

CHAPTER 4

HANNS HOHMANN

RHETORIC AND DIALECTIC

Some Historical and Legal Perspectives

1. RHETORIC AND DIALECTIC: INTRODUCTION

The trouble started when the names were assigned. In the first chapter of his *Rhetoric*, Aristotle put the matter succinctly: while the term “dialectician” refers generally to a person possessing argumentative capabilities, there is a special term “sophist” for someone who uses these capabilities to mislead by means of specious arguments; by contrast, the term “rhetor” marks both the general category of people with an aptitude for persuasive speaking as well as those among them who misuse this aptitude to deceive their audiences (Aristotle, *Rhetoric* 1.1.14 [1355b]).

Ever since this initial terminological bifurcation, or perhaps even preceding and helping to explain it, there has been a tendency to emphasize somewhat one-sidedly the negative potentials of rhetoric and the positive aspects of dialectic. The upshot of this is to conceive of dialectic as a rather pure and theoretically sound method aimed at a cooperative search for cognitive truth, and of rhetoric as a seriously tainted and practically compromised knack serving a competitive quest for persuasive success.

And even when it is conceded that rhetoric at least *can be* theoretically sound and used for good, it is often assigned an auxiliary role as a kind of handmaiden of dialectic. The model for this intellectual class structure read into the field of argumentation is outlined in Plato’s *Phaedrus*: dialectic, understood as a somewhat esoteric process of real definition proceeding by collection and division, uncovers the truth, which is then exoterically imparted by means of a rhetoric which “gives the soul the desired belief and virtue” (Plato, *Phaedrus* 265 D ff., 270 B).

I think that some traces of these tendencies can also be found in recent work by Frans van Eemeren and Peter Houtlosser, work in which they enlarge the scope of their pragma-dialectical analysis to encompass rhetorical dimensions of the argumentative process. In a paper (van Eemeren & Houtlosser, 1999a) presented at the 1998 ISSA Conference in Amsterdam, these authors do resist the temptation to construct a neat dichotomy between rhetoric and dialectic, as we find it posited for instance by Trudy Govier, who describes rhetoric as an approach to argumentation in which we “argue to win our case,” while in dialectic we “argue in search of the truth” (Govier, 1997: 73); or even by Chaïm Perelman and Lucie Olbrechts-Tyteca, who contrast, though with some caveats, a concept of discussion, “considered as a sincere quest for the truth,” with a concept of debate, whose “protagonists [...] are

chiefly concerned with the triumph of their own viewpoint" (Perelman & Olbrechts-Tyteca, 1969, 38).

By contrast, van Eemeren and Houtlosser reject "the sharp and infertile ideological division between rhetoric and dialectic," and strongly insist on both the theoretical connection between the two fields, and on the way in which they are linked in actual argumentative discourse (van Eemeren & Houtlosser, 1999a, 165, 164 ff.). But they still associate dialectic, as a method of critical discussion, with the objective of resolving differences of opinion, in search of a standpoint that is defensible against doubt or criticism; and they link rhetoric, as a method of strategic manoeuvring, with the objective of having one's own position accepted, aiming at successful persuasion (van Eemeren & Houtlosser, 1999a, 163 ff.). Moreover, they also propose to subtly subordinate rhetoric to dialectic in their model, positing that "we view rhetorical moves as operating within a dialectical framework" (van Eemeren & Houtlosser, 1999a, 164, 165 [n.79]).

In this contribution, I would like to examine these characterizations of the relationship between rhetoric and dialectic in connection with a necessarily very cursory survey of some historical moments in the evolving interactions between these two perspectives on argumentation, paying particular attention to the way these interactions have played themselves out in the analysis of legal argumentation.¹ This survey will offer strong support for van Eemeren and Houtlosser's insistence on the theoretical and practical links between the two disciplines, but I think this look back will also suggest that we should perhaps see the modalities of these links in a somewhat different light.

2. ARISTOTLE'S CHARACTERIZATION OF THE RELATIONSHIP

The first way station in my survey will offer a brief look at some of Aristotle's characterizations of the relationships between rhetoric and dialectic. To begin with, I would like to point out that in contrast to the idealization of dialectic as a tool for philosophical truth-seeking that we find in Plato's sketchy program for such a method, the more fully worked-out dialectic that we encounter in Aristotle's *Topica* is a much more ambivalent pursuit. In fact that work does not only lay down elaborate ground rules for the dialectical question-and-answer game, but is also very much a handbook proposing to teach a method for winning such disputes. This aim is particularly apparent in Book VIII, where Aristotle gives much advice on how to conceal one's argumentative goals in order to extract from one's opponent assent to premises and concessions needed to ground one's successful argument. He does indeed also criticize as "not a seemly proceeding" a certain "debased kind of discussion," but the starting point for this warning is the observation that "with a man who tries every means to seem to avoid defeat you are justified in using every means to obtain your conclusion" (Aristotle, *Topica* 8.14 [164b]).

