

ISSA Proceedings 2002 - Perelman's Universal Audience: Between Norms And Facts



I will open this lecture by pointing out that, quite paradoxically, Perelman's notion of Universal Audience seems to oscillate between two incompatible interpretations. We have, on the one hand, a factual universality, which is linguistically impossible to reach, and on the other hand, a universality of right, which

concerns some happy few only among a well-read community.

Indeed, Perelman and Olbrechts-Tyteca first claim that the agreement of a Universal Audience is a matter of right (1988 :41); but they acknowledge, afterwards, that this notion looks like an illegitimate generalization of a particular intuition. In sum, the Universal Audience seems to lie somewhere between norms and facts.

In a second time, I will try to show that this hesitation could be the very sign of an underlying cognitive continuity. Relying on a genealogical perspective which aims at understanding the origin of audience as an argumentative notion, I will define our contemporary notion of a Universal Audience as a hybrid concept that covers two components: first, a regulatory principle which is concerned with norms; second, a factual notion that refers to the conscience of every man. The intimate link between both sub-notions paves the way to critical discussion. Indeed, when a norm turn out to conflict with facts, we endeavour to unearth its spirit through the feeling of a human conscience. Such a genealogical perspective helps us to understand the working of this argumentative process, without which every norm, sooner or later, is threatened with arbitrariness.

Finally, I will illustrate my claim by analyzing a debate that concerns Human Rights.

1. The notion of an audience in Perelman's theory

In Perelman's mind, an audience is always an orator's construction. In the *New Rhetoric*, the notion of an audience is first described as a "presumed audience", "product of the construction of an orator" (1969 : 19-23). But Perelman then underlines that this construction has to be as precise as possible, in order to meet

the actual psychology of particular audiences whose adherence the orator hopes to obtain. Now, in Perelman's theory, the question of adherence gets complicated by the opposition between *persuasion* and *conviction*.

"We are going to apply the term *persuasive* to argumentation that only claims validity for a particular audience, and the term *convincing* to argumentation that presume to gain the adherence of every rational being." (1969 : 28).

We may appreciate here that the opposition between persuasion and conviction is linked with a distinction between particular and universal audience. But, at the same time, this leads to the theoretical problem which is involved by the concept of a Universal Audience:

"The nuance involved is a delicate one and depends, essentially, on the idea the speaker has formed on the incarnation of reason. Every person believes in a set of facts, of truths, which he thinks must be accepted by every 'normal' person, because they are valid for every rational being." (1969 : 28).

Of course, the conception one assumes of what is a "normal" person implies a concept of a Universal Audience.

2. *The paradox of the universal audience*

Let us see how this is conceived by Perelman:

"Philosophers always claim to be addressing such an audience, not because they hope to obtain the effective assent of all men - they know very well that only a small minority will ever read their works - but because they think that all who understand the reasons they give will have to accept their conclusions.

The agreement of a universal audience is thus a matter, not of fact, but of right.
(1969 : 31)

Hence a twofold paradox. First, an epistemological paradox, second, a political paradox. Let us begin with the epistemological question.

As underlined by Crosswhite (1989), the problem with Universal Audience - i.e. the problem with universality in general as it is build up by the Aufklärung - lies in the fact that one is condemned to choose between, on the one hand, an empty and abstract universality, and, on the other hand, a concrete particularity which is potentially relative to cultures and individuals. The threat of emptiness and abstraction for universality implies that any argumentative community runs the risk of building its own rationality with concepts and norms that are nothing else than empty constructions. According to Crosswhite, Perelman transcended this paradox thanks to his distinction between facts and right in the concept of a

Universal Audience. But this directly lead to the second paradox: A Universal audience of right is conversely proportionnal to a factual universality. Indeed, a rational individual who is able to understand a complex argumentation is automatically a member of an *elite*.

