

ISSA Proceedings 2010 - Are Motivational Thoughts Persuasive And Valid?



1. Introduction

In this paper, I would like to examine the rhetorical status of the *1948 Human Rights declaration*.

In order to do this, I first go back to Perelman's theory of argumentation by shedding a light on its juridical thought.

This approach will question the status of "*natural law*" from a rhetorical point of view, as it is expressed in the *1948 Human Rights Declaration*, considered as an expression of natural law today.

Second, I describe four levels of belief expression, and their discursive and rhetorical functions, as they appear in the Human Rights charter:

- a literal level
- a conventional level
- a fictional level
- a motivational level

It will be argued that such a complex construction is possible thanks to rhetorical skills that are shared by every speaker and hearer.

Finally, I analyze the human rights charter's first article in the light of four levels of representation.

2. Perelman and Natural Law

Let us go back to Perelman and Natural Law. As it is argued by Francis J. Mootz (2009), there are no explicit links between Perelman's theory of argumentation and his legal thought. But it is nevertheless possible to build this link. Mootz develops such a point of view in an article entitled: «Perelman's Theory of Argumentation and Natural Law». Indeed, we can claim that the Perelmanian theory of argumentation is for a large part grounded in his judicial culture. As Mootz wrote:

"The New Rhetoric is a rich resource for describing the ontological space in which laws operates, and also for providing normative guidance to those engage

in legal practice.” (Mootz 2009, p. 2).

As I will argue, such an “ontological space” may be described in the Human Rights charter thanks to a rhetorical approach that surmises various parts and also different levels for representation, i.e. the literal, conventional, fictional and motivational. Such a description will lead me to argue that a charter is a kind of rhetorical *genre*. Actually, an important question about the validity and the efficiency of a charter is grounded in the question of the “backing” (in a Toulminian sense) of human rights principles. Are they natural or transcendental? Of course, such a question has to deal with the philosophical and judicial question of natural law.

As it is well known, the theory of natural law claims that laws have natural foundations, either religious or human. This is the case in classical thought, in Christian thought, but also in Enlightenment philosophy that inspired the first Declaration of Human Rights in France (1789). It is also the case for Independence Declaration of American (1776).

And this was finally the case in the so-called “logician” conception of rationality as it was thought in Europe in the 20th Century. In such a conception, “logicism” has to be seen as an optimistic trust toward logic in order to ground rationality.

Let us be reminded that Perelman firmly opposed such a conception of rationality. It is the reason why he proposed to establish a difference between, on the one hand, validity for empirical facts and, on the other hand, reasonableness for social facts. This is of course an important starting point for a possible link between his argumentative theory and his judicial thought.

Mootz examines the possibility to build a link between Perelman’s theory of argumentation and his judicial thought through the status of the Universal Audience. Indeed, in his critique of a “logician” conception of argumentation, Perelman claims that the concept of Universal Audience relies on the idea that a speaker’s rationality is grounded neither in validity nor in truth, like it seems to be the case in all theories of natural law. But, at the same time, the critique of such a positivist point of view often leads to a relativistic vision where it is argued that truth or validity are completely relative, since they have no stable ground.

Finally, the whole history of rhetoric is trapped in a tension between relativism and positivism.

In order to overcome this tension, Mootz proposes to introduce the concept of “*naturalizing rhetoric*”, a concept which I consider to be very fruitful. He claims that we have to keep in mind a naturalistic criterion when we are analyzing rhetorical exchanges, but that it has to be found in our very “rhetorical nature”:

“We “naturalize” rhetoric when we regard human “nature” as rhetorical. Simply put, it is our fixed human condition to be recreating ourselves and our society through continuous rhetorical exchanges with others. A naturalized rhetoric embraces the paradox that non-essentialism is essential to our being, that we can find a foundation for reflection in anti-foundationalism.” (Mootz 2009, p.10).

Now, one may argue that such a definition of our “rhetorical nature” leads to a *petitio principii*, i.e.: “Our nature is to be rhetorical beings, so rhetoric is natural”.

But Mootz promptly adds an important precision:

“Perelman is less vigorous in his critique of Cartesian rationalism than Vico, who argued against the incipient rationalism of the Western tradition by defending the priority of rhetoric and its connections to our imaginative capacities and the metaphoric structure of human understanding. By naturalizing rhetoric in the humanist tradition exemplified by Vico we can elaborate the ontological claims that subtend Perelman’s theory of argumentation.” (Mootz 2009, p. 10).

In the following, I will develop Mootz’s concept of rhetorical nature by examining the case of the Human Rights charter. Indeed, such a concept perfectly fits with the naturalist conception of rationality that I have been trying to develop (Danblon, 2002). Moreover, I will argue that imagination, as an expression of our rhetorical nature, i.e. as an expression of our rationality is necessary to both the efficacy and the validity of a charter. This point will be demonstrated by describing the various levels of thought in the Human Rights charter.

3. The Human Rights charter as an expression of rhetorical rationality

Let us now describe the Human Rights charter from a rhetorical point of view (see Danblon & de Jonge 2010).

As most of the charters, the Universal Declaration of Human Rights is divided into three parts. First, there is a preamble where one generally finds the recent story of people who are concerned with the charter. Such a storytelling aims at justifying the proclamation of the charter. Second, there is a proclamation that is always expressed by a performative speech act. In the 1948 Declaration, one finds the following expression:

“Now, therefore, the General Assembly proclaims this Universal Declaration of

Human Rights as a common standard of achievement (...).”

Such a performative speech act aims at creating a new common world.

Third, there are articles that describe the way in which every human being is supposed to behave in the new common world. Articles have thus a regulative function, which is expressed by assertive or directive speech acts.

Consequently, these three parts (preamble, proclamation and articles) have each a precise discursive status (respectively: storytelling, performative speech act, assertive/directive speech acts) in which each fulfils a rhetorical function (respectively: justifying the creation of a new common world, creating the new common world, regulating the behaviour of actors of the new common world).

These discursive status and rhetorical functions are represented under this figure:

Part of a charter	Discursive status	Rhetorical function
Preamble	Storytelling	Justifying the creation of a common world
Proclamation	Performative speech act	Creating a common world
Articles	Assertive and directive speech acts	Regulating the behaviour of actors belonging to the common world

Such a description allows us to claim that a charter is a rhetorical genre since it presents stable discursive parts and rhetorical functions, that are associated with institutional roles.

4. Discussion about the “ontological” status of a charter

Now, the current philosophical question about such a document is: on what is it grounded? And as a consequence, at which conditions is it either efficient or valid (or both)?

Here comes back the “natural law” question from a rhetorical point of view. Indeed, one often hears that such a charter has no reason to pretend to universal validity since it was thought and wrote in a precise historical and geographical context. Nevertheless, it is well known that such a text was written with the explicit intention to address to the whole humanity. In Perelman’s terms, the Human Rights charter addresses to the Universal Audience (Perelman and Olbrechts-Tyteca 1969; see also Crosswhite 1989; Christie 2000; Danblon 2004). At this stage, we should face the question of the natural grounds of such particular principles and values. In the following, I will go back to Mootz’s idea of naturalizing rhetoric in order to try to go beyond such a difficulty.

5. Four levels for representation

In order to argue in this sense, I will first show that the Human Rights charter does not aim at describing the reality. Consequently, it has to be understood as a convention and not as a description. In order to describe the different levels of representation, let us consider the first part of article 1. from the human rights charter, in order to determine more precisely the kind of *ontological space* (cf. Mootz) that is relevant here:

All human beings are born free and equal in dignity and rights.

Let us first try to interpret such a sentence as a description, at a literal level. Obviously, as a factual description, it is false. Keeping in mind such an interpretation would be irrational, precisely because of the fact that the description is obviously false.

Let us now assume that such a sentence is a convention. Such a convention would have no real efficiency if it is not linked at all with reality, like it is often the case with arbitrary conventions in games.

Third, let us try to interpret the sentence on a fictional level. In this case, one has to act “as if” *all human beings are born free and equal in dignity and rights*. I think that here, more than in the literal and conventional interpretations, the fictional interpretation is offending from an ethical and political viewpoint. Indeed, such a fiction would appear as a sinister farce: life is not a game where social rules may be totally invented.

At this stage, no satisfying “ontological space” was described in order to interpret such an article in a way that it is valid and efficient.

As I argued elsewhere (Danblon 2010), the best way to interpret such a sentence is at a “motivational” level. I borrow the concept of “motivational belief” from (Clément 2005) who tries to describe the cognitive functions of what he calls “credulity”, i.e. a cognitive and rhetorical function using our “natural” ability of imagination. A motivational thought is a representation that is both possible and desirable. I think that this is exactly the case for the sentence: “*all human beings are born free and equal in dignity and rights*”: it is not true but it is both desirable and possible. In such an interpretation, the sentence perfectly fulfils its rhetorical regulative function, expressed by an assertive speech act, even if this assertion is neither a description of reality, nor an arbitrary convention, nor a metaphorical fiction.

Now, following this description, we have to admit that human ability of imagination is one of the conditions for its rationality, which is very useful in all domains where we need to exert rhetorical skills: politics, law, ethic, education, etc (see also Schaeffer 2002).

But to be honest, a motivational thought becomes both valid and efficient if and only if we are able to meet our rhetorical nature that allows us to use multiple levels of conventions and especially imagination. And, as it was underlined by (Vico 1986) and also by (Mootz 2008), such an ability has to be practiced (see also Girard 2009):

“Exercising the imagination through topical argumentation is necessary because there is no substitute for the accumulation of experience. One cannot become prudent by deducing answers to practical problems; one becomes prudent through the exercise of judgment based on insight, which actually is a way of apprehending the world by cultivating a rhetorical engagement with it. Vico stresses that education in rhetoric can develop this capacity. ” (Mootz 2008, p.18).

6. Conclusion

Motivational thoughts are persuasive and valid if they are exercised. Such a practice is one of the most important functions in rhetoric. It is the only way to build a common world thanks to imagination and representation of possible worlds. Indeed, imagination is neither a fallacy nor a masquerade, but we have to exercise it regularly in order to understand the cognitive importance of this

rhetorical function. In this perspective, charters illustrate a genre, which fulfils essential political and regulative functions in society. Old Europe is faced with a problem: it no longer believes in Utopia and therefore refrains from exercising imagination.

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ISSA Proceedings 2010 - Argumentative Structure In Octavius Of Minucius Felix: The Role Of The Thesis And The “Status Quaestionis” In The Development Of The Structure



1. Work and Author

Minucius Felix, the author of “*Octavius*”, is among the clearest and most original voices of Christian literature. A lawyer by profession, he was of African origins and lived and worked in Rome at the end of the second century. He was a contemporary of Tertullianus, but, unlike him, he is not in favour of an abrupt break with the classical tradition and prefers the ground of philosophical dispute. His literary work is the only one of the apologetical Latin literature in dialogue form. The dialogue takes place on the beach of Ostia and it involves three characters: the pagan Caecilius, the Christian Octavius and Minucius himself. Octavius reproaches Caecilius for worshipping a statue of the god *Serapis* and Caecilius suggests explaining their own reasons in support of their religious models, naming Minucius judge of the controversy. After the two speeches, however, the one made by Caecilius against Christianity and the other by Octavius in favour of Christianity, there is no need to come to a final judgment because Caecilius admits defeat. Minucius, with his dialogue, shows he is firmly convinced he is able to interact with his interlocutor, provided that they are both guided by reason and honesty. Minucius shows his argumentative intelligence not only in the tones he uses but also in the interweaving of the literary and philosophical references proposed by Octavius in his confutation of the pagan positions and consequent demonstration of the rationality of Christianity.

Since his work's addressees are the learned pagans, the literary and philosophical sources he considers belong to the classical tradition, in particular to Cicero and Seneca, thus avoiding taking the Bible as the direct source of reference and authority. Minucius prefers emphasizing the differences in the continuity: "*Octavius*", in fact, doesn't mark the end of the classical world and the passage to Christianity on the line of an abrupt break with it, as proposed by Tertullianus, but on the acceptance, as common ground to share with the other, of the noblest principles of the Greek-Latin philosophical culture. In the cultural project of Minucius, there is no space for extreme radical positions; instead, features such as the search of coherence, the pursuit of knowledge and the fulfillment of the universal values of the "*virtus*" are central.

2. Methodology

The aim of this analysis is to investigate the relationship between the thesis, the structure and the nature of the arguments, trying to see how the thesis can produce and direct the structure and the phase of *inventio*. The disposition of the macrosequences of the arguments in support of the theses has been read and represented with the modalities of subordinative or coordinative argumentation (Eemeren, F.H. van, Grootendorst, R., & Snoeck Henkemans, A. F. 2002), while the evaluation of the arguments has been conducted through the classical topic. The two theses have been considered as the main generators of the monologues and they have been analyzed inside the hermeneutic categories of *status qualitatis* (*Inst. Or. III, 6, 41-42; VII, 4, 2-3*) and *kairós*.

To study a thesis inside the *status qualitatis* means considering the thesis according to *vis, natura, genus*. With *vis* I have intended to point out the direction imposed by the thesis in the: a) generation of arguments, b) generation of structure, c) generation of linguistic modalities pertinent to the proposed cultural model.

With the term *natura* inside the *status qualitatis* I have intended to point out the conceptual models of Right and Useful, that inform the thesis.

With the Greek concept of *kairós* we can philosophically understand the situational context, the balance between two opposing forces. I have intended *kairós*, in this proposal of analysis, as the relationship model between the speaker's *Weltanschauung* and the expectation horizon of the audience.

3. Structure of Caecilius's discourse

Since this work is constituted by two monologues, two diagrams have been worked out, one for each. First, the diagram related to the *sermo* of Caecilius will be analyzed. The reconstruction of Caecilius's discourse in defense of his own standpoint (covering chapters V-XIII) has been conducted: a) identifying in each chapter of the work the functional unities which bring sense, b) grouping the chapters into wider sections (or blocks) each aimed at carrying out one of the communicative subprojects, according to which the general project of the text is articulated. This, in Caecilius's discourse, is shown in three moments, following a three phase organization.

The two polar moments of defense and accusation are followed by the moment of the composition in the attenuated conclusion (*quamquam*). Every phase is aimed at embodying a subproject: in phase A (*pars construens*) Caecilius claims it is advisable to continue accepting the doctrine received by the ancestors, which is proposed as the best theological paradigm, in phase B (*pars destruens*) the orator attacks pagan rites and beliefs in an attempt to demolish their credibility as a valid alternative to his own proposal, in phase C (*peroratio*) conclusion, the arguments put forward in the Premise and Thesis are proposed again, though attenuated (*quamquam*). The second section B is divided internally into B', where the Christian behaviours are considered cruel and irrational and B'', where the cosmological and metaphysical aspects of the Christian doctrine are considered groundless. In summary follows the content of the functional blocks: a) in chapters VI-VII Caecilius underlines the advisability of preserving the traditional *religio*, as the institution of the sacred rites has a motivated fundament and the traditional polytheistic religion has social utility, b) in chapters VIII-XII, in a derisive tone, accusations are made first to the Christians, defined as audacious, disrespectful and vulgar (VIII), then to their rites (IX), their God (X), their beliefs around conflagration, resurrection, final judgment (XI) and eternal life (XII), c) in chapter XIII, epilogue of Caecilius's speech, the adoption of the system of doubt is proposed as the only reasonable attitude to deal with metaphysical problems. Once again, the image of the Christians as audacious and rash is presented and, in the conclusion, the arguments are drawn *ex auctoritate* from the academic philosophical tradition.

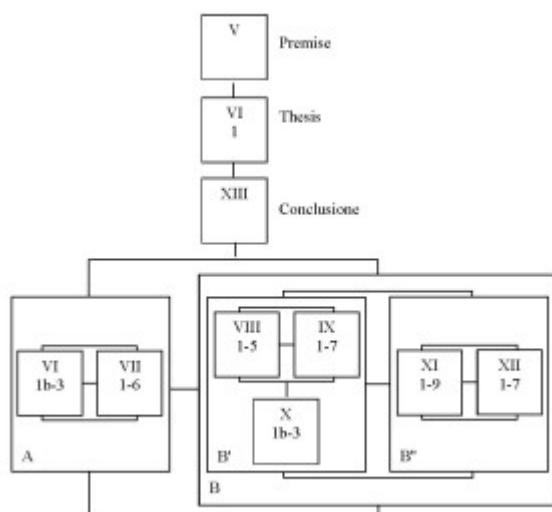
The general disposition of the proofs follows the Nestorian order with the strongest arguments in the first and last sections, distributing the weaker ones and gathering them together in the middle. In fact, in the chapters included in

group B, the arguments against the Christians are often introduced by terms like *fama*, *audio*, *alii dicunt*, *fabula*, *obscuritas*: arguments of this species taken one by one, have a low persuasive potential. In the initial chapters of block A and in the conclusion, the proofs drawn from the authority of the ancient texts and from the Socratic philosophical tradition represent, in the beliefs of the orator, the arguments with the greatest weight.

The central structure of the discourse in two blocks (A and B) and the coordination between them spring, in the first instance, from the nature of the thesis, presented by the orator according to the comparative *status qualitatis*, that requires the comparison of the two philosophical models. The functional blocks A and B work together in order to support the thesis, every section responds to the thesis requirement: section A aims at proving how venerable and advantageous/useful (*venerabilius ac melius*) the traditional model is, section B proves that choosing Christianity as an alternative to the traditional *religio* is an unreasonable choice. From a dialogical point of view, section B adds complementary arguments supporting the thesis and it tries to prevent attacks on the arguments of *pars construens* (section A).

Structure of Caecilius's discourse.

Structure of Caecilius's discourse.



4. Difference of opinion.

The difference of opinion springs from the different points of view of the two debaters around the more correct and useful philosophical/religious model. It is mixed because different standpoints are adopted by the respective orators, who alternately in their discourses, play the roles of protagonist of their own thesis

and antagonist of the other's thesis (Eemeren, F.H. van, Grootendorst, R., & Snoeck Henkemans, A. F. 2002).

Question: what kind of life is better? (V, 1)

Caecilius Premise: everything in human matters is doubtful and uncertain. (V, 13)

Thesis: to receive the teachings of the ancestors is much more venerable and useful. (VI, 1)

Octavius Premise: I will convince you and I will show how false your opinions are through the confirmed and approved truth. (XVI, 4)

Thesis: accepting Christianity is more reasonable.

