argues that "there is an integration between the emotional and logical, an intermixing that is frequently so thorough that separation is difficult if not impossible" (p. 43). Reasonable hostility is a norm for communication "that seeks to honor the importance of respectful talk as it simultaneously legitimizes the expression of outrage and criticism. . .[It] is emotionally-marked critical commentary about another's actions that matches the perceived wrong to which it responds" (Tracy 2010, pp. 202-203).

Three characteristics distinguish reasonable hostility from unreasonable relatives. First, reasonable hostility is a responding rather than initiating move. Pre-emptive strikes are not okay, although admittedly figuring out when a sequence of actions began is difficult and likely to be contested. Second, reasonable hostility includes talk tokens that give attention to the face wants (i.e., the desired public persona (Goffman 1955)) of targeted others. Perfunctory attention to face by using polite address terms, expressing hope that a target (or a spoken-about category of others) will not take comments the wrong way, and

commenting about the importance of civility or respectfulness are ways speakers display themselves to be issue-focused even as they simultaneously express hostility about an idea proposer. A final defining feature of reasonable hostility is that it is similar to the reasonable person standard in the law. Reasonable hostility is a situated, social judgment that non-involved parties make about the reasonableness of another's speech given the complexity of circumstances the person faced.

4. The public hearing about civil unions

Whether state laws should be revised to permit domestic partnership, civil unions, or same-sex marriage has been and continues to be a highly contentious issue in 21st century U.S. society. Following the passage of the federal Defense of Marriage Act in 1996 under President Clinton, forty US states passed their own statutes or constitutional amendments defining marriage as a union of one man and one woman. An obvious reason that same-sex marriage is more contentious in US society than Canada or European countries is the United States' relative religiousness.[1] Related to religiousness is the slower evolution of U.S. laws about homosexual activities. It was not until 2003 that sodomy laws were declared illegal in the U.S., whereas these laws were taken off the books in Europe many decades earlier (Richards 2009). Opponents of same-sex marriage frame its legalization as the "cultural equivalent of a heart attack" (Wardle 2008, p. 207) and as "verbicide" (Christensen2008, p. 275). In contrast, proponents see the ability to marry the person one loves as a fundamental right that all citizens should be able to exercise. From Badgett's (2009) point of view, same-sex marriage offers no more than a cosmetic makeover to marriage. "Opening up marriage to same-sex couples is just the latest step toward renewing marriage's continuing relevance in the twenty-first century" (p. 213).

The debate about legalizing same-sex marriage or permitting civil unions is being argued out in multiple arenas, with the courts and legislative bodies being the two most consequential sites. Elsewhere (Craig & Tracy 2010; Tracy 2009, 2011a, 2011b, in press) I have analyzed oral argument about same-sex marriage in state supreme courts. Here I focus

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[1] Religiousness varies state by state in the U.S. but as a whole the country is quite religious. http://www.gallup.com/poll/114022/State-States-Importance-Religion.aspx

on a public hearing that brought out a large number of people on both sides of the issue.

The hearing is the 2009 public meeting held by the Hawaii senate judiciary and government operations committee to consider HB 444, a bill to extend civil unions to same-sex couples. The bill was designed to give gay and lesbian couples the legal rights of marriage while naming their relationships "civil unions." The hearing involved 176 citizens testifying, 100 against the bill and 76 for it. Beginning at 9 AM and finishing at 3AM the next day, it ran 18 hours in length. Following the testimony, the committee discussed for six minutes and then voted 3 to 3 about whether the bill should be moved out of committee to the full senate for a vote. Because the committee vote was a tie, HB 444 did not move forward.

Table 1 offers a demographic profile of the Hawaii testifiers by their position on the bill. As can be seen from inspecting the table, more men than women testified, but the numbers of each sex on the pro and con sides were relatively equal. This was not the case for race/ethnicity. Caucasians divided roughly equally for each side, but among Pacific Islanders and African Americans, a much higher percent testified against the bill.[2]

Table 1 also provides a profile of three features of the citizens' testimony. In his opening comments the committee chair encouraged people to keep their remarks brief, but he gave no instruction about what "brief" meant. The length of citizens' speeches varied markedly (.5 to 20 minutes), with the average length, as Table 1 shows, being 4 to 5 minutes.[3] The percent of testifiers who included spontaneous remarks in addition to, or instead of, the written testimony that each speaker was required to submit is also identified. Although most testifiers read part of their remarks, the majority also spoke spontaneously. These spontaneous remarks included a diversity of actions but many were rebuttals aimed at opposing speakers' earlier assertions. Finally, Table 1 shows whether speakers were questioned. As the table indicates, most speakers were not questioned, but

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[2] Speakers' ethnicity/race was assessed based on their appearance and name. Such cues are a crude and imperfect index, admittedly, but they are what people use in social life. While I believe race/ethnicity are socially con-structed—both the boundaries of categories and each category's meanings—they are sturdy constructions.

