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ENVIRONMENT AND SOCIETY

Aulis Aarnio

In the Footsteps of the New Rhetoric

Stephen Toulmin, a distinguished contributor to the theory of argumentation, has written the following lines on the possibility of understanding another person:

> If we accept the formal pattern of mathematical and scientific theory as the only acceptable varieties of ”rational demonstration”, therefore, we shall be driven to the paradoxical conclusion that the best of us do not really ”know” what other people’s states of mind really are, even in the most favorable situations.

Toulmin proceeds to note that ”scientific” methods, that is, the mathematical-positivist model of science, are of no help to us as we try to ”read” a person’s unconnected sentences, gestures, expressions or other kinds of behavior to provide us some clues about what he means. What is it that makes this process impossible? Toulmin has an answer ready at hand. It is closely related to the proposition made at nearly the same time in the 1970’s by *Georg Henrik von Wright* concerning the understanding of human behavior. Toulmin pinpoints the difficulty on ”*the ambiguity of all individual signs and features when taken separately*”.

But what, in the end, is ”understanding”? What kind of research does it demand? What kind of truth does it produce? All these questions are unleashed at the moment one adopts the thoughts of Toulmin, von Wright or – especially when it comes to law – *Chaim Perelman*. Since my theory rests largely on the influence of Perelman, his ideas demand closer attention, especially as they point out the ways and manners in which the legal positivism represented by *Alf Ross* leaks.

Thinking back to their school history books, many are likely to remember the story about an Athenian called Demosthenes who suffered from weak rhetorical skills. He decided to overcome his faults and went to the

sea-shore. As the waves rumbled he put stones in his mouth and began practicing. Demosthenes' perseverance was rewarded and he became one of the great orators of his time. The story skillfully describes not only tenacity and sense of direction but also one specific cultural feature characteristic to ancient Greece. This feature is the important role of speech and oratorical skills. It follows from this that speech was more important than writing in managing public affairs. It's no wonder that rhetoric was one of the great virtues for the Greek.

The skill of speaking, rhetoric (*rhetoriké* in Greek) has been defined as eloquence or influential speech. To be more specific, rhetoric in this sense is a group of rules and principles through the use of which a speech can be made aesthetically pleasing and influential, efficient. For the people in ancient times rhetoric was more than anything a practical affair. The Greek though of it as technique (*tekhne*), while the Romans described it as an "art" (*ars*).

The most significant developer of rhetoric was, without a doubt, *Aristotle* (384–322 BCE). He set apart three types of rhetoric: the political speech (*deliberative*), the judicial speech (*forensic*) and a type of speech concerned with ceremonial events, in which the orator's objective is to prove his skills and abilities as a speaker (*epideictic*). In the first two cases the core is in developing a solution to a problem and making the public believe it by directing their opinion with rhetorical means. In ceremonial affairs rhetoric is used to make people admire the skills of the speaker. For example, when discussing a judicial speech, Aristotle advised the use of certain specific means in order to guarantee the outcome. The point of departure is in taking account of every essential aspect of the topic. In modern times, we might say that the speaker has to know how to recognize the problem, to concentrate on the essential. Aristotle developed specific techniques for these occasions. He thought that the speaker has to master certain manners of treatment in order to have something to say about different matters. Those manners are processes of thought that always take off from some place, figuratively speaking. These places, or points of reference, were called *topoi* (plural of *topos*).

What follows can be taken as examples of topoi. Sometimes it is useful to set off from juxtaposition, such as large/small or expensive/cheap. One application could be the reasoning often used by lawyers: if a greater wrong is allowed, the lesser wrong must be allowed as well. The relation of cause and effect can also be a topos, as can the conceptual pair of common/specif-

ic. They are places from which the speaker can begin his argumentation. For example, he can take specific case as his point of reference and then proceed to the common. In addition to topoi, perhaps the most crucial aspects of Aristotle's rhetoric are the proofs, since they are the means by which one can give rise to acceptance among the public. Examples of proofs are generalization (induction) and logical verification (deduction). Nevertheless, Aristotle also thought that a speech and a good orator always have to make the audience emotionally convinced as well.

A good speech has to be outlined clearly (*dispositio*), in addition to which its language has to be put into a beautiful form that is easy on the ears. This is the *elocutio*-part of the speech, the finishing touch. Since speeches were not written down in ancient times, one also needed various techniques of memorization. Only with their help could the orator concentrate all his skills on speaking and on winning over the public.