5. Analysis of the thesis

The thesis present in VI, 1 springs from the semantic content expressed in V, 13, of which it represents a *res adiuncta* (*de diff. topicis 1200B, 1200C*). In syllogistic terms, the thesis represents the unnecessary conclusion of a hypothetical enthymema having as premise V, 13b.

HOW MUCH MORE VENERABLE AND BETTER IT IS, TO RECEIVE THE TEACHING OF ANCESTORS. (VI, 1)

Before proceeding with the analysis, the thesis will be reduced and simplified in order to make the work easier. The textual segments which contain the leading thought of the orator can be identified in the sentence *quanto venerabilius ac melius antistetem veritatis maiorum excipere disciplinam*, which results in a thesis made up of two coordinate elements. The other eliminated indications can semantically be brought back into the two isolated statements.

This thesis, according to the Ciceronian model (*Top. § 81*), belongs to the *genus cognitionis* subpartition *qualitas comparativa de maiore ad minus*. Including the thesis in the *genus cognitionis* corresponds to the orator's wish to consider the action of choosing the theological model as a result of a cognitive process. The protagonist intends to involve the addressees in a work leading to investigate the philosophical fields of physics and ethics.

The comparative *status qualitatis* inside which the thesis has been interpreted is linguistically determined both by a morphological level, through the comparative forms *venerabilius ac melius* which let us understand how to contrast two philosophical models, and by the semantic values of the two terms that place them in the word fields of *honestum/honest*, *iustum/right* and *usefulness*, belonging to the field of interest of the *status qualitatis*.

The *genus causae*, at which such a strategy of defense of the standpoint aims, is comparable to the *genus deliberativum*, concerning the matters related to *dignitas, honestum, utile* and characterized by the comparison and search for the greatest advantage. If we consider that in the concept of *honestum* there is the idea of *pietas* and that persuasion requires arousing emotion, we will understand how also the use of *indignatio* and of the *genus dicendi turpe*, in the following chapters (VIII, IX), is the fulfillment of the implications of the depth structure of thesis. The development of the discourse inside the model of the *genus deliberativum* also includes “the mind of those who have to decide must be touched not only by the nature of honesty, but by glory, by public opinion, and, if this vanity achieves poor results, by the demonstration of the advantages that they take from such things, or, on the other hand, of the possible risks, if they act in a different way” (*Quint. Inst. Or. III, 8, 39*).

The thesis presents a comparative elliptic form, containing implicitly the second term of comparison introduced by *quam*. Such a structured thesis gives instructions to the text, requiring from it the fulfillment of the two requests present in a comparative thesis: the acceptance of the validity of the traditional religious model and the demonstration of the inadvisability of accepting Christianity as an alternative to it. The features of the language of the presence, the defense of the tradition and its greatness, recall the *genus dicendi grave* as conceptual model, although the comparative forms amplified by *how much more* and the presence of the adjective *melius*/better in ascending position in comparison to *venerabilius* evoke the concept of *prépon* and the neutral *genus dicendi (mesótes)*, which includes in itself the whole sentence. The *genus mesótes* will be the distinctive stylistic and philosophical mark of Caecilius’s *sermo*.

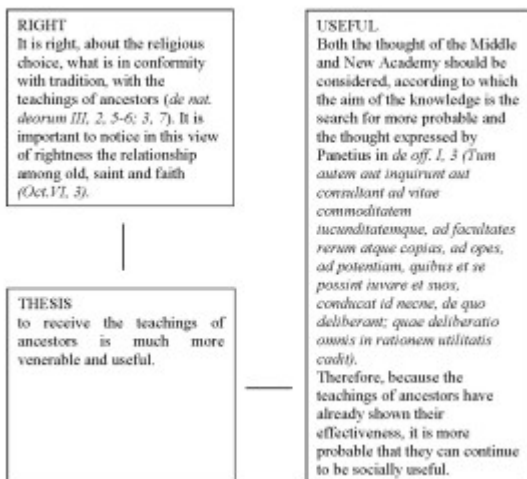
Therefore, the thesis *morphé* of the theological model will give information to the text also in relation to the *genus dicendi*: a weak theological model that does not imply a deep investigation into the religious dimension, characterized by the adherence to the tradition, the consideration of the advantages of such adherence and the social functions of *religio*.

Now a synoptical table of the analysis of the thesis is provided. The analysis is based on the categories of *status* and *kairós*:

<p>Short definition of <i>disciplina maiorum</i></p>	<p>The set of teachings, customs, lifestyle of the ancestors. The respect of this was part of the <i>pietas</i>, and was felt as a guarantee of greatness, stability, as a pleasant thing to the gods.</p>
<p><i>Natura</i></p>	<p>Inside the comparative <i>qualitas</i>, the thesis implies that the discipline of the ancestors has been regarded ethically more honest, fairer and more useful than Christianity. The thesis springs from:- a model of the world founded upon a probabilistic concept of truth, on the respect for the ancestors, the country, the gods as guarantee of social unity.- Theological-epistemological, relativistic weak model, based on the religion and social utility connection.- An hermeneutic criterion, for the evaluation of history, based on the idea of the advantage achieved.</p>
<p><i>Kairós</i></p>	<p>- The thought expressed by the thesis is judged as endowed with a greater degree of probability in that communicative context.- The thesis conforms to common sense, to tradition; it is endowed with strong initial credibility for the social classes of academic, philosophical culture.- It demands of the addressee an immediate response to the proposed arguments.</p>

<p><i>Vis</i></p>	<p>The thesis implies:- the advisability of continuing to live according to the customs of the ancestors. Generation of matters founded upon the philosophical pragmatic model.- A model of <i>elocutio</i> founded upon the <i>genus dicendi mesótes</i>.- <i>Genus tenue, indignatio</i> for forms of thought contrary to the tradition.- The choice of the locus of comparison as a result of the comparative thesis.- A polar structure where two visions of the world are contrasted.</p>
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Concepts of Right and Useful in Caecilius



6. Overview of arguments

While carrying out a work of analysis and synthesis on the whole discourse of Caecilius, it can be noticed that in order to defend the thesis in the *construens* section, the pagan orator puts forward three arguments: *potestas meruerunt, vetustas, utile*. Every argument is supported by the others with the aim of strengthening its idea. The three arguments are introduced as inferred from reality, from observation, therefore endowed with incontestable evidence.

In *potestas meruerunt*, the reflections on the fortune of Rome, on the historical events that have characterized its development and brought it to its current greatness are blended. The adoption of the traditional religious model and the fidelity to it is at the basis of the extension of Rome's authority all over the world.

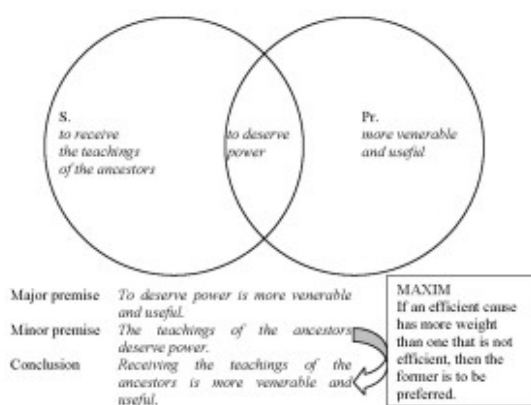
In *vetustas*, it is underlined how the religious tradition had been handed down without interruption for so many centuries and in the ancient world it was the custom to attribute the cults the same degree of holiness as their ancientness.

In *utile* there are observations related to the social function of the prophets, to their ability to predict the future, to give hope to the afflicted, to heal the sick. The arguments put forward by the two orators will be analyzed and valued with the tools offered by Cicero in the *Topica* and by Boethius. The theoretical starting points are the definitions of *argumentum* provided by Cicero as *ratio quae rei dubiae facit fidem* (Top. 2, 8) and by Boethius as *medietatis inventio* (In Cic. Top. 1051A).

The process of finding an argument, according to Boethius, consists essentially of finding an intermediate or middle term by means of which two terms whose connection is in doubt may be connected affirmatively. So, in our case, if in the definition of *to receive the teachings of ancestors* there is a semantic aspect that can be considered venerable and useful, then we can say that S. and Pr. can be connected. The middle term represents in a syllogism the substance or points out an aspect in relationship with the substance (Arist. An. Post. II, 11, 94a 20). *To deserve power* may be considered as a consequence of *to receive the teachings of ancestors*.

The *res dubia* is represented by the thesis *quanto venerabilius ac melius disciplinam maiorum excipere*, the argument (*argumentum*) object of the analysis is *excipere disciplinam maiorum meruit potestatem*.

Separating the thesis in Subject and Predicate we obtain the following syllogism:



Separating the thesis in Subject and Predicate

The major premise represents the *endoxon* and finds its justification in the traditional hermeneutic model that considers both the greatness of Rome a gift of the gods, whose only compliance has made it possible to have the power, and all those excellent things worthy of veneration (Cic. *de nat.deorum* I, 17, 45 and III, 2, 5-6; 3, 7).

The passage from the minor premise to the conclusion is guaranteed by the maxim inferred from the locus of comparison *per vim* (Cic. *Top.* §70).

Example of synoptical table of argument analysis:

Argument	<i>the teachings of the ancestors deserve power</i>
Degree of credibility	Sentence in keeping with the mental context of the Roman learned classes, endowed with a high degree of initial credibility towards the addressees. It is founded upon the model of evaluation of Roman history, spread in wide strata of society. The dialogue with the addressees is based on the statement underlining the connection politics-politics-favour of the gods.
Locus	In the comparative locus <i>per vim</i> two realities are compared from the perspective of the ability to produce advantages. Caecilius invites the addressees to consider the advantages enjoyed by the Romans in comparison to the Christians; it is implied that they are the consequence of <i>excipere disciplinam minorum</i> .

Example of synoptical table of argument analysis

7. Macrostructure of the discourse of Octavius

The *sermo* of Octavius, to the level of *dispositio*, is realized in three following moments conforming itself to the *dispositio* of the accusation. In each section the arguments presented by the adversary in the correspondent functional blocks are analyzed and confuted. Chapters XVI-XIX represent the premise and attack the premises of Caecilius in chap. V. Chapters XX-XXVII confute the positions of Caecilius sustained in VI,VII. Chapters XXVIII-XXXVIII, 4 disprove the contained accusations in block B. Chapter XXXVIII, from 5 to 7 act as a conclusion. In his premise Octavius responds to the premise of probabilistic nature of Caecilius with the sentence of methodological nature “... *convincam et redarguam, ..., quae dicta sunt, a veritate confirmata probataque*” (XVI, 4), and he continues attacking and disproving Caecilius’s arguments to support his general premise. The aim of the section consists of making the addressees acquire the idea that the harmony of the universe is the fruit of a rational mind and that instead of chance there is providence.

In block A he disproves the *pars construens* of Caecilius attacking and showing

the rational appeals of paganism unfounded, alleging as proofs the easiness in believing in the *fabulae*, the irrationality, the violence and the obscenity of the cults, the sacrilegious attitude towards the divinities.

In block B he disproves the accusations of Caecilius about the customs and the theological beliefs of the Christians. This action is developed into three different points:

a) denying the accusation (*status coniecturae*), turning this against the adversary showing the pagan irrationality (*translatio criminis*) and maintaining the difference and superiority of the Christians (XXIX).

Through the *percontatio*, rephrasing the accusations addressed in the form of questions, followed by immediate answers that show the absurdity of the accusations (XXII,1).>

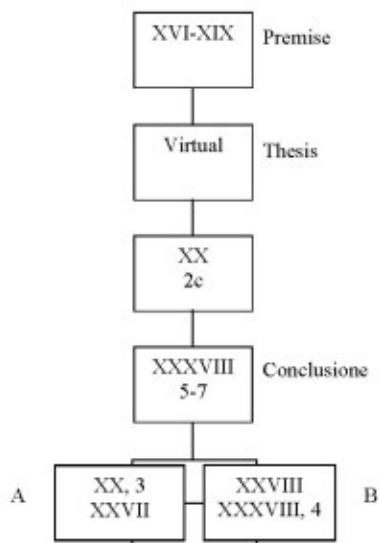
c) With motivation of the beliefs through the authority of the philosophical and historical tradition which, well investigated, confirms the Christian affirmations (XIX).

Chapter XXXVIII from paragraph 5 acts as *peroratio* introduced by a conjunction as *proinde*. It is not presented with an attenuation in the tone like the pagan one; it introduces a hard judgment on the sceptic and academic philosophical school claiming for the Christians the true wisdom (XXXVIII, 6), the true attainment of virtue.

The disposition of the *res* in two blocks responds both to the choice of Octavius to disprove the affirmations of Caecilius in a punctual way, section by section, and to the nature of the thesis structured on the comparative *status qualitatis*. Implicitly this demands that the reasons for which something is better than another are explained (useful for reflection on the concept of comparison, even though it is treated inside the *qualitas iuridicialis*, is the analysis of Cicero in *de inv. 2*, 74-78).

Therefore, to a constructive phase a side by side destructive phase is followed. In the case of the discourse of Octavius, initially we meet the destructive phase of the reasons alleged by Caecilius to motivate the choice of the tradition, then we find the constructive phase where he suggests the reasons for the choice of the alternative. To satisfy the thesis requirements the two blocks must be considered coordinated: each one of these has a task. In A Octavius attacks the *pars construens* of Caecilius, in B, disproving the accusations of Caecilius, he suggests for contrast the only rational choice. Section B is to be considered coordinated in an additive way to the preceding one. It adds further proofs against paganism

affirming Christianity through the *correctio* (XXIX).



Structure of Octavius's discourse

8. Analysis of the thesis

The formulation of the standpoint is reconstructed at a conceptual level starting from: a) the rational concept of unique God as principle guide on the earth and in the heaven (XVIII, 6), b) word fields having as matrix terms rationality (XXXV, 5, XXXVIII, 6) and reasoned choice (XXXII, 2; XXXIV, 5; XXXII, 3), c) ethical values alleged in the phase of *correctio* (*est vobis licitum... non nobis*), d) inter-textual reasons i.e. from the thesis expressed by other former apologists (see Justin I, 2, 1).

The comparative nature of the thesis can be deduced by XXXV, 5 and XXXVIII, 6 (nos... sed.). As criterion of choice the concepts of venerability and usefulness are contrasted, in the Christian thesis, with the concept of reason.

TO ACCEPT CHRISTIANITY IS MORE REASONABLE

Proposing the semantic analysis of the thesis within *status* and *kairós* we will have:

<p>Short definition of Christianity</p>	<p>Monotheistic religion founded on the person and on the preaching of Jesus Christ. It implies a new vision of God, a new relationship between God and men, a deep faith in Christ's teachings.</p>
<p><i>Natura</i></p>	<p>The semantic direction imposed by the <i>status</i> implies that the thesis must be interpreted on an ethical basis, according to the categories of honesty, justice and utility. The thesis springs from:- a strong, pervasive concept of knowledge.- a strong theological model founded upon the certainty of the existence of the truth.- A world governed by a rational mind.</p>
<p><i>Kairós</i></p>	<p>- Thesis which is estranged from the common sense of the Roman learned classes, has the taste of the intellectual challenge.- It (<i>kairós</i>) is founded upon the trust that the addressees are prepared to interact and to activate a cognitive process together with the proponent.- It points at a new criterion of harmony not considered on the basis of a greater degree of probability of a thought in that precise moment, but founded upon the search for a single provable truth.</p>

<i>Vis</i>	<p>The thesis implies:- <i>Genus dicendi grave</i>, to express the conviction of the existence of the truth.- Word fields of rationality, of order, of decency.- An absence of dichotomy between knowledge and practice.- The locus for comparison as a result of the comparative thesis.</p> <p>- A structure built on the comparison of two antithetical philosophical models.</p> <p>- A high degree of commitment for the orator in showing the validity of his own thesis.</p>
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Concepts of Right and Useful in Octavius



9. Overview of arguments

Octavius, in order to support his standpoint in block A, puts forward three arguments against the *pars construens* of Caecilius: *improvidi* (20, 5), *ridiculi* (22, 8 and 23, 2), *sacrilegi* (25, 7).

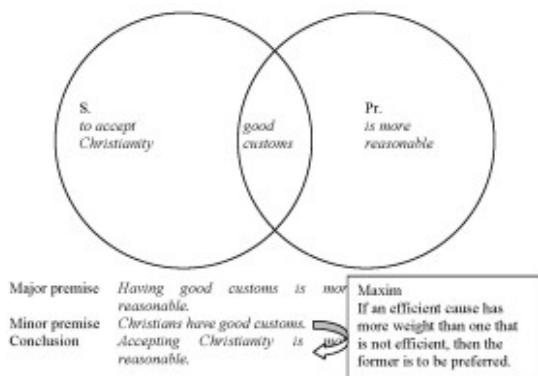
To *improvidi* are related the following ideas: excessive and rough simplicity in believing fanciful narrations, the non perfect knowledge of the nature of the divinity, the abandonment to other people's mistake rather than conducting personal searches to authentically know and to have experience of the divine. The Christian aspires to a religiousness that is a result of personal choice and conviction and the intimate knowledge of God, through a direct relationship with him; human essence and divine essence in communication without mediations of idols and complex rites.

In *ridiculus*, the reflections on pagan rites converge: many and often in contrast among themselves, violent, deprived of rationality, honesty and decorum (23, 4).

In *sacrilegi*, there are considerations on the sacrilegious nature of enslaving the divinities of the subjugated people and then adoring them. In reality this means insulting and mocking the divinities. The observations on the real use of the

temples as places to deal with rapists and adulterers confirm the use of the term *sacrilegus* for the pagans.

In phase B, where the ethical superiority of the Christians is affirmed and the consequent reasonableness of accepting Christianity, he brings forward as proofs the correctness (being correct) (XXXII, 3), God’s knowledge, honesty, modesty, reservation (XXXVII, 11). We are able to summarize all these values in the *iunctura boni mores* (good customs)



iunctura boni mores (good customs)

In the definition of Christianity, we find sober, longing for the truth, ethically correct. The *endoxon* is tied up to the classical concept of order, decency, measure in behaviour as an aspect of the reasonable quality of human nature (*Cic. de off. I, 4; 5; 6*).