[3] Speaking time is approximate. The videotape of the hearing displayed the time (7:09 AM, 11:23 PM). To compute each presenter's speech length, the starting time was subtracted from the finishing time. For speakers who began and ended within the same minute, speech length was recorded as .5 minutes.

among those who were, they were more likely to be speaking in favour of civil unions.

Table 1
Profile of Hawaii Testifiers

	PRO	CON
Sex		
Male	41	56
Female	35	44
Race/Ethnicity		
Pacific Islander	20	43
African American	2	9
White	44	40
Can't tell (or Other)	10	8
Testimony Features		
Percent Questioned	8%	3%
Ave. Length in minutes	4.8	4.2
Extemporaneous (fully or partially)	74%	75%

5. Why consider reasonable hostility?

A good starting point for developing a communication ideal for public hearings would be to consider what has been proposed for related practices. If two activities have similar purposes and interaction formats, then it seems possible that a communication norm for one site might be useful in the other. Public hearings held by state-level legislative bodies and meetings of local governance groups (e.g., school boards, city councils, town assemblies) are similar in a number of important regards. First, in both public hearings and the public participation phase of local governance meetings, the primary purpose of talk involves advocacy for a policy action: speakers argue for or against some issue that is being considered by the governance body. Second, citizens speak to elected officials who themselves have the

responsibility of voting on that issue. Third, in both of these settings citizens are expected to keep their remarks short and, most often, they do not discuss the issue any further with the elected officials after they testify (Tracy & Durfy 2007). Finally, in both public hearings and local governance groups, citizen testimony is framed as an appreciated and important part of democracy that will affect officials' deliberation and voting. Yet in both of these sites, elected officials' actions often undermine this view. Not only is there frequently a strong sense of how an official will vote before any testimony is heard, but after hearing from the public, elected officials often vote quickly with limited or no discussion about the issues citizens raised in their testimony.

Whether the failure to act in a manner that seems consistent with the espoused valuing of citizen testimony is for good or poor reasons, I leave as an issue for further reflection. It could be that elected officials do not attend to the espoused ideal because they are unskilled, self-serving, or corrupt. Or, perhaps, elected officials are pursuing other legitimate aims and are acting as they do because the nominally espoused ideal is not their situated one, the one they value and work to honour. Or perhaps their motivation is a complex mix of both the positive and negative reasons.

Because public hearings and citizen participation during local governance meetings have such similar purposes and format structures, my focus in this analysis is to consider how suitable reasonable hostility is as a conduct norm for public hearings about controversial issues. Before evaluating the norm's applicability, however, I provide a portrait of the arguments made by testifiers on each side and illustrate the sentiment-rich discourse styles that speakers used.

6. The argument and style portrait of testifiers

The public hearing had a clear issue for citizens to address: Should Hawaii senators (and the senate committee in particular) support a bill that would permit same-sex couples to form civil unions? Of note, it was easy to identify which position a speaker favoured. Quite often speakers began their testimony identifying explicitly the side they were on. A pro speaker (Speaker 5), for instance, began by addressing the committee and thanking them for allowing her to testify on behalf of the Democratic Party, which she noted "supports HB 444." Others did not note their position at the outset but began in ways that cued identities that came to be affiliated with a particular stance on the issue. Testifiers against the bill, for instance, began by announcing that

they were Christian, loved God, believed in the importance of loving all people, and/or identified themselves as parents or grandparents who were particularly concerned about Hawaii's children. For example after identifying his name and the fact that she was a native Hawaiian, Speaker 142 said:

Excerpt 1

> I am a devout Christian, I love my God. I do not judge anyone for their beliefs. This is a free country. They can do what they want. That is within their means. Um I just wanted to share my view for my four children that I have. And a grandbaby on the way. 'Scuse me. I am a proud believer of God, the Father, the Son, and the Holy Spirit, and I am not ashamed of the Gospel and sharing it with everyone and anyone who cares to hear about it.

