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LINKS AND INTERSECTIONS BETWEEN RHETORIC AND LAW

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Abstract *The roots of rhetoric and legal sciences go back to ancient times and at certain stages of evolution, rhetoric and law had both links and intersections. At different times, their union was treated differently - sometimes it was encouraged, and sometimes - not at all. In the long run, however, it has been understood that legal dogmas alone do not describe all life events, so it is necessary to take certain circumstances into account each time, and rhetoric can help to articulate and convince the court of them. Its art of persuasion has always been associated with wise and reasonable speaking, giving the one explaining a certain point the right and freedom of speech allowing to explain legal norms, evaluate and interpret them and persuade listeners of them. So the objective of the article is to analyse the origin and development of the relationship between rhetoric and law. Used analysis and synthesis of scientific literature and analytical methods helped to analyse the main links and intersections of rhetoric and legal sciences at different stages of their development and assess the differences and circumstances of said stages that led to them. A review of the origins and development of rhetoric and law shows that each of them have their own history of origin, but in certain periods of their development, obvious links and intersections, determined by certain historical changes, could be noticed. In view of the diverse environment in which rhetoric and legal interfaces and intersections are treated, it must be acknowledged that each of them is a separate science with points of contact, but it must be acknowledged nonetheless that rhetoric was recognized as important to law as a representative of democracy and freedom of speech, and the main task of rhetoric — to persuade the listeners in wise and reasonable language, and help maintain the unity of law and justice. Thus, modern rhetoric teaches speakers to be effective persuasors in courtrooms, using both legal facts and the art of eloquence in a broad sense.*

Keywords: *rhetoric, law, intersection, interface.*

Introduction

The roots of rhetoric and legal sciences go back to ancient times. While their origins and evolution date back thousands of years and each has its own history, but at certain stages of evolution, rhetoric and law had both links and intersections. At different times, their union was treated differently - sometimes it was encouraged, and sometimes - not at all. Accordingly, all this had an impact on the science of rhetoric, which managed to survive the ups and downs. The main feature of rhetoric - convincingness, or persuasion, that used to help people in the times of the Sophists to defend themselves in courts, was later seen as synonymous with empty, though embellished language, and as a result rhetoric became an undesirable ally of the law. In the long run, however, it has been understood that legal dogmas alone do not describe all life events, so it is necessary to take certain circumstances into account each time, and rhetoric can help to articulate and convince the court of them. After all, every person's truth is different, and thus can be challenged. In reality, rhetoric has never presented itself as the art of empty, embellished language. On the contrary, its art of persuasion has always been associated with wise and reasonable speaking, giving the one explaining a certain point the right and freedom of speech allowing to explain legal norms, evaluate and interpret them and persuade listeners of them (Koženiauskienė, 2006). To this day, however, the links between rhetoric and legal sciences are subjects of much debate, and scholars are divided into two groups, but this is now the subject of scientific debate and said links are no longer categorically denied. Hence the problem posed in this article: can the branches of rhetoric and law have mutually beneficial

links that lead to mutually beneficial cooperation; does rhetoric distort the functioning of practical law? An overview of the origins and evolution of law and rhetoric, and an analysis of the intersections and links between these disciplines, should help to provide answers to the raised questions. An overview of the development of rhetoric and legal sciences reveals their closer cooperation in certain historical periods, i.e., links, and in certain periods - their difference, a radical separation and reassessment of what is considered in this article as the intersection of these sciences.

Thus, the **objective** of the article is to analyse the origin and development of the relationship between rhetoric and law.

To reach said objective, the following **tasks** are set:

1. To give an overview of the origin and development of rhetoric and legal sciences.
2. To reveal the intersections these sciences.

The article uses the following **research methods**: analysis and synthesis of scientific literature and analytical methods that help to analyse the main links and intersections of rhetoric and legal sciences at different stages of their development and assess the differences and circumstances of said stages that led to them.

