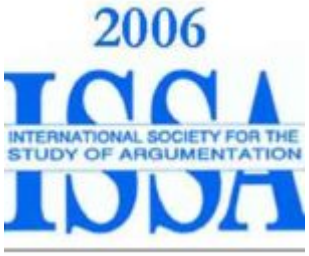
ISSA Proceedings 2006 – Revolutionary Rhetoric – Georg Büchner's "Der Hessische Landbote" (1834). A Case Study



1. *Georg Büchner's Political Pamphlet "Der Hessische Landbote" (1834): Historical Background and Persuasive Effect*

If we want to understand and interpret Büchner's revolutionary rhetoric in his pamphlet "Der Hessische Landbote", we have to take into account the political and social context, that is, the historical situation of the duchy Hessen-Darmstadt in the 30's of the 19th century. In this context, several political reforms initiated by Duke Ludewig I. (1753-1830) have to be mentioned positively, namely, the abolishment of peonage, the declaration of a constitution and the introduction of elective franchise; moreover, the Duke's theatre and library were opened for the general public. However, these reforms at the beginning of the 19th century remained half-hearted. For example, even after the abolishment of peonage, certain feudal tax privileges remained. In this way, many farmers had to suffer an intolerable double burden of the traditional taxes paid to the nobility and the newly introduced taxes paid to the central authorities of Hessen (cf. Franz 1987, p. 38). The right to be elected remained restricted to the wealthy citizens. Finally, the laws abolishing the traditional guild system and introducing free trade caused the bankruptcy of craftsmen through the newly created competition of cheap factory products from foreign countries.

Furthermore, from 1830 onwards, Duke Ludewig II. (1777-1848) returned to a conservative policy, with much less social ambitions than his father Ludewig I. Consequently, Ludewig II. let his prime minister Carl W. H. du Bos du Thil (1777-1859) use authoritarian methods, for example, the brutal knock down of social riots in the northern parts of Hessen.

In 1834, the year of the publication of "Der Hessische Landbote", the duchy Hessen-Darmstadt had about 720.000 inhabitants, whose majority, especially in

rural areas, suffered from extreme poverty. Almost 50% of the population lived just at or below the level of subsistence, 40-45% of the working population (including children over the age of 12 and elderly people) had to work 12-18 hours a day (cf. Schaub 1976, p. 99; Hauschild 2000, p. 19 and p. 43).

In this dramatic situation, Georg Büchner (1813-1827), who is well-known as a brilliant German writer, radical political thinker and distinguished scientist in the fields of medicine and biology, decided to contribute to a revolutionary change of the intolerable social situation via political propaganda. Büchner was born in Goddelau and grew up in the capital of the duchy, Darmstadt. He was the son of the successful physician Dr. Ernst Karl Büchner and his wife Caroline. Among his numerous siblings, Wilhelm Büchner (1816-1892) stands out as the inventor of artificial ultramarine, Luise Büchner (1821-1877) became a distinguished writer and feminist and Ludwig Büchner (1824-1899) was a well-known materialist philosopher.

After finishing grammar school in Darmstadt, Georg Büchner studied medicine in Straßburg, the centre of German political emigration, where he probably established contacts with revolutionary circles in the years 1831-1833. Büchner continued his studies in Gießen 1833-1834, and founded a section of the "Society of Human Rights", first in Gießen, later in Darmstadt. In this society, pre-communistic theories were discussed. Büchner developed an increasingly critical view of the political reality within the duchy and the other countries of the political confederation "Deutscher Bund" bordering on Hessen-Darmstadt. Through his friend August Becker, Büchner got to know the Protestant pastor Friedrich Ludwig Weidig (1791-1837), the leading head of the liberal-democratic opposition in northern Hessen.

In the beginning of the year 1834, Büchner wrote his pamphlet "Der Hessische Landbote" ("The Hessian Courier") as a call for a general revolution. To mobilize the masses, he mainly criticized their enormous tax burden: About 700.000 citizens had to pay more than 6 millions "guilders" ("Gulden") and were thus exploited by a minority of about 10.000 privileged people. However, Büchner did not have any illusions about causing a revolution of the masses solely by means of publishing this pamphlet. He mainly intended to inform the population drastically about its desperate political situation and to test if he could arouse general indignation, which in the long run could lead to an uprising of the masses (cf. Schaub 1976, p. 142; Hauschild 2000, p. 54; cf. also Glebke 1995, pp. 62f., who

assumes that Büchner believed in the possibility of initiating a revolution, in spite of his deterministic view of human history).

It is quite clear that Büchner was more radical than the liberal-democratic opposition of his time. He had the intention to abolish the enormous gap between the rich and the poor and to overthrow the political system which made it possible. His brother Ludwig wrote the following about the political point of view of Georg Büchner: "Was seinen politischen Charakter anlangt, so war Büchner noch mehr Sozialist, als Republikaner" ("As to his political character, Büchner was more of a socialist than a republican"; cf. Hauschild 2000, p. 51). And what is more, Georg Büchner was a socialist in the sense of a radical egalitarian, who went as far as the abolishment of private property, as his friend August Becker remarked (cf. Hauschild 2000, p. 51). Therefore, Büchner's pamphlet differs from earlier revolutionary texts in the German speaking area through its systematic criticism and it is a forerunner of anarchist and Marxist political programs (cf., however, Glebke, 1995, pp. 97f., who sees Büchner as a representative of a liberal-democratic point of view).

To soften the radical design of Büchner's "Landbote", Weidig revised the original text because he was afraid to offend the liberal opposition, which he wanted to win over as an ally. He composed an introduction, which advised the audience to take precautions when reading and keeping the text, and wrote a conclusion which he formulated as a prayer. Furthermore, he inserted many quotations from the Bible (but cf. Schaub 1976, pp. 49ff., who doubts that Weidig indeed introduced all or most of the Bible quotations). He also probably deleted passages especially criticizing the liberal bourgeoisie and added passages with a strongly idealized view of the former German emperorship (abolished in the year 1806). Weidig did all that without informing Büchner, who was very upset about Weidig's modifications. Büchner remained loyal, however, and helped with the preparations of the print. The "Landsbote" appeared in July, 1834, the first edition comprising 1000 copies.

Already in August, 1834, Carl Minnigerode, a member of the Gießen section of the "Society of Human Rights", was arrested while trying to distribute copies of the "Landbote". Büchner succeeded in avoiding arrest by cold-bloodedly making up alibis. In September, 1834 he went to Darmstadt and tried to reorganize the local section of the "Society of Human Rights", to free Minnigerode and other arrested members and to organize the print of further editions of the "Landbote". In

October, 1834, the situation became ever more threatening for Büchner because the police continued receiving detailed information about the revolutionary circles from police spies.

In March, 1835, Büchner fled to Straßburg. Gustav Clemm, a member of the Gießen section gave away the names of the conspirators, which led to numerous arrests. Among the arrested were Weidig, who was brutally tortured during his detention and committed suicide in 1837, and Becker, who remained in detention for four years, and emigrated to Switzerland and the USA after his release.

As far as the persuasive success of the "Landbote" is concerned, there are contradictory claims. At his interrogation, August Becker declared that most of the farmers brought their copies of the pamphlet to the police (cf. Schaub 1976, p. 143). However, in his book "Die Volksphilosophie unserer Tage" ("The philosophy of the people in our times", 1843), which he wrote when he was free again, Becker stressed the fact that the "Landsbote" successfully aroused the emotions of the people (cf. Schaub 1976, p. 53) and that Weidig met farmers who were extraordinarily impressed by the pamphlet (cf. Schaub 1976, p. 143). What is more, if the first edition had not had a recognizable impact,Weidig would not have published the second edition of the "Landbote" in November, 1834. The lecturer at the University of Marburg, Eichelberg, planned to write a second issue of the "Landbote", which also makes it more plausible that it was efficient in persuading the population. Last not least, the assessment of the "Landbote" by representatives of the authorities of Hessen (e.g. Konrad Georgi, Martin Schäffer), who considered it to be most dangerous, revolutionary and populist, suggests that it was adequate for its intended purpose (cf. Schaub 1976: p. 144).

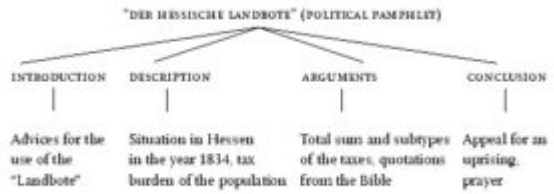
2. *Argumentative Structure of "Der Hessische Landbote"*
Der "Hessische Landbote" belongs to the genre of the political pamphlet, that is, a subtype of argumentative discourse. This is reflected in its argumentative super-structure (cf. van Dijk 1980), which can be divided into four main sections:

1. The "Landbote" begins with an introduction, which is set off from the main text by formal means such as a headline (*Vorbericht*), a typographically deviating smaller font size, a black line, but also as far as content is concerned. The introduction contains only measures of precaution concerning the reading, storing and further distribution of the "Landbote".

2. The title of the main part *Friede den Hütten! Krieg den Palästen!* (“Peace to the huts, war to the palaces”) is a free translation of the slogan of the French writer and revolutionary Nicolas de Chamfort (1741-1794), who allegedly suggested this slogan for the soldiers of the French revolutionary armies: “Guerre aux chateaux! Paix aux chaumières!” (literally: “War to the castles! Peace to the thatched cottages!”; cf. Schaub 1976, 75). The title is followed by a detailed description of the deplorable social situation in Hessen-Darmstadt. This descriptive part contains several argumentative passages, but the first four paragraphs remain mainly descriptive. Within these paragraphs, the extreme discrepancy between the situation of the rich and the poor in the duchy in the year 1834 is vividly described. After that, the total sum of the taxes and the subtypes of taxes are enumerated and the concept of “state” is defined (*Der Staat also sind alle* = “The state are all (citizens)”). Finally, the disproportion between the masses of exploited citizens (about 700.000) and the small ruling elite and the oppressive bureaucracy is severely criticized.

3. In the following argumentative part of the “Landbote” Büchner follows two main strategies. On the one hand, he quotes the sums of the respective subtypes of taxes according to the contemporary statistical survey by G.W.J. Wagner (1831; cf. Franz 1987, West 1987, Mayer 1987) and thus argues, using empirical and inductive arguments, for the justification of the revolution (cf. the paragraphs 5-15 of the “Landbote”). On the other hand, Büchner and Weidig appeal to the authority of the Bible, quoting about 80 passages of the Old and New Testament in order to legitimize the revolution (cf. the paragraphs 16-21 of the “Landbote”). It remains a controversial question whether these quotations were written solely by Weidig, which is is the mainstream opinion in the research on Büchner, or whether Büchner used the Bible passages already in the original version of the text (cf. Schaub 1976, p. 50).