Rhetoric didn't have such a good reputation in antiquity. In his dialogue *Gorgias*, Plato paints a devastating picture of the titular person, the greatest sophist speaker, even though it has been said that it was Gorgias who realized that speech can even be used to produce fraud and make people believe a lie. This was the reason *Socrates* thought that the sophists' rhetoric was only flattery and impersonation, being nowhere close to influencing and persuasion. These masters of rhetoric lacked what is most important: the knowledge of the good, the truthful and the right. At their worst, the sophists taught that an opinion could be defended at any cost necessary. To emphasize: a good speaker had to know how to turn black into white.

As the significance of the speech as an influence on public opinion waned more generally in the Roman age – speech was partly replaced by written text – rhetoric began to acquire more and more negative connotations. Later on, it disappeared from the public scene and moved into (monastery) schools, where, as in universities, it was for a long time regarded as one of the seven liberal arts. The radical change brought on in the 13th century through the development of cities transferred the church into the center of the village, so to speak. The cathedral replaced the monasteries, giving birth to the sermon tradition as a counterbalance to seclusion and keeping rhetoric alive through the early Middle Ages. Still, rhetoric would have to step aside little by little and give room to more important issues. It has been said that rhetoric became art for art's sake and finally its destiny was complete disappearance from the group of important subjects taught in schools. Thus, rhetoric was covered by the merciful pastel dust of history.

The return of rhetoric into the legal context actually occurred only after the Second World War. Perhaps it is appropriate to associate this turn with the name of the German *Theodor Viehweg*, whose book ”Topik und Jurisprudenz” from 1954 has been reprinted four times and been translated to languages that include Italian, Spanish, Serbo-Croatian, Japanese and English (1993). This presentation doesn't offer space to develop Viehweg's central idea any further, so I will make do with the following remark.

Legal thinking isn't logical from top to bottom. When solving a legal problem a lawyer doesn't act according to the classic syllogistic model. Even though being logical is obviously a lawyer's virtue as well, law is ”something more”, something other than deductive reasoning. Legal discretion is problem-directed and ”topical”, developing its arguments from a certain point. This is the very thing that provides the connection with rhetoric. Nevertheless, even as Viehweg connects his thoughts to the ancient tradition of rhetoric while providing a detailed description of its development and characteristics, he still makes a decisive break with Antiquity. For Viehweg, rhetoric is no longer the art of speaking or persuasion: it is action, where argumentation holds a crucial position. To put the point differently, for Viehweg, rhetoric is a form of thinking, not a form of speaking. In this specific way, Viehweg can be held as a significant thinker in the development the influence of which reaches all the way to present-day Finland. To quote *Chaim Perelman*, I call this development the new rhetoric.

Perelman was a full-blooded philosopher and a philosophy professor, but he was a lawyer by education. This becomes clear in his unceasing interest in legal thinking. Therefore, there is much reason for calling his thinking not just moral-philosophical, but legal-theoretical as well. For Perelman, the basic question was: can the goodness or inferiority of value-goals be judged, and if this is possible, then what is the theoretical nature and structure of this judgment? He himself claims that this problem was of utmost importance to him after his dissertation on *Gottlob Frege*'s logic had been finished.

Perelman set out from the thought that logic can in no better way than empirical research answer the problem of the goodness/inferiority of value-goals. Logical reasoning is always valid but it is also tautological and in this sense empty. Two plus two equals four: no more, no less. One can't draw on actual reality to provide an answer for what is good or bad, beautiful or ugly, right or wrong, just as one cannot find out what should be done

or what is allowed or forbidden. If we are at an exhibition, looking at a painting that we perceive as beautiful, our stance cannot be explained by referring to certain empirical facts except if we have attached the description of beauty to a definition. Only then can we state with empirical means: this painting fills the criteria of the definition. It is beautiful. In any other sense, the beauty-test won't work empirically.

In this case Perelman whole-heartedly agreed with the thoughts of *David Hume*. The so-called Hume's guillotine cuts the actual world and values apart from each other. The way things are can in no way be used to draw thoughts on how things ought to be. The sun rises every morning, but it doesn't follow from this that the sun should – in a normative way – rise in the morning. It either is or is not in the sky, fully detached from the wants and hopes of men. To follow on this remark it should be said that one day the sun won't be in the sky, even if the "world spirit" ordered it. On the other hand, there probably won't be humans around to worry about the sun dying out when it happens.

