Arguing from precedent in two French public debates

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RESUMEN

Este artículo examina varios movimientos argumentativos que caerían bajo el concepto francés de "précédent" y propone un esquema general común a todos ellos. Se distinguen, a continuación, diversas variantes de este esquema general de acuerdo a su "orientación argumentativa". Los ejemplos se toman de dos Conferencias de Consenso francesas con idea de mostrar cómo los argumentos basados en el precedente suelen ayudar a las personas corrientes a clarificar su postura respecto de cuestiones complejas sobre tecnología.

PALABRAS CLAVE: argumentación, argumento basado en el precedente, conferencia de consenso, debate público.

ABSTRACT

This paper examines various argumentative moves that may be refered to by French "précédent". It proposes a general pattern common to these moves. Variants of this general pattern are then distinguished according to their argumentative orientation. Examples are taken from two French consensus conferences in order to show how arguments from precedent may help lay people to elaborate their position on complex technological issues.

KEYWORDS: argumentation, argument from predecent, consensus conference, public debate.

1. INTRODUCTION

This paper aims at connecting three scientific concerns in my present research in argumentation studies:

- First, a concern with various forms of deliberation devices, and more specifically here, with consensus conferences. Public debates are institutional dispositions that may be used when certain decisions likely to have an important impact on society are at stake. They aim at involving "lay" people beyond the usual experts and politicians, in order to highlight the decisions to take on a certain issue (Joss & Durant, 1995; Guston, 1999). Typically, "The very core of consensus conferences is the discursive process, leading to the citizens' judgement, which follows the encounter of lay panel and experts' panel." (Skorupinski *et al.* 2007: 44); and this discursive process has a highly argumentative component.

- Second, a concern with an analytical tool which I consider central to argumentation studies: namely, the notion of argument schemes. Analyzing argumentative discourse in terms of argument schemes enables the analyst to account for the internal cohesion of a 'premise-conclusion' sequence, and to highlight the interactional dynamics in which this sequence enters (in that the specific scheme an argument belongs to designs the critical reactions it may give rise to) (Eemeren & Grootendorst, 1992).

- At last, this paper is devoted to a specific argument scheme in a specific context: arguments from precedent in consensus conferences. Arguing from precedent is a precious argumentative resource for lay speakers asked to take a stance on a complex issue, and even more when this issue has a technological dimension that goes beyond their expertise. Furthermore, arguments from precedent are a key device for the construction of the temporal dimension of debates (Chateauraynaud & Doury 2013).

After proposing a definition of argumentation, I will indicate why I consider that argument schemes are central to argumentation studies. I will then present the data this paper is based on. Then I will turn to argument from precedent in general, and to argument from precedent in these two specific public debates.

2. A DISCURSIVE APPROACH TO ARGUMENTATION

2.1. ARGUMENTATION AS A DISCURSIVE ACTIVITY

The discursive materiality of argumentation is central to the approach to argumentation that will be developed here. Argumentation is not discursive by accident or by necessity: the argumentative activity which is at the core of this research has no existence outside language. Hence the analyst should tackle seriously the discursive choices of the speakers trying to achieve their argumentative goals under specific circumstances. In particular s/he has to pay attention to the spontaneous metadiscourse of argumentation, that is, to the way ordinary speakers label the argumentative moves or schemes they are confronted to, and to the way they categorize their own argumentative activities. Along this line, in my previous research, I focused on various French words used by arguers involved in an argumentative exchange in order to disqualify the opponent's argument, for instance, "*amalgame*" (Doury 2005), "*procès d'intention*" (Doury 2009) or "*prétexte*" (Doury 2013). In this paper, I will focus on the way the word "precedent" (French "*précédent*") may be used to label a large range of argumentative devices. I will also suggest that argument from precedent may be associated with a specific stereotypical phraseology, the identification of which may be helpful for the analysis of argumentation.

2.2. A DESCRIPTIVE (VERSUS NORMATIVE) APPROACH TO ARGUMENTATION

The second main characteristic of the present approach to argumentation is that it is a descriptive one (as opposed to a normative one). If one looks at the reality of argumentative practice it its various forms, there is no doubt that the way an arguer behaves argumentatively is to some extent determined by what s/he considers an acceptable argumentative behavior. Simultaneously, a person who participates in an argumentative interaction evaluates the arguments s/he is addressed by his/her interlocutor –who may or may not be an opponent– and, on the basis of this evaluation, s/he decides to accept or to reject the argument. Consequently, the argumentative competence as it appears through actual argumentative practice is in some way normative.

