

CHAPTER 13.

ARTICULATING SOPHISTIC RHETORIC AS A VALIDITY HEURISTIC FOR WRITING ASSESSMENT

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This essay develops a validity inquiry heuristic from several Elder Sophists' positions on the nomos–physis controversy of the fifth and fourth century B.C.E. in Greece. The nomos–physis debate concerned the nature and existence of knowledge and virtue, and maps well to current discussion of validity inquiry in writing assessment. Beyond rearticulating validity as a reflexive, agency-constructing, rhetorical act, this article attempts to bridge disciplines by articulating validity in terms of rhetorical theory, and understanding ancient sophistic rhetorical positions as validity theory.

What kind of theoretical framework best supports a rhetorical relationship between teaching and writing assessment? For several years now, there have been calls for writing assessment and composition theory (particularly pedagogical theories) to be articulated together (Huot, 2002), for writing assessment to incorporate “language-based theories” (Williamson, 1993), and for test validation to provide “validity arguments,” that is, to be understood as more rhetorical (Cronbach, 1988; see also Kane, 1992; Shepard, 1993). These calls stem from a growing recognition that our ways of talking about and teaching language and our theories and methods of writing assessment should be theoretically closer to one another, or at least in conversation. A common theoretical language can build disciplinary bridges in composition and rhetorical theory (generally speaking) and writing assessment theory, as Williamson (1993) and Huot (2002) have suggested. This article attempts to do this multidisciplinary work by articulating contemporary assessment theory, especially validity, as a sophistic rhetorical practice.

The practice of assessment, particularly the reporting of test results and test validation, has long been understood as a rhetorical endeavor. In fact, Cleo

Cherryholmes explained that Cronbach and Meehl's original work on construct validity begins to argue construct validation as not just an interpretation of test results and its supporting nomological network (Cronbach & Meehl, 1955, p. 300) but as "explicitly discursive" (Cherryholmes, 1988, p. 102). By 1971, Cronbach promoted validation as an investigation that becomes rhetorical "in the sense of making persuasive arguments" (Cherryholmes, 1988, p. 103). And eventually, Cronbach argued an explicit rhetorical notion of construct validity, as well as one that is empirical and logical (Cherryholmes, 1988, p. 107; Cronbach, 1988, 1989). In his comprehensive discussion of the subject, Samuel Messick's (1989) famous explication of validity focused on "integrated evaluative judgment," "inductive summary," and the interpretation and use of "inferences" and "actions" from test results (p. 13).¹In short, Messick revealed validity as a rhetorical endeavor. Finally, Brian Huot (2002) draws on Cronbach (1988), Moss (1992), and Lorrie Shepard (1993) to explain validity as an argumentative activity:

Not only does validity as argument pose more of an interest to those with a strong sense of rhetoric, it also give[s] them a rhetorical heuristic for learning to construct validity arguments that contain a strong consideration of alternate views as well as an understanding of how to create arguments that are compelling to various audiences. (p. 56)

According to Huot, validity arguments can be "familiar, understandable and valuable" to those in English departments who are "isolated from . . . educational measurement" (p. 56). Conceptualizing validity as explicitly a rhetorical activity brings those doing writing assessment and educational measurement to the same table of theory. Additionally, sophistic rhetorical theory offers a political sensitivity and philosophy of language that accounts for social contexts and cultural influences on individual readers/judges, allowing validity research to consider individual dispositions to judge in certain ways as consubstantial to larger cultural and historical milieus, creating a complex relationship that can be considered in our validity arguments. In this project, a neosophistic orientation is offered to provide teachers, writing program administrators, assessment specialists and validity researchers a framework to address the formidable issues they face.²The Sophists' understanding of how rhetoric, culture, and agents

1 Samuel Messick's (1989) definition is important to my discussion and is assumed throughout. He stated it as: "Validity is an integrated evaluative judgment of the degree to which empirical evidence and theoretical rationales support the adequacy and appropriateness of inferences and actions based on test scores or other modes of assessment" (p. 13).

2 Invoking Edward Schiappa's (1991, 2003) distinction between research on the Sophists

function to produce and validate decisions through *agon* explicitly accounts for the ways power and privilege are distributed; such understanding offers insights for validity theory and assessment at all levels. In the following discussion, I first give a brief account of ancient Hellenic Greek society and its culture of *agon* (i.e., contest or struggle that results in a winner). This section explains the historical origins and purposes of sophistic rhetoric that's important to understanding the social and cultural grounds of the *nomos-physis* debate. Second, I discuss primarily three sophistic positions on *nomos-physis* in order to produce a validity heuristic that offers reflexive inquiry that agrees with much existing validity theory. This heuristic offers three important areas of inquiry that focus on concerns about methods and fairness, well-being of stakeholders, and participation and agreement. Third, I conclude by suggesting how the *nomos-physis* validity heuristic reinforces sophistic notions of agency through reflexivity in ways more comprehensive than postmodern accounts. I end my discussion by explicating Protagoras' human-measure doctrine in order to connect individual ways of judging to the validity inquiry that the *nomos-physis* validity heuristic provides. This last aspect of validity highlights the importance of any inquiry's need to examine carefully hegemonic power arrangements and socialized tastes that develop from writing assessments.

HELLENIC SOCIETY AND *AGON*

Ancient Hellenic societies of the fifth and fourth centuries might be best characterized as burgeoning cultures of mandatory civic participation. Civic decisions were debated openly, thus contentious debates were explicitly about making decisions that were acceptably valid. Shortly after the overthrow of the tyranny of Sicily in 446 B.C.E., all citizens were expected to participate in civic decisions, represent themselves in the law courts when necessary, and serve in a variety of public capacities (e.g., serving in the Assembly, acting as a juror, or providing military support, etc.; Bizzell & Herzberg, 2001, p. 21; Jarratt 1991, p. xv; Kennedy, 1994, pp. 3, 15). This Athenian democratic movement was aided by the Periclean constitutional reforms in Athens around 462-461 B.C.E. (Bizzell & Herzberg, 2001, pp. 20-21; Kerferd, 1981, p. 16; Plutarch, Cimon 15.2;

that is either "historical reconstruction" or "contemporary appropriation," Bruce McComiskey's (2002) definition of "neosophistic appropriation" seems to offer the best explanation for my project (pp. 7-11; 55-56). McComiskey explained that neosophistic appropriation culls "sophistic doctrines and historical interpretations . . . for theories and methods that contribute solutions to problems in contemporary rhetoric" (p. 55). These ancient theories and doctrines then "travel" to modern contexts, and "are remolded in ways that the exigencies of the original historical contexts might not have suggested or even allowed" (p. 56).

Thucydides II.37.1), and these factors “created the need for a kind of secondary education designed to prepare young men for public life in the polis” (Jarratt, 1991, p. xv).³ Those who first filled this need for training youth for civic service were the Sophists, traveling teachers of rhetoric, Corax and Tisias (c. 467 B.C.E.) being the first. A Sophist would travel from town to town, gathering and teaching small groups of young men the art of rhetoric, or the “art of politics” for a fee (Plato, Protagoras 319a; Marrou, 1956, p. 50). Some Sophists, in fact, are said to have written the laws (*nomos*).⁴ However, teaching rhetoric was considered by some to be ethically questionable since it suggested one could teach, *arête* (virtue), which was often assumed to be natural, innate, and reserved for a few elite individuals, as Plato argues in his dialogues (see Gorgias and Protagoras).⁵ From this contention around the art of rhetoric,⁶ we get the *nomos–physis* controversy.

