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In Praise of Eristics

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The international field of argumentation theory is dominated by the logical-dialectical approach. This approach is centered in a linear logical dimension: propositions and schemes of argument. The argumentative discourse is defined in terms of the ancient tradition: a dialogue game developed according to rational rules. Van Eemeren and Grootendorst describe this latter aspect in the principle of dialectification:

If a language user advances a constellation of statements calculated either to justify or to refute an expressed opinion. ...The language user addresses another language user who is supposed to adopt the position of a rational judge and who reacts to the argumentation critically, so that a critical discussion ensues (van Eemeren and Grootendorst 1984, p. 15).

The logical-dialectical approach is exemplified in several theories: Pragma-dialectics in Holland, Informal Logic and Critical Thinking in the United States and Canada, Logical Propaedeutic from the Erlangen School, Barth and Krabbe's Formal Dialectics, and Habermas' Communicative Action Theory in Germany. Since all these theories are prescriptive, they deal with the problem of the "ought-to be" issue in argumentation. When dealing with argumentation procedures, they postulate Weber-type models, that is, they use ideal argumentation types. There is usually a huge gap between the ideal model type and the real argument token.

On the other hand, due to the contributions made by Logic, these models consider agents to be one-dimensional entities: not persons but proponent and opponent that follow the rules of an ideal rational judge; they are just machines of propositionalization and judgment. By emphasizing logic instead of rhetoric or eristics, as well as by restricting argumentation to an "ought-to be" issue and agents to one-dimensional entities, the prevailing theory of argumentation claims that consensus is possible and even required. Viewed in this manner, consent is merely logical. These limits are just partially overcome when the recent changes in logical-dialectical theories, pushed forward by contemporary reflection to consider emotional aspects of argument (van Eemeren and Houtlosser 2000).

To state it precisely, the prevailing theoretical approach to argumentation is based mainly on three interrelated philosophical assumptions that are considerably significant and interesting for this essay:

- 1) These theories emphasize the ideal "ought- to be" issue over the actual "being" of argumentation, the preeminence of the norm over description.
- 2) Reducing concrete and actual agents to extremely simplified theoretical expressions.
- 3) Such an approach results in theories aiming at all costs to achieve consensus that is seen as universal and logical.

Normative approaches to argument are necessary, but if norms are far from the complexity and the richness of actual discourse, they have to be modified. There is a need of constant

relation between norm and description. Otherwise, the details and nuances of ideology, context, language, emotion, intuition and belief are stripped away “so that a universal structure can be exposed, examined and placed into a uniform system” almost as in symbolic logic (Gilbert 1995a). In describing different contexts and cultures we may construct better and more adequate normative approaches, since the more applicable a theory is, the better it is, at least from the point of view of social utility and scope. If we defend the norm and criteria inflexibly in all contexts, then argumentative theory becomes an ideology.

The problem of the agents of argumentation is not sufficiently theorized. Agents are persons with a huge complexity: social, cultural, ideological, political, philosophical, psychological and linguistic. They have different identities (father, man, marine, catholic, old, etc.) sometimes relevant to understand their arguments. They have an important history in regard to the judgment we can make about political and interpersonal arguments.

The voiding of the subject is not an accident, but a result of three overwhelming legacies:

- 1) Traditional Logic that by centering on reasoning has forgotten the questions from which argument arises (Meyer 1986) and the agents of argumentation with all their complexity;
- 2) Nietzsche : who is currently nurturing Postmodernism;
- 3) and Structuralism.

Moreover, by revealing the unconscious social and psychological determinations of individuals, vulgar Marxism (not Marxian theory) and Psychoanalysis have strongly contributed to diminish the theoretical role of the agents. We need to reinsert the subject and subjectivity in argument. This does not mean we should abandon the desire of objectivity or intersubjectivity but rather that there is a need to be aware of the impossibility of a non-situated eternally true discourse. The problem of the pragmatic shift in argumentation is that we do not take seriously pragmatics, that is, agents in a cultural context. We need to leave aside Searle and get back to Austin and Wittgenstein.

There is a great difference between theories that analyze arguments in the first place and reduce agents to its minimal expression and those that study arguers and their arguments as situated in time, place and context. As we have said, arguers are complex and have social, cultural, ideological, political, cognitive and historical dimensions (Gilbert 1995 a).

Logical consensus is just a matter of coincidence of formal procedure and products, not of persons. Logical agreement is frequently a requisite for agreement. The aim of logical consensus is perhaps desirable in some contexts and very important, but has to be questioned. Discourse is never just logical and not always rational in the restricted sense of the word. Consensus has to be conceived as agreement between persons as holistic entities. This means that we have to study other modes of argument besides the logical ones. We have to study rationality in its broader sense, including convictions, desires, emotions, beliefs, goals and intuitions. Consensus per se may be inadequate in extreme situations of interpersonal argument and in cases of oppression in the public sphere. This means that sometimes our just and rational aim must be to dissent. The only way out for the theories of logical-rational consensus is what Habermas did: redefine discourse as only critical discourse not pretending to analyze everyday exchanges. The so-called marketplace or kitchen arguments rarely ever meet the standards required to be considered “good arguments” by the logical-dialectical theories.

The description of the prevailing theories of argumentation presented in the preceding paragraphs and throughout this essay is perhaps somewhat schematic and unfair in certain cases, or with respect to certain authors or nuances, but I believe it reflects the general prevailing trend and its risks. This trend exhibits a marked "angelical approach" to argumentation in the search for truth (Plantin, 1990).

Since we come from the functional tradition in Linguistics, which is interested in depicting concrete reality, and since we care about discourse in its broader sense we must consider subjects as multidimensional entities. We must also take into account not only consensus but also conflict, and describe actual issues and not only normative "ought- to be" issues. Also, we must pay close attention to the subjects' relationships. We need to be aware if there is a justification for dissent and eristic attitudes in a given situation. We may need to study if apparently rational and cool logical arguments are a mask of unjust exercise of power, of a distorted ideological view or of a cultural imposition. Such a choice, however, is not made for mere local issues related to a certain analytical tradition. This essay attempts to justify on theoretical and philosophical grounds that, in order to analyze "daily" (Dispiaux) or "natural" (Woods and Walton) argumentation, it is necessary to consider the oscillation in social life and public discourse which takes us from war to peace. Peace implies a certain consensus, but this is not the whole picture of a society. There is also a systematic legal or illegal blocking of the possibility of constructing "dangerous" and wide consensus among subordinate groups. The analogy of the movement and complexity of the relations between war and peace is expressed in interpersonal argument in an oscillation going from eristics oriented to win an argument to coalescence (Gilbert, 1997). Of course we are thinking of argumentation not as a simple product but as a complex series of discourses exchanged between the agents, sometimes multiple agents. To describe and depict them we need not only simple schemes of Aristotelian logic but also the complex operations of Natural Logic. For us argument is dynamic and argumentation is a social practice. Of course, in such an approach, "an argument is any disagreement –from the most polite discussion to the loudest brawl" (Gilbert 1996, p. 5) and includes verbal and non-verbal aspects.

Doubt and the consequent difference of opinion are the basis of argument. We have to be always aware that if there is argumentation at a certain moment it is because there is not a demonstration available at the very moment, and argumentation means there is a doubt and possible pros and cons to a certain question. So, the field of argumentation has to be aware of the necessity of doubt as long as there is something to argue about, if not, we have not argumentation but formal demonstration or logical proof. Difference of opinion entails the possibility of considering different routes of discussion and approaches to argument that are not logical-dialectical, that include the agents of argumentation and describe rational phenomena outside the norm. We certainly may favor one route, but need to be aware of the existence of a dynamics of argument that may push us towards other contexts and theories.

We are not saying that dialectics are not important. We are defending (Reygadas & Haidar 1999) a Theory of the Field of Argumentation capable of including logic-dialectics, eristics, rhetoric and linguistics. In such a broad approach to the field, we may have a (non exhaustive) continuum of theories, like the following:

- 1) Aimed to construct consensus, as the Theory of Communicative Action and Pragma-dialectics.

- 2) Aimed to eliminate dissent, as Coalescent Argumentation.
- 3) Aimed to self-defense against an hegemonic consensus.
- 4) Aimed to win an argument by means of persuasion, like in Perelman's Rhetoric.
- 5) Aimed to win an argument at all costs as we see in Kotarbinski's eristics.

We may also have theories that consider the different aspects of the above, like in Gilbert's book "How to win an Argument", aimed at self-defense and how to win an argument by rational and reasonable means.