When applied with law, Perelman's conception means that legal discretion is neither (purely) logical reasoning (deduction; demonstration) nor reasoning from generalizations to individual instances (induction). The thought of lawyers is on a "*third way*" between these points. This is what Perelman called argumentation. He saw that the manner in which an interpretation is justified and well-argued is not a composite of logical derivation, the rules of which have been given in advance but is put together from more or less efficient argumentation.

For Perelman, the success of the speaker or writer in his speech or written text wasn't essential or even important. What was important was the weight of the presented arguments. Here Perelman stands apart from some of the other classics of rhetoric, like *Kenneth Burke*, who wasn't interested in the "goodness" of argumentation, for he was more drawn to the hidden "rhetoricity" of our presentations, especially regarding the force and cunning inherent in rhetoric expressions. Once he has set his sights on the preconditions for "good" argumentation, Perelman takes an important step. He focuses his theory especially on how *mutual understanding* between people can be reached on such difficult matters as values, morality or law. Perelman's answer is typically derived from the teachings of the new rhetoric: Mutual understanding can only be reached through argumentation, which includes arguments, counter-arguments, additional questions and the explanation of all these areas.

This is the very idea that links the new rhetoric and the modern theory of argumentation. For example, juridical interpretation stands tall or falls in relation to its justification. Perelman saw the same in the area of morality. In this case, what is important is not the opinion on morality per se, for example, whether committing a certain act is morally justified, but the argumentation behind the moral standpoint.

Perelman calls this third way that comes naturally to reasoning in morality and law *dialectic*. What is sought in this context is the acceptance of claims that might be controversial through the presentation of arguments that can be more or less forceful but never purely formal. Argumentation is explanation for and against something, *pro & contra*.

It has been said that this is Perelman's greatest achievement as a philosopher. He disproved the idea of rhetoric as nothing but an eloquent tool for persuasion and returned it to its roots, to a question on the ways of convincing the receiver of the expression. The goal of argumentation is not persuasion, manipulation or mental intimidation. It should aim for *credibility*; for the receiver to commit to the result through the power of the arguments, not because the person giving the arguments is in a position of authority or backed by potential force. Both the process of argumentation and the end result have to be legitimate.

Perelman is correct to point out that it was Aristotle who originally chose to separate rhetoric and dialectic, even as he thought that the two were related, more or less adjacent pairs. In Perelman's own words: Dialectic deals with arguments used in disputes and bilateral conversations, while rhetoric focuses on the techniques of the public speaker as he speaks to a crowd of laymen gathered together in a public space, not equipped to follow more complicated reasoning.

Another turning point of rhetoric that should be held as Perelman's achievement is in his way of focusing on arguments presented to experts, not laymen. Dialectic is the speech of one expert to another. That is why it is well-suited for lawyers among others or perhaps them especially. While solving a legal problem, a lawyer isn't persuading others to assume his viewpoint, for he is trying to *convince* them – at least this should be his goal. The work of convincing others is achieved rationally, with respect to certain principles of reasonable conversation and by presenting contentual arguments. Among lawyers, arguments have commonly been called sources of law.

To simplify the point, legal discretion is like a game of chess where the principles of rational discretion are the rules and sources of law the piec-

es which the lawyer moves in the ways pointed out by the principles. Each move is either for or against the statement. The sum of the movements produces the whole, which we call the legal explanation of the solution.

Perelman saw that the presentation of arguments is always a *dialogue*. No one speaks or writes to himself. This point provides an interesting connection with the question of the impossibility of a private language, pondered by Ludwig Wittgenstein: Argumentation is always a social matter and a part of human communication. Therefore it always has to take place through some shared language. Law is not only a societal matter, for it is also communal and social, and through this fact it is unavoidably one form of both sociality and social interaction – communication, when it comes to language. It is naturally also a form of power, for coercion as an element of the use of power is inherent in law as law would at best be morality without this connection. For this reason the Perelmanian and Aristotelian rhetoric (dialectic) is closely linked with the theory of communication. Taking all this into account, it is no wonder that rhetoric after Perelman has turned largely into a theory of communicative rationality in the hands of *Jürgen Habermas* and *Robert Alexy*.