Concomitantly, Aristotle does indeed throughout his *Rhetoric* offer much guidance on how to win one's case in a court of law or how to persuade one's audience in a civic deliberative assembly or ceremonial gathering. But he emphasizes that the

¹ For a broad overview of the historical development of legal rhetoric see Hohmann (1998b).

“function [of rhetoric as a discipline] is not to persuade but to see the available means of persuasion in each case, as is also the case in all the other arts” (Aristotle, *Rhetoric* 1.1.14 [1355b]). And furthermore he warns his own audience against an exclusive focus on winning: he emphasizes that “one should be able to argue persuasively on either side of a question, just as in the use of the syllogism [i.e., as in dialectic], not that we may actually do both, (for one should not persuade what is debased) but in order that it may not escape our notice what the real state of the case is and that we ourselves may be able to refute if another person uses speech unjustly” (Aristotle, *Rhetoric* 1.1.12 [1355a]).

Aristotle’s characterization of rhetoric as an *antistrophos* to dialectic is notoriously difficult to interpret (Green, 1990, 5ff.). But on the whole, he appears to envision a coordinate relationship here, emphasizing the parallels between the two fields: “dialectic and rhetoric [...] are equally concerned with opposites” (Aristotle, *Rhetoric* 1.1.12 [1355a]); “both are concerned with such things as are, to a certain extent, within the knowledge of all people and belong to no separately defined science. A result is that all people, in some way, share in both; for all, to some extent, try both to test and to maintain an argument and to defend themselves and attack” (Aristotle, *Rhetoric* 1.1.1 [1354a]). In his translation of the *Rhetoric*, George Kennedy parenthetically links the phrase “to test and maintain an argument” with dialectic, and the phrase “to defend themselves and attack” with rhetoric (Kennedy, 1991, 29); but I think that such unequivocal references cannot be maintained, since in the *Topica*, dialectic is likewise associated with attack and defense, and Aristotle’s moral strictures about the use of rhetoric also show a concern for testing arguments in the interest of ascertaining “what the real state of the case is.”

An argument could be made on the basis of Aristotle’s observation that rhetorical demonstration (*apodeixis*) proceeds by means of the enthymeme, that “the enthymeme is a kind of syllogism,” and that furthermore “it is the function of dialectic, either as a whole or one of its parts, to see about every syllogism equally” (Aristotle, *Rhetoric* 1.1.11 [1355a]), that he sees rhetoric, at least insofar as it deals with enthymematic arguments, as a part of, and thus as theoretically subordinated to dialectic, which deals with all syllogisms, including the rhetorical syllogism of the enthymeme. But then again in the *Topica*, dialectic is identified as relying on premises that are “accepted opinions” (*endoxa*), which are further defined as “those that commend themselves to all or the majority of the wise — that is, to all of the wise or to the majority or to the most famous and distinguished of them” (Aristotle, *Topica* 1.1 [100b]).² And this characterization of the basis of dialectical arguments lends itself in turn to the contention that in this respect dialectic is a special case of, and insofar conceptually subordinated to rhetoric, since rhetoric deals generally with arguments based on premises acceptable to whatever audience is at hand, while dialectic relies particularly on premises acceptable to a special limited kind of audience.

² E.S. Forster translates *endoxa* as “generally accepted opinions,” but I think that in view of Aristotle’s subsequent definition of the term, this translation is potentially misleading, since the point of the definition is to insist on the special qualifications of a necessarily limited rather than general audience.