Pragma-dialectics –considering emotion, intuition, beliefs and context– may be useful in contexts of political and ideological equal footing, even in pedagogical contexts lacking symmetry or where the parties are clearly willing to come to an agreement, such as in certain negotiations of social conflicts. But in the absence of these conditions, the pragma-dialectical procedure is not adequate. Actual discourse is a multiple-dimension entity: It surely reproduces the logical-philosophical "materialities" on which van Eemeren and Grootendorst's model is based, but it also reproduces social, historical and cultural "materialities", as well as psychological, poetical-rhetorical, political and ideological ones, which do not fit into the 10 or 100 rules of an ideal model whatsoever.

In some cases we may legitimately and rationally want to win an argument persuasively or eristically. This does not mean we defend violence or irrationality. We deal with our topic of "conflict, dissent and violence" searching for rationality, peace and harmony among people. Unlike the "angelical approach" to argumentation, we think that true agreement can only arise from a simultaneous analysis of disagreement, conflict, and polemic issues. First, one cannot but realize how naive or partial the approach to politics, philosophy and argumentation is and how it pretends to exclude conflict from its point of reference. Secondly, one finds a set of paradoxes in the prevailing argumentation theories: By searching for an immediate peaceful consent, they may legitimate inadequate empowerment and a derived conflict or even violence. By looking for agreement at all costs, they may deny the very sense of argumentation, whose existence depends on conflict or, at the lower threshold, difference. Our basic theory has to reflect the Walton's idea that there are different types of argument. We may go from very linear, clinical (Gilbert 1995b) and pacific arguments to really chaotic, emotional and conflictive ones in interpersonal or political arguments. We will continue to develop the backing for these assertions, but we must say a few words about them now.

We certainly may legitimately construct theories of consensus; we need them. Nonetheless, if we look for agreement without recognizing the necessity of justice in the long run, we will end up justifying the existing social differences, blocking changes that may really end in a future true peace of an interpersonal relationship, an institution or even a social regime. It is frequently because of a conflict that questions arise. It is always because of a difference of opinion that we have to argue, otherwise we only need to explain or demonstrate. Therefore, consensus must not be seen as dissociated from dissent.

To sum up, the construction of a deep consensual and peaceful rationality should respond to a higher order. We are willing to contribute to this reflection writing about eristics, the forgotten heart of argumentation as it was taught by the sophists. We will do this by means of discussing five points:

- 1) The legal-philosophical foundations of the argumentation theory. The logical-dialectical approaches only care about freedom of the arguers and rational judges aiming at consensus. We include conflict and dissent, and consider not only the importance of freedom as an initial assumption of argumentation but also justice. We do not try to make a contribution to legal and political philosophy but to make an analogy between law and argument.
- 2) The relation of silence and the implicit to argumentative discourse. We show the necessity of challenging the requirement of externalization of all components of arguments as something absolute. We also defend the necessity to consider the general background of a dispute in evaluating an argument.
- 3) The origin of eristic situations: how they arise from a difference of opinion and the shift from compatible to incompatible positions, or from an attitude looking for compatibility to an attitude looking for incompatibility.
- 4) The necessity of considering conflict and dissent not only in the logical mode but also in the emotional one.
- 5) The different levels of eristics: self-defense, externalization of hidden conflicts, incompatibility, and attack on injustice, inequality and dictatorship. In this case, we have no space to develop a reflection. We just want to remember, by means of simply listing procedures and sketching a wide summary, the emerging complexity of eristics.

Eristics apply especially to the public sphere and to politics, because political discourse is intrinsically polemical. However, eristics are also needed sometimes in interpersonal argument and even in science.

Law and conflict

We will first analyze the relation between law and argument, especially in the case of deliberative discourse. From law are derived all the dominant argumentative models. The law is used as the core example of argumentation as well as of all the processes related to social conflict.

In our societies violence precedes the likelihood of agreement. When at a state scale violence and war attempt to change force relations and even to modify the prevailing state of affairs, a curious process of homologies, a particular cycle from weapons to law begins.

War entails postulating a plan of fight, rejecting a situation that is regarded as untenable, and summoning the people. In addition, an explicit or implicit war declaration - which has been the most common case in recent times - implies two unique elements: the war declaration as a last resort alternative, and a statutory protection that allows the people to fight injustice. The statutory protection is a sovereignty safeguard. For example, in the Mexican case, article 39 of the Constitution allows people to change government. In an extreme case, as the Chiapas war, the indigenous population has interpreted it as a right to launch warfare. That is, the subversion of order appeals to law. "War is the prolongation of politics by other means", as the Clausewitz maxim reads. And politics are in turn the prolongation of war. The snake will continue to bite its

tail until a future egalitarian society arises, a society that today, in the 21st century, seems more distant than at the beginning of the 20th century.

After a war, the ceremony of peace rules the new circumstances recognized as "new law." Violence is the foundation of law: American Independence and Civil War, Mexican or Russian Revolution. This violence is sometimes present in special ways. The foundation of law is equal to the foundation of power and most times it is an immediate expression of violence or at least domination of certain kind. Only a power that is not founded on nor bonded to violence could be able to get out of the circle, if it can ever do so.

According to Walter Benjamin (*For a Critique of Violence*, Benjamin, 1972, whose text we follow in this section), since natural law aspires to justify means by virtue of the fairness of their ends, it makes broad room for violence, such as in the case of terrorism during French Revolution, the founding movement of the most beloved democratic political rights: Liberty, equality and fraternity.

Positive Law, in turn, tries to "warrant" fair ends by legitimizing their means. It considers violence in individuals' hands to be dangerous for the existing legal arrangement. Striking is one of the few ways in which violence and the reappearance of class struggle are allowed, but even this avenue is violated, particularly in underdeveloped countries, by the right the state has to remove the right to strike, and by the dictatorial suppression of freedoms. Anyway, from the perspective of the workers' sector facing the violence of the state, the right to strike is a right to use violence for certain ends. Also, in modern progressive constitutions, such as the Mexican one, the people can establish or modify the conditions of law.

Thus, a right or a suggestion about the right to make war certainly exists. But beyond this - continues Benjamin - there is also a violence that aims to preserve law. Its extreme is the death penalty, which is accepted for instance in many states of the American "liberal" federation.

Of its different expressions, violence as a right expresses itself in the police. The law that rules the police expresses the point where the state, due to impotence or to the contexts inherent to a particular legal arrangement, feels incapable of warranting through that arrangement its own empirical ends, which it aims to achieve at all costs. The police acts in the name of security. It is the maximum degeneration of violence.

Beyond the police, a contract of law is never the source that solves conflicts without appealing to violence. The origin of all contracts is related to violence, which takes the form of the power supporting it. Law becomes impotent if the consciousness of its latent violence disappears. This means that law is followed not only because of the acceptance of the social contract but also because of the fear of being punished.

However - reads the German author - it is possible to solve conflicts in a non-violent manner. Even the hardest mentality will frequently prefer clean and non-violent means, being afraid of the common disadvantages that would result from a fight of forces, whoever would turn to be the winner. But the solution of conflicts - and we know that - extends across a long chain of nuances: from the violence of a debate homologous to war up to the logic of zero violence. In all debates, law is in the horizon of discussions, always with its implicit violence and lack of determination to decisively decide what is believed to be true or false in a given situation. This appears, of course, as a background, because truth, justice and good arguments are not decided most of the time by a violent act. Violence entails the direct use of force. Force is a necessary

component of violence. But there is a continuum in social life going from violence to conflict, dissent and consensus. There is a “symbolic violence” in a metaphoric sense and violence may be, in the ordinary use of the term, every thing that “touches our body” without our consent.

Curiously, dialectics follow the model of judicial discourse, and this influence extends to rhetoric since the times of Old Greece. Judicial issues have to do with discourses delivered before a court of law, where judges are invited to pass their judgment on a past state of facts, in the sense of accusation, claim, or defense (Lausberg, 1960). The evaluation that the speaker pretends to justify with facts is the alternative of fairness / unfairness (*iustum / iniustum*). The judgment of what is unfair corresponds to the court's (*officium*) claim (*category, intentio, intendere, accusatio, aut petitio*). The judgment of what is fair corresponds to the defense (*apology, depulsio, depellere, defensio*). The whole course of the accusation / defense game is called action (*actio*). The invention of these issues has to do with arguments (*argumenta*).