Argument	<i>Christians have good customs</i>
Degree of credibility	Sentence with a low degree of initial credibility, in dissonance with the concept of Roman pietas. Actually endowed with strong dialogic power it suggests good customs as a meter of evaluation, it is brought back into the idea of the classical <i>honestum</i> . It creates a bridge with the other at the moment it differentiates from the other, evoking deep common and rational conceptual structures. The argument is the mediation not only between the determinations of the thesis but between the two civilizations.
Locus	Octavius, through the comparative <i>locus per vim</i> , invites us to consider the reasonableness of the choice of the Christian ethical model on the basis of the coherence of the demonstrations with the rational ethical principles.

10. Comparison

The arguments in favour of the Christians, in the *pars construens* of the discourse of Octavius in block B, belong to the semantics of the rational choice; they concern concepts of rationality (XXXV, 5,

XXXVIII, 6), reasoned decision (XXXII, 2), philosophical validity of the choice (XXXIV, 5), (XXXII, 3).

The model of the Christian God involves an ordered and comprehensible vision of the world and a congruence between cult and theology. It doesn’t contemplate the dissension between theory and practice, it involves the way of living according to wisdom, knowing the truth without falling in fault, according to

temperance, pursuing order and decency. If the process of the final conversion of Caecilius to Christianity can take place, this is due to the fact that the pagan intellectual has recognized that if he intends to live really according to the purest values of the classical civilization, he must admit that in Christianity these find true fulfillment. The strength of Christianity resides in rationality and in coherence (XXVII, 5).

In *Octavius* the idea of a provable existing truth represents a reason of separation and union/agreement with the other. The discourse of the Christian, at the moment it enacts an incompatible difference with the other, builds a new dialogue, founded upon a different basis. In the *pars destruens* the middle terms chosen by Octavius in order to demolish the choice of paganism are not conciliatory and they represent a challenge for the other. They ask for a restructuring of the evaluation model of reality, a deep adhesion on a rational basis of the values of truth, of honesty, of the right. They meet the other on the ground of the reflection and the possibility of rediscovering the meaning of knowledge. They do not seek an easy point of meeting. They enact differences but do not destroy the possibility of a dialogue. Octavius appeals to the sense of justice and truth that has to animate every true philosopher; whoever wants the truth, has to look for the rationality of justice and ethics, has to rise above tradition, pragmatism, gnoseological relativism.

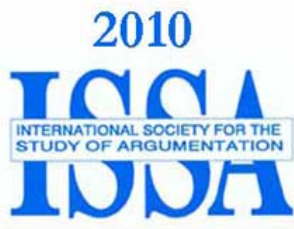
The choice of aggressive middle terms imposes a skimming, choosing who really wants to interact risking being convinced, who really wants to argue. The middle terms are blades that divide the incongruities and they demand a dialogue between men that rationally seek the truth. The middle terms of Caecilius in the *pars construens* recall the values of tradition, of social utility, of the cultural system and they express the belief that the political greatness of Rome is the result of the acceptance of that tradition. In the *pars destruens* the arguments are not founded upon real knowledge of the other, but they represent the acceptance of the widespread voices among the population. It is important to notice how the *endoxa* of Octavius's reasoning belongs to the classical Weltanschauung, and the process of persuasion moves towards the breakup with the immediate acceptance of the tradition and towards the recovery of the universal value of reason.

We are all participants of reason and from this every kind of honesty and decorum is drawn. Octavius, in the field of ethics, appeals to the rational action according to knowledge and wisdom.

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ISSA Proceedings 2010 - Argumentation In Tourism: An Analysis Of User-Generated- Contents About Lugano (Switzerland)



1. Argumentation in the (e)tourism context

Tourism is an experience which needs to be communicated (Inversini & Cantoni 2009). In fact, both if it was wonderful or terrible, a travel experience is usually shared with others; telling it, discussing it, comparing it with previous experiences is nearly a need for someone who just came back from a journey.

Tourism is an experience of freedom, since it gives the tourist the opportunity to decide where, how and with whom to spend her free-time, fulfilling those desires which are usually subordinated to the duties and rules of the daily life.

Many elements of a journey contribute to shape a unique experience, but each journey is usually fixed in the memory because of one or a few more aspects, which makes it special and different from all the others. Such aspect represents the dominant value that a certain travel experience detains for the tourist. The touristic value of the journey one of the authors made in Rome some years ago, for instance, resides in the capacity the city has to evoke ancient civilizations. Every corner in Rome speaks of the glorious Roman empire, and reveals the roots of the European culture. This aspect constitutes the value that the author ascribes to her tourism experience in Rome and, thus, to the destination itself.

When designing a travel experience, the decision of the destination is rarely casual; the most of the times it is the subject of discussions and careful considerations, which are lead by material circumstances, as well as by expectations about the destination and the experience one would like to live, and by a constellation of criteria bound to the lifestyle, values and interests. Such expectations and constellation of criteria have a strong influence on the opinion one gives of her tourism experience and the destination she visited. The tale of a tourism experience, actually, comes out to be a highly argumentative text, where the confrontation and discussion of different opinions with the self or the others brings one to form a reasoned opinion on the destination she visited and the time she spent.

If one considers tourism - i.e. tourism related communication - as a specific context of interaction, she can hypothesize that the argumentative discourse which takes place therein follows proper dynamics and rules. It seems therefore meaningful to ask how argumentation is molded on this kind of context, that is how an opinion about a tourism experience arises and how such opinion is put

forward and defended. In argumentative terms it means, for instance, to look for recurring reasoning schemes or structures, which should help to determine the argumentative quality of the text.

The paper pursues a high-level objective, that is to start an investigation of the argumentative significance of a specific context of interaction, that is constituted by tourism experience and the respective communication. At a lower-level, the aim is to verify the hypothesis according to which the opinion about a tourism experience at a certain destination may be said to depend, principally, by the recognition of a dominant touristic value for that destination.

In order to pursue these two goals, a study has been developed which applied different tools of argument analysis to a corpus of texts reporting the tales of tourists on their experience at a certain destination; the texts were retrieved from the so called web 2.0.

In the last years, in fact, the way tourism-related information is distributed and accessed has been deeply reshaped by the Internet. Xiang and Gretzel (2009) explain that the predominant role is played both by social media websites, which are becoming increasingly popular in online travelers' use of the Internet, and by search opportunities given by the net, which allow to bear one's way in the huge amount of information available. A number of studies confirm the growing importance of social media in the online tourism domain, especially for travel planning (Gretzel 2006; Pan, MacLaurin & Crofts 2007; Inversini, Cantoni & Buhalis 2009). Social media allow users to directly publish contents and, on the other side, to enjoy genuine contents published by other users, this way becoming a valuable source of information besides being a means of social interaction.

Tourism related eWord-of-mouth represents people's wish to share their travel experiences, recommending a destination or complaining about it. Contents published and enjoyed online by tourists on social networks are known as User Generated Contents (UGC), and can equate electronic word-of-mouth. Tourism-related UGC usually reflect the experience of the tourist at specific destinations, her evaluations and reactions about the experience as well as about the destination itself. Prospective tourists use the net for gathering the necessary information to take decisions about the many different aspects of the journey; they trust more contents generated by other tourists - like online reviews or forum posts - than official sources, because they are considered more credible, genuine and not business-driven (Dwyer 2007).

The web allowed the authors to collect the texts for the analysis easily and quickly; it is not among the aims of this paper to discuss the features that argumentation assumes in the digital space. Web 2.0 only worked as a source for gathering convenient types of texts for pursuing the goals of the paper. The following paragraphs sets the method of analysis and describes the steps of the pilot study, which was developed both for observing argumentative interventions in the context of tourism, and for verifying the hypothesis that a dominant touristic value can be identified for a certain destination.

2. Giving opinions on a tourism experience

Lugano has been chosen as destination of attention, due to its limited dimensions and because it is the authors' place of work. Lugano is, in fact, a small city in the Southern part of Switzerland, which counts only about 30.000 inhabitants, but has all the services and facilities of a big city. It is the biggest touristic destination in Ticino - the Italian-speaking canton of Switzerland. It sets at the foothills of the Alps, on the river of lake Ceresio - best known as lake Lugano. It is characterized by a Mediterranean vegetation, due to the temperate climate. It is the third financial district in Switzerland, hosting a number of banks and financial institutes; business and academic tourism has developed in the last few years also thanks to the congress center and the University.

UGC about Lugano have been collected on some of the most common Web 2.0 websites for tourism, including texts in English and Italian. Only UGC containing comments or reviews about the destination were considered, and all those commenting or reviewing services or attractions, like hotels, transports, cultural events, etc. were ignored. Texts were then filtered a second time to sort out only argumentatively relevant ones. The *corpus* of analysis was made up of two kinds of texts: forum posts and reviews. While the former ones are usually short dialogical moves in an asynchronous discussion, the latter are longer monographic texts. Online discussion fora are considered a new type of communicative situation, characterized by the absence of most of the contextual features of face-to-face conversation. They present a considerable dialectical variability, in that the discussion usually moves from a focus on a given topic towards a focus on the interaction and the participants, topic tends to decay, turn-taking is dislocated and several conversations are jumbled together (Lewis 2005). Tourism-related fora are usually the place where to ask for specific and quick pieces of information or tips to organize a trip. Reviews, on the other side, can be

compared to travel diaries, reporting the experience of the tourist on a destination as well as his/her comments and opinions. They are of help to get an overview of the destination, to size expectations according to unofficial voices who are, nonetheless, authoritative and trustworthy thanks to their personal experience gained on the place. Reviews are generally more argumentative, and argumentation develops in a more articulated fashion than in forum posts. Considered the organization process of a trip, if travel reviews support the first phase, that is the deliberation about the place to visit, travel fora are more useful to decide about specific aspects of the trip, because one can directly ask to the virtual community constituted by those who already visited the destination.

The selection process resulted in a corpus of eighty-two texts, constituted by:

- 10 reviews from the Lugano Travel Guide of www.tripadvisor.com
- 47 posts in the Lugano Travel Forum of www.tripadvisor.com (out of over 1000 posts divided in 335 threads)
- 10 reviews from www.igougo.com
- 2 reviews from www.dooyoo.com
- 11 reviews from www.virtualtourist.com
- 2 reviews from www.bootsnall.com.

The selection has been made in July 2010.

The corpus was firstly carefully read, looking for frequent occurrences of arguments supporting Lugano as a destination worth to be visited (standpoint). The hypothesis leading the study implied that only positive opinions were considered; if a dominant recognized touristic value for a destination exists, in fact, it should be identified among those aspects which positively impressed the tourist.

From the analysis of the corpus they emerged three main types of argument supporting the standpoint.

1) The 'nature' argument focuses on the morphological aspects of Lugano, praising its location, often defined as a nestle in the foothills of the mountains, the scenic views of the Alps tumbling down to the lake, the small fishing villages around the city, the romantic and peaceful atmosphere. This argument is often expressed with epithets like: "a little Paradise on Earth", "the gem of Southern Switzerland", "a postcard".

2) The 'confidence' argument exploits the stereotype according to which

Switzerland is well-organized, punctual, efficient, respectful of the rules, clean, tidy: these aspects contribute to create a sense of confidence, since nothing dangerous or unexpected can happen if everything remains at its place. In the forum posts it is said that “you cannot ‘not get a train’, because if you miss one, there will be the next one an hour later”, that “i servizi, e non è cosa da poco, funzionano tutti bene”**[i]**; in the reviews they argue that there is “a simple bus system and (...) virtually no crime”, that “if you are walking down the street, the second you step off the curb, cars stop to cross the street”. The predictability of the city makes it “child friendly”, that is, in its turn, an argument for families with children to visit Lugano.

3) The ‘culture-mix’ argument states that Lugano is a combination of the best traits of the Italian and the Swiss culture. This argument seems to particularly strike Lugano visitors: it is frequently reported and extensively argued.

The ‘nature’ argument occurs almost in every text, usually in addition to other arguments, to make the argumentation stronger. Since it is based on the ontological (i.e. morphological) aspects of the destination, it may be taken as a first necessary move to convince about its touristic value. In fact, the appearance is the aspect of a destination which immediately strikes a visitor. If this aspect is not valuable - i.e. because the destination cannot naturally boast a beautiful location - then, to support its touristic value one should concentrate on other aspects, which should constitute a sufficient defense. Lugano is naturally set in a charming location, so that the “nature” argument can be exploited to highlight its touristic value. Nevertheless, it is not a sufficient argument, since a tourist may like to find more than just natural attractions. This argument, in fact, is used as a sufficient defense of the standpoint only when arguing for a selected audience, that is “nature lovers” or “outdoorsy types”. In these cases the writers *strategically maneuver* according to a specific *audience demand*. “Strategic maneuvering refers to the efforts arguers make in argumentative discourse to reconcile aiming for rhetorical effectiveness with maintaining dialectical standards of reasonableness” (van Eemeren & Houtlosser 2006, p. 383). Strategic maneuvering manifests itself in the choice of certain arguments from a paradigm of similar arguments, for framing the discourse in front of a certain audience, making use of certain presentational devices (for a detailed explanation see van Eemeren & Houtlosser 2007, 2009).

There are no solitary occurrences of the ‘confidence’ argument in the corpus. It is

always put forward in combination with other arguments, this way constituting a *coordinatively compound argumentation* (van Eemeren & Grootendorst 1982). Lugano's reputation of an efficient and well-organized place does not suffice to support its touristic value.

From a rhetorical point of view, the 'culture-mix' argument opens in many cases the text, and it is proposed as a sufficient argument to support the standpoint, or it functions as the focus around which the text is developed. It is manifest, here, the use of strategic maneuvering, which takes place at the level of the *topical potential*, that is in the choice of arguments from those available to support the standpoint, according to the (actual features of the) destination considered (van Eemeren and Houtlosser, 2009).

Thus, the 'culture-mix' argument has been selected for a deeper analysis. It has been considered in all its occurrences, the most complex of them have been analyzed and compared, in order to reconstruct its *internal inferential configuration*, that is the intertwining of the logical pattern of reasoning and the cultural and factual premises to which the argument is anchored. The aim was to verify how this argument supports the standpoint that Lugano is worth a short visit and what its strong and weak points are.

3. A Pragma-Dialectical reconstruction of touristic UGC

The reconstruction of argumentative moves containing the 'culture-mix' argument followed the Pragma-Dialectical model of a critical discussion, particularly the studies of van Eemeren and Grootendorst (1982) and F. Snoeck Henkemans (1997, 2001) concerning argumentation structure and indicators. The argumentative reconstruction of the texts aims at driving their evaluation as argumentative interventions, in that it includes ideally all aspects of meaning that are potentially relevant for assessing their dialectical consistency as well as their persuasive power.

Twenty-one occurrences of the 'culture-mix' argument have been counted in the corpus. Six representative occurrences will be here analyzed and discussed, in order to clearly define the meaning, the function and the structure of the argument.

Example (1) (from www.tripadvisor.com, Travel Forum, topic "*How many full days in Lugano?*", Nov 15, 2007, 8:28 PM):

About Lugano - I don't think that the mountains in the Ticino can compare with

the mountains in the Bernese Oberland or the Matterhorn, and if you don't expect them to, you won't be disappointed. What the Ticino has is a startlingly different vegetation and ambiance - lizards and chestnut trees in the mountain forests, banana palms and olive trees on the shore of Lake Lugano. I find this combination of alpine but Mediterranean, Swiss but Italian, fascinating, and if it interests you, then you will like the Ticino.

Lugano itself seems to divide visitors - some love it, some don't like it at all. I think some people don't expect it to be a city, and don't expect Switzerland to be so hot in the summer. (...) I could easily fill up 3 days in and around Lugano.

The argumentative structure of the extract is the following:

SP (1) - Lugano is worth a visit.

(1.1a - Lugano is in Ticino)

1.1b - If you don't expect the mountains in Ticino compare with the mountains in the Bernese Oberland or the Matterhorn you won't be disappointed

1.1c - Ticino has a startlingly different vegetation and ambiance (in comparison with the rest of Switzerland)

1.1c.1- Ticino is a combination of Alpine but Mediterranean, Swiss but Italian

1.1c.1.1a - Ticino has lizards and chestnut trees

1.1c.1.1b - Ticino has banana palms and olive trees

1.1d- Lugano has all the facilities of a city.

1.1e - (differently from the rest of Switzerland) Lugano is hot in the summer.

The post is an answer to the question opening the forum thread, that is "How many full-days [are worth spending] in Lugano?". The standpoint is expressed in the last proposition of the post extract and claims: "I could easily fill up 3 days in and around Lugano". It can be substituted with the standpoint that is assumed as the base for this investigation: "Lugano is worth a visit [of at least three full days]".

The standpoint is supported with a *complex argumentation*. The five arguments directly supporting the standpoint constitute a *cumulative coordinative argumentation*, since they have to be taken together in order to sufficiently defend the standpoint, and every new argument is added to strengthen the acceptability of the standpoint. The unexpressed argument "Lugano is in Ticino", is supported by a *complementary coordinatively argumentation*, according to which Ticino is worth a visit for its mountains but, above all, for its vegetation and

ambience. “What the Ticino has” is, here, an indicator for complementary arguments: the argument expressed in “I don’t think that the mountains in the Ticino can compare with the mountains in the Bernese Oberland or the Matterhorn, and if you don’t expect them to, you won’t be disappointed” is an attempt to defend the fact that Lugano is worth a visit because it is in Ticino, by highlighting one of the features of Ticino that make it worth a visit, that are its mountains. Nevertheless, the arguer anticipates that Ticino’s mountains probably would not win the competition if compared to the Bernese Oberland, and the argument would thus not be a sufficient support. Therefore, the author of the post adds a complementary argument, that is what has been previously called the ‘culture-mix’ argument. In the post, indeed, the argument “Ticino is a combination of Alpine but Mediterranean, Swiss but Italian” refers to the vegetation and ambience, rather than to the culture of the place. This combination gives the destination a special charm (it is *fascinating*). The indicator “but” suggests that the combination is to be interpreted as an integration rather than as a sum of different traits: Swiss and Italian traits cannot be divided, they are so well integrated that they cannot even be distinguished.

