Book of Abstracts

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Main Conference Theme: **Legal Argumentation and/or Legal Rhetoric?**

KEY NOTE:

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Values, Constitutionalism and the Viability of European Integration

This paper examines the question of impact of common values on the viability of European integration and the role of constitutionalism, as a discourse of imagination and conceptualization, in it. It is a large question that, even before taking it up, requires some clarification and narrowing of our focus. Our theoretical assumptions should therefore be spelled out first.

We proceed from a hypothesis, that any form of social co-operation requires some sort of agreement, either explicit or implicit, on the conditions for starting the co-operation, for conducting the co-operation and about the outcomes this co-operation should ideally result in. These conditions are typically set because those engaged in that or another form of social co-operation find them of value. These are thus value-based conditions, in other words the common values of co-operation. As they are present at three different stages of co-operation, at its input, throughput and output, they should be hereinafter labelled as input, throughput and output values of co-operation. It is our second hypothesis, that the values of co-operation, their type, the degree of their actual presence or absence, influence the viability of co-operation. Under the notion of viability of co-operation we understand the capacity of cooperation to actually get going, its capacity to last and finally to achieve, as much

as possible, the object and purpose for which it was created. If a form of co-operation runs short of

delivering on its anticipated outcomes; if in its daily operation it does not comply with the preset standards and if those who co-operate no longer comply with the conditions that had been set for their co-operation, so that the input, throughput and output values are in decline, undermined or even inexistent, the viability of co-operation decreases too. It is our third hypothesis, that while the viability of co-operation is thus also, but not exclusively, dependent on the existence of common input, throughput and output values, the degree of existence of these values as well as their content and type, i.e. what kind of values this should be, hinges on the intensity of a given form of social co-operation. The more intense a co-operation, the greater the need for common value foundations across all three domains of co-operation: input, throughput and output. And vice versa, of course.

The paper thus builds against the backdrop of these three abstract hypotheses, to focus concretely on the viability of European integration and the impact of common values thereof. The process of European integration is an example of an intense form of social co-operation not just between individuals, but also between the states. Furthermore, the intensity of co-operation inside the process of European integration has increased over the years, which has in turn also required widening and deepening of the shared value foundations. However, as the shared value foundations were about to widen and deepen, profound value fissures, between the North and the South, but in particular between the West and the East, have emerged to a disadvantage of the integration's viability.

The EU today is thus going through a difficult moment at which the deepening of the integration requires increasingly solid common value grounds that have, however, in recent years been weakened instead. The challenge, both theoretical and practical, that the EU is thus facing is therefore how to close the value gap and the requirements of progressing integration. Possible strategies include: strengthening the common values for more integration; rolling the integration back to fit the actual limited scope of common values; or investing into variable geometry so to adapt the depth and breadth of the integration to the existing value variations between the member states, while preserving the Union as a whole. In short, the question which poses itself is: how much and which values ought to be shared at a particular stage of integration? And, related to that, taking into account the existing actual scope of common values, how much integration can the EU actually afford?

Our argument shall, accordingly, proceed as follows. First, we will study the historical trajectory of European integration in order to examine how the deepening and widening of the integration process, in which the very character of the integration has been transformed, has impacted on the degree of required shared value foundations, as well as how the need for shared value foundations affected the dynamics of the integration process. Secondly, having conducted the historical analysis, we are going to concentrate on the present in order to describe and understand the contemporary value fissures in the European Union. This reflection will allow us, in the third step, to turn to the future in order to examine the viability of the three visions of the future of the EU: the status quo vision; the status quo ante vision and the reformist vision in light of the existing or required shared valued foundations. Finally, the paper will conclude by examining the appropriateness and utility of couching the presented theoretical and above all practical dilemma of the relationship between common values and the viability of European integration in a constitutional language. Can constitutionalism, as a discourse of imagination and conceptualization, be used as a vehicle for striking an integration-value balance so to strengthen the viability of European integration?