4. The conclusion (paragraphs 22-25) contains Büchner’s thesis that a revolution is unavoidable and is characterized by the increasing use of imperatives (cf. § 22, at the beginning: *Hebt die Augen auf* (“Look and see!”), at the end: *erhebet euch* (“stand up!”); § 25 *wühlt, stürzt, wachet, rüstet, betet, lehrt* (“dig!”, “overthrow!”, “wake up!”, “prepare!”, “pray!”, “teach!”). The very end is a prayer with the concluding formula *Amen* (“Amen”). This structure is summarized within Display 1:



Display 1

Büchner's argumentative strategies will be illustrated in the first sentences of the fifth paragraph of the argumentative part of the "Landbote". These sentences are reproduced according to the original orthography, which is sometimes mistaken (cf. the printing error "Innrrn" instead of "Innern"). In this passage, Büchner severely criticizes the tax burden for the Ministry of Internal Affairs and Justice, because the taxes in this institutional area are spent for obscure, inefficient laws, which are to the disadvantage of the people. Therefore, so-called "justice" is only a means to stabilize the power of the ruling elite and the exploitation of the masses (cf.. Büchner 1834, p. 3):

(1) *Für das Ministerium des Innrrn und der Gerechtigkeitspflege werden bezahlt 1,110,607 Gulden. Dafür habt ihr einen Wust von Gesetzen, zusammengehäuft aus willkührlichen Verordnungen aller Jahrhunderte, meist geschrieben in einer fremden Sprache. Der Unsinn aller vorigen Geschlechter hat sich darin auf euch vererbt, der Druck, unter dem sie erlagen, sich auf euch fortgewälzt. Das Gesetz ist das Eigenthum einer unbedeutenden Klasse von Vornehmen und Gelehrten, die sich durch ihr eignes Machwerk die Herrschaft zuspricht. Diese Gerechtigkeit ist nur ein Mittel, euch in Ordnung zu halten, damit man euch bequemer schinde.*

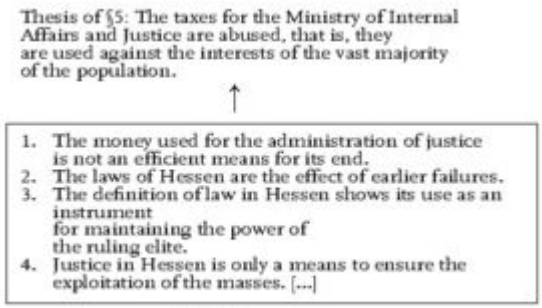
(For the Ministry of Internal Affairs and Justice, 1.110.607 Guilders are paid. For this, you get a tangle of laws, compiled from arbitrary decrees of all centuries, most of the time written in a strange language. The nonsense of all preceding generations has been left to you there, the pressure they succumbed to has rolled over onto you. The law is the property of an insignificant class of aristocrats and scholars, who assign themselves control through their own broth. This justice is only a means to keep you down in order to torment you more conveniently)

The arguments appearing in this passage can be subsumed under wide spread types or schemes of everyday argumentation (cf. Kienpointner 1992, pp. 250ff.). The prevailing types are causal schemes (e.g. means-end arguments or pragmatic arguments, which highlight the positive or negative effects of certain acts).

Empirical indicators for the plausibility of these susumptions are lexical and syntactic means of expression such as *Dafür* ("For this"; *Dafür habt ihr einen Wust…*) in the first sentence, which indicates that unsufficient means have been used in order to achieve a certain end (cf. the negative connotations of *Wust von Gesetzen* "a tangle of laws" and *in einer fremden Sprache* "in a strange language", that is, a language difficult to understand for ordinary people). The second argument is a pragmatic argument (cf. Perelman/Olbrechts-Tyteca 1983, p. 358). It presupposes that the laws in Hessen are the negative effects of a lack of critical attention of former generations (cf. *Der Unsinn aller vorigen Geschlechter hat sich … vererbt; …hat … sich … fortgewälzt* "The nonsense of all preceding generations has been left; …has rolled over onto you").

The third argument has the form of a (persuasively formulated) definition (cf. Walton 2005) according to the classical pattern "X is Y (genus proximum), and Y is characterized by the property Z (differentia specifica): *Das Gesetz ist das Eigentum einer unbedeutenden Klasse von Vornehmen…., die sich … die Herrschaft zuspricht* ("The law (= X) is the property of an insignificant class of aristocrats and scholars (= Y), who […](= Z)"). The fourth argument criticizes that the taxes for the administration of justice are only a means for a bad end (*… nur ein Mittel … damit man euch bequemer schinde* "…only a means … in order to torment you more conveniently").

The radical style of these arguments could be judged as being exaggerated and overly hostile. In spite of the highly polemical formulations and the pungency of Büchner's criticism, however, the misery of the masses in Hessen in the year 1834 justifies an overall evaluation of these causal arguments as basically plausible. Taken together with the following arguments in paragraph 5, they sufficiently support Büchner's claim that the taxes for the administration of internal affairs and justice are abused to maintain an unjust and inefficient system. The first four arguments of paragraph 5 can be summarized as follows (cf. display 2):

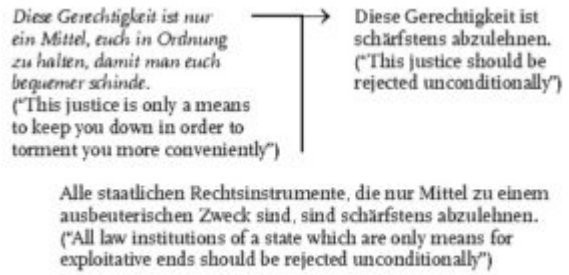


Display 2

For the explicit reconstruction of the microstructure of the fourth particular argument of this passage, which based on the means-end relation (*Diese Gerechtigkeit ist nur ein Mittel, euch in Ordnung zu halten, damit man euch bequemer schinde* "This justice is only a means to keep you down in order to torment you more conveniently"), I am going to use a tripartite model of argumentation. It contains the three basic elements of the well-known Toulmin model (cf. Toulmin 1958, Toulmin et al. 1984, Kopperschmidt 1980, pp. 91ff.; Kienpointner 1992, pp. 24ff.; Van Eemeren/Grootendorst/Snoeck Henkemans 1996, pp. 129ff.; Freeman 2005). This tripartite model contains only those elements of the Toulmin model which are indispensable for any simple, single argumentation, namely, the thesis (= the controversial claim, the point of view), the argument (here understood in the narrow sense, that is, the grounds supporting or attacking the thesis) and the warrant (the semantic relations granting the relevance of the arguments for the thesis).

There is no algorithm or mechanical procedure for the explicit reconstruction of the schemes underlying argumentative passages. But there are a few rules of thumb for the reconstruction of implicit elements:
1. Most of the time, in everyday argumentation only the arguments (in the narrow sense mentioned above, that is, the grounds supporting/attacking a thesis) are formulated explicitly.
2. The default explicitation should aim for a logically valid reconstruction, unless there is strong evidence for assuming an invalid underlying scheme. In many cases, the Modus ponens ("If p, then q; p; therefore, q"), the Modus tollens ("If p, then q; not q; therefore, not p") or the Disjunctive Syllogism ("Either p or q; not p; therefore, q") are such valid schemes as to serve as the underlying formal structures.
3. The implicit elements should be supplemented on the basis of those elements which are explicitly mentioned. This means that the reconstruction should be as

close as possible to the explicitly mentioned elements of the schemes and add only as many implicit elements as seem to be necessary.
4. Reconstructing the warrant, we have to choose between a logical minimum, which can be, for example, the conditional premise of the Modus ponens ("If p, then q") and the pragmatic maximum, that is, more general reconstructions, for example, "All X are Y" or "Mosts X are Y". A decision in this respect has to be taken on the basis of the verbal and situational context and the reconstruction of the intentions of the speaker/writer. In addition to the explicitly formulated means-ends argument *Diese Gerechtigkeit ist nur ein Mittel, euch in Ordnung zu halten, damit man euch bequemer schinde* ("This justice is only a means to keep you down in order to torment you more conveniently"), and on the basis of our knowledge about the radical political point of view of Büchner, we can reconstruct a radical thesis and a highly general and far-reaching warrant (cf. display 3; the explicit elements in Büchner's text are in italics):



Display 3

Critical questions for evaluating means-ends arguments can be given as follows: Are the means sufficient to achieve the end? Are there better means to achieve the end? Can the means be justified by the end? Are the means (only) used to achieve a bad end? (etc.). The last one of these critical questions could be asked to test Büchner's means-ends argumentation. It can be doubted whether the administration of justice in Hessen in the year 1834 was really *only* a means (cf. […] nur ein Mittel […]) for maintaining the rule of the elite and to stabilize the system of exploitation. There could also have been elements of justice which transcended the class system. However, taking into account the miserable situation of the poor and their double tax burden, we could evaluate the harsh criticism formulated by Büchner in this argument as well as in other means-end arguments at least as not being totally exaggerated.

3. *Stilistic Presentation of the Argumentation in "Der Hessische Landbote"*
The aggressiveness of Büchner's argumentation in "Der Hessische Landbote" is

increased by a series of brilliantly used stylistic techniques such as parallel clause structure, anaphors, rhetorical questions, metaphors and metonymies. Especially the metaphors and metonymies are used for making the mechanisms of complex power and domination structures vivid and understandable also for the masses, with the help of personifications (metaphors) and spatio-temporal contiguity (metonymies).

In the passage from §5 analysed above, these techniques can be illustrated, for example, by the frequent use of parallel constructions at the level of the phrase and the clause structure. In the following example, the parallel structures are visualized by labelled bracketing (PART = participle, PP = prepositional phrase; SUBJ = subject, ATTR = attribute, PRED = predicate)(cf. Büchner 1834, 3):

(2) *Dafür habt ihr einen Wust von Gesetzen*,
[PART *zusammengehäuft* [PP *aus willkührlichen Verordnungen …*]],
[PART *meist geschrieben* [PP *in einer fremden Sprache*]].
[SUBJ *Der Unsinn* [ATTR *aller vorigen Geschlechter*]] [PRÄD *hat sich darin* [PP auf euch] vererbt],
[SUBJ *der Druck*, [ATTR *unter dem sie erlagen*]], [PRÄD [hat] *sich* [PP *auf euch*] *fortgewälzt*].

As the cognitive theory of metaphor has amply shown, metaphors are not only esthetic devices for the embellishment of texts, but rather important ingredients of our thought, which they shape considerably (cf. Lakoff/Johnson, Lakoff 1987). This has an important impact on the political discourse of all involved parties (cf. Lakoff 2005). Büchner used metaphorical characterizations in order to make abstract entities such as laws accessible: They are portrayed as concrete objects, which are inherited and which move, and justice is personified as a tyrant, who torments the people.

In the other paragraphs of the “Landbote”, too, metaphorical images are used to visualize the system of exploitation and to portray the ruling elite and the bureaucracy as vampires, dangerous beasts and criminals. In this way, Büchner’s attacks and criticisms are much more understandable and persuasive than a purely abstract analysis could have been. In the whole text, I count about 40 persuasive metaphors which serve this function, supplemented by six explicit similes.

Here are a few examples: Justice is the whore (*Hure*) of the dukes, (Büchner 1834, p. 3). Revenue officers are merciful to the same degree as someone who spares cattle which he does not want to decimate too much (*wie man ein Vieh schont, das man nicht so sehr angreifen will* (Büchner 1834, p. 4). The soldiers are legal murderers (*Mörder*), who protect legal robbers (*Räuber*) (Büchner 1834, p. 4). A sincere minister would only be a string puppet (*eine Drahtpuppe*), being pulled by the duke, who himself is only a puppet (*Puppe*) pulled by influential persons at his court (Büchner 1834, p. 4). The Hessian people behaves like the pagans, who worship the crocodile (*das Krokodill*), which rips them to pieces (Büchner 1834, p. 2; actually, this page 2 = 5; a printing error). The duke has his foot on the neck of the people (*seinen Fuß auf einem Nacken*; Büchner 1834, 2 = 5). The duke, his ministers and officials are the head, the teeth and the tail of a leech creeping over the people (*Der Fürst ist der Kopf des Blutigels, der über euch hinkriecht, die Minister sind seine Zähne und die Beamten sein Schwanz*; cf. Büchner 1834, p. 2 = 5). The 'noble' exploitators are only strong because they suck the blood of the people away (*das Blut, das sie euch aussaugen*; Büchner 1834, p. 8).

Metonymies are often employed to suggest that taxes are wasted for paying the highly expensive furniture and luxurious wardrobe of people serving for the authorities, such as policemen or officials. This is achieved by using the principle of spatial contiguity and part-whole relationships for a vivid description of the system of taxes, privileges and exploitation. The resting chairs of the officials stand on a huge heap of Guilders, the tail coats of the policemen are embroidered with silver taken from the taxes of the people (*Ihre Ruhestühle stehen auf einem Geldhaufen von 461,373 Gulden (so viel betragen die Ausgaben für die Gerichtshöfe und die Kriminalkosten). Die Fräcke, Stöcke und Säbel ihrer unverletzlichen Diener sind mit dem Silber von 197,502 Gulden beschlagen (so viel kostet die Polizei überhaupt, die Gensdarmerie u.s.w.*; cf. Büchner 1834, p. 3).

4. *Critical Evaluation of the Revolutionary Rhetoric in Büchners "Landbote"*

As for the explicitation of implicit elements of an argumentation scheme (cf. above, section 2), there are no algorithms or mechanical procedures for the evaluation of argumentative texts. Especially a critical analysis of political discourse should not forget an important insight of Mannheim (1929, p. 32), namely, that the thought of all social groups and in all historical periods is bound to a certain ideology ("das menschliche Denken [ist] bei allen Parteien und in

sämtlichen Epochen ideologisch"). So-called 'objective' descriptions and evaluations of political argumentation often run into the danger of reifying and immunizing the own ideological position. Therefore, it is better to make one's own standpoint explicit – in my case, a leftist standpoint – and to try to judge the strength and weaknesses of political discourse as impartially as possible (cf. Kienpointner 2005).