The key to making decisions in Hellenic civic rhetoric was *agon* (i.e., contest, struggle).⁷ For many Hellenes, *agon* determined one’s virtue (*arête*) and knowledge/truth (which for Plato was *episteme*, or a singular Truth linked to *physis* or one’s nature). Competition was the primary method for determining right

3 The term polis refers to the Greek city-state, and maybe more importantly to the citizens that make—through their bodies and rhetoric—that city-state.

4 G. B. Kerferd (1981, p. 18), Susan Jarratt (1991, p. 98) and Edward Schiappa (2003, pp. 13, 52, 179) argued that many Sophists, like Protagoras and Gorgias, were instrumental in developing and writing the initial laws and codes of various Hellenic city-states.

5 The arguments against the Sophists that Plato makes through Socrates in his dialogues are more complicated and nuanced than this. One can find philosophical/ethical, practical, xenophobic, and elitist/aristocratic-based arguments made by Plato. George Kennedy (1994) offered a brief account of Plato’s Phaedrus and Gorgias (pp. 35–43), and Gregory Vlastos (1956) gave a detailed accounting of Protagoras in the Prentice-Hall edition of the dialogue. G.B. Kerferd (1981) also gave an account of Plato’s hostility toward the Sophists in chapter 2 of his book. I am mindful of the controversy around the use of the Greek term rhetoric (*rhêtorikê*) as a descriptor of what the Sophists said they taught. Edward Schiappa (2003) said the term does not even appear in the literature of the fifth century, and only rarely is it present in that of the fourth century (p. 42). He argued a more appropriate term might be *logos* (word, argument, logic) (pp. 54–55, 58). I retain “rhetoric” in this discussion for convenience.

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7 The Oxford English Dictionary defines *agon* as “a public celebration of games, a contest for the prize at those games” and “a verbal contest or dispute between two characters in a Greek play.” Liddell and Scott’s Greek lexicon offer several definitions of the term: “gathering, assembly,” particularly to see the Greek games; an “assembly of the Greeks at the national games”; a “contest for a prize at the games”; “generally, struggle,” as in a “battle” or an “action at law, trial”; a “speech delivered in court or before an assembly or a ruler”; the “main argument of a speech”; “mental struggle, anxiety”; and “divinity of the contest.”

and wrong, good and bad, just and unjust. Prior to Hellenic democratic times, the earlier aristocratic culture was one dominated by individual virtue, military training, and training in athletic contest (e.g., boxing, wrestling, long jump, javelin and disc throwing, running, etc.). In fact, sport and “physical training occupied the place of honour” in education and culture (Marrou, 1956, p. 40). Hellenic society was “based on a system of contests that centered on fame, competitive achievement, and envy . . . [there was] a conviction that fame must be earned in a contest, not inherited” (Petrochilos, 2002, p. 605). This cultural heritage constructed virtue as a material sign, like physical beauty, muscularity, and athletic prowess, attained and proven through *agon*, all of which is illustrated in the conception of the “perfect and just” man (*kalos kagathos*) that George Petrochilos (2000) discusses.⁸ Thus, Hellenic agonistic logic followed a predictable pattern: Civic decisions are validated by contest because contest reveals the strongest and best people, arguments, and decisions. As the mechanism for making Hellenic decisions, *agon* produced empirical evidence, such as the javelin thrown farther or the first man across the finish line, as signs of virtue that then tacitly signify an individual’s merit, worth, or status.

Hellenic society reveals a very contemporary writing assessment issue. If *agon* creates merit, worth, and virtue in our society, then as Kurt Spellmeyer (1996) argued in a different way, (1996), assessment as *agon* is a political struggle for power that defines culture, literacy, the “haves,” and the “have-nots.” *Agon* is also important to the validation of writing assessment decisions, and students’ virtue and social opportunity are at stake in its success. Putting aside a discussion of assessment as an *agon* among students, validity inquiry and research often require *agon* in order to test assessments and their results. Yet our theoretical frameworks, like assessment rubrics and assumptions implicit in norming procedures, which are often taken for granted, construct what is evidence in student writing. Viable alternative interpretations and evidence have difficulty competing with dominant frameworks that make up our methods, what constitutes evidence, fairness, and participation in assessments. Hellenic society’s use of *agon* shows us that validity inquiry is about more than establishing the degree to which theoretical frameworks and empirical evidence appropriately and adequately determine results and decisions. It is about investigating the social consequences of our assessments and the *agon* that produces those consequences for their fairness and equity. If our inquiries don’t directly address this issue, as Pamela Moss

8 David Rosenbloom’s (2004) discussion of *Ponêroi* and *Chrêstoi*, two economic and social classes seen as opposites, also suggest that those born in certain classes and trades would not have the opportunity to be judged as *kalos kagathos*; however, *arête* (virtue) is still understood in these two classes as manifested through conspicuous material signs one’s profession and dress, which the *agon* of life, markets, and history create.

(1998) asks us to by questioning our “taken-for-granted theories and practices,” then validation may simply reinforce inequalities and social imbalances that our assessments often create. The sophists’ positions on *nomos–physis* articulate a validity heuristic that addresses the above issues in validation. If reformulated as a three-part heuristic, the various sophistic positions on *nomos–physis* investigates the *agon* of the inquiry itself. It examines the construction of fairness in an assessment, the use of power for various stakeholders’ interests and well-being, and the participation of stakeholders and their agreement on decisions.

NOMOS–PHYSIS AS A HEURISTIC FOR VALIDITY

The ongoing philosophical and political debate of *nomos–physis* stems from accusations that the Sophists were corrupting the young men they taught by teaching them how to argue for the wrong things, or that the gods didn’t exist.⁹ In one sense, they were accused of teaching ways to validate untruths and unjust decisions, and this criticism assumed the primacy of *physis* in the binary. G. B. Kerferd (1981) defined *physis* as “nature,” or “characteristics appropriate to a thing as such, that it possesses in its own right, or of its own accord” (p. 111). James Herrick (2001) defined *physis* as, “[t]he law or rule of nature under which the strong dominate the weak,” and as Guthrie (1971) pointed out, is taken from Plato’s Callicles in *Gorgias* (1990) and in his *Laws* (1956b). For our discussion, the concept of *physis* is a position that promotes the customs, conventions, and values of a community as universal and natural by their dominance or hegemonic use in the culture.

