

L'ANALISI LINGUISTICA E LETTERARIA

FACOLTÀ DI SCIENZE LINGUISTICHE E LETTERATURE STRANIERE
UNIVERSITÀ CATTOLICA DEL SACRO CUORE

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ANNO XVII 2009

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PUBBLICAZIONE SEMESTRALE

L'ANALISI LINGUISTICA E LETTERARIA
Facoltà di Scienze linguistiche e Letterature straniere
Università Cattolica del Sacro Cuore
Anno XVII - 1/2009
ISSN 1122-1917

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e-mail: editoriale.dsu@educatt.it (*produzione*); librario.dsu@educatt.it (*distribuzione*);
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Redazione della Rivista: redazione.all@unicatt.it - *web:* www.educatt.it/librario/all

Questo volume è stato stampato nel mese di aprile 2010
presso la Litografia Solari - Peschiera Borromeo (Milano)

ARGUMENTATION THEORY AFTER THE NEW RHETORIC

FRANS H. VAN EEMEREN

1. *Neo-classical contributions to the study of argumentation*

Perelman's and Toulmin's prominence

It is beyond any doubt that Chaïm Perelman was one of the greatest scholars that were actively engaged in the study of rhetoric in the twentieth century.¹ Other important twentieth century rhetoricians were the Americans I.A. Richards, Richard Weaver and Kenneth Burke and the Euro-American Stephen Toulmin. This is so in spite of the fact that some of these authors did not label themselves rhetoricians. Even prominent scholars such as Michel Foucault and Jürgen Habermas are sometimes regarded as rhetoricians.² The aims and ambitions of these modern rhetoricians diverge considerably. Weaver³, for one, would like to develop a culture that is based on the ideal and the truth, albeit that he realizes that rhetoric can also be abused. Richards thinks that rhetoric must lead to insight that can be helpful in correcting misunderstandings. To him, just as to Campbell, rhetoric is “the art by which discourse is adapted to its end”⁴; it is a philosophical discipline aimed at getting hold of the fundamental laws of language use.

Also there are scholars who view rhetoric as an instrument for thoroughly acquiring knowledge. Robert L. Scott⁵, for instance, considers rhetoric to be “a way of knowing, it is epistemic”. By adopting this epistemological stance he is ahead of Ernesto Grassi and of Foucault, who gives a central position to the rhetorical notion of ‘episteme’, although he replaced this notion in *The Archeology of Knowledge*⁶ by that of ‘discursive formation’.

¹ An earlier version of this paper was published in German (F.H. van Eemeren, *Argumentationstheorie nach der Neuen Rhetorik*, in *Die neue Rhetorik – Studien zu Chaïm Perelman*, J. Kopperschmidt ed., Wilhelm Fink Verlag, Paderborn 2006, pp. 345-382.)

² See, for instance, S.K. Foss – K.A. Foss – R. Trapp, *Contemporary Perspectives on Rhetoric*, Waveland Press, Prospect Heights, IL 1985/2002.

³ R. Weaver, *The Ethics of Rhetoric*, H. Regnery Co., Chicago 1953.

⁴ I.A. Richards, *Complementarities. Uncollected Essays*, Red. John Paul Russo, Harvard University Press, Cambridge 1976.

⁵ R.L. Scott, *On viewing rhetoric as epistemic*, “Central States Speech Journal”, XVIII, 1967, pp. 9-17.

⁶ M. Foucault, *The Archeology of Knowledge*, Tavistock, London 1978. English transl. of *L'archéologie du*

At any rate, in Foucault's view an episteme is the whole of relations that unites the discursive practices that determine the conditions that make knowledge possible in a certain period. The rhetorician Burke, who has been so important to the American 'rhetorical criticism', describes the aim of rhetoric a little bit simpler as the offering of strategies to solve problems or handle situations. Burke too takes a broad view on rhetoric and adds, among other terms, the key term *identification* to the traditional conceptual system. Nevertheless, Burke's definition of rhetoric in *Language as Symbolic Action*⁷, "the use of words by human agents to form attitudes or to induce actions in other human agents", comes in fact close to the definitions concentrating on 'persuasion' that have traditionally been given. Burke does not wish to replace the term *persuasion*, but looks on identification as a necessary complement, because persuasion is in his view a result of it.

For a very long time now the argumentative *angle* is generally considered as paradigmatic. From Aristotle to Bishop Whately it was the dominant view that rhetoric pertains to the ability or skill to find appropriate means of persuasion and to make use of them in a speech. The modern rhetoricians choose this argumentative angle as well.

Perelman too adopts this argumentative perspective, just like Toulmin, as a matter of course. Both authors devote their attention to the persuasive force of oral and written language. Together, but independently of each other, they have revived the theoretical study of argumentation by publishing, in the same year (1958) two highly influential books. Perelman published together with Lucie Olbrecht-Tyteca the impressive volume *La nouvelle rhétorique: Traité de l'argumentation*⁸ and Toulmin published a book that became just as influential, *The Uses of Argument*⁹.

The study of argumentation has in the past fifty years not only been nourished by rhetorical insights, but it is certain that Toulmin's and Perelman's rhetorically oriented contributions have been the cradle of modern argumentation theory. A new start was indeed called for, because in the 1950s it had become clear that for studying argumentation only logic is, unlike many people had thought, not enough. A great many verbal, contextual, situational and other pragmatic factors, which play a crucial part in the argumentative process of communication, are left outside consideration in logic: the conversational situation, who exactly speaks to whom, what has happened before that, which conventions are followed, in what way the 'premises' that are used are colloquially phrased, et cetera. In practice, logicians deal with formally structured derivations from abstract – and in some sense even empty – premises. In order to be able to make an unequivocal distinction between the 'valid' and the 'invalid' *argument forms* underlying such reasoning, they put the most important aspects of argumentative reality in brackets as it were. Both Perelman and Toulmin are not only aware that logicians act like this, but they also point out why this is not right and offer an interesting alternative. Because of the illustra-

savoir, Gallimard, Paris 1969.

⁷ K.D. Burke, *Language as Symbolic Action. Essays on Life, Literature, and Method*, University of California Press, Berkeley 1966.

⁸ Ch. Perelman – L. Olbrechts-Tyteca, *La nouvelle rhétorique: Traité de l'argumentation*, l'Université de Bruxelles, Brussels 1958. English transl. *The New Rhetoric. A Treatise on Argumentation*, University of Notre Dame Press, Notre Dame/London 1969.

⁹ S.E. Toulmin, *The Uses of Argument*, Cambridge University Press, Cambridge, MA 1958/2003.

tive parallels and differences between these two dominant authors, I shall start by making a short comparison.

Toulmin's model of analysis

Stephen Toulmin was interested in the way in which ideas and claims can be justified. He took a special interest in the norms that must be used when giving a rational assessment of argumentation put forward in support of views and assertions. Is there one universal system of norms that can be used to evaluate all kinds of argumentation in all areas or should each type of argumentation be judged in accordance with its own norms? In *The Uses of Argument* Toulmin explains for the first time systematically what his views are with regard to answering these questions.¹⁰

Gradually Toulmin had come to the conclusion that formal logic cannot offer any further insight in the problems he was concerned with. In his opinion, more could be learned from observing the juridical process of argumentation. Analogously with the procedural way of acting in law, a model could be sketched of the various steps that must be made in argumentation. In a court of law, just as in argumentation, propositions are to be justified and the nature of these propositions can also vary considerably. The proofs that are put forward in a legal case are in the one case, and in the one kind of case, different from the other, but in all cases there are general similarities in the procedure that was followed.

In *The Uses of Argument* Toulmin presents a model that represents the 'procedural form' of argumentation: the functional steps that can be distinguished in the defense of a standpoint or *claim*. According to Toulmin, the soundness of argumentation is primarily determined by the degree to which the *warrant*, which connects the *data* adduced in the argumentation with the claim that is defended, is made acceptable by a *backing*.¹¹ Toulmin thinks that this procedural form of argumentation is 'field-independent'. The various steps that are taken – and which are represented in the model – are always the same, irrespective of the kind of subject the argumentation refers to. What kind of backing is required, however, is dependent on the field to which the question at issue belongs. An ethical justification, for instance, requires a different kind of backing than a legal justification. Toulmin concludes from this that the evaluation criteria for determining the soundness of argumentation are 'field dependent'.¹² This field-dependency means that the

¹⁰ For his ideas concerning rationality and reasonableness, see also S.E. Toulmin, *Human Understanding*, Princeton University Press, Princeton, NJ 1972; S.E. Toulmin, *Knowing and Acting. An Invitation to Philosophy*, Macmillan, New York 1976.

¹¹ In the basic model it is assumed that the warrant is a rule without any exceptions and that the correctness of the warrant itself is not doubted. If there are exceptions to the rule, the force of the warrant is weakened and a 'rebuttal' needs to be added. Then the claim must be weakened by means of 'modal term' that involves a qualification of the claim. A 'backing' is required if the authority of the warrant is not immediately accepted. To account for such complications in argumentative reality, the basic model may have to be extended on several points.

¹² However inspiring Toulmin's ideas about argumentation and his model may be, all kinds of serious theoretical objections have been brought forward. Also it appears to be difficult in some case to apply the model. Toulmin's definition of the 'data' and the 'warrant' make it often difficult, as Toulmin concedes, to keep them

evaluation criteria for argumentation are historically determined and must be established empirically.

In this way, Toulmin's model puts argumentation in the rhetorical context of what may be expected in a specific field of argumentation. It is good to note that according to Toulmin the notion of 'validity of argumentation' – validity in a broader sense than logical validity – is an 'intra-territorial' notion and not 'inter-territorial'. This means that argumentation must be evaluated with norms that are relevant and adequate for the field that the argumentation pertains to and that the assessment criteria may not automatically be transferred from the one field to the other. The conception of reasonableness that is manifested here is relativistic in a temporal as well as a spatial sense.

Perelman and Olbrechts-Tyteca's new rhetoric

Perelman and Olbrechts-Tyteca have a conception of reasonableness that, just as Toulmin's, goes against formal logic (they associate formal logic without any further ado with a reasonableness conception *more geometrico*). Because of that formal – 'geometrical' – conception of reasonableness, they think that for the study of argumentation logic is not sufficient or irrelevant, if not both. In Perelman's view, argumentation that is aimed at justification is complementary to formal proof and a theory of argumentation that is complementary to formal logic is urgently needed.¹³

This theory of argumentation must pertain to differences of opinion in which *values* play a part and neither empirical verification nor formal proof nor a combination of the two can offer a way out. The theory of argumentation should show how choices that are made and decisions that are taken could be justified on rational (and reasonable) grounds. Like Frege analyzed mathematical thinking to develop a theory about logical reasoning, according to Perelman¹⁴, Perelman and Olbrechts-Tyteca examined philosophical, juridical and other sorts of argumentation to develop a theory about arguing with values.

Perelman and Olbrechts-Tyteca define their 'new rhetoric' as "the study of the discursive techniques allowing us *to induce or to increase the mind's adherence to the theses presented for its assent*"¹⁵. They give a description of the premises that can be used as 'start-

apart. This problem stems from the fact that Toulmin introduces the data and the warrant by means of two different descriptions. According to the first description, data provide specific information of a factual nature, whereas warrants are general, hypothetical, rule-like statements that serve as a bridge between the claim and the data and justify the step from the data to the claim. S.E. Toulmin, *The Uses of Argument*, p. 98. According to the second description, data are called upon explicitly and warrants implicitly, *Ibid.*, p. 100. Therefore it can be difficult to determine which statements exactly serve as data and which statements serve as warrants.

¹³ According to Perelman, the new rhetoric constitutes a reaction to "positivistic empiricism" and "rationalistic idealism" in which important areas of rational thinking, such as legal reasoning, are simply passed by. By means of *positivistic empiricism* Perelman very probably refers to the analytic school of thought generally called logical empiricism or – disregarding any differences – logical positivism or neo-positivism. According to *rationalism*, the only reliable source of knowledge is not experience (as empiricism claims) but reason (or *ratio*). Perelman reacts to a rationalism based on "idealism", that is, one in which reality is reduced to ideas – to what are termed people's "consciousness contents".