Genesis of rhetoric and its links with law

The rhetoric and legal sciences seem different at first glance and seemingly have nothing in common with each other, as they may be perceived like areas that define and analyse different objects and are applied in different life situations. Rhetoric is usually associated with eloquence, persuasion, and law - with norms and measures to ensure justice. However, these two disciplines also have commonalities, and the link between certain aspects of rhetoric and law reveals the possibility of looking at these two areas in an interdisciplinary way (Gagarin, 2017). First of all, we are enabled to do so by the relationship between these fields dating back to ancient times, when the theoretical and practical application of each of them was formed. Of course, each field has its own history of origin and development, but when looking at certain periods the links between them seem undeniable. The relationship between law and rhetoric is particularly evident in ancient Greece, when the link between these areas was close, complex, and controversial (Gagarin, 2017). This shows that rhetoric and law have common historical roots. Both fields of science developed at the same time, both dealt with certain challenges of that time, which they could overcome only by cooperating together and separately creating the scientific foundations of their individual field, as well as the main dogmas that later expanded, changed over time, and were determined by various historical and political factors. First of all, law has played a key role in the development of oratory since the beginning of the science of rhetoric, which dates back to the 5th century BC in Sicily. The law also influenced Plato's and Aristotle's views on rhetoric, however different they may be, as well as rhetorical theory and practice in Hellenistic and Roman periods. Second of all, oratory was a major component of Greek law from Homer's active period until the 4th century BC, when the rhetorical ability of litigants - or their logographers (speech writers) - has had a significant impact on the nature and outcome of the cases (Gagarin, 2017). This was due to certain historical-social circumstances, as the Greeks had to be lawyers themselves when defending their rights in the courts, i.e., the defendants had to be able to defend themselves in court. Understandably, not every ordinary Greek citizen was able to 'advocate' for himself, so they hired so-called sophists logographers, who wrote defence speeches for them, taking into account the nature of the case, the audience of judges, as well as the client's age, education and personality. Clients would then have to learn the speech by heart and say it in court. Thus, rhetoric arose from legal practice, the realities

of life and the need to speak in a people's court in such a way as to persuade and influence judges who had no legal training, followed only their sense of justice, and whose verdicts were often in favour of those who managed to sound more eloquent (Koženiauskienė, 2005). However, in the long run, there were some undesirable consequences of such an intersection between law and rhetoric, when rhetoric started to play the central role in the legal system of Athens. Plato then began to condemn rhetoric in law for its corrupt role in cases, as instead of legal persuasion based on facts and arguments, persuasion based on the eloquence of language began to prevail, bringing rhetoric closer to the concept of empty, though embellished language, which is still seen by some scholars as a negative side of the concept of rhetoric (Koženiauskienė, 2005).

Thus, the foundations of the theory of rhetoric were laid in the 5th century BC in Sicily by the aforementioned Greek Sophists, who taught young people to think and speak according to the following ideal of language: *the language must be beautifully wise and wisely beautiful*. It should come as no surprise that due to the frequent court proceedings, the sophists worked a lot and were paid significant amounts of money (they would get about one-sixth of the court costs). Such a situation allowed them to create schools of rhetoric, in which the norms of public life were formed: first and foremost, students were taught legal norms, and with that also came the social, political and ethical norms. It was believed that 'the teaching of rhetoric helps to develop a wise and honest person - a full-fledged citizen of the state' (Koženiauskienė, 2005, p. 42). Sophists, who liked to argue, reason and discuss things, did not want to accept preconceived legal and other kinds of dogmas literally and interpreted those dogmas in different ways in order to remain rational, strengthen the will of the students and persuade the listeners in any way they could. The tricks of the Sophists and their thought-provoking questions did not mean that they taught or encouraged the curious students to lie or deceive. Instead, they sought to send out a wise citizen into the world who would be able to defend his opinion, think logically and would also be witty, able to recognize the opponent's tricks, and defend himself against twisted and manipulative ways of speaking (Koženiauskienė, 2005).