Example (2) (from www.dooyoo.com; “Italian Swiss-style”, Aug 14, 2000):

It seemed as if it would be a lovely place to spend a few days although not terribly lively. It is a little part of Italy, with the organization and efficiency of Switzerland. An odd, but somehow charming combination.

The argumentation put forward in the post can be reconstructed as follows:

SP (1) - (Lugano is a lovely place to spend a few days) Lugano is worth a visit

1.1a - The fact that Lugano is not terribly lively does not impact that much its touristic value

1.1b - It is an odd, but somehow charming combination of Italy and Switzerland.

1.1b.1a - (It is a little part of Italy =) Lugano shares the typical features of an Italian city

1.1b.1b - (with the organization and efficiency of Switzerland =) The organization and efficiency of Lugano are typical of Switzerland

(1.1b.1b.1 - Lugano is in Switzerland)

(1.1b.1b.1a - Italy is not organized nor efficient as Switzerland is)

(1.1b.1b.1b - Switzerland is organized and efficient)

The counter-argument according to which Lugano is not a lively place is acknowledged by the arguer to show that, even if it is true, it may be regarded as

insufficient for attacking the touristic value of the destination which relies, instead, in its “odd, but somehow charming combination”.**[ii]** The arguer knows well that Lugano is in Switzerland (the author previously writes that “It is on Lake Lugano, in the foothills of the Alps in the Italian-speaking canton of Ticino”), but describes it as “a little part of Italy” having some Swiss features, that are organization and efficiency. It is thus likely to interpret the “combination” as an inseparable integration of cultural traits: Lugano is Italy (it does not look like Italy!), unless for the efficiency and the organization, that are truly Swiss.

Example (3) (from www.igougo.com, “Lugano - The home of la dolce vita, Swiss style”, Nov 6, 2003):

One version of a well-known joke states that in heaven, among other things, the Italians are the cooks and everything is organized by the Swiss, and these criteria could also apply to Lugano. The lack of the English police, French lovers, and German mechanics also mentioned in the witticism possibly indicates that it is not quite paradise, but nevertheless, the combination of two sets of national traits is probably the single most appealing thing about the place.

The city has a picturesque backdrop featuring a lake and some mountains, which is obviously quite characteristic of Switzerland. In addition, the high level of efficiency and orderliness found throughout the country exists, but in combination with a less typical Mediterranean atmosphere. For example, sitting at outside café terraces is a popular activity with the stylish locals, as is dining in cozy restaurants such as *La Tinèra* that serve the fine Italian style regional cuisine.

The arguer makes use of a complex argumentation to support the (sub) standpoint that

SP (1) - The combination of two sets of national traits is probably the single most appealing thing about Lugano

then acknowledges the fact that

1.1a - The picturesque backdrop featuring a lake and some mountains is obviously quite characteristic of Switzerland

but implicitly considers it not a strong counter-argument if compared with the pro-argument

1.1b - The high level of efficiency and orderliness found throughout the country is combined with a less typical Mediterranean atmosphere

The Mediterranean atmosphere is exemplified by the fact that

1.1b.1a - sitting at outside café terraces is a popular activity with the stylish

locals

and that

1.1b.1b - dining in cozy restaurants that serve the fine Italian style regional cuisine is a popular activity

The 'culture-mix' argument is better expressed by the witticism opening the review. The structure of the argument is the following:

SP (1) - In Lugano there is a combination of the best of two sets of national traits

(1.1a - The best of Italy is the cuisine / Italians are the best cooks)

(1.1b - The best of Switzerland is the organization / Swiss people are the best managers)

1.1a.1 - In Paradise Italians are the cooks

1.1b.1 - In Paradise Swiss are the managers

(1.1.1.1 - Only the best is worth to be in Paradise)

The witticism works well only if one adds a premise, that has been left implicit because it was assumed to be known by the audience - it is, properly, an *endoxon* -, that only the best is worth to be in Paradise. The combined cultural traits of Lugano are, therefore, the best traits, and this argument is not one reason among the others to visit the city, but it is the most appealing reason, it represents Lugano's distinctive trait, that exceeds the expectations.

In the same vein of example (3), in examples (4), (5) and (6), the 'culture-mix' argument is rewarded as the very touristic value of Lugano. It is expressed through a coordinatively compound argumentation, made up of two cumulative arguments: one of them supporting the sub-standpoint that Lugano has the best cultural traits of Italy, and the other one supporting the similar standpoint for Swiss cultural traits.

Example (4) (from www.dooyoo.com; "Lugano - The home of la dolce vita, Swiss style", May 27, 2009):

Unlike the rest of Switzerland, the atmosphere here is mainly Mediterranean. Trust me when I say that the Ticino, Switzerland's only Italian-speaking canton, is where the country comes alive. It's Italian lifestyle with Swiss efficiency: the best of both worlds.

In example (4), the two cumulative arguments are linked by the indicator "with" ("It's Italian lifestyle *with* Swiss efficiency"), which makes think of a new unique entity, not simply defined by the sum of its parts.

The exhortation “trust me” not only functions as a reinforcement of the argument, but moreover points out its relevance: the combination of two worlds is the very value of Lugano.

Example (5) (from www.virtualtourist.com; “In many ways Ticino is my...”, August 26, 2002:

In many ways Ticino is my favorite part of Switzerland, it has a lovely mix of the best bits of Swiss and Italian culture. It is more laid back and relaxed than the rest of Switzerland, but it retains the cleanliness, punctuality and respect. (We thought that there were far more good looking guys here too, Italian looks, romanticism etc, but Swiss manners!)

In example (5), the indicator “but” can be said to represent an exception to the rule for which “if a ‘*p* but *q*’ utterance is put forward by the protagonist in an implicit discussion, it may in general be assumed that the standpoint supported by the second conjunct is the protagonist’s own standpoint” (Snoeck Henkemans 1995, p. 292). Here, *p* (“It is more laid back and relaxed than the rest of Switzerland”) and *q* (“it retains the cleanliness, punctuality and respect”) are, in fact, not arguments for two opposite conclusions, but they are both pro-arguments for the same conclusion that Lugano “has a lovely mix of the best bits of Swiss and Italian culture”. The defense of the standpoint requires a combination of the arguments conjoined by “but”. It is the combination of relaxed and laid-back Italian attitude and Swiss cleanliness, punctuality and respect, that constitutes the lovely cultural mix.

Example (6) (from <http://www.bootsnall.com>; “Lounging in Lugano”, Aug 23, 2006):

[Lugano, the pride of Southern Switzerland, conjures up images of beautiful scenery and delightful Mediterranean weather. I was holidaying in Switzerland last May with my family (husband and two kids) and had decided to spend a few days at this distinctly Italian flavored resort in the Ticino region. I had heard that Lugano enjoyed the best of Italian and Swiss culture - the vibrant charm of the Italians and the order and punctuality of the Swiss. I was soon to discover more than just that. (...)

I had found this beautiful city to be a laid-back and cheerful place, with warm locals, their easy-going attitude, superb cuisine and great scenery - not to mention eyeing the handsome Lugano men; even middle aged guys are quite

dashing, from the cab driver, to the carpenter, to the housekeeping guy - all with a smile on their faces and trying their best to help you. The Lugano ladies must have been beautiful too, but for that you will have to ask my husband! Mamma Mia, lovely Lugano, we promise to come back again!

Argumentation in example 6 deserves to be reconstructed in detail, for it helps seizing the relevance of the 'culture-mix' argument.

SP (1) - Lugano is the pride of Southern Switzerland

1.1a - It conjures up images of beautiful scenery and delightful Mediterranean weather

1.1b - It enjoys the best of Italian and Swiss culture

1.1b.1a - It enjoys the vibrant charm of the Italians

(1.1b.1a.1 - The vibrant charm of people is the best trait of Italian culture)

1.1b.1b - It enjoys the order and punctuality of the Swiss

(1.1b.1b.1 - The order and punctuality of people is the best trait of Swiss culture)

1.1c - It is a laid back and cheerful place

1.1d -Locals are warm and have an easy-going attitude

1.1d.1 - Men are handsome and dashing

1.1e - Cuisine is superb

The final passage of the review lists, in a condensed way, all the arguments that have been put forward in the text to support the standpoint "Lugano is the pride of Southern Switzerland", that was stated immediately at the beginning of the text. It is a case of coordinatevely compound cumulative argumentation, in which every new argument is added to strengthen the acceptability of the standpoint. The arguer takes herself the commitment to give further evidences for the standpoint, since she attacks the sufficiency of the first proposed argument. For her, Lugano is the pride of Southern Switzerland not only and not mainly because it combines the best traits of two cultures, but also for a number of other reasons. Nevertheless, the arguments put forward are nothing else than a list of typical aspects of Italian culture: a laid-back and cheerful place, where locals have a warm and easy-going attitude, men are handsome and dashing, cuisine is superb.

4. Looking for the Touristic Value of a destination

Once the 'culture-mix' argument has been investigated in its different occurrences, and its facets have been pointed out reconstructing the respective argumentative moves, its internal inferential configuration can be further analyzed, to identify the elements which determine its logic validity and its

pragmatic persuasiveness. The *Argumentum Model of Topics*, developed by Rigotti and Greco Morasso (Rigotti 2006, 2009; Rigotti & Greco Morasso 2009), allows to reconstruct the two inferential paths which together lead to the conclusion (the standpoint). Figure 1 shows how this type of representation is made up of a Y-like structure, constituted by the intertwining of two reasoning lines. The right-hand line (Maxim - Minor premise - Final conclusion) represents the logical pattern that underpins the argument; because of its logic-oriented, procedural nature it is called the *procedural* component (Rigotti and Greco Morasso 2010). The left-hand component (Endoxon - Minor premise - First conclusion) derives from the anchoring of the argument in the cultural and factual premises supplied by tourists who have visited Lugano; its culture-dependent and context-dependent nature justifies the term *material* component (ibid.).

The procedural component originates from an implicit *maxim*: “If a certain effort is worthwhile to get X, the same effort is particularly worthwhile to get twice X value”. The concept of *maxim* comes from the Topical tradition, and refers to an inferential principle having the form $p \rightarrow q$, which connects two or more aspects of the ontological relationship between premises and the conclusion on which the argumentative reasoning is based. The type of ontological relationship between premises and the conclusion constitutes the *locus* (e.g. cause-effect, genus to species). The maxims generated from the same locus are implications of the ontological relationship constituting the locus (Rigotti and Greco Morasso 2009). In the ‘culture-mix’ argument the relationship between premises and the conclusion is based on a specific aspect of the touristic value Lugano is argued to have. The touristic value of Lugano lies in the fact that it combines the aspects of two different cultures, that are considered the touristic value (the “best”) of those cultures. The touristic values of such two cultures are in Lugano so well combined, that they give birth to a new unique more valuable entity. The *locus*, here, is based on a paradigmatic relationship of analogy, since the touristic value of Lugano is implicitly compared to the touristic value of another generic destination - it is a relationship among similar alternatives. It is, more precisely, the *locus from the more and the less*, which instantiates a relationship between premises and conclusion on the base of the probability or value of one of their factors. If a destination having a recognized touristic value is worth a visit, a destination combining two recognized touristic values is particularly worth a visit. [iii]

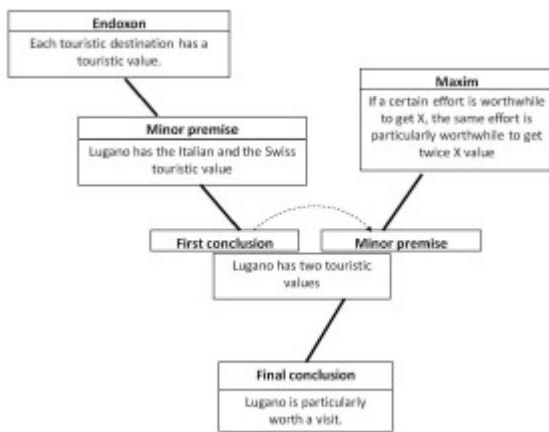


Figure 1: Synergic structure of the 'culture-mix' argument.

The material component, represented in the left-hand part of figure 1, originates from an *endoxon*. “*Endoxa* are the remarkable opinions of a community, that is to say the propositions that are in the common opinion (i.e. the *doxa*) and, as a consequence, are generally accepted, reliable and credited within a community” (Tardini 2005, p. 281). The community to which authors of travel reviews or travel forum posts refer is the generic community of tourists, constituted by all those who intend to organize a trip or are simply keen on travelling. It is thus reasonable to think that the *endoxon* here evoked is: “Each touristic destination has a touristic value.”

From the fact that Lugano has both the Italian and the Swiss touristic values, and from the logical implication that a destination having two touristic values is more worthwhile than another having only one of them, comes the conclusion that Lugano is particularly worth a visit.

5. Conclusion

The paper presents a first attempt to critically consider tourism-related User-Generated-Contents, as a means to let emerge and better understand tourists' opinions on their travel experiences and on the destination they visited. The study discussed in the paper suggests that tourism is an interesting context for argumentation studies, considered that opinion giving and deliberation are the engines of tourism organization and consumption. People who intend to leave for a journey, go through a process of information seeking and evaluation aimed at deliberating about the place to visit and the time to spend there. Once they come back from their journey, they are in *the position to know* (Walton 1997) about a destination, and they become worth trust because of their experience. In the Internet society, tourists always more give their opinions and look for others'

opinions on the web, by means of social networks. UGC represent, thus, an easily accessible source for gathering the information needed.

Here, UGC have been used to develop a pilot study on the opinions given by tourists who visited Lugano. The hypothesis leading the study was that it can be identified a dominant value for a certain destination recognized by the most of the tourists, which makes it unique and worth a visit. The pilot study confirmed the hypothesis.

So, what can one say about the touristic value of Lugano? An analysis of a corpus of eighty-two texts produced and published online by tourists has allowed to point out three argument classes which tourists frequently refer to when they report of a positive touristic experience in Lugano: 1) the 'nature' argument, which is based on the morphological aspects of the destination; 2) the 'confidence' argument, which exploits the stereotype usually accompanying Switzerland, that is of an organized, efficient and respectful place; 3) the 'culture-mix' argument, which focuses on the peculiar touristic value of Lugano, given by the combination of the best traits of the Italian and the Swiss culture. The 'nature' argument occurs almost in every text, but usually together with other arguments, since a tourist may like to find more than just natural attractions in a place. It is, thus, not a sufficient argument, unless it addresses a specific audience, that are "nature lovers" or "outdoorsy types". The 'confidence' argument is put forward in addition to other arguments. Lugano's reputation as an efficient and well-organized place does not seem to be sufficient for recommending it for a visit. It is the combination of cultures that particularly strikes Lugano visitors: the 'culture-mix' argument is frequently reported in the texts, extensively argued and many times constitutes a sufficient reason for a visit according to the writer.

This argument has been therefore observed in its most relevant occurrences in the corpus. The argumentative reconstruction of the text passages where it was employed, shows that it represents the key touristic value of Lugano and, broadly, of Ticino. This standpoint, which is expressed with different wordings (e.g. "Ticino is where Switzerland comes alive", "Lugano is the pride of Southern Switzerland"), is supported by a coordinatevely compound argumentation, made up of two similar arguments: one states that Lugano shares the best traits of Italian culture - identified in the easy-going and warm attitude, the fine cuisine, the Mediterranean vegetation - and the other states that Lugano shares the best traits of Swiss culture - identified in the organization, efficiency, order. The

charming cultural combination gives birth to a new and unique entity, which has a “double” touristic value, if compared with other destinations, which can boast only one set of cultural traits. The analysis of the inferential structure of the argument has, in fact, shown that this argument is based on the *paradigmatic locus of the more and the less*, and is rooted in the *endoxon* according to which each destination has a touristic value; such *endoxon* allows the argument to be accepted by the community of tourists.

Future studies should be developed in order to further verify the hypothesis. The corpus used in the case here discussed was made up of texts belonging to different genres: travel reviews, blogs and forum posts, but such difference was not taken into account in the analysis. Almost no account of the communication context within which argumentation became relevant was either given. The fact that UGC are produced on the web, in the frame of specific interaction modes having proper rules, dynamics and roles, should be considered in future studies on argumentation in the context of tourism.

NOTES

[i] “All services work well, and this aspect should not be taken for granted” [the implicit comparison is with Italy].

[ii] According to Snoeck Henkemans, when arguers acknowledge counter-arguments, this acknowledgment is apt to show that the counter-argument is less important than the pro-argument. Therefore, the arguer’s implicit claim of the irrelevance of the counter-argument should be added to the pro-argument, and the argumentation structure should then be considered coordinatively compound (Snoeck Henkemans 1997).

[iii] Rigotti & Greco Morasso (2009) classify the *loci* according to a taxonomy, which distinguishes among: *paradigmatic loci*, based on relations *in absentia* (of alternativeness), both of opposition and of analogy; *syntagmatic loci*, based on relations *in praesentia* that refer to aspects ontologically linked to the standpoint, as for instance the relationship between the whole and its constituent parts; *complex loci*, which are on the borderline between the previous two ones.

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ISSA Proceedings 2010 - Points And Purposes Of Argumentative Texts



1. Preliminaries

What does it take to understand an argument? We can't hope to provide the answer to this question in full here. We will instead focus on an obvious point about which there is universal agreement: understanding an argument requires that one be able to identify the argument's conclusion. This apparent truism, however, might not be quite as simple as at first it appears. Arguments do not spring forth from the universe by themselves; they have authors. And their authors have purposes in making their arguments that are not necessarily identical to their conclusions. Indeed, it is another common idea that in order to fully understand an argument, it is a good idea to identify the *author's purpose* in making that argument. We want to suggest that these two claims are in fact closely related, and that, in fact, comprehension of the

conclusion of the argument and the argument as a whole is often heightened by seeing how the author's activity of attempting to establish that conclusion can be re-described as activity of another (but related) sort.

We approach this matter as developers of a high-level reading and reasoning test—the LSAT (Law School Admission Test). The LSAT is a high-stakes test used for admission into law school in the US and Canada (also currently by one law school in Australia). We will be focusing here on reasoning as found in longish argumentative texts, which appear in the reading comprehension section of the test (our test has four scored multiple choice sections, one of which is reading comprehension).

