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ARGUMENTATION
IN PROFESSIONAL AND INSTITUTIONAL CONTEXTS

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The Witness Examination of Public Inquiries. A Case of Argumentative Dialogue

Silvia Cavalieri

1. *Introduction*

Legal discourse has been thoroughly investigated from a variety of angles over the last thirty years or so. Investigations on courtroom interaction have involved linguistic analysis of legal style and rhetoric (Mellinkoff 1963, Crystal & Davy 1969, Goodrich 1986 and 1987, Tiersma 1999), studies of specific legal genres (Levi 1990, Bhatia 1993, 1994, Maley 1994, Trosborg 1997, Gibbons 1994, Kurzon 2001), as well as ethnomethodological and sociological approaches (O' Barr 1982, Drew 1985, O'Barr & Conley 1990). The analysis of courtroom discourse has recently extended to issues of language power relations and on the legal argumentative strategies employed by counsels during the examination of witnesses (Walton 1996, 2002, 2003).

As the title suggests, this study intends to analyse a particular kind of courtroom discourse, that is, the witness examination of Public Inquiries. Specifically, some linguistic tools exploited by the lawyers in the questions posed will be observed and described in order to demonstrate that even this inquisitorial proceeding retains some traces of the adversarial system typical of any other jury trial in Common Law countries such as England, Scotland and Northern Ireland.

In particular, this study aims at shedding some light on the argumentative functions of the lawyer's self-mention in his/her questions during the witness examination of Public Inquiries. Thus, the analysis will principally focus on two lexical items used by the counsels as "shifting reference" to the authority, namely "Inquiry" and "Tribunal" and will try to demonstrate how their combination with other meta-argumentative elements contributes to the construction of argumentative strategies during the examination of witnesses.

The paper is organized as follows. Section 2 deals with the presentation of the data and methods adopted in the study. Section 3 presents some preliminary definitions of "Tribunal" and "Inquiry" to better understand the etymology of these two words used as shifting reference and discusses both the quantitative and the qualitative results of the analysis. On the basis of these results, Section 4 draws some concluding remarks about the different argumentative strategies in which "Tribunal" and "Inquiry" are involved.

2. Data and methods

2.1 The data

The analysis is carried out on a corpus of witness examination transcripts collected from the official websites of three Public Inquiries established in England, Scotland, and Northern Ireland. The Public Inquiries are described in the following lines:

a) Cullen Inquiry: Public Inquiry concerning the "Dunblane massacre", a multiple homicide committed in a primary school of Dunblane (Scotland), on 13th March 1996. Chaired by Lord Douglas Cullen.
b) Bloody Sunday Inquiry: Public Inquiry dealing with the killing of civilians due to a shooting caused by British soldiers during a peaceful march in Derry (Northern Ireland), on 30th January 1972. Chaired by Lord Saville of Newdigate.
c) Shipman Inquiry: Public Inquiry concerning the homicide of 15 patients, carried out by Dr. Harold Shipman when he was a practitioner at Market Street, Hyde, near Manchester (England). Chaired by Dame Janet Smith.

Specifically, the corpus is composed of 5 days of transcripts for each Public Inquiry giving a total number of 507,346 tokens. As the main interest of the present paper concerns the questions posed by the lawyers both during Examination-in-Chief and Cross Examination, the corpus has been subsequently tagged by means of the software "Note Tab Light", which enables the user to select by hand parts of text that could be used separately in a quantitative analysis. As shown by the following description, three tags have been chosen to identify three smaller sub-corpora concerning questions:

a) <QST> (question): including all the questions posed by the lawyers and by the Chairman of the Inquiry.
b) <DE QST> (Direct Examination question): including the questions posed during Examination-in-Chief.
c) <CE QST> (Cross-Examination question): including all the questions posed during Cross-Examination.

This type of tagging allows the subdivision into sub-corpora and, at the same time, leaves all the data available in their entire form for a more complete analysis.

2.2 The methods

The analytical framework of the present work has followed three different steps, involving both a quantitative and a qualitative observation of the data presented in the previous section.

