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The Triple Contract: A Case Study of a Source Blending Analogical Argument

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ABSTRACT: One form of analogical argument proceeds by comparing a disputed case (the target) with an agreed upon case (the source) to try to resolve the dispute. There is a variation on preceding form of argument not yet identified in the theoretical literature. This variation involves multiple sources, and it requires that the sources be combined or blended for the argument to work. Arguments supporting the Triple Contract are shown to possess this structure.

KEYWORDS: analogy, partial analogy, conceptual blending, triple contract.

1. INTRODUCTION

One form of analogical argument proceeds in the following manner. There is a disputed case (the target), and at least one of the parties to the dispute appeals to another case (the source) to try to resolve the dispute. In other words, because the disputed target (T) is similar to the source (S), S and T should be treated in the same way. Call this a single-source analogical argument. Another form of analogical argument takes place when an arguer appeals to more than one source case. Call this a multi-source analogical argument. One way such an argument could work is that each of the sources, on its own, possesses a structure that is relevantly similar to the structure of the target. In other words, if

(i) S₁ is similar to T, and S₂ is similar to T, and so on to Sₙ being similar to T; and
(ii) the Sᵢ are all treated in the same way, then
(iii) T should be treated in the same way as the Sᵢ.

By saying that “Sᵢ are all treated in the same way,” I mean that they are all instances of the relevant category; for example, they may all be cases where the defendant was guilty, or all cases where the defendant was innocent, or all cases that were thrown out of court.

The argument strategy expressed in (i) through (iii) is one that a lawyer might use when citing multiple precedents. This paper will demonstrate that there is another type of multi-source analogical argument, which, while working from multiple sources, is importantly different from the aforementioned type of multiple-source analogical argument. The difference is in the way the sources are treated. Each source, on its own, is
not similar enough to $T$ to argue for a specific treatment of $T$; rather, the argument works by combining or blending the sources. That is a point which is difficult to grasp in the abstract, but this paper will present an example of such an argument: the triple contract argument in defence of guaranteed return on investment.

Before getting to the triple contract argument, it would be fruitful to review some literature from cognitive science on analogy and conceptual blending. This work provides some useful tools for understanding different types of case-based reasoning. These tools – primarily structure mapping and conceptual blending – will prove useful for understanding some of the differences between blended multi-source analogical arguments and non-blended analogical arguments.

2.0 STRUCTURE MAPPING AND STRUCTURE BLENDING

This section will briefly summarize some literature from cognitive science that is relevant to understanding analogies. For the most part, work in cognitive science has not focussed on analogical arguments, as the material discussed in this section will make clear. The preceding notwithstanding, some of this research is useful in helping us to understand analogical argument. The reason is that this research deals with abstractly conceived structures and how they are preserved or blended in the use of analogy. The theory of argument is also concerned with structure. Logical structure is a type of relation that holds between the premise(s) and the conclusion(s). Dedre Gentner and others have made the structure mapping paradigm very influential in understanding analogy, and Gilles Fauconier and Mark Turner have moved beyond this approach to make use of what they call conceptual blending. I will argue that Fauconier and Turner’s work can help us to improve our understanding of the structure of at least one type of analogical argument: source blended arguments.