Even the mythological genesis of rhetoric suggests that coercive persuasion is inseparable from rhetoric. In his tragedy 'Oresteia', famous poet and playwright Aeschylus mentions the goddess Peitho (in Greek, *peitho* means the ability to convince, persuade, speak in such a way that listeners believe in what is being explained and said; if translated literally, her Latin name *Suada* means *persuasion*, which has become an international word), who uses her eloquence to help resolve a great conflict between the old and the new gods that has arisen in court. Long before Aeschylus, the Greek poet Hesiod listed the nine daughters of Zeus in his 'Theogony', including the fiery and strong goddess of rhetoric *Calliope* with a helmet on her head and a beautifully embroidered cloak on her shoulders. It is assumed that it is the same goddess Peitho, except referred to by her nickname - her most important characteristic (in Greek, *Calliope* means one who speaks beautifully) (Koženiauskienė, 2005). Inspired by the aforementioned myths, the old iconography also shows Rhetoric as Peitho - a girl full of life and energy with a helmet and a sword in her hand. Most of the inscriptions in iconography proclaim that Rhetoric is *Regina artium*, i.e., the queen of all arts. This emphasizes not only the supremacy of Rhetoric, but also the fact that it could not exist without other sciences - law, philosophy, logic, psychology, grammar and ethics.

Following one of the concepts of a myth, saying that myths are not the history of gods but that of people who were deified at a later time, today's scholars draw a number of conclusions that are directly relevant to the science of legal rhetoric: rhetoric, as an oral text, emerged out of a natural desire and need to persuade judges; language can win against the use of physical force or violence, injustice and lies; it turns arguments into agreements, affects the

mind, feelings and will, and receives the support and approval of the listeners (Dilytė, 1998; Koženiauskienė, 2005).

The legal nature of rhetoric and the significance of argument-based persuasion are also evidenced by the etymology of the word *rhetoric* itself. *Reo* in ancient Greek (eventually replaced by the word *lego* in classical Greek) means *to speak accurately, clearly*, that is, according to the established legal norm *Rieton*, valid for those who accepted it as truth. However, the young and rebellious thought of an educated, unsuperstitious Greek or his freedom to believe in various gods, was not constrained by dogmas or catechisms, as such a person raised questions instead of blindly following someone's truth without proof and verification. Every person's truth is different, and thus can be challenged. The reference point of all things is a person, not a dogma (Koženiauskienė, p. 34). The Greeks called a speaker who could interpret *Rieton* (in Latin, *Justum* - a legal norm) creatively and, most importantly - one who managed to fully convince the crowd of the unconditional nature of a legal norm that has never been changed before, a *rector*; the Romans then literally translated the word into an *orator* (one asking for permission to speak publicly), and the technique of such persuasion - the art of rhetoric, or rhetoric (Koženiauskienė, 2005, p. 35). Thus, rhetoric has been associated with persuasion, or coercive persuasion, since its inception. 'Coercive persuasion is a synthesis of intellectual, moral and emotional elements of language' (Koženiauskienė, 2005, p. 22), therefore not only beautiful eloquence is important for rhetoric, but also the content of language itself, as well as moral values. Even the oldest definition of rhetoric, dating back 2,500 years, from ancient Greece, calls this field of science the 'art of persuasion'. According to Regina Koženiauskienė, the word 'persuasion' also prevails in many later definitions of rhetoric, as its forms or synonyms can be found in the definitions provided by Palazzi (*The art that teaches how to convincingly express our thoughts and feelings in words is called stylistics, or rhetoric*, 1969), Perelman (*Rhetoric is the theory of persuasive communication (1987)*, and Kennedy (*Rhetoric is the energy of mind, spirit, and feelings used to persuade listeners*, 1994) (2005)). In order for these definitions not to give the false notion that rhetoric is merely a means to persuade the listener and be understood, the concept of persuasion is later supplemented by the concept of believing, or harmony, as seen in today's definitions of rhetoric, stating the following: *well-spoken people are those who can convey their thoughts clearly, use the arguments that are most appropriate for a particular situation and audience, and are able to give their words an emotional tone that is compelling at a particular moment* (Koženiauskienė, 2005).