In line with these preliminary remarks, I am going to discuss a few argumentative strengths and weaknesses of Büchner's "Der Hessische Landbote". More particularly, I would like to provide some tentative answers to the question whether Büchner's revolutionary rhetoric can be judged to be an instance of legitimate "strategic maneuvering" or as a "derailment of strategic maneuvering", that is, as (wholly or partially) fallacious. I understand "strategic maneuvering" in the sense of van Eemeren/Houtlosser (2002a, p. 16):

[…] strategic maneuvering can take place in making an expedient selection from the options constituting the *topical potential* associated with a particular discussion stage, selecting a responsive adaption to *audience demand,* and exploiting the appropriate *presentational* devices. Given a certain difference of opinion, speakers or writers will choose the material they can most appropriately deal with, make the moves that most acceptable to the audience, and employ the most effective presentational means.

I would like to start with some critical remarks. At the level of the presentational devices, it can be criticized that the metaphorical characterizations of Büchner's political enemies are formulated in such an aggressive way that their negative evaluation as instances of abusive *ad hominem* arguments can hardly be avoided. As far as the level of adaption to audience demand is concerned, they strongly appeal to emotions like hatred and envy of the masses and can, therefore, be plausibly criticized as instances of *ad populum* arguments, that is, as populist appeals. Indeed, many of these attacks are insults rather than rationally justifiable arguments and therefore, can be classified as emotional fallacies (on criticizing these and other types of emotional fallacies cf. van Eemeren/Grootendorst 1992, Walton 1992, 1998, 1999; Doury 2004).

At the level of the topical potential, Büchner's (or Weidig's) strategic decision for a strong preference of arguments from authority has to be critically discussed. They use a great number of arguments appealing to the authority of the Bible. All

in all, about 80 quotations from the Old and New Testament occur in the text (cf. Schaub 1976, p. 55; on the use of analogies taken from the Bible in other works of Büchner cf. Waragai 1996). This strategy can be criticized as follows: The authority of the Bible is invoked although it is not made clear in most of the passages whether the respective utterances of Jesus Christ, the prophets and the evangelists can be plausibly applied to the historical and political situation of Hessen in the year 1834.

Furthermore, the argumentative appeal for a general uprising of the masses, that is, for the use of violence as a means of politics, is somewhat problematic or even paradoxical, because argumentation normally is a non-violent means for the solution of conflicts. In addition, the sad history of the revolutions tells us that they generally led to new terror and oppression. Finally, the mixture of Büchner's radically socialist original text and the revision by Weidig is not homogeneous, if not inconsistent, because Weidig's romantic view of the German emperorship does not really fit with Büchner's revolutionary perspective. Another tension or even incompatibility is caused by the fact that the appeal to use violence against the ruling elite does not fit with those passages of the New Testament where violence against enemies is explicitly rejected. Typically, however, most of the approximately 80 quotations are taken from the Old Testament.

This criticism suggests that Büchner's "Landbote" contains a number of fallacies, which all in all would justify a very negative judgment. It could be concluded then, that Büchner's strategic maneuvering quite often derailed. However, the "Landbote" can hardly be judged according to the standards of a critical discussion in the sense of Pragma-Dialectics. Rather, it has to be judged as another type of text. Within Walton's typology of argumentative dialogues (cf. Walton 1999: p. 17), it could be classified as a mixture of a persuasion dialogue (= a critical discussion), a deliberation dialogue and a quarrel (Note that also a written monological text like the "Landbote" contains dialogical elements). Apart from resolving a conflict of opinion, which is the goal of a persuasion dialogue, the "Landbote" also suggests to perform political acts on a thoughtful basis (= the goal of a deliberation dialogue) and last not least, to reveal deeper conflicts and to express hidden grievances (= the goal of a quarrel or an eristic dialogue). The resulting use of abusive ad hominem arguments may be of little value for "getting at the truth of the matter", but it can have "the cathartic effect whereby hidden conflicts or antagonisms can be openly acknowledged by both parties" (Walton

1999, pp. 180f.). And indeed, the highly oppressive rule of the elite, the exploitation and the misery of the masses in Hessen needed and deserved a pungent criticism of the kind Büchner gave in the "Landbote", because the masses were not able and the moderate opposition was not willing to publish such a radical kind of criticism.

Moreover, apart from the critical observation mentioned above, the "Landbote" also deserves some much more positive comments. Firstly, rhetorically spoken, Büchner/Weidig managed to adapt their stylistic presentation very well to the needs of their audience. Secondly, their two main argumentative strategies, namely, to list empirical-statistic arguments concerning the tax burden of the poor masses and the religious arguments from authority successfully selected the two main topics which could have been successful for persuading the majority of the population. This is also stated explicitly by Büchner in the following text (quoted after Böhme 1987, p. 9, p. 11; Hauschild 2000, p. 33):

Und die große Klasse selbst? Für sie gibt es nur zwei Hebel: materielles Elend und religiöser Fanatismus. Jede Partei, welche diese Hebel anzusetzen weiß, wird siegen. […] Mästen Sie die Bauern, und die Revolution bekommt die Apoplexie. Ein Huhn im Topfe jedes Bauern macht den gallischen Hahn verenden. (And the big class itself? There are only two levers to move it: material misery and religious fanatism. Every party who knows to push these levers, will prevail. […] Fatten the farmers, and the revolution will suffer from apoplexy. A chicken in the pot of every farmer will let perish Gaul's cock [= the revolution, M.K.])

Therefore, if seen from the perspective of style and efficiency of persuasion, the "Landbote" can even be evaluated as a masterpiece of political agitation which was most suitable for explaining complex political structures to the people in a simple, vivid and highly persuasive way.

Büchner's radical way of formulating his political criticism is also partially justifiable (or at least explainable) because of the scandalous and disgraceful social conditions in Hessen in the year 1834: censorship of the press, prohibition of political meetings, right to stand for election only for a small rich minority, misery of the farmers and craftsmen, child labour, workdays of up to 18 hours. Finally, Büchner hoped for an almost unbloody overthrow of the ruling elite by an uprising of the masses, although he did not reject violence in principle (cf. Hauschild 2000, pp. 36f.). That he perfectly knew the problems of violent political

change is shown by his sober remarks about the bloody terror occurring in the years after the French revolution, which he criticized in the same year 1834 in a letter to his fiancée Wilhelmine Jaeglé (cf. Böhme 1987, p. 9; Hauschild 2000, p. 44).

As far as Büchner's empirical-statistic arguments are concerned, they are basically sound and acceptable. The sums of the various tax types given in the "Landbote" are based on a source which most probably was not biased, namely the statistics by G.W.J. Wagner from the year 1831. Büchner is also quoting his source quite correctly. Out of the 18 figures given by Büchner, 12 are exactly correct, 5 show little deviations from Wagner, resulting from confusion of decimal places or arithmetical errors. Only one incorrect number cannot be explained in this way. Furthermore, these errors need not be Bücher's (or Weidig's), because also August Becker, who copied the original text, or the printer could have been responsible for them (cf. Schaub 1976, pp. 65ff.; Hauschild 2000, p. 55).

5. *Conclusion*

To conclude, I would like to highlight that with his pamphlet "Der Hessische Landbote", Büchner created a brilliant piece of political propaganda, which was partially downplayed by the additions of Weidig, but also became somewhat inconsistent through these modifications. The aggressive personal attacks and the dehumanization of the political opponents have to be criticized as abusive *ad hominem* arguments, but can be partially justified with the incredible misery and the reckless exploitation of the masses by the ruling elite as an outburst of justified indignation. These scandalous social conditions are plausibely criticized by Büchner on the basis of reliable statistical sources. Moreover, the"Landbote" is not only to be judged according to the standards of a critical discussion, as it also has the properties of a quarrel or eristic dialogue.

Taken as a whole, Büchner's text comes close to later leftist revolutionary rhetoric which intends to overthrow the entire power system by relying on the uprising of the masses, such as the speeches by Rosa Luxemburg. Büchner's text clearly differs, for example, from Lenins's revolutionary rhetoric. In his pre-revolutionary speeches, Lenin promised to give the power to the people and to abolish the state, but after the revolution in fact relied on the authoritarian control of the state by the party elite, condemning any kind of democratic opposition (cf. Kienpointner, in print).

And of course, Büchner's leftist populist appeals, which have no nationalist, let alone chauvinist background (cf. Büchner 1834, pp. 5f. on the French revolution), clearly differ from today's right wing populist propaganda. This kind of propaganda appeals to national ethnic egoism rather than to the international solidarity of all poor and disadvantaged groups suffering from exploitation (cf. also Weiss 2005, p. 259 on some similarities and differences between right wing (Fascist) and left wing (Stalinist) totalitarian propaganda, including aggressive metaphorical attacks at the political opponents, which were also used by Büchner).

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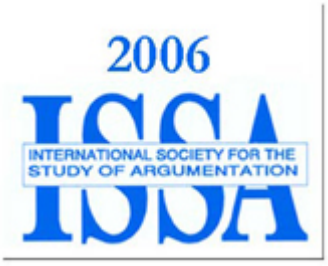
ISSA Proceedings 2006 – Legal Argumentation, Constitutional Interpretation, And Presumption

Of Constitutionality



Abstract: Constitutional interpretation is a very complex task. The main reason underlying this complexity is the open and abstract language of constitutional texts, mainly when it concerns their bill of rights. And when it comes to judicial review of legislation, constitutional interpretation becomes even more complex. Not only the constitution but also ordinary legislation has to be interpreted so that their compatibility can be properly analysed. Although this scheme represents common sense among constitutional scholars, the arguments used in the judicial review are the subject of fierce disputes. The aim of my paper is to analyse one of these arguments, which is frequently employed in Latin American constitutional adjudication: the presumption of constitutionality. I will argue that this kind of presumption entails many problematic issues of which constitutional scholars in Latin America are often unaware. Roughly speaking, these problematic issues can be of two types:
(1) Formal argumentation problems – concerning above all the relationship between presumption and time, as well as between presumption and proof; and
(2) Constitutional theory problems – concerning some consequences of the presumption of constitutionality in the separation of powers.

1. *Introduction and definitions*

In legal argumentation, presumptions often play an important role. Presuming something to be true under given circumstances – above all when it is difficult or impossible to discover the real truth – is a strategy which has been used in legal argumentation and legal decision ever since the Roman Law. Although the idea is ancient and appears, at least at first sight, quite straightforward, there is no real consensus on its precise definition and on the situations in which presumptions can be used. As will be shown further on, these two variables – definition and applicability – are of great importance to the subject of this paper, the presumption of constitutionality.

Presumptions are usually defined as *the acceptance of something as true given certain conditions.* But this is not enough, since it is crucial for the concept of presumption to define whether and – if it is the case – how a presumption can be defeated. In legal systems based on the Roman Law tradition, it is common to speak of two kinds of presumptions: the so-called presumptions *iuris tantum* and

the *iuris et de iure.* Presumptions of the first kind can be defeated while presumptions of the latter cannot. For the aims of this paper, presumptions *iuris et de iure* are of no importance, since the constitutionality of an enacted law cannot be exempt from a possible defeat, at least in those countries where there is some kind of judicial review of legislation.**[i]** For presumptions iuris tantum, the presumed fact should be considered true unless stringent *evidence to the contrary* is introduced to the argumentation. In this sense, it can be said, as a preliminary working definition, that one is facing a presumption (*iuris tantum*) if, *given certain conditions, something shall be considered true, unless there is stringent evidence to believe the contrary.*
In her logic formalisation of presumptions, Edna Ullmann-Margalit (1983, 147) includes only the first part of my definition, leaving aside the reference to the evidence and to the possibility of defeat. She represents presumptions through the following formula: pres (*P, Q*), where *P* stands for the *presumption-raising-fact* and *Q* for the *presumed fact*. This means "P raises the presumption of Q" or "[t]here is a presumption from Q that P" (1983, 147). Nevertheless, when it comes to an explanation of the "presumption rule", her idea is completed in the following terms: "Given that *p* is the case, you (= the rule subject) shall proceed as if *q* were true, unless or until you have (sufficient) reason to believe that *q* is not the case." She calls this last part of the rule the "rebuttal clause" (1983, 149).