¹⁴ Ch. Perelman, *The new rhetoric: A theory of practical reasoning. The Great Ideas Today. Part 3: The Contemporary Status of a Great Idea*, Encyclopedia Britannica, Chicago 1970, pp. 273-312, p. 281.

¹⁵ Ch. Perelman – L. Olbrechts-Tyteca, *La nouvelle rhétorique*, p. 4.

ing point' of an argumentation. Of special interest in this endeavour are the values, which are related to preferences of an audience for the one instead of the other, the value hierarchies, which are often more important than the values themselves and which vary as a rule more strongly per audience, and the *loci*, which are preferences of a general nature that can for a certain audience, just like that, be used as a justification.

In connection with the point of departure, certain 'argument(ation) schemes' are used in argumentation. These schemes can rest on two principles: 'association' and 'dis-sociation'. Every association that puts certain elements of an attempt at justification in a particular argumentative relationship connects a particular proposition with a viewpoint. Perelman and Olbrechts-Tyteca's typology is an attempt at making an inventory of the various kinds of associations that can be made. Three main categories are distinguished: 'quasi-logical relations', 'relations based on the structure of reality' and 'relations establishing the structure of reality'.¹⁶ These relations are distinguished analytically, but in practice they are often combined and then they can strengthen or weaken each other.

The new rhetoric is not a normative theory but a description of types of argumentation that can be successful in practice. Ultimately the soundness of argumentation is in the new rhetoric linked to an audience. Argumentation is sound if it adduces (more) assent among the audience with the standpoint that is defended. Thus the soundness of argumentation is in the new rhetoric measured against its effect on a 'target group', which may be a 'particular audience', but also the 'universal audience': the people who the speaker or writer views as the embodiment of reasonableness.¹⁷

Characteristic commonalities and differences

There are some striking commonalities between the approach to argumentation taken by Perelman and his co-author Olbrechts-Tyteca in developing the new rhetoric and that of Toulmin in the layout of his model. Both approaches start from a broad philosophical background and a strong intellectual interest in the justification of views by means of

¹⁶ Unfortunately, the categories that are distinguished in Perelman and Olbrechts-Tyteca's catalogue are neither well defined nor really systematic and mutually exclusive. And there are other infirmities that prevent unequivocal application of their theory to the analysis of argumentation. For a more extensive evaluation of the theoretical and practical merits and demerits of Perelman and Olbrechts-Tyteca's contribution to the study of argumentation, see F.H. van Eemeren – R. Grootendorst – A.F. Snoeck Henkemans – J.A. Blair – R.H. Johnson – E.C.W. Krabbe – C. Plantin – D.N. Walton – C.A. Willard – J. Woods – D. Zarefsky, *Fundamentals of Argumentation Theory*, Lawrence Erlbaum, Mahwah, 1996, Ch. 4.

¹⁷ Every person can imagine the universal audience to be in the way he prefers it to be, with all the norms of rationality that go with it. The domineering role that Perelman and Olbrechts-Tyteca assign to this audience – which is in the end constructed by the speaker or writer – with regard to distinguishing argument schemes and determining the validity of argumentation makes it impossible to achieve an unequivocal and identical analysis based on the typology. The typology can be used only if it is first clearly indicated which conditions must be satisfied in order to allow a certain argument scheme to be effective. In that case (at least in theory), it can be checked whether these conditions have been satisfied in a specific case. The kinds of argument that are distinguished in the new rhetoric are in most cases intuitively recognizable and they are closely related to the argument types from the topical tradition. Nevertheless the shortcomings of the typology make it hard to give a definitive answer to the question of the extent to which the new rhetoric offers a realistic survey of the argument schemes that are in argumentative practice of influence on gaining adherence.

argumentative discourse in ordinary language. In both approaches it is emphasized that argumentation can deal with a great variety of topics with the inclusion of value judgments and other kinds of normative stances. Neither Perelman and Olbrechts-Tyteca nor Toulmin regard modern formal logic as an adequate tool for dealing with argumentation. Both turn to the juridical procedures of law for finding an alternative model. Just as Toulmin, Perelman developed, together with Olbrechts-Tyteca, an impressive theoretical framework for analysing argumentation in the way he considered fruitful. Just as Toulmin, he gained broad and massive recognition for his work, but first he had to wait for it for a considerable period of time. In his case, this was probably also due to the fact that his work was not published in English until 1969 while this has become a precondition for international acknowledgment nowadays. In fact, both Perelman and Toulmin did not receive their recognition straight from their fellow philosophers but through speech communication. In both cases communication scholars saw the potential of their works for studying argumentative discourse and improving their students' analytic skills.¹⁸

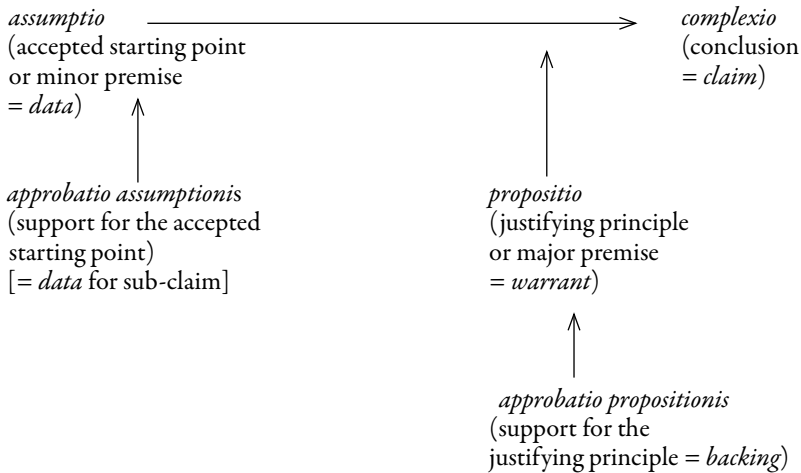
In spite of these commonalities, Perelman and Toulmin also differ in many other respects. Toulmin has had a typical Oxbridge upbringing, with a strong emphasis on philosophy of language. Perelman's intellectual orientation was more continental, although he was at the same time a great admirer of Peirce. Toulmin's philosophical and writing style is much more analytical than Perelman's, who was closer to phenomenology. Although both Toulmin and Perelman turn to the juridical model in a similar fashion, for Toulmin the context of law was just a suitable example whereas for Perelman it was not only a real source of inspiration but also a genuine area of interest, with authentic problems he would like to solve (and did solve in some cases). More important, of course, are the differences between the contents of the two theories, which reflect to some extent the differences just mentioned. While Toulmin presents an analytic model that should lend itself directly to practical application, Perelman offers, together with Olbrechts-Tyteca, an overview of elements that play a part in the process of convincing or persuading an audience. Rather than for immediate application, Perelman's new rhetoric lends itself for stimulating further reflection on the phenomena that are being analysed. This explains that Perelman has found more followers among fellow rhetoricians and philosophers of law whereas Toulmin's work has had more impact on students of communication and authors of textbooks and material for instruction.

Neo-classical in a double sense

We have two different reasons for describing Perelman's and Toulmin's contributions to the study of argumentation as 'neo-classical'. In the first place, they are neo-classical because they have had a similar strong influence on the study of argumentation in the past

¹⁸ In our view, a connection can even be made between Perelman's typology and Toulmin's model of analysis by viewing Perelman's points of departure and argument schemes as substantiations of different types of data, warrants and ways of backing. In the distinction between argument schemes based on the structure of reality and argument schemes determining the structure of reality there is a strong reminiscence of the Toulminian distinction between 'warrant-using' and 'warrant-establishing'.

decades as classical scholars such as Aristotle have had since Antiquity. In the second place, Perelman's and Toulmin's contributions may also be called neo-classical because they involve a reevaluation of rhetorical insights that has led the study of argumentation back to its classical roots. Perelman's new rhetoric and Toulmin's model of argumentation are, in fact, imbued with notions and distinctions that can already be found in the works of their classical predecessors.¹⁹ In Toulmin's case, this applies for instance to the similarity between the roles played by the 'warrant' and the 'backing' in his model and the classical *topoi* or *loci*, but here we would like to leave it at pointing out once more the remarkable resemblance between the Toulmin model and the classical *epicheirema* as described much earlier by Cicero:



In Perelman's case, his goals fit in well with Aristotle's in the *Rhetoric*, albeit that the system Aristotle offers is primarily heuristic and Perelman's analytic. The close relationship is expressed in the very name for the theory, the new *rhetoric*. In the new rhetoric it is postulated, just as in classical rhetoric, that argumentation is always designed to achieve a particular effect on those for whom it is intended. Thus in both classical rhetoric and the new rhetoric the audience plays a crucial part.

There are, in fact, several close similarities between the new rhetoric and classical rhetoric. One of them consists in the classification of premises. Further, this classification is in both cases connected with the degree to which premises are acceptable for an audience. Another similarity can be found in the argument schemes characterizing the connection between the premises and the thesis. The major part of the Perelmanian argumentation schemes based on the structure of reality can be found already in book III of the *Topics*. And the argument schemes establishing the structure of reality offer the same possibilities for generalizing with respect to reality as classical rhetorical induction.

¹⁹ See F.H. van Eemeren, *Klassieke invloeden in de moderne argumentatietheorie*, in *De moderniteit van de Oudheid. Zes voordrachten over de Klassieke Oudheid en de moderne wetenschap* door R.F.W. Diekstra, F.H. van Eemeren, H.J. de Jonge, E.H. Kossmann, J.H.A. Lokin, M.A. Schenkeveld-van der Dussen, ingeleid door J.D. Drenth, E. Meijering – G.W. Muller – J.R.T.M. Peters ed., Publikaties van de Commissie Geesteswetenschappen 2, Van Gorcum, Assen-Maastricht 1992, pp. 26-41.

In principle, the distinction between the argument schemes based on the structure of reality and those establishing the structure of reality runs parallel with Aristotle's more precise distinction between rhetorical syllogisms ('enthymemata') and rhetorical induction ('paradigmata').

2. *General impact of the New Rhetoric on the dominant approaches to argumentation*

The state of the art in the study of argumentation

In order to give a clear picture of the influence that Perelman's contribution has had on the study of argumentation, an overview of the major developments is required, so that Perelman's general impact can be pointed out realistically. The current state of the art in the study of argumentation is characterized by the co-existence of a variety of theoretical approaches, differing considerably in conceptualisation, scope and degree of theoretical refinement.²⁰ All modern approaches are strongly influenced by classical rhetoric and dialectic, but each of them in a different way. The influence exercised by Perelman and Toulmin can be noticed everywhere, but most particularly in North America, where their works have been dominating the study of argumentation for a long time. In Europe, it should be added, their less well-known contemporaries Arne Naess²¹ and Rupert Crawshay-Williams²² have also been influential, albeit to a lesser extent.

The formal dialectical approach

Of all prominent modern approaches the formal dialectical approach to argumentation, which was coined and introduced by Charles Hamblin²³, is probably furthest removed from Perelman's work. The "new dialecticians", who are responsible for the revival of dialectics in the second part of the twentieth century, view argumentation as part of a procedure to resolve a difference of opinion by means of a discussion that is formally regulated. In designing such a procedure, they make use of ideas propounded by Crawshay-Williams, Naess and the Erlangen School of Lorenzen and Lorenz *cum suis*. The most completely worked out proposal for a dialectical theory of argumentation was presented by Barth and Krabbe²⁴. In *From Axiom to Dialogue* they described a 'formal-dialectical' procedure for determining by means of a regimented dialogue game between a 'proponent' and an

²⁰ Together with approaches with a more limited scope or a less developed research program, the most important approaches are discussed in much more detail in van Eemeren et al., *Fundamentals of Argumentation Theory*, 1996.