2.1 Structure Mapping

Let us begin with Dedre Gentner’s seminal, “Structure-Mapping: A Theoretical Framework for Analogy.” In this work, Gentner argues that not all similarity comparisons are analogies. Similarity comparisons involve a source or base domain and a target domain. Domains consist of objects, attributes, and relations. The key to separating out analogies from other types of similarity comparisons is to stress the importance of mapping relations. For example, key in the analogy, “The atom is like our solar system” is that the relation REVOLVES(x, y) is mapped from the source – our solar system – to the target. Electrons revolving around an atom are said to be like plants revolving around the sun. Other relations could be mapped as well (Gentner 1983, 159). However, attributes (or single place predicates) of objects are not mapped. For example, we do not map the yellowness of the sun to the nucleus of the atom. According to the structure mapping approach, analogies will involve many relational mappings, but few if any attribute mappings. This is different from a literal similarity comparison which would involve many relational and attribute mappings. For example, consider someone who says of a solar system in another galaxy that, “The K5 solar system is like our solar system.” Here it is not just that relations are mapped, but attributes as well: YELLOW and MEDIUM are mapped from our sun to the K5 sun. As it turns out, Gentner identifies
other types of similarity comparisons besides literal similarity and analogy, but we need not get into that here. (See Gentner 1983, 157-161 for details.) This work has influenced a number of different theorists who have gone on to stress the importance of structure mapping (or the importance of preserving relational mappings) in trying to understand analogy (Falkenheimer, Forbus, & Gentner 1989; Holyoak & Thagard 1989; Hummel, Burns, & Holyoak 1994; Holyoak & Thagard 1995; Eliasmith & Thagard 2001; Holyoak 2001).

2.2 Blending

Gilles Fauconnier and Mark Turner have argued that structure mapping will not account for all linguistic phenomena that come under the heading of “analogy” or “metaphor.” Their approach to these phenomena is part of a more general framework they refer to as conceptual blending. Let us have a look.

Consider a monk who, at the dawn of one day, begins walking to the top of a mountain, which he reaches at sunset of that same day. He then spends several days at the top of the mountain meditating. One day, at dawn, he begins his decent of the mountain using the same path as when he ascended (but in reverse). He arrives at the base of the mountain at sunset of the day he started his decent. Without being given any information about the speed at which the monk is traveling during ascent or descent, can it be determined whether there is one point on the path that the monk occupied at the same time of day during both the ascending day and the descending day? The question is not whether we can determine exactly what the time is or where the location on the path is. Rather, it is a question about whether there is some location on the path, wherever that location happens to be, that the monk occupied at the same time, whenever that time was, both on the ascending and descending days. Stop reading and think about it for a bit. Don’t cheat. Really think about it.

Here is how many people solve the problem. They combine or blend the monk ascending the mountain with the monk descending the mountain, and once they carry out the blend, they realize that there must be some point at which the monk would “pass himself” on the two different days of the journey. The idea of the monk “passing himself” on the ascending and descending days is the result of blending the monk ascending the mountain with the monk descending the mountain. Of course, there is only one monk, and he cannot literally pass himself, but thinking of the problem in those terms allows many to discover the correct solution to the problem: yes, there is some point on the path that is occupied by the monk both during the ascending and descending phases of his journey. Figure one (on p. 4) demonstrates the way in which the two different phases of the journey can be blended so as to yield a result that can help us to solve our problem. The generic space in the figure simply lists the elements common to both of the input spaces. What concerns us is how the elements from different input spaces (or sources) get mapped into a blended space. Different days are mapped to one day, and the ascending and descending monk is mapped to the same path, but going in different directions, and then we can see that at some point, the monk will “pass himself” on the path. Fauconnier and Turner (2002) have showed how the blending of elements from different spaces or domains is useful for understanding a wide variety of metaphorical, analogical, and other cognitive phenomena. To keep things brief, I will skip over the theoretical details of the
Figure One (Fouconnier and Turner 2002, p. 43)
The letter ‘a’ indicates the position of the monk; The letter ‘d’ indicates the day.
different types of blending they identify. (For those who are interested, the aforementioned source contains a lucid and book length treatment of the theoretical details.) What we need to see at this point is that blending involves the mapping of objects, properties, or relations from more than one non-identical conceptual spaces or source domains to a common conceptual space or target domain. This idea will prove important in understanding how the case-based reasoning that went into the triple contract is different from the case-based reasoning that has gone into more widely recognized forms of analogical argument.

3.0 THE TRIPLE CONTRACT

Inspired by biblical texts, the early Christian church had strict prohibitions against charging interest. Even a scriptural passage that appeared to allow for some interest charges was interpreted in a way that barred such charges.