PANEL 1: Zóon logòn échon. *The anthropological dimension of legal argumentation*

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M. Manzin

The faces of trial

Trials have faces, faces have voices, voices have mouths. Subjectivities (individuals) are not waste that must be eliminated from the trial scene in order to formulate more correctly (i.e. abstractly) the issues on the table. Argumentation is always embodied: people like lawyers, judges, prosecutors, defendants and offended persons, experts etc discuss about facts and norms. They all act linguistically in a concrete space-time, they all want to be persuasive. But under what conditions these speech acts are not simply 'chatting'? Recourse to logical forms or patterns should in turn be justified, and whatever the foundation, the focus should be maintained on why a justification is needed - why a question (and thus a discussion) arises and incarnates in faces and voices and mouths. Participants in the panel believe that (1) rhetoric is the way in which an authoritative part of Western philosophy addressed the issue from the very beginning, and that (2) rhetoric fits specifically with judicial reasoning. They will try to argument this viewpoint from their respective domain of legal-philosophical studies.

F. Puppo

The Anthropological Value of Rhetoric

Nowadays rhetoric is mostly conceived in a negative way, as a technique used to gain persuasion, in addition to argumentation and/or against reason. The aim of my paper is to offer a completely different view on rhetoric, in the wake of the Aristotelian lesson offered, among others, by Martin Heidegger (2009): the basic idea is that rhetoric could have anything other than a pejorative sense (Tindale 2004, 2019; Rocci 2016; Piazza 2017) and that rhetoric, despite his coming from the past, could still play a decisive role for the foundation of a highly valid account of law.
The starting point will be the fact that rhetoric, as law and justice, is always *ad alterum*. From this point of view, rhetoric, as law and justice, is given within a social practice and it is more than a repertoire of means of persuasion or a theory of speaking. In the Aristotelian account, rhetoric is a way of thinking and a way of being. To be more precise, it is the *zoon politikon*'s way of being, i.e. the way of being of man as living in the co-original linguistic *and* political dimension (Heidegger 2009). According to this account, this is the dimension in which legal and political deliberations take place, since «we deliberate about things that are in our power and can be done» (Arist. *Nic. Eth.*, 3, 1112), such as what is good or evil, or just or unjust.
But what does it mean that these things are in our power?
I will show that to answer this question means to understand the difference between two of the main ways to conceive the nature of law (Jager 1947)., i.e. the legal philosophical account by Aristotle, on one side, and sophists and modern jurisprudence, on the other, which are also related to their different accounts about rhetoric. From one hand, we find a conception which is based on the existence of *kosmos*, metaphysical and divine order to which men are related and on which they depend; from another hand, this *kosmos* does not exist or we are not able to know it: and so, man is the measure of everything

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S. Tomasi

Rhetoric in legal education: theoretical and methodological perspectives

Rhetoric constitutes an important dimension of daily life and professional activities. Rhetorical practices in legal education are interesting because they invite legal practitioners to use and come to understand rules of reasoning that are used in trial. Rhetorical practices are, also, powerful resources to deal with cognitive contradiction, doubts, controversies, complex decisions, requiring intellectual and social skills, are often emotional and demanding.
The paper will be organized into two main parts: theoretical foundations in legal argumentation are presented in the first part, drawing attention to the development of argumentation theories in the contemporary epistemological scene and their methodological implications; research results of innovative rhetorical techniques and lesson applied in trial (transcription techniques) constitute the second part.
As a result, the paper would offer perspectives on the issues of legal education in the effort to develop the critical awareness of lawyers and forensic practitioners in general, that each learner is the co-author of a constructive socio-cognitive process in which rhetoric holds important functions.

P. Ciccioli

Sign and Multimodality. An approach to Legal Rhetoric

The aim of my paper is to investigate Peirce's (new) rhetoric in the light of his semiosis. Peirce defines rhetoric as "the highest and most living branch of logic" and after 1907 he increasingly attributed to the field of rhetoric the whole study of pragmatism. This turn in his thought, connected with the rejection of his former conception of logic of new introduction and pragmatism, should be better deepened. I will start from the elementary unit of his philosophy - the sign - and from the branch of logic dealing with the elements of the sign, that is, speculative grammar. As the sign in the Peircean conception may be a picture, a diagram, a pointing finger, a knot in one's handkerchief or wink - in a nutshell whatever communicates an idea - his semiotics grounded on rhetoric seems to be intrinsically multimodal. Such an approach could be applied for signs like legal norms and judicial decisions in different legal systems, given that their dynamic status can be provided, in signification and meaning,

by virtue of rhetoric which "ascertain the laws by which in every scientific intelligence one sign gives birth to another, and especially one thought brings forth another" (ms. 2.227).