As is usual for tests of reading comprehension, one of the standard questions on the LSAT asks the test-taker to identify the main point, or main idea, of the passage. The motivation for this is again straightforward. Scholars and instructors of reading agree that understanding a text requires that the reader be able to identify the text's main idea. What "*main idea*" designates across text types (e.g. expository, narrative, and argumentative texts) is a matter of some debate (Cunningham & Moore 1986), but if we restrict our attention to argumentative texts, as we largely do on the LSAT, then the main idea of such a text is the conclusion of the argument. **[i]** We call this the "*main point*" of the text.

Just as one standard reading comprehension question asks for the main point of the passage, another standard reading comprehension question on the LSAT asks about the author's "primary purpose" in the text. This may appear puzzling. You might think that they are probably just two ways of asking the same thing because the primary purpose of the text is just to establish the main point (i.e. the conclusion of the argument). If so, there would be no point in making the distinction between main point and primary purpose. On the other hand, if the author of the passage attempts to argue for the conclusion in order to serve some *further* purpose, then the primary purpose - if it can be identified in the text - might seem *itself* to be the best candidate for the "main point" of the text, at least at first glance. In other words, if something in the text tells us what the author hoped to accomplish in writing his or her text, why isn't *that* the main point? And so, again, the distinction would seem to be doubtful.

We are going to argue that there is a real and significant difference between main points and primary purposes of argumentative texts. We will make our case with

the help of some concepts from the philosophy of action. We will conclude with some remarks about why it might be useful from the point of view of understanding argumentative texts to make the distinction between the primary purpose and the main point of the text.

Let's begin with the above mentioned case, in which the author argues for conclusion p , but in order to, or as part of the effort to establish some further proposition, q . To be explicit (and to somewhat artificially restrict our attention to a special case), let's imagine that p is a premise in an argument for q . Arguing in support of p will typically only be part of the process of attempting to establish q . We want to reject the notion, first, that the "main point" of such an argumentative text *must be* q .

Imagine a hypothetical text in which the author argues as her main point that the death penalty, as it is administered in the United States, leads occasionally to the execution of the wrong person. On the one hand, one might think that the author's purpose is simply to show that the claim in question is true. On the other hand, depending on context and other factors that we will discuss later, it might be more accurate to say that the author's purpose is to persuade the reader that the death penalty should be abolished. We maintain that the main point of such a text is not that the death penalty should be abolished because (so we stipulate for this hypothetical text) it does not *completely* make the case for this further conclusion. We claim that the same will hold for any text with a similar argumentative structure. If establishing p is only one small part of the argument on behalf of q , and it can be gleaned from the text and surrounding clues that the author aims to establish q , we maintain that establishing q is (of the cases we will discuss) most evidently and appropriately described as the author's primary purpose in writing the text, and distinct from the effort to establish the local conclusion of argument in the text.

In other argumentative texts, however, the case for a difference between main point and primary purpose is harder to make. It is to these latter cases that we now wish to turn, and to which the bulk of our argument is dedicated. Our main aim will be to suggest that there can be a primary purpose of an argumentative text that is distinct from the main point of the text, *even when* the case for p thereby completely (or very nearly so) suffices for establishing q . Even in these cases, the main point need not be identified as q . Also, more generally, even when there is no further conclusion to which the case for p contributes, there can be,

we suggest, an identifiable primary purpose of the text that is distinct from the main point.

So how are we to understand the relation between main points and primary purposes for these latter types of cases? They are not identical, though they are obviously closely related. How do they bear on each other? We will argue that the main point and primary purpose of an argumentative text are related to one another in these cases as two actions[**ii**] are related to one another when one action “level-generates” another. This relation, explained in detail by philosopher Alvin Goldman in his *A Theory of Human Action*, holds between co-temporaneous actions that nevertheless stand in something like a means-end relation. We turn now to a brief examination of Goldman’s framework and then show how it can be applied usefully to the distinction between main points and primary purposes.

2. Level-Generation

One action “level-generates” a second action when the two actions are performed at the same time and the agent performs the second action *by* performing the first.[**iii**] A third action can, in turn, be performed *by* performing the second act, and so on. As the name suggests, therefore, level-generated actions stand in a hierarchy, with more basic actions standing at lower levels. As levels are ascended, more of the purposive content of the agent’s behavior comes into view. For example, Smith signals for a cab *by* raising his hand in the air. Jones checkmates her opponent *by* moving her queen to king-knight seven. And so on. Goldman describes four kinds of level-generation: first, causal generation; second, conventional generation; third, simple generation; and finally fourth, augmentation generation. Because its utility to the textual case is limited, we will ignore the case of causal level-generation (the first in Goldman’s taxonomy) and focus instead on the remaining three varieties.

The two examples mentioned above (hand-raising/signaling and checkmating) are cases of conventional generation, which, according to Goldman, “is characterized by the existence of rules, conventions, or social practices in virtue of which an act *A'* can be ascribed to an agent *S*, given [the agent’s] performance of another act, *A*.” (Goldman 1970, p. 25) There is a conventional rule, for example, that raising one’s hand in a particular way *counts as* hailing a cab. In addition to a rule, conventional generation often requires certain circumstances to be in place. Raising one’s hand in a classroom, for instance, counts as a very different action as raising one’s hand at the side of a road.

In simple generation (the second type in Goldman's taxonomy), circumstances but no rules come into play in the generation. Goldman's examples include: *S* out-jumps George by jumping 6 feet 3 inches and *S* fishes by dangling a line in the water (Goldman 1970, p. 27). Here circumstances alone dictate that performing one type of action counts as the performance of another type of action. No conventions or rules need come into play.

The final variety of level-generation Goldman discusses is augmentation generation. The key idea here is that one can perform an act and also perform that act in a specific manner. Goldman relates the act described in terms of the manner in which it is performed as the generated (higher-level) act. So *S*'s extending his arm level-generates the action of extending his arm out the car window; *S*'s saying "hello" level-generates his saying "hello" loudly; and *S*'s running level-generates his running at 8 m.p.h. Goldman emphasizes that the performance of the generated act (e.g. running at 8 m.p.h.) *entails* the performance of the generating act (running), but not vice versa. He also notes that this form of level-generation is "not as intuitively attractive" as the other types of level-generation, in part because the actions can't be easily described as standing in the "by" relation. It would be somewhat odd to say that *S* runs 8 m.p.h. by running, in the same way we say that Smith signals for a cab by raising his hand (Goldman 1970, pp. 28-29).

Part of the reason that Goldman finds augmentation generation intuitively unappealing may be because he has reversed the direction of generating and generated actions. **[iv]** In conventional and simple generation, it is the performance of the generating action that "entails" the performance of the generated action (together with some circumstances and/or rules). If that pattern held for augmentation generation, then it would be *S*'s running 8 m.p.h. that level-generates his running, not the other way around, as Goldman claims. Also, consider that *in* raising his hand at the curb, *S* signaled, but not vice versa (for he could signal a variety of ways). Applied to the augmentation case, we would say that *in* running 8 m.p.h., *S* runs, but not vice versa. So while we may not get the "by" description of the relation of the two actions, in other ways the augmented actions are, contrary to Goldman, best conceived as standing at the *lower*, generating level. It is this conception of augmentation generation with which we will proceed. We turn now to an application of Goldman's concept of level-generation to the distinction between main points and primary purposes of

argumentative texts.

3. Textual Generation

Taking our inspiration from Goldman, we will call level-generation that takes place within texts “textual generation”. If we take arguing for the conclusion (i.e. the main point) to be what an argumentative text, taken as a whole, “does” (Kintsch 1998, p. 66ff), then in some cases we can see that action as level-generating another action – the action in the service of the primary purpose. **[v]** Broadly speaking, there are two species of textual generation, one corresponding roughly to Goldman’s simple/conventional generation (we leave aside the complex matter of the role of rules) and one corresponding to augmentation generation. We will consider each in turn.

The first type, analogous to simple/conventional generation, takes the main point of the text and re-describes it in some way. It typically yields a description that contains some of the elements of the description of the main point, perhaps even constituting a paraphrase of the description of the text’s main point. In fact, however, there can be new information in such a description – a way of looking at the effort to establish the argument’s conclusion that places the conclusion in a different pattern of significance, e.g. *out-jumping George* includes the concept of jumping, but shows the significance of *jumping 6 feet and 3 inches*. And, just as these actions stand in the “by” relation, so too we can say that the author achieves his or her primary purpose *by* attempting to establish the conclusion of the argument. (More on this later.)

The second kind of textual generation occurs when the description of the primary purpose strips away information from the description of the main point. These are cases where the primary purpose appears to be a description cast in more general terms of the attempt to establish the main point. These are most analogous to cases of augmentation generation, where the main point is the analogue of the augmented action – the action performed in a particular manner – and the level-generated action is the more generic action, e.g. running vs. running at 8 m.p.h.

Note that deriving a generic description of the text’s main point is not necessarily to derive a description that contains less information. Consider the case of augmentation generation again. Suppose that we ask why *S* says “hello” loudly. Several answers are possible. It could be that *S* aimed to make a loud sound. Alternatively, it may be that *S* wished to greet someone; with this answer we

learn, in effect, what is *not* central about *S*'s intentional action – that saying hello at the volume he did was in some way incidental to his main purpose – saying hello. And that, because of the way level-generated actions are structured, he could have achieved this end perhaps by saying hello at a different volume.

To return to textual generation, then, consider the case of a text that seeks to establish that global warming is real and caused by humans. This is the main point, i.e. the conclusion of the author's argument. Here too, the purpose of doing so can be described a number of ways, but not all of them would be correct, i.e. supported by the text, signifying the author's genuine purpose. The main point could be re-described as "discussing a phenomenon caused by humans". Alternatively, it could be that the author aimed to "defend a position about global warming". These are very different descriptions of the main point, and, presumably, only one of them will correctly describe the author's purpose in writing the text. So, while it may appear that the re-description of the main point in these generic terms is a loss of information, being able to derive it correctly requires being able to rule out other possible interpretations. To see these issues in a little more detail, let's turn to another example.

To take an example from our test: the author of one passage argues that the writing in professional history is terrible:

Part of the joy of reading is in being surprised, but academic historians leave little to the imagination. The perniciousness of the historiographic approach became fully evident to me when I started teaching. Historians require undergraduates to read scholarly monographs that sap the vitality of history; they visit on students what was visited on them in graduate school. (Law School Admission Council 2007, p. 32)

The author goes on to argue that one effort to address this problem focuses on the importance of story, of *narrative*, in history. This movement encourages historians to tell stories. But, the author complains that even the papers inspired by this movement are dry, dull, and dreary. At professional meetings of historians, he concludes, "we" still do not see historians who tell stories that move readers "to smiles, chills, or tears."

We might distill the main point as follows: "The writing in professional history is abysmal, and efforts to improve it through attention to narrative are so far not promising." Here we have the gist of what the author argues, the argumentative

thrust of the text. In this case, various indications in the text – for example, his use of the first person “I”, indicating that he is a professional historian himself – suggest that the author has a direct stake in the issue. And the author’s use of certain phrases – for example, the mordant humor in the phrase, “they visit on students what was visited on them in graduate school” – suggests that he would like the situation he discusses to be improved. So we can infer that the author’s *purpose* in writing the piece is something like: to convince other historians that something should be done about this problem. This purpose is pretty closely related to the main point stated above, but it is logically (and perhaps rhetorically) separable, and, importantly, requires utilizing cues from the text independent from those used to identify the main point. In particular the use of “we” in the last sentence indicates that the author is addressing a community to which he belongs, with all that entails – shared interests, goals, etc. Note that this case is relevantly dissimilar to the death penalty case, in that there was more to do to convince the reader of the further conclusion in the death penalty argument, whereas here making the case for the main point pretty much suffices for the making the case for the larger point.

The argument that there is a distinction between main points and primary purposes even in cases dissimilar to the death penalty case is therefore very simple: If the effort to establish the conclusion of the argument textually generates another description of what the author intentionally does in the text, then, *ipso facto*, there are at least *two* accurate descriptions of the text’s most global features. The uppermost description deserves the title “primary purpose”, when, like the historian case, it takes some further inference by the reader to derive this description. If this purpose were to be explicitly spelled out as well as its connection to the main conclusion of the argument, then it *would* most likely be the best candidate for the title “main point.” But in cases where this is not so, an intelligible distinction between main point and primary purpose can be made, and worth making. We will now explore in a little more detail why such a distinction can be worth making.

4. Points and Purposes

We have already alluded to the way that textual generation gives rise to descriptions of the text that put the main point into a new light, in many cases emphasizing the *significance* of the main point or why it matters that the point be made. The value of this perspective should be self-evident. Even in cases of

textual generation that are closer to augmentation generation can still highlight what is significant about the conclusion or put the effort to establish the conclusion in a light that reveals what is at stake. Consider the global warming case again. Identifying the primary purpose as to “defend a position about global warming”, or, even more abstractly, as to “defend a position on a scientific issue”, forces us to see the text as engaged in a debate of social-political significance (in the first case) or of scientific significance (in the second). (Note that both descriptions may not be applicable to the same text.)

As indicated above, the importance of being able to correctly identify the primary purpose of an argumentative text often has much to do with being able to *rule out* competing possible interpretations of the primary purpose. As in the historian case: identifying the historian’s purpose as advocating for reform requires that the reader rule out other possible uses to which the historian may have put the main point of the text, e.g. to convince writers of history that their efforts to improve are doomed to fail.

Readers of argumentative texts should be able to identify the description of the purpose textually generated from the main point that most accurately captures the author’s actual aim in making the argument. How do readers do this? In the case of physical actions, as we discussed earlier, both circumstances and rules can come into play. Being able to see Smith’s arm-raising as a cab-signaling required knowing the relevant rule (the “counts as” rule regarding cab-signaling) and appreciating the salience of the relevant circumstances (standing by the side of a road). The interpreter brings knowledge of the rule and the salience of certain circumstances to the interpretation - i.e. as background knowledge - but must observe the situation to see which circumstances actually obtain, and which rules actually apply.

Much is the same in the textual case. The reader brings background knowledge to the text that allows her to see that arguing for p counts as an instance of doing q . But background knowledge is only part of the story. The reader must be able to *infer* from clues in the text itself which “rules” and “circumstances” apply. Unlike the case of physical actions, in some cases the text itself provides information to the reader about how to interpret the main point that was not already part of the reader’s background knowledge. In other cases, the circumstances and rules can be gleaned from indications surrounding the text proper - as in the historian case. These activities require a kind of deep engagement with the text that goes beyond

merely being able to reconstruct the conclusion of the author's argument. Here again we take the value of this kind of engagement with the argumentative text to be self-evident. Its value resides not only in a better understanding of the argument, but, we surmise, can open the door to modes of *evaluation* of the argument that may not have been available without it.

Finally, we suggest that making an effort to identify the primary purpose of an argumentative text is part of a more general interpretative activity – adopting a “purposive stance” with respect to the argument – the value of which is already well-recognized. We began our paper with the truism that understanding an argument requires being able to identify the argument's conclusion. Added to this, and perhaps equally as obvious, is the fact that one must be able to see how the elements of the argument fit together in support of the argument's conclusion. Especially for long arguments, this means being able to decipher the *structure* of the argument. (Without an understanding of the structure of the argument, one well might not be able to identify the conclusion at all.) One asks, for instance, what role the second paragraph (or section) plays in the author's argument, or what the function of a paragraph (or even a sentence) has. Another way to describe this is in terms of the *purpose* of various parts of the argumentative text. One aims to understand *how* the conclusion is supported by asking *why* the author does various things in the text.

The purposive stance with regard to the main point of the text can be directed “upward” in addition to “downward”. Textual generation occurs with respect to many elements of the text, and not just the most global aspects of the text. The author argues for *p* by establishing *r*, pointing out *s*, and rejecting the possibility of *t* (one in each paragraph, say). But, likewise, as we have seen, the author can be said in most cases to seek to achieve the primary purpose of the text *by* arguing for the main point. So, just as for smaller elements of the text, the main point and primary purpose stand in the why/how relation. The author aims to achieve the primary purpose by making the main point, and makes the main point in order to achieve the primary purpose. In many cases, an understanding of the argument's structure is incomplete without identifying the primary purpose and how it relates to the main point of the text. **[vi]** Seeking the primary purpose can sensitize the interpreter to questions of finer-grained purposes that can, in turn, yield valuable insights to the argument's structure. The chain of “why” questions should not stop once the conclusion of the argument is reached.

So, not only is the distinction between main points and primary purposes (even when they are seeming re-descriptions) real and defensible, being able to distinguish them in an argumentative text is a valuable skill. There is some evidence from reading studies that identifying the main point of a text does not occur automatically; it is an inference task (Kintsch 1998, p. 180). (Even when it is explicitly stated - *that* it is the main point has to be inferred). Skilled readers have been *trained* to make this inference. We suspect that even skilled readers often do not go the next step. And so our point is also a pragmatic one, especially as applied to *argumentative* texts. Once the reader has identified the main point of an argumentative text, he or she should learn to go the next step and identify what we have described as the primary purpose of the text. Granted, rhetoricians have been telling us for a long time that we should identify the author/speaker's purpose in engaging with some discourse. But what they mean by "purpose" is either something so abstract, "e.g. to persuade, explain, etc." as to be of little value, or something equivalent to what we have identified as the main point.

The main point of our text, then, is, once again, that there is a real distinction worth making between main points and primary purposes of argumentative texts. Our primary purpose, if it were to be spelled out, might be "to articulate and defend a reading-comprehension distinction." This primary purpose can be textually generated from the main point on the model of augmentation generation. It appears to merely re-state the main point in a more generic form, i.e. with less information. But being able to correctly identify it plays a crucial role in correctly understanding the text. We are not, for instance, attempting to participate in some debate about the rhetorical structure of arguments - a purpose which is conceivably compatible with our main point.

NOTES

i In many cases, an articulation of the main point will include more information than the isolated conclusion. In fact, the main point of an argumentative text may best be characterized as a tightly compressed "gist" of the argument that is centered on the argument's conclusion. Note that we are not claiming that that the main point is a summary of the argument, which often includes more information about the argument's structure than a "gist".

ii Or two action-descriptions. We won't take a stand on the question of how actions are individuated, but for expository convenience will adopt Goldman's way of describing level-generation as a relation between distinct actions.

iii Goldman further distinguishes level-generation from cases in which one performs an act while also performing another, e.g. patting one's head and rubbing one's stomach.

iv Another reason may have to do with his insistence on individuating actions so narrowly that each level picks out a distinct action that *S* performs, rather than the levels describing the same action in different ways.

v The application of level-generation to the textual case is analogical since the existence of a text creates conditions and properties that have no obvious parallel in the behavioral case.

vi Probably less for cases analogous to augmentation generation—which is not to say that even in those cases identifying the primary purpose is without value, as we have already suggested.