A more complete formalisation of the idea of presumptions can be found in Daniel Mendonca (1998, 408). According to him, the formula of presumption should take the following form: *[Pro (P) & ¬Pro (¬Q)] → O Pres (Q)*. This means that proven that *P* is the case – *Pro (P)* – and not proven that *Q* is not the case – *¬Pro (¬Q)* – it is then obligatory to presume *Q*. The importance of Mendonca's formulation lies in its emphasis on the necessity of proving something in order to rebut a presumption. This necessity will be explored further on (see section 2.3).

In this paper, the efforts will concentrate on demonstrating two main theses:
(1) Although the concept of presumption may be fairly straightforward in many legal subjects, its applicability within the constitutional argumentation – under the label "presumption of constitutionality" – entails several formal problems, above all those concerned with the relationship between presumption and time, and between presumption and proof, as well as between presumption and conditions.
(2) The presumption of constitutionality, when allied to other canons of

constitutional interpretation, may have – and often has – paramount consequences for the separation of powers and for the role of judges in the judicial review of legislation (it will be shown that the use of the *topos* "presumption of constitutionality" is the first step to a judicial activism "disguised" as judicial restraint).**[ii]** Although it is intuitive to think that the contrary is the case, i.e., that presuming the constitutionality of an enactment of the legislative power is both a respectful approach and an exercise of judicial restraint (in this sense, Stokes 2003: 345 ff.), it will be shown that judges often use this kind of presumption and this alleged respect as a excuse to correct, change or extend the textual meaning of a statute.

2. *The presumption of constitutionality*

In a past decision of the Brazilian Supreme Court, Justice Moreira Alves argued that when interpreting a statute the Court must presuppose its constitutionality. According to him, this should be always the working hypothesis from which the court should begin.**[iii]** This statement can be understood in at least two different ways. On the one hand, it can be said that it is a plain triviality, since it would be a nonsense to think that legislators act always unconstitutionally and that it is the judges' task to demonstrate the contrary. On the other hand, it can be understood as a presumption that can be rebutted in some cases. In this case, although it is not possible to speak of a triviality or of nonsense, resorting to the idea of presumption is not unproblematic.

In order to demonstrate this, it is first of all necessary to analyse three issues that undermine the possibility (or the usefulness) of the presumption of constitutionality in any sense. The first one is related to the concept of time, the second to the concept of condition, and the third to the concept of proof.

2.1. *Presumption and time*

The first argument against the possibility of a presumption of constitutionality that should be discussed is related to some problematic issues concerning the relationship between presumption and time. The presumption of constitutionality can be understood as the presumption that, whenever the legislator enacts a statute, he always intends to act in accordance with the constitution. But this idea considerably weakens the expected argumentative strength of the presumption of constitutionality, for it is only possible to presume that the legislator respects the constitution that was in force at the time the statute has been enacted.**[iv]** Hence, the presumption of constitutionality could hold (if at all) in the Brazilian case only

for laws enacted after October 5th, 1988, which is the date of the promulgation of the constitution presently in force. And since this constitution has been amended 52 times since its promulgation, it is allowable to suppose that, if a statute apparently contradicts an article that has been changed, then the presumption can only hold if the statute has been enacted after this constitutional change.

2.2. *Presumption and conditions*

It has been shown that the *presumption formula* entails not only the fact to be presumed, but also the conditions under which this same fact is to be presumed, i.e. something is to be presumed as true *under certain conditions or circumstances.* For example: many civil codes stipulate that a child born *at least 180 days after wedlock* is presumably legitimate; or that if husband and wife die *in the same car* (*or plane, or train*) *accident*, it should be presumed that the deaths were simultaneous.

However, this model is impossible to follow when it comes to a presumption of constitutionality, for it is impossible to define under which conditions or under which circumstances a statute should be presumed constitutional and under which conditions it should not. Indeed, if there were any reason to believe in a presumption of constitutionality, one should believe in it *in every case*. The "given-clause" is totally absent. There is no "given the child was born at least 180 days after wedlock …" (and not 179 day or less) or "given husband and wife were in the same plane that crashed …" (and not in different planes), but only "given that a law is enacted", which states no real condition or circumstance.

Hence, to state that a law is always *presumably* constitutional is the same as saying that every law is constitutional unless someone (a constitutional court, for instance) *declares* otherwise. But this is not really a presumption, since presumptions start with the statement of some conditions, as already shown. The examples above demonstrate the idea. Although it would be possible to imagine a norm stating that *every* child *is* legitimate until a judges decides otherwise, this norm would not express any kind of presumption. Actually, it could be said that such a norm would be completely superfluous, since it would be nonsense to state the contrary ("every child should be considered illegitimate until the contrary is proved").

2.3. *Presumption and proof*

When it comes to a legal presumption, as already shown, it is necessary to accept that something is true if, given certain conditions, there is no proof to the

contrary. Following this pattern, art. 1597 (1) of the Brazilian Civil Code, which states that a child born at least 180 days after wedlock is presumably legitimate, stipulates a presumption, as already stated.

The traditional idea of legal presumption (*iuris tantum*), already outlined in this paper, presupposes the possibility of demonstrating the contrary of what the presumption stipulates, i.e. it presupposes the possibility of rebutting the presumption when it is possible to prove that the presumed fact is not true. In the case of the example mentioned above, it is possible, through a DNA test, to prove that a child is not legitimate, even if he or she were born more than 180 days after wedlock. But this kind of rebuttal is impossible when it comes to a presumption of constitutionality, for the simple reason that constitutionality and unconstitutionality *are not subject to proof*. "Being" constitutional or unconstitutional are not *inherent features* of laws. Contrary to what common sense seems to propose, the process of constitutional review of legislation is not a kind of search for a "genetic code" – congenital to the enacted law – waiting to be discovered by legal scientists.

Therefore, when legal scholars and legal practitioners argue that a statute cannot be declared unconstitutional unless it is *provably* unconstitutional, they are mistakenly transposing the idea of a *factual* presumption to an *argumentative* presumption without being aware that this latter kind of presumption (argumentative presumption) cannot be confirmed or rebutted according to the same rationale, for the constitutionality or the unconstitutionality of a statute, despite being subject to legal argumentation, is not subject to any kind of proof or evidence.

3. *Constitutional Theory and Separation of Rights*

Despite the various theoretical inconsistencies which surround it, the presumption of constitutionality has been frequently used by courts in many countries. Its problematic consequences, however, for both the constitutional review of legislation and the separation of powers often remain unnoticed. To understand the kind of consequences I am referring to, we could take a brief look at some judicial decisions by courts in three different countries. In the United States, the Supreme Court (and also other state courts) often resorts to the so-called "constitutional avoidance canon", in the following terms:

"Under this canon of statutory construction, the elementary rule is that every reasonable construction must be resorted to in order to *save a statute from unconstitutionality*" and "as between two possible interpretations of a statute, by

one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that *which will save the Act*."**[v]**

The Federal Constitutional Court of Germany has several decisions with a similar view on the question, the leading case in this matter being the following decision:
"[a] statute should not be declared void if it is possible to interpret it in a way compatible with the constitution, for it is necessary not only to presuppose that a statute is compatible with the constitution, but also that this presupposition expresses a principle, according to which, in case of doubt, *a statute should be interpreted in accordance to the constitution*."**[vi]**

And an example from the Brazilian Supreme Court:
"[The] interpretation of the assailed statute should start from a working hypothesis – *the so-called presumption of constitutionality* – from which derives the rule that between two possible understandings about the assailed norm, *the one that is in accordance with the constitution should prevail.*"**[vii]**

To put in a nutshell: according to the views expressed in the transcribed decisions, among all the possibilities of interpreting a statute, judges should *always* prefer the one that sustains its constitutionality. According to this view, this would *confirm the presumption of constitutionality*. Additionally, by acting in this way courts would respect the separation of powers as well as the work of the legislator.

I argue that this pattern of argumentation not only has several theoretical flaws – as demonstrated in sections 2.1, 2.2, and 2.3 above – but also that it means neither a preservation of an equilibrium between courts and legislators, nor a deference to the work of the democratic legislator. On the contrary: in the way the presumption of constitutionality is usually applied, it grants much more power to judges than they already have without it. In order to demonstrate this thesis, I will call upon the so-called "interpretation in accordance to the constitution" (*Verfassungskonforme Auslegung*) mentioned in the decision of the German Constitutional Court, as transcribed above. This canon of interpretation – widely accepted in other European**[viii]** as well in Latin American countries**[ix]** – states simply that judges have the *duty* to prefer the interpretation of a statute that maintains its constitutionality (interpretation in accordance with the constitution). In other words, judges are obliged to try to save the statute from unconstitutionality and hence to save also the presumption of constitutionality

from any kind of rebuttal.

4. *Correcting the meaning of the law*

I argue that, in these cases, "respect for the legislator" is merely a commonplace. The court actually gives *its own* interpretation of the statute, in order to make it compatible with what *the same court* – and nobody else – thinks is constitutional. At this point, one can ask: But is this not exactly the task of a constitutional judge? It is indeed. The task of constitutional judges is exactly to interpret a statute in order to check its compatibility with the constitution. However, for this task – usually assigned by the constitution itself -, there would be no need for resorting to concepts like "presumption of constitutionality" and "interpretation in accordance with the constitution". But if not, then why do judges do it so frequently?

Judges – including constitutional judges – normally feel uncomfortable with the idea of "creating the law". They usually regard their task as a merely interpretative task. To justify such a view, the Brazilian Supreme Court uses the Kelsenian dichotomy between "positive legislator" and "negative legislator" (Kelsen 1929, 34-35). According to Kelsen, a constitutional court can only act as a negative legislator, i.e. the court can, at the utmost, *annul* a statute because of non-conformity with the constitution. But a constitutional court cannot *create* norms positively. However, the Brazilian constitution – like many other European and Latin American post-war constitutions – poses, by raising a very large array of themes to the constitutional level, new challenges to constitutional judges. To face these challenges, the judges need more than the simple dichotomy between negative and positive legislator. But for those judges who are unwilling to abandon the Kelsenian dichotomy and still pretend that constitutional judges are "no more than the mouth that pronounces the words of the law" (Montesquieu 1748, XI/6), the presumption of constitutionality and its main consequence – the duty to save the enacted law by interpreting it "in accordance with the constitution" – can be very useful. By resorting to this kind of argumentation, they can still – at least apparently – remain faithful to the "negative legislator dogma" and, at the same time, *correct* or *extend* the work of the legislator whenever they consider it convenient.

Except in unimportant and trivial cases, this occurs because the duty to *save* the law from unconstitutionality implies a possibility – and frequently a necessity – of altering its meaning, especially when saving the enacted law implies going beyond what the legal text prescribes. I am of course not unaware of the fact that

interpreting the law is always ascribing a meaning to the law, a meaning that may not be the same meaning the parliament majority had in mind when it passed it. This is, per se, not a problematic issue – except for those who believe that interpreting the law is to search for the legislator's intent. But what is problematic is to mask this fact as an alleged "deference to the legislator" and behind a unjustified and theoretical unsound presumption of constitutionality.

NOTES

[i] In this sense, it can be said that a presumption of constitutionality would be iuris et de iure in those countries where parliament is sovereign.

[ii] I do not intend to take sides in the dispute between activism and restraint, and this would be in any case not required for the aims of this paper. As is clear in the text, the problem is not activism as such, but a "disguised activism", in which judges pretend to exercise restraint while modifying the meaning of enacted law.

[iii] Rep. 1417 (1987). See RTJ 126, 48 (53).

[iv] In this same sense, see, for the German case, Skouris (1973, 98), Gusy (1985, 218) and Bogs (1966, 22). For the case of the United States – by Scheef (2003, 530 ff.).

[v] Rust v. Sullivan, 500 U.S. 173 (1991) – emphasis added. This is a very old canon within the US Supreme Court. See for instance Hooper v. California, 155 U.S. 648 (1895). More recently – and with details about the "constitutional avoidance canon" – see Clark v. Martinez, 543 US 371 (2005). See also Vermeule (1997, 1949).