First of all, since the focus of this paper centres on the items "Inquiry" and "Tribunal" as shifting references to the authority used by the counsels as shields to create different ar-

gumentative strategies in their questions during the witness examination, the methodology has at first considered the etymology of these two words looking at their definitions as a preliminary point.

Secondly, after these introductory generalisations, a quantitative analysis with the software "WordSmith Tools" (Scott 1996) has been made considering the frequency of these items in the three sub-corpora, their keyness, as well as their concordances, their collocations and clusters in order to identify their argumentative roles through their combination with connectives and other meta-argumentative expressions.

Lastly, a more qualitative analysis of the argumentative functions of "Inquiry" and "Tribunal" has been carried out on some samples extracted from the data combining two theories proposed by Stati (2002) and Walton (2002). The investigation has focused in particular on the role these two items take in the forms of argument they produce ("active" *vs*. "passive subject") (Stati 2002: 47) and on the legal argumentative strategies in which they are involved (Walton 2002: 35-72).

3. *Discussion*

3.1 Premises

In this section, before starting with the quantitative and qualitative analysis of the data, the preliminary definitions of "Tribunal" and "Inquiry" provided by the *Oxford English Dictionary* (OED) are discussed in order to better understand the lexical-semantic nature of these two items.

The definition of "Tribunal" in the OED is the following:

a. a court of justice; a *judicial* (my emphasis) assembly
b. *fig*. place of *judgement* (my emphasis) or decision; *judicial authority* (my emphasis)

As shown by the previous definitions, we can notice that the etymology of the word "Tribunal" is strictly linked to the idea of judging and it is characterised by its reference to the "judicial authority" that has as a final goal to return a verdict. Thus, we expect the data to confirm the presence of this item as a shifting reference to the authority in judging argumentative strategies.

Moving on to "Inquiry", the definition proposed by the OED is the following:

a. the action of seeking, esp. (not always) for truth, knowledge, or information concerning something; search, research, *investigation*, *examination* (my emphasis)
b. a course of inquiry; an *investigation* (my emphasis)

Differently from the definition of "Tribunal", the etymology of the word "Inquiry" is associated with the action of investigating and its semantics involves an information-seeking

process. As a consequence, we expect a different use of "Inquiry" from "Tribunal" as a shifting reference to the authority in the construction of the argumentative strategies. We argue that the data will demonstrate the presence of the reference to the "Inquiry" in argumentative patterns involving an investigative purpose.

3.2 Quantitative results

Considering the frequency and the keyness of "Tribunal" and "Inquiry" in the two sub-corpora of questions posed during the Examination-in-Chief and during the Cross-Examination analysed with "WordSmith Tools" (Scott 1996), and comparing their results, it is interesting to notice how the quantitative presence of the two items is diametrically opposite in the two phases of the witness examination. In fact, as can be seen in Table I, "Tribunal" presents 54 entries in the Examination-in-Chief and 106 entries in the Cross-Examination, while "Inquiry" presents 173 instances in the Examination-in-Chief and 50 instances in the Cross-Examination.

Table I: *Frequency of the reference to the authority in the sub-corpora Examination-in-Chief and Cross-Examination*

Reference to the authority	Examination-in-Chief	Cross-Examination
Tribunal	54	106
Inquiry	173	50

The former table represents a first confirmation of the expectations raised by the preliminary definitions of the two items. In fact, the word "Tribunal" is more frequent in the Cross-Examination, the most combative phase of the examination, in which the witness is questioned by the counsel representing the opposite part in the proceeding. On the contrary, the situation is overturned for the item "Inquiry" that is more recurrent in the Examination-in-Chief, the first investigative stage of the witness interrogation. As a consequence, as already shown by the semantics of the two words, "Inquiry" is associated with information-seeking situations such as the Examination-in-Chief, while "Tribunal" to judging ones such as the Cross-Examination in which the credibility of the witness is tested and judged by the authority.

3.3 Qualitative results

After having presented the quantitative results concerning the frequency and the keyness of "Tribunal" and "Inquiry" in the sub-corpora, in this section the discussion moves on the qualitative analysis of the two items and some examples selected from the data are presented in order to show the argumentative role of the two references to the authority and the strategies they contribute to create.