In the 18 hours of testimony many different assertions were made, but recurring points were advanced by each side. The central argument moves of those favouring passage of the bill included:

- to argue the issue is a matter of basic civil rights, drawing analogies with African Americans, women, and Japanese internment during World War II;
- to frame the opposing others as prejudiced and bigoted;
- to highlight that *civil marriage* is a state institution, and that citizens' religious beliefs should not be shaping such an institution;
- to draw attention to a speaker's own goodness (religious-ness, family commitments) but to question the reasonable-ness of certain biblical assertion;
- to tell personal stories that normalized gay wants and ex-periences.

Those arguing in favour of civil unions were especially likely to identify their own sexual orientation in their opening moments and to tell stories that made visible how gays—often the speaker him- or herself—were parties in long-lasting relationships with life aims and troubles similar to most people.

Speakers opposing passage of the bill centrally:

- asserted that the dispute concerned a life style issue, not a civil rights one;

- announced that God does not approve of homosexual activities, often quoting biblical excerpts;
- criticized opposing others for their hate toward religious expression;
- claimed that they cared about and respected all persons, and disclaimed that they were prejudiced or hateful toward gays;
- argued that the U.S. has always been a Christian nation, and that it was right and good for religion to shape public policy;
- asserted (a) that the majority of Hawaiians, as evidenced by the 1998 constitutional amendment, opposed same-sex marriage, (b) that HB 444 was really same-sex marriage by a different name, and (c) that democracy is about honoring the majority's view.

As the pro and con argument profiles suggest, citizens' comments included a complex mix of assertion-making and assertion-countering that bound together policy issues and character defence and attack. As the hours in the hearing ticked by, speakers increasingly oriented to the negatively-freighted implications of testifiers on the other side. An opponent of the bill who spoke late in the evening said:

Excerpt 2 (Speaker 164: Con)

> What I saw today in one side was lack of manner, angry, rejection, bitterness, sacra- sarcasm, and even bad words. In the other side I hear love, tears, compassion, truth, and forgiveness. I decide [for] the side that love and forgive. This is why I oppose the HB 444.

The next two excerpts illustrate how one pro speaker (excerpt 4) attended to an earlier con speaker's (excerpt 3) implied character assertion in which he packaged his love of gays with his love of others that society regards as dysfunctional.

Excerpt 3 (Speaker 109: Con)

> I wanna state unequivocally that I love the gays, lesbians. Our church has some of them, the gays. Our company has employed them, my kids have gay friends. I will also say that I love drug addicts, alcoholics. I've been ministering the homeless. I've been ministering to them for the last fourteen years ...While ministering in these programs I have accou- encountered gays, drug

addicts, alcoholics, I love them all. I was not prejudiced against any groups.

Excerpt 4 (Speaker 126: Pro)

Today, I've heard gay people described as diseased, perverted, unnatural, sinners, an abomination, destructive, and the cruellest of all called sneaky, which I really can't understand after twelve hours of hearings, but I've also heard us compared to rapists, child molesters, alcoholics, participants in incest, and drug users- eh drug users. And after ea- after each of these speeches, there's been thunderous applause. And I have to ask, how is this respectful? How is this- how is this a show of love?

Speakers attended to dismantling earlier claims by the opposing side that subsequent speakers would then work to further refute. Excerpt 5 comes from a pro speaker seeking to refute an earlier argument that extending same-sex unions to gays was not a civil rights issue. Excerpt 6 is from a still later speaker who uses her African American identity to establish her superior right to determine what is or is not a civil rights issue.

Excerpt 5 (Speaker 92: Pro)

I've heard a couple of times- ooh a couple, numerous times today that this is not a civil rights issue. Um I'd like ta make sure that folks are aware that the NAACP [National Association for the Advancement of Colored People] does not agree with you. Um today the NAACP issued a statement uh recognizing uh gay rights as in fact a civil right.

Excerpt 6 (Speaker 162: Con)

Well I say to you that when you say to me you know how it feels to be black, you do not know how it feels to be an African American. Hundreds and thousands of my brothers and sisters have died....You have never been subjected to the lifestyle and the- the things that I have as an African American, American. Please do not use your choice to defame the rights and the fact that I and my ancestors have suffered and have continued to suffer because of racism. That is not equivalent.