²¹ A. Naess, *Communication and Argument. Elements of Applied Semantics*, Allen & Unwin, London 1966.

²² R. Crawshay-Williams, *Methods and Criteria of Reasoning. An Inquire into the Structure of Controversy*, Routledge & Kegan Paul, London 1957.

²³ C.L. Hamblin, *Fallacies*, Methuen, London 1970. Photographic reprint Vale Press, Newport News, VA.

²⁴ E.M. Barth – E.C.W. Krabbe, *From Axiom to Dialogue*, Walter de Gruyter, Berlin 1982.

‘opponent’ of a thesis whether the thesis can be maintained in the light of the opponent’s ‘concessions’ (propositions that the opponent has accepted). The proponent attempts to bring the opponent in a contradictory position by skilfully exploiting the concessions. If the proponent succeeds, the thesis has been successfully defended *ex concessis*, i.e. given the concessions. In effect, Barth and Krabbe’s formal dialectics amount to a translation of formal logical systems into formal rules of dialogue. Because Perelman concentrated fully on the practice of ordinary argumentation, and intended his work to be an alternative to the formal approach, it is not surprising that his ideas have had no real influence on formal dialectics.

Informal logic

Perelman’s dissatisfaction with the logical approach to argumentation is shared by a group of philosophers in Canada and the United States who started in the 1970s a movement that is now known as *informal logic*. Since 1978 the journal *Informal Logic*, edited by J. Anthony Blair and Ralph R. Johnson, has been the speaking voice of the informal logic movement. The informal logicians were in the first place dissatisfied with the way in which argumentation was treated in introductory logical textbooks. Informal logic is not a new kind of logic, but a ‘logical’ approach to the normative study of reasoning in ordinary language that remains closer to the practice of argumentation than formal logic²⁵.

Johnson and Blair²⁶ have indicated what they have in mind when they speak of an informal logical alternative. In *Logical Self-Defense* they explain that the premises of an argument have to meet the criteria of ‘relevance’, ‘sufficiency’ and ‘acceptability’. Other informal logicians have adopted these three criteria, albeit sometimes under different names (e.g., Govier²⁷). In the case of ‘relevance’ the question is whether there is an adequate substantial relation between the premises and the conclusion of an argument; in the case of ‘sufficiency’ whether the premises provide enough evidence for the conclusion; in the case of ‘acceptability’ whether the premises themselves are true, probable, or in some other way trustworthy.

Unlike Perelman, informal logicians maintain as a starting point that argumentation should be sound in a logical sense. Although it is not yet fully transparent what they think this involves, it is clear that the informal logicians are primarily interested in the premise-conclusion relations in arguments. So far they have not paid much attention to Perelman’s views on the matter, giving preference to examining the possibilities offered by the Toulmin model. An exception is Christopher Tindale²⁸, who takes due account of rhetorical insights.

²⁵ J.A. Blair – R.H. Johnson, *Argumentation as dialectical*, “Argumentation”, I, 1987, 1, pp. 41-56.

²⁶ R.H. Johnson – J.A. Blair, *Logical Self-Defense*, McGraw-Hill Ryerson, Toronto 1977/1993.

²⁷ T. Govier, *Problems in Argument Analysis and Evaluation*, Foris, Dordrecht 1987.

²⁸ Chr.W. Tindale, *Acts of Arguing. A Rhetorical Model of Argument*, State University of New York Press, New York 1999.

Radical argumentativism

Starting in the 1970s in Europe, Oswald Ducrot and Jean-Claude Anscombe have developed in a number of – almost exclusively French – publications a linguistic approach to language use and argumentation. Because they are of the opinion that almost all verbal utterances – often implicitly – lead the listener or reader to a certain conclusion and are therefore crucially argumentative in their meaning, they refer to their theoretical position as *radical argumentativism*²⁹. Ducrot and Anscombe's descriptive approach is characterized by a great interest in words such as 'only', 'no less than', 'but', 'even', 'still', 'because' and 'so', which can serve as argumentative 'operators' or 'connectors' and give the utterances a certain *argumentative force* and *argumentative direction*. Another kind of observation made by Ducrot and Anscombe is that a word such as 'but' only determines the direction of the conclusion that is suggested by the sentence, not the content of this conclusion. Whatever conclusion may be drawn in a specific context, the presence of the word 'but' causes in all cases this conclusion to be the opposite of, and also stronger than, the conclusion that has to be drawn from the part of the sentence preceding 'but'. According to Ducrot and Anscombe, the opposite standpoints that in a sentence such as "Paul is rich, but he is married" are suggested by 'but' select two different 'argumentative principles' which are on a par with the *topoi* from classical rhetoric. In this way, radical argumentativism shares with Perelman a great interest in making use of insights and concepts developed in classical rhetoric. Due account is also taken of Perelman's own rhetorical contribution to the study of argumentation, but this has not led to any major influences on the theorizing.

Modern rhetorical approaches

In the last decades a powerful reevaluation of rhetoric has taken place. The irrational and even anti-rational image of rhetoric that has come into being during the past centuries has been revised.³⁰ It is remarkable that the rehabilitation of rhetoric in the study of argumentation has started at about the same time in various countries. A considerable time after the pioneering work by Perelman and Olbrechts-Tyteca several argumentation scholars in the United States have defended the rational qualities of rhetoric. Wenzel³¹, for one, would like to give rhetoric full credit, but then emphatically in relation with logic and more in particular dialectics. In France, Reboul³² argued in favour of giving rhetoric a satisfactory position in the study of argumentation beside dialectics. He regards rhetoric and dialectic as different disciplines, which also display some overlap: rhetoric applies dialectic to public discussions while dialectic is at the same time a part of rhetoric because

²⁹ J.-C. Anscombe – O. Ducrot, *L'argumentation dans la langue*, Mardaga, Brussels 1983.

³⁰ See, among others, M. Leff, *Rhetoric and dialectic in the twenty-first century*, "Argumentation", XIV, 2000, 3, pp. 241-254.

³¹ J.W. Wenzel, *Perspectives on argument*, in *Proceedings of the 1979 Summer Conference on Argument*, J. Rhodes – S. Newell ed., SCA, Falls Church 1980, pp. 112-133.

³² O. Reboul, *Rhétorique et dialectique chez Aristote*, "Argumentation", IV, 1990, 1, pp. 35-52.

dialectic provides rhetoric with intellectual tools. In Germany, Kopperschmidt³³ takes a considerable step further: he argues that, viewing things also from a historical perspective, rhetoric is the central concern of argumentation theorists. These are just prominent examples of a phenomenon that can be noticed on a much broader scale. In revaluing rhetoric most authors point emphatically to the works of their pre-eminent predecessor, Perelman, and more in particular to the great influence of Perelman and Olbrecht-Tyteca's *The New Rhetoric*.

The pragma-dialectical approach

The pragma-dialectical approach to argumentation, which was developed by Frans H. van Eemeren and Rob Grootendorst³⁴ connects immediately with formal dialectics, but is also fundamentally different. The difference is expressed in the replacement of the term *formal* by *pragma* (for 'pragmatic'). The pragmatic approach means that argumentation is viewed as a phenomenon of ordinary discourse that should be studied by making use of pragmatic insights from speech act theory, Gricean language philosophy and discourse analysis.

In the pragma-dialectical approach an ideal model of critical discussion has been developed covering the stages that can be analytically distinguished in resolving a difference of opinion by putting the standpoints at issue to the test and the speech acts that are performed in the process. The pragma-dialectical discussion procedure includes a series of basic rules that constitute a code of conduct for reasonable discussants. Any violation of a rule, in whatever stage it occurs, amounts to an incorrect discussion move that is an impediment to the resolution of a difference of opinion and is therefore, and in this sense, considered fallacious. Although Perelman's work was always recognized by pragma-dialecticians as important, until recently it did not have an immediate influence on the theorizing. This changed in the late 1990s when van Eemeren and Peter Houtlosser³⁵ started their effort to integrate rhetorical insights systematically in the dialectical theoretical framework of pragma-dialectics.

The separation between dialectic and rhetoric

Although dialectic and rhetoric were initially closely interwoven, they have grown apart in the course of time. This has led to a division between dialectic and rhetoric that has

³³ J. Kopperschmidt, *Methodik der Argumentationsanalyse*, Fromann-Holzboog, Stuttgart 1989.

³⁴ F.H. van Eemeren – R. Grootendorst, *Speech Acts in Argumentative Discussions*, Walter de Gruyter/Foris, Berlin/Dordrecht 1984; F.H. van Eemeren – R. Grootendorst, *Argumentation, Communication and Fallacies*, Lawrence Erlbaum, Hillsdale, NJ 1992; F.H. van Eemeren – R. Grootendorst, *A Systematic Theory of Argumentation. The Pragma-Dialectical Approach*, Cambridge University Press, Cambridge 2004.

³⁵ F.H. van Eemeren – P. Houtlosser, *Strategic maneuvering in argumentative discourse: A delicate balance*, in F.H. van Eemeren – P. Houtlosser, *Dialectic and Rhetoric: The Warp and Woof of Argumentation Analysis*, Kluwer Academic, Dordrecht 2002, pp. 131-159; F.H. van Eemeren – P. Houtlosser, *Fallacies as derailments of strategic maneuvering: The argumentum ad verecundiam, a case in point*, in *Proceedings of the Fifth Conference of the International Society for the Study of Argumentation*, F.H. van Eemeren – J.A. Blair – C.A. Willard – A.F. Snoeck Henkemans ed., Sic Sat, Amsterdam 2003, pp. 289-292.

resulted in the existence of two mutually isolated paradigms, which are based on entirely different perspectives on argumentation and are often even seen as contradictory. Rhetoric maintained a modest place in the humanities and is mainly an area of interest to scholars in cultural studies and literature. Dialectic has been incorporated in logic and has even disappeared from view for a long time after logic was further formalized in the nineteenth century. When some decades ago the formal dialecticians took up the dialectical approach to argumentation again from a formal logical angle, this approach had become inaccessible to a great many scholars in the humanities.

Both opinions about dialectic and rhetoric have differed virtually from the beginning. Aristotle already made a 'disciplinary' division of labour between the two. Later dialectic developed, in accordance with the meaning that Aristotle had given to the term *dialectica* in the *Topics*, into a theory of debate starting from premises that the other party is willing to accept. In medieval times dialectic became more important at the expense of rhetoric. After the study of *inventio* and *dispositio* had been transferred to dialectic, rhetoric was reduced to the study of *elocutio* and *actio*. In the end, this development culminated in a strict separation between dialectic and rhetoric. Toulmin³⁶ asserts that the ideological division between dialectic and rhetoric only became a fact after the peace of Westphalia (1648); from then on, the 'geometrical conception of rationality' from the exact sciences prevailed. The formal paradigm involved an ideal of reasonableness that was quite different from that adhered to in the humanities. Argumentation was no longer seen as a means of resolving a difference of opinion between people in a reasonable way, but was equated with rational reasoning by means of formal derivations. The present situation is that there is not only a revival of interest in both rhetoric and dialectic, but also a wide conceptual and communicative gap between the two. Rhetoricians and dialecticians speak different languages and do not understand of each other what they are doing.³⁷

Strategic manoeuvring to bridge the gap

Recently, an argument has been made for re-establishing the link between rhetoric and dialectic by viewing argumentative discourse as aimed at achieving dialectical as well as rhetorical objectives. This is desirable, because each of the two angles leads to interesting insights in argumentation, which can enrich the analysis and evaluation of argumentative discourse if they are in some way or other combined. Perelman's and Toulmin's ideas can play a constructive role in this endeavour. Eventually, Perelman appears to have come to terms with Socratic dialectics.³⁸ In *Justice, Law and Argument* he describes argumentation as "the technique that we use in controversy when we are concerned with criticizing and

³⁶ S.E. Toulmin, *Return to Reason*, Harvard University Press, Cambridge, MA 2001.

³⁷ In my opinion, it is not the case that dialectic and rhetoric deal with a different subject matter, but the same subject matter is approached from different perspectives.