Plato clearly embraced the concept of *physis*. His description of the soul in *Phaedrus* is an apt illustration of where he stood on *nomos–physis*. Plato’s Socrates describes physical beauty as the easiest to see of the soul’s past perfection because sight is the “clearest of our senses” (p. 250c-d). He concludes that the image of beauty alone can be recognized as such (p. 250d). As illustrated in the soul’s perfection, Platonic Truth is static, eternal, and empirical. For even after the soul has fallen from its perfect state in heaven to earth, losing its immediate knowledge of wisdom and Truth, Socrates says that it can still glimpse wisdom empirically from the “godlike face or form which is a good image of beauty.” When this happens, the beholder sweats and produces “unwonted heat . . . beauty enters him through the eyes, [and] he is warmed.” The dormant feathers that once allowed his soul to soar are softened and begin to grow back (p. 251a-b).

9 In Plato’s *Apology*, Socrates (Plato’s teacher) attempts to defend himself against the accusations (mainly by Meletus, Anytus, and Lycon) of being a “villainous misleader of youth” and for “teaching things up in the clouds and under the earth, and having no gods, and making the worse appear the better cause,” all of which were accusations of being a sophist.

For Plato and his Socrates, the truth of *physis* is revealed empirically (yet lies dormant within the soul), and is described not-so-ironically as a product of internal *agon* in labor, sweat, and heat. Thus, some will be able to recognize Truth, others won't, which justifies unequal social arrangements—some are more capable of making civic decisions because of their inherent virtue. So the validity of any decision about reality or Truth, like the dialogue itself, can be tested in an agnostic dialectic that deduces the significance of empirical signs from static truths (theoretical frameworks) agreed upon by all. The true lover of wisdom will recognize the Truth from the *agon*. *Physis*, for Plato, always makes the cream rise to the top, and this fact is empirical.

For Plato, there is a perfect student paper. There exists a static set of writing constructs usable for deducing both truth and the distance from it. Platonic philosophy, particularly the assumption of an episteme (a singular Truth), is part of a tradition that later would yield logical positivism, itself a vision that “argued that the goal of science was to speak correctly about the world” (Cherryholmes, 1988, p. 100; Shapiro, 1981).¹⁰ If everyone works from the same universal ideals, then validating decisions Platonically is simply a matter of recognizing or acknowledging Truth when it shows itself. Validating writing placement procedures, like validating grades on essays, is also a matter of recognizing clearly how close decisions come to ideal or correct decisions. Validity inquiry that appeals strictly to *physis* typically does not question the dominance of particular values, theoretical frameworks used to make inferences and decisions, or methods for data collection. *Physis* assumes those who achieve in the system have inherent “merit,” so the frameworks used, methods established, and evidence collected are “correct.” As a validity concept, *physis* calls attention to how theoretical frameworks (regardless of how they are defined), as Messick's validity definition points out, are necessary to read empirical signs and make inferences. Additionally, Plato's position on *physis* implies for a postmodern audience that part of validity inquiry is understanding the nature of what we investigate. In other words, the writing performance by a student is one thing; the significance or meaning of that performance as judgments made by individuals is another. What's between are competing theoretical frameworks.

Many of the sophists, on the other hand, often argued from a position of *nomos*, or socially derived customs, conventions, or rules agreed upon by the

10 Plato's need for episteme (a singular Truth) stems from two places: first, his own philosophical idealism that locates episteme outside of human affairs and the world in a static realm ready to be rediscovered by the lover of wisdom, which is exemplified in his theory of the divided line, the cave allegory (Republic Books 6 and 7), and his description of the soul as a charioteer and two horses (Phaedrus, pp. 246a-249c); and second, his belief in the power of dialectic (roughly speaking, philosophy or philosophical inquiry) over rhetoric for the discovery of episteme.

citizenry (Herrick, 2001, p. 38, 279). In the strictest sense, an understanding of *nomos* as agreed upon convention or custom constructs values not as inherent, static, or universal, but as relative to context, people, and situations. In effect, cultural and social customs evolve through agreement and decisions made in communities, which are its laws and conventions, or *nomoi*. *Nomos*, then, is “always prescriptive and normative and never merely descriptive,” providing direction “affecting the behaviour and activities of persons and things” (Kerferd, 1981, p. 112). *Nomos* is not the Truth or right course of action, like *physis*. *Nomos* is local and political, and is about agreement on what is the fairest and best course of action. There are no universals by which to compare results. Truth, per se, is not what’s at stake, only actions and decisions that a community accepts, only exigency and opportunity. So, as many validity researchers tell us today (Cronbach, 1988; Huot, 2002; Moss, 1998; Shepard, 1993), revealing various positions and arguments in the validation of decisions is critical. These “validity arguments” (Cronbach, 1988) might be loosely understood as *nomoi* that map out the available judgments and decisions that a community regards at a given historical moment in their assessments.¹¹ Not all Sophists, however, held the same position concerning how *nomos* and *physis* could be applied to rhetoric. Each position on *nomos-physis* articulates a set of concerns in validity inquiry.

HIPPIAS AND ANTIPHON: CONCERNS ABOUT METHODS AND FAIRNESS

The Sophist Hippias of Elis held to a theory of “absolute *physis*,” in which “[t]he law of nature [*physis*] . . . is . . . something more objective, universal and morally binding than *nomos*” (Untersteiner, 1954, p. 281). Hippias would have decisions validated through controlled *agon*. The Hippias of Plato’s Protagoras implores Protagoras and Socrates not to “quarrel,” but instead “to come to terms arranged, as it were, under our arbitration” and “to choose . . . [a] supervisor . . . who will keep watch for you over the due measure of either’s speeches” (pp. 337c-338b).¹² Hippias wishes to level the field of contest, so that all rhetoric can be fairly judged and the result of the *agon* will be *physis*. The morally superior

11 I use “historical moment” to suggest that *kairos* (the “right moment”) indeed is a part of this debate, affecting the outcome of any *agon*, and generally is a component of sophistic rhetoric, as Gorgias the Sophist illustrates in his Encomium of Helen (cf. DK 82B 11.11), and as Bruce McComiskey (2002) explained in chapter 1 of his discussion of Gorgias. However, because of my scope in this article, I cannot engage deeply with *kairos* or Gorgias.

12 “DK” refers to the Diels-Kranz translations and numbering system for various fragments of the ancient Greek texts, which are commonly used and found in Sprague (2001) and Freeman (1966).

natural law will conspicuously win, and there will be empirical evidence to back up convention and laws. In this sense, *physis* validates *nomos* through controlled *agon*. This assumption of *physis* as an origin for what's right, and articulated in communities, is similar to Antiphon's position, only his was one of "enlightened self-interest" (Gutherie, 1971, p. 107), and it didn't assume *physis* to be present in communities, nor that communities establish valid *nomoi*. You should obey laws when there are witnesses, otherwise do what benefits you most. In *On Truth*, Antiphon states: "[T]he demands of the laws are artificial, but the demands of nature are necessary . . . Laws lay down what the eyes may see and not see, what the ears may hear and not hear . . . When justice is brought in to assist in punishment it is no more on the side of the sufferer than of the doer" (DK 87B 90 fr. A). Cynically echoing Democritus,¹³ Antiphon attacks social conventions, deciding for might as right, but acknowledges that local *nomos* does not always agree with *physis*. The natural strength of one's arguments and one's ability to get away with selfish (but enlightened) acts validate decisions through *agon*.