7. The usefulness of reasonable hostility

When we examine the Hawaii hearing in light of the aims of reasonable hostility, Hawaii citizens could be assessed as doing a good job enacting it. A large number of citizens came to the meeting, therein enacting a strong democratic forum, and these citizens spoke passionately about what they saw as morally right and (un)deserving to be state policy. In speaking their views, hearing participants worked to frame their stance as reasonable and spoke strongly about what they believed. At the same time—as is recognized will happen within the conception of reasonable hostility—speakers were taken to be hostile and rude by persons on the other side of the issue. Those favouring civil unions reported how insulted they felt to be put in the category of problematic, immoral life styles; those against civil unions expressed outrage to be cast as bigoted, hateful, and prejudiced. Insult was regularly inferred even as speakers did interactional work to evidence that their intention was not aimed to insult. Speakers built into their talk a whole array of linguistic markers of politeness and face-attention (Brown & Levinson 1987). Speakers thanked the committee for its willingness to listen, expressed their pride in Hawaii and in being Hawaiian, and celebrated their collective ability to be democratic and "speak out." However, while face-attending moves were regularly used by speakers on both sides, there was an asymmetry in the quantity and intensity of selected moves. By and large, anti-civil-union speakers used more frequent and more intense face–attention strategies. In particular, two strategies were striking and recurred frequently.

The first facework strategy used by those adopting the con position was to assert one's love of the category of person against whom one was arguing. In essence this "I love but" strategy in an instantiation of a disclaimer (Hewitt & Stokes 1975; van Dijk 1987) in which a person seeks to avert another from drawing a likely inference for what would usually be taken to be a speaker's attitude if espousing such a position. We saw an example of this strategy in Excerpt 4. Excerpt 7 illustrates an additional four.

Excerpt 7 "I love but" Strategy

> *Speaker 21:* I have family members whom *I love* who have chosen this lifestyle, and I will stand shoulder to shoulder with them, in defending their rights to not be discriminated because of their lifestyle choices.
> *Speaker 37:* And I stand here as a mother. You know you have the moms' group. Well I speak on behalf as a mother of a child who chose the lifestyle. *I love* her

nevertheless, and she can always come to me. … So it takes a mother and a father to produce this child, who nevertheless we love.
Speaker 39: But I'm one person who will tell them the truth- Homosexuals, your lifestyle is not healthy for you. And because *I love* you as a person, I'll ask you to change your lifestyle so that you'll be around in the next fourteen months.
Speaker 56: Everybody needs uncles and aunties. In Hawaii *I love* the way that we refer to those who we respect as uncle and auntie. Anybody know what I'm talkin about? ((slight applause)) However, there's no theory that exists that says a child needs two moms or two dads. So I don't think that's where we should go.

The second facework strategy used by citizens speaking against civil unions was to apologize for their side coming across as offensive.[4] Of the nine speakers who apologized for how the content or style of their comments may have affected the other side, only one was by a speaker in favour of civil unions. There was, in fact, an interesting exchange between the two sides about apologizing. After seven con speakers apologized (see excerpt 8), two subsequent con speakers criticized past pro speakers for not also apologizing (excerpt 9). In so doing, con speakers can be seen as framing the offering of an apology as the polite thing to do. By calling pro speakers on their own failure to apologize, they can be seen as working to frame the issue of potentially nasty words being spoken as equally applicable. In essence, con speakers sought to tap into a cultural logic that assumes that when there is a conflict, both sides of a disagreement should accept blame and apologize to the other.

Excerpt 8 (Apologies for offense)

Speaker 31: Excuse me, I would like to *apologize* for some, to reiterate what someone else had said earlier, *apologize* for those who've acted in a hateful manner out

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[4] To identify moments of apology in the 188 pages (177, 681 words) of testimony, I did a search of the Word file on three terms: (1) sorry (96 uses), (2) apology/apologize (29 uses) and (3) regret (2 uses), seeking to identify how the term was functioning. The most frequent use of "sorry" (83%) as well as a good percentage of uses of apology/apologize (37%) was to repair small conversational errors related to such things as skipping a speaker on the list, a testifier coming to the lectern when it was not his or her turn, speaking for too long, and mispronouncing a name or word.

of fear and ignorance. That is never acceptable, ever. I would like to stress that this opposition has nothing to do with hate or prejudice, but everything to do with protecting the value and the sanctity of traditional marriage,

Speaker 131: I personally want to *apologize* for the sins of my generation, and I vow to teach my children compassion, and understanding toward all people. That being said, I want it to be known that I fiercely oppose this bill.