However, acknowledging the normative dimension of the ordinary argumentative competence does not entail that the analyst himself/herself should take a normative stance when examining argumentative data, and should endorse the mission of assessing the arguments s/he analyses as *good* or *bad* arguments. As I understand it,

the mission assigned to the scholar in argumentation studies is to show how people manage to defend a standpoint when facing diverging views – how they back up their position and how they weaken the opposing standpoint, and how, in doing this, they resort to argumentative standards that warrant their strategies (Plantin, 1995). To sum up, as an analyst of argumentation, I take a radically descriptive stance aiming at describing how people manage to elaborate an argumentative scaffolding meant to support a conclusion and how they take advantage of the points of vulnerability of the opposing view to dismiss it. But I do not want to duplicate the speakers' evaluative activity by engaging, as an analyst, in the assessment of the arguments that are put forward in the data I want to account for.

2.3. ARGUMENTATION AND PERSUASION

A third characteristic of my conception of argumentation is that it does not rely on the notion of persuasion (Doury, 2012). When engaging in an argumentative discussion, an arguer may pursue various goals, the most obvious of which being persuasion, heuristics, and the construction of identity.

Argumentation may have a heuristic dimension (Blair 2004: 140; Lumer 1991). Not only does it "externalize", to use the pragma-dialectics wording (Eemeren and Grootendorst, 1992), the position one adheres to, and the reasons why s/he adheres to it; argumentation also contributes to the very elaboration of this position, it helps outlining its limits, specifying its consequences, plugging its loopholes. It is an important mainspring in the creation of knowledge.

Argumentation may also play a role in the definition and expression of one's identity. One's identity includes for instance one's age, being a man or a woman, being a student or a teacher or any other professional characterization. One's beliefs, and the reasons why one subscribes to these beliefs, are also part of what one is. When one decides to express his/her position and to argue for it publicly, s/he also proposes facets of his/her identity to the audience (Garver 2000: 307).

At last, under certain circumstances, argumentation may also be a means to achieve persuasion. The persuasive potential of argumentation is so widely acknowledged that many authors consider it as a defining feature of argumentation. I will not follow their stance, notably because I consider that the orientation of argumentation towards the realization of goals such as persuasion, elaboration of knowledge, expression of one's self, is very much dependent on context, on the

persons who take on the argumentation, on the persons the argumentation is addressed to, on the interaction type in which participants are involved, etc. In other words, the goals of argumentation (among which, persuasion) are context-dependent, and therefore cannot serve as defining features of argumentation.

In the end, I will consider argumentation as a way of constructing discursively a position in order to hold out against contention.

3. THE IMPORTANCE OF ARGUMENT SCHEMES
FOR ARGUMENTATION STUDIES

Argumentation studies do not constitute a coherent scientific paradigm in Thomas Kuhn's sense. Approaches to argumentation are spectacularly diverse; they belong to many different disciplinary fields, they consider that argumentation is a matter of mere discourse or a matter of pure reasoning, they split into normative versus descriptive perspectives, they give more or less importance to actual argumentative practice … Nevertheless, whatever the theoretical background in which they are anchored, most of them share the analytic category of argument schemes.

Analyzing argumentation requires that the analyst adopt a somewhat acrobatic middle position at an intermediate level, between the letter of an argumentation, that is what makes its singularity (the articulation of a specific content with a specific phrasing in a specific context) and its "logical" structure (its translation into a general logical scheme, which is so general that it misses most of the substance of the argumentation).

Distributing the various arguments we are confronted with into general schemes, according to the nature of the relation which links the premise to the conclusion, allows the analyst to move away from the literal and specific content of an argumentative discourse in order to gain in abstraction. It makes it possible for him/her to compare various argumentative discourses which, at this intermediate level of argument schemes, may rely on similar configurations, though dealing with different subject matters.

Moreover, an argument scheme is not only defined by the nature of the inference that warrants the transition, from a premise, to a conclusion. It is also defined by a specific critical discourse – that is, by a set of critical questions that channel the examination of the acceptability of any argument belonging to this argument scheme (Eemeren & Grootendorst, 1992). Even in a descriptive perspective, taking into

consideration the critical questions associated with a specific argument scheme enables the analyst to understand better the architecture of many argumentative monologal discourses, or the dynamics of many argumentative interactions.