Hippias' and Antiphon's positions on *nomos-physis* allow us to see that part of inquiring into validity is questioning and articulating the methods used to gather evidence and make ethical decisions in assessment. I'll call this attention to methods and ethics fairness because at the heart of Hippias and Antiphon's positions are decisions meant to be fair for all. Consequently, an important aspect of both fairness and "due measuring" by judges is the test itself, which in Hippias' case is the rhetorical *agon* in Plato's dialogue. But as Antiphon shows (if we read him positively), sometimes we know the best decision to make but our methods (e.g., the test as a method for evidence gathering and the methods of judging that evidence) may prohibit an ethical decision or outcome, so there may be occasions where arguments can be made to circumvent the test to keep a decision fair. In this way, "fairness" does not equate to "consistency." Instead, fairness is an investigation of the methods used and the social arrangements and decisions those methods produce (i.e., effects or outcomes). Seen in this way, fairness is conceived in a more complex and contextual way than Edward White's (1995) use of the term to define "reliability" (p. 22).¹⁴ We might rely on the first two of Guba and Lincoln's (1989), "authenticity criteria" for evaluation, which they term "fairness" and "ontological authenticity." For them fairness is

13 Democritus' famous fragment states: "Sweet exists by convention, bitter by convention, colour by convention; atoms and void (alone) exist in reality. . . . We know nothing accurately in reality, but (only) as it changes according to the bodily condition, and the constitution of those things that flow upon (the body) and impinge upon it" (DK 68B 9).

14 I agree with Liz Hamp-Lyons and William Condon's (2000) argument that reliability can not be equated to fairness because an assessment might create consistent judgments "across time and among readers," but may still produce unfair results. One example they offer is a program that teaches "writing as a process but testing only the writer's ability to draft quickly" (p. 13).

a reflexive method (pp. 245-246), and a high level of fairness is achieved when judges/readers “solicit,” “honor,” and compare various judgments/readings and their “underlying value structures,” particularly ones that conflict (p. 246). Ontological authenticity is achieved through methods and techniques that allow judges/readers to evolve and improve their understanding of other competing judgments, which matures their own (p. 248). Just as Hippias pleads for proper methods of supervision of the *agon* in order to come to fair conclusions, Guba and Lincoln’s criteria also focus on methods that allow competing readings to co-exist and even affect each other.

For example, let’s examine a decision to pass a particular student’s writing portfolio in a composition course. Some judges have read it as not demonstrating writing of passing quality, whereas others argue the portfolio embodies competency. Each decision might be a fair one if all readings, and their readers’ “enlightened interests,” are examined carefully as *nomoi* with particular value structures, each offering ethical rationales that need articulation. How and why is the evidence read differently? In what ways is each decision ethical or fair? What various external criteria are being considered in each reading that make it fair? Also, the various methods of the assessment are implicated in this sophistic inquiry: How well does the portfolio itself, as a method that a student must use to demonstrate writing proficiency, allow that student to demonstrate what various judges are looking for in student writing? How well does it allow the student to demonstrate the external criteria a judge uses in her reading? How does the assessment’s method of decision making by readers account for the inevitably diverse set of external criteria that they applied to their readings of those portfolios?¹⁵ In a concise way, this sophistic *nomos-physis* position highlights the concerns that Messick (1989) said are involved in content and criterion-related validities (pp. 16-17), but it does so by focusing on more tangible inquiries, those concerning methods for testing and judging, and the value structures that make various decisions fair.

Mostly, Hippias and Antiphon compel us to see larger concerns about methods and fairness. How do our assessment’s various methods construct fairness? How do the rationales we use that form our readings of student writing and ethical decisions construct fairness? In short, Hippias and Antiphon call attention to the ways in which fairness is not inherent or outside of any system, but is a construction of it, built into it by methods of evidence gathering and judging. Fairness isn’t inherent in any particular kind of assessment, like portfolio-based procedures or holistic readings, but is itself a design feature that needs articulation and supervision.

15 In effect, this is the focus of Bob Broad’s (2003) inquiry.

THRASYMACHUS: CONCERNS OF POWER AND THE WELL-BEING OF STAKEHOLDERS

The Sophist Thrasymachus provides a second validity concern for our heuristic. Thrasymachus has been described as an “amoral realist,” who understood justice, moral standards, and conventions as depending on “equality of power: the strong do what they can and the weak submit,” thus *nomos* embodies group or individual “interests” rather than some ideal “justice” (Gutherie, 1971, p. 85). Kerferd (1981) agrees and explained that Thrasymachus’ *nomoi*, and their paternalistic creators, would look out for the interests of the weak (those being ruled) (p. 121). In Plato’s Republic, Thrasymachus makes clear how *nomoi* are validated through rulers’ power: “[I]n all states alike ‘right’ has the same meaning, namely what is for the interest of the party established in power, and that is the strongest . . . ‘right’ is the same everywhere: the interest of the stronger party” (Book I, p. 338). Thrasymachus’ position perhaps works from an older notion of *nomos*. Susan Jarrett (1991) explained that *nomos* derived from an older term, *nomós*, meaning “pasture.” In Pindar it referred to “habitation,” then later it shifted to signify “habitual practice, usage, or custom” (p. 41). What’s important in this etymology is the term’s close association to rhetoric as “a process of articulating codes, consciously designed by groups of people,” and connected to the ways ancient communities managed property, made judgments in law courts, and decided upon civic issues (Jarrett, 1991, p. 42). In effect, *nomos* was the production of power, which ratified future decisions and solidified particular groups’ dominance, particularly through land ownership. Thrasymachus’ position on *nomos* reveals that those in positions of power in an assessment (e.g., test designers and policymakers) also typically determine the interests for assessing and of the assessed, and that the assessment itself is in fact a way for a dominate group to solidify its dominance and interests over others. These interests determine not just how a portfolio is read, but what writing constructs, or “explanatory concepts” (Messick, 1989, p. 16), are used as qualities a test measures and/or predicts as future achievement.

More specifically, Thrasymachus’ position suggests several questions: How and why are particular interests, and the agents and groups associated with them, being used to conduct assessment and validation? What rationales construct decisionmakers’ power, and in turn, determine what’s “right” in an assessment, who judges student writing, who makes decisions, and who determines methods? How is the assessment and its results working toward the interests of those being assessed, namely students (and secondarily programs and faculty), and not simply reinforcing the interests of those with power (or those who control the “land” of assessment)? Are the interests and needs of students being

represented by students, or are these interests merely represented for them? How is each stakeholder allowed an inquiry in validation processes? I'm not suggesting that power arrangements will be equal or can be in writing evaluation in and outside the classroom, or that all groups' interests are in conflict all the time. What I am suggesting is that assessment should not be based on the altruism of elite decision makers. Stakeholder silence, like the silence of our students, should not be assumed as acquiescence. Consideration of the well-being of all stakeholders should be a factor in the invention, arrangement, and style of any writing assessment.