Speaker 138: First I'd like to *apologize* also to especially the young women in the gay community, because scripture does tell us as older women in Titus- in Titus, um too, that older women are to be reverent in their behaviour, not malicious gossips…And so I *apologize* to you for not having set the example for you to see what it's like to be one of these women that honours God and honours her husband.

Excerpt 9 (Pro speakers should also apologize)

Speaker 155: And oh, I would add one thing to that. Um a lotta- um- several Christians have stood up here and uh been very accommodating uh to the other side, *apologizing* and uh, try- giving ground. Um and I think, uh I- I- I have not heard that from the other side as much.

Speaker 162: And it is with love that we come to you today. Not out of hate, not out of fear, and not out of fear-mongering. I have not heard one person of the other persuasion today *apologize* for their rudeness, for their an- animosity.

A pro speaker who followed the above two con speakers, though, did not accept that the need to apologize applied equally to both sides. She said:

Excerpt 10 (Apologies are not equally warranted)

Speaker 167: You're asking us to *apologize* to you guys. But you have the rights in this room. You have the rights, we don't have the rights. So I can't *apologize* to you for all of the insults that you've levered at us today, that you've levelled at us today, for all of the incredible ignorance that I have heard.

Pro speaker-167 makes visible a different reason why apologies were more forthcoming from those opposing civil unions—they

were more called for. The single apology for communicative style by a pro speaker occurred shortly after this one. But, the content of speaker 170's apology offers a striking contrast to that of the con speakers.

> Excerpt 11 (Pro speaker apology for implying Christians are hateful)
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> > *Speaker 170*: I and- and I- I can't speak for everyone else. I do *apologize* to Christians and conservatives. I do think that there's been uh unfairness on our side. I- I don't think any of you have been, uh I don't think you're bigots. I don't think you're hateful.

Whereas con speakers apologized for potentially coming across as hateful or prejudiced, the single pro speaker apologized for speakers on his side thinking or implying that con speakers *actually were* hateful.

The danger of being judged unreasonable, I would suggest, was not equal for each side. Citizens arguing against civil unions were much more likely to display a concern that they might be seen as attacking than those arguing for civil unions. For this reason, anti-civil union arguers had to do considerably more discursive work to create a sense that their hostility was defensible. This disparity in the need to do facework points to a limitation of reasonable hostility as a conduct norm for public hearings about person- rights issues.

8. The limitation of reasonable hostility

In the local governance meetings for which I developed the idea of reasonable hostility, the connection between ideas and people and what negative expression signalled about a speaker evidenced no obvious differences across kinds of issues nor stances (i.e., pro or con) toward the issue. Although reasonable hostility as a concept recognized that what will count as *reasonable* hostility is culture-bound, it tended to assume that what speakers need to include in their talk to have others judge their sentiment–laced opinions as reasonable would be virtually the same. Study of the argument-making in this public hearing about civil unions exposes the inadequacy of such a view.

When people argue about person-rights issues, in contrast to, say resource allocation issues or symbolic issues whose practical implications are ambiguous, speakers will be positioned differently because of their identification with or distance from a category of person to whom a right is proposed

to be extended or withdrawn. This difference in positioning intersects a second important feature of the situation: whether the rights are for a legitimate or illegitimate category of person. There are rights that all humans are generally seen as entitled to, but there are many arenas of life in which unequal treatment is accepted as legitimate. Those who violate the law, for instance, are not entitled to the same rights as those who follow it, and persons who are not citizens of a nation will be (legitimately) granted fewer rights than those who are its citizens. To be sure, what exact rights persons in these different categories should possess is an issue of ongoing debate, but that it is reasonable to not treat the two categories identically is taken for granted.