The first example involves "Tribunal":

Ex. 1

Q. Could you see if you could help us make sense, please, of M25.255. To put it in context, this is where you are playing him the recording that you had made of your interview with soldier D, who is referred to as SD in the transcript. He is speaking in the background in his conversation with you and you were commenting on the quality of the evidence and Paul Mahon [...]
Would the *Tribunal* be right to assume what he was saying was: yes, this is jolly good evidence, but I have got it now on the recording that I have made; is that what that means, or can you ascribe any other meaning to it or help us with what it does mean?
A. Does that not look like it is soldier D says, "Yes, very good"?

As shown by Ex. 1 extracted from the Cross-Examination of the Bloody Sunday Inquiry, in the first part of the question the lawyer starts an "argument from testimony" (Walton 1996b: 61) by presenting part of the witness written statement (M25.255) as a piece of evidence. Then, in the second part of the same question, he makes a claim about the evidence presented and introduces it by placing himself behind the reference to the "Tribunal", which in this case becomes an "authoritative self" for the lawyer. In this extract, the item "Tribunal" is the subject of the argumentative strategy and it is used as a personification of the judicial authority that enables the counsel to give his assumptions by "hiding behind the authority" ("Would the Tribunal be right to assume..."). The creation of an "authoritative self" serves the lawyer to frighten the witness and to make his question more effective.

Moreover, the item "Tribunal" is also employed during the Cross-Examination in the creation of the "*ad hominem* argument" (Walton 2002: 59-63) as shown by the following extract:

Ex.2

Q. If the position is that you saw somebody with blond hair who you understood to be a journalist talking to Michael, it is not entirely candid to this *Tribunal* to say today on oath that you did not see any journalist, is it?
A. No, I was told he was a journalist, I did not know he was a journalist at the time.
Q. Are you doing your best to help this *Tribunal*?

In Ex. 2, we can see two instances of "Tribunal". In the first question, the reference to the authority follows the same pattern already pointed out in the previous example. In the second instance, on the other hand, "Tribunal" is introduced as a passive subject in the argumentative strategy to create an "*ad hominem* argument". In fact, we can notice that the question in which is employed does not represent a request for information, but a personal attack to the witness who is alleged of not doing his/her best to help the authority ("Are you doing your best to help this Tribunal?").

As well as in the two previous forms of argument, we find the shifting reference from the counsel to the "Tribunal" also in the realization of a biased type of "argument from position to know", in which the witness is in the position to know something about the evidence (Walton 2002: 45-50), as highlighted in the following example:

Ex. 3
Q. Could you please help the *Tribunal* a little more with your own recollections of what you saw on the day, and could I ask you again, please, to look at AM44.6, the whole page first of all. Have you today been shown the original of this document?
A. I have. [...]
Q. Could we look at it together, please. Is it right that you saw five soldiers running across Glenfada Park?
A. No.
Q. Firing on people who were carrying a wounded man?
A. No, the only recollection I have is three soldiers in Glenfada Park. Now, there was people running, carrying people. I did not actually see a soldier shooting one of them.
Q. This first sentence is certainly not accurate?
A. No.
Q. Are you telling this *Tribunal* on oath today that you have no recollection of giving that statement in 1972?
A. I have not.
Q. No recollection at all?
A. No.

In the first question of Ex. 3, the reference to "Tribunal" is clearly used in an "argument from position to know" since the witness is asked to help the Tribunal in the recollections of facts ("Could you please help the Tribunal...?). The second instance, on the contrary, could seem at first again implied in the construction of an "argument from position to know". However, in this case the reference to the authority serves the lawyer as a shield to make a counter-claim to a previous statement given by the witness. In fact, in the second occurrence it is possible to notice the presence of the progressive form related to the item "Tribunal" that, following Heffer (2005), is a clear signal of challenge to the witness evidence commonly used in trials. Moreover, another hint to this challenging strategy is the meta-argumentative item "on oath" that again serves to frighten the witness remembering that he/she is producing his/her testimony in front of the authority.