You shall not lend upon interest to your brother, interest on money, interest on victuals, interest on anything that is lent for interest. To a foreigner you may lend for interest, but to your brother you may not lend upon interest. (Deut. 23:19-20. Quoted from Jonsen & Toulmin 1988, 182)

St. Jerome argued that the Christian teachings regarding universal brotherhood and the universality of salvation meant that the distinction between brothers and foreigners was invalid. St. Thomas Aquinas adopted this interpretation as well (Jonsen & Toulmin 1988, 182 and note 3 on 379-380). Popes and church councils weighed in on the issue and condemned usury across the board. By 806 C.E., usury was understood as, “when more is asked than is given” (Jonsen & Toulmin 1988, 183).

The prohibition against the charging of interest was challenged using a variety of arguments. The point here will not be to examine all these arguments. The debate over how best to understand the charging of interest and its moral and legal status raged for centuries, and others have documented that debate (Noonan 1957; Nelson 1969). I will examine one type of argument: the argument involving the triple contract. The triple contract consisted of the signing of three contracts. Signing one contract on its own was not considered morally or legally problematic; however, the signing of all three contracts by the same two parties generated a scenario where there was guaranteed return on investment (which looked very much like an interest bearing loan). The arguments involving the triple contract lead to the revision of those early strictures against guaranteed return on investment.

3.1 History of the Triple Contract

The triple contract (also known as the “German contract” and the “5 percent contract”) combined different forms of generally accepted financial interaction. The first form of accepted financial interaction was the societas – a contract of partnership where the partners pooled their resources (both capital and intellectual) to realize a profit. This was considered different from usury since risk was shared, and since neither partner was understood as giving up ownership of any of their resources. If (a) one partner provided money or other capital resources while (b) the other partner brought skill, knowledge, and
labour to the arrangement, and (c) any resulting profit from the partnership was shared, then it was said that the profit was not being realized merely in virtue of a loan. In fact, a partnership was considered something different from a loan precisely in virtue of the pooling of resources and the sharing of risk and potential benefits and harms.

A second form of financial interaction that had emerged by the 14th and 15th centuries was the insurance contract. Again, this was considered different from usury since there was an exchange of risk. The insuring party was considered entitled to profit (via insurance premiums) in virtue of assuming risk. Contracts for both societas and insurance became prevalent as a result of growing maritime trade in 14th and 15th century Europe.

As well as the aforementioned forms of acceptable financial interaction, there were recognized exceptions to the teachings against demanding money for a loan. These exceptions also factored into the arguments pertaining to the acceptability of the triple contract. Many of these considerations will be left out in the following discussion. For reasons of time, the focus will be on the way in which the scenarios generally created by each of the contracts in the triple contract contribute to the acceptability of a scenario where there is guaranteed return on investment.

The triple contract involved two parties signing three contracts. The first contract was a contract for partnership, a societas. For example, a well-off widow investor may provide money to a maritime merchant for some prospectively profitable venture. So far, so good. The second contract was a contract for insurance. The same merchant agrees to insure the same investor against loss of the principal; in exchange for this guarantee on the principal, the investor agrees to accept a lower percentage of the profit than would otherwise come her way. (For example, if the venture in question usually results in a 14 percent return, then the chance at that return is sold for a guarantee on the principle and, say, a return capped at 8 percent. Of course, if the venture goes poorly, there may be no return at all.) A third contract was then signed, where the same investor sold this uncertain future gain for a guaranteed but lower rate. The investor is now insured not only against loss of principal but also against the possibility of obtaining no return. (Following the example through, the potential for an 8 percent return is sold for a guaranteed return, say, of 5 percent.) Using the triple contract, investors could realize a guaranteed return on investment. Problem: guaranteed return on investment was thought by many to be usury. Many commentators agreed that if the insuring party was a third party, then the triple contract would not be suspect; what caught the attention of moralists, theologians, and jurists is that when the same two parties are involved in all three contracts, risk is eliminated for one of the parties. The counter to this type of concern was that risk was not a necessary condition for the legitimacy of any of the contracts. Clearly, those who supported the triple contract were trying to overturn some of the traditional strictures placed on guaranteed return on investment. Let us have a closer look at how the blending of cases contributed to their case.