The preceding thread in jurisprudential discourse has been preserved for about 25 centuries. The two most outstanding modern founders of argumentation follow the example of judicial precedents: Toulmin's argumentation model to define the scheme of argumentation and Perelman's New Rhetoric, deeply interested in the "rule of justice", which approaches in an identical manner to beings or situations that are integrated into the same category (Perelman and Olbrechts-Tyteca 1958, p. 340).

For logical dialectics, the study of the argumentative process is clearly jurisprudential, something similar to a lawsuit:

- 1) The charge
- 2) The evidence
- 3) Witnesses
- 4) Lawsuits
- 5) The verdict
- 6) The decision

This idea of the lawsuit elements is followed in Toulmin's dialectics and in his argumentation scheme (Toulmin, 1958). He rationally discusses, step by step, the Claim and Ground of an argument, as well as its Warrant and Backing, its Modality and Rebuttal. It is a dialectical process or, rather, a process of inquiry. Ordinary discourse and non-traditional logic are referred to, but the process is only logical and, in dialogue, the hearer is reduced to the minimal expression, not of a dialectician but of a Socratic inquirer who is limited to asking questions. Discourse loses complexity, while the agent reduces his competence: he is not only unable to engage in controversy, but even to reply.

When studying argumentative discourse - such as Pragma-dialectics, Informal Logic à la Blair-Johnson and Critical Thinking do - the analysis changes its focus on the rules and criteria of rationality, while the global sociological problem composed of argumentation, argument and agents is minimized. Argumentation deprived of its complex context, of emotions and non-verbal elements is not seen any more as part of a discourse that is uttered or written according to certain ideological positions and to certain places of power. These theories are concentrated in an abstract ideal rationality. Rational rules and criteria are certainly crucial and they should be

studied in their pure form, free from any other determination. But the reduction should not hinder the reconstruction of the whole global social process of argumentation, since in doing so it loses something crucial. Searching for an isolated rationality alone is losing the actual humanity of argumentation.

The reductionist analogy between dialectics, rhetoric and law is not accidental. In history, argumentation was born out of the defense of property in Syracuse after the collapse of the tyranny. Rhetoric arose as a form of law to persuade judges. The very origin of argumentation, with the sophists, was quite rhetorical and eristic and we must not forget this, at least in the case of public discourse where the status of the agents matter as much as the structure and the style of an argument.

We may say with Chomsky that “violence, deceit, and lawlessness are natural functions of the state, any state” (Chomsky 1992, p. 126). Nonetheless, even if we give to the state and law a different role, we have to change our view of the relation of argument to law. The dominant dialectical approach to argumentation, as well as Perelman’s whole rhetorical theory, use the analogy of law and argument, based in agreement and pure reason. Habermas and the pragma-dialecticians consider the principle of freedom: the principle of symmetry in the former and the first rule of freedom of speech in the second case. The Theory of Communicative Action and Pragma-dialectics do not consider another basic problem of law, ethics and argument: the theory of justice. We need a better analogy of law and argument at least in certain respects, including justice and conflict.

First we have to be aware of the consequences of reducing agents to one-dimensional entities, a typical operation even in many rhetorical theories. They make use of ideas that are similar to the “universal audience,” which is actually non-existent and is the speaker's mere imaginary reflection of unanimity (Perelman and Olbrechts Tyteca 1958, p 73), or -likewise logical-dialectical approaches- only the “actant role” is considered (proponent- opponent). The “rational judge” is a core notion of normative theories. It states that we can reason in a way which should be approved by all rational people without distinction. These rational people are in certain respects those trained in the skills required by Western thinkers and scientists today. This “rational judge” is often not a judge but a legislator. A “judge” is related to the past and the “legislator” makes constraints about the future argumentative behavior, like in Habermas’ Theory of Communicative Action or Pragma-dialectics. It is different to legislate ideal rules to constrain the future possible rational arguments and to judge the real past

To construct a better analogy of the relation of law and argument, and to allow different degrees of conflict we won’t need to appeal to Benjamin, Chomsky or any other radical thinker. The liberal John Rawls and his “Theory of Justice” will suffice for this. An analogy between his theory and argumentation as a rational process and procedure shows us how we must allow for different degrees of conflict and must consider justice as a crucial topic. Rawls show us clearly that what the ideal theories of argumentation have forgotten when talking about analogies of law and argument is the main problem of the philosophy of law: the preservation of justice.

- 1) Even if Rawls is interested in the ideal, according to him there is a need also for a non-ideal theory of justice. This must include just war (treated in *The Law of Peoples*), conscientious objection, civil disobedience and militant resistance. In argument we can correlate this to *ad baculum*, polemical arguments and non-acceptance of a rule or argument.

- 2) Injustice can arise in two ways: “current arrangements may depart in varying degrees from publicly accepted standards that are more or less just; or these arrangements may conform to a society’s conception of justice, or to the view of the dominant class, but this conception itself may be unreasonable, and in many cases clearly unjust”.

“Obligations arise only if certain background conditions are satisfied” (Rawls 1999, p. 309). “Acquiescence in, or event consent to, clearly unjust institutions does not give rise to obligations.” ...“Unjust social arrangements are themselves a kind of extortion, even violence, and consent to them does not bind” (Rawls 1999, p. 303). “When a society is regulated by principles favoring narrow class interests, one may have no recourse to oppose the prevailing conception and the institution it justifies...” (Rawls 1999, p. 310).

“It is simply that those who disagree with the decision made cannot convincingly establish their point within the framework of the public conception of justice.” “The aim of constitutional design is to make sure, if possible, that the self-interest of social classes does not distort the political settlement that is made outside the permitted limits” (Rawls 1999, p. 318).

These quotations show us –by analogy- what to do whenever we have an argument that departs from accepted real standards of a group or another society, when we ask something unjust or favor narrow interests. In these cases the ten commandments of Pragma-dialectics and the requirements of sufficiency, relevance and adequacy do not bind the arguing parts. An opponent affected by abuse of power may have no recourse in opposing the other in “rational” terms. We can follow certain ideal rational rules or criteria as long as they do not entail an excess of certain limits in a given situation. We can follow the rules and criteria if they do not imply suffering of injustice or the imposition of a certain idea of rationality.

These sorts of cases arise whenever we do not have a symmetry principle (Habermas 1989) and a critical discussion, that is, almost always.

- 3) “Now since even rational legislators would often reach different conclusions, there is a necessity for a vote under ideal conditions” (Rawls 1999, p. 314).

“In everyday life the exchange of opinion with others check our partiality and widens our perspective” (Rawls 199, p. 315).

This is crucial. There is no possibility of an absolute rule. Many times we can find different rules and contradictions. We have to discuss rules and criteria and we are to follow them only when that is a result of a democratic consensus or vote in a given situation, group or society. Eristics, even in political discourse and in the public sphere, also have rules, but they are negotiated: the rules for discussing the end of a war, the presidential debate on T.V., or a scientific conflict.

- 4) “By engaging in civil disobedience a minority forces the majority to consider whether it wishes to have its actions construed in this way, or whether, in view of the common sense of justice, it wishes to acknowledge the legitimate claims of the minority” (Rawls 1999, p. 321).

“Conscientious refusal is noncompliance with a more or less direct legal injunction or administrative order.” In this case, “those ready to withhold obedience recognize that there may be no basis for mutual understanding” (Rawls 1999, p. 323).

Rawls' reflection comes from considering of the fight against racism and the opposition to the Vietnam War. But his point of view is general. In everyday argument, we often need to oppose a point of view, even if it is the argument of the majority and liberty and justice are at stake. We may disobey the rules and criteria of rational argument in order to preserve justice. We sometimes find that in a certain respect, at the moment, there is no basis for agreement.

To conclude this analogy between the theory of law and the theory of argument, I would like to quote a passage from Rawls that shows the necessity of considering conflict and agreement. This gives a legal philosophical foundation of an Integrated Theory of the Field of Argumentation, going from consensus to conflict:

“...Although a society is a cooperative venture for mutual advantage, it is typically marked by a conflict as well as an identity of interests. There is an identity of interests since social cooperation makes possible a better life for all than any would have if each were to try to live solely by his own efforts. There is a conflict of interests since men are not indifferent as to how the greater benefits produced by their collaboration are distributed, for in order to pursue their ends they each prefer a larger to a lesser share” (Rawls 1999, p. 109).

According to their interests, the agents of argumentation rank the alternatives, protect their liberties, widen their opportunities and promote their aims, dialectically or eristically.