Guba and Lincoln's (1989) fairness criteria addresses some of the concerns Thrasymachus' position reveals, but their "tactical" and "educative" authenticity criteria provides a fuller articulation of the issues of stakeholder interests and power. Guba and Lincoln's discussion examines how the various testimonies of stakeholders are "appreciated" and "negotiated" (pp. 248-249), making the evaluation process "educative" for participants. Their participation should also empower all participants to act, or to make the decisions that the assessment might produce (p. 250). This means that validity inquiry is about making arguments for the ways in which power is used and by whom, and how the well-being of stakeholders is addressed through this power. These arguments might also take into account how power in the assessment (re)produces particular interests while ignoring others. Validating a classroom's evaluation processes, for example, may involve a classroom inquiring into the interests represented in an evaluation rubric, whom the rubric serves, and what reasons can be given for their use. Furthermore, the class might look at the results of the decisions made from the rubric. Did half the class fail the assignment? What feedback did the assessment offer students and how did they understand that feedback? What grade distribution did it produce, and how do students understand its meaning and significance for their learning? For Thrasymachus, then, validation might be an inquiry into stakeholder interests and needs, the power created and used, and the assessment's consequences for stakeholder well-being.

Richard Haswell (1998a) argued for a similar kind of validation inquiry in his discussion of the need for "multiple inquiry in the validation of writing tests." He asked: If the writing test "is social, then what (fallible) humans run it for what (debatable) ends and (more or less) how well, and how do the (vulnerable) people who are labeled by it feel (they think) about the process?" (p. 92). His multiple inquiry identifies several stakeholder groups that form Washington State University's efforts at validating their writing placement program, such as students, teachers of writing courses, teachers of other courses, central administrators, higher administration, among others. Although

Haswell discussed each in terms of their different interests and uses of collected data, he does not address how power is unevenly distributed, which affects the plausibility of any possible validity arguments a group might make, or the usefulness of the data. For instance, his discussion of central administrators, focuses on delivering data for their use and possible responses, which could gesture to student interests and well-being but these validity concerns are not articulated at all. Haswell discussed how the data can be used to help departments reflect on how they perform compared to other departments (p. 103), and what courses seem to offer students profitable writing practice within a department (p. 104), but he does not say how multiple inquiry can be used to investigate how the interests of those making decisions (and the power those decisions have) affect the well-being of students. How is power and the interests it (re)produces checked in the system? How is the assessment not simply an enactment of “might is right”?

Additionally, each stakeholder group’s relative power in the institution affects how each might use, understand, and comment on data collected, offer rival hypotheses for judgments, or make validity arguments. Each group’s position in the institution often dictates what they can say, or how influential their voices will be. A Board of Regents will have stronger voices, and more power to act and make related decisions, than teachers of writing courses. And students may not be listened to carefully when they argue that their assessments are “unfair” or “too strict” or “inconsistent,” especially when writing teachers argue contrary positions. Additionally, Haswell’s chairs don’t seem to be a part of any data collection or substantive inquiry; instead, he speaks of them as using the data collected for departmental purposes, or understanding it as justifications for assessment results. Thrasy-machus’ position suggests that chairs and other stakeholders might be involved in decisions about methods and data collection since these things dictate what kinds of information are understood as data for future analysis and validation.¹⁶ As Haswell (1998a) pointed out, what higher administration might find most useful in validating a test, like costs and “distinctive outcomes” (p. 104), may seem completely irrelevant to a teacher of writing or a student, thus not data worth collecting. While acknowledging that multiple-method inquiry allows for program improvement through various stakeholders’ input, Pamela Moss (1998) in her response to Haswell identified a similar concern about stakeholder interest and power in Haswell’s writing program example: “it appears that validity evidence was not used to illuminate biases of those responsible for the writing program,

16 This last comment is somewhat unfair to Haswell because he did gesture toward this, and having worked within the assessment program he speaks about, I acknowledge that stakeholder participation is encouraged and usually welcomed.

but rather to persuade the stakeholders that they should see things differently” (p. 118). Moss used this analysis to make her point about “challenging biases” of an assessment (p. 118), or questioning “the beliefs and practices of researchers,” which she later identified as “epistemic reflexivity,” taken from Bourdieu (p. 120). Challenging the biases of various stakeholders amounts to analyzing the use of power as a way to construct self-conscious data and evidence, a lesson Thrasymachus offers as well. In short, the data worth collecting and analyzing are products of power, associated with those who wield it, and contribute to stakeholder well-being.

PROTAGORAS AND PRODICUS: CONCERNS OF PARTICIPATION AND AGREEMENT

Perhaps the strongest position for *nomos* is that of Protagoras. Protagoras saw *nomos* as a social force that improved *physis*. Kerferd (1981) explained that the myth attributed to him in Plato’s Protagoras offers “a fundamental defense of *nomos* in relation to *physis*, in that *nomos* is a necessary condition for the maintenance of human societies” (p. 126).¹⁷ There are no “ultimate moral standards” for Protagoras, instead, similar to Antiphon’s position, *nomoi* “teach . . . citizens the limits within which they may move” in their society (Gutherie, 1971, p. 68). Protagoras’ creation myth illustrates the evolutionary aspect of humanity, accomplished by *nomoi* that protect humans, first from the elements and starvation, next from the wild beasts who would kill them, and finally from each other (war and civil discord) (Plato, Protagoras, pp. 320c-323a). Yet it takes Zeus to intervene, providing humanity with “reverence and justice” as “ordering principles of cities and the bonds of friendship and conciliation.” So while humanity develops *nomoi* as prescriptions for security and well-being, each person is guided by his own divinely bestowed *physis*, but this *physis* does not designate static virtue or a “true” course of action, instead it indirectly regulates individual agency that produces fair decisions through society’s *agon*. Protagoras provided the thread that sews together all three validity concerns. Just as Guba and Lincoln’s (1989) authenticity criteria promote full stakeholder involvement (pp. 245-250), Protagoras’ democratic participation by all stakeholders is the key to the validity of civic decisions.¹⁸

17 Some have argued that the myth attributed to Protagoras in Plato’s Protagoras (pp. 320c-323a) may not be authentically a position of the Sophist; however, I find Untersteiner’s (1954, endnote 24, pp. 72-73) and Schiappa’s (2003, pp. 146-147) arguments for its authenticity compelling.

18.

18 Protagoras’ use of sophistic antilogic, or the use of contrary arguments (logos) that form the rhetoric of debate and finally of civic decisions, which is often discussed as a rhetorical method for

In fact, validity, generally speaking, requires agreement to function. Researchers agree to the meaningfulness of the correlation that any validity inquiry provides, yet Protagoras tells us that part of our need for agreement is that each stakeholder has something worthwhile to contribute, some kind of virtue to be tapped. So writing assessment needs more than stakeholder agreement. Writing assessment requires participation.

Although Protagoras' teachings offer much more for validity researchers, here it is enough to say that he promotes a process of civic decision making as a rhetorical *agon* that, similar to Guba and Lincoln's methods, asks for competing arguments (*logoi*), which embody competing *nomoi* and the interests of well-being for each stakeholder involved. Because all have a share in virtue, which Protagoras traces to Zeus' gift, a community's *agon* will produce valid decisions, not because *physis* dictates winners and what's right or true, but because agreement and participation allow choices and decisions to be accepted. Thus for Protagoras, the level of participation and agreement correlates to understanding validity. Validity, then, stems from stakeholder ability to participate in and accept decisions from participation.