In what follows I will focus on a specific argument scheme, the argument from precedent, in a specific context : two French consensus conferences.

4. PRESENTATION OF THE DATA

This paper will further examine the way argument from precedent works in two Consensus Conferences that took place in France, the first one in 1998 on the GMOs, the second one in 2007 on Nanotechnologies. According to Joss & Durant, "The idea behind a consensus conference is to take discussion about contentious, or potentially contentious areas of science and technology beyond the traditional debate amongst experts and special interest groups, i.e. to broaden the range of participants so as to include members of the general public and their points of view" (1995: 9). The structure of consensus conferences will not be detailed here; I will content myself with mentioning that at the core of the consensus conference is the encounter of a lay panel (made of 10 to 15 citizens), with an experts' panel, on an issue which often has a technological dimension – as it is the case in the two consensus conferences examined here.

At the end of the whole process, the citizen panel is expected to elaborate a written final report. Usually this report mentions the main consensual scientific evidence that is available, identifies the issues on which the experts disagree, and puts forward recommendations meant to channel the decisions to come on the issue that has been discussed throughout the consensus conference.

This objective is a real challenge for citizens in the lay panel. Having no special knowledge of, or no vested interest in, the subject area is a precondition for being considered an "ordinary citizen", therefore for being included in the panel (Levitt, 2003). Nevertheless, an "enlightened" report on the complex issue at stake is expected from the lay panel at the end of the consensus conference. I will show that resorting to arguments from precedent is an important resource in order to achieve the task the citizens have been assigned.

5. ARGUMENTS FROM PRECEDENT 'IN GENERAL'

French uses of the word « précédent », in its argumentative meaning, cover a wide range of phenomena. I will first try and identify the argumentative pattern that is common to all these uses; I will then characterize some variants of this common pattern.

5.1. PARALLELS WITH A TEMPORAL DIMENSION

The argumentative processes that may be labeled « précédents » in French contribute to the temporal construction of a debate, in that they anchor the question under discussion in the past, while planning its developments to come. These argumentative devices share a common structure which consists in establishing a parallel between:

- An previous event or a previous situation; this event or this situation is the *phoros* (or the comparing ítem) of the argument;

- The present situation or event, or a situation or an event to come, which is being discussed (from the point of view of the plausibility of its achievement, or about its desirability).

The theme (or the compared ítem) is precisely what is under discussion; the *phoros* is supposed to be better known, or better understood, or more consensually admitted, than the theme. On the basis of this parallel, a conclusion is drawn concerning the theme. Both cases may pertain to different registers or domains of knowledge, but still, they present enough relevant similarities to allow the arguer to conclude from the *phoros* to the theme.

This pattern may be seen either as a subtype of an argument by analogy, or as an instance of reasoning from one case to another ([*argument du particulier au particulier*], in Perelman's terms; Perelman & Olbrechts-Tyteca, 1988). Reasoning from one case to another consists in transferring a feature proper from one case to another case. What warrants the transfer from the former case to the present case is an implicit inductive generalization from the former case to a general principle, which is then deductively applied to the present case.

The refutation of an argument from precedent makes it clear whether it was conceived as an analogical argument, or as an inductive/deductive argument. In the first case, the refutation will be channeled by the critical questions typical of comparative arguments – for instance, one may object that C_0 and C_1 are not

comparable (the presumed shared properties may be challenged, or there may be opposed dissimilarities considered as more relevant). In the second case (when the argument from precedent is considered as an inductive/deductive reasoning), the general principle that warrants the inference from C_0 to C_1 may be explicitly rejected – or the opponent may suggest that C_0 or C_1 does not fall under this principle.

Regardless whether they belong to the general category of comparative arguments or to that of reasoning from one case to another, the set of argumentative patterns that are being considered in this paper all have the distinctive feature of having a temporal dimension: the case which is being used as a *phoros* is anterior to the case which constitutes the theme of the argument.

5.2. THE ARGUMENTATIVE ORIENTATION OF THE PARALLEL

When examining the various forms that the general argumentative pattern displayed above may generate, different cases should be distinguished, depending on the argumentative orientation of the parallel which is being drawn between the *phoros* and the theme.