Simmons criticizes Rawls, and considers that only consent (with the principle of fidelity) clearly accounts for the political obligations of citizens in existing states. But even under this principle only a very few citizens seem to be bound. His conclusion is (Simmons 1979, pp. 192-193) that “citizens generally have no special political bonds which require that they obey and support the governments of their countries of residence. Most citizens have neither political obligations nor ‘particularized’ political duties, and they will continue to be free of such bonds barring changes in political structures and conventions.” Nevertheless, disobedience almost always affects someone else negatively and we have moral duties to those persons, qua persons (as opposed to “citizens”). The effect of our disobedience on others may provide reasons for obeying the rules, but we have no special obligation of obedience. In argumentation, the important thing and the way through this is how well and how fairly procedures, rules and criteria provide the benefits which we legitimately expect to receive following them in a given situation.

Simmons' idea is interesting, because dialectics often supposes a dialectical obligation that is far from reality. The acceptance of dialectical rules of argument or the acceptance of not using eristic strategies in a given situation may be hard to decide. What do we have to consider, obligations, consequences, convictions or all of them? And, most of all, obedience to dialectical rules remains as much in need of justification as disobedience of them.

Simmons ends his book with lines that must prevent us from the excess of dialectics: “For surely a nation composed of such ‘dutiful citizens’ would be the cruelest sort of trap of the poor, the oppressed, and the alienated” (Simmons 1979, p. 201). The same thing happens in certain contexts with the application of the duties of dialectics in argumentation.

Finally, Martin Luther King in his famous “Letter from Birmingham City Jail” tells us that one who is more devoted to order than to justice prefers a negative peace which is the absence of tension, to a positive peace which is the presence of justice. He also tells us that the context is

crucial. We may have a correct commandment, but when the ordinance is used to preserve privileges, then it becomes unjust (Bedau 1995, p. 74-75).

Discourse and its Core of Violent Silence

With the previous panorama, Jean Pierre Faye's claim that discourse and, therefore, argumentation also is built on a core of "violent silence" is not surprising. It is the silence of the law that does not defend the equality of those judged in advance as unequal. It is the silence of those who take command over the dominated who may be affected if taking the floor, if renouncing to keep quiet. The 1994 war in Chiapas, Mexico, is an example of the common perception of this problem. At its beginning, an Indian described the outbreak of war as follows: "What was broken on January 1st was not peace, but silence;" that is, the apparent peace was true war and silence for the Indians from Chiapas. Peace was not broken with the declaration of war, since it had been broken with the establishment of the peace of law founded on the inequality between the ethnic groups and the rest of the nation. This is theoretically and philosophically relevant. There is a problem with the principle of externalization that often appears in argumentation theories (O'Keefe, Habermas, van Eemeren and Grootendorst).

The principle of externalization is originally derived from Searle's principle of expressibility in his Speech Acts' theory (Searle 1990, pp. 28-30). He expresses this principle as follows: for any meaning X and speaker S, whenever S wants to say (intend to transmit or wants to communicate) X then the existence of an expression E is possible. E is an "exact" expression of, or a formulation of X.

We will challenge this principle by means of describing silence. According to Pucinelli Orlandi's (1993) excellent essay, silence is the first state, the state of the one who keeps quiet, who does not even make a noise, who is in the darkness. But silence and conflict –or even violence– call each other, and power is always willing in an ambivalent manner to silence and to put an end to silence, it is frightened by silence. Teachers, dictators, parents and jailers say: Why are you quiet? What are you thinking about? And, at the same time power creates silence, it silences opposing words. In a "powerful" manner, silence does not speak but has a meaning. Thus the rebellion expressed in phrases such as "take the floor", "raise one's voice", "break silence."

Silence is in language. Talking includes silence. Showing what everybody knows allows keeping secret what one knows without confessing. Silence is on the conceptions of the world that we do not let to be expressed: those of Indians, women, poor, illiterate, gays, transgendered, subordinates. Silence is in the lack of words, in the ellipsis, in what is implicit. We are surrounded by the silence of emotions, mysticism, contemplation, introspection, revolt, resistance, discipline, exercise of power, defeated will.

Silence is not visible, but it can be seen through historical, critical, reconstructive methods. It is decipherable and intelligible. It surrounds and is inserted in every argumentation. Saying something is not saying other things. Saying one thing is leaving other things unsaid. Words are loaded with silence.

Silence is with the one who speaks without speaking, who is spoken, such as Indians in "indigenismo", women in "machismo", or as poor in the welfare state. In this manner, subordinates are forced to speak where they are not expected to do so. They show up with verbal

or physical "violence" and they are condemned for doing so, as if the daily and invisible violence to which they are subjected should be accepted, unlike rebellious violence. Rebels are asked to come to reason. Insulting and using violence is touching the taboo of law, the status quo. Rebels should present evidence, demonstrate that the law adjudged against them is not peace but violence, they have to afford the "burden of the proof" in argumentation. Of course, this is not universally and everywhere valid. Many political strategies are possible, depending of the situation. A counterexample is the case of Native people in Canada. Following the law they can obtain more than ever.

Moreover - reminds Pucinelli Orlandi (op. cit.) –there is the practice of imposing silence, in the politics of sense: Constitutive and local silence. Constitutive silence cancels other possible senses, which are undesirable in a particular discursive situation. It cuts off and determines the limits of those things that cannot be said. Local silence is censure, the prohibition to say something. It is nude violence, taboo. Certain words are not allowed to be said. Occupying certain subject positions is prohibited. The historical work on sense is prohibited, the agents are not permitted to develop and discuss their ideas in the public sphere.

Polemical words and arguments are always understood within the game of violence, conflict and silence. They frequently arise from resistance, which says the same to mean something else, which says different things to mean the same. I mean by this that there is a metalinguistic use of terms and a strategy of roundabout to arrive to the taboo.

Silence is what is hushed, what is set aside, what is excluded. And exclusion devices are multiple. Unlike silence, which takes us to the whole dynamics of society and power, what is implicit is related to what is said. Beyond the diffuse border of frustrated acts, which is founded in what is said but that is related to the unconscious, what is implicit is linked to what is understood without being said - which is related to the particular uses of a group and to a particular communicative situation - or to an indisputable assumption anchored in language (presupposition).

Thus, a hidden pyramid underlies what is explicit: What is forbidden and what is imposed, silence and exclusion, ellipsis, frustrated acts, and what is implicit in presuppositions or what is understood without being said.

The procedures of exclusion, which disable others from arguing, deny them words. These procedures are related to devices that are internal and external to discourse, as well as to the evaluation of subjects (Foucault 1980). The external procedures of exclusion are:

- 1) the forbidden word to control, select and distribute senses;
- 2) the taboo of subject matters;
- 3) the ritual of the circumstances that are the frame of discourse;
- 4) the exclusive right of the subject who speaks;
- 5) the separation between the words of reason and madness;
- 6) the distinction between true and false words imposed by the power-knowledge of the science, the adults, the experts;
- 7) the institution that establishes roles and rights.

Truth in these cases is equated to what is believed to be true, because Foucault does not believe in objective truth.

The internal procedures of exclusion are:

- 1) The comment: saying something new about the same text, as the sacred texts and constitutions –only what is within constitutional interpretation is legal and valid–. In lawsuits we can talk about anything as long as a new interpretation is not conceived as contradicting the Constitution;
- 2) the function of the author: the reduction to identity, to order, and to individuality. This means that, strictly speaking, there is no immutable “I”. Since the end of the Middle Ages, we construct a reduction of agent’s change and variability to regularity;
- 3) and science, which determines - by its errors and paradigms, its determination of a series of objects, and the ascription to a particular theoretical position - the limits of what can be said, of what can be argued.

The procedures of subject evaluation are:

- 1) The ritual - at the same time an exclusion and evaluation procedure of the subject - including gestures, behaviors, and codified circumstances that are to be dominated;
- 2) discourse societies that limit knowledge to closed, secret circles;
- 3) doctrines that put the speaker under the control of discourse and that put discourse under the control of those who are allowed to speak;
- 4) and education, which controls the distribution of knowledge.

Dialectics ask us to look for consensus. This is perfectly valid in general terms. But frequently what we face is that we are asked to comply with a manufactured consent related to certain politics of silence. This is the case when we talk about law and politics. Chomsky gives us various examples of this situation (Chomsky 1992 , p. 121-136). When John Q. Adams expressed on the fourth of July, the belief in the superiority of his country, he considered that in the United States “all was voluntary, was unbiased consent: all was the agreement of soul with soul.” And T.D. Allman observed that that was just an act of hiding “the American national experience of genocidal slaughter of the Indian.”