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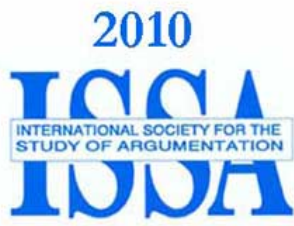
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ISSA Proceedings 2010 - A Critical-Rationalist Approach To Premise Acceptability



1. Introduction

In this paper I consider the problem: ‘*When is a statement acceptable as a premise in an argument?*’ This question is widely discussed in informal logic and practical reasoning circles, but most of these considerations presuppose the correctness of a justificationist epistemology: where the information comes from is of paramount importance in assessing its legitimacy. This is explicit in the title of an important paper by Freeman (1996): “Consider the Source”. Not only has justificationism got many faults, some of which I mention in the next section, but also the audience to whom the argument is addressed tends to be overlooked. In an argument we are, typically, trying to convince one or more people of something that they are initially reluctant to accept. We do this by showing them that it follows from premises that they do accept. My approach puts the emphasis on the audience to whom the argument is addressed.

I see premise acceptability as being part of the broader issue of testimony and I have developed a critical-rationalist account of how we respond to the assertions of others: we accept them unless we have a reason not to. (Critical rationalism is opposed to all forms of justificationism.) We do not need a reason to accept testimony. We have a tendency to believe other people and the default position when we hear or read an assertion is simply to accept it. The proposal I present in detail below is that a premise is acceptable in an argument if the audience has no objection to it. I also show that this proposal is better than a widely accepted account of premise acceptability.

2. Critical Rationalism

‘Critical rationalism’ is the name given to the philosophy developed and elaborated by Popper. It is a species of rationalism and, as such, is opposed to all forms of irrationalism. Popper does not try to give an exhaustive characterisation of all the forms that irrationalism has taken. He, rather, focuses on what he takes to be its key component: other people’s opinions and arguments are not taken at face value. Irrationalists see thought as being ‘merely a somewhat superficial manifestation’ of what exists in ‘the “deeper” layers of human nature’ (Popper 1966, p. 235) and they look for the hidden motives from which they believe theories and arguments spring.

Rationalists seek ‘to solve as many problems as possible by an appeal to reason,

i.e. to clear thought and experience, rather than by an appeal to emotions and passions' (Popper 1966, p. 224). Popper (1966, p. 225) sums up his own brand of rationalism by means of the formula: *'I may be wrong and you may be right, and by an effort, we may get nearer to the truth'*. This attitude of reasonableness, as Popper calls it, may sound simplistic, but it encapsulates a many-faceted and fecund position. At its heart is a readiness not to lightly dismiss contrary opinions and a willingness not to ignore or evade criticisms directed at your own views. It is an attitude that welcomes such criticisms and actively encourages them. A moral commitment is required to adopt the attitude of reasonableness (Popper 1966, p. 231). This is one of the most distinctive features of critical rationalism. Living in accordance with this attitude is not an easy thing to do. It involves an almost daily struggle not to dismiss, in one way or another, inconvenient truths and irritating arguments that do more than merely suggest that our carefully-worked out opinions are not as perfect as we would like them to be.

Popper (1966, pp. 215–216) mentions several methods that irrationalists use to 'unveil the hidden motives behind our actions'. A psychoanalyst, for example, presented with an objection to one of Freud's theories, may say that that objection is due to the critic's repressions. A Marxist may well dismiss an opponent's disagreement by saying that it is due to his class bias and a sociologist of knowledge by saying that it is due to his total ideology. (This method, when used by a sociologist of knowledge, is dubbed 'socio-analysis'.) An Hegelian faced with an argument that shows his position to be inconsistent may proclaim that contradictions are fertile. A philosopher of meaning presented with objections to his ideas may well dismiss the views of his opponents as being meaningless. This is a very powerful way of dealing with criticism as it is always possible to use such a narrow conception of meaning that makes any inconvenient question senseless (Popper 1975, p. 51).

The practice of arguing logically exists in present-day societies and has existed for thousands of years. The difference between the rationalist and the irrationalist is not that the former engages in this practice and the latter does not, but rather in *how* they participate. Someone is an irrationalist if he fails to take *some* arguments seriously (Popper 1966, p. 240). An irrationalist may well treat certain arguments at face value, but 'without any feeling of obligation'. Thus, Popper (1966, p. 251) considers Arnold Toynbee, the author of the monumental *A Study of History* (1934–1947), to be an irrationalist even though he uses 'a

fundamentally rational method of argument' when discussing different historical interpretations of the same series of events. He is an irrationalist because, when discussing Marx, he does not reply to his opinions and arguments rationally, but rather explains them away as being the product of Marx's social habitat rather in the manner of the sociologists of knowledge using their irrational methods, including that of socio-analysis.

As already mentioned, critical rationalism is opposed to all forms of justificationism. I have discussed the main differences between justificationism and anti-justificationism elsewhere (Diller 2006). I will briefly mention a few of the key differences here. (Unfortunately, I do not have enough space to discuss probabilistic varieties of justificationism and so my considerations are restricted to non-probabilistic justificationism.) These key differences can be brought out by considering some of the things that the justificationist Gilbert says about argumentation. It should be noted that my discussion of Gilbert's ideas is restricted to what he says in his book *How to Win an Argument* (1996). I do not wish to suggest that my criticism of what he says there necessarily applies to the more sophisticated analysis of argumentation that he presents in *Coalescent Argumentation* (1997) which, unfortunately, I do not have space to examine with the thoroughness that it deserves.

In its simplest form, a justification for some standpoint is a logical argument the conclusion of which is that very standpoint and the premises of which are themselves justified statements. Gilbert (1996, p. 35) accepts this idea of a justification and he proposes the following Principle of Rationality: '*Always assume that people have reasons for their beliefs.*' On the basis of this he gives the following advice to those engaged in an argument (p. 32): '*Always attack the reasons for a claim, not the claim itself.*' This is bad advice for at least three reasons. In the first place, as Harman (1986, pp. 38-40) stresses, people rarely keep track of the reasons for their beliefs. This means that they simply would not be able to say why they hold certain beliefs. In the second place, showing that the reasons for a claim are false tells us nothing whatsoever about the truth or falsity of the claim itself, as a valid argument with just a single false premise can have either a true or a false conclusion. In the third place, it opens the door either to a charge of circularity or to the possibility of an infinite regress. Gilbert (1996, p. 34) is honest enough to acknowledge these faults of his advice: 'The sequence of claims and reasons may even come back and meet itself, so that in the end your

beliefs form a circle.’ Arguing in a circle is generally acknowledged to be fallacious. The threat of an infinite regress has even more dire consequences: Someone who believes something without reason is being irrational. In terms of argument, being rational means providing reasons for beliefs. In the end all of us may be irrational, since sooner or later we reach a point of ultimate beliefs (for which it is impossible to provide reasons).

Rather than trying to improve his conception of rationality, Gilbert does not say anything more about the possibility that we are all irrational and carries on as if nothing is seriously wrong with his characterisation of rationality. A critical rationalist would agree with the deficiencies of rationality that Gilbert draws attention to, but he or she would say that these only apply to the particular account of rationality that Gilbert accepts. There are other conceptions of rationality that do not have these faults; Popper’s critical rationalism is one of these.

Gilbert’s approach exemplifies several elements of justificationism. One of these is the fusing of criticism with justification (Diller 2006, p. 123). This means that the main or only kind of criticism that is countenanced is that in which a claim is criticised by attacking the reasons that supposedly support it. In the previous paragraph I showed that Gilbert explicitly endorses this view. Another constituent of justificationism illustrated by Gilbert’s position is that there have to be claims that cannot be criticised (Diller 2006, p. 123). Gilbert calls these ‘ultimate beliefs’; for him they prevent an infinite regress of justifications being generated. As they have no reasons to support them there are no reasons to attack. Hence, they cannot be criticised.

Critical rationalists do not link criticism and justification. They employ various methods of criticism (Diller 2006, pp. 124-126). However, they do not criticise a claim by attacking its reasons. Critical rationalists would not give anybody the advice to attack the reasons for a claim rather than the claim itself. They would, rather, advise those involved in argumentation to directly criticise any claims they find objectionable. One kind of criticism they do use is that of criticising a claim by showing that it has clearly false consequences. Since falsity is retransmitted in a valid argument, this would mean that the claim itself was false. In general, they hold that the origins of a theory are irrelevant to its truth; the consequences of a standpoint are far more important in assessing its value. Gilbert (1996, p. 31), however, tells people not to criticise claims directly and attempts to provide a

rationale for this: 'If the reasons are good and the logic is correct, you are bound to accept the claim. This is why you never attack claims directly.' He is correct in saying that truth is transmitted in a valid argument. However, falsity is not. If the reasons are bad and the logic is correct, you are not bound to reject the claim. (It is also correct to say that if the reasons are good and the logic faulty, then you are not bound to reject the claim.) Just because one particular set of reasons for a claim has been shown to be false does not mean it is irrational to accept that claim. There may well be other considerations that show it is rational to believe it and carry on believing it.

As already mentioned, one of the differences between justificationists and anti-justificationists, such as critical rationalists, is that justificationists are forced to admit that some statements are beyond criticism. Anti-justificationists, by contrast, are anti-authoritarian in the sense that they believe that everything can be criticised and that nothing is immune from criticism.

A critical rationalist would not endorse Gilbert's Principle of Rationality. In its place he or she would put something along the following lines: Assume that people are either unaware of any criticisms of their beliefs or they can rationally counter any criticisms of which they are aware. A critical rationalist does not think it is irrational to hold unjustified beliefs; it is irrational to carry on believing something which has been successfully criticised. The critical rationalist, however, needs to explain how we acquire our initial stock of beliefs, and continue adding to it throughout our lives, and this I do in the next section.

3. Testimony

Most of our beliefs have been received from the testimony of others. Before continuing, I need to point out that by 'testimony' I mean much more than just eyewitness testimony. 'Testimony' refers to propositional information about anything that we receive from another person in either written or spoken form. Virtually all of our knowledge about history and science, for example, comes from testimony. This is how we know that the Battle of Thermopylae, between the Greeks and Persians, took place in 480 B.C. and that the losing Greek force was led by the Spartan king Leonidas. It is also how we know that the speed of sound in dry air at zero degrees Celsius is 331.4 metres per second. I would also like to mention that, unlike some writers, I do not distinguish between *belief* and *acceptance*. Scholars who do distinguish between these differ amongst themselves as to how acceptance should be understood and I do not have the

space here to evaluate their analyses. I do not deny that there are several different ways in which we can hold propositional information, but for my purposes I only need to consider one such method.

We have a tendency to believe what other people assert and I have argued elsewhere that we respond to testimony as if that response were governed by the defeasible *acquisition rule*: 'Accept other people's assertions' (Diller 2008, p. 434). We do not need a reason to accept testimony. In the absence of any other considerations we cannot but believe what others assert. It should be noted that our acceptance of testimony is neither the result of a decision nor a result of argumentation. Thus, the default position is that, when we hear or read an assertion, we simply accept it. However, we do not believe every piece of propositional information we come across. The acquisition rule is *defeasible*: it can be overruled. Young children are usually seen as being more prone to believe what they are told. However, as we grow up we learn that, for various reasons, the assertions that people make are not always true. People sometimes lie deliberately or they may be genuinely mistaken in what they themselves believe. We also learn that not all written information is correct. So, we learn to overrule the acquisition rule. The fact that such overriding factors are learnt has at least two consequences, namely that the way in which people respond to testimony changes over time and that not everybody necessarily responds to the same piece of testimony in the same way.

We receive information from various sources, including other people in the flesh, books, journal articles, the media and the Internet. For example, a visitor to London who asks a policeman for directions to the British Museum is likely to receive the information requested and accept it as being true; a person interested in Ancient Egypt will learn a great deal by reading books about that period. In considering the factors that people take into account when they are deliberating whether or not to reject an assertion, it is helpful to group those factors into categories. No doubt, several different categorisations are possible, but the most obvious one is suggested by the nature of communication itself. In its simplest form, communication involves the production of a message, in spoken or written form, by a single speaker or author and its reception by a single hearer or reader. Thus, many of the overriding factors will fall into one of the following three categories: those relating to the assertor, those relating to the content of the assertion and those relating to the recipient of the message. Factors relating to

any of these three categories may come into play no matter where the encountered assertion is found. They apply equally to spoken assertions as well as to those found in books, in newspapers, in articles and on the Internet. In the case of spoken, but not written, assertions, whether heard on the radio, television or when listening to another person in the flesh, there is another category of factors that relate to the manner in which the spoken assertion is delivered. There are also specific factors pertaining to the medium by which the assertion is conveyed. Thus, there are specific factors that apply to assertions heard on the radio that do not apply to assertions read in a book. Some examples will make this clearer. An example of an overriding factor relating to the recipient of information is that the information is inconsistent with his or her pre-existing knowledge. Usually, people reject information that conflicts with what they already know. I recently read, for example, Kynaston's book *Family Britain* (2009) in which the author states that Colin Wilson, one of the most influential of the Angry Young Men of the 1950s, came from a lower middle-class background (p. 643). I did not accept this claim as, being interested in the Angry Young Men, I have read a lot about them and know from various sources that Wilson came from a working-class family and has never made a secret of this. In this case I overruled the operation of the acquisition rule.

Many overriding factors apply to the person making an assertion. Hume was aware of several of these. In section X of *An Enquiry Concerning Human Understanding* (1748) he mentions various factors that we take into account when assessing the truth or otherwise of what other people tell us. He says that we consider the character of the person involved. If he is of doubtful character, then we do not necessarily accept his testimony. We consider whether or not the person has an interest in what he tells us. We also take into account the manner of the person's delivery. If he either hesitates or presents his testimony with 'too violent asseverations', then this may arouse our suspicions. Hume's observations are as relevant today as when he first made them, though they should not be thought of as an exhaustive list of possible overriding factors that people use when listening to someone talk.

It should be stressed that in the critical-rationalist account of testimony that I am putting forward the beliefs we acquire by accepting other people's assertions are not justified in any way whatsoever. They just are beliefs that we have obtained from testimony. We cannot help but believe other people, unless we have some

reason not to, as the powerful tendency to accept others' assertions has been built into us. I have argued elsewhere against the idea that testimonial beliefs are justified in any way (Diller 2008, pp. 421–425).

Two mechanisms are needed to account for the spread of information across time and between people. In addition to the acquisition rule, which explains how people respond to the propositional information they come across, we also need a means of making such information available to other people. All we need for this purpose is the social practice or speech act of assertion. Assertion and the acquisition rule are all that is required to explain how propositional information is transmitted between people.

Unfortunately, for many reasons, including our inability to always spot when other people are lying and because people, being fallible, do make mistakes, we acquire some false beliefs by accepting the testimony of others. We thus need to check some of the propositional information we come across. We cannot test all this information because there is so much of it and because examining information can be a very time-consuming activity. However, it is worth investing the time and energy to investigate the truth or falsity of information that is particularly important to us or which we find intriguing for some reason or other. Thus, in addition to *absorbing* propositional information, as explained by the acquisition rule, we need sometimes to engage in *checking* such information. There is a division of intellectual labour involved in the task of testing specialised information as not everybody is equally equipped with the expertise needed to evaluate the veracity of all kinds of information. Thus, an ancient historian would not be the right person to ask to investigate the speed of sound, but he would be able to research what happened at the Battle of Thermopylae. Most adults, however, have at least a rudimentary understanding of how to test everyday assertions and this can be improved by being taught critical-reasoning skills or informal logic. The activities of absorbing propositional information and criticising it are interleaved in our intellectual endeavours. An account of testimony that recognises them both can, therefore, be called a *two-phase* model. I have elaborated such a model elsewhere (Diller 2008, pp. 433–442).

4. Premise Acceptability

I see the issue of premise acceptability as being part of the more general topic of testimony. A theory of testimony must be able to account for our acceptance of other people's assertions no matter what, if anything, we intend to do with such

information. Some people, for example, like to acquire knowledge for its own sake without any thought of its utility. Some of the information we acquire, however, guides what we do. Knowing that the weed henbane is poisonous may well save your life as you are unlikely to put it into your salad. (The English celebrity chef Antony Worrall Thompson advised readers of the August 2008 issue of *Healthy and Organic Living* magazine to add henbane to salads; he had confused it with the weed fat hen which actually is sometimes included in salads.) In the case of premise acceptability, we are interested in the acquisition of propositional information which will form the foundations of various sorts of argumentation. Two people, for example, may be discussing whether or not they should go swimming in the ocean later that day. In the course of their conversation one of them asserts that she heard the weatherman forecast a thunderstorm. The other one accepts this and, believing that swimming during a thunderstorm is dangerous, concludes that it would be dangerous to go swimming. This might well influence what they decide to do.

My proposal is that premise acceptability is governed by the acquisition rule. Thus, in the case of a face-to-face argument, a premise is acceptable if the antagonist has no reason to overrule the acquisition rule when the protagonist asserts that premise in the course of the argument. Different people, as mentioned above, do not necessarily respond to the same piece of information in the same way. There is great variety in the factors that people use to overrule the acquisition rule. Because of this I think it is a mistake to look for intrinsic properties of statements that would make them universally acceptable as premises. In a face-to-face argument the onus is on the antagonist to inform the protagonist if he or she has any objections to a statement being considered as a premise. If the protagonist asserts a proposition which the antagonist does not explicitly reject, then both parties can use that proposition as a premise in their future arguments.