- First case

The argument aims at transferring a judgment, an assessment or a decision concerning the phoros (C_0) to the theme (C_1): "In case C_0, decision D has been taken (or judgment J has been pronounced); C_0 and C_1 are similar in some relevant respects; therefore, case C_1 should be treated like case C_0": the *phoros* works like a model to be re-enacted.

This argumentative pattern is very close to argument from precedent as it is defined by most of argumentation theorists (Fogelin 2001: 423-425 ; Govier 2001: 354, Guarini *et al*. 2009: 92), and echoes the legal notion of precedent. In a legal context, arguing from precedent is a way of ensuring that successive decisions will be consistent: cases which belong to a same category (here, a legal category) should be treated in the same way. Such a reasoning activates what Perelman calls "*la règle de justice*" (the justice principle; Perelman & Olbrechts-Tyteca 1988), and exemplifies an *a pari* reasoning. Perelman emphasizes the fact that this argument from precedent favors inertia. I will call this form of argument from precedent Precedent$_1$.

- Second case

In the second variant of the general argumentative pattern, the *phoros* is assessed negatively (that is, it is deemed a "bad thing"). In this second case, the *phoros* works no longer as a model, but rather as an anti-model, the re-enacting of which should be avoided. C_0 is seen as "past wrong" ("*une erreur du passé*" in French). The present decision or judgment concerning the theme C_1 should take the opposite view to what has been decided or judged with regard to the *phoros* C_0. This argumentative pattern illustrates what the word "precedent" usually means when used by ordinary speakers as a meta-argumentative term: "don't forget the precedent of P !" ("*souvenez-vous du précédent P !*") is a way of inviting the addressee to "learn from the past" ("*tirer des leçons du passé*") and to "prevent the repetition of past mistakes" ("*ne pas répéter les erreurs du passé*"). Contrary to Precedent$_1$, this second variant of argument from precedent encourages the revision of procedures for judgment and action. This variant will be called Precedent$_2$.

The definition of the word "PRÉCÉDENT" proposed by the French dictionary *Le Petit Robert* is neutral as regards the argumentative orientation of the parallel at the core of the argument (it does not specify whether the *phoros* should serve as a model to be replicated, or as an anti-model to be avoided):

> II. N.m (1828) 1°) Un, des précédents : fait antérieur qui permet de comprendre un fait analogue ; décision, manière d'agir qui peut servir d'exemple dans un cas semblable.
>
> 1°) former event which makes it possible to understand a similar event; decision, attitude which may serve as an example in a similar case.

This definition covers both Precedent$_1$ and Precedent$_2$.

- Third case

The parallel between C_0 and C_1 may be a way of assessing how plausible a certain interpretation of C_1 is, or how probable the realization of C_1 is. The corresponding reasoning runs as follows: "we know that C_0 used to be the case. C_1 shares such and such properties with C_0. Therefore C_1 is the case, or C_1 will probably be the case."

Such an argumentative pattern may be associated with expressions such as: "this is no sci-fi fantasy, it has happened before! There are precedents for that…".

[French "*ça s'est déjà vu ! Il y a des précédents* !"]. I will call this variant Precedent$_3$.

Precedent$_3$ aims at determining whether C$_1$ is or will be the case. Contrary to precedent$_1$ or $_2$, the transfer of the assessment from C$_0$ to C$_1$ is not at stake.

This variant of the argument from precedent is illustrated in example 1. This message was posted on an Internet newsgroup (fr.soc.politique). It seeks for a plausible explanation of the crash of a boeing of Malaysia airlines in Donetsk region, eastern Ukraine, on July 17th, 2014. Western nations said there was growing evidence that the plane was hit by a Russian-supplied missile fired by rebels. Russia blamed Ukrainian government forces. The message backs the hypothesis of a Ukrainian missile with the evocation of what it names "the precedent of the Tel Aviv-Novossibirsk flight":