3.2 The Triple Contract as a Source-blended Argument

The first of the three contracts making up the triple contract is the contract of partnership. In general, when this contract is signed between an investor and a merchant, the relations listed below hold between the two parties. I am assuming that no other contracts are
signed or other relevant agreements or considerations are at issue; this is what I mean by such relations holding “in general.” As we will see, when other contracts are signed in conjunction with the first contract, not all of the relations below continue to hold. For now, though, let us look at the relations that hold in general.

Relations generally resulting from signing the contract of partnership
(1) Business partnership holds between the investor and merchant.
(2) Pooling of resources between the investor and the merchant: the investor brings capital to the partnership, and the merchant brings labour and skill (and sometimes capital).
(3) Shared risk of no return/profit from the venture: both the investor and the merchant run the risk of not earning any return or profit from the use of their resources.
(4) Shared risk of losing or wasting resources committed to the venture: the investor runs the risk of losing capital, while the merchant runs the risk of losing or wasting labour and skill (and possibly capital).

The claim is not that the above list is an exhaustive account of the relations that hold between the investor and merchant; however, they are relations that were widely seen as relevant in arguments pertaining to the acceptability of different forms of commerce. Below are the relations that generally held as a result of signing the second contract. I am assuming that the parties signing this second contract are not identical to the parties signing the first contract.

Relations generally resulting from signing the first type of insurance contract
(5) Payment of insurance fee from the insured to the insurer.
(6) Insurer guarantees the principal for the insured.

What happens when both of the above contracts are signed by the same parties? Let us see.

Results of same two parties signing both of the above contracts
(7) Business partnership holds between the investor and merchant.
(8) The investing party becomes an insured party as well: investor/insured.
(9) The merchant party becomes an insuring party as well: merchant/insurer.
(10) Shared risk of no return/profit from the venture: both the investor and the merchant run the risk of not earning any return or profit from the use of their resources.
(11) Payment of insurance from the insured to the insurer (in the form of investor/insured accepting a lesser portion of the potential return than the investor would normally get).
(12) Merchant/insurer guarantees the principal for the investor/insured.
(13) Only the merchant/insurer risks losing or wasting initial resources committed to the venture.
S1: State of affairs generally created by signing the partnership contract

Investor
Merchant

Pooling of resources
Shared risk of no returns/profits
Shared risk of losing/wasting initial resources
Partnership

Insured
Insurer

Payment of insurance fee
Insurer guarantees principal of the Insured

S2: State of affairs generally created by signing the first type of insurance contract

Investor / Insured
Merchant / Insurer

Pooling of resources
Shared risk of no returns/profits
Partnership

Payment of insurance fee (in the form of accepting lower percentage of profits than would otherwise come)
Insurer guarantees principal of the Insured
Only Merchant/Insurer risks losing/wasting initial resources

State of affairs created when the same 2 parties sign both the partnership and the first insurance contract

Figure Two
Since the same parties signed both contracts, one of the parties – the investor/insured party – no longer runs the risk of losing her initial resources. However, there is still some shared risk. Both parties run the risk of realizing no return at all from commitment of their initial resources. See figure two (on p. 8) for a diagrammatic depiction of how the actors and relations generally involved in the first two contracts are blended to create a third state of affairs that is not identical to the state of affairs generally created by either the first or the second contract on its own.

The third of the three contracts was another insurance contract. If we assume that the parties signing the third contract are not identical to the parties signing the first contract, then the following relations generally hold.

**Relations generally resulting from signing the second type of insurance contract**

(14) Payment of insurance fee from the insured to the insurer.
(15) Insurer guarantees return for the insured.

When all three contracts are signed by the same two parties, the following is what we get.