³⁸ D.A. Frank, *Dialectical rapprochement in the New Rhetoric*, "Argumentation and Advocacy", XXXIV, 1998, 3, pp. 111-126 discusses Perelman and Olbrecht-Tyteca's conception of dialectic and their elaboration of that conception in the new rhetoric. He argues that it was their intention to accommodate dialectic and rhetoric, Western and Jewish thought as well as the formal and the informal perspective on logic in a non-binary opposition in one framework.

justifying, objecting and refuting, of asking and giving reasons". He believes that in addition to logic as a formal proof theory, an argumentation theory should be developed: "This enlargement would complete formal logic by the study of what, since Socrates, has been called *dialectics*"³⁹.

In a series of papers, van Eemeren and Houtlosser⁴⁰ have argued that a case can be defended as effectively as possible while critical standards for argumentative discourse are observed at the same time. In each stage of the process of resolving a difference of opinion 'strategic manoeuvring' takes place in order to aim rhetorically as good as one can for one's own benefit without violating any dialectical norms. According to van Eemeren and Houtlosser, each of the four dialectical stages that are analytically distinguished in the resolution process has a rhetorical analogue. They distinguish between three aspects of strategic manoeuvring, which correspond with major areas of interest from classical rhetoric: making an opportune selection from the topical potential available at a certain discussion stage (topical systems), achieving an adequate attuning with the audience (means of persuasion), and exploiting the presentational means effectively (stylistics). When examining the three aspects Perelman's insights can be used immediately.

The topical potential of a certain discussion stage can be viewed as the set of alternative moves that are relevant in that stage of the resolution process. Perelman and Olbrechts-Tyteca emphasize that from the fact that particular moves are selected "their importance and pertinence to the discussion are implied"⁴¹. Besides giving 'presence' to a certain move, deliberately leaving out a certain move can be regarded as making such a choice⁴². In the confrontation stage, strategic manoeuvring in choosing from the topical potential means that a deliberate selection is made from the possible discussion issues. This boils down to achieving such a reduction of the 'disagreement space' – the set of issues that play a part in the difference of opinion – that the confrontation concentrates on the point (or the points) the speaker or writer can handle best. In the opening stage, the strategic manoeuvring amounts to the speaker or writer creating the point of departure that is most favourable to him. This can, for instance, happen, by bringing helpful concessions of the other party to mind or by emphasizing shared starting points that the party concerned can use well in supporting his standpoint. In the argumentation stage, starting from the opportunities the nature of the standpoint at issue offers, the *status topoi*, the speaker or writer can choose a strategic line of defence (or line of attack) in which he anticipates possible objections and makes use of the argument schemes that serve his purpose best. In the concluding stage, everything will be directed towards ending the discussion with an outcome that is most favourable to the speaker or writer.

In order to achieve an optimal result, the moves that are made in the various discussion stages must be attuned to the audience in such a way that a certain *communio* is created between the arguer and the listeners or readers. In the confrontation stage, this can

³⁹ Ch. Perelman, Justice, *Law and Argument: Essays on Moral and Legal Reasoning*, Reidel, Dordrecht 1980, p. 108.

⁴⁰ F.H. van Eemeren – P. Houtlosser, *Strategic maneuvering in argumentative discourse: A delicate balance*; F.H. van Eemeren – P. Houtlosser, *Fallacies as derailments of strategic maneuvering*.

⁴¹ Ch. Perelman – L. Olbrechts-Tyteca, *La nouvelle rhétorique*, p. 119.

⁴² *Ibid.*, p. 116.

for instance happen by avoiding issues that are less important or that can evidently not be resolved. In the opening stage, the speaker or writer will make an effort to provide the basis for his argumentation “the status enjoying the widest agreement”⁴³. This explains why it is often attempted to elevate personal opinions and subjective impressions to the level of generally shared value judgments. In the argumentation stage, the argument can be strategically attuned to the audience by basing them on sources respected by the audience or by appealing to authorities recognized by the audience. In the concluding stage, the joint responsibility for the outcome of the discussion is often emphasized.

In order to make rhetorical moves effective and have a real effect on the audience, the verbal presentation must stylistically be in harmony with the discursive effects that are aimed for. The French argumentation theorists Anscombe and Ducrot⁴⁴ equate the wording with ‘giving direction’ – or, as it is expressed by Anscombe, “diriger le discours vers une certaine direction”⁴⁵. Perelman and Olbrechts-Tyteca observe that argumentative language use always presupposes a choice “consisting not only of the selection of elements to be used, but also of the techniques for their presentation”⁴⁶. Rhetorical figures are means that can be used to give certain things or events a certain ‘presence’ for the listeners or readers. Among the rhetorical figures that can clearly serve an argumentative purpose are the rhetorical questions and figures of style such as *praeteritio*: establishing a certain interest in something by saying that you are not going to talk about it.

3. Perelmanian influences on the study of the main problem areas

Some problem areas unaffected by Perelman

The problems involved in the production, analysis and evaluation of argumentation are treated differently in the various theoretical approaches to the study of argumentation. Some concepts crucial to the theory of argumentation, such as ‘point of view’, ‘unexpressed premise’, ‘argument scheme’, ‘argumentation structure’, and ‘fallacy’, are, in some way or other, examined in almost all of them.

Verbal expressions are not ‘by nature’ standpoints, arguments, or other kinds of argumentative units, but only when they serve a specific function in the communication process. They represent, for instance, a point of view only if a positive or negative position is expressed with respect to a certain proposition.⁴⁷ This problem area is studied first of all by argumentation theorists involved in speech act theory or other forms of linguistic pragmatics.⁴⁸ Perelman’s work has not had much influence on these linguistically oriented

⁴³ *Ibid.*, p. 179.

⁴⁴ J.-C. Anscombe – O. Ducrot, *L’argumentation dans la langue*, p. i.

⁴⁵ J.-C. Anscombe, *La nature des topoï*, in *La théorie des topoï*, J.C. Anscombe ed., Kimé, Paris 1994, pp. 49-84, p. 30.

⁴⁶ Ch. Perelman – L. Olbrechts-Tyteca, *La nouvelle rhétorique*, p. 119.

⁴⁷ Perelman refers to a proposition that is put forward for the adherence of an audience as a *thesis*.

⁴⁸ J. Goodwin, *Perelman, adhering, and conviction*, “Philosophy and Rhetoric”, XXVIII, 1995, 3, pp. 215-233 discusses Perelman’s concept of ‘adherence’ in relation to ‘conviction’. She argues that it cannot support the

studies. Nor has it been of influence on the study of unexpressed premises and other argumentative elements that are only implicitly present in the discourse. Another problem area in the study of argumentation that Perelman has barely influenced is the determination of the argumentation structure. The structure of argumentation is determined by the way in which the reasons advanced hang together and jointly support the standpoint that is defended.⁴⁹ Christian Plantin rightly observes that Perelman was never interested in “the technicalities of argument analysis”⁵⁰.

Argument schemes

Although it should not be taken for granted that anyone who puts forward an argument is automatically involved in an attempt to logically derive the conclusion from the premises, in some way or other, a transfer of acceptance must be aimed for from the explicit premise to the standpoint at issue. It may be assumed that the arguer had made an attempt to design the argument in such a fashion that it will convince the listener or reader. Perelman coined such designs, which are extensively examined by him and Olbrechts-Tyteca, *argumentative schemes* (*schèmes argumentatifs*). Nowadays they are usually called *argument schemes* or *argumentation schemes*.

Argument schemes are generally viewed as conventionalised ways of establishing a relationship between what is stated in the explicit premise and what is stated in the standpoint. Because such schemes characterize the type of justification provided by the explicit premise of a single argument for the standpoint, an analysis of the argument schemes used in argumentative discourse provides information as to the principles, standards, criteria, or assumptions involved in argumentative attempts at justification (or refutation), i.e. the *topoi* on which the argumentation rests.⁵¹ Argument schemes are among the concepts that are most intensively studied by argumentation theorists and Perelman’s pioneering work is generally recognized as having broken new ground.⁵²

weight Perelman puts on it.

⁴⁹ Argumentation for or against a standpoint can be ‘single argumentation’ consisting of one reason for or against the standpoint. The argumentation can also have a more complex structure, depending on the way in which the defense of the standpoint has been organized in view of (anticipated) doubts or criticism. In a more complexly structured argumentation several reasons are put forward for or against the same standpoint. These reasons can be alternative defenses of the standpoint which are unrelated, but they can also be interdependent, so that there is a ‘parallel chain’ of reasons which mutually strengthen or complement each other, or a ‘serial chain’ of reasons.

⁵⁰ Chr. Plantin, *Review of R. Schmetz (2000), L’argumentation selon Perelman. Pour une raison au cœur de la rhétorique. Namur: Presses Universitaires de Namur, “Argumentation”, XVII, 2003, pp. 127-130.*

⁵¹ According to Annalisa Cattani, *Argumentative mechanisms in advertising*, in *Proceedings of the Fifth Conference of the International Society for the Study of Argumentation*, pp. 177-181, in Perelman’s approach only the general premises that make it possible to ground values and hierarchies are called *topoi*. This leads to a simplified scheme of the classical *topoi*, which is limited to the ones that Aristotle studies among the *loci* of the accident: *quality, quantity, existence, essence, order and person*. Cattani shows how the *topoi* of essence and persona have been developed in the world of advertising and how they affect the audience.

⁵² The point of departure in the study of argument schemes nowadays is that in argumentative discourse, depending on the argument scheme that is used, various types of argumentation can be distinguished and that each type of argumentation calls for the answering of specific critical questions. See, among others, F.H. van Eemeren – R. Grootendorst, *Argumentation, Communication, and Fallacies*, pp. 94-102 and D.N. Walton,

In the new rhetoric, Perelman and Olbrechts-Tyteca provide a description of a great many argument schemes that can be used successfully by an arguer if they are appropriate in view of the audience's premises. The description is systematic to the extent that the schemes are divided up in a typology according to two ordering principles: association and dissociation.⁵³ The classes of argument schemes distinguished in the new rhetoric are not (and are not intended to be) mutually exclusive.⁵⁴ In a given case, an argument may, for example, be regarded both as 'quasi-logical argumentation' and as 'argumentation based on the structure of reality'. The same goes for certain subtypes of the various classes. Perelman and Olbrechts-Tyteca will have regarded these complications as natural phenomena, which are true to the way in which argumentation is perceived in practice.⁵⁵

When applying Perelman and Olbrechts-Tyteca's typology in analysing argumentation it is rarely possible for all interpreters to arrive at the same unequivocal interpretation. This is partly due to a lack of clear definitions of the various categories. A more serious problem, however, is that divergent ordering principles have been used in drawing up the typology: quasi-logical argumentation is distinguished on the basis of a formal criterion (does the argumentation display a structural correspondence to a valid logical or mathematical argument form?), whereas argumentation based on the structure of reality and argumentation establishing the structure of reality are distinguished on the grounds of a content criterion (does the argumentation flow from a particular view of reality or does it suggest a particular idea of reality?). When argument schemes are distinguished on the basis of a content criterion, the notion of 'scheme' has been stripped of its formalistic meaning, while the formal connotations remain intact. Then, it is all the more necessary to indicate precisely which sort of cases (with which kind of empirical features) are to be counted as belonging to each of the various argumentation types.

Going by Perelman and Olbrechts-Tyteca's distinctions, one audience can discern argument schemes in an argumentation that are different from those discerned by another, and the same can be said for analysts. The criterion cannot simply be "what determines the effectiveness (i.e., the persuasive effect)?" in a particular case, as neither the audience nor an independent interpreter can know for certain which scheme is responsible for the effect (which is itself often difficult enough to determine). A typology in which a decisive role is assigned to the audience can only be implemented in practice if it is precisely indicated when, and under which conditions, a particular argument scheme can be an instrumental part of an effective technique of argumentation. In theory at least, analysts can then determine whether in a given case these conditions have been fulfilled, and decide accordingly in their analysis. However recognizable the argument schemes that are distinguished in the new rhetoric may be, the problems of demarcating the vari-

Argumentation Schemes for Presumptive Reasoning, Lawrence Erlbaum, Mahwah, N.J. 1996.