Lithuanian linguistics also explains the Lithuanian links between law and rhetoric. Law and rhetoric are linked by the concept of *case*. The word *case* (in Lithuanian - *byla*; the word comes from the verbs *prabilti* (speak) and *byloti* (testify)), used to mean the same thing as speech, speaking. Later, it meant public speaking in court, and then was started to be used as legal terminology and began to mean the whole court proceedings, e.g., civil proceedings (compare this the following French words and/or phrases: *parle* Parliament - *place where laws are passed)* (Koženiauskienė, 2005, p. 22). Consequently, the ultimate goal of a lawyer is to make his 'case' in such a way as to influence the actions and assessment of judges, and convince them. By *influence,* it is not just any effect that is meant, but an effect that has gone beyond the power of evidence. It is an attempt to influence the conscious thinking of the listeners by legitimate means. According to Justickis, 'The most obvious methods of psychological influence are used in the speeches of lawyers and prosecutors. Their legal status indicates that they must "convince" the court' (2003, p. 259), and convincing, or persuasion, is exactly the main goal of rhetoric. Thus, during the court process, opposing sides both pursue their goals not only by legal, but also by rhetorical (psychological) means.

Hence, the historical, etymological and mythological genesis of rhetoric is based on the same basis: the model of wise and harmonious (beautiful) speech. Only by speaking can a lawyer really 'act' in court, because his work mostly consists of activity 'constructed' in a professional language. Although the value and understanding of the science of rhetoric has changed over the centuries, the rhetorical ideal of the courts, formed in the homeland of free speech and democracy, Greece, remains relevant in democracies to this day.

Intersections between rhetoric and law

The obvious links between rhetoric and law in ancient times, however, have not been continuously developed to this day. An opposite opinion about the role of rhetoric in law soon emerged, as Plato was already outraged by the abuse of rhetoric: he defined it as the persuasion of ignorant masses in courts and assemblies (Legal rhetoric, 2019). In Europe, the rhetoric that originated in Greece, was continued by the Roman Cicero and Quintilian, and became an indicator of legal education, was later suppressed by the rise of rationalism in the 17th and 18th centuries (Harrington et al., 2019), and Plato's position is also supported in the work of today's scholars, although there is also an opposition to it stating that rhetoric is an inevitable component of any legal system (Gagarin, 2017). The intersection of rhetoric and law to this day has had to endure considerable trials, changes in attitudes towards their links, different positions of scholars in assessing the significance of rhetoric in law. From the 17th century onwards, rhetoric began to fade, becoming more and more often presented as an additional skill that people can develop and work on. In the works of Tom Hobbes, Jeremy Bentham and John Rawls, there was an opinion contrary to the meaning of rhetoric, offering instead the theories of sovereignty, legislation, political morality, and so on. The nature of rhetoric was also condemned by J. Lock, who argued that eloquence and figurative language only have the purpose of 'instilling' wrong ideas, causing arguments and, thus, leading to wrong decisions. Therefore, according to the authors of the time, the immorality of rhetoric contradicts natural law, which sought to establish legal considerations in some higher order (Harrington et al., 2019). Rhetoric remains only as a separate scientific legal field. Modern legal theory considers law to be an ideal system of rules that is pre-determined and whose meaning must be determined through exegesis, rather than being actively developed through arguments as it was done in ancient Greek or Roman times. Despite various authors treating the relationship between rhetoric and law differently, the closeness of rhetoric to the social context allowed it to return to the field of law and help it with its own strengths. Over time, it has been understood that classical rhetoric provides an excellent set of tools for the analysis of persuasive effects. This includes instances of speaking (i.e., speaking in court, reasoning or giving a celebratory speech); canons of rhetoric (discovery, layout, style, presentation and memory); figures of speech (metaphor, metonymy, synecdoche, etc.) and part of speech (introduction, narrative, proof, denial, and conclusion). All of this can help to read the legal material carefully, while the main components of rhetoric, i.e., *logos, pathos* and *ethos*, help to properly shape legal arguments (Harrington et al., 2019). People started to understand that information is a resource, not just 'empty words' as an antithesis of 'action' (Amilevičius, 2011). Finally, Luhman points out that rhetoric can participate in law, which is understood as a system of separate textual and oral episodes with legal validity, culturally and politically. Each case can be analysed as an attempt to convince a diverse audience of the legal validity and appropriateness of the facts. However, instead of applying indisputable principles, the law must look at and pay the most attention to sound arguments and specific situations, and rhetoric must be understood not as a pleasantry or a linguistic 'caress', but as the essence of democratic life allowing one to express

one's arguments, which as elements of judicial debate should help to clarify each case individually and find a suitable solution. Thus, there was a return to the concept of the link between democratic rhetoric and law that was popular in ancient Greece, which, although valued by scholars in two ways, is nevertheless recognized and no longer ignored in modern times.