Prodicus offers an even clearer rendition of this last concern in our *nomos-physis* heuristic. For him *nomos* perfected *physis*, which is exemplified in his fragment, "Heracles at the Crossroads" (DK 84B 2).¹⁹ Untersteiner (1954) explained Prodicus' position: "*physis* acquires its value as a result of the use made of it, by the *nomos* which interprets it. . . . Virtue is therefore a *nomos* which interprets *physis*" (p. 217). In this way, sophistic rhetoric supports the emphasis on test use for considering validity issues. Virtue's speech to Heracles provides a clear illustration of this *nomos-physis* position:

The gods give no real benefits or honors to men without struggle and perseverance: to obtain the gods' favor you must serve them; to get abundant fruit from the earth one must cultivate it; to earn wealth from livestock one must learn to care for them; to prosper in war, to gain the power to succor friends and best one's enemies, one must study the techniques of warfare from its masters and exercise oneself in their proper employment—and finally, if you should wish to enjoy physical vigor, it is to the mind that the body must learn subjection, and discipline itself with hard work and sweat (DK 84B 2).

"seeing both sides on every subject" (Gutherie, 1917, p. 24), is the essence of democratic participation (see Kerferd, 1981, pp. 61-64).

19. This doctrine of nature (*physis*) developed or cultivated by nurture (*nomos*) appears to be common. It is also articulated in the Anonymous Iamblich (DK 896), the Dissoi Logoi (DK 906), Demosthenes' speech XXV, Against Aristogeiton, and the Sophist Isocrates' *Against the Sophists*, in which he argued that valid civic decisions and *nomoi* are accomplished through the rhetoric of the orator with natural talent (*physis*), which would have been honed by training and experience (Isocrates, 1929, p. 294).

It is significant that Virtue speaks to Heracles because he is the personification of humanity's "opposing tendencies," as Untersteiner (1954) tells us (p. 217). These tendencies are articulated in *nomos-physis*, and Heracles' is the ultimate illustration of the binary. His kernel virtue (*physis*) is an in-born strength, athletic prowess, and power, which represents a "primitive state of conscience" (p. 217), but this raw strength will not be enough to allow him to succeed. His *physis* needs perfecting through *nomos*, hard work, *agon*, and civilized training. Virtue in this scene explains that he must cultivate and perfect his natural abilities to succeed in his life's labors and work. For Prodicus, like Protagoras, *nomoi* are conventions, like the ethics of "hard work and sweat," agreed on by communities to cultivate the natural virtue within each person. And assumed in this cultivation of *physis*—assumed in *nomos*—is not just *agon* but others who form the *agon*. One must compete against someone else (it is telling that Virtue ends her speech with examples of war, military training, and athletic contest). Thus, part of participation, and agreement in any contest is tension, conflict, struggle, difference, and disagreement, which are all important to Prodicus' sense of *nomos-physis* in fair civic decisions.

For our heuristic, Prodicus calls attention to the healthy conflict within agreement. Agreement is not synonymous with consensus. It is a stance reached through differing readings and judgments, through hard work and *agon*, through disagreement, which could be debate, negotiation, or war. Like Haswell's (1998a) multiple inquiry, validation might involve a process that allows for various stakeholders to voice opposing arguments for a student's placement in a writing course, thus disagreement is necessary to test the decisions made and their adequacy. Because all are assumed capable in some way, even students can be brought into these decisions since validation inquires into who can and should make decisions and how all stakeholders are a part of decision making. For the writing classroom, inquiring into participation and agreement might mean a teacher and her students investigate ways to allow for multiple readings and evaluations of writing to be considered in grades. A class might ask how "stake" can be given to students in the evaluations and grades of their writing. Reflective activities and group discussions that examine student writing and multiple evaluations of it can be conducted as inquiries of stakeholder biases, evaluative frameworks, and interests, as well as the processes themselves that produce evaluations of student writing. Importantly, in the classroom a teacher and his or her students together would construct consciously participation and agreement.

When unified, the *nomos-physis* validity heuristic achieves the "epistemic reflexivity" that Moss (1998) encouraged, which she called a "courageous act of opening the details of a program of research to critical public review" (p.

120). Through its inquiries into “how” assessment is constructed and decisions are made, and by whom, the *nomos–physis* heuristic provides reflexivity for researchers, teachers, and students. And reflexivity is a defining feature of sophistic rhetoric and agency. Reflexivity can also explain how the *nomos–physis* heuristic investigates the (re)production of hegemony, accounts for individual judgment as more than just reflections of social dispositions, and articulates/theorizes individual agency as a constitutive part of any assessment decision.

PROTAGORAS’ HUMAN–MEASURE: A CONCLUSION ON AGENCY

Table 3.1 illustrates one way the positions on *nomos–physis* can be represented. It shows the three areas of concern that *nomos–physis* articulates as validity inquiry: methods and fairness, power and the well-being of stakeholders (particularly those with less power), and the ways participation and agreement are constructed. This heuristic, however, also extends postmodern positions on subjectivity that affect the construction of socialized judgment and decision-making in assessments. *Nomos–physis* renders personal and local dispositions to read and judge in certain ways as *gestalts* that are made from, and make, larger histories of *agon* that maintain or alter a community’s intellectual property, sense of its culture, and privilege while also preserving a sense of individual agency by holding on to both ends of the *nomos–physis* binary.²⁰

Lester Faigley’s (1992) *Fragments of Rationality* provides a good case in point. Faigley looked at the evaluations of student essays submitted for the College Entrance Exam Board in 1929 and essays from William Coles and James Vopat’s (1985) anthology of student writing, *What Makes Writing Good*. Faigley argued that teachers evaluate writing through their historically contextual and culturally defined tastes, and by implication, their distastes (pp. 119-130). In the 1980s, these tastes were governed by the essayistic use of “confession” as truth-telling, which “emerge,” or come “out of,” historical values shared broadly by academic culture (p. 111).²¹ He concluded that teachers must consider the relations of power (using Foucault) inherent in their evaluation practices if they are going to create better assessments with “more equitable relations of power” (p. 131). Faigley’s excellent account reminds us that who assesses determines what values and tastes power will embody and promote, and that those with

20 As the previous sophistic positions suggest, I use “gestalt” to imply agency in the individual, because the term suggests that there is more to one’s disposition to judge than her training and socio-historical and contextual influences.

21 Faigley (1992) also explicated the Latin roots of “evaluation” (ex + valere) to illustrate how judgment of writing comes “out of” values (p. 113).

power tend to hold tastes that define and give them power. But as Faigley himself acknowledged in his conclusion (pp. 238-239), this postmodern account of judgment and tastes do not explain well individual agency on the part of teachers and validity researchers, nor ways to resist, or participate if an agent works from a marginal position.²² Faigley's account does remind us not to obscure the ways in which culturally and historically defined tastes control value, student interests, and the production of subjectivity. The Sophists, on the other hand, tell us that not only must there be tastes governed by larger stable ideas, values, and patterns of behavior—or *nomoi* developed from *physis*—but those who control assessment control the construction of fairness, well-being, and agreement (i.e., control what we take for granted and what we investigate in/through our decisions). These “controls” influence tastes and power, but do not wholly govern individual judgments.