> *Titre : Gaffes, bévues et boulettes de ukrainienne : le précédent du vol Tel Aviv –*
> *Novossibirsk*
> *De : Liquid Angel*
> *C'était le 4 octobre 2001, soit moins d'un mois après la vague d'attentats sous*
> *fausse bannière qui frappa si cruellement les Etats-Unis d'Amérique d'une façon*
> *très "planifiée".*
> *Si beaucoup pensèrent à un attentat terroriste, pour finir, l'Ukraine reconnut*
> *officiellement son entière responsabilité, invoquant un missile "errant" - tiré, puis*
> *"perdu" lors d'exercices de DCA.*
> *Comme quoi certains n'en sont pas à leur coup d'essai.*
> *Qui a bu, boira?*
>
> Title: Blunder, slip-up, clanger, gaffe of the Ukrainian DCA: The precedent of the
> Tel Aviv-Novossibirsk flight
> By: Liquid Angel
> It was on the 4th of October 2001, that is, less than one month after the wave of
> terrorism under a deceptive banner that stroke the USA so cruelly in a very
> "planned" mode.
> If many thought of a terrorist attack, in the end, Ukrain officially accepted its full
> responsibility, invoking a "wandering missile" - shot, and then lost during
> exercises of the DCA.
> It suggests that some are no novice in these matters.
> Whoever drank once, will drink again ?

In this example, the word "precedent" refers to a reasoning which aims at increasing the plausibility of an explanation by paralleling the present case (the crash of the Malaysian Airlines boeing) with the 2001 crash of the Novossibirsk flight. The underlying inference is the following: "It has already been the case that an airplane crash was due to a mistaken maneuver of Ukrainian DCA, it might well be the case in the present situation". Reasonings based on Precedent$_3$ reflect a vision of the world which is reluctant to breaks and insists on continuity, as illustrated by the adage "*qui a*

bu, boira" ("whoever drank once, will drink again") at the end of the message.

If one examines the discussions during the two public debates we will consider in this paper (the consensus conference on GMOs and the consensus conference on Nanotechnologies), one can hardly find any example of Arguments from precedent of the first type – that is, encouraging the repetition of the line of action that was adopted for the *phoros* and should be applied to the theme. This may seem surprising, considering that it is the only meaning of "precedent" that argumentation scholars take into account. But if one considers the context in which the examples were produced, the absence of arguments from the precedent of the first type makes sense: in the debates that I examined, most often the participants consider that the authorities did not act as they should have, and were not able to handle the technological innovations correctly – that is, encouraging the research on new technologies while preserving the security of the population. Accordingly, the absence of argumentative patterns encouraging the duplication of past actions or decisions is not surprising, given that these actions are not deemed satisfactory.

On the contrary, many arguments from precedent of type 2 and 3 can be found in these public debates.

Example 2 illustrates the Precedent$_2$ type, that is, a parallel between two cases in which the *phoros* (the former event) serves as an anti-model, pointing to a line of action or assessment that should be avoided. It is taken from the consensus conference organized by the Ile-de-France region on nanotechnologies in which a member of the citizen panel calls for a better information on the risks potentially induced by nanotechnologies. An expert expresses his doubts on such a measure as follows:

> *faut-il informer le citoyen de tout (.) vous savez euh c'était p't'être pas très malin d'annoncer/ euh que la grippe aviaire allait s'transformer en grippe humaine/ et tuer tout l'monde/ parce que ça (.) ça a créé des ravages pour euh: pour rien donc (.) y a des questions d'éthique sur l'information/ c'est clair/ (.)*

> should we inform the citizen about everything? You know, maybe it was not so smart to claim that the avian influenza would turn into human influenza and kill everybody, because it had devastating effects for nothing, so… information raises ethical concerns, it's clear.

In order to assess the appropriateness of the measures that should be implemented in the nanotechnologies domain, the expert evokes the avian influenza crisis as a relevant *phoros*. He assesses negatively the way this crisis was handled as far as the

information strategy is concerned ("it was not so smart", "it had devastating effects"). Consequently, he presents the *phoros* (the way the risk issue was handled in the avian influenza crisis) as an anti-model. The conclusion, which is left implicit, is that it is not appropriate to inform the public of all the potential risks associated to an epidemic (in the case of the avian influenza) or, here, to a technology (in the case of the consensus conference).

In arguments from precedent of types 2 and 3, the temporal gap between the *phoros* and the theme is crucial. By definition, past is effective, it is factual. The parallel permits, in the case of Precedent$_3$, to make hypotheses on what may happen (and thus, to *foresee* what is to come), and, in the case of Precedent$_2$, to transfer a judgment from the *phoros* to the theme in order to orient the decisions to be taken – and thus to *influence* what is to come.