Thus, before advancing any consensual argument, there is a barrier of silence, a long series of previously constructed senses, a dense network of exclusion devices that block the free expression of words. When finally argumentation arises, it rests on a series of implicit issues surrounding words. Some of these are innocent, but very often some limit the scope of peaceful voices, making conflictive or even violent voices to break out. Those who are excluded -the subordinates- are forced to assume the voice of eristics or violence (Reygadas 1996). For those who do not have the right to speak or argue, there is only silence or the right to seize the opportunity to speak by force. As they cannot meet the requirements of discourse, of "rational" argumentation, they have to disturb it, at least until they "learn the rules." Those who lack power,

knowledge and law often need to surprise, to attack, to anticipate, to nullify the opponent, to be the one who aggressively refutes.

As can be deduced from the above arguments, the constitutive silence and the omnipresence of the implicit, challenges the dialectical postulates of externalization as well as the idea of rationality in the real world. Eristics cannot be understood and justified without considering silence and implicit.

Frequently, people are pejoratively considered “aggressors” by a certain way of conceiving the world and processes of argument. But they have been previously aggressed. Many times, the subordinate groups are forced to “consent without consent” (Chomsky 1992, p. 123). Rules of reasoning are sometimes rules of certain ways of reasoning or if they are followed, they mask a lack of symmetry. Generalizing Chomsky’s thought, we may say that since someone or some institution “lacks the capacity to ensure obedience by force, thought can lead to action and therefore threat to order must be exercised at the source. It is necessary to establish a framework for possible thought that is constrained within the principles” of the state, the church, the group (Chomsky 1992, p. 133). This happens not only in politics and religion but also in science. Let us remember, for example, the case of Mandelbröt, certainly one of the most important mathematicians of the end of the twentieth Century, who had to leave Europe and the university academies to work with IBM. One of the main reasons for his escape was that in France the “Bourbaki”, a group that preserved the rules of mathematical reasoning, considered that pictures were ephemeral to mathematics. Mandelbröt was no doubt a genius precisely because he captured the geometrical universal picture of the world that led him to the systematization of the theory of fractals. This is just one among many cases when “to achieve respectability, to be admitted to the debate, (...we...) must accept without question or inquiry the fundamental doctrine” (Chomsky 1992, p. 139). If Mandelbröt didn’t fight it was because he still had an option. That was not the case of Galileo –reduced to argue in the shadow- of Spinoza –obliged to talk in secret language- or Bruno –who was murdered-. Therefore, the appearance of eristics in argument is frequently rational. It is so, because it is the opposition to the device of a “feigned dissent” and “feigned consent” and to those conventions that eliminate rational critical discussion (Chomsky 1992, p. 136). To achieve critical discussion we occasionally need to avoid it, so to speak.

The Dawn of Eristics: Compatibility and Incompatibility in Perelman's Rhetoric

In spite of their interest on conviction as opposed to persuasion, pragma-dialectics and other types of dialectics take agreement as their point of departure. Considering agreement to be a priori, because there is no discussion of the prevailing hegemony prevents peace and consensus. Agreement can be a priori only when there is a nearly just society or situation. Rhetoric, which conceives agreement and acceptance both as a problem and as an end, allows moving on towards the resolution of conflicts.

Now, rhetoric does not necessarily answer many of the questions we put to ourselves. In rhetoric, dialectical discussion vanishes and only the speaker and his passive audience remain. On the other hand, some rhetorical approaches agree with the prevailing trend in argumentation.

Perelman is the most important of the new notable rhetoricians interested in argumentation (Gadamer, Paul de Mann, Ricoeur) and the only one who formulates an approach applicable to actual analysis. Although he deals with rhetoric, he barely takes into account discourse and

linguistic considerations. Although he deals with emotions, he shares the rationalistic approach of the prevailing theories. In Perelman's rhetoric, the agent is also minimized. Moreover, his analytical examples frequently arise from fictitious subjects or from subjects drawn from literature. In fact, *The New Rhetoric* which he wrote with Me. Olbrechts-Tyteca, is based on the merging of rhetoric and dialectics, certainly including the latter but affecting in the process the place and function given to rhetoric: Persuading but at the same time convincing; searching for acceptance, but that of an abstract universal audience.

Nevertheless, Perelman and Olbrechts-Tyteca deal with the problem of violence and consent in a keen and relevant manner when he takes us to deal with argumentative techniques. He outlines the problem of conflict based on a reflection on incompatibility (Perelman and Olbrechts Tyteca 1958, pp. 306-321). It is worth discussing this issue in extenso:

Usually, argumentation will strive to show that the claims that are fought against result in an incompatibility which is in this respect similar to a contradiction consisting of two assertions from which one should be chosen, unless both are given up. Incompatible claims do not appear as contradictory assertions due to merely formal reasons. Although they are frequently intended to follow from reason and logic, to be inevitable, their incompatibility depends on the nature of things or on a human decision. Thus, one of the defensive devices opposed against a quasi-logic argumentation that makes use of contradictions will consist of showing that it is not contradiction, but incompatibility, that is, what will be made evident is the reduction allowing the assimilation of the attacked system into a formal system which, in fact, is far from showing the same rigidity.

Building an argument in order to generate incompatibility leads to conflict, which expresses itself most clearly in an ultimatum, which "creates an incompatibility between the refusal to change one's opinion and the maintenance of peace between two states." Impartiality, which is related to the ultimatum issue, is difficult to maintain in agonistic situations. When dealing with the logic of conflicts, Dupréel (referred to in Perelman and Olbrechts Tyteca 1958, p. 308) considers that "every dispute tends to extend to third parties, who develop it by taking sides."

The preceding paragraphs deal with two key issues: Impartiality and agonism. Politically impartial discourse is always fleeting and unstable. What we will have, at the most, is a "partially" impartial third party. This mediator will oscillate with respect to the contradictory semantics of proponents and opponents. He permits the opposite positions to establish a dialogue, "discharging" the ideological languages like the opposite poles in an oscillator (Faye 1976).

In an unequal society, agonism - we should say it - is consubstantial to a disfavoring situation. And it is also the starting point of certain cultures, such as the English who, in principle, consider argumentation and "arguing" to be polemic, agonistic and non-cooperative, unlike Spanish, where "argumentar" is intrinsically positive and rational. The term discussion is also different in English and Spanish. Language terms used in argumentation are usually culturally loaded.

According to Perelman and Olbrechts-Tyteca, incompatibility in a communicative situation always depends on contingent situations, whether they are already established by natural laws, particular events, or human decisions. Three devices exist in order to get rid of an incompatibility, state Perelman and Olbrechts-Tyteca:

- 5) Sacrificing one of the rules or values that are at work in the discussion; this means that one of the parties should give up something.
- 6) Appealing to commitment, which frequently implies sacrifice.
- 7) Avoiding the appearance of an incompatibility.

According to Perelman and Olbrechts-Tyteca, there are also three possible ways-out of conflict: Logical, practical and tactful. The "logical" way out is legalistic, applies rules, laws, and norms which should be complied with. But this way-out poses the problem of philosophy, the grounds of law and civil disobedience that we have already discussed. On the other hand, it is idealistic, since it assumes that events always fit into the scope of norms. If this does not come true, we should change the norm or appeal to exception, with the risk of setting a judicial precedent, which takes us to a practical commitment.

The "practical" way-out only solves problems as they take place. A practical individual "reconsiders his ideas and rules taking into account actual situations and the decisions which are crucial for his actions." This is the judge's attitude (not the pragma-dialectical or Habermasian legislators), who considers "legal reasons", but who tries to limit the scope of his decisions as much as possible, in order for them not to set judicial precedents. In this case we become dependent on what is contingent and the rule of justice is called in doubt.

The "tactful" attitude creates "procedures to prevent the incompatibility from appearing or to leave for a more convenient time the decisions that should be made." This is the technique of fiction, feigning, and also of the problematic hypocrisy which –specify Perelman and Olbrechts-Tyteca– "pays homage to a certain value, which is sacrificed and, at the same time, pretended to be followed, since there is a refusal to compare it to other values." When feigning is unilateral we are before a lie. "Fiction, lies, silence, serve as to prevent an incompatibility in the domain of action, in order not to face it in the theoretical domain." But we have already seen the costs of silence in discourse. Curiously, this procedural model is sometimes close to the ideal model of dialectics.