S. Corradi

Legal rhetoric and artificial intelligence: what is missing out?

The contribution aims to reflect on the use of artificial intelligence in legal argumentation. The analysis will consider some particular features that seem to be hardly compatible with recent approaches inside the framework of the theories of argumentation, that try to emphasize a specific role of rhetoric - namely, connected to an anthropological background of the subjects involved in a debate. The contribution will be divided in two parts.
The first one will analyse the functioning of "Project Debater", an autonomous debating system developed by IBM, able to argue with human debaters. In this part there will be underlined some similarities with the structure of the civil trial according to the art. 183 of the Italian civil procedure code.
The second part, starting from the debater example, will focus on some changes connected with the so-called "digital revolution". There will be emphasised two different elements: the first one deals with the graphic revolution which involves a revolution in linguistic terms, whereas the second one will focus on the dimension of space which seems to be modified, or better to say, "re-ontologized" by the digital.

L. Zoppellari

From Dialectic to Dialogic: the contribution of Rhetoric

There is no doubt that today, also (or perhaps especially) in the legal context, there seems to be some confusion between the words: "dialectic" and "dialogue". Often, in fact, one hears indiscriminately speaking of "dialectical method in trial" or "dialogue between the parties", of "dialogue between the courts", as if they could speak with each other in an authentic sense, and of "dialectical procedure", as if from the simple argumentative clash between two subjects, the true can emerge. But this is plenty of confusion.
The aim of the contribution is twofold: first of all, I will propose an analytical distinction between "dialectic" and "dialogue"; secondly, I will underline how to pass from dialectic – as a formal attitude – to dialectic – as an authentic dialogue – also deal with a certain conception of rhetoric. In conclusion, the paper would like to highlight how modern misunderstandings on dialectic produced the prejudice, even in the legal field, on rhetoric which, instead, could be recovered starting from a clear distinction between dialectical and dialogical fields.

PANEL 2: Argumentation and Rhetoric

H. M. Kreuzbauer
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Proposal for a Classification of Eristics

By "eristics" we here will understand *any kind of non-cooperative communication*, i.e. the set of all communicative techniques that are applied with the standard intention to assert one's own interests, even at the expense of others (calculus of defection), including everything that is culturally-technologically directly related to it.

Although eristics is constantly discussed by science, it has always lived a rather shadowy life. One aspect of this is the non-existence of any classification of eristic standard techniques – at least to the author's best knowledge, thus the intention of this paper to propose such a classification.

Eristic standard techniques combine standard means and standard goals. The latter mostly mean influencing an opponent's motivation to make him/her act in a desired way, and the most important dimensions of all eristic standard techniques are: (1) complexity (single technique, simple or complex combination), (2) truthfulness (honest or dishonest) and (3) motivational impact (emotion, intuitive or reflexive cognition), and (4) intensity (fierce to subtly) – thus we ignore all other dimensions for the moment.

For the categorization we roughly follow an evolutionary pattern, thus from simple to sophisticated, from mentally easy (thus honest) to difficult (thus dishonest: since this needs much more thinking), from emotion to cognitive reflection and from fierceness to subtlety. When we try to bring this in a line, we end up with the following four categories.

1. Proto-Eristica
2. Eristica simplex
3. Eristica callida
4. Eristica artistica

1. Proto-Eristica

This means the most basic eristics, mostly fierce and with more or less only instant emotional impact. There we find the standard techniques of territio[1] and attraction.

2. Eristica Simplex

The second class includes all uncombined eristical standard techniques with all sorts of impact, thus more than only instant emotion. Here we find the following basic categories:

A. Eristica assertionis

Eristics based on honest information

1. Eristica assertionis neutralis: neutral empirical information
2. Eristica assertionis evaluationis: information of moral evaluation (maledictum, gloriatio, probrum, offensa, laus and adulatio)
3. Eristica assertionis adfecta: information for non-instant emotional effect: (minatio and allectatio)

B. Eristica simulationis

Eristics based on dishonesty including falsitas, deceptio and all kinds of simulatio provecta

[1] We mainly use Latin terms here.

3. Eristica callida
Eristica callida means all simple combinations of eristical techniqies. This includes simple forms of what is often called ‘manipulation’, especially ludibrium, ostentatio, provocatio etc.