If, however, a person-rights issue relates to a category of person expected to be treated equally, either because of relatively immutable characteristics (race, sex) or a longstanding societal commitment (protecting religion), then in 21st century American public discourse, arguments cannot be made equally persuasively on each side. As Goodwin (2005) has noted, in U. S. public discourse it is widely understood that remarks that express intolerance on the basis of race, ethnicity, or religion should not be made. Identity related to sexual orientation is not seen by all Americans as belonging to a to-be-protected category of persons. Yet, even though dispute continues, most U.S. citizens now recognize that gays have become a legitimate category of person whose rights will be judged by the larger American society as deserving to be protected, more similar to the categories of blacks and women than to criminals and non-citizens.

Elsewhere (Tracy 2011) I show how in the 17 years between the two U. S. Supreme Court cases assessing the legality of sodomy laws—*Bowers v. Hardwick (*1986) in which it upheld these laws and *Texas v. Lawrence* (2003) in which it overturned them—U.S. society changed markedly in how it constructed and referenced homosexuality and homosexuals. In the language of the courts and in the larger society over this time gays and lesbians became a legitimate category of person; a group of citizens whose rights deserved to be protected. With the passage of legislation that protected gays against employment and housing discrimination, and inclusion of them in growing numbers of laws forbidding hate crimes, gays no longer could be regarded as persons who "commit homosexual," i.e., criminal acts whose behaviour legitimated unfavourable societal treatment. A recent article in the *New York Times* (Liptak April 30, 2011) titled "A Tipping Point for Gay Marriage" argued that a decision of a prominent law firm to *not* take the U.S. House of Representatives as a client who wanted to defend the legality of the Defense of Marriage Act is a

turning point in the debate. As Liptak commented, the decision of this law firm to forego such a lucrative job indicates "the moment at which opposition to same-sex marriage came to look like bigotry, similar to racial discrimination and the subordination of women."

My point is this. At a particular historical moment, a type of person will be seen by its larger society as either a legitimate category of person deserving rights or as a category of person who engages in illegal activities, hence warranting differential and unfavourable treatment. Once the identity of a category has shifted from the latter to the former kind, it becomes difficult to make public arguments that favour negative actions toward a category of person. The greater discursive work that anti-civil-union speakers had to do in communicating their stance as reasonable evinced this. This finding suggests that to develop a desirable norm of communicative conduct a much wider notion of "context" needs to be developed. Not only does one need to consider the particular site and purpose of exchanges—parliamentary debate, local governance, public hearing—but one must recognize the centrality of culture in both shaping what is imaginable as a proposition to be argued and determining what must be treated as facts of social life.

9. Conclusion

Fitch (2003) developed the idea of "cultural persuadables" to refer to claims about events, policies, and people that could be explicitly argued. Not all matters, she asserted, are taken to be issues for persuasion and argument. Between what everyone in a culture already does and believes (and hence nothing needs to be said), and what nobody would do or believe (and hence nothing needs to be said), are matters that are matters for persuasion and argument.

In roughly 25 years we have seen marriage between same-sex partners move from an issue no one could imagine raising to a matter that people are heatedly discussing. This movement has occurred, I have argued, because the societal perception of gays has shifted from a category of person who engages in illegal acts to a category of citizen deserving the rights and protections extended to all citizens. As this shift in personhood beliefs about gays in U.S. culture solidifies, the argument-making of opponents of gay marriage has and will continue changing its meaning. Arguments against same-sex marriage that just several years ago would have been treated as serious, legitimate position-taking are now becoming unsavoury comment-making.

In listening to Christian speakers' anti-civil union speeches in the Hawaii 2009 Hearing, it is difficult to engage seriously with their position, to treat what they say as deserving careful reflection about which points have merit and which do not. But just a quarter of a century ago an argument about marriage's meaning would not have happened; it was an unimaginable kind of conversation, not a matter for discussion, let alone debate. To virtually everyone in U.S. society it was obvious that marriage was one man and one woman.

Reasonable hostility as a communication norm for citizen participation sites needs to better take account of how shifting cultural ground affects the say-able. Such consideration is equally called for in informal logic and critical discussion models of argumentation. Changes in a society's beliefs about personhood and reasonable conduct will change what will be regarded as "an issue" and what can be argued. As we are currently seeing in the case of laws about who can marry, policy proposals can shift from the unimaginable to the self-evidently right in a very short space of time. When a transformation of this magnitude occurs, the distance between a policy proposal that no one could imagine advancing and one that few people can understand opposing is miniscule. A proposal about what should count as desirable communicative conduct in public hearings needs to take account of what can and cannot be argued and how matters move between these categories.

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