⁵³ Because Perelman and Olbrechts-Tyteca's compilation of argument schemes is based on their analysis of a somewhat accidental collection of argumentations, a natural consequence of their method is that exhaustiveness cannot be claimed automatically for their list.

⁵⁴ For a critical appreciation of the taxonomy, see also M.A. van Rees, *Argument interpretation and reconstruction*, in *Crucial Concepts in Argumentation Theory*, F.H. van Eemeren ed., Amsterdam University Press, Amsterdam, 2001b, pp. 165-199, pp. 184-185.

⁵⁵ Perelman and Olbrechts-Tyteca anticipated some of the problems mentioned here, but offered no feasible solutions to those empiricists who would like to put Perelman and Olbrechts-Tyteca's observations to the test.

ous schemes make it difficult to answer the question as to the degree in which the new rhetoric provides a realistic survey of the argument schemes that influence the approval of these. There is simply not a sufficient basis for deducing testable hypotheses regarding the way people persuade and convince one another.

Several authors have taken up the new rhetoric's typology of argument schemes. Manfred Kienpointner⁵⁶, who acknowledges some of the weaknesses of the typology, has added a number of argument schemes to the collection. In a very basic sense the pragma-dialectical approach to argument schemes has also benefited from Perelman's insights. Van Eemeren and Grootendorst took over the idea of the associative argument scheme as a principle that connects a premise with a thesis or standpoint: "an argument scheme is a more or less conventionalised way of representing the relation between what is stated in the argument and what is stated in the standpoint."⁵⁷ Traces of Perelman's influence can also be found in the pragma-dialectical typology, which distinguishes between three main types of argument schemes: 'causal argumentation', 'comparison argumentation' and 'symptomatic argumentation'. Like Perelman, van Eemeren and Grootendorst consider 'pragmatic argumentation' to be a subtype of causal argumentation and treat the 'argument from authority' as a subtype of symptomatic argumentation, which has a similar argument scheme as Perelman's 'arguments based on a coexistence relation'. Other authors distinguish argument schemes that are also in some respects similar to Perelman and Olbrechts-Tyteca's.

Recently, Roland Schmetz provided in *L'argumentation selon Perelman. Pour une raison au cœur de la rhétorique*⁵⁸ a detailed and valuable analysis of Perelman's typology of arguments, summarizing the possible connections between argumentative forms in two tables. Much earlier, Seibold, McPhee, Poole, Tanita, and Canary⁵⁹ and Farrell⁶⁰ have made an effort to apply the schemes to argument practices. There are also authors who elaborate on specific concepts of argument schemes described in the new rhetoric, such as Dearin⁶¹ on quasi-logical argumentation, Measell⁶² on analogy, and Kienpointner⁶³ on

⁵⁶ M. Kienpointner, *Argumentationsanalyse*, Verlag des Instituts für Sprachwissenschaft der Universität Innsbruck, Innsbrucker Beiträge zur Kulturwissenschaft, Sonderheft 56, Innsbruck 1983; M. Kienpointner, *Alltagslogik. Struktur und Funktion vom Argumentationsmustern*, Frommann-Holzboog, Stuttgart/Bad Cannstatt 1992; M. Kienpointner, *The empirical relevance of Perelman's new rhetoric*, "Argumentation", VII, 1993, pp. 419-437.

⁵⁷ F.H. van Eemeren – R. Grootendorst, *Argumentation, Communication, and Fallacies*, p. 96. When Grize earlier defined argumentation in his 'natural logic' as a process of 'schematization' for an audience, he made also use of the term *scheme*.

⁵⁸ R. Schmetz, *L'argumentation selon Perelman. Pour une raison au cœur de la rhétorique*, Presses Universitaires de Namur, Namur 2000, Ch. 4.

⁵⁹ D.R. Seibold – R.D. McPhee – M.S. Poole – N.E. Tanita – D.J. Canary, *Argument, group influence, and decision outcomes*, in *Dimensions of Argument. Proceedings of the Second Summer Conference on Argumentation*, G. Ziegelmüller – J. Rhodes ed., Speech Communication Association, Annandale, VA 1981, pp. 663-692.

⁶⁰ Th.B. Farrel, *Reason and rhetorical practice: The inventional agenda of Chaim Perelman*, in *Practical reasoning in human affairs. Studies in honor of Chaim Perelman*, J.L. Golden – J.J. Pilotta ed., Reidel, Dordrecht 1986, pp. 259-286.

⁶¹ R.D. Dearin, *Perelman's concept of 'quasi-logical' argument: A critical evaluation*, in *Advances in Argumentation Theory and Research*, J.R. Cox – C.A. Willard ed., Southern Illinois University Press, Carbondale, IL 1982, pp. 78-94.

⁶² J.S. Measell, *Perelman on analogy*, "Journal of the American Forensic Association", XXII, 1985, pp. 65-71.

⁶³ M. Kienpointner, *Perelman on causal arguments: The argument of waste. Interpreting arguments*, pp. 611-616.

causal arguments and the argument of waste.

Barbara Warnick and Susan Kline⁶⁴ made an effort to clarify and elaborate the typology of argument schemes. After acknowledging some of the criticisms we mentioned, they set out to counter them. In the *New Rhetoric's* scheme system, form and content are indeed fused, they admit, but this fusion does not prevent the schemes from being recognizable to various interpreters. Their answer to the typological criticism that Perelman and Olbrechts-Tyteca's system is endangered by the use of inconsistent classification criteria is that reducing an argument only to its formal feature would undermine "the *New Rhetoric's* central purpose of reintroducing culturally recognizable argument features that formal logic has set aside"⁶⁵. Most variations can be resolved when they are considered "in the context of the argument situation and in relation to the arguer's intention". According to Warnick and Kline, in their inference structures the schemes make use of culturally accepted commonplaces. Warnick and Kline agree that the treatment of the schemes in *The New Rhetoric* "does at times lack clarity"⁶⁶. They began their study therefore by identifying as precisely as possible the features of each scheme as discussed in the writings (not just *The New Rhetoric*) of Perelman and Olbrechts-Tyteca: "Consequently, we were able to construct a substantial set of identifiable attributes for each scheme"⁶⁷.

Having thus reviewed the typology of the new rhetoric critically, Warnick and Kline began investigating the validity of Perelman's argument schemes empirically. For this purpose, they developed "detailed coding guidelines identifying the attributes of each scheme category according to descriptions contained in *The New Rhetoric* and *The Realm of Rhetoric*"⁶⁸. They found their scheme system "to be generally complete, since nearly all the arguments could be categorized into at least [!] one of the scheme types"⁶⁹ (1992: 14). Their conclusion is that three individuals could indeed identify the use of thirteen schemes they had coded with an acceptable level of consistency⁷⁰ (1992: 13). Therefore, Warnick and Kline claim to have established that "the schemes recognizably appear in discursive arguments"⁷¹ (1992: 2).

The fallacies

Another concept argumentation theorists are especially interested in is that of the *fallacies*. Virtually every normative theory of argumentation includes a treatment of the fallacies. In some sense the quality of a normative theory of argumentation can even be judged from the degree to which it makes it possible to provide an adequate analysis of the fallacies. Given Perelman and Olbrechts-Tyteca's non-normative stance, which goes well togeth-

⁶⁴ B. Warnick – S.L. Kline, *The new rhetoric's argument schemes: A rhetorical view of practical reasoning*, "Argumentation and Advocacy", XXIX, 1992, pp. 1-15.

⁶⁵ *Ibid.*, p. 5

⁶⁶ *Ibidem.*

⁶⁷ *Ibidem.*

⁶⁸ *Ibid.*, p. 12.

⁶⁹ *Ibid.*, p. 14.

⁷⁰ *Ibid.*, p. 13.

⁷¹ *Ibid.*, p. 2.

er with their audience-dependent view of rationality and reasonableness, it seems unjustified to expect a full treatment of the fallacies in their theory of argumentation.⁷² There appears to be no room for the fallacies in the new rhetoric.⁷³

Indeed, neither in *The New Rhetoric* nor in any other publication by Perelman a general account or discussion of the fallacies can be found.⁷⁴ The few remarks that have been made show that Perelman considers ‘bad faith’ to be a distinctive feature of committing a fallacy. A bad argument differs from a good one because an in itself sound rhetorical technique is deliberately used in bad faith. When discussing argumentation techniques that have some relation with a particular type of fallacy, Perelman and Olbrechts-Tyteca sometimes explicitly say that the technique concerned is wrong or they warn against the use of a particular technique because it may have an undesired effect on the audience. An example of a condemnation of an argumentation technique is Perelman and Olbrechts-Tyteca’s discussion of *petitio principii*. They regard a *petitio principii* as an error in argumentation⁷⁵. In other cases, they have a more appreciative judgement. An example of this positive attitude can be found in their discussion of arguments from authority. Having discussed Locke’s view with respect to arguments from authority, Perelman and Olbrechts-Tyteca say that the argument from authority is often seen as “a pseudo-argument, intended to camouflage the irrationality of our beliefs and win for them the consent of everybody or of the majority by appeal to the authority of eminent persons.” They add immediately: “To us, on the contrary, the argument from authority is of extreme importance, and [...] it cannot be dismissed as irrelevant without further ado, except in certain special cases”⁷⁶.

In the twentieth century, the study of the *argumentum ad hominem* is highly influenced by the views of Whately and Schopenhauer. Whately’s influence is clear in the works of Perelman and Henry W. Johnstone Jr.⁷⁷. In their definition of *argumentum ad hominem*, Perelman and Olbrechts-Tyteca refer to Schopenhauer. Unlike Schopenhauer, they see nothing reprehensible in this form of argumentation⁷⁸. They even argue that without *ad hominem* argumentation it would be impossible to win others over to a particular standpoint. In their view, *ad hominem* does not denote a specific (and incorrect) argumentation technique, but a general characteristic of all successful argumentation. According to the new rhetoric, arguing *ad hominem* means starting from the audience’s opinions concerning facts and values. Perelman and Olbrechts-Tyteca place *ad hominem* on the same level as arguing *ex concessis*. Arguing *ad hominem* amounts to utilizing what

⁷² See F.H. van Eemeren – R. Grootendorst, *Perelman and the fallacies*, “Philosophy and Rhetoric”, XXVIII, 1995, 2, pp. 122-133.

⁷³ This explains why not much has been written about Perelman and Olbrechts-Tyteca’s attitude towards the fallacies. Witness, for instance, the special issue on Perelman of the “Journal of the American Forensic Association”, XXII, 1985, 2, pp. 63-114 and Chr. Plantin, *Essais sur l’argumentation*, Kimé, Paris 1990.

⁷⁴ In C.L. Hamblin, *Fallacies*, Perelman is conspicuously absent, but he is discussed in E.M. Barth – J.L. Martens, *Argumentum ad hominem: From chaos to formal dialectic*, “Logique et Analyse”, LXXVII, 1977, 78, pp. 76-96.

⁷⁵ Ch. Perelman – L. Olbrechts-Tyteca, *La nouvelle rhétorique*, p. 114.

⁷⁶ *Ibid.*, p. 306.

⁷⁷ H.W. Johnstone, Jr., *Philosophy and Argument*, The Pennsylvania State University Press, University Park, PA 1959.

⁷⁸ Ch. Perelman – L. Olbrechts-Tyteca, *La nouvelle rhétorique*, pp. 110-114.

the audience is prepared to concede (*concedere*).