Moving on to the shifting reference of "Inquiry", we can observe a different role from that of "Tribunal" as regards to the construction of the legal argumentative strategies. Indeed, "Inquiry" is often used as a simple collective self-mention reference to the authority which is receiving the evidence from the witness, as shown in the subsequent example:

Ex. 1b

Q. You told the Inquiry that you were going to inquire if soldiers A or C, or indeed the others, had given statements to the Tribunal. Have you been able to do that?

A. No, I have not been able to make contact with either of them

In this extract, the "Inquiry" is the "receiver" of the witness evidence (the witness "told the Inquiry" that...) and it can be considered as a passive participant in the creation of an "argument from testimony" (Walton 1996: 61). In the example, it is possible to observe also an instance of "Tribunal", which is implied in the "argument from testimony" too. In fact, it is associated with the meta-argumentative item "statement" that makes the "Tribunal" object of the action "give statements to..." and consequently passive subject in the "argument from testimony".

Another form of argument in which the reference to "Inquiry" is involved is the "argument from position to know" as shown in example 2b.

Ex. 2b

Q. First of all, can you tell the *Inquiry* how you first either heard from him or met him?

A. It is quite difficult for me to recollect the detail. It was shortly after I was elected. He came to my surgery and gave me a tale that is broadly set out in the Ombudsman's Report.The gist of it was that he had been a Scout leader, and he had run an organisation I think called the Dunblane Rovers for youngsters [...]

Q. Can you date this meeting?

A. I cannot.

Q. Was it long after you were elected?

A. I don't know, but it must have been during 1983, certainly.

In the former extract, we can see an instance of "Inquiry" at the beginning of the passage as reference starting an "argument from position to know". In fact, through the authoritative reference "Inquiry", the counsel asks the witness to "tell" what he/she remembers. The "Inquiry" is in this case the direct object of the verb to "tell", thus being the passive subject of the "argument from position to know".

However, we can also find the shifting reference "Inquiry" as an active subject of different forms of argument. One of these is again the "argument from testimony" as proposed by the following example:

Ex. 3b

Q. You can take it that the *Inquiry* has heard direct evidence about how this system worked, and indeed works up to the present time. What I am more concerned about at the moment is what you saw as perhaps the shortcomings of that particular direction, and you make comments on Page 4, and can I take it that essentially you are saying there that that is a fairly skeletal direction on how to carry out such an enquiry?

> A. I took the view that all parts of the system must be in place and be equally supportive of the overall purpose of the system, and in respect of the Order and the form which was required to be completed by the officers, I felt that they were not adequate in their form.

In Ex. 3b, "Inquiry" is personified as demonstrated by its association with the verb "has heard". Furthermore, it is the subject of the verb, thus being at the same time the active participant of the argument in which it is involved. In this case, the "Inquiry" is presented as reference for the construction of an "argument from testimony" as also substantiated by the meta-argumentative item "direct evidence" by which it is followed.

4. *Concluding remarks*

The results of both the quantitative and the qualitative analysis has confirmed the expectations given by the different semantics of "Tribunal" and "Inquiry" in the way they contribute as shifting references to the authority for the lawyer in the creation of different argumentative strategies.

In fact, considering the quantitative results, "Tribunal" has appeared to be more frequent in the Cross-Examination (106 *vs.* 54), the most combative phase of the witness examination. On the contrary, "Inquiry" has proved to have a higher keyness in the Examination-in-Chief (173 *vs.* 50), the part of the witness examination devoted to the search for information.

Moreover, as demonstrated by the qualitative observation of some samples of data, "Inquiry" is implied in information-seeking kind of arguments both as active and passive subject in the argumentative strategies. Indeed, "Inquiry" is used by the counsels especially in the Examination-in-Chief mainly in the creation of the "argument from position to know" or of the "argument from testimony".

On the other hand, "Tribunal" is involved in more judging forms of argument as for example the "*ad hominem* argument" or to make counter-claims about a previous evidence given by the witness. As shown by the data, "Tribunal" acts differently from "Inquiry" as an "authoritative self" for the counsel that "hides behind the authority" to produce a more powerful and effective question and, sometimes, to scare the witness.

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