

Every subject which contains in itself a controversy to be resolved by speech and debate involves a question about a fact, or about a definition, or about the nature of an act, or about. . . the processes of deciding it.

--Marcus Tullius Cicero, *On Invention*

POINTS-AT-ISSUE

The concept of point-at-issue deals not with the inner workings of arguments but with their claims. Marcus Tullius Cicero (106 B. C. - 43 B. C.), a Roman Senator and the author of the quotation is considered one of the greatest orators of the classical world. Living during the rise, dictatorship, and death of Julius Caesar, Cicero was a renowned politician, lawyer, and rhetorical theorist.

Following Greek models, Cicero was concerned with the stasis, or points-at-issue, in any argument. As the quotation indicates, Cicero believed that an essential step in developing an argument is to identify the points-at-issue. Any time we debate something or try to persuade someone of something, all the parties involved will agree to some propositions but not to others. If everyone agrees to everything, there is no debate. If, on the other hand, there are no mutually agreed upon beliefs, no common assumptions, there cannot be debate and resolution but only conflict.

The first step in an argument, then, is to identify which issues are agreed upon by all the participants and which issues are not. Following classical rhetorical theory, we can classify any issue as falling into one of the four following categories:

Fact. Facts are events that occurred in the past, are occurring now, or will occur in the future. We can debate, for example, the past fact that Lee Harvey Oswald was the sole assassin of President Kennedy, the current fact that the ceiling in the dormitory lounge is leaking, or the future prediction that the Boston Red Sox will win next year's World Series. A fact is always theoretically knowable and verifiable, although in many cases we are never able to confirm it. Often we must depend on the reports of others, especially in the case of past facts. We will never know with certainty, for example, if King Richard III of England murdered his nephews in the Tower of London or if Brutus was the son of Julius Caesar.

Closer to home, you may never be able to be absolutely sure who put that dent in your car. Witnesses can be unsure, mistaken, and untruthful. Even with events we witness ourselves, - we may not be certain of what has occurred. Think about the illusions you observe during a magic show; in these cases we cannot always trust our senses.

Predictions of future events can also be verified but only in the future. Until a prediction does or does not occur, it exists largely as a guess based on probabilities that cannot be proven or disproven.

Questions of fact also include the very tricky issues of cause and effect. Does smoking cause cancer? Do frogs cause warts? What caused the French Revolution? Does reading or viewing explicitly violent material increase or decrease the probability that an individual will commit violent acts? In most human situations, determining a cause or an effect consists of informed guessing. We can never be absolutely sure that smoking cigarettes causes cancer, but we can be fairly certain that it does.

Definition. In many arguments, the definition of a key term is the central point-at-issue. In many circumstances, the power to define key terms is, indeed, the power to control and master the situation. The definition of words such as "adult," "obscene," "harassment," "drug," "treason," or "family values," can often determine the outcome of a discussion. But clear definitions of key terms often prove quite elusive. The Supreme Court has had considerable difficulty in establishing a lasting workable definition of obscenity. At one point, it defined obscenity as "material utterly devoid of any redeeming social value." Later, the court stated that such a criterion could only be judged within the context of "local community standards." However, when a small town decided that the a French film called *Les Amants* was obscene, the Supreme Court overruled that particular local community standard and declared that the film was not obscene. In the decision, Justice Potter Stuart expressed his own difficulty in trying to define obscene material. ". . . criminal laws in this area are constitutionally limited to hard-core pornography. I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description, and perhaps I could never succeed in intelligibly doing so. But I know it when I see it, and the motion picture involved in this case is not that."

Value. In many arguments the central issue rests not with facts or definitions but with values, that is, qualitative judgments about the facts in a particular situation. We argue that something is good or bad, just or unjust, that it should or should not be done. Issues of value include pure moral and aesthetic judgments such as "All murder is wrong," and "All Hip-Hop music is horrible." This category also includes issues of obligation where the central debate revolves around the question of whether or not someone or something is required to do something. Thus an argument for a city's instituting a comprehensive program to help the homeless, for example, may rest largely on the issue of whether or not a community is obligated to help indigent people. Similarly, an argument against abortion may rest on whether or not the state is obligated to protect unborn fetuses.