Only arguers who imagine to convince the universal audience, lay claims on the approval of all reasonable beings. Then, Perelman and Olbrechts-Tyteca speak of argumentation *ad humanitatem*⁷⁹. Arguers who think their *ad hominem* argumentation only to be successful with a specific audience do not claim to argue *ad humanitatem*.⁸⁰ Perelman and Olbrechts-Tyteca also discuss the argumentation technique of personally attacking the opposition. In order to avoid confusion, they do not call this technique *argumentum ad hominem* but *argumentum ad personam*. They do not reject a personal attack on the opposition. They do warn, however, that in certain cases it is not so expedient because it may have the reverse effect. Scientific audiences in particular, have a low esteem of personal attacks. Then the attack on the opposition backfires and the speaker's (or writer's) own standing, prestige and credibility are reduced⁸¹.

Various publications are devoted to the study of fallacies from a Perelmanian rhetorical perspective. A remarkable contribution to this study is made by Goodwin⁸². He connects the Perelmanian concept of dissociation with Rescher's idea of 'distinction' as a 'dialectical countermove', and examines then how current arguments against the 'standard treatment' of the fallacies are underpinned by distinctions that challenge previously formulated distinctions.⁸³ Crosswhite⁸⁴ uses the distinction between a universal and a particular audience to deal with the problem of the fallacies in a rhetorical fashion. Rather than as violations of "formal" or "quasi-formal" rules, fallacies arise, according to Crosswhite, when the arguer mistakes a particular audience for a universal audience.⁸⁵ There is

⁷⁹ *Ibid.*, p. 110.

⁸⁰ Perelman and Olbrechts-Tyteca discuss an example of *ad hominem* argumentation: "There will be eleven people for lunch. The maid exclaims, 'That's bad luck!' Her mistress is in a hurry, and replies, 'No, Mary, you're wrong; it's thirteen that brings bad luck'" *Ibid.*, p. 111. In this example, the lady of the house makes shrewdly use of the maid's superstitions. Rather than attempting to convince her that superstitions are absurd, she, very effectively, modifies a small factual detail. According to Perelman and Olbrechts-Tyteca, there is nothing erroneous about this. They believe indeed that it is fully justified to call the lady's way of arguing rational. Objecting to this amounts in their view to erroneously assuming that it is always the approval of the universal audience that is aimed for. In this particular case, it is sufficient if just the specific audience consisting of the maid is persuaded. Calling the argument in this example a fallacy or a 'pseudo-argumentation' is only saying that one would not be convinced by it oneself.

⁸¹ *Ibid.*, p. 318.

⁸² D. Goodwin, *The dialectic of second-order distinctions: The structure of arguments about fallacies*, "Informal Logic", XIV, 1992, pp. 11-22.

⁸³ According to Hamblin's 'standard definition', a fallacy is an argument that seems valid but is not, C.L. Hamblin, *Fallacies*, p. 12. Major objections to this definition are that a great number of the generally recognized fallacies are not arguments (e.g., *many questions*) and that (by modern interpretations) others are not invalid arguments (e.g., *petitio principii*) or that their fallaciousness is not due to the invalidity of the argument (e.g., *argumentum ad verecundiam*, *argumentum ad populum*, *argumentum ad hominem*). One explanation why fallacy theorists stuck with this definition is that before Perelman and Toulmin published their works most approaches to the fallacies were logico-centric. Most modern argumentation theorists view the fallacies, more broadly, as discussion moves that diminish in some way or other the quality of argumentative discourse.

⁸⁴ J. Crosswhite, *Being unreasonable. Perelman and the problem of fallacies*, "Argumentation", VII, 1993, pp. 385-402.

⁸⁵ In J. Crosswhite, *Is there an audience for this argument? Fallacies, theories, and relativisms*, "Philosophy and Rhetoric", XXVIII, 1995, 2, pp. 134-145, the author counters van Eemeren and Grootendorst's critique of Perelman (F.H. van Eemeren – R. Grootendorst, *Perelman and the fallacies*), and in turn criticizes the pragma-dialectical approach to fallacies.

a certain resemblance here with Walton's⁸⁶ 'dialectical shifts', but Crosswhite concentrates on audience shifting and Walton on purpose shifting. In order to determine whether an argument is a fallacy, Crosswhite thinks that we first have to know to what audience the argument is addressed and how it is understood.

4. Perelmanian influences that have shaped certain problem areas

Rationality, reasonableness and value judgements

Among the typically Perelmanian ideas and concepts that have set the agenda for various argumentation theorists is, first of all, the idea that value judgments should be included in a realistic conception of rationality and reasonableness.⁸⁷ The philosophy of logical empiricism, which was prevailing when Perelman set out to develop his theory of argumentation, did not allow for an account of the use of value judgments.⁸⁸ Technically speaking, this meant that they ought to be regarded as unfounded and unjustified. The implication would be that argumentation relying on value judgments is not rational. This implication regarded Perelman as unacceptable. If the adjectives 'rational' and 'reasonable' are to be reserved only for statements capable of being verified by empirical observation or of being reached deductively by formal logic, then there is no rational basis for formal law as the systematic application of rules founded on value judgments.⁸⁹ The theory that Perelman was going to create would have to show how choices and decisions, once made, could be justified on rational grounds. In his opinion, argumentation theory must investigate the whole (unordered) field that is disregarded by logicians, thus encompassing the entire area of 'non-analytic thinking'.

⁸⁶ D.N. Walton, *Types of dialogue, dialectical shifts and fallacies*, in *Argumentation Illuminated*, F.H. van Eemeren – R. Grootendorst – J.A. Blair – C.A. Willard ed., Sic Sat, Amsterdam 1992, pp. 133-147.

⁸⁷ For his distinction between 'rational' (the formal applications of rules) and 'reasonable' (the use of judgment and common sense), see Ch. Perelman, *The rational and the reasonable*, in Ch. Perelman, *The New Rhetoric and the Humanities. Essays on Rhetoric and its Applications*, Reidel, Dordrecht 1979, pp. 117-123. R.E. McKerrow (*Rationality and reasonableness in a theory of argument*, in *Advances in Argumentation Theory and Research*, J.R. Cox – C.A. Willard ed., Southern Illinois University Press, Carbondale, IL 1982, pp. 214-227) and S.K. Laughlin – D.T. Hughes (*The rational and the reasonable: Dialectical or parallel systems?*, in *Practical reasoning in human affairs*, pp. 187-205) go into Perelman's position on the rational and the reasonable, as does R.D. Rieke (*The evolution of judicial justification: Perelman's concept of the rational and the reasonable*, *Ibid.*, pp. 227-244), who has been mentioned earlier in the context of judicial justification.

⁸⁸ Ch. Perelman, *The new rhetoric*, p. 280. For comments by Perelman on his own intellectual development, see also Golden and Pilotta's anthology *Practical reasoning in human affairs*, 1986, pp. 1-18).

⁸⁹ This observation led Perelman to seek a logic that makes it possible to argue about values instead of simply letting them depend on irrational choices based on interests, passions, prejudices, and myths. He felt that recent history had provided abundant evidence of what sad excesses can result from the latter attitude. Instead of elaborating a priori possible structures for a logic of value judgments, Perelman decided to investigate how authors of different schools of thought actually argue about values, in order thus to discover the existing logics of value judgments.

According to Perelman⁹⁰, the new rhetoric is not merely a theory that describes the practice of non-formal argument. It is first and foremost an attempt at creating a framework that unites all forms of non-analytic thinking.⁹¹ A theory of argumentation must make it possible to place different claims to rationality and a multiplicity of philosophical systems in a single theoretical framework. In Perelman's view, the different philosophies are systems of justification for particular ideas. As a rule, philosophers do not offer formal proof of the rightness of their ideas. Instead, they try to justify the rationality of those ideas with the help of argumentation. Claiming rationality is not the same as proclaiming the only, ultimate truth, and it should therefore not be equated with it.

At several places in *The New Rhetoric* Perelman and Olbrechts-Tyteca introduce normative elements, such as the distinction between eristic debates and co-operative discussions⁹², between personal attacks *ad personam* and arguments *ad hominem*⁹³, and, more importantly, between a particular audience and a universal audience. Connected with the audience-centred approach that is inherent in the last distinction, is a relativism that many philosophers and thinkers find hard to accept. The new rhetoric is characterised by a rhetorical approach that fits in with an anthropological conception of reasonableness. The consequence of this approach is that the soundness of argumentation depends on the criteria employed by the audience that carries out the assessment. This means that the standard of reasonableness is extremely relative. Not all argumentation scholars will agree with this standard. Some will argue that norms for rationality or reasonableness are always, at least partly, defined by a social contract, such as the law, or some other socially determined empirical set of external restrictions. Others will argue that there are (actual or possible) universal or absolute criteria for rationality or truth. In both cases, the norms and criteria are not solely dependent on an audience that is to some extent fortuitous. It seems too much of a simplification to incorporate such norms or criteria, without any further ado, in the rhetorical system by saying that their adherents have formed their own idea of rationality and reasonableness.

The views of rationality and reasonableness underlying the new rhetoric have been used abundantly by others. In the first place, Perelman's work has been a major source of inspiration to philosophers, in spite of their initial denigration of his approach.⁹⁴ The philosophical assumptions of the new rhetoric are elucidated by Dearin⁹⁵. In a philosophical vein, Maneli sees Perelman's theory of argumentation as "a new social philosophy and a critical instrument for social reform"⁹⁶. In Maneli's view, argumentation "legitimises" democratic government. Rather than on the techniques of argumentation, however, he

⁹⁰ Ch. Perelman, *The new rhetoric*.

⁹¹ Perelman does not define what is meant by 'non-analytic thinking', but from what he says it is clear that he refers to reasoning based on "discursive means of obtaining the adherence of minds" rather than on "the idea of self-evidence" prevailing in modern logic and mathematics.

⁹² Ch. Perelman – L. Olbrechts-Tyteca, *La nouvelle rhétorique*, pp. 37-39.

⁹³ *Ibid.*, pp. 110-114.

⁹⁴ See H.W. Johnstone, Jr. (guest ed.), *Perelman's theory of argumentation: The next generation reflects*, "Argumentation", VII, 1993, pp. 379-480.

⁹⁵ R.D. Dearin, *The philosophical basis of Chaim Perelman's theory of rhetoric*, in *The New Rhetoric of Chaim Perelman. Statement and Response*, R.D. Dearin ed., University Press of America, Lanham, MD 1989, pp. 17-34.

⁹⁶ M. Maneli, *Perelman's New Rhetoric as Philosophy and Methodology for the Next Century*, Kluwer Academic, Dordrecht 1994, p. 115.

concentrates on Perelman's concepts of morality, power and authority, law and politics. Maneli shows that Perelman's theory of argumentation provides a new social philosophy and a critical instrument for social reform in contexts in which ideologies can no longer secure a consensus. Grácio⁹⁷ discusses how argumentative activity sustains and stimulates a continual questioning on the nature of rationality from the perspective of Perelman's new rhetoric. According to Gross⁹⁸, a rhetoric such as Perelman's should not be seen as being exclusively concerned with either persuading an audience or finding means for approaching the truth, but as being concerned with both. In his view, it depends on the context how such rhetoric is to be applied. Frank⁹⁹ argues that Perelman's work should be read as a reaction to post-Enlightenment thinking and postmodern culture, and that his argumentation theory fits in with the Jewish tradition and is in conformity with the Talmudic style of arguing. Seen in this perspective, Perelman is claimed not to be the relativist he has been accused of being.

Grácio¹⁰⁰ discovered another interesting connection. He showed that in Gadamer's hermeneutics the relation between rhetoric and philosophy is viewed in terms similar to Perelman's. Schmetz¹⁰¹ compares *The New Rhetoric* with alternative theories that have been developed since it was first published.¹⁰² He is entirely focused on Perelman's approach to argumentation and its philosophical implications and emphasizes the "inseparability" of rhetoric and philosophy while deploring the split that has taken place between science and the philosophy of argumentation. On the basis of authors such as Jean-Blaise Grize, Michel Meyer and Jürgen Habermas, Schmetz argues for an integration of argumentation in the philosophical process, as is exemplified in Perelman's work. To him, Perelman is the model of argumentation as a philosophical style.