In both cases, argument from precedent implies something like scripting the future: the parallel supports the elaboration of scripts, the plausibility of which is discursively constructed. Even in Precedent$_3$, the assessment of the plausibility of a situation to come is closely associated with an assessment of this situation. Once the plausibility of the event has been rated, this is not the end of the story. Next move consists in deeming C_1 desirable or, on the contrary, undesirable. Correspondingly, C_1 will be hoped for or dreaded. A further step consists in trying to influence what will happen, along the line of such an assessment: arguments from the precedent are closely linked to action.

5.3. VARIOUS CAPTURES ALONG THE TIME AXIS

The last point I will make in this paper is that the way the precedent argumentatively works may vary according to the relative timing of the *phoros* and the theme on the one side, and of what we would call in French "*le moment de l'énonciation*", the moment when one speaks, on the other side.

Most of the time, C_0, the *phoros* case, comes before the moment when one speaks. C_1 (the case under discussion) may coincide with the enunciation time:

C_0 C_1

In this case, the argument aims at taking a stance on C_1 on the basis of C_0 (be it in accordance with it: $Precedent_1$, or in opposition to it: $Precedent_2$).

C_1 may also not have happened yet.
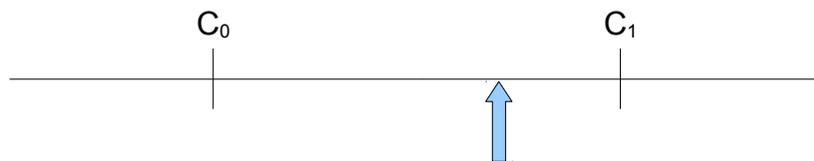
In this case, the discussion is about facilitating its realization or, on the contrary, preventing it from happening, according to the way C_0 – the *phoros* case – is assessed.

Example 3 illustrates a $Precedent_2$ argument corresponding to this configuration. During the consensus conference on Nanotechologies, Shérazade, a member of the citizen panel, parallels the predictable evolution of nanotechnologies with the asbestos affair (in France, it took a long time for the authorities to acknowledge that asbestos in living or working places was very harmful to health, and many people were victims of asbestos-related diseases before safeguard measures were taken):

> *Shérazade : ouais mais (…) mm moi/ ça fait peur/ parce que j'ai l'impression qu'on va sur le même chemin que l'amiante/ (.) c'est-à-dire que on connaît la toxicité: des produits/ (..) et::: dans dix ans ou quinze ans/ on va s'rend' compte que y a des personnes qui meurent parce que euh: (.) des nanoparticules: se sont diffusées (.) et ont causé des maladies d'l'in- dans leur corps/*

> Shérazade: yes yes, as far as I'm concerned it scares me, because I feel we're following the same path as with asbestos; that is, we know how toxic the items are, and in ten or fifteen years, we will realize that people are dying because nanoparticles have spread and caused diseases in their bodies

The parallel which is being drawn by Shérazade between the asbestos affair and the predictable developments of nanotechnologies is associated with very complex temporal constructions.

- The use of present tense ("*on connaît la toxicité des produits*", "we know how toxic the items are"), which may refer to the enunciation time and to the present state of development of nanotechnologies, as well as to C_0 (it would then mean "in the asbestos affair, we knew that asbestos was toxic"; present tense should

then be understood as a "*présent de narration*"). The second use of present tense ("*il y a des personnes qui meurent*") is a projection on future (ten or fifteen years later). This use of present tense makes this future appear more certain – it creates an "*effet de réel*" which makes the envisaged script appear more plausible on the basis of the parallel with asbestos.

- The use of future tense ("*on va s'rendre compte*", "we will realize") may be understood as referring to the predictable development of the nanotechnologies file (C_1), or to the asbestos file (C_0) (in this latter case the use of future tense should be understood as a temporal trope: along with this interpretation Shérazade would point to the moment when the asbestos-related damages were discovered from the (C_0) perspective).

- The use of past tense: Shérazade speaks from a post-C_1 perspective, when nanotechnologies, as asbestos before them, would have caused many damages. From this perspective, people would look back and observe that "nanoparticles have spread and caused diseases". This utterance implicitly refers to C_0, as in the asbestos file, micro-particles did spread and cause diseases.

The point of this fine-grained analysis of this example of Precedent$_2$ was to show how arguing from precedent contributes to anchoring the issue under discussion in the past, while projecting the conclusion in the future.