The Sophists' articulations of *nomos-physis* both acknowledge the socialized aspects of our tastes and decisions, and reinsert agency into the agent's act of judging by calling attention to how its formed and situated. Sophistic agency is not a modernist agency, not an “individual struggling against the constraints and conforming pressures of society” (Faigley, 1992, p. 230), nor the agency of “Liberalism” that is “motivated only by its [the self's] desires” (p. 231); instead, the Sophists offer an agency that is defined by reflexivity (through the “how” questions in the heuristic). Agency is constructed through individual articulations of fairness, of interests, tastes, and well-being, and through conscious participation and negotiation in decisions. This is not simply, as Faigley favored in his conclusion, a subjectivity that works from Lyotard's differend, or a rhetorical and material space in which parties in conflict disagree about “the relevant rule of justice” (Faigley, 1992, p. 233). Lyotard's subjectivity, according to Faigley, created an agency defined by “ethical decisions” that are “a matter of recognizing the responsibility of linking phrases” (p. 237). But agency still seems undefined and presumed in Lyotard's account: How is one's recognition of linking phrases achieved? What constitutes “ethical”? In writing assessment decisions, how exactly are hegemonic dispositions and readings interrogated? Since there are no universal values or “external discourse to validate choice” (p. 237), no *physis*, only multiple *nomoi*, Lyotard's differend makes agency a mysterious, inherent aspect of agent, but not something easily consciously constructed.

22 I realize that Faigley was not making claims about writing assessment researchers; however, I believe teachers and validity researches share fundamental issues concerning how judgments are made on student writing and their sources.

Table 3.1. A *Nomos-Physis* Validity Heuristic

Sophists	Characteristics	Key Investigations	Validity Concerns
Hippias and Antiphon	Absolute <i>physis</i> By their natural right and abilities, the strongest will achieve Assessment decisions can be supervised and empirically verified	How does the assessment's methods for gathering evidence construct fairness? How are fair results ethically determined, supervised and articulated?	Methods and Fairness
Thrasymachus	Amoral realist; <i>physis</i> produces <i>nomos</i> Altruistic power governs conventions and "rightness" Assessment decisions are made by stakeholders in power based on the interests and needs of those the assessment serves (weaker stakeholders)	How does power work to validate decisions? What are the interests and needs of students and other stakeholders involved and who articulates them? How do our assessments serve our students, their needs, and well-being?	Power and the Well-being of Stakeholders
Protagoras and Prodicus	<i>Nomos</i> cultivates <i>physis</i> All stakeholders have the ability and right to participate in assessment since they all share in the virtue of the community Antilogical methods performed by all stakeholders	How is agreement constructed and by whom? Who is affected by the results of the assessment decision and how are they involved in decisions? How are various adjustments accounted for before a decision is made?	Participation and Agreement

Sophistic agency, however, provides for ethics through reflexive discourse. By acknowledging the full binary, the Sophists' articulations of *nomos-physis* leave room for decisions that are un-avoidable, counterhegemonic, ambiguous, indecisive, radical, inevitable, hegemonic, clear, and decisive. So unlike Lyotard and Faigley, the Sophists do not allow assessment researchers and teachers to use vague notions of "ethics" to govern decisions. Instead their positions on *nomos-physis* acknowledge that even ethics are constructed in practice, yet there may be some universal ideas, or larger patterns of truth, that govern *nomos* in particular

contexts, such as the ideal of democratic participation, the need for equality in effects, and the necessity of honoring of all voices in debate.

At its most fundamental level, sophistic agency theorizes how individuals make decisions, and it is best located in Protagoras' Human-Measure doctrine.²³ As suggested in Protagoras' position on *nomos-physis*, his rhetoric generates *nomoi*, and is "the mechanism allowing for the functioning of social organizations," or "how group values evolve out of custom or habit as 'pragmatic solutions to temporal and historical needs'" (Jarratt, 1991, p. 10). These *nomoi* articulate and stem from various senses of fairness, justice, and well-being that citizens voice in democratic debate and decide upon. Agency, then, is understood as partly the *physis* that grants citizens their abilities to participate in decisions, partly the *agon* of society itself, and partly the reflective ability inherent in democratic participation and rhetoric.

Protagoras' human-measure fragment embodies all of these components in a theory of individual judgment.

Protagoras' human-measure fragment can be stated as follows: "Of everything and anything the measure [truly is] human(ity): of that which is, that it is the case; of that which is not, that it is not the case" (Schiappa, 2003, p. 121).²⁴ According to Protagoras, what is "measurable" is limited socially, locally, and discursively. The agent's measuring is understood as consubstantial to the *nomos* of his or her larger social context. Judgment is shaped through democratic *agon* (agreement from difference). In one sense, Protagoras' doctrine states that a teacher's reading of writing is a product of various readings voiced already (or those the teacher is aware of). These other readings, like Faigley's tastes, influence a teacher's reading practices. There is no clear line between how, for instance, a teacher's judgment of a student's essay is "honest" and "persuasive," and what that teacher's larger historical and academic context prescribes as "honesty" and "persuasiveness" in student writing. And yet, sophistic agents are not simply conduits for *nomoi* and social tastes, which could be concluded from Faigley's and other postmodern accounts of power and socialized tastes. Human-measure, on the other hand, promotes a reflexive theory of judgment, and this reflexivity defines agency in assessment.

23 This fragment has traditionally been known as the "man-measure" doctrine, but as Edward Schiappa (2003) pointed out in his discussion of it, the Greek term used by Protagoras (*anthrōpos*) actually can refer to individual human beings or to humanity as a whole, which includes women. I favor Schiappa's use of "human measure" as the preferred nonsexist term (p. 131).

24 Herrick (2001) stated the fragment this way: "man is the measure of all things, of things that are not, that they are not; of things that are, that they are" (p. 42). He took this version from Plato's *Theaetetus* (pp. 151a-152a). Sextus gives this version of the doctrine: "of all things the measure is man, of things that are that they are, and of things that are not that they are not" (Diels, 1972, p.10).

Cynthia Farrar (1989) helps make clearer how human-measure's notion of agency works. She said that human measure theorizes how an orator can articulate only "the way things are" for the polis through his own eyes. "Of the things that are f, he measures that they are f," Farrar explained (p. 49). This means that what an agent experiences is all the agent can know. Additionally, Farrar said that "measuring is not limited to perceiving an object or feature of the world but includes the rendering of judgments," so a teacher may read a student essay, but the teacher also renders judgments, or makes inferences. Together, sensing and judging create a teacher's measuring. Farrar (1989) continued, "man the measurer is both what we would call a 'sensing' and 'judging' being, and his standard is his own. . . . The man-measure doctrine makes a claim about all men; but it does not claim that the measure is the species man, except in so far as such a unified view could emerge from the experience of individual men" (p. 49). So although Farrar emphasized the singular "man" measuring in Protagoras' doctrine, as she discussed later in the article, this man is social, or a man-in-the-polis and not simply an isolated man. One's decisions and judgments—one's measuring—are always guided by social and civic ends. But, as with Lyotard's differend, we run into a problem: Where do these ethics or values come from by which an agent judges? What or who defines proper social and civic ends? How do we account for the agent's own standard?