Less enthusiastic about Perelman's philosophical ideas is Cummings¹⁰³. She argues that Perelman's manner of theorizing when developing his new rhetoric has a metaphysical starting point and is therefore problematic. In her opinion, Perelman twists and turns in a similar way between an unscientific and a scientific conception of practical reasoning as Frege did between a Kantian and a scientific conception of logic.

Universal audience

Claiming rationality or reasonableness always means claiming the approbation of people – not just of arbitrary people but the ideal audience that Perelman calls the 'universal

⁹⁷ R.A.L.M. Grácio, *La nouvelle rhétorique devant la tradition rationaliste occidentale*, "Argumentation", IX, 1995, 3, pp. 503-510.

⁹⁸ A.G. Gross, *Rhetoric as a technique and a mode of truth reflections on Chaim Perelman*, "Philosophy and Rhetoric", XXXIII, 2000, 4, pp. 319-335.

⁹⁹ D.A. Frank, *The new rhetoric, Judaism, and post-Enlightenment thought: The cultural origins of Perelmanian philosophy*, "Quarterly Journal of Speech", LXXXIII, 1997, 3, pp. 311-331.

¹⁰⁰ R.A.L.M. Grácio, *Perelman's rhetorical foundation of philosophy*, "Argumentation", VII, 1993, pp. 439-450.

¹⁰¹ R. Schmetz, *L'argumentation selon Perelman*.

¹⁰² Schmetz determines Perelman's philosophical position and its significance by means of a confrontation between Perelman and other approaches such as the logical approach, the Toulminian approach, the pragmatodialectical approach, and radical argumentativism.

¹⁰³ L. Cummings, *Justifying practical reason: What Chaim Perelman's New Rhetoric can learn from Frege's attack on psychologism*, "Philosophy and Rhetoric", XXXIV, 2002, 1, pp. 50-76.

audience'. The universal audience is not an existing reality, but a thought-construct of the arguer. It will look different to different people. The picture people have of the ideal audience will hang together with the historical circumstances in which they find themselves. Some may imagine it as a certain elite; others might have an overall picture of "the reasonable human being". According to Perelman and Olbrechts-Tyteca, no existing audience constitutes a generally recognized body for evaluating non-analytic argument.

The consequence of this soundness criterion is that the norms of rationality that prevail are relative to a more or less arbitrary group of people. From this, as was already pointed out, it can be concluded that Perelman offers an extremely relativistic standard of rationality.¹⁰⁴ Ultimately, there can be as many rationality concepts as there are audiences – or even more, in view of the fact that audiences can change their norms in the course of time. Perelman counters the Platonist criticism of a lacking guarantee for quality by pointing out that arguers are, in principle, free to determine what audience they wish to convince. Thus all arguers can decide themselves what audience they wish to be their norm. Therefore, one might object, the introduction of the universal audience does not result in any fundamental limitation, the only difference being that the variation is eventually tied to arguers instead of audiences. Because arguers are free to construct their own universal audience, the standard of rationality is then left as being no less arbitrary. In Perelman's view, the criticism of the rhetorical criterion of soundness is no fundamental criticism of the soundness norm but criticism of a particular choice of a particular audience that is claimed to be universal. In his view, the quality required of argumentation in order to be acceptable is always a function of the quality of the audience that carries out the evaluation. In the criticism of rhetoric this relation of dependence is not profoundly taken into account.

Several scholars have been attracted to the new rhetoric's conception of a universal audience, often with a critical eye for its problems. Perelman's concept has been adopted as the central focus of attention in various publications, in particular the distinction between the universal audience (in some interpretation or other) and a particular audience. Schmetz¹⁰⁵ devotes his first chapter to a detailed discussion of the universal audience. He stresses the usefulness of having such a global, fuzzy and unlimited concept¹⁰⁶, without concealing its very paradoxical nature¹⁰⁷. The idea of the dialogical or interactional nature of argument and of the necessity to consider the critical activity of the arguers is presented as basic by Schmetz.¹⁰⁸

¹⁰⁴ See Ch. Perelman, *The rational and the reasonable* and W. Kluback, *The new rhetoric as a philosophical system*, "Journal of the American Forensic Association", XVII, 1980, pp. 73-79.

¹⁰⁵ R. Schmetz, *L'argumentation selon Perelman*.

¹⁰⁶ *Ibid.*, p. 75.

¹⁰⁷ *Ibid.*, p. 79.

¹⁰⁸ Schmetz points out that this intuition has been developed in fallacy theory, pragma-dialectics and interaction theory of face-to-face argument. According to Chr. Plantin, *Review of R. Schmetz (2000)*, it could be argued that the developments of such theories, linked with the analysis of ordinary or institutionalized debate, are the major post-Perelmanian gains.

Among the various interpretations of the two kinds of audience are those of Golden¹⁰⁹, Dunlap¹¹⁰ and Wintgens¹¹¹. Golden emphasizes the critical use that can be made of the concept of a universal audience. Dunlap relates the universal audience to Isocrates' "competing image" of an ideal audience, which embodies the ideals of Greek culture. Wintgens argues that a better understanding can be achieved of Perelman's view of reasonableness, and what is meant by arguers constructing their audience, by connecting the concept of a universal audience with that of the 'generalized other' that is part of the theory of 'symbolic interactionism' developed by the pragmatist Mead.¹¹² Recently, Danblon¹¹³ distinguished two conceptions of the universal audience: a factual universality, which is impossible to reach, and a universality of right, which concerns some happy few only among a well-read community.¹¹⁴ Gross¹¹⁵ shows how Perelman's distinction between the universal and the specific audience can be used in analysing arguments in the public sphere.¹¹⁶

Dissociation

Although Perelman's concept of dissociation involves an important renewal, in the study of argumentation this concept has not been taken up widely. Among the main studies are

¹⁰⁹ J.L. Golden, *The universal audience revisited*, in *Practical reasoning in human affairs*, pp. 287-304.

¹¹⁰ D.D. Dunlap, *The conception of audience in Perelman and Isocrates: Locating the ideal in the real*, "Argumentation", VII, 1993, pp. 461-474.

¹¹¹ L.J. Wintgens, *Rhetoric, reasonableness and ethics: An essay on Perelman*, "Argumentation", VII, 1993, pp. 451-460. Other studies of the concept of the universal audience are, for instance, J. Crosswhite, *Universality in rhetoric: Perelman's universal audience*, "Philosophy and Rhetoric", XXII, 1989, pp. 157-173; L.S. Ede, *Rhetoric versus philosophy: The role of the universal audience in Chaim Perelman's The New Rhetoric*, in *The New Rhetoric of Chaim Perelman*, pp. 141-151; W.R. Fisher, *Judging the quality of audiences and narrative rationality*, in *Practical reasoning in human affairs*, pp. 85-103; J.L. Golden, *The universal audience revisited*; J.W. Ray, *Perelman's universal audience*, "Quarterly Journal of Speech", LXIV, 1978, pp. 361-375; and A. Scult, *A note on the range and utility of the universal audience*, "Journal of the American Forensic Association", XXII, 1985, pp. 84-87; A. Scult, *Perelman's universal audience: One perspective*, in *The New Rhetoric of Chaim Perelman*, pp. 153-162.

¹¹² According to symbolic interactionism, rather than individual and coincidental intentions and reactions, speakers attribute to their interlocutors the intentions and reactions of a "generalized other" who shares the basic rules of their social community.

¹¹³ E. Danblon, *Perelman's universal audience*.

¹¹⁴ Starting from Perelmanian criteria, V. Corgan, *Perelman's universal audience as a critical tool*, "Journal of the American Forensic Association", XXIII, 1987, pp. 147-157 proposes an analysis of legal arguments that uses the universal audience as a critical tool.fgq

¹¹⁵ A. Gross, *A theory of rhetorical audience: reflections on Chaim Perelman*, "Quarterly Journal of Speech", LXXXV, 1999, 2, pp. 203-211.

¹¹⁶ In *Is there an argument for this audience?* Stumpf and McDonnell examine the notion of audience using the new rhetoric, 'personal construct psychology' and the associated 'repertory grid technique'. They examine the relevant understandings of audience that flow from the new rhetoric and then they investigate audiences by making a comparison of repertory grids, illustrating their point by means of examples drawn from a particular audience of experts. S.C. Stumpf – J.T. McDonnell, *Is there an argument for this audience?*, in *Proceedings of the Fifth Conference of the International Society for the Study of Argumentation*, F.H. van Eemeren – J.A. Blair – C.A. Willard – A.F. Snoeck Henkemans ed., Sic Sat, Amsterdam 2003, pp. 981-984.

Schiappa¹¹⁷ and Goodwin¹¹⁸. Goodwin extends the concept of dissociation in order to investigate “how distinctions modify the very desiderata by which argumentation itself is understood and assessed, and thus reconstruct social values, hierarchies, and concepts of the real”¹¹⁹. More recent contributions to the study of dissociation are ‘Dissociation and its relation to the theory of argument’ by Konishi¹²⁰ and ‘Argumentative functions of dissociation in every-day discussions’ by van Rees¹²¹. In her article she examines in which dialogical contexts the Perelmanian technique of dissociating can be used, what the consequences of using it are for the process of resolving a difference of opinion and what rhetorical effects can be achieved in this way. Van Rees developed a research project entirely devoted to dissociation, involving conceptual clarification of the notion of dissociation, examination of the means through which dissociation becomes manifest in discourse, and construction of dialectical standards for the use of dissociation¹²².

Presence

When discussing the contribution that Perelman’s insights make to the study of strategic manoeuvring in argumentative discourse we already mentioned the Perelmanian concept of ‘presence’ (*présence*) and the role it may play in combination with style. This rhetorical notion has been used by a great many authors. It was examined by Karon¹²³. Other authors who devoted specific studies to it are Murphy¹²⁴ and Tucker¹²⁵. In ‘Presence, analogy, and *Earth in Balance*’, Murphy explores the significance and critical utility of Perelman’s concept of presence. Using Albert Gore, Jr.’s book, *Earth in Balance*, as a case study, he examines the relationship between presence and analogy, and the possible relationships between Perelman and American pragmatists such as Richard Rorty and Cornel West. In ‘Figure, ground and presence: A phenomenology of meaning in rhetoric’, Tucker makes an attempt to revive the notion of ‘presence’, arguing that this notion draws the attention to the remarkable psychological fact that people cannot attribute more than one meaning to the same thing at the same time. Tucker examines the implications of this fact for rhetorical theorizing.

¹¹⁷ E. Schiappa, *Dissociation in the arguments of rhetorical theory*, “Journal of the American Forensic Association”, XXII, 1985, pp. 72-82.

¹¹⁸ D. Goodwin, *Distinction, argumentation, and the rhetorical construction of the real*, “Argumentation and Advocacy”, XXVII, 1991, pp. 41-158.

¹¹⁹ *Ibid.*, p. 141.

¹²⁰ T. Konishi, *Dissociation and its relation to the theory of argument*, in *Proceedings of the Fifth Conference of the International Society for the Study of Argumentation*, pp. 637-640.

¹²¹ M.A. van Rees, *Argumentative functions of dissociation in every-day discussions*, in *Argumentation and its Applications*, OSSA 2001, H.V. Hansen – Chr.W. Tindale – J.A. Blair – R.H. Johnson – R.C. Pinto ed., CD-ROM.

¹²² M.A. van Rees, *Dissociation in Argumentative Discussions. A Pragma-Dialectical Perspective*, Springer, Dordrecht 2008.

¹²³ L.A. Karon, *Presence in the new rhetoric*, in *The New Rhetoric of Chaim Perelman*, pp. 163-178.

¹²⁴ J.M. Murphy, *Presence, analogy, and Earth in Balance*, “Argumentation and Advocacy”, XXXI, 1994, 1, pp. 1-16.