Leaving the confrontation for later, hoping that it disappears in the future, may solve the issue or increase conflicts. The tactful attitude is a bet. According to Jankélévitch (quoted by Perelman and Olbrechts-Tyteca), it is the case of alms and lies: "Alms, as well as lies, keep the problem at a longer distance without solving it; they put off the difficulty, which worsens it." Bad faith is the extreme case of a tactful attitude: the refusal to acknowledge incompatibilities.

What is clear is that "in order to take part in a conflict imposing a choice, two rules are necessarily and simultaneously to be applied to one reality." And reducing the incompatibility with time in order for one rule to lose its force or for both to be applied successively may prevent the sacrifice for one of the parties. Or, at least, may allow the decision to be made with a better knowledge of the case if the conflict does not worsen before.

The logical attitude tries to anticipate the solution for conflicts. The practical attitude avoids solving in advance all of the conflicts and faces particular ones. The tactful attitude strives to put off the solution.

Incompatibility in Perelman and Olbrechts-Tyteca arises from the determination of certain notions. Argumentative incompatibility is not already given, but becomes given. It is created when an opinion is considered to be a formal and true issue once and for all. The unique and

final truth generates conflict. Incompatibility arises because we can not choose two claims at the same time without contradiction. It is unavoidable for us to select only one of them. Moreover, the choice transfers its conflicts to the interpretation of past in order to justify current agonism: "Asserting that a choice has been made will help - to put it in this way - to retrospectively reveal that the claims that may have had influence on that choice were incompatible.

A claim is considered to be incompatible with another one when asserting that they exclude each other with respect to a certain issue at a given time. Both claims become incompatible if a division occurs in the object or in time. The succession is allowed in this manner, as well the current person is distinguished from that in the past or future and the individual is separated from the group. Or, otherwise, the dialectical way out is chosen by depriving the authority of one of the claims based on some set of shared criteria.

The New Rhetoric's approach is very important, but it is centered in propositional and claim incompatibility. Propositions are only part of the argumentative exchange. The exchange is only part of the iceberg of a position. Sometimes, to understand incompatibilities we need to expand the idea of incompatibility to the full position, to the agents' emotions, beliefs and intuitions, and to the history of the exchanges between the opponents.

Another technique to avoid incompatibilities is using precise notions, in order for a situation not to fall in the application field of certain notion that generates conflicts. Naess (1953) and Crawshay-Williams (1957) deal with this kind of conflict. According to Perelman and Olbrechts-Tyteca, the far-extending rule increases the risk of arising incompatibilities and new cases enter into the conflict, while the restriction of the application field reduces incompatibility.

A border case of incompatibility is that of autophagy or retortion (*redargutio elenchi*): "An argument tending to show that the act by which a rule is attacked is incompatible with the principle supporting that attack", which eliminates the conflicts through a dialectical conviction. Criticism by retortion, which is related to the logical problem of self-inclusion, leads to an argumentation on conscience, on principles: "Positivists who state that every proposition is analytical or experimental in nature will be asked if what they have just said is an analytical proposition or a proposition resulting from experience."

Coalescent and Multi-Modal Argumentation

Studying discussion processes and procedures within a wide dialectical approach allows us to understand the diversity of arguments, which may be expressed in different modes: logical, emotional, visceral (physical evidence and context) or kisceral (such as religious and intuitive arguments, and beliefs). Understanding these multiple manners and, thus, the multiple variety of justification and rational forms of arguments, open the way for understanding and solving the incompatibilities stated by Perelman and Olbrechts-Tyteca. By studying the ways in which to argue and the goals sought in dialogue, it is possible to build jointly the way-out of a discussion, that is, coalescence. This is Michael Gilbert's claim (Gilbert, 1997). He combines description and norms in his argumentative model, inspired among others by Willard. Willard's approach fully places arguments in the social domain and considers the central role of context and agents:

“By examining the separate modes, identifying their input into a given argumentation, and using that information as a basis, disparate components can be coalesced and used as the basis for a new, more generally agreeable position.”

This “approach to argument emphasizes agreement and, more, delimits specific methodologies designed to increase the likelihood of agreement arising between dispute partners” (Gilbert 1997, p. 103).

We think that we cannot separate the different modes in practice. The modes are interwoven. Nevertheless, the separation is useful for analysis.

As Benjamin stated, coalescent argumentation claims that, in the long term, agreement is preferable to violence. Being conscious that agreement is difficult at times and that it exceeds pure logic, coalescent argumentation –aiming at interpersonal not at political arguments– is based on an underlying complex view of rationality, which includes not only deduction and induction based on logical principles or principles pretending to be logical.

Doubtless, when a situation is not unequal or irreversible with respect to power, and when at least one of the subjects is willing to keep peace, authenticate the social contract, change the conditions of the relation and come to an agreement in any of the ways shown by Perelman and Olbrechts-Tyteca, coalescent argumentation is the most interesting way the theory of argumentation has to solve the problem of conflict. Nonetheless, the maximum logical, emotional, intuitive and contextual understanding cannot solve the inequalities that are a component part of a given situation, it can only put off the conflict and take it to other domains.

What I have already said about the necessity of polemics in the logical mode can be said about polemics in the emotional mode. Emotions need sometimes to be polemic, as Solomon states (Solomon 1976, 424-425):

“For example, a small judgment of (justified) anger against a lover or a spouse may, if unexpressed or ‘repressed’, become the seed for the much more destructive emotions of indignation and resentment. In such cases, a quick argument or fight, carefully limited to expression and not allowed to become a contest of power or status, may be the obvious solution. Similarly, when we find ourselves in an embarrassing situation or a position of inferiority, the most rational response may well be to express one’s displeasure and resentment –openly, as resentment (not hidden as contempt or hatred), and simply but effectively alter the circumstances which might, if left unexpressed, initiate syndromes of defensiveness that are responsible for so much of our unhappiness... Where the emotion is central to our surreality, its intensification may be precisely what is most desired.”

The eristic use of emotions may be valid. As Jagger suggests, “it is appropriate to feel anger and perhaps disgust in those situations where humans are denied their full creativity or freedom” (Jagger 1989, p. 168). Outlaw emotions, incompatible with the dominant perceptions and values, are frequently emotions of women and subordinate groups. “By forming our emotional constitution in particular ways, our society helps to ensure his own perpetuation” (Jagger 1989, p. 165).

Just as with coalescent argumentation, Moeschler's approach to conversation, in Geneva, and Plantin's approach to interaction, at Lyon, allow dealing with actual argumentation, including its emotions, its consensus and polemic, its ideological uses, as well as its abuses of power. In the case of linguistic approaches we have just described, in the case of Gilbert we have both a normative and a descriptive view of argument.

The previous comments, I believe, do not go against Gilbert's point of view. In his overall oeuvre he accepts the possibility and even the necessity of conflict when coalescence fails and something really important, just and rational is at stake (Gilbert 1996).

Eristics or the Continuation of War Through Words

Once incompatibilities play an inevitable role, eristics appears.

The eristic approach to argument, centered in conflict, was not developed in the same way as the game theory of the regulated consensus of dialectics. Eristics means related to "eris", the dispute. Eristics was very well known by the sophists. For Plato it meant the search of victory in argumentation and was illustrated in the "Euthydemus" dialogue. Eristics are related to rhetoric. They look to persuade and win the argument. The discipline is related to dialectics as long as it uses a dialogue procedure. However, eristics use non-discursive means as well as various discursive means. Eristic dialogues also have some rules and a minimum of cooperation. Otherwise, we would not have a word exchange but a fire or fist exchange.

Eristic argumentation considers dialogue to be a fight, a combat. On the other hand, sophistic argumentation does not care for truth, but for persuasion at all costs. In turn, dialectical argumentation is said to search for rational conviction; even though, the separation of conviction-persuasion-force is not really absolute.

Eristics, as far as we know, has been studied since Aristotle and Teofrastus in a lost book, to which Diogenes Laertius refers: "–Discussion about the Theory of Eristic Discourses–". The discipline has an important modern antecedent in Schopenhauer and current examples in Walton, Gilbert and Kotarbinski. These four authors have been chosen because they show us a gradation of conflict in argument.

1. Eristics as a dialectical procedure.

According to Schopenhauer (1997), the dialectical-eristic process begins when advancing a claim that should be proven to be false. According to Aristotle's dialectics, the claim takes us to a concept whose definition, kind, particular (typical) features, or accident is looked for. Once the claim has been stated, the second moment is refutation. Refutation expresses itself in two modes and two manners, which are ad rem and ad hominem (or ex concessis) and direct and indirect, respectively.