[vi] BVerfGE 2, 266 (282) – emphasis added.

[vii] RTJ 126, 48 (53) – emphasis added.

[viii] See, for instance, the following decisions: Portuguese Constitutional Court – decisions 327/99 e 466/00; Italian Constitutional Court – decisions 138/1998 and 139/1998; ; Austrian Constitutional Court – decision 11.576/1987.

[ix] See, for instance, the following decisions: Columbian Constitutional Court – decisions C-496/94 e C-109/95; Chilean Constitutional Court, decision 309/2000; Brazilian Supreme Court – decisions RTJ 173, 424; RTJ 181, 54; RTJ 167, 376; RTJ 178, 919; and RTJ 167, 363.

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ISSA Proceedings 2002 – Preface

It is with great pleasure that the planning committee of the Fifth Conference of the International Society for the Study of Argumentation (ISSA), which was held in Amsterdam in 2002 (June 25-28), presents all interested students of argumentation now with the Proceedings of this Conference.

We are sad that, due to his untimely death in 2002, this time *Rob Grootendorst*, who was a member of our team at all four previous ISSA Conferences, is no longer among the editors of the Proceedings. However, we are happy that Francisca Snoeck Henkemans was willing to take his place and join the editorial company. In honor of all the important work the late Rob Grootendorst did to stimulate and promote the study of argumentation, these Proceedings are dedicated to his memory.

It is our emphatic opinion that the Proceedings of the Fifth Conference include a great number of very interesting papers. They are written from a variety of perspectives and theoretical backgrounds. Besides philosophical, theoretical and empirical papers, there are, for instance, papers that deal specifically with public argumentation or with legal argumentation and there are also a number of case studies. Among the general topics that are treated are, as always, the fallacies, the teaching of argumentation, and argumentation in the media, but studies of linguistic aspects of argumentation and artificial intelligence are also represented. The Proceedings of the Fifth ISSA Conference reflect the richness of the contributions that were made to the Conference.

Since the First Conference in 1986, the ISSA Conferences in Amsterdam have become an important meeting-place for argumentation scholars from different disciplinary fields and with a great variety of interests. The number of participants has increased over the years, and so has the number of countries that are represented. We are convinced that the Fifth ISSA Conference has been as fruitful and stimulating as we hoped it would be. In our opinion, the average quality of the papers and the intellectual exchanges has reached a very high level. We hope that these Proceedings will prove our point to the readers. All the papers submitted for publication were reviewed by the editors. In some cases, this has led to further improvements. Despite the fact that we intended to publish Proceedings that provide a comprehensive and representative overview of the conference as a whole, only those papers were accepted that met our quality standards.

It goes without saying that the editors could only accomplish their task in such a short time because they received a lot of help from others. In the process of preparing these Proceedings, just as during the Conference itself, they were able to rely on the assistance of the faculty members of the Department of Speech Communication, Argumentation Theory and Rhetoric of the University of Amsterdam and other members of the research group 'Argumentation in Discourse' of the Amsterdam School for Cultural Analysis (ASCA).
It seems only fair, however, to mention one name in particular: Bart Garssen. We are grateful to Bart for his technical assistance in getting the manuscripts ready for publication. Thanks to his help. We are also able to include a CD-rom containing the electronic versions of the papers.

For financial and other kinds of assistance we are grateful to the Royal

Netherlands Academy of Arts and Sciences (KNAW), the Dutch-Belgian Speech Communication Association (VIOT), the Amsterdam School for Cultural Analysis (ASCA), and, last but not least, the International Center for the Study of Argumentation and Speech Communication (Sic Sat).

Amsterdam, December 10, 2002
Frans H. van Eemeren, University of Amsterdam
J. Anthony Blair, University of Windsor
Charles A. Willard, University of Louisville
A. Francisca Snoeck Henkemans, University of Amsterdam

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Analysis Of Arguments

The study of arguments within the pragma-dialectic program (Eemeren & Grootendorst, 1992) removes arguments from their situated contexts (e.g. Eemeren, Grootendorst, Jackson, & Jacobs, 1994, pp. 60-89) in order to present them as a series of opposing standpoints designed to press towards a resolution within the framework of a critical discussion. Maximal Dialectic Analysis (MDA) is a technique used to reconstruct arguments and identify missing premises that relies on Grice's (1975) system of interpretation based upon the Cooperative Principle (CP) and Conversational Maxims of Quantity, Quality, Relation, and Manner. The CP requires speakers to: "Make your conversational contribution such as is required, at the stage in which it occurs, by the accepted purposes or direction of the talk exchange in which you are engaged" (p. 45). Quantity Maxims require interlocutors to be as informative as is necessary (for the purposes of the exchange) but to not be over or under-informative. Quality Maxims require speakers to say what they believe to be true and to not say that which they have reasons to believe might be false. The Relation Maxim requires speakers to be relevant. Unlike the first three maxims that deal with content, the Manner Maxims are concerned with how an utterance gets expressed. Speakers are expected to say things in ways that are clear, concise, orderly, and to the point.

According to Brown and Levinson (1987), the CP provides "an 'unmarked' or socially neutral (indeed asocial) presumptive framework for communication" (p. 5) that emphasizes rational efficiency above deviations without principled reasons. Deviations are identified by the utterance's distance from the CP and conversational maxims. Principled reasons for violations of the CP and Maxims become resources for alternative interpretations that move beyond the literal surface meanings of the utterance while serving to repair the deviations from the CP and Conversational Maxims.

The Gricean framework as a set of guiding principles seems well suited for MDA analysis of arguments made by a variety of people in a variety of situations (Eemeren, Grootendorst, Jackson, & Jacobs, 1994). However, MDA has paid attention to the maxims of quantity, quality, and relation at the expense of the

manner maxim (Aldrich, 1995). How interlocutors make an utterance carries interpretive weight in addition to what is said. For this reason, analysts using MDA must be responsive to the manner maxim if overly charitable or less than charitable interpretations are to be avoided (Aldrich, 1995).

The analyst must know several things in order to use a Gricean framework effectively in the conduct of MDA. First, the underlying purposes of the talk exchange must be accessible. What will constitute a cooperative move hinges upon this knowledge. In terms of defining what it means to be cooperative, Grice indicates that conversation partners must recognize "to some extent, a common purpose or set of purposes, or at least a mutually accepted direction" (p. 45) while offering little else in the way of elaboration. MDA establishes this direction as being in the form of a critical discussion (Snoeck-Henkemans, 1992). Second, the potential pragmatic functions of each move must be recognizable in order to be evaluated against the standards provided by the CP and Conversational maxims.

Knowledge of what it means to be cooperative or to follow a maxim tends to be taken for granted in most analyses that use a Gricean interpretive system. Both the interlocutors and analysts tend to be from the same speech community and share similar knowledge and assumptions about the culture and language usage within the community. However, it must be emphasized that understanding argument at the local level of expression by engaged interlocutors requires an awareness of the normative assumptions in play (Eemeren, Grootendorst, Jackson, and Jacobs, 1993, p. 20). This is especially important when using a Gricean system of analysis. While Grice has provided analysts and users of natural language with a robust system for interpretation, it is not at all clear that the CP and especially the Conversational Maxims are (a) pan-cultural or (b) interpreted in similar ways across cultures. This problem can be illustrated in how indirection in language usage gets interpreted across different cultures.

Indirection is a key feature in politeness systems (Brown & Levinson, 1987) and as such is found within most systems of discourse. Indirection is handled quite efficiently by the Gricean system of interpretation and is a feature commonly found in speech acts such as requests which form a key component of the constellation of speech acts (Eemeren & Grootendorst, 1992) that converge to form arguments. While indirection is managed well in the Gricean system, what the indirect use of language means and how indirection is to be interpreted is tightly bound in cultural assumptions. Indirection as evidence of cooperativeness

or uncooperativeness (violation of one or more of the Conversational maxims) will be managed quite differently in the Gricean system depending upon the culture the participants and/or analyst are situated in. That the American culture values directness as is evidenced in sayings such as “Say what you mean” and “Lets get to the bottom line.” Indirection used by American English speakers is often treated as a violation of the quantity maxim (failure to be as informative as is required for the talk exchange) or as a possible threat to the quality maxim (saying only what you know or believe to be true). Other cultures value indirection over direction such as Japan (Gudykunst & Kim, 1997) where a direct or “bald” and “on record” request (Brown & Levinson, 1979) would be seen as violating both the quantity and manner maxims.

Using an asocial framework in the analysis of socially contexted interaction is not problematic as long as we recognize and identify how information is interpreted within the cultural context the discourse is from. This is especially the case when engaging in the analysis of arguments across different cultures. Simultaneously, the study of arguments and argument schemes across cultures can help provide the cultural awareness necessary for understanding when an utterance is in accordance with the CP and Maxims or when the utterance becomes a violation of the same according to the prevailing cultural norms and practices. The asocial nature of the Gricean system must be combined with understanding of what constitutes principled reasoning within the context of culture if the analyst is to provide a properly charitable argument reconstruction.

The position developed to this point is that the Gricean interpretive system is well suited for MDA but needs to be sensitive to cultural norms and practices. At the same time, we’ve suggested that an analysis of argument schemes within a culture can provide the analyst with understanding of how cultural norms and practices affect interpretations made using MDA within a Gricean framework. These claims will be supported through an analysis of complaints made by consumers within the German and American consumer cultures.

Complaints

Complaints are a specialized form of argumentation that provide an ideal means to examine the relationship between culture and argumentation. In complaints, both the complainer and the target of the complaint hold competing standpoints that, if properly managed, will result in a solution satisfactory for both sides. Complaints provide a particularly useful locus for the analysis of arguments as

many different elements of the speech act constellation are used in the performance of a complete complaint sequence. Equally as useful for MDA and its associated Gricean analysis are how cultural norms and preferences are given explicit expression in written and verbal complaints. This knowledge can help the MDA analyst avoid overly or underly charitable interpretations. The remainder of this work consists of an analysis of complaint letters written by German speakers and sent to offices of the Verbraucher Zentrale or consumer complaint service in Germany and complaint letters written by American English speakers and sent to offices of the Better Business Bureau in the United States.

An analysis of the German and American data sets allows us to see localized differences in how complaints are expressed by individuals writing in either German or English. Both cultural preferences and institutional preferences are also expressed in these letters. Identification of differences in the expression of acts provides the initial basis for intercultural understandings at the pragmatic level of language use and can be further used in the identification of what constitute principled reasons for the violation of maxims within a Gricean framework.

Acts of complaint are made up of at least three primary elements (Felstiner, Abel, & Sarat, 1980-81): naming, blaming, and claiming. Naming involves identifying the reason or basis for the complaint. Blaming involves the assessment of accountability or culpability. Claiming is often not done directly but involves identification of the redress that is desired by the person making the complaint.

Direct accusations
Differences are readily apparent when we examine how the complaint is named or identified within the German or American data corpus. The following examples involve direct expressions of accusations made by individuals writing the Verbraucher Zentrale (DE) or to the Better Business Bureau (US). For material from the German data corpus, the translation is presented first followed by the original text in German.

DE-5d.1: Anywise, the period of the transfer is completely in your control.
Außerdem liegt die Laufzeit der ausgehenden Überwiesungen sehr wohl in Ihrer Hand.
DE-37b: The written confirmation that was initially issued weeks after consideration certainly followed so that the customer would have no possibility to

be able to put in a cancellation.
Die erst nach Wochen erteilte schriftliche Bestätigung erfolgt sicherlich wohl überlegt, damit seitens der Kunden keine Möglichkeit besteht, Widerruf einlegen zu können.
DE-4a: As my bankcard was stolen and used to withdraw money, I would like to look more closely into this subject because the bank is not prepared to reimburse the stolen sum, though as far as I am concerned, the legal decision ought to be that the PIN number was obtainable by the thief only through culpable negligence.
Da mir meine Bankcard geklaut und dann mit ihr Geld abgehoben wurde, möchte ich mich näher mit diesem Thema befassen, denn die Bank ist nich bereiut mir die abgehobenene Summe yu erstatten, da laut Gerichtsurteil die Pin nur durch grobe Fahrlässigkeit meinerseits an dem Dieb gelangt sein kann.
DE-5d.2: Anyways, I am not satisfied with your answer-it is in my opinion even false.
Außerdem befriedigen mich Ihre Antworten überhaupt nicht, sie sind m.E. sogar falsch.
US-3e: I am writing to file a formal complaint against…
US-16e: I feel I was misrepresented by your sales person. I was flat out lied to!
US-19g: We feel he didn't fulfill his guarantee.
US-20d: It was clear that I was fraudulently baited into accepting an XXXX plan that I did not want and that was not truthfully explained to me.