¹²⁵ R.E. Tucker, *Figure, ground and presence: A phenomenology of meaning in rhetoric*, “Quarterly Journal of Speech”, LXXXVII, 2001, 4, pp. 396-414.

Argumentation in the field of law

Legal practice is the argumentative practice *par excellence*. In modern society it has become the institutionalised court for various kinds of disputes that cannot be resolved without recourse to specific procedures and the judgment of disinterested outsiders. As exemplified by their writings, Perelman and Olbrechts-Tyteca, just like Toulmin, were fully aware of this. Along with Theodor Viehweg's¹²⁶ topical approach, their approaches are the most prominent and influential contributions to the rhetorical approach of juridical argumentation.

As a reaction to the logical approach and the emphasis it places on formal aspects of legal argumentation, the rhetorical approach emphasizes the content of arguments and the context-dependent aspects of acceptability. In this approach, the acceptability of argumentation is dependent on the effectiveness of the argumentation for the audience to which it is addressed. The audience might consist of individuals, such as a magistrate in Traffic Court, or collections of persons, such as the jury in a criminal trial, the lawyers who form the audience of a legal journal, or the legal community as a whole.

Right from the beginning, Perelman¹²⁷ took a special interest in argumentation in law. In *Logique juridique; Nouvelle rhétorique*¹²⁸, he gave a description of the starting points and argumentation techniques that play a role in legal argumentation.¹²⁹ In *Fundamentals of Legal Argumentation*, Feteris¹³⁰ devotes a whole chapter to the new rhetoric. She points out that in the legal decision process judges cannot apply the rules automatically. The rules always need to be interpreted first; the reasoned choice involved in this interpretation is based on certain values. According to Perelman, judges attempt to gain the approbation of three different audiences: the legal practitioners (judges and lawyers), the community of law scholars and other interested members of society at large, and the parties involved in the dispute. When attempting to convince their audience of the soundness of their decision, they have to show that it is in accordance with certain accepted judicial starting points and argument schemes. By taking accepted legal principles as a starting point, consensus can be gained on points that are controversial. In attuning the argumentation to the starting points accepted in the legal community, the general legal principles and values can be used as *loci*. These are relatively abstract values, so that they can be interpreted in various ways.¹³¹ Important examples of such starting points are

¹²⁶ Th. Viehweg, *Topik und Jurisprudenz. Ein Beitrag zur rechtswissenschaftlichen Grundlagenforschung*, Beck, München 1974.

¹²⁷ Ch. Perelman, *The Idea of Justice and the Problem of Argument*, The Humanities Press, New York 1963; Ch. Perelman, *Logique juridique. Nouvelle rhétorique*, Dalloz, Paris 1976; Ch. Perelman, *Justice, Law and Argument*.

¹²⁸ Ch. Perelman, *Logique juridique. Nouvelle rhétorique*.

¹²⁹ Perelman gives no description of the ways in which, and the circumstances in which, the specific kinds of *loci* constituted by the general legal principles can be effective means of convincing an audience. Which sorts of starting point and which sorts of argument scheme play a part in the general legal principles, he does not say. Nor does he describe the relation between the various audiences, starting points, and argument schemes in a legal context.

¹³⁰ E.T. Feteris, *Fundamentals of Legal Argumentation. A Survey of Theories on the Justification of Judicial Decisions*, Kluwer Academic, Dordrecht 1999.

¹³¹ For non-judicial uses of Perelman's concept of *loci*, see, for instance, Wallace, who writes about developing a modern system of rhetorical invention (K.R. Wallace, *Topoi and the problem of invention*, in *The New*

the legal principles of fairness, equity, good faith, and freedom. Among the argument schemes that enable a judge to win the assent of the audience are analogy and *a contrario*. By using analogical reasoning, for instance, the judge can show that a certain rule which is applicable to certain cases is also applicable to a new concrete case which is similar in relevant respects, and by using *a contrario* reasoning he or she can show that a rule is not applicable to a concrete case which seems similar at first sight. Starting from Tarello's¹³² description of methods for interpreting legal rules, Perelman discusses also various other argument schemes that can be used for defending legal standpoints: the argument *a simili*, the argument *a completudine*, the argument *a coherentia*, the psychological argument, the historical argument, the apagogic argument, the teleological argument, the argument *ab exemplo*, the systematic argument, and the naturalistic argument.¹³³

A great number of jurists have been inspired by the new rhetoric and the philosophical perspectives that Perelman offers.¹³⁴ They are in particular attracted by his ideas concerning the philosophy of law and his views on justice and judicial argumentative justification.¹³⁵ In *Practical Reasoning in Human Affairs: Studies in Honor of Chaim Perelman*, edited by Golden and Pilotta, various authors discuss the application of Perelman's ideas in the field of law. Haarscher¹³⁶ pays attention to Perelman's ideas about justice. Makau¹³⁷ discusses his legal model as an alternative to the mathematical model. Rieke¹³⁸ describes various approaches to the process of legal decision-making and sums up the advantages of Perelman's rhetorical tools for the argumentative analysis of legal decision-making.

In *Chaim Perelman et la pensée contemporaine*, a series of essays edited by Haarscher¹³⁹, various authors pay attention to the legal aspects of Perelman's ideas and their implications for legal theory and legal philosophy. Christie¹⁴⁰ delves into the role of the universal audience in law, Kamenka and Erh-Soon Tay¹⁴¹ apply Perelman's ideas to common law and continental European law, Sandaku¹⁴² discusses the influence of Perelman's ideas on

Rhetoric of Chaim Perelman, pp. 107-119), and Cox, who concentrates on a particular *locus* (J.R. Cox, *The dice is cast: Topical and ontological dimensions of the locus of the irreparable*, in *The New Rhetoric of Chaim Perelman*, pp. 121-139).

¹³² G. Tarello, *Sur la spécificité du raisonnement juridique*, in *Die juristische Argumentation. Vorträge der Weltkongresses für Rechts- und Sozial Philosophie, Brüssel, 29. VII-3 IX.*, Franz Steiner Verlag, Wiesbaden 1972, pp. 103-124.

¹³³ In justifying their decisions in accordance with their legal convictions, judges that have a teleological approach will concentrate on whether a certain goal will be reached by a certain rule or set of rules. Judges favoring a functional approach, in which the law is regarded as a means for attaining the goals intended by the legislator, will concentrate on arguments that represent the intentions of the legislator.

¹³⁴ For a review of Perelman's theory from a judicial perspective, see R.W. Alexy, *Theorie der juristischen Argumentation. Die Theorie des rationalen Diskurses als Theorie der juristischen Begründung*, Suhrkamp, Frankfurt am Main 1978, pp. 197-218.

¹³⁵ See also G. Haarscher – L. Ingber ed., *Justice et argumentation. Autour de la pensée de Chaim Perelman*, Édition de l'Université de Bruxelles, Brussels 1986.

¹³⁶ G. Haarscher ed., *Chaim Perelman et la pensée contemporaine*, Bruylant, Brussels 1993.

¹³⁷ J.M. Makau, *The Supreme Court and reasonableness*, "Quarterly Journal of Speech", LXX, 1984, pp. 379-396.

¹³⁸ R.D. Rieke, *The evolution of judicial justification*.

¹³⁹ G. Haarscher ed., *Chaim Perelman et la pensée contemporaine*.

¹⁴⁰ G.C. Christie, *The universal audience and the law*, in *Chaim Perelman et la pensée contemporaine*, pp. 43-68.

¹⁴¹ E. Kamenka – A. Erh-Soon Tay, *The law as reasonable: Applying Perelman's dictum to common law and to continental civil law*, in *Chaim Perelman et la pensée contemporaine*, pp. 167-178.

¹⁴² E. Sandaku, *L'influence de Ch. Perelman sur la pensée juridique au Japon*, *Ibid.*, pp. 69-76.

legal thinking in Japan while Holmström-Hintikka¹⁴³ concentrates on practical reasoning in law, and Pavcnik¹⁴⁴ on the importance of a theory of practical reasoning to the study of law. According to Maneli¹⁴⁵, the new rhetoric is a good starting point for a rhetorical foundation of legal philosophy. Maneli¹⁴⁶ argues that Perelman's rhetorical criterion of soundness offers an attractive alternative to formal logical criteria.

According to Makau¹⁴⁷ and Schuetz¹⁴⁸, Perelman's concept of an audience and his views of argumentative strategies are tools for analysis. Makau and Schuetz have adjusted Perelman's theory for the analysis of certain examples of legal argument. Makau proves her point by describing the securing of adherence by the Supreme Court from a composite audience consisting of a variety of legal and non-legal groups. She shows how the Supreme Court addresses a number of different addressees: justices (both present and future), lower court justices, legal administrators, legislators, lawyers, participating litigants, legal scholars, and other educated members of the body of politics. Each of these groups reflects unique, often conflicting sets of interests, values, and beliefs. Schuetz analyses the use of value hierarchies, precedents and presumptions in a Mexican legal process. She shows how precedent is used to give an effective defence of a legal position. Wiethoff¹⁴⁹ discusses Perelman's philosophy of legal argument and argues that the movement called Critical Legal Studies offers the most likely opportunity for the application of this philosophy.¹⁵⁰

5. Conclusion

The conclusion can be brief. The new rhetoric, as developed by the great twentieth century rhetorician Perelman, together with his co-author Olbrechts-Tyteca, is not only a neo-classical contribution to the study of argumentation, but also a major influence on modern argumentation theory. In particular, the new rhetoric has had a big impact on

¹⁴³ Holmström-Hintikka, *Practical reasoning in argumentation and law*, *Ibid.*, pp. 179-194.

¹⁴⁴ M. Pavcnik, *The value of argumentation theory for the quality of reasoning in law*, *Ibid.*, pp. 237-244.

¹⁴⁵ M. Maneli, *The new theory of argumentation and American jurisprudence*, "Logique et Analyse", XXI, 1978, pp. 19-50.

¹⁴⁶ M. Maneli, *Perelman's New Rhetoric as Philosophy and Methodology for the Next Century*.

¹⁴⁷ J.M. Makau, *The Supreme Court and reasonableness*.

¹⁴⁸ J. Schuetz, *Perelman's rule of justice in Mexican appellate courts*, in *Proceedings of the Second International Conference on Argumentation*, Organised by the International Society for the Study of Argumentation, F.H. van Eemeren – R. Grootendorst – J.A. Blair – C.A. Willard ed., Sic Sat, Amsterdam 1991, pp. 804-812.

¹⁴⁹ W.E. Wiethoff, *Critical perspectives on Perelman's philosophy of legal argument*, "Journal of the American Forensic Association", XXII, 1985, pp. 88-95.

¹⁵⁰ Some more topics central to the new rhetoric have been given special attention. R.A. McKerrow, *Pragmatic justification*, in *Practical Reasoning in Human Affairs. Studies in Honor of Chaim Perelman*, J.L. Golden – J.J. Pilotta ed., Reidel, Dordrecht 1986, pp. 207-223, for one, focused on pragmatic justifications. Perelman's theory of values is discussed by B. Warnick, *Arguing value propositions*, "Journal of the American Forensic Association", XVIII, 1981, pp. 109-119 and by G.B. Walker – M.O. Sillars, *Where is argument? Perelman's theory of fallacies*, in *Perspectives on Argumentation. Essays in Honor of Wayne Brockriede*, R. Trapp – J. Schuetz ed., Waveland Press, Prospect Heights, IL 1990, and the universal aspects of values by R. Eubanks, *An axiological analysis of Chaim Perelman's theory of practical reasoning*, in *Practical Reasoning in Human Affairs*, pp. 53-67.

rhetorical approaches of argumentation and on the pragma-dialectical approach, especially after the integration of rhetorical insight. The new rhetoric has also affected the theorizing in several of the main problem areas in the study of argumentation: the argument schemes and the fallacies. On top of that, through the ideas and concepts that Perelman developed, this argumentation theory has shaped (or reshaped) certain problem areas, such as those of rationality reasonableness and value judgments, the universal audience, dissociation and presence, and argumentation in the field of law.