**Results of same parties signing all three contracts**

(16) Business partnership holds between the investor and merchant.
(17) The investing party becomes an insured party as well: investor/insured.
(18) The merchant party becomes an insuring party as well: merchant/insurer.
(19) Only the merchant/insurer runs the risk of not realizing a return from the venture.
(20) Only the merchant/insurer risks losing or wasting initial resources committed to the venture.
(21) Payment of insurance from the insured to the insurer (in the form of investor/insured accepting a lesser portion of the potential return than the investor would normally get).
(22) Merchant/insurer guarantees the principal for the investor/insured.
(23) Payment of insurance from the investor/insured to the merchant/insurer (in the form of the investor/insured accepting a still lesser portion of the potential return than the investor would normally get).
(24) Merchant/insurer guarantees a return for the investor/insured.

See figure three (on p. 10) for a diagrammatic depiction of the blending involved when the third contract is signed by the same two parties who signed the first two contracts. By signing all three contracts, risk is completely eliminated for the investor. To be sure, the above summary is from the perspective of those who endorsed the triple contract. Those who argued against it claimed that the relation of partnership no longer held as a result of risk being completely eliminated for one of the parties; those who argued in favour of the triple contract claimed that the pooling of resources was sufficient for partnership, and that while sharing of risk might be one possible indicator of partnership, it was not a necessary condition of partnership.
State of affairs created when the same two parties sign both the partnership and the first contract:

- Investor / Insured
- Merchant / Insurer
- Pooling of resources
- Shared risk of no returns/profits
- Partnership
- Payment of insurance fee (in the form of accepting lower percentage of profits than would otherwise come)
- Insurer guarantees principal of the Insured
- Only Merchant/Insurer risks losing/wasting initial resources

S3: State of affairs generally created by signing the second insurance contract

T: State of affairs created when all 3 contracts are signed:

- Investor / Insured
- Merchant / Insurer
- Pooling of resources
- Partnership
- Payment of insurance fee (in the form of accepting lower percentage of profits than would otherwise come)
- Payment of second insurance fee (in the form of accepting a still lesser portion of expected profits)
- Insurer guarantees principal of the Insured
- Insurer guarantees return for Insured
- Only Merchant / Insurer risks losing initial resources
- Only Merchant / Insurer risks no returns

Figure Three
3.3 Source Blending Arguments as Involving Partial Analogues

Why go to all the trouble of signing three separate contracts? Why not just write up one contract, the signing of which creates the desired relations that hold when all three contracts are signed? In general, guaranteed return on a loan was taken to be usury. A single contract that involves one party lending money to a second party in exchange for guaranteed return of principle plus interest would have been considered a form of usury. The solution was to show how, at least in some instances, guaranteed return could be conceived as a combination of generally accepted forms of commerce. In this way, it could be argued that at least in some business contexts, guaranteed return was disanalogous from usury. One paradigm of usury was the subsistence loan in contexts of distress, where the receiver of the loan agreed to interest charges out of desperation and was unlikely to be able to repay the loan with interest. Such a loan could lead to a state of perpetual indebtedness. Triple contract investments did not, in general, have such a form at all. Both parties were likely to benefit, and defenders of the contract pointed this out. However, that was not enough. Defenders of guaranteed return on investment realized that what they advocated was likely to be seen as a form of usury, and they showed how to conceive of some instances of guaranteed return on investment as a multiply insured partnership. The form of guaranteed return being advocated was partially analogous to a contract of partnership if signed all on its own. Such a contract involved a pooling of resources, which is present in the merchant-investor guaranteed return scenario. However, the partnership contract did not include provision for guaranteed return. Insurance contracts, if signed on their own, could completely insulate one party from risk, and that is partially analogous to the merchant-investor guaranteed return scenario, but insurance contracts were not understood as possessing the relation of partnership. It is only when all three contracts are signed that a partnership with one party free of risk is created. In other words, the combination or blending of the source cases yields the intended result.