There is undoubtedly a link between this view in Perelman's conception and Habermas' theory of discussion. In Habermas' view, audiences are the measure of an argument. As it is explained by Crosswhite (1989):

"A central concern of modern political theory is to find an audience whose members evaluate one another's argument in a way that ensures that the most worthy argument will be the most effective one." (1989 : 159).

By doing this, Habermas tries to ground a rationality for discussion through an argumentative mechanism. To reach his goal, he stipulates that a *consensus* may be two faced. First we have a rational consensus which is a matter for truth. Second, we have a *de facto* consensus which is a matter for mere agreement. This distinction relays for a part the distinction between *episteme* and *doxa*, i.e., between persuasion and conviction, particular and Universal audiences. But, as pointed out by Crosswhite, Habermas has a serious problem with his concept of "an ideal speech situation" which has to do with emptiness participants' motivations.

This gives us a path to try to transcend the two faced paradox, at its epistemological level, as well as at its political level. Indeed, the crucial point in modern argumentative theories is the nature of an audience's adherence. As we will see, we may assume that the adherence of a Universal Audience is, as a principle, an ideal moment of the critique process. In this respect the concept of Universal Audience may be defined as a twofold concept, with a theoretical and normative aspect, and with an empirical and critical aspect. Let me explain this point.

A political maturity is characterized by a tendency to proceduralize the juridical institution. Thus, the argumentative process includes a dynamic critical mechanism which appears to be central in order to warrant the rationality of norms. Propositions have to face critique and sometimes refutation in order to be considered as rational. Now, in this step of the process, Universal Audience has to concretize in a human conscience, represented by a reasonable human being who will assume the delicate moment of the critique. Hence the political paradox; because the critical face of a Universal Audience has to be assumed by educated and enlightened men and women, i.e., by an elite. This is of course a crucial

question for democracy. When criticizing a proposition, one has to face the tradition and has therefore to assume the *burden of proof*. In order to compensate this burden, he/she has to associate his/her proposition to a certain actual audience which is identifiable in the core of the discussion, but at the same time, he/she has to declare this very audience to be universal.

Now, as we will see, when analyzing an actual debate where the question of a Universal Audience is used, we have to face both of the described situations. On the one hand, a conception of a Universal Audience as a regulatory principle where refers every declaration of right, as well as every norm and rule which is implied by the declaration. On the other hand, one judges a norm in the name of the Universal Audience, when this norm offends the conscience of everyman. In this case, the notion recovers its factual dimension, since this conscience is supposed to be tested on every reasonable human being. Depending on whether we face one or another aspect of the Universal Audience, it will be more or less normative and abstract.

If we assume such a conception, the respective quality of arguments are only judged *a posteriori*, by the argument's degree of resistance towards the refutation attempts. This criterion is of course directly related to the adherence of the audience to the presented claims. Let me then formulate the following hypothesis: the paradoxical status of a universal audience may be transcended by a dissociation and a hierarchisation. Someone discusses the letter of a law which is presumed to be assumed by a Universal Audience of right. The discutant is challenging the letter of the law in the name of its spirit, which has to be invoked in the name of an actual Universal Audience: the conscience of every man.

3. Analysis

Let us now concretize these reflections by analyzing a short sample of a debate. We will analyze some extracts of an "open letter" from a victim of Pinochet's terror in Chile, which is addressed to Jack Straw, who was, in April 1999, Home Secretary in Great-Britain, when the letter has been written. This is the situation: in the night of the 16 October 1998, Augusto Pinochet was arrested by the London Police, on a charge of torture. But torture became a *universal competence crime* in the United Kingdom only in 1988. As a dramatic consequence, crimes committed by Pinochet's government before that date may not be retained against him in a trial. This is the meaning of the open letter.