1)

- a. Ad rem refutation overthrows the claim's absolute or objective truth, since it shows that the claim does not coincide with the quality of the thing that is referred to.
- b. Ad hominem refutation –in the sense that Schopenhauer gives to the ad hominem argument- overthrows relative truth, since it shows that the claim contradicts other statements or grants of the defender. Or that it is founded in untenable arguments, but it leaves as indeterminate the objective truth of the thing that is referred to.

2)

- a. Direct refutation attacks the grounds of the claim: Denial of the major or minor premise to attack the matter supporting the conclusion. Or the grounds are accepted, but showing that the claim does not follow from them, attacking in this manner the form of the conclusion.
- b. Indirect refutation attacks the consequences of the claim by showing that they are false. The untruthfulness of the grounds is deducted from the untruthfulness of the consequences

This indirect manner may appeal to rebuttal or to apagoge:

- i. Rebuttal is a contrary example. The claim is proven to be false by providing evidence of things or relationships that is included in its statement and which arise from it, but to which the statement of the claim is not applicable and, thus, it cannot be true.
- ii. Apagoge consists of accepting the claim to be true, but combined with another claim whatsoever which is openly recognized to be true. Then, both claims are considered to be the premises of a syllogism, from which a clearly false conclusion follows, since the claim of the adversary is denied by *ad rem* or *ad hominem*. If the truths that are proven to be false by the conclusion are indisputable or evident, a *reductio ad absurdum* would result.

We should remember that Schopenhauer distinguishes between form and content. Eristics deal with content. Denying the consequence takes to the material or content consequence. We should logically and dialectically distinguish between a *reductio ad absurdum* and a reduction to the impossible, between Schopenhauer's proposal and the method of Old dialectics.

Thus, as a process, eristics are dialectic in full sense, but they are expressed in polemic and not in agreement. Schopenhauer was interested in eristics because he was pessimistic about the human nature. By telling the adversary that she is right when it only appears to be so, it will be difficult for her to do it conversely at a given time (Schopenhauer 1997, p. 47). But the German philosopher also thought about other important aspects, like the following:

- 1) The distinction between truth and approval by the opponents and the audience.
-The fact that sometimes the right argument does not come to our mind at the required moment.
- 2) The fact that often the one who wins an argument wins it not because of truth but because of his cunning ability to defend it. One of this cases -we may think- is the one when Chomsky “won” the argument with Piaget when discussing about the theory of language. Chomsky’s structural innatism won against the developmental Piagetian picture of language, but now history is reversing the judgement in favor of developmental theories.
- 3) The content is important. For Schopenhauer, the logic has to be looked at as a foundation for the study of dialectics and eristics.

- 4) Knowing if the content of one of two opposite propositions is false is completely uncertain, because the criterion to judge them cannot be in them, in the arguers or in the conclusion of the dispute (Schopenhauer 1997, p. 49).

In conclusion, for Schopenhauer, dialectics and eristics are not about reason but about “the art of being right” (Schopenhauer 1997, p. 49, 53). And, as it is frequent to use the name of dialectics to talk about something equivalent to logic, he names the discipline of his interest dialectics-eristics. This discipline is aimed at teaching self-defense against attacks, especially those that are disloyal, and to attack the opponent without self-contradiction or the possibility of being refuted. So, it is not scientific, is not Popperian at all.

2. The appearance of eristic moments as a way of preserving an overall dialectical argument

As catharsis, eristics are valued as long as a conflictive discussion allow the revealing of what otherwise would remain hidden (Walton, 1998). This relates argumentation to silence and violence in an illustrative manner: In order for silence not to necessarily result in physical violence, symbolic violence arises in argumentation as a threat, epithet, and reproach.

The point of departure of a natural eristic dialogue is the existence of differences, of disagreements that are not expressed in words. We blame each other. We emotionally attack each other. But eristic dialogue establishes the grounds for communication and a future relationship. While we discuss, we learn things of ourselves and of the others. Sometimes eristics drive us to a deeper agreement, and sometimes they show that our agreement was hollow.

Thus, far from being a problem, eristics are needed in democratic dialogue, whether for couples or parliaments. When eristic polemic is banned, conflicts do not arise and, thus, they may unnecessarily result in physical violence. When eristics are absent, dialogue cannot dispute the places and discourses of power. Democracy and even creativity without polemic, surprise, exaggeration or threat is fruitless, since it only maintains a given arrangement of things; and those who lose in that arrangement, to whom words are denied, can only rebel or be subdued. Of course, as Gilbert’s considers, we must try first to understand the positions on the table and try to find if there is a path that respects different goals and values that satisfies both opposite positions.

3. The use of eristics as a way of self-defense and a rational technique against empowerment

Other features of argument exist which can be ascribed to eristic dialogue and which are reminded by authors such as Walton (Walton, 1998) and Gilbert (1996). We list some of these strategies just as a way of remembering them to the people not familiarized with eristics:

- 1) Personal attack
- 2) A closed attitude searching for victory at all costs
- 3) The tactics of the straw man fallacy
- 4) The tactics of irrelevancy or jumping from one topic to another, unlike Pragm-dialectics, where non sequitur is the super-rule of critical discussion.

- 5) The game of “doubleness” between reason and combat for one's benefit; that is, we fight with the other and at the same time we ask him to act in a rational manner
- 6) Not respecting conversational postulates
- 7) Searching for the errors of the adversary
- 8) Attacking the reasons backing a pretension, not the pretension itself
- 9) Symbolic violence

Eristics can also be considered to be a defense, which is needed in our current world of continuous demagoguery, advertisement, and marketing. The rules of defense include fallacious strategies, such as the stratagems collected by Schopenhauer (1997) and more rational procedures, such as the ones referred to by Gilbert (1996):

- 1) Assume everyone is out to get you!
- 2) Skepticism: “believe nothing”
- 3) Never accepting the defeat, not even when one is completely convinced that it is the case
- 4) Knowing the fallacies, not to apply them but for self-defense.

In this case, argumentation is looked at as a social process. This approach does not promote the attachment to our beliefs, irrationally. On the contrary, it shows that agreement is not always immediate, but rather a product of reflection following an eristic exchange:

“You may not want to publicly change your position at the time the argument is taking place, but you should try carefully to note the weak points of your own position so that you can shore them up, make them sharper, or strengthen in some other way” (Gilbert 1996, p.14).

4. Eristics as a procedure to attack the opponent and win at all costs.

In an extreme case of eristics, Kotarbinski (1963) made an inventory of the procedures or rules that are allowed in conflictive disputes. Argumentation is considered to be an arsenal of discursive procedures to attack the opponent:

- 1) Surprise
- 2) Threat
- 3) Making the burden of proof fall on the adversary
- 4) Occupying the attacking position
- 5) Anticipation
- 6) Nullifying the rival's arguments
- 7) Occupying the place of the one who denies what is being said

The manner in which we look at eristics, is related to the cases contemplated by Rawls, Chomsky and Benjamin, where the rules cannot be accepted because there is no space for agreement or coalescence.

Conclusion

On the whole, it seems to me that a theory of natural argumentation searching for a more adequate and complex approach, which will be more likely to create a true democratic social agreement, should:

- 1) Consider the agents of argumentation in all their complexity and contradictions;
- 2) integrate historicity, power, and ideology in the field of argumentation;
- 3) include polemic and agreement as a problem;
- 4) incorporate the principle of justice in the initial condition of the models of argumentation;
- 5) consider the different manners of arguing, as well as a wide theory of rationality;
- 6) consider the role of silence, the implicit and non-discursive means in argumentation;
- 7) evaluate, according to the situation, the validity of eristics moments or dialogues in argument.

This theory should value the linguistic, logical, dialectical, and eristic approaches to argumentation as product, process, and procedure, according to the goals of the participants, communicative situations, fields, languages, and cultures in the world. Argumentation should pass from the idealistic consent deprived of agents and time to the actual world of conflict, subjectivity, and history. We have to change our appraisal of argument in the public sphere in order to make peace and words possible in all their authenticity and maximum scope without leaving aside our search for rational agreement and coalescence in as many cases as possible.

When possible, some steps are to be fulfilled before engaging in conflict: to be sure we are in real conflict and to appeal first to rational coalescent procedures. Only when we are sure of the first point and we have tried unsuccessfully the second strategy, are we allowed to engage in discussion as war, in the sense of eristics.