While the above is useful, it does not yet make perspicuous the sense in which analogy plays a role. Why not simply say that there is a blending of source cases to argue for a specific state of affairs and leave it at that? Well, putting things in that way misses the manner in which the argument derives its force. Again, the target, T, is the merchant-investor guaranteed return scenario, and the sources – S1, S2, and S3 – are the three scenarios created, in general, by the respective contracts that are used in the triple contract. There is a relevant relation that S1 shares with T – the pooling of resources. However, there is also a relation that S1 does not share with T – the absence of risk for one of the parties. (Moreover, the absence of risk for one party is a feature that is common, though not exclusive, to cases of usury.) The mapping of relations from source to target is a hallmark of analogies. It is in virtue of the mapping of a relevant relation from S1 to T that S1 is a partial analogue of T. The reason that it is partial is that any mapping of relations that may hold between S1 and T is insufficient for establishing the acceptability of a specific treatment of T. The same can be said for the other sources. Each of the S_i is a partial analogue of T; individually, they are insufficient for making an acceptable case for a specific treatment of T. Jointly, the S_i do establish a case for the acceptability of a specific treatment of T. Of course, objections could be raised. There is no reason to believe that it will always be the case that individually acceptable contracts
are jointly acceptable. And there was no shortage of objectors to the triple contract. That said, it is not my purpose here to deliver an account of all the objections and replies pertaining to the triple contract. It is my purpose to make clear (or at least start to make clear) how source blending analogical argument differs in structure from other types of analogical argument. Each type of contract in the triple contract, on its own, expressed the conditions for a paradigmatically acceptable form of financial interaction. To understand how source-blended arguments work, we need to see not only that there is a blend, but we also need to see what there is a blend of. If, after a blending of sources, one or more of the sources no longer resembled the target in any relevant respect, it is difficult to believe the argument would have any force. It matters that some relevant relation(s) can still be mapped from each source to the target; it matters that the blend preserves a partial analogy from each source to the target. The reason is that the treatment of the target derives the acceptability it has from the acceptability of the sources. If the blend of sources eliminates all of the relevant similarities between one or more sources and the target, then it is hard to see how the acceptability of those sources could be transferred to the target through the blend.

The simplest form of analogical argument is when one source is compared to one target. In that case, there can be no blending of sources, and the single-source is used to argue for a specific treatment of the target. In some contexts, multiple sources will be cited, but each of the sources, on its own, is treated as analogous to the target. In other words, each of the sources, on its own, has sufficiently many relations or features that can be mapped to the target to provide an acceptable case for a specific treatment of the target. In the source blended analogical argument, the sources are singly inadequate but jointly adequate for licensing a specific treatment of the target. For this reason, the source-blended argument cannot be reduced to a sequence of single-source arguments. There are multi-source analogical arguments that can be understood as a sequence of single-source arguments each of which constitute an acceptable case in favour of the same conclusion; it is has been the burden of this paper to show that source blended analogical arguments are not best understood in that way.

4.0 OTHER QUESTIONS

What makes two or more “things” analogous? Two or more things can be very similar yet not be analogous. The literature on analogy stresses the importance of commonality of relations and not just monadic predicates in understanding what makes things analogous. This paper suggests that two or more things can be partially analogous. The question naturally arises: what makes two or more things partially analogous? Again, many things can be similar but not partially analogous; more work needs to be done to spell out when cases are partially analogous. More work also needs to be done on understanding the manner in which analogical arguments can be evaluated. While this paper does not contain extensive commentary on the evaluation of analogical arguments, one thing should be clear: if our evaluations of multi-source analogical arguments are going to be plausible, we need to distinguish between source-blended and non-blended arguments. These arguments can fail or succeed in different ways. For example, in a non-blended multi-source argument (which is a sequence of single-source arguments), if it turns out that one source is problematic and must by abandoned, the conclusion of the argument
TRIPLE CONTRACT: SOURCE BLENDED ANALOGY

may still be intact since the other single-source arguments making up the multi-source argument may be intact. With a source-blended argument, if it turns out that one of the sources has to be abandoned, then the support for the conclusion has been seriously undermined. (Think of what would happen in the triple contract argument if it turned out that insurance contracts were not generally acceptable.) There are other differences between the manner in which different types of multi-source arguments may be evaluated, and more needs to be said on this issue as well. However, before engaging these and other questions we must first recognize that there are importantly different types of multi-source arguments. This paper has been a first step toward making that point.

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