Accusations in German complaint letters tends to focus on identifying actions done by the target that are viewed as being wrong or somehow defective. Also directly associated with the manner in which the complaint is expressed is the element of blame or of censoring. By asserting the institution is in control of the transfer period, the writer of DE-5d.1 projects responsibility (and blame) onto the organization. The writer of DE-37b also presents an accusation that is explicitly directed against the target of the complaint. The German text contains language that has a strong legal tone or flavor to it. This comes in part from the formality of expression. Example DE-37b refers to the writer in the third person as the customer. This also comes in part from the direct invocation of law as in example DE-4a where the writer asserts what the legal decision ought to be.

The result of this focus on the target of the complaint rather than the complainer and the use of a formal, legalistic style serves to distance the complainer from the

complaint and the individuals and/or organization responsible for the complaint. This subtly suggests that the complainer shares no responsibility in the complainable action's occurrence. Even in the case of DE-5d.2 where the writer is making a direct accusation of lying, a formal style is used.

The American texts differ from the German texts in both what is named as the complaint and in the manner of presentation. The complainer in the American data corpus is made the center of attention. Specific phrases such as "I am" (US-3e), "I feel" (US-16-e), and "We feel" (US-19g) direct the attention of the reader to the writer as the object of focus rather then on the specific complaint. This self-centered focus projects an impression of the writer as being affected or impacted by the undesired action that is the object of complaint. The personal nature of the American style of presentation is typified by the accusation of lying made in US-16e. The complainer asserts feelings of being misrepresented followed by an on record charge of lying. Notice as well how the manner in which the accusation is made focuses attention again onto the writer rather than onto the organization's representative being accused of lying.

These accusations culled from both German and American letters of complaint would receive different interpretations within a Gricean analysis. From a German perspective (Neidert, 1998, personal communication), the focus in the American letters upon the complainer at the expense of the complaint is a violation of the relation and manner maxim because the obvious (the complainer being upset or feeling abused) is being made explicit when that sort of information can and should be assumed. Thus, such information does not need to be made explicit within German discourse.

Threats

Threats are common acts that make up part of the argument constellation and appear frequently in both the German and American data corpi. As is the case with accusations, threats vary in their functions and in how they are performed within each culture. We will first consider threats in German texts followed by threats from the American texts.

DE-31a: If you do not pick up the defective washer, which I cannot use for washing, by the 10th of February, 1996 and return the promised 300 German Marks to me, I see myself forced to undertake other steps.
Falls Sie bis zum 10.Februar 1996 die defekte Waschmachine, die ich nicht zum

Waschen benutzen konnte und mir die vereinarten 300,-DM dafür zurückerstatten, sehe ich mich gezwungen, andere Schritte zu unternehmen.
DE-47c-1: If the goods are not delivered by the 31st of December 1996 in the original packaging and free from defects I will withdraw from the purchase agreement. Furthermore, I will feel forced to take further legal steps against you.
Wird die Ware nicht bis zum 31.12.96 Orginal verpackt und fehlerfrei geliefert, werde ich vom Kaufvertrag zurücktreten. Anderseits fühle ich mich gezwungen, gegen Sie rechlich Schritte vorzunehmen.
DE-23a: Should I not receive a positive decision by the above given date I would like to draw your attention to the fact that I will pass this affair on legally and will insist on the cancellation of the purchase contract.
Sollte ich bis zum o.g. Termin von Ihnen keinen positiven Bescheid hUSen, mache ich Sie darauf aufmerksam, daß ich die Sache rechlicht weiter geben werde und auf Rückgängigmachung des Kaufvertrages bestehen werde.
DE-35a: If you do not resolve the complaint by 15 January, 1996, and address the above mentioned three points, I will immediately contact the Consumer Advising Center.
Wenn Sie die Reklamation nicht bis zum 15. Januar 1996, und zwar die obigen drei Punkte betreffend, erledigen, werde ich mich unverzüglich mit der Verbraucher-Beratung in Verbindung setzen.

Two features are immediately apparent in the German use of threats. First, these threats use the conditional "if-then" clause construction. Threats in the German data corpus are almost always made by identifying a set of conditional expectations. The sense of obligation is specific and temporal in conditional clauses. From a naïve perspective held by some Americans, the German letters would appear to violate the quantity maxim by being over informative. The German letters use sentence structures that are much longer and more complex than equivalent sentences in the American letters. This is an artifact of linguistic differences between the two languages and not of the pragmatic nature of the utterances. The reality of this situation is the opposite – German letters seem to violate the quantity maxim by being under-informative in regards to what the complainer is willing to do next. Contrary to the American notion of "Saying what you mean" the German complainer hints or suggests future action that is or will be undesirable for the target while not explicitly providing details of the to be pursued action.

In letter DE-31a, the writer invokes a rather vague threat of having to take other steps in the event the defective washing machine is not picked up and the money refunded. For the analyst with footing (Goffman, 1975) in a different (in this case American) culture, it is not at all clear what such steps might be. Yet, writers have points to make and are expected to express these points in ways that are mutually intelligible to other members of their culture within the Gricean interpretive system.

Any analyses of German texts involving complaints requires understanding the nature of the contractual obligations that exist between purchasers and sellers in Germany and how an individual's access to law is managed. Consumers have explicit rights and responsibilities under German civil law. These rights and responsibilities include identification of how long a consumer has to wait for the delivery of goods or what the condition of delivered goods must be in for the consumer to cancel the sales agreement (Stillner, 1997). Further more, consumers are responsible for obtaining this knowledge on their own rather than going to an attorney for this knowledge. The conditional form used to express the threat functions in part as a declaration that the consumer is putting into effect these rights and as such is fully informative in terms of the quantity maxims to interlocutors armed with this knowledge.

The German letters appear to focus on legal or contractual relations and expectations. The exchange of goods or services is privileged over a more personal focus on relationships between the consumer and organization. In example DE-31a where the woman identifies a promise between her and the unidentified organization, the promise refers to a contractual type issue of agreement rather than a personal issue based upon the morality of trust and promise keeping. As with the direct expressions, the German text frames threats using a very formal tone that strongly conveys what the obligations are. Unlike the American texts where the individual pronoun "I" was used to focus attention on the writer, phrases such as "I would like to draw your attention to the fact" and "I see myself forced to take other steps" transform the pronoun "I" from that of a person who exists in a relationship with the reader of the text to that of the "I" as a separate legal entity specified in a contract.

Example DE-47c-1 has qualities different from the other German examples. The threat contains a strategy we identify as *tattletale*. In tattletale, writers threaten to inform the third party complaint agency about the disagreement between the

consumer and the target of the complaint. As third party complaint agencies, the German Verbraucher Zentrale and the American Better Business Bureau accept reports from consumers about troubled interactions and work to inform consumers on how to protect their interests in the market economy. One of the functions served by the third party complaint agencies is to act as a record keeper of organizations and the complaints directed against these organizations by dissatisfied consumers. The "tattletale" occurs where negative information is kept by the third party complaint agency and made available to other interested parties. Tattletale is a form of censure. While this example has the "I am telling on you" quality that is the mark of tattletale, it follows the German style of the conditional form that expresses the actual act indirectly. The writer identifies three points made explicit earlier in the letter that must be addressed to avoid the threat of censure. If the contractual obligations are satisfied then the "telling" portion will be defeated.

The American letters present threats in ways distinct from threats presented in the German examples.
US-22e: I wanted to make you aware of a recent situation and allow you to attempt to remedy it before contacting the Better Business Bureau.
US-25b: You will receive much better word of mouth advertising from me if you are cooperative and refund my VISA account. If it turns out that working with you has been more trouble than pleasure, I will certainly let others know that this package is no more than a high-pressure sales/unprofessional customer service enterprise.
US-23d: Carbon Copy: The Better Business Bureau
US-26c: You took advantage of two senior citizens. We are determined to see to it that you are not allowed to do the same to other people senior citizens or otherwise. CC: Attorney General, Better Business Bureau, Mr. X-attorney at law.

The writers of letters US-22e and US-25b use the conditional form as we observed in the German data. The differences are found in the content rather than the form of expression. Where the German threats focus on the contractual nature of the exchange and imply what might be done, the American threats make explicit what will be done as well as containing a strong flavor of personal contact and connection. Example US-22e emphasizes the willingness of the writer to allow the target of the complaint the opportunity to avoid censure while also specifying the tattletale act of telling the Better Business Bureau about the complaint and

offending organization. Example US-25b has the writer invoking a threat of personal censure. The emphasis is placed upon interpersonal cooperation rather than on adhering to any contractual or legal norms. Notice as well the very explicit detail provided in example US-25b about what the writer will do if the complaint is not resolved.

Example US-22e is similar to the German example DE-35a in its use of the tattletale strategy to convey the threat. American complaint writers use tattletale strategies for the majority of threats. Tattletale, though recognized by German writers as a threat form, occurs only infrequently in German texts. The discrepancy in frequency of use suggests these differences are a matter of cultural preferences and not due to a pan-cultural interpretive system. At the same time, presence of this strategy in each culture suggests interlocutors are able to perform and recognize strategies favored by the other culture. This recognition of strategies across cultures is not unique to complaints. Scollon and Scollon (1995) show how speakers in Hong Kong recognize and make use of topic first and topic delayed discourse systems depending upon the cultural contexts speakers find themselves in.

The American texts also differ from the German by presenting threats and tattletales as actions already taken or being taken. A common strategy found in the American letters is to send a "carbon copy" of the letter to the Better Business Bureau or other third party settlement agency as is done in example US-23d. This is the sort of action done where censure or "tattling" is one of the primary goals. Tattletale moves of censure indicate a relationship already soured rather than the focus on legal and contractual issues found in the German texts.

Letter US-26c continues this theme of presenting ongoing action rather than conditional threat. The writers, self-identified as two senior citizens, are complaining about a contractual failure. Significant is the emphasis they place on how they feel taken advantaged of. They take the moral high ground in asserting their letter is to censure the organization and to prevent future untoward behavior. The interjection of personal feelings and use of personal accounts are features common to these American letters.

Both the German and American letters make reference to the legal systems of each culture respectively. When Germans invoke the threat of law they do so through referencing initially to common assumptions shared about contract

periods, etc. When legal representation is identified, German letters refer to such representation as “my attorney.” This suggests the writer has a specific lawyer designated to take further legal action if needed. Americans, though viewed as being especially litigious, have a much more general and somewhat ambivalent use of law in terms of complaints. Instead of directly making use of personal attorneys, Americans seem to limit themselves to “public law” or the legal apparatus designed to handle grievances that are seen as offenses against the public at large rather than against just an individual. The most common use of law in the American letters is found in references to the State Attorney General’s offices, usually in the form of “carbon copy” attachments.

Expressions of emotions
Expressions of emotions are directly tied into the manner maxim and are culturally dependent for their interpretation.

DE-4a: I do not want to be satisfied with this decision.
Mit diesem Beschluß möchte ich nicht zufrieden geben.
De-17a: I am no longer willing to wait for the sofa
Sehe ich mich meinerseits nicht mehr länger gewillt auf das sofa zu.
De-26a: As you can see, there is an enormous difference between your price and the price in Italy and I think that is not correct.
Wie Sie sehen besteht zwischen Ihrem Preis und den in Italien ein enormer unterschied und genau dies halte ich nicht für korrekt.

The German complaint writer tends to be reluctant to openly express feelings. The German society is reserved in nature and expression of feelings within a formal context such as business settings (Randlesome, 1994) is viewed as being a violation of the manner maxim whereas we have already seen how the American writers feel free to express personal feelings and to focus attention on the complainer rather than the complaint. Further more, American complaint letters often contain what Pomerantz (1986) refers to as “extreme case formulations to indicate the strength of the emotion being expressed as in:
PB-1a1 Extreme displeasure
PB-1f1 Extreme dismay and shock
AB-19a I am appalled
These cultural preferences result in very different Gricean interpretations as to what constitutes adherence and violation of the CP and Conversational Maxims.