In view of the diverse medium of treatment of links and intersections between rhetoric and law, it must be acknowledged that each of them is a separate science with points of contact. In other words, rhetoric and law are interdisciplinary sciences, and not just in terms of their interrelationship. Each of these sciences is interdisciplinary in their own way: rhetoric combines philology, logic, philosophy, psychology, ethics, and neorhetoric; reborn in the middle of the twentieth century, rhetoric is also based on new sciences - communication theory, psycholinguistics, sociolinguistics, hermeneutics, semantics and semiotics, i.e., sciences that regard rhetoric as their forerunner. The science of law is also not isolated from other sciences and is actually based on them (e.g., on philosophy, philology, logic, psychology, sociology, etc.). This situation in the aforementioned fields of science is determined by their social context - both sciences are for society and analyse aspects related to people as a collective, i.e., speech and legal decision making. In law and rhetoric themselves, the boundaries of individual disciplines are generally blurred: both theoretical and practical methodological elements of the disciplines permeate each other. Also, the links between law and rhetoric do not need to be understood and assessed in a straightforward way, and just the spheres occupied by each of them need to be properly distinguished. For example, rules of legal reasoning are developed by legal theory, but they can only be effective if they are not limited to said legal theory and are seen in the broader context, i.e., the knowledge and achievements of other disciplines are applied (Mikelėnienė, Mikelėnas, 1999). So, a lawyer must have a good command of the language, think logically, be a good psychologist and have a strong ethical foundation. A lawyer must also be a hermeneutic who is able to mediate between a letter of the law and the addressee who wants to understand it and see that justice is done. Law and rhetoric have much in common with hermeneutics: rhetoric teaches the creation of a text, and hermeneutics teaches us to understand and interpret it. A lawyer needs both of these sciences, because he needs to understand the text of the law, be able to interpret the opponent's perception of the law and create his own text at the same time. Thus, the studies of law and rhetoric provide a wide range of information and have much in common in their universality: by combining jurisprudence and eloquence, they develop logical thinking and, at the same time, creative speaking (Koženiauskienė, 2005). In other words, the interdisciplinary nature of the science of rhetoric allows for the meaningful use of the latest theoretical and methodological achievements of many disciplines (Brūzgienė, 2006).

So, modern rhetoric teaches speakers to be effective and persuasive in courtrooms, using both legal facts and the art of eloquence in a broad sense. A lawyer must have a good command of the language, know the logic, be a good psychologist, have a strong ethical foundation. The studies of law and rhetoric provide a wide range of information and have much in common in their universality: by combining jurisprudence and eloquence, they develop logical thinking and, at the same time, creative speaking. A lawyer must also be a hermeneutic who is able to mediate between a letter of the law and the addressee who wants to understand it and see that justice is done. Law and rhetoric have much in common with hermeneutics: rhetoric teaches the creation of a text, and hermeneutics teaches us to understand and interpret it. A lawyer needs both of these sciences, because he needs to understand the text of the law, be able to interpret the opponent's perception of the law and create his own text at the same time. In other words, rhetoric proposes measures to link law to the social context without losing various legal nuances

(Harrington et al., 2019). The fact that the closeness of rhetoric and law is also recognized in science is evidenced by the development of the field of legal rhetoric, which was singled out by Aristotle as one of the types of a public talk, and argumentation, as a part of rhetoric, is studied not only in a linguistic sense, but also by assessing paralinguistic elements - the volume of speech, intonations (Kjeldsen; Eckstein), or even the influence of non-verbal language on the strength of argumentation (Gelang), not to mention argumentation theories (Rapp, Wagner). This shows that science is becoming more and more modern, is constantly evolving, and does not limit itself to fundamental dogmas. Consequently, it is noticeable not only a clear affirmation of the links between rhetoric and law, but it is even being developed. It can therefore be concluded that each field of science needs to be analyzed in detail, delving into all its aspects in order to find out and discover what is most appropriate to link it to another field of science that can help other sciences. Only comprehensive and varied research can reveal this. Therefore, it is recommended to study the fields of science in as many different aspects as possible, as well as to keep in mind the mutual benefits of interdisciplinary research, which helps to reveal the similarities and differences of several fields of science, their mutual benefits. The results of such research often show unexpected results that are useful in developing the concept of science in each field of it and in general.