Many arguments are written in various sorts of document. Arguments occur, for example, in books, journal articles, newspaper columns, Internet blogs and so on. Similar considerations apply to all these cases, so I will only consider written arguments as they occur in journal articles. With slight changes what I say will also apply to other sorts of written arguments as well. In a journal article, premises are acceptable if it can be assumed that the intended readership would have no objection to them. The editor and referees are usually the final arbiters of

which premises are acceptable and they are guided by the purpose and scope of the journal. Someone writing for the Marxist journal *Capital & Class*, for example, can assume that the intended readership accepts the fundamental tenets of Marxism and so these do not need to be argued for. Similarly, someone submitting an article to *Analysis*, a journal of analytic philosophy, would be advised not to take for granted the core assumptions of critical rationalism as these are not accepted by analytic philosophers who constitute the intended readership. There are, of course, journals like *Philosophy of the Social Sciences* which present themselves as not being partisan. In every issue they state: 'No school, party, or style of philosophy of the social sciences is favored. Debate between schools is encouraged.' Even in such cases, however, assuming the claim of non-partisanship to be correct, the intended audience can be assumed to have no objection to certain statements which can form the starting points for various sorts of argument. The journal is aimed, after all, at philosophers with a special interest in the social sciences.

Some of the advantages of my proposal are best brought out by contrasting it with a widely accepted alternative account. I give references to the version found in chapter 4 of Bickenbach and Davies (1997) because their account is clearly and concisely presented, but similar accounts are also to be found in books by Govier (1988, ch. 5), LeBlanc (1998, ch. 6), Moore and Parker (1989, ch. 3), Conway and Munson (2000, ch. 11) and no doubt many others.

Bickenbach and Davies (1997, p. 159) propose that a premise is acceptable if it is a necessary truth or it is a controversial claim accepted by both the protagonist and antagonist for the sake of argument. A premise is also acceptable if it is a contingent truth, but in this case it must either be supported by a cogent sub-argument or form part of common knowledge or be asserted by an appropriate expert or be a credible report of personal experience. I will look at each of these kinds of supposedly acceptable premises in turn. Thinking that a premise is acceptable because it is a necessary truth appears, at first sight, to be entirely reasonable and straightforward. Bickenbach and Davies (1997, p. 158) say that there are two types of necessary truth, namely statements that are true by definition and logical truths. Quine's essay "Two Dogmas of Empiricism" (1951) has spawned what seems to be an interminable flood of articles about analyticity and what it is for a statement to be true by definition. There exists no consensus and the protagonist and antagonist in a dispute may well disagree about what is

true by definition. Just because one person thinks a statement is true in this way does not mean everyone will. Only if the protagonist and antagonist agree on this matter can the relevant statement be accepted as a premise and this is exactly what my proposal amounts to in this case.

People also disagree about certain logical truths. Intuitionistic mathematicians and philosophers do not accept that many classically true logical laws, such as the law of excluded middle, really are correct. Thus, if the antagonist in an argument is an intuitionist, the protagonist cannot use the law of excluded middle as a premise as it is unacceptable to the antagonist. In this case my proposal for premise acceptability fares much better than that of Bickenbach and Davies (1997). It should be noted that intuitionists are not the only people who object to certain classically true logical laws. Various philosophers and logicians have proposed revisions of classical logic as documented, for example, by Haack (1996).

Bickenbach and Davies (1997, p. 163) allow controversial and even false statements to be acceptable as premises if the protagonist and antagonist agree to accept them because they are interested in seeing what would follow from them if they were true. They imagine a situation, for example, where the statement that Napoleon won the Battle of Waterloo is accepted in order to test the claim that 'later developments in Russia were a direct result of Napoleon's defeat'. I have no objection to this and it is easily accommodated within my general approach to premise acceptability.

For Bickenbach and Davies (1997, p. 159), a contingent truth is acceptable as a premise if either it is supported by a cogent sub-argument or it is a part of common knowledge or it is asserted by an appropriate expert or it is a credible report of someone's personal experience. A premise supported by a cogent sub-argument raises no new issues since it itself must have premises and some account must be given of their acceptability.

Bickenbach and Davies (1997, p. 159) see common knowledge as being relative to a country, for they say that it is common knowledge for 'people living in Canada' that 'Canadian winters are colder than Canadian summers' and 'among North Americans' that 'one of the most important holidays in the U.S.A. occurs in July'. The idea seems to be that if you are arguing with someone in Canada you can treat everything that is common knowledge in Canada as an acceptable premise and if you are arguing with someone in North America you can regard everything

that is common knowledge there as an acceptable premise. Unfortunately, they do not provide any rationale for why this should be the case. Why relativise common knowledge to a country? Why not to a state, region, county, province or even tribe? The boundaries of many countries, such as those in Africa, were imposed by colonial powers with no regard to the needs or concerns of the indigenous populations. Why should common knowledge be relative to such an arbitrary political construct? In deciding which premises are acceptable we must always take account of the audience to whom the argument is addressed. Someone putting forward an argument in a newspaper article in Canada, say, needs to assume certain propositions as premises. On my proposal, these will be things that the intended readership of the newspaper would accept. This would depend upon various factors including the political affiliation of the newspaper and whether it was a serious paper or merely a tabloid. The category of such statements is not the same as what is common knowledge in Canada. That category is proposed without reference to the audience being argued with. Moreover, I have provided a rationale for my proposal, whereas Bickenbach and Davies (1997), as already mentioned, have not provided one for theirs.

In the case of expert or personal testimony the justificationist roots of the approach proposed by Bickenbach and Davies (1997) are finally made explicit. The idea is that the source of certain statements renders them acceptable. The truth is that we accept propositional information from any source unless we have a reason to reject it. We do not accept what an expert says, for example, because the information comes from an expert; the fact that it comes from an expert affects the kind of reasons we can give for rejecting it. Expert testimony can indeed be rejected and experts can and do contradict one another. A widely reported recent example concerns the possibility that chronic fatigue syndrome may be caused by the XMRV virus. There was considerable media coverage of the results of a study by Lombardi et al. (2009) suggesting that maybe as many as 95% of sufferers had the XMRV virus compared to about 4% of the general population. A few months later, a study by Erlwein et al. (2010) found that none of the patients with chronic fatigue syndrome they tested had the XMRV virus. The truth of the matter is not decided by working out which team of researchers is the more expert. What is happening is that a critical discussion is taking place in order to try and explain both findings and understand what is really going on. Many people also feel that more research needs to be done. Examples of such discussions can be found, for example, on a number of websites, including those

of the Whittemore Peterson Institute for Neuro-immune Disease (www.wpinstitute.org), ME Research UK (www.mere-earch.org.uk) and the UK-based ME Association (www.meassociation.org.uk). (These websites were consulted in May 2010.) This is exactly what a critical rationalist would expect.

In the case of personal testimony, again, we do not accept someone's testimony because they are particularly reliable and the testimony is credible. We accept every-one's testimony unless there are reasons to reject it. The concepts that wear the trousers are those of unreliability and implausibility. We assume that everyone is reliable and all testimony is credible unless we have a definite reason to think the assertion is unreliable or the testimony implausible.

As well as having criteria of acceptability, Bickenbach and Davies (1997, p. 160) also have principles of unacceptability. There is no point in discussing these at length as they are mirror images of the acceptability criteria and so add nothing new to their account. Thus, corresponding to the rule that a premise is acceptable if it is part of common knowledge, they propose that a premise is unacceptable if it is refuted by common knowledge.

This comparison between my proposal and that of Bickenbach and Davies (1997) shows the advantages of my way of looking at things and the flaws in a widely accepted account that seeks to uncover intrinsic properties of statements that render them universally acceptable as premises irrespective of the context in which they are put forward.

5. Conclusion

In this paper I have presented a proposal concerning premise acceptability and compared it to a widely accepted alternative account. My proposal sees premise acceptability as being part of a more general theory of testimony and the specific account of testimony that I have made use of is a critical-rationalist one which sees us as accepting information unless we have definite reasons not to. Furthermore, my proposal for premise acceptability emphasises the role of the audience to whom an argument is addressed rather than looking for intrinsic properties of statements that would make them universally acceptable as premises.

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ISSA Proceedings 2010 - “The Truth And Nothing But The Truth?”: The Argumentative Use Of Fictions In Legal Reasoning



1. Introduction: the concept of legal fiction [i]

In eighteenth-century England, as we can see from a notorious story reproduced in different contemporary pieces of writing in the philosophy and history of law (Perelman 1999, p. 63; Perelman 1974, p. 348; Friedman 1995, p. 4, part II), the provisions of the criminal law insisted on the death penalty for every culprit accused of “grand larceny”. According to the same law, “grand larceny” was defined as the theft of anything worth at least two pounds (or 40 shillings). Nevertheless, in order to spare the lives of the defendants, the English judges established a regular practice which lasted for many years, to estimate every theft, regardless of its real value, as though it were worth 39 shillings. The culmination of that practice was the case when the court estimated the theft of 10 pounds, i.e. 200 shillings, as being worth only 39 shillings, and thus revealed an obvious distortion of the factual aspect of that, as well as of many previous cases.

The said situation and the corresponding judicial solution of it represent one of the most utilized classical examples of the phenomenon of what is called “legal fiction” (or more adequately in this case, “jurisprudential fiction”). This concept designates a specific legal technique based on the qualification of facts which is contrary to the reality, that is, which supposes a fact or a situation different from what it really is, in order to produce a certain legal effect (Perelman 1999, p. 62; Salmon 1974, p. 114; Foriers 1974, p. 16; Delgado-Ocando 1974, p. 78, 82; Rivero 1974, p. 102; de Lamberterie 2003, p. 5; see also Smith 2007, p. 1437, Moglen 1998, p. 3, part 2 A).

However, this definition is not free from internal difficulties. Namely, the use of the terms “facts” and “reality” in its formulation immediately triggers the controversy between the common-sense, unreflective concept of factual reality as

something that is simply “out there”, waiting to be checked and identified, and the more sophisticated concept of “facts” and “reality” appropriate for the legal context. Namely, the latter takes into account the constructive capacity of institutional norms and rules to produce complex forms of legally relevant realities (“theft”, “murder”, “marriage”, “contract”, “association”, etc.), consisting of a specific mixture of “brute” and “institutional” factual elements (Searle 1999, pp. 122-134).

That is why some authors insist on the point that in order to be counted as proper legal fictions, it is not enough that the fictional legal statements simply involve an element of counterfactuality opposed to the common-sense reality; they must, moreover, be contrary to the existing *legal* reality. Thus, for instance, Perelman claims that if the existent legal reality is established by the legislator, like in the case of associations and other groups of individuals that are treated as legal personalities, then we are not entitled to consider it legal fiction, although it deviates from the psychological, physiological and moral reality in which the persons are identified as individual human beings. However, if, Perelman argues, a judge grants the right to sue a group of individuals that does not represent a legal personality, while the right to sue is reserved only for groups constituted as legal personalities, he is in fact resorting to the use of legal fiction (Perelman 1999, pp. 62-63). A similar position is also advocated by Delgado-Ocando, who subscribes to Dekker’s view that legal fiction should not be considered a violation of “natural facts”, but, essentially, a deliberately inaccurate use of the actual legal categories (Delgado-Ocando 1974, p. 82). Thus, using the above-mentioned definition of legal fictions as “a qualification of facts contrary to reality”, I will bear in mind this specific meaning of “contrary-to-legal-reality”, because I see as convincing the view that the existing legal reality, which includes the factual components but is not reducible to them, is the real target of the fictional reconfiguration by means of this peculiar legal technique.

Within this conceptual framework, the main goal of my approach to the issue of legal fictions will be twofold. First, through the analysis of some practical examples of legal fictions taken from different national jurisprudences, I will attempt to isolate the general argumentative mechanism of legal fictions by using some of the fundamental ideas and insights developed in different branches of the contemporary argumentation theory. Second, given the possible abuse of legal fictions as an instrument of legal justification, the emphasis will be placed on the

issue concerning the possibility for the formulation of certain criteria in establishing the difference between the legitimate and the illegitimate use of this argumentative technique. However, in order to do this it will be necessary, first, to define the distinction between legal fictions and another kind of legal phenomena with which they are sometimes confused – legal presumptions, and second, to distinguish the different kinds of legal fictions that exist. Those distinctions will enable us to focus our attention solely on those aspects of the complex issue of legal fictions which are relevant for the purpose of this paper.

2. *Legal fictions vs. legal presumptions*

On a theoretical level, the question concerning the relation of legal fictions to legal presumptions is still a controversial one. The reason for this is most probably the fact that both legal fictions and legal presumptions establish a sophisticated relationship to the element of factual truth involved in a legal case in the sense that they both treat as true (in a legally relevant sense) something which is not, or may not be true in a factual sense. Thus, the presumption may be defined as an affirmation which the legal officials consider to be true in the absence of proof of the contrary, or even, in some cases, notwithstanding the proof of the contrary (cf. Goltzberg 2010, p. 98: “Affirmation, d’origine légale ou non, que le magistrat tient pour vraie jusqu’à preuve du contraire ou même dans certains cas nonobstant la preuve du contraire”). For example, a child born to a husband and wife living together is presumed to be the natural child of the husband; an accused person is presumed innocent until found guilty; an act of the state administration is presumed to be legal, etc., although in some cases those presumptions may be shown not to correspond to the factual state of affairs.

When discussing the issue of the relationship of legal fictions and legal presumptions, it is necessary to mention the classical dichotomy of presumptions into presumptions *juris tantum* and presumptions *juris et de jure*, i.e., “simple”, rebuttable presumptions, which admit proof of the contrary, and “absolute”, irrefutable presumptions, which do not admit proof of the contrary. For instance, the presumption of the paternity of the legitimate husband is rebuttable because it can be proven that the husband is not the real biological father of the child born within the marital union; on the other hand, the presumption that everyone knows the law (“no one is supposed to ignore the law”, or in the well-known Latin formulation, “*nemo censetur ignorare legem*”) is usually treated as an example of an irrefutable presumption because it is not possible to avoid liability for violating

the law in criminal or in civil lawsuits merely by claiming ignorance of its content.

This distinction is significant in the issue of legal fictions because they are sometimes assimilated into the category of irrefutable presumptions. Thus, for instance, Wróblewski argues that irrefutable presumptions are the source of legal fictions because they cannot be discarded and because they formulate assertions which cannot be demonstrated to be false by reference to reality (Wróblewski 1974, p. 67: "Particulièrement la source des fictions se trouve dans les présomptions irréfragables, *praesumptiones iuris et de iure*, car elles ne peuvent être écartées, elles formulent donc des assertions dont la fausseté n'est pas démontrable par une référence à la réalité").

However, the reasons for accepting this view do not seem to be conclusive. First, irrefutable presumptions and legal fictions establish different relations to the element of factual truth involved in a legal dispute. Namely, the irrefutable presumption just makes it irrelevant, in the sense that this kind of presumption does not allow the claims of the factual truth contrary to the presumed truth to be even taken into consideration in deciding the case. On the other hand, the legal fiction starts with the identification of the factual reality in the case at hand, but then distorts the standard qualification of facts that would be appropriate for this case in order to include them in another legal category and to produce the desired legal effect. Second, it seems reasonable to claim, as Foriers does, that legal presumptions and legal fictions belong, in fact, to different segments of legal theory and practice: the presumptions are related to the theory (and practice) of legal proof, regulating the possible objects of proof and the distribution of burden of proof between the parties, while legal fictions are related to the theory (and practice) of the extension of legal norms, or of their creating and legitimatizing (Foriers 1974, p. 8). That is why in the present approach, adopting the view of a fundamentally different nature of legal presumptions and legal fictions, my interest will be restricted only to the latter, without underestimating, of course, the genuine interest that legal presumptions legitimately raise as an object of study of contemporary research in legal argumentation.

3. Kinds of legal fictions

Legal fictions, as an interesting technical device, the use of which represents a pervasive trait of the legal practice from Roman times to the present, are not a homogenous class. The kinds of legal fictions vary depending on the segment of the legal system in which they are created and utilized. Thus, according to the

criterion of their origin, we can distinguish legislative, doctrinal and adjudicative (jurisprudential) fictions (Delgado-Ocando 1974, p. 92; Foriers 1974, p. 16).

Legislative fictions, being those established by the legislator himself, can be further sub-divided into the categories of “terminological” and “normative” fictions. In the case of terminological fictions, the legislator fictionally qualifies a factual situation which is obviously contrary to the common-sense conceptual reality, like in the case when the law stipulates that some physically movable objects - animals, seeds, utensils, etc. - are to be considered immovable goods (Article 524 of the French and Belgian Civil code). Normative legislative fiction, on the other hand, is that which adds a complementary norm to the terminological stipulation, because without invoking that norm it would be impossible for the fiction to play out its role. An example of this situation may be found in Article 587 of the French and Belgian Civil code, in which the legislator regulates the rights and duties of the usufructuary (a person who has the right to enjoy the products of property they do not own). Namely, the right to usufruct usually presupposes the conservation of the object (i.e. not damaging the property) that is being used. However, in order to further extend the right to usufruct also to things that cannot be used without being consumed, like money, grains, liquors, etc., the legislator is obliged to include a supplementary norm that, following the completion of the usufruct, the usufructuary should replace the consumed objects with such of similar quantity, quality and value. Thus, in this case, the fictional assimilation of expendable goods in the category of legitimate objects of usufruct is made possible by the introduction of a “meta-rule” that should justify or counterbalance the violation of the fundamental nature of the institution of usufruct (Foriers 1974, pp. 19-20).

Although the distinction between legislative and doctrinal legal fictions is not always easy to establish, it may be said that doctrinal fictions are theoretical devices whose function is to pave the road for the reception of new legal categories or to justify the implicit ideological basis of the legal system. Thus, the theories of the “declarative function of the judge” (judges are not entitled to create or to interpret the law, that being the function of the legislator) and of the “inexistent gaps in the law” (the system of law is complete and capable of regulating every legal dispute) are treated as examples of “doctrinal fictions”, which attempt to assure the theoretical and systematic stability of the actual legal order (Delgado-Ocando 1974, p. 99).

However, for the purpose of this paper, the most important and the most interesting for argumentative analysis are the fictions of the third, adjudicative kind (usually called “jurisprudential fictions”, especially in the French-speaking tradition). These are the fictions used in judicial reasoning as strategic instruments in attaining the desired aim by a deliberately inaccurate use of the existent legal categories and techniques of legal qualification. The specificity of jurisprudential fictions lies in their dynamic and unpredictable nature, in the sense that they are created “ad hoc” in the function of the resolution of a particular, usually difficult and complex legal case. As Perelman points out, their use is particularly frequent in criminal law, when the members of the jury or the judges strive to avoid the application of the law that they find unjust in the circumstances of the specific case. This is the case not only in the classical “39-shillings” example, but also in the twentieth-century French and Belgian legal practices, when in several cases involving euthanasia the jury did not find the defendants guilty of the death of the deceased, although in the corresponding national legislatures there was no established distinction between euthanasia and simple murder (Perelman 1999, p. 63).