4. Eristica artistica
Finally, the last class contains all combinations, that are more than simple ones. This includes the following three subclasses

1. Eristica discursi: the manipulation of discourse
2. Eristica narrativa: complex story telling etc.
3. Eristica argumentativa: all techniques of complex argumentation and persuasion, including fallaciae and what we will call loriciae

L. Leszczyński

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On the Role of Discursive Style of Justification of Judicial Decisions: Context of Reasoning and Argumentation

The aim of this presentation is to analyze the practical aspects of the discursive style of justification of judicial decision in the context of its superiority over the strictly formalistic (monologue) style of presenting the reasons for a decision. Relating the concept of justification style to the way of presenting arguments collected on the grounds of decision-making reasoning, whose function is to convince the addressees of the justification that the content of the issued decision is right and proper, it should be pointed out that the discursive style first of all more clearly reflects and takes into account the actual reasoning undertaken in the decision-making process, giving a chance of proper balance between description and persuasion. This is because such a justification does not merely communicate the content of the decision, but "weighs the ratios". It is rather a kind of "entering into dialogue" with the addressees, indicating to their various types why the decision is the best (although not the only possible) choice from several options. Such arguments refer both to the parties' arguments and draw on doctrinal positions and judicial practice. As a result, the discursive style of reasoning presents the decision as a decision of a particular court (or judge), made under conditions of judicial discretion, and constituting an element not of the legal system, but of the legal order (which is a polycentric phenomenon, broader than the system), and in turn influencing that order. This allows to indicate as an actual basis for the decisional process and decision not only binding legal regulations (following positivistic approach), but also various types of principles of law, extra-legal values and norms, as well as precedent rulings. It also allows for an argumentative reference to the whole process of operative legal interpretation (in its validation, reconstruction, construction and decisional stages) and to all rules used within it (not only linguistic and systemic, but also functional, axiological, collision and inference ones) in accordance with the "*omnia sunt interpretanda*" formula. In effect all of that potentially constitutes (regardless of the specific features of the type of decision-making process, branch of law, type of legal culture or political regime) a kind of transparent *iunctim* between the description of actual reasoning in the decision-making process and the rhetorically influential arguments of the justification of the judicial decision.

I.Padjen

University of Zagreb

The Duty to Obey the Rule of Law

Does the rule of law (hereinafter: RoL) impose on a legal subject the duty to obey the law that is - in addition to being legal, as the duty implied by every legal order - also political and/or, moreover, moral?

The initial assumption is that RoL is a British invention that includes the following tenets: (a) the political power is legitimate if it is limited by its purpose; (b) the purpose is protection of personal and political rights of subjects; (c) the political power is limited primarily by an independent judiciary. It is tempting to read the question as theoretical, i.e. as a call for knowledge for its own sake, in the vein of analytical philosophers of law. The temptation is misleading. It is a truism that an order implies a duty, rather then an obligation (which stems from a contract) let alone a right towards the order. Although a truism, it runs counter the self-understanding of our age. Today it is a commonplace to claim any right – even a human right – at will. Duty calls have faded away. The withering away of a political and/or moral duty towards a political and legal order (briefly: the state) indicates that the question of the presentation is, as any other question about law, primarily practical. It concerns social problems that can be alleviated by law, which can alleviate them only if its addressees can have a strong duty to obey it. An example of the problems is the obedience of adherents of an ethnic community to the state law dominated by adherents of another ethnic community. It is contestable whether it is possible in principle for the former to have a duty of obedience to the state law and, if the answer is in principle positive, to what kind of the state law (any or RofL or a pluralist social democracy incorporating the rule of law or …?), what kind of a duty of obedience (legal and/or political and/or moral) they have and in what degree (without or with exceptions). The problem may seem to be a part and parcel of ethnicist esoteria on the fringes of Europe: the Serbs in Kosovo and Bosnia and Herzegovina, Hungarians in Slovakia and Romania, the Russians in Estonia, and the Catalans in Spain. A closer inspection may reveal that the problem is not dissimilar to issues arising out of politics of identity, or – in the eyes of adversaries – tribalism, that is tearing apart advanced Western states.