Competence: In some arguments, the major point-at-issue is who or what is empowered to decide. In some communities, for example, elementary school teachers check the lunch boxes of their students and remove all "junk" foods. Parents have protested, arguing, for the most part, not whether or not the food was good or bad, nutritious or unnutritious, but that the decision of what kind of food to eat rests with the parents and child, not with a teacher or school. Similarly, an argument whether or not a college can prohibit individuals from viewing pornographic films in their own dorm rooms may rest on a

different issue than the one involved in whether or not a college can ban pornographic films from public lounges that other students have to pass through. In the first case, the issue might center on competence:

- whether or not the college has the right to regulate what students see in the privacy of their own "homes."

In the second case, the central issue might be one of value:

- whether or not a college should keep public spaces free of material that some students might find sexually objectionable.

We can refer to the various types of points-at-issue as *points-of-fact*, *points-of-definition*, *points-of-value*, and *points-of-competence*.

AN ARGUMENT FOR ANALYSIS: *ROE V. WADE*

Few Supreme Court decisions of the twentieth century have changed the lives of so many people or have been the subject of such an intense and enduring debate as *Roe vs. Wade*. Before this decision, abortion was illegal in almost every state. New York had recently passed a law making abortion legal, and a few other states, such as California, had passed bills allowing "therapeutic" abortions for medical reasons, including a woman's mental health. For most women in the United States, however, abortion was not a legal choice.

Women had the choice of carrying the fetus to term and either raising the child with or without its father, or putting the child up for adoption, or seeking a dangerous illegal abortion or an expensive foreign one.

Roe changed all that. Since the decision in 1973, women in America have been able to terminate pregnancies during the first three months on demand. A significant minority of Americans have steadfastly opposed the decision, believing that the Supreme Court made a serious error in refusing to consider a fetus to be a human life worthy of constitutional protection. In this decision Associate Justice Harry Blackmun delivered an opinion that argued for legalizing abortion through the identification of certain key points at issue and the assertion of a variety of claims.

After discussing the history of reasons why abortion was prohibited, the decision begins by exploring three possible claims:

The first possible issue is a claim of value: that abortion should be outlawed "to discourage illicit sexual conduct." The main point-at-issue is whether or not the state should use laws to prevent certain types of sexual activity. However, since all of the parties involved in the suit agreed that the state should not legislate sexual conduct, this

point was dismissed from further discussion. Furthermore, all of the parties agreed to an associated proposition: that even if the state should use abortion laws to discourage illicit sexual conduct, the laws in question were overbroad because they made no distinction between abortions requested by married couples and those requested by single women.

The second issue is whether states should prohibit abortions as part of their obligation to 'protect a woman's health by regulating or prohibiting dangerous medical procedures. As we shall see, this point breaks down into a claim of value, that the state should pass laws to protect women, and a claim of fact, that abortion is a relatively dangerous medical procedure. A subsidiary issue of fact is the relative safety to a woman of abortions at various stages of pregnancy compared to the risks of carrying a child to term.

The third issue is the duty of the state to protect all human life, even prenatal life. Since there is little if any disagreement with the proposition that states should protect human life, this issue is largely one of definition: How do we define "human life"? Does the definition include or exclude a fetus?

Another major issue in the case is the relative value that should be given to a state's duty to protect the potential of human life and the state's duty to protect the health of a woman seeking an abortion.

Still another central issue is one of competence: Do states have the authority to prevent women from obtaining an abortion, or does the right to privacy implicit in the Constitution guarantee that the decision whether or not to have an abortion should rest with the woman herself?

In reading the decision, pay careful attention to the evidence Justice Blackmun offers to support each of the claims he makes.

Questions for Discussion

1. Why does Justice Blackmun begin his argument with a lengthy history of the attitudes towards abortion in Western history? What points-at-issue are addressed by this account?
2. The decision argues that the law does not define a fetus as a person. What evidence does it use? Can you think of counter-evidence?
3. What are some of the possible problems of choosing the moment of birth as the initial point in the definition of a legal person? Can you think of some arguments supporting an assertion that a fetus should be defined as a legal person earlier in the pregnancy? What about after the birth?
4. What is the relevance that abortion in the first trimester is now medically safer for a woman than carrying a fetus to term?

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