An Integrated Theory of the Field of Argumentation has to include dialectics, rhetoric and eristics: "Arguments can be among the mildest of polite conversations, and they can be the most violent and lethal of exchanges" (Gilbert 1996, p. 6). To deny conflict and challenge is to deny reason. Reasons arise when we have to defend our position, otherwise followed by inertia.

Bibliography

- Aristóteles. 1982. *Tratado de lógica (Organon). I: Categorías – Tópicos- Sobre las refutaciones sofisticas*. Madrid: Gredos.
- Austin, J. L. 1988. *Cómo hacer cosas con palabras*. Barcelona, Paidós Estudio.
- Bailin, Sharon, R. Case, J. Coombs and L.B. Daniels. 1999. "Conceptualizing critical thinking". *J. Curriculum studies*. 31: 3: 285-302.

- Barth, E.M., & Krabbe, E.C.W. 1983. *From axiom to dialogue*. Berlin: de Gruyter.
- Bedau, Hugo Adam. 1995. *Civil Disobedience in focus*. New York, NY: Routledge.
- Benjamin, Walter. 1999. *Para una crítica de la violencia y otros ensayos –Iluminaciones IV–*. Spain: Taurus.
- Bourdieu, Pierre. 1990. *Sociología y Cultura*. México, Grijalbo, pp. 135-141.
- Crawshay-Williams, R. 1957. *Methods and criteria of reasoning. An inquiry into the structure of controversy*. Londres: Sage.
- Chomsky, Noam. 1992. "The manufacture of consent". In *The Chomsky Reader*. New York: Hill and Wamc.
- Dispaux, Gilbert. 1981. *La logique et le quotidien*. Paris: Editions Minuit.
- Ducrot, Oswald. 1996. *Conférences slovènes –sémantique argumentative–*. Ljubljana: Igor Z. Zagar.
- Ducrot, Oswald. 1988. *Polifonía y argumentación –conferencias del seminario Teoría de la argumentación y análisis del discurso–*. Cali: Universidad del Valle.
- Eemeren, Frans van & Grootendorst, Rob. 1984. *Speech Acts in Argumentative Discussions*. Dordrecht, Holland: Foris.
- Eemeren Frans van & R. Grootendorst. 1996. *La nouvelle dialectique*. Paris: Kimé.
- Eemeren Frans van et al. 1996. *Fundamentals of Argumentation Theory –a handbook of historical backgrounds and contemporary developments–*. Mahwah, Nueva Jersey: Lawrence Erlbaum Associates Publishers.
- Eemeren, Frans van and Peter Houtlosser. Rhetoric in pragma-dialectics, http://www.argumentation.spb.ru/2000_1/papers/I_2000pl.htm.
- Faye, Jean Pierre. 1976. *La crítica del lenguaje y su economía*. Madrid: Alberto Corazón.
- Foucault, Michel. 1980. *El orden del discurso*. Barcelona: Tusquets.
- Foucault, Michel. 1992. *Microfísica del poder*. Madrid: La Piqueta.
- Gilbert, Michael A. 1995a. "Emotional Argumentation, or, Why Do Argumentation Theorists Argue with their Mates?". In F.H. van Eemeren, R. Grootendorst, J.A. Blair, and C.A. Willard, eds. *Analysis and Evaluation: Proceedings of the Third ISSA Conference of Argumentation Vol II*. Amsterdam 1994: Sic Sat.
- Gilbert, Michael A. 1995b. "Arguments and Arguers." *Teaching Philosophy*. 18:2: 125-138.
- Gilbert, Michael. 1996. *How to win an argument –sure fire strategies for getting your point across–*. New York-Chichester-Brisbane-Toronto-Singapore: John Wiley & sons. 2nd ed.
- Gilbert, Michael A. 1997. *Coalescent Argumentation*. Mahwah, New Jersey, Lawrence Erlbaum Associates.
- Grice, Paul. 1989. "Logic and conversation". In *Studies in the way of words*. Cambridge, MA: Harvard University Press.
- Grize, Jean Blaise. 1990. *Logique et langage*. Ophrys.
- Grize, Jean Blaise. 1974. "Argumentation, schématisation et logique naturelle". *Revue Européene des sciences sociales*, 32, XII.
- Grize, Jean Blaise. 1973. "Logique et discours pratique". In *Revue Communications*.
- Grize, Jean Blaise. 1982. *De la logique a l'argumentation*. Geneve: Librairie Oroz.
- Grize, Jean Blaise. 1996. *Logique naturelle et communications*. Paris: PUF.
- Habermas, J. 1989. *Teoría de la acción comunicativa: complementos y estudios previos*. Madrid: Cátedra.
- Hamblin, C.L. 1987. *Fallacies*. Virginia: Vale Press, New Ports.
- Jagger, Alison. 1989. "Love and Knowledge: Emotion in Feminist Epistemology". *Inquiry*. 32:2.

- Johnson, Ralph. 1996. *The rise of informal logic -essays on argumentation, critical thinking, reasoning and politics-*. Virginia: Vale Press, New Port News.
- Kotarbinski, Thadée. 1963. "L'éristique, cas particulier de la théorie de la lutte". *Logique et Analyse*. 6: 19-29.
- Lausberg, H. 1960. *Manual de retórica literaria. Fundamentos de una ciencia de la literatura*. Madrid: Gredos.
- Lorenzen, P. 1969. *Normative logic and ethics*. Hochschultaschenbücher 236. Mannheim: Bibliografisches Institut.
- Meyer, Michel. 1986. *De la problématique –philosophie, science et langage-*. Bruxelles: Pierre Mardaga.
- Meyer, Michel. 1987. *Lógica, lenguaje, argumentación*. Buenos Aires: Hachette.
- Moeschler, J. 1985. *Argumentation et conversation*. Hatier-Crédif.
- Naess, Arne. 1953. *Interpretation and preciseness. A contribution to the theory of communication*. Oslo.
- Perelman Ch. & Olbrechts-Tyteca. 1989. *Tratado de la argumentación*. Madrid: Gredos.
- Perelman, Ch. 1979. *The New Rhetoric and the Humanities*. Dordrecht, Holland: Reidel.
- Perelman, Ch. 1977. *L'empire rhétorique*. Paris: Librairie Philosophique.
- Puccinelli, Orlandi. 1993. *As formas do silêncio*. Campinas, Brazil: State University of Campinas.
- Plantin, Christian: *Essais sur l'argumentation*, Kimé, Paris, 1990.
- Rawls, John. 1999a. *A Theory of Justice*. Cambridge, Massachusetts: Harvard University Press.
- Rawls, John. 1999b. *The law of peoples*. Cambridge, Massachusetts-London, England: Harvard University Press.
- Reygadas, Pedro. 1996. *Voz de la violencia y violencia de la voz -Chiapas 1994-*. *Thesis on Linguistics*. México: Escuela Nacional de Antropología e Historia.
- Reygadas, Pedro. 1994. "Argumentation and seduction of war –Chiapas- 1994". In *Proceedings of the Fourth International Conference of the International Society for the Study of Argumentation*. Amsterdam: Sic Sat.
- Reygadas, Pedro. 1998. *Argumentation: de la guerre à la paix –Chiapas 1994-*. *Thesis Diplôme d'Études Approfondies en Sciences du Langage*. Lyon: Université Lumière.
- Reygadas, Pedro y Julieta Haidar. 1999. "Towards an Integrated Theory of argumentation". In *Argumentation at the Century's Turn*. Ontario: Brock University.
- Schopenhauer, Arthur. 1997. *Dialéctica-erística*. Madrid: Ed. Trotta.
- Searle, John. 1990. *Actos de habla –ensayo de filosofía del lenguaje-*. Madrid: Cátedra.
- Simmons, A. John. 1979. *Moral Principles and Political Obligations*. Princeton, New Jersey: Princeton University Press.
- Solomon, Robert. 1983. *The Passions –the Myth and Nature of Human Emotion-*. Indiana: University of Notre Dame Press.
- Toulmin, S.E. 1958. *The uses of argument*. Cambridge: Cambridge University Press.
- Toulmin, Stephen. 1979. *An introduction to reasoning*. New York: Macmillan Publishing Co.
- Walton, Douglas. 1998. *The New Dialectic –conversational contexts of argument-* Toronto, Buffalo, London: University of Toronto Press.
- Woods J. y D. Walton. 1992. *Critique de l'argumentation -logique des sophismes ordinaires-*. Paris: Kimé.