Conceptually, the Perelmanian dialogue includes two sides: Side A is the presenter of an argument, for example a conception on the interpretation of statute T, and side B the receiver, that can be an individual, a group or a community, even a universal community covering all peoples. Perelman called the receiver an audience. The idea of the conversational process is easy to grasp by focusing only on dialogue between two persons. A is the interpreter, B the receiver, i.e. audience. In this case, the core of legal discretion is squeezed into the question: What means are necessary to convince B of the validity of A's interpretation? The question splices the old rhetoric away from the new and makes a conceptual difference between speech-skills and argumentation. As speech-skills, rhetoric persuades and coaxes; it might flatter, manipulate or even invade the most sensitive areas of human privacy by shaping emotions. The new rhetoric stays far away from these matters. It deals with convincing the other party (audience) through the strength of the argumentation. When the argumentation is weighty enough, the receiver either accepts the presented idea as it is, bringing forth a (genuine) consensus on the matter, or is ready to make a fair compromise. The result is accepted because of the strength of the arguments, not because of the person presenting them.

This provides a new viewpoint also on the way Perelman separates demonstration (logical reasoning) and argumentation from each other. In demonstration, one follows certain rules of reasoning to arrive at formally *true* statements. Argumentation, on the other hand, consists of movement in a world of substantial ”truths”, thus giving rise to the problem of whether conceptions concerning values, morality or law can be ”true” or only more or less thoroughly explained. This question is important because legal interpretative arguments cannot be justified with reference to the empirical reality. A statement on the content of law has no ”correspondence” with external reality. There is no use with the concept of truth in legal science understood as an interpretative science.

Ilkka Niiniluoto (1980) is right to point out that the concept of truth should be defined specifically in a ”Tarskian” sense, that is, with the use of correspondence. This is why talk of ”legal truths” doesn't carry any weight. Rhetoric argumentation belongs to another matter, which I have called ”certainty” in my previous writings. In this way, Perelman's terminology differs from the one taken in this work.

In this context, Perelman himself speaks of the *probability* produced by argumentation, just like Alf Ross. Still, this expression isn't very accurate in describing the setting in the study of law. At its core, probability is a quantitative concept. When associated with legal comments, probability has more to do with *legitimacy* than mathematic-statistical probability. From beginning to end, argumentation is about what is acceptable at a specific occasion. Argumentation strives to ”bring together” the presenter and the receiver in a way that results in not only one person understanding the other's claim but also in an adequate mutual understanding.

What proved to be troublesome for Perelman was that each opinion given to an actual group turns into persuasion in practice. The presenter of the argument can't (at least this is often the case) separate rational and non-rational arguments, and this also stands for the receiver. Dialogue often includes prejudices, unfounded beliefs, impressions, emotions and will. Argumentation is distorted into rhetoric in its eloquent sense. Even though all speech and writing is directed at someone (an audience) it cannot, as a theoretical concept, be an actual community, i.e. a school class. The teachers and students can all too easily fall into the traps of persuasion and manipulation. The community that is the focus of the expressions has to be undefined in order to function as a party in a dialogue aimed at convincing the other.

For this purpose, Perelman adopted the concept of a *universal audience*. In the development of his theory, the concept is important but also easily misleading. The universal audience does draw attention away from persuasion and manipulation toward convincement and credibility, but the concept ”universal” is in itself problematic. If the universal audience includes all the individuals of the world at a given moment, it is not universal, to be specific. It is a composite of members of a given state at a given time, even if the amount of members reaches into the billions. A universal audience like this doesn't differ from a school class in any important way. On the contrary, it is an empirical certainty that it includes the collision of many interests deeply linked to culture. It is impossible to think that one could ”let arguments speak” in this empirically locked audience. Thus, the only alternative is a new definition of the universal audience, in order to salvage Perelman's central ideas.

If the concept ”universal” is used in a way similar to the ”universals” of logic, it is an abstraction that covers all possible words, so to speak. It includes all the receivers one can think of. A rational, mutual understanding in this universal audience would mean an objective truth, valid in all surroundings. If a dialogue focuses on morality, our definition of the universal audience leads to the observation that an objective result is reached even in moral questions. We can talk of a moral *truth*. Actually, Perelman refers to this principled possibility in his presentation of moral argumentation.