It is cold and misty here; trees are turning slowly into yellow shadows and the morning dew finds it increasingly difficult to pose its crystal drops. It is autumn again, red and yellow, beautiful and yet disconcerting. As is the Law Lord's decision to Grant General Pinochet immunity from crimes committed before 1988. I'm confused and deeply offended by their verdict, because I was arrested and tortured before that date. Do we not matter, are we not human beings too, did we deserve to be savagely tortured? It was before 1988, yes, but it was pure horror, something the Lords, sitting comfortably in their golden chairs, cannot understand.

[...]

He is responsible for all of the disappearances, the kidnapping and subsequent vanishing of over a thousand human beings. Ordinary people, men, women and children who disappeared after being arrested. It was before 1988, I know, but their families are still suffering the psychological torture of not knowing whether their loved ones are dead or alive.

[...]

Fortunately, they are many in Chile and around the world who are doing whatever they can to bring Pinochet to trial in Spain. To transform the fragile past into a strong collective memory so that justice can be done. Jack Straw, we hope that you are one of them.

As we may see, this discourse reveals both faces of the Universal Audience. First, the Universal Audience of right assumes the declaration from the Lord's decision and that we may formulate as follows: "Torture has become /has been declared a universal competence crime in United Kingdom since 1988". As a letter of a law, it is supposed to be assumed by the whole rational community, and, as such, it is moreover presented as undisputable. Second, a deontic rule follows from this declaration, which may be formulated as follows: "No trial concerning torture which happened before 1988 may be conducted in Great Britain". The declaration and its following deontic rule are assumed - in right - by the Universal Audience. More precisely, this means that these propositions are written in law's texts and charters *as if* they had always been there and *as if* they were undisputable. This effect is in part due to the declaration's illocutionary force. Now, when applied to concrete cases, this law and its consequences creates incomptabilities such as one may be tempted to face law. This is actually what the author of the open letter does. But, as we saw, facing the doxa is always a delicate challenge. This is done in the name of a Universal Audience, which is identifiable with the actual

audience of the open letter. It is clearly brought about by an appeal to the conscious of everyman, an appeal to empathy and to pity towards a suffering that everyone may be able to feel and to understand. This appeal consists in challenging the letter of the law which is primarily assumed by the Universal Audience of right.

Let's now see in further details how this discourse is constructed.

1. The orator set an analogy between autumn and the Law Lord's decision, both being qualified as *disconcerting*. This sample has something to do with epideictic genre of the rhetoric because of its appeal to poetical emotion. But, symptomatically, the author of the letter is not in a position to blame his addressee – Jack Straw – first, because, since he faces the doxa, he has to bear the burden of proof; second, because he still hopes to obtain something from him.

2. The author expresses more precisely his feelings and his emotions towards this decision: he is *confused* and *deeply offended*. He immediately explains the reason (because). There, we may appreciate a concretisation of the dialogue between both faces of Universal Audience: *it was before 1988, yes*: which is a concession to the letter of the law; *but it was pure horror*: this represents an appeal to the spirit of this law, which is assumed by the conscience of every man. As a matter of fact, the author carries on with a kind of more direct blame: *something the Lords, sitting comfortably in their golden chairs, cannot understand*.

3. Bearing the burden of proof, the orator describes the charges brought against Pinochet, underlying – in the name of every human conscience – that such crimes were perpetrated against *ordinary people*, so that everybody in the audience may recognize her/himself in the victim's fate. Repeating its opposition between the spirit and the letter of the law, the orator insists (*I know*) on the fact that he is aware about this letter but that its human spirit is a sufficient reason to challenge it.

4. The orator ends with an optimistic note (*fortunately*) hoping that his appeal to human conscience will be heard. His trust towards people who will help the victim to be officially recognized in their status is finally transferred to Jack Straw who is the official audience of this letter.

As we saw in this short analysis, the delicate articulation between norms and facts, between the letter and the spirit of a law may be clarified by a twofold concept of a Universal Audience, which, far from being contradictory, represents the very condition of critical discussion, which is the warrant for our norms and

rules to remain rational.

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