Popular opinion

The American letters contain a category of popular opinion that is virtually absent from German letters of complaint. This strategy of Popular Opinion is a form of argument by public opinion where the fact that more people besides the letter writer share the same complaint serves as a warrant in support of the writer's claim that a complaint worthy situation exists.

PB-1a1: I was not alone in my state of annoyance at this misleading ad—three other women were also quite upset.

PB-1f1 : Many of my friends, neighbors, and coworkers have similar opinions.

US-26d2: All in all, 64 people were so frightened of the plane and its mechanical problems…

Rules and Relationships

The above examples from German and American complaint letters highlight some of the differences found in complaints as argument within each culture. Conley and O'Barr (1996) provide a framework against which the pragmatic preferences of Germans and Americans can be understood. Conley and O'Barr (1996) suggest social action between individuals and institutions can be arrayed along a continuum anchored respectively by "rules" and "relational" orientations. These orientations comes out of their work on interactions between individuals and the legal system in small claims court actions within the United States. People accessing the informal justice system in America (plaintiffs, judges, attorneys) take either a rules or relational orientation in how they present and manage expression of grievances.

People who express complaints from a rules orientation view the rules and principles as a set of universals that ought to be indifferent to issues of status or power. The universality of such rules and principles is in part to ensure equal footing among individuals. Contractual symmetry is provided for in how the rules are structured. Thus, one turns to these social/contractual rules in order to obtain proper redress once wronged. Social organization is seen as a network of contractual opportunities and contractual responsibilities. Obligations are codified within the set of rules used to govern social order. A key feature of contractual relations is the stability and predictability that results (Williamson, 1985). Knowledge of rules and one's position relative to the rules ought to produce regularized and predictable outcomes. Finally, there ought to be a visible orientation to legal and processual rules in the presentation of one's grievance.

This orientation translates to expectations about the type of material used to support one's grievance and claims.

People who express complaints from a relational orientation view social relationships and one's footing within a social network, i.e., status and power, as superceding contractual rules and principles. Personal understandings and expectations within the perceived relationship are the basis for obligations. Obligations are judged in relationship to individual understandings and beliefs rather than upon legal prescriptions and explicit contractual beliefs. Grievance management becomes a process of deciding individual cases relative to social merits and proprieties. Judgment is personalized to the situation. The type of information deemed important to a relational orientation emphasizes one's place within a social network and subsequent expectations. Entitlement belongs to the individual rather than to the larger social order. Finally, social rules for appropriate behavior get emphasized over contractual or legal rules.

Each of these orientations provides a different set of motives for action and normative obligations sustained by each person when entering into an interaction. Key differences between German and American complaints can be seen using a rules & relationship continuum. German consumers favor a rules orientation where American consumers favor a relational orientation in the making and managing of their complaints. Understanding these two orientations and how each orientation represents culturally preferred preferences for making arguments in the form of complaints provides the MDA analyst with inforamtion necessary to apply a Gricean analysis when filling in missing premises and reconstructing the argumentative discourse.

Summary

Cultural differences exist in the type of preferences that guide both action in the form of discourse, i.e., naming, blaming, and claiming, and in how what constitutes a deviation from the Gricean principles is determined. Any form of argument analysis such as MDA must take into account the cultural differences when performing analyses if overly or underly charitable interpretations are to be avoided. Studying argument schemes across cultures as has been done here is one fruitful way to obtain this needed cultural knowledge and to bring culture back into the analysis of argumentation.

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ISSA Proceedings 2002 – Leff's Account Of The Aristotelian Roots Of The Boethian Theory Of Dialectical Reasoning: A Contemporary Reconsideration

This paper is an attempt to call attention to the need for a reconsideration of the evolution of the concept of dialectic that took place between the time of Aristotle and Boethius. The central allegation of the paper is that Anicius Manlius Serverinus Boethius was a central figure in the development of a formalised concept of the dialectic, one that was far from Aristotelian. This perspective on the dialectic was made possible through Boethius' reinterpretation of the dialectical *topoi*. The key evidence for this shift provided in the paper is the refutation of the presentation of the Aristotelian dialectic as being a theory of proofs. Rather, Boethius successfully convinced many contemporary authors, including Leff, that this interpretation was Aristotle's own.

The point of departure for the paper is Leff's stance on the Boethian theory of the commonplaces (1974, 1978, 1983), which was focused on the rhetorical topoi. The aim of the paper is to demonstrate that a focus on the evolution of the rhetorical topoi does not allow for an adequate evaluation of the way in which Boethius' works affected the medieval understanding of the dialectic. Rhetorical theorists have failed to note how Boethius catalysed an important shift in the relationship between dialectical theory and the theory of the analytic demonstration, which subsequently affected the relationship between dialectical and rhetorical theory.

The importance of demonstrating the origin of the trend towards the conflation of the theories of dialectic and analytics is of more than merely historical interest.

This is because of the fact that Boethius' work provides an example of one of the first instances of an attempt to create a hierarchy between theories of argumentative justification. A reconsideration of the way that Boethius attempted to reconstruct dialectical disputation as an attempt to produce proofs might allow those interested in the reconciliation of rhetorical and dialectical approaches certain critical insights. The recognition of the importance of Boethius in the history of the medieval dialectical might allow these theorists to more forward towards a reconciliation that might do justice to both traditions of argumentation theory.

Understanding Boethius' role in the formalisation of the topical tradition (Bird 1960) leads to the conclusion that the theory contained in *De Topicis Differentiis* represents a paradigm shift in the dialectical method. This understanding should draw attention towards impact of certain external influences on medieval dialectical theory. In particular, comprehension of Boethius' importance motivates an examination of the changes in the forums for argument that existed in the early middle ages, as a possible explanation for theoretical developments, which cannot be adequately explained (*contra* Leff) in terms of a synthesis of already existing notions.

1. An Introduction to Boethius' Context and Sources

Boethius was born into a patrician family and served in the Roman Senate at a time of great upheaval. While Cicero, one of his key influences, had served in a powerful senate during the late republican period, Boethius was a member of an assembly that was little more than a rubber stamp for Theodoric, the Ostrogothic King of Italy. Boethius, who was also a member of Theodoric's court, was ultimately executed by the King on the basis of flimsy evidence linking him with a plot of the Emperor Justinian to overthrow barbarian rule in Italy.

Boethius was a philosopher in his own right, author of one of the most influential texts of the Middle Ages (*The Consolation of Philosophy*). However, he is remembered primarily for his translation of the extant logical works of Aristotle into Latin (Murphy 1974: 67). On the basis of these credentials, he was also a highly respected commentator on the works of Aristotle, becoming the most credible exegete of the Stagyrite until the Renaissance. In keeping with the tenets of the classical age that had just drawn to a close, Boethius also attempted to further refine the method of dialectic.

While Leff (1978) was correct in claiming that Boethius was working within a

Latin rhetorical tradition of the commonplaces, the question of which tradition of the dialectical topoi he drew upon is critical to an understanding of Boethius' work. Leff's conception of Boethius as a figure who intended primarily to reconcile the Latin rhetoricians with Aristotelian assumptions is correct only insofar as one does not consider Boethius' approach to the dialectic. In his own philosophical works, Boethius was known for attempting to reconcile Aristotle and Plato, who had disparate views on the dialectic that might have informed Boethius' conception of the epistemic status of the proposition being tested within dialectical disputation (Boethius, 1999).

However, to show that Leff did not effectively highlight the difference between Aristotle and Boethius' conceptions of the *dialectical* commonplaces, Aristotle's own comments on these must be outlined, before moving on to demonstrate how the Boethian and contemporary interpretations of this commentary differ.

2. The Aristotelian Dialectic

Aristotle's conception of the dialectic was derived fundamentally from the question and answer procedure known as *elenchis*. One party must adopt a standpoint from two possible alternatives, while the interlocutor must attempt to refute them by obtaining premises (by means of putting questions to the first party) with which to construct a syllogism. This syllogism must either refute the proposition at issue, or demonstrate that the respondent has been led into a contradiction (Smith 1997: xxii).

However, for the purposes of this paper, a discussion of the salient features of the Aristotelian elenchis are not as important as the differences between the form of the syllogism with which it is associated (via the refutation) and the forms of argument associated with the two other forms of argumentative justification that Aristotle described. Aristotle (in *On Rhetoric* and the *Prior* and *Posterior Analytics*) formalised two other techniques of argument that are each fundamentally different from the dialectical procedure. The analytic demonstration produces a deductive proof that begins with an axiom (or first principle), and is designed to produce irrefutably true conclusions. Demonstration is the only method whereby Aristotle contends that one can demonstrate with certainty the truth of a proposition.

The second argumentative method that Aristotle distinguished from dialectic is rhetoric, which he designated as its counterpart (*On Rhetoric*: 1354a). When engaged in the rhetorical defence of a proposition, the speaker must attempt to

discern which premises his audience would accept, and construct an argument that they would accede to on this basis. One of the defining characteristics of rhetoric is that some elements of arguments are usually implicit, which means that they are constructed around and enthymeme rather than a syllogism.

In charting the Boethian movement of the canons of rhetoric closer to those of the dialectic, Leff has effectively detailed the way in which Boethius collapsed some distinctions Aristotle made between dialectic and rhetoric. However, Leff failed to note the way in which Boethius had weakened the barriers between the notions of analytic demonstration and dialectic. It was the latter process that had the consequent effect of allowing Boethius to subordinate rhetorical argumentation to a more quasi-analytical framework of argumentative construction.
Both rhetorical oratory and analytic demonstration diverge from the dialectic insofar as the latter depends upon two parties, who effectively champion the position of doubt and credence relative to the proposition at issue. However, this difference is obvious, and this paper must focus upon the differences between dialectic and rhetoric that have not informed discussions of the Boethian exegesis thus far. Aristotle stated that: "demonstrative propositions differ from dialectical ones in this way. A demonstrative proposition is the taking of one side of an *antiphasis* whereas a dialectical proposition is an enquiry related to an *antiphasis*" (*Prior Analytics* I: 1).

The starting point of the dialectical encounter is amenable to a different sort of testing procedure than a proposition which is suitable for an analytic demonstration. Once this has been acknowledged, it is a short step to understanding that the difference in the features of the appropriate method of argumentation is due to the disparate epistemic status of the two sets of propositions. The axiom that propels the analytic demonstration has the status of a first principle; while the axiom may not be in principle provable, it cannot be doubted. The starting point of a dialectical demonstration is one that can (or indeed must) be doubted in order to investigate the right course of action in practical matters, pertaining to such topics as the good of the city.
However, it is not only the starting point of the dialectical disputation that differentiates it from the demonstration. The epistemic status of the premises that support the syllogism that either refutes or affirms proposition at issue also vary between the two procedures. In analytic demonstration, the premises that allow for the deduction from the axiom or first principle must also be certain, owing to

their connection to the axiom. In dialectical disputation, the propositions that form the syllogism of refutation are deemed acceptable not in virtue of the fact that they are certain, but owing to the acceptance of the interlocutor after careful scrutiny (Evans 1977). The respondent in dialectical elenchis must not reject any potential premise out of hand, but must carefully consider whether they are acceptable in the context where they are being applied, thus preventing what Aristotle called "sophistical refutation".

Aristotle stated that the premises of the dialectical syllogism should have the status of *endoxa*, being premises that would be endorsed not only by those involved in the disputation, but also by those people generally considered wise, or to a subgroup of the wise who are most qualified in that area of knowledge (*Topics I*). That said, it is still up to the parties participating in the disputation to grant or deny these premises in the course of the proceedings. The form of reasoning is therefore unique to the dialectic; dialectical disputation is aimed at producing tentative adherence to a proposition not on the basis of either the preconceptions of the audience, or because of the demonstration that proceeds from an undeniable principle.

Both of these features, the fact that neither the starting point nor the premises used to construct the dialectical syllogism are certifiably true, necessitate the presence of the topoi, the nature of which further differentiates dialectical disputation from analytic demonstration, until, unmentioned by Leff, the nature of these dialectical commonplaces are transformed by Boethius. Leff's statement that Aristotle considered the topoi as "principles or strategies that enable the arguer to connect reasons with conclusions *for the purpose of effecting a proof*" (Leff 1983: 25, emphasis added) bears witness to a failure to recognise the shift in the dialectic that Boethius effected.