Still, the definition of the universal audience is problematic even when formulated in this way. In order to reach consensus through means apart from manipulation, we must assume that the members of the universal audience are wholly rational entities. It is only by this assumption that it becomes possible to think of the universal audience reaching unanimity or truth in moral or legal questions. For this reason, my understanding has all the while been that the concept of the universal audience is in need of fundamental repair. In doing this, I have adopted the concept of a partial universal audience. This terminological monstrosity surely needs some further clarification.

An audience that is partial as well as universal covers all the individuals who accept the terms of rational argumentation and commit to them. Therefore, it doesn't include – in the light of experience – every person in the world. Actually it isn't even essential to ponder who belongs to it, or who could belong to it in the actual world. The members of the partial universal audience are ”ideal creatures” and *the audience in itself is ideal*. It is as-

sumed that the members have internalized the ideal of rational conversation and committed themselves to it. This assumption is weaker than the one behind Perelman's universal audience. A partial audience has room for differences of opinion. It is possible that two members of the audience, sharing the same terms of rationality, commit to different moral presumptions, perhaps because of different (basic) interests. Rationality won't guarantee unanimity, or even a consensus, on moral with any logical certainty. All rationally deliberative people won't necessarily end up in the same result in difficult situations. Therefore, even an audience of rational individuals can split into two or more factions.

This is the core of the moderate value-relativism that I have defended on many occasions, partly in co-operation with my late colleague *Aleksander Peczenik*. Moderate value-relativism isn't any kind of "overtolerance" that allows everything and values each opinion as much as any other. It presupposes that value-comments and moral judgements are argued in a way that convinces a party that accepts rational arguments. Moderate value-relativism is an effort dominated by rationality, focused on getting past the apparent differences of opinion that separate people. In this way of thought, a rational discourse provides a way of achieving a fair compromise. After all, one of the characteristics of the concept of rationality is the ability to arrive at a compromise. In sensible consideration, this is a lesser evil than an unsolved conflict.

Thus, Perelman's rhetoric (or the general theory of argumentation developed afterwards) isn't left in a powerless state of gasping at the cruelty of men or our lesser unethical qualities. Nor does it reach for more than what man is capable of. The point is in the attempt to overcome randomness and to create a *model* for the way in which rational argumentation can function in the world of values, morality, and law without bringing forth results that can be deemed objectively "true". This might be called poor and meaningless idealism but in the end it is the kind of idealism that is needed on the level of theory.

An interesting contemporary perspective on the matter can be found with *Hilary Putnam* as he considers the difference between values and facts in the light of e.g. the theory of *Jürgen Habermas*. Putnam's claim is that the model for ideal argumentation isn't meaningless even though it is a model in the true sense of the word. There is no other way for theory or general thinking that surpasses everyday experience to serve the people. The ideal model helps to draw up directions, or landmarks of sorts, for those who are ready to stand against the irrationality of everyday reality.

Perelman's new rhetoric cannot change the world any more than the theory of argumentation. People are as cruel from generation to generation and their ears remain deaf to the call of rationality. But Chaim Perelman has lit a beacon for those who still have a conscience to listen to the sound of reason in a world of irrationality, to let arguments speak on the expense of emotions and prejudices.

The new rhetoric was a significant turning point for the part of legal *theory*. With its help, a break away from both judicial and legal positivism could be achieved. In this sense, the new rhetoric prepared and strengthened the ground for the hermeneutic approach. On the other hand, it shouldn't be said of either the new rhetoric or hermeneutics that they offer precise guidance for legal argumentation. They are not *methods*, in the actual sense of the word, even though hermeneutics implicitly contains notions of how texts have to be (should be) interpreted. *Tomasz Gizbert-Studnici* has made a fascinating contribution to this matter when stating that even though hermeneutics is normative in a hidden way, it is primarily a *background philosophy* for argumentation (or interpretation), giving answers to what interpretation is, not to the ways in which a "sufficiently right" interpretation can be justified.

The additional value produced by the modern theory of argumentation, for example through the work of *Robert Alexy*, resides to a large degree in repairing the "methodological deficits" of the new rhetoric. This is because Perelman himself doesn't give an answer to *how* the examined texts should be interpreted in legal science. In other words, his theory remains vague on the kinds of discretionary rules used to produce arguments or the ways in which these arguments can be justified.