Conclusions

The rhetoric and law, mentioned in various sources since ancient times, each have their own history of origin, but in certain periods of their development, obvious links and intersections, determined by certain historical changes, could be noticed. Eventually, however, rhetoric was recognized as important to law as a representative of democracy and freedom of speech, and it was not the manipulative aspects, but the real task of the science of rhetoric — to persuade the listeners in wise and reasonable language, and help maintain the unity of law and justice — that were finally taken into account. The development of neorhetoric as a field of science, associating it with the influence that paralinguistic elements and non-verbal language have on speech, and research on legal rhetoric shows that rhetoric and law have remained interdisciplinary to this day, and that they have common objects of research which can be studied in various aspects.

References

1. „Legal Rhetoric. A Guide to Legal Writing, Legal Arguments & Legal Interpretation“ (2010), Ojijo, Uganda [online]. Available at: http://www.academia.edu/11809508/Legal_Rhetoric_A_Guide_to_Legal_Writing_Legal_Arguments_and_Legal_Interpretation_docx.
2. Amilevičius, Darius (2011) „Retorikos taikymo viešosios tvarkos apsaugos ir policijos pareigūnų kvalifikacijos kėlimo srityse galimybės“, *Visuomenės saugumas ir viešoji tvarka*, 5, p. 5–18 [online]. Available at: http://repository.mruni.eu/handle/007/14822.
3. Brūzgienė, Rūta (2006) „Juridinė retorika: modernieji komparatyvistikos aspektai“, *Jurisprudencija,* 8 (86), p. 71–77 [online]. Available at: http://ojs.mruni.eu/ojs/jurisprudence/article/view/2838 .

4. Eckstein, Justin (2018) „The acoustics of argumentation and advocacy“, *Argumentation and Advocacy*, 54 (4), p. 338–346 [online], DOI: 10.1080/10511431.2018.1525012. Available at: https://www.tandfonline.com/doi/full/10.1080/10511431.2018.1525012 .

5. Gagarin, Michael (2017) *Rhetoric in Law*, Oxford University Press.

6. Gelang, Marie, Kjeldsen, Jens 2018) „Nonverbal Communication as Argumentation“, Proceedings of the 7th Conference of the International Society for the Study of Argumentation [online]. Available at: http://www.academia.edu/2247782/Nonverbal_ Communication_as_Argumentation.

7. Harrington, John, Series, Lucy and Ruck-Keene, Alexander (2019) „Law and Rhetoric: Critical Possibilities“, *Journal of law and society volume,* 46 (2), p. 302–327 [online]. Available at: http://onlinelibrary.wiley.com/doi/full/10.1111/jols.12156 .

8. Kjeldsen, Jens (2018) „The rhetoric of sound, the sound of arguments three propositions, three questions, and an afterthought for the study of sonic and multimodal argumentation“ , *Argumentation and Advocacy*, DOI: 10.1080/10511431.2018.1525013 [online]. Available at: www.tandfonline.com/doi/abs/10.1080/10511431.2018.1525013 ?journalCode=rafa20.

9. Koženiauskienė, Regina (2005) *Juridinė retorika*. Vilnius: Teisinės informacijos centras.

10. Koženiauskienė, Regina (2006) „Retorikos genezė iš justum et aequum dualizmo: teisės ir retorikos sąsajos“, *Jurisprudencija,* 8 (86), p. 18–23 [online]. Available at: http://ojs.mruni.eu/ojs/jurisprudence/article/view/2830/2634 .

11. Mikelėnas, V., Mikelėnienė D. (1999) *Teismo procesas: teisės aiškinimo ir taikymo aspektai*. Vilnius: Justitia.