3. The Role of the Topoi within Aristotle's Dialectical Procedure

If premises related to empirical facts were all that were available to those involved in dialectical disputation, it would be effectively impossible for these propositions to be combined in order to create an argument related to a controversial starting point. The questioner requires premises will that allow for the answers drawn from the respondent to be linked to the proposition at issue, in order to effect a refutation. These premises come in the form of the topoi. It is this addition of the topoi as crucial premises needed to construct syllogisms which accounts for the complexity of the dialectical disputation over the analytic

demonstration. The treatise Aristotle wrote on the former method is over one third longer than the two written on the latter.
The topoi are basic (and abstract, as they lack both particular subjects and predicates) premises that can be used to link the responses of the respondent in order to create the syllogism containing the refutation. In rhetorical terms, the commonplaces facilitate the invention of arguments, since once they are adopted they will dictate the form of the argument. Once the questioner chooses a commonplace, the premises they will need to acquire from the respondent in order to complete the refutation become known.

However, the topoi, like all other premises that will be used in the dialectical syllogism, must be accepted by the respondent. The topoi themselves only have the status of endoxa, as demonstrated by the fact that they can be denied by the respondent, if they are inappropriate to the subject at issue (and, as demonstrated in the *Topics VIII*¸ particular topoi are only appropriate relative to a certain class of subjects). In this paper, further evidence will be brought forward from Aristotle's work to support the claim that this is the correct interpretation of the epistemic status of the commonplaces. This argument will demonstrate that the topoi, (*contra* Boethius and Leff) did not provide the type of argumentative support that allows for a deductive proof.

Aristotle was clear on what is required for a proof, and dialectical argumentation, which relies upon acceptable but unproved premises (including the topoi), does not meet his standards. Aristotle wrote in the *Posterior Analytics* that: "Since, then, what we know demonstratively must belong to necessity, it is clear that we must demonstrate through a middle that is *necessary* (§74b). This is crucial, as it demonstrates that dialectics will not be able to produce proofs, since the middle term is a topos and is not derived from a first principle.

One can demonstrate that Aristotle did not believe that the topoi did not have the same status as first principles by providing an example of the way in which topoi are only functional if applied correctly. Aristotle wrote that in testing whether or not a species is actually a member of the genus to which the respondent has assigned it, one should inquire whether the respondent includes it within the genus because it is closely related to another species that is likewise considered a member of the genus in question (*Topics II*: 10, 115a 15-24). The skeletal premise connected to the *topos* is this: If the second subject belong to a class because of their similarity to the first subject, if the first does not properly belong to that

class, then neither does the second. Example: If we believe that zebras are mammals (not having examined the internal anatomy of a zebra) on the basis of their similarity to horses, we must accept that we have no good reason to believe that a zebra is a mammal if someone proves that horses should not properly considered mammalian.

In the *Topics*, Aristotle provides a commentary on each topos that explains why it works reliably in a general set of circumstances (which generally consists of examples), but he never makes an argument for the general applicability of that commonplace. Aristotle held that the topoi could be used inappropriately, showing that they were not axiomatic. He noted that there was an obvious way in which the topos above could be used inappropriately: "[W]hatever is one in number is most uncontroversially called the same in everyone's judgement. But even this is customarily indicated in several ways" (*Topics:* 103a). Smith (71) notes that by highlighting how a similitude is not one but rather a set of relationships, Aristotle indicates that one must be cautious when using topoi based upon similarity. We must know that the subject that we rely upon (in our above example, horses) are in fact members of a set that is homogenous in terms of what is important for their membership in the mammalian genus, or else we might have drawn an incorrect conclusion about zebras on the basis of the topos employed.

Given the clarity of Aristotle's comments, it seems self-evident that the commonplaces were not mention to serve the same function as axioms. However, some philosophers have interpreted the topoi as possessing the same epistemic status. Leff does not cite them within his accounts of the Boethius' dialectic. Despite this absence, this paper will be used to flesh out the position that the reason why a quasi-analytic position on the dialectic (and the dialectical commonplaces in particular) goes unquestioned is owing to the enduring notion that dialectic is merely an extension of analytic demonstration, a position developed by Boethius himself.

However, some contemporary philosophers have alleged that Aristotle rejected the approach to argumentation found in the Topics by the time that he wrote the works contained in his *Organon*. This would provide for a defence of Boethius' conception of the dialectic, and hence would demonstrate that Leff's account of that conception was adequate. Fortunately, this position has been criticized and found lacking by more recent accounts of the Aristotelian corpus. The account of

this refutation provides further evidence which complement the analysis contained above which concludes that the topoi do not provide analytic validity to a syllogism.

4. Contemporary Philosophical Approaches to Dialectics and the Topoi

There are two positions within Twentieth Century philosophy on the nature of the dialectical commonplaces, one consonant and one in opposition to Boethius. The former position was advanced by De Pater (1965), who argued that the topoi were designed to function as logical or axiological laws. The opposite position was taken by Stump (1978), who argued that the term topos only applies to the instruction of how to invent an argument and not the reason Aristotle provided for why it can be considered reliable. Green-Pedersøn (1984) advanced an intermediary theory, one that seems most satisfactory in terms of the arguments included in this paper. His position was that both the strategy of argumentation provided by the topoi and the reasons why it can be considered reliable in certain circumstances can be properly considered as part of the Aristotelian commonplace.

To the credit of his position, Green-Pedersøn's discussion of the dialectical commonplaces was eventually adopted by Stump (1989) who stated in the introduction to this volume that "I especially recommend the study of … Green-Pedersøn's *The Tradition of the Topics in the Middle Ages*", and she acknowledged in an earlier treatise that she would have appreciated the ability to consult it. Thus, the paper must move forward to an examination to the details of the critique of Stump and Green-Pedersøn, which explains how Boethius had struck out in new directions when formalising the dialectical commonplaces.

5. The Role of the Topoi in the Emergent Boethian Dialectic

According to Stump (1988), the trend towards a logical interpretation of the *Topics* did not begin with Aristotle, as Leff (1983) had contended, but with Boethius. The key to the transition is Boethius' claim that the dialectical commonplace functions as a "maximal proposition", and essentially as being self-evidently true: "[T]hose maximal propositions are known *per se*, so that they need no proof from without to impart belief to all argument" (in Stump 1978: 1185D). Boethius appears to have been the first to equate a commonplace with an axiom, something that he could not have done without disregarding the function of each in argumentative construction.

Due to this change, the dialectical argument, according to Boethius, has a

conditionally true conclusion (which depends only on the truth of the empirical premises) and therefore that the dialectical syllogism functions as a conditional proof. This is not exactly what Boethius had in mind, according to Stump (1978), but he was clearly interpreted this way by his later medieval exegetes. As shall be shown below, this does not do complete justice to Boethius' concerns, but it is not far from the mark, as the general effect of the theory of the maximal propositions is to shift the epistemic status of the topoi closer towards that of axioms.

Stump and Green-Pedersøn have documented how this interpretation of the dialectical commonplaces diverges from the Aristotelian approach significantly. First, the new approach pays little attention to the fact that even the opinion of the wise could be challenged within the framework of Aristotelian dialectical disputation. This was a simple matter for the questioner during that procedure, as every premise can be denied with cause according to the rules laid out in book one of the *Topics*. Stump (1978: 57) demonstrated how Boethius' neglect of this fact is motivated by his failure to consider the implications of the oral context of the dialectic, which Aristotle took for granted when writing his texts on dialectical disputation.
The impact of considering the oral context of the disputation procedure is considerable. Within this type of encounter, each party has the ability not only to challenge the propositions that are offered to them within a question form, but also to challenge any form of reasoning that they do not find wholly convincing. The examples that would be found within the oral encounter would likely be far less tidy than those that Boethius provides, which bear the mark of any example of argumentation produced with no thought to context.

The result is that "Boethius' exposition centres on the arguments themselves, divorced from disputation and its participants, and the examples that he proposes are brief, orderly and textbookish" (Stump: 1978, 57). While it would be fruitful to examine the context (and especially the forums of argumentation typical of Ostrogothic Italy) or Boethius' influences (in particular, Plato) that led him towards this type of focus on abstracted rather than living argumentation, this is not within the scope of this paper. The next section must turn to the way in which this focus on argumentation led to the theory of the maximal propositions, which only makes sense on the basis of this shift away from the oral context.

6. The Maximal Propositions as an Anti-Aristotelian Development: Further Aspects
The focus on written discourse led Boethius to overlook the fact that in the

Aristotelian dialectic the premises that form the dialectical syllogism can only be used if the propositions are granted by the *interlocutor*. Second, Boethius ignores the fact that the topos functions within the argument produced by the questioner on this basis, that it must likewise be accepted by the respondent, owing to the epistemic status of the dialectical commonplace as endoxa. Indeed, it is highly unlikely that in actual argumentation, as will be demonstrated below, the interlocutor would not fail to react to the inappropriate use of a topos.

Boethius' examples of the maximal propositions indicate both that these topoi move towards obtaining the epistemic status of the axioms, and furthermore that this interpretation could only hold up when divorced from any pragmatic context. For instance, Boethius advances this example for the use of the maximal proposition of material cause: "If someone argues that the Moors do not have weapons, he will say that they do not use weapons because they lack iron. The maximal proposition: Where the matter is lacking, what is made from the matter is also lacking" (*De Topicis Differentiis*: 1189C15-D3). This is obviously a good general principle, perhaps appropriate when pertaining to a certain class of subject, but it fails utterly to create a conclusion that is necessarily true, as it fails to provide the analytic validity that Boethius desired.
Boethius failed to elevate the maximal proposition to the level of an axiom in this example because the general principle embodied in the example will only work within a certain context and for a particular purpose. It holds true if two conditions are met, namely if the discussion is intended to test the proposition that the Moors have a large quantity of iron weapons and if it is granted that the Moors could not otherwise acquire weapons made of this material. Like all topoi, the maximal propositions can only be considered as creating a valid argument given an all-important stipulation of *ceteris paribus*.

Unlike Aristotle, Boethius never explained how his dialectical commonplaces could be used effectively by reference to their purpose in dialectical disputation. To have done so would have been to undermine his conclusion that "once the arguer has made clear that the conclusion that he wants is covered by the maximal proposition, the opponent will have to grant the conclusion as well" (Stump 1989: 44). That said, those investigating the shift in the dialectic inaugurated by Boethius should move on to a consideration of his motives. Stump claimed that "it is easy to read Aristotle's *Topics* as if his presentation amounted to no more than a boxful of recipes for arguments [rather than as] the

instruments of an art" (1989: 44-45), but there is little explanation of why Boethius was inclined to interpret the topoi in this manner. As indicated above, it will take more analysis on the factors external to the history of dialectical ideas to explain this shift.

7. Epilogue

This paper was an attempt to demonstrate that in order to address the evolution of the relationship between dialectic and rhetoric more adequately, there must be further investigation into the transformation of the relationship between analytic demonstration and dialectical disputation in Latin thought. Leff's attempt was only lacking insofar as it neglected this dimension of the dynamic tension between all three of these disciplines, which lies at the centre the Boethian corpus.

To move forward with this line of inquiry, what is necessary is to avoid the trap of being inclined to see every development within theory as being the result of a gradual evolution of trends that takes place solely in the realm of ideas. By investigating the context of Boethius' writings, it might also be possible to explain the popularity of Boethius' corpus in the later Middle Ages more adequately. Insofar as Boethius was influenced not only by the Latin rhetorical tradition, but also by the political, legal and economic environment of the society in which he lived and worked. By comparing this environment against Aristotle's, it might be possible to understand some of the differences, and by comparing it against the societies inhabited by Abelard, Albertus Magnus and Thomas Aquinas, one might better understand the affinities in their works.

Leff was surely right to contend that Boethius' aim was to synthesize a theory of the rhetorical topics out of the disparate approaches of Cicero and Aristotle, but to understand and ultimately explain why this amalgamation took the particular from of Boethius' *De Topicis Differentiis*, one must first acknowledge that no scholar, even one who created his masterwork while imprisoned in a tower, works outside of a social context.

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