The presentation is divided in two major parts. The first outlines presuppositions and components of the question. The second part: (a) sketches the origin and development of RoL, suggesting that the key to understanding RoL, as well as any social order, is the duty toward oneself; (b) distinguishes four typical approaches to RoL, differentiating them by their epistemological presuppositions (legalistic: Hobbes, H.L.A. Hart, moral non-cognitivism; constitutional: Locke, speculative knowledge of natural law and natural rights; procedural or methodical naturalist: Fuller, contextual knowledge of law that includes knowledge of natural law; empirical naturalist: cognitive sciences, esp. psychology); (c) points out foundations, i.e. what makes possible and what justifies RoL; (d) indicates functions of RoL as both a standard of action and a condition of the state.

PANEL 3: Legal Argumentation in Various Contexts

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M. Novak

Mistakes, Fallacies and Legal Errors of Multi-Modal Arguments

Mult(i)modal theory of argumentation has recently also been extended to a relatively formal and institutionally very much entrenched area of law and legal argumentation. Leo Groarke, a prominent theorist of multimodal argumentation, has claimed that that is certainly a necessary thing to do but the problem is to differentiate between those features of multimodality that fall and those that do not fall within the ambit of what is still acceptable in law.
Multi-modal arguments can be analysed within different normative frameworks in order to evaluate their validity: multi-modal theory of argumentation would discuss mistakes, informal logic fallacies, while legal argumentation legal errors. Each of these normative frameworks have developed their own criteria of evaluation. What applies to the legal domain as a special field of argumentation is, however, that legal errors are the only criteria to evaluate the validity of multi-modal arguments.

B. Marinčič

The Right to Be Offended: Should We Toughen Up?
Legal Argumentation Analysis in the Case of Blackhorse v. Pro-Football Inc.

It is arguable that the use of the term »Redskins« is controversial, and thus should be supported by substantial evidence until proven as such. This paper explores the controversies associated with the Washington Football Team, formerly known as the Washington Redskins. It further analyzes the legal arguments and examines the logical strengths behind the conclusions outlined in this research paper. To achieve the aforementioned objectives, scholarly articles were revised alongside an analysis of the Blackhorse V. Pro-Football Inc. case. It is hypothesized that the judge in this case Gerald Bruce Lee's argumentation was flawed in the verdict of the infringement of the First Amendment right to free speech put forward by Pro Football Inc. in correlation with the Section 2(a) of the Lanham Act. The aforementioned conclusion was deduced on the basis of his argumentation being irrational and unsuppported by evidence. Whereby insufficient differentiation of the term "disparage" (among others) was inappropriately utilized in various contexts it causes legal ramifications as well. It is of questionable grounds to presume that the use of the word »Redskins« may be deemed offensive no matter the context. Notably, societal alterations, norms, and time periods contribute to the offensive and misconstrued nature of various terminology. Hence, good legal argumentation is dependent on the consideration of all circumstances and societal state of condition.

P. F. Zorko

The Importance of Argumentative Dialog as a Means for Mediating in Social Interactions

Human social interactions often encounter obstacles that can escalate into conflict and can therefore significantly affect interpersonal relationships. People who are able to reasonably overcome these barriers can enjoy all the diversity that such relationships bring. As a result, their relationships grow and strengthen. An important tool to help address such barriers is argumentative dialogue. Argumentative dialogue is a discussion that focuses on the diversity of opinions between individuals. These opinions, which can be imagined as different positions, are often not solid points, opposing poles, but beliefs that allow a lot of "grayness". Thus, different opinions allow the search for common solutions through common points of contact. Misunderstandings are most often about the parties

having different views of a particular matter and therefore looking at it from different angles. However, because opinions are a product of the human brain, they are often based on people's emotions. Therefore, different parties often find it difficult to resolve such disagreements on their own. Emotions are what guide people through their social interactions. Thus, it is important that a third neutral party participates in resolving disagreements, a person who is able to neutralize the emotionally charged atmosphere and to create space for finding common solutions. This person, whom we call a mediator, does not propose solutions, but merely creates opportunities for their joint search. In the end, it is the parties in a conflict who come up with a reasonable solution for them. The mediator, as the architect or designer of the argumentative discussion, is the one who leads them to this solution. Thus, argumentative dialogue becomes an important means of consolidating relations and, consequently, social progress.