Farrar said that human measure promotes a "unified view" that "emerges from the experience of individual men" (p. 49). So in Farrar's reading, teachers create readings of student writing that become hegemonic to some degree. These hegemonic readings in turn create communal dispositions, such as "good development" in student writing, or what a particular department or rubric designates a "passing" portfolio. Farrar explained how individuals arrive at judgments about student writing. Her reading of human measure assumes an individual has agency simply because he or she can sense and judge, because he or she is the measure of all things. This account does not really explain agency. It simply asserts it much like Lyotard's account. Furthermore, Farrar's reading may be too *physis*-centered, thus less critical of how social dispositions are constructed. When a teacher agrees with others' readings of student writing, the teacher's agency is affirmed by his or her access to socialized tastes. The teacher's use of them confirms his or her position in the community of teachers (the community of power). In this paradigm, agency is indistinguishable from an adherence to the status quo.

To solve this problem, we need only adjust slightly Farrar's logic. Human-measure can be read to state that the agent who measures does so from "standards" and "senses," or tastes and dispositions, that are simultaneously socially sanctioned and products of individual reflective participation. We have our own share of innate virtues, as Protagoras claims in his origin myth, yet they

are each cultivated differently in society's *agon* (as Prodicus' Heracles illustrates). So an individual's measuring is consubstantial to his larger social milieu, but never identical to the ways others have of measuring. Additionally, individual ways of measuring help constitute the social milieu in which those individuals measure. Calling attention to this dialectic in one's rhetoric provides the agent with self-conscious, reflective claims that construct his or her agency and acknowledges social influences and hegemony. This reflexive component is seen in the second part of Protagoras' doctrine. An agent's rhetoric must acknowledge what and how he or she knows what he does. This positions the agent socially in the *agon* and accounts for the three concerns that the *nomos-physis* validity heuristic focuses on. In short, an individual's level of agency comes from his or her reflexive understanding that the individual can make choices about methods and fairness, select from a variety of tastes and theoretical frameworks by which to make judgments about his or her own well-being and that of others, and be guided by his or her ethical obligation to participate in the *agon* that produces decisions.

Additionally, by creating the agent as the sole origin of judgment, Farrar's account displaces the powerful influence social tastes (*nomoi* as prescriptions and past decisions) have on individual "sensing" and "judging." We get our ideas about things from contextual and historical sources that can be located, as many validity researchers have already discussed (e.g., Edgington, 2005; Huot, 1993; Pula & Huot, 1993), but we choose from these sources unevenly, and perhaps at times randomly or unpredictably, often revising social tastes for our individual uses. Decisions are social, but the individuals who make up the various judgments that construct those decisions are more than simply socially constructed. Agency, then, in my reading of human measure does not come from inherently using one's own standard (as Farrar suggests), but from the ability to choose, change, and affect socialized standards and tastes reflectively. Thus, human measure would explain how a rubric may still represent departmental expectations but not account for individual ways of sensing and judging for those expectations, making the continual revisiting of expectations an integral part of program assessment, the rearticulation of its values, and validation.

Perhaps the *nomos-physis* heuristic and human-measure doctrine mostly offer validity researchers a reflexive rhetorical stance toward validity inquiry. In her response to Haswell's "Multiple Inquiry in the Validation of Writing Tests," Moss promoted this reflective aspect of validation, calling it an "epistemic reflexivity" (taken from Bourdieu in Bourdieu & Wacquant, 1992) that compliments Haswell's multiple method approach, which she acknowledged (Moss, 1998, p. 112). In fact, Haswell's (1998a) work defined assessment in a contextual, local way, one that requires reflexive practices from multiple methods of inquiry (pp.

91-92).²⁵ Loïc J. D. Wacquant identifies three characteristics of Bourdieu's epistemic reflexivity that enrich an understanding of the reflexive qualities promoted by the *nomos-physis* heuristic. First, epistemic reflexivity targets the "social and intellectual unconscious embedded in analytic tools and operations," that is, it is a conscious articulation of the constitutive *nomos* of researchers and their methods for assessing and validating, which might also include how fairness is constructed; second, it is a "collective enterprise," one of dialogue in a community that assumes participation and the sharing of power by various stakeholders; and third, it supports "the epistemological security of sociology," searching for ways to understand current results and theoretical constructs, validating and justifying them when possible (Bourdieu & Wacquant, 1992, p. 36), which means it inquires and justifies current interests and power embodied in the theories and assumptions that are stable in any field of study. In these three ways, the *nomos-physis* heuristic makes epistemic reflexivity a defining feature of the discourse of validation, and the human-measure doctrine accounts for this reflexivity at an individual level, making validation endeavors that can do more than simply affirm the status quo.

John Trimbur (1996), reflecting on the politics of writing assessment, said that when we talk about assessment, we are really talking about "conflicts of interest, asymmetrical relations of power, hidden motives, and unforeseen consequences." The goal then, in "analysis," or validity research, is to "read between the lines, so we see what's really going on in writing assessment" (p. 45). Trimbur's penultimate question is a sophistic one: "I simply want to ask why assessment is taken for granted as a necessary part of the study and teaching of writing. What are the politics that authorize the assessment of writing?" (p. 47). Politics, in fact, is much of what the *nomos-physis* heuristic investigates in reflexive ways. It allows researchers and teachers to acknowledge openly that assessment is surveillance, that it reproduces social arrangements by privileging certain dispositions, but it can also establish self-consciously new social arrangements. This kind of validity inquiry, in turn, allows for broader institutional questions: How do the dispositions to judge writing in certain ways distribute power in our classrooms? What material effects might our validity rhetorics have on the academy and our students in terms of their educational access and opportunity? How might our assessment practices radiate from (contested/able) concerns for intellectual property, privilege, and power? From what socio-historical sources do our dispositions come, and how

25 Haswell (1998) explained the contextual and local nature of assessment: "an institutionalized writing test [is] a social apparatus that applies a nomenclature (specialized and provisional language) in order to classify and label people for certain public uses" (p. 91). This implies, as his long list of questions suggest (p. 92), that validation must be reflective and interpretive by nature. This inference is backed up by Haswell's own "rationales for multiple inquiry" (pp. 93-94).

do our social and private methods for measuring work in concert with, or against, these sources and dispositions? Furthermore, given the social arrangements and uneven distributions of power already, what kinds of validity arguments are more important to make and for what ultimate social goals and stakeholder well-being? What are our ethical responsibilities toward those left out of our *nomos* and the academy, those who define our distastes (which not so ironically help define our tastes), as assessment practitioners and theorists, teachers and guardians of culture? Ultimately, I believe, the sophists' positions on *nomos–physis* and Protagoras' human-measure doctrine ask us to reconsider continually our own relationships to the cultural hegemony we often say we resist as intellectuals, but clearly must work within as teachers, assessors, validity researchers, and citizens, which in turn asks us to find ways to open the academy's doors a little wider.

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