In common usage, questions like this are rarely put forth. What use would a lawyer or a judge have for thoughts on the foundations of law or ideas on the essence of values? His task is to come to an understanding on the content of the legal rules covering a certain type of case or an individual one. So, why ask something one must remain silent about? The problem is presented in a new light when and if the task is turned around and one focuses on the *common usages* in themselves. This step is an entry point to a second degree, to the meta-level. On this level, the basic question is not the case-specific content of the legal order, but (for example) the nature of the legal order *as a legal order* and the nature of legal science *as legal thought*. It is at this very point, in the *difference of the questions*, that one can clearly grasp the difference between the viewpoints of legal science and legal theory.

These views can be clarified by taking three additional steps. The first step is the *recognition of the target* of legal science. This could be called the ontological step. It is only the recognition of the target that makes it possible to think about questions concerning so-called ”knowing”, for example the following: What does the idea of the ”truth” of legal science being conceptually ”thinner” than the truth of so-called hard sciences, an idea defended by Perelman, mean? If we consider, like I have grown used to doing, the ”certainty” of propositions or notions, not their truth in a Tarskian sense, we must be able to prove *what kind of certainty* can legal theory discuss in the context of legal science. This is an epistemological problem, even though the focus is on a softer type of certainty in relation to knowledge. In the end, the epistemological question, however it may be formulated, always reverts to a question of ontology from a philosophical viewpoint. One must justify a credible answer to the question on the *kind of certainty* legal science discusses when one puts forth conceptions on norms, institutions, and normative behavior.

It is in this very sense that the epistemological step always follows after the ontological. The same relation prevails between epistemology and methodology. Only when we know something about the nature of ”knowing” in legal science, can we move on to considerations of method and take the methodological step by thinking about the conditions, structure and rules of the legal discourse.

Questions of ontology, epistemology and methodology are of particular interest when we try to describe the status of legal science among the family of sciences. By legal science, I mean the traditional legal-dogmatic research (Rechtsdogmatik). This is the case especially because it seems that the question of legal science’s nature *as a science* seems to be a recurring one in the field of legal theory.

One of the consequences of Perelman’s new rhetoric is that we must abandon different kinds of empirical attempts to characterize legal dogmatics, the realism represented by *Alf Ross* as one example of them. The new rhetoric doesn’t grant an empirical status to legal science. The most common criticism of Perelman has been that legal dogmatics is not a science at all if the truth-quality is removed from its statements, replaced only by talk of certainty and degrees of certainty. Legal dogmatics has to be scientific to at least some degree if we take into account the field’s official name.

Worries such as these are understandable, although I don’t consider myself one of those who think that the ”scientific nature” of legal science is

one of the biggest problems in legal thinking. Nevertheless, since the question has been formulated, we must have some kind of an answer to it. To give this answer, we don't need to look for support from the narrow scientific criteria of legal or judicial positivism. Science has other characteristics that do more justice to legal research than the ones suggested by the empiricists. One must only take a different point of view.

Instead of asking what can generally be considered science, we can examine actual legal research and its essential qualities. The starting point for theory formation is in legal-dogmatic research as it is practiced especially in continental Europe. When the essential qualities of legal dogmatics as an interpretative science have been uncovered, it becomes possible to evaluate the concept of science in the light of which legal statements are "scientific", that is, the kind of (credible) concept of science that can be formulated to suit the needs of legal science. Two characteristics take the key position here: The *methodicalness* of the research as well as the *controllability* of the presented arguments. If legal dogmatics fails both or one of these tests, it doesn't deserve the value of scientific research.

My own answer is based not only on present practices but also on the history of legal dogmatics that can be recognized in different European countries. Both the present and earlier legal dogmatics fill the demand of methodicalness rather well. The methodicalness of legal regulations can even be called one of the core issues of legal dogmatics, even though it is bound to its time and to the special needs of each society. Therefore the methodical needs of late-19th century German legal science are quite different from the ones of the Finnish analytic tradition after the Second World War. Still, theoretically both were dealing with the meeting of the methodical need characteristic to science.

The new rhetoric and the theory of argumentation it inspired have proven that the statements of legal dogmatics can be controlled with rational criteria. We must let the arguments speak, and whenever this happens, legal dogmatics joins the family of sciences as its sovereign member. In this sense it was Theodor Viehweg and Chaim Perelman who, more than anyone else, turned over a new leaf for European legal thought. This is a good place from which to proceed.