3. CICERO: DIALECTIC AS A TOOL FOR RHETORICIANS

Not surprisingly, Cicero as the most famous rhetor of antiquity tends to treat dialectic in both his philosophical and rhetorical writings as a tool for the rhetorician; as a tool that is certainly important, but whose importance is nevertheless limited. For one thing, in his *Topica* he identifies dialectic (*dialektike*) as being exclusively concerned with the judgment of the validity of arguments, treating topics (*topike*), the art of inventing arguments that in his view "is both more useful and certainly prior in the order of nature," as a coordinated second branch of the systematic study of argumentation, rather than as a part of dialectic as well as of rhetoric (Cicero, *Topica* 6). By contrast, the latter approach, treating topics as part of dialectic as well as of rhetoric, had been Aristotle's, who provided partially overlapping catalogues of dialectical and rhetorical topics in the *Topica* and in the *Rhetoric* respectively (Aristotle, *Topica* 2-7 [108b ff.]; and Aristotle, *Rhetoric* 2.23 [1397a ff.]). That Cicero's instrumental view of dialectic was not a mere personal idiosyncrasy is shown by the fact that in Roman education dialectic was treated as a propaedeutic subject, following the basic study of grammar in the trivium, but followed by the more advanced pursuit of rhetorical training. This instrumental view does, however, not entirely preclude considerable respect for dialectic, which is expressed in Cicero's observation in his *De finibus*, a slightly earlier work than the *Topica*, that dialectic "encompasses at once the entire science of discerning the essence of a thing, and of judging the qualities of a thing, by means of rational argument and disputation" (*dialecticam [...] quae una continet omnem et perspicendi quid in quaque re sit scientiam et iudicandi quale quidque sit et ratione ac via disputandi*) (Cicero, *De finibus* 2.18).³ The same passage also includes a reference to the differentiation between rhetoric and dialectic proposed by Zeno the Stoic, much quoted throughout succeeding centuries as well, "that rhetoric was like the palm of the hand, dialectic like the closed fist; because rhetoricians employ an expansive style, and dialecticians one that is more compressed." However, it should be noted that Cicero does not endorse Zeno's view that continuous discourse in a more expansive vein is not appropriate for philosophers, but rather proposes to employ for philosophical inquiry a rhetoric more subtle than that used in the law-courts (Cicero, *De finibus* 2.17). And furthermore it should not be overlooked that a compressed dialectical style may well be deployed rhetorically to persuade certain audiences by its authoritative logical impressiveness.

Cicero used a somewhat dialectical approach to the systematic analysis of legal argumentation in his *Topica*, aiming at ordering patterns of juristic reasoning according to a more concise and general set of formal categories, rather than the more substantively oriented topics found in the framework of the rhetorical *status* system. On the whole, however, the orientation of this book is rhetorical, a fact later emphasized by Boethius, who pointed out that Cicero was not interested in the logical properties of the dialectical topics (such as genus and species, similarity and dissimilarity), but in the application of these topics in the search for arguments to be used in discussing legal problems and individual cases (Stump, 1978, 95).

³ My translation.

4. BOETHIUS: THE PRIMACY OF DIALECTIC

This observation points to Boethius' own proposal for differentiating dialectic and rhetoric in his work *De differentiis topicis*. In Book IV he distinguishes the two fields according to their different matter (*materia*), use (*usus*), and end (*finis*). He contends that the matter of dialectic are theses, i.e. general questions not involving particular circumstances, while rhetoric deals with hypotheses, i.e. questions that do involve such individualizing circumstances, and that call for discussions of general issues only incidentally to the resolution of particular problem cases. The distinction according to use focuses on the different types of discourse prevalent in the two disciplines: question and answer in dialectic and continuous discourse in rhetoric. And he sees the different ends in dialectic's wresting from an adversary what it wants, and in rhetoric's persuading a judge other than the adversary (Stump, 1978, 79f.).

It may be observed that this definition of dialectic would limit its matter to philosophical issues and would deny the label "dialectical" to the myriad practically-oriented disputes that are a major focus of pragma-dialectical analysis. It would also exclude, according to the criterion of use, from the realm of dialectic a text such as William the Silent's *Apologia*, a long unbroken discourse with which van Eemeren and Houtlosser illustrated the incorporation of rhetorical considerations into the pragma-dialectical framework (van Eemeren & Houtlosser, 1999b). And the criterion of end as formulated by Boethius ascribes competitive rather than cooperative purposes to both rhetoric and dialectic, since victory over the opponent is seen as the aim in both fields.

Boethius does reverse Cicero's preferential hierarchy very decisively, and unequivocally claims theoretical primacy for dialectic over rhetoric. But as I have pointed out elsewhere, his argument for this contention is highly problematic. He claims this primacy by pointing out that "the rhetorician always proceeds from dialectical topics, but the dialectician can be content with his own topics" (Stump, 1978, 79f.). In other words, the rhetorical topics are merely particular applications of the more general patterns represented by the dialectical topics, and thus conceptually subordinated to the latter. But when Boethius claims further that the rhetorical topics derive their persuasiveness from the dialectical ones, I think he clearly overstates his case. The persuasiveness, if any, of the use of a general topic such as "where the genus is absent, the species must also be absent" in order to refute the charge that someone was drunk by arguing that he had never before been dissipated, would come not from the logical relationship between genus and species expressed in the dialectical topical maxim, but from the empirical belief, presumably based on inductive observation, that drunkenness only occurs if there have been prior instances of other forms of dissipation. Such appeals to common experience and probabilities, however, are the stock-in-trade of the rhetorician rather than the dialectician (Hohmann, 1998a, 45ff.).

Dialectic and Rhetoric

The Warp and Woof of Argumentation Analysis

van Eemeren, F.H.; Houtlosser, P. (Eds.)

2002, VI, 167 p., Hardcover

ISBN: 978-1-4020-0703-3