Nevertheless, jurisprudential fictions are not restricted solely to criminal cases; they may also be used in other legal areas, such as constitutional, civil, administrative, international law, etc. One particularly illustrative example can be taken from a former Yugoslavian and, subsequently, Macedonian legal practice from the area of contract law in the late 1960s. Namely, the existent law on the sale of land and buildings recognized legal validity only to those agreements concluded in written form, explicitly denying it to the non-written ones. However, in deciding the practical cases in which the sources of the dispute were orally concluded agreements, and in order to prevent manipulations with their consequences (for instance, the attempts of their annulment following the completion of the transfer of the property and money), the court decided to assimilate oral agreements into the category of written agreements and to accord them the same legal status, provided that they had been carried out (decision of the supreme Court of Yugoslavia R. no. 1677/65 from 18.03.1966; cited from Чавдар 2001, p. 155).

Although jurisprudential fictions are usually generated in order to deal with perplexing practical cases, they may also function as a source in creating new legislative rules (as was actually the case with the “39-shillings decision”, or with

the decision of the Yugoslavian Supreme Court to treat oral agreements, under certain conditions, as if they were written ones, which were later incorporated in the law in the form of general rules). This is, amongst others, one of the important reasons which make the phenomenon of jurisprudential fictions worthy of theoretical and practical attention and which will be further commented on in the concluding section of this paper.

4. Jurisprudential fictions and their argumentative role

Regardless of the definition of legal fictions that we are ready to adopt, it is obvious that the strong counterfactual element necessarily involved in fictions which are used in judicial reasoning and motivation of judicial decisions makes their nature extremely controversial. Namely, it obviously collides with one of the fundamental demands of legal procedures – the need to establish the factual truth which lies in the basis of a lawsuit and to stick to it in the determination of the outcome of the legal dispute. Even if we agree that the concept of truth does not have the same meaning in the courtroom, in a scientific or philosophical investigation, or in everyday use, it cannot be denied that the mechanism of jurisprudential fictions is based on the deliberate refusal to adhere, for legal purposes, to the established truth of the facts in the case (for instance, the truth that the value of the theft is more than 39 shillings, or that the defendant voluntarily caused the death of another human being, or that the contract was not concluded in writing, etc.).

On the other hand, it is a well-known fact that the demand for the adherence to the truth in the adjudicative context cannot be easily disregarded because it arises primarily from the need to assure objectivity, impartiality and legal certainty in the administration of justice. Consequently, every aberration from it spontaneously raises suspicions that the respect of those fundamental values may be somehow placed in danger. This is perhaps the main reason why, in the history of legal thought, especially in the common law tradition in which the use of legal fictions in the process of adjudication was especially frequent, they were often perceived in a negative light, as a technique of manipulation by the judges, which corrupted the normal functioning of the legal system. The most prominent representative of that stance is Jeremy Bentham, in whose opinion legal fictions were simply usurpations of legislative power by the judges. He even compares the fiction to a nasty disease, syphilis, which infects the legal system with the principle of rottenness (cf. Smith 2007, p. 1466; Klerman 2009, p. 2; Fuller 1967,

p. 2-3). Furthermore, in a contemporary context, there are also opinions which label legal fictions as dangerous and unnatural technical means in the law (cf. Stanković, 1999, p. 346).

However, there is also another side to this, which, being more sympathetic to the phenomenon of legal (or, in this context, jurisprudential) fictions, treats them as an important, useful and generally legitimate legal technique. In this perspective, they are viewed, essentially, as instruments that help their authors to determine and justify the correct outcome of a legal dispute, to obtain a result which would be compliant to equity, justice or social efficiency (Perelman; cf. de Lamberterie, 2003, p. 5), especially in difficult and perplexing legal situations, when the established legal rules cease to “encompass neatly the social life they are intended to regulate” (Fuller 1967, p. viii). Thus, legal fictions are sometimes described as “white lies” of the law (Ihering; cf. Fuller 1967, p. 5), lies “not intended to deceive” and not actually deceiving anyone (Fuller 1967, p. 6), lies which are also “benefactors of law” (Cornu; cf. de Lamberterie 2003, p. 5) because they serve as a means to protect the important values of the legal and social world which may sometimes be endangered precisely by the very mechanical application of the existing legal rules.

As it is obvious even from this simplified description, the phenomenon of legal fictions mobilizes a corpus of very deep questions concerning the relations of law, reality and truth, the hierarchisation of legal values, the distribution of power between the legislative and the adjudicative officials within the framework of the legal system, the legitimate and illegitimate use of judicial discretion, etc. However, in my present approach, I shall focus only on those elements of the phenomenon of legal, or, more precisely, of jurisprudential fictions which are relevant for the analysis of legal reasoning from the point of view of the argumentation theory. Namely, it seems to me that the unveiling of the complex mechanisms of reasoning which those fictions use in applying the norms to the distorted factual reality is of crucial significance for the better understanding also of the other aspects of their functioning within the socio-legal context.

As a theoretical platform for analyzing the phenomenon of jurisprudential fictions, I would suggest a combination of two general ideas developed in the different orientations of the contemporary argumentation theory: first, the idea of legal justification as the essence of legal argumentation, and second, the idea of strategic maneuvering as an indispensable instrument of legal technique,

especially in what is called “difficult cases”. Allow me to briefly comment on each of the above-mentioned.

4.1. Jurisprudential fictions as justificatory devices

The importance of justificatory techniques in legal, and especially in judicial reasoning, is nicely summarized in the formulation that the acceptability of a legal decision is dependent on the quality of its justification (Feteris 1999, p. 1). However, some theoreticians of legal argumentation, as for example, Robert Blanché, are prepared to go even further and to affirm that judicial argumentation is, in its essence, justification. Namely, according to this view, behind the façade of an impartial derivation of legal conclusions from the normative and the factual premises, in the judicial reasoning there is always an effort to justify a certain axiologically impregnated legal standpoint (Blanché 1973, pp. 228-238).

The main point of this insistence to the justificatory nature of legal argumentation is the need to emphasize the fundamentally regressive character of legal reasoning. The qualification “regressive” in this context means that in this type of reasoning the starting points are not the principles from which we progressively derive the consequence, but rather the consequence itself, from which we regress to the principles from which it may be derived (Blanché 1973, p. 12). Thus, in the context of legal reasoning, whilst the deliberation is treated as a progressive procedure in which the judge is seeking a solution for a legal problem, starting from a complex of legal principles, the justification is essentially a regressive procedure, which begins from the decision, that is, from the solution of the problem, and seeks the reasons and arguments which can support it (Blanché 1973, pp. 228-230).

It seems that the existence and the functioning of jurisprudential fictions strongly support the thesis of a fundamentally regressive character of legal argumentation. Namely, the need to use a fiction in the motivation of a judicial decision emerges only when it is necessary to find a way to justify a legal conclusion which, for some reason, does not fit in the existing legal framework, but which has already been estimated by the judge as the most satisfactory solution to the legal issue at hand. However, legal fictions are a type of non-standard justificatory device because they demand a deeper, riskier and more artificial argumentative maneuver than a search for reasons and arguments, which can simply be extracted from the existing regulation. In fact, the very need

for fictional justification of a legal decision is a symptom of the disputable status of its legitimacy in the current legal framework, or an indicator that in the previous process of judicial deliberation which led to that decision, the boundaries of the system, for better or worse, have already been transgressed (for the difference in the justificatory function of “classical” and “new” legal fictions, see Smith 2003).

From the above-mentioned examples it is clear that the need to use jurisprudential fictions arises in situations when no exception to the rule, no alternative interpretation and no ambiguous rule can be invoked by the judge in order to evade the unacceptable result of the application of the relevant legal norm and to justify the desired legal outcome of the case (for instance, sparing the life of a petty thief, granting the legally relevant status of orally concluded, yet realized agreements, etc.). Thus, not being entitled to assume, not openly at least, a legislative role and to change the legal rule which generates the undesired conclusion, the author of the jurisprudential fiction resorts to the modification of the other element on which the syllogistic structure of their reasoning is based – the factual premise.

From an argumentative point of view, the false qualification of facts, their deliberate assimilation in a legal category to which they obviously do not belong, represents a procedure which combines the techniques of reasoning *a contrario* and *a simili* in an idiosyncratic and rather radical argumentative maneuver (for the use of arguments *a contrario* as a technique of justification of judicial decisions, see Canale & Tuzet 2008, and Jansen 2008). Namely, the use of fiction is based on the identification not of similarity, but precisely of the essential difference between the categories to which the technique of assimilation is applied (“grand” and “small” larceny, “oral” and “written agreement”, etc.). In fact, the fiction is in demanding an analogical treatment of two legally relevant acts in spite of the explicit recognition of their inequality (Delgado-Ocando, 1974, p. 82).

This analogical treatment of obviously different legal facts, which amounts to the assimilation of some of them in a category other than that they would normally belong to, is the key move which makes it possible for the judge to use the logical force of the subsumptive pattern of legal reasoning in order to justify his/her decision. For instance, if the rule of law provides that only written agreements are legally valid, and the oral agreement which is the object of the dispute is

fictionally assimilated into the category of written agreements, it follows that it is also legally valid and should be protected by the law. To wit, the new, modified factual premise is now suitable for generating the desired conclusion under the general and unchanged normative premise. **[ii]**

4.2. Jurisprudential fictions as instruments of strategic maneuvering

The treatment of judicial fictions as specific justificatory instruments of “last resort”, by which the judge attempts to fulfill his/her strategic role - that of legitimatizing a decision which cannot, *stricto sensu*, be justified by the standard means in the existing legal framework - is very close to the conceptual horizon opened up by the theory of “strategic maneuvering” applied in a legal context (van Eemeren & Houtlosser 2005; Feteris 2009).

Legal, and especially judicial argumentation, like any other kind of argumentation, represents a goal-directed and rule-governed activity, with a strongly manifested agonistic aspect. However, one of the peculiarities of judicial argumentation is the fact that the justification and the refutation of legally relevant stances, opinions and decisions is realized within a strictly defined institutional framework, bounded by many restrictions not only of a logical, but also of a legal, substantial, as well as a procedural nature. Moreover, because of the conflicts of values, conceptions and interests in the social context, the judicial decisions are usually the object of numerous controversies and should be capable of withstanding sharp criticism in a dialogically structured (potential or actual) argumentative exchange. That is the reason why the argumentative strategies and instruments used in legal justification, especially in difficult cases, are complex and multi-layered; to wit, they have to represent an optimal plan to justify a particular decision taken as the most adequate and fair solution of the case at hand, in accordance with the strict demands of the legal system, and to defend it against any possible argumentative attack.

The concept of the argumentative maneuver in a legal context comes into play in those challenging situations when the judicial conviction of the fairness and rightness of a particular decision conflicts with the relevant norms applicable to the specific case. In that kind of situation, the judge operates in the (usually, fairly limited) space left for his/her “margin of appreciation”, trying to find argumentative means to fulfill the strategic goal of justification by using the instruments which are placed at his/her disposal by the legal system.

In general, the techniques of interpretation of legal rules (linguistic, genetic, systematic, historical, etc.), which enable to broaden or to restrict their scope by invoking the intention of the legislator, the origin and the evolution of the rule, the nuances of meaning of terms in its formulation, etc., are used as tools in this strategic maneuvering (on this point, besides the above-mentioned Feteris 2009, it could be instructive to see also van Rees 2009 and Iețcu-Fairclough 2009). Viewed, generally, as an “attempt to reconcile dialectical obligations and rhetorical ambitions” (van Eemeren & Houtlosser 2005, p.1), the strategic maneuvering in the justification of judicial decisions is an indispensable instrument in resolving the tension “between the requirement of legal certainty and the requirement of reasonableness and fairness” (Feteris 2009, p. 95).

This general function of strategic maneuvers used in legal justification is the main reason for suggesting that the phenomenon of legal fictions could also be treated as a specific type of such maneuvering, although comprised in a broader sense than the interpretative maneuvers *stricto sensu*, capable of being adequately accounted for by the pragma-dialectical analytical apparatus (like, for instance, in Feteris 2009). Namely, in the above-mentioned examples of the judicial use of fictions, the refusal to apply (at least, in a straightforward way) the general legal norm to the established facts of the case was inspired by the need to meet the standard of reasonableness and fairness of the decision, while the move of falsely qualifying the facts was intended to integrate the judicial solution into the structure of paradigmatic legal reasoning, as one of the warrants of legal certainty. Nevertheless, the specificity of legal fictions compared to other forms of strategic maneuvering in the legal area lies in the fact that the target of this maneuver is not the rule itself and its possible interpretations, but the very facts of the case which make it possible (or impossible) to subsume it under that particular legal rule. However, this move reveals, simultaneously, the inherently controversial connotations of the notions “maneuver” and “maneuvering”, which may sometimes also denote an implicit attempt to undermine or to subvert the legitimate functioning of legal rules, while creating only the impression that they are being consistently observed.

In that way, the use of fictions as strategic means in legal reasoning and argumentation shares the crucial question treated in the contemporary theory of strategic maneuvering in argumentation: how to establish the difference between the legitimate and the illegitimate use of this technique, between its “sound” and

its “derailed” instances (van Eemeren & Houtlosser 2009)? Namely, when it is affirmed that the use of fiction aims to produce a desired legal outcome, the adjective “desired” is burdened by a particularly dangerous form of ambiguity. The effect desired by a corrupted or biased judge, to bear in mind the Benthamian warnings, may be, for example, the protection of particular political, economic or personal interests, the discreditation or elimination of political adversaries, the legitimatizing of an oppressive politics by a (nationally or internationally) dominant class or ideology, etc. Obviously, the fictional distortion of existent reality in order to bring about legal consequences is a pricey move, a move which may serve the search for justice and equity equally well as it may hinder it.

The problem of the criteria in distinguishing the legitimate and the illegitimate use of legal fiction as a technique of justification of judicial decisions, especially in difficult legal cases in which “the legal reasoning falters and reaches out clumsily for help” (Fuller 1967, p. viii), is too complex and too difficult to be resolved by a simple theoretical gesture. On this occasion, I would venture only to make two suggestions in the direction of making preparations for its more elaborate treatment in the future.

First, it seems that the criteria of sound and derailed argumentative use of fictions are not an absolutely homogenous class, but that they could be differentiated according to the legal area to which the case with fictional justification belongs: civil, criminal, constitutional, etc. The reason for this is the fact that in different legal areas there are different articulations of the fundamental legal relationships between the concerned subject and agents, different standards of acceptable methods of proof and justification. For instance, as it is well known, the use of analogical reasoning in criminal law is not allowed, whilst in civil law the norms governing its use are more permissible. Thus, a detailed identification of the existent standards of use of argumentative techniques in each legal area could represent a useful clue to the elaboration of criteria of the acceptable application of the fictional legal devices in it.

Second, if we feel that notwithstanding the differences in the area of application, there should be a more general formulation of the criterion of the legitimate use of legal, or, more precisely, jurisprudential fictions, perhaps we should explore the direction open by the formulations of the “principle of universalizability” (cf., for instance, Hare 1963) suitable for the legal context - like, for example, Perelman’s “rule of justice” (Perelman & Olbrechts-Tyteca 1983, p. 294), or

Alexy's "rules of justification" in the rational practical discourse (Alexy 1989, pp. 202-204). Namely, in all of these examples the underlying idea is that one of the fundamental features of fair application of legal rules is its capacity for universalisation, in the sense that the treatment accorded to one individual in a given legally-relevant situation, should also be accorded to any other individual who is in a similar situation in all relevant aspects. Applied to the problem of jurisprudential fictions, it would mean that if the judge is prepared, in an ideal speech situation, to openly declare the normative choice obfuscated by the fictional means and to plead for its universalisation to the status of precedent for other cases or of a general rule that should be explicitly incorporated in the legal system, then it can be treated as a positive sign (although not as an absolute or clear-cut criterion) of the legitimacy of its previous use. Supposedly, the protection of partial political, economic or ideological interests "covered" by the derailed uses of fictions in judicial reasoning should not be able to pass the hypothetical or the actual test of universalizability.

In fact, in a historical sense, the universalisation, i.e. the extension of a particular judicial solution to other similar cases, was the general effect of the use of some famous legal fictions, including those from our examples, which contributed to the sensibilisation of legal and social authorities to the existing gap between the reality and the norms, and to the overcoming of it by creating new legal rules. In that way, legal fictions, in spite of their controversial nature, or perhaps just because of it, are shown to be, not only in history, but also in the present, a powerful impetus of the conceptual and normative evolution, in the legal, as well as in the philosophical and logical sense of the word.

5. Conclusion

In this paper, an attempt was made to approach the issue of legal and, especially, jurisprudential fictions by using the theoretical and conceptual tools developed within the framework of the contemporary argumentation theory. Two ideas were discussed as particularly suitable in the realization of this goal: the idea of legal justification as a fundamental aspect of legal argumentation and the idea of strategic maneuvering as an indispensable tool of the technique of justification of legal decisions, especially in "difficult" legal cases. From this perspective, legal fictions used in judicial reasoning have been treated as peculiar, non-standard justificatory devices and instruments of strategic maneuvering. Their main function is related to the attempt to reconcile the desirability of a certain judicial

solution seen as the most reasonable and fair decision in the case at hand, with the demands of the existing legal order, especially the demands of legal certainty. Given the possibility of the abuse of fictions as an instrument in legitimatizing the inappropriate usurpation of normative power by judges, particular attention was accorded to the issue of the criteria of their legitimate and illegitimate use, and the potential of universalization of a particular legal fiction was suggested as a possible indicator of the appropriateness of being resorted to in judicial reasoning.

NOTES

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ii An interesting question, which deserves a more elaborate treatment and more detailed research, is the question if the reasoning mechanisms involved in the creation and utilization of legal fictions can be plausibly accounted for from the point of view of the contemporary theories of defeasible reasoning in law (on the problem of defeasibility in judicial opinion cf. Godden & Walton 2008).

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