This case (C_1 has not happened yet) may also give rise to a Precedent$_3$, which aims at assessing the plausibility of the realization of C_1, as shown in example 4.

During the consensus conference on Genetically Modified Organisms, Michel Martinet, a member of the citizen panel, parallels the GMO issue with the mad cow affair in order to assess the probability of the transmission of mutant genes from plants to human beings:

> *MM : pour revenir à une discussion d'hier sur la vache folle, c'est-à-dire que le prion jusqu'à maintenant n'allait pas chez l'homme, il n'y avait pas ou très peu de transmission de maladie disons sur des choses simples, sur des choses virales ou des choses microbiennes, mais sur les bases mêmes, il n'y avait pas eu jusqu'à maintenant d'évolution ou de transformation entre l'homme et puis l'animal ; maintenant on s'aperçoit que c'est possible ; pourquoi c'est pas possible disons avec les plantes ? si vous changez le caractère des plantes…*

> MM: to turn back to yesterday's discussion on mad cow, first they thought that

> prions did not affect human beings, there was no possibility –or very little possibility that the disease could affect let's say simple organisms, viral things or microbial things, but basically, until then there had been no evolution or transformation between man and animal; now we realize that it is possible; why wouldn't it be possible with, let's say, plants? if you modify the characteristics of a plant [why couldn't these characteristics spread to men?]

The parallel between the transmission of prions from animals to men and the transmission of mutant genes from plants to men aims at concluding from the possibility of the first one to the possibility of the second one. This parallel also signs a position in the debate on GMOs: the latter are compared with a disease (the Encéphalie Spongiforme Bovine), and therefore it is assessed negatively.

It may also be the case that the time of enunciation corresponds to the realization of C_0, which is constructed, through discursive devices, as a breaking point between 'before' and 'after' (this breaking point may be marked by adverbial phrases like "from now on" in English or "*désormais*" in French). Simultaneously with it happening, C_0 is instituted as a precedent: now that C_0 is the fact, any ulterior judgement on a case that may be deemed analogous to it should refer to C_0 in order to duplicate it or to prevent from reproducing it. For instance, when the 2001 Fukushima accident happened, commentators insisted on the fact that the discussion on nuclear power would bluntly change and that Fukushima would serve as an inescapable precedent in reference to which any decision should be considered.

$$C_0 \qquad\qquad\qquad\qquad C_1$$

An additional argumentative configuration associated with the word "precedent" can be met when an event that did not happen yet is considered in the perspective of the precedent it might ground if it happened.

$$C_0 \qquad\qquad\qquad\qquad C_1$$

Such an argumentative configuration cannot be analysed as an argument from precedent, but rather as anticipating such an argument. The speaker does not intend to conclude from C_0 to C_1. S/he rather anticipates on such an inference, and urges to facilitate the realization of C_0 or, on the contrary, to divert from that because of the follow-up it might have ("we must prevent C_0 from happening because it would found a disastrous precedent", or, on the contrary, "we must help C_0 to obtain because it would provide our cause with a powerful precedent").

To my knowledge, only the negative version of this argument – that is, the anticipation on a Precedent$_2$ – has been considered by argumentation scholars: Walton and Govier call this line of reasoning the fallacy of slippery precedent (Walton 1992, Govier 2001: 383). Yet the positive version of it (the anticipation on a Precedent$_1$, when the realization of a case C_0 is encouraged because it would initiate a new *jurisprudens*, and thus contribute to strengthen the future of a cause) is not so rare as to be disregarded.

6. CONCLUSION

To sum up, arguing from precedent is one of the central argumentative means arguers may resort to in order to anchor a debate in a wider historicity, and in order to construct its internal historicity. As such, arguments from precedent contribute to the construction of what Sophie Moirand (2007) calls the "*mémoire interdiscursive*" ("interdiscursive memory"). Moirand examines how the media forge this interdiscursive memory for instance following the various uses of the adjective "mad", from the expression "mad cow" (which refers to the bovine spongiform encephalopathy) to expressions such as "mad soy" (*soja fou*, which refers to Genetically Modified Soy).

Such formulas (as well as argumentative devices of the type we have been examining here) testify that arguers strive to link together various debates, to connect apparently independent events, in order to make sense of the world that surrounds them. Arguments from precedent are devices on which non-expert people rely in order to "act in an uncertain world", along the title of Callon, Lascoumes and Barthe (2001, *Agir dans un monde incertain*).

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